**South Carolina General Assembly**

125th Session, 2023-2024

**H. 5350**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Pace, A.M. Morgan, S. Jones, Magnuson, Beach, Harris, Kilmartin, Oremus and T.A. Morgan

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Introduced in the House on March 28, 2024

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

Summary: Immigration enforcement

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/28/2024 House Introduced and read first time ([House Journal‑page 11](h:\hj\20240328.docx))

3/28/2024 House Referred to Committee on **Judiciary** ([House Journal‑page 11](h:\hj\20240328.docx))

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=5350&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[03/28/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/5350_20240328.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY ADDING article 5 to chapter 7, title 16 SO AS TO PROVIDE FOR THE ARREST AND PROSECUTION OF PERSONS WHO ENTER THIS STATE ILLEGALLY, TO PROVIDE PENALTIES, TO PROVIDE DEFINITIONS, AND to PROVIDE procedures for civil actions.

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

SECTION 1. Chapter 7, Title 16 of the S.C. Code is amended by adding:

Article 5

Illegal Entry Into South Carolina

Section 16-7-310. As contained in this article:

(1) “Alien” has the meaning assigned by 8 U.S.C. Section 1101, as that provision existed on January 1, 2023.

(2) “Port of entry” means a port of entry in the United States as designated by 19 C.F.R. Part 101.

Section 16-7-320. (A) A person who is an alien commits an offense if the person enters or attempts to enter this State directly from a foreign nation at any location other than a lawful port of entry.

(B) A person who violates subsection (A) is guilty of a misdemeanor and, upon conviction must be imprisoned not more than one hundred eighty days and fined not more than two thousand dollars for a first offense and, for a second or subsequent offense is guilty of a felony and, upon conviction must be imprisoned not more than five years. A person convicted of this offense is not eligible for community supervision or release on parole.

(C) It is an affirmative defense to prosecution under this section that:

(1) the federal government has granted the defendant:

(a) lawful presence in the United States; or

(b) asylum under 8 U.S.C. Section 1158;

(2) the defendant’s conduct does not constitute a violation of 8 U.S.C. Section 1325(a); or

(3) the defendant was approved for benefits under the federal Deferred Action for Childhood Arrivals program between June 15, 2012, and July 16, 2021.

(D) The following federal programs do not provide an affirmative defense for purposes of subsection (C)(1):

(1) the Deferred Action for Parents of Americans and Lawful Permanent Residents program; and

(2) any program not enacted by the United States Congress that is a successor to or materially similar to the program described by subsection (C)(3) or item (1) of this subsection.

Section 16-7-330. Notwithstanding any provision of law to the contrary, a law enforcement officer may not arrest or detain a person for purposes of enforcing a provision of this article if the person is on the premises or grounds of a:

(1) public or private primary or secondary school for educational purposes;

(2) a church, synagogue, or other established place of religious worship;

(3) health care facility, including a facility a state agency maintains or operates to provide health care, or the office of a health care provider, provided that the person is on the premises or grounds of the facility or office for the purpose of receiving medical treatment; or

(4) facility that provides forensic medical examinations to sexual assault survivors, provided that the person is on the premises or grounds of the facility for purposes of obtaining a forensic medical examination and treatment.

Section 16-7-340. (A) A magistrate, after making a determination that probable cause exists for arrest for an offense under this article, may order the person released from custody and issue a written order in accordance with subsection (C).

(B) The court, in a person’s case, at any time after the person’s appearance before a magistrate may, in lieu of continuing the prosecution of or entering an adjudication regarding an offense under this article, may dismiss the charge pending against the person and issue a written order in accordance with subsection (C).

(C) A written order authorized by subsection (A) or (B) must discharge the person and require him to return to the foreign nation from which he entered or attempted to enter, and may be issued only if:

(1) the person agrees to the order;

(2) the person previously has not been convicted of an offense under this article, or previously obtained a discharge under an order described by subsection (A) or (B);

(3) the person is not charged with another offense that is punishable as a Class C misdemeanor or any higher category of offense; and

(4) before the issuance of the order, the arresting law enforcement agency:

(a) collects all available identifying information of the person, which must include taking his fingerprints and using other applicable photographic and biometric measures to identify him; and

(b) cross-references the collected information with:

(i) all relevant local, state, and federal criminal databases; and

(ii) federal lists or classifications used to identify a person as a threat or potential threat to national security.

