

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 431**

By Senators Woodrum, Deeds, and Stuart

[Introduced January 12, 2024; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §21-1B-1, §21-1B-2, §21-1B-3, §21-1B-4, §21-1B-5, §21-1B-6, §21-  
 2 1B-7, and §21-1B-8 of the Code of West Virginia, 1931, as amended, all relating to the  
 3 verification of the legal employment status of workers; modifying findings and policy;  
 4 adding to definitions; clarifying that work authorization status is verified by the E-Verify  
 5 system; modifying record-keeping requirements; providing for the suspension or  
 6 revocation of license; creating penalties for the failure to comply; providing for defenses;  
 7 and providing for enforcement by the Attorney General and Division of Labor.

8 Be it enacted by the Legislature of West Virginia:

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

**§21-1B-1. Findings; policy.**

1 (a) The Legislature finds that employers have the responsibility to verify the legal  
 2 employment status of all persons who come into their employ and to report their employment to  
 3 the appropriate governmental agencies. Employers are precluded from hiring and employing  
 4 unauthorized workers and can be penalized for doing so. Additionally, employers owe a duty to the  
 5 residents of the state to uphold the intent and integrity of the general workforce due to the potential  
 6 loss of revenue to the state by loss of taxes, unemployment premiums, and workers'  
 7 compensation premiums.

8 (b) The terms of this article shall be interpreted consistently with 8 U.S.C. § 1324a and any  
 9 applicable federal rules and regulations.

**§21-1B-2.**

**Definitions.**

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

5 (b) ~~"Commissioner" means the labor commissioner or his or her designated agent.~~

6 (c) ~~"Unauthorized worker" means a person who does not have the legal right to be~~

7 ~~employed or is employed in violation of law.~~

8 (d) ~~"Records" means records that may be required by the commissioner of labor for the~~  
9 ~~purposes of compliance with the provisions of this article.~~

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

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

17 "Alien" means any person who is not a citizen or national of the United States as described  
18 in 8 U.S.C. § 1101 et seq., and any amendments thereto.

19 "Commissioner" means the ~~labor commissioner~~ Commissioner of the Division of Labor or  
20 his or her designated agent.

21 "Employee" means any person directed, allowed, or permitted to perform labor or service  
22 of any kind by an employer. The employees of an independent contractor working for a business  
23 entity shall not be regarded as the employees of the business entity, for the purposes of this article.

24 "Employer" means any individual, person, corporation, department, board, bureau,  
25 agency, commission, division, office, company, firm, partnership, council or committee of the state  
26 government, public benefit corporation, public authority or political subdivision of the state, or  
27 other business entity which employs or seeks to employ an individual or individuals and that is  
28 registered or registers with the Secretary of State: *Provided*, That individual homeowners who hire  
29 workers on their private property for noncommercial purposes are not employers for purposes of  
30 this article.

31 "E-Verify" means the electronic verification of federal employment authorization program  
32 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, PL 104-208, 8 U.S.C.

33 § 1324a, and operated by the United States Department of Homeland Security, or its successor  
34 program.

35 "Federal work authorization program" means any of the electronic verification of work  
36 authorization programs operated by the United States Department of Homeland Security or an  
37 equivalent federal work authorization program operated by the United States Department of  
38 Homeland Security to verify information of newly hired employees, under the Immigration Reform  
39 and Control Act of 1986 (IRCA), P.L. 99-603 or the Illegal Immigration Reform and Immigrant  
40 Responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a), 8 U.S.C. § 1324a.

41 "Knowingly" means, with respect to conduct or to a circumstance described by a statute  
42 defining an offense, that a person is aware by documentation or action that the person's conduct is  
43 of that nature or that the circumstance exists. Failure to request or review documentation of an  
44 employee's legal status or authorization to work is deemed to be "knowingly".

