

By: Representatives Lott, Weathersby, Rogers (61st), Jennings, Staples, Palazzo, Gunn, Hudson, Chism, Gregory, Rogers (14th), Akins, Vince, Nicholson, Moore To: Labor

HOUSE BILL NO. 1379

1 AN ACT TO CREATE THE MISSISSIPPI EMPLOYMENT PROTECTION ACT;
2 TO PROVIDE PROCEDURES FOR NEWLY HIRED EMPLOYEES AND THEIR
3 EMPLOYERS; TO PROVIDE PENALTIES FOR VIOLATIONS OF THIS ACT; AND
4 FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 **SECTION 1. TITLE.** This act shall be known as the

7 "Mississippi Employment Protection Act."

8 **SECTION 2. EMPLOYEE VERIFICATION.** Any newly hired employee
9 shall present a valid social security number to the employer on
10 the first day the employee is hired.

11 The employer shall verify such employee's social security
12 number using the federal Basic Employment Verification Pilot or
13 another federal employee verification program that matches social
14 security numbers with a person's name within three (3) business
15 days of the employee's first day of employment. The employer
16 shall follow the guidelines set forth by the Memorandum of
17 Understanding associated with the verification program as
18 authorized by federal statute when using the Basic Employment
19 Verification Pilot. If the employee's name and social security
20 number do not match, the following procedure shall be followed:

21 (a) The employer shall notify the employee within five
22 (5) working days of the nonmatch report and provide a letter of
23 confirmation to the employee to be taken to the Social Security
24 Administration in the event that the employee desires to contest
25 the nonmatch report;

26 (b) If an employee desires to contest a nonmatch
27 report, the employee shall notify the employer within five (5)
28 working days of the employer's notification to the employee of the

29 nonmatch and provide the letter of confirmation to the Social
30 Security Administration within eight (8) days of notifying the
31 employer;

32 (c) The employer shall contact the Social Security
33 Administration on the tenth working day after the employee's
34 notification of contest to verify whether the nonmatch report was
35 confirmed;

36 (d) The employer shall not allow the employee to
37 provide written verification and shall receive verification only
38 from the Social Security Administration, once a nonmatch has
39 occurred;

40 (e) If the Social Security Administration confirms the
41 nonmatch report, the employer shall dismiss the employee within
42 one (1) day of confirmation of the nonmatch report; and

43 (f) If the employee does not notify the employer that
44 the nonmatch report will be contested, the employer shall dismiss
45 the employee on the sixth day after notifying the employee of the
46 nonmatch report.

47 **SECTION 3. EMPLOYER LIABILITY.** In accordance with federal
48 law, no employer who uses the Basic Employment Verification Pilot
49 program shall be civilly or criminally liable for any action taken
50 in good faith on information provided through the confirmation
51 system. In addition, any employer who uses the worker
52 verification program and does not receive a nonmatch shall not be
53 held responsible for the validity of the social security card
54 presented by the employee upon employment, provided the employer
55 is not directly involved in the creation of any false documents.

56 **SECTION 4. THIRD PARTY EMPLOYERS/CONTRACT EMPLOYERS/LEASING**
57 **COMPANIES.** (1) Third party employers, contract employers,
58 leasing companies, or like employers shall register to do business
59 in Mississippi with one (1) of the following state entities:

60 (a) The Mississippi Secretary of State;

61 (b) The Mississippi Tax Commission; or

62 (c) The Mississippi Department of Employment Security.

63 (2) The registration shall be completed and approved at
64 least thirty (30) days before the employer places any employees
65 into the state's work force. Such employers shall be required to
66 verify employee social security numbers as required by Section 1
67 of this act.

68 (3) Third party employers shall report any information
69 required by the Mississippi Department of Employment Security,
70 including the name of any employer or company with whom the third
71 party employer places workers, the number of workers, and the
72 names and social security numbers of each worker placed.

73 (4) Any employer or company that uses a third party employer
74 to secure workers shall report the name of the third party
75 employer or company that sent such workers to the Mississippi
76 Department of Employment Security within thirty (30) days of
77 employing such workers.

