

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0908.01 Kristen Forrestal x4217

HOUSE BILL 16-1202

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A BILL FOR AN ACT

101 CONCERNING THE REQUIREMENT THAT ALL EMPLOYERS IN THE STATE
102 VERIFY THE WORK ELIGIBILITY STATUS OF NEW EMPLOYEES
103 THROUGH THE FEDERAL ELECTRONIC VERIFICATION PROGRAM.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Current law requires employers in Colorado to examine the legal work status of newly hired employees, within 20 days after hiring, using paper-based forms of identification. The bill will instead require all employers, upon hiring a new employee on or after January 1, 2017, to participate in the federal electronic verification program (e-verify

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

program) to determine the work eligibility status of newly hired employees. Employers must retain a written or electronic copy of the employment eligibility information received through the e-verify program regarding each newly hired employee, and the director of the division of labor (director) in the department of labor and employment (department) may review employers' documentation and conduct random audits of employers to ensure compliance.

An employer is subject to a fine of up to \$5,000 for a first offense and up to \$25,000 for a second offense if the employer knowingly:

- ! Fails to submit the required documentation to the director;
- ! Submits false or fraudulent documentation; or
- ! Fails to participate in the e-verify program.

For a subsequent offense, the employer is subject to a fine of up to \$25,000 and suspension of all the employer's business licenses for up to 6 months.

The bill also requires the department, as part of its quarterly electronic publication to all employers in the state, to notify employers of the requirements of the bill and to include a link to its website, on which a permanent notice must be posted detailing the requirements of the bill and instructions for enrolling in the e-verify program. The secretary of state's website must also include information regarding the requirements of the bill and the penalties for noncompliance.

The bill takes effect January 1, 2017.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 8-2-122 as
3 follows:

4 **8-2-122. Employment verification requirements - audits - fine**
5 **for fraudulent documents - cash fund created - definitions.**

6 (1) **Definitions.** As used in this section, unless the context otherwise
7 requires:

8 (a) "BUSINESS LICENSE" MEANS A LICENSE, PERMIT, CERTIFICATE,
9 APPROVAL, REGISTRATION, CHARTER, OR SIMILAR FORM OF
10 AUTHORIZATION REQUIRED BY LAW AND ISSUED BY AN AGENCY FOR THE
11 PURPOSE OF OPERATING A BUSINESS IN THIS STATE.

12 (b) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND

1 EMPLOYMENT.

2 (a) (c) "Director" means the director of the division.

3 (b) (d) "Division" means the division of labor in the department
4 of labor and employment.

5 (e) (e) "Employer" means a person or entity that

6 ~~(f) Transacts business in Colorado;~~

7 ~~(H) At any time, employs another person to perform services of~~
8 ~~any nature; and~~

9 ~~(HH) Has control of the payment of wages for such services or is~~
10 ~~the officer, agent, or employee of the person or entity having control of~~
11 ~~the payment of wages~~ ENGAGES IN BUSINESS WHO HAS TEN OR MORE
12 EMPLOYEES. "EMPLOYER" INCLUDES THE STATE AND ANY POLITICAL
13 SUBDIVISION OF THE STATE WITH TEN OR MORE EMPLOYEES.

14 (f) "E-VERIFY PROGRAM" OR "PROGRAM" MEANS THE ELECTRONIC
15 EMPLOYMENT VERIFICATION PROGRAM, FORMERLY KNOWN AS THE "BASIC
16 PILOT PROGRAM", AUTHORIZED UNDER PUB.L. 104-208, DIVISION C, TITLE
17 IV, SUBTITLE A, 110 STAT. 3009-655 (SEPT. 30, 1996), AS AMENDED, AND
18 JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF
19 HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION, OR ITS
20 SUCCESSOR PROGRAM.

21 (g) "FEDERAL LAW" MEANS THE FEDERAL "IMMIGRATION AND
22 NATIONALITY ACT", AS AMENDED, 8 U.S.C. SEC. 1324a, AND ANY
23 FEDERAL REGULATIONS ADOPTED PURSUANT TO 8 U.S.C. SEC. 1324a.

24 ~~(d)~~ (h) "Unauthorized alien" has the same meaning as set forth in
25 8 U.S.C. sec. 1324a (h) (3).

