

	<i>Corey Stewart’s “Rule of Law”</i>	<i>Office of the Attorney General’s Opinion</i>
<b>Section 3- Paragraph B</b>	<p>B. 1. For any lawful stop, detention, or arrest made by a law enforcement official or a law enforcement agency of this Commonwealth, or a law enforcement official or a law enforcement agency of a county, city, town or other political subdivision of this Commonwealth, in the enforcement of any other law or ordinance of a county, city or town or this Commonwealth, where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made to determine the immigration status of the person, unless such determination will hinder or obstruct a criminal investigation.</p> <p>2. The immigration status of any person who is arrested shall be determined before such person is released from custody. The person's immigration status may be verified with the federal government pursuant to 8 United States code section 1373(c).</p> <p>3. A law enforcement official or agency of this Commonwealth, or a county, city, town or other political subdivision of this Commonwealth, may not consider race, color or national origin in implementing the requirements of this subsection except to the extent permitted by the United States or the Virginia Constitution.</p> <p>4. A person is presumed to not be an alien who is unlawfully present in the United States if the person provides to the law enforcement officer or agency any of the following:</p> <ol style="list-style-type: none"> <li>a. A valid Virginia driver license.</li> <li>b. A valid Virginia non-operating identification license.</li> <li>c. A valid tribal enrollment card or photo identification document.</li> <li>d. If the issuing jurisdiction requires proof of legal presence in the United States before issuance, any valid United States federal, state or local government-issued photo identification card or document.</li> </ol>	<p>Paragraph (B), which allows officers to make a “reasonable inquiry” into a detainee’s immigration status where there is a reasonable suspicion the person is unlawfully present in the United States, is unnecessary. Virginia law already permits law enforcement officers to inquire about the legal status of any person stopped or arrested based upon probable cause or reasonable suspicion, so long as the inquiry does not prolong the lawful detention. (AG Op. 10-047).</p>
<b>Section 3- Paragraph C</b>	<p>C. If an alien who is unlawfully present in the United States is convicted by a Court of the Commonwealth for a violation of law for which a criminal penalty or term of imprisonment or suspended sentence has been imposed, the clerk of the court where the conviction occurred or the keeper of the jail, as soon as practicable and before the date of discharge from imprisonment or of the assessment of any imposed monetary obligation shall</p> <ol style="list-style-type: none"> <li>1. Notify the United States Immigration and Customs Enforcement agency, or any other federal agency designated for responding to inquiries pursuant to 8 U.S.C. § 1373(c), of</li> </ol>	<p>The operative provisions of paragraph (C) are already addressed under our “Secure Communities” partnership with ICE. Under this partnership, an arrestee’s fingerprints are transmitted to both the FBI and Department of Homeland Security during the booking process and simultaneously checked against both the FBI criminal history records and the biometrics-based immigration records maintained by the (DHS). If any fingerprints match those of someone in the DHS biometric system, the new automated process notifies ICE. As of this summer, Secure Communities is active in every county in Virginia. In addition, we have used our partnership with ICE to</p>

