

By: Senator(s) Watson

To: Judiciary, Division B;
Accountability, Efficiency,
Transparency

SENATE BILL NO. 2609

1 AN ACT TO AMEND SECTION 71-11-3, MISSISSIPPI CODE OF 1972, TO
2 PROVIDE FOR RETENTION OF E-VERIFY CONFIRMATIONS FOR AT LEAST THREE
3 YEARS, REVISE AND CLARIFY ENFORCEMENT AND PENALTIES UNDER THE
4 MISSISSIPPI EMPLOYMENT PROTECTION ACT, REVISE DEFINITIONS, AND
5 PROVIDE FOR EXPEDITING TRIAL OF VIOLATIONS; AND FOR RELATED
6 PURPOSES.

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

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

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

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

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

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



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

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

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

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

37 (f) "Legal alien" means an individual who was lawfully
38 present in the United States at the time of employment and for the
39 duration of employment, or who was permanently residing in the
40 United States under color of law at the time of employment and for
41 the duration of employment.

42 (* * *g) "Public employer" means every department,
43 agency or instrumentality of the state or a political subdivision
44 of the state.



45 (* * *h) "Subcontractor" means a subcontractor,
46 contract employee, staffing agency or any contractor regardless of
47 its tier.

48 (i) "Solicit" means communication, whether verbally or
49 nonverbally, or by a gesture or a nod, that would indicate to a
50 reasonable person that a person is willing to be employed.

51 (4) (a) Employers in the State of Mississippi shall only
52 hire employees who are legal citizens of the United States of
53 America or are legal aliens. * * * An employer that knowingly or
54 intentionally uses a third-party employer to obtain the labor of
55 an unauthorized alien in this state violates this subsection.

56 (b) (i) The Attorney General shall prescribe a
57 complaint form for a person to allege a violation of paragraph (a)
58 of this subsection (4). The complainant shall not be required to
59 list the complainant's social security number on the complaint
60 form or to make the complaint under oath. On receipt of a
61 complaint on a prescribed complaint form that an employer
62 allegedly knowingly or intentionally employs an unauthorized
63 alien, the Attorney General or district attorney shall investigate
64 whether the employer has violated paragraph (a) of this subsection
65 (4). If a complaint is received but is not submitted on a
66 prescribed complaint form, the Attorney General or district
67 attorney may investigate whether the employer has violated
68 paragraph (a) of this subsection (4). This subsection (4)(b)
69 shall not be construed to prohibit the filing of anonymous



70 complaints that are not submitted on a prescribed complaint form.
71 The Attorney General or district attorney shall not investigate
72 complaints that are based solely on race, color or national
73 origin. A complaint that is submitted to a district attorney
74 shall be submitted to the district attorney in the county in which
75 the alleged unauthorized alien is or was employed by the employer.
76 The county sheriff or any other local law enforcement agency may
77 assist in investigating a complaint. When investigating a
78 complaint, the Attorney General or district attorney shall verify
79 the work authorization of the alleged unauthorized alien with the
80 federal government pursuant to 8 USC Section 1373(c). A state,
81 county or local official shall not attempt to independently make a
82 final determination on whether an alien is authorized to work in
83 the United States. An alien's immigration status or work
84 authorization status shall be verified with the federal government
85 pursuant to 8 USC Section 1373(c).

86 (ii) A person who knowingly files a false or
87 frivolous complaint under this subsection is guilty of a
88 misdemeanor.

89 (c) If, after an investigation, the Attorney General or
90 district attorney determines that the complaint is not false or
91 frivolous:

92 (i) The Attorney General or district attorney
93 shall notify the United States Immigration and Customs Enforcement
94 of the unauthorized alien.



95 (ii) The Attorney General or district attorney
96 shall notify the local law enforcement agency of the unauthorized
97 alien.

98 (iii) The Attorney General shall notify the
99 appropriate district attorney to bring an action pursuant to
100 paragraph (d) of this subsection (4) if the complaint was
101 originally filed with the Attorney General.

102 (d) An action for a violation of paragraph (a) of this
103 subsection (4) shall be brought against the employer by the
104 district attorney in the county where the unauthorized alien
105 employee is or was employed by the employer. A second violation
106 of this section shall be based only on employment of an
107 unauthorized alien who is or was employed by the employer after an
108 action has been brought for a first violation of paragraph (a) of
109 this subsection (4).

110 (e) For any action under this subsection (4), the court
111 shall expedite the action, including assigning the hearing at the
112 earliest practicable date.

113 (f) On a finding of a violation of paragraph (a) of
114 this subsection (4).

115 (i) For a first violation as defined in this
116 section, the court:

117 1. Shall order the employer to terminate the
118 employment of all unauthorized aliens.



119 2. Shall order the employer to be subject to
120 a three-year probationary period for the business location where
121 the unauthorized alien performed work.

122 3. Shall order the appropriate agencies to
123 suspend all licenses described in subsection (7) of this section
124 that are held by the employer for a period not less than ten (10)
125 business days, subject to item 4 of this paragraph (f)(i). The
126 court shall base its decision whether to suspend under this item 3
127 on any evidence or information submitted to it during the action
128 for a violation of this subsection (4) and may consider the
129 following factors, if relevant: the number of unauthorized aliens
130 employed by the employer; any prior misconduct by the employer;
131 the degree of harm resulting from the violation; whether the
132 employer made good-faith efforts to comply with any applicable
133 requirements; the duration of the violation; the role of the
134 directors, officers or principals of the employer in the
135 violation; and any other factors the court deems appropriate.

