

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 48

BY SENATORS HAMILTON AND ROMANO

[Introduced February 10, 2021; referred
to the Committee on the Workforce; and then to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §21-1F-1, §21-1F-2, §21-1F-3, §21-1F-4, and §21-1F-5, all relating to
 3 prohibiting the employment of unauthorized employees in the construction industry;
 4 requiring employers to verify eligibility for employment with the federal government;
 5 providing for duties of the Attorney General; and establishing penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1F. CONSTRUCTION INDUSTRY EMPLOYEE VERIFICATION ACT.

§21-1F-1. Short title.

1 This article shall be known and may be cited as the Construction Industry Employee
 2 Verification Act.

§ 21-1F-2. Definitions.

1 The following words and phrases when used in this article shall have the meanings given
 2 to them in this section unless the context clearly indicates otherwise:

3 (1) "Agency." An agency, department, board or commission of the state or of a municipality
 4 that issues a license for purposes of operating a business in this state.

5 (2) "Construction industry." The industry which engages in the erection, reconstruction,
 6 demolition, alteration, modification, custom fabrication, building, assembling, site preparation and
 7 repair work or maintenance work done on real property or premises under a contract, including
 8 work for a public body or work paid for from public funds.

9 (3) "Construction industry employer." An individual, entity or organization that transacts
 10 business in this state in the construction industry, has a license issued by an agency and employs
 11 at least one employee in this state.

12 (4) "Employee." An individual for whom a construction industry employer is required by
 13 law to file a Form W-2 with the Internal Revenue Service.

14 (5) "Employer." A construction industry employer.

15 (6) "E-Verify program." The Internet-based program administered by the United States

16 Department of Homeland Security and the United States Social Security Administration which
17 allows employers to verify an employee's work-authorization status. The term includes any
18 successor program.

19 (7) "License." A permit, certificate, approval, registration, charter or similar form of
20 authorization that is required by law and issued by an agency for the purposes of operating a
21 business in this state. The term includes articles of incorporation and partnership registrations.
22 The term does not include a professional or occupational license or certificate granted to an
23 individual to engage in a profession or trade.

24 (8) "Unauthorized employee." An individual who does not have the legal right or
25 authorization under Federal law to work in the United States.

§21-1F-3. Prohibited employment.

1 (a) Prohibition.--

2 An employer may not knowingly employ an unauthorized employee.

3 (b) Verification. --

4 On or after the effective date of this section, each employer who hires an employee shall
5 verify the employment eligibility of the employee through the E-Verify program and shall keep a
6 record of the verification for the duration of the employee's employment or three years, whichever
7 is longer.

§21-1F-4. Procedures, presumptions and defenses.

1 (a) Form.--

2 The Attorney General shall prescribe a complaint form for an individual to allege a violation
3 of section 3(a) of this article. An individual who knowingly provides materially false information in
4 a complaint form under this subsection is guilty of a misdemeanor and, upon conviction thereof,
5 shall be fined not more than \$1,000 or confined in a regional correction facility for no more than
6 one year.

7 (b) Duty to investigate. --

8 Upon receipt or a complaint on a prescribed complaint form alleging that an employer
9 knowingly employs an unauthorized employee, the Attorney General shall investigate whether the
10 employer has violated section 3(a) of this article.

11 (c) Authority to investigate . --

12 The Attorney General may investigate a complaint that is not submitted on a prescribed
13 complaint form, including an anonymous complaint.

14 (d) Prohibition. --

15 The Attorney General may not investigate a complaint that is based solely on race, color
16 or national origin.

17 (e) Verification. --

18 If investigating a complaint, the Attorney General shall verify the work authorization of the
19 alleged unauthorized employee with the Federal Government under section 642(c) of the Illegal
20 Immigration Reform and Immigrant Responsibility Act of 1996 (Public Law 104-208, 8 U.S.C.
21 Section 1373(c)). A local official may not attempt to independently make a final determination on
22 whether an unauthorized employee is authorized to work in the United States.

23 (f) Notification and action. --

24 If, after an investigation, the Attorney General determines that the alleged employee is an
25 unauthorized employee, the Attorney General shall do all of the following:

26 (1) Notify United States Immigration and Customs Enforcement of the unauthorized
27 employee.

