

1 **H. B. 2664**

2  
3 (By Delegates Moye, Barker, M. Poling, T. Campbell  
4 and D. Poling)

5  
6 [Introduced January 20, 2011; referred to the  
7 Committee on Energy, Industry and Labor, Economic  
8 Development and Small Business then the Judiciary.]  
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10 A BILL to amend and reenact §21-1B-2 and §21-1B-3 of the Code of  
11 West Virginia, 1931, as amended, all relating to verifying  
12 legal employment status of workers; providing new definitions;  
13 requiring employers to register with and utilize the  
14 electronic verification of work authorization program of the  
15 Illegal Immigration Reform and Immigration Responsibility Act  
16 of 1996, Public Law 104-208, Division C, Section 403(a); 8  
17 U.S.C. Section 1324a, and operated by the United States  
18 Department of Homeland Security, known as the E-Verify  
19 Program; and providing dates by which employers are to meet  
20 the verification requirements.

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

22 That §21-1B-2 and §21-1B-3 of the Code of West Virginia, 1931,  
23 as amended, be amended and reenacted, all to read as follows:

24 **ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT STATUS OF WORKERS.**

25 **§21-1B-2. Definitions.**

1 (a) "Employer" means any individual, person, corporation,  
2 department, board, bureau, agency, commission, division, office,  
3 company, firm, partnership, council or committee of the state  
4 government, public benefit corporation, public authority or  
5 political subdivision of the state or other business entity which  
6 employs or seeks to employ an individual or individuals.

7 (b) "Commissioner" means the Labor Commissioner or his or her  
8 designated agent.

9 (c) "Unauthorized worker" means a person who does not have the  
10 legal right to be employed or is employed in violation of law.

11 (d) "Records" means records that may be required by the  
12 Commissioner of Labor for the purposes of compliance with the  
13 provisions of this article.

14 (e) "Knowingly" means, with respect to conduct or to a  
15 circumstance described by a statute defining an offense, that a  
16 person is aware by documentation or action that the person's  
17 conduct is of that nature or that the circumstance exists. Failure  
18 to request or review documentation of an employee's legal status or  
19 authorization to work is deemed to be "knowingly".

20 (f) "License" means any permit, certificate, approval,  
21 registration, charter or similar form of authorization that is  
22 required by law and that is issued for the purpose of operating a  
23 business in this state.

24 (g) "Status verification system" means the electronic

1 verification of work authorization program of the Illegal  
2 Immigration Reform and Immigration Responsibility Act of 1996,  
3 Public Law 104-208, Division C, Section 403(a); 8 U.S.C. Section  
4 1324a, and operated by the United States Department of Homeland  
5 Security, known as the E-Verify Program.

6 (h) "Unauthorized alien" means an alien as defined in Section  
7 1324a(h) (3) of Title 8 of the United States Code.

8 **§21-1B-3. Unauthorized workers; employment prohibited.**

9 (a) It is unlawful for any employer to knowingly employ, hire,  
10 recruit or refer, either for him or ~~herself~~ her or on behalf of  
11 another, for private or public employment within the state, an  
12 unauthorized worker who is not duly authorized to be employed by  
13 law.

14 (b) Employers in the State of West Virginia may only hire  
15 employees who are citizens of the United States of America or are  
16 authorized workers. For purposes of this section, an authorized  
17 worker is an individual who was lawfully present in the United  
18 States and permitted to work at the time of employment and for the  
19 duration of employment, or was permanently residing in the United  
20 States under color of law and permitted to work at the time of  
21 employment and for the duration of employment.

22 ~~(b)~~ (c) Employers shall ~~be required to~~ verify a prospective  
23 employee's ~~legal status or~~ authorization to work prior to employing  
24 the individual or contracting with the individual for employment

1 services and may only hire employees who are citizens of the United  
2 States of America or are authorized to work. Every employer shall  
3 register with and utilize the status verification system to verify  
4 the federal employment authorization status of all newly hired  
5 employees. For purposes of this section, a legal alien is an  
6 individual who was lawfully present in the United States at the  
7 time of employment and for the duration of employment, or was  
8 permanently residing in the United States under color of law at the  
9 time of employment and for the duration of employment.

10 ~~(c)~~ (d) For purposes of this article, proof of ~~legal status or~~  
11 authorization to work includes, but is not limited to, a valid  
12 social security card, a valid immigration or nonimmigration visa:  
13 which includes ~~including~~ photo identification, a valid birth  
14 certificate, a valid passport, a valid photo identification card  
15 issued by a government agency, a valid work permit or supervision  
16 permit authorized by the Division of Labor, a valid permit issued  
17 by the Department of Justice or other valid document providing  
18 evidence of legal residence or authorization to work in the United  
19 States.

20 ~~(d)~~ (e) For purposes of enforcing the provisions of this  
21 article, and notwithstanding any other provision of this code to  
22 the contrary, the commissioner or his or her authorized  
23 representative may access information maintained by any other state  
24 agency, including, but not limited to, the Bureau of Employment

1 Programs and the Division of Motor Vehicles, for the limited  
2 purpose of confirming the validity of ~~a worker's legal status~~ an  
3 individual's eligibility ~~or authorization~~ to work. The  
4 commissioner shall promulgate rules in accordance with the  
5 provisions of chapter twenty-nine-a of this code to safeguard  
6 against the release of any confidential or identifying information  
7 that is not necessary for the limited purpose of enforcing the  
8 provisions of this article.

9 (f) State of West Virginia agencies and political  
10 subdivisions, public contractors and private employers with two  
11 hundred fifty or more employees shall meet verification  
12 requirements not later than January 1, 2012.

13 (g) Employers with at least one hundred but less than two  
14 hundred fifty employees shall meet verification requirements not  
15 later than January 1, 2013.

16 (h) Employers with at least thirty but less than one hundred  
17 employees shall meet verification requirements not later than  
18 January 1, 2014.

19 (i) Employers with six or less employees may apply to the  
20 Labor Commissioner for a waiver.

21 (j) All employers shall meet verification requirements not  
22 later than January 1, 2015.

NOTE: The purpose of this bill is to require all employers in West Virginia to verify legal employment status of workers by requiring employers to register with and utilize the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Public Law 104-208, Division C, Section 403(a); 8 U.S.C. Section 1324a, and operated by the United States Department of Homeland Security, known as the E-Verify Program. The bill provides new definitions and also provides dates by which employers are to meet the verification requirements.

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