

NAVIGATING THE IMMIGRATION DEBATE

A Guide for State & Local Policymakers and Advocates



American Immigration Lawyers Association

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I. INTRODUCTION: STATE AND LOCAL ADVOCACY



Fed by a daily drumbeat of inflammatory rhetoric on cable television and talk radio, public frustration with our broken immigration system and federal inaction is now hyper-charged. It has transformed immigration policy from an inside-the-beltway debate into a political flashpoint jolting state houses and town halls across the country.

State and local legislators feeling heat from angry constituents have introduced a dizzying array of bills and ordinances. However, in most localities, it cannot legitimately be claimed that the influx of immigrants has created a true crisis. Case in point: A small, declining Maryland farm town profiled in the *Washington Post* recently debated restrictive immigration legislation even though there are less than two dozen foreign-born residents living there. Conversely, in locales where immigrants account for a greater percentage of residents, governing bodies have been more likely to introduce and enact legislation that welcomes foreign born members of the community.

To be sure, the arrival of newcomers has triggered cultural tensions and has stressed certain public services in some communities, particularly near the border. The legislative backlash, however, has been disproportionate to any actual public policy problems. At their best, these negative measures are a legitimate expression of local frustration targeting specific policy concerns resulting from an influx of migrants; at worst, they are cheap political haymakers that divide communities and wreak havoc on local economies.





Many of the negative measures that have passed are of dubious constitutionality and have been subjected to legal challenge. Many other proposals have died on the vine once the litigation and implementation costs were exposed. None of these measures, individually or in aggregate, represents a practical solution to the nation's immigration challenges. To the contrary, a patchwork of state and local efforts to address a uniquely federal policy concern harkens back to the nation's disastrous pre-constitutional experiment with the Articles of Confederation.

The federal government has allowed the failures of our immigration system to fester in communities across the country. And the federal government alone has the constitutional authority, institutional orientation, and national perspective to address them. Until it does, however, the country will continue to be engulfed in these localized skirmishes that are spreading like prairie fires across the land.

A recent review of state and local immigration initiatives published by the Progressive States Network reveals that positive immigration policies are gaining momentum around the country. Many states, including those where most immigrants live, now provide in-state tuition (so-called DREAM Acts) for undocumented immigrants going to public universities. Others are promoting policies to integrate immigrants through English language instruction and assistance in navigating the citizenship process. A number of states are even providing health insurance to undocumented children. Instead of trying to punish immigrant workers, states are increasingly working with native and immigrant workers to crack down on bad employers who are violating minimum wage, safety and workers compensation laws (see [The Anti-Immigrant Movement that Failed: Positive Integration Policies by State Governments Still Far Outweigh Punitive Policies Aimed at New Immigrants](#), PSN).

The 2009 edition of *Navigating the Immigration Debate—A Guide for State & Local Policymakers and Advocates* provides a roadmap for steering through the policy minefields created by this proliferating legislation. Organized around the following seven hot-button issues, the guide is designed to provide a basic orientation to the issues and an introduction to critical resources:

- [Restricting immigrants' access to public benefits and services](#)
- [Mandating verification of employment eligibility](#)
- [Restricting congregations of day laborers](#)
- [Establishing “English-only” policies](#)
- [Imposing restrictive housing policies](#)
- [Requiring state and local police to serve as immigration agents](#)
- [Restricting immigrants' access to driver's licenses](#)

Each of these issue sections contains: (1) a background summary that distills the central arguments, problems, and state of play; (2) a factual rebuttal of the most commonly propounded myths; (3) a synthesis of current legislative activity around the country; (4) a description of relevant litigation; and (5) a broad compilation of additional resources from individuals and organizations with issue expertise.

This guide should be viewed as a launching point for individuals concerned about immigration-related policy developments at the state and local level. We hope that the array of materials and organizations referenced herein help provide a roadmap for tapping in to the expertise of a growing network of national and local organizations committed to sustainable immigration solutions. We further hope that as the futility of pursuing localized responses to a national problem becomes manifest, state and local governments will channel their efforts into pressuring the federal government to act.









A. PUBLIC BENEFITS



(i) Background Information

Without a federal solution to our nation’s broken immigration system, state and local policy makers are taking matters into their own hands by drafting initiatives aimed at addressing the perceived threats and costs caused by undocumented immigrants. With mounting public pressure to “do something” policymakers have responded with an easy but ineffective answer: restricting immigrants’ access to public benefits and services.

Federal law already prohibits undocumented immigrants from accessing “federal public benefits,” a term which encompasses a range of federally-funded services. Undocumented immigrants are ineligible for all of the major “federal public benefits” programs such as: full-scope Medicaid, CHIP, Supplemental Security Income (SSI), Social Security, Medicare, Food Stamps, and TANF (cash assistance). Despite inflammatory rhetoric from anti-immigrant groups, these programs have never provided benefits to the undocumented (see [The Economic Impact of Immigration](#), IPC). Moreover, even legal immigrants found their access to “federal public benefits” severely limited following the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), also known as “welfare reform” (see [A Manual for HIV/AIDS Service Providers](#), National Immigration Project).





However, in situations when universal access to federal public benefits serves the greater good, Congress has refused to impose immigration status restrictions. Certain state and local programs that use federal funds must also guarantee universal access, such as emergency services under Medicaid; public health programs for immunizations and the testing and treatment of the symptoms of communicable diseases; short-term, non-cash, in-kind emergency disaster relief programs; and school lunches and breakfasts (see [Immigrant Eligibility for Public Benefits](#), NILC and [Immigrant Eligibility for Health Benefits](#), NCSL). Many states have even attempted to fill some of the gaps in non-citizen coverage resulting from the 1996 laws. In fact, over half of the states spend their own money to cover at least some of the immigrants who are ineligible for federally funded services (see [Overview of Immigrant Eligibility for Federal Programs](#), NILC). The FY08 Maryland budget bill (HB 50), for instance, appropriated \$5,000,000 in supplementary funding for medical assistance services to legal immigrants ineligible for the federal Medicaid program. While in California, SB 330 extended public benefits to migrant workers.

Still, a pernicious trend to deny even more benefits and services to immigrants in this country is gaining steam. It is rooted in the immigration debate from the early 1990s, famously initiated by California's 1994 ballot measure, Proposition 187. This proposal to restrict undocumented immigrants' access to most publicly-funded programs—including elementary education—was approved by California voters, although it was eventually ruled unconstitutional. While the measure's passage was an initial win for immigration restrictionists, Republican politicians' support for Proposition 187 eventually came back to haunt them, as Latino immigrants were inspired to apply for citizenship and vote them out of office following the ugly debate over this measure.

Arizona voters approved a related measure just a decade later, enacting Proposition 200 in 2004. Importantly, this initiative was opposed by many of the key Republican and Democratic leaders in Arizona, but it was still approved by an electorate frustrated with federal inaction on immigration reform. Arizona's Proposition 200 requires employees of state and local agencies to verify the immigration status of benefits applicants, and to report any "discovered" immigration law violations to the Department of Homeland Security or face criminal sanctions (see [Immigrants' Rights Update](#), NILC).

Within a year of Proposition 200's passage, more than twenty states had introduced approximately eighty bills aimed at restricting benefits for undocumented immigrants, at least seven of which directly copied some of the Arizona measure's provisions. This trend has continued into the present: in 2008, 56 such bills were introduced in 28 states, 4 which of became law. And in 2007, 115 such bills were introduced in thirty-nine states, fifteen of which became law (see [State Laws Related to Immigrants and Immigration in 2008](#), NCSL). For a list of bills addressing these issues see the [Legislative Activity](#) tab of this chapter.

The reason these proposals are so controversial is not because they deny undocumented immigrants benefits they are already disqualified from, but because they create restrictive documentation requirements for all applicants for public services and benefits that can impact U.S. citizens and legal immigrants. For example, in 2006 the Colorado House of Representatives passed a bill that "requires all state entities to verify the lawful presence of persons 18 years or older who apply for state, local, or federal public benefits" (Colorado HB 1023). Lawful presence is verified through producing a





state driver's license or ID card, a U.S. military ID card, U.S. Coast Guard merchant mariner card, or Native American tribal document, and by signing an affidavit affirming citizenship or legal status. For various reasons, many U.S. citizens do not have access to these documents, and were unable to obtain the benefit they need. Due to the nightmares caused by the implementation of this law, Colorado subsequently passed HB 1314, expanding the list of acceptable forms of identification.

Proponents of these restrictive measures hope that by making life in the U.S. less welcoming to immigrant families, many will “self-deport” (see [Immigrants' Rights Update](#), NILC). These restrictions will undoubtedly frighten immigrants, their families, and their communities who feel targeted by the measures (see [Documentation Requirements Relating to Health for the Immigrant Community](#), NCLR). Yet the idea that these restrictions will somehow help resolve the issue of undocumented immigration is foolhardy. Undocumented immigrants are here to work, not take welfare, and passing laws that further limit their access to public benefits will not lead these workers to leave the country. Instead, these laws will harm legally-present individuals—including U.S. citizens—who cannot produce sufficient documentation under the new rules (see [Medicaid: States Reported That Citizenship Requirement Resulted in Enrollment Decline for Eligible Citizens and Posed Administrative Burdens](#), GAO and [Not Getting What They Paid For: Limiting Immigrants' Access to Benefits Hurts Families Without Reducing Healthcare Costs](#), IPC).

Furthermore, creating additional barriers for accessing basic public benefits and services carries serious public health implications. As the National Council of La Raza (NCLR) warns, “when immigrant parents are afraid to visit health care providers, their citizen family members will lose access to care,” and as a consequence, communicable illnesses will be untreated and children will go without immunizations (see [Documentation Requirements Relating to Health for the Immigrant Community](#), NCLR). Public health depends on all members of the community having access to care. When any one segment of the population is marginalized, it seriously undermines the fight to eradicate serious childhood illnesses like rubella, and increases the risk that illnesses like influenza spread rapidly. It is simply not good public policy to prevent or impede a portion of the population from seeking health care, whether through publicly-funded health insurance programs for children or emergency medical assistance for victims of accidents or crimes.

Fortunately, not all recent legislation regarding immigrant access to public benefits is restrictive. Some states, including California, Maine, and Vermont, voted to provide alternate forms of aid to immigrant families, regardless of their status. Additionally, legal challenges to restrictions on services have been successful in Maryland (*Ehrlich v. Perez*, 908 A.2d 1220 (MD. Ct. App, Oct. 12, 2006)) and New York (*Aliessa v. Novello*, 96 NY.2d 418 (NY 2001)). For a partial list of legal challenges to these bills see the [Litigation](#) tab of this chapter.

Despite mounting frustration at the state and local level over federal inaction to correct our country's broken immigration system, state initiatives and local ordinances aimed at denying services to undocumented immigrants will not solve the problem. Such short-sighted policies are doomed because they fail to address the root causes of our current policy failures. They will only create fear and confusion that will obstruct lawful immigrants and U.S. citizens from accessing key health and social services that benefit us all.





(ii) Myths and Facts

MYTH: Undocumented immigrants can access the same public benefits as U.S. citizens.

FACT: Current federal law prohibits undocumented immigrants from accessing “federal public benefits,” a term which encompasses a range of federally funded services. Undocumented immigrants are not eligible for most “federal public benefits” programs such as: full-scope Medicaid, CHIP, Supplemental Security Income (SSI), Social Security, Medicare, Food Stamps, or TANF (cash assistance). Despite rhetoric from anti-immigrant groups, these restrictions are not new policy; these programs never included the undocumented.¹

However, in situations when universal access to federal public benefits serves the greater good, Congress has refused to impose immigration status restrictions. Certain state and local programs that use federal funds must also guarantee universal access, such as emergency services under Medicaid; public health programs for immunizations and the testing and treatment of the symptoms of communicable diseases; short-term, non-cash, in-kind emergency disaster relief programs; and school lunches and breakfasts.²

MYTH: Undocumented immigrants come to the United States to get welfare.

FACT: Undocumented immigrants come to the United States to work and reunite with family members.

In fact, undocumented immigrants are less likely than natives to use public services.³ On average, both legal and undocumented immigrants received about \$1,139 in health care, compared with \$2,546 for native-born residents. Although immigrants comprised 10% of the U.S. population in 1998, they accounted for only 8% of U.S. health care costs.⁴

An analysis of welfare data by researchers at the Urban Institute reveals that less than 1% of households headed by undocumented immigrants receive cash assistance for needy families, compared to 5% of households headed by native-born U.S. citizens.

Also, while 66% of Mexican immigrants report the withholding of Social Security taxes from their paychecks and 62% say that employers withhold income taxes, only 10% say they have ever sent a child to U.S. public schools, 7% indicate they have received Supplemental Security Income, and 5% or less report ever using food stamps, welfare, or unemployment compensation.⁵

Moreover, undocumented immigrants are ineligible for welfare, food stamps, full scope Medicaid, and most other public benefits.⁶

¹ [The Economic Impact of Immigration](#), IPC.

² [Immigrant Eligibility for Public Benefits](#), NILC.

³ [Facts About Immigrants' Low Use of Health Services and Public Benefits](#), NILC.

⁴ [The Economic Impact of Immigration](#), IPC.

⁵ [Five Myths About Immigration: Common Misconceptions Underlying U.S. Border-Enforcement Policy](#), IPC.

⁶ [Undocumented Immigrants: Myths and Reality](#), Urban Institute.





MYTH: Undocumented immigrants do not pay taxes that fund public benefits programs.

FACT: Immigrants pay taxes just like everyone else, in the form of income, property, sales, and other taxes at the federal, state, and local level. IRS Commissioner Mark Everson testified before the House Ways and Means Committee in July 2006 that undocumented immigrants paid almost \$50 billion in federal taxes from 1996 to 2003.⁷ The majority of the costs of schooling and other services are funded by these taxes.

As far as income tax payments go, sources vary in their accounts, but a range of studies find that immigrants pay between \$90 and \$140 billion a year in federal, state, and local taxes.

Additionally, the twelve million undocumented immigrants in the United States pay into Social Security and Medicare at a rate of approximately \$8.5 billion per year, yet they are unable to collect on the benefits.⁸

MYTH: Undocumented immigrants are a costly drain on the system.

FACT: Immigrants are a net fiscal benefit to the U.S. economy. According to a 1997 study by the National Academy of Sciences, “the average fiscal impact of immigrants . . . is positive in part because they tend to arrive at young working ages, in part because their descendants are expected to have higher skills and incomes, in part because they pay taxes for some items, such as national defense and interest on the federal debt, for which they do not impose costs, and in part because they will help to pay the public costs of the aging baby-boom generations.”

The National Academy of Sciences estimated that “the average immigrant pays nearly \$1,800 more in taxes than he or she costs in benefits” each year. However, the net tax contribution of an immigrant and his or her descendants is \$80,000: +\$105,000 at the federal level, but -\$25,000 at the state level.⁹

MYTH: A large share of schoolchildren are undocumented immigrants.

FACT: In 2000, only 1.5% of elementary school children (enrolled in kindergarten through 5th grade) and 3% of secondary children (grades 6–12) were undocumented. Slightly higher shares—5% in elementary and 4% in secondary schools—had undocumented parents.¹⁰

⁷ See IRS Commissioner Mark Everson testimony before the [House Ways and Means Committee](#).

⁸ [Paying Their Way and Then Some](#), NILC.

⁹ [The New Americans: Economic, Demographic, and Fiscal Effects of Immigration](#), James P. Smith and Barry Edmonston.

¹⁰ [Undocumented Immigrants: Myths and Reality](#), Urban Institute.





MYTH: Requiring citizenship documentation for benefits will save taxpayers money.

FACT: On July 24, 2007, House Oversight Committee Chairman Henry Waxman (D-CA) released two new analyses that examine the impact of new Medicaid citizenship documentation requirements in effect since 2006. A GAO analysis shows that the new restrictions have caused tens of thousands of eligible U.S. citizens to lose their Medicaid coverage,¹¹ and a report by the Committee's majority staff shows that implementation costs far outweigh any expenditure savings generated by excluding undocumented immigrants from Medicaid coverage.¹² For every \$100 spent by federal taxpayers to implement the new requirements in six states, the staff report found, only \$0.14 in Medicaid savings can be documented.¹³

¹¹ [States Reported That Citizenship Documentation Requirement Resulted in Enrollment Declines for Eligible Citizens and Posed Administrative Burdens](#), GAO.

¹² [Medicaid Citizenship Documentation Requirements Deny Coverage to Citizens and Cost Taxpayers Millions](#), Majority Staff, Committee on Oversight and Government Reform.

¹³ [The Pulse, AILA's Capitol Beat](#), AILA (members only).





(iii) Legislative Activity

ENACTED LAWS THAT RESTRICT IMMIGRANTS' ACCESS TO BENEFITS

STATE LEVEL

The following list of state measures was taken from a December, 2008 [report](#) published by the [National Conference of State Legislatures](#). Updates to the report are expected periodically.

Alaska SB 120 (Signed 5/28/08)

This Act limits the disclosure of certain records of the state Department of Labor and Workforce Development but requires that some confidential information must be provided to several federal agencies, such as the U.S. Department of Homeland Security, to verify the immigration status of an individual claiming unemployment benefits. Effective immediately.

Hawaii SB 2542 (To Governor 4/25/08)

Under this legislation, services provided by federally qualified health centers or rural health clinics to individuals not eligible for Medicaid benefits (which includes all unauthorized and some authorized immigrants) are not eligible for reimbursement. A federally qualified health center may apply for funding to modify its scope of services when the population it serves changes, for example, serving more migrant patients. It also appropriates \$1 million for the department of health to provide resources to community-based, non-profit health care providers for medical care of the uninsured.

Kansas SB 81 (Signed 5/18/08)

This law requires that individuals be U.S. citizens or legal aliens and present documentary evidence to prove their status in order to be eligible for Kansas's discretionary SCHIP.

Maine HB 1651 (Signed 3/21/08)

This law reduces funds for purchased social services, which include refugee services. It reduces funding for state-administered food stamps to legally-admitted aliens who are no longer eligible for federal food stamps.

Missouri HB 1549 (Omnibus bill, signed 7/7/08)

The law prohibits immigrants unlawfully present from receiving state or local public benefits, with the exceptions provided under 8 USC 1621(b). This does not prohibit emergency medical care, prenatal care, services offering alternatives to abortion, emergency assistance or legal assistance. It requires proof of lawful status for those over 18. Lawful presence must be verified by the federal government.

Minnesota HF 3376 (Signed 5/23/08)

Under this legislation, asylees, in addition to refugees, who have been in the U.S. for less than one year before applying are barred from being eligible for the diversionary work program, which is part of Minnesota's TANF program. The legislation also establishes the Interstate Compact for the Placement of Children, which excludes children entering the United States for the purpose of adoption from its jurisdiction. Additionally, the courts will also ensure that children exiting the foster care system have assistance in obtaining the documents necessary to live on their own, including green cards and school visas.





South Carolina HB 4400 (Omnibus bill, signed 6/4/08)

The law mandates lawful presence in order to receive public benefits and provides for exceptions, such as emergency health and disaster relief services, immunizations, prenatal care and domestic violence. Immigrant applicants have to submit an affidavit of their lawful presence, which will be subsequently verified through the federal SAVE program.

Utah SB 81 (Omnibus bill, signed 3/13/08)

It requires a state agencies to verify lawful presence of public benefit applicants through SAVE and provides for exceptions.

ENACTED LAWS THAT PROMOTE IMMIGRANTS' ACCESS TO BENEFITS

STATE LEVEL

The following list of state measures was taken from a December, 2008 [report](#) published by the [National Conference of State Legislatures](#). Updates to the report are expected periodically.

Colorado SB 177 (Signed 6/2/08)

This legislation addresses the Colorado Works Program, Colorado's TANF program. The law redefines "qualified alien" to refer directly to the definition used by the state board that conforms with the definition set out in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA). Under this legislation, the state department of human services is no longer explicitly required to report the citizenship status of members of families participating in the Colorado Works Program. The statute requiring the state department to report names and addresses of unlawful aliens to INS, except those who only receive benefits from Medicaid, is also repealed.

Colorado HB 1199 (Signed 4/7/08)

This law eliminates the one year residency requirement for receiving hospitalization assistance for the treatment of tuberculosis, which enhances the non-discrimination policy in providing programs and services related to testing for, diagnosing, and treating tuberculosis, regardless of national origin or immigration status.

Colorado HB 1285 (Signed 3/17/08)

This law appropriates funds to the Department of Health Care Policy and Financing. It appropriates \$47 million for medical service premiums for non-citizens, and \$3,000 for SAVE.

Colorado HB 1287 (Signed 3/17/08)

This law appropriates \$37.2 million to the Department of Human Services Office of Operations, of which \$71,000 shall be from the U.S. Department of Health and Human Services Office of Refugee Resettlement. It appropriates \$3.9 million to special purpose welfare programs to refugee assistance. It appropriates \$49.8 million to SAVE.

Florida HB 1193 (Vetoed 6/25/08)

This legislation would have provided for the development of a plan to implement a statewide electronic benefits transfer program for the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The program was structured to enable an individual who receives





an electronic benefit transfer card for food stamp benefits and temporary assistance payments—including refugee cash assistance payments and asylum applicant payments—to also use that card for WIC benefits.

Hawaii SB 2830 (To Governor 2/25/08)

This legislation expands the Kapuna care program, which provides daily living assistance to individuals over sixty years of age, including legal aliens, to include emergency and short-term respite services and grants for home modifications and family caregivers.

Illinois SB 1102 (Signed 7/9/08)

This law appropriates grants to assist Community and Migrant Health Centers to expand service capacity and develop additional sites.

Iowa SF 2425 (Signed 5/13/08)

If sufficient funding is available, this appropriations legislation allows Iowa's State Children's Health Insurance Program (SCHIP) to expand insurance coverage to legal immigrant children and pregnant women, who are not eligible under current federal guidelines.

Iowa SF 2430 (Signed 4/29/08)

This legislation provides for the creation of an individual development account program for low income refugees, subject to available funding. To assist in addressing the special needs of refugee families, the state would match deposits in those accounts up to \$2,000. The law also provides \$475,000 in grants for community micro-enterprise development organizations that serve underserved and low- to moderate-income individuals.

New York SB 6804 (Signed 4/23/08)

This law includes an allocation for migrant worker services. It also provides \$430,000 for services and expenses to community health centers to provide care to migrant and seasonal farm workers and their families, among others.

New York AB 10228 (Signed 9/25/08)

The Act provides that an alien, including a nonqualified alien, is eligible for residential services for victims of domestic violence.

Utah HB 336 (Signed 3/17/08)

This legislation creates the Refugee Services Fund, which will provide grants to refugee organizations that help meet the employment, language, education, health care, and other needs of refugees, and will encourage refugees who receive services to become donors to the fund once their financial situations improve.

