

**Second Regular Session  
Sixty-seventh General Assembly  
STATE OF COLORADO**

**INTRODUCED**

LLS NO. 10-0609.01 Christy Chase

**SENATE BILL 10-033**

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**SENATE SPONSORSHIP**

**Schultheis**, Harvey, Renfroe

**HOUSE SPONSORSHIP**

**Baumgardner**, King S., Lambert

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**Senate Committees**  
State, Veterans & Military Affairs

**House Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING THE VERIFICATION OF THE WORK ELIGIBILITY STATUS OF**  
102             **NEW EMPLOYEES THROUGH THE FEDERAL ELECTRONIC**  
103             **VERIFICATION PROGRAM.**

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**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>.)*

Under current law, employers are required to examine, and retain records of examining, the legal work status of new employees. The bill repeals the current law and instead creates the "Fair and Legal Employment for Coloradans Act" (act), which requires all

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.*

nongovernmental employers in the state to participate in the federal electronic verification program (e-verify program) for purposes of verifying the work eligibility status of all new employees hired by an employer. A person who employs only H-2A workers would not have to comply with the act.

Employers would be obligated to start participating in the e-verify program in accordance with the following schedule:

- ! For employers with 200 or more employees, by January 1, 2011;
- ! For employers with 50 or more employees but fewer than 200 employees, by July 1, 2011; and
- ! For employers with fewer than 50 employees, by July 1, 2013.

The attorney general is to impose fines on an employer for knowing or intentional failure to participate in the e-verify program or to provide documentary proof of participation.

An employer would be prohibited from intentionally or knowingly employing an unauthorized alien, and would be required to immediately terminate an employee for whom the employer receives a final notice of nonconfirmation of work eligibility through the e-verify program. The attorney general or the county or city attorney, as appropriate, would be obligated to investigate complaints of employer noncompliance, and the appropriate county or city attorney would have to bring a court action against the employer when an investigation shows a complaint has merit.

Upon finding a violation, the bill requires the court to order the employer to:

- ! Terminate the employment of all unauthorized aliens;
- ! Be subject to probation, during which the employer must submit quarterly reports of all newly hired employees to the county or city attorney; and
- ! Submit a sworn affidavit attesting that the employer has terminated the employment of all unauthorized aliens.

For knowing violations, the court may order the suspension of the employer's business licenses. For intentional violations, the court must order the suspension of all business licenses for a period determined by the court. For a second violation, the court is to order the immediate and permanent revocation of all business licenses.

The bill requires the attorney general to maintain copies of, and provide access to, all court orders issued against employers and to maintain a database of employers with a first violation. The department of labor and employment (department) is required to notify employers via quarterly electronic publications and post a notice on its web site explaining the requirements of the act to employers. Additionally, the bill requires the secretary of state, in consultation with the department, to include information about the requirements of the bill on its web site.

The bill creates the e-verify program cash fund, to consist of moneys collected as fines imposed on employers for failing to participate in the e-verify program. The moneys in the fund are to be used to cover the reasonable costs incurred by the attorney general, county attorneys, and city attorneys in administering and enforcing the requirements of the act.

The bill defines as a discriminatory or unfair employment practice the refusal to hire, or to terminate from employment, a United States citizen or permanent resident alien while hiring or retaining an unauthorized alien in the same type of job when the employer knew or should have known that the person was an unauthorized alien.

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

2 **SECTION 1.** Part 1 of article 2 of title 8, Colorado Revised  
3 Statutes, is amended BY THE ADDITION OF A NEW SECTION to  
4 read:

5 **8-2-125. Verification of employee work eligibility status - short**  
6 **title - legislative declaration - definitions - e-verify program - cash**  
7 **fund.** (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE  
8 "FAIR AND LEGAL EMPLOYMENT FOR COLORADANS ACT".

9 (2) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DETERMINES  
10 THAT:

11 (I) ENSURING THAT COLORADO EMPLOYERS EMPLOY ONLY THOSE  
12 PERSONS ELIGIBLE TO WORK WITHIN COLORADO IS AN ISSUE OF STATEWIDE  
13 CONCERN;

14 (II) IT IS IN THE BEST INTEREST OF CITIZENS AND EMPLOYERS IN  
15 COLORADO FOR ALL EMPLOYERS TO FOLLOW FEDERAL LAW AS IT APPLIES  
16 TO THE HIRING OF PERSONS WHO ARE AUTHORIZED TO WORK IN THE  
17 UNITED STATES;

18 (III) EMPLOYERS WHO VIOLATE FEDERAL EMPLOYMENT LAWS WITH  
19 RESPECT TO THE HIRING OF PERSONS WHO ARE UNAUTHORIZED TO WORK

1 IN THE UNITED STATES PLACE AN UNDUE ECONOMIC BURDEN ON  
2 EMPLOYERS WHO ATTEMPT TO HIRE ONLY PERSONS WHO ARE AUTHORIZED  
3 TO WORK IN THE UNITED STATES;

4 (IV) STRICT ADHERENCE TO LEGAL HIRING PRACTICES WILL  
5 DECREASE ILLEGAL IMMIGRATION INTO COLORADO AND SUBSTANTIALLY  
6 REDUCE THE MILLIONS OF DOLLARS LEAVING COLORADO'S ECONOMY EACH  
7 YEAR AND GOING TO OTHER COUNTRIES; AND

