

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

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4 AMENDED

5 May 24, 2011

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S. 20

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9 Introduced by Senators Grooms, McConnell, Thomas, Alexander,
10 Leatherman, Knotts, Bryant, Hayes, Rose, Verdin, S. Martin,
11 Peeler, L. Martin, Fair, Ryberg, Cromer, Campsen, Davis,
12 Shoopman, Rankin and Bright

13

14 S. Printed 5/24/11--H.

15 Read the first time March 14, 2011.

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17

18

A BILL

11 TO AMEND CHAPTER 1, TITLE 23 OF THE 1976 CODE, BY
12 ADDING SECTION 231250 TO PROVIDE THAT WHERE A
13 LAW ENFORCEMENT OFFICER HAS REASONABLE
14 SUSPICION THAT A PERSON STOPPED, DETAINED, OR
15 ARRESTED BY LAW ENFORCEMENT IS AN ALIEN
16 UNLAWFULLY IN THE UNITED STATES, THE OFFICER OR
17 HIS AGENCY MUST FOLLOW CERTAIN PROCEDURES TO
18 VERIFY HIS IMMIGRATION STATUS; AND TO AMEND
19 ARTICLE 5, CHAPTER 9, TITLE 16, BY ADDING SECTION
20 169480 TO PROVIDE THAT IT IS UNLAWFUL FOR A
21 PERSON UNLAWFULLY IN THE UNITED STATES TO
22 SOLICIT OR ATTEMPT TO SOLICIT WORK, AND TO
23 PROVIDE PROCEDURES FOR VERIFYING IMMIGRATION
24 STATUS.

Amend Title To Conform

27 Be it enacted by the General Assembly of the State of South
28 Carolina:

30 SECTION 1. Section 6-1-170 of the 1976 Code is amended by
31 adding subsection (E) to read:

32 “(E)(1) Notwithstanding any other provision of law, a resident
33 of a political subdivision in this State may bring a civil action in
34 the circuit court in which the resident and political subdivision are
35 located to enjoin:

37 (a) an enactment by the political subdivision of any
38 ordinance or policy that intentionally limits or prohibits a law
39 enforcement officer, local official, or local government employee
40 from seeking to enforce a state law with regard to immigration;

(b) an enactment by the political subdivision of any ordinance or policy that intentionally limits or prohibits a law

1 enforcement officer, local official, or local government employee
2 from communicating to appropriate federal or state officials
3 regarding the immigration status of a person within this State; or

4 (c) an enactment by the political subdivision of any
5 ordinance, policy, regulation, or other legislation pertaining to the
6 employment, licensing, permitting, or otherwise doing business
7 with a person based upon that person's authorization to work in the
8 United States, which intentionally exceeds or conflicts with federal
9 law or that intentionally conflicts with state law.

10 (2) A person who is not a resident of the political
11 subdivision may not bring an action against the political
12 subdivision pursuant to this subsection. The action must be
13 brought against the political subdivision and not against an
14 employee of the political subdivision acting in the employee's
15 individual capacity.

16 (3) If the court finds that the political subdivision has
17 intentionally violated this section, the court shall enjoin the
18 enactment, action, policy, or practice, and may enter a judgment
19 against the political subdivision of not less than one thousand
20 dollars nor more than five thousand dollars for each day that the
21 enactment, action, policy, or practice remains or remained in
22 effect. The proceeds from any such judgment must be used to
23 reimburse the resident's reasonable attorney's fees. Any remaining
24 proceeds must be used to cover the administrative costs of
25 implementing, investigating, and enforcing the provisions of
26 Chapter 8, Title 41 of the South Carolina Code of Laws."

27
28 SECTION 2. Section 8-14-20(B) of the 1976 Code is amended to
29 read:

30
31 "(B) A public employer may not enter into a services contract
32 with a contractor for the physical performance of services within
33 this State unless the contractor agrees:

34 (1) to register and participate in the federal work
35 authorization program to verify the employment authorization of
36 all new employees and require agreement from its subcontractors,
37 and through the subcontractors, the subsubcontractors, to register
38 and participate in the federal verification of the employment
39 authorization of all new employees; or

40 (2) to employ only workers who:

41 (a) possess a valid South Carolina driver's license or
42 identification card issued by the South Carolina Department of
43 Motor Vehicles;

1 (b) are eligible to obtain a South Carolina driver's license
2 or identification card in that they meet the requirements set forth in
3 Sections 56140 through 56190; ~~or~~

4 (c) possess a valid driver's license or identification card
5 from another state where the license requirements are at least as
6 strict as those in South Carolina, as determined by the Executive
7 Director of the South Carolina Department of Motor Vehicles, or
8 his designee. The Executive Director of the South Carolina
9 Department of Motor Vehicles, or his designee, shall publish on its
10 website a list of states where the license requirements are at least
11 as strict as those in South Carolina; or

12 (d) possess a valid United States passport or valid United
13 States military identification card."

