

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 526

By Senator Woodrum

[Introduced January 23, 2024; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §21-1B-2, §21-1B-3, and §21-1B-6 of the Code of West Virginia,
2 1931, as amended; and to amend said code by adding thereto a new section, designated
3 §21-1B-9, all relating to labor; verifying the legal employment status of all persons by a
4 business of entity and to report employment to the appropriate governmental agencies;
5 providing definitions; using E-Verify, the electronic verification of federal employment
6 authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act
7 of 1996; and prohibiting the employment of unauthorized workers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT STATUS OF WORKERS.

§21-1B-2. Definitions.

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

3 "Commissioner" means the labor commissioner or his or her designated agent.

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

7 "Employer" means any individual, person, corporation, department, board, bureau,
8 agency, commission, division, office, company, firm, partnership, council or committee of the state
9 government, public benefit corporation, public authority or political subdivision of the state or other
10 business entity which employs or seeks to employ an individual or individuals and that registers
11 with the Secretary of State.

12 "E-Verify" means the electronic verification of federal employment authorization program
13 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, P.L. 104-208, Division
14 C, Section 403(a); 8 U.S.C. § 1324a, and operated by the United States Department of Homeland
15 Security, or its successor program.

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

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

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

32 (1) A valid, unexpired West Virginia driver's license.

33 (2) A valid, unexpired West Virginia nondriver identification card (if applicable).

34 (3) A valid tribal enrollment card or other form of tribal identification bearing a photograph
35 or other biometric identifier.

36 (4) Any valid United States federal or state government issued identification document
37 bearing a photograph or other biometric identifier, if issued by an entity that requires proof of lawful
38 presence in the United States before issuance.

39 (5) A foreign passport with an unexpired United States Visa and a corresponding stamp or
40 notation by the United States Department of Homeland Security indicating the bearer's admission
41 to the United States.

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

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

49 "Records" means records that may be required by the Commissioner of Labor for the
50 purposes of compliance with the provisions of this article.

51 "Unauthorized worker" means a person who does not have the legal right to be employed
52 or is employed in violation of law or an alien who is not authorized to work in the United States as
53 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
2 or herself or on behalf of another, for private or public employment within the state, an
3 unauthorized 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 after ~~prior to~~ 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; then verification must occur no later than the first
8 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.

15 (d) For purposes of enforcing the provisions of this article, and notwithstanding any other
16 provision of this code to the contrary, the commissioner or his or her authorized representative
17 may access information maintained by any other state agency, including, but not limited to, the
18 Bureau of Employment Programs and the Division of Motor Vehicles, for the limited purpose of
19 confirming the validity of a worker's legal status or authorization to work. The commissioner shall
20 promulgate rules in accordance with the provisions of chapter 29A of this code to safeguard
21 against the release of any confidential or identifying information that is not necessary for the
22 limited purpose of enforcing the provisions of this article.

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

30 (f) No subcontractor on a project paid for by contract, grant, or incentive by this state, any
31 political subdivision thereof, or any state-funded entity may knowingly employ, hire for
32 employment, or continue to employ an unauthorized alien and shall also enroll in the E-Verify
33 Program prior to performing any work on the project and shall verify every employee that is
34 required to be verified according to the applicable federal rules and regulations.

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

40 (h)(1) Upon the first violation of subsection (e) of this section by any business entity or
41 employer awarded a contract by the state, any political subdivision thereof, or any state-funded
42 entity, the business entity or employer shall be considered in breach of contract and the state,
43 political subdivision thereof, or state-funded entity may terminate the contract after providing
44 notice and an opportunity to be heard. Upon application by the state entity, political subdivision
45 thereof, or state-funded entity, the Attorney General may bring an action to suspend the business
46 licenses and permits of the business entity or employer for a period not to exceed 60 days,
47 according to the procedures described in this section. The court shall order the business entity or
48 employer to file a signed, sworn affidavit with the Attorney General within three days after the order
49 is issued by the court stating that the business entity or employer has terminated the employment
50 of every unauthorized alien and the business entity or employer will not knowingly or intentionally
51 employ an unauthorized alien in this state. Before a business license or permit that has been
52 suspended under this subsection is reinstated, a legal representative of the business entity or
53 employer shall submit to the court a signed, sworn affidavit stating that the business entity or
54 employer is in compliance with the provisions of this article and a copy of the Memorandum of
55 Understanding issued to the business entity or employer at the time of enrollment in E-Verify.

