HOUSE BILL 1380
By Carr

SENATE BILL 780

By Ketron

AN ACT to amend Tennessee Code Annotated, Title 3; Title 4; Title 5; Title 6; Title 7; Title 8; Title 9; Title 12; Title 29; Title 38; Title 39; Title 40; Title 41; Title 49; Title 50; Title 55; Title 67; Title 68 and Title 71, relative to unlawful presence in the United States.

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

SECTION 1. This act shall be known and may be cited as the "Lawful Immigration Enforcement Act."

SECTION 2. Tennessee Code Annotated, Section 7-68-102, is amended by adding the following new appropriately designated subdivisions thereto:

( ) "Officer" means an elected or appointed official in the executive branch of state government;

( ) "State" means an officer or agency that carries out state functions and programs;

SECTION 3. Tennessee Code Annotated, Section 7-68-103(b), is amended by deleting the subsection in its entirety and substituting instead the following new subsections:

(b) The state, an official or a local governmental entity shall not limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law.

(c) Pursuant to 8 U.S.C. § 1373 and 8 U.S.C. § 1644, the state, an official or a local governmental entity shall not prohibit or in any way restrict a law enforcement officer or other employee from sending, receiving, or maintaining information relating to the immigration status, lawful or unlawful, of any individual, or exchanging such

information with any other federal, state, or local governmental entity for the following purposes, unless otherwise provided by federal law:

(1) Verifying any claim of residence or domicile, if determination of residence or domicile is required under any federal or state law or judicial order issued pursuant to a civil or criminal proceeding in this state;

(2) Confirming the identity of an individual who is lawfully detained; or

(3) Determining whether a person, who is an alien, is in compliance with the federal registration laws prescribed by 8 U.S.C. § 1301, et seq.

SECTION 4. Tennessee Code Annotated, Section 7-68-104, is amended by deleting the section in its entirety and substituting instead the following:

(a)

(1) A person who is eligible to vote in this state pursuant to section § 2-2-102, regardless of whether or not such person is an actual registered voter, who believes the state has violated § 7-68-103, may file a complaint in the chancery court of Davidson County seeking to compel or enjoin the state.

(2) A person who is eligible to vote in a county, regardless of whether or not such person is an actual registered voter, who believes a local governmental entity of such county, an official of the county or a municipality in such county, or such county has violated § 7-68-103, may file a complaint in chancery court in such municipality or county seeking to compel or enjoin the local governmental entity or official.

(b) A person filing a complaint pursuant to subsection (a) shall have the burden of proving by a preponderance of the evidence that a violation of § 7-68-103 has occurred.

(c) If the court finds that an official, a local governmental entity or the state has violated § 7-68-103, the court shall issue a writ of mandamus against the local governmental entity, official or state ordering such entity or official to comply with § 7-68-103, or enjoin the local governmental entity, official or state from violating § 7-68-103.

(d)

(1) A local governmental entity, an official or the state shall have no less than ninety (90) days from the date of the court's order to comply with the order. If, after ninety (90) days, the local governmental entity, official or state has not complied with the court's order, the court may hold the local governmental entity, official or state in contempt of court.

(2) If the court holds the local governmental entity, official or state in contempt pursuant to subdivision (d)(1), the court may order that a local governmental entity, an official or the state pay a civil penalty of not less than five hundred dollars ($500) and not more than five thousand dollars ($5,000) for each day that the local governmental entity, official or state continues to violate § 7-68-103.

(e) A court shall collect any civil penalty assessed pursuant to subdivision (d)(2) and remit the civil penalty to the state treasurer for deposit in the lawful immigration enforcement fund established pursuant to § 7-68-105.

(f) The court may award court costs and reasonable attorney fees to a plaintiff or petitioner who prevails in any action brought pursuant to this section.

SECTION 5. Tennessee Code Annotated, Title 7, Chapter 68, Part 1, is amended by adding the following new section thereto:

7-68-105.

(a) There is created in the state treasury a fund to be known as the lawful immigration enforcement fund. All money in such fund shall be used by the treasurer to provide grants to law enforcement agencies for reimbursing the agencies for enforcement costs under this act that are associated with housing and transporting persons who are unlawfully present in the United States. Moneys in the fund shall not revert to the general fund of the state, but shall remain available to be used as provided for in this section.

(b) Interest accruing on investments and deposits of the lawful immigration enforcement fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

(c) Moneys in the lawful immigration enforcement fund account shall be invested by the state treasurer in accordance with § 9-4-603.

