



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB5718

by Rep. Dan Brady

SYNOPSIS AS INTRODUCED:

See Index

Creates the Unauthorized Alien Employment Prohibition Act and amends the Illinois Income Tax Act, the Illinois Human Rights Act, and the Right to Privacy in the Workplace Act. Provides that an employer shall not intentionally or knowingly employ an unauthorized alien. Provides for investigation of complaints. Provides for actions against an employer by the State's Attorney. Provides that the court may, depending upon the circumstances and with specified exceptions: order an employer to terminate the employment of unauthorized aliens; impose probationary periods; require affidavits or reports; or order suspension or revocation of certain licenses held by the employer. Provides that an employer shall verify the employment eligibility of hired employees through the basic pilot program administered by the Department of Homeland Security and the Social Security Administration. Creates the Employer Sanctions Legislative Study Committee to examine and report on laws and rules regarding employer sanctions. Contains provisions regarding: false and frivolous complaints; notices to U.S. Immigration and Customs Enforcement and local law enforcement agencies; expediting of actions; defenses; presumptions; information on the Attorney General's website; construction; notices by the Department of Revenue to employers; discrimination; severability; and other matters. Makes a violation of the discrimination provisions of the Unauthorized Alien Employment Prohibition Act a civil rights violation under the Illinois Human Rights Act. Deletes provisions that restricted the use of any Employment Eligibility Verification System. Some provisions are effective immediately.

LRB095 12761 WGH 45389 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Unauthorized Alien Employment Prohibition Act.

6 Section 5. Definitions. In this Act:

7 "Agency" means any agency, department, board, or
8 commission of this State or a county or municipality that
9 issues a license for purposes of operating a business in this
10 State.

11 "Basic pilot program" means the basic employment
12 verification pilot program jointly administered by the United
13 States Department of Homeland Security and the Social Security
14 Administration or its successor program.

15 "Critical infrastructure" means systems and assets,
16 whether physical or virtual, so vital to the United States or
17 this State that the incapacity or destruction of such systems
18 and assets would have a debilitating impact on security,
19 economic security, public health or safety, or any combination
20 of those matters.

21 "Employee" means any person who performs employment
22 services for an employer pursuant to an employment relationship
23 between the employee and employer.

1 "Employer" means any individual or type of organization
2 that transacts business in this State, that has a license
3 issued by an agency in this State and that employs one or more
4 individuals who perform employment services in this State.
5 "Employer" includes this State, any political subdivision of
6 this State, and self-employed persons.

7 A person acts "intentionally" to accomplish a result or
8 engage in conduct when the person's conscious objective or
9 purpose is to accomplish that result or engage in that conduct.

10 "Knowingly employ an unauthorized alien" means the actions
11 described in 8 U.S.C. 1324a. This term shall be interpreted
12 consistently with 8 U.S.C. 1324a and any applicable federal
13 rules and regulations.

14 "License" means any agency permit, certificate, approval,
15 registration, charter, or similar form of authorization that is
16 required by law and that is issued by any agency for the
17 purposes of operating a business in this State. "License" does
18 not include any professional license.

19 "Unauthorized alien" means an alien who does not have the
20 legal right or authorization under federal law to work in the
21 United States as described in 8 U.S.C. 1324a(h)(3).

22 Section 10. Employment of unauthorized aliens;
23 prohibition; false and frivolous complaints; violation;
24 classification; license suspension and revocation.

25 (a) An employer shall not intentionally employ an

1 unauthorized alien or knowingly employ an unauthorized alien.

2 (b) On receipt of a complaint that an employer allegedly
3 intentionally employs an unauthorized alien or knowingly
4 employs an unauthorized alien, the Attorney General or State's
5 Attorney shall investigate whether the employer has violated
6 subsection (a). When investigating a complaint, the Attorney
7 General or State's Attorney shall verify the work authorization
8 of the alleged unauthorized alien with the federal government
9 pursuant to 8 U.S.C. 1373(c). A State, county, or local
10 official shall not attempt to independently make a final
11 determination on whether an alien is authorized to work in the
12 United States. An alien's immigration status or work
13 authorization status shall be verified with the federal
14 government pursuant to 8 U.S.C. 1373(c). A person who knowingly
15 files a false and frivolous complaint under this subsection is
16 guilty of a Class C misdemeanor.

17 (c) If, after an investigation, the Attorney General or
18 State's Attorney determines that the complaint is not
19 frivolous:

20 (1) The Attorney General or State's Attorney shall
21 notify U.S. Immigration and Customs Enforcement of the
22 unauthorized alien.

