

SECOND REGULAR SESSION
SIXTY-EIGHTH GENERAL ASSEMBLY
STATE OF COLORADO

PREAMENDED

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

LLS NO. 12-0038.02 Christy Chase x2008

HOUSE BILL 12-1309

HOUSE SPONSORSHIP

Swalm and Looper, Holbert, Barker, Coram, Joshi, Kerr J., Murray

SENATE SPONSORSHIP

King K.,

House Committees

Economic and Business Development
Agriculture, Livestock, & Natural Resources

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE REQUIREMENT THAT ALL EMPLOYERS IN THE STATE**
102 **VERIFY THE WORK ELIGIBILITY STATUS OF NEW EMPLOYEES**
103 **THROUGH THE FEDERAL ELECTRONIC VERIFICATION PROGRAM,**
104 **AND, IN CONNECTION THEREWITH, MAKING AND REDUCING**
105 **APPROPRIATIONS.**

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

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.

records of examining, the legal work status of new employees. The bill enacts the "Colorado Mandatory E-verify Act", which requires all employers in the state, by January 1, 2013, to instead 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. Employers are subject to fines of up to \$5,000 for a first offense and up to \$25,000 for a second offense for failing to participate in the e-verify program. For subsequent offenses, an employer is subject to a fine of up to \$25,000 and a 6-month suspension of the employer's business licenses.

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 act on its web site.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend 8-2-122** as
3 follows:

4 **8-2-122. Verification of employee work eligibility status - short**
5 **title - legislative declaration - definitions - e-verify program - audits**
6 **- fines - cash fund.** (1) THIS SECTION SHALL BE KNOWN AND MAY BE
7 CITED AS THE "COLORADO MANDATORY E-VERIFY ACT".

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

10 (I) THE GENERAL ASSEMBLY'S TOP PRIORITY FOR THE 2012
11 LEGISLATIVE SESSION IS PUTTING COLORADANS BACK TO WORK;

12 (II) OUR STATE HAS OVER FOUR HUNDRED THOUSAND PEOPLE OUT
13 OF WORK WHO DESPERATELY NEED SOMETHING BETTER FOR THEMSELVES
14 AND THEIR FAMILIES;

15 (III) UNEMPLOYMENT AMONG VETERANS RETURNING FROM IRAQ
16 OR AFGHANISTAN IS NEARLY DOUBLE THE RATE AMONG THE POPULATION

1 AT LARGE;

2 (IV) YOUTH AND MINORITIES HAVE AN EVEN TOUGHER TIME
3 FINDING WORK;

4 (V) EVERY DAY, ONE HUNDRED FIFTY THOUSAND UNAUTHORIZED
5 ALIENS HEAD OFF TO WORK IN COLORADO, MANY OF THEM DOING SO IN
6 DEFIANCE OF COLORADO LAW MANDATING THAT EMPLOYERS VERIFY THE
7 WORK ELIGIBILITY OF NEWLY HIRED EMPLOYEES BY CHECKING
8 PAPER-BASED FORMS OF IDENTIFICATION, SUCH AS DRIVER'S LICENSES OR
9 SOCIAL SECURITY CARDS;

10 (VI) WHILE THE CURRENT LAW, WHICH WAS PASSED DURING THE
11 2006 FIRST EXTRAORDINARY SESSION OF THE SIXTY-FIFTH GENERAL
12 ASSEMBLY ADDRESSING IMMIGRATION REFORM, REQUIRES EMPLOYERS TO
13 VERIFY WORK ELIGIBILITY USING PAPER-BASED FORMS OF IDENTIFICATION,
14 THAT MODE OF VERIFICATION IS OUTDATED AND RELATIVELY EASY TO
15 FORGE;

16 (VII) COLORADO CITIZENS STRUGGLING TO FIND SCARCE JOBS
17 DESERVE BETTER, AND IT IS TIME TO BRING EMPLOYMENT VERIFICATION
18 INTO THE TWENTY-FIRST CENTURY BY MANDATING THAT ALL COLORADO
19 EMPLOYERS USE THE INTERNET-BASED FEDERAL EMPLOYMENT
20 VERIFICATION SYSTEM, KNOWN AS "E-VERIFY", ADMINISTERED BY THE
21 UNITED STATES DEPARTMENT OF HOMELAND SECURITY, TO BETTER
22 ENSURE THAT ONLY THOSE COLORADANS WHO ARE LEGALLY ENTITLED TO
23 WORK HERE ARE DOING SO;

