

2011 -- H 5407

LC00368

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - ENFORCEMENT OF
IMMIGRATION LAWS

Introduced By: Representatives Palumbo, Trillo, Menard, Gordon, and Reilly

Date Introduced: February 16, 2011

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 42 of the General Laws entitled "STATE AFFAIRS AND
2 GOVERNMENT" is hereby amended by adding thereto the following chapter:

3 CHAPTER 28.10

4 IN SUPPORT OF OUR LAW ENFORCEMENT AND SAFE NEIGHBORHOODS ACT

5 **42-28.10-1. Short Title.** – This chapter shall be known and may be cited as “In Support
6 of Our Law Enforcement and Safe Neighborhoods Act.”

7 **42-28.10-2. Legislative findings.** – It is hereby found and declared by the general
8 assembly that:

9 (1) There is a compelling interest in the cooperative enforcement of federal immigration
10 laws throughout all of Rhode Island.

11 (2) There is a compelling interest in reducing the number of persons unlawfully present in
12 the state by enforcing the public policy of all state and local government agencies.

13 (3) The provisions of this chapter are intended to work together to discourage and deter
14 the unlawful entry and presence of aliens and economic activity by persons unlawfully present in
15 the United States.

16 **42-28.10-3. Cooperation and assistance in enforcement of immigration laws:**
17 **indemnification.** – (a) No official or agency of this state, city, town or other political subdivision
18 of this state may limit or restrict the enforcement of federal immigration laws to less than the full

1 extent permitted by federal law.

2 (b) For any lawful contact made by a law enforcement official or a law enforcement
3 agency of this state or a law enforcement official or a law enforcement agency of a city, town or
4 other political subdivision of this state where reasonable suspicion exists that the person is an
5 alien who is unlawfully present in the United States, a reasonable attempt shall be made, when
6 practicable, to determine the immigration status of the person, except if the determination may
7 hinder or obstruct an investigation. Any person who is arrested shall have the person's
8 immigration status determined before the person is released. The person's immigration status
9 shall be verified with the federal government pursuant to 8 United States code section 1373(c). A
10 law enforcement official or agency of this state or a city, town or other political subdivision of
11 this state may not solely consider race, color, or national origin in implementing the requirements
12 of this subsection except to the extent permitted by the United States or Rhode Island
13 constitution. A person is presumed not to be an alien who is unlawfully present in the United
14 States, if the person provides to the law enforcement officer or agency any of the following:

15 (1) A valid Rhode Island driver license.

16 (2) A valid Rhode Island non-operating identification license.

17 (3) A valid tribal enrollment card or other form of tribal identification.

18 (4) If the entity requires proof of legal presence in the United States before issuance, any
19 valid United States federal, state or local government issued identification.

20 (c) If an alien who is unlawfully present in the United States is convicted of a violation of
21 state or local law, on discharge from imprisonment, or on the assessment of any monetary
22 obligation that is imposed, the United States immigration and customs enforcement or the United
23 States customs and border protection shall be immediately notified.

24 (d) Notwithstanding any provision of the general or public laws to the contrary, a law
25 enforcement agency may securely transport an alien who the agency has received verification is
26 unlawfully present in the United States and who is in the agency's custody to a federal facility in
27 this state or to any other point of transfer into federal custody that is outside the jurisdiction of the
28 law enforcement agency. A law enforcement shall obtain judicial authorization before securely
29 transporting an alien who is unlawfully present in the United States to a point of transfer that is
30 outside of this state.

31 (e) Except as provided in federal law, officials or agencies of this state and counties,
32 cities, towns and other political subdivisions of this state may not be prohibited or in any way be
33 restricted from sending, receiving or maintaining information relating to the immigration status,
34 lawful or unlawful, of any individual or exchanging that information with any other federal, state

1 or local government entity for the following official purposes:

2 (1) Determining eligibility for any public benefit, service or license provided by any
3 federal, state, local or other political subdivision of this state.

4 (2) Verifying any claim of residence or domicile if determination of residence or
5 domicile is required under the laws of this state or a judicial order issued pursuant to a civil or
6 criminal proceeding in this state.

7 (3) If the person is an alien, determining whether the person is in compliance with the
8 federal registration laws prescribed by title II, chapter 7 of the federal immigration and nationality
9 act.

10 (4) Pursuant to 8 United States code section 1373 and 8 United States code section 1644.

11 (f) A person who is a legal resident of this state may bring an action in superior court to
12 challenge any official or agency of this state or a city, town or other political subdivision of this
13 state that adopts or implements a policy or practice that limits or restricts the enforcement of
14 federal immigration laws to less than the full extent permitted by federal law. If there is a judicial
15 finding that an entity has violated this section, the court shall order that the entity pay a civil
16 penalty of not less than one thousand dollars (\$1,000) and not more than five thousand dollars
17 (\$5,000) for each day that the policy has remained in effect after the filing of an action pursuant
18 to this subsection.

