

# SENATE, No. 1842

## STATE OF NEW JERSEY 214th LEGISLATURE

INTRODUCED MAY 10, 2010

**Sponsored by:**

**Senator ROBERT W. SINGER**

**District 30 (Burlington, Mercer, Monmouth and Ocean)**

**Senator STEVEN V. OROHO**

**District 24 (Sussex, Hunterdon and Morris)**

**Co-Sponsored by:**

**Senators Doherty, Ciesla and Pennacchio**

**SYNOPSIS**

Prohibits the employment of unauthorized aliens and requires employers to use E-Verify program.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 4/12/2011)**

1 AN ACT concerning the employment of unauthorized aliens and  
2 supplementing Title 34 of the Revised Statutes.

3

4 **BE IT ENACTED** *by the Senate and General Assembly of the State*  
5 *of New Jersey:*

6

7 1. As used in this act:

8 "Agency" means any agency, department, board or commission  
9 of this State, or of any political subdivisions of this State, that  
10 issues a license for purposes of operating a business in this State.

11 "Commissioner" means the Commissioner of the Department of  
12 Labor and Workforce Development

13 "E-Verify program" means the electronic verification of work  
14 authorization program of the Illegal Immigration Reform and  
15 Immigration Responsibility Act of 1996, Pub.L. 104-208 (8 U.S.C.  
16 s.1324a), jointly operated by the United States Department of  
17 Homeland Security and the Social Security Administration or its  
18 successor program.

19 "Employee" means any individual who is employed by an  
20 employer.

21 "Employer" means any individual or entity that transacts  
22 business in this State that employs one or more individuals who  
23 perform employment services in this State. "Employer" includes the  
24 State, any political subdivision of this State and self-employed  
25 persons.

26 "Intentionally" means, with respect to a result or to conduct  
27 described in this act, that a person's objective is to cause that result  
28 or to engage in that conduct.

29 "Knowingly employ an unauthorized alien" means those actions  
30 described in 8 U.S.C. s.1324a. This term shall be interpreted  
31 consistently with 8 U.S.C. s.1324a and any applicable federal rules  
32 and regulations.

33 "License" means any agency permit, certificate, approval,  
34 registration, charter or similar form of authorization that is required  
35 by law and that is issued by any agency for the purposes of  
36 operating a business in this State, and additionally includes, but is  
37 not limited to:

38 (1) A certificate of incorporation pursuant to N.J.S.14A:2-1 et  
39 seq.

40 (2) A certificate of authority pursuant to N.J.S.14A:13-1 et seq.

41 (3) A statement of qualification or a statement of foreign  
42 qualification pursuant to P.L.2000, c.161 (C.42:1A-47 et seq.)

43 (4) A certificate of limited partnership or a certificate of  
44 authority pursuant to P.L.1983, c.489 (C.42:2A-14 et seq.)

45 (5) A certificate of formation pursuant to P.L.1993, c.210  
46 (C.42:2B-1 et seq.)

1 "Unauthorized alien" means an alien who does not have the legal  
2 right or authorization under federal law to work in the United States  
3 as described in 8 U.S.C. s.1324a(h)(3).

4  
5 2. a. After December 31, 2010, all employers, who employ  
6 100 or more employees, shall verify the employment eligibility of  
7 all new employees through the E-Verify program.

8 b. After December 31 2011, all employers, who employ less  
9 than 100 employees, shall verify the employment eligibility of all  
10 new employees through the E-Verify program.

11  
12 3. a. The commissioner shall develop a Statewide random  
13 auditing program to inspect private employers for compliance with  
14 section 2 of this act.

15 b. Upon receipt of a written and signed complaint against an  
16 employer, or upon an investigation initiated by the commissioner  
17 for good cause, if the commissioner finds reasonable grounds exist  
18 that an employer allegedly violated section 2, the commissioner  
19 shall institute an investigation of the alleged violation.

20 c. Upon a finding of an occurrence involving a violation after a  
21 random audit pursuant to subsection a., or after an investigation  
22 pursuant to subsection b., the employer shall be assessed a civil  
23 penalty of not less than one hundred dollars and not more than one  
24 thousand dollars for each violation. For a first occurrence involving  
25 a violation of section 2, if, upon notification by the commissioner of  
26 a violation, the employer complies within seventy-two hours, the  
27 employer shall not be assessed a penalty. Any subsequent  
28 occurrence involving a violation of section 2 by the employer shall  
29 result in the assessment of a civil penalty by the commissioner.  
30 However, if the employer has not committed a violation of section 2  
31 within the previous five years, a subsequent occurrence shall be  
32 treated as a first occurrence.

