~~\Indicates Matter Stricken~~
Indicates New Matter

AMENDED
May 27, 2008

H. 4400

Introduced by Reps. Harrell, Harrison, Cato, Cooper, Walker, Witherspoon, Merrill, Sandifer, Haley, Young, Erickson, Littlejohn, Simrill, Bowen, Crawford, Barfield, Cotty, Taylor, Spires, Davenport, E.H. Pitts, Frye, Lowe, Shoopman, Hardwick, Bingham, Skelton, Clemmons, Thompson, Bedingfield, Bannister, Mahaffey, Herbkersman, J.R. Smith, Haskins, Huggins, Hutson, Leach, Toole, Viers, Brady, Dantzler, Delleney, Gambrell, Hamilton, Kelly, Rice, Scarborough, G.M. Smith, G.R. Smith, Talley, Umphlett, Duncan, Owens, Mulvaney, White, Loftis and Edge

S. Printed 5/27/08--S. [SEC 5/28/08 2:14 PM]
Read the first time February 5, 2008.

A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING ARTICLE 13 TO CHAPTER 11 OF TITLE 8, RELATING TO ILLEGAL ALIENS AND PUBLIC EMPLOYMENT SO AS TO REQUIRE A PUBLIC EMPLOYER AND A CONTRACTOR DOING BUSINESS WITH A PUBLIC EMPLOYER TO REGISTER AND PARTICIPATE IN THE FEDERAL WORK AUTHORIZATION PROGRAM TO VERIFY THE LAWFUL PRESENCE IN THE UNITED STATES OF NEW EMPLOYEES, WITH ALTERNATIVE MEASURES TO BE FOLLOWED BY A CONTRACTOR, TO DESCRIBE COMPLIANCE, TO PROHIBIT LOCAL LAWS FROM LIMITING ENFORCEMENT, AND TO PROVIDE FOR FORMS, REGULATIONS, AND RULES; BY ADDING SECTION 23-52-10 SO AS TO PROVIDE THAT THE APPROPRIATE OFFICIAL UNDERTAKE TO DETERMINE THE LAWFUL PRESENCE IN THE UNITED STATES OF A PERSON CHARGED WITH A CRIMINAL OFFENSE AND CONFINED IN A JAIL AND TO PROVIDE THE PROCESS OF VERIFICATION AND REPORTING, AS WELL AS FOR RECOUPING EXPENSES OF THE CONFINEMENT; BY ADDING CHAPTER 91 TO TITLE 40 SO AS TO ENACT THE "REGISTRATION OF IMMIGRATION ASSISTANCE ACT", PRESCRIBING THE ACTS THAT MAY BE PERFORMED BY AN IMMIGRATION ASSISTANCE SERVICE, REQUIRING A PERSON PERFORMING THOSE ACTS TO BE LICENSED, REQUIRING THE POSTING OF CERTAIN CONSPICUOUS DISCLAIMERS, PROHIBITING THE PERFORMANCE OF CERTAIN ACTS, EXEMPTING CERTAIN PERSONS FROM THESE RESTRICTIONS, AND PROVIDING FOR CIVIL AND CRIMINAL PENALTIES FOR VIOLATIONS; BY ADDING ARTICLE 11 TO CHAPTER 5 OF TITLE 43 SO AS TO REQUIRE ALL STATE AND LOCAL AGENCIES PROVIDING

PUBLIC BENEFITS VERIFY THE LAWFUL PRESENCE IN THE UNITED STATES OF A NATURAL PERSON EIGHTEEN YEARS OLD OR OLDER WHO APPLIES FOR STATE OR LOCAL BENEFITS OR FEDERAL BENEFITS ADMINISTERED BY THE STATE, PROVIDING EXCEPTIONS, PROVIDING FOR AN AFFIDAVIT OF ELIGIBILITY AND CRIMINAL PENALTIES FOR A FALSE AND FRAUDULENT AFFIDAVIT, FOR RESTITUTION OF IMPROPERLY RECEIVED BENEFITS, FOR A CIVIL CAUSE OF ACTION AND JOINT AND SEVERAL LIABILITY; BY ADDING SECTION 6-1-170 SO AS TO PROHIBIT A POLITICAL SUBDIVISION OF THIS STATE FROM LIMITING OR INCREASING THE POWER OF LOCAL OFFICIALS TO ENFORCE STATE IMMIGRATION LAWS; BY ADDING SECTION 12-6-3595 SO AS TO PROHIBIT ANY WAGES OR REMUNERATION FOR LABOR SERVICES PAID TO AN INDIVIDUAL OF SIX HUNDRED DOLLARS OR MORE A YEAR FROM BEING CLAIMED AS A DEDUCTIBLE BUSINESS EXPENSE FOR STATE INCOME TAX PURPOSES UNLESS THE INDIVIDUAL IS AN AUTHORIZED EMPLOYEE, TO PROVIDE FOR EXEMPTIONS, TO REQUIRE THE DIRECTOR OF THE DEPARTMENT OF REVENUE TO PRESCRIBE FORMS AND PROMULGATE REGULATIONS TO EFFECTUATE THIS SECTION, AND TO REQUIRE THE EXECUTIVE DIRECTOR OF THE SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION TO SEND WRITTEN NOTICE OF THIS PROVISION TO ALL EMPLOYERS IN THIS STATE; BY ADDING SECTION 12-8-610 SO AS TO REQUIRE TAX WITHHOLDING AGENTS FOR EMPLOYERS TO WITHHOLD STATE INCOME TAX AT THE RATE OF SIX PERCENT OF THE AMOUNT OF COMPENSATION PAID TO AN INDIVIDUAL IF THE INDIVIDUAL HAS FAILED TO PROVIDE A TAXPAYER IDENTIFICATION NUMBER, FAILED TO PROVIDE A CORRECT TAXPAYER IDENTIFICATION NUMBER, OR PROVIDED A TAXPAYER IDENTIFICATION NUMBER ISSUED FOR NONRESIDENTS, TO PROVIDE THAT WITHHOLDING AGENTS WHO FAIL TO FOLLOW THE PROVISIONS OF THIS SECTION ARE LIABLE FOR THE TAX, TO PROVIDE EXCEPTIONS FROM LIABILITY FOR WITHHOLDING AGENTS IF THE EMPLOYEE PROVIDES A FACIALLY CORRECT TAXPAYER IDENTIFICATION NUMBER THAT THE

