

**NOTE: This bill has been prepared for the signature of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.**

# An Act

SENATE BILL 08-139

BY SENATOR(S) Schultheis, Mitchell S., Renfroe, and Spence;  
also REPRESENTATIVE(S) Lundberg, Gagliardi, Kerr J., King, Lambert,  
Liston, Looper, Mitchell V., Rice, Summers, and Witwer.

CONCERNING NOTIFICATION TO EMPLOYERS OF THE FEDERAL ELECTRONIC  
VERIFICATION PROGRAM FOR USE IN VERIFYING THE WORK  
ELIGIBILITY STATUS OF NEW EMPLOYEES.

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

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

**8-2-124. Electronic verification program - availability - notice to employers - definitions.** (1) AS USED IN THIS SECTION:

(a) "DEPARTMENT" MEANS THE DEPARTMENT OF LABOR AND EMPLOYMENT.

(b) "ELECTRONIC VERIFICATION PROGRAM" OR "E-VERIFY PROGRAM" MEANS THE ELECTRONIC EMPLOYMENT VERIFICATION PROGRAM THAT IS AUTHORIZED IN 8 U.S.C. SEC. 1324a AND JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL

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

SECURITY ADMINISTRATION, OR ITS SUCCESSOR PROGRAM.

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

(d) "EMPLOYMENT ELIGIBILITY VERIFICATION FORM I-9" MEANS THE FORM DEVELOPED BY THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES IN THE DEPARTMENT OF HOMELAND SECURITY PURSUANT TO 8 U.S.C. SEC. 1324a (b).

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

(2) (a) (I) AS PART OF ITS QUARTERLY ELECTRONIC PUBLICATION DISTRIBUTED TO EMPLOYERS, THE DEPARTMENT SHALL, AT A MINIMUM, NOTIFY EVERY EMPLOYER OF THE FEDERAL LAW AGAINST HIRING OR CONTINUING TO EMPLOY AN UNAUTHORIZED ALIEN AND OF THE AVAILABILITY OF THE OPTIONAL ELECTRONIC VERIFICATION PROGRAM TO VERIFY THE WORK ELIGIBILITY STATUS OF NEW EMPLOYEES.

(II) (A) IN NOTIFYING EMPLOYERS OF THE E-VERIFY PROGRAM PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), THE DEPARTMENT SHALL INCLUDE LANGUAGE SIMILAR TO THE FOLLOWING:

AS WITH ALL CURRENT EMPLOYEE VERIFICATION PROGRAMS, THE E-VERIFY PROGRAM IS NOT ONE HUNDRED PERCENT ACCURATE, AND AN EMPLOYEE HAS RECOURSE AVAILABLE IF THE EMPLOYEE IS LEGALLY DOCUMENTED TO WORK IN THE UNITED STATES BUT THE EMPLOYER RECEIVES A FINAL NOTICE OF NONCONFIRMATION OF WORK ELIGIBILITY REGARDING THE EMPLOYEE THROUGH THE E-VERIFY PROGRAM.

(B) ADDITIONALLY, THE DEPARTMENT SHALL PROVIDE EMPLOYERS INFORMATION ABOUT WHEN, DURING THE HIRING PROCESS, AN EMPLOYER MAY LAWFULLY USE THE E-VERIFY PROGRAM, SPECIFYING THAT THE E-VERIFY PROGRAM CAN ONLY BE USED AFTER AN EMPLOYEE IS HIRED AND

CANNOT BE USED TO VERIFY THE WORK ELIGIBILITY STATUS OF EXISTING EMPLOYEES. THE NOTICE SHALL ALSO RESTATE THE REQUIREMENTS OF SECTION 24-34-402, C.R.S., WHICH PROHIBITS EMPLOYERS FROM ENGAGING IN DISCRIMINATORY OR UNFAIR EMPLOYMENT PRACTICES.

