

HOUSE BILL 502

P2

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CF 9lr2812

By: **Delegates Miller, Malone, Bromwell, Costa, Kipke, McDonough, and Weldon**

Introduced and read first time: February 4, 2009

Assigned to: Health and Government Operations

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

26 BY adding to

27 Article – State Finance and Procurement

28 Section 20–101 through 20–115 to be under the new subtitle “Title 20.

29 Employment of Unauthorized Aliens and the Federal E–Verify Program”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Annotated Code of Maryland
(2006 Replacement Volume and 2008 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) “BASIC PILOT PROGRAM” MEANS THE BASIC EMPLOYMENT
VERIFICATION PILOT PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED
STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY
ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

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

(E) (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.

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

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

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

20-102.

(A) AN EMPLOYER THAT HOLDS A STATE PROCUREMENT CONTRACT OR RECEIVES SOME OTHER GRANT OF STATE MONEY SHALL VERIFY THROUGH THE BASIC PILOT PROGRAM THE EMPLOYMENT ELIGIBILITY OF EACH EMPLOYEE HIRED BY THE EMPLOYER TO WORK UNDER THE PROCUREMENT CONTRACT OR GRANT.

(B) AN EMPLOYER THAT HOLDS A STATE PROCUREMENT CONTRACT MAY NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

20-103.

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

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

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

1 (D) A PERSON WHO KNOWINGLY FILES A FALSE AND 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 IS SUBJECT TO A SECOND VIOLATION OF § 20-102 OF
22 THIS TITLE AS TO THE EMPLOYMENT OF AN UNAUTHORIZED ALIEN ONLY IF AN
23 ACTION PREVIOUSLY HAS BEEN BROUGHT AGAINST THE EMPLOYER FOR A
24 VIOLATION OF THAT SECTION.

25 **20-106.**

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

28 **20-107.**

29 (A) ON A FINDING OF A VIOLATION OF § 20-102 OF THIS TITLE, FOR A
30 FIRST VIOLATION DURING A 3-YEAR PERIOD, THE COURT SHALL:

1 (1) ORDER THE EMPLOYER TO TERMINATE THE EMPLOYMENT OF
2 ALL UNAUTHORIZED ALIENS;

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

8 (3) ORDER THE EMPLOYER TO SIGN AND FILE A SWORN
9 AFFIDAVIT WITH THE COUNTY ATTORNEY WITHIN 3 BUSINESS DAYS AFTER THE
10 COURT ORDER IS ISSUED STATING THAT THE EMPLOYER:

11 (I) HAS TERMINATED THE EMPLOYMENT OF ALL
12 UNAUTHORIZED ALIENS; AND

13 (II) WILL NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN
14 UNAUTHORIZED ALIEN; AND

15 (4) (I) ORDER APPROPRIATE AGENCIES TO SUSPEND ALL
16 LICENSES THAT ARE HELD BY THE EMPLOYER IF THE EMPLOYER FAILS TO SIGN
17 AND FILE A SWORN AFFIDAVIT WITH THE COUNTY ATTORNEY WITHIN 3
18 BUSINESS DAYS AFTER THE ORDER IS ISSUED; AND

19 (II) DIRECT THAT THE LICENSES REMAIN SUSPENDED UNTIL
20 THE EMPLOYER SIGNS AND FILES A SWORN AFFIDAVIT WITH THE COUNTY
21 ATTORNEY.

22 (B) ON RECEIPT OF A COURT ORDER DIRECTING IT TO DO SO, AN
23 AGENCY SHALL SUSPEND THE LICENSE HELD BY THE EMPLOYER IN
24 ACCORDANCE WITH THE COURT ORDER.

25 (C) IF AN EMPLOYER THEREAFTER FILES THE AFFIDAVIT PRESCRIBED
26 UNDER SUBSECTION (A)(3) OF THIS SECTION, THE RESPONSIBLE AGENCY
27 IMMEDIATELY SHALL REINSTATE THE EMPLOYER'S SUSPENDED LICENSE.

28 (D) (1) THE LICENSES SUBJECT TO SUSPENSION UNDER SUBSECTION
29 (B) OF THIS SECTION INCLUDE ALL LICENSES THAT ARE HELD BY THE
30 EMPLOYER THAT ARE NECESSARY TO OPERATE THE EMPLOYER'S BUSINESS AT
31 THE EMPLOYER'S BUSINESS LOCATION WHERE THE UNAUTHORIZED ALIEN
32 PERFORMED WORK.

