

House Bill 2802

Sponsored by Representative THATCHER (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits restrictions on public body's ability to enforce immigration law to extent permitted by federal law. Authorizes legal resident to bring civil action against public body that violates prohibition.

Requires peace officer to make reasonable attempt to determine immigration status of person stopped or arrested for crime. Requires county to verify immigration status of person incarcerated in county correctional facility. Authorizes law enforcement agencies to enter into agreement with federal government for purposes of enforcing immigration law.

Creates crime of failure to carry an alien registration document. Punishes by maximum of 30 days' imprisonment, \$1,250 fine, or both.

Creates crime of smuggling. Punishes by maximum of 10 years' imprisonment, \$250,000 fine, or both.

Prohibits certain conduct related to employment of unauthorized aliens. Punishes by maximum of six months' imprisonment, \$2,500 fine, or both.

Creates crime of encouraging unlawful immigration. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Requires employers to verify immigration status of employees hired after January 1, 2012. Prohibits intentionally or knowingly hiring unauthorized alien. Authorizes Attorney General or district attorney to investigate violations. Suspends or revokes business licenses of violators under certain circumstances.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to aliens; creating new provisions; amending ORS 131.602, 161.005, 181.850 and 423.497; and
3 declaring an emergency.

4 Whereas the Legislative Assembly finds that there is a compelling interest in the cooperative
5 enforcement of federal immigration laws throughout this state; and

6 Whereas the Legislative Assembly declares that the intent of this Act is to make attrition
7 through enforcement the public policy of all state and local government agencies in this state; and

8 Whereas the provisions of this Act are intended to work together to discourage and deter the
9 unlawful entry and presence of aliens and economic activity by persons unlawfully present in the
10 United States; now, therefore,

11 **Be It Enacted by the People of the State of Oregon:**

12 **SECTION 1. (1) A public body may not adopt laws, policies or procedures or take any**
13 **other action that limits or restricts the ability of the public body to:**

14 **(a) Send, receive or maintain information relating to a person's immigration status;**

15 **(b) Exchange information related to a person's immigration status with any other gov-**
16 **ernmental entity; or**

17 **(c) Enforce federal immigration laws to less than the extent permitted by federal law.**

18 **(2) A person who is a legal resident of this state may bring an action in circuit court to**
19 **challenge any public body that violates subsection (1) of this section. If the court finds that**
20 **a public body has violated subsection (1) of this section, the court shall order the public body**
21 **to pay a penalty of not less than \$500 and not more than \$5,000 for each day after the action**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **is filed that the public body violates subsection (1) of this section.**

2 **(3) The court may award costs and reasonable attorneys fees to any person or public body**
 3 **that prevails in an action filed under subsection (2) of this section.**

4 **(4) As used in this section, “public body” has the meaning given that term in ORS 174.109.**

5 **SECTION 2.** ORS 181.850 is amended to read:

6 181.850. (1) [No] **In addition to any other authority provided by law, a law enforcement**
 7 **agency of the State of Oregon or of any political subdivision of the state [shall use agency moneys,**
 8 **equipment or personnel for the purpose of detecting or apprehending persons whose only violation of**
 9 **law is that they are persons of foreign citizenship present in the United States in violation of federal**
 10 **immigration laws.] may:**

11 **(a) Enter into a written agreement with the Attorney General of the United States under**
 12 **8 U.S.C. 1357(g) that authorizes the officers or employees of the agency to perform the**
 13 **functions of an immigration officer; and**

14 **(b) Enter into a cooperative agreement with the federal government under 8 U.S.C.**
 15 **1103(c) for the purpose of assisting in the enforcement of immigration laws.**

16 (2) [Notwithstanding subsection (1) of this section, a law enforcement agency] **A public body as**
 17 **defined in ORS 174.109 may exchange information with the United States Bureau of Immigration**
 18 **and Customs Enforcement, the United States Bureau of Citizenship and Immigration Services and**
 19 **the United States Bureau of Customs and Border Protection [in order to:] for the following official**
 20 **purposes:**

21 **(a) Determining eligibility for any public benefit, service or license provided by any fed-**
 22 **eral, state or local government.**

23 **(b) Verifying any claim of residence or domicile, if determination of residence or domicile**
 24 **is required under the laws of this state or a court order.**

25 **(c) Determining whether an alien is in compliance with the federal registration laws**
 26 **prescribed by Title II, chapter 7 of the federal Immigration and Nationality Act.**

