

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 738 Session of 2011

INTRODUCED BY METCALFE, READSHAW, BARRAR, BROOKS, CHRISTIANA, CLYMER, COX, CREIGHTON, EVERETT, GABLER, GALLOWAY, GIBBONS, GILLEN, GOODMAN, GROVE, HAHN, HARRIS, HUTCHINSON, KAUFFMAN, KNOWLES, KORTZ, KRIEGER, METZGAR, MILLARD, MILNE, MUSTIO, O'NEILL, PERRY, PYLE, REESE, ROAE, ROCK, SACCONI, SAYLOR, SCHRODER, STERN, SWANGER AND VULAKOVICH, FEBRUARY 17, 2011

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 17, 2011

AN ACT

1 Relating to support for law enforcement authorities and safe
2 neighborhoods.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the Support Our
7 Law Enforcement and Safe Neighborhoods Act.

8 Section 2. Legislative intent.

9 The General Assembly finds and declares as follows:

10 (1) Illegal immigration is causing economic hardship and
11 lawlessness in this Commonwealth.

12 (2) Illegal immigration is encouraged when public
13 agencies within this Commonwealth provide public benefits
14 without verifying immigration status.

15 (3) There is a compelling interest in the cooperative
16 enforcement of Federal immigration laws throughout all of

1 this Commonwealth.

2 (4) The intent of this act is to make attrition through
3 enforcement the public policy of all agencies of this
4 Commonwealth and its political subdivisions.

5 (5) The provisions of this act are intended to work
6 together to discourage and deter the unlawful entry, presence
7 and economic activity, by persons unlawfully present in the
8 United States.

9 (6) The provisions of this act shall be enforced without
10 regard to race, religion, gender, ethnicity or national
11 origin.

12 Section 3. Construction.

13 The terms of this act regarding immigration shall be
14 construed to have the meanings given to them under Federal
15 immigration law, and the provisions of this act shall be
16 implemented in a manner consistent with Federal laws regulating
17 immigration while protecting the civil rights of all persons and
18 respecting the privileges and immunities of United States
19 citizens.

20 Section 4. Public benefits.

21 The following shall apply:

22 (1) Except as provided in paragraph (2) or where
23 exempted by Federal law, every agency or political
24 subdivision of this Commonwealth shall verify the lawful
25 presence in the United States of any natural person 18 years
26 of age or older who has applied for Federal public benefits,
27 State public benefits or local public benefits, as defined in
28 the Personal Responsibility and Work Opportunity
29 Reconciliation Act of 1996 (Public Law 104-193, 110 Stat.
30 2105), that are administered by an agency or a political

1 subdivision of this Commonwealth.

2 (2) Verification of lawful presence under the provisions
3 of this section shall not be required for:

4 (i) Assistance for health care items and services
5 that are necessary for the treatment of an emergency
6 medical condition of the alien involved and are not
7 related to an organ transplant procedure.

8 (ii) Short-term, noncash, in-kind emergency disaster
9 relief.

10 (iii) Public health assistance for immunizations
11 with respect to diseases and for testing and treatment of
12 symptoms of communicable diseases whether or not such
13 symptoms are caused by a communicable disease.

14 (iv) Programs, services or assistance such as soup
15 kitchens, crisis counseling and intervention, and short-
16 term shelter specified by the Attorney General of the
17 United States, in the sole and unreviewable discretion of
18 the Attorney General of the United States after
19 consultation with appropriate federal agencies and
20 departments, which:

21 (A) deliver in-kind services at the community
22 level, including through public or private nonprofit
23 agencies;

24 (B) do not condition the provision of
25 assistance, the amount of assistance provided or the
26 cost of assistance provided on the income or
27 resources of the individual recipient; and

28 (C) are necessary for the protection of life or
29 safety.

30 (3) Verification of lawful presence in the United States

1 by the agency or political subdivision required to make such
2 verification shall require that the applicant execute an
3 affidavit under penalty of perjury that the applicant is a:

4 (i) United States citizen; or

5 (ii) qualified alien under the Immigration and
6 Nationality Act (66 Stat. 163, 8 U.S.C. § 1101 et seq.)
7 and is lawfully present in the United States.