WITHHOLDING AGENT DOES NOT KNOW WAS FALSE OR INCORRECT, AND TO REQUIRE THE EXECUTIVE DIRECTOR OF THE SOUTH CAROLINA EMPLOYMENT SECURITY COMMISSION TO SEND NOTICE OF THIS PROVISION TO ALL EMPLOYERS; BY ADDING SECTION 16-9-460 SO AS TO PROVIDE THAT IT IS A FELONY FOR ANY PERSON TO TRANSPORT, MOVE, OR ATTEMPT TO TRANSPORT WITHIN THE STATE ANY PERSON KNOWINGLY OR IN RECKLESS DISREGARD TO THE FACT THAT THE PERSON HAS COME TO, ENTERED INTO, OR REMAINED IN THE UNITED STATES IN VIOLATION OF THE LAW, IN FURTHERANCE OF THE PERSON'S ILLEGAL PRESENCE IN THE UNITED STATES, OR TO CONCEAL, HARBOR, OR SHELTER FROM DETECTION A PERSON ILLEGALLY IN THE UNITED STATES IN FURTHERANCE OF THE PERSON'S ILLEGAL PRESENCE IN THE UNITED STATES, AND TO PROVIDE FOR PENALTIES IF A PERSON IS CONVICTED; BY ADDING SECTION 16-13-525 SO AS TO REQUIRE A PERSON WHO USES FINANCIAL IDENTITY FRAUD INVOLVING THE CREATION OF DOCUMENTS PURPORTING TO AUTHORIZE EMPLOYMENT IN THE UNITED STATES TO DISGORGE ANY BENEFIT HE RECEIVES AND TO PROVIDE FOR CRIMINAL PENALTIES AND INDIVIDUAL CIVIL REMEDIES; BY ADDING SECTION 16-23-530 SO AS TO MAKE IT A CRIME TO OWN, POSSESS, TRANSFER, MAKE, DISPOSE OF, RENT, BUY, OR OTHERWISE TRANSACT AN ACTIVITY INVOLVING A FIREARM IN THIS STATE IF THE PERSON IS NOT LAWFULLY PRESENT IN THIS STATE; BY ADDING SECTION 23-3-80 SO AS TO AUTHORIZE THE CHIEF OF THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION TO NEGOTIATE THE TERMS OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE STATE AND THE FEDERAL GOVERNMENT CONCERNING THE ENFORCEMENT OF FEDERAL IMMIGRATION AND CUSTOMS LAWS, DETENTIONS AND REMOVALS, AND INVESTIGATIONS IN THE STATE, TO AUTHORIZE THE DESIGNATION OF STATE AND LOCAL OFFICERS TO BE TRAINED PURSUANT TO THE MEMORANDUM, TO STIPULATE FUNDING FOR THE TRAINING, AND TO PROVIDE FOR CERTIFICATION OF TRAINING TO ENFORCE FEDERAL IMMIGRATION LAWS; BY ADDING SECTION 41-1-30 SO AS TO PROVIDE FOR A CIVIL CAUSE

OF ACTION BY A PERSON WHO IS TERMINATED FOR THE PURPOSE OF BEING REPLACED BY A WORKER WHO IS NOT AUTHORIZED TO WORK IN THE UNITED STATES; BY ADDING SECTION 59-101-430 SO AS TO PROHIBIT A PERSON WHO IS NOT LAWFULLY PRESENT IN THE UNITED STATES FROM ATTENDING OR RECEIVING ANY BENEFIT OF RESIDENCE; BY AMENDING SECTION 1-31-40, RELATING TO THE STATE COMMISSION ON MINORITY AFFAIRS, SO AS TO PROVIDE FOR A TOLL FREE TELEPHONE NUMBER, ELECTRONIC WEBSITE, AND TRACKING DATABASES FOR RECEIVING AND REPORTING VIOLATIONS OF LAWS OR REGULATIONS BY A NONUNITED STATES CITIZEN OR IMMIGRANT; BY AMENDING SECTION 14-7-1630, AS AMENDED, RELATING TO JURISDICTION OF THE STATE GRAND JURY, SO AS TO INCLUDE THE OFFENSES OF FALSIFICATION OF DOCUMENTS, IDENTITY FRAUD, FRAUDULENT AFFIDAVITS, AND OTHER SPECIFIED ACTS UNDERTAKEN IN A FRAUDULENT ATTEMPT TO DEMONSTRATE LAWFUL PRESENCE IN THE UNITED STATES; AND BY AMENDING SECTION 17-15-30, AS AMENDED, RELATING TO DETERMINATION BY THE COURT OF RELEASE ON BAIL, SO AS TO PROVIDE THAT THE COURT SHALL CONSIDER IF THE ACCUSED IS AN ILLEGAL ALIEN AND IF THAT STATUS POSES A SUBSTANTIAL FLIGHT RISK.

Amend Title To Conform

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

SECTION 1. This act may be cited as the “South Carolina Illegal Immigration Reform Act”.

SECTION 2. Section 1-31-40(A) of the 1976 Code is amended to read:

“(A) The commission shall:

(1) provide the minority community consisting of African Americans, Native American Indians, Hispanics/Latinos, Asians, and others with a single point of contact for statistical and technical assistance in the areas of research and planning for a greater economic future;

(2) work with minority officials on the state, county, and local levels of government in disseminating statistical data and its impact on their constituencies;

(3) provide for publication of a statewide statistical abstract on minority affairs;

(4) provide statistical analyses for members of the General Assembly on the state of minority communities as the State experiences economic growth and changes;

(5) provide the minority community with assistance and information on Voting Rights Act submissions in the State, as well as other related areas of concern to the minority community;

(6) determine, approve, and acknowledge by certification state recognition for Native American Indian entities; however, notwithstanding their state certification, the tribes have no power or authority to take any action which would establish, advance, or promote any form of gambling in this State;

(7) establish advisory committees representative of minority groups, as the commission considers appropriate to advise the commission;

(8) act as liaison with the business community to provide programs and opportunities to fulfill its duties under this chapter;

(9) seek federal and other funding on behalf of the State of South Carolina for the express purpose of implementing various programs and services for African Americans, Native American Indians, Hispanics/Latinos, Asians, and other minority groups;

(10) promulgate regulations as may be necessary to carry out the provisions of this article including, but not limited to, regulations regarding State Recognition of Native American Indian entities in the State of South Carolina; ~~and~~

(11) establish and maintain a twenty-four hour toll free telephone number and electronic website in accordance with Section 8-30-10; and

~~(11)~~(12) perform other duties necessary to implement programs."

