

As Reported by the Senate Workforce Development Committee

136th General Assembly

Regular Session

2025-2026

Sub. H. B. No. 246

Representatives Swearingen, Fischer

Cosponsors: Representatives Williams, Thomas, D., Hall, T., Gross, Johnson, Plummer, Stephens, Abrams, Barhorst, Bird, Brennan, Click, Daniels, Deeter, Demetriou, Denson, Dovilla, Ghanbari, Glassburn, Hall, D., Hiner, Holmes, Hoops, John, King, Kishman, Lampton, LaRe, Lett, Lorenz, Mathews, A., Mathews, T., McClain, McNally, Miller, J., Miller, K., Miller, M., Odioso, Oelslager, Peterson, Richardson, Ritter, Robb Blasdel, Roemer, Salvo, Santucci, Schmidt, Sigrist, Stewart, Sweeney, Synenberg, Thomas, C., Troy, Upchurch, Willis, Young

Senators Koehler, Ingram

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 enact the E-Verify Workforce	3
Integrity Act requiring certain construction	4
industry employers to use E-verify and to	5
sanction specified hiring practices in the	6
industry.	7

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

Section 1. That sections 4151.01, 4151.02, 4151.03,	8
4151.04, 4151.05, 4151.06, and 4151.07 of the Revised Code be	9
enacted to read as follows:	10

<u>Sec. 4151.01.</u> As used in this chapter:	11
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(A) <u>"Alien" means an individual who is not a United States</u>	12
<u>citizen or a United States national.</u>	13

(B) "Business day" means a day of the week excluding 14
Saturday, Sunday, and a legal holiday as defined under section 15
1.14 of the Revised Code. 16

(C) "Employee" means any individual who performs services 17
for a contractor, subcontractor, or labor broker who satisfies 18
both of the following conditions: 19

(1) The individual is subject to the contractor's, 20
subcontractor's, or labor broker's direction and control, not 21
only as to the result accomplished but also as to the details of 22
how the work is performed; 23

(2) The individual receives compensation in the form of 24
wages, salary, or any other form of remuneration in exchange for 25
services rendered. 26

(D) "E-verify" means the employment verification program 27
as jointly administered by the United States department of 28
homeland security and the social security administration under 29
section 101(a)(1) of the federal "Immigration Reform and Control 30
Act of 1986," 8 U.S.C. 1324a, or any of its successor programs. 31

(E) (1) "Labor broker" means any individual or entity who 32
hires an employee and supplies the employee's labor to a 33
nonresidential construction contractor or a subcontractor, 34
regardless of tier, through the use of a contract. 35

(2) "Labor broker" does not include any governmental 36
entity or labor organization as defined in section 3517.01 of 37
the Revised Code. 38

(F) "Nonresidential construction contractor" means any 39
individual or entity that has responsibility for the means, 40
method, and manner of construction, improvement, renovation, or 41
repair on a nonresidential construction project with respect to 42

one or more trades and who offers, identifies, advertises, or 43
otherwise holds out or represents that the individual or entity 44
is permitted or qualified to perform or have responsibility for 45
the means, method, and manner of construction, improvement, 46
renovation, repair, or maintenance with respect to one or more 47
trades on a nonresidential construction project. 48

(G) "Nonresidential construction project" means the 49
construction or renovation of any building, highway, bridge, 50
utility, or related infrastructure, but does not include any of 51
the following: 52

(1) An industrialized unit, manufactured home, or a 53
residential building as defined in section 3781.06 of the 54
Revised Code; 55

(2) A building or structure that is incidental to the use 56
of the land on which the building or structure is located for 57
agricultural purposes as defined in section 3781.06 of the 58
Revised Code; 59

(3) A mobile home as defined in section 4501.01 of the 60
Revised Code. 61

(H) "Subcontractor" means any individual or entity who 62
enters into a contract with a nonresidential construction 63
contractor or another subcontractor, regardless of tier, to 64
perform work on a nonresidential construction project. 65

(I) "Unauthorized alien" means an alien who is not 66
authorized to be employed as determined in accordance with the 67
federal "Immigration Reform and Control Act of 1986," 8 U.S.C. 68
1324a. 69

Sec. 4151.02. (A) Except as provided in division (C) of 70
this section, no nonresidential construction contractor, 71

subcontractor, or labor broker shall fail to verify the 72
employment eligibility of each employee hired to perform work on 73
a nonresidential construction project through the e-verify 74
program. A nonresidential construction contractor shall use e- 75
verify to confirm the identity and legal working status of each 76
employee employed by the nonresidential construction contractor. 77
A subcontractor shall use e-verify to confirm the identity and 78
legal working status of each employee employed by the 79
subcontractor. A labor broker shall use e-verify to confirm the 80
identity and legal working status of each employee employed by 81
the labor broker. 82