33  
34 4. An employer shall not intentionally employ an unauthorized  
35 alien or knowingly employ an unauthorized alien.

36  
37 5. a. On receipt of a complaint that an employer allegedly  
38 intentionally employs an unauthorized alien or knowingly employs  
39 an unauthorized alien, the Attorney General or county prosecutor  
40 shall investigate whether the employer has violated subsection a. of  
41 this section. When investigating a complaint, the Attorney General  
42 or county prosecutor shall verify the work authorization of the  
43 alleged unauthorized alien with the federal government pursuant to  
44 8 U.S.C. s.1373(c). A state, county or local official shall not attempt  
45 to independently make a final determination as to whether an alien  
46 is authorized to work in the United States. An alien's immigration  
47 status or work authorization status shall be verified with the federal  
48 government pursuant to 8 U.S.C. s.1373(c).

- 1       b. If, after an investigation, the Attorney General or county  
2 prosecutor determines that the complaint is not frivolous:
- 3       (1) The Attorney General or county prosecutor shall notify the  
4 United States Immigration and Customs Enforcement of the  
5 unauthorized alien;
- 6       (2) The Attorney General or county prosecutor shall notify the  
7 local law enforcement agency of the unauthorized alien; and
- 8       (3) The Attorney General shall notify the appropriate county  
9 prosecutor to bring an action pursuant to section 4 of this act if the  
10 complaint was originally filed with the Attorney General.

11

12       6. a. An action for a violation of section 4 of this act shall be  
13 brought against the employer by the county prosecutor in the county  
14 where the unauthorized alien employee is employed. The county  
15 prosecutor shall not bring an action against any employer for any  
16 violation of section 4 that occurs before January 1, 2011. A second  
17 violation shall be based only on an unauthorized alien who is  
18 employed by the employer after an action has been brought for a  
19 previous violation of section 4.

20       b. For any action in Superior Court under this act, the court  
21 shall expedite the action, including assigning the hearing at the  
22 earliest practicable date.

23

24       7. On a finding of a violation of section 4 of this act:

25       a. For a first violation during a three year period that is a  
26 knowing violation the court:

27       (1) Shall order the employer to terminate the employment of all  
28 unauthorized aliens.

29       (2) Shall order the employer to be subject to a three year  
30 probationary period. During the probationary period the employer  
31 shall file quarterly reports with the county prosecutor of each new  
32 employee who is hired by the employer at the specific location  
33 where the unauthorized alien performed work.

34       (3) Shall order the employer to file a signed sworn affidavit with  
35 the county prosecutor within three business days after the order is  
36 issued. The affidavit shall state that the employer has terminated the  
37 employment of all unauthorized aliens and that the employer will  
38 not intentionally or knowingly employ an unauthorized alien. The  
39 court shall order the appropriate agencies to suspend all licenses  
40 subject to this paragraph (3) that are held by the employer if the  
41 employer fails to file a signed sworn affidavit with the county  
42 prosecutor within three business days after the order is issued. All  
43 licenses that are suspended under this paragraph (3) shall remain  
44 suspended until the employer files a signed sworn affidavit with the  
45 county prosecutor. Notwithstanding any other law, on filing of the  
46 affidavit, the suspended licenses shall be reinstated immediately by  
47 the appropriate agencies. For the purposes of this paragraph (3), the  
48 licenses that are subject to suspension under this paragraph (3) are

1 all licenses that are held by the employer and that are necessary to  
2 operate the employer's business at the employer's business location  
3 where the unauthorized alien performed work. If a license is not  
4 necessary to operate the employer's business at the specific location  
5 where the unauthorized alien performed work, but a license is  
6 necessary to operate the employer's business in general, the licenses  
7 that are subject to suspension under this paragraph (3) are all  
8 licenses that are held by the employer at the employer's primary  
9 place of business. On receipt of the court's order and  
10 notwithstanding any other law, the appropriate agencies shall  
11 suspend the licenses according to the court's order. The court shall  
12 send a copy of the court's order to the Attorney General and the  
13 Attorney General shall maintain the copy pursuant to section 8 of  
14 this act.