27 **(d) Pursuant to 8 U.S.C. 1373 and 8 U.S.C. 1644.**

28 **(e) Any other lawful purpose specifically authorized under federal or state law.**

29 **(3) When ORS 423.497 or section 3, 5, 6, 8 or 9 of this 2011 Act requires the verification**
 30 **of a person’s immigration status, verification shall be conducted in accordance with this**
 31 **section or pursuant to 8 U.S.C. 1373(c).**

32 [(a) Verify the immigration status of a person if the person is arrested for any criminal offense;
 33 or]

34 [(b) Request criminal investigation information with reference to persons named in records of the
 35 United States Bureau of Immigration and Customs Enforcement, the United States Bureau of Citizen-
 36 ship and Immigration Services or the United States Bureau of Customs and Border Protection].

37 [(3) Notwithstanding subsection (1) of this section, a law enforcement agency may arrest any person
 38 who:]

39 [(a) Is charged by the United States with a criminal violation of federal immigration laws under
 40 Title II of the Immigration and Nationality Act or 18 U.S.C. 1015, 1422 to 1429 or 1505; and]

41 [(b) Is subject to arrest for the crime pursuant to a warrant of arrest issued by a federal
 42 magistrate.]

43 [(4) For purposes of subsection (1) of this section, the Bureau of Labor and Industries is not a law
 44 enforcement agency.]

45 [(5) As used in this section, “warrant of arrest” has the meaning given that term in ORS

1 131.005.]

2 **SECTION 3. (1) A peace officer shall make a reasonable attempt to determine a person's**
 3 **immigration status when the peace officer:**

4 (a) **Conducts a stop or arrests a person; and**

5 (b) **Has reasonable suspicion to believe that the person is an alien who is unlawfully**
 6 **present in the United States.**

7 (2) **A peace officer need not comply with subsection (1) of this section if the determi-**
 8 **nation would hinder or obstruct an investigation.**

9 (3) **A person is presumed to be lawfully present in the United States if the person pro-**
 10 **vides the peace officer:**

11 (a) **An Oregon driver license;**

12 (b) **An Oregon identification card;**

13 (c) **A valid tribal enrollment card or other form of tribal identification; or**

14 (d) **Any other government-issued identification, if the government requires proof of legal**
 15 **presence in the United States before issuing the identification.**

16 (4) **As used in this section:**

17 (a) **"Arrest" has the meaning given that term in ORS 133.005.**

18 (b) **"Peace officer" has the meaning given that term in ORS 133.005.**

19 (c) **"Stop" has the meaning given that term in ORS 131.605.**

20 **SECTION 4. ORS 423.497 is amended to read:**

21 423.497. (1) **During the intake process, each county shall conduct a national criminal history**
 22 **check on every person incarcerated in the county correctional facility. The national criminal**
 23 **history check must include verification of the person's immigration status.**

24 (2) **The county shall develop policies and procedures to ensure that the results of the national**
 25 **criminal history check are received before an inmate is released.**

26 (3) **The state shall reimburse each county for the costs of conducting the national criminal his-**
 27 **tory checks.**

28 **SECTION 5. (1) When an alien who is unlawfully present in the United States is convicted**
 29 **of a crime and sentenced to a term of incarceration, the Department of Corrections or, if**
 30 **the person is sentenced to a term of incarceration of 12 months or less, the county sheriff**
 31 **shall notify the United States Bureau of Customs and Border Protection immediately upon**
 32 **the person's discharge.**

33 (2) **When an alien who is unlawfully present in the United States is convicted of a crime**
 34 **and is not sentenced to a term of incarceration or is convicted of a violation, the district**
 35 **attorney of the county in which the person is convicted shall notify the United States Bureau**
 36 **of Customs and Border Protection immediately after the person is sentenced.**

37 (3) **If a law enforcement agency or the Department of Corrections receives verification**
 38 **that a person is an alien who is unlawfully present in the United States, the agency or de-**
 39 **partment may, upon completion of the person's sentence, securely transport the person to**
 40 **a federal facility in this state or, with judicial authorization, to any other point of transfer**
 41 **into federal custody that is outside this state.**

42 **SECTION 6. (1) A person commits the crime of failing to complete or carry an alien**
 43 **registration document if the person violates 8 U.S.C. 1304(e) or 1306(a).**

44 (2) **Failing to complete or carry an alien registration document is a Class C misdemeanor.**

45 (3) **A person sentenced under this section may not be granted time credit for good be-**

1 **havior under ORS 169.110.**

2 (4) **This section does not apply to a person who maintains authorization from the federal**
3 **government to remain in the United States.**

