ANOTHER ROUND
IMMIGRATION LAWMAKING
IN THE STATES

2011
ImmigrationWorks USA is a national organization advancing immigration reform that works for all Americans – employers, workers and citizens. Its twin goals: to educate the public about the benefits of immigration and build a mainstream grassroots constituency in favor of an overhaul – business owners and others from across America willing to speak out and demand that it gets done. The organization links 25 state-based business coalitions: employers and trade associations from Florida to Oregon and from every sector of the economy that relies on immigrant workers. For more information, visit www.ImmigrationWorksUSA.org or contact us at info@immigrationworksusa.org.
With Congress deadlocked and still unable to act on immigration, lawmakers across the country continue to take matters into their own hands. So far in 2011, ten states from the Southeast to the Rockies have enacted tough immigration enforcement measures, mandating E-Verify for some or all employers or empowering local police to ask people about their immigration status.

Not all the news from the states is bad. Many enforcement-only measures talked about or introduced in the last year lost momentum or died. In Utah, Arizona, Indiana and elsewhere, business leaders and pragmatic Republicans sought more balanced approaches. And of the 25 states that began the year threatening to pass bills modeled on Arizona’s tough policing measure, SB 1070, only four have enacted law.

Still, the red tide of enforcement continued to spread across the map, particularly in the Southeast, where every state but Arkansas now requires E-Verify for some or all employers.

Two ways to get tough

States eager to crack down on illegal immigration now have two distinct options, sometimes used alone, sometimes in combination.

The first approach, modeled on Arizona’s 2007 employer sanctions law, the Legal Arizona Workers Act, zeros in on what happens in the workplace. Hiring illegal immigrants is deemed a state offense. Businesses are required to run new hires through the federal electronic employment verification system, E-Verify. And most states that adopt this approach punish employers found to have hired illegal immigrants by first suspending, then revoking their business licenses – sometimes narrowly defined, sometimes broadly to include even articles of incorporation.

The second approach, modeled on Arizona’s 2010 policing measure, SB 1070, targets immigrants more directly by enlisting state and local law enforcement to inquire about the immigration status of people they stop in the course of other, routine policing.

Both approaches have been challenged in court – in the past five years, more than a dozen lawsuits have been filed, often by business interests acting in concert with immigrant rights groups. And the results are now coming in.

In May, after almost four years of legal wrangling, the U.S. Supreme Court found the 2007 Arizona employer sanctions law constitutional. According to the decision, states have a right to mandate E-Verify and punish businesses that hire unauthorized immigrants by suspending and revoking their business licenses.

The Arizona policing approach has not fared so well in court. In July 2010, the Obama administration filed suit against SB 1070, and a federal judge in Phoenix struck down the law’s core provisions, including the section that required police to ask suspects about their immigration status. This hasn’t stopped other states from passing SB 1070 copycat laws. But in virtually every instance, the measure has been challenged, and these cases, which rest on an entirely different line of legal reasoning than the employer sanctions suits, are working their way toward the Supreme Court.

The 2011 sessions – a mixed scorecard

Since January, nine new states have enacted E-Verify mandates for some or all employers: Alabama, Florida, Georgia, Indiana, Louisiana, North Carolina, South Carolina, Tennessee and Virginia. This brings the national total to seventeen.
Verification requirements vary widely from state to state. Some mandates affect only public agencies and contractors doing business with state departments. Others exclude small businesses or allow employers to use drivers’ licenses or other documentation to check employees’ identities and work authorization rather than running them through E-Verify.

Altogether, seven states – Alabama, Arizona, Georgia, Mississippi, North Carolina, South Carolina and Utah – now require all or most employers to enroll in the federal verification program.

And politically, E-Verify has proven increasingly difficult to stop. This year, employers in a few states convinced lawmakers to water down verification requirements. But in most places, mandating E-Verify struck voters as a reasonable course – in most states where it failed, it was because it was coupled with a more controversial Arizona-style policing law.

