Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

For An Act To Be Entitled

AN ACT CONCERNING ILLEGAL IMMIGRATION; TO MAKE CERTAIN ACTS UNLAWFUL; TO AUTHORIZE STATE AGENCIES TO ISSUE IDENTIFICATION DOCUMENTS TO CERTAIN PERSONS; TO REQUIRE THE DETERMINATION OF CITIZENSHIP STATUS FOR PERSONS CHARGED WITH CERTAIN OFFENSES; TO REQUIRE STATE AGENCIES TO PARTICIPATE IN A STATUS VERIFICATION SYSTEM; TO REQUIRE STATE AGENCIES TO VERIFY THE LAWFUL PRESENCE OF PERSONS APPLICING FOR CERTAIN BENEFITS; TO REQUIRE WITHHOLDING OF STATE INCOME TAX UNDER CERTAIN CIRCUMSTANCES; TO LIMIT BENEFITS FOR POSTSECONDARY EDUCATION; TO ESTABLISH A FRAUDULENT DOCUMENTS IDENTIFICATION UNIT WITHIN THE DEPARTMENT OF ARKANSAS STATE POLICE; TO PROVIDE GUIDELINES FOR RESIDENT TUITION; AND FOR OTHER PURPOSES.

Subtitle

AN ACT CONCERNING ILLEGAL IMMIGRATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. NOT TO BE CODIFIED. This act shall be known and may be cited as the “Arkansas Taxpayer and Citizen Protection Act of 2009”.

SECTION 2. NOT TO BE CODIFIED. (a)(1) The State of Arkansas finds that illegal immigration is a factor that can lead to economic hardship and,
because it is contrary to state and federal law, public agencies within this state should not encourage illegal immigration by providing public benefits without verifying immigration status.

(2) The State of Arkansas further finds that illegal aliens have been harbored and sheltered in this state and encouraged to reside in this state through the issuance of identification cards that are issued without verifying immigration status and that these practices impede and obstruct the enforcement of federal immigration law, undermine the security of our state, and impermissibly restrict the privileges and immunities of the citizens of Arkansas.

(b)(1) It is a compelling public interest of this state to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration laws.

(2) The State of Arkansas also finds that other measures are necessary to ensure the integrity of various governmental programs and services.

SECTION 3. Arkansas Code Title 4, Chapter 16 is amended to add an additional subchapter to read as follows:

4-16-101. Resident alien identification documents.

(a) The following entities may create, publish, or otherwise manufacture an identification document, identification card, or identification certificate and may possess an engraved plate or other device for the printing of identification when the name of the issuing entity is clearly printed upon the face of the identification:

(1) A business, company, corporation, or service organization, or any federal, state, or local governmental agency for its employees which identification is designed to identify the bearer as an employee;

(2) A business, company, corporation, or service organization for which customer identification is designed to identify the bearer as a customer or member;

(3) A federal, state, or local governmental agency for purposes authorized or required by law or any legitimate purpose consistent with the duties of the agency, including without limitation voter identification cards, drivers’ licenses, nondriver identification cards, passports, birth
certificates, and social security cards;

(4) A public school or state or private educational institution
to identify the bearer as an administrator, a faculty member, a student, or
an employee;

(5) A professional organization or labor union to identify the
bearer as a member of the professional organization or labor union; and

(6) A business, company, corporation, or service corporation
that manufactures medical-alert identification for the wearer of the
identification.

(b) All identification documents, identification cards, or
identification certificates as provided in subdivisions (a)(3) and (4) of
this section shall be issued only to:

(1) United States citizens;

(2) Lawful permanent resident aliens; or

(3) Holders of valid unexpired nonimmigrant visas.

(c)(1) Subsection (b) of this section does not apply when an applicant
presents in person valid documentary evidence of:

(A) A valid, unexpired immigrant or nonimmigrant visa
status for admission into the United States;

(B) A pending or approved application for asylum in the
United States;

(C) Admission into the United States of refugee status;

(D) A pending or approved application for temporary
protected status in the United States;

(E) Approved deferred action status; or

(F) A pending application for adjustment of status to
legal permanent resident status or conditional resident status.

(2)(A)(i) Any person identified in subdivision (c)(1)(A) through
(c)(1)(F) of this section may make an application for an identification
document, identification card, or identification certificate as provided in
subdivision (a)(3) or (a)(4) of this section.

(ii) Upon approval, the applicant may be issued an
identification document, identification card, or identification certificate
as provided in subdivision (a)(3) or subdivision (a)(4) of this section.

(B)(i) Except as provided in subdivision (c)(2)(B)(ii) of
this section, the identification document, identification card, or
identification certificate shall be valid only during the period of time of
the authorized stay of the applicant in the United States.

