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SENATE BILL 5338

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State of Washington                      62nd Legislature                      2011 Regular Session

By Senators Stevens, Benton, Swecker, Carrell, Delvin, and Ericksen

Read first time 01/20/11. Referred to Committee on Government Operations, Tribal Relations & Elections.

1            AN ACT Relating to lawful legal presence in the United States;  
2 amending RCW 46.20.031, 74.08.025, and 74.08A.110; reenacting and  
3 amending RCW 70.47.020; adding a new section to chapter 9A.76 RCW;  
4 adding a new section to chapter 70.48 RCW; adding a new section to  
5 chapter 41.04 RCW; adding a new section to chapter 74.08 RCW; repealing  
6 RCW 74.08A.100 and 74.08A.120; and prescribing penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8            NEW SECTION.    **Sec. 1.** A new section is added to chapter 9A.76 RCW  
9 to read as follows:

10            (1) It is unlawful for any person to transport, move, or attempt to  
11 transport in the state of Washington any alien knowingly or in reckless  
12 disregard of the fact that the alien has come to, entered, or remained  
13 in the United States in violation of the law, in furtherance of the  
14 illegal presence of the alien in the United States.

15            (2) It is unlawful for any person to conceal, harbor, or shelter  
16 from detection any alien in any place within the state of Washington,  
17 including any building or means of transportation, knowingly or in  
18 reckless disregard of the fact that the alien has come to, entered, or  
19 remained in the United States in violation of the law.

1 (3) Nothing in this section may be construed so as to prohibit or  
2 restrict the provision of any state or local public benefit described  
3 in 8 U.S.C. Sec. 1621(b), or regulated public health services provided  
4 by a private charity using private funds.

5 (4) Any person violating the provisions of subsection (1) or (2) of  
6 this section is, upon conviction, guilty of a felony punishable by  
7 imprisonment in the custody of the department of corrections for not  
8 less than one year, or by a fine of not less than one thousand dollars,  
9 or by both the fine and imprisonment.

10 **Sec. 2.** RCW 46.20.031 and 2002 c 279 s 3 are each amended to read  
11 as follows:

12 The department shall not issue a driver's license to a person:

13 (1) Who is under the age of sixteen years;

14 (2) Whose driving privilege has been withheld unless and until the  
15 department may authorize the driving privilege under RCW 46.20.311;

16 (3) Who has been classified as an alcoholic, drug addict, alcohol  
17 abuser, or drug abuser by a program approved by the department of  
18 social and health services. The department may, however, issue a  
19 license if the person:

20 (a) Has been granted a deferred prosecution under chapter 10.05  
21 RCW; or

22 (b) Is satisfactorily participating in or has successfully  
23 completed an alcohol or drug abuse treatment program approved by the  
24 department of social and health services and has established control of  
25 his or her alcohol or drug abuse problem;

26 (4) Who has previously been adjudged to be (~~mentally ill~~) an  
27 individual with a mental illness or insane, or to be incompetent due to  
28 a mental disability or disease. The department shall, however, issue  
29 a license to the person if he or she otherwise qualifies and:

30 (a) Has been restored to competency by the methods provided by law;  
31 or

32 (b) The superior court finds the person able to operate a motor  
33 vehicle with safety upon the highways during such incompetency;

34 (5) Who has not passed the driver's licensing examination required  
35 by RCW 46.20.120 and 46.20.305, if applicable;

36 (6) Who is required under the laws of this state to deposit proof  
37 of financial responsibility and who has not deposited such proof;

1 (7) Who is unable to safely operate a motor vehicle upon the  
2 highways due to a physical or mental disability. The department's  
3 conclusion that a person is barred from licensing under this subsection  
4 must be reasonable and be based upon good and substantial evidence.  
5 This determination is subject to review by a court of competent  
6 jurisdiction;

7 (8)(a) Who cannot provide proof of United States citizenship or  
8 status as a legal permanent resident alien. The provisions of this  
9 subsection do not apply when an applicant presents, in person, valid  
10 documentary evidence of:

11 (i) A valid, unexpired immigrant or nonimmigrant visa status for  
12 admission into the United States;

13 (ii) A pending or approved application for asylum in the United  
14 States;

15 (iii) Admission into the United States in refugee status;

16 (iv) A pending or approved application for temporary protected  
17 status in the United States;

18 (v) Approved deferred action status; or

19 (vi) A pending application for adjustment of status to legal  
20 permanent residence status or conditional resident status.

