

**First Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 09-0237.01 Christy Chase

SENATE BILL 09-023

SENATE SPONSORSHIP

Schultheis,

HOUSE SPONSORSHIP

Lambert,

Senate Committees
State, Veterans & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE VERIFICATION OF THE WORK ELIGIBILITY STATUS OF**
102 **NEW EMPLOYEES THROUGH THE FEDERAL ELECTRONIC**
103 **VERIFICATION PROGRAM.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Repeals the current requirements imposed on employers to examine, and retain records of examining, the legal work status of new employees and instead creates the "Fair and Legal Employment for Coloradans Act" (act), which requires all nongovernmental employers in the state to participate in the federal electronic verification program (e-verify program) for purposes of verifying the work eligibility status of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

all new employees hired by an employer. Establishes deadlines by which employers must start participating in the e-verify program, based on the number of employees of the employer, and requires the attorney general to impose fines on an employer for failure to participate in the e-verify program or to provide documentary proof of participation.

Prohibits an employer from intentionally or knowingly employing an unauthorized alien, and requires an employer to immediately terminate an employee for whom the employer receives a final notice of nonconfirmation of work eligibility through the e-verify program. Requires the attorney general or the county or city attorney, as appropriate, to investigate complaints of employer noncompliance. Requires the appropriate county or city attorney to bring a court action against the employer when an investigation shows a complaint has merit. Upon finding a violation, requires the court to order the employer to:

- ! Terminate the employment of all unauthorized aliens;
- ! Be subject to probation, during which the employer must submit quarterly reports of all newly hired employees to the county or city attorney; and
- ! Submit a sworn affidavit attesting that the employer has terminated the employment of all unauthorized aliens.

For knowing violations, allows the court to order the suspension of the employer's business licenses. For intentional violations, requires the court to order the suspension of all business licenses for a minimum period. For a second violation, requires the revocation of all business licenses.

Requires the attorney general to maintain copies of, and provide access to, all court orders issued against employers and to maintain a database of employers with a first violation. Requires the department of revenue, in cooperation with the department of labor and employment, to provide a notice of the requirements of the act to employers obligated by law to withhold taxes for employees.

Creates the e-verify program cash fund, to consist of moneys collected as fines imposed on employers for failing to participate in the e-verify program. Authorizes the moneys in the fund to be used to cover the reasonable costs incurred by the attorney general, county attorneys, and city attorneys in administering and enforcing the requirements of the act.

Defines as a discriminatory or unfair employment practice the refusal to hire or termination from employment of a United States citizen or permanent resident alien while hiring or retaining an unauthorized alien in the same type of job when the employer knew or should have known that the person was an unauthorized alien.

1 *Be it enacted by the General Assembly of the State of Colorado:*

1 **SECTION 1.** Part 1 of article 2 of title 8, Colorado Revised
2 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
3 read:

4 **8-2-125. Verification of employee work eligibility status - short**
5 **title - legislative declaration - definitions - e-verify program - cash**
6 **fund.** (1) THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE
7 "FAIR AND LEGAL EMPLOYMENT FOR COLORADANS ACT".

8 (2) (a) THE GENERAL ASSEMBLY HEREBY FINDS AND DETERMINES
9 THAT:

10 (I) ENSURING THAT COLORADO EMPLOYERS EMPLOY ONLY THOSE
11 PERSONS ELIGIBLE TO WORK WITHIN COLORADO IS AN ISSUE OF STATEWIDE
12 CONCERN;

13 (II) IT IS IN THE BEST INTEREST OF CITIZENS AND EMPLOYERS IN
14 COLORADO FOR ALL EMPLOYERS TO FOLLOW FEDERAL LAW AS IT APPLIES
15 TO THE HIRING OF PERSONS WHO ARE AUTHORIZED TO WORK IN THE
16 UNITED STATES;

17 (III) EMPLOYERS WHO VIOLATE FEDERAL EMPLOYMENT LAWS WITH
18 RESPECT TO THE HIRING OF PERSONS WHO ARE UNAUTHORIZED TO WORK
19 IN THE UNITED STATES PLACE AN UNDUE ECONOMIC BURDEN ON
20 EMPLOYERS WHO ATTEMPT TO HIRE ONLY PERSONS WHO ARE AUTHORIZED
21 TO WORK IN THE UNITED STATES;

22 (IV) STRICT ADHERENCE TO LEGAL HIRING PRACTICES WILL
23 DECREASE ILLEGAL IMMIGRATION INTO COLORADO AND SUBSTANTIALLY
24 REDUCE THE MILLIONS OF DOLLARS LEAVING COLORADO'S ECONOMY EACH
25 YEAR AND GOING TO OTHER COUNTRIES; AND

26 (V) EMPLOYERS IN COLORADO WHO ILLEGALLY HIRE
27 UNAUTHORIZED PERSONS CREATE AN ATTRACTIVE ENVIRONMENT FOR

1 ILLEGAL IMMIGRANTS TO LOCATE WITHIN COLORADO, WHICH COSTS
2 TAXPAYERS HUNDREDS OF MILLIONS OF DOLLARS TO PROVIDE PUBLIC
3 EDUCATION, HEALTH CARE, AND OTHER SERVICES AND, IN ADDITION,
4 PLACES UNDUE STRAIN AND COSTS ON OUR JUDICIAL SYSTEM.

