

South Carolina General Assembly
117th Session, 2007-2008

H. 3032

STATUS INFORMATION

General Bill

Sponsors: Reps. Viers and Sandifer

Document Path: l:\council\bills\agm\18642mm07.doc

Introduced in the House on January 9, 2007

Introduced in the Senate on March 6, 2007

Last Amended on May 7, 2008

Currently residing in conference committee

Summary: Illegal aliens

HISTORY OF LEGISLATIVE ACTIONS

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
12/13/2006	House	Prefiled
12/13/2006	House	Referred to Committee on Judiciary
1/9/2007	House	Introduced and read first time HJ-28
1/9/2007	House	Referred to Committee on Judiciary HJ-28
2/28/2007	House	Committee report: Favorable with amendment Judiciary HJ-24
3/1/2007	House	Amended HJ-32
3/1/2007	House	Read second time HJ-33
3/1/2007	House	Unanimous consent for third reading on next legislative day HJ-33
3/2/2007	House	Read third time and sent to Senate HJ-1
3/6/2007	Senate	Introduced and read first time SJ-10
3/6/2007	Senate	Referred to Committee on Judiciary SJ-10
3/7/2007	Senate	Referred to Subcommittee: Ritchie (ch), Sheheen, Campsen, Scott, Williams, Vaughn
5/17/2007	Senate	Committee report: Favorable with amendment Judiciary SJ-4
5/21/2007		Scrivener's error corrected
4/29/2008	Senate	Debate interrupted SJ-23
4/30/2008	Senate	Committee Amendment Withdrawn SJ-61
4/30/2008	Senate	Amended SJ-61
4/30/2008	Senate	Read second time SJ-61
4/30/2008	Senate	Unanimous consent for third reading on next legislative day SJ-61
5/1/2008	Senate	Read third time and returned to House with amendments SJ-28
5/7/2008	House	Debate adjourned on amendments HJ-18
5/7/2008	House	Senate amendment amended HJ-33
5/7/2008	House	Returned to Senate with amendments HJ-33
5/14/2008	Senate	Non-concurrence in House amendment SJ-52
5/15/2008	House	House insists upon amendment and conference committee appointed Reps. Harrison, Delleney, and Viers HJ-2
5/15/2008	Senate	Conference committee appointed McConnell, Verdin, and Sheheen SJ-9

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VERSIONS OF THIS BILL

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[5/21/2007](#)

[4/30/2008](#)

[5/7/2008](#)

1
2 AMENDED--NOT PRINTED IN THE HOUSE
3 Amt. No. 8A (Doc. Path council\agm\19244mm08)
4 May 7, 2008
5

6 **H. 3032**
7

8 Introduced by Reps. Viers and Sandifer
9

10 S. Printed 4/30/08--S.
11 Read the first time March 6, 2007.
12 _____

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[3032-1]

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9 **A BILL**

10

11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,
12 1976, TO CREATE A STUDY COMMITTEE TO STUDY
13 APPROPRIATE ENFORCEMENT OF FEDERAL AND STATE
14 LAWS RELATING TO THE PRESENCE OF ILLEGAL ALIENS
15 IN THIS STATE AND TO RECOMMEND LEGISLATIVE
16 CHANGES AS APPROPRIATE.

17 Amend Title To Conform

18

19 Be it enacted by the General Assembly of the State of South
20 Carolina:

21

22 SECTION 1. This act may be cited as the "South Carolina Illegal
23 Immigration Reform Act".

24

25 SECTION 2. Section 1-31-40(A) of the 1976 Code is amended to
26 read:

27

28 “(A) The commission shall:

29 (1) provide the minority community consisting of African
30 Americans, Native American Indians, Hispanics/Latinos, Asians,
31 and others with a single point of contact for statistical and
32 technical assistance in the areas of research and planning for a
33 greater economic future;

34 (2) work with minority officials on the state, county, and
35 local levels of government in disseminating statistical data and its
36 impact on their constituencies;

37 (3) provide for publication of a statewide statistical abstract
38 on minority affairs;

39 (4) provide statistical analyses for members of the General
40 Assembly on the state of minority communities as the State
41 experiences economic growth and changes;

1 (5) provide the minority community with assistance and
2 information on Voting Rights Act submissions in the State, as well
3 as other related areas of concern to the minority community;

4 (6) determine, approve, and acknowledge by certification
5 state recognition for Native American Indian entities; however,
6 notwithstanding their state certification, the tribes have no power
7 or authority to take any action which would establish, advance, or
8 promote any form of gambling in this State;

9 (7) establish advisory committees representative of minority
10 groups, as the commission considers appropriate to advise the
11 commission;

12 (8) act as liaison with the business community to provide
13 programs and opportunities to fulfill its duties under this chapter;

14 (9) seek federal and other funding on behalf of the State of
15 South Carolina for the express purpose of implementing various
16 programs and services for African Americans, Native American
17 Indians, Hispanics/Latinos, Asians, and other minority groups;

18 (10) promulgate regulations as may be necessary to carry out
19 the provisions of this article including, but not limited to,
20 regulations regarding State Recognition of Native American Indian
21 entities in the State of South Carolina; and

22 (11) establish and maintain a twenty-four hour toll free
23 telephone number and electronic website in accordance with
24 Section 8-30-10; and

25 (11)(12) perform other duties necessary to implement
26 programs."

27

28 SECTION 3. Title 8 of the 1976 Code is amended by adding:

29

“CHAPTER 14

Illegal Aliens and Public Employment

33 Section 8-14-10. (A) As used in this article, the term:

34

34 (1) "Contractor" means any person having a contract with a
35 public employer except a political subdivision, where the total
36 value of the contract to be performed in a twelve-month period
37 exceeds twenty-five thousand dollars, or, if the public employer is
38 a political subdivision, where the total value of the contract to be
39 performed in a twelve-month period exceeds fifteen thousand
40 dollars.

41 (2) 'Director' means the director of the State Budget and
42 Control Board.

1 (3) 'End product' means movable personal property
2 described in the solicitation and in final form and ready for the use
3 intended including, without limitation, commodities or equipment.

4 (4) 'Federal work authorization program' means the
5 E-Verify Program or one of the electronic verification of work
6 authorization programs operated by the United States Department
7 of Homeland Security, or an equivalent federal work authorization
8 program operated by the United States Department of Homeland
9 Security to verify information of newly hired employees, pursuant
10 to the Immigration Reform and Control Act of 1986 (IRCA),
11 Public Law 99-603, or an electronic verification of work
12 authorization program operated by a private entity and approved
13 by the Attorney General.

14 (5) 'Public employer' means every department, agency, or
15 instrumentality of the State or a political subdivision of the State.

16 (6) 'Service contract' means a contract that involves the
17 physical performance of manual labor, if the total cost of such
18 labor exceeds (i) thirty percent of the total cost of all labor, or (ii)
19 five percent of the total contract price. The term does not include:

20 (a) a contract with a public employer, other than a
21 political subdivision, with a total value of less than twenty-five
22 thousand dollars, or a contract with a political subdivision with a
23 total value of less than fifteen thousand dollars;

24 (b) a contract primarily for the acquisition of an end
25 product; and

26 (c) a contract that is predominantly for the performance of
27 professional or consultant services.

28 (7) 'Subcontractor' means any person having either: (a) a
29 services contract with a contractor; or (b) a contract with a
30 sub-subcontractor.

31 (8) 'Sub-subcontractor' means any person having a services
32 contract with a subcontractor.

33 (9) 'Private employer' means any person carrying on any
34 employment and the legal representative of a deceased person or
35 the receiver or trustee of any person, and any person for whom an
36 individual performs a service, of whatever nature, as an employee,
37 as defined in Section 12-8-10.

