

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 1284

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

Eric A. Youngberg

AN ACT

RELATING TO IMMIGRATION; REQUIRING STATE AND LOCAL LAW ENFORCEMENT TO ENFORCE FEDERAL IMMIGRATION LAWS; ALLOWING LAW ENFORCEMENT OFFICERS TO INQUIRE ABOUT A PERSON'S IMMIGRATION STATUS IF THE PERSON HAS BEEN LAWFULLY DETAINED; CREATING A NEW CRIMINAL OFFENSE KNOWN AS CRIMINAL TRESPASS BY AN ILLEGAL ALIEN; ENACTING THE EMPLOYMENT OF UNAUTHORIZED WORKERS ACT; PROHIBITING THE EMPLOYMENT OF PERSONS NOT AUTHORIZED TO WORK IN THE UNITED STATES; PROVIDING PENALTIES; CREATING THE INTERIM LEGISLATIVE COMMITTEE ON IMMIGRATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 29, Article 1 NMSA 1978 is enacted to read:

"[NEW MATERIAL] ENFORCEMENT OF FEDERAL IMMIGRATION LAW REQUIRED.--Law enforcement agencies of the state and its

.163046.1

underscoring material = new  
[bracketed material] = delete

underscoring material = new  
[bracketed material] = delete

1 political subdivisions shall employ all lawful means, including  
2 use of state or federal funds, equipment, personnel or  
3 resources, to detect or apprehend persons of foreign  
4 citizenship who have entered or are residing in the United  
5 States in violation of federal immigration laws in Title 8 of  
6 the United States Code."

7 Section 2. A new section of Chapter 29, Article 1 NMSA  
8 1978 is enacted to read:

9 "[NEW MATERIAL] LAW ENFORCEMENT OFFICERS--IMMIGRATION  
10 STATUS INQUIRY.--A law enforcement officer of the state and its  
11 political subdivisions who lawfully detains a person based on  
12 reasonable suspicion that the person is engaged in or will  
13 engage in criminal activity may inquire about the person's  
14 immigration status."

15 Section 3. A new section of Chapter 30, Article 14 NMSA  
16 1978 is enacted to read:

17 "[NEW MATERIAL] CRIMINAL TRESPASS BY AN ILLEGAL ALIEN--  
18 PENALTIES.--

19 A. Criminal trespass by an illegal alien consists  
20 of a person entering or remaining upon public or private land  
21 in the state if the person is of foreign citizenship and has  
22 entered or is residing in the United States in violation of  
23 federal immigration laws in Title 8 of the United States Code.

24 B. Except as provided in Subsection C of this  
25 section, whoever commits criminal trespass by an illegal alien

.163046.1

underscored material = new  
[bracketed material] = delete

1 is guilty of a:

2 (1) misdemeanor upon a first conviction; or

3 (2) fourth degree felony upon a second or  
4 subsequent conviction.

5 C. A person who commits criminal trespass by an  
6 illegal alien is guilty of a third degree felony if, while in  
7 the commission of the crime, the person also commits:

8 (1) possession of a controlled substance  
9 pursuant to Section 30-31-20 NMSA 1978;

10 (2) unlawful carrying of a deadly weapon  
11 pursuant to Section 30-7-2 NMSA 1978; or

12 (3) unlawful sale, possession or  
13 transportation of explosives pursuant to Section 30-7-7 NMSA  
14 1978."

15 Section 4. [NEW MATERIAL] SHORT TITLE.--Sections 4  
16 through 8 of this act may be cited as the "Employment of  
17 Unauthorized Workers Act".

18 Section 5. [NEW MATERIAL] DEFINITIONS.--As used in the  
19 Employment of Unauthorized Workers Act:

20 A. "employer" means a person, including the state  
21 or a political subdivision of the state, who employs the  
22 services or one or more persons; and

23 B. "unauthorized worker" means a person of foreign  
24 citizenship who has entered or resides in the United States and  
25 is not authorized to be employed under federal law.

