

IN THE SENATE

SENATE BILL NO. 1260

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE IMMIGRATION COOPERATION AND ENFORCEMENT ACT; AMENDING SEC-  
2 TION 18-9002, IDAHO CODE, TO DEFINE A TERM; AMENDING SECTION 18-9003,  
3 IDAHO CODE, TO REVISE PROVISIONS REGARDING ILLEGAL ENTRY AND TO REMOVE  
4 PROVISIONS REGARDING ILLEGAL ENTRY; AMENDING SECTION 18-9004, IDAHO  
5 CODE, TO PROVIDE FOR CERTAIN AFFIRMATIVE DEFENSES; AND DECLARING AN  
6 EMERGENCY AND PROVIDING AN EFFECTIVE DATE.  
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Section 18-9002, Idaho Code, be, and the same is hereby  
10 amended to read as follows:

11 18-9002. DEFINITIONS. As used in this chapter:

12 (1) "Alien" has the meaning assigned by 8 U.S.C. 1101, as that provision  
13 existed on January 1, 2023.

14 (2) "Custodial authority" means the director of the department of cor-  
15 rection, county sheriffs, city chiefs of police, and any of their subordi-  
16 nates with the power to confine or detain a person under color of law.

17 (3) "Dangerous crime" means any felony crime as described in Idaho Code  
18 or in similar state or federal code, any offense for which an extended term of  
19 imprisonment may be imposed pursuant to section 19-2520B, Idaho Code, or any  
20 offense requiring sex offender registration as set forth in section 18-8304,  
21 Idaho Code.

22 (4) "Dangerous illegal alien" means an illegal alien who has previously  
23 been convicted or found guilty, by judgment or withheld judgment, of a dan-  
24 gerous crime in this state or in any other state or nation.

25 (5) "DHS" means the United States department of homeland security and  
26 its subordinate agencies and divisions.

27 (6) "Illegal alien" means a person eighteen (18) years of age or older  
28 who is verified by the federal government to be present in the United States  
29 in violation of the federal immigration and nationality act, 8 U.S.C., and  
30 federal rules promulgated in accordance therewith.

31 (7) "Immigration detainer" means a notice or other documentation is-  
32 sued by United States immigration and customs enforcement requesting that a  
33 custodial authority or law enforcement official maintain temporary custody  
34 of an illegal alien, including a DHS form I-247 document or a similar succes-  
35 sor form.

36 (8) "Law enforcement official" means all state, county, and local law  
37 enforcement officers, prosecuting attorneys, and city attorneys.

38 (9) "Port of entry" means a port of entry in the United States pursuant  
39 to 19 CFR 101.

40 (10) "Violation of 8 U.S.C. 1324(a)(1) or 8 U.S.C. 1324(a)(2)" means  
41 a conviction in federal court of violating 8 U.S.C. 1324(a)(1) or 8 U.S.C.

1 1324(a)(2) or, in the absence of a charge or conviction, committing acts that  
 2 would be a violation of 8 U.S.C. 1324(a)(1) or 8 U.S.C. 1324(a)(2).

3 SECTION 2. That Section 18-9003, Idaho Code, be, and the same is hereby  
 4 amended to read as follows:

5 18-9003. ~~ILLEGAL ENTRY FROM FOREIGN NATION.~~ (1) A person who is an  
 6 alien and is eighteen (18) years of age or older commits an offense if the  
 7 person knowingly enters or attempts to enter this state at any location other  
 8 than a lawful port of entry or through another manner of lawful entry or is  
 9 at any time present in this state after having entered the United States in  
 10 violation of 8 U.S.C. 1324(a)(1) or 8 U.S.C. 1324(a)(2).

11 (2) A violation of this section shall be a misdemeanor upon a first con-  
 12 viction. A second or subsequent conviction shall be a felony.

13 (3) Law enforcement officers may enforce the provisions of this section  
 14 only when a person is detained or investigated for suspected commission of  
 15 an independent crime under title 18, Idaho Code, excluding this chapter, or  
 16 under chapter 27, title 37, Idaho Code.

