

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 34

Introduced by Ashford, 20.

Read first time January 8, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to employment; to adopt the Nebraska Fair
2 and Legal Employment Act; to provide contracting duties
3 for the state and political subdivisions; and to provide
4 penalties.

5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 11 of this act shall be known
2 and may be cited as the Nebraska Fair and Legal Employment Act.

3 Sec. 2. For purposes of the Nebraska Fair and Legal
4 Employment Act:

5 (1) Agency means any state agency, department, board, or
6 commission or a county, city, or village that issues a license for
7 purposes of operating a business in this state;

8 (2) Employee means any person who provides services
9 or labor for an employer in this state for wages or other
10 remuneration;

11 (3) Employer means an individual or type of organization
12 that transacts business in this state that has a license issued by
13 an agency and that employs one or more individuals who performs
14 work in this state. Employer includes the state, any political
15 subdivision of the state, and self-employed individuals;

16 (4) Employment verification system means the federal
17 E-Verify system operated by the Department of Homeland Security
18 in partnership with the Social Security Administration, or its
19 successor system, that allows employers to electronically verify
20 the employment eligibility of their employees;

21 (5) Knowingly employ an undocumented worker means the
22 actions described in 8 U.S.C. 1324a and any applicable federal
23 rules and regulations, as such law, rule, and regulation existed on
24 January 1, 2009;

25 (6) License means any permit, certificate, approval,

1 registration, charter, or similar form of authorization that is
2 required by law and that is issued by an agency for the purposes of
3 operating a business in this state; and

4 (7) Undocumented worker means an alien who does not have
5 the legal right or authorization under federal law to work in the
6 United States as described in 8 U.S.C. 1324a(h)(3) as such law
7 existed on January 1, 2009.

8 Sec. 3. An employer shall not knowingly employ an
9 undocumented worker.

10 Sec. 4. After December 31, 2010, every employer, after
11 hiring an employee, shall verify the employment eligibility of the
12 employee through the employment verification system.

13 Sec. 5. (1) The Attorney General shall prescribe a
14 complaint form for a person to allege a violation of section
15 3 of this act. The complainant shall not be required to list
16 the complainant's social security number on the complaint form or
17 to have the complaint form notarized. This section shall not be
18 construed to prohibit the filing of anonymous complaints that are
19 not submitted on a prescribed complaint form.

20 (2) Upon receipt of a complaint on a prescribed
21 complaint form that an employer allegedly knowingly employs an
22 undocumented worker, the Attorney General or county attorney
23 shall investigate whether the employer has violated section 3
24 of this act. The Attorney General or county attorney shall not
25 investigate complaints that are based solely on race, color, or

1 nation origin. A complaint that is submitted to a county attorney
2 shall be submitted to the county attorney in the county in which
3 the alleged undocumented worker is or was employed by the employer.
4 The county sheriff or any other local law enforcement agency
5 may assist in investigating a complaint. When investigating a
6 complaint, the Attorney General or county attorney shall verify
7 the work authorization of the alleged undocumented worker with the
8 federal government pursuant to 8 U.S.C. 1373(c). A state, county,
9 or local official shall not attempt to independently make a final
10 determination on whether an undocumented worker is authorized to
11 work in the United States. An undocumented worker's immigration
12 status or work authorization status shall be verified with the
13 federal government pursuant to 8 U.S.C. 1373(c).

14 Sec. 6. (1) If, after an investigation under section 5 of
15 this act, the Attorney General or county attorney determines that
16 the complaint is not false and frivolous:

17 (a) The Attorney General or county attorney shall notify
18 the United States Immigration and Customs Enforcement of the
19 undocumented worker;

20 (b) The Attorney General or county attorney shall notify
21 the local law enforcement agency of the undocumented worker; and

22 (c) The Attorney General shall notify the appropriate
23 county attorney to bring an action pursuant to subsection (2)
24 of this section if the complaint was originally filed with the
25 Attorney General.

1 (2) An action for a violation of section 3 of this act
 2 shall be brought against the employer by the county attorney in
 3 the county where the undocumented worker is or was employed by the
 4 employer.

5 (3) The county attorney shall not bring an action against
 6 any employer for any violation of section 3 of this act that
 7 occurred before January 1, 2010.

8 Sec. 7. For any action under section 3 of this act:

9 (1) The court shall expedite the action, including
 10 assigning the hearing at the earliest practicable date;

11 (2) In determining whether an employee is an undocumented
 12 worker, the court shall consider only the federal government's
 13 determination pursuant to 8 U.S.C. 1373(c). The federal
 14 government's determination creates a rebuttable presumption of
 15 the employee's lawful status. The court may take judicial notice
 16 of the federal government's determination and may request the
 17 federal government to provide automated or testimonial verification
 18 pursuant to 8 U.S.C. 1373(c);

19 (3) Proof of verifying the employment authorization of
 20 an employee through the employment verification system creates a
 21 rebuttable presumption that an employer did not knowingly employ an
 22 undocumented worker; and

23 (4) An employer that establishes that it has complied in
 24 good faith with the requirements of 8 U.S.C. 1324a(b) establishes
 25 an affirmative defense that the employer did not knowingly employ

1 an undocumented worker. An employer is considered to have complied
2 with the requirements of 8 U.S.C. 1324a(b), notwithstanding an
3 isolated, sporadic, or accidental technical or procedural failure
4 to meet the requirements, if there is a good faith attempt to
5 comply with the requirements.