14
15 SECTION 3. Section 16-9-460 of the 1976 Code is amended to
16 read:

17
18 "Section 16-9-460. (A) It is a felony for a person who has come
19 to, entered, or remained in the United States in violation of law to
20 allow themselves to be transported, moved, or attempted to be
21 transported within the State or to solicit or conspire to be
22 transported or moved within the State with intent to further the
23 person's unlawful entry into the United States or avoiding
24 apprehension or detection of the person's unlawful immigration
25 status by state or federal authorities.

26 (A)(B) It is a felony for a person knowingly or in reckless
27 disregard of the fact that another person has come to, entered, or
28 remained in the United States in violation of law to transport,
29 move, or attempt to transport that person within the State or to
30 solicit or conspire to transport or move that person within the State
31 with intent to further that person's unlawful entry into the United
32 States or avoiding apprehension or detection of that person's
33 unlawful immigration status by state or federal authorities.

34 (C) It is a felony for a person who has come to, entered, or
35 remained in the United States in violation of law to conceal,
36 harbor, or shelter themselves from detection or to solicit or
37 conspire to conceal, harbor, or shelter themselves from detection in
38 any place, including a building or means of transportation, with
39 intent to further that person's unlawful entry into the United States
40 or avoiding apprehension or detection of the person's unlawful
41 immigration status by state or federal authorities.

42 (B)(D) It is a felony for a person knowingly or in reckless
43 disregard of the fact that another person has come to, entered, or

1 remained in the United States in violation of law to conceal,
2 harbor, or shelter from detection or to solicit or conspire to
3 conceal, harbor, or shelter from detection that person in any place,
4 including a building or means of transportation, with intent to
5 further that person's unlawful entry into the United States or
6 avoiding apprehension or detection of that person's unlawful
7 immigration status by state or federal authorities.

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

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

16 ~~(E)(G)~~ Subseetions ~~(A)~~ and ~~(B)~~ do This section does not apply
17 to programs, services, or assistance including soup kitchens, crisis
18 counseling and intervention; churches or other religious
19 institutions that are recognized as a 501(c)(3) organizations by the
20 Internal Revenue Service; and shortterm shelters specified by the
21 United States Attorney General, in the United States Attorney
22 General's sole discretion after consultation with appropriate
23 federal agencies and departments, which:

24 (i) deliver inkind services at the community level, including
25 through public or private nonprofit agencies;

26 (ii) do not condition the provision of assistance, the amount
27 of assistance provided, or the cost of assistance provided on the
28 individual recipient's income or resources; and

29 (iii) are necessary for the protection of life or safety.

30 Shelter provided for strictly humanitarian purposes or provided
31 under the Violence Against Women Act is not a violation of this
32 section, so long as the shelter is not provided in furtherance of or
33 in an attempt to conceal a person's illegal presence in the United
34 States.

35 ~~(F)(H)~~ Providing health care treatment or services to a natural
36 person who is in the United States unlawfully is not a violation of
37 this section."

38
39 SECTION 4. Chapter 17, Title 16 of the 1976 Code is amended
40 by adding:

41
42 "Section 16-17-750. (A) It is unlawful for a person eighteen
43 years of age or older to fail to carry in the person's personal

1 possession any certificate of alien registration or alien registration
2 receipt card issued to the person pursuant to 8 U.S.C. Section 1304
3 while the person is in this State.

4 (B) A person who violates this section is guilty of a
5 misdemeanor and, upon conviction, must be fined not more than
6 one hundred dollars or imprisoned for not more than thirty days, or
7 both."

8
9 SECTION 5. Chapter 13, Title 17 of the 1976 Code is amended
10 by adding:

11
12 "Section 1713170. (A) If a law enforcement officer of this
13 State or a political subdivision of this State lawfully stops, detains,
14 investigates, or arrests a person for a criminal offense, and during
15 the commission of the stop, detention, investigation, or arrest the
16 officer has reasonable suspicion to believe that the person is
17 unlawfully present in the United States, the officer shall make a
18 reasonable effort, when practicable, to determine whether the
19 person is lawfully present in the United States, unless the
20 determination would hinder or obstruct an investigation.

21 (B)(1) If the person provides the officer with a valid form of
22 any of the following picture identifications, the person is presumed
23 to be lawfully present in the United States:

24 (a) a driver's license or picture identification issued by the
25 South Carolina Department of Motor Vehicles;

26 (b) a driver's license or picture identification issued by
27 another state;

28 (c) a picture identification issued by the United States,
29 including a passport or military identification; or

30 (d) a tribal picture identification.

31 (2) It is unlawful for a person to display, cause or permit to
32 be displayed, or have in the person's possession a false, fictitious,
33 fraudulent, or counterfeit picture identification for the purpose of
34 offering proof of the person's lawful presence in the United States.

