As Introduced

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S. B. No. 183

Senators Cirino, Reynolds
Cosponsors: Senators Schaffer, Wilkin

To enact sections 4151.01, 4151.02, 4151.03, 4151.04, 4151.05, 4151.06, and 4151.07 of the Revised Code to require certain construction industry employers to use E-verify and to sanction specified hiring practices in the industry.

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

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

Sec. 4151.01. As used in this chapter:

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

(B) "Employee" means any individual who performs services for a contractor, subcontractor, or labor broker who satisfies both of the following conditions:

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

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

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

(D)(1) "Labor broker" means any individual or entity who hires an employee and supplies the employee's labor to a nonresidential construction contractor or a subcontractor, regardless of tier, through the use of a contract.

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

(E) "Nonresidential construction contractor" means any individual or entity that has responsibility for the means, method, and manner of construction, improvement, renovation, or repair on a nonresidential construction project with respect to one or more trades and who offers, identifies, advertises, or otherwise holds out or represents that the individual or entity is permitted or qualified to perform or have responsibility for the means, method, and manner of construction, improvement, renovation, repair, or maintenance with respect to one or more trades on a nonresidential construction project.

(F) "Nonresidential construction project" means the construction or renovation of any building, highway, bridge, utility, or related infrastructure, but does not include any of the following:

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

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

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

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

(H) "Unauthorized alien" means an alien who is not authorized to be employed as determined in accordance with the federal "Immigration Reform and Control Act of 1986," 8 U.S.C. 1324a.

Sec. 4151.02. (A) Except as provided in division (C) of this section, no nonresidential construction contractor, subcontractor, or labor broker shall fail to verify the employment eligibility of each employee hired to perform work on a nonresidential construction project through the e-verify program. A nonresidential construction contractor shall use e-verify to confirm the identity and legal working status of each employee employed by the nonresidential construction contractor. A subcontractor shall use e-verify to confirm the identity and legal working status of each employee employed by the subcontractor. A labor broker shall use e-verify to confirm the identity and legal working status of each employee employed by

the labor broker.

(B) A nonresidential construction contractor, subcontractor, or labor broker 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 employee's employment is terminated, whichever is later.

(C) A nonresidential construction contractor, subcontractor, or labor broker 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 has previously verified an employee's employment eligibility using e-verify.

(2) The employer is not required to verify or reverify the 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 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 receives a case result indicating that an employee's employment eligibility could not be confirmed and instructions that the contractor, subcontractor, or labor broker should close the e-verify case associated with the employee.

Sec. 4151.04. (A)(1) The attorney general shall prescribe a complaint form for an individual to allege a violation of section 4151.02 or 4151.03 of the Revised Code. The attorney

general shall not require the complainant to list the complainant's social security number on the complaint form or to have the form notarized. A complainant shall submit the complaint to the attorney general. Except as provided in division (B) of this section, the attorney general shall investigate any violation alleged in a prescribed complaint form when the attorney general determines the complaint contains sufficient facts to reasonably conclude that a violation may have occurred.

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

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

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

(D) Except as provided in division (G) 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, after providing notice and an opportunity for a hearing in accordance with Chapter 119. of the Revised Code, issue an order that does both of the following:

(1) Directs the contractor, subcontractor, or labor broker

to provide satisfactory proof that any violation has been corrected;

(2) Imposes any penalty that applies under division (E) 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 general shall order the contractor, subcontractor, or labor broker to pay a fine of two hundred fifty dollars for each violation. Except as otherwise provided in this division, if the attorney general's investigation reveals one or more violations of section 4151.03 of the Revised Code, the attorney general shall order the contractor, subcontractor, or labor broker to pay a fine of five thousand dollars for each violation.

(2) Except as otherwise provided in this division, if the attorney general's investigation reveals one or more violations of 4151.02 of the Revised Code and the contractor, subcontractor, or labor broker has been ordered by the attorney general or a court to pay a fine under division (E)(1) of this section during the preceding three years, the attorney general shall order the contractor, subcontractor, or labor broker to pay a fine of one thousand dollars for each violation. Except as provided in this division, if the attorney general's investigation reveals one or more violations of section 4151.03 of the Revised Code and the contractor, subcontractor, or labor broker has been ordered by the attorney general or a court to pay a fine under division (E)(1) of this section during the preceding three years, the attorney general shall order the contractor, subcontractor, or labor broker to pay a fine of ten thousand dollars per violation.