56 (2) Upon a second or subsequent violation of subsection (e) of this section by any business
57 entity or employer awarded a contract by the state, any political subdivision thereof, or any state-
58 funded entity the business entity or employer shall be considered in breach of contract and the
59 state, any political subdivision thereof, or any state-funded entity shall terminate the contract after
60 providing notice and an opportunity to be heard. Upon application by the state entity, political
61 subdivision thereof, or state-funded entity, the Attorney General may bring an action to
62 permanently revoke the business licenses and permits of the business entity or employer
63 according to the procedures described in this section.

64 (i)(1) Upon the first violation of subsection (f) of this section by a subcontractor, the state or
65 political subdivision thereof may bar the subcontractor from doing business with the state, any

66 political subdivision thereof, any state-funded entity, or with any contractor who contracts with the
67 state, any political subdivision thereof, or any state-funded entity after providing notice and an
68 opportunity to be heard. Upon application by the state entity or political subdivision thereof, or
69 state-funded entity, the Attorney General may bring an action to suspend the business licenses
70 and permits of the subcontractor for a period not to exceed 60 days according to the procedures
71 described in subsection (h) of this section. The court shall order the subcontractor to file a signed,
72 sworn affidavit with the Attorney General within three days after the order is issued by the court
73 stating that the subcontractor has terminated the employment of every unauthorized alien and the
74 subcontractor will not knowingly or intentionally employ an unauthorized alien in this state. Before
75 a business license or permit that has been suspended under this subsection is reinstated, a legal
76 representative of the subcontractor shall submit to the court a signed, sworn affidavit stating that
77 the subcontractor is in compliance with the provisions of this article and a copy of the
78 Memorandum of Understanding issued to the subcontractor at the time of enrollment in E-Verify.

79 (2) Upon a second or subsequent violation of subsection (f) of this section by a
80 subcontractor and upon application by the state entity or political subdivision thereof, or state-
81 funded entity, the Attorney General may bring an action to permanently suspend the business
82 licenses of the business entity or employer according to the procedures described in subsection
83 (e) of this section. The determination of a violation shall be according to the procedures described
84 in subsection (h) of this section.

85 (j)(1) A business entity or employer that establishes that it has complied in good faith with
86 this section establishes an affirmative defense that the business entity or employer did not
87 knowingly hire or employ an unauthorized alien.

88 (2) A subcontractor that establishes that it has complied in good faith with this section
89 establishes an affirmative defense that the subcontractor did not knowingly hire or employ an
90 unauthorized alien.

91 (k) The Secretary of State shall propose rules for legislative approval in accordance with

92 §29A-3-1 et seq. of this code.

93 (l) Compliance with this section may be verified by the state authorities or law enforcement
94 at any time to ensure a contractual agreement as provided for in this section is being met.

95 (m) The suspension of a business license or permit under subdivision (1), subsection (h) of
96 this section and subdivision 1, subsection (i) of this section shall terminate one business day after
97 a legal representative of the business entity, employer, or subcontractor submits a signed, sworn
98 affidavit stating that the business entity, employer, or subcontractor is in compliance with the
99 provisions of this article and a copy of the Memorandum of Understanding issued at the time of
100 enrollment in E-Verify to the court.

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

105 (o) Effective January 1, 2025, every business entity or employer in this state shall enroll in
106 E-Verify and thereafter, according to the federal statutes and regulations governing E-Verify, shall
107 verify the employment eligibility of new hires through E-Verify. A business entity or employer that
108 uses E-Verify to verify the work authorization of an employee shall not be considered to have
109 violated this section with respect to the employment of that employee.

110 (p) On a finding of a first violation by a court of competent jurisdiction that a business entity
111 or employer knowingly violated subsection (n), the court shall do all of the following:

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

114 (2) Subject the business entity or employer to a three-year probationary period throughout
115 the state. During the probationary period, the business entity or employer shall file quarterly
116 reports with the Attorney General of each new employee who is hired by the business entity or
117 employer in the state.

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

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

125 (q)(1) Before a business license or permit that has been suspended under subsection (p) is
126 reinstated, a legal representative of the business entity or employer shall submit to the court a
127 signed, sworn affidavit stating that the business entity or employer is in compliance with the
128 provisions of this article and a copy of the Memorandum of Understanding issued to the business
129 entity or employer at the time of enrollment in E-Verify.

130 (2) The suspension of a business license or permit under subsection (p) shall terminate
131 one business day after a legal representative of the business entity or employer submits a signed,
132 sworn affidavit stating that the business entity or employer is in compliance with the provisions of
133 this article and a copy of the Memorandum of Understanding issued to the business entity or
134 employer to the court.

