

**As Introduced**

**129th General Assembly  
Regular Session  
2011-2012**

**H. B. No. 286**

**Representatives Combs, Bulp**

**Cosponsors: Representatives Thompson, Adams, R., Adams, J., Brenner,  
Ruhl, Derickson, Johnson, Newbold, McClain, Maag, Young, Martin**

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**A B I L L**

To amend section 4113.99 and to enact sections 1  
4113.81 to 4113.88 of the Revised Code to adopt 2  
provisions related to the employment of 3  
unauthorized aliens. 4

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

**Section 1.** That section 4113.99 be amended and sections 5  
4113.81, 4113.82, 4113.83, 4113.84, 4113.85, 4113.86, 4113.87, and 6  
4113.88 of the Revised Code be enacted to read as follows: 7

**Sec. 4113.81.** As used in sections 4113.81 to 4113.88 of the 8  
Revised Code: 9

(A) "E-verify program" means the employment verification 10  
pilot program as jointly administered by the United States 11  
department of homeland security and the social security 12  
administration or any of its successor programs. 13

(B) "Knowingly employ an unauthorized alien" means the 14  
actions described in the "Immigration Reform and Control Act of 15  
1986," 100 Stat. 3360, 8 U.S.C. 1324a. This term shall be 16  
interpreted consistently with the "Immigration Reform and Control 17  
Act of 1986," 100 Stat. 3360, 8 U.S.C. 1324a and any applicable 18

federal rules and regulations. 19

(C)(1) "License" means any agency permit, certificate, approval, registration, charter, or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state. 20  
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(2) "License" includes all of the following: 24

(a) Articles of incorporation or organization under Title XVII of the Revised Code; 25  
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(b) A certificate of limited partnership issued under section 1782.08 of the Revised Code; 27  
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(c) A license issued to a foreign corporation under section 1703.04 of the Revised Code. 29  
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(3) "License" does not include either of the following: 31

(a) Any permit or license issued under any environmental laws as defined by section 3745.70 of the Revised Code; 32  
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(b) Any professional license. 34

(D) "Unauthorized alien" means an alien who does not have the legal right or authorization under federal law to work in the United States as described in the "Immigration Reform and Control Act of 1986," 100 Stat. 3360, 8 U.S.C. 1324a. 35  
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**Sec. 4113.82.** (A)(1) No employer shall knowingly employ an unauthorized alien. 39  
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(2) No employer purposefully shall employ an unauthorized alien. 41  
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(3) No individual knowingly shall file a false and frivolous complaint under section 4113.83 of the Revised Code. 43  
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(B) Every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify 45  
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program. 47

(C) For purposes of division (A)(1) of this section, an 48  
employer violates that division if the employer uses a contract, 49  
subcontract, or other independent contractor agreement to obtain 50  
the labor of an alien in this state and the employer knowingly 51  
contracts with an alien the employer knows is an unauthorized 52  
alien or with a person whom the employer knows employs or 53  
contracts with an unauthorized alien to perform the labor. 54

(D) For purposes of division (A)(2) of this section, an 55  
employer violates that division if the employer uses a contract, 56  
subcontract, or other independent contractor agreement to obtain 57  
the labor of an alien in this state and the employer purposefully 58  
contracts with an alien the employer knows is an unauthorized 59  
alien or with a person whom the employer knows employs or 60  
contracts with an unauthorized alien to perform the labor. 61

**Sec. 4113.83.** The attorney general shall prescribe a 62  
complaint form for a person to allege a violation of division 63  
(A)(1) or (2) of section 4113.82 of the Revised Code. The attorney 64  
general shall not require the complainant to list the 65  
complainant's social security number on the complaint form or to 66  
have the complaint form notarized. A complainant shall submit the 67  
complaint to the attorney general or to the prosecuting attorney 68  
of the county in which the alleged unauthorized alien is or was 69  
employed by the employer. On receipt of a complaint on a 70  
prescribed complaint form that an employer allegedly knowingly or 71  
purposefully employs an unauthorized alien, the attorney general 72  
or prosecuting attorney shall investigate whether the employer has 73  
violated division (A)(1) or (2) of section 4113.82 of the Revised 74  
Code, as alleged in the complaint. Nothing in this section shall 75  
be construed to prohibit an individual from filing an anonymous 76  
complaint on a form other than the prescribed complaint form. If 77

the attorney general or a prosecuting attorney receives a 78  
complaint that is not submitted on a prescribed complaint form, 79  
the attorney general or prosecuting attorney may, but is not 80  
required to, investigate whether the employer has violated 81  
division (A)(1) or (2) of section 4113.82 of the Revised Code as 82  
alleged in the complaint. The attorney general or prosecuting 83  
attorney shall not investigate complaints that are based solely on 84  
race, color, or national origin. 85

