

# **WEST VIRGINIA LEGISLATURE**

**2026 REGULAR SESSION**

**ENGROSSED**

**Committee Substitute**

**for**

**House Bill 4198**

By Delegates Coop-Gonzalez, Hornby, Brooks,  
Phillips, Linville, Ridenour, Mazzocchi, Ferrell,  
McGeehan, Pritt, and Foggin

[Originating in the Committee on Government  
Organization; Reported on February 2, 2026]



1 A Bill to amend and reenact §21-1B-2, §21-1B-3, §21-1B-5, and §21-1B-7 of the Code of West  
2 Virginia, 1931, as amended; and to repeal §21-1B-6, relating to the E-Verify employment  
3 verification system; providing a definition; requiring employers to register and create an E-  
4 Verify account; requiring employers to verify a new employee's authorization to work;  
5 creating exceptions; revising a certain penalty; removing certain criminal penalties;  
6 revising business-license sanctions; removing prohibition on claiming certain business-  
7 expense deductions; providing an affirmative defense for an employer that uses the E-  
8 Verify employment verification system.

*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 The words defined in this section have the meanings given to them for purposes of this  
18 article unless the context clearly requires otherwise.

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

20 "E-Verify" means the electronic verification of federal employment authorization program of  
21 the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, PL 104-208, 8 U.S.C. §  
22 1324a, and operated by the United States Department of Homeland Security, or its successor  
23 program.

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 other  
27 business entity which employs or seeks to employ an individual or individuals.

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

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

35 "Records" means records that may be required by the commissioner of labor for the  
36 purposes of compliance with the provisions of this article.

37 "Unauthorized worker" means a person who does not have the legal right to be employed  
38 or is employed in violation of law.

**§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 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 (e) (1) All employers as defined in §21-1B-2 of this code shall register and create an E-  
22 Verify employer account;

23 (2) After hiring an employee, an employer shall employ provisionally a new employee until  
24 the new employee's work authorization has been verified pursuant to this section. An employer  
25 shall submit a new employee's name and information for verification even if the new employee's  
26 employment is terminated less than three business days after becoming employed.

27 (3) If a new employee's work authorization is not verified by the federal work authorization  
28 program, a private employer may not employ, continue to employ, or reemploy the new employee:  
29 Provided, That upon discovery that the employee's work authorization has not been verified, the  
30 employer shall initiate the verification process through the federal work authorization program  
31 within two business days of such discovery. Upon initiation of the verification process, the  
32 employer may continue to employ the individual for a period not to exceed twenty calendar days to  
33 allow completion of the verification process. If the employee's work authorization is not verified  
34 within this twenty calendar day period, the employer shall terminate the employee. An employer  
35 may employ or reemploy the individual only upon verification of the individual's work authorization  
36 pursuant to this section.

37 (4) All employers shall keep a record of the verification for the duration of the employee's  
38 employment with the employer or three years, whichever is longer.

39 (f) An employer is not required to comply with this section if:

40 (1) An employee was hired by the employer prior to the day of amendment of this section;

41 (2) The employer is not required to verify or reverify the employee's eligibility to work  
42 pursuant to federal law.

43 (g) An employer may not employ any employee who meets the definition of unauthorized  
44 worker as defined in §21-1B-2 of this code. Failure to comply with requirements in §21-1B-2 or  
45 §21-1B-3 shall be presumed to be violations of this section.

#### **§21-1B-5. Penalties.**

1 (a) Any employer who knowingly and willfully fails to maintain records as required by §21-  
2 1B-4 of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$100 for  
3 ~~each offense~~ \$500 for each offense, and each day of noncompliance shall constitute a separate  
4 offense. Failure to keep records on each employee constitutes a separate offense.

5 (b) Any employer who knowingly violates the provisions of §21-1B-3 of this code by  
6 employing, hiring, recruiting or referring an unauthorized worker is ~~guilty of a misdemeanor and,~~  
7 ~~upon conviction thereof, is subject to the following penalties:~~ subject to the penalties set forth in  
8 §21-1B-7 of this code.

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

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

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

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

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

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

1 [Repealed.]

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

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~~ §21-1B-5(c) or §21-1B-5(d) of this code, the commissioner  
5 may enter an order imposing the following 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 (c) Upon a knowing and willful first violation of §21-1B-3 of this code by a private employer  
20 the commissioner shall, after providing notice and an opportunity to be heard pursuant to §29A-5-1  
21 et seq. of this code, issue a formal warning to the employer. Any employer who is not in  
22 compliance with the provisions of this article within 14 days of the commissioner's final order is  
23 subject to the sanctions set forth in §21-1B-7(d) of this section.

24 (d) For purposes of enforcement under this section, upon a knowing and willful second  
25 violation of §21-1B-3 of this code, the commissioner shall after providing notice and an opportunity  
26 to be heard pursuant to §29A-5-1 et seq. of this code:

- 27 (1) Publicly post notice of the violation on the division's website;
- 28 (2) Bring a civil action to prohibit the employer from bidding on, entering into, or renewing  
29 any contract with the state or any political subdivision thereof for a period of not less than two  
30 years; and
- 31 (3) Impose the maximum civil fine or sanction, as applicable, authorized under §21-1B-5

32 of this code.”

33 (e) Upon a knowing and willful third violation of §21-1B-3 of this code, the commissioner  
34 shall after providing notice and an opportunity to be heard pursuant to §29A-5-1 et seq. of this  
35 code seek permanent revocation of the employer’s business license by bringing a civil action in a  
36 court of competent jurisdiction to permanently revoke the business license of the employer. The  
37 court shall permanently suspend the business license of the employer upon making specific  
38 findings that the employer knowingly and willfully violated the provisions of this article and shall  
39 then order that any applicable governing body will permanently suspend the employer’s business  
40 license.”

41 (f) For purposes of this section, a knowing and willful violation of §21-1B-3 of this code shall  
42 be considered a first, second, or third violation only by reference to prior violations of §21-1B-3 of  
43 this code that:

44 (1) Were finally determined by an order of the commissioner issued pursuant to §29A-5-1  
45 et seq. of this code or by a final order of a court of competent jurisdiction; and

46 (2) Occurred within five years immediately preceding the date of the violation at issue, as  
47 determined in the applicable final order.

48 (g) An employer that demonstrates that it verified an employee’s authorization to work  
49 through E-Verify and that the employee was cleared to work by E-Verify has established an  
50 affirmative defense that the employer has not violated §21-1B-3 of this code with respect to the  
51 hiring of that employee. An employer that does not utilize E-Verify shall bear the full burden of  
52 compliance and enforcement under this article and shall not be entitled to any presumption,  
53 defense, or reduction in penalties otherwise available under state law.

54 (h) Notwithstanding any other provision of this code to the contrary, an employer that does  
55 not utilize the federal E-Verify employment verification system at the time of hiring an employee  
56 shall not be eligible for any mitigation, reduction, warning, or discretionary leniency in the  
57 assessment of penalties, sanctions, or disciplinary actions imposed pursuant to this article.

58           (i) Any employer found to have knowingly and willfully violated §21-1B-3 of this code shall  
59 be ineligible, for a period of not less than three years from the date of the final order, to participate  
60 in any public-private partnership administered by the state or any political subdivision thereof.