

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 462

By Senator Helton

[Introduced January 16, 2026; referred
to the Committee on Government Organization]

1 A BILL to amend and reenact §21-1B-2, §21-1B-3, and §21-1B-4 of the Code of West Virginia,
2 1931, as amended; and to amend the code by adding five new sections, designated §21-
3 1B-9, §21-1B-10, §21-1B-11, §21-1B-12, and §21-1B-13, relating to the labor
4 commissioner; verifying legal employment status of workers; record-keeping requirements
5 and employer compliance; defining "employment verification" as the electronic verification
6 system as "E-Verify"; providing definitions for "employee" and "unauthorized worker";
7 investigations by the commissioner; prohibiting local governments from enacting
8 ordinances that contravene or limit the commissioner; providing civil protections for
9 employers using E-Verify; and right of entry and inspection by the commissioner or
10 inspectors to determining compliance with the provisions of verifying the legal status of
11 workers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT STATUS OF WORKERS.

§21-1B-2. Definitions.

1 As used in this article:

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

3 "Employer" means any individual, person, corporation, department, board, bureau,
4 agency, commission, division, office, company, firm, partnership, council or committee of the state
5 government, public benefit corporation, public authority or political subdivision of the state or other
6 business entity which employs or seeks to employ an individual or individuals.

7 "Employment Verification" means the electronic verification system known as E-Verify,
8 operated by United States Citizenship and Immigration Services, or its successor program, as
9 authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, PL 104-
10 208, 8 U.S.C. § 1324a.

11 "Employee" means any person directed, allowed, or permitted to perform labor or services
12 of any kind by an employer.

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

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

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

~~"Unauthorized worker" means a person who does not have the legal right to be employed or is employed in violation of law.~~ "Unauthorized Worker" is a worker as defined in 8 U.S.C. § 1324a(h)(3) who is either not lawfully admitted for permanent residence or is otherwise not authorized to be so employed in the United States.

§21-1B-3. Unauthorized workers; employment prohibited.

(a) It is unlawful for any employer to knowingly employ, hire, recruit or refer, either for him or herself or on behalf of another, for private or public employment within the state, an unauthorized worker who is not duly authorized to be employed by law.

(b) Employers shall ~~be required to~~ verify a prospective employee's legal status or authorization to work prior to employing the individual or contracting with the individual for employment services.

(c) For purposes of this article, proof of legal status or authorization to work includes, but is not limited to, a valid social security card, a valid immigration or nonimmigration visa, including photo identification, a valid birth certificate, a valid passport, a valid photo identification card issued by a government agency, a valid work permit or supervision permit authorized by the Division of Labor, a valid permit issued by the Department of Justice or other valid document providing evidence of legal residence or authorization to work in the United States.

(d) For purposes of enforcing the provisions of this article, and notwithstanding any other provision of this code to the contrary, the commissioner or his or her authorized representative may access information maintained by any other state agency, including, but not limited to, the Bureau of Employment Programs and the Division of Motor Vehicles, for the limited purpose of confirming the validity of a worker's legal status or authorization to work. The commissioner shall promulgate rules in accordance with ~~the provisions of~~ §29A-3-1 et seq. of this code to safeguard against the release of any confidential or identifying information that is not necessary for the limited purpose of enforcing the provisions of this article.

(e)(1) All employers as defined in section two of this article shall register and create an E-Verify employer account;

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

(3) If a new employee's work authorization is not verified by the federal work authorization program, a private employer may not employ, continue to employ, or reemploy the new employee.

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

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

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

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

(g) An employer may not employ any employee who meets the definition of Unauthorized Worker as defined in section three of this article. Failure to comply with requirements in sections two or three of this article shall be presumed to be violations of this section.

§21-1B-4. Record-keeping requirements; employer compliance.

1 Every employer, firm and corporation shall make such records of the persons he or she
2 employs including records of proof of the legal status or authorization to work of all employees.
3 ~~Such~~ These records shall be preserved pursuant to ~~the provisions of~~ §21-5C-5 of this code and
4 shall be maintained at the place of employment. Pursuant to §21-3-1 of this code, such the
5 records shall be made available to the commissioner or his or her authorized representative for
6 inspection and investigation as the commissioner deems necessary and appropriate for the
7 purposes of determining whether any employer, firm or corporation has violated any provision of
8 this article which may aid in the enforcement of the provisions of this article.