(ii) If there is no definite end to the period of
authorized stay, the identification document, identification card, or
identification certificate shall be valid for a period of one (1) year.

(3)(A) An identification document, identification card, or
identification certificate issued under this subsection (c) shall clearly
indicate that it is temporary and shall state the date that the
identification document, identification card, or identification certificate
expires.

(B) The identification document, identification card, or
identification certificate may be renewed only upon presentation of valid
documentary evidence that the status by which the applicant qualified for the
identification document, identification card, or identification certificate
has been extended by the United States Immigration and Naturalization Service
or the Bureau of Citizenship and Immigration Services of the United States
Department of Homeland Security.

(d)(1) Except as provided in subdivision (d)(2) of this section, any
driver’s license for which an application has been made for renewal,
duplication, or reissuance is presumed to have been issued in accordance with
subsection (c) of this section if at the time the application is made, the
driver’s license has not expired or been cancelled, suspended, or revoked.

(2) The requirements of subsection (c) of this section apply to
a renewal, duplication, or reissuance of a driver’s license if the issuer is
notified by a local, state, or federal governmental agency that the
individual seeking renewal, duplication, or reissuance of a driver’s license
is neither a citizen of the United States nor legally in the United States.

SECTION 4. Arkansas Code Title 5, Chapter 60, Subchapter 1 is amended
to add an additional section to read as follows:

5-60-102. Trafficking or harboring an illegal alien.

(a) As used in this section, “illegal alien” means a person who is not
a citizen of the United States and who is not lawfully present in the United
States.

(b) It is unlawful for a person to transport, move, or attempt to
transport within the United States an illegal alien in reckless disregard of
the fact that the illegal alien has come to, entered, or remained in the
United States in violation of law in furtherance of the illegal presence of
the illegal alien in the United States.

(c) It is unlawful for a person to conceal, harbor, or shelter from
detection an illegal alien in any place, including any building or means of
transportation, in reckless disregard of the fact that the illegal alien has
come to, entered, or remained in the United States in violation of law.

(d) This section does not prohibit or restrict the provision of any
state or local public benefit described in 8 U.S.C. § 1621(b) as it existed
on January 1, 2009, or regulated public health services provided by a private
charity using private funds.

(e) Upon conviction, a person violating subsection (b) or subsection
(c) of this section is guilty of a Class D felony.

SECTION 5. Arkansas Code Title 6, Chapter 60, Subchapter 2 is amended
to add an additional section to read as follows:

6-60-214. Illegal aliens – Prohibition on scholarships, grants, and
in-state tuition.

Unless otherwise provided by law, an individual who is not lawfully
present in the United States shall not be eligible on the basis of residence
within this state for any postsecondary education benefit, including without
limitation:

(1) Scholarships;

(2) Grants;

(3) An in-state tuition benefit; or

(4) Other financial aid.

SECTION 6. Arkansas Code Title 12, Chapter 8, Subchapter 1 is amended
to add an additional section to read as follows:

12-8-125. Fraudulent Documents Identification Unit.

(a) Subject to an appropriation, funding, and position authorization,
the Department of Arkansas State Police shall establish a Fraudulent
Documents Identification Unit for the primary purpose of investigating and
apprehending persons or entities that participate in the sale or distribution
of fraudulent documents used for identification purposes.

(b) The unit shall additionally specialize in fraudulent
identification documents created and prepared for persons who are unlawfully residing within the State of Arkansas.

(c) The department shall employ sufficient employees to investigate and implement the unit.

SECTION 7. Arkansas Code Title 12, Chapter 41, Subchapter 1 is amended to add an additional section to read as follows:

12-41-106. Illegal aliens – Resident status checks.

(a) When a person charged with driving while intoxicated under the Omnibus DWI Act, § 5-65-101 et seq., or a felony is confined for any period in the jail of a county or a municipality or in a jail operated by a regional jail authority, a reasonable effort shall be made to determine the citizenship status of the prisoner.

(b)(1) If the prisoner is a foreign national, the keeper of the jail or other officer shall make a reasonable effort to verify that the prisoner has been lawfully admitted to the United States and, if lawfully admitted, that the lawful status has not expired.

(2) If verification of lawful status cannot be made from documents in the possession of the prisoner, verification shall be made within forty-eight (48) hours through a query to the Federal Law Enforcement Support Center of the United States Department of Homeland Security or other office or agency designated for that purpose by the United States Department of Homeland Security.

(c) If the lawful immigration status of the prisoner cannot be verified, the keeper of the jail or other officer shall notify the United States Department of Homeland Security.

(d) For the purpose of determining the grant or issuance of bond, it is a rebuttable presumption that a person whose citizenship status has been verified under subsection (b) of this section to be a foreign national who has not been lawfully admitted to the United States is at risk of flight.

