

SENATE, No. 1842

STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MAY 10, 2010

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Burlington, Mercer, Monmouth and Ocean)

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District 24 (Sussex, Hunterdon and Morris)

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SYNOPSIS

Prohibits the employment of unauthorized aliens and requires employers to use E-Verify program.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/12/2011)

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 "Commissioner" means the Commissioner of the Department of
12 Labor and Workforce Development

13 "E-Verify program" means the electronic verification of work
14 authorization program of the Illegal Immigration Reform and
15 Immigration Responsibility Act of 1996, Pub.L. 104-208 (8 U.S.C.
16 s.1324a), jointly operated by the United States Department of
17 Homeland Security and the Social Security Administration or its
18 successor program.

19 "Employee" means any individual who is employed by an
20 employer.

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

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

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

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

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

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

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

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

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

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

4
5 2. a. After December 31, 2010, all employers, who employ
6 100 or more employees, shall verify the employment eligibility of
7 all new employees through the E-Verify program.

8 b. After December 31 2011, all employers, who employ less
9 than 100 employees, shall verify the employment eligibility of all
10 new employees through the E-Verify program.

11
12 3. a. The commissioner shall develop a Statewide random
13 auditing program to inspect private employers for compliance with
14 section 2 of this act.

15 b. Upon receipt of a written and signed complaint against an
16 employer, or upon an investigation initiated by the commissioner
17 for good cause, if the commissioner finds reasonable grounds exist
18 that an employer allegedly violated section 2, the commissioner
19 shall institute an investigation of the alleged violation.

20 c. Upon a finding of an occurrence involving a violation after a
21 random audit pursuant to subsection a., or after an investigation
22 pursuant to subsection b., the employer shall be assessed a civil
23 penalty of not less than one hundred dollars and not more than one
24 thousand dollars for each violation. For a first occurrence involving
25 a violation of section 2, if, upon notification by the commissioner of
26 a violation, the employer complies within seventy-two hours, the
27 employer shall not be assessed a penalty. Any subsequent
28 occurrence involving a violation of section 2 by the employer shall
29 result in the assessment of a civil penalty by the commissioner.
30 However, if the employer has not committed a violation of section 2
31 within the previous five years, a subsequent occurrence shall be
32 treated as a first occurrence.

33
34 4. An employer shall not intentionally employ an unauthorized
35 alien or knowingly employ an unauthorized alien.

36
37 5. a. On receipt of a complaint that an employer allegedly
38 intentionally employs an unauthorized alien or knowingly employs
39 an unauthorized alien, the Attorney General or county prosecutor
40 shall investigate whether the employer has violated subsection a. of
41 this section. When investigating a complaint, the Attorney General
42 or county prosecutor shall verify the work authorization of the
43 alleged unauthorized alien with the federal government pursuant to
44 8 U.S.C. s.1373(c). A state, county or local official shall not attempt
45 to independently make a final determination as to whether an alien
46 is authorized to work in the United States. An alien's immigration
47 status or work authorization status shall be verified with the federal
48 government pursuant to 8 U.S.C. s.1373(c).

1 b. If, after an investigation, the Attorney General or county
2 prosecutor determines that the complaint is not frivolous:

3 (1) The Attorney General or county prosecutor shall notify the
4 United States Immigration and Customs Enforcement of the
5 unauthorized alien;

6 (2) The Attorney General or county prosecutor shall notify the
7 local law enforcement agency of the unauthorized alien; and

8 (3) The Attorney General shall notify the appropriate county
9 prosecutor to bring an action pursuant to section 4 of this act if the
10 complaint was originally filed with the Attorney General.

11

12 6. a. An action for a violation of section 4 of this act shall be
13 brought against the employer by the county prosecutor in the county
14 where the unauthorized alien employee is employed. The county
15 prosecutor shall not bring an action against any employer for any
16 violation of section 4 that occurs before January 1, 2011. A second
17 violation shall be based only on an unauthorized alien who is
18 employed by the employer after an action has been brought for a
19 previous violation of section 4.

20 b. For any action in Superior Court under this act, the court
21 shall expedite the action, including assigning the hearing at the
22 earliest practicable date.

23

24 7. On a finding of a violation of section 4 of this act:

25 a. For a first violation during a three year period that is a
26 knowing violation the court:

27 (1) Shall order the employer to terminate the employment of all
28 unauthorized aliens.