45 "Lawful presence or lawfully present" means a person shall be regarded as an alien  
46 unlawfully present in the United States only if the person's unlawful immigration status has been  
47 verified by the federal government pursuant to 8 U.S.C. § 1373(c). No officer of this state or any  
48 political subdivision of this state shall attempt to independently make a final determination of an  
49 alien's immigration status. An alien possessing self-identification in any of the following forms is  
50 entitled to the presumption that he or she is an alien lawfully present in the United States:

- 51 (1) A valid, unexpired West Virginia driver's license;
- 52 (2) A valid, unexpired West Virginia nondriver identification card (if applicable);
- 53 (3) A valid tribal enrollment card or other form of tribal identification bearing a photograph  
54 or other biometric identifier;
- 55 (4) Any valid United States federal or state government issued identification document  
56 bearing a photograph or other biometric identifier, if issued by an entity that requires proof of lawful  
57 presence in the United States before issuance;
- 58 (5) A foreign passport with an unexpired United States Visa and a corresponding stamp or

59 notation by the United States Department of Homeland Security indicating the bearer's admission  
60 to the United States; and

61 (6) A foreign passport issued by a Visa Waiver Program designated country with the  
62 corresponding entry stamp and unexpired duration of stay annotation or an I-94W form by the  
63 United States Department of Homeland Security indicating the bearer's admission to the United  
64 States.

65 "License" means any permit, certificate, approval, registration, charter, or similar form of  
66 authorization that is required by law and that is issued for the purpose of operating a business in  
67 this state.

68 "Records" means records that may be required by the ~~commissioner of labor~~  
69 Commissioner of the Division of Labor for the purposes of compliance with the provisions of this  
70 article.

71 "Unauthorized worker" means a person who does not have the legal right to be employed  
72 or is employed in violation of law or an alien who is not authorized to work in the United States as  
73 defined in 8 U.S.C. § 1324a(h)(3).

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

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

4 (b) Employers shall be required to verify a ~~prospective~~ an employee's legal status or  
5 authorization to work ~~prior to~~ after employing the individual ~~or contracting with the individual for~~  
6 ~~employment services~~ but prior to three days after the employee's first day of work for pay, unless  
7 the employee will work for fewer than three days, in which case the verification must occur no later  
8 than the first day of work for pay.

9 (c) For purposes of this article, proof of legal status or authorization to work ~~includes, but is~~  
10 ~~not limited to, a valid social security card, a valid immigration or nonimmigration visa, including~~

11 ~~photo identification, a valid birth certificate, a valid passport, a valid photo identification card issued~~  
12 ~~by a government agency, a valid work permit or supervision permit authorized by the Division of~~  
13 ~~Labor, a valid permit issued by the Department of Justice or other valid document providing~~  
14 ~~evidence of legal residence or authorization to work in the United States~~ refers to evidence that the  
15 employee's work authorization status has been verified by the E-Verify system. This proof  
16 includes, but is not limited to, the case number assigned to each employee by the E-Verify system.

17 (d) For purposes of enforcing the provisions of this article, and notwithstanding any other  
18 provision of this code to the contrary, the commissioner or his or her authorized representative  
19 may access information maintained by any other state agency, including, but not limited to, the  
20 Bureau of Employment Programs and the Division of Motor Vehicles, for the limited purposes of  
21 ~~confirming the validity of a worker's legal status or authorization to work~~ an employer's compliance  
22 with the provisions of this section and whether an employee is authorized to work, as determined  
23 by the federal government. The commissioner shall promulgate rules in accordance with the  
24 provisions of §29A-3-1 *et seq.* of this code to safeguard against the release of any confidential or  
25 identifying information that is not necessary for the limited purpose of enforcing the provisions of  
26 this article.

27 (e) As a condition for the award of any contract, grant, or incentive by this state, any  
28 political subdivision thereof, or any state-funded entity to a business entity or employer that  
29 employs one or more employees, the business entity or employer shall provide documentation  
30 establishing that the business entity or employer is enrolled in the E-Verify Program. During the  
31 performance of the contract, the business entity or employer shall participate in the E-Verify  
32 Program and shall verify every employee that is required to be verified according to the applicable  
33 federal rules and regulations.

