

# Bagels and Briefings for Legislators

## IMMIGRATION

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**Tuesday • February 1, 2011**  
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### **PowerPoint Presentation**

Federal and Utah Law - History and Current Status  
Demographics - Utah Trends/Costs and Benefits  
50 State Survey  
2011 General Session - Immigration Legislation in Utah  
OLRGC Immigration Team

### **Appendices**

Real ID Act of 2005 Driver's License Title Summary  
Selected Utah Statutes Related to Immigration  
A Summary of State Studies On Fiscal Impacts of Immigrants  
Chart of Immigrant Eligibility for Federal Programs  
Federal Benefits Available to Unauthorized Immigrants  
SSI/Medicare Restoration for Refugees  
Benefits  
Total Utah Prison Population Breakdown by Offense Type - 2008  
Percentage of Population 5 Years and Over Who Speak Spanish at Home  
2010 Immigration-Related Laws and Resolutions in the States  
In-State Tuition and Unauthorized Immigrant Students  
Immigration and State Law Enforcement: Federal 287(g) Cooperative Agreements  
E-Verify: Frequently Asked Questions  
Arizona's Immigration Enforcement Laws



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**POWERPOINT  
PRESENTATION**

## IMMIGRATION

- ✓ Federal and Utah Law
- ✓ Demographics
- ✓ 50 State Survey
- ✓ 2011 General Session



Bagels & Briefings, February 1, 2011



## Federal and Utah Law

History and Current Status

## U.S. Immigration Law

### History

- **Early History: Colonies governed their own immigration**
- **Constitution (Article I, Section 8):**
  - No express authority granted to control entry of foreign nationals
  - Grants authority to regulate foreign commerce and to adopt a uniform rule of naturalization

## U.S. Immigration Law

### Federal Control of Immigration (1875)

#### U.S. Supreme Court:

**“the passage of laws which concern the admission of citizens and subjects of foreign nations to our shores belongs to Congress, and not to the States.”**

(beginning of development of plenary power doctrine)

(Chy Lung v. Freeman, 92 U.S. 275)

## U.S. Immigration Law

### Involving States Again

- **1974: Farm Labor Contractor Registration Act Amendments**
  - Required farm labor contractors to ensure their workers were either citizens or non-citizens with work authorization
- **1986: Immigration Reform and Control Act**
  - Made verification of employees mandatory for all employers
  - Increase border enforcement
  - May apply for Amnesty if entered U.S. January 1, 1982

## U.S. Immigration Law

### Increasing Reliance on State Action

- **1996: Illegal Immigration Reform and Immigrant Responsibility Act**
  - Classified certain immigration violations as criminal
  - Increased sentences
  - Granted broader grounds for deportation, exclusion
- **2005: Real ID Act**
  - Requires federal agencies to only accept state driver's licenses as ID if the state has verified the person's lawful presence
  - Feds relying more on states to ensure compliance with federal law

## U.S. Immigration Law

### Current Federal Law and Preemption

U.S. Supreme Court has construed Supremacy Clause to allow federal law to preempt state and local laws

- Express statements
- Congress to “occupy the field”
- Conflicts



## Utah Law

### Basics

- **Omnibus**
  - Identity documents
  - Public employers and Contractors
  - Action for wrongful discharge
  - Verify lawful presence for public benefits
- **Private Employers**
  - Verify federal legal working status
  - 15 or more employees
  - Voluntary registration
- **Drivers**
  - Driver license requires lawful presence
  - Driving privilege card
  - Limited-term licenses
- **Other**
  - In-state tuition waivers
  - Others





## DEMOGRAPHICS

### Utah Trends / Costs and Benefits

## Illegal Immigration

### Costs and Benefits

- ❑ Overall fiscal impact is difficult to quantify
- ❑ Much of the information sought is unavailable

#### Some Possible Costs

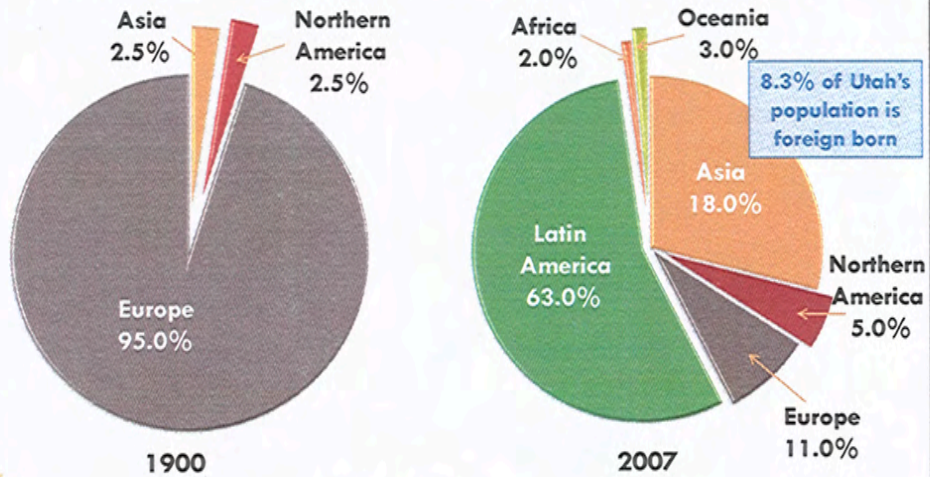
- ❑ Health and Welfare
- ❑ Education
- ❑ Jobs
- ❑ Courts and Corrections
- ❑ Human costs (stolen identity, human trafficking)

#### Some Possible Benefits

- ❑ Taxes (income, sales, fuel, property)
- ❑ Consumption
- ❑ Labor
- ❑ Housing
- ❑ Productivity

## General Trends

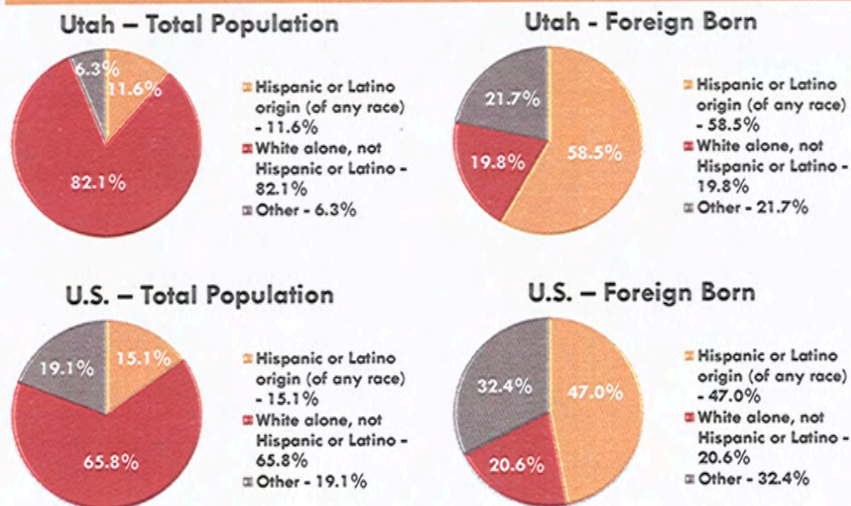
### Changes in Utah's Foreign Born Population



Source: Census Bureau; Bureau of Economic and Business Research, University of Utah

## General Trends

### Utah & U.S. Comparison of Hispanic or Latino Population



Source: U.S. Census Bureau, 2005-2009 American Community Survey



## General Trends

### Illegal Aliens in Utah

#### Illegal Alien Population

- Estimated at 110,000
- 4% of Utah's Population

#### Illegal Alien Workers

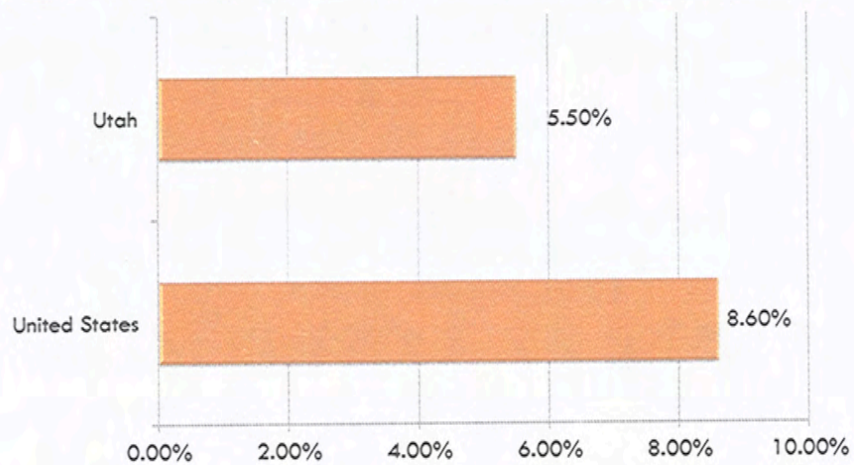
- Estimated at 70,000
- 5% of Utah's Labor Force



Source: Pew Hispanic Center, *Unauthorized Immigrants in the U.S.* Retrieved January 25, 2011, from <http://pewhispanic.org/unauthorized-immigration/>

## General Trends

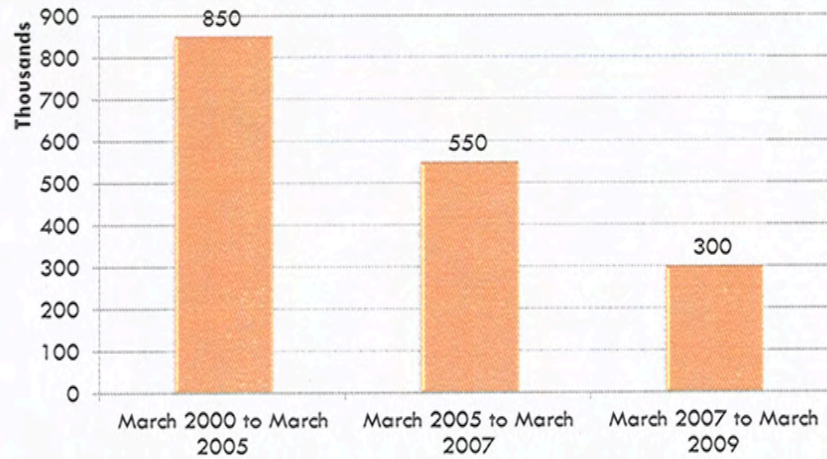
### Percentage of Population Who Speak English Less Than "Very Well"



Source: U.S. Census Bureau, 2005-2009 American Community Survey

## General Trends

Average Annual Inflow of Illegal Aliens to the U.S. (2000 – 2009)



Source: Pew Hispanic Center. U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade (SEP 2010). Retrieved January 28, 2011, from <http://pewhispanic.org/files/reports/126.pdf>.

## Public Assistance

Illegal Alien in Household



Source: Salt Lake Tribune. Retrieved January 28, 2011, from [http://local.sltrib.com/upload/2010/12/1293758348Impact\\_welfare\\_123110.pdf](http://local.sltrib.com/upload/2010/12/1293758348Impact_welfare_123110.pdf); Department of Health; Department of Workforce Services

## Public Assistance

### Utah Emergency-only Medicaid Deliveries for Illegal Alien Mothers

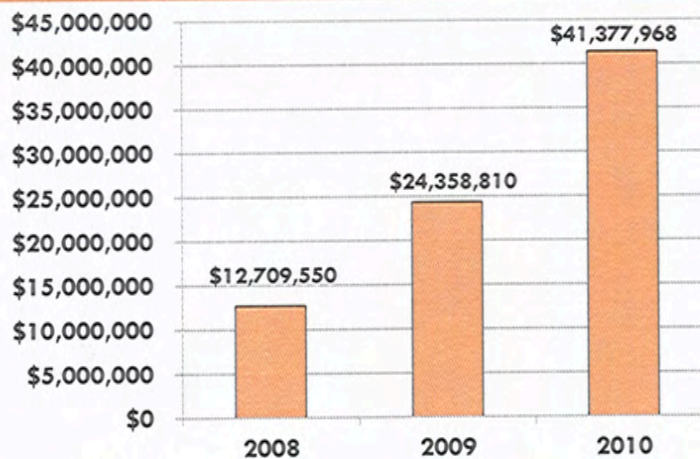
Year	Deliveries	Expenditures	General Fund	ARRA	Federal Funds
2006	4,074	\$13,585,214	\$3,924,769	\$0	\$9,660,447
2007	4,124	\$13,757,785	\$4,087,438	\$0	\$9,670,347
2008	4,461	\$12,689,277	\$3,622,032	\$0	\$9,067,245
2009	4,866	\$17,415,669	\$4,053,587	\$1,009,707	\$12,352,374
2010	4,256	\$15,896,607	\$3,091,000	\$1,454,172	\$11,351,436

Note: Unauthorized immigrants were identified from a list of Client ID's provided by Department of Workforce Services. This list was used as a filter to acquire the costs of deliveries for illegal immigrants. Our policy for paying for these deliveries comes from 42 CFR 440.255(c).

Source: Utah Department of Health; Utah Department of Workforce Services

## Public Assistance

### Welfare Benefits of U.S. Children of Illegal Aliens

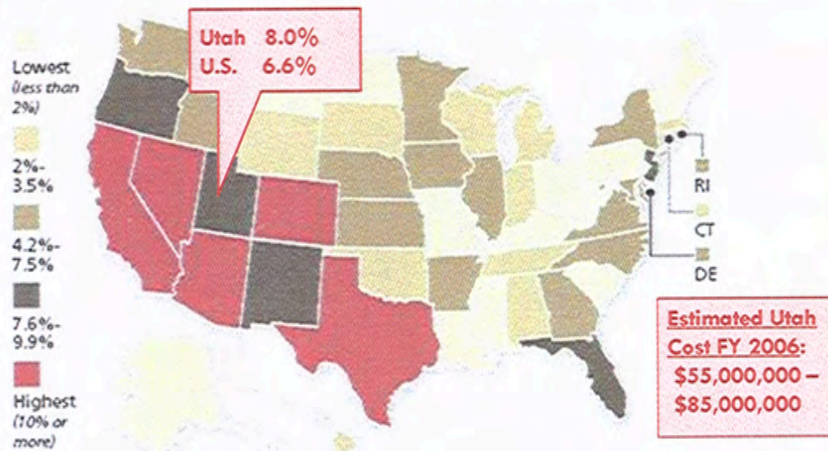


Note: Combined TANF, Childcare, and Food Stamps Totals

Source: Utah Department of Workforce Services

## Education

K-through-12 Students With At Least One Illegal Alien Parent (2008)

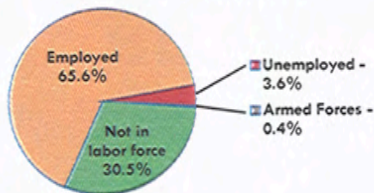


Source: The Salt Lake Tribune; Pew Hispanic Center; Utah Legislative Audit 2007

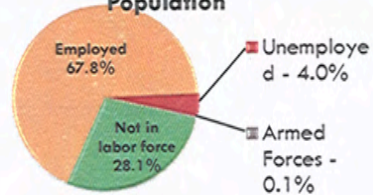
## Employment

Utah & U.S.

