

IMMIGRATION

“SOUTH CAROLINA ILLEGAL IMMIGRATION REFORM ACT”

Highlights of the legislation include the following.

Harboring and Transporting

The legislation provides that it is a felony offense to transport or harbor undocumented immigrants with intent to further that person’s illegal entry into the United States or avoiding apprehension or detection of that person’s undocumented status by authorities. A violation is punishable with a fine of up to \$5,000 dollars and/or imprisonment for up to five years. Specific exemptions are established for providing health care treatment and for providing shelter that is offered for strictly humanitarian purposes or in compliance with the Violence Against Women Act.

"Sanctuary Cities" Prohibited

Political subdivisions are prohibited from adopting provisions that limit or prohibit the enforcement of State laws pertaining to immigration.

Political subdivisions are prohibited from adopting provisions that limit or prohibit law enforcement or other officials from communicating to appropriate federal or state officials with regard to the immigration status of any person within this State.

Preemption Language

Political subdivisions may not enact any provisions pertaining to the employment, licensing, permitting, or otherwise doing business with a person based upon that person's authorization to work in the United States that exceeds or otherwise conflicts with federal law or that is in conflict with state law. An enactment found to be in conflict with federal or state law is void.

Penalties for Fraudulent Documents

The legislation provides that it is unlawful to display or possess a false, fictitious, fraudulent, or counterfeit green card or other document, such as a driver’s license or social security card, for the purpose of offering proof of United States citizenship or classification by the United States as an immigrant lawfully admitted for temporary or permanent residence under federal immigration law. A first offense is a misdemeanor subject to a fine of no more than \$100 dollars or imprisonment for no more than 30 days. A second or subsequent offense is a felony subject to a fine of no more than \$500 dollars or imprisonment for no more than five years.

Public Sector Employment

On or after January 1, 2009, this legislation requires every public employer to register and participate in the federal work authorization program to verify the employment authorization of all new employees. ‘Federal work authorization program’ means the E-Verify Program maintained and operated by the United States Department of Homeland Security and the Social Security Administration, or any successor program.

A public employer may not enter into a services contract with a contractor for the physical performance of services within this State unless the contractor agrees:

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

(2) to employ only workers who:

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

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

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

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

These provisions apply on and after January 1, 2009, with respect to contractors, subcontractors, or sub-subcontractors of 500 or more employees; on and after July 1, 2009, with respect to contractors, subcontractors, or sub-subcontractors of 100-499; and on and after January 1, 2010, with respect to all other contractors, subcontractors or sub-subcontractors.

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

A contractor or public employer who in good faith complies with these requirements may not be sanctioned or subjected to any civil or administrative action for employing an individual not authorized for employment in the United States.

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

Private Sector Employment

South Carolina Employment License

All private employers in South Carolina on or after July 1, 2009 shall be imputed a South Carolina employment license, which permits a private employer to employ a person in this state. On and after July 1, 2009, a private employer may not employ a person unless his South Carolina employment license is in effect and is not suspended or revoked. A private employer's employment license shall remain in effect provided the private employer complies with these provisions. The legislation includes graduated civil penalties for violations. Only violations that take place within five years of the initial occurrence may be considered subsequent violations.

Employment Eligibility Verification

On and after July 1, 2009, all private employers of 100 or more employees who are required by federal law to complete and maintain federal employment eligibility verification forms or documents must:

- (1) register and participate in the E-Verify federal work authorization program, or its successor, to verify information of all new employees, and verify the work authorization of every new employee within five business days after employing a new employee; or
- (2) employ only workers who, at the time of employment:
 - (a) possess a valid South Carolina driver's license or identification card issued by the South Carolina Department of Motor Vehicles;
 - (b) are eligible to obtain a South Carolina driver's license or identification card in that they meet the requirements set forth in Sections 56-1-40 through 56-1-90; or
 - (c) possess a valid driver's license or identification card from another state where the license requirements are at least as strict as those in South Carolina, as determined by the director. The Executive Director of the Department of Motor Vehicles, or his designee, shall determine which states have driver's license requirements that are at least as strict as those in South Carolina, and shall develop and periodically update a list of the states. The list shall be published on the Department of Labor, Licensing and Regulation's website.

These provisions apply to all private employers who employ less than 100 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.

An employer is given five days in which to complete only the E-Verify option, and during this time the worker may be employed.

Knowingly or Intentionally Employing Unauthorized Immigrants

A private employer shall not knowingly or intentionally employ an unauthorized immigrant. The penalty structure for knowingly and intentionally employing an unauthorized worker is as follows:

- First offense: suspension of employment license for 10-30 days
- Second offense: suspension of employment license for 30-60 days
- Third offense: revocation of employment license for five years. Businesses can apply for a provisional license after 90 days. A provisional license carries with it a three year probationary period and quarterly audits.

Investigation of Allegations of Violations

The legislation outlines procedures whereby the Department of Labor, Licensing and Regulation (LLR) may investigate allegations of violations pertaining to the South Carolina employment license or the knowing and intentional employment of unauthorized immigrants. It is a separate violation each time the private employer fails to verify the immigration status of a new employee.

In assessing a civil penalty or taking any other disciplinary action for a violation of these provisions, the Director of LLR 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.

