



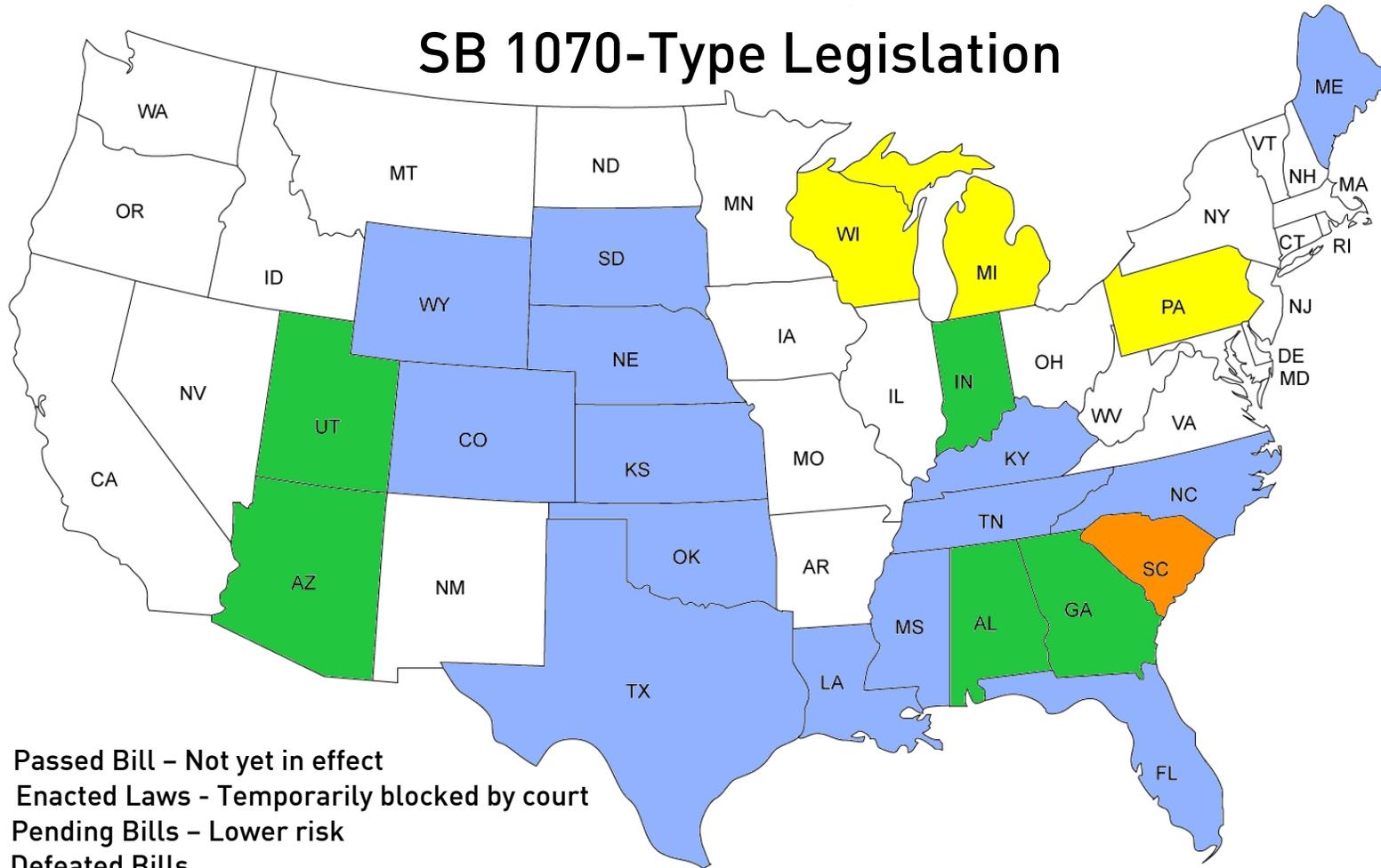
ACLU

AMERICAN CIVIL LIBERTIES UNION

FOUNDATION

IMMIGRANTS' RIGHTS PROJECT

SB 1070-Type Legislation



Status of Litigation

The ACLU and other civil rights organizations have filed lawsuits challenging Arizona’s SB 1070 and every other “copycat law” that has been enacted in the past year (in Alabama, Georgia, Indiana, South Carolina, and Utah). In addition, the U.S. Department of Justice has filed lawsuits challenging Arizona’s SB 1070, Alabama’s HB 56 and South Carolina’s SB 20. The following table shows the current status of these lawsuits.

