

**As Passed by the House**

**135th General Assembly**

**Regular Session**

**2023-2024**

**Sub. H. B. No. 327**

**Representatives Wiggam, Swearingen**

**Cosponsors: Representatives Click, Creech, Cutrona, Edwards, Fowler Arthur, Gross, Hall, Hillyer, John, Johnson, Kick, King, Klopfenstein, Lorenz, Loychik, McClain, Merrin, Miller, K., Miller, M., Patton, Pizzulli, Plummer, Seitz, Stewart, Williams, Young, T., Abrams, Bird, Brennan, Brown, Carruthers, Daniels, Dell'Aquila, Dobos, Ghanbari, Holmes, Jones, Lampton, LaRe, Lear, Lipps, Mathews, Miller, J., Oelslager, Ray, Richardson, Robb Blasdel, Santucci, Stein, Thomas, C., Willis**

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**A BILL**

To enact sections 4151.01, 4151.02, 4151.03, 1  
4151.04, 4151.05, and 4151.06 of the Revised 2  
Code to require certain government contractors 3  
and employers to use E-verify. 4

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

**Section 1.** That sections 4151.01, 4151.02, 4151.03, 5  
4151.04, 4151.05, and 4151.06 of the Revised Code be enacted to 6  
read as follows: 7

**Sec. 4151.01.** As used in this chapter: 8

(A) "Bidder" means an individual or entity who submits a 9  
bid to a state agency or political subdivision to perform work 10  
under a public improvement or maintenance contract. 11

(B) "Public contractor" means any individual or entity who 12  
directs, supervises, or has responsibility for the means, 13

method, and manner of implementing a contract for the 14  
construction or maintenance of a public improvement. 15

(C) "E-verify" means the employment verification program 16  
as jointly administered by the United States department of 17  
homeland security and the social security administration under 18  
section 101(a)(1) of the federal "Immigration Reform and Control 19  
Act of 1986," 8 U.S.C. 1324a, or any of its successor programs. 20

(D) "Political subdivision" means any body corporate and 21  
politic that is responsible for governmental activities in a 22  
geographic area smaller than the state. 23

(E) "Public improvement" has the same meaning as in 24  
section 9.75 of the Revised Code. 25

(F)(1) "Maintenance" means any activity necessary to keep 26  
a public improvement, its fixtures, and its components in proper 27  
working condition. "Maintenance" includes janitorial services, 28  
disinfection, snow removal, landscaping, repairs, equipment 29  
testing, and scheduled replacement of parts, components, or 30  
materials. 31

(2) "Maintenance" does not include utilities, waste 32  
management, software systems, or information technology 33  
services. 34

(G) "State agency" means any organized body, office, 35  
agency, institution, or other entity established by the laws of 36  
the state for the exercise of any function of state government. 37

(H) "State contract" has the same meaning as in section 38  
9.242 of the Revised Code. 39

(I) "Employer" means the state, any political subdivision 40  
of the state, any employer employing seventy-five or more 41

individuals within the state, and any nonresidential 42  
construction contractor employing one or more individuals within 43  
the state. 44

(J) "Nonresidential construction contractor" means any 45  
individual or contracting company that satisfies both of the 46  
following: 47

(1) Has responsibility for the means, method, and manner 48  
of construction, improvement, renovation, repair, or maintenance 49  
on a nonresidential construction project with respect to one or 50  
more trades and who offers, identifies, advertises, or otherwise 51  
holds out or represents that the individual or contracting 52  
company is permitted or qualified to perform or have 53  
responsibility for the means, method, and manner of 54  
construction, improvement, renovation, repair, or maintenance 55  
with respect to one or more trades on a construction project; 56

(2) Does either of the following: 57

(a) Performs construction, improvement, or renovation on a 58  
nonresidential construction project with respect to the 59  
individual's or contracting company's trade; 60

(b) Employs or assigns tradespersons to perform 61  
construction, improvement, or renovation on a nonresidential 62  
construction project with respect to the individual's or 63  
contracting company's trades. 64

(K) "Nonresidential construction project" means a 65  
construction project involving a building or structure subject 66  
to Chapter 3781. of the Revised Code and the rules adopted under 67  
that chapter, but not any of the following: 68

(1) An industrialized unit, manufactured home, or a 69  
residential building as defined in section 3781.06 of the 70

Revised Code; 71

(2) A building or structure that is incidental to the use 72  
of the land on which the building or structure is located for 73  
agricultural purposes as defined in section 3781.06 of the 74  
Revised Code; 75

(3) A mobile home as defined in section 4501.01 of the 76  
Revised Code. 77

**Sec. 4151.02.** (A) As used in this section, "subcontractor" 78  
means any individual or entity who undertakes any part of a 79  
contract for the construction or maintenance of a public 80  
improvement project with any person other than the state agency 81  
or political subdivision. 82

