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(R103, S20)

AN ACT TO AMEND SECTION 6-1-170, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO PREEMPTION OF LOCAL ORDINANCES REGARDING IMMIGRATION, SO AS TO ALLOW A CIVIL ACTION TO BE BROUGHT UNDER CERTAIN CIRCUMSTANCES WHEN A POLITICAL SUBDIVISION LIMITS OR PROHIBITS A LOCAL OFFICIAL FROM SEEKING TO ENFORCE A FEDERAL OR STATE LAW WITH REGARD TO IMMIGRATION OR THE UNLAWFUL IMMIGRATION STATUS OF A PERSON; TO AMEND SECTION 8-14-10, RELATING TO DEFINITIONS FOR THE PURPOSES OF UNAUTHORIZED ALIENS AND PUBLIC EMPLOYMENT, SO AS TO EXPAND THE DEFINITION OF "PRIVATE EMPLOYER"; TO AMEND SECTION 8-14-20, RELATING TO PUBLIC EMPLOYER PARTICIPATION IN THE FEDERAL WORK AUTHORIZATION PROGRAM AND SERVICE CONTRACTORS, SO AS TO DELETE PROVISIONS REGARDING CERTAIN TYPES OF IDENTIFICATIONS PREVIOUSLY ALLOWED FOR VERIFICATION OTHER THAN E-VERIFY AND TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 16-9-460, RELATING TO AIDING ILLEGAL ENTRY OR HARBORING AN UNLAWFUL ALIEN, SO AS TO INCLUDE IN THE PURVIEW OF THE STATUTE THE PERSON WHO ENTERED THE COUNTRY, REMAINED, OR SHELTERED THEMSELVES FROM DETECTION ILLEGALLY; BY ADDING SECTION 16-17-750 SO AS TO CREATE THE OFFENSE OF FAILURE TO CARRY A CERTIFICATE OF ALIEN REGISTRATION ISSUED TO THE PERSON AND TO PROVIDE A PENALTY; BY ADDING SECTION 17-13-170 SO AS TO REQUIRE LAW ENFORCEMENT UNDER CERTAIN CIRCUMSTANCES AND WITH REASONABLE SUSPICION TO DETERMINE WHETHER A PERSON IS LAWFULLY PRESENT IN THE UNITED STATES, TO DELINEATE INFORMATION THAT MAY BE PROVIDED TO PRESUME THE PERSON IS LEGALLY PRESENT IN THE UNITED STATES, TO PROVIDE FOR THE OFFENSE OF PROVIDING FALSE