| State | Date Signed into Law | Current Litigation Status | Litigation Timeline | Currently in Effect? |
|---|-----------------------|--|---|--|
| <p>Arizona SB 1070</p> | <p>April 23, 2010</p> | <p>Discovery proceeding. Third motion for preliminary injunction is pending before district court.</p> | <p><i>Friendly House v. Whiting:</i></p> <ul style="list-style-type: none"> - Oct. 28, 2011: Plaintiffs filed a third preliminary injunction motion regarding § 5(A) and (B), the day laborer provisions, citing the en banc decision in <i>Redondo Beach</i> (9th Cir. Sept. 16, 2011). - Oct. 3, 2011: Plaintiffs filed a first amended complaint (adding new plaintiffs etc.). - Jan. 7, 2011: Plaintiffs filed a second preliminary injunction motion regarding §5(A) and (B) (day laborer provisions). The district court denied this second motion without prejudice (because <i>Redondo Beach</i> en banc was still pending) on May 10, 2011. - Oct. 8, 2010: The district court denied our first preliminary injunction as moot (because preliminary injunction had already been entered in <i>US v. Arizona</i>), and also denied in large part | <p>Partly.</p> <p>In <i>US v. Arizona</i>, the district court preliminarily enjoined the core provisions – §2(B) (verification of immigration status during stops, arrests, detentions), §3 (registration docs), §5(C) (solicitation of work by unauthorized non-citizen), and §6 (warrantless arrest). The 9th Circuit affirmed.</p> <p>The district court denied US government’s preliminary injunction motion as to other provisions of the law (§1, §2(A), (C)-(L), §4, portions of §5, §7, §8, §9, §10, §11, §12, and §13).</p> |



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| | | | <p>defendants' motion to dismiss.</p> <ul style="list-style-type: none"> - June 21, 2010: Plaintiffs filed a first motion for preliminary injunction. - May 17, 2010: Plaintiffs filed a complaint. | |
| | | <p>Motion for preliminary injunction granted in part; Defendants' petition for certiorari is pending before Supreme Court</p> | <p><i>United States v. Arizona:</i></p> <ul style="list-style-type: none"> - Aug. 11, 2011: Arizona filed a petition for certiorari with the US Supreme Court. US government's response to Arizona's cert petition is due 11/10/11. - Apr. 11, 2011: The Ninth Circuit upheld preliminary injunction against core provisions. - July 28, 2010: The district court preliminarily enjoined core provisions. - July 6, 2010: US government filed a complaint and a motion for preliminary injunction. | |
| <p>Alabama HB 56</p> | <p>June 9, 2011</p> | <p>Motion for preliminary injunction granted in part; appeal and cross-appeal are pending before 11th Circuit</p> | <p><i>Hispanic Interest Coalition of Alabama v. Bentley:</i></p> <ul style="list-style-type: none"> - Oct. 14, 2011: The 11th Circuit granted our motion for an emergency injunction pending appeal as to §10 and §28. - Oct. 7, 2011: Plaintiffs filed an emergency motion for an injunction pending appeal with the 11th Circuit. - Oct. 7, 2011: Defendants filed a cross-appeal with the 11th Circuit. - Oct. 5, 2011: The district court denied our emergency motion for an injunction of the non- | <p>Partly.</p> <p>In <i>HICA v. Bentley</i> and <i>US v. AL</i>, the district court has preliminarily enjoined: §8 (higher ed), §11(f) and (g) (solicitation of work & day labor), and §13 (harboring), among other provisions.</p> <p>The 11th Circuit has additionally enjoined §10 (registration docs) and §28 (K-12 schools status checks) pending appeal.</p> <p>Sections currently in effect: §12, §18, §19, and §20 (status verification during stops, arrests and detentions and in jails), §27 (contracts), and §30 (business</p> |