8 (V) EMPLOYERS IN COLORADO WHO ILLEGALLY HIRE  
9 UNAUTHORIZED PERSONS CREATE AN ATTRACTIVE ENVIRONMENT FOR  
10 ILLEGAL IMMIGRANTS TO LOCATE WITHIN COLORADO, WHICH COSTS  
11 TAXPAYERS HUNDREDS OF MILLIONS OF DOLLARS TO PROVIDE PUBLIC  
12 EDUCATION, HEALTH CARE, AND OTHER SERVICES AND, IN ADDITION,  
13 PLACES UNDUE STRAIN AND COSTS ON OUR JUDICIAL SYSTEM.

14 (b) THE GENERAL ASSEMBLY THEREFORE FINDS AND DETERMINES  
15 THAT IT IS:

16 (I) IN THE BEST INTEREST OF THE STATE'S TAXPAYERS FOR ALL  
17 EMPLOYERS TO VERIFY THE SOCIAL SECURITY NUMBERS AND WORK  
18 ELIGIBILITY STATUS OF NEWLY HIRED EMPLOYEES; AND

19 (II) IMPORTANT THAT EVERY EMPLOYER IN COLORADO  
20 PARTICIPATE IN THE FEDERAL EMPLOYMENT VERIFICATION PROGRAM,  
21 KNOWN AS "E-VERIFY", FOR THE PURPOSE OF VERIFYING THE WORK  
22 ELIGIBILITY STATUS OF NEWLY HIRED EMPLOYEES.

23 (3) AS USED IN THIS SECTION:

24 (a) "AGENCY" MEANS ANY DEPARTMENT, DIVISION, BOARD, OR  
25 COMMISSION OF THIS STATE OR OF A COUNTY, CITY, OR CITY AND COUNTY  
26 THAT ISSUES A LICENSE FOR THE PURPOSE OF OPERATING A BUSINESS IN  
27 THIS STATE.

1 (b) "BUSINESS LICENSE" MEANS ANY LICENSE ISSUED BY AN  
2 AGENCY TO AN EMPLOYER THAT IS NECESSARY FOR THE EMPLOYER TO  
3 OPERATE ITS BUSINESS.

4 (c) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND  
5 EMPLOYMENT.

6 (d) (I) "EMPLOYER" MEANS A PERSON TRANSACTING BUSINESS IN  
7 COLORADO WHO, AT ANY TIME, EMPLOYS ANOTHER PERSON TO PERFORM  
8 SERVICES OF ANY NATURE AND WHO HAS CONTROL OF THE PAYMENT OF  
9 WAGES FOR SUCH SERVICES OR IS THE OFFICER, AGENT, OR EMPLOYEE OF  
10 THE PERSON HAVING CONTROL OF THE PAYMENT OF WAGES.

11 (II) "EMPLOYER" DOES NOT INCLUDE:

12 (A) THE FEDERAL GOVERNMENT, THE STATE OF COLORADO,  
13 ANOTHER STATE, OR A POLITICAL SUBDIVISION OF COLORADO OR ANOTHER  
14 STATE; OR

15 (B) A PERSON WHO EMPLOYS ONLY EMPLOYEES WHO HOLD AN  
16 H-2A VISA, AS DEFINED IN SECTION 8-3.5-103.

17 (e) "E-VERIFY PROGRAM" OR "PROGRAM" MEANS THE ELECTRONIC  
18 EMPLOYMENT VERIFICATION PROGRAM THAT IS AUTHORIZED IN 8 U.S.C.  
19 SEC. 1324a AND JOINTLY ADMINISTERED BY THE UNITED STATES  
20 DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY  
21 ADMINISTRATION, OR ITS SUCCESSOR PROGRAM.

22 (f) "UNAUTHORIZED ALIEN" HAS THE SAME MEANING AS SET FORTH  
23 IN 8 U.S.C. SEC. 1324a (h) (3).

24 (4) (a) EACH EMPLOYER IN COLORADO SHALL PARTICIPATE IN THE  
25 E-VERIFY PROGRAM FOR THE PURPOSE OF VERIFYING THE WORK  
26 ELIGIBILITY STATUS OF EACH OF THE EMPLOYER'S NEWLY HIRED  
27 EMPLOYEES BY THE FOLLOWING DATES:

1 (I) FOR AN EMPLOYER WITH TWO HUNDRED OR MORE EMPLOYEES,  
2 NO LATER THAN JANUARY 1, 2011;

3 (II) FOR AN EMPLOYER WITH AT LEAST FIFTY EMPLOYEES BUT  
4 FEWER THAN TWO HUNDRED EMPLOYEES, NO LATER THAN JULY 1, 2011;  
5 AND

6 (III) FOR AN EMPLOYER WITH FEWER THAN FIFTY EMPLOYEES, NO  
7 LATER THAN JULY 1, 2013.

