

Reviewed As To Form By
Legislative Service Commission

LSC 127 1212

Combs

127th General Assembly
Regular Session
2007-2008

. B. No.

A BILL

To enact sections 2921.61, 2921.62, 2921.63, 2921.64, 1
2921.65, 2921.66, 2921.67, 2921.68, 2921.69, and 2
2921.70 of the Revised Code to prohibit the 3
concealment and intrastate transportation of 4
illegal aliens, to regulate the issuance of public 5
identification documents to persons other than 6
United States citizens, nationals, and legal 7
permanent resident aliens, to require correctional 8
institutions to make a reasonable effort to 9
determine the citizenship of inmates, to require 10
public employers to register and participate in a 11
status verification system to verify the work 12
eligibility status of all new employees, to 13
require a contracting business entity to withhold 14
state income taxes at the top marginal rate from 15
any individual independent contractor who fails to 16
verify work eligibility status, to prohibit 17
employers from discharging citizen employees in 18
favor of aliens, to require public agencies to 19
verify that individuals who apply for certain 20
public benefits are United States citizens or 21
qualified aliens, to direct the Attorney General 22
to negotiate a memorandum of understanding with 23
federal agencies concerning the enforcement of 24
federal immigration and custom laws in Ohio, to 25

B. No.
LSC 127 1212

Page 2

regulate nonresident tuition and fees at state 26
institutions of higher education, and to provide 27
for the establishment of a fraudulent documents 28
identification unit within the Department of 29
Public Safety. 30

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2921.61, 2921.62, 2921.63, 2921.64, 31
2921.65, 2921.66, 2921.67, 2921.68, 2921.69, and 2921.70 of the 32
Revised Code be enacted to read as follows: 33

Sec. 2921.61. As used in sections 2921.61 to 2921.70 of the 34
Revised Code: 35

(A) "Alien" means an individual who is not a born or fully 36
naturalized citizen of the United States. 37

(B) "Emergency medical condition" has the same meaning as in 38
42 U.S.C. 1396b(y)(3). 39

(C) "Federal public benefits" has the same meaning as in 8 40
U.S.C. 1611. 41

(D) "Identification document" means a printed document, card, 42
or certificate that contains the name and a photograph or physical 43
description of an individual and that is issued by a public agency 44
for purposes authorized or required by law or for any legitimate 45
purpose consistent with the duties of the public agency, 46
including, but not limited to, a voter identification card, a 47
motor vehicle driver's license or commercial driver's license, an 48
identification card issued under Chapter 4507, of the Revised 49
Code, passport, birth certificate, or social security card. 50
"Identification document" does not include any printed document, 51
card, or certificate that on its face conspicuously bears the term 52
"NOT FOR IDENTIFICATION" or any document, card, or certificate 53

. B.No.
LSC 127 1212

Page 3

from a school or state-assisted college or university that 54
identifies the bearer as an administrator, faculty member, 55
student, or employee, that is valid for use only on the campus or 56
facility of the school or state-assisted college or university, 57
and that on its face contains a clear and conspicuous statement of 58
its restricted validity. 59

(E) "Institution of higher education" has the same meaning as 60
in section 3333.043 of the Revised Code. 61

(F) "Jail" has the same meaning as in section 2929.01 of the 62
Revised Code. 63

(G) "Prison" has the same meaning as in section 2929.01 of 64
the Revised Code. 65

(H) "Public agency" means the general assembly, all courts, 66
any department, division, institution, board, commission, 67
authority, bureau, school, or other instrumentality of the state, 68
a county, a city, a village, a township, or other governmental 69
entity. 70

(I) "Public employer" means the state or any political 71
subdivision of the state, including any department, agency, or 72
instrumentality of the state or a political subdivision. 73

(J) "Public official" means any elected or appointed officer 74
of the state or any political subdivision, whether in a temporary 75
or permanent capacity. 76

(K) "School" means any school operated by a school district 77
board of education, any community school established under Chapter 78
3314 of the Revised Code, or any nonpublic school for which the 79
state board of education prescribes minimum education standards 80
under section 3301.07 of the Revised Code. 81

(L) "State-assisted college or university" has the same 82
meaning as in section 3333.041 of the Revised Code. 83

. B. No.
LSC 127 1212

Page 4

(M) "State or local public benefits" has the same meaning as 84
in 8 U.S.C. 1621. 85

(N) "Status verification system" means an electronic system 86
operated by the federal government, through which an authorized 87
official or agency of this state or a political subdivision of 88
this state may make an inquiry pursuant to authority delegated 89
pursuant to 8 U.S.C. 1373 to verify or ascertain the citizenship 90
or immigration status of any individual within the jurisdiction of 91
the official or agency for any purpose authorized by this section. 92
"Status verification system" includes all of the following: 93

