

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

HOUSE BILL 2009

5 By: Representative Hubbard
6

For An Act To Be Entitled

8 AN ACT TO CREATE THE ARKANSAS LEGAL WORKER'S ACT; AND
9 FOR OTHER PURPOSES.
10

Subtitle

11 THE ARKANSAS LEGAL WORKER'S ACT.
12
13
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15

16 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
17

18 SECTION 1. Arkansas Code Title 4, Chapter 16 is amended to add an
19 additional subchapter to read as follows:

20 Subchapter 1 – The Arkansas Legal Worker's Act
21

22 4-16-101. Title.

23 This subchapter shall be known and may be cited as the "Arkansas Legal
24 Worker's Act".
25

26 4-16-102. Definitions.

27 As used in this subchapter:

28 (1) "Agency" means any agency, department, board, or commission
29 of this state or a county, city, or town that issues a license for purposes
30 of operating a business in this state;

31 (2) "Employ" means hiring an employee after December 31, 2012;

32 (3)(A) "Employee" means a person who provides services or labor
33 for an employer in this state for wages or other remuneration.

34 (B) "Employee" does not include an independent contractor;

35 (4)(A) "Employer" means any individual or type of organization
36 that transacts business in this state, that has a license issued by an agency



1 in this state, and that employs one (1) or more employees in this state.

2 (B) "Employer" includes the state, any political
3 subdivision of the state, and self-employed persons.

4 (C) For an independent contractor, "employer" means the
5 independent contractor and does not mean the person or organization that uses
6 the contract labor;

7 (5) "E-verify program" means the employment verification
8 program, as it existed on January 1, 2011, as jointly administered by the
9 United States Department of Homeland Security and the United States Social
10 Security Administration or any of its successor programs;

11 (6)(A) "Independent contractor" means an individual or entity
12 that carries on an independent business, that contracts to do a piece of work
13 according to the individual's or entity's own means and methods and that is
14 subject to control only as to results.

15 (B) "Independent contractor" includes an individual or
16 entity that is determined to be an independent contractor on a case-by-case
17 basis through various factors, including without limitation, whether the
18 individual or entity:

19 (i) Supplies the tools or materials;

20 (ii) Makes services available to the general public;

21 (iii) Works or may work for a number of clients at
22 the same time;

23 (iv) Has an opportunity for profit or loss as a
24 result of labor or service provided;

25 (v) Invests in the facilities for work;

26 (vi) Directs the order or sequence in which the work
27 is completed; and

28 (vii) Determines the hours when the work is
29 completed;

30 (7)(A) "License" means any agency permit, certificate, approval,
31 registration, charter, or similar form of authorization that is required by
32 law and that is issued by any agency for the purposes of operating a business
33 in this state.

34 (B) "License" includes:

35 (i) Articles of incorporation;

36 (ii) A certificate of partnership, a partnership

1 registration, or articles of organization;

2 (iii) A grant of authority; and

3 (iv) Any privilege tax license.

4 (C) "License" does not include any professional license.

5 (8) "Social Security Number Verification Service" means the
6 program administered by the United States Social Security Administration or
7 any of its successor programs; and

8 (9) "Unauthorized alien" means, with respect to the employment
9 of an alien at a particular time, that the alien is not at that time either:

10 (A) An alien lawfully admitted for permanent residence, or

11 (B) Authorized to be so employed under United States Code
12 Title 8, Chapter 12, as it existed on January 1, 2011, or by the United
13 States Attorney General.

14
15 4-16-103. Knowingly employing unauthorized aliens – Prohibition– False
16 and frivolous complaints –Violation – Classification – License suspension and
17 revocation – Affirmative defense.

18 (a)(1) An employer shall not knowingly employ an unauthorized alien.

19 (2) If an employer uses a contract, subcontract, or other
20 independent contractor agreement to obtain the labor of an alien in this
21 state and the employer knowingly contracts with an unauthorized alien or with
22 a person who employs or contracts with an unauthorized alien to perform the
23 labor, the employer violates this subsection.

24 (b)(1) The Attorney General shall prescribe a complaint form for a
25 person to allege a violation of subsection (a) of this section.

26 (2) The complainant shall not be required to list the
27 complainant's social security number on the complaint form or to have the
28 complaint form notarized.

