

**House File 2430 - Introduced**

HOUSE FILE 2430  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HF 2156)

**A BILL FOR**

1 An Act relating to the employment of unauthorized aliens and  
2 providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 93.1 Definitions.

2 As used in this chapter, unless the context otherwise  
3 requires:

4 1. "Agency" means an agency, department, board, or  
5 commission of this state or a political subdivision that issues  
6 a license for purposes of operating a business in this state.

7 2. "Economic development incentive" means a grant, loan, or  
8 performance-based incentive awarded by a government entity of  
9 this state. "Economic development incentive" does not include a  
10 tax credit or tax incentive program.

11 3. "Employ" means hiring or continuing to employ an  
12 individual to perform services.

13 4. "Employee" means an individual who provides services  
14 or labor for an employer in this state for wages or other  
15 remuneration. "Employee" does not include an independent  
16 contractor.

17 5. "Employer" means a person, as defined in chapter 4, that  
18 transacts business in this state, that has a license issued by  
19 an agency in this state, and that employs one or more employees  
20 in this state. "Employer" includes this state, a political  
21 subdivision of this state, and a self-employed individual.  
22 In the case of an independent contractor, "employer" means  
23 the independent contractor and does not mean the person or  
24 organization that uses the contract labor.

25 6. "E-verify program" means the employment verification  
26 program as jointly administered by the United States department  
27 of homeland security and the United States social security  
28 administration or any successor program.

29 7. "Government entity" means this state or a political  
30 subdivision of this state that receives and uses tax revenues.

31 8. a. "Independent contractor" means a person that carries  
32 on an independent business, that contracts to do a piece of  
33 work according to the person's own means and methods and that  
34 is subject to control only as to results. Whether a person is  
35 an independent contractor is determined on a case-by-case basis

1 through various factors, including whether the person does any  
2 of the following:

3 (1) Supplies tools or materials.

4 (2) Makes services available to the general public.

5 (3) Works or may work for a number of clients at the same  
6 time.

7 (4) Has an opportunity for profit or loss as a result of  
8 labor or service provided.

9 (5) Invests in facilities for work.

10 (6) Directs the order or sequence in which the work is  
11 completed.

12 (7) Determines the hours when the work is completed.

13 *b.* Independent contractor status includes an individual who  
14 performs services and is not an employee pursuant to section  
15 3508 of the Internal Revenue Code.

16 9. "*Knowingly employ an unauthorized alien*" means the  
17 actions described in 8 U.S.C. § 1324a, and shall be interpreted  
18 consistently with 8 U.S.C. § 1324a and any applicable federal  
19 regulations.

20 10. "*License*" means a permit, certificate, approval,  
21 registration, charter, or similar form of authorization, other  
22 than a professional license, that is required by law and that  
23 is issued by an agency, allowing the licensee to do business  
24 in this state.

25 11. "*Social security number verification service*" means  
26 the program administered by the United States social security  
27 administration or any successor program.

28 12. "*Unauthorized alien*" means an alien who does not have  
29 the legal right or authorization under federal law to work in  
30 the United States as described in 8 U.S.C. § 1324a(h)(3).

31 **Sec. 2. NEW SECTION. 93.2 Knowingly employing unauthorized**  
32 **aliens.**

33 1. *Knowingly employing unauthorized aliens prohibited.* An  
34 employer shall not knowingly employ an unauthorized alien. If  
35 an employer uses a contract, subcontract, or other independent

1 contractor agreement to obtain the labor of an alien in  
2 this state, and the employer knowingly contracts with an  
3 unauthorized alien or with a person who employs or contracts  
4 with an unauthorized alien to perform the labor, the employer  
5 violates this subsection.

6     2. *Complaints.*

7     a. The secretary of state shall prescribe a complaint  
8 form for a person to allege a violation of subsection 1. The  
9 complainant shall not be required to list the complainant's  
10 social security number on the complaint form or to have the  
11 complaint form notarized. Complaints shall be submitted to the  
12 county sheriff or a local law enforcement agency in the county  
13 in which the alleged unauthorized alien is or was employed  
14 by the employer. This subsection shall not be construed to  
15 prohibit the filing of anonymous complaints that are not  
16 submitted on a prescribed complaint form.

17     b. On receipt of a complaint on a prescribed complaint  
18 form which alleges that an employer knowingly employs or  
19 employed a named individual employee who is an unauthorized  
20 alien, the county sheriff or local law enforcement agency  
21 shall investigate whether the employer has violated subsection  
22 1. On receipt of a complaint on a prescribed complaint  
23 form which alleges that an employer knowingly employs or  
24 employed an unauthorized alien, but which does not name a  
25 specific individual employee, the county sheriff or local law  
26 enforcement agency may investigate whether the employer has  
27 violated subsection 1. If a complaint is received but is not  
28 submitted on a prescribed complaint form or is an anonymous  
29 complaint, the county sheriff or local law enforcement agency  
30 may investigate whether the employer has violated subsection 1.

