

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 753

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO IMMIGRATION; AMENDING TITLE 18, IDAHO CODE, BY THE ADDITION OF A  
2 NEW CHAPTER 89, TITLE 18, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE FOR THE  
3 CRIME OF ILLEGAL ENTRY FROM A FOREIGN NATION, TO PROVIDE FOR THE CRIME OF  
4 ILLEGAL REENTRY BY CERTAIN ALIENS, TO PROVIDE FOR THE CRIME OF REFUSAL  
5 TO COMPLY WITH AN ORDER TO RETURN TO A FOREIGN NATION, AND TO PROHIBIT  
6 THE ABATEMENT OF PROSECUTION ON THE BASIS OF IMMIGRATION STATUS DE-  
7 TERMINATION; AMENDING TITLE 19, IDAHO CODE, BY THE ADDITION OF A NEW  
8 CHAPTER 63, TITLE 19, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING AN  
9 ORDER TO RETURN TO A FOREIGN NATION; AMENDING CHAPTER 3, TITLE 5, IDAHO  
10 CODE, BY THE ADDITION OF A NEW SECTION 5-347, IDAHO CODE, TO PROVIDE FOR  
11 CIVIL IMMUNITY FOR AND INDEMNIFICATION OF LOCAL GOVERNMENT OFFICIALS,  
12 EMPLOYEES, AND CONTRACTORS; AMENDING CHAPTER 3, TITLE 5, IDAHO CODE,  
13 BY THE ADDITION OF A NEW SECTION 5-347A, IDAHO CODE, TO PROVIDE FOR  
14 CIVIL IMMUNITY FOR AND INDEMNIFICATION OF STATE OFFICIALS, EMPLOYEES,  
15 AND CONTRACTORS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE  
16 DATE.  
17

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

19 SECTION 1. That Title 18, Idaho Code, be, and the same is hereby amended  
20 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
21 ter 89, Title 18, Idaho Code, and to read as follows:

22 CHAPTER 89  
23 ILLEGAL ENTRY INTO THIS STATE

24 18-8901. DEFINITIONS. As used in this chapter:  
25 (1) "Alien" has the meaning assigned by 8 U.S.C. 1101, as that provision  
26 existed on January 1, 2023.  
27 (2) "Port of entry" means a port of entry in the United States as desig-  
28 nated by 19 CFR 101.

29 18-8902. ILLEGAL ENTRY FROM FOREIGN NATION. (1) A person who is an  
30 alien commits an offense if the person enters or attempts to enter this state  
31 directly from a foreign nation at any location other than a lawful port of  
32 entry.

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

35 (3) It shall be an affirmative defense to prosecution under this sec-  
36 tion that:

- 37 (a) The federal government has granted the defendant:  
38 (i) Lawful presence in the United States; or  
39 (ii) Asylum under 8 U.S.C. 1158;

1 (b) The defendant's conduct does not constitute a violation of 8 U.S.C.  
2 1325(a); or

3 (c) The defendant was approved for benefits under the federal deferred  
4 action for childhood arrivals program between June 15, 2012, and July  
5 16, 2021.

6 (4) The following federal programs do not provide an affirmative de-  
7 fense for purposes of subsection (3) (a) of this section:

8 (a) The deferred action for parents of Americans and lawful permanent  
9 residents program; and

10 (b) Any program not enacted by the United States congress that is a suc-  
11 cessor to or materially similar to the program described by subsection  
12 (3) (c) or paragraph (a) of this subsection.

13 (5) Notwithstanding any other provision of law to the contrary, a de-  
14 fendant shall not be eligible for deferred adjudication or a withheld judg-  
15 ment if the defendant is charged with or convicted of an offense pursuant to  
16 this section.

17 18-8903. ILLEGAL REENTRY BY CERTAIN ALIENS. (1) A person who is an  
18 alien commits an offense if the person enters, attempts to enter, or is at any  
19 time found in this state after the person:

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

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

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

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

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

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

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

34 (3) For purposes of this section, "removal" includes an order issued  
35 pursuant to section 19-6301, Idaho Code, or any other agreement in which an  
36 alien stipulates to removal pursuant to a criminal proceeding pursuant to  
37 either federal or state law.

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

42 18-8904. REFUSAL TO COMPLY WITH AN ORDER TO RETURN TO FOREIGN NA-  
43 TION. (1) A person who is an alien commits an offense if:

44 (a) The person has been charged with or convicted of an offense pursuant  
45 to this chapter;

46 (b) A magistrate or judge, as applicable, has issued an order pursuant  
47 to section 19-6301, Idaho Code, for the person to return to the foreign  
48 nation from which the person entered or attempted to enter; and

- 1 (c) The person refuses to comply with the order.  
 2 (2) A violation of this section shall be a felony.

3 18-8905. ABATEMENT OF PROSECUTION ON BASIS OF IMMIGRATION STATUS DE-  
 4 TERMINATION PROHIBITED. A court may not abate the prosecution of an offense  
 5 pursuant to this chapter on the basis that a federal determination regarding  
 6 the immigration status of the defendant is pending or will be initiated.

