

By: Representative Currie

To: Judiciary B; Workforce
Development

HOUSE BILL NO. 67

1 AN ACT TO AMEND SECTION 71-11-3, MISSISSIPPI CODE OF 1972, TO
2 REVISE THE MISSISSIPPI EMPLOYMENT PROTECTION ACT; TO REVISE
3 REQUIREMENTS FOR EMPLOYERS; TO REVISE ENFORCEMENT; TO REVISE
4 CERTAIN PENALTIES; TO PROVIDE FOR A COMPLAINT FORM FOR ALLEGING
5 VIOLATIONS; AND FOR RELATED PURPOSES.

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

7 **SECTION 1.** Section 71-11-3, Mississippi Code of 1972, is
8 amended as follows:

9 71-11-3. (1) This chapter shall be known as the
10 "Mississippi Employment Protection Act."

11 (2) The provisions of this section shall be enforced without
12 regard to race, gender, religion, ethnicity or national origin.

13 (3) For the purpose of this section only, the following
14 words shall have the meanings ascribed herein unless the content
15 clearly states otherwise:

16 (a) "Employer" is any person or business that is
17 required by federal or state law to issue a United States Internal
18 Revenue Service Form W-2 or Form 1099 to report income paid to
19 employed or contracted personnel in Mississippi.



20 (b) "Employee" is any person or entity that is hired to
21 perform work within the State of Mississippi and to whom a United
22 States Internal Revenue Service Form W-2 or Form 1099 must be
23 issued.

24 (c) "Third-party employer" is any person or company
25 that provides workers for another person or company. This
26 includes, but is not limited to, leasing companies and contract
27 employers.

28 (d) "Status verification system" means the electronic
29 verification of work authorization program of the Illegal
30 Immigration Reform and Immigration Responsibility Act of 1996,
31 Public Law 104-208, Division C, Section 403(a); 8 USC, Section
32 1324a, and operated by the United States Department of Homeland
33 Security, known as the E-Verify Program.

34 (e) "Unauthorized alien" means an alien as defined in
35 Section 1324a(h) (3) of Title 8 of the United States Code.

36 (f) "Public employer" means every department, agency or
37 instrumentality of the state or a political subdivision of the
38 state.

39 (g) "Subcontractor" means a subcontractor, contract
40 employee, staffing agency or any contractor regardless of its
41 tier.

42 (4) (a) Employers in the State of Mississippi shall only
43 hire employees who are legal citizens of the United States of
44 America or are legal aliens. For purposes of this section, a



45 legal alien is an individual who was lawfully present in the
46 United States at the time of employment and for the duration of
47 employment, or was permanently residing in the United States under
48 color of law at the time of employment and for the duration of
49 employment.

50 (b) (i) Every employer shall register with and utilize
51 the status verification system to verify the federal employment
52 authorization status of all newly hired employees.

53 (ii) No contractor or subcontractor shall hire any
54 employee unless the contractor or subcontractor registers and
55 participates in the status verification system to verify the work
56 eligibility status of all newly hired employees.

57 (iii) No contractor or subcontractor who enters
58 into a contract with a public employer shall enter into such a
59 contract or subcontract unless the contractor or subcontractor
60 registers and participates in the status verification system to
61 verify information of all newly hired employees.

62 (c) The provision of this section shall not apply to
63 any contracts entered into on or before July 1, 2008.

64 (d) It shall be a discriminatory practice for an
65 employer to discharge an employee working in Mississippi who is a
66 United States citizen or permanent resident alien while retaining
67 an employee who the employing entity knows, or reasonably should
68 have known, is an unauthorized alien hired after July 1, 2008, and
69 who is working in Mississippi in a job category that requires



70 equal skill, effort and responsibility, and which is performed
71 under similar working conditions, as defined by 29 USC, Section
72 206(d) (1), as the job category held by the discharged employee.

73 (e) An employing entity which, on the date of the
74 discharge in question, was enrolled in and used the status
75 verification system to verify the employment eligibility of its
76 employees in Mississippi hired after July 1, 2008, shall be exempt
77 from liability, investigation or suit arising from any action
78 under this section.

79 (f) No cause of action for a violation of this section
80 shall lie under any other Mississippi law but shall arise solely
81 from the provisions of this section.

82 (g) Every employer shall, by July 1, 2013, file with
83 the Secretary of State a signed, sworn, legal employment affidavit
84 designed by the Secretary of State indicating that the employer
85 does not knowingly employ an unauthorized alien, that the employer
86 will not direct any other person to employ an unauthorized alien
87 and that the employer makes a good faith effort to comply with all
88 federal and state laws regarding the authorization for employment
89 in the United States of every employee who is employed by the
90 employer in this state.

91 (5) Any employer that complies with the requirements of this
92 section shall be held harmless by the Mississippi Department of
93 Employment Security, provided the employer is not directly
94 involved in the creation of any false documents, and provided that



95 the employer did not knowingly and willfully accept false
96 documents from the employee.