31     c. The county sheriff or local law enforcement agency shall  
32 not investigate complaints that are based solely on race,  
33 color, or national origin. When investigating a complaint  
34 alleging that a named individual is an unauthorized alien, the  
35 county sheriff or local law enforcement agency shall verify the

1 work authorization of the alleged unauthorized alien with the  
2 federal government pursuant to 8 U.S.C. § 1373(c). A state,  
3 county, or local official shall not attempt to independently  
4 make a final determination on whether an alien is authorized  
5 to work in the United States.

6 *d.* A person who knowingly files a false or frivolous  
7 complaint under this subsection is guilty of a simple  
8 misdemeanor.

9 *3. Required notifications.* If, after an investigation,  
10 the county sheriff or local law enforcement agency determines  
11 that the complaint is not false and not frivolous, the  
12 county sheriff or local law enforcement agency shall ask the  
13 appropriate county attorney to bring an action pursuant to  
14 subsection 4. The county sheriff or local law enforcement  
15 agency shall also notify United States immigration and customs  
16 enforcement of the unauthorized alien.

17 *4. Court action required.* An action for a violation of  
18 subsection 1 shall be brought against the employer by the  
19 county attorney in the district court of the county where the  
20 unauthorized alien employee is or was employed by the employer.  
21 The district court shall expedite the action, including  
22 assigning a hearing at the earliest practicable date.

23 *5. Court order — first violation.* On a finding of a first  
24 violation as described in subsection 7, the court shall require  
25 by order all of the following:

26 *a.* The employer shall terminate the employment of all  
27 unauthorized aliens.

28 *b. (1)* The employer shall be subject to a three-year  
29 probationary period for the business location where the  
30 unauthorized alien performed work.

31 *(2)* During the probationary period, the employer shall file  
32 quarterly reports on the form prescribed in section 252G.3 with  
33 the county attorney for each new employee who is hired by the  
34 employer at the business location where the unauthorized alien  
35 performed work.

1 c. The employer shall be required to file a signed sworn  
2 affidavit with the county attorney within three business days  
3 after the order is issued. The affidavit shall state that the  
4 employer has terminated the employment of all unauthorized  
5 aliens in this state and that the employer will not knowingly  
6 employ an unauthorized alien in this state.

7 (1) The court shall order the appropriate agencies to  
8 suspend all licenses that are held by the employer if the  
9 employer fails to file a signed sworn affidavit with the county  
10 attorney within three business days after the order is issued.  
11 All licenses that are suspended shall remain suspended until  
12 the employer files a signed sworn affidavit with the county  
13 attorney. Upon filing of the affidavit, the suspended licenses  
14 shall be reinstated immediately by the appropriate agencies.

15 (2) Licenses that are subject to suspension under this  
16 paragraph "c" are all licenses that are held by the employer  
17 specific to the business location where the unauthorized alien  
18 performed work. If the employer does not hold a license  
19 specific to the business location where the unauthorized alien  
20 performed work, but a license is necessary to operate the  
21 employer's business in general, the licenses that are subject  
22 to suspension under this paragraph "c" are all licenses that  
23 are held by the employer at the employer's primary place of  
24 business. On receipt of the court's order, the appropriate  
25 agencies shall suspend the licenses according to the court's  
26 order. The court shall send a copy of the court's order to the  
27 secretary of state and the secretary of state shall maintain  
28 the copy pursuant to subsection 8.

29 (3) The court may order the appropriate agencies to suspend  
30 all licenses described in this paragraph "c" that are held by  
31 the employer for not more than ten business days. The court  
32 shall base its decision to suspend under this subparagraph  
33 on any evidence or information submitted to it during the  
34 action for a violation of subsection 1 and shall consider the  
35 following factors, if relevant:

1 (a) The number of unauthorized aliens employed by the  
2 employer.

3 (b) Any prior misconduct by the employer.

4 (c) The degree of harm resulting from the violation.

5 (d) Whether the employer made good faith efforts to comply  
6 with any applicable requirements.

7 (e) The duration of the violation.

8 (f) The role of the directors, officers, or principals of  
9 the employer in the violation.

10 (g) Any other factors the court deems appropriate.

