**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE “SOUTH CAROLINA IMMIGRATION COMPLIANCE ACT OF 2011” BY ADDING ARTICLE 13 TO CHAPTER 11, TITLE 8 TO REQUIRE PUBLIC EMPLOYERS OF THE STATE TO REGISTER AND PARTICIPATE IN THE FEDERAL WORK AUTHORIZATION PROGRAM AND TO PROHIBIT A PUBLIC EMPLOYER OF THIS STATE FROM ENTERING INTO A CONTRACT FOR SERVICES UNLESS THE CONTRACTOR AND SUBCONTRACTOR COMPLY WITH THE FEDERAL WORK AUTHORIZATION PROGRAM IN VERIFYING INFORMATION ON ALL NEW EMPLOYEES; BY ADDING SECTION 43‑5‑250 SO AS TO PROVIDE THAT A PERSON MAY NOT RECEIVE WELFARE, HEALTH, DISABILITY, PUBLIC OR ASSISTED HOUSING, FOOD ASSISTANCE, UNEMPLOYMENT, RETIREMENT, OR OTHER SIMILAR BENEFITS PROVIDED BY THE STATE OR A POLITICAL SUBDIVISION OF THE STATE UNLESS THE PERSON VERIFIES THAT HE OR SHE IS LAWFULLY PRESENT IN THE STATE AND TO PROVIDE THAT IT IS UNLAWFUL FOR THE STATE OR A POLITICAL SUBDIVISION OF THE STATE TO PROVIDE SUCH BENEFITS; BY ADDING SECTION 44‑7‑75 SO AS TO PROVIDE THAT A PERSON MAY NOT RECEIVE SERVICES FROM A HOSPITAL LICENSED IN THIS STATE UNLESS THE PERSON VERIFIES THAT HE OR SHE IS LAWFULLY PRESENT IN THE STATE AND TO PROVIDE AN EXCEPTION FOR RECEIVING SERVICES FOR AN EMERGENCY MEDICAL CONDITION; TO AMEND SECTION 59‑63‑30, RELATING TO QUALIFICATIONS OF A CHILD TO ATTEND PUBLIC SCHOOL IN THIS STATE, SO AS TO REQUIRE THE PARENT OF A CHILD TO VERIFY THAT THE CHILD IS LEGALLY PRESENT IN THE STATE; BY ADDING SECTION 11‑35‑57 SO AS TO PROVIDE THAT AN EMPLOYER WHO HIRES AN INDIVIDUAL WHO IS NOT LEGALLY PRESENT IN THIS STATE PURSUANT TO FEDERAL LAW IS NOT ELIGIBLE TO ENTER INTO A CONTRACT WITH THE STATE OR WITH OTHER GOVERNMENTAL BODIES OR POLITICAL SUBDIVISIONS THAT PROCURE GOODS OR SERVICES PURSUANT TO THE SOUTH CAROLINA PROCUREMENT CODE; BY ADDING SECTION 16‑11‑645 SO AS TO CREATE THE FELONY OFFENSE OF ILLEGAL ALIEN TRESPASS AND TO PROVIDE A PENALTY; AND BY ADDING SECTION 16‑11‑647 SO AS TO ALLOW THE FORFEITURE OF PROPERTY, MONIES, NEGOTIABLE INSTRUMENTS, SECURITIES, AND OTHER THINGS OF VALUE WHEN A PERSON COMMITS THE OFFENSE OF ILLEGAL ALIEN TRESPASS, TO PROVIDE PROCEDURES FOR FORFEITURE, TO CREATE AN EXCEPTION FOR THE INNOCENT OWNER OF ITEMS SUBJECT TO FORFEITURE, AND TO PROVIDE FOR THE DISTRIBUTION OF FORFEITED ITEMS AFTER CONVICTION.

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

SECTION 1. This act may be cited as the “South Carolina Immigration Compliance Act of 2011”.

SECTION 2. Chapter 11, Title 8 of the 1976 Code is amended by adding:

“Article 13

Illegal Aliens and Public Employment

Section 8‑11‑1310. As used in this article:

(1) ‘Director’ means the Director of the State Budget and Control Board.

