

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

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-5, and §21-1B-7 of the Code of West Virginia,
2 1931, as amended; and to repeal §21-1B-6, relating to the E-Verify employment
3 verification system; providing a definition; removing certain criminal penalties; revising
4 business-license sanctions; removing prohibition on claiming certain business-expense
5 deductions; providing a safe harbor for an employer that uses the E-Verify employment
6 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-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. Failure to keep records on each employee constitutes a separate offense.

4 (b) Any employer who knowingly violates the provisions of §21-1B-3 of this code 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: subject to the penalties set forth in
7 §21-1B-7 of this code.

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

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

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

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

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

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) Upon a knowing and willful second violation of §21-1B-3 of this code by a private
25 employer the commissioner shall, after providing notice and an opportunity to be heard pursuant to
26 §29A-5-1 *et seq.* of this code, post on the division's website that the employer has violated the
27 provisions of this article and bring a civil action in a court of competent jurisdiction to obtain an
28 order prohibiting the employer from bidding for or entering into any contract with the state or any of
29 its subdivisions for one year next after the date of the court's order. Any employer who is not in
30 compliance with the provisions of this article within 14 days of the order is subject to the sanctions
31 set forth in §21-1B-7(e) of this section.

32 (e) Upon a knowing and willful third violation of §21-1B-3 of this code by a private employer

33 the commissioner shall, after providing notice and an opportunity to be heard pursuant to §29A-5-1
34 et seq. of this code, bring a civil action in a court of competent jurisdiction to permanently revoke
35 the business license of the employer, and the court shall permanently suspend the business
36 license of the employer upon making specific findings that the employer knowingly and willfully
37 violated the provisions of this article and shall then order that any applicable governing body will
38 permanently suspend the employer's business license.

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

42 (1) were finally determined by an order of the commissioner issued pursuant to §29A-5-1 et
43 seq. of this code or by a final order of a court of competent jurisdiction; and
44 (2) occurred within five years immediately preceding the date of the violation at issue, as
45 determined in the applicable final order.

46 (g) An employer that demonstrates that it verified an employee's authorization to work
47 through E-Verify and that the employee was cleared to work by E-Verify has established an
48 affirmative defense that the employer has not violated §21-1B-3 of this code with respect to the
49 hiring of that employee.

NOTE: The purpose of this bill is to provide employers who use the E-Verify system safe harbor from violations of state prohibitions on hiring unauthorized workers.

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