SECTION 3. Title 8 of the 1976 Code is amended by adding:

"CHAPTER 14

Unauthorized Aliens and Public Employment

Section 8-14-10. (A) As used in this chapter, the term:

(1) 'Contractor' means any person having a contract with a public employer except a political subdivision, where the total

value of the contract to be performed in a twelve-month period exceeds twenty-five thousand dollars, or, if the public employer is a political subdivision, where the total value of the contract to be performed in a twelve-month period exceeds fifteen thousand dollars. A contractor may also be a private employer.

(2) 'Director' means the director of the State Budget and Control Board.

(3) 'End product' means movable personal property described in the solicitation and in final form and ready for the use intended including, without limitation, commodities or equipment.

(4) 'Federal work authorization program' means the E-Verify Program maintained and operated by the United States Department of Homeland Security and the Social Security Administration, or any successor program.

(5) 'Public employer' means every department, agency, or instrumentality of the State or a political subdivision of the State.

(6) 'Service contract' means a contract that involves the physical performance of manual labor, if the total cost of such labor exceeds (i) thirty percent of the total cost of all labor, or (ii) five percent of the total contract price. The term does not include:

(a) a contract with a public employer, other than a political subdivision, with a total value of less than twenty-five thousand dollars, or a contract with a political subdivision with a total value of less than fifteen thousand dollars;

(b) a contract primarily for the acquisition of an end product; and

(c) a contract that is predominantly for the performance of professional or consultant services.

(7) 'Subcontractor' means any person having either: (a) a services contract with a contractor; or (b) a contract with a sub-subcontractor. A subcontractor may also be a private employer.

(8) 'Sub-subcontractor' means any person having a services contract with a subcontractor. A sub-subcontractor may also be a private employer.

(9) '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.

Section 8-14-20. (A) On or after January 1, 2009, 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:

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

(2) to employ only workers who:

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

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

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

(C) A public employer and contractor must not divide work or duties that would otherwise constitute a single service contract into separate contracts for the purpose of avoiding the requirements of this chapter.

(D) Subsection (B) applies as follows:

(1) on and after January 1, 2009, with respect to contractors, subcontractors, or sub-subcontractors of five hundred or more employees;

(2) on and after July 1, 2009, with respect to contractors, subcontractors, or sub-subcontractors of one hundred or more employees but less than five hundred employees; and

(3) on and after January 1, 2010, with respect to all other contractors, subcontractors or sub-subcontractors.

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

Section 8-14-30. The provisions of this chapter are enforceable without regard to race, religion, gender, ethnicity, or national origin. Section 11-35-4210 provides the exclusive remedy for violations of this chapter for any contract governed by Title 11, Chapter 35. A pre-award protest process appearing in a procurement ordinance adopted by a political subdivision pursuant to Section 11-35-50 or Section 11-35-70 provides the exclusive remedy for violations of this chapter for any contract governed by that procurement ordinance.

Section 8-14-40. A public employer complies with this chapter if it obtains a written statement from the contractor certifying that the contractor will comply with the requirements of this chapter and agrees to provide to the public employer any documentation required to establish either: (a) the applicability of this chapter to the contractor, subcontractor, and sub-subcontractor; or (b) the compliance with this chapter by the contractor and any subcontractor or sub-subcontractor. A public employer need not audit or independently verify a contractor's compliance with this chapter.

Section 8-14-50. A contractor or public employer who in good faith complies with the requirements of this chapter may not be sanctioned or subjected to any civil or administrative action for employing an individual not authorized for employment in the United States.

Section 8-14-60. A person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony, and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both.

Section 8-14-70. A local government must not enact any ordinance or policy that limits or prohibits a law enforcement officer, local official, or local government employee from seeking to enforce the provisions of this chapter.

Section 8-14-80. Except as otherwise provided in this chapter, the director shall prescribe all forms and promulgate regulations necessary for the application of this chapter to contracts or agreements and may publish these regulations on the Budget and

Control Board's website in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws.

Section 8-14-90. Except as otherwise provided in this chapter, the director of the Department of Transportation shall prescribe forms, promulgate regulations, and adopt rules necessary for the application of this chapter to a contract or agreement relating to public transportation and shall publish these rules and regulations on the Department of Transportation's website in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws."

SECTION 4. Article 1, Chapter 3, Title 23 of the 1976 Code is amended by adding:

"Section 23-3-80. (A) The chief of the South Carolina Law Enforcement Division is authorized and directed to negotiate the terms of a memorandum of understanding between the State of South Carolina and the United States Department of Justice or Department of Homeland Security addressing:

(1) the enforcement of federal immigration laws by state and local law enforcement, specifically through the 287-G program or other applicable federal law or program designed for the purpose of state enforcement of federal immigration laws;

(2) the detention of unlawful aliens by state and local law enforcement officials and the costs associated with those detentions;

(3) the removal of detained unlawful aliens by federal authorities or, instead of removal, the deportation of illegal immigrants by state and local law enforcement officials;

(4) training of state and local law enforcement officials pursuant to the 287-G program or other applicable federal law or program and the costs of such training; and

(5) further communication and cooperation between federal law enforcement and state and local law enforcement officials in the area of immigration enforcement, pursuant to 8 U.S.C. Section 1357(g).

(B) The memorandum of understanding negotiated pursuant to subsection (A) must be signed on behalf of the State by the chief of the South Carolina Law Enforcement Division and the Governor or as otherwise required by the appropriate federal agency.

(C) The chief of the South Carolina Law Enforcement Division shall designate appropriate law enforcement officers to be trained

pursuant to the memorandum of understanding provided for in subsections (A) and (B). The training may be funded pursuant to the federal Homeland Security Appropriations Act of 2006, or any other source of funding. The provisions of this section become effective upon the securing of this funding.