8 (4) For any applicant who has executed the affidavit
9 described in paragraph (3)(ii), eligibility for benefits
10 shall be made through the Systematic Alien Verification of
11 Entitlement program operated by the United States Department
12 of Homeland Security or a successor program designated by the
13 United States Department of Homeland Security. Until such
14 eligibility verification is made, the affidavit may be
15 presumed to be proof of lawful presence for the purposes of
16 this section.

17 (5) Any person who knowingly and willfully makes a
18 false, fictitious or fraudulent statement of representation
19 in an affidavit executed under paragraph (3) commits a
20 misdemeanor of the second degree. If the affidavit
21 constitutes a false claim of United States citizenship under
22 18 U.S.C. § 911 (relating to citizen of the United States), a
23 complaint shall be filed by the agency requiring the
24 affidavit with the United States attorney for the Federal
25 judicial district in which the agency is located.

26 (6) Agencies or political subdivisions of this
27 Commonwealth may adopt variations to the requirements of the
28 provisions of this section which demonstrably improve the
29 efficiency or reduce delay in the verification process, or to
30 provide for adjudication of unique individual circumstances

1 where the verification procedures in this section would
2 impose unusual hardship on a legal resident of this
3 Commonwealth.

4 (7) It shall be unlawful for an agency or political
5 subdivision of this Commonwealth to provide any Federal
6 benefit, State benefit or local benefit, as defined in the
7 Personal Responsibility and Work Opportunity Reconciliation
8 Act of 1996, in violation of this section.

9 Section 5. Full enforcement of immigration laws required.

10 The following shall apply:

11 (1) No official or agency of the Commonwealth or other
12 political subdivision shall adopt a policy that limits or
13 restricts enforcement of Federal immigration laws to less
14 than the full extent permitted by Federal law.

15 (2) When a law enforcement officer has lawfully stopped,
16 detained or arrested, for a violation of a law of this
17 Commonwealth or any political subdivision, a person who is or
18 should reasonably be suspected of being unlawfully present in
19 the United States, a complete, full and appropriate attempt
20 shall be made to verify the person's immigration status with
21 the Federal Government. The person's immigration status shall
22 be verified through a query to the appropriate entity of the
23 Federal Government under section 642 of the Omnibus
24 Consolidated Appropriations Act, 1977 (Public Law 104-208, 8
25 U.S.C. § 1373(c)). For the purposes of this paragraph, a
26 person is presumed not to be an alien who is unlawfully
27 present in the United States if the person provides to the
28 law enforcement officer or agency any of the following:

29 (i) A valid Pennsylvania driver's license.

30 (ii) A valid identification card issued by the

Department of Transportation.

(iii) Any other valid identification document with a photograph of the bearer issued by a Federal, State or local government agency which has verified the lawful presence of the bearer as a condition of issuance.

(3) If an alien, who is unlawfully present in the United States, is convicted of a violation of State or local law, upon discharge from imprisonment or assessment of any fine that is imposed, the alien shall be transferred immediately to the custody of the United States Immigration and Customs Enforcement or the United States Customs and Border Protection.

(4) Notwithstanding any other law, a law enforcement agency may securely transport an alien who is unlawfully present in the United States and who is in the agency's custody to a Federal facility in this Commonwealth or any other point of transfer into Federal custody that is outside the jurisdiction of the law enforcement agency. If the point of transfer is located outside of this Commonwealth, the arrested person first shall be served with a copy of a detainer request issued by a Federal immigration officer or a record of judicial authorization for the transfer.

(5) A law enforcement officer, with or without a warrant, may arrest a person if the officer has probable cause to believe that the person has committed a public offense that makes the person removable from the United States.