29 (3) On receipt of a complaint on a prescribed complaint form
30 that an employer allegedly knowingly employs an unauthorized alien, the
31 Attorney General or prosecuting attorney of the county in which the alleged
32 unauthorized alien is or was employed by the employer shall investigate
33 whether the employer has violated subsection (a) of this section.

34 (4) If a complaint is received but is not submitted on a
35 prescribed complaint form, the Attorney General or prosecuting attorney may
36 investigate whether the employer has violated subsection (a) of this section.

1 (5) This subsection does not prohibit the filing of anonymous
2 complaints that are not submitted on a prescribed complaint form.

3 (6) The Attorney General or prosecuting attorney shall not
4 investigate complaints that are based solely on race, color, or national
5 origin.

6 (7)(A) A complaint that is submitted to a prosecuting attorney
7 shall be submitted to the prosecuting attorney in the county in which the
8 alleged unauthorized alien is or was employed by the employer.

9 (B) The county sheriff or any other local law enforcement
10 agency may assist in investigating a complaint.

11 (C) When investigating a complaint, the Attorney General
12 or prosecuting attorney shall verify the work authorization of the alleged
13 unauthorized alien with the federal government under 8 U.S.C. § 1373(c).

14 (D) A state, county, or local official shall not attempt
15 to independently make a final determination on whether an alien is authorized
16 to work in the United States.

17 (E) An alien's immigration status or work authorization
18 status shall be verified with the federal government under 8 U.S.C. §
19 1373(c), as it existed on January 1, 2011.

20 (c) If after an investigation, the Attorney General or prosecuting
21 attorney determines that the complaint is not false and frivolous:

22 (1) The Attorney General or prosecuting attorney shall notify
23 the United States Immigration And Customs Enforcement of the unauthorized
24 alien;

25 (2) The Attorney General or prosecuting attorney shall notify
26 the local law enforcement agency of the unauthorized alien; and

27 (3) The Attorney General shall notify the appropriate
28 prosecuting attorney to bring an action under subsection (d) of this section
29 if the complaint was originally filed with the Attorney General.

30 (d)(1) An action for a violation of subsection (a) of this section
31 shall be brought against the employer by the prosecuting attorney in the
32 county where the unauthorized alien employee is or was employed by the
33 employer.

34 (2) The prosecuting attorney shall not bring an action against
35 an employer for a violation of subsection (a) of this section that occurs
36 before January 1, 2012.

1 (3) An allegation of a second violation of this section shall be
2 based only on an unauthorized alien who is or was employed by the employer
3 after an action has been brought for a violation of subsection (a) of this
4 section or § 4-16-104.

5 (e) For an action in circuit court under this section, the court shall
6 expedite the action, including assigning the hearing at the earliest
7 practicable date.

8 (f) On a finding of a violation of subsection (a) of this section:

9 (1)(A) For a first violation, as described in this subsection,
10 the court:

11 (i) Shall order the employer to terminate the
12 employment of all unauthorized aliens;

13 (ii)(a) Shall order the employer to be subject to a
14 three-year probationary period for the business location where the
15 unauthorized alien performed work.

16 (b) During the probationary period, the
17 employer shall file quarterly reports with the prosecuting attorney for each
18 new employee who is hired by the employer at the business location where the
19 unauthorized alien performed work;

20 (B)(i) Shall order the employer to file a signed sworn
21 affidavit with the prosecuting attorney within three (3) business days after
22 the order is issued.

23 (ii) The affidavit shall state that the employer has
24 terminated the employment of all unauthorized aliens in this state and that
25 the employer will not intentionally or knowingly employ an unauthorized alien
26 in this state.

27 (iii) The court shall order the appropriate agencies
28 to suspend all licenses subject to this subdivision that are held by the
29 employer if the employer fails to file a signed sworn affidavit with the
30 prosecuting attorney within three (3) business days after the order is
31 issued.

32 (iv) All licenses that are suspended under this
33 subdivision shall remain suspended until the employer files a signed sworn
34 affidavit with the county attorney.

35 (v) On filing of the affidavit, the suspended
36 licenses shall be reinstated immediately by the appropriate agencies.