34 (f) No subcontractor on a project paid for by contract, grant, or incentive by this state, any  
35 political subdivision thereof, or any state-funded entity may knowingly employ, hire for  
36 employment, or continue to employ an unauthorized alien and shall also enroll in the E-Verify

37 Program prior to performing any work on the project and shall verify every employee that is  
38 required to be verified according to the applicable federal rules and regulations.

39 (g) A contractor of any tier shall not be liable under this section when its direct  
40 subcontractor violates this section, if the contractor receives a sworn affidavit from the  
41 subcontractor signed before a notary that the direct subcontractor, in good faith, has complied with  
42 respect to verifying each of its employee's eligibility for employment, unless the contractor knows  
43 the direct subcontractor is violating this section.

44 (h) No business entity, employer, or public employer may knowingly employ, hire for  
45 employment, or continue to employ an unauthorized alien to perform work within the State of West  
46 Virginia. Knowingly employ, hire for employment, or continue to employ an unauthorized alien  
47 means the actions described in 8 U.S.C. § 1324a.

48 (i) Effective January 1, 2024, every business entity or employer in this state shall enroll in  
49 E-Verify and thereafter, according to the federal statutes and regulations governing E-Verify, shall  
50 verify the employment eligibility of new hires through E-Verify. A business entity or employer that  
51 uses E-Verify to verify the work authorization of an employee shall not be considered to have  
52 violated this section with respect to the employment of that employee.

53 (j) The provisions of this section do not apply to the following:

54 (1) The relationship between a party and the employees of an independent  
55 contractor performing work for the party; and

56 (2) Casual domestic labor performed within a household; and

57 (3) Individual homeowners who hire workers on their private property for  
58 noncommercial purposes.

59 (k) The Commissioner shall propose rules for legislative approval, in accordance with  
60 §29A-3-1 et seq. of this code, to implement the requirements and provisions of this section,  
61 including, but not limited to developing a statewide random auditing program to inspect private  
62 employers for compliance with the provisions of this section, safeguarding against the release of

63 any confidential or identifying information that is not necessary for the limited purpose of enforcing  
 64 the provisions of this article, and posting educational information and materials about the E-Verify  
 65 program on the Division of Labor's website.

**§21-1B-4. Record-keeping requirements; employer compliance.**

1 (a) Every employer, firm and, corporation shall make such records of the persons he or she  
 2 employs including records of proof of the legal status or authorization to work of all employees.  
 3 Such records shall be preserved pursuant to the provisions of §21-5C-5 of this code and shall be  
 4 maintained at the place of employment. Pursuant to §21-1-3 of this code, such records shall be  
 5 made available to the commissioner or his or her authorized representative for inspection and  
 6 investigation as the commissioner deems necessary and appropriate for the purposes of  
 7 determining whether any employer, firm or corporation has violated any provision of this article  
 8 which may aid in the enforcement of the provisions of this article.

9 (b) Compliance with this article may be verified by the commissioner at any time to ensure  
 10 a contractual agreement as provided for in §21-1B-3 of this code is being met.

**§21-1B-5. Penalties Penalties; suspension or revocation of license.**

1 (a) Any employer who knowingly and willfully fails to maintain records as required by  
 2 section four of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined  
 3 \$100 for each offense. Failure to keep records on each employee constitutes a separate offense.