4 **SECTION 7. (1) A person commits the crime of smuggling if the person intentionally**
5 **engages in the smuggling of human beings for profit or commercial purpose.**

6 (2)(a) **Smuggling is a Class C felony.**

7 (b) **Notwithstanding paragraph (a) of this subsection, smuggling is a Class B felony if:**

8 (A) **The offense involved the use or threatened use of a dangerous or deadly weapon; or**

9 (B) **If the person smuggled is under 18 years of age and is not accompanied by a family**
10 **member who is 18 years of age or older.**

11 (3) **A person sentenced under this section shall serve the entire sentence imposed by the**
12 **court and is not eligible for a reduction in sentence under ORS 169.110 or 421.121.**

13 (4) **As used in this section:**

14 (a) **“Family member” means a parent, grandparent, sibling or any other person who is**
15 **related by consanguinity or affinity to the second degree.**

16 (b) **“Procurement of transportation” means the participation in or facilitation of trans-**
17 **portation and includes:**

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

20 (B) **Providing property that facilitates transportation, including a weapon, false identifi-**
21 **cation, vehicle or lodging.**

22 (c) **“Smuggling of human beings” means the transportation or procurement of transpor-**
23 **tation or the use of property to assist in transportation by a person that knows or has rea-**
24 **son to know that the person transported:**

25 (A) **Is not a United States citizen, permanent resident alien or other person who is law-**
26 **fully present in this state; or**

27 (B) **Is attempting to enter or has entered or remained in the United States in violation**
28 **of the law.**

29 **SECTION 8. (1) It is unlawful for an occupant of a motor vehicle that is stopped on a**
30 **public highway to hire and transport passengers for work at another location if the motor**
31 **vehicle blocks or impedes the normal movement of traffic.**

32 (2) **It is unlawful for a person to enter a motor vehicle that is stopped on a public high-**
33 **way for the purpose of being hired and transported to work at another location if the motor**
34 **vehicle stops or impedes the normal movement of traffic.**

35 (3) **It is unlawful for a person who is unlawfully present in the United States and who is**
36 **an unauthorized alien to knowingly apply for or solicit work in a public place or perform**
37 **work as an employee or independent contractor in this state.**

38 (4) **Violation of this section is a Class B misdemeanor.**

39 (5) **As used in this section, “unauthorized alien” means an alien who does not have the**
40 **legal right or authorization to work in the United States as described in 8 U.S.C. 1324a(h)(3).**

41 **SECTION 9. (1) A person commits the crime of encouraging unlawful immigration if the**
42 **person knows or reasonably should know that an alien is unlawfully present in the United**
43 **States and with the intent to prevent detection of the alien by law enforcement, the person:**

44 (a) **Transports, moves, conceals, harbors or shields the alien; or**

45 (b) **Induces the alien to reside in this state.**

1 **(2)(a) Encouraging unlawful immigration is a Class A misdemeanor.**

2 **(b) Notwithstanding paragraph (a) of this subsection, encouraging unlawful immigration**
3 **is a Class C felony if the violation involves 10 or more aliens.**

4 **(3) This section does not apply to:**

5 **(a) An employee of the Department of Human Services or Oregon Health Authority act-**
6 **ing in the course of official duties; or**

7 **(b) A person employed as an emergency medical technician or other first responder act-**
8 **ing in the course of official duties.**

9 **(4) When a person is convicted of violating this section, the court shall impose a fine of**
10 **at least \$1,000 unless the offense involves 10 or more aliens, in which case the court shall**
11 **impose a fine of at least \$1,000 per alien.**

12 **SECTION 10.** ORS 161.005 is amended to read:

13 161.005. ORS 161.005 to 161.055, 161.085 to 161.125, 161.150 to 161.175, 161.190 to 161.275, 161.290
14 to 161.370, 161.405 to 161.485, 161.505 to 161.585, 161.605, 161.615 to 161.685, 161.705 to 161.737,
15 162.005, 162.015 to 162.035, 162.055 to 162.115, 162.135 to 162.205, 162.225 to 162.375, 162.405 to
16 162.425, 162.465, 163.005, 163.115, 163.125 to 163.145, 163.149, 163.160 to 163.208, 163.196, 163.215 to
17 163.257, 163.261, 163.263, 163.264, 163.266, 163.275, 163.285, 163.305 to 163.467, 163.432, 163.433,
18 163.505 to 163.575, 163.665 to 163.693, 164.005, 164.015 to 164.135, 164.138, 164.140, 164.205 to 164.270,
19 164.305 to 164.377, 164.395 to 164.415, 164.805, 164.857, 164.886, 165.002 to 165.102, 165.109, 165.118,
20 165.805, 166.005 to 166.095, 166.350, 166.382, 166.384, 166.660, 167.002 to 167.027, 167.054, 167.057,
21 167.060 to 167.100, 167.117, 167.122 to 167.162, 167.203 to 167.252, 167.310 to 167.340 and 167.350,
22 167.810 and 167.820 **and sections 6, 7, 8 and 9 of this 2011 Act** shall be known and may be cited
23 as Oregon Criminal Code of 1971.

