

SENATE, No. 1312

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED FEBRUARY 26, 2008

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator JOHN H. ADLER

District 6 (Camden)

Co-Sponsored by:

Senators Singer, Pennacchio, Ciesla, O'Toole, Oroho and Turner

SYNOPSIS

Prohibits employment of unauthorized aliens.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/3/2008)

1 AN ACT concerning the employment of unauthorized aliens and
2 supplementing Title 34 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. As used in this act:

8 "Agency" means any agency, department, board or commission
9 of this State, or of any political subdivisions of this State, that
10 issues a license for purposes of operating a business in this State.

11 "Basic pilot program" means the basic employment verification
12 pilot program as jointly administered by the United States
13 Department of Homeland Security and the Social Security
14 Administration or its successor program.

15 "Employee" means any individual who is employed by an
16 employer.

17 "Employer" means any individual or entity that transacts
18 business in this State that employs one or more individuals who
19 perform employment services in this State. "Employer" includes
20 the State, any political subdivision of this State and self-employed
21 persons.

22 "Intentionally" means, with respect to a result or to conduct
23 described in this act, that a person's objective is to cause that result
24 or to engage in that conduct.

25 "Knowingly employ an unauthorized alien" means those actions
26 described in 8 U.S.C.s. 1324a. This term shall be interpreted
27 consistently with 8 U.S.C.s. 1324a and any applicable federal rules
28 and regulations.

29 "License" means any agency permit, certificate, approval,
30 registration, charter or similar form of authorization that is required
31 by law and that is issued by any agency for the purposes of
32 operating a business in this State, and additionally includes, but is
33 not limited to:

34 (1) A certificate of incorporation pursuant to N.J.S.14A:2-1 et
35 seq.

36 (2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.

37 (3) A statement of qualification or a statement of foreign
38 qualification pursuant to P.L.2000, c.161 (C.42:1A-47 et seq.)

39 (4) A certificate of limited partnership or a certificate of
40 authority pursuant to P.L.1983, c.489 (C.42:2A-14 et seq.)

41 (5) A certificate of formation pursuant to P.L.1993, c.210
42 (C.42:2B-1 et seq.)

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

46

47 2. a. An employer shall not intentionally employ an
48 unauthorized alien or knowingly employ an unauthorized alien.

1 b. On receipt of a complaint that an employer allegedly
2 intentionally employs an unauthorized alien or knowingly employs
3 an unauthorized alien, the Attorney General or county prosecutor
4 shall investigate whether the employer has violated subsection a. of
5 this section. When investigating a complaint, the Attorney General
6 or county prosecutor shall verify the work authorization of the
7 alleged unauthorized alien with the federal government pursuant to
8 8 U.S.C.s. 1373(c). A state, county or local official shall not
9 attempt to independently make a final determination as to whether
10 an alien is authorized to work in the United States. An alien's
11 immigration status or work authorization status shall be verified
12 with the federal government pursuant to 8 U.S.C.s. 1373(c).

13 c. If, after an investigation, the Attorney General or county
14 prosecutor determines that the complaint is not frivolous:

15 (1) The Attorney General or county prosecutor shall notify the
16 United States Immigration and Customs Enforcement of the
17 unauthorized alien.

18 (2) The Attorney General or county prosecutor shall notify the
19 local law enforcement agency of the unauthorized alien.

20 (3) The Attorney General shall notify the appropriate county
21 prosecutor to bring an action pursuant to section 3 of this act if the
22 complaint was originally filed with the Attorney General.

23

24 3. a. An action for a violation of section 2 of this act shall be
25 brought against the employer by the county prosecutor in the county
26 where the unauthorized alien employee is employed. The county
27 prosecutor shall not bring an action against any employer for any
28 violation of subsection a. of this section that occurs before January
29 1, 2009. A second violation shall be based only on an unauthorized
30 alien who is employed by the employer after an action has been
31 brought for a violation of subsection a. of this section.

32 b. For any action in Superior Court under this act, the court
33 shall expedite the action, including assigning the hearing at the
34 earliest practicable date.

35

36 4. On a finding of a violation of section 2 of this act:

37 a. For a first violation during a three year period that is a
38 knowing violation the court:

39 (1) Shall order the employer to terminate the employment of all
40 unauthorized aliens.

41 (2) Shall order the employer to be subject to a three year
42 probationary period. During the probationary period the employer
43 shall file quarterly reports with the county prosecutor of each new
44 employee who is hired by the employer at the specific location
45 where the unauthorized alien performed work.

46 (3) Shall order the employer to file a signed sworn affidavit with
47 the county prosecutor within three business days after the order is
48 issued. The affidavit shall state that the employer has terminated

1 the employment of all unauthorized aliens and that the employer
2 will not intentionally or knowingly employ an unauthorized alien.
3 The court shall order the appropriate agencies to suspend all
4 licenses subject to this paragraph (3) that are held by the employer
5 if the employer fails to file a signed sworn affidavit with the county
6 prosecutor within three business days after the order is issued. All
7 licenses that are suspended under this paragraph (3) shall remain
8 suspended until the employer files a signed sworn affidavit with the
9 county prosecutor. Notwithstanding any other law, on filing of the
10 affidavit, the suspended licenses shall be reinstated immediately by
11 the appropriate agencies. For the purposes of this paragraph (3), the
12 licenses that are subject to suspension under this paragraph (3) are
13 all licenses that are held by the employer and that are necessary to
14 operate the employer's business at the employer's business location
15 where the unauthorized alien performed work. If a license is not
16 necessary to operate the employer's business at the specific location
17 where the unauthorized alien performed work, but a license is
18 necessary to operate the employer's business in general, the licenses
19 that are subject to suspension under this paragraph (3) are all
20 licenses that are held by the employer at the employer's primary
21 place of business. On receipt of the court's order and
22 notwithstanding any other law, the appropriate agencies shall
23 suspend the licenses according to the court's order. The court shall
24 send a copy of the court's order to the Attorney General and the
25 Attorney General shall maintain the copy pursuant to section 5 of
26 this act.