6 Sec. 8. On a finding of a violation of section 3 of this
7 act:

8 (1) For a Type A violation as described in section 9 of
9 this act, the court:

10 (a) Shall order the employer to terminate the employment
11 of all undocumented workers;

12 (b) Shall order the employer to be subject to a
13 three-year probationary period for the business location where
14 the undocumented worker performed work;

15 (c) Shall order the employer to file a signed sworn
16 affidavit with the county attorney within three business days
17 after the order is issued. The affidavit shall state that the
18 employer has terminated the employment of all undocumented workers
19 in this state and that the employer will not knowingly employ
20 an undocumented worker in this state. The court shall order the
21 appropriate agencies to suspend all licenses subject to this
22 subdivision that are held by the employer if the employer fails
23 to file a signed sworn affidavit with the county attorney within
24 three business days after the order is issued. All licenses
25 that are suspended under this subdivision shall remain suspended

1 until the employer files a signed sworn affidavit with the
2 county attorney. Notwithstanding any other law, on filing of the
3 affidavit the suspended licenses shall be reinstated immediately
4 by the appropriate agencies. For purposes of this subdivision, the
5 licenses that are subject to suspension are all licenses that are
6 held by the employer specific to the business location where the
7 undocumented worker performed work. If the employer does not hold
8 a license specific to the business location where the undocumented
9 worker performed work, but a license is necessary to operate the
10 employer's business in general, the licenses that are subject to
11 suspension are all licenses that are held by the employer at the
12 employer's primary place of business. Upon receipt of the court's
13 order and notwithstanding any other law, the appropriate agencies
14 shall suspend the licenses according to the court's order. The
15 court shall send a copy of the court's order to the Attorney
16 General and the Attorney General shall maintain the copy pursuant
17 to section 10 of this act; and

18 (d) May order the appropriate agencies to suspend all
19 licenses described in subdivision (c) of this subsection that are
20 held by the employer for not to exceed ten business days. The
21 court shall base its decision to suspend under this subdivision on
22 any evidence or information submitted to it during the action for
23 a violation of this subsection and shall consider the following
24 factors, if relevant:

25 (i) The number of undocumented workers employed by the

1 employer;
2 (ii) Any prior misconduct by the employer;
3 (iii) The degree of harm resulting from the violation;
4 (iv) Whether the employer made good faith efforts to
5 comply with any applicable requirements;
6 (v) The duration of the violation;
7 (vi) The role of the directors, officers, or principals
8 of the employer in the violation; and
9 (vii) Any other factors the court deems appropriate; and
10 (2) For a Type B violation as described in section 9
11 of this act, the court shall order the appropriate agencies to
12 permanently revoke all licenses that are held by the employer
13 specific to the business location where the undocumented worker
14 performed work. If the employer does not hold a license specific
15 to the business location where the undocumented worker performed
16 work, but a license is necessary to operate the employer's business
17 in general, the court shall order the appropriate agencies to
18 permanently revoke all licenses that are held by the employer at
19 the employer's primary place of business. On receipt of the order
20 and notwithstanding any other law, the appropriate agencies shall
21 immediately revoke the licenses.

22 Sec. 9. A violation of section 3 of this act shall be
23 considered:

24 (1) A Type A violation by an employer at a business
25 location if the violation did not occur during a probationary

1 period ordered by the court under section 8 of this act for that
2 employer's business location; and

3 (2) A Type B violation by an employer at a business
4 location if the violation occurred during a probationary period
5 ordered by the court under section 8 of this act for that
6 employer's business location.

7 Sec. 10. The Attorney General shall maintain copies of
8 court orders that are received pursuant to section 8 of this
9 act and shall maintain a data base of the employers and business
10 locations that have a Type A of section 3 of this act and make the
11 court orders available on the Attorney General's web site.

12 Sec. 11. (1) A person who files a false and frivolous
13 complaint against an employer under the Nebraska Fair and Legal
14 Employment Act is guilty of a Class III misdemeanor.

15 (2) A person who has been previously convicted of filing
16 a false and frivolous complaint under the act is guilty of a Class
17 I misdemeanor.

18 Sec. 12. The state or any political subdivision of the
19 state shall not award a contract to any contractor or subcontractor
20 that provides services in Nebraska unless the employment
21 eligibility of the employees of the contractor or subcontractor who
22 perform the services is verified by the contractor or subcontractor
23 through the employment verification system. The contractor or
24 subcontractor shall provide the employment verification system
25 documents for all employees who will perform services under the

LB 34

LB 34

- 1 contract before a contract is awarded. This subsection applies to
- 2 contracts awarded after January 1, 2010.