

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

ENGROSSED

Committee Substitute

House Bill 4759

By Delegates Phillips, McGeehan and Horst

[Originating in the Committee on the Judiciary;

Reported on January 23, 2024]

1 A BILL to amend and reenact §21-1B-2, §21-1B-3, §21-1B-4, §21-1B-5, §21-1B-7, and §21-1B-8
2 of the Code of West Virginia, 1931, and to repeal §21-1B-6, of the Code of West Virginia,
3 1931, and amends and reenacts §21-5I-4 of the Code of West Virginia, 1931, all relating to
4 E-Verify, the federal employment authorization program; defining terms; requiring
5 businesses to participate in E-Verify as a condition for receiving state contracts, grants, or
6 incentives; requiring subcontractors to participate in E-Verify prior to working on any
7 project paid for by any state contract, grant, or incentive; providing for all employers
8 regardless of size to keep required records; providing rules for E-Verify participation for
9 contractors and subcontractors; requiring employers in this state to enroll and participate in
10 E-Verify; listing exceptions to said mandatory participation; providing rules for E-Verify
11 participation for employers; imposing civil penalties; providing defenses; providing for
12 enforcement; and requiring the Division of Labor to propose legislative rules to implement
13 the article's provisions, and relating to the definition of independent contractor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT STATUS OF WORKERS.

§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 Commissioner of the Division of Labor or his or her designated
20 agent.

21 "Court of competent jurisdiction" means the circuit court where violations of §21-1B-3 of
22 this code is alleged to have occurred.

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

26 "Employer" means any individual, person, contractor, subcontractor, corporation,
27 department, board, bureau, agency, commission, division, office, company, firm, partnership,
28 council or committee of the state government, public benefit corporation, public authority or
29 political subdivision of the state, or other private business entity which employs or seeks to employ
30 an individual or individuals and that is registered or registers with the Secretary of State: *Provided,*
31 That employers who employ fewer than fifteen people are not employers for purposes of this
32 article.

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

35 § 1324a, and operated by the United States Department of Homeland Security, or its successor
36 program.

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

43 "Independent contractor" has the same meaning as defined in §21-5I-4 of this code.

44 "Knowingly" means, with respect to conduct or to a circumstance described by a statute
45 defining an offense, that a person is aware by documentation or action that the person's conduct is
46 of that nature or that the circumstance exists.

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

54 (1) A valid, unexpired West Virginia driver's license;

55 (2) A valid, unexpired West Virginia nondriver identification card (if applicable);

56 (3) A valid, tribal enrollment card or other form of tribal identification bearing a photograph
57 or other biometric identifier;

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

61 (5) A foreign passport with an unexpired United States visa and a corresponding stamp or
62 notation by the United States Department of Homeland Security indicating the bearer's admission
63 to the United States; and

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

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

71 "Private employer" means an employer that is not the State of West Virginia or any political
72 subdivision, agency, or instrumentality thereof.

73 "Public employer" means the State of West Virginia and any political subdivision, agency,
74 or instrumentality thereof.

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

78 "Willfully" means conduct that is intentionally engaged and the consequences of such
79 conduct results in a violation of this article.

§21-1B-3. Unauthorized workers; employment prohibited; requirement to E-Verify;
exceptions.

1 ~~(a) It is unlawful for any employer to knowingly employ, hire, recruit or refer, either for~~
2 ~~himself 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 employee's legal status or~~
5 ~~authorization to work prior to employing the individual or contracting with the individual for~~
6 ~~employment services~~

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

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

21 (a) No employer, regardless of the number of employees, may knowingly and willfully
22 employ, hire for employment, or continue to employ an unauthorized alien to perform work within
23 the state of West Virginia.

24 (b) Effective January 1, 2025, every employer in this state shall enroll in E-Verify and
25 thereafter, according to the federal statutes and regulations governing E-Verify, shall verify the
26 employment eligibility of new hires through E-Verify within three days after the employee's first day
27 of work for pay, unless the employee will work for fewer than three days, in which case the
28 verification must occur no later than the first day of work for pay. An employer that uses E-Verify to

29 verify the work authorization of an employee shall not be considered to have violated this section
30 with respect to the employment of that employee.

31 (c) The provisions of this article do not apply to the following:

32 (1) The relationship between a party and independent contractor or the employees of an
33 independent contractor performing work for the party;

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

35 (3) Individual homeowners who hire workers on private property used exclusively for the
36 owner and the owner's guests.

