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Bill Analysis

Version: As Introduced

Primary Sponsor: Rep. Patton

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SUMMARY

- Prohibits an employer from knowingly or purposely employing a person who is not a U.S. citizen or national and who is not authorized to be employed as determined in accordance with federal immigration law (an “unauthorized alien”).
- Requires the Attorney General to prescribe a form an individual may use to allege a violation of the bill.
- Requires the Attorney General or a county prosecutor to investigate any violation alleged in a prescribed form.
- Requires the Attorney General or county prosecutor to notify the U.S. Department of Homeland Security and local law enforcement after investigating and determining that an alleged violation is not false and frivolous.
- Requires a county prosecutor to sue the employer for an alleged violation after a determination by the Attorney General or prosecutor that reasonable evidence exists that an employer violated the bill.
- Requires a court to issue specific orders after determining an employer has knowingly or purposely employed an unauthorized alien, including, under certain circumstances, suspending or revoking a license held by the employer specific to the business location where the work was performed or a general license necessary for the employer to do business.
- Requires the Attorney General to maintain, and make public, records related to violations of the bill.

DETAILED ANALYSIS

Prohibitions against employing unauthorized alien

The bill prohibits an employer from knowingly or purposely employing an “unauthorized alien.” Under the bill, an unauthorized alien is any person who is:

- Is not a U.S. citizen or U.S. national;
- Is not authorized to be employed as determined in accordance with the federal “Immigration Reform and Control Act of 1986” (IRCA).¹

An employer who obtains an alien’s labor in Ohio through a contract, subcontract, or other independent contractor agreement violates the bill’s prohibitions under either of the following circumstances:

- The employer knowingly or purposely contracts directly with an alien who the employer knows is an unauthorized alien;
- The employer knowingly or purposely contracts with a third party who the employer knows employs or contracts with an unauthorized alien to perform the labor.²

Complaints and investigations

Under the bill, the Attorney General must prescribe a complaint form an individual may use to allege a violation of the prohibitions against knowingly or purposely employing an unauthorized alien. The Attorney General cannot require an individual filing a complaint to list the individual’s Social Security number on the form or have the form notarized. The complaint must be submitted to the Attorney General or the prosecutor for the county in which the alleged unauthorized alien is or was employed. The Attorney General or prosecutor must investigate any violation alleged in a prescribed form.

An individual may file an anonymous complaint using a different form. However, the Attorney General or prosecutor is not obligated to investigate a complaint filed using a nonprescribed form.

The Attorney General or prosecutor may not investigate a complaint based solely on race, color, or national origin.

A county sheriff or other local law enforcement officer may assist the Attorney General’s or prosecutor’s investigation. During an investigation, the Attorney General or prosecutor must verify the alleged unauthorized alien’s work eligibility with the federal government in accordance with federal law. The bill prohibits an investigator from attempting to independently make a final determination on whether an alien is authorized to work in the U.S.³

¹ R.C. 4177.01 and 4177.02(A).

² R.C. 4177.02(B) and (C).

³ R.C. 4177.03.

Under the bill, an individual who knowingly files a false and frivolous complaint is guilty of a fourth degree misdemeanor.⁴

Enforcement action

If, after an investigation, the Attorney General or prosecutor determines a complaint is not false and frivolous, the Attorney General or prosecutor must do all the following, as applicable:

- Notify the U.S. Department of Homeland Security or its successor agency of the unauthorized alien's status;
- Notify the local law enforcement agency of the unauthorized alien's status;
- If the complaint was originally filed with the Attorney General, notify the appropriate county prosecutor to allow the prosecutor to bring a lawsuit under the bill.

After receiving a notice from the Attorney General or investigating and finding reasonable evidence that an employer violated the bill, a prosecutor must sue the employer in the common pleas court of the county where the unauthorized alien allegedly is or was employed. The prosecutor may not sue an employer for a violation that occurred before the bill's effective date. A second violation may be based only on an additional unauthorized alien being employed by the employer after a previous action brought against the employer.

