

As Introduced

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H. B. No. 246

Representatives Swearingen, Fischer

**Cosponsors: Representatives Williams, Thomas, D., Hall, T., Gross, Johnson,
Plummer, Stephens**

To enact sections 4151.01, 4151.02, 4151.03, 1
4151.04, 4151.05, 4151.06, and 4151.07 of the 2
Revised Code to require certain construction 3
industry employers to use E-verify and to 4
sanction specified hiring practices in the 5
industry. 6

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4151.01, 4151.02, 4151.03, 7
4151.04, 4151.05, 4151.06, and 4151.07 of the Revised Code be 8
enacted to read as follows: 9

Sec. 4151.01. As used in this chapter: 10

(A) "Alien" means an individual who is not a United States 11
citizen or a United States national. 12

(B) "Employee" means any individual who performs services 13
for a contractor, subcontractor, or labor broker who satisfies 14
both of the following conditions: 15

(1) The individual is subject to the contractor's, 16
subcontractor's, or labor broker's direction and control, not 17
only as to the result accomplished but also as to the details of 18

how the work is performed; 19

(2) The individual receives compensation in the form of 20
wages, salary, or any other form of remuneration in exchange for 21
services rendered. 22

(C) "E-verify" means the employment verification program 23
as jointly administered by the United States department of 24
homeland security and the social security administration under 25
section 101(a)(1) of the federal "Immigration Reform and Control 26
Act of 1986," 8 U.S.C. 1324a, or any of its successor programs. 27

(D) (1) "Labor broker" means any individual or entity who 28
hires an employee and supplies the employee's labor to a 29
nonresidential construction contractor or a subcontractor, 30
regardless of tier, through the use of a contract. 31

(2) "Labor broker" does not include any governmental 32
entity or labor organization as defined in section 3517.01 of 33
the Revised Code. 34

(E) "Nonresidential construction contractor" means any 35
individual or entity that has responsibility for the means, 36
method, and manner of construction, improvement, renovation, or 37
repair on a nonresidential construction project with respect to 38
one or more trades and who offers, identifies, advertises, or 39
otherwise holds out or represents that the individual or entity 40
is permitted or qualified to perform or have responsibility for 41
the means, method, and manner of construction, improvement, 42
renovation, repair, or maintenance with respect to one or more 43
trades on a nonresidential construction project. 44

(F) "Nonresidential construction project" means the 45
construction or renovation of any building, highway, bridge, 46
utility, or related infrastructure, but does not include any of 47

the following:

(1) An industrialized unit, manufactured home, or a
residential building as defined in section 3781.06 of the
Revised Code;

(2) A building or structure that is incidental to the use
of the land on which the building or structure is located for
agricultural purposes as defined in section 3781.06 of the
Revised Code;

(3) A mobile home as defined in section 4501.01 of the
Revised Code.

(G) "Subcontractor" means any individual or entity who
enters into a contract with a nonresidential construction
contractor or another subcontractor, regardless of tier, to
perform work on a nonresidential construction project.

(H) "Unauthorized alien" means an alien who is not
authorized to be employed as determined in accordance with the
federal "Immigration Reform and Control Act of 1986," 8 U.S.C.
1324a.

Sec. 4151.02. (A) Except as provided in division (C) of
this section, no nonresidential construction contractor,
subcontractor, or labor broker shall fail to verify the
employment eligibility of each employee hired to perform work on
a nonresidential construction project through the e-verify
program. A nonresidential construction contractor shall use e-
verify to confirm the identity and legal working status of each
employee employed by the nonresidential construction contractor.
A subcontractor shall use e-verify to confirm the identity and
legal working status of each employee employed by the
subcontractor. A labor broker shall use e-verify to confirm the

identity and legal working status of each employee employed by 77
the labor broker. 78

(B) A nonresidential construction contractor, 79
subcontractor, or labor broker shall keep a record of the 80
verification required by division (A) of this section for three 81
years after the date of hire or one year after the date the 82
employee's employment is terminated, whichever is later. 83

(C) A nonresidential construction contractor, 84
subcontractor, or labor broker is not required to comply with 85
division (A) of this section if both of the following apply: 86

(1) The nonresidential construction contractor, 87
subcontractor, or labor broker has previously verified an 88
employee's employment eligibility using e-verify. 89

(2) The employer is not required to verify or reverify the 90
employee's eligibility to work under section 101(a)(1) of the 91
federal "Immigration Reform and Control Act of 1986," 8 U.S.C. 92
1324a(b) . 93

Sec. 4151.03. No nonresidential construction contractor, 94
subcontractor, or labor broker shall continue to employ an 95
individual after receiving a notice of final nonconfirmation for 96
that individual from the e-verify program. For purposes of this 97
section, a final nonconfirmation occurs when the contractor, 98
subcontractor, or labor broker receives a case result indicating 99
that an employee's employment eligibility could not be confirmed 100
and instructions that the contractor, subcontractor, or labor 101
broker should close the e-verify case associated with the 102
employee. 103

