

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

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4 AMENDED

5 May 24, 2011

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## S. 20

8

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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9 **A BILL**

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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.

25 Amend Title To Conform

26  
27 Be it enacted by the General Assembly of the State of South  
28 Carolina:

29  
30 SECTION 1. Section 6-1-170 of the 1976 Code is amended by  
31 adding subsection (E) to read:

32  
33 “(E)(1) Notwithstanding any other provision of law, a resident  
34 of a political subdivision in this State may bring a civil action in  
35 the circuit court in which the resident and political subdivision are  
36 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;

41 (b) an enactment by the political subdivision of any  
42 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)~~ ~~Subsections (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 ~~(D)~~(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  
11 SECTION 7. Section 41-8-20 of the 1976 Code is amended to  
12 read:

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

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

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

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

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

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

39             (c) possess a valid driver's license or identification card  
40 from another state where the license requirements are at least as  
41 strict as those in South Carolina, as determined by the director.  
42 The Executive Director of the Department of Motor Vehicles, or  
43 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 ~~(C) 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 ~~2009~~, 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 8  
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 418120(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:

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

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

7 (iii) pays a reinstatement fee equal to the cost of  
8 investigating and enforcing the matter, provided that the  
9 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:

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

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

21 (iii) pays a reinstatement fee equal to the cost of  
22 investigating and adjudicating the matter, provided that the  
23 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  
16 employer from the list who has been assessed only a civil penalty  
17 pursuant to this chapter one year after the private employer's name  
18 has been published, if the private employer has not been assessed a  
19 subsequent civil penalty, or had their license disciplined, or  
20 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:

30  
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:

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  
20  
21