**South Carolina General Assembly**

119th Session, 2011-2012

**S. 111**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Cromer, L. Martin, Verdin, Fair and Rose

Document Path: l:\s-res\rwc\001immi.kmm.rwc.docx

Introduced in the Senate on January 11, 2011

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

Summary: Prisoners

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

12/1/2010 Senate Prefiled

12/1/2010 Senate Referred to Committee on **Judiciary**

1/11/2011 Senate Introduced and read first time ([Senate Journal‑page 53](file:///h:\sj%20archive\2011\01-11-11.docx))

1/11/2011 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 53](file:///h:\sj%20archive\2011\01-11-11.docx))

1/12/2011 Senate Referred to Subcommittee: L.Martin (ch), Campsen, Ford

**VERSIONS OF THIS BILL**

[12/1/2010](file:///p:\pprever\2011-12\111_20101201.docx)

**A** **BILL**

TO AMEND ARTICLE 13, CHAPTER 3, TITLE 23 OF THE 1976 CODE, RELATING TO THE VERIFICATION OF NATIONALITY OF PRISONERS, TO PROVIDE THAT LAW ENFORCEMENT OFFICERS MAY ACT UPON A REASONABLE SUSPICION TO DETERMINE WHETHER A PERSON IS AN ALIEN UNLAWFULLY IN THE UNITED STATES AND TO PROVIDE CERTAIN PRESUMPTIONS; BY ADDING NEW SECTIONS TO ARTICLE 13 TO PROVIDE FOR VERIFICATION OF LAWFUL PRESENCE IN THE UNITED STATES, TO PROVIDE FOR THE DISPOSITION OF A PERSON DETERMINED TO BE IN THE UNITED STATES UNLAWFULLY, TO PROVIDE THAT A PERSON MAY NOT BE DENIED BOND BECAUSE OF HIS ILLEGAL ALIEN STATUS, TO PROVIDE A PROHIBITION AGAINST RACIAL PROFILING, TO PROVIDE FOR THE CIRCUMSTANCES UNDER WHICH THE STATE MUST DEFEND AND INDEMNIFY LAW ENFORCEMENT OFFICIALS, AND TO PROVIDE THAT THE ARTICLE DOES NOT IMPLEMENT, AUTHORIZE, OR ESTABLISH AND SHALL NOT BE CONSTRUED TO IMPLEMENT, AUTHORIZE, OR ESTABLISH THE FEDERAL REAL ID ACT OF 2005, INCLUDING THE USE OF RADIO FREQUENCY IDENTIFICATION CHIPS; TO AMEND TITLE 15, RELATING TO CIVIL REMEDIES AND PROCEDURES, BY ADDING CHAPTER 83 TO PROHIBIT SANCTUARY COUNTIES, MUNICIPALITIES, OR POLITICAL SUBDIVISIONS AND TO PROVIDE FOR REMEDIES; TO AMEND CHAPTER 8, TITLE 41, RELATING TO ILLEGAL ALIENS AND PRIVATE EMPLOYMENT, BY ADDING ARTICLE 3 TO PROHIBIT DAY LABOR EMPLOYMENT OF ILLEGAL ALIENS; TO AMEND SECTION 41‑8‑10, TO PROVIDE THAT THE DEFINITION OF “EMPLOYER” INCLUDES ANY PERSON THAT EMPLOYS A PERSON TO PERFORM AGRICULTURAL SERVICES; TO AMEND SECTION 41‑8‑20, TO PROVIDE THAT A UNITED STATES PASSPORT MAY BE USED FOR EMPLOYER VERIFICATION PURPOSES; TO AMEND SECTION 41-8-50, TO PROVIDE THAT THE DEPARTMENT OF LABOR, LICENSING AND REGULATION SHALL MAKE A PRELIMINARY INVESTIGATION OF COMPLAINTS THAT AN EMPLOYER IS IN VIOLATION OF THE LAWS PROHIBITING THE EMPLOYMENT OF ILLEGAL ALIENS, TO PROVIDE THAT THE ATTORNEY GENERAL IS RESPONSIBLE FOR A FORMAL INVESTIGATION AND PURSUING CIVIL FINES, TO PROVIDE FOR THE CIVIL ACTION TO RECOVER FINES, AND TO PROVIDE THAT THE CIVIL FINES COLLECTED MUST BE DEPOSITED IN THE ILLEGAL IMMIGRATION ENFORCEMENT TRUST FUND; TO AMEND SECTION 41-8-60, TO PROVIDE THAT THE ATTORNEY GENERAL MUST BRING AN ACTION TO RECOVER UNPAID FINES LEVIED AGAINST AN EMPLOYER PURSUANT TO SECTION 41-8-50; TO AMEND SECTION 41-8-140, TO ESTABLISH THE IMMIGRATION ENFORCEMENT TRUST FUND AND TO PROVIDE FOR THE DISBURSEMENT OF REVENUE IN THE FUND; TO AMEND ARTICLE 9, CHAPTER 3, TITLE 16, BY ADDING SECTION 16-3-940, TO PROHIBIT HUMAN SMUGGLING; TO AMEND CHAPTER 17, TITLE 16, BY ADDING SECTION 16-17-750, TO REQUIRE ALIENS TO COMPLETE AND CARRY ALIEN REGISTRATION DOCUMENTS; TO AMEND CHAPTER 17, TITLE 16, BY ADDING SECTION 16-15-750, TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON TO KNOWINGLY FAIL TO COMPLETE OR CARRY AN ALIEN REGISTRATION DOCUMENT IN VIOLATION OF 8 USC 1304(E) OR 1306(A), AND TO PROVIDE PENALTIES FOR VIOLATIONS; TO AMEND SECTION 8-30-10, TO PROVIDE THAT A VIOLATION OF HUMAN SMUGGLING LAWS MUST BE REPORTED TO THE EXECUTIVE DIRECTOR OF THE STATE COMMISSION FOR MINORITY AFFAIRS TO BE INCLUDED ON THE IMMIGRATION DATABASE MAINTAINED BY THE COMMISSION; AND TO MAKE OTHER TECHNICAL AND CONFORMING AMENDMENTS.

