

HOUSE BILL NO. HB0094

Illegal immigration.

Sponsored by: Representative(s) Illoway, Childers,
Davison, Jaggi, Kroeker, Petersen, Quarberg
and Shepperson and Senator(s) Driskill and
Hicks

A BILL

for

1 AN ACT relating to immigration; establishing an offense for
2 failure to carry an alien registration document;
3 establishing offenses for unlawful hiring and unlawful
4 employment; establishing an offense for unlawful
5 transporting of aliens; providing for the determination and
6 communication of immigration status; prohibiting employment
7 of unauthorized aliens; requiring employers to participate
8 in the e-verify program; authorizing warrantless arrests
9 for offenses that make a person removable from the United
10 States; providing penalties; providing for severability of
11 provisions; and providing for an effective date.

12

13 *Be It Enacted by the Legislature of the State of Wyoming:*

14

1 **Section 1.** W.S. 6-5-214 through 6-5-216, 7-2-109,
2 27-15-101 and 27-15-102 are created to read:

3

4 **6-5-214. Willful failure to complete or carry an**
5 **alien registration document.**

6

7 (a) In addition to any violation of federal law, a
8 person is guilty of willful failure to complete or carry an
9 alien registration document if the person is in violation
10 of 8 U.S.C. § 1304(e) or 1306(a).

11

12 (b) In the enforcement of this section, immigration
13 status may be determined by:

14

15 (i) A peace officer who is authorized by the
16 federal government to verify or ascertain an alien's
17 immigration status;

18

19 (ii) The United States immigration and customs
20 enforcement or the United States customs and border
21 protection pursuant to 8 U.S.C. § 1373(c).

22

23 (c) A peace officer or other law enforcement official
24 or law enforcement agency of this state or of a city, town,

1 county or other political subdivision of this state shall
2 not consider race, color or national origin in the
3 enforcement of this section.

4

5 (d) In addition to any other penalty prescribed by
6 law, the court shall order a person convicted pursuant to
7 this section to pay jail costs as provided in W.S. 7-3-109.

8

9 (e) This section does not apply to any person who
10 maintains authorization from the federal government to
11 remain in the United States.

12

13 (f) Any record that relates to the immigration status
14 of a person is admissible in any court without further
15 foundation testimony from a custodian of records if the
16 record is certified as authentic by the government agency
17 that is responsible for maintaining the record.

18

19 (g) Any person violating subsection (a) of this
20 section is guilty of a misdemeanor punishable by a fine of
21 not more than one hundred dollars (\$100.00), imprisonment
22 for not more than twenty (20) days for a first conviction
23 and thirty (30) days for a second or subsequent conviction,
24 or both.

1

2 **6-5-215. Unlawful stopping to hire; unlawful**
3 **application, solicitation or employment.**

4

5 (a) A person is guilty of unlawful stopping to hire
6 if an occupant of a motor vehicle that is stopped on a
7 street, roadway or highway hires or attempts to hire and
8 pick up a passenger for work at a different location if the
9 motor vehicle blocks or impedes the normal movement of
10 traffic.

11

12 (b) A person is guilty of unlawful application,
13 solicitation or employment if:

14

15 (i) The person enters a motor vehicle that is
16 stopped on a street, roadway or highway in order to be
17 hired by an occupant of the motor vehicle and be
18 transported to a different location if the motor vehicle
19 blocks or impedes the normal movement of traffic; or

20

21 (ii) A person who is unlawfully present in the
22 United States and who is an unauthorized alien knowingly
23 applies for work, solicits work in a public place or

1 performs work as an employee or independent contractor in
2 this state.

3

4 (c) A peace officer or other law enforcement official
5 or law enforcement agency of this state or of a city, town,
6 county or other political subdivision of this state shall
7 not consider race, color or national origin in the
8 enforcement of this section.

9

10 (d) In the enforcement of this section, immigration
11 status may be determined by:

12

13 (i) A peace officer who is authorized by the
14 federal government to verify or ascertain an alien's
15 immigration status;

16

17 (ii) The United States immigration and customs
18 enforcement or the United States customs and border
19 protection pursuant to 8 U.S.C. § 1373(c).

