

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2873

BY DELEGATES YOUNG, GRAVES, ZUKOFF, SUMMERS,

FLEISCHAUER, WALKER AND BROWN

[Introduced March 03, 2021; Referred to the
Committee on Workforce Development then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §21A-6-18, relating to allowing waiver of repayment of overpaid
 3 unemployment insurance; providing factors to consider by the Commissioner of Bureau of
 4 Employment Programs' to waive repayments; prohibiting of a waiver if the insured
 5 commits fraud or is otherwise responsible for the over payment; providing criteria for
 6 eligibility for waiver; placing burden on insured to prove eligibility for waiver; providing
 7 procedures for review of claims; providing for discontinuance of further governmental
 8 payments until repayment is satisfied, and providing for a retroactivity clause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-18. Waiver for repayment of benefits erroneously received.

1 (a) When an overpayment of unemployment benefits has occurred for which the claimant
 2 is not at fault, the commissioner shall waive repayment when repayment would be against equity
 3 and good conscience.

4 (b) Repayment would be against equity and good conscience when it would create
 5 financial hardship as defined in subsections (c) and (d) of this section.

6 (c) Unless there are unusual circumstances which would argue against waiver, the
 7 department will presume repayment would leave the claimant unable to provide basic necessities
 8 if the claimant's current total household income in relation to household size does not exceed 100
 9 percent of the federal OMB Poverty Guideline and circumstances are not reasonably likely to
 10 change within the next 90 days. If anyone in the claimant's household receives Temporary
 11 Assistance to Needy Families (TANF) benefits, Supplemental Security Income (SSI) benefits, or
 12 Social Security then repayment of overpayment shall be deemed to be against equity and good
 13 conscience;

14 (d) In determining whether the repayment will be against equity and good conscience and
 15 cause financial hardship, the commissioner shall consider:

16 (1) Whether recovery of the overpayment would cause extraordinary and lasting financial
17 hardship to the claimant resulting in the claimant's loss of or inability to obtain minimal necessities
18 of food, medicine, and shelter; and whether the financial hardship as described may be expected
19 to last for the foreseeable future;

20 (2) All financial resources available to the claimant and members of the claimant's
21 household; and

22 (3) The claimant's living expenses, including, but not by way of limitation, expenses for
23 food, rent, clothing; debt payment obligations, accident and health insurance, medical care
24 expenses, taxes owed, work related transportation; the support of others for whom the claimant
25 is legally responsible; and whether the claimant detrimentally changed his or her financial position
26 in reliance on the receipt of the overpaid benefits including, but not limited to, entering into a
27 financial and/or contractual obligation that he or she would not have entered except for the receipt
28 of the overpaid benefits.

29 (e) The overpaid claimant shall have the burden of proving entitlement to a waiver, and
30 shall provide supporting documentation of financial hardship as required by the commissioner.
31 The commissioner shall not consider any petition for waiver of overpayment while an appeal of
32 the overpayment is pending. The commissioner may not waive repayment of any overpayment
33 of any state or federal unemployment insurance benefits caused by fraud or otherwise the fault
34 of the claimant.

35 (f) Unless repayment is waived in accordance with this section, whenever the
36 commissioner finds, after notice and opportunity by the claimant to contest, that a claimant has
37 received benefits erroneously and has been charged with an overpayment, recovery shall be
38 carried out as set forth in §21A-10-8 or §21A-10-21 of the code, as applicable. No recovery may
39 be attempted until the determination of an erroneous payment is final as to law and fact; and the
40 individual has been notified of the opportunity to request a waiver under this section; and the
41 individual has not requested a waiver within 21 days of being notified of the opportunity.

- 42 (g) The provisions of this section are retroactive and applicable to all benefits paid
43 beginning on January 1st, 2020.

NOTE: The purpose of this bill is to allow the Commissioner of the Bureau of Employment Programs to waive repayment of overpaid benefits where the insured was not at fault in creating the overpayment, and the insured shows that repayment will create financial hardship as defined in the bill and would be against equity and good conscience.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.