

By: Senator(s) Watson, McDaniel, Yancey

To: Judiciary, Division A

SENATE BILL NO. 2988
(As Passed the Senate)

1 AN ACT TO CREATE THE MISSISSIPPI EMPLOYMENT PROTECTION ACT;
2 TO PROVIDE PROCEDURES FOR NEWLY HIRED EMPLOYEES AND THEIR
3 EMPLOYERS; TO ENACT DEFINITIONS; TO REQUIRE EMPLOYEE VERIFICATION;
4 TO PROVIDE EMPLOYER LIABILITY; TO SET UP EMPLOYER-EMPLOYEE
5 PROGRAMS; TO MAKE PROVISIONS FOR THIRD-PARTY EMPLOYERS; TO DEFER
6 TO FEDERAL LAW IN STATE LAW; TO ENACT EXEMPTIONS; TO DESIGNATE
7 ENFORCEMENT DUTIES UNDER THE ACT; TO PROVIDE PENALTIES FOR
8 VIOLATIONS OF THIS ACT; AND FOR RELATED PURPOSES.

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

10 **SECTION 1.** The Legislature finds that when illegal
11 immigrants have been sheltered and harbored in this state and
12 encouraged to reside in this state through the benefit of work
13 without verifying immigration status, these practices impede and
14 obstruct the enforcement of federal immigration law, undermine the
15 security of our borders, and impermissibly restrict the privileges
16 and immunities of the citizens of Mississippi. The Legislature
17 further finds that illegal immigration is encouraged when public
18 agencies within this state provide public benefits without
19 verifying immigration status. The Legislature further finds that
20 the Tenth Amendment to the United States Constitution reserves to
21 the states those powers not delegated to the United States by the
22 Constitution. Therefore, the Legislature declares that it is a
23 compelling public interest of this state to discourage illegal
24 immigration by requiring all agencies within this state to fully
25 cooperate with federal immigration authorities in the enforcement
26 of federal immigration laws. The Legislature also finds that
27 other measures are necessary to ensure the integrity of various
28 governmental programs and services.



29 **SECTION 2.** (1) This act shall be known as the "Mississippi
30 Employment Protection Act."

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

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

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

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

44 (c) "Third-party employer" is any person or company
45 that provides workers for another person or company. This
46 includes, but is not limited to, leasing companies and contract
47 employers.

48 (d) "Status verification system" means the electronic
49 verification of work authorization program of the Illegal
50 Immigration Reform and Immigration Responsibility Act of 1996,
51 Public Law 104-208, Division C, Section 403(a); 8 USC Section
52 1324a, and operated by the United States Department of Homeland
53 Security, known as the E-Verify Program.

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

56 (f) "Public employer" means every department, agency or
57 instrumentality of the state or a political subdivision of the
58 state.

59 (g) "Subcontractor" means a subcontractor, contract
60 employee, staffing agency or any contractor regardless of its
61 tier.



62 (4) (a) Employers in the State of Mississippi shall only
63 hire employees who are legal citizens of the United States of
64 America or are legal aliens. For purposes of this section, a
65 legal alien is an individual who was lawfully present in the
66 United States at the time of employment and for the duration of
67 employment, or was permanently residing in the United States under
68 color of law at the time of employment and for the duration of
69 employment.

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

73 (ii) No contractor or subcontractor shall hire any
74 employee unless the contractor or subcontractor registers and
75 participates in the status verification system to verify the work
76 eligibility status of all newly hired employees.

77 (iii) No contractor or subcontractor who enters
78 into a contract with a public employer shall enter into such a
79 contract or subcontract unless the contractor or subcontractor
80 registers and participates in the status verification system to
81 verify information of all newly hired employees.

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

84 (d) It shall be a discriminatory practice for an
85 employer to discharge an employee working in Mississippi who is a
86 United States citizen or permanent resident alien while retaining
87 an employee who the employing entity knows, or reasonably should
88 have known, is an unauthorized alien hired after July 1, 2008, and
89 who is working in Mississippi in a job category that requires
90 equal skill, effort and responsibility, and which is performed
91 under similar working conditions, as defined by 29 USC, Section
92 206(d) (1), as the job category held by the discharged employee.

93 (e) An employing entity which, on the date of the
94 discharge in question, was enrolled in and used the status



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

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

102 (5) Any employer that complies with the requirements of this
103 section shall be held harmless by the Mississippi Department of
104 Employment Security, provided the employer is not directly
105 involved in the creation of any false documents, and provided that
106 the employer did not knowingly and willfully accept false
107 documents from the employee.

108 (6) (a) All third-party employers that conduct business in
109 Mississippi shall register to do business in Mississippi with the
110 Mississippi Department of Employment Security before placing
111 employees into the workforce in Mississippi.

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

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

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

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

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



127 (e) (i) Any employer violating the provisions of this
128 section shall be subject to the cancellation of any state or
129 public contract, resulting in ineligibility for any state or
130 public contract for up to three (3) years, the loss of any
131 license, permit, certificate or other document granted to the
132 employer by any agency, department or government entity in the
133 State of Mississippi for the right to do business in Mississippi
134 for up to one (1) year, or both.

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

140 (iii) Any person or entity penalized under this
141 section shall have the right to appeal to the appropriate entity
142 bringing charges or to the circuit court of competent
143 jurisdiction.

144 (f) The Department of Employment Security, State Tax
145 commission, Secretary of State, Department of Human Services and
146 the Attorney General shall have the authority to seek penalties
147 under this section and to bring charges for noncompliance against
148 any employer or employee.

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

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

156 (ii) Any candidate for employment referred by the
157 Mississippi Department of Employment Security, if the Mississippi
158 Department of Employment Security has verified the social security
159 number and provides for verification of the candidate's lawful



160 presence in the United States in an employment-authorized
161 immigration status; or

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

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

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

170 (c) (i) It shall be a felony for any person to accept
171 or perform employment for compensation knowing or in reckless
172 disregard that the person is an unauthorized alien with respect to
173 employment during the period which the unauthorized employment
174 occurred. Upon conviction, a violator shall be subject to
175 imprisonment in the custody of the Department of Corrections for
176 not less than one (1) year nor more than five (5) years, a fine of
177 not less than One Thousand Dollars (\$1,000.00) nor more than Ten
178 Thousand Dollars (\$10,000.00), or both.

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

184 **SECTION 3.** This act shall take effect and be in force from
185 and after July 1, 2008, for all state agencies, departments, and
186 political subdivisions, all employers who have contracts with the
187 State of Mississippi, or with its departments, agencies, political
188 subdivisions, all third-party employers, and any person or company
189 using a third-party employer.

190 This act shall take effect and be in force from and after
191 January 1, 2009, for all other employers who do business in
192 Mississippi.

