~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 9, 2011

**S. 20**

Introduced by Senators Grooms, McConnell, Thomas, Alexander, Leatherman, Knotts, Bryant, Hayes, Rose, Verdin, S. Martin, Peeler, L. Martin, Fair, Ryberg, Cromer, Campsen, Davis, Shoopman and Rankin

S. Printed 2/9/11--S.

Read the first time January 11, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 20) to amend Chapter 1, Title 23 of the 1976 Code, by adding Section 23‑1‑250 to provide that where a law enforcement officer has reasonable suspicion that a, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, by striking all after the enacting words and inserting the following:

/ SECTION 1. Section 6-1-170 of the 1976 Code is amended by adding subsection (E) to read:

“(E) Notwithstanding any other provision of law, a resident of a political subdivision in this State may bring a civil action in the circuit court in which the resident and political subdivision are located to enjoin any enactment, action, policy, or practice intentionally taken by the political subdivision in violation of this section. A person who is not a resident of the political subdivision may not bring an action against the political subdivision pursuant to this subsection. If the court finds that the political subdivision has intentionally violated this section, the court shall enjoin the enactment, action, policy, or practice, and may enter a judgment against the political subdivision of not less than one thousand dollars nor more than five thousand dollars for each day that the enactment, action, policy, or practice remains or remained in effect. The proceeds from any such judgment must be used to reimburse the resident’s reasonable attorney fees. Any remaining proceeds must be used to cover the administrative costs of implementing, investigating, and enforcing the provisions of Chapter 8, Title 41, of the South Carolina Code of Laws.”

SECTION 2. Section 8-14-20(B) of the 1976 Code is amended to read:

“(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 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 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; or

(d) possess a valid United States passport or valid United States military identification card.”

SECTION 3. Section 16-9-460 of the 1976 Code is amended to read:

“Section 16-9-460. (A) It is a felony for a person who has come to, entered, or remained in the United States in violation of law to allow themselves to be transported, moved, or attempted to be transported within the State or to solicit or conspire to be transported or moved within the State with intent to further the person’s unlawful entry into the United States or avoiding apprehension or detection of the person’s unlawful immigration status by state or federal authorities.

~~(A)~~(B) It is a felony for a person knowingly or in reckless disregard of the fact that another person has come to, entered, or remained in the United States in violation of law to transport, move, or attempt to transport that person within the State or to solicit or conspire to transport or move that person within the State with intent to further that person’s unlawful entry into the United States or avoiding apprehension or detection of that person’s unlawful immigration status by state or federal authorities.

(C) It is a felony for a person who has come to, entered, or remained in the United States in violation of law to conceal, harbor, or shelter themselves from detection or to solicit or conspire to conceal, harbor, or shelter themselves from detection in any place, including a building or means of transportation, with intent to further that person’s unlawful entry into the United States or avoiding apprehension or detection of the person’s unlawful immigration status by state or federal authorities.

~~(B)~~(D) It is a felony for a person knowingly or in reckless disregard of the fact that another person has come to, entered, or remained in the United States in violation of law to conceal, harbor, or shelter from detection or to solicit or conspire to conceal, harbor, or shelter from detection that person in any place, including a building or means of transportation, with intent to further that person’s unlawful entry into the United States or avoiding apprehension or detection of that person’s unlawful immigration status by state or federal authorities.

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

~~(E)~~(G) ~~Subsections (A) and (B) do~~ This section does not apply to programs, services, or assistance including soup kitchens, crisis counseling and intervention; churches or other religious institutions that are recognized as 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)~~(H) Providing health care treatment or services to a natural person who is in the United States unlawfully is not a violation of this section.”

SECTION 4. Chapter 17, Title 16 of the 1976 Code is amended by adding:

“Section 16-17-750. (A) It is unlawful for a person eighteen years of age or older to fail to carry in the person’s personal possession any certificate of alien registration or alien registration receipt card issued to the person pursuant to 8 U.S.C. Section 1304 while the person is in this State.