	<p>the location of the alien, and</p> <p>2. Request the agency to issue a detainer authorizing the transfer of such alien into federal custody.</p>	<p>identify and remove more than 500 criminal alien sex offenders from the Commonwealth over the past several years.</p>
<b>Section 3- Paragraph D</b>	<p>D. Notwithstanding any other law, a law enforcement agency may securely transport an alien, whom the agency has verified to be unlawfully present in the United States and who is in the agency's custody, to a federal facility in this Commonwealth or, with the concurrence of the receiving federal agency, to a point of transfer into federal custody that is outside the jurisdiction of the law enforcement agency.</p>	<p>Paragraph (D) is unnecessary because law enforcement already has authority to transport prisoners, and there appears to be no need for this additional provision specifically related to persons illegally present in the United States.</p>
<b>Section 3- Paragraph G</b>	<p>G. Any record that relates to the immigration status of a person is admissible in any court without further foundation or testimony from a custodian of records if the record is certified as authentic by the government agency that is responsible for maintaining the record.</p>	<p>Paragraph (G) has the potential to run afoul of <u>Crawford v. Washington</u>, 541 U.S. 36 (2004) and <u>Melendez-Diaz v. Massachusetts</u>, 557 U.S. __ (2009), depending upon the type of record(s) sought to be introduced into evidence.</p>
<b>Section 3- Paragraph H</b>	<p>H. 1. A person who is a legal resident of this Commonwealth may bring an action in Superior Court to challenge any official or agency of the Commonwealth, or a county, city, town or other political subdivision of the Commonwealth, that adopts or implements a policy that limits or restricts an officer or official from enforcing enforcement federal immigration laws which prohibit the presence, including any unauthorized activity, of an alien unlawfully present in the United States.</p> <p>2. If there is a judicial finding that an entity has violated this section, the court shall order that the entity pay a civil penalty of not less than five hundred dollars and not more than five thousand dollars for each day that the policy has remained in effect for more than 14 days after the action was filed pursuant to this subsection and order the agency, county, city town or other political subdivision to pay the legal resident's reasonable attorney's fees and legal costs.</p> <p>3. A court shall collect the civil penalty prescribed in this subsection and remit the civil penalty to the state treasurer. The Department of Taxation shall apportion all revenues derived from the penalty to local and regional law enforcement initiatives that target gangs, drug money laundering, and aliens who are present in the Commonwealth in violation of immigration laws, in the form of grants.</p>	<p>Paragraph (H) would violate the Virginia Constitution, which requires that any such fees must go to the state literary fund.</p>
<b>Section 3- Paragraph J</b>	<p>J. Implementation of this section shall be consistent with federal laws regulating immigration, and protecting the civil rights of all persons, and shall not infringe upon the privileges and immunities of United States citizens.</p>	<p>Paragraph (J) raises potential equal protection concerns, because it specifically differentiates between United States citizens and other persons in protecting privileges and immunities.</p>

<p><b>Section 4</b></p>	<p>A. It is unlawful for a person to intentionally engage in the smuggling of human beings for profit or commercial purpose, or to conspire with another for such purpose.</p> <p>B. A violation of this section is a class 4 felony.</p> <p>C. Notwithstanding subsection B of this section, a violation of this section:</p> <ol style="list-style-type: none"> <li>1. Is a class 2 felony if the human being who is smuggled is under eighteen years of age and is not accompanied by a family member over eighteen years of age or the offense involved the use of a deadly weapon or dangerous instrument.</li> <li>2. Is a class 3 felony if the offense involves the use or threatened use of deadly physical force. If convicted under this subsection, the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any other basis except pursuant to section 19.2-303.1, until the sentence imposed by the court is served, the person is eligible for release pursuant to section 19.2-313 or the sentence is commuted.</li> </ol> <p>D. For the purposes of this section:</p> <ol style="list-style-type: none"> <li>1. "Family member" means the person's parent, grandparent, sibling or any other person who is related to the person by consanguinity or affinity to the second degree.</li> <li>2. "Smuggling of human beings" means the transportation, procurement of transportation or use of property or real property within the Commonwealth of Virginia by a person or an entity that knows or has reason to know that the person or persons transported or to be transported were unlawfully present in the United States.</li> <li>3. "Procurement of transportation" means any participation in or facilitation of transportation and includes: <ol style="list-style-type: none"> <li>(a) Providing services that facilitate the alien's unlawful transportation including travel arrangement services or money transmission services.</li> <li>(b) Providing property that facilitates transportation, including a weapon, a vehicle or other means of transportation or false identification, or selling, leasing, renting or otherwise making available a drop house.</li> <li>(c) "Drop house" means property or real property that is used to facilitate smuggling of humans.</li> </ol> </li> </ol>	<p>This section creates sweeping new classes of felonies and will have a significant fiscal impact.</p> <p>In addition, many of the definitions within the section create overbreadth concerns and could be portrayed as criminalizing legitimate behavior not intended by the drafter. For instance, human smuggling as defined in the draft bill could potentially subject many drivers-for-hire (taxi, limo, etc.) to prosecution. These concerns could significantly entangle the legislation during the session and create headlines when more targeted legislation could achieve the intended impact.</p> <p>Additionally, the provisions of this section may have the unintended consequence of securing visas (or at least visa application delays of deportation) for those unlawfully present. By recasting themselves as trafficking "victims," the unlawfully present persons could then petition/apply for a T-visas and receive authorization to remain even though they were willing participants in the crime.</p> <p>The General Assembly in 2007 created a commission to study the problem of human trafficking in Virginia and in 2009 enacted very narrow legislation in response to the commission's work. HB2016 modified Virginia's abduction statutes and created several RICO (Racketeer Influenced and Corrupt Organizations) provisions to address the problem of human trafficking. The sense of the General Assembly at that time was that all other matters related to human trafficking were satisfactorily addressed by other laws of general application in the Code of Virginia, such as Virginia's statutes governing extortion. It seems unlikely the General Assembly would be eager to revisit this issue and retaining this provision may invite a referral of the entire bill to the Crime Commission for additional study.</p>
<p><b>Section 5</b></p>	<p>A. It is unlawful for an occupant of a motor vehicle that is stopped on a public street, roadway or highway, other than in an authorized parking place, to attempt to hire or hire and pick up passengers for work at a different location, if the motor</p>	<p>This provision is contrary to the Attorney General's opinion issued in February regarding federal preemption in the area of employment of unauthorized aliens. (AG Op. 09-071). These provisions trigger preemption concerns as they carry a state-law</p>