5 (b) THE GENERAL ASSEMBLY THEREFORE FINDS AND DETERMINES
6 THAT IT IS:

7 (I) IN THE BEST INTEREST OF THE STATE'S TAXPAYERS FOR ALL
8 EMPLOYERS TO VERIFY THE SOCIAL SECURITY NUMBERS AND WORK
9 ELIGIBILITY STATUS OF NEWLY HIRED EMPLOYEES; AND

10 (II) IMPORTANT THAT EVERY EMPLOYER IN COLORADO
11 PARTICIPATE IN THE FEDERAL EMPLOYMENT VERIFICATION PROGRAM,
12 KNOWN AS "E-VERIFY", FOR THE PURPOSE OF VERIFYING THE WORK
13 ELIGIBILITY STATUS OF NEWLY HIRED EMPLOYEES.

14 (3) AS USED IN THIS SECTION:

15 (a) "AGENCY" MEANS ANY DEPARTMENT, DIVISION, BOARD, OR
16 COMMISSION OF THIS STATE OR OF A COUNTY, CITY, OR CITY AND COUNTY
17 THAT ISSUES A LICENSE FOR THE PURPOSE OF OPERATING A BUSINESS IN
18 THIS STATE.

19 (b) "BUSINESS LICENSE" MEANS ANY LICENSE ISSUED BY AN
20 AGENCY TO AN EMPLOYER THAT IS NECESSARY FOR THE EMPLOYER TO
21 OPERATE ITS BUSINESS.

22 (c) (I) "EMPLOYER" MEANS A PERSON TRANSACTING BUSINESS IN
23 COLORADO WHO, AT ANY TIME, EMPLOYS ANOTHER PERSON TO PERFORM
24 SERVICES OF ANY NATURE AND WHO HAS CONTROL OF THE PAYMENT OF
25 WAGES FOR SUCH SERVICES OR IS THE OFFICER, AGENT, OR EMPLOYEE OF
26 THE PERSON HAVING CONTROL OF THE PAYMENT OF WAGES.

27 (II) "EMPLOYER" DOES NOT INCLUDE THE FEDERAL GOVERNMENT,

1 THE STATE OF COLORADO, ANOTHER STATE, OR A POLITICAL SUBDIVISION
2 OF COLORADO OR ANOTHER STATE.

3 (d) "E-VERIFY PROGRAM" OR "PROGRAM" MEANS THE ELECTRONIC
4 EMPLOYMENT VERIFICATION PROGRAM THAT IS AUTHORIZED IN 8 U.S.C.
5 SEC. 1324a AND JOINTLY ADMINISTERED BY THE UNITED STATES
6 DEPARTMENT OF HOMELAND SECURITY AND THE SOCIAL SECURITY
7 ADMINISTRATION, OR ITS SUCCESSOR PROGRAM.

8 (e) "UNAUTHORIZED ALIEN" HAS THE SAME MEANING AS SET
9 FORTH IN 8 U.S.C. SEC. 1324a (h) (3).

10 (4) (a) EACH EMPLOYER IN COLORADO SHALL PARTICIPATE IN THE
11 E-VERIFY PROGRAM FOR THE PURPOSE OF VERIFYING THE WORK
12 ELIGIBILITY STATUS OF EACH OF THE EMPLOYER'S NEWLY HIRED
13 EMPLOYEES BY THE FOLLOWING DATES:

14 (I) FOR AN EMPLOYER WITH TWO HUNDRED OR MORE EMPLOYEES,
15 NO LATER THAN JANUARY 1, 2010;

16 (II) FOR AN EMPLOYER WITH AT LEAST FIFTY EMPLOYEES BUT
17 FEWER THAN TWO HUNDRED EMPLOYEES, NO LATER THAN JULY 1, 2010;
18 AND

19 (III) FOR AN EMPLOYER WITH FEWER THAN FIFTY EMPLOYEES, NO
20 LATER THAN JULY 1, 2012.

