

By: Senator(s) Fillingane

To: Judiciary, Division A

SENATE BILL NO. 2090

1 AN ACT TO CREATE THE MISSISSIPPI SUPPORT OUR LAW ENFORCEMENT
2 AND SAFE NEIGHBORHOODS ACT OF 2012; TO SET FORTH LEGISLATIVE
3 INTENT AND SHORT TITLE; TO REQUIRE COOPERATION AND ASSISTANCE IN
4 ENFORCEMENT OF IMMIGRATION LAWS AND TO INDEMNIFY LAW ENFORCEMENT
5 OFFICERS FOR IMPLEMENTATION OF THIS ACT; TO CREATE THE OFFENSE OF
6 WILLFUL FAILURE TO COMPLETE AND CARRY AN ALIEN REGISTRATION
7 DOCUMENT AND PRESCRIBE PENALTIES THEREFOR; TO CREATE THE OFFENSE
8 OF UNLAWFUL TRANSPORT, CONCEALMENT OR HARBORING OF UNLAWFUL
9 ALIENS; TO ENACT EXCEPTIONS; TO AMEND SECTION 99-3-7, MISSISSIPPI
10 CODE OF 1972, TO CONFORM THE ARREST WITHOUT WARRANT STATUTE; TO
11 AMEND SECTION 71-11-3, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR
12 RETENTION OF E-VERIFY CONFIRMATIONS FOR AT LEAST 3 YEARS, TO
13 CLARIFY AND REVISE ENFORCEMENT AND PENALTIES UNDER THE MISSISSIPPI
14 EMPLOYMENT PROTECTION ACT AND TO PRESCRIBE A COMPLAINTS PROCEDURE;
15 TO REQUIRE THE IMMOBILIZATION OR IMPOUNDMENT OF A VEHICLE OPERATED
16 IN FURTHERANCE OF VIOLATIONS UNDER THIS ACT; TO CREATE THE SPECIAL
17 FUND TO BE KNOWN AS THE IMMIGRATION VIOLATION REIMBURSEMENT FUND;
18 TO AUTHORIZE ALL MISSISSIPPI LAW ENFORCEMENT OFFICERS TO ASSIST
19 FEDERAL AGENCIES IN ENFORCEMENT OF IMMIGRATION LAW; TO REQUIRE THE
20 BOARD OF PUBLIC CONTRACTORS TO REVIEW CONTRACTOR COMPLIANCE WITH
21 E-VERIFY REQUIREMENTS; TO PROVIDE FOR SEVERABILITY, IMPLEMENTATION
22 AND CONSTRUCTION; AND FOR RELATED PURPOSES.

23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

24 **SECTION 1. Legislative intent and short title.** (1) The
25 Legislature finds that there is a compelling interest in the
26 cooperative enforcement of federal immigration laws throughout all
27 of Mississippi. The Legislature declares that the intent of this
28 act is to make attrition through enforcement the public policy of
29 all state agencies and local governments in Mississippi. The
30 provisions of this act are intended to work together to discourage
31 and deter the unlawful entry and presence of aliens and economic
32 activity by persons unlawfully present in the United States.

33 (2) Sections 1, 2, 3, 5, 6, 12, 13 and 14 of this act may be
34 cited as the "Support Our Law Enforcement and Safe Neighborhoods
35 Act."



36 **SECTION 2. Cooperation and assistance in enforcement of**

37 **immigration laws.** (1) No official or agency of this state or a
38 political subdivision of this state shall limit or restrict the
39 enforcement of federal immigration laws.

40 (2) For any lawful stop, detention or arrest made by a law
41 enforcement official or a law enforcement agency of this state or
42 a law enforcement official or a law enforcement agency of a
43 political subdivision of this state in the enforcement of any
44 other law or ordinance of a county, municipality or the state
45 where reasonable suspicion exists that the person is an alien and
46 is unlawfully present in the United States, a reasonable attempt
47 shall be made, when practicable, to determine the immigration
48 status of the person, except if the determination may hinder or
49 obstruct an investigation. The immigration status of any person
50 who is arrested shall be determined before the person is released
51 by verification with the federal government pursuant to 8 USC
52 Section 1373(c). A law enforcement official or agency of this
53 state or political subdivision of this state shall not consider
54 race, color or national origin in implementing the requirements of
55 this subsection except to the extent permitted by the United
56 States or Mississippi Constitution. A person is presumed to not
57 be an alien who is unlawfully present in the United States if the
58 person provides to the law enforcement officer or agency any of
59 the following:

60 (a) A valid Mississippi driver's license.

