

**Second Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 08-0280.01 Christy Chase

SENATE BILL 08-083

SENATE SPONSORSHIP

Schultheis, Brophy, Harvey, Kopp, Renfroe, Johnson, and Penry

HOUSE SPONSORSHIP

Lundberg, Summers, Gardner B., Lambert, and Liston

Senate Committees

State, Veterans & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE VERIFICATION OF THE WORK ELIGIBILITY STATUS OF**
102 **NEW EMPLOYEES THROUGH THE FEDERAL ELECTRONIC**
103 **VERIFICATION PROGRAM.**

Bill Summary

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

Repeals the current requirements imposed on employers to examine, and retain records of examining, the legal work status of new employees and instead creates the "Fair and Legal Employment Act" (act), which requires all nongovernmental employers in the state to participate in the federal electronic verification program (e-verify program) for purposes of verifying the work eligibility status of all new

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.

employees hired by an employer. Establishes deadlines by which employers must start participating in the e-verify program, based on the number of employees of the employer, and requires the attorney general to impose fines on an employer for failure to participate in the e-verify program or to provide documentary proof of participation.

Prohibits an employer from intentionally or knowingly employing an unauthorized alien, and requires an employer to immediately terminate an employee for whom the employer receives a final notice of nonconfirmation of work eligibility through the e-verify program. Requires the attorney general or the county or city attorney, as appropriate, to investigate complaints of employer noncompliance. Requires the appropriate county or city attorney to bring a court action against the employer when an investigation shows a complaint has merit. Upon finding a violation, requires the court to order the employer to:

- Terminate the employment of all unauthorized aliens;
- Be subject to probation, during which the employer must submit quarterly reports of all newly hired employees to the county or city attorney;
- Submit a sworn affidavit attesting that the employer has terminated the employment of all unauthorized aliens.

For knowing violations, allows the court to order the suspension of the employer's business licenses. For intentional violations, requires the court to order the suspension of all business licenses for a minimum period. For a second violation, requires the revocation of all business licenses.

Requires the attorney general to maintain copies of, and provide access to, all court orders issued against employers and to maintain a database of employers with a first violation. Requires the department of revenue, in cooperation with the department of labor and employment, to provide a notice of the requirements of the act to employers obligated by law to withhold taxes for employees.

Creates the e-verify program cash fund, to consist of moneys collected as fines imposed on employers for failing to participate in the e-verify program. Authorizes the moneys in the fund to be used to cover the costs incurred by the attorney general, county attorneys, and city attorneys in administering and enforcing the requirements of the act.

Requires contractors and subcontractors entering into public contracts for services with a state agency to participate in the e-verify program.

Defines as a discriminatory or unfair employment practice the termination from employment of a United States citizen or permanent resident alien while retaining an unauthorized alien in the same type of job when the employer knew or should have known that the person was an unauthorized alien.

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 OF A NEW SECTION to
4 read:

5 **8-2-124. Verification of employee work eligibility status - short**
6 **title - legislative declaration - definitions - e-verify program - cash**
7 **fund.** (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE
8 "FAIR AND LEGAL EMPLOYMENT ACT".

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

11 (I) ENSURING THAT COLORADO EMPLOYERS EMPLOY ONLY THOSE
12 PERSONS ELIGIBLE TO WORK WITHIN COLORADO IS AN ISSUE OF STATEWIDE
13 CONCERN;

14 (II) IT IS IN THE BEST INTEREST OF EMPLOYERS IN COLORADO FOR
15 ALL EMPLOYERS TO FOLLOW FEDERAL LAW AS IT APPLIES TO THE HIRING
16 OF PERSONS WHO ARE AUTHORIZED TO WORK IN THE UNITED STATES;

17 (III) EMPLOYERS WHO VIOLATE FEDERAL EMPLOYMENT LAWS WITH
18 RESPECT TO THE HIRING OF PERSONS WHO ARE UNAUTHORIZED TO WORK
19 IN THE UNITED STATES PLACE AN UNDUE ECONOMIC BURDEN ON
20 EMPLOYERS WHO ATTEMPT TO HIRE ONLY PERSONS WHO ARE AUTHORIZED
21 TO WORK IN THE UNITED STATES;

22 (IV) STRICT ADHERENCE TO LEGAL HIRING PRACTICES WILL
23 DECREASE ILLEGAL IMMIGRATION INTO COLORADO AND SUBSTANTIALLY
24 REDUCE THE MILLIONS OF DOLLARS LEAVING COLORADO'S ECONOMY TO
25 OTHER COUNTRIES; AND

26 (V) EMPLOYERS IN COLORADO WHO ILLEGALLY HIRE

1 UNAUTHORIZED PERSONS CREATE AN ATTRACTIVE ENVIRONMENT FOR
2 ILLEGAL IMMIGRANTS TO LOCATE WITHIN COLORADO, WHICH COSTS
3 TAXPAYERS MILLIONS OF DOLLARS TO PROVIDE PUBLIC EDUCATION,
4 HEALTH CARE, AND OTHER SERVICES AND, IN ADDITION, PLACES UNDUE
5 STRAIN AND COSTS ON OUR JUDICIAL SYSTEM.

6 (b) THE GENERAL ASSEMBLY THEREFORE FINDS AND DETERMINES
7 THAT IT IS IN THE BEST INTEREST OF THE STATE FOR ALL EMPLOYERS TO
8 VERIFY THE SOCIAL SECURITY NUMBERS AND WORK ELIGIBILITY STATUS
9 OF NEWLY HIRED EMPLOYEES AND THAT IT IS IMPORTANT THAT EVERY
10 EMPLOYER IN COLORADO PARTICIPATE IN THE FEDERAL EMPLOYMENT
11 VERIFICATION PILOT PROGRAM, KNOWN AS "E-VERIFY", FOR THE PURPOSE
12 OF VERIFYING THE WORK ELIGIBILITY STATUS OF NEWLY HIRED
13 EMPLOYEES.

14 (3) AS USED IN THIS SECTION:

15 (a) "AGENCY" MEANS ANY DEPARTMENT, DIVISION, BOARD, OR
16 COMMISSION OF THIS STATE OR OF A COUNTY, CITY, OR CITY AND COUNTY
17 THAT ISSUES A LICENSE FOR THE PURPOSE OF OPERATING A BUSINESS IN
18 THIS STATE.

19 (b) "BUSINESS LICENSE" MEANS ANY LICENSE ISSUED BY AN
20 AGENCY TO AN EMPLOYER THAT IS NECESSARY FOR THE EMPLOYER TO
21 OPERATE ITS BUSINESS.

22 (c) (I) "EMPLOYER" MEANS A PERSON TRANSACTING BUSINESS IN
23 COLORADO WHO, AT ANY TIME, EMPLOYS ANOTHER PERSON TO PERFORM
24 SERVICES OF ANY NATURE AND WHO HAS CONTROL OF THE PAYMENT OF
25 WAGES FOR SUCH SERVICES OR IS THE OFFICER, AGENT, OR EMPLOYEE OF
26 THE PERSON HAVING CONTROL OF THE PAYMENT OF WAGES.

27 (II) "EMPLOYER" DOES NOT INCLUDE THE FEDERAL GOVERNMENT,

1 THE STATE OF COLORADO, ANOTHER STATE, OR A POLITICAL SUBDIVISION
2 OF COLORADO OR ANOTHER STATE.

3 (d) "E-VERIFY PROGRAM" OR "PROGRAM" MEANS THE ELECTRONIC
4 EMPLOYMENT VERIFICATION PROGRAM THAT IS AUTHORIZED IN 8 U.S.C.
5 SEC. 1324a AND JOINTLY ADMINISTERED BY THE UNITED STATES
6 DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY
7 ADMINISTRATION, OR ITS SUCCESSOR PROGRAM.

8 (e) "UNAUTHORIZED ALIEN" HAS THE SAME MEANING AS SET
9 FORTH IN 8 U.S.C. SEC. 1324a (h) (3).

10 (4) (a) EACH EMPLOYER IN COLORADO SHALL PARTICIPATE IN THE
11 E-VERIFY PROGRAM FOR THE PURPOSE OF VERIFYING THE WORK
12 ELIGIBILITY STATUS OF EACH OF THE EMPLOYER'S NEWLY HIRED
13 EMPLOYEES BY THE FOLLOWING DATES:

14 (I) FOR AN EMPLOYER WITH TWO HUNDRED OR MORE EMPLOYEES,
15 NO LATER THAN JANUARY 1, 2009;

16 (II) FOR AN EMPLOYER WITH AT LEAST FIFTY EMPLOYEES BUT
17 FEWER THAN TWO HUNDRED EMPLOYEES, NO LATER THAN JULY 1, 2009;
18 AND

19 (III) FOR AN EMPLOYER WITH FEWER THAN FIFTY EMPLOYEES, NO
20 LATER THAN JULY 1, 2011.

21 (b) AN EMPLOYER SHALL ENTER INTO AN AGREEMENT AS
22 REQUIRED BY THE SOCIAL SECURITY ADMINISTRATION AND THE UNITED
23 STATES DEPARTMENT OF HOMELAND SECURITY TO PARTICIPATE IN THE
24 E-VERIFY PROGRAM AND SHALL COMPLY WITH THE REQUIREMENTS FOR
25 PARTICIPATING IN THE PROGRAM. IF THE AGREEMENT IS TERMINATED BY
26 THE SOCIAL SECURITY ADMINISTRATION OR THE UNITED STATES
27 DEPARTMENT OF HOMELAND SECURITY BASED ON THE EMPLOYER'S

1 FAILURE TO COMPLY WITH THE ESTABLISHED PROCEDURES OR LEGAL
2 REQUIREMENTS AS SET FORTH IN THE AGREEMENT, THE EMPLOYER SHALL
3 BE SUBJECT TO THE PENALTIES SET FORTH IN PARAGRAPH (d) OF THIS
4 SUBSECTION (4).

5 (c) UPON ENTERING THE AGREEMENT DESCRIBED IN PARAGRAPH
6 (b) OF THIS SUBSECTION (4), THE EMPLOYER SHALL MAINTAIN A COPY OF
7 THE AGREEMENT, SHOWING THAT THE EMPLOYER IS AN ACTIVE
8 PARTICIPANT IN THE PROGRAM.

9 (d) IF THE ATTORNEY GENERAL FINDS THAT AN EMPLOYER HAS
10 FAILED TO PARTICIPATE IN THE E-VERIFY PROGRAM AS REQUIRED BY THIS
11 SUBSECTION (4), THE EMPLOYER SHALL BE SUBJECT TO THE FOLLOWING
12 PENALTIES FOR EACH THIRTY-DAY PERIOD OF NONCOMPLIANCE:

13 (I) AT LEAST FIVE THOUSAND DOLLARS BUT NOT MORE THAN TEN
14 THOUSAND DOLLARS IF THE EMPLOYER HAS TWO HUNDRED OR MORE
15 EMPLOYEES;

16 (II) AT LEAST THREE THOUSAND DOLLARS BUT NOT MORE THAN
17 FIVE THOUSAND DOLLARS IF THE EMPLOYER HAS AT LEAST FIFTY
18 EMPLOYEES BUT FEWER THAN TWO HUNDRED EMPLOYEES; OR

19 (III) AT LEAST ONE THOUSAND DOLLARS BUT NOT MORE THAN
20 THREE THOUSAND DOLLARS IF THE EMPLOYER HAS FEWER THAN FIFTY
21 EMPLOYEES.

22 (e) THE ATTORNEY GENERAL SHALL VERIFY THAT EACH EMPLOYER
23 HAS COMPLIED WITH PARAGRAPH (a) OF THIS SUBSECTION (4) WITHIN
24 NINETY DAYS AFTER THE FIRST FINDING OF NONCOMPLIANCE. IF THE
25 EMPLOYER IS NOT IN COMPLIANCE, THE ATTORNEY GENERAL SHALL FINE
26 THE EMPLOYER THE MAXIMUM FINE AMOUNT PURSUANT TO PARAGRAPH
27 (d) OF THIS SUBSECTION (4).

1 (f) UPON REQUEST OF THE ATTORNEY GENERAL, AN EMPLOYER
2 SHALL SUBMIT EVIDENCE THAT THE EMPLOYER IS PARTICIPATING IN THE
3 E-VERIFY PROGRAM, INCLUDING A COPY OF THE AGREEMENT EXECUTED BY
4 THE EMPLOYER WITH THE SOCIAL SECURITY ADMINISTRATION AND THE
5 UNITED STATES DEPARTMENT OF HOMELAND SECURITY. UPON RECEIPT OF
6 TWO COMPLAINTS THAT AN EMPLOYER HAS NOT COMPLIED WITH THIS
7 SUBSECTION (4), THE ATTORNEY GENERAL SHALL REQUEST THE
8 SUBMISSION OF SUCH EVIDENCE WITHIN THIRTY DAYS AFTER THE SECOND
9 COMPLAINT. THE ATTORNEY GENERAL SHALL LEVY A FINE AGAINST AN
10 EMPLOYER PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (4) FOR
11 EACH CALENDAR MONTH THE EMPLOYER FAILS TO SUBMIT SUCH EVIDENCE.

12 (5) ON AND AFTER THE DATE BY WHICH AN EMPLOYER IS REQUIRED
13 TO PARTICIPATE IN THE E-VERIFY PROGRAM PURSUANT TO SUBSECTION (4)
14 OF THIS SECTION:

15 (a) AN EMPLOYER SHALL NOT INTENTIONALLY OR KNOWINGLY
16 EMPLOY AN UNAUTHORIZED ALIEN; AND

17 (b) AN EMPLOYER SHALL IMMEDIATELY TERMINATE THE
18 EMPLOYMENT OF AN EMPLOYEE FOR WHOM THE EMPLOYER RECEIVES A
19 FINAL NOTICE OF NONCONFIRMATION OF WORK ELIGIBILITY THROUGH THE
20 E-VERIFY PROGRAM.

21 (6) (a) ANY PERSON MAY FILE A COMPLAINT ALLEGING THAT AN
22 EMPLOYER INTENTIONALLY OR KNOWINGLY EMPLOYS AN UNAUTHORIZED
23 ALIEN. THE COMPLAINT SHALL BE FILED EITHER WITH THE ATTORNEY
24 GENERAL OR THE COUNTY OR CITY ATTORNEY FOR THE COUNTY OR CITY
25 IN WHICH THE EMPLOYER ALLEGEDLY EMPLOYS AN UNAUTHORIZED ALIEN.
26 UPON RECEIPT OF A COMPLAINT THAT AN EMPLOYER INTENTIONALLY OR
27 KNOWINGLY EMPLOYS AN UNAUTHORIZED ALIEN, THE ATTORNEY GENERAL

1 OR COUNTY OR CITY ATTORNEY, AS APPROPRIATE, SHALL INVESTIGATE
2 WHETHER THE EMPLOYER HAS VIOLATED SUBSECTION (5) OF THIS SECTION.
3 AS PART OF THE INVESTIGATION, THE ATTORNEY GENERAL OR COUNTY OR
4 CITY ATTORNEY SHALL VERIFY THE WORK AUTHORIZATION OF THE
5 ALLEGED UNAUTHORIZED ALIEN WITH THE FEDERAL GOVERNMENT
6 PURSUANT TO 8 U.S.C. SEC. 1373 (c). A STATE, COUNTY, OR CITY
7 OFFICIAL SHALL NOT ATTEMPT TO INDEPENDENTLY MAKE A FINAL
8 DETERMINATION ON WHETHER AN ALIEN IS AUTHORIZED TO WORK IN THE
9 UNITED STATES. A PERSON WHO KNOWINGLY FILES A FALSE OR
10 FRIVOLOUS COMPLAINT UNDER THIS SUBSECTION (6) IS GUILTY OF A CLASS
11 3 MISDEMEANOR.

12 (b) IF, AFTER AN INVESTIGATION, THE ATTORNEY GENERAL OR
13 COUNTY OR CITY ATTORNEY DETERMINES THAT THE COMPLAINT IS NOT
14 FRIVOLOUS, THE ATTORNEY GENERAL OR COUNTY OR CITY ATTORNEY
15 SHALL NOTIFY THE UNITED STATES IMMIGRATION AND CUSTOMS
16 ENFORCEMENT AND LOCAL LAW ENFORCEMENT OF THE SUBSTANCE OF THE
17 COMPLAINT, INCLUDING THE IDENTITY OF THE UNAUTHORIZED ALIEN IF
18 KNOWN. IF THE COMPLAINT WAS FILED WITH AND INVESTIGATED BY THE
19 ATTORNEY GENERAL, THE ATTORNEY GENERAL SHALL NOTIFY THE
20 APPROPRIATE COUNTY OR CITY ATTORNEY TO BRING AN ACTION AGAINST
21 THE EMPLOYER PURSUANT TO SUBSECTION (7) OF THIS SECTION.

22 (7) (a) THE COUNTY ATTORNEY OF THE COUNTY, OR THE CITY
23 ATTORNEY OF THE CITY, IN WHICH THE UNAUTHORIZED ALIEN IS OR HAS
24 BEEN EMPLOYED SHALL BRING AN ACTION AGAINST THE EMPLOYER FOR A
25 VIOLATION OF SUBSECTION (5) OF THIS SECTION. AN ACTION SHALL NOT
26 BE BROUGHT AGAINST AN EMPLOYER FOR A VIOLATION OF SUBSECTION (5)
27 OF THIS SECTION BEFORE THE DATE BY WHICH THE EMPLOYER IS

1 OBLIGATED TO PARTICIPATE IN THE E-VERIFY PROGRAM PURSUANT TO
2 SUBSECTION (4) OF THIS SECTION. THE COURT IN WHICH THE ACTION IS
3 FILED SHALL EXPEDITE THE ACTION AND SHALL SET THE MATTER FOR
4 HEARING AT THE EARLIEST PRACTICABLE DATE.

5 (b) (I) IF THE COURT FINDS THAT THE EMPLOYER KNOWINGLY
6 VIOLATED SUBSECTION (5) OF THIS SECTION AND IT IS THE EMPLOYER'S
7 FIRST KNOWING VIOLATION WITHIN A THREE-YEAR PERIOD, THE COURT
8 SHALL ORDER THE EMPLOYER TO:

9 (A) TERMINATE THE EMPLOYMENT OF ALL UNAUTHORIZED ALIENS;

10 (B) BE SUBJECT TO A THREE-YEAR PROBATIONARY PERIOD, DURING
11 WHICH THE EMPLOYER SHALL FILE QUARTERLY REPORTS WITH THE
12 APPROPRIATE COUNTY OR CITY ATTORNEY SPECIFYING EACH NEW
13 EMPLOYEE HIRED BY THE EMPLOYER AT THE SPECIFIC LOCATION WHERE
14 THE UNAUTHORIZED ALIEN PERFORMED WORK AND THE WORK ELIGIBILITY
15 STATUS OF EACH NEW EMPLOYEE; AND

16 (C) FILE A SIGNED, SWORN AFFIDAVIT WITH THE COUNTY OR CITY
17 ATTORNEY WITHIN THREE BUSINESS DAYS AFTER THE ORDER IS ISSUED,
18 ATTESTING THAT THE EMPLOYER HAS TERMINATED THE EMPLOYMENT OF
19 ALL UNAUTHORIZED ALIENS AND THAT THE EMPLOYER WILL NOT
20 KNOWINGLY OR INTENTIONALLY EMPLOY AN UNAUTHORIZED ALIEN. IF
21 THE EMPLOYER FAILS TO TIMELY FILE THE AFFIDAVIT, THE COURT SHALL
22 ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL BUSINESS LICENSES
23 HELD BY THE EMPLOYER UNTIL THE EMPLOYER FILES THE AFFIDAVIT.
24 UPON NOTICE FROM THE COUNTY OR CITY ATTORNEY THAT THE EMPLOYER
25 HAS FILED THE AFFIDAVIT, THE APPROPRIATE AGENCIES SHALL
26 IMMEDIATELY REINSTATE ALL SUSPENDED BUSINESS LICENSES.

27 (II) IN ADDITION, THE COURT MAY ORDER THE APPROPRIATE

1 AGENCIES TO SUSPEND ALL BUSINESS LICENSES HELD BY THE EMPLOYER
2 FOR UP TO TEN BUSINESS DAYS. IN DETERMINING WHETHER TO ORDER THE
3 SUSPENSION OF THE EMPLOYER'S BUSINESS LICENSES, THE COURT SHALL
4 BASE ITS DECISION ON ANY EVIDENCE OR INFORMATION IT RECEIVES
5 DURING THE ACTION AND SHALL CONSIDER THE FOLLOWING FACTORS, IF
6 RELEVANT:

7 (A) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE
8 EMPLOYER;

9 (B) ANY PRIOR MISCONDUCT OF THE EMPLOYER;

10 (C) THE DEGREE OF HARM RESULTING FROM THE VIOLATION;

11 (D) WHETHER THE EMPLOYER MADE GOOD-FAITH EFFORTS TO
12 COMPLY WITH THE LAW;

13 (E) THE DURATION OF THE VIOLATION;

14 (F) THE ROLE OF THE DIRECTORS, OFFICERS, OR PRINCIPALS OF THE
15 EMPLOYER IN THE COMMISSION OF THE VIOLATION; AND

16 (G) ANY OTHER FACTORS DEEMED APPROPRIATE BY THE COURT.

17 (c) IF THE COURT FINDS THAT THE EMPLOYER INTENTIONALLY
18 VIOLATED SUBSECTION (5) OF THIS SECTION AND IT IS THE EMPLOYER'S
19 FIRST INTENTIONAL VIOLATION WITHIN A FIVE-YEAR PERIOD, THE COURT
20 SHALL ORDER:

21 (I) THE EMPLOYER TO TERMINATE THE EMPLOYMENT OF ALL
22 UNAUTHORIZED ALIENS;

23 (II) THE EMPLOYER TO BE SUBJECT TO A FIVE-YEAR
24 PROBATIONARY PERIOD, DURING WHICH THE EMPLOYER SHALL FILE
25 QUARTERLY REPORTS WITH THE APPROPRIATE COUNTY OR CITY ATTORNEY
26 SPECIFYING EACH NEW EMPLOYEE HIRED BY THE EMPLOYER AT THE
27 SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK

1 AND THE WORK ELIGIBILITY STATUS OF EACH NEW EMPLOYEE;

2 (III) THE EMPLOYER TO FILE A SIGNED, SWORN AFFIDAVIT WITH
3 THE COUNTY OR CITY ATTORNEY, ATTESTING THAT THE EMPLOYER HAS
4 TERMINATED THE EMPLOYMENT OF ALL UNAUTHORIZED ALIENS AND THAT
5 THE EMPLOYER WILL NOT KNOWINGLY OR INTENTIONALLY EMPLOY AN
6 UNAUTHORIZED ALIEN. IF THE EMPLOYER FAILS TO FILE THE AFFIDAVIT
7 WITHIN THE PERIOD IN WHICH THE EMPLOYER'S BUSINESS LICENSES ARE
8 SUSPENDED PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH (c),
9 THE EMPLOYER'S BUSINESS LICENSES SHALL REMAIN SUSPENDED UNTIL
10 THE EMPLOYER FILES THE AFFIDAVIT. UPON NOTICE FROM THE COUNTY OR
11 CITY ATTORNEY THAT THE EMPLOYER HAS FILED THE AFFIDAVIT, THE
12 APPROPRIATE AGENCIES SHALL IMMEDIATELY REINSTATE ALL SUSPENDED
13 BUSINESS LICENSES.

14 (IV) THE APPROPRIATE AGENCIES TO SUSPEND ALL BUSINESS
15 LICENSES HELD BY THE EMPLOYER FOR AT LEAST TEN BUSINESS DAYS. IN
16 DETERMINING THE LENGTH OF THE BUSINESS LICENSE SUSPENSION, THE
17 COURT SHALL BASE ITS DECISION ON ANY EVIDENCE OR INFORMATION IT
18 RECEIVES DURING THE ACTION AND SHALL CONSIDER THE FOLLOWING
19 FACTORS, IF RELEVANT:

20 (A) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE
21 EMPLOYER;

22 (B) ANY PRIOR MISCONDUCT OF THE EMPLOYER;

23 (C) THE DEGREE OF HARM RESULTING FROM THE VIOLATION;

24 (D) WHETHER THE EMPLOYER MADE GOOD-FAITH EFFORTS TO
25 COMPLY WITH THE LAW;

26 (E) THE DURATION OF THE VIOLATION;

27 (F) THE ROLE OF THE DIRECTORS, OFFICERS, OR PRINCIPALS OF THE

1 EMPLOYER IN THE COMMISSION OF THE VIOLATION; AND

2 (G) ANY OTHER FACTORS DEEMED APPROPRIATE BY THE COURT.

3 (d) IF, DURING A PERIOD OF PROBATION IMPOSED BY A COURT
4 ORDER ISSUED PURSUANT TO PARAGRAPH (b) OR (c) OF THIS SUBSECTION
5 (7), THE COURT FINDS THAT THE EMPLOYER HAS EMPLOYED AN
6 UNAUTHORIZED ALIEN, THE EMPLOYER SHALL BE FOUND TO HAVE
7 COMMITTED A SECOND VIOLATION OF SUBSECTION (5) OF THIS SECTION,
8 AND THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO
9 IMMEDIATELY AND PERMANENTLY REVOKE ALL BUSINESS LICENSES HELD
10 BY THE EMPLOYER.

11 (e) UPON THE ISSUANCE OF AN ORDER PURSUANT TO THIS
12 SUBSECTION (7), THE COURT SHALL SEND A COPY OF THE ORDER TO THE
13 ATTORNEY GENERAL. FOR PURPOSES OF ORDERS DIRECTING THE
14 SUSPENSION OF AN EMPLOYER'S BUSINESS LICENSES, A COPY OF THE ORDER
15 SHALL BE SENT TO ALL APPROPRIATE AGENCIES.

16 (f) IN DETERMINING WHETHER AN EMPLOYEE IS AN UNAUTHORIZED
17 ALIEN, THE COURT SHALL CONSIDER ONLY THE FEDERAL GOVERNMENT'S
18 DETERMINATION PURSUANT TO 8 U.S.C. SEC. 1373 (c). THE FEDERAL
19 GOVERNMENT'S DETERMINATION CREATES A REBUTTABLE PRESUMPTION
20 OF THE EMPLOYEE'S WORK ELIGIBILITY STATUS, AND THE COURT MAY
21 TAKE JUDICIAL NOTICE OF THAT DETERMINATION. THE COURT MAY
22 REQUEST THE FEDERAL GOVERNMENT TO PROVIDE AUTOMATED OR
23 TESTIMONIAL VERIFICATION PURSUANT TO 8 U.S.C. SEC. 1373 (c).

24 (g) PROOF OF VERIFYING THE WORK ELIGIBILITY STATUS OF AN
25 EMPLOYEE THROUGH THE E-VERIFY PROGRAM CREATES A REBUTTABLE
26 PRESUMPTION THAT THE EMPLOYER DID NOT INTENTIONALLY OR
27 KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

1 (h) AN EMPLOYER THAT SHOWS THAT IT COMPLIED IN GOOD FAITH
2 WITH THE REQUIREMENTS OF 8 U.S.C. SEC. 1324b ESTABLISHES AN
3 AFFIRMATIVE DEFENSE THAT THE EMPLOYER DID NOT INTENTIONALLY OR
4 KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

5 (8) THE ATTORNEY GENERAL SHALL MAINTAIN COPIES OF ALL
6 COURT ORDERS ISSUED PURSUANT TO SUBSECTION (7) OF THIS SECTION
7 AND SHALL MAKE THE COURT ORDERS AVAILABLE ON THE ATTORNEY
8 GENERAL'S WEB SITE. ADDITIONALLY, THE ATTORNEY GENERAL SHALL
9 MAINTAIN A DATABASE OF THE EMPLOYERS WHO HAVE COMMITTED A
10 FIRST VIOLATION OF SUBSECTION (5) OF THIS SECTION.

11 (9) (a) ON OR BEFORE OCTOBER 1, 2008, THE DEPARTMENT OF
12 REVENUE SHALL PROVIDE A NOTICE TO EVERY EMPLOYER THAT IS
13 REQUIRED TO WITHHOLD TAX PURSUANT TO SECTION 39-22-604, C.R.S.,
14 EXPLAINING THE REQUIREMENTS OF THIS SECTION. THE DEPARTMENT OF
15 LABOR AND EMPLOYMENT SHALL ASSIST THE DEPARTMENT OF REVENUE IN
16 DEVELOPING THE NOTICE, WHICH SHALL SET FORTH AT LEAST THE
17 FOLLOWING INFORMATION:

18 (I) THAT A NEW STATE LAW PROHIBITS AN EMPLOYER FROM
19 INTENTIONALLY OR KNOWINGLY EMPLOYING AN UNAUTHORIZED ALIEN;

20 (II) THE PENALTIES FOR VIOLATING THE PROHIBITION;

21 (III) THAT EMPLOYERS WILL BE REQUIRED TO VERIFY THE
22 EMPLOYMENT ELIGIBILITY OF NEW EMPLOYEES THROUGH THE E-VERIFY
23 PROGRAM; AND

24 (IV) INSTRUCTIONS FOR THE EMPLOYER ON HOW TO ENROLL IN THE
25 E-VERIFY PROGRAM.

26 (b) THE DEPARTMENTS OF REVENUE AND LABOR AND EMPLOYMENT
27 AND THE ATTORNEY GENERAL SHALL MAINTAIN A COPY OF THE NOTICE

1 REQUIRED BY THIS SUBSECTION (9) ON THEIR RESPECTIVE WEB SITES.

2 (10) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE
3 AN EMPLOYER TO TAKE ANY ACTION THAT THE EMPLOYER BELIEVES IN
4 GOOD FAITH WOULD VIOLATE FEDERAL OR STATE LAW.

5 (11) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE
6 E-VERIFY PROGRAM CASH FUND, REFERRED TO IN THIS SECTION AS THE
7 "FUND". THE FUND SHALL CONSIST OF ANY MONEYS COLLECTED
8 PURSUANT TO SUBSECTION (4) OF THIS SECTION. ADDITIONALLY, ANY
9 UNENCUMBERED AND UNEXPENDED MONEYS REMAINING IN THE
10 EMPLOYMENT VERIFICATION CASH FUND, CREATED IN SECTION 8-2-122(4),
11 AS OF THE DATE SECTION 8-2-122 IS REPEALED, SHALL BE TRANSFERRED
12 TO THE FUND. MONEYS REMAINING IN THE FUND AT THE END OF ANY
13 FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT REVERT TO THE
14 GENERAL FUND.

15 (b) MONEYS IN THE FUND SHALL BE SUBJECT TO APPROPRIATION
16 BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF LAW FOR THE
17 PURPOSE OF ADMINISTERING AND ENFORCING THIS SECTION AND
18 REIMBURSING COUNTY OR CITY ATTORNEYS FOR THEIR COSTS ASSOCIATED
19 WITH ENFORCING THIS SECTION. A COUNTY OR CITY ATTORNEY THAT
20 INCURS COSTS ASSOCIATED WITH ENFORCING THIS SECTION SHALL SUBMIT
21 A REQUEST FOR REIMBURSEMENT TO THE DEPARTMENT OF LAW AT THE
22 END OF THE STATE FISCAL YEAR FOR COSTS INCURRED DURING THAT
23 FISCAL YEAR. THE DEPARTMENT OF LAW SHALL DETERMINE AN
24 EQUITABLE METHOD OF REIMBURSING COUNTY AND CITY ATTORNEYS FOR
25 THEIR ENFORCEMENT COSTS FROM AVAILABLE MONEYS IN THE FUND.

26 **SECTION 2.** 8-17.5-101 (1), Colorado Revised Statutes, is
27 amended, and the said 8-17.5-101 is further amended BY THE

1 ADDITION OF A NEW SUBSECTION, to read:

2 **8-17.5-101. Definitions.** As used in this article, unless the context
3 otherwise requires:

4 (1) ~~"Basic pilot program" means the basic pilot employment~~
5 ~~verification program created in Public Law 208, 104th Congress, as~~
6 ~~amended, and expanded in Public Law 156, 108th Congress, as amended,~~
7 ~~that is administered by the United States department of homeland~~
8 ~~security.~~

9 (3.5) "E-VERIFY PROGRAM" OR "PROGRAM" MEANS THE
10 ELECTRONIC EMPLOYMENT VERIFICATION PROGRAM THAT IS AUTHORIZED
11 IN 8 U.S.C. SEC. 1324a AND JOINTLY ADMINISTERED BY THE UNITED
12 STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY
13 ADMINISTRATION, OR ITS SUCCESSOR PROGRAM.

14 **SECTION 3.** 8-17.5-102 (1), (2) (b) (I), and (2) (b) (II), Colorado
15 Revised Statutes, are amended to read:

16 **8-17.5-102. Illegal aliens - prohibition - public contracts for**
17 **services.** (1) A state agency or political subdivision shall not enter into
18 or renew a public contract for services with a contractor who knowingly
19 employs or contracts with an illegal alien to perform work under the
20 contract or who knowingly contracts with a subcontractor who knowingly
21 employs or contracts with an illegal alien to perform work under the
22 contract. ~~Prior to~~ BEFORE executing a public contract for services, each
23 prospective contractor shall certify that, at the time of the certification, it
24 does not knowingly employ or contract with an illegal alien and that the
25 contractor has participated ~~or attempted to participate~~ in the ~~basic pilot~~
26 E-VERIFY program in order to confirm the employment eligibility of all
27 employees who are newly hired for employment in the United States.

1 (2) (b) Each public contract for services shall also include the
2 following provisions:

3 (I) A ~~provision stating~~ STATEMENT that the contractor has
4 confirmed ~~or attempted to confirm~~ the employment eligibility of all
5 employees who are newly hired for employment in the United States
6 through participation in the ~~basic pilot~~ E-VERIFY program; ~~and, if the~~
7 ~~contractor is not accepted into the basic pilot program prior to entering~~
8 ~~into a public contract for services, that the contractor shall apply to~~
9 ~~participate in the basic pilot program every three months until the~~
10 ~~contractor is accepted or the public contract for services has been~~
11 ~~completed, whichever is earlier.~~ EXCEPT THAT the ~~provision~~ STATEMENT
12 specified in this subparagraph (I) shall not be required or effective in a
13 public contract for services if the ~~basic pilot~~ E-VERIFY program is
14 discontinued.

15 (II) A provision that prohibits the contractor from using ~~basic pilot~~
16 E-VERIFY program procedures to undertake preemployment screening of
17 job applicants while the public contract for services is being performed;

18 **SECTION 4.** 24-34-402, Colorado Revised Statutes, is amended
19 BY THE ADDITION OF A NEW SUBSECTION to read:

20 **24-34-402. Discriminatory or unfair employment practices.**

21 (8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE
22 CONTRARY, IT SHALL BE A DISCRIMINATORY OR UNFAIR EMPLOYMENT
23 PRACTICE FOR AN EMPLOYER TO DISCHARGE AN EMPLOYEE WHO IS A
24 UNITED STATES CITIZEN OR PERMANENT RESIDENT ALIEN WHILE
25 RETAINING AN EMPLOYEE WHO THE EMPLOYER KNOWS OR REASONABLY
26 SHOULD HAVE KNOWN IS AN UNAUTHORIZED ALIEN, AS DEFINED IN
27 SECTION 8-2-124, C.R.S., HIRED AFTER THE DATE BY WHICH THE EMPLOYER

1 IS REQUIRED TO PARTICIPATE IN THE FEDERAL E-VERIFY PROGRAM
2 PURSUANT TO SECTION 8-2-124 (4) (a), C.R.S., IF THE UNAUTHORIZED
3 ALIEN IS WORKING IN A JOB CATEGORY THAT REQUIRES EQUAL SKILL,
4 EFFORT, AND RESPONSIBILITY AND UNDER SIMILAR WORKING CONDITIONS,
5 AS DEFINED IN 29 U.S.C. SEC. 206 (d) (1), AS THE JOB CATEGORY HELD BY
6 THE DISCHARGED EMPLOYEE. FOR PURPOSES OF THIS SUBSECTION (8), AN
7 EMPLOYER MAY SHOW THAT IT DID NOT KNOW OR SHOULD NOT
8 REASONABLY HAVE KNOWN THAT IT EMPLOYED AN UNAUTHORIZED ALIEN
9 IF THE EMPLOYER PROVIDES EVIDENCE THAT IT VERIFIED THE
10 UNAUTHORIZED ALIEN'S WORK ELIGIBILITY STATUS THROUGH THE
11 E-VERIFY PROGRAM, AS DEFINED IN SECTION 8-2-124, C.R.S.

12 **SECTION 5. Repeal.** 8-2-122, Colorado Revised Statutes, is
13 repealed.

14 **SECTION 6. Effective date - applicability.** (1) This act shall
15 take effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly that is
17 allowed for submitting a referendum petition pursuant to article V,
18 section 1 (3) of the state constitution, (August 6, 2008, if adjournment
19 sine die is on May 7, 2008); except that, if a referendum petition is filed
20 against this act or an item, section, or part of this act within such period,
21 then the act, item, section, or part, if approved by the people, shall take
22 effect on the date of the official declaration of the vote thereon by
23 proclamation of the governor.

24 (2) The provisions of sections 2 and 3 of this act shall apply to
25 public contracts for services entered into on or after the applicable
26 effective date of this act.

1 (3) The provisions of section 4 of this act shall apply to
2 discriminatory or unfair employment practices committed on or after the
3 applicable effective date of this act.