21 (b) Upon approval, the applicant may be issued an identification  
22 document provided for in (a)(iii) or (iv) of this subsection. A  
23 driver's license is valid only during the period of time of the  
24 authorized stay of the applicant in the United States or, if there is  
25 no definite end to the period of authorized stay, a period of one year.  
26 Any driver's license issued pursuant to the provisions of this  
27 subsection must clearly indicate that it is temporary and must state  
28 the date that the identification document expires. The identification  
29 document may be renewed only upon presentation of valid documentary  
30 evidence that the status by which the applicant qualified for the  
31 identification document has been extended by the United States  
32 citizenship and immigration services or other authorized agency of the  
33 United States department of homeland security.

34 Any driver's license issued to a person who is not a United States  
35 citizen, national, or legal permanent resident alien for which an  
36 application has been made for renewal, duplication, or reissuance is  
37 presumed to have been issued in accordance with the provisions of this  
38 subsection if, at the time the application is made, the driver's

1 license has not expired, or been canceled, suspended, or revoked. The  
2 requirements of this subsection apply; however, to a renewal,  
3 duplication, or reissuance if the department is notified by a local,  
4 state, or federal government agency of information in the possession of  
5 the agency indicating a reasonable suspicion that the individual  
6 seeking the renewal, duplication, or reissuance is present in the  
7 United States in violation of the law. The provisions of this  
8 subsection do not apply to United States citizens, nationals, or legal  
9 permanent resident aliens.

10 NEW SECTION. Sec. 3. A new section is added to chapter 70.48 RCW  
11 to read as follows:

12 (1) When a person charged with a felony or with driving under the  
13 influence pursuant to RCW 46.61.502 is confined, for any period, in the  
14 jail of the county, any municipality, or a jail operated by a regional  
15 jail authority, a reasonable effort must be made to determine the  
16 citizenship status of the person so confined.

17 (2) If the prisoner is a foreign national, the keeper of the jail  
18 or other officer shall make a reasonable effort to verify that the  
19 prisoner has been lawfully admitted to the United States and, if  
20 lawfully admitted, that his or her lawful status has not expired. If  
21 verification of lawful status cannot be made from documents in the  
22 possession of the prisoner, verification must be made within forty-  
23 eight hours through a query to the law enforcement support center of  
24 the United States department of homeland security or other office or  
25 agency designated for that purpose by the United States department of  
26 homeland security. If the lawful immigration status of the prisoner  
27 cannot be verified, the keeper of the jail or other officer shall  
28 notify the United States department of homeland security.

29 (3) For the purpose of determining the grant of or issuance of  
30 bond, it is a rebuttable presumption that a person whose citizenship  
31 status has been verified pursuant to subsection (2) of this section to  
32 be a foreign national who has not been lawfully admitted to the United  
33 States is at risk of flight.

34 NEW SECTION. Sec. 4. A new section is added to chapter 41.04 RCW  
35 to read as follows:

1 (1) Every agency in the state shall register with and utilize the  
2 e-verify program to verify the work eligibility status of all new  
3 employees.

4 (2)(a) After August 1, 2011, an agency may not enter into a  
5 contract for the performance of services within this state unless the  
6 contractor registers and participates in the e-verify program to verify  
7 the work eligibility status of all new employees.

8 (b) The provisions of this subsection do not apply to any contracts  
9 entered into prior to the effective date of this section even though  
10 the contracts may involve the performance of services within this state  
11 after August 1, 2011.

12 (3) The definitions in this subsection apply throughout this  
13 section unless the context clearly requires otherwise.

14 (a) "Agency" means any agency, department, board, or commission of  
15 this state or a county, city, or town that issues a license for  
16 purposes of operating a business in this state.

17 (b) "E-verify program" means the employment verification pilot  
18 program as jointly administered by the United States department of  
19 homeland security and the social security administration or any of its  
20 successor programs.

21 (c) "Unauthorized alien" means an alien who does not have the legal  
22 right or authorization under federal law to work in the United States  
23 as described in 8 U.S.C. Sec. 1324a(h)(3).