15 (4) May order the appropriate agencies to suspend all licenses  
16 described in paragraph (3) of this subsection that are held by the  
17 employer, not to exceed 10 business days. The court shall base its  
18 decision to suspend under paragraph (4) on any evidence or  
19 information submitted to it during the action for a violation of this  
20 section and shall consider the following factors, if relevant:

21 (a) The number of unauthorized aliens employed by the  
22 employer.

23 (b) Any prior misconduct by the employer.

24 (c) The degree of harm resulting from the violation.

25 (d) Whether the employer made good faith efforts to comply  
26 with any applicable requirements.

27 (e) The duration of the violation.

28 (f) The role of the directors, officers or principals of the  
29 employer in the violation.

30 (g) Any other factors the court deems appropriate.

31 b. For a first violation during a five year period that is an  
32 intentional violation of section 4, the court shall:

33 (1) Order the employer to terminate the employment of all  
34 unauthorized aliens.

35 (2) Order the employer to be subject to a five year probationary  
36 period. During the probationary period the employer shall file  
37 quarterly reports with the county prosecutor of each new employee  
38 who is hired by the employer at the specific location where the  
39 unauthorized alien performed work.

40 (3) Order the appropriate agencies to suspend all licenses,  
41 described in paragraph (3) of subsection a. of this section that are  
42 held by the employer for a minimum of 10 days. The court shall  
43 base its decision on the length of the suspension under this  
44 paragraph (3) on any evidence or information submitted to it during  
45 the action for a violation of this subsection and shall consider the  
46 following factors, if relevant:

47 (a) The number of unauthorized aliens employed by the  
48 employer.

- 1 (b) Any prior misconduct by the employer.  
2 (c) The degree of harm resulting from the violation.  
3 (d) Whether the employer made good faith efforts to comply  
4 with any applicable requirements.  
5 (e) The duration of the violation.  
6 (f) The role of the directors, officers or principals of the  
7 employer in the violation.  
8 (g) Any other factors the court deems appropriate.  
9 (4) Order the employer to file a signed sworn affidavit with the  
10 county prosecutor. The affidavit shall state that the employer has  
11 terminated the employment of all unauthorized aliens and that the  
12 employer will not intentionally or knowingly employ an  
13 unauthorized alien. All licenses that are suspended under this  
14 paragraph shall remain suspended beyond the minimum 10 days  
15 required in paragraph (3) of subsection b. of this section until the  
16 employer files a signed sworn affidavit with the county prosecutor.  
17 For the purposes of this paragraph, the licenses that are subject to  
18 suspension under this paragraph are all licenses that are held by the  
19 employer and that are necessary to operate the employer's business  
20 at the employer's business location where the unauthorized alien  
21 performed work. If a license is not necessary to operate the  
22 employer's business at the specific location where the unauthorized  
23 alien performed work, but a license is necessary to operate the  
24 employer's business in general, the licenses that are subject to  
25 suspension under this subdivision are all licenses that are held by  
26 the employer at the employer's primary place of business. On  
27 receipt of the court's order and notwithstanding any other law, the  
28 appropriate agencies shall suspend the licenses according to the  
29 court's order. The court shall send a copy of the court's order to the  
30 Attorney General and the Attorney General shall maintain the copy  
31 pursuant to section 8 of this act.  
32 c. For a second violation of section 4 of this act during the  
33 period of probation, the court shall order the appropriate agencies to  
34 permanently revoke all licenses that are held by the employer and  
35 that are necessary to operate the employer's business at the  
36 employer's business location where the unauthorized alien  
37 performed work. If a license is not necessary to operate the  
38 employer's business at the specific location where the unauthorized  
39 alien performed work, but a license is necessary to operate the  
40 employer's business in general, the court shall order the appropriate  
41 agencies to permanently revoke all licenses that are held by the  
42 employer at the employer's primary place of business. On receipt of  
43 the order and notwithstanding any other law, the appropriate  
44 agencies shall immediately revoke the licenses.  
45  
46 8. The Attorney General shall maintain copies of court orders  
47 that are received pursuant to section 5 of this act and shall maintain  
48 a database of the employers who have a first violation of section 4

1 of this act and make the court orders available on the Attorney  
2 General's website.