23 (2) The Attorney General or State's Attorney shall
24 notify the local law enforcement agency of the unauthorized
25 alien.

26 (3) The Attorney General shall notify the appropriate

1 State's Attorney to bring an action pursuant to subsection
2 (d) if the complaint was originally filed with the Attorney
3 General.

4 (d) An action for a violation of subsection (a) shall be
5 brought against the employer by the State's Attorney in the
6 county where the unauthorized alien is employed. The State's
7 Attorney shall not bring an action against any employer for any
8 violation of subsection (a) that occurred before January 1,
9 2008. A second violation of this Section shall be based only on
10 an unauthorized alien who is employed by the employer after an
11 action has been brought for a violation of subsection (a).

12 (e) For any action in a circuit court under this Section,
13 the court shall expedite the action, including assigning the
14 hearing at the earliest practicable date.

15 (f) On a finding of a violation of subsection (a):

16 (1) For a first violation during a 3-year period that
17 is a knowing violation of subsection (a), the court:

18 (A) Shall order the employer to terminate the
19 employment of all unauthorized aliens.

20 (B) Shall order the employer to be subject to a
21 3-year probationary period. During the probationary
22 period the employer shall file quarterly reports with
23 the State's Attorney of each new employee who is hired
24 by the employer at the specific location where the
25 unauthorized alien performed work.

26 (C) Shall order the employer to file an affidavit

1 with the State's Attorney within 3 business days after
2 the order is issued. The affidavit shall state that the
3 employer has terminated the employment of all
4 unauthorized aliens and that the employer will not
5 intentionally or knowingly employ an unauthorized
6 alien. The court shall order the appropriate agencies
7 to suspend all licenses subject to this subdivision
8 that are held by the employer if the employer fails to
9 file an affidavit with the State's Attorney within 3
10 business days after the order is issued. All licenses
11 that are suspended under this subdivision shall remain
12 suspended until the employer files an affidavit with
13 the State's Attorney. Notwithstanding any other law,
14 on filing of the affidavit the suspended licenses shall
15 be reinstated immediately by the appropriate agencies.
16 For the purposes of this subdivision, the licenses that
17 are subject to suspension under this subdivision are
18 all licenses that are held by the employer and that are
19 necessary to operate the employer's business at the
20 employer's business location where the unauthorized
21 alien performed work. On receipt of the court's order
22 and notwithstanding any other law, the appropriate
23 agencies shall suspend the licenses according to the
24 court's order. The court shall send a copy of the
25 court's order to the Attorney General and the Attorney
26 General shall maintain the copy pursuant to subsection

1 (g).

2 (D) may order the appropriate agencies to suspend
3 all licenses described in subdivision (C) of this
4 paragraph that are held by the employer for not to
5 exceed 10 business days. The court shall base its
6 decision to suspend under this subdivision on any
7 evidence or information submitted to it during the
8 action for a violation of this subsection and shall
9 consider the following factors, if relevant:

10 (i) The number of unauthorized aliens employed
11 by the employer.

12 (ii) Any prior misconduct by the employer.

13 (iii) The degree of harm resulting from the
14 violation.

15 (iv) Whether the employer made good faith
16 efforts to comply with any applicable
17 requirements.

18 (v) The duration of the violation.

19 (vi) The role of the directors, officers, or
20 principals of the employer in the violation.

21 (vii) Any other factors the court deems
22 appropriate.

23 (2) For a first violation during a 5-year period that
24 is an intentional violation of subsection (a), the court
25 shall:

26 (A) Order the employer to terminate the employment

1 of all unauthorized aliens.

2 (B) Order the employer to be subject to a 5-year
3 probationary period. During the probationary period
4 the employer shall file quarterly reports with the
5 State's Attorney of each new employee who is hired by
6 the employer at the specific location where the
7 unauthorized alien performed work.

8 (C) Order the appropriate agencies to suspend all
9 licenses described in subdivision (D) of this
10 paragraph that are held by the employer for a minimum
11 of 10 days. The court shall base its decision on the
12 length of the suspension under this subdivision on any
13 evidence or information submitted to it during the
14 action for a violation of this subsection and shall
15 consider the following factors, if relevant:

16 (i) The number of unauthorized aliens employed
17 by the employer.

18 (ii) Any prior misconduct by the employer.

19 (iii) The degree of harm resulting from the
20 violation.

21 (iv) Whether the employer made good faith
22 efforts to comply with any applicable
23 requirements.