(D) The director of the South Carolina Department of Corrections, the sheriff of a county, and the governing body of a municipality that maintains a paid police department may enter into the memorandum of understanding between the State of South Carolina and the United States Department of Justice or Department of Homeland Security as a party, and, subject to the availability of funds provided for in subsection (C) of this section, provide corrections officers and local law enforcement officers for training in accordance with the memorandum of understanding.

(E) A law enforcement officer certified as trained in accordance with the memorandum of understanding as provided in this section is authorized to enforce federal immigration and customs laws while performing within the scope of his or her authorized duties."

SECTION 5. Title 8 of the 1976 Code is amended by adding:

"CHAPTER 29

Verification of Lawful Presence in the United States

Section 8-29-10. (A) Except as provided in subsection (C) of this section or where exempted by federal law, on or after July 1, 2008, every agency or political subdivision of this State shall verify the lawful presence in the United States of any alien eighteen years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in 8 U.S.C. Section 1611, that are administered by an agency or a political subdivision of this State.

(B) The provisions of this article shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(C) Verification of lawful presence pursuant to the provisions of this article is not required for:

(1) a purpose for which lawful presence in the United States is not required by law, ordinance, or regulation;

(2) assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in the Social Security Act (42 U.S.C. 1396 et seq.), of the

person involved and are not related to an organ transplant procedure;

(3) short-term, noncash, in-kind emergency disaster relief;

(4) public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(5) programs, services, or assistance including soup kitchens, crisis counseling and intervention, and short-term shelter 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:

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

(b) 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

(c) are necessary for the protection of life or safety;

(6) prenatal care;

(7) postsecondary education, whereby the Department of Education shall set forth, or cause to be set forth, policies regarding postsecondary benefits that comply with all federal law including, but not limited to, public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623;

(8) benefits, programs, services or any other assistance provided to victims of domestic violence, irrespective of their immigration status, under the Violence Against Women Act of 2000, Public Law Number 106-386, or the Illegal Immigration Reform and Immigrant Responsibility Act, Public Law Number 104-208; or

(9) benefits and refunds lawfully due from the South Carolina Retirement Systems pursuant to Title 9 of the South Carolina Code of Laws to members of the Retirement Systems and their beneficiaries.

(D) Verification of lawful presence in the United States by the agency or political subdivision required to make such verification must occur as follows:

(1) the applicant must execute an affidavit that he is a United States citizen or legal permanent resident eighteen years of age or older; or

(2) the applicant must execute an affidavit that he or she is a qualified alien or nonimmigrant under the Federal Immigration and

Nationality Act, Public Law 82-414, eighteen years of age or older, and lawfully present in the United States.

(E) For an applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for benefits shall be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until the eligibility verification is made, the affidavit shall be presumed to be proof of lawful presence for the purposes of this article.

(F) A person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit executed pursuant to this section, or who aids or abets a person in knowingly and willfully making a false, fictitious, or fraudulent statement or representation in an affidavit executed pursuant to this section, or who solicits or conspires to make a false, fictitious, or fraudulent statement or representation in an affidavit executed pursuant to this section shall be guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both. In addition, a person convicted pursuant to this section must disgorge any benefit received or make restitution, or both, to the agency or political subdivision of this State that administered the benefit or entitlement program. It is a separate violation of this section each time a person receives a public benefit based on such a statement or representation. A conviction and fine charged pursuant to this section shall not preempt or preclude additional appropriate civil or criminal charges or penalties. A person who suffers an ascertainable loss of money or property, real or personal, as a result of the actions of anyone convicted of a violation of this subsection may bring an action, individually, or in a representative capacity, to recover actual damages. If the court finds that a violation has been established, the court shall award three times the actual damages sustained and may provide such other relief as it considers necessary and proper. Upon a finding by the court of a violation, the court shall award to the person bringing the action under this section reasonable attorney's fees and costs.

(G) Persons convicted of a violation of this section are jointly and severally liable for a loss suffered by a person or an agency or political subdivision of the State.

(H) If an affidavit constitutes a false claim of U.S. citizenship under 18 U.S.C. Section 911, a complaint must be filed by the

agency or political subdivision with the United States Attorney for the District of South Carolina.

(I) It is unlawful for an agency or a political subdivision of this State to provide any state, local, or federal benefit, as defined in 8 U.S.C. Section 1621 or 8 U.S.C. Section 1611, in violation of this section.

(J) All errors and significant delays by SAVE or its successor program must be reported to the United States Department of Homeland Security and to the Secretary of State which will monitor the state's participation in the SAVE program and its verification of application errors and significant delays and report yearly on such errors and significant delays to ensure that the application of SAVE is not wrongfully denying benefits to legal residents of South Carolina.

(K) An agency or a political subdivision of this State that provides a state, local, or federal benefit, as defined in 8 U.S.C. 1621 or 8 U.S.C. Section 1611, must require a person currently under the age of eighteen who received the benefit to comply with the provisions of this article upon reaching the age of eighteen. If the recipient is unwilling or unable to comply, receipt of all benefits must cease immediately upon the recipient's eighteenth birthday.

(L) A local government may not enact any ordinance or policy that limits or prohibits a law enforcement officer, local official, or local government employee from seeking to enforce the provisions of this article."

SECTION 6. Title 8 of the 1976 Code is amended by adding:

"CHAPTER 30

Recording and Reporting Immigration Law Violations

Section 8-30-10. (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, landlord tenant law violations, or violations of any law pertaining to the provision or receipt of public assistance benefits or public services.

(B) The executive director, or a designee, shall establish and maintain a centralized tracking database consisting of all information received through the twenty-four hour toll free telephone number and electronic website, and shall report all alleged violations to the appropriate law enforcement, administrative, executive, or regulatory agency or political subdivision having law enforcement or regulatory control over the subject matter, including, but not limited to the United States Bureau of Immigration and Customs Enforcement, consistent with 8 U.S.C. Section 1373.

Section 8-30-20. The executive director is authorized to hire personnel necessary to carry out the duties prescribed in Section 8-30-10. The General Assembly shall provide for the funds in the annual appropriations act."

SECTION 7. Chapter 6, Title 12 of the 1976 Code is amended by adding:

"Section 12-6-1175. (A) As used in this section:

(1) 'Unauthorized alien' means an unauthorized alien as defined by 8 U.S.C. Section 1324A(b)(3).

(2) 'Labor services' means the physical performance of services in this State.