(B) A nonresidential construction contractor, 83
subcontractor, or labor broker shall keep a record of the 84
verification required by division (A) of this section for three 85
years after the date of hire or one year after the date the 86
employee's employment is terminated, whichever is later. 87

(C) A nonresidential construction contractor, 88
subcontractor, or labor broker is not required to comply with 89
division (A) of this section if both of the following apply: 90

(1) The nonresidential construction contractor, 91
subcontractor, or labor broker has previously verified an 92
employee's employment eligibility using e-verify. 93

(2) The employer is not required to verify or reverify the 94
employee's eligibility to work under section 101(a)(1) of the 95
federal "Immigration Reform and Control Act of 1986," 8 U.S.C. 96
1324a(b) . 97

Sec. 4151.03. No nonresidential construction contractor, 98
subcontractor, or labor broker shall continue to employ an 99
individual after receiving a notice of final nonconfirmation for 100

that individual from the e-verify program. For purposes of this 101
section, a final nonconfirmation occurs when the contractor, 102
subcontractor, or labor broker receives a case result indicating 103
that an employee's employment eligibility could not be confirmed 104
and instructions that the contractor, subcontractor, or labor 105
broker should close the e-verify case associated with the 106
employee. 107

Sec. 4151.04. (A) (1) The attorney general shall prescribe 108
a complaint form for an individual to allege a violation of 109
section 4151.02 or 4151.03 of the Revised Code. The attorney 110
general shall not require the complainant to list the 111
complainant's social security number on the complaint form or to 112
have the form notarized. A complainant shall submit the 113
complaint to the attorney general. Except as provided in 114
division (B) of this section, the attorney general shall 115
investigate any violation alleged in a prescribed complaint form 116
when the attorney general determines the complaint contains 117
sufficient facts to reasonably conclude that a violation may 118
have occurred. 119

(2) This section does not prohibit an individual from 120
filing an anonymous complaint on a form other than the 121
prescribed complaint form. Except as provided in division (B) of 122
this section, the attorney general may, but is not required to, 123
investigate a violation alleged in a form other than a 124
prescribed form, provided the complaint contains sufficient 125
facts to reasonably conclude that a violation may have occurred. 126

(B) The attorney general shall not investigate a complaint 127
that is based solely on race, color, or national origin. 128

(C) Any local law enforcement officer may assist in 129
investigating a complaint filed under this section. 130

(D) Except as provided in division (I) of this section, if 131
the attorney general conducts an investigation under this 132
section and determines that reasonable evidence exists that a 133
violation of section 4151.02 or 4151.03 of the Revised Code has 134
occurred, the attorney general shall issue a notice of violation 135
that does all of the following: 136

(1) Directs the contractor, subcontractor, or labor broker 137
to provide satisfactory proof to the attorney general not later 138
than ten days after the notice is issued that individuals 139
employed by the contractor, subcontractor, or labor broker are 140
authorized to be employed under the federal "Immigration Reform 141
and Control Act of 1986," 8 U.S.C. 1324a; 142

(2) Specifies any penalty assessed under division (E) of 143
this section based on the attorney general's determination; 144

(3) If the attorney general determined it is likely the 145
contractor, subcontractor, or labor broker committed two or more 146
willful violations of section 4151.02 or 4151.03 of the Revised 147
Code, informs the contractor, subcontractor, or labor broker 148
that the contractor, subcontractor, or labor broker is 149
disqualified from bidding on or participating in any future 150
state contract for a period not to exceed two years; 151

(4) Notifies the contractor, subcontractor, or labor 152
broker of the contractor's, subcontractor's, or labor broker's 153
right to request a hearing described in division (F) of this 154
section. 155

(E) (1) Except as otherwise provided in this division, if 156
the attorney general's investigation reveals one or more 157
violations of section 4151.02 of the Revised Code, the attorney 158
general shall assess a fine of two hundred fifty dollars for 159

each violation against the contractor, subcontractor, or labor 160
broker. Except as otherwise provided in this division, if the 161
attorney general's investigation reveals one or more violations 162
of section 4151.03 of the Revised Code, the attorney general 163
shall assess a fine of five thousand dollars for each violation 164
against the contractor, subcontractor, or labor broker. 165

(2) Except as otherwise provided in this division, if the 166
attorney general's investigation reveals one or more violations 167
of 4151.02 of the Revised Code and the contractor, 168
subcontractor, or labor broker has been ordered by the attorney 169
general or a court to pay a fine under division (E) (1) of this 170
section during the preceding three years, the attorney general 171
shall assess a fine of one thousand dollars for each violation 172
against the contractor, subcontractor, or labor broker. Except 173
as provided in this division, if the attorney general's 174
investigation reveals one or more violations of section 4151.03 175
of the Revised Code and the contractor, subcontractor, or labor 176
broker has been ordered by the attorney general or a court to 177
pay a fine under division (E) (1) of this section during the 178
preceding three years, the attorney general shall assess a fine 179
of ten thousand dollars per violation against the contractor, 180
subcontractor, or labor broker. 181

