

As Introduced

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H. B. No. 184

Representative Combs

Cosponsors: Representatives Batchelder, Jordan, Wachtmann, Uecker,
Bubp, Maag, Adams, J., Derickson, Hall, Martin

—

A BILL

To amend sections 2937.23, 5747.07, and 5747.99 and 1
to enact sections 8.01 to 8.04 of the Revised Code 2
to require employers to register and participate 3
in a status verification system to verify the work 4
eligibility status of all new employees and to 5
affirm their participation on their state income 6
tax returns, to specify that an employer's failure 7
to affirm their participation in the status 8
verification system on their state income tax 9
returns constitutes falsification or dereliction 10
of duty, to require public agencies to cancel 11
contracts with private employers who do not 12
participate in a status verification system, to 13
require jail officials to make a reasonable effort 14
to verify the citizenship of confined persons, to 15
collect electronic fingerprints of illegal aliens, 16
and to notify the United States Department of 17
Homeland Security in certain circumstances, to 18
prohibit political subdivisions from restricting 19
communication and cooperation with federal 20
officials regarding a person's citizenship status, 21
to require judges and magistrates to consider 22

immigration status and other factors in 23
determining a defendant's bail, and to declare an 24
emergency. 25

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2937.23, 5747.07, and 5747.99 be 26
amended and sections 8.01, 8.02, 8.03, and 8.04 of the Revised 27
Code be enacted to read as follows: 28

Sec. 8.01. As used in sections 8.01 to 8.04 of the Revised 29
Code: 30

(A) "Alien" means a person who is not a United States citizen 31
or a United States national. 32

(B) "Illegal alien" means an alien who is deportable if 33
apprehended because of one of the following: 34

(1) The alien entered the United States illegally without the 35
proper authorization and documents. 36

(2) The alien once entered the United States legally and has 37
since violated the terms of the status under which the alien 38
entered the United States, making that alien an "out of status" 39
alien. 40

(3) The alien once entered the United States legally but has 41
overstayed the time limits of the original legal status. 42

(C) "Immigrant" and "legal permanent resident alien" mean an 43
alien who has been granted the right by the United States bureau 44
of citizenship and immigration services to reside permanently in 45
the United States and to work without restrictions in the United 46
States. 47

(D) "Nonimmigrant" and "legal resident alien" mean an alien 48
who has been granted the right by the United States bureau of 49

citizenship and immigration services to reside temporarily in the 50
United States and the period of that temporary residence has not 51
expired. 52

(E) "Public employer" and "public agency" mean any 53
department, agency, or instrumentality of the state or a political 54
subdivision of the state. 55

(F) "Private employer" means any person who has one or more 56
employees and who is not a public employer. 57

(G) "Status verification system" means any electronic system 58
the federal government operates to assist an employer in verifying 59
the identity and legal working status of new employees. 60

(H) "Subcontractor" means a subcontractor, contract employee, 61
staffing agency, or any contractor regardless of the contractor's 62
tier. 63

Sec. 8.02. (A) Every public and private employer shall 64
register with a federal status verification system such as the 65
"e-verify" system operated by the United States department of 66
homeland security and the United States social security 67
administration, or similar successor system as the federal 68
government designates, to assist in verifying the identity and 69
legal working status of newly hired employees. 70

(B) No public employer shall enter into a contract unless the 71
person with which the public employer contracts registers and 72
participates in a status verification system as described in 73
division (A) of this section. The public employer shall require 74
that any bid or proposal include an affirmation that the 75
prospective contractor and any subcontractor participate in such a 76
system to assist in verifying the identity and legal working 77
status of all new employees. 78

(C) No private employer shall enter into any contract to 79

provide products or services for a public agency unless the 80
private employer registers and participates in a status 81
verification system as described in division (A) of this section 82
to assist in verifying the identity and legal working status of 83
all new employees. 84

(D) A public employer shall cancel any contract with a 85
private employer if that private employer has not participated in 86
a status verification system as this section requires. 87

(E) Divisions (B), (C), and (D) of this section apply to 88
contracts entered into on and after July 1, 2009. Every contract 89
entered into on or after July 1, 2009, between a public agency and 90
a private employer shall be deemed to include a provision that 91
authorizes the public agency to cancel the contract if the private 92
employer does not participate in a status verification system as 93
this section requires. 94

