

**Senate File 516 - Introduced**

SENATE FILE 516  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 243)

**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 1A. "Department" means the department of workforce  
8 development.

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

13 3. "Employ" means hiring or continuing to employ an  
14 individual to perform services.

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

19 5. "Employer" means a person, as defined in section 4.1,  
20 that transacts business in this state and that has a license  
21 issued by an agency in this state. "Employer" includes  
22 this state, a political subdivision of this state, and a  
23 self-employed individual. In the case of an independent  
24 contractor, "employer" means the independent contractor and  
25 does not mean the person or organization that uses the contract  
26 labor.

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

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

33 8. a. "Independent contractor" means a person that carries  
34 on an independent business, that contracts to do a piece of  
35 work according to the person's own means and methods, and that

1 is subject to control only as to results. Whether a person is  
2 an independent contractor is determined on a case-by-case basis  
3 through various factors, including whether the person does any  
4 of the following:

5 (1) Supplies tools or materials.

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

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

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

11 (5) Invests in facilities for work.

12 (6) Directs the order or sequence in which the work is  
13 completed.

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

15 *b.* Independent contractor status includes an individual who  
16 performs services and is not an employee pursuant to section  
17 3508 of the Internal Revenue Code.

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

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

27 11. "*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. 95.2 **Knowingly employing unauthorized**  
31 **aliens.**

32 1. *Knowingly employing unauthorized aliens prohibited.* An  
33 employer shall not knowingly employ an unauthorized alien. If  
34 an employer uses a contract, subcontract, or other independent  
35 contractor agreement to obtain the labor of an alien in

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

5     2. *Complaints — court action required.* A county attorney,  
6 local law enforcement official, or member of the public may  
7 file a complaint of a violation of subsection 1 with the  
8 department. If the department determines, based on evidence  
9 included with the complaint or on evidence gathered by the  
10 department, that an employer has violated subsection 1, the  
11 department shall bring an action against the employer in the  
12 district court of the county where the unauthorized alien  
13 employee is or was employed by the employer. The district  
14 court shall expedite the action, including scheduling a hearing  
15 at the earliest practicable date.

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

19     a. The employer shall terminate the employment of all  
20 unauthorized aliens.

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

24     (2) During the probationary period, the employer shall file  
25 quarterly reports on the form prescribed in section 252G.3  
26 with the department for each new employee who is hired by the  
27 employer at the business location where the unauthorized alien  
28 performed work.

29     c. The employer shall be required to file a signed sworn  
30 affidavit with the department within three business days after  
31 the order is issued. The affidavit shall state that the  
32 employer has terminated the employment of all unauthorized  
33 aliens in this state and that the employer will not knowingly  
34 employ an unauthorized alien in this state.

35     (1) The court shall order the appropriate agencies to

1 suspend all licenses that are held by the employer if the  
2 employer fails to file a signed sworn affidavit with the  
3 department within three business days after the order is  
4 issued. All licenses that are suspended shall remain suspended  
5 until the employer files a signed sworn affidavit with the  
6 department. Upon filing of the affidavit, the suspended  
7 licenses shall be reinstated immediately by the appropriate  
8 agencies.

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

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

30 (a) The number of unauthorized aliens employed by the  
31 employer.

32 (b) Any prior misconduct by the employer.

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

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

1 (e) The duration of the violation.

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

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

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

17 5. *Violations defined.*

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

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

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

34 7. *Federal determination creates rebuttable presumption.* In  
35 determining whether an employee is an unauthorized alien, the

1 court shall consider the federal government's determination  
2 of the immigration status of the employee pursuant to 8  
3 U.S.C. §1373(c). The court may take judicial notice of the  
4 federal government's determination. The federal government's  
5 determination that the employee is an unauthorized alien  
6 creates a rebuttable presumption of the employee's unauthorized  
7 status. The employer may present evidence that the employee  
8 is not an unauthorized alien.

9 8. *Good-faith compliance.* For the purposes of this section,  
10 an employer that establishes that it has complied in good  
11 faith with the requirements of 8 U.S.C. §1324a(b) establishes  
12 a conclusive affirmative defense that the employer did not  
13 knowingly employ an unauthorized alien. An employer is  
14 considered to have complied with the requirements of 8 U.S.C.  
15 §1324a(b), notwithstanding an isolated, sporadic, or accidental  
16 technical or procedural failure to meet the requirements, if  
17 there is a good-faith attempt to comply with the requirements.  
18 For purposes of this subsection, "*good-faith attempt to comply*"  
19 means an employer to which all of the following apply with  
20 respect to an employee hired or rehired by the employer:

21 a. The employer made a bona fide attempt to meet the  
22 requirements for completion of the form I-9 for the employee  
23 found in 8 C.F.R. §274a.2(a)(3), as amended through January 1,  
24 2019.

25 b. The employer was a participating employer in the e-verify  
26 program at the time the employee was hired or rehired.