24 (VIII) ANYONE, INCLUDING LEGITIMATE JOB-SEEKERS, CAN GO ON
25 THE E-VERIFY WEB SITE AND RUN A SELF-CHECK TO MAKE SURE THEY ARE
26 ELIGIBLE AND CLEAR UP ANY POTENTIAL PROBLEMS, SUCH AS IDENTITY
27 THEFT, BEFORE APPLYING FOR WORK;

1 (IX) E-VERIFY IS ALREADY WIDELY USED IN COLORADO AND
2 THROUGHOUT THE COUNTRY AT LARGE;

3 (X) OVER TWENTY THOUSAND COLORADO BUSINESS SITES AND
4 SEVEN HUNDRED THOUSAND BUSINESS SITES ACROSS THE NATION USE THE
5 SYSTEM ON A VOLUNTARY BASIS;

6 (XI) NINE OTHER STATES HAVE ALREADY PASSED LEGISLATION
7 REQUIRING PRIVATE EMPLOYERS TO USE E-VERIFY, A MANDATE THAT THE
8 UNITED STATES SUPREME COURT HAS DECLARED CONSTITUTIONAL.

9 (b) THE GENERAL ASSEMBLY THEREFORE FINDS AND DETERMINES
10 THAT IT IS:

11 (I) IN THE BEST INTEREST OF THE STATE FOR ALL EMPLOYERS TO
12 VERIFY THE SOCIAL SECURITY NUMBERS AND WORK ELIGIBILITY STATUS
13 OF NEWLY HIRED EMPLOYEES; AND

14 (II) IMPORTANT THAT EVERY EMPLOYER IN COLORADO
15 PARTICIPATE IN E-VERIFY FOR THE PURPOSE OF VERIFYING THE WORK
16 ELIGIBILITY STATUS OF NEWLY HIRED EMPLOYEES.

17 (†) (3) As used in this section, unless the context otherwise
18 requires:

19 (a) "BUSINESS LICENSE" MEANS A LICENSE, PERMIT, CERTIFICATE,
20 APPROVAL, REGISTRATION, CHARTER, OR SIMILAR FORM OF
21 AUTHORIZATION REQUIRED BY LAW AND ISSUED BY AN AGENCY FOR THE
22 PURPOSE OF OPERATING A BUSINESS IN THIS STATE.

23 (a) (b) "Director" means the director of the division.

24 (b) (c) "Division" means the division of labor in the department
25 of labor and employment.

26 (c) (d) "Employer" means a person or entity that:

27 (I) Transacts business in Colorado;

1 (II) At any time, employs another person to perform services of
2 any nature IN COLORADO; and

3 (III) Has control of the payment of wages for such services or is
4 the officer, agent, or employee of the person or entity having control of
5 the payment of wages.

6 (e) "E-VERIFY PROGRAM" OR "PROGRAM" MEANS THE ELECTRONIC
7 EMPLOYMENT VERIFICATION PROGRAM, FORMERLY KNOWN AS THE "BASIC
8 PILOT PROGRAM", AUTHORIZED UNDER PUB.L. 104-208, DIVISION C, TITLE
9 IV, SUBTITLE A, 110 STAT. 3009-655, (SEPT. 30, 1996), AS AMENDED, AND
10 JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF
11 HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION, OR ITS
12 SUCCESSOR PROGRAM.

13 (f) "FEDERAL LAW" MEANS SECTION 274A OF THE FEDERAL
14 "IMMIGRATION AND NATIONALITY ACT", AS AMENDED, 8 U.S.C. SEC.
15 1324a, AND ANY FEDERAL REGULATIONS ADOPTED PURSUANT TO 8 U.S.C.
16 SEC. 1324a.

17 (d) (g) "Unauthorized alien" has the same meaning as set forth in
18 8 U.S.C. sec. 1324a (h) (3).