33 (2) IF A LICENSE IS NOT NECESSARY TO OPERATE THE
34 EMPLOYER'S BUSINESS AT THE SPECIFIC LOCATION WHERE THE

1 UNAUTHORIZED ALIEN PERFORMED WORK, BUT A LICENSE IS NECESSARY TO
2 OPERATE THE EMPLOYER'S BUSINESS IN GENERAL, THE LICENSES THAT ARE
3 SUBJECT TO SUSPENSION UNDER THIS SUBSECTION ARE ALL OF THE LICENSES
4 THAT ARE HELD BY THE EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF
5 BUSINESS.

6 (E) (1) THE COURT SHALL SEND A COPY OF THE COURT ORDER TO
7 THE ATTORNEY GENERAL.

8 (2) THE ATTORNEY GENERAL SHALL MAINTAIN THE COPY AS
9 REQUIRED UNDER § 20-112 OF THIS TITLE.

10 20-108.

11 (A) (1) NOTWITHSTANDING § 20-107 OF THIS TITLE, FOR A
12 VIOLATION OF § 20-102 OF THIS TITLE THE COURT MAY ORDER THE
13 APPROPRIATE AGENCIES TO SUSPEND ALL LICENSES THAT ARE HELD BY THE
14 EMPLOYER FOR A PERIOD NOT TO EXCEED 10 BUSINESS DAYS.

15 (2) THE COURT SHALL BASE ITS DECISION WHETHER TO SUSPEND
16 THE EMPLOYER'S LICENSE UNDER THIS SUBSECTION AND THE LENGTH OF ANY
17 SUSPENSION ON EVIDENCE OR INFORMATION SUBMITTED TO IT DURING THE
18 ACTION FOR A VIOLATION OF § 20-102 OF THIS TITLE AND, TO THE EXTENT
19 RELEVANT, CONSIDER THE FOLLOWING FACTORS:

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

22 (II) ANY PRIOR MISCONDUCT BY THE EMPLOYER;

23 (III) THE DEGREE OF HARM RESULTING FROM THE
24 VIOLATION;

25 (IV) WHETHER THE EMPLOYER MADE GOOD FAITH EFFORTS
26 TO COMPLY WITH ANY APPLICABLE REQUIREMENTS;

27 (V) THE DURATION OF THE VIOLATION;

28 (VI) THE ROLE OF THE DIRECTORS, OFFICERS, OR
29 PRINCIPALS OF THE EMPLOYER IN THE VIOLATION; AND

30 (VII) ANY OTHER FACTORS THE COURT DEEMS APPROPRIATE.

1 **(B) FOR A FIRST VIOLATION DURING A 5-YEAR PERIOD THAT IS AN**
2 **INTENTIONAL OR KNOWING VIOLATION OF § 20-102 OF THIS TITLE, THE COURT**
3 **SHALL:**

4 **(1) ORDER THE EMPLOYER TO TERMINATE THE EMPLOYMENT OF**
5 **ALL UNAUTHORIZED ALIENS;**

6 **(2) SUBJECT THE EMPLOYER TO A 5-YEAR PROBATION PERIOD;**

7 **(3) DURING THE PROBATION PERIOD, REQUIRE THE EMPLOYER**
8 **TO FILE QUARTERLY REPORTS WITH THE COUNTY ATTORNEY AND IDENTIFY**
9 **EACH NEW EMPLOYEE HIRED BY THE EMPLOYER AT THE SPECIFIC LOCATION**
10 **WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK; AND**

11 **(4) ORDER APPROPRIATE AGENCIES TO SUSPEND ALL LICENSES**
12 **SUBJECT TO THIS TITLE THAT ARE HELD BY THE EMPLOYER FOR A MINIMUM OF**
13 **10 DAYS.**

14 **20-109.**

15 **IF THE COURT SUSPENDS THE EMPLOYER'S LICENSE UNDER § 20-108 OF**
16 **THIS TITLE, THE COURT SHALL ORDER THE EMPLOYER TO SIGN AND FILE A**
17 **SWORN AFFIDAVIT WITH THE COUNTY ATTORNEY STATING THAT THE**
18 **EMPLOYER:**

