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HOUSE BILL NO. 1727

Offered January 12, 2011

Prefiled January 10, 2011

A *BILL to amend the Code of Virginia by adding in Chapter 1 of Title 40.1 a section numbered 40.1-11.3, relating to Virginia employer participation in E-Verify program.*

Patrons—Carrico, Athey, Bell, Richard P., Cleaveland, Cole, Cosgrove, Cox, J.A., Hugo, Iaquinto, Landes, Lingamfelter, Merricks, Miller, J.H., Nutter, Peace, Poindexter, Robinson, Rust, Sherwood, Tata and Villanueva

Referred to Committee for Courts of Justice

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 40.1-11.3 as follows:

§ 40.1-11.3. *Employer participation in E-Verify program; "Virginia Fair Employment Act."*

A. *As used in this section, unless the context requires a different meaning:*

"Employer" (i) *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 and (ii) does not include any agency of the Commonwealth that is subject to the provisions of § 40.1-11.2.*

"E-Verify program" *means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (P.L. 104-208), Division C, Title IV, § 403(a), as amended, operated by the United States 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. *Contracts or subcontracts with an annual value of less than \$600;*

2. *Work performed by persons not subject to the employment verification requirements of 8 U.S.C. § 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. *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 shall:*

1. *Be enrolled in the E-Verify program by December 1, 2011; and*

2. *On and after December 1, 2011, use the E-Verify program for each newly hired employee who is to perform work within the Commonwealth.*

C. *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 public contractor that contracts with an agency of the Commonwealth or locality for work to be performed within the Commonwealth shall:*

1. *Be enrolled in the E-Verify program by December 1, 2011; and*

2. *On and after December 1, 2011, use the E-Verify program for each newly hired employee who is to perform work within the Commonwealth.*

D. *Every locality shall:*

1. *Be enrolled in the E-Verify program by December 1, 2011; and*

2. *On and after December 1, 2011, use the E-Verify program for each newly hired employee who is to perform work within the Commonwealth.*

E. *If an employer or public contractor subject to the provisions of this section is not enrolled in and*

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57 using the E-Verify program as required by subsection B or C:

58 1. Each agency of the Commonwealth that has issued a license to such employer or public
59 contractor, after notice and opportunity for hearing pursuant to the Administrative Process Act
60 (§ 2.2-4000 et seq.), shall suspend or revoke any license issued by it to such employer or public
61 contractor. The provisions of this subdivision may be suspended if it is found that good cause exists for
62 why the employer or public contractor is not enrolled in or using the E-Verify program as required by
63 this section. An employer or public contractor shall have the right to appeal to circuit court an agency
64 decision to revoke or suspend a license as provided in Article 5 (§ 2.2-4025 et seq.) of Chapter 40 of
65 Title 2.2. An employer or public contractor that has had its license revoked or suspended pursuant to
66 this subdivision shall be entitled to reinstatement of the license upon establishing that (i) if the license
67 revocation or suspension was attributable to the employer or public contractor not being enrolled in the
68 E-Verify program, the employer or public contractor has enrolled in the E-Verify program or (ii) if the
69 license revocation or suspension was attributable to the employer or public contractor not using the
70 E-Verify program, the employer or public contractor has prepared and is implementing a plan to
71 comply with the requirements of this section;

72 2. Any business license issued by a locality pursuant to Chapter 37 (§ 58.1-3700 et seq.) of Title
73 58.1 to an employer or public contractor shall be cancelled upon a finding by a circuit court of any city
74 or county in which the employer or public contractor conducts operations that the employer or public
75 contractor is not enrolled in and using the E-Verify program as required by this section. The court shall
76 not require cancellation of such license if it finds good cause for why the employer or public contractor
77 is not enrolled in or using the E-Verify program as required by this section. An employer or public
78 contractor that has had its business license cancelled pursuant to this subsection shall be entitled to
79 reinstatement of the license upon establishing to the satisfaction of the court that (i) if the license
80 suspension was attributable to the employer or public contractor not being enrolled in the E-Verify
81 program, the employer or public contractor has enrolled in the E-Verify program or (ii) if the license
82 suspension was attributable to the employer or public contractor not using the E-Verify program, the
83 employer or public contractor has prepared and is implementing a plan to comply with the requirements
84 of this section; and

85 3. Any public contract between a public contractor and an agency of the Commonwealth or a
86 locality shall be invalid and unenforceable as contrary to law upon a finding by a circuit court of any
87 city or county in which the public contractor conducts operations that the public contractor is not
88 enrolled in and using the E-Verify program as required by this section. The court shall not be required
89 to find that the contract is invalid and unenforceable as contrary to law if it finds good cause for why
90 the public contractor is not enrolled in or using the E-Verify program as required by this section. A
91 public contract that has been found to be invalid and unenforceable pursuant to this subdivision shall
92 be reinstated upon a court finding that (i) if the contract's invalidity or unenforceability was attributable
93 to the public contractor not being enrolled in the E-Verify program, the public contractor has enrolled
94 in the E-Verify program or (ii) if the contract's invalidity or unenforceability was attributable to the
95 public contractor not using the E-Verify program, the public contractor has prepared and is
96 implementing a plan to comply with the requirements of this section.

97 F. The Attorney General shall request the U.S. Department of Homeland Security, once each
98 calendar quarter, to provide a list of employers and public contractors within the Commonwealth that
99 are enrolled and participate in the E-Verify program. In addition, by March 1, 2013, the Attorney
100 General shall request the U.S. Department of Homeland Security to provide a list of localities that were
101 enrolled and participated in the E-Verify program during calendar year 2012.