INFORMATION AND TO PROVIDE PENALTIES, TO PROVIDE PROCEDURES FOR VERIFICATION OF STATUS AND EXCEPTIONS, AND TO PROVIDE FOR THE COLLECTION OF DATA ON MOTOR VEHICLES STOPPED WITHOUT A CITATION ISSUED; TO AMEND SECTION 23-3-1100, RELATING TO THE VERIFICATION OF THE STATUS OF PRISONERS, NOTIFICATION OF THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY, AND HOUSING AND MAINTENANCE EXPENSES, SO AS TO PROVIDE FOR TRANSPORTATION OF A PRISONER WHO IS AN ALIEN UNLAWFULLY PRESENT IN THE UNITED STATES TO A FEDERAL FACILITY OR OTHER FORM OF FEDERAL CUSTODY AND FOR NOTIFICATION TO THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY; TO AMEND SECTION 41-8-10, RELATING TO DEFINITIONS FOR PURPOSES OF ILLEGAL ALIENS AND PRIVATE EMPLOYMENT, SO AS TO REDEFINE THE TERMS "LICENSE" AND "PRIVATE EMPLOYER" AND DEFINE THE TERM "UNAUTHORIZED ALIEN"; TO AMEND SECTION 41-8-20, RELATING TO THE REQUIREMENTS OF COMPLETION AND MAINTENANCE OF FEDERAL EMPLOYMENT ELIGIBILITY VERIFICATION FORMS OR E-VERIFY, SO AS TO REQUIRE AUTHORIZATION OF EVERY NEW EMPLOYEE WITHIN THREE, RATHER THAN FIVE, DAYS AND REQUIRE CONTRACTORS TO MAINTAIN CONTACT PHONE NUMBERS OF ALL SUBCONTRACTORS AND SUB-SUBCONTRACTORS PERFORMING SERVICES FOR THE CONTRACTOR AND PROVIDE THIS INFORMATION UPON REQUEST; TO AMEND SECTION 41-8-30, RELATING TO EMPLOYMENT OF UNAUTHORIZED ALIENS, SO AS TO PROVIDE THAT A PRIVATE EMPLOYER VIOLATES THE PRIVATE EMPLOYER LICENSE IF HE KNOWINGLY AND INTENTIONALLY EMPLOYS AN UNAUTHORIZED ALIEN; TO AMEND SECTION 41-8-40, RELATING TO A PRIVATE EMPLOYER'S PRESUMPTION OF COMPLIANCE WITH THE LAW, SO AS TO MAKE TECHNICAL CHANGES; TO AMEND SECTION 41-8-50, RELATING TO PENALTIES FOR FAILING TO COMPLY WITH E-VERIFY REQUIREMENTS, SO AS TO ALLOW ACTION AGAINST A PRIVATE EMPLOYER TO BE BROUGHT AFTER A RANDOM AUDIT OR AN INSPECTION REGARDING AN EMPLOYEE WHO HAS BEEN EMPLOYED THREE, RATHER THAN FIVE, DAYS AND TO PROVIDE FURTHER PROCEDURES FOR A

PRIVATE EMPLOYER'S COMPLIANCE, TO PROVIDE FOR SUSPENSION AND REVOCATION OF THE PRIVATE EMPLOYER'S LICENSE UNDER CERTAIN CIRCUMSTANCES, AND TO MAKE CONFORMING CHANGES; TO AMEND SECTIONS 41-8-60, RELATING TO ACTIONS TO COLLECT CIVIL PENALTIES AGAINST A PRIVATE EMPLOYER, AND 41-8-120, RELATING TO THE PROMULGATION OF REGULATIONS AND STATEWIDE RANDOM AUDITS, BOTH SO AS TO DELETE REFERENCES TO CIVIL PENALTIES AND MAKE CONFORMING CHANGES REGARDING DISCIPLINARY ACTION AGAINST A PRIVATE EMPLOYER; BY ADDING SECTION 16-13-480 SO AS TO CREATE THE OFFENSE OF PROVIDING A FALSE PICTURE IDENTIFICATION FOR USE BY AN ALIEN UNLAWFULLY PRESENT IN THE UNITED STATES AND TO PROVIDE A PENALTY; TO REPEAL SECTION 23-3-80 RELATING TO THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION'S AUTHORIZATION TO NEGOTIATE A MEMORANDUM OF UNDERSTANDING WITH THE UNITED STATES DEPARTMENT OF JUSTICE OR THE DEPARTMENT OF HOMELAND SECURITY REGARDING UNLAWFUL ALIENS; AND BY ADDING SECTION 23-6-60 SO AS TO CREATE THE ILLEGAL IMMIGRATION ENFORCEMENT UNIT WITHIN THE DEPARTMENT OF PUBLIC SAFETY, TO PROVIDE FOR ITS ADMINISTRATION AND DUTIES, AND TO REQUIRE A MEMORANDUM OF AGREEMENT WITH UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT.

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

Civil actions to enforce laws relating to immigration

SECTION 1. Section 6-1-170 of the 1976 Code, as added by Act 280 of 2008, 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."