(B) On or after January 1, 2009, no wages or remuneration for labor services to an individual of six hundred dollars or more per annum may be claimed and allowed as a deductible business expense for state income tax purposes by a taxpayer if the individual is an unauthorized alien. The provisions of this subsection shall apply whether or not an Internal Revenue Service Form 1099 is issued in conjunction with the wages or remuneration.

(C) This section shall not apply to a business domiciled in this State that is exempt from compliance with federal employment verification procedures under federal law.

(D) This section shall not apply to an individual hired by the taxpayer prior to January 1, 2009.

(E) This section shall not apply to a taxpayer where the individual being paid is not directly compensated or employed by said taxpayer.

(F) This section shall not apply to wages or remuneration paid for labor services to any individual whose employment authorization status was verified in accordance with the provisions of Section 41-8-20.

(G) A taxpayer must not be held liable for failing to comply with the provisions of this section, if, based on a reasonable investigation of the individual, the taxpayer did not know or should not have known that the individual was an unauthorized alien. For purposes of this subsection, a taxpayer shall be deemed to have conducted a reasonable investigation if the individual met the requirements of subsection (F), and the information provided by the individual to the taxpayer was facially correct.

(H) The director of the South Carolina Department of Revenue is authorized to prescribe forms and promulgate regulations deemed necessary in order to administer and effectuate this section in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws.

(I) The director of the Department of Revenue shall send written notice of this section to all South Carolina employers no later than July 1, 2008."

SECTION 8. Chapter 8, Title 12 of the 1976 Code is amended by adding:

"Section 12-8-595. (A) A withholding agent, as defined in Section 12-8-10, shall withhold state income tax at the rate of seven percent of the amount of compensation paid to an individual, which compensation is reported on Form 1099 and with respect to which the individual has:

(1) failed to provide a taxpayer identification number or social security number;

(2) failed to provide a correct taxpayer identification number or social security number; or

(3) provided an Internal Revenue Service issued taxpayer identification number issued for nonresident aliens.

(B) A withholding agent who fails to comply with the withholding requirements of this subsection shall be liable for the taxes required to have been withheld unless the withholding agent

is exempt from federal withholding with respect to the individual pursuant to a properly filed Internal Revenue Service Form 8233 and has provided a copy of the form to the commissioner.

(C) A withholding agent does not violate this section if the individual provides a false or incorrect social security number or taxpayer identification number that is facially correct and the withholding agent does not know or should not have known based on a reasonable investigation that the number provided is false or incorrect.

(D) The director of the South Carolina Department of Revenue shall send written notice of this section to all South Carolina employers no later than July 1, 2008."

SECTION 9. Article 5, Chapter 9, Title 16 of the 1976 Code is amended by adding:

"Section 16-9-460. (A) 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.

(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 conceal, harbor, or shelter from detection or to solicit or conspire to conceal, harbor, or shelter from detection that person in any place, including a building or means of transportation, with intent to further that person's unlawful entry into the United States or avoiding apprehension or detection of that person's unlawful immigration status by state or federal authorities.

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

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

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

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

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

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

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

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

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

"Section 16-13-525. (A) In addition to the penalties provided for in this chapter, a person who is convicted of, pleads guilty to, or enters into a plea of nolo contendere to financial identity fraud or identity fraud involving the false, fictitious, or fraudulent creation or use of documents that enable an alien who is unlawfully present in the United States to live or work in the United States, or to receive benefits administered by an agency or political subdivision of this State, must disgorge any benefit received or make restitution to the agency or political subdivision that administered the benefit or entitlement program, or both. A criminal charge pursuant to this chapter shall not preempt or preclude additional appropriate civil or criminal charges or penalties.

(B) A person who suffers an ascertainable loss of money or property, real or personal, as a result of a conviction or plea to a violation of financial identity fraud or identity fraud involving a matter described in subsection (A), may bring an action

individually, or in a representative capacity, to recover actual damages against any person convicted of the violation. If a court finds that a violation has been established, the court shall award three times the actual damages sustained and may provide such other relief as it considers necessary or proper. Upon the finding by the court of a violation, the court shall award to the person bringing this action pursuant to this section reasonable attorney's fees and costs.

(C) A person convicted of a violation of this subsection is jointly and severally liable for a loss suffered by a person or an agency or political subdivision of the State.

(D)(1) It is unlawful for a person to display, cause or permit to be displayed, or have in his possession a false, fictitious, fraudulent, or counterfeit identity document including, but not limited to, a driver's license or social security card for the purpose of offering proof of United States citizenship or classification by the United States as an alien lawfully admitted for temporary or permanent residence under federal immigration law.

(2) A person who violates the provisions of this section:

(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.

(E) A violation of the provisions of this section is considered a separate criminal offense and does not preclude prosecution for perjury pursuant to Section 16-9-10 in addition to prosecution pursuant to the provisions of this section.

(F) 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 any alien's status with the federal government in accordance with 8 U.S.C. Section 1373(c)."

SECTION 11. Chapter 3, Title 23 of the 1976 Code is amended by adding:

"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.

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

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

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

SECTION 12. Chapter 1, Title 41 of the 1976 Code is amended by adding:

"Section 41-1-30. (A) There is a civil right of action for wrongful termination against an employer who discharges an employee authorized to work in the United States for the purpose

of replacing that employee with a person the employer knows or should reasonably know is an unauthorized alien.

(B) An aggrieved employee must show all of the following:

(a) the replacement occurred within sixty days of the date of the employee's termination,

(b) the replacement worker was an unauthorized alien at the time of the replacement;

(c) the employer knew or reasonably should have known of the replacement worker's status; and

(d) the replacement worker filled duties and responsibilities the employee vacated.

(C) This section does not create an employment contract for either a public or private employer.

(D) An employee who brings a civil suit pursuant to this section is limited to the following recovery:

(1) reinstatement to his former position;

(2) actual damages; and

(3) lost wages.

(E) A cause of action does not arise against an employer who submits the necessary identifying information for all employees through the Systematic Alien Verification of Entitlement (SAVE) program, the E-Verify Program or a successor program used for verification of work authorization and operated by the United States Department of Homeland Security.

(F) Any cause of action arising pursuant to this section is equitable in nature and must be brought within one year of the date of the alleged violation.

(G) For any action brought pursuant to this section, the court may award attorney fees to the prevailing party.

