

House File 2345 - Introduced

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A BILL FOR

1 An Act relating to illegal immigration, providing penalties,
2 and including effective date provisions.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 13.11 Memorandum of understanding
2 — immigration issues.

3 1. The attorney general shall negotiate the terms of a
4 memorandum of understanding between the state of Iowa and
5 the United States department of justice or the United States
6 department of homeland security concerning the enforcement of
7 federal immigration and custom laws, detention and removal of
8 unauthorized aliens, and investigations in the state of Iowa.

9 2. The memorandum of understanding shall be signed on behalf
10 of this state by the attorney general and the governor or as
11 otherwise required by the appropriate federal agency.

12 3. A local governmental entity shall not, whether acting
13 through its governing body or by an initiative, referendum, or
14 any other process, enact any ordinance or policy that limits or
15 prohibits a law enforcement officer, local official, or local
16 government employee from communicating or cooperating with
17 federal officials with regard to the immigration status of any
18 person within this state.

19 4. Notwithstanding any other provision of law, a
20 governmental entity or official within this state shall not
21 prohibit, or in any way restrict, any governmental entity or
22 official from sending to, or receiving from, the United States
23 department of homeland security, information regarding the
24 citizenship or immigration status, lawful or unlawful, of any
25 person.

26 5. Notwithstanding any other provision of law, a person or
27 governmental entity shall not prohibit, or in any way restrict,
28 a public employee from doing any of the following with respect
29 to information regarding the immigration status, lawful or
30 unlawful, of any person:

31 a. Sending information to, or requesting or receiving such
32 information from, the United States department of homeland
33 security.

34 b. Maintaining the information described in paragraph "a".

35 c. Exchanging the information described in paragraph "a"

1 with any other federal, state, or local governmental entity.

2 6. Any natural person lawfully domiciled in this state
3 may file for a writ of mandamus to compel any noncooperating
4 local or state governmental entity to comply with the reporting
5 provisions set forth in this section.

6 Sec. 2. NEW SECTION. 91A.15 Independent contractors — wage
7 withholding.

8 1. An employer shall withhold state income tax at the
9 rate of six percent of the amount of compensation paid to
10 an individual, which compensation is required to be reported
11 on internal revenue service form 1099 and with respect to
12 which the individual has failed to provide a valid social
13 security number issued by the United States social security
14 administration.

15 2. An employer who fails to comply with the withholding
16 requirements of subsection 1 shall be liable for the taxes
17 required to have been withheld unless such employer is exempt
18 from federal withholding with respect to such an individual
19 pursuant to a properly filed internal revenue service form 8233
20 or its equivalent, and has provided a copy of such form to the
21 Iowa department of revenue.

22 Sec. 3. NEW SECTION. 91F.1 Definitions.

23 As used in this chapter, unless the context otherwise
24 requires:

25 1. "Commissioner" means the labor commissioner appointed
26 pursuant to section 91.2, or the commissioner's designee.

27 2. "E-verify program" means one of the following:

28 a. The electronic verification of work authorization status
29 program of the federal Illegal Immigration Reform and Immigrant
30 Responsibility Act of 1996, 8 U.S.C. § 1324a, operated by the
31 United States department of homeland security.

32 b. Any federal work authorization status program equivalent
33 to the program described in paragraph "a" and operated by
34 the United States department of homeland security or any
35 other designated federal agency authorized to verify the work

1 authorization status of newly hired employees, pursuant to the
2 federal Immigration Reform and Control Act of 1986, Pub. L. No.
3 99-603.

4 3. "*Public employer*" means the state of Iowa, its boards,
5 commissions, agencies, and departments, and its political
6 subdivisions including school districts and other special
7 purpose districts.

8 4. "*Subcontractor*" means a subcontractor, contract
9 employee, staffing agency, or any contractor regardless of the
10 contractor's tier.

11 5. "*Unfair trade practice*" means any practice which offends
12 established public policy or if the practice is immoral,
13 unethical, oppressive, unscrupulous, or substantially injurious
14 to consumers.

15 Sec. 4. NEW SECTION. 91F.2 E-verify program —
16 participation.

17 1. Each public employer shall register and participate in
18 the e-verify program to verify the work authorization status
19 of all newly hired employees.

20 2. a. A public employer shall not enter into a contract
21 for the performance of services within the state unless the
22 contractor registers and participates in the e-verify program
23 to verify the work authorization status of all newly hired
24 employees.

25 b. A contractor or subcontractor who enters into a contract
26 with a public employer shall not enter into such a contract
27 or subcontract in connection with the performance of services
28 within this state unless the contractor or subcontractor
29 registers and participates in the e-verify program to verify
30 the work authorization status of all newly hired employees.

