

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

A Bill

HOUSE BILL 2006

5 By: Representative Hubbard
6

For An Act To Be Entitled

8 AN ACT CREATING A CRIMINAL STATUTE INVOLVING THE
9 TRANSPORTATION AND HARBORING OF ILLEGAL ALIENS; THE
10 ENFORCEMENT OF THE LAW CREATING THAT CRIME; CREATION
11 OF A CIVIL ACTION; AND FOR OTHER PURPOSES.
12
13

Subtitle

14 CREATING A CRIMINAL STATUTE INVOLVING THE
15 TRANSPORTATION AND HARBORING OF ILLEGAL
16 ALIENS, THE ENFORCEMENT OF THE LAW
17 CREATING THAT CRIME, AND CREATION OF A
18 CIVIL ACTION.
19
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 5, Subtitle 6, is amended to add a new
25 Chapter to read as follows:

26 Chapter 80

27 Illegal Immigration

28 5-80-101. Transporting, moving, concealing, harboring, or sheltering
29 illegal aliens.

30 (a) As used in this section, "alien" means a person who is not a
31 United States citizen, not a permanent resident, and not otherwise authorized
32 to work in the United States under federal law.

33 (b) It is unlawful for a person to:

34 (1) Knowingly transport or move another person in reckless
35 disregard of the fact that the other person is an alien; or

36 (2) Knowingly conceal, harbor, or shelter from detection another



1 person in any place, including without limitation any building or means of
2 transportation, in reckless disregard of the fact that the other person is an
3 alien.

4 (c) A violation of this section is a Class D felony.

5 (d) This section does not apply to a child protective services worker
6 acting in his or her official capacity or a person who is acting in the
7 capacity of a first responder, an ambulance attendant, or an emergency
8 medical technician and who is transporting or moving an alien in this state.

9
10 SECTION 2. Arkansas Code Title 12, Subtitle 2, is amended to add a new
11 Chapter to read as follows:

12 Chapter 19

13 Illegal Immigration – Enforcement

14 12-19-101. Definition.

15 As used in this subchapter, “alien” means a person who is not a United
16 States citizen, not a permanent resident, and not otherwise authorized to
17 work in the United States under federal law.

18
19 12-19-102. Cooperation and assistance in enforcement of immigration
20 laws.

21 (a) A state official or state agency or an official or agency of a
22 political subdivision of this state shall not limit or restrict the
23 enforcement of federal immigration laws to less than the full extent
24 permitted by federal law.

25 (b)(1) Upon any lawful stop, detention, or arrest of a person by a
26 certified law enforcement officer in the enforcement of any other law or
27 ordinance of this state or a political subdivision of this state in which
28 reasonable suspicion exists that the person is an alien who is unlawfully
29 present in the United States, the certified law enforcement officer shall
30 make a reasonable attempt, when practicable, to determine the immigration
31 status of the person, except if the determination may hinder or obstruct an
32 investigation.

33 (2)(A) If a lawful stop, detention, or arrest of a person is
34 made by a noncertified law enforcement officer, he or she shall enlist the
35 assistance of a certified law enforcement officer or a law enforcement agency
36 in enforcing this section.

1 (B) The certified law enforcement officer or law
2 enforcement agency shall then be responsible for enforcing this section.

3 (c)(1) If a person is arrested for any reason, the arresting law
4 enforcement agency shall determine the arrested person's immigration status
5 before he or she is released.

6 (2) The arrested person's immigration status shall be verified
7 with the United States Government under 8 U.S.C. § 1373(c) or by a certified
8 law enforcement officer who is authorized by the United States Government to
9 verify or ascertain a person's immigration status.

10 (d)(1) In implementing the requirements of this section, a law
11 enforcement agency or certified law enforcement officer shall not consider
12 race, color, or national origin, except to the extent permitted by either the
13 United States Constitution or the Arkansas Constitution.

