

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **Senate Bill 1073**

By Senators Willis, Barrett, Bartlett, Helton, Martin,  
and Rucker

[Introduced February 23, 2026; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §21-5I-4 of the Code of West Virginia, 1931, as amended, relating to  
 2 making the distinction between an independent contractor and employee in this state  
 3 consistent with Internal Revenue Services classifications.

*Be it enacted by the Legislature of West Virginia:*

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

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

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

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

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

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

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

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

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

21 ~~(2) The person:~~

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

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

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

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

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

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

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

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

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

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

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

58 ~~(F) The person cannot be required to perform additional services without a new or modified~~  
59 ~~contract;~~

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

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

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

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

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

73 ~~Human Rights Act rights in §5-11-1 et seq. of this code, and wage payment and collection in §21-5-~~  
74 ~~1 et seq. of this code. In addition, nothing contained in said subsection requires a principal to~~  
75 ~~classify a worker who meets the criteria contained therein as an independent contractor, the~~  
76 ~~principal always being free to hire the worker as an employee.~~

77 The classification of all workers as either an independent contractor or employee shall be  
78 determined by the test set forth in Internal Revenue Service Revenue Ruling 87-41, or subsequent  
79 applicable IRS Revenue rules of regulations, as updated from time to time. Ambiguity shall be  
80 resolved in favor of independent contract status.

NOTE: The purpose of this bill is to align the state classifications of independent contractor and employee with the Internal Revenue Service classifications.

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