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

SECTION 1. This act may be cited and referred to as the “Citizenship Defense Act”.

SECTION 2. Article 13, Chapter 3, Title 23 of the 1976 Code is amended to read:

“ARTICLE 13.

VERIFICATION OF NATIONALITY ~~OF PRISONERS~~

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.~~ If a law enforcement officer establishes that reasonable suspicion exists that a person is an alien and unlawfully in the United States during an investigation, arrest, or any activity related to enforcing a municipal or county ordinance or a state criminal statute, a reasonable attempt must be made, when practicable, to determine whether the person is an alien unlawfully in the United States, unless the determination would hinder or obstruct an investigation.

(B)(1) ~~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.~~ A person that can produce a valid South Carolina driver’s license, a valid South Carolina Department of Motor Vehicles identification card, a valid tribal enrollment card or other form of tribal identification, or any valid United States federal, state, or local government issued identification or a United States passport is presumed not to be an alien unlawfully present in the United States.

(2) A person who cannot produce one of the forms of identification contained in this section may still be presumed not to be an alien unlawfully in the United States if the law enforcement officer inquiring about the person’s alienage is able to otherwise verify that the person has been issued one of the forms of identification contained in this section.

(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, 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.~~ A person that meets the presumption established in subsection (B) may not be further detained or questioned by the law enforcement officer solely on the basis of his legal presence in the United States.

(D) ~~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.~~ A person that does not meet the presumption established in subsection (B) must be confined in a jail of the State, county, or municipality, or a jail operated by a regional jail authority to verify whether he is unlawfully present in the United States in the manner provided in Section 23‑3‑1110.

