

## AN ACT

1 Providing for prohibiting the employment of unauthorized aliens;  
2 requiring registration in and use of the E-Verify program;  
3 and prohibiting the deduction of payments to unauthorized  
4 aliens for tax purposes.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the State  
9 Immigration Total Enforcement Act.

10 Section 2. Definitions.

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

14 "Alien." An individual who is not a citizen or national of  
15 the United States.

16 "Business entity." An individual or group of individuals  
17 performing or engaging in an activity, enterprise, profession or  
18 occupation for gain, benefit, advantage or livelihood, whether

1 for profit or not-for-profit. The term shall include, but not be  
2 limited to:

3 (1) Self-employed individuals, business entities filing  
4 articles of incorporation, partnerships, limited  
5 partnerships, limited liability companies, foreign  
6 corporations, foreign limited partnerships, foreign limited  
7 liability companies authorized to transact business in this  
8 Commonwealth, business trusts and any business entity that  
9 registers with the Secretary of the Commonwealth.

10 (2) Any business entity that possesses a business  
11 license, permit, certificate, approval, registration, charter  
12 or similar form of authorization issued by the Commonwealth,  
13 any business entity that is exempt by law from obtaining a  
14 business license and any business entity that is operating  
15 unlawfully without a business license.

16 "Employee." An individual directed, allowed or permitted to  
17 perform labor or service of any kind by an employer, with the  
18 exception of casual domestic labor hired to work in or around an  
19 individual's personal abode. The employees of an independent  
20 contractor working for a business entity shall not be regarded  
21 as the employees of the business entity.

22 "E-Verify." The electronic verification of Federal  
23 employment authorization program of the Illegal Immigration  
24 Reform and Immigrant Responsibility Act of 1996 (Division C of  
25 the act of September 30, 1996, Public Law 104-208, 110 Stat.  
26 3009-546) and operated by the United States Department of  
27 Homeland Security, or its successor program.

28 "Public employer." A department, agency or instrumentality  
29 of the Commonwealth or a political subdivision of the  
30 Commonwealth.

1 "Unauthorized alien." An alien who is not authorized to work  
2 in the United States, as defined in 8 U.S.C. § 1324a(h) (3)  
3 (relating to unlawful employment of aliens).

4 Section 3. Prohibition of employment of unauthorized aliens.

5 (a) General rule.--It is unlawful for an employer to  
6 knowingly hire or to recruit or refer for a fee for employment  
7 in this Commonwealth an unauthorized alien. If, in the case when  
8 an employer uses a contract, subcontract or other independent  
9 contractor agreement to obtain the labor of an alien in this  
10 Commonwealth, the employer knowingly contracts with an  
11 unauthorized alien or with a person who employs or contracts  
12 with an unauthorized alien to perform the labor, the employer  
13 violates this subsection.

14 (b) Enforcement.--The provisions of this section may be  
15 enforced by a district attorney or by the Attorney General.

16 (c) Complaint.--The Attorney General shall prescribe a  
17 complaint form for an individual to allege a violation of  
18 subsection (a). The complainant shall not be required to list  
19 the complainant's Social Security number on the complaint form  
20 or to have the complaint form notarized. On receipt of a  
21 complaint on a prescribed complaint form that an employer  
22 allegedly knowingly employs an unauthorized alien, the Attorney  
23 General or appropriate district attorney shall investigate  
24 whether the business entity has violated subsection (a). If a  
25 complaint is received but is not submitted on a prescribed  
26 complaint form, the Attorney General or district attorney may  
27 investigate whether the employer has violated subsection (a).  
28 This subsection shall not be construed to prohibit the filing of  
29 anonymous complaints that are not submitted on a prescribed  
30 complaint form. The Attorney General or a district attorney

1 shall not investigate complaints that are based solely on race,  
2 color or national origin. The county sheriff or any other local  
3 law enforcement agency may assist in investigating a complaint.  
4 When investigating a complaint, the Attorney General or district  
5 attorney shall verify the work authorization of the alleged  
6 unauthorized alien with the Federal Government pursuant to 8  
7 U.S.C. § 1373(c) (relating to communication between government  
8 agencies and the Immigration and Naturalization Service). A  
9 State, county or local official shall not attempt to  
10 independently make a final determination on whether an alien is  
11 authorized to work in the United States. A person who knowingly  
12 files a false and frivolous complaint under this subsection  
13 commits a misdemeanor of the third degree.

