



**House
Legislative
Analysis
Section**

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**PROHIBIT DRIVERS LICENSE TO
ILLEGAL ALIENS**

**House Bill 5497 (Substitute H-1)
Sponsor: Rep. Lauren Hager**

**First Analysis (2-5-02)
Committee: Transportation**

THE APPARENT PROBLEM:

On Tuesday morning September 11, 2001, nineteen terrorists hijacked four east coast passenger jets fueled for transcontinental flights, and flew three of them into two targets: the twin towers of the 110-story World Trade Center in New York City; and, the Pentagon military headquarters located in Alexandria, Virginia near the nation's capitol. A fourth jet crashed in rural Pennsylvania, 80 miles southeast of Pittsburgh, seemingly enroute to Washington, D.C. The fiery suicide missions killed more than 3,000 people, collapsing the skyscrapers and a wing of the Pentagon. The hijackers have been linked to an international network of Muslim extremists called Al Qaeda, whose leader is Osama bin Laden, a Saudi Arabian citizen unwelcome in his country and now thought to be hiding from military forces in Afghanistan.

Since these attacks, the president of the United States and the country's secretary of state and attorney general have called on leaders throughout the world to unite in a global network of effective surveillance and intelligence-gathering that would eliminate terrorism. Further, the president has called for international cooperation as the United States moves to apprehend known terrorists and to bring them to justice. Finally, the president promised military action against the governments of countries that harbor terrorists, and a military campaign was launched by American and British forces against the Taliban government of Afghanistan, beginning on October 7, 2001 and continuing to this time.

In addition to these international initiatives, the U.S. president has called for more vigilance and heightened internal security throughout the nation. To that end he has created a new cabinet-level post called the Secretary for Homeland Security, and appointed the governor of Pennsylvania to fill it. In addition, the U.S. Congress has pledged \$40 billion in federal aid to rebuild the New York City crash site, and established the Victims Compensation Fund to protect family members whose claims are settled by a special master appointed from the judiciary. More than 16 agencies of the federal government have

received appropriations to fund programs that are designed to help recovery. [Descriptions of the Homeland Security and Defense programs are available at <http://usinfo.state.gov/topical/pol/terror/homeland.htm>]

To ensure the continued capacity of the air transportation system, the U.S. Congress has provided favorable loans to the airline industry to prevent bankruptcies caused by the declining number of passengers. Further, the Congress has enacted a new airport security law that puts responsibility for the country's airport security into the hands of national law enforcers at the U.S. Department of Transportation, and that requires the inspection of all bags for weapons, as well as assigns armed air marshals on long-distance flights.

To identify and restrict the movement of illegal aliens and other newcomers to America, a more nuanced debate also is underway to consider the need for broader or more effective law enforcement powers that might infringe on the customary civil liberties of American people, the constitutionality of which have been challenged at times by the American Civil Liberties Association. Finally, efforts to patrol the nation's borders have been increased in order to prevent illegal immigrants and known terrorists from crossing into the United States from Canada and Mexico.

In Michigan, several proposals to ensure safety would limit the use of the ground transportation system, in particular automobile travel. One proposal would restrict the movement of those who enter the country illegally by denying them a drivers license.

There are, of course, no accurate data as to the number of illegal aliens (customarily called undocumented workers--See *BACKGROUND INFORMATION* below) who have come from nations throughout the world to live and work in Michigan. Estimates are published, however. It seems likely the number of illegal immigrants would be high, since

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according to testimony offered by the office of Congressman Nick Smith, the United States had more than 510 million immigrants apply for residency inspections during 2001, of whom only 849,807 were admitted. The estimates of the undocumented people who come here annually, however, are much lower.

A report issued by the U.S. Department of Justice in 1996 estimated that the total number of undocumented immigrants living in the United States was 5 million people. Further, the Immigration and Naturalization Service (INS) estimated that the average annual growth was about 275,000, and noted that the overall level of growth has been fairly constant over the past decade, while the rate of growth of the undocumented resident population has declined since 1988. Most undocumented immigrants--80 percent--come from countries in this hemisphere. According to the INS, the annual growth of the undocumented population can be grouped in four disparate categories: 1) Mexico, with more than half of the annual growth (adding just over 150,000 undocumented residents each year); 2) six countries--El Salvador, Guatemala, Canada, Haiti, Honduras, and the Dominican Republic--each adding between 6,000 and 12,000 annually; 3) thirteen countries each adding about 2,000 to 4,000 annually; and 4) the remaining countries, approximately 200 nations, adding a total of about 30,000 undocumented residents.