Sec. 8.03. (A) Every entity that operates a jail in this 95
state shall designate an official, who may be a jail keeper, 96
sheriff, or other person the entity designates, to act on its 97
behalf in carrying out this section. 98

(B) When a person charged with a criminal offense is confined 99
in a jail for any period of time, the official designated pursuant 100
to division (A) of this section shall make a reasonable effort to 101
determine the citizenship status of the confined person. 102

(C) If the designated official determines that the confined 104
person is an alien, the official shall make a reasonable effort to 105
verify that the person has been lawfully admitted to the United 106
States and that any lawful immigration status has not expired. If 107
the official determines that the confined person is an illegal 108
alien, the official shall notify the United States department of 109
homeland security and shall collect the person's fingerprints in 110

an electronic format. If the official cannot verify the lawful 111
immigration status of the confined person, the official shall 112
notify the United States department of homeland security. 113

(D) "Jail" has the same meaning as in section 2929.01 of the 114
Revised Code. 115

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Sec. 8.04. (A) No political subdivision of this state, 117
whether acting through its governing body or by an initiative, 118
referendum, or any other process, shall enact an ordinance or 119
policy that limits or prohibits a law enforcement officer or other 120
employee of the political subdivision from communicating or 121
cooperating with federal officials with regard to the immigration 122
status of any individual within this state. 123

(B) Notwithstanding any other provision of law, no public 124
agency or public official may prohibit, or in any way restrict, 125
any public agency or public official from sending to, or receiving 126
from, the United States department of homeland security 127
information regarding the lawful or unlawful citizenship or 128
immigration status of any individual. 129

(C) Notwithstanding any other provision of law, no person or 130
public agency may prohibit or in any way restrict an employee of a 131
public agency from doing any of the following with respect to 132
information regarding the lawful or unlawful immigration status of 133
any individual: 134

(1) Sending the information to, or requesting or receiving 135
the information from, the United States department of homeland 136
security; 137

(2) Maintaining the information; 138

(3) Exchanging the information with any other federal, state, 139
or local government entity. 140

Sec. 2937.23. (A)(1) In a case involving a felony or a 141
violation of section 2903.11, 2903.12, or 2903.13 of the Revised 142
Code when the victim of the offense is a peace officer, the judge 143
or magistrate shall fix the amount of bail. 144

(2) In a case involving a misdemeanor or a violation of a 145
municipal ordinance and not involving a felony or a violation of 146
section 2903.11, 2903.12, or 2903.13 of the Revised Code when the 147
victim of the offense is a peace officer, the judge, magistrate, 148
or clerk of the court may fix the amount of bail and may do so in 149
accordance with a schedule previously fixed by the judge or 150
magistrate. If the judge, magistrate, or clerk of the court is not 151
readily available, the sheriff, deputy sheriff, marshal, deputy 152
marshal, police officer, or jailer having custody of the person 153
charged may fix the amount of bail in accordance with a schedule 154
previously fixed by the judge or magistrate and shall take the 155
bail only in the county courthouse, the municipal or township 156
building, or the county or municipal jail. 157

(3) In all cases, the bail shall be fixed with consideration 158
of the seriousness of the offense charged, the previous criminal 159
record of the defendant, and the probability of the defendant 160
appearing at the trial of the case. The following factors shall be 161
considered in determining the defendant's probability of appearing 162
at the trial of the case: 163

(a) The length of the defendant's residence in the community; 164

(b) The defendant's employment status and history and the 165
defendant's ability to give bail; 166