SECTION 6. Tennessee Code Annotated, Section 38-8-112, is amended by deleting the section in its entirety and substituting instead the following:

The curriculum requirements of the Tennessee peace officer standards and training commission established by this part shall include materials concerning:

(1) Domestic violence training;

(2) Proper procedures to respond to persons with mental illnesses;

(3) Best practices under state and federal law for verifying the immigration status of a person who is lawfully stopped, arrested or otherwise detained, pursuant to §§ 40-7-123 and 40-7-124;

(4) Constitutionally permissible practices for determining whether there is reasonable suspicion to believe a person is unlawfully present in the United States; and

(5) The proper procedures to follow after a federal immigration detainer has been issued, including but not limited to, the maximum period in which a person may be held pursuant to such detainer, and the procedure for seeking reimbursement for incarceration expenses from federal immigration authorities.

SECTION 7. Tennessee Code Annotated, Section 39-17-114(d), is amended by deleting the language “arresting agency or agencies” and substituting instead the language “lawful immigration enforcement fund created pursuant to § 7-68-105”.

SECTION 8. Tennessee Code Annotated, Title 40, Chapter 7, Part 1, is amended by adding the following new sections thereto:

40-7-124.

(a) Except as otherwise provided in subsection (b), when any law enforcement officer acting in the enforcement of any state law or local ordinance makes a lawful stop or detention of a person for a violation of a state law or local ordinance, and the officer has reasonable suspicion to believe that the person stopped or detained is unlawfully present in the Untied States, the officer shall request verification of the immigration status of such person from federal immigration authorities, pursuant to 8 U.S.C. § 1373(c).

(b) A law enforcement officer is not required to request verification of immigration status pursuant to subsection (a) if the officer reports to the law enforcement agency that the attempt would hinder or obstruct a criminal investigation or the treatment of a medical emergency.

(c) A person subject to verification of immigration status pursuant to subsection (a) is presumed to be lawfully present in the United States if the person provides to the law enforcement officer any of the following forms of identification:

(1) A valid Tennessee driver license;

(2) A valid Tennessee photo identification card;

(3) A valid tribal enrollment card or other form of tribal identification issued by a federally recognized Indian tribe that bears a photographic image of the holder; or

(4) Any valid United States federal, state or local government issued identification, if the entity that issued such identification requires proof of legal presence in the United States before issuance that bears a photographic image of the holder.

40-7-125.

Notwithstanding any other law to the contrary, a law enforcement agency or law enforcement officer may securely transport an alien whom the agency has verified is unlawfully present in the United States, and who is in the agency's custody, to a federal facility in this state or, with the concurrence of the receiving federal agency, to any other point of transfer into federal custody that is outside this state.

SECTION 9. Tennessee Code Annotated, Section 40-11-118, is amended by inserting the following language as a new subsection immediately after subsection (b) and by appropriately redesignating subsequent subsections accordingly:

(c) When determining the amount of bail, if, after an inquiry made pursuant to § 40-7-123, it is determined that the defendant is unlawfully present in the United States, there shall be a presumption that the defendant is at risk of flight.

SECTION 10. Tennessee Code Annotated, Title 40, Chapter 20, Part 1, is amended by adding the following new section thereto:

40-20-118.

If an alien who has been verified by federal immigration authorities pursuant to 8 U.S.C. § 1373(c) as unlawfully present in the United States is convicted of a state or local offense and such alien was not ordered to serve a term of imprisonment, but was assessed a fine or any other punishment authorized by law, then the court or applicable law enforcement agency shall provide notification to the United States immigration and customs enforcement agency that such alien has been convicted of a state or local offense and assist in the detention and transfer into federal custody of such alien, if requested by such agency pursuant to an immigration detainer.

SECTION 11. Tennessee Code Annotated, Title 41, Chapter 51, Part 1, is amended by adding the following new section thereto:

41-51-105.

If an alien who has been verified by federal immigration authorities pursuant to 8 U.S.C. § 1373(c) as unlawfully present in the United States is convicted of a state or local offense and such alien was sentenced to a term of imprisonment that the alien was required to serve, then prior to the alien's discharge from imprisonment, the correctional institution or county or municipal jail or workhouse shall provide notification to the United States immigration and customs enforcement agency or the United States customs and border protection that such alien is to be released and the date of such release and assist in the detention and transfer into federal custody of such alien, if requested by such agency pursuant to an immigration detainer.

SECTION 12. Any state agency, local law enforcement agency or municipality or county that incurs correctional officer salary costs for incarcerating undocumented criminal aliens with at least one (1) felony or two (2) misdemeanor convictions for violations of state or local law,

and incarcerated for at least (4) consecutive days during a reporting period, as determined by the United States department of justice, may apply for a reimbursement award from the United States department of justice through the state criminal alien assistance program.

SECTION 13. This act shall be construed and implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.

SECTION 14. This act shall be enforced without regard to race, religion, gender, ethnicity or national origin.

SECTION 15. The Tennessee peace officer standards and training commission shall implement this act without using additional resources.

SECTION 16. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 17. This act shall take effect July 1, 2011, the public welfare requiring it.