

As Introduced

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H. B. No. 921

Representatives Williams, Swearingen

To amend sections 4151.01, 4151.02, 4151.03, 1
4151.04, 4151.05, 4151.06, and 4151.07 of the 2
Revised Code to require additional Ohio 3
employers to use E-verify and to prohibit 4
certain employment practices. 5

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

Section 1. That sections 4151.01, 4151.02, 4151.03, 6
4151.04, 4151.05, 4151.06, and 4151.07 of the Revised Code be 7
amended to read as follows: 8

Sec. 4151.01. As used in this chapter: 9

(A) "Alien" means an individual who is not a United States 10
citizen or a United States national. 11

(B) "Business day" means a day of the week excluding 12
Saturday, Sunday, and a legal holiday as defined under section 13
1.14 of the Revised Code. 14

(C) ~~"Employee"~~ "Covered employee" means ~~any~~ all of the 15
following: 16

(1) Any individual who performs services for a 17
construction contractor, subcontractor, or labor broker who 18
satisfies both of the following conditions: 19

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

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

(2) A child care staff member as defined in section 27
5104.01 of the Revised Code; 28

(3) Any individual employed in any school, college, or 29
university; 30

(4) Any individual employed by the state or any political 31
subdivision of the state. 32

(D) "E-verify" means the employment verification program 33
as jointly administered by the United States department of 34
homeland security and the social security administration under 35
section 101(a)(1) of the federal "Immigration Reform and Control 36
Act of 1986," 8 U.S.C. 1324a, or any of its successor programs. 37

(E) (1) "Labor broker" means any individual or entity who 38
hires ~~an employee~~ a covered employee described in division (C) 39
(1) of this section and supplies the employee's labor to a 40
~~nonresidential~~ construction contractor or a subcontractor, 41
regardless of tier, through the use of a contract. 42

(2) "Labor broker" does not include any governmental 43
entity or labor organization as defined in section 3517.01 of 44
the Revised Code. 45

(F) ~~"Nonresidential construction~~ Construction contractor" 46
means any individual or entity that has responsibility for the 47

means, method, and manner of construction, improvement, 48
renovation, or repair on a ~~nonresidential~~ construction project 49
with respect to one or more trades and who offers, identifies, 50
advertises, or otherwise holds out or represents that the 51
individual or entity is permitted or qualified to perform or 52
have responsibility for the means, method, and manner of 53
construction, improvement, renovation, repair, or maintenance 54
with respect to one or more trades on a ~~nonresidential~~ 55
construction project. 56

(G) "~~Nonresidential construction~~ Construction project" 57
means the construction or renovation of any building, highway, 58
bridge, utility, or related infrastructure, ~~but does not include~~ 59
~~any of the following:~~ 60

~~(1) An industrialized unit, manufactured home, or a 61
residential building as defined in section 3781.06 of the 62
Revised Code;~~ 63

~~(2) A building or structure that is incidental to the use 64
of the land on which the building or structure is located for 65
agricultural purposes as defined in section 3781.06 of the 66
Revised Code;~~ 67

~~(3) A mobile home as defined in section 4501.01 of the 68
Revised Code.~~ 69

(H) "Subcontractor" means any individual or entity who 70
enters into a contract with a ~~nonresidential~~ construction 71
contractor or another subcontractor, regardless of tier, to 72
perform work on a ~~nonresidential~~ construction project. 73

(I) "Unauthorized alien" means an alien who is not 74
authorized to be employed as determined in accordance with the 75
federal "Immigration Reform and Control Act of 1986," 8 U.S.C. 76

1324a.	77
<u>(J) "Covered employer" means any person who has one or</u>	78
<u>more covered employees. "Covered employer" includes an agent of</u>	79
<u>a covered employer.</u>	80
<u>(K) "School" includes all of the following:</u>	81
<u>(1) A preschool as defined in section 2950.034 of the</u>	82
<u>Revised Code;</u>	83
<u>(2) A school operated by a city, local, or exempted</u>	84
<u>village school district, a joint vocational school district, a</u>	85
<u>community school established under Chapter 3314., a STEM school</u>	86
<u>established under Chapter 3326., or a college-preparatory</u>	87
<u>boarding school established under Chapter 3328. of the Revised</u>	88
<u>Code;</u>	89
<u>(3) A chartered nonpublic school as defined in section</u>	90
<u>3310.01 of the Revised Code.</u>	91
Sec. 4151.02. (A) Except as provided in division (C) of	92
this section, no nonresidential construction contractor,	93
subcontractor, or labor broker <u>covered employer</u> shall fail to	94
verify the employment eligibility of each <u>covered</u> employee hired	95
to perform work on a nonresidential construction project through	96
the e-verify program. A nonresidential	97
<u>With respect to a covered employee described in division</u>	98
<u>(C) (1) of section 4151.01 of the Revised Code, all of the</u>	99
<u>following apply:</u>	100
<u>(1) A construction contractor shall use e-verify to</u>	101
confirm the identity and legal working status of each <u>covered</u>	102
employee employed by the nonresidential construction contractor.	103
A	104

(2) A subcontractor shall use e-verify to confirm the identity and legal working status of each covered employee employed by the subcontractor. ~~A~~

(3) A labor broker shall use e-verify to confirm the identity and legal working status of each covered employee employed by the labor broker.