14 (d) Notification of action required.--If the Attorney  
15 General or a district attorney elects to bring an action under  
16 this section, the Attorney General or district attorney shall  
17 notify United States Immigration and Customs Enforcement. The  
18 Attorney General or district attorney shall not bring an action  
19 against a business entity for a violation of this section that  
20 occurs before January 1, 2022.

21 (e) Finding of violation.--The following shall apply:

22 (1) For a first violation, the court shall order the:

23 (i) suspension of all licenses issued by the  
24 Commonwealth or any political subdivision that are held  
25 by the business entity for a minimum of one day and a  
26 maximum of 30 days;

27 (ii) business entity to terminate the employment of  
28 all unauthorized aliens; and

29 (iii) business entity to file a signed sworn  
30 affidavit with the relevant county attorney or district

1 attorney within three business days. The affidavit shall  
2 state that the business entity has terminated the  
3 employment of all unauthorized aliens in this  
4 Commonwealth and that the business entity will not  
5 intentionally or knowingly employ an unauthorized alien  
6 in this Commonwealth. The court shall order the  
7 appropriate agencies to suspend all licenses subject to  
8 this subparagraph that are held by the business entity if  
9 the business entity fails to file a signed sworn  
10 affidavit with the county attorney within three business  
11 days after the order is issued. All licenses that are  
12 suspended under this subparagraph shall remain suspended  
13 until the business entity files a signed sworn affidavit  
14 with the county attorney. Notwithstanding any other law,  
15 upon filing of the affidavit the suspended licenses shall  
16 be reinstated immediately by the appropriate agencies.

17 (2) For a second violation of this section by a business  
18 entity, the court shall order the suspension of all licenses  
19 that are held by the business entity for a minimum of 30 days  
20 and a maximum of one year.

21 (3) For a third violation of this section by a business  
22 entity, the court shall order the permanent suspension of all  
23 licenses that are held by the business entity as well as the  
24 revocation of the business entity's registration as a  
25 corporation, limited liability company or limited partnership  
26 in this Commonwealth, if applicable.

27 (f) Enforcement.--In enforcing the provisions of this  
28 section, no Commonwealth official or county or local official  
29 shall attempt to independently determine whether an individual  
30 is an unauthorized alien or an alien not lawfully present in the

1 United States. Such determination shall only be made by  
2 verifying the alien's immigration status with the Federal  
3 Government.

4 (g) Determination of immigration status.--For the purposes  
5 of this section, when making a determination of whether an  
6 employee is an unauthorized alien, a court shall only consider  
7 the Federal Government's determination. The court shall take  
8 judicial notice of any verification of the immigration status  
9 previously provided by the Federal Government. The court may,  
10 and at the request of a party shall, request the Federal  
11 Government to provide, in automated, documentary or testimonial  
12 form, a new verification of the immigration status of the  
13 employee. The most recent determination of the immigration  
14 status of an employee by the Federal Government shall create a  
15 rebuttable presumption as to the employee's immigration status.

16 (h) Good faith compliance.--The following shall apply:

17 (1) A business entity that has complied in good faith  
18 with this section through enrollment in E-Verify and has used  
19 E-Verify to confirm the employment authorization of any  
20 employee in question will benefit from a rebuttable  
21 presumption that the business entity did not knowingly employ  
22 an unauthorized alien.

23 (2) A business entity that has complied in good faith  
24 with the requirements of 8 U.S.C. § 1324a(b) (relating to  
25 unlawful employment of aliens) establishes an affirmative  
26 defense that the business entity did not knowingly employ an  
27 unauthorized alien.

28 Section 4. Mandatory employer registration and use of E-Verify  
29 program for new employees.

30 (a) General rule.--Each business entity doing business in

1 this Commonwealth that employs one or more employees shall  
2 register with and utilize E-Verify to verify the employment  
3 authorization of all new employees.

