

WEST VIRGINIA LEGISLATURE
2017 SECOND EXTRAORDINARY SESSION

ENROLLED

House Bill 205

BY MR. SPEAKER (MR. ARMSTEAD) AND DELEGATE MILEY

(BY REQUEST OF THE EXECUTIVE)

[Passed October 17, 2017; in effect from passage.]

1 AN ACT to amend and reenact §21-1C-2, §21-1C-4 and §21-1C-6 of the Code of West Virginia,
2 1931, as amended, all relating generally to the West Virginia Jobs Act; defining terms;
3 requiring Workforce West Virginia to provide a waiver to an employer if unable to refer
4 certain amount of qualified job applicants to the employer within three business days;
5 increasing and adding civil penalties for violations; providing for written notice of violation
6 to employer for violations; creating a special revenue account; and other technical
7 corrections.

Be it enacted by the Legislature of West Virginia:

1 That §21-1C-2, §21-1C-4 and §21-1C-6 of the West Virginia Code, 1931, as amended,
2 be amended and reenacted, all to read as follows:

ARTICLE 1C. WEST VIRGINIA JOBS ACT.

§21-1C-2. Definitions.

1 As used in this article:

2 (1) The term “commissioner” means the Commissioner of the West Virginia Division of
3 Labor, or his or her authorized representatives.

4 (2) The term “construction project” means any construction, reconstruction, improvement,
5 enlargement, painting, decorating or repair of any public improvement let to contract in an amount
6 equal to or greater than \$500,000. The term “construction project” does not include temporary or
7 emergency repairs;

8 (3) The term “domicile” or “primary residence” means an individual’s true, fixed, principal,
9 and permanent home, to which he or she returns or intends to return, even though currently
10 residing elsewhere. Presentation of a valid, government-issued identification card shall be
11 conclusive proof of domicile.

12 (4) (A) The term “employee” means any person hired or permitted to perform hourly work
13 for wages by a person, firm or corporation in the construction industry;

14 (B) The term “employee” does not include:

15 (i) Bona fide employees of a public authority or individuals engaged in making temporary
16 or emergency repairs;

17 (ii) Bona fide independent contractors; or

18 (iii) Salaried supervisory personnel necessary to assure efficient execution of the
19 employee's work;

20 (5) The term "employer" means any person, firm or corporation employing one or more
21 employees on any public improvement and includes all contractors and subcontractors;

22 (6) The term "local labor market" means every county in West Virginia, and any county
23 outside of West Virginia if any portion of that county is within fifty miles of the border of West
24 Virginia;

25 (7) The term "public authority" means any officer, board, commission or agency of the
26 State of West Virginia and its subdivisions, including counties and municipalities. Further, the
27 economic grant committee, economic development authority, infrastructure and jobs development
28 council and School Building Authority shall be required to comply with the provisions of this article
29 for loans, grants or bonds provided for public improvement construction projects;

30 (8) The term "public improvement" includes, the construction of all buildings, roads,
31 highways, bridges, streets, alleys, sewers, ditches, sewage disposal plants, waterworks, airports
32 and all other structures that may be let to contract by a public authority, excluding improvements
33 funded, in whole or in part, by federal funds.

**§21-1C-4. Local labor market utilization on public improvement construction projects;
waiver certificates.**

1 (a) Employers shall hire at least seventy-five percent of employees for public improvement
2 construction projects domiciled in the local labor market, to be rounded off, with at least two
3 employees from outside the local labor market permissible for each employer per project.

4 (b) Any employer unable to employ the minimum number of employees from the local
5 labor market shall inform the nearest office of Workforce West Virginia of the number of qualified
6 employees needed and provide a job description of the positions to be filled.

7 (c) If, within three business days following the placing of a job order, Workforce West
8 Virginia is unable to refer any qualified job applicants to the employer or refers less qualified job
9 applicants than the number requested, then Workforce West Virginia shall issue a waiver to the
10 employer stating the unavailability of applicants and shall permit the employer to fill any positions
11 covered by the waiver from outside the local labor market. The waiver shall be in writing and shall
12 be issued within the prescribed three days. A waiver certificate shall be sent to both the employer
13 for its permanent project records and to the public authority.

§21-1C-6. Penalties for violation of article, notice of violations; administrative remedies.

1 (a) If, after inspection or investigation, the commissioner determines that an employer has
2 violated any provision of this article, the commissioner shall provide a written notice of violation
3 to the employer and the public authority, setting forth the number of violations, a description of
4 every violation and the amount of the penalty that will be imposed if the employer continues to
5 violate any provision of this article after receipt of the notice of violation, and shall direct the public
6 authority to withhold final payment to the employer until the employer has paid the penalty or the
7 matter has been otherwise resolved.

8 (b) Any employer who violates any provision of this article is subject to a civil penalty of
9 \$250 per each employee less than the required threshold of seventy-five percent per day of
10 violation after receipt of a notice of violation issued by the commissioner. This civil penalty
11 terminates upon compliance or upon issuance of a waiver by Workforce West Virginia.

12 (c) Any employer that continues to violate any provision of this article more than fourteen
13 calendar days after receipt of a notice of violation is subject to a civil penalty of \$500 per each
14 employee less than the required threshold of seventy-five percent per day of violation. This civil
15 penalty terminates upon compliance or upon issuance of a waiver by Workforce West Virginia.

16 (d) All civil penalties paid pursuant to this section shall be paid to the commissioner and
17 deposited in an appropriated special revenue account hereby created in the State Treasury to be
18 known as the "West Virginia Jobs Act Fund" and expended for the implementation and
19 enforcement of this article.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2017.

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Governor