

2007 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB101)

Received: 03/08/2007

Received By: jkreye

Wanted: Soon

Identical to LRB:

For: Marlin Schneider (608) 266-0215

By/Representing:

This file may be shown to any legislator: NO

Drafter: jkreye

May Contact:

Addl. Drafters:

Subject: Tax, Business - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.Schneider@legis.wisconsin.gov

Carbon copy (CC:) to: joseph.kreye@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Denying tax credits and benefits to companies that employ illegal aliens

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	jkreye 03/08/2007	lkunkel 03/08/2007		_____			
/1			jfrantze 03/09/2007	_____	cduerst 03/09/2007	cduerst 03/09/2007	

FE Sent For:

<END>

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1/?	jkreye	1/mk 3/8	J 3/8	J/Pr 3/8			

FE Sent For:

<END>

## **Kreye, Joseph**

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**From:** Schneider, Marlin  
**Sent:** Thursday, March 08, 2007 11:45 AM  
**To:** Kreye, Joseph  
**Subject:** RE: LRB 07-0666/2 (AB 101) (Tech. Memo by DOR - attached - for your review)

Thanks. Yes what you have suggested sounds good and we keep it with Commerce. Thanks a lot for your help. - Marlin

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**From:** Kreye, Joseph  
**Sent:** Thursday, March 08, 2007 10:36 AM  
**To:** Schneider, Marlin  
**Subject:** RE: LRB 07-0666/2 (AB 101) (Tech. Memo by DOR - attached - for your review)

Representative Schneider,

Federal law prohibits the employment of illegal aliens and imposes civil penalties upon a violation of that law. I can draft a substitute amendment that denies benefits to any company that employs illegal aliens in violation of 8 USC 1324a for a period of 7 years beginning with the date on which a final order, penalty, or injunction is issued under 8 USC 1324a. This would address DOR's concerns as it would apply prospectively from the "conviction" date rather than from the date of the first prohibited hiring.

With regard to your question about how DOR handles cases of "whistle blowing", if DOR found out about a company's illegal activity, it would likely send out an audit notice as a first step toward investigating that activity. DOR has the authority to conduct routine audits, regardless of whether or not DOR suspects that the taxpayer is "up to something."

Also, please note that the bill requires Commerce to administer the penalties, not DOR, and requires that Commerce promulgate rules to administer the program. I believe we chose Commerce to administer the program because the penalties relate to grants, loans, contracts, and procurement activities, as well as tax exemptions and credits. Commerce also has a role in administering many of the state's corporate tax credits. If you prefer, I can provide that DOA administer the program rather than Commerce, but, either way, I'm not sure why DOR is so concerned about the penalty administration provisions.

Finally, with regards to violations of federal law, do you want the bill to require that the company that violates the federal law notify Commerce of the violation (and provide an additional penalty for failing to do so) or do you want Commerce to address this in the rules?

Joe

**Joseph T. Kreye**  
Senior Legislative Attorney  
Legislative Reference Bureau  
(608) 266-2263

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**From:** Barman, Mike  
**Sent:** Thursday, March 08, 2007 7:49 AM  
**To:** Schneider, Marlin; Kreye, Joseph  
**Subject:** RE: LRB 07-0666/2 (AB 101) (Tech. Memo by DOR - attached - for your review)

Representative Schneider,

I forwarded your message on to the drafting attorney ... Joe Kreye (266-2263).