SECTION 8. Arkansas Code Title 19, Chapter 11 is amended to add an additional subchapter to read as follows:


As used in this subchapter:

(1) “Contractor” means a person or entity of any type that for a
fee or other compensation undertakes to procure the performance of work or
services or furnishes goods for:

(A) A public employer; or

(B) An individual or any type of business entity when the
work, services, or goods represent at least twenty percent (20%) of the total
work, services, or goods required by an oral or written contract for
construction or other services or for supplying goods;

(2) "Public employer" means a department, agency, or
instrumentality of this state or a political subdivision of this state;

(3) (A) "Status verification system" means an electronic system
operated by the federal government through which an authorized official of a
public employer may make an inquiry by exercise of authority delegated under
8 U.S.C. § 1373, as it existed on January 1, 2009, to verify or ascertain the
citizenship or immigration status of an individual within the jurisdiction of
the public employer for any purpose authorized by § 20-76-114.

(B) “Status verification system” includes:

(i) The electronic verification of work
authorization program of the Illegal Immigration Reform and Immigration
Responsibility Act of 1996, Pub. L. No. 104-208, Division C, Section 403(a),
that is operated by the United States Department of Homeland Security and
that is known as the Basic Pilot Program or E-Verify;

(ii) An equivalent federal program designated by the
United States Department of Homeland Security or any other federal agency
authorized to verify the work eligibility status of newly hired employees

(iii) Any other independent third-party system with
an equal or higher degree of reliability as the programs, systems, or
processes described in this subdivision (3); or

(iv) The Social Security Number Verification Service
or a similar online verification process implemented by the United States
Social Security Administration;

(4) "Subcontractor" means a person or entity of any type that
performs work or provides services, furnishes goods, or obtains employees for
a contractor or other subcontractor; and

(5) "Unauthorized alien" means, with respect to the employment
of an alien at a particular time, that the alien is not at that time:
(A) An alien lawfully admitted for permanent residence into the United States; or

(B) Authorized to be so employed under 8 U.S.C. § 1324a, as it existed on January 1, 2009, or by the Attorney General of the United States.

19-11-1302. Public employer resident status verification – Prohibitions.

(a) A public employer shall register with and utilize a status verification system to verify the federal employment authorization status of each new employee.

(b)(1) On and after July 1, 2009, a public employer shall not enter into a contract for the physical performance of services within this state unless the contractor registers and participates in the status verification system to verify the work eligibility status of each new employee.

(2) On and after July 1, 2009, a contractor or subcontractor who enters into a contract with a public employer shall not enter into a contract or subcontract in connection with the physical performance of services within this state unless the contractor or subcontractor registers and participates in the status verification system to verify information of each new employee.

(3) This subsection (b) does not apply to a contract entered into before the effective date of this section even though the contract may involve the physical performance of services within this state after July 1, 2009.

(c)(1) It is a discriminatory practice for a contractor or a subcontractor to discharge an employee working in this state who is a United States citizen or a United States permanent resident alien while retaining an employee who the contractor or subcontractor knows or reasonably should have known is:

(A) An unauthorized alien hired on or after July 1, 2009, and

(B) Working in this state in a job that when compared to the job held by the discharged employee:

(i) Requires similar skill, effort, and responsibility; and

(ii) Is performed under similar working conditions,

(2) A contractor or subcontractor that on the date of the discharge in question was enrolled in and used the status verification system to verify the employment eligibility of its employees in this state hired on or after July 1, 2009, is exempt from liability, investigation, or suit arising from any action under this section.

(3) A cause of action for a violation of this subsection (c) arises only as set forth in this section.

(4)(A) An employee of a contractor or subcontractor, or an independent contractor providing services to a contractor or subcontractor, who is aggrieved by a violation of this subsection (c) may bring a cause of action against a contractor or subcontractor doing business in this state that violates the provisions of this subsection (c).

(B) The cause of action may be filed in the circuit court of the county where:

(i) The violation occurred; or

(ii) The contractor or subcontractor maintains a place of business.

(C) Damages resulting from a cause of action filed under subdivision (c)(4)(A) of this section include:

(i) The greater amount of actual damages sustained or liquidated damages in the sum of one thousand five hundred dollars ($1,500); and

(ii) Reasonable attorney's fees and litigation expenses.

SECTION 9. Arkansas Code Title 20, Chapter 76, Subchapter 1 is amended to add an additional section to read as follows:

20-76-114. Illegal aliens – Public benefits prohibition.

(a) Except as provided in subsection (c) of this section or when exempted by federal law, an agency or political subdivision of this state shall verify the lawful presence in the United States of any natural person fourteen (14) years of age or older who has applied for state or local public benefits as defined in 8 U.S.C. § 1621, as it existed on January 1, 2009, or for federal public benefits as defined in 8 U.S.C. § 1611, as it existed on January 1, 2009, that are administered by the agency or political subdivision
of this state.