61 (b) A valid Mississippi identification card issued
62 under Title 45, Chapter 35, Mississippi Code of 1972.

63 (c) A valid tribal enrollment card or other form of
64 tribal identification.

65 (d) If the entity requires proof of legal presence in
66 the United States before issuance, any valid United States
67 federal, state or local government issued identification or
68 driver's license.



69 (3) If an alien who is unlawfully present in the United
70 States is convicted of a violation of state or local law, on
71 discharge from imprisonment or on the assessment of any monetary
72 obligation that is imposed, the United States Immigration and
73 Customs Enforcement or the United States Customs and Border
74 Protection shall be notified immediately.

75 (4) Notwithstanding any other law, a law enforcement agency
76 may securely transport to a federal facility in this state or to
77 any other point of transfer into federal custody that is outside
78 the jurisdiction of the law enforcement agency an alien for whom
79 the agency has received verification that the alien is unlawfully
80 present in the United States and is in the agency's custody. A
81 law enforcement agency shall obtain judicial authorization before
82 securely transporting an alien who is unlawfully present in the
83 United States to a point of transfer that is outside of this
84 state.

85 (5) In the implementation of this section, an alien's
86 immigration status may be determined by:

87 (a) A law enforcement officer who is authorized by the
88 federal government to verify or ascertain an alien's immigration
89 status.

90 (b) The United States Immigration and Customs
91 Enforcement or the United States Customs and Border Protection
92 pursuant to 8 USC Section 1373(c).

93 (6) Except as provided in federal law, officials or agencies
94 of this state and political subdivisions of this state may not be
95 prohibited or in any way be restricted from sending, receiving or
96 maintaining information relating to the immigration status, lawful
97 or unlawful, of any individual or exchanging that information with
98 any other federal, state or local governmental entity for the
99 following official purposes:



100 (a) Determining eligibility for any public benefit,
101 service or license provided by any federal, state, local or other
102 political subdivision of this state.

103 (b) Verifying any claim of residence or domicile if
104 determination of residence or domicile is required under the laws
105 of this state or a judicial order issued pursuant to a civil or
106 criminal proceeding in this state.

107 (c) If the person is an alien, determining whether the
108 person is in compliance with the federal registration laws
109 prescribed by Title II, Chapter 7 of the federal Immigration and
110 Nationality Act.

111 (d) Pursuant to 8 USC Section 1373 and 8 USC Section
112 1644.

113 (7) This section does not implement, authorize or establish
114 and shall not be construed to implement, authorize or establish
115 the REAL ID Act of 2005 (Public Law 109-13, Division B; 119 Stat.
116 302), including the use of a radio frequency identification chip.

117 (8) A person who is a legal resident of this state may bring
118 an action in circuit court to challenge any official or agency of
119 this state or a political subdivision of this state that adopts or
120 implements a policy that limits or restricts the enforcement of
121 federal immigration laws, including, but not limited to, 8 USC
122 Sections 1373 and 1644, to less than the full extent permitted by
123 federal law. If there is a judicial finding that an entity has
124 violated this section, the court shall order that the entity pay a
125 civil penalty of not less than Five Hundred Dollars (\$500.00) and
126 not more than Five Thousand Dollars (\$5,000.00) for each day that
127 the policy has remained in effect after the filing of an action
128 pursuant to this subsection.

129 (9) A court shall collect the civil penalty prescribed in
130 subsection (8) of this section and remit the civil penalty to the
131 State Treasurer for deposit in the Immigration Violation
132 Reimbursement Fund established by Section 9 of this act.



133 (10) The court may award court costs and reasonable attorney
134 fees to any person or any official or agency of this state or a
135 political subdivision of this state that prevails by an
136 adjudication on the merits in a proceeding brought pursuant to
137 this section.

138 (11) Except in relation to matters in which the officer is
139 adjudged to have acted in bad faith, a law enforcement officer is
140 indemnified by the law enforcement officer's agency against
141 reasonable costs and expenses, including attorney fees, incurred
142 by the officer in connection with any action, suit or proceeding
143 brought pursuant to this section in which the officer may be a
144 defendant by reason of the officer being or having been a member
145 of the law enforcement agency.

146 (12) This section shall be implemented in a manner
147 consistent with federal laws regulating immigration, protecting
148 the civil rights of all persons, and respecting the privileges and
149 immunities of United States citizens.

150 **SECTION 3. Willful failure to complete and carry an alien**
151 **registration document; assessment; exception; authenticated**
152 **records; classification.** (1) In addition to any violation of
153 federal law, a person is guilty of willful failure to complete and
154 carry an alien registration document if the person is in violation
155 of 8 USC Section 1304(e) or 1306(a).