1 (vi) For purposes of this subdivision, the licenses
2 that are subject to suspension under this subdivision are all licenses that
3 are held by the employer specific to the business location where the
4 unauthorized alien performed work.

5 (vii) If the employer does not hold a license
6 specific to the business location where the unauthorized alien performed work
7 but a license is necessary to operate the employer's business in general, the
8 licenses that are subject to suspension under this subdivision are all
9 licenses that are held by the employer at the employer's primary place of
10 business.

11 (viii) On receipt of the court's order and
12 notwithstanding any other law, the appropriate agencies shall suspend the
13 licenses according to the court's order.

14 (ix) The court shall send a copy of the court's
15 order to the Attorney General and the Attorney General shall maintain the
16 copy under subsection (g) of this section;

17 (C)(i) May order the appropriate agencies to suspend all
18 licenses described in subsection (c) of this section that are held by the
19 employer for not to exceed ten (10) business days.

20 (ii) The court shall base its decision to suspend
21 licenses under this subdivision on any evidence or information submitted to
22 it during the action for a violation of this subsection and shall consider
23 the following factors, if relevant:

24 (a) The number of unauthorized aliens employed
25 by the employer;

26 (b) Prior misconduct by the employer;

27 (c) The degree of harm resulting from the
28 violation;

29 (d) Whether the employer made good faith
30 efforts to comply with any applicable requirements;

31 (e) The duration of the violation;

32 (f) The role of the directors, officers, or
33 principals of the employer in the violation; and

34 (g) Other factors the court deems appropriate;

35 (2)(A) For a second violation, as described in this subsection,
36 the court shall order the appropriate agencies to permanently revoke all

1 licenses that are held by the employer specific to the business location
2 where the unauthorized alien performed work.

3 (B)(i) If the employer does not hold a license specific to
4 the business location where the unauthorized alien performed work but a
5 license is necessary to operate the employer's business in general, the court
6 shall order the appropriate agencies to permanently revoke all licenses that
7 are held by the employer at the employer's primary place of business.

8 (ii) On receipt of the order and notwithstanding any
9 other law, the appropriate agencies shall immediately revoke the licenses;
10 and

11 (3) A violation under this section shall be considered:

12 (A) A first violation by an employer at a business
13 location if the violation did not occur during a probationary period ordered
14 by the court under this subsection for that employer's business location; or

15 (B) A second violation by an employer at a business
16 location if the violation occurred during a probationary period ordered by
17 the court under this subsection for that employer's business location.

18 (g) The Attorney General shall maintain copies of court orders that
19 are received under subsection (f) of this section, shall maintain a database
20 of the employers and business locations that have a first violation of
21 subsection (a) of this section, and make the court orders available on the
22 attorney general's website.

23 (h)(1) On determining whether an employee is an unauthorized alien,
24 the court shall consider only the federal government's determination under 8
25 U.S.C. § 1373(c).

26 (2) The federal government's determination creates a rebuttable
27 presumption of the employee's lawful status.

28 (3) The court may take judicial notice of the federal
29 government's determination and may request the federal government to provide
30 automated or testimonial verification under 8 U.S.C. § 1373(c).

31 (i) For purposes of this section, proof of verifying the employment
32 authorization of an employee through the E-verify program creates a
33 rebuttable presumption that an employer did not knowingly employ an
34 unauthorized alien.

35 (j)(1) For purposes of this section, an employer that establishes that
36 the employer has complied in good faith with the requirements of 8 U.S.C. §

1 1324a(b) establishes an affirmative defense that the employer did not
2 knowingly employ an unauthorized alien.

3 (2) An employer is considered to have complied with the
4 requirements of 8 U.S.C. Code § 1324a(b), notwithstanding an isolated,
5 sporadic, or accidental technical or procedural failure to meet the
6 requirements, if there is a good faith attempt to comply with the
7 requirements.

8 (k)(1) It is an affirmative defense to a violation of subsection (a)
9 of this section that the employer was entrapped.

10 (2) To claim entrapment, the employer must admit by the
11 employer's testimony or other evidence the substantial elements of the
12 violation.