38
39 Section 8-14-20. (A) On or after January 1, 2009, every public
40 employer shall register and participate in the federal work
41 authorization program to verify information of all new employees.

1 (B) A public employer may not enter into a services contract
2 with a contractor for the physical performance of services within
3 this State unless the contractor agrees:

4 (1) to register and participate in the federal work
5 authorization program to verify information of all new employees;
6 and require agreement from its subcontractors, and through the
7 subcontractors, the sub-subcontractors, to register and participate
8 in the federal verification of information of all new employees; or

9 (2) to employ only workers who:

10 (a) possess a valid South Carolina driver's license or
11 identification card issued by the South Carolina Department of
12 Motor Vehicles;

13 (b) are eligible to obtain a South Carolina driver's license
14 or identification card in that they meet the requirements set forth in
15 S.C. Code Ann. Section 56-1-40 through 56-1-90; or

16 (c) possess a valid driver's license or identification card
17 from another state where the license requirements are at least as
18 strict as those in South Carolina, as determined by the Attorney
19 General.

20 (C) A public employer and contractor must not divide work or
21 duties that would otherwise constitute a single service contract into
22 separate contracts for the purpose of avoiding the requirements of
23 this chapter.

24 (D) Subsection (B) applies as follows:

25 (1) on and after January 1, 2009, with respect to contractors,
26 subcontractors, or sub-subcontractors of five hundred or more
27 employees;

28 (2) on and after July 1, 2009, with respect to contractors,
29 subcontractors, or sub-subcontractors of one hundred or more
30 employees but less than five hundred employees; and

31 (3) on and after January 1, 2010, with respect to all other
32 contractors, subcontractors or sub-subcontractors.

33 (E) Private employers shall comply with the provisions of
34 Chapter 8, Title 41.

35

36 Section 8-14-30. The provisions of this article are enforceable
37 without regard to race, religion, gender, ethnicity, or national
38 origin. Section 11-35-4210 provides the exclusive remedy for
39 violations of this article for any contract governed by Title 11,
40 Chapter 35. A pre-award protest process appearing in a
41 procurement ordinance adopted by a political subdivision pursuant
42 to Section 11-35-50 or Section 11-35-70 provides the exclusive

1 remedy for violations of this article for any contract governed by
2 that procurement ordinance.

3

4 Section 8-14-40. A public employer complies with this article if
5 it obtains a written statement from the contractor certifying that the
6 contractor will comply with the requirements of this article and
7 agrees to provide to the public employer any documentation
8 required to establish either: (a) the applicability of this article to
9 the contractor, subcontractor, and sub-subcontractor; or (b) the
10 compliance with this article by the contractor and any
11 subcontractor or sub-subcontractor. A public employer need not
12 audit or independently verify a contractor's compliance with this
13 article.

14

15 Section 8-14-50. A contractor or public employer who in good
16 faith complies with the requirements of this article may not be
17 sanctioned or subjected to any civil or administrative action for
18 employing an individual not authorized for employment in the
19 United States.

20

21 Section 8-14-60. A person who knowingly makes or files any
22 false, fictitious, or fraudulent document, statement, or report
23 pursuant to this chapter is guilty of a felony, and, upon conviction,
24 must be fined within the discretion of the court or imprisoned for
25 not more than five years, or both.

26

27 Section 8-14-70. A local government must not enact any
28 ordinance or policy that limits or prohibits a law enforcement
29 officer, local official, or local government employee from seeking
30 to enforce the provisions of this article.

31

32 Section 8-14-80. Except as otherwise provided in this section,
33 the director shall prescribe all forms and promulgate regulations
34 necessary for the application of this article to contracts or
35 agreements and may publish these regulations on the Budget and
36 Control Board's website in accordance with the provisions of
37 Chapter 23 of Title 1 of the South Carolina Code of Laws.

38

39 Section 8-14-90. Except as otherwise provided in this section,
40 the director of the Department of Transportation shall prescribe
41 forms, promulgate regulations, and adopt rules necessary for the
42 application of this article to a contract or agreement relating to
43 public transportation and shall publish these rules and regulations

1 on the Department of Transportation's website in accordance with
2 the provisions of Chapter 23 of Title 1 of the South Carolina Code
3 of Laws."

4
5 SECTION 4. Article 1, Chapter 3, Title 23 of the 1976 Code is
6 amended by adding:

7
8 "Section 23-3-80. (A) The chief of the South Carolina Law
9 Enforcement Division is authorized and directed to negotiate the
10 terms of a memorandum of understanding between the State of
11 South Carolina and the United States Department of Justice or
12 Department of Homeland Security addressing:

13 (1) the enforcement of federal immigration laws by state and
14 local law enforcement, specifically through the 287-G program or
15 other applicable federal law designed for the purpose of state
16 enforcement of federal immigration laws;

17 (2) the detention of illegal immigrants by state and local law
18 enforcement officials and the costs associated with those
19 detentions;

20 (3) the removal of detained illegal immigrants by federal
21 authorities or, instead of removal, the deportation of illegal
22 immigrants by state and local law enforcement officials;

23 (4) training of state and local law enforcement officials
24 pursuant to the 287-G program or other applicable federal laws and
25 the costs of such training; and

26 (5) further communication and cooperation between federal
27 law enforcement and state and local law enforcement officials in
28 the area of immigration enforcement.

29 (B) The memorandum of understanding negotiated pursuant to
30 subsection (A) must be signed on behalf of the State by the chief of
31 the South Carolina Law Enforcement Division and the Governor or
32 as otherwise required by the appropriate federal agency.

33 (C) The chief of the South Carolina Law Enforcement Division
34 shall designate appropriate law enforcement officers to be trained
35 pursuant to the memorandum of understanding provided for in
36 subsections (A) and (B). The training may be funded pursuant to
37 the federal Homeland Security Appropriations Act of 2006, or any
38 other source of funding. The provisions of this section become
39 effective upon the securing of this funding.

40 (D) The director of the South Carolina Department of
41 Corrections, the sheriff of a county, and the governing body of a
42 municipality that maintains a paid police department may enter
43 into the memorandum of understanding between the State of South

1 Carolina and the United States Department of Justice or
2 Department of Homeland Security as a party, and, subject to the
3 availability of funds provided for in subsection (C) of this section,
4 provide corrections officers and local law enforcement officers for
5 training in accordance with the memorandum of understanding.

6 (E) A law enforcement officer certified as trained in
7 accordance with the memorandum of understanding as provided in
8 this section is authorized to enforce federal immigration and
9 customs laws while performing within the scope of his or her
10 authorized duties."

11

12 SECTION 5. Title 8 of the 1976 Code is amended by adding:

13

14 "CHAPTER 29

15 Verification of Lawful Presence in the United States

16

17 Section 8-29-10. (A) Except as provided in subsection (C) of
18 this section or where exempted by federal law, on or after July 1,
19 2008, every agency or political subdivision of this State shall
20 verify the lawful presence in the United States of any natural
21 person eighteen years of age or older who has applied for state or
22 local public benefits, as defined in 8 USC Section 1621, or for
23 federal public benefits, as defined in 8 USC Section 1611, that are
24 administered by an agency or a political subdivision of this State.

25 (B) The provisions of this article shall be enforced without
26 regard to race, religion, gender, ethnicity, or national origin.