	<p>vehicle blocks or impedes the normal movement of traffic.</p> <p>B. It is unlawful for a person to enter a motor vehicle that is stopped on a street, roadway or highway, other than in an authorized parking place, in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location, if the motor vehicle blocks or impedes the normal movement of traffic.</p> <p>C. It is unlawful for a person who is unlawfully present in the United States and who also is an unauthorized alien, to apply for work, solicit work in a public place or perform work as an employee or independent contractor in this state.</p> <p>D. In the enforcement of this section, an alien's immigration status may be determined by:  (1) a law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status; or (2) an agent of the United States Department of Homeland Security or, other federal agency authorized to provide such information pursuant to 8 United States Code section 1373(c).</p> <p>F. A violation of this section is a class 1 misdemeanor.</p> <p>G. For the purposes of this section:  1. "Solicit" means verbal or nonverbal communication by a gesture or a nod that would indicate to a reasonable person that a person is willing to be employed.  2. "Unauthorized alien" means an alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 United States Code section 1324a(h)(3).</p>	<p>penalty for violations of federal law.</p>
<p><b>Section 6</b></p>	<p>A. It is unlawful for any person, in the Commonwealth, to:  1. Transport or move or attempt to transport or move an alien , in furtherance of the illegal presence of the alien in the United States, by means of transportation or otherwise, if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of law.  2. Conceal, harbor or shield or attempt to conceal, harbor or shield an alien from detection in any place, including any building or any means of transportation, if the person knows or recklessly disregards the fact that the alien has come to, has entered or remains in the United States in violation of law.  3. Encourage or induce an alien to reside or remain in the Commonwealth if the person knows or recklessly disregards</p>	<p>As with Section 4, this provision contains very sweeping language that may encounter overbreadth concerns. It may be advisable to include some intent requirement on the part of the potentially liable individual to reduce the risk of criminally penalizing, for example, a taxi driver or hotel manager.</p>

the fact that such residence or presence is or will be in violation of law.

B. A means of transportation that is used in the commission of a violation of this section is subject to mandatory vehicle immobilization or impoundment.

C. In the enforcement of this section, a law enforcement official or agency of this state or a county, city, town or other political subdivision therein may not consider race, color or national origin, except to the extent permitted by the United States or the Virginia Constitution.

D. In the enforcement of this section, an alien's immigration status may be determined by:  
(1) a law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status; or (2) an agent of the United States Department of Homeland Security, or other agency authorized to provide such information pursuant to 8 United States Code section 1373(c).

E. This section does not apply to a child protective services worker acting in the worker's official capacity or a person who is acting in the capacity of a first responder, an ambulance attendant or an emergency medical technician and who is transporting or moving an alien pursuant to section 46.2-920.

F. A person who violates this section is guilty of a class 6 felony and is subject to imprisonment or a fine of at least one thousand dollars, or both, except that a violation of this section that involves six or more illegal aliens, other than family members as defined in §5.E.1 of this Act, is a class 3 felony and the person is subject to a fine of at least one thousand dollars for each alien who is involved.

G. 1. Prior to the date of the filing of any criminal charge under this section, a civil claim may be brought in Superior Court against any person or legal person who commits a violation of this section in the State of Virginia for corrupt purposes.  
2. A violation of this section for corrupt purposes means three or more violations of this section, on different dates within a period of 550 days, which together involved the transporting, moving, concealing, harboring or shielding of unlawful aliens

	<p>and for which the person or legal persons received \$18,000 or more in funds, services or property.</p> <p>3. (A) A plaintiff prevailing in an action brought under this subsection may be awarded three times the value of the funds, services or property from the defendants, as well as reasonable attorneys fees and court costs. (B) A defendant prevailing in a frivolous action brought under this subsection may be awarded reasonable attorneys fees and court costs.</p> <p>4. Initiation of a civil action under this subsection shall not limit the discretion of the Commonwealth’s attorney to bring a criminal action to enforce this section.</p>	
<p><b>Section (6)- Paragraph G (1)</b></p>	<p>G. 1. Prior to the date of the filing of any criminal charge under this section, a civil claim may be brought in Superior Court against any person or legal person who commits a violation of this section in the State of Virginia for corrupt purposes.</p>	<p>Paragraph (G)(1) contains a reference to “Superior Court”; there is no such court in Virginia.</p>
<p><b>Section (7)</b></p>	<p>A. Any licensee of a money transmission, transmitter or wire transmitter business and their delegates shall collect a fee of five Dollars (\$ 5.00) for each transaction not in excess of five Hundred Dollars (\$ 500.00), and in addition to such fee an amount equal to one percent (1%) of the amount of the transaction in excess of five hundred Dollars (\$ 500.00).</p> <p>B.1. The fee prescribed by subsection A of this section shall be remitted quarterly to the Virginia Department of Taxation on such forms as it may prescribe for such purpose.</p> <p>2. All required forms and remittances shall be filed with Department of Taxation not later than the fifteenth day of the month following the close of each calendar quarter.</p> <p>3. The Department of Taxation shall apportion all revenues derived from the fee, in the form of grants, to state and local law enforcement initiatives that target gangs, drug money laundering, and interception of aliens who are present in violation of federal immigration laws.</p> <p>C. Every licensee and their delegates shall post a notice on a form prescribed by the Secretary of Finance that notifies customers that upon filing an individual income tax return with a valid social security number the customer shall be entitled to an income tax credit equal to the amount of the fee paid by the customer for the transaction.</p> <p>D. The Virginia Department of Taxation shall be afforded all provisions currently under law to enforce the provisions of</p>	<p>This provision could create an “entanglement” problem along the lines of the “abusive driver fees” debacle from a couple sessions ago. This provision could have significant commerce clause concerns and needs extensive review by attorneys versed in matters of financial market regulation and taxation litigation.</p>