The INS notes that the estimates of undocumented workers within the 50 states reflect a well-established pattern of geographic concentration, and that generally a few states serve as the customary states of residence for most undocumented workers. For example, seven states accounted for 83 percent of the undocumented population in October 1996, as follows: California was the leading state of residence with an estimated 2 million undocumented people, overall (or 40 percent of the total); then Texas (with 700,000 undocumented people), and New York (with 540,000 undocumented people), and Florida (with 350,000 people), followed by Illinois (with an estimated 290,000 undocumented people), then New Jersey (with 135,000 people), and finally, Arizona (with 115,000 undocumented people). Michigan was ranked 13th among the top 20 states of residence, having an estimated 37,000 immigrants who were undocumented.

One prominent group of much-needed workers in this state comes from Mexico. According to the U.S. Census of 2001, there are 350,000 Mexicans living in Michigan, 3,000 of whom work in automobile

manufacturing under the North American Free Trade Agreement (NAFTA), and many thousands of others who harvest crops. During the first hearing scheduled by the committee to take testimony, it was estimated by a spokesman for the Consulate of Mexico that about one-third of the Mexican citizens--more than 100,000 people--are undocumented workers. However, at the second hearing a week later, another estimate was offered and it was far lower: perhaps as many as 20,000 undocumented workers among 40,000 Mexicans in the workforce. (In 1996, the INS estimated that Michigan was the state of residence for 37,000 undocumented workers.)

There are no INS estimates of the number of *criminal* undocumented aliens who reside in the United States or in Michigan. However, the INS has operated the Alien Criminal Apprehension Program since 1986, and its one objective is to locate, apprehend, and remove criminal aliens from the community, and ultimately, from the United States, in as expeditious a manner as possible. See *BACKGROUND INFORMATION* below.

Michigan law currently requires any temporary worker who drives to have a Michigan drivers license, if he or she is in the state for more than 30 days. This provision has required all immigrants who drive--documented and undocumented--to have Michigan drivers licenses, and to carry auto insurance. It is not known, however, how many of those with drivers licenses remain undocumented, since there exist a welter of ways in which to categorize those with lawful presence.

Some have argued that the large number of undocumented people with drivers licenses threatens the security of citizens in the United States. They argue that the security risk to the United States would be curtailed if undocumented people had their mobility restricted, and in particular, if they were denied the opportunity to drive. They note that according to *The Washington Times* (12-13-02), four of the 19 terrorists who attacked U.S. targets on September 11 were carrying drivers licenses issued by the State of Virginia, despite the fact that they were illegal aliens (although another report says that three, not four, of the 19 terrorists had legally obtained a drivers license despite their undocumented status).

In an effort to make certain that terrorists and other criminal aliens are denied driving privileges, legislation has been introduced to deny all undocumented people the privilege of driving.

THE CONTENT OF THE BILL:

The bill would prohibit the secretary of state from issuing a drivers license to illegal aliens. A detailed description of the bill follows.

House Bill 5497 would amend the Michigan Vehicle Code (MCL 257.51, 257.209, 257.303, and 257.314) to prohibit the secretary of state from issuing a driver license to a person who is in the United States unlawfully. However, the bill specifies that the following people would be presumed to be lawfully in the United States if they had resided here for at least 30 days: (i) any person who possessed documentation from any applicable United States agency that proved they were in the process of becoming lawfully in the United States; or, (ii) any person who possessed documentation from any applicable United States agency that proved they had lawfully challenged a decision of an administrative law judge or applicable United States department related to an immigration determination decision.

Further, the bill specifies that the expiration of a legal alien's license would be the customary expiration date (on the birthday of the person in the fourth year following the date of issuance), or the date on which that person's presence in the United States became unlawful, whichever occurred first.

In addition, the bill would require that the secretary of state recognize a driver's license from any state in the Republic of Mexico to the same degree as it recognized driver's licenses from any other foreign country.

Finally, House Bill 5497 specifies that if the Department of State had reasonable cause to believe that an application for a vehicle registration, certificate of title, or an operator's or chauffeur's license, or any other application made to the department contained information that the applicant was an illegal alien, the department could report that information to an appropriate United States government agency.

