

First Regular Session  
Sixty-eighth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 11-0719.01 Christy Chase

SENATE BILL 11-129

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SENATE SPONSORSHIP

Harvey,

HOUSE SPONSORSHIP

(None),

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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 does not have to comply with the act.

Employers are 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, 2012;
- ! For employers with 50 or more employees but fewer than 200 employees, by July 1, 2012; and
- ! For employers with fewer than 50 employees, by July 1, 2014.

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

An employer is prohibited from intentionally or knowingly employing an unauthorized alien, and is 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, is obligated to investigate complaints of employer noncompliance, and the appropriate county or city attorney must bring a court action against the employer when an investigation shows a complaint has merit.

Upon finding a violation, the court must 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 up to 10 days. 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.

Employers who participate in the e-verify program and make a hiring decision based on information obtained through the e-verify program are shielded from liability if the employer ultimately hires a person who is not authorized to work in the United States or refuses to hire a person for whom the employer cannot confirm work eligibility status.

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) must 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.** 8-2-122, Colorado Revised Statutes, is REPEALED  
3 AND REENACTED, WITH AMENDMENTS, to read:

4 **8-2-122. Verification of employee work eligibility status - short**  
5 **title - legislative declaration - definitions - e-verify program - cash**  
6 **fund.** (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE  
7 "FAIR AND LEGAL EMPLOYMENT FOR COLORADANS ACT".

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

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

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

1 (III) EMPLOYERS WHO VIOLATE FEDERAL EMPLOYMENT LAWS WITH  
2 RESPECT TO THE HIRING OF PERSONS WHO ARE UNAUTHORIZED TO WORK  
3 IN THE UNITED STATES PLACE AN UNDUE ECONOMIC BURDEN ON  
4 EMPLOYERS WHO ATTEMPT TO HIRE ONLY PERSONS WHO ARE AUTHORIZED  
5 TO WORK IN THE UNITED STATES;

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

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

16 (b) THE GENERAL ASSEMBLY THEREFORE FINDS AND DETERMINES  
17 THAT IT IS:

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

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

25 (3) AS USED IN THIS SECTION:

26 (a) "AGENCY" MEANS A DEPARTMENT, DIVISION, BOARD, OR  
27 COMMISSION OF THIS STATE OR OF A COUNTY, CITY, OR CITY AND COUNTY

1 THAT ISSUES A LICENSE FOR THE PURPOSE OF OPERATING A BUSINESS IN  
2 THIS STATE.

3 (b) "BUSINESS LICENSE" MEANS A LICENSE ISSUED BY AN AGENCY  
4 TO AN EMPLOYER THAT IS NECESSARY FOR THE EMPLOYER TO OPERATE ITS  
5 BUSINESS.

6 (c) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND  
7 EMPLOYMENT.

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

13 (II) "EMPLOYER" DOES NOT INCLUDE:

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

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

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

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

26 (4) (a) EACH EMPLOYER IN COLORADO SHALL PARTICIPATE IN THE  
27 E-VERIFY PROGRAM FOR THE PURPOSE OF VERIFYING THE WORK

1 ELIGIBILITY STATUS OF EACH OF THE EMPLOYER'S NEWLY HIRED  
2 EMPLOYEES BY THE FOLLOWING DATES:

3 (I) FOR AN EMPLOYER WITH TWO HUNDRED OR MORE EMPLOYEES,  
4 NO LATER THAN JANUARY 1, 2012;

5 (II) FOR AN EMPLOYER WITH AT LEAST FIFTY EMPLOYEES BUT  
6 FEWER THAN TWO HUNDRED EMPLOYEES, NO LATER THAN JULY 1, 2012;

7 AND

8 (III) FOR AN EMPLOYER WITH FEWER THAN FIFTY EMPLOYEES, NO  
9 LATER THAN JULY 1, 2014.