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| | | | <p>enjoined sections pending appeal.</p> <ul style="list-style-type: none"> - Sept. 29, 2011: Plaintiffs filed an appeal with the 11th Circuit (regarding non-enjoined sections §10, §12, §18, §27, §28, and §30). We also filed an emergency motion for an injunction pending appeal with the district court. - Sept. 28, 2011: District court granted in part and denied in part our motion for preliminary injunction. - Sept. 16, 2011: Plaintiffs filed an amended complaint. - July 21, 2011: Plaintiffs filed a motion for preliminary injunction. - July 8, 2011: Plaintiffs filed a complaint. | <p>transactions).</p> |
| | | <p>Motion for preliminary injunction granted in part; appeal and cross-appeal are pending before 11th Circuit.</p> | <p><i>United States v. Alabama:</i></p> <ul style="list-style-type: none"> - Oct. 14, 2011: The 11th Circuit granted US government's motion for an emergency injunction pending appeal of §10 and §28. - Oct. 7, 2011: US government filed an emergency motion for an injunction pending appeal with the 11th Circuit. - Oct. 7, 2011: Defendants filed a cross-appeal with the 11th Circuit. - Oct. 5, 2011: District court denied US government's emergency motion for an injunction of the non-enjoined sections pending appeal. - Sept. 30, 2011: US government filed an appeal with 11th Circuit (regarding non-enjoined | |

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| | | | <p>sections §10, §12(a), §18, §27, §28, and §30). US government also filed a motion for an emergency injunction pending appeal with the district court.</p> <ul style="list-style-type: none"> - Sept. 28, 2011: District court granted in part and denied in part US government's motion for preliminary injunction. - Aug. 1, 2011: US government filed a complaint and preliminary injunction motion. | |
| <p>Georgia HB 87</p> | <p>May 13, 2011</p> | <p>Motion for preliminary injunction granted in part; Defendants' appeal pending before the 11th Circuit.</p> | <p><i>Georgia Latino Alliance for Human Rights v. Deal</i></p> <ul style="list-style-type: none"> - July 8, 2011: Defendants appealed to the 11th Circuit. - June 27, 2011: The district court granted in part and denied in part our motion for preliminary injunction. The district court also granted in part and denied in part Defendants' motion to dismiss. - June 8, 2011: Plaintiffs filed an Motion for Preliminary Injunction. - June 2, 2011: Plaintiffs filed a complaint. | <p>Partly. District court has preliminarily enjoined §8 (immigration status verification during stops, arrests, detentions) and §7 (transporting/harboring). Other provisions are in effect.</p> |
| <p>Indiana SEA 590</p> | <p>May 10, 2011</p> | <p>Motion for preliminary injunction granted; case is proceeding to discovery before district court</p> | <p><i>Buquer v. City of Indianapolis</i></p> <ul style="list-style-type: none"> - June 24, 2011: The district court preliminarily enjoined both challenged provisions. - June 1, 2011: Plaintiffs filed an preliminary injunction motion. - May 25, 2011: Plaintiffs filed a complaint challenging §18 and § 19. | <p>Partly. District court has preliminarily enjoined both challenged provisions: §18 (consular IDs) and §19 (warrantless arrest). Other provisions are in effect.</p> |



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| South Carolina SB 20 | June 27, 2011 | Motion for preliminary injunction is pending before district court | <i>Lowcountry Immigration Coalition v. Haley</i> - Oct. 21, 2011: Plaintiffs filed a motion for preliminary injunction. - Oct. 12, 2011: Plaintiffs filed a complaint . | No. Effective date is Jan. 1, 2012. |
| | | Complaint filed | <i>United States v. South Carolina</i> - Oct. 31, 2011: US government filed a complaint. | |
| Utah HB 497 | March 15, 2011 | Temporary restraining order granted; motion for preliminary injunction is pending before district court | <i>Utah Coalition of La Raza v. Herbert</i> - Sept. 13, 2011: The district court granted Defendants' request to delay preliminary injunction hearing due to possible involvement by the US government. Preliminary injunction hearing rescheduled for Dec. 2, 2011. - May 10, 2011: The district court issued temporary restraining order against entire law. - May 6, 2011: Plaintiffs filed a motion for preliminary injunction. - May 2, 2011: Plaintiffs filed a complaint . | No. The district court has issued a temporary restraining order against HB 497 in its entirety. |

