

# SENATE BILL 696

P2

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CF HB 502

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By: **Senator Kittleman**

Introduced and read first time: February 6, 2009

Assigned to: Education, Health, and Environmental Affairs

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## 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”

30 Annotated Code of Maryland

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2006 Replacement Volume and 2008 Supplement)

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

4 **Article – State Finance and Procurement**

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

7 **20-101.**

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

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

13 (C) “BASIC PILOT PROGRAM” MEANS THE BASIC EMPLOYMENT  
14 VERIFICATION PILOT PROGRAM AS JOINTLY ADMINISTERED BY THE UNITED  
15 STATES DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY  
16 ADMINISTRATION OR ITS SUCCESSOR PROGRAM.

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

20 (E) (1) “EMPLOYER” MEANS ANY INDIVIDUAL OR TYPE OF  
21 ORGANIZATION THAT:

22 (I) TRANSACTS BUSINESS IN THE STATE;

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

24 AND

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

27 (2) “EMPLOYER” INCLUDES:

28 (I) THE STATE;

29 (II) ANY POLITICAL SUBDIVISION OF THE STATE; AND

1                   (III) SELF-EMPLOYED PERSONS.

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

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

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

12 **20-102.**

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

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

20 **20-103.**

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

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

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

32           (D) A PERSON WHO KNOWINGLY FILES A FALSE AND FRIVOLOUS  
33 COMPLAINT UNDER THIS SECTION IS GUILTY OF A MISDEMEANOR.

1 **20-104.**

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

6 (1) UNITED STATES IMMIGRATION AND CUSTOMS  
7 ENFORCEMENT; AND

8 (2) THE LOCAL LAW ENFORCEMENT AUTHORITY IN THE COUNTY  
9 WHERE THE INDIVIDUAL IS PRESENT.

10 **20-105.**

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

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

19 (C) AN EMPLOYER IS SUBJECT TO A SECOND VIOLATION OF § 20-102 OF  
20 THIS TITLE AS TO THE EMPLOYMENT OF AN UNAUTHORIZED ALIEN ONLY IF AN  
21 ACTION PREVIOUSLY HAS BEEN BROUGHT AGAINST THE EMPLOYER FOR A  
22 VIOLATION OF THAT SECTION.

23 **20-106.**

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

26 **20-107.**

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

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

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

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

9                   (I) HAS TERMINATED THE EMPLOYMENT OF ALL  
10 UNAUTHORIZED ALIENS; AND

11                   (II) WILL NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN  
12 UNAUTHORIZED ALIEN; AND

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

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

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

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

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

31                   (2) IF A LICENSE IS NOT NECESSARY TO OPERATE THE  
32 EMPLOYER'S BUSINESS AT THE SPECIFIC LOCATION WHERE THE  
33 UNAUTHORIZED ALIEN PERFORMED WORK, BUT A LICENSE IS NECESSARY TO  
34 OPERATE THE EMPLOYER'S BUSINESS IN GENERAL, THE LICENSES THAT ARE  
35 SUBJECT TO SUSPENSION UNDER THIS SUBSECTION ARE ALL OF THE LICENSES

1 THAT ARE HELD BY THE EMPLOYER AT THE EMPLOYER'S PRIMARY PLACE OF  
2 BUSINESS.

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

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

7 20-108.

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

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

17 (I) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY  
18 THE EMPLOYER;

19 (II) ANY PRIOR MISCONDUCT BY THE EMPLOYER;

20 (III) THE DEGREE OF HARM RESULTING FROM THE  
21 VIOLATION;

22 (IV) WHETHER THE EMPLOYER MADE GOOD FAITH EFFORTS  
23 TO COMPLY WITH ANY APPLICABLE 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; AND

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

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

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

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

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

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

11 **20-109.**

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

16           (1) HAS TERMINATED THE EMPLOYMENT OF ALL UNAUTHORIZED  
17 ALIENS; AND

18           (2) WILL NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN  
19 UNAUTHORIZED ALIEN.

20 **20-110.**

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

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

29           (C) IF A LICENSE IS NOT NECESSARY TO OPERATE THE EMPLOYER'S  
30 BUSINESS AT THE SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN  
31 PERFORMED WORK, BUT IS NECESSARY TO OPERATE THE EMPLOYER'S  
32 BUSINESS IN GENERAL, THE LICENSE HELD BY THE EMPLOYER AT THE

1 EMPLOYER'S PRIMARY PLACE OF BUSINESS SHALL BE SUBJECT TO THE  
2 SUSPENSION.

3 (D) ON RECEIPT OF THE COURT ORDER, THE APPROPRIATE AGENCY  
4 SHALL SUSPEND ANY AFFECTED LICENSE IN ACCORDANCE WITH THE COURT  
5 ORDER.

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

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

10 20-111.

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

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

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

25 20-112.

26 THE ATTORNEY GENERAL SHALL:

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

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

32 20-113.



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

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

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

11 **20-114.**

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

17 **20-115.**

18           FOR THE PURPOSES OF THIS TITLE, AN EMPLOYER THAT ESTABLISHES  
19 THAT IT HAS COMPLIED IN GOOD FAITH WITH THE REQUIREMENTS OF 8 U.S.C. §  
20 1373(C) ESTABLISHES AN AFFIRMATIVE DEFENSE THAT THE EMPLOYER DID  
21 NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

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

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

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

28           (2) An employer under a State procurement executed, or a grant of  
29 State money received, after December 31, 2009, shall verify through the basic pilot  
30 program required under Section 1 of this Act the employment eligibility status of each  
31 employee hired by the employer who performs work under the State procurement  
32 contract or grant.

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