The county sheriff or any other local law enforcement officer 86  
may assist in investigating a complaint. When investigating a 87  
complaint, the attorney general or prosecuting attorney shall 88  
verify the work authorization of the alleged unauthorized alien 89  
with the federal government pursuant to the federal "Omnibus 90  
Consolidated Appropriations Act, 1997," 110 Stat. 3009, 8 U.S.C. 91  
1373(c), as amended. An officer or employee of the state or a 92  
political subdivision of the state shall not attempt to 93  
independently make a final determination on whether an alien is 94  
authorized to work in the United States. 95

**Sec. 4113.84.** (A) If, after an investigation conducted under 96  
section 4113.83 of the Revised Code, the attorney general or 97  
prosecuting attorney determines that the complaint is not false 98  
and frivolous, the attorney general or prosecuting attorney shall 99  
do all of the following, as applicable: 100

(1) Notify the United States department of homeland security 101  
or its successor agency regarding the status of the unauthorized 102  
alien; 103

(2) Notify the local law enforcement agency regarding the 104  
status of the unauthorized alien; 105

(3) If the complaint was originally filed with the attorney 106  
general, notify the appropriate prosecuting attorney to allow the 107

prosecuting attorney to bring an action pursuant to division (B) 108  
of this section. 109

(B) If a prosecuting attorney of the county where an 110  
unauthorized alien employee allegedly is or was employed by an 111  
employer conducts an investigation under section 4113.83 of the 112  
Revised Code and determines that reasonable evidence exists that 113  
the employer violated division (A)(1) or (2) of section 4113.82 of 114  
the Revised Code, or if that prosecuting attorney receives a 115  
notice under division (A)(3) of this section, the prosecuting 116  
attorney shall bring an action for a violation of division (A)(1) 117  
or (2) of section 4113.82 of the Revised Code against the employer 118  
in the court of common pleas of the county where the unauthorized 119  
alien employee allegedly is or was employed by the employer. The 120  
prosecuting attorney shall not bring an action against any 121  
employer for any violation of division (A)(1) or (2) of section 122  
4113.82 of the Revised Code that occurred prior to the effective 123  
date of this section. A second violation of this section shall be 124  
based only on any additional unauthorized aliens employed by the 125  
employer after a previous action has been brought against an 126  
employer for a violation of division (A)(1) or (2) of section 127  
4113.82 of the Revised Code. 128

(C) For any action brought pursuant to this section, the 129  
court shall expedite the action, including assigning the hearing 130  
at the earliest practicable date. 131

**Sec. 4113.85.** (A) In an action brought pursuant to section 132  
4113.84 of the Revised Code, for purposes of determining whether 133  
an employee is an unauthorized alien, a court shall consider only 134  
a determination with respect to that alien's immigration status 135  
made by the federal government pursuant to the federal "Omnibus 136  
Consolidated Appropriations Act, 1997," 110 Stat. 3009, 8 U.S.C. 137  
1373(c), as amended. The federal government's determination 138

creates a rebuttable presumption of the alien's lawful status. The 139  
court may take judicial notice of the federal government's 140  
determination and may request the federal government to provide 141  
automated or testimonial verification pursuant to the federal 142  
"Omnibus Consolidated Appropriations Act, 1997," 110 Stat. 3009, 8 143  
U.S.C. 1373(c), as amended. 144

(B) For purposes of section 4113.84 of the Revised Code, 145  
proof of verifying the employment authorization of an employee 146  
through the e-verify program creates a rebuttable presumption that 147  
an employer did not knowingly or purposefully employ an 148  
unauthorized alien. 149

(C) For purposes of section 4113.84 of the Revised Code, an 150  
employer who establishes that the employer has complied in good 151  
faith with the requirements of the federal "Immigration Reform and 152  
Control Act of 1986," 100 Stat. 3360, 8 U.S.C. 1324a(b), as 153  
amended, establishes an affirmative defense that the employer did 154  
not knowingly or purposefully employ an unauthorized alien in 155  
violation of division (A)(1) or (2) of section 4113.82 of the 156  
Revised Code. An employer is considered to have complied with the 157  
requirements of the federal "Immigration Reform and Control Act of 158  
1986," 100 Stat. 3360, 8 U.S.C. 1324a(b), as amended, 159  
notwithstanding an isolated, sporadic, or accidental technical or 160  
procedural failure to meet the requirements, if a good faith 161  
attempt was made to comply with the requirements of that act. 162