(6) Except as provided in Federal law, officials or agencies of the Commonwealth and any political subdivision shall not be prohibited or in any way restricted from

1 sending, receiving or maintaining information relating to the
2 immigration status of any individual or exchanging that
3 information with any other Federal, State or local
4 governmental entity for the following official purposes:

5 (i) The investigation, adjudication or prosecution
6 of a criminal or civil offense.

7 (ii) Determining eligibility for any public benefit,
8 service or license provided by the Federal Government,
9 any State government, or any political subdivision of a
10 state government.

11 (iii) Verifying a claim of residence or domicile if
12 determination of residence or domicile is required under
13 the laws of this Commonwealth or a judicial order issued
14 pursuant to a civil or criminal proceeding in this
15 Commonwealth.

16 (iv) Confirming the identity of any person who is
17 detained.

18 (v) If the person is an alien, determining whether
19 the person is in compliance with the Federal registration
20 laws.

21 (7) A person may challenge in court any official or
22 agency of the Commonwealth or any political subdivision that
23 adopts or implements a policy limiting or restricting
24 enforcement of Federal immigration laws to less than the full
25 extent permitted by Federal law. If there is a judicial
26 finding that an official or agency of the Commonwealth or any
27 political subdivision has violated this section, the court
28 may order any of the following:

29 (i) That the person who brought the action recover
30 court costs and attorney fees.

1 (ii) That the official or agency of the Commonwealth
2 or any political subdivision pay a civil penalty of not
3 less than \$1,000 and not more than \$5,000 to the
4 Commonwealth for each day beyond the seventh day that the
5 policy remains in effect after service of notice on the
6 agency of the filing of an action under this paragraph.

7 (8) A law enforcement officer shall be indemnified by
8 the officer's agency against reasonable costs and expenses,
9 including attorney fees, incurred in connection with an
10 action or proceeding under this section to which the officer
11 may become a party by reason of being or having been a member
12 of the law enforcement agency, except in relation to matters
13 in which the officer is adjudged to have acted in bad faith.

14 (9) This section shall be implemented in a manner
15 consistent with Federal laws regulating immigration,
16 protecting the civil rights of all persons and respecting the
17 privileges and immunities of United States citizens.

18 Section 6. Failure to complete or carry an alien registration
19 document; assessment.

20 (a) Offense defined.--Except as provided in subsection (e),
21 and in addition to any violation of Federal law, a person who
22 willfully fails to apply for alien registration or to carry an
23 alien registration document in violation of section 264(e) or
24 266(a) of the Immigration Nationality Act (66 Stat. 175, 8
25 U.S.C. § 1304(e) or 1306(a)) commits a misdemeanor of the third
26 degree. In addition to any other penalty prescribed by law, the
27 court shall order the offender to pay jail costs and an
28 additional assessment of \$500 for a first violation and \$1,000
29 for a second or subsequent offense.

30 (b) Determination of immigrant status.--In enforcing this

1 section, the final determination of an alien's immigration
2 status shall be made by:

3 (1) a law enforcement officer who is authorized by the
4 Federal Government to verify or ascertain an alien's
5 immigration status; or

6 (2) a law enforcement officer or agency communicating
7 with the United States Immigration and Customs Enforcement or
8 the United States Customs and Border Protection.

9 (c) Inapplicability.--This section shall not apply to a
10 person who maintains authorization from the Federal Government
11 to remain in the United States.

12 (d) Admissibility of records.--Any record that relates to
13 the immigration status of a person is admissible in any court
14 without further foundation or testimony from a custodian of
15 records if the record is certified as authentic by the
16 government agency that is responsible for maintaining the
17 record.

18 (e) Enhanced offense.--A violation of this section is a
19 misdemeanor of the first degree if the person violates this
20 section while in possession of a controlled substance, a deadly
21 weapon or property used for the purpose of committing an act of
22 terrorism.

23 Section 7. Smuggling of human beings.

24 (a) General rule.--A person who intentionally engages in the
25 smuggling of human beings for profit or other commercial purpose
26 commits a felony of the third degree.