20

21 (e) Any person violating subsection (a) or (b) of
22 this section is guilty of a misdemeanor punishable by
23 imprisonment for not more than six (6) months, a fine of

1 not more than seven hundred fifty dollars (\$750.00), or
2 both.

3

4 (f) As used in this section:

5

6 (i) "Solicit" means verbal or nonverbal
7 communication, including a gesture or nod, that would
8 indicate to a reasonable person that a person is willing to
9 be employed;

10

11 (ii) "Unauthorized alien" means an alien who
12 does not have the legal right or authorization under
13 federal law to work in the United States as described in 8
14 U.S.C. § 1324a(h)(3).

15

16 **6-5-216. Unlawful transporting, moving, concealing,
17 harboring or shielding of unlawful aliens; exceptions.**

18

19 (a) A person is guilty of unlawful transporting,
20 moving, concealing, harboring or shielding an unlawful
21 alien if the person:

22

23 (i) Transports or moves, or attempts to
24 transport or move an alien in this state in the furtherance

1 of the illegal presence of the alien in the United States,
2 in a vehicle, if the person knows or recklessly disregards
3 the fact that the alien has come to, has entered or remains
4 in the United States in violation of law;

5

6 (ii) Conceals, harbors or shields, or attempts
7 to conceal, harbor or shield an alien from detection in any
8 place in this state, including any building or vehicle, if
9 the person knows or recklessly disregards the fact that the
10 alien has come to, has entered or remains in the United
11 States in violation of law;

12

13 (iii) Encourages or induces, including through
14 an offer of employment, an alien to come to or remain in
15 this state if the person knows or recklessly disregards the
16 fact that the alien has come to, has entered or remains in
17 the United States in violation of law.

18

19 (b) Any vehicle used in a violation of subsection (a)
20 of this section is subject to immediate impoundment.

21

22 (c) A peace officer or other law enforcement official
23 or law enforcement agency of this state or of a city, town,
24 county or other political subdivision of this state shall

1 not consider race, color or national origin in the
2 enforcement of this section.

3

4 (d) In the enforcement of this section, immigration
5 status may be determined by:

6

7 (i) A peace officer who is authorized by the
8 federal government to verify or ascertain an alien's
9 immigration status;

10

11 (ii) The United States immigration and customs
12 enforcement or the United States customs and border
13 protection pursuant to 8 U.S.C. § 1373(c).

14

15 (e) This section does not apply to a child protective
16 service worker acting in the worker's official capacity or
17 a person who is acting in the capacity of a first
18 responder, an ambulance attendant or an emergency medical
19 technician.

20

21 (f) Any person violating subsection (a) of this
22 section is guilty of a misdemeanor punishable by a fine of
23 not less than one thousand dollars (\$1,000.00), except that
24 a violation of subsection (a) of this section that involves

1 ten (10) or more unauthorized aliens is a felony punishable
2 by a fine of not less than one thousand dollars (\$1,000.00)
3 per unauthorized alien.

4

5 **7-2-109. Cooperation and assistance in enforcement of**
6 **immigration laws; indemnification.**

7

8 (a) No official or agency of this state or a city,
9 town, county or other political subdivision of this state
10 may limit or restrict the enforcement of federal
11 immigration laws to less than the full extent permitted by
12 federal law.