(B) Subject to division (C) of this section, each state 83  
agency or political subdivision desiring to enter or renew a 84  
contract for the construction or maintenance of a public 85  
improvement on and after the effective date of this section 86  
shall include in the contract a provision requiring the public 87  
contractor who is awarded the contract and any subcontractor to 88  
use e-verify. The public contractor shall use e-verify to 89  
confirm the identity and legal working status of each employee 90  
hired by the public contractor. A subcontractor shall use e- 91  
verify to confirm the identity and legal working status of each 92  
employee hired by the subcontractor. The public contractor and 93  
each subcontractor shall use e-verify with respect to both of 94  
the following types of employees: 95

(1) All individuals hired during the contract term by the 96  
public contractor or subcontractor to perform duties within this 97  
state; 98

(2) All individuals assigned by the public contractor or 99

subcontractor to perform work within this state on the contract. 100

(C) A contract for the construction or maintenance of a 101  
public improvement entered into or renewed on and after the 102  
effective date of this section may include a provision waiving 103  
the requirement in division (B) of this section when both of the 104  
following apply: 105

(1) The public contractor or subcontractor hires or 106  
rehires an employee whose identity and working status the public 107  
contractor or subcontractor has previously confirmed using e- 108  
verify. 109

(2) The public contractor or subcontractor is not required 110  
to verify or reverify the employee's eligibility to work under 111  
section 101(a) (1) of the federal "Immigration Reform and Control 112  
Act of 1986," 8 U.S.C. 1324a(b). 113

(D) No state agency or political subdivision shall award a 114  
a contract for the construction or maintenance of a public 115  
improvement to a bidder unless the contract contains terms 116  
consistent with this section. Any contract entered into in 117  
violation of this section is void. 118

**Sec. 4151.03.** (A) The attorney general shall conduct 119  
periodic reviews of state agencies and political subdivisions to 120  
ensure that state agencies and political subdivisions are 121  
including within their contracts for the construction or 122  
maintenance of public improvements provisions required by 123  
section 4151.02 of the Revised Code. 124

(B) Each state agency or political subdivision found in 125  
violation of division (D) of section 4151.02 of the Revised Code 126  
shall be fined five thousand dollars per violation. 127

**Sec. 4151.04.** (A) (1) Every employer shall do both of the 128

<u>following:</u>	129
<u>(a) Except as provided in division (A) (2) of this section,</u>	130
<u>after hiring an employee, verify the employment eligibility of</u>	131
<u>the employee through the e-verify program;</u>	132
<u>(b) Keep a record of the verification for the duration of</u>	133
<u>the employee's employment with the employer or three years,</u>	134
<u>whichever is longer.</u>	135
<u>(2) An employer is not required to comply with division</u>	136
<u>(A) (1) (a) of this section if both of the following apply:</u>	137
<u>(a) The employer has previously complied with division (A)</u>	138
<u>(1) of this section with respect to that individual.</u>	139
<u>(b) The employer is not required to verify or reverify the</u>	140
<u>employee's eligibility to work under section 101(a) (1) of the</u>	141
<u>federal "Immigration Reform and Control Act of 1986," 8 U.S.C.</u>	142
<u>1324a(b).</u>	143
<u>(B) (1) Subject to division (B) (2) of this section, a</u>	144
<u>contract for a nonresidential construction project entered into</u>	145
<u>on or after the effective date of this section shall include a</u>	146
<u>provision requiring the nonresidential construction contractor</u>	147
<u>responsible for the project and any subcontractor, regardless of</u>	148
<u>tier, that provides construction services with respect to the</u>	149
<u>contract to use e-verify to confirm the identity and work</u>	150
<u>eligibility of any tradesperson assigned to perform work on the</u>	151
<u>project.</u>	152
<u>(2) A contract for a nonresidential construction project</u>	153
<u>entered into on or after the effective date of this section may</u>	154
<u>include a provision waiving the requirement in division (B) (1)</u>	155
<u>of this section when both of the following apply:</u>	156

(a) The nonresidential construction contractor responsible 157  
for the project or a subcontractor hires or rehires a 158  
tradesperson whose identity and working status the contractor or 159  
subcontractor has previously confirmed using e-verify; 160

(b) The contractor or subcontractor is not required to 161  
verify or reverify the tradesperson's eligibility to work under 162  
section 101(a)(1) of the federal "Immigration Reform and Control 163  
Act of 1986," 8 U.S.C. 1324a(b). 164

**Sec. 4151.05.** (A) (1) The attorney general shall prescribe 165  
a complaint form for an individual to allege a violation of a 166  
contract provision required by section 4151.02 of the Revised 167  
Code or a violation of section 4151.04 of the Revised Code. The 168  
attorney general shall not require the complainant to list the 169  
complainant's social security number on the complaint form or to 170  
have the form notarized. A complainant shall submit the 171  
complaint to the attorney general. Except as provided in 172  
division (B) of this section, the attorney general shall 173  
investigate any violation alleged in a prescribed form submitted 174  
to the attorney general. 175