Comparison of Key Provisions of State Copycat Laws

| Key Provision | AZ | AL | GA | IN | SC | UT |
|--|---|--|---|--------------------------------|-------|--|
| 1. Law enforcement agencies (LEAs) may/must check immigration status during any lawful stop or arrest | §2(B) (enjoined by dist. ct., affirmed by 9th Circuit) | §12 (Motion for preliminary injunction (MPI) denied by dist. ct. and 11th Cir.) | §8 (enjoined by dist. ct.) | | §6(A) | §3 (Temporary restraining order (TRO) granted by dist. ct.) |
| 2. LEAs must check immigration status of people who are booked into custody, held in custody, convicted of a crime, etc. | §2(C) (MPI denied by dist. ct. in <i>US v. AZ</i>) | §18, §19, §20 (MPI denied by dist. ct. and 11th Cir.) | §13 | | §7 | §3(1) (TRO granted by dist. ct.) |
| 3. LEAs authorized to make warrantless arrests for civil immigration violations | §6 (enjoined by dist. ct., affirmed by 9th Circuit) | | §8(e) ¹ (enjoined by dist. ct.) | §19 (enjoined by dist. ct.) | | §11 (TRO granted by dist. ct.) |

¹ Although HB 87 does not explicitly authorize warrantless arrest, the law authorizes law enforcement officers to detain and transfer a suspected unauthorized immigrant to federal custody.

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| 4. Crime for failing to carry immigration registration docs | §3 (enjoined by dist. ct., affirmed by 9th Circuit) | §10 (MPI denied by dist. ct., but granted by 11th Circuit) | | | §5 | §6 ² |
| 5. Crime for transporting or harboring an undocumented immigrant | §5 (amending a preexisting state harboring & transporting statute, which is being challenged in <i>Somos America v. Maricopa County</i>) ³ | §13 (enjoined by dist. ct.) | §7 (enjoined by dist. ct.) | §24 ⁴ | §4 | §10 (TROed by dist. ct.) |
| 6. Crime to solicit or perform work if unauthorized immigrant | §5(C) (enjoined by dist. ct., affirmed by 9th Circuit) | §11(a) (enjoined by dist. ct.) | | §17 (day labor only) | | |

² HB 497 does not create a state crime for failing to carry alien registration documents, but it prohibits state and local agencies and officials from limiting law enforcement agencies and officials' ability to "investigat[e] and enforce[]" the federal alien registration statute.

³ See *Somos America v. Maricopa County Board of Supervisors*, 386 Fed.Appx. 726 (9th Cir. 2010) (on appeal from motion to dismiss, remanding to district court to consider organizational plaintiffs' standing).

⁴ Indiana's §24 requires that the transporting or harboring be "for the purpose of commercial advantage or private financial gain."

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| 7. Crime to hire unauthorized day laborers, or for day laborers to solicit work in a roadway or get into a vehicle | §5(A)-(B) (MPI denied by dist. ct. w/o prejudice; new MPI pending) | §11(f), (g) (enjoined by dist. ct.) | | | | |
| 8. Crime for using consular ID | | | §19 ⁵ (not yet in effect) | §18 (enjoined by dist. ct.) | | |
| 9. Mandatory E-Verify (for public employers and/or private employers) | §9 | §9, §15, §26 | §12 | §16 | §3 | |

⁵ HB 87 creates a crime for a person who *accepts* consular documents as proof of identification rather than the person who submits the documents.