13 (3) An employer that asserts an entrapment defense has the
14 burden of proving the following by a preponderance of the evidence:

15 (A) The idea of committing the violation started with law
16 enforcement officers or their agents rather than with the employer;

17 (B) The law enforcement officers or their agents urged and
18 induced the employer to commit the violation; and

19 (C) The employer was not predisposed to commit the
20 violation before the law enforcement officers or their agents urged and
21 induced the employer to commit the violation.

22 (l)(1) An employer does not establish entrapment if the employer was
23 predisposed to violate subsection (a) of this section and the law enforcement
24 officers or their agents merely provided the employer with an opportunity to
25 commit the violation.

26 (2) It is not entrapment for law enforcement officers or their
27 agents merely to use a ruse or to conceal their identity.

28 (3) The conduct of law enforcement officers and their agents may
29 be considered in determining if an employer has proven entrapment.

30 (m) A person who knowingly files a false and frivolous complaint under
31 this subsection is subject to a fine of ten thousand dollars (\$10,000) for
32 each violation.

33
34 4-16-104. Intentionally employing unauthorized aliens – Prohibition –
35 False and frivolous complaints – Violation – Classification – License
36 suspension and revocation – Affirmative defense.

1 (a)(1) An employer shall not intentionally employ an unauthorized
2 alien.

3 (2) If in the case when an employer uses a contract,
4 subcontract, or other independent contractor agreement to obtain the labor of
5 an unauthorized alien in this state, the employer intentionally contracts
6 with an unauthorized alien or with a person who employs or contracts with an
7 unauthorized alien to perform the labor, the employer violates this
8 subsection.

9 (b)(1) The Attorney General shall prescribe a complaint form for a
10 person to allege a violation of subsection (a) of this section.

11 (2) The complainant shall not be required to list the
12 complainant's social security number on the complaint form or to have the
13 complaint form notarized.

14 (3) On receipt of a complaint on a prescribed complaint form
15 that an employer allegedly intentionally employs an unauthorized alien, the
16 Attorney General or prosecuting attorney shall investigate whether the
17 employer has violated subsection (a) of this section.

18 (4) If a complaint is received but is not submitted on a
19 prescribed complaint form, the Attorney General or prosecuting attorney may
20 investigate whether the employer has violated subsection (a) of this section.

21 (5) This subsection does not prohibit the filing of anonymous
22 complaints that are not submitted on a prescribed complaint form.

23 (6) The Attorney General or prosecuting attorney shall not
24 investigate complaints that are based solely on race, color, or national
25 origin.

26 (7) A complaint that is submitted to a prosecuting attorney
27 shall be submitted to the prosecuting attorney in the county in which the
28 alleged unauthorized alien is or was employed by the employer. The county
29 sheriff or any other local law enforcement agency may assist in investigating
30 a complaint.

31 (8) When investigating a complaint, the Attorney General or
32 prosecuting attorney shall verify the work authorization of the alleged
33 unauthorized alien with the federal government under 8 U.S.C. § 1373(c), as
34 it existed on January 1, 2011.

35 (9) A state, county, or local official shall not attempt to
36 independently make a final determination on whether an alien is authorized to

1 work in the United States.

2 (10) An alien's immigration status or work authorization status
3 shall be verified with the federal government under 8 U.S.C. § 1373(c), as it
4 existed on January 1, 2011.

5 (c) If, after an investigation, the Attorney General or prosecuting
6 attorney determines that the complaint is not false and frivolous:

7 (1) The Attorney General or prosecuting attorney shall notify
8 the United States Immigration And Customs Enforcement of the unauthorized
9 alien;

10 (2) The Attorney General or prosecuting attorney shall notify
11 the local law enforcement agency of the unauthorized alien; and

12 (3) The Attorney General shall notify the appropriate county
13 attorney to bring an action under subsection (d) of this section if the
14 complaint was originally filed with the Attorney General.

15 (d)(1) An action for a violation of subsection (a) of this section
16 shall be brought against the employer by the prosecuting attorney in the
17 county where the unauthorized alien employee is or was employed by the
18 employer.

19 (2) The prosecuting attorney shall not bring an action against
20 any employer for any violation of subsection (a) of this section that occurs
21 before January 1, 2012.

22 (3) A second violation of this section shall be based only on an
23 unauthorized alien who is or was employed by the employer after an action has
24 been brought for a violation of subsection (a) of this section.