(a) The electronic verification of work authorization program 94
of the "Illegal Immigration Reform and Immigrant Responsibility 95
Act of 1996." Pub. L. No. 104-208, 8 U.S.C. 1324a that is operated 96
by the United States department of homeland security and is known 97
as the basic pilot program: 98

(b) Any federal program equivalent to the basic pilot program 99
designated by the United States department of homeland security or 100
any other federal agency authorized to verify the work eligibility 101
status of newly hired employees pursuant to the "Immigration 102
Reform and Control Act of 1986." Pub. L. No. 99-603: 103

(c) The social security number verification service or any 104
similar online verification process implemented by the United 105
States social security administration: 106

(d) Any other independent, third-party system with an equal 107
or higher degree of reliability as the programs, systems, or 108
processes described in division (N) (1) (a), (b), or (c) of this 109
section. 110

(O) "Subcontractor" means a subcontractor, contract employee, 111
staffing agency, or any contractor regardless of its tier. 112

(P) "Unauthorized alien" means an alien as defined in 8 113
U.S.C. 1324a(h)(3). 114

. B. No.
LSC 127 1212

Page 5

Sec. 2921.62. (A) No person, in furtherance of the illegal presence of the alien in the United States, shall transport, move, or attempt to transport any alien in this state knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law. 115
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(B) No person shall conceal, harbor, or shelter from detection any alien in any place within this state, including any building or means of transportation, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law. 120
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(C) Whoever violates division (A) or (B) of this section is guilty of illegally transporting or concealing an alien, a felony of the third degree. 125
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(D) Nothing in this section prohibits or denies assistance to any alien involved in a violation of this section for health care items and services that are necessary for the treatment of an emergency medical condition that is not related to an organ transplant procedure. 128
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Sec. 2921.63. (A) Except as provided in division (B) of this section, no public agency shall issue an identification document to any individual other than a United States citizen, national, or legal permanent resident alien. 133
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(B) A public agency may issue an identification document to an individual other than a United States citizen, national, or legal permanent resident alien if the applicant presents in person valid documentary evidence of one of the following: 137
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(1) A valid, unexpired immigrant or nonimmigrant visa status for admission into the United States; 141
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(2) A pending or approved application for asylum in the United States; 143
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. B. No.
LSC 127 1212

Page 6

<u>(3) Admission into the United States in refugee status:</u>	145
<u>(4) A pending or approved application for temporary protected status in the United States:</u>	146
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<u>(5) Approved deferred action status:</u>	148
<u>(6) A pending application for adjustment of status to legal permanent residence status or conditional resident status.</u>	149
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<u>(C)(1) An identification document issued to an individual other than a United States citizen, national, or legal permanent resident alien in accordance with division (B) of this section 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, the identification document shall be valid for a period of one year.</u>	151
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<u>(2) Any identification document issued in accordance with divisions (B) and (C)(1) of this section shall clearly indicate that the identification document is temporary and shall state the document's expiration date. An applicant may renew the identification document only upon the applicant's presentation of valid documentary evidence that the status by which the applicant qualified for the identification document has been extended by the bureau of citizenship and immigration services or other authorized agency of the United States department of homeland security.</u>	158
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<u>(D)(1) Except as provided in division (D)(2) of this section, any motor vehicle driver's license or commercial driver's license issued to an individual who is not a United States citizen, national, or legal permanent resident alien for which an application has been made for renewal, duplication, or reissuance shall be presumed to have been issued in accordance with divisions (B) and (C) of this section if at the time the application is made the driver's license or commercial driver's license has not expired or been revoked, cancelled, or suspended.</u>	167
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. B. No.
LSC 127 1212

Page 7

(2) Divisions (B) and (C) of this section apply to the 176
renewal, duplication, or reissuance of a driver's license or 177
commercial driver's license if the department of public safety is 178
notified by a federal, state, or local government agency of 179
information in the agency's possession that indicates a reasonable 180
suspicion that the individual seeking renewal, duplication, or 181
reissuance is present in the United States in violation of the 182
law. This division does not apply to United States citizens, 183
nationals, or legal permanent resident aliens. 184

Sec. 2921.64. (A) When an individual who has been charged 185
with a felony or a violation of section 4511.19 of the Revised 186
Code is confined for any period in a jail or prison the person in 187
charge of the jail or prison shall make a reasonable effort to 188
determine the citizenship status of that individual. 189