135 (r) For a second violation of subsection (n) of this section by a business entity or employer,
136 the court shall direct the applicable state, county, or municipal governing body to permanently
137 revoke any business licenses and permits, held by the business entity or employer specific to the
138 business location where the unauthorized alien performed work. On receipt of the order, and
139 notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses and
140 permits held by the business entity or employer.

141 (s) For a third or subsequent violation of subsection (n) of this section, the court shall direct
142 the applicable governing bodies to permanently suspend any business licenses and permits, of
143 the business entity or employer throughout the state.

144 (t) This section may not be construed to deny any procedural mechanisms or legal
145 defenses included in the E-Verify program or any other federal work authorization program. A
146 person or entity that establishes that it has complied in good faith with subsection (o) of this section
147 establishes an affirmative defense that the business entity or employer did not knowingly hire or
148 employ an unauthorized alien.

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

155 (v) Any business entity or employer that terminates an employee to comply with this
156 section shall not be liable for any claims made against the business entity or employer by the
157 terminated employee: *Provided*, That such termination is made without regard to the race,
158 ethnicity, or national origin of the employee.

159 (w) If an employee of any agency of the state or any political subdivision thereof fails to
160 suspend the business licenses or permits of any business entity or employee, as a result of a
161 violation of this section, the agency shall be deemed to have violated subsection (n) of this section
162 and shall be subject to being compelled to enforce this section by a writ of mandamus brought by
163 the Attorney General in any court of competent jurisdiction.

164 (x) The Attorney General may also bring a civil complaint in any court of competent
165 jurisdiction to enforce the requirements of this section and, further, shall respond to petitions by
166 residents of this state as follows:

167 (1) Any resident of this state may petition the Attorney General to bring an enforcement
168 action against a specific business entity or employer by means of a written, signed petition. A valid
169 petition shall include an allegation that describes the alleged violator or violators, as well as the

170 action constituting the violation, and the date and location where the violation occurred.

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

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

177 (y) This section does not apply to the relationship between a party and the employees of an
178 independent contractor performing work for the party and does not apply to casual domestic labor
179 performed within a household.

180 (z) It is an affirmative defense to a violation of subsection (a) of this section that a business
181 entity or employer was entrapped.

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

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

186 (A) The idea of committing the violation started with law-enforcement officers or their
187 agents rather than with the business entity or employer;

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

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

193 (aa) In addition to actions taken by the state or political subdivisions thereof, the Attorney
194 General may bring an action to enforce the requirements of this section in the circuit court of any
195 county of this state wherein the business entity or employer does business.

196 (bb) The terms of this section shall be interpreted consistently with 8 U.S.C. § 1324a and
197 any applicable federal rules and regulations.

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

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

§21-1B-9. State or subdivisions prohibited from adopting policy or practice that limits or
restricts the enforcement of federal immigration laws by limiting communication
between its officers and federal immigration officials.

1 (a) No official or agency of this state or any political subdivision thereof, including, but not
2 limited to, an officer of a court of this state, may adopt a policy or practice that limits or restricts the
3 enforcement of federal immigration laws by limiting communication between its officers and
4 federal immigration officials in violation of 8 U.S.C. § 1373 or 8 U.S.C. § 1644, or that restricts its
5 officers in the enforcement of this article. If, in the judgment of the Attorney General of West

6 Virginia, an official or agency of this state or any political subdivision thereof, including, but not
7 limited to, an officer of a court in this state, is in violation of this subsection, the Attorney General
8 shall report any violation of this subsection to the Governor and the State Auditor's Office, under
9 the provisions of §5A-2-33 of this code, and that agency or political subdivision shall not be eligible
10 to receive any funds, grants, or appropriations from the State of West Virginia until such violation
11 has ceased and the Attorney General has so certified. Any appeal of the determination of the
12 Attorney General as considered in this section shall be first appealed to the circuit court of the
13 respective jurisdiction in which the alleged offending agency resides.

14 (b) All state officials, agencies, and personnel, including, but not limited to, an officer of a
15 court of this state, shall fully comply with and, to the full extent permitted by law, support the
16 enforcement of federal law prohibiting the entry into, presence, or residence in the United States of
17 aliens in violation of federal immigration law.

NOTE: The purpose of this bill is to verify the legal employment status of all persons who come into their employ and to report their employment to the appropriate governmental agencies; providing definitions; requiring use of E-Verify, the electronic verification of federal employment authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996; and providing that unauthorized workers employment prohibited.

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