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CHAPTER 8.

 ILLEGAL ALIENS AND PRIVATE EMPLOYMENT

**SECTION 41‑8‑10.** Definitions.

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.** South Carolina employment licenses; completion and maintenance of federal employment eligibility verification forms; compliance assistance.

(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 driver’s license requirements that are at least as strict as those in South Carolina, and shall develop and periodically update a list of the states. The Department of Motor Vehicles shall provide the director with a copy of the list and all updates to the list. The director shall publish the list on the Department of Labor, Licensing and Regulation’s website.

(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.** Employment of unauthorized alien.

A private employer shall not knowingly or intentionally employ an unauthorized alien.

**SECTION 41‑8‑40.** Presumption of compliance.

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.** Violations; investigations; suspension and revocation of license.

(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 USC Section 1373(c). A state, county, or local official must not attempt to independently determine if an alien is authorized to work in the United States.

(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 USC Section 1373(c) and notify the private employer of the results. The private employer must immediately terminate an employee whose work authorization was not verified upon being notified by the director. The director shall notify federal, state, and local law enforcement officials of any suspected unlawful aliens employed by the private employer, pursuant to subsections (A) and (B) of this section.

(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.** Commencement of action to collect civil penalty; review of assessment.

(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.** Filing false or fraudulent documents; penalty.

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.** Local ordinances limiting enforcement of chapter.

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.** Equal enforcement of chapter.

The provisions of this chapter are enforceable without regard to race, religion, gender, ethnicity, or national origin.

**SECTION 41‑8‑100.** Compliance with federal immigration requirements.

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.** Exemption from civil action for wrongful termination.

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.** Promulgation of regulations; statewide random auditing program.

(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.** Right of entry and inspection by inspectors.

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.** Retention and use of funds collected.

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.