S T A T E O F N E W Y O R K

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2009-2010 Regular Sessions

I N A S S E M B L Y

March 12, 2009

Introduced by M. of A. BALL, WALKER, TOBACCO, TOWNSEND, McDONOUGH -- Multi-Sponsored by -- M. of A. MOLINARO -- read once and referred to the Committee on Codes

AN ACT to amend the executive law, in relation to an agreement under the federal illegal immigration reform and immigrant responsibility act regarding criminal aliens

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The executive law is amended by adding a new section 844 to read as follows:

S 844. AGREEMENT UNDER THE FEDERAL ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT REGARDING CRIMINAL ALIENS. 1. LEGISLATIVE INTENT. THE LEGISLATURE HEREBY DETERMINES AND DECLARES THAT: NEW YORKERS AND MOST AMERICANS ARE DESCENDANTS OF IMMIGRANTS FROM ALL REGIONS OF THE WORLD AND NEW YORK CONTINUES TO WELCOME NEW IMMIGRANTS WHO LEGALLY SEEK THE OPPORTUNITIES THAT THE STATE, ITS ECONOMY AND ITS RESOURCES OFFER; CONGRESS AND THE PRESIDENT HAVE BEEN UNABLE TO RESOLVE THE PROBLEM OF ILLEGAL IMMIGRATION, LEAVING THE STATES TO DEAL WITH THE CONSEQUENCES OF 11 TO 20 MILLION ILLEGAL IMMIGRANTS RESIDING IN THE UNITED STATES; THE PRESENCE OF SIGNIFICANT NUMBERS OF PEOPLE ILLEGALLY RESIDING IN THE STATE CREATES A BURDEN ON THE RESOURCES OF STATE AND LOCAL HUMAN SERVICES, LAW ENFORCEMENT AGENCIES, EDUCATIONAL INSTITUTIONS AND OTHER GOVERNMENTAL INSTITUTIONS, AND DIMINISHES OPPORTUNITIES FOR CITIZENS AND LEGAL IMMIGRANTS; IN 1996 CONGRESS AMENDED THE IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. S 1373(C), TO ALLOW GOVERNMENT ENTITIES OR OFFICIALS TO SEND TO OR RECEIVE FROM THE IMMIGRATION AND NATURALIZATION SERVICE INFORMATION REGARDING THE CITIZENSHIP OR IMMIGRATION STATUS, LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL AND THE FEDERAL GOVERNMENT ESTABLISHED THE E-VERIFY PROGRAM TO HELP EMPLOYERS ELECTRONICALLY VERIFY THE EMPLOYMENT ELIGIBILITY OF NEW HIRES AND THE VALIDITY OF THEIR SOCIAL SECURITY NUMBERS; THE ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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(IIRAIRA) ADDED SECTION 287(G), PERFORMANCE OF IMMIGRATION OFFICER FUNCTIONS BY STATE OFFICERS AND EMPLOYEES, TO THE IMMIGRATION AND NATIONALITY ACT (INA), AND AUTHORIZES THE SECRETARY OF THE FEDERAL DEPARTMENT OF HOMELAND SECURITY TO ENTER INTO AGREEMENTS WITH STATE AND LOCAL LAW ENFORCEMENT AGENCIES, PERMITTING DESIGNATED OFFICERS TO PERFORM IMMIGRATION LAW ENFORCEMENT FUNCTIONS PURSUANT TO A MEMORANDUM OF AGREEMENT, PROVIDED THAT THE LOCAL LAW ENFORCEMENT OFFICERS RECEIVED APPROPRIATE TRAINING AND FUNCTION UNDER THE SUPERVISION OF SWORN U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICERS; AND LAW ENFORCEMENT CAN MORE EFFECTIVELY COMBAT CRIMINAL ACTIVITY RELATED TO ILLEGAL IMMIGRATION IF FEDERAL, STATE AND LOCAL AUTHORITIES WORK ON A COOPERATIVE BASIS.