35 A person who violates the provisions of this item:

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

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

42 (3) If the person cannot provide the law enforcement officer
43 with any of the forms of picture identification listed in this

1 subsection, the person may still be presumed to be lawfully present
2 in the United States, if the officer is able to otherwise verify that
3 the person has been issued any of those forms of picture
4 identification.

5 (4) If the person is operating a motor vehicle on a public
6 highway of this State without a driver's license in violation of
7 Section 56-1-20, the person may be arrested pursuant to Section
8 56-1-440.

9 (5) If the person meets the presumption established pursuant
10 to this subsection, the officer may not further stop, detain,
11 investigate, or arrest the person based solely on the person's lawful
12 presence in the United States.

13 (6) This section does not apply to a law enforcement officer
14 who is acting as a school resource officer for any elementary or
15 secondary school.

16 (C)(1) If the person does not meet the presumption established
17 pursuant to subsection (B), the officer shall make a reasonable
18 effort, when practicable, to verify the person's lawful presence in
19 the United States by at least one of the following methods:

20 (a) contacting the Illegal Immigration Enforcement Unit
21 within the South Carolina Department of Public Safety;

22 (b) submitting an Immigration Alien Query through the
23 International Justice and Public Safety Network;

24 (c) contacting the United States Immigration and Customs
25 Enforcement's Law Enforcement Support Center; or

26 (d) contacting the United States Immigration and Customs
27 Enforcement's local field office.

28 (2) The officer shall stop, detain, or investigate the person
29 only for a reasonable amount of time as allowed by law. If, after
30 making a reasonable effort, the officer is unable to verify the
31 person's lawful presence in the United States by one of the
32 methods described in subitem (C)(1), the officer may not further
33 stop, detain, investigate, or arrest the person based solely on the
34 person's lawful presence in the United States.

35 (3) If the officer verifies that the person is lawfully present
36 in the United States, the officer may not further stop, detain,
37 investigate, or arrest the person based solely on the person's lawful
38 presence in the United States.

39 (4) If the officer determines that the person is unlawfully
40 present in the United States, the officer shall determine in
41 cooperation with the Illegal Immigration Enforcement Unit within
42 the South Carolina Department of Public Safety or the United
43 States Immigration and Customs Enforcement, as applicable,

1 whether the officer shall retain custody of the person for the
2 underlying criminal offense for which the person was stopped,
3 detained, investigated, or arrested, or whether the Illegal
4 Immigration Enforcement Unit within the South Carolina
5 Department of Public Safety or the United States Immigration and
6 Customs Enforcement, as applicable, shall assume custody of the
7 person. The officer is not required by this section to retain custody
8 of the person based solely on the person's lawful presence in the
9 United States. The officer may securely transport the person to a
10 federal facility in this State or to any other point of transfer into
11 federal custody that is outside of the officer's jurisdiction. The
12 officer shall obtain judicial authorization before securely
13 transporting a person to a point of transfer that is outside of this
14 State.

15 (D) Nothing in this section must be construed to require a law
16 enforcement officer to stop, detain, investigate, arrest, or confine a
17 person based solely on the person's lawful presence in the United
18 States. A law enforcement officer may not attempt to make an
19 independent judgment of a person's lawful presence in the United
20 States. A law enforcement officer may not consider race, color, or
21 national origin in implementing this section, except to the extent
22 permitted by the United States or South Carolina Constitution.
23 This section must be implemented in a manner that is consistent
24 with federal laws regulating immigration, protecting the civil
25 rights of all persons, and respecting the privileges and immunities
26 of United States citizens.

27 (E) Except as provided by federal law, officers and agencies of
28 this State and political subdivisions of this State may not be
29 prohibited or restricted from sending, receiving, or maintaining
30 information related to the immigration status of any person or
31 exchanging that information with other federal, state, or local
32 government entities for the following purposes:

33 (1) determining eligibility for any public benefit, service, or
34 license provided by the federal government, this State, or a
35 political subdivision of this State;

36 (2) verifying any claim of residence or domicile, if
37 determination of residence or domicile is required under the laws
38 of this State or a judicial order issued pursuant to a civil or
39 criminal proceeding in this State;

40 (3) determining whether an alien is in compliance with the
41 federal registration laws prescribed by Chapter 7, Title II of the
42 federal Immigration and Nationality Act; or

1 (4) pursuant to 8 U.S.C. Section 1373 and 8 U.S.C. Section
2 1644.

3 (F) Nothing in this section must be construed to deny a person
4 bond or from being released from confinement when such person
5 is otherwise eligible for release. However, pursuant to the
6 provisions of Section 171530, a court setting bond shall consider
7 whether the person charged is an alien unlawfully present in the
8 United States.