156 (2) In the enforcement of this section, an alien's
157 immigration status may be determined by:

158 (a) A law enforcement officer who is authorized by the
159 federal government to verify or ascertain an alien's immigration
160 status.

161 (b) The United States Immigration and Customs
162 Enforcement or the United States Customs and Border Protection
163 pursuant to 8 USC Section 1373(c).

164 (3) A law enforcement official or agency of this state or a
165 county, city, town or other political subdivision of this state



166 shall not consider race, color or national origin in the
167 enforcement of this section except to the extent permitted by the
168 United States or Mississippi Constitution.

169 (4) A person who is sentenced pursuant to this section is
170 not eligible for suspension of sentence, probation, or release
171 from confinement on any basis except as authorized by Section
172 47-7-4 until the sentence imposed by the court has been served or
173 the person is eligible for release pursuant to Section 47-7-47 or
174 47-5-138.

175 (5) In addition to any other penalty prescribed by law, the
176 court shall order the person to pay jail costs.

177 (6) This section does not apply to a person who maintains
178 authorization from the federal government to remain in the United
179 States.

180 (7) A violation of this section is a misdemeanor, punishable
181 by a fine not to exceed One Hundred Dollars (\$100.00) and thirty
182 (30) days in jail; for a first violation, the court shall not
183 sentence the offender to more than twenty (20) days in jail.

184 **SECTION 4. Unlawful transporting, moving, concealing,**
185 **harboring or shielding of unlawful aliens; vehicle impoundment;**
186 **exception; classification.** (1) It is unlawful for a person to:

187 (a) Transport or move or attempt to transport or move
188 an alien in this state, in furtherance of the illegal presence of
189 the alien in the United States, in a means of transportation if
190 the person knows that the alien has come to, has entered or
191 remains in the United States in violation of law.

192 (b) Conceal, harbor or shield or attempt to conceal,
193 harbor or shield an alien from detection in any place in this
194 state, including any building or any means of transportation, if
195 the person knows that the alien has come to, has entered or
196 remains in the United States in violation of law.



197 (c) Encourage or induce an alien to come to or reside
198 in this state if the person knows that such coming to, entering or
199 residing in this state is or will be in violation of law.

200 (2) A means of transportation that is used in the commission
201 of a violation of this section is subject to mandatory vehicle
202 immobilization or impoundment pursuant to Section 8 of this act.

203 (3) A law enforcement official or agency of this state, a
204 county or a municipality shall not consider race, color or
205 national origin in the enforcement of this section except to the
206 extent permitted by the United States or Mississippi Constitution.

207 (4) In the enforcement of this section, an alien's
208 immigration status may be determined by:

209 (a) A law enforcement officer who is authorized by the
210 federal government to verify or ascertain an alien's immigration
211 status; or

212 (b) The United States Immigration and Customs
213 Enforcement or the United States Customs and Border Protection
214 pursuant to 8 USC Section 1373(c).

215 (5) (a) Nothing in this section shall be construed so as to
216 prohibit or restrict the provision of any state or local public
217 benefit described in 8 USC, Section 1621(b), or regulated public
218 health services provided by a private charity using private funds.

219 (b) The following activities shall not constitute
220 unlawful harboring of illegal aliens under this section:
221 providing medical, legal or other professional services to illegal
222 aliens; or providing health care, food, shelter or other material
223 goods to illegal aliens. These activities shall not constitute
224 unlawful transporting of illegal aliens under this section.

225 (6) A person who violates this section is guilty of a
226 misdemeanor and is subject to a fine in an amount of not less than
227 One Thousand Dollars (\$1,000.00), except in a court having a lower
228 maximum jurisdiction, and except that a violation of this section
229 that involves ten (10) or more illegal aliens is a felony



230 punishable by imprisonment in the custody of the Department of
231 Corrections for not less than one (1) nor more than two (2) years,
232 and the person is subject to a fine of not less than One Thousand
233 Dollars (\$1,000.00) for each alien who is involved.

234 **SECTION 5.** Section 99-3-7, Mississippi Code of 1972, is
235 amended as follows:

236 99-3-7. (1) An officer or private person may arrest any
237 person without warrant, for an indictable offense committed, or a
238 breach of the peace threatened or attempted in his presence; or
239 when a person has committed a felony, though not in his presence;
240 or when a felony has been committed, and he has reasonable ground
241 to suspect and believe the person proposed to be arrested to have
242 committed it; or on a charge, made upon reasonable cause, of the
243 commission of a felony by the party proposed to be arrested; and
244 in all cases of arrests without warrant, the person making such
245 arrest must inform the accused of the object and cause of the
246 arrest, except when he is in the actual commission of the offense,
247 or is arrested on pursuit.

