

Initiative Measure No. 1043

Filed

FEB 02 2009

SECRETARY OF STATE

AN ACT Relating to immigration law enforcement; amending RCW 46.20.035; adding a new section to chapter 10.40 RCW; adding a new section to chapter 43.10 RCW; adding a new section to chapter 74.04 RCW; adding a new chapter to Title 43 RCW; creating a new section; and prescribing penalties.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** (1) No local government in this state, whether acting through its governing body or by an initiative, referendum, or any other process, shall enact any ordinance or policy that limits or prohibits a law enforcement officer, official, or employee of an agency of a local government or political subdivision in this state from communicating or cooperating with federal officials with regard to the immigration status of any person within this state.

(2) No government entity or official within the State of Washington may prohibit, or in any way restrict, any government entity or official from sending to, or receiving from the United States Department of Homeland Security, information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(3) No person or agency may prohibit, or in any way restrict, a public employee from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

(a) Sending such information to, or requesting or receiving such information from, the United States Department of Homeland Security or the United States Department of Justice;

(b) Maintaining such information; or

(c) Exchanging such information with any other federal, state, or local government entity.

NEW SECTION. Sec. 2. A new section is added to chapter 10.40 RCW to read as follows:

(1) When a person has been charged with a felony, or for driving under the influence under RCW 46.61.502, and is confined for any period in a jail or other detention center or facility, a reasonable effort shall be made to determine the citizenship status of that person.

(2) If the prisoner is a foreign national, the entity confining the person shall make a reasonable effort to verify that the prisoner is lawfully present in the United States under federal immigration law and, if lawfully admitted, that lawful status has not expired. If a determination of citizenship cannot be made from documents in the possession of the prisoner, verification of immigration status shall be requested no later than forty-eight hours after the beginning of the confinement in subsection (1) of this section through a query to the United States Department of Homeland Security. Upon verification that the person is not lawfully present in the United States, the entity shall notify the United States Department of Homeland Security of the detention status of the prisoner, and confirm whether or not a federal immigration detainer has been requested for the alien. Such notification shall be public record.

(3) For the purposes of determining the conditions for issuance of bond, it shall be a rebuttable presumption that a prisoner whose immigration status has been verified under subsection (2) of this section to be a foreign national who is not lawfully present in the United States is at risk of flight.

(4) The Washington State Attorney General shall have the authority to adopt rules pursuant to the Administrative Procedure Act, chapter 34.05 RCW, to implement the provisions of this section.

NEW SECTION. Sec. 3.

A new section is added to chapter 43.10

RCW to read as follows:

(1) The Washington State Attorney General is authorized and directed to negotiate the terms of a memorandum of understanding between this state and the United States Department of Homeland Security providing for the designation of appropriate officers or employees of the state or a political subdivision, to include appropriate employees of the Washington State Patrol, as qualified to perform the function of an immigration officer in relation to the investigation, apprehension, or detention of aliens in the United States, including the transportation of aliens across state lines for transfer into federal custody.

(2) The agreement under this section shall provide that officers or employees designated as qualified to perform the functions of an immigration officer shall have the knowledge and training to adhere to federal law relating to the function.

(3) The terms of the memorandum of understanding to be negotiated shall be in accord with the provisions of 8 U.S.C. Sec. 1357, regulating the content and operation of such agreements.

(4) The memorandum of understanding to be negotiated under subsection (1) of this section shall be signed on behalf of this state by the attorney general and the governor.

(5) Nothing in this section shall be construed to require the existence of an agreement under this section in order for any officer or employee of this state or a political subdivision therein to communicate with the federal government regarding the immigration status of any individual, or otherwise to cooperate among such government entities or with the federal government, in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States, to the full extent permitted by law.

NEW SECTION. Sec. 4. (1) Every public employer shall register and participate in the E-verify program to verify the work authorization status of all new employees.

(2) No public employer shall enter into a contract for the physical or personal performance of services within this state unless the contractor has registered and participates in the E-verify program to verify the work authorization status of all new workers employed by the contractor within this state.

(3) The Department of Labor and Industries shall adopt rules pursuant to the Administrative Procedure Act, chapter 34.05 RCW, to implement the provisions of this section.

(4) For the purposes of this section:

(a) "E-verify" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, Division C, Sec. 403(a); 8 U.S.C. Sec. 1324a; and operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security or any other designated federal agency authorized to verify the work authorization status of newly hired employees, pursuant to the immigration reform and control act of 1986, P.L. 99- 603.