7 SECTION 2. That Title 19, Idaho Code, be, and the same is hereby amended  
 8 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-  
 9 ter 63, Title 19, Idaho Code, and to read as follows:

10 CHAPTER 63  
 11 ORDER TO RETURN TO FOREIGN NATION

12 19-6301. ORDER TO RETURN TO FOREIGN NATION. (1) A magistrate during a  
 13 person's appearance pursuant to section 19-514 or 19-615, Idaho Code, may,  
 14 after making a determination that probable cause exists for arrest for an of-  
 15 fense pursuant to section 18-8902 or 18-8903, Idaho Code, order the person  
 16 released from custody and issue a written order in accordance with subsec-  
 17 tion (3) of this section.

18 (2) The judge in a person's case at any time after the person's appear-  
 19 ance before a magistrate pursuant to section 19-514 or 19-615, Idaho Code,  
 20 may, in lieu of continuing the prosecution of or entering an adjudication re-  
 21 garding an offense pursuant to section 18-8902 or 18-8903, Idaho Code, dis-  
 22 miss the charge pending against the person and issue a written order in ac-  
 23 cordance with subsection (3) of this section.

24 (3) A written order authorized by subsection (1) or (2) of this section  
 25 must discharge the person and require the person to return to the foreign na-  
 26 tion from which the person entered or attempted to enter and may be issued  
 27 only if:

- 28 (a) The person agrees to the order;  
 29 (b) The person has not previously been convicted of an offense under  
 30 chapter 89, title 18, Idaho Code, or previously obtained a discharge un-  
 31 der an order described by subsection (1) or (2) of this section;  
 32 (c) The person is not charged with another offense that is punishable as  
 33 a felony; and  
 34 (d) Before the issuance of the order, the arresting law enforcement  
 35 agency:

36 (i) Collects all available identifying information of the per-  
 37 son, which must include taking fingerprints from the person and  
 38 using other applicable photographic and biometric measures to  
 39 identify the person; and

- 40 (ii) Cross-references the collected information with:  
 41 1. All relevant local, state, and federal criminal  
 42 databases; and  
 43 2. Federal lists or classifications used to identify a per-  
 44 son as a threat or potential threat to national security.

45 (4) On a person's conviction of an offense under chapter 89, title 18,  
 46 Idaho Code, the judge shall enter in the judgment in the case an order requir-  
 47 ing the person to return to the foreign nation from which the person entered

1 or attempted to enter. An order issued pursuant to this subsection takes ef-  
2 fect on completion of the term of confinement or imprisonment imposed by the  
3 judgment.

4 (5) An order issued pursuant to this section shall include:

5 (a) The manner of transportation of the person to a port of entry, as  
6 defined in section 18-8901, Idaho Code; and

7 (b) The law enforcement officer or state agency responsible for moni-  
8 toring compliance with the order.

9 (6) An order issued pursuant to this section shall be filed:

10 (a) With the county clerk of the county in which the person was ar-  
11 rested, for an order described in subsection (1) of this section; or

12 (b) With the clerk of the court exercising jurisdiction in the case, for  
13 an order described in subsection (2) or (4) of this section.

14 (7) Not later than the seventh day after the date an order is issued pur-  
15 suant to this section, the law enforcement officer or state agency required  
16 to monitor compliance with the order shall report the issuance of the order  
17 to the Idaho state police for inclusion in the Idaho criminal history data-  
18 base.

19 SECTION 3. That Chapter 3, Title 5, Idaho Code, be, and the same is  
20 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
21 ignated as Section 5-347, Idaho Code, and to read as follows:

22 5-347. CIVIL IMMUNITY FOR AND INDEMNIFICATION OF LOCAL GOVERNMENT  
23 OFFICIALS, EMPLOYEES, AND CONTRACTORS. (1) Except as provided by subsection  
24 (4) of this section, a local government official, employee, or contractor  
25 shall be immune from liability for damages arising from a cause of action  
26 under state law resulting from an action taken by the official, employee,  
27 or contractor to enforce the provisions of chapter 89, title 18, Idaho  
28 Code, or an order issued pursuant to section 19-6301, Idaho Code, during  
29 the course and scope of the official's, employee's, or contractor's office,  
30 employment, or contractual performance for or service on behalf of the local  
31 government.

32 (2) Subject to the provisions of subsection (3) of this section and ex-  
33 cept as provided by subsection (4) of this section, a local government shall  
34 indemnify an official, employee, or contractor of the local government for  
35 damages arising from a cause of action under federal law resulting from an  
36 action taken by the official, employee, or contractor to enforce the pro-  
37 visions of chapter 89, title 18, Idaho Code, or an order issued pursuant to  
38 section 19-6301, Idaho Code, during the course and scope of the official's,  
39 employee's, or contractor's office, employment, or contractual performance  
40 for or service on behalf of the local government.

