

CHAPTER 208

LABOR AND INDUSTRY

SENATE BILL 08-193

BY SENATOR(S) McElhany, Groff, Kester, Morse, Spence, Tapia, and Schultheis;
also REPRESENTATIVE(S) Judd, Gardner B., Garza-Hicks, Liston, Looper, Marostica, Merrifield, and White.

AN ACT

CONCERNING REQUIREMENTS RELATING TO PUBLIC CONTRACTS FOR SERVICES.

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

SECTION 1. 8-17.5-101 (1), (5), and (6), Colorado Revised Statutes, are amended, and the said 8-17.5-101 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

8-17.5-101. Definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Basic pilot program" means the basic pilot employment verification program created in Public Law 208, 104th Congress, as amended, and expanded in Public Law 156, 108th Congress, as amended, that is administered by the United States department of homeland security.~~

(3.3) "DEPARTMENT PROGRAM" MEANS THE EMPLOYMENT VERIFICATION PROGRAM ESTABLISHED PURSUANT TO SECTION 8-17.5-102 (5) (c).

(3.7) "E-VERIFY PROGRAM" MEANS THE ELECTRONIC EMPLOYMENT VERIFICATION PROGRAM CREATED IN PUBLIC LAW 104-208, AS AMENDED, AND EXPANDED IN PUBLIC LAW 108-156, AS AMENDED, AND JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION, OR ITS SUCCESSOR PROGRAM.

(4.5) "NEWLY HIRED FOR EMPLOYMENT" MEANS HIRED TO WORK IN THE UNITED STATES SINCE THE EFFECTIVE DATE OF THE PUBLIC CONTRACT FOR SERVICES.

(5) "Political subdivision" means any city, county, city and county, town, special

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

district, school district, local improvement district, or any other kind of municipal, quasi-municipal, or public corporation ORGANIZED PURSUANT TO LAW.

(6) (a) "Public contract for services" means any type of agreement, regardless of what the agreement may be called, between a state agency or political subdivision and a contractor for the procurement of services.

(b) "PUBLIC CONTRACT FOR SERVICES" DOES NOT INCLUDE:

(I) AGREEMENTS RELATING TO THE OFFER, ISSUANCE, OR SALE OF SECURITIES, INCLUDING BUT NOT LIMITED TO AGREEMENTS PERTAINING TO:

(A) UNDERWRITING, MARKETING, REMARKETING, PAYING, TRANSFERRING, RATING, OR REGISTERING SECURITIES; OR

(B) THE PROVISION OF CREDIT ENHANCEMENT, LIQUIDITY SUPPORT, INTEREST RATE EXCHANGES, OR TRUSTEE OR FINANCIAL CONSULTING SERVICES IN CONNECTION WITH SECURITIES; OR

(II) AGREEMENTS FOR INVESTMENT ADVISORY SERVICES OR FUND MANAGEMENT SERVICES;

(III) ANY GRANT, AWARD, OR CONTRACT FUNDED BY ANY FEDERAL OR PRIVATE ENTITY FOR ANY RESEARCH OR SPONSORED PROJECT ACTIVITY OF AN INSTITUTION OF HIGHER EDUCATION OR AN AFFILIATE OF AN INSTITUTION OF HIGHER EDUCATION THAT IS FUNDED FROM MONEYS THAT ARE RESTRICTED BY THE ENTITY UNDER THE GRANT, AWARD, OR CONTRACT. FOR PURPOSES OF THIS SUBPARAGRAPH (III), "SPONSORED PROJECT" MEANS AN AGREEMENT BETWEEN AN INSTITUTION OF HIGHER EDUCATION AND ANOTHER PARTY THAT PROVIDES RESTRICTED FUNDING AND REQUIRES OVERSIGHT RESPONSIBILITIES FOR RESEARCH AND DEVELOPMENT OR OTHER SPECIFIED PROGRAMMATIC ACTIVITIES THAT ARE SPONSORED BY FEDERAL OR PRIVATE AGENCIES AND ORGANIZATIONS;

(IV) INTERGOVERNMENTAL AGREEMENTS; OR

(V) AGREEMENTS FOR INFORMATION TECHNOLOGY SERVICES OR PRODUCTS AND SERVICES.

SECTION 2. 8-17.5-102 (1), (2) (b) (I), and (2) (b) (II), Colorado Revised Statutes, are amended to read:

8-17.5-102. Illegal aliens - prohibition - public contracts for services - rules.

(1) A state agency or political subdivision shall not enter into or renew a public contract for services with a contractor who knowingly employs or contracts with an illegal alien to perform work under the contract or who knowingly contracts with a subcontractor who knowingly employs or contracts with an illegal alien to perform work under the contract. Prior to executing a public contract for services, each prospective contractor shall certify that, at the time of the certification, it does not knowingly employ or contract with an illegal alien WHO WILL PERFORM WORK UNDER THE PUBLIC CONTRACT FOR SERVICES and that the contractor ~~has participated or attempted to~~ WILL participate in the ~~basic pilot~~ E-VERIFY PROGRAM OR

DEPARTMENT program in order to confirm the employment eligibility of all employees who are newly hired for employment ~~in the United States~~ TO PERFORM WORK UNDER THE PUBLIC CONTRACT FOR SERVICES.

