~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 18, 2011

**S. 20**

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

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Read the first time March 14, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 20) to amend Chapter 1, Title 23 of the 1976 Code, by adding Section 23‑1‑250 to provide that where a law enforcement officer has reasonable suspicion that a person, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by deleting Section 41‑8‑20(B)(2), as contained in SECTION 7, pages 10 and 11, and inserting:

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

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

(b) are eligible to obtain a South Carolina driver’s license or identification card in that they meet the requirements set forth in Sections 56‑1‑40 through 56‑1‑90; ~~or~~

(c) possess a valid driver’s license or identification card from another state where the license requirements are at least as strict as those in South Carolina, as determined by the director. The Executive Director of the Department of Motor Vehicles, or his designee, shall determine which states have driver’s license requirements that are at least as strict as those in South Carolina, and shall develop and periodically update a list of the states. The Department of Motor Vehicles shall provide the director with a copy of the list and all updates to the list. The director shall publish the list on the Department of Labor, Licensing and Regulation’s website;

(d) possess a valid United States passport;

(e) valid United States military identification card;

(f) possess ‘Documents evidencing employment authorization and identify’ as described in 8 U.S.C. Section 1324a(b)(1)(B); or

(g) possess ‘Documents evidencing employment authorization’ as described in 8 U.S.C. Section 1324a(b)(1)(C) and ‘Documents evidencing identity’ as described in 8 U.S.C. Section 1324a(b)(1)(D). /

Amend the bill further, by deleting Section 41-8-50(D), as contained in SECTION 8, and inserting:

/ (D) Upon a finding of an occurrence involving a violation after an investigation pursuant to subsection (A), or after a random audit pursuant to Section 41‑8‑120(B), where the director considered all information or evidence gathered by the director and any information or evidence submitted by the private employer demonstrating compliance with the provisions of this chapter:

(1) for an occurrence involving a violation of Section 41‑8‑20, the private employer must be assessed a reasonable civil penalty of ~~not less than one hundred dollars and~~ not more than one thousand dollars for each violation. ~~However, for a first occurrence involving a violation of Section 41‑8‑20, if, upon notification by the director of a violation of Section 41‑8‑20, the private employer complies with the provisions of Section 41‑8‑20(B) within seventy‑two hours, he must not be assessed a penalty.~~ ~~Any subsequent occurrence involving a violation of Section 41‑8‑20 by the private employer shall result in the assessment of a civil penalty by the director, except, if a private employer has not committed a violation of Section 41‑8‑20 within the previous five years, a subsequent occurrence must be treated as a first occurrence. If a private employer has ever committed a violation of Section 41‑8‑30, he must be assessed a civil penalty for any violation or subsequent occurrence involving a violation of Section 41‑8‑20.~~ The director must verify the work authorization status of the employees with the federal government pursuant to 8 U.S.C. Section 1373(c) and notify the private employer of the results. The private employer must immediately terminate an employee whose work authorization was not verified upon being notified by the director. The director shall notify federal, state, and local law enforcement officials of any suspected unlawful aliens employed by the private employer, pursuant to subsections (A) and (B) of this section.

(2) for a first occurrence involving a violation of Section 41‑8‑30, the private employer must be assessed a reasonable civil penalty of not more than fifteen thousand dollars for each violation. If a private employer fails to pay the penalty within ten days, a private employer’s license is suspended, and must remain suspended for at least ten days but not more than thirty days. During the period of suspension, a private employer may not engage in business, open to the public, employ an employee, or otherwise operate. After the period of suspension or revocation, a private employer’s license must be reinstated, permitting the private employer to engage in business and to employ an employee, if the private employer:

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

(ii) 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;

(3) for a second occurrence involving a violation of Section 41‑8‑30, the private employer must be assessed a reasonable civil penalty of not more than thirty thousand dollars for each violation. If a private employer fails to pay the penalty within ten days, a private employer’s license is suspended, and must remain suspended for at least thirty days but not more than sixty days. During the period of suspension, a private employer may not engage in business, open to the public, employ an employee, or otherwise operate. After the period of suspension, a private employer’s license must be reinstated, permitting the private employer to engage in business ~~and to~~, open to the public, employ an employee, and otherwise operate, if the private employer:

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

(ii) 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;

(4) for a third and subsequent occurrences involving a violation of Section 41‑8‑30, the private employer must be assessed a reasonable civil penalty of not more than fifty thousand dollars for each violation. If a private employer fails to pay the penalty within ten days, a private employer’s license is revoked, and the private employer may not engage in business, open to the public, employ an employee, or otherwise operate. For a third occurrence only, after ninety days, a private employer may petition the director for a provisional license. A provisional license permits a private employer to engage in business, open to the public, employ an employee, and otherwise operate. The director may grant the 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 41‑8‑20 and 41‑8‑30;

(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.