Virginia HB 30 (Signed 5/9/08)

This law directs the Department of Social Services to develop a multi-lingual outreach program to ensure access to food stamps for qualified aliens who are U.S. citizens, to minimize the procedural burden on qualified aliens, and to provide that the eligibility of a qualified alien for Temporary Assistance for Needy Families (TANF) and social services will be determined without regard to immigration status to the extent possible. The legislation appropriates \$300,000 over two years to





train law enforcement in immigration law, policy, and the Spanish language. The legislation provides for a shorter certification period for food stamps for households containing migrants. It prohibits the Virginia State Bar and the Legal Service Corporation of Virginia from using funds provided in the act to file lawsuits on behalf of aliens present in the United States in violation of the law. The legislation provides that payments received pursuant to the State Criminal Alien Assistance Program for housing illegal aliens, estimated at \$2 million over two years, will be deposited directly into the general fund.

Washington HB 3168 (Signed 3/26/08)

This law establishes a Head Start Program to assist the educational needs of low-income populations in the early childhood education arena. Providers operating migrant and seasonal Head Start programs will be consulted in order to address the needs of children of migrant and seasonal farm worker families.

PENDING LEGISLATION

A number of other jurisdictions have introduced legislation on immigrants' access to public benefits. As state and local legislatures revisit these bills or consider new ones in 2009, this issue is certain to assume more prominence unless and until the federal government takes explicit preemptive action.

AL HB163	MS HB298	NY HB10228
AL SB106	MS HB350	NY SB1496
AL SB226	MS HB352	NY SB7185
AL SB590	MS HB1249	NY SB8413
AZ HB2624	MS HB1417	OK SB1157
AZ HB2750	MS HB1473	PA SB9
AZ SB1072	MS SB2069	RI HB7595
AZ SB1109	MS SB2279	RI HB7653
CA HB20	MS SB2564	RI HB7746
CA HB271	MS SB2776	RI HB7875
CA HB1328	MS SB2827	RI SB2220
CA HB1382	MS SB2984	RI SB2765
CA HB1930	MO HB1346	SC HB4388
CA HB2875	MO HB1626	SC SB869
CO HB1326	MO HB1655	SC SB1008
GA HB1219	MO SB751	TN HB73
IL HB6658	MO SB1186	TN HB406
IL SB2468	MO SB1255	TN HB407
IN HB1240	NE LB784	TN HB655
IN HB1385	NE LB963	TN HB3257
KS HB2367	NJ SB82	TN HB3961
LA HB1233	NJ SB1665	TN SB2791
MD HB604	NJ SCR69	TN SB2936
MD SB84	NY HB2345	VA HB439
MI HB6224	NY HB5932	VA HB1026
MI HB6225	NY HB6787	WV HB4581
MS HB241	NY HB9985	

To search for additional state immigration legislation visit the Migration Policy Institute's [State Law Database](#).





MODEL LEGISLATION

There exist positive and proactive alternatives to addressing this problem that states may want to consider. In a November 2007 strategy memo, the Progressive States Network highlights the idea that:

“Rather than pursuing useless and costly attempts to deny benefits that undocumented immigrants don’t even qualify for, many states are actually trying to spend more on new immigrants, recognizing that long-term investments in education and health care will pay off with a more skilled and healthy workforce in the future. More than half of the states spend their own funds to provide services to at least some immigrants ineligible for federal services” ([2007 Strategy Memo](#), Progressive States Network).

On medical care in particular, Illinois’ new [AllKids program](#) extended coverage to children of all income levels, regardless of immigration status. Illinois was joined by Massachusetts, Hawaii, and New York as those states continued to expand health benefits for many immigrant children.

Health care prevention and education are the most obvious places where leaders can make the case that attempts to save money today will just cost a lot more money down the line, with a sicker and less educated workforce in the future.

For model legislation, see [Washington SB 5093](#), which extends health coverage to all children in families earning up to 250% of the federal poverty line (moving to 300% in 2009), regardless of immigration status.





(iv) Litigation

Case: Ehrlich v. Perez, 908 A.2d 1220 (MD. Ct. App, Oct. 12, 2006).

In 1997, the Maryland General Assembly enacted Md. Ann. Code, Health-General Article §15-103(a)(2)(viii), which provided “comprehensive medical care and other health care services for all legal immigrant children under the age of 18 years and pregnant women who meet [Medicaid] eligibility standards and who arrived in the U.S. on or after August 22, 1996.”

In 2006, Maryland’s governor terminated state funding for medical services to “qualified” immigrant children and pregnant women who are ineligible for Medicaid due the federal five year bar. Advocates representing the affected immigrants sued. The state’s highest court applied “strict scrutiny” review to the governor’s actions and found that the immigrants were likely to win their claim that the cuts violated the state constitution’s equal protection clause. After the decision was issued, the state agency restored coverage for these children and pregnant women.

The Circuit Court for Montgomery County issued a [preliminary injunction](#) ordering that the state (i) provide Medicaid coverage for all those within the ambit of §15-103(a)(2)(viii) and (ii) reimburse recipients for the benefits that had been denied to them before the date of the order. The injunction was based on the equal protection provisions of Maryland’s constitution set forth in Article 24 of Maryland’s Declaration of Rights.

Case: [Aliessa v. Novello](#), 96 NY.2d 418 (NY 2001).

New York’s highest court has ruled that the state violated the U.S. and state constitutions when it denied state-funded Medicaid to certain immigrants who lost eligibility for Medicaid under the 1996 welfare reform law. The New York Court of Appeals in *Aliessa, et. al. v. Novello* held unanimously that a New York statute limiting immigrants’ eligibility for the state’s medical assistance program ran afoul of the equal protection clauses of the New York and U.S. constitutions, as well as the New York constitution’s requirement that the state and its subdivisions provide for the aid, care, and support of the needy.

Other states are not bound by a decision of a New York court. Nonetheless, they should take note of the court’s conclusion that states violate the U.S. Constitution when they discriminate among classes of immigrants in the administration of their benefit programs. The *Aliessa* decision should prompt states to examine their benefit programs for immigration-based classifications, including programs that fail to draw down federal funds for immigrants after the five-year bar, and it may encourage more states to extend benefits to all lawfully present immigrants. The decision could also add momentum to efforts to make federal funding available to restore benefits to qualified immigrants subject to the five-year bar.

For an updated list and additional information on legal challenges to state and local ordinances see the [Legal Action Center](#) at the American Immigration Law Foundation.





(v) More Resources

ORGANIZATIONS

- [**American Immigration Law Foundation \(AILF\)**](#)
- [**American Immigration Lawyers Association \(AILA\)**](#)
- [**Community Justice Project \(CJP\)**](#)
- [**Fair Immigration Reform Movement \(FIRM\)**](#)
- [**National Council of La Raza \(NCLR\)**](#)
- [**National Immigration Law Center \(NILC\)**](#)
- [**Nebraska Appleseed**](#)
- [**National Conference of State Legislatures \(NCSL\)**](#)
- [**Urban Institute**](#)
- [**Progressive States Network \(PSN\)**](#)

MATERIALS/REPORTS

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- **Center for Public Policy Priorities**
[PowerPoint Presentation on Immigrants and Public Benefits in Texas](#)
- **Community Justice Project (CJP)**
[Studies Show that Undocumented Immigrants Contribute to the National and Local Economy](#)
- **Government Accountability Office (GAO)**
[Medicaid: States Reported That Citizenship Documentation Requirement Resulted in Enrollment Decline for Eligible Citizens and Posed Administrative Burdens](#)
- [Medicaid Citizenship Documentation Requirements Deny Coverage to Citizens and Cost Taxpayers Millions](#)
- **National Center for Children in Poverty**
[Federal Policies Restrict Immigrant Children's Access to Key Public Benefits](#)





- **National Conference of State Legislatures (NCSL)**
[Immigrant Eligibility for Health Benefits](#)
[Health Care for Children of Immigrants, Annotated Bibliography](#)
[2006 State Legislation Related to Immigration: Enacted and Vetoed](#)
[State Laws Related to Immigrants and Immigration in 2008](#)
- **National Council of La Raza (NCLR)**
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[Overview of Immigrant Eligibility for Federal Programs](#)
[Immigrant Rights' Update: Most State Proposals to Restrict Benefits to Immigrants Failed in 2005](#)
[Paying Their Way and Then Some: Facts about the Contributions of Immigrants to Economic Growth and Public Investment](#)
[Facts About Immigrants' Low Use of Health Services and Public Benefits](#)
[State and Local Policies on Immigrant Access to Services: Promoting Integration or Isolation?](#)
[Immigrant Eligibility for Public Benefits](#)
- **Nebraska Appleseed**
[Immigrants and Public Benefits in Nebraska](#)
- **Progressive States Network**
[Fighting the Anti-Immigrant Movement in the States: Strategy Memo and Resources](#)
[Using Smart State Policy to Challenge the Anti-Immigrant Movement](#)

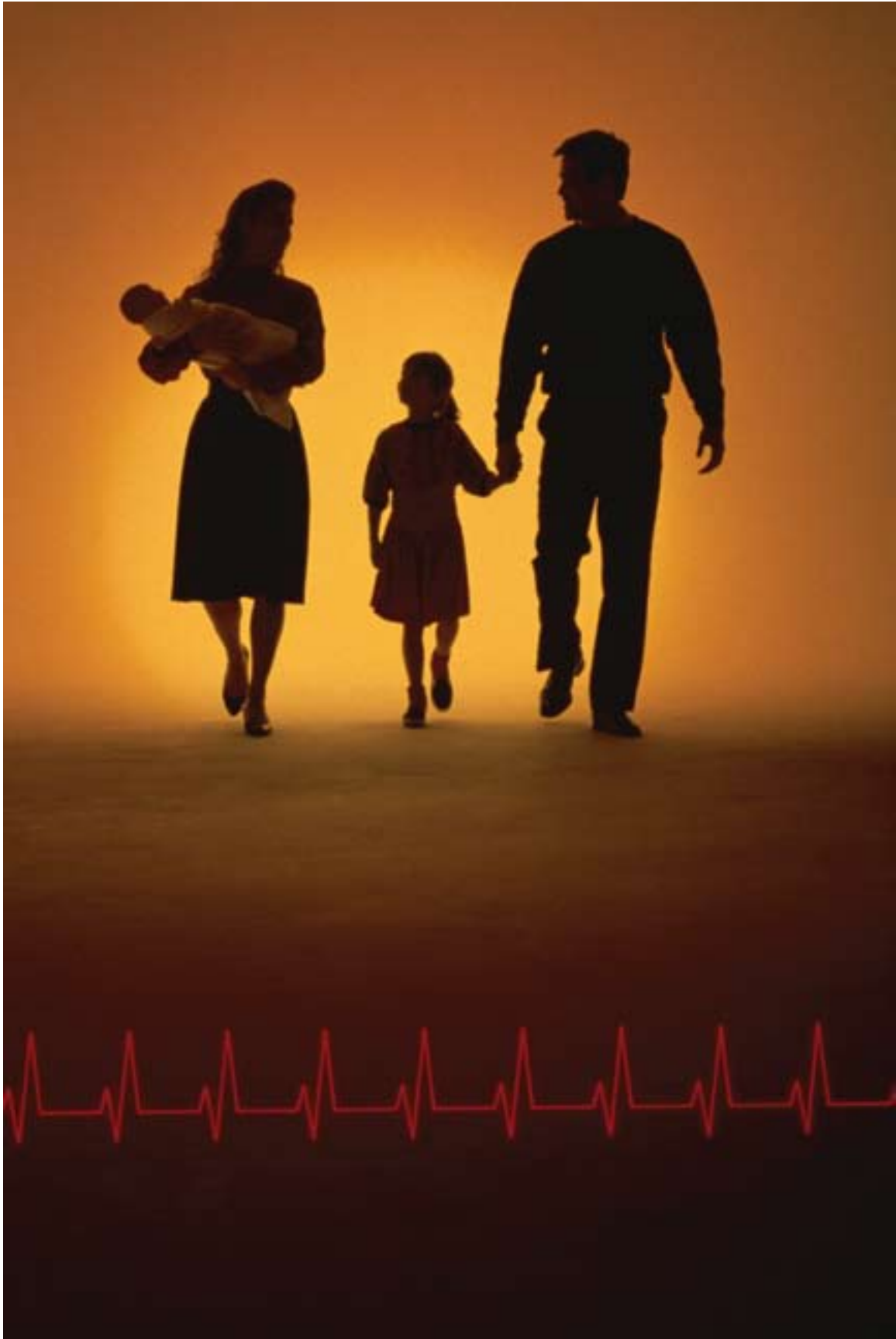
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- **Urban Institute**
[Undocumented Immigrants: Myths and Reality](#)


ADVOCACY TOOLS/CAMPAIGNS

- [AllKids program](#)





Listings



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B. EMPLOYMENT ELIGIBILITY VERIFICATION



(i) Background Information

The concept of “cracking down” on employers who hire unauthorized foreign workers is one of the most commonly-cited prescriptions for our nation’s immigration woes—that is, until one scratches the surface to examine why we have large-scale undocumented immigration in the first place. Immigrants come to the United States to work, and the bitter irony of our broken immigration system is the fact that while our immigration laws erect a “Keep Out” sign along the border, our economy even in as bad shape as it is currently in, beckons immigrants with “Help Wanted” signs.

The demand for immigrant workers in the U.S. far outweighs the supply of legal visas, leading an estimated 500,000 or more potential workers to come to the U.S. without legal work authorization every year (see [State Laws Related to Immigrants and Immigration in 2008](#), Pew Hispanic Center). At the same time, employers are subject to the penalties of fines and possible incarceration for knowingly hiring an undocumented worker.

Since 1996, the federal government has made efforts to create an electronic system that would allow employers to verify an employee’s work authorization. Originally known as the “Basic Pilot” system, this program was recently re-branded “E-Verify” by the Department of Homeland Security. There are serious privacy, civil liberties, budgetary and technological questions that must be addressed before this pilot program will be ready for prime time. Furthermore, E-Verify relies upon databases





that contain unacceptably high percentages of outdated or simply inaccurate information (see [Basic Pilot / E-Verify: Not a Magic Bullet](#), NILC). Because an error in a database has the severe consequence of preventing someone from being able to work, these problems with the current program are of grave import.

While E-Verify was wisely established as a voluntary program, some state legislatures have passed measures that would mandate its use within their jurisdictions in a misguided attempt to show they are tough on undocumented immigrants and the businesses that hire them. For a list of bills addressing this issue, see the [Legislative Activity](#) tab of this chapter.

States like Colorado, Arizona, Georgia, and Oklahoma have already signed these ill-conceived measures into law, even though the provisions will hurt their own states' economies and workforces (see [State Laws Related to Immigrants and Immigration in 2008](#), NCSL and [BASIC PILOT/E-VERIFY](#), NILC). In fact, a growing body of anecdotal evidence shows that these measures are already having serious negative impacts on their local economies (see [Erecting Its Own Tombstone: Arizona's Mandatory Basic Pilot /E-Verify Law](#), NILC, and [E-Verify and Arizona: Early Experiences Portend a Rough Road Ahead](#), IPC).

In Illinois, lawmakers have taken the opposite approach by passing HB 1744, which states that businesses may not participate in E-Verify until there is evidence that the program's accuracy rate is substantially improved. This law, however, as with many of the other states' immigration-focused laws, is currently facing a court challenge (see [USA v. Illinois](#))— this time from the federal government--and may be amended or invalidated as a result. For a partial list of legal challenges to these bills, see the [Litigation](#) tab of this chapter.

This conflict between federal and state laws on the topic of employment eligibility verification is a direct result of the federal government's failure to provide an immigration solution for employers, workers, and the public at large. Furthermore, as is often the case when laws are passed without careful consideration of the consequences, these laws have been hung up in the judicial process and their full effects are not yet known.

All told, sanctions on employers and efforts to make employment eligibility verification mandatory nationwide will not solve our nation's immigration crisis. Only updating our immigration admissions laws to meet reality will restore control and order to our immigration system.





(ii) Myths and Facts

MYTH: There is no liability for an employer who hires an undocumented worker; therefore, states must create their own employment verification requirements and their own penalties for businesses that hire unauthorized immigrants.

FACT: Until 1986, no federal law actually made it illegal for an employer to hire an immigrant worker who was not authorized to work in the U.S. In 1986, Congress considered the Immigration Reform and Control Act of 1986 (IRCA). One of the most intensely-debated aspects of this measure was whether to impose penalties on employers who hire undocumented workers. It was argued that by creating what are now referred to as “employer sanctions,” employers would have a major disincentive for hiring such noncitizens.

IRCA set out the basic framework that requires employers to verify the employment eligibility of newly-hired employees. IRCA made it unlawful for employers to knowingly hire or continue to employ unauthorized workers. All new hires were required to fill out the new Form I-9 in an accurate and timely manner. The [I-9 form](#)—still in use today—has three parts:

1. The employee must complete section one of the form at the time of hire or when the employee begins work. In this section, the employee provides documentation of her identity and work eligibility. In 1996, Congress enacted the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), which among other major changes to immigration policy, reduced the number of documents that employers may accept from newly-hired employees during the employment verification process.
2. The employer must complete section two of the form within three business days of hire, and certify that the employee’s documents of identity and work authorization appear to be genuine and belong to the employee.
3. The employer completes section three of the form when it is necessary to update or re-verify an employee’s work authorization document(s).

For more information, read how [USCIS explains the I-9 form](#).

If the Department of Homeland Security finds that a business is employing an unauthorized worker, sanctions can be imposed. Employers who do not properly use and retain the I-9 forms can face a civil penalty ranging from \$110 to \$1,100. If the employer is found to have been employing unauthorized workers, penalties start in the \$275 to \$2,200 range, with amounts increasing for repeat violators. When an employer is convicted of having engaged in a pattern or practice of knowingly hiring unauthorized workers, the fine can go up to \$3,000 and include six months imprisonment.





MYTH: The I-9 employment eligibility form is easy to fill out, and provides clear guidelines on how to identify and verify document authenticity without running afoul of anti-discrimination laws.

FACT: Despite being given a huge new mandate by Congress in the 1986 law, employers received very little or no training in how to determine the authenticity of documents used to prove identification and employment eligibility in the new system. On the one hand, some employers violated the rights of legal workers by using racial and linguistic profiling to narrow the applicant pool, with the goal of avoiding liability for hiring an undocumented worker. A 1990 Government Accountability Office (GAO) study found there to be a “widespread pattern of discrimination” in the manner in which employers were implementing the I-9 verification process.¹ On the other hand, other employers accepted almost any document offered to them, with the goal of avoiding charges of discrimination by asking too many questions about a particular document or applicant. To date, the system is still wholly inadequate according to both employer and worker groups, and both camps agree that fundamental reforms are needed to make the system work.

MYTH: The federal government is simply not enforcing the employer sanctions laws, therefore state and local governments must fill the void.

FACT: There are an estimated twelve million undocumented immigrants in the U.S. today, with some seven million of them working in our economy. U.S. Immigration and Customs Enforcement (ICE) has begun what DHS Secretary Michael Chertoff calls a “strategic shift” in enforcement by focusing on employers that knowingly or recklessly hire undocumented immigrants.² While the former INS brought just 25 criminal charges against employers in 2002, ICE arrested 716 employers in 2006³ and 863 in 2007.⁴ Whether the number of employers sanctioned is seven or seven hundred, enforcement-alone is not a solution to the problem of undocumented immigration. We have seven million undocumented immigrants working in our country today, and clearly we cannot enforce our way out of this situation, even if the states get involved in punishing employers who hire undocumented workers.

MYTH: Employers now have an easy to use, quick, and fool-proof method of checking employment eligibility.

FACT: In an attempt to create a better method for determining work authorization, the 1996 legislative package called IIRIRA established the Basic Pilot Program, or as the Department of Homeland Security now calls it, [E-Verify](#).

E-Verify is a federally-run, voluntary program whereby an employer enters form I-9 data (name; date of birth; Social Security number) into a computer within three days of an employee’s hire

¹ [Immigration Reform: Employer Sanctions and the Question of Discrimination](#), GAO.

² [Department of Homeland Security unveils comprehensive immigration enforcement strategy for the nation’s interior](#), ICE.

³ [Executive Summary of ICE Accomplishments in Fiscal Year 2006](#), ICE.

⁴ [Fiscal Year 2007 Annual Report](#), ICE.





date. The information is then compared with databases maintained by the Social Security Administration (SSA) and Department of Homeland Security (DHS), where USCIS oversees the program. If work authorization cannot be confirmed, the employer must notify the employee of the finding, referred to as a “tentative non-confirmation.” The employee has the right to clear up the discrepancy by contacting SSA and/or USCIS, as appropriate, but cannot be hired long-term unless the non-confirmation is resolved.

While in concept E-Verify sounds like an easy and efficient way for employers to check the work authorization of new hires, major problems still exist with this program. The fundamental problem remains the fact that DHS must run the identity data it receives against the SSA database, a database whose purpose and function was not for meant for immigration enforcement.

Employers and immigration advocates also point out that with the obligation to scrutinize the immigration status of potential employees against a flawed database, E-Verify can lead to increased employment discrimination as employers illegally pre-screen applicants or make other assumptions about potential workers based on ethnic or linguistic characteristics. Immigration attorney Carl Shusterman pointed out in a 1995 National Law Journal article that:

When Congress enacted the Immigration Reform and Control Act of 1986 (IRCA), it placed employers in the schizophrenic role as both enforcers and targets of our immigration laws. Employers are charged with the duty of reducing the employment “magnet” for illegal immigrants and are obligated to exercise great caution not to hire an unauthorized worker. At the same time, they may not discriminate against foreign-born job applicants or request that an applicant present a particular work-related document. In short, IRCA’s mandate to employers is to make sure that a job applicant is authorized to work before you hire him, but don’t ask too many questions lest you commit discrimination or document abuse.⁵

⁵ [Immigration laws place employers on the defensive: A delicate balancing act is required](#), Shusterman.





MYTH: If there are problems with the E-Verify system, Congress and the federal government can simply address them.

FACT: Congress has had a number of hearings looking into the issue of electronic verification and has yet to come any closer to a workable solution. A selected sample of testimony Congress has heard includes:

[John W. \(Jack\) Shandley](#), Senior Vice President, Human Resources, Swift & Company, Greeley, Colorado.

[Stephen Yale-Loehr](#), Adjunct Professor, Cornell University Law School.

[Marc R. Rosenblum](#), Robert Dupuy Professor of Pan-American Studies and Associate Professor of Political Science, University of New Orleans, Fellow, Migration Policy Institute.

[Tyler Moran](#), Employment Policy Director, National Immigration Law Center.

[Angelo I. Amador](#), Director of Immigration Policy, U.S. Chamber of Commerce.

[Marc Rotenberg](#), Executive Director, Electronic Privacy Information Center.

[Richard Stana](#), Director of Homeland Security and Justice Issues, Government Accountability Office.

[Muzaffar A. Chishti](#), Director, Migration Policy Institute's office at New York University School of Law.

[Cecilia Muñoz](#), Vice President, Office of Research, Advocacy, and Legislation, National Council of La Raza.

House Immigration Subcommittee hearing on "[Electronic Employment Verification Systems: Needed Safeguards to Protect Privacy and Prevent Misuse](#)", June 10, 2008.

House Ways and Means Committee hearing on "[Employment Eligibility Verification Systems](#)", June 7, 2007.

For an extensive report on the E-Verify program, see the Westat report: "[Findings of the Web Basic Pilot Evaluation](#)."





