



DEBRA BOWEN | SECRETARY OF STATE
STATE OF CALIFORNIA | ELECTIONS

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November 22, 2010

County Clerk/Registrar of Voters (CC/ROV) Memorandum #10322

TO: All County Clerks/Registrars of Voters and Proponent

FROM:


Katherine Montgomery
Initiative Program Manager

RE: Initiative: 1476, Related to Immigration

Pursuant to Elections Code section 336, we transmit herewith a copy of the Title and Summary prepared by the Attorney General on a proposed initiative measure entitled:

**MAKES IT A CRIME FOR UNDOCUMENTED
PERSONS TO SEEK WORK WHILE CONCEALING
THEIR IMMIGRATION STATUS AND ALSO MAKES IT A
CRIME FOR ANY EMPLOYER TO HIRE AN UNDOCUMENTED
PERSON INTENTIONALLY OR NEGLIGENTLY. INITIATIVE STATUTE.**

The proponent of the above-named measure is:

Michael Erickson

erickson@reagan.com

**MAKES IT A CRIME FOR UNDOCUMENTED
PERSONS TO SEEK WORK WHILE CONCEALING
THEIR IMMIGRATION STATUS AND ALSO MAKES IT A
CRIME FOR ANY EMPLOYER TO HIRE AN UNDOCUMENTED
PERSON INTENTIONALLY OR NEGLIGENTLY. INITIATIVE STATUTE.**

CIRCULATING AND FILING SCHEDULE

1. Minimum number of signatures required: 433,971
California Constitution, Article II, Section 8(b)
2. Official Summary Date: Monday, 11/22/10
3. Petitions Sections:
 - a. First day Proponent can circulate Sections for
signatures (Elec. Code § 336)..... Monday, 11/22/10
 - b. Last day Proponent can circulate and file with the county.
All sections are to be filed at the same time within each
county. (Elec. Codes §§ 336, 9030(a))..... Thursday, 04/21/11
 - c. Last day for county to determine total number of
signatures affixed to petitions and to transmit total
to the Secretary of State (Elec. Code § 9030(b))..... Tuesday, 05/03/11

(If the Proponent files the petition with the county on a date prior to
04/21/11, the county has eight working days from the filing of the petition
to determine the total number of signatures affixed to the petition and to
transmit the total to the Secretary of State) (Elec. Code § 9030(b)).
 - d. Secretary of State determines whether the total number
of signatures filed with all county clerks/registrars of
voters meets the minimum number of required signatures
and notifies the counties..... Thursday, 05/12/11*
 - e. Last day for county to determine total number of qualified
voters who signed the petition, and to transmit certificate
with a blank copy of the petition to the Secretary of State
(Elec. Code § 9030(d)(e))..... Friday, 06/24/11

* Date varies based on the date of county receipt.

INITIATIVE #1476

Circulating and Filing Schedule continued:

(If the Secretary of State notifies the county to determine the number of qualified voters who signed the petition on a date other than 05/12/11, the last day is no later than the thirtieth working day after the county's receipt of notification.) (Elec. Code § 9030(d)(e)).

- f. If the signature count is more than 477,369 or less than 412,273 then the Secretary of State certifies the petition as qualified or failed, and notifies the counties. If the signature count is between 412,273 and 477,369 inclusive, then the Secretary of State notifies the counties using the random sampling technique to determine the validity of **all** signatures (EC §9030(f)(g); 9031(a))Monday, 07/04/11* .
- g. Last day for county to determine actual number of all qualified voters who signed the petition, and to transmit certificate with a blank copy of the petition to the Secretary of State. (Elec. Code § 9031(b)(c)).....Monday, 08/15/11

(If the Secretary of State notifies the county to determine the number of qualified voters who have signed the petition on a date other than 07/04/11, the last day is no later than the thirtieth working day after the county's receipt of notification.) (Elec. Code § 9031(b)(c).)

- h. Secretary of State certifies whether the petition has been signed by the number of qualified voters required to declare the petition sufficient (Elec. Code §§ 9031(d), 9033) Friday, 08/19/11*

*Date varies based on the date of county receipt.