(b) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(c) Verification of lawful presence under this section is not required for:

(1) A purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation;

(2) Assistance for health care items and services that are necessary for the treatment of an emergency medical condition as defined in 42 U.S.C. § 1396b(v)(3), as it existed on January 1, 2009, of the alien involved and are not related to an organ transplant procedure;

(3) Short-term, noncash, in-kind emergency disaster relief;

(4) Public health assistance for immunizations with respect to diseases and for testing and treatment of symptoms of communicable diseases whether or not the symptoms are caused by a communicable disease; or

(5) Programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the sole and unreviewable discretion of the United States Attorney General after consultation with appropriate federal agencies and departments that:

(A) Deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) Do not condition the provision of assistance, amount of assistance provided, or cost of assistance provided on the income or resources of the individual recipient; and

(C) Are necessary for the protection of life or safety.

(d)(1) Verification of lawful presence in the United States by the agency or political subdivision of this state required to make the verification under this section requires the applicant to execute an affidavit under penalty of perjury that states:

(A) He or she is a United States citizen; or

(B) He or she is a qualified alien under the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., as it existed on January 1, 2009, and is lawfully present in the United States.

(2) The agency or political subdivision of this state required by this section to make the verification of lawful presence in the United
States shall provide notary services as necessary to execute the affidavit at no cost to the applicant.

(e)(1) For an applicant who has executed the affidavit described in subdivision (d)(1) of this section, eligibility for benefits shall be made through the Systematic Alien Verification for Entitlements Program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security.

(2) Until eligibility verification is made, the affidavit may be presumed to be proof of lawful presence in the United States for the purposes of this section.

(f)(1) Any person who knowingly makes a false, fictitious, or fraudulent statement or representation in an affidavit executed under subsection (d) of this section is subject to criminal penalties applicable in this state for fraudulently obtaining public assistance program benefits.

(2) If the affidavit executed under subsection (d) of this section constitutes a false claim of United States citizenship under 18 U.S.C. § 911, as it existed on January 1, 2009, a complaint shall be filed by the agency or political subdivision of this state requiring the affidavit with the United States Attorney for the applicable district in this state based upon the venue where the affidavit was executed.

(g) An agency or political subdivision of this state may adopt variations to the requirements of this section that demonstrably improve the efficiency or reduce delay in the verification process or provide for adjudication of unique individual circumstances when the verification procedures in this section impose unusual hardship on a legal resident of Arkansas.

(h) It is unlawful for an agency or political subdivision of this state to provide any state, local, or federal benefit as defined in 8 U.S.C. § 1621, as it existed on January 1, 2009, or 8 U.S.C. § 1611, as it existed on January 1, 2009, in violation of this section.

(i)(1) Each agency or political subdivision of this state that administers any program of state or local public benefits shall provide an annual report to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives with respect to its compliance with this section.

(2)(A) To ensure that the application of the Systematic Alien
Verification for Entitlements Program is not erroneously denying benefits to legal residents of Arkansas, each agency or political subdivision of this state that administers the Systematic Alien Verification for Entitlements Program shall:

(i) Monitor the Systematic Alien Verification for Entitlements Program for application verification errors and significant delays in receiving benefits; and

(ii) Provide an annual public report to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives on:

(a) Application verification errors and significant delays in receiving benefits; and

(b) Recommendations for improvements in the application process.

(B) Application verification errors also shall be reported to the United States Department of Homeland Security by each agency or political subdivision of this state that administers the Systematic Alien Verification for Entitlements Program.

SECTION 10. Arkansas Code Title 26, Chapter 51, Subchapter 9 is amended to add an additional section to read as follows:


(a) Pursuant to the prohibition against the use of unauthorized alien labor through contract set forth in 8 U.S.C. § 1324a(a)(4), as it existed on January 1, 2009, if an individual independent contractor contracting for the physical performance of services in this state fails to provide to the contracting entity documentation to verify the individual independent contractor’s employment authorization, the contracting entity is required to withhold state income tax at the top marginal income tax rate as provided by Arkansas law as applied to compensation paid to the individual independent contractor for the performance of services within this state that exceeds the minimum amount of compensation the contracting entity is required to report as income on United States Internal Revenue Service Form 1099.

(b) Any contracting entity that fails to comply with the income tax withholding requirements of subsection (a) of this section is liable for the
income taxes required to have been withheld unless the contracting entity is exempt from federal withholding with respect to the individual independent contractor pursuant to a properly filed Internal Revenue Service Form 8233 or its equivalent.

(c) This section does not create and shall not be construed as creating an employer-employee relationship between a contracting entity and an individual independent contractor.