

SB 70
(veto)

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED
Committee Substitute for
Senate Bill No. 70

(SENATORS MCKENZIE, BOWMAN, KESSLER, McCABE, HALL,
LOVE, WELLS AND HUNTER, *original sponsors*)

[Passed March 6, 2007; in effect ninety days from passage.]

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COMMITTEE SUBSTITUTE

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[Passed March 6, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §21-1B-2, §21-1B-3 and §21-1B-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §21-1B-6 and §21-1B-7, all relating to definitions; authorizing commissioner limited access to state agency information to confirm legal status of workers; criminal penalties for violations of article relating to employing, hiring, recruiting or referring unauthorized workers, falsifying records and evading

record-keeping requirements; denial of a deductible business expense; suspension or revocation of license; and purpose of hearing.

Be it enacted by the Legislature of West Virginia:

That §21-1B-2, §21-1B-3 and §21-1B-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto two new sections, designated §21-1B-6 and §21-1B-7, all to read as follows:

ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT STATUS OF WORKERS.

§21-1B-2. Definitions.

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

9 (b) "Commissioner" means the labor commissioner or
10 his or her designated agent.

11 (c) "Unauthorized worker" means a person who does
12 not have the legal right to be employed or is employed
13 in violation of law.

14 (d) "Records" means records that may be required by
15 the commissioner of labor for the purposes of
16 compliance with the provisions of this article.

17 (e) “Knowingly” means, with respect to conduct or to
18 a circumstance described by a statute defining an
19 offense, that a person is aware by documentation or
20 action that the person’s conduct is of that nature or that
21 the circumstance exists. Failure to request or review
22 documentation of an employee’s legal status or
23 authorization to work is deemed to be “knowingly”.

24 (f) “License” means any permit, certificate, approval,
25 registration, charter or similar form of authorization
26 that is required by law and that is issued for the
27 purpose of operating a business in this state.

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

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

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

10 (c) For purposes of this article, proof of legal status or
11 authorization to work includes, but is not limited to, a
12 valid social security card, a valid immigration or
13 nonimmigration visa, including photo identification, a
14 valid birth certificate, a valid passport, a valid photo
15 identification card issued by a government agency, a
16 valid work permit or supervision permit authorized by
17 the Division of Labor, a valid permit issued by the
18 Department of Justice or other valid document

19 providing evidence of legal residence or authorization to
20 work in the United States.

21 (d) For purposes of enforcing the provisions of this
22 article, and notwithstanding any other provision of this
23 code to the contrary, the commissioner or his or her
24 authorized representative may access information
25 maintained by any other state agency, including, but not
26 limited to, the Bureau of Employment Programs and the
27 Division of Motor Vehicles, for the limited purpose of
28 confirming the validity of a worker's legal status or
29 authorization to work. The commissioner shall
30 promulgate rules in accordance with the provisions of
31 chapter twenty-nine-a of this code to safeguard against
32 the release of any confidential or identifying
33 information that is not necessary for the limited purpose
34 of enforcing the provisions of this article.

§21-1B-5. Penalties.

1 (a) Any employer who knowingly violates the
2 provisions of section three of this article by employing,
3 hiring, recruiting or referring an unauthorized worker
4 is guilty of a misdemeanor and, upon conviction thereof,
5 is subject to the following penalties:

6 (1) For a first offense, a fine of not less than one
7 hundred dollars nor more than one thousand dollars for
8 each violation;

9 (2) For a second offense, a fine of not less than five
10 hundred dollars nor more than five thousand dollars for
11 each violation;

12 (3) For a third or subsequent offense, a fine of not less

13 than one thousand dollars nor more than ten thousand
14 dollars, or confinement in jail for not less than thirty
15 days nor more than one year, or both.

16 (b) Any employer who knowingly and willfully
17 provides false records as to the legal status or
18 authorization to work of any employee to the
19 commissioner or his or her authorized representative is
20 guilty of a misdemeanor and, upon conviction thereof,
21 shall be confined in jail not more than one year or fined
22 not more than two thousand five hundred dollars, or
23 both.

24 (c) Any employer who knowingly and willfully and
25 with fraudulent intent sells, transfers or otherwise
26 disposes of substantially all of the employer's assets for
27 the purpose of evading the record-keeping requirements
28 of section four of this article is guilty of a misdemeanor
29 and, upon conviction thereof, shall be confined in jail
30 not more than one year or fined not more than ten
31 thousand dollars, or both.

§21-1B-6. Denial of deductible business expense.

1 On or after the first day of January, two thousand
2 eight, no wages or remuneration for services paid to an
3 unauthorized worker of six hundred dollars (\$600.00) or
4 more per annum may be claimed and allowed as a
5 deductible business expense for state income tax
6 purposes by a taxpayer if the employer has been
7 convicted under this article of employing, hiring,
8 recruiting or referring the unauthorized worker. The
9 commissioner shall notify the Department of Revenue of
10 any conviction of an employer under this article and the
11 department is to take the appropriate action against the

12 taxpayer.

§21-1B-7. Suspension or revocation of license.

1 (a) If, upon examination of the record or records of
2 conviction, the commissioner determines that an
3 employer has been convicted of a third or subsequent
4 offense under subsection (a), section five of this article
5 or has been convicted of the offenses described in
6 subsection (b) or (c) of said section, the commissioner
7 may enter an order imposing the following disciplinary
8 actions:

9 (1) Permanently revoke or file an action to revoke any
10 license held by the employer; or

11 (2) Suspend a license or move for a suspension of any
12 license held by the employer for a specified period;

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy White
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Parrell Eshes
.....
Clerk of the Senate

Greg S. S.
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this
the *15th* Day of *May*, 2007.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 14 2007

Time

3/14/07