31 3. The discharge of any United States citizen or permanent
32 resident alien employee by an employer of this state, who, on
33 the date of the discharge employed an unauthorized alien, as
34 defined in section 710B.1, shall constitute an unfair trade
35 practice, and the discharged employee shall have a private

1 right of action for such unfair trade practice.

2 4. The provisions of this chapter shall be enforced without
3 regard to race, religion, gender, ethnicity, or national
4 origin.

5 5. The commissioner shall prescribe forms and administer
6 and effectuate the provisions of this chapter and publish
7 any rules and regulations on the department of workforce
8 development's internet site.

9 Sec. 5. NEW SECTION. 234.15 **Citizenship verification**
10 **program — public benefits.**

11 1. Except as provided in subsection 3 or where exempted by
12 federal law, every state agency and political subdivision shall
13 verify the lawful presence in the United States of any natural
14 person fourteen years of age or older who has applied for state
15 or local public benefits, as defined in 8 U.S.C. § 1621, or for
16 federal public benefits, as defined in 8 U.S.C. § 1611, that
17 are administered by an agency or a political subdivision of
18 this state.

19 2. The provisions of this section shall be enforced without
20 regard to race, religion, gender, ethnicity, or national
21 origin.

22 3. Verification of a person's lawful presence in the United
23 States under the provisions of this section shall not be
24 required for the following:

25 a. For any purpose for which lawful presence in the United
26 States is not restricted by law.

27 b. For assistance for health care items and services
28 that are necessary for the treatment of an emergency medical
29 condition, as defined in 42 U.S.C. § 1396b(v)(3), of the
30 unauthorized alien involved and are not related to an organ
31 transplant procedure.

32 c. For short-term, noncash, in-kind emergency disaster
33 relief.

34 d. For public health assistance for immunizations with
35 respect to diseases and for testing and treatment of symptoms

1 of communicable diseases whether or not such symptoms are
2 caused by a communicable disease.

3 *e.* For programs, services, or assistance such as soup
4 kitchens, crisis counseling and intervention, and short-term
5 shelter specified by the United States attorney general, in the
6 sole and unreviewable discretion of the United States attorney
7 general after consultation with appropriate federal agencies
8 and departments, which:

9 (1) Deliver in-kind services at the community level,
10 including through public or private nonprofit agencies.

11 (2) Do not condition the provision of assistance, the amount
12 of assistance provided, or the cost of assistance provided on
13 the income or resources of the individual recipient.

14 (3) Are necessary for the protection of life or safety.

15 *f.* For prenatal care.

16 4. To verify a natural person's lawful presence in the
17 United States in order to receive benefits, the agency or
18 political subdivision required to make such verification shall
19 require that the applicant execute an affidavit under penalty
20 of perjury that makes one of the following assertions:

21 *a.* The applicant is a United States citizen.

22 *b.* The applicant is a qualified alien under the federal
23 Immigration and Nationality Act, and is lawfully present in the
24 United States.

25 5. For any applicant who has executed the affidavit
26 described in subsection 4, paragraph "b", eligibility for
27 benefits shall be verified through the federal systematic
28 alien verification for entitlement program operated by the
29 United States department of homeland security or a successor
30 program designated by the United States department of homeland
31 security. Until such eligibility verification is completed,
32 the affidavit may be presumed to be proof of lawful presence
33 for the purposes of this section.

34 6. *a.* A person who knowingly and willfully makes a false,
35 fictitious, or fraudulent statement of representation in an

1 affidavit executed pursuant to subsection 4 is guilty of a
2 fraudulent practice pursuant to section 714.8, subsection 3.

3 **b.** If the affidavit constitutes a false claim of United
4 States citizenship under 18 U.S.C. § 911, a complaint shall
5 be filed by the agency requiring the affidavit with the
6 appropriate Iowa district of the United States attorney's
7 office.

8 7. An agency or political subdivision of this state may
9 adopt variations to the requirements of this section which
10 demonstrably improve the efficiency or reduce delay in the
11 verification process, or to provide for adjudication of unique
12 individual circumstances where the verification procedures in
13 this section would impose unusual hardship on a legal resident
14 of Iowa.

15 8. An agency or political subdivision of this state shall
16 not provide any state, local, or federal benefit, as defined
17 in 8 U.S.C. § 1621 or 8 U.S.C. § 1611, in violation of the
18 provisions of this section.

19 9. Each state agency or department which administers any
20 program of state or local public benefits shall provide an
21 annual report to the secretary of state with respect to its
22 compliance with the provisions of this section. Any and all
23 errors shall be reported to the United States department of
24 homeland security by the secretary of state. The secretary of
25 state shall monitor the federal systematic alien verification
26 for entitlement program and its verification application
27 errors and significant delays and shall issue an annual report
28 to the governor and the general assembly on such errors and
29 significant delays, and recommendations to ensure that the
30 application of the systematic alien verification of entitlement
31 program is not erroneously denying benefits to legal residents
32 of Iowa.