(D)(1) It is an affirmative defense to a violation of 163  
division (A)(1) or (2) of section 4113.82 of the Revised Code that 164  
an employer was entrapped. To claim entrapment, the employer shall 165  
admit to the substantial elements of the violation through the 166  
employer's testimony or by the use of other evidence. An employer 167  
who asserts an entrapment defense has the burden of proving all of 168  
the following elements by a preponderance of the evidence: 169

(a) The idea of committing the violation started with a peace officer or an agent of the officer rather than with the employer. 170  
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(b) The peace officer or agent urged and induced the employer to commit the violation. 172  
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(c) The employer was not predisposed to commit the violation before the peace officer or agent urged and induced the employer to commit the violation. 174  
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(2) An employer does not establish the defense of entrapment if the employer was predisposed to violate division (A)(1) or (2) of section 4113.82 of the Revised Code and the peace officer or agent merely provided the employer with an opportunity to commit the violation. A peace officer or an agent of the officer has not entrapped an employer if the officer or agent merely used a ruse or concealed the officer's or agent's identity. The conduct of a peace officer or an agent of the officer may be considered in determining if an employer has proven entrapment. 177  
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**Sec. 4113.86.** (A)(1) If a court, pursuant to an action brought under section 4113.84 of the Revised Code, determines that an employer has committed a first violation of division (A)(1) of section 4113.82 of the Revised Code, the court shall do all of the following: 186  
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(a) Order the employer to terminate the employment of all unauthorized aliens; 191  
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(b) Order the employer to be subject to a three-year probationary period for the business location where the unauthorized alien performed work; 193  
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(c) Order the employer to file a signed affidavit of the type described in division (A)(4) of this section with the prosecuting attorney of the county where the violation occurred within three business days after the order is issued. 196  
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(2) If a court pursuant to an action brought under section 4113.84 of the Revised Code determines that an employer has committed a first violation of division (A)(1) of section 4113.82 of the Revised Code, the court may order the appropriate agencies to suspend all licenses described in division (A)(4) of this section that are held by the employer for a period not to exceed ten business days. The court shall determine whether to suspend an employer's licenses based upon any evidence or information submitted to the court during the action and shall consider any of the following factors, as applicable:

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

(b) Any prior misconduct committed by the employer;

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

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

(e) The duration of the violation;

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

(g) Any other factors the court considers appropriate.

(3) During the probationary period described in division (A)(1)(b) of this section, the employer shall file quarterly reports in the form provided in section 3121.892 of the Revised Code with the prosecuting attorney of the county where the violation occurred documenting each new employee who is hired by the employer after the date the court determined the employer violated division (A)(1) of section 4113.82 of the Revised Code and who is employed at the business location where the unauthorized alien performed work.

(4) The affidavit described in division (A)(1)(c) of this



section shall state that the employer has terminated the 230  
employment of all unauthorized aliens employed by the employer in 231  
this state and that the employer will not purposefully or 232  
knowingly employ an unauthorized alien in this state. If the 233  
employer fails to file the affidavit with the prosecuting attorney 234  
within three business days after the date the order is issued, the 235  
court shall order the appropriate agencies to suspend all licenses 236  
described in this division held by the employer. On receipt of the 237  
court's order and notwithstanding any other law to the contrary, 238  
the appropriate agencies shall suspend the licenses according to 239  
the court's order. The court shall send a copy of the court's 240  
order to the attorney general, and the attorney general shall 241  
maintain the copy pursuant to section 4113.88 of the Revised Code. 242

For the purposes of division (A)(4) of this section, a 243  
license subject to suspension is any license held by the employer 244  
specific to the business location where the unauthorized alien 245  
performed work. If the employer does not hold a license specific 246  
to the business location where the unauthorized alien performed 247  
work, but a license is necessary to operate the employer's 248  
business in general, any license held by the employer at the 249  
employer's primary place of business is subject to suspension. 250

A license remains suspended until the employer files the 251  
affidavit required under division (A)(1)(c) of this section with 252  
the prosecuting attorney. Notwithstanding any other law to the 253  
contrary, the appropriate agency shall reinstate the suspended 254  
license upon the employer's filing of the affidavit with the 255  
prosecuting attorney. 256

(B) For a second violation of division (A)(1) of section 257  
4113.82 of the Revised Code, the court shall order the appropriate 258  
agencies to permanently revoke all licenses that are held by the 259  
employer specific to the business location where the unauthorized 260  
alien performed work. If the employer does not hold a license 261

specific to the business location where the unauthorized alien 262  
performed work, but a license is necessary to operate the 263  
employer's business in general, the court shall order the 264  
appropriate agencies to permanently revoke all licenses that are 265  
held by the employer at the employer's primary place of business. 266  
On receipt of the order and notwithstanding any other law, the 267  
appropriate agencies shall immediately revoke the licenses. 268