9 (G) No official, agency, or political subdivision of this State
10 may limit or restrict the enforcement of this section or federal
11 immigration laws.

12 (H) This section does not implement, authorize, or establish,
13 and shall not be construed to implement, authorize, or establish the
14 federal Real ID Act of 2005.

15 (I) Any time a motor vehicle is stopped by a state or local law
16 enforcement officer without a citation being issued or an arrest
17 being made and the officer contacts the Illegal Immigration
18 Enforcement Unit within the Department of Public Safety pursuant
19 to this section, the officer who initiated the stop must complete a
20 data collection form designed by the Department of Public Safety
21 that must include information regarding the age, gender, and race
22 or ethnicity of the driver of the vehicle. This information may be
23 gathered and transmitted electronically under the supervision of
24 the Department of Public Safety, which shall develop and maintain
25 a database storing the information collected. The Department of
26 Public Safety must promulgate regulations with regard to the
27 collection and submission of the information gathered. In
28 addition, the Department of Public Safety shall prepare a report to
29 be posted on the Department of Public Safety's website regarding
30 motor vehicle stops using the collected information. The General
31 Assembly shall have the authority to withhold any state funds or
32 federal passthrough funds from any state or local law enforcement
33 agency that fails to comply with the requirements of this
34 subsection."

35
36 SECTION 6. Section 23-3-1100 of the 1976 Code is amended to
37 read:

38
39 "Section 23-3-1100. (A) If a person is charged with a criminal
40 offense and is confined for any period in a jail of the State, county,
41 or municipality, or a jail operated by a regional jail authority, a
42 reasonable effort shall be made to determine whether the confined
43 person is an alien unlawfully present in the United States.

1 (B) If the prisoner is an alien, the keeper of the jail or other
2 officer must make a reasonable effort to verify whether the
3 prisoner has been lawfully admitted to the United States or if the
4 prisoner is unlawfully present in the United States. Verification
5 must be made within seventytwo hours through a query to the Law
6 Enforcement Support Center (LESC) of the United States
7 Department of Homeland Security or other office or agency
8 designated for that purpose by the United States Department of
9 Homeland Security. If the prisoner is determined to be an alien
10 unlawfully present in the United States, the keeper of the jail or
11 other officer shall notify the United States Department of
12 Homeland Security.

13 (C) Upon notification to the United States Department of
14 Homeland Security pursuant to subsection (B), the keeper of the
15 jail must account for daily expenses incurred for the housing,
16 maintenance, transportation, and care of the prisoner who is an
17 alien unlawfully present in the United States and must forward an
18 invoice to the Department of Homeland Security for these
19 expenses.

20 (D) The keeper of the jail or other officer may securely
21 transport the prisoner who is an alien unlawfully present in the
22 United States to a federal facility in this State or to any other point
23 of transfer into federal custody that is outside of the keeper of the
24 jail or other officer's jurisdiction. The keeper of the jail or other
25 officer shall obtain judicial authorization before securely
26 transporting a prisoner who is unlawfully present in the United
27 States to a point of transfer that is outside of this State.

28 (E) If a prisoner who is an alien unlawfully present in the
29 United States completes the prisoner's sentence of incarceration,
30 the keeper of the jail or other officer shall notify the United States
31 Department of Homeland Security and shall securely transport the
32 prisoner to a federal facility in this State or to any other point of
33 transfer into federal custody that is outside of the keeper of the jail
34 or other officer's jurisdiction. The keeper of the jail or other
35 officer shall obtain judicial authorization before securely
36 transporting a prisoner who is unlawfully present in the United
37 States to a point of transfer that is outside of this State.

38 (F) Nothing in this section shall be construed to deny a
39 person bond or from being released from confinement when such
40 person is otherwise eligible for release. However, pursuant to the
41 provisions of Section 171530, a court setting bond shall consider
42 whether the person charged is an alien unlawfully present in the
43 United States.

1 ~~(E)~~(G) The State Law Enforcement Division shall promulgate
2 regulations to comply with the provisions of this section in
3 accordance with the provisions of Chapter 23 of Title 1 of the
4 South Carolina Code of Laws.

5 ~~(F)~~(H) In enforcing the terms of this section, no state officer
6 shall attempt to make an independent judgment of an alien's
7 immigration status. State officials must verify an alien's status
8 with the federal government in accordance with 8 U.S.C. Section
9 1373(c)."

10 SECTION 7. Section 41-8-20 of the 1976 Code is amended to
11 read:

12 "Section 41-8-20. (A) All private employers in South Carolina
13 ~~on or after July 1, 2009~~, shall be imputed a South Carolina
14 employment license, which permits a private employer to employ a
15 person in this State. ~~On and after July 1, 2009~~, a A private
16 employer may not employ a person unless his South Carolina
17 employment license is in effect and is not suspended or revoked. A
18 private employer's employment license shall remain in effect
19 provided the private employer complies with the provisions of this
20 chapter.

