

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

March 22, 2012
Date

Committee on Economic and Business Development.

After consideration on the merits, the Committee recommends the following:

HB12-1309 be amended as follows, and as so amended, be referred to the Committee on Agriculture, Livestock, & Natural Resources with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

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

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

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

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

16 (III) UNEMPLOYMENT AMONG VETERANS RETURNING FROM IRAQ
17 OR AFGHANISTAN IS NEARLY DOUBLE THE RATE AMONG THE POPULATION
18 AT LARGE;

19 (IV) YOUTH AND MINORITIES HAVE AN EVEN TOUGHER TIME
20 FINDING WORK;

21 (V) EVERY DAY, ONE HUNDRED FIFTY THOUSAND UNAUTHORIZED
22 ALIENS HEAD OFF TO WORK IN COLORADO, MANY OF THEM DOING SO IN
23 DEFIANCE OF COLORADO LAW MANDATING THAT EMPLOYERS VERIFY THE

1 WORK ELIGIBILITY OF NEWLY HIRED EMPLOYEES BY CHECKING
2 PAPER-BASED FORMS OF IDENTIFICATION, SUCH AS DRIVER'S LICENSES OR
3 SOCIAL SECURITY CARDS;

4 (VI) WHILE THE CURRENT LAW, WHICH WAS PASSED DURING THE
5 2006 FIRST EXTRAORDINARY SESSION OF THE SIXTY-FIFTH GENERAL
6 ASSEMBLY ADDRESSING IMMIGRATION REFORM, REQUIRES EMPLOYERS TO
7 VERIFY WORK ELIGIBILITY USING PAPER-BASED FORMS OF IDENTIFICATION,
8 THAT MODE OF VERIFICATION IS OUTDATED AND RELATIVELY EASY TO
9 FORGE;

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

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

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

24 (X) OVER TWENTY THOUSAND COLORADO BUSINESS SITES AND
25 SEVEN HUNDRED THOUSAND BUSINESS SITES ACROSS THE NATION USE THE
26 SYSTEM ON A VOLUNTARY BASIS;

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

30 (b) THE GENERAL ASSEMBLY THEREFORE FINDS AND DETERMINES
31 THAT IT IS:

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

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

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

40 (a) "BUSINESS LICENSE" MEANS A LICENSE, PERMIT, CERTIFICATE,
41 APPROVAL, REGISTRATION, CHARTER, OR SIMILAR FORM OF

1 AUTHORIZATION REQUIRED BY LAW AND ISSUED BY AN AGENCY FOR THE
2 PURPOSE OF OPERATING A BUSINESS IN THIS STATE.

3 (a) (b) "Director" means the director of the division.
4 (b) (c) "Division" means the division of labor in the department
5 of labor and employment.
6 (c) (d) "Employer" means a person or entity that:
7 (I) Transacts business in Colorado;
8 (II) At any time, employs another person to perform services of
9 any nature IN COLORADO; and
10 (III) Has control of the payment of wages for such services or is
11 the officer, agent, or employee of the person or entity having control of
12 the payment of wages.

13 (e) "E-VERIFY PROGRAM" OR "PROGRAM" MEANS THE ELECTRONIC
14 EMPLOYMENT VERIFICATION PROGRAM, FORMERLY KNOWN AS THE "BASIC
15 PILOT PROGRAM", AUTHORIZED UNDER PUB.L. 104-208, DIVISION C, TITLE
16 IV, SUBTITLE A, 110 STAT. 3009-655, (SEPT. 30, 1996), AS AMENDED, AND
17 JOINTLY ADMINISTERED BY THE UNITED STATES DEPARTMENT OF
18 HOMELAND SECURITY AND THE SOCIAL SECURITY ADMINISTRATION, OR ITS
19 SUCCESSOR PROGRAM.

20 (f) "FEDERAL LAW" MEANS SECTION 274A OF THE FEDERAL
21 "IMMIGRATION AND NATIONALITY ACT", AS AMENDED, 8 U.S.C. SEC.
22 1324a, AND ANY FEDERAL REGULATIONS ADOPTED PURSUANT TO 8 U.S.C.
23 SEC. 1324a.

24 (d) (g) "Unauthorized alien" has the same meaning as set forth in
25 8 U.S.C. sec. 1324a (h) (3).

