

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 11-1050.01 Kate Meyer

HOUSE BILL 11-1309

HOUSE SPONSORSHIP

Baumgardner, Scott

SENATE SPONSORSHIP

Renfroe,

House Committees

Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 CONCERNING ENACTMENT OF THE "UNAUTHORIZED EMPLOYMENT
102 AND HUMAN SMUGGLING PREVENTION ACT".

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>.)

The bill enacts the "Unauthorized Employment and Human Smuggling Prevention Act".

Section 2 of the bill specifies that an employer must comply within 20 days after receiving a request from the director of the division of labor in the department of labor and employment (director) for employment

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.

verification-related documentation, and grants the director discretion to grant a one-time extension of up to 10 additional business days to an employer. Section 2 also immunizes from penalty an employer who made a good-faith effort to comply with documentation submission requirements.

Section 3 makes any record that relates to the immigration status of a person admissible in a court without further foundation or testimony from a custodian of records if the record is certified as authentic by the government agency that is responsible for maintaining the record.

Section 4 directs state and local officials to cooperate with federal authorities in enforcing immigration laws, including allowing a law enforcement agency or officer to securely transport into federal custody a person that the agency has verified is unlawfully present (unauthorized person) in the country.

Section 5 allows a peace officer enforcing the law relating to smuggling humans to lawfully stop a person operating a motor vehicle who the officer has reasonable suspicion to believe is in violation of any civil traffic law.

Section 6 criminalizes the following acts:

- ! Stopping and blocking traffic to hire and pick up passengers for work at a different location;
- ! If a person knows or recklessly disregards that an unauthorized person has come to, entered, or remains in the United States in violation of law, transporting or moving the unauthorized person in Colorado, in furtherance of the unauthorized person's unlawful presence, in a means of transportation, or concealing, harboring, or shielding the unauthorized person from detection in any place in Colorado; and
- ! Encouraging or inducing an unauthorized person to enter the state when the actor knows or recklessly disregards the fact that the unauthorized person's entrance will be in violation of law.

Section 6 also prohibits a person unlawfully in the country from entering a vehicle for the purpose of being transported to work at a different location or from knowingly applying for, soliciting, or performing work in Colorado.

A person who commits one of the above offenses is subject to a fine of \$500 per unauthorized person. Each day is a separate violation. Fines will be deposited in the newly created immigration enforcement mission cash fund, and will be used to reimburse law enforcement authorities for the costs associated with unauthorized persons.

1 **SECTION 1. Short title - legislative declaration.** (1) This act
2 shall be known as the "Unauthorized Employment and Human Smuggling
3 Prevention Act".

4 (2) The general assembly finds that federal law:

5 (a) Prohibits an unauthorized person from entering the United
6 States illegally (8 U.S.C. secs. 1181, 1321, and 1323);

7 (b) Prohibits the employment of unauthorized persons (8 U.S.C.
8 sec. 1324a);

9 (c) Prohibits certain unauthorized persons from receiving public
10 benefits (8 U.S.C. secs. 1611, 1621, and 1623); and

11 (d) Authorizes the federal government to remove unauthorized
12 persons who are found to be present illegally in the United States (8
13 U.S.C. secs. 1226, 1227, and 1231).

14 (3) In addition to federal law prohibitions, the general assembly
15 finds that Colorado law includes the following provisions:

16 (a) A state agency or political subdivision of the state is prohibited
17 from entering into or renewing a public contract for services with a
18 contractor that knowingly employs or contracts with an unauthorized
19 person to perform work under the contract (article 17.5 of title 8,
20 Colorado Revised Statutes);

21 (b) A licensing authority must deny certain professional licenses
22 upon the determination that the applicant is unlawfully present in the
23 United States (section 24-34-107, Colorado Revised Statutes); and

24 (c) A person seeking certain public benefits must present proof of
25 lawful presence in the United States (article 76.5 of title 24, Colorado
26 Revised Statutes).

