

First Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

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 **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.*

HOUSE
3rd Reading Unamended
May 4, 2011

HOUSE
Amended 2nd Reading
May 3, 2011

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 [redacted] Act".

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

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

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

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

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

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

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

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

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

26 (4) The general assembly therefore declares that, while current
27 laws exist to detect, deter, and punish employment of unauthorized

1 persons, it is necessary to increase the transparency of certain laws in
2 order to assess their effectiveness. To that end, the "Unauthorized
3 Employment Act" is hereby enacted.

4

5 **SECTION 2.** 8-2-122 (3) and (4), Colorado Revised Statutes, are
6 amended, and the said 8-2-122 is further amended BY THE ADDITION
7 OF A NEW SUBSECTION, to read:

8 **8-2-122. Employment verification requirements - audits - fine**
9 **for noncompliance or fraudulent documents - employment**
10 **verification cash fund created - report - definitions.** (3) (a) Upon the
11 WITHIN TWENTY DAYS AFTER RECEIVING A request of TO DO SO FROM the
12 director, an employer shall submit documentation to the director that
13 demonstrates that the employer is in compliance with the employment
14 verification requirements specified in 8 U.S.C. sec. 1324a (b) and
15 documentation that the employer has complied with the requirements of
16 subsection (2) of this section. IF, PRIOR TO THE EXPIRATION OF THE
17 TWENTY-DAY PERIOD, THE DIRECTOR RECEIVES A WRITTEN REQUEST FROM
18 AN EMPLOYER FOR ADDITIONAL TIME, THE DIRECTOR MAY GRANT A
19 ONE-TIME EXTENSION OF UP TO TEN BUSINESS DAYS.

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

22 (II) When the director has reason to believe that an employer has
23 not complied with the employment verification and examination
24 requirements, the director shall request the employer to submit the
25 documentation.

26 (c) NOTHING IN THIS SECTION RESTRICTS OR IMPAIRS THE ABILITY
27 OF THE DIRECTOR TO USE ANY EXISTING SUBPOENA POWER TO ADMINISTER

1 OR FULFILL HIS OR HER DUTIES UNDER THIS SECTION.

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

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

12 (b) The moneys collected pursuant to this subsection (4) shall be
13 deposited in the employment verification cash fund, ALSO REFERRED TO
14 IN THIS SUBSECTION (4) AS THE "FUND", which is hereby created in the
15 state treasury. The moneys in the fund shall be appropriated to the
16 department of labor and employment for the purpose of implementing,
17 administering, and enforcing this section. The moneys in the fund ~~shall~~
18 remain in the fund and DO not revert to the general fund or any other fund
19 at the end of any fiscal year.

20 (6) BEFORE FEBRUARY 1, 2012, AND PRIOR TO FEBRUARY 1
21 DURING EACH REGULAR LEGISLATIVE SESSION THEREAFTER, THE DIRECTOR
22 SHALL PERSONALLY REPORT TO THE HOUSE ECONOMIC AND BUSINESS
23 DEVELOPMENT COMMITTEE AND THE SENATE BUSINESS, LABOR, AND
24 TECHNOLOGY COMMITTEE, OR ANY SUCCESSOR COMMITTEES, REGARDING
25 THE ADMINISTRATION AND ENFORCEMENT OF THIS SECTION. THE REPORT
26 MUST INCLUDE, AT A MINIMUM, THE NUMBER OF REQUESTS FOR
27 DOCUMENTATION MADE, THE NUMBER OF RANDOM AUDITS CONDUCTED,

1 THE NUMBER OF EMPLOYERS FINED, AND THE AMOUNTS OF THE FINES
2 ASSESSED DURING THE PREVIOUS YEAR. ANY SUPPLEMENTARY MATERIALS
3 TO THE REPORT MAY BE SUBMITTED TO THE COMMITTEE MEMBERS
4 ELECTRONICALLY.

5 **SECTION 3. Safety clause.** The general assembly hereby finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, and safety. [REDACTED]