27 (b) Lawful stop.--Notwithstanding any other law, a law
28 enforcement officer engaged in enforcement of this section may
29 lawfully stop a person who is operating a motor vehicle if the
30 officer has reasonable suspicion to believe that the person is

1 in violation of any provision of 75 Pa.C.S. (relating to
2 vehicles).

3 (c) Definition.--For purposes of this section, "smuggling of
4 human beings" shall mean transportation, procurement of
5 transportation or use of property or real property by a person
6 or an entity knowing, or having reason to know, that the person
7 or persons transported or to be transported are unlawfully
8 present in the United States in violation of law.

9 Section 8. Employment of unauthorized aliens prohibited.

10 (a) General rule.--On and after January 1, 2012, an employer
11 shall not intentionally or knowingly employ an unauthorized
12 alien. A violation of this section occurs if an employer:

13 (1) uses a contract, subcontract or other independent
14 contractor agreement to obtain labor of an alien in this
15 Commonwealth; or

16 (2) contracts with an unauthorized alien, or a person
17 who employs or contracts with an unauthorized alien, to
18 perform labor in this Commonwealth.

19 (b) Complaint form.--Any person may report a violation of
20 this section to the district attorney of the county in which the
21 employer conducts business or in which it is alleged that the
22 employer employs an unauthorized alien. Upon receipt of a
23 reported violation, the district attorney shall conduct such
24 investigation as he or she shall determine to be warranted under
25 the circumstances. Nothing in this subsection shall be construed
26 to prohibit the filing of anonymous complaints or to constrain
27 or discourage any person from reporting a violation of this
28 section. When investigating a complaint, the district attorney
29 shall verify the work authorization of the alleged unauthorized
30 alien with the Federal Government under section 642 of the

Omnibus Consolidated Appropriations Act, 1977 (Public Law 104-208, 8 U.S.C. § 1373(c)), and no State or local official shall attempt to determine independently whether an alien is authorized to work in the United States.

(c) False report.--A person who knowingly makes a false report under this section commits a misdemeanor of the third degree.

(d) Determination of violation.--If after an investigation the district attorney determines that a violation of this section has occurred, the district attorney shall notify United States Immigration and Customs Enforcement of the unauthorized alien and bring an action under subsection (e).

(e) Action.--An action for a violation of this section shall be brought against the employer by the district attorney.

(f) Penalty.--Upon finding a violation of this section:

(1) For a first violation, the court shall order the employer to:

(i) terminate the employment of all unauthorized aliens;

(ii) undergo a three-year probationary period, or a five-year probationary period in the case of an intentional violation, with regard to the business location where the unauthorized alien performed work. During the probationary period, the employer shall file quarterly reports with the district attorney listing each new employee hired at the business location where the unauthorized alien performed work; and

(iii) file, within three business days, a signed sworn affidavit with the district attorney affirming that the employer has terminated employment of all

1 unauthorized aliens known to have been employed by the
2 employer in this Commonwealth and will refrain in the
3 future from intentionally or knowingly employing
4 unauthorized aliens in this Commonwealth. Upon failure to
5 timely file the affidavit, the court shall order
6 suspension of all licenses possessed by the employer and
7 issued by the Commonwealth or any governmental
8 subdivision thereof until such time as the affidavit has
9 been duly filed. Upon receipt of the court's order,
10 notwithstanding any other law, the appropriate
11 governmental agencies shall suspend the licenses in
12 accordance with the court's order.

13 (2) For a second or subsequent violation, the court
14 shall impose a license suspension of 30 days, unless the
15 employer is found to have employed six or more unauthorized
16 aliens, in which case the court shall order permanent
17 revocation of all licenses held by the employer and specific
18 to the business location where the unauthorized alien
19 performed work. If the employer does not hold a license
20 specific to the business location where the unauthorized
21 alien performed work, but a license is necessary to operate
22 the employer's business in general, the court shall order the
23 appropriate agencies to permanently revoke all licenses that
24 are held by the employer at the employer's primary place of
25 business. Upon receipt of the court's order, and
26 notwithstanding any other law, the appropriate agencies shall
27 immediately revoke the licenses.

