

**South Carolina General Assembly**  
117th Session, 2007-2008

**S. 1336**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Ritchie, Campsen and McConnell

Document Path: I:\s-jud\bills\ritchie\jud0483.spl.doc

Companion/Similar bill(s): 392, 3026, 3027, 3037, 3068, 3141

Introduced in the Senate on April 29, 2008

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

Summary: Illegal Immigration Reform Act

**HISTORY OF LEGISLATIVE ACTIONS**

<u>Date</u>	<u>Body</u>	<u>Action Description with journal page number</u>
4/29/2008	Senate	Introduced and read first time
4/29/2008	Senate	Referred to Committee on <b>Judiciary</b>
5/6/2008	Senate	Referred to Subcommittee: Ritchie (ch), Sheheen, Campsen, Scott, Williams, Vaughn

**VERSIONS OF THIS BILL**

[4/29/2008](#)

1  
2  
3  
4  
5  
6  
7  
8  
9

**A BILL**

10

11 TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA,  
12 1976, BY ADDING CHAPTER 14 TO TITLE 8, RELATING TO  
13 ILLEGAL ALIENS AND PUBLIC EMPLOYMENT, SO AS TO  
14 ENACT THE “SOUTH CAROLINA ILLEGAL IMMIGRATION  
15 REFORM ACT”, TO REQUIRE THAT EVERY PUBLIC  
16 EMPLOYER PARTICIPATE IN THE FEDERAL WORK  
17 AUTHORIZATION PROGRAM TO VERIFY ALL NEW  
18 EMPLOYEES, TO REQUIRE CONTRACTORS OR  
19 SUBCONTRACTORS WHO CONTRACT WITH PUBLIC  
20 EMPLOYERS FOR THE PHYSICAL PERFORMANCE OF  
21 SERVICES TO REGISTER AND PARTICIPATE IN THE  
22 FEDERAL WORK AUTHORIZATION PROGRAM, TO  
23 DEFINE TERMS, TO ESTABLISH DEADLINES TO COMPLY  
24 FOR PUBLIC EMPLOYERS, CONTRACTORS, AND  
25 SUBCONTRACTORS, TO REQUIRE THAT THE PROVISIONS  
26 OF THE CHAPTER ARE ENFORCEABLE WITHOUT  
27 REGARD TO RACE, RELIGION, GENDER, ETHNICITY, OR  
28 NATIONAL ORIGIN, AND TO AUTHORIZE THE DIRECTOR  
29 OF THE STATE BUDGET AND CONTROL BOARD TO  
30 PRESCRIBE FORMS AND PROMULGATE RULES  
31 NECESSARY TO ADMINISTER THE ACT AND PUBLISH  
32 THE RULES AND REGULATIONS ON THE BOARD’S  
33 WEBSITE; TO AMEND TITLE 8 BY ADDING CHAPTER 28,  
34 RELATING TO ENFORCEMENT OF FEDERAL  
35 IMMIGRATION AND CUSTOMS LAWS, SO AS TO  
36 AUTHORIZE THE CHIEF OF THE SOUTH CAROLINA LAW  
37 ENFORCEMENT DIVISION TO NEGOTIATE THE TERMS OF  
38 A MEMORANDUM OF UNDERSTANDING BETWEEN THE  
39 STATE AND THE FEDERAL GOVERNMENT CONCERNING  
40 THE ENFORCEMENT OF FEDERAL IMMIGRATION AND  
41 CUSTOMS LAWS, DETENTION AND REMOVALS, AND  
42 INVESTIGATIONS IN THE STATE, TO AUTHORIZE THE

1 CHIEF OF THE SOUTH CAROLINA LAW ENFORCEMENT  
2 DIVISION TO DESIGNATE APPROPRIATE LAW  
3 ENFORCEMENT OFFICERS TO BE TRAINED PURSUANT  
4 TO THE MEMORANDUM OF UNDERSTANDING, TO  
5 STIPULATE THAT NO TRAINING SHALL TAKE PLACE  
6 UNTIL FUNDING IS SECURED, TO PERMIT THE DIRECTOR  
7 OF THE DEPARTMENT OF CORRECTIONS, ANY COUNTY  
8 SHERIFF, OR THE GOVERNING BODY OF ANY  
9 MUNICIPALITY THAT MAINTAINS A POLICE FORCE TO  
10 ENTER INTO THE MEMORANDUM AS A PARTY AND  
11 PROVIDE OFFICERS TO BE TRAINED, AND TO PROVIDE  
12 THAT AN OFFICER CERTIFIED AS TRAINED IN  
13 ACCORDANCE WITH THE MEMORANDUM IS  
14 AUTHORIZED TO ENFORCE FEDERAL IMMIGRATION  
15 AND CUSTOMS LAWS WHILE PERFORMING WITHIN THE  
16 SCOPE OF HIS OR HER DUTIES; TO AMEND TITLE 8, BY  
17 ADDING CHAPTER 29, RELATING TO VERIFICATION OF A  
18 PERSON'S LAWFUL PRESENCE IN THE UNITED STATES,  
19 SO AS TO REQUIRE THAT EVERY AGENCY OR POLITICAL  
20 SUBDIVISION OF THIS STATE VERIFY THE LAWFUL  
21 PRESENCE IN THE UNITED STATES OF ANY NATURAL  
22 PERSON EIGHTEEN OR OLDER WHO HAS APPLIED FOR  
23 STATE OR LOCAL PUBLIC BENEFITS, AS DEFINED BY  
24 FEDERAL LAW, THAT ARE ADMINISTERED BY AN  
25 AGENCY OR POLITICAL SUBDIVISION OF THIS STATE,  
26 TO REQUIRE ENFORCEMENT OF THIS PROVISION  
27 WITHOUT REGARD TO RACE, RELIGION, GENDER,  
28 ETHNICITY, OR NATIONAL ORIGIN, TO PROVIDE  
29 EXCEPTIONS FOR VERIFICATION OF A PERSON'S  
30 LAWFUL PRESENCE IN THE UNITED STATES, TO  
31 PROVIDE A PROCEDURE FOR A PERSON TO VERIFY HIS  
32 OR HER LAWFUL PRESENCE IN THE UNITED STATES,  
33 INCLUDING EXECUTING AN AFFIDAVIT THAT THE  
34 PERSON IS A UNITED STATES CITIZEN OR LEGAL  
35 PERMANENT RESIDENT OR A QUALIFIED ALIEN OR  
36 NONIMMIGRANT UNDER THE IMMIGRATION AND  
37 NATURALIZATION ACT, TO REQUIRE THAT ELIGIBILITY  
38 FOR BENEFITS SHALL BE MADE THROUGH THE  
39 FEDERAL SYSTEMATIC ALIEN VERIFICATION OF  
40 ENTITLEMENT PROGRAM MAINTAINED BY THE  
41 DEPARTMENT OF HOMELAND SECURITY, TO MANDATE  
42 THAT A PERSON WHO KNOWINGLY AND WILLFULLY  
43 MAKES A FALSE, FICTITIOUS, OR FRAUDULENT