19 **(1) HAS TERMINATED THE EMPLOYMENT OF ALL UNAUTHORIZED**
20 **ALIENS; AND**

21 **(2) WILL NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN**
22 **UNAUTHORIZED ALIEN.**

23 **20-110.**

24 **(A) A LICENSE SUSPENDED UNDER § 20-108 OF THIS TITLE SHALL**
25 **REMAIN SUSPENDED UNTIL THE EMPLOYER SIGNS AND FILES THE SWORN**
26 **AFFIDAVIT REQUIRED UNDER § 20-109 OF THIS TITLE WITH THE COUNTY**
27 **ATTORNEY.**

28 **(B) EACH LICENSE HELD BY THE EMPLOYER THAT IS NECESSARY TO**
29 **OPERATE THE EMPLOYER'S BUSINESS AT THE EMPLOYER'S BUSINESS LOCATION**
30 **WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK IS SUBJECT TO THE**
31 **SUSPENSION.**

1 (C) 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 IS NECESSARY TO OPERATE THE EMPLOYER'S
4 BUSINESS IN GENERAL, THE LICENSE HELD BY THE EMPLOYER AT THE
5 EMPLOYER'S PRIMARY PLACE OF BUSINESS SHALL BE SUBJECT TO THE
6 SUSPENSION.

7 (D) ON RECEIPT OF THE COURT ORDER, THE APPROPRIATE AGENCY
8 SHALL SUSPEND ANY AFFECTED LICENSE IN ACCORDANCE WITH THE COURT
9 ORDER.

10 (E) (1) THE COURT SHALL SEND A COPY OF THE ORDER TO THE
11 ATTORNEY GENERAL.

12 (2) THE ATTORNEY GENERAL SHALL MAINTAIN THE COPY AS
13 REQUIRED UNDER § 20-112 OF THIS TITLE.

14 **20-111.**

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

21 (B) IF A LICENSE IS NOT NECESSARY TO OPERATE THE EMPLOYER'S
22 BUSINESS AT THE SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN
23 PERFORMED WORK, BUT A LICENSE IS NECESSARY TO OPERATE THE
24 EMPLOYER'S BUSINESS IN GENERAL, THE COURT SHALL ORDER EACH
25 AFFECTED AGENCY TO REVOKE PERMANENTLY ANY LICENSE THAT IS HELD BY
26 THE EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF BUSINESS.

27 (C) ON RECEIPT OF THE COURT ORDER, AN AGENCY IMMEDIATELY
28 SHALL REVOKE THE LICENSE.

29 **20-112.**

30 **THE ATTORNEY GENERAL SHALL:**

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

(2) MAKE THE COURT ORDERS FILED WITH THE ATTORNEY GENERAL UNDER §§ 20-107 AND 20-110 OF THIS TITLE AVAILABLE ON THE ATTORNEY GENERAL'S WEBSITE.

20-113.

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

(B) (1) THE DETERMINATION RENDERED BY THE FEDERAL GOVERNMENT CREATES A REBUTTABLE PRESUMPTION OF THE EMPLOYEE'S LAWFUL STATUS.

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

20-114.

FOR THE PURPOSES OF THIS TITLE, THE SUBMISSION BY AN EMPLOYER OF PROOF OF VERIFYING THE EMPLOYMENT AUTHORIZATION OF AN EMPLOYEE THROUGH THE BASIC PILOT PROGRAM CREATES A REBUTTABLE PRESUMPTION THAT THE EMPLOYER DID NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

20-115.

FOR THE PURPOSES OF THIS TITLE, AN EMPLOYER THAT ESTABLISHES THAT IT HAS COMPLIED IN GOOD FAITH WITH THE REQUIREMENTS OF 8 U.S.C. § 1373(C) ESTABLISHES AN AFFIRMATIVE DEFENSE THAT THE EMPLOYER DID NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

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

SECTION 3. AND BE IT FURTHER ENACTED, That:

(1) This Act shall apply to each employer under a State procurement contract executed, or a grant of State money received, after December 31, 2009; and

(2) An employer under a State procurement executed, or a grant of State money received, after December 31, 2009, shall verify through the basic pilot

1 program required under Section 1 of this Act the employment eligibility status of each
2 employee hired by the employer who performs work under the State procurement
3 contract or grant.

4 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2009.