37 **§21-1B-4. Record-keeping requirements; employer compliance.**

38 Every employer, firm and corporation, regardless of number of employees, shall make
39 such records of the persons he or she employs including records of proof of the legal status or
40 authorization to work of all employees. Such records shall be preserved pursuant to the provisions
41 of section five, article five-c of this chapter and shall be maintained at the place of employment.
42 Pursuant to section three, article one of this chapter, such records shall be made available to the
43 commissioner or his or her authorized representative for inspection and investigation as the
44 commissioner deems necessary and appropriate for the purposes of determining whether any
45 employer, firm or corporation has violated any provision of this article which may aid in the
46 enforcement of the provisions of this article.

§21-1B-5. Penalties; suspension or revocation of license; determination of employment
status; writ of mandamus for nonenforcement of provisions.

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 ~~(c) Any employer who knowingly and willfully provides false records as to the legal status~~
13 ~~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) Any employer who knowingly and willfully and with fraudulent intent sells, transfers, or~~
17 ~~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 (a) Upon a knowing and willful first violation of §21-1B-3 of this code by an employer the
22 commissioner may, after providing notice and an opportunity to be heard, pursuant to §29A-5-1 et
23 seq. of this code, suspend the business licenses of the employer for up to 10 days, or until
24 compliance is accomplished, whichever is later. If the employer is a contractor or subcontractor
25 under a contract with the state or any political subdivision thereof, the commissioner may, within
26 the same administrative proceeding, also suspend the applicable contract for any time the
27 employer's license is suspended. If the employer accomplishes compliance with this article prior
28 to the start or prior to the completion of any administrative action, the employer's business license
29 shall not be suspended. Accomplishment of compliance with this article shall include submission
30 by the employer of a signed, sworn affidavit stating that the employer is in compliance with the
31 provisions of this article and a copy of the Memorandum of Understanding issued to the employer
32 at the time of enrollment in E-Verify. In the case the employer is a contractor or subcontractor

33 whose contract has also been suspended, if the contracting parties are willing to resume the
34 contract, upon the reinstatement of the license the contract shall also be reinstated.

35 (b) Upon a knowing and willful second violation of §21-1B-3 of this code by an employer
36 the commissioner may, after providing notice and an opportunity to be heard, pursuant to §29A-5-
37 1 et seq. of this code, suspend the business licenses of the employer for up to 60 days, or until
38 compliance is accomplished, whichever is later. If the employer is a contractor or subcontractor
39 under a contract with the state or any political subdivision thereof, the commissioner may, within
40 the same administrative proceeding, also suspend the applicable contract for any time the
41 employer's license is suspended. If the employer accomplishes compliance with this article prior
42 to the start or prior to the completion of any administrative action, the employer's business license
43 shall not be suspended. Accomplishment of compliance with this article shall include submission
44 by the employer of a signed, sworn affidavit stating that the employer is in compliance with the
45 provisions of this article and a copy of the Memorandum of Understanding issued to the employer
46 at the time of enrollment in E-Verify. In the case the employer is a contractor or subcontractor
47 whose contract has also been suspended, if the contracting parties are willing to resume the
48 contract, upon the reinstatement of the license the contract shall also be reinstated: *Provided,*
49 That an adjudicated first violation of this section by a private employer, as demonstrated by a final
50 order not subject to any further appellate processes, must have occurred within 10 years
51 immediately preceding the date of application by the state entity, political subdivision thereof, or
52 state to the commissioner in the current proceeding in order for a second offense violation to be
53 alleged against the private employer.

54 (c) Upon a knowing and willful third violation of §21-1B-3 of this code by an employer the
55 commissioner may bring a civil action in a court of competent jurisdiction to permanently revoke
56 the business licenses of the employer and the court shall permanently suspend the business
57 license of the employer upon making specific findings that the employer knowingly and willfully
58 violated the provisions of this article and shall then order that any applicable governing body will

59 permanently suspend the employer's business license: *Provided*, That an adjudicated second
60 violation of this section by a private employer, as demonstrated by a final order not subject to any
61 further appellate processes, must have occurred within 10 years immediately preceding the date
62 of application by the state entity, political subdivision thereof, or state to the commissioner in the
63 current proceeding in order for a third offense violation to be alleged against the private employer.