28 Section 9. Employment or contracting by unauthorized aliens
29 prohibited.

30 (a) General rule.--It shall be unlawful for a person who is

1 unlawfully present in the United States and is an unauthorized
2 alien to knowingly apply for work, solicit work in a public
3 place or perform work as an employee or independent contractor
4 in this Commonwealth.

5 (b) Misdemeanor.--A violation of this section is a
6 misdemeanor of the third degree.

7 (c) Definitions.--For the purposes of this section, the
8 following terms shall have the meanings given to them in this
9 subsection:

10 "Solicit." Verbally communicate, or nonverbally communicate
11 by means of a gesture or a nod, in a manner that would indicate
12 to a reasonable person that a person is willing to be employed.

13 "Unauthorized alien." An alien who does not have the legal
14 right or authorization under Federal law to work in the United
15 States.

16 Section 10. Verification of legal status.

17 (a) General rule.--No later than 60 days after the effective
18 date of this section, every employer in this Commonwealth shall:

19 (1) register with and participate in the e-verify
20 program;

21 (2) upon hiring an employee, verify employment
22 eligibility of the employee through the e-verify program; and

23 (3) keep a record of the e-verify program result for the
24 duration of the employee's employment or for a minimum of
25 three years, whichever is longer.

26 (b) Penalty.--An employer that violates the provisions of
27 this section shall be ineligible to receive economic development
28 incentives from the State or local government. Upon application
29 for and before receiving economic development incentives, an
30 employer shall be required to provide to the government entity

1 offering the incentive proof that the employer is in compliance
2 with the provisions of this section. If the government entity
3 determines that the employer is in violation of this section, it
4 shall notify the employer by certified mail of the determination
5 of noncompliance, and the employer shall repay all moneys
6 received as economic development incentives within 30 days of
7 the determination.

8 (c) Definition.--For purposes of this section, "e-verify
9 program" means the Internet-based system operated by the United
10 States Department of Homeland Security in partnership with the
11 Social Security Administration that allows an employer, using
12 information reported on an employee's Form I-9, Employment
13 Eligibility Verification, to determine eligibility of that
14 employee to work in the United States.

15 Section 11. Immobilization or towing and storage of vehicle.

16 (a) General rule.--Subject to subsection (d), a law
17 enforcement officer shall immobilize any vehicle or combination
18 or, in the interest of public safety, direct that the vehicle be
19 towed and stored by the appropriate towing and storage agent
20 under subsection (c), and the appropriate judicial authority
21 shall be so notified, if the law enforcement officer determines
22 that a person is driving the vehicle or combination for any
23 financial gain or commercial purpose while the person is:

24 (1) illegally present in the United States; or

25 (2) transporting, moving, concealing, harboring,
26 shielding or attempting to transport, move, conceal, harbor
27 or shield an alien in this Commonwealth in a vehicle under
28 circumstances where the person knows or recklessly disregards
29 the fact that the alien has come to, has entered or remains
30 in the United States in violation of law.

(b) Procedure upon immobilization.--The following shall apply:

(1) When a vehicle is immobilized under subsection (a), the operator of the vehicle may appear before the appropriate judicial authority within 24 hours from the time the vehicle was immobilized. The appropriate judicial authority may issue a certificate of release upon:

(i) the furnishing of proof of the operator's legal presence in the United States;

(ii) the furnishing of proof of the operator's ownership or other right to take possession of the vehicle; and

(iii) payment of all fines, costs and fees associated with the immobilization of the vehicle.

(2) When a vehicle is immobilized under subsection (a), the owner of the vehicle may appear before the appropriate judicial authority within 24 hours from the time the vehicle was immobilized. The appropriate judicial authority may issue a certificate of release upon:

(i) the furnishing of proof of the owner's legal presence in the United States;

(ii) the furnishing of proof of ownership of the vehicle; and

(iii) either payment of all fines, costs and fees associated with the immobilization of the vehicle or proof that the vehicle was, at time of immobilization, driven without the owner's permission.

