

Senate Bill No. 405

(By Senators Barnes, Hall, K. Facemyer, Nohe, Boley and Sypolt)

[Introduced February 3, 2011; referred to the Committee on the
Judiciary; and then to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new article, designated §61-14-1, §61-14-2,
§61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-14-8,
§61-14-9 and §61-14-10, all relating to creating the Support
Our Law Enforcement and Safe Neighborhoods Act; defining
terms; requiring cooperation among officials and agencies;
permitting lawful actions; establishing enforcement
procedures; requiring aliens to carry alien registration
documents; making it illegal to stop to pick up passengers for
work; making it illegal to transport, move, conceal, harbor or
shield unauthorized aliens; making it illegal to knowingly or
intentionally employ unauthorized aliens; making it illegal to
file false and frivolous complaints; creating the Intelligence
Team Enforcement Mission Fund; setting forth civil and
criminal penalties; and establishing a severability provision.

1 *Be it enacted by the Legislature of West Virginia:*

2 That the Code of West Virginia, 1931, as amended, be amended
3 by adding thereto a new article, designated §61-14-1, §61-14-2,
4 §61-14-3, §61-14-4, §61-14-5, §61-14-6, §61-14-7, §61-14-8, §61-14-
5 9 and §61-14-10, all to read as follows:

6 **ARTICLE 14. SUPPORT OUR LAW ENFORCEMENT AND SAFE NEIGHBORHOOD ACT.**

7 **§61-14-1. Short title.**

8 This article may be cited as the "Support Our Law Enforcement
9 and Safe Neighborhoods Act".

10 **§61-14-2. Definitions.**

11 For the purposes of this article:

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

15 (2) "Unauthorized alien" means an alien who does not have the
16 legal right or authorization under federal law to work in the
17 United States as described in 8 U.S.C. §1324a(h) (3).

18 **§61-14-3. Cooperation and assistance in enforcement of immigration
19 laws; indemnification.**

20 (a) No official or agency of this state or a county, city,
21 town or other political subdivision of this state may limit or
22 restrict the enforcement of federal immigration laws to less than
23 the full extent permitted by federal law.

24 (b) For any lawful stop, detention or arrest made by a law

1 enforcement official or a law-enforcement agency of this state or
2 a law-enforcement official or a law-enforcement agency of a county,
3 city, town or other political subdivision of this state in the
4 enforcement of any other law or ordinance of a county, city or town
5 or this state where reasonable suspicion exists that the person is
6 an alien and is unlawfully present in the United States, a
7 reasonable attempt shall be made, when practicable, to determine the
8 immigration status of the person, except if the determination may
9 hinder or obstruct an investigation. Any person who is arrested
10 shall have the person's immigration status determined before the
11 person is released. The person's immigration status shall be
12 verified with the federal government pursuant to 8 U.S.C. §1373(c).
13 A law-enforcement official or agency of this state or a county,
14 city, town or other political subdivision of this state may not
15 consider race, color or national origin in implementing the
16 requirements of this subsection except to the extent permitted by
17 the United States or West Virginia Constitution. A person is
18 presumed to not be an alien who is unlawfully present in the United
19 States if the person provides to the law-enforcement officer or
20 agency any of the following:

- 21 (1) A valid West Virginia driver license;
- 22 (2) A valid West Virginia nonoperating identification card;
- 23 (3) A valid tribal enrollment card or other form of tribal
24 identification; or
- 25 (4) If the entity requires proof of legal presence in the

1 United States before issuance, any valid federal, state or local
2 government issued identification.

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

9 (d) Notwithstanding any other law, a law-enforcement agency may
10 securely transport an alien who the agency has received verification
11 is unlawfully present in the United States and who is in the
12 agency's custody to a federal facility in this state or to any other
13 point of transfer into federal custody that is outside the
14 jurisdiction of the law-enforcement agency. A law-enforcement
15 agency shall obtain judicial authorization before securely
16 transporting an alien who is unlawfully present in the United States
17 to a point of transfer that is outside of this state.

18 (e) In the implementation of this section, an alien's
19 immigration status may be determined by:

20 (1) A law-enforcement officer who is authorized by the federal
21 government to verify or ascertain an alien's immigration status; or

22 (2) The United States immigration and customs enforcement or
23 the United States customs and border protection pursuant to 8 U.S.C.
24 §1373(c).