1 STATEMENT OR REPRESENTATION IN AN AFFIDAVIT  
2 EXECUTED PURSUANT TO THIS SECTION, OR WHO AIDS  
3 OR ABETS A PERSON IN KNOWINGLY AND WILLFULLY  
4 MAKING A FALSE, FICTITIOUS, OR FRAUDULENT  
5 STATEMENT OR REPRESENTATION IN AN AFFIDAVIT  
6 SHALL BE GUILTY OF A FELONY AND, UPON  
7 CONVICTION, SHALL BE FINED OR IMPRISONED NOT  
8 MORE THAN FIVE YEARS, OR BOTH, AND MUST  
9 DISGORGE ANY BENEFIT RECEIVED AND MAKE  
10 RESTITUTION TO THE AGENCY WHO ADMINISTERED  
11 THE BENEFIT OR ENTITLEMENT, TO REQUIRE THAT IF  
12 THE AFFIDAVIT CONSTITUTES A FALSE CLAIM OF  
13 UNITED STATES CITIZENSHIP, THE STATE SHALL FILE A  
14 COMPLAINT WITH THE UNITED STATES ATTORNEY'S  
15 OFFICE, TO PROVIDE THAT AGENCIES OR POLITICAL  
16 SUBDIVISIONS MAY ADOPT VARIATIONS OF THE  
17 REQUIREMENTS OF THIS SECTION TO REDUCE DELAY  
18 AND IMPROVE EFFICIENCY, TO PROVIDE THAT IT SHALL  
19 BE UNLAWFUL FOR ANY STATE AGENCY OR POLITICAL  
20 SUBDIVISION TO PROVIDE BENEFITS IN VIOLATION OF  
21 THIS SECTION, AND TO REQUIRE THAT ALL ERRORS  
22 AND DELAYS EXPERIENCED BY AGENCIES OR  
23 POLITICAL SUBDIVISIONS IN THE SYSTEMATIC ALIEN  
24 VERIFICATION OF ENTITLEMENT PROGRAM BE  
25 REPORTED TO THE DEPARTMENT OF HOMELAND  
26 SECURITY; TO ADD SECTION 12-6-1175, SO AS TO  
27 PROHIBIT ANY WAGES OR REMUNERATION FOR LABOR  
28 SERVICES PAID TO AN INDIVIDUAL OF SIX HUNDRED  
29 DOLLARS OR MORE PER YEAR FROM BEING CLAIMED  
30 AS A DEDUCTIBLE BUSINESS EXPENSE FOR STATE  
31 INCOME TAX PURPOSES UNLESS THE INDIVIDUAL IS AN  
32 AUTHORIZED EMPLOYEE, TO PROVIDE FOR  
33 EXEMPTIONS, TO REQUIRE THE DIRECTOR OF THE  
34 DEPARTMENT OF REVENUE TO PRESCRIBE FORMS AND  
35 PROMULGATE REGULATIONS TO EFFECTUATE THIS  
36 SECTION, AND TO REQUIRE THE EXECUTIVE DIRECTOR  
37 OF THE SOUTH CAROLINA EMPLOYMENT SECURITIES  
38 COMMISSION TO SEND WRITTEN NOTICE OF THIS  
39 PROVISION TO ALL EMPLOYERS IN THIS STATE; TO ADD  
40 SECTION 12-8-595, SO AS TO REQUIRE TAX  
41 WITHHOLDING AGENTS FOR EMPLOYERS TO  
42 WITHHOLD STATE INCOME TAX AT THE RATE OF SIX  
43 PERCENT OF THE AMOUNT OF COMPENSATION PAID TO