Key Detailed Provisions of State Copycat Laws

ARIZONA (SB 1070)

- §2(A): Prohibits localities from “limit[ing] or restrict[ing] the enforcement of federal immigration laws to less than the full extent permitted by federal law.”
- §2(B): During “any lawful contact” (e.g. brief stop, detention, or arrest), a law enforcement officer must make a “reasonable attempt” to determine a person’s immigration status if there is “reasonable suspicion” that the person is “an alien who is unlawfully present in the United States.” Further, “[a]ny person who is arrested shall have the person's immigration status determined before the person is released.” → **ENJOINED by district court in *US v. AZ*; affirmed by 9th Circuit.**
- §2(C): Requires notification of ICE whenever an “alien who is unlawfully present” is discharged from imprisonment or assessed any monetary obligation.
- §3: “In addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 [U.S.C. §] 1304(e) or 1306(a).” → **ENJOINED by district court in *US v. AZ*; affirmed by 9th Circuit.**
- §5(A), (B): It is a crime for drivers of motor vehicles to stop to pick up day laborers, and for day laborers to get in a motor vehicle. → **New MPI pending in light of the Ninth Circuit’s en banc decision in *Redondo Beach*.**
- §5(C): It is a crime for an “unauthorized alien” to “knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor in this state.” → **ENJOINED by district court in *US v. AZ*; affirmed by 9th Circuit.**

- §6: Authorizes the warrantless arrest of a person where there is “probable cause” to believe the person “has committed any public offense that makes the person removable from the United States.” → **ENJOINED by district court in *US v. AZ*; affirmed by 9th Circuit.**

ALABAMA (HB 56)

- §5, §6: No state or local agencies or officials may have any “policy or practice that limits or restricts the enforcement” of either federal immigration law or HB 56. Agencies in violation may be punished by the loss of state funds. Officials in violation may be punished with civil penalties. Any public employee who “willfully fails to report any violation of this act . . . shall be guilty of obstructing governmental operations,” a Class A misdemeanor.
- §7: An “alien who is not lawfully present in the United States . . . shall not receive any state or local public benefits.”
- §8: Bars non-citizens who do not have LPR status or “an appropriate nonimmigrant visa” from “enroll[ing] in or attend[ing] any public postsecondary education institution in this state” or receiving any postsecondary benefits. → **ENJOINED by district court.**
- §10: “In addition to any violation of federal law, a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of 8 U.S.C. § 1304(e) or 8 U.S.C. § 1306(a), and the person is an alien unlawfully present in the United States.” → **District court denied out PI motion; ENJOINED by 11th Circuit.**
- §11(a): It is a crime for an “unauthorized alien” to “knowingly apply for work, solicit work in a public or private place, or perform work as an employee or independent contractor in this state.” → **ENJOINED by district court.**
- §11(f), (g): It is a crime to solicit work in a roadway. → **ENJOINED by district court.**

- §10(e), §11(e), §13(h): State courts shall consider only the federal government’s verification in making immigration status determinations. → **ENJOINED by district court.**
- §12(a): A law enforcement officer shall make a “reasonable attempt” to determine the immigration status of a person “[u]pon any lawful stop, detention or arrest,” where “reasonable suspicion exists that the person is an alien who is unlawfully present in the United States.” → **District court DENIED our PI motion; so did 11th Circuit.**
- §12(b): “Any alien who is arrested and booked into custody” shall have his or her immigration status checked. → **District court DENIED our PI motion; so did 11th Circuit.**
- §12(e): “If an alien is determined by the federal government to be . . . unlawfully present, . . . the [state/local] law enforcement agency shall cooperate in the transfer of the alien to the custody of the federal government, if the federal government so requests.” → **District court DENIED our PI motion; so did 11th Circuit.**
- §13: It is a crime to harbor or transport an immigrant, or to encourage an immigrant to come to or reside in the state, while “know[ing] or recklessly disregard[ing] the fact that the alien has come to, has entered, or remains in the United States in violation of federal law.” It is also a crime to enter into a rental agreement with an unlawfully present immigrant. → **ENJOINED by district court.**
- §15: No business entity shall knowingly employ an unauthorized immigrant. Mandates the use of E-Verify after April 1, 2012.
- §17: Creates a private right of action for the “discriminatory business practice” of failing to hire a US citizen or authorized immigrant applicant while knowingly retaining or hiring an employee who is an unauthorized immigrant. → **ENJOINED by district court in DOJ suit.**
- §18: Requires law enforcement officers to verify the immigration status of individuals arrested for driving without a license, and allows individuals to be detained for up to 48 hours solely to verify their immigration status. → **District court DENIED our PI motion; so did the 11th Circuit.**