(3) If the attorney general's investigation reveals one or 182
more violations of section 4151.02 of the Revised Code and the 183
contractor, subcontractor, or labor broker has been ordered by 184
the attorney general or a court to pay a fine under division (E) 185
(2) of this section during the preceding three years, the 186
attorney general shall assess a fine of one thousand five 187
hundred dollars per violation against the contractor, 188
subcontractor, or labor broker. If the attorney general's 189
investigation reveals one or more violations of section 4151.03 190

of the Revised Code and the contractor, subcontractor, or labor 191
broker has been ordered by the attorney general or a court to 192
pay a fine under division (E)(2) of this section during the 193
preceding three years, the attorney general shall assess a fine 194
of twenty-five thousand dollars for each violation against the 195
contractor, subcontractor, or labor broker. 196

(F) Notwithstanding the thirty-day period to request a 197
hearing described in section 119.07 of the Revised Code, a 198
contractor, subcontractor, or labor broker may request an 199
adjudicatory hearing not more than ten business days after being 200
served a notice of violation under division (D) of this section. 201
A contractor, subcontractor, or labor broker shall send the 202
request to the attorney general, who shall forward the request 203
to the director of commerce. The director, or the director's 204
designee, shall conduct a hearing under this division. Except as 205
provided in this division, the director or designee shall comply 206
with Chapter 119. of the Revised Code. A determination made by 207
the director or the director's designee is a final order that 208
may be appealed under section 119.12 of the Revised Code. 209

If a contractor, subcontractor, or labor broker fails to 210
request a hearing within the time specified in this division, a 211
notice of violation issued under division (D) of this section 212
becomes an enforceable order against the contractor, 213
subcontractor, or labor broker. 214

(G) (1) If a notice of violation that includes a 215
disqualification described in division (D)(3) of this section 216
becomes an enforceable order under division (F) of this section, 217
the attorney general shall provide a copy of the order to the 218
director of administrative services. The director shall add the 219
contractor, subcontractor, or labor broker to the list 220

maintained by the director under division (C) (1) of section 221
4151.05 of the Revised Code. 222

Except as provided in division (G) (2) of this section, 223
after the period of disqualification in the order ends, the 224
contractor, subcontractor, or labor broker may be eligible to 225
bid for and participate in state contracts if the contractor, 226
subcontractor, or labor broker files a sworn affidavit with the 227
director of administrative services stating that the period of 228
disqualification has ended and that the contractor, 229
subcontractor, or labor broker has not violated section 4151.02 230
or 4151.03 of the Revised Code during the period of 231
disqualification. 232

(2) The director shall not remove a contractor, 233
subcontractor, or labor broker from the list maintained under 234
division (C) (1) of section 4151.05 of the Revised Code if the 235
contractor, subcontractor, or labor broker has not paid a fine 236
assessed under this section. 237

(H) If a contractor, subcontractor, or labor broker fails 238
to comply with an order that has become enforceable under 239
division (F) of this section within thirty days after the order 240
is enforceable, the attorney general shall bring a civil action 241
against the contractor, subcontractor, or labor broker in 242
accordance with section 4151.05 of the Revised Code. In the 243
action, the attorney general also may present evidence that the 244
contractor, subcontractor, or labor broker violated section 245
4151.06 of the Revised Code. 246

(I) The attorney general shall not issue a notice of 247
violation under this section or bring a civil action under 248
section 4151.06 of the Revised Code if a violation of section 249
4151.02 or 4151.03 of the Revised Code was the result of an 250

isolated technical error or a malfunction in the e-verify 251
program. 252

Sec. 4151.05. (A) If a contractor, subcontractor, or labor 253
broker fails to comply with an order that has become enforceable 254
against the contractor, subcontractor, or labor broker under 255
division (F) of section 4151.04 of the Revised Code, the 256
attorney general shall bring a civil action against the 257
contractor, subcontractor, or labor broker in the court of 258
common pleas of the county where the contractor, subcontractor, 259
or labor broker is located or does business or in the court of 260
common pleas of the county where the violation is alleged to 261
have occurred. 262

(B) (1) If the court determines that a contractor, 263
subcontractor, or labor broker violated section 4151.02 or 264
4151.03 of the Revised Code, the court shall do both of the 265
following: 266

(a) Order the contractor, subcontractor, or labor broker 267
to pay any portion of the penalty imposed by the attorney 268
general that the court determines to have been validly imposed 269
based on the evidence presented plus an additional one thousand 270
dollars for each violation; 271