17 (4) It shall be an affirmative defense to prosecution under this sec-  
 18 tion that:

19 (a) The federal government has affirmatively granted the defendant:  
 20 permission to remain in the United States under a provision of the immi-  
 21 gration and nationality act or other federal statute; or

22 ~~(i) Lawful presence in the United States; or~~

23 ~~(ii) Asylum under 8 U.S.C. 1158;~~

24 ~~(b) The defendant's conduct does not constitute a violation of 8 U.S.C.~~  
 25 ~~1325(a);~~

26 ~~(c) (b) The defendant was not investigated for, charged with, or con-~~  
 27 ~~victed of committing the independent crime for which the defendant was~~  
 28 ~~detained or investigated pursuant to subsection (3) of this section;~~  
 29 ~~or.~~

30 ~~(d) The defendant was approved for benefits under the federal deferred~~  
 31 ~~action for childhood arrivals program between June 15, 2012, and July~~  
 32 ~~16, 2021.~~

33 ~~(5) The following federal programs do not provide an affirmative de-~~  
 34 ~~fense for purposes of subsection (4) (a) of this section:~~

35 ~~(a) The deferred action for parents of Americans and lawful permanent~~  
 36 ~~residents program; and~~

37 ~~(b) Any program not enacted by the United States congress that is a suc-~~  
 38 ~~cessor to or materially similar to the program described by subsection~~  
 39 ~~(4) (d) or paragraph (a) of this subsection.~~

40 ~~(6) (5) Notwithstanding any other provision of law to the contrary,~~  
 41 ~~a defendant shall not be eligible for deferred adjudication or a withheld~~  
 42 ~~judgment if the defendant is charged with or convicted of an offense pursuant~~  
 43 ~~to this section.~~

44 SECTION 3. That Section 18-9004, Idaho Code, be, and the same is hereby  
 45 amended to read as follows:

1 18-9004. ILLEGAL REENTRY BY CERTAIN ALIENS. (1) A person who is an  
 2 alien commits an offense if the person enters, attempts to enter, or is at any  
 3 time found in this state after the person:

4 (a) Has been denied admission to or excluded, deported, or removed from  
 5 the United States; or

6 (b) Has departed from the United States while an order of exclusion, de-  
 7 portation, or removal is outstanding.

8 (2) A violation of this section shall be a misdemeanor, except that the  
 9 violation shall be a felony if:

10 (a) The defendant's removal was subsequent to a conviction for commis-  
 11 sion of two (2) or more misdemeanors involving drugs, crimes against a  
 12 person, or both;

13 (b) The defendant was excluded pursuant to 8 U.S.C. 1225(c) because the  
 14 defendant was excludable under 8 U.S.C. 1182(a) (3) (B);

15 (c) The defendant was removed pursuant to the provisions of 8 U.S.C.  
 16 chapter 12, subchapter V; or

17 (d) The defendant was removed pursuant to 8 U.S.C. 1231(a) (4) (B) .

18 (3) For purposes of this section, "removal" includes any agreement in  
 19 which an alien stipulates to removal pursuant to a criminal proceeding pur-  
 20 suant to either federal or state law.

21 (4) Law enforcement officers may enforce the provisions of this section  
 22 only when a person is detained or investigated for suspected commission of  
 23 an independent crime under title 18, Idaho Code, excluding this chapter, or  
 24 under chapter 27, title 37, Idaho Code.

25 (5) It shall be an affirmative defense to prosecution under this sec-  
 26 tion that ~~the~~:

27 (a) The defendant was not investigated for, charged with, or convicted  
 28 of committing the independent crime for which the defendant was de-  
 29 tained or investigated pursuant to subsection (4) of this section;

30 (b) The attorney general of the United States or the secretary of the  
 31 United States department of homeland security has expressly consented  
 32 to the defendant's entry into, reentry into, or presence in the United  
 33 States; or

34 (c) The federal government has affirmatively granted the defendant  
 35 permission to remain in the United States under a provision of the immi-  
 36 gration and nationality act or other federal statute.

37 (6) Notwithstanding any other provision of law to the contrary, a de-  
 38 fendant shall not be eligible for deferred adjudication or withheld judgment  
 39 if the defendant is charged with or convicted of an offense pursuant to this  
 40 section.

41 SECTION 4. An emergency existing therefor, which emergency is hereby  
 42 declared to exist, this act shall be in full force and effect on and after  
 43 July 1, 2026.