



Ohio Legislative Service Commission

Bill Analysis

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(As Introduced)

Reps. Combs and Bubp, Thompson, R. Adams, J. Adams, Brenner, Ruhl, Derickson, Johnson, Newbold, McClain, Maag, Young, Martin

BILL SUMMARY

- Prohibits an employer from either knowingly or purposefully employing an unauthorized alien.
- Requires every employer, after hiring an employee, to verify the employment eligibility of the employee through the federal E-Verify program.
- Requires the Attorney General or a prosecuting attorney, upon receipt of a complaint alleging that an employer either knowingly or purposefully employs an unauthorized alien, to investigate whether the employer has committed such a violation.
- Creates a rebuttable presumption that an employer did not either knowingly or purposefully employ an unauthorized alien if the employer verified the employment authorization of the employee through the E-Verify program.
- Prescribes penalties that a court must impose upon an employer if the court finds that the employer either knowingly or purposefully employed an unauthorized alien.

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CONTENT AND OPERATION

The bill requires an employer to verify a newly hired employee's employment eligibility through the federal E-Verify program and enacts prohibitions and penalties regarding the employment of unauthorized aliens.

Prohibitions regarding the employment of unauthorized aliens

The bill prohibits both of the following:

- (1) An employer from knowingly employing an unauthorized alien;¹
- (2) An employer from purposefully employing an unauthorized alien;²

"Knowingly employ an unauthorized alien" means the actions described in federal law and interpreted consistent with federal law, which includes the hiring, or recruiting or referring for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien with respect to such employment.³ An "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 federal law.⁴

For purposes of the first prohibition, which prohibits an employer from knowingly employing an unauthorized alien, an employer violates that prohibition if the employer uses a contract, subcontract, or other independent contractor agreement to obtain the labor of an alien in this state and the employer knowingly contracts with an alien the employer knows is an unauthorized alien or with a person whom the employer knows employs or contracts with an unauthorized alien to perform the labor.⁵ For purposes of the second prohibition, which prohibits an employer from purposefully employing an unauthorized alien, an employer violates that prohibition if the employer

¹ R.C. 4113.82(A)(1).

² R.C. 4113.82(A)(2). A person who acts purposefully is more culpable than a person who acts knowingly.

³ R.C. 4113.81(B) and 8 U.S.C.A. 1324a(a)(1)(A).

⁴ R.C. 4113.81(D).

⁵ R.C. 4113.82(C).

uses a contract, subcontract, or other independent contractor agreement to obtain the labor of an alien in this state and the employer purposefully contracts with an alien the employer knows is an unauthorized alien or with a person whom the employer knows employs or contracts with an unauthorized alien to perform the labor.⁶

Employer verification of the employment eligibility of an employee

The bill requires every employer, after hiring an employee, to verify the employment eligibility of the employee through the federal E-Verify program.⁷ This program is an employment verification pilot program that is jointly administered by the United States Department of Homeland Security and the Social Security Administration or any of its successor programs.⁸

Investigation of a violation of the prohibition

The bill requires the Attorney General to prescribe a complaint form for a person to use to allege a violation of either of the two prohibitions regarding an employer hiring an unauthorized alien. The Attorney General cannot require the complainant to list the complainant's Social Security number on the complaint form or to have the complaint form notarized. A complainant is required to submit the complaint to the Attorney General or to the prosecuting attorney of the county in which the alleged unauthorized alien is or was employed by the employer. Upon receipt of a complaint on the prescribed complaint form, the Attorney General or prosecuting attorney is required to investigate whether the employer has violated either of the two employer-related prohibitions of the bill, as alleged in the complaint. Nothing in the bill, however, may be construed to prohibit an individual from filing an anonymous complaint on a form other than the prescribed complaint form. If the Attorney General or a prosecuting attorney receives a complaint that is not submitted on a prescribed complaint form, the Attorney General or prosecuting attorney may, but is not required to, investigate whether the employer has violated either of the two prohibitions regarding an employer hiring an unauthorized alien. The Attorney General and all prosecuting attorneys are prohibited from investigating complaints that are based solely on race, color, or national origin.