25 (f) Except as provided in federal law, officials or agencies

1 of this state and counties, cities, towns and other political
2 subdivisions of this state may not be prohibited or in any way be
3 restricted from sending, receiving or maintaining information
4 relating to the immigration status, lawful or unlawful, of any
5 individual or exchanging that information with any other federal,
6 state or local governmental entity for the following official
7 purposes:

8 (1) Determining eligibility for any public benefit, service or
9 license provided by any federal, state, local or other political
10 subdivision of this state;

11 (2) Verifying any claim of residence or domicile if
12 determination of residence or domicile is required under the laws
13 of this state or a judicial order issued pursuant to a civil or
14 criminal proceeding in this state;

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

19 (4) Pursuant to 8 U.S.C. §§1373 and 1644.

20 (g) A person who is a legal resident of this state may bring
21 an action in court to challenge any official or agency of this state
22 or a county, city, town or other political subdivision of this state
23 that adopts or implements a policy that limits or restricts the
24 enforcement of federal immigration laws, including 8 U.S.C. §§1373
25 and 1644, to less than the full extent permitted by federal law.

1 If there is a judicial finding that an entity has violated this
2 section, the court shall order that the entity pay a civil penalty
3 of not less than \$500 and not more than \$5,000 for each day that the
4 policy has remained in effect after the filing of an action pursuant
5 to this subsection.

6 (h) A court shall collect the civil penalty prescribed in
7 subsection (g) of this section and remit the civil penalty to the
8 State Treasurer for deposit in the Immigration Intelligence Team
9 Enforcement Mission fund established by section nine of this
10 article.

11 (i) The court may award court costs and reasonable attorney
12 fees to any person or any official or agency of this state or a
13 county, city, town or other political subdivision of this state that
14 prevails by an adjudication on the merits in a proceeding brought
15 pursuant to this section.

16 (j) Except in relation to matters in which the officer is
17 adjudged to have acted in bad faith, a law-enforcement officer is
18 indemnified by the law-enforcement officer's agency against
19 reasonable costs and expenses, including attorney fees, incurred by
20 the officer in connection with any action, suit or proceeding
21 brought pursuant to this section in which the officer may be a
22 defendant by reason of the officer being or having been a member of
23 the law-enforcement agency.

24 (k) This section shall be implemented in a manner consistent
25 with federal laws regulating immigration, protecting the civil

1 rights of all persons and respecting the privileges and immunities
2 of United States citizens.

3 **§61-14-4. Willful failure to complete or carry an alien**
4 **registration document; exception; authenticated**
5 **records; classification.**

6 (a) In addition to any violation of federal law, a person is
7 guilty of willful failure to complete or carry an alien registration
8 document if the person is in violation of 8 U.S.C. §§1304(e) or
9 1306(a).

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

12 (1) A law-enforcement officer who is authorized by the federal
13 government to verify or ascertain an alien's immigration status; or

14 (2) The United States immigration and customs enforcement or
15 the United States customs and border protection pursuant to 8 U.S.C.
16 §1373(c);

17 (c) A law-enforcement official or agency of this state or a
18 county, city, town or other political subdivision of this state may
19 not consider race, color or national origin in the enforcement of
20 this section except to the extent permitted by the United States or
21 West Virginia Constitution.

22 (d) A person who is sentenced pursuant to this section is not
23 eligible for suspension of sentence, probation, pardon, commutation
24 of sentence, or release from confinement on any basis.

25 (e) In addition to any other penalty prescribed by law, the

1 court shall order the person to pay confinement costs.

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

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

10 (h) Any person who violates this section is guilty of a
11 misdemeanor and, upon conviction, shall, for each offense, be fined
12 not less than \$250 nor more \$1,000, or confined in the regional jail
13 for twenty days, or both fined and confined, in the discretion of
14 the court, and for each subsequent conviction be fined not less than
15 \$500 nor more \$2,500, or confined in the regional jail for thirty
16 days, or both fined and confined.

17 **§61-14-5. Unlawful stopping to hire and pick up passengers for**
18 **work; unlawful application, solicitation or**
19 **employment; classification; definitions.**

20 (a) It is unlawful for an occupant of a motor vehicle that is
21 stopped on a street, roadway or highway to attempt to hire or hire
22 and pick up passengers for work at a different location if the motor
23 vehicle blocks or impedes the normal movement of traffic.