27 c. The employer can demonstrate that the employer attempted  
28 to verify the employment eligibility of the employee through  
29 the e-verify program.

30 9. *Entrapment as affirmative defense.*

31 a. It is an affirmative defense to a violation of subsection  
32 1 that the employer was entrapped. To claim entrapment, the  
33 employer must admit by the employer's testimony or other  
34 evidence the substantial elements of the violation. An  
35 employer who asserts an entrapment defense has the burden

1 of proving all of the following by a preponderance of the  
2 evidence:

3 (1) The idea of committing the violation started with law  
4 enforcement officers or their agents rather than with the  
5 employer.

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

8 *b.* An employer does not establish entrapment if the employer  
9 was predisposed to violate subsection 1 and the law enforcement  
10 officers or their agents merely provided the employer with  
11 an opportunity to commit the violation. The conduct of law  
12 enforcement officers and their agents may be considered in  
13 determining if an employer has proven entrapment.

14 **Sec. 3. NEW SECTION. 95.3 E-verify program — employer**  
15 **participation — economic development incentives from government**  
16 **entities.**

17 1. An employer, after hiring or rehiring an employee, shall  
18 verify the employment eligibility of the employee through  
19 the e-verify program, shall certify to the department that  
20 the employer has done so, and shall keep a record of the  
21 verification for the duration of the employee's employment or  
22 at least three years, whichever is longer. The certification  
23 shall be considered a record under section 96.11, subsection  
24 6, and rules adopted pursuant thereto, and shall be submitted  
25 to the department within the time period required by rule for  
26 an employer to submit the employer's contribution and payroll  
27 report.

28 2. In addition to any other requirement for an employer to  
29 receive an economic development incentive from a government  
30 entity, the employer shall register with and participate  
31 in the e-verify program. Before receiving the economic  
32 development incentive, the employer shall provide proof to the  
33 government entity that the employer is registered with and  
34 is participating in the e-verify program. If the government  
35 entity determines that the employer is not complying with this



1 subsection, the government entity shall notify the employer  
2 by certified mail of the government entity's determination  
3 of noncompliance and the employer's right to appeal the  
4 determination. On a final determination of noncompliance,  
5 the employer shall repay all moneys received as an economic  
6 development incentive to the government entity within thirty  
7 days of the final determination.

8 3. Every three months, the secretary of state shall request  
9 from the United States department of homeland security a  
10 list of employers from this state that are registered with  
11 the e-verify program. On receipt of the list of employers,  
12 the secretary of state shall make the list available on the  
13 secretary of state's internet site.

14 Sec. 4. NEW SECTION. 95.4 Compliance with federal and state  
15 law.

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

19 Sec. 5. NEW SECTION. 95.5 Rules.

20 The department shall adopt rules pursuant to chapter 17A to  
21 carry out the department's duties under this chapter, including  
22 but not limited to processes for the filing of complaints,  
23 quarterly reports, and affidavits pursuant to section 95.2 and  
24 certifications pursuant to section 95.3 with the department.

25 Sec. 6. IMPLEMENTATION OF ACT. Section 25B.2, subsection  
26 3, shall not apply to this Act.

27 EXPLANATION

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

30 This bill prohibits employers from knowingly employing  
31 unauthorized aliens.

32 The bill defines "employer" as a person that transacts  
33 business in this state and that has a license issued by an  
34 agency in this state. "Employer" includes this state, a  
35 political subdivision of this state, and a self-employed

1 individual. In the case of an independent contractor,  
2 "employer" means the independent contractor and does not mean  
3 the person or organization that uses the contract labor.

4 The bill authorizes a county attorney, local law enforcement  
5 official, or member of the public to file a complaint of a  
6 violation with the department of workforce development. If  
7 the department determines, based on evidence included with  
8 the complaint or on evidence gathered by the department, that  
9 an employer has committed a violation, the bill requires the  
10 department to bring an action in district court against an  
11 employer for a violation in the county where the unauthorized  
12 alien employee is or was employed by the employer. The bill  
13 provides that such an action must be expedited by the court.

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

28 In determining the immigration status of an alleged  
29 unauthorized alien employed by an employer, the bill requires  
30 the district court to consider the federal government's  
31 determination of the immigration status of the employee. The  
32 federal government's determination that the employee is an  
33 unauthorized alien creates a rebuttable presumption of the  
34 employee's unauthorized status. The employer may present  
35 evidence that the employee is not an unauthorized alien.

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

13 The bill requires an employer hiring or rehiring an employee  
14 to verify the employee's employment eligibility through the  
15 federal e-verify program and certify to the department of  
16 workforce development that the employer has done so. The bill  
17 requires the employer to keep records of the verification  
18 for the duration of the employee's employment or three  
19 years, whichever is longer, and establishes a time period  
20 for submission of certifications to the department. 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

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

2 The bill requires the department of workforce development  
3 to adopt rules to carry out the department's duties under the  
4 bill, including but not limited to rules on certain specified  
5 subjects.

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