

**Senate File 516 - Reprinted**

SENATE FILE 516  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 243)

(As Amended and Passed by the Senate April 2, 2019)

**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 96.19, 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 96.19.

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 96.19.

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.