
SENATE BILL No. 590

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-3-22-17; IC 5-2; IC 5-14-1.5; IC 5-28-6-8; IC 5-32; IC 10-11-2-21.5; IC 11-10; IC 15-11-2-8; IC 21-11-7.5; IC 21-14-11; IC 21-15-2-5; IC 22-4-14-9; IC 22-5; IC 34-28-8; IC 34-30-2-87.3; IC 35-33; IC 35-44-2-6; IC 35-44-5.

Synopsis: Illegal immigration matters. Makes various changes to law concerning enforcement of federal immigration laws, checking the citizenship or immigration status of individuals, and related criminal matters, including the following: (1) Requiring that only English be used, with certain exceptions, in public meetings, public documents, by officers and employees of state or political subdivisions in performing their duties, and providing information communicated electronically by the state or a political subdivision. (2) Requiring the office of management and budget to calculate the costs of illegal aliens to Indiana and make a written request to the Congress of the United States to reimburse the state for those costs. (3) Prohibiting governmental bodies from restricting or limiting certain actions by other governmental bodies with regard to information of the citizenship or immigration status of an individual. (4) Prohibiting a governmental body from limiting or restricting the enforcement of federal immigration laws to less than the full extent permitted by federal law. (5) Requiring law enforcement officers to verify the citizenship or immigration status of individuals in certain situations. (6) Establishing a process to suspend or revoke business licenses of employers who knowingly employ unauthorized aliens. (7) Requiring the superintendent of state police to negotiate the terms of a memorandum of agreement with the federal government so that state police employees can be trained to enforce federal immigration and customs
(Continued next page)

C
o
p
y

Effective: July 1, 2011.

Delph

January 20, 2011, read first time and referred to Committee on Pensions and Labor.



laws. (8) Requiring state agencies, political subdivisions, contractors with public contracts for services with a state or political subdivision, and certain business entities to use E-Verify and meet other requirements. (9) Allowing a state agency or political subdivision to terminate a public contract for services with a contractor for breach of the public contract for services if the contractor knowingly employs an unauthorized alien. (10) Prohibiting individuals from commencing day labor without completing an attestation required under federal law. (11) Creating private rights of actions for certain violations. (12) Establishing certain state crimes, including: (A) offenses related to identification numbers and documents; (B) false identity statement; (C) crimes established under federal law prohibiting the transporting, concealing, harboring, or shielding from detection of an alien or aiding, abetting, or engaging in conspiracy to commit one of those acts knowing or in reckless disregard of the fact that the alien has come to, entered, or remains in the United States in violation of law; and (D) a crime established under federal law prohibiting encouraging or inducing an alien to come to, enter into, or reside in the United States knowing or in reckless disregard of the fact that the alien coming to, entering into, or residing in the United States is or would be in violation of law. (13) Requiring law enforcement officers to impound motor vehicles for violations of crimes related to transporting, concealing, harboring, or shielding from detection aliens. (14) Requiring a judicial officer in setting bail to consider that the defendant is a foreign national who has not been lawfully admitted to the United States as relevant to the risk of nonappearance. (15) Allowing a law enforcement officer to arrest a person if the officer has probable cause to believe the person is an alien who meets certain criteria. (16) Requiring the Indiana economic development corporation and the Indiana department of agriculture to include certain agriculture jobs and wage rates on the corporation's and department's web sites. (17) Requiring the department of correction to verify the citizenship or immigration status of offenders. (18) Prohibiting a person who is not lawfully in the United States from being eligible for or receiving any higher education award or a resident tuition rate. (19) Requiring the department of workforce development to verify the status of an individual as a qualified alien through the Systematic Alien Verification for Entitlements program to determine the individual's eligibility for unemployment compensation benefits.

C
O
P
Y



Introduced

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

C
O
P
Y

SENATE BILL No. 590



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-3-22-17 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2011]: **Sec. 17. (a) As used in this section, "alien" has the**
- 4 **meaning set forth in 8 U.S.C. 1101(a).**
- 5 **(b) As used in this section, "illegal alien" means an alien who**
- 6 **has come to, entered, or remained in the United States in violation**
- 7 **of the law.**
- 8 **(c) As used in this section, "total costs" includes, but is not**
- 9 **limited to, costs related to incarceration, education, health care,**
- 10 **and public assistance.**
- 11 **(d) Not later than July 1, 2012, the OMB shall, using existing**
- 12 **resources, do the following:**
- 13 **(1) Calculate an estimate of the total costs of illegal aliens to**
- 14 **the state of Indiana.**
- 15 **(2) Make a written request to the Congress of the United**



1 States to reimburse the state of Indiana for the costs
2 calculated under subdivision (1).

3 (e) This section expires July 1, 2013.

4 SECTION 2. IC 5-2-18 IS ADDED TO THE INDIANA CODE AS
5 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2011]:

7 **Chapter 18. Citizenship and Immigration Status Information**

8 **Sec. 1.** As used in this chapter, "governmental body" has the
9 meaning set forth in IC 5-22-2-13.

10 **Sec. 2.** As used in this chapter, "law enforcement officer" has
11 the meaning set forth in IC 5-2-1-2.

12 **Sec. 3.** A governmental body may not enact or implement an
13 ordinance, a resolution, a rule, or a policy that prohibits or in any
14 way restricts another governmental body, including a law
15 enforcement officer, a state or local official, or a state or local
16 government employee, from taking the following actions with
17 regard to information of the citizenship or immigration status,
18 lawful or unlawful, of an individual:

- 19 (1) Communicating or cooperating with federal officials.
- 20 (2) Sending to or receiving information from the United States
21 Department of Homeland Security.
- 22 (3) Maintaining information.
- 23 (4) Exchanging information with another federal, state, or
24 local government entity.

25 **Sec. 4.** If a governmental body violates this chapter, a person
26 lawfully domiciled in Indiana may bring an action to compel the
27 governmental body to comply with this chapter.

28 **Sec. 5.** Every law enforcement agency (as defined in IC 5-2-17-2)
29 shall provide each law enforcement officer with a written notice
30 that the law enforcement officer has a duty to cooperate with state
31 and federal agencies and officials on matters pertaining to
32 enforcement of state and federal laws governing immigration.

33 SECTION 3. IC 5-2-19 IS ADDED TO THE INDIANA CODE AS
34 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
35 1, 2011]:

36 **Chapter 19. Verification of Immigration Status**

37 **Sec. 1.** As used in this chapter, "governmental body" has the
38 meaning set forth in IC 5-22-2-13.

39 **Sec. 2.** As used in this chapter, "law enforcement agency" has
40 the meaning set forth in IC 5-2-17-2.

41 **Sec. 3.** As used in this chapter, "law enforcement officer" has
42 the meaning set forth in IC 5-2-1-2.

C
o
p
y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

Sec. 4. A governmental body may not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.

Sec. 5. (a) Except as provided under subsection (b), if a law enforcement officer acting in the enforcement of any state law or local ordinance:

(1) makes a lawful stop, detention, or arrest of an individual for a violation of a state law or local ordinance; and

(2) has reasonable suspicion to believe that the individual stopped, detained, or arrested as described under subdivision

(1):

(A) is an alien; and

(B) is not lawfully present in the United States;

the law enforcement officer shall request verification of identity and the citizenship or immigration status of the individual from federal immigration authorities under 8 U.S.C. 1373(c).

(b) A law enforcement officer is not required to request verification of citizenship or immigration status under subsection (a), if the law enforcement officer reports to the law enforcement agency that the attempt would hinder or obstruct a criminal investigation or the treatment of a medical emergency.

(c) A law enforcement agency that has custody of an individual who has been verified by federal immigration authorities as an alien unlawfully present in the United States shall request the United States Department of Homeland Security to issue a detainer authorizing transfer of the alien into federal custody.