(b) "Public employer" means every department, agency, or instrumentality of the state or a political subdivision of the state.

(c) "Contractor" includes a subcontractor, contract employee, staffing agency, or any contractor providing contracted services subject to the requirements of this section within the state, regardless of its tier.

NEW SECTION. **Sec. 5.** A new section is added to chapter 74.04 RCW to read as follows:

(1) Except as provided in subsection (3) of this section or where exempted by federal law, each agency and political subdivision of this state shall verify the lawful presence in the United States of any person fourteen years of age or older who has applied for state, local, or federal public benefits that are administered by an agency or a political subdivision of this state.

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

(3) Verification of lawful presence in the United States under the provisions of this section shall not be required:

(a) For any purpose for which lawful presence in the United States is not restricted by law, ordinance, or rule for the purposes of obtaining federal, state, or local public benefits;

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

(c) For short-term, noncash, in-kind emergency disaster relief;

(d) For public health assistance for immunizations with respect to diseases and for testing and treatment of symptoms of communicable diseases;

(e) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the sole and unreviewable discretion of the United States Attorney General after consultation with appropriate federal agencies and departments, which:

(i) Deliver in-kind services at the community level, including through public or private nonprofit agencies;

(ii) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the individual recipient; and

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

(4) Verification of lawful presence in the United States by the agency or political subdivision required to make such verification shall require that the applicant execute an affidavit under penalty of perjury that:

(a) He or she is a United States citizen; or

(b) He or she is a qualified alien as defined under 8 U.S.C. Sec. 1641(b), has fully disclosed to the agency administering the benefits for which application has been made the existence of income and resources of a sponsor attributable to the alien under 8 U.S.C. Sec. 1631, and is lawfully present in the United States.

(5) For any applicant who has executed the affidavit described in subsection (4)(b) of this section, eligibility for benefits shall be made through the Systematic Alien Verification for Entitlements program. Until the eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this section. No state official shall attempt to independently determine that an alien is unlawfully present in the United States, without utilizing the Systematic Alien Verification for Entitlements program or otherwise obtaining a federal verification of the alien's immigration status, under U.S.C. 8 Sec. 1373(c).

(6) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in an affidavit executed pursuant to subsection (4) of this section shall be subject to criminal penalties applicable in this state for fraudulently obtaining public assistance program benefits. If the affidavit constitutes a false claim of United States citizenship under 18 U.S.C. Sec. 911, a complaint shall be filed by the agency requiring the affidavit with the appropriate United States Attorney General's office.

(7) Any agency or political subdivision of this state may adopt rules providing for variations to the requirements of this section that demonstrably improve the efficiency or reduce delay in the verification process, or to provide for adjudication of unique individual circumstances where the verification procedures in this section would impose unusual hardship on a legal resident of this state.

(8) No agency or political subdivision of this state shall provide any state, local, or federal public benefit in violation of this section.

(9) Each state agency or department that administers any program of state or local public benefits shall provide an annual report to the Washington State Auditor with respect to its compliance with the provisions of this section. The state auditor shall monitor the eligibility verification program used under subsection (4) of this section and any verification application errors and significant delays of the program. By October 1st of each year, the state auditor shall provide a report to the governor on the errors and significant delays, and make

recommendations to ensure that the application of the program is not erroneously denying benefits to legal residents of this state. The state auditor shall report errors in the operation of the eligibility verification program to the United States Department of Homeland Security.

(10) For the purposes of this section:

(a) "Federal public benefits" has the same meaning as defined in 8 U.S.C. Sec. 1611(c).

(b) (i) "State and local public benefits" has the same meaning as defined in 8 U.S.C. Sec. 1621(c).

(ii) Any Washington State Lottery winnings, any sales and use tax exemption in the form of a remittance, and any other tax credit or rebate program provided by any Washington State or local government entity is a state or local public benefit under 8 U.S.C. Sec. 1621(c).

NEW SECTION. **Sec. 6** (1) It shall be an unlawful discriminatory practice for an employer to discharge or terminate any United States citizen employee in this state, or any legal permanent resident alien employee in this state who has applied for naturalization, where, on the date of such discharge, an unauthorized alien worker was employed by the employer at the same job site, or in an equivalent job classification elsewhere in the state, in reckless disregard for the fact that such alien worker lacked federal employment authorization.