(b) Order that the contractor, subcontractor, or labor 272
broker is not eligible to bid for or participate in any future 273
state contract for a period of up to two years. 274

(2) The court shall provide a copy of an order issued 275
under division (B) (1) of this section to the director of 276
administrative services. 277

(3) After the period of disqualification described in 278
division (B) (1) (b) of this section has elapsed, a contractor, 279

subcontractor, or labor broker that has been ordered ineligible 280
may be eligible to bid for and participate in state contracts if 281
the contractor, subcontractor, or labor broker files a sworn 282
affidavit with the director that the period of disqualification 283
has elapsed and that the contractor, subcontractor, or labor 284
broker has not violated section 4151.02 or 4151.03 of the 285
Revised Code during that period. 286

(C) (1) The director shall maintain a list of all 287
contractors, subcontractors, and labor brokers ineligible to bid 288
for or participate in any state contract for a period of two 289
years under division (B) (1) (b) of this section. Except as 290
provided in division (C) (2) of this section, the director shall 291
remove a contractor, subcontractor, or labor broker from the 292
list when the two-year period ends. The director also shall 293
maintain a record of all affidavits filed with the director 294
under division (B) (3) of this section. 295

(2) The director shall not remove a contractor, 296
subcontractor, or labor broker from the list maintained under 297
division (C) (1) of this section if the contractor, 298
subcontractor, or labor broker has not paid a fine ordered under 299
this section. 300

(D) The e-verify enforcement fund is created in the state 301
treasury. Fines collected pursuant to this chapter shall be 302
deposited to the credit of the fund. The attorney general shall 303
use the fund to administer and enforce this chapter. 304

Sec. 4151.06. (A) If a court, pursuant to an action 305
brought under section 4151.05 of the Revised Code, determines 306
that a nonresidential construction contractor, subcontractor, or 307
labor broker has knowingly employed an unauthorized alien, the 308
court shall order each appropriate agency to permanently revoke 309

any license issued by the agency and held by the nonresidential 310
construction contractor, subcontractor, or labor broker specific 311
to the business location where the unauthorized alien performed 312
work. If the nonresidential construction contractor, 313
subcontractor, or labor broker does not hold a license specific 314
to the business location where the unauthorized alien performed 315
work, but a license is necessary to operate the nonresidential 316
construction contractor's, subcontractor's, or labor broker's 317
business in general, the court shall order the appropriate 318
agency to permanently revoke all licenses issued by that agency 319
that are held by the nonresidential construction contractor, 320
subcontractor, or labor broker at the nonresidential 321
construction contractor's, subcontractor's, or labor broker's 322
primary place of business. On receipt of the order and 323
notwithstanding any other law to the contrary, the appropriate 324
agency immediately shall revoke the licenses. 325

(B) For purposes of determining whether an employee is an 326
unauthorized alien, a court shall consider only a determination 327
with respect to that alien's immigration status made by the 328
federal government pursuant to the federal "Omnibus Consolidated 329
Appropriations Act, 1997," 8 U.S.C. 1373(c). The federal 330
government's determination creates a rebuttable presumption of 331
the alien's lawful status. The court may take judicial notice of 332
the federal government's determination and may request the 333
federal government to provide automated or testimonial 334
verification pursuant to the federal "Omnibus Consolidated 335
Appropriations Act, 1997," 8 U.S.C. 1373(c). 336

Sec. 4151.07. (A) No state agency shall fail to include in 337
a contract for the construction or renovation of a 338
nonresidential construction project provisions requiring 339
compliance with sections 4151.02 and 4151.03 of the Revised 340

Code. 341

(B) The attorney general shall conduct periodic reviews of 342
state agencies to ensure that state agencies are including 343
within their contracts for the construction or renovation of 344
nonresidential construction projects provisions that comply with 345
division (A) of this section. 346

(C) The attorney general shall notify a state agency and 347
the director of administrative services of any contract for the 348
construction or renovation of a nonresidential construction 349
project the attorney general determines violates division (A) of 350
this section. In the notice, the attorney general shall inform 351
the state agency and the director of the state agency's duty 352
under division (A) of this section. 353

(D) Each state agency found in violation of division (A) 354
of this section shall, for one year after the attorney general 355
provides the notice required under division (C) of this section, 356
submit any contract for the construction or renovation of a 357
nonresidential construction project to the director of 358
administrative services. The director shall promptly review the 359
proposed contract and determine whether the state agency 360
complied with division (A) of this section. The director shall 361
notify the agency of the director's determination and, in the 362
event the proposed contract does not contain the required 363
provisions, instruct the state agency to include the provisions 364
in a revised draft of the proposed contract. 365

Section 2. This act shall be known as the E-Verify 366
Workforce Integrity Act. 367