

SENATE BILL 844

P2
SB 696/09 – EHE

0lr3037
CF HB 721

By: **Senators Kittleman, Astle, Brinkley, Colburn, Dyson, Glassman, Haines, Jacobs, Munson, Reilly, Simonaire, Stoltzfus, and Stone**
Introduced and read first time: February 11, 2010
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 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 under certain
17 circumstances; requiring that certain agencies suspend the licenses of certain
18 employers under certain circumstances; providing for the reinstatement of the
19 licenses of certain employers under certain circumstances; providing for the
20 revocation of the licenses of certain employers under certain circumstances;
21 requiring the Attorney General to maintain certain records and a certain
22 database and to make the information available on the Attorney General’s
23 website; specifying a certain absolute defense; providing for the construction of
24 this 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 20–114 to be under the new title “Title 20. Employment
29 of Unauthorized Aliens and the Federal E–Verify Program”

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland
2 (2006 Replacement Volume and 2009 Supplement)

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

5 **Article – State Finance and Procurement**

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

8 **20-101.**

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

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

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

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

19 (I) TRANSACTS BUSINESS IN THE STATE;

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

21 AND

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

24 (2) “EMPLOYER” INCLUDES:

25 (I) THE STATE;

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

27 (III) SELF-EMPLOYED PERSONS.

28 (E) “E-VERIFY PROGRAM” MEANS THE E-VERIFY EMPLOYMENT
29 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 SOME OTHER GRANT OF STATE MONEY SHALL VERIFY THROUGH THE
16 E-VERIFY PROGRAM THE EMPLOYMENT ELIGIBILITY OF EACH EMPLOYEE
17 HIRED BY THE EMPLOYER TO WORK UNDER THE PROCUREMENT CONTRACT OR
18 GRANT.

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

21 **20-103.**

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

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

29 (C) WHEN INVESTIGATING A COMPLAINT, THE ATTORNEY GENERAL OR
30 COUNTY ATTORNEY SHALL VERIFY THE IMMIGRATION STATUS AND WORK
31 AUTHORIZATION STATUS OF THE ALLEGED UNAUTHORIZED ALIEN WITH THE
32 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, FOR A
31 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 10 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 10**
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) NOTWITHSTANDING § 20-107 OF THIS TITLE, FOR A VIOLATION OF §
12 20-102 OF THIS TITLE THE COURT MAY ORDER THE APPROPRIATE AGENCIES TO
13 SUSPEND ALL LICENSES THAT ARE HELD BY THE EMPLOYER FOR A PERIOD NOT
14 TO EXCEED 10 BUSINESS DAYS.

15 (B) THE COURT SHALL BASE ITS DECISION WHETHER TO SUSPEND THE
16 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 (1) THE NUMBER OF UNAUTHORIZED ALIENS EMPLOYED BY THE
21 EMPLOYER;

22 (2) THE DEGREE OF HARM RESULTING FROM THE VIOLATION;

23 (3) WHETHER THE EMPLOYER MADE GOOD FAITH EFFORTS TO
24 COMPLY WITH ANY APPLICABLE REQUIREMENTS;

25 (4) THE DURATION OF THE VIOLATION;

26 (5) THE ROLE OF THE DIRECTORS, OFFICERS, OR PRINCIPALS OF
27 THE EMPLOYER IN THE VIOLATION; AND

28 (6) ANY OTHER FACTORS THE COURT DEEMS APPROPRIATE.

29 20-109.

30 IF THE COURT SUSPENDS THE EMPLOYER'S LICENSE UNDER § 20-108 OF
31 THIS TITLE, THE COURT SHALL ORDER THE EMPLOYER TO SIGN AND FILE A

1 SWORN AFFIDAVIT WITH THE COUNTY ATTORNEY STATING THAT THE
2 EMPLOYER:

3 (1) HAS TERMINATED THE EMPLOYMENT OF ALL UNAUTHORIZED
4 ALIENS; AND

5 (2) WILL NOT INTENTIONALLY OR KNOWINGLY EMPLOY AN
6 UNAUTHORIZED ALIEN.

7 20-110.

8 (A) A LICENSE SUSPENDED UNDER § 20-108 OF THIS TITLE SHALL
9 REMAIN SUSPENDED UNTIL THE EMPLOYER SIGNS AND FILES THE SWORN
10 AFFIDAVIT REQUIRED UNDER § 20-109 OF THIS TITLE WITH THE COUNTY
11 ATTORNEY.

12 (B) EACH LICENSE HELD BY THE EMPLOYER THAT IS NECESSARY TO
13 OPERATE THE EMPLOYER'S BUSINESS AT THE EMPLOYER'S BUSINESS LOCATION
14 WHERE THE UNAUTHORIZED ALIEN PERFORMED WORK IS SUBJECT TO THE
15 SUSPENSION.

16 (C) IF A LICENSE IS NOT NECESSARY TO OPERATE THE EMPLOYER'S
17 BUSINESS AT THE SPECIFIC LOCATION WHERE THE UNAUTHORIZED ALIEN
18 PERFORMED WORK, BUT IS NECESSARY TO OPERATE THE EMPLOYER'S
19 BUSINESS IN GENERAL, THE LICENSE HELD BY THE EMPLOYER AT THE
20 EMPLOYER'S PRIMARY PLACE OF BUSINESS SHALL BE SUBJECT TO THE
21 SUSPENSION.

22 (D) ON RECEIPT OF THE COURT ORDER, THE APPROPRIATE AGENCY
23 SHALL SUSPEND ANY AFFECTED LICENSE IN ACCORDANCE WITH THE COURT
24 ORDER.

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

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

29 20-111.

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

1 BUSINESS AT THE EMPLOYER'S BUSINESS LOCATION WHERE THE
2 UNAUTHORIZED ALIEN PERFORMED WORK.

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

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

11 20-112.

12 THE ATTORNEY GENERAL SHALL:

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

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

18 20-113.

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

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

26 20-114.

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

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

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

5 (1) This Act shall apply to each employer under a State procurement
6 contract executed, or a grant of State money received, after December 31, 2010; and

7 (2) An employer under a State procurement contract executed, or a
8 grant of State money received, after December 31, 2010, shall verify through the basic
9 pilot program required under Section 1 of this Act the employment eligibility status of
10 each employee hired by the employer who performs work under the State procurement
11 contract or grant.

12 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2010.