248 (2) Any law enforcement officer may arrest any person on a
249 misdemeanor charge without having a warrant in his possession when
250 a warrant is in fact outstanding for that person's arrest and the
251 officer has knowledge through official channels that the warrant
252 is outstanding for that person's arrest. In all such cases, the
253 officer making the arrest must inform such person at the time of
254 the arrest the object and cause therefor. If the person arrested
255 so requests, the warrant shall be shown to him as soon as
256 practicable.

257 (3) (a) Any law enforcement officer shall arrest a person
258 with or without a warrant when he has probable cause to believe
259 that the person has, within twenty-four (24) hours of such arrest,
260 knowingly committed a misdemeanor which is an act of domestic
261 violence or knowingly violated provisions of an ex parte
262 protective order, protective order after hearing or court-approved



263 consent agreement entered by a chancery, circuit, county, justice
264 or municipal court pursuant to the Protection from Domestic Abuse
265 Law, Sections 93-21-1 through 93-21-29, Mississippi Code of 1972,
266 or a restraining order entered by a foreign court of competent
267 jurisdiction to protect an applicant from domestic violence as
268 defined by Section 97-3-7 that requires the person to refrain from
269 further abuse or threats of abuse, to absent himself from a
270 particular geographic area, or prohibit such person from being
271 within a specified distance of another person or persons.

272 (b) If a law enforcement officer has probable cause to
273 believe that two (2) or more persons committed a misdemeanor which
274 is an act of domestic violence as defined herein, or if two (2) or
275 more persons make complaints to the officer, the officer shall
276 attempt to determine who was the principal aggressor. The term
277 principal aggressor is defined as the party who poses the most
278 serious ongoing threat, or who is the most significant, rather
279 than the first, aggressor. The officer shall presume that arrest
280 is not the appropriate response for the person or persons who were
281 not the principal aggressor. If the officer affirmatively finds
282 more than one (1) principal aggressor was involved, the officer
283 shall document those findings.

284 (c) To determine who is the principal aggressor, the
285 officer shall consider the following factors, although such
286 consideration is not limited to these factors:

287 (i) Evidence from the persons involved in the
288 domestic abuse;

289 (ii) The history of domestic abuse between the
290 parties, the likelihood of future injury to each person, and the
291 intent of the law to protect victims of domestic violence from
292 continuing abuse;

293 (iii) Whether one (1) of the persons acted in
294 self-defense; and



295 (iv) Evidence from witnesses of the domestic
296 violence.

297 (d) A law enforcement officer shall not base the
298 decision of whether to arrest on the consent or request of the
299 victim.

300 (e) A law enforcement officer's determination regarding
301 the existence of probable cause or the lack of probable cause
302 shall not adversely affect the right of any party to independently
303 seek appropriate remedies.

304 (4) (a) Any person authorized by a court of law to
305 supervise or monitor a convicted offender who is under an
306 intensive supervision program may arrest the offender when the
307 offender is in violation of the terms or conditions of the
308 intensive supervision program, without having a warrant, provided
309 that the person making the arrest has been trained at the Law
310 Enforcement Officers' Training Academy established under Section
311 45-5-1 et seq., or at a course approved by the Board on Law
312 Enforcement Officer Standards and Training.

313 (b) For the purposes of this subsection, the term
314 "intensive supervision program" means an intensive supervision
315 program of the Department of Corrections as described in Section
316 47-5-1001 et seq., or any similar program authorized by a court
317 for offenders who are not under jurisdiction of the Department of
318 Corrections.

319 (5) A law enforcement officer who makes an arrest without a
320 warrant under the authority of this section shall verify the
321 immigration status of the person arrested as provided in Section 2
322 of this act.

323 (6) As used in subsection (3) of this section, the phrase
324 "misdemeanor which is an act of domestic violence" shall mean one
325 or more of the following acts between current or former spouses or
326 a child of current or former spouses, persons living as spouses or
327 who formerly lived as spouses or a child of persons living as



328 spouses or who formerly lived as spouses, other persons related by
329 consanguinity or affinity who reside or formerly resided together,
330 persons who have a current or former dating relationship, or
331 persons who have a biological or legally adopted child together:

332 (a) Simple domestic violence within the meaning of
333 Section 97-3-7;

334 (b) Disturbing the family or public peace within the
335 meaning of Section 97-35-9, 97-35-11, 97-35-13 or 97-35-15; or

336 (c) Stalking within the meaning of Section 97-3-107.

