

SENATE BILL 807

P2

EMERGENCY BILL

11r2731

By: **Senator Stone**

Introduced and read first time: February 4, 2011

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **State Procurement – Employment of Unauthorized Aliens and the Federal**
3 **E–Verify Program**

4 FOR the purpose of requiring an employer under a State procurement contract or
5 certain other grant that includes State money to verify, through a certain
6 federal program governing immigration status, the employment eligibility of
7 certain of its employees; prohibiting an employer under a State procurement
8 contract or certain other grant that includes State money from intentionally or
9 knowingly hiring an unauthorized alien under the procurement contract or
10 grant; defining certain terms; authorizing a person to file a certain complaint
11 with certain law enforcement officials alleging that certain employers are
12 employing certain employees in violation of law; requiring the law enforcement
13 officials to investigate the complaints and take certain actions; requiring a
14 certain court to hear certain actions; requiring the court to impose certain
15 sanctions on certain employers found to have committed certain violations;
16 authorizing a court to impose certain sanctions against certain employers under
17 certain circumstances; requiring that certain agencies suspend the licenses of
18 certain employers under certain circumstances; providing for the revocation of
19 the licenses of certain employers under certain circumstances; requiring the
20 Attorney General to maintain certain records and a certain database and to
21 make the information available on the Attorney General’s Web site; specifying a
22 certain absolute defense; providing for the construction of this Act; providing for
23 the application of this Act; making this Act an emergency measure; and
24 generally relating to the employment of unauthorized aliens and the federal
25 E–Verify program.

26 BY adding to

27 Article – State Finance and Procurement

28 Section 20–101 through 20–111 to be under the new title “Title 20. Employment
29 of Unauthorized Aliens and the Federal E–Verify Program”

30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(2009 Replacement Volume and 2010 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

Article – State Finance and Procurement

TITLE 20. EMPLOYMENT OF UNAUTHORIZED ALIENS AND THE FEDERAL E-VERIFY PROGRAM.

20-101.

(A) UNLESS THE CONTEXT REQUIRES OTHERWISE, IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “AGENCY” MEANS ANY AGENCY, DEPARTMENT, BOARD, COMMISSION, OR OTHER ENTITY OF THE STATE THAT ISSUES A LICENSE FOR PURPOSES OF OPERATING A BUSINESS IN THE STATE.

(C) “EMPLOYEE” MEANS ANY PERSON WHO PERFORMS EMPLOYMENT SERVICES FOR AN EMPLOYER UNDER AN EMPLOYMENT RELATIONSHIP BETWEEN THE EMPLOYEE AND EMPLOYER.

(D) (1) “EMPLOYER” MEANS ANY INDIVIDUAL OR TYPE OF ORGANIZATION THAT:

(I) TRANSACTS BUSINESS IN THE STATE;

(II) HAS A LICENSE ISSUED BY AN AGENCY IN THE STATE;

AND

(III) EMPLOYS ONE OR MORE INDIVIDUALS WHO PERFORM EMPLOYMENT SERVICES IN THE STATE.

(2) “EMPLOYER” INCLUDES:

(I) THE STATE;

(II) ANY POLITICAL SUBDIVISION OF THE STATE; AND

(III) SELF-EMPLOYED PERSONS.

(E) “E-VERIFY PROGRAM” MEANS THE E-VERIFY EMPLOYMENT VERIFICATION PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED STATES

1 DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY
2 ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

3 (F) "KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN" MEANS THE
4 ACTIONS DESCRIBED IN 8 U.S.C. § 1324A AND ANY FEDERAL RULES AND
5 REGULATIONS APPLICABLE TO THAT SECTION.

6 (G) "LICENSE" MEANS ANY PERMIT, CERTIFICATE, APPROVAL,
7 REGISTRATION, CHARTER, OR SIMILAR FORM OF AUTHORIZATION THAT IS
8 REQUIRED BY LAW AND ISSUED BY AN AGENCY FOR THE PURPOSE OF
9 OPERATING A BUSINESS IN THE STATE.

10 (H) "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE
11 THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE
12 UNITED STATES AS DESCRIBED IN 8 U.S.C. § 1324A(H)(3).

13 **20-102.**

14 (A) AN EMPLOYER THAT HOLDS A STATE PROCUREMENT CONTRACT OR
15 RECEIVES ANY OTHER GRANT THAT INCLUDES STATE MONEY SHALL VERIFY
16 THROUGH THE E-VERIFY PROGRAM THE EMPLOYMENT ELIGIBILITY OF EACH
17 EMPLOYEE HIRED BY THE EMPLOYER TO WORK UNDER THE PROCUREMENT
18 CONTRACT OR GRANT.

19 (B) AN EMPLOYER THAT HOLDS A STATE PROCUREMENT CONTRACT OR
20 RECEIVES ANY OTHER GRANT THAT INCLUDES STATE MONEY MAY NOT
21 INTENTIONALLY OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

22 **20-103.**

23 (A) ON INFORMATION AND BELIEF, A PERSON MAY FILE A COMPLAINT
24 WITH THE ATTORNEY GENERAL OR WITH THE COUNTY ATTORNEY OF A COUNTY
25 ALLEGING THAT AN EMPLOYER INTENTIONALLY OR KNOWINGLY EMPLOYS AN
26 UNAUTHORIZED ALIEN.