1 AN INDIVIDUAL IF THE INDIVIDUAL HAS FAILED TO  
2 PROVIDE A TAXPAYER IDENTIFICATION NUMBER,  
3 FAILED TO PROVIDE A CORRECT TAXPAYER  
4 IDENTIFICATION NUMBER, OR PROVIDED A TAXPAYER  
5 IDENTIFICATION NUMBER ISSUED FOR NONRESIDENTS,  
6 TO PROVIDE THAT WITHHOLDING AGENTS WHO FAIL  
7 TO FOLLOW THE PROVISIONS OF THIS SECTION ARE  
8 LIABLE FOR THE TAX, TO PROVIDE EXCEPTIONS FROM  
9 LIABILITY FOR WITHHOLDING AGENTS IF THE  
10 EMPLOYEE PROVIDES A FACIALLY CORRECT  
11 TAXPAYER IDENTIFICATION NUMBER THAT THE  
12 WITHHOLDING AGENT DOES NOT KNOW WAS FALSE OR  
13 INCORRECT, AND TO REQUIRE THE EXECUTIVE  
14 DIRECTOR OF THE SOUTH CAROLINA EMPLOYMENT  
15 SECURITY COMMISSION TO SEND NOTICE OF THIS  
16 PROVISION TO ALL EMPLOYERS; TO ADD SECTION 16-9-  
17 460, TO PROVIDE THAT IT IS A FELONY FOR ANY  
18 PERSON TO TRANSPORT, MOVE, OR ATTEMPT TO  
19 TRANSPORT WITHIN THE STATE ANY PERSON  
20 KNOWINGLY OR IN RECKLESS DISREGARD TO THE  
21 FACT THAT THE PERSON HAS COME TO, ENTERED INTO,  
22 OR REMAINED IN THE UNITED STATES IN VIOLATION OF  
23 THE LAW, IN FURTHERANCE OF THE PERSON'S ILLEGAL  
24 PRESENCE IN THE UNITED STATES, OR TO CONCEAL,  
25 HARBOR, OR SHELTER FROM DETECTION A PERSON  
26 ILLEGALLY IN THE UNITED STATES IN FURTHERANCE  
27 OF THE PERSON'S ILLEGAL PRESENCE IN THE UNITED  
28 STATES, TO PROVIDE FOR PENALTIES IF A PERSON IS  
29 CONVICTED, AND TO PROHIBIT ANY PERSON  
30 CONVICTED FROM OBTAINING A PROFESSIONAL  
31 LICENSE IN SOUTH CAROLINA; TO ADD SECTION 16-9-  
32 460, SO AS SO MAKE IT A FELONY TO TRANSPORT,  
33 MOVE, OR ATTEMPT TO TRANSPORT WITHIN THE STATE,  
34 ANY PERSON KNOWINGLY OR IN RECKLESS DISREGARD  
35 FOR THE FACT THAT THE PERSON IS NOT LEGALLY  
36 PRESENT IN THE UNITED STATES, OR TO CONCEAL,  
37 HARBOR, OR SHELTER FROM DETECTION ANY PERSON  
38 IN ANY PLACE KNOWINGLY OR IN RECKLESS  
39 DISREGARD OF THE FACT THAT THE PERSON IS NOT  
40 LEGALLY PRESENT IN THE UNITED STATES, AND TO  
41 PROVIDE PENALTIES FOR A CONVICTION FOR SUCH  
42 CRIME; TO ADD SECTION 23-3-1100, SO AS TO REQUIRE  
43 THAT ALL JAILS OF THIS STATE OR ITS COUNTIES OR

1 MUNICIPALITIES MUST MAKE A REASONABLE EFFORT  
2 TO DETERMINE WHETHER ANY PERSON CHARGED WITH  
3 A FELONY OR DRIVING UNDER THE INFLUENCE IS  
4 LAWFULLY PRESENT IN THE UNITED STATES, TO MAKE  
5 SUCH VERIFICATION WITHIN 72 HOURS OF  
6 CONFINEMENT, TO NOTIFY THE DEPARTMENT OF  
7 HOMELAND SECURITY IF A PERSON IS NOT LAWFULLY  
8 IN THE UNITED STATES, AND TO REQUIRE THE STATE  
9 LAW ENFORCEMENT DIVISION TO PROMULGATE  
10 REGULATIONS TO COMPLY WITH THE PROVISIONS OF  
11 THIS SECTION; TO ADD SECTION 39-5-37, SO AS TO  
12 PROVIDE A CIVIL CAUSE OF ACTION TO ANY PERSON  
13 WHO IS TERMINATED BY AN EMPLOYER IF THE  
14 PURPOSE FOR DISCHARGE WAS TO REPLACE THE  
15 WORKER WITH ANOTHER PERSON WHO THE EMPLOYER  
16 KNEW OR SHOULD HAVE KNOWN WAS NOT LAWFULLY  
17 ADMITTED TO THE UNITED STATES, OR NOT  
18 AUTHORIZED TO WORK IN THE UNITED STATES, AND  
19 TO PROVIDE AN EXEMPTION FOR ANY EMPLOYER WHO  
20 CONFIRMS A WORKER'S STATUS THROUGH THE  
21 FEDERAL WORK AUTHORIZATION PROGRAM; AND TO  
22 AMEND TITLE 40, BY ADDING CHAPTER 83, RELATING  
23 TO REGISTRATION OF IMMIGRATION ASSISTANCE  
24 SERVICES, SO AS TO ADD THE "REGISTRATION OF  
25 IMMIGRATION SERVICE ACT" TO REQUIRE ALL  
26 IMMIGRATION ASSISTANCE SERVICES TO OBTAIN A  
27 BUSINESS LICENSE FROM THE SOUTH CAROLINA  
28 DEPARTMENT OF LABOR, LICENSING AND  
29 REGULATION, TO PROVIDE DEFINITIONS, TO LIST THE  
30 SERVICES THAT IMMIGRATION ASSISTANCE SERVICES  
31 MAY PROVIDE, TO PROHIBIT IMMIGRATION SERVICES  
32 FROM ACCEPTING PAYMENT IN EXCHANGE FOR  
33 PROVIDING LEGAL ADVICE, FOR REFUSING TO RETURN  
34 DOCUMENTS SUPPLIED BY, PREPARED FOR, OR PAID  
35 FOR BY A CUSTOMER, FOR REPRESENTING OR  
36 ADVERTISING, IN CONNECTION WITH PROVIDING  
37 IMMIGRATION ASSISTANCE SERVICES, CERTAIN TITLES  
38 TO INCLUDE 'NOTARY PUBLIC', OR 'IMMIGRATION  
39 CONSULTANT', OR FOR PROVIDING LEGAL ADVICE, OR  
40 MAKING ANY MISREPRESENTATION OR FALSE  
41 STATEMENT TO INFLUENCE, PERSUADE, OR INDUCE  
42 PATRONAGE, TO PROVIDE FOR CIVIL AND CRIMINAL  
43 PENALTIES FOR VIOLATIONS, AND TO REQUIRE THE

1 DIRECTOR OF THE DEPARTMENT OF LABOR, LICENSING  
2 AND REGULATION TO PROMULGATE RULES TO  
3 EFFECTUATE THIS SUBSECTION, AND TO AMEND TITLE  
4 41 OF THE CODE OF LAWS BY ADDING CHAPTER 8 TO  
5 REQUIRE PRIVATE EMPLOYERS TO VERIFY THE  
6 IMMIGRATION STATUS OF ALL NEW EMPLOYEES.