24 (b) It is unlawful for a person to enter a motor vehicle that
25 is stopped on a street, roadway or highway in order to be hired by

1 an occupant of the motor vehicle and to be transported to work at
2 a different location if the motor vehicle blocks or impedes the
3 normal movement of traffic.

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

8 (d) A law-enforcement official or agency of this state or a
9 county, city, town or other political subdivision of this state may
10 not consider race, color or national origin in the enforcement of
11 this section except to the extent permitted by the United States or
12 West Virginia Constitution.

13 (e) In the enforcement of this section, an alien's immigration
14 status may be determined by:

15 (1) A law-enforcement officer who is authorized by the federal
16 government to verify or ascertain an alien's immigration status; or

17 (2) The United States immigration and customs enforcement or
18 the United States customs and border protection pursuant to 8 §
19 1373(c).

20 (f) Any person who violates this section is guilty of a
21 misdemeanor and, upon conviction, shall, for each offense, be fined
22 not less than \$250 nor more than \$1,000.

23 **§61-14-6. Unlawful transporting, moving, concealing, harboring or**
24 **shielding of unlawful aliens; vehicle impoundment;**
25 **exception; classification.**

1 (a) It is unlawful for a person who is in violation of a
2 criminal offense to:

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

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

13 (3) Encourage or induce an alien to come to or reside in this
14 state if the person knows or recklessly disregards the fact that
15 such coming to, entering or residing in this state is or will be in
16 violation of law.

17 (b) A means of transportation that is used in the commission
18 of a violation of this section is subject to mandatory impoundment,
19 immobilization or other remedy considered necessary.

1 (c) A law-enforcement official or agency of this state or a
2 county, city, town or other political subdivision of this state may
3 not consider race, color or national origin in the enforcement of
4 this section except to the extent permitted by the United States or
5 West Virginia Constitution.

6 (d) In the enforcement of this section, an alien's immigration
7 status may be determined by:

8 (1) A law-enforcement officer who is authorized by the federal
9 government to verify or ascertain an alien's immigration status; or

10 (2) The United States immigration and customs enforcement or
11 the United States customs and border protection pursuant to 8 U.S.C.
12 §1373(c).

13 (e) This section does not apply to a child protective services
14 worker acting in the worker's official capacity or a person who is
15 acting in the capacity of a first responder, an ambulance attendant
16 or an emergency medical technician and who is transporting or moving
17 an alien in this state pursuant to title 36, chapter 21.1.

18 (f) Any person who violates any of this section is guilty of
19 a misdemeanor and, upon conviction, shall be fined not less than
20 \$1,000 nor more than \$10,000, except that a violation of this
21 section that involves ten or more illegal aliens is a felony and,
22 the person shall be fined not less than \$1,000 nor more than \$10,000
23 for each alien who is involved.

24 **§61-14-7. Knowingly employing unauthorized aliens; prohibition;**
25 **false and frivolous complaints; violation;**

1 **classification; license suspension and revocation;**
2 **affirmative defense.**

3 (a) An employer shall not knowingly employ an unauthorized
4 alien. If, in the case when an employer uses a contract,
5 subcontract or other independent contractor agreement to obtain the
6 labor of an alien in this state, the employer knowingly contracts
7 with an unauthorized alien or with a person who employs or contracts
8 with an unauthorized alien to perform the labor, the employer
9 violates this subsection.

10 (b) The Attorney General shall prescribe a complaint form for
11 a person to allege a violation of subsection (a) of this
12 section. The complainant shall not be required to list the
13 complainant's social security number on the complaint form or to
14 have the complaint form notarized. On receipt of a complaint on a
15 prescribed complaint form that an employer allegedly knowingly
16 employs an unauthorized alien, the Attorney General or county
17 prosecuting attorney shall investigate whether the employer has
18 violated subsection (a) of this section. If a complaint is received
19 but is not submitted on a prescribed complaint form, the Attorney
20 General or county prosecuting attorney may investigate whether the
21 employer has violated subsection (a) of this section. This
22 subsection shall not be construed to prohibit the filing of
23 anonymous complaints that are not submitted on a prescribed
24 complaint form. The Attorney General or county prosecuting attorney
25 shall not investigate complaints that are based solely on race,