13

14 (b) For any lawful stop, detention or arrest made by
15 a peace officer or other law enforcement official or law
16 enforcement agency of this state or of a city, town, county
17 or other political subdivision of this state in the
18 enforcement of any other law or ordinance of this state or
19 a city, town or county of this state where reasonable
20 suspicion exists that the person stopped, detained or
21 arrested is an alien who is unlawfully present in the
22 United States, a reasonable attempt shall be made, when
23 practicable, to determine the immigration status of the
24 person, except if the determination may hinder or obstruct

1 an investigation. The immigration status of each person
2 arrested in this state shall be determined prior to the
3 release of the person. Determination of immigration status
4 under this section shall be verified with the federal
5 government pursuant to 8 U.S.C. § 1373(c). A peace officer
6 or other law enforcement official or law enforcement agency
7 of this state or of a city, town, county or other political
8 subdivision of this state shall not consider race, color or
9 national origin in implementing the requirements of this
10 section. A person is presumed to not be an alien who is
11 unlawfully present in the United States if the person
12 provides the peace officer or other law enforcement
13 official or agency any of the following:

14

15 (i) A valid Wyoming driver's license;

16

17 (ii) A valid identification card issued by the
18 Wyoming department of transportation;

19

20 (iii) A valid tribal identification card or
21 other form of tribal identification;

22

1 (iv) If the entity requires proof of legal
2 presence in the United States prior to issuance, any valid
3 federal or state government issued identification card.

4

5 (c) If an alien who is unlawfully present in the
6 United States is convicted of a violation of state or local
7 law, upon discharge from imprisonment or the assessment of
8 any monetary obligation imposed, the appropriate state law
9 enforcement agency shall immediately notify the United
10 States customs and border protection or the United States
11 immigration and customs enforcement.

12

13 (d) Notwithstanding any other provision of law, a law
14 enforcement agency may securely transport an alien who the
15 agency has received verification is unlawfully present in
16 the United States and is in the custody of the agency to a
17 federal facility in this state or to any other point of
18 transfer into federal custody that is outside the
19 jurisdiction of the law enforcement agency. A law
20 enforcement agency shall obtain judicial authorization
21 prior to securely transporting an alien who is unlawfully
22 present in the United States to a point of transfer outside
23 of this state.

24

1 (e) In the implementation of this section, an alien's
2 immigration status may be determined by:

3

4 (i) A peace officer who is authorized by the
5 federal government to verify or ascertain an alien's
6 immigration status;

7

8 (ii) The United States immigration and customs
9 enforcement or the United States customs and border
10 protection pursuant to 8 U.S.C. § 1373(c).

11

12 (f) Except as otherwise provided in federal law,
13 peace officers and officials and agencies of this state and
14 cities, towns, counties and other political subdivisions of
15 this state shall not be prohibited or in any way restricted
16 from sending, receiving or maintaining information relating
17 to the immigration status, lawful or unlawful, of any
18 individual or from exchanging that information with any
19 other federal, state or local government entity for:

20

21 (i) Determining eligibility for any public
22 benefit, service or license provided by any federal, state,
23 local or other political subdivision of this state;

24

1 (ii) Verifying any claim of residence or
2 domicile if determination of residence or domicile is
3 required under the laws of this state or a judicial order
4 issued pursuant to a civil or criminal proceeding in this
5 state;

6

7 (iii) If the person is an alien, determining
8 whether the person is in compliance with the federal
9 registration laws prescribed by title II, chapter 7 of the
10 federal Immigration and Nationality Act;

11

12 (iv) The purposes of 8 U.S.C. § 1373 and 8
13 U.S.C. § 1644.

14

15 (g) This section does not implement, authorize or
16 establish and shall not be construed to establish the Real
17 ID Act of 2005, P.L. 109-13, Division B, including the use
18 of a radio frequency identification chip.

19

20 (h) A person who is a legal resident of this state
21 may bring an action in district court to challenge any
22 official or agency of this state or a city, town, county or
23 other political subdivision of this state that adopts or
24 implements a policy which limits or restricts the

1 enforcement of federal immigration laws, including 8 U.S.C.
2 §§ 1377 and 1644, to less than the full extent permitted by
3 federal law. If there is a judicial finding that an entity
4 has violated this subsection, the court shall order the
5 entity to pay a civil penalty of not less than five hundred
6 dollars (\$500.00) and not more than five thousand dollars
7 (\$5,000.00) for each day that the policy remained in effect
8 after the filing of an action pursuant to this subsection.