27 (C) Verification of lawful presence pursuant to the provisions
28 of this article is not required for:

29 (1) a purpose for which lawful presence in the United States
30 is not required by law, ordinance, or regulation;

31 (2) assistance for health care items and services that are
32 necessary for the treatment of an emergency medical condition, as
33 defined in the Social Security Act (42 USC 1396 et seq.), of the
34 person involved and are not related to an organ transplant
35 procedure;

36 (3) short-term, noncash, in-kind emergency disaster relief;

37 (4) public health assistance for immunizations with respect
38 to immunizable diseases and for testing and treatment of symptoms
39 of communicable diseases whether or not such symptoms are
40 caused by a communicable disease;

41 (5) programs, services, or assistance including soup
42 kitchens, crisis counseling and intervention, and short-term shelter
43 specified by the United States Attorney General, in the United

1 States Attorney General's sole discretion after consultation with
2 appropriate federal agencies and departments, which:

3 (a) deliver in-kind services at the community level,
4 including through public or private nonprofit agencies;

5 (b) do not condition the provision of assistance, the
6 amount of assistance provided, or the cost of assistance provided
7 on the individual recipient's income or resources; and

8 (c) are necessary for the protection of life or safety;

9 (6) prenatal care;

10 (7) postsecondary education, whereby the Department of
11 Education shall set forth, or cause to be set forth, policies
12 regarding postsecondary benefits that comply with all federal law
13 including, but not limited to, public benefits as described in 8 USC
14 Section 1611, 1621, or 1623;

15 (8) benefits, programs, services or any other assistance
16 provided to victims of domestic violence, irrespective of their
17 immigration status, under the Violence Against Women Act of
18 2000, Public Law Number 106-386, or the Illegal Immigration
19 Reform and Immigrant Responsibility Act, Public Law Number
20 104-208; or

21 (9) benefits and refunds lawfully due from the South
22 Carolina Retirement Systems pursuant to Title 9 of the South
23 Carolina Code to members of the Retirement Systems and their
24 beneficiaries.

25 (D) Verification of lawful presence in the United States by the
26 agency or political subdivision required to make such verification
27 must occur as follows:

28 (1) the applicant must execute an affidavit that he is a United
29 States citizen or legal permanent resident eighteen years of age or
30 older; or

31 (2) the applicant must execute an affidavit that he or she is a
32 qualified alien or nonimmigrant under the Federal Immigration and
33 Nationality Act, Public Law 82-414, eighteen years of age or older,
34 and lawfully present in the United States.

35 (E) For an applicant who has executed an affidavit that he or
36 she is an alien lawfully present in the United States, eligibility for
37 benefits shall be made through the Systematic Alien Verification
38 of Entitlement (SAVE) program operated by the United States
39 Department of Homeland Security or a successor program
40 designated by the United States Department of Homeland Security.
41 Until the eligibility verification is made, the affidavit shall be
42 presumed to be proof of lawful presence for the purposes of this
43 article.

1 (F) A person who knowingly and willfully makes a false,
2 fictitious, or fraudulent statement or representation in an affidavit
3 executed pursuant to this section, or who aids or abets a person in
4 knowingly and willfully making a false, fictitious, or fraudulent
5 statement or representation in an affidavit executed pursuant to this
6 section, or who solicits or conspires to make a false, fictitious, or
7 fraudulent statement or representation in an affidavit executed
8 pursuant to this section shall be guilty of a felony and, upon
9 conviction, must be fined in the discretion of the court or
10 imprisoned not more than five years, or both. In addition, a person
11 convicted pursuant to this section must disgorge any benefit
12 received or make restitution, or both, to the agency or political
13 subdivision of this State that administered the benefit or
14 entitlement program. It is a separate violation of this section each
15 time a person receives a public benefit based on such a statement
16 or representation. A conviction and fine charged pursuant to this
17 section shall not preempt or preclude additional appropriate civil or
18 criminal charges or penalties. A person who suffers an
19 ascertainable loss of money or property, real or personal, as a
20 result of the actions of anyone convicted of a violation of this
21 subsection may bring an action, individually, or in a representative
22 capacity, to recover actual damages. If the court finds that a
23 violation has been established, the court shall award three times the
24 actual damages sustained and may provide such other relief as it
25 considers necessary and proper. Upon a finding by the court of a
26 violation, the court shall award to the person bringing the action
27 under this section reasonable attorney's fees and costs.

28 (G) Persons convicted of a violation of this section are jointly
29 and severally liable for a loss suffered by a person or an agency
30 or political subdivision of the State.

31 (H) If an affidavit constitutes a false claim of U.S. citizenship
32 under 18 USC Section 911, a complaint must be filed by the
33 agency or political subdivision with the United States Attorney for
34 the District of South Carolina.

35 (I) It is unlawful for an agency or a political subdivision of this
36 State to provide any state, local, or federal benefit, as defined in 8
37 USC Section 1621 or 8 USC Section 1611, in violation of this
38 section.

39 (J) All errors and significant delays by SAVE or its successor
40 program must be reported to the United States Department of
41 Homeland Security and to the Secretary of State which will
42 monitor SAVE and its verification application errors and
43 significant delays and report yearly on such errors and significant

1 delays to ensure that the application of SAVE is not wrongfully
2 denying benefits to legal residents of South Carolina.

3 (K) An agency or a political subdivision of this State that
4 provides a state, local, or federal benefit, as defined in 8 USC 1621
5 or 8 USC Section 1611, must require a person currently under the
6 age of eighteen who received the benefit to comply with the
7 provisions of this article upon reaching the age of eighteen. If the
8 recipient is unwilling or unable to comply, receipt of all benefits
9 must cease immediately upon the recipient's eighteenth birthday.

10 (L) A local government may not enact any ordinance or policy
11 that limits or prohibits a law enforcement officer, local official, or
12 local government employee from seeking to enforce the provisions
13 of this article."

14

15 SECTION 6. Title 8 of the 1976 Code is amended by adding:

16

17 "CHAPTER 30

18 Recording and Reporting Immigration Law Violations

19

20 Section 8-30-10. (A) The executive director of the State
21 Commission for Minority Affairs, or a designee, shall establish and
22 maintain a twenty-four hour toll free telephone number and
23 electronic website to receive, record, collect, and report allegations
24 of violations of any laws or regulations by any non-United States
25 citizen or immigrant, and allegations of violations of any laws or
26 regulations against any non-United States citizen or immigrant.
27 Such violations shall include, but are not limited to, E-Verify or
28 other federal work authorization program violations, violations of
29 Chapter 83 of Title 40 of this Code relating to immigration
30 assistance services, or any regulations enacted governing the
31 operation of immigration assistance services, false or fraudulent
32 statements made or documents filed in relation to an immigration
33 matter, as defined by Section 40-83-20, violation of human
34 trafficking laws, as defined in Section 16-3-930, landlord tenant
35 law violations, or violations of any law pertaining to the provision
36 or receipt of public assistance benefits or public services.

37 (B) The executive director, or a designee, shall establish and
38 maintain a centralized tracking database consisting of all
39 information received through the twenty-four hour toll free
40 telephone number and electronic website, and shall report all
41 alleged violations to the appropriate law enforcement,
42 administrative, executive, or regulatory agency or political

1 subdivision having law enforcement or regulatory control over the
2 subject matter.

3

4 Section 8-30-20. The executive director is authorized to hire
5 personnel necessary to carry out the duties prescribed in Section
6 8-30-10. The General Assembly shall provide for the funds in the
7 annual appropriations act.”

8

9 SECTION 7. Chapter 6, Title 12 of the 1976 Code is amended by
10 adding:

11

12 “Section 12-6-1175. (A) As used in this section:

13 (1) ‘Authorized employee’ means an individual authorized
14 for employment in the United States as defined in the Immigration
15 Reform and Control Act of 1986.