- §19: Jails must verify the immigration status of every person charged with a crime for which bail is required, or confined for any period in a jail. → **District court DENIED our PI motion; we didn't seek emergency injunction from 11th Circuit.**
- §20: If an unlawfully present alien is convicted of a violation of state or local law and is within 30 days of release or has paid any fine as required, custodian shall notify ICE, and Alabama DHS shall assist in transfer to ICE. → **District court DENIED our PI motion; we didn't seek emergency injunction from 11th Circuit.**
- §22: Authorizes the "Alabama Department of Homeland Security" to hire law enforcement officers whose purpose is "not engage in routine law enforcement activity," but rather to "carry out the enforcement of this act."
- §27: State courts "shall not enforce the terms of, or otherwise regard as valid, any contract between a party and an alien unlawfully present in the United States, if the party had direct or constructive knowledge that the alien was unlawfully present in the United States." Does not apply to a contract for lodging for one night, food, medical services, or transportation to country of origin. → **District court DENIED our PI motion; so did 11th Circuit.**
- §28: Every public K-12 school, at the time of enrollment, "shall determine whether the student enrolling in public school was born outside the jurisdiction of the United States or is the child of an alien not lawfully present in the United States." If yes, the student must produce proof of status within 30 days. Schools must report this information to the State Board of Education. → **District court denied our PI motion; ENJOINED by 11th Circuit.**
- §29: Eligibility requirements for voter registration.
- §30: It is a crime for an unlawfully present immigrant (or his or her agent) to enter into or attempt to enter into a "business transaction" with the state or a political subdivision, including applying for a motor vehicle

license plate, driver's license, business license, etc. → **District court DENIED our PI motion; so did 11th Circuit.**

GEORGIA (HB 87):

- §3: Every public employer, and all public contractors, shall participate in the E-Verify program.
- §7: Creates a crime for a person who “transports or moves an illegal alien in a motor vehicle for the purpose of further the illegal presence of the alien in the United States.” Creates a crime for “harbor[ing] . . . an illegal alien,” with certain specified exceptions. → **ENJOINED by district court.**
- §8(b): “[D]uring any investigation of a criminal suspect,” when there is “probable cause to believe that [the] suspect has committed a criminal violation,” a law enforcement officer “shall be authorized” to verify the suspect’s immigration status. → **ENJOINED by district court.**
- §8(e): “If during the course of the investigation into such suspect's identity, a peace officer receives verification that such suspect is an illegal alien, then such peace officer may . . . detain[] . . . [and] securely transport[] . . . [the person] to any authorized federal or state detention facility.” (Warrantless arrest provision.) → **ENJOINED by district court.**
- §12: Every private employer with more than ten employees must participate in E-Verify.
- §13: “When any person is confined, for any period, in [a] jail . . . in compliance with Article 36 of the Vienna Convention on Consular Relations, a reasonable effort shall be made to determine the nationality of the person so confined.”
- §17: An agency or political subdivision providing a public benefit shall require every applicant to provide verification of immigration status and lawful presence in the US.

- §19: Creates a crime for knowingly accepting identification documents that are not “secure and verifiable documents” (such as consular identification documents).

INDIANA (SB 590):

- §13: An agency or political subdivision “shall verify” the immigration status of any individual over the age of 18 who applies for public benefits, including postsecondary education benefits.
- §15: The State may sue an employer for reimbursement of unemployment insurance benefits if the employer has knowingly employed an “unauthorized alien.”
- §16: State agencies and political subdivisions must use E-Verify.
- §17: Prohibits performing day labor in Indiana unless the individual has completed an “individual attestation of employment authorization” per 8 U.S.C. § 1324a(b)(2).
- §18: Offering or accepting a consular ID “as proof of identification for any purpose” (except investigation of a crime) is an infraction. → **ENJOINED by district court.**
- §19: A law enforcement officer may arrest a person when the officer has “a removal order for the person issued by an immigration court,” “a detainer or notice of action . . . issued by the [DHS],” or “probable cause to believe that the person has been indicted for or convicted of one or more aggravated felonies.” → **ENJOINED by district court.**
- §24: Creates crimes (with certain exceptions) for transporting, moving, harboring, concealing or shielding from detection an “alien” for “the purpose of commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of the law.”