The county sheriff or any other local law enforcement officer may assist in investigating a complaint. When investigating a complaint, the Attorney General or prosecuting attorney must verify the work authorization of the alleged unauthorized

⁶ R.C. 4113.82(D).

⁷ R.C. 4113.82(B).

⁸ R.C. 4113.81(A).

alien with the federal government pursuant to federal law.⁹ An officer or employee of the state or a political subdivision of the state is prohibited from independently attempting to make a final determination on whether an alien is authorized to work in the United States.¹⁰

Required actions if the complaint is not false and frivolous

Under the bill, if, after an investigation is conducted, the Attorney General or prosecuting attorney determines that the complaint is not false and frivolous, the Attorney General or prosecuting attorney is required to do all of the following, as applicable:

(1) Notify the United States Department of Homeland Security or its successor agency regarding the status of the unauthorized alien;

(2) Notify the local law enforcement agency regarding the status of the unauthorized alien;

(3) If the complaint was filed originally with the Attorney General, notify the appropriate prosecuting attorney to allow the prosecuting attorney to bring an action against the employer of the unauthorized alien.¹¹

If a prosecuting attorney of the county where an unauthorized alien employee allegedly is or was employed by an employer conducts an investigation and determines that reasonable evidence exists that the employer violated either of the bill's prohibitions regarding the employment of an unauthorized alien, or if that prosecuting attorney receives a notice from the Attorney General allowing the prosecuting attorney to bring an action for such a violation, the prosecuting attorney must bring an action against the employer for the violation. The action must be filed in the court of common pleas of the county where the unauthorized alien employee allegedly is or was employed by the employer. The prosecuting attorney cannot bring any such action against any employer for any violation of the bill's two prohibitions that occurred prior to the bill's effective date. A second violation is required to be based only on the employment of any additional unauthorized aliens employed by the employer after a

⁹ The applicable federal law is the "Omnibus Consolidated Appropriations Act, 1997," 110 Stat. 3009, 8 U.S.C. 1373(c), as amended.

¹⁰ R.C. 4113.83.

¹¹ R.C. 4113.84(A)(1) to (3).

previous action has been brought against that employer for a violation of one of the two prohibitions.¹²

For any action brought pursuant to these provisions, the court is required to expedite the action, including assigning the hearing at the earliest practicable date.¹³

Rebuttable presumption of an alien's immigration status; affirmative defense

The bill provides that in a court action brought pursuant to the bill, for purposes of determining whether an employee is an unauthorized alien, a court is required to consider only a determination with respect to that alien's immigration status made by the federal government. The federal government's determination creates a rebuttable presumption of the alien'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.¹⁴

For purposes of a court action relating to an employer's employment of an unauthorized alien, proof of verifying the employment authorization of an employee through the E-Verify program creates a rebuttable presumption that the employer did not knowingly or purposefully employ an unauthorized alien.¹⁵ In addition, for purposes of such a court action, an employer who establishes that the employer has complied in good faith with the requirements of applicable federal law establishes an affirmative defense that the employer did not knowingly or purposefully employ an unauthorized alien in violation of the bill. An employer is considered to have complied with the requirements of applicable federal law, notwithstanding an isolated, sporadic, or accidental technical or procedural failure to meet the requirements, if a good faith attempt was made to comply with the requirements of the applicable federal provisions.¹⁶

It is an affirmative defense to a violation of either of the bill's two prohibitions that an employer was entrapped. To claim entrapment, the employer is required to admit to the substantial elements of the violation through the employer's testimony or

¹² R.C. 4113.84(B).

¹³ R.C. 4113.84(C).

¹⁴ R.C. 4113.85(A).

¹⁵ R.C. 4113.85(B).