Definitions, unauthorized aliens and public employment

SECTION 2. Section 8-14-10(9) of the 1976 Code, as added by Act 280 of 2008, is amended to read:

"(9) 'Private employer' means any:

(a) person or entity that transacts business in this State, is required to have a license issued by an agency, department, board, commission, or political subdivision of this State that issues licenses for the purposes of operating a business in this State, and employs one or more employees in this State, as defined in Section 12-8-10;

(b) person or entity carrying on any employment and the legal representative of a deceased person or the receiver or trustee of any person; or

(c) person or entity for whom an individual performs a service or sells a good, of whatever nature, as an employee, as defined in Section 12-8-10."

Federal Work Authorization Program, verification of workers' status, deletion of certain forms of identification rather than E-Verify

SECTION 3. Section 8-14-20 of the 1976 Code, as added by Act 280 of 2008, is amended to read:

"Section 8-14-20. (A) Every public employer shall register and participate in the federal work authorization program to verify the employment authorization of all new employees.

(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 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 work authorization program to verify the employment authorization of all new employees.

(C) Private employers shall comply with the provisions of Chapter 8, Title 41."

Unlawful entry into the United States, unlawful immigration status, penalties

SECTION 4. Section 16-9-460 of the 1976 Code, as added by Act 280 of 2008, 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.

(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.

(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.

(E) A person who violates the provisions 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.

(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.

(G) 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 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.

(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."

Failure to carry a certificate of alien registration, penalty

SECTION 5. Article 7, 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."

Law enforcement authorization to determine immigration status, reasonable suspicion, procedures, data collection on motor vehicle stops

SECTION 6. Article 1, 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 (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, which 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."

Verification of immigration status of prisoners, transport to federal facility or custody

SECTION 7. Section 23-3-1100 of the 1976 Code, as added by Act 280 of 2008, 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.

(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.

(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, Title 1.

(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)."

Definitions, illegal aliens and private employer

SECTION 8. Section 41-8-10 of the 1976 Code, as added by Act 280 of 2008, is amended to read:

"Section 41-8-10. As used in this chapter:

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

(B) 'Director' means the Director of the Department of Labor, Licensing and Regulation or the director's 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 any agency or political subdivision of this State for the purpose of operating a business in this State, excluding professional licenses, but including employment licenses, articles of organization, articles of incorporation, a certificate of partnership, a partnership registration, a certificate to transact business, or similar

forms of authorization issued by the South Carolina Secretary of State, and any transaction privilege tax 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:

(1) person or entity that transacts business in this State, is required to have a license issued by an agency, department, board, commission, or political subdivision of this State that issues licenses for the purposes of operating a business in this State, and employs one or more employees in this State, as defined in Section 12-8-10;

(2) person or entity carrying on any employment and the legal representative of a deceased person or the receiver or trustee of any person; or

(3) person or entity for whom an individual performs a service or sells a good, of whatever nature, as an employee, as defined in Section 12-8-10.

(F) 'Unauthorized alien' means an unauthorized alien as defined by 8 U.S.C. Section 1324a(h)(3)."

Federal Work Authorization Program, requirements for verification of new employees, contact information to be maintained

SECTION 9. Section 41-8-20 of the 1976 Code, as added by Act 280 of 2008, is amended to read:

"Section 41-8-20. (A) All private employers in South Carolina shall be imputed a South Carolina employment license, which permits a private employer to employ a person in this State. A private employer may not employ a person unless the private employer's South Carolina employment license and any other applicable licenses as defined in Section 41-8-10 are in effect and are 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) All private employers who are required by federal law to complete and maintain federal employment eligibility verification forms or documents must register and participate in the E-Verify federal work authorization program, or its successor, to verify the work authorization of every new employee within three business days after employing a new employee. A private employer who does not comply with the requirements of this subsection violates the private employer's licenses.

(C) The South Carolina Department of Employment and Workforce shall 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.

(D) Private employers shall employ provisionally a new employee until the new employee's work authorization has been verified pursuant to this section. A private employer shall submit a new employee's name and information for verification even if the new employee's employment is terminated less than 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 reemploy the new employee.

