



## **What You Need to Know About South Carolina's Version of the Arizona Law (SB 20)**

On June 27, 2011, the Governor signed Senate Bill 20 (SB 20) into law. SB 20 unconstitutionally requires an officer to verify the legal status of a person if the officer develops suspicion that the person is unlawfully present. The law also creates the SC Illegal Immigration Enforcement Unit made up of officers whose only duties will be enforcing certain immigration laws. SB 20 also makes it a state crime for immigrants not to carry their immigration papers. It requires that all employers use E-Verify to check whether employees have permission to work. Finally, it makes it a crime to transport or harbor a person, if such assistance was intended to further the person's unlawful presence. If you are here illegally, you may be charged with transporting or harboring yourself. This statute does not go into effect until January 1, 2012. (The Enforcement Unit cannot be created until it is funded and it receives approval from the federal government.) **If the law goes into effect, every person needs to know how the law will change things in South Carolina.**

### **What could keep the law from going into effect?**

A court could decide that all, or a part of, SB 20 violates the US Constitution and denies peoples' civil and human rights. Attorneys from the American Civil Liberties Union, Southern Poverty Law Center, and National Immigration Law Center will file suit before January 2012 asking for such a decision.

### **What does SB 20 say about law enforcement?**

The new law says that when a police officer stops you because s/he believes you are violating the law, that officer must check your legal status if s/he forms a "reasonable suspicion" that you are not in the country legally. Since "reasonable suspicion" is not actually defined by the law, it is likely that some officers will use things like a person's race, ethnicity, ability to speak English, or accent to develop a suspicion that you do not have legal status. If you can show a valid driver's license or state identification card issued by SC or another state, a valid US photo ID like a passport, or a tribal ID card, the officer will be satisfied that you are here legally. The police may detain you for a "reasonable" time to check your status if you cannot produce valid identification. If you do not or cannot prove you have legal status, you will probably be taken to jail or held until the police attempt to verify your immigration status with the federal government. You may also be arrested for the original reason the police stopped you, for example, driving with expired tags.

**Many people are already being asked their legal status after they are arrested. Is this part of SB 20?**

No. SB 20 is set to go into effect on January 1, 2012. Currently, state and local officers do not have the authority to detain or arrest you solely to verify your immigration status. Officers are able, however, to ask questions of individuals during the time they are stopped for a lawful reason, such as speeding ticket, but cannot extend the investigation solely for immigration purposes. Two existing programs allow law enforcement to look into someone's legal status after he or she is arrested. One program allows Sheriff's offices to enter into agreements with Immigration and Customs Enforcement (ICE). Called 287(g) agreements, these permit certain Sheriff's Deputies to be trained to enforce federal immigration laws. Right now four counties in South Carolina have 287g(s): Beaufort, Charleston, Lexington, and York.

The other program, Secure Communities, helps jails determine whether immigrants under arrest are deportable. Under Secure Communities, participating jails send inmates' fingerprints to databases, which allow ICE to find out who is in jail. Almost all jurisdictions in South Carolina are part of Secure Communities.

**I do not have valid identification. What should I do if I am stopped by law enforcement?**

You have the right to remain silent. If you wish to remain silent, say so out loud. You do not have to discuss your immigration or citizenship status with police or immigration agents. You are not required to answer questions about where you were born, whether you are a US citizen, or how you entered the country. Do not lie about your status. Do not show fake documents.

**I am here legally, but do not have valid US identification. What should I do?**

If possible, obtain a valid SC driver's license or identification card. Some people, who are here legally, such as people subject to Temporary Protected Status (TPS) or applicants for asylum, do not have immigration papers that the DMV will accept as proof of legal status. If you are here legally but cannot obtain ID, you might ask your immigration attorney to draft a document indicating you have legal status or are here with permission, as you have applied for legal status. This may not stop you from being arrested, as it is not valid identification, but could prevent you from being detained for a long period of time. At the very least, memorize your attorney's telephone number and either ask to call your lawyer directly or have law enforcement call your attorney.

**I do have valid US identification. What should I carry with me?**

You should carry your driver's license and immigration papers, if you have them. The law says if you are an immigrant here legally and over 18 years old, you **must** carry your immigration papers at all times. Some examples of immigration papers are: a legal permanent resident card (I-551), a temporary resident card, an arrival-departure record (I-94), or a work authorization permit (I-766). Unfortunately, many people who are here legally have no such papers.

### **How should I respond if I am asked about my legal status?**

The only information you have to provide the officer with is your name. Other than that, you have the RIGHT TO REMAIN SILENT. It is usually better not to answer questions about where you were born, what country you are a citizen of, or how you entered the United States. Without getting into an argument with the officer, you should decline to answer their questions and tell them you would like to speak to an attorney. You are allowed to say this even if you do not have an attorney. Do not lie or provide fake documents.