(c) The defendant's family ties and relationships; 167

(d) The defendant's character, reputation, habits, and mental 168
condition; 169

(e) The defendant's previous record of not responding to 170

<u>required court appearances;</u>	171
<u>(f) The source of funds or property to be used to post bail</u>	172
<u>or to pay a premium, insofar as it affects the risk of</u>	173
<u>nonappearance;</u>	174
<u>(g) Whether the defendant is an alien who has not been</u>	175
<u>lawfully admitted to the United States; and</u>	176
<u>(h) Any other factors, including any evidence of instability</u>	177
<u>and a disdain for authority, that may indicate that the defendant</u>	178
<u>may not adhere to the court's authority to bring the defendant to</u>	179
<u>trial.</u>	180
(B) In any case involving an alleged violation of section	181
2903.211 of the Revised Code or of a municipal ordinance that is	182
substantially similar to that section, the court shall determine	183
whether it will order an evaluation of the mental condition of the	184
defendant pursuant to section 2919.271 of the Revised Code and, if	185
it decides to so order, shall issue the order requiring the	186
evaluation before it sets bail for the person charged with the	187
violation. In any case involving an alleged violation of section	188
2919.27 of the Revised Code or of a municipal ordinance that is	189
substantially similar to that section and in which the court finds	190
that either of the following criteria applies, the court shall	191
determine whether it will order an evaluation of the mental	192
condition of the defendant pursuant to section 2919.271 of the	193
Revised Code and, if it decides to so order, shall issue the order	194
requiring that evaluation before it sets bail for the person	195
charged with the violation:	196
(1) Regarding an alleged violation of a protection order	197
issued or consent agreement approved pursuant to section 2919.26	198
or 3113.31 of the Revised Code, that the violation allegedly	199
involves conduct by the defendant that caused physical harm to the	200
person or property of a family or household member covered by the	201

order or agreement or conduct by that defendant that caused a 202
family or household member to believe that the defendant would 203
cause physical harm to that member or that member's property; 204

(2) Regarding an alleged violation of a protection order 205
issued pursuant to section 2903.213 or 2903.214 of the Revised 206
Code, or a protection order issued by a court of another state, as 207
defined in section 2919.27 of the Revised Code, that the violation 208
allegedly involves conduct by the defendant that caused physical 209
harm to the person or property of the person covered by the order 210
or conduct by that defendant that caused the person covered by the 211
order to believe that the defendant would cause physical harm to 212
that person or that person's property. 213

(C) As used in this section, "peace officer" has the same 214
meaning as in section 2935.01 of the Revised Code. 215

Sec. 5747.07. (A) As used in this section: 216

(1) "Partial weekly withholding period" means a period during 217
which an employer directly, indirectly, or constructively pays 218
compensation to, or credits compensation to the benefit of, an 219
employee, and that consists of a consecutive Saturday, Sunday, 220
Monday, and Tuesday or a consecutive Wednesday, Thursday, and 221
Friday. There are two partial weekly withholding periods each 222
week, except that a partial weekly withholding period cannot 223
extend from one calendar year into the next calendar year; if the 224
first day of January falls on a day other than Saturday or 225
Wednesday, the partial weekly withholding period ends on the 226
thirty-first day of December and there are three partial weekly 227
withholding periods during that week. 228

(2) "Undeposited taxes" means the taxes an employer is 229
required to deduct and withhold from an employee's compensation 230
pursuant to section 5747.06 of the Revised Code that have not been 231
remitted to the tax commissioner pursuant to this section or to 232

the treasurer of state pursuant to section 5747.072 of the Revised Code. 233
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(3) A "week" begins on Saturday and concludes at the end of the following Friday. 235
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(B) Except as provided in divisions (C) and (D) of this section and in division (A) of section 5747.072 of the Revised Code, every employer required to deduct and withhold any amount under section 5747.06 of the Revised Code shall file a return and shall pay the amount required by law as follows: 237
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(1) An employer who accumulates or is required to accumulate undeposited taxes of one hundred thousand dollars or more during a partial weekly withholding period shall make the payment of the undeposited taxes by the close of the first banking day after the day on which the accumulation reaches one hundred thousand dollars. If required under division (I) of this section, the payment shall be made by electronic funds transfer under section 5747.072 of the Revised Code. 242
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(2)(a) Except as required by division (B)(1) of this section, an employer described in division (B)(2)(b) of this section shall make the payment of undeposited taxes within three banking days after the close of a partial weekly withholding period during which the employer was required to deduct and withhold any amount under this chapter. If required under division (I) of this section, the payment shall be made by electronic funds transfer under section 5747.072 of the Revised Code. 250
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(b) For amounts required to be deducted and withheld during 1994, an employer described in division (B)(2)(b) of this section is one whose actual or required payments under this section exceeded one hundred eighty thousand dollars during the twelve-month period ending June 30, 1993. For amounts required to be deducted and withheld during 1995 and each year thereafter, an 258
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employer described in division (B)(2)(b) of this section is one 264
whose actual or required payments under this section were at least 265
eighty-four thousand dollars during the twelve-month period ending 266
on the thirtieth day of June of the preceding calendar year. 267