19 (g) A court shall collect the civil penalty prescribed in subsection (f) of this section and
20 remit the civil penalty to the state treasurer for deposit in the gang and immigration intelligence
21 team enforcement mission fund established by section 42-28.10-13.

22 (h) The court may award court costs and reasonable attorney fees to any person or any
23 official or agency of this state or a city, town or other political subdivision of this state that
24 prevails by adjudication on the merits in a proceeding brought pursuant to this section.

25 (i) Except in relation to matters in which the officer is adjudged to have acted in bad
26 faith, a law enforcement officer is indemnified by the law enforcement officer's agency against
27 reasonable costs and expenses, including attorney fees, incurred by the officer in connection with
28 any action, suit or proceeding brought pursuant to this section in which the officer may be a
29 defendant by reason of the officer being or having been a member of the law enforcement agency.

30 (j) This section shall be implemented in a manner consistent with federal laws regulating
31 immigration, protecting the civil rights of all persons and respecting the privileges and
32 immunities of United States citizens.

33 **42-28.10-4. Willful failure to complete or carry alien registration document;**
34 **assessment; exception; authenticated records; classification.** – (a) In addition to any violation

1 of federal law, a person is guilty of willful failure to complete or carry an alien registration
2 document if the person is in violation of 8 United States code section 1304(e) or 1306(a).

3 (b) In the enforcement of this section, an alien's immigration status may be determined
4 by:

5 (1) A law enforcement officer who is authorized by the federal government to verify or
6 ascertain an alien's immigration status.

7 (2) The United States immigration and customs enforcement or the United States customs
8 and border protection pursuant to 8 United States code section 1373(c).

9 (c) A person who is sentenced pursuant to this section is not eligible for suspension of
10 sentence, probation, pardon, commutation of sentence, or release from confinement on any basis
11 except as authorized by this chapter until the sentence imposed by the court has been served or
12 the person is eligible for release.

13 (d) In addition to any other penalty prescribed by law, the court shall order the person to
14 pay all costs and an additional assessment in the following amounts:

15 (1) At least five hundred dollars (\$500) for a first violation.

16 (2) Twice the amount specified in subdivision (1) of this subsection if the person was
17 previously subject to an assessment pursuant to this subsection.

18 (e) A court shall collect the assessments prescribed in subsection (d) of this section and
19 remit the assessments to the department of public safety, which shall establish a special
20 subaccount for the monies in the account established for the gang and immigration intelligence
21 team enforcement mission appropriation. Monies in the special account are subject to legislative
22 appropriation for distribution for gang and immigration enforcement and for imprisonment
23 reimbursement costs relating to illegal immigration.

24 (f) This section does not apply to a person who maintains authorization from the federal
25 government to remain in the United States.

26 (g) Any record that relates to the immigration status of a person is admissible in any court
27 without further foundation or testimony from a custodian of records if the record is certified as
28 authentic by the government agency that is responsible for maintaining the record.

29 (h) A violation of this section is a misdemeanor, except that a violation of this section is:

30 (1) A felony if the person violates this section while in possession of any of the
31 following:

32 (a) A controlled substance defined in section 21-28.1 et seq.

33 (b) Precursor chemicals that are used in the manufacturing of methamphetamine.

34 (c) A deadly weapon or a dangerous instrument, as defined in section 11-5-1 et seq.

1 (d) Property that is used for the purpose of committing an act of terrorism.

2 (2) A felony if the person either:

3 (i) Is convicted of a second or subsequent violation of this section.

4 (ii) Within sixty (60) months before the violation, has been removed from the United

5 States code section 1229a or has accepted a voluntary removal from the United States pursuant to

6 8 United States code section 1229c.

7 **42-28.10-5. Smuggling; classification; definitions.** – (a) It is unlawful for a person to

8 intentionally engage in the smuggling of human beings for profit or commercial purpose.

9 (b) A violation of this section is a felony.

10 (c) Notwithstanding subsection (b) of this section, a violation of this section:

11 (1) Is a felony if the human being who is smuggled is under eighteen (18) years of age

12 and is not accompanied by a family member over eighteen (18) years of age or the offense

13 involved the use of a deadly weapon or dangerous instrument.

14 (2) Is a felony if the offense involves the use or threatened use of deadly physical force

15 and the person is not eligible for suspension of sentence, probation, pardon or release from

16 confinement on any other basis until the sentence imposed by the court is served, the person is

17 eligible for release or the sentence is commuted.

18 (d) Chapter 10 of this title does not apply to a violation of subsection (c), subdivision (1)

19 of this section.

