

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 750 Session of
2007

INTRODUCED BY METCALFE, CREIGHTON, MUSTIO, PERRY, ARGALL,
BASTIAN, BEAR, CAUSER, CIVERA, CLYMER, COX, FAIRCHILD, GEIST,
GIBBONS, GOODMAN, HARRIS, HUTCHINSON, KAUFFMAN, KENNEY,
KILLION, KIRKLAND, KORTZ, MARSHALL, MILLARD, R. MILLER,
O'NEILL, PEIFER, PYLE, QUIGLEY, RAPP, ROAE, ROCK, SCHRODER,
SONNEY, R. STEVENSON, SWANGER, TRUE, VULAKOVICH, YEWCIC AND
MAHER, MARCH 22, 2007

REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 22, 2007

AN ACT

1 Prohibiting employment of illegal aliens; requiring
2 participation in the Basic Pilot Program as a condition for
3 Commonwealth contracts or grants; prohibiting business tax
4 deductions for certain compensation; requiring suspension of
5 licenses, registrations and certificates of incorporation
6 under certain circumstances; and authorizing a private cause
7 of action.

8 The General Assembly finds that:

9 (1) Employers in this Commonwealth who employ
10 unauthorized aliens have systematically distorted the labor
11 market of this Commonwealth by reducing wages, adversely
12 affecting working conditions, evading taxes and reducing the
13 number of jobs available to those who are lawfully entitled
14 to employment in this Commonwealth.

15 (2) The United States has established and maintains a
16 national program for the electronic verification of work
17 authorization, the Basic Pilot Program, which enables
18 employers to promptly and accurately verify the employment

1 eligibility of all job applicants.

2 (3) It is in the best interests of and will serve and
3 benefit the health, safety and welfare of the public and law-
4 abiding business entities to adopt policies and procedures to
5 deter and prevent the employment of unauthorized aliens.

6 (4) The Federal Government expressly permits state
7 governments to sanction the employers of unauthorized aliens
8 through licensing and other similar restrictions.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Short title.

12 This act shall be known and may be cited as the Fair
13 Employment Act.

14 Section 2. Definitions.

15 The following words and phrases when used in this act shall
16 have the meanings given to them in this section unless the
17 context clearly indicates otherwise:

18 "Basic Pilot Program." The electronic verification of work
19 authorization program of the Illegal Immigration Reform and
20 Immigrant Responsibility Act of 1996 (Public Law 104-208, 110
21 Stat. 3009-546) which is operated by the Department of Homeland
22 Security.

23 "Business entity." An individual, corporation, partnership,
24 limited liability company or other legal entity, whether for
25 profit or not for profit, who has applied for, holds or benefits
26 from any registration.

27 "Contractor." A person, employer or business entity that
28 enters into an agreement to perform any service or work or to
29 provide a certain product in exchange for valuable
30 consideration.

1 "Employee." A person performing or applying for work or
2 service of any kind or character for hire.

3 "Employer." A business entity which employs or seeks to
4 employ a person for hire. If there are two or more putative
5 employers, the business entity taking a business tax deduction
6 for the employee in question shall be considered the employer of
7 that person for the purposes of this act.

8 "Employment." The act of employing or of being employed,
9 engaged or hired.

10 "Government entity." The Commonwealth or any of its
11 political subdivisions. The term includes any agency, authority,
12 board or commission of the Commonwealth or any of its political
13 subdivisions.

14 "Registration." Any license, permit, registration or
15 certificate granted or provided by a government entity.

16 "Unauthorized alien." An alien who does not have the legal
17 right or authorization under Federal law to work in the United
18 States.

19 "Work." A job, task, employment, labor, personal service or
20 any other activity for which compensation is provided, expected
21 or due, including activities conducted by business entities.

22 Section 3. Prohibitions.

23 (a) Employment.--It is unlawful for any employer to employ,
24 or employer or business entity to permit the employment of, an
25 unauthorized alien.

26 (b) Affirmation for initial registration.--As a condition
27 for initial registration, a business entity shall provide to the
28 government entity:

29 (1) an affidavit that the business entity is not an
30 employer; or

1 (2) an affidavit affirming that the business entity does
2 not knowingly employ any person who is an unauthorized alien
3 as well as an affidavit and supporting documentation that the
4 business entity has enrolled and is an active participant in
5 the Basic Pilot Program.

6 (c) Affirmation for continued registration.--As a condition
7 of the periodic renewal of a registration, a business entity
8 shall comply with subsection (b) as if applying for initial
9 registration.

10 (d) Change of status.--A business entity which complied with
11 subsection (b)(1) as a condition of any initial registration
12 under subsection (b) or continued registration under subsection
13 (c) and, during that registration becomes an employer, shall
14 comply with subsection (b)(2).

15 (e) Awards.--As a condition for the award of any
16 Commonwealth contract or grant to an employer for which the
17 value of employment, labor or personal service shall exceed
18 \$10,000, the employer shall provide documentation affirming its
19 enrollment and participation in the Basic Pilot Program.

20 (f) Government entities.--All government entities shall
21 enroll and actively participate in the Basic Pilot Program.

22 (g) Verification.--An employer participating in the Basic
23 Pilot Program shall verify the employment eligibility of every
24 employee in the employer's hire whose employment commences after
25 the employer enrolls in the Basic Pilot Program.

26 (h) Tax deduction.--Compensation, whether in money or in
27 kind or in services, provided to any unauthorized alien shall
28 not be allowed as a business expense deduction from any income
29 or business tax of the Commonwealth.

30 (i) Violations.--Any business entity operating within this

Commonwealth in violation of this act shall have all
registrations suspended under subsection (j).

