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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 856 Session of  
2017

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INTRODUCED BY METCALFE, D. COSTA, CUTLER, CAUSER, EMRICK,  
MILLARD, PHILLIPS-HILL, WATSON, KAUFFMAN, DUNBAR, COX,  
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STAATS, GOODMAN, BURNS, EVERETT, READSHAW AND ROAE,  
MARCH 13, 2017

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REFERRED TO COMMITTEE ON STATE GOVERNMENT, MARCH 13, 2017

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AN ACT

1 Providing for the prohibition of employing unauthorized aliens.

2 The General Assembly of the Commonwealth of Pennsylvania

3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the Legal  
6 Pennsylvania Workers Act.

7 Section 2. Definitions.

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

11 "Agency." An agency, department, board or commission of a  
12 county, city, town or the Commonwealth that issues a license for  
13 purposes of operating a business in this Commonwealth.

14 "Attorney General." The Attorney General of the  
15 Commonwealth.

16 "Basic pilot program." The Basic Pilot Employment

1 Verification Program as jointly administered by the United  
2 States Department of Homeland Security and the Social Security  
3 Administration or its successor program, as authorized under  
4 Title IV, Subtitle A, of the Illegal Immigration Reform and  
5 Immigrant Responsibility Act of 1996.

6 "District attorney." The district attorney of the county in  
7 which the employee is employed.

8 "Employee." A person who performs employment services for an  
9 employer pursuant to an employment relationship.

10 "Employer." An individual or organization that transacts  
11 business in this Commonwealth, that has a license issued by an  
12 agency in this Commonwealth and that employs at least one  
13 individual. Employer includes the Commonwealth, any political  
14 subdivision of this Commonwealth and any self-employed person.

15 "Illegal Immigration Reform and Immigrant Responsibility Act  
16 of 1996." Division C of the act of September 30, 1996, (Public  
17 Law 104-208. 110 Stat. 3009-546).

18 "Knowingly employ an unauthorized alien." As described in  
19 section 274A of the Immigration Reform and Control Act of 1986  
20 (Public Law 99-603, 8 U.S.C. § 1324A).

21 "License." An agency permit, certificate, approval,  
22 registration, charter or similar form of authorization that is  
23 required by law and that is issued by an agency for the purposes  
24 of operating a business in this Commonwealth, and the following  
25 shall apply:

26 (1) A license shall include:

27 (i) Articles of incorporation, a certificate of  
28 limited partnership, certificate of organization or  
29 articles of association under 15 Pa.C.S. (relating to  
30 corporations and unincorporated associations).

1 (ii) A sales tax license, as required by the act of  
2 March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code  
3 of 1971.

4 (2) A license does not include any state-issued  
5 professional license.

6 "Secretary." The Secretary of the Department of Labor and  
7 Industry.

8 "Unauthorized alien." As defined in section 274A of the  
9 Immigration Reform and Control Act of 1986 (Public Law 99-603, 8  
10 U.S.C. § 1324A(h) (3)).

11 Section 3. Employment of unauthorized aliens.

12 An employer may not knowingly employ an unauthorized alien in  
13 this Commonwealth.

14 Section 4. Investigations.

15 (a) General rule.--On the receipt of a complaint that an  
16 employer knowingly employs an unauthorized alien, the Attorney  
17 General or a district attorney shall investigate whether the  
18 employer has violated section 3 and the following shall apply:

19 (1) When investigating a complaint the Attorney General  
20 or district attorney shall verify the work authorization of  
21 the alleged unauthorized alien with the Federal Government  
22 under section 642 of the Illegal Immigration Reform and  
23 Immigrant Responsibility Act of 1996 (8 U.S.C. § 1373(c))

24 (2) A State, county or local official may not attempt to  
25 independently make a final determination of whether an alien  
26 is authorized to work in the United States.

27 (b) False complaint.--A person who knowingly files a false  
28 complaint under this section is guilty of a class three  
29 misdemeanor.

30 (c) Duty of Attorney General or district attorney.--If,

1 after an investigation, the Attorney General or district  
2 attorney determines that the complaint is not false, the  
3 Attorney General or district attorney shall notify:

4 (1) The United States Immigration and Customs  
5 Enforcement of the unauthorized alien.

6 (2) The local law enforcement agency of the unauthorized  
7 alien.

8 (3) The district attorney to bring an action under  
9 section 5 if the complaint was originally filed with the  
10 Attorney General.

11 Section 5. Civil action.

12 (a) General rule.--An action for a violation of section 3  
13 shall be brought against the employer by the district attorney.

14 (b) Exception.--The district attorney may not bring an  
15 action against any employer for any violation of section 3 that  
16 occurs before January 1, 2018.

17 (c) Second or subsequent violation.--A second or subsequent  
18 violation shall be based on the employment of any unauthorized  
19 alien by an employer after an action has been brought against  
20 the employer for a violation of section 3, regardless of whether  
21 the employer knowingly employed the unauthorized alien.