21 (b) AN EMPLOYER SHALL ENTER INTO AN AGREEMENT AS
22 REQUIRED BY THE SOCIAL SECURITY ADMINISTRATION AND THE UNITED
23 STATES DEPARTMENT OF HOMELAND SECURITY TO PARTICIPATE IN THE
24 E-VERIFY PROGRAM AND SHALL COMPLY WITH THE REQUIREMENTS FOR
25 PARTICIPATING IN THE PROGRAM. IF THE AGREEMENT IS TERMINATED BY
26 THE SOCIAL SECURITY ADMINISTRATION OR THE UNITED STATES
27 DEPARTMENT OF HOMELAND SECURITY BASED ON THE EMPLOYER'S

1 FAILURE TO COMPLY WITH THE ESTABLISHED PROCEDURES OR LEGAL
2 REQUIREMENTS AS SET FORTH IN THE AGREEMENT, THE EMPLOYER SHALL
3 BE SUBJECT TO THE PENALTIES SET FORTH IN PARAGRAPH (d) OF THIS
4 SUBSECTION (4).

5 (c) UPON ENTERING THE AGREEMENT DESCRIBED IN PARAGRAPH
6 (b) OF THIS SUBSECTION (4), THE EMPLOYER SHALL MAINTAIN A COPY OF
7 THE AGREEMENT, SHOWING THAT THE EMPLOYER IS AN ACTIVE
8 PARTICIPANT IN THE PROGRAM, AND SHALL NOTIFY ITS EMPLOYEES THAT
9 IT IS PARTICIPATING IN THE PROGRAM.

10 (d) IF THE ATTORNEY GENERAL FINDS THAT AN EMPLOYER HAS
11 FAILED TO PARTICIPATE IN THE E-VERIFY PROGRAM AS REQUIRED BY THIS
12 SUBSECTION (4), THE EMPLOYER SHALL BE SUBJECT TO THE FOLLOWING
13 PENALTIES FOR EACH THIRTY-DAY PERIOD OF NONCOMPLIANCE:

14 (I) AT LEAST FIVE THOUSAND DOLLARS BUT NOT MORE THAN TEN
15 THOUSAND DOLLARS IF THE EMPLOYER HAS TWO HUNDRED OR MORE
16 EMPLOYEES;

17 (II) AT LEAST THREE THOUSAND DOLLARS BUT NOT MORE THAN
18 FIVE THOUSAND DOLLARS IF THE EMPLOYER HAS AT LEAST FIFTY
19 EMPLOYEES BUT FEWER THAN TWO HUNDRED EMPLOYEES; OR

20 (III) AT LEAST ONE THOUSAND DOLLARS BUT NOT MORE THAN
21 THREE THOUSAND DOLLARS IF THE EMPLOYER HAS FEWER THAN FIFTY
22 EMPLOYEES.

23 (e) THE ATTORNEY GENERAL SHALL VERIFY THAT EACH EMPLOYER
24 HAS COMPLIED WITH PARAGRAPH (a) OF THIS SUBSECTION (4) WITHIN
25 NINETY DAYS AFTER THE FIRST FINDING OF NONCOMPLIANCE. IF THE
26 EMPLOYER IS NOT IN COMPLIANCE, THE ATTORNEY GENERAL SHALL FINE
27 THE EMPLOYER THE MAXIMUM FINE AMOUNT PURSUANT TO PARAGRAPH

1 (d) OF THIS SUBSECTION (4).

2 (f) UPON REQUEST OF THE ATTORNEY GENERAL, AN EMPLOYER
3 SHALL SUBMIT EVIDENCE THAT THE EMPLOYER IS PARTICIPATING IN THE
4 E-VERIFY PROGRAM, INCLUDING A COPY OF THE AGREEMENT EXECUTED BY
5 THE EMPLOYER WITH THE SOCIAL SECURITY ADMINISTRATION AND THE
6 UNITED STATES DEPARTMENT OF HOMELAND SECURITY. UPON RECEIPT OF
7 TWO COMPLAINTS THAT AN EMPLOYER HAS NOT COMPLIED WITH THIS
8 SUBSECTION (4), THE ATTORNEY GENERAL SHALL REQUEST THE
9 SUBMISSION OF SUCH EVIDENCE WITHIN THIRTY DAYS AFTER THE SECOND
10 COMPLAINT. THE ATTORNEY GENERAL SHALL LEVY A FINE AGAINST AN
11 EMPLOYER PURSUANT TO PARAGRAPH (d) OF THIS SUBSECTION (4) FOR
12 EACH CALENDAR MONTH THE EMPLOYER FAILS TO SUBMIT SUCH EVIDENCE.