(3) If the attorney general's investigation reveals one or more violations of section 4151.02 of the Revised Code and the contractor, subcontractor, or labor broker has been ordered by the attorney general or a court to pay a fine under division (E)(2) of this section during the preceding three years, the attorney general shall order the contractor, subcontractor, or labor broker to pay a fine of one thousand five hundred dollars per violation. If the attorney general's investigation reveals one or more violations of section 4151.03 of the Revised Code and the contractor, subcontractor, or labor broker has been ordered by the attorney general or a court to pay a fine under division (E)(2) of this section during the preceding three years, the attorney general shall order the contractor, subcontractor, or labor broker to pay a fine of twenty-five thousand dollars for each violation.

(F) If a contractor, subcontractor, or labor broker fails to comply with an order issued by the attorney general under division (D) of this section within thirty days after the attorney general issues the order, the attorney general shall bring a civil action against the contractor, subcontractor, or labor broker in accordance with section 4151.05 of the Revised Code. In the action, the attorney general also may present evidence that the contractor, subcontractor, or labor broker violated section 4151.06 of the Revised Code.

(G) The attorney general shall not issue an order under this section or bring a civil action under section 4151.06 of the Revised Code if a violation of section 4151.02 or 4151.03 of the Revised Code was the result of an isolated technical error or a malfunction in the e-verify program.

Sec. 4151.05. (A) If a contractor, subcontractor, or labor

broker fails to comply with an order issued by the attorney general under division (D) of section 4151.04 of the Revised Code within the period specified in division (F) of that section, the attorney general shall bring a civil action against the contractor, subcontractor, or labor broker in the court of common pleas of the county where the contractor, subcontractor, or labor broker is located or does business or in the court of common pleas of the county where the violation is alleged to have occurred.

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

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

(b) Order that the contractor, subcontractor, or labor broker is not eligible to bid for or participate in any state contract for a period of 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 two-year period described in division (B)(1)(b) of this section has elapsed, a contractor, subcontractor, or labor broker that has been ordered ineligible may be eligible to bid for and participate in state contracts if the contractor, subcontractor, or labor broker files a sworn affidavit with the

director that two years or more have elapsed since the order described in division (B)(1)(b) of this section and that the contractor, subcontractor, or labor broker has not violated section 4151.02 or 4151.03 of the Revised Code during the two-year period.

(C)(1) The director shall maintain a list of all contractors, subcontractors, and labor brokers 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 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 from the list maintained under division (C)(1) of this section if the contractor, subcontractor, or labor broker has not paid a fine ordered under this section.

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

Sec. 4151.06. (A) If a court, pursuant to an action brought under section 4151.05 of the Revised Code, determines that a nonresidential construction contractor, subcontractor, or labor broker has knowingly employed an unauthorized alien, the court shall order each appropriate agency to permanently revoke any license issued by the agency and held by the nonresidential construction contractor, subcontractor, or labor broker specific

to the business location where the unauthorized alien performed work. If the nonresidential construction contractor, subcontractor, or labor broker does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the nonresidential construction contractor's, subcontractor's, or labor broker's business in general, the court shall order the appropriate agency to permanently revoke all licenses issued by that agency that are held by the nonresidential construction contractor, subcontractor, or labor broker at the nonresidential construction contractor's, subcontractor's, or labor broker's primary place of business. On receipt of the order and notwithstanding any other law to the contrary, the appropriate agency immediately shall revoke the licenses.

(B) For purposes of determining whether an employee is an unauthorized alien, a court shall consider only a determination with respect to that alien's immigration status made by the federal government pursuant to the federal "Omnibus Consolidated Appropriations Act, 1997," 8 U.S.C. 1373(c). The federal government's determination creates a rebuttable presumption of the alien's lawful status. The court may take judicial notice of the federal government's determination and may request the federal government to provide automated or testimonial verification pursuant to the federal "Omnibus Consolidated Appropriations Act, 1997," 8 U.S.C. 1373(c).

Sec. 4151.07. (A) The attorney general shall conduct periodic reviews of state agencies and political subdivisions to ensure that state agencies and political subdivisions are including within their contracts for the construction or renovation of nonresidential construction projects provisions requiring compliance with sections 4151.02 and 4151.03 of the

Revised Code.

(B) Each state agency or political subdivision that fails to include provisions requiring compliance with sections 4151.02 and 4151.03 of the Revised Code in a contract for the construction or renovation of a nonresidential construction project shall be fined five thousand dollars for each failure.