9

10 (j) All fines and penalties collected under this
11 section shall be paid to the state treasurer and credited
12 as provided in W.S. 8-1-109.

13

14 (k) The court may award court costs and reasonable
15 attorney fees to any person or any official or agency of
16 this state or a city, town, county or other subdivision of
17 this state that prevails by an adjudication on the merits
18 in a proceeding brought pursuant to subsection (h) of this
19 section.

20

21 (m) Unless the officer has been adjudged to have
22 acted in bad faith, a peace officer or other law
23 enforcement official acting pursuant to this section shall
24 be indemnified by the officer's agency against reasonable

1 costs and expenses, including attorney fees, incurred by
2 the officer in connection with any action, suit or
3 proceeding brought pursuant to this section.

4

5 (n) This section shall be implemented in a manner
6 consistent with federal laws regulating immigration,
7 protecting the civil rights of all persons and respecting
8 the privileges and immunities of United States citizens.

9

10

CHAPTER 15

11

UNAUTHORIZED ALIENS

12

13 **27-15-101. Employing unauthorized aliens;**
14 **prohibition.**

15

16 (a) An employer shall not employ an unauthorized
17 alien intentionally, knowingly or in reckless disregard of
18 the fact that the alien has come to, has entered or remains
19 in the United States in violation of law.

20

21 (b) The attorney general shall prescribe a complaint
22 form for a person to allege a violation of subsection (a)
23 of this section. The complainant shall not be required to
24 list the complainant's social security number on the

1 complaint or to have the complaint notarized. On receipt
2 of a complaint under this section, the attorney general or
3 appropriate district attorney shall investigate whether the
4 employer violated subsection (a) of this section. If a
5 complaint is received that is not on a complaint form
6 prescribed by the attorney general under this section, the
7 attorney general or the district attorney may investigate
8 whether the employer violated subsection (a) of this
9 section. The attorney general or district attorney shall
10 not investigate a complaint that is based solely upon race,
11 color or national origin. A person who files a false or
12 frivolous complaint under this section is guilty of a
13 misdemeanor.

14

15 (c) In investigating a complaint under subsection (b)
16 of this section, the attorney general or district attorney
17 shall verify the work authorization of the alleged
18 unauthorized alien with the federal government pursuant to
19 8 U.S.C. § 1373(c). No state, county or local official
20 shall attempt to independently make a final determination
21 as to whether an alien is authorized to work in the United
22 States.

23

1 (d) If, after investigation, the attorney general or
2 district attorney determines that the complaint is not
3 false or frivolous:

4

5 (i) The attorney general or district attorney
6 shall notify the United States immigration and customs
7 enforcement of the unauthorized alien;

8

9 (ii) The attorney general or district attorney
10 shall notify the appropriate local law enforcement agency
11 of the unauthorized alien;

12

13 (iii) If the complaint was filed with the
14 attorney general, the attorney general shall notify the
15 appropriate district attorney to bring an action pursuant
16 to subsection (e) of this section.

17

18 (e) The district attorney in the county where the
19 unauthorized alien is or was employed shall bring an action
20 in district court. For any action in district court under
21 this subsection, the court shall expedite the action
22 including assigning the hearing at the earliest practicable
23 date.

24

1 (f) On finding a violation of subsection (a) of this
2 section:

3

4 (i) For a first violation, as provided in
5 subsection (g) of this section, the court shall:

6

7 (A) Order the employer to terminate the
8 employment of all unauthorized aliens;

9

10 (B) Order that the employer be subject to a
11 five (5) year probationary period for the business location
12 where the unauthorized alien performed work. During the
13 probationary period the employer shall file quarterly
14 reports with the district attorney providing detailed
15 information on each new employee hired by the employer at
16 the business location where the unauthorized alien
17 performed work;

18

19 (C) In addition to any suspension under
20 subparagraph (D) of this paragraph, order the appropriate
21 agencies to suspend all licenses described in subparagraph
22 (D) of this paragraph for not less than ten (10) days. The
23 court shall determine the length of the suspension based on
24 the following factors, if relevant:

1

2

3

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

4

5

6

(II) Prior misconduct of the employer;

7

8

(III) The degree of harm resulting from the violation;

9

10

11

12

(IV) Whether the employer made good faith efforts to comply with applicable laws and requirements;

13

14

15

(V) The duration of the violation;

16

17

18

(VI) The role of directors, officers or principals of the employer in the violation;

19

20

(VII) Any other factor the court deems appropriate.