26 (2) **Participation required.** (a) ~~On and after January 1, 2007,~~
27 ~~within twenty days after hiring a new employee, each employer in~~

1 ~~Colorado shall affirm that the employer has examined the legal work~~
2 ~~status of such newly hired employee and has retained file copies of the~~
3 ~~documents required by 8 U.S.C. sec. 1324a; that the employer has not~~
4 ~~altered or falsified the employee's identification documents; and that the~~
5 ~~employer has not knowingly hired an unauthorized alien. The employer~~
6 ~~shall keep a written or electronic copy of the affirmation, and of the~~
7 ~~documents required by 8 U.S.C. sec. 1324a, for the term of employment~~
8 ~~of each employee~~ PURSUANT TO FEDERAL LAW, IT IS UNLAWFUL FOR AN
9 EMPLOYER TO KNOWINGLY HIRE AN UNAUTHORIZED ALIEN.

10 (b) ON OR AFTER JANUARY 1, 2017, UPON HIRING A NEW
11 EMPLOYEE TO PERFORM WORK IN COLORADO, EACH EMPLOYER IN
12 COLORADO SHALL PARTICIPATE IN THE E-VERIFY PROGRAM FOR THE
13 PURPOSE OF VERIFYING THE WORK ELIGIBILITY STATUS OF EACH OF THE
14 EMPLOYER'S NEWLY HIRED EMPLOYEES. THE EMPLOYER SHALL RETAIN A
15 WRITTEN OR ELECTRONIC COPY OF THE EMPLOYMENT ELIGIBILITY
16 INFORMATION IT RECEIVES THROUGH THE E-VERIFY PROGRAM REGARDING
17 EACH NEWLY HIRED EMPLOYEE IN ACCORDANCE WITH E-VERIFY PROGRAM
18 STANDARDS.

19 (c) UPON HIRING A NEW EMPLOYEE TO PERFORM WORK IN
20 COLORADO ON OR AFTER JANUARY 1, 2017, AN EMPLOYER SHALL ENTER
21 INTO AN AGREEMENT AS REQUIRED BY THE UNITED STATES DEPARTMENT
22 OF HOMELAND SECURITY TO PARTICIPATE IN THE E-VERIFY PROGRAM AND
23 SHALL COMPLY WITH THE REQUIREMENTS FOR PARTICIPATING IN THE
24 PROGRAM. IF THE AGREEMENT IS TERMINATED BY THE UNITED STATES
25 DEPARTMENT OF HOMELAND SECURITY BASED ON THE EMPLOYER'S
26 FAILURE TO COMPLY WITH THE ESTABLISHED PROCEDURES OR LEGAL
27 REQUIREMENTS SET FORTH IN THE AGREEMENT, THE EMPLOYER IS SUBJECT

1 TO THE PENALTIES SET FORTH IN SUBSECTION (4) OF THIS SECTION.

2 (d) UPON ENTERING THE AGREEMENT DESCRIBED IN PARAGRAPH
3 (c) OF THIS SUBSECTION (2), THE EMPLOYER SHALL MAINTAIN A COPY OF
4 THE AGREEMENT, SHOWING THAT THE EMPLOYER IS AN ACTIVE
5 PARTICIPANT IN THE E-VERIFY PROGRAM, AND SHALL NOTIFY ITS
6 EMPLOYEES THAT IT IS PARTICIPATING IN THE PROGRAM IN THE MANNER
7 REQUIRED BY THE AGREEMENT.

8 (3) **Documentation.** Upon the request of the director, an employer
9 shall submit ~~documentation~~ to the director ~~that demonstrates that the~~
10 ~~employer is in compliance with the employment verification requirements~~
11 ~~specified in 8 U.S.C. sec. 1324a (b) and documentation that the employer~~
12 ~~has complied with the requirements of~~ COPIES OF THE E-VERIFY
13 EMPLOYMENT ELIGIBILITY INFORMATION REGARDING NEW EMPLOYEES
14 AND A COPY OF THE EMPLOYER'S AGREEMENT WITH THE UNITED STATES
15 DEPARTMENT OF HOMELAND SECURITY, AS REQUIRED BY subsection (2) of
16 this section. The director or the director's designee may conduct random
17 audits of employers in Colorado to obtain the documentation. When the
18 director has reason to believe that an employer has not ~~complied with the~~
19 ~~employment verification and examination requirements~~ ENROLLED IN THE
20 E-VERIFY PROGRAM OR HAS FAILED TO VERIFY A NEW EMPLOYEE THROUGH
21 THE E-VERIFY PROGRAM, the director shall request the employer to submit
22 the documentation.