(B) If an individual confined in a jail or prison is a 190
foreign national, the person in charge of the jail or prison shall 191
make a reasonable effort to verify that the individual has been 192
lawfully admitted to the United States and, if the individual was 193
lawfully admitted, that the individual's lawful status has not 194
expired. If the verification of the individual's lawful status can 195
not be made from documents in the individual's possession, the 196
person in charge of the jail or prison shall make a query within 197
forty-eight hours to the law enforcement support center or other 198
office or agency designated for that purpose by the United States 199
department of homeland security. If the lawful immigration status 200
of the individual cannot be verified, the person in charge of the 201
jail or prison shall notify the United States department of 202
homeland security. 203

(C) For the purpose of determining whether to admit an inmate 204
to bail by bond, there is a rebuttable presumption that an inmate 205
is at risk of flight if the inmate has been verified pursuant to 206

. B. No.
LSC 127 1212

Page 8

division (B) of this section to be a foreign national who has not 207
been lawfully admitted to the United States. 208

Sec. 2921.65. (A) Every public employer shall register and 209
participate in a status verification system to verify the work 210
eligibility status of all new employees. 211

(B)(1) Beginning July 1, 2008, no public employer shall enter 212
into a contract for the physical performance of services within 213
this state unless the contractor registers and participates in the 214
status verification system to verify the work eligibility status 215
of all new employees. 216

(2) Beginning July 1, 2008, no contractor or subcontractor 217
shall enter into a contract or subcontract with a public employer 218
in connection with the physical performance of services within 219
this state unless the contractor or subcontractor registers and 220
participates in the status verification system to verify 221
information on all new employees. 222

(3) Divisions (B)(1) and (2) of this section do not apply to 223
any contract or subcontract with a public employer in connection 224
with the physical performance of services within this state 225
entered into prior to July 1, 2008, even if the contract or 226
subcontract involves the physical performance of services within 227
this state after July 1, 2008. 228

(C)(1) No employer shall discriminate against an employee 229
working in this state who is a United States citizen or permanent 230
resident alien by discharging the employee while retaining an 231
employee whom the employer knows, or reasonably should have known, 232
is an unauthorized alien hired after July 1, 2008, and who is 233
working in this state in a job category that requires equal skill, 234
effort, and responsibility and that is performed under similar 235
working conditions as the job category held by the discharged 236
employee. 237

. B. No.
LSC 127 1212

Page 9

(2) An employer that on the date of a discharge in violation of this division is enrolled in and used a status verification system to verify the employment eligibility of employees working in this state who are hired after July 1, 2008, is exempt from liability, investigation, or suit arising from any action under this section.

(3) There is no cause of action under the Revised Code for a violation of this section except as provided by this division.

Sec. 2921.65. (A) Except as provided by federal law or division (C) of this section, every public agency shall verify the lawful presence in the United States of any individual who is fourteen years of age or older and who has applied for state or local public benefits or federal public benefits that is administered by a public agency.

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

(C) A public agency is not required to verify an individual's lawful presence under the provisions of this section for any of the following:

(1) Any purpose for which an individual's lawful presence in the United States is not restricted by law, ordinance, or regulation:

(2) Assistance to the individual for health care items and services that are necessary for the treatment of an emergency medical condition that is not related to an organ transplant procedure:

(3) Short-term, noncash, in-kind emergency disaster relief:

(4) Public health assistance for immunizations with respect to diseases and for testing and treatment of symptoms of communicable diseases whether or not the symptoms are caused by a

B. No.
LSC 127 1212

Page 10

<u>communicable disease:</u>	268
<u>(5) Programs, services, or assistance, such as soup kitchens,</u>	269
<u>crisis counseling and intervention, and short-term shelter</u>	270
<u>specified by the United States attorney general in the sole and</u>	271
<u>unreviewable discretion of the United States attorney general</u>	272
<u>after consultation with appropriate federal agencies and</u>	273
<u>departments, to which all of the following apply:</u>	274
<u>(a) The program, service, or assistance delivers in-kind</u>	275
<u>services at the community level, including through public or</u>	276
<u>private nonprofit agencies.</u>	277
<u>(b) The program, service, or assistance does not condition</u>	278
<u>the provision of assistance, the amount of assistance provided, or</u>	279
<u>the cost of assistance provided on the income or resources of the</u>	280
<u>individual recipient.</u>	281
<u>(c) The program, service, or assistance is necessary for the</u>	282
<u>protection of life or safety.</u>	283
<u>(D)(1) In order to verify an applicant's lawful presence in</u>	284
<u>the United States, every public agency shall require an applicant</u>	285
<u>for state or local public benefits to execute an affidavit under</u>	286
<u>penalty of perjury that states one of the following:</u>	287
<u>(a) The applicant is a United States citizen.</u>	288
<u>(b) The applicant is a qualified alien under the "Immigration</u>	289
<u>and Nationality Act," Pub. L. No. 82-414, and is lawfully present</u>	290
<u>in the United States.</u>	291
<u>(2) A public agency providing state or local public benefits</u>	292
<u>shall provide notary public services at no cost to the applicant.</u>	293
<u>(E) The eligibility of any applicant who has executed an</u>	294
<u>affidavit pursuant to division (D) of this section for benefits</u>	295
<u>shall be determined through the systematic alien verification for</u>	296
<u>entitlements program operated by the United States department of</u>	297