IMPORTANT POINTS

- California law prohibits the use of signatures, names and addresses gathered on initiative petitions for any purpose other than to qualify the initiative measure for the ballot. This means that the petitions cannot be used to create or add to mailing lists or similar lists for any purpose, including fundraising or requests for support. Any such misuses constitutes a crime under California law. Elections Code section 18650; *Bilofsky v. Deukmejian* (1981) 124 Cal.App.3d 825, 177 Cal.Rptr. 621; 63 Ops.Cal.Atty.Gen. 37 (1980).
- Please refer to Elections Code sections 100, 101, 104, 9001, 9008, 9009, 9021, and 9022 for appropriate format and type consideration in printing, typing and otherwise preparing your initiative petition for circulation and signatures. Please send a copy of the petition after you have it printed. This copy is not for our review or approval, but to supplement our file.
- Your attention is directed to the campaign disclosure requirements of the **Political Reform Act of 1974**, Government Code section 81000 et seq.
- When writing or calling state or county elections officials, provide the official title of the initiative which was prepared by the Attorney General. Use of this title will assist elections officials in referencing the proper file.
- When a petition is presented to the county elections official for filing by someone other than the proponent, the required authorization shall include the name or names of the persons filing the petition.
- When filing the petition with the county elections official, please provide a blank petition for elections official use.

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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E-Mail: Krystal.Paris@doj.ca.gov

November 22, 2010

FILED
In the office of the Secretary of State
of the State of California

NOV 22 2010

Debra Bowen, Secretary of State
By: 
Deputy Secretary of State

Honorable Debra Bowen
Secretary of State of the State of California
State of California Elections
1500 11th Street, 5th Floor
Sacramento, CA 95814

Attention: Ms. Katherine Montgomery
Associate Elections Analyst

Dear Secretary Bowen:

Pursuant to Elections Code, section 9004, you are hereby notified that on this day we sent our title and summary for the following proposed initiative to the proponent:

- 10-0023, "Support Federal Immigration Law Act"

A copy of that title and summary and text of the proposed measure is enclosed. Please contact me if you have questions. Thank you.

Sincerely,



KRYSTAL M. PARIS
Initiative Coordinator

For EDMUND G. BROWN JR.
Attorney General

Proponent:
Michael Erickson
erickson@reagan.com

November 22, 2010
Initiative 10-0023

The Attorney General of California has prepared the following title and summary of the chief purpose and points of the proposed measure:

MAKES IT A CRIME FOR UNDOCUMENTED PERSONS TO SEEK WORK WHILE CONCEALING THEIR IMMIGRATION STATUS AND ALSO MAKES IT A CRIME FOR ANY EMPLOYER TO HIRE AN UNDOCUMENTED PERSON INTENTIONALLY OR NEGLIGENTLY. INITIATIVE STATUTE. Requires all highway patrol, police, sheriffs and other sworn officers to investigate immigration status when they are reasonably suspicious that a person stopped is in the country illegally. Authorizes legal residents to sue any official or agency that adopts or implements policies that limit immigration enforcement, and specifies a \$5,000 per day fine and attorneys' fees for violations. Summary of estimate by Legislative Analyst and Director of Finance of fiscal impact on state and local government: **Potentially significant cost savings in services provided to undocumented immigrants by state and local governments and reductions in state and local revenue to the extent this measure reduces the number of undocumented immigrants in the state. The net impact of this factor is unknown. Increased costs to the state and local criminal justice system, potentially exceeding tens of millions of dollars annually, from the arrest, prosecution, and detention of violators of the provisions of the measure. (10-0023.)**

September 27, 2010

10-0023

Krystal Paris
Initiative Coordinator
Office of the Attorney General
1300 "T" Street
Sacramento, CA 95814

RECEIVED

SEP 30 2010 

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Ms. Paris,

In accordance with the provisions of Section 9004 of the Election Code, I have enclosed the text of a proposed initiative measure for the preparation of a title and summary. I have also enclosed a statement pursuant to Section 9608 of the Election Code. Finally, I have enclosed a check in the amount of \$200.00 made out to the "State of California" for the specified filing fee.

Thank you for your assistance in this matter. If you have any questions of me, then please do not hesitate to reach out to me at any time.

Sincerely,

Michael Erickson

This initiative measure is submitted to the people in accordance with the provisions of Section 8 of Article II of the California Constitution.

