**South Carolina General Assembly**

119th Session, 2011-2012

**H. 3129**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Bedingfield, Horne, Simrill, Toole, G.R. Smith, Taylor, Murphy, G.M. Smith, Bingham, Long, Viers, Herbkersman and McCoy

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Introduced in the House on January 11, 2011

Currently residing in the House Committee on **Judiciary**

Summary: Illegal alien enforcement

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/7/2010 House Prefiled

12/7/2010 House Referred to Committee on **Judiciary**

1/11/2011 House Introduced and read first time ([House Journal‑page 56](file:///h:\hj%20archive\2011\01-11-11.docx))

1/11/2011 House Referred to Committee on **Judiciary** ([House Journal‑page 56](file:///h:\hj%20archive\2011\01-11-11.docx))

1/12/2011 House Member(s) request name added as sponsor: Long

1/19/2011 House Member(s) request name added as sponsor: Viers

2/8/2011 House Member(s) request name added as sponsor: Herbkersman

2/23/2011 House Member(s) request name added as sponsor: McCoy

**VERSIONS OF THIS BILL**

[12/7/2010](file:///p:\pprever\2011-12\3129_20101207.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 15 TO CHAPTER 3, TITLE 23 SO AS TO ENTITLE THE ARTICLE “ILLEGAL ALIENS ENFORCEMENT”, TO PROVIDE FOR PROCEDURES FOR VERIFICATION OF A PERSON’S IMMIGRATION STATUS UNDER CERTAIN CIRCUMSTANCES AND TO PROVIDE FOR THE WARRANTLESS ARREST OF PERSONS SUSPECTED OF BEING PRESENT IN THE UNITED STATES UNLAWFULLY; BY ADDING SECTION 16‑9‑470 SO AS TO CREATE THE OFFENSE OF WILFUL FAILURE TO COMPLETE OR CARRY AN ALIEN REGISTRATION DOCUMENT UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE PENALTIES FOR THE VARIOUS DEGREES OF THE OFFENSE; AND BY ADDING SECTION 16‑9‑480 SO AS TO CREATE THE OFFENSE OF UNLAWFULLY HIRING AND PICKING UP WORKERS AT DIFFERENT LOCATIONS WHILE IMPEDING TRAFFIC, TO CREATE THE OFFENSE OF ENTERING MOTOR VEHICLES STOPPED IN RIGHTS‑OF‑WAY TO BE HIRED TO WORK AT A DIFFERENT LOCATION, AND TO PROVIDE PENALTIES FOR VIOLATIONS.

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

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

“Article 15

Illegal Aliens Enforcement

Section 23‑3‑1300. (A) Notwithstanding another provision of law, when a lawful contact is made by a law enforcement official or a law enforcement agency of this State or a law enforcement official or a law enforcement agency of a county, municipality, or other political subdivision of this State when reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt must be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation. If the person is arrested for an alleged violation of state or local law or the officer has probable cause to believe the person to be arrested has committed an offense which makes the person removable from the United States, the law enforcement officer may arrest the person without a warrant, and the law enforcement officer or agency shall determine the person’s immigration status before the person is released from custody. The person’s immigration status must be verified with the federal government pursuant to 8 U.S.C. Section 1373(c). A law enforcement official or agency of this state or a county, municipality, or other political subdivision of this State may not solely consider race, color, or national origin in implementing the requirements of this section except to the extent permitted by the United States or South Carolina Constitution. A person is presumed not to be an alien who is unlawfully present in the United States if the person provides to the law enforcement officer or agency any of the following:

(1) a valid South Carolina driver’s license;

(2) a valid South Carolina identification card;

(3) a valid tribal enrollment card or other form of tribal identification; or

(4) if the entity requires proof of legal presence in the United States before issuance, any valid United States federal, state, or local government issued identification.

(B) Notwithstanding another provision of law, a law enforcement agency may securely transport an alien who the agency has received verification is unlawfully present in the United States and who is in the agency’s custody to a federal facility in this State or to another point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial authorization before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside of this State.

(C) Except as provided by federal law, officials or agencies of this State and counties, municipalities, and other political subdivisions of this State may not be prohibited or in any way be restricted from sending, receiving, or maintaining information relating to the immigration status, lawful or unlawful, of any individual or exchanging that information with another federal, state, or local governmental entity for the following official purposes:

(1) determining eligibility for any public benefit, service, or license provided by any federal, state, local or other political subdivision of this State;

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

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

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

(D) This section does not implement, authorize, or establish and may not be construed to implement, authorize, or establish the REAL ID act of 2005 (P.L. 109‑13, division B; 119 Stat. 302), including the use of a radio frequency identification chip.

