

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

Senate Bill 823

By Senators Tarr and Deeds

[Introduced February 16, 2024; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §61-17-1, §61-17-2, §61-17-3, §61-17-4, §61-17-5, §61-17-6, §61-17-7, §61-
 3 17-8, and §61-17-9, all relating to prohibitions on the illegal entry into, or illegal presence
 4 in, this state by a person who is an alien, the enforcement of those prohibitions and certain
 5 related orders, including immunity from liability and indemnification for enforcement
 6 actions, and authorizing, or requiring under certain circumstances, the removal of persons
 7 who violate those prohibitions; and creating criminal offenses.

Be it enacted by the Legislature of West Virginia: _

ARTICLE 17. PROCEDURES FOR CERTAIN OFFENSES INVOLVING ILLEGAL

ENTRY INTO THIS STATE.

§61-17-1. Definitions.

1 In this article:
 2 (1) "Alien" means any person not a citizen of the United States.
 3 (2) "Port of entry" means a port of entry in the United States as designated by 19 C.F.R.
 4 Part 101, including Charleston, West Virginia.

§61-17-2. Illegal entry from foreign nation.

1 (a) A person who is an alien commits an offense if the person enters this state directly from
 2 a foreign nation at any location other than a lawful port of entry.
 3 (b) An offense under this section is a misdemeanor, except that the offense is a felony if it is
 4 shown on the trial of the offense that the defendant has been previously convicted of an offense
 5 under this section. A person convicted of the misdemeanor offense under this Section shall be
 6 subject to a fine of not less than \$50 nor more than \$500, or up to 90 days in jail, or both a fine and
 7 a period of confinement. A person convicted of the felony offense under this section shall be
 8 subject to a fine of up to \$5,000, and a period of confinement of not less than 1 nor more than 3
 9 years, or both a fine and a period of confinement.

10 (c) It is an affirmative defense to prosecution under this section that:

11 (1) The federal government has granted the defendant:

12 (A) Lawful presence in the United States; or

13 (B) Asylum under 8 U.S.C. Section 1158;

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

15 (3) The defendant was approved for benefits under the federal Deferred Action for

16 Childhood Arrivals program between June 15, 2012, and July 16, 2021.

§61-17-3. Illegal reentry by certain aliens.

1 (a) A person who is an alien commits an offense if the person enters or is at any time found
2 in this state after the person:

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

5 (2) Has departed from the United States while an order of exclusion, deportation, or
6 removal is outstanding.

7 (b) An offense under this section is a misdemeanor, except that the offense is:

8 (1) A felony if:

9 (A) The defendant's removal was subsequent to a conviction for commission of two or
10 more misdemeanors involving drugs, crimes against a person, or both;

11 (B) The defendant was excluded pursuant to 8 U.S.C. Section 1225(c) because the
12 defendant was excludable under 8 U.S.C. Section 1182(a)(3)(B); or

13 (C) The defendant was removed pursuant to the provisions of 8 U.S.C. Chapter 12,
14 Subchapter V.

15 (2) The defendant was removed subsequent to a conviction for the commission of a felony.

16 (c) For purposes of this section, "removal" includes an order or any other agreement in
17 which an alien stipulates to removal pursuant to a criminal proceeding under either federal or state
18 law. A person convicted of the misdemeanor offense under this Section shall be subject to a fine of

19 not less than \$50 nor more than \$500, or up to 90 days in jail, or both a fine and a period of
20 confinement. A person convicted of the felony offense under this Section shall be subject to a fine
21 of up to \$5,000, and a period of confinement of not less than 1 nor more than 3 years, or both a fine
22 and a period of confinement.

§61-17-4. Order to return to foreign nation.