This initiative measure adds sections to the Penal Code; therefore, new provisions proposed to be added are printed *in italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. TITLE

This initiative statute shall be known and may be cited as the "Support Federal Immigration Law Act".

SECTION 2. FINDING AND DECLARATION OF INTENT

The People of California find that there is a compelling interest in the cooperative enforcement of federal immigration laws throughout this state and declare that the intent of this Act is to establish a public policy for all state and local government agencies in California to cooperate with federal immigration authorities wherever possible.

SECTION 3. DEFINITIONS AND GENERAL PROVISIONS

Section 834d is added to Chapter 5 of Title 3 of Part 2 of the Penal Code to read:

834d Definitions and general provisions

- A. For the purposes of any section in this chapter, the term "unauthorized alien" shall have the meaning as defined in federal law.*
- B. For the purposes of any section in this chapter, the term "unlawfully present" shall have the meaning as defined in federal law.*
- C. It is unlawful for a person who is unlawfully present in the United States or who is an alien unauthorized to work in the United States to conceal his or her immigration status while applying for work, soliciting work in a public place, or performing work as an employee or independent contractor in this state.*
- D. In the implementation of any section in this chapter, the immigration status of a person may be determined by a law enforcement officer who is authorized by the federal government to verify or ascertain the person's immigration status with the United States Immigration and Customs Enforcement, or the United States Customs and Border Protection pursuant to 8 United States Code Section 1373 (c).*
- E. No stop, detainment, or arrest may be effected under any provision of any section in this chapter where the primary and sole cause of such stop, detainment, or arrest is a suspicion that the person stopped, detained, or arrested is unlawfully present in the United States, or is an unauthorized alien.*
- F. A law enforcement official or agency of this state, or a county, city, city and county, or other political subdivision of this state may not consider race, color, or national origin in implementing the requirements of any section in this chapter except to the extent permitted by the United States or California Constitution.*
- G. The various sections of this chapter shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.*

SECTION 4. ENFORCEMENT OF IMMIGRATION LAWS

Section 834e is added to Chapter 5 of Title 3 of Part 2 of the Penal Code, to read:

834e Cooperation and assistance in enforcement of immigration laws; indemnification

A. No official or agency of this state, or a county, city, city and county, or other political subdivision of this state may limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.

B. For any lawful stop, detention, or arrest made by a law enforcement official or a law enforcement agency of this state, or a law enforcement official or a law enforcement agency of a county, city, city and county; or other political subdivision of this state, in the enforcement of any other law or ordinance of the state, county, city, city and county, or other political subdivision of the state where reasonable suspicion exists that the person is unlawfully present in the United States, a reasonable attempt shall be made to verify the immigration status of the person with the federal government pursuant to 8 United States Code Section 1373(c). Verification of the immigration status of a person who is stopped or detained, but not arrested, shall be made in a timely manner at the scene of the stop or detainment except where such verification may hinder or obstruct an investigation, or where such verification is not given by the federal government in a timely manner. Verification of the immigration status of a person who is arrested shall be made before the person is released from custody, except where such verification may hinder or obstruct an investigation or where such verification is not given by the federal government before the person is released from custody. A person is presumed not to be unlawfully present in the United States if the person provides to the law enforcement officer or agency any of the following:

- 1. A valid California driver's license.*
- 2. A valid California identification card.*
- 3. A valid tribal enrollment card or other form of tribal identification.*
- 4. A valid United States passport.*
- 5. A valid passport issued by another country containing a valid visa document issued by the United States.*

6. If the issuing entity requires proof of legal presence in the United States before issuance, any valid United States federal, state, or local government issued identification.

C. If a person who is unlawfully present in the United States is convicted of a violation of state or local law then, on discharge from imprisonment or on the assessment of any monetary obligation that is imposed, the United States Immigration and Customs Enforcement or the United States Customs and Border Protection shall be immediately notified.

D. Notwithstanding any other law, a law enforcement agency may securely transport an alien who the agency has received verification is unlawfully present in the United States and who is in the agency's custody to a federal facility in this state or to any other point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency. A law enforcement agency shall obtain judicial authorization before securely transporting an alien who is unlawfully present in the United States to a point of transfer that is outside of this state.

