

Senate File 84 - Introduced

SENATE FILE 84

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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. "Department" means the department of workforce
8 development.

9 3. "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 4. "Employ" means hiring or continuing to employ an
14 individual to perform services.

15 5. "Employee" means an individual who is paid wages by an
16 employer for service in employment in this state. "Employee"
17 does not include an independent contractor.

18 6. "Employer" means an employer, as defined in section
19 96.1A, that has a license issued by an agency in this state.
20 In the case of an independent contractor, "employer" means
21 the independent contractor and does not mean the person or
22 organization that uses the contract labor.

23 7. "Employment" means the same as defined in section 96.1A.

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

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

30 10. "Independent contractor" means the same as described in
31 rules adopted by the department for purposes of administration
32 of chapter 96.

33 11. "Knowingly employ an unauthorized alien" means the
34 actions described in 8 U.S.C. §1324a, and shall be interpreted
35 consistently with 8 U.S.C. §1324a and any applicable federal

1 regulations.

2 12. *"License"* means a permit, certificate, approval,
3 registration, charter, or similar form of authorization, other
4 than a professional license, that is required by law and that
5 is issued by an agency, allowing the licensee to do business
6 in this state.

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

10 14. *"Wages"* means the same as defined in section 96.1A.

11 Sec. 2. NEW SECTION. **95.2 Knowingly employing unauthorized**
12 **aliens.**

13 1. *Knowingly employing unauthorized aliens prohibited.* An
14 employer shall not knowingly employ an unauthorized alien. If
15 an employer uses a contract, subcontract, or other independent
16 contractor agreement to obtain the labor of an alien in
17 this state, and the employer knowingly contracts with an
18 unauthorized alien or with a person who employs or contracts
19 with an unauthorized alien to perform the labor, the employer
20 violates this subsection.

21 2. *Complaints — court action required.* A county attorney,
22 local law enforcement official, or member of the public may
23 file a complaint of a violation of subsection 1 with the
24 department. If the department determines, based on evidence
25 included with the complaint or on evidence gathered by the
26 department, that an employer has violated subsection 1, the
27 department shall bring an action against the employer in the
28 district court of the county where the unauthorized alien
29 employee is or was employed by the employer. The district
30 court shall expedite the action, including scheduling a hearing
31 at the earliest practicable date.

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

35 a. The employer shall terminate the employment of all

1 unauthorized aliens.

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

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

10 *c.* The employer shall be required to file a signed sworn
11 affidavit with the department within three business days after
12 the order is issued. The affidavit shall state that the
13 employer has terminated the employment of all unauthorized
14 aliens in this state and that the employer will not knowingly
15 employ an unauthorized alien in this state.

16 (1) The court shall order the appropriate agencies to
17 suspend all licenses that are held by the employer if the
18 employer fails to file a signed sworn affidavit with the
19 department within three business days after the order is
20 issued. All licenses that are suspended shall remain suspended
21 until the employer files a signed sworn affidavit with the
22 department. Upon filing of the affidavit, the suspended
23 licenses shall be reinstated immediately by the appropriate
24 agencies.

25 (2) Licenses that are subject to suspension under this
26 paragraph "*c*" are all licenses that are held by the employer
27 specific to the business location where the unauthorized alien
28 performed work. If the employer does not hold a license
29 specific to the business location where the unauthorized alien
30 performed work, but a license is necessary to operate the
31 employer's business in general, the licenses that are subject
32 to suspension under this paragraph "*c*" are all licenses that
33 are held by the employer at the employer's primary place of
34 business. On receipt of the court's order, the appropriate
35 agencies shall suspend the licenses according to the court's

1 order. The court shall send a copy of the court's order to the
2 secretary of state and the secretary of state shall maintain
3 the copy pursuant to subsection 6.

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

11 (a) The number of unauthorized aliens employed by the
12 employer.

13 (b) Any prior misconduct by the employer.

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

15 (d) Whether the employer made good-faith efforts to comply
16 with any applicable requirements.

17 (e) The duration of the violation.

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

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

21 4. *Court order — second violation.* For a second violation,
22 as described in subsection 5, the court shall order the
23 appropriate agencies to permanently revoke all licenses that
24 are held by the employer specific to the business location
25 where the unauthorized alien performed work. If the employer
26 does not hold a license specific to the business location
27 where the unauthorized alien performed work, but a license
28 is necessary to operate the employer's business in general,
29 the court shall order the appropriate agencies to permanently
30 revoke all licenses that are held by the employer at the
31 employer's primary place of business. On receipt of the order,
32 the appropriate agencies shall immediately revoke the licenses.

33 5. *Violations defined.*

34 a. A violation shall be considered a first violation by
35 an employer at a business location if the violation did not

1 occur during a probationary period ordered by the court under
2 subsection 3, paragraph "b", for that employer's business
3 location.

4 *b.* A violation shall be considered a second violation by
5 an employer at a business location if the violation occurred
6 during a probationary period ordered by the court under
7 subsection 3, paragraph "b", for that employer's business
8 location.

9 *6. Secretary of state database.* The secretary of state
10 shall maintain copies of court orders that are received
11 pursuant to subsection 3, paragraph "c", and shall maintain a
12 database of the employers and business locations found to have
13 committed a first violation of subsection 1 and make the court
14 orders available on the secretary of state's internet site.

15 *7. Federal determination creates rebuttable presumption.* In
16 determining whether an employee is an unauthorized alien, the
17 court shall consider the federal government's determination
18 of the immigration status of the employee pursuant to 8
19 U.S.C. §1373(c). The court may take judicial notice of the
20 federal government's determination. The federal government's
21 determination that the employee is an unauthorized alien
22 creates a rebuttable presumption of the employee's unauthorized
23 status. The employer may present evidence that the employee
24 is not an unauthorized alien.

