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## A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature recognizes that while the  
2 majority of contractors and developers in Hawaii conduct  
3 business in a legal, ethical, safe, and conscientious manner,  
4 unfortunately, there are some in our community who flaunt local  
5 rules and hiring practices and violate our laws and island  
6 values. These unscrupulous contractors engage in illegal hiring  
7 practices, fail to adhere to safety codes, and play fast and  
8 loose in other ways to increase their profits at the expense of  
9 Hawaii's skilled workers and consumers. These practices help  
10 these contractors gain an unfair competitive advantage over  
11 reputable, law-abiding companies and contribute to an underpaid,  
12 under-trained workforce.

13           Recent reports regarding the arrest and prosecution of  
14 unauthorized aliens working in the State of Hawaii in the  
15 agricultural and service industries indicate that the problem  
16 may be growing.



1           The legislature finds that Hawaii needs to preserve fair  
2 labor practices and quality construction standards in Hawaii by  
3 holding persons who engage in illegal hiring practices  
4 accountable. The purpose of this Act is to prohibit employers  
5 from hiring unauthorized aliens.

6           SECTION 2. Chapter 371, Hawaii Revised Statutes, is  
7 amended by adding a new section to part I to be appropriately  
8 designated and to read as follows:

9           "§371-       **Employment of unauthorized aliens prohibited.**

10          (a) An employer shall not knowingly employ an unauthorized  
11 alien for any length of time or under any circumstance.

12          (b) Upon receipt by the department of an allegation of the  
13 employment of an unauthorized alien by an employer or upon the  
14 department's own initiative, the department shall forthwith  
15 notify the state attorney general and the United States  
16 Immigration and Customs Enforcement of the suspected employment  
17 of an unauthorized alien. The department or the state attorney  
18 general, or both, shall conduct an appropriate investigation  
19 accordingly, with or without assistance of the United States  
20 Immigration and Customs Enforcement, and shall undertake  
21 appropriate enforcement actions, including but not limited to,  
22 initiating action to suspend the professional or vocational



1 license of the employer under chapter 436B and to levy an  
2 administrative fine of \$ \_\_\_\_\_ for each day of the  
3 violation; provided that employer penalties as provided in  
4 title 8 United States Code section 1324a(e)(4)(A), shall take  
5 precedence with regard to fines if a federal enforcement is  
6 conducted.

7 (c) Pursuant to the investigation under subsection (b), an  
8 unauthorized alien in the employment of the employer shall be:

- 9 (1) Terminated from employment by operation of law;
- 10 (2) Taken into custody if appropriate and referred for  
11 further proceedings to the appropriate federal  
12 authorities; and
- 13 (3) Subject to prosecution for the offense of identity  
14 theft in the third degree under section 708-839.8.

15 (d) For purposes of this section:

16 "Employer" means a person who engages the services of an  
17 employee, and includes any person acting on behalf of an  
18 employer, but shall not include the State or any political  
19 subdivision thereof, or any labor organization or anyone acting  
20 in behalf of the labor organization other than when it is acting  
21 as an employer in fact. The term "employer" includes, but is

1 not limited to, construction contractors and employers engaged  
2 in agriculture.

3 "Knowingly employ an unauthorized alien" means to hire,  
4 recruit, or refer for a fee, for employment in this State an  
5 alien, knowing the alien is an unauthorized alien.

6 "Unauthorized alien" means an alien who does not have the  
7 legal right or authorization under federal law to work in the  
8 United States, as provided in title 8 United States Code section  
9 1324a(h)(3)."

10 SECTION 3. Section 436B-19, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 **"§436B-19 Grounds for refusal to renew, reinstate or**  
13 **restore and for revocation, suspension, denial, or condition of**  
14 **licenses.** In addition to any other acts or conditions provided  
15 by law, the licensing authority may refuse to renew, reinstate  
16 or restore, or may deny, revoke, suspend, or condition in any  
17 manner, any license for any one or more of the following acts or  
18 conditions on the part of the licensee or the applicant thereof:

19 (1) Failure to meet or maintain the conditions and  
20 requirements necessary to qualify for the granting of  
21 a license;



- 1           (2) Engaging in false, fraudulent, or deceptive  
2           advertising, or making untruthful or improbable  
3           statements;
- 4           (3) Being addicted to, dependent on, or a habitual user of  
5           a narcotic, barbiturate, amphetamine, hallucinogen,  
6           opium, or cocaine, or other drugs or derivatives of a  
7           similar nature;
- 8           (4) Practicing the licensed profession or vocation while  
9           impaired by alcohol, drugs, physical disability, or  
10          mental instability;
- 11          (5) Procuring a license through fraud, misrepresentation,  
12          or deceit;
- 13          (6) Aiding and abetting an unlicensed person to directly  
14          or indirectly perform activities requiring a license;
- 15          (7) Professional misconduct, incompetence, gross  
16          negligence, or manifest incapacity in the practice of  
17          the licensed profession or vocation;
- 18          (8) Failure to maintain a record or history of competency,  
19          trustworthiness, fair dealing, and financial  
20          integrity;
- 21          (9) Conduct or practice contrary to recognized standards  
22          of ethics for the licensed profession or vocation;



- 1           (10) Violating any condition or limitation upon which a  
2                   conditional or temporary license was issued;
- 3           (11) Engaging in business under a past or present license  
4                   issued pursuant to the licensing laws, in a manner  
5                   causing injury to one or more members of the public;
- 6           (12) Failure to comply, observe, or adhere to any law in a  
7                   manner such that the licensing authority deems the  
8                   applicant or holder to be an unfit or improper person  
9                   to hold a license;
- 10          (13) Revocation, suspension, or other disciplinary action  
11                   by another state or federal agency against a licensee  
12                   or applicant for any reason provided by the licensing  
13                   laws or this section;
- 14          (14) Criminal conviction, whether by nolo contendere or  
15                   otherwise, of a penal crime directly related to the  
16                   qualifications, functions, or duties of the licensed  
17                   profession or vocation;
- 18          (15) Failure to report in writing to the licensing  
19                   authority any disciplinary decision issued against the  
20                   licensee or the applicant in another jurisdiction  
21                   within thirty days of the disciplinary decision;



1 (16) Employing, utilizing, or attempting to employ or  
2 utilize at any time any person [~~not~~]:

3 (A) Not licensed under the licensing laws where  
4 licensure is required; or

5 (B) Who is an unauthorized alien, as defined in  
6 section 371- ; or

7 (17) Violating this chapter, the applicable licensing laws,  
8 or any rule or order of the licensing authority."

9 SECTION 4. If any provision of this Act, or the  
10 application thereof to any person or circumstance is held  
11 invalid, the invalidity does not affect other provisions or  
12 applications of the Act, which can be given effect without the  
13 invalid provision or application, and to this end the provisions  
14 of this Act are severable.

15 SECTION 5. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

Calvin K. Boy  
JAN 26 2009



**Report Title:**

Unauthorized Aliens; Employment

**Description:**

Prohibits employers from knowingly hiring unauthorized aliens, as defined in federal law, and establishes a mechanism for handling complaints and conducting investigations, and penalties for violation of the prohibition.