16 (2) ‘Labor services’ means the physical performance of
17 services in this State.

18 (B) On or after January 1, 2009, no wages or remuneration for
19 labor services to an individual of six hundred dollars or more per
20 annum may be claimed and allowed as a deductible business
21 expense for state income tax purposes by a taxpayer unless such
22 individual is an authorized employee. The provisions of this
23 subsection shall apply whether or not an Internal Revenue Service
24 Form 1099 is issued in conjunction with the wages or
25 remuneration.

26 (C) This section shall not apply to a business domiciled in this
27 State that is exempt from compliance with federal employment
28 verification procedures under federal law that makes the
29 employment of unauthorized persons unlawful.

30 (D) This section shall not apply to an individual hired by the
31 taxpayer prior to January 1, 2009.

32 (E) This section shall not apply to a taxpayer where the
33 individual being paid is not directly compensated or employed by
34 said taxpayer.

35 (F) This section shall not apply to wages or remuneration paid
36 for labor services to any individual who:

37 (1) holds and presents to the taxpayer a valid license or
38 identification card issued by the South Carolina Department of
39 Motor Vehicles;

40 (2) is eligible to obtain a South Carolina driver’s license or
41 identification card in that he meets the requirements set forth in
42 S.C. Code Ann. Section 56-1-40 through 56-1-90; or

1 (3) possesses a valid driver's license or identification card
2 from another state where the license requirements are as strict or
3 stricter than those in South Carolina, as determined by the
4 Attorney General.

5 (G) A taxpayer must not be held liable for failing to comply
6 with the provisions of this section, if, based on a reasonable
7 investigation of the individual, the taxpayer did not know or should
8 not have known that the individual was not an authorized
9 employee. For purposes of this subsection, a taxpayer shall be
10 deemed to have conducted a reasonable investigation if the
11 individual met the requirements of subsection (F), and the
12 information provided by the individual to the taxpayer was facially
13 correct.

14 (H) The director of the South Carolina Department of Revenue
15 is authorized to prescribe forms and promulgate regulations
16 deemed necessary in order to administer and effectuate this section
17 in accordance with the provisions of Chapter 23 of Title 1 of the
18 South Carolina Code of Laws.

19 (I) The executive director of the South Carolina Employment
20 Security Commission shall send written notice of this section to all
21 South Carolina employers no later than July 1, 2008.”

22

23 SECTION 8. Chapter 8, Title 12 of the 1976 Code is amended by
24 adding:

25

26 “Section 12-8-595. (A) A withholding agent, as defined in
27 Section 12-8-10, shall withhold state income tax at the rate of
28 seven percent of the amount of compensation paid to an individual,
29 which compensation is reported on Form 1099 and with respect to
30 which the individual has:

31 (1) failed to provide a taxpayer identification number or
32 social security number;

33 (2) failed to provide a correct taxpayer identification number
34 or social security number; or

35 (3) provided an Internal Revenue Service issued taxpayer
36 identification number issued for nonresident aliens.

37 (B) A withholding agent who fails to comply with the
38 withholding requirements of this subsection shall be liable for the
39 taxes required to have been withheld unless the withholding agent
40 is exempt from federal withholding with respect to the individual
41 pursuant to a properly filed Internal Revenue Service Form 8233
42 and has provided a copy of the form to the commissioner.

1 (C) A withholding agent does not violate this section if the
2 individual provides a false or incorrect social security number or
3 taxpayer identification number that is facially correct and the
4 withholding agent does not know or should not have known based
5 on a reasonable investigation that the number provided is false or
6 incorrect.

7 (D) The executive director of the South Carolina Employment
8 Security Commission shall send written notice of this section to all
9 South Carolina employers no later than July 1, 2008."

10
11 SECTION 9. Article 5, Chapter 9, Title 16 of the 1976 Code is
12 amended by adding:

13
14 "Section 16-9-460. (A) It is a felony for a person knowingly or
15 in reckless disregard of the fact that another person has come to,
16 entered, or remained in the United States in violation of law to
17 transport, move, or attempt to transport that person within the State
18 or to solicit or conspire to transport or move that person within the
19 State with specific intent to further that person's illegal entry into
20 the United States or avoiding apprehension or detection of that
21 person's illegal status by state or federal authorities.

22 (B) It is a felony for a person knowingly or in reckless
23 disregard of the fact that another person has come to, entered, or
24 remained in the United States in violation of law to conceal,
25 harbor, or shelter from detection or to solicit or conspire to
26 conceal, harbor, or shelter from detection that person in any place,
27 including a building or means of transportation, with specific
28 intent to further that person's illegal entry into the United States or
29 avoiding apprehension or detection of that person's illegal status
30 by state or federal authorities.

31 (C) A person who violates the provisions of subsection (A) or
32 (B) of this section is guilty of a felony and, upon conviction, must
33 be punished by a fine not to exceed five thousand dollars or by
34 imprisonment for a term not to exceed five years, or both.

35 (D) A person who is convicted of, pleads guilty to, or enters
36 into a plea of nolo contendere to a violation of this section must
37 not be permitted to seek or obtain any professional license offered
38 by the State or any agency or political subdivision of the State.

39 (E) Subsections (A) and (B) do not apply to programs, services,
40 or assistance including soup kitchens, crisis counseling and
41 intervention; churches or other religious institutions that are
42 recognized as a 501(c)(3) organizations by the Internal Revenue
43 Service; and short-term shelters specified by the United States

1 Attorney General, in the United States Attorney General's sole
2 discretion after consultation with appropriate federal agencies and
3 departments, which:

4 (i) deliver in-kind services at the community level,
5 including through public or private nonprofit agencies;
6 (ii) do not condition the provision of assistance, the
7 amount of assistance provided, or the cost of assistance provided
8 on the individual recipient's income or resources; and
9 (iii) are necessary for the protection of life or safety.

10 Shelter provided for strictly humanitarian purposes or provided
11 under the Violence Against Women Act is not a violation of this
12 section, so long as the shelter is not provided in furtherance of or
13 in an attempt to conceal a person's illegal presence in the United
14 States.

15 (F) Providing health care treatment or services to a natural
16 person who is in the United States unlawfully is not a violation of
17 this section."

18

19 SECTION 10. Chapter 13, Title 16 of the 1976 Code is amended
20 by adding:

21

22 "Section 16-13-525. (A) In addition to the penalties provided
23 for in this chapter, a person who is convicted of, pleads guilty to,
24 or enters into a plea of nolo contendere to financial identity fraud
25 or identity fraud involving the false, fictitious, or fraudulent
26 creation or use of documents that enable a person who is not
27 authorized to live or work in the United States to live or work in
28 the United States, or to receive benefits administered by an agency
29 or political subdivision of this State, must disgorge any benefit
30 received or make restitution to the agency or political subdivision
31 that administered the benefit or entitlement program, or both. A
32 criminal charge pursuant to this chapter shall not preempt or
33 preclude additional appropriate civil or criminal charges or
34 penalties.

35 (B) A person who suffers an ascertainable loss of money or
36 property, real or personal, as a result of a conviction or plea to a
37 violation of financial identity fraud or identity fraud involving a
38 matter described in subsection (A), may bring an action
39 individually, or in a representative capacity, to recover actual
40 damages against any person convicted of the violation. If a court
41 finds that a violation has been established, the court shall award
42 three times the actual damages sustained and may provide such
43 other relief as it considers necessary or proper. Upon the finding

1 by the court of a violation, the court shall award to the person
2 bringing this action pursuant to this section reasonable attorney's
3 fees and costs.