E. A law enforcement officer or agency of this state, or a county, city, city and county, or other political subdivision of this state may not consider race, color, or national origin in the enforcement of this section except to the extent permitted by the United States or California Constitution.

F. In the implementation of this section, the immigration status of a person may be determined by a law enforcement officer who is authorized by the federal government to verify or ascertain the person's immigration status with the United States Immigration and Customs Enforcement or the United States Customs and Border Protection pursuant to 8 United States Code Section 1373 (c).

G. Except as provided in federal law, officials or agencies of this state and counties, cities, cities and counties, and other political subdivisions of this state may not be prohibited or in any way be restricted from sending, receiving, or maintaining information relating to the immigration status, lawful or unlawful, of any individual or exchanging that information with any other federal, state or local governmental entity for the following official purposes:

- 1. Determining eligibility for any public benefit, service, or license provided by any federal, state, local, or other political subdivision of this state.*
- 2. Verifying any claim of residence or domicile if determination of residence or domicile is required under the laws of this state or a judicial order issued pursuant to a civil or criminal proceeding in this state.*
- 3. If the person is an alien, determining whether the person is in compliance with the federal registration laws prescribed by Title II, Chapter 7 of the Federal Immigration and Nationality Act.*
- 4. Pursuant to 8 United States Code Section 1373 and 8 United States Code Section 1644.*

H. A person who is a legal resident of this state may bring an action in superior court to challenge any official or agency of this state, or a county, city, city and county, or other political subdivision of this state that adopts or implements a policy that limits or restricts the enforcement of federal immigration laws, including 8 United States Code Sections 1373 and 1644, to less than the full extent permitted by federal law. If there is a judicial finding that an entity has violated this section, the court shall order that the entity pay a civil penalty of not less than Five Thousand Dollars for each day that the policy has remained in effect after the filing of an action pursuant to this subsection. If there is a judicial finding that an entity has violated this section, the court furthermore may order that the entity discontinue the policy that the court has determined limits or restricts the enforcement of federal immigration laws, including 8 United States Code Sections 1373 and 1644, to less than the full extent permitted by federal law, and the court may issue any injunctive relief that it deems necessary and just under the circumstances to compel compliance with such an order.

I. The court may award court costs and reasonable attorney fees to any person or any official or agency of this state, or a county, city, city and county, or other political subdivision of this state that prevails by an adjudication on the merits in a proceeding brought pursuant to this section.

J. Except in relation to matters in which the officer is adjudged to have acted in bad faith, a law enforcement officer is indemnified by the law enforcement officer's agency against reasonable costs and expenses, including attorney fees, incurred by the officer in

connection with any action, suit, or proceeding brought pursuant to this section in which the officer may be a defendant by reason of the officer being or having been a member of the law enforcement agency.

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

SECTION 5. SMUGGLING OF HUMAN BEINGS

Section 834f is added to Chapter 5 of Title 3 of Part 2 of the Penal Code, to read:

834f Smuggling; classification; definitions

A. It is unlawful for a person to intentionally engage in the smuggling of human beings for profit or commercial purpose.

B. A violation of this section is a felony.

C. Penalties for a violation of this section shall be enhanced if:

1. The human being who is smuggled is under eighteen years of age and is not accompanied by a family member over eighteen years of age, or

2. The offense involved the use of a deadly weapon or dangerous instrument, or

3. The offense involved the use or threatened use of deadly physical force.

D. Notwithstanding any other law, in the enforcement of this section a peace officer may lawfully stop any person who is operating a motor vehicle if the officer has reasonable suspicion to believe the person is in violation of any civil traffic law.

E. For the purposes of this section:

1. "Family member" means the person's parent, grandparent, sibling, or any other person who is related to the person by consanguinity or affinity to the second degree.

2. "Procurement of transportation" means any participation in or facilitation of transportation and includes:

(a) Providing services that facilitate transportation including travel arrangement services or money transmission services.

(b) Providing property that facilitates transportation, including a weapon, a vehicle, or other means of transportation or false identification, or selling, leasing, renting, or otherwise making available a drop house as defined in California law.

3. "Smuggling of human beings" means the transportation, procurement of transportation, or use of property or real property by a person or an entity that knows or has reason to know that the person or persons transported or to be transported are not United States citizens, permanent resident aliens, or persons otherwise lawfully in this state or have attempted to enter, entered, or remained in the United States in violation of law.

