



# Ohio Legislative Service Commission

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## Bill Analysis

David M. Gold

### **H.B. 184**

128th General Assembly  
(As Introduced)

**Reps.** Combs, Batchelder, Jordan, Wachtmann, Uecker, Bubb, Maag, J. Adams, Derickson, Hall, Martin

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### **BILL SUMMARY**

- Requires public and private employers to register with a federal electronic verification system to assist in verifying the identity and working status of new employees.
- Prohibits a public employer from entering into a contract unless the other contracting party registers and participates in a federal electronic verification system to assist in verifying the identity and working status of new employees and mandates that the public employer require any bid or proposal to include an affirmation that the prospective contractor and any subcontractor participates in such a system.
- Prohibits a private employer from entering into any contract to provide products or services for a public agency unless the private employer registers and participates in a federal electronic verification system to assist in verifying the identity and working status of new employees and requires a public employer to cancel any contract with a private employer that has not participated in such a system.
- Requires every entity that operates a jail in Ohio to designate an official to determine the citizenship status of persons confined in the jail.
- Requires that a tax return filed by an employer for taxes withheld from employee compensation include an affirmation of compliance with the requirement of registration with a federal electronic verification system to verify the identity and working status of new employees and provides that failure to do so constitutes falsification or dereliction of duty.

- Prohibits adoption of local laws, ordinances, or policies by political subdivisions or public agencies that prohibit or restrict the sending to or receiving from the U.S. Department of Homeland Security information concerning any person's citizenship or immigration status.
- Establishes factors for a court to consider in determining a defendant's probability of appearing for trial when setting bail.

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## **CONTENT AND OPERATION**

### **Employer and contractor registration with federal system to verify worker status**

The bill requires every public and private employer to register with a federal status verification system such as the e-verify system operated by the U.S. Department of Homeland Security (DHS) and the Social Security Administration, or a similar successor system designated by the federal government, to assist in verifying the identity and legal working status of newly hired employees (R.C. 8.02(A)).

The bill prohibits any public employer from entering into a contract unless the other contracting party registers and participates in a federal status verification system as described in the prior paragraph, and it mandates that the public employer require that any bid or proposal include an affirmation that the prospective contractor and any subcontractor participates in such a system to assist in verifying the identity and legal working status of all new employees. The bill also prohibits any private employer from entering into any contract to provide products or services for a public agency unless the private employer registers and participates in such a federal status verification system. A public employer must cancel any contract with a private employer that has not participated in a status verification system. The provisions outlined in this paragraph apply to contracts entered into on and after July 1, 2009. Every such contract between a public agency and a private employer is deemed to include a provision that authorizes the public agency to cancel the contract if the private employer does not participate in a status verification system as required. (R.C. 8.03(B), (C), (D), and (E).)

The bill requires that every employer who files a tax return for taxes withheld from employee compensation under R.C. 5747.07 include with the return an affirmation of compliance with R.C. 8.02 (R.C. 5747.07(E)(3)). An organization or public servant

that fails to do so commits falsification under R.C. 2921.13<sup>1</sup> or dereliction of duty<sup>2</sup> under R.C. 2921.44 (R.C. 5747.99(D)).

### **Verification of citizenship status by jail**

The bill requires every entity that operates a jail in Ohio to designate an official, who may be a jail keeper, sheriff, or other person, to act on its behalf in making a reasonable effort to determine the citizenship status of any person who is charged with a crime and confined in the jail for any period of time. If the official determines that the confined person is an alien, the official must make a reasonable effort to verify that the person has been lawfully admitted to the United States and that any lawful immigration status has not expired. If the official determines that the confined person is an illegal alien, the official must notify DHS and collect the person's fingerprints in an electronic format. If the official cannot verify the lawful immigration status of the confined person, the official must notify DHS. (R.C. 8.03(A), (B), and (C).)

For purposes of the above jail-related provisions, the bill defines "jail" as having the same meaning as in R.C. 2929.01 (a jail, workhouse, minimum security jail, or other residential facility used for the confinement of alleged or convicted offenders that is operated by a political subdivision or a combination of political subdivisions of Ohio) (R.C. 8.03(D)).

### **Cooperation of political subdivision with federal immigration officials**

The bill prohibits any political subdivision, whether acting through its governing body or by an initiative, referendum, or any other process, from enacting an ordinance or policy that limits or prohibits a law enforcement officer or other employee of the political subdivision from communicating or cooperating with federal officials with regard to the immigration status of any individual in Ohio. It prohibits any public agency or public official from prohibiting or in any way restricting any public agency or public official from sending to or receiving from DHS information regarding the lawful or unlawful citizenship or immigration status of any individual. (R.C. 8.04(A) and (B).)

The bill further prohibits any person or public agency from prohibiting or restricting an employee of a public agency from doing any of the following with respect

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<sup>1</sup> A person commits falsification under R.C. 2921.13 by knowingly making a false statement, or affirming or swearing to the truth of a statement previously made, under specified circumstances. It is not clear that failing to make a statement falls within the statutory definition of falsification.

<sup>2</sup> A person commits dereliction of duty under R.C. 2921.44 by failing to perform one or more specified duties. The prohibitions apply to certain public officers and employees and to certain operators of correctional facilities. They do not apply generally to private employers who withhold taxes.

to information regarding the lawful or unlawful immigration status of any individual (R.C. 8.04(C)):

(1) Sending the information to or requesting or receiving the information from DHS;

(2) Maintaining the information;

(3) Exchanging the information with any other federal, state, or local government entity. (R.C. 8.04.)

### **Factors considered in setting of bail**

Under existing law, a court, when fixing bail, must consider the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of the defendant appearing at the trial of the case. The bill requires the court, in determining the defendant's probability of appearing at the trial, to consider all of the following (R.C. 2937.23(A)(3)) (see **COMMENT**):

(1) The length of the defendant's residence in the community;

(2) The defendant's employment status and history and the defendant's ability to give bail;

(3) The defendant's family ties and relationships;

(4) The defendant's character, reputation, habits, and mental condition;

(5) The defendant's previous record of not responding to required court appearances;

(6) The source of funds or property to be used to post bail or to pay a premium, insofar as it affects the risk of nonappearance;

(7) Whether the defendant is an alien who has not been lawfully admitted to the United States; and

(8) Any other factors, including any evidence of instability and a disdain for authority, that may indicate that the defendant may not adhere to the court's authority to bring the defendant to trial.

### **Definitions**

The bill includes the following definitions for purposes of R.C. 8.01 to 8.04 (R.C. 8.01):

**Alien.** A person who is not a United States citizen or a United States national.

**Illegal alien.** An alien who is deportable if apprehended because of one of the following:

(1) The alien entered the United States illegally without the proper authorization and documents.

(2) The alien once entered the United States legally and has since violated the terms of the status under which the alien entered the United States, making that alien an "out of status" alien.

(3) The alien once entered the United States legally but has overstayed the time limits of the original legal status.

**Immigrant** and **legal permanent resident alien.** An alien who has been granted the right by the United States Bureau of Citizenship and Immigration Services to reside permanently in the United States and to work without restrictions in the United States.<sup>3</sup>

**Nonimmigrant** and **legal resident alien.** An alien who has been granted the right by the United States Bureau of Citizenship and Immigration Services to reside temporarily in the United States and the period of that temporary residence has not expired.<sup>4</sup>

**Public employer** and **public agency.** Any department, agency, or instrumentality of the state or a political subdivision of the state.

**Private employer.** Any person who has one or more employees and who is not a public employer.

**Status verification system.** Any electronic system the federal government operates to assist an employer in verifying the identity and legal working status of new employees.

**Subcontractor.** A subcontractor, contract employee, staffing agency, or any contractor regardless of the contractor's tier.

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<sup>3</sup> Neither "immigrant" nor "nonimmigrant" is used elsewhere in the bill.

<sup>4</sup> Neither "legal resident alien" nor "legal permanent resident alien" is used elsewhere in the bill.

## Effective date

The bill declares an emergency and provides for an effective date of July 1, 2009. (Sections 4 and 5.)

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## COMMENT

Under Article IV, Section 5(B) of the Ohio Constitution, the Supreme Court has the authority to prescribe rules of practice and procedure for the courts. Such rules prevail over any conflicting statutes. Criminal Rule 46 sets forth factors to be considered in determining the types, amounts, and conditions of bail. The Supreme Court has held that the right to apply for bail is substantive, but that the method of applying for bail is procedural. *State ex rel. Silcott v. Spahr* (1990), 50 Ohio St.3d 110. Although there do not appear to be any decisions directly on point, it is conceivable that a court would hold that the establishment of factors to be considered in setting bail is a procedural matter and that Criminal Rule 46 would prevail over the bill's amendment to R.C. 2937.23 *in case of a conflict*. Even if a court found that listing factors to be considered in setting bail is a matter of procedure, it would not necessarily find the two sets of factors to be incompatible.

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## HISTORY

ACTION	DATE
Introduced	05-19-09

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