(E) ~~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.~~ Except where prohibited by federal law, law enforcement agencies may send, receive, or maintain information relating to the immigration status of any individual. Any law enforcement agency with information concerning the immigration status of any individual may exchange that information with other federal, state, or local governmental entity for the following purposes:

(1) to determine the eligibility for any public benefit, service, or license;

(2) to verify a claim of residence or domicile if the determination of residence or domicile is required under state or federal law;

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

(4) pursuant to 8 USC 1373 and 8 USC 1644.

~~(F)~~(F) In enforcing the terms of this section, no state law enforcement 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 USC Section 1373(c).

Section 23‑3‑1110. (A) If a person is arrested for the alleged violation of a criminal offense or is confined for any period in a jail of the State, county, or municipality, or a jail operated by a regional jail authority, a determination must be made concerning whether the confined person is an alien unlawfully present in the United States.

(B) If the person is an alien, the keeper of the jail or other officer must 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 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.

Section 23‑3‑1120. (A) If a person is determined to be an alien unlawfully present in the United States, the keeper of the jail or other officer with custody of the person shall notify the United States Department of Homeland Security.

(B) Upon notification to the United States Department of Homeland Security pursuant to subsection (A), the keeper of the jail or other officer with custody of the person must account for daily expenses incurred for the housing, maintenance, and care of the person and must forward an invoice to the Department of Homeland Security for these expenses, including transportation expenses incurred pursuant to subsection (C).

(C) Except as provided in subsection (D), the keeper of the jail or other officer with custody of the person may securely transport the alien to a federal facility in this State or to any other point of transfer into federal custody that is outside its jurisdiction. The alien may be transported to a point of transfer outside of this State with judicial authorization.

(D) If an alien who is unlawfully present in the United States is convicted for committing a criminal offense, upon completion of his sentence, the United States Department of Homeland Security shall be notified and the alien must be securely transferred to a federal facility in this state or to any other point of transfer into federal custody that is outside its jurisdiction. The alien may be transported to a point of transfer outside of this State with judicial authorization.

Section 23‑3‑1130. Nothing in this article 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.

Section 23‑3‑1140. In enforcing the provisions contained in this article, no state officer may consider race, color, or national origin except to the extent permitted by the United States and South Carolina Constitution.

Section 23‑3‑1150. The State must defend a law enforcement agency, law enforcement officer, or keeper of a jail against a claim or suit that arises out of or by virtue of his good faith performance of his official duties pursuant to this article and must indemnify the agency, officer, or keeper for a loss or judgment incurred by him as a result of the claim or suit unless the loss or judgment was entered due to the agency’s, officer’s, or keeper’s acting in bad faith. The State must defend and indemnify the law enforcement agency, law enforcement officer, or keeper of a jail without regard to whether the claim or suit is brought against them in their individual or official capacities, or both.

Section 23‑3‑1160. This article must be implemented in a manner consistent with federal immigration laws, protecting the civil rights of all persons and respecting the privileges and immunities of citizens of the United States.

Section 23‑3‑1170. This article does not implement, authorize, or establish and shall not be construed to implement, authorize, or establish the federal REAL ID Act of 2005, including the use of radio frequency identification chips.

Section 23‑3‑1180. The State Law Enforcement Division shall promulgate regulations to comply with the provisions of this article in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws.”

SECTION 3. Title 15 of the 1976 Code is amended by adding:

“Chapter 83

Prohibition of Immigration Law Sanctuaries

Section 15‑83‑110. No county, municipality, or political subdivision may take any action to limit or restrict the enforcement of federal immigration laws.

Section 15‑83‑120. A resident of a county, municipality, or political subdivision may bring a civil action in circuit court to enjoin any action taken by the municipality, or any political subdivision to adopt or implement a policy or practice that limits or restricts the enforcement of federal immigration laws.