4 (b) Compliance.--Each business entity shall be in compliance  
5 with this section by January 1, 2022. A business entity shall  
6 retain all documentation received in connection with the  
7 entity's participation in E-Verify that verifies the employment  
8 authorization of each employee verified through E-Verify for at  
9 least three years after the termination of the employment of the  
10 employee. This documentation shall be provided to the Attorney  
11 General or a district attorney upon request.

12 (c) Enforcement.--This section may be enforced by the  
13 Attorney General or a district attorney.

14 (d) Violation.--On a finding of a violation of this section  
15 by a business entity, the court shall order the suspension of  
16 all licenses issued by the Commonwealth or a political  
17 subdivision that are held by the business entity for a minimum  
18 of 10 days and a maximum of one year.

19 (e) Registration and use required.--On or before September  
20 1, 2021, each public employer within this Commonwealth shall  
21 register with and utilize E-Verify to verify the employment  
22 authorization of all new employees.

23 (f) Prohibition.--After September 1, 2021, no public  
24 employer shall enter into a contract for the performance of  
25 services within this Commonwealth unless the contractor  
26 registers and participates in E-Verify to verify the employment  
27 authorization of all new employees. This subsection shall not  
28 apply to contracts entered into prior to the effective date of  
29 this section even though the contracts may involve the  
30 performance of labor within this Commonwealth after September 1,

1 2021.

2 Section 5. Payments made to unauthorized aliens not deductible  
3 for tax purposes.

4 (a) Deductible prohibited.--The following shall apply:

5 (1) On or after January 1, 2022, no wage or remuneration  
6 for the performance of services paid to an unauthorized alien  
7 shall be allowed as a deductible business expense for State  
8 income tax purposes by a taxpayer. This subsection shall  
9 apply whether or not an Internal Revenue Service Form 1099 is  
10 issued in conjunction with the wages or remuneration.

11 (2) On or after January 1, 2022, a taxpayer shall not be  
12 allowed a deductible business expense for State income tax  
13 purposes of a wage or remuneration for the performance of  
14 services paid to an independent contractor who is not  
15 registered with and utilizing the E-Verify program to verify  
16 the Federal employment authorization of all new employees.

17 (b) Affidavit.--All employers shall submit an affidavit to  
18 the Department of Revenue accompanying the annual tax return  
19 required under State law. This affidavit shall be signed by the  
20 employer under penalty of perjury and shall state:

21 (1) whether the employer utilized a business expense or  
22 business loss deduction in determining Federal adjusted gross  
23 income;

24 (2) whether the employer employed any employees or  
25 independent contractors for the tax year in question and the  
26 number of employees or independent contractors;

27 (3) whether the employer is enrolled in and is actively  
28 participating in E-Verify;

29 (4) whether the employer has used E-Verify to confirm  
30 the employment eligibility of every employee hired on or



1 after January 1, 2022;

2 (5) whether the employer has confirmed that any  
3 independent contractor paid by the employer is an independent  
4 contractor who is registered with and utilizing E-Verify to  
5 verify the employment authorization of all new employees; and

6 (6) the employer's identification number signifying the  
7 employer's enrollment in E-Verify.

8 (c) Audit.--The Department of Revenue may audit any employer  
9 who fails to timely submit the affidavit required under this  
10 section. The Department of Revenue may also audit any employer  
11 about which the Department of Revenue develops probable cause to  
12 believe the employer is out of compliance with this section.

13 (d) Penalties.--If the Department of Revenue determines that  
14 an employer has knowingly made material misrepresentations of  
15 fact regarding information contained in the affidavit required  
16 under this section, the employer shall be required to add back  
17 business deductions taken in determining the employer's adjusted  
18 gross income used to calculate the employer's State tax  
19 liability, to the extent the deductions constitute wages or  
20 remuneration paid to employees whose employment authorization  
21 was not verified using E-Verify.

22 Section 6. Effective date.

23 This act shall take effect immediately.