SECTION 6. UNLAWFUL STOPPING

Section 834g is added to Chapter 5 of Title 3 of Part 2 of the Penal Code, to read:

834g Unlawful stopping to hire and pick up passengers for work; unlawful application, solicitation, or employment; classification; definitions

- A. It is unlawful for an occupant of a motor vehicle that is stopped on a street, roadway, or highway to attempt to hire or to hire and pick up passengers for work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.*
- B. It is unlawful for a person to enter a motor vehicle that is stopped on a street, roadway, or highway in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location if the motor vehicle blocks or impedes the normal movement of traffic.*
- C. It is unlawful for a person who is unlawfully present in the United States or who is an unauthorized alien in the United States to conceal their immigration status when applying for work, soliciting work, or performing work for which they are not eligible as an employee or as independent contractor in this state.*
- D. A law enforcement official or agency of this state, or a county, city, city and county, or other political subdivision of this state may not consider race, color, or national origin in the enforcement of this section except to the extent permitted by the United States or California Constitution.*
- E. In the enforcement of this section, the immigration status of a person may be determined by a law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status with the United States Immigration and Customs Enforcement or the United States Customs and Border Protection pursuant to 8 United States Code Section 1373(c).*
- F. A violation of this section is a misdemeanor.*
- G. For the purposes of this section:*
- 1. "Solicit" means verbal or nonverbal communication by a gesture or a nod that would indicate to a reasonable person that a person is willing to be employed.*
 - 2. "Unauthorized alien" means an alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 United States Code Section 1324a(h)(3).*

SECTION 7. UNLAWFUL TRANSPORTING

Section 834h is added to Chapter 5 of Title 3 of Part 2 of the Penal Code, to read:

834h Unlawful transporting, moving, concealing, harboring, or shielding of unlawful aliens; vehicle impoundment; exception; classification

A. It is unlawful for a person to:

- 1. Transport or move or attempt to transport or move an alien in this state, in furtherance of the illegal presence of the alien in the United States, in a means of transportation if the person knows or recklessly disregards the fact that the alien has come to, has entered, or remains in the United States in violation of law.*
- 2. Conceal, harbor, or shield or attempt to conceal, harbor, or shield an alien from detection in any place in this state, including any building or any means of transportation, if the person knows or recklessly disregards the fact that the alien has come to, has entered, or remains in the United States in violation of law.*
- 3. Encourage or induce an alien to come to or reside in this state if the person knows or recklessly disregards the fact that such coming to, entering into, or residing in this state is or will be in violation of law.*

B. A means of transportation that is used in the commission of a violation of this section is subject to mandatory vehicle immobilization or impoundment in accordance with California law.

C. A law enforcement official or agency of this state, or a county, city, city and county, or other political subdivision of this state may not consider race, color, or national origin in the enforcement of this section except to the extent permitted by the United States or California Constitution.

D. In the enforcement of this section, the immigration status of a person may be determined by a law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status with the United States Immigration and Customs Enforcement or the United States Customs and Border Protection pursuant to 8 United States Code Section 1373(c).

E. This section does not apply to a child protective services worker acting in the worker's official capacity or a person who is acting in the capacity of a first responder, an ambulance attendant, or an emergency medical technician and who is transporting or moving an alien in this state in accordance with federal or California law.

F. A person who violates this section is guilty of a misdemeanor and is subject to a fine of at least One Thousand Dollars, except that a violation of this section that involves ten or more persons unlawfully present in the United States is a felony and the person is subject to both a fine of at least One Thousand Dollars for each alien who is involved and incarceration in a California state prison for a minimum of one year.