(d) An individual whose immigration status is being verified by a law enforcement officer under this chapter is presumed not to be an alien who is unlawfully present in the United States if the individual provides one (1) or more of the following to the law enforcement officer:

(1) A valid Indiana driver's license.

(2) A valid Indiana identification card issued under IC 9-24-16.

(3) A valid tribal enrollment card or other form of identification issued by a federally recognized Indian tribe that bears a photographic image of the holder.

(4) Any valid identification document issued by a federal, state, or local government, if:

(A) the document bears a photographic image of the holder; and

(B) the issuing entity requires proof of legal presence in the

**C
O
P
Y**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

United States as a condition for issuance.

Sec. 6. A law enforcement agency may securely transport an alien in the law enforcement agency's custody who has been verified by federal immigration authorities as unlawfully present in the United States to:

- (1) a federal facility in Indiana; or**
- (2) any other point of transfer into federal custody that is outside Indiana;**

if the receiving federal agency agrees to the transportation and transfer of the alien.

Sec. 7. If any person who is a legal resident of Indiana believes that a law enforcement agency or any governmental body has adopted or implemented a policy or practice that limits or restricts the enforcement of federal immigration laws in violation of this chapter, that person may bring an action in the appropriate court for declaratory and injunctive relief against the law enforcement agency or governmental body.

Sec. 8. If a court finds that a governmental body knowingly or intentionally violated section 4 of this chapter or a law enforcement agency knowingly or intentionally failed to comply with section 5 of this chapter, the court shall enjoin the law enforcement agency or political subdivision from engaging in or encouraging policies, practices, or acts that limit or restrict the enforcement of federal immigration laws in violation of this chapter.

Sec. 9. The court may award costs and reasonable attorney's fees to any plaintiff who prevails in an action under this chapter.

Sec. 10. If a law enforcement officer is a party to an action under this chapter, the law enforcement agency with whom the law enforcement officer is employed shall indemnify the law enforcement officer for all reasonable costs and expenses, including attorney's fees, incurred by the law enforcement officer in connection with the action unless the law enforcement officer is found to have acted in bad faith.

Sec. 11. This chapter shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

SECTION 4. IC 5-14-1.5-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3.5. (a) Notwithstanding any other state law and except as provided in subsection (b), a governing body of a public agency shall conduct all meetings, including meetings by telephone, computer, videoconferencing, or any other electronic means of communication, in English.

**C
o
p
y**



- 1 **(b) A language other than English may be used when required:**
- 2 **(1) by the Constitution of the United States, federal law, or the**
- 3 **Constitution of the State of Indiana;**
- 4 **(2) to protect the rights of parties and witnesses in a civil or**
- 5 **criminal action in a court or in an administrative proceeding;**
- 6 **(3) to promote tourism or international trade; or**
- 7 **(4) by law enforcement or public health and safety needs.**

8 **(c) This section may not be construed to affect the ability of a**
 9 **person to exercise the person's rights under:**

- 10 **(1) the First Amendment to the Constitution of the United**
- 11 **States; or**
- 12 **(2) Article 1, Section 9 of the Constitution of the State of**
- 13 **Indiana.**

14 SECTION 5. IC 5-14-1.5-7, AS AMENDED BY P.L.179-2007,
 15 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2011]: Sec. 7. (a) An action may be filed by any person in any
 17 court of competent jurisdiction to:

- 18 (1) obtain a declaratory judgment;
- 19 (2) enjoin continuing, threatened, or future violations of this
 20 chapter; or
- 21 (3) declare void any policy, decision, or final action:
- 22 (A) taken at an executive session in violation of section 3(a) of
 23 this chapter;
- 24 (B) taken at any meeting of which notice is not given in
 25 accordance with section 5 of this chapter;
- 26 (C) that is based in whole or in part upon official action taken
 27 at any:
 - 28 (i) executive session in violation of section 3(a) of this
 29 chapter;
 - 30 (ii) meeting of which notice is not given in accordance with
 31 section 5 of this chapter; or
 - 32 (iii) series of gatherings in violation of section 3.1 of this
 33 chapter; or
 - 34 **(iv) meeting that was not conducted in English in**
 35 **violation of section 3.5 of this chapter; or**
 - 36 (D) taken at a meeting held in a location in violation of section
 37 8 of this chapter.

38 The plaintiff need not allege or prove special damage different from
 39 that suffered by the public at large.

40 (b) Regardless of whether a formal complaint or an informal inquiry
 41 is pending before the public access counselor, any action to declare any
 42 policy, decision, or final action of a governing body void, or to enter an

C
O
P
Y



1 injunction which would invalidate any policy, decision, or final action
 2 of a governing body, based on violation of this chapter occurring before
 3 the action is commenced, shall be commenced:

4 (1) prior to the delivery of any warrants, notes, bonds, or
 5 obligations if the relief sought would have the effect, if granted,
 6 of invalidating the notes, bonds, or obligations; or

7 (2) with respect to any other subject matter, within thirty (30)
 8 days of either:

9 (A) the date of the act or failure to act complained of; or

10 (B) the date that the plaintiff knew or should have known that
 11 the act or failure to act complained of had occurred;

12 whichever is later. If the challenged policy, decision, or final action is
 13 recorded in the memoranda or minutes of a governing body, a plaintiff
 14 is considered to have known that the act or failure to act complained of
 15 had occurred not later than the date that the memoranda or minutes are
 16 first available for public inspection.

17 (c) If a court finds that a governing body of a public agency has
 18 violated this chapter, it may not find that the violation was cured by the
 19 governing body by only having taken final action at a meeting that
 20 complies with this chapter.

21 (d) In determining whether to declare any policy, decision, or final
 22 action void, a court shall consider the following factors among other
 23 relevant factors:

24 (1) The extent to which the violation:

25 (A) affected the substance of the policy, decision, or final
 26 action;

27 (B) denied or impaired access to any meetings that the public
 28 had a right to observe and record; and

29 (C) prevented or impaired public knowledge or understanding
 30 of the public's business.

31 (2) Whether voiding of the policy, decision, or final action is a
 32 necessary prerequisite to a substantial reconsideration of the
 33 subject matter.

34 (3) Whether the public interest will be served by voiding the
 35 policy, decision, or final action by determining which of the
 36 following factors outweighs the other:

37 (A) The remedial benefits gained by effectuating the public
 38 policy of the state declared in section 1 of this chapter.

39 (B) The prejudice likely to accrue to the public if the policy,
 40 decision, or final action is voided, including the extent to
 41 which persons have relied upon the validity of the challenged
 42 action and the effect declaring the challenged action void

C
O
P
Y



1 would have on them.

2 (4) Whether the defendant acted in compliance with an informal

3 inquiry response or advisory opinion issued by the public access

4 counselor concerning the violation.

5 (e) If a court declares a policy, decision, or final action of a

6 governing body of a public agency void, the court may enjoin the

7 governing body from subsequently acting upon the subject matter of

8 the voided act until it has been given substantial reconsideration at a

9 meeting or meetings that comply with this chapter.

10 (f) In any action filed under this section, a court shall award

11 reasonable attorney's fees, court costs, and other reasonable expenses

12 of litigation to the prevailing party if:

13 (1) the plaintiff prevails; or

14 (2) the defendant prevails and the court finds that the action is

15 frivolous and vexatious.

16 The plaintiff is not eligible for the awarding of attorney's fees, court

17 costs, and other reasonable expenses if the plaintiff filed the action

18 without first seeking and receiving an informal inquiry response or

19 advisory opinion from the public access counselor, unless the plaintiff

20 can show the filing of the action was necessary to prevent a violation

21 of this chapter.