(3) Except as required by divisions (B)(1) and (2) of this 268
section, if an employer's actual or required payments were more 269
than two thousand dollars during the twelve-month period ending on 270
the thirtieth day of June of the preceding calendar year, the 271
employer shall make the payment of undeposited taxes for each 272
month during which they were required to be withheld no later than 273
fifteen days following the last day of that month. The employer 274
shall file the return prescribed by the tax commissioner with the 275
payment. 276

(4) Except as required by divisions (B)(1), (2), and (3) of 277
this section, an employer shall make the payment of undeposited 278
taxes for each calendar quarter during which they were required to 279
be withheld no later than the last day of the month following the 280
last day of March, June, September, and December each year. The 281
employer shall file the return prescribed by the tax commissioner 282
with the payment. 283

(C) The return and payment schedules prescribed by divisions 284
(B)(1) and (2) of this section do not apply to the return and 285
payment of undeposited school district income taxes arising from 286
taxes levied pursuant to Chapter 5748. of the Revised Code. 287
Undeposited school district income taxes shall be returned and 288
paid pursuant to divisions (B)(3) and (4) of this section, as 289
applicable. 290

(D)(1) The requirements of division (B) of this section are 291
met if the amount paid is not less than ninety-five per cent of 292
the actual tax withheld or required to be withheld for the prior 293
quarterly, monthly, or partial weekly withholding period, and the 294
underpayment is not due to willful neglect. Any underpayment of 295

withheld tax shall be paid within thirty days of the date on which 296
the withheld tax was due without regard to division (D)(1) of this 297
section. An employer described in division (B)(1) or (2) of this 298
section shall make the payment by electronic funds transfer under 299
section 5747.072 of the Revised Code. 300

(2) If the tax commissioner believes that quarterly or 301
monthly payments would result in a delay that might jeopardize the 302
remittance of withholding payments, the commissioner may order 303
that the payments be made weekly, or more frequently if necessary, 304
and the payments shall be made no later than three banking days 305
following the close of the period for which the jeopardy order is 306
made. An order requiring weekly or more frequent payments shall be 307
delivered to the employer personally or by certified mail and 308
remains in effect until the commissioner notifies the employer to 309
the contrary. 310

(3) If compelling circumstances exist concerning the 311
remittance of undeposited taxes, the commissioner may order the 312
employer to make payments under any of the payment schedules under 313
division (B) of this section. The order shall be delivered to the 314
employer personally or by certified mail and shall remain in 315
effect until the commissioner notifies the employer to the 316
contrary. For purposes of division (D)(3) of this section, 317
"compelling circumstances" exist if either or both of the 318
following are true: 319

(a) Based upon annualization of payments made or required to 320
be made during the preceding calendar year and during the current 321
calendar year, the employer would be required for the next 322
calendar year to make payments under division (B)(2) of this 323
section. 324

(b) Based upon annualization of payments made or required to 325
be made during the current calendar year, the employer would be 326
required for the next calendar year to make payments under 327

division (B)(2) of this section. 328

(E)(1) An employer described in division (B)(1) or (2) of 329
this section shall file, not later than the last day of the month 330
following the end of each calendar quarter, a return covering, but 331
not limited to, both the actual amount deducted and withheld and 332
the amount required to be deducted and withheld for the tax 333
imposed under section 5747.02 of the Revised Code during each 334
partial weekly withholding period or portion of a partial weekly 335
withholding period during that quarter. The employer shall file 336
the quarterly return even if the aggregate amount required to be 337
deducted and withheld for the quarter is zero dollars. At the time 338
of filing the return, the employer shall pay any amounts of 339
undeposited taxes for the quarter, whether actually deducted and 340
withheld or required to be deducted and withheld, that have not 341
been previously paid. If required under division (I) of this 342
section, the payment shall be made by electronic funds transfer. 343
The tax commissioner shall prescribe the form and other 344
requirements of the quarterly return. 345

