First Extraordinary Session Sixty-fifth General Assembly STATE OF COLORADO

ENGROSSED

This Version Includes All Amendments Adopted on Second Reading in the House of Introduction HOUSE BILL 06S-1017

LLS NO. 06B-2073.02 Kristen Forrestal

HOUSE SPONSORSHIP

Solano, and Paccione

(None),

SENATE SPONSORSHIP

House Committees Business Affairs and Labor Appropriations

Senate Committees

A BILL FOR AN ACT

101	CONCERNING	DOCUMENTATION	BY	AN	EMPL	OYER	THAT
102	DEMONS	FRATES COMPLIANCE	E WIT	H FEI	DERAL 1	EMPLO	YMENT
103	VERIFICA	TION REQUIREMENTS,	AND	AAKIN	NG AN AI	PPROPF	RIATION
104	IN CONNI	ECTION THEREWITH.					

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires each employer in Colorado to attest that the employer has verified the legal work status of each employee, that the employer has not altered or falsified the employee's identification documents, and that the employer has not knowingly hired an unauthorized alien.

HOUSE Amended 2nd Reading July 6, 2006 Requires each employer in Colorado to submit documentation to the director of the division of labor within the department of labor and employment that demonstrates that the employer is in compliance with federal employment verification requirements. Authorizes the director to conduct random audits of employers to ensure compliance with the federal laws. Requires the director to request documentation if the director receives a valid complaint that an employer is not in compliance with federal law. Subjects an employer to a fine for the failure to provide documentation or for the provision of fraudulent documentation.

1 Be it enacted by the General Assembly of the State of Colorado: 2 SECTION 1. Part 1 of article 2 of title 8, Colorado Revised 3 Statutes, is amended BY THE ADDITION A NEW SECTION to read: 4 8-2-122. Employment verification requirements - quarterly 5 report - audits - fine for fraudulent documents - definitions. (1) As 6 USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES: 7 (a) "DIRECTOR" MEANS THE DIRECTOR OF THE DIVISION. "DIVISION" MEANS THE DIVISION OF LABOR IN THE 8 (b) 9 DEPARTMENT OF LABOR AND EMPLOYMENT. 10 (c) "EMPLOYER" MEANS A PERSON OR ENTITY THAT: 11 (I) TRANSACTS BUSINESS IN COLORADO; 12 (II) AT ANY TIME, EMPLOYS ANOTHER PERSON TO PERFORM 13 SERVICES OF ANY NATURE; AND 14 HAS CONTROL OF THE PAYMENT OF WAGES FOR SUCH (III) 15 SERVICES OR IS THE OFFICER, AGENT, OR EMPLOYEE OF THE PERSON OR 16 ENTITY HAVING CONTROL OF THE PAYMENT OF WAGES. (d) "UNAUTHORIZED ALIEN" HAS THE SAME MEANING AS SET 17 18 FORTH IN 8 U.S.C. SEC. 1324a (h) (3). 19 (2) EACH EMPLOYER IN COLORADO SHALL ATTEST THAT THE 20 EMPLOYER HAS VERIFIED THE LEGAL WORK STATUS OF EACH EMPLOYEE

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AND HAS RETAINED FILE COPIES OF THE DOCUMENTS REQUIRED BY 8
 U.S.C. SEC. 1324a; THAT THE EMPLOYER HAS NOT ALTERED OR FALSIFIED
 THE EMPLOYEE'S IDENTIFICATION DOCUMENTS; AND THAT THE EMPLOYER
 HAS NOT KNOWINGLY HIRED AN UNAUTHORIZED ALIEN. THE EMPLOYER
 SHALL KEEP A WRITTEN COPY OF THE ATTESTATION, AND OF THE
 DOCUMENTS REQUIRED BY 8 U.S.C. SEC. 1324a, FOR THE TERM OF
 EMPLOYMENT OF EACH EMPLOYEE.

8 (3) UPON THE REQUEST OF THE DIRECTOR, AN EMPLOYER SHALL 9 SUBMIT DOCUMENTATION TO THE DIRECTOR THAT DEMONSTRATES THAT 10 THE EMPLOYER IS IN COMPLIANCE WITH THE EMPLOYMENT VERIFICATION REQUIREMENTS SPECIFIED IN 8 U.S.C. SEC. 1324a (b) and 11 12 DOCUMENTATION THAT THE EMPLOYER HAS COMPLIED WITH THE 13 REQUIREMENTS OF SUBSECTION (2) OF THIS SECTION. THE DIRECTOR OR 14 THE DIRECTOR'S DESIGNEE MAY CONDUCT RANDOM AUDITS OF EMPLOYERS 15 IN COLORADO TO OBTAIN THE DOCUMENTATION. UPON RECEIPT OF ANY 16 CREDIBLE COMPLAINT THAT AN EMPLOYER HAS NOT COMPLIED WITH THE 17 EMPLOYMENT VERIFICATION REQUIREMENTS, THE DIRECTOR SHALL 18 REQUEST THE EMPLOYER TO SUBMIT THE DOCUMENTATION.