33 Sec. 6. NEW SECTION. 710B.1 Unlawful assistance —
34 unauthorized aliens — penalty.

35 1. For purposes of this section, "unauthorized alien" means

1 a person who is not lawfully present in the United States.

2 2. A person shall not transport, move, or attempt to
3 transport within this state any unauthorized alien, knowing
4 or in reckless disregard of the fact that the unauthorized
5 alien has come to, entered, or remained in the United States in
6 violation of law, in furtherance of the illegal presence of the
7 unauthorized alien in the United States.

8 3. A person shall not conceal, harbor, or shelter from
9 detection any unauthorized alien in any place, including any
10 building or means of transportation, knowing or in reckless
11 disregard of the fact that the unauthorized alien has come to,
12 entered, or remained in the United States in violation of law.

13 4. A person who violates this section is guilty of a serious
14 misdemeanor.

15 Sec. 7. NEW SECTION. 710B.2 Unauthorized aliens — official
16 documents.

17 1. Notwithstanding any other provision of law, the
18 following identification documents shall be issued only to
19 United States citizens, legal permanent resident aliens, or
20 holders of valid unexpired nonimmigrant visas.

21 a. Any driver's licenses or nonoperator's identification
22 cards pursuant to chapter 321, birth certificates pursuant to
23 chapter 144, or other identification documents required by
24 law or any legitimate purpose consistent with the duties of a
25 federal, state, or local governmental entity.

26 b. Identification designed to identify the bearer as a
27 student, faculty member, administrator, or employee of any
28 public or nonpublic school or state or private educational
29 institution.

30 2. a. The provisions of subsection 1 shall not apply
31 when an applicant presents, in person, proof of United States
32 citizenship including but not limited to one of the following:

33 (1) A federal passport.

34 (2) Any state driver's license or state nonoperator
35 identification card.

1 (3) A certified birth certificate.

2 *b.* The provisions of subsection 1 shall not apply when an
3 applicant presents, in person, valid documentary evidence of
4 any of the following:

5 (1) A valid unexpired immigrant or nonimmigrant visa status
6 for admission to the United States.

7 (2) A pending or approved application for asylum in the
8 United States.

9 (3) Admission into the United States in refugee status.

10 (4) A pending or approved application for temporary
11 protected status in the United States.

12 (5) Approved deferred action status.

13 (6) A pending application for adjustment of status to legal
14 permanent residence status or conditional residence status.

15 3. *a.* Upon approval of a document in subsection 2,
16 paragraph "b", the applicant may be issued an identification
17 document as provided in subsection 1, unless otherwise
18 prohibited by law. Such identification document shall be valid
19 only during the time of the authorized stay of the applicant in
20 the United States, or if there is no definite end to the period
21 of authorized stay, a period of one year.

22 *b.* Any identification document issued pursuant to this
23 subsection shall clearly indicate that it is temporary
24 and shall state the date that the identification document
25 expires. Such identification document may be renewed only
26 upon presentation of valid documentary evidence that the
27 status by which the applicant qualified for the identification
28 document has been extended by the United States citizenship
29 and immigration services or United States immigration and
30 customs enforcement of the United States department of homeland
31 security.

32 4. Any driver's license or nonoperator's identification
33 card issued pursuant to chapter 321 for which an application
34 has been made for renewal, duplication, or reissuance shall be
35 presumed to have been issued in accordance with the provisions

1 of subsection 1, provided that, at the time the application
2 is made, the driver's license or nonoperator's identification
3 card has not expired, or been canceled, suspended, or revoked.
4 The requirements of subsection 1 shall apply to a renewal,
5 duplication, or reissuance if the department of transportation
6 receives information or is notified by a local, state, or
7 federal agency that the individual seeking such renewal,
8 duplication, or reissuance is neither a citizen of the United
9 States nor lawfully present in the United States.

10 Sec. 8. NEW SECTION. 710B.3 Criminal conduct — immigration
11 status verification.

12 1. A reasonable effort shall be made to determine the
13 citizenship of a person charged with a serious misdemeanor
14 or a more serious offense, or who is charged with operating
15 while intoxicated pursuant to section 321J.2, if the person is
16 confined for any period in a county jail or city jail.

17 2. If the person is not a United States citizen, the keeper
18 of the jail or other officer shall make a reasonable effort to
19 verify that the prisoner has been lawfully admitted into the
20 United States and if lawfully admitted, that such lawful status
21 has not expired. If verification of the prisoner's lawful
22 status cannot be made from documents in the possession of the
23 prisoner, verification shall be made within forty-eight hours
24 through a query to the United States immigration and customs
25 enforcement law enforcement support center of the United States
26 department of homeland security or other office or agency
27 designated for that purpose. If the prisoner is determined not
28 to be lawfully admitted to the United States, the keeper of the
29 jail or other officer shall notify the United States department
30 of homeland security.

