

# WEST VIRGINIA LEGISLATURE

## 2022 REGULAR SESSION

Introduced

### Senate Bill 251

FISCAL  
NOTE

BY SENATOR ROBERTS

[Introduced January 13, 2022; referred to the  
Committee on the Judiciary; and then to the  
Committee on Finance]

1 A BILL to amend and reenact §21A-10-4 of the Code of West Virginia, 1931, as amended, relating  
2 to unemployment compensation records and reports; providing for the preservation of  
3 such records and reports; providing for the making of copies of reports and records, as  
4 well as their admissibility; dealing with their destruction and the appropriateness for doing  
5 so; and providing for a civil or criminal penalty for noncompliance.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 10. GENERAL PROVISIONS.**

### **§21A-10-4. Records and reports; preservation; copies; admissibility; destruction; penalty.**

1 ~~(1) An employing unit shall keep true and accurate work records containing such~~  
2 ~~information as the commissioner may prescribe. The record shall be open to inspection and be~~  
3 ~~subject to being copied by the commissioner or his authorized representatives at any reasonable~~  
4 ~~time.~~

5 ~~(2) The commissioner may cause to be made such summaries, compilations,~~  
6 ~~photographs, duplication, or reproduction of any records, reports, or transcripts thereof as he may~~  
7 ~~deem advisable for the effective and economical preservation of information contained therein,~~  
8 ~~and such summaries, compilations, photographs, duplication, or reproductions duly~~  
9 ~~authenticated, shall be admissible in any proceeding under this chapter if the original record or~~  
10 ~~records would have been admissible therein and are unavailable.~~

11 ~~(3) The commissioner, with the concurrence of the majority of the advisory council, may~~  
12 ~~provide regulations for the destruction or disposition, after reasonable periods, of any records,~~  
13 ~~reports, transcripts, or reproductions thereof, or other papers in his custody, the preservation of~~  
14 ~~which is considered no longer necessary for the establishment of contribution liability or benefit~~  
15 ~~rights, or for any purpose necessary to the proper administration of this chapter, including any~~  
16 ~~audit required~~

17 (a) Each employing unit shall keep true and accurate records containing such information  
18 as the commissioner may prescribe. Such records shall be open to inspection and be subject to

19 being copied by the commissioner or his authorized representatives at any time and as often as  
20 may be necessary. In addition to information prescribed by the commissioner, each employer  
21 shall keep records of and report to the commissioner quarterly the street address of each  
22 establishment, branch, outlet, or office of such employer, the nature of the operation, the number  
23 of persons employed, and the wages paid at each establishment, branch, outlet, or office.

24 (b) The commissioner or his or her authorized representative may require from any  
25 employing unit any sworn or unsworn reports deemed necessary for the effective administration  
26 of this chapter. Any member of the board of review and any appeal referee may require from any  
27 employing unit any sworn or unsworn reports, with respect to persons employed by it, which are  
28 deemed necessary for the effective administration of this chapter.

29 (c)(1) If, in response to the commissioner's request, an employer refuses to allow an audit  
30 of its records; fails to make all necessary records available for audit or inspection; or in response  
31 to a fraud investigation, fails to provide a claimant's weekly wage information; the employer may  
32 be assessed an administrative penalty of not less than \$100 and not more than \$2,500.

33 (2) Any notice requesting records as provided for in paragraph (1) of this subsection must  
34 clearly state that a penalty of up to \$2,500 may be assessed for the failure to provide the records  
35 which are requested by the commissioner.

36 (3) Any penalties assessed and collected against the employer shall be credited to the  
37 penalty and interest account.

38 (4) Upon the conclusion of an audit pursuant to this subsection, the commissioner may  
39 refund the administrative penalty to the employer, minus all administrative costs associated with  
40 the audit request.

41 (d)(1) Information, statements, transcriptions of proceedings, transcriptions of recordings,  
42 electronic recordings, letters, memoranda, and other documents and reports thus obtained, or  
43 obtained from any individual, claimant, employing unit, or employer pursuant to the administration  
44 of this chapter, except to the extent necessary for the proper administration and enforcement of

45 this chapter, shall be held confidential and shall not be subject to subpoena in any civil action or  
46 proceeding, nor be published or open to public inspection, other than to public employees in the  
47 performance of their public duties, including the office of workers' compensation in any manner  
48 revealing the individual's or employing unit's identity. However, if requested, an employing unit or  
49 employer shall receive with any "notice to appear for a hearing" a copy of the statement which the  
50 claimant made regarding his separation from that employing unit or employer and in the same  
51 manner, and on the same subject, the claimant shall receive a copy of the employer's statement.  
52 Additionally, any claimant or his or her duly authorized representative, at a hearing before an  
53 appeal referee or the board of review, shall be supplied with information from such records to the  
54 extent necessary for the proper presentation of his or her claim.