(B) A person who violates this section is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days, or both.”

SECTION 5. Chapter 13, Title 17 of the 1976 Code is amended by adding:

“Section 17‑13‑170. (A) If a law enforcement officer of this State or a political subdivision of this State lawfully stops, detains, investigates, or arrests a person for a criminal offense, and during the commission of the stop, detention, investigation, or arrest the officer has reasonable suspicion to believe that the person is unlawfully present in the United States, the officer shall make a reasonable effort, when practicable, to determine whether the person is lawfully present in the United States, unless the determination would hinder or obstruct an investigation.

(B)(1) If the person provides the law enforcement officer with a valid form of any of the following picture identifications, the person is presumed to be lawfully present in the United States:

(a) a driver’s license or picture identification issued by the South Carolina Department of Motor Vehicles;

(b) a driver’s license or picture identification issued by another state;

(c) a picture identification issued by the United States, including a passport or military identification; or

(d) a tribal picture identification.

(2) If the person cannot provide the law enforcement officer with any of the forms of picture identification listed in this subsection, the person may still be presumed to be lawfully present in the United States, if the officer is able to otherwise verify that the person has been issued any of the forms of picture identification.

(3) It is unlawful for a person to display, cause or permit to be displayed, or have in the person’s possession a false, fictitious, fraudulent, or counterfeit picture identification for the purpose of offering proof of the person’s lawful presence in the United States. A person who violates the provisions of this item:

(a) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned not more than thirty days; and

(b) for a second offense or subsequent offenses, is guilty of a felony and, upon conviction, must be fined not more than five hundred dollars or imprisoned not more than five years.

(4) If the person meets the presumption established pursuant to this subsection, the officer may not further stop, detain, or investigate the person based solely on the person’s lawful presence in the United States.

(C)(1) If the person does not meet the presumption established pursuant to subsection (B), the law enforcement officer shall verify the person’s lawful presence in the United States with United States Immigration and Customs Enforcement.

(2) If United States Immigration and Customs Enforcement verifies that the person is lawfully present in the United States, the officer may not further stop, detain, or investigate the person based solely on the person’s lawful presence in the United States.

(3) If United States immigration and Customs Enforcement determines that the person is unlawfully present in the United States, the officer shall determine in cooperation with United States Immigration and Customs Enforcement whether the officer shall retain custody of the person or whether United States Immigration and Customs Enforcement shall assume custody of the person. The officer may securely transport the person to a federal facility in this State or to any other point of transfer into federal custody that is outside of the officer’s jurisdiction. The officer shall obtain judicial authorization before securely transporting a person to a point of transfer that is outside of this State.

(4) If, after making a reasonable attempt, the officer is unable to contact United States Immigration and Customs Enforcement to determine if the person is lawfully present in the United States, the officer may not further stop, detain, or investigate the person based solely on the person’s lawful presence in the United States. The officer shall stop, detain, or investigate the person only for a reasonable time as allowed by law.

(D) A law enforcement officer may not attempt to make an independent judgment of a person’s lawful presence in the United States. A law enforcement officer may not consider race, color, or national origin in implementing this section, except to the extent permitted by the United States or South Carolina Constitution. This section must be implemented in a manner that is consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens.

(E) Except as provided by federal law, officers and agencies of this State and political subdivisions of this State may not be prohibited or restricted from sending, receiving, or maintaining information related to the immigration status of any person or exchanging that information with other federal, state, or local government entities for the following purposes:

(1) determining eligibility for any public benefit, service, or license provided by the federal government, this State, or a political subdivision of this State;

(2) verifying any claim of residence or domicile, if determination of residence or domicile is required under the laws of this State or a judicial order issued pursuant to a civil or criminal proceeding in this State;

(3) determining whether an alien is in compliance with the federal registration laws prescribed by Chapter 7, Title II of the federal Immigration and Nationality Act; or

(4) pursuant to 8 U.S.C. Section 1373 and 8 U.S.C. Section 1644.