The bill would modify the definition of "resident" that is used for the purposes of this act. Currently under the code, "resident" means every person who resides in a settled or permanent home or domicile with the intention of remaining in this state. Further, a person who obtains employment in this state is presumed to have the intention of remaining in this state. House Bill 5497 would retain these provisions, but the bill would add that a United States citizen or an alien lawfully in the United States would be

presumed to be a resident of this state if he or she had resided in this state for at least 30 days.

BACKGROUND INFORMATION:

Lawful status without a 'green card'. According to committee testimony offered by the Michigan Migrant Legal Assistance Program, there are many people who have lawful status, and upon whom the INS has conferred benefits, although none, if asked to present documents, would have a Legal Permanent Resident Card (commonly called a 'green card'). Among those with 'lawful presence' would be people with any of the following designations: asylee; beneficiary of approved or pending VAWA (Violence Against Women act) applicant; Temporary Protected Status (TPS); parolee; old green card holder; deferred action grantee; refugee; visa waiver grantee; asylum pending applicant; removal withheld; ABC class member; Family Unity beneficiary; removal cancellation (10 year); removal cancellation (7 year); removal cancellation (3 year); CSS, LULAC, and Zambrano class members; registry; A visa: diplomat/ambassador; B visa: visitor for pleasure of business; C visa: alien in transit; D visa: crewman; E visa: trade investor; F visa: student; G visa (government employees) and its derivatives: G-1, G-2, G-3, G-4, & G-5; H1B visa: specialty occupation; H2B visa: temporary non-agricultural worker; H2A visa: derivatives of H1B; I visa: foreign press/media; J visa: exchange student; K visa: spouse of U.S. citizen, fiancée; L visa: specialized knowledge foreign worker; M visa: vocational student visa; and N visa: unmarried child of a G-visa holder.

The Law Enforcement Support Center. To train local law enforcement personnel in INS protocols and document recognition, the U.S. Immigration and Naturalization Service operates the Law Enforcement Support Center in South Burlington, VT. Among the center's many services is publication of "A Guide to Selected U. S. Travel/Identity Documents," which provides illustrations of the many identification documents issued by the U.S. government, in order to categorize the newcomers to this country and to enumerate the benefits of citizenship for which they are eligible. The guide explains the following: "In accordance with the 14th amendment to the U.S. Constitution, any person born in and subject to the jurisdiction of the United States is a citizen of the U.S. at birth. U.S. citizenship may also be acquired through derivation from U.S. citizen parents when children are born abroad or through naturalization

after meeting the necessary residency requirements. All persons not citizens or nationals of the U.S. are aliens which generally are classified as permanent residents (immigrants), non-immigrants, or undocumented aliens." The guide defines the three classes of aliens as follows:

Permanent resident aliens enjoy almost all of the same rights as U.S. citizens. This status may be obtained through a number of different procedures and, unless taken away by administrative hearing, is granted for life. Aliens with permanent residence must carry evidence of their status. The Immigration & Naturalization Service no longer requires permanent residents to report their address annually.

Non-Immigrant aliens are admitted to the U.S. for a temporary period of time and for a specific purposes, most often as a tourist. There are different classes of non-immigrants, and they are identified through letter/number symbols (i.e. B-2). Non-immigrants are also required to present evidence of their lawful status in the U.S. to officers of the INS. This will usually consist of a passport containing a visa and an I-94 Arrival/Departure Record.

Undocumented aliens are those who may have crossed the border illegally and/or been smuggled into the interior of the U.S., or those who have violated their non-immigrant status by accepting unauthorized employment, remaining longer than permitted, or committing some sort of violation. Some of these aliens purchase counterfeit documents or assume another person's identity by using fraudulently obtained genuine documents.

Criminal undocumented aliens. There are no INS estimates of the number of criminal undocumented aliens who reside in the United States or in Michigan. However, the INS has operated the Alien Criminal Apprehension Program since 1986, and its one objective is to locate, apprehend, and remove criminal aliens from the community, and ultimately, from the United States, in as expeditious a manner as possible. The program works closely with state and local law enforcement, both briefing and training police officers in hundreds of police agencies. To take criminal aliens into custody when they are reported by local law enforcers, the INS deploys 45 Quick Response Teams--each having 200 INS special agents and detention and removal officers--throughout the United States. Through the third quarter of fiscal year 2001, officers from the Quick Response Teams responded to 7,608 calls for assistance, and those calls resulted in 10,998 arrests, and 847 individuals presented for criminal prosecution. In addition, the INS has about 1,977 special agents to conduct investigation on suspected

violations of immigration laws, including terrorism, smuggling, and trafficking.