For all other occurrences where a private employer’s license is revoked, the private employer may not seek reinstatement of his license for a period of five years. After five years, the director may grant reinstatement of a private employer’s 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 41‑8‑20 and 41‑8‑30;

(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.

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

Amend the bill further, Section 41-8-50, as contained in Section 8, page 16, by adding after line 4 the following:

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

Amend the bill further, by deleting SECTION 9 in its entirety, page 16, lines 6-32.

Amend the bill further, by deleting Section 23-6-60(B), as contained in SECTION 12, page 17, lines 14-20, and inserting:

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

Amend the bill further, by deleting Section 23-6-60(E), as contained in SECTION 12, page 18, lines 26-31, and inserting:

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

Amend the bill further, by deleting SECTION 15 in its entirety and inserting:

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

Renumber sections to conform.

Amend title to conform.

JAMES H. HARRISON for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

A Cost to the General Fund (See Below)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

A Cost of Federal and/or Other Funds (See Below)

**EXPLANATION OF IMPACT:**

Department of Corrections (SDDC)

The department indicates that Sections 4 and 6 of the bill will potentially have an impact on the agency, but cannot provide an accurate estimate of the impact on the department’s inmate population. SCDC has procedures in place to work with U.S. Immigration and Customs Enforcement (ICE) to verify immigration status. In FY 2009-10 154 inmates were transferred to the custody of ICE upon release from incarceration at the department. During that year 209 ICE detainers were placed on new admissions. The daily cost of incarceration at SCDC is approximately $40 (State Funds only). The department notes that in 2008 there were approximately 70,000 unauthorized immigrants in South Carolina.

Other Agencies

The Judicial Department, the Department of Labor, Licensing and Regulation, Department of Public Safety, Commission on Indigent Defense, Prosecution Coordination Commission and the Law Enforcement Training Council each indicate enactment of this bill will have little or no impact on these agencies. The Department of Public Safety assumes it would not be responsible to transporting these individuals to a federal facility. The State Law Enforcement Division does not anticipate any direct impact to the agency.

**LOCAL GOVERNMENT IMPACT:**

Law Enforcement entities may seek to enter into a Memorandum of Agreement (MOA) with the federal government for 287(g) certification and enforcement. The MOAs can vary between local law enforcement entities and these MOAs specify which costs the federal government will cover. Four county governments in this state currently have 287(g) MOAs with ICE. Under MOAs that allow for a jail based program on the part of the local law enforcement office the federal government covers the cost of training, provides support and reimburses the entity for some or all incarceration expenses. The jail facilities must meet federal standards. Three state county governments are jail based programs while another is certified by ICE for Task Force responsibilities only (no reimbursement for jail expenses).

Local entities would likely incur some cost associated with overtime while officers are being trained for 287(g) certification. One local government estimated overtime cost it would have to cover at $2,400 if four of its officers received training.

The estimated cost of incarceration at a local jail facility is estimated at $55 per day per inmate for all direct and indirect cost. Marginal costs are estimated at less than $15 per day. Local governments that are unable to develop an MOA with ICE could incur costs associated with detention until the individual could be transported to a federal facility. In these cases, law enforcement entities would incur transportation expenses. One entity that has an MOA with ICE estimates the cost of transporting individuals to a federal facility at $8,000 annually (an expense not reimbursable under this entity’s MOA with ICE).