4 ~~(b) Any employer who knowingly violates the provisions of section three of this article by~~  
 5 ~~employing, hiring, recruiting or referring an unauthorized worker is guilty of a misdemeanor and,~~  
 6 ~~upon conviction thereof, is subject to the following penalties:~~

7 ~~(1) For a first offense, a fine of not less than \$100 nor more than \$1,000 for each violation;~~

8 ~~(2) For a second offense, a fine of not less than \$500 nor more than \$5,000 for each~~  
 9 ~~violation;~~

10 ~~(3) For a third or subsequent offense, a fine of not less than \$1,000 nor more than \$10,000,~~  
 11 ~~or confinement in jail for not less than thirty days nor more than one year, or both~~



12           ~~(e)~~ (b) Any employer who knowingly and willfully provides false records as to the legal  
13 status or authorization to work of any employee to the commissioner or his or her authorized  
14 representative is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not  
15 more than one year or fined not more than \$2,500, or both.

16           ~~(d)~~ (c) Any employer who knowingly and willfully and with fraudulent intent sells, transfers,  
17 or otherwise disposes of substantially all of the employer's assets for the purpose of evading the  
18 record-keeping requirements of section four of this article is guilty of a misdemeanor and, upon  
19 conviction thereof, shall be confined in jail not more than one year or fined not more than \$10,000,  
20 or both.

21           (d)(1) Upon the first violation of §21-1B-3(e) of this code by any business entity or  
22 employer awarded a contract by the state, any political subdivision thereof, or any state-funded  
23 entity, the business entity or employer shall be considered in breach of contract and the state,  
24 political subdivision thereof, or state-funded entity may terminate the contract after providing  
25 notice and an opportunity to be heard. Upon application by the state entity, political subdivision  
26 thereof, or state-funded entity, the Commissioner may bring an action to suspend the business  
27 licenses and permits of the business entity or employer for a period not to exceed 60 days,  
28 according to the procedures described in this section. The court shall order the business entity or  
29 employer to file a signed, sworn affidavit with the Commissioner within three days after the order is  
30 issued by the court stating that the business entity or employer has terminated the employment of  
31 every unauthorized alien and the business entity or employer will not knowingly or intentionally  
32 employ an unauthorized alien in this state. Before a business license or permit that has been  
33 suspended under this subsection is reinstated, a legal representative of the business entity or  
34 employer shall submit to the court a signed, sworn affidavit stating that the business entity or  
35 employer is in compliance with the provisions of this article and a copy of the Memorandum of  
36 Understanding issued to the business entity or employer at the time of enrollment in E-Verify.

37           (2) Upon a second or subsequent violation of §21-1B-3(e) of this code by any business

38 entity or employer awarded a contract by the state, any political subdivision thereof, or any state-  
39 funded entity, the business entity or employer shall be considered in breach of contract and the  
40 state, any political subdivision thereof, or any state-funded entity shall terminate the contract after  
41 providing notice and an opportunity to be heard. Upon application by the state entity, political  
42 subdivision thereof, or state-funded entity, the Commissioner may bring an action to permanently  
43 revoke the business licenses and permits of the business entity or employer according to the  
44 procedures described in this article.

45 (e)(1) Upon the first violation of §21-1B-3(f) of this code by a subcontractor, the state or  
46 political subdivision thereof may bar the subcontractor from doing business with the state, any  
47 political subdivision thereof, any state-funded entity, or with any contractor who contracts with the  
48 state, any political subdivision thereof, or any state-funded entity after providing notice and an  
49 opportunity to be heard. Upon application by the state entity or political subdivision thereof, or  
50 state-funded entity, the Commissioner may bring an action to suspend the business licenses and  
51 permits of the subcontractor for a period not to exceed 60 days according to the procedures  
52 described in this article. The court shall order the subcontractor to file a signed, sworn affidavit with  
53 the Commissioner within three days after the order is issued by the court stating that the  
54 subcontractor has terminated the employment of every unauthorized alien and the subcontractor  
55 will not knowingly or intentionally employ an unauthorized alien in this state. Before a business  
56 license or permit that has been suspended under this subsection is reinstated, a legal  
57 representative of the subcontractor shall submit to the court a signed, sworn affidavit stating that  
58 the subcontractor is in compliance with the provisions of this article and a copy of the  
59 Memorandum of Understanding issued to the subcontractor at the time of enrollment in E-Verify.