24 (v) The duration of the violation.

25 (vi) The role of the directors, officers, or
26 principals of the employer in the violation.

1 (vii) Any other factors the court deems
2 appropriate.

3 (D) Order the employer to file an affidavit with
4 the State's Attorney. The affidavit shall state that
5 the employer has terminated the employment of all
6 unauthorized aliens and that the employer will not
7 intentionally or knowingly employ an unauthorized
8 alien. All licenses that are suspended under this
9 subdivision shall remain suspended until the employer
10 files an affidavit with the State's Attorney. For the
11 purposes of this subdivision, the licenses that are
12 subject to suspension under this subdivision are all
13 licenses that are held by the employer and that are
14 necessary to operate the employer's business at the
15 employer's business location where the unauthorized
16 alien performed work. On receipt of the court's order
17 and notwithstanding any other law, the appropriate
18 agencies shall suspend the licenses according to the
19 court's order. The court shall send a copy of the
20 court's order to the Attorney General and the Attorney
21 General shall maintain the copy pursuant to subsection
22 (g).

23 (3) For a second violation of subsection (a) during the
24 period of probation, the court shall order the appropriate
25 agencies to permanently revoke all licenses that are held
26 by the employer and that are necessary to operate the

1 employer's business at the employer's business location
2 where the unauthorized alien performed work. On receipt of
3 the order and notwithstanding any other law, the
4 appropriate agencies shall immediately revoke the
5 licenses.

6 (g) The Attorney General shall maintain copies of court
7 orders that are received pursuant to subsection (f) and shall
8 maintain a database of the employers who have a first violation
9 of subsection (a) and make the court orders available on the
10 Attorney General's website.

11 (h) On determining whether an employee is an unauthorized
12 alien, the court shall consider only the federal government's
13 determination pursuant to 8 U.S.C. 1373(c). The federal
14 government's determination creates a rebuttable presumption of
15 the employee's lawful status. The court may take judicial
16 notice of the federal government's determination and may
17 request the federal government to provide automated or
18 testimonial verification pursuant to 8 U.S.C. 1373(c).

19 (i) For the purposes of this Section, proof of verifying
20 the employment authorization of an employee through the basic
21 pilot program creates a rebuttable presumption that an employer
22 did not intentionally employ an unauthorized alien or knowingly
23 employ an unauthorized alien.

24 (j) For the purposes of this Section, an employer that
25 establishes that it has complied in good faith with the
26 requirements of 8 U.S.C. 1324a(b) establishes an affirmative

1 defense that the employer did not intentionally or knowingly
2 employ an unauthorized alien.

3 (k) Notwithstanding any other provision of this Act, a
4 license may not be revoked under this Act if the revocation of
5 that license would have the effect of jeopardizing critical
6 infrastructure.

7 Section 15. Employer actions; federal or State law
8 compliance. This Act shall not be construed to require an
9 employer to take any action that the employer believes in good
10 faith would violate federal or State law.

11 Section 20. Verification of employment eligibility; basic
12 pilot program. On and after January 1, 2009, every employer,
13 after hiring an employee, shall verify the employment
14 eligibility of the employee through the basic pilot program.

15 Section 25. Employer Sanctions Legislative Study
16 Committee.

17 (a) The Employer Sanctions Legislative Study Committee is
18 established consisting of the following members:

19 (1) Two members appointed by the President of the
20 Senate.

21 (2) Two members appointed by the Minority Leader of the
22 Senate.

23 (3) Two members appointed by the Speaker of the House

1 of Representatives.

2 (4) Two members appointed by the Minority Leader of the
3 House of Representatives.

4 (5) A citizen of Illinois appointed by the President of
5 the Senate who owns a business in Illinois with no more
6 than 30 employees.

7 (6) A citizen of Illinois appointed by the Minority
8 Leader of the Senate who owns a business in Illinois with
9 no more than 30 employees.

10 (7) A citizen of Illinois appointed by the Speaker of
11 the House of Representatives who owns a business in
12 Illinois with more than 30 employees.

13 (8) A citizen of Illinois appointed by the Minority
14 Leader of the House of Representatives who owns a business
15 in Illinois with more than 30 employees.

16 (b) The Committee shall:

17 (1) Examine the laws and regulations pertaining to
18 employer sanctions in Illinois.

19 (2) Examine the effects of these laws and whether such
20 laws are being properly implemented.

21 (3) Examine whether these laws are being applied to all
22 businesses in Illinois in a fair manner.

23 (4) Examine whether the complaint process is being
24 implemented in a fair and just manner.