Sec. 4151.04. (A)(1) The attorney general shall prescribe 104
a complaint form for an individual to allege a violation of 105

section 4151.02 or 4151.03 of the Revised Code. The attorney 106
general shall not require the complainant to list the 107
complainant's social security number on the complaint form or to 108
have the form notarized. A complainant shall submit the 109
complaint to the attorney general. Except as provided in 110
division (B) of this section, the attorney general shall 111
investigate any violation alleged in a prescribed complaint form 112
when the attorney general determines the complaint contains 113
sufficient facts to reasonably conclude that a violation may 114
have occurred. 115

(2) This section does not prohibit an individual from 116
filing an anonymous complaint on a form other than the 117
prescribed complaint form. Except as provided in division (B) of 118
this section, the attorney general may, but is not required to, 119
investigate a violation alleged in a form other than a 120
prescribed form, provided the complaint contains sufficient 121
facts to reasonably conclude that a violation may have occurred. 122

(B) The attorney general shall not investigate a complaint 123
that is based solely on race, color, or national origin. 124

(C) Any local law enforcement officer may assist in 125
investigating a complaint filed under this section. 126

(D) Except as provided in division (G) of this section, if 127
the attorney general conducts an investigation under this 128
section and determines that reasonable evidence exists that a 129
violation of section 4151.02 or 4151.03 of the Revised Code has 130
occurred, the attorney general shall, after providing notice and 131
an opportunity for a hearing in accordance with Chapter 119. of 132
the Revised Code, issue an order that does both of the 133
following: 134

(1) Directs the contractor, subcontractor, or labor broker 135
to provide satisfactory proof that any violation has been 136
corrected; 137

(2) Imposes any penalty that applies under division (E) of 138
this section. 139

(E) (1) Except as otherwise provided in this division, if 140
the attorney general's investigation reveals one or more 141
violations of section 4151.02 of the Revised Code, the attorney 142
general shall order the contractor, subcontractor, or labor 143
broker to pay a fine of two hundred fifty dollars for each 144
violation. Except as otherwise provided in this division, if the 145
attorney general's investigation reveals one or more violations 146
of section 4151.03 of the Revised Code, the attorney general 147
shall order the contractor, subcontractor, or labor broker to 148
pay a fine of five thousand dollars for each violation. 149

(2) Except as otherwise provided in this division, if the 150
attorney general's investigation reveals one or more violations 151
of 4151.02 of the Revised Code and the contractor, 152
subcontractor, or labor broker has been ordered by the attorney 153
general or a court to pay a fine under division (E) (1) of this 154
section during the preceding three years, the attorney general 155
shall order the contractor, subcontractor, or labor broker to 156
pay a fine of one thousand dollars for each violation. Except as 157
provided in this division, if the attorney general's 158
investigation reveals one or more violations of section 4151.03 159
of the Revised Code and the contractor, subcontractor, or labor 160
broker has been ordered by the attorney general or a court to 161
pay a fine under division (E) (1) of this section during the 162
preceding three years, the attorney general shall order the 163
contractor, subcontractor, or labor broker to pay a fine of ten 164

thousand dollars per violation. 165

(3) If the attorney general's investigation reveals one or 166
more violations of section 4151.02 of the Revised Code and the 167
contractor, subcontractor, or labor broker has been ordered by 168
the attorney general or a court to pay a fine under division (E) 169
(2) of this section during the preceding three years, the 170
attorney general shall order the contractor, subcontractor, or 171
labor broker to pay a fine of one thousand five hundred dollars 172
per violation. If the attorney general's investigation reveals 173
one or more violations of section 4151.03 of the Revised Code 174
and the contractor, subcontractor, or labor broker has been 175
ordered by the attorney general or a court to pay a fine under 176
division (E) (2) of this section during the preceding three 177
years, the attorney general shall order the contractor, 178
subcontractor, or labor broker to pay a fine of twenty-five 179
thousand dollars for each violation. 180

(F) If a contractor, subcontractor, or labor broker fails 181
to comply with an order issued by the attorney general under 182
division (D) of this section within thirty days after the 183
attorney general issues the order, the attorney general shall 184
bring a civil action against the contractor, subcontractor, or 185
labor broker in accordance with section 4151.05 of the Revised 186
Code. In the action, the attorney general also may present 187
evidence that the contractor, subcontractor, or labor broker 188
violated section 4151.06 of the Revised Code. 189

(G) The attorney general shall not issue an order under 190
this section or bring a civil action under section 4151.06 of 191
the Revised Code if a violation of section 4151.02 or 4151.03 of 192
the Revised Code was the result of an isolated technical error 193
or a malfunction in the e-verify program. 194