Thanks,

**Mike Barman (Senior Program Assistant)**  
State of Wisconsin - Legislative Reference Bureau  
Legal Section - Front Office  
1 East Main Street, Suite 200, Madison, WI 53703  
(608) 266-3561 / [mike.barman@legis.wisconsin.gov](mailto:mike.barman@legis.wisconsin.gov)

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**From:** Schneider, Marlin  
**Sent:** Wednesday, March 07, 2007 3:55 PM  
**To:** Barman, Mike  
**Subject:** RE: LRB 07-0666/2 (AB 101) (Tech. Memo by DOR - attached - for your review)

Well now! I didn't draft this so I didn't think of all those little technical details. I guess we would say that it is seven years from the date of conviction for having done so rather than the way the bill is drafted. On the other point I doubt that the company would turn itself in so the reporting is done by anybody who blows the whistle on the company. How does the department deal with issues like that now if somebody reports some illegal activity? On one point the bill revision (substitute amendment) should say "Notwithstanding Section 77.71(2) the department shall go back seven years....." In the department's second point the terminology of hired should be changed to "employed" so that the date rolls rather than starts at a time certain which raises the issues they raise. Finally there should be reference to laws which make it illegal to hire illegal aliens under state or federal statute if they exist and then upon conviction of those laws they lose their status. If such laws do not exist a new bill should be drafted taking all these issues into account and making it clearly illegal to hire illegal aliens with the loss of these benefits as penalties. Once there is a conviction the court should be told to notify the Department of Revenue to engage loss of these tax benefits and privileges. I'm not sure if any of this is clear but the guy from the DOR wasn't too keen on my bill and didn't seem particularly interested in trying to help me work through these problems with the draft although he did talk to me at some length about this. - Marlin

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**From:** Barman, Mike  
**Sent:** Wednesday, March 07, 2007 3:01 PM  
**To:** Rep.Schneider  
**Subject:** LRB 07-0666/2 (AB 101) (Tech. Memo by DOR - attached - for your review)

<< File: 07-0666feDORtech.PDF >>

**Mike Barman (Senior Program Assistant)**  
State of Wisconsin - Legislative Reference Bureau  
Legal Section - Front Office  
1 East Main Street, Suite 200, Madison, WI 53703  
(608) 266-3561 / [mike.barman@legis.wisconsin.gov](mailto:mike.barman@legis.wisconsin.gov)

**2007-2008 LEGISLATURE**

**CORRECTIONS IN:**

**2007 ASSEMBLY BILL 101**

Prepared by the Legislative Reference Bureau  
(February 23, 2007)

1. Page 4, line 18: delete "111" and substitute "III".

(END)

**Kreye, Joseph**

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**From:** Hanaman, Cathlene  
**Sent:** Thursday, March 08, 2007 9:48 AM  
**To:** Kreye, Joseph

A contracting agency shall include the following provision in every contract executed by it: "In connection with the performance of work under this contract, the contractor will not violate 8 USCS 1324a (a)."

(3) If, during a period in which contractual services are being provided, the contractor violates 8 USC 1324a (a), as evidenced by the issuance of a final order under 8 USC 1324a (e) (4), (5), or (6) or the issuance of a penalty or injunction under 8 USC 1324a (f), one of the following applies:

0036/1

ASA to

# 2007 ASSEMBLY BILL 101

in 3-8-07

due Fri. 3-9

February 22, 2007 - Introduced by Representatives SCHNEIDER, VRUWINK, F. LASEE, ALBERS and GUNDERSON, cosponsored by Senator LEIBHAM. Referred to Committee on Judiciary and Ethics.

LPS: PLS fix OK request sheet

employers

Regm

✓

1 AN ACT *to amend* 16.75 (6) (e), 16.855 (18), 16.855 (21) and 16.855 (22); and *to*

2 *create* 16.756, 16.855 (23) and 560.29 of the statutes; **relating to:** making

3 companies that ~~hire~~ illegal aliens ineligible for certain tax exemptions,

4 governmental contracts, grants, and loans, granting rule-making authority,

5 and providing penalties.

substitute amendment

### Analysis by the Legislative Reference Bureau

employers

Under this ~~bill~~, any company that ~~has hired~~ illegal aliens is, for a period of seven years, ineligible to: 1) receive any income or franchise tax credit or property tax exemption; 2) enter into a contract with the state or a local governmental unit for the construction, remodeling, or repair of a public work or building, or for the furnishing of supplies, services, equipment, or material of any kind; and 3) receive any grants or loans from a local governmental unit. ✓