7  
8 Be it enacted by the General Assembly of the State of South  
9 Carolina:

10  
11 SECTION 1. This act may be cited as the “South Carolina Illegal  
12 Immigration Reform Act”.

13  
14 SECTION 2. Section 1-31-40(A) of the 1976 Code is amended to  
15 read:

16  
17 “(A) The commission shall:

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

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

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

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

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

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

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

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

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

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

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

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

14

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

16

17

“CHAPTER 14

18

Unauthorized Aliens and Public Employment

19

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

21 (1) ‘Contractor’ means any person having a contract with a  
22 public employer except a political subdivision, where the total  
23 value of the contract to be performed in a twelve-month period  
24 exceeds twenty-five thousand dollars, or, if the public employer is  
25 a political subdivision, where the total value of the contract to be  
26 performed in a twelve-month period exceeds fifteen thousand  
27 dollars.

28 (2) ‘Director’ means the director of the State Budget and  
29 Control Board.

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

33 (4) ‘Federal work authorization program’ means the  
34 E-Verify Program or one of the electronic verification of work  
35 authorization programs operated by the United States Department  
36 of Homeland Security, or an equivalent federal work authorization  
37 program operated by the United States Department of Homeland  
38 Security to verify information of newly hired employees, pursuant  
39 to the Immigration Reform and Control Act of 1986 (IRCA),  
40 Public Law 99-603, or an electronic verification of work  
41 authorization program operated by a private entity and approved  
42 by the Attorney General.



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

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

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

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

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

15 (7) 'Subcontractor' means any person having either: (a) a  
16 services contract with a contractor; or (b) a contract with a  
17 sub-subcontractor.

18 (8) 'Sub-subcontractor' means any person having a services  
19 contract with a subcontractor.

20 (9) 'Private employer' means any person carrying on any  
21 employment and the legal representative of a deceased person or  
22 the receiver or trustee of any person, and any person for whom an  
23 individual performs a service, of whatever nature, as an employee,  
24 as defined in Section 12-8-10.

25  
26 Section 8-14-20. (A) On or after January 1, 2009, every public  
27 employer shall register and participate in the federal work  
28 authorization program to verify the employment authorization of  
29 all new employees.

30 (B) A public employer may not enter into a services contract  
31 with a contractor for the physical performance of services within  
32 this State unless the contractor agrees:

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

39 (2) to employ only workers who:

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

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

4 (c) possess a valid driver's license or identification card  
5 from another state where the license requirements are at least as  
6 strict as those in South Carolina, as determined by the Attorney  
7 General.

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

12 (D) Subsection (B) applies as follows:

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

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

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

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

23  
24 Section 8-14-30. The provisions of this chapter are enforceable  
25 without regard to race, religion, gender, ethnicity, or national  
26 origin. Section 11-35-4210 provides the exclusive remedy for  
27 violations of this article for any contract governed by Title 11,  
28 Chapter 35. A pre-award protest process appearing in a  
29 procurement ordinance adopted by a political subdivision pursuant  
30 to Section 11-35-50 or Section 11-35-70 provides the exclusive  
31 remedy for violations of this article for any contract governed by  
32 that procurement ordinance.

33  
34 Section 8-14-40. A public employer complies with this chapter  
35 if it obtains a written statement from the contractor certifying that  
36 the contractor will comply with the requirements of this article and  
37 agrees to provide to the public employer any documentation  
38 required to establish either: (a) the applicability of this article to  
39 the contractor, subcontractor, and sub-subcontractor; or (b) the  
40 compliance with this article by the contractor and any  
41 subcontractor or sub-subcontractor. A public employer need not  
42 audit or independently verify a contractor's compliance with this  
43 article.

1

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

7

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

13

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

18

19 Section 8-14-80. Except as otherwise provided in this section,  
20 the director shall prescribe all forms and promulgate regulations  
21 necessary for the application of this chapter to contracts or  
22 agreements and may publish these regulations on the Budget and  
23 Control Board's website in accordance with the provisions of  
24 Chapter 23 of Title 1 of the South Carolina Code of Laws.

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

33

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

36

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

42 (1) the enforcement of federal immigration laws by state and  
43 local law enforcement, specifically through the 287-G program or

1 other applicable federal law designed for the purpose of state  
2 enforcement of federal immigration laws;  
3 (2) the detention of unlawful aliens by state and local law  
4 enforcement officials and the costs associated with those  
5 detentions;  
6 (3) the removal of detained unlawful aliens by federal  
7 authorities or, instead of removal, the deportation of illegal  
8 immigrants by state and local law enforcement officials;  
9 (4) training of state and local law enforcement officials  
10 pursuant to the 287-G program or other applicable federal laws and  
11 the costs of such training; and  
12 (5) further communication and cooperation between federal  
13 law enforcement and state and local law enforcement officials in  
14 the area of immigration enforcement, pursuant to 8 U.S.C. Section  
15 1357(g).  
16 (B) The memorandum of understanding negotiated pursuant to  
17 subsection (A) must be signed on behalf of the State by the chief of  
18 the South Carolina Law Enforcement Division and the Governor or  
19 as otherwise required by the appropriate federal agency.  
20 (C) The chief of the South Carolina Law Enforcement Division  
21 shall designate appropriate law enforcement officers to be trained  
22 pursuant to the memorandum of understanding provided for in  
23 subsections (A) and (B). The training may be funded pursuant to  
24 the federal Homeland Security Appropriations Act of 2006, or any  
25 other source of funding. The provisions of this section become  
26 effective upon the securing of this funding.  
27 (D) The director of the South Carolina Department of  
28 Corrections, the sheriff of a county, and the governing body of a  
29 municipality that maintains a paid police department may enter  
30 into the memorandum of understanding between the State of South  
31 Carolina and the United States Department of Justice or  
32 Department of Homeland Security as a party, and, subject to the  
33 availability of funds provided for in subsection (C) of this section,  
34 provide corrections officers and local law enforcement officers for  
35 training in accordance with the memorandum of understanding.  
36 (E) A law enforcement officer certified as trained in  
37 accordance with the memorandum of understanding as provided in  
38 this section is authorized to enforce federal immigration and  
39 customs laws while performing within the scope of his or her  
40 authorized duties.”

