

First Extraordinary Session
Sixty-fifth General Assembly
STATE OF COLORADO

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 06B-2058.01 Jason Gelender

HOUSE BILL 06S-1020

HOUSE SPONSORSHIP

Benfield and Berens, Harvey, Kerr J., Penry, and Schultheis

SENATE SPONSORSHIP

Windels,

House Committees

Business Affairs and Labor
Appropriations

Senate Committees

Business, Labor and Technology
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE ELIMINATION OF A STATE INCOME TAX BENEFIT FOR**
102 **A BUSINESS THAT PAYS AN UNAUTHORIZED ALIEN TO PERFORM**
103 **LABOR SERVICES, AND, IN CONNECTION THEREWITH,**
104 **PROHIBITING CERTAIN WAGES OR REMUNERATION PAID TO AN**
105 **UNAUTHORIZED ALIEN FOR LABOR SERVICES FROM BEING**
106 **CLAIMED AS A DEDUCTIBLE BUSINESS EXPENSE FOR STATE**
107 **INCOME TAX PURPOSES IF, AT THE TIME THE BUSINESS HIRED**
108 **THE UNAUTHORIZED ALIEN, THE BUSINESS KNEW == OF THE**
109 **UNAUTHORIZED STATUS OF THE ALIEN UNLESS SPECIFIED**
110 **EXCEPTIONS APPLY AND, TO THE EXTENT SUCH A PAYMENT WAS**
111 **CLAIMED AS A DEDUCTION IN DETERMINING THE BUSINESS'**
112 **FEDERAL INCOME TAX LIABILITY, REQUIRING AN AMOUNT**

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.

HOUSE
3rd Reading Unamended
July 7, 2006

HOUSE
Amended 2nd Reading
July 6, 2006

101 **EQUAL TO THE PROHIBITED DEDUCTION TO BE ADDED TO THE**
102 **BUSINESS' FEDERAL TAXABLE INCOME FOR THE PURPOSE OF**
103 **DETERMINING STATE INCOME TAX LIABILITY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Refers to the voters of the state a measure with the following provisions:

On or after a specified date, prohibits a business from claiming wages or remuneration for labor services paid to an unauthorized alien in excess of a specified amount as a deductible business expense for state income tax purposes by a taxpayer unless specified exceptions apply.

Requires the disallowed business expense that was claimed as a deduction in determining the business' federal income tax liability to be added to its federal taxable income for purposes of determining the state income tax liability.

Defines "labor services" and "unauthorized alien".

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

2 **SECTION 1.** 39-22-104 (3), Colorado Revised Statutes, is
3 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

4 **39-22-104. Income tax imposed on individuals, estates, and**
5 **trusts - single rate - definitions.** (3) There shall be added to the federal
6 taxable income:

7 (i) AN AMOUNT EQUAL TO A BUSINESS EXPENSE FOR LABOR
8 SERVICES THAT IS DEDUCTED PURSUANT TO SECTION 162 (a) (1) OF THE
9 INTERNAL REVENUE CODE BUT THAT IS PROHIBITED FROM BEING CLAIMED
10 AS A DEDUCTIBLE BUSINESS EXPENSE FOR STATE INCOME TAX PURPOSES
11 PURSUANT TO SECTION 39-22-529.

12 **SECTION 2.** 39-22-304 (2), Colorado Revised Statutes, is

1 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

2 **39-22-304. Net income of corporation.** (2) There shall be added
3 to federal taxable income:

4 (h) AN AMOUNT EQUAL TO A BUSINESS EXPENSE FOR LABOR
5 SERVICES THAT IS DEDUCTED PURSUANT TO SECTION 162 (a) (1) OF THE
6 INTERNAL REVENUE CODE BUT THAT IS PROHIBITED FROM BEING CLAIMED
7 AS A DEDUCTIBLE BUSINESS EXPENSE FOR STATE INCOME TAX PURPOSES
8 PURSUANT TO SECTION 39-22-529.

9 **SECTION 3.** Part 5 of article 22 of title 39, Colorado Revised
10 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
11 read:

12 **39-22-529. Business expense deduction - labor services -**
13 **unauthorized alien - definitions.** (1) AS USED IN THIS SECTION, UNLESS
14 THE CONTEXT OTHERWISE REQUIRES:

15 (a) "LABOR SERVICES" MEANS THE PHYSICAL PERFORMANCE OF
16 SERVICES IN THIS STATE.

17 (b) "UNAUTHORIZED ALIEN" SHALL HAVE THE SAME MEANING AS
18 SET FORTH IN 8 U.S.C. SEC. 1324a (h) (3), AS AMENDED.

