



# HOUSE COMMITTEE ON APPROPRIATIONS

## FISCAL NOTE

HOUSE BILL NO. 1170

PRINTERS NO. 2129

PRIME SPONSOR: Mackenzie

COST / (SAVINGS)		
FUND	FY 2018/19	FY 2019/20
General Fund	\$0	See "Fiscal Impact"

**SUMMARY:** Creates a freestanding act to prohibit the employment of unauthorized employees in the construction industry, require construction industry employers to utilize the E-Verify system when hiring a new employee, and impose penalties (suspension of licenses issued by Commonwealth/municipal agencies). This legislation would take effect in one year.

**ANALYSIS:** This legislation creates the Construction Industry Employee Verification Act.

**Prohibited Employment:** The legislation prohibits a construction industry employer (employer) from knowingly employing an unauthorized employee. For employees hired on or after the effective date, an employer who hires an employee will be required to verify the employment eligibility of the new employee through the E-Verify program and keep a record of the verification for the duration of employment or three years, whichever is longer.

**Enforcement:** The Department of Labor and Industry (DLI) will have the authority to investigate complaints. Pursuant to the investigation of a complaint, DLI will be allowed to enter/inspect, copy records, require statements from the employer and interrogate persons for the purposes of determining compliance with the act.

DLI will prescribe a complaint form for an individual to allege a violation. An individual who provides materially false information on the form is subject to punishment for the offense of unsworn falsification to authorities.

DLI:

- Is required to investigate a complaint submitted on the prescribed form if all the required information has been provided, including the name of the complainant;
- May investigate a complaint that is not submitted on the prescribed form, including an anonymous complaint; and
- Is prohibited from investigating a complaint that is solely based on race, color or national origin.

When investigating complaints, DLI will verify the work authorization of the employee with the Federal government under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Commonwealth and local officials are prohibited from independently making a final determination on whether an employee is authorized to work in the United States.

If DLI determines that the employee is an unauthorized employee:

- For a first violation, DLI will issue a warning letter (a violation more than 10 years after a prior violation counts as a first violation). A warning letter will not be issued if the employer used E-Verify in good faith when hiring the employee. The employer will have 10 business days to verify to DLI that each unauthorized employee has been terminated if the employer does not provide verification, the violation will constitute a second violation. The issuance of a warning letter may be appealed administratively.
- For a second or subsequent violation, DLI will refer the case to the Attorney General. The AG will bring an action against the employer in the county where the unauthorized employee was employed.

A court is required to expedite the action brought by the Attorney General, including assigning the hearing at the earliest possible date. In determining whether an employee is an unauthorized employee, the court will only consider the Federal Government's determination, which shall create a rebuttable presumption of the employee's status.

Proof that the employer verified the employee's authorization through the E-Verify program creates a rebuttable presumption that the employer did not knowingly employ an unauthorized employee. It is an affirmative defense that the employer demonstrates that it has complied in good faith with the employment verification requirements of the federal Immigration and Nationality Act.

**Penalties:** Upon finding a violation, the court shall order all of the following:

- The employer must terminate the employment of each unauthorized employee.
- The employer must serve a three-year probationary period for each business location where the unauthorized employee worked. During the probation, the employer must file quarterly reports with DLI of each new employee at the location, and may not knowingly employ an unauthorized employee.
- The employer must verify in writing to DLI, within 5 business days, that the employer has terminated the employment of each unauthorized employee in the Commonwealth.
- Commonwealth/municipal agencies must suspend each license held by the employer if the employer fails to submit verification on time. Licenses will be suspended until the employer complies and will be reinstated immediately upon the filing of the verification. Licenses suspended must be specific to the business location where the unauthorized employee performed work. If the employer does not have a license specific to the business location, licenses pertaining to operations anywhere in the Commonwealth will be suspended.

For a second violation of knowingly employing an unauthorized employee, the court may order the suspension of a license for up to 30 business days. For a subsequent violation or a violation occurring during the three-year probationary period, the court shall order suspension for at least one year up to the permanent revocation of each license. When a determination is under review, the court must consider:

- The number of unauthorized employees.
- Any prior misconduct by the employer.
- The degree of harm resulting from the violation.
- Whether the employer made good faith efforts to comply with any applicable requirements.
- The duration of the violation.
- The role of the directors, officers or principals of the employer in the violation.
- Other factors the court deems appropriate.

**Protection from Retaliation:** A construction industry employer is prohibited from any retaliation or discrimination against an employee because the employee 1) participates in an investigation, hearing or inquiry under the act, or 2) reports or makes a complaint about a violation under the act to the employer or a governmental authority. An employee who suffers retaliation/discrimination may bring an action in court within three years and may receive relief, including reinstatement, restitution (3x the amount of wages/benefits), attorney fees and costs, and any other legal or equitable relief the court deems appropriate.

**Immunity and Compliance:** A construction industry employer that relies in good faith on E-Verify to verify new employees will not have any liability to an individual who is not hired or is discharged from employment if incorrect information has been provided to the employer.

General contractors are generally not responsible for the violations of subcontractors, and subcontractors are not responsible for the violations of other subcontractors. To not be considered responsible for the violation of a subcontractor, a contractor must 1) require compliance with the act in the contract with the subcontractor, and 2) obtain written verification from the subcontractor that the subcontractor is aware of the provisions the act and is responsible for compliance.

**FISCAL IMPACT:** According to the Department of Labor and Industry, this legislation would cost roughly \$1 million annually as the Department anticipates the hiring of 11 full-time employees such as investigators, a director and an attorney and will incur other operating expenses. Since this legislation would not take effect for one year, it is unlikely that any costs would be incurred in FY 2019-20.

**PREPARED BY:** Tim Rodrigo  
House Appropriations Committee (R)

**DATE:** June 14, 2019

*Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.*