1 A magistrate, during a person's appearance, or the judge in the person's case at any time
2 after that appearance may, in lieu of continuing the prosecution of or entering an adjudication
3 regarding an offense contained within the Article, dismiss the charge pending against the person
4 and issue a written order that discharges the person and requires the person to return to the
5 foreign nation from which the person entered or attempted to enter, if:

6 (a) The person agrees to the order;

7 (b) The person has not previously been convicted of an offense under this Article, or
8 previously obtained a dismissal and discharge under this subsection; and

9 (c) The person is not charged with another offense that, if convicted, would constitute a
10 felony; and

11 (d) Before the issuance of the order dismissing the charge and discharging the person, the
12 arresting law enforcement agency:

13 (1) Collects all available identifying information of the person, which must include taking
14 fingerprints from the person and using other applicable photographic and biometric measures to
15 identify the person; and

16 (2) Cross-references the collected information with:

17 (A) All relevant local, state, and federal criminal databases; and

18 (B) Federal lists or classifications used to identify a person as a threat or potential threat to
19 national security.

20 (3) An order issued under this article must include:

21 (A) The manner of transportation of the person to a port of entry; and

22 (B) The law enforcement officer or state agency responsible for monitoring compliance
23 with the order.

§61-17-5. Abatement of prosecution on basis of immigration status determination prohibited.

1 A court may not abate the prosecution of an offense on the basis that a federal
2 determination regarding the immigration status of the defendant is pending or will be initiated.

§61-17-6. Refusal to comply with order to return to foreign nation.

1 (a) A person who is an alien commits an offense if:

2 (1) The person has been charged with or convicted of an offense under this chapter;

3 (2) A magistrate or judge, as applicable, has issued an order for the person to return to the
4 foreign nation from which the person entered or attempted to enter; and

5 (3) The person refuses to comply with the order.

6 (b) An offense under this section is a felony, and, upon conviction, shall be subject to a fine
7 of up to \$5,000, and a period of confinement of not less than 1 nor more than 3 years, or both a fine
8 and a period of confinement.

§61-17-7. Placement on community supervision prohibited for certain offenses involving illegal entry into this state.

1 Notwithstanding any other provision of this article, a defendant is not eligible for community
2 supervision, including deferred adjudication community supervision, under this chapter if the
3 defendant is charged with or convicted of an offense under the West Virginia Code.

§61-17-8. Enforcement prohibited in certain locations.

1 Notwithstanding any other law, a law enforcement officer may not arrest or detain a person
2 for purposes of enforcing any provision of this Article, if the person is on the premises or grounds
3 of:

4 (1) A public or private primary or secondary school provided that the person is on such
5 premises for educational purposes;

6 (2) A church, synagogue, or other established place of religious worship;

7 (3) A health care facility as defined in §61-39-3 of this code.

8 (4) A facility that provides forensic medical examinations to sexual assault survivors,
9 provided that the person is on the premises or grounds of the facility for purposes of obtaining a
10 forensic medical examination and treatment.

§61-17-9. Liability for and indemnification of certain claims relating to enforcement of certain criminal offenses involving illegal entry into this state.

1 (a) Damages. – In this chapter, "damages" includes any and all damages, fines, fees,
2 penalties, court costs, attorney 's fees, or other assessments.

3 (b) Civil immunity of local government officials, employees, and contractors. – A local
4 government official, employee, or contractor is immune from liability for damages arising from a
5 cause of action under state law resulting from an action taken by the official, employee, or
6 contractor to enforce this Article, during the course and scope of the official's, employee's, or
7 contractor's office, employment, or contractual performance for or service on behalf of the local
8 government.

9 (c) Civil immunity does not apply if the court or jury determines that the local government
10 official, employee, or contractor acted in bad faith, with conscious indifference, or with
11 recklessness.

12 (d) Other laws not affected. – This article does not limit or otherwise affect a defense,
13 immunity, or jurisdictional bar available to the state or a local government or an official, employee,
14 or contractor of the state or a local government recognized elsewhere by West Virginia law.

NOTE: The purpose of this bill is to create prohibitions on the illegal entry into or illegal presence in this state by a person who is an alien. The bill provides for the enforcement of those prohibitions and certain related orders, including immunity from liability and indemnification for enforcement actions. Finally, the bill authorizes and requires under certain circumstances the removal of persons who violate those prohibitions; and creating criminal offenses.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.