(H) The provisions of this section do not apply to a private employer who terminates an employee to comply with the provisions Chapter 8 of Title 41.

(I) This section takes effect ninety days after the effective date of the act."

SECTION 13. Title 40 of the 1976 Code is amended by adding:

"CHAPTER 83

Registration of Immigration Assistance Services

Section 40-83-10. This act shall be cited as the 'Registration of Immigration Assistance Service Act'.

Section 40-83-20. As used in this chapter, the term:

(A) 'Compensation' means money, property, services, promise of payment, or anything else of value given in exchange for a service.

(B) 'Director' means the Director of the South Carolina Department of Labor, Licensing and Regulation, or his designee.

(C) 'Employed by' means that a person is on the payroll of the employer and the employer deducts from the employee's paycheck social security and withholding taxes or that a person receives compensation from the employer on a commission basis or as an independent contractor.

(D) 'Immigration assistance service' means information or action provided or offered to customers or prospective customers related to immigration matters, excluding legal advice, recommending a specific course of legal action or providing other assistance that requires legal analysis, legal judgment, or interpretation of the law.

(E) 'Immigration matter' means a proceeding, filing, or action affecting the nonimmigrant, immigrant, or citizenship status of any person that arises under:

(1) immigration and naturalization law, executive order, or presidential proclamation of the United States or any foreign country; or

(2) action of the United States Department of Labor, the United States Department of State, the United States Department of Homeland Security, or the United States Department of Justice.

Section 43-83-30. (A) A person who provides or offers to provide immigration assistance service shall perform only the following services:

(1) completing a government agency form, requested by the customer and appropriate to the customer's needs only if the completion of that form does not involve a legal judgment for that particular matter;

(2) transcribing responses to a government agency form that is related to an immigration matter but not advising a customer as to his or her answers on those forms;

(3) translating information on forms to a customer and translating the customer's answers to questions posed on those forms;

(4) securing for the customer supporting documents currently in existence, such as birth and marriage certificates,

which may be needed to be submitted with government agency forms;

(5) translating documents from a foreign language into English;

(6) notarizing signatures on government agency forms, if the person performing the service is a notary public commissioned in the State of South Carolina and is lawfully present in the United States;

(7) making referrals, without a fee, to attorneys who could undertake legal representation for a person in an immigration matter;

(8) preparing or arranging for the preparation of photographs and fingerprints;

(9) arranging for the performance of medical testing (including X-rays and AIDS tests) and the obtaining of reports of such test results;

(10) conducting English language and civics courses; and

(11) performing other services that the director determines by rule may be appropriately performed by such persons in light of the purposes of this chapter.

(B) The following persons are exempt from this chapter:

(1) an attorney licensed to practice law in South Carolina or an attorney licensed to practice law in another state or territory of the United States or in a foreign country when acting with the approval of a judge having lawful jurisdiction over the matter;

(2) a legal intern, clerk, paralegal, or person in a similar position employed by and under the direct supervision of a licensed attorney meeting the requirements in item (1) of this subsection and rendering immigration assistance service in the course of employment; or

(3) a not-for-profit organization recognized by the Board of Immigration Appeals under 8 C.F.R. 292.2(a), to include, but not be limited to, religious, charitable, social service, or similar organizations, and employees of those organizations accredited under 8 C.F.R. 292.2(d).

(C) This chapter does not regulate any business to the extent that such regulation is prohibited or preempted by federal law.

(D) A person performing the services described in this chapter shall obtain a business license from the Department of Labor, Licensing and Regulation, and as may be required by a local governing authority.

(E) A person who provides or offers immigration assistance service and is not exempted under this chapter shall post signs at

his or her place of business setting forth information in English and in every other language in which the person provides or offers to provide immigration assistance service. Each language shall be on a separate sign. Signs shall be posted in a location where the signs will be visible to customers. Each sign shall be at least twelve inches by seventeen inches and shall contain the following statement:

'I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.'

(F) Each person engaged in immigration assistance service who is not an attorney who advertises immigration assistance service in a language other than English, whether by radio, television, signs, pamphlets, newspapers, or other written communication, with the exception of a single desk plaque, must include in the document, advertisement, stationery, letterhead, business card, or other comparable written material the following notice in English and the language in which the written communication appears. This notice shall be of a conspicuous font size, if in writing, and shall state:

'I AM NOT AN ATTORNEY LICENSED TO PRACTICE LAW AND MAY NOT GIVE LEGAL ADVICE OR ACCEPT FEES FOR LEGAL ADVICE.'

If an advertisement is by radio or television, the statement may be modified but must include substantially the same information.

(G) A person who provides or offers immigration assistance service and who is not exempted pursuant to the provisions of this chapter may not literally translate from English into another language any document, advertisement, stationery, letterhead, business card, or other comparable written material terms or titles including, but not limited to, notary public, notary, licensed attorney, lawyer, or another term that implies the person is an attorney.

(H) A person engaged in providing immigration services who is not exempted under this chapter may not:

(1) accept payment in exchange for providing legal advice or any other assistance that requires legal analysis, legal judgment, or interpretation of the law;

(2) refuse to return documents supplied by, prepared on behalf of, or paid for by the customer upon the request of the customer. These documents must be returned upon request even if there is a fee dispute between the immigration assistant and the customer;

(3) represent or advertise, in connection with providing assistance in immigration matters, other titles or credentials, including, but not limited to, 'notary public' or 'immigration consultant', that could cause a customer to believe that the person possesses special professional skills or is authorized to provide advice on an immigration matter, provided that a certified notary public may use the term ' notary public' if the use is accompanied by the statement that the person is not an attorney. The term 'notary public' may not be translated into another language;

(4) provide legal advice, recommend a specific course of legal action, or provide any other assistance that requires legal analysis, legal judgment, or interpretation of the law; or

(5) make any misrepresentation or false statement, directly or indirectly, to influence, persuade, or induce patronage.

(I) Violations of this chapter may result in a civil penalty of up to one thousand dollars per violation and the revocation of the business license of the immigration assistance service. A fine charged pursuant to this chapter shall not preempt or preclude additional appropriate civil or criminal penalties to include disgorgement and restitution.

(J) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in any document prepared or executed as part of the provision of immigration assistance services in an immigration matter pursuant to this chapter, or anyone who aids or abets a person in knowingly and willfully making a false, fictitious, or fraudulent statement or representation in any document prepared or executed as part of the provision of immigration assistance services in an immigration matter pursuant to this chapter, or who solicits or conspires to make a false, fictitious, or fraudulent statement or representation in any document prepared or executed as part of the provision of immigration assistance services in an immigration matter pursuant to this chapter shall be guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both. In addition, a person convicted of this subsection must disgorge any benefit received or make restitution, or both, to the agency or political subdivision that administered the benefit or entitlement program. It is a separate violation of this subsection each time a person knowingly and willfully makes, aids, or abets in the making of, or solicits or conspires to make a false, fictitious, or fraudulent statement or representation in any document prepared or executed pursuant to this subsection. A criminal charge pursuant to this chapter shall not preempt or

preclude additional appropriate civil or criminal charges or penalties. A person who suffers any ascertainable loss of money or property, real or personal, as a result of a conviction or plea to a violation of this subsection may bring an action individually, or in a representative capacity, to recover actual damages from any person convicted of the violation of this subsection. If the court finds that a violation has been established, the court shall award three times the actual damages sustained and may provide such other relief as it considers necessary or proper. Upon the finding by the court of a violation, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs.

(K) Persons convicted of a violation of this subsection are jointly and severally liable for any loss suffered by any person or any agency or political subdivision of the State.

(L) The director shall promulgate regulations not inconsistent with this chapter for the implementation, administration, and enforcement of this chapter in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws.

(M) This chapter shall not apply to anyone employed by or working for an educational institution who is registered as a designated school official with the SEVIS program, or a successor program, operated by the United States Department of Homeland Security."

SECTION 14. Section 14-7-1630(A)(8) and (9) of the 1976 Code, as last amended by Act 82 of 2007, is further amended to read:

"(8) a crime involving obscenity including, but not limited to, a crime as provided in Article 3, Chapter 15, Title 16 or any attempt, aiding, abetting, solicitation, or conspiracy to commit a crime involving obscenity; ~~and~~

(9) <u>a crime involving the knowing and willful making of, aiding and abetting in the making of, or soliciting or conspiring to make a false, fictitious, or fraudulent statement or representation in an affidavit regarding an alien's lawful presence in the United States, as defined in Section 43-5-1410, if the number of violations exceeds twenty or if the public benefit received by a person from a violation or combination of violations exceeds twenty thousand dollars;</u>

<u>(10)</u> <u>a crime involving financial identity fraud or identity fraud involving the false, fictitious, or fraudulent creation or use of</u>

documents used in an immigration matter as defined in Section 16-13-525, if the number of violations exceeds twenty, or if the value of the ascertainable loss of money or property suffered by a person or persons from a violation or combination of violations exceeds twenty thousand dollars;

(11) a crime involving the knowing and willful making of, aiding or abetting in the making of, or soliciting or conspiring to make a false, fictitious, or fraudulent statement or representation in a document prepared or executed as part of the provision of immigration assistance services in an immigration matter, as defined in Section 40-91-40, if the number of violations exceeds twenty, or if a benefit received by a person from a violation or combination of violations exceeds twenty thousand dollars; and

(12) a knowing and willful crime involving actual and substantial harm to the water, ambient air, soil or land, or both soil and land. This crime includes a knowing and willful violation of the Pollution Control Act, the Atomic Energy and Radiation Control Act, the State Underground Petroleum Environmental Response Bank Act, the State Safe Drinking Water Act, the Hazardous Waste Management Act, the Infectious Waste Management Act, the Solid Waste Policy and Management Act, the Erosion and Sediment Control Act, the South Carolina Mining Act, and the Coastal Zone Management Act, or a knowing and willful crime arising out of or in connection with environmental laws, or any attempt, aiding, abetting, solicitation, or conspiracy to commit a knowing and willful crime involving the environment if the anticipated actual damages including, but not limited to, the cost of remediation, are two million dollars or more, as certified by an independent environmental engineer who must be contracted by the Department of Health and Environmental Control. If the knowing and willful crime is a violation of federal law, then a conviction or an acquittal pursuant to federal law for the same act is a bar to the impaneling of a state grand jury pursuant to this section."

SECTION 15. Article 6, Chapter 23, Title 16 of the 1976 Code is amended by adding:

"Section 16-23-530. (A) It is unlawful for an alien unlawfully present in the United States to possess, purchase, offer to purchase, sell, lease, rent, barter, exchange, or transport into this State a firearm.

(B) It is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State a firearm to a person knowing that such person is not lawfully present in the United States.

(C) A person violating the provisions of subsection (A) of this section is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

(D) A person violating the provisions of subsection (B) of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than three years, or both."

SECTION 16. Section 17-15-30 of the 1976 Code, as last amended by Act 106 of 2005, is further amended to read:

"Section 17-15-30. (A) In determining conditions of release that will reasonably assure appearance, or if release would constitute an unreasonable danger to the community, the court may, on the basis of available information, consider the nature and circumstances of the offense charged~~,~~ and the accused's:

(1) family ties~~,~~;

(2) employment~~,~~;

(3) financial resources~~,~~;

(4) character and mental condition~~,~~;

(5) ~~the~~ length of ~~his~~ residence in the community~~,~~;

(6) ~~his~~ record of convictions~~,~~; and

(7) ~~his~~ record of flight to avoid prosecution or failure to appear at other court proceedings.

(B) The court shall consider:

(1) the accused's criminal record~~, if any. The court shall consider, if available,~~;

(2) all incident reports generated as a result of the offense charged, if available; and

(3) whether the accused is an alien unlawfully present in the United States, and poses a substantial flight risk due to this status."

SECTION 17. Chapter 101, Title 59 of the 1976 Code is amended by adding:

"Section 59-101-430. (A) An alien unlawfully present in the United States is not eligible to attend a public institution of higher learning in this State, as defined in Section 59-103-5. The trustees

of a public institution of higher learning in this State shall develop and institute a process by which lawful presence in the United States is verified. In doing so, institution personnel shall not attempt to independently verify the immigration status of any alien, but shall verify any alien's immigration status with the federal government pursuant to 8 U.S.C. Section 1373(c).

(B) An alien unlawfully present in the United States is not eligible on the basis of residence for a public higher education benefit including, but not limited to, scholarships, financial aid, grants, or resident tuition."

