

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4009

By Delegates Kyle, Funkhouser, Green, Burkhammer,
Jeffries, Akers, Riley, Hornby, Hott, Heckert, and
Drennan

[Originating in the Committee on Finance, February
13, 2026]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §11-21-12o; to amend said code by adding there to a new section designated
3 §11-24-6d; and to amend said code by adding thereto a new article, designated §33-64-1,
4 §33-64-2, §33-64-3, §33-64-4, and §33-64-5, all relating to portable benefit accounts;
5 providing a short title; providing definitions; authorizing portable benefit accounts;
6 providing modifications to federal adjusted gross income related to portable benefit
7 accounts for personal income tax and corporate net income tax purposes; and authorizing
8 rulemaking.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 21. PERSONAL INCOME TAX

§11-21-12o. Additional modifications related to Voluntary Portable Benefits Plans.

1 (a) Modification for contributions - For taxable years beginning on or after January 1, 2026,
2 in addition to the amounts authorized to be subtracted from federal adjusted gross income
3 pursuant to §11-21-12(c) of this code there shall be subtracted an amount equal to a West Virginia
4 taxpayer's contribution to a voluntary portable benefits plan for the taxable year in which the
5 payment is made, in accordance with §33-64-1 et seq. of this code, but only to the extent the
6 amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross
7 income for the taxable year.

8 (b) Modification for recipients - For taxable years beginning on or after January 1, 2026, in
9 addition to the amounts authorized to be subtracted from federal adjusted gross income pursuant
10 to §11-21-12(c) of this code there shall be subtracted an amount equal to a West Virginia
11 taxpayer's receipt of a contribution to a voluntary portable benefits plan for the taxable year in
12 which the payment is made, in accordance with §33-64-1 et seq. of this code, but only to the extent

13 the amount is includable when arriving at the taxpayer's federal adjusted gross income for the
14 taxable year.

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-6d. Additional modification related to Voluntary Portable Benefits Plans.

1 For taxable years beginning on or after January 1, 2026, in addition to the amounts
2 authorized to be subtracted from federal taxable income pursuant to §11-24-6(c) of this code,
3 there shall be subtracted from federal taxable income an amount equal to a West Virginia
4 taxpayer's contribution to a voluntary portable benefits plan for the taxable year in which the
5 payment is made, in accordance with §33-64-1 et seq. of this code, but only to the extent the
6 amount is not allowable as a deduction when arriving at the taxpayer's federal taxable income for
7 the taxable year.

CHAPTER 33. INSURANCE.

ARTICLE 64. VOLUNTARY PORTABLE BENEFITS PLAN ACT.

§33-64-1. Legislative Findings.

1 The Legislature hereby finds:

2 (1) As of the effective date of this Act, there are over 90,000 independent contractors in
3 West Virginia. Nationally, a substantial majority of independent contractors prefer their
4 independent work arrangement over traditional employment, citing autonomy, flexibility, and
5 control over their schedules;

6 (2) Under current law, hiring entities are generally prohibited from providing employment-
7 based benefits to independent contractors without risking the reclassification of those workers as
8 employees;

9 (3) As a result, many independent contractors lack access to affordable benefits through
10 traditional employment channels, spousal coverage, or public programs. For many, private market
11 alternatives remain prohibitively expensive; and

(4) Establishing a portable benefit plan would provide tax incentives for hiring entities as contributions are deductible business expenses, and enhance financial stability for independent contractors, as contributions would not be included in their gross income.

§33-64-2.

Definitions.

As used in this article:

"Hiring party" means a person who hires or enters into a contract with an independent contractor;

"Independent contractor" means an individual who performs services for a hiring party in exchange for compensation, and the relationship with the hiring party qualifies the individual as an independent contractor based upon §21-5I-1 *et seq.* of this code;

"Portable benefit plan" means a benefit plan administered by a third-party portable benefit plan provider chosen by the independent contractor and assigned to a beneficiary rather than to a hiring party, and includes, but is not limited to:

(A) Health insurance;

(B) Income replacement insurance;

(C) Disability insurance;

(D) Life insurance; and

(E) Retirement benefits;

"Portable benefit plan provider" means the administrator of a portable benefit account who satisfies the Commissioner of Insurance that the manner in which the person will administer the portable benefit account will be consistent with the portable benefit account requirements under this article.

§33-64-3.

Administration.

(a) Any person or entity, whether public or private, including an internet or application-based company, may voluntarily contribute funds to a portable benefit account, as set forth in this

article, for an independent contractor who resides in West Virginia or who performs actual work in West Virginia.

(b) Contributions to a portable benefit account may be made using the funds of the hiring party, or a percentage of funds withheld from the compensation owed to the independent contractor, or both.

(c) A percentage of funds may be withheld only if the following conditions are met:

(1) The withholding of compensation is expressly agreed to in writing;

(2) The written agreement is clear, unambiguous, and prominently displayed either in a work contract or a separate invoice;

(3) The withholdings are voluntary and require the independent contractor to opt-in; and

(4) The independent contractor may choose to opt-out from withholdings at any time.

<u>§33-64-4.</u>	<u>Employment</u>	<u>Classification.</u>
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(a) Contributions to a portable benefit account may not be used as a criterion for determining a worker's employment classification for purposes of:

(1) Human Rights Act rights, as set forth in §16B-17-1 et seq. of this code;

(2) Wage payment and collection, as set forth in §21-5-1 et seq. of this code;

(3) Unemployment compensation, as set forth Chapter 21A of this code;

(4) Workers' compensation, as set forth in Chapter 23 of this code;

(5) Taxes due the state, except for as set forth in §11-21-12o and §11-24-6d of this code;

(6) Any lawsuit implicating employment law, including, but not limited to, discrimination, hostile work environment, wrongful discharge, or retaliation;

(7) Any lawsuit implicating a third party, including, but not limited to, vicarious liability; or

(8) Establishing any other right, privilege, or legal standing which would only apply when there is an employer-employee relationship.

(b) This section does not preclude the establishment of an employer-employee relationship for any of these purposes. However, any act under this article, including the creation,

15 use, or contributions to a portable benefit account, is strictly prohibited from being used to
16 establish an employer-employee relationship between the hiring party and the independent
17 contractor.

§33-64-5. **Rule-making.**

1 The Commissioner of the Division of Insurance is authorized to promulgate legislative
2 rules, and emergency legislative rules, in accordance with §29A-3-1 *et seq.* of this code to
3 effectuate the provisions of this article.