24 **SECTION 11.** ORS 131.602 is amended to read:

25 131.602. The crimes to which ORS 131.550 (12)(b) applies are:

26 (1) Bribe giving, as defined in ORS 162.015.

27 (2) Bribe receiving, as defined in ORS 162.025.

28 (3) Public investment fraud, as defined in ORS 162.117.

29 (4) Bribing a witness, as defined in ORS 162.265.

30 (5) Bribe receiving by a witness, as defined in ORS 162.275.

31 (6) Simulating legal process, as defined in ORS 162.355.

32 (7) Official misconduct in the first degree, as defined in ORS 162.415.

33 (8) Custodial interference in the second degree, as defined in ORS 163.245.

34 (9) Custodial interference in the first degree, as defined in ORS 163.257.

35 (10) Buying or selling a person under 18 years of age, as defined in ORS 163.537.

36 (11) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670.

37 (12) Encouraging child sexual abuse in the first degree, as defined in ORS 163.684.

38 (13) Encouraging child sexual abuse in the second degree, as defined in ORS 163.686.

39 (14) Encouraging child sexual abuse in the third degree, as defined in ORS 163.687.

40 (15) Possession of materials depicting sexually explicit conduct of a child in the first degree, as
41 defined in ORS 163.688.

42 (16) Possession of materials depicting sexually explicit conduct of a child in the second degree,
43 as defined in ORS 163.689.

44 (17) Theft in the second degree, as defined in ORS 164.045.

45 (18) Theft in the first degree, as defined in ORS 164.055.

- 1 (19) Aggravated theft in the first degree, as defined in ORS 164.057.
- 2 (20) Theft by extortion, as defined in ORS 164.075.
- 3 (21) Theft by deception, as defined in ORS 164.085, if it is a felony or a Class A misdemeanor.
- 4 (22) Theft by receiving, as defined in ORS 164.095, if it is a felony or a Class A misdemeanor.
- 5 (23) Theft of services, as defined in ORS 164.125, if it is a felony or a Class A misdemeanor.
- 6 (24) Unauthorized use of a vehicle, as defined in ORS 164.135.
- 7 (25) Mail theft or receipt of stolen mail, as defined in ORS 164.162.
- 8 (26) Laundering a monetary instrument, as defined in ORS 164.170.
- 9 (27) Engaging in a financial transaction in property derived from unlawful activity, as defined
- 10 in ORS 164.172.
- 11 (28) Burglary in the second degree, as defined in ORS 164.215.
- 12 (29) Burglary in the first degree, as defined in ORS 164.225.
- 13 (30) Possession of a burglary tool or theft device, as defined in ORS 164.235.
- 14 (31) Unlawful entry into a motor vehicle, as defined in ORS 164.272.
- 15 (32) Arson in the second degree, as defined in ORS 164.315.
- 16 (33) Arson in the first degree, as defined in ORS 164.325.
- 17 (34) Computer crime, as defined in ORS 164.377.
- 18 (35) Robbery in the third degree, as defined in ORS 164.395.
- 19 (36) Robbery in the second degree, as defined in ORS 164.405.
- 20 (37) Robbery in the first degree, as defined in ORS 164.415.
- 21 (38) Unlawful labeling of a sound recording, as defined in ORS 164.868.
- 22 (39) Unlawful recording of a live performance, as defined in ORS 164.869.
- 23 (40) Unlawful labeling of a videotape recording, as defined in ORS 164.872.
- 24 (41) A violation of ORS 164.886.
- 25 (42)(a) Endangering aircraft in the first degree, as defined in ORS 164.885.
- 26 (b) Endangering aircraft in the second degree, as defined in ORS 164.885.
- 27 (43) Interference with agricultural operations, as defined in ORS 164.887.
- 28 (44) Forgery in the second degree, as defined in ORS 165.007.
- 29 (45) Forgery in the first degree, as defined in ORS 165.013.
- 30 (46) Criminal possession of a forged instrument in the second degree, as defined in ORS 165.017.
- 31 (47) Criminal possession of a forged instrument in the first degree, as defined in ORS 165.022.
- 32 (48) Criminal possession of a forgery device, as defined in ORS 165.032.
- 33 (49) Criminal simulation, as defined in ORS 165.037.
- 34 (50) Fraudulently obtaining a signature, as defined in ORS 165.042.
- 35 (51) Fraudulent use of a credit card, as defined in ORS 165.055.
- 36 (52) Negotiating a bad check, as defined in ORS 165.065.
- 37 (53) Possessing a fraudulent communications device, as defined in ORS 165.070.
- 38 (54) Unlawful factoring of a payment card transaction, as defined in ORS 165.074.
- 39 (55) Falsifying business records, as defined in ORS 165.080.
- 40 (56) Sports bribery, as defined in ORS 165.085.
- 41 (57) Sports bribe receiving, as defined in ORS 165.090.
- 42 (58) Misapplication of entrusted property, as defined in ORS 165.095.
- 43 (59) Issuing a false financial statement, as defined in ORS 165.100.
- 44 (60) Obtaining execution of documents by deception, as defined in ORS 165.102.
- 45 (61) A violation of ORS 165.543.