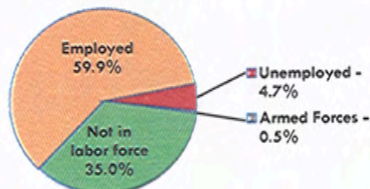
Utah - Total Population



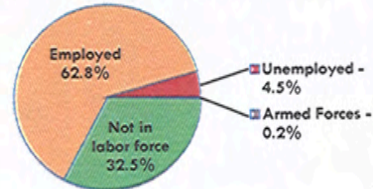
Utah - Foreign Born Population



U.S. - Total Population



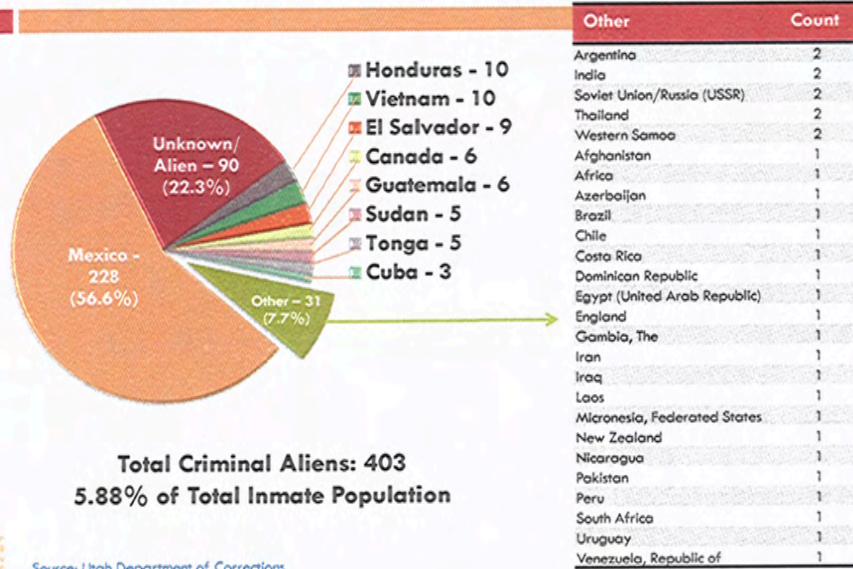
U.S. - Foreign Born Population



Source: U.S. Census Bureau, 2005-2009 American Community Survey

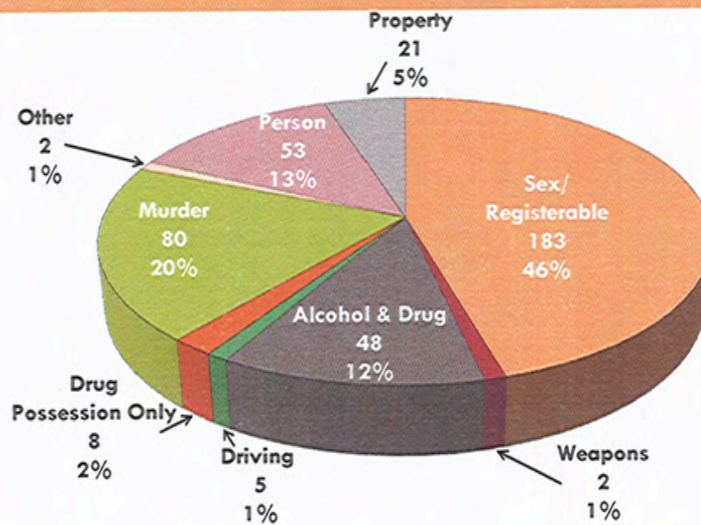
## Corrections

### Utah's Criminal Illegal Alien Inmate Count - January 2011



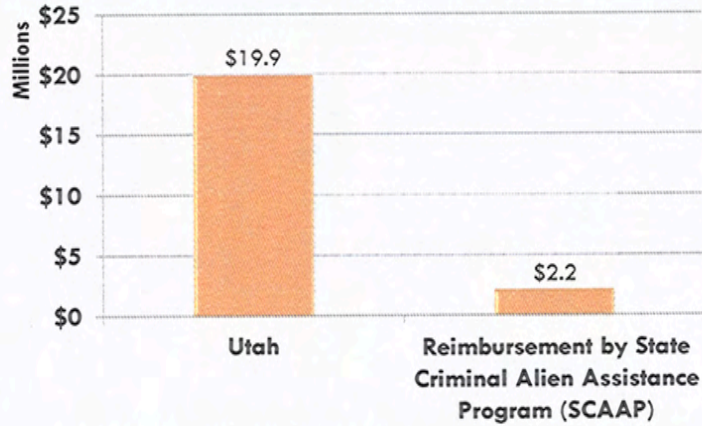
## Corrections

### Offense Data for Illegal Aliens in Utah State Prison



## Corrections

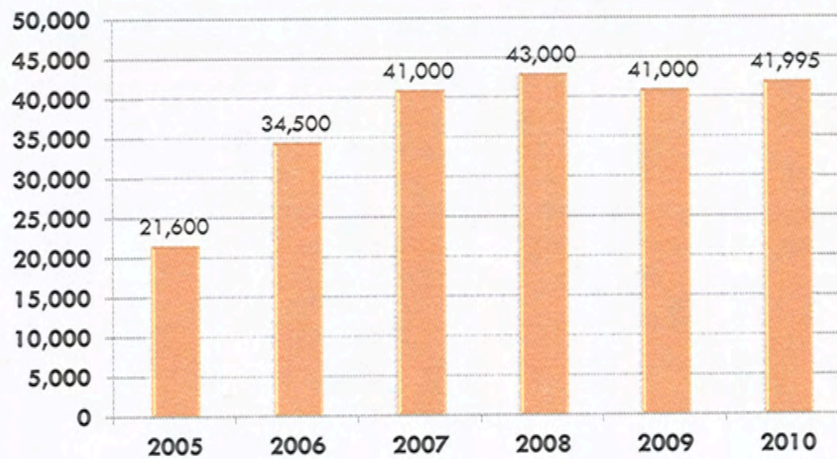
Costs of I.C.E. Detained Inmates in Utah Prisons and Jails (2009)



Note: Based on 260,603 I.C.E. detained inmate days

Source: U.S. Department of Justice, State Criminal Alien Assistance Program (SCAAP). Retrieved January 28, 2011, from [www.ojp.usdoj.gov/BJA/grant/scaap.html](http://www.ojp.usdoj.gov/BJA/grant/scaap.html).

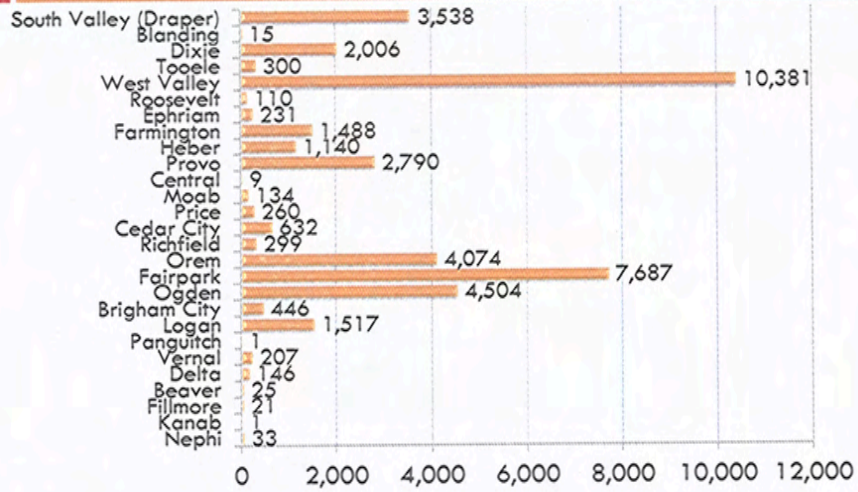
## Estimated Number of Driving Privilege Cards Issued by year



Source: Utah Driver License Division

## Driving Privilege Cards Issued

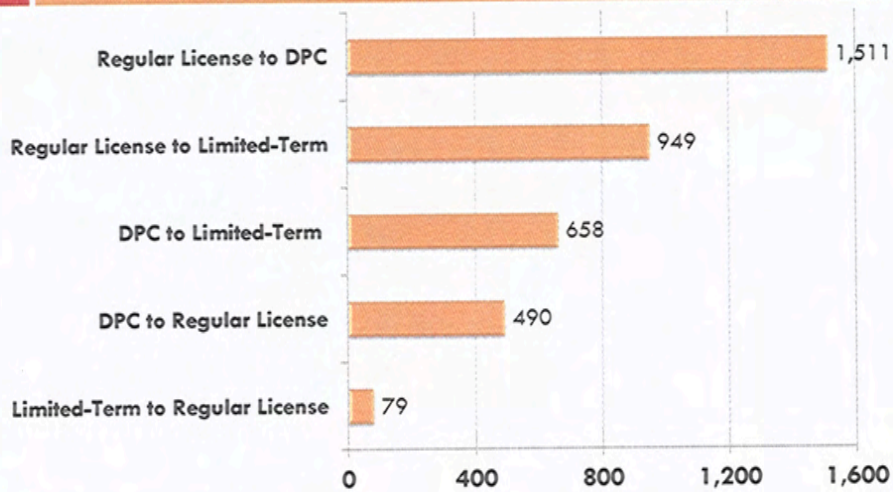
By Office as of January 10, 2011



Source: Utah Driver License Division

## License Certificate Conversions

January 1, 2010 – January 10, 2011



Source: Utah Driver License Division

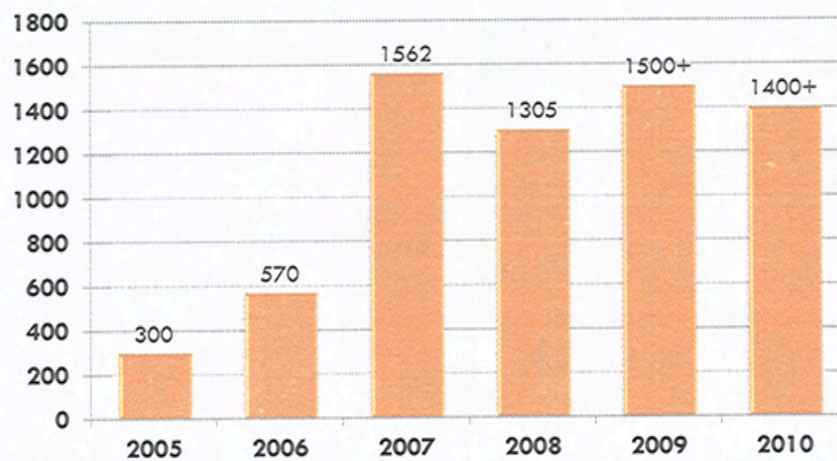


## 50 State Survey

### Immigration-Related Legislation

### Immigration-Related Legislation in the States

Number of Bills Introduced (2005 – 2010)



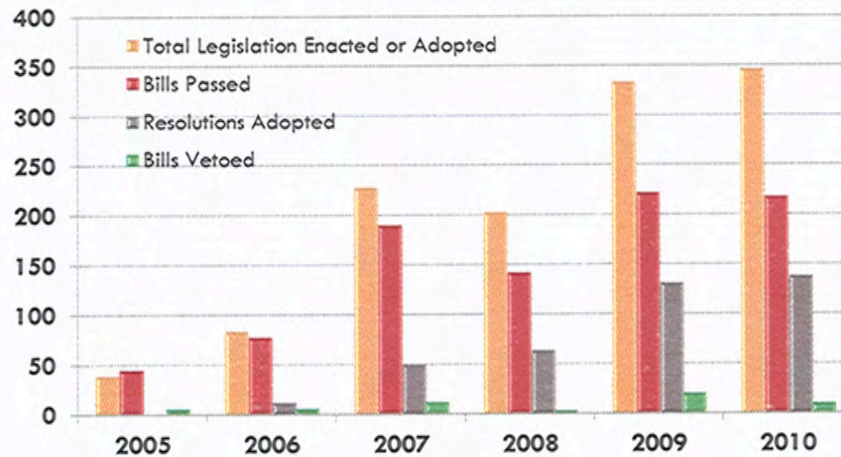
Note: NCSL did not give an exact number of bills introduced in 2009 and 2010.

Source: NCSL, Immigration Policy Project. 2010 *Immigration-Related Laws and Resolutions in the States* (Jan 2011). Retrieved January 13, 2011, from <http://www.ncsl.org/default.aspx?tabid=21857>.



## Immigration-Related Legislation in the States

Enacted, Passed, Adopted, Vetoed Legislation (2005 – 2010)



Sources: NCSL, Immigration Policy Project. 2010 *Immigration-Related Laws and Resolutions in the States* (Jan 2011). Retrieved January 13, 2011, from <http://www.ncsl.org/default.aspx?tabid=21857>.

## Immigration-Related Legislation in the States

Number of Enacted Bills by Subject (2005 – 2010)

Subject Areas	2005	2006	2007	2008	2009	2010
Budget	0	0	3	26	36	49
Education	3	3	22	12	27	17
Employment	5	14	29	19	21	27
Health	0	0	14	11	28	17
Human Trafficking	9	13	18	5	16	8
ID/Driver and Other Licenses	9	6	40	32	46	26
Law Enforcement	3	8	16	12	16	37
Miscellaneous*	5	6	14	12	12	20
Omnibus	0	1	1	3	3	2
Public Benefits	5	10	33	9	15	9
Voting	0	6	0	1	4	6
<b>Total Bills Enacted</b>	<b>39</b>	<b>84</b>	<b>228</b>	<b>203</b>	<b>333</b>	<b>346</b>

\*Bill issues include legal services, gun permits, commission and study creation, and technical changes. In 2010, NCSL combined legal services with law enforcement.

Sources: NCSL, Immigrant Policy Project. *State Laws Related to Immigrants and Immigration (2005 – 2010 reports)*. Retrieved January 11, 2011, from [http://www.ncsl.org/default.aspx?tabid=19897#Previous\\_Reports](http://www.ncsl.org/default.aspx?tabid=19897#Previous_Reports).

## Education-Related Immigration Legislation (2005 – 2010)

- Allow in-state tuition for certain aliens (10+)
- Bar non-citizen from at least some scholarships/  
financial aid (10+)
- Require lawful presence for certain education  
programs (at least four)

Indicates that there is a related provision in Utah law

Source: NCSL, Immigrant Policy Project. *State Laws Related to Immigrants and Immigration (2005 – 2010 reports)*. Retrieved January 11, 2011, from [http://www.ncsl.org/default.aspx?tabid=19897#Previous\\_Reports](http://www.ncsl.org/default.aspx?tabid=19897#Previous_Reports).

## Employment-Related Immigration Legislation (2005 – 2010)

- Require or encourage public employers to verify  
employment eligibility (15+)
- Prohibit or discourage unemployment/workers  
comp. benefits for unauthorized workers (15+)
- Require or encourage private employers to verify  
employment eligibility (10+)
- Establish penalties for employers who hire  
unauthorized workers (5+)

Indicates that there is a related provision in Utah law

Source: NCSL, Immigrant Policy Project. *State Laws Related to Immigrants and Immigration (2005 – 2010 reports)*. Retrieved January 11, 2011, from [http://www.ncsl.org/default.aspx?tabid=19897#Previous\\_Reports](http://www.ncsl.org/default.aspx?tabid=19897#Previous_Reports).

## Human Trafficking Related Immigration Legislation (2005 – 2010)

- Criminalize, deter, or penalize human trafficking (30+)
- Provide aid for victims of human trafficking (5+)

Indicates that there is a related provision in Utah law

Source: NCSL, Immigrant Policy Project. *State Laws Related to Immigrants and Immigration (2005 – 2010 reports)*. Retrieved January 11, 2011, from [http://www.ncsl.org/default.aspx?tabid=19897#Previous\\_Reports](http://www.ncsl.org/default.aspx?tabid=19897#Previous_Reports).

## ID and License Related Immigration Legislation (2005 – 2010)

- Require proof of lawful presence or legal work status to obtain driver or professional license (30+)
- Provide for gun and weapon restrictions for unlawfully present (10+)
- Tie driver license expiration to visa expiration (10+)
- Discourage making and using fraudulent identification documents (5+)

Indicates that there is a related provision in Utah law

Source: NCSL, Immigrant Policy Project. *State Laws Related to Immigrants and Immigration (2005 – 2010 reports)*. Retrieved January 11, 2011, from [http://www.ncsl.org/default.aspx?tabid=19897#Previous\\_Reports](http://www.ncsl.org/default.aspx?tabid=19897#Previous_Reports).

## Law Enforcement Related Immigration Legislation (2005 – 2010)

- Strengthen and facilitate enforcement of federal immigration laws (15+)
  - Authorize memorandum of understanding with ICE
  - Facilitate deportation of unlawfully present
  - Report unlawfully present criminals to ICE
- Determine immigration status of inmates or certain offenders (5+)
- Discourage or deny bail to unlawfully present (5+)

Indicates that there is a related provision in Utah law

Source: NCSL, Immigrant Policy Project. *State Laws Related to Immigrants and Immigration (2005 – 2010 reports)*. Retrieved January 11, 2011, from [http://www.ncsl.org/default.aspx?tabid=19897#Previous\\_Reports](http://www.ncsl.org/default.aspx?tabid=19897#Previous_Reports).

## Public Benefits Related Immigration Legislation (2005 – 2010)

- Require proof of lawful presence or U.S. citizenship to receive a public benefit (20+)
- Specifically authorize unlawfully present to receive a public benefit (5+)

Indicates that there is a related provision in Utah law

Source: NCSL, Immigrant Policy Project. *State Laws Related to Immigrants and Immigration (2005 – 2010 reports)*. Retrieved January 11, 2011, from [http://www.ncsl.org/default.aspx?tabid=19897#Previous\\_Reports](http://www.ncsl.org/default.aspx?tabid=19897#Previous_Reports).

