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Statehouse Update - 1/28/2008

by Marty Ryan, Legislative Director

The ACLU of Iowa Board of Directors identified two issues as priorities for the 2008 Legislative Program – the passage of a bill requiring the videotaping of custodial interviews, and the enactment of a bill that will allow for a private cause of action in consumer fraud instances.

We have yet to see a bill on a private cause of action, but we have been told that it's coming soon.

Videotaping of custodial interviews

[House Study Bill 580](#) was introduced in the [House Judiciary Committee](#) on Thursday, January 24. [HSB 580](#) requires law enforcement personnel to videotape interviews with suspects accused of a crime.

In a 2006 case, [State v. Hajtic](#), 724 N.W.2d 449, 453 (Iowa 2006), the [Iowa Supreme Court](#) stated that failing to record all custodial interrogations from start to finish frustrates the criminal justice system by: creating swearing matches; claims of constitutional violations; false confessions; public distrust; and violations of defendants' rights. The Court warned that if the Iowa Legislature does not adopt a mandatory recording policy of all custodial interrogations, the Court will likely impose one from the bench. It is under this cloud of judicial doubt that the [ACLU of Iowa](#) believes [HSB 580](#) is timely and necessary.

For a two-page summary of the issue, click on the “[documents](#)” link of the [ACLU-IA website](#). If you're interested in a 22-page white paper on the issue, complete with endnotes, make a request to the [Legislative Program](#) with “white paper” in the subject line and we'll send you copy.

The three-person subcommittee consists of Reps. [Rick Olson](#) (D-Des Moines), chair; [Ciel Baudler](#) (R-Greenfield), and [Cindy Winckler](#) (D-Davenport).

Guns in the courtroom

[Senate File 2010](#) is a bill that will allow a peace officer “to carry a weapon while making a court appearance if in the performance of official duties.” It was brought up in subcommittee that law enforcement officers are “getting tired of having to take their weapons off” as they enter courtrooms. Most judges require the removal of weapons prior to law enforcement entering courtrooms.

The [ACLU of Iowa](#) objects to this bill on the basis of due process. The wearing of a holstered weapon by law enforcement personnel, whether on the witness stand or just in the presence of a defendant, may be seen as an act of intimidation – albeit inadvertent. It could be a subliminal factor in the course of deliberations by a jury. It will definitely be a distraction to many court personnel and even the judge. But more importantly, it has the potential for a defendant to attempt to disarm an officer in an attempt to escape.

The courtroom belongs, in essence, to the judge. When a trial, preliminary hearing, or other procedure is occurring in a courtroom, the courtroom belongs to the judge – not the county, not the sheriff, not even the people. The judge must have complete control of the courtroom in order to administer justice. The [ACLU of Iowa](#) believes that this bill, if enacted, could be the beginning of a bad precedent.

The bill has been discussed in subcommittee and will now advance to the full [Senate Judiciary Committee](#).

Equal protection under the law

[House File 2026](#), co-sponsored by 44 Democrats, creates two new sections of the Iowa Code. First, the bill introduces new chapter 91F, which places hefty fines on employers who fail to obtain proper documentation in the hiring process. However, the bill does not place employers at risk of a fine if they have in good faith accepted false identification under the document verification process, but disruptions to productivity could be strong for an employer who, in fact, hires undocumented immigrants in large numbers or in critical skilled positions.

The major problem with this portion of the bill is that immigration is a “federal” issue – wholly regulated and enforced by the federal government. This legislation may dissuade Iowa employers who intend to invest in the costs of training their own employees from hiring from ethnic groups that have only recently arrived in the US. While the employer would not be at risk of a fine, the employer stands to lose the training investment if a government investigation reveals its newly trained employees to be undocumented aliens. Similarly, employers who must operate under project deadlines may exercise excess caution by engaging in illegal discrimination in order to reduce their chances of a labor disruption resulting from a government raid.

This law is bad for business and bad for American workers. It will lead to discrimination and have a disproportionate affect on workers who are perceived to be foreign. There

can be no doubt that employers will look over potential employees with Hispanic and mid-Eastern surnames and choose new hires on the basis of names.