27 (4) The general assembly also finds that:

1 (a) On January 4, 2011, Governor Bill Ritter signed a
2 memorandum of agreement with the United States department of
3 homeland security's immigration and customs enforcement agency to
4 participate in the secure communities initiative, which will assist local
5 law enforcement in its efforts to combat illegal immigration;

6 (b) By working to reduce the number of unauthorized workers in
7 Colorado, there will be more jobs for citizens and legally present workers;
8 and

9 (c) Uniform, fair, and equitable enforcement of federal
10 immigration and state employment laws will benefit all citizens of
11 Colorado, help revitalize the Colorado economy, and offer increased job
12 opportunities for citizens and legally present workers.

13 (5) Furthermore, the general assembly finds that the lure of
14 unauthorized employment encourages human smuggling.

15 (6) Therefore, the general assembly declares that Colorado must
16 bolster its laws regarding the presence and employment of unlawfully
17 present individuals, as well as address the tragedy of human smuggling.

18 **SECTION 2.** 8-2-122 (3) and (4), Colorado Revised Statutes, are
19 amended to read:

20 **8-2-122. Employment verification requirements - audits - fine**
21 **for noncompliance or fraudulent documents - employment**
22 **verification cash fund created - definitions.** (3) (a) ~~Upon the~~ WITHIN
23 TWENTY DAYS AFTER RECEIVING A request of TO DO SO FROM the director,
24 an employer shall submit documentation to the director that demonstrates
25 that the employer is in compliance with the employment verification
26 requirements specified in 8 U.S.C. sec. 1324a (b) and documentation that
27 the employer has complied with ~~the requirements of~~ subsection (2) of this

1 section. IF, PRIOR TO THE EXPIRATION OF THE TWENTY-DAY PERIOD, THE
2 DIRECTOR RECEIVES A WRITTEN REQUEST FROM AN EMPLOYER FOR
3 ADDITIONAL TIME, THE DIRECTOR MAY GRANT A ONE-TIME EXTENSION OF
4 UP TO TEN BUSINESS DAYS.

5 (b) (I) The director or the director's designee may conduct random
6 audits of employers in Colorado to obtain the documentation.

7 (II) When the director has reason to believe that an employer has
8 not complied with the employment verification and examination
9 requirements, the director shall request the employer to submit the
10 documentation.

11 (c) NOTHING IN THIS SECTION RESTRICTS OR IMPAIRS THE ABILITY
12 OF THE DIRECTOR TO USE ANY EXISTING SUBPOENA POWER TO ADMINISTER
13 OR FULFILL HIS OR HER DUTIES UNDER THIS SECTION.

14 (4) (a) (I) An employer who, with reckless disregard, fails to
15 submit the documentation required by this section, or who, with reckless
16 disregard, submits false or fraudulent documentation shall be IN RESPONSE
17 TO A REQUEST FOR SUCH DOCUMENTATION UNDER SUBSECTION (3) OF THIS
18 SECTION, IS subject to a fine of not more than five thousand dollars for the
19 first offense and not more than twenty-five thousand dollars for the
20 second and any subsequent offense.

21 (II) AN EMPLOYER WHO MAKES A GOOD FAITH EFFORT TO COMPLY
22 WITH THIS SECTION IS IMMUNE FROM A FINE UNDER SUBPARAGRAPH (I) OF
23 THIS PARAGRAPH (a).

24 (b) The moneys collected pursuant to this subsection (4) shall be
25 deposited in the employment verification cash fund, ALSO REFERRED TO
26 IN THIS SUBSECTION (4) AS THE "FUND", which is hereby created in the
27 state treasury. The moneys in the fund shall be appropriated to the

1 department of labor and employment for the purpose of implementing,
2 administering, and enforcing this section. The moneys in the fund shall
3 remain in the fund and DO not revert to the general fund or any other fund
4 at the end of any fiscal year.

5 **SECTION 3.** 16-1-108, Colorado Revised Statutes, is amended
6 BY THE ADDITION OF A NEW SUBSECTION to read:

7 **16-1-108. Admission of records in court - records pertaining**
8 **to immigration status.** (4) ANY RECORD THAT RELATES TO THE
9 IMMIGRATION STATUS OF A PERSON IS ADMISSIBLE IN A COURT WITHOUT
10 FURTHER FOUNDATION OR TESTIMONY FROM A CUSTODIAN OF RECORDS IF
11 THE RECORD IS CERTIFIED AS AUTHENTIC BY THE GOVERNMENT AGENCY
12 THAT IS RESPONSIBLE FOR MAINTAINING THE RECORD.