27 (B) ON RECEIPT OF A COMPLAINT UNDER THIS SECTION, THE
28 ATTORNEY GENERAL OR COUNTY ATTORNEY, OR BOTH, SHALL INVESTIGATE
29 WHETHER THE EMPLOYER HAS VIOLATED § 20-102 OF THIS TITLE.

30 (C) WHEN INVESTIGATING A COMPLAINT, THE ATTORNEY GENERAL OR
31 COUNTY ATTORNEY SHALL VERIFY THE IMMIGRATION STATUS AND WORK
32 AUTHORIZATION STATUS OF THE ALLEGED UNAUTHORIZED ALIEN WITH THE
33 FEDERAL GOVERNMENT IN ACCORDANCE WITH 8 U.S.C. § 1373(C).

1 (D) A PERSON WHO KNOWINGLY FILES A FALSE OR FRIVOLOUS
2 COMPLAINT UNDER THIS SECTION IS GUILTY OF A MISDEMEANOR.

3 **20-104.**

4 IF AFTER AN INVESTIGATION THE ATTORNEY GENERAL OR COUNTY
5 ATTORNEY DETERMINES THAT THE COMPLAINT IS NOT FRIVOLOUS, THE
6 ATTORNEY GENERAL OR COUNTY ATTORNEY SHALL PROVIDE NOTICE OF THE
7 PRESENCE OF THE ALLEGED UNAUTHORIZED ALIEN TO:

8 (1) UNITED STATES IMMIGRATION AND CUSTOMS
9 ENFORCEMENT; AND

10 (2) THE LOCAL LAW ENFORCEMENT AUTHORITY IN THE COUNTY
11 WHERE THE INDIVIDUAL IS PRESENT.

12 **20-105.**

13 (A) IF THE COMPLAINT UNDER § 20-103 OF THIS TITLE WAS
14 ORIGINALLY FILED WITH THE ATTORNEY GENERAL, WHEN THE ATTORNEY
15 GENERAL PROVIDES NOTICE TO THE COUNTY ATTORNEY UNDER § 20-104 OF
16 THIS TITLE, THE ATTORNEY GENERAL ALSO SHALL REQUEST THAT THE COUNTY
17 ATTORNEY BRING AN ACTION AGAINST THE EMPLOYER OF THE UNAUTHORIZED
18 ALIEN FOR A VIOLATION OF § 20-102 OF THIS TITLE.

19 (B) THE COUNTY ATTORNEY SHALL BRING THE ACTION IN THE COUNTY
20 WHERE THE UNAUTHORIZED ALIEN IS EMPLOYED.

21 (C) AN EMPLOYER MAY BE CONSIDERED TO HAVE COMMITTED A
22 SECOND VIOLATION OF § 20-102 OF THIS TITLE AS TO THE EMPLOYMENT OF AN
23 UNAUTHORIZED ALIEN ONLY IF THE EMPLOYER PREVIOUSLY HAS BEEN THE
24 SUBJECT OF A FINAL ADJUDICATION THAT FOUND THAT THE EMPLOYER
25 VIOLATED § 20-102 OF THIS TITLE.

26 **20-106.**

27 THE COURT SHALL EXPEDITE AN ACTION UNDER THIS TITLE AND ASSIGN
28 THE MATTER FOR HEARING AT THE EARLIEST PRACTICABLE DATE.

29 **20-107.**

30 (A) ON A FINDING OF A VIOLATION OF § 20-102 OF THIS TITLE, THE
31 COURT:

1 (1) SHALL ORDER:

2 (I) THE EMPLOYER TO TERMINATE THE EMPLOYMENT OF
3 ALL UNAUTHORIZED ALIENS; AND

4 (II) THAT THE EMPLOYER BE SUBJECT TO A 3-YEAR
5 PROBATION PERIOD, DURING WHICH PERIOD THE EMPLOYER SHALL FILE A
6 REPORT EACH QUARTER WITH THE COUNTY ATTORNEY AND IDENTIFY EACH
7 NEW EMPLOYEE HIRED BY THE EMPLOYER AT THE LOCATION WHERE THE
8 UNAUTHORIZED ALIEN PERFORMED WORK; AND

9 (2) MAY ORDER ANY APPLICABLE AGENCY TO SUSPEND THE
10 LICENSE HELD BY THE EMPLOYER IN ACCORDANCE WITH THE COURT ORDER.

11 (B) (1) THE LICENSES SUBJECT TO SUSPENSION UNDER SUBSECTION
12 (A)(2) OF THIS SECTION INCLUDE ALL LICENSES THAT ARE HELD BY THE
13 EMPLOYER THAT ARE NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT
14 THE EMPLOYER'S BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN
15 PERFORMED WORK.

