ASSEMBLY, No. 4077

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MAY 7, 2020

Sponsored by:
Assemblyman RONALD S. DANCER
District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.

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

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

1. As used in this act:

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

“Commissioner” means the Commissioner of Labor and Workforce Development

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

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

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

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

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

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

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

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

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

(4) A certificate of limited partnership or a certificate of authority pursuant to P.L.1983, c.489 (C.42:2A-1 et seq.)

(5) A certificate of formation pursuant to P.L.2012, c.50 (C.42:2C-1 et seq.)

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

2. a. After December 31, 2020, all employers, who employ 100 or more employees, shall verify the employment eligibility of all new employees through the E-Verify program.

b. After December 31, 2021, all employers, who employ less than 100 employees, shall verify the employment eligibility of all new employees through the E-Verify program.

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

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

c. Upon a finding of an occurrence involving a violation after a random audit pursuant to subsection a. of this section, or after an investigation pursuant to subsection b. of this section, the employer shall be assessed a civil penalty of not less than $100 and not more than $1000 for each violation. For a first occurrence involving a violation of section 2, if, upon notification by the commissioner of a violation, the employer complies within seventy-two hours, the employer shall not be assessed a penalty. Any subsequent occurrence involving a violation of section 2 by the employer shall result in the assessment of a civil penalty by the commissioner. However, if the employer has not committed a violation of section 2 within the previous five years, a subsequent occurrence shall be treated as a first occurrence.

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

5. a. On receipt of a complaint that an employer allegedly intentionally employs an unauthorized alien or knowingly employs an unauthorized alien, the Attorney General or county prosecutor shall investigate whether the employer has violated section 4 of this act. When investigating a complaint, the Attorney General or county prosecutor shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 U.S.C. s.1373(c). A State, county or local official shall not attempt to independently make a final determination as to whether an alien is authorized to work in the United States. An alien's immigration status or work authorization status shall be verified with the federal government pursuant to 8 U.S.C. s.1373(c).

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

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

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

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

6. a. An action for a violation of section 4 of this act shall be brought against the employer by the county prosecutor in the county where the unauthorized alien employee is employed. The county prosecutor shall not bring an action against any employer for any violation of section 4 that occurs before January 1, 2021. A second violation shall be based only on an unauthorized alien who is employed by the employer after an action has been brought for a previous violation of section 4.

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

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

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

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

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

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

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

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

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

(b) Any prior misconduct by the employer.

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

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

(e) The duration of the violation.

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

(g) Any other factors the court deems appropriate.

b. For a first violation during a five year period that is an intentional violation, the court:

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

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

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

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

(b) Any prior misconduct by the employer.

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

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

(e) The duration of the violation.

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

(g) Any other factors the court deems appropriate.

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

c. For a second violation of section 4 of this act during the period of probation, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer and that are necessary to operate the employer's business at the employer's business location where the unauthorized alien performed work. If a license is not necessary to operate the employer's business at the specific location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer at the employer's primary place of business. On receipt of the order and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses.

8. The Attorney General shall maintain copies of court orders that are received pursuant to section 5 of this act and shall maintain a database of the employers who have a first violation of section 4

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

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

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

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

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

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

12. This act shall take effect January 1, 2021.

STATEMENT

This bill requires every employer, before hiring an employee, to verify the employment eligibility of the employee through the E-Verify program. E-Verify is an electronic verification of work authorization program jointly operated by the United States Department of Homeland Security and the Social Security Administration. The bill provides for employers who employ 100 or more employees to comply with the E-Verify requirement by December 31, 2020. Employers who employ less than 100 employees must comply with the E-Verify requirement by December 31, 2020.

The bill directs the Commissioner of Labor and Workforce Development to develop a Statewide random auditing program to

inspect private employers for compliance with the E-Verify requirement. The commissioner is also directed, upon receipt of a written and signed complaint against an employer, or upon an investigation initiated by the commissioner for good cause, to institute an investigation if the commissioner finds reasonable grounds exist that an employer allegedly violated the E-Verify requirement.

The bill provides for the assessment of a civil penalty of not less than $100 and not more than $1000 on employers found to be in violation of the E-Verify requirement. For a first occurrence involving a violation, if, upon notification by the commissioner, the employer complies within seventy-two hours, the employer shall not be assessed a penalty. Any subsequent occurrence involving a violation by the employer results in the assessment of a civil penalty by the commissioner. However, if the employer has not committed a violation of the E-Verify requirement within the previous five years, a subsequent occurrence shall be treated as a first occurrence.

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

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

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