

HB 3301

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 3301**

(By Delegates Moye, Schoen, Klempa, Campbell,
Sumner, Caputo, D. Poling and Barker)



Passed March 9, 2010

In Effect Ninety Days From Passage

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H. B. 3301

(BY DELEGATES MOYE, SCHOEN, KLEMPA, CAMPBELL,
SUMNER, CAPUTO, D. POLING AND BARKER)

[Passed March 9, 2010; in effect ninety days from passage]

AN ACT to amend and reenact §21-1B-5 and §21-1B-7 of the Code of West Virginia, 1931, as amended, and to further amend said code by adding thereto a new section, designated §21-1B-8, all relating to employment of unauthorized workers; creating a penalty for failure to maintain certain records; authorizing the Commissioner to issue notices to produce records and citations under certain circumstances; and requiring such citations to be presented to a magistrate or circuit judge.

Be it enacted by the Legislature of West Virginia:

That §21-1B-5 and §21-1B-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that said code be amended by adding a new section, designated §21-1B-8, all to read as follows:

**ARTICLE 1B. VERIFYING LEGAL EMPLOYMENT STATUS
OF WORKERS.**

§21-1B-5. Penalties.

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

6 (b) Any employer who knowingly violates the provisions
7 of section three of this article by employing, hiring, recruiting
8 or referring an unauthorized worker is guilty of a misdemeanor
9 and, upon conviction thereof, is subject to the following
10 penalties:

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

13 (2) For a second offense, a fine of not less than five
14 hundred dollars nor more than five thousand dollars for each
15 violation;

16 (3) For a third or subsequent offense, a fine of not less
17 than one thousand dollars nor more than ten thousand dollars,
18 or confinement in jail for not less than thirty days nor more
19 than one year, or both.

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

27 (d) Any employer who knowingly and willfully and with
28 fraudulent intent sells, transfers or otherwise disposes of

29 substantially all of the employer's assets for the purpose of
30 evading the record-keeping requirements of section four of
31 this article is guilty of a misdemeanor and, upon conviction
32 thereof, shall be confined in jail not more than one year or
33 fined not more than ten thousand dollars, or both.

§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 employer
3 has been convicted of a third or subsequent offense under
4 subsection (b), section five of this article or has been
5 convicted of the offenses described in subsection (c) or (d) of
6 said section, the commissioner may enter an order imposing
7 the following disciplinary actions:

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

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

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

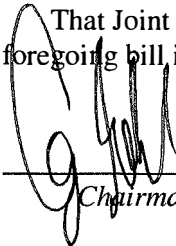
26 revocation or suspension shall become effective until ten
27 days after receipt of a copy of the order.

§21-1B-8. Citation for violation.

1 (a) If, upon inspection or investigation, the commissioner
2 believes that an employer has violated a provision of this
3 article, the commissioner shall issue a notice to produce
4 records or documents to the employer. Each notice shall be
5 in writing and shall describe with particularity the nature of
6 the violation, including a reference to the provision of this
7 article alleged to have been violated. The employer shall
8 have up to seventy-two hours, or for good cause shown to the
9 commissioner, a greater period of time, to produce
10 employment status verification records.

11 (b) If after the time period allowed under subsection (a)
12 of this section the employer is unable to produce the required
13 documents to satisfy the commissioner that there is no
14 violation of this article, the commissioner may issue a
15 citation to the employer. Each citation shall be in writing on
16 a standard form as prescribed by the commissioner and shall
17 describe with particularity the nature of the violation,
18 including a reference to the provision of this article alleged
19 to have been violated. Each citation issued under this section
20 or a copy or copies thereof shall be prominently presented to
21 a magistrate or circuit judge in the county where the violation
22 occurred.

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



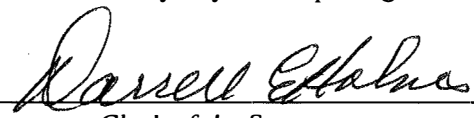
Chairman Senate Committee



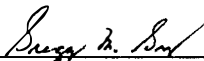
Chairman House Committee

Originating in the House.

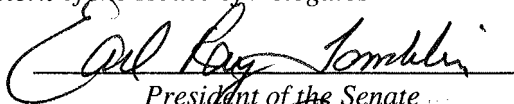
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Clerk of the Senate



Clerk of the House of Delegates

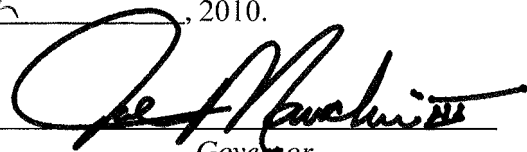


President of the Senate



Speaker of the House of Delegates

The within is approved this the 16th
day of March, 2010.



Governor

PRESENTED TO THE
GOVERNOR

MAR 13 2010

Time 11:40am