3  
4 9. a. In determining whether an employee is an unauthorized  
5 alien, the court shall consider only the federal government's  
6 determination pursuant to 8 U.S.C. s.1373(c). The federal  
7 government's determination creates a rebuttable presumption of the  
8 employee's lawful status. The court may take judicial notice of the  
9 federal government's determination and may request the federal  
10 government to provide automated or testimonial verification  
11 pursuant to 8 U.S.C. s.1373(c).

12 b. For the purposes of this section, proof of verifying the  
13 employment authorization of an employee through the E-Verify  
14 program creates a rebuttable presumption that an employer did not  
15 intentionally employ an unauthorized alien or knowingly employ an  
16 unauthorized alien.

17 c. For the purposes of this section, an employer who  
18 establishes that it has complied in good faith with the requirements  
19 of 8 U.S.C. s.1324b establishes an affirmative defense that the  
20 employer did not intentionally or knowingly employ an  
21 unauthorized alien.

22  
23 10. This act shall not be construed to require an employer to take  
24 any action that the employer believes in good faith would violate  
25 federal or State law.

26  
27 11. The Commissioner of the Department of Labor and  
28 Workforce Development shall adopt, pursuant to the  
29 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
30 seq.), rules and regulations as necessary to effectuate the purposes  
31 of sections 2 and 3 of this act.

32  
33 12. This act shall take effect January 1, 2011.

34  
35  
36 STATEMENT

37  
38 This bill requires every employer, before hiring an employee, to  
39 verify the employment eligibility of the employee through the E-  
40 Verify program. E-Verify is an electronic verification of work  
41 authorization program jointly operated by the United States  
42 Department of Homeland Security and the Social Security  
43 Administration. The bill provides for employers who employ 100 or  
44 more employees to comply with the E-Verify requirement by  
45 December 31, 2010. Employers who employ less than 100  
46 employees must comply with the E-Verify requirement by  
47 December 31, 2011.

1       The bill directs the Commissioner of the Department of Labor  
2 and Workforce Development to develop a Statewide random  
3 auditing program to inspect private employers for compliance with  
4 the E-Verify requirement. The commissioner is also directed, upon  
5 receipt of a written and signed complaint against an employer, or  
6 upon an investigation initiated by the commissioner for good cause,  
7 to institute an investigation if the commissioner finds reasonable  
8 grounds exist that an employer allegedly violated the E-Verify  
9 requirement.

10       The bill provides for the assessment of a civil penalty of not less  
11 than one hundred dollars and not more than one thousand dollars on  
12 employers found to be in violation of the E-Verify requirement. For  
13 a first occurrence involving a violation, if, upon notification by the  
14 commissioner, the employer complies within seventy-two hours, the  
15 employer shall not be assessed a penalty. Any subsequent  
16 occurrence involving a violation by the employer results in the  
17 assessment of a civil penalty by the commissioner. However, if the  
18 employer has not committed a violation of the E-Verify requirement  
19 within the previous five years, a subsequent occurrence shall be  
20 treated as a first occurrence.

21       The bill also prohibits the employment of unauthorized aliens. It  
22 imposes penalties on employers who knowingly or intentionally  
23 employ unauthorized aliens. For the first violation where an  
24 employer knowingly hired unauthorized aliens, a court shall order  
25 the employer to terminate such employment, to be subject to a three  
26 year probationary period during which the employer shall submit  
27 quarterly reports for each new hire, to file a sworn affidavit within  
28 three business days after the order has been issued or face the  
29 suspension of any business license held by the employer until such  
30 time a signed sworn affidavit is filed. In addition, a court may  
31 consider a number of factors surrounding the violation and order the  
32 suspension of any business license for a period not to exceed ten  
33 business days.

34       For the first violation where an employer intentionally hired  
35 unauthorized aliens, a court shall order the employer to terminate  
36 such employment; a five year probationary period during which the  
37 employer shall submit quarterly reports for each new hire; the  
38 suspension of any business license for a minimum ten days after  
39 considering all factors surrounding the violation; and the employer  
40 to file a sworn affidavit until which all licenses shall remain  
41 suspended.

42       For any second violation of knowingly or intentionally  
43 employing an unauthorized alien, a court shall order the permanent  
44 revocation of any and all of the employers' business licenses issued  
45 by the State or any political subdivisions of the State.