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

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

26 (d) IF THE ATTORNEY GENERAL FINDS THAT AN EMPLOYER HAS  
27 KNOWINGLY OR INTENTIONALLY FAILED TO PARTICIPATE IN THE E-VERIFY

1 PROGRAM AS REQUIRED BY THIS SUBSECTION (4), THE EMPLOYER IS  
2 SUBJECT TO THE FOLLOWING PENALTIES FOR EACH THIRTY-DAY PERIOD OF  
3 NONCOMPLIANCE:

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

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

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

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

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

24 (II) ANY PERSON MAY FILE A SIGNED, SWORN COMPLAINT WITH THE  
25 ATTORNEY GENERAL ALLEGING THAT AN EMPLOYER IS NOT PARTICIPATING  
26 IN THE E-VERIFY PROGRAM. A PERSON WHO FILES A FALSE OR FRIVOLOUS  
27 COMPLAINT UNDER THIS SUBSECTION (4) COMMITS A CLASS 3

1 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION  
2 18-1.3-501, C.R.S.

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

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

13 (a) AN EMPLOYER SHALL NOT INTENTIONALLY OR KNOWINGLY  
14 EMPLOY AN UNAUTHORIZED ALIEN; AND

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

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



1 OR COUNTY OR CITY ATTORNEY SHALL VERIFY THE WORK AUTHORIZATION  
2 OF THE ALLEGED UNAUTHORIZED ALIEN WITH THE FEDERAL GOVERNMENT  
3 PURSUANT TO 8 U.S.C. SEC. 1373 (c). A STATE, COUNTY, OR CITY  
4 OFFICIAL SHALL NOT ATTEMPT TO INDEPENDENTLY MAKE A FINAL  
5 DETERMINATION ON WHETHER A PERSON IS AUTHORIZED TO WORK IN THE  
6 UNITED STATES. A PERSON WHO KNOWINGLY FILES A FALSE OR  
7 FRIVOLOUS COMPLAINT UNDER THIS SUBSECTION (6) COMMITS A CLASS 3  
8 MISDEMEANOR AND SHALL BE PUNISHED AS PROVIDED IN SECTION  
9 18-1.3-501, C.R.S.

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

21 (7) (a) THE COUNTY ATTORNEY OF THE COUNTY, OR THE CITY  
22 ATTORNEY OF THE CITY, IN WHICH THE UNAUTHORIZED ALIEN IS OR HAS  
23 BEEN EMPLOYED SHALL BRING AN ACTION AGAINST THE EMPLOYER FOR A  
24 VIOLATION OF SUBSECTION (5) OF THIS SECTION. A COUNTY OR CITY  
25 ATTORNEY SHALL NOT BRING AN ACTION AGAINST AN EMPLOYER FOR A  
26 VIOLATION OF SUBSECTION (5) OF THIS SECTION BEFORE THE DATE BY  
27 WHICH THE EMPLOYER IS OBLIGATED TO PARTICIPATE IN THE E-VERIFY

1 PROGRAM PURSUANT TO SUBSECTION (4) OF THIS SECTION. THE COURT IN  
2 WHICH THE ACTION IS FILED SHALL EXPEDITE THE ACTION AND SHALL SET  
3 THE MATTER FOR HEARING AT THE EARLIEST PRACTICABLE DATE, BUT NO  
4 LATER THAN NINETY DAYS AFTER THE ACTION IS FILED.

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

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

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

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

27 (II) IN ADDITION, THE COURT MAY ORDER THE APPROPRIATE

1 AGENCIES TO SUSPEND ALL BUSINESS LICENSES HELD BY THE EMPLOYER  
2 FOR UP TO TEN BUSINESS DAYS. IN DETERMINING WHETHER TO ORDER THE  
3 SUSPENSION OF THE EMPLOYER'S BUSINESS LICENSES, THE COURT SHALL  
4 BASE ITS DECISION ON ANY EVIDENCE OR INFORMATION IT RECEIVES  
5 DURING THE ACTION AND SHALL CONSIDER THE FOLLOWING FACTORS, IF  
6 RELEVANT:

7 (A) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE  
8 EMPLOYER;

9 (B) ANY PRIOR MISCONDUCT OF THE EMPLOYER;

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

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

13 (E) THE DURATION OF THE VIOLATION;

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

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

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

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

26 (I) THE EMPLOYER TO TERMINATE THE EMPLOYMENT OF ALL  
27 UNAUTHORIZED ALIENS;