60 (2) Upon a second or subsequent violation of §21-1B-3(f) of this code by a subcontractor  
61 and upon application by the state entity or political subdivision thereof, or state-funded entity, the  
62 Commissioner may bring an action to permanently suspend the business licenses of the business  
63 entity or employer according to the procedures described in this article. The determination of a

64 violation shall be according to the procedures described in subsection (d) of this section.

65 (f) The suspension of a business license or permit under §21-1B-3(d)(1) and §21-1B-  
66 3(e)(1) of this code shall terminate one business day after a legal representative of the business  
67 entity, employer, or subcontractor submits a signed, sworn affidavit stating that the business entity,  
68 employer, or subcontractor is in compliance with the provisions of this article and a copy of the  
69 Memorandum of Understanding issued at the time of enrollment in E-Verify to the court.

70 (g) On a finding of a first violation by a court of competent jurisdiction that a business entity  
71 or employer knowingly violated §21-1B-3(h) of this code, the court shall do all of the following:

72 (1) Order the business entity or employer to terminate the employment of every  
73 unauthorized alien.

74 (2) Subject the business entity or employer to a three-year probationary period throughout  
75 the state. During the probationary period, the business entity or employer shall file quarterly  
76 reports with the Commissioner of each new employee who is hired by the business entity or  
77 employer in the state.

78 (3) Order the business entity or employer to file a signed, sworn affidavit with the  
79 Commissioner within three days after the order is issued by the court stating that the business  
80 entity or employer has terminated the employment of every unauthorized alien and the business  
81 entity or employer will not knowingly or intentionally employ an unauthorized alien in this state.

82 (4) Direct the applicable state, county, or municipal governing bodies to suspend any  
83 business licenses and permits, of the business entity or employer for a period not to exceed 10  
84 business days specific to the business location where the unauthorized alien performed work.

85 (h)(1) Before a business license or permit that has been suspended under subsection (g) is  
86 reinstated, a legal representative of the business entity or employer shall submit to the court a  
87 signed, sworn affidavit stating that the business entity or employer is in compliance with the  
88 provisions of this article and a copy of the Memorandum of Understanding issued to the business  
89 entity or employer at the time of enrollment in E-Verify.

90 (2) The suspension of a business license or permit under subsection (g) shall terminate  
91 one business day after a legal representative of the business entity or employer submits a signed,  
92 sworn affidavit stating that the business entity or employer is in compliance with the provisions of  
93 this article and a copy of the Memorandum of Understanding issued to the business entity or  
94 employer to the court.

95 (i) For a second violation of §21-1B-3(h) of this code by a business entity or employer, the  
96 court shall direct the applicable state, county, or municipal governing body to permanently revoke  
97 any business licenses and permits, held by the business entity or employer specific to the  
98 business location where the unauthorized alien performed work. On receipt of the order, and  
99 notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses and  
100 permits held by the business entity or employer.

101 (j) For a third or subsequent violation of §21-1B-3(h) of this code, the court shall direct the  
102 applicable governing bodies to permanently suspend any business licenses and permits of the  
103 business entity or employer throughout the state.

104 (k) This section may not be construed to deny any procedural mechanisms or legal  
105 defenses included in the E-Verify program or any other federal work authorization program.

106 (l) In any court proceedings, the determination of whether an employee is an unauthorized  
107 alien shall be made by the federal government, pursuant to 8 U.S.C. § 1373(c). The court shall  
108 consider only the federal government's determination when deciding whether an employee is an  
109 unauthorized alien. The court may take judicial notice of any verification of an individual's  
110 immigration status previously provided by the federal government and may request the federal  
111 government to provide further automated or testimonial verification.