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

34 (3) Shall order the employer to file a signed sworn affidavit with
35 the county prosecutor within three business days after the order is
36 issued. The affidavit shall state that the employer has terminated the
37 employment of all unauthorized aliens and that the employer will
38 not intentionally or knowingly employ an unauthorized alien. The
39 court shall order the appropriate agencies to suspend all licenses
40 subject to this paragraph (3) that are held by the employer if the
41 employer fails to file a signed sworn affidavit with the county
42 prosecutor within three business days after the order is issued. All
43 licenses that are suspended under this paragraph (3) shall remain
44 suspended until the employer files a signed sworn affidavit with the
45 county prosecutor. Notwithstanding any other law, on filing of the
46 affidavit, the suspended licenses shall be reinstated immediately by
47 the appropriate agencies. For the purposes of this paragraph (3), the
48 licenses that are subject to suspension under this paragraph (3) are

1 all licenses that are held by the employer and that are necessary to
2 operate the employer's business at the employer's business location
3 where the unauthorized alien performed work. If a license is not
4 necessary to operate the employer's business at the specific location
5 where the unauthorized alien performed work, but a license is
6 necessary to operate the employer's business in general, the licenses
7 that are subject to suspension under this paragraph (3) are all
8 licenses that are held by the employer at the employer's primary
9 place of business. On receipt of the court's order and
10 notwithstanding any other law, the appropriate agencies shall
11 suspend the licenses according to the court's order. The court shall
12 send a copy of the court's order to the Attorney General and the
13 Attorney General shall maintain the copy pursuant to section 8 of
14 this act.

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

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

23 (b) Any prior misconduct by the employer.

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

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

27 (e) The duration of the violation.

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

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

31 b. For a first violation during a five year period that is an
32 intentional violation of section 4, the court shall:

33 (1) Order the employer to terminate the employment of all
34 unauthorized aliens.

35 (2) Order the employer to be subject to a five year probationary
36 period. During the probationary period the employer shall file
37 quarterly reports with the county prosecutor of each new employee
38 who is hired by the employer at the specific location where the
39 unauthorized alien performed work.

40 (3) Order the appropriate agencies to suspend all licenses,
41 described in paragraph (3) of subsection a. of this section that are
42 held by the employer for a minimum of 10 days. The court shall
43 base its decision on the length of the suspension under this
44 paragraph (3) on any evidence or information submitted to it during
45 the action for a violation of this subsection and shall consider the
46 following factors, if relevant:

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

1 (b) Any prior misconduct by the employer.

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

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

5 (e) The duration of the violation.

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

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

9 (4) Order the employer to file a signed sworn affidavit with the
10 county prosecutor. The affidavit shall state that the employer has
11 terminated the employment of all unauthorized aliens and that the
12 employer will not intentionally or knowingly employ an
13 unauthorized alien. All licenses that are suspended under this
14 paragraph shall remain suspended beyond the minimum 10 days
15 required in paragraph (3) of subsection b. of this section until the
16 employer files a signed sworn affidavit with the county prosecutor.
17 For the purposes of this paragraph, the licenses that are subject to
18 suspension under this paragraph are all licenses that are held by the
19 employer and that are necessary to operate the employer's business
20 at the employer's business location where the unauthorized alien
21 performed work. If a license is not necessary to operate the
22 employer's business at the specific location where the unauthorized
23 alien performed work, but a license is necessary to operate the
24 employer's business in general, the licenses that are subject to
25 suspension under this subdivision are all licenses that are held by
26 the employer at the employer's primary place of business. On
27 receipt of the court's order and notwithstanding any other law, the
28 appropriate agencies shall suspend the licenses according to the
29 court's order. The court shall send a copy of the court's order to the
30 Attorney General and the Attorney General shall maintain the copy
31 pursuant to section 8 of this act.

32 c. For a second violation of section 4 of this act during the
33 period of probation, the court shall order the appropriate agencies to
34 permanently revoke all licenses that are held by the employer and
35 that are necessary to operate the employer's business at the
36 employer's business location where the unauthorized alien
37 performed work. If a license is not necessary to operate the
38 employer's business at the specific location where the unauthorized
39 alien performed work, but a license is necessary to operate the
40 employer's business in general, the court shall order the appropriate
41 agencies to permanently revoke all licenses that are held by the
42 employer at the employer's primary place of business. On receipt of
43 the order and notwithstanding any other law, the appropriate
44 agencies shall immediately revoke the licenses.