(2) (b) Each public contract for services shall also include the following provisions:

(I) A provision stating that the contractor has confirmed ~~or attempted to confirm~~ the employment eligibility of all employees who are newly hired for employment ~~in the United States~~ TO PERFORM WORK UNDER THE PUBLIC CONTRACT FOR SERVICES through participation in EITHER the ~~basic pilot~~ E-VERIFY PROGRAM OR THE DEPARTMENT program. ~~and, if the contractor is not accepted into the basic pilot program prior to entering into a public contract for services, that the contractor shall apply to participate in the basic pilot program every three months until the contractor is accepted or the public contract for services has been completed, whichever is earlier. The provision specified in this subparagraph (I) shall not be required or effective in a public contract for services if the basic pilot program is discontinued.~~

(II) A provision that prohibits the contractor from using ~~basic pilot program~~ EITHER THE E-VERIFY PROGRAM OR THE DEPARTMENT PROGRAM procedures to undertake preemployment screening of job applicants while the public contract for services is being performed;

SECTION 3. 8-17.5-102 (5) (a), Colorado Revised Statutes, is amended, and the said 8-17.5-102 (5) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

8-17.5-102. Illegal aliens - prohibition - public contracts for services - rules.

(5) (a) The department may investigate whether a contractor is complying with the provisions of a public contract for services required pursuant to subsection (2) of this section. The department may conduct on-site inspections where a public contract for services is being performed WITHIN THE STATE OF COLORADO, request and review documentation that proves the citizenship of any person performing work on a public contract for services, or take any other reasonable steps that are necessary to determine whether a contractor is complying with the provisions of a public contract for services required pursuant to subsection (2) of this section. The department shall receive complaints of suspected violations of a provision of a public contract for services required pursuant to subsection (2) of this section and shall have discretion to determine which complaints, if any, are to be investigated. The results of any investigation shall not constitute final agency action. The department is authorized to promulgate rules in accordance with article 4 of title 24, C.R.S., to implement the provisions of this subsection (5).

(c) (I) THERE IS HEREBY CREATED THE DEPARTMENT PROGRAM. ANY CONTRACTOR WHO PARTICIPATES IN THE DEPARTMENT PROGRAM SHALL NOTIFY THE DEPARTMENT AND THE CONTRACTING STATE AGENCY OR POLITICAL SUBDIVISION OF SUCH PARTICIPATION. A PARTICIPATING CONTRACTOR SHALL COMPLY WITH THE PROVISIONS OF SUBPARAGRAPH (II) OF THIS PARAGRAPH (c) AND SHALL CONSENT TO DEPARTMENT AUDITS CONDUCTED IN ACCORDANCE WITH SUBPARAGRAPH (III) OF THIS PARAGRAPH (c). FAILURE TO MEET EITHER OF THESE OBLIGATIONS SHALL

CONSTITUTE A VIOLATION OF THE DEPARTMENT PROGRAM. THE EXECUTIVE DIRECTOR SHALL NOTIFY A CONTRACTING STATE AGENCY OR POLITICAL SUBDIVISION OF SUCH VIOLATION.

(II) A PARTICIPATING CONTRACTOR SHALL, WITHIN TWENTY DAYS AFTER HIRING AN EMPLOYEE WHO IS NEWLY HIRED FOR EMPLOYMENT TO PERFORM WORK UNDER THE PUBLIC CONTRACT FOR SERVICES, AFFIRM THAT THE CONTRACTOR HAS EXAMINED THE LEGAL WORK STATUS OF SUCH EMPLOYEE, RETAINED FILE COPIES OF THE DOCUMENTS REQUIRED BY 8 U.S.C. SEC. 1324a, AND NOT ALTERED OR FALSIFIED THE IDENTIFICATION DOCUMENTS FOR SUCH EMPLOYEES. THE CONTRACTOR SHALL PROVIDE A WRITTEN, NOTARIZED COPY OF THE AFFIRMATION TO THE CONTRACTING STATE AGENCY OR POLITICAL SUBDIVISION.

(III) THE DEPARTMENT MAY CONDUCT RANDOM AUDITS OF STATE AGENCIES OR POLITICAL SUBDIVISIONS TO REVIEW THE AFFIDAVITS AND OF CONTRACTORS TO REVIEW COPIES OF THE DOCUMENTS REQUIRED BY SUBPARAGRAPH (II) OF THIS PARAGRAPH (c). AUDITS SHALL NOT VIOLATE FEDERAL LAW.

SECTION 4. 8-17.5-102, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-17.5-102. Illegal aliens - prohibition - public contracts for services - rules.

(6) NOTHING IN THIS SECTION SHALL BE CONSTRUED AS REQUIRING A CONTRACTOR TO VIOLATE ANY TERMS OF PARTICIPATION IN THE E-VERIFY PROGRAM.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 13, 2008