(2) ‘Federal work authorization program’ means one of the electronic verification of work authorization programs operated by the United States Department of Homeland Security, Citizenship and Immigration Services, or a federal work authorization program equivalent to the federal work authorization program operated by the United States Department of Homeland Security, Citizenship and Immigration Services, to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99‑603.

(3) ‘Public employer’ means the State and any department, agency, instrumentality, or political subdivision of the State.

(4) ‘Subcontractor’ includes a subcontractor, contract employee, staffing agency, or other contractor regardless of its tier.

Section 8‑11‑1320. A) After June 30, 2011, a public employer shall register and participate in the federal work authorization program to verify information of all new employees.

(B) A public employer may not enter into a contract for the physical performance of services within this State unless the contractor registers and participates in the federal work authorization program to verify information of all new employees.

(C) A contractor or subcontractor may not enter into a contract or subcontract with a public employer in connection with the physical performance of services within this State unless the contractor or subcontractor registers and participates in the federal work authorization program to verify information of all new employees.

(D) Subsections (B) and (C) apply as follows:

(1) After June 30, 2011, with respect to public employers, contractors, or subcontractors of five hundred or more employees;

(2) After June 30, 2012, with respect to public employers, contractors, or subcontractors of one hundred or more employees but fewer than five hundred employees; and

(3) After June 30, 2013, with respect to all other public employers, contractors, and subcontractors.

Section 8‑11‑1330. The provisions of this article are enforceable without regard to race, religion, gender, ethnicity, or national origin.

Section 8‑11‑1340. Except as provided in Section 8‑11‑1350, the director shall prescribe forms and promulgate regulations necessary to administer the provisions of this article and shall publish these regulations on a state website designed at the direction of the director.

Section 8‑11‑1350. The Director of the Department of Transportation shall prescribe forms and promulgate regulations necessary for the application of this article to a contract or agreement relating to public transportation and shall publish these rules and regulations on the Department of Transportation’s website.”

SECTION 3. Article 1, Chapter 5, Title 43 of the 1976 Code is amended by adding:

“Section 43‑5‑250. (A) A person may not receive any retirement, welfare, health, disability, public or assisted housing, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the State or a political subdivision of the State or by appropriated funds of the State or a political subdivision of the State unless the person verifies that he or she is lawfully present in this State.

(B) A person required to verify that he or she is lawfully present in this State shall execute an affidavit that he or she is:

(1) a United States citizen or legal permanent resident of this State eighteen years of age or older; or

(2) a qualified alien or nonimmigrant under the federal Immigration and Nationality Act eighteen years of age or older lawfully present in the United States.

(C) For an applicant who has executed an affidavit that he is lawfully present in this State, eligibility for any retirement, welfare, health, disability, public or assisted housing, food assistance, unemployment benefit, or any other similar benefit must be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by the United States Department of Homeland Security, Citizenship and Immigration Services or a successor program designated by the United States Department of Homeland Security, Citizenship and Immigration Services. Until eligibility is verified pursuant to SAVE, the affidavit is presumed to be proof of the applicant’s lawful presence in this State for the purposes of this section.

(D) A person who knowingly and wilfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to subsection (B) is guilty of the offense of perjury and must be punished as provided for in Section 16‑9‑10.

(E) To the extent that there is no direct conflict with this section or federal law, state agencies and political subdivisions of the State may adopt variations to the requirements of this section to improve efficiency or reduce delay in the verification process or to provide for adjudication of unique individual circumstances if the verification procedures provided in this section would impose unusual hardship on a legal resident of South Carolina.

(F) It is unlawful for the State or a political subdivision of the State to provide any retirement, welfare, health, disability, public or assisted housing, food assistance, unemployment benefit, or any other similar benefit in violation of the provisions of this section.

(G) The provisions of this section must be enforced with out regard to race, religion, gender, ethnicity, or national origin.”

