

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2430 Session of  
2014

INTRODUCED BY METCALFE, COX, EVERETT, GALLOWAY, GREINER,  
KAUFFMAN, KNOWLES, R. MILLER, ROCK, SACCONI, SAYLOR, SWANGER  
AND CLYMER, AUGUST 5, 2014

REFERRED TO COMMITTEE ON STATE GOVERNMENT, AUGUST 5, 2014

AN ACT

1 Prohibiting employment of illegal aliens; requiring  
2 participation in the E-verify Program as a condition for  
3 Commonwealth contracts or grants; prohibiting business tax  
4 deductions for certain compensation; requiring suspension of  
5 licenses, registrations and certificates of incorporation  
6 under certain circumstances; and authorizing a private cause  
7 of action.

8 The General Assembly finds that:

9 (1) Employers in this Commonwealth who employ  
10 unauthorized aliens have systematically distorted the labor  
11 market of this Commonwealth by reducing wages, adversely  
12 affecting working conditions, evading taxes and reducing the  
13 number of jobs available to those who are lawfully entitled  
14 to employment in this Commonwealth.

15 (2) The United States has established and maintains a  
16 national program for the electronic verification of work  
17 authorization, the E-verify Program, which enables employers  
18 to promptly and accurately verify the employment eligibility  
19 of all job applicants.

20 (3) It is in the best interests of and will serve and

1 benefit the health, safety and welfare of the public and law-  
2 abiding business entities to adopt policies and procedures to  
3 deter and prevent the employment of unauthorized aliens.

4 (4) The Federal Government expressly permits state  
5 governments to sanction the employers of unauthorized aliens  
6 through licensing and other similar restrictions.

7 The General Assembly of the Commonwealth of Pennsylvania  
8 hereby enacts as follows:

9 Section 1. Short title.

10 This act shall be known and may be cited as the Fair  
11 Employment Act.

12 Section 2. Definitions.

13 The following words and phrases when used in this act shall  
14 have the meanings given to them in this section unless the  
15 context clearly indicates otherwise:

16 "Business entity." An individual, corporation, partnership,  
17 limited liability company or other legal entity, whether for  
18 profit or not for profit, who has applied for, holds or benefits  
19 from any registration.

20 "Contractor." A person, employer or business entity that  
21 enters into an agreement to perform any service or work or to  
22 provide a certain product in exchange for valuable  
23 consideration.

24 "E-verify Program." The electronic verification of work  
25 authorization program of the Illegal Immigration Reform and  
26 Immigrant Responsibility Act of 1996 (Division C of the act of  
27 September 30, 1996, Public Law 104-208, 110 Stat. 3009-546)  
28 which is operated by the Department of Homeland Security.

29 "Employee." A person performing or applying for work or  
30 service of any kind or character for hire.

1 "Employer." A business entity which employs or seeks to  
2 employ a person for hire. If there are two or more putative  
3 employers, the business entity taking a business tax deduction  
4 for the employee in question shall be considered the employer of  
5 that person for the purposes of this act.

6 "Employment." The act of employing or of being employed,  
7 engaged or hired.

8 "Government entity." The Commonwealth or any of its  
9 political subdivisions. The term includes any agency, authority,  
10 board or commission of the Commonwealth or any of its political  
11 subdivisions.

12 "Registration." Any license, permit, registration or  
13 certificate granted or provided by a government entity.

14 "Unauthorized alien." An alien who does not have the legal  
15 right or authorization under Federal law to work in the United  
16 States.

17 "Work." A job, task, employment, labor, personal service or  
18 any other activity for which compensation is provided, expected  
19 or due, including activities conducted by business entities.

20 Section 3. Prohibitions.

21 (a) Employment.--It is unlawful for any employer to employ,  
22 or employer or business entity to permit the employment of, an  
23 unauthorized alien.

24 (b) Affirmation for initial registration.--As a condition  
25 for initial registration, a business entity shall provide to the  
26 government entity:

27 (1) an affidavit that the business entity is not an  
28 employer; or

29 (2) an affidavit affirming that the business entity does  
30 not knowingly employ any person who is an unauthorized alien

1 as well as an affidavit and supporting documentation that the  
2 business entity has enrolled and is an active participant in  
3 the E-verify Program.

4 (c) Affirmation for continued registration.--As a condition  
5 of the periodic renewal of a registration, a business entity  
6 shall comply with subsection (b) as if applying for initial  
7 registration.

8 (d) Change of status.--A business entity which complied with  
9 subsection (b) (1) as a condition of any initial registration  
10 under subsection (b) or continued registration under subsection  
11 (c) and, during that registration becomes an employer, shall  
12 comply with subsection (b) (2).

13 (e) Awards.--As a condition for the award of any grant to an  
14 employer for which the value of employment, labor or personal  
15 service shall exceed \$10,000, the employer shall provide  
16 documentation affirming its enrollment and participation in the  
17 E-verify Program.

18 (f) Government entities.--All government entities shall  
19 enroll and actively participate in the E-verify Program.

20 (g) Verification.--An employer participating in the E-verify  
21 Program shall verify the employment eligibility of every  
22 employee in the employer's hire whose employment commences after  
23 the employer enrolls in the E-verify Program.

24 (h) Tax deduction.--Compensation, whether in money or in  
25 kind or in services, provided to any unauthorized alien shall  
26 not be allowed as a business expense deduction from any income  
27 or business tax of the Commonwealth.

28 (i) Violations.--Any business entity operating within this  
29 Commonwealth in violation of this act shall have all  
30 registrations suspended under subsection (j).