(D) On a person’s conviction under this article, the court shall enter the judgment in the case an order requiring the person to return to the foreign nation from which he entered or attempted to enter. An order issued under this subsection takes effect upon completion of the sentence imposed by the court.

(E) An order issued under this article must include:

(1) the manner of transportation of the person to a port of entry; and

(2) the law enforcement officer or state agency responsible for monitoring compliance with the order.

(F) An order issued under this article must be filed with:

(1) the clerk of court in the county in which the person was arrested, for an order described by subsection (A); or

(2) with the clerk of the court in the county exercising jurisdiction in the case, for an order described by subsection (B) or (D).

(G) No later than the seventh day after the date an order is issued under this article, the law enforcement officer or state agency required to monitor compliance with the order shall report the issuance of the order to SLED for inclusion in its computerized criminal history system.

Section 16-7-350. A court may not abate the prosecution of an offense under this article on the basis that a federal determination regarding the immigration status of the defendant is pending or will be initiated.

Section 16-7-360. (A) Except as provided by subsection (D), a local government official, employee, or contractor is immune from liability for damages arising from a cause of action under state law resulting from an action taken by the official, employee, or contractor to enforce the provisions contained in this article or an order issued pursuant to this article during the course and scope of the official’s, employee’s, or contractor’s office, employment, or contractual performance for or service on behalf of the local government. As contained in this article, the term “damages” includes any and all fines, fees, penalties, court costs, attorney’s fees, or other assessments.

(B) Subject to subsection (C) and except as provided by subsection (D), a local government shall indemnify an official, employee, or contractor of the local government for damages arising from a cause of action under federal law resulting from an action taken by the official, employee, or contractor to enforce the provisions of this article during the course and scope of the official’s, employee’s, or contractor’s office, employment, or contractual performance for or service on behalf of the local government.

(C) Indemnification payments made under subsection (B) by a local government may not exceed:

(1) $100,000 to any one person or $300,000 for any single occurrence in the case of personal injury or death; or

(2) $10,000 for a single occurrence of property damage.

(D) Subsections (A) and (B) do not apply if the court determines that the local government official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness.

(E) A local government shall indemnify an official, employee, or contractor of the local government for reasonable attorney’s fees incurred in defense of a criminal prosecution against the official, employee, or contractor for an action taken by the official, employee, or contractor to enforce the provisions contained in this article, during the course and scope of the official’s, employee’s, or contractor’s office, employment, or contractual performance for or service on behalf of the local government.

(F) This section may not be construed to waive any statutory limits on damages under state law.

Section 16-7-370. (A) Except as provided by subsection (D), an elected or appointed state official or a state employee or contractor is immune from liability for damages arising from a cause of action under state law resulting from an action taken by the official, employee, or contractor to enforce the provisions contained in this article during the course and scope of the official’s, employee’s, or contractor’s office, employment, or contractual performance for or service on behalf of the State.

(B) Except as provided by subsection (D), the State shall indemnify an elected or appointed state official or a state employee or contractor for damages arising from a cause of action under federal law resulting from an action taken by the official, employee, or contractor to enforce the provisions contained in this article, during the course and scope of the official’s, employee’s, or contractor’s office, employment, or contractual performance for or service on behalf of the State.

(C) Notwithstanding any other law, an indemnification payment made under subsection (B) is not subject to an indemnification limit under state law.

(D) Subsections (A) and (B) do not apply if it is determined the state official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness.

(E) The State shall indemnify a state official, employee, or contractor for reasonable attorney’s fees incurred in defense of a criminal prosecution against the official, employee, or contractor for an action taken by the official, employee, or contractor to enforce the provisions contained in this article, or an order issued during the course and scope of the official’s, employee’s, or contractor’s office, employment, or contractual performance for or service on behalf of the State.

(F) A state official, employee, or contractor who may be entitled to indemnification under subsection (B) is entitled to representation by the Attorney General in an action in connection with which the official, employee, or contractor may be entitled to that indemnification.

(G) This section may not be construed to waive any statutory limits on damages under state law.

Section 16-7-380. For a civil action brought against a person who may be entitled to immunity or indemnification under this article, an appeal must be taken directly to the State Supreme Court.

Section 16-7-390. This article does not affect a defense, immunity, or jurisdictional bar available to the state or a local government or an official, employee, or contractor of the State or a local government.

SECTION 2. This act takes effect upon approval by the Governor.

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