4 (C) A person convicted of a violation of this subsection is
5 jointly and severally liable for a loss suffered by a person or an
6 agency or political subdivision of the State.

7 (D)(1) It is unlawful for a person to display, cause or permit to
8 be displayed, or have in his possession a false, fictitious,
9 fraudulent, or counterfeit green card or other document including,
10 but not limited to, a driver's license or social security card for the
11 purpose of offering proof of United States citizenship or
12 classification by the United States as an alien lawfully admitted for
13 temporary or permanent residence under federal immigration law.

14 (2) A person who violates the provisions of this section:

15 (a) for a first offense, is guilty of a misdemeanor and,
16 upon conviction, must be fined not more than one hundred dollars
17 or imprisoned not more than thirty days; and

18 (b) for a second offense or subsequent offense, is guilty of
19 a felony and, upon conviction, must be fined not more than five
20 hundred dollars or imprisoned not more than five years.

21 (E) A violation of the provisions of this section is considered a
22 separate criminal offense and does not preclude prosecution for
23 perjury pursuant to Section 16-9-10 in addition to prosecution
24 pursuant to the provisions of this section."

25

26 SECTION 11. Chapter 3, Title 23 of the 1976 Code is amended
27 by adding:

28

29 "Article 13
30 Verification of Nationality of Prisoners
31

32 Section 23-3-1100. (A) If a person is charged with a criminal
33 offense and is confined for any period in a jail of the State, county,
34 or municipality, or a jail operated by a regional jail authority, a
35 reasonable effort shall be made to determine whether the confined
36 person is lawfully present in the United States.

37 (B) If the prisoner is a foreign national, the keeper of the jail or
38 other officer must make a reasonable effort to verify that the
39 prisoner has been lawfully admitted to the United States and if
40 lawfully admitted, that such lawful status has not expired. If
41 verification of lawful status cannot be made from documents in the
42 possession of the prisoner, verification must be made within
43 seventy-two hours through a query to the Law Enforcement

1 Support Center (LESC) of the United States Department of
2 Homeland Security or other office or agency designated for that
3 purpose by the United States Department of Homeland Security. If
4 the prisoner is determined not to be lawfully admitted to the United
5 States, the keeper of the jail or other officer shall notify the United
6 States Department of Homeland Security.

7 (C) Upon notification to the United States Department of
8 Homeland Security pursuant to subsection (B), the keeper of the
9 jail must account for daily expenses incurred for the housing,
10 maintenance, and care of the prisoner who is unlawfully admitted
11 to the United States and forward an invoice to the Department of
12 Homeland Security for these expenses.

13 (D) Nothing in this section shall be construed to deny a person
14 bond or from being released from confinement when such person
15 is otherwise eligible for release. However, pursuant to the
16 provisions of Section 17-15-30, a court setting bond shall consider
17 the lawful presence in the United States of the person charged.

18 (E) The State Law Enforcement Division shall promulgate
19 regulations to comply with the provisions of this section in
20 accordance with the provisions of Chapter 23 of Title 1 of the
21 South Carolina Code of Laws."

22

23 SECTION 12. Chapter 1, Title 41 of the 1976 Code is amended
24 by adding:

25

26 "Section 41-1-30. (A) There is a civil right of action for
27 wrongful termination against an employer who discharges an
28 employee authorized to work in the United States for the purpose
29 of replacing that employee with a person the employer knows or
30 should reasonably know is not lawfully present and authorized to
31 work in the United States.

32 (B) An aggrieved employee must show:

33 (a) the replacement occurred within sixty days of the date of
34 the employee's termination, and

35 (b) the replacement worker was not authorized to work in
36 the United States at the time of the replacement; and

37 (c) the employer knew or reasonably should have known of
38 the replacement worker's status; and

39 (d) the replacement worker filled duties and responsibilities
40 the employee vacated.

41 (C) This section does not create an employment contract for
42 either a public or private employer.

1 (D) An employee who brings a civil suit pursuant to this section
2 is limited to the following recovery:

3 (1) reinstatement to his former position; and
4 (2) lost wages.

5 (E) A cause of action does not arise against an employer who
6 submits the necessary identifying information for all employees
7 through the Systematic Alien Verification of Entitlement (SAVE)
8 program, the E-Verify Program or a successor program used for
9 verification of work authorization and operated by the United
10 States Department of Homeland Security.

11 (F) Any cause of action arising pursuant to this section is
12 equitable in nature and must be brought within one year of the date
13 of the alleged violation.

14 (G) For any action brought pursuant to this section, the court
15 may award attorney fees to the prevailing party.

16 (H) This section takes effect ninety days after the effective date
17 of the act."

18

19 SECTION 13. Title 40 of the 1976 Code is amended by adding:

20

21 “CHAPTER 83

22 Registration of Immigration Assistance Services

23

24 Section 40-83-10. This act shall be cited as the ‘Registration of
25 Immigration Assistance Service Act’.

26

27 Section 40-83-20. As used in this chapter, the term:

28 (A) ‘Compensation’ means money, property, services, promise
29 of payment, or anything else of value given in exchange for a
30 service.

31 (B) ‘Director’ means the Director of the South Carolina
32 Department of Labor, Licensing and Regulation, or his designee.

33 (C) ‘Employed by’ means that a person is on the payroll of the
34 employer and the employer deducts from the employee’s paycheck
35 social security and withholding taxes or that a person receives
36 compensation from the employer on a commission basis or as an
37 independent contractor.

38 (D) ‘Immigration assistance service’ means information or
39 action provided or offered to customers or prospective customers
40 related to immigration matters, excluding legal advice,
41 recommending a specific course of legal action or providing other
42 assistance that requires legal analysis, legal judgment, or
43 interpretation of the law.

1 (E) 'Immigration matter' means a proceeding, filing, or action
2 affecting the nonimmigrant, immigrant, or citizenship status of any
3 person that arises under:

4 (1) immigration and naturalization law, executive order, or
5 presidential proclamation of the United States or any foreign
6 country; or

7 (2) action of the United States Department of Labor, the
8 United States Department of State, the United States Department
9 of Homeland Security, or the United States Department of Justice.

10

11 Section 43-83-30. (A) A person who provides or offers to
12 provide immigration assistance service shall perform only the
13 following services:

14 (1) completing a government agency form, requested by the
15 customer and appropriate to the customer's needs only if the
16 completion of that form does not involve a legal judgment for that
17 particular matter;

18 (2) transcribing responses to a government agency form that
19 is related to an immigration matter but not advising a customer as
20 to his or her answers on those forms;

21 (3) translating information on forms to a customer and
22 translating the customer's answers to questions posed on those
23 forms;

24 (4) securing for the customer supporting documents
25 currently in existence, such as birth and marriage certificates,
26 which may be needed to be submitted with government agency
27 forms;

28 (5) translating documents from a foreign language into
29 English;

30 (6) notarizing signatures on government agency forms, if the
31 person performing the service is a notary public commissioned in
32 the State of South Carolina and is lawfully present in the United
33 States;

34 (7) making referrals, without a fee, to attorneys who could
35 undertake legal representation for a person in an immigration
36 matter;

37 (8) preparing or arranging for the preparation of photographs
38 and fingerprints;

39 (9) arranging for the performance of medical testing
40 (including X-rays and AIDS tests) and the obtaining of reports of
41 such test results;

42 (10) conducting English language and civics courses; and

1 (11) performing other services that the director determines by
2 rule may be appropriately performed by such persons in light of
3 the purposes of this chapter.