Policing measures are far more polarizing. This year, three states – Alabama, Georgia and South Carolina – followed Arizona almost to the letter in authorizing local law enforcement to inquire about the immigration status of anyone they stop in the course of other, routine police work. Utah diverged slightly from the formula, allowing police to check immigration status only after an arrest for a serious crime.

But in a number of other states, business interests and voters sharply rejected the Arizona policing approach. Costly boycotts targeting the Arizona tourism and convention industry frightened business leaders in many states. So did the damage to Arizona’s reputation – according to Arizona employers, even highly skilled, legal immigrants are increasingly hesitant to move there, and global businesses are loath to invest. Intense, emotional debates in Florida, Indiana, Kansas and elsewhere proved that Arizona copycats are beatable – few Americans are comfortable with racial profiling, and increasing numbers grasp that SB 1070-like policing laws come with that risk.

An uncertain road ahead

The Supreme Court’s Arizona decision is sure to have repercussions in the year to come. Within days of the May ruling, immigration hardliners in several states – Kansas and Utah, among others – announced their intent to introduce Arizona-style E-Verify mandates in their legislatures. The court’s sanction takes the question mark out of cracking down in the workplace, making it a risk-free step for politicians seeking to get tough on illegal immigration.

Far less clear: what the decision means for other kinds of state immigration enforcement – policing measures, efforts to redefine citizenship, withhold benefits or require teachers and nurses to inquire about people’s immigration status. The Supreme Court said nothing about any of this: the Arizona decision was narrowly tailored to apply only to worksite enforcement. But it won’t be surprising if enforcement-only advocates test the court by pushing still more boldly into these areas. Proponents of enforcement-only say they are now setting their sights on politically moderate states like Pennsylvania and Missouri. And several of the states that tried and failed to pass Arizona-style policing measures in 2011 are likely to try again next year.

The good news for the future: the debate is changing in the states. A new set of voices is emerging – Republicans and business leaders calling for pragmatism and more sensible law. In Utah, Arizona, Kansas, and Tennessee, among other places, not just business associations but brand-name companies stepped out from the shadows this year to make the case that immigration is good for the state economy. And in many states, the public seemed to get the message, creating space for lawmakers to vote differently than they had in the past.

The wild card for the future: legislation introduced in the House in June by Judiciary Committee chairman Lamar Smith that would mandate E-Verify for all U.S. employers and preempt or nullify most state employer sanctions laws.

But whether the Smith bill passes or not, the debate is far from over in the states. The expanding patchwork of conflicting federal, state and local immigration enforcement is sure to grow more confusing and unworkable in the year to come. Enforcement-only advocates will continue to try ever brasher and more audacious moves. And business will be called upon to make the pragmatic case: how immigrant workers benefit the U.S. economy and why immigration enforcement only is not good policy.
The toughest immigration enforcement law enacted this year comes out of Alabama. HB 56 combines policing measures that go beyond Arizona’s controversial SB 1070 with one of the most exhaustive packages of employer sanctions yet passed in any state. Although Alabama immigrant rights advocates denounced the bill, it sailed through the legislature with little opposition from elected officials, Democrat or Republican.

Passage of HB 56 was a foregone conclusion. The 2010 Republican takeover of the state legislature paved the way, and Republican Gov. Robert Bentley signaled early on that he would support a bill. The only uncertainty was just how tough the employer sanctions would be – an issue about which the bill’s two principal sponsors, Republican Rep. Micky Hammon and Republican Sen. Scott Beason, disagreed. Hammon wanted to require all employers in the state to use E-Verify. Beason wanted to exempt small businesses and employers who hire day laborers. He was also prepared to give private employers a choice: use E-Verify or request workers to provide valid drivers’ licenses or other state IDs.

Business leaders urged lawmakers to adopt Beason’s milder package, and the Senate stripped out many of the House bill’s harshest provisions. But in the end, the House simply restored them, and the tougher measure passed overwhelmingly in both chambers.

What the law mandates: by April 2012, all public and private employers in Alabama must use E-Verify. The penalty for knowingly hiring an unauthorized immigrant is three years of probation, during which the employer must file quarterly reports affirming the legal status of all employees.

