

House Bill 3215

Sponsored by Representative ESQUIVEL; Representatives GARRARD, G SMITH

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires employers to verify immigration status of employees hired after January 1, 2009.

Prohibits knowingly or intentionally hiring unauthorized aliens. Authorizes Attorney General or district attorney to investigate violations. Suspends or revokes business license of violators under certain circumstances.

Requires Attorney General to publish information related to hiring of unauthorized aliens on website.

Creates crime of filing a frivolous complaint. Punishes by maximum of 30 days' imprisonment, \$1,250 fine, or both.

A BILL FOR AN ACT

1
2 Relating to unauthorized aliens.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1. As used in sections 1 to 9 of this 2009 Act:**

5 (1) **"Employee" means any person who performs services or labor for an employer in this**
6 **state for wages or other remuneration.**

7 (2) **"Employer" means any individual, organization or entity that:**

8 (a) **Transacts business in this state;**

9 (b) **Has a license issued by a public body in this state; and**

10 (c) **Engages a person to perform services or labor in this state for wages or other**
11 **remuneration, even though the relationship of the person so engaged may be as an inde-**
12 **pendent contractor for other purposes.**

13 (3) **"Employment verification process" means the basic employment verification pilot**
14 **program as administered by the United States Department of Homeland Security or its suc-**
15 **cessor program.**

16 (4) **"Intentionally" has the meaning given that term in ORS 161.085.**

17 (5) **"Knowingly employ an unauthorized alien" means the actions described in 8 U.S.C.**
18 **1324a.**

19 (6) **"License" means a permit, certificate, approval, registration, charter or similar form**
20 **of authorization that is required by law and that is issued by a public body for the purposes**
21 **of operating a business in this state. "License" does not include a professional license.**

22 (7) **"Public body" has the meaning given that term in ORS 174.109.**

23 (8) **"Unauthorized alien" means an alien who does not have the legal right or authori-**
24 **zation under federal law to work in the United States as described in 8 U.S.C. 1324a(h)(3).**

25 **SECTION 2. (1) Every employer, after hiring an employee, shall verify the employment**
26 **eligibility of the employee through the employment verification process.**

27 (2) **The Attorney General shall, on a quarterly basis, request from the United States**
28 **Department of Homeland Security a list of employers in this state that are registered with**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 the employment verification process.

2 **SECTION 3. (1) An employer may not knowingly or intentionally employ an unauthorized**
 3 **alien.**

4 (2) Upon receipt of a complaint that an employer has violated subsection (1) of this sec-
 5 tion, the Attorney General or district attorney shall conduct an investigation.

6 (3) During the investigation, the Attorney General or district attorney shall verify the
 7 work authorization of the alleged unauthorized alien with the federal government pursuant
 8 to 8 U.S.C. 1373(c).

9 (4) A state, county or local official may not attempt to independently make a final de-
 10 termination on whether an alien is authorized to work in the United States. An alien's im-
 11 migration status or work authorization status shall be verified with the federal government
 12 pursuant to 8 U.S.C. 1373(c) only by the Attorney General or district attorney.

13 (5) A person who knowingly files a frivolous complaint under this section is subject to
 14 section 9 of this 2009 Act.

15 (6) If, after an investigation, the Attorney General or district attorney determines that
 16 the complaint received under this section is not frivolous:

17 (a) The Attorney General or district attorney shall notify the United States Bureau of
 18 Immigration and Customs Enforcement of the unauthorized alien;

19 (b) The Attorney General or district attorney shall notify the local law enforcement
 20 agency of the unauthorized alien; and

21 (c) If the complaint was originally filed with the Attorney General, the Attorney General
 22 shall notify the district attorney of the unauthorized alien.

23 (7) An action for a violation of subsection (1) of this section shall be brought against the
 24 employer by the district attorney in the county where the unauthorized alien is employed.
 25 A second violation of this section may be based only on an unauthorized alien who is em-
 26 ployed by the employer after an action has been brought for a violation of subsection (1) of
 27 this section.

28 (8) For any action brought under this section, the court shall expedite the action, in-
 29 cluding assigning the hearing at the earliest practicable date.

30 **SECTION 4. (1) If a court finds that an employer has committed a knowing violation of**
 31 **section 3 (1) of this 2009 Act that is a first violation committed by the employer during a**
 32 **three-year period, the court shall issue an order requiring that the employer:**

33 (a) Terminate the employment of all unauthorized aliens;

34 (b) Be subject to a three-year probationary period during which the employer shall file
 35 quarterly reports with the district attorney for each new employee hired by the employer
 36 at the specific location where the unauthorized alien performed work; and

37 (c) File a signed, sworn affidavit with the court within three business days after the or-
 38 der is issued. The affidavit shall state that the employer has terminated the employment of
 39 all unauthorized aliens and that the employer will not intentionally or knowingly employ an
 40 unauthorized alien.

41 (2) If an employer fails to file a signed, sworn affidavit as required by subsection (1)(c)
 42 of this section, the court shall order the appropriate agencies to suspend all licenses de-
 43 scribed in subsection (4) of this section. On receipt of the court's order and notwithstanding
 44 any other law, the appropriate agencies shall suspend the licenses according to the court's
 45 order.

1 (3) All licenses that are suspended under subsection (2) of this section shall remain sus-
 2 pended until the employer files a signed, sworn affidavit with the county attorney.
 3 Notwithstanding any other law, on filing of the affidavit the suspended licenses shall be
 4 reinstated immediately by the appropriate agencies.