16 (2) IF A LICENSE IS NOT NECESSARY TO OPERATE THE
17 EMPLOYER'S BUSINESS AT THE SPECIFIC LOCATION WHERE THE
18 UNAUTHORIZED ALIEN PERFORMED WORK, BUT A LICENSE IS NECESSARY TO
19 OPERATE THE EMPLOYER'S BUSINESS IN GENERAL, THE LICENSES THAT ARE
20 SUBJECT TO SUSPENSION UNDER THIS SUBSECTION ARE ALL OF THE LICENSES
21 THAT ARE HELD BY THE EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF
22 BUSINESS.

23 (C) (1) THE COURT SHALL SEND A COPY OF THE COURT ORDER TO
24 THE ATTORNEY GENERAL.

25 (2) THE ATTORNEY GENERAL SHALL MAINTAIN THE COPY AS
26 REQUIRED UNDER § 20-109 OF THIS TITLE.

27 20-108.

28 (A) IF DURING THE PERIOD OF PROBATION AN EMPLOYER IS FOUND
29 GUILTY OF A SECOND VIOLATION OF § 20-102 OF THIS TITLE, THE COURT SHALL
30 ORDER EACH AFFECTED AGENCY TO REVOKE PERMANENTLY ANY LICENSE
31 HELD BY THE EMPLOYER THAT IS NECESSARY TO OPERATE THE EMPLOYER'S
32 BUSINESS AT THE EMPLOYER'S BUSINESS LOCATION WHERE THE
33 UNAUTHORIZED ALIEN PERFORMED WORK.

1 **(B) IF A LICENSE IS NOT NECESSARY TO OPERATE THE EMPLOYER'S**
2 **BUSINESS AT THE SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN**
3 **PERFORMED WORK, BUT A LICENSE IS NECESSARY TO OPERATE THE**
4 **EMPLOYER'S BUSINESS IN GENERAL, THE COURT SHALL ORDER EACH**
5 **AFFECTED AGENCY TO REVOKE PERMANENTLY ANY LICENSE THAT IS HELD BY**
6 **THE EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF BUSINESS.**

7 **(C) ON RECEIPT OF THE COURT ORDER, AN AGENCY IMMEDIATELY**
8 **SHALL REVOKE THE LICENSE.**

9 **20-109.**

10 **THE ATTORNEY GENERAL SHALL:**

11 **(1) MAINTAIN A DATABASE OF THE EMPLOYERS FOUND GUILTY**
12 **OF A FIRST VIOLATION OF § 20-102 OF THIS TITLE; AND**

13 **(2) MAKE THE COURT ORDERS FILED WITH THE ATTORNEY**
14 **GENERAL UNDER §§ 20-107 OF THIS TITLE AVAILABLE ON THE ATTORNEY**
15 **GENERAL'S WEB SITE.**

16 **20-110.**

17 **(A) IN DETERMINING WHETHER AN EMPLOYEE IS AN UNAUTHORIZED**
18 **ALIEN, THE COURT SHALL CONSIDER ONLY A DETERMINATION RENDERED BY**
19 **THE FEDERAL GOVERNMENT IN ACCORDANCE WITH 8 U.S.C. § 1371(C).**

20 **(B) THE COURT MAY TAKE JUDICIAL NOTICE OF THE DETERMINATION**
21 **BY THE FEDERAL GOVERNMENT AND REQUEST THAT THE FEDERAL**
22 **GOVERNMENT PROVIDE THE COURT AUTOMATED OR TESTIMONIAL**
23 **VERIFICATION IN ACCORDANCE WITH 8 U.S.C. § 1373(C).**

24 **20-111.**

25 **FOR THE PURPOSES OF THIS TITLE, THE SUBMISSION BY AN EMPLOYER**
26 **OF PROOF OF VERIFYING THE EMPLOYMENT AUTHORIZATION OF AN EMPLOYEE**
27 **THROUGH THE E-VERIFY PROGRAM CREATES AN ABSOLUTE DEFENSE THAT**
28 **THE EMPLOYER DID NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN**
29 **UNAUTHORIZED ALIEN.**

30 **SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be**
31 **construed to require an employer to take any action that the employer believes in good**
32 **faith would violate State or federal law.**

1 SECTION 3. AND BE IT FURTHER ENACTED, That:

2 (1) This Act shall apply to each employer under a State procurement
3 contract executed, or grant that includes State money that is received, after December
4 31, 2011; and

5 (2) An employer under a State procurement contract executed, or a
6 grant that includes State money that is received, after December 31, 2011, shall verify
7 through the E-Verify employment verification program required under Section 1 of
8 this Act the employment eligibility status of each employee hired by the employer who
9 performs work under the State procurement contract or grant.

10 SECTION 4. AND BE IT FURTHER ENACTED, That this Act is an emergency
11 measure, is necessary for the immediate preservation of the public health or safety,
12 has been passed by a yea or nay vote supported by three-fifths of all the members
13 elected to each of the two Houses of General Assembly, and shall take effect from the
14 date it is enacted.