.163046.1

underscored material = new  
[bracketed material] = delete

1           Section 6. [NEW MATERIAL] EMPLOYERS--VERIFICATION OF  
2 EMPLOYEES.--

3           A. An employer shall:

4                   (1) make reasonable efforts to verify that the  
5 employer does not hire or employ an unauthorized worker; and

6                   (2) comply with federal and state laws  
7 regarding a person's employment eligibility.

8           B. An employer shall discharge an employee if the  
9 employer discovers that the employee provided an invalid social  
10 security number to the employer, unless the employee provides a  
11 valid social security number or a legal and valid federal or  
12 state identification document to the employer no later than ten  
13 business days after receiving notice from the employer that the  
14 initial number was invalid. This subsection shall not apply if  
15 an error occurred when a valid social security number was  
16 processed by the employer, the federal government or the state.

17           Section 7. [NEW MATERIAL] EMPLOYMENT OF UNAUTHORIZED  
18 WORKERS--ENFORCEMENT.--

19           A. The attorney general is empowered to investigate  
20 and bring a civil action for the enforcement of the Employment  
21 of Unauthorized Workers Act. If the attorney general  
22 determines after an investigation that an employer knowingly  
23 employs an unauthorized worker in this state, as verified by  
24 the attorney general with the federal government, the attorney  
25 general shall:

.163046.1

underscoring material = new  
[bracketed material] = delete

1 (1) notify the employer that the employer is  
2 in violation of the Employment of Unauthorized Workers Act;

3 (2) notify United States immigration and  
4 customs enforcement of the unauthorized worker; and

5 (3) petition a district court for an order  
6 requiring the employer to cease and desist from employing the  
7 unauthorized worker and to discharge other unauthorized workers  
8 who are identified in the cease and desist order who are  
9 knowingly employed by the employer.

10 B. A district court may enter orders after  
11 reasonable notice and hearing. The employer may appeal from  
12 any final decision or order of the district court to the court  
13 of appeals.

14 C. For purposes of this section, proof of the  
15 following creates a rebuttable presumption that the employer  
16 knowingly employed an unauthorized worker:

17 (1) the employer violated the minimum wage  
18 requirements prescribed by the federal Fair Labor Standards Act  
19 of 1938 for the unauthorized worker identified in the petition;  
20 or

21 (2) the employer accepts a consular  
22 identification card that is issued by a foreign government as a  
23 form of identification when determining the employee's  
24 identity.

25 Section 8. [NEW MATERIAL] EMPLOYMENT OF UNAUTHORIZED

.163046.1

underscored material = new  
[bracketed material] = delete

1 WORKERS--PENALTIES.--An employer who violates the provisions of  
2 the Employment of Unauthorized Workers Act shall be subject to  
3 a civil penalty not to exceed five thousand dollars (\$5,000).  
4 Any permit, license, registration or other authorization issued  
5 to the employer to conduct business in this state shall also be  
6 subject to suspension or revocation.

7 Section 9. [NEW MATERIAL] INTERIM LEGISLATIVE COMMITTEE  
8 ON IMMIGRATION--CREATED.--The "interim legislative committee on  
9 immigration" is created as a joint interim legislative  
10 committee. The committee shall function from the date of its  
11 appointment until the first of December prior to the first  
12 session of the fiftieth legislature.

13 Section 10. [NEW MATERIAL] INTERIM LEGISLATIVE COMMITTEE  
14 ON IMMIGRATION--MEMBERSHIP--APPOINTMENT--VACANCIES.--

15 A. The interim legislative committee on immigration  
16 shall be composed of eight members. Four members of the house  
17 of representatives shall be appointed by the speaker of the  
18 house of representatives. Four members of the senate shall be  
19 appointed by the senate committees' committee or, if the senate  
20 appointments are made in the interim, by the president pro  
21 tempore of the senate after consultation with and agreement of  
22 a majority of the members of the senate committees' committee.