SECTION 4. Article 1, Chapter 7, Title 44 of the 1976 Code is amended by adding:

“Section 44‑7‑75. (A) Unless a person pays when services are rendered or verifies that he or she is lawfully present in this State, the person may not receive services from a hospital licensed in this State, including services provided by a hospital emergency room, except for receiving health care items and services that are necessary for the treatment of an emergency medical condition of the person involved. Health care items and services that are necessary for the treatment of an emergency medical condition do not include health care items and services related to an organ transplant.

(B) A person required to verify that he or she is lawfully present in this State shall execute an affidavit that he or she is:

(1) a United States citizen or legal permanent resident of this State eighteen years of age or older; or

(2) a qualified alien or nonimmigrant under the federal Immigration and Nationality Act eighteen years of age or older lawfully present in the United States.

(C) A person who knowingly and wilfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to subsection (B) is guilty of the offense of perjury and must be punished as provided for in Section 16‑9‑10.

(D) The provisions of this section must be enforced without regard to race, religion, gender, ethnicity, or national origin.

(E) For purposes of this section, ‘emergency medical condition’ means a medical condition, including emergency labor and delivery, manifesting itself by acute symptoms of sufficient medical attention could reasonably be expected to result in:

(1) placing the patient’s health in serious jeopardy;

(2) serious impairment to bodily functions; or

(3) serious dysfunction of any bodily organ or part.”

SECTION 5. Section 59‑63‑30 of the 1976 Code is amended by adding an appropriately lettered subsection at the end to read:

“( ) The parent or legal guardian of the child must provide documentation of the legal relationship between the parent and child or legal guardian and child, as required by the Department of Education in regulation, and the parent or guardian must verify that the child is lawfully present in this State pursuant to federal law.”

SECTION 6. Subarticle 1, Article 1, Chapter 35, Title 11 of the 1976 Code is amended by adding:

“Section 11‑35‑57. (A) Notwithstanding any other provision of law, an employer who hires or contracts with an individual who is not legally present in this State pursuant to federal law is not eligible to bid upon or to enter into any contract with the state or any governmental body or agency or department or a political subdivision of this State to provide goods or services under the provisions of this chapter.

(B) For purposes of this section ‘employer’ means a corporation, association, partnership, sole proprietorship, or an individual business owner.”

SECTION 7. A. Article 7, Chapter 11, Title 16 of the 1976 Code is amended by adding:

“Section 16‑11‑645. (A) It is unlawful for a person to be in this State if the individual is not legally present in the United States pursuant to federal law.

(B) A person who violates subsection (A) is guilty of the felony offense of illegal alien trespass and, upon conviction, must be fined not less than ten thousand dollars or imprisoned not less than three years and not more than five years. No part of the fine or imprisonment imposed by this section may be suspended and probation must not be granted.

(C) It is unlawful for a person to aid or abet a person who violates the provisions of subsection (A).

(D) Law enforcement officers of the State and its political subdivisions are authorized to investigate and arrest violators of the provisions of this section.”

B. Article 7, Chapter 11, Title 16 of the 1976 Code is amended by adding:

“Section 16‑11‑647. (A) A person who violates a provision of Section 16‑11‑645 is subject to forfeiture of:

(1) property, both real and personal, which is knowingly used to engage in a violation or to further a violation of Section 16‑11‑645; and

(2) monies, negotiable instruments, securities, or other things of value furnished or intended to be furnished by a person to engage in or further a violation of Section 16‑11‑645.

(B) Property subject to forfeiture pursuant to the provisions of Section 16‑11‑645 may be seized by the appropriate law enforcement agency with a warrant properly issued by a court with jurisdiction over the property. Property may be seized without a warrant if the:

(1) seizure is incident to an arrest or a search with a search warrant or an inspection under an administrative inspection warrant;

(2) property subject to seizure was the subject of a prior judgment in favor of the State in a criminal injunction or forfeiture proceeding pursuant to the provisions of Section 16‑11‑645;

(3) law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(4) law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of the provisions of Section 16‑11‑645.

(C) Forfeiture proceedings instituted pursuant to the provisions of Section 16‑11‑645 are subject to the procedures and requirements for forfeiture as set out in Section 44‑53‑530.