21 (B) ~~On and after July 1, 2009~~, all All private employers ~~of one~~
22 ~~hundred or more employees~~ who are required by federal law to
23 complete and maintain federal employment eligibility verification
24 forms or documents must:

25 (1) register and participate in the EVerify federal work
26 authorization program, or its successor, to verify information of all
27 new employees, and verify the work authorization of every new
28 employee within ~~five~~ three business days after employing a new
29 employee; or

30 (2) employ only workers who, at the time of employment:

31 (a) possess a valid South Carolina driver's license or
32 identification card issued by the South Carolina Department of
33 Motor Vehicles;

34 (b) are eligible to obtain a South Carolina driver's license
35 or identification card in that they meet the requirements set forth in
36 Sections 56140 through 56190; or

37 (c) possess a valid driver's license or identification card
38 from another state where the license requirements are at least as
39 strict as those in South Carolina, as determined by the director.
40 The Executive Director of the Department of Motor Vehicles, or
41 his designee, shall determine which states have driver's license

1 requirements that are at least as strict as those in South Carolina,
2 and shall develop and periodically update a list of the states. The
3 Department of Motor Vehicles shall provide the director with a
4 copy of the list and all updates to the list. The director shall
5 publish the list on the Department of Labor, Licensing and
6 Regulation's website;

7 (d) possess a valid United States passport;
8 (e) valid United States military identification card;
9 (f) possess 'Documents evidencing employment
10 authorization and identify' as described in 8 U.S.C. Section
11 1324a(b)(1)(B); or

12 (g) possess 'Documents evidencing employment
13 authorization' as described in 8 U.S.C. Section 1324a(b)(1)(C) and
14 'Documents evidencing identity' as described in 8 U.S.C. Section
15 1324a(b)(1)(D).

16 (E) ~~The provisions of subsection (B) apply to all private~~
17 ~~employers who employ less than one hundred employees and who~~
18 ~~are required by federal law to complete and maintain federal~~
19 ~~employment eligibility verification forms or documents on and~~
20 ~~after July 1, 2010.~~

21 (D)(C) The Employment Security Commission South Carolina
22 Department of Employment and Workforce must provide private
23 employers with technical advice and electronic access to the
24 EVerify federal work authorization program's website for the sole
25 purpose of registering and participating in the program.

26 (E)(D) Private employers who elect to verify a new employee's
27 work authorization in accordance with Section 41820(B)(1) shall
28 provisionally employ a new employee until his work authorization
29 has been verified. A private employer who elects to verify a new
30 employee's work authorization in accordance with Section
31 41820(B)(1) must submit a new employee's name and information
32 for verification even if the new employee's employment is
33 terminated less than ~~five~~ three business days after becoming
34 employed. If a new employee's work authorization is not verified
35 by the federal work authorization program, a private employer
36 must not employ, continue to employ, or reemploy the employee.

37 (F)(E) To assist private employers in understanding the
38 requirements of this chapter, the director shall send written notice
39 of the requirements of this section, to include a list of states with
40 driver's license requirements at least as strict as those in South
41 Carolina, to all South Carolina employers ~~no later than January 1,~~
42 and shall publish the information contained in the notice on
43 its website. Nothing in this section shall create a legal requirement

1 that any private employer receive actual notice of the requirements
2 of this chapter through written notice from the director, nor create
3 any legal defense for failure to receive notice.

4 (F) If a private employer is a contractor, the private employer
5 shall maintain the contact phone numbers of all subcontractors and
6 sub-subcontractors performing services for the private employer.
7 The private employer shall provide the contact phone numbers or a
8 contact phone number, as applicable, to the director pursuant to an
9 audit or investigation within seventy-two hours of the director's
10 request."

11
12 SECTION 8. Section 41-8-50 of the 1976 Code is amended to
13 read:

14
15 “Section 41-8-50. (A) Upon receipt of a written and signed
16 complaint against a private employer, or upon an investigation
17 initiated by the director for good cause, if the director finds
18 reasonable grounds exist that a private employer allegedly violated
19 the provisions of Section 41820 or Section 41830, the director
20 must institute an investigation of the alleged violation. The
21 director shall verify the work authorization status of the alleged
22 unauthorized alien with the federal government pursuant to
23 U.S.C. Section 1373(c). A state, county, or local official must not
24 attempt to independently determine if an alien is authorized to
25 work in the United States.

26 (B) If, after completing the investigation, and after reviewing
27 any information or evidence submitted by the private employer
28 demonstrating compliance with the provisions of this chapter, the
29 director determines that substantial evidence exists to support a
30 finding that the private employer has committed a violation of
31 Section 41820 or Section 41830, the director shall:

32 (1) notify the United States Immigration and Customs
33 Enforcement of suspected unauthorized aliens employed by the
34 private employer;

35 (2) notify state and local law enforcement agencies
36 responsible for enforcing state immigration laws of the
37 employment of suspected unauthorized aliens by the employer;
38 and

39 (3) assess a reasonable penalty in accordance with
40 subsection (D) of this section.