22 (g) A court shall expedite the hearing of an action filed under this

23 section.

24 SECTION 6. IC 5-28-6-8 IS ADDED TO THE INDIANA CODE

25 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

26 1, 2011]: **Sec. 8. The corporation shall include on the corporation's**

27 **Internet web site the following:**

28 (1) **A list of agricultural jobs in which there is a critical need**

29 **for agricultural workers, as determined by the department of**

30 **agriculture under IC 15-11-2-8.**

31 (2) **The wage rate for each agricultural job listed in**

32 **accordance with subdivision (1).**

33 SECTION 7. IC 5-32 IS ADDED TO THE INDIANA CODE AS A

34 NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,

35 2011]:

36 **ARTICLE 32. ENGLISH LANGUAGE REQUIREMENT**

37 **Chapter 1. Official Documents or Communications**

38 **Sec. 1. As used in this chapter, "official document or**

39 **communication" means a written document or written**

40 **communication that:**

41 (1) **binds or commits the state;**

42 (2) **is required by law; or**

COPY



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

(3) gives the appearance of presenting the official views or positions of the state.

Sec. 2. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.

Sec. 3. As used in this chapter, "state" means Indiana or any agency of state government and includes a body corporate and politic established as an instrumentality of the state. The term does not include a political subdivision (as defined in IC 3-5-2-38).

Sec. 4. Notwithstanding any other state law and except as provided in section 7 of this chapter, an official document or communication issued:

- (1) by;
- (2) on behalf of; or
- (3) representing;

the state or a political subdivision may be issued only in the English language.

Sec. 5. Notwithstanding any other state law and except as provided in section 7 of this chapter, an officer or employee of the state or a political subdivision may not provide information or communicate in a language other than English while performing the duties of the officer or employee.

Sec. 6. Notwithstanding any other state law and except as provided in section 7 of this chapter, information communicated electronically by the state or a political subdivision may not be in a language other than English, including an:

- (1) electronic telephone voice system;
- (2) electronic mail message; or
- (3) Internet web site.

Sec. 7. (a) A language other than English may be used when required:

- (1) by the Constitution of the United States, federal law, or the Constitution of the State of Indiana;
- (2) by law enforcement or public health and safety needs;
- (3) to protect the rights of parties and witnesses in a civil or criminal action in a court or in an administrative proceeding;
- (4) to promote and encourage tourism and international trade;
- (5) to teach:
 - (A) another language to students proficient in English; or
 - (B) English to students of limited English proficiency; or
- (6) by libraries:
 - (A) to collect and promote foreign language materials; and

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- (B) to provide foreign language services and activities.**
- (b) A language other than English may be used as follows:**
 - (1) To create or promote state or political subdivision mottos.**
 - (2) For inscriptions on public monuments.**
 - (3) When the language involves terms of art or terms or phrases from languages other than English that are commonly used in official communications.**

Sec. 8. This chapter may not be construed to affect the ability of a person to exercise the person's rights under:

- (1) the First Amendment to the Constitution of the United States; or**
- (2) Article 1, Section 9 of the Constitution of the State of Indiana.**

SECTION 8. IC 10-11-2-21.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 21.5. (a) The superintendent shall negotiate the terms of a memorandum of agreement under Section 287(g) of the United States Immigration and Nationality Act between the state and the United States Department of Homeland Security concerning the enforcement of federal immigration and customs laws in Indiana.

(b) The memorandum of agreement described in subsection (a) must be signed on behalf of the state by the superintendent and governor, unless otherwise required by the United States Department of Homeland Security.

(c) The superintendent shall designate appropriate police employees to be trained under the memorandum of agreement described in subsection (a).

(d) The department shall apply for federal funding, as available, for the costs associated with training police employees under the memorandum of agreement described in subsection (a).

(e) A police employee certified as trained in accordance with the memorandum of agreement described in subsection (a) may enforce federal immigration and customs laws while performing within the scope of the police employee's duties.

(f) This section may not be construed to require an agreement in order for any police employee to:

- (1) communicate with the United States Department of Homeland Security regarding the immigration status of any individual, including reporting knowledge that a particular alien is not lawfully present in the United States; or**
- (2) otherwise cooperate with the United States Department of**

**C
O
P
Y**



1 **Homeland Security in the identification, apprehension,**
2 **detention, or removal of aliens not lawfully present in the**
3 **United States.**

4 SECTION 9. IC 11-10-1-2 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) A committed
6 criminal offender shall, within a reasonable time, be evaluated
7 regarding:

- 8 (1) ~~his~~ **the offender's** medical, psychological, educational,
- 9 vocational, economic and social condition, and history;
- 10 (2) the circumstances surrounding ~~his~~ **the offender's** present
- 11 commitment;
- 12 (3) ~~his~~ **the offender's** history of criminality; ~~and~~
- 13 **(4) the citizenship or immigration status of the offender by**
- 14 **making a reasonable effort to verify the offender's citizenship**
- 15 **or immigration status with the United States Department of**
- 16 **Homeland Security under 8 U.S.C. 1373(c); and**
- 17 ~~(4)~~ **(5)** any additional relevant matters.

18 (b) In making the evaluation prescribed in subsection (a), the
19 department may utilize any presentence report, any presentence
20 memorandum filed by the offender, any reports of any presentence
21 physical or mental examination, the record of the sentencing hearing,
22 or other information forwarded by the sentencing court or other agency,
23 if that information meets the department's minimum standards for
24 criminal offender evaluation.

25 (c) If an offender has undergone, within two (2) years before the
26 date of ~~his~~ **the offender's** commitment, a previous departmental
27 evaluation under this section, the department may rely on the previous
28 evaluation and the information used at that time. However, this
29 subsection does not deprive an offender of the right to a medical and
30 dental examination under IC 11-10-3.

31 **(d) If the department is unable to verify the citizenship or**
32 **immigration status of a committed criminal offender, the**
33 **department shall notify the United States Department of Homeland**
34 **Security that the citizenship or immigration status of the offender**
35 **could not be verified. The department shall provide the United**
36 **States Department of Homeland Security with any information**
37 **regarding the committed criminal offender that:**

- 38 **(1) is requested by the United States Department of Homeland**
- 39 **Security; and**
- 40 **(2) is in the department's possession or the department is able**
- 41 **to obtain.**

42 SECTION 10. IC 11-10-2-4 IS AMENDED TO READ AS

C
o
p
y



1 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) A committed
2 offender shall, within a reasonable time, be evaluated regarding:

3 (1) ~~his the offender's~~ medical, psychological, educational,
4 vocational, economic and social condition, and history;

5 (2) the circumstances surrounding ~~his the offender's~~ present
6 commitment;

7 (3) ~~his the offender's~~ history of delinquency; ~~and~~

8 (4) **the citizenship or immigration status of the offender by**
9 **making a reasonable effort to verify the offender's citizenship**
10 **or immigration status with the United States Department of**
11 **Homeland Security under 8 U.S.C. 1373(c); and**

12 ~~(4)~~ (5) any additional relevant matters.

13 (b) In making the evaluation prescribed in subsection (a), the
14 department may utilize reports of any precommitment physical or
15 mental examination or other information or records forwarded by the
16 committing court or other agency, if that information meets the
17 department's minimum standards for delinquent offender evaluation.

18 (c) If a committed offender has undergone, within one (1) year
19 before the date of ~~his the offender's~~ commitment, a previous
20 departmental evaluation under this section, the department may rely on
21 the previous evaluation and the information used at that time. However,
22 this subsection does not deprive an offender of the right to a medical
23 and dental examination under IC 11-10-3.