26 ~~(2) (4) (a) On and after January 1, 2007, within twenty days after~~
27 ~~hiring a new employee, each employer in Colorado shall affirm that the~~
28 ~~employer has examined the legal work status of such newly hired~~
29 ~~employee and has retained file copies of the documents required by 8~~
30 ~~U.S.C. sec. 1324a; that the employer has not altered or falsified the~~
31 ~~employee's identification documents; and that the employer has not~~
32 ~~knowingly hired an unauthorized alien. The employer shall keep a written~~
33 ~~or electronic copy of the affirmation, and of the documents required by~~
34 ~~8 U.S.C. sec. 1324a, for the term of employment of each employee~~
35 ~~PURSUANT TO FEDERAL LAW, IT IS UNLAWFUL FOR AN EMPLOYER TO~~
36 ~~KNOWINGLY HIRE AN UNAUTHORIZED ALIEN.~~

37 (b) ON AND AFTER JANUARY 1, 2013, UPON HIRING A NEW
38 EMPLOYEE TO PERFORM WORK IN COLORADO, EACH EMPLOYER IN
39 COLORADO SHALL PARTICIPATE IN THE E-VERIFY PROGRAM FOR THE
40 PURPOSE OF VERIFYING THE WORK ELIGIBILITY STATUS OF EACH OF THE
41 EMPLOYER'S NEWLY HIRED EMPLOYEES. THE EMPLOYER SHALL RETAIN A

1 WRITTEN OR ELECTRONIC COPY OF THE EMPLOYMENT ELIGIBILITY
2 INFORMATION IT RECEIVES THROUGH THE E-VERIFY PROGRAM REGARDING
3 EACH NEWLY HIRED EMPLOYEE IN ACCORDANCE WITH E-VERIFY PROGRAM
4 STANDARDS.

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

16 (d) UPON ENTERING THE AGREEMENT DESCRIBED IN PARAGRAPH
17 (c) OF THIS SUBSECTION (4), THE EMPLOYER SHALL MAINTAIN A COPY OF
18 THE AGREEMENT, SHOWING THAT THE EMPLOYER IS AN ACTIVE
19 PARTICIPANT IN THE E-VERIFY PROGRAM, AND SHALL NOTIFY ITS
20 EMPLOYEES THAT IT IS PARTICIPATING IN THE PROGRAM IN THE MANNER
21 REQUIRED BY THE AGREEMENT.

22 ~~(3)~~ (5) Upon the request of the director, an employer shall submit
23 ~~documentation to the director that demonstrates that the employer is in~~
24 ~~compliance with the employment verification requirements specified in~~
25 ~~8 U.S.C. sec. 1324a (b) and documentation that the employer has~~
26 ~~complied with the requirements of~~ COPIES OF THE E-VERIFY EMPLOYMENT
27 ELIGIBILITY INFORMATION REGARDING NEW EMPLOYEES AND A COPY OF
28 THE EMPLOYER'S AGREEMENT WITH THE UNITED STATES DEPARTMENT OF
29 HOMELAND SECURITY, AS REQUIRED BY subsection ~~(2)~~ (4) of this section.
30 The director or the director's designee may conduct random audits of
31 employers in Colorado to obtain the documentation. When the director
32 has reason to believe that an employer has not ~~complied with the~~
33 ~~employment verification and examination requirements~~ ENROLLED IN THE
34 E-VERIFY PROGRAM OR VERIFIED A NEW EMPLOYEE THROUGH THE
35 E-VERIFY PROGRAM, the director shall request the employer to submit the
36 documentation.

37 ~~(4)~~ (6) (a) An employer who, with reckless disregard, fails to
38 submit the documentation required by this section, ~~or who, with reckless~~
39 ~~disregard,~~ submits false or fraudulent documentation, ~~shall be~~ OR FAILS
40 TO PARTICIPATE IN THE E-VERIFY PROGRAM TO VERIFY THE EMPLOYMENT
41 ELIGIBILITY OF EACH NEWLY HIRED EMPLOYEE IS subject to a fine of not

1 more than five thousand dollars for the first offense and not more than
2 twenty-five thousand dollars for the second ~~and~~ OFFENSE. FOR any
3 subsequent offense, THE EMPLOYER IS SUBJECT TO A FINE OF NOT MORE
4 THAN TWENTY-FIVE THOUSAND DOLLARS AND A SUSPENSION OF ALL THE
5 EMPLOYER'S BUSINESS LICENSES FOR UP TO SIX MONTHS. The DIVISION
6 SHALL TRANSMIT moneys collected pursuant to this subsection ~~(4) shall~~
7 ~~be deposited~~ (6) TO THE STATE TREASURER FOR DEPOSIT in the
8 employment verification cash fund, which is hereby created in the state
9 treasury. The GENERAL ASSEMBLY SHALL APPROPRIATE moneys in the
10 fund ~~shall be appropriated~~ to the department of labor and employment for
11 the purpose of implementing, administering, and enforcing this section.
12 The moneys in the fund ~~shall~~ remain in the fund and DO not revert to the
13 general fund or any other fund at the end of any fiscal year.