45
46 8. The Attorney General shall maintain copies of court orders
47 that are received pursuant to section 5 of this act and shall maintain
48 a database of the employers who have a first violation of section 4

1 of this act and make the court orders available on the Attorney
2 General's website.

3
4 9. a. In determining whether an employee is an unauthorized
5 alien, the court shall consider only the federal government's
6 determination pursuant to 8 U.S.C. s.1373(c). The federal
7 government's determination creates a rebuttable presumption of the
8 employee's lawful status. The court may take judicial notice of the
9 federal government's determination and may request the federal
10 government to provide automated or testimonial verification
11 pursuant to 8 U.S.C. s.1373(c).

12 b. For the purposes of this section, proof of verifying the
13 employment authorization of an employee through the E-Verify
14 program creates a rebuttable presumption that an employer did not
15 intentionally employ an unauthorized alien or knowingly employ an
16 unauthorized alien.

17 c. For the purposes of this section, an employer who
18 establishes that it has complied in good faith with the requirements
19 of 8 U.S.C. s.1324b establishes an affirmative defense that the
20 employer did not intentionally or knowingly employ an
21 unauthorized alien.

22
23 10. This act shall not be construed to require an employer to take
24 any action that the employer believes in good faith would violate
25 federal or State law.

26
27 11. The Commissioner of the Department of Labor and
28 Workforce Development shall adopt, pursuant to the
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
30 seq.), rules and regulations as necessary to effectuate the purposes
31 of sections 2 and 3 of this act.

32
33 12. This act shall take effect January 1, 2011.

34
35
36 STATEMENT

37
38 This bill requires every employer, before hiring an employee, to
39 verify the employment eligibility of the employee through the E-
40 Verify program. E-Verify is an electronic verification of work
41 authorization program jointly operated by the United States
42 Department of Homeland Security and the Social Security
43 Administration. The bill provides for employers who employ 100 or
44 more employees to comply with the E-Verify requirement by
45 December 31, 2010. Employers who employ less than 100
46 employees must comply with the E-Verify requirement by
47 December 31, 2011.

1 The bill directs the Commissioner of the Department of Labor
2 and Workforce Development to develop a Statewide random
3 auditing program to inspect private employers for compliance with
4 the E-Verify requirement. The commissioner is also directed, upon
5 receipt of a written and signed complaint against an employer, or
6 upon an investigation initiated by the commissioner for good cause,
7 to institute an investigation if the commissioner finds reasonable
8 grounds exist that an employer allegedly violated the E-Verify
9 requirement.

10 The bill provides for the assessment of a civil penalty of not less
11 than one hundred dollars and not more than one thousand dollars on
12 employers found to be in violation of the E-Verify requirement. For
13 a first occurrence involving a violation, if, upon notification by the
14 commissioner, the employer complies within seventy-two hours, the
15 employer shall not be assessed a penalty. Any subsequent
16 occurrence involving a violation by the employer results in the
17 assessment of a civil penalty by the commissioner. However, if the
18 employer has not committed a violation of the E-Verify requirement
19 within the previous five years, a subsequent occurrence shall be
20 treated as a first occurrence.

21 The bill also prohibits the employment of unauthorized aliens. It
22 imposes penalties on employers who knowingly or intentionally
23 employ unauthorized aliens. For the first violation where an
24 employer knowingly hired unauthorized aliens, a court shall order
25 the employer to terminate such employment, to be subject to a three
26 year probationary period during which the employer shall submit
27 quarterly reports for each new hire, to file a sworn affidavit within
28 three business days after the order has been issued or face the
29 suspension of any business license held by the employer until such
30 time a signed sworn affidavit is filed. In addition, a court may
31 consider a number of factors surrounding the violation and order the
32 suspension of any business license for a period not to exceed ten
33 business days.

34 For the first violation where an employer intentionally hired
35 unauthorized aliens, a court shall order the employer to terminate
36 such employment; a five year probationary period during which the
37 employer shall submit quarterly reports for each new hire; the
38 suspension of any business license for a minimum ten days after
39 considering all factors surrounding the violation; and the employer
40 to file a sworn affidavit until which all licenses shall remain
41 suspended.

42 For any second violation of knowingly or intentionally
43 employing an unauthorized alien, a court shall order the permanent
44 revocation of any and all of the employers' business licenses issued
45 by the State or any political subdivisions of the State.