8 (b) AN EMPLOYER SHALL ENTER INTO AN AGREEMENT AS  
9 REQUIRED BY THE SOCIAL SECURITY ADMINISTRATION AND THE UNITED  
10 STATES DEPARTMENT OF HOMELAND SECURITY TO PARTICIPATE IN THE  
11 E-VERIFY PROGRAM AND SHALL COMPLY WITH THE REQUIREMENTS FOR  
12 PARTICIPATING IN THE PROGRAM. IF THE AGREEMENT IS TERMINATED BY  
13 THE SOCIAL SECURITY ADMINISTRATION OR THE UNITED STATES  
14 DEPARTMENT OF HOMELAND SECURITY BASED ON THE EMPLOYER'S  
15 FAILURE TO COMPLY WITH THE ESTABLISHED PROCEDURES OR LEGAL  
16 REQUIREMENTS AS SET FORTH IN THE AGREEMENT, THE EMPLOYER SHALL  
17 BE SUBJECT TO THE PENALTIES SET FORTH IN PARAGRAPH (d) OF THIS  
18 SUBSECTION (4).

19 (c) UPON ENTERING THE AGREEMENT DESCRIBED IN PARAGRAPH  
20 (b) OF THIS SUBSECTION (4), THE EMPLOYER SHALL MAINTAIN A COPY OF  
21 THE AGREEMENT, SHOWING THAT THE EMPLOYER IS AN ACTIVE  
22 PARTICIPANT IN THE E-VERIFY PROGRAM, AND SHALL NOTIFY ITS  
23 EMPLOYEES THAT IT IS PARTICIPATING IN THE PROGRAM.

24 (d) IF THE ATTORNEY GENERAL FINDS THAT AN EMPLOYER HAS  
25 KNOWINGLY OR INTENTIONALLY FAILED TO PARTICIPATE IN THE E-VERIFY  
26 PROGRAM AS REQUIRED BY THIS SUBSECTION (4), THE EMPLOYER SHALL BE  
27 SUBJECT TO THE FOLLOWING PENALTIES FOR EACH THIRTY-DAY PERIOD OF

1 NONCOMPLIANCE:

2 (I) AT LEAST FIVE THOUSAND DOLLARS BUT NOT MORE THAN  
3 TWENTY THOUSAND DOLLARS IF THE EMPLOYER HAS TWO HUNDRED OR  
4 MORE EMPLOYEES;

5 (II) AT LEAST THREE THOUSAND DOLLARS BUT NOT MORE THAN  
6 TEN THOUSAND DOLLARS IF THE EMPLOYER HAS AT LEAST FIFTY  
7 EMPLOYEES BUT FEWER THAN TWO HUNDRED EMPLOYEES; OR

8 (III) AT LEAST ONE THOUSAND DOLLARS BUT NOT MORE THAN  
9 THREE THOUSAND DOLLARS IF THE EMPLOYER HAS FEWER THAN FIFTY  
10 EMPLOYEES.

11 (e) THE ATTORNEY GENERAL SHALL VERIFY THAT EACH EMPLOYER  
12 HAS COMPLIED WITH PARAGRAPH (a) OF THIS SUBSECTION (4) WITHIN  
13 NINETY DAYS AFTER THE FIRST FINDING OF NONCOMPLIANCE. IF THE  
14 EMPLOYER IS NOT IN COMPLIANCE, THE ATTORNEY GENERAL MAY FINE THE  
15 EMPLOYER UP TO THE MAXIMUM FINE AMOUNT SPECIFIED IN PARAGRAPH  
16 (d) OF THIS SUBSECTION (4).

17 (f) (I) UPON REQUEST OF THE ATTORNEY GENERAL, AN EMPLOYER  
18 SHALL SUBMIT EVIDENCE THAT THE EMPLOYER IS PARTICIPATING IN THE  
19 E-VERIFY PROGRAM, INCLUDING A COPY OF THE AGREEMENT EXECUTED BY  
20 THE EMPLOYER WITH THE SOCIAL SECURITY ADMINISTRATION AND THE  
21 UNITED STATES DEPARTMENT OF HOMELAND SECURITY.

22 (II) ANY PERSON MAY FILE A SIGNED, SWORN COMPLAINT WITH THE  
23 ATTORNEY GENERAL, ALLEGING THAT AN EMPLOYER IS NOT  
24 PARTICIPATING IN THE E-VERIFY PROGRAM. A PERSON WHO FILES A FALSE  
25 OR FRIVOLOUS COMPLAINT UNDER THIS SUBSECTION (4) COMMITS A CLASS  
26 3 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION  
27 18-1.3-501, C.R.S.

1 (III) UPON RECEIPT OF TWO COMPLAINTS THAT THE ATTORNEY  
2 GENERAL FINDS ARE NOT FRIVOLOUS, THE ATTORNEY GENERAL SHALL  
3 REQUEST THE EMPLOYER TO SUBMIT EVIDENCE OF PARTICIPATION IN THE  
4 PROGRAM WITHIN THIRTY DAYS AFTER THE REQUEST. THE ATTORNEY  
5 GENERAL SHALL LEVY A FINE AGAINST AN EMPLOYER PURSUANT TO  
6 PARAGRAPH (d) OF THIS SUBSECTION (4) FOR EACH CALENDAR MONTH THE  
7 EMPLOYER FAILS TO SUBMIT SUCH EVIDENCE.