24 (d) **If the department is unable to verify the citizenship or**
25 **immigration status of a committed offender, the department shall**
26 **notify the United States Department of Homeland Security that the**
27 **citizenship or immigration status of the committed offender could**
28 **not be verified. The department shall provide the United States**
29 **Department of Homeland Security with any information regarding**
30 **the committed offender that:**

31 (1) **is requested by the United States Department of Homeland**
32 **Security; and**

33 (2) **is in the department's possession or the department is able**
34 **to obtain.**

35 SECTION 11. IC 15-11-2-8 IS ADDED TO THE INDIANA CODE
36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
37 1, 2011]: Sec. 8. (a) **The department shall include on the**
38 **department's Internet web site the following:**

39 (1) **A list of agricultural jobs in which there is a critical need**
40 **for agricultural workers, as determined by the department.**

41 (2) **The wage rate for each agricultural job listed in**
42 **accordance with subdivision (1).**

C
o
p
y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

(b) The department shall:
(1) accept information on agricultural jobs; and
(2) determine whether there is a critical need for agricultural workers for the agricultural jobs.

(c) The department shall provide a list of agricultural jobs in which there is a critical need for agricultural workers and the wage rate for each of the agricultural jobs to the Indiana economic development corporation.

SECTION 12. IC 21-11-7.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 7.5. Lawful Presence Required for Higher Education Awards

Sec. 1. Except as otherwise provided under federal law, a person who is not lawfully present in the United States is not eligible for a higher education award, including financial aid.

SECTION 13. IC 21-14-11 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 11. Restrictions on Resident Tuition

Sec. 1. A person who is not lawfully present in the United States is not eligible to pay the resident tuition rate (as determined by the state educational institution).

SECTION 14. IC 21-15-2-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 5. Except as otherwise provided under federal law, a person who is not lawfully present in the United States is not eligible for an award, a scholarship, a grant, or financial aid from a state educational institution.**

SECTION 15. IC 22-4-14-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 9. (a) As used in this section, "SAVE program" refers to the Systematic Alien Verification for Entitlements program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security.**

(b) For weeks of unemployment occurring subsequent to December 31, 1977, benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who has been lawfully admitted for permanent residence at the time the services are performed, is lawfully present for purposes of performing the services, or otherwise is permanently residing in the United States under color of law at the time the services are performed (including an alien who

C
o
p
y



1 is lawfully present in the United States as a result of the application of
2 the provisions of Section 207, Section 208, or Section 212(d)(5) of the
3 Immigration and Nationality Act (8 U.S.C. 1157 through 1158).

4 (1) Any data or information required of individuals applying for
5 benefits to determine whether benefits are not payable to them
6 because of their alien status shall be uniformly required from all
7 applicants for benefits.

8 (2) In the case of an individual whose application for benefits
9 would otherwise be approved, no determination that benefits to
10 the individual are not payable because of ~~his~~ **the individual's**
11 alien status may be made except upon a preponderance of the
12 evidence.

13 (3) Any modifications to the provisions of Section 3304(a)(14) of
14 the Federal Unemployment Tax Act, as provided by P.L.94-566,
15 which specify other conditions or other effective date than stated
16 in this section for the denial of benefits based on services
17 performed by aliens and which are required to be implemented
18 under state law as a condition for full tax credit against the tax
19 imposed by the Federal Unemployment Tax Act, shall be
20 considered applicable under this section.

21 **(c) If an individual who applies for benefits is not a citizen or**
22 **national of the United States, the department shall verify the status**
23 **of the individual as a qualified alien (as defined in 8 U.S.C. 1641)**
24 **through the SAVE program to determine the individual's eligibility**
25 **for benefits. The department shall implement this subsection in**
26 **accordance with federal law.**

27 SECTION 16. IC 22-5-1.5 IS ADDED TO THE INDIANA CODE
28 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
29 JULY 1, 2011]:

30 **Chapter 1.5. Employment of Unauthorized Aliens**

31 **Sec. 1. (a) This chapter applies only to an employee that an**
32 **employer hires after September 30, 2011.**

33 **(b) Except as provided in subsection (c), this chapter does not**
34 **apply to the following:**

35 **(1) A public utility (as defined in IC 8-1-2-1(a)) that is subject**
36 **to regulation by the Indiana utility regulatory commission**
37 **under IC 8-1-2.**

38 **(2) A hospital licensed under IC 16-21.**

39 **(3) A county hospital organized under IC 16-22.**

40 **(4) A municipal hospital organized under IC 16-23.**

41 **(5) A nonprofit corporation.**

42 **(6) A person who operates a business of transporting**

C
o
p
y



1 emergency patients by ambulance or using a nontransporting
2 emergency medical services vehicle (as defined in
3 IC 16-31-3-0.5).

4 (7) A corporation organized under IC 8-1-13.

5 (8) A corporation organized under IC 23-17 that is an electric
6 cooperative and that has at least one (1) member that is a
7 corporation organized under IC 8-1-13.

8 (c) After September 30, 2011, a person listed under subsection
9 (b) shall verify the employment eligibility of each employee of the
10 person through the E-Verify program after hiring the employee.

11 Sec. 2. As used in this chapter, "agency" means any state or
12 local administration, agency, authority, board, bureau,
13 commission, committee, council, department, division, institution,
14 office, service, or other similar body of government created or
15 established by law that issues a license for purposes of operating a
16 business in Indiana.

17 Sec. 3. As used in this chapter, "employee" means an individual
18 who provides services or labor for an employer for wages or other
19 remuneration.

20 Sec. 4. (a) As used in this chapter, "employer" means a person
21 that:

- 22 (1) transacts business in Indiana;
- 23 (2) has a license issued by an agency; and
- 24 (3) employs one (1) or more individuals who perform
25 employment services in Indiana.

26 (b) The term includes the state, a political subdivision (as
27 defined in IC 3-5-2-38) of the state, and a self-employed person.

28 Sec. 5. As used in this chapter, "E-Verify program" means the
29 electronic verification of work authorization program of the Illegal
30 Immigration Reform and Immigration Responsibility Act of 1996
31 (P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated
32 by the United States Department of Homeland Security or a
33 successor work authorization program designated by the United
34 States Department of Homeland Security or other federal agency
35 authorized to verify the work authorization status of newly hired
36 employees under the Immigration Reform and Control Act of 1986
37 (P.L. 99-603).

38 Sec. 6. As used in this chapter, "knowingly" means knowledge
39 that may fairly be inferred through notice of certain facts and
40 circumstances that would lead a person, through the exercise of
41 reasonable care, to know that an employee is unlawfully present in
42 the United States.

C
o
p
y



1 **Sec. 7. (a) As used in this chapter, "license" means any agency**
2 **permit, certificate, approval, registration, charter, or similar**
3 **authorization that is:**
4 **(1) required by law; and**
5 **(2) issued by an agency;**
6 **for purposes of operating a business in Indiana.**
7 **(b) The term does not include an occupational or professional**
8 **license.**
9 **Sec. 8. As used in this chapter, "person" means an individual, a**
10 **corporation, a limited liability company, a partnership, or another**
11 **legal entity.**
12 **Sec. 9. As used in this chapter, "unauthorized alien" has the**
13 **meaning set forth in 8 U.S.C. 1324a(h)(3).**
14 **Sec. 10. An employer shall not knowingly employ an**
15 **unauthorized alien.**
16 **Sec. 11. (a) The attorney general may investigate a complaint**
17 **filed with the attorney general that an employer knowingly**
18 **employed an unauthorized alien in violation of section 10 of this**
19 **chapter.**
20 **(b) A prosecuting attorney may investigate a complaint filed**
21 **with the prosecuting attorney that an employer knowingly**
22 **employed an unauthorized alien in violation of section 10 of this**
23 **chapter.**
24 **(c) In investigating a complaint under subsection (a) or (b), the**
25 **attorney general or a prosecuting attorney shall verify the work**
26 **authorization of the alleged unauthorized alien with the federal**
27 **government under 8 U.S.C. 1373(c).**
28 **(d) A complaint filed with the attorney general or a prosecuting**
29 **attorney under subsection (a) or (b) must be:**
30 **(1) in writing; and**
31 **(2) signed by the individual filing the complaint.**
32 **(e) The attorney general or a prosecuting attorney may issue a**
33 **subpoena to require a person to produce employment records that**
34 **relate to the recruitment, hiring, employment, or termination**
35 **policies, practices, or acts of employment of an employer under an**
36 **investigation of a valid complaint under this section.**
37 **Sec. 12. A state, county, or local official or employee may not**
38 **attempt to make independently a final determination as to whether**
39 **an individual is authorized to work in the United States.**
40 **Sec. 13. (a) If, after an investigation, the attorney general**
41 **determines that an employer has knowingly employed an**
42 **unauthorized alien, the attorney general shall notify:**