The net impact on local governments would depend on how many potential illegal immigrants are detained, the amount of time these individuals are detained until transported to a federal facility, and the specific type of MOA each local could potentially develop with ICE. All four county governments with existing ICE MOAs indicate this bill would likely create a new set of detainees, but could not estimate the number, and were unsure if costs associated with these individuals would qualify for federal reimbursement. In addition, these counties indicated it takes more than a year to obtain training and to put a complete ICE certified 287(g) program in place.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND CHAPTER 1, TITLE 23 OF THE 1976 CODE, BY ADDING SECTION 23‑1‑250 TO PROVIDE THAT WHERE A LAW ENFORCEMENT OFFICER HAS REASONABLE SUSPICION THAT A PERSON STOPPED, DETAINED, OR ARRESTED BY LAW ENFORCEMENT IS AN ALIEN UNLAWFULLY IN THE UNITED STATES, THE OFFICER OR HIS AGENCY MUST FOLLOW CERTAIN PROCEDURES TO VERIFY HIS IMMIGRATION STATUS; AND TO AMEND ARTICLE 5, CHAPTER 9, TITLE 16, BY ADDING SECTION 16‑9‑480 TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON UNLAWFULLY IN THE UNITED STATES TO SOLICIT OR ATTEMPT TO SOLICIT WORK, AND TO PROVIDE PROCEDURES FOR VERIFYING IMMIGRATION STATUS.

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

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

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

(a) an enactment by the political subdivision of any ordinance or policy that intentionally limits or prohibits a law enforcement officer, local official, or local government employee 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 enforcement officer, local official, or local government employee from communicating to appropriate federal or state officials regarding the immigration status of a person within this State; or

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

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

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

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

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

(1) to register and participate in the federal work authorization program to verify the employment authorization of all new employees and require agreement from its subcontractors, and through the subcontractors, the sub‑subcontractors, to register and participate in the federal verification of the employment authorization of all new employees; or

(2) to employ only workers who:

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

(b) are eligible to obtain a South Carolina driver’s license or identification card in that they meet the requirements set forth in Sections 56‑1‑40 through 56‑1‑90; ~~or~~

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

(d) possess a valid United States passport or valid United States military identification card.”

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

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

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

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

~~(B)~~(D) It is a felony for a person knowingly or in reckless disregard of the fact that another person has come to, entered, or remained in the United States in violation of law to conceal, harbor, or shelter from detection or to solicit or conspire to conceal, harbor, or shelter from detection that person in any place, including a building or means of transportation, with intent to further that person’s unlawful entry into the United States or avoiding apprehension or detection of that person’s unlawful immigration status by state or federal authorities.

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

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

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

(i) deliver in‑kind services at the community level, including through public or private nonprofit agencies;

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

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

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

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

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

“Section 16-17-750. (A) It is unlawful for a person eighteen years of age or older to fail to carry in the person’s personal possession any certificate of alien registration or alien registration receipt card issued to the person pursuant to 8 U.S.C. Section 1304 while the person is in this State.

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

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

“Section 17‑13‑170. (A) If a law enforcement officer of this State or a political subdivision of this State lawfully stops, detains, investigates, or arrests a person for a criminal offense, and during the commission of the stop, detention, investigation, or arrest the officer has reasonable suspicion to believe that the person is unlawfully present in the United States, the officer shall make a reasonable effort, when practicable, to determine whether the person is lawfully present in the United States, unless the determination would hinder or obstruct an investigation.

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

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

(b) a driver’s license or picture identification issued by another state;

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

(d) a tribal picture identification.

(2) It is unlawful for a person to display, cause or permit to be displayed, or have in the person’s possession a false, fictitious, fraudulent, or counterfeit picture identification for the purpose of offering proof of the person’s lawful presence in the United States. A person who violates the provisions of this item:

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

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

(3) If the person cannot provide the law enforcement officer with any of the forms of picture identification listed in this subsection, the person may still be presumed to be lawfully present in the United States, if the officer is able to otherwise verify that the person has been issued any of those forms of picture identification.

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

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

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

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

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

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

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

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

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

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

(4) If the officer determines that the person is unlawfully present in the United States, the officer shall determine in cooperation with the Illegal Immigration Enforcement Unit within the South Carolina Department of Public Safety or the United States Immigration and Customs Enforcement, as applicable, whether the officer shall retain custody of the person for the underlying criminal offense for which the person was stopped, detained, investigated, or arrested, or whether the Illegal Immigration Enforcement Unit within the South Carolina Department of Public Safety or the United States Immigration and Customs Enforcement,as applicable, shall assume custody of the person. The officer is not required by this section to retain custody of the person based solely on the person’s lawful presence in the United States. The officer may securely transport the person to a federal facility in this State or to any other point of transfer into federal custody that is outside of the officer’s jurisdiction. The officer shall obtain judicial authorization before securely transporting a person to a point of transfer that is outside of this State.