337 (7) Any arrest made pursuant to subsection (3) of this
338 section shall be designated as domestic assault or domestic
339 violence on both the arrest docket and the incident report. Any
340 officer investigating a complaint of a misdemeanor crime of
341 domestic violence who finds probable cause that such an offense
342 has occurred within the past twenty-four (24) hours shall file an
343 affidavit on behalf of the victim(s) of the crime, regardless of
344 whether an arrest is made within that time period. If the crime
345 is reported or investigated outside of that twenty-four-hour
346 period, the officer may file the affidavit on behalf of the
347 victim. In the event the officer does not file an affidavit on
348 behalf of the victim, the officer shall instruct the victim of the
349 procedure for filing on his or her own behalf.

350 (8) A law enforcement officer shall not be held liable in
351 any civil action for an arrest based on probable cause and in good
352 faith pursuant to subsection (3) of this section, or failure, in
353 good faith, to make an arrest pursuant to subsection (3) of this
354 section.

355 **SECTION 6.** Section 71-11-3, Mississippi Code of 1972, is
356 amended as follows:

357 71-11-3. (1) This chapter shall be known as the
358 "Mississippi Employment Protection Act."

359 (2) The provisions of this section shall be enforced without
360 regard to race, gender, religion, ethnicity or national origin.



361 (3) For the purpose of this section only, the following
362 words shall have the meanings ascribed herein unless the content
363 clearly states otherwise:

364 (a) "Employer" is any person or business that is
365 required by federal or state law to issue a United States Internal
366 Revenue Service Form W-2 or Form 1099 to report income paid to
367 employed or contracted personnel in Mississippi.

368 (b) "Employee" is any person or entity that is hired to
369 perform work within the State of Mississippi and to whom a United
370 States Internal Revenue Service Form W-2 or Form 1099 must be
371 issued.

372 (c) "Third-party employer" is any person or company
373 that provides workers for another person or company. This
374 includes, but is not limited to, leasing companies and contract
375 employers.

376 (d) "Status verification system" means the electronic
377 verification of work authorization program of the Illegal
378 Immigration Reform and Immigration Responsibility Act of 1996,
379 Public Law 104-208, Division C, Section 403(a); 8 USC, Section
380 1324a, and operated by the United States Department of Homeland
381 Security, known as the E-Verify Program.

382 (e) "Unauthorized alien" means an alien as defined in
383 Section 1324a(h) (3) of Title 8 of the United States Code.

384 (f) "Legal alien" means an individual who was lawfully
385 present in the United States at the time of employment and for the
386 duration of employment, or who was permanently residing in the
387 United States under color of law at the time of employment and for
388 the duration of employment.

389 (g) "Public employer" means every department, agency or
390 instrumentality of the state or a political subdivision of the
391 state.



392 (h) "Subcontractor" means a subcontractor, contract
393 employee, staffing agency or any contractor regardless of its
394 tier.

395 (i) "Solicit" means communication, whether verbally or
396 nonverbally by a gesture or a nod, that would indicate to a
397 reasonable person that a person is willing to be employed.

398 (4) (a) Employers in the State of Mississippi shall only
399 hire employees who are legal citizens of the United States of
400 America or are legal aliens. * * * An employer that knowingly or
401 intentionally uses a third-party employer to obtain the labor of
402 an unauthorized alien in this state violates this subsection.

403 (b) (i) The Attorney General shall prescribe a
404 complaint form for a person to allege a violation of paragraph (a)
405 of this subsection (4). The complainant shall not be required to
406 list the complainant's social security number on the complaint
407 form or to have the complaint form notarized. On receipt of a
408 complaint on a prescribed complaint form that an employer
409 allegedly knowingly or intentionally employs an unauthorized
410 alien, the Attorney General or district attorney shall investigate
411 whether the employer has violated paragraph (a) of this subsection
412 (4). If a complaint is received but is not submitted on a
413 prescribed complaint form, the Attorney General or district
414 attorney may investigate whether the employer has violated
415 paragraph (a) of this subsection (4). This subsection (4) shall
416 not be construed to prohibit the filing of anonymous complaints
417 that are not submitted on a prescribed complaint form. The
418 Attorney General or district attorney shall not investigate
419 complaints that are based solely on race, color or national
420 origin. A complaint that is submitted to a district attorney
421 shall be submitted to the district attorney in the county in which
422 the alleged unauthorized alien is or was employed by the employer.
423 The county sheriff or any other local law enforcement agency may
424 assist in investigating a complaint. When investigating a



425 complaint, the Attorney General or district attorney shall verify
426 the work authorization of the alleged unauthorized alien with the
427 federal government pursuant to 8 USC Section 1373(c). A state,
428 county or local official shall not attempt to independently make a
429 final determination on whether an alien is authorized to work in
430 the United States. An alien's immigration status or work
431 authorization status shall be verified with the federal government
432 pursuant to 8 USC Section 1373(c).