20 (e) Notwithstanding any other law, in the enforcement of this section, a peace officer may

21 lawfully stop any person who is operating a motor vehicle if the officer has reasonable suspicion

22 to believe the person is in violation of any civil traffic law.

23 (f) For the purposes of this section:

24 (1) “Family member” means the person’s parent, grandparent, sibling or any other person

25 who is related to the person by consanguinity or affinity to the second degree.

26 (2) “Procurement of transportation” means any participation in or facilitation of

27 transportation and includes:

28 (i) Providing services that facilitate transportation including travel arrangement services

29 or money transmission services.

30 (ii) Providing property that facilitates transportation, including a weapon, a vehicle or

31 other means of transportation or false identification, or selling, leasing, renting or otherwise

32 making available a drop house as defined in this chapter.

33 (3) “Smuggling of human beings” means the transportation, procurement of

34 transportation or use of property or real property by a person or an entity that knows or has reason

1 to know that the person or persons transported or to be transported are not United States citizens,
2 permanent resident aliens or persons otherwise lawfully in this state or have attempted to enter,
3 entered or remained in the United States in violation of law.

4 **42-28.10-6. Unlawful stopping to hire and pick up passengers for work; unlawful**
5 **application, solicitation or employment; classification; definitions.** – (a) It is unlawful for an
6 occupant of a motor vehicle that is stopped on a street, roadway or highway to attempt to hire or
7 hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes
8 the normal movement of traffic.

9 (b) It is unlawful for a person to enter a motor vehicle that is stopped on a street, roadway
10 or highway in order to be hired by an occupant of the motor vehicle and to be transported to work
11 at a different location if the motor vehicle blocks or impedes the normal movement of traffic.

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

15 (d) A violation of this section is a misdemeanor.

16 (e) For the purposes of this section:

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

19 (2) “Unauthorized alien” means an alien who does not have the legal right or
20 authorization under federal law to work in the United States as described in 8 United States code
21 section 1324a(h)(3).

22 **42-28.10-7. Unlawful transporting, moving, concealing, harboring or shielding of**
23 **unlawful aliens; vehicle impoundment; exception; classification.** – (a) It is unlawful for a
24 person who is in violation of a criminal offense to:

25 (1) Transport or move or attempt to transport or move an alien in this state, in furtherance
26 of the illegal presence of the alien in the United States, in a means of transportation if the person
27 knows or recklessly disregards the fact that the alien has come to, has entered or remains in the
28 United States in violation of law.

29 (2) Conceal, harbor or shield or attempt to conceal, harbor or shield an alien from
30 detection in any place in this state, including any building or any means of transportation, if the
31 person knows or recklessly disregards the fact that the alien has come to, has entered or remains
32 in the United States in violation of law.

33 (3) Encourage or induce an alien to come to or reside in this state if the person knows or
34 recklessly disregards the fact that such coming to, entering or residing in this state is, or will be in

1 violation of law.

2 (b) A means of transportation that is used in the commission of a violation of this section
3 is subject to mandatory vehicle immobilization or impoundment.

4 (c) This section does not apply to a child protective services worker acting in the
5 worker's official capacity or a person who is acting in the capacity of a first responder, an
6 ambulance attendant or an emergency medical technician and who is transporting or moving an
7 alien in this state.

8 (d) A person who violates this section is guilty of a misdemeanor and is subject to a fine
9 of at least one thousand dollars (\$1,000) except that a violation of this section that involves ten
10 (10) or more illegal aliens is a felony and the person is subject to a fine of at least one thousand
11 dollars (\$1,000) for each alien who is involved.

12 **42-28.10-8. Arrest by officer without warrant.** – (a) A peace officer without a warrant,
13 may arrest a person if the officer has probable cause to believe:

14 (1) A felony has been committed and probable cause to believe the person to be arrested
15 has committed the felony.

16 (2) A misdemeanor has been committed in the officer's presence and probable cause to
17 believe the person to be arrested has committed the offense.

18 (3) The person to be arrested has been involved in a traffic accident and violated the
19 provisions of section 31-26-1 et seq., and that such violation occurred prior to or immediately
20 following such traffic accident.

21 (4) A misdemeanor or a petty offense has been committed and probable cause to believe
22 the person to be arrested under this paragraph is eligible for release as provided in this chapter.

23 (5) The person to be arrested has committed any public offense that makes the person
24 removable from the United States.

25 (b) A peace officer may stop and detain a person as is reasonably necessary to investigate
26 an actual or suspected violation of any traffic law committed in the officer's presence and may
27 serve a copy of the traffic complaint for any alleged civil or criminal traffic violation. A peace
28 officer who serves a copy of the traffic complaint shall do so within a reasonable time of the
29 alleged criminal or civil traffic violation.