41 (3) Indemnification payments made pursuant to subsection (2) of this  
42 section by a local government shall not exceed:

43 (a) One hundred thousand dollars (\$100,000) to any one (1) person or  
44 three hundred thousand dollars (\$300,000) for any single occurrence in  
45 the case of personal injury or death; or

46 (b) Ten thousand dollars (\$10,000) for a single occurrence of property  
47 damage.

1 (4) Subsections (1) and (2) of this section shall not apply if the court  
2 or jury determines that the local government official, employee, or contrac-  
3 tor acted in bad faith, with conscious indifference, or with recklessness.

4 (5) A local government shall indemnify an official, employee, or con-  
5 tractor of the local government for reasonable attorney's fees incurred in  
6 defense of a criminal prosecution against the official, employee, or con-  
7 tractor for an action taken by the official, employee, or contractor to en-  
8 force the provisions of chapter 89, title 18, Idaho Code, or an order issued  
9 pursuant to section 19-6301, Idaho Code, during the course and scope of the  
10 official's, employee's, or contractor's office, employment, or contractual  
11 performance for or service on behalf of the local government.

12 (6) The provisions of this section may not be construed to waive any  
13 statutory limits on damages under state law.

14 (7) For a civil action brought against a person who may be entitled  
15 to immunity or indemnification pursuant to this section, an appeal must be  
16 taken directly to the Idaho supreme court.

17 (8) The provisions of this section shall not affect a defense, immu-  
18 nity, or jurisdictional bar available to a local government or an official,  
19 employee, or contractor of a local government.

20 (9) As used in this section, "damages" includes any and all damages,  
21 fines, fees, penalties, court costs, attorney's fees, or other assessments.

22 SECTION 4. That Chapter 3, Title 5, Idaho Code, be, and the same is  
23 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
24 ignated as Section 5-347A, Idaho Code, and to read as follows:

25 5-347A. CIVIL IMMUNITY FOR AND INDEMNIFICATION OF STATE OFFICIALS,  
26 EMPLOYEES, AND CONTRACTORS. (1) Except as provided by subsection (4) of this  
27 section, an elected or appointed state official or a state employee or con-  
28 tractor is immune from liability for damages arising from a cause of action  
29 under state law resulting from an action taken by the official, employee, or  
30 contractor to enforce the provisions of chapter 89, title 18, Idaho Code, or  
31 an order issued pursuant to section 19-6301, Idaho Code, during the course  
32 and scope of the official's, employee's, or contractor's office, employ-  
33 ment, or contractual performance for or service on behalf of the state.

34 (2) Except as provided by subsection (4) of this section, the state  
35 shall indemnify an elected or appointed state official or a state employee  
36 or contractor for damages arising from a cause of action under federal law  
37 resulting from an action taken by the official, employee, or contractor to  
38 enforce the provisions of chapter 89, title 18, Idaho Code, or an order is-  
39 sued pursuant to section 19-6301, Idaho Code, during the course and scope of  
40 the official's, employee's, or contractor's office, employment, or contrac-  
41 tual performance for or service on behalf of the state.

42 (3) Notwithstanding the provisions of any other law to the contrary,  
43 an indemnification payment made pursuant to subsection (2) of this section  
44 shall not be subject to an indemnification limit under the laws of this  
45 state.

46 (4) The provisions of subsections (1) and (2) of this section shall not  
47 apply if the court or jury determines that the state official, employee, or  
48 contractor acted in bad faith, with conscious indifference, or with reck-  
49 lessness.

1 (5) The state shall indemnify a state official, employee, or contractor  
2 for reasonable attorney's fees incurred in defense of a criminal prosecu-  
3 tion against the official, employee, or contractor for an action taken by the  
4 official, employee, or contractor to enforce the provisions of chapter 89,  
5 title 18, Idaho Code, or an order issued pursuant to section 19-6301, Idaho  
6 Code, during the course and scope of the official's, employee's, or contrac-  
7 tor's office, employment, or contractual performance for or service on be-  
8 half of the state.

9 (6) A state official, employee, or contractor who may be entitled to in-  
10 demnification pursuant to subsection (2) of this section is entitled to rep-  
11 resentation by the attorney general in an action in connection with which the  
12 official, employee, or contractor may be entitled to that indemnification.

13 (7) The provisions of this section shall not be construed to waive any  
14 statutory limits on damages under state law.

15 (8) For a civil action brought against a person who may be entitled  
16 to immunity or indemnification pursuant to this section, an appeal must be  
17 taken directly to the Idaho supreme court.

18 (9) The provisions of this section shall not affect a defense, immu-  
19 nity, or jurisdictional bar available to the state or an official, employee,  
20 or contractor of the state.

21 (10) As used in this section, "damages" includes any and all damages,  
22 fines, fees, penalties, court costs, attorney's fees, or other assessments.

23 SECTION 5. An emergency existing therefor, which emergency is hereby  
24 declared to exist, this act shall be in full force and effect on and after  
25 July 1, 2024.