Section 15‑83‑130. If the court finds that a county, municipality, or political subdivision has violated this section, the court may enter a judgment against the municipality, or any other political subdivision of not less than one thousand dollars and not more than five thousand dollars for each day that the action, policy, or practice remained in effect. The proceeds from the judgment must be used to reimburse the plaintiff’s reasonable attorney’s fees. Any remaining proceeds must be credited to the Illegal Immigration Enforcement Trust Fund.”

SECTION 4. A. Chapter 8, Title 41 of the 1976 Code, relating to illegal aliens and private employment, is divided into Article 1 and Article 3. Article 1 is comprised of Sections 41‑8‑10 through 41‑8‑140 and shall be styled “Article 1, Illegal Aliens and Private Employment.” The Code Commissioner is directed to make appropriate changes in the 1976 Code of Laws.

B. Section 41‑8‑10 of the 1976 Code is amended to read:

“Section 41‑8‑10. As used in this ~~chapter~~ article:

(A) ‘Agency’ means any agency, department, board, or commission of this State or any political subdivision of this State that issues a license for the purposes of operating a business in this State.

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

(C) ‘License’ means an agency permit, certificate, approval, registration, charter, or similar form of authorization that is required by law and that is issued by the State, an agency, or political subdivision for the purpose of operating a business or engaging in a profession in this State, to include a South Carolina employment license.

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

(E) ‘Private employer’ means any person carrying on any employment and the legal representative of a deceased person or the receiver or trustee of any person, and any person for whom an individual performs a service, of whatever nature, as an employee, as defined in Section 12‑8‑10, and including any person that employs a person to perform agricultural services.”

C. Section 41‑8‑20(B)(2) of the 1976 Code is amended to read:

“(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.”

D. Chapter 8, Title 41 of the 1976 Code is amended by adding:

“Article 3

Day Labor

Section 41‑8‑300. For the purposes of this article, 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) ‘An alien unlawfully in the United States’ 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 41‑8‑310. It is unlawful for an occupant of a motor vehicle that is stopped on a street, roadway, highway, or parking lot to attempt to hire or hire and pick up an alien unlawfully in the United States for work at a different location. A person who violates this section is guilty of a misdemeanor and, upon conviction, may be fined one thousand dollars or imprisoned for thirty days, or both.

Section 41‑8‑320. (A) It is unlawful for an alien unlawfully in the United States to solicit work in a public place.

(B) It is unlawful for an alien unlawfully in the United States to enter a motor vehicle that is stopped on a street, roadway, highway, or parking lot in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location.

(C) A person who violates this section is guilty of a misdemeanor and, upon conviction, may be fined one thousand dollars or imprisoned for thirty days, or both.

Section 41‑8‑330. (A) Entrapment is an affirmative defense to a violation of this article.

(B) To establish entrapment, the employer must prove by a preponderance of the evidence that the:

(1) idea of committing the violation started with a law enforcement officer or law enforcement agency or an agent of a law enforcement officer or law enforcement agency;

(2) employer was induced to commit the violation by the law enforcement officer or law enforcement agency or an agent of a law enforcement officer or law enforcement agency; and

(3) employer was not predisposed to commit the violation before the law enforcement officer or law enforcement agency or an agent of the law enforcement officer or law enforcement agency induced the employer to commit the violation.

(C) An employer was not entrapped if:

(1) the employer was predisposed to violate this article and the law enforcement officer or law enforcement agency or an agent of the law enforcement officer or law enforcement agency merely provided the employer with an opportunity to commit the violation; or

(2) the law enforcement officer or law enforcement agency or an agent of the law enforcement officer or law enforcement agency merely used a ruse or concealed their identity.”

SECTION 5. A. Section 41‑8‑20 of the 1976 Code is amended to by adding an appropriately new lettered subsection to read:

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

(a) For an occurrence involving a violation of this section, the private employer must be assessed a civil penalty of not less than one hundred dollars and not more than one thousand dollars for each violation.

(b) Any subsequent occurrence involving a violation of this section 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 this section within the previous five years, a subsequent occurrence must be treated as a first occurrence.