41 (C) ~~The director must not bring an action for an occurrence~~
42 ~~involving a violation of Section 41820 or Section 41830 against a~~
43 ~~private employer of one hundred or more employees prior to July~~

1 ~~1, 2009, or against a private employer of less than one hundred~~
2 ~~employees prior to July 1, 2010.~~ The director must not bring an
3 action against a private employer for any employee who has been
4 employed for ~~five~~ three business days or less at the time of the
5 director's inspection or random audit. A second occurrence
6 involving a violation of this section must be based only on an
7 employee who is employed by the private employer after a first
8 action has been brought for a violation of Section 41820 or Section
9 41830.

10 (D) Upon a finding of an occurrence involving a violation after
11 an investigation pursuant to subsection (A), or after a random audit
12 pursuant to Section 41820(B), where the director considered all
13 information or evidence gathered by the director and any
14 information or evidence submitted by the private employer
15 demonstrating compliance with the provisions of this chapter:

16 (1) for an occurrence involving a violation of Section 41820,
17 the private employer must be assessed a reasonable civil penalty of
18 ~~not less than one hundred dollars and not more than one thousand~~
19 dollars for each violation. ~~However, for a first occurrence~~
20 ~~involving a violation of Section 41820, if, upon notification by the~~
21 ~~director of a violation of Section 41820, the private employer~~
22 ~~complies with the provisions of Section 41820(B) within~~
23 ~~seventytwo hours, he must not be assessed a penalty. Any~~
24 ~~subsequent occurrence involving a violation of Section 41820 by~~
25 ~~the private employer shall result in the assessment of a civil~~
26 ~~penalty by the director, except, if a private employer has not~~
27 ~~committed a violation of Section 41820 within the previous five~~
28 ~~years, a subsequent occurrence must be treated as a first~~
29 ~~occurrence. If a private employer has ever committed a violation~~
30 ~~of Section 41830, he must be assessed a civil penalty for any~~
31 ~~violation or subsequent occurrence involving a violation of Section~~
32 ~~41820. The director must verify the work authorization status of~~
33 ~~the employees with the federal government pursuant to 8 U.S.C.~~
34 ~~Section 1373(c) and notify the private employer of the results. The~~
35 ~~private employer must immediately terminate an employee whose~~
36 ~~work authorization was not verified upon being notified by the~~
37 ~~director. The director shall notify federal, state, and local law~~
38 ~~enforcement officials of any suspected unlawful aliens employed~~
39 ~~by the private employer, pursuant to subsections (A) and (B) of~~
40 ~~this section.~~

41 (2) for a first occurrence involving a violation of Section
42 41830, the private employer must be assessed a reasonable civil
43 penalty of not more than fifteen thousand dollars for each

1 violation. If a private employer fails to pay the penalty within ten
2 days, a private employer's license is suspended, and must remain
3 suspended for at least ten days but not more than thirty days.
4 During the period of suspension, a private employer may not
5 engage in business, open to the public, employ an employee, or
6 otherwise operate. After the period of suspension or revocation, a
7 private employer's license must be reinstated, permitting the
8 private employer to engage in business and to employ an
9 employee, if the private employer:

10 (i) demonstrates that he has terminated the unauthorized
11 alien; and

12 (ii) pays a reinstatement fee equal to the cost of
13 investigating and enforcing the matter, provided that the
14 reinstatement fee must not exceed one thousand dollars;

15 (3) for a second occurrence involving a violation of Section
16 41830, the private employer must be assessed a reasonable civil
17 penalty of not more than thirty thousand dollars for each violation.
18 If a private employer fails to pay the penalty within ten days, a
19 private employer's license is suspended, and must remain
20 suspended for at least thirty days but not more than sixty days.
21 During the period of suspension, a private employer may not
22 engage in business, open to the public, employ an employee, or
23 otherwise operate. After the period of suspension, a private
24 employer's license must be reinstated, permitting the private
25 employer to engage in business and to, open to the public, employ
26 an employee, and otherwise operate, if the private employer:

27 (i) demonstrates that he has terminated the unauthorized
28 alien; and

29 (ii) pays a reinstatement fee equal to the cost of
30 investigating and enforcing the matter, provided that the
31 reinstatement fee must not exceed one thousand dollars;