23 (4) **Penalties - definition.** (a) An employer who ~~with reckless~~
24 ~~disregard~~, KNOWINGLY fails to submit the documentation required by this
25 section, ~~or who, with reckless disregard~~, submits false or fraudulent
26 documentation, ~~shall be~~ OR FAILS TO PARTICIPATE IN THE E-VERIFY
27 PROGRAM TO VERIFY THE EMPLOYMENT ELIGIBILITY OF EACH NEWLY

1 HIRED EMPLOYEE IS subject to a fine of not more than five thousand
2 dollars for the first offense and not more than twenty-five thousand
3 dollars for the second ~~and~~ OFFENSE. FOR any subsequent offense, THE
4 EMPLOYER IS SUBJECT TO A FINE OF NOT MORE THAN TWENTY-FIVE
5 THOUSAND DOLLARS AND SUSPENSION OF ALL THE EMPLOYER'S BUSINESS
6 LICENSES FOR UP TO SIX MONTHS. The ~~moneys~~ DIVISION SHALL TRANSMIT
7 MONEY collected pursuant to this subsection (4) ~~shall be deposited~~ TO THE
8 STATE TREASURER FOR DEPOSIT in the employment verification cash fund,
9 which is hereby created in the state treasury. The ~~moneys~~ GENERAL
10 ASSEMBLY SHALL APPROPRIATE MONEY in the fund ~~shall be appropriated~~
11 to the department ~~of labor and employment~~ for the purpose of
12 implementing, administering, and enforcing this section. The ~~moneys~~
13 MONEY in the fund ~~shall remain~~ REMAINS in the fund and DOES not revert
14 to the general fund or any other fund at the end of any fiscal year.

15 (b) FOR PURPOSES OF THIS SUBSECTION (4), "PARTICIPATE IN THE
16 E-VERIFY PROGRAM" MEANS TO:

17 (I) ENROLL IN THE PROGRAM BY ENTERING INTO AN AGREEMENT
18 WITH THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; AND

19 (II) USE THE PROGRAM TO VERIFY THE WORK ELIGIBILITY STATUS
20 OF EACH NEW EMPLOYEE.

21 (5) **Notification.** (a) THE DEPARTMENT SHALL NOTIFY EVERY
22 EMPLOYER OF THE REQUIREMENTS OF THIS SECTION AND SHALL PUBLISH
23 A LINK TO ITS WEBSITE WHERE AN EMPLOYER CAN ACCESS THE NOTICE
24 DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (5). THE DEPARTMENT
25 SHALL INCLUDE THE NOTICE AND WEBSITE LINK IN EACH QUARTERLY
26 ELECTRONIC PUBLICATION DISTRIBUTED TO EMPLOYERS ON AND AFTER
27 THE EFFECTIVE DATE OF THIS SECTION, AS AMENDED.

1 (b) IN CONNECTION WITH THE STATEMENT AND INFORMATION
2 REQUIRED TO BE POSTED PURSUANT TO SECTION 8-2-124, THE
3 DEPARTMENT SHALL PERMANENTLY POST ON ITS WEBSITE A NOTICE THAT
4 EXPLAINS THE REQUIREMENTS OF THIS SECTION AND INCLUDES AT LEAST
5 THE FOLLOWING INFORMATION:

6 (I) THAT FEDERAL LAW PROHIBITS AN EMPLOYER FROM
7 KNOWINGLY EMPLOYING AN UNAUTHORIZED ALIEN;

8 (II) THAT AS OF JANUARY 1, 2017, EMPLOYERS WHO HIRE NEW
9 EMPLOYEES TO PERFORM WORK IN COLORADO ARE REQUIRED TO VERIFY
10 THE EMPLOYMENT ELIGIBILITY OF THE NEW EMPLOYEES THROUGH THE
11 E-VERIFY PROGRAM; AND

12 (III) INSTRUCTIONS FOR THE EMPLOYER ON HOW TO ENROLL IN THE
13 E-VERIFY PROGRAM.

14 (6) **Affirmative defense.** (a) AN EMPLOYER HAS A REBUTTABLE
15 PRESUMPTION THAT THE EMPLOYER, ACTING IN GOOD FAITH, DID NOT
16 KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN IF:

17 (I) THE EMPLOYER COMPLIES WITH THE EMPLOYMENT
18 VERIFICATION REQUIREMENTS SPECIFIED IN FEDERAL LAW AND IN
19 PARAGRAPH (b) OF SUBSECTION (2) OF THIS SECTION; AND

20 (II) THE EMPLOYER PARTICIPATES IN THE E-VERIFY PROGRAM IN
21 ACCORDANCE WITH PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION,
22 AND THE INFORMATION OBTAINED IN ACCORDANCE WITH THE E-VERIFY
23 PROGRAM INDICATES THAT THE EMPLOYEE'S WORK ELIGIBILITY STATUS
24 ALLOWED THE EMPLOYER TO HIRE AND RETAIN THE EMPLOYEE.