FISCAL IMPLICATIONS:

The House Fiscal agency notes that the Department of State estimates a \$50,000 one-time programming cost to implement House Bill 5497. (2-4-02)

ARGUMENTS:

For:

Those who have illegally entered the United States without the required immigration permits or work and study documents are criminals who have demonstrated a flagrant disregard for the laws that govern our society, many of which are enacted in order to ensure the peace and security of United States citizens. Those who do not abide by the law should not be granted the privilege of driving; the license to drive conferred by the state should be denied or revoked in these instances.

For:

According to a report in the *Washington Times* (12-13-01), four of the 19 terrorists who killed more than 3,000 people on September 11 had State of Virginia drivers licenses. Despite the fact they were illegal aliens, their licenses had been granted because Virginia, like Michigan, allows illegal aliens to drive lawfully. The terrorists' drivers licenses enabled them to transact business, open bank accounts, and even enter flight schools. Had they been denied their drivers licenses, their mobility would have been restricted, and their unfettered ability to plan and implement the attack on America would have been made far more difficult, and perhaps entirely thwarted.

For:

Illegal aliens should be denied drivers licenses so that they do not participate in U.S. elections. This bill would help to eliminate election fraud that has increased since the enactment of "motor voter" laws throughout the country, a change in state election laws that make voter registration available at the time one becomes licensed to drive. It should be no surprise, then, that illegal aliens have participated in U.S. elections. Indeed, according to the *Washington Times* article called "A National Security Wreck" (12-13-01), Phil Kent (president of Southeastern Legal Foundation, a constitutional public-interest law firm researching legal action on the driver's license issue) reports that in one close 1996 California congressional race, as many as 600 foreign nationals illegally cast votes, and the election was decided by less than 900 votes. There have also been reports of

undocumented citizens voting in Virginia, North Carolina, Tennessee, and Utah, all states that issue driver's licenses to illegal aliens.

For:

Both proponents and opponents of this legislation have expressed concern about the impact this change could have on Michigan's agricultural economy. According to committee testimony, it is customary that agricultural workers are recruited by Michigan farmers who sometimes travel to Florida and Texas where they are able to find able veteran farm workers. Farmers acknowledge, then, that the workers who will pick crops need their automobiles to travel from out-of-state as they follow the harvest of successively ripening crops, and once here, they will need their automobiles to travel to fields and orchards within the regions of the state, as they move to each successive harvest. Many of the workers who harvest crops are Mexican, and they often travel with their families. Consequently, this bill has been amended to require that the secretary of state "recognize a drivers license from any state in the Republic of Mexico to the same degree as it recognizes drivers licenses from any other foreign country." The intent of the amendment is to assure the mobility of Mexican farm workers.

Response:

Many seasonal agricultural workers are unable to get drivers licenses in Mexico, and have come to rely on the licenses they can get in some states in the United States. They need a U.S. license in order to buy auto insurance, and the U.S. licensing system also familiarizes them with the traffic safety laws, and the rules of the Michigan Vehicle Code.

Against:

Michigan law requires a person who has an out-of-state or out-of-country drivers license to obtain a Michigan driver license if he or she is in the state more than 30 days, and wishes to drive. The applicant's Michigan drivers license serves as an identity card, and it helps authorities to know where undocumented people reside. Further, a Michigan drivers license enables people who are in the state for more than 30 days to obtain automobile insurance, which is an advantage to all citizens who are injured in auto accidents while the temporary workers are here.

Against:

According to committee testimony from the Mexican consulate in Washington, D.C., the 2001 U.S. census indicates there are 350,000 Mexicans living in Michigan. About one-third of the Mexican citizens in Michigan during any given season of the year are undocumented, an estimated 100,000 or more people.

The Mexicans who are undocumented are not terrorists, but instead are in the state generally to harvest agricultural crops, although under the North American Free Trade Agreement (NAFTA) 3,000 Mexicans work in the auto manufacturing plants. [A representative of the Mexican consulate testified that among the 50 states, Michigan is Mexico's third largest trade partner with \$32 billion in trade agreements, an amount surpassed only by California and Texas.]

