

ASSEMBLY BILL

No. 26

Introduced by Assembly Member Donnelly

December 6, 2010

An act to add Section 53069.63 to the Government Code, to add Part 5.5 (commencing with Section 1550) to Division 2 of the Labor Code, and to add Sections 653.65, 653.67, 653.69, 653.71, 653.73, and 653.74 to the Penal Code, relating to illegal immigrants.

LEGISLATIVE COUNSEL'S DIGEST

AB 26, as introduced, Donnelly. Illegal immigrants.

Existing law, held unenforceable as preempted by federal law in the case of *League of United Latin American Citizens v. Wilson* (1997) 997 F.Supp. 1244, prohibits any city, county, or other legally authorized local governmental entity from preventing or limiting the cooperation of any law enforcement agency with federal authorities regarding persons arrested and suspected of being present in the United States in violation of federal immigration laws, as specified.

This bill would prohibit public officials and agencies from adopting a policy that limits or restricts the enforcement of federal immigration laws or that restricts the sharing of a person's immigration status, as specified. The bill would allow any person to bring an action against an entity to enforce these provisions.

Existing law generally regulates employment, including, but not limited to, the wages, hours, and working conditions of employees.

This bill would prohibit an employer from knowingly or intentionally employing an unauthorized alien, as specified. The bill would establish a process for persons to file complaints of violations of these provisions with the Attorney General or a district attorney. The bill would make

it a misdemeanor to make a false and frivolous complaint alleging a violation of these provisions by an employer. The bill would provide for the investigation of these complaints and specify consequences, including the suspension of certain licenses, for employers that violate these provisions. The bill would require every employer to verify the employment eligibility of employees through the federal E-Verify program and require employers to participate in the federal E-Verify program in order to be eligible for economic development incentives, as specified. Because this bill would impose new duties on local governments and district attorneys, it would impose a state-mandated local program.

Existing law, held unenforceable as preempted by federal law in the case of *League of United Latin American Citizens v. Wilson* (1997) 977 F.Supp. 1244, requires every law enforcement agency, with respect to any person who is arrested and suspected of being present in the United States in violation of federal immigration laws, to, among other things, attempt to verify the legal status of such person and notify the Attorney General and federal authorities of any apparent illegal status. Existing law makes it a felony, punishable in the state prison for 5 years and a fine of \$25,000, for any person to use false documents to conceal his or her true citizenship or resident alien status.

This bill would make it a misdemeanor for a person to be present on any public or private land while at the same time the person is in violation of specified federal immigration laws. The bill would make it a felony to be in violation of this provision if the person is in possession of specified drugs, weapons, or property, as specified. The bill would make it a felony for a person to intentionally engage in the smuggling of a human being for profit or commercial purposes, as specified, and would provide differing penalties depending on the circumstances of the offense. The bill would make it a misdemeanor for an occupant of a motor vehicle to attempt to hire persons for work if the motor vehicle blocks or impedes the normal movement of traffic. The bill would also make it a misdemeanor to enter a motor vehicle in order to be hired by an occupant if the motor vehicle blocks or impedes the normal movement of traffic. The bill would make it a misdemeanor for a person who is unlawfully present in the United States and who is an unauthorized alien, as defined, to knowingly apply for or solicit work or perform work as an employee or independent contractor.

The bill would make it a misdemeanor to transport or move or attempt to transport or move an alien when the person knows, or recklessly

disregards the fact, that the alien is in the United States unlawfully, as specified. The bill would make it a misdemeanor to conceal, harbor, or shield or attempt to conceal, harbor, or shield an alien from detection if the person knows, or recklessly disregards the fact, that the alien is in the United States unlawfully, as specified. The bill would make it a misdemeanor to encourage or induce an alien to come to, or reside in, this state if the person knows, or recklessly disregards the fact, that the alien would be entering or residing in this state unlawfully. The bill would make a violation of these provisions a felony if the violation involves 10 or more illegal aliens. Because this bill would create various new crimes, it would impose a state-mandated local program.

The bill would require a peace officer to cause the removal and either immobilization or impoundment of a vehicle if the peace officer determines that a person is driving the vehicle while the person is engaged in certain acts involving an alien unlawfully in the United States, as specified.

The bill would establish the Gang and Immigration Intelligence Team Enforcement Mission Fund to be funded as specified, and administered by the Department of Justice to be used, upon appropriation, for gang and immigration enforcement and for county jail reimbursements relating to illegal immigration.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. This act may be cited as the Secure Immigration
- 2 Enforcement Act.
- 3 SEC. 2. The Legislature finds that there is a compelling interest
- 4 in the cooperative enforcement of federal immigration laws
- 5 throughout California. The Legislature declares that the intent of

1 this act is to make attrition through enforcement the public policy
2 of all state and local government agencies in California. The
3 Legislature further declares that the provisions of this act are
4 intended to work together to discourage and deter the unlawful
5 entry and presence of aliens and economic activity by persons
6 unlawfully present in the United States.