The measure prohibits businesses from laying off legal employees while retaining unauthorized workers and makes it a crime for illegal immigrants to apply for work in Alabama.

Victories for Enforcement Only

The U.S. Supreme Court’s decision in the Chamber of Commerce v. Whiting case was a victory for advocates of tough state employer sanctions laws, but – many scholars argue – a narrow victory.

An unlikely coalition of immigrant rights groups and business interests, including the U.S. Chamber of Commerce, emerged shortly after the law was passed to challenge it in court. Their argument: that Arizona had overstepped its authority to make immigration policy – specifically, that the federal Immigration Reform and Control Act of 1986 preempted the Arizona employer sanctions law.

It took three years for the case to reach the Supreme Court. By then, more than a dozen states had copied Arizona, mandating E-Verify for some or all employers. And Arizona had gone further still, passing a tough policing law, SB 1070, perhaps or perhaps not governed by the same legal principles as employer sanctions bills.

Clear-cut case, uncertain consequences

The Supreme Court’s decision left no room for doubt about the Legal Arizona Workers Act. Chief Justice John Roberts, writing for a 5-3 majority, said Arizona was within its rights to mandate E-Verify and use state licensing provisions to sanction employers found to have hired unauthorized workers.

The court’s decision turned on the “savings clause” – a seven-word parenthesis in the 1986 Immigration Reform and Control Act. According to the Chamber of Commerce, Arizona lawmakers had misinterpreted that federal statute, which prohibits states from imposing civil or criminal sanctions on employers who hire illegal workers but leaves an ill-defined loophole for enforcement through “licensing and similar laws.” According to the Supreme Court, Arizona’s interpretation was right on the mark.

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“Arizona’s licensing law falls well within the confines of the authority Congress chose to leave to the States,” Justice Roberts wrote. “Arizona’s procedures simply implement the sanctions that Congress expressly allowed the States to pursue through licensing laws.”

What isn’t clear going forward: the scope of the Supreme Court’s Arizona decision.

The ruling addressed only one kind of state immigration enforcement: employer sanctions laws permissible under the IRCA savings clause. And many legal scholars maintain that the decision stops there – that the justices considered only worksite enforcement, not policing measures or other state laws, and that nothing in the ruling should be interpreted as giving states a green light to pass other kinds of immigration enforcement. Still, many state enforcement advocates are reading the decision differently, and they are likely to test it in years to come by passing new policing laws, new definitions of citizenship, new measures depriving illegal immigrants of state benefits, and more.

In the meantime, the court’s decision is already emboldening states eager to control illegal immigration with employer sanctions. In the weeks since the decision came down, Louisiana, North Carolina, South Carolina and Tennessee have mandated E-verify for some or all employers, and lawmakers in states from Kansas to Utah are talking about introducing E-Verify mandates modeled on the Legal Arizona Workers Act.

The high court’s ruling is also sending ripple effects through the lower courts. In 2010, prior to the Supreme Court’s Arizona decision, the U.S. Third Circuit Court of Appeals found a local immigration ordinance passed in 2006 in Hazelton, Pennsylvania unconstitutional. Now the Third Circuit must reconsider that decision.

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Meanwhile, legal challenges to SB 1070 and a host of other state policing laws – in Georgia, Alabama and Utah – are also working their way up through the courts.

Finally, if all this isn’t confusing enough, Congress is now poised to weigh in on the issue of which lawmakers – Congress or the states – have authority to make immigration law.

Legislation introduced in June by House Judiciary Committee chairman Lamar Smith would mandate E-Verify for all U.S. employers and preempt most state employer sanctions laws currently on the books. The one exemption: states would retain authority to impose their own stiff penalties, suspending and revoking the business licenses of employers who did not comply with federal E-Verify requirements.

The upshot for state lawmakers: more confusion ahead. Passage of the Smith bill would clarify the matter somewhat. But if the Smith bill fails, the states will remain a hard-fought battleground. And the result will be an increasingly confusing and unworkable patchwork of state immigration enforcement law.

from employers with more than four employees to employers with more than ten. And just days before passage, the Senate stripped the E-Verify mandate out of the bill and modified the policing measures to require checking immigration status only after an arrest, rather than during an investigation. But in last-minute parliamentary maneuvering, House lawmakers had their way, and the bill that landed on Republican Gov. Nathan Deal’s desk reinstated both tough provisions.