SOUTH CAROLINA (SB 20):

- §1: Creates a private right of action to sue a political subdivision for any ordinance or policy limiting public employees from “seeking to enforce a state law with regard to immigration” or “communicating to appropriate federal or state officials regarding the immigration status of a person.” Political subdivisions found guilty face fines of \$1,000 - \$5,000 per day.
- §3: Public employers must participate in E-Verify, and may hire only contractors who use E-Verify.
- §4: Amends a previous state law that made it a crime to transport or harbor an undocumented immigrant with intent to further the person’s unlawful entry into the US. See S.C. Code § 16-9-460 (enacted by A280, 2008). SB 20 § 4 adds the crimes of *self*-harboring and *self*-transporting as well.
- §5: It is a crime to fail to carry alien registration documents.
- §6(A): During any “lawful[] stop[], det[ention], investigat[ion], or arrest[] . . . for a criminal offense,” a law enforcement officer “shall make a reasonable effort” to determine the person’s immigration status if the officer has “reasonable suspicion to believe that the person is unlawfully present.” “If the officer determines that the person is unlawfully present,” the officer must contact the state Department of Public Safety and decide whether to “retain custody of the person for the underlying criminal offense” or transfer the person to the state or to ICE’s custody.
- §6(B): It is a crime to use or possess “a false, fictitious, fraudulent, or counterfeit picture identification for the purpose of offering proof of the person’s lawful presence in the United States.”
- §7: If a person is charged with a criminal offense and confined for any period in a state or local jail, correctional officers must attempt to determine whether the person is unlawfully present. Further, if “the prisoner is an alien,” officers must, within 72 hours, contact the federal government to “verify whether the prisoner . . . is unlawfully present.” If the prisoner is deemed unlawfully present and has completed his or her sentence, an officer must notify DHS and transport the prisoner to federal custody.

- §9: All private employers that are required under federal law to maintain I-9s must participate in E-Verify.
- §11: Creates an Illegal Immigration Enforcement Unit within the Department of Public Safety.

UTAH (HB 497):

- §3(1): Authorizes / requires law enforcement officers to verify immigration status during “any lawful stop, detention, or arrest,” if the person cannot produce one of several enumerated identity documents and “the officer is otherwise unable to verify the identity of the person.” Status verification is mandatory if the person is arrested for a Class A misdemeanor or a felony, and permissive if the person is arrested for a Class B or C misdemeanor. However, if the person is “arrested and booked” for a class B or C misdemeanor, immigration status verification is mandatory. → **TRO issued by district court.**
- §3(2): During any lawful stop, detention or arrest of “the operator of a vehicle,” if the officer has “reasonable suspicion” that any of the vehicle’s occupants are violating the state smuggling and transporting statutes, the officer shall “detain the occupants” and inquire about their immigration status. → **TRO issued by district court.**
- §4(1)-(2): A person is “presumed to be lawfully present in the United States” if they can produce one of several enumerated identity documents, or if he or she “makes a statement or affirmation to the law enforcement officer that the person is a United States citizen or national, unless the officer has a reasonable suspicion that the statement or affirmation is false.” → **TRO issued by district court.**
- §6: No state or local government agency or official may limit assistance to the federal government in enforcing federal immigration law. No state or local government agency or official may restrict any law enforcement agency from “investigat[ing] or enforce[ing]” the federal alien registration statutes.

- §8: Requires proof of immigration status to receive public benefits. → **TRO issued by district court.**
- §10: It is a crime to (a) transport, or attempt to transport, an alien “into or within . . . the state,” (b) conceal, harbor, or shelter from detection, an alien “within this state,” or (c) “encourage or induce an alien to come to, enter, or reside in this state” for “commercial advantage or private financial gain,” “knowing or in reckless disregard of the fact that the alien is in the United States in violation of federal law.” → **TRO issued by district court.**
- §11: A law enforcement officer may make an arrest when she or he has “reasonable cause to believe that the person is an alien” who (a) is subject to a civil removal order issued by an immigration judge, (b) is subject to a “civil detainer order” issued by DHS, or (c) “has been charged or convicted in another state with one or more aggravated felonies.” → **TRO issued by district court.**