

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 496

FISCAL
NOTE

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PITSENBARGER, STOLLINGS, WOELFEL, BALDWIN, AND
LINDSAY

[Introduced January 15, 2020; 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 §21-1C-1, §21-1C-2, §21-1C-3, §21-1C-4, and §21-1C-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; duties
 5 of the attorney general; and penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. CONSTRUCTION INDUSTRY EMPLOYEE VERIFICATION ACT.

§21-1C-1. Short title.

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

§ 21-1C-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.

§21-1C-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.

§21-1C-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). An individual who knowingly provides materially false information in a complaint
 4 form under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined
 5 not more than \$1,000 or confined in a regional correction facility for no more than one year.

6 (b) Duty to investigate. --

7 Upon receipt or a complaint on a prescribed complaint form alleging that an employer

8 knowingly employs an unauthorized employee, the Attorney General shall investigate whether the
9 employer has violated section 3(a).

10 (c) Authority to investigate .--

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

13 (d) Prohibition. --

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

16 (e) Verification. --

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

22 (f) Notification and action. --

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

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

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

30 (g) Expedited action. --

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

33 (h) Determination. --

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

41 (i) Rebuttable presumption. --

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

45 (j) Affirmative defense. --

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

§21-1C-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
 2 following:

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

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

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

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

8 and

9 (ii) may not knowingly employ an unauthorized employee.

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

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

21 (b) Duration. --

22 The following shall apply:

23 (1) For a first violation of section 3(a), the court may order the agency to suspend each
24 license described under subsection (a)(4) that is held by the employer for a period not to exceed
25 10 business days.

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

28 (c) Factors. --

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

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

32 (2) Any prior misconduct by the employer.

- 33 (3) The degree of harm resulting from the violation.
- 34 (4) Whether the employer made good faith efforts to comply with any applicable
- 35 requirements.
- 36 (5) The duration of the violation.
- 37 (6) The role of the directors, officers or principals of the employer in the violation.
- 38 (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.