4 (B) The following persons are exempt from this chapter:

5 (1) an attorney licensed to practice law in South Carolina or
6 an attorney licensed to practice law in another state or territory of
7 the United States or in a foreign country when acting with the
8 approval of a judge having lawful jurisdiction over the matter;

9 (2) a legal intern, clerk, paralegal, or person in a similar
10 position employed by and under the direct supervision of a
11 licensed attorney meeting the requirements in item (1) of this
12 subsection and rendering immigration assistance service in the
13 course of employment; or

14 (3) a not-for-profit organization recognized by the Board of
15 Immigration Appeals under 8 C.F.R. 292.2(a), to include, but not
16 be limited to, religious, charitable, social service, or similar
17 organizations, and employees of those organizations accredited
18 under 8 C.F.R. 292.2(d).

19 (C) This chapter does not regulate any business to the extent
20 that such regulation is prohibited or preempted by federal law.

21 (D) A person performing the services described in this chapter
22 shall obtain a business license from the Department of Labor,
23 Licensing and Regulation, and as may be required by a local
24 governing authority.

25 (E) A person who provides or offers immigration assistance
26 service and is not exempted under this chapter shall post signs at
27 his or her place of business setting forth information in English and
28 in every other language in which the person provides or offers to
29 provide immigration assistance service. Each language shall be on
30 a separate sign. Signs shall be posted in a location where the signs
31 will be visible to customers. Each sign shall be at least twelve
32 inches by seventeen inches and shall contain the following
33 statement:

34 ‘I AM NOT AN ATTORNEY LICENSED TO PRACTICE
35 LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT
36 FEES FOR LEGAL ADVICE.’

37 (F) Each person engaged in immigration assistance service who
38 is not an attorney who advertises immigration assistance service in
39 a language other than English, whether by radio, television, signs,
40 pamphlets, newspapers, or other written communication, with the
41 exception of a single desk plaque, must include in the document,
42 advertisement, stationery, letterhead, business card, or other
43 comparable written material the following notice in English and

1 the language in which the written communication appears. This
2 notice shall be of a conspicuous font size, if in writing, and shall
3 state:

4 'I AM NOT AN ATTORNEY LICENSED TO PRACTICE
5 LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT
6 FEES FOR LEGAL ADVICE.'

7 If an advertisement is by radio or television, the statement may
8 be modified but must include substantially the same information.

9 (G) A person who provides or offers immigration assistance
10 service and who is not exempted pursuant to the provisions of this
11 chapter may not literally translate from English into another
12 language any document, advertisement, stationery, letterhead,
13 business card, or other comparable written material terms or titles
14 including, but not limited to, notary public, notary, licensed
15 attorney, lawyer, or another term that implies the person is an
16 attorney.

17 (H) A person engaged in providing immigration services who is
18 not exempted under this chapter may not:

19 (1) accept payment in exchange for providing legal advice or
20 any other assistance that requires legal analysis, legal judgment, or
21 interpretation of the law;

22 (2) refuse to return documents supplied by, prepared on
23 behalf of, or paid for by the customer upon the request of the
24 customer. These documents must be returned upon request even if
25 there is a fee dispute between the immigration assistant and the
26 customer;

27 (3) represent or advertise, in connection with providing
28 assistance in immigration matters, other titles or credentials,
29 including, but not limited to, 'notary public' or 'immigration
30 consultant', that could cause a customer to believe that the person
31 possesses special professional skills or is authorized to provide
32 advice on an immigration matter, provided that a certified notary
33 public may use the term 'notary public' if the use is accompanied
34 by the statement that the person is not an attorney. The term
35 'notary public' may not be translated into another language;

36 (4) provide legal advice, recommend a specific course of
37 legal action, or provide any other assistance that requires legal
38 analysis, legal judgment, or interpretation of the law; or

39 (5) make any misrepresentation or false statement, directly
40 or indirectly, to influence, persuade, or induce patronage.

41 (I) Violations of this chapter may result in a civil penalty of up
42 to one thousand dollars per violation and the revocation of the
43 business license of the immigration assistance service. A fine

1 charged pursuant to this chapter shall not preempt or preclude
2 additional appropriate civil or criminal penalties to include
3 disgorgement and restitution.

4 (J) Any person who knowingly and willfully makes a false,
5 fictitious, or fraudulent statement or representation in any
6 document prepared or executed as part of the provision of
7 immigration assistance services in an immigration matter pursuant
8 to this chapter, or anyone who aids or abets a person in knowingly
9 and willfully making a false, fictitious, or fraudulent statement or
10 representation in any document prepared or executed as part of the
11 provision of immigration assistance services in an immigration
12 matter pursuant to this chapter, or who solicits or conspires to
13 make a false, fictitious, or fraudulent statement or representation in
14 any document prepared or executed as part of the provision of
15 immigration assistance services in an immigration matter pursuant
16 to this chapter shall be guilty of a felony and, upon conviction,
17 must be fined in the discretion of the court or imprisoned not more
18 than ten years, or both. In addition, a person convicted of this
19 subsection must disgorge any benefit received or make restitution,
20 or both, to the agency or political subdivision that administered the
21 benefit or entitlement program. It is a separate violation of this
22 subsection each time a person knowingly and willfully makes,
23 aids, or abets in the making of, or solicits or conspires to make a
24 false, fictitious, or fraudulent statement or representation in any
25 document prepared or executed pursuant to this subsection. A
26 criminal charge pursuant to this chapter shall not preempt or
27 preclude additional appropriate civil or criminal charges or
28 penalties. A person who suffers any ascertainable loss of money
29 or property, real or personal, as a result of a conviction or plea to a
30 violation of this subsection may bring an action individually, or in
31 a representative capacity, to recover actual damages from any
32 person convicted of the violation of this subsection. If the court
33 finds that a violation has been established, the court shall award
34 three times the actual damages sustained and may provide such
35 other relief as it considers necessary or proper. Upon the finding
36 by the court of a violation, the court shall award to the person
37 bringing such action under this section reasonable attorney's fees
38 and costs.

39 (K) Persons convicted of a violation of this subsection are
40 jointly and severally liable for any loss suffered by any person or
41 any agency or political subdivision of the State.

42 (L) The director shall promulgate regulations not inconsistent
43 with this chapter for the implementation, administration, and

1 enforcement of this chapter in accordance with the provisions of
2 Chapter 23 of Title 1 of the South Carolina Code of Laws.

3 (M) This chapter shall not apply to anyone employed by or
4 working for an educational institution who is registered as a
5 designated school official with the SEVIS program, or a successor
6 program, operated by the United States Department of Homeland
7 Security.”