24 NEW SECTION. **Sec. 5.** A new section is added to chapter 74.08 RCW  
25 to read as follows:

26 (1) Except as provided in subsection (2) of this section or where  
27 exempted by federal law, every agency or political subdivision of this  
28 state shall verify the lawful presence in the United States of any  
29 natural person fourteen years of age or older who has applied for state  
30 or local public benefits, as defined in 8 U.S.C. Sec. 1621, or for  
31 federal public benefits, as defined in 8 U.S.C. Sec. 1611, that is  
32 administered by an agency or political subdivision of this state.

33 (2) Verification of lawful presence shall not be required:

34 (a) For any purpose for which lawful presence in the United States  
35 is not required by law, ordinance, or regulation;

36 (b) For assistance for health care items and services that are

1 necessary for the treatment of an emergency medical condition, as  
2 defined in 42 U.S.C. Sec. 1396b(v)(3), of the alien involved and are  
3 not related to an organ transplant procedure;

4 (c) For short-term, noncash, in-kind emergency disaster relief; or

5 (d) For public health assistance for immunizations with respect to  
6 diseases and for testing and treatment of symptoms of communicable  
7 diseases whether or not such symptoms are caused by a communicable  
8 disease.

9 (3) Verification of lawful presence in the United States by the  
10 agency or political subdivision required to make such verification  
11 shall require that the applicant execute an affidavit under penalty of  
12 perjury that: (a) He or she is a United States citizen; or (b) he or  
13 she is a qualified alien under the federal immigration and nationality  
14 act and is lawfully present in the United States.

15 (4) For any applicant who has executed the affidavit, eligibility  
16 for benefits shall be verified through the systematic alien  
17 verification for entitlements program operated by the United States  
18 department of homeland security or an equivalent program. Until such  
19 eligibility verification is made, the affidavit may be presumed to be  
20 proof of lawful presence for the purposes of this section.

21 (5) Any person who knowingly and willfully makes a false statement  
22 in an affidavit executed pursuant to subsection (3) of this section  
23 shall be subject to criminal penalties for fraudulently obtaining  
24 public assistance program benefits.

25 (6) Agencies or political subdivisions may adopt variations to the  
26 requirements of the provisions of this section which demonstrably  
27 improve the efficiency or reduce delay in the verification process, or  
28 to provide for adjudication of unique individual circumstances where  
29 the verification procedures in this section would impose unusual  
30 hardship on a legal resident of Washington.

31 (7) It shall be unlawful for any agency or political subdivision of  
32 this state to provide any state, local, or federal benefit, as defined  
33 in 8 U.S.C. Sec. 1621, or 8 U.S.C. Sec. 1611, in violation of the  
34 provisions of this section.

35 **Sec. 6.** RCW 74.08.025 and 2005 c 174 s 2 are each amended to read  
36 as follows:

37 (1) Public assistance may be awarded to any applicant:

1 (a) Who is in need and otherwise meets the eligibility requirements  
2 of department assistance programs; and

3 (b) Who is a United States citizen or is a qualified alien under  
4 the federal immigration and nationality act and is lawfully present in  
5 the United States; and

6 (c) Who has not made a voluntary assignment of property or cash for  
7 the purpose of qualifying for an assistance grant; and

8 ((+e)) (d) Who is not an inmate of a public institution except as  
9 a patient in a medical institution or except as an inmate in a public  
10 institution who could qualify for federal aid assistance: PROVIDED,  
11 That the assistance paid by the department to recipients in nursing  
12 homes, or receiving nursing home care, may cover the cost of clothing  
13 and incidentals and general maintenance exclusive of medical care and  
14 health services. The department may pay a grant to cover the cost of  
15 clothing and personal incidentals in public or private medical  
16 institutions and institutions for tuberculosis. The department shall  
17 allow recipients in nursing homes to retain, in addition to the grant  
18 to cover the cost of clothing and incidentals, wages received for work  
19 as a part of a training or rehabilitative program designed to prepare  
20 the recipient for less restrictive placement to the extent permitted  
21 under Title XIX of the federal social security act.

22 (2) Any person otherwise qualified for temporary assistance for  
23 needy families under this title who has resided in the state of  
24 Washington for fewer than twelve consecutive months immediately  
25 preceding application for assistance is limited to the benefit level in  
26 the state in which the person resided immediately before Washington,  
27 using the eligibility rules and other definitions established under  
28 this chapter, that was obtainable on the date of application in  
29 Washington state, if the benefit level of the prior state is lower than  
30 the level provided to similarly situated applicants in Washington  
31 state. The benefit level under this subsection shall be in effect for  
32 the first twelve months a recipient is on temporary assistance for  
33 needy families in Washington state.