7 SEC. 3. Section 53069.63 is added to the Government Code,
8 to read:

9 53069.63. (a) No official or agency of the state or a city,
10 county, city and county, or other political subdivision may adopt
11 a policy that limits or restricts the enforcement of federal
12 immigration laws to less than the full extent permitted by federal
13 law.

14 (b) Except as otherwise provided in federal law, officials or
15 agencies of the state or of a city, county, city and county, or other
16 political subdivision may not be prohibited or in any way restricted
17 from sending, receiving, or maintaining information relating to
18 the immigration status of any individual or exchanging that
19 information with any other federal, state, or local governmental
20 entity for any of the following purposes:

21 (1) Determining eligibility for any public benefit, service, or
22 license provided by any federal, state, city, county, city and county,
23 or other political subdivision.

24 (2) Verifying any claim of residence or domicile if determination
25 of residence or domicile is required under the laws of the state or
26 a judicial order issued pursuant to a civil or criminal proceeding.

27 (3) Confirming the identity of any person who is detained.

28 (4) If the person is an alien, determining whether the person is
29 in compliance with the federal registration laws prescribed by Title
30 II of Chapter 7 of the Federal Immigration and Nationality Act.

31 (c) A person may bring an action in superior court to challenge
32 any official or agency of the state or of a city, county, city and
33 county, or other political subdivision that adopts or implements a
34 policy that limits or restricts the enforcement of federal
35 immigration laws to less than the full extent permitted by federal
36 law. If there is a judicial finding that an entity has violated this
37 section, the court shall order any of the following:

38 (1) That the person who brought the action recover court costs
39 and attorney's fees.

1 (2) That the entity pay a civil penalty of not less than one
2 thousand dollars (\$1,000) and not more than five thousand dollars
3 (\$5,000) for each day that the policy has remained in effect after
4 the filing of an action pursuant to this subdivision.

5 (d) A court shall collect the civil penalty prescribed in
6 subdivision (c) and remit the civil penalty to the Department of
7 Justice for deposit into the Gang and Immigration Intelligence
8 Team Enforcement Mission Fund established by Section 653.74
9 of the Penal Code.

10 (e) A law enforcement officer shall be indemnified by the law
11 enforcement officer's agency against reasonable costs and
12 expenses, including attorney's fees, incurred by the officer in
13 connection with any action, suit, or proceeding brought pursuant
14 to this section to which the officer may be a party by reason of the
15 officer being or having been a member of the law enforcement
16 agency, except in relation to matters in which the officer is
17 adjudged to have acted in bad faith.

18 (f) This section shall be implemented in a manner consistent
19 with federal laws regulating immigration, protecting the civil rights
20 of all persons, and respecting the privileges and immunities of
21 United States citizens.

22 SEC. 4. Part 5.5 (commencing with Section 1550) is added to
23 Division 2 of the Labor Code, to read:

24
25 **PART 5.5. EMPLOYMENT OF UNAUTHORIZED ALIENS**

26
27 1550. (a) An employer shall not knowingly employ an
28 unauthorized alien. If, in the case when an employer uses a
29 contract, subcontract, or other independent contractor agreement
30 to obtain the labor of an alien in this state, the employer knowingly
31 contracts with an unauthorized alien or with a person who the
32 employer knows employs or contracts with an unauthorized alien
33 to perform the labor, the employer violates this section.

34 (b) The Attorney General shall prescribe a complaint form for
35 a person to allege a violation of subdivision (a). The complainant
36 shall not be required to list the complainant's social security
37 number on the complaint form or to have the complaint form
38 notarized. On receipt of a complaint on a prescribed complaint
39 form that an employer allegedly knowingly employs an
40 unauthorized alien, the Attorney General or district attorney shall

1 investigate whether the employer has violated subdivision (a). If
2 a complaint is received but is not submitted on a prescribed
3 complaint form, the Attorney General or district attorney may
4 investigate whether the employer has violated subdivision (a). This
5 section shall not be construed to prohibit the filing of anonymous
6 complaints that are not submitted on a prescribed complaint form.
7 The Attorney General or district attorney shall not investigate
8 complaints that are based solely on race, color, or national origin.
9 A complaint that is submitted to a district attorney shall be
10 submitted to the district attorney in the county in which the alleged
11 unauthorized alien is or was employed by the employer. The county
12 sheriff or any other local law enforcement agency may assist in
13 investigating a complaint. When investigating a complaint, the
14 Attorney General or district attorney shall verify the work
15 authorization of the alleged unauthorized alien with the federal
16 government pursuant to Section 1373(c) of Title 8 of the United
17 States Code. A state, county, or local official shall not attempt to
18 independently make a final determination on whether an alien is
19 authorized to work in the United States. An alien's immigration
20 status or work authorization status shall be verified with the federal
21 government pursuant to Section 1373(c) of Title 8 of the United
22 States Code. A person who knowingly files a false and frivolous
23 complaint under this section is guilty of a misdemeanor.