Sec. 4151.05. (A) If a contractor, subcontractor, or labor 195
broker fails to comply with an order issued by the attorney 196
general under division (D) of section 4151.04 of the Revised 197
Code within the period specified in division (F) of that 198
section, the attorney general shall bring a civil action against 199
the contractor, subcontractor, or labor broker in the court of 200
common pleas of the county where the contractor, subcontractor, 201
or labor broker is located or does business or in the court of 202
common pleas of the county where the violation is alleged to 203
have occurred. 204

(B) (1) If the court determines that a contractor, 205
subcontractor, or labor broker violated section 4151.02 or 206
4151.03 of the Revised Code, the court shall do both of the 207
following: 208

(a) Order the contractor, subcontractor, or labor broker 209
to pay any portion of the penalty imposed by the attorney 210
general that the court determines to have been validly imposed 211
based on the evidence presented plus an additional one thousand 212
dollars for each violation; 213

(b) Order that the contractor, subcontractor, or labor 214
broker is not eligible to bid for or participate in any state 215
contract for a period of two years. 216

(2) The court shall provide a copy of an order issued 217
under division (B) (1) of this section to the director of 218
administrative services. 219

(3) After the two-year period described in division (B) (1) 220
(b) of this section has elapsed, a contractor, subcontractor, or 221
labor broker that has been ordered ineligible may be eligible to 222
bid for and participate in state contracts if the contractor, 223

subcontractor, or labor broker files a sworn affidavit with the 224
director that two years or more have elapsed since the order 225
described in division (B) (1) (b) of this section and that the 226
contractor, subcontractor, or labor broker has not violated 227
section 4151.02 or 4151.03 of the Revised Code during the two- 228
year period. 229

(C) (1) The director shall maintain a list of all 230
contractors, subcontractors, and labor brokers ineligible to bid 231
for or participate in any state contract for a period of two 232
years under division (B) (1) (b) of this section. Except as 233
provided in division (C) (2) of this section, the director shall 234
remove a contractor, subcontractor, or labor broker from the 235
list when the two-year period ends. The director also shall 236
maintain a record of all affidavits filed with the director 237
under division (B) (3) of this section. 238

(2) The director shall not remove a contractor, 239
subcontractor, or labor broker from the list maintained under 240
division (C) (1) of this section if the contractor, 241
subcontractor, or labor broker has not paid a fine ordered under 242
this section. 243

(D) The e-verify enforcement fund is created in the state 244
treasury. Fines collected pursuant to this chapter shall be 245
deposited to the credit of the fund. The attorney general shall 246
use the fund to administer and enforce this chapter. 247

Sec. 4151.06. (A) If a court, pursuant to an action 248
brought under section 4151.05 of the Revised Code, determines 249
that a nonresidential construction contractor, subcontractor, or 250
labor broker has knowingly employed an unauthorized alien, the 251
court shall order each appropriate agency to permanently revoke 252
any license issued by the agency and held by the nonresidential 253

construction contractor, subcontractor, or labor broker specific 254
to the business location where the unauthorized alien performed 255
work. If the nonresidential construction contractor, 256
subcontractor, or labor broker does not hold a license specific 257
to the business location where the unauthorized alien performed 258
work, but a license is necessary to operate the nonresidential 259
construction contractor's, subcontractor's, or labor broker's 260
business in general, the court shall order the appropriate 261
agency to permanently revoke all licenses issued by that agency 262
that are held by the nonresidential construction contractor, 263
subcontractor, or labor broker at the nonresidential 264
construction contractor's, subcontractor's, or labor broker's 265
primary place of business. On receipt of the order and 266
notwithstanding any other law to the contrary, the appropriate 267
agency immediately shall revoke the licenses. 268

(B) For purposes of determining whether an employee is an 269
unauthorized alien, a court shall consider only a determination 270
with respect to that alien's immigration status made by the 271
federal government pursuant to the federal "Omnibus Consolidated 272
Appropriations Act, 1997," 8 U.S.C. 1373(c). The federal 273
government's determination creates a rebuttable presumption of 274
the alien's lawful status. The court may take judicial notice of 275
the federal government's determination and may request the 276
federal government to provide automated or testimonial 277
verification pursuant to the federal "Omnibus Consolidated 278
Appropriations Act, 1997," 8 U.S.C. 1373(c). 279

Sec. 4151.07. (A) The attorney general shall conduct 280
periodic reviews of state agencies and political subdivisions to 281
ensure that state agencies and political subdivisions are 282
including within their contracts for the construction or 283
renovation of nonresidential construction projects provisions 284

<u>requiring compliance with sections 4151.02 and 4151.03 of the</u>	285
<u>Revised Code.</u>	286
<u>(B) Each state agency or political subdivision that fails</u>	287
<u>to include provisions requiring compliance with sections 4151.02</u>	288
<u>and 4151.03 of the Revised Code in a contract for the</u>	289
<u>construction or renovation of a nonresidential construction</u>	290
<u>project shall be fined five thousand dollars for each failure.</u>	291