

INTRODUCTION

This paper addresses the controversy associated with the passage of the Arizona's immigration law (SB 1070), the lawsuit by the federal government, and the impact immigration law will have on all states, especially Kansas. Specifically, this paper will compare the Arizona and federal immigration law, review the proposed 2008 Kansas law, describe law enforcement duties of state and the federal law, analyze the relationship between the local, state and federal governments, and provide general information on E-Verify and In-state tuition. This information can be found on the Kansas Legislative Research Department website.

WHAT IS THE ARIZONA LAW?

On April 23, 2010, Arizona Governor Jan Brewer signed SB 1070 (Support Our Law Enforcement and Safe Neighborhood Act) into law. The legislation represents Arizona's latest effort to combat illegal immigration. On April 30, 2010, the Governor signed into law HB 2162 which clarifies when police officers may inquire into an individual's immigration status. Below is a brief summary of SB 1070 as amended by HB 2162. ¹

- Prohibits law enforcement officials and law enforcement agencies of Arizona or its counties, municipalities and political subdivisions from restricting or limiting the enforcement of the federal immigration laws to less than the full extent permitted by federal law.
- Requires law enforcement officials and agencies to make a reasonable attempt, when practicable, to determine the immigration status of a person involved in a stop, detention or arrest in the enforcement of any other law or ordinance of a county, city or town or the state where reasonable suspicion exists that the person is an alien and is unlawfully present, unless the determination may hinder or obstruct an investigation.
- Stipulates that if the person is arrested, the person's immigration status must be determined before the person is released and must be verified with the federal government.
- Stipulates that a law enforcement official or agency cannot consider race, color or national origin when implementing these provisions, except as permitted by the U.S. or Arizona Constitutions.
- Specifies that a person is presumed to be lawfully present if the person provides any of the following:
 - A valid Arizona driver license.

¹ Kansas Legislative Research Department

- A valid Arizona nonoperating identification license.
- A valid tribal enrollment card or other form of tribal identification.
- A valid federal, state or local government issued identification, if the issuing entity requires proof of legal presence before issuance.

- Requires that if an unlawfully present alien is convicted of a violation of any state or local law, on discharge from imprisonment or on the assessment of any monetary obligation imposed, Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) must be immediately notified.

- Authorizes a law enforcement agency to securely transport an unlawfully present alien to a federal facility.

- Requires a law enforcement agency to obtain judicial authorization before securely transporting an unlawfully present alien to a point of transfer that is outside of Arizona.

- Stipulates that an alien's immigration status may be determined by:
 - A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.
 - ICE or CBP pursuant to [8 U.S.C. § 1373\(c\)](#), Aliens and Nationality (March 2006).

- Prohibits, except as provided in federal law, officials and agencies of counties, cities, towns or other political subdivisions from being prevented or restricted from sending, receiving or maintaining information relating to the immigration status of any individual or exchanging that information with another governmental entity for the following official purposes:
 - Determination of eligibility for any public benefit, service or license.
 - Verification of any claim of legal domicile if legal domicile is required by law or judicial order.
 - If the person is an alien, determination of the person's compliance with federal registration laws.
 - Pursuant to federal laws regarding communication between government agencies and federal immigration agencies.

- Stipulates that the new law's provisions do not implement, authorize or establish and cannot be construed to implement authorize or establish the REAL ID Act of 2005, including the use of Radio Frequency Identification (RFID).
- Allows a person who is a legal resident of Arizona to bring an action in superior court to challenge officials and agencies of the state, counties, cities, towns or other political subdivisions that adopt or implement a policy that limits or restricts the enforcement of federal immigration laws, including [8 U.S.C. § 1373 and § 1644](#), Aliens and Nationality, to less than the full extent permitted by federal law.
- Requires the court to order a violating entity pay a civil penalty of at least \$500, not to exceed \$5,000, for each day that the policy has remained in effect after the filing of an action under these provisions.
- States that the court will collect the penalty and transmit the collected monies to the state Treasurer for deposit in the Gang and Immigration Intelligence Team Enforcement Mission (GIITEM) Fund.
- Authorizes the court to award court costs and reasonable attorney fees to any person or any official or agency that prevails in a case brought under these provisions.
- Indemnifies officers against actions brought under these provisions, except if the officer has been adjudged to have acted in bad faith.
- Stipulates that these provisions are to be implemented in a manner consistent with federal immigration law protecting the civil rights of all persons and respecting the privileges and immunities of U.S. citizens.

Willful Failure to Complete or Carry an Alien Registration Document

- Specifies that in addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of [8 U.S.C. § 1304\(e\) or 1306\(a\)](#), Aliens and Nationality.
- Stipulates that an alien's immigration status may be determined by:
 - A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.
 - ICE or CBP pursuant to [8 U.S.C. § 1373\(c\)](#).
- Stipulates that a law enforcement official or agency cannot consider race, color or national origin when implementing these provisions, except as permitted by the U.S. or Arizona constitutions.

- Prevents a person convicted of the new offense from being eligible for suspension of sentence, probation, pardon, commutation of sentence, or release from confinement on any basis except for as authorized by the Director of the Arizona Department of Corrections until the sentence imposed has been served or the person is eligible for release due to early release credits.
- Requires the court to order the person to pay jail costs.
- Stipulates that any record that relates to the immigration status of a person is admissible in any court without further foundation or testimony from a custodian of records if the record is certified as authentic by the government agency responsible for maintaining the record.
- Makes a first offense a class 1 misdemeanor with a maximum fine of \$100 for a first violation.
- Prohibits the courts from sentencing a violator to more than 20 days in jail for a first violation and not more than 30 days for a second or subsequent violation.

Unlawfully Picking up Passengers for Work

- Specifies that it is a class 1 misdemeanor for an occupant of a motor vehicle that is stopped on a street, roadway, or highway to attempt to hire or hire and pick up passengers for work at a different location, if the motor vehicle blocks or impedes the normal movement of traffic.
- Specifies that it is a class 1 misdemeanor for a person to enter a motor vehicle that is stopped on a street, roadway or highway in order to be hired by an occupant of the motor vehicle and to be transported to work at a different location, if the motor vehicle blocks or impedes the normal movement of traffic.
- Specifies that it is a class 1 misdemeanor for a person who is unlawfully present and who is 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 a law enforcement official or agency cannot consider race, color or national origin when implementing these provisions, except as permitted by the U.S. or Arizona constitutions.
- Stipulates that an alien's immigration status may be determined by:
 - A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.
 - ICE or CBP pursuant to [8 U.S.C. § 1373\(c\)](#).
- Defines *solicit* and *unauthorized alien*.

Unlawfully Transporting or Harboring Unlawful Aliens

- Stipulates that it is unlawful for a person who is in violation of a criminal offense to:
 - Transport or move an alien in a means of transportation, or attempt to do so, if the person knows or recklessly disregards the fact that the alien is here unlawfully.
 - Conceal, harbor or shield an alien, or attempt to, if the person knows or recklessly disregards the fact that the alien is here unlawfully.
 - Encourage or induce an alien to come to Arizona if the person knows or recklessly disregards the fact that doing so would be a violation of law.
- Specifies that a means of transportation used in a violation of these provisions is subject to mandatory vehicle immobilization or impoundment.
- Stipulates that a law enforcement official or agency cannot consider race, color or national origin when implementing these provisions, except as permitted by the U.S. or Arizona constitutions.
- Stipulates that an alien's immigration status may be determined by:
 - A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status.
 - ICE or CBP pursuant to [8 U.S.C. § 1373\(c\)](#).
- Specifies that these provisions do not apply to a Child Protective Services worker acting in the worker's official capacity or a person who is acting in the capacity of a first responder, an ambulance attendant or an emergency medical technician and is transporting or moving an alien in relation to emergency medical services.
- Stipulates that violators are guilty of a class 1 misdemeanor and subject to a fine of at least \$1,000. However, a violation involving 10 or more illegal aliens is a class 6 felony and subject to a fine of at least \$1,000 for each alien involved.
- Requires a peace officer to immobilize or impound a person's vehicle if the officer determines either that:
 - In furtherance of the illegal presence of an alien and in violation of a criminal offense, the person is transporting or moving, or attempting to do so in a

vehicle if the person knows or recklessly disregards the fact that the alien is here unlawfully.

- The person is concealing, harboring or shielding an alien in this state, or attempting to do so in a vehicle if the person knows or recklessly disregards the fact that the alien is here unlawfully.

Employer Sanctions

- Provides employers with the affirmative defense that they were entrapped, but they must admit the substantial elements of the violation.
- Stipulates that the employer has the burden of proof proving the following by a preponderance of the evidence:
 - The idea of committing the violation started with the officer or their agents.
 - The officers or their agents urged and induced the employer to commit the violation.
 - The employer was not predisposed to commit the violation before the law enforcement officer or agents urged and induced the employer to do so.
- Stipulates that an employer is not entrapped if the employer was predisposed to violate the law and law enforcement merely provided the employer with the opportunity. Additionally, it is not entrapment for law enforcement to use a ruse or to conceal their identity.
- Requires employers to keep a record of the employment verification from E-verify for the duration of an employee's employment, or three years, whichever is longer.

Miscellaneous

- Authorizes peace officers, in the enforcement of human smuggling laws, to lawfully stop a person if they have reasonable suspicion to believe the person is in violation of any civil traffic law.
- Authorizes a peace officer to arrest a person without a warrant if the officer has probable cause to believe that the person has committed any public offense that makes the person removable from the U.S.
- Establishes the Gang and Immigration Intelligence Team Enforcement Mission (GIITEM) fund (fund) and directs monies collected from penalties resulting from policies limiting the enforcement of federal immigration law to the fund.

- Requires the Arizona Department of Public Safety to administer the fund, which is subject to legislative appropriation and is to be used for gang and immigration enforcement and for county jail reimbursement for costs relating to illegal immigration.
- Requires the Attorney General (AG) to act at the direction of the Governor in any challenge of these provisions in state or federal court.
- Authorizes the Governor to direct counsel other than the AG to appear on behalf of this state to defend any challenges to these provisions.
- Contains *intent* and *severability, implementation and construction* clauses.
- Specifies that this act may be cited as the “Support Our Law Enforcement and Safe Neighborhoods Act.”
- Makes technical and conforming changes. ²

WHAT IS "REASONABLE SUSPICION?"

The Fourth Amendment and Exclusionary Rule

The Fourth Amendment to the *United States Constitution* provides that “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”

In *Weeks v. U.S.*, 232 U.S. 383 (1914), the U.S. Supreme Court held that evidence seized during an unlawful search and seizure could not be used in federal prosecutions. This exclusion was extended to state courts in *Mapp v. Ohio*, 357 U.S. 643 (1961), holding “all evidence obtained by searches and seizures in violation of the Constitution is . . . inadmissible in a state court.” Thus, for example, if an officer conducts a search and seizure without probable cause or a warrant and obtains evidence, the evidence may be inadmissible in court due to the lack of probable cause or warrant.

However, in some limited circumstances, a search and seizure may be performed without a warrant and without probable cause. One of those exceptions is known as a *Terry* stop and frisk after *Terry v. Ohio*, which allowed the admission of evidence obtained without a warrant and on a standard of reasonable suspicion. A warrantless arrest also may be conducted if “there is probable cause to believe that a criminal offense has been or is being committed.” See *Devenpeck v. Alford*, 543 U.S. 146 (2004).

² Arizona Senate Research for the Committee on Military Affairs and Public Safety

Terry v. Ohio

The Supreme Court of the United States, in *Terry v. Ohio*, 392 U.S. 1 (1968), first articulated the reasonable suspicion standard. In *Terry*, a plainclothes police officer observed two men who appeared to be “casing” a store. The officer became “thoroughly suspicious” and, fearing the men were armed, approached the men, identified himself as a police officer, and then proceeded to pat down one of the men feeling a pistol.

The plaintiffs moved to suppress the evidence, including two revolvers and bullets, based on an unreasonable search and seizure, but the motion was denied. Following a subsequent conviction, the plaintiffs appealed to the Supreme Court and the question presented was “whether it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons unless there is probable cause for an arrest.” The court determined that the Fourth Amendment did apply to “stop and frisks.” The Court reasoned that “it is necessary ‘first to focus upon the governmental interest which allegedly justifies official intrusion upon the constitutionally protected interests of the private citizen,’ for there is ‘no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails.’” “And in justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”

The Court held that “where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous, where in the course of investigating this behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others’ safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of such persons in an attempt to discover weapons which might be used to assault him.”

U.S. v. Brignoni-Ponce

In *U.S. v. Brignoni-Ponce*, 422 U.S. 873 (1975), the issue was whether the border patrol could stop vehicles near the U.S./Mexico border and question the occupants about their citizenship and immigration status. The officers admitted that the reasoning for stopping the car was because three of the occupants appeared to be of Mexican descent. After questioning the occupants of the vehicle, it was determined that two occupants were illegal aliens.

On appeal, the Supreme Court held that “when an officer’s observations lead him reasonably to suspect that a particular vehicle may contain aliens who are illegally in the country, he may stop the car briefly and investigate the circumstances that provoke suspicion. As in *Terry*, the stop and inquiry must be ‘reasonably related in scope to the justification for their initiation.’” The Court stated that “[t]he officer may question the driver and passengers about their citizenship and immigration status, and he may ask them to explain suspicious circumstances, but any further detention or search must be based on consent or probable cause.” Thus, “officers on roving patrol may stop

vehicles only if they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably warrant suspicion that the vehicles contain aliens who may be illegally in the country.”

Thus, the Supreme Court held that the officer’s belief that the occupants of the car were of Mexican descent did not provide reasonable grounds for the stop. Furthermore, “[e]ven if [the officers] saw enough to think that the occupants were of Mexican descent, this factor alone would justify neither a reasonable belief that they were aliens, nor a reasonable belief that the car concealed other aliens who were illegally in the country.”

Muehler v. Mena

In *Muehler v. Mena*, 544 U.S. 93 (2005), one of the issues presented to the U.S. Supreme Court was whether police officers’ questioning of an individual’s immigration status violated the Fourth Amendment. In that case, officers obtained a search warrant for a house following a gang related, drive-by shooting. Because the gang was known to consist of illegal immigrants, the police had told the Immigration and Naturalization Service (INS) that they would be executing the warrant. After entering the house and detaining people found within, the police then asked about the detainees’ immigration status. An INS officer also asked for immigration papers. The Court reasoned that it had “held repeatedly that mere police questioning does not constitute a seizure.” Thus, because the initial detention of the plaintiff was lawful, the officers “did not need reasonable suspicion” to question the plaintiff’s immigration status.

In its opinion, the Court also addressed and disagreed with the Ninth Circuit’s reasoning that *Brignoni-Ponce* “created a requirement of particularized reasonable suspicion for purposes of inquiry into citizenship status.” The Court also noted that the issue on appeal in *Brignoni-Ponce* was the appropriateness of the initial stop and not the subsequent questioning.

U.S. v. Salinas-Calederon

In *U.S. v. Salinas-Calederon*, 728 F.2d 1298 (10th Cir. 1984), the Court of Appeals for the Tenth Circuit held that “A state trooper has general investigatory authority to inquire into possible immigration violations. Moreover, the trooper’s question about the green card was reasonable under the circumstances, and thus lawful.”

In that case, a state trooper stopped a pickup on belief that the driver was intoxicated or drowsy. Upon stopping the vehicle, the trooper tried to speak to the driver, but the driver did not speak English. The passenger in the vehicle informed the trooper that the driver did not speak English, did not have a green card or driver’s license, and was from Mexico. The trooper also observed six individuals in the back of the pickup and was informed by the passenger that they were all from Mexico. The court found that the officer had probable cause to make a warrantless arrest based on this information. The court distinguished the present case from *Brignoni-Ponce* in that the trooper’s suspicion for stopping the car was based on his belief that the driver was intoxicated and not because the driver was of Mexican descent.

Subsequently, the trooper contacted the local INS office. The court also held that the trooper's calling of the INS agent did not invalidate probable cause for making an arrest.

WHAT IS THE *U.S. v. ARIZONA* DISTRICT COURT ORDER SUMMARY?

The United States District Court for the District of Arizona Order, concerning the enforcement of the provisions of Arizona SB 1070, Case No. CV-10-1413-PHX-SRB is summarized below.

In response to the government's challenge of the constitutionality of SB 1070 and request that an injunction be granted to halt enforcement of the law in its entirety until constitutionality can be determined, the court first explained that for an injunction to be granted, the government must show: (1) it is likely to succeed on the merits; (2) it is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in its favor; and (4) an injunction is in the public interest.

The government argues primarily that the bill's provisions are unconstitutional because they are preempted by federal law. *The U.S. Constitution* provides that federal law is the supreme law of the land and the Supreme Court has consistently ruled that the federal government has broad and exclusive authority to regulate immigration, although the court has also stated that not every statute on immigration is necessarily preempted by federal law. On that note, and after determining that the bill's severability clause would allow its provisions to stand alone even if some are found unconstitutional, the court began its analysis of each section of SB 1070 to determine whether the government was likely to succeed on the merits of its claim that the law, as a whole, is unconstitutional.

WHAT IS THE SUCCESS ON THE MERITS RULING BY THE COURT?

On Section 2(B), sentence two, a provision requiring that the immigration status of all persons arrested be determined before they are released, the court stated the requirement is likely to burden lawfully present aliens, which conflicts with a Supreme Court decision stating aliens should not be subject to the possibility of inquisitorial practices and police surveillance. Further, it explained that federal law preempts where state law burdens a federal agency's resources and impedes the agency's function, and, observing that the Department of Homeland Security (DHS) is required to respond to law enforcement agency inquiries about a person's immigration status, held that the requirement would likely place such a burden on DHS. Consequently, the court found the government was likely to succeed on the merits of Section 2(B), sentence 2.

The court used a similar analysis for Section 2(B), sentence one. It provides that law enforcement should make a reasonable attempt to determine the immigration status of a person lawfully stopped, detained, or arrested where reasonable suspicion exists that the person is unlawfully present in the country. The court again acknowledged the law would place an unreasonable burden on DHS and discussed the burden on aliens further, concluding that "the federal government has long rejected a system by which aliens' papers are routinely demanded and checked." (Opinion page 20.) Based on these arguments, the court found the government was likely to succeed on the merits for sentence 1 of Section 2(B).

For Section 3, which makes it a crime for an alien to willfully fail to complete or carry registration documents, the court found the government was likely to succeed on the merits based on the Supreme Court's decision that a state statute is preempted where it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. The court determined that Section 3 alters the penalties established by Congress and was thus preempted by federal law.

The court found that the government was not likely to succeed in its challenge of Section 4, making a minor change to Arizona's existing human smuggling statute.

A portion of Section 5 makes it illegal for a person not lawfully present in the country to apply for, solicit, or perform work in the state. The court found that the Immigration Reform and Control Act of 1986 has "occupied the field" with respect to the employment of unauthorized aliens (that is, the depth and breadth of congressional efforts to address the issue implies states are not meant to supplement the federal law). Further the court reasoned that congress has intentionally decided to penalize employers rather than aliens for working without authorization. Based on that conclusion, the court found the government was likely to succeed on the merits on this portion of Section 5.

Another portion of Section 5 addresses the transportation of an alien in Arizona "in furtherance of the alien's unlawful presence" in the country; concealing the unlawful presence of an alien in Arizona; and encouraging an alien to come or live unlawfully in Arizona. The court found that contrary to the government's argument, this section, which parallels federal immigration law, is not preempted by it. Further, and also in opposition to the government's stance, the court found the section does not violate the negative commerce clause, which prohibits states from unjustifiably discriminating against or burdening the interstate flow of articles of commerce. Such state action is unconstitutional when it has a substantial effect on interstate commerce, which congress has the authority to regulate. Having dismissed each of the government's arguments, the court found the government was unlikely to succeed on the merits here.

Section 6 allows law enforcement to make a warrantless arrest of a person when an officer has probable cause to believe the person has committed any public offense that makes the person removable from the country. The court noted that ultimately, the decision of whether an offense makes a person "removable" is made by immigration court judges and federal appeals court judges. Based on the complexity of the decision, the court reasoned that this provision was likely to be abused, leading to unlawful, warrantless arrests. Consequently, the court found the government was likely to succeed on the merits.

WHAT IS THE IRREPARABLE HARM RULING BY THE COURT?

Having determined whether the government's challenge of each section was likely to succeed on the merits, the court looked next at the second requirement for an injunction: the likelihood of irreparable harm. Noting that an alleged constitutional infringement alone frequently will constitute irreparable harm, the court found that for the sections likely are preempted by federal law, the government is likely to suffer irreparable harm.

WHAT IS THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST RULING BY THE COURT?

For the final two requirements for an injunction, the balance of equities tips in favor of the proponent of the action and an injunction is in the public interest, the court referenced a Ninth Circuit Court of Appeals opinion stating that to allow a state to enforce a state law that is preempted by federal law is neither equitable, nor in the public interest. The court also noted the burdens placed on legal resident aliens and the interference with federal law if SB 1070 were enforced. The court concluded that enforcement was inequitable and not in the public interest.

WHAT IS THE CONCLUSION?

Based on the analysis outlined above, the court granted an injunction against all sections for which it found the government was likely to succeed on the merits. It may be helpful to note, however, that Arizona is likely to appeal this decision to the Ninth Circuit Court of Appeals.

WHAT IS THE COMPARISON OF ARIZONA AND KANSAS IMMIGRATION LEGISLATION?

Since Arizona passed SB 1070, other states have expressed interest in adopting similar legislation. Though the federal government has challenged the constitutionality of Arizona's law, nationwide demands are being made for illegal immigration reform. It is unclear how Kansas will respond, but a comparison of a proposed Kansas 2008 illegal immigration bill to Arizona's SB 1070 may be useful. SB 458 from the 2008 Kansas Session unanimously passed in the Senate but died in the House Committee on Federal and State Affairs. Since the bill had several proposed and adopted amendments, it may indicate some of the Kansas Senate's approaches toward illegal immigration.

<p style="text-align: center;">KANSAS 2008 SB 458 as Amended by the Senate Committee of the Whole</p>	<p style="text-align: center;">ARIZONA 2010 Arizona SB 1070 as Amended by HB 2162</p>
<p>Sub. for SB 458 would create the Kansas Illegal Immigration Enforcement and Reform Act.</p>	<p>Arizona SB 1070 created the Support Our Law Enforcement and Safe Neighborhoods Act.</p>
<p>Law Enforcement</p>	
<ul style="list-style-type: none"> ● All state officials, agencies, and personnel shall fully comply with, and enforce to its full extent, the enforcement of federal law prohibiting the entry into, presence, or residence in the United States of aliens in violation of federal immigration law. (New Sec. 6 (a)) 	<ul style="list-style-type: none"> ● Prohibits law enforcement officials and law enforcement agencies of this state or counties, municipalities, and political subdivisions from restricting or limiting the enforcement of the federal immigration laws to less than the full extent permitted by federal law. (Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by Sec. 12 adding article 8, A.)
<ul style="list-style-type: none"> ● No such requirement regarding determination of immigration status. 	<ul style="list-style-type: none"> ● Requires officials and agencies to reasonably attempt to determine the immigration status of a person involved in a lawful contact where reasonable suspicion exists regarding the immigration status of the person, except if the determination may hinder or obstruct an investigation. (Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by Sec. 12 adding article 8, B.)
<ul style="list-style-type: none"> ● No such requirement regarding racial profiling. 	<ul style="list-style-type: none"> ● Stipulates that a law enforcement official or agency cannot solely consider race, color, or national origin when implementing these provisions, except as permitted by the U.S. or Arizona constitutions. (Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by 12 adding article 8, B.)
<ul style="list-style-type: none"> ● No such requirement regarding transportation of illegal aliens. 	<ul style="list-style-type: none"> ● Authorizes a law enforcement agency to securely transport an unlawfully present alien to a federal facility. (Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by 12 adding article 8, D.)
<ul style="list-style-type: none"> ● No such requirement regarding arrests without warrants. 	<ul style="list-style-type: none"> ● Authorizes a peace officer to arrest a person without a warrant if the officer has probable cause to believe that the person has committed any public offense that makes the person removable from the U.S. (Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by 12 adding article 8, E.)

<ul style="list-style-type: none">● No official or agent of a state, county, or city law enforcement agency may be prohibited or in any way restricted from sending, receiving, or maintaining, information regarding the immigration status, lawful or unlawful, of any individual, or exchanging such information with any other federal, state, or local government entity. No state, county or city law enforcement agency may by ordinance, resolution, official policy or informal policy, prevent, restrict or discourage its officers from asking individuals their citizenship or immigration status. (New Sec. 6 (c))● Any state, county, or city law enforcement agency shall be deemed to be in violation of this section if the attorney general determines a violation has occurred. A legislator may request such a determination from the attorney general. Any agency found in violation of this section will be ineligible for state funding until such agency can prove to the attorney general that it is no longer in violation. (New Sec. 6 (d))	<ul style="list-style-type: none">● Prohibits, except as provided in federal law, officials and agencies of counties, cities, towns, or other political subdivisions from being prevented or restricted from sending, receiving, or maintaining information relating to the immigration status of any individual or exchanging that information with another governmental entity for the following official purposes:<ul style="list-style-type: none">○ Determination of eligibility for any public benefit, service, or license;○ Verification of any claim of legal domicile if legal domicile is required by law or judicial order;○ If the person is an alien, determination of the person’s compliance with federal registration laws; or○ Pursuant to federal laws regarding communication between government agencies and federal immigration agencies. (Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by 12 adding article 8, F.)
<ul style="list-style-type: none">● No such requirement regarding indemnifying officers from court costs and expenses.	<ul style="list-style-type: none">● Indemnifies officers (from court costs and expenses) against actions brought under these provisions [actions taken against entities that do not enforce federal immigration laws to their full extent], except if the officer has been adjudged to have acted in bad faith. (Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by 12 adding article 8, I.)
<ul style="list-style-type: none">● No such requirement regarding alien registration documents.	<ul style="list-style-type: none">● Specifies that in addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 U.S.C. § 1304(e) or 1306(a). Immigration status may be determined by:<ul style="list-style-type: none">○ A law enforcement officer who is authorized by the federal government to verify or ascertain an alien’s immigration status; or

<ul style="list-style-type: none">● No such requirement regarding unlawfully picking up passengers for work.	<ul style="list-style-type: none">○ U.S. Immigration and Customs Enforcement or Customs and Border Protection pursuant to 8 U.S.C. § 1373 (c). (Sec. 3. Title 13, chapter 15, Arizona Revised Statutes, is amended by 21 adding section 13-1509 A. B.)● In the enforcement of this section (unlawfully picking up passengers for work,) a peace officer may lawfully stop any person who is operating a motor vehicle if the officer has reasonable suspicion to believe the person is in violation of any civil traffic law. (Sec. 4. Title 13-2319, E.)
<ul style="list-style-type: none">● No such requirement regarding immobilizing or impounding vehicles.	<ul style="list-style-type: none">● Requires a peace officer to immobilize or impound a person's vehicle if the officer determines either that:<ul style="list-style-type: none">○ In furtherance of the illegal presence of an alien and in violation of a criminal offense, the person is transporting or moving, or attempting to do so, in a vehicle if the person knows or recklessly disregards the fact that the alien is here unlawfully; or○ The person is concealing, harboring or shielding an alien in this state, or attempting to do so in a vehicle if the person knows or recklessly disregards the fact that the alien is here unlawfully. (Sec. 4. Section 13-2929 B.)
<ul style="list-style-type: none">● All law enforcement officers shall inquire into the citizenship and immigration status of any person arrested for a violation of any state law or municipal ordinance, regardless of the person's national origin, ethnicity, or race. In all such cases where a person indicates that such person is not a citizen or national of the United States, the law enforcement officer shall verify with the federal government whether the alien is lawfully or unlawfully present in the United States, pursuant to 8 U.S.C. 1373 (c). (New Sec. 6 (b).)● Lacks the Arizona provision that does not require a warrant.	<ul style="list-style-type: none">● A peace officer, without a warrant, may arrest a person if the officer has probable cause to believe:<ul style="list-style-type: none">○ A felony has been committed and probable cause to believe the person to be arrested has committed the felony.○ A misdemeanor has been committed in the officer's presence and probable cause to believe the person to be arrested has committed the offense.○ The person to be arrested has been involved in a traffic accident and violated any criminal section of title 28, and that violation occurred prior to or immediately following the accident.

	<ul style="list-style-type: none">○ A misdemeanor or petty offense has been committed and probable cause to believe the person to be arrested has committed the offense; or○ The person to be arrested has committed any public offense that makes the person removable from the United States. (Sec. 6. Section 13-3883, A.)
<ul style="list-style-type: none">● No such requirement regarding traffic stops.	<ul style="list-style-type: none">● A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation. A peace officer who serves a copy of the traffic complaint shall do so within a reasonable time of the alleged criminal or civil traffic violation. (Sec. 6. Section 13-3883, B.)
<ul style="list-style-type: none">● This verification [determining any arrested person's immigration status] shall occur through communication with the law enforcement support center, operated by the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security. If the alien is verified to be unlawfully present in the United States, the law enforcement officer shall cooperate with any request by federal immigration authorities to detain the alien or transfer the alien to the custody of the federal government. (New Sec. 6 (b))	<ul style="list-style-type: none">● Specifies that a person is presumed to be lawfully present if the person provides any of the following:<ul style="list-style-type: none">○ A valid Arizona driver's license;○ A valid Arizona nonoperating identification license;○ A valid tribal enrollment card or other form of tribal identification; or○ A valid federal, state, or local government issued identification, if the issuing entity requires proof of legal presence before issuance.● Stipulates that the immigration status may be determined by:<ul style="list-style-type: none">○ A law enforcement officer who is authorized by the federal government to verify or ascertain an alien's immigration status; or○ ICE or CBP pursuant to 8 U.S.C. § 1373(c). 11-1051)

Human Trafficking	
<ul style="list-style-type: none">● Includes knowingly transporting or assisting in the transportation of any person into the State of Kansas who is not lawfully present in the United States is the definition of trafficking. In addition, human trafficking would be defined as concealing, harboring, or shielding from detection an alien who enters or remains in the United States in violation of the law. (Section 11 (1))● Human trafficking would be a severity level 2, person felony. Human trafficking also would subject a person to forfeiture of assets. In addition to the penalty for human trafficking, the sentence may be increased by up to ten years if the offense was part of an ongoing commercial or criminal organization and unauthorized aliens were transported in a manner that endangered their lives or such aliens presented a life-threatening health risk to the people of Kansas. A person convicted of aggravated human trafficking would be required to register as a sex offender for the remainder of such person's life if the victim is less than 14 years of age. (Sections 12-20)	<ul style="list-style-type: none">● Authorizes peace officers, in the enforcement of human smuggling laws, to lawfully stop a person if they have reasonable suspicion to believe the person is in violation of any civil traffic law. (Sec. 4 Section 13-2319)
Responsibilities of the Attorney General	
<ul style="list-style-type: none">● The Illegal Immigration Enforcement Division within the Office of the Attorney General would be created. The Enforcement Division would be responsible for the investigation and enforcement of criminal and civil prohibitions established under the Act. The Attorney General, concurrent with a county or district attorney, would be authorized to prosecute civil or criminal violations under the Act. (Section 23)	<ul style="list-style-type: none">● The Attorney General is required to act at the direction of the Governor in any challenge of these provisions and any complaints filed in state or federal court. (Sec. 7. Section 23-212, Sec. 8. Section 23-212.01, New Sec. 14)

While SB 1070 from Arizona focused mainly on law enforcement and illegal immigration enforcement, SB 458 from the 2008 Kansas Session had additional provisions.

Hiring Practices

2008 SB 458 would have prohibited a business from knowingly hiring, recruiting, or referring for a fee for employment an unauthorized alien. The Attorney General or a county or district attorney could bring a civil suit for violation of these provisions. Under the bill, no suit would be allowed against a business if the business participates in the federal E-verify system and such system generates no concerns that the person is an unauthorized alien. If a business were determined to have violated the provisions of the bill, the district court would have been required to issue a permanent injunction against further violations. The court would have been authorized to order the business to appear before the court to show cause why such business should not be held in contempt. A business would have had the affirmative defense if the business properly completed an I-9 form as required by federal law. Any action would have had to be commenced within five years of the occurrence of the violation.

Crime and Bail

2008 SB 458 would have created the crime of employment identity fraud, which would have been willfully presenting to an employer false or misleading identification documents for the purpose of obtaining employment. The penalty would have been a severity level 8, nonperson felony. In addition, the bill would have created the crime of coercing employment, which is labor or services that are performed or provided by another person and that are obtained or maintained by the following: causing or threatening to cause serious physical injury; physically restraining or threatening to restrain a person; abusing or threatening to abuse the law or legal process; threatening to withhold food, lodging, or clothing; or knowingly destroying, concealing, removing, confiscating, or possessing a passport or any other governmental identification of another person. The penalty for this crime would have been a severity level 9, person felony if the victim is 18 years or older and a severity level 5 if the victim is less than 18 years of age. The bill also would have created the crime of peonage, which is knowingly holding another person in a condition of involuntary servitude for a debt owed the person. The crime of peonage would have been a severity level 8, person felony.

The bill would have set out bail criteria for unauthorized aliens arrested for various infractions, as follows:

- For an off-grid felony, no bail;
- For a severity level 1, 2, or 3 person felony or a severity level 1 or 2 drug felony, bail would have been at least \$250,000 cash or surety;
- For all other felonies, bail would have been at least \$50,000 cash or surety;
- For a non-person felony, bail would have been at least \$25,000 cash or surety; and
- For a class A misdemeanor, bail would have been at least \$10,000 cash or surety.

Bail would have been required unless the court determined that the defendant was not likely to re-offend, and an intensive pre-trial supervision program is available. In addition, the bill would have allowed forfeiture of assets of a person if that person is present in the United States in violation of federal immigration laws and commits a felony. A person convicted of violating any criminal statute in the State of Kansas would not have been eligible for a suspended sentence, conditional release, community service, or probation if the person is in violation of federal immigration laws.

Unions

Under 2008 SB 458, it would have been unlawful for any labor union or employee organization to knowingly collect union dues from unauthorized aliens. The Attorney General would have been able to initiate a civil action in district court. The civil fine for the first violation could have been up to \$2,000; for the second violation, \$5,000; and, for the third and subsequent violations, \$10,000.

Public Benefits

As passed by the Kansas Senate Committee of the Whole, 2008 SB 458 would have prohibited an unauthorized alien from receiving public benefits except those benefits that are required to be offered by federal law. A public benefit would not have included reduced tuition or fees at a postsecondary educational institution provided under KSA 2007 Supp. 76-731a.

In-State Tuition

As proposed, 2008 SB 485 would have required unauthorized aliens who are eligible for in-state tuition to file an affidavit with the Illegal Immigration Enforcement Division of the Attorney General's Office stating that such alien has filed an application for citizenship. Current law requires the affidavit to be filed with a postsecondary educational institution.

WHAT IS ARIZONA'S IMMIGRATION LAW (SB 1070) COMPARED TO CURRENT FEDERAL IMMIGRATION LAWS?

Upon its passage, Arizona's SB 1070 sparked controversy across the United States. The massive anti-illegal immigration law has drawn praise and criticism. SB 1070 is significant but many Arizona officials, including Governor Jan Brewer, claim that SB 1070 merely enforces federal law. The table below compares federal laws and practices vis-à-vis SB 1070.

Immigration: Responsibilities of Law Enforcement Officers	
Federal Law	Arizona Law
n/a	<ul style="list-style-type: none"> Prohibits law enforcement officials and law enforcement agencies of Arizona or its counties, municipalities and political subdivisions from restricting or limiting the enforcement of the federal immigration laws to less than the full extent permitted by federal law.(Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by 12 adding article 8, A.)
n/a	<ul style="list-style-type: none"> Prohibits, except as provided in federal law, officials and agencies of Arizona counties, cities, towns or other political subdivisions

Immigration: Responsibilities of Law Enforcement Officers	
Federal Law	Arizona Law
	<p>from being prevented or restricted from sending, receiving or maintaining information relating to the immigration status, of any individual or exchanging that information with another governmental entity for the following official purposes:</p> <ul style="list-style-type: none"> ○ Determination of eligibility for any public benefit, service or license; ○ Verification of any claim of legal domicile if legal domicile is required by law or judicial order; ○ If the person is an alien, determination of the person's compliance with federal registration laws; and ○ Communication between government agencies and federal immigration agencies, pursuant to federal laws. <p>(Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by 12 adding article 8, F.)</p>
n/a	<ul style="list-style-type: none"> ● Authorizes a law enforcement agency to securely transport an unlawfully present alien to a federal facility. <p>(Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by 12 adding article 8, D.)</p>
<ul style="list-style-type: none"> ● U.S. Immigration and Customs Enforcement (ICE). Must abide by federal law and Supreme Court precedents regarding racial profiling. 	<ul style="list-style-type: none"> ● Stipulates that a law enforcement official or agency cannot solely consider race, color or national origin when implementing these provisions, except as permitted by the U.S. or Arizona constitutions. <p>(Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by 12 adding article 8, B.)</p>

Immigration: Responsibilities of Law Enforcement Officers	
Federal Law	Arizona Law
<ul style="list-style-type: none"> ● No such requirement. 	<ul style="list-style-type: none"> ● Requires officials and agencies to reasonably attempt to determine the immigration status of a person involved in a lawful contact where reasonable suspicion exists regarding the immigration status of the person, except if the determination may hinder or obstruct an investigation. <p>(Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by 12 adding article 8, B.)</p>
<ul style="list-style-type: none"> ● Any officer or employee of the Department of Homeland Security authorized and designated under regulations prescribed by the U.S. Attorney General, whether individually or as one of a class, shall have power to conduct a search, without warrant, of the person, and of the personal effects in the possession of any person seeking admission to the United States, concerning whom such officer or employee may have reasonable cause to suspect that grounds exist for denial of admission to the United States under this chapter which would be disclosed by such search. <p>(Title 8 Chapter 12 Subchapter II Part IX §1357(c))</p>	<ul style="list-style-type: none"> ● No such authorization.
<ul style="list-style-type: none"> ● Any conveyance, including any vessel, vehicle, or aircraft, that has been or is being used in the commission of bringing in aliens, harboring aliens or both and any proceeds or property traceable to such conveyance or proceeds, shall be seized and subject to forfeiture. (Title 8 Chapter 12 Subchapter II Part VIII § 1324 (b) (1)) 	<ul style="list-style-type: none"> ● Requires a peace officer to immobilize or impound a person's vehicle if the officer determines either that: <ul style="list-style-type: none"> ○ In furtherance of the illegal presence of an alien and in violation of a criminal offense, the person is transporting or moving, or attempting to do so in a vehicle if the person knows or recklessly disregards the fact that the alien is here unlawfully. ○ The person is concealing, harboring or shielding an alien in this state, or attempting to do so in a vehicle if the person knows or recklessly disregards the fact that the alien is here unlawfully. (Sec. 4. Section 13-2929 B.)

Immigration: Responsibilities of Law Enforcement Officers	
Federal Law	Arizona Law
<ul style="list-style-type: none"> ● Any officer or employee of the Service authorized under regulations prescribed by the Attorney General shall have power without warrant: <ul style="list-style-type: none"> ○ To interrogate any person believed to be an alien as to his right to be or to remain in the United States; ○ To arrest any alien who in his presence or view is entering or attempting to enter the United States in violation of any law or regulation made in pursuance of law regulating the admission, exclusion, expulsion, or removal of aliens, or to arrest any alien in the United States, if he has reason to believe that the alien so arrested is in the United States in violation of any such law or regulation; ○ Within a reasonable distance from any external boundary of the United States, to board and search for aliens any vessel within the territorial waters of the United States and any railway car, aircraft, conveyance, or vehicle, and within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings; ○ To make arrests for felonies which have been committed and which are cognizable under any law of the United States regulating the admission, exclusion, expulsion, or removal of aliens, if he has reason to believe that the person so arrested is guilty of such felony; and ○ To make arrests for any offense against the United States, if the offense is committed in the officer's or employee's 	<ul style="list-style-type: none"> ● A peace officer, without a warrant, may arrest a person if the officer has probable cause to believe: <ul style="list-style-type: none"> ○ A felony has been committed and probable cause to believe the person to be arrested has committed the felony; ○ A misdemeanor has been committed in the officer's presence and probable cause to believe the person to be arrested has committed the offense; ○ The person to be arrested has been involved in a traffic accident and violated any criminal section of title 28, and that violation occurred prior to or immediately following the accident; ○ A misdemeanor or petty offense has been committed and probable cause to believe the person to be arrested has committed the offense; and ○ The person to be arrested has committed any public offense that makes the person removable from the United States. <p>(Sec. 6. Section 13-3883, A.)</p> ● Authorizes a peace officer to arrest a person without a warrant if the officer has probable cause to believe that the person has committed any public offense that makes the person removable from the U.S. <p>(Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by 12 adding article 8, E.)</p>

Immigration: Responsibilities of Law Enforcement Officers	
Federal Law	Arizona Law
<p>presence, or for any felony cognizable under the laws of the United States.</p> <p>(Title 8 Chapter 12 Subchapter II Part IX §1357 (a) (1-5))</p>	
<ul style="list-style-type: none"> ● Immigration officers are authorized to board and search any vessel, aircraft, railway car, or other conveyance or vehicle in which they believe aliens are being brought into the United States. Immigration officers are authorized to order an owner, agent, master, commanding officer, person in charge, purser, or consignee of a vessel or aircraft bringing an alien (except an alien crew member) to the United States: <ul style="list-style-type: none"> ○ To detain the alien on the vessel or at the airport of arrival; and ○ To deliver the alien to an immigration officer for inspection or to a medical officer for examination. <p>Title 8 Chapter 12 Subchapter II Part IV § 1225 (d) (1) and (2)</p>	<ul style="list-style-type: none"> ● A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation. A peace officer who serves a copy of the traffic complaint shall do so within a reasonable time of the alleged criminal or civil traffic violation. (Sec. 6. Section 13-3883, B.) <ul style="list-style-type: none"> ○ In the enforcement of this section [unlawfully picking up passengers for work] a peace officer may lawfully stop any person who is operating a motor vehicle if the officer has reasonable suspicion to believe the person is in violation of any civil traffic law. <p>(Sec. 4. Title 13-2319, E.)</p>

How Arizona Law is Different from Federal Law

Arizona's SB 1070 mandates that the federal law be enforced to its full extent but parts of the state's law are not present at the federal level. A few specific sections of SB 1070 go beyond federal law. Section 5A, for instance, makes it illegal for a driver to stop and attempt to hire or to hire and pick up passengers, if that action impedes traffic. It also prohibits a person from getting into someone's vehicle in order to be hired. An illegal alien cannot apply for work or solicit work publicly in the state. Most of this is aimed at day laborers and those who hire them. Another example, Section 2H, allows any citizen to sue an official or agency in the state who "adopts or implements a policy that limits or restricts the enforcement of federal immigration laws to less than the full extent permitted by federal law."

In a broader context, jurisdictions and agency powers make the enforcement of SB 1070 different than ICE's enforcement of federal law. Federal violations of immigration statutes by someone in the U.S. illegally may in some cases be punished with a jail sentence but are often penalized by deporting the individual. Arizona, lacking the authority to deport anyone, could enforce jail sentences laid out in its new law for failing to carry one's immigration authorization documents or soliciting day work by the side of the road.

Perhaps most controversial, section 2B of the new law requires law enforcement officers to try to check the immigration status of anyone with whom they have "lawful contact" if they have "reasonable suspicion" the person might be an unauthorized alien. The amended version said race could not be the "sole" factor. But the statute does not detail what "reasonable suspicion" might include. And the phrase "except to the extent permitted" by the federal or state constitutions may leave even more ambiguity because federal law permits race to be a 'relevant factor' in determining reasonable suspicion for stops and inquiries.

DO LOCAL GOVERNMENTS, STATE AND THE FEDERAL GOVERNMENT HAVE IMMIGRATION WORKING RELATIONS?

Traditionally, immigration has been a federal issue. U.S. Immigration and Customs Enforcement (ICE), the largest investigative agency in the Department of Homeland Security (DHS), is responsible for enforcing federal immigration laws as part of its homeland security mission. ICE works closely with federal, state and local law enforcement partners in this mission. DHS encourages state and local entities to share resources and information. Arizona's enactment of SB 1070 is unique because it mandates total cooperation with federal laws and prohibits officials from being prevented or restricted from sending, receiving or maintaining information relating to the immigration status of any individual or exchanging that information with another governmental entity. However, some states and localities already are developing plans with ICE to best meet their communities' immigration needs.

Agreements of Cooperation in Communities to Enhance Safety and Security Programs

ICE developed the Agreements of Cooperation in Communities to Enhance Safety and Security (ACCESS) program in response to the widespread interest from local law enforcement agencies who have requested ICE assistance through the 287(g) Program. This program cross-designates local officers to enforce immigration law as authorized through section 287(g) of the Immigration and Nationality Act. The 287 program is only one component under the ACCESS program. Other ACCESS programs include: Asset Forfeiture and Equitable Sharing; Border Enforcement Security Task Forces (BEST); Criminal Alien Program (CAP); Customs Cross-Designation (Title 19); Document and Benefit Fraud Task Forces; Fugitive Operation Teams (FOTs); the Intellectual Property Rights (IPR) Center; Law Enforcement Support Center (LESC); Operation Community Shield (a national law enforcement initiative that targets violent transnational street gangs); Operation Firewall (a comprehensive law enforcement operation targeting criminal organizations involved in the smuggling of large quantities of U.S. currency); Operation Predator (targeting child exploitation and sexual crimes); Rapid REPEAT (Removal of Eligible Parolees Accepted for Transfer) and Secure Communities (a comprehensive strategy to improve and modernize the identification and removal of criminal aliens from the United States).

The ICE 287(g) Program: A Law Enforcement Partnership

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 added Section 287(g), performance of immigration officer functions by state officers and employees, to the Immigration and Nationality Act. This authorizes the Secretary of DHS to enter into agreements with state and local law enforcement agencies, permitting designated officers to perform immigration law enforcement functions, provided that the local law enforcement officers receive appropriate training and function under the supervision of ICE officers.

The alliance between ICE and state and local patrol officers, detectives, investigators and correctional officers allows these local and state officers resources and latitude to pursue investigations relating to violent crimes, human smuggling, gang/organized crime activity, sexually-related offenses, narcotics smuggling, and money laundering. In addition, participating entities are eligible for increased resources and support in more remote geographical locations.

State and local law enforcement entities enter into a partnership with ICE under a joint Memorandum of Agreement (MOA) to receive delegated authority for immigration enforcement within their jurisdictions. The 287(g) program trains local officers to enforce immigration law as authorized through section 287(g) of the Immigration and Nationality Act.

287(g) Memorandum of Agreement

The 287(g) MOA defines the scope and limitations of the authority to be designated. It also establishes the supervisory structure for the officers working under the cross-designation and prescribes the agreed upon complaint process governing officer conduct during the life of the MOA. Under the statute, ICE will supervise all cross-designated officers when they exercise their immigration authorities. The agreement must be signed by the ICE Assistant Secretary, and the governor, a senior political entity, or the head of the local agency before trained local officers are authorized to enforce immigration law.

Participating officers in the 287(g) Program must have U.S. citizenship, a completed background investigation, a minimum of two-years experience in his or her current position and no pending disciplinary actions. ICE offers a four-week training program now held at the Federal Law Enforcement Training Center (FLETC) ICE Academy (ICEA) in Charleston, SC, conducted by certified instructors.

287(g) Participating Entities

Currently ICE has 287(g) agreements with 71 law enforcement agencies in 26 states. Since January 2006, the 287(g) Program is credited with identifying more than 160,000 potentially removable aliens—mostly at local jails. ICE has trained and certified more than 1,130 state and local officers to enforce immigration law.

Mutually Signed Agreements as of 4/29/2010*			
State	Law Enforcement Agency	Support Type	Signed
Alabama	Alabama Department of Public Safety	Task Force	37873
Alabama	Etowah County Sheriff's Office	Jail Enforcement	39636
Arizona	Arizona Department of Corrections	Jail Enforcement	38610
Arizona	Arizona Department of Public Safety	Jail & Task Force	39186
Arizona	City of Mesa Police Department	Jail & Task Force	40135
Arizona	City of Phoenix Police Department	Jail & Task Force	39516
Arizona	Florence Police Department	Task Force	40106

Mutually Signed Agreements as of 4/29/2010*			
State	Law Enforcement Agency	Support Type	Signed
Arizona	Maricopa County Sheriff's Office	Jail Enforcement	39119
Arizona	Pima County Sheriff's Office	Jail & Task Force	39516
Arizona	Pinal County Sheriff's Office	Jail & Task Force	39516
Arizona	Yavapai County Sheriff's Office	Jail & Task Force	39516
Arkansas	Benton County Sheriff's Office	Jail & Task Force	39350
Arkansas	City of Springdale Police Department	Task Force	39350
Arkansas	Rogers Police Department	Task Force	39349
Arkansas	Washington County Sheriff's Office	Jail & Task Force	39350
California	Orange County Sheriff's Office	Jail Enforcement	39022
California	San Bernardino County Sheriff's Office	Jail Enforcement	38674
Colorado	Colorado Department of Public Safety	Task Force	39169
Colorado	El Paso County Sheriff's Office	Jail Enforcement	39218
Connecticut	City of Danbury Police Department	Task Force	40100
Delaware	Delaware Department of Corrections	Jail Enforcement	40100
Florida	Bay County Sheriff's Office	Task Force	39613
Florida	Collier County Sheriff's Office	Jail & Task Force	39299
Florida	Florida Department of Law Enforcement	Task Force	37438
Florida	Jacksonville Sheriff's Office	Jail Enforcement	39636
Georgia	Cobb County Sheriff's Office	Jail Enforcement	39125
Georgia	Georgia Department of Public Safety	Task Force	39289
Georgia	Gwinnett County Sheriff's Office	Jail Enforcement	40100
Georgia	Hall County Sheriff's Office	Jail & Task Force	39506
Georgia	Whitfield County Sheriff's Office	Jail Enforcement	39481
Maryland	Frederick County Sheriff's Office	Jail & Task Force	39483
Minnesota	Minnesota Department of Public Safety	Task Force	39712
Missouri	Missouri State Highway Patrol	Task Force	39623
Nevada	Las Vegas Metropolitan Police Department	Jail Enforcement	39698
New Hampshire	Hudson City Police Department	Task Force	39206
New Jersey	Morristown County Department of Corrections	Jail & Task Force	39670
New Jersey	Monmouth County Sheriff's Office	Jail Enforcement	40104

Mutually Signed Agreements as of 4/29/2010*			
State	Law Enforcement Agency	Support Type	Signed
North Carolina	Alamance County Sheriff's Office	Jail Enforcement	39091
North Carolina	Cabarrus County Sheriff's Office	Jail Enforcement	39295
North Carolina	Durham Police Department	Task Force	39478
North Carolina	Gaston County Sheriff's Office	Jail Enforcement	39134
North Carolina	Guilford County Sheriff's Office	Task Force	40100
North Carolina	Henderson County Sheriff's Office	Jail Enforcement	39623
North Carolina	Mecklenburg County Sheriff's Office	Jail Enforcement	38774
North Carolina	Wake County Sheriff's Office	Jail Enforcement	39623
Ohio	Butler County Sheriff's Office	Jail & Task Force	39482
Oklahoma	Tulsa County Sheriff's Office	Jail & Task Force	39299
Rhode Island	Rhode Island State Police	Task Force	40104
South Carolina	Beaufort County Sheriff's Office	Task Force	39623
South Carolina	Charleston County Sheriff's Office	Jail Enforcement	40125
South Carolina	York County Sheriff's Office	Jail Enforcement	39370
Tennessee	Davidson County Sheriff's Office	Jail Enforcement	39133
Tennessee	TN Highway Patrol/Department of Safety	Task Force	39623
Texas	Carrollton Police Department	Jail Enforcement	39671
Texas	Farmers Branch Police Department	Task Force	39636
Texas	Harris County Sheriff's Office	Jail Enforcement	39648
Utah	Washington County Sheriff Office	Jail Enforcement	39712
Utah	Weber County Sheriff's Office	Jail Enforcement	39712
Virginia	Herndon Police Department	Task Force	39161
Virginia	Loudoun County Sheriff's Office	Task Force	39623
Virginia	Manassas Park Police Department	Task Force	39516
Virginia	Manassas Police Department	Task Force	39511
Virginia	Prince William County Police Department	Task Force	39503
Virginia	Prince William County Sheriff's Office	Task Force	39503
Virginia	Prince William-Manassas Regional Jail	Jail Enforcement	39271
Virginia	Rockingham County Sheriff's Office	Jail & Task Force	39196
Virginia	Shenandoah County Sheriff's Office	Jail & Task Force	39211

Mutually Signed Agreements as of 4/29/2010*			
State	Law Enforcement Agency	Support Type	Signed
Active MOAs Pending 'Good Faith' Negotiations as of 04/29/2010			
California	Los Angeles County Sheriff's Office	Jail Enforcement	38383
California	Riverside County Sheriff's Office	Jail Enforcement	38834
Massachusetts	Massachusetts Department of Corrections	Jail Enforcement	39166
New Mexico	New Mexico Department of Corrections	Jail Enforcement	39341
Source: U.S. Immigration and Custom Enforcement, Office of State and Local Coordination . *Kansas does not have MOAs for jail or task enforcement.			

WHAT IS E-VERIFY?

E-Verify is an electronic program through which employers verify the employment eligibility of their employees after hire. The program was authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Employers submit information taken from a new hire's Form I-9 (Employment Eligibility Verification Form) through E-Verify to the Social Security Administration and U.S. Citizenship and Immigration Services (USCIS) to determine whether the information matches government records and whether the new hire is authorized to work in the United States.

Federal Use of E-Verify

Federal contractors and subcontractors are required to use E-Verify as of September 8, 2009. Executive Order 12989 mandates the electronic verification of all employees working on any federal contract. The amended Executive Order reinforces the policy that the federal government supports a legal workforce.

State Use of E-Verify

Table 1: States Requiring E-Verify			
State	Citation	Year	Applies to
Arizona	HB 2779 (A.R.S.§ 23-233 to 23-214) HB 2745 (A.R.S.§ 23-211 to 23-212, 23-214 to 23-216, 23-361, 41-1080 and 41-4401)	2007 2008	all employers, public and private

Table 1: States Requiring E-Verify			
State	Citation	Year	Applies to
Colorado	HB 1343 (C.R.S. § 8-17.5-101 to 202) SB 139 (C.R.S. § 8-2-124 and 24-21-112) SB 193 (C.R.S. § 8-17.5-101 to 202)	2006 2008	state contractors
Georgia	SB 529 (O.C.G.A. § 43-20A-1 to 43-20A-4, 48-7-101 and 50-36-1) HB 2 (O.C.G.A. § 13-10-91)	2006 2009	state agencies, contractors, and subcontractors
Idaho	Executive Order 2006-40	2006	state agencies, contractors
Minnesota	Executive Order 2008-01	2008	state agencies, state contracts
Mississippi	SB 2988 (M.C. §71-11-3)	2008	all employers, public and private
Missouri	HB 1549 (M.R.S § 285.525 to 285.550) HB 3	2008 2009	public employers, contractors and subcontractors
Nebraska	LB 403 (N.R.S § 77-5722.01)	2009	public employers, public contractors
North Carolina	SB 1523 (G.S. § 126-7.1, 128-1.1 and 122C-142)	2006	state agencies
Oklahoma	HB 1804 (O.S § 25-1312 to 25-1313)	2007	public employers, contractors, subcontractors
Rhode Island	Executive Order 2008-01	2008	state agencies, grantees, contractors, subcontractors
South Carolina	HB 4400 (S.C.C.L § 8-14-20)	2008	all employers, public and private, phased in by 2010
Utah	SB 81 (U.C § 63-99-a-103) SB 39 (U.C § 63G-11-103)	2008 2009	public employers, contractors, subcontractors

Sources: E-Verify: Frequently Asked Questions, Immigrant Policy Project. National Conference of State Legislatures. Revised February 4, 2010.

States Encouraging the Use of E-Verify

- Pennsylvania. HB 2319, signed May 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 licenses. 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.

- Though Kansas does not require the use of E-Verify, some private and public sector employers—including the Department of Administration—utilize E-Verify services.

States Limiting the Use of E-Verify

- Illinois enacted HB 1744 in 2009, which bars Illinois companies from enrolling in any Employment Eligibility Verification System until accuracy and timeliness issues are resolved. Illinois also enacted HB 1743 in 2009, which creates privacy and antidiscrimination protections for workers if employers participating in E-Verify do not follow the program's procedures. On August 24, 2009, Illinois enacted S 1133 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.
- The California Legislature passed CA AB 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.

The Department of Homeland Security recently released the latest figures on E-Verify use by state, specifically the number of employers, work sites, and queries in fiscal years 2007 to 2009. Employers must sign Memorandums of Understanding (MOUs) to participate in E-Verify.

State	Total MOUs	Total Sites	Queries for FY 09	Queries for FY 08	Queries for FY 07
Total	134,702	511,228	6,126,197	6,649,788	3272944
ARIZONA*	31,112	50,582	552,078	822,157	66,039
CALIFORNIA	10,476	51,001	697,832	673,314	301,034
MISSOURI*	10,046	19,869	740,042	507,692	159,927
GEORGIA*	8,629	27,954	243,691	323,367	138,633
TEXAS	6,914	40,145	545,492	708,658	433,603
FLORIDA	5,388	20,515	160,086	178,226	144,617
COLORADO*	4,822	18,731	153,895	226,569	158,582
NEW YORK	3,359	24,788	106,750	99,841	87,624

Table 2: E-Verify Usage					
State	Total MOUs	Total Sites	Queries for FY 09	Queries for FY 08	Queries for FY 07
Total	134,702	511,228	6,126,197	6,649,788	3272944
VIRGINIA	3,301	17,705	136,694	135,313	57,967
SOUTH CAROLINA*	3,086	9,303	176,171	120,084	52,680
ILLINOIS	3,056	21,678	115,127	136,660	110,536
NORTH CAROLINA*	2,764	20,215	189,666	293,325	197,643
NEW JERSEY	2,593	8,831	73,635	91,366	66,148
MISSISSIPPI*	2,530	6,544	234,535	110,524	26,409
PENNSYLVANIA	2,311	17,974	115,240	118,708	72,559
MINNESOTA**	2,308	16,585	130,964	117,182	31,387
OKLAHOMA*	2,179	4,952	127,442	155,736	47,765
MASSACHUSETTS	2,094	20,982	54,042	66,634	55,840
MARYLAND	2,066	9,935	173,004	166,892	34,351
OHIO	1,874	13,236	134,833	181,260	104,452
TENNESSEE	1,841	8,091	146,353	183,444	76,044
RHODE ISLAND**	1,793	2,840	20,535	12,232	7,366
ALASKA	1,669	5,549	52,312	58,052	31,244
MICHIGAN	1,460	5,601	55,103	60,357	43,243
INDIANA	1,306	3,410	85,966	132,998	109,318
KANSAS	1,193	11,432	53,701	69,536	49,232
WISCONSIN	1,126	4,998	64,218	71,601	57,071
OREGON	1,092	3,848	34,115	42,030	23,721
ALABAMA	1,088	5,786	51,383	54,912	32,300
UTAH*	1,035	2,780	73,965	68,912	40,493
DISTRICT OF COLUMBIA	1,014	4,232	112,038	19,897	10,680
NEVADA	924	2,530	40,114	59,460	29,787
CONNECTICUT	890	3,729	27,916	31,356	23,042
LOUISIANA	859	3,649	47,249	33,015	17,683
KENTUCKY	777	2,700	64,450	95,665	63,149
IOWA	756	3,040	56,947	72,187	53,829
NEBRASKA*	754	2,579	54,782	77,306	55,920
ARKANSAS	685	3,136	73,453	129,488	133,122
NEW MEXICO	551	1,047	19,181	17,005	5,236
IDAHO**	508	1,201	25,466	32,079	9,338
NEW HAMPSHIRE	324	1,034	13,199	10,172	6,308
HAWAII	316	647	10,383	6,449	3,549

Table 2: E-Verify Usage					
State	Total MOUs	Total Sites	Queries for FY 09	Queries for FY 08	Queries for FY 07
Total	134,702	511,228	6,126,197	6,649,788	3272944
DELAWARE	280	1,822	21,492	23,638	12,027
ALASKA	210	766	8,894	5,847	2,826
MAINE	192	444	6,206	8,648	5,363
WYOMING	189	377	6,049	9,550	5,468
WEST VIRGINIA	181	387	8,039	6,290	4,762
SOUTH DAKOTA	172	414	5,026	5,672	3,998
MONTANA	168	513	7,237	5,106	1,716
NORTH DAKOTA	156	415	6,510	4,261	1,800
PUERTO RICO	156	177	5,801	2,418	148
VERMONT	83	205	4,103	5,756	5,361
VIRGIN ISLANDS	24	252	2,416	885	4
GUAM	18	68	375	56	0
MARSHALL ISLANDS	2	2	1	0	0
NORTHERN MARIANA ISLANDS	2	2	0	0	0
*Legislation enacted **Executive Order Proclaimed Source: Department of Homeland Security 2009					

E-Verify Updates

- US Citizenship and Immigration Services Director Alejandro Mayorkas announced three new E-Verify civil rights initiatives: videos specially designed for employers and employees; a dedicated telephone number created to respond to employee inquiries; and a memorandum of understanding between USCIS and U.S. Department of Justice, Civil Rights Division.
- The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 required the termination of the pilot program after four years (allowing for a one-year implementation). It has been extended multiple times. 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 of 2010 (Public Law 111-8). Another three-year extension was approved in the Department of Homeland Security appropriations in October 2009, P.L. 111-83. E-Verify is now set to expire on September 30, 2012.
- 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 those valued at less than \$100,000 and subcontracts valued at less than \$3,000.

E-Verify Statistics

- The U.S. Citizenship and Immigration Services (USCIS) reports that as of January 16, 2010 more than 182,000 employers have registered with the program, with 8.7 million inquiries (an updated figure) in FY 2009.
- The Department of Homeland Security confirmed that 96.9 percent (up 0.8 percent from June 2008) of employees are automatically confirmed as work-authorized either instantly or within 24 hours (requiring no employee/employer action).
- 3.1 percent of employees receive initial system mismatches (tentative non-confirmations, TNCs). 0.3 percent of employees who receive initial mismatches later confirmed work-authorized after contesting and resolving the mismatch, and 2.8 percent of employees receive final non-confirmations (FNCs).
- According to the Department of Homeland Security, several hundred instances of document fraud have been detected.
- In FY 2007, E-Verify received about 3 million queries, 157,000 were found to be unauthorized to work despite having evaded the I-9 process previously, stopping their illegal employment.

Pros and Cons

Since use of E-Verify has encountered some controversy, looking at the advantages and disadvantages of E-Verify may be beneficial.

PROS	CONS
<ul style="list-style-type: none">• Employers get safe harbor protection in the event of discovery of unauthorized workers and can avoid penalties.• Employers can use E-Verify free of charge.• E-Verify can result in significant savings of work time and associated costs (I-9 forms were required following passage of the Immigration Reform and Control Act of 1986. Pursuant to this Act, all U.S. employers must verify the employment eligibility and identity of all employees hired to work in the U.S.• E-Verify reduces unauthorized employment and minimizes verification-related discrimination.• E-Verify is quick and non-burdensome to employers but it also maintains employee privacy.• E-Verify is highly compatible with employer's Human Resources Information System (HRIS), a system that lets you keep track of all your employees and information about them, or payroll system that already has the employee's name, hire data, SSN and other information. Because this information is readily available, very little additional data has to be entered for the I-9 Form.• E-Verify software generates auto-alerts for missing fields or incompatible information. Therefore, fewer errors requiring later corrections to I-9 forms occur.• Employers using E-Verify company-wide have a better chance of attracting and retaining talented foreign nationals who are recent graduates from U.S. universities with degrees in science, technology, engineering, or math. E-Verify employers can ensure that employees have enough time to try twice at the "H-1B Lottery" (The US H-1B visa is a non-immigrant visa, which allows a U.S. company to employ a foreign individual for up to six years).	<ul style="list-style-type: none">• If correct information is not in the system for a particular individual – even a US citizen – the employer may be prevented from continuing to employ that person if the issue is not resolved within the allocated time period. The employee has eight federal workdays from the date of the “referral” (non-match from E-Verify) to visit or call the appropriate government agency to resolve the discrepancy. Employees will usually miss time from work and the employer's I-9 managers will have to take extra steps that are not currently required when using the paper I-9s.• In E-Verify, there appears to be some confusion involving documents used to establish a person's identification using a photograph. The most common forms of identification already have photographs, but it is not clear when the Department of Homeland Security will require employers to submit such documents against the photo database in E-Verify.• E-Verify can generate “false positives” (incorrectly shows a mismatch) when name changes (for example, from maiden to married) are not promptly registered in government databases. Complications also can occur when the system cannot accommodate linguistic and cultural peculiarities of transcribing some foreign names. Further, naturalized citizens who have not yet updated their records with Social Security Administration are the largest category of persons who initially face a mismatch. These false positives inconvenience thousands of employees and employers.• Though there are legal protections and rules designed to prevent discrimination, some worry that the E-Verify system will actually increase discriminatory practices.• E-Verify lacks a strong federal enforcement mechanism.

IN-STATE TUITION

In June 2001, Texas was the first state to pass legislation allowing in-state tuition for illegal immigrant students, followed by California, Utah, and New York in 2001-2002; Washington, Oklahoma, and Illinois in 2003; Kansas in 2004; New Mexico in 2005; Nebraska in 2006; and Wisconsin in 2009. The state laws permit 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.¹

Kansas

In 2004, the Legislature passed HB 2145 (KSA 76-731a), which addresses “certain persons without lawful immigration status deemed residents for purpose of tuition and fees.” Section (2) defines the criteria for in-state tuition with regard to illegal immigrants (subsection (C)), which states: “(C) in the case of a person without lawful immigration status, has filed with the postsecondary educational institution an affidavit stating that the person or the person's parents have filed an application to legalize such person's immigration status, or such person will file such an application as soon as such person is eligible to do so or, in the case of a person with a legal, nonpermanent immigration status, has filed with the postsecondary educational institution an affidavit stating that such person has filed an application to begin the process for citizenship of the United States or will file such application as soon as such person is eligible to do so.”

A claim filed in a Kansas district court by a Missouri resident who was denied in-state tuition, while unauthorized immigrant students were granted in-state tuition benefits, argued that this violated the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) (*Day v. Sebelius*, 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. ²

Texas

In 2001, the Texas Legislature passed HB 1403 (TEC 54.052), which grants in-state tuition to illegal immigrants if they: graduated from a public or private high school or received the equivalent of a high school diploma in Texas; resided in Texas for at least three years as of the date the person graduated from high school or received the equivalent of a high school diploma; registered as an entering student in an institution of higher education not earlier than the 2001 fall semester; and provided to the institution an affidavit stating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so.

A claim was brought to the Harris County District Court in December 2009, by the Immigration Reform Coalition of Texas. The Coalition contends that the statute violates federal law. The case had not been resolved as of June 1, 2010.

¹ Ann Morse and Kerry Birnbach, *Immigrant Policy Project, National Conference of State Legislatures. 2010.*
<http://www.ncsl.org/default.aspx?tabid=13100>

² Ann Morse and Kerry Birnbach, *Immigrant Policy Project, National Conference of State Legislatures. 2010.*
<http://www.ncsl.org/default.aspx?tabid=13100>

California

In 2001, the California Legislature passed AB 540 (§68130.5). The law grants in-state tuition rates to illegal immigrants in a similar fashion as Kansas' law. To be eligible, an illegal immigrant must attend a California high school for at least three years, graduate from a high school in California, and file an affidavit (as required by individual institutions) stating that the filer will apply for legal residency as soon as possible.

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.³

Utah

In 2002, the Utah Legislature passed HB 144 (§53B-8-106). Utah's law specifically addresses the controversy surrounding whether or not federal law prohibits illegal immigrants from receiving in-state tuition. Section (1) of the bill states: "if allowed under federal law, a student, other than a nonimmigrant alien within the meaning of paragraph (15) of subsection (a) of Section 1101 of Title 8 of the United States Code..." Furthermore, a student is required to attend a high school in Utah for three or more years, graduate from a high school in Utah, and file an affidavit with the institution of higher education stating that the student has filed an application to legalize his immigration status, or will file an application as soon as the student is eligible to do so.

New York

In 2002, New York passed SB 7784 (§355(2)(h)(8)). According to New York law, an illegal immigrant is eligible for in-state tuition if they have attended an approved New York high school for two or more years, graduated from an approved New York High school, and applied for attendance at an institution or educational unit of the state university within five years of receiving a New York state high school diploma. If said student did not graduate from or attend a high school in New York, the student can still be eligible for in-state tuition if the student attended an approved New York state program for general equivalency diploma exam preparation, received a general equivalency diploma issued within New York state, and applied for attendance at an institution or educational unit of the state university within five years of receiving a general equivalency diploma issued within New York state. Illegal immigrants also must submit an affidavit stating the student has filed an application to legalize his or her immigration status, or will do so as soon as he or she is eligible to do so.

Washington

In 2003, Washington passed HB 1079 (§28B.15.012). According to the bill, an illegal immigrant can pay in-state tuition rates if said person completed their full senior year of high school and obtained a high school diploma in the State of Washington. Additionally, an illegal immigrant

³ See footnote 2

is eligible for in-state tuition rates if he or she lived in the state for three years and received an equivalent of a diploma. Much like other states with similar laws, an illegal immigrant would have to file an affidavit indicating that he or she will file an application to become a permanent resident at the earliest opportunity he or she is eligible to do so.

Oklahoma

In 2003, Oklahoma passed SB 596 (70 §3242). The purpose of the bill was to give illegal immigrants in-state tuition rates. From 2003 to 2008, the bill allowed any person who graduated from a public or private high school in the state or successfully completed the General Education Development test and resided in Oklahoma with a parent or guardian for at least two years to be eligible for in-state tuition rates. Oklahoma also required illegal immigrants to file an affidavit stating that the student had filed an application or had a petition pending with the Bureau of Citizenship and Immigration Services to legalize the student's immigration status, or that the student would file an application to legalize his or her immigration status at the earliest opportunity the student was eligible to do so. Additionally, the bill allowed illegal immigrants access to state financial aid and scholarships if they met the aforementioned requirements. Oklahoma has since repealed this law and now prohibits illegal immigrants from receiving in-state tuition rates (see next section).

Illinois

In 2003, Illinois passed HB 60 (110 Ill. Comp. Stat. Ann.). The bill allows illegal immigrants to pay in-state tuition rates if they lived with their parent or guardian while attending high school in Illinois for at least three years, graduated from high school in Illinois, and submit an affidavit stating that the individual will file an application to become a permanent resident of the United States at the earliest opportunity the individual is eligible to do so.

New Mexico

In 2005, New Mexico passed SB 582 (§21-1-1.2). The bill was titled "Nondiscrimination policy for admission to any public post-secondary education institution—nondiscrimination in eligibility for education benefits." The bill states:

- A public post-secondary educational institution shall not deny admission to a student on account of the student's immigration status.
- Any tuition rate or state-funded financial aid that is granted to residents of New Mexico shall also be granted on the same terms to all persons, regardless of immigration status, who have attended a secondary educational institution in New Mexico for at least one year and who have either graduated from a New Mexico high school or received a general educational development certificate in New Mexico.

Nebraska

In 2006, Nebraska passed LB 239 (§85-502). An illegal immigrant must reside for a minimum of three years with his or her parent, guardian, or conservator while attending a public or private high school in Nebraska and graduate from a public or private high school, or receive the equivalent of

a high school diploma in Nebraska. Additionally, the student must submit an affidavit stating the student has filed an application to legalize his or her immigration status, or do so as soon as eligible.

Wisconsin

In 2009, Wisconsin passed AB 75 (§36.72). Wisconsin mandates that an illegal immigrant must attend high school in the state for three years prior to graduation and submit proof that the person has filed or will file an application for a permanent resident visa with U.S. Citizenship and Immigration Services as soon as the person is eligible to do so. Additionally, the student must live in Wisconsin for the 12 months prior to enrolling in a higher education institution.

States that Explicitly Deny In-State Tuition to Illegal Immigrants

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 illegal immigrant students from in-state tuition benefits include Arizona, Colorado, Georgia, and South Carolina.

Arizona

In 2006, Arizona passed Proposition 300 (§1503). The question on the ballot measure asked voters if they agreed with the following statement: "Provides that in accordance with the federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996, a person who is not a United States citizen or legal resident and who does not otherwise possess lawful immigration status in this country may not be classified as an in-state student or county resident for community college or state university tuition purposes." The measure passed 1,060,444 to 423,994. The statute states, "In accordance with the illegal immigration reform and immigrant responsibility act of 1996 (P.L. 104-208; 110 stat. 3009), a person who was not a citizen or legal resident of the United States or who is without lawful immigration status is not entitled to classification as an in-state student pursuant to section 15-1802 or entitled to classification as a county resident pursuant to section 15-1802.01."

Colorado

As of August 1, 2006, Colorado law (HB06S-1023) requires that all students who apply for certain public benefits that entail any payment or financial assistance provide proof that they are lawfully present in the United States. In the higher education arena, these public benefits include the College Opportunity Fund (COF), in-state or reduced tuition rates, some types of institutional and state-sponsored financial aid, and any other benefit for which there is an application, excluding employment benefits. ⁴

Georgia

In 2008, Georgia passed SB 492 (§20-3-66). The bill denies illegal immigrants in-state tuition. The bill states: "Noncitizen students shall not be classified as in-state for tuition purposes

⁴ <http://www.ppec.edu/prospective-students/records-1/hb1023/>

unless the student is legally in this state and there is evidence to warrant consideration of in-state classification as determined by the board of regents. Lawful permanent residents, refugees, asylees, or other eligible noncitizens as defined by federal Title IV regulations may be extended the same consideration as citizens of the United States in determining whether they qualify for in-state classification. International students who reside in the United States under nonimmigrant status conditioned at least in part upon intent not to abandon a foreign domicile shall not be eligible for in-state classification."

Oklahoma

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 said student meets special requirements.⁵ One key change to the law was changing the word "shall" to "may" in Section 3242, which states: "The Oklahoma State Regents for higher Education ~~shall~~ may adopt a policy which allows a student to enroll in an institution within the Oklahoma State System of Higher Education and allows a student to be eligible for resident tuition if the student..." The special requirements include:

- Graduated from a public or private high school in this state;
- Resided in Oklahoma with a parent or legal guardian while attending classes at a public or private high school in this state for at least two years prior to graduation; and
- Provided to the institution a copy of a true and correct application or petition filed with the United States Citizenship and Immigration Services to legalize the student's immigration status, or filed an affidavit with the institution stating that the student would file an application to legalize his or her immigration status at the earliest opportunity the student is eligible to do so, but in no case later than one year after the date on which the student enrolls for study at the institution, or if there is no formal process to permit children of parents without lawful immigration status to apply for lawful status without risk of deportation, one year after the date the United States Citizenship and Immigration Services provides such a formal process.

South Carolina

In 2008, South Carolina passed HB 4400 (§59-101-430). The statute states: "An alien unlawfully present in the United States is not eligible to attend a public institution of higher learning in this State, as defined in Section 59-103-5. The trustees of a public institution of higher learning in this State shall develop and institute a process by which lawful presence in the United States is verified. In doing so, institution personnel shall not attempt to independently verify the immigration status of any alien, but shall verify any alien's immigration status with the federal government pursuant to 8 USC Section 1373(c). An alien unlawfully present in the United States is not eligible on the basis of residence for a public higher education benefit including, but not limited to, scholarships, financial aid, grants, or resident tuition."

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⁵ Ann Morse and Kerry Birnbach, *Immigrant Policy Project, National Conference of State Legislatures*. 2010. <http://www.ncsl.org/default.aspx?tabid=13100>