What’s in the law: HB 87 requires public and private employers with more than ten employees to enroll in E-Verify – they will not be issued state, county or municipal business licenses unless they do. The program is phased in over two years. Companies with more than 500 employers must enroll by January 2012, businesses with more than 100 employees by July 2012 and those with more than ten employees by July 2013.

The law makes it a felony to use false identification to obtain a job in Georgia. This new crime, “aggravated identify fraud,” carries a prison sentence of between one and 15 years and a fine of up to $250,000.

The policing provisions of HB 87 give local law enforcement officers authority to question anyone they stop who cannot provide identification proving his or her immigration status.

A coalition of labor and immigrants rights groups has challenged the law in court, and in June a federal district court judge temporarily blocked the controversial policing provisions and those that penalize harboring and transporting illegal immigrants. The state has appealed and expects the matter to go to the Eleventh U.S. Circuit Court of Appeals.
THE COST OF IMMIGRATION ENFORCEMENT

With states from the Southeast to the Rockies racing to pass tough new immigration enforcement laws, few legislators are taking the time to ask about costs. But the evidence is pouring in, and it’s not good news for the bottom line – for state budgets or businesses or often struggling state economies.

The costs fall into three baskets. Out-of-state boycotts are hammering the tourism and convention sectors in Arizona and other states that have passed tough policing measures – measures that opponents believe encourage racial profiling. Second, immigrant workers are packing up and moving away from places with strict immigration laws, leaving gaping, costly holes in many states’ lesser-skilled workforces. And states passing immigration enforcement measures despite proscriptions in federal law are being hauled to court – in some cases, running up multimillion dollar legal bills.

Boycotts hit the states where it hurts

The ink on Arizona’s controversial policing measure, SB 1070, was hardly dry when immigrant rights groups, unions and cities across the country announced they were boycotting the state. Arizona is a major conference and vacation center: in 2009, 35 million travelers spent $16 billion in Arizona, generating $2.4 billion in tax revenues. And boycotts are proving an effective way to hit the state where it hurts.

Within weeks of passage of SB 1070, in April 2010, dozens of local school districts, colleges and city and county governments had cancelled conventions or forbidden employees to travel to Arizona on official business.

The first and most obvious cost was hotel cancellations. According to the Arizona Hotel and Lodging Association, some two-dozen meetings and conventions were cancelled in the first month after passage. By mid-August, there had been 40 cancellations for group hotel bookings, at an estimated cost of $15 million. Just one hotel, the Phoenix Sheraton Downtown, lost a reported $9 million in convention contracts in 2010 and 2011. Cancelled hotel and convention business in Phoenix alone is projected to reach $90 million over five years. And that doesn’t include popular Tucson or northern Arizona destinations — or indirect spending by convention-goers at Arizona restaurants or retail outlets.

The economic ripple effect has also been painful: costs to other sectors up- and downstream from the tourism industry. Among the sectors feeling the pinch: foodservice, construction, landscaping, agriculture, even manufacturing. Kovach, Inc., a high-end

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In South Carolina, legislators made an existing law tougher. Already the state with the strictest immigration enforcement in the land – not the most demanding law, but the most exacting enforcement – this year, South Carolina added new requirements, including an Arizona-like policing measure, and still more hard-hitting enforcement.

South Carolina’s 2008 employer sanctions law required all public employers to use E-Verify but gave private employers the option of ascertaining workers’ immigration status by checking their drivers’ licenses or a state-issued ID. The new law passed this year closes that loophole, requiring all businesses in the state to participate in E-Verify.

Employers not already enrolled in the program have a year to do so, and during that time, any penalties will be probationary. But as of July 2012, any business found to have knowingly hired an illegal immigrant will face a suspension of its business license. After a third offense, the license can be permanently revoked.