34 (3) Any person otherwise qualified for temporary assistance for  
35 needy families who is assessed through the state alcohol and substance  
36 abuse program as drug or alcohol-dependent and requiring treatment to  
37 become employable shall be required by the department to participate in  
38 a drug or alcohol treatment program as a condition of benefit receipt.

1 (4) Pursuant to 21 U.S.C. 862a(d)(1), the department shall exempt  
2 individuals from the eligibility restrictions of 21 U.S.C. 862a(a)(1)  
3 and (2) to ensure eligibility for temporary assistance for needy  
4 families benefits and federal food assistance.

5 **Sec. 7.** RCW 74.08A.110 and 1997 c 57 s 2 are each amended to read  
6 as follows:

7 (1) Except as provided in subsection (4) of this section, qualified  
8 aliens (~~(and aliens permanently residing under color of law)~~) shall  
9 have their eligibility for assistance redetermined.

10 (2) In determining the eligibility and the amount of benefits of a  
11 qualified alien (~~(or an alien permanently residing under color of law)~~)  
12 for public assistance under this title, the income and resources of the  
13 alien shall be deemed to include the income and resources of any person  
14 and his or her spouse who executed an affidavit of support pursuant to  
15 section 213A of the federal immigration and naturalization act on  
16 behalf of the alien for a period of five years following the execution  
17 of that affidavit of support. The deeming provisions of this  
18 subsection shall be waived if the sponsor dies or is permanently  
19 incapacitated during the period the affidavit of support is valid.

20 (3) As used in this section, "qualified alien" has the meaning  
21 provided it in P.L. 104-183.

22 (4)(a) Qualified aliens specified under sections 403, 412, and 552  
23 (e) and (f), subtitle B, Title IV, of P.L. 104-193 and in P.L. 104-208,  
24 are exempt from this section.

25 (b) Qualified aliens who served in the armed forces of an allied  
26 country, or were employed by an agency of the federal government,  
27 during a military conflict between the United States of America and a  
28 military adversary are exempt from the provisions of this section.

29 (c) Qualified aliens who are victims of domestic violence and  
30 petition for legal status under the federal violence against women act  
31 are exempt from the provisions of this section.

32 **Sec. 8.** RCW 70.47.020 and 2009 c 568 s 2 are each reenacted and  
33 amended to read as follows:

34 As used in this chapter:

35 (1) "Administrator" means the Washington basic health plan



1 administrator, who also holds the position of administrator of the  
2 Washington state health care authority.

3 (2) "Health coverage tax credit eligible enrollee" means individual  
4 workers and their qualified family members who lose their jobs due to  
5 the effects of international trade and are eligible for certain trade  
6 adjustment assistance benefits; or are eligible for benefits under the  
7 alternative trade adjustment assistance program; or are people who  
8 receive benefits from the pension benefit guaranty corporation and are  
9 at least fifty-five years old.

10 (3) "Health coverage tax credit program" means the program created  
11 by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax  
12 credit that subsidizes private health insurance coverage for displaced  
13 workers certified to receive certain trade adjustment assistance  
14 benefits and for individuals receiving benefits from the pension  
15 benefit guaranty corporation.

16 (4) "Managed health care system" means: (a) Any health care  
17 organization, including health care providers, insurers, health care  
18 service contractors, health maintenance organizations, or any  
19 combination thereof, that provides directly or by contract basic health  
20 care services, as defined by the administrator and rendered by duly  
21 licensed providers, to a defined patient population enrolled in the  
22 plan and in the managed health care system; or (b) a self-funded or  
23 self-insured method of providing insurance coverage to subsidized  
24 enrollees provided under RCW 41.05.140 and subject to the limitations  
25 under RCW 70.47.100(7).