136 4. May order the minimum ten-day suspension
137 under item 3 of this paragraph (f)(i) to occur at the completion
138 of construction if the suspension would interrupt progress on a
139 state, local government or federal construction project.

140 5. Shall send a copy of the court's order to
141 the Attorney General.



142 (ii) For a second violation as described in this
143 section, the court shall order the appropriate agencies to
144 permanently revoke all licenses that are held by the employer.

145 (g) The Attorney General shall maintain copies of court
146 orders that are received pursuant to paragraph (f) of this
147 subsection (4) and shall maintain a database of the employers and
148 business locations that have a first violation of paragraph (a) of
149 this subsection (4) and make the court orders available on the
150 Attorney General's website.

151 (h) On determining whether an employee is an
152 unauthorized alien, the court shall consider only the federal
153 government's determination pursuant to 8 USC Section 1373(c). The
154 federal government's determination creates a rebuttable
155 presumption of the employee's lawful status. The court may take
156 judicial notice of the federal government's determination and may
157 request the federal government to provide automated or testimonial
158 verification pursuant to 8 USC Section 1373(c).

159 (i) For the purposes of this section, proof of
160 verifying the employment authorization of an employee through the
161 status verification program creates a rebuttable presumption that
162 an employer did not knowingly employ an unauthorized alien.

163 (j) (i) Every employer shall register with and utilize
164 the status verification system to verify the federal employment
165 authorization status of all newly hired employees and, from and
166 after July 1, 2019, shall keep a record of the verification for



167 the duration of the employee's employment or three (3) years,
168 whichever is longer.

169 (ii) No contractor or subcontractor shall hire any
170 employee unless the contractor or subcontractor registers and
171 participates in the status verification system to verify the work
172 eligibility status of all newly hired employees.

173 (iii) No contractor or subcontractor who enters
174 into a contract with a public employer shall enter into such a
175 contract or subcontract unless the contractor or subcontractor
176 registers and participates in the status verification system to
177 verify information of all newly hired employees.

178 (* * *k) The provisions of this section shall not
179 apply to any contracts entered into on or before July 1, 2008.

180 (* * *l) (i) It shall be a discriminatory practice
181 for an employer to discharge an employee working in Mississippi
182 who is a United States citizen or permanent resident alien while
183 retaining an employee who the employing entity knows, or
184 reasonably should have known, is an unauthorized alien hired after
185 July 1, 2008, and who is working in Mississippi in a job category
186 that requires equal skill, effort and responsibility, and which is
187 performed under similar working conditions, as defined by 29 USC,
188 Section 206(d) (1), as the job category held by the discharged
189 employee.

190 (* * *ii) An employing entity which, on the date
191 of the discharge in question, was enrolled in and used the status



192 verification system to verify the employment eligibility of its
193 employees in Mississippi hired after July 1, 2008, shall be exempt
194 from liability, investigation or suit arising from any action
195 under this section.

196 (* * *iii) No cause of action for a violation of
197 this section shall lie under any other Mississippi law but shall
198 arise solely from the provisions of this section.

199 (5) Any employer that complies with the requirements of this
200 section shall be held harmless by the Mississippi Department of
201 Employment Security, provided the employer is not directly
202 involved in the creation of any false documents, and provided that
203 the employer did not knowingly and willfully accept false
204 documents from the employee.

205 (6) (a) All third-party employers that conduct business in
206 Mississippi shall register to do business in Mississippi with the
207 Mississippi Department of Employment Security before placing
208 employees into the workforce in Mississippi.

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

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



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

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

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

224 (e) (i) Any employer violating the provisions of this
225 section shall be subject to the cancellation of any state or
226 public contract, resulting in ineligibility for any state or
227 public contract for up to three (3) years, the loss of any
228 license, permit, certificate or other document granted to the
229 employer by any agency, department or government entity in the
230 State of Mississippi for the right to do business in Mississippi
231 for up to one (1) year, or both.

232 (ii) The contractor or employer shall be liable
233 for any additional costs incurred by the agencies and institutions
234 of the State of Mississippi, or any of its political subdivisions,
235 because of the cancellation of the contract or the loss of any
236 license or permit to do business in the state.

237 (iii) Any person or entity penalized under
238 this * * * paragraph shall have the right to appeal to the
239 appropriate entity * * * imposing sanctions or to the circuit
240 court of competent jurisdiction.



241 (f) The Department of Employment Security, * * *
242 Department of Revenue, Secretary of State, Department of Human
243 Services * * *, Board of Public Contractors, the Attorney General,
244 and any other agency, department or government entity shall have
245 the authority to impose sanctions or seek penalties authorized
246 under this section * * *.

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

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

254 (ii) Any candidate for employment referred by the
255 Mississippi Department of Employment Security, if the Mississippi
256 Department of Employment Security has verified the social security
257 number and provides for verification of the candidate's lawful
258 presence in the United States in an employment-authorized
259 immigration status; or

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

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



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

268 (c) (i) It shall be a felony for any person to accept
269 or perform employment for compensation knowing or in reckless
270 disregard that the person is an unauthorized alien with respect to
271 employment during the period in which the unauthorized employment
272 occurred. Upon conviction, a violator shall be subject to
273 imprisonment in the custody of the Department of Corrections for
274 not less than one (1) year nor more than five (5) years, a fine of
275 not less than One Thousand Dollars (\$1,000.00) nor more than Ten
276 Thousand Dollars (\$10,000.00), or both.

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

282 (d) It is a misdemeanor for a person who is unlawfully
283 present in the United States and who is an unauthorized alien to
284 knowingly apply for work or solicit work in a public place in this
285 state.

286 **SECTION 2.** This act shall take effect and be in force from
287 and after July 1, 2019.