78 (5) Any third party employer, contract employer, or leasing
79 company that violates the provisions of this act shall be fined
80 One Thousand Dollars (\$1,000.00) per employee by the state agency
81 that such third party employer, contract employer, or leasing
82 company registered with under the provisions of this act. The
83 fines collected from penalties assessed to employers shall be
84 retained by the agency bringing the charges of violations.

85 **SECTION 5. STATE AGENCIES.** Each state agency, department or
86 political subdivision shall be required to use the Basic
87 Employment Verification Pilot in the same manner as prescribed by
88 this act. The agency shall be held liable for violations of its
89 hiring personnel as provided in this act.

90 **SECTION 6. PENALTIES FOR NONCOMPLIANCE.** (1) Any employer
91 violating the provisions of this act shall be penalized as
92 follows:

93 (a) For the first offense, One Thousand Dollars
94 (\$1,000.00) per employee and double any previous fines per

95 employee for each recurring offense, for second and subsequent
96 offenses;

97 (b) Increase the employer's tax rate to the maximum
98 unemployment tax rate as prescribed in Sections 71-5-353 and
99 71-5-355, Mississippi Code of 1972;

100 (c) Cancellation of any state or public contract,
101 resulting in ineligibility for any state or public contract for
102 three (3) years;

103 (d) The loss of the employer's license, permit,
104 certificate, or other document(s) granting the right to do
105 business in Mississippi for three (3) years; or

106 (e) A combination of one or more of the above
107 penalties.

108 (2) Charges of violations of this act shall be brought by
109 the Office of the Mississippi Secretary of State, the Mississippi
110 State Tax Commission, the Mississippi Department of Employment
111 Security, or the Mississippi Office of the Attorney General.

112 (3) Employers may also be held responsible for any legal
113 costs incurred by the entity bringing the charge against the
114 employer. The fines collected from penalties assessed to
115 employers shall be retained by the agency bringing the charges of
116 violations.

117 **SECTION 7. SPECIAL WORKER PROGRAM.** (1) There is created an
118 Office of Special Workers Program within the Mississippi
119 Department of Employment Security.

120 (2) The duties of the Special Workers Program shall be to:

121 (a) To assist companies and agencies in finding
122 qualified United States citizens and qualified legal foreign
123 workers as employees;

124 (b) To promulgate rules, regulations and policies to
125 carry out the provisions of this act;

126 (c) To create education materials for employers and the
127 community to assist in the enforcement of this act; and

128 (d) To create any forms, including the employment
129 letter of confirmation, necessary to carry out the provisions of
130 this act.

131 **SECTION 8. EXEMPTIONS.** The provisions of this act shall not
132 apply to:

133 (a) An employer who hires an employee through
134 a state or federal work program that requires verification of the
135 employee's social security number or verification of the
136 employee's United States legal status;

137 (b) An employer that performs a criminal background
138 check for newly hired employees that required verification of the
139 employee's social security number; or

140 (c) An employer that has any other type of verification
141 of the employee's social security number through another legal
142 process.

143 If the employer uses any of the three substitute verification
144 methods described above, a record of this information must be sent
145 to the Mississippi Department of Employment Security within thirty
146 (30) days of hiring such employees.

147 **SECTION 10. FEDERAL COMPLIANCE.** Compliance with the
148 sections of this statute shall not exempt the employer from
149 regulations and requirements related to any federal laws or
150 procedures related to employers.

151 **SECTION 9.** This act shall take effect and be in force for
152 from and after July 1, 2007, for all state agencies, departments,
153 and political subdivisions, all employers who have contracts with
154 the State of Mississippi, or with its departments, agencies, and
155 political subdivisions, all third-party employers, job
156 contractors, leasing companies or like employers of this state and
157 any company or employer using a third-party employer, job
158 contractor, or leasing company. This act shall take effect and be
159 in force for from and after July 1, 2008, for all other employers
160 who do business in Mississippi.