21

22

23

24

(D) Order the employer to file a signed sworn affidavit with the district attorney. The affidavit shall state that the employer has terminated the employment

1 of all unauthorized aliens in this state and that the
2 employer will not intentionally, knowingly or recklessly
3 employ an unauthorized alien in this state. If the
4 employer fails to file an affidavit within three (3) days
5 after an order is issued under this paragraph, the court
6 shall order the appropriate agencies to suspend all
7 licenses specified under this subparagraph. The licenses
8 shall remain suspended until the employer files the signed
9 affidavit. For the purposes of this subparagraph, the
10 licenses that are subject to suspension are all licenses
11 that are held by the employer specific to the business
12 location where the unauthorized alien performed work. If
13 the employer does not hold a license specific to the
14 business location where the unauthorized alien performed
15 work, but a license is required to operate the employer's
16 business in general, the licenses subject to suspension
17 under this paragraph are all licenses that are held by the
18 employer at the employer's primary place of business.

19

20 (ii) For a second violation, as provided in
21 subsection (g) of this section, the court shall order the
22 appropriate agencies to permanently revoke all licenses
23 that are held by the employer specific to the business
24 location where the unauthorized alien performed work. If

1 the employer does not hold a license specific to the
2 business location where the unauthorized alien performed
3 work, but a license is required to operate the employer's
4 business in general, the court shall order the appropriate
5 agencies to permanently revoke all licenses that are held
6 by the employer at the employer's primary place of
7 business. On receipt of an order under this paragraph, and
8 notwithstanding any other law, the appropriate agencies
9 shall immediately revoke the licenses.

10

11 (g) A violation of subsection (a) of this section
12 shall be considered:

13

14 (i) A first violation if the violation did not
15 occur during a probationary period ordered pursuant to W.S.
16 subparagraph (f)(i)(B) of this section;

17

18 (ii) A second violation if the violation
19 occurred during a probationary period ordered pursuant to
20 subparagraph (f)(i)(B) of this section.

21

22 (h) The district court shall submit any order issued
23 pursuant to subsection (f) of this section to the attorney
24 general. The attorney general shall maintain copies of all

1 orders received under this subsection and shall maintain a
2 database of all employers and business locations that have
3 a first violation of subsection (a) of this section. The
4 attorney general shall make copies of court orders received
5 under this subsection available on the attorney general's
6 website.

7

8 (j) In determining whether an employee is an
9 unauthorized alien, the court shall consider the federal
10 government's determination pursuant to 8 U.S.C. § 1373(c).
11 The federal government's determination creates a rebuttable
12 presumption of the employee's lawful status. The court may
13 take judicial notice of the federal government's
14 determination and may request the federal government to
15 provide automated or testimonial verification pursuant to 8
16 U.S.C. § 1373(c).

17

18 (k) For the purposes of this section, proof that the
19 employer verified the employment authorization of an
20 employee through the e-verify program creates a rebuttable
21 presumption that the employer did not intentionally,
22 knowingly or recklessly employ an unauthorized alien.

23

1 (m) For the purposes of this section, proof that the
2 employer has complied in good faith with the requirements
3 of 8 U.S.C. § 1324a(b) establishes an affirmative defense
4 that the employer did not intentionally, knowingly or
5 recklessly employ an unauthorized alien. An employer is
6 considered to have complied with the requirements of 8
7 U.S.C. § 1324a(b) notwithstanding isolated, sporadic or
8 accidental technical or procedural failure to meet the
9 requirements if there is a good faith attempt to meet the
10 requirements.

