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HOUSE BILL NO. 737

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend the Code of Virginia by adding in Chapter 1 of Title 40.1 a section numbered 40.1-11.2, relating to participation in E-Verify program.*

Patrons—Albo, Anderson, Athey, Carrico, Cole, Gilbert, Hugo, Lingamfelter, Marshall, R.G., Miller, J.H., Rust and Tata

Referred to Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 40.1 a section numbered 40.1-11.2 as follows:

§ 40.1-11.2. *Participation in E-Verify program.*

A. *As used in this section:*

"Employer" includes, in addition to the persons included in the definition of "employer" set forth in § 40.1-2, any person who uses a contract or subcontract to obtain the labor of an alien within the Commonwealth, knowing that such alien is an unauthorized alien with respect to performing such labor.

"E-Verify program" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated by the United State Department of Homeland Security, or a successor work authorization program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work authorization status of newly hired employees under the Immigration Reform and Control Act of 1986 (P.L. 99-603).

"Public contractor" means a nongovernmental contractor that has entered into a public contract with an agency of the Commonwealth or of a locality, and shall include any subcontractor that subcontracts with such contractor to perform work or provide services pursuant to such public contract, but shall exclude the following:

1. Contract or subcontracts with an annual value of less than \$600;
2. Work performed by persons not subject to the employment verification requirements of the United States Code Title 8, Section 1324a;

3. Contracts for the supply of commercially available off-the-shelf items, or items that are commercial items sold in substantial quantities in the commercial marketplace and offered to the agency in the same form available in the commercial market place, or with minor modifications;

4. Contracts for food and agricultural products shipped as bulk cargo, including items such as grains, oils and produce; and

5 Subcontracts that only provide supplies, such as food, fuel, or construction materials.

B. Certain employers, certain public contractors, and all agencies of the Commonwealth and localities shall enroll in and use the E-Verify program subject to the conditions set forth herein:

1. As a condition of doing business in the Commonwealth and as a condition of obtaining and retaining any permit or license issued by any agency of the Commonwealth, every employer that employs 15 or more employees within the Commonwealth and every public contractor that contracts with an agency of the Commonwealth or locality for work to be performed within the Commonwealth shall:

a. Be enrolled in the E-Verify program by December 1, 2010; and

b. On and after December 1, 2010, use the E-Verify program for each newly hired employee who is to perform work within the Commonwealth.

2. All agencies of the Commonwealth and their public contractors and each locality and its public contractors shall:

a. Be enrolled in the E-Verify program by December 1, 2010; and

b. On and after December 1, 2010, use the E-Verify program for each newly hired employee who is to perform work within the Commonwealth.

C. If an employer subject to the provisions of this section or public contractor subject to the provision of this section is not enrolled in and using the E-Verify program as required by subsection B:

1. Each agency of the Commonwealth that has issued a license to such employer or public contractor, after notice and opportunity for hearing pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), shall suspend or revoke any license issued by it to such employer or public contractor and, in the case of a public contractor, shall additionally suspend or terminate any contract

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58 such employer has with an agency of the Commonwealth or locality. The provisions of this subdivision
59 may be suspended if it is found that good cause exists for why the employer or public contractor is not
60 enrolled in or using the E-Verify program as required by this section. An employer or public contractor
61 shall have the right to appeal, to circuit court, an agency decision to revoke or suspend a license as
62 provided in Article 5 (§ 2.2-4025 et seq.) of Chapter 40 of Title 2.2. An employer or public contractor
63 that has had its license revoked or suspended pursuant to this subsection shall be entitled to
64 reinstatement of the license upon establishing that (i) if the license revocation or suspension was
65 attributable to the employer or public contractor not being enrolled in the E-Verify program, the
66 employer or public contractor has enrolled in the E-Verify program; or (ii) if the license revocation or
67 suspension was attributable to the employer or public contractor not using the E-Verify program, the
68 employer or public contractor has prepared and is implementing a plan to comply with the requirements
69 of this section; and

70 2. Each locality who has issued a business license pursuant to Chapter 37 (§ 58.2-3700 et seq.) of
71 Title 58.2 shall forfeit such license upon a finding by a circuit court of any city or county in which the
72 employer or public contractor conducts operations. Such court shall not require forfeiture of such
73 license if it finds good cause for why the employer or public contractor is not enrolled in or using the
74 E-Verify program as required by this section. An employer or public contractor that has forfeited its
75 business license pursuant to this subsection shall be entitled to reinstatement of the license upon
76 establishing to the satisfaction of the court that (i) if the license suspension was attributable to the
77 employer or public contractor not being enrolled in the E-Verify program, the employer or public
78 contractor has enrolled in the E-Verify program; or (ii) if the license suspension was attributable to the
79 employer or public contractor not using the E-Verify program, the employer or public contractor has
80 prepared and is implementing a plan to comply with the requirements of this section.

81 D. The Attorney General shall request the U.S. Department of Homeland Security, once each
82 calendar quarter, to provide a list of employers, public contractors, localities and agencies of the
83 Commonwealth within the Commonwealth that are enrolled and participate in the E-Verify program. In
84 addition, by March 1, 2012, the Attorney General shall request the U.S. Department of Homeland
85 Security to provide a list of state agencies and localities that were enrolled and participate in the
86 E-Verify program during calendar year 2011.