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

(G) No official, agency, or political subdivision of this State may limit or restrict the enforcement of this section or federal immigration laws.

(H) This section does not implement, authorize, or establish, and shall not be construed to implement, authorize, or establish the federal Real ID Act of 2005.”

SECTION 6. Section 23-3-1100 of the 1976 Code is amended to read:

“Section 23-3-1100. (A) If a person is charged with a criminal offense and is confined for any period in a jail of the State, county, or municipality, or a jail operated by a regional jail authority, a reasonable effort shall be made to determine whether the confined person is an alien unlawfully present in the United States.

(B) If the prisoner is an alien, the keeper of the jail or other officer must make a reasonable effort to verify whether the prisoner has been lawfully admitted to the United States or if the prisoner is unlawfully present in the United States. Verification must be made within seventy‑two hours through a query to the Law Enforcement Support Center (LESC) of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security. If the prisoner is determined to be an alien unlawfully present in the United States, the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

(C) Upon notification to the United States Department of Homeland Security pursuant to subsection (B), the keeper of the jail must account for daily expenses incurred for the housing, maintenance, transportation, and care of the prisoner who is an alien unlawfully present in the United States and must forward an invoice to the Department of Homeland Security for these expenses.

(D) The keeper of the jail or other officer may securely transport the prisoner who is an alien unlawfully present in the United States to a federal facility in this State or to any other point of transfer into federal custody that is outside of the keeper of the jail or other officer’s jurisdiction. The keeper of the jail or other officer shall obtain judicial authorization before securely transporting a prisoner who is unlawfully present in the United States to a point of transfer that is outside of this State.

(E) If a prisoner who is an alien unlawfully present in the United States completes the prisoner’s sentence of incarceration, the keeper of the jail or other officer shall notify the United States Department of Homeland Security and shall securely transport the prisoner to a federal facility in this State or to any other point of transfer into federal custody that is outside of the keeper of the jail or other officer’s jurisdiction. The keeper of the jail or other officer shall obtain judicial authorization before securely transporting a prisoner who is unlawfully present in the United States to a point of transfer that is outside of this State.

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

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

~~(F)~~(H) In enforcing the terms of this section, no state officer shall attempt to make an independent judgment of an alien’s immigration status. State officials must verify an alien’s status with the federal government in accordance with 8 USC Section 1373(c).”

SECTION 7. Section 41-8-20 of the 1976 Code is amended to read:

“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~~ 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~~ 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~~ three 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; or

(d) possess a valid United States passport or valid United States military identification card.

~~(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)~~(C) 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)~~(D) 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~~ three 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)~~(E) To assist private employers in understanding the requirements of this chapter, the director shall send written notice of the requirements of this section, to 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.

(F) If a private employer is a contractor, the private employer shall maintain the contact phone numbers of all subcontractors and sub-subcontractors performing services for the private employer. The private employer shall provide the contact phone numbers or a contact phone number, as applicable, to the director pursuant to an audit or investigation within seventy-two hours of the director’s request.”

SECTION 8. Section 41-8-50 of the 1976 Code is amended to read:

“Section 41-8-50. (A) Upon receipt of a written and signed complaint against a private employer, or upon an investigation initiated by the director for good cause, if the director finds reasonable grounds exist that a private employer 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 reasonable 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~~ three 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 reasonable 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 reasonable civil penalty by the director of not more than one thousand dollars for each violation, 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 reasonable civil penalty of not more than one thousand dollars for ~~any~~ each 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 reasonable 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;

(7) the degree of the violation; and

(8) the good faith of the private employer.

(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. The director shall remove a private employer from the list who has been assessed only a civil penalty pursuant to this chapter one year after the private employer’s name has been published, if the private employer has not been assessed a subsequent civil penalty, or had their license disciplined, or revoked, within the one year period.”