25 (5) Submit a report of its findings and recommendations
26 to the Governor and the General Assembly on or before

1 December 31, 2009.

2 (c) Committee members are not eligible to receive
3 compensation or reimbursement of expenses.

4 (d) This Section is repealed on March 1, 2010.

5 Section 30. Discrimination. In performing its
6 responsibilities under this Act, an employer shall not
7 discriminate against any individual (other than an
8 unauthorized alien, as defined in 8 U.S.C. 1324a(h)(3)) because
9 of that individual's national origin or, in the case of a
10 protected individual (as defined in 8 U.S.C. 1324b(a)(3)),
11 because of that individual's citizenship status. A violation of
12 this Section constitutes a civil rights violation under the
13 Illinois Human Rights Act.

14 Section 80. The Illinois Income Tax Act is amended by
15 adding Section 1409 as follows:

16 (35 ILCS 5/1409 new)

17 Sec. 1409. Employer notice. On or before October 1, 2008,
18 the Department shall provide a notice to every employer that is
19 required to withhold tax under this Act. The notice shall
20 explain the requirements of the Unauthorized Alien Employment
21 Prohibition Act, including the following:

22 (1) The Unauthorized Alien Employment Prohibition Act
23 prohibits employers from intentionally employing an

1 unauthorized alien or knowingly employing an unauthorized
2 alien.

3 (2) For a first violation of the Unauthorized Alien
4 Employment Prohibition Act during a 3-year period that is a
5 knowing violation, the court will order the appropriate
6 licensing agencies to suspend all licenses held by the
7 employer unless the employer files an affidavit with the
8 State's Attorney within 3 business days. The filed
9 affidavit must state that the employer has terminated the
10 employment of all unauthorized aliens and that the employer
11 will not intentionally or knowingly employ an unauthorized
12 alien. A license that is suspended will remain suspended
13 until the employer files an affidavit with the State's
14 Attorney. A copy of the court order will be made available
15 on the Attorney General's website.

16 (3) For a first violation of the Unauthorized Alien
17 Employment Prohibition Act during a 5-year period that is
18 an intentional violation, the court will order the
19 appropriate licensing agencies to suspend all licenses
20 held by the employer for a minimum of 10 days. The employer
21 must file an affidavit with the State's Attorney. The filed
22 affidavit must state that the employer has terminated the
23 employment of all unauthorized aliens and that the employer
24 will not intentionally or knowingly employ an unauthorized
25 alien. A license that is suspended will remain suspended
26 until the employer files an affidavit with the State's

1 Attorney. A copy of the court order will be made available
2 on the Attorney General's website.

3 (4) For a second violation of the Unauthorized Alien
4 Employment Prohibition Act, the court will order the
5 appropriate licensing agencies to permanently revoke all
6 licenses that are held by the employer.

7 (5) Proof of verifying the employment authorization of
8 an employee through the basic pilot program, as defined in
9 this new State law, will create a rebuttable presumption
10 that an employer did not violate the Unauthorized Alien
11 Employment Prohibition Act.

12 (6) On and after January 1, 2009, every employer, after
13 hiring an employee, is required to verify the employment
14 eligibility of the employee through the basic pilot
15 program, as defined in the Unauthorized Alien Employment
16 Prohibition Act.

17 (7) Instructions for the employer on how to enroll in
18 the basic pilot program, as defined in the Unauthorized
19 Alien Employment Prohibition Act.

20 Section 85. The Illinois Human Rights Act is amended by
21 changing Section 6-102 as follows:

22 (775 ILCS 5/6-102)

23 Sec. 6-102. Violations of other Acts. A person who violates
24 the Military Leave of Absence Act, the Public Employee Armed

1 Services Rights Act, Section 11-117-12.2 of the Illinois
2 Municipal Code, Section 224.05 of the Illinois Insurance Code,
3 Section 8-201.5 of the Public Utilities Act, Section 9-107.10
4 of the Code of Civil Procedure, Section 4.05 of the Interest
5 Act, the Military Personnel Cellular Phone Contract
6 Termination Act, ~~or~~ Section 37 of the Motor Vehicle Leasing
7 Act, or Section 30 of the Unauthorized Alien Employment
8 Prohibition Act commits a civil rights violation within the
9 meaning of this Act.

10 (Source: P.A. 95-392, eff. 8-23-07.)

11 Section 90. The Right to Privacy in the Workplace Act is
12 amended by changing Section 12 as follows:

13 (820 ILCS 55/12)

14 Sec. 12. Responsibilities of employer using ~~Restrictions~~
15 ~~on use of~~ Employment Eligibility Verification Systems.