24 (c) (1) If, after an investigation, the Attorney General or district
25 attorney determines that the complaint is not false and frivolous,
26 the Attorney General or district attorney shall do both of the
27 following:

28 (A) Notify the United States Immigration and Customs
29 Enforcement of the unauthorized alien.

30 (B) Notify the local law enforcement agency of the unauthorized
31 alien.

32 (2) If, after investigation, the Attorney General determines that
33 the complaint is not false and frivolous, the Attorney General shall
34 notify the appropriate district attorney to bring an action pursuant
35 to subdivision (d), if the complaint was originally filed with the
36 Attorney General.

37 (d) An action for a violation of subdivision (a) shall be brought
38 against the employer by the district attorney in the county where
39 the unauthorized alien employee is or was employed by the
40 employer. A second violation shall be based only on the

1 employment of an unauthorized alien by the employer after a prior
2 action has been brought against that employer for a violation of
3 subdivision (a) or Section 1555.

4 (e) For any action in superior court under this section, the court
5 shall expedite the action, including holding the hearing at the
6 earliest practicable date.

7 (f) On a finding of a violation of subdivision (a) the following
8 shall apply:

9 (1) For a first violation, as described in paragraph (3), all of the
10 following apply:

11 (A) The court shall order the employer to terminate the
12 employment of all unauthorized aliens.

13 (B) The court shall order the employer to be subject to a
14 three-year probationary period for the business location where the
15 unauthorized alien performed work. During the probationary period
16 the employer shall file quarterly reports with the district attorney
17 containing the information obtained from the I-9 form of each new
18 employee who is hired by the employer at the business location
19 where the unauthorized alien performed work.

20 (C) The court shall order the employer to file a signed sworn
21 affidavit with the district attorney within three business days after
22 the order is issued. The affidavit shall state that the employer has
23 terminated the employment of all unauthorized aliens in this state
24 and that the employer will not intentionally or knowingly employ
25 an unauthorized alien in this state. The court shall order the
26 appropriate agencies to suspend all licenses subject to this
27 subdivision that are held by the employer if the employer fails to
28 file a signed sworn affidavit with the district attorney within three
29 business days after the order is issued. All licenses that are
30 suspended pursuant to this subdivision for failing to file a signed
31 sworn affidavit shall remain suspended until the employer files a
32 signed sworn affidavit with the district attorney. Notwithstanding
33 any other law, on filing of the affidavit the suspended licenses
34 shall be reinstated immediately by the appropriate agencies. For
35 the purposes of this subdivision, the licenses that are subject to
36 suspension pursuant to this subdivision are all licenses that are
37 held by the employer specific to the business location where the
38 unauthorized alien performed work. If the employer does not hold
39 a license specific to the business location where the unauthorized
40 alien performed work, but a license is necessary to operate the

1 employer's business in general, the licenses that are subject to
2 suspension pursuant to this subdivision are all licenses that are
3 held by the employer at the employer's primary place of business.
4 On receipt of the court's order and notwithstanding any other law,
5 the appropriate agencies shall suspend the licenses according to
6 the court's order. The court shall send a copy of the court's order
7 to the Attorney General and the Attorney General shall maintain
8 the copy pursuant to subdivision (g).

9 (D) The court may order the appropriate agencies to suspend
10 all licenses described in subparagraph (C) that are held by the
11 employer for a period not to exceed 10 business days. The court
12 shall base its decision to suspend under this subdivision on any
13 evidence or information submitted to it during the action for a
14 violation of this subdivision and shall consider the following
15 factors, if relevant:

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

18 (ii) Any prior misconduct by the employer.

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

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

22 (v) The duration of the violation.

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

25 (vii) Any other factors the court deems appropriate.

26 (2) For a second violation, as described in paragraph (3), the
27 court shall order the appropriate agencies to permanently revoke
28 all licenses that are held by the employer specific to the business
29 location where the unauthorized alien performed work. If the
30 employer does not hold a license specific to the business location
31 where the unauthorized alien performed work, but a license is
32 necessary to operate the employer's business in general, the court
33 shall order the appropriate agencies to permanently revoke all
34 licenses that are held by the employer at the employer's primary
35 place of business. On receipt of the order and notwithstanding any
36 other law, the appropriate agencies shall immediately revoke the
37 licenses.

38 (3) A violation shall be considered:

39 (A) A first violation by an employer at a business location if
40 the violation did not occur during a probationary period ordered

1 by the court under this subdivision or subdivision (f) of Section
2 1555 for that employer’s business location.

3 (B) A second violation by an employer at a business location
4 if the violation occurred during a probationary period ordered by
5 the court under this subdivision or subdivision (f) of Section 1555
6 for that employer’s business location.