(2) In addition to other returns required to be filed and 346
payments required to be made under this section, every employer 347
required to deduct and withhold taxes shall file, not later than 348
the thirty-first day of January of each year, an annual return 349
covering, but not limited to, both the aggregate amount deducted 350
and withheld and the aggregate amount required to be deducted and 351
withheld during the entire preceding year for the tax imposed 352
under section 5747.02 of the Revised Code and for each tax imposed 353
under Chapter 5748. of the Revised Code. At the time of filing 354
that return, the employer shall pay over any amounts of 355
undeposited taxes for the preceding year, whether actually 356
deducted and withheld or required to be deducted and withheld, 357
that have not been previously paid. The employer shall make the 358
annual report, to each employee and to the tax commissioner, of 359

the compensation paid and each tax withheld, as the commissioner 360
by rule may prescribe. 361

(3) Each return required to be filed under this section shall 362
contain an affirmation by the employer that it has complied with 363
section 8.02 of the Revised Code. 364

(4) Each employer required to deduct and withhold any tax is 365
liable for the payment of that amount required to be deducted and 366
withheld, whether or not the tax has in fact been withheld, unless 367
the failure to withhold was based upon the employer's good faith 368
in reliance upon the statement of the employee as to liability, 369
and the amount shall be deemed to be a special fund in trust for 370
the general revenue fund. 371

(F) Each employer shall file with the employer's annual 372
return the following items of information on employees for whom 373
withholding is required under section 5747.06 of the Revised Code: 374

(1) The full name of each employee, the employee's address, 375
the employee's school district of residence, and in the case of a 376
nonresident employee, the employee's principal county of 377
employment; 378

(2) The social security number of each employee; 379

(3) The total amount of compensation paid before any 380
deductions to each employee for the period for which the annual 381
return is made; 382

(4) The amount of the tax imposed by section 5747.02 of the 383
Revised Code and the amount of each tax imposed under Chapter 384
5748. of the Revised Code withheld from the compensation of the 385
employee for the period for which the annual return is made. The 386
commissioner may extend upon good cause the period for filing any 387
notice or return required to be filed under this section and may 388
adopt rules relating to extensions of time. If the extension 389
results in an extension of time for the payment of the amounts 390

withheld with respect to which the return is filed, the employer 391
shall pay, at the time the amount withheld is paid, an amount of 392
interest computed at the rate per annum prescribed by section 393
5703.47 of the Revised Code on that amount withheld, from the day 394
that amount was originally required to be paid to the day of 395
actual payment or to the day an assessment is issued under section 396
5747.13 of the Revised Code, whichever occurs first. 397

(5) In addition to all other interest charges and penalties 398
imposed, all amounts of taxes withheld or required to be withheld 399
and remaining unpaid after the day the amounts are required to be 400
paid shall bear interest from the date prescribed for payment at 401
the rate per annum prescribed by section 5703.47 of the Revised 402
Code on the amount unpaid, in addition to the amount withheld, 403
until paid or until the day an assessment is issued under section 404
5747.13 of the Revised Code, whichever occurs first. 405

(G) An employee of a corporation, limited liability company, 406
or business trust having control or supervision of or charged with 407
the responsibility of filing the report and making payment, or an 408
officer, member, manager, or trustee of a corporation, limited 409
liability company, or business trust who is responsible for the 410
execution of the corporation's, limited liability company's, or 411
business trust's fiscal responsibilities, shall be personally 412
liable for failure to file the report or pay the tax due as 413
required by this section. The dissolution, termination, or 414
bankruptcy of a corporation, limited liability company, or 415
business trust does not discharge a responsible officer's, 416
member's, manager's, employee's, or trustee's liability for a 417
failure of the corporation, limited liability company, or business 418
trust to file returns or pay tax due. 419

(H) If an employer required to deduct and withhold income tax 420
from compensation and to pay that tax to the state under sections 421
5747.06 and 5747.07 of the Revised Code sells the employer's 422