25 *8. Good-faith compliance.* For the purposes of this section,
26 an employer that establishes that it has complied in good
27 faith with the requirements of 8 U.S.C. §1324a(b) establishes
28 a conclusive affirmative defense that the employer did not
29 knowingly employ an unauthorized alien. An employer is
30 considered to have complied with the requirements of 8 U.S.C.
31 §1324a(b), notwithstanding an isolated, sporadic, or accidental
32 technical or procedural failure to meet the requirements, if
33 there is a good-faith attempt to comply with the requirements.
34 For purposes of this subsection, "good-faith attempt to comply"
35 means an employer to which all of the following apply with

1 respect to an employee hired or rehired by the employer:

2 *a.* The employer made a bona fide attempt to meet the
3 requirements for completion of the form I-9 for the employee
4 found in 8 C.F.R. §274a.2(a)(3), as amended through January 1,
5 2019.

6 *b.* The employer was a participating employer in the e-verify
7 program at the time the employee was hired or rehired.

8 *c.* The employer can demonstrate that the employer attempted
9 to verify the employment eligibility of the employee through
10 the e-verify program.

11 9. *Entrapment as affirmative defense.*

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

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

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

24 *b.* An employer does not establish entrapment if the employer
25 was predisposed to violate subsection 1 and the law enforcement
26 officers or their agents merely provided the employer with
27 an opportunity to commit the violation. The conduct of law
28 enforcement officers and their agents may be considered in
29 determining if an employer has proven entrapment.

30 Sec. 3. NEW SECTION. 95.3 **E-verify program — employer**
31 **participation — economic development incentives from government**
32 **entities.**

33 1. An employer, after hiring or rehiring an employee, shall
34 verify the employment eligibility of the employee through
35 the e-verify program, shall certify to the department that

1 the employer has done so, and shall keep a record of the
2 verification for the duration of the employee's employment or
3 at least three years, whichever is longer. The certification
4 shall be considered a record under section 96.11, subsection
5 6, and rules adopted pursuant thereto, and shall be submitted
6 to the department within the time period required by rule for
7 an employer to submit the employer's contribution and payroll
8 report.

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

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

30 Sec. 4. NEW SECTION. **95.4 Compliance with federal and state**
31 **law.**

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

35 Sec. 5. NEW SECTION. **95.5 Rules.**

1 The department shall adopt rules pursuant to chapter 17A to
2 carry out the department's duties under this chapter, including
3 but not limited to processes for the filing of complaints,
4 quarterly reports, and affidavits pursuant to section 95.2 and
5 certifications pursuant to section 95.3 with the department.

6 Sec. 6. NEW SECTION. **95.6 Use of federal funds by**
7 **department prohibited.**

8 The department shall not utilize federal funds, or personnel
9 or any other department resources for which federal funding
10 is allocated, to carry out the department's duties under this
11 chapter.

12 Sec. 7. IMPLEMENTATION OF ACT. Section 25B.2, subsection
13 3, shall not apply to this Act.

14 EXPLANATION

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

17 This bill prohibits employers from knowingly employing
18 unauthorized aliens.

19 "Employer" is defined as the same as provided in Code chapter
20 96 relating to unemployment insurance. "Unauthorized alien"
21 is defined as an alien who does not have the legal right or
22 authorization under federal law to work in the United States as
23 described in 8 U.S.C. §1324a(h)(3).

24 The bill authorizes a county attorney, local law enforcement
25 official, or member of the public to file a complaint of a
26 violation with the department of workforce development. If
27 the department determines, based on evidence included with
28 the complaint or on evidence gathered by the department, that
29 an employer has committed a violation, the bill requires the
30 department to bring an action in district court against an
31 employer for a violation in the county where the unauthorized
32 alien employee is or was employed by the employer. The bill
33 provides that such an action must be expedited by the court.

34 The bill provides that for a first violation, the court
35 must order the employer to terminate the employment of all

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

13 In determining the immigration status of an alleged
14 unauthorized alien employed by an employer, the bill requires
15 the district court to consider the federal government's
16 determination of the immigration status of the employee. The
17 federal government's determination that the employee is an
18 unauthorized alien creates a rebuttable presumption of the
19 employee's unauthorized status. The employer may present
20 evidence that the employee is not an unauthorized alien.
21 The bill provides that an employer who establishes that the
22 employer complied in good faith with 8 U.S.C. §1324a(b),
23 relating to verification of authorization for employment,
24 establishes a conclusive affirmative defense that the employer
25 did not knowingly employ an unauthorized alien. The bill
26 provides that an employer is considered to have complied with
27 the requirements of 8 U.S.C. §1324a(b), notwithstanding an
28 isolated, sporadic, or accidental technical or procedural
29 failure to meet the requirements, if there is a good-faith
30 attempt to comply with the requirements as defined in the bill.
31 The bill provides an employer with an affirmative defense of
32 entrapment if certain elements are met.

33 The bill requires an employer hiring or rehiring an employee
34 to verify the employee's employment eligibility through the
35 federal e-verify program and certify to the department of

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

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

22 The bill requires the department of workforce development
23 to adopt rules to carry out the department's duties under the
24 bill, including but not limited to rules on certain specified
25 subjects.

26 The bill prohibits the department of workforce development
27 from utilizing federal funds, or personnel or any other
28 department resources for which federal funding is allocated, to
29 carry out the department's duties under the bill.

30 The bill may include a state mandate as defined in Code
31 section 25B.3. The bill makes inapplicable Code section 25B.2,
32 subsection 3, which would relieve a political subdivision from
33 complying with a state mandate if funding for the cost of
34 the state mandate is not provided or specified. Therefore,
35 political subdivisions are required to comply with any state

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1 mandate included in the bill.