25 (e) For an action in circuit court under this section, the court shall
26 expedite the action, including assigning the hearing at the earliest
27 practicable date.

28 (f) On a finding of a violation of subsection (a) of this section:

29 (1) For a first violation of this section, the court shall:

30 (A) Order the employer to terminate the employment of all
31 unauthorized aliens; and

32 (B)(i) Order the employer to be subject to a five-year
33 probationary period for the business location where the unauthorized alien
34 performed work.

35 (ii) During the probationary period the employer
36 shall file quarterly reports with the prosecuting attorney for each new

1 employee who is hired by the employer at the business location where the
2 unauthorized alien performed work;

3 (C)(i) Order the appropriate agencies to suspend all
4 licenses described in subdivision (f)(1)(D) of this section that are held by
5 the employer for a minimum of ten (10) days.

6 (ii) The court shall base its decision on the length
7 of the suspension under this subdivision on any evidence or information
8 submitted to it during the action for a violation of this subsection and
9 shall consider the following factors, if relevant:

10 (a) The number of unauthorized aliens employed
11 by the employer;

12 (b) Prior misconduct by the employer;

13 (c) The degree of harm resulting from the
14 violation;

15 (d) Whether the employer made good faith
16 efforts to comply with any applicable requirements;

17 (e) The duration of the violation;

18 (f) The role of the directors, officers, or
19 principals of the employer in the violation; and

20 (g) Other factors the court deems appropriate;
21 and

22 (D)(i) Order the employer to file a signed sworn affidavit
23 with the county attorney.

24 (ii) The affidavit shall state that the employer has
25 terminated the employment of all unauthorized aliens in this state and that
26 the employer will not intentionally or knowingly employ an unauthorized alien
27 in this state.

28 (iii) The court shall order the appropriate agencies
29 to suspend all licenses subject to this subdivision that are held by the
30 employer if the employer fails to file a signed sworn affidavit with the
31 county attorney within three (3) business days after the order is issued.

32 (iv) All licenses of employers that are suspended
33 under this subdivision for the employer failing to file a signed sworn
34 affidavit shall remain suspended until the employer files a signed sworn
35 affidavit with the county attorney.

36 (v) For purposes of this subdivision, the licenses

1 that are subject to suspension under this subdivision are all licenses that
2 are held by the employer specific to the business location where the
3 unauthorized alien performed work.

4 (vi) If the employer does not hold a license
5 specific to the business location where the unauthorized alien performed work
6 but a license is necessary to operate the employer's business in general, the
7 licenses that are subject to suspension under this subdivision are all
8 licenses that are held by the employer at the employer's primary place of
9 business.

10 (vii) On receipt of the court's order and
11 notwithstanding any other law, the appropriate agencies shall suspend the
12 licenses according to the court's order.

13 (viii) The court shall send a copy of the court's
14 order to the Attorney General and the Attorney General shall maintain the
15 copy under subsection (g) of this section;

16 (2)(A) For a second violation under this subsection, the court
17 shall order the appropriate agencies to revoke permanently all licenses that
18 are held by the employer specific to the business location where the
19 unauthorized alien performed work.

20 (B) If the employer does not hold a license specific to
21 the business location where the unauthorized alien performed work, but a
22 license is necessary to operate the employer's business in general, the court
23 shall order the appropriate agencies to permanently revoke all licenses that
24 are held by the employer at the employer's primary place of business.

25 (C) On receipt of the order and notwithstanding any other
26 law, the appropriate agencies shall immediately revoke the licenses; and

27 (3) A violation of this section shall be considered:

28 (A) A first violation by an employer at a business
29 location if the violation did not occur during a probationary period ordered
30 by the court under this subsection for that employer's business location; or

31 (B) A second violation by an employer at a business
32 location if the violation occurred during a probationary period ordered by
33 the court under this subsection for that employer's business location.

34 (g) The Attorney General shall maintain copies of court orders that
35 are received under subsection (f) of this section and shall maintain a
36 database of the employers and business locations that have a first violation

1 of subsection (a) of this section and make the court orders available on the
2 Attorney General's website.

3 (h)(1) On determining whether an employee is an unauthorized alien,
4 the court shall consider only the federal government's determination under 8
5 U.S.C. § 1373(c).