Second, [HF 2026](#) creates another new chapter of the Iowa Code – Chapter 91G – which is designed to address the problem of many unethical companies from misclassifying employees as independent contractors. This division of the bill creates a stronger presumption that a laborer is an employee, and extends statutory rights to those "newly defined" employees. In most cases, day laborers will no longer be treated as "independent contractors" and will be eligible to benefit from unemployment compensation, workers comp, OSHA safety requirements and other government mandated employee protections. Accordingly, this legislation should be a boon to unions that compete against undocumented immigrant day laborers for work.

To its credit, [HF 2026](#) furthers the civil liberties goal (if there is one) of discouraging market exploitation of both lawful workers and illegal workers with realistic looking fake ID's, however it will place additional unemployment pressure on illegal workers who do not successfully fake their identities and upon legal workers who are unable to access their own documentation.

In view of the supposition that most illegal workers have credible looking fake ID's, this legislation will likely produce only a slight shift the general market balance between some groups of workers and others.

We must be concerned about the discriminatory pressures this legislation would have upon the hiring of workers for skilled positions requiring high levels of initial employer investment. This effect is hard to gage. If an employer is willing to invest in a prospective worker, presumably the resources are also there to verify their [I-9](#) information. Of greater concern, however, might be the employer whose operations cannot tolerate a sudden loss of employees to a government raid and who uses invidious discrimination rather than a background investigation as a cheaper or more expedient alternative to minimizing workforce risks under this legislation.

This bill evinces governmental hostility toward illegal immigrants and it fosters discrimination against lawful job candidates who are easily confused with illegal immigrant populations. The improved protections for day laborers does not compensate for this legislation's discriminatory potential and its hostility toward illegal immigrants.

This bill seeks to prevent Iowa companies from hiring unauthorized aliens and bars employers from "knowingly" employing an unauthorized alien. An employer would be shielded however, if employment eligibility is verified by the unreliable E-Verify system, a federal database in the US Department of Homeland Security.

HF 2026 is on the fast track. Please contact the House Labor Committee ASAP and your own legislators to urge them to oppose HF 2026. The bill is expected to make it to the House Labor Committee by Thursday this week, or at the latest, early next week.

Please distribute to your friends, colleagues, and family members. HF 2026 is bad policy and bad politics. Your help is critical to defeat this bill which is bad for immigrants and natives alike. It will result in unintended consequences that will erase Iowa's image as a welcoming state and turn away legal immigrants, as well as families and businesses seeking to make a better life for themselves and grow their businesses

Talking Points

- **Iowa's economy needs immigrants to fuel growth and help meet worker shortages. Immigrants create main street businesses and provide jobs, boost native wages and have a positive impact on the wealth of states.**
- **Racial profiling and discrimination will increase.**
- **Employer sanctions are disruptive to families and businesses.**
- **Immigration policy is the responsibility of the federal government.**

YOUR HELP IS NEEDED NOW!

1. **Please call and email members of the Iowa House Labor Committee and ask them to oppose HF 2026. They need to hear from you now as the Committee is expected to take up this bill later this week. See phone numbers and email formula below and a fact sheet attached.**

- **[Rick Olson](#) (D, District 68), Chair and HF 2026 subcommittee chair**
- **[Lance Horbach](#) (R, District 40), Ranking Member, HF 2026 subcommittee**
- **[Eric Palmer](#) (D, District 75), HF 2026 subcommittee member**

- **[Todd Taylor](#) (D, District 34), Vice Chair**
- **[Ako Abdul-Samad](#) (D, District 66)**
- **[Royd Chambers](#) (R, District 5)**
- **[Pat Grassley](#) (R, District 17)**
- **[Bruce Hunter](#) (D, District 62)**
- **[Pam Jochum](#) (D, District 27)**
- **[Mary Mascher](#) (D, District 77)**
- **[Christopher Rants](#) (R, District 54)**
- **[Art Staed](#) (D, District 37)**
- **[Jodi Tymeson](#) (R, District 73)**
- **[Jim Van Engelenhoven](#) (R, District 71)**
- **[Ralph Watts](#) (R, District 47)**
- **[Cindy Winckler](#) (D, District 86)**
- **[Ray Zirkelbach](#) (D, District 31)**

2. Please call and email your legislators in the Iowa House and Senate and ask them to oppose HF 2026. Consider attending candidate forums this weekend in your district. See phone numbers and email formula below and a fact sheet attached. Legislators need to hear from you now.

To find your legislator, go to <http://www.legis.state.ia.us/FindLeg/>

House Switchboard: 515-281-3221

Senate Switchboard: 515-281-3371

Email: FIRST.LAST@legis.state.ia.us