

**SECTION 302.**  
**BUSINESS LICENSING; REQUIREMENT FOR EMPLOYMENT AUTHORIZATION SYSTEM**

**IRLI Comment:** Section 302 integrates the most successful aspects of Arizona’s private employer E-verify bill and the Valley Park, MO business licensing ordinance. Arizona created a complaint process using the State Attorney General and County Attorney offices. The IRLI Model Bill uses a state administrative hearing process to determine whether an employer has knowingly employed an illegal alien, similar to the *Valley Park* approach. The Model Bill has a single “knowledge” element, with no increased sanction for “intentionally” employing illegal aliens.

The definitions and exclusions mirror federal law and are designed to avoid a conflict preemption challenge. The complaint process and administrative hearings are designed to insure due process protections for respondents, both employers and employees, consistent with federal judicial rulings in *Gray v. Valley Park* and *Arizona Contractors Ass’n v. Candelario*. The model procedures are designed to ensure that only the federal government makes the determination whether an individual is an unauthorized worker, by requiring that the state officer verify the work authorization by communicating with the federal government pursuant to 8 U.S.C. § 1373.

The penalty provisions rely primarily on the risk of suspension of business licenses, using the 8 U.S.C. § 1624a(h)(2)) “licensing and similar laws” exception. Direct civil fines to punish employers are preempted and thus not used in the model. The definition of licenses is flexible and can be adopted to specific state circumstances.

Subsection (C)(9) requires the maintenance of a database, available to the public, of businesses who have suspended licenses under this Section, to ensure the information is easily accessible to the public so no individual unknowingly enters into any contracts during such a time period. Subsection (C)(10) provides an enforcement mechanism against businesses that choose to ignore the department’s orders. Subsection (C)(11) provides employers using E-verify a safe harbor from being found to knowingly hire unauthorized aliens.

**(A) Definitions.**

In this section, unless the context otherwise requires:

1. "Agency" means any agency, department, board or commission of this State or a county, city or town that issues a license for purposes of operating a business in this state.
2. "Employment Authorization Program" means the E-verify program (formerly "Basic Pilot Program") under P.L. 104-208, Div. C, Title IV, Subtitle A, 110 Stat. 3009-655 (Sept. 30, 1996), as amended, or any successor program designated by the federal government for verification that an employee is not an unauthorized alien.
3. "Employee" means any person who performs employment services within the State of [XXXX] for an employer pursuant to an employment relationship between the employee and employer.
4. "Employer" means any individual or type of organization that transacts business in this state, and that holds or has applied for a license issued by an agency in this State, and that employs individuals who perform employment services in this state. "Employer" shall not include an entity that hires an independent contractor to perform work or hires casual domestic labor to perform work.
5. "Knowingly employ an unauthorized alien" shall have the meaning prescribed in United States Code Title 8 Section 1324a (Unlawful Employment of Aliens). This term shall be interpreted consistently with such section, and any federal rules and regulations applicable thereto.
6. "License":
  - (a) means any agency license, permit, certificate, approval, registration, charter or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state.
  - (b) includes:
    - (i) Articles of Incorporation under [XXXX].

(ii) A certificate of partnership, a partnership registration or articles of organization under [XXXX]

(iii) A grant of authority issued under title [xx], chapter [xx].

(iv) A transaction privilege tax license.

(c) The [Department of Licensing] shall, no later than twelve months after the effective date of this section, issue regulations providing a procedure for an agency to exempt certain licenses issued by such agency that have been determined, with the concurrence of the [Department], to be unrelated to operating a business in this State.

7. “Unauthorized alien” means an alien who is not authorized under federal law to be employed in the United States, as described in United States Code Title 8, Section 1324a(h)(3).

**(B) Verification of employment eligibility; E-Verify program**

Beginning six months after enactment, every employer shall, after making an offer of employment which has been accepted by an employee, verify the employment eligibility of each employee using the Employment Authorization Program. Such verification shall occur within the time period stipulated by federal law or regulations, after the hiring of the employee. A continuing employee hired prior to the date of the employer’s registration with the program is exempt from the requirements of this subsection.

**(C) Employment of unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation**

(1) An employer shall not employ an unauthorized alien.

(2) Any person with actual or constructive knowledge that (a) an employer employs, or has within ninety days employed, an unauthorized alien, or (b) an unauthorized alien is employed by an employer, may file a complaint with the [Department of Labor] of the State of [XXXX].

(3) A person who knowingly files a false and frivolous complaint under this subsection is guilty of a misdemeanor.