13 (5) ON AND AFTER THE DATE BY WHICH AN EMPLOYER IS REQUIRED
14 TO PARTICIPATE IN THE E-VERIFY PROGRAM PURSUANT TO SUBSECTION (4)
15 OF THIS SECTION:

16 (a) AN EMPLOYER SHALL NOT INTENTIONALLY OR KNOWINGLY
17 EMPLOY AN UNAUTHORIZED ALIEN; AND

18 (b) AN EMPLOYER SHALL IMMEDIATELY TERMINATE THE
19 EMPLOYMENT OF AN EMPLOYEE FOR WHOM THE EMPLOYER RECEIVES A
20 FINAL NOTICE OF NONCONFIRMATION OF WORK ELIGIBILITY THROUGH THE
21 E-VERIFY PROGRAM.

22 (6) (a) ANY PERSON MAY FILE A COMPLAINT ALLEGING THAT AN
23 EMPLOYER INTENTIONALLY OR KNOWINGLY EMPLOYS AN UNAUTHORIZED
24 ALIEN. THE COMPLAINT SHALL BE FILED EITHER WITH THE ATTORNEY
25 GENERAL OR THE COUNTY OR CITY ATTORNEY FOR THE COUNTY OR CITY
26 IN WHICH THE EMPLOYER ALLEGEDLY EMPLOYS AN UNAUTHORIZED ALIEN.
27 UPON RECEIPT OF A COMPLAINT THAT AN EMPLOYER INTENTIONALLY OR

1 KNOWINGLY EMPLOYS AN UNAUTHORIZED ALIEN, THE ATTORNEY GENERAL
2 OR COUNTY OR CITY ATTORNEY, AS APPROPRIATE, SHALL INVESTIGATE
3 WHETHER THE EMPLOYER HAS VIOLATED SUBSECTION (5) OF THIS SECTION.
4 AS PART OF THE INVESTIGATION, THE ATTORNEY GENERAL OR COUNTY OR
5 CITY ATTORNEY SHALL VERIFY THE WORK AUTHORIZATION OF THE
6 ALLEGED UNAUTHORIZED ALIEN WITH THE FEDERAL GOVERNMENT
7 PURSUANT TO 8 U.S.C. SEC. 1373 (c). A STATE, COUNTY, OR CITY
8 OFFICIAL SHALL NOT ATTEMPT TO INDEPENDENTLY MAKE A FINAL
9 DETERMINATION ON WHETHER AN ALIEN IS AUTHORIZED TO WORK IN THE
10 UNITED STATES. A PERSON WHO KNOWINGLY FILES A FALSE OR
11 FRIVOLOUS COMPLAINT UNDER THIS SUBSECTION (6) IS GUILTY OF A CLASS
12 3 MISDEMEANOR.

13 (b) IF, AFTER AN INVESTIGATION, THE ATTORNEY GENERAL OR
14 COUNTY OR CITY ATTORNEY DETERMINES THAT THE COMPLAINT IS NOT
15 FRIVOLOUS, THE ATTORNEY GENERAL OR COUNTY OR CITY ATTORNEY
16 SHALL NOTIFY THE UNITED STATES IMMIGRATION AND CUSTOMS
17 ENFORCEMENT AND LOCAL LAW ENFORCEMENT OF THE SUBSTANCE OF THE
18 COMPLAINT, INCLUDING THE IDENTITY OF THE UNAUTHORIZED ALIEN IF
19 KNOWN. IF THE COMPLAINT WAS FILED WITH AND INVESTIGATED BY THE
20 ATTORNEY GENERAL, THE ATTORNEY GENERAL SHALL NOTIFY THE
21 APPROPRIATE COUNTY OR CITY ATTORNEY TO BRING AN ACTION AGAINST
22 THE EMPLOYER PURSUANT TO SUBSECTION (7) OF THIS SECTION.

23 (7) (a) THE COUNTY ATTORNEY OF THE COUNTY, OR THE CITY
24 ATTORNEY OF THE CITY, IN WHICH THE UNAUTHORIZED ALIEN IS OR HAS
25 BEEN EMPLOYED SHALL BRING AN ACTION AGAINST THE EMPLOYER FOR A
26 VIOLATION OF SUBSECTION (5) OF THIS SECTION. AN ACTION SHALL NOT
27 BE BROUGHT AGAINST AN EMPLOYER FOR A VIOLATION OF SUBSECTION (5)

1 OF THIS SECTION BEFORE THE DATE BY WHICH THE EMPLOYER IS
2 OBLIGATED TO PARTICIPATE IN THE E-VERIFY PROGRAM PURSUANT TO
3 SUBSECTION (4) OF THIS SECTION. THE COURT IN WHICH THE ACTION IS
4 FILED SHALL EXPEDITE THE ACTION AND SHALL SET THE MATTER FOR
5 HEARING AT THE EARLIEST PRACTICABLE DATE, BUT NO LATER THAN
6 NINETY DAYS AFTER THE ACTION IS FILED.