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

6 SECTION 1. 16.75 (6) (e) of the statutes is amended to read:

in violation of federal law

ASSEMBLY BILL 101

1           16.75 (6) (e) The governor or his or her designee may waive any requirement  
 2 of this subchapter if the governor or his or her designee finds that there exists an  
 3 emergency which threatens the public health, safety or welfare and the waiver is  
 4 necessary to meet the emergency. The governor or his or her designee shall require  
 5 the award of each contract under this paragraph to be made with such competition  
 6 as is practicable under the circumstances. The governor or his or her designee shall  
 7 file with the department a statement of facts constituting the emergency for each  
 8 waiver issued under this paragraph, and a statement of the basis for selection of each  
 9 contractor under the emergency procedure. This paragraph does not apply to the  
 10 requirement requirements specified in sub. (7) and s. 16.756.

11           SECTION 2. 16.756 of the statutes is created to read:

12           **16.756 Companies hiring illegal aliens.** No company that <sup>employs</sup> ~~hires~~ an illegal  
 13 alien is eligible to enter into any contract with an agency for the purchase of  
 14 materials, supplies, equipment, or contractual services for a period of 7 years  
 15 beginning with the year in which ~~the company hires an illegal alien.~~ <sup>employing</sup>

INSERT  
2-15

16           SECTION 3. 16.855 (18) of the statutes is amended to read:

17           16.855 (18) This Except as provided in sub. (23), this section shall not apply  
 18 to restoration or reconstruction of the state capitol building, historic structures at the  
 19 old world Wisconsin site and at Heritage Hill state park when the department  
 20 determines that a waiver of this section would serve the best interests of this state.

21           SECTION 4. 16.855 (21) of the statutes is amended to read:

22           16.855 (21) This Except as provided in sub. (23), this section does not apply to  
 23 contracts by the department of natural resources for construction work related to  
 24 hazardous substance spill response under s. 292.11 or environmental repair under  
 25 s. 292.31.

**ASSEMBLY BILL 101**

1           **SECTION 5.** 16.855 (22) of the statutes is amended to read:

2           16.855 (22) The provisions of this section, except ~~sub.~~ subs. (10m) and (23), do  
3 not apply to construction work for any project that does not require the prior approval  
4 of the building commission under s. 13.48 (10) (a) if the project is constructed in  
5 accordance with policies and procedures prescribed by the building commission  
6 under s. 13.48 (29). If the estimated construction cost of any project is at least  
7 \$40,000, and the building commission elects to utilize the procedures prescribed  
8 under s. 13.48 (29) to construct the project, the department shall provide adequate  
9 public notice of the project and the procedures to be utilized to construct the project  
10 on a publicly accessible computer site.

11           **SECTION 6.** 16.855 (23) of the statutes is created to read:

12           16.855 (23) No company that ~~hires~~ <sup>employ</sup> an illegal alien is eligible to enter into any  
13 contract with an agency for engineering or architectural services or for construction  
14 work, as defined in s. 16.87 (1) (a) for a period of 7 years beginning with the year in  
15 which ~~the company hires an illegal alien.~~ INSERT 3-15

16           **SECTION 7.** 560.29 of the statutes is created to read:

17           **560.29** ~~Hiring~~ <sup>Employing</sup> **illegal aliens.** (1) DEFINITIONS. In this section:

18           (a) "Company" means any organization or enterprise operated for profit,  
19 including a proprietorship, partnership, firm, business trust, joint venture,  
20 syndicate, corporation, limited liability company, or association.

21           (b) "Local governmental unit" has the meaning given in s. 66.0131 (1) (a).

22           (c) "Public contract" means a contract for the construction, execution, repair,  
23 remodeling, or improvement of a public work or building or for the furnishing of  
24 supplies, services, equipment, or material of any kind.