25 (b) AN EMPLOYER HAS A REBUTTABLE PRESUMPTION THAT THE
26 EMPLOYER, ACTING IN GOOD FAITH, DID NOT WRONGFULLY TERMINATE AN
27 INDIVIDUAL IF:

1 (I) THE EMPLOYER PARTICIPATES IN THE E-VERIFY PROGRAM IN
2 ACCORDANCE WITH PARAGRAPH (c) OF SUBSECTION (2) OF THIS SECTION;
3 AND

4 (II) THE EMPLOYER RECEIVED A FINAL NOTICE OF
5 NONCONFIRMATION OF WORK ELIGIBILITY ON THE INDIVIDUAL THROUGH
6 THE E-VERIFY PROGRAM.

7 (c) AN EMPLOYER THAT SHOWS THAT IT COMPLIED IN GOOD FAITH
8 WITH THE REQUIREMENTS OF FEDERAL LAW ESTABLISHES AN AFFIRMATIVE
9 DEFENSE THAT THE EMPLOYER DID NOT INTENTIONALLY OR KNOWINGLY
10 EMPLOY AN UNAUTHORIZED ALIEN.

11 ~~(5)~~ (7) **Construction.** It is the public policy of Colorado that this
12 section shall be enforced without regard to race, religion, gender,
13 ethnicity, national origin, or disability AND BE CONSTRUED IN A MANNER
14 THAT IS FULLY CONSISTENT WITH APPLICABLE PROVISIONS OF FEDERAL
15 LAW.

16 (8) **Implementation.** THIS SECTION SHALL BE IMPLEMENTED IN A
17 MANNER CONSISTENT WITH FEDERAL LAWS REGULATING IMMIGRATION,
18 PROTECTING THE CIVIL RIGHTS OF ALL PERSONS, AND RESPECTING THE
19 PRIVILEGES AND IMMUNITIES OF UNITED STATES CITIZENS.

20 (9) **Severability.** IF ANY PROVISION OF THIS SECTION IS HELD
21 INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OF THIS
22 SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION.

23 **SECTION 2.** In Colorado Revised Statutes, 8-2-124, **amend** (2)
24 (a) (I) as follows:

25 **8-2-124. Electronic verification program - availability - notice**
26 **to employers - definitions.** (2) (a) (I) As part of its quarterly electronic
27 publication distributed to employers, the department shall, at a minimum,

1 notify every employer of the federal law against hiring or continuing to
2 employ an unauthorized alien and of the availability of, AND THE
3 REQUIREMENT UNDER SECTION 8-2-122 (2) (b) TO PARTICIPATE IN, the
4 ~~optional~~ electronic verification program to verify the work eligibility
5 status of new employees.

6 **SECTION 3.** In Colorado Revised Statutes, **repeal** article 17.5
7 of title 8.

8 **SECTION 4.** In Colorado Revised Statutes, 24-21-112, **amend**
9 (2) as follows:

10 **24-21-112. Electronic verification program - notice - employer**
11 **responsibilities - definitions.** (2) The secretary of state, in consultation
12 with the department of labor and employment, shall post on the secretary
13 of state's website information pertaining to the prohibition against hiring
14 or continuing to employ an unauthorized alien, as defined in 8 U.S.C. sec.
15 1324a (h) (3), ~~and~~ the availability of and the requirements for
16 participation in the electronic verification program as a means for
17 employers to verify the work eligibility status of new employees, AND THE
18 REQUIREMENTS FOR VERIFYING THE WORK ELIGIBILITY STATUS OF NEWLY
19 HIRED EMPLOYEES AND THE PENALTIES FOR NONCOMPLIANCE AS SET
20 FORTH IN SECTION 8-2-122, C.R.S. The website posting required by this
21 subsection (2) ~~shall~~ MUST appear in the same format as required by
22 section 8-2-124 (2) (a), C.R.S., and ~~shall~~ MUST appear in a conspicuous
23 location on the secretary of state's website. The secretary of state's
24 website ~~shall~~ MUST also provide a link to the e-verify website available
25 through the internet portal for the United States citizenship and
26 immigration services, or its successor agency.

27 **SECTION 5. Act subject to petition - effective date.** This act

1 takes effect January 1, 2017; except that, if a referendum petition is filed
2 pursuant to section 1 (3) of article V of the state constitution against this
3 act or an item, section, or part of this act within the ninety-day period
4 after final adjournment of the general assembly, then the act, item,
5 section, or part will not take effect unless approved by the people at the
6 general election to be held in November 2016 and, in such case, will take
7 effect on January 1, 2017, or on the date of the official declaration of the
8 vote thereon by the governor, whichever is later.