business or stock of merchandise or quits the employer's business, 423
the taxes required to be deducted and withheld and paid to the 424
state pursuant to those sections prior to that time, together with 425
any interest and penalties imposed on those taxes, become due and 426
payable immediately, and that person shall make a final return 427
within fifteen days after the date of selling or quitting 428
business. The employer's successor shall withhold a sufficient 429
amount of the purchase money to cover the amount of the taxes, 430
interest, and penalties due and unpaid, until the former owner 431
produces a receipt from the tax commissioner showing that the 432
taxes, interest, and penalties have been paid or a certificate 433
indicating that no such taxes are due. If the purchaser of the 434
business or stock of merchandise fails to withhold purchase money, 435
the purchaser shall be personally liable for the payment of the 436
taxes, interest, and penalties accrued and unpaid during the 437
operation of the business by the former owner. If the amount of 438
taxes, interest, and penalties outstanding at the time of the 439
purchase exceeds the total purchase money, the tax commissioner in 440
the commissioner's discretion may adjust the liability of the 441
seller or the responsibility of the purchaser to pay that 442
liability to maximize the collection of withholding tax revenue. 443

(I)(1) An employer described in division (I)(2) of this 444
section shall make all payments required by this section for the 445
year by electronic funds transfer under section 5747.072 of the 446
Revised Code. 447

(2)(a) For 1994, an employer described in division (I)(2) of 448
this section is one whose actual or required payments under this 449
section exceeded five hundred thousand dollars during the 450
twelve-month period ending June 30, 1993. 451

(b) For 1995, an employer described in division (I)(2) of 452
this section is one whose actual or required payments under this 453
section exceeded five hundred thousand dollars during the 454

twelve-month period ending June 30, 1994. 455

(c) For 1996, an employer described in division (I)(2) of 456
this section is one whose actual or required payments under this 457
section exceeded three hundred thousand dollars during the 458
twelve-month period ending June 30, 1995. 459

(d) For 1997 through 2000, an employer described in division 460
(I)(2) of this section is one whose actual or required payments 461
under this section exceeded one hundred eighty thousand dollars 462
during the twelve-month period ending on the thirtieth day of June 463
of the preceding calendar year. 464

(e) For 2001 and thereafter, an employer described in 465
division (I)(2) of this section is one whose actual or required 466
payments under this section exceeded eighty-four thousand dollars 467
during the twelve-month period ending on the thirtieth day of June 468
of the preceding calendar year. 469

Sec. 5747.99. (A) Whoever violates section 5747.19 of the 470
Revised Code, or whoever violates section 5747.06 or 5747.07 of 471
the Revised Code by failing to remit state income taxes withheld 472
from an employee, is guilty of a felony of the fifth degree. 473

(B) Whoever violates any provision of sections 5747.01 to 474
5747.19 of the Revised Code, or any lawful rule promulgated by the 475
tax commissioner under authority of any provision of those 476
sections, for the violation of which no other penalty is provided 477
in this section, shall be fined not less than one hundred nor more 478
than five thousand dollars. 479

(C) Whoever violates section 5747.49 of the Revised Code 480
shall be fined not more than five dollars for each day that 481
elapses between the date specified by law for performance and the 482
date when the duty is actually performed. 483

(D) An organization or public servant that fails to comply 484

with division (E)(3) of section 5747.07 of the Revised Code 485
commits falsification under section 2921.13 of the Revised Code or 486
derelection of duty under section 2921.44 of the Revised Code. 487

Section 2. That existing sections 2937.23, 5747.07, and 488
5747.99 of the Revised Code are hereby repealed. 489

Section 3. Section 2937.23 of the Revised Code is presented 490
in this act as a composite of the section as amended by both Sub. 491
H.B. 202 and Am. S.B. 142 of the 123rd General Assembly. The 492
General Assembly, applying the principle stated in division (B) of 493
section 1.52 of the Revised Code that amendments are to be 494
harmonized if reasonably capable of simultaneous operation, finds 495
that the composite is the resulting version of the section in 496
effect prior to the effective date of the section as presented in 497
this act. 498

Section 4. Sections 1, 2, and 3 of this act shall take effect 499
on July 1, 2009. 500

Section 5. This act is hereby declared to be an emergency 501
measure necessary for the immediate preservation of the public 502
peace, health, and safety. The reason for the necessity is because 503
illegal immigration causes economic hardship and lawlessness in 504
this state and immediate action is required to curb illegal 505
immigration in this state by encouraging all agencies within this 506
state to fully cooperate with federal immigration authorities in 507
the enforcement of federal immigration laws, by encouraging all 508
employers to verify the immigration status of new employees, and 509
by taking steps to identify illegal aliens in this state. 510
Therefore, this act shall go into immediate effect. 511