112 (m) If an employee of any agency of the state or any political subdivision thereof fails to  
113 suspend the business licenses or permits of any business entity or employee, as a result of a  
114 violation of this section, the agency shall be deemed to have violated §21-1B-3(h) of this code and  
115 shall be subject to being compelled to enforce this section by a writ of mandamus brought by the

116 Attorney General in any court of competent jurisdiction.

**§21-1B-6. Denial of deductible business expense.**

1 ~~On or after January 1, 2008, no wages or remuneration for services paid to an~~  
 2 ~~unauthorized worker of \$600 or more per annum may be claimed and allowed as a deductible~~  
 3 ~~business expense for state income tax purposes by a taxpayer if the employer has been convicted~~  
 4 ~~under this article of employing, hiring, recruiting, or referring the unauthorized worker. The~~  
 5 ~~commissioner shall notify the Department of Revenue of any conviction of an employer under this~~  
 6 ~~article and the department is to take the appropriate action against the taxpayer.~~

7 (a) No wage, compensation, whether in money, in kind, or in services, or remuneration of  
 8 any kind for the performance of services paid to an unauthorized alien may be allowed as a  
 9 deductible business expense for any state income or business tax purposes in this state. This  
 10 subsection shall apply whether or not an Internal Revenue Service Form 1099 is issued in  
 11 conjunction with the wages or remuneration.

12 (b) Any business entity or employer that knowingly fails to comply with the requirements of  
 13 §21-1B-3 of this code shall be liable for a penalty equal to 10 times the business expense  
 14 deduction claimed in violation of subsection (a). The penalty provided in this subsection shall be  
 15 payable to the West Virginia Tax Department.

**§21-1B-7. Suspension or revocation of license Defenses.**

1 ~~(a) If, upon examination of the record or records of conviction, the commissioner~~  
 2 ~~determines that an employer has been convicted of a third or subsequent offense under~~  
 3 ~~subsection (b), section five of this article or has been convicted of the offenses described in~~  
 4 ~~subsection (c) or (d) of said section, the commissioner may enter an order imposing the following~~  
 5 ~~disciplinary actions:~~

- 6 ~~(1) Permanently revoke or file an action to revoke any license held by the employer; or~~  
 7 ~~(2) Suspend a license or move for a suspension of any license held by the employer for a~~  
 8 ~~specified period;~~

9           ~~(b) The order shall contain the reasons for the revocation or suspension and the revocation~~  
10 ~~or suspension periods. Further, the order shall give the procedures for requesting a hearing. The~~  
11 ~~person shall be advised in the order that because of the receipt of the record of conviction by the~~  
12 ~~commissioner a presumption exists that the person named in the record of conviction is the person~~  
13 ~~named in the commissioner's order and this constitutes sufficient evidence to support a revocation~~  
14 ~~or suspension and that the sole purpose for the hearing held under this section is for the person~~  
15 ~~requesting the hearing to present evidence that he or she is not the person named in the record of~~  
16 ~~conviction. A copy of the order shall be forwarded to the person by registered or certified mail,~~  
17 ~~return receipt requested. No revocation or suspension shall become effective until ten days after~~  
18 ~~receipt of a copy of the order.~~

19           (a) For the purposes of this article, proof of verifying the employment authorization of an  
20 employee through the E-Verify program creates a rebuttable presumption that an employer did not  
21 knowingly employ an unauthorized alien.

22           (b)(1) A business entity or employer that establishes that it has complied in good faith with  
23 §21-1B-3 of this code establishes an affirmative defense that the business entity or employer did  
24 not knowingly hire or employ an unauthorized alien.

25           (2) A subcontractor that establishes that it has complied in good faith with §21-1B-3 of this  
26 code establishes an affirmative defense that the subcontractor did not knowingly hire or employ an  
27 unauthorized alien.

28           (c) Any business entity or employer that terminates an employee to comply with §21-1B-3  
29 of this code shall not be liable for any claims made against the business entity or employer by the  
30 terminated employee.

31           (d) It is an affirmative defense to a violation of §21-1B-3(a) of this code that a business  
32 entity or employer was entrapped.