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

66 (e) In any court proceeding, the determination of whether an employee is an unauthorized
67 alien shall be made by the federal government Immigration and Customs Enforcement (ICE), or
68 any successor agency thereto, pursuant to 8 U.S.C. § 1373(c). The court shall consider only the
69 federal government's determination of ICE, or any successor agency thereto, when deciding
70 whether an employee is an unauthorized alien. The court may take judicial notice of any
71 verification of an individual's immigration status previously provided by the federal government
72 ICE, or any successor agency thereto, and may request the federal government to provide further
73 automated or testimonial verification.

74 (f) If any agency of the state or any political subdivision thereof fails to suspend the license,
75 or licenses, of any private employer, as a result of a knowing and willful violation of this section, the
76 agency shall be deemed to have violated this section and shall be subject to being compelled to
77 enforce this section by a writ of mandamus brought by the Attorney General in the circuit court for
78 the county where the agency of the state or any political subdivision thereof is located, or in the
79 Supreme Court of Appeals.

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

1 [Repealed]

§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 §21-1B-~~

3 ~~5(b) or has been convicted of the offenses described in subsection §21-1B-5(c) or §21-1B-5(c),~~
4 ~~the commissioner may enter an order imposing the following disciplinary actions:~~

5 ~~(1) Permanently revoke or file an action to revoke any license held by the employer; or~~

6 ~~(2) Suspend a license or move for a suspension of any license held by the employer for a~~
7 ~~specified period;~~

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

18 (a) A contractor of any tier shall not be liable under this article when its direct subcontractor
19 violates this article provided the subcontractor is an independent contractor.

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

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

26 (c) Any employer that terminates an employee to comply with §21-1B-3 of this code shall
27 not be liable for any wrongful-termination claims made against the employer by the terminated
28 employee.

29 (d) It is an affirmative defense to a violation of §21-1B-3 of this code that an employer was
30 entrapped.

31 (1) To claim entrapment, the employer must admit by testimony or other evidence the
32 substantial elements of the violation.

33 (2) An employer who asserts an entrapment defense has the burden of proving by a
34 preponderance of the evidence the following:

35 (A) The idea of committing the violation started with law-enforcement officers or their
36 agents rather than with the employer.

37 (B) The law-enforcement officers or their agents urged and induced the employer to
38 commit the violation;

39 (C) The employer was not already predisposed to commit the violation before the law-
40 enforcement officers or their agents urged and induced the employer to commit the violation.

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

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

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

§21-1B-8. Citation for violation Enforcement; Rule making authority; public notifications provision.

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) By July 1, 2024, the commissioner may propose rules for legislative approval, in
15 accordance with §29A-3-1 et seq. of this code, to implement the requirements and provisions of
16 this section, including, but not limited to developing a statewide random auditing program to
17 inspect private employers for compliance with the provisions of this section, safeguarding against
18 the release of any confidential or identifying information that is not necessary for the limited
19 purpose of enforcing the provisions of this article.

20 (b) Public notifications provision:

21 (1) the Division of Labor shall post educational information and materials about the E-
22 Verify program on the Division of Labor's website along with any other notification the
23 commissioner approves to make employers aware of the provisions of this article.

24 (2) The Secretary of State shall notify the service of process agent or individual authorized
25 to file the annual report on behalf of the employer of the E-Verify provisions of this article for each
26 business registered with the Secretary of State.

27 (c) For purposes of enforcing the provisions of this article, and notwithstanding any other
28 provision of this code to the contrary, the commissioner or his or her authorized representative
29 may access information maintained by any other state agency, including, but not limited to, the
30 Bureau of Employment Programs and the Division of Motor Vehicles, for the limited purposes of
31 confirming an employer's compliance with the provisions of this section and whether an employee
32 is authorized to work, as determined by the federal government.

ARTICLE 5I. WEST VIRGINIA EMPLOYMENT LAW WORKER CLASSIFICATION ACT.

§21-5I-4. Classification of independent contractors and employees.

1 (a) A person shall be classified as an independent contractor under the laws of this state as
2 defined in §21-1B-2 of this code if the requirements of this subsection are satisfied. Subject only to
3 the provisions of subsection (b) of this section, a person shall be classified as an independent
4 contractor under the laws of this state as defined in workers' compensation in Chapter 23 of this
5 code, unemployment compensation in Chapter 21A of this code, Human Rights Act rights in §5-
6 11-1 *et seq.* of this code, and wage payment and collection as defined in §21-5-1 *et seq.* of this
7 code, if:

8 (1) The person signs a written contract with the principal, in substantial compliance with the
9 terms of this subsection, that states the principal's intent to engage the services of the person as
10 an independent contractor and contains acknowledgements that the person understands that he
11 or she is:

12 (A) Providing services for the principal as an independent contractor;

13 (B) Not going to be treated as an employee of the principal;

14 (C) Not going to be provided by the principal with either workers' compensation or
15 unemployment compensation benefits;

16 (D) Obligated to pay all applicable federal and state income taxes, if any, on any moneys
17 earned pursuant to the contractual relationship, and that the principal will not make any tax
18 withholdings from any payments from the principal; and

19 (E) Responsible for the majority of supplies and other variable expenses that he or she
20 incurs in connection with performing the contracted services unless: The expenses are for travel
21 that is not local; the expenses are reimbursed under an express provision of the contract; or the
22 supplies or expenses reimbursed are commonly reimbursed under industry practice; and

23 (2) The person:

24 (A) Has either filed, or is contractually required to file, in regard to the fees earned from the
25 work, an income tax return with the appropriate federal, state, and local agencies for a business or
26 for earnings from self-employment; or

27 (B) Provides his or her services through a business entity, including, but not limited to, a
28 partnership, limited liability company or corporation, or through a sole proprietorship registered
29 with a “doing business as” as required under state or local law; and

30 (3) With the exception of the exercise of control necessary to ensure compliance with
31 statutory, regulatory, licensing, permitting, or other similar obligations required by a governmental
32 or regulatory entity, or to protect persons or property, or to protect a franchise brand, the person
33 actually and directly controls the manner and means by which the work is to be accomplished,
34 even though he or she may not have control over the final result of the work: *Provided*, That the
35 required deployment, implementation, or use of any safety improvement by an independent
36 contractor as required by contract or otherwise shall not be considered when evaluating status as
37 an employee or independent contractor under any state law. For purposes of this section, “safety
38 improvement” shall mean any device, equipment, software, technology, procedure, training,
39 policy, program, or operational practice intended and primarily used to improve or facilitate
40 compliance with state, federal, or local safety laws or regulations or general safety concerns. This
41 provision is satisfied even though the principal may provide orientation, information, guidance, or
42 suggestions about the principal’s products, business, services, customers and operating systems,
43 and training otherwise required by law; and

44 (4) The person satisfies three or more of the following criteria:

45 (A) Except for an agreement with the principal relating to final completion or final delivery
46 time or schedule, range of work hours, or the time entertainment is to be presented if the work
47 contracted for is entertainment, the person has control over the amount of time personally spent
48 providing services;

49 (B) Except for services that can only be performed at specific locations, the person has
50 control over where the services are performed;

51 (C) The person is not required to work exclusively for one principal unless:

52 (i) A law, regulation, or ordinance prohibits the person from providing services to more than
53 one principal; or

54 (ii) A license or permit that the person is required to maintain in order to perform the work
55 limits the person to working for only one principal at a time or requires identification of the principal;

56 (D) The person is free to exercise independent initiative in soliciting others to purchase his
57 or her services;

58 (E) The person is free to hire employees or to contract with assistants, helpers, or
59 substitutes to perform all or some of the work;

60 (F) The person cannot be required to perform additional services without a new or modified
61 contract;

62 (G) The person obtains a license or other permission from the principal to utilize any
63 workspace of the principal in order to perform the work for which the person was engaged;

64 (H) The principal has been subject to an employment audit by the Internal Revenue
65 Service (IRS) and the IRS has not reclassified the person to be an employee or has not
66 reclassified the category of workers to be employees;

67 (I) The person is responsible for maintaining and bearing the costs of any required
68 business licenses, insurance, certifications, or permits required to perform the services; or

69 (5) The person satisfies the definition of a direct seller under Section 3508(b)(2) of the
70 Internal Revenue Code of 1986.

71 (b) The classification of all workers who do not satisfy the criteria set forth in subsection (a)
72 of this section shall be determined by the test set forth in Internal Revenue Service Rev. Ruling 87-
73 41, for purposes of classifying workers under the laws concerning workers' compensation as
74 defined in Chapter 23 of this code, unemployment compensation in Chapter 21A of this code,

75 Human Rights Act rights in §5-11-1 *et seq.* of this code, and wage payment and collection in §21-5-
76 1 *et seq.* of this code. In addition, nothing contained in said subsection requires a principal to
77 classify a worker who meets the criteria contained therein as an independent contractor, the
78 principal always being free to hire the worker as an employee.

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. The bill defines "E-Verify", the electronic verification of federal employment authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and provides that unauthorized workers' employment is 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.