

104TH CONGRESS
2D SESSION

S. 1692

To bar Federal agencies from procuring goods and services from employers of illegal aliens.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 1996

Mr. HARKIN introduced the following bill; which was read twice and referred to the Committee on Governmental Affairs

A BILL

To bar Federal agencies from procuring goods and services from employers of illegal 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 “Illegal Worker Preven-
5 tion Act.”

6 **SEC. 2. DEBARMENT OF FEDERAL CONTRACTORS NOT IN**
7 **COMPLIANCE WITH IMMIGRATION AND NA-**
8 **TIONALITY ACT EMPLOYMENT PROVISIONS.**

9 (a) POLICY.—It is the policy of the United States
10 that—

1 (1) the heads of executive agencies in procuring
2 goods and services should not contract with an em-
3 ployer that has not complied with paragraphs (1)(A)
4 and (2) of section 274A(a) of the Immigration and
5 Nationality Act (8 U.S.C. 1324a(a)) (hereafter in
6 this section referred to as the “INA employment
7 provisions”), which prohibit unlawful employment of
8 aliens; and

9 (2) the Attorney General should fully and ag-
10 gressively enforce the antidiscrimination provisions
11 of the Immigration and Nationality Act.

12 (b) ENFORCEMENT.—

13 (1) AUTHORITY.—

14 (A) IN GENERAL.— Using the procedures
15 established pursuant to section 274A(e) of the
16 Immigration and Nationality Act (8 U.S.C.
17 1324a(e)), the Attorney General may conduct
18 such investigations as are necessary to deter-
19 mine whether a contractor or an organizational
20 unit of a contractor is not complying with the
21 INA employment provisions.

22 (B) COMPLAINTS AND HEARINGS.—The
23 Attorney General—

24 (i) shall receive and may investigate
25 any complaint by an employee of any such

1 entity that alleges noncompliance by such
2 entity with the INA employment provi-
3 sions; and

4 (ii) in conducting the investigation,
5 shall hold such hearings as are necessary
6 to determine whether that entity is not in
7 compliance with the INA employment pro-
8 visions.

9 (2) ACTIONS ON DETERMINATIONS OF NON-
10 COMPLIANCE.—

11 (A) ATTORNEY GENERAL.—Whenever the
12 Attorney General determines that a contractor
13 or an organizational unit of a contractor is not
14 in compliance with the INA employment provi-
15 sions, the Attorney General shall transmit that
16 determination to the head of each executive
17 agency that contracts with the contractor and
18 the heads of other executive agencies that the
19 Attorney General determines it appropriate to
20 notify.

21 (B) HEAD OF CONTRACTING AGENCY.—
22 Upon receipt of the determination, the head of
23 a contracting executive agency shall consider
24 the contractor or an organizational unit of the
25 contractor for debarment, and shall take such

1 other action as may be appropriate, in accord-
2 ance with applicable procedures and standards
3 set forth in the Federal Acquisition Regulation.

4 (C) NONREVIEWABILITY OF DETERMINA-
5 TION.—The Attorney General’s determination is
6 not reviewable in debarment proceedings.

7 (c) DEBARMENT.—

8 (1) AUTHORITY.—The head of an executive
9 agency may debar a contractor or an organizational
10 unit of a contractor on the basis of a determination
11 of the Attorney General that it is not in compliance
12 with the INA employment provisions.

13 (2) SCOPE.—The scope of the debarment gen-
14 erally should be limited to those organizational units
15 of a contractor that the Attorney General determines
16 are not in compliance with the INA employment pro-
17 visions.

18 (3) PERIOD.—The period of a debarment under
19 this subsection shall be one year, except that the
20 head of the executive agency may extend the debar-
21 ment for additional periods of one year each if,
22 using the procedures established pursuant to section
23 274A(e) of the Immigration and Nationality Act (8
24 U.S.C. 1324a(e)), the Attorney General determines
25 that the organizational unit of the contractor con-

1 cerned continues not to comply with the INA em-
2 ployment provisions.