(iii) Legislative Activity

ENACTED LAWS THAT REQUIRE PARTICIPATION IN THE BASIC PILOT PROGRAM, OR OTHERWISE ENFORCE DOCUMENTATION REQUIREMENTS FOR WORKERS

STATE LEVEL

The following list of state measures was taken from a December, 2008 [report](#) published by the [National Conference of State Legislatures](#). Updates to the report are expected periodically.

Alabama SJR 38 (Signed 5/6/08)

This resolution urges the President of the United States and Congress to develop a comprehensive guest worker program, ensure that federal benefits are delivered to qualified applicants, allocate adequate resources to the U.S. DHS to secure the borders and ensure that the current E-Verify system is fully functional.

Arizona SB 1125 (Signed 5/12/08)

This law provides for additional employer penalties and the payment of compensation benefits to an employee or to the employee's estate if an employee injury results in permanent disability or death. An employee is defined as every person in the service of any employer subject to this chapter, including aliens and minors legally or illegally permitted to work for hire.

Arizona HB 2745 (Signed 5/1/08)

This Act adjusts the prohibitions against knowingly or intentionally employing an unauthorized alien and eliminates independent contractors from the definition of employee. It provides for the Arizona Attorney General to establish a Voluntary Employer Enhanced Compliance Program. After September 30, 2008, the law prohibits an agency from issuing a license to an individual who does not establish legal presence and prohibits government entities from awarding a contract to any contractor and subcontractor that fails to use E-Verify. The Act establishes the crime of knowingly accepting the identity of another person or entity and expands the definitions of identity theft. The Act also provides that companies can be punished only for unauthorized workers they hired after January 1, 2008 and that a violation at one location of a company shuts down only that location, not the entire corporation.

Colorado SB 139 (Signed 5/20/08)

This law requires that employers be notified of the prohibition against hiring an unauthorized alien and the availability of and participation requirements for the federal E-Verify program. The Act requires the Department of Labor and Employment's website to provide this information.

Colorado SB 193 (Signed 5/13/08)

The law creates a program to allow a contractor to verify employment eligibility of all employees under a public contract and requires future participation in the Federal Electronic Employment Eligibility Program or the department program to verify the employment eligibility of certain employees.





Florida HB 601 (Signed 6/30/08)

The law would revise duties of farm labor contractors and eliminates the requirement of a farm labor contractor to submit a set of fingerprints.

Idaho HB 445 (Signed 3/3/08)

The law requires that a provision in the Idaho Code that prohibits employment of persons who are not U.S. citizens or eligible to become citizens on public works projects shall not apply to Capitol building projects.

Mississippi SB 2988 (Signed 3/17/08)

The Act requires every employer in the state to use the E-Verify program to verify the employment authorization status of all newly-hired employees. No contractor or subcontractor shall hire any employee unless registered and participating in the system. State agencies and employers with at least 250 employees must comply by July 1, 2008; employers with 100–249 employees must comply by July 1, 2009; employers with 30–99 employees must comply by July 1, 2010; and all employers by July 1, 2011. Penalties include loss of public contracts for up to three years, loss of licenses for up to one year, or both. Additionally, the law makes it a felony for unauthorized workers to knowingly accept or perform work in the state and it creates a private cause of action for legal U.S. residents laid off and replaced by unauthorized workers.

Missouri HB1549 (Omnibus bill, signed 07/07/08)

No employer shall knowingly employ an unauthorized alien. Any public contractor or subcontractor must, by sworn affidavit, affirm its enrollment and participation in a federal work authorization program. All public employers must enroll and participate in a federal work authorization program. If a court finds that a business knowingly employed someone not authorized to work, the company's business permit and licenses shall be suspended for 14 days. Upon the first violation, the state may terminate contracts and bar the company from doing business with the state for 3 years. Upon the second violation, the state may permanently debar the company from doing business with the state. Compensation shall not be allowed as a business expense deduction for unauthorized aliens.

Missouri HB 2058 (Signed 6/11/08)

This law requires that any applicant of a tax credit program who purposely and directly employs unauthorized aliens has to forfeit any tax credits and must repay the amount of any tax credits redeemed during the period when an unauthorized alien was employed by the applicant.

South Carolina HB 4400 (Omnibus bill, signed 06/04/08)

The Act requires public employers and public contractors to register and participate in the federal work authorization program E-Verify to verify all new employees. All public employers, private employers with more than 100 employees and public contractors with more than 500 employees must comply with the law's provisions on or after January 1, 2009; contractors with more than 100 employees on July 1, 2009; and all other contractors on January 1, 2010. The penalty for knowingly hiring unauthorized immigrants is a felony and punishable with up to five years in prison.





The law provides for a private cause of action for an authorized employee, if he or she is discharged and replaced with an unauthorized employee. A business expense deduction for an unauthorized worker is disallowed and the law mandates withholding of seven percent income tax, if the employee does not provide a SSN or ITIN.

Tennessee SB 4069 (Signed 4/29/08)

The Act provides that upon receiving a complaint regarding the hiring of an illegal alien the Commissioner of the Department of Labor and Workforce Development shall inform the person against whom a complaint is made that they may request the name of the person filing the complaint.

Utah SB 81 (Omnibus bill, signed 3/13/08)

The law requires public employers, public contractors and subcontractors to use the federal work authorization program. It is unlawful to discharge a lawful employee while retaining an unauthorized alien in the same job category.

Virginia HB 926/SB 782 (Signed 3/12/08)

This law provides for various disciplinary actions including revocation or cancellation of a certificate of authority, certificate of organization, or certificate of trust of any domestic or foreign corporation, limited liability company, limited partnership, or business trust conducting business in this state, for a violation of state or federal law prohibiting the employment of illegal aliens.

Virginia HB 1298/SB 517 (Signed 3/12/08)

All public bodies shall provide in every written contract that the contractor does not, and shall not, during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

Virginia HB 1386 (Signed 3/10/08)

The law provides for a program with federal eligibility requirements set by the U.S. Department of Veterans Affairs for service-disabled veteran-owned small businesses and defines small businesses as those owned by U.S. citizens or non-citizens who are in full compliance with immigration law.

West Virginia HB 4255 (Signed 3/27/08)

The law authorizes the Division of Labor to promulgate a legislative rule relating to verifying the legal employment status of workers.





PENDING LEGISLATION

A number of other jurisdictions have introduced legislation on state or local enforcement of laws against hiring undocumented workers. As state and local legislatures revisit these bills or consider new ones in 2009, this issue is certain to assume more prominence unless and until the federal government takes explicit preemptive action.

AL HB74	FL SB388	MI HB6375	RI HB7597
AL HB727	ID SB1513	MI SB1216	SC HB4400
AL SB526	IL HB773	MS HB486	SC SB1336
AZ HB2063	IL HB5656	MS HB937	SD HB1121
AZ HB2341	IL HB5718	MS HB949	TN HB66
AZ HB2342	IL SB1878	MS HB967	TN HB74
AZ HB2343	IN HB1219	MS HB970	TN HB727
AZ HB2344	IN SB345	MS HB987	TN HB684
AZ HB2345	IA HB2026	MS HB1421	TN HB2527
AZ HB2346	IA HB2610	MS SB2037	TN HB2992
AZ HB2745	IA HB2686	MS SB2988	TN HB3024
AZ HB2791	IA SB2257	MO HB1381	TN HB3111
AZ SB1374	IA SB2416	MO HB1757	TN HB3929
AZ SB1482	KS HB2023	MO HB2179	TN SB204
CA HB107	KS HB2163	MO HB2320	TN SB3722
CA HB689	KS HB2680	MO SB858	VA HB926
CA HB735	KS HB2921	MO SB927	UT HB98
CA HB1615	KS HB2954	NE LB1170	UT HB257
CA HB2028	KS SB260	NJ HB3289	VA HB90
CA HB2076	LA HB1082	NJ SB1312	VA HB1047
CA HB2089	LA HB1103	NJ SB1341	VA HB1249
CA HB2102	LA HB1380	NY HB7588	VA HB1298
CA HB2201	MD HB866	NY HB10193	VA HB1558
CA HB2421	MD SB650	NY HB11207	VA SB90
CA SB189	MI HB5783	NC HB2610	VA SB426
CO HB1325	MI HB6327	NC SB2002	WV HB4547
CO SB83	MI HB6328	OK SB1161	WI HB101
CO SB139	MI HB6329	OK SB2085	WI HB712
DE SB132	MI HB6330	PA HB2202	WI SB404
FL HB159	MI HB6331	RI HB7107	
FL SB124	MI HB6332	RI SB2091	

To search for additional state immigration legislation visit the Migration Policy Institute’s [State Law Database](#)





MODEL LEGISLATION

Illinois HB 1744 (Signed 8/13/2007)

This act amends the Right to Privacy in the Workplace Act and prohibits employers from enrolling in any Employment Eligibility Verification System, including the Basic Pilot program, until the Social Security Administration and Department of Homeland Security databases are able to make a determination on 99% of the tentative non-confirmation notices issued to employers within three days, unless otherwise required by federal law. It provides that the Department of Human Rights shall establish a statewide advisory council to study the effects of Employment Eligibility Verification Systems, including the Basic Pilot program, on employers and employees in Illinois.





(iv) Litigation

Case: [AFL-CIO vs. Chertoff](#) (3:07-cv-04472-CRB (N.D. Cal.)).

On June 14, 2006 the Department of Homeland Security issued a proposed regulation regarding an employer’s legal obligations upon receiving a letter from the Social Security Administration (SSA), entitled “[Safe Harbor Procedures for Employers Who Receive a No-Match Letter](#).”

On August 29, 2007, the AFL-CIO and local San Francisco labor organizations, represented by the ACLU of Northern California, the ACLU Immigrants’ Rights Project, the National Immigration Law Center, and private cooperating attorneys, filed a lawsuit in the United States District Court for the Northern District of California to challenge the pending Department of Homeland Security rule. In the past, the Social Security Administration had periodically sent out “no-match” letters to inform employers that employee names on W-2 forms they submitted did not match with assigned Social Security numbers. Those letters were deemed advisory and imposed no duties on employers. Under the new rule, if an employer receives a “no-match” letter,” the employer is required to give the employee ninety days to resolve the data discrepancy with the Social Security Administration or face termination. Failure of employers to take necessary action can subject the employer to certain liabilities.

Plaintiffs took the position that the new rule was beyond the authority of the Department of Homeland Security, which was attempting to use data maintained by the Social Security Administration for immigration enforcement. Plaintiffs predicted that the new rule would wreak havoc on employers and jeopardize the jobs of employees legally working in the U.S., on account of clerical errors and other problems with data kept by the Social Security Administration.

Immediately after filing the complaint, Plaintiffs filed a request that the court issue a [temporary restraining order and preliminary injunction](#). The District Court (Judge Maxine M. Chesney) issued a [TRO](#) on August 31, 2007, enjoining the Department of Homeland Security from implementing the rule pending further hearings on the matter.

Following a hearing, District Court Judge Charles R. Breyer issued a [preliminary injunction](#) and ordered the parties to meet and confer on the form of the injunction, and submit a proposed order by October 12, 2007.

For more information and documents on this case, see the [ACLU’s litigation page](#).

Case: [Arizona Contractors Assoc. v. Candelaria](#) (No. 07-2496 (D. Ariz. 12/9/07))

On 07/02/07 Arizona became the first state to require every employer to enroll and participate in DHS’s flawed E-Verify program to verify the employment eligibility of all newly hired workers when it passed [H.B. 2779](#). Dubbed “The Legal Arizona Workers Act,” the poorly crafted law (which took effect January 1, 2008) also created state penalties for employers who “knowingly” or “intentionally” employ undocumented workers, including the possible suspension or revocation of business licenses, and additional reporting and compliance requirements.





Shortly after its passage, several national and local groups [filed suit](#) in federal district court asking that implementation of the law be delayed because it conflicted with federal law, violated constitutional due process rights, increased discrimination against foreign-born workers, and would cause severe economic hardship to the state. These lawsuits were consolidated, and on 02/07/08 the court [denied the requests to delay implementation of the new law](#).

In response, an appeal was filed with the 9th Circuit Court of Appeals in April 2008. For more information view the [Opening brief](#) and the [Plaintiffs'/Appellants' Consolidated Reply Brief](#) in that case.

On 09/17/08, the 9th U.S. Circuit Court of Appeals [rejected the challenge](#) by business and civil rights groups and upheld the Legal Arizona Workers Act. In response, a [petition for rehearing and rehearing en banc](#) was filed on October 1, 2008.

For more information see the ACLU's [Arizona Employers Sanction Litigation](#) page, the [Legal Action Center](#) at the American Immigration Law Foundation, and the [Arizona Employers for Immigration Reform](#) page.

Case: [United States et al. v. Henry](#)

On 06/04/08, a U.S. District Court Judge postponed enforcement of employer-related portions of Oklahoma's Taxpayer and Citizen Protection Act of 2007 ([H.B. 1804](#), passed on 5/8/07). The judge found not only that the law likely amounts to an unconstitutional preemption of federal authority over immigration, but would cause "irreparable harm" to businesses faced with "the choice of complying with either state or federal law, but not both." Joining as co-plaintiffs were The State Chamber of Oklahoma, Greater Oklahoma City Chamber, Tulsa Metro Chamber, Oklahoma Restaurant Association and Oklahoma Hotel and Lodging Association. A final judgment in Chamber of Commerce of the United States et al. v. Henry is still pending.

For more information, read the full text of the [Petition for Declaratory Judgment and Injunction](#), the [Preliminary Injunction Order](#) and the [Order of Injunction](#).

The Oklahoma law would require employers doing business with the state to use the "Basic Pilot Program" (also known as "E-Verify"), the federal government's voluntary and error riddled experimental program for electronically verifying work eligibility. The court's decision to issue a preliminary injunction was based on its finding that it is "substantially likely" that the law unconstitutionally imposes civil sanctions on employers who fail to comply with the law. The Oklahoma law's sanctions include increased tax rates, the loss of contracts, and exposure to litigation if an employer "should have known" that an employee was unauthorized to work.

See also: [Stewart v. Cherokee County, GA](#), and [US v. Illinois](#).

For an updated list and additional information on legal challenges to state and local ordinances see the [Legal Action Center](#) at the American Immigration Law Foundation.





(v) More Resources

ORGANIZATIONS

- [American Civil Liberties Union \(ACLU\)](#)
- [American Council on International Personnel \(ACIP\)](#)
- [American Immigration Lawyers Association \(AILA\)](#)
- [College and University Professional Association for Human Resources \(CUPA-HR\)](#)
- [Food Marketing Institute \(FMI\)](#)
- [HR Policy Association](#)
- [International Public Management Association for Human Resources \(IPMA-HR\)](#)
- [Immigration Works USA](#)
- [Immigration Policy Center](#)
- [National Association of Manufacturers \(NAM\)](#)
- [National Employment Law Project \(NELP\)](#)
- [National Immigration Law Center \(NILC\)](#)
- [Service Employees International Union \(SEIU\)](#)
- [Society for Human Resource Management \(SHRM\)](#)

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[E-Verify and Arizona: Early Experiences Portend a Rough Road Ahead](#)
- **Carl Shusterman**
[Immigration laws place employers on the defensive: A delicate balancing act is required](#)
- **Fair Immigration Reform Movement (FIRM)**
[Database of Local Ordinances](#)
- **The Human Resource Initiative for a Legal Workforce Principles**
[2007 Principles](#)
[What are Biometric Identifiers?](#)
- **Mexican American Legal Defense and Educational Fund (MALDEF)**
[Talking Points on Anti-Immigrant Ordinances](#)
- **Migration Policy Institute (MPI)**
[The Impact of Immigration on Native Workers: A Fresh Look at the Evidence](#)





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[State Laws Related to Immigrants and Immigration in 2008](#)

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- **National Immigration Law Center (NILC)**
[BASIC PILOT/E-VERIFY](#)
[Most State Bills Mandating Use of the Employment Eligibility Verification Basic Pilot Fail in 2007](#)
[Why States and Localities Should Not Require Employer Participation in the Basic Pilot Program](#)
[Basic Pilot / E-Verify: Not a Magic Bullet](#)
[State and Local Proposals that Punish Employers for Hiring Undocumented Workers Are Unenforceable, Unnecessary, and Bad Policy](#)
[Erecting Its Own Tombstone: Arizona's Mandatory Basic Pilot /E-Verify Law](#)
[Oppose State and Local Proposals to Make Basic Pilot Mandatory: Talking Points](#)
- **Pew Hispanic Center**
[The Size and Characteristics of the Unauthorized Migrant Population in the U.S.](#)

[ADVOCACY TOOLS/CAMPAIGNS](#)

- [Texans for Sensible Immigration Policy](#)

[OPPOSITION-RELATED CAMPAIGNS](#)

- [Illegal Employers](#)
- [We Hire Aliens](#)







C. DAY LABORER SITES



(i) Background Information

A small town situated near the foothills of the Blue Ridge Mountains, in a region steeped in Civil War history, might seem an unlikely battleground for yet another, albeit modern-day, fight over issues deeply dividing the country. But in 2005, when the mayor of this town announced his proposal to create a hiring site to assist day laborers in finding jobs, this is exactly what Herndon, Virginia became: one of the frontlines in the battle over immigration. In August 2005, anti-immigrant restrictionist groups got wind of Herndon's plans and engaged in a systematic campaign to ratchet up as much opposition as they could, drawing federal, state, and local politicians into the mix, and thrusting the issue, and this small community, into the national spotlight of the broader immigration debate (see [Day-Labor Centers Spark Immigration Debate](#), National Public Radio).

Generally hired for the duration of a particular job, immigrant day laborers are employed in landscaping, construction, manufacturing, and the service sectors. Day laborers obtain work through a variety of means. Some follow the long tradition of assembling at an informal “shape-up” site to negotiate work with employers. Temporary employment agencies are also serving as corporate intermediaries between day laborers and third party employers. Regardless of how the work is obtained, day laborers offer employers a flexible labor source, yet are frequently subject to egregious employment law violations (see [Non-Standard Worker Project](#), NELP).





In December 2005, the City Council of Herndon opened a publicly-funded day labor hiring site. This site, operated by a non-profit entity, functioned very well for several months, but the idea of spending public funds to run an official worker center ignited the ire of anti-immigration activists who believed that such centers would only encourage loitering, crime, and illegal immigration. Due to political pressures the city dismissed the nonprofit entity in August 2007 and sought to transfer control over the site to a private employment company that would be required to check the documentation of workers. The city also passed another anti-solicitation ordinance that ensured unauthorized immigrants had no public space in which to solicit work. For a list of additional laws and ordinances addressing this issue see the [Legislative Activity](#) tab of this chapter.

In September 2007, after a Fairfax County Circuit Court judge ruled that the hiring site had to be open to all, regardless of immigration status, the Herndon Town Council chose to shut the center down rather than comply with the ruling. As was the case in Herndon, ordinances targeting day labor sites have so far failed. Scholars have shown that the center, and others like it, neither harbors undocumented immigrants nor aids and abets in illegal activity (see [The Day Laborer Debate: Small Town, U.S.A. Takes on Federal Immigration Law Regarding Undocumented Workers](#)).

That said, Herndon is not alone in the effort to provide a safe and fair center for willing workers and willing employers to meet up; many other similar situations exist. In Farmingdale on Long Island, New York, for example, advocates fought to create a temporary hiring site that was later shut down because of strong opposition and waning political support for a permanent location (see [Immigrant Policies Take a More Aggressive Turn](#), The New York Times). For a partial list of legal challenges to these ordinances, see the [Litigation](#) tab of this chapter.

Perhaps the most publicized cases centering on the day labor dispute are those regarding home improvement retail stores. A significant number of these stores have, in recent years, become improvised sites of congregation for day laborers looking to help small businesses and private citizens complete their home or building improvement projects. In fact, some cite the presence of these workers as one reason they choose to shop at these home improvement stores.

Recognizing the inherent attraction of day laborers and those seeking to hire them to home improvement stores, several city councils across the country have undertaken measures to require these establishments to build formal day laborer hiring centers on their own. They want to ensure the safety of the public and the laborers, to add a measure of legitimacy, credibility, and efficiency to what is otherwise a haphazard process, and to provide a place for educational outreach for both laborers and contractors (see [The Home Depot National Hiring Partnership](#), NCLR). Some, like the Los Angeles City Council, have also passed ordinances requiring home improvement stores to provide laborers with toilets and other basic amenities at the hiring site (see [City Council of Los Angeles Ordinance 108174](#), and [L.A. Councilman Calls for Day Laborer Sites](#), New America Media).





But home improvement stores often have balked at these requirements, and have sometimes even resorted to threatening the laborers themselves with fines and arrests in order to prevent them from congregating anywhere near these stores. Naturally, this has prompted efforts by immigrants' rights and civil liberties groups to deter home improvement stores from engaging in such activity. However, it also has caught the attention of some on Capitol Hill, resulting in attempts by some legislators to prevent local communities from requiring home improvement stores to build day laborer hiring sites.

Despite some successful, but local and isolated, anti-day laborer efforts, the nationwide failure thus far to curtail day laborer hiring sites strongly suggests that Americans sympathize with the plight of these hard working people and understand the need for their presence and for the presence of formal hiring sites (see [First National Study of Day Laborers](#), Day Labor Research Institute). A [recent partnership](#) between the AFL-CIO and the National Day Laborer Organizing Network (NDLON), the nation's largest day laborer network, promises to assist day laborers and state and local communities in working together to promote positive change regarding workers' rights, safety, and other employment-related concerns. According to NDLON Director Pablo Alvarado, speaking of the partnership and its goals:

We need to build bridges, not walls, within our communities. We will not have better immigration laws until we have reformed the debate. Day laborers are experts in the failure of status quo immigration policy, and their voices and perspectives should be heard and listened to, rather than demeaned and vilified (see [National Day Laborer Group Seeks Voice in Immigration Debate](#)).





(ii) Myths and Facts¹

MYTH: Day labor is a small, localized, isolated means of employment.

FACT: Day labor is a nationwide phenomenon. On any given day, approximately 117,600 workers are either looking for day-labor jobs or working as day laborers. The largest concentration of day laborers is in the West (42%), followed by the East (23%), Southwest (18%), South (12%), and Midwest (4%). Day laborers search for work in different types of hiring sites. The vast majority (79%) of hiring sites are informal and include workers standing in front of businesses (24%), home improvement stores (22%), gas stations (10%), and on busy streets (8%). Most of these sites are near residential neighborhoods, and one in five day laborers search for work at day-labor worker centers.

MYTH: Day laborers are primarily a convenient means for big businesses to employ temporary labor.

FACT: The vast majority of day laborers are hired by homeowners, renters, contractors, and small businesses, not big businesses. The majority of day laborers are employed by homeowners/renters (49%), followed by construction contractors (43%). The top five day laborer occupations include construction laborer, gardener and landscaper, painter, roofer, and drywall installer.

MYTH: Day laborers are lazy people who do not want to find full-time work.

FACT: Day laborers search for work on a full-time basis. The vast majority (83%) relies on day-labor work as their sole source of income. Seventy percent search for work five or more days a week, while 9% seek work only one or two days a week. Three-quarters of day laborers have worked in this market for less than three years, suggesting that many transition into other jobs in other sectors of the economy after working as day laborers.

