

**House File 368 - Introduced**

HOUSE FILE 368

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**A BILL FOR**

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

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 public employer 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 or public employer in this state for  
15 wages or other remuneration. "Employee" does not include an  
16 independent contractor.

17 5. "Employer" means a person, as defined in chapter 4,  
18 that does business with or receives an economic development  
19 incentive from a public employer, and that employs one or more  
20 employees in this state.

21 6. "E-verify program" means the employment verification  
22 program as jointly administered by the United States department  
23 of homeland security and the United States social security  
24 administration or any successor program.

25 7. a. "Independent contractor" means a person that carries  
26 on an independent business, that contracts to do a piece of  
27 work according to the person's own means and methods and that  
28 is subject to control only as to results. Whether a person is  
29 an independent contractor is determined on a case-by-case basis  
30 through various factors, including whether the person does any  
31 of the following:

32 (1) Supplies tools or materials.

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

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

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

3 (5) Invests in facilities for work.

4 (6) Directs the order or sequence in which the work is  
5 completed.

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

7 *b.* Independent contractor status includes an individual who  
8 performs services and is not an employee pursuant to section  
9 3508 of the Internal Revenue Code.

10 8. "*Knowingly employ an unauthorized alien*" means the  
11 actions described in 8 U.S.C. § 1324a, and shall be interpreted  
12 consistently with 8 U.S.C. § 1324a and any applicable federal  
13 regulations.

14 9. "*License*" means a permit, certificate, approval,  
15 registration, charter, or similar form of authorization, other  
16 than a professional license, that is required by law and that  
17 is issued by an agency, allowing the licensee to do business  
18 in this state.

19 10. "*Political subdivision*" means a city, county, township,  
20 school district, area education agency, community college, or  
21 institution governed by the state board of regents.

22 11. "*Professional license*" means a license, certification,  
23 or registration required by law to engage in a profession or  
24 occupation in this state.

25 12. "*Public employer*" means this state or a political  
26 subdivision of this state.

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

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

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

1 agreement to obtain the labor of an alien in this state, and  
2 the employer or public 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 or public employer violates this subsection.

6     2. *Court action required.* An action for a violation of  
7 subsection 1 shall be brought against an employer by the  
8 county attorney in the district court of the county where the  
9 unauthorized alien employee is or was employed by the employer.  
10 The district court shall expedite the action, including  
11 assigning a hearing at the earliest practicable date.

12     3. *Court order — first violation.* On a finding of a first  
13 violation as described in subsection 5, the court shall require  
14 by order all of the following:

15     a. The employer shall terminate the employment of all  
16 unauthorized aliens.

17     b. (1) The employer shall be subject to a three-year  
18 probationary period for the business location where the  
19 unauthorized alien performed work.

20     (2) During the probationary period, the employer shall file  
21 quarterly reports in the form prescribed in section 252G.3 with  
22 the county attorney for each new employee who is hired by the  
23 employer at the business location where the unauthorized alien  
24 performed work.

25     c. The employer shall be required to file a signed sworn  
26 affidavit with the county attorney within three business days  
27 after the order is issued. The affidavit shall state that  
28 the employer has terminated the employment of all of the  
29 employer's unauthorized alien employees in this state and that  
30 the employer will not knowingly employ an unauthorized alien  
31 in this state.

32     (1) The court shall order the appropriate agencies to  
33 suspend all licenses that are held by the employer if the  
34 employer fails to file a signed sworn affidavit with the county  
35 attorney within three business days after the order is issued.

1 All licenses that are suspended shall remain suspended until  
2 the employer files a signed sworn affidavit with the county  
3 attorney. Upon filing of the affidavit, the suspended licenses  
4 shall be reinstated immediately by the appropriate agencies.

5 (2) Licenses that are subject to suspension under this  
6 paragraph "c" are all licenses that are held by the employer  
7 specific to the business location where the unauthorized alien  
8 performed work. If the employer does not hold a license  
9 specific to the business location where the unauthorized alien  
10 performed work, but a license is necessary to operate the  
11 employer's business in general, the licenses that are subject  
12 to suspension under this paragraph "c" are all licenses that  
13 are held by the employer at the employer's primary place of  
14 business. On receipt of the court's order, the appropriate  
15 agencies shall suspend the licenses according to the court's  
16 order. The court shall send a copy of the court's order to the  
17 secretary of state and the secretary of state shall maintain  
18 the copy pursuant to subsection 6.