C
O
P
Y



- 1 (1) the United States Immigration and Customs Enforcement;
- 2 (2) local law enforcement agencies; and
- 3 (3) the prosecuting attorney in the county in which the
- 4 unauthorized alien is employed.

5 (b) If, after an investigation, the prosecuting attorney
 6 determines that an employer has knowingly employed an
 7 unauthorized alien, the prosecuting attorney shall notify:

- 8 (1) the United States Immigration and Customs Enforcement;
- 9 and
- 10 (2) local law enforcement agencies.

11 Sec. 14. (a) If:

- 12 (1) the attorney general notifies a prosecuting attorney; or
- 13 (2) a prosecuting attorney determines;

14 under section 13 of this chapter that an employer has knowingly
 15 employed an unauthorized alien, the prosecuting attorney may
 16 bring a civil action for a violation of section 10 of this chapter
 17 against an employer in the county where the unauthorized alien is
 18 employed.

19 (b) A prosecuting attorney filing an action under subsection (a)
 20 may file only one (1) action against an employer relating to the
 21 employment of all unauthorized aliens employed by the employer
 22 at a business location of the employer at the time the prosecuting
 23 attorney files the action. The prosecuting attorney may file an
 24 additional action against an employer relating to the employment
 25 of unauthorized aliens for each business location at which the
 26 employer employs unauthorized aliens.

27 (c) The prosecuting attorney may file an additional action
 28 against an employer under this section for a second or subsequent
 29 violation of section 10 of this chapter only for violations allegedly
 30 committed by the employer after the employer receives notice that
 31 the prosecuting attorney has filed an action against the employer
 32 relating to the employment of unauthorized aliens at a specific
 33 business location under this section.

34 (d) A prosecuting attorney may file an action against an
 35 employer under this section only for a violation of section 10 of this
 36 chapter that occurs after September 30, 2011.

37 Sec. 15. If a prosecuting attorney files an action under section 14
 38 of this chapter, the court in which the action is filed may hold a
 39 hearing and make a determination on an expedited basis.

40 Sec. 16. Except as provided in sections 17 and 18 of this chapter,
 41 if a trier of fact determines that an employer knowingly employed
 42 an unauthorized alien in violation of section 10 of this chapter, the

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

court may do the following:

- (1) Order the employer to terminate the employment of all unauthorized aliens employed by the employer.**
- (2) Place the employer on probation for a three (3) year period, beginning on the date of the order. During the probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.**
- (3) Order the employer to file a sworn affidavit signed by the employer with the prosecuting attorney within thirty (30) calendar days after the order is issued under subdivision (1). The affidavit must include a statement that the employer:**
 - (A) has terminated the employment of all unauthorized aliens; and**
 - (B) will not knowingly employ an unauthorized alien.**

Sec. 17. If a trier of fact determines that an employer knowingly employed an unauthorized alien in a second violation of section 10 of this chapter, the court may do the following:

- (1) Order the employer to terminate the employment of all unauthorized aliens employed by the employer.**
- (2) Place the employer on probation for a ten (10) year period, beginning on the date of the order. During the probationary period, the employer shall file a quarterly report with the attorney general concerning each new individual the employer hires at the specific business location where the unauthorized alien worked.**
- (3) Order the employer to file a sworn affidavit signed by the employer with the prosecuting attorney within thirty (30) calendar days after the order is issued under subdivision (1). The affidavit must include a statement that the employer:**
 - (A) has terminated the employment of all unauthorized aliens; and**
 - (B) will not knowingly employ an unauthorized alien.**
- (4) Order the appropriate agencies to suspend all licenses held by the employer that are described under section 19(a) of this chapter for not more than thirty (30) days.**

Sec. 18. If a trier of fact determines that an employer knowingly employed an unauthorized alien in a third violation of section 10 of this chapter, the court may order the appropriate agencies to revoke the employer's license or licenses for a period determined by the court or permanently revoke all licenses held by the

**C
O
P
Y**



1 employer that are described in section 19(a) of this chapter.

2 Sec. 19. (a) This section applies to all licenses held by an
3 employer:

4 (1) that are necessary to operate the employer's business at
5 the employer's business location where an unauthorized alien
6 worked; or

7 (2) if a license is not necessary at the employer's business
8 location described in subdivision (1), that are held by the
9 employer for the employer's primary place of business.

10 (b) If an employer fails to file a sworn affidavit required under
11 section 16(3) or 17(3) of this chapter with the prosecuting attorney
12 within thirty (30) business days after the order requiring the filing
13 of the affidavit is issued, the court may order the appropriate
14 agencies to suspend all licenses that are held by the employer. All
15 licenses suspended under this subsection may remain suspended
16 until the employer files a sworn affidavit as required under section
17 16(3) or 17(3) of this chapter with the prosecuting attorney.

18 (c) If the employer subject to an order filed under subsection (b)
19 files a sworn affidavit required under section 16(3) or 17(3) of this
20 chapter, the court may order the appropriate agencies to reinstate
21 the employer's suspended licenses.

22 Sec. 20. A court may consider the following factors, if
23 applicable, in deciding whether to order an agency to revoke an
24 employer's license or licenses for a period determined by the court
25 or permanently revoke an employer's license under section 18 of
26 this chapter:

27 (1) The number of unauthorized aliens employed by the
28 employer.

29 (2) Any prior misconduct by the employer.

30 (3) The degree of harm resulting from the violation.

31 (4) The extent to which the employer made good faith efforts
32 to comply with any applicable requirements under this
33 chapter.

34 (5) The duration of the violation.

35 (6) The role of the directors, officers, or agents of the
36 employer in the violation.

37 (7) Any other factors the court considers relevant.

38 Sec. 21. (a) If an agency receives an order from a court under
39 section 17 or 19(b) of this chapter, the agency shall immediately
40 suspend the license or licenses described in section 19(a) of this
41 chapter that are held by the employer to which the order relates.

42 (b) If an agency receives an order from a court under section 18

C
o
p
y



1 of this chapter, the agency shall immediately revoke the license or
 2 licenses described in section 19(a) of this chapter that are held by
 3 the employer to which the order relates.

4 **Sec. 22.** A court shall send copies of all orders issued under
 5 sections 16, 17, 18, and 19 of this chapter to the attorney general.

6 **Sec. 23. (a)** In determining whether an individual is an
 7 unauthorized alien for purposes of this chapter, a court may
 8 consider only the federal government's verification or status
 9 information provided under 8 U.S.C. 1373(c).

10 **(b)** The federal government's verification or status information
 11 provided under 8 U.S.C. 1373(c) creates a rebuttable presumption
 12 of an individual's lawful status.