41  
42 SECTION 5. Title 8 of the 1976 Code is amended by adding:  
43

1 "CHAPTER 29

2 Verification of Lawful Presence in the United States

3  
4 Section 8-29-10. (A) Except as provided in subsection (C) of  
5 this section or where exempted by federal law, on or after July 1,  
6 2008, every agency or political subdivision of this State shall  
7 verify the lawful presence in the United States of any alien  
8 eighteen years of age or older who has applied for state or local  
9 public benefits, as defined in 8 U.S.C. Section 1621, or for federal  
10 public benefits, as defined in 8 U.S.C. Section 1611, that are  
11 administered by an agency or a political subdivision of this State.

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

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

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

18 (2) assistance for health care items and services that are  
19 necessary for the treatment of an emergency medical condition, as  
20 defined in the Social Security Act (42 U.S.C. 1396 et seq.), of the  
21 person involved and are not related to an organ transplant  
22 procedure;

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

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

28 (5) programs, services, or assistance including soup  
29 kitchens, crisis counseling and intervention, and short-term shelter  
30 specified by the United States Attorney General, in the United  
31 States Attorney General's sole discretion after consultation with  
32 appropriate federal agencies and departments, which:

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

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

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

39 (6) prenatal care;

40 (7) postsecondary education, whereby the Department of  
41 Education shall set forth, or cause to be set forth, policies  
42 regarding postsecondary benefits that comply with all federal law

1 including, but not limited to, public benefits as described in 8  
2 U.S.C. Section 1611, 1621, or 1623;

3 (8) benefits, programs, services or any other assistance  
4 provided to victims of domestic violence, irrespective of their  
5 immigration status, under the Violence Against Women Act of  
6 2000, Public Law Number 106-386, or the Illegal Immigration  
7 Reform and Immigrant Responsibility Act, Public Law Number  
8 104-208; or

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

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

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

19 (2) the applicant must execute an affidavit that he or she is a  
20 qualified alien or nonimmigrant under the Federal Immigration and  
21 Nationality Act, Public Law 82-414, eighteen years of age or older,  
22 and lawfully present in the United States.

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

32 (F) A person who knowingly and willfully makes a false,  
33 fictitious, or fraudulent statement or representation in an affidavit  
34 executed pursuant to this section, or who aids or abets a person in  
35 knowingly and willfully making a false, fictitious, or fraudulent  
36 statement or representation in an affidavit executed pursuant to this  
37 section, or who solicits or conspires to make a false, fictitious, or  
38 fraudulent statement or representation in an affidavit executed  
39 pursuant to this section shall be guilty of a felony and, upon  
40 conviction, must be fined in the discretion of the court or  
41 imprisoned not more than five years, or both. In addition, a person  
42 convicted pursuant to this section must disgorge any benefit  
43 received or make restitution, or both, to the agency or political

1 subdivision of this State that administered the benefit or  
2 entitlement program. It is a separate violation of this section each  
3 time a person receives a public benefit based on such a statement  
4 or representation. A conviction and fine charged pursuant to this  
5 section shall not preempt or preclude additional appropriate civil or  
6 criminal charges or penalties. A person who suffers an  
7 ascertainable loss of money or property, real or personal, as a  
8 result of the actions of anyone convicted of a violation of this  
9 subsection may bring an action, individually, or in a representative  
10 capacity, to recover actual damages. If the court finds that a  
11 violation has been established, the court shall award three times the  
12 actual damages sustained and may provide such other relief as it  
13 considers necessary and proper. Upon a finding by the court of a  
14 violation, the court shall award to the person bringing the action  
15 under this section reasonable attorney's fees and costs.

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

19 (H) If an affidavit constitutes a false claim of U.S. citizenship  
20 under 18 U.S.C. Section 911, a complaint must be filed by the  
21 agency or political subdivision with the United States Attorney for  
22 the District of South Carolina.

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

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

35 (K) An agency or a political subdivision of this State that  
36 provides a state, local, or federal benefit, as defined in 8 U.S.C.  
37 1621 or 8 U.S.C. Section 1611, must require a person currently  
38 under the age of eighteen who received the benefit to comply with  
39 the provisions of this article upon reaching the age of eighteen. If  
40 the recipient is unwilling or unable to comply, receipt of all  
41 benefits must cease immediately upon the recipient's eighteenth  
42 birthday.

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

5  
6 SECTION 6. Title 8 of the 1976 Code is amended by adding:  
7

8 “CHAPTER 30  
9 Recording and Reporting Immigration Law Violations

10  
11 Section 8-30-10. (A) The executive director of the State  
12 Commission for Minority Affairs, or a designee, shall establish and  
13 maintain a twenty-four hour toll free telephone number and  
14 electronic website to receive, record, collect, and report allegations  
15 of violations of federal immigration laws or related provisions of  
16 South Carolina law by any non-United States citizen or immigrant,  
17 and allegations of violations of any federal immigration laws or  
18 related provisions in South Carolina law against any non-United  
19 States citizen or immigrant. Such violations shall include, but are  
20 not limited to, E-Verify or other federal work authorization  
21 program violations, violations of Chapter 83 of Title 40 of this  
22 Code relating to immigration assistance services, or any  
23 regulations enacted governing the operation of immigration  
24 assistance services, false or fraudulent statements made or  
25 documents filed in relation to an immigration matter, as defined by  
26 Section 40-83-20, violation of human trafficking laws, as defined  
27 in Section 16-3-930, landlord tenant law violations, or violations of  
28 any law pertaining to the provision or receipt of public assistance  
29 benefits or public services.

