

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2933

By Delegate Reynolds

[Introduced January 23, 2023; Referred to the
Committee on Workforce Development then the
Judiciary]

1 A BILL to amend and reenact §21-1B-5 of the Code of West Virginia, 1931, as amended, relating
 2 to an increase in fines and criminal penalties when an employer fails to maintain
 3 employment records of an unauthorized employee, knowingly hires, employs, recruits, or
 4 refers an unauthorized employee, also relating to enhancing the criminal penalties and
 5 fines for repeat convictions, also relating to increasing the criminal penalties and fines for
 6 any employer who knowingly and willfully provides false records as to the legal status or
 7 authorization to work of any employee to the commissioner and for any employer who
 8 knowingly and willfully and with fraudulent intent sells, transfers or otherwise disposes of
 9 substantially all of the employer's assets for the purpose of evading the record-keeping
 10 requirements, also creating a new subdivision that creates criminal penalties and a fine for
 11 any employer who knowingly, and willfully fails to send, by certified mail, a written notice to
 12 the commissioner that an unauthorized employee has been in the employ of the employer
 13 but said employment relationship has been immediately terminated upon the employer
 14 receiving information that an unauthorized employee is in their employ.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT STATUS OF WORKERS.

§21-1B-5. Penalties.

1 (a) Any employer who knowingly and willfully fails to maintain records as required by §21-
 2 1B-4 of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$100
 3 \$1,000 for each day the employer is adjudicated guilty by a court of proper jurisdiction as being in
 4 violation of this article, for each offense. Failure to keep records on each employee constitutes a
 5 separate offense.

6 (b) Any employer who knowingly violates ~~the provisions of~~ §21-1B-3 of this code by
 7 employing, hiring, recruiting or referring an unauthorized worker is guilty of a misdemeanor and,
 8 upon conviction thereof, is subject to the following penalties:

9 (1) For a first offense, a fine of ~~not less than \$100 nor more than~~ \$1,000 for each day in

10 violation;

11 (2) For a second offense, confinement in jail for not less than 60 days nor more than one
12 year, and a fine of not less than \$500 nor more than \$5,000 for each violation \$2,500 for each day
13 in violation;

14 (3) For a third or subsequent offense, a fine of ~~not less than \$1,000 nor more than \$10,000,~~
15 ~~or confinement in jail for not less than thirty days nor more than one year, or both~~ \$5,000 for each
16 day the employer is in violation and confinement in jail for not less than one year.

17 (c) Any employer who knowingly and willfully provides false records as to the legal status
18 or authorization to work of any employee to the commissioner or his or her authorized
19 representative is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not
20 less than six months nor more than one year, or and fined not more than \$2,500, or both \$25,000.

21 (d) Any employer who knowingly and willfully and with fraudulent intent sells, transfers or
22 otherwise disposes of substantially all of the employer's assets for the purpose of evading the
23 record-keeping requirements of §21-1B-4 section four of this is guilty of a misdemeanor and, upon
24 conviction thereof, shall be confined in jail not less than 60 days nor more than one year or and
25 fined not more than \$10,000., or both \$25,000.

26 (e) Any employer who knowingly, and willfully fails to send, by certified mail, a written
27 notice to the commissioner that an unauthorized employee has been in the employ of the
28 employer but the employment relationship has been immediately terminated upon the employer
29 receiving information that an unauthorized employee is in their employ, is guilty of a misdemeanor
30 and, upon conviction thereof, shall be confined in jail not less than 60 days nor more than one year
31 and fined \$10,000 for each instance. Failure to provide to the commissioner the written notice
32 required in this subdivision for each unauthorized employee constitutes a separate offense.

NOTE: The purpose of this bill is to increase the fines and criminal penalties for employers who hire, retain, refer unauthorized enhances the criminal penalties and fines for crimes related to record keeping of the unauthorized employee. This bill also increases criminal

penalties for an employer to willfully provides false records as to the legal status or authorization to work of any employee to the commissioner as well as increase criminal penalties and fines for employers that willfully and with fraudulent intent sells, transfers or otherwise disposes of substantially all of the employer's assets for the purpose of evading the record-keeping requirements. The bill also creates new criminal penalties and fines for any employer who knowingly, and willfully fails to send, by certified mail, a written notice to the commissioner that an unauthorized employee has been in the employ of the employer but said employment relationship has been immediately terminated upon the employer receiving information that an unauthorized employee is in their employer.

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