

SENATE, No. 164

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator ROBERT W. SINGER

District 30 (Monmouth and Ocean)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Senators Doherty, Pennacchio and A.R.Bucco

SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/26/2012)

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

1 status or work authorization status shall be verified with the federal
2 government pursuant to 8 U.S.C. s.1373(c).

3 b. If, after an investigation, the Attorney General or county
4 prosecutor determines that the complaint is not frivolous:

5 (1) The Attorney General or county prosecutor shall notify the
6 United States Immigration and Customs Enforcement of the
7 unauthorized alien;

8 (2) The Attorney General or county prosecutor shall notify the
9 local law enforcement agency of the unauthorized alien; and

10 (3) The Attorney General shall notify the appropriate county
11 prosecutor to bring an action pursuant to section 4 of this act if the
12 complaint was originally filed with the Attorney General.

13

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

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

25

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

27 a. For a first violation during a three year period that is a
28 knowing violation the court:

29 (1) Shall order the employer to terminate the employment of all
30 unauthorized aliens.

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

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

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

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

24 (a) The number of unauthorized aliens employed by the
25 employer.

26 (b) Any prior misconduct by the employer.

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

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

30 (e) The duration of the violation.

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

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

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

36 (1) Order the employer to terminate the employment of all
37 unauthorized aliens.

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

43 (3) Order the appropriate agencies to suspend all licenses,
44 described in paragraph (3) of subsection a. of this section that are
45 held by the employer for a minimum of 10 days. The court shall
46 base its decision on the length of the suspension under this
47 paragraph (3) on any evidence or information submitted to it during

1 the action for a violation of this subsection and shall consider the
2 following factors, if relevant:

3 (a) The number of unauthorized aliens employed by the
4 employer.

5 (b) Any prior misconduct by the employer.

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

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

9 (e) The duration of the violation.

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

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

13 (4) Order the employer to file a signed sworn affidavit with the
14 county prosecutor. The affidavit shall state that the employer has
15 terminated the employment of all unauthorized aliens and that the
16 employer will not intentionally or knowingly employ an
17 unauthorized alien. All licenses that are suspended under this
18 paragraph shall remain suspended beyond the minimum 10 days
19 required in paragraph (3) of subsection b. of this section until the
20 employer files a signed sworn affidavit with the county prosecutor.
21 For the purposes of this paragraph, the licenses that are subject to
22 suspension under this paragraph are all licenses that are held by the
23 employer and that are necessary to operate the employer's business
24 at the employer's business location where the unauthorized alien
25 performed work. If a license is not necessary to operate the
26 employer's business at the specific location where the unauthorized
27 alien performed work, but a license is necessary to operate the
28 employer's business in general, the licenses that are subject to
29 suspension under this subdivision are all licenses that are held by
30 the employer at the employer's primary place of business. On
31 receipt of the court's order and notwithstanding any other law, the
32 appropriate agencies shall suspend the licenses according to the
33 court's order. The court shall send a copy of the court's order to the
34 Attorney General and the Attorney General shall maintain the copy
35 pursuant to section 8 of this act.

36 c. For a second violation of section 4 of this act during the
37 period of probation, the court shall order the appropriate agencies to
38 permanently revoke all licenses that are held by the employer and
39 that are necessary to operate the employer's business at the
40 employer's business location where the unauthorized alien
41 performed work. If a license is not necessary to operate the
42 employer's business at the specific location where the unauthorized
43 alien performed work, but a license is necessary to operate the
44 employer's business in general, the court shall order the appropriate
45 agencies to permanently revoke all licenses that are held by the
46 employer at the employer's primary place of business. On receipt of

1 the order and notwithstanding any other law, the appropriate
2 agencies shall immediately revoke the licenses.

3

4 8. The Attorney General shall maintain copies of court orders
5 that are received pursuant to section 5 of this act and shall maintain
6 a database of the employers who have a first violation of section 4
7 of this act and make the court orders available on the Attorney
8 General's website.

9

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

18 b. For the purposes of this section, proof of verifying the
19 employment authorization of an employee through the E-Verify
20 program creates a rebuttable presumption that an employer did not
21 intentionally employ an unauthorized alien or knowingly employ an
22 unauthorized alien.

23 c. For the purposes of this section, an employer who
24 establishes that it has complied in good faith with the requirements
25 of 8 U.S.C. s.1324b establishes an affirmative defense that the
26 employer did not intentionally or knowingly employ an
27 unauthorized alien.

28

29 10. This act shall not be construed to require an employer to take
30 any action that the employer believes in good faith would violate
31 federal or State law.

32

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

38

39 12. This act shall take effect January 1, 2011.

40

41

42

STATEMENT

43

44 This bill requires every employer, before hiring an employee, to
45 verify the employment eligibility of the employee through the E-
46 Verify program. E-Verify is an electronic verification of work
47 authorization program jointly operated by the United States

1 Department of Homeland Security and the Social Security
2 Administration. The bill provides for employers who employ 100 or
3 more employees to comply with the E-Verify requirement by
4 December 31, 2010. Employers who employ less than 100
5 employees must comply with the E-Verify requirement by
6 December 31, 2011.

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

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

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

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

S164 SINGER, OROHO

9

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