- 1 (62) Cellular counterfeiting in the third degree, as defined in ORS 165.577.
- 2 (63) Cellular counterfeiting in the second degree, as defined in ORS 165.579.
- 3 (64) Cellular counterfeiting in the first degree, as defined in ORS 165.581.
- 4 (65) Identity theft, as defined in ORS 165.800.
- 5 (66) A violation of ORS 166.190.
- 6 (67) Unlawful use of a weapon, as defined in ORS 166.220.
- 7 (68) A violation of ORS 166.240.
- 8 (69) Unlawful possession of a firearm, as defined in ORS 166.250.
- 9 (70) A violation of ORS 166.270.
- 10 (71) Unlawful possession of a machine gun, short-barreled rifle, short-barreled shotgun or
- 11 firearms silencer, as defined in ORS 166.272.
- 12 (72) A violation of ORS 166.275.
- 13 (73) Unlawful possession of armor piercing ammunition, as defined in ORS 166.350.
- 14 (74) A violation of ORS 166.370.
- 15 (75) Unlawful possession of a destructive device, as defined in ORS 166.382.
- 16 (76) Unlawful manufacture of a destructive device, as defined in ORS 166.384.
- 17 (77) Possession of a hoax destructive device, as defined in ORS 166.385.
- 18 (78) A violation of ORS 166.410.
- 19 (79) Providing false information in connection with a transfer of a firearm, as defined in ORS
- 20 166.416.
- 21 (80) Improperly transferring a firearm, as defined in ORS 166.418.
- 22 (81) Unlawfully purchasing a firearm, as defined in ORS 166.425.
- 23 (82) A violation of ORS 166.429.
- 24 (83) A violation of ORS 166.470.
- 25 (84) A violation of ORS 166.480.
- 26 (85) A violation of ORS 166.635.
- 27 (86) A violation of ORS 166.638.
- 28 (87) Unlawful paramilitary activity, as defined in ORS 166.660.
- 29 (88) A violation of ORS 166.720.
- 30 (89) Prostitution, as defined in ORS 167.007.
- 31 (90) Promoting prostitution, as defined in ORS 167.012.
- 32 (91) Compelling prostitution, as defined in ORS 167.017.
- 33 (92) Exhibiting an obscene performance to a minor, as defined in ORS 167.075.
- 34 (93) Unlawful gambling in the second degree, as defined in ORS 167.122.
- 35 (94) Unlawful gambling in the first degree, as defined in ORS 167.127.
- 36 (95) Possession of gambling records in the second degree, as defined in ORS 167.132.
- 37 (96) Possession of gambling records in the first degree, as defined in ORS 167.137.
- 38 (97) Possession of a gambling device, as defined in ORS 167.147.
- 39 (98) Possession of a gray machine, as defined in ORS 167.164.
- 40 (99) Cheating, as defined in ORS 167.167.
- 41 (100) Tampering with drug records, as defined in ORS 167.212.
- 42 (101) A violation of ORS 167.262.
- 43 (102) Research and animal interference, as defined in ORS 167.312.
- 44 (103) Animal abuse in the first degree, as defined in ORS 167.320.
- 45 (104) Aggravated animal abuse in the first degree, as defined in ORS 167.322.