	<p>subsection B of this section. If a licensee fails to file reports or fails to remit the fee authorized by subsection B of this section, the Virginia Department of Taxation shall have the authority pursuant to Title 58.1 to suspend the license of the licensee and its delegates. A notification of the suspension shall also be sent to the Commissioner of the Bureau of Financial Institutions. The licensee and its delegates may not reapply for a license until all required reports have been filed and all required fee amounts have been remitted.</p> <p>E. Upon request from the Virginia Department of Taxation, the Commissioner of the Bureau of Financial Institutions may make a claim against the surety bond of the licensee on behalf of the Commonwealth of Virginia.</p> <p>F. The Virginia State Corporation Commission and its attorneys may assist the Virginia Department of Taxation in conducting audits, investigations, civil litigation, and criminal prosecutions, to ensure compliance with this Act.</p>	
<p><b>Section (8)</b></p>	<p>A. 1. It shall be unlawful to (a) register with the Commonwealth a motor vehicle in the name of a person who is unlawfully present in the United States, or (b) to register a motor vehicle in the name of another person or entity with the intent of circumventing the prohibition under subsection (a). 2. A person who violates this section is guilty of a class 1 misdemeanor.</p> <p>3. A motor vehicle discovered to be unlawfully registered pursuant to this section may be impounded by a law enforcement agency until documentation is presented to the agency establishing that the vehicle registration has been transferred to an authorized person or entity who is not in violation of this section. The party presenting such documentation shall pay the cost of towing and impoundment of the vehicle incurred by the law enforcement agency.</p>	<p>It is unnecessary to create a new crime that may raise federalism concerns. If it is desirable, as a matter of public policy, to prevent some individuals from titling or registering vehicles it would be more effective to amend state law to prohibit DMV from issuing titles or registrations absent proof of legal presence in the Commonwealth. If someone then presents fraudulent documents to DMV to title or register a vehicle, the existing forgery and uttering statute, § 18.2-168, already imposes felony liability. This approach avoids potential preemption problems because it addresses only issues that plainly and inarguably fall within the Commonwealth's traditional police powers. In addition, by not creating a new felony, it would avoid fiscal impact concerns.</p>
<p><b>Section (9)</b></p>	<p>A. It shall be unlawful for an alien, knowing that he or she is unlawfully present in the United States ,to</p> <ol style="list-style-type: none"> <li>1. Acquire any interest in real property located in the Commonwealth, or</li> <li>2 Use property located in the Commonwealth in which the alien possesses an interest for residential or commercial purposes.</li> <li>3. An interest in real property shall mean any interest in real property, or a right incident to such interest, that is recognized by the law of the Commonwealth or a political subdivision therein, including but not limited to any interest in a leasehold</li> </ol>	<p>The provisions of this section raise significant ex post facto/takings concerns that are not easily addressed through revision or redrafting. In addition, because parts of this section create a felony there will be a fiscal impact that cannot be determined.</p>

	<p>or tenancy in residential property.</p> <p>B. 1. A person who acquires, or uses for commercial purposes an interest in real property, in violation of this section, is guilty of a class 6 felony; except that if the interest in real property was valued at less than two thousand dollars, the person is guilty of a class 1 misdemeanor.</p> <p>2. A person who uses for residential purposes an interest in real property, in violation of this section, is guilty of a class 1 misdemeanor.</p> <p>3. A person who knowingly aids or abets a violation of this section is guilty of a class 1 misdemeanor; except that if the interest in real property is valued at more than five hundred thousand dollars (\$500,000), the person is guilty of a class 6 felony.</p> <p>C. A person shall not be subject to prosecution under this section if he or she presents to the law enforcement agency or Commonwealth's attorney: 1. valid documentary evidence of (1) a pending or approved application for asylum in the United States, (b) entry into the United States in refugee or parole status, (c) a pending or approved application for temporary protected status in the United States, (d) approved deferred action status, (e) a pending application for adjustment of status to legal permanent residence status or conditional resident status, (f) permission from the United States Department of Homeland Security to be present in Virginia notwithstanding the alien's unlawful immigration status, or 2. valid documentary evidence that the alien was (a) a minor aged 16 years old or younger on the date the complaint was filed, or (b) otherwise been adjudged to be an incompetent, or 3. the federal government otherwise affirms that such person is lawfully present in the United States.</p>	
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**Sources:**

*Office of the Attorney General Legal Assessment of the proposed "Rule of Law" Legislation*

*IRLI Draft of Corey Stewart's "Rule of Law" Legislation*