97 (6) (a) All third-party employers that conduct business in
98 Mississippi shall register to do business in Mississippi with the
99 Mississippi Department of Employment Security before placing
100 employees into the workforce in Mississippi.

101 (b) Third-party employers shall provide proof of
102 registration and any participation in the status verification
103 system to any Mississippi employer with whom they do business.

104 (7) (a) State of Mississippi agencies and political
105 subdivisions, public contractors and public subcontractors and
106 private employers with two hundred fifty (250) or more employees
107 shall meet verification requirements not later than July 1, 2008.

108 (b) Employers with at least one hundred (100) but less
109 than two hundred fifty (250) employees shall meet verification
110 requirements not later than July 1, 2009.

111 (c) Employers with at least thirty (30) but less than
112 one hundred (100) employees shall meet verification requirements
113 not later than July 1, 2010.

114 (d) All employers shall meet verification requirements
115 not later than July 1, 2011.

116 (e) (i) Any employer violating the provisions of this
117 section shall be subject to the cancellation of any state or
118 public contract, resulting in ineligibility for any state or
119 public contract for up to three (3) years, the loss of any



120 license, permit, certificate or other document granted to the
121 employer by any agency, department or government entity in the
122 State of Mississippi for the right to do business in Mississippi
123 for up to one (1) year * * *. For a second violation, the
124 employer shall have all relevant business licenses relevant to the
125 business location that hired unauthorized aliens permanently
126 revoked. If the employer has received any economic development
127 incentive from a governmental entity and the employer is found to
128 be in violation of this section, then the employer shall repay all
129 monies received within thirty (30) days of the final determination
130 of the noncompliance.

131 (ii) The contractor or employer shall be liable
132 for any additional costs incurred by the agencies and institutions
133 of the State of Mississippi, or any of its political subdivisions,
134 because of the cancellation of the contract or the loss of any
135 license or permit to do business in the state.

136 (iii) After a finding by the court that an
137 employer has knowingly employed an unauthorized alien, the court
138 shall order the employer to end the employment of all unauthorized
139 aliens. The employer shall be subject to a five-year probationary
140 period for the business location where the unauthorized aliens
141 performed work. During this period the employer shall file
142 quarterly reports with the Attorney General for each new employee
143 hired to work at the location where unauthorized aliens were
144 employed.



145 (* * * iv) Any person or entity penalized under
146 this section shall have the right to appeal to the appropriate
147 entity bringing charges or to the circuit court of competent
148 jurisdiction.

149 (f) The * * * Attorney General shall have the authority
150 to seek penalties under this section and to bring charges for
151 noncompliance against any employer or employee.

152 (g) Every three (3) months the Attorney General shall
153 request from the Department of Employment Security and the status
154 verification system a list of employers registered with the status
155 verification system and the Attorney General shall make the list
156 available on his website. The Attorney General shall also list
157 all employers charged with violations of this section on his
158 website.

159 (8) (a) There shall be no liability under this section in
160 the following circumstances:

161 (i) An employer who hires an employee through a
162 state or federal work program that requires verification of the
163 employee's social security number and provides for verification of
164 the employee's lawful presence in the United States in an
165 employment-authorized immigration status;

166 (ii) Any candidate for employment referred by the
167 Mississippi Department of Employment Security, if the Mississippi
168 Department of Employment Security has verified the social security
169 number and provides for verification of the candidate's lawful



170 presence in the United States in an employment-authorized
171 immigration status; or

172 (iii) Individual homeowners who hire workers on
173 their private property for noncommercial purposes, unless required
174 by federal law to do so.

175 (b) (i) Compliance with the sections of this statute
176 shall not exempt the employer from regulations and requirements
177 related to any federal laws or procedures related to employers.

178 (ii) This section shall not be construed as an
179 attempt to preempt federal law.

180 (c) (i) It shall be a felony for any person to accept
181 or perform employment for compensation knowing or in reckless
182 disregard that the person is an unauthorized alien with respect to
183 employment during the period in which the unauthorized employment
184 occurred. Upon conviction, a violator shall be subject to
185 imprisonment in the custody of the Department of Corrections for
186 not less than one (1) year nor more than five (5) years, a fine of
187 not less than One Thousand Dollars (\$1,000.00) nor more than Ten
188 Thousand Dollars (\$10,000.00), or both.

189 (ii) For purposes of determining bail for persons
190 who are charged under this section, it shall be a rebuttable
191 presumption that a defendant who has entered and remains in the
192 United States unlawfully is deemed at risk of flight for purposes
193 of bail determination.



194 (9) The Attorney General shall provide a complaint form for
195 individuals alleging that an employer has knowingly employed an
196 unauthorized alien. The Attorney General shall investigate any
197 complaint filed. All law enforcement officers shall assist the
198 Attorney General in any investigation. The filing of a false
199 complaint is a misdemeanor punishable by a fine of not more than
200 One Thousand Dollars (\$1,000.00) or imprisonment in the county
201 jail for not more than six (6) months, or both such fine and
202 imprisonment.

203 **SECTION 2.** This act shall take effect and be in force from
204 and after July 1, 2013.