- 1 (105) Animal neglect in the first degree, as defined in ORS 167.330.
- 2 (106) Interfering with an assistance, a search and rescue or a therapy animal, as defined in ORS
3 167.352.
- 4 (107) Involvement in animal fighting, as defined in ORS 167.355.
- 5 (108) Dogfighting, as defined in ORS 167.365.
- 6 (109) Participation in dogfighting, as defined in ORS 167.370.
- 7 (110) Unauthorized use of a livestock animal, as defined in ORS 167.385.
- 8 (111) Interference with livestock production, as defined in ORS 167.388.
- 9 (112) A violation of ORS 167.390.
- 10 (113) Participation in cockfighting, as defined in ORS 167.431.
- 11 (114) A violation of ORS 471.410.
- 12 (115) Failure to report missing precursor substances, as defined in ORS 475.955.
- 13 (116) Illegally selling drug equipment, as defined in ORS 475.960.
- 14 (117) Providing false information on a precursor substances report, as defined in ORS 475.965.
- 15 (118) Unlawful delivery of an imitation controlled substance, as defined in ORS 475.912.
- 16 (119) A violation of ORS 475.840, if it is a felony or a Class A misdemeanor.
- 17 (120) A violation of ORS 475.914, if it is a felony or a Class A misdemeanor.
- 18 (121) A violation of ORS 475.916.
- 19 (122) A violation of ORS 475.906, if it is a felony or a Class A misdemeanor.
- 20 (123) A violation of ORS 475.904.
- 21 (124) Misuse of an identification card, as defined in ORS 807.430.
- 22 (125) Unlawful production of identification cards, licenses, permits, forms or camera cards, as
23 defined in ORS 807.500.
- 24 (126) Transfer of documents for the purposes of misrepresentation, as defined in ORS 807.510.
- 25 (127) Using an invalid license, as defined in ORS 807.580.
- 26 (128) Permitting misuse of a license, as defined in ORS 807.590.
- 27 (129) Using another's license, as defined in ORS 807.600.
- 28 (130) Criminal driving while suspended or revoked, as defined in ORS 811.182, when it is a fel-
29 ony.
- 30 (131) Driving while under the influence of intoxicants, as defined in ORS 813.010, when it is a
31 felony.
- 32 (132) Unlawful distribution of cigarettes, as defined in ORS 323.482.
- 33 (133) Unlawful distribution of tobacco products, as defined in ORS 323.632.
- 34 (134) A violation of ORS 180.440 (2) or 180.486 (2).
- 35 (135) A violation described in ORS 475.846 to 475.894, if it is a felony.
- 36 (136) Subjecting another person to involuntary servitude in the first degree, as defined in ORS
37 163.264.
- 38 (137) Subjecting another person to involuntary servitude in the second degree, as defined in ORS
39 163.263.
- 40 (138) Trafficking in persons, as defined in ORS 163.266.
- 41 (139) Furnishing sexually explicit material to a child, as defined in ORS 167.054.
- 42 (140) Luring a minor, as defined in ORS 167.057.
- 43 (141) Online sexual corruption of a child in the second degree, as defined in ORS 163.432.
- 44 (142) Online sexual corruption of a child in the first degree, as defined in ORS 163.433.
- 45 **(143) Smuggling as defined in section 7 of this 2011 Act.**

1 (144) A violation of section 8 of this 2011 Act.

2 (145) Encouraging unlawful immigration as defined in section 9 of this 2011 Act.

3 [(143)] (146) An attempt, conspiracy or solicitation to commit a crime in subsections (1) to
4 [(142)] (145) of this section if the attempt, conspiracy or solicitation is a felony or a Class A
5 misdemeanor.

6 **SECTION 12.** As used in sections 12 to 21 of this 2011 Act:

7 (1) "Employee" means any person who performs services or labor for an employer in this
8 state for wages or other remuneration.

9 (2) "Employer" means any individual, organization or entity that:

10 (a) Transacts business in this state;

11 (b) Has a license issued by a public body in this state; and

12 (c) Engages a person to perform services or labor in this state for wages or other
13 remuneration, even though the relationship of the person so engaged may be as an inde-
14 pendent contractor for other purposes.

15 (3) "Employment verification process" means the basic employment verification pilot
16 program as administered by the United States Department of Homeland Security or its suc-
17 cessor program.

18 (4) "Intentionally" has the meaning given that term in ORS 161.085.

19 (5) "Knowingly employ an unauthorized alien" means the actions described in 8 U.S.C.
20 1324a.