30 **42-28.10-9. Knowingly employing unauthorized aliens; prohibition; false and**
31 **frivolous complaints; violation; classification; license suspension and revocation;**
32 **affirmation defense.** – (a) An employer shall not knowingly employ an unauthorized alien. If, in
33 the case when an employer uses a contract, subcontract or other independent contractor
34 agreement to obtain the labor of an alien in this state, the employer knowingly contracts with an

1 unauthorized alien or with a person who employs or contracts with an unauthorized alien to
2 perform the labor, the employer violates this section.

3 (b) The attorney general shall prescribe a complaint form for a person to allege a
4 violation of subsection a of this section. The complainant shall not be required to list the
5 complainant's social security number on the complaint form or to have the complaint form
6 notarized. On receipt of a complaint on a prescribed complaint form that an employer allegedly
7 knowingly employs an unauthorized alien, the attorney general shall investigate whether the
8 employer has violated subsection a of this section. If a complaint is received but is not submitted
9 on a prescribed complaint form, the general or county attorney may investigate whether the
10 employer has violated subsection (a) of this section. This subsection shall not be construed to
11 prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint
12 form. The attorney general shall not investigate complaints that are based solely on race, color or
13 national origin. Any other local law enforcement agency may assist in investigating a complaint.
14 When investigating a complaint, the attorney general shall verify the work authorization of the
15 alleged unauthorized alien with the federal government pursuant to 8 United States code section
16 1373(c). A state or local official shall not attempt to independently make a final determination on
17 whether an alien is authorized to work in the Unites States. An alien's immigration status or work
18 authorization status shall be verified with the federal government pursuant to 8 Unites States code
19 section 1373(c). A person who knowingly files a false and/or frivolous complaint under this
20 subsection is guilty of a class 3 misdemeanor.

21 (c) If, after an investigation, the attorney general determines that the complaint is not
22 false and frivolous:

23 (1) The attorney general shall notify the United States immigration and customs
24 enforcement of the unauthorized alien.

25 (2) The attorney general shall notify the local law enforcement agency of the
26 unauthorized alien.

27 (d) An action for a violation of subsection (a) of this section shall be brought against the
28 employer in the county where the unauthorized alien employee is or was employed by the
29 employer. The attorney general shall not bring an action against any employer for any violation of
30 subsection (a) of this section that occurs before January 1, 2010. A second violation of this
31 section shall be based only on an unauthorized alien who is or was employed by the employer
32 after an action has been brought for a violation of subsection (a) of this section or section 42-28-
33 10.10, subsection (a).

34 (e) For any action in superior court under this section, the court shall expedite the action,

1 including assigning the hearing at the earliest practicable date.

2 (f) On a finding of a violation of subsection (a) of this section:

3 (1) For a first violation, as described in subdivision 3 of this subsection, the court:

4 (i) Shall order the employer to terminate the employment of all unauthorized aliens.

5 (ii) Shall order the employer to be subject to a three (3) year probationary period for the
6 business location where the unauthorized alien performed work. During the probationary period
7 the employer shall file quarterly reports with the attorney general of each new employee who is
8 hired by the employer at the business location where the unauthorized alien performed work.

9 (iii) Shall order the employer to file a signed sworn affidavit with the attorney general
10 within three (3) business days after the order is issued. The affidavit shall state that the employer
11 has terminated the employment of all unauthorized aliens in this state and that the employer will
12 not intentionally or knowingly employ an unauthorized alien in this state. The court shall order
13 the appropriate agencies to suspend all licenses that are held by the employer if the employer fails
14 to file a signed sworn affidavit with the attorney general within three (3) business days after the
15 order is issued. All licenses that are suspended under this subdivision shall remain suspended
16 until the employer files a signed sworn affidavit with the attorney general. Notwithstanding any
17 other law, filing of the affidavit the suspended licenses shall be reinstated immediately by the
18 appropriate agencies. For the purposes of this subdivision, the licenses that are subject to
19 suspension under this subdivision are all licenses that are held by the employer specific to the
20 business location where the unauthorized alien performed work. If the employer does not hold a
21 license specific to the business location where the unauthorized alien performed work, but a
22 license is necessary to operate the employer's business in general, the licenses that are subject to
23 suspension under this subdivision are all licenses that are held by the employer at the employer's
24 primary place of business. On receipt of the court's order and notwithstanding any other law, the
25 appropriate agencies shall suspend the licenses according to the court's order. The court shall
26 send a copy of the court's order to the attorney general and the attorney general shall maintain the
27 copy pursuant to subsection (g) of this section.

28 (iv) May order the appropriate agencies to suspend all licenses described in subdivision
29 (iii) of this paragraph that are held by the employer for not to exceed ten (10) business days. The
30 court shall base its decision to suspend under this subdivision on any evidence or information
31 submitted to it during the action for a violation of this subsection and shall consider the following
32 factors, if relevant:

33 (i) The number of unauthorized aliens employed by the employer.

34 (ii) Any prior misconduct by the employer.

1 (iii) The degree of harm resulting from the violation.

2 (iv) Whether the employer made good faith efforts to comply with any applicable
3 requirements.

4 (v) The duration of the violation.

5 (vi) The role of the directors, officers or principals of the employer in the violation.

6 (vii) Any other factors the court deems appropriate.

7 (2) For a second violation, as described in subdivision (3) of this subsection, the court
8 shall order the appropriate agencies to permanently revoke all licenses that are held by the
9 employer specific to the business location where the unauthorized alien performed work. If the
10 employer does not hold a license specific to the business location where the unauthorized alien
11 performed work, but a license is necessary to operate the employer’s business in general, the
12 court shall order the appropriate agencies to permanently revoke all licenses that are held by the
13 employer at the employer’s primary place of business. On receipt of the order and
14 notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses.

15 (3) The violation shall be considered:

16 (i) A first violation by an employer at a business location if the violation did not occur
17 during a probationary period ordered by the court under this subsection or section 42-28.10-10,
18 subsection (f) for that employer’s business location.

19 (ii) A second violation by an employer at a business location if the violation occurred
20 during a probationary period ordered by the court under this subsection or section 42-28.10-10,
21 subsection (f) for that employer’s business location.

22 (g) The attorney general shall maintain copies of court orders that are received pursuant
23 to subsection (f) of this section and shall maintain a database of the employers and business
24 locations that have a first violation of subsection (a) of this section and make the court orders
25 available on the attorney general’s website.

26 (h) On determining whether an employee is an unauthorized alien, the court shall
27 consider only the federal government’s determination pursuant to 8 United States code section
28 1373(c). The federal government’s determination creates a rebuttable presumption of the
29 employee’s lawful status. The court may take judicial notice of the federal government’s
30 determination and may request the federal government to provide automated or testimonial
31 verification pursuant to 8 United States code section 1373(c).

32 (i) For the purposes of this section, proof of verifying the employment authorization of an
33 employee through the e-verify program creates a rebuttable presumption that an employer did not
34 knowingly employ an unauthorized alien.

1 (j) For the purposes of this section, an employer that establishes that it has complied in
2 good faith with the requirements of 8 United States code section 1324a(b) establishes an
3 affirmative defense that the employer did not knowingly employ an unauthorized alien. An
4 employer is considered to have complied with the requirements of 8 United States code section
5 1324a(b), notwithstanding an isolated, sporadic or accidental technical or procedural failure to
6 meet the requirements, if there is a good faith attempt to comply with the requirements.

7 (k) To claim entrapment, the employer must admit by the employer’s testimony or other
8 evidence the substantial elements of the violation. An employer who asserts an entrapment
9 defense has the burden of proving the following by a preponderance of the evidence:

10 (1) The idea of committing the violation started with law enforcement officers or their
11 agents rather than with the employer.

12 (2) The law enforcement officers or their agents urged and induced the employer to
13 commit the violation.

14 (3) The employer was not predisposed to commit the violation before the law
15 enforcement officers or their agents urged and induced the employer to commit the violation.

16 (l) An employer does not establish entrapment if the employer was predisposed to violate
17 subsection (a) of this section and the law enforcement officers or their agents merely provided the
18 employer with an opportunity to commit the violation. It is not entrapment for law enforcement
19 officers or their agents merely to use a ruse or to conceal their identity. The conduct of law
20 enforcement officers and their agents may be considered in determining if an employer has
21 proven entrapment.

22 **42-28.10-10. Intentionally employing unauthorized aliens; prohibition; false and**
23 **frivolous complaints; violation; classification; license suspension and revocation;**
24 **affirmative defense.** – (a) An employer shall not intentionally employ an unauthorized alien. If,
25 in the case when an employer uses a contract, subcontract or other independent contractor
26 agreement to obtain the labor of an alien in this state, the employer intentionally contracts with an
27 unauthorized alien with a person who employs or contracts with an unauthorized alien to perform
28 the labor, the employer violates this subsection.