A court must expedite a suit brought under the bill, including assigning a hearing at the earliest practicable date.⁵

When deciding whether an employee was an unauthorized alien at the time of employment, a court may consider only the alien's status as determined by the federal government pursuant to federal immigration law. The federal government's determination creates a rebuttable presumption of the alien's status. The court may take judicial notice of the determination and may request the federal government to provide automated or testimonial verification.⁶

An employer may create a rebuttable presumption that the employer did not knowingly or purposely employ an unauthorized alien by providing proof the employer verified the employee's work authorization through the federal E-Verify Program or another verification system.⁷ E-Verify is an internet-based program that uses information from the "I-9 Employment Eligibility Verification Form" ("I-9 form") to help employers verify a newly hired employee's work eligibility. An employer and all new employees (citizens and noncitizens) must complete the I-9

⁴ R.C. 4177.02(A) and 4177.99.

⁵ R.C. 4177.04.

⁶ R.C. 4177.05(A).

⁷ R.C. 4177.05(B).

form during the first three days of employment. Participation in E-Verify is voluntary, except that certain federal contractors must participate.⁸

Affirmative defenses

The bill allows an employer to raise a “good faith” affirmative defense in an enforcement action. An employer raises the defense by providing proof that the employer made a good faith attempt to comply with requirements in federal immigration law to verify a person’s authorization to work in the U.S.

An employer and each new employee, regardless of citizenship or immigration status, comply with federal immigration law by completing the I-9 form. As part of completing the I-9 form, the employee must present documentation to establish the employee’s identity and employment authorization. An employer must retain copies of the completed I-9 form for a period of three years after the date of hire or one year after the employee’s employment ends.

Under the bill, an employer is considered to have complied with federal verification requirements notwithstanding an isolated, sporadic, or accidental technical or procedural failure to meet them, provided a good faith attempt was made to comply with the requirements.⁹

The bill also allows entrapment as an affirmative defense to an alleged violation. To claim entrapment, an employer must admit to the substantial elements of a violation through testimony or other evidence. The employer may then establish entrapment by proving all the following elements through a preponderance of the evidence:

- The idea of committing the violation started with a peace officer or the officer’s agent rather than with the employer;
- The peace officer or agent urged and induced the employer to commit the violation;
- The employer was not predisposed to commit the violation before the peace officer or agent urged and induced the employer to commit the violation.

An employer does not establish the entrapment defense if the employer was predisposed to violate the bill and the peace officer or agent merely provided the employer with an opportunity to commit the violation. A peace officer or an agent does not entrap an employer if the officer or agent merely uses a ruse or conceals the officer’s or agent’s identity. The conduct of a peace officer or an agent of the officer may be considered when determining whether an employer has established the entrapment defense.¹⁰

⁸ See 48 Code of Federal Regulations 22.1802 and [OMB No. 1615-0047 \(PDF\)](#), which may be accessed by conducting a keyword “I-9 form” search on the U.S. Citizenship and Immigration Services (USCIS) website: www.uscis.gov.

⁹ R.C. 4177.05(C); see also 8 United States Code 1324a and [I-9, Employment Eligibility Verification and Penalties](#), both available on the USCIS website at uscis.gov by conducting a keyword “I-9” or “Penalties” search, respectively.

¹⁰ R.C. 4177.05(D).

Penalties

Knowing violations

If a court, pursuant to a lawsuit described above, determines an employer has committed a first violation of the prohibition against knowingly hiring an unauthorized alien, the court must do all the following:

- Order the employer to terminate the employment of all unauthorized aliens;
- Subject the employer to a three-year probationary period for the business location where the unauthorized alien performed work;
- Order the employer to file with the prosecutor of the county where the violation occurred a signed affidavit stating the employer has terminated the employment of all unauthorized aliens employed by the employer in Ohio and that the employer will not knowingly or purposely employ an unauthorized alien in Ohio.¹¹

Additionally, after a knowing violation, the court may, but is not required to, order the appropriate agencies to suspend all licenses subject to suspension held by the employer for a period not to exceed ten business days. A license subject to suspension is any license held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, any license held by the employer at the employer's primary place of business is subject to suspension.