19 (2) ON OR AFTER JANUARY 1, 2008, NO WAGES OR REMUNERATION
20 FOR LABOR SERVICES PAID TO AN UNAUTHORIZED ALIEN OF SIX HUNDRED
21 DOLLARS OR MORE IN A YEAR SHALL BE CLAIMED AS A DEDUCTIBLE
22 BUSINESS EXPENSE FOR STATE INCOME TAX PURPOSES BY A TAXPAYER
23 WHO, AT THE TIME THE TAXPAYER HIRED THE UNAUTHORIZED ALIEN,
24 KNEW OF THE UNAUTHORIZED STATUS OF THE ALIEN. THE PROVISIONS
25 OF THIS SUBSECTION (2) SHALL APPLY REGARDLESS OF WHETHER AN
26 INTERNAL REVENUE SERVICE FORM 1099-MISC IS ISSUED IN CONJUNCTION
27 WITH THE WAGES OR REMUNERATION.

1 (3) THIS SECTION SHALL NOT APPLY TO:

2 (a) ANY BUSINESS DOMICILED IN THE STATE THAT IS EXEMPT FROM
3 COMPLIANCE WITH FEDERAL EMPLOYMENT VERIFICATION PROCEDURES
4 UNDER FEDERAL LAW THAT MAKES THE EMPLOYMENT OF UNAUTHORIZED
5 ALIENS UNLAWFUL;

6 (b) ANY INDIVIDUAL HIRED BY THE TAXPAYER BEFORE THE
7 EFFECTIVE DATE OF THIS PARAGRAPH (b);

8 (c) ANY TAXPAYER WHERE THE INDIVIDUAL BEING PAID IS NOT
9 DIRECTLY COMPENSATED OR EMPLOYED BY THE TAXPAYER; OR

10 (d) WAGES OR REMUNERATION PAID FOR LABOR SERVICES TO ANY
11 INDIVIDUAL WHO HOLDS AND PRESENTS TO THE TAXPAYER A VALID
12 LICENSE OR IDENTIFICATION CARD ISSUED BY THE DEPARTMENT OF
13 REVENUE.

14 (4) THE EXECUTIVE DIRECTOR IS AUTHORIZED TO PRESCRIBE
15 FORMS AND PROMULGATE RULES THAT ARE NECESSARY TO ADMINISTER
16 THIS SECTION.

17 **SECTION 4. Refer to people under referendum.** (1) This act
18 shall be submitted to a vote of the registered electors of the state of
19 Colorado at the next election for which it may be submitted, for their
20 approval or rejection, under the provisions of the referendum as provided
21 for in section 1 of article V and section 20 of article X of the state
22 constitution, and in article 40 of title 1, Colorado Revised Statutes. Each
23 elector voting at said election and desirous of voting for or against said
24 act shall cast a vote as provided by law either "Yes" or "No" on the
25 proposition: "SHALL STATE TAXES BE INCREASED ONE HUNDRED FIFTY
26 THOUSAND DOLLARS ANNUALLY BY AN AMENDMENT TO THE COLORADO
27 REVISED STATUTES THAT ELIMINATES A STATE INCOME TAX BENEFIT FOR

1 A BUSINESS THAT PAYS AN UNAUTHORIZED ALIEN TO PERFORM LABOR
2 SERVICES, AND, IN CONNECTION THEREWITH, PROHIBITS CERTAIN WAGES
3 OR REMUNERATION PAID TO AN UNAUTHORIZED ALIEN FOR LABOR
4 SERVICES FROM BEING CLAIMED AS A DEDUCTIBLE BUSINESS EXPENSE FOR
5 STATE INCOME TAX PURPOSES IF, AT THE TIME THE BUSINESS HIRED THE
6 UNAUTHORIZED ALIEN, THE BUSINESS KNEW ___ OF THE UNAUTHORIZED
7 STATUS OF THE ALIEN UNLESS SPECIFIED EXCEPTIONS APPLY AND, TO THE
8 EXTENT SUCH A PAYMENT WAS CLAIMED AS A DEDUCTION IN DETERMINING
9 THE BUSINESS' FEDERAL INCOME TAX LIABILITY, REQUIRES AN AMOUNT
10 EQUAL TO THE PROHIBITED DEDUCTION TO BE ADDED TO THE BUSINESS'
11 FEDERAL TAXABLE INCOME FOR THE PURPOSE OF DETERMINING STATE
12 INCOME TAX LIABILITY?" The votes cast for the adoption or rejection of
13 said act shall be canvassed and the result determined in the manner
14 provided by law for the canvassing of votes for representatives in
15 Congress.

16 (2) In accordance with section 1-5-407 (5), Colorado Revised
17 Statutes, it is the intent of the general assembly that this act, as a measure
18 to increase taxes, be printed on the ballot immediately following all
19 constitutional referred measures and before any other statutory referred
20 measures and lettered accordingly.