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

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

(1) determining eligibility for any public benefit, service, or license provided by the federal government, this State, or a 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) determining whether an alien is in compliance with the federal registration laws prescribed by Chapter 7, Title II of the federal Immigration and Nationality Act; or

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

(F) Nothing in this section must be construed to deny a person bond or from being released from confinement when such person is otherwise eligible for release. However, pursuant to the provisions of Section 17‑15‑30, a court setting bond shall consider whether the person charged is an alien unlawfully present in the United States.

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

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

(I) Any time a motor vehicle is stopped by a state or local law enforcement officer without a citation being issued or an arrest being made and the officer contacts the Illegal Immigration Enforcement Unit within the Department of Public Safety pursuant to this section, the officer who initiated the stop must complete a data collection form designed by the Department of Public Safety that must include information regarding the age, gender, and race or ethnicity of the driver of the vehicle. This information may be gathered and transmitted electronically under the supervision of the Department of Public Safety, which shall develop and maintain a database storing the information collected. The Department of Public Safety must promulgate regulations with regard to the collection and submission of the information gathered. In addition, the Department of Public Safety shall prepare a report to be posted on the Department of Public Safety’s website regarding motor vehicle stops using the collected information. The General Assembly shall have the authority to withhold any state funds or federal pass‑through funds from any state or local law enforcement agency that fails to comply with the requirements of this subsection.”

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

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

(B) If the prisoner is an alien, the keeper of the jail or other officer must make a reasonable effort to verify whether the prisoner has been lawfully admitted to the United States or if the prisoner is unlawfully present in the United States. Verification must be made within seventy‑two hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the prisoner is determined to be an alien unlawfully present in the United States, the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

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

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

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

~~(D)~~(F) Nothing in this section shall be construed to deny a person bond or from being released from confinement when such person is otherwise eligible for release. However, pursuant to the provisions of Section 17‑15‑30, a court setting bond shall consider whether the person charged is an alien unlawfully present in the United States.

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

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

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

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

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

(1) register and participate in the E‑Verify federal work authorization program, or its successor, to verify information of all new employees, and verify the work authorization of every new employee within ~~five~~ three business days after employing a new employee; or

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

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

(b) are eligible to obtain a South Carolina driver’s license or identification card in that they meet the requirements set forth in Sections 56‑1‑40 through 56‑1‑90; ~~or~~

(c) possess a valid driver’s license or identification card from another state where the license requirements are at least as strict as those in South Carolina, as determined by the director. The Executive Director of the Department of Motor Vehicles, or his designee, shall determine which states have driver’s license requirements that are at least as strict as those in South Carolina, and shall develop and periodically update a list of the states. The Department of Motor Vehicles shall provide the director with a copy of the list and all updates to the list. The director shall publish the list on the Department of Labor, Licensing and Regulation’s website; or

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

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

~~(D)~~(C) The ~~Employment Security Commission~~ South Carolina Department of Employment and Workforce must provide private employers with technical advice and electronic access to the E‑Verify federal work authorization program’s website for the sole purpose of registering and participating in the program.

~~(E)~~(D) Private employers who elect to verify a new employee’s work authorization in accordance with Section 41‑8‑20(B)(1) shall provisionally employ a new employee until his work authorization has been verified. A private employer who elects to verify a new employee’s work authorization in accordance with Section 41‑8‑20(B)(1) must submit a new employee’s name and information for verification even if the new employee’s employment is terminated less than ~~five~~ three business days after becoming employed. If a new employee’s work authorization is not verified by the federal work authorization program, a private employer must not employ, continue to employ, or re‑employ the employee.

~~(F)~~(E) To assist private employers in understanding the requirements of this chapter, the director shall send written notice of the requirements of this section, to include a list of states with driver’s license requirements at least as strict as those in South Carolina, to all South Carolina employers ~~no later than January 1, 2009~~, and shall publish the information contained in the notice on its website. Nothing in this section shall create a legal requirement that any private employer receive actual notice of the requirements of this chapter through written notice from the director, nor create any legal defense for failure to receive notice.