¹⁶ R.C. 4113.85(C).

by the use of other evidence. An employer who asserts an entrapment defense has the burden of proving all of the following elements by a preponderance of the evidence:

- (1) The idea of committing the violation started with a peace officer or an agent of the officer rather than with the employer;
- (2) The peace officer or agent urged and induced the employer to commit the violation;
- (3) The employer was not predisposed to commit the violation before the peace officer or agent urged and induced the employer to commit the violation.¹⁷

An employer does not establish the defense of entrapment if the employer was predisposed to commit the violation and the peace officer or agent merely provided the employer with an opportunity to commit the violation. A peace officer or an agent of the officer has not entrapped an employer if the officer or agent merely used a ruse or concealed the officer's or agent's identity. The conduct of a peace officer or an agent of the officer may be considered in determining if an employer has proven entrapment.¹⁸

Required court-imposed penalties for violations

First violation of knowingly employing an unauthorized alien

If a court, in an action brought under the bill, determines that an employer has committed a first violation of the bill's prohibition regarding an employer "knowingly" employing an unauthorized alien, the court is required to do all of the following:

- (1) Order the employer to terminate the employment of all unauthorized aliens;
- (2) Order the employer to be subject to a three-year probationary period for the business location where the unauthorized alien performed work;
- (3) Order the employer to file a signed affidavit of the type prescribed in the bill (see below) with the prosecuting attorney of the county where the violation occurred within three business days after the order is issued.¹⁹

In addition, the court is permitted to, but is not required to, order the appropriate agencies to suspend all licenses specified in the bill that are held by the employer for a period not to exceed ten business days. In determining whether to suspend an

¹⁷ R.C. 4113.85(D)(1)(a) to (c).

¹⁸ R.C. 4113.85(D)(2).

¹⁹ R.C. 4113.86(A)(1)(a) to (c).

employer's licenses, the court must base its decision on any evidence or information submitted to the court during the action and also must consider any of the following factors, as applicable:

- (1) The number of unauthorized aliens employed by the employer;
- (2) Any prior misconduct committed by the employer;
- (3) The degree of harm resulting from the violation;
- (4) Whether the employer made good faith efforts to comply with any applicable requirements;
- (5) The duration of the violation;
- (6) The role of the directors, officers, or principals of the employer in the violation;
- (7) Any other factors the court considers appropriate.²⁰

During the probationary period the court may impose upon the employer, the employer is required to file quarterly reports in the form of new hire reports provided in existing child support law with the prosecuting attorney of the county where the violation occurred. Each such report must document each new employee who is hired by the employer after the date the court determined the employer committed the violation and who is employed at the business location where the unauthorized alien performed work.²¹

The affidavit the employer is required to file with the prosecuting attorney must state that the employer has terminated the employment of all unauthorized aliens employed by the employer in this state and that the employer will not purposefully or knowingly employ an unauthorized alien in this state. If the employer fails to file the affidavit with the prosecuting attorney within three business days after the date the order is issued, the court must order the appropriate agencies to suspend all licenses held by the employer. On receipt of the court's order and notwithstanding any other law to the contrary, the appropriate agencies are required to suspend the licenses according to the court's order. The court is required to send a copy of the court's order to the Attorney General, who must maintain the copy as required by the bill.

²⁰ R.C. 4113.86(A)(2)(a) to (g).

²¹ R.C. 4113.86(A)(3).

For the purposes of these license suspension provisions, a license subject to suspension is any license held by the employer specific to the business location where the unauthorized alien performed work.²² The bill defines "license" as meaning 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.²³ License includes all of the following:

(1) Articles of incorporation or organization under Title XVII of the Revised Code;

(2) A certificate of limited partnership or a license for a foreign corporation issued under state law.²⁴

"License" does not include any permit or license issued under any environmental laws as defined in existing law²⁵ or any professional license.²⁶

If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, any license held by the employer at the employer's primary place of business is subject to suspension. A license remains suspended until the employer files the required affidavit with the prosecuting attorney. Notwithstanding any other law to the contrary, the appropriate agency is required to reinstate the suspended license upon the employer's filing of the affidavit with the prosecuting attorney.²⁷

Second violation of knowingly employing an unauthorized alien

If a court determines that an employer has committed a second violation of the bill's prohibition regarding an employer's knowingly employing an unauthorized alien, the court is required to order the appropriate agencies to revoke permanently all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the court is required to order

²² R.C. 4113.86(A)(4).

²³ R.C. 4113.81(C)(1).

²⁴ R.C. 4113.81(C)(2)(a) to (c).

²⁵ Specifically, R.C. 3745.70.

²⁶ R.C. 4113.81(C)(3)(a) and (b).