(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 all South Carolina employers, 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."

Employment of unauthorized aliens, private employer license violation

SECTION 10. Section 41-8-30 of the 1976 Code, as added by Act 280 of 2008, is amended to read:

"Section 41-8-30. A private employer who knowingly or intentionally employs an unauthorized alien violates the private employer's licenses."

Verification of immigration status of new employees, technical changes

SECTION 11. Section 41-8-40 of the 1976 Code, as added by Act 280 of 2008, is amended to read:

"Section 41-8-40. For purposes of this chapter, a private employer who in good faith verifies the immigration status of a new employee pursuant to Section 41-8-20 must be presumed to have complied with the provisions of Section 41-8-20 and Section 41-8-30."

Violations regarding unauthorized aliens and E-Verify program, deletion of civil penalties, random audits and inspections, private employer compliance, suspension and revocation of licenses

SECTION 12. Section 41-8-50 of the 1976 Code, as added by Act 280 of 2008, 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 violated the provisions of Section 41-8-20 or Section 41-8-30, the director shall 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) take appropriate action in accordance with subsection (D) of this section.

(C) The director must not bring an action against a private employer for any employee who has been employed for 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)(a) prior to July 1, 2012, for a first occurrence involving a violation of Section 41-8-20, the private employer shall, upon notification by the director of a violation of Section 41-8-20, swear or affirm in writing that the private employer has complied with the

provisions of 8 U.S.C. Section 1324a from the effective date of this section to the time the private employer received notification from the director, and shall comply with the provisions of Section 41-8-20within three business days. Failure to swear or affirm compliance in writing or failure to comply with Section 41-8-20 within three business days requires that the private employer be placed on probation for a period of one year, during which time the private employer shall submit quarterly reports to the director demonstrating compliance with the provisions of Section 41-8-20. The director shall provide appropriate assistance to the private employer to aid the private employer in complying with Section 41-8-20 within the three business day period. The director may extend the three business day period, as necessary, if the director determines that more time is required for compliance. Any subsequent occurrence involving a violation of Section 41-8-20 by the private employer must result in the suspension of the private employer's licenses for at least ten days, but not more than thirty days, by the director, except, if a private employer has not committed a violation of Section 41-8-20 within the previous three 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, the private employer's licenses must be suspended for at least ten days but not more than thirty days for any violation or subsequent occurrence involving a violation of Section 41-8-20. The director shall 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 shall 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 unauthorized aliens employed by the private employer;

(b) on or after July 1, 2012, for a first occurrence involving a violation of Section 41-8-20, the private employer shall, upon notification by the director of a violation of Section 41-8-20, immediately comply with the provisions of Section 41-8-20, and the private employer must be placed on probation for a period of one year, during which time the private employer shall submit quarterly reports to the director demonstrating compliance with the provisions of

Section 41-8-20. Any subsequent occurrence involving a violation of Section 41-8-20 by the private employer must result in the suspension of the private employer's licenses for at least ten days but not more than thirty days by the director, except, if a private employer has not committed a violation of Section 41-8-20 within the previous three 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, the private employer's licenses must be suspended for at least ten days but not more than thirty days for any violation or subsequent occurrence involving a violation of Section 41-8-20. The director shall 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 shall 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 unauthorized aliens employed by the private employer;

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

(a) demonstrates that the private employer has terminated the unauthorized alien; and

(b) 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's licenses must be suspended, and must remain suspended for at least thirty days but not more than sixty days. During the period of suspension, the private employer may not

engage in business, open to the public, employ an employee, or otherwise operate. After the period of suspension, the private employer's licenses must be reinstated, permitting the private employer to engage in business, open to the public, employ an employee, and otherwise operate, if the private employer:

(a) demonstrates that the private employer has terminated the unauthorized alien; and

