SENATE FILE 516
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SF 243)

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

_____ = New Language by the Senate

A BILL FOR

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. NEW SECTION. 95.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. "*Agency*" means an agency, department, board, or commission of this state or a political subdivision that issues a license for purposes of operating a business in this state.

2. "*Department*" means the department of workforce development.

3. "*Economic development incentive*" means a grant, loan, or performance-based incentive awarded by a government entity of this state. "*Economic development incentive*" does not include a tax credit or tax incentive program.

4. "*Employ*" means hiring or continuing to employ an individual to perform services.

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

6. "*Employer*" means an employer, as defined in section 96.19, that has a license issued by an agency in this state. In the case of an independent contractor, "*employer*" means the independent contractor and does not mean the person or organization that uses the contract labor.

7. "*Employment*" means the same as defined in section 96.19.

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

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

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

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

regulations.

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

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

14. *"Wages"* means the same as defined in section 96.19.

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

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

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

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

a. The employer shall terminate the employment of all

unauthorized aliens.

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

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

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

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

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

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

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

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

(b) Any prior misconduct by the employer.

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

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

(e) The duration of the violation.

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

(g) Any other factors the court deems appropriate.

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

5. *Violations defined.*

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

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

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

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

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

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

respect to an employee hired or rehired by the employer:

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

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

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

9. *Entrapment as affirmative defense.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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