.B.No.
LSC 127 1212

Page 11

homeland security or a successor program designated by the United States department of homeland security. Until the applicant's eligibility for benefits is determined, the affidavit shall be presumed to be proof of the applicant's lawful presence in the United States for purposes of this section.

(E) Any applicant who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to division (D) of this section is guilty of a violation of division (A) of section 2921.13 of the Revised Code. If the affidavit constitutes a false claim of United States citizenship under 18 U.S.C. 911, the public agency requiring the affidavit shall file a complaint with the United States attorney general for the applicable district based upon the venue in which the affidavit was executed.

(G) A public agency may adopt variations to the requirements of this section that demonstrably improve the efficiency or reduce delay in the verification process, or to provide for the adjudication of unique individual circumstances if the verification procedures of this section would impose unusual hardship on a legal resident of the state.

(H) No public agency shall provide any state or local public benefit or federal public benefit in violation of this section.

(I) Each public agency that administers any program of state or local public benefits shall provide an annual report to the governor, the speaker of the house of representatives, and the president of the senate with respect to the public agency's compliance with this section. Each public agency shall monitor the systematic alien verification for entitlements program for application verification errors and significant delays and shall provide an annual public report on application verification errors and significant delays and recommendations to ensure that the application of the systematic alien verification for entitlements

. B. No.
LSC 127 1212

Page 12

program is not erroneously denying benefits to legal residents of 330
the state. Public agencies must report application verification 331
errors to the United States department of homeland security. 332

Sec. 2921.67. (A) If an individual independent contractor. 333
contracting for the physical performance of services in this 334
state, fails to provide the appropriate documentation to the 335
individual's contracting business entity to verify the 336
individual's work eligibility status pursuant to the "Immigration 337
Reform and Control Act of 1986," Pub. L. No. 99-603, the 338
contracting business entity shall withhold state income tax at the 339
top marginal income tax rate under section 5747.02 of the Revised 340
Code, as applied to the amount of compensation paid to the 341
individual for the performance of services within the state that 342
the contracting business entity is required to report as income on 343
internal revenue service form 1099. 344

(B) A contracting business entity that fails to comply with 345
the withholding requirements of this section is liable for the 346
taxes required to have been withheld unless the contracting 347
business entity is exempt from federal withholding tax with 348
respect to the individual pursuant to a properly filed internal 349
revenue service form 8233 or its equivalent. 350

(C) Nothing in this section creates an employer-employee 351
relationship between an individual independent contractor and a 352
contracting business entity. 353

Sec. 2921.68. (A) The attorney general shall negotiate the 354
terms of a memorandum of understanding between the state and the 355
United States department of justice or the United States 356
department of homeland security, as provided in 8 U.S.C. 1357(g), 357
concerning the enforcement of federal immigration and custom laws, 358
detention and removals, and investigations in this state. 359

S. No.
LSC 127 1212

Page 13

(B) The memorandum of understanding shall be signed on behalf 360
of this state by the attorney general and the governor or as 361
otherwise required by the appropriate federal agency. 362

(C) No political subdivision of this state, whether acting 363
through its governing body or by an initiative, referendum, or any 364
other process, shall enact an ordinance or policy that limits or 365
prohibits a law enforcement officer or other employee of the 366
political subdivision from communicating or cooperating with 367
federal officials with regard to the immigration status of any 368
individual within this state. 369

(D) Notwithstanding any other provision of law, no public 370
agency or public official may prohibit, or in any way restrict, 371
any public agency or public official from sending to, or receiving 372
from, the United States department of homeland security 373
information regarding the lawful or unlawful citizenship or 374
immigration status of any individual. 375

(E) Notwithstanding any other provision of law, no person or 376
public agency may prohibit or in any way restrict an employee of a 377
public agency from doing any of the following with respect to 378
information regarding the lawful or unlawful immigration status of 379
any individual: 380

(1) Sending the information to, or requesting or receiving 381
the information from, the United States department of homeland 382
security: 383