MYTH: Day laborers are schemers looking to make good money quickly and easily.

FACT: Day labor pays poorly. The median hourly wage for day laborers is \$10. However, employment is unstable and insecure, resulting in volatile monthly earnings. Median earnings during peak periods are \$1,400, while in slow periods median monthly earnings fall to just \$500. Even if day laborers have many more good months than bad months, it is unlikely that their annual earnings will exceed \$15,000, keeping them at or below the federal poverty threshold.

¹ Material in this section was taken from the following sources: [Migration, Health & Work: The Facts Behind the Myths](#), by the UC Berkeley, School of Public Health, Health Initiative of the Americas (HIA) and the University of California, Los Angeles, School of Public Health, Center for Health Policy Research; [On the Corner: Day Labor in the United States](#), by Abel Valenzuela Jr., UCLA Center for the Study of Urban Poverty, Nik Theodore, University of Illinois at Chicago Center for Urban Economic Development, Edwin Meléndez, New School University Milano Graduate School of Management and Urban Policy, and Ana Luz Gonzalez, UCLA Center for the Study of Urban Poverty.





Despite this, many day laborers support themselves and their families through this work. A significant number of day laborers are either married (36%) or living with a partner (7%), and almost two-thirds (63%) have children. Twenty-eight percent of the children of day laborers are U.S. citizens. The need for day laborers to earn an income, in most cases, is made all the more urgent by the responsibility to support their families.

MYTH: No day laborer worksite protections are necessary, since they are no more likely to suffer workplace abuse from employers than any other employees.

FACT: Day laborers regularly suffer employer abuse. Almost half of all day laborers experienced at least one instance of wage theft in the two months prior to being surveyed. In addition, 44% were denied food/water or breaks while on the job.

A recent [partnership](#) between the AFL-CIO and the National Day Laborer Organizing Network (NDLON), the nation's largest day laborer network, promises to assist day laborers and state and local communities in working together to promote positive change regarding workers' rights, safety, and other employment-related concerns.

MYTH: Day laborers face no greater occupational health risks than any other workers.

FACT: According to a recent study by the University of California,² day laborers—immigrant men and women who congregate in public places and provide their services as construction laborers, movers, gardeners and landscapers, painters, roofers, and house cleaners—experience a high incidence of workplace injury. This is due to certain defining features of the informal economy in which they operate—i.e., the work of day laborers is largely unregulated and unprotected by law, leaving unscrupulous employers who see workers as highly replaceable to act more or less with impunity.

One in five day laborers reports having suffered an injury while on the job, two-thirds having missed work following an injury, and over half (54%) failing to receive needed medical care for their injuries. Of those who missed work due to an occupational injury, 39% missed a week or less, and another 39% had a mean number of thirty-three work days missed due to injury. Of all day laborers, 68% have worked while in pain during the past year, with a mean number of twenty days working while in pain.

Several factors contribute to the high rate of work-related injury among this population, including exposure to hazardous conditions, the use of faulty equipment, lack of protective gear and safety equipment, and lack of safety training. In addition, many day laborers are employed in the construction industry, which has high rates of work-related injury in general.

² [Migration, Health & Work: The Facts Behind the Myths](#), University of California.





MYTH: Day laborers have access to appropriate medical care to help treat workplace injuries.

FACT: Among day laborers injured on the job in the past year, over half did not receive appropriate medical care for their injuries because they could not afford it, or the employer refused to cover the worker under the company's workers' compensation insurance. Only 6% of injured day laborers had their medical expenses covered by their employer's workers' compensation insurance.

MYTH: Americans generally are opposed to the existence of day laborers and day labor hiring sites.

FACT: Despite some successful, but local and isolated, anti-day laborer efforts, the nationwide failure thus far to curtail the growth of day laborer hiring sites, along with the fact that nearly half of all day laborers are hired by individual home owners and renters and not businesses, strongly suggests that Americans as a whole sympathize with the plight of these hard working people, and understand the need for their presence and for the presence of formal hiring sites.³

Hiring sites have emerged as the most practical response to the challenges associated with the growth of day labor. Community organizations, municipal governments, faith-based organizations, and other local stakeholders have created and now operate day-labor worker centers to reduce workers' rights violations and help communities address competing concerns over day labor. In 2006 alone, sixty-three day-labor worker centers were operating in seventeen states, and another fifteen community-based organizations served, organized, or advocated on behalf of day laborers. Since then, other cities have initiated the process of opening worker centers.

³ [First National Study of Day Laborers](#), Day Labor Research Institute.





(iii) Legislative Activity

ENACTED LAWS THAT PROHIBIT DAY LABOR SITES

LOCAL LEVEL

The following localities have passed anti-day laborer ordinances since 2007 ([FIRM Database](#)):

Herndon, VA
Gaithersburg, MD

Coweta, GA
Aurora, CO

Vista, CA

ENACTED LAWS THAT ENCOURAGE DAY LABOR SITES

LOCAL LEVEL

Los Angeles Ordinance 180174 (Passed 08/14/08)

Requires new or renovating big-box home-improvement stores, like Home Depot, to set aside a “suitable area” for day laborers which would include drinking water, toilets, trash cans, tables and seats.

PENDING LEGISLATION

As state and local legislatures revisit these bills or consider new ones in 2009, this issue is certain to assume more prominence unless and until the federal government takes explicit preemptive action.

AZ HB 2412

IL HB 1631

NY SB 7212

To search for additional state immigration legislation visit the Migration Policy Institute’s [State Law Database](#).





MODEL LEGISLATION

The National Employment Law Project has put together a guide entitled [Drafting Day Labor Legislation: A Guide for Organizers and Advocates](#). According to the guide, day laborer legislation is best crafted with the key points below in mind.

STEP 1: Provide a Clear and Broad Definition of the Employer-Employee Relationship

- The first step towards effective advocacy is identifying the entity responsible for remedying the wrong. Thus, a clear definition of the “employer-employee” relationship is a cornerstone of protective legislation. Regardless of whether the day laborer obtained work through a temporary agency or by negotiating directly with an employer, all entities benefiting from the day laborer’s work should be held accountable as “employers.” For day laborers working through a temporary agency it is particularly important to define the third-party user or on-site employer as an “employer.” This enables day laborers to hold the on-site employer accountable when a temporary agency fails to meet its legal obligations. In sub-contracted work situations, a definition of “employer” should include all entities that benefit from, or permit the work of the day laborer. This enables day laborers to hold general contractors accountable when sub-contractors renege on their legal obligations.

STEP 2: Define Day Labor

- Model Language: **DAY LABOR**—The term “day labor” means labor or employment that is occasional or irregular, in which an individual is employed for not longer than the period of time required to complete the assignment for which the individual was hired and in which wage payments are made directly or indirectly to the day laborer by the day labor service agency or by the third party employer, for work undertaken by the day laborer. Day labor does not include labor or employment of a professional or clerical nature.

STEP 3: Expand and Protect the Right to be Paid

- Provide for strong wage and hour rights.
- Regulate and limit fees and deductions from wages.

STEP 4: Strictly Regulate Day Labor Service Agencies

- Require day labor employers and day service agencies to register with the state.
- Impose notice requirements for day labor agencies.
- Deter processing delays.
- Impose requirements for public access areas.
- Prohibit restrictions on accepting or offering permanent work.
- Require itemized wage statements.
- Prohibit strike breaking.





STEP 5: Impose Strict Health and Safety Obligations on Day Labor Employers

- Clearly establish parties accountable for health and safety obligations.
- Protect workers' rights to refuse unsafe work.
- Clearly establish that a day labor employer must adopt and use adequate methods to render the work and worksite safe.
- Require notification and consent for hazardous work.
- Ensure that day laborers injured on the job have access to medical treatment.
- Require notification of the availability of workers' compensation benefits.

STEP 6: Regulate Transportation

- Require transportation back to point of hire.
- Impose liability for transportation-related injuries.
- Ensure safe means of transportation.
- Require motor vehicle inspections.

STEP 7: Adopt Strong State and Private Enforcement Provisions

- Ensure a day laborer's right to sue for enforcement.
- Ensure workers are not required to waive their rights.
- Do not penalize day laborers for an employer's failure to maintain records.

STEP 8: Provide Strong Anti-Retaliation Protections for Workers Seeking to Enforce their Rights

- Prohibit retaliation against day laborers enforcing their rights

See also, [Los Angeles City Council Ordinance 180174](#) ([passed](#) on 08/19/08) which requires new or renovating big-box home-improvement stores, like Home Depot, to set aside a "suitable area" for day laborers that would include drinking water, toilets, trash cans, tables and seats.





(v) Litigation

Case: [Town of Herndon v. Thomas](#), MI-2007-644 (Va. Cir. Ct. Aug. 29, 2007).

In 2005, Herndon, Virginia passed a targeted ordinance making it unlawful for “any person, while occupying as a pedestrian any portion of a highway, sidewalk, driveway, parking area, or alley, to solicit or attempt to solicit employment” (Virginia Municipal Code at § 42-136 (2005)).

In December 2005, the City Council of Herndon opened a publicly-funded day labor hiring site. This site, operated by a nonprofit entity, functioned very well for several months. Due to political pressure, in August 2007 the city dismissed the nonprofit entity and sought to transfer control over the site to a private employment company that would be required to check the documentation of workers. The city also passed another anti-solicitation ordinance that ensured unauthorized immigrants had no public space in which to solicit work.

In August 2007, the [issue was brought](#) to the Fairfax County District Court by a man who had been issued a ticket for vehicle solicitation under the ordinance.

The court struck the ordinance down on the grounds that, in order to limit the time, place, and manner of content-neutral speech in a public forum, the government must leave open ample alternative channels for the speech. In Herndon’s case, the court found that the hiring site adopted by the town was not an adequate alternative forum for communication because of its temporary nature.

As a result, rather than comply with the court’s ruling and open the hiring site to all, regardless of immigration status, the Herndon Town Council decided to shut down the day labor center for good on September 14, 2007.

Even after shutting down the day labor center, the city of Herndon has continued to crack down on day laborers in the area. In December 2008, the Herndon Town Council [implemented a federal worker verification program](#) that will require employers to check the work status of any prospective day laborer before hiring them.

Other cities around the country have passed similar ordinances, and have stirred the same type of Constitutional hornet’s nest that Herndon did, resulting in many of them being considered in the courts. See also: *Comite de Jornaleros de Glendale v. City of Glendale*, No CV 04-3521-SJO (C.D. Cal. May 16, 2005).

For an updated list and additional information on legal challenges to state and local ordinances see the [Legal Action Center](#) at the American Immigration Law Foundation.





(vi) More Resources

ORGANIZATIONS

- [**American Federation of Labor and Congress of Industrial Organizations \(AFL-CIO\)**](#)
- [**National Day Laborer Organizing Network \(NDLON\)**](#)
- [**National Employment Law Project \(NELP\)**](#)
- [**National Council of La Raza \(NCLR\)**](#)

MATERIALS/REPORTS

- **Abel Valenzuela, Nik Theodore, Edwin Meléndez, and Ana Luz Gonzalez**
[On the Corner: Day Labor in the United States](#)
- **AFL-CIO**
[AFL-CIO and NDLON, Largest Organization of Worker Centers, Enter Watershed Agreement to Improve Conditions for Working Families](#)
- **Day Labor Organizing Project**
[Proposal for Day Labor Legislation](#)
- **Day Labor Research Institute**
[Frequently Asked Questions About Day Labor Sites](#)
[First National Study of Day Laborers](#)
- **Margaret B. Hobbins, American University, Washington College of Law**
[The Day Laborer Debate: Small Town, U.S.A. Takes on Federal Immigration Law Regarding Undocumented Workers](#)
- **Mike Hall, AFL-CIO Now Blog**
[National Day Laborer Group Seeks Voice in Immigration Debate](#)
- **National Employment Law Project (NELP)**
[Drafting Day Labor Legislation: A Guide for Organizers and Advocates](#)
[Fact Sheet for Workers](#)
[Summary of the Day Labor Fairness and Protection Act](#)
[A Comparison of Day Laborer Statutes](#)
[Non-Standard Worker Project](#)
- **National Council of La Raza (NCLR)**
[The Home Depot National Hiring Partnership](#)
- **National Immigration Forum**
[Immigrants and the Economy](#)





Day Laborer Sites

- **University of California**
[Migration, Health & Work: The Facts Behind the Myths](#)
- **Urban Planning Research**
[First National Study of Day Laborers](#)

NEWS ARTICLES

- **Associated Press**
[“Home Depot Seeks Relief from Day-Labor Rules”](#) (06/27/07)
- **National Public Radio**
[“Day-Labor Centers Spark Immigration Debate”](#) by Jennifer Ludden (09/19/05)
- **New America Media**
[“L.A. Councilman Calls for Day Laborer Sites”](#) by Selene Rivera (06/01/05)
- **The New York Times**
[“Immigrant Policies Take a More Aggressive Turn”](#) by Campbell Robertson (11/14/04)
[“Day Laborers and Home Depot”](#) Editorial (08/12/08)

OPPOSITION-RELATED CAMPAIGNS

- [Day Laborers](#)







D. ENGLISH-ONLY



(i) Background Information

Rising concern over immigration and Congress' failure to enact comprehensive immigration reform have prompted a wave of cities and states to enact ordinances aimed at establishing English as the "official" language of their communities.

These "English-Only" laws vary, but usually (1) declare English as the "official" language of the state, which means that for the government to act officially, it must communicate in English and/or (2) that all business forms, documents, signage, and other communications must be in English. For an example of this type of legislation, see the text of the [Farmers Branch Resolution](#). In many cases, these laws may attempt to void all state and federal laws that require government provision of services in languages other than English, such as: health, education, and social welfare services, job training, translation assistance to crime victims and witnesses in court and administrative proceedings, voting assistance and ballots, driver's licensing exams, and AIDS prevention education. There have also been a number of recent ballot initiatives and ordinances that sought to limit English as a Second Language learning instruction programs at the state or local level. For a list of laws and ordinances addressing this issue, see the [Legislative Activity](#) tab of this chapter.





Restrictive “English-Only” language laws date back to the founding of our country, and were generally aimed at harassing unpopular minorities, as is the case today. With the help of xenophobic anti-immigrant groups, twenty-seven states have adopted various forms of English-Only legislation since 1981. Subtracting Hawaii (which is officially bilingual) and Alaska (whose English-only initiative has been declared unconstitutional), as of January 2009 there are a total of twenty-six states with active English-Only laws (see [Issues in U.S. Language Policy: Language Legislation in the U.S.A](#), Crawford).

Despite these sporadic efforts, English has never been declared the official language of the United States, although it is clearly the language of communication and commerce in our society—and by extension, the world (see [Frequently Asked Questions](#), Crawford). Strictly-speaking, the United States has never had a language policy that is consciously planned and national in scope. Instead, states have resorted to *ad hoc* responses to meet immediate political pressures that ultimately become inadequate, contradictory, or unconstitutional responses to an important issue.

“English-Only” laws violate both the due process clause of the Fourteenth Amendment and the First Amendment right to petition the government and express views and opinions, because they make it virtually impossible for persons who do not speak English well—whether they are U.S. citizens, legal immigrants, or undocumented workers—to communicate effectively and to assert their fundamental constitutional rights (see [Legal and Policy Analysis: Local Illegal Immigration Relief Act Ordinances](#), MALDEF).

Such laws will undoubtedly make our communities less safe by erecting barriers that prohibit persons who are not proficient in English from communicating with key government institutions like the police. For example, in the event of a natural disaster or terrorist threat, federal emergency workers must be able to convey important information and instructions to as broad an audience as possible, a need that may require the use of languages other than English. English-only policies could impede the government’s ability to convey warnings or post danger or hazard signs in languages other than English. They could prevent local law enforcement from effectively investigating crimes, communicating with crime victims or witnesses, or providing critically-needed services to victims of domestic violence. In the area of public health, they could hinder the ability of medical personnel to communicate effectively with patients at federally-funded hospitals or the public at large, potentially complicating diagnosis and treatment or even facilitating the spread of communicable diseases (see [testimony of Mr. John Trasviña](#) of MALDEF before the United States House of Representatives Committee on Education and the Workforce, Subcommittee on Education Reform, July 26, 2006).

Furthermore, denying rights and benefits, or discriminating against non-English speakers or those with limited-English proficiency, is in clear violation of Title VI of the Civil Rights Act of 1964 which states that “No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” By restricting the government’s ability to provide services to non-English speaking Americans, including children and elderly citizens, English-only laws deny fair and equal access to government. The bottom line is that non-English speakers will not get important government information in a timely or useful way if these laws were to proliferate.





Time and again, our courts have consistently found “English-Only” laws unconstitutional. In the 1923 U.S. Supreme Court case *Meyer v. Nebraska*, for example, the Court affirmed that:

“[t]he protection of the Constitution extends to all, to those who speak other languages as well as to those born with English on their tongue... Perhaps it would be highly advantageous if all had ready understanding of our ordinary speech, but this cannot be coerced by methods which conflict with the Constitution—a desirable end cannot be promoted by prohibited means.”

More recently, both Arizona (*Ruiz v. Hull*, Supreme Court of Arizona, 1998) and Alaska (*Moses Kritz v. State of Alaska* and *Tony Knowles*, Governor, Alaska State Superior Court, 2002) have ruled that voter initiatives aimed at creating “English-Only” laws are unconstitutional. For a partial list of legal challenges to these ordinances, see the [Litigation](#) tab of this chapter.

Some states, however, have taken stands against language protectionism. In 1989, New Mexico, Washington, and Oregon passed “English-Plus” laws that protect the use of languages other than English, and encourage the study of foreign languages. Both Hawaii and Louisiana have official policies aimed at preserving languages and cultures.

Beyond the dubious legality of “English-Only” ordinances, it should be noted that such ordinances are also entirely unnecessary. For two centuries, generations of immigrants have successfully learned English and integrated into American society. In fact, immigrants today are learning English at the same rates or faster than in previous generations (see [English-Only Talking Points](#), Asian American Justice Center, formerly National Asian Pacific American Legal Consortium). Immigrants recognize that English is the language of power in this country, and they are learning it as quickly as they can.

“English-Only” ordinances will not adequately address the issue of illegal immigration, but will instead invite litigation and create public safety problems in the community as a whole. Such laws are unnecessary, divisive, unproductive, and only encourage discrimination against, and scapegoating of, immigrants.





(ii) Myths and Facts

MYTH: English is the official language of the United States.

FACT: English has never been declared the official language of the United States.¹ The U.S. has always been a multilingual nation that values diversity. However, not including Hawaii (which is officially bilingual) and Alaska (whose English-only initiative has been declared unconstitutional), a total of twenty-six states have adopted various forms of legislation establishing English as the “official” state language.²

MYTH: Immigrants do not want to learn English.

FACT: Immigrants recognize that English is the language of power in this country, and they are learning it as quickly as they can. Within ten years of arrival, more than 75% of immigrants speak English well.³

Given a supportive learning environment, it takes two years to develop basic conversational skills and five to seven years to be fully literate in another language. There are long waiting lists for English as a Second Language (ESL) classes at many adult schools. Immigrants who want to learn English are being turned away because there are not enough classes. In Los Angeles, for example, schools run twenty-four hours a day and 50,000 students are still on waiting lists for ESL classes.

According to the 2000 census, approximately 96% of Americans speak English well or very well, including immigrants. It is important to distinguish those who cannot speak English at all and those who speak English and another language. Only 1.3% of U.S. residents do not speak English.⁴

MYTH: It costs taxpayers too much money to provide government services in languages other than English.

FACT: The use of a language other than English by government officials and agencies can make it easier and more expedient to serve taxpayers. For example in Arizona recently, a bilingual state employee found it easier, quicker, and less expensive to collect medical malpractice information from claimants who were more comfortable conversing in Spanish than in English. Communicating in a secondary language without proficiency takes more time and may result in dangerous miscommunication, especially in life threatening situations. Although some people say the number of translated government documents is “overwhelming,” a recent survey found that out of 400,000 documents, only 265 were translated into languages other than English.⁵

¹ [Frequently Asked Questions](#), Crawford.

² Alabama (1990), Arizona (2006), Arkansas (1987), California (1986), Colorado (1988), Florida (1988), Georgia (1986 & 1996), Idaho (2007), Illinois (1969), Indiana (1984), Iowa (2002), Kansas (2007), Kentucky (1984), Louisiana (1811), Massachusetts (1975), Mississippi (1987), Missouri (1998), Montana (1995), Nebraska (1920), New Hampshire (1995), North Carolina (1987), North Dakota (1987), South Carolina (1987), South Dakota (1995), Tennessee (1984), Utah (2000), Virginia (1981 & 1996), and Wyoming (1996).

³ [Top 10 Immigration Myths and Facts](#), National Immigration Forum.

⁴ [Census 2000: A Guide for the Perplexed](#), Crawford.

⁵ [Position Paper on “English Only”](#), ACLU.





MYTH: The law does not require fair treatment of non-native speakers of English, or non-English and limited-English speakers.

FACT: The law does not require “special” treatment for those who do not speak English, or who speak English less than proficiently. However, federal and state laws require equal and fair treatment of these classes of people in many contexts: education, government services, employment, and the courts.

While English is recognized as the language of broader communication in government and commerce, discrimination based on language is prohibited under United States and Hawaii constitutional and civil rights laws. Failure to provide bilingual education for non-English speaking students is a denial of equal access to educational opportunities, constituting a violation of Title VI of the Civil Rights Act of 1964.

Denial of access to federally-funded government services and benefits on the basis of language is also considered discrimination, and a violation of Title VI. In employment, discrimination based on accent and English-only rules are unlawful absent a strong business justification, according to Title VII of the Civil Rights Act of 1964.

Both state and federal constitutional due process protections guarantee the rights of non-English or limited-English speaking defendants.

MYTH: “English-Only” laws will not harm immigrants.

FACT: Some versions of the proposed English-Only laws would void almost all state and federal laws that require the government to provide services in languages other than English. The services affected would include: health, education, and social welfare services; job training and translation assistance to crime victims and witnesses in court and administrative proceedings; voting assistance and ballots; driver’s licensing exams, and AIDS-prevention education. Passage of a 1980 “English-Only” ordinance by Florida’s Dade County barring public funding of activities that involved the use of languages other than English, resulted in the cancellation of all multicultural events and bilingual services ranging from directional signs in the public transit system, to medical services at the county hospital. Where basic human needs are met by bilingual or multilingual services, the consequences of eliminating those services could be dire. For example, in 1987 the *Washington Times* reported that a 911 emergency dispatcher was able to save the life of a Salvadoran woman’s baby son, who had stopped breathing, by coaching the mother in Spanish over the telephone to administer mouth-to-mouth and cardiopulmonary resuscitation until the paramedics arrived.





MYTH: “English-Only” laws affect only government services and programs.

FACT: “English-Only” laws apply primarily to government programs. However, such laws can also affect private businesses. For example, several Southern California cities have passed ordinances that forbid or restrict the use of foreign languages on private business signs. Some “English-Only” advocates have opposed a telephone company’s use of multilingual operators and multilingual directories, Federal Communications Commission licensing of Spanish-language radio stations, and bilingual menus at fast food restaurants.

MYTH: “English-Only” laws won’t deprive individuals of their rights.

FACT: “English-Only” laws violate both the due process clause of the U.S. Constitution’s Fourteenth Amendment and the First Amendment right to petition the government and express views and opinions, because they make it virtually impossible for persons who do not speak English well to communicate effectively and assert their fundamental Constitutional rights.⁶

MYTH: Immigrants today are not as willing to assimilate as in the past. “English-Only” laws will speed up that process.⁷

FACT: Contrary to what “English-Only” advocates assert, the vast majority of today’s Asian and Latino immigrants are acquiring English proficiency and assimilating as fast as did earlier generations of Italian, Russian, and German immigrants.⁸ For example, research studies show that over 95% of first generation Mexican Americans are English proficient, and more than 50% of second generation Mexican Americans have lost their native tongue entirely. In addition, census data reveal that nearly 90% of Latinos five years old or older speak English in their households. And 98% of Latinos surveyed said they felt it is “essential” that their children learn to read and write English “perfectly.”

Unfortunately, not enough educational resources are available for immigrants to learn English well. For example, over 50,000 immigrants are on the waiting list for adult English classes in Los Angeles alone. “English-Only” laws do not increase resources to meet these needs. The best insurance against social isolation of those who immigrate to our nation is acceptance—and celebration—of the differences that exist within our diverse citizenry, and the fact that it takes time for newcomers to learn our language but they are willing to try. The bond that unites our nation is not linguistic or ethnic homogeneity but a shared commitment to democracy, liberty, and equality.

⁶ [Legal and Policy Analysis: Local Illegal Immigration Relief Act Ordinances](#), MALDEF.

⁷ [Position Paper on “English Only”](#), ACLU.

⁸ [Talking Points on English-Only: Provisions of Anti-Immigrant Ordinances](#), MALDEF.





MYTH: Bilingual ballots are unnecessary because citizenship is required to vote, English literacy is required for citizenship, and political campaigns are largely conducted in English.

FACT: While most immigrants who apply for U.S. citizenship are required to demonstrate proficiency in the English language, there are exceptions for certain immigrants depending on their age, length of time in the United States, and disability. Thus, there are many elderly immigrant citizens whose ability to read English is limited, and who could not exercise their right to vote without bilingual ballots and voter materials. Moreover, bilingual campaign materials and ballots foster a better-informed electorate by increasing the information available to people who lack complete confidence in reading, speaking, and understanding the English language.

MYTH: Bilingual education slows immigrant children’s learning of English, in contrast to the “sink or swim” method used in the past.

FACT: The primary purpose of bilingual programs in elementary and secondary schools, which use both English and a child’s native language to teach all subjects, is to develop proficiency in English while continuing to advance the child’s understanding of key subjects like science and math. The goal of these programs is to facilitate the child’s transition to all-English instruction, without allowing him to fall behind in content relevant to other students in his grade or age level. Although debate about this approach continues, the latest studies show that bilingual education does enhance a child’s ability to acquire the second language and stay current with his peers in coursework. Some studies even show that the more extensive the native language instruction, the better students perform all around, and that the bilingual method engenders a positive self-image and self-respect by validating the child’s native language and culture.

The “sink or swim” experience of past immigrants left more of them underwater than not. In 1911, the U.S. Immigration Service found that 77% of Italian, 60% of Russian, and 51% of German immigrant children were one or more grade levels behind in school, compared to 28% of American-born white children. Moreover, those immigrants who did manage to “swim” unaided in the past, when agricultural and factory jobs were plentiful, might not do so well in today’s “high-tech” economy, with its more rigorous educational requirements.⁹

⁹ [Position Paper on “English Only”](#), ACLU.





(iii) Legislative Activity

ENACTED “ENGLISH-ONLY” LAWS

LOCAL LEVEL

The following localities have passed anti-day laborer ordinances since 2007 ([FIRM Database](#)):

Boaz, AL	Beaufort, NC	Gilberton, PA
Gadsden, AL	Davidson County, NC	Hazelton, PA
Huntsville, AL	Landis, NC	Mahanoy City, PA
Kingman, AZ	Lincoln County, NC	Shenandoah, PA
San Bernardino, CA	Mint Hill, NC	West Hazelton, PA
Avon Park, FL	Bogota, NJ	Nashville, TN
Cherokee County (Canton), GA	Newton, NJ	Farmers Branch, TX
Carpentersville, IL	Pahrump, NV	Friendswood, TX
Hampshire Village, IL	Bartlesville, OK	Oak Point, TX
Taneytown, MD	Conyngham Borough, PA	Herndon, VA
Hazel Park, MI	East Union, PA	Kennewick, WA
St. Charles County, MO	Forty Fort, PA	Arcadia, WI

STATE LEVEL

The following list of state measures was taken from a December, 2008 [report](#) published by the [National Conference of State Legislatures](#). Updates to the report are expected periodically.

Missouri Constitutional Amendment 1 (Signed 11/4/2008)

Constitutional amendment stating that English shall be the language of all governmental meetings at which any public business is discussed, decided, or public policy is formulated.

ENACTED PRO-IMMIGRANT LANGUAGE LAWS

STATE LEVEL

The following list of state measures was taken from a December, 2008 [report](#) published by the [National Conference of State Legislatures](#). Updates to the report are expected periodically.

Arizona SB 1096 (Signed 4/14/2008)

This law appropriates \$40.7 million towards English language immersion programs.

California AB 88 (Signed 9/23/2008)

The Act provides \$8.8 million of reimbursements to CALWORKS participants. Providers of adult basic education, English as a Second Language, and English as a Second Language-Citizenship for legal permanent residents, shall grant priority for services to immigrants facing the loss of federal benefits under the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193). The law also provides for citizenship and naturalization preparation services.





Georgia HB 990 (Signed 5/14/2008)

This law appropriates funds for refugee assistance, the English Language Learners Assessment, and adult essential health treatment services.

Hawaii SB 2395 (Signed 4/8/2008)

This law expands the language access advisory council within the Department of Labor and Industrial Relations to include several county representatives with an interest in language access. The law clarifies the definition of “written language services” as free provision of written information that allows limited English proficient persons to access services.

Maryland HB 610 (Signed 5/13/2008)

This law establishes a Task Force on the Preservation of Heritage Language Skills, which will compile data on the number of heritage speakers in the state and focus on innovative ways to encourage heritage language learning while also encouraging new citizens of the United States to learn and master English.

New York SB 6803 (Signed 4/23/2008)

This law appropriates funds, including \$126 million for administration of federal grants in connection with federal law, including title III language instruction for limited English proficient and immigrant students. The legislation provides \$2.4 million for services related to programs to assist non-citizens in attaining citizenship status and \$25 million for enhanced services to refugees, asylees, victims of human trafficking and their family members, and other immigrant populations eligible for refugee services, including case management, ESL, job training and placement assistance, and post-employment services.

Washington State Executive Order (Signed 2/20/2008)

This executive order will promote strategies to help legal immigrants become naturalized and learn English language skills, as well as facilitate public-private partnerships to better integrate new Americans into the fabric of the state’s society and economy.

Washington HB 2779 (Signed 3/27/08)

The law requires obtaining a specialized forest products permit in order to harvest huckleberries and adds huckleberry harvesting to the specialized forest products industries in which minority groups (including refugees) have long been participants. The legislation encourages agencies serving minority communities, refugee centers and other social service agencies to work cooperatively in the translation of educational materials.

Washington SB 6673 (Signed 4/1/2008)

This law enhances funds allocated to eligible school districts where more than twenty percent of students are eligible for and enrolled in transitional bilingual instruction programs. It also requires student learning plans for high school students who were not successful on the Washington assessment, including schools serving English language learner students and schools with transitional bilingual programs. English language learners will qualify for help from the extended learning program.





PENDING LEGISLATION

A number of other jurisdictions have introduced “English-Only” legislation. As state and local legislatures revisit these bills or consider new ones in 2009, this issue is certain to assume more prominence unless and until the federal government takes explicit preemptive action.

AL HB136	NJ SB1090	NY SB7495
AL SB136	OK HB2630	SC HB4353
AL SB446	OK HB3349	SC SB857
CO SCR6	OK HJR1100	VA HB55
GA HR413	OK SJR54	VA HJR124
GA SB335	RI HB7024	WA HB2810
KS HB2050	RI SB2205	WA HJR 4219
MD HB886	MD HB610	WI HB289
MD HB887	MD SB506	WI HB806
MN HB2652	NY HB5077	
MN HB4161	NY HB5115	

To search for additional state immigration legislation visit the Migration Policy Institute’s [State Law Database](#).

MODEL LEGISLATION

The Strengthening Communities through English and Integration Act of 2008 (S. 3334/ H.R. 6617), federal legislation introduced in the 110th Congress, could serve as a model for state-level bills that promote English-language learning. The bill would increase appropriations for English Literacy and Civics Education programs; provides funding for local educational programs for English language acquisition for middle and high school students; provides tax credits for teachers in Limited English Proficient schools; and creates a research and development center for adult education and literacy, among other programs.

There exist positive and proactive measures to promote English acquisition that states may want to consider. For model state legislation see New York [HB 5115](#) (pending), which was introduced into the New York State Assembly in February 2007. The bill would require that statements of employee rights and employer obligations for domestic workers be prepared in English, Spanish, Creole, and other necessary languages.

See also, Texas [HB 109](#), which amends the Health and Safety code to require that outreach materials generated under the bill be written in both English and Spanish.





(iv) Litigation

Case: [Lozano v. City of Hazleton](#) (3:06-cv-01586-JMM (M.D. Pa.)).

On July 13, 2006 the city of Hazleton, Pennsylvania passed the [Illegal Immigration Relief Act Ordinance](#) (IIRA) penalizing those who rent to or hire undocumented immigrants.

On August 15, 2006 in the U.S. District Court for the Middle District of Pennsylvania, a collection of public interest organizations [challenged](#) the Hazleton ordinance. The same day the lawsuit was filed, public interest organizations representing the plaintiffs sent a [letter](#) to the city requesting that it revoke the IIRA ordinance at the council meeting that evening. The city declined and instead passed a companion ordinance titled “[Tenant Registration Ordinance](#).”

On September 1, 2006 the city decided to forego enforcement of the Immigration Ordinance until it gave the plaintiffs twenty days notice and then began the process of passing a new version of the Immigration Ordinance; that new version was enacted on September 21, 2006, along with a third ordinance entitled the “[Official English Ordinance](#).”

On October 30, 2006, the District Court granted plaintiffs’ motion for a preliminary injunction and temporary restraining order in part, and entered a [temporary restraining order](#) on October 31, 2006.

On July 26, 2007, District Court Judge Munley issued a 206-page [Decision and Verdict](#) declaring the Immigration Ordinance and Registration Ordinance unconstitutional and permanently enjoining the city from enforcing the ordinances. Judge Munley found the ordinances were pre-empted by federal law and violated plaintiffs’ due process rights, though he failed to rule on the English-Only Ordinance.

Plaintiffs moved for an award of attorneys’ fees and costs. The District Court agreed to reserve ruling on the fee application pending defendant’s appeal. As of the date of this summary, the appeal was still pending before the Third Circuit.

In a separate action the city’s insurance company, Scottsdale Ins. Co., filed a declaratory judgment action in the District Court, seeking a declaration that it was no longer obligated to pay for the defense of this case, nor was it obligated to satisfy any judgment rendered against the city.

For additional resources on the Hazleton case, see: the [ACLU’s documents relating to Hazleton Case](#), [PRLDEF’s Hazleton page](#), and a [website](#) created by District Court Judge Munley to provide information to the public about this case.





Case: LULAC and GI Forum v. The State of Texas (2:2003cv00367, filed 10/27/03)

On July 25, 2008, U.S. District Judge William Wayne Justice for the Eastern District of Texas ruled that Texas is failing to overcome language barriers for tens of thousands of Latino students in secondary programs. The Mexican American Legal Defense and Educational Fund (MALDEF) and the Multicultural Education Training and Advocacy, Inc. (META) sought further relief from the Court under its continuing jurisdiction in the landmark case of U.S. v. Texas. The case comes 25 years after the State promised the Texas Court to implement effectively a bilingual education program for all English Language Learner students.

For more information read the Memorandum Opinion, and the Final Judgment.

Another relevant case includes: *Sandoval v. Alexander* 532 U.S. 275, 121 S.Ct. 1511, 149 L.Ed.2d 517 (U.S., Apr 24, 2001), in which the U.S. Supreme Court, by a 5–4 vote, rejected a legal challenge to Alabama’s Official English law. For a list of other relevant litigation on “English-Only” legislation see the [American Law and Legal Information Law Library](#).

For an updated list and additional information on legal challenges to state and local ordinances see the [Legal Action Center](#) at the American Immigration Law Foundation.





(v) More Resources

ORGANIZATIONS

- [The American Jewish Committee \(AJC\)](#)
- [Asian American Justice Center \(AAJC\)](#)
- [Center for Equal Opportunity \(CEO\)](#)
- [Leadership Conference on Civil Rights \(LCCR\)](#)
- [Puerto Rican Legal Defense and Education Fund \(PRLDEF\)](#)
- [Immigration Policy Center \(IPC\)](#)
- [National Council of La Raza \(NCLR\)](#)
- [American Civil Liberties Union \(ACLU\)](#)
- [Mexican American Legal Defense and Educational Fund \(MALDEF\)](#)
- [American Immigration Law Foundation \(AILF\)](#)
- [Fair Immigration Reform Movement \(FIRM\)](#)
- [National Immigration Forum](#)

MATERIALS/REPORTS

- **American Civil Liberties Union (ACLU)**
[ACLU Backgrounder on English Only Policies in Congress](#)
[Position Paper on “English Only”](#)
[English-Only Amendment Would Endanger Lives, Discriminate and Create ‘Second-Class’ Citizens](#)
- **American Immigration Law Foundation (AILF)**
[Missing the Target: Anti-Immigrant Ordinances Backfire](#)
- **Asian American Justice Center (formerly National Asian Pacific American Legal Consortium)**
[The Politics of Language: Your Handbook to English-Only Laws and Policies](#)





- **Congressional Research Service (CRS)**
[Hazelton Memo June 2006](#)
- **Fair Immigration Reform Movement (FIRM)**
[Anti Immigrant Ordinances Database](#)

[Types of Local Anti Immigrant Ordinances](#)
- **Immigration Policy Center**
[From Newcomers to Americans: An Integration Policy for a Nation of Immigrants](#)
- **James Crawford**
[Testimony of Mr. James Crawford, Director of the Institute for Language and Education Policy, “Official English Legislation: Bad for Civil Rights, Bad for America’s Interests, and Even Bad for English,” United States House of Representatives Committee on Education and the Workforce, Subcommittee on Education Reform, July 26, 2006](#)
[Loose Ends in a Tattered Fabric: The Inconsistency of Language Rights in the United States](#)
[English as the “National Language”? A Political Blunder by Republicans](#)
[Official English FAQ](#)
[Anatomy of the English-Only Movement](#)
[Issues in U.S. Language Policy: Language Legislation in the U.S.A](#)
[Census 2000: A Guide for the Perplexed](#)
- **Mexican American Legal Defense and Educational Fund (MALDEF)**
[Testimony of Mr. John Trasviña, Interim President and General Counsel, MALDEF, “Examining Views on English as the Official Language,” United States House of Representatives Committee on Education and the Workforce, Subcommittee on Education Reform, July 26, 2006](#)
[Legal and Policy Analysis: Local Illegal Immigration Relief Act Ordinances](#)
[Sample Letter in Opposition to Anti-immigrant Ordinances](#)
- **National Commission on Adult Literacy**
[Reach Higher, America: Overcoming Crisis in the U.S. Workforce](#)
- **National Council of Teachers of English**
[Politics of English Only in the United States: Historical, Social, and Legal Aspects](#)
- **National Education Association**
[“No” to English Only Initiatives Before Congress](#)
- **National Immigration Forum**
[Top 10 Immigration Myths and Facts](#)
- **Pew Hispanic Center**
[Hispanic Attitudes Toward Learning English Fact Sheet](#)





[English Usage Among Hispanics in the United States](#)

- **Puerto Rican Legal Defense and Education Fund (PRLDEF)**
[List of Local Anti Immigrant Ordinances](#)
- **Teachers of English to Speakers of Other Languages (TESOL)**
[TESOL'S Recommendations for Countering the Official English Movement in the U.S.](#)

[FACT SHEETS](#)

- **Asian American Justice Center (formerly National Asian Pacific American Legal Consortium)**
[English-Only Talking Points](#)
- **Asian Pacific American Legal Center of Southern California**
[Fact Sheet: Why English Only-Legislation Violates Civil Rights](#)
- **Mexican American Legal Defense and Educational Fund (MALDEF)**
[Talking Points on English-Only: Provisions of Anti-Immigrant Ordinances](#)
- **National Council of La Raza (NCLR)**
[English-Only "Fact Check"](#)
[Talking Points for English-Only](#)

[POLICY STATEMENT](#)

- **Linguistic Society of America**
[LSA Statement on Language Rights](#)

[NEWSPAPER ARTICLES](#)

- **USA Today**
["Court tests await cities' laws on immigrants,"](#) 10/09/06

[ADVOCACY TOOLS/CAMPAIGNS](#)

- **Mexican American Legal Defense and Educational Fund (MALDEF)**
[State and Local Anti-Immigrant Ordinance Toolkit](#)
- **National Immigration Forum**
[Toolkit for Responding to Local Anti-Immigrant Ordinances](#)

[OPPOSITION-RELATED CAMPAIGNS](#)

- [U.S. ENGLISH, Inc.](#)
- [English First](#)









E. HOUSING



(i) Background Information

Municipalities across the country are attempting to secure local “fixes” to our deeply dysfunctional federal immigration system. For local officials who believe that undocumented immigration “destroys . . . neighborhoods and diminishes . . . overall quality of life,” (see San Bernardino [Illegal Immigration Relief Act Ordinance](#)) strict anti-immigrant housing ordinances appear to be one “practical solution” to a burdensome problem. These “Do Not Rent” ordinances seek to deny housing to undocumented immigrants by turning property owners into *de facto* federal immigration law officers. Though they vary in scope, the ordinances generally require property owners to verify the immigration status of all applicants before renting to them, or otherwise limit rental opportunities to tenants with legal immigration status; suspend or deny renting licenses for property owners that rent to undocumented immigrants; and fine or imprison property owners that continue to rent to undocumented immigrants.

The current wave of anti-immigrant ordinances aimed at denying housing to individuals who cannot immediately prove their immigration status began in April 2006, with the introduction of the “[Illegal Immigration Relief Act Ordinance](#)” in San Bernardino, California. Though the proposed ordinance was defeated, it provided communities across the country with a blueprint for attempting to regulate immigration at the local level. Since then, more than forty localities have proposed some form of the San Bernardino ordinance, each varying in language and in scope ([Local Ordinance Database](#), FIRM). For a list of ordinances addressing this issue see the [Legislative Activity](#) tab of this chapter.





The recent upsurge in housing ordinances that target undocumented immigrants introduces new and problematic legal issues for states and localities stepping into this uncharted terrain in immigration law. Though federal laws exist against knowingly “harboring” undocumented immigrants, the federal government has not adopted specific legislation that would require landlords to check the immigration status of tenants in non-federally subsidized housing (see [Office of Fair Housing and Equal Opportunity](#), and [Local Tenant Rights, Laws, and Protections](#), U.S. Department of Housing and Urban Development). Beyond the concern that local ordinances are preempted by the federal government’s power to regulate immigration, they raise problems of both discrimination and due process.

“Do Not Rent” ordinances will likely lead to discrimination by local property owners who attempt to comply with the poorly-conceived laws. Landlords would be required to verify the immigration status of every tenant before renting to them, without the tools or training to determine what type of documentation would be sufficient, or the expertise to distinguish valid documentation from invalid. In an attempt to avoid the fines and penalties associated with a failure to comply with the ordinances, property owners would undoubtedly cease to rent to anyone who looks or sounds “foreign,” or who they believe might be undocumented, regardless of their citizenship or immigration status (see [Talking Points on Do Not Rent Laws](#), NCLR and [Talking Points on Do Not Rent Laws](#), MALDEF). The ordinances, in effect, compel property owners to deny housing to individuals based upon their perceived race, ethnicity, or national origin (see [Immigrants’ Rights Project](#), ACLU).

Furthermore, many of these “Do Not Rent” ordinances call for tenants to be evicted from their homes, and landlords penalized, without adequate notice or a meaningful hearing (see [Legal and Policy Analysis: Local Illegal Immigration Relief Act Ordinances](#), MALDEF). This likely violates federal due process rights established in the U.S. Constitution, which require that affected parties be given “notice” and a “meaningful opportunity to be heard” before they can be deprived of “life, liberty or property” (see [Letter Explaining Legal Flaws of San Bernardino Proposal](#), ACLU).

Most municipalities that have considered such ordinances have failed to pass them, and the few that have passed them are prohibited from enforcing them due to court injunctions. For a partial list of legal challenges to these ordinances, see the [Litigation](#) tab of this chapter.

Still, the effects of these ordinances are already being felt. Heightened racial tensions in these communities have contributed to harassment at the workplace, fights at school, and—in at least one case—the withdrawal of funds for an outreach program to the Latino community (see [Division and Dislocation: Regulating Immigration through Local Housing Ordinances](#), IPC). Local businesses have lost consumers and workers, and local governments collect fewer taxes while having to pay the hefty litigation costs of defending the ordinances from legal challenges (see [State and Local Policies on Immigrant Access to Services: Promoting Integration or Isolation?](#), NILC).

These discriminatory housing laws will not fix our broken immigration system; they only serve to isolate communities, push people from their homes, and breed fear, distrust, and divisiveness between local residents.





(ii) Myths and Facts

MYTH: Undocumented immigrants are here illegally, and therefore are not entitled to the same rights, such as access to housing, as U.S. citizens and legal residents.

FACT: The Constitution, as well as fair housing and other civil rights laws, apply to all persons here in America. All noncitizens—regardless of the lawfulness of their presence here—are entitled to due process under the Fifth and Fourteenth Amendments to the U.S. Constitution. In addition, the Fair Housing Act prohibits discrimination based on race, ethnicity, national origin, and family status (among other classifications). Further, discrimination based on alienage may also violate 42 U.S.C. 1981 or the Constitution’s Equal Protection Clause. Laws that encourage landlords to discriminate against immigrants are not only unethical, they are illegal.

MYTH: The best way to stop undocumented immigration is to make it harder for undocumented immigrants to lead a normal life.

FACT: Undocumented workers are not here for the rental housing, they are here for jobs. Right now there are twelve million undocumented immigrants in this country, of which roughly one-third have lived here for ten years or more.¹ Many of them have formed deep roots in this country and are part of families that include legal residents and U.S. citizens. Creating laws that deny undocumented immigrants basic human rights, such as access to housing, in hopes that they “self-deport” will harm American families, divide our communities, and fail to address the reasons we have undocumented immigration in the first place. These laws also raise deeply disturbing questions about whether it is legal or humane to deprive shelter to the roughly five million children who live in households headed by undocumented immigrants. Increased enforcement of inhumane laws will not stop undocumented migration; reform of our immigration laws will.²

MYTH: Do Not Rent laws are targeted, and will only affect undocumented immigrants.

FACT: Do Not Rent laws would endanger the civil rights of ALL community members, regardless of their immigration status.³ By excluding undocumented persons from protection under fair housing and civil rights laws, these ordinances would lead to increased discrimination in housing on the basis of race, ethnicity, or national origin. In an attempt to avoid severe penalties, landlords will likely profile families based on race, ethnicity, and nationality grounds, and deny housing to anyone who sounds or looks foreign, or who they believe might be undocumented.⁴ This would undoubtedly include legal immigrants, permanent residents, and U.S. citizens.

¹ [Making the Case for Comprehensive Immigration Reform: Resource Guide](#), AILA.

² [Common Myths About Undocumented Immigrants](#), NCLR.

³ [Legal and Policy Analysis: Local Illegal Immigration Relief Act Ordinances](#), MALDEF.

⁴ [Talking Points on Do Not Rent Laws](#), MALDEF.





MYTH: Passing Do Not Rent laws raises no legal concerns.

FACT: Do Not Rent laws raise a host of legal issues which have so far prevented any such ordinance from being enforced. Civil rights advocates have challenged these ordinances as unconstitutional because they violate the Supremacy Clause of the U.S. Constitution, which grants the federal government the sole right to regulate immigration.⁵

Additionally, Do Not Rent laws have been challenged because they violate state and federal due process rights by failing to provide procedures for a landlord or tenant to contest the claim that the tenant is not lawfully present in the United States. Under these laws, tenants and landlords would face the possibility of being deprived of their property based on erroneous status determinations.

Finally, these ordinances have been challenged under federal statutes that prohibit discrimination based on national origin or citizenship.⁶

MYTH: It would be easy for landlords to check the immigration status of residents.

FACT: Do Not Rent laws do not provide landlords with any instructions on how to verify the immigration status of potential tenants, or the authenticity of documentation. These ordinances therefore place a huge burden on landlords by requiring them to become *de facto* immigration agents, without any guidance or training.

Even if landlords were trained on how to use some of the federal government's verification systems, including the Systematic Alien Verification for Entitlements (SAVE) database, such systems were not designed for this purpose, are woefully inadequate to handle such high demand, and are error-prone.

MYTH: Do Not Rent Laws will only punish landlords who knowingly harbor undocumented immigrants.

FACT: Some Do No Rent proposals would penalize even well-intentioned property owners, regardless of the landlord's diligence. Under such strict liability schemes, any property owner found to have rented to undocumented immigrants faces severe fines and penalties.⁷ Further, housing restrictions that do require knowledge on the part of the landlord may nonetheless ensnare well-intentioned landlords, because local enforcement officials unfamiliar with complicated immigration laws may mistakenly determine that a landlord is at fault.

⁵ See, [Lozano v. Hazleton](#).

⁶ [Toolkit for Responding to Local Anti-Immigrant Ordinances](#), National Immigrant Forum.

⁷ [Division and Dislocation: Regulating Immigration through Local Housing Ordinances](#), IPC.





MYTH: There are no costs associated with implementing Do Not Rent laws.

FACT: Numerous Do Not Rent laws that have been passed at the local level have been challenged in court, resulting in costly and time-consuming litigation.⁸ Civil rights advocates have filed numerous challenges to Do Not Rent laws across the country, and have been successful in keeping these ordinances from taking effect. No ordinance has won a legal challenge yet, despite municipalities spending hundreds of thousands of taxpayer dollars to defend them in court.⁹

The town of Riverside, New Jersey, where a Do Not Rent law was passed in 2006, rescinded its law after spending more than \$82,000 defending the ordinance in court. The battle forced the town to delay road paving projects, the purchase of a dump truck and repairs to the town hall. Yet the economic impact of the ordinances went far beyond the litigation costs. Many longtime residents left the town because they no longer felt welcome, and as a result the local economy suffered. Hair salons, restaurants, and corner shops that catered to immigrants saw business plummet, and several closed. The once vibrant downtown became empty as businesses closed, and the town lost revenue.¹⁰

⁸ [Too Costly For My Town: The Dollars and Cents of an Immigration Ordinance](#), NCLR.

⁹ [State and Local Policies on Immigrant Access to Services: Promoting Integration or Isolation?](#), NILC.

¹⁰ [Towns Rethink Laws Against Illegal Immigrants](#), The New York Times.





(iii) Legislative Activity

ENACTED LAWS THAT RESTRICT IMMIGRANTS' ACCESS TO HOUSING

LOCAL LEVEL

The following localities have passed anti-housing ordinances since 2007 ([FIRM Database](#)):

Cherokee County, GA	Gilberton, PA
Topeka, KS	Bridgeport, PA
Milford, MA	Altoona, PA
Valley Park, MO	Mahanoy City, PA
Gaston County, NC	Gaston, SC
Riverside, NJ	Farmers Branch, TX
Inola, OK	Culpeper, VA
West Hazelton, PA	

ENACTED LAWS THAT PROTECT IMMIGRANTS' ACCESS TO HOUSING

STATE LEVEL

The following list of state measures was taken from a December, 2008 [report](#) published by the [National Conference of State Legislatures](#). Updates to the report are expected periodically.

California AB 1781 (signed 9/23/08)

The Act provides funding for various migrant related services. The Governor's veto reduced by \$340,000 the allocation to migrant housing. The Act allocates ten percent of the Community Services Block Grant to migrant and seasonal farm worker programs; \$600,000 for a three-year program evaluation to meet federal Title I Migrant Education Program requirements; and funds migrant day and child care.

Connecticut HB 5321 (Signed 6/12/08)

The Act establishes an Asian Pacific American Affairs Commission to work in consultation with state agencies to develop programs that address issues as they affect the Asian Pacific American community, including access to health care, housing, job training, access to the legal system, mental health and addiction services, economic development, workplace justice and equality, immigration, education and English language instruction.





PENDING LEGISLATION

A number of other jurisdictions have introduced legislation on immigrant access to housing. As state and local legislatures revisit these bills or consider new ones in 2009, this issue is certain to assume more prominence.

AZ HB2625
LA HB1157
LA HB1365
NH HB1137
NY HB9677

RI HB7700
RI SB2735
TN HB70
TN SB1343

To search for additional state immigration legislation visit the Migration Policy Institute's [State Law Database](#).

MODEL LEGISLATION

There exist positive and proactive alternatives to addressing this problem that states may want to consider. For model legislation, see the October 2007 law passed in California ([HB976](#)) which prevents landlords from verifying the immigration status of tenants, or the March 2007 bill introduced in Texas ([HB2676](#)) which would prohibit regulating residential tenancies based on immigration status.

Also, see the 2007 [policy passed by the Detroit City Council](#) that prohibits racial profiling.





(iv) Litigation

Case: [Villas at Parkside Partners v. City of Farmers Branch](#) (3-08CV1551-B (N.D. Tex.))

On December 26, 2006 several civil rights groups [filed a civil rights suit](#) in the U.S. District Court for the Northern District of Texas against the City of Farmers Branch, challenging the city's [Ordinance 2892](#). The ordinance, which required landlords to verify the “eligible immigration status” of prospective tenants prior to renting them apartments, was twice ruled unconstitutional by a federal judge.

Just five days after U.S. District Judge Sam Lindsay struck down the ordinance the City of Farmers Branch passed a revised version, [Ordinance 2952](#). This revised ordinance requires all renters in Farmers Branch to register their presence with the City and obtain an occupancy license. Prior to taking effect on 09/13/08 the ordinance was enjoined by U.S. District Judge Jane Boyle, and a merits hearing will likely be held in the very near future.

For more information on this case visit the [American Civil Liberties Union, American Immigration Law Foundation](#).

Case: [Garrett v. City of Escondido](#) (06-cv-2434-JAH-NLS (S.D. Cal.)).

On October 18, 2006, the Escondido City Council passed an [ordinance](#) that imposed penalties for landlords who rented to undocumented immigrants.

A consortium of public interest organizations and lawyers subsequently filed a [federal lawsuit](#) in the U.S. District Court for the Southern District of California, seeking a declaration of the ordinance's unconstitutionality.

In December 2006, the City acceded to the lawsuit, agreeing to the entry of a permanent injunction against enforcement of the ordinance, and paying plaintiffs' counsel \$90,000 in attorney's fees.

On December 14, 2006 the judge issued a [Stipulated Final Judgment and Permanent Injunction](#), agreeing that the ordinance violated the Equal Protection Clause and forced citizens to take on federal law enforcement duties. The City of Escondido is now permanently enjoined from enforcing the ordinance.

For more information on this case visit the [American Civil Liberties Union, American Immigration Law Foundation](#), and [Cooley Godward Kronish LLP](#).





Case: [Reynolds v. City of Valley Park](#) (06-CC-3802 (State Court)).

On July 17, 2006, the Board of Alderman of the City of Valley Park passed an [ordinance](#) which imposed penalties and fines for landlords who rented to undocumented immigrants.

On September 22, a coalition of landlords, along with the Metropolitan St. Louis Equal Housing Opportunity Council, challenged the ordinance, and [petitioned for a temporary restraining order](#). St. Louis Circuit Court Judge Barbara Wallace issued a [temporary restraining order](#) to block enforcement of the law, citing “big holes” in the city ordinance.

The Valley Park City Council then removed the English-only provision and passed a second, [revised version of the law](#). A [second injunction](#) blocked enforcement of the new version; on November 15, 2006, the U.S. District Court for the Eastern District of Missouri remanded the case to Missouri state court. On March 12, 2007, Judge Wallace granted a [permanent injunction](#) which voided the ordinance and permanently enjoined its enforcement

See also: [Lozano v. City of Hazleton](#), and *Assembly of God Church Riverside v. Township of Riverside*.

For an updated list and additional information on legal challenges to state and local ordinances see the [Legal Action Center](#) at the American Immigration Law Foundation.





(v) More Resources

ORGANIZATIONS

- [**American Civil Liberties Union \(ACLU\)**](#)
- [**American Immigration Law Foundation \(AILF\)**](#)
- [**American Immigration Lawyers Association \(AILA\)**](#)
- [**Fair Immigration Reform Movement \(FIRM\)**](#)
- [**Mexican American Legal Defense and Educational Fund \(MALDEF\)**](#)
- [**National Council of La Raza \(NCLR\)**](#)
- [**National Immigration Forum**](#)
- [**National Immigration Law Center \(NILC\)**](#)
- [**New York Immigration Coalition \(NYIC\)**](#)
- [**Puerto Rican Legal Defense and Education Fund \(PRLDEF\)**](#)

MATERIALS/REPORTS

- [**American Civil Liberties Union \(ACLU\)**](#)
[Immigrants' Rights Project](#)
[Local Anti-Immigrant Ordinance Cases](#)
[Letter Explaining Legal Flaws of San Bernardino Proposal](#)
- [**American Immigration Law Foundation \(AILF\), Immigration Policy Center \(IPC\)**](#)
[Division and Dislocation: Regulating Immigration through Local Housing Ordinances](#)
- [**Catholic Legal Immigration Network, INC. \(CLINIC\)**](#)
[State and Local Anti-Immigration Legislation Litigation Update](#)
- [**Department of Housing and Urban Development \(HUD\)**](#)
[Office of Fair Housing and Equal Opportunity](#)
[Local Tenant Rights, Laws, and Protections](#)
[Rights and Responsibilities of Landlords and Residents in Preventing Housing Discrimination Based on Race, Religion, or National Origin in the Wake of the Events of September 11, 2001](#)
- [**Fair Immigration Reform Movement \(FIRM\)**](#)
[Database of Local Ordinances](#)
- [**Mexican American Legal Defense and Educational Fund \(MALDEF\)**](#)
[Legal and Policy Analysis: Local Illegal Immigration Relief Act Ordinances](#)
- [**National Conference of State Legislatures \(NCSL\)**](#)
[State Laws Related to Immigrants and Immigration in 2008](#)
- [**National Council of La Raza \(NCLR\)**](#)
[Too Costly For My Town: The Dollars and Cents of an Immigration Ordinance](#)
[Common Myths About Undocumented Immigrants](#)





- **National Immigrant Forum**
[Toolkit for Responding to Local Anti-Immigrant Ordinances](#)
- **National Immigration Law Center (NILC)**
[State and Local Policies on Immigrant Access to Services: Promoting Integration or Isolation?](#)
- **New York Immigration Coalition**
[Immigrant Housing Concerns: Q&A Brochure](#)
- **Puerto Rican Legal Defense and Education Fund (PRLDEF)**
[Hazleton Page](#)
[Letter to Hazleton Mayor Barletta](#)
[Press Release “Hazleton Trial Ends and the Mayor’s Message Is – Blame the Powerless”](#)

TALKING POINTS

- **Mexican American Legal Defense and Educational Fund (MALDEF)**
[Talking Points on Do Not Rent Laws](#)
- **National Council of La Raza (NCLR)**
[Talking Points on Do Not Rent Laws](#)

NEWS ARTICLES

- **CNN**
[“How Illegal Immigration is Dividing a Town’s Business Owners,”](#) by David Holthouse (04/18/08)
- **The New York Times**
[“Towns Rethink Laws Against Illegal Immigrants,”](#) by Ken Belson & Jill P. Capuzzo (09/26/07)
- **USA Today**
[“Officials: Immigrant hostility fuels discriminatory housing laws,”](#) by Deborah Barfield Berry (09/28/07)

ADVOCACY TOOLS/CAMPAIGNS

- **Fair Housing Council of Montgomery County**
Fair Housing Council of Montgomery County (Pennsylvania), a local housing group fighting the Bridgeport, PA ordinance, has published a number of helpful resources, including a [fair housing flyer](#) and a [monthly newsletter](#).
- Gilberto Ramos, a real estate broker, sued the city of Farmers Branch. [Read his story.](#)
- The [Florida Immigrant Coalition](#) succeeded in building coalitions in Avon Park and Palm Bay, and was able to defeat anti-immigrant proposals in both cities.
- The [Tennessee Immigrant and Refugee Rights Coalition](#) fought vigorously to defeat both a housing and employment ordinance.







F. STATE AND LOCAL POLICE RESPONSIBILITIES



(i) Background Information

One of the highest profile immigration-related federalism issues over the last several years involves the role of state and local police in the enforcement of federal immigration laws. Historically, the line demarcating federal enforcement jurisdiction from state and local jurisdiction has been clear: it has tracked the line between civil immigration laws and criminal immigration laws. Federal authorities have long been considered to possess exclusive jurisdiction over laws regulating immigration status, which are civil in nature. In contrast federal, state, and local authorities typically have been considered to possess the authority to enforce criminal laws related to immigration (e.g. trafficking and smuggling offenses).

In 1996, however, Congress blurred the line when it passed a measure known by its Immigration and Nationality Act (INA) code reference “287(g)” (8 U.S.C. Sec. 1357(g)). This provision authorizes states and localities to enter into specific cooperative agreements with the federal government, and empower their police officers to engage in certain civil immigration enforcement activities. In the first five years of the provision’s existence, few states and localities showed any interest in these agreements, and none were executed. However, post-9/11, and in the wake of Congress’s failure to enact comprehensive immigration reform, that trend has changed significantly (see [Forcing Our Blues Into Gray Areas: Local Police and Federal Immigration Law Enforcement](#), Nebraska Applesseed). Immigration and Customs Enforcement now reports that over sixty-three 287(g)





agreements have been implemented, and another forty have been requested by state and local governments (see [287\(g\) Fact Sheet](#), AILA). The vast majority of these agreements were finalized after 2006, when public frustration with our broken borders boiled over and the immigration debate became emotionally charged.

While most of the 287(g) agreements focus on screening convicted criminals serving time in state and local jails to see if they are eligible for deportation, others cast a wide net to target ordinary undocumented workers who may come into casual contact with state or local police. Some were established at the direction of state or local legislative bodies. For a list of ordinances addressing immigration law enforcement, see the [Legislative Activity](#) tab of this chapter.

The central policy concern with these types of arrangements is that they chill crime reporting in immigrant communities (see [Police Chiefs Guide to Immigration Issues](#), International Association of Chiefs of Police, [Police Chiefs Announce Immigration Enforcement Policy](#), International Association of Chiefs of Police, and [Statement on Immigration](#), Major Cities Chiefs Association). When immigrants learn that contact with local law enforcement could lead to their own deportation or the deportation of close relatives, they stop reporting crimes they experience or witness. This, in turn, allows criminals to roam free and continue to prey on our communities.

Many state and local police officers have voiced strong opposition to local enforcement of immigration laws for this very reason—they see their number one job as fighting crime and protecting the community, and know that becoming “deportation agents” will hurt their ability to protect the public from serious criminals (see [Proposals To Expand the Immigration Authority of State and Local Police: Dangerous Public Policy According to Law Enforcement, Governments, Opinion Leaders, and Communities](#), National Immigration Forum).

Still, some Members of Congress have led a crusade to bypass the need for 287(g) agreements altogether, and to statutorily redefine the immigration enforcement roles of states and localities. Bills like the CLEAR Act¹ declare that states and localities have the “inherent authority” to enforce all immigration laws, and encourage (or in some cases mandate) state and local police to engage in such enforcement activities. None of these bills has come close to becoming law, and for good reason: state and local police forces overwhelmingly oppose a new unfunded mandate from Congress, particularly one that will make it harder for them to locate criminals and bring them to justice. Most state and local police agencies agree that any increased involvement in immigration enforcement should be voluntary, limited, and related to the goal of making our streets and communities safer (see [Proposals to Expand the Immigration Authority of State and Local Police](#), National Immigration Forum).

¹ The CLEAR Act (“Clear Law Enforcement for Criminal Alien Removal Act”), introduced originally in 2003, has become short-hand for an assortment of bills seeking to mandate the participation of state and local authorities in enforcing federal immigration laws.





Despite the concerns of law enforcement officers, increasing numbers of states, counties, and municipalities are bowing to a vocal minority of residents and have started considering bills that would require their police officers to check the immigration status of anyone they encounter, including victims of crime. Not only are these bills constitutionally dubious, but they also run the practical risk of making communities less safe, and exposing state and local governments to legal liability if police use racial profiling to determine who to question about their immigration status. For a partial list of legal challenges to these laws and ordinances, see the [Litigation](#) tab of this chapter.

In stark contrast to the uptick in state bills and local ordinances requiring police to engage in immigration enforcement, scores of other states and localities have moved in the exact opposite direction. They have heeded the advice of their law enforcement officials and adopted so-called “confidentiality policies” (see [Chart of States and Cities with Confidentiality Policies](#), NILC). These policies limit the authority of police departments to coordinate with federal immigration authorities except in the context of criminal investigations. They restrict police officers from asking about the immigration status of witnesses to or victims of crime. Cities and states across the nation have adopted these community policing policies in order to ensure that immigrants feel safe reporting crimes and assisting in investigations. This helps them protect public safety and put more criminals behind bars.

Predictably, the cities and states with confidentiality policies are also under attack by Members of Congress who support the CLEAR Act. These politicians want to enlist all 700,000 state and local police officers to help the federal government deport non-criminal, undocumented workers. For now, the CLEAR Act is at bay because the public agrees with the police that putting criminals behind bars is more important than deporting undocumented workers. Still, supporters of the CLEAR Act have become artful in couching their bill as a “tough” law enforcement approach, and it remains to be seen whether state and local police can continue to stand up for good policy and public safety under mounting pressure by politicians at all levels of government.





(ii) Myths and Facts

MYTH: Police do not need explicit authority to enforce “civil” immigration laws.

FACT: States and localities do *not* have the authority to enforce federal civil immigration laws except as explicitly provided by Congress. Long-standing legal consensus affirms that states and localities lack such authority and that the Constitutional doctrine of preemption precludes states and localities from legislating in this arena.² That consensus came under attack after 9/11, when the Department of Justice’s Office of Legal Counsel reversed its opinion on this matter, due to strong pressure by an aide to then-Attorney General John Ashcroft (Kris Kobach, now a law professor and attorney for the Federation for American Immigration Reform). Given the outcry from state and local police, who did not want the immigrant community to start viewing them as agents of the INS, the new OLC memo was kept under seal until litigation pried it loose. Analysis by legal experts has shown that the 2002 OLC opinion is wrong, and the 1996 DOJ memo is still an accurate analysis of the law on this issue.³

MYTH: Local police want the authority to enforce the immigration laws.

FACT: Not only do state and local police lack the inherent authority to enforce civil provisions of federal immigration law, they have expressed overwhelming opposition to taking on that responsibility.⁴

State and local police officers typically register four primary objections to assuming immigration enforcement authority:

- Limited Resources – police departments around the country are struggling to find the resources necessary to accomplish their core mission of protecting their communities and promoting safety; a sweeping new mandate would severely undermine their effectiveness;
- Community Trust/Safety – many police departments attribute their effectiveness at combating crime to community-based policing initiatives that are predicated on obtaining the trust of the community’s residents; they justifiably fear that turning their officers into immigration agents will erode that trust and limit crime reporting by witnesses and victims;
- Complexity/Training – police departments understand that immigration status determinations can be extremely complex and require extensive training that they cannot afford; and
- Racial/Ethnic Profiling – police departments understand that asking their officers to enforce immigration laws increases the likelihood that the investigative focus will turn from conduct to perceived ethnicity, which can lead to civil rights abuses and costly litigation.

² [Memorandum on the Assistance by State and Local Police In Apprehending Illegal Aliens](#), DOJ Office of Legal Counsel, 1996.

³ [Analysis of the 2002 DOJ Office of Legal Counsel Opinion](#), ACLU.

⁴ [Proposals to Expand the Immigration Authority of State and Local Police](#), National Immigration Forum.





MYTH: All undocumented immigrants are criminals.

FACT: Immigration status violations—such as overstaying one’s visa—are “civil,” not criminal, offenses. Other examples of civil law violations include speeding, jaywalking, late tax filing, etc. A large percentage (estimates range from 35% to 50%) of the undocumented immigrant population entered the country lawfully and then overstayed their visas, meaning they have committed no criminal offense. It is true that individuals who cross the border without a visa have committed a federal misdemeanor and could be prosecuted for this crime. Their presence in the United States after such an entry, however, is not an on-going criminal violation. In other words, their mere presence in the U.S., whether subsequent to an illegal border crossing or a status violation, is not a crime.

MYTH: Police need new legal authority to arrest “criminal aliens.”

FACT: State and local police already can (and do) assist federal immigration agents in *criminal* matters, just as they do with anti-gang and anti-drug work that has federal implications. State and local police already can (and do) arrest immigrants who commit crimes. What they cannot do, without explicit authority and execution of a 287(g) agreement with DHS, is enforce civil immigration laws.

A simple analogy would be federal tax law enforcement. If a vendor is selling merchandise on a street corner in violation of state or local law, police can shut down the illegal operation. They cannot then enforce the sections of the federal tax code that may have been violated. And if the vendor is not violating a state or local law, they cannot go on a fishing expedition to see if the business is complying with its federal tax payments. Not only do state and local police not have the training to do such enforcement, they do not have the time and it is not their priority. That is why we have federal agencies that do such work, and state and local police that focus on breaches of criminal law.

MYTH: Confidentiality policies—sometimes called “sanctuary policies”—shield foreign-born criminals from arrest, detention, prosecution, referral to ICE, and deportation.

FACT: No state or locality has adopted a policy to shield non-citizen criminals from prosecution or deportation. Many states and cities have adopted policies to encourage immigrant crime victims to report the abuses to state and local police, without fear that this will lead to their own deportation. These policies do not limit federal enforcement of our immigration laws, and in fact, they help enhance public safety by building trust between immigrants and local law enforcement so that more community residents call the police.

State and local police already report criminals who may be deportable to federal immigration authorities. This happens every day, and the cities and states with confidentiality policies in place are also the ones that most frequently contact DHS about actual criminals.





MYTH: Local police can easily enforce immigration law without racial or ethnic profiling.

FACT: Immigration law is extremely complex and subject to constant change. A broad array of documents can be used to prove immigration status and even with extensive training and experience, mistakes are inevitable. Experience has shown that when local law enforcement gets involved in immigration enforcement, particularly without proper training and experience, people are often targeted on the basis of their accent or appearance. This can lead to serious violations of the civil rights of legal permanent residents and even U.S. citizens. Puerto Ricans, naturalized citizens, and others who “look” or “sound” foreign to some ears have frequently been the victims of such abuses.

These civil rights violations, in turn, may result in costly litigation. The case of Chandler, Arizona is instructive. In July 1997, local police and INS agents worked closely in planning a community-wide roundup of suspected undocumented immigrants. Chandler police acted beyond their authority and attempted to enforce immigration law. The Arizona Attorney General later found that residents were stopped repeatedly “for no other apparent reason than their skin color or Mexican appearance or use of the Spanish language.” Police harassed and detained Hispanic-appearing individuals in their cars, walking on the street, and sitting in their homes. The Attorney General’s report further stated that these stops “violated the Constitutional rights of American citizens and legal residents to equal protection and to be free from unlawful searches and seizures.” The subsequent lawsuit cost the city \$400,000 in damages.

Similarly, in November 2003, the Mexican American Legal Defense and Educational Fund (MALDEF) settled a case with the city of Rogers, Arkansas, where Latinos were allegedly improperly stopped and investigated based on their ethnicity and perceived immigration status.⁵ Under the settlement agreement, the City of Rogers was ordered to publish a general order regarding “prohibition and prevention of racial/bias profiling” and to prohibit officers from engaging in profiling of persons based on their race, national origin, citizenship, religion, ethnicity, age, gender, or physical or mental disability for the purpose of initiating law enforcement action—except to determine whether a person matches a specific description of a particular suspect. The city also agreed to prohibit police action against an individual based solely on his or her actual or perceived immigration status.

⁵ [Latinos To Bring Class Action Lawsuit Alleging Racial Profiling By Police In Rogers, Arkansas, MALDEF.](#)





(iii) Legislative Activity

ENACTED LEGISLATION MANDATING EXPANDED ROLES FOR LOCAL LAW ENFORCEMENT

LOCAL LEVEL

The following localities have passed ordinances mandating that police verify immigration status of individuals they encounter or detain have been enacted since 2007 ([FIRM Database](#)):

Prince William County, VA
Farmers Branch, TX
Gaston County, NC

LaPorte, IN
Tulsa, OK

STATE LEVEL

A number of states and localities, however, have passed laws broadly related to immigration law enforcement, including: authorizing funds to be allocated to immigration enforcement-related efforts, requiring immigration status checks of incarcerated individuals, and requiring police forces to enter into 287(g) agreements with DHS.

The following list of state measures was taken from a December, 2008 [report](#) published by the [National Conference of State Legislatures](#). Updates to the report are expected periodically.

Alabama HB 28 (Signed 5/1/08)

This law makes holding federal wards in state or local juvenile detention facilities for longer than 24 hours for the purpose of returning them to their countries of citizenship a violation of the deinstitutionalization of status offender requirement.

Alabama SJR 39 (Signed 5/8/08)

This resolution urges the Governor to expand the current 287(g) program to serve target areas where the illegal immigrant population has caused issues with public health services, public education and in the community in general; train law enforcement to identify a suspect's resident status during processing.

Arizona HB 2807 (Vetoed 4/28/08)

This bill states that officials, agencies, or cities will not be prohibited from sending or receiving information regarding immigration status of any individual for the purpose of determining public benefit eligibility, confirming an identity of a person who was arrested, or verifying a claim of legal domicile. County sheriffs and police officers will be trained by a federal entity as peace officers to coordinate with ICE to implement these provisions.

Colorado SB 134 (Signed 5/20/08)

Under this law, 50 percent of bonds and fees recovered from persons illegally in the country who are charged with felonies or class 1 or 2 misdemeanors will be credited to the county jail assistance





fund; the other 50 percent will be given to the capital construction fund.

Colorado HB 1348 (Signed 5/1/08)

This law authorizes officers of the Federal Protective Service of the Immigration and Customs Enforcement (ICE) to serve as peace officers. It grants ICE officers recognition as federal law enforcement officers who are empowered to make arrests for violations of the U.S. Code and are authorized to carry a firearm and use deadly force in performing their duties. It clarifies that after making an arrest under the authority of this law, an ICE officer must transfer custody of the arrested individual to a Colorado peace officer.

Georgia SB 350 (Signed 5/14/08)

This law adds that for persons convicted of driving without a license, in addition to any person charged with a felony or with driving under the influence who is confined in jail, a reasonable effort should be made to determine nationality.

Hawaii HB 3040 (Signed 5/16/08)

This law requires each covered sex offender and offender against a minor to register with a signed statement that includes passports or documents establishing immigration status if the covered offender is an alien and a statement indicating whether the covered offender is a U.S. citizen. A digitized copy of an offender's passport or documentation of immigration status will be included in the registry.

Mississippi SB 3124 (Signed 5/10/08)

This legislation makes appropriations for the Department of Public Safety for FY 2009, including \$1 million for the DHS with authorization to increase both funds and number of positions if any additional funding is received. Cost study: The Department of Public Safety will also submit a cost study report to the Legislature on state enforcement of federal immigration laws by December 31, 2008.

Missouri HB1549 (Omnibus bill, signed 7/07/08)

The law requires state highway patrol to be trained in accordance with a memorandum of understanding with DHS to enforce federal immigration law. It prohibits sanctuary policies. It is unlawful to knowingly transport any illegal alien for the purposes of drug trafficking, prostitution, or employment and establishes a felony with penalties of one year imprisonment and/or \$1,000. The arresting agency shall verify immigration status of those confined to jail through the Law Enforcement Support Center, and notify DHS of any who are present unlawfully. Unlawful status will be considered when judging release on bail.

North Carolina SB 1955 (Signed 8/8/08)

The law provides for the limited release of certain prisoners into the custody of immigration officials for deportation.

North Carolina HB 2436 (Signed 7/16/08)

Law enforcement: Provides that by March 1, 2009, the North Carolina Sheriffs' Association (NCSA) shall submit a report to the legislature on the operations and effectiveness of the "Illegal Immigration Project", which, in cooperation with ICE, provides technical assistance and advice to Sheriffs on Immigration and Customs Enforcement and participation in the 287(g) program.





South Carolina HB 4400 (Omnibus bill, signed 6/4/08)

The law requires a Memorandum of Understanding (MOU) with DHS or DOJ, regarding the enforcement of federal immigration laws. The act establishes an immigration violation hotline. It makes it a felony to harbor, transport or conceal unauthorized aliens. It requires jail officers to determine the nationality and immigration status of prisoners by using DHS' Law Enforcement Support Center. The law considers immigration status a variable when courts determine the conditions of release.

South Dakota HCR 1009 (Signed 2/26/08)

This resolution urges the federal government to provide full funding so that when local law enforcement officers who contact ICE regarding a person suspected of committing a crime in the state and who is determined by ICE as illegal, that person may be detained or deported.

Utah SB 81 (Omnibus bill, signed 3/13/08)

The law requires the attorney general to negotiate a Memorandum of Understanding with DHS for the enforcement of federal immigration law by state and local law enforcement personnel. Local governments may not prohibit a law enforcement officer from cooperating or communicating with federal officials regarding the immigration status of a person. The law makes it a class A misdemeanor for a person to transport, conceal, harbor or shelter unauthorized immigrants, knowing or in reckless disregard that the alien is in the United States in violation of federal law. County sheriffs must make a reasonable effort to verify immigration status of confined foreign nationals.

Utah HB 492 (Signed 3/18/08)

This law requires sex offenders to provide the department or registry with all documents, telephone numbers, internet identifiers, and professional licenses establishing their immigrant status if the offender is an alien. Nonresident offenders are required to register as offenders in the state if the offender is in Utah for ten or more days during the year.

Virginia HB 440/SB 623 (Signed 3/8/08)

This law creates a rebuttable presumption against bail for any person who is determined to be present illegally in the United States and who is charged with any of the following offenses: any violent crime including any murder or assault, any felony drug offense and any firearm offense. The presumption only applies if ICE agrees to issue a detainer for removal of the detainee and agrees to pay for the cost of incarceration after issuance of the detainer.

Virginia HB 820/SB 609 (Signed 3/3/08)

This law requires an officer in charge of a jail or correctional facility to inquire the immigration status of a person with ICE. The facility officer shall communicate the results of this immigration alien query to the State Compensation Board which shall communicate on a monthly basis the results of any query confirming that a person is illegally present in the United States to the Virginia Central Criminal Records Exchange.





ENACTED LEGISLATION RESTRICTING THE ROLE OF STATE AND LOCAL LAW ENFORCEMENT

STATE LEVEL

Scores of states and localities have adopted confidentiality policies or resolutions limiting the role of state and local police in enforcing civil immigration laws. The National Immigration Law Center (NILC) tracks a number of them in a regularly updated resource entitled [Laws, Resolutions, and Policies Instituted Across the U.S. Limiting Enforcement of Immigration Laws by State and Local Authorities](#).

The following list of state measures was taken from a December, 2008 [report](#) published by the [National Conference of State Legislatures](#). Updates to the report are expected periodically.

Tennessee HB 4001 (Signed 5/19/08)

This law bars any law enforcement office from using racial profiling, defined as detention or disparate treatment of an individual on the basis of their actual or perceived race, color, ethnicity, or national origin. People who believe they were subjected to a motor vehicle stop resulting from racial profiling can file a report in electric format through the Attorney General’s office. A person aggrieved by violation of this law may file a lawsuit.

PENDING LEGISLATION

A number of other jurisdictions have introduced legislation on state/local law enforcement. As state and local legislatures revisit these bills or consider new ones in 2008, this issue is certain to assume more prominence unless and until the federal government takes explicit preemptive action.

CA HB648	NJ HB4561	PA SB1124
CA HB1081	NY HB3161	RI HB5237
CA HB1082	NY HB5404	RI HB5871
CA HB1141	NY HB5870	RI HB5875
CA SB3	NY HB6452	RI SB298
FL HB73	NY HB6495	RI SB735
FL SB540	NY HB7559	SC HB3026
GA SB23	NY HB8560	SC HB3057
KS HB2370	NY HB9455	TN HB491
KS SB124	NY SB71	TN HB728
KS SB125	NY SB75	TN HB1107
KY HB95	NY SB4389	TN HB2212
KY HB97	OH HB308	TN SB91
MI HB5211	OH SB260	TN SB203
MO HB1395	OK HB1413	TN SB1604
NC HB1620	OK SJR25	VA HB1618
NC SB229	PA HB751	VA HB1918
NC SB807	PA HB752	VA HB1970
NH HB404	PA SB980	VA HB2322





State and Local Police Responsibilities

VA HB2926
VA HB2931
VA HB2933
VA HB2936
VA HB3006

VA HB3206
VA SB1045
VA SB1421
WA HB1874
WA HB2439

WA HB2441
WI HB569
WI SB309

In addition, as noted earlier, several dozen 287(g) agreements have already been executed between states or localities and DHS. At least eighty more state and local law enforcement agencies are seeking to join the program, according to a U.S. Immigration and Customs Enforcement spokesman ([287\(g\) Fact Sheet](#), AILA).

To search for additional state immigration legislation visit the Migration Policy Institute's [State Law Database](#).

MODEL LEGISLATION

[Sample Language for Policies Limiting the Enforcement of Immigration Laws By Local Authorities](#), a document prepared by NILC, provides model language that localities can use to limit the role of state and local police in the enforcement of civil immigration laws.

See also resolutions passed in St. Paul and [Minneapolis](#), Minnesota which state that local police will not check immigration status.





(iv) Litigation

As of December 2008, there was no reported court case squarely ruling on the Constitutionality of state or local ordinances empowering police to enforce civil immigration laws. A number of judicial opinions, however, have touched peripherally on the issue and indicate severe skepticism regarding whether such laws would be constitutional on their face or as applied.

Case: [Lopez v. the City of Rogers](#), (U.S. District Court Case No. 01-5061).

The court accepted a settlement agreement in which the City agrees, among other things, to prohibit police action against an individual based solely on his or her actual or perceived immigration status.

Case: [State of Louisiana v. Omar Barrientos](#), No. 06-1726 (La. 24th Jud. Dist. Ct. Jefferson Parish Jan. 31, 2007).

Louisiana passed a law providing that “no alien student or nonresident alien shall operate a motor vehicle in the state without documentation demonstrating that the person is lawfully present in the United States.” The statute further provided that the arresting law enforcement officer was to seize and cancel the defendant’s driver’s license and notify the Department of Homeland Security of the defendant’s arrest so that removal proceedings could be initiated. Punishment for violation of the statute included a fine up to \$1,000 and jail time not to exceed one year.

Omar Barrientos was arrested and charged under this state law with operating a vehicle without lawful presence in the United States. On January 31, 2007, the 24th Judicial District Court, Jefferson Parish Louisiana [granted defendant’s motion to quash](#) and dismissed the criminal charge against him. The Court found that the statute was “an impermissible attempt to regulate immigration and conflicts with federal immigration law,” and was therefore unconstitutional.

Case: [State of Louisiana v. Juan Herrera](#), No. 467-763 “K” (La. Crim. Dist. Ct. Orleans Parish Feb. 1, 2007).

The court found that “the defendant’s arrest pursuant to LSA-R.S. 14:100.13 was made without probable cause, because it was the result of a selective enforcement policy profiling, targeting and arresting Latino drivers.”

Case: [State of Louisiana v. Neri Lopez](#), 948 So. 2d 1121 (La. Ct. App. 4th Cir. 2006).

In its December 20, 2006 decision granting a motion to quash driving without lawful presence charges against Neri Lopez, the Fourth Circuit reasoned that the driving without lawful presence statute “places a burden on both legal and non-legal aliens which exceeds any standard contemplated by federal immigration law”—i.e., it imposes a requirement regarding who must carry documents that exceeds what federal law requires, and the penalties it imposes are harsher than those provided for in federal law. Accordingly, the court held that the statute is preempted by federal law.

For an updated list and additional information on legal challenges to state and local ordinances see the [Legal Action Center](#) at the American Immigration Law Foundation.





(v) More Resources

ORGANIZATIONS

- [American Civil Liberties Union \(ACLU\)](#)
- [American Immigration Lawyers Association \(AILA\)](#)
- [Center for Community Change \(CCC\)](#)
- [Mexican American Legal Defense and Educational Fund \(MALDEF\)](#)
- [National Council of La Raza \(NCLR\)](#)
- [National Immigration Forum](#)
- [National Immigration Law Center \(NILC\)](#)

MATERIALS/REPORTS

- **American Civil Liberties Union**
[Analysis of the 2002 DOJ Office of Legal Counsel Opinion](#)
- **Department of Justice (DOJ)**
[Audit on State and Local Confidentiality Policies](#)
- **Fair Immigration Reform Movement (FIRM)**
[Database of Local Ordinances](#)
- **Immigration Policy Center (IPC), American Immigration Law Foundation (AILF)**
[The Myth of Immigrant Criminality and the Paradox of Assimilation](#)
[What Happens When Local Cops Become Immigration Agents? Arizona Sheriff's](#)
[Immigration-Enforcement Activities Impact Budget, Arrest Rates and Response Times](#)
- **International Association of Chiefs of Police**
[Police Chiefs Guide to Immigration Issues](#)
- **Mexican American Legal Defense and Educational Fund (MALDEF)**
[Fiscal Impact on the State of Arkansas as the Result of Local Law Enforcement of Civil](#)
[Immigration Law](#)
[Latinos To Bring Class Action Lawsuit Alleging Racial Profiling By Police In Rogers,](#)
[Arkansas](#)





- **National Conference of State Legislatures (NCSL)**
[State Laws Related to Immigrants and Immigration in 2008](#)
- **National Conference of State Legislatures (NCSL)**
[2007 Enacted State Legislation Related to Immigrants and Immigration](#)
- **National Council of La Raza (NCLR)**
[Toolkit for State and Local Police Enforcement of Immigration Law](#)
- **National Immigration Forum**
[Backgrounder: Immigration Law Enforcement By State And Local Police](#)
[State and Local Enforcement of Immigration Laws Resources](#)
- **National Immigration Law Center (NILC)**
[Chart of States and Cities with Confidentiality Policies](#)
[2005 State Legislation Restricting Benefits for Immigrants or Promoting State and Local Law Enforcement of Immigration Laws](#)
[Sample Language for Policies Limiting the Enforcement of Immigration Laws By Local Authorities](#)
- **Nebraska Appleseed**
[Legal Guide on State and Local Police Enforcement of Immigration Laws: “Forcing Our Blues Into Gray Areas”](#)
- **Tennessee Immigrant & Refugee Rights Coalition (TIRRC)**
[Turning Tennessee Highway Patrol into Immigration Agents: At What Cost to Our Communities?](#)
- **U.S. Immigration and Customs Enforcement (ICE)**
[Delegation of Immigration Authority Section 287\(g\) Fact Sheet](#)

POLICY STATEMENTS

- **International Association of Chiefs of Police**
[Police Chiefs Announce Immigration Enforcement Policy](#)
- **Major Cities Chiefs Association**
[Statement on Immigration](#)
- **National Immigration Forum**
[Letter to Congress Presenting the Perspective of Major Cities With Confidentiality Policies](#)
[Letter to Congress Presenting the Perspective of Domestic Violence Prevention Groups](#)
[Conservatives and Cops Agree: The CLEAR Act and Its Senate Companion Are Bad Public Policy](#)
[Pending DOJ Proposal Denounced as “Nationalization of Local Law Enforcement”](#)
[Proposals To Expand The Immigration Authority Of State And Local Police: Dangerous Public Policy According to Law Enforcement , Governments, Opinion Leaders, and Communities](#)





TALKING POINTS

- **National Council of La Raza (NCLR)**
[Talking Points: Strategic Suggestions for Advocates](#)
[Protect the Integrity of Our Country: Talking Points](#)







G. DRIVER'S LICENSES / REAL ID



(i) Background Information

With Congressional failure to reform national immigration policy, state and local governments have acted independently to try to address the symptoms of our country's broken system. Initiatives regulating immigrants' access to identification and driver's licenses are continually among the highest profile state and local actions. Emotional battles over the issue in California, Tennessee, New York, and the city of New Haven, Connecticut all made national headlines, as well as fodder for Sunday morning talk show hosts and late night comedians.

In broad strokes, state and local initiatives relating to identity documents fall into two distinct categories: those seeking to alter states' driver's license requirements, and those seeking to either ensure or restrict states' compliance with the 2005 REAL ID Act.

ALTERING STATES' DRIVER'S LICENSES REQUIREMENTS

While driver's license eligibility requirements vary from state to state, applicants must generally provide proof of age, identity, and in some instances, state and legal U.S. residency. In many states, the list of acceptable documents to verify identity explicitly excludes many individuals at various stages of the immigration process and serves as a *de facto* legal immigration status requirement (see [Driver's License Fact Sheet on Residency Requirements](#), NCLR, and [State Driver's License Requirements](#), NILC). Some state legislators have sought to formalize this requirement by offering new laws that limit the ability of immigrants with various statuses to obtain driver's licenses.





For example, a Colorado law first introduced in the Colorado House of Representatives (CO HB1313) in 2007, states that the Department of Motor Vehicles “shall require an applicant for a driver’s license or an instruction permit to provide evidence of identity, age, and lawful presence in the United States before issuing a driver’s license.” A similar bill that was introduced in Connecticut would have required “proof of United States citizenship or other legal status before issuing or renewing a motor vehicle operator’s license” (CT SB419). No action was taken on this bill in 2007 and it has since expired. For a list of laws and ordinances addressing these issues, see the [Legislative Activity](#) tab of this chapter.

In the aftermath of the terrorist attacks of September 11, 2001, some policy makers have backed more restrictive requirements for driver’s licenses, claiming that this would help combat terrorism by denying would-be-terrorists the ability to board airplanes, rent cars, and blend into society. While enhancing national security is critical, restricting access to driver’s licenses is counterproductive to that goal. In fact, this policy makes everyone in the community less safe; driver’s license restrictions lead immigrants to fear being reported to DHS, and as a result avoid contact and cooperation with law enforcement in fighting potential criminal and terrorist activity (see [Driver’s License Fact Sheet on Public Safety Issues](#), NCLR). Driver’s license restrictions also lead to more unlicensed and uninsured drivers on our nation’s roads, which decreases public safety.

Additionally, these proposals will not deny access to driver’s licenses to undocumented immigrants alone. By imposing additional barriers that are impractical and reduce the number of documents someone can use to establish eligibility for a state-issued identity document, these laws have the potential to deny documented immigrants and even naturalized or native-born citizens access to these important documents.

In response to the misguided efforts of some states to restrict access to driver’s licenses, policymakers in other regions such as New York state and the city of New Haven, Connecticut considered relaxing documentation requirements for obtaining driver’s licenses and municipal identifications (see [Why the Federal Government Should Not Place Immigration Status Restrictions on Driver’s Licenses](#), NILC, and [Driver’s License Fact Sheet](#), NCLR). Currently, a total of five states do not require proof of legal immigration status to get a license: Hawaii, Maryland, New Mexico, Utah, and Washington.

New York’s push for broader access to driver’s licenses fell under the media’s microscope in the fall of 2007 when it ran up against Presidential campaign politics. Governor Elliot Spitzer initially supported an administrative shift that would have created three types of driver’s licenses in the state of New York: the first, a traditional state license, that would be available to all New Yorkers including those without proof of citizenship; a second “enhanced driver’s license” that would be as secure as a passport; and a third license that would meet new federal standards in the REAL ID Act.

As Spitzer rightly [claimed](#), the proposal would have helped enhance public safety by decreasing the number of uninsured drivers on the roads, and lowering auto insurance rates for all drivers. Millions of undocumented immigrants live and work in the United States and consequently will drive on U.S. roads whether or not they have a driver’s license. Allowing immigrants access to driver’s licenses would help ensure that far more drivers take driving classes, pass driving tests,





and get insurance, and fewer drivers flee the scene of an accident (see [Driver's License Fact Sheet on Public Safety Issues](#), NCLR, and [Utah Legislative Auditor General Report](#)). Due to political pressure the Governor's plan was eventually abandoned, and New York conformed to new driver's license standards intended to meet REAL ID requirements. See the [Litigation](#) tab of this chapter for more information.

[REAL ID REBELLION](#)

Prior to the Congressional debates over comprehensive immigration reform in 2006 and 2007, the REAL ID Act became law and its provisions were set to be implemented in May 2008. One month prior to the date of mandatory compliance, DHA announced an extension until December 31, 2009. This 2005 law places federal restrictions and requirements on state-issued driver's licenses, and requires all states to comply with these national standards (see [Driver's License Policies](#), NCLR and [Summary of the Driver's License Provisions in the REAL ID Act of 2005](#), NILC). The Act seeks to bar all states from issuing driver's licenses to people who cannot prove they are in the U.S. legally by creating minimum issuance standards for such documents. REAL ID requires: (1) verification of presented information with the issuing agencies; (2) evidence that the applicant is lawfully present in the United States; and (3) issuance of temporary driver's licenses or identification cards to persons here on non-immigrant visas. The law does allow states to issue driver's certificates or ID cards to undocumented immigrants if they chose to do so, although these IDs must clearly state that they are invalid for federal identification or official purposes. This includes making the licenses and ID cards a different color to distinguish them from regular licenses and IDs (see [REAL ID Q&A](#), NILC).

In order to bring their states into compliance with the REAL ID requirements, the Indiana and Nevada state legislatures passed bills (SB 463 and AB 584 respectively) to “make changes to the Motor Vehicle Code including provisions intended to bring the state into compliance with the REAL ID Act” (see [State Laws Related to Immigrants and Immigration in 2008](#), NCSL). Support for those bills came from a public concerned about terrorism and identity theft (see results of a national survey by the [Information Technology Association of America](#)), and from federal lawmakers like Congressman Wally Herger (R-CA), who [supports a national ID card](#) intended to “prevent states from undermining our nation's immigration laws by issuing driver's licenses or other official forms of identification to those who are in this country illegally.”

Yet, opposition by state governments and agencies against implementing the REAL ID Act is also widespread. To date, twenty-one states have enacted anti-REAL ID bills or resolutions, and sixteen additional states had anti-REAL ID bills and resolutions pending in state legislatures in 2008. Of those twenty-one states, eleven—Arizona, Arkansas, Georgia, Idaho, Louisiana, Maine, Montana, New Hampshire, Oklahoma, South Carolina, and Washington—will never issue a REAL ID license because those states have enacted binding legislation prohibiting participation in the REAL ID program (see [Real Nightmare](#), ACLU).

Those states argue that the REAL ID Act imposes an unfunded mandate on states and violates the principles of federalism contained in the Tenth amendment to the United States Constitution. According to a [report](#) by the National Governors Association (NGA), the American Association of Motor Vehicles Administrators, and the National Conference of State Legislatures, the cost to states of implementing the REAL ID Act would be approximately \$11 billion over five years (see [The REAL ID Issue Packet](#), AILA).





Beyond the constitutional and budgetary objections which state legislatures have voiced, implementation of the REAL ID Act presents risks to the privacy of personal information for millions of people. By its very terms, it imposes obstacles that will prevent citizens and immigrants alike from obtaining driver's licenses and identification cards. Furthermore, the REAL ID Act particularly harms the poor, victims of domestic violence, immigrants, and religious minorities (see [Why the REAL ID Act's Driver's License Restrictions Are Really Anti-Immigrant](#), NILC and [Public Comment on REAL ID Regulations](#), NILC).

The fundamental problem with REAL ID is that it imposes the United States' first-ever national identity card system. National IDs threaten privacy by consolidating data in huge, insecure government databases that could be accessed by hundreds of thousands of government employees. National IDs also facilitate tracking of innocent citizens' movements by the government. The end result could be a situation where citizens' movements inside their own country are monitored and recorded through these "internal passports." In addition, REAL ID mandates significant changes to the amount and type of sensitive, personally identifiable information states will obtain, store, and share about each and every applicant for an ID card. These mandates will likely lead to rampant identity theft and significant invasions of personal privacy.

The REAL ID Act goes far beyond what is needed to make driver's licenses more secure, and places impractical new requirements on states and ID applicants that will cause brand-new headaches at the DMV when fully implemented.





(ii) Myths and Facts

MYTH: Increasing immigrants' access to driver's licenses is a threat to national security.

FACT: Many local law enforcement officials oppose restrictive licensing proposals because driver's license databases play a critical role in enforcement.¹ In fact, a recent GAO report noted that agents of ICE find public source databases, such as DMV databases, to be more current and reliable than DHS databases.² Licensing noncitizens enriches our domestic intelligence by allowing law enforcement authorities to verify and obtain the identities, residences, and addresses of millions of foreign nationals. Restrictive licensing will deprive authorities of this information. Moreover, the proliferation of fraudulent documents that will result from restrictive licensing will contaminate intelligence regarding who is present in the United States.

MYTH: Department of Motor Vehicle employees can easily recognize immigration documents and interpret immigration laws.

FACT: Restrictive licensing will require state motor vehicle administrators to become immigration law and document experts, in order to properly evaluate an applicant's immigration status and determine when such status expires. Our immigration laws recognize approximately 60 ever-changing nonimmigrant visa categories, in addition to myriad classifications for asylees, refugees, parolees, persons in immigration proceedings, persons under orders of supervision, persons with temporary protected status, as well as applicants for extension, change, or adjustment of status. The array of documents issued by U.S. Citizenship and Immigration Services (USCIS), the State Department, and other agencies as evidence of these classifications is even more perplexing and includes visa stamps, laminated cards, un-laminated handwritten cards, forms, letters, and many other documents or combinations of documents which, even to the trained eye, often do not clearly show an applicant's status or duration of lawful admission. Additionally, due to extensive USCIS delays in application processing, many immigrants and lawful non-immigrants will be unable to present current documentation of their status. It is highly unlikely that motor vehicle administrators will be able to determine correctly whether a particular document or combination of documents establishes lawful immigration status. This task requires the interpretation and application of a complex body of law, as well as access to case histories and files not available at the DMV. Requiring DMV personnel to understand and enforce immigration laws will most likely result in legal U.S. residents facing wrongful license denials and revocations for reasons that are wholly unrelated to driver competence.

¹ [Driver's Licenses for All Immigrants: Quotes From Law Enforcement](#), NILC

² [Alien Registration: Usefulness of a Nonimmigrant Alien Annual Address Reporting Requirement is Questionable](#), GAO.





MYTH: Immigrant access to driver's licenses will jeopardize highway safety.

FACT: Proposals to restrict immigrants' access to driver's licenses will result in more unlicensed drivers operating vehicles on U.S. roads.³ Whether licensed or not, many individuals will have no choice but to drive—to work, to school, to doctors, and to many other destinations—to meet basic everyday needs. Thus, restrictive licensing has the potential to reduce the safety of Americans and all drivers on our roads because it will:

- Remove an entire segment of the driving population from the reach of administrators charged with testing and certifying driver competence;
- Deprive motor vehicle administrators of the driving records of millions of drivers;
- Discourage or prevent millions of drivers from registering their vehicles;
- Eliminate incentives for foreign nationals to attend driver education schools;
- Increase the rate of minor traffic violations for unlicensed driving, which will divert law enforcement and judicial resources from truly serious offenses; and
- Create incentives for unlicensed drivers to flee accident scenes.

³ [Immigrants' Access to Driver's Licenses: A Matter of Safety and Security](#), AILA.





(iii) Legislative Activity

The National Conference of State Legislatures (NCSL) maintains a [REAL ID State Legislation Database](#) which tracks state legislative responses to the federal REAL ID Act of 2005 and is updated daily. The database contains bill numbers, sponsor information, bill summaries, status information, and, where available, links to legislation.

ENACTED LAWS RESISTING IMPLEMENTATION OF THE REAL ID ACT

STATE LEVEL

The following list of state measures was taken from a December, 2008 [report](#) published by the [National Conference of State Legislatures](#). Updates to the report are expected periodically.

Alaska SB 202 (Signed 5/28/08)

This law puts a limit on certain state expenditures, noting that a state agency may not expend funds solely for the purpose of implementing requirements of the Real ID Act.

Idaho HB 606 (Signed 4/9/08)

This law states the findings of the legislature that the Real ID Act will cause unneeded expense and inconvenience to the people of the state. It declares that the Idaho transportation board and the Idaho transportation department, including the motor vehicles division are directed not to implement the provisions of the Real ID Act. Idaho will continue to enhance the security of driver's licenses and identification cards.

Louisiana HB 715 (To Governor 6/20/08)

This law directs the Department of Public Safety and Corrections, including the office of motor vehicles, not to implement provisions of the Real ID Act, and to notify the Governor of any attempt of the DHS to implement such provisions.

South Carolina H 4822 (Signed 3/6/08)

This House resolution requests that Mark Sanford, Governor of South Carolina, apply for an extension of the deadline to comply with the Real ID Act before the March 31, 2008, deadline, to allow South Carolina time to analyze the impact of the Real ID Act but will not require South Carolina to declare its intent to comply with this Act. This will allow the state's current credentials to be accepted by the federal government and DHS during the extension period.

South Dakota SCR 7 (2/22/08)

This resolution petitions the U.S. Congress to repeal the Real ID Act.

ENACTED LAWS EMPLOYING STRICT DOCUMENTATION REQUIREMENTS TO OBTAIN DRIVER'S LICENSES

STATE LEVEL

The following list of state measures was taken from a December, 2008 [report](#) published by the [National Conference of State Legislatures](#). Updates to the report are expected periodically.





Florida SB 1992 (Signed 6/17/08)

This law requires all applicants for driver's licenses and identification cards to provide proof of identity, including a U.S. passport, an alien registration receipt card, an employment authorization card, all of which must be valid and unexpired, or a Consular Report of Birth Abroad provided by the U.S. State Department. Proof of nonimmigrant classification, for the purpose of proving identity, will include an unexpired foreign passport with an unexpired U.S. visa affixed, and accompanied by an approved I-94, beginning January 1, 2010. Applicants for driver's licenses must now provide proof of social security card number and of residential address satisfactory to the department.

Georgia SB 488 (Signed 5/14/08)

This law allows non-citizens who are eligible for U.S. driver's licenses to keep their foreign licenses, except for persons who are required to terminate any previously issued identification card pursuant to federal law. This information will be kept on record through the Georgia Crime Information Center. This law adds verification of lawful presence to the requirements for obtaining a temporary license, permit, or special identification card, which will be valid only for the period of their authorized stay. If the Systematic Alien Verification for Entitlements (SAVE) program does not provide sufficient information to determine lawful presence, a verbal or e-mail confirmation of the legal status of the applicant from the Department of Homeland Security (DHS) will be necessary.

Idaho HB 366 (Signed 3/5/08)

Under this law, applicants who are not lawfully in the U.S. shall not be issued driver's licenses. This law removes social security cards as a form of verification for licenses and identification cards; all Social Security Numbers will be verified through the Social Security Administration (SSA). Driver's licenses and identification cards issued to non-citizens or non-permanent residents will expire at the same time as their lawful stay in the United States. Persons whose DHS documents do not have an expiration date shall be issued a driver's license with an expiration date of one year from the date of issuance.

Maine HF 1669a (Signed 4/17/08)

The Secretary of State may not issue a license or identification card to an applicant unless the applicant is legally present in the United States. A license or identification card issued to an applicant who is not a citizen or a legal permanent resident of the United States expires when the applicant's visa expires. This law mandates participation in the SAVE Program by December 1, 2009. If the U.S. Congress repeals the Real ID Act, the Secretary of State shall submit proposed legislation to the joint standing committee of the legislature that returns Maine law regarding the issuance of driver's licenses and identification cards to what it was prior to the effective date of this Act.

Michigan HB 5535 (Signed 3/13/08)

This law authorizes the Secretary of State to enter into a Memorandum of Understanding with any federal agency in order to issue an enhanced driver's license or official state personal identification card as proof of identity and citizenship. Enhanced driver's licenses or identification cards may be issued to an applicant who provides proof of their full legal name, U.S. citizenship, identity, date of birth, social security number, residence address, and a photographic identity document. The Secretary may enter into an agreement with the United Mexican States, Canada or a Canadian province for the purpose of implementing a border crossing initiative. Making false certification or statements while applying for an enhanced driver's license or identification card is a felony punishable by up to five years in prison, a fine up to \$5,000 or both.





Michigan SB 712 (Signed 3/13/08)

Under this law, a non-citizen applicant for a chauffeur's or operator's license must supply a photographic identity document to verify their legal presence in the U.S. A person legally present in the United States includes a person with nonimmigrant status authorized under federal law, a person authorized by the U.S. government for employment, and a person with an approved immigrant visa or labor certification.

Missouri HB1549 (Omnibus bill, signed 7/07/08)

The law prohibits the Department of Revenue from issuing driver's licenses to illegal aliens or any person who cannot prove lawful presence in the U.S. It creates a class A misdemeanor for fraudulent applications for driver's licenses.

Oregon SB 1080a (Signed 2/15/08)

Under this law, the Department of Transportation will require applicants to provide proof of legal presence in the United States and a social security number in order to obtain licenses and identification cards. If an applicant is ineligible for a social security number, the applicant must provide proof of ineligibility. If an applicant cannot provide the necessary documentation for a driver's license, permit, or identification card but can certify to being legally present, the applicant can be issued an applicant temporary driver permit or an applicant temporary identification card, valid for 90 days from the date issued. Limited term licenses, permits, or identification cards are only valid during the period of authorized legal status up to eight years and must indicate the expiration date.

Oregon HB 3624a (Signed 3/11/08)

This law requires an annual report by the Department of Transportation for the Legislative Assembly describing the effects of implementation and fiscal impact of Chapter 1, Oregon Laws 2008 including changes in rates of unlicensed drivers and multiple passenger accidents relating to the transportation of laborers.

Tennessee SB 2907 (Signed 3/5/08)

The law removes the one year minimum period of issuance for temporary license or photo identification license issued to persons legally admitted to United States for a limited stay and reiterates that the license is valid only during the period of time of the applicant's authorized stay.

Utah HB 26 (Signed 3/14/08)

This legislation changes the definition of satisfactory evidence of identity as provided by an individual to a notary to exclude driver's licenses and specifies that the evidence of identity must be a valid item of personal identification issued by the U.S. government, any U.S. state, or a foreign government.





PENDING LEGISLATION REGARDING THE REAL ID ACT

STATE LEVEL

A number of other jurisdictions have introduced legislation on REAL ID rejection and compliance. As state and local legislatures revisit these bills or consider new ones in 2009, this issue is certain to assume more prominence unless and until the federal government takes explicit preemptive action.

AL HB298	MD SB576	NY HB9636
AL HJR13	MD SB621	NY SB6479
AL SB223	MI HB4505	NY SB6484
AK HB3	MI HB5518	NY SB6523
AK HB390	MI HB5537	NC HB2136
AK HJR19	MI HB5658	NC SB1786
AK SB202	MI SB654	OK HB2445
AK SB215	MI SB915	OK HB3067
AZ HB2012	MI SB962	OK HB3225
AZ HB2284	MI SB963	OK SB1414
AZ HB2677	MI SB1075	OK SB1465
AZ HB2762	MN HB1351	OK SB1898
AZ SB1472	MN HB3605	PA HB2537
AZ SCR1012	MN HB3807	PA HR767
AZ SCR1016	MN HB4224	SC HB4360
CA SB60	MN SB3850	SC HB4386
DC LR427	MS HB274	SC HCR4823
FL SB2220	MS HB302	SC SB453
GA HB971	MS HB590	SC SR1179
GA SB25	MS HB624	SD SCR7
ID HB366	MS HB1127	UT HB449
ID HB606	MS SB3034	VA HB186
IL HB1100	MO HB1605	VA HB1587
IL HB5344	MO HB1716	VA HJR42
IA HDSB753	MO HB1841	WA HB1440
KY SB182	MO SB750	WA HB2930
LA HB715	NE LB285	WA HB3063
ME HB1662	NE LB911	WA SB6416
MD HB288	NH SB434	WA SJM8005
MD HB1046	NJ HB2321	WV SB248
MD HB1306	NY HB1768	WI HB475
MD SB93	NY HB9457	WY HJR5
MD SB277	NY HB9502	

To search for additional state immigration legislation visit the Migration Policy Institute's [State Law Database](#).





MODEL LEGISLATION

There exist positive and proactive alternatives to addressing this problem that states may want to consider. For model legislation see Arizona [S.B. 1152](#), which prohibits the state from implementing the REAL ID Act.

Also, see the “[Elm City Resident Cards](#)” program which was implemented in New Haven, Connecticut in July 2007. The cards [are available to all residents](#) of New Haven at a cost of \$10 for adults and \$5 for children. The first of its kind in the nation, the Elm City Resident Cards program will allow residents access to the public library, the City’s parks and recreational sites, and a debit feature that will be accepted by a number of downtown merchants and can be used in the City’s parking meters.

According to city officials, the new identification cards are aimed at increasing public safety in the City. “We’ve seen undocumented immigrants and their neighbors become the victims of robbery, assault and in one case even murder because thieves know they often carry large sums of cash in their pockets or store it in their homes,” [said Mayor John DeStefano](#). “This is the case because undocumented immigrants do not have the identification information necessary to open bank accounts and thereby safeguard their hard earned money. By eliminating this barrier to banking services, we expect to make New Haven safe for all of its residents.”





(iv) Litigation

Case: [Staudenraus v. Spitzer](#) (No. 07-33872).

In 2004, the New York State Department of Motor Vehicles began sending out thousands of letters threatening to suspend the licenses of individuals whose Social Security number on file with DMV did not match the federal government's records.

DMV officials defended their actions as an effort to deter fraud and combat terrorism, stating that they were merely seeking to “verify that the applicant is, in fact, who s/he purports to be.” For the 300,000 immigrants throughout New York State who received a DMV letter and faced suspension of their driver's licenses, however, the effort represented an attack on their ability to make a living and survive in New York.

The DMV policy was challenged in state court, where a preliminary injunction was granted to halt the suspensions. In June 2006, however, a state appellate court in [Cubas v. Martinez](#) reversed the lower court's decision and upheld the DMV's policy of requiring proof of immigration status.

In the fall of 2007, however, New York Governor Elliot Spitzer supported an administrative shift that would have allowed broader access to driver's licenses. Under the policy change, the state intended to dispense with the requirement that a driver's license applicant provide a valid social security number in order to receive a license. In response, the conservative group Judicial Watch [filed a lawsuit](#) on behalf of a New York taxpayer in the Supreme Court of the State of New York, Suffolk County, challenging Governor Spitzer's change to the state driver's license policy.

Criticism led to compromise when Governor Spitzer, in the face of a national outcry, conformed the new driver's license standards to meet REAL ID. Under Spitzer's new administrative order, New York will agree on a federally approved secure driver's licenses separated into three tiers: a traditional state license; an “enhanced driver's license” that will be as secure as a passport; and a license that meets new federal standards of the REAL ID Act. While the license will state that it is not proof of legal residency in the U.S., it could easily lead police officers and officials to suspect the holder may be an illegal immigrant. ([New Driver's License Plan Safer, Still Controversial](#) , AP)

See also, [Villegas v. Silverman](#), 832 N.E.2d 598 (Ind. Ct. App. 2005), in which the Indiana Court of Appeals held that a class of undocumented immigrants had standing to challenge a state law that implemented new identification requirements to obtain a state driver's license. The court found that the new requirements were not adopted in accordance with the Indiana Administrative Rules and Procedures Act (“ARPA”), and, therefore, were void.

For an updated list and additional information on legal challenges to state and local ordinances see the [Legal Action Center](#) at the American Immigration Law Foundation.





(v) More Resources

ORGANIZATIONS

- [American Civil Liberties Union \(ACLU\)](#)
- [American Immigration Lawyers Association \(AILA\)](#)
- [Massachusetts Immigrant and Refugee Advocacy Coalition \(MIRA\)](#)
- [National Conference of State Legislatures \(NCSL\)](#)
- [National Council of La Raza \(NCLR\)](#)
- [National Immigration Law Center \(NILC\)](#)
- [Tennessee Immigrant and Refugee Rights Coalition \(TIRRC\)](#)

MATERIALS/REPORTS

- **American Civil Liberties Union (ACLU)**
[“Real Nightmare” Campaign](#)
- **American Immigration Lawyers Association (AILA)**
[Issue Packet on Due Process, Civil Liberties, and Security](#)
[Immigrants’ Access to Driver’s Licenses: A Matter of Safety and Security](#)
- **Center for Democracy and Technology**
[Three Years Later: A Primer on REAL ID](#)
- **Congressional Research Service**
[Summary of State Laws on the Issuance of Driver’s Licenses to Undocumented Aliens](#)
- **Fair Immigration Reform Movement (FIRM)**
[Database of Local Ordinances](#)
- **Information Technology Association of America (ITAA)**
[Memorandum of Key Findings](#)
- **National Conference of State Legislatures (NCSL)**
[State Laws Related to Immigrants and Immigration in 2008](#)





- **National Council of La Raza (NCLR)**
[Driver's License Policies](#)
[Driver's Licenses for Undocumented Immigrants: Unfortunate Campaign Issue, Bad Public Policy](#)
- **National Governors Association, National Conference of State Legislatures, and the American Association of Motor Vehicle Administrators**
[The Real ID Act: National Impact Analysis](#)
- **National Immigration Law Center (NILC)**
[Immigrants and Driver's Licenses Resource Page](#)
[Overview of States' Driver's License Requirements](#)
[2007 State REAL ID Legislation](#)
[Public Comment on REAL ID Regulations](#)
[Driver's Licenses for All Immigrants: Quotes From Law Enforcement](#)
[Driver's License for All Immigrants: Quotes From Religious Leaders](#)
[Why the REAL ID Act's Driver's License Restrictions Are Really Anti-Immigrant](#)
[Why the Federal Government Should Not Place Immigration Status Restrictions on Driver's Licenses](#)
[Summary of the Driver's License Provisions in the REAL ID Act of 2005](#)
- **Texas House Research Organization**
[The Role of States in Immigration Enforcement](#)
- **Tennessee Immigrant and Refugee Rights Coalition (TIRRC)**
[The Tennessee Driving Certificate—Background, Pitfalls, and Lessons Learned](#)
- **Utah Legislative Auditor General**
[Follow-Up of Sample Matching Driving Privilege \(DP\) Cards to Vehicle Insurance](#)

NEWS ARTICLES

- **Associated Press**
[“New Driver's License Plan Safer, Still Controversial”](#) (10/28/07)
- **Salt Lake City Tribune**
[“Audit shows driving privilege cards working: 76 percent of those using cards insure their vehicles,”](#) by Robert Gehrke and Jennifer W. Sanchez (01/24/08)





FACT SHEETS

- **National Council of La Raza (NCLR)**
 - [Driver's License Fact Sheet](#)
 - [Driver's License Fact Sheet on Public Safety Issues](#)
 - [Driver's License Fact Sheet on Residency Requirements](#)
- **Massachusetts Immigrant and Refugee Advocacy Coalition (MIRA)**
 - [Fact Sheet on the REAL ID Act](#)





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