(E) A person who is a legal resident of this State may bring an action in circuit court to challenge any official or agency of this State or a county, municipality, or other political subdivision of this State that adopts or implements a policy or practice that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law. If there is a judicial finding that an entity has violated this section, the court shall order that the entity pay a civil penalty of not less than one thousand dollars and not more than five thousand dollars for each day that the policy has remained in effect after the filing of an action pursuant to this subsection.

(F) The court may award court costs and reasonable attorney fees to a person or official or agency of this State or a county, municipality, or other political subdivision of this State that prevails by an adjudication on the merits in a proceeding brought pursuant to this section.

(G) Except in relation to matters in which the officer is adjudged to have acted in bad faith, a law enforcement officer is indemnified by the law enforcement officer’s agency against reasonable costs and expenses, including attorney’s fees, incurred by the officer in connection with any action, suit, or proceeding brought pursuant to this section in which the officer may be a defendant by reason of the officer being or having been a member of the law enforcement agency.

(H) This section must be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.”

SECTION 2. Article 5, Chapter 9, Title 16 of the 1976 Code is amended by adding:

“Section 16‑9‑470. (A) In addition to a violation of federal law, a person is guilty of wilful failure to complete or carry an alien registration document if the person is in violation of 8 U.S.C. Section 1304(e) or 1306(a).

(B) In the enforcement of this section, an alien’s immigration status may be determined by:

(1) a law enforcement officer who is authorized by the federal government to verify or ascertain an alien’s immigration status; or

(2) the United States immigration and customs enforcement or the United States customs and border protection pursuant to 8 U.S.C. 1373(c).

(C) A person who is sentenced pursuant to this section is not eligible for suspension of sentence, probation, pardon, commutation of sentence, or release from confinement on any basis until the sentence imposed by the court has been served or the person is eligible for release pursuant to another provision of law.

(D) In addition to another penalty prescribed by law, the court shall order the person to pay jail costs and an additional assessment in the following amounts:

(1) not less than five hundred dollars for a first offense violation; and

(2) not less than one thousand dollars for a second or subsequent offense pursuant to this section.

(E) This section does not apply to a person who maintains authorization from the federal government to remain in the United States.

(F) Any record that relates to the immigration status of a person is admissible in any court without further foundation or testimony from a custodian of records if the record is certified as authentic by the government agency that is responsible for maintaining the record.

(G) A violation of this section is a misdemeanor, except that a violation of this section is:

(1) a Class E felony if the person violates this section while in possession of any of the following:

(a) a controlled substance as defined in Section 44‑53‑110;

(b) precursor chemicals that are used in the manufacturing of methamphetamine in violation of Section 44‑53‑375;

(c) a firearm as provided in Section 16‑23‑530 or other deadly weapon; or

(d) property that is used for the purpose of committing an act of terrorism or a violation of Article 7, Chapter 23, Title 16.

(2) a Class D felony if the person either:

(a) is convicted of a second or subsequent violation of this section; or

(b) within sixty months before the violation, has been removed from the United States pursuant to 8 U.S.C. Section 1229(a) or has accepted a voluntary removal from the United States pursuant to 8 U.S.C. 1229(c).”

SECTION 3. Article 5, Chapter 9, Title 16 of the 1976 Code is amended by adding:

“Section 16‑9‑480. (A) It is unlawful for an occupant of a motor vehicle that is stopped on a street, roadway or highway to attempt to hire or hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic. (B) It is unlawful for a person to enter a motor vehicle that is stopped on a street, roadway, or highway in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

(C) It is unlawful for a person who is unlawfully present in the United States and who is an unauthorized alien to knowingly apply for work, solicit work in a public place, or perform work as an employee or independent contractor in this State.

(D) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than five hundred dollars or imprisoned for not more than thirty days.

(E) For the purposes of this section, the term:

(1) ‘Solicit’ means verbal or nonverbal communication by a gesture or a nod that would indicate to a reasonable person that a person is willing to be employed.

(2) ‘Unauthorized alien’ means an alien who does not have the legal right or authorization pursuant to federal law to work in the United States as described in 8 U.S.C. 1324(a)(h)(3).”

SECTION 4. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

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

SECTION 6. This act takes effect upon approval by the Governor.

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