22 Section 6. Penalties.

23 (a) First violation.--The following shall apply for the  
24 first violation during a three-year period:

25 (1) The court shall order:

26 (i) the employer to terminate the employment of all  
27 unauthorized aliens;

28 (ii) the employer to enter into a three-year  
29 probationary period, during which the employer shall file  
30 quarterly reports with the district attorney of each new

1 employee who is hired by the employer at the specific  
2 location where the unauthorized alien performed work;

3 (iii) the employer to file a signed affidavit with  
4 the district attorney, within three business days after  
5 the order is issued, that states the employer has  
6 terminated the employment of all unauthorized aliens; and

7 (iv) the appropriate agencies to suspend all  
8 licenses subject to this act that are held by the  
9 employer if the employer fails to file a signed affidavit  
10 with the district attorney within three business days  
11 after the order is issued.

12 (2) The court may order the appropriate agency to  
13 suspend a license held by the employer for not more than 10  
14 business days. The court shall consider the following factors  
15 in deciding to suspend a license, if relevant:

16 (i) The number of unauthorized aliens employed by  
17 the employer.

18 (ii) Any prior misconduct by the employer.

19 (iii) The degree of harm resulting from the  
20 violation.

21 (iv) Whether the employer made good faith efforts to  
22 comply with any applicable requirements.

23 (v) The duration of the violation.

24 (vi) The role of the directors, officers or  
25 principals of the employer in the violation.

26 (vii) Any other factors the court deems appropriate.

27 (3) The court shall send a copy of the court's order to  
28 the Attorney General, who shall maintain the copy under  
29 section 7.

30 (4) All licenses that are suspended under this

1 subsection shall remain suspended until the employer files  
2 the signed affidavit under paragraph (1)(iii) with the  
3 district attorney. Notwithstanding any other law, a suspended  
4 license shall be reinstated immediately by the appropriate  
5 agency upon the filing of the affidavit by the employer.

6 (b) Second or subsequent violation.--For a second or  
7 subsequent violation of section 3 during the period of  
8 probation, the following shall apply:

9 (1) The court shall order the appropriate agencies to  
10 permanently revoke all licenses that are held by the employer  
11 and that are necessary to operate the employer's business at  
12 the employer's business location where the unauthorized alien  
13 performed work.

14 (2) If a license is not necessary to operate the  
15 employer's business at the specific location where the  
16 unauthorized alien performed work, but a license is necessary  
17 to operate the employer's business in general, the court  
18 shall order the appropriate agencies to permanently revoke  
19 all licenses that are held by the employer at the employer's  
20 primary place of business.

21 Section 7. Records of the Attorney General.

22 The Attorney General shall maintain copies of court orders  
23 that are received under section 6(a)(3) and shall maintain a  
24 database of the employers who have a first violation of section  
25 3. The Attorney General shall make the court orders available on  
26 the Attorney General's website.

27 Section 8. Verifying the immigration status of an employee.

28 (a) General rule.--A court shall verify the immigration  
29 status of an employee through a query to the appropriate entity  
30 of the Federal Government under section 642 of the Illegal

1 Immigration Reform and Immigrant Responsibility Act of 1996 (8  
2 U.S.C. § 1373(c)).

3 (b) Rebuttable presumption of immigration status.--A  
4 determination of an employee's immigration status under  
5 subsection (a) creates a rebuttable presumption of the  
6 employee's lawful status. The court may take judicial notice of  
7 the Federal Government's determination and may request the  
8 Federal Government to provide automated or testimonial  
9 verification of the employee's immigration status.

10 (c) Intent of employer.--Evidence that an employer verified  
11 an employee's authorization for employment through the basic  
12 pilot program creates a rebuttable presumption that an employer  
13 did not violate section 3.

14 Section 9. Employer actions.

15 This article may not be construed to require an employer to  
16 take any action that the employer believes in good faith would  
17 violate Federal or State law.

18 Section 10. Verification of employment eligibility through the  
19 basic pilot program.

20 After December 31, 2017, an employer shall verify the  
21 employment eligibility of an employee through the basic pilot  
22 program.

23 Section 11. Employer notice.

24 On or before October 1, 2017, the Department of Revenue shall  
25 provide a notice to each employer that is required to withhold  
26 tax under the act of March 4, 1971 (P.L.6, No.2), known as the  
27 Tax Reform Code of 1971, which shall include the following:

28 (1) An explanation of the provisions of this act.

29 (2) Instructions for how an employer enrolls in the  
30 basic pilot program.

1 Section 12. Promulgation of a Statewide random auditing  
2 program.

3 The secretary shall develop a Statewide random auditing  
4 program to inspect private employers for compliance with the  
5 provisions of this act and shall promulgate regulations for the  
6 program under the act of June 25, 1982 (P.L.633, No.181), known  
7 as the Regulatory Review Act.

8 Section 13. Right of entry and inspection by inspectors.

9 The secretary or inspectors, agents, designees of the  
10 secretary or any elected official of this Commonwealth, upon  
11 proper presentation of credentials to the owner, manager or  
12 agent of the employer, may:

13 (1) enter at reasonable times and question either  
14 publicly or privately any employer, owner, manager or agent  
15 and the employees of the private employer; and

16 (2) inspect, investigate, reproduce or photograph  
17 business records relevant to determining compliance with this  
18 act.

19 Section 14. Effective date.

20 This act shall take effect in 60 days.