7 (b) (I) IF THE COURT FINDS THAT THE EMPLOYER KNOWINGLY
8 VIOLATED SUBSECTION (5) OF THIS SECTION AND IT IS THE EMPLOYER'S
9 FIRST KNOWING VIOLATION WITHIN A THREE-YEAR PERIOD, THE COURT
10 SHALL ORDER THE EMPLOYER TO:

11 (A) TERMINATE THE EMPLOYMENT OF ALL UNAUTHORIZED ALIENS;

12 (B) BE SUBJECT TO A THREE-YEAR PROBATIONARY PERIOD, DURING
13 WHICH THE EMPLOYER SHALL FILE QUARTERLY REPORTS WITH THE
14 APPROPRIATE COUNTY OR CITY ATTORNEY SPECIFYING EACH NEW
15 EMPLOYEE HIRED BY THE EMPLOYER AT THE SPECIFIC LOCATION WHERE
16 THE UNAUTHORIZED ALIEN PERFORMED WORK AND THE WORK ELIGIBILITY
17 STATUS OF EACH NEW EMPLOYEE; AND

18 (C) FILE A SIGNED, SWORN AFFIDAVIT WITH THE COUNTY OR CITY
19 ATTORNEY WITHIN THREE BUSINESS DAYS AFTER THE ORDER IS ISSUED,
20 ATTESTING THAT THE EMPLOYER HAS TERMINATED THE EMPLOYMENT OF
21 ALL UNAUTHORIZED ALIENS AND THAT THE EMPLOYER WILL NOT
22 KNOWINGLY OR INTENTIONALLY EMPLOY AN UNAUTHORIZED ALIEN. IF
23 THE EMPLOYER FAILS TO TIMELY FILE THE AFFIDAVIT, THE COURT SHALL
24 ORDER THE APPROPRIATE AGENCIES TO SUSPEND ALL BUSINESS LICENSES
25 HELD BY THE EMPLOYER UNTIL THE EMPLOYER FILES THE AFFIDAVIT.
26 UPON NOTICE FROM THE COUNTY OR CITY ATTORNEY THAT THE EMPLOYER
27 HAS FILED THE AFFIDAVIT, THE APPROPRIATE AGENCIES SHALL

1 IMMEDIATELY REINSTATE ALL SUSPENDED BUSINESS LICENSES.

2 (II) IN ADDITION, THE COURT MAY ORDER THE APPROPRIATE
3 AGENCIES TO SUSPEND ALL BUSINESS LICENSES HELD BY THE EMPLOYER
4 FOR UP TO TEN BUSINESS DAYS. IN DETERMINING WHETHER TO ORDER THE
5 SUSPENSION OF THE EMPLOYER'S BUSINESS LICENSES, THE COURT SHALL
6 BASE ITS DECISION ON ANY EVIDENCE OR INFORMATION IT RECEIVES
7 DURING THE ACTION AND SHALL CONSIDER THE FOLLOWING FACTORS, IF
8 RELEVANT:

9 (A) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE
10 EMPLOYER;

11 (B) ANY PRIOR MISCONDUCT OF THE EMPLOYER;

12 (C) THE DEGREE OF HARM RESULTING FROM THE VIOLATION;

13 (D) WHETHER THE EMPLOYER MADE GOOD-FAITH EFFORTS TO
14 COMPLY WITH THE LAW;

15 (E) THE DURATION OF THE VIOLATION;

16 (F) THE ROLE OF THE DIRECTORS, OFFICERS, OR PRINCIPALS OF THE
17 EMPLOYER IN THE COMMISSION OF THE VIOLATION; AND

18 (G) ANY OTHER FACTORS DEEMED APPROPRIATE BY THE COURT.

19 (III) IN DETERMINING WHETHER TO SUSPEND AN EMPLOYER'S
20 BUSINESS LICENSES PURSUANT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH
21 (b), THE COURT SHALL NOT CONSIDER THE POTENTIAL FINANCIAL
22 HARDSHIP THAT MAY BE IMPOSED ON THE EMPLOYER IF ITS BUSINESS
23 LICENSES ARE SUSPENDED.