5 (4) The licenses that are subject to suspension under this section are all of the licenses
 6 held by the employer that are necessary to operate the employer's business at the employer's
 7 business location where the unauthorized alien performed work. If a license is not necessary
 8 to operate the employer's business at the specific location where the unauthorized alien
 9 performed work, but a license is necessary to operate the employer's business in general, the
 10 licenses subject to suspension under this section are all of the licenses held by the employer
 11 at the employer's primary place of business.

12 (5) In addition to the suspension described in subsection (2) of this section, the court
 13 may order the appropriate agencies to suspend for a period not to exceed 10 business days
 14 all licenses described in subsection (4) of this section. The court shall base its decision to
 15 suspend under this subsection on any evidence or information submitted to it during the
 16 action for a violation of subsection (1) of this section and shall consider the following factors,
 17 if relevant:

- 18 (a) The number of unauthorized aliens employed by the employer;
- 19 (b) Any prior misconduct by the employer;
- 20 (c) The degree of harm resulting from the violation;
- 21 (d) Whether the employer made good faith efforts to comply with any applicable re-
 22 quirements;
- 23 (e) The duration of the violation;
- 24 (f) The role of the directors, officers or principals of the employer in the violation; and
- 25 (g) Any other factors the court deems appropriate.

26 (6) The court shall send a copy of the court's order issued under this section to the At-
 27 torney General.

28 **SECTION 5.** (1) If a court finds that an employer has committed an intentional violation
 29 of section 3 (1) of this 2009 Act that is a first violation committed by the employer during a
 30 five-year period, the court shall issue an order requiring:

- 31 (a) The employer to terminate the employment of all unauthorized aliens;
- 32 (b) The employer to be subject to a five-year probationary period during which the em-
 33 ployer shall file quarterly reports with the district attorney for each new employee hired by
 34 the employer at the specific location where the unauthorized alien performed work; and
- 35 (c) Suspension of all licenses described in subsection (4) of this section for a minimum
 36 of 10 days. On receipt of the court's order and notwithstanding any other law, the appropri-
 37 ate agencies shall suspend the licenses according to the court's order.

38 (2) The court shall base its decision on the length of the suspension under subsection
 39 (1)(c) of this section upon any evidence or information submitted to it during the action for
 40 a violation of section 3 (1) of this 2009 Act. The court shall consider the following factors, if
 41 relevant:

- 42 (a) The number of unauthorized aliens employed by the employer;
- 43 (b) Any prior misconduct by the employer;
- 44 (c) The degree of harm resulting from the violation;
- 45 (d) Whether the employer made good faith efforts to comply with any applicable re-

1 **quirements;**

2 (e) **The duration of the violation;**

3 (f) **The role of the directors, officers or principals of the employer in the violation; and**

4 (g) **Any other factors the court deems appropriate.**

5 (3) **In addition to an order issued under subsection (1) of this section, the court shall**
 6 **order the employer to file a signed, sworn affidavit with the court. The affidavit shall state**
 7 **that the employer has terminated the employment of all unauthorized aliens and that the**
 8 **employer will not intentionally or knowingly employ an unauthorized alien. All licenses sus-**
 9 **pended under subsection (1)(c) of this section shall remain suspended until the employer files**
 10 **a signed, sworn affidavit with the court.**

11 (4) **The licenses that are subject to suspension under this section are all of the licenses**
 12 **held by the employer that are necessary to operate the employer’s business at the employer’s**
 13 **business location where the unauthorized alien performed work. If a license is not necessary**
 14 **to operate the employer’s business at the specific location where the unauthorized alien**
 15 **performed work but a license is necessary to operate the employer’s business in general, the**
 16 **licenses subject to suspension under this section are all of the licenses held by the employer**
 17 **at the employer’s primary place of business.**

18 (5) **The court shall send a copy of the court’s order to the Attorney General.**

19 **SECTION 6. (1) If a court finds that an employer has committed a second violation of**
 20 **section 3 (1) of this 2009 Act during the period of probation ordered under section 4 or 5 of**
 21 **this 2009 Act, the court shall order the appropriate agencies to permanently revoke all li-**
 22 **licenses held by the employer that are necessary to operate the employer’s business at the**
 23 **employer’s business location where the unauthorized alien performed work. If a license is**
 24 **not necessary to operate the employer’s business at the specific location where the unau-**
 25 **thorized alien performed work but a license is necessary to operate the employer’s business**
 26 **in general, the court shall order the appropriate agencies to permanently revoke all licenses**
 27 **that are held by the employer at the employer’s primary place of business.**

28 (2) **On receipt of the court’s order and notwithstanding any other law, the appropriate**
 29 **agencies shall immediately revoke the licenses.**

30 **SECTION 7. In an action brought under sections 1 to 9 of this 2009 Act:**

31 (1) **The court may take judicial notice of the federal government’s determination of the**
 32 **employee’s lawful status and may request the federal government to provide automated or**
 33 **testimonial verification pursuant to 8 U.S.C. 1373(c).**

34 (2) **The federal government’s determination of the employee’s status pursuant to 8 U.S.C.**
 35 **1373(c) creates a rebuttable presumption of the employee’s lawful status.**

36 (3) **Proof that an employer verified the employment eligibility of the employee through**
 37 **the employment verification process creates a rebuttable presumption that an employer did**
 38 **not knowingly or intentionally employ an unauthorized alien.**

39 (4) **It is an affirmative defense that:**

40 (a) **An employer complied in good faith with the requirements of 8 U.S.C. 1324a(b); or**

41 (b) **The employer failed to take an action that the employer in good faith believed would**
 42 **be a violation of state or federal law.**

43 **SECTION 8. The Attorney General shall:**

44 (1) **Maintain copies of court orders that are received pursuant to sections 4, 5 and 6 of**
 45 **this 2009 Act;**