8 (5) ON AND AFTER THE DATE BY WHICH AN EMPLOYER IS REQUIRED  
9 TO PARTICIPATE IN THE E-VERIFY PROGRAM PURSUANT TO SUBSECTION (4)  
10 OF THIS SECTION:

11 (a) AN EMPLOYER SHALL NOT INTENTIONALLY OR KNOWINGLY  
12 EMPLOY AN UNAUTHORIZED ALIEN; AND

13 (b) AN EMPLOYER SHALL IMMEDIATELY TERMINATE THE  
14 EMPLOYMENT OF AN EMPLOYEE FOR WHOM THE EMPLOYER RECEIVES A  
15 FINAL NOTICE OF NONCONFIRMATION OF WORK ELIGIBILITY THROUGH THE  
16 E-VERIFY PROGRAM.

17 (6) (a) ANY PERSON MAY FILE A COMPLAINT ALLEGING THAT AN  
18 EMPLOYER INTENTIONALLY OR KNOWINGLY EMPLOYS AN UNAUTHORIZED  
19 ALIEN. THE COMPLAINT SHALL BE FILED EITHER WITH THE ATTORNEY  
20 GENERAL OR THE COUNTY OR CITY ATTORNEY FOR THE COUNTY OR CITY  
21 IN WHICH THE EMPLOYER ALLEGEDLY EMPLOYS AN UNAUTHORIZED ALIEN.  
22 UPON RECEIPT OF A COMPLAINT THAT AN EMPLOYER INTENTIONALLY OR  
23 KNOWINGLY EMPLOYS AN UNAUTHORIZED ALIEN, THE ATTORNEY GENERAL  
24 OR COUNTY OR CITY ATTORNEY, AS APPROPRIATE, SHALL INVESTIGATE  
25 WHETHER THE EMPLOYER HAS VIOLATED SUBSECTION (5) OF THIS SECTION.  
26 AS PART OF THE INVESTIGATION, THE ATTORNEY GENERAL OR COUNTY OR  
27 CITY ATTORNEY SHALL VERIFY THE WORK AUTHORIZATION OF THE



1 ALLEGED UNAUTHORIZED ALIEN WITH THE FEDERAL GOVERNMENT  
2 PURSUANT TO 8 U.S.C. SEC. 1373 (c). A STATE, COUNTY, OR CITY  
3 OFFICIAL SHALL NOT ATTEMPT TO INDEPENDENTLY MAKE A FINAL  
4 DETERMINATION ON WHETHER AN ALIEN IS AUTHORIZED TO WORK IN THE  
5 UNITED STATES. A PERSON WHO KNOWINGLY FILES A FALSE OR  
6 FRIVOLOUS COMPLAINT UNDER THIS SUBSECTION (6) COMMITS A CLASS 3  
7 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION  
8 18-1.3-501, C.R.S.

9 (b) IF, AFTER AN INVESTIGATION, THE ATTORNEY GENERAL OR  
10 COUNTY OR CITY ATTORNEY DETERMINES THAT THE COMPLAINT IS NOT  
11 FRIVOLOUS, THE ATTORNEY GENERAL OR COUNTY OR CITY ATTORNEY  
12 SHALL NOTIFY THE UNITED STATES IMMIGRATION AND CUSTOMS  
13 ENFORCEMENT AND LOCAL LAW ENFORCEMENT OF THE SUBSTANCE OF THE  
14 COMPLAINT, INCLUDING THE IDENTITY OF THE UNAUTHORIZED ALIEN IF  
15 KNOWN. IF THE COMPLAINT WAS FILED WITH AND INVESTIGATED BY THE  
16 ATTORNEY GENERAL, THE ATTORNEY GENERAL SHALL NOTIFY THE  
17 APPROPRIATE COUNTY OR CITY ATTORNEY TO BRING AN ACTION AGAINST  
18 THE EMPLOYER PURSUANT TO SUBSECTION (7) OF THIS SECTION.

19 (7) (a) THE COUNTY ATTORNEY OF THE COUNTY, OR THE CITY  
20 ATTORNEY OF THE CITY, IN WHICH THE UNAUTHORIZED ALIEN IS OR HAS  
21 BEEN EMPLOYED SHALL BRING AN ACTION AGAINST THE EMPLOYER FOR A  
22 VIOLATION OF SUBSECTION (5) OF THIS SECTION. AN ACTION SHALL NOT  
23 BE BROUGHT AGAINST AN EMPLOYER FOR A VIOLATION OF SUBSECTION (5)  
24 OF THIS SECTION BEFORE THE DATE BY WHICH THE EMPLOYER IS  
25 OBLIGATED TO PARTICIPATE IN THE E-VERIFY PROGRAM PURSUANT TO  
26 SUBSECTION (4) OF THIS SECTION. THE COURT IN WHICH THE ACTION IS  
27 FILED SHALL EXPEDITE THE ACTION AND SHALL SET THE MATTER FOR

