

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.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4

A Bill

HOUSE BILL 1093

5 By: Representative Sample
6
7

For An Act To Be Entitled

9 AN ACT CONCERNING ILLEGAL IMMIGRATION; TO MAKE
10 CERTAIN ACTS UNLAWFUL; TO AUTHORIZE STATE
11 AGENCIES TO ISSUE IDENTIFICATION DOCUMENTS TO
12 CERTAIN PERSONS; TO REQUIRE THE DETERMINATION OF
13 CITIZENSHIP STATUS FOR PERSONS CHARGED WITH
14 CERTAIN OFFENSES; TO REQUIRE STATE AGENCIES TO
15 PARTICIPATE IN A STATUS VERIFICATION SYSTEM; TO
16 REQUIRE STATE AGENCIES TO VERIFY THE LAWFUL
17 PRESENCE OF PERSONS APPLYING FOR CERTAIN
18 BENEFITS; TO REQUIRE WITHHOLDING OF STATE INCOME
19 TAX UNDER CERTAIN CIRCUMSTANCES; TO LIMIT
20 BENEFITS FOR POSTSECONDARY EDUCATION; TO
21 ESTABLISH A FRAUDULENT DOCUMENTS IDENTIFICATION
22 UNIT WITHIN THE DEPARTMENT OF ARKANSAS STATE
23 POLICE; TO PROVIDE GUIDELINES FOR RESIDENT
24 TUITION; AND FOR OTHER PURPOSES.
25

Subtitle

26 AN ACT CONCERNING ILLEGAL IMMIGRATION.
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30 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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32 SECTION 1. NOT TO BE CODIFIED. This act shall be known and may be
33 cited as the "Arkansas Taxpayer and Citizen Protection Act of 2009".
34

35 SECTION 2. NOT TO BE CODIFIED. (a)(1) The State of Arkansas finds
36 that illegal immigration is a factor that can lead to economic hardship and,



1 because it is contrary to state and federal law, public agencies within this
 2 state should not encourage illegal immigration by providing public benefits
 3 without verifying immigration status.

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

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

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

18
 19 SECTION 3. Arkansas Code Title 4, Chapter 16 is amended to add an
 20 additional subchapter to read as follows:

21 4-16-101. Resident alien identification documents.

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

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

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

33 (3) A federal, state, or local governmental agency for purposes
 34 authorized or required by law or any legitimate purpose consistent with the
 35 duties of the agency, including without limitation voter identification
 36 cards, drivers' licenses, nondriver identification cards, passports, birth

1 certificates, and social security cards;

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

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

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

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

13 (1) United States citizens;

14 (2) Lawful permanent resident aliens; or

15 (3) Holders of valid unexpired nonimmigrant visas.

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

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

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

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

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

25 (E) Approved deferred action status; or

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

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

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

35 (B)(i) Except as provided in subdivision (c)(2)(B)(ii) of
36 this section, the identification document, identification card, or

1 identification certificate shall be valid only during the period of time of
2 the authorized stay of the applicant in the United States.

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

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

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

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

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

28
29 SECTION 4. Arkansas Code Title 5, Chapter 60, Subchapter 1 is amended
30 to add an additional section to read as follows:

31 5-60-102. Trafficking or harboring an illegal alien.

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

35 (b) It is unlawful for a person to transport, move, or attempt to
36 transport within the United States an illegal alien in reckless disregard of

1 the fact that the illegal alien has come to, entered, or remained in the
 2 United States in violation of law in furtherance of the illegal presence of
 3 the illegal alien in the United States.

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

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

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

14
 15 SECTION 5. Arkansas Code Title 6, Chapter 60, Subchapter 2 is amended
 16 to add an additional section to read as follows:

17 6-60-214. Illegal aliens – Prohibition on scholarships, grants, and
 18 in-state tuition.

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

- 23 (1) Scholarships;
- 24 (2) Grants;
- 25 (3) An in-state tuition benefit; or
- 26 (4) Other financial aid.

27
 28 SECTION 6. Arkansas Code Title 12, Chapter 8, Subchapter 1 is amended
 29 to add an additional section to read as follows:

30 12-8-125. Fraudulent Documents Identification Unit.

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

36 (b) The unit shall additionally specialize in fraudulent

1 identification documents created and prepared for persons who are unlawfully
 2 residing within the State of Arkansas.