(2) This section does not prohibit an individual from 176  
filing an anonymous complaint on a form other than the 177  
prescribed complaint form. Except as provided in division (B) of 178  
this section, the attorney general may, but is not required to, 179  
investigate a violation alleged in a form other than a 180  
prescribed form. 181

(B) The attorney general shall not investigate a complaint 182  
that is based solely on race, color, or national origin. 183

(C) Any local law enforcement officer may assist in 184  
investigating a complaint filed under this section. 185

(D) (1) If the attorney general conducts an investigation 186  
under this section and determines that reasonable evidence 187  
exists that an individual or entity has violated a contract 188  
provision required by section 4151.02 of the Revised Code or 189  
violated section 4151.04 of the Revised Code, the attorney 190  
general shall, after providing notice and an opportunity for a 191  
hearing in accordance with Chapter 119. of the Revised Code, do 192  
both of the following: 193

(a) Except as provided in division (D) (2) of this section, 194  
order the individual or entity to pay a fine of one thousand 195  
dollars; 196

(b) Order the individual or entity to provide the attorney 197  
general with satisfactory proof that any violation has been 198  
corrected. 199

(2) If the attorney general's investigation reveals two 200  
violations, the attorney general shall order the individual or 201  
entity to pay a fine of two thousand five hundred dollars for 202  
the second violation. If the attorney general's investigation 203  
reveals three or more violations, the attorney general shall 204  
order an individual or entity to pay a fine of five thousand 205  
dollars for each violation beyond the second. 206

(E) If an individual or entity fails to comply with an 207  
order issued by the attorney general under division (D) of this 208  
section within thirty days after the attorney general issues the 209  
order, the attorney general shall bring a civil action against 210  
the individual or entity in accordance with section 4151.06 of 211  
the Revised Code. 212

**Sec. 4151.06.** (A) If an individual or entity fails to 213  
comply with an order issued by the attorney general under 214



division (D) of section 4151.05 of the Revised Code within the 215  
period specified in division (E) of that section, the attorney 216  
general shall bring a civil action against the individual or 217  
entity in the court of common pleas of the county where the 218  
individual or entity is located or does business. 219

(B) (1) Except as provided in divisions (B) (2) and (D) of 220  
this section, if the court determines that an individual or 221  
entity violated a contract provision required by section 4151.02 222  
of the Revised Code or violated section 4151.04 of the Revised 223  
Code, the court shall do both of the following: 224

(a) Order the individual or entity to pay five thousand 225  
dollars for each violation; 226

(b) Order the individual or entity to otherwise comply 227  
with the attorney general's order. 228

(2) If the court determines the individual or entity 229  
recklessly violated a contract provision required by section 230  
4151.02 of the Revised Code or violated section 4151.04 of the 231  
Revised Code, the court shall do both of the following: 232

(a) Order the individual or entity to pay a fine of ten 233  
thousand dollars for each reckless violation; 234

(b) Order that the individual or entity is not eligible to 235  
bid for or participate in any state contract for a period of one 236  
year. 237

(3) The court shall provide a copy of the order to the 238  
director of administrative services. 239

(4) After the one-year period described in division (B) (2) 240  
(b) of this section has elapsed, an individual or entity who has 241  
been ordered ineligible may be eligible to bid for and 242

participate in state contracts if the individual or entity files 243  
a sworn affidavit with the director that one year or more has 244  
elapsed since the order described in division (B) (2) (b) of this 245  
section and that the individual or entity has not violated a 246  
contract provision required by section 4151.02 of the Revised 247  
Code and has not violated section 4151.04 of the Revised Code 248  
during the one-year period. 249

(C) (1) The director shall maintain a list of all 250  
individuals and entities ineligible to bid for or participate in 251  
any state contract for a period of one year under division (B) 252  
(2) (b) of this section. Except as provided in division (C) (2) of 253  
this section, the director shall remove an individual or entity 254  
from the list when the one-year period ends. The director also 255  
shall maintain a record of all affidavits filed with the 256  
director under division (B) (4) of this section. 257

(2) The director shall not remove an individual or entity 258  
from the list maintained under division (C) (1) of this section 259  
if the individual or entity has not paid a fine ordered under 260  
this section. 261

(D) If a violation of a contract provision required under 262  
section 4151.02 of the Revised Code and a violation of section 263  
4151.04 of the Revised Code arise from the same facts and 264  
circumstances, a court shall fine an individual or entity for 265  
only one of the violations. 266

(E) For purposes of this section, an individual or entity 267  
acts recklessly when the individual or entity has conducted 268  
business in bad faith and has acted with conscious disregard or 269  
indifference to the e-verify program. 270

(F) The e-verify enforcement fund is created in the state 271

<u>treasury. Fines collected pursuant to this chapter shall be</u>	272
<u>deposited to the credit of the fund. The attorney general shall</u>	273
<u>use the fund to administer and enforce this chapter.</u>	274