13 **(c)** The court may:

14 (1) take judicial notice of the federal government's
 15 verification or status information; and

16 (2) request the federal government to provide automated or
 17 testimonial verification under 8 U.S.C. 1373(c).

18 **Sec. 24.** A prosecuting attorney may not file an action against an
 19 employer under section 14 of this chapter for knowingly employing
 20 an unauthorized alien if the employer verified the employment
 21 authorization of the employed individual through the E-Verify
 22 program.

23 **Sec. 25.** A court shall dismiss an action against an employer filed
 24 under section 14 of this chapter for knowingly employing an
 25 unauthorized alien if the employer establishes:

26 (1) that the employee performed agricultural labor or
 27 provided services of a temporary or seasonal nature as
 28 described in:

29 (A) 8 U.S.C. 1101(a)(15)(H)(ii)(a); or

30 (B) 8 U.S.C. 1101 (a)(15)(H)(ii)(b); and

31 (2) that the employer has complied with all federal laws and
 32 regulations governing the foreign worker program described
 33 in:

34 (A) 8 U.S.C. 1101(a)(15)(H)(ii)(a); or

35 (B) 8 U.S.C. 1101(a)(15)(H)(ii)(b).

36 **Sec. 26.** The attorney general shall:

37 (1) maintain copies of orders received under section 22 of this
 38 chapter;

39 (2) make the orders available on the attorney general's
 40 Internet web site; and

41 (3) establish and maintain a data base of the names and
 42 addresses of the employers that have a violation under this

**C
O
P
Y**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

chapter.
Sec. 27. A person who files a complaint with the attorney general or a prosecuting attorney under this chapter, knowing that the complaint is false or frivolous, commits a Class B misdemeanor.

Sec. 28. (a) An employer may not discharge an employee or in any way discriminate against any employee because the employee:
(1) has filed a complaint or instituted or caused to be instituted any proceeding under or related to this chapter;
(2) has testified or is about to testify in any proceeding under this chapter; or
(3) exercised on behalf of the employee or others any right afforded by this chapter.

(b) Any employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of this section may, within thirty (30) calendar days after the violation occurs, file a complaint with the commissioner of labor alleging the discrimination.

(c) Upon receipt of a complaint under subsection (b), the commissioner of labor shall investigate as the commissioner of labor considers appropriate.

(d) If after an investigation, the commissioner of labor determines that this section has been violated, the commissioner of labor, through the attorney general, shall, not later than one hundred twenty (120) days after receipt of the complaint under subsection (b), bring an action in a circuit court.

(e) A circuit court has jurisdiction to restrain violations of this section and order all appropriate relief, including rehiring, or reinstatement of the employee to the employee's former position with back pay, after taking into account any interim earnings of the employee.

(f) Not later than ninety (90) days after the receipt of a complaint filed under this section, the commissioner of labor shall notify the complainant in writing of a determination under this section.

Sec. 29. The suspension or revocation of a license under this chapter does not relieve an employer from an obligation to withhold, collect, or pay income tax on wages paid by the employer to an employee.

Sec. 30. This chapter shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

SECTION 17. IC 22-5-1.7 IS ADDED TO THE INDIANA CODE

C
O
P
Y



1 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2011]:

3 **Chapter 1.7. Public Contract for Services; Business Entities;
4 Unauthorized Aliens**

5 **Sec. 1. (a) As used in this chapter, "business entity" means a
6 person or group of persons that perform or engage in any activity,
7 enterprise, profession, or occupation for gain, benefit, advantage,
8 or livelihood.**

9 **(b) The term includes self-employed individuals, partnerships,
10 corporations, contractors, and subcontractors.**

11 **(c) The term does not include a self-employed person that does
12 not employ any employees.**

13 **Sec. 2. As used in this chapter, "contractor" means a person
14 that has or is attempting to enter into a public contract for services
15 with a state agency or political subdivision.**

16 **Sec. 3. As used in this chapter, "E-Verify program" means the
17 electronic verification of work authorization program of the Illegal
18 Immigration Reform and Immigration Responsibility Act of 1996
19 (P.L. 104-208), Division C, Title IV, s. 403(a), as amended, operated
20 by the United States Department of Homeland Security or a
21 successor work authorization program designated by the United
22 States Department of Homeland Security or other federal agency
23 authorized to verify the work authorization status of newly hired
24 employees under the Immigration Reform and Control Act of 1986
25 (P.L. 99-603).**

26 **Sec. 4. As used in this chapter, "person" means an individual, a
27 corporation, a limited liability company, a partnership, or another
28 legal entity.**

29 **Sec. 5. As used in this chapter, "political subdivision" has the
30 meaning set forth in IC 36-1-2-13.**

31 **Sec. 6. As used in this chapter, "public contract for services"
32 means any type of agreement between a state agency or a political
33 subdivision and a contractor for the procurement of services.**

34 **Sec. 7. As used in this chapter, "state agency" has the meaning
35 set forth in IC 4-6-3-1.**

36 **Sec. 8. As used in this chapter, "subcontractor" means a person
37 that:**

- 38 **(1) is a party to a contract with a contractor; and**
39 **(2) provides services for work the contractor is performing
40 under a public contract for services.**

41 **Sec. 9. As used in this chapter, "unauthorized alien" has the
42 meaning set forth in 8 U.S.C. 1324a(h)(3).**

**C
O
P
Y**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

Sec. 10. (a) Except as provided in subsection (b), a state agency or political subdivision shall use the E-Verify program to verify the work eligibility status of all employees of the state agency or political subdivision hired after June 30, 2011.

(b) A state agency or political subdivision is not required to use the E-Verify program as required under subsection (a) if the E-Verify program no longer exists.

Sec. 11. (a) A state agency or political subdivision may not enter into or renew a public contract for services with a contractor unless:

(1) the public contract contains:

(A) a provision requiring the contractor to enroll in and verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program; and

(B) a provision that provides that a contractor is not required to verify the work eligibility status of all newly hired employees of the contractor through the E-Verify program if the E-Verify program no longer exists; and

(2) the contractor signs an affidavit affirming that the contractor does not knowingly employ an unauthorized alien.

(b) A state agency or political subdivision may not award a grant of more than one thousand (\$1,000) to a business entity unless the business entity:

(1) signs a sworn affidavit that affirms that the business entity has enrolled and is participating in the E-Verify program;

(2) provides documentation to the state agency or political subdivision that the business entity has enrolled and is participating in the E-Verify program; and

(3) signs an affidavit affirming that the business entity does not knowingly employ an unauthorized alien.

Sec. 12. A business entity may not claim or receive a deduction or credit for a listed or other statewide tax, property tax exemption, deduction or credit, or loan from the state unless the business entity:

(1) signs a sworn affidavit that affirms that the business entity has enrolled and is participating in the E-Verify program;

(2) provides documentation that the business entity has enrolled and is participating in the E-Verify program to the applicable state agency or political subdivision; and

(3) signs an affidavit affirming that the business entity does not knowingly employ an unauthorized alien.

**C
O
P
Y**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

Sec. 13. (a) A contractor or a subcontractor may not:

- (1) knowingly employ or contract with an unauthorized alien;**
- or**
- (2) retain an employee or contract with a person that the contractor or subcontractor subsequently learns is an unauthorized alien.**

(b) If a contractor violates this section, the state agency or political subdivision shall require the contractor to remedy the violation not later than thirty (30) days after the date the state agency or political subdivision notifies the contractor of the violation.

(c) There is a rebuttable presumption that a contractor did not knowingly employ an unauthorized alien if the contractor verified the work eligibility status of the employee through the E-Verify program.