The court determines whether to suspend an employer's licenses based on any evidence or information submitted to the court during the lawsuit and must consider the following factors, as applicable:

- The number of unauthorized aliens employed by the employer;
- Any prior misconduct knowingly committed by the employer relating to the bill within six years before the violation subject to the suit;
- The degree of harm resulting from the violation;
- Whether the employer made good faith efforts to comply with any applicable requirements;
- The duration of the violation;
- The role of the directors, officers, or principals of the employer in the violation;
- Any other factors the court considers appropriate.¹²

¹¹ R.C. 4177.06(A)(1) and (4).

¹² R.C. 4177.06(A)(2).

Purposeful violations

If a court, pursuant to a lawsuit described above, determines an employer has committed a first violation of the prohibition against purposely hiring an unauthorized alien, the court must do the following:

- Order the employer to terminate the employment of all unauthorized aliens;
- Subject the employer to a five-year probationary period for the business location where the unauthorized alien performed work;
- Based on evidence or information submitted to the court during the lawsuit, and considering the factors listed above, order the appropriate agencies to suspend for a minimum of ten days all licenses held by the employer that are subject to suspension under the bill;
- Order the employer to file with the prosecutor of the county where the violation occurred the signed affidavit described above.¹³

Probationary period

During the three-year probationary period required for a knowing violation, or the five-year period required for a purposeful violation, the employer must file quarterly new hire reports with the prosecutor of the county where the violation occurred. The reports must include contact information for the employer. The reports also must include contact information for each new employee hired by the employer after the date of the violation to perform work at the business location where the violation occurred.¹⁴

Failure to file affidavit

If the employer fails to file the affidavit required after either a knowing or purposeful violation within three business days after the date the court issues its order, the court must order the suspension of all licenses held by the employer that are subject to suspension under the bill. On receipt of the court's order, and notwithstanding any other law to the contrary, the appropriate agencies must suspend the licenses according to the order. The court must send a copy of the order to the Attorney General, and the Attorney General must maintain the copy.

A license remains suspended until the employer files the affidavit with the prosecuting attorney. Notwithstanding any other law to the contrary, the appropriate agency must reinstate a suspended license when the employer files the affidavit.¹⁵

Subsequent violations

For a second violation of either of the bill's prohibitions, the court must order the appropriate agencies to permanently revoke all licenses held by the employer specific to the

¹³ R.C. 4177.07(A).

¹⁴ R.C. 4177.06(A)(3) and 4177.07(A)(2), by reference to R.C. 3121.892, not in the bill.

¹⁵ R.C. 4177.06(A)(4) and 4177.07(A)(4).

business location where the unauthorized alien worked. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the court must order the appropriate agencies to permanently revoke all licenses held by the employer at the employer's primary place of business. The appropriate agencies immediately must revoke the licenses after receiving the court's order.

A violation is considered a first violation by an employer at a business location if the violation did not occur during a probationary period at the employer's business location. A violation is considered a second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court for that employer's business location.¹⁶

Attorney General's additional duties

The bill requires the Attorney General to do all the following:

- Maintain copies of all court orders resulting from violations of the prohibitions against knowingly or purposely employing an unauthorized alien;
- Maintain a database including the name of each employer who has committed a first violation of either prohibition with the address of the business location where that violation occurred;
- Make the court orders available on the Attorney General's website.¹⁷

HISTORY

Action	Date
Introduced	08-19-24

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¹⁶ R.C. 4177.06(B) and (C) and 4177.07(B) and (C).

¹⁷ R.C. 4177.08.