3 (4) LISTING.—The Administrator of General
4 Services shall list each debarred contractor and each
5 debarred organizational unit of a contractor on the
6 List of Parties Excluded from Federal Procurement
7 and Nonprocurement Programs that is maintained
8 by the Administrator. No debarred contractor and
9 no debarred organizational unit of a contractor shall
10 be eligible to participate in any procurement, nor in
11 any nonprocurement activities, of the Federal Gov-
12 ernment.

13 (d) REGULATIONS AND ORDERS.—

14 (1) ATTORNEY GENERAL.—

15 (A) AUTHORITY.—The Attorney General
16 may prescribe such regulations and issue such
17 orders as the Attorney General considers nec-
18 essary to carry out the responsibilities of the
19 Attorney General under this section.

20 (B) CONSULTATION.—In proposing regula-
21 tions or orders that affect the executive agen-
22 cies, the Attorney General shall consult with the
23 Secretary of Defense, the Secretary of Labor,
24 the Administrator of General Services, the Ad-
25 ministrator of the National Aeronautics and

1 Space Administration, the Administrator for
2 Federal Procurement Policy, and the heads of
3 any other executive agencies that the Attorney
4 General considers appropriate.

5 (2) FEDERAL ACQUISITION REGULATION.—The
6 Federal Acquisition Regulatory Council shall amend
7 the Federal Acquisition Regulation to the extent
8 necessary to provide for implementation of the de-
9 barment responsibility and other related responsibil-
10 ities assigned to heads of executive agencies under
11 this section.

12 (e) INTERAGENCY COOPERATION.—The head of each
13 executive agency shall cooperate with, and provide such
14 information and assistance to, the Attorney General as is
15 necessary for the Attorney General to perform the duties
16 of the Attorney General under this section.

17 (f) DELEGATION.—The Attorney General, the Sec-
18 retary of Defense, the Administrator of General Services,
19 the Administrator of the National Aeronautics and Space
20 Administration, and the head of any other executive agen-
21 cy may delegate the performance of any of the functions
22 or duties of that official under this section to any officer
23 or employee of the executive agency under the jurisdiction
24 of that official.

1 (g) IMPLEMENTATION NOT TO BURDEN PROCURE-
2 MENT PROCESS EXCESSIVELY.—This section shall be im-
3 plemented in a manner that least burdens the procure-
4 ment process of the Federal Government.

5 (h) CONSTRUCTION.—

6 (1) ANTIDISCRIMINATION.—Nothing in this sec-
7 tion relieves employers of the obligation to avoid un-
8 fair immigration-related employment practices as re-
9 quired by—

10 (A) the antidiscrimination provisions of
11 section 274B of the Immigration and National-
12 ity Act (8 U.S.C. 1324b), including the provi-
13 sions of subsection (a)(6) of that section con-
14 cerning the treatment of certain documentary
15 practices as unfair immigration-related employ-
16 ment practices; and

17 (B) all other antidiscrimination require-
18 ments of applicable law.

19 (2) CONTRACT TERMS.—This section neither
20 authorizes nor requires any additional certification
21 provision, clause, or requirement to be included in
22 any contract or contract solicitation.

23 (3) NO NEW RIGHTS AND BENEFITS.—This sec-
24 tion may not be construed to create any right or
25 benefit, substantive or procedural, enforceable at law

1 by a party against the United States, including any
2 department or agency, officer, or employee of the
3 United States.

4 (4) JUDICIAL REVIEW.—This section does not
5 preclude judicial review of a final agency decision in
6 accordance with chapter 7 of title 5, United States
7 Code.

8 (i) DEFINITIONS.—In this section:

9 (1) EXECUTIVE AGENCY.—The term “executive
10 agency” has the meaning given that term in section
11 4 of the Office of Federal Procurement Policy Act
12 (41 U.S.C. 403).

13 (2) CONTRACTOR.—The term “contractor”
14 means any individual or other legal entity that—

15 (A) directly or indirectly (through an affili-
16 ate or otherwise), submits offers for or is
17 awarded, or reasonably may be expected to sub-
18 mit offers for or be awarded, a Federal Govern-
19 ment contract, including a contract for carriage
20 under Federal Government or commercial bills
21 of lading, or a subcontract under a Federal
22 Government contract; or

23 (B) conducts business, or reasonably may
24 be expected to conduct business, with the Fed-

1 eral Government as an agent or representative
2 of another contractor.

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