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

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

(1) ~~The nonresidential construction contractor, subcontractor, or labor broker~~ covered employer has previously verified ~~an~~ a covered employee's employment eligibility using e-verify.

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

Sec. 4151.03. No ~~nonresidential construction contractor, subcontractor, or labor broker~~ covered employer shall continue to employ an individual after receiving a notice of final nonconfirmation for that individual from the e-verify program. For purposes of this section, a final nonconfirmation occurs

when the ~~contractor, subcontractor, or labor broker~~ covered 134
employer receives a case result indicating that ~~an~~ a covered 135
employee's employment eligibility could not be confirmed and 136
instructions that the ~~contractor, subcontractor, or labor broker~~ 137
covered employer should close the e-verify case associated with 138
the covered employee. 139

Sec. 4151.04. (A) (1) The attorney general shall prescribe 140
a complaint form for an individual to allege a violation of 141
section 4151.02 or 4151.03 of the Revised Code. The attorney 142
general shall not require the complainant to list the 143
complainant's social security number on the complaint form or to 144
have the form notarized. A complainant shall submit the 145
complaint to the attorney general. Except as provided in 146
division (B) of this section, the attorney general shall 147
investigate any violation alleged in a prescribed complaint form 148
when the attorney general determines the complaint contains 149
sufficient facts to reasonably conclude that a violation may 150
have occurred. 151

(2) This section does not prohibit an individual from 152
filing an anonymous complaint on a form other than the 153
prescribed complaint form. Except as provided in division (B) of 154
this section, the attorney general may, but is not required to, 155
investigate a violation alleged in a form other than a 156
prescribed form, provided the complaint contains sufficient 157
facts to reasonably conclude that a violation may have occurred. 158

(B) The attorney general shall not investigate a complaint 159
that is based solely on race, color, or national origin. 160

(C) Any local law enforcement officer may assist in 161
investigating a complaint filed under this section. 162

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

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

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

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

(4) Notifies the ~~contractor, subcontractor, or labor broker~~ covered employer of the ~~contractor's, subcontractor's, or labor broker's~~ covered employer's right to request a hearing described in division (F) of this section.

(E) (1) Except as otherwise provided in this division, if the attorney general's investigation reveals one or more

violations of section 4151.02 of the Revised Code, the attorney 192
general shall assess a fine of two hundred fifty dollars for 193
each violation against the ~~contractor, subcontractor, or labor-~~ 194
~~broker~~ covered employer. Except as otherwise provided in this 195
division, if the attorney general's investigation reveals one or 196
more violations of section 4151.03 of the Revised Code, the 197
attorney general shall assess a fine of five thousand dollars 198
for each violation against the ~~contractor, subcontractor, or-~~ 199
~~labor broker~~ covered employer. 200

(2) Except as otherwise provided in this division, if the 201
attorney general's investigation reveals one or more violations 202
of section 4151.02 of the Revised Code and the ~~contractor,~~ 203
~~subcontractor, or labor broker~~ covered employer has been ordered 204
by the attorney general or a court to pay a fine under division 205
(E) (1) of this section during the preceding three years, the 206
attorney general shall assess a fine of one thousand dollars for 207
each violation against the ~~contractor, subcontractor, or labor-~~ 208
~~broker~~ covered employer. Except as provided in this division, if 209
the attorney general's investigation reveals one or more 210
violations of section 4151.03 of the Revised Code and the 211
~~contractor, subcontractor, or labor broker~~ covered employer has 212
been ordered by the attorney general or a court to pay a fine 213
under division (E) (1) of this section during the preceding three 214
years, the attorney general shall assess a fine of ten thousand 215
dollars per violation against the ~~contractor, subcontractor, or-~~ 216
~~labor broker~~ covered employer. 217