11

12 (n) It is an affirmative defense to a violation of
13 subsection (a) of this section that the employer was
14 entrapped. An employer that asserts an entrapment defense
15 has the burden of proving by a preponderance of the
16 evidence:

17

18 (i) That the idea of committing the violation
19 started with peace officers or their agents and not with
20 the employer;

21

22 (ii) That peace officers or their agents urged
23 and induced the employer to commit the violation;

24

1 (iii) That the employer was not predisposed to
2 commit the violation before the peace officers or their
3 agents urged and induced the employer to commit the
4 violation.

5
6 (o) An employer does not establish entrapment under
7 subsection (n) of this section if the employer was
8 predisposed to violate subsection (a) of this section and
9 peace officers or their agents merely provided the employer
10 with an opportunity to commit the violation. It is not
11 entrapment for peace officers or their agents to use a ruse
12 or conceal their identity. The conduct of peace officers
13 and their agents may be considered in determining if an
14 employer has proven entrapment under subsection (n) of this
15 section.

16
17 (p) As used in this section, "employ" includes using
18 a contract, subcontract or other independent contractor
19 agreement to obtain the labor of an unauthorized alien or a
20 person who employs or contracts with an unauthorized alien
21 to perform labor.

22

23

1 **27-15-102. Verification of employment eligibility; e-**
2 **verify program.**

3

4 (a) Every employer, after hiring a new employee,
5 shall verify the employment eligibility of the employee
6 through the e-verify program operated by the department of
7 homeland security. The employer shall keep a record of
8 each verification for the duration of the employee's
9 employment or three (3) years, whichever is longer.

10

11 (b) In addition to any other requirement, before
12 receiving any economic development incentive the employer
13 shall provide proof to the government entity that the
14 employer is registered with and is participating in the e-
15 verify program.

16

17 (c) At least quarterly, the attorney general shall
18 request from the department of homeland security a list of
19 employers from this state that are registered with the e-
20 verify program. The attorney general shall make the list
21 of employers available on the attorney general's website.

22

23 (d) As used in this section, "economic development
24 incentive" means any grant, loan or performance-based

1 incentive from any government entity. "Economic
2 development incentive" does not include any tax provision
3 under title 39, Wyoming statutes.

4

5 **Section 2.** W.S. 7-2-102(b)(ii) and by creating a new
6 paragraph (iv) is amended to read:

7

8 **7-2-102. Preconditions for arrests.**

9

10 (b) A peace officer may arrest a person without a
11 warrant when:

12

13 (ii) The officer has probable cause to believe
14 that a felony has been committed and that the person to be
15 arrested has committed it;~~or~~

16

17 (iv) The officer has probable cause to believe
18 that the person to be arrested has committed any offense
19 that makes the person removable from the United States.

20

21 **Section 3.**

22

23 (a) If any provision of this act or its application
24 to any person or circumstance is held invalid, the

1 invalidity does not affect other provisions or applications
2 of the act which can be given effect without the invalid
3 provision or application, and to this end the provisions of
4 this act are severable.

5

6 (b) The terms of this act regarding immigration shall
7 be construed to have the same meanings given to them under
8 federal immigration law.

9

10 (c) This act shall be implemented in a manner
11 consistent with federal laws regarding immigration,
12 protecting the civil rights of all persons and respecting
13 the privileges and immunities of United States citizens.

14

15 (d) This act does not implement, authorize or
16 establish and shall not be construed to implement or
17 establish the Real ID Act of 2005, P.L. 109-13, Division B,
18 including the use of a radio frequency identification chip.

19

20 (e) Notwithstanding any other law, the attorney
21 general shall act at the direction of the governor to
22 defend any challenge to this act in a state or federal
23 court.

24

1 (f) Notwithstanding any other law, the governor may
2 direct counsel other than the attorney general to appear on
3 behalf of this state to defend any challenge to this act in
4 a state or federal court.

5

6 **Section 4.** This act is effective July 1, 2011.

7

8

(END)