19 (2) (4) (a) ~~On and after January 1, 2007, within twenty days after~~
20 ~~hiring a new employee, each employer in Colorado shall affirm that the~~
21 ~~employer has examined the legal work status of such newly hired~~
22 ~~employee and has retained file copies of the documents required by 8~~
23 ~~U.S.C. sec. 1324a; that the employer has not altered or falsified the~~
24 ~~employee's identification documents; and that the employer has not~~
25 ~~knowingly hired an unauthorized alien. The employer shall keep a written~~
26 ~~or electronic copy of the affirmation, and of the documents required by~~
27 ~~8 U.S.C. sec. 1324a, for the term of employment of each employee~~

1 PURSUANT TO FEDERAL LAW, IT IS UNLAWFUL FOR AN EMPLOYER TO
2 KNOWINGLY HIRE AN UNAUTHORIZED ALIEN.

3 (b) ON AND AFTER JANUARY 1, 2013, UPON HIRING A NEW
4 EMPLOYEE TO PERFORM WORK IN COLORADO, EACH EMPLOYER IN
5 COLORADO SHALL PARTICIPATE IN THE E-VERIFY PROGRAM FOR THE
6 PURPOSE OF VERIFYING THE WORK ELIGIBILITY STATUS OF EACH OF THE
7 EMPLOYER'S NEWLY HIRED EMPLOYEES. THE EMPLOYER SHALL RETAIN A
8 WRITTEN OR ELECTRONIC COPY OF THE EMPLOYMENT ELIGIBILITY
9 INFORMATION IT RECEIVES THROUGH THE E-VERIFY PROGRAM REGARDING
10 EACH NEWLY HIRED EMPLOYEE IN ACCORDANCE WITH E-VERIFY PROGRAM
11 STANDARDS.

12 (c) UPON HIRING A NEW EMPLOYEE TO PERFORM WORK IN
13 COLORADO ON OR AFTER JANUARY 1, 2013, AN EMPLOYER SHALL ENTER
14 INTO AN AGREEMENT AS REQUIRED BY THE UNITED STATES DEPARTMENT
15 OF HOMELAND SECURITY TO PARTICIPATE IN THE E-VERIFY PROGRAM AND
16 SHALL COMPLY WITH THE REQUIREMENTS FOR PARTICIPATING IN THE
17 PROGRAM. IF THE AGREEMENT IS TERMINATED BY THE UNITED STATES
18 DEPARTMENT OF HOMELAND SECURITY BASED ON THE EMPLOYER'S
19 FAILURE TO COMPLY WITH THE ESTABLISHED PROCEDURES OR LEGAL
20 REQUIREMENTS AS SET FORTH IN THE AGREEMENT, THE EMPLOYER IS
21 SUBJECT TO THE PENALTIES SET FORTH IN SUBSECTION (6) OF THIS
22 SECTION.

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

1 REQUIRED BY THE AGREEMENT.

2 ~~(3)~~ (5) Upon the request of the director, an employer shall submit
3 documentation to the director that demonstrates that the employer is in
4 compliance with the employment verification requirements specified in
5 8 U.S.C. sec. 1324a (b) and documentation that the employer has
6 complied with the requirements of COPIES OF THE E-VERIFY EMPLOYMENT
7 ELIGIBILITY INFORMATION REGARDING NEW EMPLOYEES AND A COPY OF
8 THE EMPLOYER'S AGREEMENT WITH THE UNITED STATES DEPARTMENT OF
9 HOMELAND SECURITY, AS REQUIRED BY subsection ~~(2)~~ (4) of this section.
10 The director or the director's designee may conduct random audits of
11 employers in Colorado to obtain the documentation. When the director
12 has reason to believe that an employer has not complied with the
13 employment verification and examination requirements ENROLLED IN THE
14 E-VERIFY PROGRAM OR VERIFIED A NEW EMPLOYEE THROUGH THE
15 E-VERIFY PROGRAM, the director shall request the employer to submit the
16 documentation.