30 (B) The executive director, or a designee, shall establish and  
31 maintain a centralized tracking database consisting of all  
32 information received through the twenty-four hour toll free  
33 telephone number and electronic website, and shall report all  
34 alleged violations to the appropriate law enforcement,  
35 administrative, executive, or regulatory agency or political  
36 subdivision having law enforcement or regulatory control over the  
37 subject matter, including, but not limited to the United States  
38 Bureau of Immigration and Customs Enforcement, consistent with  
39 8 U.S.C. Section 1373.

40  
41 Section 8-30-20. The executive director is authorized to hire  
42 personnel necessary to carry out the duties prescribed in Section



1 8-30-10. The General Assembly shall provide for the funds in the  
2 annual appropriations act.”

3  
4 SECTION 7. Chapter 6, Title 12 of the 1976 Code is amended by  
5 adding:

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

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

10 (2) ‘Labor services’ means the physical performance of  
11 services in this State.

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

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

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

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

28 (F) This section shall not apply to wages or remuneration paid  
29 for labor services to any individual who: (1) holds and presents to  
30 the taxpayer a valid license or identification card issued by the  
31 South Carolina Department of Motor Vehicles; (2) is eligible to  
32 obtain a South Carolina driver’s license or identification card in  
33 that he meets the requirements set forth in S.C. Code Ann. Section  
34 56-1-40 through 56-1-90; or (3) possesses a valid driver’s license  
35 or identification card from another state where the license  
36 requirements are as strict or stricter than those in South Carolina,  
37 as determined by the Attorney General.

38 (G) A taxpayer must not be held liable for failing to comply  
39 with the provisions of this section, if, based on a reasonable  
40 investigation of the individual, the taxpayer did not know or should  
41 not have known that the individual was an unauthorized alien. For  
42 purposes of this subsection, a taxpayer shall be deemed to have  
43 conducted a reasonable investigation if the individual met the

1 requirements of subsection (F), and the information provided by  
2 the individual to the taxpayer was facially correct.

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

8 (I) The executive director of the South Carolina Employment  
9 Security Commission shall send written notice of this section to all  
10 South Carolina employers no later than July 1, 2008.”

11

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

14

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

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

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

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

26 (B) A withholding agent who fails to comply with the  
27 withholding requirements of this subsection shall be liable for the  
28 taxes required to have been withheld unless the withholding agent  
29 is exempt from federal withholding with respect to the individual  
30 pursuant to a properly filed Internal Revenue Service Form 8233  
31 and has provided a copy of the form to the commissioner.

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

38 (D) The executive director of the South Carolina Employment  
39 Security Commission shall send written notice of this section to all  
40 South Carolina employers no later than July 1, 2008.”

41

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

1

2 “Section 16-9-460. (A) It is a felony for a person knowingly or  
3 in reckless disregard of the fact that another person has come to,  
4 entered, or remained in the United States in violation of law to  
5 transport, move, or attempt to transport that person within the State  
6 or to solicit or conspire to transport or move that person within the  
7 State with specific intent to further that person’s unlawful entry  
8 into the United States or avoiding apprehension or detection of that  
9 person’s unlawful immigration status by state or federal  
10 authorities.

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

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

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

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

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

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

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

42 Shelter provided for strictly humanitarian purposes or provided  
43 under the Violence Against Women Act is not a violation of this

1 section, so long as the shelter is not provided in furtherance of or  
2 in an attempt to conceal a person's illegal presence in the United  
3 States.

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

7  
8 SECTION 10. Chapter 13, Title 16 of the 1976 Code is amended  
9 by adding:

10

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

24 (B) A person who suffers an ascertainable loss of money or  
25 property, real or personal, as a result of a conviction or plea to a  
26 violation of financial identity fraud or identity fraud involving a  
27 matter described in subsection (A), may bring an action  
28 individually, or in a representative capacity, to recover actual  
29 damages against any person convicted of the violation. If a court  
30 finds that a violation has been established, the court shall award  
31 three times the actual damages sustained and may provide such  
32 other relief as it considers necessary or proper. Upon the finding  
33 by the court of a violation, the court shall award to the person  
34 bringing this action pursuant to this section reasonable attorney's  
35 fees and costs.

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

39 (D)(1) It is unlawful for a person to display, cause or permit to  
40 be displayed, or have in his possession a false, fictitious,  
41 fraudulent, or counterfeit identity document including, but not  
42 limited to, a driver's license or social security card for the purpose  
43 of offering proof of United States citizenship or classification by

1 the United States as an alien lawfully admitted for temporary or  
2 permanent residence under federal immigration law.

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

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

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

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

14 (F) In enforcing the terms of this section, no state officer shall  
15 attempt to make an independent judgment of an alien's  
16 immigration status. State officials must verify any alien's status  
17 with the federal government in accordance with 8 U.S.C. Section  
18 1373(c)."

19  
20 SECTION 11. Chapter 3, Title 23 of the 1976 Code is amended  
21 by adding:

22  
23 "Article 13

24  
25 Verification of Nationality of Prisoners

26  
27 Section 23-3-1100. (A) If a person is charged with a criminal  
28 offense and is confined for any period in a jail of the State, county,  
29 or municipality, or a jail operated by a regional jail authority, a  
30 reasonable effort shall be made to determine whether the confined  
31 person is an alien unlawfully present in the United States.

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

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

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

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

17 (F) In enforcing the terms of this section, no state officer shall  
18 attempt to make an independent judgment of an alien's  
19 immigration status. State officials must verify any alien's status  
20 with the federal government in accordance with 8 U.S.C. Section  
21 1373(c)."

22

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

25

26 "Section 41-1-30. (A) There is a civil right of action for  
27 wrongful termination against an employer who discharges an  
28 employee authorized to work in the United States for the purpose  
29 of replacing that employee with a person the employer knows or  
30 should reasonably know is an unauthorized alien.

31 (B) An aggrieved employee must show:

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

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

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

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

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

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

1 (1) reinstatement to his former position; and

2 (2) lost wages.

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

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

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

14 (H) This section takes effect ninety days after the effective date  
15 of the act.”