433 (ii) A person who knowingly files a false or
434 frivolous complaint under this subsection is guilty of a
435 misdemeanor.

436 (c) If, after an investigation, the Attorney General or
437 district attorney determines that the complaint is not false or
438 frivolous:

439 (i) The Attorney General or district attorney
440 shall notify United States Immigration and Customs Enforcement of
441 the unauthorized alien.

442 (ii) The Attorney General or district attorney
443 shall notify the local law enforcement agency of the unauthorized
444 alien.

445 (iii) The Attorney General shall notify the
446 appropriate district attorney to bring an action pursuant to
447 paragraph (d) of this subsection if the complaint was originally
448 filed with the Attorney General.

449 (d) An action for a violation of paragraph (a) of this
450 subsection (4) shall be brought against the employer by the
451 district attorney in the county where the unauthorized alien
452 employee is or was employed by the employer. A second violation
453 of this section shall be based only on an unauthorized alien who
454 is or was employed by the employer after an action has been
455 brought for a first violation of paragraph (a) of this subsection
456 (4).



457 (e) For any action under this subsection, the court
458 shall expedite the action, including assigning the hearing at the
459 earliest practicable date.

460 (f) On a finding of a violation of subsection (4)(a) of
461 this section:

462 (i) For a first violation as defined in this
463 section, the court:

464 1. Shall order the employer to terminate the
465 employment of all unauthorized aliens.

466 2. Shall order the employer to be subject to
467 a three-year probationary period for the business location where
468 the unauthorized alien performed work. During the probationary
469 period, the employer shall report quarterly reports to the
470 district attorney for each new employee who is hired by the
471 employer at the business location where the unauthorized alien
472 performed work the following: the name, address and social
473 security number of each employee hired and the name, address and
474 federal tax identification number for the employer. The district
475 attorney shall redact all identifying information from the public
476 record except for the employer's name and address.

477 3. Shall order the appropriate agencies to
478 suspend any license, permit, certificate or other document granted
479 to the employer by any agency, department or governmental entity
480 in the state that is held by the employer for a period not less
481 than ten (10) business days, subject to item 4 of this paragraph
482 (f)(i). The court shall base its decision whether to suspend
483 under this item 3 on any evidence or information submitted to it
484 during the action for a violation of this subsection and may
485 consider the following factors, if relevant: the number of
486 unauthorized aliens employed by the employer; any prior misconduct
487 by the employer; the degree of harm resulting from the violation;
488 whether the employer made good-faith efforts to comply with any
489 applicable requirements; the duration of the violation; the role



490 of the directors, officers or principals of the employer in the
491 violation; and any other factors the court deems appropriate.

492 4. May order the minimum ten-day suspension
493 under item 3 of this paragraph (f)(i) to occur at the completion
494 of construction if the suspension would interrupt progress on a
495 state, local government or federal construction project.

496 5. Shall send a copy of the court's order to
497 the Attorney General.

498 (ii) For a second violation as described in this
499 section, the court shall order the appropriate agencies to
500 permanently revoke all licenses that are held by the employer.

501 (g) The Attorney General shall maintain copies of court
502 orders that are received pursuant to paragraph (f) of this
503 subsection (4) and shall maintain a database of the employers and
504 business locations that have a first violation of paragraph (a) of
505 this subsection (4) and make the court orders available on the
506 Attorney General's website.

507 (h) On determining whether an employee is an
508 unauthorized alien, the court shall consider only the federal
509 government's determination pursuant to 8 USC Section 1373(c). The
510 federal government's determination creates a rebuttable
511 presumption of the employee's lawful status. The court may take
512 judicial notice of the federal government's determination and may
513 request the federal government to provide automated or testimonial
514 verification pursuant to 8 USC Section 1373(c).

515 (i) For the purposes of this section, proof of
516 verifying the employment authorization of an employee through the
517 status verification program creates a rebuttable presumption that
518 an employer did not knowingly employ an unauthorized alien.

519 (j) (i) Every employer shall register with and utilize
520 the status verification system to verify the federal employment
521 authorization status of all newly hired employees and shall keep a



522 record of the verification for the duration of the employee's
523 employment or at least three (3) years, whichever is longer.

524 (ii) No contractor or subcontractor shall hire any
525 employee unless the contractor or subcontractor registers and
526 participates in the status verification system to verify the work
527 eligibility status of all newly hired employees.

528 (iii) No contractor or subcontractor who enters
529 into a contract with a public employer shall enter into such a
530 contract or subcontract unless the contractor or subcontractor
531 registers and participates in the status verification system to
532 verify information of all newly hired employees.

533 (k) The provisions of this section shall not apply to
534 any contracts entered into on or before July 1, 2008.

535 (l) (i) It shall be a discriminatory practice for an
536 employer to discharge an employee working in Mississippi who is a
537 United States citizen or permanent resident alien while retaining
538 an employee who the employing entity knows, or reasonably should
539 have known, is an unauthorized alien hired after July 1, 2008, and
540 who is working in Mississippi in a job category that requires
541 equal skill, effort and responsibility, and which is performed
542 under similar working conditions, as defined by 29 USC, Section
543 206(d) (1), as the job category held by the discharged employee.

544 (ii) An employing entity which, on the date of the
545 discharge in question, was enrolled in and used the status
546 verification system to verify the employment eligibility of its
547 employees in Mississippi hired after July 1, 2008, shall be exempt
548 from liability, investigation or suit arising from any action
549 under this section.

550 (iii) No cause of action for a violation of this
551 section shall lie under any other Mississippi law but shall arise
552 solely from the provisions of this section.

553 (5) Any employer that complies with the requirements of this
554 section shall be held harmless by the Mississippi Department of



555 Employment Security, provided the employer is not directly
556 involved in the creation of any false documents, and provided that
557 the employer did not knowingly and willfully accept false
558 documents from the employee.

559 (6) (a) All third-party employers that conduct business in
560 Mississippi shall register to do business in Mississippi with the
561 Mississippi Department of Employment Security before placing
562 employees into the workforce in Mississippi.

563 (b) Third-party employers shall provide proof of
564 registration and any participation in the status verification
565 system to any Mississippi employer with whom they do business.

566 (7) (a) State of Mississippi agencies and political
567 subdivisions, public contractors and public subcontractors and
568 private employers with two hundred fifty (250) or more employees
569 shall meet verification requirements not later than July 1, 2008.

570 (b) Employers with at least one hundred (100) but less
571 than two hundred fifty (250) employees shall meet verification
572 requirements not later than July 1, 2009.

573 (c) Employers with at least thirty (30) but less than
574 one hundred (100) employees shall meet verification requirements
575 not later than July 1, 2010.

576 (d) All employers shall meet verification requirements
577 not later than July 1, 2011.

578 (e) (i) Any employer violating the provisions of this
579 section shall be subject to the cancellation of any state or
580 public contract, resulting in ineligibility for any state or
581 public contract for up to three (3) years * * *.

582 (ii) The contractor or employer shall be liable
583 for any additional costs incurred by the agencies and institutions
584 of the State of Mississippi, or any of its political subdivisions,
585 because of the cancellation of the contract or the loss of any
586 license or permit to do business in the state.



587 (iii) Any person or entity penalized under this
588 paragraph shall have the right to appeal to the appropriate entity
589 imposing sanctions or to the circuit court of competent
590 jurisdiction.

591 (f) The Department of Employment Security, Department
592 of Revenue, Secretary of State, Department of Human Services,
593 Board of Public Contractors, the Attorney General and any other
594 agency, department or government entity shall have the authority
595 to impose sanctions or seek penalties authorized under this
596 section * * *.

597 (8) (a) There shall be no liability under this section in
598 the following circumstances:

599 (i) An employer who hires an employee through a
600 state or federal work program that requires verification of the
601 employee's social security number and provides for verification of
602 the employee's lawful presence in the United States in an
603 employment-authorized immigration status;

604 (ii) Any candidate for employment referred by the
605 Mississippi Department of Employment Security, if the Mississippi
606 Department of Employment Security has verified the social security
607 number and provides for verification of the candidate's lawful
608 presence in the United States in an employment-authorized
609 immigration status; or

610 (iii) Individual homeowners who hire workers on
611 their private property for noncommercial purposes, unless required
612 by federal law to do so.

613 (b) (i) Compliance with the sections of this statute
614 shall not exempt the employer from regulations and requirements
615 related to any federal laws or procedures related to employers.

616 (ii) This section shall not be construed as an
617 attempt to preempt federal law.

618 (c) (i) It shall be a felony for any person to accept
619 or perform employment for compensation knowing or in reckless



620 disregard that the person is an unauthorized alien with respect to
621 employment during the period in which the unauthorized employment
622 occurred. Upon conviction, a violator shall be subject to
623 imprisonment in the custody of the Department of Corrections for
624 not less than one (1) year nor more than five (5) years, a fine of
625 not less than One Thousand Dollars (\$1,000.00) nor more than Ten
626 Thousand Dollars (\$10,000.00), or both.