1 HEARING AT THE EARLIEST PRACTICABLE DATE, BUT NO LATER THAN  
2 NINETY DAYS AFTER THE ACTION IS FILED.

3 (b) (I) IF THE COURT FINDS THAT THE EMPLOYER KNOWINGLY  
4 VIOLATED SUBSECTION (5) OF THIS SECTION AND IT IS THE EMPLOYER'S  
5 FIRST KNOWING VIOLATION WITHIN A THREE-YEAR PERIOD, THE COURT  
6 SHALL ORDER THE EMPLOYER TO:

7 (A) TERMINATE THE EMPLOYMENT OF ALL UNAUTHORIZED ALIENS;

8 (B) BE SUBJECT TO UP TO A THREE-YEAR PROBATIONARY PERIOD,  
9 AS DETERMINED BY THE COURT, DURING WHICH THE EMPLOYER SHALL FILE  
10 QUARTERLY REPORTS WITH THE APPROPRIATE COUNTY OR CITY ATTORNEY  
11 SPECIFYING EACH NEW EMPLOYEE HIRED BY THE EMPLOYER AT THE  
12 SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK  
13 AND THE WORK ELIGIBILITY STATUS OF EACH NEW EMPLOYEE; AND

14 (C) FILE A SIGNED, SWORN AFFIDAVIT WITH THE COUNTY OR CITY  
15 ATTORNEY WITHIN THREE BUSINESS DAYS AFTER THE ORDER IS ISSUED,  
16 ATTESTING THAT THE EMPLOYER HAS TERMINATED THE EMPLOYMENT OF  
17 ALL UNAUTHORIZED ALIENS AND THAT THE EMPLOYER WILL NOT  
18 KNOWINGLY OR INTENTIONALLY EMPLOY AN UNAUTHORIZED ALIEN. IF  
19 THE EMPLOYER FAILS TO TIMELY FILE THE AFFIDAVIT, THE COURT SHALL  
20 ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL BUSINESS LICENSES  
21 HELD BY THE EMPLOYER UNTIL THE EMPLOYER FILES THE AFFIDAVIT.  
22 UPON NOTICE FROM THE COUNTY OR CITY ATTORNEY THAT THE EMPLOYER  
23 HAS FILED THE AFFIDAVIT, THE APPROPRIATE AGENCIES SHALL  
24 IMMEDIATELY REINSTATE ALL SUSPENDED BUSINESS LICENSES.

25 (II) IN ADDITION, THE COURT MAY ORDER THE APPROPRIATE  
26 AGENCIES TO SUSPEND ALL BUSINESS LICENSES HELD BY THE EMPLOYER  
27 FOR UP TO TEN BUSINESS DAYS. IN DETERMINING WHETHER TO ORDER THE

1 SUSPENSION OF THE EMPLOYER'S BUSINESS LICENSES, THE COURT SHALL  
2 BASE ITS DECISION ON ANY EVIDENCE OR INFORMATION IT RECEIVES  
3 DURING THE ACTION AND SHALL CONSIDER THE FOLLOWING FACTORS, IF  
4 RELEVANT:

5 (A) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE  
6 EMPLOYER;

7 (B) ANY PRIOR MISCONDUCT OF THE EMPLOYER;

8 (C) THE DEGREE OF HARM RESULTING FROM THE VIOLATION;

9 (D) WHETHER THE EMPLOYER MADE GOOD-FAITH EFFORTS TO  
10 COMPLY WITH THE LAW;

11 (E) THE DURATION OF THE VIOLATION;

12 (F) THE ROLE OF THE DIRECTORS, OFFICERS, OR PRINCIPALS OF THE  
13 EMPLOYER IN THE COMMISSION OF THE VIOLATION; AND

14 (G) ANY OTHER FACTORS DEEMED APPROPRIATE BY THE COURT.

15 (III) IN DETERMINING WHETHER TO SUSPEND AN EMPLOYER'S  
16 BUSINESS LICENSES PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH  
17 (b), THE COURT SHALL NOT CONSIDER THE POTENTIAL FINANCIAL  
18 HARDSHIP THAT MAY BE IMPOSED ON THE EMPLOYER IF ITS BUSINESS  
19 LICENSES ARE SUSPENDED.

20 (c) IF THE COURT FINDS THAT THE EMPLOYER INTENTIONALLY  
21 VIOLATED SUBSECTION (5) OF THIS SECTION AND IT IS THE EMPLOYER'S  
22 FIRST INTENTIONAL VIOLATION WITHIN A FIVE-YEAR PERIOD, THE COURT  
23 SHALL ORDER:

24 (I) THE EMPLOYER TO TERMINATE THE EMPLOYMENT OF ALL  
25 UNAUTHORIZED ALIENS;

26 (II) THE EMPLOYER TO BE SUBJECT TO A FIVE-YEAR  
27 PROBATIONARY PERIOD, DURING WHICH THE EMPLOYER SHALL FILE

1 QUARTERLY REPORTS WITH THE APPROPRIATE COUNTY OR CITY ATTORNEY  
2 SPECIFYING EACH NEW EMPLOYEE HIRED BY THE EMPLOYER AT THE  
3 SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK  
4 AND THE WORK ELIGIBILITY STATUS OF EACH NEW EMPLOYEE;