(III) IMMEDIATELY FOLLOWING THE NOTICE REQUIRED BY SUBPARAGRAPH (I) OF THIS PARAGRAPH (a), THE DEPARTMENT SHALL INCLUDE IN THE QUARTERLY ELECTRONIC PUBLICATION A LINK TO THE PORTION OF THE DEPARTMENT'S WEB SITE WHERE AN EMPLOYER CAN ACCESS ADDITIONAL INFORMATION ABOUT THE FEDERAL LAW, THE E-VERIFY PROGRAM AND THE REQUIREMENTS FOR PARTICIPATION IN THE E-VERIFY PROGRAM, AND THE FOLLOWING STATEMENT, IN BOLD-FACED TYPE IN A CONSPICUOUS LOCATION:

**IT IS UNLAWFUL FOR AN EMPLOYER TO:**

**HIRE, RECRUIT, OR REFER FOR A FEE, FOR EMPLOYMENT IN THE UNITED STATES, AN ALIEN, KNOWING THE ALIEN IS AN UNAUTHORIZED ALIEN;**

**HIRE, RECRUIT, OR REFER FOR A FEE, FOR EMPLOYMENT IN THE UNITED STATES, AN INDIVIDUAL WITHOUT VERIFYING THE EMPLOYMENT ELIGIBILITY STATUS OF THE INDIVIDUAL THROUGH COMPLETION OF THE EMPLOYMENT ELIGIBILITY VERIFICATION FORM I-9, OR ITS SUCCESSOR FORM;**

**CONTINUE TO EMPLOY AN ALIEN IN THE UNITED STATES, KNOWING THAT THE ALIEN IS OR HAS BECOME AN UNAUTHORIZED ALIEN;  
OR**

**WHILE USING THE E-VERIFY PROGRAM, REFUSE TO HIRE, DISCHARGE, PROMOTE, OR DEMOTE A PERSON, HARASS A PERSON DURING THE COURSE OF EMPLOYMENT, OR DISCRIMINATE AGAINST A PERSON IN MATTERS OF COMPENSATION, ON THE BASIS OF THE PERSON'S DISABILITY, RACE, CREED, COLOR, SEX, SEXUAL ORIENTATION, RELIGION, AGE, NATIONAL ORIGIN, OR ANCESTRY, PURSUANT TO SECTION 24-34-402, C.R.S.**

**FOR MORE SPECIFIC INFORMATION REGARDING THE E-VERIFY PROGRAM AND ITS REQUIREMENTS AND USE, EMPLOYERS SHOULD**

**CONSULT 8 U.S.C. SEC. 1324a.**

(IV) THE DEPARTMENT SHALL INCLUDE THE NOTICE AND WEB SITE LINK REQUIRED BY THIS PARAGRAPH (a) IN EACH QUARTERLY ELECTRONIC PUBLICATION DISTRIBUTED TO EMPLOYERS ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION.

(b) THE DEPARTMENT SHALL PERMANENTLY POST ON ITS WEB SITE THE STATEMENT AND INFORMATION DESCRIBED IN SUBPARAGRAPH (III) OF PARAGRAPH (a) OF THIS SUBSECTION (2), AS WELL AS A LINK TO THE E-VERIFY WEB SITE AVAILABLE THROUGH THE INTERNET PORTAL FOR THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, OR ITS SUCCESSOR AGENCY.

**SECTION 2.** Part 1 of article 21 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**24-21-112. Electronic verification program - notice - definitions.**

(1) AS USED IN THIS SECTION:

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

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

(2) THE SECRETARY OF STATE, IN CONSULTATION WITH THE DEPARTMENT OF LABOR AND EMPLOYMENT, SHALL POST ON THE SECRETARY OF STATE'S WEB SITE INFORMATION PERTAINING TO THE PROHIBITION AGAINST HIRING OR CONTINUING TO EMPLOY AN UNAUTHORIZED ALIEN, AS DEFINED IN 8 U.S.C. SEC. 1324a (h) (3), AND THE AVAILABILITY OF AND THE REQUIREMENTS FOR PARTICIPATION IN THE ELECTRONIC VERIFICATION PROGRAM AS A MEANS FOR EMPLOYERS TO VERIFY THE WORK ELIGIBILITY STATUS OF NEW EMPLOYEES. THE WEB SITE POSTING REQUIRED BY THIS

SUBSECTION (2) SHALL APPEAR IN THE SAME FORMAT AS REQUIRED BY SECTION 8-2-124 (2) (a), C.R.S., AND SHALL APPEAR IN A CONSPICUOUS LOCATION ON THE SECRETARY OF STATE'S WEB SITE. THE SECRETARY OF STATE'S WEB SITE SHALL ALSO PROVIDE A LINK TO THE E-VERIFY WEB SITE AVAILABLE THROUGH THE INTERNET PORTAL FOR THE UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, OR ITS SUCCESSOR AGENCY.

**SECTION 3. Effective date.** This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or

part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

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Peter C. Groff  
PRESIDENT OF  
THE SENATE

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Andrew Romanoff  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Karen Goldman  
SECRETARY OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_

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Bill Ritter, Jr.  
GOVERNOR OF THE STATE OF COLORADO