627 (ii) For purposes of determining bail for persons
628 who are charged under this section, it shall be a rebuttable
629 presumption that a defendant who has entered and remains in the
630 United States unlawfully is deemed at risk of flight for purposes
631 of bail determination.

632 (d) It is a misdemeanor for a person who is unlawfully
633 present in the United States and who is an unauthorized alien to
634 knowingly apply for work or solicit work in a public place in this
635 state.

636 **SECTION 7.** A law enforcement officer shall cause the removal
637 and either immobilization or impoundment of a vehicle if the law
638 enforcement officer determines that a person is driving the
639 vehicle in furtherance of the illegal presence of an alien in the
640 United States and in violation of a criminal offense, the person
641 is transporting or moving or attempting to transport or move an
642 alien in this state in a vehicle if the person knows or recklessly
643 disregards the fact that the alien has come to, has entered or
644 remains in the United States in violation of law, or the person is
645 concealing, harboring or shielding or attempting to conceal,
646 harbor or shield from detection an alien in this state in a
647 vehicle if the person knows or recklessly disregards the fact that
648 the alien has come to, entered or remains in the United States in
649 violation of law.

650 **SECTION 8.** (1) The Department of Public Safety shall
651 implement an Immigration Violation Reimbursement Program that will
652 provide reimbursement to county jails and municipal jails, to the



653 extent funds may be available therefor, of costs relating to
654 incarceration of certain illegal aliens, not to exceed Twenty
655 Dollars (\$20.00) per eligible inmate per day.

656 (2) There is created in the State Treasury a special fund to
657 be known as the Immigration Violation Reimbursement Fund. The
658 purpose of the fund shall be to provide reimbursement to local
659 governments of unrecovered costs relating to the incarceration of
660 illegal aliens for the offense or alleged offense of willful
661 failure to carry documentation as set forth in Section 3 of this
662 act, for the Immigration Violation Reimbursement Program. Monies
663 from the fund shall be distributed by the State Treasurer upon
664 warrants issued by the Department of Public Safety. The fund
665 shall be a continuing fund, not subject to fiscal-year
666 limitations, and shall consist of:

- 667 (a) Monies appropriated by the Legislature;
- 668 (b) The interest accruing to the fund;
- 669 (c) Monies received under the provisions of Section
670 2(9) of this act;
- 671 (d) Monies received from the federal government;
- 672 (e) Donations; and
- 673 (f) Monies received from such other sources as may be
674 provided by law.

675 **SECTION 9.** All law enforcement officers of this state are
676 authorized to assist federal agencies in the enforcement of
677 federal immigration law.

678 **SECTION 10.** The State Board of Contractors shall have the
679 duty to review contractor compliance with the status verification
680 system requirements for employers and public employers set forth
681 in Section 71-11-3(6)(k) of the Mississippi Employment Protection
682 Act in the course of the board's performance of its regular
683 inspection responsibilities under Title 31 of the Mississippi Code
684 of 1972. This information may be obtained by investigation, by
685 hearings, or by any other reasonable and lawful means. The board



686 shall keep information concerning contractor compliance
687 appropriately filed and shall disseminate to any interested person
688 information as to contractor compliance; the information
689 disseminated shall not identify individual employees or give
690 identifying information about individual employees. The board
691 shall have the power of subpoena in enforcing this section. If an
692 inspector finds a violation of the Mississippi Employment
693 Protection Act set forth in Section 71-11-3(6)(k), the board shall
694 file a complaint with the Attorney General under Section
695 71-11-3(4).

696 **SECTION 11.** (1) If a provision of this act or its
697 application to any person or circumstance is held invalid, the
698 invalidity does not affect other provisions or applications of the
699 act that can be given effect without the invalid provision or
700 application, and to this end the provisions of this act are
701 severable.

702 (2) The terms of this act regarding immigration shall be
703 construed to have the meanings given to them under federal
704 immigration law.

705 (3) This act shall be implemented in a manner consistent
706 with federal laws regulating immigration, protecting the civil
707 rights of all persons and respecting the privileges and immunities
708 of United States citizens.

709 (4) Nothing in this act shall implement or shall be
710 construed or interpreted to implement or establish the REAL ID Act
711 of 2005 (Public Law 109-13, Division B; 119 Stat. 302) including
712 the use of a radio frequency identification chip.

713 **SECTION 12.** This act shall take effect and be in force from
714 and after July 1, 2012.