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

26 (a) The number of unauthorized aliens employed by the  
27 employer.

28 (b) Any prior misconduct by the employer.

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

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

32 (e) The duration of the violation.

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

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

1     4. *Court order — second violation.* For a second violation,  
2 as described in subsection 5, the court shall order the  
3 appropriate agencies to revoke all licenses that are held  
4 by the employer specific to the business location where the  
5 unauthorized alien performed work. If the employer does not  
6 hold a license specific to the business location where the  
7 unauthorized alien performed work, but a license is necessary  
8 to operate the employer's business in general, the court shall  
9 order the appropriate agencies to revoke all licenses that  
10 are held by the employer at the employer's primary place of  
11 business. On receipt of the order, the appropriate agencies  
12 shall immediately revoke the licenses. An agency shall not  
13 reissue a license revoked in this manner.

14     5. *Violations defined.*

15     a. A violation shall be considered a first violation by  
16 an employer at a business location if the violation did not  
17 occur during a probationary period ordered by the court under  
18 subsection 3, paragraph "b", for that employer's business  
19 location.

20     b. A violation shall be considered a second violation by  
21 an employer at a business location if the violation occurred  
22 during a probationary period ordered by the court under  
23 subsection 3, paragraph "b", for that employer's business  
24 location.

25     6. *Secretary of state database.* The secretary of state  
26 shall maintain copies of court orders that are received  
27 pursuant to subsection 3, paragraph "c", and shall maintain a  
28 database of the employers and business locations found to have  
29 committed a first violation of subsection 1 and make the court  
30 orders available on the secretary of state's internet site.

31     7. *Federal determination governs.* In determining whether  
32 an employee is an unauthorized alien, the court shall consider  
33 only the federal government's determination pursuant to 8  
34 U.S.C. § 1373(c). The federal government's determination  
35 creates a rebuttable presumption of the employee's lawful

1 status. The court may take judicial notice of the federal  
2 government's determination and may request the federal  
3 government to provide automated or testimonial verification  
4 pursuant to 8 U.S.C. § 1373(c).

5 8. *Good-faith compliance.* For the purposes of this section,  
6 an employer that establishes that it has complied in good  
7 faith with the requirements of 8 U.S.C. § 1324a(b) establishes  
8 a conclusive affirmative defense that the employer did not  
9 knowingly employ an unauthorized alien. An employer is  
10 considered to have complied with the requirements of 8 U.S.C. §  
11 1324a(b), notwithstanding an isolated, sporadic, or accidental  
12 technical or procedural failure to meet the requirements, if  
13 there is a good-faith attempt to comply with the requirements.

14 9. *Entrapment as affirmative defense.*

15 a. It is an affirmative defense to a violation of subsection  
16 1 that the employer was entrapped. To claim entrapment, the  
17 employer must admit by the employer's testimony or other  
18 evidence the substantial elements of the violation. An  
19 employer who asserts an entrapment defense has the burden  
20 of proving all of the following by a preponderance of the  
21 evidence:

22 (1) The idea of committing the violation started with law  
23 enforcement officers or their agents rather than with the  
24 employer.

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

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

30 b. An employer does not establish entrapment if the employer  
31 was predisposed to violate subsection 1 and the law enforcement  
32 officers or their agents merely provided the employer with an  
33 opportunity to commit the violation. It is not entrapment for  
34 law enforcement officers or their agents merely to use a ruse  
35 or to conceal their identity. The conduct of law enforcement

1 officers and their agents may be considered in determining if  
2 an employer has proven entrapment.

3     **Sec. 3. NEW SECTION. 93.3 E-verify program — employer**  
4 **participation.**

5     1. An employer or public employer, after hiring an employee,  
6 shall verify the employment eligibility of the employee  
7 through the e-verify program and shall keep a record of the  
8 verification for the duration of the employee's employment or  
9 at least three years, whichever is longer.