(3) If a certification of release is not obtained within 24 hours from the time the vehicle was immobilized, the vehicle shall be towed and stored by the appropriate towing

1 and storage agent under subsection (c).

2 (c) Procedure upon towing and storage.--The following is the
3 procedure to be followed upon towing and storage of a vehicle
4 under this section:

5 (1) Except as provided in paragraph (2), the following
6 steps shall be taken:

7 (i) The appropriate judicial authority shall notify
8 the appropriate law enforcement officer of the county in
9 which the violation occurred.

10 (ii) The officer notified under subparagraph (i)
11 shall notify the appropriate towing and storage agent to
12 tow and store the vehicle or combination and provide
13 notice by the most expeditious means and by first class
14 mail, proof of service, of the towing, storage and
15 location of the vehicle or combination to the owner of
16 the vehicle or combination and any lienholder and, if
17 applicable, the owner of the load, if the names and
18 addresses of the owner and any lienholder are known or
19 can be ascertained by investigation.

20 (2) In a city of the first class, the following steps
21 shall be taken:

22 (i) The appropriate judicial authority or
23 appropriate law enforcement officer shall notify the
24 appropriate towing and storage agent.

25 (ii) The appropriate towing and storage agent shall
26 tow and store the vehicle or combination and provide
27 notice by first class mail, proof of mailing, of the
28 towing, storage and location of the vehicle or
29 combination to the owner and the lienholder of the
30 vehicle or combination using a reasonably available State

1 database.

2 (d) Recovery of towed and stored vehicle.—The following
3 shall apply:

4 (1) The owner or lienholder of any vehicle or
5 combination which has been towed and stored under this
6 section may obtain possession of the vehicle or combination
7 by appearing before the appropriate judicial authority. The
8 appropriate judicial authority may issue an order for the
9 release of the towed and stored vehicle upon:

10 (i) the furnishing of proof of the owner's or
11 lienholder's legal presence in the United States;

12 (ii) the furnishing of proof of ownership of or
13 interest in the vehicle; and

14 (iii) either payment of all fines, costs and fees
15 associated with the immobilization of the vehicle or
16 proof that the vehicle was, at time of immobilization,
17 driven without the owner's or lienholder's permission.

18 (2) In cities of the first class, the appropriate
19 judicial authority shall not issue an order for the release
20 of any vehicle towed and stored under this section until
21 provisions are made for payment of all fines and penalties
22 associated with violations of any local parking regulation or
23 ordinance or applicable section of Title 75 (relating to
24 vehicles).

25 (3) Any vehicle not recovered under this subsection may
26 be sold as an unclaimed vehicle, combination or load under 75
27 Pa.C.S. § 6310 (relating to disposition of impounded
28 vehicles, combinations and loads). The proceeds of the sale
29 shall be applied to the payment of the fines, costs and fees
30 associated with the towing and storage of the vehicle.

1 (e) Recovery of load.--The owner of any load on an
2 immobilized or towed and stored vehicle may repossess the load
3 as provided in 75 Pa.C.S. § 6310.

4 (f) Definitions.--As used in this section, the following
5 words and phrases shall have the meanings given to them in this
6 subsection:

7 "Appropriate judicial authority." In counties of the first
8 class, the Philadelphia Traffic Court. In all other counties,
9 the magisterial district judge in whose district the violation
10 occurred.

11 "Appropriate towing and storage agent." In counties of the
12 first class, the Philadelphia Parking Authority or its
13 authorized agent. In other municipalities, a towing and storage
14 agent designated by local ordinance.

15 Section 12. Severability.

16 If a provision of this act or its application to any person
17 or circumstance is held invalid, the invalidity does not affect
18 other provisions or applications of the act that can be given
19 effect without the invalid provision or application, and to this
20 end the provisions of this act are severable.

21 Section 13. Effective date.

22 This act shall take effect in 90 days.