(2) It shall be an unlawful discriminatory practice for a labor organization to refer for employment an individual whose unauthorized employment status would cause an employer to violate this section.

(3) Subsections (1) and (2) of this section shall not apply to an employer or a labor organization who, as of the date of discharge, had enrolled in the E-verify program and maintained a standard employment practice of verifying the work authorization of newly hired employees in this state or, in the case of a labor organization, individuals referred for employment to the employer, using the E-verify program.

NEW SECTION. **Sec. 7** (1) Beginning three months after the effective date of this act, every employer shall, after making an offer of employment which has been accepted by an employee, verify the employment eligibility of each employee using the Employment Authorization Program. The verification shall occur within the time period stipulated by federal law or rules, after the hiring of the employee. A continuing employee hired prior to the date of the employer's registration with the program is exempt from the requirements of this subsection.

(2) An employer shall not knowingly employ an unauthorized alien.

(3) Any person with actual or constructive knowledge that (a) an employer employs, or has within ninety days employed, an unauthorized alien, or (b) an unauthorized alien is employed by an employer, may file a complaint with the department.

(4) A person who knowingly files a false and frivolous complaint under this subsection is guilty of a misdemeanor punishable under chapter 9A.20 RCW.

(5) Upon the receipt of a valid complaint of a violation of subsection (2) of this section, the department shall notify the employer and shall direct the employer to notify any employees referred to in the complaint. The department shall investigate whether a violation has occurred and shall hold an administrative hearing at which the employer may present any information he or she desires and at which the employer shall enjoy the right to counsel. The department shall also request the federal government to verify, pursuant to U.S.C. 8, Sec. 1373(c), the employment authorization of any employee referred to in the complaint. The department shall not attempt to independently make a final determination of whether an alien is authorized to be employed in the United States. The department shall rely upon verification of employment authorization provided by the federal government, pursuant to U.S.C. 8, Sec. 1373(c).

(6) If, after confirmation that the employer has employed an unauthorized alien, the department determines that the complaint is not frivolous, the department shall:

(a) Notify the United States Immigration and Customs Enforcement agency of the identity of the unauthorized alien and, if known, the alien's address or location in the state; and

(b) Notify the local law enforcement agency of the presence of the

unauthorized alien in the jurisdiction.

(7) The department shall not act upon a complaint against any employer for any violation that occurs within three months of the effective date of this act.

(8) (a) For a first violation of subsection (2) of this section during a two-year period, the department:

(i) Shall order the employer to terminate the employment of all unauthorized aliens; and

(ii) Shall order the employer to file a signed sworn affidavit with the department within ten business days after the order is issued.

(b) The affidavit shall state that the employer has corrected the violation by taking any of the following actions:

(i) Terminated the unauthorized alien's employment; or

(ii) After consultation with the employee, requested a secondary or additional verification of employment authorization using the employment authorization program; or

(iii) Attempted to terminate the unauthorized alien's employment, and such termination has been challenged in a court of competent jurisdiction.

(c) If the employer fails to file the affidavit as prescribed in this subsection, the department shall order the appropriate agencies to suspend all licenses subject to this subsection that are held by the employer. All licenses that are suspended under this subsection shall remain suspended until the prescribed affidavit has been filed with the department. Upon filing the affidavit, the suspended licenses shall be deemed to have been reinstated for the purposes of this subsection. During the pendency of an action affirmed under (b)(ii) or (iii) of this subsection, the ten-day period shall be tolled. The ten-day period shall also be tolled during any contest period in which the federal government may allow an alien to challenge the federal government's determination of his or her immigration status or employment authorization.

(d) Licenses that are subject to suspension under this subsection are all licenses that are held by the employer and that are necessary to operate the employer's business at the employer's business location where the unauthorized alien performed work. If a license is not necessary to operate the employer's business at the specific 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 subsection include all

licenses that are held by the employer at the employer's primary place of business.

(9) For a second violation of subsection (2) of this section during the two-year period:

(a) The department shall order the appropriate agencies to suspend, for at least thirty days, all licenses that are held by the employer and that are necessary to operate the employer's business at the employer's business location where the unauthorized alien performed work.

(b) If a license is not necessary to operate the employer's business at the specific location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the department shall order the appropriate agencies to suspend 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 suspend such licenses for at least thirty days.

(10) The department shall maintain a public database containing copies of all orders issued pursuant to this section, available on the department's web site.