5 (III) THE EMPLOYER TO FILE A SIGNED, SWORN AFFIDAVIT WITH  
6 THE COUNTY OR CITY ATTORNEY, ATTESTING THAT THE EMPLOYER HAS  
7 TERMINATED THE EMPLOYMENT OF ALL UNAUTHORIZED ALIENS AND THAT  
8 THE EMPLOYER WILL NOT KNOWINGLY OR INTENTIONALLY EMPLOY AN  
9 UNAUTHORIZED ALIEN. IF THE EMPLOYER FAILS TO FILE THE AFFIDAVIT  
10 WITHIN THE PERIOD IN WHICH THE EMPLOYER'S BUSINESS LICENSES ARE  
11 SUSPENDED PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH (c),  
12 THE EMPLOYER'S BUSINESS LICENSES SHALL REMAIN SUSPENDED UNTIL  
13 THE EMPLOYER FILES THE AFFIDAVIT. UPON NOTICE FROM THE COUNTY OR  
14 CITY ATTORNEY THAT THE EMPLOYER HAS FILED THE AFFIDAVIT, THE  
15 APPROPRIATE AGENCIES SHALL IMMEDIATELY REINSTATE ALL SUSPENDED  
16 BUSINESS LICENSES. THE BUSINESS LICENSES OF AN EMPLOYER WHO FILES  
17 THE AFFIDAVIT AS REQUIRED BY THIS PARAGRAPH (III) ARE DEEMED TO BE  
18 REINSTATED ONCE THE EMPLOYER FILES THE AFFIDAVIT, REGARDLESS OF  
19 WHETHER THE APPROPRIATE AGENCIES TAKE ACTION TO IMMEDIATELY  
20 REINSTATE THE SUSPENDED BUSINESS LICENSES.

21 (IV) THE APPROPRIATE AGENCIES TO SUSPEND ALL BUSINESS  
22 LICENSES HELD BY THE EMPLOYER FOR A PERIOD DETERMINED BY THE  
23 COURT. IN DETERMINING THE LENGTH OF THE BUSINESS LICENSE  
24 SUSPENSION, THE COURT SHALL BASE ITS DECISION ON ANY EVIDENCE OR  
25 INFORMATION IT RECEIVES DURING THE ACTION AND SHALL CONSIDER THE  
26 FOLLOWING FACTORS, IF RELEVANT:

27 (A) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE

1 EMPLOYER;

2 (B) ANY PRIOR MISCONDUCT OF THE EMPLOYER;

3 (C) THE DEGREE OF HARM RESULTING FROM THE VIOLATION;

4 (D) WHETHER THE EMPLOYER MADE GOOD-FAITH EFFORTS TO

5 COMPLY WITH THE LAW;

6 (E) THE DURATION OF THE VIOLATION;

7 (F) THE ROLE OF THE DIRECTORS, OFFICERS, OR PRINCIPALS OF THE

8 EMPLOYER IN THE COMMISSION OF THE VIOLATION; AND

9 (G) ANY OTHER FACTORS DEEMED APPROPRIATE BY THE COURT.

10 (d) IN DETERMINING THE LENGTH OF THE BUSINESS LICENSE

11 SUSPENSION PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (c) OF

12 THIS SUBSECTION (7), THE COURT SHALL NOT CONSIDER THE POTENTIAL

13 FINANCIAL HARDSHIP THAT MAY BE IMPOSED ON THE EMPLOYER BASED ON

14 THE LENGTH OF THE BUSINESS LICENSE SUSPENSION.

15 (e) IF, DURING A PERIOD OF PROBATION IMPOSED BY A COURT

16 ORDER ISSUED PURSUANT TO PARAGRAPH (b) OR (c) OF THIS SUBSECTION

17 (7), THE COURT FINDS THAT THE EMPLOYER HAS EMPLOYED AN

18 UNAUTHORIZED ALIEN, THE EMPLOYER SHALL BE FOUND TO HAVE

19 COMMITTED A SECOND VIOLATION OF SUBSECTION (5) OF THIS SECTION,

20 AND THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO

21 IMMEDIATELY AND PERMANENTLY REVOKE ALL BUSINESS LICENSES HELD

22 BY THE EMPLOYER.

23 (f) UPON THE ISSUANCE OF AN ORDER PURSUANT TO THIS

24 SUBSECTION (7), THE COURT SHALL SEND A COPY OF THE ORDER TO THE

25 ATTORNEY GENERAL. FOR PURPOSES OF ORDERS DIRECTING THE

26 SUSPENSION OF AN EMPLOYER'S BUSINESS LICENSES, A COPY OF THE ORDER

27 SHALL BE SENT TO ALL APPROPRIATE AGENCIES, INFORMING THE AGENCIES

1 THAT THE EMPLOYER'S BUSINESS LICENSES ARE SUSPENDED, EFFECTIVE  
2 FIVE BUSINESS DAYS AFTER THE DATE THE ORDER WAS ISSUED.