SECTION 18. Chapter 1, Title 6 of the 1976 Code is amended by adding:

"Section 6-1-170. (A) For purposes of this section, 'political subdivision' includes, but is not limited to, a municipality, county, school district, special purpose district, or public service district.

(B) A political subdivision of this State may not enact any ordinance or policy that limits or prohibits a law enforcement officer, local official, or local government employee from seeking to enforce a state law with regard to immigration.

(C) A political subdivision of this State may not enact any ordinance or policy that limits or prohibits a law enforcement officer, local official, or local government employee from communicating to appropriate federal or state officials with regard to the immigration status of any person within this State.

(D) A city, county, municipality, or other local government or political subdivision may not enact 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 that exceeds or otherwise conflicts with federal law or that is in conflict with state law. An enactment found to be in conflict with federal or state law is void."

SECTION 19. Title 41 of the 1976 Code is amended by adding:

"CHAPTER 8

Illegal Aliens and Private Employment

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

(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.

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

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

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

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

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

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

(c) possess a valid driver's license or identification card from another state where the license requirements are at least as strict as those in South Carolina, as determined by the director. The Executive Director of the Department of Motor Vehicles, or his designee, shall determine which states have drivers 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.

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

(D) The Employment Security Commission must provide private employers with technical advice and electronic access to the E-Verify federal work authorization program's website for the sole purpose of registering and participating in the program.

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

(F) To assist private employers in understanding the requirements of this chapter, the director shall send written notice of the requirements of this section, to include a list of states with driver's license requirements at least as strict as those in South Carolina, to all South Carolina employers no later than January 1, 2009, and shall publish the information contained in the notice on its website. Nothing in this section shall create a legal requirement that any private employer receive actual notice of the requirements

of this chapter through written notice from the director, nor create any legal defense for failure to receive notice.

Section 41-8-30. A private employer shall not knowingly or intentionally employ an unauthorized alien.

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 subsection (B)(1) of Section 41-8-20 shall be presumed to have complied with the provisions of Section 41-8-20 and Section 41-8-30.

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

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

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

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

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

(C) The director must not bring an action for an occurrence involving a violation of Section 41-8-20 or Section 41-8-30 against a private employer of one hundred or more employees prior to July 1, 2009, or against a private employer of less than one hundred employees prior to July 1, 2010. The director must not bring an

action against a private employer for any employee who has been employed for five days or less at the time of the director's inspection or random audit. A second occurrence involving a violation of this section must be based only on an employee who is employed by the private employer after a first action has been brought for a violation of Section 41-8-20 or Section 41-8-30.

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

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

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

employer to engage in business and to employ an employee, if the private employer:

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

(ii) pays a reinstatement fee equal to the cost of investigating and enforcing the matter, provided that the reinstatement fee must not exceed one thousand dollars.

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

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

(ii) pays a reinstatement fee equal to the cost of investigating and enforcing the matter, provided that the reinstatement fee must not exceed one thousand dollars.

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

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

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

(iii) pays a reinstatement fee equal to the cost of investigating and enforcing the matter, provided that the reinstatement fee must not exceed one thousand dollars.

For all other occurrences where a private employer's license is revoked, the private employer may not seek reinstatement of his license for a period of five years. After five years, the director may grant reinstatement of a private employer's license if the private employer:

(i) agrees to be on probation for a period of three years, during which time the private employer must submit quarterly

reports to the director demonstrating compliance with the provisions of Sections 41-8-20 and 41-8-30;

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

(iii) pays a reinstatement fee equal to the cost of investigating and adjudicating the matter, provided that the reinstatement fee must not exceed one thousand dollars.

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

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

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

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

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

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

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

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

(6) the duration of the violation.

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

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

(I) If a private employer continues to engage in business after his license has been revoked pursuant to this chapter, the director

must seek an injunction from the court to enjoin the private employer from continuing to operate his business for which his license was revoked or from employing new employees.

Section 41-8-60. (A) In each case where a civil penalty assessed by the director pursuant to Section 41-8-50(D)(1) is not paid within sixty days, the director 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 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 41-8-70. In addition to other penalties provided for by law, a person who knowingly makes or files any false, fictitious, or fraudulent document, statement, or report pursuant to this chapter is guilty of a felony and, upon conviction, must be fined within the discretion of the court or imprisoned for not more than five years, or both.

Section 41-8-80. A local government must not enact an ordinance or policy that limits or prohibits a law enforcement officer, local official, or local government employee from seeking to enforce the provisions of this chapter.

Section 41-8-90. The provisions of this chapter are enforceable without regard to race, religion, gender, ethnicity, or national origin.

Section 41-8-100. Nothing in this chapter shall be construed to abrogate a private employer's obligation to comply with federal immigration law, including the proper completing and maintaining of federal employment eligibility verification forms or documents.

Section 41-8-110. A private employer who terminates an employee to comply with the provisions of this chapter shall not be subject to a civil action for wrongful termination of the employee under Section 41-1-30 or as otherwise provided for by law.

Section 41-8-120. (A) The director shall promulgate regulations in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws to establish a procedure for administrative review of any revocation, civil penalty, or other disciplinary action assessed against a private employer or his South Carolina employment license pursuant to this chapter.

(B) The director shall develop a statewide random auditing program to inspect private employers for compliance with the provisions of this chapter, and shall promulgate regulations in accordance with the provisions of Chapter 23 of Title 1 of the South Carolina Code of Laws governing the implementation of the audit program.

Section 41-8-130. The director, his inspectors, agents, or designees, upon proper presentation of credentials to the owner, manager, or agent of the employer, may enter at reasonable times and have the right to question either publicly or privately any employer, owner, manager, or agent and the employees of the private employer and inspect, investigate, reproduce, or photograph original business records relevant to determining compliance with the provisions of this chapter.

Section 41-8-140. All amounts collected pursuant to this chapter shall be retained by the director and must be used to fund the costs of implementing and enforcing the provisions of this chapter."

SECTION 20. If any subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, or word of Section 19 is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of the Section, the General Assembly hereby declaring that it would have passed this act, and each and every subsection, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 21. If any section, subsection, item, subitem, 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, item, subitem, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, items, subitems, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 23. This act takes effect upon approval by the Governor.

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