(11) In cases where the department determines that an agency or employer has failed to comply with such order under this section, the department may apply to the superior court having jurisdiction over the agency or employer for a judicial order, directing the agency or employer to comply with the department's order.

(12) For the purposes of this section, an employer who has used the employment authorization program in compliance with subsection (1) of this section has a rebuttable presumption that the employer did not knowingly employ an unauthorized alien in violation of subsection (2) of this section.

(13) At any time after a complaint is received, an employer subject to a complaint under this section, or any employee of such employer who is alleged to be an unauthorized alien, may challenge and seek to enjoin the enforcement of this section with respect to such entity or individual before a superior court of competent jurisdiction.

(14) For the purposes of this section:

(a) "Agency" means any agency, department, board, or commission of this state or a county, city, or town that issues a license for purposes of operating a business in this state.

(b) "Department" means the department of labor and industries.

(c) "Employee" means any person who performs employment services within the state of Washington for an employer pursuant to an employment relationship between the employee and employer.

(d) "Employer" means any individual or type of organization that transacts business in this state, and that holds or has applied for a license issued by an agency in this state, and that employs individuals who perform employment services in this state. "Employer" shall not include an entity that hires an independent contractor to perform work or hires casual domestic labor to perform work.

(e) "Employment authorization program" has the same meaning as defined in section 4(4)a of this act.

(f) "Knowingly employ an unauthorized alien" has the meaning as defined in U.S.C. 8, Sec. 1324a. This term shall be interpreted consistently with such section, and any federal rules applicable thereto.

(g) "License":

(i) Means any agency license, permit, certificate, approval, registration, charter, or similar form of authorization that is required by law and that is issued by any agency for the purposes of operating a business in this state.

(ii) Includes:

(A) Articles of incorporation under Titles 23, 23B, and 24 RCW;

(B) A certificate of partnership, a partnership registration, or articles of organization under Title 25 RCW;

(C) A grant of authority;

(D) A transaction privilege fee

(iii) The Department of Licensing shall, no later than three months after the effective date of this act, issue rules providing a procedure for an agency to exempt certain licenses issued by such agency that have been determined, with the concurrence of the department, to be unrelated to operating a business in this state.

(h) "Unauthorized alien" means an alien who is not authorized under federal law to be employed in the United States, as described in U.S.C. 8, Sec. 1324a(h) (3).

NEW SECTION. Sec. 8 (1) An employer, against whom two or more claims for compensation are filed within a twelve-month period by employees who are subsequently determined to be unauthorized alien workers, shall be deemed to be an uninsured employer, for each date on which such employees performed four or more hours of work.

(2) An employer shall be exempt from classification as an uninsured employer under subsection (1) of this section if the employer had verified the employment authorization of the workers who had filed the claims for compensation through the employment authorization program.

(3) An employee who is an unauthorized alien worker, who is awarded compensation pursuant to the compensation provisions of Title 51 RCW, shall not receive payment for the compensation until the insurer liable for payment of compensation to the employee has received and retained an official copy of an affidavit, personally executed by the employee before a United States consular representative in the foreign state of which the employee is a citizen or national, or in another foreign state to which the employee has voluntarily departed or been removed, confirming that the employee has established his or her identity to the satisfaction of the consular representative, and that the employee has identified to the consular representative a bank or financial institution account in that country into which such compensation shall be paid by electronic funds transfer or other means designated by regulation. The funds may be withdrawn only in person by the employee or, in the case of total disability or death, by a beneficiary.

NEW SECTION. Sec. 9 (1) It shall be unlawful for any nonprofit corporation, unincorporated nonprofit association, or charitable organization registered with the secretary of state to offer or provide employment services, including temporary contract labor, day labor, employment counseling, recruitment, or referral to or from a prospective employer, to persons other than protected individuals, as defined by U.S.C. 8, Sec. 1324b(a)(3).

(2) It shall not be unlawful for a corporation or other entity described in subsection (1) of this section to offer or provide employment services to persons other than protected individuals, provided:

(a) A fee of not less than ten dollars is charged to such person for employment services, to include the cost of verification described in (b) of this subsection; and

(b) Verification of eligibility for employment is confirmed through the Systematic Alien Verification for Entitlements program by the Department of Labor and Industries, to the nonprofit corporation or association which has offered to provide employment services to such person.

(3) A nonprofit corporation or association found to have failed to comply with the verification requirements of this section for two or more persons within any twelve-month period shall be prohibited from expending tax-exempt funds to provide employment services in this state for twelve months.