27 (4) May order the appropriate agencies to suspend all licenses
28 described in paragraph (3) of this subsection that are held by the
29 employer, not to exceed 10 business days. The court shall base its
30 decision to suspend under paragraph (4) on any evidence or
31 information submitted to it during the action for a violation of this
32 section and shall consider the following factors, if relevant:

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

35 (b) Any prior misconduct by the employer.

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

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

39 (e) The duration of the violation.

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

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

43 b. For a first violation during a five year period that is an
44 intentional violation of section 2, the court shall:

45 (1) Order the employer to terminate the employment of all
46 unauthorized aliens.

47 (2) Order the employer to be subject to a five year probationary
48 period. During the probationary period the employer shall file

1 quarterly reports with the county prosecutor of each new employee
2 who is hired by the employer at the specific location where the
3 unauthorized alien performed work.

4 (3) Order the appropriate agencies to suspend all licenses,
5 described in paragraph (3) of subsection a. of this section that are
6 held by the employer for a minimum of 10 days. The court shall
7 base its decision on the length of the suspension under this
8 paragraph (3) on any evidence or information submitted to it during
9 the action for a violation of this subsection 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 the
19 employer in the violation.

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

21 (4) Order the employer to file a signed sworn affidavit with the
22 county prosecutor. The affidavit shall state that the employer has
23 terminated the employment of all unauthorized aliens and that the
24 employer will not intentionally or knowingly employ an
25 unauthorized alien. All licenses that are suspended under this
26 paragraph shall remain suspended beyond the minimum 10 days
27 required in paragraph (3) of subsection b. of this section until the
28 employer files a signed sworn affidavit with the county prosecutor.
29 For the purposes of this paragraph, the licenses that are subject to
30 suspension under this paragraph are all licenses that are held by the
31 employer and that are necessary to operate the employer's business
32 at the employer's business location where the unauthorized alien
33 performed work. If a license is not necessary to operate the
34 employer's business at the specific location where the unauthorized
35 alien performed work, but a license is necessary to operate the
36 employer's business in general, the licenses that are subject to
37 suspension under this subdivision are all licenses that are held by
38 the employer at the employer's primary place of business. On
39 receipt of the court's order and notwithstanding any other law, the
40 appropriate agencies shall suspend the licenses according to the
41 court's order. The court shall send a copy of the court's order to the
42 Attorney General and the Attorney General shall maintain the copy
43 pursuant to section 6 of this act.

44 c. For a second violation of section 2 of this act during the
45 period of probation, the court shall order the appropriate agencies to
46 permanently revoke all licenses that are held by the employer and
47 that are necessary to operate the employer's business at the
48 employer's business location where the unauthorized alien

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

9
10 5. The Attorney General shall maintain copies of court orders
11 that are received pursuant to section 4 of this act and shall maintain
12 a database of the employers who have a first violation of subsection
13 a. of section 2 of this act and make the court orders available on the
14 Attorney General's website.

15
16 6. a. In determining whether an employee is an unauthorized
17 alien, the court shall consider only the federal government's
18 determination pursuant to 8 U.S.C.s. 1373(c). The federal
19 government's determination creates a rebuttable presumption of the
20 employee's lawful status. The court may take judicial notice of the
21 federal government's determination and may request the federal
22 government to provide automated or testimonial verification
23 pursuant to 8 U.S.C.s. 1373(c).

24 b. For the purposes of this section, proof of verifying the
25 employment authorization of an employee through the basic pilot
26 program creates a rebuttable presumption that an employer did not
27 intentionally employ an unauthorized alien or knowingly employ an
28 unauthorized alien.

29 c. For the purposes of this section, an employer who
30 establishes that it has complied in good faith with the requirements
31 of 8 U.S.C.s. 1324b establishes an affirmative defense that the
32 employer did not intentionally or knowingly employ an
33 unauthorized alien.

34
35 7. This act shall not be construed to require an employer to take
36 any action that the employer believes in good faith would violate
37 federal or State law.

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39 8. After December 31, 2008, every employer, after hiring an
40 employee, shall verify the employment eligibility of the employee
41 through the basic pilot program.

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43 9. This act shall take effect January 1, 2009.

STATEMENT

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3 This bill prohibits the employment of unauthorized aliens. The
4 bill imposes penalties on employers who knowingly or intentionally
5 employ unauthorized aliens. For the first violation where an
6 employer knowing hired unauthorized aliens, a court shall order the
7 employer to terminate such employment, to be subject to a three
8 year probationary period during which the employer shall submit
9 quarterly reports for each new hire, to file a sworn affidavit within
10 three business days after the order has been issued or face the
11 suspension of any business license held by the employer until such
12 time a signed sworn affidavit is filed. In addition, a court may
13 consider a number of factors surrounding the violation and order the
14 suspension of any business license for a period not to exceed ten
15 business days.

16 For the first violation where an employer intentionally hired
17 unauthorized aliens, a court shall order the employer to terminate
18 such employment; a five year probationary period during which the
19 employer shall submit quarterly reports for each new hire; the
20 suspension of any business license for a minimum ten days after
21 considering all factors surrounding the violation; and the employer
22 to file a sworn affidavit until which all licenses shall remain
23 suspended. For any second violation, a court shall order the
24 permanent revocation of any and all of the employers' business
25 licenses issued by the State or any political subdivisions of the
26 State.