19 (4) AN EMPLOYER WHO FAILS TO SUBMIT THE DOCUMENTATION 20 REQUIRED BY THIS SECTION, OR WHO SUBMITS DOCUMENTATION 21 THAT THE EMPLOYER KNOWS OR REASONABLY SHOULD HAVE KNOWN IS 22 FALSE OR FRAUDULENT, SHALL BE SUBJECT TO A FINE OF NOT MORE THAN 23 FIVE THOUSAND DOLLARS FOR THE FIRST OFFENSE AND NOT MORE THAN 24 TWENTY-FIVE THOUSAND DOLLARS FOR THE SECOND AND ANY 25 THE MONEYS COLLECTED PURSUANT TO THIS SUBSEQUENT OFFENSE. 26 SUBSECTION (4) SHALL BE DEPOSITED IN THE EMPLOYMENT VERIFICATION 27 CASH FUND, WHICH IS HEREBY CREATED. THE MONEYS IN THE FUND SHALL

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1 BE APPROPRIATED TO THE DEPARTMENT OF LABOR AND EMPLOYMENT FOR 2 THE PURPOSE OF IMPLEMENTING, ADMINISTERING, AND ENFORCING THIS 3 SECTION. THE MONEYS IN THE FUND SHALL REMAIN IN THE FUND AND NOT 4 REVERT TO THE GENERAL FUND OR ANY OTHER FUND AT THE AND OF ANY 5 FISCAL YEAR. 6 (5) (a) NO EMPLOYER SHALL INITIATE OR ADMINISTER ANY 7 DISCIPLINARY ACTION AGAINST AN EMPLOYEE ON ACCOUNT OF THE 8 EMPLOYEE'S DISCLOSURE OF INFORMATION. THIS PARAGRAPH (a) SHALL 9 NOT APPLY TO AN EMPLOYEE WHO DISCLOSES INFORMATION THAT THE 10 EMPLOYEE KNOWS TO BE FALSE OR WHO DISCLOSES INFORMATION WITH 11 DISREGARD FOR THE TRUTH OR FALSITY THEREOF OR AN EMPLOYEE WHO 12 DISCLOSES INFORMATION WHICH IS CONFIDENTIAL UNDER ANY OTHER 13

PROVISION OF LAW.

14 (b) AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE 15 **REQUIRES:**

16 (I) "DISCIPLINARY ACTION" MEANS ANY DIRECT OR INDIRECT FORM 17 OF DISCIPLINE OR PENALTY, INCLUDING, BUT NOT LIMITED TO, DISMISSAL, 18 DEMOTION, TRANSFER, REASSIGNMENT, SUSPENSION, CORRECTIVE ACTION, 19 REPRIMAND, ADMONISHMENT, UNSATISFACTORY OR BELOW STANDARD 20 PERFORMANCE EVALUATION, REDUCTION IN FORCE, OR WITHHOLDING OF 21 WORK, OR THE THREAT OF ANY SUCH DISCIPLINE OR PENALTY.

(II) "DISCLOSURE OF INFORMATION" MEANS A REPORT TO THE 22 23 DEPARTMENT OF LABOR AND EMPLOYMENT PURSUANT TO SUBSECTION (3) 24 OF THIS SECTION THAT AN EMPLOYER HAS NOT COMPLIED WITH 25 SUBSECTION (1) THIS SECTION.

26 **SECTION 2.** Appropriation. (1) In addition to any other 27 appropriation, there is hereby appropriated, out of any moneys in the

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employment support fund created in section 8-77-109, Colorado Revised
Statutes, not otherwise appropriated, to the department of labor and
employment, for allocation to the division of labor, for the fiscal year
beginning July 1, 2006, the sum of one hundred ten thousand four
hundred forty-seven dollars (\$110,447) and 2.0 FTE, or so much thereof
as may be necessary, for the implementation of this act.

7 (2) In addition to any other appropriation, there is hereby 8 appropriated, out of any moneys in the employment support fund created 9 in section 8-77-109, Colorado Revised Statutes, not otherwise 10 appropriated, to the department of labor and employment, for allocation 11 to the executive director's office, for legal services, for the fiscal year 12 beginning July 1, 2006, the sum of three thousand two hundred twenty-13 three dollars (\$3,223), or so much thereof as may be necessary, for the 14 implementation of this act.

15 (3) In addition to any other appropriation, there is hereby 16 appropriated to the department of law, for the fiscal year beginning 17 July 1, 2006, the sum of three thousand two hundred twenty-three dollars 18 (\$3,223), or so much thereof as may be necessary, for the provision of 19 legal services to the division of labor in the department of labor and 20 employment related to the implementation of this act. Said sum shall be 21 from cash funds exempt received from the division of labor in the 22 department of labor and employment out of the appropriation made in 23 subsection (2) of this section.

SECTION 3. Effective date - applicability. This act shall take
effect upon passage and shall apply to employees hired on or after
January 1, 2007.

27 **SECTION 4. Safety clause.** The general assembly hereby finds,

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- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.