13 **SECTION 4.** Article 2.5 of title 16, Colorado Revised Statutes,
14 is amended BY THE ADDITION OF A NEW PART to read:

15 **PART 3**
16 **COOPERATION IN ENFORCEMENT**
17 **OF IMMIGRATION LAWS**

18 **16-2.5-301. Cooperation in enforcement of immigration laws.**

19 (1) AN OFFICIAL OR AGENCY OF THIS STATE OR OF A COUNTY, CITY, CITY
20 AND COUNTY, TOWN, OR OTHER POLITICAL SUBDIVISION OF THIS STATE
21 SHALL NOT LIMIT OR RESTRICT THE ENFORCEMENT OF FEDERAL
22 IMMIGRATION LAWS TO LESS THAN THE FULL EXTENT PERMITTED BY
23 FEDERAL LAW.

24 (2) NOTWITHSTANDING ANY PROVISION OF LAW TO THE
25 CONTRARY, A LAW ENFORCEMENT AGENCY OR LAW ENFORCEMENT
26 OFFICER MAY SECURELY TRANSPORT A PERSON WHOM THE AGENCY HAS
27 VERIFIED, THROUGH CONSULTATION WITH THE UNITED STATES

1 IMMIGRATION AND CUSTOMS ENFORCEMENT, UNITED STATES CITIZENSHIP
2 AND IMMIGRATION SERVICES, OR OTHER APPROPRIATE FEDERAL ENTITY,
3 IS UNLAWFULLY PRESENT IN THE UNITED STATES AND WHO IS IN THE
4 AGENCY'S CUSTODY TO A FEDERAL FACILITY IN THIS STATE OR TO ANY
5 OTHER POINT OF TRANSFER INTO FEDERAL CUSTODY THAT IS OUTSIDE THE
6 JURISDICTION OF THE LAW ENFORCEMENT AGENCY. A LAW ENFORCEMENT
7 AGENCY SHALL OBTAIN JUDICIAL AUTHORIZATION BEFORE SECURELY
8 TRANSPORTING A PERSON WHO IS UNLAWFULLY PRESENT IN THE UNITED
9 STATES TO A POINT OF TRANSFER THAT IS OUTSIDE OF THIS STATE.

10 (3) THIS SECTION DOES NOT IMPLEMENT, AUTHORIZE, OR
11 ESTABLISH THE FEDERAL "REAL ID ACT OF 2005", PUB.L. 109-13,
12 INCLUDING THE USE OF A RADIO FREQUENCY IDENTIFICATION CHIP.

13 (4) THE ATTORNEY GENERAL SHALL ENFORCE THIS SECTION AND
14 ENSURE THAT EVERY COUNTY, CITY, CITY AND COUNTY, TOWN, AND
15 OTHER POLITICAL SUBDIVISION OF THE STATE COMPLIES WITH THIS
16 SECTION.

17 (5) THIS SECTION SHALL BE IMPLEMENTED IN A MANNER
18 CONSISTENT WITH FEDERAL LAWS REGULATING IMMIGRATION,
19 PROTECTING THE CIVIL RIGHTS OF ALL PERSONS, AND RESPECTING THE
20 PRIVILEGES AND IMMUNITIES OF UNITED STATES CITIZENS.

21 **SECTION 5.** 18-13-128, Colorado Revised Statutes, is amended
22 BY THE ADDITION OF A NEW SUBSECTION to read:

23 **18-13-128. Smuggling of humans.** (5) NOTWITHSTANDING ANY
24 PROVISION OF LAW TO THE CONTRARY, IN THE ENFORCEMENT OF THIS
25 SECTION, A PEACE OFFICER MAY LAWFULLY STOP ANY PERSON WHO IS
26 OPERATING A MOTOR VEHICLE IF THE OFFICER HAS REASONABLE SUSPICION
27 TO BELIEVE THAT THE PERSON IS IN VIOLATION OF ANY CIVIL TRAFFIC LAW.