SECTION 9. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 10. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 11. This act takes effect on September 1, 2011, or sixty days after approval by the Governor, whichever is later. /

Renumber sections to conform.

Amend title to conform.

LARRY A. MARTIN for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

A Cost to the General Fund (See Below)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

A Cost of Federal and/or Other Funds (See Below)

**EXPLANATION OF IMPACT:**

Department of Corrections (SDDC)

The department indicates that Sections 4 and 6 of the bill will potentially have an impact on the agency, but cannot provide an accurate estimate of the impact on the department’s inmate population. SCDC has procedures in place to work with U.S. Immigration and Customs Enforcement (ICE) to verify immigration status. In FY 2009-10 154 inmates were transferred to the custody of ICE upon release from incarceration at the department. During that year 209 ICE detainers were placed on new admissions. The daily cost of incarceration at SCDC is approximately $40 (State Funds only). The department notes that in 2008 there were approximately 70,000 unauthorized immigrants in South Carolina

Other Agencies

The Judicial Department, the Department of Labor, Licensing and Regulation, Department of Public Safety, Commission on Indigent Defense, Prosecution Coordination Commission and the Law Enforcement Training Council each indicate enactment of this bill will have little or no impact on these agencies. The Department of Public Safety assumes it would not be responsible to transporting these individuals to a federal facility. The State Law Enforcement Division does not anticipate any direct impact to the agency.

**LOCAL GOVERNMENT IMPACT:**

Law Enforcement entities may seek to enter into a Memorandum of Agreement (MOA) with the federal government for 287(g) certification and enforcement. The MOAs can vary between local law enforcement entities and these MOAs specify which costs the federal government will cover. Four county governments in this state currently have 287(g) MOAs with ICE. Under MOAs that allow for a jail based program on the part of the local law enforcement office the federal government covers the cost of training, provides support and reimburses the entity for some or all incarceration expenses. The jail facilities must meet federal standards. Three state county governments are jail based programs while another is certified by ICE for Task Force responsibilities only (no reimbursement for jail expenses).

Local entities would likely incur some cost associated with overtime while officers are being trained for 287(g) certification. One local government estimated overtime cost it would have to cover at $2,400 if four of its officers received training.

The estimated cost of incarceration at a local jail facility is estimated at $55 per day per inmate for all direct and indirect cost. Marginal costs are estimated at less than $15 per day. Local governments that are unable to develop an MOA with ICE could incur costs associated with detention until the individual could be transported to a federal facility. In these cases, law enforcement entities would incur transportation expenses. One entity that has an MOA with ICE estimates the cost of transporting individuals to a federal facility at $8,000 annually (an expense not reimbursable under this entity’s MOA with ICE).

The net impact on local governments would depend on how many potential illegal immigrants are detained, the amount of time these individuals are detained until transported to a federal facility, and the specific type of MOA each local could potentially develop with ICE. All four county governments with existing ICE MOAs indicate this bill would likely create a new set of detainees, but could not estimate the number, and were unsure if costs associated with these individuals would qualify for federal reimbursement. In addition, these counties indicated it takes more than a year to obtain training and to put a complete ICE certified 287(g) program in place.

*Approved By:*

Harry Bell

Office of State Budget

**A** **BILL**

TO AMEND CHAPTER 1, TITLE 23 OF THE 1976 CODE, BY ADDING SECTION 23‑1‑250 TO PROVIDE THAT WHERE A LAW ENFORCEMENT OFFICER HAS REASONABLE SUSPICION THAT A PERSON STOPPED, DETAINED, OR ARRESTED BY LAW ENFORCEMENT IS AN ALIEN UNLAWFULLY IN THE UNITED STATES, THE OFFICER OR HIS AGENCY MUST FOLLOW CERTAIN PROCEDURES TO VERIFY HIS IMMIGRATION STATUS; AND TO AMEND ARTICLE 5, CHAPTER 9, TITLE 16, BY ADDING SECTION 16‑9‑480 TO PROVIDE THAT IT IS UNLAWFUL FOR A PERSON UNLAWFULLY IN THE UNITED STATES TO SOLICIT OR ATTEMPT TO SOLICIT WORK, AND TO PROVIDE PROCEDURES FOR VERIFYING IMMIGRATION STATUS.