(D) Property taken or detained pursuant to the provisions of this section is not subject to replevin but is considered to be in the custody of the law enforcement agency making the seizure subject only to an order of the court having jurisdiction over the forfeiture proceedings.

(E) For purposes of this section, when the seizure of property subject to forfeiture is accomplished as a result of a joint effort by more than one law enforcement agency, the law enforcement agency initiating the investigation is considered to be the agency making the seizure.

(F) A law enforcement agency seizing property pursuant to the provisions of this section shall take reasonable steps to maintain the property. Equipment and conveyances seized must be removed to an appropriate place for storage. Monies seized must be deposited in an interest bearing account pending final disposition by the court unless the seizing agency determines the monies to be of an evidential nature and provides for appropriate security in another manner.

(G) When property, monies, negotiable instruments, securities, or other things of value pursuant to the provisions of subsection (A) are seized, the law enforcement agency making the seizure, within ten days or a reasonable period of time after the seizure, shall submit a report to the appropriate prosecuting agency.

(1) The report must include:

(a) a description of the property seized;

(b) the circumstances of the seizure;

(c) the present custodian and where the property is being stored or its location;

(d) the name of the owner of the property;

(e) the name of any lienholders of the property; and

(f) the seizing agency.

(2) If the property is a conveyance, the report must include the:

(a) make, model, serial number, and year of the conveyance;

(b) person in whose name the conveyance is registered; and

(c) name of any lienholders.

(3) In addition to the report provided for in items (1) and (2) of this subsection, the appropriate law enforcement agency shall prepare for dissemination to the public, upon request, a report providing:

(a) a description of the quantity and nature of the property and money seized;

(b) the seizing agency;

(c) the make, model, and year of a conveyance; and

(d) the law enforcement agency responsible for the property or conveyance seized.

(H) Property or conveyances sized by a law enforcement agency may not be used by officers or employees of the agency for personal purposes.

(I)(1) An innocent owner or a manager or owner of a licensed rental agency or a common carrier or carrier of goods for hire may apply to the court of common pleas for the return of an item seized pursuant to the provisions this section. Notice of hearing or rule to show cause accompanied by copy of the application must be directed to all persons and agencies entitled to notice as provided in Section 44‑53‑530. If the court denies the application, the hearing may proceed as a forfeiture hearing held pursuant to the provisions of Section 44‑53‑530.

(2) The court may return a seized item to the owner if the owner demonstrates to the court by a preponderance of the evidence:

(a) in the case of an innocent owner, that the person or entity was not a consenting party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture; and

(b) in the case of a manager or an owner of a licensed rental agency, a common carrier, or a carrier of goods for hire, that an agent, servant, or employee of the rental agency or of the common carrier or carrier of goods for hire was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

(3) If the licensed rental agency demonstrates to the court that it has rented the seized property in the ordinary course of its business and that the tenant or tenants were not related within the third degree of kinship to the manager or owner, or any agents, servants, or employees of the rental agency, then it is presumed that the licensed rental agency was not a party to, or privy to, or did not have knowledge of, the use of the property which made it subject to seizure and forfeiture.

(4) The lien of an innocent person or other legal entity, recorded in public records, continues in force upon transfer of title of a forfeited item, and a transfer of title is subject to the lien, if the lienholder demonstrates to the court by a preponderance of the evidence that he was not a consenting party to, or privy to, or did not have knowledge of, the involvement of the property which made it subject to seizure and forfeiture.

(J) Notwithstanding any other provision of law, upon conviction for a violation of Section 16‑11‑645, all items forfeited pursuant to the provisions of subsection (A) become the property of the State and must be distributed as follows:

(1) forty percent to the law enforcement agency responsible for the arrest;

(2) fifteen percent to the solicitor’s office with jurisdiction over the offense;

(3) fifteen percent to the Department of Corrections;

(4) fifteen percent to the Office of the Attorney General; and

(5) fifteen percent to the State Law Enforcement Division who shall regulate and administer the distribution of these items.”

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

SECTION 9. 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 10. This act takes effect July 1, 2011.

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