1 **SECTION 6.** Part 1 of article 9 of title 18, Colorado Revised
2 Statutes, is amended BY THE ADDITION OF THE FOLLOWING NEW
3 SECTIONS to read:

4 **18-9-107.5. Unlawful stopping to hire and pick up passengers**
5 **for work - unlawful application, solicitation, or employment -**
6 **surcharge - fund - classification - definitions.** (1) AN OCCUPANT OF A
7 MOTOR VEHICLE THAT IS STOPPED ON A STREET, ROADWAY, OR HIGHWAY
8 SHALL NOT ATTEMPT TO HIRE OR HIRE AND PICK UP PASSENGERS FOR WORK
9 AT A DIFFERENT LOCATION IF THE MOTOR VEHICLE BLOCKS OR IMPEDES
10 THE NORMAL MOVEMENT OF TRAFFIC.

11 (2) A PERSON SHALL NOT ENTER A MOTOR VEHICLE THAT IS
12 STOPPED ON A STREET, ROADWAY, OR HIGHWAY IN ORDER TO BE HIRED BY
13 AN OCCUPANT OF THE MOTOR VEHICLE AND TO BE TRANSPORTED TO WORK
14 AT A DIFFERENT LOCATION IF THE MOTOR VEHICLE BLOCKS OR IMPEDES
15 THE NORMAL MOVEMENT OF TRAFFIC.

16 (3) AN UNAUTHORIZED PERSON SHALL NOT KNOWINGLY APPLY FOR
17 WORK, SOLICIT WORK IN A PUBLIC PLACE, OR PERFORM WORK AS AN
18 EMPLOYEE OR INDEPENDENT CONTRACTOR IN THIS STATE.

19 (4) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
20 MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY
21 A FINE OF FIVE HUNDRED DOLLARS PER PERSON, UP TO TWENTY-FIVE
22 THOUSAND DOLLARS, WHICH SHALL BE CREDITED TO THE IMMIGRATION
23 ENFORCEMENT MISSION FUND PURSUANT TO SUBSECTION (6) OF THIS
24 SECTION. EACH DAY CONSTITUTES A SEPARATE VIOLATION.

25 (5) FOR THE PURPOSES OF THIS SECTION AND SECTION 18-9-107.7:

26 (a) "SOLICIT" MEANS VERBAL OR NONVERBAL COMMUNICATION BY
27 A GESTURE OR A NOD THAT WOULD INDICATE TO A REASONABLE PERSON

1 THAT A PERSON IS WILLING TO BE EMPLOYED.

2 (b) "UNAUTHORIZED PERSON" MEANS A PERSON WHO IS
3 UNLAWFULLY PRESENT IN THE UNITED STATES AND DOES NOT HAVE THE
4 LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE
5 UNITED STATES AS DESCRIBED IN 8 U.S.C. SEC. 1324a (h) (3).

6 (6) ALL MONEYS COLLECTED PURSUANT TO SUBSECTION (4) OF
7 THIS SECTION AND SECTION 18-9-107.7 SHALL BE TRANSMITTED TO THE
8 STATE TREASURER, WHO SHALL CREDIT THE SAME TO THE IMMIGRATION
9 ENFORCEMENT MISSION FUND, WHICH FUND IS HEREBY CREATED IN THE
10 STATE TREASURY AND REFERRED TO IN THIS SECTION AS THE "FUND". THE
11 MONEYS IN THE FUND ARE ANNUALLY APPROPRIATED TO THE DEPARTMENT
12 OF LOCAL AFFAIRS FOR REIMBURSEMENTS TO LOCAL GOVERNMENTS FOR
13 THEIR COSTS INCURRED TO HOUSE UNAUTHORIZED PERSONS IN COUNTY
14 JAILS AND TRANSPORT UNAUTHORIZED PERSONS TO FEDERAL CUSTODY.
15 IN ORDER TO RECEIVE MONEYS FROM THE FUND, A LOCAL GOVERNMENT
16 SHALL APPLY TO THE DEPARTMENT OF LOCAL AFFAIRS, INCLUDING IN THE
17 APPLICATION AN ACCOUNTING OR EXPLANATION OF COSTS FOR WHICH THE
18 LOCAL GOVERNMENT IS SEEKING REIMBURSEMENT. THE DEPARTMENT OF
19 LOCAL AFFAIRS SHALL ANNUALLY DISBURSE MONEYS FROM THE FUND TO
20 LOCAL GOVERNMENTS ON A PRO RATA BASIS, REFLECTING THE AMOUNTS
21 RECEIVED FROM EACH JURISDICTION. THE STATE TREASURER MAY INVEST
22 ANY MONEYS IN THE FUND NOT EXPENDED FOR THE PURPOSES OF THIS
23 SECTION AS PROVIDED BY LAW. THE STATE TREASURER SHALL CREDIT ALL
24 INTEREST AND INCOME DERIVED FROM THE INVESTMENT AND DEPOSIT OF
25 MONEYS IN THE FUND TO THE FUND. ANY UNEXPENDED AND
26 UNENCUMBERED MONEYS REMAINING IN THE FUND AT THE END OF ANY
27 FISCAL YEAR REMAIN IN THE FUND AND ARE NOT CREDITED OR