9 Nothing in this article may be construed as to abrogate an employer's obligation to comply
10 with federal immigration laws, including the completion and maintenance of federal employment
11 eligibility verification forms or documents.

§21-1B-9. Investigation by the Commissioner.

1 (a) The commissioner shall prescribe a complaint form for an individual to allege a violation
2 of section four of this article. The commissioner may not require the complaint to list personal
3 identifying information on the complaint form or to have the form notarized. A complainant shall
4 submit the complaint to the commissioner. Except as prohibited by law, the commissioner shall
5 investigate any violation alleged in a prescribed form to the commissioner.

6 (1) The commissioner may investigate a complaint form submitted by an anonymous
7 complainant.

8 (2) The commissioner may not investigate any complaint filed that is based on race, color,
9 national origin, or any other discriminatory factor.

10 (b) If the commissioner conducts an investigation under this section and determines that
11 reasonable evidence exists that an employer has violated a provision of this article, the
12 commissioner shall take the following actions:

13 (1) Provide notice of the alleged violation to the employer and provide the employer with an
14 opportunity to comment;

15 (2) If, upon notice, the commissioner determines that this is the employer's first violation
16 and it constitutes only a single unverified or unauthorized worker, the commissioner may, upon the
17 employer presenting proof that the violation has been corrected, issue a formal warning letter to
18 the employer and close the matter.

19 (3) If, upon notice, the commissioner determines that this violation constitutes either a
20 second violation for the employer or constitutes two or more unverified or unauthorized workers,
21 the commissioner shall order the employer to pay a fine of \$2,500 for each violation.

22 (4) If, upon notice, the commissioner determines that this violation constitutes a third or
23 subsequent violation for the employer the commissioner shall order the employer to pay a fine of
24 \$5,000 for each violation and shall institute proceedings before a court of competent jurisdiction to
25 suspend or revoke the employer's license to transact business in this state.

26 (c) An employer who is assessed fines under this paragraph, may appeal that
27 determination to a court of competent jurisdiction but is required to pay an appeal bond equal to
28 the amount of the fine. If the court finds for the employer, the bond will be released, and the
29 violation will not count as a previous violation for purposes of a subsequent investigation.

30 (d) The commissioner shall bring proper action against an employer who does not comply
31 with the order to pay the fine and who does not appeal the assessment. If the court determines that
32 the employer is liable, the court may assess double the fine of what was ordered by the
33 commissioner.

34 (e) The commissioner, in consultation with the state departments responsible for business
35 licenses and for contracts, shall maintain a list of every employer assessed a fine under this
36 section. An employer shall remain on the list for a period not to exceed one year, and during that
37 period, the employer may not be eligible to bid for or participate in any state contract. Following the
38 year period, the employer shall be eligible to bid for and participate in state contracts if the
39 employer files a sworn affidavit with the commissioner that one year or more has elapsed since the
40 order described in this section and that the employer has not violated any provision of this bill

41 during that period.

§21-1B-10. Good faith compliance.

1 For purposes of this article, an employer who, in good faith, verifies the immigration status
 2 of a new employee pursuant to the provisions of this chapter shall be presumed to have complied
 3 with all of the provisions of this article.

§21-1B-11. Preemption of local ordinances.

1 A political subdivision of the state may not enact an ordinance or policy, whether written or
 2 oral, that limits or otherwise acts in contravention of the commissioner's ability to enforce the
 3 provisions of this article.

§21-1B-12. Civil protections for employers using E-Verify.

1 An employer who terminates an employee in order to comply with the provisions of this
 2 article may not be subject to a civil action for wrongful termination of the employee as provided by
 3 law.

§21-1B-13. Right of entry and inspection by inspectors.

1 The commissioner, inspectors, agents, or designees, upon proper presentation of
 2 credentials to the owner, manager, or agent of the employer, may enter at reasonable times and
 3 have the right to question either publicly or privately any employer, owner, manager, or agent and
 4 the employees of the private employer and inspect, investigate, reproduce, or photograph original
 5 business records relevant to determining compliance with the provisions of this article.

NOTE: The purpose of this bill is to verify the legal employment status of workers and record-keeping requirements and employer compliance. The bill defines "employment verification" as the electronic verification system or "E-Verify." The bill prohibits local governments from enacting ordinances that contravene or limit the commissioner; and provides civil protections for employers using E-Verify.

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