2. AGREEMENT. WITHIN THIRTY DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE ATTORNEY GENERAL SHALL ENTER INTO A MEMORANDUM OF AGREEMENT WITH THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT TO IMPLEMENT THE PROVISIONS OF SECTION 287(G) OF THE FEDERAL ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT (IIRAIRA). THE MEMORANDUM OF AGREEMENT SHALL CONTAIN BUT NOT BE LIMITED TO THE FOLLOWING PROVISIONS:

A. TO ALLOW ALL POLICE OFFICERS AND PEACE OFFICERS TO RECEIVE APPROPRIATE TRAINING AND FUNCTIONS UNDER THE SUPERVISION OF IMMIGRATION AND CUSTOMS ENFORCEMENT.

B. THE IMPLEMENTATIONS OF THE AGREEMENT SHALL BE DIRECTED AT RESIDENT CRIMINAL ALIENS AND ABSCONDERS AT-LARGE WITHIN THE STATE AND ALSO ALIENS INCARCERATED IN ANY CORRECTIONAL FACILITY WITHIN THE STATE.

C. EVERY SHERIFF'S DEPARTMENT SHALL PARTICIPATE IN THE TRAINING IN THIS SECTION AND SHALL DESIGNATE A MINIMUM NUMBER OF ITS STAFF TO RECEIVE SUCH TRAINING. ALL COSTS OF THE TRAINING PROGRAM NOT FUNDED BY THE FEDERAL GOVERNMENT SHALL BE BORNE BY THE STATE.

D. THE MEMORANDUM OF AGREEMENT SHALL INCLUDE REQUIREMENTS TO LIMIT INCARCERATION COSTS ASSOCIATED WITH CRIMINAL ALIENS.

E. THE MEMORANDUM OF AGREEMENT SHALL REQUIRE THE DEPARTMENT OF CORRECTIONAL SERVICES TO TAKE STEPS TO INSURE DEPORTABLE CRIMINAL ALIENS ARE RELEASED ONLY INTO CUSTODY OF THE FEDERAL GOVERNMENT.

F. THE MEMORANDUM OF AGREEMENT SHALL REQUEST IMMIGRATION AND CUSTOMS ENFORCEMENT TO SEARCH ON A MONTHLY BASIS THE REGISTERED SEX OFFENDER REGISTRY FOR THE PURPOSE OF LOCATING FOR DEPORTMENT CRIMINAL ALIEN SEX OFFENDERS.

G. THE MEMORANDUM OF AGREEMENT SHALL CONTAIN PROVISIONS PROHIBITING ANY LOCAL MUNICIPALITY FROM PASSING "SANCTUARY LAWS" THAT INHIBIT LOCAL POLICE AUTHORITIES FROM CONTACTING IMMIGRATION AND CUSTOMS ENFORCEMENT WHEN THEY TAKE CUSTODY OF AN ILLEGAL ALIEN.

H. THE MEMORANDUM OF AGREEMENT SHALL PROHIBIT LEGISLATION THAT PRECLUDES ANY LOCAL LAW ENFORCEMENT AGENCY FROM PARTICIPATING IN THE TRAINING PROGRAM SET FORTH IN THIS SECTION.

I. THE DIVISION SHALL REGISTER AND USE THE FEDERAL GOVERNMENT'S E-VERIFY PROGRAM TO ELECTRONICALLY VERIFY THE EMPLOYMENT ELIGIBILITY OF NEW HIRES IN THE EXECUTIVE DEPARTMENT AND THE VALIDITY OF THEIR SOCIAL SECURITY NUMBERS TO ENSURE THAT ALL EMPLOYEES OF THE EXECUTIVE DEPARTMENT ARE LEGALLY ELIGIBLE TO BE EMPLOYED IN THE UNITED STATES AND TAKE APPROPRIATE ACTION AGAINST THOSE THAT ARE NOT ELIGIBLE FOR EMPLOYMENT, CONSISTENT WITH FEDERAL AND STATE LAW. FOR PURPOSES OF THIS SECTION, THE EXECUTIVE DEPARTMENT IS CONSIDERED TO BE ALL AGENCIES AND DEPARTMENTS IN THE EXECUTIVE BRANCH, EXCLUDING THE OFFICES OF GENERAL OFFICERS, SAID OFFICERS BEING THE DEPARTMENT OF LAW, LIEUTENANT GOVERNOR, SECRETARY OF STATE AND COMPTROLLER.