1 TRANSFERRED TO THE GENERAL FUND OR ANOTHER FUND.

2 **18-9-107.7. Unlawful transporting, moving, concealing,**
3 **harboring, or shielding of unauthorized persons - exception -**
4 **surcharge - classification.** (1) A PERSON SHALL NOT:

5 (a) TRANSPORT OR MOVE OR ATTEMPT TO TRANSPORT OR MOVE AN
6 UNAUTHORIZED PERSON IN THIS STATE, IN FURTHERANCE OF THE
7 UNLAWFUL PRESENCE OF THE UNAUTHORIZED PERSON IN THE UNITED
8 STATES, IN A MEANS OF TRANSPORTATION IF THE PERSON KNOWS OR
9 RECKLESSLY DISREGARDS THE FACT THAT THE UNAUTHORIZED PERSON
10 HAS COME TO, HAS ENTERED, OR REMAINS IN THE UNITED STATES IN
11 VIOLATION OF LAW;

12 (b) CONCEAL, HARBOR, OR SHIELD OR ATTEMPT TO CONCEAL,
13 HARBOR, OR SHIELD AN UNAUTHORIZED PERSON FROM DETECTION IN ANY
14 PLACE IN THIS STATE, INCLUDING A BUILDING OR ANY MEANS OF
15 TRANSPORTATION, IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS
16 THE FACT THAT THE UNAUTHORIZED PERSON HAS COME TO, HAS ENTERED,
17 OR REMAINS IN THE UNITED STATES IN VIOLATION OF LAW; OR

18 (c) ENCOURAGE OR INDUCE AN UNAUTHORIZED PERSON TO COME
19 TO OR RESIDE IN THIS STATE IF THE PERSON KNOWS OR RECKLESSLY
20 DISREGARDS THE FACT THAT SUCH COMING TO, ENTERING, OR RESIDING IN
21 THIS STATE IS OR WILL BE IN VIOLATION OF LAW.

22 (2) A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A
23 MISDEMEANOR, AND, UPON CONVICTION THEREOF, SHALL BE PUNISHED BY
24 A FINE OF FIVE HUNDRED DOLLARS PER UNAUTHORIZED PERSON, UP TO
25 TWENTY-FIVE THOUSAND DOLLARS, THAT THE PERSON TRANSPORTS,
26 MOVES, CONCEALS, HARBORS, OR SHIELDS; ATTEMPTS TO TRANSPORT,
27 MOVE, CONCEAL, HARBOR, OR SHIELD; OR ENCOURAGES OR INDUCES TO

1 ENTER OR RESIDE IN THE STATE. EACH DAY CONSTITUTES A SEPARATE
2 VIOLATION. ANY MONEYS COLLECTED UNDER THIS SUBSECTION (2) SHALL
3 BE CREDITED TO THE IMMIGRATION ENFORCEMENT MISSION FUND CREATED
4 IN, AND IN ACCORDANCE WITH, SECTION 18-9-107.5.

5 (3) THIS SECTION DOES NOT APPLY TO A CHILD PROTECTIVE
6 SERVICES WORKER ACTING IN THE WORKER'S OFFICIAL CAPACITY OR A
7 PERSON WHO IS ACTING IN THE CAPACITY OF A FIRST RESPONDER, AN
8 AMBULANCE ATTENDANT, OR AN EMERGENCY MEDICAL TECHNICIAN AND
9 WHO IS TRANSPORTING OR MOVING AN UNAUTHORIZED PERSON IN THIS
10 STATE.

11 **SECTION 7. 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.