16

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

18

19 “Chapter 83

20

21 Registration of Immigration Assistance Services

22

23 Section 40-83-10. This act shall be cited as the ‘Registration of  
24 Immigration Assistance Service Act’.

25

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

27 (A) ‘Compensation’ means money, property, services, promise  
28 of payment, or anything else of value given in exchange for a  
29 service.

30 (B) ‘Director’ means the Director of the South Carolina  
31 Department of Labor, Licensing and Regulation, or his designee.

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

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

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

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

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

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

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

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

20 (3) translating information on forms to a customer and  
21 translating the customer’s answers to questions posed on those  
22 forms;

23 (4) securing for the customer supporting documents  
24 currently in existence, such as birth and marriage certificates,  
25 which may be needed to be submitted with government agency  
26 forms;

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

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

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

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

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

41 (10) conducting English language and civics courses; and



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

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

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

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

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

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

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

25 (E) A person who provides or offers immigration assistance  
26 service and is not exempted under this chapter shall post signs at  
27 his or her place of business setting forth information in English and  
28 in every other language in which the person provides or offers to  
29 provide immigration assistance service. Each language shall be on  
30 a separate sign. Signs shall be posted in a location where the signs  
31 will be visible to customers. Each sign shall be at least twelve  
32 inches by seventeen inches and shall contain the following  
33 statement:

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

37 (F) Each person engaged in immigration assistance service who  
38 is not an attorney who advertises immigration assistance service in  
39 a language other than English, whether by radio, television, signs,  
40 pamphlets, newspapers, or other written communication, with the  
41 exception of a single desk plaque, must include in the document,  
42 advertisement, stationery, letterhead, business card, or other  
43 comparable written material the following notice in English and

1 the language in which the written communication appears. This  
2 notice shall be of a conspicuous font size, if in writing, and shall  
3 state:

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

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

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

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

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

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

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

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

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

41 (I) Violations of this chapter may result in a civil penalty of up  
42 to one thousand dollars per violation and the revocation of the  
43 business license of the immigration assistance service. A fine

1 charged pursuant to this chapter shall not preempt or preclude  
2 additional appropriate civil or criminal penalties to include  
3 disgorgement and restitution.

4 (J) Any person who knowingly and willfully makes a false,  
5 fictitious, or fraudulent statement or representation in any  
6 document prepared or executed as part of the provision of  
7 immigration assistance services in an immigration matter pursuant  
8 to this chapter, or anyone who aids or abets a person in knowingly  
9 and willfully making a false, fictitious, or fraudulent statement or  
10 representation in any document prepared or executed as part of the  
11 provision of immigration assistance services in an immigration  
12 matter pursuant to this chapter, or who solicits or conspires to  
13 make a false, fictitious, or fraudulent statement or representation in  
14 any document prepared or executed as part of the provision of  
15 immigration assistance services in an immigration matter pursuant  
16 to this chapter shall be guilty of a felony and, upon conviction,  
17 must be fined in the discretion of the court or imprisoned not more  
18 than ten years, or both. In addition, a person convicted of this  
19 subsection must disgorge any benefit received or make restitution,  
20 or both, to the agency or political subdivision that administered the  
21 benefit or entitlement program. It is a separate violation of this  
22 subsection each time a person knowingly and willfully makes,  
23 aids, or abets in the making of, or solicits or conspires to make a  
24 false, fictitious, or fraudulent statement or representation in any  
25 document prepared or executed pursuant to this subsection. A  
26 criminal charge pursuant to this chapter shall not preempt or  
27 preclude additional appropriate civil or criminal charges or  
28 penalties. A person who suffers any ascertainable loss of money  
29 or property, real or personal, as a result of a conviction or plea to a  
30 violation of this subsection may bring an action individually, or in  
31 a representative capacity, to recover actual damages from any  
32 person convicted of the violation of this subsection. If the court  
33 finds that a violation has been established, the court shall award  
34 three times the actual damages sustained and may provide such  
35 other relief as it considers necessary or proper. Upon the finding  
36 by the court of a violation, the court shall award to the person  
37 bringing such action under this section reasonable attorney's fees  
38 and costs.

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

42 (L) The director shall promulgate regulations not inconsistent  
43 with this chapter for the implementation, administration, and

1 enforcement of this chapter in accordance with the provisions of  
2 Chapter 23 of Title 1 of the South Carolina Code of Laws.

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

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

12  
13 “(8) a crime involving obscenity including, but not limited to,  
14 a crime as provided in Article 3, Chapter 15, Title 16 or any  
15 attempt, aiding, abetting, solicitation, or conspiracy to commit a  
16 crime involving obscenity; ~~and~~

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

25 (10) a crime involving financial identity fraud or identity  
26 fraud involving the false, fictitious, or fraudulent creation or use of  
27 documents used in an immigration matter as defined in Section  
28 16-13-525, if the number of violations exceeds twenty, or if the  
29 value of the ascertainable loss of money or property suffered by a  
30 person or persons from a violation or combination of violations  
31 exceeds twenty thousand dollars;

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

40 (12) a knowing and willful crime involving actual and  
41 substantial harm to the water, ambient air, soil or land, or both soil  
42 and land. This crime includes a knowing and willful violation of  
43 the Pollution Control Act, the Atomic Energy and Radiation

1 Control Act, the State Underground Petroleum Environmental  
2 Response Bank Act, the State Safe Drinking Water Act, the  
3 Hazardous Waste Management Act, the Infectious Waste  
4 Management Act, the Solid Waste Policy and Management Act,  
5 the Erosion and Sediment Control Act, the South Carolina Mining  
6 Act, and the Coastal Zone Management Act, or a knowing and  
7 willful crime arising out of or in connection with environmental  
8 laws, or any attempt, aiding, abetting, solicitation, or conspiracy to  
9 commit a knowing and willful crime involving the environment if  
10 the anticipated actual damages including, but not limited to, the  
11 cost of remediation, are two million dollars or more, as certified by  
12 an independent environmental engineer who must be contracted by  
13 the Department of Health and Environmental Control. If the  
14 knowing and willful crime is a violation of federal law, then a  
15 conviction or an acquittal pursuant to federal law for the same act  
16 is a bar to the impaneling of a state grand jury pursuant to this  
17 section.”