29 (b) The attorney general shall prescribe a complaint form for a person to allege a
30 violation of subsection (a) of this section. The complainant shall not be required to list the
31 complainant’s social security number on the complaint form or to have the complaint form
32 notarized. On receipt of a complaint on a prescribed complaint form that an employer allegedly
33 intentionally employs an unauthorized alien, the attorney general shall investigate whether the
34 employer has violated subsection (a) of this section. If a complaint is received but is not

1 submitted on a prescribed complaint form, the attorney general may investigate whether the
2 employer has violated subsection (a) of this section. This subsection shall not be construed to
3 prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint
4 form. The attorney general shall not investigate complaints that are based solely on race, color or
5 national origin. Any other local law enforcement agency may assist in investigating a complaint.
6 When investigating a complaint, the attorney general shall verify the work authorization of the
7 alleged unauthorized alien with the federal government pursuant to 8 United States code section
8 1373(c). A state or local official shall not attempt to independently make a final determination on
9 whether an alien is authorized to work in the United States. An alien's immigration status or work
10 authorization status shall be verified with the federal government pursuant to 8 United States code
11 section 1373(c). A person who knowingly files a false and/or frivolous complaint under this
12 subsection is guilty of a misdemeanor.

13 (c) If, after an investigation, the attorney general determines that the complaint is not
14 false and/or frivolous:

15 (1) The attorney general shall notify the United States immigration and customs
16 enforcement of the unauthorized alien.

17 (2) The attorney general shall notify the local law enforcement agency of the
18 unauthorized alien.

19 (d) An action for a violation of subsection (a) of this section shall be brought against the
20 employer by the attorney general in the county where the unauthorized alien employee is or was
21 employed by the employer. The attorney general shall not bring an action against any employer
22 for any violation of subsection (a) of this section that occurs before January 1, 2010. A second
23 violation of this section shall be based only on an unauthorized alien who is or was employed by
24 the employer after an action has been brought for a violation of subsection (a) of this section or
25 section 42-28.10-9, subsection (a).

26 (e) For any action in superior court under this section, the court shall expedite the action,
27 including assigning the hearing at the earliest practicable date.

28 (f) On a finding of a violation of subsection (a) of this section:

29 (1) For a first violation, as described in subdivision (3) of this subsection, the court shall:

30 (i) Order the employer to terminate the employment of all unauthorized aliens.

31 (ii) Order the employer to be subject to a five (5) year probationary period for the
32 business location where the unauthorized alien performed work. During the probationary period
33 the employer shall file quarterly reports with the attorney general of each new employee who is
34 hired by the employer at the business location where the unauthorized alien performed work.

1 (iii) Order the appropriate agencies to suspend all licenses described in subdivision (d) of
2 this paragraph that are held by the employer for a minimum of ten (10) days. The court shall base
3 its decision on the length of the suspension under this subdivision on any evidence or information
4 submitted to it during the action for a violation of this subsection and shall consider the following
5 factors, if relevant:

6 (A) The number of unauthorized aliens employed by the employer.

7 (B) Any prior misconduct by the employer.

8 (C) The degree of harm resulting from the violation.

9 (D) Whether the employer made good faith efforts to comply with any applicable
10 requirements.

11 (E) The duration of the violation.

12 (F) The role of the directors, officers or principals of the employer in the violation.

13 (G) Any other factors the court deems appropriate.

14 (iv) Order the employer to file a signed sworn affidavit with the attorney general. The
15 affidavit shall state that the employer has terminated the employment of all unauthorized aliens in
16 this state and that the employer will not intentionally or knowingly employ an unauthorized alien
17 in this state. The court shall order the appropriate agencies to suspend all licenses subject to this
18 subdivision that are held by the employer if the employer fails to file a signed sworn affidavit
19 with the attorney general within three (3) business days after the order is issued. All licenses that
20 are suspended under this subdivision for failing to file a signed sworn affidavit shall remain
21 suspended until the employer files a signed sworn affidavit with the attorney general. For the
22 purposes of this subdivision, the licenses that are subject to suspension under this subdivision are
23 all licenses that are held by the employer specific to the business location where the unauthorized
24 alien performed work. If the employer does not hold a license specific to the business location
25 where the unauthorized alien performed work, but a license is necessary to operate the
26 employer's business in general, the licenses that are subject to suspension under this subdivision
27 are all licenses that are held by the employer at the employer's primary place of business. On
28 receipt of the court's order and notwithstanding any other law, the appropriate agencies shall
29 suspend the licenses according to the court's order. The court shall send a copy of the court's
30 order to the attorney general and the attorney general shall maintain the copy pursuant to
31 subsection (g) of this section.

32 (2) For a second violation, as described in paragraph (3) of this subsection, the court shall
33 order the appropriate agencies to permanently revoke all licenses that are held by the employer
34 specific to the business location where the unauthorized alien performed work. If the employer

1 does not hold a license specific to the business location where the unauthorized alien performed
2 work, but a license is necessary to operate the employer's business in general, the court shall
3 order the appropriate agencies to permanently revoke all licenses that are held by the employer at
4 the employer's primary place of business. On receipt of the order and notwithstanding any other
5 law, the appropriate agencies shall immediately revoke the licenses.

