

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4009

BY DELEGATES KYLE, FUNKHOUSER, GREEN,
BURKHAMMER, JEFFRIES, AKERS, RILEY, HORNBY, HOTT,
HECKERT, AND DRENNAN

[Passed March 14, 2026; in effect 90 days from
passage (June 12, 2026)]

1 AN ACT 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 §21-18-
4 1, §21-18-2, §21-18-3, §21-18-4, and §21-18-5, all relating to voluntary portable benefit
5 accounts; providing legislative findings; providing definitions; authorizing portable benefit
6 accounts; specifying types of contributions to portable benefit accounts; restricting use of
7 contributions to portable benefit accounts for the purpose of various state laws; providing
8 modifications to federal adjusted gross income related to portable benefit accounts for
9 personal income tax and corporate net income tax purposes; and authorizing rule-making.

Be it enacted by the Legislature of West Virginia:

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,
2 2026, 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 §21-18-1 *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,
9 in addition to the amounts authorized to be subtracted from federal adjusted gross income
10 pursuant 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 §21-18-1 *et seq.* of this code, but only to the
13 extent the amount is includable when arriving at the taxpayer's federal adjusted gross income for
14 the 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 §21-18-1 *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 21. LABOR.

ARTICLE 18. VOLUNTARY PORTABLE BENEFITS PLAN ACT.

§21-18-1. Legislative findings.

1 The Legislature hereby finds:

2 (1) As of the effective date of this act, there are more than 90,000 independent contractors
3 in 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) Many independent contractors lack access to affordable benefits through traditional
10 employment channels, spousal coverage, or public programs. For many, private market
11 alternatives remain prohibitively expensive; and

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

§21-18-2. Definitions.

1 As used in this article:

2 "Hiring party" means a person or entity that hires or enters into a contract with an
3 independent contractor;

4 "Independent contractor" means an individual who performs services for a hiring party in
5 exchange for compensation, and the relationship with the hiring party qualifies the individual as
6 an independent contractor based upon §21-51-1 *et seq.* of this code;

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

10 (A) Health insurance;

11 (B) Income replacement insurance;

12 (C) Disability insurance;

13 (D) Life insurance; and

14 (E) Retirement benefits;

15 "Portable benefit plan provider" means the administrator of a portable benefit account, and
16 includes:

17 (A) A bank;

18 (B) An investment management firm;

19 (C) A technology provider or program manager that offers services through a bank or
20 investment management firm; or

21 (D) Any other person or entity that demonstrates to the satisfaction of the West Virginia
22 Division of Labor that the manner in which the portable benefit account will be administered will
23 be consistent with the portable benefit account requirements under this article.

§21-18-3. Administration.

1 (a) Any person or entity, whether public or private, including an internet or application-
2 based company, may voluntarily contribute funds to a portable benefit account, as set forth in this
3 article, for an independent contractor who resides in West Virginia or who performs actual work
4 in West Virginia.

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

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

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

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

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

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

§21-18-4. Employment classification.

1 (a) Contributions to a portable benefit account may not be used as a criterion for
2 determining a worker's employment classification for purposes of:

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

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

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

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

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

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

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

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

13 (b) This section does not preclude the establishment of an employer-employee
14 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.

§21-18-5. Rule-making.

1 The Commissioner of Labor may propose rules for legislative approval in accordance with
2 the provisions of §29A-3-1 *et seq.* of this code and may promulgate emergency rules pursuant to
3 the provisions of §29A-3-15 of this code to effectuate the provisions of this article, including but
4 not limited to specifying requirements for a portable benefit plan provider designed to safeguard
5 contributions for the benefit of an independent contractor.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect 90 days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2026.

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Governor