18

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

21

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

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

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

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

39

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

42

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

6 (1) family ties;

7 (2) employment;

8 (3) financial resources;

9 (4) character and mental condition;

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

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

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

14 (B) The court shall consider:

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

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

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

21  
22 SECTION 17. Chapter 101, Title 59 of the 1976 Code is  
23 amended by adding:

24  
25 “Section 59-101-430. (A) A alien unlawfully present in the  
26 United States is not eligible to attend a public institution of higher  
27 learning in this State, as defined in Section 59-103-5. The trustees  
28 of a public institution of higher learning in this State shall develop  
29 and institute a process by which lawful presence in the United  
30 States is verified. In doing so, institution personnel shall not  
31 attempt to independently verify the immigration status of any  
32 alien, but shall verify any alien’s immigration status with the  
33 federal government pursuant to 8 U.S.C. Section 1373(c).

34 (B) A person not lawfully present in the United States is not  
35 eligible on the basis of residence for a public higher education  
36 benefit including, but not limited to, scholarships, financial aid,  
37 grants, or resident tuition.”

38  
39 SECTION 18. Chapter 1, Title 6 of the 1976 Code is amended  
40 by adding:

41  
42 “Section 6-1-170. (A) For purposes of this section, ‘political  
43 subdivision’ includes, but is not limited to, a municipality, county,

1 school district, special purpose district, or public service district.

2

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

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

12 (D) A city, county, municipality, or other local government or  
13 political subdivision may not enact any ordinance, regulation, or  
14 other legislation pertaining to the employment, licensing,  
15 permitting, or otherwise doing business with a person based upon  
16 that person's authorization to work in the United States that  
17 exceeds or otherwise conflicts with federal law or that is in conflict  
18 with state law. An enactment found to be in conflict with federal  
19 or state law is void."

20

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

22

23 "Chapter 8

24

25 Illegal Aliens and Private Employment

26

27 Section 41-8-10. (A) On and after July 1, 2009, all private  
28 employers of one hundred or more employees must:

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

34 (2) employ only workers who:

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

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

41 (c) possess a valid driver's license or identification card  
42 from another state where the license requirements are at least as

1 strict as those in South Carolina, as determined by the Attorney  
2 General.

3 (B) The provisions of subsection (A) apply to all private  
4 employers of less than one hundred employees on and after  
5 January 1, 2010.

6 (C) The Employment Security Commission may provide  
7 private employers with technical advice and electronic access to  
8 the federal work authorization program's website for the sole  
9 purpose of registering and participating in the program.

10

11 Section 41-8-20. The provisions of this chapter are enforceable  
12 without regard to race, religion, gender, ethnicity, or national  
13 origin.

14

15 Section 41-8-30. A private employer shall not knowingly or  
16 intentionally employ an alien unlawfully present in the United  
17 States.

18

19 Section 41-8-40. A private employer who in good faith complies  
20 with the requirements of this chapter may not be sanctioned or  
21 subjected to any civil or administrative action for employing an  
22 alien unlawfully present in the United States and not authorized to  
23 work.

24

25 Section 41-8-60. A person who knowingly makes or files any  
26 false, fictitious, or fraudulent document, statement, or report  
27 pursuant to this chapter is guilty of a felony, and, upon conviction,  
28 must be fined within the discretion of the court or imprisoned for  
29 not more than five years, or both.

30

31 Section 41-8-70. A local government must not enact any  
32 ordinance or policy that limits or prohibits a law enforcement  
33 officer, local official, or local government employee from seeking  
34 to enforce the provisions of this chapter.

35

36 Section 41-8-80. Except as otherwise provided in this chapter,  
37 the director shall prescribe all forms and promulgate regulations  
38 deemed necessary for the application of this article to contracts or  
39 agreements and may publish these regulations on the Budget and  
40 Control Board's website in accordance with the provisions of  
41 Chapter 23 of Title 1 of the South Carolina Code of Laws.

42



1 Section 41-8-90. Nothing in this chapter shall be construed to  
2 abrogate a private employer's obligation to comply with federal  
3 immigration law, to include the proper completing and maintaining  
4 of federal Employee Eligibility Verification Forms I-9.”

5  
6 SECTION 20. All requirements of this act concerning  
7 immigration or the classification of immigration status must be  
8 construed in conformity with federal immigration law.

9  
10 SECTION 21. If any subsection, item, subitem, paragraph,  
11 subparagraph, sentence, clause, phrase, or word of Section 19 is  
12 for any reason held to be unconstitutional or invalid, such holding  
13 shall not affect the constitutionality or validity of the remaining  
14 portions of the Section, the General Assembly hereby declaring  
15 that it would have passed this act, and each and every subsection,  
16 item, subitem, paragraph, subparagraph, sentence, clause, phrase,  
17 and word thereof, irrespective of the fact that any one or more  
18 other subsections, items, subitems, paragraphs, subparagraphs,  
19 sentences, clauses, phrases, or words hereof may be declared to be  
20 unconstitutional, invalid, or otherwise ineffective.

21  
22 SECTION 22. If any section, subsection, item, subitem,  
23 paragraph, subparagraph, sentence, clause, phrase, or word of this  
24 act is for any reason held to be unconstitutional or invalid, such  
25 holding shall not affect the constitutionality or validity of the  
26 remaining portions of this act, the General Assembly hereby  
27 declaring that it would have passed this act, and each and every  
28 section, subsection, item, subitem, paragraph, subparagraph,  
29 sentence, clause, phrase, and word thereof, irrespective of the fact  
30 that any one or more other sections, subsections, items, subitems,  
31 paragraphs, subparagraphs, sentences, clauses, phrases, or words  
32 hereof may be declared to be unconstitutional, invalid, or  
33 otherwise ineffective.

34  
35 SECTION 23. This act takes effect upon approval by the  
36 Governor.

37  
38 SECTION 24. This act takes effect upon approval by the  
39 Governor.

40 ----XX----

41