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

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

“Section 41-8-50. (A) Upon receipt of a written and signed complaint against a private employer, or upon an investigation initiated by the director for good cause, if the director finds reasonable grounds exist that a private employer ~~allegedly~~ violated the provisions of Section 41‑8‑20 or Section 41‑8‑30, the director must institute an investigation of the alleged violation. The director shall verify the work authorization status of the alleged unauthorized alien with the federal government pursuant to 8 U.S.C. Section 1373(c). A state, county, or local official must not attempt to independently determine if an alien is authorized to work in the United States.

(B) If, after completing the investigation, and after reviewing any information or evidence submitted by the private employer demonstrating compliance with the provisions of this chapter, the director determines that substantial evidence exists to support a finding that the private employer has committed a violation of Section 41‑8‑20 or Section 41‑8‑30, the director shall:

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

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

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

(C) ~~The director must not bring an action for an occurrence involving a violation of Section 41‑8‑20 or Section 41‑8‑30 against a private employer of one hundred or more employees prior to July 1, 2009, or against a private employer of less than one hundred employees prior to July 1, 2010.~~ The director must not bring an action against a private employer for any employee who has been employed for ~~five~~ three business days or less at the time of the director’s inspection or random audit. A second occurrence involving a violation of this section must be based only on an employee who is employed by the private employer after a first action has been brought for a violation of Section 41‑8‑20 or Section 41‑8‑30.

(D) Upon a finding of an occurrence involving a violation after an investigation pursuant to subsection (A), or after a random audit pursuant to Section 41‑8‑120(B), where the director considered all information or evidence gathered by the director and any information or evidence submitted by the private employer demonstrating compliance with the provisions of this chapter:

(1) for an occurrence involving a violation of Section 41‑8‑20, the private employer must be assessed a reasonable civil penalty of ~~not less than one hundred dollars and~~ not more than one thousand dollars for each violation. ~~However, for a first occurrence involving a violation of Section 41‑8‑20, if, upon notification by the director of a violation of Section 41‑8‑20, the private employer complies with the provisions of Section 41‑8‑20(B) within seventy‑two hours, he must not be assessed a penalty.~~ Any subsequent occurrence involving a violation of Section 41‑8‑20 by the private employer shall result in the assessment of a reasonable civil penalty by the director of not more than one thousand dollars for each violation, except, if a private employer has not committed a violation of Section 41‑8‑20 within the previous five years, a subsequent occurrence must be treated as a first occurrence. If a private employer has ever committed a violation of Section 41‑8‑30, he must be assessed a reasonable civil penalty of not more than one thousand dollars for ~~any~~ each violation or subsequent occurrence involving a violation of Section 41‑8‑20. The director must verify the work authorization status of the employees with the federal government pursuant to 8 U.S.C. Section 1373(c) and notify the private employer of the results. The private employer must immediately terminate an employee whose work authorization was not verified upon being notified by the director. The director shall notify federal, state, and local law enforcement officials of any suspected unlawful aliens employed by the private employer, pursuant to subsections (A) and (B) of this section.

(2) for a first occurrence involving a violation of Section 41‑8‑30, a private employer’s license is suspended, and must remain suspended for at least ten days but not more than thirty days. During the period of suspension, a private employer may not employ an employee. After the period of suspension, a private employer’s license must be reinstated, permitting the private employer to engage in business and to employ an employee, if the private employer:

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

(ii) 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;

(3) for a second occurrence involving a violation of Section 41‑8‑30, a private employer’s license is suspended, and must remain suspended for at least thirty days but not more than sixty days. During the period of suspension, a private employer may not employ an employee. After the period of suspension, a private employer’s license must be reinstated, permitting the private employer to engage in business and to employ an employee, if the private employer:

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

(ii) 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;

(4) for a third and subsequent occurrences involving a violation of Section 41‑8‑30, a private employer’s license is revoked, and the private employer may not employ an employee. For a third occurrence only, after ninety days, a private employer may petition the director for a provisional license. The director may grant the 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 41‑8‑20 and 41‑8‑30;

(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.