Sec. 10 RCW 46.20.035 and 2008 c 267 s 8 are each amended to read as follows:

The department may not issue an identicard, ~~or~~ a Washington State driver's license, or a commercial driver's license that is valid for identification unless the applicant meets the identification requirements of subsection (1), (2), or (3), and either (6) or (7) of this section.

(1) A driver's license or identicard applicant must provide the department with at least one of the following pieces of valid identifying documentation that contains the signature and a photograph of the applicant:

(a) A valid or recently expired driver's license or instruction permit that includes the date of birth of the applicant;

(b) A Washington State identicard or an identification card issued by another state;

(c) An identification card issued by the United States, a state, or an agency of either the United States or a state, of a kind commonly used to identify the members or employees of the government agency;

(d) A military identification card;

(e) A United States passport; or

(f) ~~An Immigration and Naturalization Service~~ A United States Citizenship and Immigration Services form.

(g) A tribal identification card issued by a federally recognized tribe located in Washington or with a Washington affiliation if the department determines that the procedures used in issuing the card are sufficient to prove a member is legally present in the United States.

(2) An applicant who is a minor may establish identity by providing an affidavit of the applicant's parent or guardian. The parent or guardian must accompany the minor and display or provide:

(a) At least one piece of documentation in subsection (1) of this section establishing the identity of the parent or guardian; and

(b) Additional documentation establishing the relationship between the parent or guardian and the applicant.

(3) A person unable to provide identifying documentation as specified in subsection (1) or (2) of this section may request that the department review other available documentation in order to ascertain identity. The department may waive the requirement if it finds that other documentation

clearly establishes the identity of the applicant. Notwithstanding the requirements in subsection (2) of this section, the department shall issue an identicard to an applicant for whom it receives documentation pursuant to RCW 74.13.283.

(4) An identicard or a driver's license that includes a photograph that has been renewed by mail or by electronic commerce is valid for identification purposes if the applicant met the identification requirements of subsection (1), (2), or (3) and either (6) or (7) of this section at the time of previous issuance.

(5) The form of an applicant's name, as established under this section, is the person's name of record for the purposes of this chapter.

~~(6) If the applicant is unable to prove his or her identity under this section, the department shall plainly label the license "not valid for identification purposes."~~The department shall not issue an official state personal identification card, driver's license or commercial driver's license to a person who is not a resident of this state. A person, other than a citizen or national of the United States, or an alien lawfully admitted for permanent residence, shall be deemed to be a nonresident for purposes of Title 46, unless and until the Department of Licensing has verified that the person is lawfully present in the United States, through the Systematic Alien Verification for Entitlements program.

(7) The department may issue, renew or replace a driver license, driver permit or identification card for an applicant who has submitted a Social Security number only after the department verifies the Social Security number with the United States Social Security Administration.

(a) This section does not apply if the department previously verified the Social Security number as required by subsection (7) of this section and the person applying for the driver license, driver permit or identification card is a citizen or permanent legal resident of the United States.

(8) All driver's licenses and identicards provided for in chapter 46.20 shall be issued only to United States Citizens, nationals and legal permanent resident aliens.

(9) The provisions of subsection (8) of this section shall not apply when an applicant presents, in person, valid documentary evidence of:

(a) Admission to the United States in a valid, unexpired immigrant

or nonimmigrant visa status;

(b) A pending or approved application for asylum in the United States

(c) Admission into the United States in refugee status

(d) An approved application for temporary protected status in the United States

(e) Approved deferred action status; or

(f) A pending application for adjustment of status to legal permanent resident status or conditional resident status.

(10) Upon approval, the applicant under subsection (9) may be issued a driver's license or identicard. Such driver's license or identicard shall be valid only during the period of time of the authorized stay of the applicant in the United States or, if there is no definite end to the period of authorized stay, a period of one (1) year.

(11) Any driver's license or identicard issued pursuant to subsection (10) shall clearly indicate that it is temporary and shall state the date of expiration.

(a) Such driver's license or identicard may be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified has been extended by the United States Citizenship and Immigration Services or other authorized agency of the United States Department of Homeland Security.

NEW SECTION. **Sec. 11** This act may be known and cited as the Washington Respect for Law Act.

NEW SECTION. **Sec. 12** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. **Sec. 13** Sections 1, 4, 6 through 9 of this act constitute a new chapter in Title 43 RCW.