The law makes it a felony to produce a false photo ID for an immigrant – a crime punishable by a $25,000 fine and five years in prison. An unauthorized foreigner transported in a vehicle can be charged with a felony.

The law’s policing measure closely follows Arizona’s: local police are authorized to question anyone lawfully stopped for any reason about their immigration status.

Where South Carolina goes further than Arizona: creating a mechanism to enforce the new policing provision – the country’s first state immigration police force. The newly created Illegal Immigration Enforcement Units will operate under the jurisdiction of the Department of Safety and serve as a liaison between local and federal officials. This new enforcement mechanism will complement the state’s extremely effective worksite enforcement.

The measure was approved by the legislature in June despite strong opposition from the Small Business Chamber of Commerce. It is scheduled to take effect in January, although the American Civil Liberties Union has said it will go to court to block it.
With almost every state in the Southeast moving to crack down on illegal immigration, North Carolina was not to be left out – it too had to have an E-Verify mandate. But in contrast to Arizona and other states, North Carolina lawmakers deferred somewhat to concerns about what the measure might do to undermine the state economy, and they exempted smaller businesses. Still, following in the footsteps of South Carolina, the North Carolina law gives state authorities ominous new enforcement powers.

As in several other states, the primary issue in the North Carolina legislature was just how tough to make the worksite provisions. The bill’s sponsor, Republican Rep. George Cleveland originally hoped to mandate E-Verify for all employers, and Republican House Majority Leader Paul Stam supported this approach. But Senate Republicans, backed by Senate President Phil Berger, pushed to moderate the mandate.

HB 36 requires all businesses with 25 or more employees to enroll in E-Verify. Companies with more than 500 employees must participate by October 2012, firms with more than 25 workers by July 2013. Counties and municipalities must also use the system.

But the bill exempts companies with fewer than 25 employees and agricultural employers who rely on seasonal workers – together perhaps 40 percent of the businesses in the state.

North Carolina also differs from many states in the penalties it imposes. It punishes businesses not for hiring illegal immigrants, but rather for failing to enroll in E-Verify. And instead of suspending or revoking employers’ business licenses, it imposes escalating fines: a warning for the first violation, $1000 per worker for the second offense and $2000 per worker for a third violation.

What concerns employers most about the law: the new enforcement mechanism it creates. HB 36 allows private individuals to file anonymous complaints if they suspect a company is employing illegal workers. The state Commissioner of Labor can request the assistance of the State Bureau of Investigation in looking into complaints, and it may subpoena employment records relating to recruitment, hiring and termination policies and practices. Knowingly filing a false or frivolous complaint is a misdemeanor.

The votes in both chambers ran largely along party lines, although a handful of Democrats crossed the aisle to support the measure. Democratic Gov. Beverly Purdue signed it into law in June.

Rep. Cleveland, still stung by the exemption of small businesses, has vowed to revisit the issue in next year’s legislative session.

Workers fleeing in droves – with no one to replace them

Even more costly than travelers’ boycotts is the exodus of low-skilled immigrant workers, legal and illegal, that often follows passage of a tough state immigration enforcement law. People fearful of being arrested, deported or simply harassed often pick up and go, generally moving to a nearby state.

The latest evidence comes from Georgia. The E-Verify provisions of Georgia’s 2011 immigration enforcement law have yet to kick in, but workers fearing the worst are said to be fleeing the state in droves.

According to the Pew Hispanic Center, nearly 60 percent of Georgia’s Hispanic population – some half a million people – are in the state illegally. Georgia’s $67 billion agricultural sector accounts for more than a tenth of the state economy. In June, the Georgia Department of Agriculture surveyed 132 Georgia agricultural businesses, and more than half said they were already experiencing labor shortages – with perhaps 11,000 positions going unfilled this production year. And according to Bryan Tolar, president of the Georgia Agribusiness Council, farms across the state have already lost $300 million and could lose up to $1 billion by the end of the year.
Worse still, these figures don’t include the costs to other businesses up- and downstream in the Georgia economy – businesses that sell farm machinery, fertilizer, seed and other farm inputs, plus food processors, truckers, retailers and restaurants that deliver farm products to consumers.