(c) If a private employer has ever committed a violation of Section 41‑8‑30, he must be assessed the maximum civil penalty allowed by this section for any violation or subsequent occurrence involving a violation of this section.

(d) The director must verify the work authorization status of the employees with the federal government pursuant to 8 USC 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.

(2) For purposes of this section, it shall be a separate violation each time the private employer fails to verify the immigration status of a new employee.

(3) In assessing a civil penalty for a violation of this section, 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:

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

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

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

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

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

(f) the duration of the violation.

(4) 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.”

B. 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~~ Complaints against a private employer, or upon ~~an~~ a preliminary investigation concerning a violation of Section 41‑8‑30 initiated by the director for good cause must be in writing and signed by the complainant and filed with the director. The director must conduct an initial investigation concerning the allegations in the complaint or the matters that gave rise to the director initiated preliminary investigation.~~, if~~ Except as provided in subsection (B), 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 USC 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~~ refer the matter to the Attorney General for further action.

(B) The director must not refer alleged violations against a private employer to the Attorney General for any employee who has been employed for three 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 this section or action has been taken concerning a violation of Section 41‑8‑30.

(C) Upon receipt of a finding by the director that reasonable grounds exist that a private employer violated the provisions of Section 41‑8‑30, the Attorney General must conduct a formal investigation of each alleged violation, including verification of the work authorization status of the alleged unauthorized alien with the federal government pursuant to 8 USC Section 1373(c).

~~(B)~~(D) If, after completing the formal investigation, and after reviewing any information or evidence submitted by the private employer demonstrating compliance with the provisions of this chapter, the ~~director~~ Attorney General 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~~ Attorney General 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 penalty in accordance with subsection (D) of this section~~ bring a civil action concerning the alleged violations of Section 41‑8‑30.

~~(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 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)~~(E) ~~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 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 USC 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.~~ If a court finds that a person has violated Section 41‑8‑30, for the first violation, 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.

~~(2)~~(a) ~~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~~ the court finds that the private employer has terminated the unauthorized alien; and

(ii) the private employer 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)~~(b) 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~~ the court finds that the private employer has terminated the unauthorized alien; and

(ii) the private employer 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)~~(c) 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. (i) For a third occurrence only, after ninety days, a private employer may petition the ~~director~~ court for a provisional license. The ~~director~~ court may grant the private employer a provisional license if ~~the private employer~~:

~~(i)~~(1) the private employer 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~~ Section 41‑8‑30; and

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

~~(iii)~~ (2) the private employer 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~~.

(ii) 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 may petition the court for reinstatement. The court may reinstate the private employer’s license if:

~~(i)~~(1) the private employer 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~~ Section 41‑8‑30;

~~(ii)~~(2) ~~demonstrates that he~~ the court finds that the private employer has terminated the unauthorized alien; and

~~(iii)~~(3) the private employer 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)~~(2) 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~~ a finding of the court that the private employer has complied with the provisions of item ~~(4)~~(c) of this subsection.

~~(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 civil ~~penalty~~ fine 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~~ the court, in addition to any evidence ~~or information collected during the investigation or submitted for consideration by the employer~~ entered into the record, ~~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.

(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~~ section, or who had their license disciplined, or revoked, and shall publish the list on the agency’s website.

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

(J) The Attorney General must maintain copies of court orders entered as a result of actions brought pursuant to this section and must maintain a database of the employers and business locations against whom the orders were entered. The database, including the orders, must be posted in a conspicuous place on the Attorney General’s internet website.”

SECTION 6. Section 41‑8‑60 of the 1976 Code is amended read:

“Section 41‑8‑60. (A) In each case where a civil fine is ~~penalty~~ assessed ~~by the director~~ pursuant to Section 41‑8‑50(D)(1) is not paid within sixty days, the ~~director~~ Attorney General shall bring an action against the assessed employer for collection of the penalty. ~~An action commenced by the director shall be brought in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws.~~

(B) A private employer may seek review of the ~~director’s~~ assessment of a civil ~~penalty~~ fine or disciplinary action ~~pursuant to Section 41‑8‑50 with the Administrative Law Court, and the action shall be brought in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws~~.”

