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HOUSE BILL NO. 472

Offered January 11, 2012

Prefiled January 10, 2012

A *BILL to amend the Code of Virginia by adding a section numbered 19.2-81.7, relating to authority of law-enforcement officers to determine immigration status following a legal traffic stop.*

Patrons—Albo, Cole, Crockett-Stark, Helsel, Hodges and Poindexter

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That the Code of Virginia is amended by adding a section numbered 19.2-81.7 as follows:**

§ 19.2-81.7. *Authority of law-enforcement officer to determine immigration status following a traffic stop.*

A. *Except as otherwise provided for in federal law, no law-enforcement officer is authorized to make an independent determination of a person's lawful presence in the United States except as provided herein.*

B. *When a law-enforcement officer lawfully detains, but does not arrest, a person pursuant to a lawful traffic stop and the detainee fails to produce a valid Virginia driver's license and follow the procedures necessary to identify himself as required by § 46.2-104, the officer shall, during the detention, unless to do so would hinder or obstruct an investigation, inquire of the detainee as to whether he (i) was born in a country other than the United States, (ii) is a citizen of a country other than the United States, and (iii) is in the country lawfully. If based upon the detainee's responses the officer has reasonable suspicion to believe the person is or remains in the United States unlawfully, he shall, when practicable, make an Immigration Alien Query to the Law Enforcement Support Center of U.S. Immigration and Customs Enforcement (ICE) to verify the person's lawful presence in the United States.*

C. *The officer shall detain the person only for a reasonable amount of time in order to complete the query to ICE. If, after a reasonable effort and the expiration of a reasonable amount of time, the officer is unable to verify the person's lawful presence in the United States, the officer shall not further detain the person for purposes of an immigration query. However, if the officer determines that the person is unlawfully present in the United States and the provisions of § 19.2-81.6 apply, the officer may place the person under arrest. If the officer determines that the person is unlawfully present in the United States and the provisions of § 19.2-81.6 do not apply, the officer may retain custody of the person for purposes of transfer of the person to federal custody.*

D. *Nothing in this section may be construed to allow or require a law-enforcement officer to stop, detain, investigate, arrest, or confine a person based solely on the question of a person's lawful presence in the United States. A law-enforcement officer may not consider race, color, or national origin in implementing this section, except to the extent permitted by the Constitutions of Virginia and the United States. This section shall be implemented in a manner that is consistent with federal law.*

INTRODUCED

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