32 (4) for a third and subsequent occurrences involving a
33 violation of Section 41830, the private employer must be assessed
34 a reasonable civil penalty of not more than fifty thousand dollars
35 for each violation. If a private employer fails to pay the penalty
36 within ten days, a private employer's license is revoked, and the
37 private employer may not engage in business, open to the public,
38 employ an employee, or otherwise operate. For a third occurrence
39 only, after ninety days, a private employer may petition the
40 director for a provisional license. A provisional license permits a
41 private employer to engage in business, open to the public, employ
42 an employee, and otherwise operate. The director may grant the
43 private employer a provisional license if the private employer:

(i) agrees to be on probation for a period of three years, during which time the private employer must submit quarterly reports to the director demonstrating compliance with the provisions of Sections 41820 and 41830;

(ii) demonstrates that he has terminated the unauthorized alien; and

(iii) pays a reinstatement fee equal to the cost of investigating and enforcing the matter, provided that the reinstatement fee must not exceed one thousand dollars.

10 For all other occurrences where a private employer's license is
11 revoked, the private employer may not seek reinstatement of his
12 license for a period of five years. After five years, the director
13 may grant reinstatement of a private employer's license if the
14 private employer:

(i) agrees to be on probation for a period of three years, during which time the private employer must submit quarterly reports to the director demonstrating compliance with the provisions of Sections 41820 and 41830;

(ii) demonstrates that he has terminated the unauthorized alien; and

(iii) pays a reinstatement fee equal to the cost of investigating and adjudicating the matter, provided that the reinstatement fee must not exceed one thousand dollars.

24 (5) If a private employer engages in business or employs a
25 new employee during the period that his license is suspended, the
26 private employer's license shall be revoked, and shall not be
27 reinstated for a period of five years, and only upon a determination
28 by the director that the private employer has complied with the
29 provisions of item (4) of this section.

30 (E) For purposes of this chapter, it shall be a separate violation
31 each time the private employer fails to verify the immigration
32 status of a new employee as required by Section 41820.

33 (F) In assessing a reasonable civil penalty or taking any other
34 disciplinary action for a violation of Section 41820 or Section
35 41830, the director shall base his determination on any evidence or
36 information collected during the investigation or submitted for
37 consideration by the employer, and shall consider the following
38 factors, if relevant:

39 (1) the number of employees for whom the private employer
40 has failed to verify their immigration status;

41 (2) the prior violations of this chapter by the private
42 employer;

43 (3) the size of the private employer's workforce;

1 (4) any actions taken by the private employer to comply with
2 federal immigration laws or with the provisions of this chapter;

3 (5) any actions taken by the private employer subsequent to
4 the inspection or random audit to comply with the provisions of
5 this chapter; and

6 (6) the duration of the violation;

7 (7) the degree of the violation; and

8 (8) the good faith of the private employer.

9 (G) Reinstatement fees assessed in accordance with this section
10 shall be used to cover the administrative costs of implementing,
11 investigating, and enforcing the provisions of this chapter.

12 (H) The director shall maintain a list of all private employers
13 who have been assessed a civil penalty pursuant to this chapter, or
14 who had their license disciplined, or revoked, and shall publish the
15 list on the agency's website. The director shall remove a private
employer from the list who has been assessed only a civil penalty
pursuant to this chapter one year after the private employer's name
has been published, if the private employer has not been assessed a
subsequent civil penalty, or had their license disciplined, or
revoked, within the one year period.

21 (I) If a private employer continues to engage in business after
22 his license has been revoked pursuant to this chapter, the director
23 must seek an injunction from the Administrative Law Court to
24 enjoin the private employer from continuing to operate his
25 business for which his license was revoked or from employing new
26 employees.”

27
28 SECTION 9. Article 1, Chapter 13, Title 16 of the 1976 Code is
29 amended by adding:

31 “Section 16-13-480. Unless otherwise provided by law, it is
32 unlawful for a person to make, issue, or sell, or offer to make,
33 issue, or sell, a false, fictitious, fraudulent, or counterfeit picture
34 identification that is for use by an alien who is unlawfully present
35 in the United States. A person who violates this section is guilty of
36 a felony, and, upon conviction, must be fined twenty-five thousand
37 dollars or imprisoned for not more than five years, or both.”

38
39 SECTION 10. Section 23-3-80 of the 1976 Code is repealed.

40
41 SECTION 11. Title 23, Chapter 6, Article 1 of the 1976 Code is
42 amended by adding:

43

1 “Section 23-6-60.(A) There is created an Illegal Immigration
2 Enforcement Unit within the Department of Public Safety. The
3 purpose of the Illegal Immigration Enforcement Unit is to enforce
4 immigration laws as authorized pursuant to federal laws and the
5 laws of this State.

6 (B) The Illegal Immigration Enforcement Unit is under the
7 administrative direction of the department’s director. The
8 department’s director shall maintain and provide administrative
9 support for the Illegal Immigration Enforcement Unit. The
10 department’s director may appoint appropriate personnel within
11 the department to administer and oversee the operations of the
12 Illegal Immigration Enforcement Unit.