7 (g) The Attorney General shall maintain copies of court orders
8 that are received pursuant to subdivision (f) and shall maintain a
9 database of the employers and business locations that have a first
10 violation of subdivision (a) and make the court orders available
11 on the Attorney General’s Internet Web site.

12 (h) On determining whether an employee is an unauthorized
13 alien, the court shall consider only the federal government’s
14 determination pursuant to Section 1373(c) of Title 8 of the United
15 States Code. The federal government’s determination creates a
16 rebuttable presumption of the employee’s lawful status. The court
17 may take judicial notice of the federal government’s determination
18 and may request the federal government to provide automated or
19 testimonial verification pursuant to Section 1373(c) of Title 8 of
20 the United States Code.

21 (i) For the purposes of this section, proof of verifying the
22 employment authorization of an employee through the federal
23 E-Verify program creates a rebuttable presumption that an
24 employer did not knowingly employ an unauthorized alien.

25 (j) For the purposes of this section, an employer that establishes
26 that it has complied in good faith with the requirements of Section
27 1324a(b) of Title 8 of the United States Code establishes an
28 affirmative defense that the employer did not knowingly employ
29 an unauthorized alien. An employer is considered to have complied
30 with the requirements of Section 1324(b) of Title 8 of the United
31 States Code, notwithstanding an isolated, sporadic, or accidental
32 technical or procedural failure to meet the requirements, if there
33 was a good faith attempt to comply with the requirements.

34 (k) It is an affirmative defense to a violation of subdivision (a)
35 that the employer was entrapped. To claim entrapment, the
36 employer must admit by the employer’s testimony or other
37 evidence the substantial elements of the violation. An employer
38 that asserts an entrapment defense has the burden of proving the
39 following by clear and convincing evidence:

1 (1) The idea of committing the violation started with law
 2 enforcement officers or their agents rather than with the employer.

3 (2) The law enforcement officers or their agents urged and
 4 induced the employer to commit the violation.

5 (3) The employer was not predisposed to commit the violation
 6 before the law enforcement officers or their agents urged and
 7 induced the employer to commit the violation.

8 (l) An employer does not establish entrapment if the employer
 9 was predisposed to violate subdivision (a) and the law enforcement
 10 officers or their agents merely provided the employer with an
 11 opportunity to commit the violation. It is not entrapment for law
 12 enforcement officers or their agents merely to use a ruse or to
 13 conceal their identity. The conduct of law enforcement officers
 14 and their agents may be considered in determining if an employer
 15 has proven entrapment.

16 1555. (a) An employer shall not intentionally employ an
 17 unauthorized alien. If, in the case when an employer uses a
 18 contract, subcontract, or other independent contractor agreement
 19 to obtain the labor of an alien in this state, the employer
 20 intentionally contracts with an unauthorized alien or contracts with
 21 a person who the employer intends shall employ or contract with
 22 an unauthorized alien to perform the labor, the employer violates
 23 this section.

24 (b) The Attorney General shall prescribe a complaint form for
 25 a person to allege a violation of subdivision (a). The complainant
 26 shall not be required to list the complainant's social security
 27 number on the complaint form or to have the complaint form
 28 notarized. On receipt of a complaint on a prescribed complaint
 29 form that an employer allegedly intentionally employs an
 30 unauthorized alien, the Attorney General or a district attorney shall
 31 investigate whether the employer has violated subdivision (a). If
 32 a complaint is received but is not submitted on a prescribed
 33 complaint form, the Attorney General or district attorney may
 34 investigate whether the employer has violated subdivision (a). This
 35 section shall not be construed to prohibit the filing of anonymous
 36 complaints that are not submitted on a prescribed complaint form.
 37 The Attorney General or district attorney shall not investigate
 38 complaints that are based solely on race, color, or national origin.
 39 A complaint that is submitted to a district attorney shall be
 40 submitted to the district attorney in the county in which the alleged

1 unauthorized alien is or was employed by the employer. The county
2 sheriff or any other local law enforcement agency may assist in
3 investigating a complaint. When investigating a complaint, the
4 Attorney General or district attorney shall verify the work
5 authorization of the alleged unauthorized alien with the federal
6 government pursuant to Section 1373(c) of Title 8 of the United
7 States Code. A state, county, or local official shall not attempt to
8 independently make a final determination on whether an alien is
9 authorized to work in the United States. An alien's immigration
10 status or work authorization status shall be verified with the federal
11 government pursuant to Section 1373(c) of Title 8 of the United
12 States Code. A person who knowingly files a false and frivolous
13 complaint under this section is guilty of a misdemeanor.

14 (c) If, after investigation, the Attorney General or district
15 attorney determines that the complaint is not false and frivolous
16 the Attorney General or district attorney shall do all of the
17 following:

18 (1) Notify the United States Immigration and Customs
19 Enforcement of the unauthorized alien.