16 (a) (Blank). ~~Employers are prohibited from enrolling in any~~
17 ~~Employment Eligibility Verification System, including the~~
18 ~~Basic Pilot program, as authorized by 8 U.S.C. 1324a, Notes,~~
19 ~~Pilot Programs for Employment Eligibility Confirmation~~
20 ~~(enacted by PL 104-208, div. C, title IV, subtitle A), until~~
21 ~~the Social Security Administration (SSA) and Department of~~
22 ~~Homeland Security (DHS) databases are able to make a~~
23 ~~determination on 99% of the tentative nonconfirmation notices~~
24 ~~issued to employers within 3 days, unless otherwise required by~~

1 ~~federal law.~~

2 (b) (Blank). ~~Subject to subsection (a) of this Section, an~~
3 ~~employer who enrolls in the Basic Pilot program is prohibited~~
4 ~~from the Employment Eligibility Verification Systems, to~~
5 ~~confirm the employment authorization of new hires unless the~~
6 ~~employer attests, under penalty of perjury, on a form~~
7 ~~prescribed by the Department of Labor:~~

8 ~~(1) that the employer has received the Basic Pilot~~
9 ~~training materials from DHS, and that personnel who will~~
10 ~~administer the program have completed the Basic Pilot~~
11 ~~Computer Based Tutorial (CBT); and~~

12 ~~(2) that the employer has posted the notice from DHS~~
13 ~~indicating that the employer is enrolled in the Basic Pilot~~
14 ~~program, the anti-discrimination notice issued by the~~
15 ~~Office of Special Counsel for Immigration-Related Unfair~~
16 ~~Employment Practices (OSC), Civil Rights Division, U.S.~~
17 ~~Department of Justice, and the anti-discrimination notice~~
18 ~~issued by the Illinois Department of Human Rights (IDHR).~~

19 (c) Responsibilities of employer using Employment
20 Eligibility Verification Systems.

21 (1) The employer shall display the notices supplied by
22 DHS, OSC, and IDHR in a prominent place that is clearly
23 visible to prospective employees.

24 (2) The employer shall require that all employer
25 representatives performing employment verification queries
26 complete the CBT. The employer shall attest, under penalty

1 of perjury, on a form prescribed by the Department of
2 Labor, that the employer representatives completed the
3 CBT.

4 (3) The employer shall become familiar with and comply
5 with the Basic Pilot Manual.

6 (4) The employer shall notify all prospective
7 employees at the time of application that such employment
8 verification system may be used for immigration
9 enforcement purposes.

10 (5) The employer shall provide all employees who
11 receive a tentative nonconfirmation with a referral letter
12 and contact information for what agency the employee must
13 contact to resolve the discrepancy.

14 (6) The employer shall comply with the Illinois Human
15 Rights Act and any applicable federal anti-discrimination
16 laws.

17 (7) The employer shall use the information it receives
18 from SSA or DHS only to confirm the employment eligibility
19 of newly-hired employees after completion of the Form I-9.
20 The employer shall safeguard this information, and means of
21 access to it (such as passwords and other privacy
22 protections), to ensure that it is not used for any other
23 purpose and as necessary to protect its confidentiality,
24 including ensuring that it is not disseminated to any
25 person other than employees of the employer who need it to
26 perform the employer's responsibilities.

1 (d) (Blank). ~~Preemption. No unit of local government,~~
2 ~~including a home rule unit, may require any employer to use an~~
3 ~~Employment Eligibility Verification System, including under~~
4 ~~the following circumstances:~~

5 ~~(1) as a condition of receiving a government contract;~~

6 ~~(2) as a condition of receiving a business license; or~~

7 ~~(3) as penalty for violating licensing or other similar~~

8 ~~laws.~~

9 ~~This subsection (d) is a denial and limitation of home rule~~
10 ~~powers and functions under subsection (h) of Section 6 of~~
11 ~~Article VII of the Illinois Constitution.~~

12 (Source: P.A. 95-138, eff. 1-1-08.)

13 Section 97. Severability. The provisions of this Act are
14 severable under Section 1.31 of the Statute on Statutes.

15 Section 99. Effective date. Section 80 and this Section
16 take effect upon becoming law.

1 INDEX

2 Statutes amended in order of appearance

3 New Act

4 35 ILCS 5/1409 new

5 775 ILCS 5/6-102

6 820 ILCS 55/12