SECTION 7. Section 41‑8‑140 of the 1976 Code is amended to read:

“Section 41‑8‑140. There is created in the state treasury a separate and distinct account called the Illegal Immigration Enforcement Trust Fund. All amounts collected pursuant to this chapter, Section 16‑17‑750, Section 15‑18‑130, Section 41‑8‑310, and Section 41‑8‑320 shall be ~~retained by the director and must be used to fund the costs of~~ credited to the fund. The fund may receive additional revenues from any source the General Assembly may provide by law, from governmental grants, and private gifts or bequests. The department must administer the fund and establish a program for disbursement of the revenue in the fund to local law enforcement agencies to offset extraordinary expenses related to implementing and enforcing the provisions of this chapter, Section 16‑17‑750, Section 15‑18‑130, Section 41‑8‑310, and Section 41‑8‑320.”

SECTION 8. Article 9, Chapter 3, Title 16 of the 1976 Code is amended by adding:

“Section 16‑3‑940. (A) For the purposes of this section:

(1) ‘Procurement of transportation’ means any participation in or facilitation of transportation and includes:

(a) providing services that facilitate transportation, including travel arrangement or money transmission services; and (b) providing property that facilitates transportation, including a weapon, a vehicle, or other means of transportation or false identification, or selling, leasing, renting, or otherwise making available a drop house.

(2) ‘Smuggling of human beings’ means the transportation, procurement of transportation, or use of property or real property by a person that knows or has reason to know that the person transported or to be transported is not a United States citizen, permanent resident alien, or otherwise lawfully in this State or has attempted to enter, entered, or remained in the United States unlawfully.

(B) It is unlawful for a person to intentionally engage in the smuggling of human beings for profit or commercial purpose. A person who violates this section is guilty of a felony known as smuggling of human beings and, upon conviction, must be imprisoned for not less than ten years and not more than fifteen years.”

SECTION 9. Chapter 17, Title 16 of the 1976 Code is amended by adding:

“Section 16‑17‑750. (A) It is unlawful for a person to knowingly fail to complete or carry an alien registration document in violation of 8 USC Section 1304(e) or 1306(a).

(B) Except as provided in subsection (C), a person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined one thousand dollars or imprisoned for thirty days, or both.

(C) A person that is convicted of a violation of this section is guilty of a Class F felony if the offense was committed while the person was in possession of narcotics or controlled substances or a weapon, as defined in Section 16‑23‑405.

(D) In addition to any other penalties imposed for a violation of this section, the court must order the person to pay all jail costs and an additional assessment of five hundred dollars for a first offense and one thousand dollars for a second or subsequent offense.”

SECTION 10. Section 8‑30‑10(A) of the 1976 Code is amended to read:

“(A) The executive director of the State Commission for Minority Affairs, or a designee, shall establish and maintain a twenty‑four hour toll free telephone number and electronic website to receive, record, collect, and report allegations of violations of federal immigration laws or related provisions of South Carolina law by any non‑United States citizen or immigrant, and allegations of violations of any federal immigration laws or related provisions in South Carolina law against any non‑United States citizen or immigrant. Such violations shall include, but are not limited to, E‑Verify or other federal work authorization program violations, violations of Chapter 83 of Title 40 of this code relating to immigration assistance services, or any regulations enacted governing the operation of immigration assistance services, false or fraudulent statements made or documents filed in relation to an immigration matter, as defined by Section 40‑83‑20, violation of human trafficking laws, as defined in Section 16‑3‑930, violation of human smuggling laws, as defined in Section 16‑3‑940, landlord tenant law violations, or violations of any law pertaining to the provision or receipt of public assistance benefits or public services.”

SECTION 11. This act takes effect upon approval by the Governor.

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