Often Mexican workers are employed in rural areas without public transportation systems, and these Mexican citizens need an automobile to get to work, take children to school, visit health care clinics, attend church, and shop. Without a driver's license, these workers and their families will be condemned to walk. The agricultural industry, in particular, needs these workers as much as the workers need the employment. This bill will cause an enormous disruption to agribusiness in Michigan, as those who harvest crops are unable to travel lawfully to the farms and orchards that employ them.

In the states of Florida and California, which deny undocumented workers a drivers license, there has been no evidence that workers leave the state. Instead, they live in a shadowy subculture that makes their lives more difficult, and often any opportunities for partial participation in the community are denied them, despite the fact that through their employment they pay income and Social Security taxes, as well as sales tax when making the purchases that sustain their families' livelihood.

Against:

According to committee testimony, many Mexican citizens have lived in Michigan for more than two years, indeed, often for as many as 15 years, and the children born to them here in Michigan are United States citizens, full and lawful residents. If House Bill 5497 is enacted into law and all undocumented people without appropriate visas who now have drivers licenses are expelled from the country, then their lawfully resident minor children will be denied the rights of their American citizenship. Or, if the young children are left behind, families will be divided. House Bill 5497 should be amended to protect these people from expulsion.

Against:

It is difficult to determine whether a person is in the country illegally. According to committee testimony, there are more than 40 different statuses of people who have lawful presence, but who do not have a Legal Permanent Resident Card (commonly called a "green card"). New visa categories are created

frequently by the U.S. Congress, as members decide to protect certain categories of immigrants. Further, there are many immigrants in the process of making application to gain lawful status but who have not yet been determined to be here lawfully by the Immigration and Naturalization Service (INS). Under the laws of the United States, a state government cannot short-circuit the INS procedures and impose disabilities on people until there has been a determination by the appropriate federal authority, in this case, the INS.

Response:

The bill was amended in the House Transportation Committee to exempt those immigrants whose determinations are in progress. Specifically, the amendment specifies that "the following people are presumed to be lawfully in the United States if they have resided in this state for at least 30 days: i) any person who possesses documentation from any applicable United States agency that proves they are in the process of becoming lawfully in the United States; and, (ii) any person who possesses documentation from any applicable United States agency that proves they have lawfully challenged a decision of an administrative law judge or applicable United States department related to an immigration determination decision."

Reply:

Although this would help people whose determinations are currently pending, it would not be available to new immigrants, since the INS cannot provide new immigrants their documents within 30 days. Customarily the agency's responses to official inquiries take between 90 and 120 days, according to committee testimony.

Against:

Although there is no provision in the United States Constitution that requires the government to admit foreign-born people, once they are here the U.S. Supreme Court has ruled that the Constitution's guarantees apply to every person within the country's borders, including "aliens whose presence in this country is unlawful." According to testimony offered by the American Civil Liberties Association (ACLU), the government has the power to decide who to let into the country and under what circumstances, but once here, even undocumented immigrants have the right to freedom of speech and religion, the right to be treated fairly, the right to privacy, and the other fundamental rights that U.S. citizens enjoy. Courts have ruled that whatever his status under the immigration laws, an alien is surely a "person" in any ordinary sense of that term. Consequently, aliens, even aliens whose presence in this country is unlawful, have long been recognized as "persons" and guaranteed due process of law by the Fifth and

Fourteenth Amendments. According to a spokesperson for the ACLU, the cases that document the rights of aliens date from 1896, while the seminal case is *Plyler v Doe* [457 U.S. 202 (1982)].

POSITIONS:

The Office of the Secretary of State supports the bill, but has concern with the committee amendment that would require acceptance of the Mexican drivers license. (2-1-02)

The Department of State Police supports the bill. (2-1-02)

The Michigan Organizing Project, a group of 50 churches in western Michigan where volunteers help immigrants translate their documents, opposes the bill. (1-23-02)

The Michigan Catholic Conference opposes the bill. (1-23-02)

The American Civil Liberties Union of Michigan opposes the bill. (1-30-02)

The National Council of La Raza opposes the bill. (1-30-02)

The Michigan Migrant Legal Assistance Program opposes the bill. (1-30-02)

Catholic Social Services Refugee Services opposes the bill. (1-30-02)

The Hispanic Center of Western Michigan opposes the bill. (2-4-02)

The Michigan AFL-CIO opposes the bill. (2-4-02)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.