

JAN 26 2009

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 employ an unauthorized alien for any
11 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 "Employ an unauthorized alien" means to hire, recruit, or
4 refer for a fee, for employment in this State an alien.

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

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

11 **"§436B-19 Grounds for refusal to renew, reinstate or**
12 **restore and for revocation, suspension, denial, or condition of**
13 **licenses.** In addition to any other acts or conditions provided
14 by law, the licensing authority may refuse to renew, reinstate
15 or restore, or may deny, revoke, suspend, or condition in any
16 manner, any license for any one or more of the following acts or
17 conditions on the part of the licensee or the applicant thereof:

18 (1) Failure to meet or maintain the conditions and
19 requirements necessary to qualify for the granting of
20 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: *Nike Galland*



Report Title:

Unauthorized Aliens; Employment

Description:

Prohibits employers from 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.