28 (2) Bring an action against the employer in the county where the unauthorized employee
29 is or was employed by the employer. The Attorney General shall not bring an action against an
30 employer for a violation that occurred before the effective date of this section.

31 (g) Expedited action. --

32 Upon docketing, the court shall expedite the action, including assigning the hearing at the
33 earliest practicable date.

34 (h) Determination. --

35 In determining whether an employee is an unauthorized employee, the court shall consider
36 only the Federal Government's determination under section 642(c) of the Illegal Immigration
37 Reform and Immigrant Responsibility Act of 1996. The Federal Government's determination shall
38 create a rebuttable presumption of the employee's status. The court may take judicial notice of
39 the Federal Government's determination and may request the Federal Government to provide
40 automated or testimonial verification under section 642(c) of the Illegal Immigration Reform and
41 Immigrant Responsibility Act of 1996.

42 (i) Rebuttable presumption. --

43 Proof that the employer verified the employment authorization of an employee through the
44 E-Verify program shall create a rebuttable presumption that an employer did not knowingly
45 employ an unauthorized employee.

46 (j) Affirmative defense. --

47 For the purposes of this section, it shall be an affirmative defense if the employer
48 demonstrates that it has complied in good faith with section 274A(b) of the Immigration and
49 Nationality Act (66 Stat. 163, 8 U.S.C. Section 1324a(b)). An employer shall be considered to
50 have complied with section 274A(b) of the Immigration and Nationality Act, notwithstanding an
51 isolated, sporadic or accidental technical or procedural failure to meet the requirements, if the
52 employer establishes a good faith attempt to comply with section 274A(b) of the Immigration and
53 Nationality Act.

§21-1F-5. Penalties and remedial orders.

1 (a) Upon a finding of a violation under §21-1C-3(a), the court shall order all of the following:

2 (1) The employer to terminate the employment of each unauthorized employee.

3 (2) The employer to a three-year probationary period for each business location where the
4 unauthorized employee performed work. During the probationary period the employer:

5 (3) (A) Shall file quarterly reports with the Attorney General of each new employee who is

6 hired by the employer at the business location where the unauthorized employee performed work;

7 and

8 (B) may not knowingly employ an unauthorized employee.

9 (4) The employer, within three business days, to verify in writing to the Attorney General
10 that the employer has terminated the employment of each unauthorized employee in this state.

11 (5) Agencies to suspend each license that is held by the employer if the employer fails to
12 timely submit the verification. Each license that is suspended under this paragraph shall remain
13 suspended until the employer complies. Notwithstanding any other law, on filing of the verification,
14 each license shall be reinstated immediately by the appropriate agency. For the purposes of this
15 paragraph, a license that is subject to suspension under this paragraph shall include each license
16 that is held by the employer specific to the business location where the unauthorized employee
17 performed work. If the employer does not hold a license specific to the business location where
18 the unauthorized employee performed work, the court shall order suspension of each license that
19 is held by the employer pertaining to operations anywhere within this state.

20 (b) Duration. --

21 The following shall apply:

22 (1) For a first violation of section 3(a) of this article, the court may order the agency to
23 suspend each license described under subsection (a)(4) of this section that is held by the
24 employer for a period not to exceed 10 business days.

25 (2) For a violation occurring during a three-year probationary period under subsection
26 (a)(2) of this section, the court may order suspension for a term not to exceed one year.

27 (c) Factors. --

28 In determining whether to order suspension or the duration of a suspension, the court shall
29 consider the following factors:

30 (1) The number of unauthorized employees employed by the employer.

31 (2) Any prior misconduct by the employer.

- 32 (3) The degree of harm resulting from the violation.
- 33 (4) Whether the employer made good faith efforts to comply with any applicable
- 34 requirements.
- 35 (5) The duration of the violation.
- 36 (6) The role of the directors, officers or principals of the employer in the violation.
- 37 (7) Any other factors the court deems appropriate.

NOTE: The purpose of this bill is to prohibit the employment of unauthorized employees in the construction industry.

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