3 (g) IN DETERMINING WHETHER AN EMPLOYEE IS AN UNAUTHORIZED  
4 ALIEN, THE COURT SHALL CONSIDER ONLY THE FEDERAL GOVERNMENT'S  
5 DETERMINATION PURSUANT TO 8 U.S.C. SEC. 1373 (c). THE FEDERAL  
6 GOVERNMENT'S DETERMINATION CREATES A REBUTTABLE PRESUMPTION  
7 OF THE EMPLOYEE'S WORK ELIGIBILITY STATUS, AND THE COURT MAY  
8 TAKE JUDICIAL NOTICE OF THAT DETERMINATION. THE COURT MAY  
9 REQUEST THE FEDERAL GOVERNMENT TO PROVIDE AUTOMATED OR  
10 TESTIMONIAL VERIFICATION PURSUANT TO 8 U.S.C. SEC. 1373 (c).

11 (h) PROOF OF VERIFYING THE WORK ELIGIBILITY STATUS OF AN  
12 EMPLOYEE THROUGH THE E-VERIFY PROGRAM CREATES A REBUTTABLE  
13 PRESUMPTION THAT THE EMPLOYER DID NOT INTENTIONALLY OR  
14 KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

15 (i) AN EMPLOYER THAT SHOWS THAT IT COMPLIED IN GOOD FAITH  
16 WITH THE REQUIREMENTS OF 8 U.S.C. SEC. 1324b ESTABLISHES AN  
17 AFFIRMATIVE DEFENSE THAT THE EMPLOYER DID NOT INTENTIONALLY OR  
18 KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

19 (8) THE ATTORNEY GENERAL SHALL MAINTAIN COPIES OF ALL  
20 COURT ORDERS ISSUED PURSUANT TO SUBSECTION (7) OF THIS SECTION  
21 AND SHALL MAKE THE COURT ORDERS AVAILABLE ON THE ATTORNEY  
22 GENERAL'S WEB SITE. ADDITIONALLY, THE ATTORNEY GENERAL SHALL  
23 MAINTAIN A DATABASE OF THE EMPLOYERS WHO HAVE COMMITTED A  
24 FIRST VIOLATION OF SUBSECTION (5) OF THIS SECTION.

25 (9) (a) AS PART OF ITS QUARTERLY ELECTRONIC PUBLICATION TO  
26 EMPLOYERS, THE DEPARTMENT SHALL NOTIFY EVERY EMPLOYER OF THE  
27 REQUIREMENTS OF THIS SECTION AND SHALL INCLUDE IN THE PUBLICATION

1 A LINK TO ITS WEB SITE WHERE AN EMPLOYER CAN ACCESS THE NOTICE  
2 DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (9). THE DEPARTMENT  
3 SHALL INCLUDE THE NOTICE AND WEB SITE LINK IN EACH QUARTERLY  
4 ELECTRONIC PUBLICATION DISTRIBUTED TO EMPLOYERS ON AND AFTER  
5 THE EFFECTIVE DATE OF THIS SECTION.

6 (b) IN CONNECTION WITH THE STATEMENT AND INFORMATION  
7 REQUIRED TO BE POSTED PURSUANT TO SECTION 8-2-124, THE  
8 DEPARTMENT SHALL POST A NOTICE ON ITS WEB SITE EXPLAINING THE  
9 REQUIREMENTS OF THIS SECTION. THE NOTICE SHALL BE POSTED  
10 PERMANENTLY ON THE WEB SITE AND SHALL SET FORTH AT LEAST THE  
11 FOLLOWING INFORMATION:

12 (I) THAT A NEW STATE LAW PROHIBITS AN EMPLOYER FROM  
13 INTENTIONALLY OR KNOWINGLY EMPLOYING AN UNAUTHORIZED ALIEN;

14 (II) THE PENALTIES FOR VIOLATING THE PROHIBITION;

15 (III) THAT EMPLOYERS WILL BE REQUIRED TO VERIFY THE  
16 EMPLOYMENT ELIGIBILITY OF NEW EMPLOYEES THROUGH THE E-VERIFY  
17 PROGRAM; AND

18 (IV) INSTRUCTIONS FOR THE EMPLOYER ON HOW TO ENROLL IN THE  
19 E-VERIFY PROGRAM.

20 (10) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE  
21 AN EMPLOYER TO TAKE ANY ACTION THAT THE EMPLOYER BELIEVES IN  
22 GOOD FAITH WOULD VIOLATE FEDERAL OR STATE LAW.

23 (11) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE  
24 E-VERIFY PROGRAM CASH FUND, REFERRED TO IN THIS SECTION AS THE  
25 "FUND". THE FUND SHALL CONSIST OF ANY MONEYS COLLECTED  
26 PURSUANT TO SUBSECTION (4) OF THIS SECTION. ADDITIONALLY, ANY  
27 UNENCUMBERED AND UNEXPENDED MONEYS REMAINING IN THE

1 EMPLOYMENT VERIFICATION CASH FUND, CREATED IN SECTION 8-2-122 (4),  
2 AS OF THE DATE SECTION 8-2-122 IS REPEALED, SHALL BE TRANSFERRED  
3 TO THE FUND. MONEYS REMAINING IN THE FUND AT THE END OF ANY  
4 FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT REVERT TO THE  
5 GENERAL FUND.