SECTION 8. KNOWINGLY OR NEGLIGENTLY EMPLOYING PERSONS UNLAWFULLY PRESENT IN THE UNITED STATES OR UNAUTHORIZED ALIENS

Section 834i is added to Chapter 5 of Title 3 of Part 2 of the Penal Code, to read:

834i Knowingly or negligently employing persons unlawfully present in the United States and/or unauthorized aliens; prohibition; violation; classification; license suspension and revocation; affirmative defense

A. An employer in this state shall not knowingly or negligently employ any person who is not lawfully present in the United States or who is lawfully present but is not authorized to seek or accept employment in the United States. Contract, subcontract, or other independent contractor agreements to obtain the labor of a person who is not lawfully present in the United States, or who is lawfully present but is not authorized to seek or accept employment in the United States, concluded in this state are unlawful, voidable, and in violation of this section. For the purposes of this section, "knowingly" means possessing credible information at hiring or at any point in the performance of work that the person applying for or performing work is unlawfully present in the United States or is lawfully present but not authorized to work in the United States; and, "negligently" means failing to exercise reasonable and timely diligence to ascertain that the person applying for or performing work is lawfully present in the United States and is authorized to be employed under federal and California law.

B. An action for a violation of Subsection A of this section shall be brought against the employer by the county district attorney in the county where the person or persons unlawfully present in the United States or lawfully present but not authorized to seek or

obtain employment are or were employed by the employer. The county district attorney shall not commence an action for a violation of subsection A of this section until there has been a determination by the federal government that the employee or employees of the employer include a person or persons unlawfully present in the United States or lawfully present but not authorized to seek or accept employment in the United States and that determination by the federal government has been communicated in an official and legal manner to the county district attorney, whether or not that determination has been made pursuant to a federal criminal prosecution. A second violation of this section shall be based only on an unauthorized alien who is or was employed by the employer after an action has been brought for a violation of subsection A of this section or of Section 834j, subsection A.

C. For any action in superior court under this section, the court shall expedite the action, including assigning the hearing at the earliest practicable date.

D. The county district attorney shall not bring an action against any employer for any violation of Subsection A of this section that occurs before six months have transpired after the enactment of this Act.

E. On a finding of a violation of Subsection A of this section:

1. For a first violation, as described in Paragraph 3 of this subsection, the court:

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

(b) Shall order the employer to be subject to a three year probationary period for the business location where the unauthorized alien performed work. During the probationary period the employer shall file quarterly reports, in a manner prescribed by the Attorney General, with the county district attorney for each new employee who is hired by the employer at the business location where the unauthorized alien performed work. The quarterly reports shall indicate the measures undertaken with the hiring and maintaining of each new employee during the period covered by the quarterly report to insure compliance with this Act.

(c) Shall order the employer to file a signed sworn affidavit with the county district attorney within three business days after the order is issued. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens in this state and that the employer will not intentionally, knowingly, or negligently employ an unauthorized alien in this state. The court shall order the appropriate agencies to suspend all licenses subject to this subdivision that are held by the employer if the employer fails to file a signed sworn affidavit with the county district attorney within three business days after the order is issued. All licenses that are suspended under this subdivision shall remain suspended until the employer files a signed sworn affidavit with the county district attorney. Notwithstanding any other law, on filing of the affidavit the suspended licenses shall be reinstated immediately by the appropriate agencies. For the purposes of this subdivision, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer at the employer's primary place of business. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses

according to the court's order. The court shall send a copy of the court's order to the Attorney General and the Attorney General shall maintain the copy pursuant to Subsection G of this section.

(d) May order the appropriate agencies to suspend all licenses described in subdivision (c) of this paragraph that are held by the employer for a minimum of ten business days. The court shall base its decision to suspend under this subdivision on any evidence or information submitted to it during the action for a violation of this subsection and shall consider the following factors, if relevant:

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

(ii) Any prior misconduct by the employer.

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

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

(v) The duration of the violation.

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

(vii) Any other factors the court deems appropriate.

2. For a second violation, as described in Paragraph 3 of this subsection:

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

(b) The court shall impose a fine on the employer of Five Thousand Dollars.

3. The violation shall be considered:

(a) A first violation by an employer at a business location if the violation did not occur during a probationary period ordered by the court under this subsection or Section 834j, Subsection E for that employer's business location.

(b) A second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court under this subsection or Section 834j, Subsection E for that employer's business location.

F. The Attorney General shall maintain copies of court orders that are received pursuant to Subsection E of this section and shall maintain a database of the employers and business locations that have a first violation of Subsection A of this section and make the court orders available on the Attorney General's web site.

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

H. For the purposes of this section, proof of verifying the employment authorization of an employee through the E-verify Program creates a rebuttable presumption that an employer did not knowingly or negligently employ an unauthorized alien.