11 6. *Court order — second violation.* For a second violation,  
12 as described in subsection 7, the court shall order the  
13 appropriate agencies to permanently revoke all licenses that  
14 are held by the employer specific to the business location  
15 where the unauthorized alien performed work. If the employer  
16 does not hold a license specific to the business location  
17 where the unauthorized alien performed work, but a license  
18 is necessary to operate the employer's business in general,  
19 the court shall order the appropriate agencies to permanently  
20 revoke all licenses that are held by the employer at the  
21 employer's primary place of business. On receipt of the order,  
22 the appropriate agencies shall immediately revoke the licenses.

23 7. *Violations defined.*

24 a. A violation shall be considered a first violation by  
25 an employer at a business location if the violation did not  
26 occur during a probationary period ordered by the court under  
27 subsection 5, paragraph "b", for that employer's business  
28 location.

29 b. A violation shall be considered a second violation by  
30 an employer at a business location if the violation occurred  
31 during a probationary period ordered by the court under  
32 subsection 5, paragraph "b", for that employer's business  
33 location.

34 8. *Secretary of state database.* The secretary of state  
35 shall maintain copies of court orders that are received pursuant

1 to subsection 5, paragraph "c", and shall maintain a database of  
2 the employers and business locations found to have committed  
3 a first violation of subsection 1 and make the court orders  
4 available on the secretary of state's internet site.

5 9. *Federal determination governs.* In determining whether  
6 an employee is an unauthorized alien, the court shall consider  
7 only the federal government's determination pursuant to 8  
8 U.S.C. § 1373(c). The federal government's determination  
9 creates a rebuttable presumption of the employee's lawful  
10 status. The court may take judicial notice of the federal  
11 government's determination and may request the federal  
12 government to provide automated or testimonial verification  
13 pursuant to 8 U.S.C. § 1373(c).

14 10. *Good-faith compliance.* For the purposes of this  
15 section, an employer that establishes that it has complied  
16 in good faith with the requirements of 8 U.S.C. § 1324a(b)  
17 establishes a conclusive affirmative defense that the employer  
18 did not knowingly employ an unauthorized alien. An employer is  
19 considered to have complied with the requirements of 8 U.S.C. §  
20 1324a(b), notwithstanding an isolated, sporadic, or accidental  
21 technical or procedural failure to meet the requirements, if  
22 there is a good-faith attempt to comply with the requirements.

23 11. *Entrapment as affirmative defense.*

24 a. It is an affirmative defense to a violation of subsection  
25 1 that the employer was entrapped. To claim entrapment, the  
26 employer must admit by the employer's testimony or other  
27 evidence the substantial elements of the violation. An  
28 employer who asserts an entrapment defense has the burden  
29 of proving all of the following by a preponderance of the  
30 evidence:

31 (1) The idea of committing the violation started with law  
32 enforcement officers or their agents rather than with the  
33 employer.

34 (2) The law enforcement officers or their agents urged and  
35 induced the employer to commit the violation.



1 (3) The employer was not predisposed to commit the violation  
2 before the law enforcement officers or their agents urged and  
3 induced the employer to commit the violation.

4 b. An employer does not establish entrapment if the employer  
5 was predisposed to violate subsection 1 and the law enforcement  
6 officers or their agents merely provided the employer with an  
7 opportunity to commit the violation. It is not entrapment for  
8 law enforcement officers or their agents merely to use a ruse  
9 or to conceal their identity. The conduct of law enforcement  
10 officers and their agents may be considered in determining if  
11 an employer has proven entrapment.

12 Sec. 3. NEW SECTION. 93.3 E-verify program — employer  
13 participation.

14 1. An employer, after hiring an employee, shall verify the  
15 employment eligibility of the employee through the e-verify  
16 program and shall keep a record of the verification for the  
17 duration of the employee's employment or at least three years,  
18 whichever is longer.

19 2. In addition to any other requirement for an employer to  
20 receive an economic development incentive from a government  
21 entity, the employer shall register with and participate  
22 in the e-verify program. Before receiving the economic  
23 development incentive, the employer shall provide proof to the  
24 government entity that the employer is registered with and  
25 is participating in the e-verify program. If the government  
26 entity determines that the employer is not complying with this  
27 subsection, the government entity shall notify the employer  
28 by certified mail of the government entity's determination  
29 of noncompliance and the employer's right to appeal the  
30 determination. On a final determination of noncompliance,  
31 the employer shall repay all moneys received as an economic  
32 development incentive to the government entity within thirty  
33 days of the final determination.

34 3. Every three months, the secretary of state shall request  
35 from the United States department of homeland security a

1 list of employers from this state that are registered with  
2 the e-verify program. On receipt of the list of employers,  
3 the secretary of state shall make the list available on the  
4 secretary of state's internet site.