6 (2) The federal government's determination creates a rebuttable
7 presumption of the employee's lawful status.

8 (3) The court may take judicial notice of the federal
9 government's determination and may request the federal government to provide
10 automated or testimonial verification under 8 U.S.C. § 1373(c).

11 (i) For purposes of this section, proof of verifying the employment
12 authorization of an employee through the E-verify program creates a
13 rebuttable presumption that an employer did not intentionally employ an
14 unauthorized alien.

15 (j)(1) For purposes of this section, an employer that establishes that
16 it has complied in good faith with the requirements of 8 U.S.C. § 1324a(b),
17 as it existed on January 1, 2011, establishes an affirmative defense that the
18 employer did not intentionally employ an unauthorized alien.

19 (2) An employer is considered to have complied with the
20 requirements of 8 U.S.C. § 1324a(b), as it existed on January 1, 2011,
21 notwithstanding an isolated, sporadic, or accidental technical or procedural
22 failure to meet the requirements, if there is a good faith attempt to comply
23 with the requirements.

24 (k)(1) It is an affirmative defense to a violation of subsection (a)
25 of this section that the employer was entrapped.

26 (2) To claim entrapment, the employer shall admit by the
27 employer's testimony or other evidence the substantial elements of the
28 violation.

29 (3) An employer that asserts an entrapment defense has the
30 burden of proving the following by a preponderance of the evidence:

31 (A) The idea of committing the violation started with law
32 enforcement officers or their agents rather than with the employer;

33 (B) The law enforcement officers or their agents urged and
34 induced the employer to commit the violation; and

35 (C) The employer was not predisposed to commit the
36 violation before the law enforcement officers or their agents urged and

1 induced the employer to commit the violation.

2 (1)(1) An employer does not establish entrapment if the employer was
3 predisposed to violate subsection (a) of this section and the law enforcement
4 officers or their agents merely provided the employer with an opportunity to
5 commit the violation.

6 (2) It is not entrapment for law enforcement officers or their
7 agents merely to use a ruse or to conceal their identity.

8 (3) The conduct of law enforcement officers and their agents may
9 be considered in determining if an employer has proven entrapment.

10 (m) A person who intentionally files a false and frivolous complaint
11 under this section is subject to a fine of ten thousand dollars (\$10,000).

12
13 4-16-105. Employer actions – Federal or state law compliance.

14 This subchapter does not require an employer to take any action that
15 the employer believes in good faith would violate federal or state law.

16
17 4-16-106. Verification of employment eligibility – E-verify program–
18 Economic development incentives – List of registered employers.

19 (a) After January 1, 2012, every employer after hiring an employee,
20 shall verify the employment eligibility of the employee through the E-verify
21 program and shall keep a record of the verification for the duration of the
22 employee’s employment or at least three (3) years, whichever is longer.

23 (b)(1) In addition to any other requirement for an employer to receive
24 an economic development incentive from a government entity, the employer
25 shall register with and participate in the E-verify program.

26 (2) Before receiving the economic development incentive, the
27 employer shall provide proof to the government entity that the employer is
28 registered with and is participating in the E-verify program.

29 (3) If the government entity determines that the employer is not
30 complying with this subsection, the government entity shall notify the
31 employer by certified mail of the government entity’s determination of
32 noncompliance and the employer’s right to appeal the determination.

33 (4) On a final determination of noncompliance, the employer
34 shall repay all moneys received as an economic development incentive to the
35 government entity within thirty (30) days of the final determination.

36 (5) For purposes of this subsection:

1 (A) "Economic development incentive" means any grant,
2 loan, or performance-based incentive from any government entity that is
3 awarded after September 30, 2012; and

4 (B) "Government entity" means this state and any political
5 subdivision of this state that receives and uses tax revenues.

6 (c)(1) Every three (3) months the Attorney General shall request from
7 the United States Department Of Homeland Security a list of employers from
8 this state that are registered with the E-verify program.

9 (2) On receipt of the list of employers, the Attorney General
10 shall make the list available on the Attorney General's website.

11
12 4-16-107. Voluntary employer enhanced compliance program – Program
13 termination.