A list of all private employers who have been assessed a civil penalty, or who have had their licenses disciplined, or revoked shall be published on LLR's website.

Private employers make seek review of any assessment of a civil penalty or disciplinary action with the Administrative Law Court.

LLR may develop a statewide random auditing program to inspect private employers for compliance.

State Income Taxes

The legislation caps at six hundred dollars the amount that a taxpayer is allowed to claim each year on state income taxes as a deductible business expense for wages paid to an unauthorized immigrant. This does not apply to an individual hired by the taxpayer prior to January 1, 2009. This deductible business expense cap does not apply to the wages of employees whose legal status is verified.

The legislation's state income tax provisions address not only direct employment situations, but also compensation paid for contract work that is reported on Form 1099. In such situations, state income tax must be withheld at the rate of seven percent of the amount of compensation if the employed individual fails to provide a taxpayer identification number or social security number.

Civil Remedy

An authorized worker who is replaced with an unauthorized worker can sue their employer.

Public Benefits

The legislation requires the verification of citizenship status in order for an individual who is at least 18 years old to be eligible to receive public benefits. Every applicant is required to execute an affidavit verifying the lawfulness of his presence in the country. In the case of an individual claiming legal immigrant status, the affidavit serves as temporary authorization for receiving benefits while further verification is conducted through the federal Systematic Alien Verification of Entitlement (SAVE) program. An individual who executes a fraudulent affidavit or assists others in making fraudulent claims is guilty of a felony offense and must be imprisoned for up to five years and/or fined at the discretion of the court.

Exceptions are provided to cover certain circumstances including but not limited to: as receiving disaster relief, benefits for certain emergency medical treatment, public health assistance for immunization, prenatal care, assistance for victims of domestic violence, and access to certain programs and services for the homeless such as soup kitchens, crisis counseling, and short-term shelters.

Registration of Immigration Assistance Services

The legislation establishes and provides for the enforcement of standards of ethics in the profession of immigration assistance by private individuals who are not licensed attorneys. The legislation limits what immigration assistance a non-lawyer may provide as well as restricts certain activities of these non-lawyers

providing immigration assistance for compensation. Exceptions are provided for attorneys and their staff and certain not-for-profit organizations. A person performing immigration assistance services is required to obtain appropriate business licenses. The legislation requires non-attorneys to post signs and give notice in advertisements and communications clearly indicating that they are not attorneys or authorized to give legal advice or accept fees for legal advice. Civil and criminal penalties are provided.

Restitution for Identity Fraud

The legislation provides that an individual found guilty of financial identity fraud or identity fraud involving the falsification of documents that enables an undocumented immigrant to receive public benefits must make restitution to the agency or political subdivision that administered the benefit or entitlement program.

The legislation establishes a civil cause of action for an individual who suffers an ascertainable loss as a result of such identity fraud relating to illegal immigration. A plaintiff is entitled to treble damages.

Higher Education

The legislation provides that undocumented immigrants are not eligible to attend public institutions of higher learning. Undocumented immigrants are not eligible to receive public higher education benefit including but not limited to, scholarships, financial aid, grants or resident tuition.

Recording and Reporting Immigration Law Violations

The State Commission for Minority Affairs shall establish and maintain a 24-hour toll free telephone number and electronic website to receive, record, collect, and report allegations of violations of any laws or regulations by any non-United States citizen or immigrant, and allegations of violations of any laws or regulations against any non-United States citizen or immigrant.

The State Commission for Minority Affairs shall establish and maintain a centralized tracking database consisting of all information received through the 24-hour toll free telephone number and electronic website, and report all alleged violations to the appropriate law enforcement or other authority.

Cooperation Between State and Federal Law Enforcement

The legislation directs the chief of the South Carolina Law Enforcement Division to enter into negotiations with federal authorities in order to reach an understanding on: (1) the enforcement of federal immigration laws by State and local law enforcement; (2) the detention of undocumented immigrants by State and local law enforcement officials and the costs associated with those detentions; (3) the removal of detained undocumented immigrants by federal authorities or the deportation of undocumented immigrants by state and local law enforcement officials; (4) relevant training for state and local law enforcement officials; and (5) further communication and cooperation between federal law enforcement and state and local law enforcement officials in the area of immigration enforcement.

Bond Consideration

The legislation allows an accused individual's undocumented immigrant status to be used as a consideration for determining bond.

Detention of Undocumented Immigrants

The legislation requires law enforcement to make a reasonable attempt to ascertain the immigration status of every person charged with a criminal offense is confined, for any period, in a local, regional, or state jail

or other correctional facility. If the prisoner is an immigrant, verification must be made within 72 hours through a query to the Law Enforcement Support Center of the United States Department of Homeland Security or other designated office or agency. If the prisoner is determined to be an undocumented immigrant, the United States Department of Homeland Security must be notified. An account must be kept of the daily expenses incurred for detaining an undocumented immigrants and an invoice must be sent to the United States Department of Homeland Security for reimbursement of those costs.

Handguns

Undocumented immigrants can not possess handguns or shotguns.

State Grand Jury

The legislation expands the jurisdiction of the State Grand Jury to include matters involving the large-scale production of false documentation for the purposes of illegal immigration or financial identity fraud.