## Challenged Immigration Legislation

### Impact on Utah

- ❑ Look to developing case law on previous legislation
- ❑ December 2010, U.S. Supreme Court considered a 2007 Arizona law
  - ❑ Ninth Circuit
  - ❑ Could have sweeping effects
- ❑ Oklahoma laws have also been challenged
  - ❑ Tenth Circuit (same as Utah)
- ❑ Wait and see what happens



Sources: Wall Street Journal, *Supreme Court Weighs Arizona's 2007 Immigration Law* (DEC 2010). Retrieved January 28, 2011, from <http://online.wsj.com/article/SB1000142405274870444760457600722324699508.html>; News on 6, *Where Does Oklahoma Immigration Law Stand?* (JUL 2010). Retrieved January 28, 2011, from <http://www.news6.com/Global/story.asp?S=12895307>



## 2011 General Session

### Immigration Legislation in Utah

## 2011 Immigration Legislation in Utah

Three Camps of Legislation



### Enforcement



### Permit Programs



### Miscellaneous

## 2011 Immigration Legislation in Utah

Three Camps of Legislation



### Enforcement

- Variety of enforcement options
  - Verifying immigration status
  - Transporting illegal aliens
  - Assisting federal enforcement
  - Sharing of immigration information
  - Private right of action
  - Authority to arrest
  - Sanctioning employers of unauthorized aliens

## 2011 Immigration Legislation in Utah

### Three Camps of Legislation



#### Permit Programs

- Purpose of Permit
  - Work
  - Identification
  - Workers compensation and unemployment
  - Alien registration
- Criteria to obtain
  - Who can qualify and when
  - Criminal background check
- Waivers
  - No obvious process to obtain
  - Multiple federal agencies involved in immigration



## 2011 Immigration Legislation in Utah

### Three Camps of Legislation



#### Miscellaneous

- Driving privilege card
- In-state tuition
- Public benefits eligibility
- Employer sanctions



## 2011 Immigration Legislation in Utah

### Combination of Options

- ❑ Issues may be raised for certain combinations of options
- ❑ Enforcement programs in relationship to Permit Programs:



Example 1



Example 2

## OLRGC Immigration Team



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**Susan Allred**, Attorney, Law  
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**Jim Wilson**, Attorney,  
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# **APPENDICES**


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## REAL ID ACT OF 2005 DRIVER'S LICENSE TITLE SUMMARY

Printer Friendly Version:



On May 11, 2005, President Bush signed into law the "REAL ID Act of 2005," which was attached to the "Emergency Supplemental Appropriation for Defense, the Global War on Terror, and Tsunami Relief, 2005" (H.R. 1268, P.L. 109-13). Title II of REAL ID—"Improved Security for Driver's License and Personal Identification Cards"—repeals the provisions of a December 2004 law that established a cooperative state-federal process to create federal standards for driver's licenses and instead directly imposes prescriptive federal driver's license standards. The following table summarizes the act's driver's license title.

Provisions/Citation	Summary
<b>Repeal of 9/11 Commission Implementation Act DL/ID Provisions</b> §206	Repeals §7212 of 9/11 Commission Implementation Act of the Intelligence Reform and Terrorism Prevention Act of 2004 ( <i>Public Law 108-458</i> ), which directed DOT in consultation with DHS to establish a negotiated rulemaking committee of state and federal officials along with other stakeholders to create federal minimum security standards for DL/IDs
<b>Minimum Standards for Federal Use</b> §202(a) §205(b)	<ul style="list-style-type: none"> <li>• A federal agency may not accept a driver's license or personal identification card (DL/ID) after May 11, 2008, unless the state has been certified by the U.S. Department of Homeland Security (DHS) in consultation with the U.S. Department of Transportation (DOT) to meet the requirements of the law</li> <li>• The DHS Secretary may grant a state an extension to meet the certification requirement if the state provides adequate justification for noncompliance</li> </ul>
<b>DL/ID Document Standards</b> §202(b)	<ul style="list-style-type: none"> <li>• At a minimum, a state shall include the following information and features on a DL/ID: (1) person's full legal name, (2) person's date of birth, (3) person's gender, (4) DL/ID number, (5) digital photograph, (6) person's address of legal residence, (7) person's signature, (8) physical security features designed to prevent tampering, counterfeiting or duplication for fraudulent purposes, and (9) a common machine-readable technology with defined data elements</li> </ul>
<b>Minimum DL/ID Issuance Standards</b> §202(c)(1)	<ul style="list-style-type: none"> <li>• At a minimum, a state shall require the presentation and verification of the following information:               <ol style="list-style-type: none"> <li>1. A photo identity document (except that a non-photo identity document is acceptable if it includes both the person's full legal name and date of birth)</li> <li>2. Documentation showing the person's date of birth</li> <li>3. Proof of the person's social security account number (SSN) or verification that the person is not eligible for an SSN</li> <li>4. Documentation showing the person's name and address of principal residence</li> </ol> </li> </ul>
§202(c)(3)(B)	<ul style="list-style-type: none"> <li>• A state shall not accept any foreign document other than an official passport</li> </ul>
§202(d)(3)	<ul style="list-style-type: none"> <li>• A state shall subject each DL/ID applicant to mandatory facial image capture</li> </ul>
§202(d)(6)	<ul style="list-style-type: none"> <li>• A state shall refuse to issue a DL/ID to a person holding a DL/ID from another state without confirmation that the person is terminating or has terminated the other state's DL/ID</li> </ul>
§202(d)(10)	<ul style="list-style-type: none"> <li>• A state shall limit the period of validity of all DL/IDs that are not temporarily issued to a period that does not exceed eight (8) years</li> </ul>
<b>Verification of Documents</b>	<ul style="list-style-type: none"> <li>• Before issuing a DL/ID, the state shall verify, with the issuing agency, the issuance, validity and completeness of each document to be presented</li> </ul>
§202(c)(3)(A) §202(d)(5)	<ul style="list-style-type: none"> <li>• A state shall confirm with the Social Security Administration a SSN presented by a person using the full SSN; in the event a SSN already is registered to or associated with another person to which any state has issued a DL/ID, the state shall resolve the discrepancy and take appropriate action</li> </ul>

Provisions/ Citation	Summary
§202(d)(4)	<ul style="list-style-type: none"> <li>• A state shall establish an effective procedure to confirm or verify a renewing applicant's information</li> </ul>
<b>Immigration Requirements</b>	<ul style="list-style-type: none"> <li>• Before issuing a DL/ID, a state shall require and verify valid documentary evidence that the person: (i) is a U.S. citizen, (ii) is an alien lawfully admitted for permanent or temporary residence, (iii) has a conditional permanent resident status, (iv) is a refugee or has been granted asylum, (v) has a valid, unexpired nonimmigrant visa or nonimmigrant visa status, (vi) has a pending application for asylum, (vii) has a pending or approved application for temporary protected status, (viii) has approved deferred status, or (ix) has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence or conditional permanent resident status</li> </ul>
Verification of U.S. Citizenship and Lawful Status §202(c)(2)(A), (B)	
Temporary DL/ID §202(c)(2)(C)	<p>A state only may issue a temporary license to persons who presents documentary evidence for the categories (v) through (ix) under the evidence of lawful status section above. A temporary DL/ID:</p> <ul style="list-style-type: none"> <li>• Shall be valid only for the period of the applicant's authorized stay in the U.S. or one (1) year if there is no definite end to the period of stay</li> <li>• Shall indicate clearly that it is temporary and shall state the date on which it expires</li> <li>• May be renewed only upon presentation of valid documentary evidence that the status by which the applicant qualified for the temporary DL/ID has been extended by DHS</li> </ul>
Non-Conforming DL/IDs §202(d)(11)	<ul style="list-style-type: none"> <li>• In any case in which a state issues a DL/ID that does not satisfy the federal requirements, a state shall ensure that that the DL/ID: (A) clearly states on its face that it may not be accepted for federal identification or any other official purpose, and (B) uses a unique design or color indicator to alert federal agencies or other law enforcement personnel that it may not be accepted for any such purpose</li> </ul>
SAVE Participation §202(c)(3)(C)	<ul style="list-style-type: none"> <li>• No later than September 11, 2005, a state shall enter into a memorandum of understanding with DHS to routinely utilize the automated system known as System for Alien Verification for Entitlements (SAVE) to verify the legal presence status of a non-citizen applying for a DL/ID</li> </ul>
<b>Security and Fraud Prevention Standards</b> §202(d)(7), (8) and (9)	<ul style="list-style-type: none"> <li>• A state shall ensure the physical security of locations where DL/IDs are produced and the security of document materials and papers from which DL/IDs are produced</li> <li>• A state shall subject all persons authorized to manufacture or produce DL/IDs to appropriate security clearance requirements</li> <li>• A state shall establish fraudulent document recognition training programs for appropriate employees engaged in the issuance of DL/ID</li> </ul>
§203(a)	<ul style="list-style-type: none"> <li>• Establishes a federal criminal penalty for persons who knowingly traffic in false or actual authentication features for use in false identification documents, document-making implements, or means of identification</li> </ul>
<b>Data Retention and Storage</b> §202(d)(1), (2) and (13)	<ul style="list-style-type: none"> <li>• A state shall employ technology to capture digital images of identity source documents so that the images can be retained in electronic storage in a transferable format</li> <li>• A state shall retain paper copies of source documents for a minimum of seven (7) years or images of source documents for a minimum of ten (10) years</li> <li>• A state shall maintain a state motor vehicle database that contains: (A) all data fields printed on DL/IDs issued by the state, and (B) motor vehicle drivers' histories, including motor vehicle violations, suspensions, and points on license</li> </ul>
<b>Linking of Databases</b> §202(d)(12)	<p>A state shall provide electronic access to all other states to information contained in the motor vehicle database of the state</p>
<b>Grants to States</b> §204	<ul style="list-style-type: none"> <li>• DHS may make grants to a state to assist the state in conforming to the minimum federal standards</li> <li>• Authorizes such sums as necessary for the fiscal years 2005 through 2009 to carry out the law (but does not appropriate any money)</li> </ul>
<b>Authority</b> §205	<p>Grants authority to DHS to issue regulations, set standards, and issue grants under the law in consultation with DOT and the states</p>
<p>Contact <a href="#">Molly Ramsdell</a> or call 202-624-3584, NCSS's Washington Office for more information.</p>	

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# Selected Utah Statutes Related to Immigration

The following are selected provisions of the Utah Code organized by general topic related to immigration or immigrants. Because any requirement related to citizenship could arguably be considered related to immigration, the designation of immigration related statutes is not precise e.g., citizenship requirements related to elections or voting are not included in this list. The following statutes are examples of provisions that have a significant requirement related to a noncitizen's legal status or presence in the United States. The summaries are brief and do not detail each provision. Citations are provided to facilitate a review of the statute. Case law review or interpretation of these statutes has not been reviewed. The Office of Legislative Research and General Counsel can provide additional information upon request.

## Summary of Key Provisions

### Omnibus Chapter

- Title 63G, Chapter 11, Identity Documents and Verification
- Imposing requirements related to identity documents and issuance of identity documents to citizens, nationals, and legal permanent resident aliens
  - Imposing requirements related to public employers and contractors with public employers verifying employment status of employees using status verification system, e.g., E-Verify
  - Establishing a right of action for the unlawful discharge by an employing entity of an employee who is a citizen or permanent resident alien when under certain circumstances the employee is replaced by an unauthorized alien.
  - Requiring a state agency or political subdivision to verify the lawful presence of an individual in the United States before the individual receives a federal, state, or local public benefit as defined by federal law, with specified exceptions

### Benefits

- Section 26-40-105
- Requiring a child to be a citizen or legal resident of the United States to be eligible to enroll in the Utah Children's Health Insurance Program
- Section 35A-3-116
- Providing for refugee services
- Section 35A-3-311
- Providing that the Employment Development Division may provide cash assistance to a legal resident who is not a citizen of the United States
- Section 35A-4-405
- Providing that an alien is ineligible for unemployment benefits or for purposes of establishing waiting period unless at the time the services are performed the alien is lawfully admitted for permanent resident, is lawfully present for purposes of performing the services, or permanently residing in the United States under color of law

### Crimes and Criminal Procedures

- Section 76-5-307
- Establishing crimes of human trafficking and smuggling of human beings
- Section 76-5-308
- Section 76-5-309
- Section 76-5-310
- Section 76-10-500
- Providing that a citizen of the United States or a lawfully admitted alien may not be prohibited from taking certain actions related to a firearm or be required to have a permit or license to purchase, own, possess, transport, or keep a firearm
- Section 76-10-503
- Categorizing as a restricted person an alien unlawfully in the United States for purposes of restrictions on the possession, purchase, transfer, and ownership of dangerous weapons
- Section 76-10-2901
- Establishing crime of transporting or harboring an alien
- Section 77-20b-101
- Providing as one of the conditions for a bond to be exonerated that the surety demonstrate by a preponderance of evidence that at the time the surety issued to bond the surety took certain steps to determine a defendant's legal presence in the United States
- Section 77-27-21.5
- Requiring an alien who is required to register as a sex or kidnap offender to provide documents establishing the offender's immigration status
- Section 78B-9-405
- Requiring a petitioner for a finding of being factually innocent be a United States citizen or otherwise lawfully present in the United States at the time of the incident that gives rise to the underlying conviction

### Driver License/Driving Privilege Card/Identification Card

- Section 53-3-102
- Providing for issuance of a driving privilege card or temporary license
- Section 53-3-205
- Providing that a driving privilege card is not valid for identification
- Section 53-3-207
- Requiring for a driver license, CDL, CDIP, or identification card evidence of the applicant's lawful presence in the United States using specified documentary evidence
- Section 53-3-214
- Providing that a limited-term license certificate expires on the expiration date of the time period an individual is authorized to state in the United States and requiring documentary evidence of status to renew a limited term license
- Section 53-3-410
- Requiring for a request for agency action evidence of the applicant's lawful presence in the United States using specified documentary evidence
- Section 53-3-804

## Education

- Section 53B-8-102 • Providing that an alien who is present in the United States on a visitor, student, or other visa is classified as a nonresident and that an alien who is granted immigrant or permanent resident status may be classified as a resident under the same criteria as a citizen
- Section 53B-8-105 • Requiring that a recipient of certain scholarships be a citizen of the United States or a noncitizen who is eligible to receive federal student aid
- Section 53B-8-109 • If allowed by federal law, providing that a student, other than a nonimmigrant alien, is exempt from paying the nonresident portion of total tuition if the student meets requirements related to high school attendance and graduation
- Section 64-13-30.5 • Providing that only an inmate lawfully present in the United States may participate in a postsecondary educational program offered through the Department of Corrections

## Employment

- Title 13, Chapter 47, Private Employer Verification Act • Addressing verification of federal legal working status of new hire using status verification system, e.g., E-Verify
- Establishing liability protections for employers who verify new hires using the status verification system
- Providing for voluntary registration certifying participation in verification, and requiring the Department of Commerce to publish a list of registrants
- Section 34-30-1 • Requiring that the state, a county, a municipality, or government contractor give reference to citizens of the United States or to an individual who has declared the intention to become a citizen in hiring for public work construction
- Section 34A-2-104 • Providing that a contract of hire for purposes of defining an "employee" under workers' compensation includes an alien, whether legally or illegally working for hire

## Licenses

- Section 23-19-4 • Providing for the purchase of a hunting, fishing, trapping, seining, and fur dealer license or certificate of registrants by a alien resident under the same terms as a resident citizen and by a nonresident alien under the same terms as a nonresident citizen
- Section 32B-5-201 (effective 7/1/11) • Prohibiting the Alcohol Beverage Control Commission from issuing a retail license to a person who is not lawfully present in the United States
- Section 53-9-108 • Requiring an applicant for a private investigator agency license to be a citizen or legal resident of the United States
- Section 53-11-108 • Requiring an applicant for a license under Bail Bond Recovery Act to be a citizen or legal resident of the United States

## Public Safety

- Section 17-22-9.5 • Addressing citizenship determination of incarcerated persons
- Section 67-5-22.7 • Authorizing the Attorney General to administer and coordinate a multi-agency strike force to combat violent and other major felony crimes committed within the state associated with illegal immigration or human trafficking
- Section 67-5-28 • Directing the Attorney General to negotiate a Memorandum of Understanding with the United States Department of Justice or the United States Department of Homeland Security for the enforcement of federal immigration and customs laws within the state

## Miscellaneous

- Section 73-3-2 • Requiring that a person be a citizen or have filed a declaration of intention to become a citizen as required by the naturalization laws to acquire the right to use any unappropriated public water in the state
- Section 78-16-107 • Including as a factor in determining a credible risk of abduction of a child undergoing a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States legally
- Section 78B-6-108 • Requiring evidence of lawful admission to United States involving the adoption of an alien child

## Identify Fraud

Although not expressly related to unlawful immigration, the Utah Code contains provisions related to the misuse of identifying information and identify fraud. The following are examples of these provisions.

- Section 35A-4-312.5, Suspected misuse of personal identifying information
- Section 67-5-22, Identity theft reporting information system- Internet website and database- Access- Maintenance and rulemaking- Criminal provisions
- Title 76, Chapter 6, Part 11, Identity Fraud Act


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## A Summary of State Studies On Fiscal Impacts of Immigrants

March 17, 2009

Several states and organizations have conducted studies on the fiscal and economic impacts of immigrants or on specific immigration laws. Because of the complexity of researching unauthorized immigrants, studies are limited in scope and size. Some address all foreign-born, while others address only illegal immigrants or Hispanic residents (without addressing citizenship or immigration status). Estimates of tax revenues typically focus on income, sales and property tax. Some studies examine health, education and law enforcement costs, while others focus only on education. A few go beyond traditional assessment of taxes paid versus services used to examine the multiplier effects of immigrants in the labor force and economy.

The following sections summarize fiscal impact studies done in Arizona, Arkansas, Colorado, Georgia, Illinois, Iowa, Kansas, Missouri, Minnesota, New Mexico, New York, North Carolina, Oklahoma, Texas, Utah, Virginia and Washington D.C.