8

9 SECTION 14. Section 14-7-1630(A)(8) and (9) of the 1976
10 Code, as last amended by Act 82 of 2007, is further amended to
11 read:

12

13 “(8) a crime involving obscenity including, but not limited to, a
14 crime as provided in Article 3, Chapter 15, Title 16 or any attempt,
15 aiding, abetting, solicitation, or conspiracy to commit a crime
16 involving obscenity; and

17 (9) a crime involving the knowing and willful making of,
18 aiding and abetting in the making of, or soliciting or conspiring to
19 make a false, fictitious, or fraudulent statement or representation in
20 an affidavit regarding a person’s lawful presence in the United
21 States, as defined in Section 43-5-1410, if the number of violations
22 exceeds twenty or if the public benefit received by a person from a
23 violation or combination of violations exceeds twenty thousand
24 dollars;

25 (10) a crime involving financial identity fraud or identity fraud
26 involving the false, fictitious, or fraudulent creation or use of
27 documents used in an immigration matter as defined in Section
28 16-13-525, if the number of violations exceeds twenty, or if the
29 value of the ascertainable loss of money or property suffered by a
30 person or persons from a violation or combination of violations
31 exceeds twenty thousand dollars;

32 (11) a crime involving the knowing and willful making of,
33 aiding or abetting in the making of, or soliciting or conspiring to
34 make a false, fictitious, or fraudulent statement or representation in
35 a document prepared or executed as part of the provision of
36 immigration assistance services in an immigration matter, as
37 defined in Section 40-91-40, if the number of violations exceeds
38 twenty, or if a benefit received by a person from a violation or
39 combination of violations exceeds twenty thousand dollars; and

40 (12) a knowing and willful crime involving actual and
41 substantial harm to the water, ambient air, soil or land, or both soil
42 and land. This crime includes a knowing and willful violation of
43 the Pollution Control Act, the Atomic Energy and Radiation

1 Control Act, the State Underground Petroleum Environmental
2 Response Bank Act, the State Safe Drinking Water Act, the
3 Hazardous Waste Management Act, the Infectious Waste
4 Management Act, the Solid Waste Policy and Management Act,
5 the Erosion and Sediment Control Act, the South Carolina Mining
6 Act, and the Coastal Zone Management Act, or a knowing and
7 willful crime arising out of or in connection with environmental
8 laws, or any attempt, aiding, abetting, solicitation, or conspiracy to
9 commit a knowing and willful crime involving the environment if
10 the anticipated actual damages including, but not limited to, the
11 cost of remediation, are two million dollars or more, as certified by
12 an independent environmental engineer who must be contracted by
13 the Department of Health and Environmental Control. If the
14 knowing and willful crime is a violation of federal law, then a
15 conviction or an acquittal pursuant to federal law for the same act
16 is a bar to the impaneling of a state grand jury pursuant to this
17 section.”

18

19 SECTION 15. Article 6, Chapter 23, Title 16 of the 1976 Code
20 is amended by adding:

21

22 “Section 16-23-530. (A) It is unlawful for a person who is not
23 lawfully present in the United States to possess, purchase, offer to
24 purchase, sell, lease, rent, barter, exchange, or transport into this
25 State a firearm.

26 (B) It is unlawful for a person to knowingly sell, offer to sell,
27 deliver, lease, rent, barter, exchange, or transport for sale into this
28 State a firearm to a person knowing that such person is not
29 lawfully present in the United States.

30 (C) A person violating the provisions of subsection (A) of
31 this section is guilty of a felony and, upon conviction, must be
32 fined not more than ten thousand dollars or imprisoned not more
33 than ten years, or both.

34 (D) A person violating the provisions of subsection (B) of
35 this section is guilty of a misdemeanor and, upon conviction, must
36 be fined not more than two thousand dollars or imprisoned not
37 more than three years, or both.”

38

39 SECTION 16. Section 17-15-30 of the 1976 Code, as last
40 amended by Act 106 of 2005, is further amended to read:

41

42 “Section 17-15-30. (A) In determining conditions of release
43 that will reasonably assure appearance, or if release would

1 constitute an unreasonable danger to the community, the court
2 may, on the basis of available information, consider the nature and
3 circumstances of the offense charged, and the accused's:

- 4 (1) family ties;
- 5 (2) employment;
- 6 (3) financial resources;
- 7 (4) character and mental condition;
- 8 (5) the length of his residence in the community;
- 9 (6) his record of convictions; and

10 (7) his record of flight to avoid prosecution or failure to
11 appear at other court proceedings.

12 (B) The court shall consider:

13 (1) the accused's criminal record, if any. The court shall
14 consider, if available:

15 (2) all incident reports generated as a result of the offense
16 charged, if available; and

17 (3) whether the accused is not lawfully present in the United
18 States in violation of the Federal Immigration and Nationality Act
19 or another federal law relating to illegal immigration, and poses a
20 substantial flight risk due to this status."

21
22 SECTION 17. Chapter 101, Title 59 of the 1976 Code is
23 amended by adding:

24
25 "Section 59-101-430. (A) A person who is not lawfully present
26 in the United States is not eligible to attend a public institution of
27 higher learning in this State, as defined in Section 59-103-5. The
28 trustees of a public institution of higher learning in this State shall
29 develop and institute a process by which lawful presence in the
30 United States is verified.

31 (B) A person not lawfully present in the United States is not
32 eligible on the basis of residence for a public higher education
33 benefit including, but not limited to, scholarships, financial aid,
34 grants, or resident tuition."

35
36 SECTION 18. Chapter 1, Title 6 of the 1976 Code is amended
37 by adding:

38
39 "Section 6-1-170. (A) For purposes of this section, 'political
40 subdivision' includes, but is not limited to, a municipality, county,
41 school district, special purpose district, or public service district.

42 (B) A political subdivision of this State may not enact any
43 ordinance or policy that limits or prohibits a law enforcement

1 officer, local official, or local government employee from seeking
2 to enforce a state law with regard to immigration.

3 (C) A political subdivision of this State may not enact any
4 ordinance or policy that limits or prohibits a law enforcement
5 officer, local official, or local government employee from
6 communicating to appropriate federal or state officials with regard
7 to the immigration status of any person within this State.

8 (D) A city, county, municipality, or other local government or
9 political subdivision may not enact any ordinance, regulation, or
10 other legislation pertaining to the employment, licensing,
11 permitting, or otherwise doing business with a person based upon
12 that person's authorization to work in the United States that
13 exceeds or otherwise conflicts with federal or state law. An
14 enactment found to be in conflict with federal or state law is void."

15

16 SECTION 19. Title 41 of the 1976 Code is amended by adding:

17

“CHAPTER 8

Illegal Aliens and Private Employment

21 Section 41-8-10 As used in this chapter:

21 Section 41-3-10.1 is used in this chapter.
22 (A) 'Agency' means any agency, department, board, or
23 commission of this state or a political subdivision of this State that
24 issues a license for the purposes of operating a business in this
25 State.

26 (B) 'Director' means the Director of the Department of
27 Revenue or his designee.

28 (C) 'License' means an agency permit, certificate, approval,
29 registration, charter, or similar form of authorization that is
30 required by law and that is issued by an agency or political
31 subdivision for the purpose of operating a business or engaging in
32 a profession in this State.

33 (D) 'Political subdivision' includes counties, cities, towns,
34 villages, townships, districts, authorities, and other public
35 corporations and entities whether organized and existing under
36 charter or general law.

37 (E) 'Private employer' means a person carrying on an
38 employment and the legal representative of a deceased person or
39 the receiver or trustee of a person, and a person for whom an
40 individual performs a service, of whatever nature, as an employee,
41 as defined in Section 12-8-10.

42

1 Section 41-8-20. A private employer may not knowingly or
2 intentionally employ an illegal alien.

3

4 Section 41-8-30. (A) On and after July 1, 2009, all private
5 employers of one hundred or more employees who are required by
6 federal law to complete and maintain federal Form I-9
7 Employment Eligibility Verification documents must:

8 (1) register and participate in the federal work authorization
9 program to verify information of all new employees; or

10 (2) employ only workers who:

11 (a) possess a valid South Carolina driver's license or
12 identification card issued by the South Carolina Department of
13 Motor Vehicles; or

14 (b) are eligible to obtain a South Carolina driver's license
15 or identification card in that they meet the requirements set forth in
16 Sections 56-1-40 through 56-1-90; or

17 (c) possess a valid driver's license or identification card
18 from another state where the license requirements are at least as
19 strict as those in South Carolina, as determined by the Attorney
20 General. The Attorney General shall publish on its website a list of
21 states where the license requirements are at least as strict as those
22 in South Carolina.