10    2. In addition to any other requirement for an employer  
11 to receive an economic development incentive from a public  
12 employer, the employer shall register with and participate  
13 in the e-verify program. Before receiving the economic  
14 development incentive, the employer shall provide proof to  
15 the public employer that the employer is registered with and  
16 is participating in the e-verify program. If the public  
17 employer determines that the employer is not complying with  
18 this subsection, the public employer shall notify the employer  
19 by certified mail of the public employer's determination  
20 of noncompliance and the employer's right to appeal the  
21 determination. On a final determination of noncompliance,  
22 the employer shall repay all moneys received as an economic  
23 development incentive to the public employer within thirty days  
24 of the final determination.

25    3. Every three months, the secretary of state shall request  
26 from the United States department of homeland security a list  
27 of employers and public employers from this state that are  
28 registered with the e-verify program. On receipt of the list  
29 of employers and public employers, the secretary of state shall  
30 make the list available on the secretary of state's internet  
31 site.

32     **Sec. 4. NEW SECTION. 93.4 Compliance with federal and state**  
33 **law.**

34     This chapter shall not be construed to require an employer or  
35 public employer to take any action that the employer or public



1 employer believes in good faith would violate federal or state  
2 law.

3 Sec. 5. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
4 3, shall not apply to this Act.

5 EXPLANATION

6 This bill prohibits employers and public employers from  
7 knowingly employing unauthorized aliens. The bill defines an  
8 "employer" as a person, as defined in Code chapter 4, that does  
9 business with or receives an economic development incentive  
10 from a public employer, and that employs one or more employees  
11 in the state. The bill defines "public employer" as this state  
12 or a political subdivision of this state.

13 The bill requires the county attorney to bring an action  
14 in district court against an employer for a violation in the  
15 county where the unauthorized alien employee is or was employed  
16 by the employer. The bill provides that such an action must be  
17 expedited by the court.

18 The bill provides that for a first violation, the court  
19 must order the employer to terminate the employment of all  
20 of its unauthorized alien employees and to submit a signed  
21 sworn affidavit to that effect or face suspension of business  
22 licenses by appropriate agencies. The court must also order  
23 a three-year probationary period for the employer. The court  
24 may also order the suspension of the employer's business  
25 licenses by appropriate agencies for up to 10 business days,  
26 after considering certain factors. The bill provides that for  
27 a second violation, defined as a violation occurring during a  
28 probationary period for a previous violation, the court must  
29 order the revocation of the employer's business licenses.  
30 Licenses revoked in this manner cannot be reissued. The bill  
31 directs the secretary of state to maintain an online database  
32 of first-time offenders.

33 The bill provides that the district court can only consider  
34 a determination by the federal government in determining the  
35 immigration status of an alleged unauthorized alien employee.

1 The bill provides that an employer who establishes that the  
2 employer complied in good faith with 8 U.S.C. § 1324a(b)  
3 establishes a conclusive affirmative defense that the employer  
4 did not knowingly employ an unauthorized alien. The bill  
5 provides that an employer is considered to have complied with  
6 the requirements of 8 U.S.C. § 1324a(b), notwithstanding an  
7 isolated, sporadic, or accidental technical or procedural  
8 failure to meet the requirements, if there is a good-faith  
9 attempt to comply with the requirements. The bill provides an  
10 employer with an affirmative defense of entrapment if certain  
11 elements are met.

12 The bill requires an employer or public employer hiring a  
13 new employee to verify the employee's employment eligibility  
14 through the federal e-verify program. The bill requires the  
15 employer or public employer to keep records of the verification  
16 for the duration of the employee's employment or three years,  
17 whichever is longer.

18 The bill also requires an employer receiving an economic  
19 development incentive from a public employer in the state to  
20 register with the federal e-verify program. The bill provides  
21 that an employer who does not comply with the requirement  
22 must repay all moneys received as an economic development  
23 incentive. The bill provides an employer the right to appeal a  
24 determination of noncompliance, and does not require repayment  
25 until a final determination of noncompliance is made.

26 The bill directs the secretary of state to request from  
27 the United States department of homeland security a list of  
28 employers and public employers registered with the e-verify  
29 program every three months. The bill directs the secretary of  
30 state to make the list available on the secretary of state's  
31 internet site.

32 The bill provides that the bill shall not be construed to  
33 require an employer or public employer to take any action that  
34 the employer believes in good faith would violate federal or  
35 state law.

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