17 ~~(4)~~ (6) (a) An employer who, with reckless disregard, fails to
18 submit the documentation required by this section, or who, with reckless
19 disregard, submits false or fraudulent documentation, shall be OR FAILS
20 TO PARTICIPATE IN THE E-VERIFY PROGRAM TO VERIFY THE EMPLOYMENT
21 ELIGIBILITY OF EACH NEWLY HIRED EMPLOYEE IS subject to a fine of not
22 more than five thousand dollars for the first offense and not more than
23 twenty-five thousand dollars for the second and OFFENSE. FOR any
24 subsequent offense, THE EMPLOYER IS SUBJECT TO A FINE OF NOT MORE
25 THAN TWENTY-FIVE THOUSAND DOLLARS AND A SUSPENSION OF ALL THE
26 EMPLOYER'S BUSINESS LICENSES FOR UP TO SIX MONTHS. The DIVISION
27 SHALL TRANSMIT moneys collected pursuant to this subsection ~~(4)~~ shall

1 ~~be deposited~~ (6) TO THE STATE TREASURER FOR DEPOSIT in the
2 employment verification cash fund, which is hereby created in the state
3 treasury. The GENERAL ASSEMBLY SHALL APPROPRIATE moneys in the
4 fund ~~shall be appropriated~~ to the department of labor and employment for
5 the purpose of implementing, administering, and enforcing this section.
6 The moneys in the fund ~~shall~~ remain in the fund and DO not revert to the
7 general fund or any other fund at the end of any fiscal year.

8 (b) FOR PURPOSES OF THIS SUBSECTION (6), "PARTICIPATE IN THE
9 E-VERIFY PROGRAM" MEANS TO:

10 (I) ENROLL IN THE PROGRAM BY ENTERING INTO AN AGREEMENT
11 WITH THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; AND

12 (II) USE THE PROGRAM TO VERIFY THE WORK ELIGIBILITY STATUS
13 OF EACH NEW EMPLOYEE.

14 (7) (a) AS PART OF ITS QUARTERLY ELECTRONIC PUBLICATION TO
15 EMPLOYERS, THE DEPARTMENT OF LABOR AND EMPLOYMENT SHALL
16 NOTIFY EVERY EMPLOYER OF THE REQUIREMENTS OF THIS SECTION AND
17 SHALL INCLUDE IN THE PUBLICATION A LINK TO ITS WEB SITE WHERE AN
18 EMPLOYER CAN ACCESS THE NOTICE DESCRIBED IN PARAGRAPH (b) OF THIS
19 SUBSECTION (7). THE DEPARTMENT SHALL INCLUDE THE NOTICE AND WEB
20 SITE LINK IN EACH QUARTERLY ELECTRONIC PUBLICATION DISTRIBUTED TO
21 EMPLOYERS ON AND AFTER THE EFFECTIVE DATE OF THIS SECTION, AS
22 AMENDED.

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

1 (I) THAT FEDERAL LAW PROHIBITS AN EMPLOYER FROM
2 KNOWINGLY EMPLOYING AN UNAUTHORIZED ALIEN;

3 (II) THAT AS OF JANUARY 1, 2013, EMPLOYERS WHO HIRE NEW
4 EMPLOYEES TO PERFORM WORK IN COLORADO ARE REQUIRED TO VERIFY
5 THE EMPLOYMENT ELIGIBILITY OF THE NEW EMPLOYEES THROUGH THE
6 E-VERIFY PROGRAM; AND

7 (III) INSTRUCTIONS FOR THE EMPLOYER ON HOW TO ENROLL IN THE
8 E-VERIFY PROGRAM.

9 (8) (a) AN EMPLOYER HAS A REBUTTABLE PRESUMPTION THAT THE
10 EMPLOYER, ACTING IN GOOD FAITH, DID NOT KNOWINGLY EMPLOY AN
11 UNAUTHORIZED ALIEN IF:

12 (I) THE EMPLOYER COMPLIES WITH THE EMPLOYMENT
13 VERIFICATION REQUIREMENTS SPECIFIED IN FEDERAL LAW AND IN
14 PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION; AND

15 (II) THE EMPLOYER PARTICIPATES IN THE E-VERIFY PROGRAM IN
16 ACCORDANCE WITH PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION,
17 AND THE INFORMATION OBTAINED IN ACCORDANCE WITH THE E-VERIFY
18 PROGRAM INDICATES THAT THE EMPLOYEE'S WORK ELIGIBILITY STATUS
19 ALLOWED THE EMPLOYER TO HIRE AND RETAIN THE EMPLOYEE.