21 (6) "License" means a permit, certificate, approval, registration, charter or similar form
22 of authorization that is required by law and that is issued by a public body for the purpose
23 of operating a business in this state. "License" does not include a professional license.

24 (7) "Public body" has the meaning given that term in ORS 174.109.

25 (8) "Unauthorized alien" means an alien who does not have the legal right or authori-
26 zation under federal law to work in the United States as described in 8 U.S.C. 1324a(h)(3).

27 **SECTION 13.** (1) Every employer, after hiring an employee, shall verify the employment
28 eligibility of the employee through the employment verification process. The employer shall
29 keep a record of the verification for the duration of the employee's employment or for three
30 years, whichever is longer.

31 (2) The Attorney General shall, on a quarterly basis, request from the United States
32 Department of Homeland Security a list of employers in this state that are registered with
33 the employment verification process.

34 **SECTION 14.** (1) An employer may not intentionally or knowingly employ an unauthor-
35 ized alien.

36 (2) Upon receipt of a complaint that an employer has violated subsection (1) of this sec-
37 tion, the Attorney General or district attorney shall conduct an investigation.

38 (3) During the investigation, the Attorney General or district attorney shall verify the
39 work authorization of the alleged unauthorized alien with the federal government pursuant
40 to 8 U.S.C. 1373(c).

41 (4) If, after an investigation, the Attorney General or district attorney determines that
42 the complaint received under this section is not frivolous:

43 (a) The Attorney General or district attorney shall notify the United States Bureau of
44 Immigration and Customs Enforcement of the unauthorized alien;

45 (b) The Attorney General or district attorney shall notify the local law enforcement

1 agency of the unauthorized alien; and

2 (c) If the complaint was originally received by the Attorney General, the Attorney Gen-
 3 eral shall notify the district attorney of the unauthorized alien.

4 (5) An action for violation of subsection (1) of this section shall be brought against the
 5 employer by the district attorney in the county where the unauthorized alien is employed.
 6 A second violation of this section may be based only on an unauthorized alien who is em-
 7 ployed by the employer after an action has been brought for a violation of subsection (1) of
 8 this section.

9 (6) For any action brought under this section, the court shall expedite the action, in-
 10 cluding assigning the hearing at the earliest practicable date.

11 **SECTION 15.** (1) If the court finds that an employer has knowingly violated section 14 (1)
 12 of this 2011 Act and the violation is the employer’s first violation committed during a
 13 three-year period, the court shall issue an order requiring that the employer:

14 (a) Terminate the employment of all unauthorized aliens;

15 (b) Be subject to a three-year probationary period during which the employer shall file
 16 quarterly reports with the district attorney for each new employee hired by the employer
 17 at the specific location where the unauthorized alien performed work; and

18 (c) File a signed, sworn affidavit with the court within three business days after the or-
 19 der is issued. The affidavit shall state that the employer has terminated the employment of
 20 all unauthorized aliens and that the employer will not intentionally or knowingly employ an
 21 unauthorized alien.

22 (2) If an employer fails to file a signed, sworn affidavit as required by subsection (1)(c)
 23 of this section, the court shall order the appropriate agencies to suspend all licenses de-
 24 scribed in subsection (4) of this section. On receipt of the court’s order and notwithstanding
 25 any other law, the agencies shall suspend the licenses according to the court’s order.

26 (3) All licenses that are suspended under subsection (2) of this section shall remain sus-
 27 pended until the employer files a signed, sworn affidavit with the district attorney. Upon
 28 filing of the affidavit, the suspended licenses shall be reinstated immediately by the appro-
 29 priate agencies.

30 (4) The licenses that are subject to suspension under this section are all of the licenses
 31 held by the employer that are necessary to operate the employer’s business at the employer’s
 32 business location where the unauthorized alien performed work. If a license is not necessary
 33 to operate the employer’s business at the specific location where the unauthorized alien
 34 performed work, but a license is necessary to operate the employer’s business in general, the
 35 licenses subject to suspension under this section are all of the licenses held by the employer
 36 at the employer’s primary place of business.