23 (B) The provisions of subsection (A) apply to all private
24 employers who employ fewer than one hundred employees and
25 who are required by federal law to complete and maintain federal
26 Form I-9 Employment Eligibility Verification documents on and
27 after July 1, 2010.

28 (C) The Employment Security Commission may provide
29 private employers with technical advice and electronic access to
30 the federal work authorization program's website for the sole
31 purpose of registering and participating in the program.

32 (D) The director of the Department of Revenue must send
33 written notice of requirements provided in this section to all South
34 Carolina employers no later than July 1, 2008, and shall publish on
35 its website the information contained in the notice.

36

37 Section 41-8-40. The provisions of this chapter are enforceable
38 without regard to race, religion, gender, ethnicity, or national
39 origin.

40

41 Section 41-8-50. A private employer who complies in good faith
42 with the requirements of this chapter must not be sanctioned or

1 subjected to civil or administrative action for employing an
2 individual not authorized for employment in the United States.

3

4 Section 41-8-60. A person who knowingly makes or files a false,
5 fictitious, or fraudulent document, statement, or report pursuant to
6 this chapter is guilty of a felony, and, upon conviction, must be
7 fined within the discretion of the court or imprisoned for not more
8 than five years, or both.

9

10 Section 41-8-70. A local government may not enact any
11 ordinance or policy that limits or prohibits a law enforcement
12 officer, local official, or local government employee from seeking
13 to enforce the provisions of this chapter.

14

15 Section 41-8-80. Nothing in this chapter abrogates a private
16 employer's obligation to comply with federal immigration law.

17

18 Section 41-8-90. The South Carolina Department of Revenue
19 shall receive and investigate written and signed complaints of
20 violations of the provisions of this chapter and assess civil
21 penalties pursuant to Section 41-8-110. The Attorney General and
22 circuit solicitors shall enforce the penalties provided in Section
23 41-8-130 for violation of Section 41-8-20.

24

25 Section 41-8-100. The director, his inspectors, agents, or
26 designees, upon proper presentation of credentials to the owner,
27 manager, or agent of the employer, may enter the business
28 premises at reasonable times and have the right to question, either
29 publicly or privately, any employer, owner, manager, or agent and
30 the employees of the employer and inspect, investigate, reproduce,
31 or photograph original business records relevant to determining
32 compliance with the provisions of Section 41-8-30.

33

34 Section 41-8-110. (A) Upon a finding that an employer has
35 violated Section 41-8-30, the director may assess a fine of up to
36 one hundred dollars for a first offense, up to two hundred and fifty
37 dollars for a second offense, and up to five hundred dollars for a
38 third or subsequent offense.

39 (B) For purposes of this section, each failure of an employer to
40 verify the immigration status of a new employee pursuant to
41 41-8-30 constitutes a separate violation; except that multiple
42 violations determined at a single investigation or audit may result

1 in multiple fines but must not be considered as more than one
2 offense.

3 (C) In each case where a civil penalty assessed by the director
4 pursuant to this section is not paid within sixty days the director
5 shall bring an action against the assessed employer for collection
6 of the penalty.

7 (D) Amounts collected pursuant to this section must be retained
8 by the director and must be used to fund the costs of implementing
9 and enforcing the provisions of this chapter.”

10
11 Section 41-8-120. (A) The director shall receive written and
12 signed complaints alleging violations of Section 41-8-20.

13 (B) Upon the receipt of a written and signed complaint alleging
14 a violation of 41-8-20, the director shall verify the work
15 authorization of the person alleged not to be lawfully present
16 pursuant to 8 U.S.C. Section 137(c). A state, county, or local
17 official may not make a determination whether an alien is lawfully
18 present in the United States. The director shall forward to the
19 Attorney General or the appropriate circuit solicitor the results of
20 his investigation of the complaint if the results indicate a violation
21 has occurred.

22
23 Section 41-8-130. (A) Upon a finding that an employer has
24 violated Section 41-8-20 the Attorney General or circuit solicitor
25 shall report the finding to the United States Immigration and
26 Customs Enforcement and impose the following penalties:

27 (1) for a first offense, order the termination of all persons
28 employed in violation of 41-8-20 and place the employer on
29 probation for a period not to exceed three years, during which time
30 the employer must submit quarterly reports to the director
31 demonstrating compliance with Section 41-8-20;

32 (2) for a second offense, order the termination of all persons
33 employed in violation of Section 41-8-20 and place the employer
34 on probation for a period not to exceed three years, during which
35 time the employer must submit quarterly reports to the director
36 demonstrating compliance with Section 41-8-20 and suspend the
37 employer's license for a period of time not to exceed ten days;

38 (3) for a third or subsequent offense, order the termination of
39 all persons employed in violation of Section 41-8-20 and place the
40 employer on probation for a period not to exceed three years,
41 during which time the employer must submit quarterly reports to
42 the director demonstrating compliance with Section 41-8-30 and

1 suspend the employer's license for a period of time not less than
2 ten days and not more than thirty days.

3 (B) Notwithstanding another provision of law, a license
4 suspended pursuant to this section must be reinstated automatically
5 at the conclusion of the suspension period.

6 (C) An entity may not charge a fee for the reinstatement of a
7 license suspended pursuant to this section.

8

9 Section 41-8-140. In assessing a penalty for a violation of
10 Section 41-8-20 or Section 41-8-30, the director or Attorney
11 General or circuit solicitor shall base his assessment on evidence
12 or information collected by the director or submitted for
13 consideration by the employer, and shall consider the following
14 factors, if relevant:

- 15 (1) the number of unauthorized aliens employed by the
16 employer;
- 17 (2) the prior violations of this chapter by the employer;
- 18 (3) the size of the employer's workforce; and
- 19 (4) the duration of the violation.

20

21 Section 41-8-150. (A) The director shall promulgate
22 regulations to establish a procedure for administrative review of a
23 penalty assessed pursuant to this chapter.

24 (B) The director shall develop a statewide random auditing
25 program to inspect private employers for compliance with the
26 provisions of Section 41-8-30.”

27

28 SECTION 20. All requirements of this act concerning
29 immigration or the classification of immigration status must be
30 construed in conformity with federal immigration law.

31

32 SECTION 21. If any subsection, item, subitem, paragraph,
33 subparagraph, sentence, clause, phrase, or word of Section 19 is
34 for any reason held to be unconstitutional or invalid, such holding
35 shall not affect the constitutionality or validity of the remaining
36 portions of the Section, the General Assembly hereby declaring
37 that it would have passed this act, and each and every subsection,
38 item, subitem, paragraph, subparagraph, sentence, clause, phrase,
39 and word thereof, irrespective of the fact that any one or more
40 other subsections, items, subitems, paragraphs, subparagraphs,
41 sentences, clauses, phrases, or words hereof may be declared to be
42 unconstitutional, invalid, or otherwise ineffective.

1 SECTION 22. If any section, subsection, item, subitem,
2 paragraph, subparagraph, sentence, clause, phrase, or word of this
3 act is for any reason held to be unconstitutional or invalid, such
4 holding shall not affect the constitutionality or validity of the
5 remaining portions of this act, the General Assembly hereby
6 declaring that it would have passed this act, and each and every
7 section, subsection, item, subitem, paragraph, subparagraph,
8 sentence, clause, phrase, and word thereof, irrespective of the fact t
9 hat any one or more other sections, subsections, items, subitems,
10 paragraphs, subparagraphs, sentences, clauses, phrases, or words
11 hereof may be declared to be unconstitutional, invalid, or
12 otherwise ineffective.

13

14 SECTION 23. This act takes effect upon approval by the
15 Governor.

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