### Arizona

- Gans, Judith. *Immigrants in Arizona: Fiscal and Economic Impacts*. Udall Center for Studies in Public Policy. 2007.

This study found that in 2004 the total state tax revenue from immigrant workers was around \$2.4 billion, with \$1.5 billion coming from unauthorized workers, and \$860 million from naturalized citizens. The fiscal cost of education, health care, and law enforcement was \$1.4 billion. The total net state fiscal impact of immigrant was positive, \$940 million.[1]

### Arkansas

- Capps, Randy, Everett Henderson, John D. Kasarda, James H. Johnson Jr., Stephen J. Appold, Derrek L. Croney, Donald J. Hernandez, Michael Fix. *A Profile of Immigrants: Executive Summary*. Winthrop Rockefeller Foundation. April 2007.

In 2004, the net fiscal impact of immigrants on the Arkansas state budget was small and positive. The cost to the state budget, including education, health services, and corrections, was \$237 million in 2004. Immigrants paid direct and indirect tax contributions of \$257 million, leaving a \$19 million surplus to the state.[2]

### Colorado

- Baker, Robin. *Testimony to the Alternative Hearing on Immigration*. The Bell Policy Center. August 29, 2006.
- Baker, Robin and Rich Jones. *State and Local Taxes Paid in Colorado by Undocumented Immigrants*. The Bell Policy Center. Issue Brief #3, June 2006.
- *Immigration: Effects on Colorado and the Nation: a Review of Research*. The Bell Policy Center. December 29, 2005.

According to Robin Baker's *Testimony to the Alternative Hearing on Immigration*, an estimated 225,000 to 275,000 unauthorized immigrants live in Colorado (2007). Federally mandated services for these immigrants (K-12 education, emergency health support, incarceration) cost state and local governments \$225 million (2005). In 2005, undocumented immigrants paid between \$159 million to \$194 million in state and local taxes, which covers 70 to 86 percent of \$225 million for federally mandated services. Unauthorized immigrants cost the state between \$31 million and \$66 million.[3]

The study *Immigration: Effects on Colorado and the Nation: A Review of Research* analyzed the cost of checking citizenship documentation and resident status. In total, costs for implementing these services in Colorado would be \$4.3 million for FY 2005-06, and \$2.6 million in FY 2006-07. Total savings from reducing human services family/children's programs and child welfare services would be \$460,606 for FY2005-06 and FY2006-07. The net costs of checking citizenship and residence status for people applying for government services would be \$3.8 million in FY2005-06 and \$2.1 million in FY2006-07.[4]

The study *State and Local Taxes in Colorado Paid by Undocumented Immigrants*, found that the average undocumented worker in 2005 paid \$1,265 in sales tax, \$105 in property tax, \$49 in income tax, totaling \$1,861.[5]

## Georgia

- *An Analysis of the Economic Impact of Undocumented Workers on Business Activity in the US with Estimated Effects by State and by Industry*. The Perryman Group. April 2008.
- Coffey, Sarah Beth. *Undocumented Immigrants in Georgia: Tax Contribution and Fiscal Concerns*. The Georgia Budget and Policy Institute. January 2006.

According to *Undocumented Immigrants in Georgia: Tax Contribution and Fiscal Concerns*, the average undocumented family in Georgia pays from \$2,340 to \$2,470 in state, local, income, and property taxes combined (based on an undocumented population of 228,000 to 250,000). State, local, income and sales tax contributions from undocumented immigrants in Georgia are estimated between \$215.6 million and \$252.5 million.[6]

*An Analysis of the Impact of Undocumented Workers on Business Activity in the US with Estimated Effects by State and by Industry* cites that without the undocumented workforce in Georgia (using 2007 dollars for monetary value), in a static scenario, the state would lose \$7,120 in expenditures per capita, \$2,639 in output losses per capita, and \$1,699 in income losses per capita. The static scenario estimates represent the immediate losses resulting from enforcement-only programs. In a dynamic scenario, expenditure losses per capita would be \$2,234, \$992 for output losses per capita, and \$622 for income losses per capita. The dynamic scenario estimates represent losses after market adjustments and new hiring has occurred.[7]

## Illinois

- Mehta, Chirag; Theodore, Nik, Mora, Iliana; and Wade, Jennifer. *Undocumented Immigrants in the Chicago Economy*. Chicago: UIC Center for Urban Economic Development. 2002.
- *Education for All*. The Center for Urban Economic Development, University of Illinois at Chicago. March 2003.

According to *Education for All*, the anticipated state cost of implementing Illinois HB 60, which allowed immigrants to become eligible for in-state tuition in 2003, was \$11.6 million in the first year and \$46.4 million in four years.[8]

The *Undocumented Immigrants in the Chicago Economy* study reported that 70 percent of undocumented workers paid their employers payroll taxes; in 2002, Illinois collected \$69.2 million in income taxes from undocumented immigrants.[9]

## Iowa

- Pearson, Beth and Michael Sheehan. *Undocumented Immigrants in Iowa*. Iowa Policy Project. October 2007.

The Iowa Policy Project estimated that each undocumented immigrant family pays \$1,671 a year, amounting to a total of tax payments for unauthorized immigrants in Iowa between \$40 and \$62 million a year, assuming a 50% payment rate.[10]

In terms of the cost of K-12 education for unauthorized immigrants, the Iowa Policy Project determined that between 5,445 to 8,415 unauthorized immigrants are between the ages of 5 and 18. Using the per-pupil education cost in Iowa of \$6,497, costs to the state for providing K-12 education to unauthorized immigrants is between \$35 million and \$54 million (2005).[11]

According to the study, overall, the tax payments made by unauthorized immigrants are 80% of the taxes paid by legally documented families with similar incomes; however, unauthorized immigrants do not qualify for as many services.[12]

## Kansas

- *Illegal Immigrants: Reviewing Studies That Have Assessed Their Economic Impact*. Legislative Post Audit Committee. 2008.

This review discusses the costs and revenues associated with immigration in several states. It does not provide statistics specific to Kansas. For more information: [http://www.kslegislature.org/postaudit/audits\\_perform/08pa19.pdf](http://www.kslegislature.org/postaudit/audits_perform/08pa19.pdf)

## Missouri

- Ehresman, Ruth. *Undocumented Workers: Impact on Missouri's Economy*. The Missouri Budget Project. June 2006.

Tax contributions from workers in 2005, including sales, income, and property tax, was estimated between \$29 million



and \$57 million (based on a 50% compliance rate with employers). This study estimated the cost for educating the children of unauthorized immigrant workers between \$17.5 and \$32.6 million in 2005.[13]

### Minnesota

- *Noncitizens and Minnesota Law: A Guide for Legislators*, Minnesota House Research. December 2004.
- *The Impact of Illegal Immigration on Minnesota*, Office of Strategic Planning and Results Management, Minnesota Department of Administration. 2005.

The study in *Noncitizens and Minnesota Law: A Guide for Legislators* found that the cost of K-12 education for unauthorized students and children of unauthorized immigrants in fiscal year 2004 was between \$118 million and \$158 million.[14] Around 2,500 -3,000 unauthorized students were enrolled in Minnesota colleges and universities.[15] *The Impact of Illegal Immigration on Minnesota* found that out of the total students receiving K-12 public education in Minnesota in 2004, 2% were non-citizens.[16]

### New Mexico

- *Undocumented Immigrants in New Mexico: State Tax Contributions and Fiscal Concerns*. New Mexico Voices for Children, Fiscal Policy Project. May 2006.

This study estimates that the cost of education for unauthorized students is between \$49 million and \$67 million, using two studies from the Pew Center and the INS.[17] Each study found a different estimate of tax payments made by unauthorized immigrants.

The Pew Center found \$69.26 million were paid in taxes. Using this estimate, the state made \$1.814 million from immigrant taxes after the cost of education.[18] The INS estimated \$50.371 million were paid in taxes by unauthorized immigrants, so the government gained \$1.25 million after the cost of education.[19]

### New York

- Passel, Jeffrey S., and Rebecca Clark. *Immigrants in New York: Their Legal Status, Incomes, and Taxes*. Washington, DC: The Urban Institute. 1998.

In 1998, this study found that with respect to average total tax contributions, legal foreign born immigrants in New York City pay roughly the same in taxes as natives (\$6,300 compared to \$6,500 for natives). Naturalized citizens ended up paying more than non-immigrants (\$8,600 compared to \$6,400 for non-immigrants). Legal permanent residents and refugees paid the least in average individual taxes (\$5,000 and \$2,200).

The study also looked at the percentage of income each group paid in taxes. Natives paid 30.7%, while legally present immigrants paid 29.1%. Refugees paid 20.9%, and unauthorized aliens paid 15.4%.

The third way this study measured tax contributions was by household. This measurement revealed that immigrant households pay far less in taxes than natives: legally foreign born households paid \$13,300, naturalized citizen households paid \$15,600, while native households paid \$17,800.

### North Carolina

- Johnson, James H. and John D. Kasarda. *The Economic Impact of the Hispanic Population on the State of North Carolina*. The University of North Carolina. January 2006.

This study looks beyond comparisons of tax contributions and costs of services for Hispanic populations, and examines the implications of Hispanic workers on the total economic output and competitiveness of the state. It provides breakdowns of Hispanic self-employed workers by industry, average personal wages and salary earnings, taxes paid by Hispanics, etc. (The study includes all Hispanics, whether citizen, legal, or unauthorized.)

The study estimates that Hispanics spent \$9 billion in North Carolina in 2004. Total tax contributions from the Hispanic population are estimated at \$756 million annually. State costs were estimated at \$817 annually (K-12 education - \$467 million; health care - \$299 million; and corrections - \$51 million). This leaves the state with a net cost of \$61 million. The report notes that these costs should be put in context of the broader contributions of Hispanics to the state's economic output and cost competitiveness [20]

### Oklahoma

- *A Computable General Equilibrium (CGE) Analysis of the Impact of the Oklahoma Taxpayer and Citizen Protection Act of 2007*. The Economic Impact Group, LLC. Edmonton, Oklahoma: March 24, 2008.

In March 2008, the Economic Impact Group analyzed the possible effects of decline in the Oklahoma workforce, from low to high outflow of foreign born workers, after the passage of SB 1804. If 25,000 foreign born workers leave the state (low impact), in the short run (no offsetting in migration) the outflow would produce a 0.58 percent reduction in the Oklahoma Gross State Product (GSP), or \$785.5 million (relative to 2006 production levels). If 50,000 foreign born workers leave the state (medium impact), GSP would decline by 1.32 percent, or \$1.8 billion. If 90,000 foreign born workers leave the state (high impact), GSP would decline by 2.27 percent, or \$3 billion. According to the study, the 50,000 worker outflow is the most plausible scenario; 50,000 foreign born workers would constitute approximately 3 percent of the Oklahoma labor force.[21]

## Texas

- Combs, Susan. *Undocumented Immigrants in Texas: A Financial Analysis of the Impact to the State Budget and Economy*. Texas Comptroller of Public Accounts. December 2006.

The study estimates total revenue, including state revenues and school property tax, from unauthorized immigrants to be \$1.58 billion. The total estimated cost of unauthorized immigrants, including education, health care, and incarceration, was \$1.16 billion leaving the net benefit to the state at \$424 million in fiscal year 2005. However, localities incurred costs of \$1.44 billion in health care and law enforcement costs not reimbursed by the state. Finally, the report notes that the absence of the estimated 1.4 million unauthorized immigrants in fiscal 2005 would have been a loss to the gross state product of \$17.7 billion.[22]

In 2000-2001, the total cost of public education for 125,000 unauthorized immigrant students was \$806 million. In 2004-2005, the total cost of public education for 135,000 unauthorized immigrant students was \$957 million.[23]

## Utah

- *A Review of the Public Education of Undocumented Children*. Utah Legislative Auditor General. 2007.

The 75,000 to 100,000 immigrants living in Utah incurred a cost of \$54.9 million to \$85.4 million in education costs from the state and local levels. The study did not include the revenues generated by illegal immigrants.

## Virginia

- *Fiscal Facts: Tax Contributions of Virginia's Undocumented Immigrants*. The Commonwealth Institute. 2008.

This study found that the estimated 250,00-300,000 illegal immigrants provided \$145 million to \$174 million in state income, excise and property taxes annually. The study did not address the societal costs of illegal immigrants.[24]

## Washington D.C.

- Capps, Randy, Everett Henderson, Jeffrey Passel, Michael Fix. *Civic Contributions: Taxes Paid by Immigrants in the Washington D.C. Metropolitan Area*. The Community Foundation. May 2006.

This study of Washington D.C. found that better-educated households pay higher taxes whether they are headed by immigrants or natives. In 1999-2000, the average tax payment was three times as high for households headed by immigrants with a four-year college degree as for those headed by immigrants without a high school degree: \$36,000 versus \$12,000. English speaking immigrant households also paid more taxes than natives, but native households paid more taxes than non-English speaking immigrant households. The study asserted that by enhancing English language classes for LEP immigrants, those immigrants could enhance their income and pay more taxes.[25]

Immigrant households in the Washington, DC, metropolitan region had a total income of \$29.5 billion in 1999-2000, and they paid \$9.8 billion in taxes; representing 19 percent of the region's total household income and 18 percent of all taxes paid.[26]

Prepared by Kerry Birnbach, State-Federal Relations Fellow, NCSL

Edited by [Ann Morse](#), Program Director, NCSL

## Notes

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Issues & Research » Immigration » Immigrant Eligibility for Federal Programs

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## Chart of Immigrant Eligibility for Federal Programs

Federal Program	Eligibility
<b>SSI</b>	Refugees: eligible for nine years, plus one additional year if a naturalization application is pending (effective FY2009-FY2011, when eligibility reverts to seven years)
	Legal immigrant SSI recipients resident in the U.S. on or before 8/22/96
	Legal immigrants resident on or before 8/22/96 who are or become disabled
	Legal immigrants with 40 work quarters
	Veterans, active military and their spouses and dependents
<b>Food Stamps</b>	Legal immigrant children (benefits restored as of October 1, 2003)
	Legal immigrants with 5 years residence in the U.S. (benefits restored as of April 1, 2003)*
	Legal immigrants with 40 work quarters
	Refugees
	Elderly, resident in the U.S. on or before 8/22/96
	Disabled or blind immigrants, regardless of when they entered the U.S.
<b>TANF</b>	Veterans, active military and their spouses and dependents
	Legal immigrants residing in the U.S. on or before 8/22/96 at state option
	Legal immigrants who enter the U.S. after 8/22/96: barred for first 5 years*
	Legal immigrants with 40 work quarters
	Refugees
<b>Medicaid</b>	Veterans, active military and their spouses and dependents
	Legal immigrants residing in the U.S. on or before 8/22/96 at state option
	Legal immigrants who enter the U.S. after 8/22/96: barred for first 5 years*
	Legal immigrants with 40 work quarters
	Refugees (eligible for first 7 years of residence)
<b>SCHIP</b>	Veterans, active military and their spouses and dependents
	SSI recipients
	Legal immigrant children residing in the U.S. on or before 8/22/96
	Legal immigrant children who enter the U.S. after 8/22/96: barred for first 5 years*
	Refugees (eligible for first 7 years of residence)
	Children of veterans and active military (unmarried, dependent)

**NOTES:** "Refugee" on this chart also includes asylees, Cuban-Haitian entrants, Amerasians, and those whose deportation has been withheld. Victims of domestic abuse and victims of trafficking may be eligible for the above programs, but they must still meet eligibility requirements (for example, 5 years residence or 40 work quarters.)

\*Sponsor-to-immigrant deeming applies to legal immigrants who have signed a legally binding affidavit of support on or after December 19, 1997. The income and resources of the sponsor are counted as available to the immigrant when determining the immigrant's eligibility.

Prepared by Ann Morse, Immigrant Policy Project, NCSL, October 10, 2008

*Last Updated: October 14, 2008*

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## Federal Benefits Available to Unauthorized Immigrants

In general, unauthorized immigrants within the United States **are not eligible for any federal public benefits, except:**

1. Emergency medical treatment under Medicaid, if the individual otherwise meets the eligibility requirements and the medical condition is not related to an organ transplant procedure
2. Immunizations for immunizable diseases and testing for and treatment of symptoms of communicable diseases (does not include assistance from Medicaid)
3. Short-term, non-cash, in-kind emergency disaster relief
4. Programs, services, or assistance that deliver in-kind services at the community level, do not have conditions for assistance on the recipients' income or resources, and are necessary for the protection of life and safety
  - Includes access to soup kitchens, crisis counseling and intervention, short-term shelter, mental health services, and child and adult protective services
5. To the extent that an immigrant was receiving assistance on 8/22/08, programs for housing, community development, or financial assistance administered by the HUD Secretary, which include:
  - Financial assistance in rural areas to farmers, owners, developers, and the elderly for loan insurance, the purchase of property, housing for trainees, and low rent housing for farm workers under title V of the Housing Act of 1949
  - Loans and grants for water access and waste treatment to alleviate health risks under Section 306C of the Consolidated Farm and Rural Development Act
6. Free public education for grades K-12
7. Federally subsidized school lunch and school breakfast programs for individuals eligible for free public education under state or local law
8. At state option, medical coverage under SCHIP, including prenatal care and delivery services, for unborn children who meet other program eligibility criteria

Note: Exceptions 2 and 3 above only grant access to disaster relief and emergency assistance for the protection of life and safety, and do not extend to non-emergency aid based on each recipient's need.