20 (b) AN EMPLOYER HAS A REBUTTABLE PRESUMPTION THAT THE
21 EMPLOYER, ACTING IN GOOD FAITH, DID NOT WRONGFULLY TERMINATE AN
22 INDIVIDUAL IF:

23 (I) THE EMPLOYER PARTICIPATES IN THE E-VERIFY PROGRAM IN
24 ACCORDANCE WITH PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION;
25 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 FEDERAL LAW ESTABLISHES AN AFFIRMATIVE
4 DEFENSE THAT THE EMPLOYER DID NOT INTENTIONALLY OR KNOWINGLY
5 EMPLOY AN UNAUTHORIZED ALIEN.

6 ~~(5)~~ (9) **Construction.** It is the public policy of Colorado that this
7 section shall be enforced without regard to race, religion, gender,
8 ethnicity, national origin, or disability AND BE CONSTRUED IN A MANNER
9 SO AS TO BE FULLY CONSISTENT WITH APPLICABLE PROVISIONS OF FEDERAL
10 LAW.

11 (10) **Implementation.** THIS SECTION MUST BE IMPLEMENTED IN A
12 MANNER CONSISTENT WITH FEDERAL LAWS REGULATING IMMIGRATION,
13 PROTECTING THE CIVIL RIGHTS OF ALL PERSONS, AND RESPECTING THE
14 PRIVILEGES AND IMMUNITIES OF UNITED STATES CITIZENS.

15 (11) **Severability.** IF ANY PROVISION OF THIS SECTION IS HELD
16 INVALID, THE INVALIDITY DOES NOT AFFECT OTHER PROVISIONS OF THIS
17 SECTION THAT CAN BE GIVEN EFFECT WITHOUT THE INVALID PROVISION.

18 **SECTION 2.** In Colorado Revised Statutes, 8-2-124, **amend** (2)
19 (a) (I) as follows:

20 **8-2-124. Electronic verification program - availability - notice**
21 **to employers - definitions.** (2) (a) (I) As part of its quarterly electronic
22 publication distributed to employers, the department shall, at a minimum,
23 notify every employer of the federal law against hiring or continuing to
24 employ an unauthorized alien and of the availability of, AND THE
25 REQUIREMENT UNDER SECTION 8-2-122 (4) (b) TO PARTICIPATE IN, the
26 ~~optional~~ electronic verification program to verify the work eligibility
27 status of new employees.

1 **SECTION 3.** In Colorado Revised Statutes, **repeal** article 17.5
2 of title 8.

3 **SECTION 4.** In Colorado Revised Statutes, 24-21-112, **amend**
4 (2) as follows:

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

22 **SECTION 5. Appropriation - adjustments in 2012 long bill.**

23 (1) For the implementation of this act, appropriations made in the annual
24 general appropriation act to the department of labor and employment for
25 the fiscal year beginning July 1, 2012, are adjusted as follows:

26 (a) The reappropriated funds appropriation for the executive
27 director's office is decreased by \$78,305 and 1.0 FTE. Said sum is from

1 statewide indirect cost recoveries.

2 (b) The appropriation for the division of labor is increased by
3 \$78,305 and 1.0 FTE. Said sum is from the employment support cash
4 fund created in section 8-77-109 (1), Colorado Revised Statutes.

5 (2) For the implementation of this act, appropriations made in the
6 annual general appropriation act to the department of personnel and
7 administration, office of the state controller, for the fiscal year beginning
8 July 1, 2012, are adjusted as follows:

9 (a) The general fund appropriation is decreased by \$78,305.

10 (b) The reappropriated funds appropriation is increased by
11 \$78,305. Said sum is from the department of labor and employment
12 statewide indirect cost recoveries.

13 **SECTION 6. Effective date.** This act takes effect January 1,
14 2013.

15 **SECTION 7. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.