6 (3) The violation shall be considered:

7 (i) A first violation by an employer at a business location if the violation did not occur
8 during a probationary period ordered by the court under this subsection or section 42-28.10-9,
9 subsection f for that employer's business location.

10 (ii) A second violation by an employer at a business location if the violation occurred
11 during a probationary period ordered by the court under this subsection or section 42-28.10-9,
12 subsection f for that employer's business location.

13 (g) The attorney general shall maintain copies of court orders that are received pursuant
14 to subsection (f) of this section and shall maintain a database of the employers and businesses
15 locations that have a first violation of subsection (a) of this section and make the court orders
16 available on the attorney general's website.

17 (h) On determining whether an employee is an unauthorized alien, the court shall
18 consider only the federal government's determination pursuant to 8 United States code section
19 1373(c). The federal government's determination creates a rebuttable presumption of the
20 employee's lawful status. The court may take judicial notice of the federal government's
21 determination and may request the federal government to provide automated or testimonial
22 verification pursuant to 8 United States code section 1373(c),

23 (i) For the purposes of this section, proof of verifying the employment authorization of an
24 employee through the E-verify program creates a rebuttable presumption that an employer did not
25 intentionally employ an unauthorized alien.

26 (j) For the purposes of this section, an employer that establishes that it has complied in
27 good faith with the requirements of 8 United States code section 1324a(b) establishes an
28 affirmative defense that the employer did not intentionally employ an unauthorized alien. An
29 employer is considered to have complied with the requirements of 8 United States code section
30 1324a(b), notwithstanding an isolated, sporadic or accidental technical or procedural failure to
31 meet requirements, if there is a good faith attempt to comply with the requirements.

32 (k) it is an affirmative defense to a violation of subsection (a) of this section that the
33 employer was entrapped. To claim entrapment, the employer must admit by the employer's
34 testimony or other evidence the substantial elements of the violation. An employer who asserts an

1 entrapment defense has the burden of proving the following by a preponderance of the evidence:

2 (1) The idea of committing the violation started with law enforcement officers or their
3 agents rather than with the employer.

4 (2) The law enforcement officers or their agents urged and induced the employer to
5 commit the violation.

6 (3) The employer was not predisposed to commit the violation before the law
7 enforcement officers or their agents urged and induced the employer to commit the violation.

8 (l) An employer does not establish entrapment if the employer was predisposed to violate
9 subsection (a) of this section and the law enforcement officers or their agents merely provided the
10 employer with an opportunity to commit the violation. It is not entrapment for law enforcement
11 officers or their agents merely to use a ruse or to conceal their identity. The conduct of law of law
12 enforcement officers and their agents may be considered in determining if an employer has
13 proven entrapment.

14 **42-28.10-11. Verification of employer eligibility; e-verify program; economic**
15 **development incentives; list of registered employers.** – (a) After December 31, 2010, every
16 employer, after hiring an employee, shall verify the employment eligibility of the employee
17 through the e-verify program and shall keep a record of the verification for the duration of the
18 employee’s employment or at least three (3) years, whichever is longer.

19 (b) In addition to any other requirement for an employer to receive an economic
20 development incentive from a government entity, the employer shall register with and participate
21 in the e-verify program. Before receiving the economic development incentive, the employer
22 shall provide proof to the government entity that the employer is registered with and is
23 participating in the e-verify program. If the government entity determines that the employer is not
24 complying with this subsection, the government entity shall notify the employer by certified mail
25 of the government entity’s determination of noncompliance and the employer’s right to appeal the
26 determination. On a final determination of noncompliance, the employer shall repay all monies
27 received as an economic development incentive to the government entity within thirty (30) days
28 of the final determination. For the purposes of this subsection:

29 (1) “Economic development incentive” means any grant, loan or performance-based
30 incentive from any government entity that is awarded after September 30, 2010. Economic
31 development incentive does not include any tax provision under title 44.

32 (2) “Government entity” means this state and any political subdivision of this state that
33 receives and uses tax revenues.

34 (c) Every three (3) months the attorney general shall request from the United States

1 department of homeland security a list of employers from this state that are registered with the e-
2 verify program. On receipt of the list of employers, the attorney general shall make the list
3 available on the attorney general's website.

4 **42-28.10-12. Removal and immobilization or impoundment of vehicle.** – (a) A peace
5 officer shall cause the removal and either immobilization or impoundment of a vehicle if the
6 peace officer determines that a person is driving the vehicle while any of the following applies:

7 (1) The person's driving privilege is suspended or revoked for any reason.