Unauthorized immigrants are eligible for the following nutrition assistance programs:

- Special Supplemental Nutrition Program for Women, Infants, and Children (WIC)
- Child and Adult Care Food Program (CACFP)
- Summer Food Service program
- Special Milk program
- Commodity Supplemental Food Program (CSFP)
- The Emergency Food Assistance Program (TEFAP)
- Food Distribution Program on Indian Reservations (FDPIR)

Note: States may, at their discretion, deny unauthorized immigrants' access to the above programs, though none have done so as of 5/21/08.

Unauthorized immigrants also appear to be able to receive services provided by federally funded community health centers regardless of immigration status; however, migrant health center services are statutorily prohibited to unauthorized immigrants by Title IV of PRWORA.

Prepared by: Holly Gierisch, Immigrant Policy Project, NCSL

July, 2008



Last updated September 12, 2008

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## SSI/Medicare Restoration for Refugees

October 3, 2008

On September 30, 2008, President Bush signed the Supplemental Security Income Extension for Elderly and Disabled Refugees Act (H.R.2608). Long sought by NCSL, the law eliminates a cost-shift to states by providing \$1.5 billion in federal income support and Medicare for elderly, disabled and blind refugees.

The law extends eligibility from 7 years to 9 years for humanitarian immigrants. Those with a naturalization application pending at the end of the two-year extension may receive a third year of benefits. Humanitarian immigrants includes refugees; asylees; Cuban/Haitian entrants; Amerasians; trafficking victims; and those granted withholding of deportation or removal.

To receive benefits, an individual is required to meet one of the following conditions:

- be under the age of 18 years old or over 70 years of age
- be a lawful permanent resident and green card holder for less than six years
- have applied for a green card within four years of receiving SSI
- granted status as a Cuban or Haitian Entrant or granted withholding of deportation or removal.

Recipients are required to make a declaration of a "good faith effort to pursue United States citizenship," with an exception for children under 18 years old. Many of the senior and disabled refugees who had lost their federal SSI benefits were being assisted by state-funded cash and medical assistance, including Medicaid. The restoration of eligibility for SSI means these refugees will gain federal income support and Medicare.

Costs for the benefit restoration are fully funded by recouping unemployment compensation debt.

The SSI extension expires in 2011.

For additional information, contact Sheri Steisel at 202-624-5400 or [sheri.steisel@ncsl.org](mailto:sheri.steisel@ncsl.org); or Christina Radecki at [christina.radecki@ncsl.org](mailto:christina.radecki@ncsl.org) or Emily Taylor at [emily.taylor@ncsl.org](mailto:emily.taylor@ncsl.org).

Last updated October 6, 2008

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Issues & Research » Immigration » Immigrant Benefits

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## Benefits

**NEW** [Federal Benefits Available to Unauthorized Immigrants](#), July 2008

Complex eligibility rules apply for legal immigrants and refugees under the 1996 welfare law. The one page chart and issue briefs below outline the changes and current law.

[Eligibility for federal programs](#): an abbreviated chart outlining the eligibility of legal immigrants and refugees for the main federal categorical programs (TANF, Medicaid, SCHIP, Food Stamps and SSI).

### TANF & Immigrants

[America's Newcomers: Mending the Safety Net for Immigrants](#) (Executive Summary) This report reviews the federal welfare reform debates and Congressional reconsideration of benefits for immigrants, as well as early decisions made by states in TANF, Medicaid, nutritional assistance, and naturalization programs. Finally, it examines federal and state constitutional issues related to public benefits for immigrants and some recent legal challenges.

*America's Newcomers: Mending the Safety Net for Immigrants*, Ann Morse, Jeremy Meadows, Kirsten Rasmussen, Sheri Steisel, 1998; 77 pages, ISBN 1-55516-707-1; Item #9378, \$20.00. Copies may be ordered from NCSL's Book Order department (303-830-2054) or [books@ncsl.org](mailto:books@ncsl.org).

[Temporary Assistance for Needy Families: A Checklist](#), by Ann Morse and Amanda Culp, June 15, 2001

[Welfare Reform & Immigrants: Temporary Assistance for Needy Families](#), March 18, 1998

[Welfare Reform & Immigrants: State Trends](#), Issue Brief, October 21, 1997

[Q&A on Immigrant Benefits](#)

[More information on welfare reform](#)

### Food Stamps/Nutritional Assistance

[Food Stamp Reauthorization: A Guide to Program Changes for State Legislators](#), by Lee Posey, September 20, 2002  
The Farm Security and Rural Investment Act of 2002, restores Food Stamp benefits to legal immigrants who lost these benefits with the passage of the 1996 welfare reform law, reversing a federal cost shift to the states. And it provides states new flexibility to improve the Food Stamp program for low-income workers.

[Food Stamp Benefits Restored](#), Issue Brief, May 14, 2002

[Nutritional Assistance in a Post-Welfare World](#), by Laurie Hoogeveen, June 15, 2001

[Welfare Reform & Immigrants: Nutritional Assistance](#), Issue Brief, January 1, 1999

### SSI

[Welfare Reform & Immigrants: Supplemental Security Income](#), Issue Brief, January 1, 1999



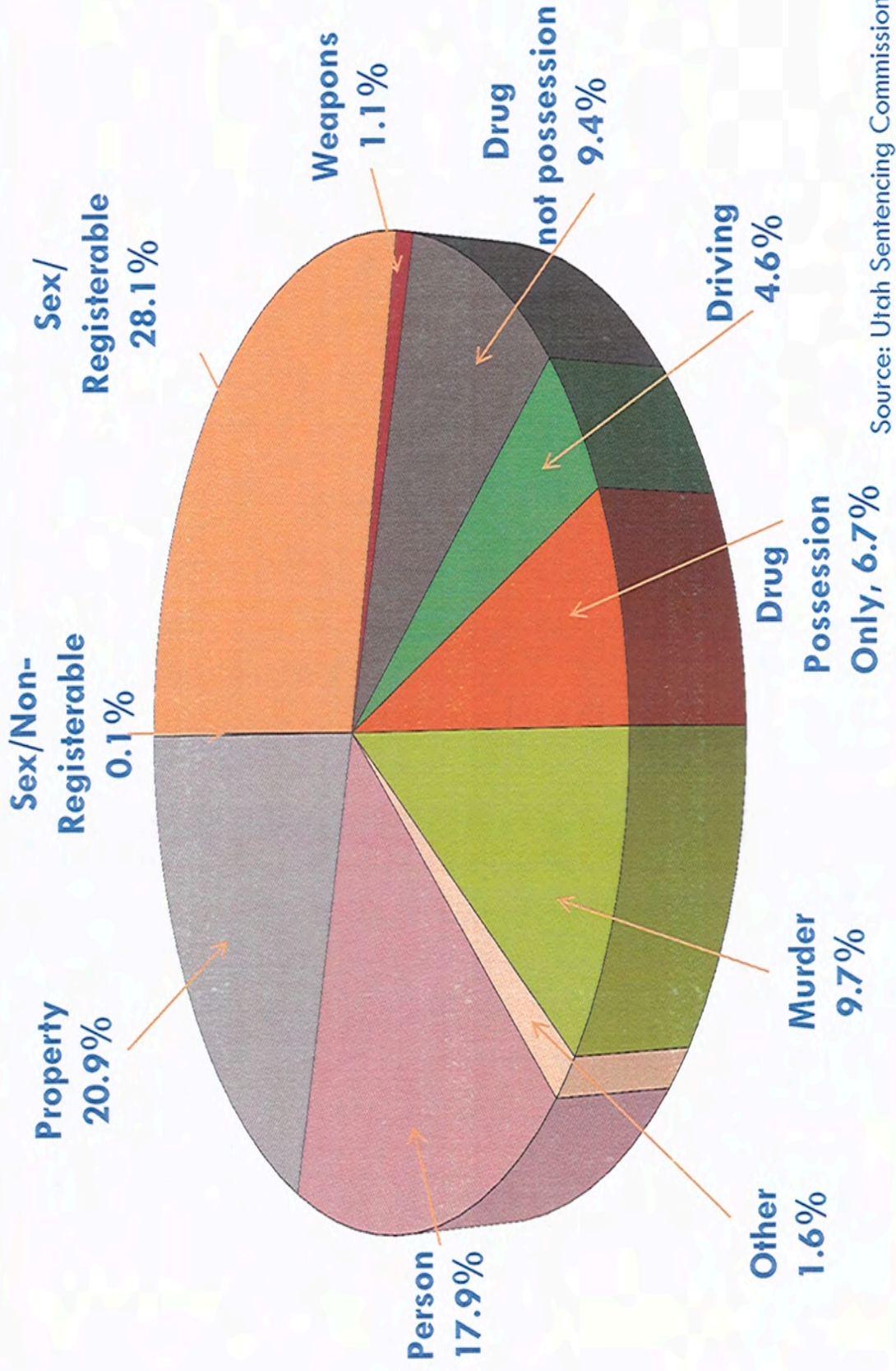
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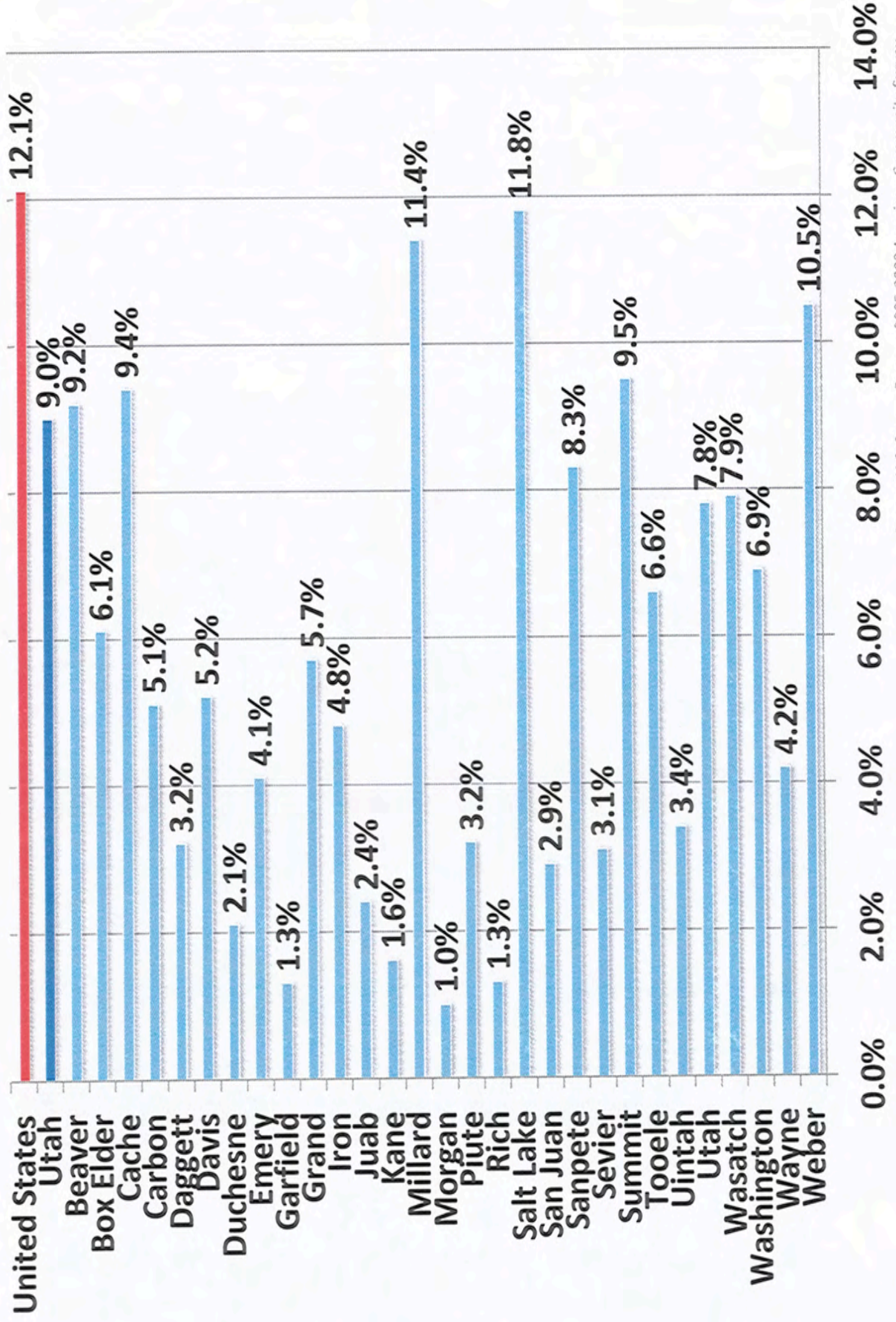
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# Total Utah Prison Population Breakdown by Offense Type – 2008



Source: Utah Sentencing Commission

# Percentage of Population 5 Years and Over Who Speak Spanish at Home



Source: U.S. Census Bureau, 2005-2009 American Community Survey


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## Immigrant Policy Project January 5, 2011

### 2010 Immigration-Related Laws and Resolutions in the States

(January 1 - December 31, 2010)

State legislatures enacted a record number of laws and resolutions addressing immigration issues in 2010: 46 state legislatures and the District of Columbia enacted 208 laws and adopted 138 resolutions, for a total of 346. An additional 10 bills passed legislatures but were vetoed by governors. During the same period in 2009, 44 states enacted 202 laws and adopted 131 resolutions, for a total of 333. An additional 20 bills were vetoed.

Every state in regular session considered laws related to immigrants or immigration in 2010. State legislators introduced more than 1,400 bills and resolutions in 46 states and the District of Columbia, which is comparable to 2009, when 50 states considered more than 1,500 bills and resolutions pertaining to immigrants. Montana, Nevada, North Dakota and Texas were not in regular session in 2010. Resolutions hit a new high of 138, with 15 of these seeking congressional action.

As in previous years, law enforcement, identification/driver's licenses and employment remained the top issues addressed in state legislation related to immigrants. E-verify legislation was enacted in four states—Georgia, Utah, Virginia and West Virginia. A new area of concern for state legislators in 2010 was child abductions. Alabama, Florida and Tennessee enacted laws to help prevent them.

Arizona's immigration enforcement laws (SB 1070 and HB 2162) received considerable national attention in 2010. These laws added new state requirements, crimes and penalties related to enforcement of immigration laws and were to become effective on July 29, 2010. Before the laws could go into effect, the U.S. Department of Justice sought an injunction arguing that the laws are unconstitutional. On July 28, Judge Bolton granted the request for injunction in part and enjoined the provisions that: allow state law officers to determine the immigration status of anyone during a lawful stop; require individuals to carry their alien registration documents; prohibit unauthorized immigrants from applying for work; and permit a warrantless arrest if there is probable cause the offense would make the person removable from the United States. Arizona Governor Jan Brewer appealed the injunction and arguments were heard by the 9th U.S. Circuit Court of appeals on Nov. 1, 2010. More information on these Arizona laws can be found under the omnibus category, and online at <http://www.ncsl.org/default.aspx?tabid=20263>.

Bills similar to Arizona's were subsequently introduced in six state legislatures—Illinois, Michigan, Minnesota, South Carolina, Pennsylvania, and Rhode Island—but none were enacted.

State laws related to immigration have increased dramatically in recent years:

- In 2005, 300 bills were introduced, 39 laws were enacted and six were vetoed.
- In 2006, 570 bills were introduced, 72 were enacted, six were vetoed, and 12 resolutions were adopted for a total of 84.
- In 2007, 1,562 bills were introduced, 178 were enacted, 12 were vetoed, and 50 resolutions were adopted for a total of 228.
- In 2008, 1,305 bills were introduced, 139 laws were enacted, three were vetoed, and 64 resolutions adopted for a total of 203.
- In 2009, more than 1,500 bills were introduced, 202 laws were enacted, 20 were vetoed, and 131 resolutions adopted for a total of 333.
- In 2010, more than 1,400 bills were introduced, 208 laws were enacted, 10 were vetoed, and 138 resolutions were adopted for a total of 346.

**Summaries of all enacted laws and resolutions are available online in a searchable database and in a chart sorted alphabetically by state and by category at [www.ncsl.org/programs/immig](http://www.ncsl.org/programs/immig).**

#### Methodology

This report summarizes laws and resolutions enacted between Jan. 1 and Dec. 31, 2010. Legislative proposals included in



Vetoed by governors	20	3	10	2
<b>Total enacted laws and resolutions</b>	<b>333</b>		<b>346</b>	

**Please note:** Beginning in 2010, budget laws were removed from the miscellaneous category, while legal services laws have been combined with law enforcement. Some laws may have been reclassified since the July report or, upon further research, found not to include new legislative language related to immigrants.