24 (c) IF THE COURT FINDS THAT THE EMPLOYER INTENTIONALLY
25 VIOLATED SUBSECTION (5) OF THIS SECTION AND IT IS THE EMPLOYER'S
26 FIRST INTENTIONAL VIOLATION WITHIN A FIVE-YEAR PERIOD, THE COURT
27 SHALL ORDER:

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

3 (II) THE EMPLOYER TO BE SUBJECT TO A FIVE-YEAR
4 PROBATIONARY PERIOD, DURING WHICH THE EMPLOYER SHALL FILE
5 QUARTERLY REPORTS WITH THE APPROPRIATE COUNTY OR CITY ATTORNEY
6 SPECIFYING EACH NEW EMPLOYEE HIRED BY THE EMPLOYER AT THE
7 SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK
8 AND THE WORK ELIGIBILITY STATUS OF EACH NEW EMPLOYEE;

9 (III) THE EMPLOYER TO FILE A SIGNED, SWORN AFFIDAVIT WITH
10 THE COUNTY OR CITY ATTORNEY, ATTESTING THAT THE EMPLOYER HAS
11 TERMINATED THE EMPLOYMENT OF ALL UNAUTHORIZED ALIENS AND THAT
12 THE EMPLOYER WILL NOT KNOWINGLY OR INTENTIONALLY EMPLOY AN
13 UNAUTHORIZED ALIEN. IF THE EMPLOYER FAILS TO FILE THE AFFIDAVIT
14 WITHIN THE PERIOD IN WHICH THE EMPLOYER'S BUSINESS LICENSES ARE
15 SUSPENDED PURSUANT TO SUBPARAGRAPH (IV) OF THIS PARAGRAPH (c),
16 THE EMPLOYER'S BUSINESS LICENSES SHALL REMAIN SUSPENDED UNTIL
17 THE EMPLOYER FILES THE AFFIDAVIT. UPON NOTICE FROM THE COUNTY OR
18 CITY ATTORNEY THAT THE EMPLOYER HAS FILED THE AFFIDAVIT, THE
19 APPROPRIATE AGENCIES SHALL IMMEDIATELY REINSTATE ALL SUSPENDED
20 BUSINESS LICENSES.

21 (IV) THE APPROPRIATE AGENCIES TO SUSPEND ALL BUSINESS
22 LICENSES HELD BY THE EMPLOYER FOR AT LEAST TEN BUSINESS DAYS. IN
23 DETERMINING THE LENGTH OF THE BUSINESS LICENSE SUSPENSION, THE
24 COURT SHALL BASE ITS DECISION ON ANY EVIDENCE OR INFORMATION IT
25 RECEIVES DURING THE ACTION AND SHALL CONSIDER THE FOLLOWING
26 FACTORS, IF RELEVANT:

27 (A) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE

1 EMPLOYER;

2 (B) ANY PRIOR MISCONDUCT OF THE EMPLOYER;

3 (C) THE DEGREE OF HARM RESULTING FROM THE VIOLATION;

4 (D) WHETHER THE EMPLOYER MADE GOOD-FAITH EFFORTS TO

5 COMPLY WITH THE LAW;

6 (E) THE DURATION OF THE VIOLATION;

7 (F) THE ROLE OF THE DIRECTORS, OFFICERS, OR PRINCIPALS OF THE

8 EMPLOYER IN THE COMMISSION OF THE VIOLATION; AND

9 (G) ANY OTHER FACTORS DEEMED APPROPRIATE BY THE COURT.

