

109TH CONGRESS
1ST SESSION

H. R. 4038

To amend the Immigration and Nationality Act to improve enforcement of restrictions on employment in the United States of unauthorized aliens.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 7, 2005

Mr. GONZALEZ (for himself and Mr. REYES) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Immigration and Nationality Act to improve enforcement of restrictions on employment in the United States of unauthorized aliens.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Unlawful Employers
5 Accountability Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Current efforts to stem the tide of illegal
2 immigrants crossing into the United States have
3 fallen far short of need.

4 (2) The number of illegal immigrants currently
5 in the United States is approximating 11 million.

6 (3) Cities, counties, and States are forced to
7 absorb the costs of illegal immigration without com-
8 pensation from the Federal Government or employ-
9 ers.

10 (4) United States companies continue to recruit
11 and hire illegal immigrants and thereby aid in the
12 erosion of the border security of the United States.

13 (5) The hiring of illegal immigrants has had a
14 negative impact on the employment opportunities of
15 legal immigrants and United States citizens.

16 (6) Federal law expressly prohibits the hiring of
17 illegal immigrants.

18 (7) In 2004, only three United States compa-
19 nies were cited for hiring illegal immigrants.

20 **SEC. 3. COMPLIANCE WITH RESPECT TO THE UNLAWFUL**
21 **EMPLOYMENT OF ALIENS.**

22 (a) CIVIL PENALTY.—Paragraph (4) of subsection
23 (e) of section 274A of the Immigration and Nationality
24 Act (8 U.S.C. 1324a) is amended to read as follows:

1 “(4) CEASE AND DESIST ORDER WITH CIVIL
2 MONEY PENALTY FOR HIRING, RECRUITING, AND RE-
3 FERRAL VIOLATIONS.—

4 “(A) IN GENERAL.—With respect to a vio-
5 lation by any person or other entity of sub-
6 section (a)(1)(A) or (a)(2), the Secretary of
7 Homeland Security shall require the person or
8 entity to cease and desist from such violations
9 and to pay a civil penalty in the amount speci-
10 fied in subparagraph (B).

11 “(B) AMOUNT OF CIVIL PENALTY.—A civil
12 penalty under this paragraph shall not be less
13 than \$50,000 for each occurrence of a violation
14 described in subsection (a)(1)(A) or (a)(2) with
15 respect to the alien referred to in such sub-
16 section, plus, in the event of the removal of
17 such alien from the United States based on
18 findings developed in connection with the as-
19 sessment or collection of such penalty, the costs
20 incurred by the Federal Government, cooper-
21 ating State and local governments, and State
22 and local law enforcement agencies, in connec-
23 tion with such removal.

24 “(C) DISTRIBUTION OF PENALTIES TO
25 STATE AND LOCAL GOVERNMENTS.—

1 “(i) IN GENERAL.—Penalties collected
2 under this paragraph from a person or en-
3 tity shall be distributed as follows:

4 “(I) 25 percent of such amount
5 shall be distributed to the State in
6 which the person or entity is located.

7 “(II) 25 percent of such amount
8 shall be distributed to the county in
9 which the person or entity is located.

10 “(III) 25 percent of such amount
11 shall be distributed to the munici-
12 pality, if any, in which the person or
13 entity is located, or, in the absence of
14 such a municipality, to the county de-
15 scribed in subclause (II).

16 “(D) LIMITATION ON USE OF FUNDS.—
17 Amounts paid to a State, county, or munici-
18 pality under subparagraph (C) may only be
19 used for costs incurred by such State, county,
20 or municipality in providing public services to
21 aliens not lawfully present in the United States.

22 “(E) DISTINCT, PHYSICALLY SEPARATE
23 SUBDIVISIONS.—In applying this subsection in
24 the case of a person or other entity composed
25 of distinct, physically separate subdivisions each

1 of which provides separately for the hiring, re-
2 recruiting, or referring for employment, without
3 reference to the practices of, and not under the
4 control of or common control with, another sub-
5 division, each such subdivision shall be consid-
6 ered a separate person or other entity.”.

7 (b) DENIAL OF AGRICULTURAL ASSISTANCE FOR
8 VIOLATORS.—Such section is further amended by adding
9 at the end the following new subsection:

10 “(i) DENIAL OF AGRICULTURAL ASSISTANCE FOR
11 VIOLATORS.—In the case of a violation of subsection
12 (a)(1)(A) or (a)(2) by an agricultural association, agricul-
13 tural employer, or farm labor contractor (as defined in
14 section 3 of the Migrant and Seasonal Agricultural Work-
15 er Protection Act (29 U.S.C. 1802)), such association, em-
16 ployer, or contractor shall be ineligible for agricultural as-
17 sistance described in paragraphs (1), (2), and (3) of sec-
18 tion 1211(a) of the Food Security Act of 1985 (16 U.S.C.
19 3811(a)) for a period not to exceed five years.”.

20 (c) GOOD FAITH DEFENSE.—

21 (1) IN GENERAL.—Such section is further
22 amended—

23 (A) by striking subsection (a)(3); and

24 (B) by striking subsection (b)(6).

1 (2) CONFORMING AMENDMENTS.—Such section
2 is further amended—

3 (A) in subsection (a)(5), by striking “para-
4 graphs (1)(B) and (3)” and inserting “para-
5 graph (1)(B)”;

6 (B) in subsection (b)—

7 (i) in the matter preceding paragraph
8 (1), by striking “paragraphs (1)(B) and
9 (3)” and inserting “paragraph (1)(B)”;
10 and

11 (ii) by striking paragraph (6).

12 (d) EMPLOYEE WHISTLEBLOWER PROTECTION.—It
13 shall be unlawful for any employer, including an employer
14 primarily engaged in agriculture, or any labor contractor
15 to intimidate, threaten, restrain, coerce, retaliate, dis-
16 charge, demote, or in any other manner discriminate
17 against an employee or former employee, regardless of the
18 immigration status of such employee or former employee,
19 because such employee or former employee—

20 (1) has disclosed, is disclosing, or seeks to dis-
21 close to Federal, State, or local law enforcement au-
22 thorities information related to a violation of an ap-
23 plicable Federal labor law as defined by the Sec-
24 retary of Labor; or

1 (2) has cooperated, is cooperating, or seeks to
2 cooperate in an investigation or other proceeding
3 concerning compliance with such an applicable Fed-
4 eral labor law.

5 (e) DISCLOSURE REQUIREMENTS.—

6 (1) IN GENERAL.—The Secretary of Homeland
7 Security shall establish, maintain, and regularly up-
8 date a publicly accessible website that contains a list
9 of persons or other entities that the Secretary has
10 determined to have been in violation of subsection
11 (a)(1)(A) or (a)(2) of section 274A of the Immigra-
12 tion and Nationality Act (8 U.S.C. 1324a) in the
13 preceding five years.

14 (2) CONTENTS OF WEBSITE.—Such website
15 shall contain, with respect to each such person or
16 entity, the following information:

17 (A) The name, address, and telephone
18 number of the person or entity.

19 (B) The names of the owners, chief execu-
20 tive officers, or other similar officers of the per-
21 son or entity.

22 (C) The number of unauthorized aliens (as
23 defined in subsection (h)(3) of such section)
24 found to be employed by the person or entity.

1 (D) The aggregate dollar amount that the
2 person or entity has received in the preceding
3 five years under any Federal contract.

4 (f) EFFECTIVE DATE.—The amendments made by
5 subsections (a), (b), and (c) shall take effect 30 days after
6 the date of the enactment of this Act and shall apply to
7 violations occurring on or after such effective date.

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