Source: NCSL, *Immigrant Policy Project, 2010*.

The full report of state laws is available online at <http://www.ncsl.org/default.aspx?tabid=19897> by state and by category. NCSL also offers a searchable database for 2009 and 2010 enacted laws and resolutions at <http://www.ncsl.org/default.aspx?TabId=19209>. The brief summary below describes the categories and provides examples of laws enacted in 2010. Click here for [PDF version of this report](#).

### **BUDGET (49)**

Forty-nine budget laws were enacted in 28 states and D.C.: Arizona, Arkansas, Colorado, Delaware, District of Columbia, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, Virginia and Washington.

These laws typically appropriate funds for refugee resettlement programs, migrant health or education, law enforcement, or naturalization assistance programs. (Note this new category, beginning in 2010, was formerly included in the miscellaneous category.)

*Example:* Michigan H 5875 requires the department of agriculture to apply for all federal funds for which it is eligible that can be used to support the migrant labor housing program.

### **EDUCATION (17)**

Seventeen laws passed in 11 states: Arizona, California, Colorado, Florida, Illinois, Ohio, Oklahoma, Oregon, Utah, Washington and West Virginia. Four bills were vetoed.

These laws generally address in-state tuition eligibility, financial assistance, and English language acquisition and access. Some laws seek to disaggregate educational data for immigrants, migrants or certain ethnic groups or target at-risk groups including migrants or immigrants.

*Example:* Washington S 6467 allows the board of regents to grant honorary degrees for persons who were students at the university in 1942 and did not graduate because they were ordered into internment camps. The honorary degree may also be requested by a representative of deceased persons who meet these requirements.

### **EMPLOYMENT (27)**

Twenty-seven laws were enacted in 20 states: Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Mississippi, Nebraska, New Mexico, New York, Oklahoma, South Carolina, Tennessee, Utah, Virginia, Washington, Wisconsin and West Virginia.

Many of these laws address employer sanctions for hiring unauthorized workers, employment eligibility verification requirements and penalties, health and safety standards, unemployment benefits and workers' compensation.

*Example:* Iowa S 2181 grants authority to the Division of Labor Services of the Department of Workforce Development to establish guidelines, as needed, to bring Iowa's occupational safety and health standards into compliance with federal standards. The law also requires every person, firm, or corporation employing migrant laborers to obtain and keep on file a work permit for migrant laborers prior to their employment.

### **HEALTH (17)**

Seventeen laws passed in 13 states: Arizona, California, Colorado, Florida, Idaho, Illinois, Louisiana, Maryland, Minnesota, Missouri, Nebraska, Oklahoma and Tennessee. One bill was vetoed in California.

These laws generally address eligibility for health care benefits and the licensing of health care professionals and interpreters.

*Example:* Illinois H 5053 establishes a program in the Department of Public Health to ensure access to psychiatric health

care services for all citizens of Illinois, with particular attention given to underserved populations and designated shortage areas, including migrant health centers.

### **HUMAN TRAFFICKING (8)**

Eight laws were enacted in eight states: Alabama, Arizona, Colorado, Kansas, Oklahoma, Utah, Vermont, and Washington.

These laws add definitions related to human trafficking, human smuggling and forced labor, create new state penalties and offer assistance to victims.

*Example:* Colorado S 140 amends provisions related to trafficking in adults and children and the coercion of involuntary servitude. It requires proof of the use of force, fraud or coercion to prove the crime of trafficking in adults and children and involuntary servitude. The definition of coercion includes withholding or threatening to destroy documents relating to a person's immigration status and threatening to notify law enforcement officials that a person is present in the United States in violation of federal immigration laws.

### **ID / DRIVER'S LICENSES AND OTHER LICENSES (26)**

Twenty-six laws passed in 21 states: Alabama, Arizona, California, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, North Carolina, South Carolina, South Dakota, Tennessee and Utah. Two bills were vetoed.

These laws relate to documentation and eligibility requirements for IDs and driver's licenses, birth certificates for foreign adoptions, professional licenses, and firearm and hunting/fishing licenses.

*Example:* South Dakota H 1107 provides for the renewal of certain nonresident commercial driver licenses, requires evidence that the applicant is authorized to stay in the United States to renew a nonresident commercial driver license, and allows the Department of Transportation to renew a nonresident commercial driver license without a skills or knowledge test if the license has been expired for a period less than one year.

### **LAW ENFORCEMENT (37)**

Thirty-seven laws passed in 19 states: Alabama, Arizona, California, Connecticut, Florida, Georgia, Illinois, Kansas, Louisiana, Maryland, Michigan, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Virginia and Wyoming. One bill was vetoed.

These laws generally deal with collaboration with federal law enforcement agencies, processes for immigrant detention, prevention of child abduction, and responsibilities of law enforcement officers.

*Example:* Tennessee H 2995, the Uniform Child Abduction Prevention Act, authorizes a court to order child abduction prevention measures in a child custody proceeding and allows a parent or guardian to petition to prevent a child abduction if there is a credible risk. Factors that can be considered by the court in determining the risk of abduction include: a lack of strong familial, financial, emotional, or cultural ties to the state or the United States; strong familial, financial, emotional, or cultural ties to another state or country; the petitioner or respondent is likely to take the child to a country that is not a party to the Hague Convention on the Civil Aspects of International Child Abduction and poses concerns due to safety, compliance or other issues; or a change in immigration or citizenship status that would adversely affect the respondent's ability to remain in the United States legally.

### **MISCELLANEOUS (20)**

Twenty laws were passed by legislatures in 15 states: Alabama, California, Florida, Illinois, Kentucky, Louisiana, Minnesota, Mississippi, Nebraska, New Hampshire, Rhode Island, Utah, Virginia, Washington and Wisconsin. One bill was vetoed.

These laws generally address immigration-related commissions and studies or make technical corrections to names of immigration agencies or offices. This section no longer includes budget and appropriation laws referring to non-citizens.

*Example:* Illinois H 5428 makes technical changes to the Illinois Adoption Act and updates references to the U.S. Immigration and Naturalization Service to the U.S. Citizenship and Immigration Services.

### **OMNIBUS / MULTI-ISSUE LEGISLATION (2)**

Arizona enacted two laws (SB 1070 and HB 2162). SB 1070, enacted on April 23, was amended a week later by HB 2162. Key provisions include: a requirement that law enforcement reasonably attempt to determine the immigration status of a person involved in a lawful stop, detention or arrest in the enforcement of any other local or state law or ordinance where

reasonable suspicion exists that the person is an alien and is unlawfully present, except if it may hinder or obstruct an investigation; allows an officer to make a warrantless arrest if the person to be arrested has committed any offense that makes the person removable from the United States; allows state residents to sue state and local agencies for noncompliance; establishes a state violation for failure to carry an alien registration document; and makes it unlawful for an unauthorized alien to knowingly apply for or perform work in Arizona. More information on these Arizona laws can be found at <http://www.ncsl.org/default.aspx?tabid=20263>.

### **PUBLIC BENEFITS (9)**

Nine laws were enacted in seven states and D.C.: Arizona, California, Colorado, District of Columbia, Illinois, Massachusetts, Minnesota, and Washington.

These laws typically relate to individuals and their eligibility to receive public benefits, such as requiring proof of lawful presence in the United States before receiving certain public benefits. Some require state agencies to use certain eligibility verification systems or to deny public benefits to unauthorized immigrants. Some make funds available for certain immigrants and refugees.

*Example:* Minnesota S 1770 establishes the Ladder Out of Poverty Task Force and ensures that immigrants, along with many other groups, will have the opportunity to meet with and present views to the task force.

### **VOTING (6)**

Six laws passed in three states: Alaska, California and Utah. One bill was vetoed.

These laws address regulations regarding voter registration, including verification of citizenship. They also pertain to the ability of immigrants to vote for public office and donate to campaigns.

*Example:* Utah S 53 defines the circumstances under which someone can challenge the validity of a person's right to vote, including claims the person is not a citizen of the United States.

### **RESOLUTIONS (138)**

One hundred thirty-eight resolutions and memorials were adopted in 27 states: Alabama, Arizona, California, Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Kentucky, Louisiana, Michigan, Mississippi, Nebraska, New Jersey, New Mexico, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Utah, Virginia, Washington, West Virginia and Wisconsin.

Most of these resolutions and memorials celebrate America's ethnic heritage and others applaud programs or individuals that serve refugees or immigrants. Fifteen of the resolutions urge Congress to: fund E-Verify, reimburse states for emergency health to undocumented aliens, enact comprehensive immigration reform, enact the International Violence Against Women Act, secure borders, fund services for migrants, pass Filipino family reunification, address refugees in Darfur and Chad, and provide Haitians with temporary protected status.

*Example:* Colorado HJR 1003 memorializes the Haiti earthquake tragedy of Jan. 12, 2010 by extending sympathies to those affected by the tragedy, urging Coloradans to contribute to both immediate relief efforts and long-term assistance, and encouraging the U.S. Department of State and all other relevant agencies to assist with the immediate evacuation of orphans who are in the process of being adopted by Colorado families.



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*This report was made possible (in part) by a grant from Carnegie Corporation of New York. The statements made and views expressed are solely the responsibility of NCSL.*



**Source:** National Conference of State Legislatures, 2010.

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## In-State Tuition and Unauthorized Immigrant Students

*Revised January 28, 2010*

In 1996, the illegal immigration reform law instituted a restriction on states' residency requirements and in-state tuition benefits for higher education, affecting an estimated 50,000-65,000 unauthorized immigrant students annually.

Eleven states subsequently enacted legislation to allow long-term unauthorized immigrant students to become eligible for in-state tuition if they meet certain requirements: California, Illinois, Kansas, Nebraska, New Mexico, New York, Oklahoma, Texas, Utah, Washington and Wisconsin. In 2008, Oklahoma ended its support for in-state tuition for students without lawful presence.

Congress has been considering bipartisan legislation to repeal this provision and help certain immigrant students gain legal status. In the 110th Congress, legislation in both the House and Senate was introduced with bipartisan cosponsorship.

### Federal Background

The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996 (Sec. 505) sought to prohibit states from providing a postsecondary education benefit to an alien not lawfully present in the United States on the basis of residence unless any U.S. citizen or national is eligible for the same benefit. (P.L. 104-208). The Congressional Research Service notes that there is disagreement about the meaning of the provision, and there is no guidance in congressional report language or in federal regulations.

The Development, Relief and Education for Alien Minors Act (the DREAM Act, S. 774) would restore the state option to determine residency for purposes of higher education benefits. It would provide conditional legal status to an individual who was under the age of 16 when he or she entered the country; has been physically present in the United States for at least five years; has earned a high school diploma or GED; is a person of good moral character; and is not inadmissible or deportable under criminal or security grounds of the Immigration and Nationality Act. These students could obtain a permanent resident status after two years of college or military service. Introduced by Senator Durbin, the legislation has 26 cosponsors. In the House, similar legislation was introduced by Congressman Berman and has 86 cosponsors (H.R. 1275, The American Dream Act). In May, 2006, it was part of the comprehensive immigration reform bill that passed the Senate (S.2611).

Proponents of these bills argue that unauthorized immigrant children had no choice in entering the United States illegally, have grown up in the United States, and can make economic and social contributions if allowed to continue their studies. Opponents believe the bills would reward lawbreakers, that only lawful resident students should qualify for resident tuition, and that it could result in added cost to taxpayers.

Any child, regardless of immigration status, is eligible for free primary and secondary education under a 1982 Supreme Court decision (*Plyler v. Doe*). The Supreme Court feared that denying children an education might create a permanent underclass of illegal immigrants who would probably remain in the United States the rest of their lives. Discrimination against the children would punish them for the acts of their parents, since the children had no choice in entering the United States. The denial of an education to these children would stamp them with an "enduring disability" that would harm both them and the State all their lives.

When students without legal residency apply for college they are asked for a social security number and citizenship status. While they may still be allowed to attend, they are not eligible for federal aid until they gain legal immigration status. Legal status can sometimes be obtained through family or work-based petitions (e.g., U.S. citizen can apply for their spouse or an employer can apply for their employee), or through the Diversity Lottery Program.

### State Actions

In June 2001, **Texas** (HB1403) was the first state to pass legislation allowing in-state tuition for immigrant students, followed by **California** (AB540), **Utah** (HB144), and **New York** (SB7784) in 2001-2002; **Washington** (HB1079), **Oklahoma** (SB596) and **Illinois** (HB60) in 2003; **Kansas** (HB2145) in 2004; **New Mexico** (SB582) in 2005; **Nebraska** (LB239) in 2006; and **Wisconsin** (A75) in 2009. The state laws permitted these students to become eligible for in-state tuition if they graduate from state high schools, have two to three years residence in the state, and apply to a state college or university. The student must sign an affidavit promising to seek legal immigration status in all states except New Mexico. These requirements for unauthorized immigrant students are stricter than the residency requirements for out-of-state students to gain in-state tuition.

In 2008, Oklahoma passed HB 1804 which ended its in-state tuition benefit, including financial aid, for students without

lawful presence in the United States. The Act allows the Oklahoma State Regents to enroll a student in higher education institutions permitted that they meet special requirements. Other states that have barred unauthorized immigrant students from in-state tuition benefits include **Arizona** (Proposition 300, 2006), **Colorado** (HB 1023, 2006), **Georgia** (SB 492, 2008), and **South Carolina** (HB4400, 2008).

#### Court Cases

**California:** Students paying out-of-state tuition attending California schools filed a lawsuit in the Yolo County State Superior Court (Martinez v. Regents, No. CV 05-2064), claiming that education officials violated the IIRIRA by offering in-state tuition to unauthorized immigrant students while continuing to charge U.S. citizens out-of-state tuition rates. The complaint was filed against the University of California, California State University, and state community college systems, who offered in-state tuition to unauthorized immigrant students following Assembly Bill 540, enacted in October 2001. On October 6, 2006, Judge Thomas E. Warriner upheld the schools' decision to grant eligibility to unauthorized immigrant students for in-state tuition. In September, 2008, a California appeals court reinstated the lawsuit and returned it for consideration in Yolo County Superior Court.

**Kansas:** A claim was brought to the Kansas District Court by a Missouri resident denied in-state tuition while unauthorized immigrant students were granted in-state tuition benefits, arguing that this violated IIRIRA (Day v. Sibelius, No. 04-4085/Day v. Bond, No. 07-1193). The Kansas District Court dismissed the claim for lack of standing. The decision was upheld in the U.S. Court of Appeals for the Tenth Circuit. On June 23, 2008, the United States Supreme Court declined to review the federal review court's ruling.

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## Immigration and State Law Enforcement: Federal 287(g) Cooperative Agreements

By Ann Morse, Kelly Foster and Geoffrey Radcliffe Vol . 17, No. 43 / November-December 2009

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Since 2002, the U.S. Department of Homeland Security (DHS) has created voluntary cooperative agreements between the federal government and state and local law enforcement agencies on immigration enforcement, as authorized by Section 287(g) in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act. The agreements delineate the DHS supervisory role and individual law enforcement agencies' jurisdictions and limitations.

The agreements establish two basic models for immigration law enforcement. The task force model focuses on law enforcement personnel, and the correctional-detention model focuses on corrections officers. Task force officers engage illegal immigrants in the field to prevent gang activity, identity and benefit fraud, and human and narcotics smuggling and trafficking. Jail enforcement officers focus primarily on identifying immigrant felons within the prison system.

State and local officers participate in a four-week training program at the Federal Law Enforcement Training Center. Immigration and Customs Enforcement (ICE) provides training and instructional materials, and state and local governments pay officers' salaries. Candidates must pass a background check; pass all tests during their training course with a minimum score of 70 percent; and perform only the functions established in the agreement, under the supervision and direction of ICE. Officers who violate the agreement can be suspended or expelled from the program. The ICE Office of Professional Responsibility can audit any 287(g) program.

### Federal Action

The U.S. Government Accountability Office audit of 287(g) programs in January 2009 revealed that they lack some necessary management controls, such as documented program objectives. Although the programs are intended to deal with unauthorized immigrants who engage in serious criminal activity, the audit found that some law enforcement agencies have begun to target those who commit only minor offenses such as traffic violations. In addition, the agreements did not require law enforcement agencies to report or track data on their programs before 2007, and there was no standardized reporting.

On July 10, 2009, DHS announced a new standardized memorandum of agreement for 287(g) partnerships that set priorities for identifying and deporting criminal aliens. The new agreements provide guidelines for supervision, information reporting and complaint procedures. Civil rights laws and regulations related to nondiscrimination apply to the agreements, which also require that interpretation services be available. All existing agreements must be renegotiated, and new agreements will sunset every three years. On October 16, DHS announced 67 new standardized agreements.

ICE notes that, because it cannot grant all requests for participation in the 287(g) program, it created the ICE ACCESS program in fall 2007 to help local law enforcement agencies address specific challenges and develop solutions tailored to community needs.