20 (2) Notify the local law enforcement agency of the unauthorized
21 alien.

22 (3) The Attorney General shall notify the appropriate district
23 attorney to bring an action pursuant to subdivision (d) if the
24 complaint was originally filed with the Attorney General.

25 (d) An action for a violation of subdivision (a) shall be brought
26 against the employer by the district attorney in the county where
27 the unauthorized alien employee is or was employed by the
28 employer. A second violation shall be based only on the
29 employment of an unauthorized alien by the employer after a prior
30 action has been brought against that employer for a violation of
31 subdivision (a) or Section 1550.

32 (e) For any action in superior court under this section, the court
33 shall expedite the action, including holding the hearing at the
34 earliest practicable date.

35 (f) On a finding of a violation of subdivision (a) the following
36 shall apply:

37 (1) For a first violation, as described in paragraph (3), the court
38 shall:

39 (A) Order the employer to terminate the employment of all
40 unauthorized aliens.

1 (B) Order the employer to be subject to a five-year probationary
2 period for the business location where the unauthorized alien
3 performed work. During the probationary period the employer
4 shall file with the quarterly reports district attorney containing the
5 information obtained from the I-9 form of each new employee
6 who is hired by the employer at the business location where the
7 unauthorized alien performed work.

8 (C) Order the appropriate agencies to suspend all licenses
9 described in subparagraph (D) that are held by the employer for a
10 minimum of 10 days. The court shall base its decision to suspend
11 under this subdivision on any evidence or information submitted
12 to it during the action for a violation of this subdivision and shall
13 consider the following factors, if relevant:

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

16 (ii) Any prior misconduct by the employer.

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

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

20 (v) The duration of the violation.

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

23 (vii) Any other factors the court deems appropriate.

24 (D) Order the employer to file a signed sworn affidavit with the
25 district attorney. The affidavit shall state that the employer has
26 terminated the employment of all unauthorized aliens in this state
27 and that the employer will not intentionally or knowingly employ
28 an unauthorized alien in this state. The court shall order the
29 appropriate agencies to suspend all licenses subject to this
30 subdivision that are held by the employer if the employer fails to
31 file a signed sworn affidavit with the district attorney within three
32 business days after the order is issued. All licenses that are
33 suspended under this subdivision for failing to file a signed sworn
34 affidavit shall remain suspended until the employer files a signed
35 sworn affidavit with the district attorney. For the purposes of this
36 subdivision, the licenses that are subject to suspension pursuant
37 to this subdivision are all licenses that are held by the employer
38 specific to the business location where the unauthorized alien
39 performed work. If the employer does not hold a license specific
40 to the business location where the unauthorized alien performed

1 work, but a license is necessary to operate the employer's business
2 in general, the licenses that are held by the employer at the
3 employer's primary place of business. On receipt of the court's
4 order and notwithstanding any other law, the appropriate agencies
5 shall suspend the licenses according to the court's order. The court
6 shall send a copy of the court's order to the Attorney General and
7 the Attorney General shall maintain the copy pursuant to
8 subdivision (g).

9 (2) For a second violation, as described in paragraph (3), the
10 court shall order the appropriate agencies to permanently revoke
11 all licenses that are held by the employer specific to the business
12 location where the unauthorized alien performed work. If the
13 employer does not hold a license specific to the business location
14 where the unauthorized alien performed work, but a license is
15 necessary to operate the employer's business in general, the court
16 shall order the appropriate agencies to permanently revoke all
17 licenses that are held by the employer at the employer's primary
18 place of business. On receipt of the order and notwithstanding any
19 other law, the appropriate agencies shall immediately revoke the
20 licenses.

21 (3) The violation shall be considered:

22 (A) A first violation by an employer at a business location if
23 the violation did not occur during a probationary period ordered
24 by the court under this subdivision or Section 1550 for that
25 employer's business location.

26 (B) A second violation by an employer at a business location
27 if the violation occurred during a probationary period ordered by
28 the court under this subdivision or Section 1550 for that employer's
29 business location.

30 (g) The Attorney General shall maintain copies of court orders
31 that are received pursuant to subdivision (f) and shall maintain a
32 database of the employers and business locations that have a first
33 violation of subdivision (a) and make the court orders available
34 on the Attorney General's Internet Web site.

35 (h) On determining whether an employee is an unauthorized
36 alien, the court shall consider only the federal government's
37 determination pursuant to Section 1373(c) of Title 8 of the United
38 States Code. The federal government's determination creates a
39 rebuttable presumption of the employee's lawful status. The court
40 may take judicial notice of the federal government's determination

1 and may request the federal government to provide automated or
2 testimonial verification pursuant to Section 1373(c) of Title 8 of
3 the United States Code.

4 (i) For the purposes of this section, proof of verifying the
5 employment authorization of an employee through the federal
6 E-Verify program creates a rebuttable presumption that an
7 employer did not intentionally employ the unauthorized alien.