1 color or national origin. A complaint that is submitted to a county
2 prosecuting attorney shall be submitted to the county prosecuting
3 attorney in the county in which the alleged unauthorized alien is
4 or was employed by the employer. The county sheriff or any other
5 local law-enforcement agency may assist in investigating a
6 complaint. When investigating a complaint, the Attorney General or
7 county prosecuting attorney shall verify the work authorization of
8 the alleged unauthorized alien with the federal government pursuant
9 to 8 U.S.C. §1373(c). A state, county or local official shall not
10 attempt to independently make a final determination on whether an
11 alien is authorized to work in the United States. An alien's
12 immigration status or work authorization status shall be verified
13 with the federal government pursuant to 8 U.S.C. §1373(c). A person
14 who knowingly files a false and frivolous complaint under this
15 subsection is guilty of a misdemeanor and, upon conviction, shall,
16 for each offense, be fined not less than \$250 nor more than \$1,000.

17 (c) If, after an investigation, the Attorney General or county
18 prosecuting attorney determines that the complaint is not false and
19 frivolous:

20 (1) The Attorney General or county prosecuting attorney shall
21 notify the United States immigration and customs enforcement of the
22 unauthorized alien;

23 (2) The Attorney General or county prosecuting attorney shall
24 notify the local law-enforcement agency of the unauthorized alien;
25 and

1 (3) The Attorney General shall notify the appropriate county
2 prosecuting attorney to bring an action pursuant to subsection (d)
3 of this section if the complaint was originally filed with the
4 Attorney General.

5 (d) An action for a violation of subsection (a) of this section
6 shall be brought against the employer by the county prosecuting
7 attorney in the county where the unauthorized alien employee is or
8 was employed by the employer. The county prosecuting attorney shall
9 not bring an action against any employer for any violation of
10 subsection (a) of this section that occurs before July 1, 2011. A
11 second violation of this section shall be based only on an
12 unauthorized alien who is or was employed by the employer after an
13 action has been brought for a violation of subsection (a) of this
14 section or subsection (a), section eight of this article.

15 (e) For any action in court under this section, the court shall
16 expedite the action, including assigning the hearing at the earliest
17 practicable date.

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

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

22 (A) Shall order the employer to terminate the employment of all
23 unauthorized aliens;

24 (B) Shall order the employer to be subject to a three-year
25 probationary period for the business location where the unauthorized

1 alien performed work. During the probationary period the employer
2 shall file quarterly reports in the form provided in section eight
3 of this article with the county prosecuting attorney of each new
4 employee who is hired by the employer at the business location where
5 the unauthorized alien performed work;

6 (C) Shall order the employer to file a signed sworn affidavit
7 with the county prosecuting attorney within three business days
8 after the order is issued. The affidavit shall state that the
9 employer has terminated the employment of all unauthorized aliens
10 in this state and that the employer will not intentionally or
11 knowingly employ an unauthorized alien in this state. The court
12 shall order the appropriate agencies to suspend all licenses subject
13 to this subdivision that are held by the employer if the employer
14 fails to file a signed sworn affidavit with the county prosecuting
15 attorney within three business days after the order is issued. All
16 licenses that are suspended under this subdivision shall remain
17 suspended until the employer files a signed sworn affidavit with the
18 county prosecuting attorney. Notwithstanding any other law, on
19 filing of the affidavit the suspended licenses shall be reinstated
20 immediately by the appropriate agencies. For the purposes of this
21 subdivision, the licenses that are subject to suspension under this
22 subdivision are all licenses that are held by the employer specific
23 to the business location where the unauthorized alien performed
24 work. If the employer does not hold a license specific to the
25 business location where the unauthorized alien performed work, but

1 a license is necessary to operate the employer's business in
2 general, the licenses that are subject to suspension under this
3 subdivision are all licenses that are held by the employer at the
4 employer's primary place of business. On receipt of the court's
5 order and notwithstanding any other law, the appropriate agencies
6 shall suspend the licenses according to the court's order. The
7 court shall send a copy of the court's order to the Attorney General
8 and the Attorney General shall maintain the copy pursuant to
9 subsection(g) of this section; and

10 (D) May order the appropriate agencies to suspend all licenses
11 described in subdivision (C) of this paragraph that are held by the
12 employer for not to exceed ten business days. The court shall base
13 its decision to suspend under this subdivision on any evidence or
14 information submitted to it during the action for a violation of
15 this subsection and shall consider the following factors, if
16 relevant:

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

18 (ii) Any prior misconduct by the employer;

19 (iii) The degree of harm resulting from the violation;

20 (iv) Whether the employer made good faith efforts to comply
21 with any applicable requirements;

22 (v) The duration of the violation;

23 (vi) The role of the directors, officers or principals of the
24 employer in the violation; and

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

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

13 (3) The violation shall be considered:

14 (A) A first violation by an employer at a business location if
15 the violation did not occur during a probationary period ordered by
16 the court under this subsection or subsection (f), section eight of
17 this article for that employer's business location; and

18 (B) A second violation by an employer at a business location
19 if the violation occurred during a probationary period ordered by
20 the court under this subsection or subsection (f), section eight of
21 this article for that employer's business location.

22 (g) The Attorney General shall maintain copies of court orders
23 that are received pursuant to subsection (f) of this section and
24 shall maintain a database of the employers and business locations
25 that have a first violation of subsection (a) of this section and

1 make the court orders available on the Attorney General's website.

2 (h) On determining whether an employee is an unauthorized
3 alien, the court shall consider only the federal government's
4 determination pursuant to 8 U.S.C. §1373(c). The federal
5 government's determination creates a rebuttable presumption of the
6 employee's lawful status. The court may take judicial notice of the
7 federal government's determination and may request the federal
8 government to provide automated or testimonial verification pursuant
9 to 8 U.S.C. §1373(c).

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

14 (j) For the purposes of this section, an employer that
15 establishes that it has complied in good faith with the requirements
16 of 8 U.S.C. §1324a(b) establishes an affirmative defense that the
17 employer did not knowingly employ an unauthorized alien. An
18 employer is considered to have complied with the requirements of 8
19 U.S.C. §1324a(b), notwithstanding an isolated, sporadic or
20 accidental technical or procedural failure to meet the requirements,
21 if there is a good faith attempt to comply with the requirements.

22 (k) It is an affirmative defense to a violation of subsection
23 (a) of this section that the employer was entrapped. To claim
24 entrapment, the employer must admit by the employer's testimony or
25 other evidence the substantial elements of the violation. An

1 employer who asserts an entrapment defense has the burden of proving
2 the following by a preponderance of the evidence:

3 (1) The idea of committing the violation started with
4 law-enforcement officers or their agents rather than with the
5 employer;

6 (2) The law-enforcement officers or their agents urged and
7 induced the employer to commit the violation; and

8 (3) The employer was not predisposed to commit the violation
9 before the law-enforcement officers or their agents urged and
10 induced the employer to commit the violation.

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

19 **§61-14-8. Intentionally employing aliens; prohibition; false and**
20 **frivolous complaints; violation; classification;**
21 **license suspension and revocation; affirmative**
22 **defense.**

23 (a) An employer shall not intentionally employ an unauthorized
24 alien. If, in the case when an employer uses a contract, subcontract

1 or other independent contractor agreement to obtain the labor of an
2 alien in this state, the employer intentionally contracts with an
3 unauthorized alien or with a person who employs or contracts with
4 an unauthorized alien to perform the labor, the employer violates
5 this subsection.

6 (b) The Attorney General shall prescribe a complaint form for
7 a person to allege a violation of subsection (a) of this section.
8 The complainant shall not be required to list the complainant's
9 social security number on the complaint form or to have the
10 complaint form notarized. On receipt of a complaint on a prescribed
11 complaint form that an employer allegedly intentionally employs an
12 unauthorized alien, the Attorney General or county prosecuting
13 attorney shall investigate whether the employer has violated
14 subsection (a) of this section. If a complaint is received but is
15 not submitted on a prescribed complaint form, the Attorney General
16 or county prosecuting attorney may investigate whether the employer
17 has violated subsection (a) of this section. This subsection shall
18 not be construed to prohibit the filing of anonymous complaints that
19 are not submitted on a prescribed complaint form. The Attorney
20 General or county prosecuting attorney shall not investigate
21 complaints that are based solely on race, color or national
22 origin. A complaint that is submitted to a county prosecuting
23 attorney shall be submitted to the county prosecuting attorney in
24 the county in which the alleged unauthorized alien is or was
25 employed by the employer. The county sheriff or any other local law

1 enforcement agency may assist in investigating a complaint. When
2 investigating a complaint, the Attorney General or county
3 prosecuting attorney shall verify the work authorization of the
4 alleged unauthorized alien with the federal government pursuant to
5 8 U.S.C. §1373(c). A state, county or local official shall not
6 attempt to independently make a final determination on whether an
7 alien is authorized to work in the United States. An alien's
8 immigration status or work authorization status shall be verified
9 with the federal government pursuant to 8 U.S.C. §1373(c). A person
10 who knowingly files a false and frivolous complaint under this
11 subsection is guilty of a misdemeanor and, upon conviction, shall,
12 for each offense, be fined not less than \$250 nor more than \$1,000.

13 (c) If, after an investigation, the Attorney General or county
14 prosecuting attorney determines that the complaint is not false and
15 frivolous:

16 (1) The Attorney General or county prosecuting attorney shall
17 notify the United States immigration and customs enforcement of the
18 unauthorized alien;

19 (2) The Attorney General or county prosecuting attorney shall
20 notify the local law-enforcement agency of the unauthorized alien;
21 and

22 (3) The Attorney General shall notify the appropriate county
23 prosecuting attorney to bring an action pursuant to subsection (d)
24 of this section if the complaint was originally filed with the
25 Attorney General.

1 (d) An action for a violation of subsection (a) of this section
2 shall be brought against the employer by the county prosecuting
3 attorney in the county where the unauthorized alien employee is or
4 was employed by the employer. The county prosecuting attorney shall
5 not bring an action against any employer for any violation of
6 subsection (a) of this section that occurs before July 1, 2011. A
7 second violation of this section shall be based only on an
8 unauthorized alien who is or was employed by the employer after an
9 action has been brought for a violation of subsection (a) of this
10 section or subsection (a), section seven of this article.

11 (e) For any action in court under this section, the court shall
12 expedite the action, including assigning the hearing at the earliest
13 practicable date.

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

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

18 (A) Order the employer to terminate the employment of all
19 unauthorized aliens;

20 (B) Order the employer to be subject to a five year
21 probationary period for the business location where the unauthorized
22 alien performed work. During the probationary period the employer
23 shall file quarterly reports in the form provided in section eight
24 of this article with the county prosecuting attorney of each new

1 employee who is hired by the employer at the business location where
2 the unauthorized alien performed work; and

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

10 (i) The number of unauthorized aliens employed by the employer;

11 (ii) Any prior misconduct by the employer;

12 (iii) The degree of harm resulting from the violation;

13 (iv) Whether the employer made good faith efforts to comply
14 with any applicable requirements;

15 (v) The duration of the violation;

16 (vi) The role of the directors, officers or principals of the
17 employer in the violation; and

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

19 (D) Order the employer to file a signed sworn affidavit with
20 the county prosecuting attorney. The affidavit shall state that the
21 employer has terminated the employment of all unauthorized aliens
22 in this state and that the employer will not intentionally or
23 knowingly employ an unauthorized alien in this state. The court
24 shall order the appropriate agencies to suspend all licenses subject
25 to this subdivision that are held by the employer if the employer

1 fails to file a signed sworn affidavit with the county prosecuting
2 attorney within three business days after the order is issued. All
3 licenses that are suspended under this subdivision for failing to
4 file a signed sworn affidavit shall remain suspended until the
5 employer files a signed sworn affidavit with the county prosecuting
6 attorney. For the purposes of this subdivision, the licenses that
7 are subject to suspension under this subdivision are all licenses
8 that are held by the employer specific to the business location
9 where the unauthorized alien performed work. If the employer does
10 not hold a license specific to the business location where the
11 unauthorized alien performed work, but a license is necessary to
12 operate the employer's business in general, the licenses that are
13 subject to suspension under this subdivision are all licenses that
14 are held by the employer at the employer's primary place of
15 business. On receipt of the court's order and notwithstanding any
16 other law, the appropriate agencies shall suspend the licenses
17 according to the court's order. The court shall send a copy of the
18 court's order to the Attorney General and the Attorney General shall
19 maintain the copy pursuant to subsection (g) of this section.

20 (2) For a second violation, as described in subdivision (3) of
21 this subsection, the court shall order the appropriate agencies to
22 permanently revoke all licenses that are held by the employer
23 specific to the business location where the unauthorized alien
24 performed work. If the employer does not hold a license specific to
25 the business location where the unauthorized alien performed work,

1 but a license is necessary to operate the employer's business in
2 general, the court shall order the appropriate agencies to
3 permanently revoke all licenses that are held by the employer at the
4 employer's primary place of business. On receipt of the order and
5 notwithstanding any other law, the appropriate agencies shall
6 immediately revoke the licenses.

7 (3) The violation shall be considered:

8 (A) A first violation by an employer at a business location if
9 the violation did not occur during a probationary period ordered by
10 the court under this subsection or subsection (f), section seven of
11 this article for that employer's business location; and

12 (B) A second violation by an employer at a business location
13 if the violation occurred during a probationary period ordered by
14 the court under this subsection or subsection (f), section seven of
15 this article for that employer's business location.

16 (g) The Attorney General shall maintain copies of court orders
17 that are received pursuant to subsection (f) of this section and
18 shall maintain a database of the employers and business locations
19 that have a first violation of subsection (a) of this section and
20 make the court orders available on the Attorney General's website.

21 (h) On determining whether an employee is an unauthorized
22 alien, the court shall consider only the federal government's
23 determination pursuant to 8 U.S.C. §1373(c). The federal
24 government's determination creates a rebuttable presumption of the
25 employee's lawful status. The court may take judicial notice of the

1 federal government's determination and may request the federal
2 government to provide automated or testimonial verification pursuant
3 to 8 U.S.C. §1373(c).

4 (i) For the purposes of this section, proof of verifying the
5 employment authorization of an employee through an e-verify program
6 creates a rebuttable presumption that an employer did not
7 intentionally employ an unauthorized alien.

8 (j) For the purposes of this section, an employer that
9 establishes that it has complied in good faith with the requirements
10 of 8 U.S.C. §1324a(b) establishes an affirmative defense that the
11 employer did not intentionally employ an unauthorized alien. An
12 employer is considered to have complied with the requirements of 8
13 U.S.C. §1324a(b), notwithstanding an isolated, sporadic or
14 accidental technical or procedural failure to meet the requirements,
15 if there is a good faith attempt to comply with the requirements.

16 (k) It is an affirmative defense to a violation of subsection
17 (a) of this section that the employer was entrapped. To claim
18 entrapment, the employer must admit by the employer's testimony or
19 other evidence the substantial elements of the violation. An
20 employer who asserts an entrapment defense has the burden of proving
21 the following by a preponderance of the evidence:

22 (1) The idea of committing the violation started with
23 law-enforcement officers or their agents rather than with the
24 employer;

25 (2) The law-enforcement officers or their agents urged and

1 induced the employer to commit the violation; and

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

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

13 **§61-14-9. Immigration Intelligence Team Enforcement Mission Fund.**

14 The Immigration Intelligence Team Enforcement Mission Fund is
15 established consisting of moneys deposited pursuant to section three
16 of this article and moneys appropriated by the Legislature. Moneys
17 in the fund are subject to legislative appropriation and shall be
18 used for immigration enforcement and for regional jail reimbursement
19 costs relating to illegal immigration.

20 **§61-14-10. Severability; implementation; construction.**

21 (a) If a provision of this article or its application to any
22 person or circumstance is held invalid, the invalidity does not
23 affect other provisions or applications of the act that can be given
24 effect without the invalid provision or application, and to this end
25 the provisions of this article are severable.

1 (b) The terms of this article regarding immigration shall be
2 construed to have the meanings given to them under federal
3 immigration law.

4 (c) This article shall be implemented in a manner consistent
5 with federal laws regulating immigration, protecting the civil
6 rights of all persons and respecting the privileges and immunities
7 of United States citizens.

NOTE: This bill creates the "Support Our Law Enforcement and Safe Neighborhoods Act." The bill defining terms, requires cooperation among officials and agencies and permits certain lawful actions. The bill requires aliens to carry alien registration documents and establishes enforcement procedures. The bill also makes it illegal to stop and pick up passengers for work, to transport, move, conceal, harbor or shielding of unauthorized aliens. Further, the bill makes it illegal to knowingly or intentionally employ unauthorized aliens and to make false or frivolous complaints. The bill creates the Intelligence Team Enforcement Mission Fund. Also, the bill sets forth penalties and provides a severability provision.

This article is new; therefore, strike-throughs and underscoring have been omitted.