14 (a)(1) The Attorney General shall establish the voluntary employer
15 enhanced compliance program.

16 (2) The program is voluntary, and an employer is not required to
17 enroll in the program.

18 (b)(1) An employer that is on probation under § 4-16-103 or § 4-16-104
19 shall not enroll in the voluntary employer enhanced compliance program.

20 (2) A court shall not consider nonenrollment in the voluntary
21 employer enhanced compliance program as a factor when determining whether to
22 suspend or revoke a license under § 4-16-103 or § 4-16-104.

23 (c)(1) To enroll in the voluntary employer enhanced compliance
24 program, an employer shall submit a signed sworn affidavit to the Attorney
25 General.

26 (2) The affidavit shall state that the employer agrees to
27 perform all of the following actions in good faith:

28 (A) After hiring an employee, the employer shall verify
29 the employment eligibility of the employee through the E-verify program;

30 (B)(i) To ensure the accuracy of reporting wages to the
31 United States Social Security Administration, the employer shall verify the
32 accuracy of social security numbers through the Social Security Number
33 Verification Service for any employee who is not verified through the E-
34 verify program.

35 (ii) Within thirty (30) days after enrolling in the
36 voluntary employer enhanced compliance program, the employer shall submit the

1 necessary information to the social security number verification service,
2 including the full name, the social security number, the date of birth and
3 the gender of each employee.

4 (iii) On receipt of a failed verification result,
5 the employer shall notify the employee of the date on which the employer
6 received the failed result and instruct the employee to resolve the
7 discrepancy with the United States Social Security Administration within
8 ninety (90) days after that date.

9 (iv) The employer and employee shall resolve any
10 failed result within ninety (90) days after the date on which the employer
11 received the failed result.

12 (v) If the failed result is not resolved within the
13 ninety-day period but the employer and employee are continuing to actively
14 and consistently work toward resolving the failed result with the United
15 States Social Security Administration, the ninety-day period does not apply
16 as long as the employer and employee have documented proof of these ongoing
17 efforts to resolve the failed result in good faith and have provided the
18 documented proof to the Attorney General.

19 (vi) The employer shall verify the accuracy of the
20 social security numbers and resolve any failed verification results in a
21 consistent manner for all employees; and

22 (C) In response to a written request by the Attorney
23 General or prosecuting attorney stating the name of an employee for whom a
24 complaint has been received under § 4-16-103 or § 4-16-104, the employer
25 shall provide the Attorney General or prosecuting attorney the documents
26 indicating that the employee was verified through the E-verify program or
27 that the accuracy of the employee's wage report was verified through the
28 Social Security Number Verification Service under this section.

29 (d) An employer that is enrolled in the voluntary employer enhanced
30 compliance program shall not be in violation of this subchapter if the
31 employer has completed both of the following:

32 (1) In good faith verified the employment eligibility of the
33 employee named in the complaint through the E-verify program or in good faith
34 verified the accuracy of the social security number of the employee named in
35 the complaint through the Social Security Number Verification Service as
36 required under this section; and

1 (2) Provided the Attorney General or prosecuting attorney with
2 the documents under this section indicating that the employer verified the
3 employee named in the complaint.

4 (e) The Attorney General shall maintain a list of employers enrolled
5 in the voluntary employer enhanced compliance program and make the list
6 available on the Attorney General's website.

7 (f) The Attorney General shall develop a form of recognition that an
8 employer may display to the general public for enrolling in the voluntary
9 employer enhanced compliance program.

10 (g)(1) If an employer does not fully comply with this section, the
11 Attorney General shall terminate the employer's enrollment in the voluntary
12 employer enhanced compliance program.

13 (2) At any time, an employer may voluntarily withdraw from the
14 voluntary employer enhanced compliance program by notifying the Attorney
15 General.

16 (3) Beginning on the date of termination or withdrawal,
17 subsection (d) of this section no longer applies to the employer, and the
18 employer shall immediately remove any form of recognition from public display
19 that is authorized under this section.

20
21 4-16-108. Independent contractors – Applicability.

22 For purposes of this subchapter, independent contractor status applies
23 to an individual or entity that performs services and is not an employee
24 under Section 3508 of the Internal Revenue Code, as it existed on January 1,
25 2011.