33           (1) To claim entrapment, the business entity or employer must admit by testimony or other  
34 evidence the substantial elements of the violation.

35 (2) A business entity or employer who asserts an entrapment defense has the burden of  
 36 proving by clear and convincing evidence the following:

37 (A) The idea of committing the violation started with law-enforcement officers or their  
 38 agents rather than with the business entity or employer.

39 (B) The law-enforcement officers or their agents urged and induced the business entity or  
 40 employer to commit the violation;

41 (C) The business entity or employer was not already predisposed to commit the violation  
 42 before the law-enforcement officers or their agents urged and induced the employer to commit the  
 43 violation.

44 (e) An employer is not in violation of §21-1B-3 of this code:

45 (1) During a time period in which the E-Verify program is suspended or not operational; or

46 (2) If the employer acts upon false results generated by the E-Verify program concerning  
 47 an employee's work authorization status.

**§21-1B-8. Citation for violation. Enforcement by Attorney General and Division of Labor.**

1 ~~(a) If, upon inspection or investigation, the commissioner believes that an employer has~~  
 2 ~~violated a provision of this article, the commissioner shall issue a notice to produce records or~~  
 3 ~~documents to the employer. Each notice shall be in writing and shall describe with particularity the~~  
 4 ~~nature of the violation, including a reference to the provision of this article alleged to have been~~  
 5 ~~violated. The employer shall have up to seventy-two hours, or for good cause shown to the~~  
 6 ~~commissioner, a greater period of time, to produce employment status verification records.~~

7 ~~(b) If after the time period allowed under subsection (a) of this section the employer is~~  
 8 ~~unable to produce the required documents to satisfy the commissioner that there is no violation of~~  
 9 ~~this article, the commissioner may issue a citation to the employer. Each citation shall be in writing~~  
 10 ~~on a standard form as prescribed by the commissioner and shall describe with particularity the~~  
 11 ~~nature of the violation, including a reference to the provision of this article alleged to have been~~  
 12 ~~violated. Each citation issued under this section or a copy or copies thereof shall be prominently~~

13 ~~presented to a magistrate or circuit judge in the county where the violation occurred.~~

14 (a) In addition to actions taken by the state or political subdivisions thereof, the Attorney  
15 General may bring an action to enforce the requirements of this section in any court of competent  
16 jurisdiction, including, but not limited to, in the circuit court of any county of this state wherein the  
17 business entity or employer does business, to enforce the requirements of this article.

18 (b)(1) Any resident of this state may petition the Attorney General to bring an enforcement  
19 action against a specific business entity or employer by means of a written, signed petition. A valid  
20 petition shall include an allegation that describes the alleged violator or violators, as well as the  
21 action constituting the violation, and the date and location where the violation occurred.

22 (2) A petition that alleges a violation on the basis of national origin, ethnicity, or race shall  
23 be considered invalid and may not be acted upon.

24 (c) The Attorney General shall respond to any petition under this subdivision within 60 days  
25 of receiving the petition, either by filing a civil complaint in a court of competent jurisdiction or by  
26 informing the petitioner in writing that the Attorney General has determined that filing a civil  
27 complaint is not warranted.

28 (d) The Division of Labor shall propose rules for legislative approval, in accordance with  
29 §29A-3-1 et seq. of this code, to implement the requirements and provisions of this section,  
30 including, but not limited to, developing a statewide random auditing program to inspect private  
31 employers for compliance with the provisions of this section.

NOTE: The purpose of this bill generally relates to the verification of the legal employment status of workers. The bill modifies findings and policy. The bill adds to definitions. The bill clarifies that work authorization status is verified by the E-Verify system. The bill modifies record-keeping requirements. The bill provides for the suspension or revocation of license. The bill creates penalties for the failure to comply. The bill provides for defenses. Finally, the bill provides for enforcement by the Attorney General and Division of Labor.

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