Sec. 14. (a) Except as provided in subsection (b), if the contractor fails to remedy the violation within the thirty (30) day period provided under section 13(b) of this chapter, the state agency or political subdivision shall terminate the public contract for services with the contractor for breach of the public contract for services.

(b) If a contractor employs or contracts with an unauthorized alien but the state agency or political subdivision (whichever the contractor has a public contract for services with) determines that terminating the public contract for services under subsection (a) would be detrimental to the public interest or public property, the state agency or political subdivision may allow the public contract for services to remain in effect until the state agency or political subdivision procures a new contractor.

(c) If a state agency or political subdivision terminates a public contract for services under subsection (a), the contractor is liable to the state agency or political subdivision for actual damages.

Sec. 15. A contractor may file an action with a circuit or superior court having jurisdiction in the county to challenge:

- (1) a notice of a violation to the contractor under section 13(b) of this chapter not later than twenty (20) days after the contractor receives the notice; or**
- (2) a termination of a public contract for services under section 14(a) of this chapter not later than twenty (20) days after the state agency or political subdivision terminates the public contract for services with the contractor.**

Sec. 16. If a contractor uses a subcontractor to provide services

**C
O
P
Y**



1 for work the contractor is performing under a public contract for
2 services, the subcontractor shall certify to the contractor in a
3 manner consistent with federal law that the subcontractor, at the
4 time of certification:

5 (1) does not employ or contract with an unauthorized alien;
6 and

7 (2) has enrolled and is participating in the E-Verify program.

8 Sec. 17. A contractor shall maintain on file a certification of a
9 subcontractor under section 16 of this chapter throughout the
10 duration of the term of a contract with the subcontractor.

11 Sec. 18. (a) If a contractor determines that a subcontractor is in
12 violation of this chapter, the contractor may terminate a contract
13 with the subcontractor for the violation.

14 (b) A contract terminated under subsection (a) for a violation of
15 this chapter by a subcontractor may not be considered a breach of
16 contract by the contractor or the subcontractor.

17 (c) A subcontractor may file an action with a circuit or superior
18 court having jurisdiction in the county to challenge a termination
19 of a contract under subsection (a) not later than twenty (20) days
20 after the contractor terminates the contract with the
21 subcontractor.

22 SECTION 18. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS
23 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
24 1, 2011]:

25 Chapter 6. Completion of Federal Attestation

26 Sec. 1. As used in this chapter, "commence day labor
27 employment" means the physical act of beginning any employment
28 in which no employment agreement has been executed specifying
29 that the term of the employment is to be more than three (3)
30 working days.

31 Sec. 2. As used in this chapter, "law enforcement officer" has
32 the meaning set forth in IC 5-2-1-2.

33 Sec. 3. An individual who is at least eighteen (18) years of age
34 may not commence day labor employment in Indiana unless the
35 individual has completed the individual attestation of employment
36 authorization required under 8 U.S.C. 1324a(b)(2).

37 Sec. 4. If a law enforcement officer or any other entity
38 authorized to enforce the employment laws of Indiana has
39 reasonable suspicion that an individual has violated this chapter,
40 the law enforcement officer or entity shall submit a complaint in
41 the form prescribed under 8 CFR 274a.9, as amended, to the
42 United States Immigration and Customs Enforcement office that

C
o
p
y



1 has jurisdiction over the residence of the individual who is
2 allegedly in violation of this chapter.

3 SECTION 19. IC 34-28-8 IS ADDED TO THE INDIANA CODE
4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2011]:

6 **Chapter 8. Offenses Related to Identification Numbers and**
7 **Documents**

8 **Sec. 1.** As used in this chapter, "consular identification" means
9 an identification, other than a passport, issued by the government
10 of a foreign state for the purpose of providing consular services in
11 the United States to a national of the foreign state.

12 **Sec. 2.** As used in this chapter, "individual taxpayer
13 identification number" means a tax processing number issued by
14 the United States Internal Revenue Service for the purpose of
15 facilitating federal tax reporting by individuals who are not eligible
16 to obtain a federal Social Security number.

17 **Sec. 3. (a)** This section does not apply to a law enforcement
18 officer who is presented with a consular identification during the
19 investigation of a crime.

20 **(b)** Except as otherwise provided under federal law or to
21 document the foreign nationality of a cardholder, a person who
22 knowingly or intentionally offers in writing, accepts, or records a
23 consular identification for any public purpose commits a Class C
24 infraction. However, the person commits:

25 (1) a Class B infraction for a second offense; and

26 (2) a Class A infraction for a third or subsequent offense.

27 **Sec. 4.** Except as otherwise provided under law, a person who
28 knowingly or intentionally offers in writing, accepts, or records an
29 individual taxpayer identification number as a valid form of
30 identification for any public or private purpose, other than for
31 reporting, payment, or other processing of federal or state personal
32 taxation for which a Social Security number would otherwise be
33 required of a United States citizen, commits a Class C infraction.
34 However, the person commits:

35 (1) a Class B infraction for a second offense; and

36 (2) a Class A infraction for a third or subsequent offense.

37 SECTION 20. IC 34-30-2-87.3 IS ADDED TO THE INDIANA
38 CODE AS A NEW SECTION TO READ AS FOLLOWS
39 [EFFECTIVE JULY 1, 2011]: **Sec. 87.3. IC 22-5-1.5-24 (Concerning**
40 **certain employers that employ unauthorized aliens).**

41 SECTION 21. IC 35-33-1-1, AS AMENDED BY P.L.50-2005,
42 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

C
O
P
Y



1 JULY 1, 2011]: Sec. 1. (a) A law enforcement officer may arrest a
2 person when the officer has:

- 3 (1) a warrant commanding that the person be arrested;
4 (2) probable cause to believe the person has committed or
5 attempted to commit, or is committing or attempting to commit,
6 a felony;
7 (3) probable cause to believe the person has violated the
8 provisions of IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-2(1),
9 IC 9-26-1-2(2), IC 9-26-1-3, IC 9-26-1-4, or IC 9-30-5;
10 (4) probable cause to believe the person is committing or
11 attempting to commit a misdemeanor in the officer's presence;
12 (5) probable cause to believe the person has committed a:
13 (A) battery resulting in bodily injury under IC 35-42-2-1; or
14 (B) domestic battery under IC 35-42-2-1.3.

15 The officer may use an affidavit executed by an individual alleged
16 to have direct knowledge of the incident alleging the elements of
17 the offense of battery to establish probable cause;

- 18 (6) probable cause to believe that the person violated
19 IC 35-46-1-15.1 (invasion of privacy);
20 (7) probable cause to believe that the person violated
21 IC 35-47-2-1 (carrying a handgun without a license) or
22 IC 35-47-2-22 (counterfeit handgun license);
23 (8) probable cause to believe that the person is violating or has
24 violated an order issued under IC 35-50-7;
25 (9) probable cause to believe that the person is violating or has
26 violated IC 35-47-6-1.1 (undisclosed transport of a dangerous
27 device); or
28 (10) probable cause to believe that the person is:
29 (A) violating or has violated IC 35-45-2-5 (interference with
30 the reporting of a crime); and
31 (B) interfering with or preventing the reporting of a crime
32 involving domestic or family violence (as defined in
33 IC 34-6-2-34.5); or

- 34 **(11) probable cause to believe that the person is an alien who:**
35 **(A) is subject to:**
36 **(i) a removal order issued by an immigration court; or**
37 **(ii) a detainer or notice of action issued by the United**
38 **States Department of Homeland Security;**
39 **(B) has been indicted for or convicted of one (1) or more**
40 **aggravated felonies (as defined in 8 U.S.C. 1101(a)(43)); or**
41 **(C) has willfully failed to register with the federal**
42 **government under 8 U.S.C. 1301 et seq.**