(C) A violation is considered a first violation by an 269  
employer at a business location if the violation did not occur 270  
during a probationary period ordered by the court under this 271  
section or section 4113.87 of the Revised Code for that employer's 272  
business location. A violation is considered a second violation by 273  
an employer at a business location if the violation occurred 274  
during a probationary period ordered by the court under this 275  
section or section 4113.87 of the Revised Code for that employer's 276  
business location. 277

**Sec. 4113.87.** (A)(1) If a court, pursuant to an action 278  
brought under section 4113.84 of the Revised Code, determines that 279  
an employer has committed a first violation of division (A)(2) of 280  
section 4113.82 of the Revised Code, the court shall do all of the 281  
following: 282

(a) Order the employer to terminate the employment of all 283  
unauthorized aliens; 284

(b) Order the employer to be subject to a five-year 285  
probationary period for the business location where the 286  
unauthorized alien performed work; 287

(c) Order the appropriate agencies to suspend all licenses 288  
described in division (A)(4) of section 4113.86 of the Revised 289  
Code held by the employer for a minimum of ten days; 290

(d) Order the employer to file a signed affidavit of the type 291

described in division (A)(4) of this section with the prosecuting attorney of the county where the violation occurred within three business days after the order is issued. 292  
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(2) During the probationary period described in division (A)(1)(b) of this section, the employer shall file quarterly reports in the form provided in section 3121.892 of the Revised Code with the prosecuting attorney of each new employee who is hired by the employer after the date the court determined the employer violated division (A)(2) of section 4113.82 of the Revised Code and who is employed at the business location where the unauthorized alien performed work. 295  
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(3) The court shall base its decision on the length of the suspension described in division (A)(1)(c) of this section on any evidence or information submitted to it during the action and shall consider the factors described in divisions (A)(2)(a) to (g) of section 4113.86 of the Revised Code, as applicable. 303  
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(4) The affidavit described in division (A)(1)(d) of this section shall state that the employer has terminated the employment of all unauthorized aliens employed by the employer in this state and that the employer will not purposefully or knowingly employ an unauthorized alien in this state. If the employer fails to file the affidavit with the prosecuting attorney within three business days after the date the order is issued, the court shall order the appropriate agencies to extend the suspension of all licenses described in division (A)(4) of section 4113.86 of the Revised Code held by the employer until the employer files the affidavit required under division (A)(1)(d) of this section. On receipt of the court's order and notwithstanding any other law to the contrary, the appropriate agencies shall suspend the licenses according to the court's order. The court shall send a copy of the court's order to the attorney general and the attorney general shall maintain the copy pursuant to section 308  
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4113.88 of the Revised Code. 324

A license remains suspended until the employer files the affidavit required under division (A)(1)(d) of this section with the prosecuting attorney. Notwithstanding any other law to the contrary, the appropriate agency shall reinstate the suspended license upon the employer's filing of the affidavit with the prosecuting attorney. 325  
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(B) For a second violation of division (A)(2) of section 4113.82 of the Revised Code, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer at the employer's primary place of business. On receipt of the order and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses. 331  
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(C) A violation is considered a first violation by an employer at a business location if the violation did not occur during a probationary period ordered by the court under this section or section 4113.86 of the Revised Code for that employer's business location. A violation is considered a second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court under this section or section 4113.86 of the Revised Code for that employer's business location. 343  
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Sec. 4113.88. The attorney general shall do all of the following: 352  
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(A) Maintain copies of all court orders received pursuant to 354

section 4113.86 or 4113.87 of the Revised Code; 355

(B) Maintain a database that includes the name of the 356  
employer who has committed a first violation of division (A)(1) or 357  
(2) of section 4113.82 of the Revised Code and the address of the 358  
business location where that violation occurred; 359

(C) Make the court orders available on the web site 360  
maintained by the attorney general. 361

**Sec. 4113.99.** (A) Whoever violates section 4113.15 of the 362  
Revised Code is guilty of a misdemeanor of the first degree. 363

(B) Whoever violates section 4113.16, 4113.18, or 4113.19 of 364  
the Revised Code is guilty of a minor misdemeanor. 365

(C) Whoever violates section 4113.17 of the Revised Code is 366  
guilty of a minor misdemeanor for a first offense; for each 367  
subsequent offense such person is guilty of a misdemeanor in the 368  
fourth degree. 369

(D) Whoever violates division (A)(3) of section 4113.82 of 370  
the Revised Code is guilty of a misdemeanor of the fourth degree. 371

**Section 2.** That existing section 4113.99 of the Revised Code 372  
is hereby repealed. 373