(3) If the attorney general's investigation reveals one or 218
more violations of section 4151.02 of the Revised Code and the 219
~~contractor, subcontractor, or labor broker~~ covered employer has 220
been ordered by the attorney general or a court to pay a fine 221
under division (E) (2) of this section during the preceding three 222

years, the attorney general shall assess a fine of one thousand 223
five hundred dollars per violation against the ~~contractor,~~ 224
~~subcontractor, or labor broker~~ covered employer. If the attorney 225
general's investigation reveals one or more violations of 226
section 4151.03 of the Revised Code and the ~~contractor,~~ 227
~~subcontractor, or labor broker~~ covered employer has been ordered 228
by the attorney general or a court to pay a fine under division 229
(E) (2) of this section during the preceding three years, the 230
attorney general shall assess a fine of twenty-five thousand 231
dollars for each violation against the ~~contractor,~~ 232
~~subcontractor, or labor broker~~ covered employer. 233

(F) Notwithstanding the thirty-day period to request a 234
hearing described in section 119.07 of the Revised Code, a 235
~~contractor, subcontractor, or labor broker~~ covered employer may 236
request an adjudicatory hearing not more than ten business days 237
after being served a notice of violation under division (D) of 238
this section. A ~~contractor, subcontractor, or labor broker~~ 239
covered employer shall send the request to the attorney general, 240
who shall forward the request to the director of commerce. The 241
director, or the director's designee, shall conduct a hearing 242
under this division. Except as provided in this division, the 243
director or designee shall comply with Chapter 119. of the 244
Revised Code. A determination made by the director or the 245
director's designee is a final order that may be appealed under 246
section 119.12 of the Revised Code. 247

If a ~~contractor, subcontractor, or labor broker~~ covered 248
employer fails to request a hearing within the time specified in 249
this division, a notice of violation issued under division (D) 250
of this section becomes an enforceable order against the 251
~~contractor, subcontractor, or labor broker~~ covered employer. 252

(G) (1) If a notice of violation that includes a 253
disqualification described in division (D) (3) of this section 254
becomes an enforceable order under division (F) of this section, 255
the attorney general shall provide a copy of the order to the 256
director of administrative services. The director shall add the 257
~~contractor, subcontractor, or labor broker~~ covered employer to 258
the list maintained by the director under division (C) (1) of 259
section 4151.05 of the Revised Code. 260

Except as provided in division (G) (2) of this section, 261
after the period of disqualification in the order ends, the 262
~~contractor, subcontractor, or labor broker~~ covered employer may 263
be eligible to bid for and participate in state contracts if the 264
~~contractor, subcontractor, or labor broker~~ covered employer 265
files a sworn affidavit with the director of administrative 266
services stating that the period of disqualification has ended 267
and that the ~~contractor, subcontractor, or labor broker~~ covered 268
employer has not violated section 4151.02 or 4151.03 of the 269
Revised Code during the period of disqualification. 270

(2) The director shall not remove a ~~contractor,~~ 271
~~subcontractor, or labor broker~~ covered employer from the list 272
maintained under division (C) (1) of section 4151.05 of the 273
Revised Code if the ~~contractor, subcontractor, or labor broker~~ 274
covered employer has not paid a fine assessed under this 275
section. 276

(H) If a ~~contractor, subcontractor, or labor broker~~ 277
covered employer fails to comply with an order that has become 278
enforceable under division (F) of this section within thirty 279
days after the order is enforceable, the attorney general shall 280
bring a civil action against the ~~contractor, subcontractor, or~~ 281
~~labor broker~~ covered employer in accordance with section 4151.05 282

of the Revised Code. In the action, the attorney general also 283
may present evidence that the ~~contractor, subcontractor, or~~ 284
~~labor broker~~ covered employer violated section 4151.06 of the 285
Revised Code. 286

(I) The attorney general shall not issue a notice of 287
violation under this section or bring a civil action under 288
section 4151.06 of the Revised Code if a violation of section 289
4151.02 or 4151.03 of the Revised Code was the result of an 290
isolated technical error or a malfunction in the e-verify 291
program. 292

Sec. 4151.05. (A) If a ~~contractor, subcontractor, or labor~~ 293
~~broker~~ covered employer fails to comply with an order that has 294
become enforceable against the ~~contractor, subcontractor, or~~ 295
~~labor broker~~ covered employer under division (F) of section 296
4151.04 of the Revised Code, the attorney general shall bring a 297
civil action against the ~~contractor, subcontractor, or labor~~ 298
~~broker~~ covered employer in the court of common pleas of the 299
county where the ~~contractor, subcontractor, or labor broker~~ 300
covered employer is located or does business or in the court of 301
common pleas of the county where the violation is alleged to 302
have occurred. 303

(B) (1) If the court determines that a ~~contractor,~~ 304
~~subcontractor, or labor broker~~ covered employer violated section 305
4151.02 or 4151.03 of the Revised Code, the court shall do both 306
of the following: 307

(a) Order the ~~contractor, subcontractor, or labor broker~~ 308
covered employer to pay any portion of the penalty imposed by 309
the attorney general that the court determines to have been 310
validly imposed based on the evidence presented plus an 311
additional one thousand dollars for each violation; 312

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

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

(3) After the period of disqualification described in division (B)(1)(b) of this section has elapsed, a ~~contractor, subcontractor, or labor broker~~ covered employer that has been ordered ineligible may be eligible to bid for and participate in state contracts if the ~~contractor, subcontractor, or labor broker~~ covered employer files a sworn affidavit with the director that the period of disqualification has elapsed and that the ~~contractor, subcontractor, or labor broker~~ covered employer has not violated section 4151.02 or 4151.03 of the Revised Code during that period.