**Pros and Cons.** Supporters argue that 287(g) programs combat crime and support national security goals. The programs provide law enforcement agencies access to federal databases to verify the identities of suspects. They also help ensure that criminal aliens are transferred to ICE for deportation. Since January 2006, the 287(g) programs have identified more than 120,000 people suspected of being in the country illegally.

Opponents believe when state and local law enforcement agencies assume federal

immigration enforcement responsibilities, it can damage relationships with immigrant communities and harm community policing. Critics also argue that targeting immigrants for minor infractions can lead to racial profiling and discrimination.

**Costs vs. Benefits.** New responsibilities can strain police departments and overcrowded jails. States may realize cost savings if criminals are removed from state jails, but they also can incur additional costs when state resources and personnel are used to enforce federal immigration laws. Federal reimbursement for state costs comes from the State Criminal Alien Assistance Program (SCAAP), which has been severely underfunded for many years and may face additional cuts. Other concerns include potential liability for unlawful arrests and detentions, sentencing discrepancies, and program effectiveness.

#### **Resources:**

U.S. Government Accountability Office. Immigration Enforcement: Better Controls Needed Over Program Authorizing State and Local Enforcement of Federal Immigration Laws. Washington, D.C.: GAO, January 2009; [www.gao.gov/new.items/d09109.pdf](http://www.gao.gov/new.items/d09109.pdf).  
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### **E-Verify: Frequently Asked Questions**

Revised January 18, 2011

[What is E-Verify?](#)[When and how was it created?](#)[When will E-Verify expire?](#)[How does E-Verify work?](#)[What is the current usage and capacity?](#)[How well does E-Verify work?](#)[How is it enforced?](#)[What is required of federal contractors?](#)[What states address the use of E-Verify?](#)[Table: States Requiring E-Verify](#)[Require Use of E-Verify](#)[Encourages the Use of E-Verify](#)[Limits on Use of E-Verify](#)[Preemption Issues and Court Challenges](#)[Sources](#)

#### **What is E-Verify**

The E-Verify program was created as a voluntary Internet-based pilot program to help employers verify the work authorization of new hires. It applies to U.S. citizens and noncitizens. Originally known as the Basic Pilot/Employment Eligibility Verification Program, the program was renamed E-Verify in 2007. The program is administered by the U.S. Department of Homeland Security in partnership with the Social Security Administration.

#### **When and how was it created?**

The Basic Pilot program was established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), P.L. 104-208, signed September 30, 1996, citation: 8 U.S.C. 1324a. The program started in California, Florida, Illinois, New York and Texas (1997) with Nebraska joining in 1999. Congress authorized the expansion of the pilot program to employers in all 50 states in 2003.

#### **When will E-Verify expire?**

September 30, 2012. IIRIRA required the termination of the pilot program after four years (allowing for a one-year implementation). It was extended for two years in 2002 and five more years in 2003 (until November 30, 2008). See the Basic Pilot Program Extension and Expansion Act of 2003, Public Law 108-156. Congress passed a continuing resolution extending budgets of certain federal agencies until March 2009, including E-Verify (HR 2638). Congress then passed the Omnibus Appropriations Act of 2009 in March, extending the budget of E-Verify until September 2009 (Public Law 111-8). Another three-year extension was approved in the Department of Homeland Security appropriations in October 2009, P.L. 111-83.

#### **How does E-Verify work?**

All employers must first complete an I-9 form for every new hire, within three business days of the date the employee starts work. Employers may not begin the I-9 process until after the individual is hired. The employer and newly-hired employee jointly complete the I-9 Employment Eligibility Verification form. The form asks for employee's name and date of birth; social security number; citizenship status; an A number or I-94 number if applicable; documentation to establish work authorization; and proof of identity and expiration date, if applicable. Employees may choose from several documents to prove identity and authorization to work, such as a U.S. passport or unexpired employment authorization card, or a combination of a driver's license and social security card. Documents must appear genuine. <http://www.uscis.gov/files/nativedocuments/m-274.pdf>

An employer then enters information from the I-9 form into the E-Verify system, where it is compared against 455 million records in the Social Security Administration (SSA) database and 80 million records in the Department of Homeland Security's (DHS) immigration databases. Most inquiries are resolved within 72 hours. Some inquiries can't be confirmed instantly by DHS ("tentative nonconfirmation notices") due to changes in citizenship status, name changes (e.g., marriage/divorce), or typographical errors.

To resolve a nonconfirmation notice, the employee must visit an SSA office or call DHS toll-free. The employee has eight federal workdays to start resolving the case. About one-half of those who receive a nonconfirmation notice contest the notice. Of these, about half of the employees will follow up.

### **What is the current usage and capacity?**

The U.S. Citizenship and Immigration Services (USCIS) reports that as of December 11, 2010 more than 238,000 employers have registered with the program, with 16 million inquiries in FY2010. In FY2009, there were 8.7 million inquiries, in FY 2008, 6.6 million, and 3.27 million in FY2007. There are an estimated 7 million employers in the United States and 60 million new hires per year. The 2007 Westat evaluation estimated that 4 percent of newly hired workers are verified using the system.

### **How well does E-Verify work?**

A December 2010 GAO report found that USCIS has improved the accuracy of E-Verify, immediately confirming 97.4 percent of 8.2 million new hires in 2009, up from 92 percent in 2007. The report notes that E-Verify remains vulnerable to identity theft and employer fraud. Name mismatches (multiple or hyphenated names) can still lead to tentative nonconfirmation notices. GAO recommends that USCIS disseminate information to employees to consistently record names and to develop procedures to help employees correct inaccurate information. GAO also recommended that USCIS develop reliable cost estimates for E-Verify. The 81-page report, "Employment Verification: Federal Agencies Have Taken Steps to Improve E-Verify, but Significant Challenges Remain" can be found at <http://www.gao.gov/new.items/d11146.pdf>.

Previous study: An evaluation conducted by Westat in 2007 for DHS found that the accuracy of the USCIS database had improved substantially. However, the error percentage was still too high for it to become a mandated program. The report finds that "the database used for verification is still not sufficiently up to date to meet the IIRIRA requirement for accurate verification." SSA estimated that 4.1 percent, or 17.8 million records, contained discrepancies related to name, date of birth or citizenship status; 12.7 million of these pertained to U.S. citizens. Westat reported that for the July-September 2008 quarter, 96.9 percent of employees attesting to be U.S. citizens were automatically confirmed as authorized to work instantly or within 24 hours (up from 96.1 percent in the previous quarter). Westat's 2007 study noted significantly different rates between citizen and noncitizen cases. Only 72 percent of lawful permanent residents and 63 percent of immigrants authorized to work were confirmed automatically.

### **How is it enforced?**

The Immigration Reform and Control Act of 1986 established a prohibition on employers from hiring unauthorized workers and established criminal and civil sanctions. Citation: 8 USC 1324a(h)(2). USCIS is responsible for verification of documents and Immigration and Customs Enforcement (ICE) is responsible for enforcement. Both USCIS and ICE are part of DHS. To participate in E-Verify, employers sign a Memorandum of Understanding that sets out responsibilities for USCIS, SSA and the employer.

The law also created civil rights protections against unfair immigration-related employment practices. The Office of Special Counsel in the U.S. Department of Justice is the law enforcement agency charged with enforcement against discrimination on the basis of citizenship, immigration status or national origin discrimination. See section 274(b) INA. <http://www.justice.gov/crt/osc/htm/article.htm>

### **What is required of federal contractors?**

As of September 8, 2009, federal contractors or subcontractors are required to use E-verify to determine employment eligibility of employees performing direct work on the contract and new hires. It applies to federal contracts that contain the Federal Acquisition Regulation E-Verify Clause. It exempts contracts of less than 120 days and valued at less than \$100,000 and subcontracts valued at less than \$3,000.

Background: President Bush amended Executive Order 12989 on June 6, 2008, requiring all federal contractors to verify the employment eligibility of all persons hired during the contract term and all persons performing work within the United States on the federal contract by using the employment eligibility verification system (E-Verify). It was scheduled to go into effect on January 15, 2009, but implementation was delayed subsequent to a lawsuit. The lawsuit filed by multiple parties, including the U.S. Chamber of Commerce, challenged the use of the Executive Order on the grounds that it circumvented the Congressional prohibition in mandating the use of E-Verify for federal contracts through IIRIRA.

### What states currently address the use of E-Verify?

Fourteen states require the use of E-Verify for public and/or private employers, eleven through legislation and three through executive orders. One state, Illinois, enacted legislation to limit the use of E-Verify until the database accuracy is improved and also created privacy and antidiscrimination protections. At least two states, Pennsylvania and Tennessee, encourage its use through providing a safe harbor from state penalties for employers enrolled in E-Verify.

**Table: States Requiring E-Verify**

	State	Citation	Year	Applies to:
1	Arizona	HB 2779 HB 2745	2007 2008	all employers, public and private
2	Colorado	HB 1343 SB139, SB193	2006 2008	state contractors
3	Georgia	SB 529 HB 2 SB 447	2006 2009 2010	state agencies, contractors, and subcontractors
4	Idaho	Executive Order	2006	state agencies, contractors
5	Minnesota	Executive Order	2008	state agencies, state contracts
6	Mississippi	SB 2988	2008	all employers, public and private
7	Missouri	HB 1549 HB3	2008 2009	public employers, contractors and subcontractors
8	Nebraska	L403	2009	Public employers, public contractors
9	North Carolina	SB 1523	2006	state agencies
10	Oklahoma	HB 1804	2007	public employers, contractors, subcontractors
11	Rhode Island	Executive Order	2008	state agencies, grantees, contractors, subcontractors
12	South Carolina	HB 4400	2008	all employers, public and private, phased in by 2010
13	Utah	SB 81 SB 39	2008 2009	public employers, contractors, subcontractors
14	Virginia	H 737	2010	state agencies





## Require Use of E-Verify (14 states)

**Arizona.** The Arizona Fair and Legal Employment Act (**HB 2779**), enacted in 2007, prohibits employers from knowingly hiring unauthorized workers and requires all employers to use the Basic Pilot Program to verify employment eligibility. It establishes substantial penalties and threatens noncompliant employers with suspension and potential revocation of their business licenses. Effective date Jan. 1, 2008. **Arizona HB 2745**, enacted in 2008, prohibits government contracts to any contractor and subcontractor that fails to use E-Verify. It provides that companies can be punished only for unauthorized workers they hired after January 1, 2008 and that a violation at one location of a company shuts down only that location, not the entire corporation. The Arizona Attorney General is required to establish a Voluntary Employer Enhanced Compliance Program. Effective May 1, 2008.

**Colorado. HB 1343** (signed 6/6/2006) prohibits state agencies from entering into contract agreements with contractors who knowingly employ illegal immigrants and requires prospective contractors to verify legal work status of all employees. The contractor must confirm that the Basic Pilot Program has been used to verify the status of all employees. If the contractor discovers that an illegal alien is employed, the contractor must alert the state agency within 3 days. Colorado SB 139 (Signed 5/20/2008) requires that employers be notified of the prohibition against hiring an unauthorized alien and the availability of and participation requirements for the federal E-Verify program. The Act requires the Department of Labor and Employment's website to provide this information. Effective August 6, 2008. Colorado SB 193 (Signed 5/13/2008) creates a program to allow a contractor to verify employment eligibility of all employees under a public contract and requires future participation in the Federal Electronic Employment Eligibility Program or the department program to verify the employment eligibility of certain employees. Effective August 6, 2008.

**Georgia.** The Georgia Security and Immigration Compliance Act, **SB 529**, covered employment, enforcement, and benefits and was signed by the Governor on April 17, 2006. The law requires public employers, contractors and subcontractors with 500 or more employees to participate in E-Verify for all new employees beginning July 1, 2007. The law is phased in for public employers, contractors and subcontractors with 100 or more employees effective July 1, 2008; and for all employers by July 1, 2009. **Georgia HB 2** (signed 5/11/2009) requires every public employer, (including municipalities and counties), contractors and subcontractors to verify employment eligibility of all newly-hired employees with the federal work authorization program, effective January 1, 2010. No employer or agency or political subdivision shall be subject to lawsuit or liability arising from any act to comply with these requirements. **Georgia SB 447** (signed 5/20/2010) requires public employers to retain, for five years, affidavits submitted by state contractors affirming their participation in the federal work authorization program. The law requires contractors to notify public employers of new subcontractors. SB447 requires the Commissioner to conduct 100 random audits annually of public employers and contractors and to seek funding from the U.S. Secretary of Labor. Violations convicted for false statements on affidavits shall be prohibited from public contracts for 12 months.

**Idaho Executive Order.** On December 13, 2006, Governor Jim Risch issued an executive order requiring that state agencies participate in the E-Verify system. Also, all workers employed to the state through contractors must also be from companies that have been verified to have eligible employees.

**Minnesota Executive Order.** Governor Tim Pawlenty issued an executive order on Jan. 7, 2008, stating that all hiring authorities within the executive branch of state government as well as any employer seeking to enter into a state contract worth in excess of \$50,000 must participate in the E-Verify program. The Executive Order's effective date is January 29, 2008.

**Mississippi. SB2988** (signed 3/17/08) requires public and private employers to participate in E-Verify. The phase-in period is: all government agencies and businesses with more than 250 employees by July 1, 2008; companies with 100 to 250 employees by July 1, 2009; those with 30 to 100 employees by July 1, 2010; and all remaining companies by July 1, 2011. An employer violating the law is subject to the cancellation of public contracts, ineligibility for contracts for up to three years, and loss of business license for up to one year. The law also makes it a felony to accept or perform employment knowing or in reckless disregard of the immigrant's ineligibility to work, with penalties from one to five years of imprisonment and/or \$1,000 to \$10,000 in fines.

**Missouri. HB1549** (Signed 7/7/2008) requires E-Verify for public employers. All public employers must enroll and participate in a federal work authorization program. Any public contractor or subcontractor must, by sworn affidavit, affirm its enrollment and participation in a federal work authorization program. If a court finds that a business knowingly employed someone not authorized to work, the company's business permit and licenses shall be suspended for 14 days. Upon the first violation, the state may terminate contracts and bar the company from doing business with the state for 3 years. Upon the second violation, the state may permanently debar the company from doing business with the state. **H390** (signed July 7, 2009) specifies that the requirement for certain businesses to participate in a federal work authorization program will not apply after the federal government discontinues or fails to authorize or implement the program. Public contractors are required to provide affidavits of participation in the federal work authorization program annually. Onsite employees of a contractor or subcontractor on a public works project must complete a 10-hour Occupational Safety and Health Administration construction safety program or similar program.

**Nebraska (L403** signed April 8, 2009) requires every public employer and every public contractor to use a federal immigration verification system.

**North Carolina.** All state agencies, offices, and universities must use E-Verify, required by SB 1523 in 2006. This applies to employees hired on or after January 1, 2007, except for employees of local education agencies hired on or after March 1, 2007.

**Oklahoma.** The Oklahoma Taxpayer and Citizen Protection Act of 2007 (HB 1804) addressed multiple issues: transporting and harboring, driver's licenses, public benefits, law enforcement and employment. It made it a felony to transport or harbor unauthorized immigrants, with exceptions for health or benefits guaranteed by federal law. It requires public employers, contractors and subcontractors to participate in a federal electronic employment verification system and requires income tax withholding for independent contractors who do not have valid Social Security numbers. The law became effective Nov. 1, 2007.

**Rhode Island Executive Order.** On March 27, 2008, Governor Carcieri issued an executive order requiring executive agencies to use E-Verify; and for all persons and businesses, including grantees, contractors and their subcontractors and vendors to use E-Verify.

**South Carolina. HB 4400** (Signed 6/4/2008) requires public employers and public contractors to register and participate in the federal work authorization program E-Verify to verify all new employees. All public employers, private employers with more than 100 employees and public contractors with more than 500 employees must comply with the law's provisions on or after January 1, 2009; contractors with more than 100 employees on July 1, 2009; and all other contractors on January 1, 2010. The penalty for knowingly hiring unauthorized immigrants is a felony and punishable with up to five years in prison. The law provides for a private cause of action for an authorized employee, if he or she is discharged and replaced with an unauthorized employee.

**Utah. SB 81** (signed 3/13/08) requires public employers, public contractors and subcontractors to register and use the federal work authorization program. It is unlawful to discharge a lawful employee while retaining an unauthorized alien in the same job category. Effective July 1, 2009. **SB 39** (signed 3/23/2009) redefines a contract to mean an agreement for the procurement of goods or services that is awarded through a request for proposals process with a public employer, and includes a sole source contract. **Utah S.251** (signed March 31, 2010) requires private employers with more than 15 employees to verify the legal status of new employees via a federally approved employment verification system.

**Virginia H737** requires state agencies of the Commonwealth to enroll in the E-Verify program by December 1, 2012, and to use the program for each newly hired employee who will work in Virginia.

## Encourages the Use of E-Verify (2)

**Pennsylvania. HB 2319** (signed 5/11/2006) prohibits the use of illegal immigrant labor on projects and provides an affirmative defense if the contractor certifies compliance with Section 274A of the Immigration Reform and Control Act of 1986.