1 (j) Enforcement.--The Secretary of State shall enforce the  
2 requirements of this section. The following apply:

3 (1) An enforcement action shall be initiated by means of  
4 a written, signed complaint to the secretary's office  
5 submitted by any government entity, business entity or  
6 resident. A valid complaint shall include an allegation which  
7 describes the alleged violator as well as the actions  
8 constituting the violation and the date and location where  
9 the actions occurred.

10 (2) A complaint which alleges a violation on the basis  
11 of national origin, ethnicity or race shall be deemed invalid  
12 and shall not be enforced.

13 (3) Upon receipt of a valid complaint, the secretary  
14 shall, within three business days, request information from  
15 the business entity which is the subject of the complaint,  
16 which may include any of the following:

17 (i) Copies of any information provided to a  
18 government entity under subsection (b), (c) or (d).

19 (ii) Identity information concerning any employees  
20 alleged to be unauthorized aliens.

21 (iii) Verification of the work authorization of  
22 aliens provided to the employer through the E-verify  
23 Program.

24 (4) The secretary shall submit identity data required by  
25 the Federal Government to verify, pursuant to the Illegal  
26 Immigration Reform and Immigrant Responsibility Act of 1996  
27 (Division C of the act of September 30, 1996, Public Law 104-  
28 208, 110 Stat. 3009-546), the immigration status and work  
29 authorization of employees alleged to be unauthorized aliens  
30 and shall provide the employer with written confirmation of

1 that verification.

2 (5) The secretary shall order all government entities to  
3 suspend the registration of any business entity that fails to  
4 correct a violation of this act.

5 (6) The correction of a violation with respect to the  
6 employment of an unauthorized alien shall include any of the  
7 following actions:

8 (i) The employer terminates the unauthorized alien's  
9 employment.

10 (ii) The employer, after acquiring additional  
11 information from the employee, requests a secondary or  
12 additional verification by the Federal Government of the  
13 employee's authorization under the procedures of the E-  
14 verify Program. While this verification is pending, any  
15 enforcement action shall be tolled.

16 (iii) The employer attempts to terminate the  
17 unlawful worker's employment and the termination is  
18 challenged in a court of this Commonwealth. While the  
19 employer pursues the termination of the unauthorized  
20 alien's employment in such forum, any enforcement action  
21 shall be tolled.

22 (7) A general contractor shall not be in violation of  
23 this act with respect to any alleged unauthorized alien  
24 employed by a subcontractor or independent contractor hired  
25 by the general contractor if, prior to the alleged violation,  
26 the general contractor verified that the subcontractor or  
27 independent contractor was enrolled in the E-verify Program  
28 by requiring the subcontractor or independent contractor to  
29 show documentary evidence of such enrollment provided by the  
30 Federal Government.

1           (8) A suspension under this section shall terminate one  
2 business day after a legal representative of the business  
3 entity submits, at an office designated by the secretary, all  
4 of the following:

5           (i) Documentation acceptable to the secretary which  
6 confirms that the business entity has enrolled in and is  
7 participating in the E-verify Program.

8           (ii) A sworn affidavit stating that the violation  
9 has ended. The affidavit shall include a description of  
10 the specific measures and actions taken by the business  
11 entity to end the violation and shall, if applicable,  
12 include the name, address and other adequate identifying  
13 information for any unauthorized aliens related to the  
14 complaint.

15           (9) For a second or subsequent violation, the secretary  
16 shall order all government entities to suspend the  
17 registration of any business entity for a minimum period of  
18 20 days. After the end of the suspension period, and upon  
19 receipt of the prescribed affidavit and documentation, the  
20 secretary shall order all government entities to reinstate  
21 the registration of any business entity. The secretary shall  
22 forward the affidavit, complaint and associated documents to  
23 the Bureau of Immigration and Customs Enforcement of the  
24 Department of Homeland Security.

25           (10) This section shall be subject to 2 Pa.C.S. Chs. 5  
26 Subch. A (relating to practice and procedure of Commonwealth  
27 agencies) and 7 Subch. A (relating to judicial review of  
28 Commonwealth agency action).

29           (k) State funding.--A government entity that fails to comply  
30 with this section and the directives from the secretary

1 regarding the failure of any business entity to enroll in the E-  
2 verify Program shall be ineligible for State funding.

3 (1) Procedure.--This act shall not be construed to deny any  
4 procedural mechanisms included in the E-verify Program.

5 (m) Federal determination.--

6 (1) The determination of whether an employee is an  
7 unauthorized alien shall be made by the Federal Government  
8 under the Illegal Immigration Reform and Immigrant  
9 Responsibility Act of 1996. A determination of the status of  
10 an employee by the Federal Government shall create a  
11 rebuttable presumption as to that employee's status in any  
12 judicial proceedings brought pursuant to this act.

13 (2) The court may take judicial notice of any  
14 verification of the employee previously provided by the  
15 Federal Government and may request the Federal Government to  
16 provide automated or testimonial verification under the  
17 Illegal Immigration Reform and Immigrant Responsibility Act  
18 of 1996.

19 Section 4. Ordinance.

20 A political subdivision of this Commonwealth may enact any  
21 ordinance:

22 (1) Prohibiting the employment of unauthorized aliens or  
23 other unlawful workers, may deny registration to employers  
24 who employ unauthorized aliens and may allow lawful employees  
25 to bring suit against such employers to recover treble  
26 damages and reasonable attorney fees.

27 (2) Restricting the rental of housing to an alien  
28 unlawfully present in the United States.

29 Section 5. Construction.

30 This act shall be construed so as to be fully consistent with



1 Federal immigration and labor laws.

2 Section 6. Severability.

3 The provisions of this act are severable. If any provision of  
4 this act or its application to any person or circumstance is  
5 held invalid, the invalidity shall not affect other provisions  
6 or applications of this act which can be given effect without  
7 the invalid provision or application.

8 Section 7. Effective date.

9 This act shall take effect in 60 days.