

Senate File 243 - Introduced

SENATE FILE 243

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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. 95.1 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 section 4.1,
18 that transacts business in this state and that has a license
19 issued by an agency in this state. "Employer" includes
20 this state, a political subdivision of this state, and a
21 self-employed individual. In the case of an independent
22 contractor, "employer" means the independent contractor and
23 does not mean the person or organization that uses the contract
24 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. "*Unauthorized alien*" means an alien who does not have
26 the legal right or authorization under federal law to work in
27 the United States as described in 8 U.S.C. §1324a(h)(3).

28 Sec. 2. NEW SECTION. 95.2 Knowingly employing unauthorized
29 aliens.

30 1. *Knowingly employing unauthorized aliens prohibited.* An
31 employer shall not knowingly employ an unauthorized alien. If
32 an employer uses a contract, subcontract, or other independent
33 contractor agreement to obtain the labor of an alien in
34 this state, and the employer knowingly contracts with an
35 unauthorized alien or with a person who employs or contracts

1 with an unauthorized alien to perform the labor, the employer
2 violates this subsection.

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

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

12 a. The employer shall terminate the employment of all
13 unauthorized aliens.

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

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

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

28 (1) The court shall order the appropriate agencies to
29 suspend all licenses that are held by the employer if the
30 employer fails to file a signed sworn affidavit with the county
31 attorney within three business days after the order is issued.
32 All licenses that are suspended shall remain suspended until
33 the employer files a signed sworn affidavit with the county
34 attorney. Upon filing of the affidavit, the suspended licenses
35 shall be reinstated immediately by the appropriate agencies.

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

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

22 (a) The number of unauthorized aliens employed by the
23 employer.

24 (b) Any prior misconduct by the employer.

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

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

28 (e) The duration of the violation.

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

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

32 4. *Court order — second violation.* For a second violation,
33 as described in subsection 5, the court shall order the
34 appropriate agencies to permanently revoke all licenses that
35 are held by the employer specific to the business location

1 where the unauthorized alien performed work. If the employer
2 does not hold a license specific to the business location
3 where the unauthorized alien performed work, but a license
4 is necessary to operate the employer's business in general,
5 the court shall order the appropriate agencies to permanently
6 revoke all licenses that are held by the employer at the
7 employer's primary place of business. On receipt of the order,
8 the appropriate agencies shall immediately revoke the licenses.

9 5. *Violations defined.*

10 a. A violation shall be considered a first violation by
11 an employer at a business location if the violation did not
12 occur during a probationary period ordered by the court under
13 subsection 3, paragraph "b", for that employer's business
14 location.

15 b. A violation shall be considered a second violation by
16 an employer at a business location if the violation occurred
17 during a probationary period ordered by the court under
18 subsection 3, paragraph "b", for that employer's business
19 location.

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

26 7. *Federal determination creates rebuttable presumption.* In
27 determining whether an employee is an unauthorized alien, the
28 court shall consider the federal government's determination
29 of the immigration status of the employee pursuant to 8
30 U.S.C. §1373(c). The court may take judicial notice of the
31 federal government's determination. The federal government's
32 determination that the employee is an unauthorized alien
33 creates a rebuttable presumption of the employee's unauthorized
34 status. The employer may present evidence that the employee
35 is not an unauthorized alien.

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

10 9. *Entrapment as affirmative defense.*

11 a. It is an affirmative defense to a violation of subsection
12 1 that the employer was entrapped. To claim entrapment, the
13 employer must admit by the employer's testimony or other
14 evidence the substantial elements of the violation. An
15 employer who asserts an entrapment defense has the burden
16 of proving all of the following by a preponderance of the
17 evidence:

18 (1) The idea of committing the violation started with law
19 enforcement officers or their agents rather than with the
20 employer.

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

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

26 b. An employer does not establish entrapment if the employer
27 was predisposed to violate subsection 1 and the law enforcement
28 officers or their agents merely provided the employer with an
29 opportunity to commit the violation. It is not entrapment for
30 law enforcement officers or their agents merely to use a ruse
31 or to conceal their identity. The conduct of law enforcement
32 officers and their agents may be considered in determining if
33 an employer has proven entrapment.

34 Sec. 3. NEW SECTION. 95.3 E-verify program — employer
35 participation — economic development incentives from government

1 **entities.**

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

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

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

28 **Sec. 4. NEW SECTION. 95.4 Compliance with federal and state**
29 **law.**

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

33 **Sec. 5. IMPLEMENTATION OF ACT.** Section 25B.2, subsection
34 3, shall not apply to this Act.

35

EXPLANATION

1 The inclusion of this explanation does not constitute agreement with
2 the explanation's substance by the members of the general assembly.

3 This bill prohibits employers from knowingly employing
4 unauthorized aliens.

5 The bill defines "employer" as a person that transacts
6 business in this state and that has a license issued by an
7 agency in this state. "Employer" includes this state, a
8 political subdivision of this state, and a self-employed
9 individual. In the case of an independent contractor,
10 "employer" means the independent contractor and does not mean
11 the person or organization that uses the contract labor.

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

17 The bill provides that for a first violation, the court
18 must order the employer to terminate the employment of all
19 unauthorized aliens and to submit a signed sworn affidavit
20 to that effect or face suspension of business licenses by
21 appropriate agencies. The court must also order a three-year
22 probationary period for the employer. The court may also
23 order the suspension of the employer's business licenses
24 by appropriate agencies for up to 10 business days, after
25 considering certain specified factors. The bill provides that
26 for a second violation, defined as a violation occurring during
27 a probationary period for a previous violation, the court must
28 order the permanent revocation of the employer's business
29 licenses. The bill directs the secretary of state to maintain
30 an online database of first-time offenders.

31 In determining the immigration status of an alleged
32 unauthorized alien employed by an employer, the bill requires
33 the district court to consider the federal government's
34 determination of the immigration status of the employee. The
35 federal government's determination that the employee is an

1 unauthorized alien creates a rebuttable presumption of the
2 employee's unauthorized status. The employer may present
3 evidence that the employee is not an unauthorized alien.
4 The bill provides that an employer who establishes that the
5 employer complied in good faith with 8 U.S.C. §1324a(b),
6 relating to verification of authorization for employment,
7 establishes a conclusive affirmative defense that the employer
8 did not knowingly employ an unauthorized alien. The bill
9 provides that an employer is considered to have complied with
10 the requirements of 8 U.S.C. §1324a(b), notwithstanding an
11 isolated, sporadic, or accidental technical or procedural
12 failure to meet the requirements, if there is a good-faith
13 attempt to comply with the requirements. The bill provides an
14 employer with an affirmative defense of entrapment if certain
15 elements are met.

16 The bill requires an employer hiring a new employee to
17 verify the employee's employment eligibility through the
18 federal e-verify program. The bill requires the employer
19 to keep records of the verification for the duration of the
20 employee's employment or three years, whichever is longer. The
21 bill requires an employer receiving an economic development
22 incentive from a state government entity to register with the
23 federal e-verify program. The bill provides that an employer
24 who does not comply with the requirement must repay all moneys
25 received for the economic development incentive. The bill
26 provides an employer the right to appeal a determination of
27 noncompliance and does not require repayment until a final
28 determination of noncompliance is made. The bill directs the
29 secretary of state to request from the United States department
30 of homeland security a list of employers registered with the
31 e-verify program every three months. The bill directs the
32 secretary of state to make the list available on the secretary
33 of state's internet site.

34 The bill provides that the bill shall not be construed
35 to require an employer to take any action that the employer

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

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