**Tennessee. HB 729**, signed into law on June 26, 2007 and effective January 1, 2008 states that employers who "knowingly employ, recruit or refer for a fee for employment an illegal alien" are subject to a temporary suspension of their business license; repeat offenders are subject to a one-year suspension. Employers who comply with the requirements of the current I-9 process or who verify new hires through the E-Verify within 14 days of employment are shielded from sanctions.

## Limits on Use of E-Verify (1)

**Illinois.** Illinois enacted **HB 1744**, which bars Illinois companies from enrolling in any Employment Eligibility Verification System until accuracy and timeliness issues are resolved. Illinois also enacted HB 1743, which creates privacy and antidiscrimination protections for workers if employers participating in E-Verify don't follow the program's procedures. On August 24, 2009, Illinois enacted S1133 amending the Right to Privacy in the Workplace Act and urges employers, before enrolling in E-Verify, to consult the State Department of Labor's website for current information on the accuracy of E-Verify and to review and understand an employer's legal responsibilities relating to the use of the voluntary program. It prohibits the state or localities from requiring employers to use an employment eligibility verification system.

**Note:** The California legislature passed CA A 1288 in 2009 that would have prohibited states, localities or special districts from requiring employers to use E-verify except when required by federal law or as a condition of receiving federal funds. The law was vetoed by the Governor on October 11, 2009.

## Preemption Issues and Court Challenges

The Immigration Reform and Control Act of 1986 (IRCA) preempts any state or local law from imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens. Citation: 8 U.S.C. 1324a(h)

**Arizona's** 2007 law (HB 2779) was challenged as unconstitutional by plaintiffs representing the business and immigrant communities. Plaintiffs allege that the 1986 Immigration and Control Act expressly preempts the state because the Act was not a "licensing or similar law" within the meaning of IRCA; it is impliedly preempted because its sanctions provisions and e-verify requirements conflict with federal law; and the Act violated employers' due process rights. In September, 2008, the 9th Circuit Court of Appeals upheld the Arizona law, determining that the law was a licensing law. Plaintiffs appealed and the U.S. Supreme Court accepted the case. The court heard *Chamber of Commerce v. Whiting* (09-115) on December 8, 2010.

**Oklahoma.** The employment provisions of the 2007 law (HB1804) were challenged by the U.S. Chamber of Commerce and Oklahoma business associations for interfering with federal law, alleging that Sections 7(B), 7(C) and 9 of the Oklahoma act were expressly and impliedly preempted by federal law and unconstitutional under the Supremacy Clause. See U.S. Const. art. VI, cl. 2; 8 U.S.C. § 1324a(h)(2). Section 7B would require businesses to use E-Verify. Section 7C makes it a discriminatory practice for an employer to fire a worker while retaining an employee that the employee knows or reasonably should know is unauthorized to work. Section 9 would require contractors to verify employees or withhold taxes from them. In June, 2008, the Federal District Court for the Western District of Oklahoma postponed enforcement of these sections of the law, including the E-Verify mandate. On February 3, 2010, the 10th Circuit federal appeals court upheld the injunction, finding that federal law preempted Sections 7C and 9, but were split on Section 7B relating to the E-Verify mandate.

**Illinois.** The provision of HB1744 limiting use of e-verify was challenged by the U.S. Department of Homeland Security on the grounds that it conflicts with federal law and is preempted by the Supremacy Clause of the U.S. Constitution. Enforcement of this provision, scheduled to begin in 2008, has been delayed until the lawsuit is decided.

#### Sources:

U.S. Citizenship and Immigration Services [www.uscis.gov/e-verify](http://www.uscis.gov/e-verify)

Westat, "Findings of the Web Basic Pilot Evaluation" September 2007 <http://www.uscis.gov/files/article/WebBasicPilotRprtSept2007.pdf>

GAO December 2010 report: <http://www.gao.gov/new.items/d11146.pdf>.

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## Arizona's Immigration Enforcement Laws

### Introduction

In April 2010, Arizona enacted two laws addressing immigration, SB 1070 and HB 2162. These laws added new state requirements, crimes and penalties related to enforcement of immigration laws and were to become effective on July 29, 2010. Before the laws could go into effect, the U.S. Department of Justice filed a lawsuit asking for an injunction against these laws arguing that they are unconstitutional. On July 28, Judge Bolton granted the request for injunction in part and enjoined those provisions related to state law officers determining immigration status during any lawful stop; the requirement to carry alien registration documents; the prohibition on applying for work if unauthorized; and permission for warrantless arrests if there is probable cause the offense would make the person is removable from the United States. Arizona Governor Jan Brewer has appealed the injunction and arguments will be heard by the 9th U.S. Circuit Court of appeals on Nov. 1, 2010.

Note: The U.S. Supreme Court is scheduled to hear arguments on a separate Arizona law enacted in 2007 that mandates use of a voluntary federal employment verification system and penalizes employers who hire unauthorized workers. The case, [Chamber of Commerce v. Whiting](#), No. 09-115, will determine whether Arizona's law is preempted by federal law and will be heard on Dec. 8, 2010.

### Background

SB 1070, "Support Our Law Enforcement and Safe Neighborhoods Act," was approved by the Arizona Legislature on Monday, April 19, and signed into law by Governor Brewer on Friday, April 23, 2010. SB 1070 includes provisions adding state penalties relating to immigration law enforcement including trespassing, harboring and transporting illegal immigrants, alien registration documents, employer sanctions, and human smuggling.

The trespassing provision appears to be the first of its kind to be enacted in the United States. In the most recent reports by NCSL on state immigration laws, few states have attempted to create a state trespassing violation for unlawful presence. Bills were introduced but failed in Arizona in 2008 and 2009; Texas in 2009; Colorado in 2008; and California in 2007.

On the same day she signed the bill, Governor Brewer issued Executive Order 2010-09 requiring the Arizona Peace Officers Standards and Training Board to establish training to ensure law enforcement officials and agencies apply SB 1070 consistent with federal laws regulating immigration, protecting the civil rights of all people and respecting the privileges and immunities of United States citizens. The executive order also requires clear guidance on what constitutes reasonable suspicion. The board is to provide a list of the specific forms of identification that provide a presumption that a person is not an alien unlawfully present in the United States.

A series of questions have been raised about the implementation and constitutionality of Arizona SB1070. Some concerns include the costs to the state for enforcing federal immigration law, particularly in tight budget times; how "reasonable suspicion of immigrant status" will be interpreted; and the narrow list of documents eligible to demonstrate lawful presence. Court challenges have raised constitutional issues including due process, equal protection under the 14th amendment, the prohibition on unreasonable search and seizure under the 4th amendment, and preemption under the Supremacy Clause of the U.S. Constitution.

On April 29, the last day of legislative session, the Arizona Legislature approved and the governor signed HB 2162 that included provisions intended to address the racial profiling concerns. HB 2162 amended SB 1070 to specify that law enforcement officials cannot consider race, color or national origin when implementing the provisions of the original law, except as permitted by the U.S. or Arizona Constitution. The law clarified the original law's language around "reasonable suspicion" by requiring state and local law enforcement to reasonably attempt to determine the immigration status of a person only while in the process of a lawful stop, detention or arrest (the original language referred to "lawful contact.") HB 2162 also stipulated that a lawful stop, detention or arrest must be in the enforcement of any other law or ordinance of a county, city or town of this state.

HB 2162 lowered the original fines in SB 1070 for state or local entities sued by legal residents

### Contents

- [Introduction](#)
- [Background](#)
- [Similar Bills](#)
- [Resolutions](#)
- [Court Challenges](#)
- [Summary of SB1070 and HB2162](#)

### Resources

- [Video: Arizona Immigrant Trespassing Law](#) (NCSL Legislative Summit)
- [Handouts](#)
  - [Senator Van de Putte PowerPoint Presentation](#)
  - [Police Foundation Report](#)

### Contact

and found guilty of restricting the enforcement of federal law from a minimum of \$1,000 to \$500 for each day the policy is in effect. The law also lowered the fine for people who fail to complete or carry an alien registration document from \$500 to \$100 for the first offense.

[Ann Morse](#)

The law was scheduled to go into effect on July 29, 2010 (90 days after the end of regular legislative session.) Parts of the law, however, were enjoined on July 28, 2010.

## Similar Bills

As of November 10, similar bills had been introduced in six state legislatures: South Carolina, Pennsylvania, Minnesota, Rhode Island, Michigan and Illinois. South Carolina HB4919 was introduced by Representative Eric Bedingfield on April 29 and SB 1446 by Senator Grooms on May 13. Pennsylvania HB 2479 was introduced by Representative Daryl Metcalfe on May 5. Minnesota HB 3830 was introduced by Representative Steve Drazkowski on May 6. Rhode Island HB 8142 was introduced by Rep. Palumbo on May 18. Michigan H6256 was introduced by Representative Meltzer on June 10; S1388 was introduced by Senators McManus, Cropsey, Allen and Brown on June 15; and H6366 was introduced by Representative Agema on August 11. Illinois H6937 was introduced by Representative Ramey on November 3, 2010. (Note that the Minnesota, Rhode Island and South Carolina legislative sessions have ended.)

## Resolutions

Six resolutions have been introduced in legislatures that address Arizona's immigration law. The California Senate, Illinois House, and New York Senate introduced resolutions opposing the Arizona law, while Tennessee enacted a resolution supporting it. Resolutions both supporting and opposing Arizona's law were introduced in the Michigan House.

California SCR 113 urges various state and private entities to withhold financial support of Arizona businesses in response to recent Arizona state laws relating to illegal immigration. The resolution was introduced on June 23.

Illinois HJR 119 calls upon the Arizona Legislature to repeal SB1070 and asks Congress and the president to act quickly to enact comprehensive immigration reform. The joint resolution was introduced May 4, adopted by the House on May 7, and is pending in the Senate.

In Michigan, HR 291 urges repeal of SB 1070 and asks Michigan businesses and public and private organizations to refrain from doing business with or in the state of Arizona. The resolution was introduced on May 26.

Michigan HR 295 expresses support for Arizona's new legislation regarding immigration and opposes any boycott of Arizona businesses. The resolution was introduced on June 9.

New York SR 5081 denounces policy that encourages racial profiling and asks cooperation on all levels of government to enact immigration policies and laws. The resolution was adopted on May 4.

Tennessee HJR 1253 commends Arizona on its upcoming Centennial and salutes the initiative of the Arizona Legislature and Governor Jan Brewer in their actions to protect their citizens and the border. HJR 1253 became law without the governor's signature on June 19, 2010.

## Court Challenges

Three individuals (two law enforcement officials and one researcher) and the Coalition of Latino Clergy filed the first challenges to the law based on equal protection, due process and preemption under the Supremacy Clause. A coalition of organizations including the ACLU, National Immigration Law Center and MALDEF filed a class action lawsuit against Arizona counties seeking a permanent injunction. The lawsuit states that SB1070 violates the Supremacy Clause, the First Amendment right to freedom of speech, the Fourth Amendment right to freedom from unreasonable searches and seizures, and the Equal Protection Clause guarantee of equal protection under the law, and Article II, Section 8 of the Arizona Constitution. The lawsuit was filed May 17 in the U.S. District Court for the District of Arizona.

On July 6, 2010, the U.S. Department of Justice filed a lawsuit in the U.S. District Court for the district of Arizona seeking a permanent injunction of SB 1070. The civil action states that SB 1070 is preempted by federal law (8 U.S.C. 1101, and following sections) and by U.S. foreign policy, and violates the Supremacy Clause and the Commerce Clause of the U.S. Constitution. The lawsuit and supporting documents are available online at <http://www.justice.gov/opa/pr/2010/July/10-opa-776.html>.

On July 15, U.S. District Judge Susan Bolton heard arguments on a request for preliminary injunction filed by the earlier lawsuits and on Arizona's request to dismiss those lawsuits. Arizona's request to dismiss can be found here: <http://www.ncsl.org/documents/immig/2010ArizonaDismiss.pdf>

On July 28, Judge Bolton granted in part and denied in part the motion for preliminary injunction. The sections that were barred from taking effect (pending appeal) were: Section 2B, requiring law enforcement officers to determine immigration status during any lawful stop; Section 3, creating state crimes and penalties for failure to carry federally-issued alien registration documents; Section 5 making it unlawful for an unauthorized alien to knowingly apply for or perform work in Arizona; and Section 6, permitting an officer to make a warrantless arrest if the officer has probable cause to believe the person has committed any public offense that makes the person removable from the United States.

Judge Bolton's ruling can be found here: <http://www.ncsl.org/documents/immig/2010Arizonaboltonruling.pdf>

Governor Brewer's appeal, filed on August 26, 2010, can be found at <http://azgovernor.gov/dms/upload/AppellantsOpeningBrief.pdf>

The summary below highlights the major provisions of the Arizona laws.

## Summary of SB 1070 and HB 2162

### Enforcement of Immigration Law

Prohibits state and local law enforcement from restricting enforcement of federal immigration laws.

Requires state and local law enforcement to reasonably attempt to determine the immigration status of a person involved in a lawful stop, detention or arrest in the enforcement of any other local or state law or ordinance where reasonable suspicion exists that the person is an alien and is unlawfully present, except if it may hinder or obstruct an investigation.

Requires the immigration status to be verified with the federal government for anyone who is arrested.

Stipulates that law enforcement cannot consider race, color or national origin when implementing these provisions, except as permitted by the U.S. or Arizona Constitution.

Specifies a presumption of lawful presence with these IDs: Arizona driver license or ID; tribal enrollment card or ID; valid federal, state or local government issued identification, if the issuing entity requires proof of legal presence before issuance.

Stipulates that these provisions do not implement or authorize REAL ID.

Allows legal residents to sue state or localities that restrict enforcement of federal law. Indemnifies officers unless they acted in bad faith. Violating entities must pay a civil penalty of at least \$500 for each day the policy is in effect.

### Willful Failure to Complete or Carry an Alien Registration Document

Creates a state violation comparable to federal law in 8 USC 1304(e) or 1306(a) and creates state penalties of jail costs and \$100 for a first offense. Stipulates immigration status may be determined by a law enforcement officer authorized by the federal government to verify an alien's immigration status; or U.S. Immigration and Customs Enforcement or U.S. Customs and Border Protection.

NOTE: The federal provisions mentioned in the Arizona law are included here for easy reference.

**8 USC 1304(e):** Personal possession of registration or receipt card; penalties. Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100 or be imprisoned not more than thirty days, or both. **8 USC 1306 (a):** Willful failure to register. Any alien required to apply for registration and to be fingerprinted in the United States who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed \$1,000 or be imprisoned not more than six months, or both.)

### Unlawfully Picking Up Passengers for Work

Makes it a class 1 misdemeanor for an occupant of a motor vehicle to hire on a street, roadway or highway if the vehicle blocks or impedes the normal movement of traffic; or to enter a vehicle to be hired and transported; or for an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor.

Stipulates that law enforcement cannot consider race, color or national origin in the enforcement when implementing the provision, except as permitted by the U.S. or Arizona Constitution.

### Unlawful Transporting or Harboring Unlawful Aliens

Stipulates that it is unlawful for a person who is in violation of a criminal offense to transport an alien; conceal, harbor or shield an alien; or encourage an alien to come to this state, if the person recklessly disregards the fact the person is here unlawfully. The vehicle may be immobilized or impounded. Provides exceptions for child protective services, first responders, ambulance or emergency medical technicians. Violators are guilty of a class 1 misdemeanor and subject to a fine of at least \$1,000.

Stipulates that law enforcement cannot consider race, color or national origin in the enforcement when implementing the provision, except as permitted by the U.S. or Arizona Constitution.

**Employer Sanctions**

Provides employers with the affirmative defense that they were entrapped, but they must admit the substantial elements of the violation. The employer has the burden of proof to show law enforcement officer induced the violation.

Requires employers to keep a record of employment verification for the duration of the employee's employment or 3 years whichever is longer.

**Miscellaneous**

Authorizes peace officers in the enforcement of human smuggling laws to lawfully stop a person if they have a reasonable suspicion to believe the person is in violation of any civil traffic law and to arrest a person without a warrant if the officer has probable cause to believe the person has committed any public offense that makes the person removable from the United States.

Penalties and fines under this bill are to be deposited to the Department of Public Safety for the Gang and Immigration Intelligence Team Enforcement Mission Fund.

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**Resources:**

Arizona legislature:

Senate Bill 1070 [http://www.azleg.gov/DocumentsForBill.asp?Bill\\_Number=1070](http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=1070)

House Bill 2162 [http://www.azleg.gov/DocumentsForBill.asp?Bill\\_Number=2162](http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2162)

Governor's executive order: [http://www.azgovernor.gov/dms/upload/EO\\_042310\\_EO201009SB1070.pdf](http://www.azgovernor.gov/dms/upload/EO_042310_EO201009SB1070.pdf)

Arizona Peace Officers Standards and Training Board training information on SB1070: <http://www.azpost.state.az.us/SB1070infocenter.htm>

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Revised November 10, 2010*

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