If you have legal status, do tell the officer this. Also, if possible, show the officer proof of your legal status.

### **What does the new law say about harboring and transporting?**

It is already the law in South Carolina that you cannot deliberately help someone illegally hide from law enforcement or ICE officers. And you cannot lie about the location of someone who is hiding from law enforcement or ICE officers. Under the new law, you could be arrested if you provide assistance that “furthers illegal presence”. It does not require intentional avoidance of law enforcement. The term “furthers illegal presence” has yet to be defined. Exceptions exist for some domestic violence shelters, churches, food banks, health care services, and homeless shelters, as long as these places routinely help all people with humanitarian needs, and that is all they are providing. SB 20 adds that even the person being harbored or transported can be charged with a crime.

### **Can I be arrested if I am a US citizen and am driving my undocumented husband to work?**

Generally, no. However, if SB 20 goes into effect, it is unclear how the law will be applied to routine conduct such as this. If you are stopped by law enforcement for some reason, your husband’s status might be questioned. If that happens, your husband must give his name. You and your husband have the right to remain silent in response to questions about his status or any other questions.

### **Can I be arrested if I volunteer at my church and give rides or shelter undocumented members of my congregation?**

Generally, no. If you are associated with a non-profit 501(c)(3) organization, you are probably not breaking a criminal law when you give people shelter. To be charged with unlawfully transporting an undocumented person, you have to intentionally help further their illegal presence in the United States. This does not typically include humanitarian assistance. But it is not clear how furthering “illegal presence” will be interpreted.

### **Can I be arrested if I am a teacher and frequently give rides to undocumented students for field trips, sports, or club events?**

Generally, no. But if SB 20 goes into effect, we cannot be sure how it will be applied to voluntary actions of individual teachers and to specific-types of extracurricular activities. In a decision called *Plyler v. Doe*, however, the US Supreme Court ruled that

undocumented students in grades K-12 have the right to a free public education and activities that constitute such education. .

### **What should I do if I am arrested?**

If you are arrested, stay calm and do not resist the arrest, no matter how unfair it seems. Say only that you wish to remain silent, and ask for a lawyer immediately. If you have a lawyer, memorize the office number. You should be allowed a local call. Do not sign any papers unless an attorney reviews them and says it is okay. If you do not understand or cannot read the papers, be sure to ask for an interpreter.

If you are transferred to ICE custody, you still have a right to remain silent. You do have a right to a lawyer, but the government is not required to provide a lawyer for you. You have a right to contact your consulate.

### **Is there anything I can do to prepare in case the law goes into effect?**

Yes. You might want to do a “Power of Attorney,” a legal document that lays out a plan for your children and property, including any bank accounts, in case you and/or your spouse is deported.

Everyone in the family should obtain valid identification and passports. Be sure to obtain long form birth certificates for children born in SC. Your US citizen children need to obtain their passports and their Social Security cards. You must have your identification in order to apply for your minor children’s documents. You may have to go to your consulate here in the US to obtain valid identification. If your children are eligible for dual citizenship, take care of this now.

In addition, meet with a reputable immigration attorney to find out if you have any grounds to stay in the United States. Identify groups that provide free or low cost representation for people detained by ICE in SC, Georgia, NC and Texas. It is easier to locate those services before you are detained. This link may be helpful: <http://www.justice.gov/eoir/ra.html>. ICE detains very few people in SC, so if detained by ICE, you will probably be transported to an ICE facility in another state.

Finally, if you are allowed to be here legally but cannot prove it, have your immigration attorney draft a document indicating you have legal status or have applied for legal status but are waiting for the paper work to be completed. This may not keep you from being detained, but may help you get released. Memorize your lawyer’s telephone number. Have family members memorize the number, too.

Memorize your immigration number (“A” number) and make sure several family members or friends know your number. Make copies of your immigration documents and give the copies to someone you trust for safekeeping.

Carry your **Rights Card** with you at all times.

Prepared by the ACLU of South Carolina  
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in collaboration with the ACLU Immigrant Right's Project and  
S.C Applesed Legal Justice Center

**August, 2011**

**Rights Card**

**Cut this portion and keep it in your wallet at all times.**

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**TO WHOM IT MAY CONCERN:**

Please be informed that I am choosing to exercise my right to remain silent and the right to refuse to answer your questions. If I am detained, I request to contact an attorney immediately. I am also exercising my right to refuse to sign anything until I consult with my attorney. Thank you.

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This is not all of the information that you need to know about the law. Speak to an attorney.

If you do not have a lawyer, the South Carolina Bar Lawyer Referral Service can give you the name of a lawyer who is willing to meet with you and advise you at a lower rate. For the name of a lawyer, call the Lawyer Referral Service (800) 868-2284.

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