37 (5) In addition to the suspension described in subsection (2) of this section and
 38 notwithstanding the filing of an affidavit under subsection (3) of this section, the court may
 39 order the appropriate agencies to suspend for a period not to exceed 10 business days all li-
 40 censes held by the employer in accordance with subsection (4) of this section. The court shall
 41 consider the following factors, if relevant:

42 (a) The number of unauthorized aliens employed by the employer;

43 (b) Any prior misconduct by the employer;

44 (c) The degree of harm resulting from the violation;

45 (d) Whether the employer made good faith efforts to comply with any applicable re-

1 **quirements;**

2 (e) **The duration of the violation;**

3 (f) **The role of the directors, officers or principals of the employer in the violation; and**

4 (g) **Any other factors the court deems appropriate.**

5 (6) **The court shall send a copy of the court's order issued under this section to the At-**
 6 **torney General.**

7 **SECTION 16. (1) If the court finds that an employer has intentionally violated section 14**
 8 **(1) of this 2011 Act and the violation is the employer's first violation committed during a**
 9 **five-year period, the court shall issue an order requiring:**

10 (a) **The employer to terminate the employment of all unauthorized aliens;**

11 (b) **The employer to be subject to a five-year probationary period during which the em-**
 12 **ployer shall file quarterly reports with the district attorney for each new employee hired by**
 13 **the employer at the specific location where the unauthorized alien performed work; and**

14 (c) **The suspension of all licenses held by the employer, in accordance with section 15 (4)**
 15 **of this 2011 Act, for a minimum of 10 days.**

16 (2) **In determining the length of suspension under this section, the court shall consider**
 17 **the factors described in section 15 (5) of this 2011 Act.**

18 (3) **In addition to the order described in subsection (1) of this section, the court shall**
 19 **order the employer to file a signed, sworn affidavit with the court. The affidavit shall state**
 20 **that the employer has terminated the employment of all unauthorized aliens and that the**
 21 **employer will not intentionally or knowingly employ an unauthorized alien. All licenses sus-**
 22 **pended under subsection (1)(c) of this section shall remain suspended until the employer files**
 23 **a signed, sworn affidavit with the court.**

24 (4) **The court shall send a copy of the court's order issued under this section to the At-**
 25 **torney General.**

26 **SECTION 17. (1) If a court finds that an employer has committed a second violation of**
 27 **section 14 (1) of this 2011 Act during the period of probation ordered under section 15 or 16**
 28 **of this 2011 Act, the court shall order the appropriate agencies to permanently revoke all**
 29 **licenses held by the employer in accordance with section 15 (4) of this 2011 Act.**

30 (2) **The court shall send a copy of the court's order issued under this section to the At-**
 31 **torney General.**

32 **SECTION 18. In an action brought under sections 12 to 21 of this 2011 Act:**

33 (1) **The court may take judicial notice of the federal government's determination of the**
 34 **employee's lawful status and may request the federal government to provide automated or**
 35 **testimonial verification pursuant to 8 U.S.C. 1373(c). The federal government's determination**
 36 **of the employee's status pursuant to 8 U.S.C. 1373(c) creates a rebuttable presumption of the**
 37 **employee's lawful status.**

38 (2) **Proof that an employer verified the employment eligibility of the employee through**
 39 **the employment verification process creates a rebuttable presumption that an employer did**
 40 **not intentionally or knowingly employ an unauthorized alien.**

41 (3) **It is an affirmative defense that:**

42 (a) **An employer complied in good faith with the requirements of 8 U.S.C. 1324a(b); or**

43 (b) **The employer failed to take an action that the employer in good faith believed would**
 44 **be a violation of state or federal law.**

45 **SECTION 19. The Attorney General shall:**

1 (1) Maintain copies of court orders that are received pursuant to sections 15, 16 and 17
2 of this 2011 Act;

3 (2) Maintain a searchable database of employers who have violated section 14 (1) of this
4 2011 Act; and

5 (3) Make available on the Attorney General's website all court orders received pursuant
6 to sections 15, 16 and 17 of this 2011 Act and the list of employers described in section 13 of
7 this 2011 Act.

8 **SECTION 20.** (1) A person commits the crime of filing a frivolous complaint if the person:

9 (a) Files a complaint alleging that an employer has intentionally or knowingly employed
10 an unauthorized alien; and

11 (b) Knows that the complaint is not supported by substantial evidence.

12 (2) Filing a frivolous complaint is a Class C misdemeanor.

13 **SECTION 21.** In an action brought against an employer under the provisions of sections
14 12 to 21 of this 2011 Act, the employer may assert an affirmative defense of entrapment as
15 described in ORS 161.275.

16 **SECTION 22.** Sections 12 to 21 of this 2011 Act apply to employees hired on or after
17 January 1, 2012.

18 **SECTION 23.** This 2011 Act being necessary for the immediate preservation of the public
19 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
20 on its passage.
21