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

5
 6 SECTION 7. Arkansas Code Title 12, Chapter 41, Subchapter 1 is amended
 7 to add an additional section to read as follows:

8 12-41-106. Illegal aliens – Resident status checks.

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

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

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

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

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

31
 32 SECTION 8. Arkansas Code Title 19, Chapter 11 is amended to add an
 33 additional subchapter to read as follows:

34 19-11-1301. Definitions.

35 As used in this subchapter:

36 (1) “Contractor” means a person or entity of any type that for a

1 fee or other compensation undertakes to procure the performance of work or
 2 services or furnishes goods for:

3 (A) A public employer; or

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

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

10 (3)(A) "Status verification system" means an electronic system
 11 operated by the federal government through which an authorized official of a
 12 public employer may make an inquiry by exercise of authority delegated under
 13 8 U.S.C. § 1373, as it existed on January 1, 2009, to verify or ascertain the
 14 citizenship or immigration status of an individual within the jurisdiction of
 15 the public employer for any purpose authorized by § 20-76-114.

16 (B) "Status verification system" includes:

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

22 (ii) An equivalent federal program designated by the
 23 United States Department of Homeland Security or any other federal agency
 24 authorized to verify the work eligibility status of newly hired employees
 25 under the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603;

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

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

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

35 (5) "Unauthorized alien" means, with respect to the employment
 36 of an alien at a particular time, that the alien is not at that time:

1 (A) An alien lawfully admitted for permanent residence
2 into the United States; or

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

6
7 19-11-1302. Public employer resident status verification -
8 Prohibitions.

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

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

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

21 (3) This subsection (b) does not apply to a contract entered
22 into before the effective date of this section even though the contract may
23 involve the physical performance of services within this state after July 1,
24 2009.

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

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

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

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

36 (ii) Is performed under similar working conditions,

1 as defined in 29 U.S.C. § 206(d)(1), as it existed on January 1, 2009.

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

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

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

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

16 (i) The violation occurred; or

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

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

21 (i) The greater amount of actual damages sustained
 22 or liquidated damages in the sum of one thousand five hundred dollars
 23 (\$1,500); and

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

26
 27 SECTION 9. Arkansas Code Title 20, Chapter 76, Subchapter 1 is amended
 28 to add an additional section to read as follows:

29 20-76-114. Illegal aliens – Public benefits prohibition.

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

1 of this state.

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

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

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

8 (2) Assistance for health care items and services that are
9 necessary for the treatment of an emergency medical condition as defined in
10 42 U.S.C. § 1396b(v)(3), as it existed on January 1, 2009, of the alien
11 involved and are not related to an organ transplant procedure;

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

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

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

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

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

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

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

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

32 (B) He or she is a qualified alien under the Immigration
33 and Nationality Act, 8 U.S.C. § 1101 et seq., as it existed on January 1,
34 2009, and is lawfully present in the United States.

35 (2) The agency or political subdivision of this state required
36 by this section to make the verification of lawful presence in the United

1 States shall provide notary services as necessary to execute the affidavit at
 2 no cost to the applicant.

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

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

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

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

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

27 (h) It is unlawful for an agency or political subdivision of this
 28 state to provide any state, local, or federal benefit as defined in 8 U.S.C.
 29 § 1621, as it existed on January 1, 2009, or 8 U.S.C. § 1611, as it existed
 30 on January 1, 2009, in violation of this section.

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

36 (2)(A) To ensure that the application of the Systematic Alien

1 Verification for Entitlements Program is not erroneously denying benefits to
 2 legal residents of Arkansas, each agency or political subdivision of this
 3 state that administers the Systematic Alien Verification for Entitlements
 4 Program shall:

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

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

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

13 (b) Recommendations for improvements in the
 14 application process.

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

19
 20 SECTION 10. Arkansas Code Title 26, Chapter 51, Subchapter 9 is
 21 amended to add an additional section to read as follows:

22 26-51-920. Failure to verify employment authorization for individual
 23 independent contractor – Withholding.

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

35 (b) Any contracting entity that fails to comply with the income tax
 36 withholding requirements of subsection (a) of this section is liable for the

1 income taxes required to have been withheld unless the contracting entity is
2 exempt from federal withholding with respect to the individual independent
3 contractor pursuant to a properly filed Internal Revenue Service Form 8233 or
4 its equivalent.

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

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