ASSEMBLY BILL 101

SECTION 7

*in violation of 8 USC 1324a(a)*

1 *employs* (2) PENALTIES. (a) Notwithstanding the provisions of any tax exemption under  
2 ch. 70 or tax credit under ch. 71 for which a company would otherwise be eligible, any

3 company that ~~has hired~~ *employs* an illegal alien shall, ~~for a period of 7 years beginning with~~  
4 ~~the year in which the company hired an illegal alien,~~ be ineligible to: INSERT 4-4

5 1. Receive any tax exemption under ch. 70 or any tax credit under ch. 71.

6 2. Enter into a public contract with a local governmental unit.

7 3. Receive any grants or loans from a local governmental unit.

8 4. Enter into a contract for the purchase of materials, supplies, equipment, or  
9 contractual services with any agency, as defined in s. 16.70 (1e).

10 5. Enter into a contract for engineering or architectural services or for  
11 construction work, as defined in s. 16.87 (1) (a), with any agency, as defined in s. 16.70  
12 (1e).

13 (b) Any company that ~~has hired~~ *employs* an illegal alien is subject to a \$10,000 fine for  
14 each illegal alien the company ~~hires~~ *employs*.

15 (3) RULES. The department shall promulgate rules to implement and  
16 administer this section.

17 (4) REVIEW. A determination of ineligibility under sub. (2) (a) and the  
18 imposition of any penalty under sub. (2) (b) are subject to review under subch. ~~III~~ *III*  
19 of ch. 227.

(END)

20 INSERT  
4-19

2007-2008 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRBs0036/?ins  
JK:.....

**Insert 2 - 15**

NOA  
1 a final order is issued against the company under 8 USC 1324a (e) (4), (5), or  
2 (6) or a penalty or injunction is issued against the company under 8 USC 1324a (f)

**Insert 3 - 15**

NOA  
3 a final order is issued against the company under 8 USC 1324a (e) (4), (5), or  
4 (6) or a penalty or injunction is issued against the company under 8 USC 1324a (f)

**Insert 4 - 4**

NOA  
5 do any of the following for a period of 7 years beginning with the year in which  
6 a final order is issued against the company under 8 USC 1324a (e) (4), (5), or (6) or  
7 a penalty or injunction is issued against the company under 8 USC 1324a (f)

**Insert 4 - 19**

8 **SECTION 1. Initial applicability.**

9 (1) This act first applies to companies for which a penalty, injunction, or final  
10 order is issued on the effective date of this subsection. ✓

**Barman, Mike**

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**From:** Hanaman, Cathlene  
**Sent:** Wednesday, March 14, 2007 10:24 AM  
**To:** Christina Duerst; Lori Northrop; Mike Barman; Sarah Basford

We are going to do a corrected copy of ASA 1 to AB 101 to fix the attorney initials (in case people want to call the drafter for amendments). Could you make the permissions amenable to the corrected copy?

2007 - 2008 LEGISLATURE

Corrected Copy

Added  
03-14-2007

LRBs0036/1  
JT:kjf&lmk:jf

JK

**ASSEMBLY SUBSTITUTE AMENDMENT 1,  
TO 2007 ASSEMBLY BILL 101**

Please do a corrected copy

March 12, 2007 - Offered by Representative SCHNEIDER.

1 AN ACT *to amend* 16.75 (6) (e), 16.855 (18), 16.855 (21) and 16.855 (22); and *to*  
2 *create* 16.756, 16.855 (23) and 560.29 of the statutes; **relating to:** making  
3 companies that employ illegal aliens ineligible for certain tax exemptions,  
4 governmental contracts, grants, and loans, granting rule-making authority,  
5 and providing penalties.

---

***Analysis by the Legislative Reference Bureau***

Under this substitute amendment, any company that employs illegal aliens in violation of federal law is, for a period of seven years, ineligible to: 1) receive any income or franchise tax credit or property tax exemption; 2) enter into a contract with the state or a local governmental unit for the construction, remodeling, or repair of a public work or building, or for the furnishing of supplies, services, equipment, or material of any kind; and 3) receive any grants or loans from a local governmental unit.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

6 SECTION 1. 16.75 (6) (e) of the statutes is amended to read: