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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 602 Session of  
2017

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INTRODUCED BY RAFFERTY, VULAKOVICH, BROWNE, SCARNATI AND  
YUDICHAK, APRIL 13, 2017

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REFERRED TO LABOR AND INDUSTRY, APRIL 13, 2017

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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

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

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

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

9 Section 1. Short title.

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

12 Section 2. Definitions.

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

16 "Basic Pilot Program." The electronic verification of the  
17 work authorization program of the Illegal Immigration Reform and  
18 Immigrant Responsibility Act of 1996 (Division C of the act of  
19 September 30, 1996, Public Law 104-208, 110 Stat. 3009-546)  
20 which is operated by the Department of Homeland Security.

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

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

29 "Employee." A person performing or applying for work or  
30 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 political  
9 subdivisions. The term includes an agency, authority, board or  
10 commission of the Commonwealth or any political subdivisions.

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

13 "Secretary." The Secretary of State of the Commonwealth.

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 an employer to employ,  
22 or an employer or business entity to permit the employment of,  
23 an 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 a person who is an unauthorized alien as

1 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 an 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 a Commonwealth  
14 contract or grant to an employer for which the value of  
15 employment, labor or personal service shall exceed \$10,000, the  
16 employer shall provide documentation affirming the enrollment  
17 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 an unauthorized alien shall not  
26 be allowed as a business expense deduction from any income or  
27 business tax of the Commonwealth.

28 (i) Violations.--A 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 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 a 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, under the Illegal  
26 Immigration Reform and Immigrant Responsibility Act of 1996  
27 (Division C of the act of September 30, 1996, Public Law 104-  
28 208, 110 Stat. 3009-546), the immigration status and work  
29 authorization of employees alleged to be unauthorized aliens  
30 and shall provide the employer with written confirmation of

1 that verification.

2 (5) The secretary shall order all government entities to  
3 suspend the registration of a business entity that the  
4 secretary finds in violation of this act or 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, any enforcement action shall be  
22 tolled.

23 (7) A general contractor shall not be in violation of  
24 this act with respect to an 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 enrollment

1 provided by the Federal Government.

2 (8) A first suspension under this section shall  
3 terminate one business day after a legal representative of  
4 the business entity submits, at an office designated by the  
5 secretary, all 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 a business entity for a minimum period of 90  
19 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 a 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.--A government entity that fails to comply

1 with this section and the directives from the secretary  
2 regarding the failure of a 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.--

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

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

19 Section 4. Ordinances.

20 A political subdivision of this Commonwealth may:

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

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

25 (3) Enact an ordinance restricting the rental of housing  
26 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 6. Severability.

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

6 Section 7. Effective date.

7       This act shall take effect in 60 days.