C
o
p
y



- 1 (b) A person who:
- 2 (1) is employed full time as a federal enforcement officer;
- 3 (2) is empowered to effect an arrest with or without warrant for a
- 4 violation of the United States Code; and
- 5 (3) is authorized to carry firearms in the performance of the
- 6 person's duties;
- 7 may act as an officer for the arrest of offenders against the laws of this
- 8 state where the person reasonably believes that a felony has been or is
- 9 about to be committed or attempted in the person's presence.
- 10 SECTION 22. IC 35-33-8-4 IS AMENDED TO READ AS
- 11 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) The court shall
- 12 order the amount in which a person charged by an indictment or
- 13 information is to be held to bail, and the clerk shall enter the order on
- 14 the order book and indorse the amount on each warrant when issued.
- 15 If no order fixing the amount of bail has been made, the sheriff shall
- 16 present the warrant to the judge of an appropriate court of criminal
- 17 jurisdiction, and the judge shall indorse on the warrant the amount of
- 18 bail.
- 19 (b) Bail may not be set higher than that amount reasonably required
- 20 to assure the defendant's appearance in court or to assure the physical
- 21 safety of another person or the community if the court finds by clear
- 22 and convincing evidence that the defendant poses a risk to the physical
- 23 safety of another person or the community. In setting and accepting an
- 24 amount of bail, the judicial officer shall take into account all facts
- 25 relevant to the risk of nonappearance, including:
- 26 (1) the length and character of the defendant's residence in the
- 27 community;
- 28 (2) the defendant's employment status and history and his ability
- 29 to give bail;
- 30 (3) the defendant's family ties and relationships;
- 31 (4) the defendant's character, reputation, habits, and mental
- 32 condition;
- 33 (5) the defendant's criminal or juvenile record, insofar as it
- 34 demonstrates instability and a disdain for the court's authority to
- 35 bring him to trial;
- 36 (6) the defendant's previous record in not responding to court
- 37 appearances when required or with respect to flight to avoid
- 38 criminal prosecution;
- 39 (7) the nature and gravity of the offense and the potential penalty
- 40 faced, insofar as these factors are relevant to the risk of
- 41 nonappearance;
- 42 (8) the source of funds or property to be used to post bail or to pay

C

O

P

Y



1 a premium, insofar as it affects the risk of nonappearance; ~~and~~
 2 **(9) that the defendant is a foreign national who is unlawfully**
 3 **present in the United States under federal immigration law;**
 4 **and**
 5 ~~(9)~~ **(10) any other factors, including any evidence of instability**
 6 **and a disdain for authority, which might indicate that the**
 7 **defendant might not recognize and adhere to the authority of the**
 8 **court to bring him to trial.**

9 SECTION 23. IC 35-44-2-6 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2011]: **Sec. 6. (a) A person who:**

- 12 **(1) with intent to mislead public servants;**
- 13 **(2) in a five (5) year period; and**
- 14 **(3) in one (1) or more official proceedings or investigations;**
- 15 **has knowingly made at least two (2) material statements**
 16 **concerning the person's identity that are inconsistent to the degree**
 17 **that one (1) of them is necessarily false, commits false identity**
 18 **statement, a Class A misdemeanor.**

19 **(b) It is a defense to a prosecution under this section that the**
 20 **material statements that are the basis of a prosecution under**
 21 **subsection (a) concerning the person's identity are accurate or**
 22 **were accurate in the past.**

- 23 **(c) In a prosecution under subsection (a):**
- 24 **(1) the indictment or information need not specify which**
 25 **statement is actually false; and**
- 26 **(2) the falsity of a statement may be established sufficient for**
 27 **conviction by proof that the defendant made irreconcilably**
 28 **contradictory statements concerning the person's identity.**

29 SECTION 24. IC 35-44-5 IS ADDED TO THE INDIANA CODE
 30 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2011]:

- 32 **Chapter 5. Offenses Relating to Illegal Aliens**
- 33 **Sec. 1. This chapter does not apply to the following:**
- 34 **(1) A church or religious organization conducting activity that**
 35 **is protected by the First Amendment to the United States**
 36 **Constitution.**
- 37 **(2) The provision of assistance for health care items and**
 38 **services that are necessary for the treatment of an emergency**
 39 **medical condition of an individual.**
- 40 **(3) A health care provider (as defined in IC 16-18-2-163(a))**
 41 **that is providing health care services.**
- 42 **(4) An attorney or other person that is providing legal**

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

services.

(5) A person who:

(A) is a spouse of an alien or who stands in relation of parent or child to an alien; and

(B) would otherwise commit an offense under this chapter with respect to the alien.

(6) A provider that:

(A) receives federal or state funding to provide services to victims of domestic violence, sexual assault, human trafficking, or stalking; and

(B) is providing the services described in clause (A).

(7) An employee of Indiana or a political subdivision (as defined in IC 36-1-2-13) if the employee is acting in the employee's official capacity.

Sec. 2. As used in this chapter, "alien" has the meaning set forth in 8 U.S.C. 1101(a).

Sec. 3. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.

Sec. 4. As used in this chapter, "state" means Indiana or any agency of state government and includes a body corporate and politic established as an instrumentality of the state.

Sec. 5. (a) A person who, within Indiana and for financial benefit or commercial gain, knowingly, recklessly, or intentionally commits an act in violation of any of the following criminal provisions of the United States Immigration and Nationality Act (8 U.S.C. 1324) commits a Class A misdemeanor:

(1) 8 U.S.C. 1324(a)(1)(A)(ii) (prohibiting transporting or attempting to transport an alien knowing or in reckless disregard of the fact that the alien has come to, entered, or remains in the United States in violation of law).

(2) 8 U.S.C. 1324(a)(1)(A)(iii) (prohibiting the concealing, harboring, or shielding from detection or the attempt to conceal, harbor, or shield from detection an alien knowing or in reckless disregard of the fact that the alien has come to, entered, or remains in the United States in violation of law).

(3) 8 U.S.C. 1324(a)(1)(A)(iv) (prohibiting encouraging or inducing an alien to come to, enter into, or reside in the United States knowing or in reckless disregard of the fact that the alien coming to, entering into, or residing in the United States is or would be a violation of law).

(4) 8 U.S.C. 1324(a)(1)(A)(v)(I) (prohibiting engaging in conspiracy to commit an act described in subdivision (1), (2),

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

or (3)).
(5) 8 U.S.C. 1324(a)(1)(A)(v)(II) (prohibiting aiding or abetting the commission of an act described in subdivision (1), (2), or (3)).

(b) If a violation under this section involves more than nine (9) aliens, the violation is a Class D felony.

Sec. 6. It is a defense to a prosecution under section 5(a)(2) of this chapter that a landlord, before renting real property to a person, was provided with and retained a copy of one (1) or more of the following from the person:

- (1) A valid state issued driver's license.
- (2) A valid identification card issued under IC 9-24-16-1 or a similar card issued under the laws of another state or federal government.
- (3) Documentary evidence provided to the bureau of motor vehicles to comply with IC 9-24-9-2.5 or IC 9-24-16-3.5.
- (4) A United States birth certificate.
- (5) A valid United States military identification card.
- (6) Any valid document recognized by the federal government as evidence of alien registration under 8 U.S.C. 1301 et seq. that bears the person's photograph.

Sec. 7. A determination by the United States Department of Homeland Security that an alien has come to, entered, or remained in the United States in violation of law is evidence that the alien is in the United States in violation of law.

Sec. 8. A law enforcement officer shall impound a motor vehicle, other than a motor vehicle used in public transportation and owned or operated by the state or a political subdivision, that is used to commit a violation of section 5(a)(1) or 5(a)(2) of this chapter.

C
o
p
y