²⁷ R.C. 4113.86(A)(4).

the appropriate agencies to revoke permanently 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 are required to revoke the licenses immediately.²⁸

A violation is considered a first violation by an employer at a business location if the violation did not occur during a probationary period ordered by the court under this bill for that employer's business location. A violation is considered a second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court under the bill for that employer's business location.²⁹

First violation of purposefully employing an unauthorized alien

If a court, in an action brought under the bill, determines that an employer has committed a first violation of the bill's prohibition regarding an employer "purposefully" employing an unauthorized alien, the court is required to do all of the following:

- (1) Order the employer to terminate the employment of all unauthorized aliens;
- (2) Order the employer to be subject to a five-year probationary period for the business location where the unauthorized alien performed work;
- (3) Order the appropriate agencies to suspend all licenses described previously in this analysis held by the employer for a minimum of ten days;
- (4) Order the employer to file a signed affidavit of the type described previously in this analysis with the prosecuting attorney of the county where the violation occurred within three business days after the order is issued.³⁰

During the probationary period, the employer is required to file quarterly reports in the form of new hire reports provided in existing child support law of each new employee who is hired by the employer after the date the court determined the employer committed the violation and who is employed at the business location where the unauthorized alien performed work.³¹

²⁸ R.C. 4113.86(B).

²⁹ R.C. 4113.86(C).

³⁰ R.C. 4113.87(A)(1)(a) to (d).

³¹ R.C. 4113.87(A)(2).

The court must base its decision on the length of the suspension, which must be at least ten days, on any evidence or information submitted during the court proceedings.³²

The affidavit must state that the employer has terminated the employment of all unauthorized aliens employed by the employer in this state and that the employer will not purposefully or knowingly employ an unauthorized alien in this state. If the employer fails to file the affidavit with the prosecuting attorney within three business days after the date the order is issued, the court must order the appropriate agencies to extend the suspension of all licenses that it previously ordered suspended held by the employer until the employer files the affidavit as required. On receipt of the court's order and notwithstanding any other law to the contrary, the appropriate agencies must extend the license suspensions in accordance with the court's order. The court must send a copy of the court's order to the Attorney General, who must maintain the copy as required by the bill. A license remains suspended until the employer files the required affidavit with the prosecuting attorney. Notwithstanding any other law to the contrary, the appropriate agency is required to reinstate the suspended license upon the employer's filing of the affidavit with the prosecuting attorney.³³

Second violation of purposefully employing an unauthorized alien

If a court determines that an employer has committed a second violation of the bill's prohibition regarding an employer's purposefully employing an unauthorized alien, the court is required to order the appropriate agencies to revoke permanently all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the court must order the appropriate agencies to revoke permanently 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 are required to revoke the licenses immediately.³⁴

A violation is considered a first violation by an employer at a business location if the violation did not occur during a probationary period ordered by the court under the bill for that employer's business location. A violation is considered a second violation

³² R.C. 4113.87(A)(3).

³³ R.C. 4113.87(A)(4).

³⁴ R.C. 4113.87(B).

by an employer at a business location if the violation occurred during a probationary period ordered by the court under the bill for that employer's business location.³⁵

Duties of the Attorney General

The bill requires the Attorney General to do all of the following:

(1) Maintain copies of all court orders received under the bill;

(2) Maintain a database that includes the name of the employer who has committed a first violation of either of the bill's two prohibitions regarding the employment of an unauthorized alien and the address of the business location where that violation occurred;

(3) Make the court orders available on the Attorney General's web site.³⁶

Prohibition against knowingly filing a false and frivolous complaint

The bill prohibits an individual from knowingly filing a false and frivolous complaint alleging the employment of an unauthorized alien.³⁷ Whoever knowingly files a false and frivolous complaint regarding the employment of an unauthorized alien is guilty of a misdemeanor of the fourth degree.³⁸

HISTORY

ACTION	DATE
Introduced	06-29-11

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³⁵ R.C. 4113.87(C).

³⁶ R.C. 4113.88(A) to (C).

³⁷ R.C. 4113.82(A)(3).

³⁸ R.C. 4113.99(D). A fourth-degree misdemeanor is punishable by a fine of not more than \$250, a jail term of not more than 30 days, or both.