55 (2) Any person who violates any provision of this section shall be fined not less than \$20  
56 nor more than \$500 or imprisoned for not less than 10 days nor more than 90 days, or both.

57 (e) On orders of the commissioner, any records or documents received or maintained by  
58 him or her under the provisions of this chapter, or the rules and regulations promulgated  
59 thereunder, may be destroyed under such safeguards as will protect their confidential nature two  
60 years after the date on which such records or documents last serve any useful, legal, or  
61 administrative purpose in the administration of this chapter or in the protection of the rights of  
62 anyone.

63 (f) Any such information, as provided in subsection (d) of this section, that is released to  
64 any public employee in the performance of public duties, may be released on a reimbursable  
65 basis and shall be used exclusively for execution of intended public duties and shall not, under  
66 any circumstance, be accessed and used for any other purpose, subject to sanction of any such  
67 public employee under paragraph (d)(2) of this section. The commissioner and the office of  
68 WorkForce West Virginia shall not be liable for any violation by any such public employee to whom  
69 such information has been disclosed or delegated.

70 (g) A state or local child support enforcement agency may provide access to disclosed

71 information to any agent that is under written contract with such agency for purposes of  
72 establishing and collecting child support obligations from and locating individuals owing such  
73 obligations. Any such designated agent of a state or local child support agency that receives such  
74 information shall fully comply with the safeguards established under subsection (f) of this section,  
75 subject to sanction under paragraph (d)(2) of this section.

76 (h)(1) WorkForce West Virginia, the Division of Administration, or any contractor working  
77 on behalf of either of them, may be provided employment data obtained pursuant to the  
78 administration of this chapter for any one of the expressly stated following purposes:

79 (A) Compiling statistics which would support performance management and evaluation by  
80 program managers of state and federal programs, especially as they relate to employment  
81 outcomes.

82 (B) Compiling statistics which would assist in the preparation of common performance  
83 reports across agencies.

84 (C) Compiling statistics for education and training research purposes, including  
85 longitudinal studies to assist in program improvement and design.

86 (2) Any employment data, provided pursuant to this subsection, will be confidential. No  
87 public employee or contractor acting on behalf of a state agency or employee of such contractor  
88 may do either of the following:

89 (A) Use any data, provided pursuant to this subsection, for any purpose other than the  
90 statistical purposes for which the data is furnished.

91 (B) Make public any of the data, provided pursuant to this subsection, which would allow  
92 the identity of any individual or employing unit to be inferred by either direct or indirect means.

93 (3)(A) Any such data, as provided in this subsection, that is released to any state agency  
94 or any contractor acting on behalf of a state agency pursuant to this subsection, may be released  
95 on a reimbursable basis and shall be used exclusively for execution of intended public duties.

96 Such data shall not, under any circumstance, be accessed and used for any other purpose,

97 subject to sanction as provided for in subparagraph (C) of this paragraph of any such employee  
98 of such state agency or any contractor acting on behalf of such state agency. The commissioner  
99 and the office of WorkForce West Virginia shall not be liable for any violation by any employee of  
100 WorkForce West Virginia, the Division of Administration, or any contractor working on behalf of  
101 either of them, to whom such information has been disclosed or delegated in accordance with the  
102 provisions of this subsection.

103 (B) Any such data, as provided in this subsection, that is received by any state agency or  
104 any contractor acting on behalf of a state agency pursuant to this subsection, must be destroyed  
105 within 30 days of completion of its intended purpose as described in this subsection.

106 (C) Any person who violates any provision of this subsection shall be fined not less than  
107 \$1,000 nor more than \$20,000 or imprisoned for not less than 30 days nor more than six months,  
108 or both.

NOTE: The purpose of this bill is to update the process of keeping and maintaining unemployment compensation records and reports. The bill provides for the preservation, copies, admissibility, and destruction of such records and reports. The bill provides for a civil and/or criminal penalty for noncompliance.

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