8 (2) The person has not ever been issued a valid driver license or permit by this state and
9 the person does not produce evidence of ever having a valid driver license or permit issued by
10 another jurisdiction. This paragraph does not apply to the operation of an implement of
11 husbandry.

12 (3) The person is subject to an ignition interlock device requirement and the person is
13 operating a vehicle without a functioning certified ignition interlock device. This paragraph does
14 not apply to a person operating an employer's vehicle or the operation of a vehicle due to a
15 substantial emergency.

16 (4) In furtherance of the illegal presence of an alien in the United States and in violation
17 of a criminal offense. The person is transporting or moving or attempting to transport or move an
18 alien in this state in a vehicle if the person knows or recklessly disregards the fact that the alien
19 has come to, has entered or remains in the United States in violation of law.

20 (4) The person is concealing harboring or shielding or attempting to conceal, harbor or
21 shield from detection an alien in this state in a vehicle if the person knows or recklessly
22 disregards the fact that the alien has come to entered or remains in the United States in violation
23 of law.

24 (b) A peace officer shall cause the removal and impoundment of a vehicle if the peace
25 officer determines that a person is driving the vehicle and if all of the following apply:

26 (1) The person's driving privilege is canceled, suspended or revoked for any reason or the
27 person has never been issued a driver license or permit by this state and the person does not
28 produce evidence of ever having a driver license or permit issued by another jurisdiction.

29 (2) The person is not in compliance with the financial responsibility as contained herein.

30 (3) The person is driving a vehicle that is involved in an accident that results in either
31 property damage or injury to, or death of another person.

32 (c) Except as provided in subsection (d) of this section, while a peace officer has control
33 of the vehicle the peace officer shall cause the removal and either immobilization or
34 impoundment of the vehicle if the peace officer has probable cause to arrest the driver of the

1 vehicle for a violation of state registration laws.

2 (d) A peace officer shall not cause the removal and either the immobilization or
3 impoundment of a vehicle pursuant to subsection (c) of this section if all of the following apply:

4 (1) The peace officer determines that the vehicle is currently registered and that the driver
5 of the vehicle is in compliance with the financial responsibility requirements as contained herein.

6 (2) The spouse of the driver is with the driver at the time of the arrest.

7 (3) The peace officer has reasonable grounds to believe that the spouse of the driver:

8 (i) Has a valid driver license.

9 (ii) Is not impaired by intoxicating liquor, any drug, a vapor releasing substance
10 containing a toxic substance or any combination of liquor, drugs or vapor releasing substances.

11 (iii) Does not have any spirituous liquor in the spouse's body if the spouse is under
12 twenty-one years of age.

13 (4) The spouse notifies the peace officer that the spouse will drive the vehicle from the
14 place of arrest to the driver's home or other place of safety.

15 (5) The spouse drives the vehicle as prescribed by paragraph (4) of this subsection (a) (b)
16 or (c) of this section shall be immobilized or impounded for thirty (30) days. An insurance
17 company does not have a duty to pay any benefits for charges or fees for immobilization or
18 impoundment.

19 (f) The owner of a vehicle that is removed and either immobilized or impounded pursuant
20 to subsection a, b or c of this section, the spouse of the owner and each person identified on the
21 department's record with an interest in the vehicle shall be provided with an opportunity for an
22 immobilization or poststorage hearing pursuant to this chapter.

23 **42-28.10-13. Gang and immigration intelligence team enforcement mission fund. -**

24 The gang and immigration intelligence team enforcement mission fund is established consisting
25 of monies deposited pursuant to this chapter and monies appropriated by the general assembly.

26 The department shall administer the fund. Monies in the fund are subject to general assembly
27 appropriation and shall be used for gang and immigration enforcement and for imprisonment
28 reimbursement costs relating to illegal immigration.

29 **42-28.10-14. Severability, implementation and construction.-**

30 (a) If any provision of
31 this chapter, or its application to any person or circumstance is held invalid, the invalidity does
32 not affect other provisions or applications of the chapter that can be given effect without the valid
33 provision or application, and to this end the provisions of this act are severable.

34 (b) The terms of this act regarding immigration shall be construed to have the meanings
given to them under federal immigration law.

1 (c) This chapter shall be implemented in a manner consistent with federal laws regulating
2 immigration, protecting the civil rights of all persons and respecting the privileges and
3 immunities of United States citizens.

4 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT - ENFORCEMENT OF
IMMIGRATION LAWS

1 This act would create the "In Support of our Law Enforcement and Safe Neighborhood
2 Act" which would authorize and empower state and local law enforcement to work together with
3 federal authorities to discourage and deter the unlawful entry and presence of aliens and
4 economic activity by persons unlawfully in the United States.

5 This act would take effect upon passage.

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LC00368
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