

2008 -- H 7107 SUBSTITUTE A AS AMENDED

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LC00178/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2008

A N A C T

RELATING TO LABOR AND LABOR RELATIONS

Introduced By: Representatives Brien, Gemma, Mattiello, Gablinske, and Singleton

Date Introduced: January 10, 2008

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 28-5 of the General Laws entitled "Fair Employment Practices" is
2 hereby amended by adding thereto the following section:

3 **28-5-43. Legislative declaration -- Definitions -- Employee's work eligibility status --**
4 **Federal basic employment verification pilot program -- Department of labor and**
5 **employment -- Duties. -- (1)(a) The general assembly hereby finds and determines that:**

6 (I) Ensuring that Rhode Island employers employ persons eligible to work within Rhode
7 Island is an issue of statewide concern.

8 (II) It is in the best interest of the employers in Rhode Island for all employers to follow
9 federal law as it applies to the hiring of persons who are authorized to work in the United States.

10 (III) Employers who violate the federal employment laws with respect to the hiring of
11 persons who are unauthorized to work in the United States place an undue economic burden on
12 employers who attempt to hire only persons who are authorized to work in the United States.

13 (b) The general assembly further finds and determines that it is in the best interest of the
14 state for all employers to verify the social security numbers and work eligibility status of newly
15 hired employees and that it is important that every employer in the state of Rhode Island apply for
16 participation in the extended federal basic employment verification pilot program for the purpose
17 of verifying the work eligibility status of newly hired employees.

18 (2) As used in this section:

19 (a) "Employer" means a person transacting business in Rhode Island who, at any time,

1 employs three (3) or more persons to perform services of any nature and who has control of the
2 payment of wages for such services or is the officer, agent, or employee of the person having
3 control of the payment of wages; except that "Employer" does not include the federal
4 government, the state of Rhode Island, another state, or a political subdivision of Rhode Island or
5 another state.

6 (b) "Program" means the basic employment verification pilot program created pursuant to
7 8 U.S.C. sec. 1324a, as expanded to include all fifty states in the "Basic Pilot Program Extension
8 and Expansion Act of 2003", Pub. L. No. 108-156.

9 (c) "Employee" means any individual for whom an employer is required to file a form W-
10 2 wage and tax statement with the federal internal revenue service.

11 (3) (a) Each employer in Rhode Island shall apply to participate in the program for the
12 purpose of verifying the work eligibility status of each of the employer's newly hired employees
13 by the following dates:

14 (I) An employer with two hundred or more employees shall apply to participate in the
15 program no later than July 1, 2009;

16 (II) An employer with at least fifty (50) employees but fewer than two (200) hundred
17 employees shall apply to participate in the program no later than January 1, 2009; and

18 (III) An employer with fewer than fifty (50) employees shall apply to participate in the
19 program no later than January 1, 2010.

20 (b) An employer shall submit an application to participate in the program no less
21 frequently than every sixty (60) days until the employer is accepted into the program. An
22 employer that is accepted into the program shall agree to participate in the program. An employer
23 shall retain records for audit purposes that show that the employer has applied to the program
24 and, following acceptance, show that the employer is an active participant in the program.

25 (c) For each thirty (30) day period for which an application for participation in the
26 program has not been submitted to the federal department of homeland security, an employer that
27 fails to apply for participation in the program pursuant to paragraph (a) of this subsection (3) shall
28 be subject to a fine of:

29 (I) At least three thousand dollars (\$3,000) but not more than five thousand dollars
30 (\$5,000) if the employer has two hundred (200) or more employees;

31 (II) At least one thousand dollars (\$1,000) but not more than two thousand dollars
32 (\$2,000) if the employer has at least fifty (50) employees but fewer than two hundred (200)
33 employees;

34 (III) At least five hundred dollars (\$500) but not more than one thousand dollars (\$1,000)

1 if the employer has fewer than fifty (50) employees.

2 (d) The department of labor and training shall verify that each employer has complied
3 with paragraph (a) of this subsection (3) within ninety (90) days after the first finding of
4 noncompliance. If the employer is not in compliance, the department of labor and training shall
5 fine the employer the maximum fine amount pursuant to paragraph (c) of this subsection (3).

6 (e) Upon request of the director of the department, an employer shall submit evidence
7 that the employer has submitted an application to participate in the program to the federal
8 department of homeland security. Upon receipt of two complaints that an employer has not
9 complied with this section, the director shall request the submission of such evidence within
10 thirty (30) days after the second complaint. The director shall levy a fine against an employer
11 pursuant to paragraph (c) of this subsection (3) for each calendar month the employer fails to
12 submit such evidence.

13 (4) The department of labor and training, with the cooperation of the secretary of state,
14 shall put a mechanism in place to notify each employer of the requirements of this section and
15 how to comply and shall make the information available on the department's website.

16 (5)(a) An employer shall immediately terminate the employment of an employee upon
17 receipt of a final notice from the department of homeland security of nonconfirmation of work
18 eligibility concerning such employee.

19 (b) Upon receipt of a credible complaint as determined by the director of the department
20 of labor that an employer is violating the provisions of this subsection (5), the director, or his or
21 her designee, shall investigate the complaint to determine if the employer is in violation of
22 paragraph (a) of subsection (3) of this section. The director shall fine a participating employer up
23 to fifty dollars (\$50.00) per day for each employee not terminated in accordance with the basic
24 pilot program agreement.

25 (6) An employer who, in good faith relies on the program to verify the employment
26 eligibility of its employees, shall be exempt from liability, or suit arising from any action under
27 this section; provided, however, that nothing contained herein shall be construed to limit remedies
28 or relieve obligations and/or penalties under state anti-discrimination laws.

29 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS

1 This act would require all nongovernmental employers within the state with (3) or more
2 employees to apply to participate in the extended federal basic employment verification pilot
3 program and to participate if accepted. The act would also impose a fine against an employer that
4 does not apply to participate in the program.

5 This act would take effect upon passage.

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