

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2834

BY DELEGATES HOWELL, FRICH, DEAN, HILL, MARTIN,
HAMRICK, ARVON, CRISS, LEWIS, SYPOLT AND PAYNTER

[Introduced March 8, 2017;

Referred to the committee on Small Business,
Entrepreneurship and Economic Development then
the Judiciary.]

1 A BILL to amend and reenact §21-1B-5 and §21-1B-7 of the Code of West Virginia, 1931, as
 2 amended; and to amend said code by adding thereto a new section, designated §21-1B-
 3 9, all relating to unlawful employment practices involving unauthorized workers; requiring
 4 that an employer’s license or authorization to operate a business in this state be
 5 suspended or revoked if the employer is convicted of certain crimes; creating a rebuttable
 6 presumption that an employer is not guilty of the offense of knowingly employing, hiring,
 7 recruiting or referring an unauthorized worker if the employer complied with federal
 8 statutory requirements for verifying employment authorization; establishing factors that the
 9 Commissioner of Labor may consider when determining whether to suspend or revoke an
 10 employer’s license or authorization to operate a business; requiring licensing agencies to
 11 suspend or revoke an employer’s license or authorization to operate a business upon
 12 receipt of an order from the Commissioner of Labor; and establishing that a public official
 13 or employee of the state has a duty report known employment of an unauthorized worker
 14 to federal immigration authorities.

Be it enacted by the Legislature of West Virginia:

1 That §21-1B-5 and §21-1B-7 of the Code of West Virginia, 1931, as amended, be
 2 amended and reenacted; and that said code be amended by adding thereto a new section,
 3 designated §21-1B-9, all to read as follows:

ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT STATUS OF WORKER.

§21-1B-5. Penalties.

1 (a) Any employer who knowingly and willfully fails to maintain records as required by
 2 section four of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined
 3 \$100 for each offense. Failure to keep records on each employee constitutes a separate offense.

4 (b) Any employer who knowingly violates the provisions of section three of this article 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:

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

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

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

12 (c) There is a rebuttable presumption that an employer did not knowingly employ, hire,
13 recruit or refer an unauthorized worker in violation of section three of this article if the employer
14 complied in good faith with the requirements of 8 U.S.C. §1324a(b) with respect to the
15 unauthorized worker.

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

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

§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~~ an offense under
3 subsection (b), ~~(d) or (e) of~~ section five of this article, ~~or has been convicted of the offenses~~
4 ~~described in subsection (c) or (d) of said section~~ the commissioner ~~may~~ shall enter an order
5 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 commissioner may consider the following factors, if applicable, in deciding whether
10 to order an agency to revoke an employer's license or licenses for a period determined by the
11 commissioner, or permanently revoke an employer's license pursuant to subsection (a) of this
12 section:

13 (1) The number of unauthorized workers employed by the employer.

14 (2) Any prior misconduct by the employer.

15 (3) The degree of harm resulting from the violation of this chapter.

16 (4) The extent to which the employer made good faith efforts to comply with any applicable
17 requirements under this chapter.

18 (5) The duration of the violation of this chapter.

19 (6) The role of the directors, officers, or agents of the employer in the violation of this
20 article.

21 (7) Any other factors the commissioner considers relevant.

22 ~~(b)~~ (c) The order shall contain the reasons for the revocation or suspension and the
23 revocation or suspension periods. Further, the order shall give the procedures for requesting a
24 hearing. The person shall be advised in the order that because of the receipt of the record of
25 conviction by the commissioner a presumption exists that the person named in the record of
26 conviction is the person named in the commissioner's order and this constitutes sufficient
27 evidence to support a revocation or suspension and that the sole purpose for the hearing held
28 under this section is for the person requesting the hearing to present evidence that he or she is
29 not the person named in the record of conviction. A copy of the order shall be forwarded to the
30 person by registered or certified mail, return receipt requested. No revocation or suspension shall
31 become effective until ten days after receipt of a copy of the order.

32 (d) If a licensing agency receives an order from the commissioner pursuant to this section,
33 the agency shall immediately suspend or revoke the license or licenses that are held by the

34 employer to which the order relates in compliance with the terms of the order.

§21-1B-9. Duty to report employment of unauthorized workers.

1 A public official or employee of this state has a duty to immediately report any known or
2 observed violation of subsection (a), section three of this article to the United States Immigration
3 and Customs Enforcement Agency.

NOTE: The purpose of this bill is to require that an employer's license or authorization to operate a business in the state be suspended or revoked if the employer is convicted of certain crimes related to employment practices involving an unauthorized worker; to create a rebuttable presumption that an employer is not guilty of the offense of knowingly employing, hiring, recruiting or referring an unauthorized worker if the employer complied with federal statutory requirements for verifying employment authorization; to establish factors that the Commissioner of Labor may consider when determining whether to suspend or revoke an employer's license or authorization to operate a business; to require an agency to suspend or revoke an employer's license or authorization to operate a business upon receipt of an order from the Commissioner of Labor; and to establish that a public official or employee of the state has a duty report known employment of an unauthorized worker to federal immigration authorities.

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