J. THE DIVISION SHALL REQUIRE THAT ALL PERSONS AND BUSINESSES, INCLUDING GRANTEES, CONTRACTORS AND THEIR SUBCONTRACTORS AND VENDORS DOING

BUSINESS WITH THE STATE ALSO REGISTER WITH AND UTILIZE THE SERVICES OF THE E-VERIFY PROGRAM TO ENSURE COMPLIANCE WITH FEDERAL AND STATE LAW.

K. THE EXECUTIVE DEPARTMENT SHALL ATTEMPT TO NOTIFY ANY PERSON WHOSE IDENTITY WAS STOLEN OR OTHERWISE IMPROPERLY USED BY ANY PERSON IN ORDER TO RECEIVE ANY BENEFIT, INCLUDING BUT NOT LIMITED TO CHILD CARE, HEALTH CARE, ANY GOVERNMENT ISSUED IDENTIFICATION CARD, INCLUDING DRIVER'S LICENSE AND NON-DRIVER'S LICENSE IDENTIFICATION, WELFARE OR EMPLOYMENT.

L. THE STATE POLICE, PURSUANT TO THE AUTHORITY SET FORTH IN SECTION 287(G) OF IIRAIRA, SHALL WORK TO SECURE A MEMORANDUM OF AGREEMENT WITH IMMIGRATION AND CUSTOMS ENFORCEMENT TO RECEIVE TRAINING NECESSARY TO ENABLE THEM TO ASSIST IMMIGRATION AND CUSTOMS ENFORCEMENT PERSONNEL IN THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS.

M. THE DEPARTMENT OF CORRECTIONAL SERVICES SHALL COOPERATE WITH IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICIALS TO SECURE A MEMORANDUM OF AGREEMENT THAT WILL DEFINE THE SCOPE OF STATE CORRECTIONAL PERSONNEL AUTHORITY TO PERFORM CERTAIN IMMIGRATION LAW ENFORCEMENT FUNCTIONS WHICH SHALL BE SUBJECT TO THE CROSS-SUPERVISION OF IMMIGRATION AND CUSTOMS ENFORCEMENT AND PERMIT CERTAIN CORRECTIONAL PERSONNEL TO COMPLETE APPROPRIATE TRAINING AND FUNCTION UNDER THE SUPERVISION OF SWORN IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICERS TO COMBAT ILLEGAL IMMIGRATION ISSUES AT CORRECTIONAL INSTITUTIONS CONSISTENT WITH FEDERAL AND STATE LAW.

N. ALL LAW ENFORCEMENT OFFICIALS, INCLUDING STATE AND LOCAL LAW ENFORCEMENT AGENCIES TAKE STEPS TO SUPPORT THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS BY INVESTIGATING AND DETERMINING THE IMMIGRATION STATUS OF ALL NON-CITIZENS TAKEN INTO CUSTODY, INCARCERATED, OR UNDER INVESTIGATION FOR ANY CRIME AND NOTIFYING FEDERAL AUTHORITIES OF ALL ILLEGAL IMMIGRANTS DISCOVERED AS A RESULT OF SUCH INVESTIGATIONS.

O. THE MEMBERS OF THE STATE PAROLE BOARD AND THE DEPARTMENT OF CORRECTIONAL SERVICES SHALL COOPERATE WITH IMMIGRATION AND CUSTOMS ENFORCEMENT TO PROVIDE FOR THE PAROLE AND DEPORTATION OF CRIMINAL ALIENS.

S 2. This act shall take effect immediately.