For all other occurrences where a private employer’s license is revoked, the private employer may not seek reinstatement of his license for a period of five years. After five years, the director may grant reinstatement of a private employer’s 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 41‑8‑20 and 41‑8‑30;

(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.

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

(E) For purposes of this chapter, it shall be a separate violation each time the private employer fails to verify the immigration status of a new employee as required by Section 41‑8‑20.

(F) In assessing a reasonable civil penalty or taking any other disciplinary action for a violation of Section 41‑8‑20 or Section 41‑8‑30, the director shall base his determination on any evidence or information collected during the investigation or submitted for consideration by the employer, and shall consider the following factors, if relevant:

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

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

(3) the size of the private employer’s workforce;

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

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

(6) the duration of the violation;

(7) the degree of the violation; and

(8) the good faith of the private employer.

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

(H) The director shall maintain a list of all private employers who have been assessed a civil penalty pursuant to this chapter, or who had their license disciplined, or revoked, and shall publish the 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.”

SECTION 9. A. Article 1, Chapter 6, Title 23 of the 1976 Code is amended by adding:

“Section 23-6-65. (A) There is levied the following fees on money transmission or wire transfers of money by a money transmitter required by federal regulation to register with the United States Department of Treasury Financial Crimes Enforcement Network, from a location within this State to a location outside of the United States:

(1) a five dollar fee for wire transfers of less than five hundred dollars; and

(2) a fee equal to one percent of the amount transferred for wire transfers of more than five hundred dollars.

(B) The money transmitter shall collect the fee from the person making the money transmission or wire transfer of money. The fee must be remitted to the Department of Revenue in a manner prescribed by the department.

(C) This section does not apply to automated clearinghouse transfers.

(D) Any South Carolina income tax filer is allowed a refundable income tax credit for the total amount of the fee paid by the filer during a tax year.

(E) All monies collected pursuant to this section remaining after the credit pursuant to subsection (C) is provided must be transferred annually to the Department of Public Safety to support the activities of the Illegal Immigration Enforcement Unit created pursuant to Section 23-6-60.”

B. This section takes effect January 1, 2012.

SECTION 10. Article 1, Chapter 13, Title 16 of the 1976 Code is amended by adding:

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

SECTION 11. Section 23-3-80 of the 1976 Code is repealed.

SECTION 12. Title 23, Chapter 6, Article 1 of the 1976 Code is amended by adding:

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

(B) The Illegal Immigration Enforcement Unit is under the administrative direction of the department’s director. The department’s director shall maintain and provide administrative support for the Illegal Immigration Enforcement Unit. The department’s director may appoint a deputy director to administer and oversee the operations of the Illegal Immigration Enforcement Unit.

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

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

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

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

(d) The department must provide the officers with distinctive uniforms and suitable arms and equipment for use in the performance of their duties. Such officers shall at all times, when in the performance of their duties, wear complete uniforms with badges conspicuously displayed on the outside of their uniforms, except officers performing undercover duties. The department director shall prescribe a unique and distinctive official uniform with appropriate insignia to be worn by all officers when on duty and at such other times as the department’s director shall order, and a distinctive color or colors and appropriate emblems for all motor vehicles used by the Illegal Immigration Enforcement Unit except those designated by the director. No other law enforcement agency, private security agency, or any person shall wear a similar uniform and insignia that could be confused with the uniform and insignia of the Illegal Immigration Enforcement Unit. An emblem may not be used on a nondepartment motor vehicle, nor may such vehicle be painted in a color or in any manner that would cause the vehicle to be similar to an Illegal Immigration Enforcement Unit vehicle or readily confused with it. The department’s director shall file with the Legislative Council for publication in the State Register a description and illustration of the official Illegal Immigration Enforcement Unit uniform with insignia and the emblems of the official Illegal Immigration Enforcement Unit and motor vehicles including a description of the color of such uniforms and vehicles.

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

(E) The department’s director, or the deputy director if appointed, shall negotiate the terms of a memorandum of agreement with the United States Immigration and Customs Enforcement pursuant to Section 287(g) of the federal Immigration and Nationality Act as soon as possible after the effective date of this act.

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

SECTION 13. 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 14. 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, 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 15. This act takes effect on September 1, 2011, or sixty days after approval by the Governor, whichever is later.

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