

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 744 Session of 2009

INTRODUCED BY RAFFERTY, BROWNE, ORIE, SCARNATI, LOGAN, PIPPY AND BOSCOLA, APRIL 3, 2009

REFERRED TO LABOR AND INDUSTRY, APRIL 3, 2009

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  
19 eligibility of all job applicants.

20 (3) It is in the best interests of and will serve and

benefit the health, safety and welfare of the public and law-abiding business entities to adopt policies and procedures to deter and prevent the employment of unauthorized aliens.

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

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

Section 1. Short title.

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

Section 2. Definitions.

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

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

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

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

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

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

6 "Employment." The act of employing or of being employed,  
7 engaged or hired.

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

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

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

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

20 Section 3. Prohibitions.

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

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

27 (1) an affidavit that the business entity is not an  
28 employer; or

29 (2) an affidavit affirming that the business entity does  
30 not knowingly employ any person who is an unauthorized alien

1 as well as an affidavit and supporting documentation that the  
2 business entity has enrolled and is an active participant in  
3 the Basic Pilot Program.

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

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

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

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

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

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

28 (i) Violations.--Any business entity operating within this  
29 Commonwealth in violation of this act shall have all  
30 registrations suspended under subsection (j).

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

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

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

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

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

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

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

24 (4) The secretary shall submit identity data required by  
25 the Federal Government to verify, pursuant to the Illegal  
26 Immigration Reform and Immigrant Responsibility Act of 1996  
27 (Public Law 104-208, 110 Stat. 3009-546), the immigration  
28 status and work authorization of employees alleged to be  
29 unauthorized aliens and shall provide the employer with  
30 written confirmation of that verification.

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

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

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

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

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

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

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

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

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

15          (9) For a second or subsequent violation, the secretary  
16 shall order all government entities to suspend the  
17 registration of any business entity for a minimum period of  
18 90 days. After the end of the suspension period, and upon  
19 receipt of the prescribed affidavit and documentation, the  
20 secretary shall order all government entities to reinstate  
21 the registration of any business entity. The secretary shall  
22 forward the affidavit, complaint and associated documents to  
23 the Bureau of Immigration and Customs Enforcement of the  
24 Department of Homeland Security.

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

29          (k) State funding.--Any government entity that fails to  
30 comply with this section and the directives from the secretary

1 regarding the failure of any business entity to enroll in the  
2 Basic Pilot Program shall be ineligible for State funding.

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

5 (m) Federal determination.--

6 (1) A determination of whether an employee is an  
7 unauthorized alien made by the Federal Government under the  
8 Illegal Immigration Reform and Immigrant Responsibility Act  
9 of 1996 shall create a rebuttable presumption as to that  
10 employee's status in any judicial proceedings brought  
11 pursuant to this act.

12 (2) The court may take judicial notice of any  
13 verification of the employee previously provided by the  
14 Federal Government and may request the Federal Government to  
15 provide automated or testimonial verification under the  
16 Illegal Immigration Reform and Immigrant Responsibility Act  
17 of 1996.

#### 18 Section 4. Ordinances.

19 A political subdivision of this Commonwealth may:

20 (1) Enact an ordinance prohibiting the employment of  
21 unauthorized aliens or other unlawful workers.

22 (2) Deny a registration to an employer who employs  
23 unauthorized aliens.

24 (3) Enact an ordinance restricting the rental of housing  
25 to an alien unlawfully present in the United States.

#### 26 Section 5. Construction.

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

#### 29 Section 20. Severability.

30 The provisions of this act are severable. If any provision of



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

5 Section 21. Effective date.

6 This act shall take effect in 60 days.