5 Sec. 4. NEW SECTION. 93.4 Compliance with federal and state  
6 law.

7 This chapter shall not be construed to require an employer to  
8 take any action that the employer believes in good faith would  
9 violate federal or state law.

10 Sec. 5. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
11 3, shall not apply to this Act.

12 EXPLANATION

13 This bill prohibits employers from knowingly employing  
14 unauthorized aliens. The bill directs the secretary of  
15 state to prescribe a complaint form for alleged violations of  
16 the prohibition. The bill provides that complaints may be  
17 submitted to the county sheriff or local law enforcement agency  
18 in the county in which the alleged unauthorized alien is or was  
19 employed by the employer. The bill directs the county sheriff  
20 or local law enforcement agency to investigate complaints they  
21 receive, and to verify the work authorization of an alleged  
22 unauthorized alien with the federal government. The bill  
23 provides that the investigation is discretionary for complaints  
24 which do not name specific employees, anonymous complaints,  
25 and complaints not submitted on a prescribed complaint form.  
26 The bill prohibits the county sheriff or local law enforcement  
27 agency from investigating complaints that are based solely  
28 on race, color, or national origin. The bill provides that  
29 a person who knowingly files a false or frivolous complaint  
30 is guilty of a simple misdemeanor, which is punishable by  
31 confinement for no more than 30 days or a fine of at least \$65  
32 but not more than \$625 or by both.

33 The bill requires the county sheriff or local law  
34 enforcement agency to notify United States immigration and  
35 customs enforcement and the county attorney of a complaint

1 that is not false and not frivolous. The bill requires the  
2 county attorney to bring an action in district court against an  
3 employer for a violation in the county where the unauthorized  
4 alien employee is or was employed by the employer. The bill  
5 provides that such an action must be expedited by the court.

6 The bill provides that for a first violation, the court  
7 must order the employer to terminate the employment of all  
8 unauthorized aliens and to submit a signed sworn affidavit  
9 to that effect or face suspension of business licenses by  
10 appropriate agencies. The court will also order a three-year  
11 probationary period for the employer. The court may also  
12 order the suspension of the employer's business licenses  
13 by appropriate agencies for up to 10 business days, after  
14 considering certain factors. The bill provides that for a  
15 second violation, defined as a violation occurring during a  
16 probationary period for a previous violation, the court must  
17 order the permanent revocation of the employer's business  
18 licenses. The bill directs the secretary of state to maintain  
19 an online database of first-time offenders.

20 The bill provides that the district court can only consider  
21 a determination by the federal government in determining the  
22 immigration status of an alleged unauthorized alien employed  
23 by an employer. The bill provides that an employer who  
24 establishes that the employer complied in good faith with 8  
25 U.S.C. § 1324a(b) establishes a conclusive affirmative defense  
26 that the employer did not knowingly employ an unauthorized  
27 alien. The bill provides that an employer is considered to  
28 have complied with the requirements of 8 U.S.C. § 1324a(b),  
29 notwithstanding an isolated, sporadic, or accidental technical  
30 or procedural failure to meet the requirements, if there is a  
31 good-faith attempt to comply with the requirements. The bill  
32 provides an employer with an affirmative defense of entrapment  
33 if certain elements are met.

34 The bill requires an employer hiring a new employee to  
35 verify the employee's employment eligibility through the

1 federal e-verify program. The bill requires the employer  
2 to keep records of the verification for the duration of the  
3 employee's employment or three years, whichever is longer. The  
4 bill requires an employer receiving an economic development  
5 incentive from a state government entity to register with the  
6 federal e-verify program. The bill provides that an employer  
7 who does not comply with the requirement must repay all moneys  
8 received for the economic development incentive. The bill  
9 provides an employer the right to appeal a determination of  
10 noncompliance, and does not require repayment until a final  
11 determination of noncompliance is made. The bill directs the  
12 secretary of state to request from the United States department  
13 of homeland security a list of employers registered with the  
14 e-verify program every three months. The bill directs the  
15 secretary of state to make the list available on the secretary  
16 of state's internet site.

17 The bill provides that the bill shall not be construed  
18 to require an employer to take any action that the employer  
19 believes in good faith would violate federal or state law.

20 The bill may include a state mandate as defined in Code  
21 section 25B.3. The bill makes inapplicable Code section 25B.2,  
22 subsection 3, which would relieve a political subdivision from  
23 complying with a state mandate if funding for the cost of  
24 the state mandate is not provided or specified. Therefore,  
25 political subdivisions are required to comply with any state  
26 mandate included in the bill.