1           (II) THE EMPLOYER TO BE SUBJECT TO A FIVE-YEAR  
2 PROBATIONARY PERIOD, DURING WHICH THE EMPLOYER MUST FILE  
3 QUARTERLY REPORTS WITH THE APPROPRIATE COUNTY OR CITY ATTORNEY  
4 SPECIFYING EACH NEW EMPLOYEE HIRED BY THE EMPLOYER AT THE  
5 SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK  
6 AND THE WORK ELIGIBILITY STATUS OF EACH NEW EMPLOYEE;

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

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

1 FOLLOWING FACTORS, IF RELEVANT:

2 (A) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE  
3 EMPLOYER;

4 (B) ANY PRIOR MISCONDUCT OF THE EMPLOYER;

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

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

8 (E) THE DURATION OF THE VIOLATION;

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

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

12 (d) IN DETERMINING THE LENGTH OF THE BUSINESS LICENSE  
13 SUSPENSION PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (c) OF  
14 THIS SUBSECTION (7), THE COURT SHALL NOT CONSIDER THE POTENTIAL  
15 FINANCIAL HARDSHIP THAT MAY BE IMPOSED ON THE EMPLOYER BASED ON  
16 THE LENGTH OF THE BUSINESS LICENSE SUSPENSION.

17 (e) IF, DURING A PERIOD OF PROBATION IMPOSED BY A COURT  
18 ORDER ISSUED PURSUANT TO PARAGRAPH (b) OR (c) OF THIS SUBSECTION  
19 (7), THE COURT FINDS THAT THE EMPLOYER HAS EMPLOYED AN  
20 UNAUTHORIZED ALIEN, THE EMPLOYER SHALL BE FOUND TO HAVE  
21 COMMITTED A SECOND VIOLATION OF SUBSECTION (5) OF THIS SECTION,  
22 AND THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO  
23 IMMEDIATELY AND PERMANENTLY REVOKE ALL BUSINESS LICENSES HELD  
24 BY THE EMPLOYER.

25 (f) UPON THE ISSUANCE OF AN ORDER PURSUANT TO THIS  
26 SUBSECTION (7), THE COURT SHALL SEND A COPY OF THE ORDER TO THE  
27 ATTORNEY GENERAL. FOR PURPOSES OF ORDERS DIRECTING THE

1 SUSPENSION OF AN EMPLOYER'S BUSINESS LICENSES, A COPY OF THE ORDER  
2 SHALL BE SENT TO ALL APPROPRIATE AGENCIES INFORMING THE AGENCIES  
3 THAT THE EMPLOYER'S BUSINESS LICENSES ARE SUSPENDED, EFFECTIVE  
4 FIVE BUSINESS DAYS AFTER THE DATE THE ORDER WAS ISSUED.

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

13 (8) (a) AN EMPLOYER SHALL NOT BE HELD CIVILLY LIABLE AND  
14 SHALL NOT BE SUBJECT TO THE PENALTIES SPECIFIED IN SUBSECTION (7) OF  
15 THIS SECTION IN A CAUSE OF ACTION FOR THE EMPLOYER'S UNLAWFUL  
16 HIRING OF AN UNAUTHORIZED ALIEN IF:

17 (I) THE EMPLOYER PARTICIPATES IN THE E-VERIFY PROGRAM IN  
18 ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION; AND

19 (II) THE INFORMATION OBTAINED IN ACCORDANCE WITH THE  
20 E-VERIFY PROGRAM INDICATES THAT THE EMPLOYEE'S WORK ELIGIBILITY  
21 STATUS ALLOWED THE EMPLOYER TO HIRE THE EMPLOYEE.