(2) Maintaining the information: 384

(3) Exchanging the information with any other federal, state, 385
or local government entity. 386

(F) Any person lawfully domiciled in this state may file for 387
a writ of mandamus to compel any noncooperating public agency to 388
comply with divisions (C) to (E) of this section. 389

. B. No.
LSC 127 1212

Page 14

Sec. 2921.69. (A) An individual who is not lawfully present 390
in the United States is not eligible on the basis of residence 391
within this state for either of the following: 392

(1) Any post-secondary education benefits, including, but not 393
limited to, scholarships or financial aid, 394

(2) Resident rates for tuitions and fees at an institution of 395
higher education. 396

(B) This section does not apply to any student enrolled in a 397
degree program at an institution of higher education during the 398
2006-2007 school year or during any prior year. 399

(C) Notwithstanding division (A) of this section, the board 400
of regents may adopt rules pursuant to Chapter 119. of the Revised 401
Code permitting nonresident students to pay tuition and fees at an 402
institution of higher education at the rates applicable to 403
residents of this state, subject to division (D)(2) of this 404
section, if the student graduated from a public or nonpublic high 405
school in this state in which the student was enrolled by a parent 406
or legal guardian and attended classes for a minimum of two years 407
prior to graduation. 408

(D) A nonresident student is not eligible for resident rates 409
for tuition and fees pursuant to rules adopted by the board of 410
regents under division (C) of this section unless the student 411
meets all of the following conditions: 412

(1) The student has satisfied all admission standards for the 413
institution of higher education, as determined by the Ohio board 414
of regents, and has secured admission to and enrolled in the 415
institution of higher education. 416

(2) If the student enrolls in an institution of higher 417
education after the effective date of this section and cannot 418
present the institution with valid documentation of United States 419

. B. No.
LSC 127 1212

Page 15

citizenship or an immigration status permitting study at an 420
institution of higher education. the student does one of the 421
following: 422

(a) Provides the institution with a copy of a true and 423
correct application or petition filed with the United States 424
citizenship and immigration services to legalize the student's 425
immigration status; 426

(b) Files an affidavit with the institution stating that the 427
student will file an application to legalize the student's 428
immigration status at the earliest opportunity the student is 429
eligible to do so, but in no case later than one year after the 430
United States citizenship and immigration services provides a 431
formal process to permit children of parents without lawful 432
immigration status to apply for lawful status without risk of 433
deportation and presents the institution of higher education with 434
a copy of a true and correct application or petition filed with 435
the United States citizenship and immigration services no later 436
than one year after the United States citizenship and immigration 437
services provides a formal process to permit children of parents 438
without lawful immigration status to apply for lawful status 439
without risk of deportation, which copy shall be maintained in the 440
institution's records. 441

(E) Any student who meets the requirements of divisions (C) 442
and (D) (1) and (2) (a) of this section shall not be disqualified on 443
the basis of the student's immigration status from any 444
scholarships or financial aid provided by this state. Any student 445
enrolled in an institution of higher education prior to the 446
effective date of this section shall not be required to meet any 447
conditions not in effect at that time to maintain enrollment at 448
that institution. 449

Sec. 2921.70. Subject to the availability of funds, the 450

. B. No.
LSC 127 1212

Page 16

department of public safety shall establish a fraudulent documents 451
identification unit for the primary purpose of investigating and 452
apprehending persons that participate in the sale or distribution 453
of fraudulent documents used for identification purposes. The unit 454
shall additionally specialize in fraudulent identification 455
documents created and prepared for persons who are unlawfully 456
residing within this state. The department of public safety shall 457
employ sufficient employees to implement the fraudulent documents 458
identification unit. 459

Section 2. The General Assembly finds that illegal 460
immigration is causing economic hardship and lawlessness in this 461
state and that illegal immigration is encouraged when public 462
agencies within this state provide public benefits without 463
verifying immigration status. The General Assembly further finds 464
that when illegal immigrants have been harbored and sheltered in 465
this state and encouraged to reside in this state through the 466
issuance of identification cards that are issued without verifying 467
immigration status these practices impede and obstruct the 468
enforcement of federal immigration law, undermine the security of 469
our borders, and impermissibly restrict the privileges and 470
immunities of the citizens of Ohio. Therefore, the General 471
Assembly declares that it is a compelling public interest of this 472
state to discourage illegal immigration by requiring all agencies 473
within this state to fully cooperate with federal immigration 474
authorities in the enforcement of federal immigration laws. The 475
General Assembly also finds that other measures are necessary to 476
ensure the integrity of various governmental programs and 477
services. 478