6 (b) MONEYS IN THE FUND SHALL BE SUBJECT TO APPROPRIATION  
7 BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF LAW FOR THE  
8 PURPOSE OF ADMINISTERING AND ENFORCING THIS SECTION AND  
9 REIMBURSING COUNTY OR CITY ATTORNEYS FOR THEIR REASONABLE COSTS  
10 ASSOCIATED WITH ENFORCING THIS SECTION. A COUNTY OR CITY  
11 ATTORNEY THAT INCURS COSTS ASSOCIATED WITH ENFORCING THIS  
12 SECTION SHALL SUBMIT A REQUEST FOR REIMBURSEMENT TO THE  
13 DEPARTMENT OF LAW AT THE END OF THE STATE FISCAL YEAR FOR COSTS  
14 INCURRED DURING THAT FISCAL YEAR. THE DEPARTMENT OF LAW SHALL  
15 DETERMINE AN EQUITABLE METHOD OF REIMBURSING COUNTY AND CITY  
16 ATTORNEYS FOR THEIR ENFORCEMENT COSTS FROM AVAILABLE MONEYS  
17 IN THE FUND.

18 **SECTION 2.** 24-34-402, Colorado Revised Statutes, is amended  
19 BY THE ADDITION OF A NEW SUBSECTION to read:

20 **24-34-402. Discriminatory or unfair employment practices.**  
21 (8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE  
22 CONTRARY, IT SHALL BE A DISCRIMINATORY OR UNFAIR EMPLOYMENT  
23 PRACTICE FOR AN EMPLOYER TO REFUSE TO HIRE AN OTHERWISE  
24 QUALIFIED PERSON, OR TO DISCHARGE AN EMPLOYEE, WHO IS A UNITED  
25 STATES CITIZEN OR PERMANENT RESIDENT ALIEN WHILE HIRING A PERSON  
26 OR RETAINING AN EMPLOYEE WHO THE EMPLOYER KNOWS OR REASONABLY  
27 SHOULD HAVE KNOWN IS AN UNAUTHORIZED ALIEN, AS DEFINED IN



1 SECTION 8-2-125, C.R.S., HIRED AFTER THE DATE BY WHICH THE  
2 EMPLOYER IS REQUIRED TO PARTICIPATE IN THE FEDERAL E-VERIFY  
3 PROGRAM PURSUANT TO SECTION 8-2-125 (4) (a), C.R.S., IF THE  
4 UNAUTHORIZED ALIEN IS WORKING IN A JOB CATEGORY THAT REQUIRES  
5 EQUAL SKILL, EFFORT, AND RESPONSIBILITY AND UNDER SIMILAR WORKING  
6 CONDITIONS, AS DEFINED IN 29 U.S.C. SEC. 206 (d) (1), AS THE JOB  
7 CATEGORY SOUGHT BY THE PERSON WHO WAS NOT HIRED OR HELD BY THE  
8 DISCHARGED EMPLOYEE. FOR PURPOSES OF THIS SUBSECTION (8), AN  
9 EMPLOYER MAY SHOW THAT IT DID NOT KNOW OR SHOULD NOT  
10 REASONABLY HAVE KNOWN THAT IT EMPLOYED AN UNAUTHORIZED ALIEN  
11 IF THE EMPLOYER PROVIDES EVIDENCE THAT IT VERIFIED THE  
12 UNAUTHORIZED ALIEN'S WORK ELIGIBILITY STATUS THROUGH THE  
13 E-VERIFY PROGRAM, AS DEFINED IN SECTION 8-2-125, C.R.S.

14 **SECTION 3.** 24-21-112 (2), Colorado Revised Statutes, is  
15 amended to read:

16 **24-21-112. Electronic verification program - notice - employer**  
17 **responsibilities - definitions.** (2) The secretary of state, in consultation  
18 with the department of labor and employment, shall post on the secretary  
19 of state's web site information pertaining to the prohibition against hiring  
20 or continuing to employ an unauthorized alien, as defined in 8 U.S.C. sec.  
21 1324a (h) (3), ~~and~~ the availability of and the requirements for  
22 participation in the electronic verification program as a means for  
23 employers to verify the work eligibility status of new employees, AND THE  
24 REQUIREMENTS FOR VERIFYING THE WORK ELIGIBILITY STATUS OF NEWLY  
25 HIRED EMPLOYEES AND THE PENALTIES FOR NONCOMPLIANCE AS SET  
26 FORTH IN SECTION 8-2-125, C.R.S. The web site posting required by this  
27 subsection (2) shall appear in the same format as required by section

1 8-2-124 (2) (a), C.R.S., and shall appear in a conspicuous location on the  
2 secretary of state's web site. The secretary of state's web site shall also  
3 provide a link to the e-verify web site available through the internet portal  
4 for the United States citizenship and immigration services, or its  
5 successor agency.

6 **SECTION 4. Repeal.** 8-2-122, Colorado Revised Statutes, is  
7 repealed.

8 **SECTION 5. Applicability.** Section 2 of this act shall apply to  
9 discriminatory or unfair employment practices committed on or after the  
10 effective date of this act.

11 **SECTION 6. Safety clause.** The general assembly hereby finds,  
12 determines, and declares that this act is necessary for the immediate  
13 preservation of the public peace, health, and safety.