10 (d) IN DETERMINING THE LENGTH OF THE BUSINESS LICENSE

11 SUSPENSION PURSUANT TO SUBPARAGRAPH (IV) OF PARAGRAPH (c) OF

12 THIS SUBSECTION (7), THE COURT SHALL NOT CONSIDER THE POTENTIAL

13 FINANCIAL HARDSHIP THAT MAY BE IMPOSED ON THE EMPLOYER BASED ON

14 THE LENGTH OF THE BUSINESS LICENSE SUSPENSION.

15 (e) IF, DURING A PERIOD OF PROBATION IMPOSED BY A COURT

16 ORDER ISSUED PURSUANT TO PARAGRAPH (b) OR (c) OF THIS SUBSECTION

17 (7), THE COURT FINDS THAT THE EMPLOYER HAS EMPLOYED AN

18 UNAUTHORIZED ALIEN, THE EMPLOYER SHALL BE FOUND TO HAVE

19 COMMITTED A SECOND VIOLATION OF SUBSECTION (5) OF THIS SECTION,

20 AND THE COURT SHALL ORDER THE APPROPRIATE AGENCIES TO

21 IMMEDIATELY AND PERMANENTLY REVOKE ALL BUSINESS LICENSES HELD

22 BY THE EMPLOYER.

23 (f) UPON THE ISSUANCE OF AN ORDER PURSUANT TO THIS

24 SUBSECTION (7), THE COURT SHALL SEND A COPY OF THE ORDER TO THE

25 ATTORNEY GENERAL. FOR PURPOSES OF ORDERS DIRECTING THE

26 SUSPENSION OF AN EMPLOYER'S BUSINESS LICENSES, A COPY OF THE ORDER

27 SHALL BE SENT TO ALL APPROPRIATE AGENCIES.

1 (g) INDETERMINING WHETHER AN EMPLOYEE IS AN UNAUTHORIZED
2 ALIEN, THE COURT SHALL CONSIDER ONLY THE FEDERAL GOVERNMENT'S
3 DETERMINATION PURSUANT TO 8 U.S.C. SEC. 1373 (c). THE FEDERAL
4 GOVERNMENT'S DETERMINATION CREATES A REBUTTABLE PRESUMPTION
5 OF THE EMPLOYEE'S WORK ELIGIBILITY STATUS, AND THE COURT MAY
6 TAKE JUDICIAL NOTICE OF THAT DETERMINATION. THE COURT MAY
7 REQUEST THE FEDERAL GOVERNMENT TO PROVIDE AUTOMATED OR
8 TESTIMONIAL VERIFICATION PURSUANT TO 8 U.S.C. SEC. 1373 (c).

9 (h) PROOF OF VERIFYING THE WORK ELIGIBILITY STATUS OF AN
10 EMPLOYEE THROUGH THE E-VERIFY PROGRAM CREATES A REBUTTABLE
11 PRESUMPTION THAT THE EMPLOYER DID NOT INTENTIONALLY OR
12 KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

13 (i) AN EMPLOYER THAT SHOWS THAT IT COMPLIED IN GOOD FAITH
14 WITH THE REQUIREMENTS OF 8 U.S.C. SEC. 1324b ESTABLISHES AN
15 AFFIRMATIVE DEFENSE THAT THE EMPLOYER DID NOT INTENTIONALLY OR
16 KNOWINGLY EMPLOY AN UNAUTHORIZED ALIEN.

17 (8) THE ATTORNEY GENERAL SHALL MAINTAIN COPIES OF ALL
18 COURT ORDERS ISSUED PURSUANT TO SUBSECTION (7) OF THIS SECTION
19 AND SHALL MAKE THE COURT ORDERS AVAILABLE ON THE ATTORNEY
20 GENERAL'S WEB SITE. ADDITIONALLY, THE ATTORNEY GENERAL SHALL
21 MAINTAIN A DATABASE OF THE EMPLOYERS WHO HAVE COMMITTED A
22 FIRST VIOLATION OF SUBSECTION (5) OF THIS SECTION.

23 (9) (a) ON OR BEFORE OCTOBER 1, 2009, THE DEPARTMENT OF
24 REVENUE SHALL PROVIDE A NOTICE TO EVERY EMPLOYER THAT IS
25 REQUIRED TO WITHHOLD TAX PURSUANT TO SECTION 39-22-604, C.R.S.,
26 EXPLAINING THE REQUIREMENTS OF THIS SECTION. THE DEPARTMENT OF
27 LABOR AND EMPLOYMENT SHALL ASSIST THE DEPARTMENT OF REVENUE IN

1 DEVELOPING THE NOTICE, WHICH SHALL SET FORTH AT LEAST THE
2 FOLLOWING INFORMATION:

3 (I) THAT A NEW STATE LAW PROHIBITS AN EMPLOYER FROM
4 INTENTIONALLY OR KNOWINGLY EMPLOYING AN UNAUTHORIZED ALIEN;

5 (II) THE PENALTIES FOR VIOLATING THE PROHIBITION;

6 (III) THAT EMPLOYERS WILL BE REQUIRED TO VERIFY THE
7 EMPLOYMENT ELIGIBILITY OF NEW EMPLOYEES THROUGH THE E-VERIFY
8 PROGRAM; AND

9 (IV) INSTRUCTIONS FOR THE EMPLOYER ON HOW TO ENROLL IN THE
10 E-VERIFY PROGRAM.

11 (b) THE DEPARTMENTS OF REVENUE AND LABOR AND EMPLOYMENT
12 AND THE ATTORNEY GENERAL SHALL MAINTAIN A COPY OF THE NOTICE
13 REQUIRED BY THIS SUBSECTION (9) ON THEIR RESPECTIVE WEB SITES.

14 (10) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE
15 AN EMPLOYER TO TAKE ANY ACTION THAT THE EMPLOYER BELIEVES IN
16 GOOD FAITH WOULD VIOLATE FEDERAL OR STATE LAW.