31 3. For the purpose of determining the grant of or issuance
32 of bond, a prisoner whose citizenship status has been verified
33 pursuant to subsection 2 to be an unauthorized alien, shall be
34 deemed a flight risk.

35 4. The department of public safety shall by rule adopt

1 guidelines and procedures to be used to comply with the
2 provisions of this section.

3 Sec. 9. EFFECTIVE DATE. This Act takes effect January 1,
4 2011.

5 EXPLANATION

6 This bill relates to illegal immigration in Iowa.

7 The bill directs the attorney general pursuant to new Code
8 section 13.11 to negotiate a memorandum of understanding
9 (MOU) regarding immigration issues between the state and the
10 United States department of justice in order to increase joint
11 enforcement of federal immigration law with the United States
12 department of homeland security. The MOU shall help insure
13 that unauthorized aliens discovered by Iowa law enforcement
14 officials are quickly and safely transferred into federal
15 custody.

16 In new Code section 91A.15, the bill requires an employer
17 to withhold state income tax from the compensation of an
18 independent contractor who fails to provide a valid social
19 security number. An employer who fails to withhold such
20 required income taxes shall be liable for that amount.

21 The bill creates new Code chapter 91F, which requires
22 that each public employer use the federal electronic work
23 authorization program, known as E-verify, to verify the
24 lawful presence of newly hired employees. Public employers
25 are prohibited from entering into contracts unless the
26 contractors register and participate in the E-verify program.
27 The discharge of a United States citizen or a permanent
28 resident alien employee of an employer, who, on the date of the
29 discharge employed an unauthorized alien, shall constitute an
30 unfair trade practice and the discharged employee shall have a
31 private right of action.

32 Under new Code section 234.15, the bill requires each
33 state agency or political subdivision to verify the lawful
34 presence of each natural person age 14 years or older who
35 applies for state or local benefits, or federal benefits that

1 are administered by the state agency or political subdivision
2 using the systematic alien verification of entitlement program
3 (SAVE). The Code section includes medical and disaster
4 exceptions for the verification requirement. The state
5 agencies and political subdivisions are provided a detailed
6 process for verifying a person's lawful presence, including
7 completion of an affidavit by the applicant asserting the
8 applicant's lawful presence in the United States. A person
9 who knowingly and willfully makes a false, fictitious, or
10 fraudulent statement in an affidavit commits a fraudulent
11 practice, and may be subject to a class "C" felony through
12 a simple misdemeanor depending on the value of the services
13 and property fraudulently received. A class "C" felony is
14 punishable by confinement for no more than 10 years and a
15 fine of at least \$1,000 but not more than \$10,000. A class
16 "D" felony is punishable by confinement for no more than five
17 years and a fine of at least \$750 but not more than \$7,500. An
18 aggravated misdemeanor is punishable by confinement for no more
19 than two years and a fine of at least \$625 but not more than
20 \$6,250. A serious misdemeanor is punishable by confinement for
21 no more than one year and a fine of at least \$315 but not more
22 than \$1,875. A simple misdemeanor is punishable by confinement
23 for no more than 30 days or a fine of at least \$65 but not more
24 than \$625 or by both.

25 An annual report shall be compiled by the secretary of
26 state about the use of the SAVE program by the state agencies
27 and political subdivisions and the number of errors and any
28 significant delays. The report shall be provided to the
29 governor and general assembly.

30 The bill creates new Code chapter 710B. Under Code section
31 710B.1, a person shall not transport, harbor, or shelter
32 an alien in reckless disregard for the person's illegal
33 immigration status. Such a violation is a serious misdemeanor,
34 which is punishable by confinement for no more than one year
35 and a fine of at least \$315 but not more than \$1,875.

1 New Code section 710B.2 restricts the issuance of most
2 official identification documents to United States citizens,
3 legal permanent residents, and holders of valid unexpired
4 visas.

5 The bill provides that a reasonable effort shall be made to
6 determine the citizenship of a person charged with a serious
7 misdemeanor or a more serious offense, or who is charged with
8 operating while intoxicated pursuant to Code section 321J.2, if
9 the person is confined for any period in a county jail or city
10 jail. Specific procedures are provided for law enforcement to
11 verify the immigration status of a person in custody. If the
12 person is an unauthorized alien, the person shall be reported
13 to the United States department of homeland security. The
14 Iowa department of public safety is charged with preparing
15 guidelines and procedures for complying with this provision.

16 The bill takes effect January 1, 2011.