14 (2) A person is presumed to be lawfully present in the United
15 States if he or she can provide:

16 (A) A valid Arkansas driver's license;

17 (B) A valid Arkansas nonoperating identification license;

18 or

19 (C) If the entity requires proof of legal presence in the
20 United States before issuance, a valid identification issued by the United
21 States Government or a state or local government.

22 (e) If an alien who is unlawfully present in the United States is
23 convicted of a violation of state or local law, on discharge from
24 imprisonment or on the assessment of any monetary obligation that is imposed,
25 the United States Immigration and Customs Enforcement or the United States
26 Customs and Border Protection shall be notified immediately by the state
27 agency or local agency discharging the person or, if the alien is not being
28 discharged, by the entity charged with collecting any monetary obligation.

29 (f) A law enforcement agency may securely transport an alien in its
30 custody who has been verified as unlawfully present in the United States to:

31 (A) A federal facility in this state; or

32 (B) Any other point of transfer into federal custody
33 within this state.

34 (g) Except as provided by federal law, a state official or state
35 agency or an official or agency of a political subdivision of this state
36 shall not be prohibited or in any way be restricted from sending, receiving,

1 or maintaining information relating to the immigration status, lawful or
2 unlawful, of any person or exchanging that information with any other
3 federal, state, or local government entity for the following official
4 purposes:

5 (1) Determining eligibility for any public benefit, service, or
6 license provided by any federal, state, local, or other political subdivision
7 of this state;

8 (2) Verifying any claim of residence or domicile if
9 determination of residence or domicile is required under the laws of this
10 state or a judicial order issued pursuant to a civil or criminal proceeding
11 in this state; or

12 (3) Under 8 U.S.C. §§ 1373 and 1644.

13 (h) This section does not implement, authorize, or establish and shall
14 not be construed to implement, authorize, or establish the Real ID Act of
15 2005, Pub. L. No. 109-13, including the use of a radio frequency
16 identification chip.

17
18 12-19-103. Civil action authorized.

19 (a)(1) A citizen of this state may bring an action in circuit court to
20 challenge any state official or state agency or an official or agency of a
21 political subdivision of this state that adopts or implements a policy that
22 limits or restricts the enforcement of federal immigration laws to less than
23 the full extent permitted by federal law.

24 (2) If there is a judicial finding that a state official or
25 state agency or an official or agency of a political subdivision has violated
26 subdivision (a)(1) of this section, the circuit court shall order that the
27 state official or state agency or the official or agency of the political
28 subdivision pay a civil penalty of not less than one thousand dollars
29 (\$1,000) and not more than five thousand dollars (\$5,000) for each day that
30 the policy has remained in effect after the filing of an action under this
31 subsection.

32 (b) The circuit court shall collect the civil penalty prescribed in
33 subdivision (a)(2) of this section and remit the civil penalty to the
34 Treasurer of State for deposit into the State Administration of Justice Fund.

35 (c) The circuit court may award court costs and reasonable attorney
36 fees to any person or state official or state agency or official or agency of

1 a political subdivision of this state that prevails by an adjudication on the
2 merits in an action brought under this section.

3
4 12-19-104. Indemnification.

5 Except in relation to matters in which the certified law enforcement
6 officer is determined to have acted in bad faith, a certified law enforcement
7 officer is indemnified by the certified law enforcement officer's law
8 enforcement agency against reasonable costs and expenses, including attorney
9 fees, incurred by the certified law enforcement officer in connection with
10 any action, suit, or proceeding brought pursuant to this chapter in which the
11 certified law enforcement officer may be a defendant by reason of the
12 certified law enforcement officer's being or having been a member of the law
13 enforcement agency.

14
15 12-19-105. Implementation.

16 This chapter shall be implemented in a manner consistent with federal
17 laws regulating immigration, protecting the civil rights of all persons, and
18 respecting the privileges and immunities of United States citizens.