17 (11) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE
18 E-VERIFY PROGRAM CASH FUND, REFERRED TO IN THIS SECTION AS THE
19 "FUND". THE FUND SHALL CONSIST OF ANY MONEYS COLLECTED
20 PURSUANT TO SUBSECTION (4) OF THIS SECTION. ADDITIONALLY, ANY
21 UNENCUMBERED AND UNEXPENDED MONEYS REMAINING IN THE
22 EMPLOYMENT VERIFICATION CASH FUND, CREATED IN SECTION 8-2-122 (4),
23 AS OF THE DATE SECTION 8-2-122 IS REPEALED, SHALL BE TRANSFERRED
24 TO THE FUND. MONEYS REMAINING IN THE FUND AT THE END OF ANY
25 FISCAL YEAR SHALL REMAIN IN THE FUND AND SHALL NOT REVERT TO THE
26 GENERAL FUND.

27 (b) MONEYS IN THE FUND SHALL BE SUBJECT TO APPROPRIATION

1 BY THE GENERAL ASSEMBLY TO THE DEPARTMENT OF LAW FOR THE
2 PURPOSE OF ADMINISTERING AND ENFORCING THIS SECTION AND
3 REIMBURSING COUNTY OR CITY ATTORNEYS FOR THEIR REASONABLE COSTS
4 ASSOCIATED WITH ENFORCING THIS SECTION. A COUNTY OR CITY
5 ATTORNEY THAT INCURS COSTS ASSOCIATED WITH ENFORCING THIS
6 SECTION SHALL SUBMIT A REQUEST FOR REIMBURSEMENT TO THE
7 DEPARTMENT OF LAW AT THE END OF THE STATE FISCAL YEAR FOR COSTS
8 INCURRED DURING THAT FISCAL YEAR. THE DEPARTMENT OF LAW SHALL
9 DETERMINE AN EQUITABLE METHOD OF REIMBURSING COUNTY AND CITY
10 ATTORNEYS FOR THEIR ENFORCEMENT COSTS FROM AVAILABLE MONEYS
11 IN THE FUND.

12 **SECTION 2.** 24-34-402, Colorado Revised Statutes, is amended
13 BY THE ADDITION OF A NEW SUBSECTION to read:

14 **24-34-402. Discriminatory or unfair employment practices.**

15 (8) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION TO THE
16 CONTRARY, IT SHALL BE A DISCRIMINATORY OR UNFAIR EMPLOYMENT
17 PRACTICE FOR AN EMPLOYER TO REFUSE TO HIRE AN OTHERWISE
18 QUALIFIED PERSON, OR TO DISCHARGE AN EMPLOYEE, WHO IS A UNITED
19 STATES CITIZEN OR PERMANENT RESIDENT ALIEN WHILE HIRING A PERSON
20 OR RETAINING AN EMPLOYEE WHO THE EMPLOYER KNOWS OR REASONABLY
21 SHOULD HAVE KNOWN IS AN UNAUTHORIZED ALIEN, AS DEFINED IN
22 SECTION 8-2-125, C.R.S., HIRED AFTER THE DATE BY WHICH THE
23 EMPLOYER IS REQUIRED TO PARTICIPATE IN THE FEDERAL E-VERIFY
24 PROGRAM PURSUANT TO SECTION 8-2-125 (4) (a), C.R.S., IF THE
25 UNAUTHORIZED ALIEN IS WORKING IN A JOB CATEGORY THAT REQUIRES
26 EQUAL SKILL, EFFORT, AND RESPONSIBILITY AND UNDER SIMILAR WORKING
27 CONDITIONS, AS DEFINED IN 29 U.S.C. SEC. 206 (d) (1), AS THE JOB

1 CATEGORY SOUGHT BY THE PERSON WHO WAS NOT HIRED OR HELD BY THE
2 DISCHARGED EMPLOYEE. FOR PURPOSES OF THIS SUBSECTION (8), AN
3 EMPLOYER MAY SHOW THAT IT DID NOT KNOW OR SHOULD NOT
4 REASONABLY HAVE KNOWN THAT IT EMPLOYED AN UNAUTHORIZED ALIEN
5 IF THE EMPLOYER PROVIDES EVIDENCE THAT IT VERIFIED THE
6 UNAUTHORIZED ALIEN'S WORK ELIGIBILITY STATUS THROUGH THE
7 E-VERIFY PROGRAM, AS DEFINED IN SECTION 8-2-125, C.R.S.

8 **SECTION 3. Repeal.** 8-2-122, Colorado Revised Statutes, is
9 repealed.

10 **SECTION 4. Applicability.** Section 2 of this act shall apply to
11 discriminatory or unfair employment practices committed on or after the
12 effective date of this act.

13 **SECTION 5. Safety clause.** The general assembly hereby finds,
14 determines, and declares that this act is necessary for the immediate
15 preservation of the public peace, health, and safety.