(j) Enforcement.--The Secretary of State shall enforce the
requirements of this section. The following apply:

(1) An enforcement action shall be initiated by means of
a written, signed complaint to the secretary's office
submitted by any government entity, business entity or
resident. A valid complaint shall include an allegation which
describes the alleged violator as well as the actions
constituting the violation and the date and location where
the actions occurred.

(2) A complaint which alleges a violation on the basis
of national origin, ethnicity or race shall be deemed invalid
and shall not be enforced.

(3) Upon receipt of a valid complaint, the secretary
shall, within three business days, request information from
the business entity which is the subject of the complaint,
which may include any of the following:

(i) Copies of any information provided to a
government entity under subsection (b), (c) or (d).

(ii) Identity information concerning any employees
alleged to be unauthorized aliens.

(iii) Verification of the work authorization of
aliens provided to the employer through the Basic Pilot
Program.

(4) The secretary shall submit identity data required by
the Federal Government to verify, pursuant to the Illegal
Immigration Reform and Immigrant Responsibility Act of 1996
(Public Law 104-208, 110 Stat. 3009-546), the immigration
status and work authorization of employees alleged to be

1 unauthorized aliens and shall provide the employer with
2 written confirmation of that verification.

3 (5) The secretary shall order all government entities to
4 suspend the registration of any business entity that fails to
5 correct a violation of this act.

6 (6) The correction of a violation with respect to the
7 employment of an unauthorized alien shall include any of the
8 following actions:

9 (i) The employer terminates the unauthorized alien's
10 employment.

11 (ii) The employer, after acquiring additional
12 information from the employee, requests a secondary or
13 additional verification by the Federal Government of the
14 employee's authorization under the procedures of the
15 Basic Pilot Program. While this verification is pending,
16 any enforcement action shall be tolled.

17 (iii) The employer attempts to terminate the
18 unlawful worker's employment and the termination is
19 challenged in a court of this Commonwealth. While the
20 employer pursues the termination of the unauthorized
21 alien's employment in such forum, any enforcement action
22 shall be tolled.

23 (7) A general contractor shall not be in violation of
24 this act with respect to any alleged unauthorized alien
25 employed by a subcontractor or independent contractor hired
26 by the general contractor if, prior to the alleged violation,
27 the general contractor verified that the subcontractor or
28 independent contractor was enrolled in the Basic Pilot
29 Program by requiring the subcontractor or independent
30 contractor to show documentary evidence of such enrollment

1 provided by the Federal Government.

2 (8) A suspension under this section shall terminate one
3 business day after a legal representative of the business
4 entity submits, at an office designated by the secretary, all
5 of the following:

6 (i) Documentation acceptable to the secretary which
7 confirms that the business entity has enrolled in and is
8 participating in the Basic Pilot Program.

9 (ii) A sworn affidavit stating that the violation
10 has ended. The affidavit shall include a description of
11 the specific measures and actions taken by the business
12 entity to end the violation and shall, if applicable,
13 include the name, address and other adequate identifying
14 information for any unauthorized aliens related to the
15 complaint.

16 (9) For a second or subsequent violation, the secretary
17 shall order all government entities to suspend the
18 registration of any business entity for a minimum period of
19 20 days. After the end of the suspension period, and upon
20 receipt of the prescribed affidavit and documentation, the
21 secretary shall order all government entities to reinstate
22 the registration of any business entity. The secretary shall
23 forward the affidavit, complaint and associated documents to
24 the Bureau of Immigration and Customs Enforcement of the
25 Department of Homeland Security.

26 (10) This section shall be subject to 2 Pa.C.S. Chs. 5
27 Subch. A (relating to practice and procedure of Commonwealth
28 agencies) and 7 Subch. A (relating to judicial review of
29 Commonwealth agency action).

30 (k) State funding.--Any government entity that fails to

1 comply with this section and the directives from the secretary
2 regarding the failure of any business entity to enroll in the
3 Basic Pilot Program shall be ineligible for State funding.

4 (l) Procedure.--This act shall not be construed to deny any
5 procedural mechanisms included in the Basic Pilot Program.

6 (m) Federal determination.--The determination of whether an
7 employee is an unauthorized alien shall be made by the Federal
8 Government under the Illegal Immigration Reform and Immigrant
9 Responsibility Act of 1996. A determination of the status of an
10 employee by the Federal Government shall create a rebuttable
11 presumption as to that employee's status in any judicial
12 proceedings brought pursuant to this act. The court may take
13 judicial notice of any verification of the employee previously
14 provided by the Federal Government and may request the Federal
15 Government to provide automated or testimonial verification
16 under the Illegal Immigration Reform and Immigrant
17 Responsibility Act of 1996.

18 Section 4. Ordinance.

19 A political subdivision of this Commonwealth may enact any
20 ordinance prohibiting the employment of unauthorized aliens or
21 other unlawful workers, may deny registration to employers who
22 employ unauthorized aliens and may allow lawful employees to
23 bring suit against such employers to recover treble damages and
24 reasonable attorney fees. A political subdivision of this
25 Commonwealth may enact any ordinance restricting the rental of
26 housing to an alien unlawfully present in the United States.

27 Section 5. Construction.

28 This act shall be construed so as to be fully consistent with
29 Federal immigration and labor laws.

30 Section 20. Severability.

1 The provisions of this act are severable. If any provision of
2 this act or its application to any person or circumstance is
3 held invalid, the invalidity shall not affect other provisions
4 or applications of this act which can be given effect without
5 the invalid provision or application.

6 Section 21. Effective date.

7 This act shall take effect in 60 days.