22 (b) AN EMPLOYER SHALL NOT BE HELD CIVILLY LIABLE IN A CAUSE  
23 OF ACTION FOR THE EMPLOYER'S REFUSAL TO HIRE AN INDIVIDUAL IF:

24 (I) THE EMPLOYER PARTICIPATES IN THE E-VERIFY PROGRAM IN  
25 ACCORDANCE WITH SUBSECTION (4) OF THIS SECTION; AND

26 (II) THE EMPLOYER RECEIVED A FINAL NOTICE OF  
27 NONCONFIRMATION OF WORK ELIGIBILITY ON THE INDIVIDUAL THROUGH

1 THE E-VERIFY PROGRAM.

2 (c) AN EMPLOYER THAT SHOWS THAT IT COMPLIED IN GOOD FAITH  
3 WITH THE REQUIREMENTS OF 8 U.S.C. SEC. 1324b ESTABLISHES AN  
4 AFFIRMATIVE DEFENSE THAT THE EMPLOYER DID NOT INTENTIONALLY OR  
5 KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

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

12 (10) (a) AS PART OF ITS QUARTERLY ELECTRONIC PUBLICATION TO  
13 EMPLOYERS, THE DEPARTMENT SHALL NOTIFY EVERY EMPLOYER OF THE  
14 REQUIREMENTS OF THIS SECTION AND SHALL INCLUDE IN THE PUBLICATION  
15 A LINK TO ITS WEB SITE WHERE AN EMPLOYER CAN ACCESS THE NOTICE  
16 DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (10). THE  
17 DEPARTMENT SHALL INCLUDE THE NOTICE AND WEB SITE LINK IN EACH  
18 QUARTERLY ELECTRONIC PUBLICATION DISTRIBUTED TO EMPLOYERS ON  
19 AND AFTER THE EFFECTIVE DATE OF THIS SECTION.

20 (b) IN CONNECTION WITH THE STATEMENT AND INFORMATION  
21 REQUIRED TO BE POSTED PURSUANT TO SECTION 8-2-124, THE  
22 DEPARTMENT SHALL PERMANENTLY POST A NOTICE ON ITS WEB SITE  
23 EXPLAINING THE REQUIREMENTS OF THIS SECTION THAT INCLUDES AT  
24 LEAST THE FOLLOWING INFORMATION:

25 (I) THAT STATE LAW PROHIBITS AN EMPLOYER FROM  
26 INTENTIONALLY OR KNOWINGLY EMPLOYING AN UNAUTHORIZED ALIEN;

27 (II) THE PENALTIES FOR VIOLATING THE PROHIBITION;

1 (III) THAT EMPLOYERS WILL BE REQUIRED TO VERIFY THE  
2 EMPLOYMENT ELIGIBILITY OF NEW EMPLOYEES THROUGH THE E-VERIFY  
3 PROGRAM; AND

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

6 (11) NOTHING IN THIS SECTION REQUIRES AN EMPLOYER TO TAKE  
7 AN ACTION THAT THE EMPLOYER BELIEVES IN GOOD FAITH WOULD  
8 VIOLATE FEDERAL OR STATE LAW.

9 (12) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE  
10 E-VERIFY PROGRAM CASH FUND, REFERRED TO IN THIS SECTION AS THE  
11 "FUND". THE FUND CONSISTS OF ANY MONEYS COLLECTED PURSUANT TO  
12 SUBSECTION (4) OF THIS SECTION. ADDITIONALLY, THE STATE TREASURER  
13 SHALL TRANSFER ALL UNENCUMBERED AND UNEXPENDED MONEYS  
14 REMAINING IN THE EMPLOYMENT VERIFICATION CASH FUND, CREATED IN  
15 SECTION 8-2-122 (4), AS OF THE DATE SECTION 8-2-122 IS REPEALED AND  
16 REENACTED, TO THE FUND. MONEYS REMAINING IN THE FUND AT THE END  
17 OF ANY FISCAL YEAR REMAIN IN THE FUND AND DO NOT REVERT TO THE  
18 GENERAL FUND.