(b) 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 or subsequent occurrence involving a violation of Section 41-8-30, the private employer's licenses must be 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 permission to apply for a provisional license if the private employer:

(a) agrees to be on probation for a period of three years, during which time the private employer shall submit quarterly reports to the director demonstrating compliance with the provisions of Sections 41-8-20 and 41-8-30;

(b) demonstrates that the private employer has terminated the unauthorized alien; and

(c) 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 licenses are revoked, the private employer may not seek reinstatement of the private employer's licenses for a period of five years. After five years,

the director may grant reinstatement of a private employer's licenses if the private employer:

(a) agrees to be on probation for a period of three years, during which time the private employer shall submit quarterly reports to the director demonstrating compliance with the provisions of Sections 41-8-20 and 41-8-30;

(b) demonstrates that the private employer has terminated the unauthorized alien; and

(c) 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 the private employer's licenses are suspended, the private employer's licenses must be revoked, and must 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 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 taking any disciplinary action for a violation of Section 41-8-20 or Section 41-8-30, the director shall base the director's 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;

(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 must 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 had their licenses disciplined pursuant to this chapter and shall publish the list on the agency's website. The director shall remove a private employer from the list who has committed only a first occurrence pursuant to Section 41-8-20 six months after the private employer's name has been published, if the private employer has not subsequently had their licenses disciplined pursuant to this chapter within the one year probation period.

(I) If a private employer continues to engage in business after the private employer's licenses have 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 the private employer's business for which the private employer's licenses were revoked or from employing new employees.

(J) The director shall notify the applicable licensing agency or political subdivision if the director determines that a private employer's license must be suspended or revoked pursuant to this section. The applicable agency or political subdivision immediately shall suspend or revoke the private employer's license.

(K) A license suspension or revocation pursuant to this section:

(1) does not constitute a dissolution, liquidation, or a winding down process; or a transfer, or other taxable event for tax purposes, including, but not limited to, taxes imposed or authorized by Title 12; and

(2) does not affect protections against personal liability provided in Title 33."

Civil penalties against private employers deleted, conforming changes

SECTION 13. Section 41-8-60 of the 1976 Code, as added by Act 280 of 2008, is amended to read:

"Section 41-8-60. A private employer may seek review of the director's disciplinary action pursuant to Section 41-8-50 with the Administrative Law Court, and the action must be brought in accordance with the provisions of Chapter 23, Title 1."

Civil penalties against private employers deleted, conforming changes

SECTION 14. Section 41-8-120(A) of the 1976 Code, as added by Act 280 of 2008, is amended to read:

"(A) The director shall promulgate regulations in accordance with the provisions of Chapter 23, Title 1 to establish a procedure for administrative review of any disciplinary action against a private employer pursuant to this chapter."

Providing false identifications for use by unlawful aliens, penalty

SECTION 15. 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."

Repeal

SECTION 16. Section 23-3-80 of the 1976 Code is repealed.

Illegal Immigration Enforcement Unit within Department of Public Safety, creation, duties

SECTION 17. Article 1, Chapter 6, Title 23 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 appropriate personnel within the department 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 those 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. The 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 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 the 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 the 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 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.

(G) The department shall develop an illegal immigration enforcement training program which the department shall offer to all local law enforcement agencies to assist any local law enforcement agency wishing to utilize the training program in the proper implementation, management, and enforcement of applicable immigration laws."

Savings clause

SECTION 18. 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.

Severability clause

SECTION 19. 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.

Time effective

SECTION 20. SECTION 17 of this act takes effect upon funding of the Illegal Immigration Enforcement Unit by the General Assembly pursuant to Section 23-6-60(D) and upon granting of Section 287(g) of the federal Immigration and Nationality Act authority to the Department of Public Safety pursuant to Section 23-6-60(E). The remaining provisions of this act take effect on January 1, 2012.

Ratified the 22nd day of June, 2011.

Approved the 27th day of June, 2011. -- S.