(4) Upon the receipt of a valid complaint of a violation of subsection (C)(1), the [Department of Labor] shall notify the employer and shall direct the employer to notify any

employees referred to in the complaint. The [Department of Labor] shall investigate whether a violation has occurred and shall hold an administrative hearing at which the employer may present any information he desires and at which the employer shall enjoy the right to counsel. The [Department of Labor] shall also request the federal government to verify, pursuant to United States Code Title 8, Section 1373(c), the employment authorization of any employee referred to in the complaint. The [Department of Labor] shall not attempt to independently make a final determination of whether an alien is authorized to be employed in the United States. The [Department of Labor] shall rely upon verification of employment authorization provided by the federal government, pursuant to United States Code Title 8, Section 1373(c).

(5) If, after confirmation that the employer has employed an unauthorized alien, the [Department of Labor] determines that the complaint is not frivolous, the [Department of Labor] shall:

- (a) notify the United States Immigration and Customs Enforcement Agency of the identity of the unauthorized alien and, if known the alien's address or location in the state, and
- (b) notify the local law enforcement agency of presence of the unauthorized alien in the jurisdiction.

(6) The [Department of Labor] shall not act upon a complaint against any employer for any violation that occurs within six months of enactment.

(7). On a finding of a violation of subsection (C)(1):

- (a). For a first violation during a two year period , the [Department of Labor]:
  - (i) shall order the employer to terminate the employment of all unauthorized aliens; and
  - (ii) shall order the employer to file a signed sworn affidavit with the [Department of Labor] within ten business days after the order is issued.
- (b) The affidavit shall state that the employer has corrected the violation by taking any of the following actions:
  - (i) terminated the unauthorized alien's employment; or
  - (ii) after consultation with the employee, requested a secondary or additional verification of employment authorization using the Employment Authorization Program; or

(iii) attempted to terminate the unauthorized alien's employment, and such termination has been challenged in a court of competent jurisdiction.

(c) If the employer fails to file the affidavit as prescribed in this subsection, the [Department of Labor] shall order the appropriate agencies to suspend all licenses subject to this subdivision that are held by the employer. All licenses that are suspended under this subdivision shall remain suspended until the prescribed affidavit has been filed with the [Department of Labor]. Notwithstanding any other law, upon the filing of the affidavit, the suspended licenses shall be deemed to have been reinstated for the purposes of this subdivision. During the pendency of an action affirmed under clause (b)(ii) or (b)(iii), the ten day period shall be tolled. The ten day period shall also be tolled during any contest period in which the federal government may allow an alien to challenge the federal government's determination of his immigration status or employment authorization.

(d) Licenses that are subject to suspension under this subsection are all licenses that are held by the employer and that are necessary to operate the employer's business at the employer's business location where the unauthorized alien performed work. If a license is not necessary to operate the employer's business at the specific location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the licenses that are subject to suspension under this subdivision include all licenses that are held by the employer at the employer's primary place of business.

(8) For a second violation of subsection (C)(1) during the two year period,

(a) the [Department of Labor] shall order the appropriate agencies to suspend, for at least thirty days, all licenses that are held by the employer and that are necessary to operate the employer's business at the employer's business location where the unauthorized alien performed work.

(b) If a license is not necessary to operate the employer's business at the specific location where the unauthorized alien performed work, but a license is necessary

to operate the employer's business in general, the [Department of Labor] shall order the appropriate agencies to suspend all licenses that are held by the employer at the employer's primary place of business. On receipt of the order and notwithstanding any other law, the appropriate agencies shall immediately suspend such licenses for at least thirty days.

(9) The [Department of Labor] shall maintain a public database containing copies of all orders issued pursuant to this section, available on the Department of Labor's website.

(10) In cases where the [Department of Labor] determines that an agency or employer has failed to comply with such order under this section, the [Department of Labor] may apply to the Superior Court having jurisdiction over the agency or employer for a judicial order, directing the agency or employer to comply with the [Department of Labor]'s order.

(11) For the purposes of this section, an employer who has used the Employment Authorization Program in compliance with subsection B has a rebuttable presumption that the employer did not knowingly employ an unauthorized alien in violation of subsection (C)(1).

**(D) Venue for judicial process**

At any time after a complaint is received, an employer subject to a complaint under this Section, or any employee of such employer who is alleged to be an unauthorized alien, may challenge and seek to enjoin the enforcement of this Section with respect to such entity or individual before a Superior Court of competent jurisdiction.