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

SECTION 9. INTENTIONALLY EMPLOYING PERSONS UNLAWFULLY PRESENT IN THE UNITED STATES OR UNAUTHORIZED ALIENS .

Section 834j is added to Chapter 5 of Title 3 of Part 2 of the Penal Code, to read:

834j Intentionally employing persons unlawfully present in the United States and/or unauthorized aliens; prohibition; violation; classification; license suspension and revocation; affirmative defense

A. An employer shall not intentionally employ a person or persons who are unlawfully present in the United States or who are lawfully present but not authorized to seek or obtain employment. If an employer uses a contract, subcontract, or other independent contractor agreement to obtain the labor of a person or persons who are unlawfully present in the United States or who are lawfully present but not authorized to seek or obtain employment in this state, or an employer intentionally contracts with a person unlawfully present in the United States or lawfully present but not authorized to seek or obtain employment in this state or with a person who employs or contracts with persons unlawfully present in the United States or lawfully present but not authorized to seek or obtain employment to perform the labor, the employer violates this subsection, and the contract, subcontract, or other independent contractor agreement is unlawful and voidable. For the purposes of this section, "intentionally" means possessing credible information at hiring or at any point in the performance of work that the person applying for or performing work is unlawfully present in the United States or is lawfully present but unauthorized to work in the United States, and hiring or maintaining the employment of five or more persons unlawfully present in the United States or lawfully present but unauthorized to work in the United States within the same calendar year, or hiring or maintaining the employment of ten or more persons unlawfully present in the United States or lawfully present but unauthorized to work in the United States within five consecutive years.

B. An action for a violation of subsection A of this section shall be brought against the employer by the county district attorney in the county where the person or persons who are unlawfully present in the United States or who are lawfully present but not authorized to seek or obtain employment was or were employed by the employer. The county district attorney shall not commence an action for a violation of subsection A of this section until there has been a determination by the federal government that the employee or employees of the employer include a person or persons not lawfully present in the United States or lawfully present but unauthorized to seek or accept employment in the United States and that determination by the federal government has been communicated in an official and legal manner to the county district attorney, whether or not that determination has been made pursuant to a federal criminal prosecution. A second

violation of this section shall be based only on an unauthorized alien who is or was employed by the employer after an action has been brought for a violation of subsection A of this section or Section 834i, subsection A.

C. For any action in superior court under this section, the court shall expedite the action, including assigning the hearing at the earliest practicable date.

D. The county district attorney shall not bring an action against any employer for any violation of Subsection A of this section that occurs before six months have transpired after the enactment of this Act.

E. On a finding of a violation of Subsection A of this section:

1. For a first violation, as described in Paragraph 3 of this subsection, the court shall:

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

(b) Order the employer to be subject to a five year probationary period for the business location where the unauthorized alien performed work. During the probationary period the employer shall file quarterly reports, in a manner prescribed by the Attorney General, with the county district attorney for each new employee who is hired by the employer at the business location where the unauthorized alien performed work. The quarterly reports shall indicate the measures undertaken with the hiring and maintaining of each new employee during the period covered by the quarterly report to insure compliance with this Act.

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

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

(ii) Any prior misconduct by the employer.

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

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

(v) The duration of the violation.

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

(vii) Any other factors the court deems appropriate.

(d) Order the employer to file a signed sworn affidavit with the county district attorney. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens in this state and that the employer will not intentionally or knowingly employ an unauthorized alien in this state. The court shall order the appropriate agencies to suspend all licenses subject to this subdivision that are held by the employer if the employer fails to file a signed sworn affidavit with the county district attorney within three business days after the order is issued. All licenses that are suspended under this subdivision for failing to file a signed sworn affidavit shall remain suspended until the employer files a signed sworn affidavit with the county district attorney. For the purposes of this subdivision, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the licenses that are

subject to suspension under this subdivision are all licenses that are held by the employer at the employer's primary place of business. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the court's order. The court shall send a copy of the court's order to the Attorney General and the Attorney General shall maintain the copy pursuant to Subsection G of this section.

2. For a second violation, as described in Paragraph 3 of this subsection:

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

(b) The court shall impose a fine on the employer of Ten Thousand Dollars.

3. The violation shall be considered:

(a) A first violation by an employer at a business location if the violation did not occur during a probationary period ordered by the court under this subsection or Section 834i, Subsection E for that employer's business location.

(b) A second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court under this subsection or Section 834i, Subsection E for that employer's business location.

F. The Attorney General shall maintain copies of court orders that are received pursuant to Subsection E of this section and shall maintain a database of the employers and business locations that have a first violation of Subsection A of this section and make the court orders available on the Attorney General's web site.

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

H. For the purposes of this section, proof of verifying the employment authorization of an employee through the E-verify Program creates a rebuttable presumption that an employer did not intentionally employ an unauthorized alien.

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

SECTION 10. VERIFICATION OF EMPLOYMENT ELIGIBILITY

Section 834k is added to Chapter 5 of Title 3 of Part 2 to the Penal Code, to read:

834k Verification of employment eligibility; economic development incentives; list of registered employers

A. Every employer, after hiring an employee, shall verify the employment eligibility of the employee through the E-verify program and shall keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.

B. In addition to any other requirement for an employer to receive an economic development incentive from a government entity, the employer shall register with and participate in the E-verify Program. Before receiving the economic development incentive, the employer shall provide proof to the government entity that the employer is registered with and is participating in the E-verify Program. If the government entity determines that the employer is not complying with this subsection, the government entity shall notify the employer by certified mail of the government entity's determination of noncompliance and the employer's right to appeal the determination. On a final determination of noncompliance, the employer shall repay all monies received as an economic development incentive to the government entity within thirty days of the final determination. For the purposes of this subsection:

- 1. "Economic development incentive" means any grant, loan, or performance-based incentive from any state government entity.*
- 2. "Government entity" means this state and any political subdivision of this state that receives and uses tax revenues.*

C. Every three months, the Attorney General shall request from the United States Department of Homeland Security a list of employers from this state that are registered with the E-verify Program. On receipt of the list of employers, the Attorney General shall make the list available on the Attorney General's web site.

SECTION 11. VEHICLE IMPOUND

Section 834l is added to Chapter 5 of Title 3 of Part 2 of the Penal Code, to read:

834l Removal and immobilization or impoundment of vehicle

Any vehicle in this state which is involved in a violation of law and which is subsequently determined to have been used to transport persons who are unlawfully present in the United States may be removed and immobilized and/or impounded by the law enforcement authorities of this state and its counties, cities, cities and counties, or other political subdivisions of the state.

SECTION 12. RESPONSIBILITIES AND PROCEDURES

Section 834m is added to Chapter 5 of Title 3 of Part 2 of the Penal Code, to read:

834m Responsibilities and procedures

The Attorney General shall propose, negotiate, and when applicable, attempt to enter into and maintain administrative agreements, compacts, and/or memoranda of understanding with the federal government to define and establish responsibilities and procedures to achieve efficient operations in the identification, detention, immigration status verification, processing and transfer of persons held in the custody of the state and its political subdivisions who are unlawfully present in the United States to the custody of

the United States Immigration and Customs Enforcement or the United States Customs and Border Protection Service as appropriate. Such administrative agreements, compacts, and/or memoranda of understanding shall, upon approval by the federal government, be binding on all law enforcement agencies of the state or a county, city, city and county, or other political subdivision of the state.

SECTION 13. AMENDMENT AND SEVERABILITY

A. The statutory provisions contained in this Act may not be amended by the Legislature except to further its purposes by a statute passed in each house, by roll call vote entered in the journal, two-thirds of the membership concurring in each house, or by a statute that becomes effective only when approved by the voters.

B. In the event that any portion of this Act or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect any other provision or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this act are severable.

SECTION 14; IMPLEMENTATION

A. This Act shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons, and respecting the privileges and immunities of United States citizens.

B. This Act shall be implemented six months after its adoption by a vote of the people.

SECTION 15. IMMIGRATION LEGISLATION CHALLENGES

A. The Governor shall direct the Attorney General to appear in a state or federal court on behalf of this state to defend any challenge to this Act.

B. In addition, the Governor may direct counsel other than the Attorney General to appear in a state or federal court on behalf of this state to defend any challenge to this Act.