23 B. Members shall be appointed from each house so as  
24 to give the two major political parties in each house  
25 proportionate representation on the committee as prevails in

.163046.1

underscored material = new  
[bracketed material] = delete

1 each house; provided, however, that in no event shall either  
2 party have less than one member from each house on the  
3 committee. The speaker of the house of representatives and the  
4 president pro tempore of the senate shall each appoint a co-  
5 chair of the committee.

6 C. A vacancy on the committee shall be filled by  
7 appointment in the same manner as the original appointment.

8 D. No action shall be taken by the committee if a  
9 majority of the total membership from either house on the  
10 committee rejects the action.

11 E. Members of the committee shall be reimbursed for  
12 per diem and mileage as provided in the Per Diem and Mileage  
13 Act and shall receive no other compensation, perquisite or  
14 allowance.

15 Section 11. [NEW MATERIAL] INTERIM LEGISLATIVE COMMITTEE  
16 ON IMMIGRATION--DUTIES--COOPERATION.--

17 A. After its appointment, the interim legislative  
18 committee on immigration shall hold one organizational meeting  
19 to develop a work plan and budget for the ensuing interim.  
20 The work plan and budget shall be submitted to the New Mexico  
21 legislative council for approval.

22 B. Upon approval of its work plan and budget, the  
23 committee shall review the implementation and enforcement of  
24 the provisions of this 2007 act. The committee shall also make  
25 annual recommendations to the legislature that will secure the

.163046.1

underscored material = new  
[bracketed material] = delete

1 borders, prevent unauthorized border crossings and improve the  
2 enforcement of immigration laws in this state.

3 C. Every state agency and political subdivision of  
4 the state shall, upon request, furnish and make available to  
5 the committee documents, material or information requested by  
6 the members of the committee or its staff. Documents, the use  
7 of which is restricted by or pursuant to law or for reasons of  
8 security or the public interest, may be inspected or surveyed  
9 by the members of the committee, subject to the same  
10 restrictions imposed upon employees of the agency holding the  
11 documents.

12 Section 12. [NEW MATERIAL] INTERIM LEGISLATIVE COMMITTEE  
13 ON IMMIGRATION--SUBCOMMITTEES.--

14 A. Subcommittees may be created only by majority  
15 vote of all members appointed to the interim legislative  
16 committee on immigration and with the prior approval of the New  
17 Mexico legislative council. A subcommittee shall be composed  
18 of at least one member from the house of representatives and  
19 one member from the senate, and at least one member of the  
20 minority party shall be a member of the subcommittee.

21 B. All meetings of a subcommittee shall be approved  
22 by the full committee in advance of the meetings, and the  
23 approval shall be shown in the minutes of the committee.

24 Section 13. [NEW MATERIAL] INTERIM LEGISLATIVE COMMITTEE  
25 ON IMMIGRATION--REPORT.--The interim legislative committee on

.163046.1

underscored material = new  
[bracketed material] = delete

1 immigration shall make a report of its findings and  
2 recommendations for the consideration of the second session of  
3 the forty-eighth legislature; the first session of the forty-  
4 ninth legislature; the second session of the forty-ninth  
5 legislature; and the first session of the fiftieth legislature.  
6 The reports and proposed legislation shall be made available to  
7 the New Mexico legislative council on or before December 15  
8 preceding the legislative session.

9 Section 14. [NEW MATERIAL] INTERIM LEGISLATIVE COMMITTEE  
10 ON IMMIGRATION--STAFF.--The staff for the interim legislative  
11 committee on immigration shall be provided by the legislative  
12 council service.

13 Section 15. SEVERABILITY.--If any part or application of  
14 this act is held invalid, the remainder or its application to  
15 other situations or persons shall not be affected.

16 Section 16. EMERGENCY.--It is necessary for the public  
17 peace, health and safety that this act take effect immediately.