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

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

“Section 23‑1‑250. (A) No official or agency of this State or any political subdivision of this State may limit or restrict the enforcement of federal immigration laws.

(B) In the implementation of this section, an alien’s immigration status may be determined by:

(1) a law enforcement officer who is authorized by the federal government to verify or ascertain an alien’s immigration status; or

(2) the United States Immigration and Customs Enforcement or the United State Customs and Border Protection, pursuant to 8 USC 1373(c).

(C) If during the commission of a lawful stop, detention, or arrest by a law enforcement officer or agency of this State or political subdivision of this State, where reasonable suspicion exists that a person stopped, detained, or arrested is an alien and unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, unless the determination may hinder or obstruct an investigation. The person’s immigration status shall be verified with the federal government pursuant to 8 USC 1373(c).

A law enforcement officer or agency of this State or any political subdivision of this State may not consider race, color, or national origin in implementing the requirements of this section, except to the extent permitted by the United States or South Carolina Constitution.

A person is presumed to not be an alien unlawfully present in the United States if the person provides to the law enforcement officer or agency any of the following:

(1) a valid South Carolina driver’s license;

(2) a valid South Carolina Department of Motor Vehicles identification card;

(3) a valid tribal enrollment card or other form of tribal identification; or

(4) any valid United States federal, state, or local government issued identification.

(D) If an alien unlawfully present in the United States is convicted of a violation of state or local law, on discharge from imprisonment or on the assessment of any monetary obligation that is imposed, the United States Immigration and Customs Enforcement or the United States Customs and Border Protection shall be immediately notified.

(E) Notwithstanding any other law, a law enforcement agency may securely transport an alien to a federal facility in this State or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency if the agency has received verification the alien is unlawfully present in the United States. A law enforcement agency shall obtain judicial authorization before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside of this State.

(F) Except as provided by federal law, officers and agencies of this State and any political subdivision of this State may not be prohibited or restricted from sending, receiving, or maintaining information relating to the immigration status of any individual or exchanging that information with any other federal, state, or local government entity for the following purposes:

(1) determining eligibility for any public benefit, service, or license provided by any federal, state, local, or other political subdivision of this State;

(2) verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this State or a judicial order issued pursuant to a civil or criminal proceeding in this State;

(3) determining whether an alien is in compliance with the federal registration laws prescribed by Chapter 7, Title II of the federal Immigration and Nationality Act; or

(4) pursuant to 8 USC 1373 and 8 USC 1644.

(G) This section does not implement, authorize, or establish and shall not be construed to implement, authorize, or establish the federal Real ID Act of 2005, including the use of a radio frequency identification chip.

(H) This law shall be implemented in a manner that is consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.”

SECTION 2. Article 5, Chapter 9, Title 16 of the 1976 Code is amended by adding:

“Section 16‑9‑480. (A) For the purposes of this section, the term:

(1) ‘Solicit’ means verbal or nonverbal communication by a gesture or a nod that would indicate to a reasonable person that a person is willing to be employed.

(2) ‘Unauthorized alien’ means an alien who does not have the legal right or authorization pursuant to federal law to work in the United States as described in 8 U.S.C. 1324(a)(h)(3).

(B) An alien’s immigration status may be determined by:

(1) a law enforcement officer who is authorized by the federal government to verify or ascertain an alien’s immigration status; or

(2) the United States Immigration and Customs Enforcement or the United States Customs and Border Protection pursuant to 8 USC 1373(c).

(C) It is unlawful for a person who is unlawfully present in the United States and who is an unauthorized alien to knowingly apply for work, solicit work in a public place, or perform work as an employee or independent contractor.”

SECTION 3. This act takes effect upon approval by the Governor.

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