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

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

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

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

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

34 (I) THAT FEDERAL LAW PROHIBITS AN EMPLOYER FROM
35 KNOWINGLY EMPLOYING AN UNAUTHORIZED ALIEN;

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

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

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

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

7 (II) THE EMPLOYER PARTICIPATES IN THE E-VERIFY PROGRAM IN
8 ACCORDANCE WITH PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION,
9 AND THE INFORMATION OBTAINED IN ACCORDANCE WITH THE E-VERIFY
10 PROGRAM INDICATES THAT THE EMPLOYEE'S WORK ELIGIBILITY STATUS
11 ALLOWED THE EMPLOYER TO HIRE AND RETAIN THE EMPLOYEE.

12 (b) AN EMPLOYER HAS A REBUTTABLE PRESUMPTION THAT THE
13 EMPLOYER, ACTING IN GOOD FAITH, DID NOT WRONGFULLY TERMINATE AN
14 INDIVIDUAL IF:

15 (I) THE EMPLOYER PARTICIPATES IN THE E-VERIFY PROGRAM IN
16 ACCORDANCE WITH PARAGRAPH (b) OF SUBSECTION (4) OF THIS SECTION;
17 AND

18 (II) THE EMPLOYER RECEIVED A FINAL NOTICE OF
19 NONCONFIRMATION OF WORK ELIGIBILITY ON THE INDIVIDUAL THROUGH
20 THE E-VERIFY PROGRAM.

21 (c) AN EMPLOYER THAT SHOWS THAT IT COMPLIED IN GOOD FAITH
22 WITH THE REQUIREMENTS OF FEDERAL LAW ESTABLISHES AN AFFIRMATIVE
23 DEFENSE THAT THE EMPLOYER DID NOT INTENTIONALLY OR KNOWINGLY
24 EMPLOY AN UNAUTHORIZED ALIEN.

25 ~~(5)~~ (9) **Construction.** It is the public policy of Colorado that this
26 section shall be enforced without regard to race, religion, gender,
27 ethnicity, national origin, or disability AND BE CONSTRUED IN A MANNER
28 SO AS TO BE FULLY CONSISTENT WITH APPLICABLE PROVISIONS OF FEDERAL
29 LAW.

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

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

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

39 **8-2-124. Electronic verification program - availability - notice**
40 **to employers - definitions.** (2) (a) (I) As part of its quarterly electronic
41 publication distributed to employers, the department shall, at a minimum,

1 notify every employer of the federal law against hiring or continuing to
2 employ an unauthorized alien and of the availability of, AND THE
3 REQUIREMENT UNDER SECTION 8-2-122 (4) (b) TO PARTICIPATE IN, the
4 ~~optional~~ electronic verification program to verify the work eligibility
5 status of new employees.

6 **SECTION 3.** In Colorado Revised Statutes, **repeal** article 17.5
7 of title 8.

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

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

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

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

31 (a) The reappropriated funds appropriation for the executive
32 director's office is decreased by \$78,305 and 1.0 FTE. Said sum is from
33 statewide indirect cost recoveries.

34 (b) The appropriation for the division of labor is increased by
35 \$78,305 and 1.0 FTE. Said sum is from the employment support cash
36 fund created in section 8-77-109 (1), Colorado Revised Statutes.

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

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

1 (b) The reappropriated funds appropriation is increased by
2 \$78,305. Said sum is from the department of labor and employment
3 statewide indirect cost recoveries.

4 **SECTION 6. Effective date.** This act takes effect January 1,
5 2013.

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

9 Page 1 of the bill, line 103, strike "**PROGRAM.**" and substitute "**PROGRAM,**
10 **AND, IN CONNECTION THEREWITH, MAKING AND REDUCING**
11 **APPROPRIATIONS.**".

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