

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 858 Session of 2011

INTRODUCED BY METCALFE, BARRAR, CARROLL, CLYMER, CREIGHTON, CUTLER, DeLUCA, DUNBAR, EVERETT, FLECK, GIBBONS, GOODMAN, GROVE, HARHAI, HARRIS, HORNAMAN, HUTCHINSON, KAUFFMAN, KNOWLES, LONGIETTI, MARSHALL, MILLARD, MOUL, MULLERY, OBERLANDER, PETRI, PYLE, RAPP, READSHAW, REICHLEY, ROCK, SIMMONS, SONNEY, SWANGER, VULAKOVICH, WHITE, CHRISTIANA, PETRARCA, ELLIS, SCHRODER AND GILLEN, MARCH 1, 2011

REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, MARCH 1, 2011

AN ACT

1 Prohibiting employment of illegal aliens; requiring
 2 participation in the E-verify 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 E-verify Program, which enables employers
 18 to promptly and accurately verify the employment eligibility

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

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

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

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 E-verify 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 E-verify Program.

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

22 (g) Verification.--An employer participating in the E-verify
23 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 E-verify 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

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

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

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

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

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

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

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

23 (iii) Verification of the work authorization of
24 aliens provided to the employer through the E-verify
25 Program.

26 (4) The secretary shall submit identity data required by
27 the Federal Government to verify, pursuant to the Illegal
28 Immigration Reform and Immigrant Responsibility Act of 1996
29 (Public Law 104-208, 110 Stat. 3009-546), the immigration
30 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 E-
15 verify Program. While this verification is pending, any
16 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 E-verify Program
29 by requiring the subcontractor or independent contractor to
30 show documentary evidence of such enrollment provided by the

1 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 E-verify 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.--A government entity that fails to comply

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

4 (1) Procedure.--This act shall not be construed to deny any
5 procedural mechanisms included in the E-verify Program.

6 (m) Federal determination.--

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

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

20 Section 4. Ordinance.

21 A political subdivision of this Commonwealth may enact any
22 ordinance:

23 (1) Prohibiting the employment of unauthorized aliens or
24 other unlawful workers, may deny registration to employers
25 who employ unauthorized aliens and may allow lawful employees
26 to bring suit against such employers to recover treble
27 damages and reasonable attorney fees.

28 (2) Restricting the rental of housing to an alien
29 unlawfully present in the United States.

30 Section 5. Construction.

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

3 Section 6. Severability.

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

9 Section 7. Effective date.

10 This act shall take effect in 60 days.