13 (C)(1) The Illegal Immigration Enforcement Unit shall have
14 such officers, agents, and employees as the department’s director
15 may deem necessary and proper for the enforcement of
16 immigration laws as authorized pursuant to federal laws and the
17 laws of this State.

18 (2)(a) The enforcement of immigration laws as authorized
19 pursuant to federal laws and the laws of this State must be the only
20 responsibility of the officers of the Illegal Immigration
21 Enforcement Unit.

22 (b) The officers shall be commissioned by the Governor
23 upon the recommendation of the department’s director.

24 (c) The officers shall have the same power to serve
25 criminal processes against offenders as sheriffs of the various
26 counties and also the same power as such sheriffs to arrest without
27 warrants and to detain persons found violating or attempting to
28 violate immigration laws. The officers also shall have the same
29 power and authority held by deputy sheriffs for the enforcement of
30 the criminal laws of the State.

31 (d) The department must provide the officers with
32 distinctive uniforms and suitable arms and equipment for use in the
33 performance of their duties. Such officers shall at all times, when
34 in the performance of their duties, wear complete uniforms with
35 badges conspicuously displayed on the outside of their uniforms,
36 except officers performing undercover duties. The department
37 director shall prescribe a unique and distinctive official uniform
38 with appropriate insignia to be worn by all officers when on duty
39 and at such other times as the department’s director shall order, and
40 a distinctive color or colors and appropriate emblems for all motor
41 vehicles used by the Illegal Immigration Enforcement Unit except
42 those designated by the director. No other law enforcement
43 agency, private security agency, or any person shall wear a similar

1 uniform and insignia that could be confused with the uniform and
2 insignia of the Illegal Immigration Enforcement Unit. An emblem
3 may not be used on a nondepartment motor vehicle, nor may such
4 vehicle be painted in a color or in any manner that would cause the
5 vehicle to be similar to an Illegal Immigration Enforcement Unit
6 vehicle or readily confused with it. The department's director shall
7 file with the Legislative Council for publication in the State
8 Register a description and illustration of the official Illegal
9 Immigration Enforcement Unit uniform with insignia and the
10 emblems of the official Illegal Immigration Enforcement Unit and
11 motor vehicles including a description of the color of such
12 uniforms and vehicles.

13 (D) Notwithstanding any other provision of law, the Illegal
14 Immigration Enforcement Unit must be funded annually by a
15 specific appropriation to the Illegal Immigration Enforcement Unit
16 in the state general appropriations act, separate and distinct from
17 the department's other appropriations.

18 (E) The department's director shall negotiate the terms of a
19 memorandum of agreement with the United States Immigration
20 and Customs Enforcement pursuant to Section 287(g) of the
21 federal Immigration and Nationality Act as soon as possible after
22 the effective date of this act.

23 (F) Nothing in this section may be construed to prevent other
24 law enforcement agencies of the State and political subdivisions of
25 the State, including local law enforcement agencies, from
26 enforcing immigration laws as authorized pursuant to federal laws
27 and the laws of this State.”

28
29 SECTION 12. The repeal or amendment by this act of any law,
30 whether temporary or permanent or civil or criminal, does not
31 affect pending actions, rights, duties, or liabilities founded thereon,
32 or alter, discharge, release or extinguish any penalty, forfeiture, or
33 liability incurred under the repealed or amended law, unless the
34 repealed or amended provision shall so expressly provide. After
35 the effective date of this act, all laws repealed or amended by this
36 act must be taken and treated as remaining in full force and effect
37 for the purpose of sustaining any pending or vested right, civil
38 action, special proceeding, criminal prosecution, or appeal existing
39 as of the effective date of this act, and for the enforcement of
40 rights, duties, penalties, forfeitures, and liabilities as they stood
41 under the repealed or amended laws.

42

1 SECTION 13. If any section, subsection, paragraph,
2 subparagraph, sentence, clause, phrase, or word of this act is for
3 any reason held to be unconstitutional or invalid, such holding
4 shall not affect the constitutionality or validity of the remaining
5 portions of this act, the General Assembly hereby declaring that it
6 would have passed this, and each and every section, subsection,
7 paragraph, subparagraph, sentence, clause, phrase, and word
8 thereof, irrespective of the fact that any one or more other sections,
9 subsections, paragraphs, subparagraphs, sentences, clauses,
10 phrases, or words hereof may be declared to be unconstitutional,
11 invalid, or otherwise ineffective.

12
13 SECTION 14. SECTION 12 of this act takes effect upon funding
14 by the General Assembly and upon the grant of Section 287(g) of
15 the Federal Immigration and Nationality Act authority to the
16 Department of Public Safety. The remaining provisions of this act
17 take effect on September 1, 2011, or sixty days after approval by
18 the Governor, whichever is later.

19 XX
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