8 (j) For the purposes of this section, an employer that establishes
9 that it has complied in good faith with the requirements of Section
10 1324a(b) of Title 8 of the United States Code establishes an
11 affirmative defense that the employer did not intentionally employ
12 an unauthorized alien. An employer is considered to have complied
13 with the requirements of Section 1324a(b) of Title 8 of the United
14 States Code, notwithstanding an isolated, sporadic, or accidental
15 technical or procedural failure to meet the requirements, if there
16 is a good faith attempt to comply with the requirements.

17 (k) It is an affirmative defense to a violation of subdivision (a)
18 that the employer was entrapped. To claim entrapment, the
19 employer must admit by the employer's testimony or other
20 evidence the substantial elements of the violation. An employer
21 that asserts an entrapment defense has the burden of proving the
22 following by clear and convincing evidence:

23 (1) The idea of committing the violation started with law
24 enforcement officers or their agents rather than with the employer.

25 (2) The law enforcement officers or their agents urged and
26 induced the employer to commit the violation.

27 (3) The employer was not predisposed to commit the violation
28 before the law enforcement officers or their agents urged and
29 induced the employer to commit the violation.

30 (l) An employer does not establish entrapment if the employer
31 was predisposed to violate subdivision (a) and the law enforcement
32 officers or their agents merely provided the employer with an
33 opportunity to commit the violation. It is not entrapment for law
34 enforcement officers or their agents merely to use a ruse or to
35 conceal their identity. The conduct of law enforcement officers
36 and their agents may be considered in determining if an employer
37 has proven entrapment.

38 1560. (a) Every employer, after hiring an employee, shall
39 verify the employment eligibility of the employee through the
40 federal E-Verify program and shall keep a record of the verification

1 for the duration of the employee’s employment or at least three
2 years, whichever is longer.

3 (b) In addition to any other requirement for an employer to
4 receive an economic development incentive from any state or local
5 government entity, the employer shall register with and participate
6 in the federal E-Verify program. Before receiving the economic
7 development incentive, the employer shall provide proof to the
8 government entity that the employer is registered with and is
9 participating in the federal E-Verify program. If the government
10 entity determines that the employer is not complying with this
11 subdivision, the government entity shall notify the employer by
12 certified mail of the government entity’s determination of
13 noncompliance and the employer’s right to appeal the
14 determination. On a final determination of noncompliance, the
15 employer shall repay all moneys received as an economic
16 development incentive to the government entity within thirty days
17 of the final determination.

18 (c) Every three months the Attorney General shall request from
19 the United States Department of Homeland Security a list of
20 employers from this state that are registered with the federal
21 E-Verify program. On receipt of the list of employers, the Attorney
22 General shall make the list available on the Attorney General’s
23 Internet Web site.

24 (d) For purposes of this section, “economic development
25 incentive” means any grant, loan, or performance-based incentive
26 from any state or local government entity.

27 (e) For purposes of this section, “government entity” means any
28 state or local entity of this state that receives and uses tax revenues.

29 (f) For purposes of this part, “unauthorized alien” means an
30 alien who does not have the legal right or authorization under
31 federal law to work in the United States as described in Section
32 1324a(h)(3) of Title 8 of the United States Code.

33 SEC. 5. Section 653.65 is added to the Penal Code, to read:

34 653.65. (a) In addition to any violation of federal law, a person
35 is guilty of trespassing if both of the following conditions exist:

36 (1) The person is present on any public or private land in this
37 state.

38 (2) The person is in violation of Section 1304(e) or 1306(a) of
39 Title 8 of the United States Code.

1 (b) In the enforcement of this section, the final determination
2 of an alien's immigration status shall be determined by either of
3 the following:

4 (1) A law enforcement officer who is authorized by the federal
5 government to verify or ascertain an alien's immigration status.

6 (2) A law enforcement officer or agency communicating with
7 the United States Immigration and Customs Enforcement or the
8 United States Customs and Border Protection pursuant to Section
9 1373(c) of Title 8 of the United States Code.

10 (c) A person who is sentenced pursuant to this section is not
11 eligible for suspension or commutation of sentence or release on
12 any basis until the sentence imposed is served.

13 (d) In addition to any other penalty prescribed by law, the court
14 shall order the person to pay jail costs and an additional assessment
15 in one of the following amounts:

16 (1) At least five hundred dollars (\$500) for a first violation.

17 (2) Twice the amount specified in paragraph (1) if the person
18 was previously subject to an assessment pursuant to this
19 subdivision.

20 (e) A court shall collect the assessments prescribed in
21 subdivision (d) and remit the assessments to the Department of
22 Justice, which shall establish a special subaccount for these moneys
23 in the Gang and Immigration Intelligence Team Enforcement
24 Mission Fund. Moneys in the special subaccount shall, upon
25 appropriation, be used for gang and immigration enforcement and
26 for county jail reimbursement costs relating to illegal immigration.

