

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.

INTERIM STUDY PROPOSAL 2009-113

State of Arkansas  
87th General Assembly  
Regular Session, 2009

# A Bill

HOUSE BILL 1093

By: Representative Sample

Filed with: House Interim Committee on Judiciary  
pursuant to A.C.A. §10-3-217.

## 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 APPLYING 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".



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

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

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

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

21  
22 SECTION 3. Arkansas Code Title 4, Chapter 16 is amended to add an  
23 additional subchapter to read as follows:

24 4-16-101. Resident alien identification documents.

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

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

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

36 (3) A federal, state, or local governmental agency for purposes

1 authorized or required by law or any legitimate purpose consistent with the  
2 duties of the agency, including without limitation voter identification  
3 cards, drivers' licenses, nondriver identification cards, passports, birth  
4 certificates, and social security cards;

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

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

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

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

16 (1) United States citizens;

17 (2) Lawful permanent resident aliens; or

18 (3) Holders of valid unexpired nonimmigrant visas.

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

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

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

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

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

28 (E) Approved deferred action status; or

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

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

35 (ii) Upon approval, the applicant may be issued an  
36 identification document, identification card, or identification certificate

1 as provided in subdivision (a)(3) or subdivision (a)(4) of this section.

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

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

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

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

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

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

31  
32 SECTION 4. Arkansas Code Title 5, Chapter 60, Subchapter 1 is amended  
33 to add an additional section to read as follows:

34 5-60-102. Trafficking or harboring an illegal alien.

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

1 States.

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

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

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

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

17  
18 SECTION 5. Arkansas Code Title 6, Chapter 60, Subchapter 2 is amended  
19 to add an additional section to read as follows:

20 6-60-214. Illegal aliens – Prohibition on scholarships, grants, and  
21 in-state tuition.

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

- 26 (1) Scholarships;
- 27 (2) Grants;
- 28 (3) An in-state tuition benefit; or
- 29 (4) Other financial aid.

30  
31 SECTION 6. Arkansas Code Title 12, Chapter 8, Subchapter 1 is amended  
32 to add an additional section to read as follows:

33 12-8-125. Fraudulent Documents Identification Unit.

34 (a) Subject to an appropriation, funding, and position authorization,  
35 the Department of Arkansas State Police shall establish a Fraudulent  
36 Documents Identification Unit for the primary purpose of investigating and

1 apprehending persons or entities that participate in the sale or distribution  
2 of fraudulent documents used for identification purposes.

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

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

8  
9 SECTION 7. Arkansas Code Title 12, Chapter 41, Subchapter 1 is amended  
10 to add an additional section to read as follows:

11 12-41-106. Illegal aliens – Resident status checks.

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

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

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

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

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

34  
35 SECTION 8. Arkansas Code Title 19, Chapter 11 is amended to add an  
36 additional subchapter to read as follows:

1 19-11-1301. Definitions.

2 As used in this subchapter:

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

6 (A) A public employer; or

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

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

13 (3)(A) "Status verification system" means an electronic system  
14 operated by the federal government through which an authorized official of a  
15 public employer may make an inquiry by exercise of authority delegated under  
16 8 U.S.C. § 1373, as it existed on January 1, 2009, to verify or ascertain the  
17 citizenship or immigration status of an individual within the jurisdiction of  
18 the public employer for any purpose authorized by § 20-76-114.

19 (B) "Status verification system" includes:

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

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

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

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

35 (4) "Subcontractor" means a person or entity of any type that  
36 performs work or provides services, furnishes goods, or obtains employees for

1 a contractor or other subcontractor; and

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

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

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

9  
10 19-11-1302. Public employer resident status verification -  
11 Prohibitions.

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

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

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

24 (3) This subsection (b) does not apply to a contract entered  
25 into before the effective date of this section even though the contract may  
26 involve the physical performance of services within this state after July 1,  
27 2009.

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

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

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



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

3 (ii) Is performed under similar working conditions,  
4 as defined in 29 U.S.C. § 206(d)(1), as it existed on January 1, 2009.

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

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

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

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

19 (i) The violation occurred; or

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

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

24 (i) The greater amount of actual damages sustained  
25 or liquidated damages in the sum of one thousand five hundred dollars  
26 (\$1,500); and

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

29  
30 SECTION 9. Arkansas Code Title 20, Chapter 76, Subchapter 1 is amended  
31 to add an additional section to read as follows:

32 20-76-114. Illegal aliens – Public benefits prohibition.

33 (a) Except as provided in subsection (c) of this section or when  
34 exempted by federal law, an agency or political subdivision of this state  
35 shall verify the lawful presence in the United States of any natural person  
36 fourteen (14) years of age or older who has applied for state or local public

1 benefits as defined in 8 U.S.C. § 1621, as it existed on January 1, 2009, or  
2 for federal public benefits as defined in 8 U.S.C. § 1611, as it existed on  
3 January 1, 2009, that are administered by the agency or political subdivision  
4 of this state.

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

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

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

11 (2) Assistance for health care items and services that are  
12 necessary for the treatment of an emergency medical condition as defined in  
13 42 U.S.C. § 1396b(v)(3), as it existed on January 1, 2009, of the alien  
14 involved and are not related to an organ transplant procedure;

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

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

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

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

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

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

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

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

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

1 2009, and is lawfully present in the United States.

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

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

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

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

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

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

30 (h) It is unlawful for an agency or political subdivision of this  
31 state to provide any state, local, or federal benefit as defined in 8 U.S.C.  
32 § 1621, as it existed on January 1, 2009, or 8 U.S.C. § 1611, as it existed  
33 on January 1, 2009, in violation of this section.

34 (i)(1) Each agency or political subdivision of this state that  
35 administers any program of state or local public benefits shall provide an  
36 annual report to the Governor, the President Pro Tempore of the Senate, and

1 the Speaker of the House of Representatives with respect to its compliance  
2 with this section.

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

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

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

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

16 (b) Recommendations for improvements in the  
17 application process.

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

22  
23 SECTION 10. Arkansas Code Title 26, Chapter 51, Subchapter 9 is  
24 amended to add an additional section to read as follows:

25 26-51-920. Failure to verify employment authorization for individual  
26 independent contractor – Withholding.

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

1 as income on United States Internal Revenue Service Form 1099.

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

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

11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36 Filed Date: 04/08/2009 By: BPG\VJF