26 (5) "Nonsubsidized enrollee" means an individual, or an individual  
27 plus the individual's spouse or dependent children: (a) Who is not  
28 eligible for medicare; (b) who is not confined or residing in a  
29 government-operated institution, unless he or she meets eligibility  
30 criteria adopted by the administrator; (c) who is accepted for  
31 enrollment by the administrator as provided in RCW 48.43.018, either  
32 because the potential enrollee cannot be required to complete the  
33 standard health questionnaire under RCW 48.43.018, or, based upon the  
34 results of the standard health questionnaire, the potential enrollee  
35 would not qualify for coverage under the Washington state health  
36 insurance pool; (d) who resides in an area of the state served by a  
37 managed health care system participating in the plan; (e) who chooses

1 to obtain basic health care coverage from a particular managed health  
2 care system; and (f) who pays or on whose behalf is paid the full costs  
3 for participation in the plan, without any subsidy from the plan.

4 (6) "Premium" means a periodic payment, which an individual, their  
5 employer or another financial sponsor makes to the plan as  
6 consideration for enrollment in the plan as a subsidized enrollee, a  
7 nonsubsidized enrollee, or a health coverage tax credit eligible  
8 enrollee.

9 (7) "Rate" means the amount, negotiated by the administrator with  
10 and paid to a participating managed health care system, that is based  
11 upon the enrollment of subsidized, nonsubsidized, and health coverage  
12 tax credit eligible enrollees in the plan and in that system.

13 (8) "Subsidy" means the difference between the amount of periodic  
14 payment the administrator makes to a managed health care system on  
15 behalf of a subsidized enrollee plus the administrative cost to the  
16 plan of providing the plan to that subsidized enrollee, and the amount  
17 determined to be the subsidized enrollee's responsibility under RCW  
18 70.47.060(2).

19 (9) "Subsidized enrollee" means:

20 (a) An individual, or an individual plus the individual's spouse or  
21 dependent children:

22 (i) Who is not eligible for medicare;

23 (ii) Who is not confined or residing in a government-operated  
24 institution, unless he or she meets eligibility criteria adopted by the  
25 administrator;

26 (iii) Who is not a full-time student who has received a temporary  
27 visa to study in the United States;

28 (iv) Who resides in an area of the state served by a managed health  
29 care system participating in the plan;

30 (v) Whose gross family income at the time of enrollment does not  
31 exceed two hundred percent of the federal poverty level as adjusted for  
32 family size and determined annually by the federal department of health  
33 and human services;

34 (vi) Who chooses to obtain basic health care coverage from a  
35 particular managed health care system in return for periodic payments  
36 to the plan; (~~and~~)

37 (vii) Who is not receiving medical assistance administered by the  
38 department of social and health services; and

1 (viii) Who is a United States citizen or is a qualified alien under  
2 the federal immigration and nationality act and is lawfully present in  
3 the United States;

4 (b) An individual who meets the requirements in (a)(i) through  
5 (iv), and (vi)((~~, and (vii)~~)) through (viii) of this subsection and who  
6 is a foster parent licensed under chapter 74.15 RCW and whose gross  
7 family income at the time of enrollment does not exceed three hundred  
8 percent of the federal poverty level as adjusted for family size and  
9 determined annually by the federal department of health and human  
10 services; and

11 (c) To the extent that state funds are specifically appropriated  
12 for this purpose, with a corresponding federal match, an individual, or  
13 an individual's spouse or dependent children, who meets the  
14 requirements in (a)(i) through (iv), and (vi)((~~, and (vii)~~)) through  
15 (viii) of this subsection and whose gross family income at the time of  
16 enrollment is more than two hundred percent, but less than two hundred  
17 fifty-one percent, of the federal poverty level as adjusted for family  
18 size and determined annually by the federal department of health and  
19 human services.

20 (10) "Washington basic health plan" or "plan" means the system of  
21 enrollment and payment for basic health care services, administered by  
22 the plan administrator through participating managed health care  
23 systems, created by this chapter.

24 NEW SECTION. Sec. 9. The following acts or parts of acts are each  
25 repealed:

26 (1) RCW 74.08A.100 (Immigrants--Eligibility) and 2002 c 366 s 1 &  
27 1997 c 57 s 1; and

28 (2) RCW 74.08A.120 (Immigrants--Food assistance) and 1999 c 120 s  
29 4 & 1997 c 57 s 3.

30 NEW SECTION. Sec. 10. If any provision of this act or its  
31 application to any person or circumstance is held invalid, the  
32 remainder of the act or the application of the provision to other  
33 persons or circumstances is not affected.

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