27 (f) This section does not apply to a person who maintains
28 authorization from the federal government to remain in the United
29 States.

30 (g) Except as provided in paragraphs (1) and (2) below, a
31 violation of this section is a misdemeanor punishable by
32 imprisonment in a county jail not exceeding one year.

33 (1) A violation of this section is a felony punishable by
34 imprisonment in the state prison for three, four, or five years if the
35 person violates this section while in possession of any of the
36 following:

37 (A) A dangerous drug that is listed in either Section 11054 or
38 11055 of the Health and Safety Code.

1 (B) Precursor chemicals that are used in the manufacturing of
2 methamphetamine in violation of Section 11383.5 of the Health
3 and Safety Code.

4 (C) A weapon designed for lethal use, including a firearm or
5 any instrument that under the circumstances in which it is used,
6 attempted to be used, or threatened to be used is readily capable
7 of causing death or serious physical injury.

8 (D) Property that is used for the purpose of committing an act
9 of terrorism.

10 (2) A violation of this section is a felony punishable by
11 imprisonment in the state prison for two, three, or four years if
12 either of the following conditions exist:

13 (A) The person is convicted of a second or subsequent violation
14 of this section.

15 (B) The person, within 60 months before the violation, has been
16 removed from the United States pursuant to Section 1229(a) of
17 Title 8 of the United States Code or has accepted a voluntary
18 removal from the United States pursuant to Section 1229(c) of
19 Title 8 of the United States Code.

20 SEC. 6. Section 653.67 is added to the Penal Code, to read:

21 653.67. (a) Except as provided in subdivisions (b) and (c), it
22 is a felony punishable by imprisonment in the state prison for 16
23 months or 2 or 3 years for a person to intentionally engage in the
24 smuggling of a human being for profit or commercial purpose.

25 (b) It is a felony punishable by imprisonment in the state prison
26 for five, seven, or 10 years if the human being who is smuggled
27 is under 18 years of age and is not accompanied by a family
28 member over 18 years of age or the offense involved the use of a
29 weapon as described in subparagraph (C) of paragraph (1) of
30 subdivision (g) of Section 653.65.

31 (c) It is a felony punishable by imprisonment in the state prison
32 for three, five, or seven years if the offense involves the use or
33 threatened use of deadly physical force, and the defendant shall
34 not be eligible for suspension of sentence, probation, pardon, or
35 release from confinement on any other basis except for participation
36 in a work release program until the sentence imposed by the court
37 is served or the sentence is commuted.

38 (d) It is a felony punishable by life in prison for any person to
39 violate subdivision (a) by smuggling a minor into or through this
40 state for the purpose of sexual slavery.

1 (e) Any person who violates this section, and during the course
2 of that violation, commits an offense listed in subdivision (c) of
3 Section 667.61 shall receive an additional sentence of 10 years
4 imprisonment in the state prison for the violation of this section,
5 and the sentence under this section shall be consecutive to any
6 sentence for the offense listed in subdivision (c) of Section 667.61.

7 (f) Notwithstanding any other law, a peace officer may lawfully
8 stop any person who is operating a motor vehicle if the officer has
9 reasonable suspicion to believe the person is in violation of any
10 civil traffic law and this section.

11 (g) For purposes of this section, “family member” means a
12 person’s parent, grandparent, sibling, or any other person who is
13 related to the person by consanguinity or affinity to the second
14 degree.

15 (h) For purposes of this section, “procurement of transportation”
16 means any participation in or facilitation of transportation,
17 including, but not limited to, all of the following:

18 (1) Providing services that facilitate transportation including
19 travel arrangement services or money transmission services.

20 (2) Providing property that facilitates transportation, including,
21 but not limited to, any weapon, vehicle, or other means of
22 transportation or false identification, or the selling, leasing, renting,
23 or otherwise making available a drop house.

24 (i) For purposes of this section, “smuggling of a human being”
25 means the transportation, procurement of transportation, or use of
26 property or real property by a person or an entity that knows or
27 has reason to know that the person or persons transported or to be
28 transported are not United States citizens, permanent resident
29 aliens, or persons otherwise lawfully in this state or have attempted
30 to enter, entered, or remained in the United States in violation of
31 law.

32 (j) For purposes of this section, “drop house” means property
33 or real property that is used to facilitate the smuggling of a human
34 being.

35 SEC. 7. Section 653.69 is added to the Penal Code, to read:

36 653.69. (a) It is a misdemeanor punishable by imprisonment
37 in a county jail not exceeding one year for an occupant of a motor
38 vehicle that is stopped on a street, roadway, or highway to attempt
39 to hire or hire and pick up passengers for work at a different

1 location if the motor vehicle blocks or impedes the normal
2 movement of traffic.