19 (b) MONEYS IN THE FUND ARE SUBJECT TO APPROPRIATION BY THE  
20 GENERAL ASSEMBLY TO THE DEPARTMENT OF LAW FOR THE PURPOSE OF  
21 ADMINISTERING AND ENFORCING THIS SECTION AND REIMBURSING COUNTY  
22 OR CITY ATTORNEYS FOR THEIR REASONABLE COSTS ASSOCIATED WITH  
23 ENFORCING THIS SECTION. A COUNTY OR CITY ATTORNEY THAT INCURS  
24 COSTS ASSOCIATED WITH ENFORCING THIS SECTION SHALL SUBMIT A  
25 REQUEST FOR REIMBURSEMENT TO THE DEPARTMENT OF LAW AT THE END  
26 OF THE STATE FISCAL YEAR FOR COSTS INCURRED DURING THAT FISCAL  
27 YEAR. THE DEPARTMENT OF LAW SHALL DETERMINE AN EQUITABLE



1 METHOD OF REIMBURSING COUNTY AND CITY ATTORNEYS FOR THEIR  
2 ENFORCEMENT COSTS FROM AVAILABLE MONEYS IN THE FUND.

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

5 **24-34-402. Discriminatory or unfair employment practices.**  
6 (8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE  
7 CONTRARY, IT IS A DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICE  
8 FOR AN EMPLOYER TO REFUSE TO HIRE AN OTHERWISE QUALIFIED PERSON,  
9 OR TO DISCHARGE AN EMPLOYEE, WHO IS A UNITED STATES CITIZEN OR  
10 PERMANENT RESIDENT ALIEN WHILE HIRING A PERSON OR RETAINING AN  
11 EMPLOYEE WHO THE EMPLOYER KNOWS OR REASONABLY SHOULD HAVE  
12 KNOWN IS AN UNAUTHORIZED ALIEN, AS DEFINED IN SECTION 8-2-122,  
13 C.R.S., HIRED AFTER THE DATE BY WHICH THE EMPLOYER IS REQUIRED TO  
14 PARTICIPATE IN THE FEDERAL E-VERIFY PROGRAM PURSUANT TO SECTION  
15 8-2-122 (4) (a), C.R.S., IF THE UNAUTHORIZED ALIEN IS WORKING IN A JOB  
16 CATEGORY THAT REQUIRES EQUAL SKILL, EFFORT, AND RESPONSIBILITY  
17 AND UNDER SIMILAR WORKING CONDITIONS, AS DEFINED IN 29 U.S.C. SEC.  
18 206 (d) (1), AS THE JOB CATEGORY SOUGHT BY THE PERSON WHO WAS NOT  
19 HIRED OR HELD BY THE DISCHARGED EMPLOYEE. FOR PURPOSES OF THIS  
20 SUBSECTION (8), AN EMPLOYER MAY SHOW THAT IT DID NOT KNOW OR  
21 SHOULD NOT REASONABLY HAVE KNOWN THAT IT EMPLOYED AN  
22 UNAUTHORIZED ALIEN IF THE EMPLOYER PROVIDES EVIDENCE THAT IT  
23 VERIFIED THE UNAUTHORIZED ALIEN'S WORK ELIGIBILITY STATUS  
24 THROUGH THE E-VERIFY PROGRAM, AS DEFINED IN SECTION 8-2-122,  
25 C.R.S.

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

1           **24-21-112. Electronic verification program - notice - employer**  
2 **responsibilities - definitions.** (2) The secretary of state, in consultation  
3 with the department of labor and employment, shall post on the secretary  
4 of state's web site information pertaining to the prohibition against hiring  
5 or continuing to employ an unauthorized alien, as defined in 8 U.S.C. sec.  
6 1324a (h) (3), ~~and~~ the availability of and the requirements for  
7 participation in the electronic verification program as a means for  
8 employers to verify the work eligibility status of new employees, AND THE  
9 REQUIREMENTS FOR VERIFYING THE WORK ELIGIBILITY STATUS OF NEWLY  
10 HIRED EMPLOYEES AND THE PENALTIES FOR NONCOMPLIANCE AS SET  
11 FORTH IN SECTION 8-2-122, C.R.S. The web site posting required by this  
12 subsection (2) shall appear in the same format as required by section  
13 8-2-124 (2) (a), C.R.S., and shall appear in a conspicuous location on the  
14 secretary of state's web site. The secretary of state's web site shall also  
15 provide a link to the e-verify web site available through the internet portal  
16 for the United States citizenship and immigration services, or its  
17 successor agency.

18           **SECTION 4. Applicability.** Section 2 of this act shall apply to  
19 discriminatory or unfair employment practices committed on or after the  
20 effective date of this act.

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