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

(2) The director shall not remove a ~~contractor, subcontractor, or labor broker~~ covered employer from the list maintained under division (C)(1) of this section if the

~~contractor, subcontractor, or labor broker~~ covered employer has 343
not paid a fine ordered under this section. 344

(D) The e-verify enforcement fund is created in the state 345
treasury. Fines collected pursuant to this chapter shall be 346
deposited to the credit of the fund. The attorney general shall 347
use the fund to administer and enforce this chapter. 348

Sec. 4151.06. (A) If a court, pursuant to an action 349
brought under section 4151.05 of the Revised Code, determines 350
that a ~~nonresidential construction contractor, subcontractor, or~~ 351
~~labor broker~~ covered employer has knowingly employed an 352
unauthorized alien, the court shall order each appropriate 353
agency to permanently revoke any license issued by the agency 354
and held by the ~~nonresidential construction contractor,~~ 355
~~subcontractor, or labor broker~~ covered employer specific to the 356
business location where the unauthorized alien performed work. 357
If the ~~nonresidential construction contractor, subcontractor, or~~ 358
~~labor broker~~ covered employer does not hold a license specific 359
to the business location where the unauthorized alien performed 360
work, but a license is necessary to operate the ~~nonresidential-~~ 361
~~construction contractor's, subcontractor's, or labor broker's~~ 362
~~covered employer's~~ business in general, the court shall order 363
the appropriate agency to permanently revoke all licenses issued 364
by that agency that are held by the ~~nonresidential construction-~~ 365
~~contractor, subcontractor, or labor broker~~ covered employer at 366
the ~~nonresidential construction contractor's, subcontractor's,~~ 367
~~or labor broker's~~ covered employer's primary place of business. 368
On receipt of the order and notwithstanding any other law to the 369
contrary, the appropriate agency immediately shall revoke the 370
licenses. 371

(B) For purposes of determining whether ~~an~~ a covered 372

employee is an unauthorized alien, a court shall consider only a 373
determination with respect to that alien's immigration status 374
made by the federal government pursuant to the federal "Omnibus 375
Consolidated Appropriations Act, 1997," 8 U.S.C. 1373(c). The 376
federal government's determination creates a rebuttable 377
presumption of the alien's lawful status. The court may take 378
judicial notice of the federal government's determination and 379
may request the federal government to provide automated or 380
testimonial verification pursuant to the federal "Omnibus 381
Consolidated Appropriations Act, 1997," 8 U.S.C. 1373(c). 382

Sec. 4151.07. (A) No state agency shall fail to include in 383
a contract ~~for the construction or renovation of a~~ 384
~~nonresidential construction project entered into between the~~ 385
~~agency and a covered employer on or after the effective date of~~ 386
~~this amendment~~ provisions requiring compliance with sections 387
4151.02 and 4151.03 of the Revised Code. 388

(B) The attorney general shall conduct periodic reviews of 389
state agencies to ensure that state agencies are including 390
within their contracts ~~for the construction or renovation of~~ 391
~~nonresidential construction projects~~with covered employers 392
provisions that comply with division (A) of this section. 393

(C) The attorney general shall notify a state agency and 394
the director of administrative services of any contract ~~for the~~ 395
~~construction or renovation of a nonresidential construction~~ 396
~~project~~ the attorney general determines violates division (A) of 397
this section. In the notice, the attorney general shall inform 398
the state agency and the director of the state agency's duty 399
under division (A) of this section. 400

(D) Each state agency found in violation of division (A) 401
of this section shall, for one year after the attorney general 402

provides the notice required under division (C) of this section, 403
submit any contract ~~for the construction or renovation of a~~ 404
~~nonresidential construction project~~ with a covered employer to 405
the director of administrative services. The director shall 406
promptly review the proposed contract and determine whether the 407
state agency complied with division (A) of this section. The 408
director shall notify the agency of the director's determination 409
and, in the event the proposed contract does not contain the 410
required provisions, instruct the state agency to include the 411
provisions in a revised draft of the proposed contract. 412

Section 2. That existing sections 4151.01, 4151.02, 413
4151.03, 4151.04, 4151.05, 4151.06, and 4151.07 of the Revised 414
Code are hereby repealed. 415