3 (b) It is a misdemeanor punishable by imprisonment in a county
4 jail not exceeding one year for a person to enter a motor vehicle
5 that is stopped on a street, roadway, or highway in order to be hired
6 by an occupant of the motor vehicle and to be transported to work
7 at a different location if the motor vehicle blocks or impedes the
8 normal movement of traffic.

9 (c) It is misdemeanor punishable by imprisonment in a county
10 jail not exceeding one year for a person who is unlawfully present
11 in the United States and who is an unauthorized alien to knowingly
12 apply for work, solicit work in a public place, or perform work as
13 an employee or independent contractor in this state.

14 (d) For purposes of this section, “solicit” means verbal or
15 nonverbal communication by a gesture or a nod that would indicate
16 to a reasonable person that a person is willing to be employed.

17 (e) For purposes of this section, “unauthorized alien” means an
18 alien who does not have the legal right or authorization under
19 federal law to work in the United States as described in Section
20 1324a(h)(3) of Title 8 of the United States Code.

21 SEC. 8. Section 653.71 is added to the Penal Code, to read:

22 653.71. (a) It is a misdemeanor punishable by imprisonment
23 in a county jail not exceeding one year for a person to do any of
24 the following:

25 (1) Transport or move or attempt to transport or move an alien
26 in this state in a means of transportation if the person knows, or
27 recklessly disregards the fact, that the alien has come to, has
28 entered, or remains in the United States in violation of law.

29 (2) Conceal, harbor, or shield or attempt to conceal, harbor, or
30 shield an alien from detection in any place in this state, including,
31 but not limited to, any building or any means of transportation, if
32 the person knows, or recklessly disregards the fact, that the alien
33 has come to, has entered, or remains in the United States in
34 violation of law.

35 (3) Encourage or induce an alien to come to or reside in this
36 state if the person knows, or recklessly disregards the fact, that
37 such coming to, entering, or residing in this state is, or will be, in
38 violation of law.

1 (b) A means of transportation that is used in the commission of
2 a violation of this section is subject to mandatory vehicle
3 immobilization or impoundment pursuant to Section 653.73.

4 (c) A person who violates this section is guilty of a misdemeanor
5 punishable by imprisonment in a county jail not exceeding one
6 year and is subject to a fine of at least one thousand dollars
7 (\$1,000), except that a violation of this section that involves ten
8 or more illegal aliens is a felony punishable in the state prison and
9 the person is subject to a fine of at least one thousand dollars
10 (\$1,000) for each illegal alien who is involved.

11 SEC. 9. Section 653.73 is added to the Penal Code, to read:
12 653.73. A peace officer shall cause the removal and either
13 immobilization or impoundment of a vehicle for a period of up to
14 30 days pursuant to procedures specified in Section 22659.5 of
15 the Vehicle Code if the peace officer determines that a person is
16 driving the vehicle while the person is unlawfully transporting,
17 moving, concealing, harboring, or shielding or attempting to
18 transport, move, conceal, harbor, or shield an illegal alien in this
19 state in a vehicle if the person knows or recklessly disregards the
20 fact that the illegal alien has come to, has entered, or remains in
21 the United States in violation of law.

22 SEC. 10. Section 653.74 is added to the Penal Code, to read:
23 653.74. The Gang and Immigration Intelligence Team
24 Enforcement Mission Fund is hereby established. The fund shall
25 consist of moneys deposited pursuant to Section 653.65 and
26 moneys appropriated by the Legislature. The Department of Justice
27 shall administer the fund. Moneys in the fund shall, upon
28 appropriation, be used for gang and immigration enforcement and
29 for county jail reimbursement costs relating to illegal immigration.

30 SEC. 11. If a provision of this act or its application to any
31 person or circumstance is held invalid, the invalidity does not affect
32 other provisions or applications of the act that can be given effect
33 without the invalid provision or application, and to this end the
34 provisions of this act are severable.

35 SEC. 12. The terms of this act regarding immigration shall be
36 construed to have the meanings given to them under federal
37 immigration law.

38 SEC. 13. This act shall be implemented in a manner consistent
39 with federal laws regulating immigration, protecting the civil rights

1 of all persons, and respecting the privileges and immunities of
2 United States citizens.

3 SEC. 14. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution for certain
5 costs that may be incurred by a local agency or school district
6 because, in that regard, this act creates a new crime or infraction,
7 eliminates a crime or infraction, or changes the penalty for a crime
8 or infraction, within the meaning of Section 17556 of the
9 Government Code, or changes the definition of a crime within the
10 meaning of Section 6 of Article XIII B of the California
11 Constitution.

12 However, if the Commission on State Mandates determines that
13 this act contains other costs mandated by the state, reimbursement
14 to local agencies and school districts for those costs shall be made
15 pursuant to Part 7 (commencing with Section 17500) of Division
16 4 of Title 2 of the Government Code.