In June, Republican Gov. Nathan Deal tried to fill this widening labor gap by connecting farmers with probationers having trouble finding work because of their criminal records. Two local AP reporters made national news with their story about the results of the governor’s experiment: the first day on the job at a large produce farm in southern Georgia, most probationers had left the fields by mid-afternoon, unable to take the heat or the backbreaking work usually done by immigrants.

The picture is even more devastating in Arizona. The immigration enforcement noose has been tightening in Arizona since 2004: first a ballot initiative prohibiting unauthorized immigrants from receiving government benefits, then the 2007 employer sanctions law, followed last year by SB 1070. And every time the state cracks down, the outflow of immigrant workers accelerates.

According to the Public Policy Institute of California, some 92,000 unauthorized immigrants of working age left Arizona between 2008 and 2009 – that’s 17 percent of the total unauthorized population. And according to the BBVA Bancomer Research, 100,000 legal and illegal Hispanics have left since May 2010.

For many proponents of immigration enforcement, this is a win – vindication of the strategy they call “attrition through enforcement.” But economic forecasters caution that it’s likely to be a Pyrrhic victory – ultimately, a devastating blow to the Arizona economy. According to a 2008 study by the Texas-based Perryman Group, if all illegal immigrant workers left Arizona, the state would likely lose 140,000 jobs, $26.4 billion in economic activity and $11.7 billion in gross state product.

Louisiana lawmakers passed not one but two worksite enforcement measures this year – the first, mandating E-Verify for state contractors, the second creating an incentive for private employers to enroll.

Lawmakers eager to crack down on illegal immigration began the session aiming for a bill that would combine employer sanctions with an Arizona-like policing measure. But concerns over the costs to the state and to Louisiana businesses led lawmakers to scale back, passing a more modest bill that mandated E-Verify only for public contractors. But then, just days before the session ended, Republican Rep. Kirk Talbot introduced a second measure that applies to private employers, encouraging though not requiring them to use E-Verify.

The public contractor law, HB 342, requires all companies doing business with the state to use E-Verify. Firms that fail to do so may lose their contracts and be barred from bidding on other projects for up to three years. They may also be required to reimburse the state for any expenses involved in reassigning the contract.

The second E-Verify law, HB 646, creates two options for private employers. They can use E-Verify. Or they can scrutinize workers’ identity documents: for each employee, either a birth certificate, a naturalization certificate, an alien registration card or other form of ID showing the worker is in the country legally.

The bill includes increasing fines for businesses that violate the law: up to $500 per worker for a first offense, up to $1000 for a second and up to $2,500 for a third violation. Third-time offenders can also have their business licenses suspended for a minimum of 30 days and no more than six months.

But employers who enroll in E-Verify are exempted from these penalties – a strong incentive to participate in the system.

The measure’s sponsor, Republican Rep. Kirk Talbot, wanted to mandate tougher penalties for private employers. But ultimately he decided that the relatively mild bill enacted this year was better than no bill at all. And he vowed to continue the fight when the legislature reconvenes next January.
A NEW ROLE FOR BUSINESS – OUT IN FRONT

Business advocates the world over prefer to keep their political activity discreet and behind the scenes. Employers advancing changes in immigration law are no exception, and though in recent years business owners have become increasingly involved in immigration politics, most are still more comfortable keeping a low profile: exerting their influence quietly, generally in the back room.

But this year, something new and different happened in states across the country where lawmakers were pushing for tougher immigration enforcement laws. Business leaders worried that these measures would be harmful for their state economies began speaking out publicly – in the media, at public forums and in public letters to lawmakers.

A business-led civic compact in Utah

In no state did business speak louder or more influentially than in Utah.

Utah business leaders didn’t seek a battle – it was thrust upon them last summer when Republican Rep. Stephen Sandstrom declared his intent to introduce a policing measure modeled on Arizona’s controversial SB 1070. The bill’s prospects looked good. “It was a foregone conclusion that Utah was going to do exactly what Arizona did,” said Marty Carpenter, director of communications for the Salt Lake Chamber.

The Utah business community was deeply concerned. Utah employers had been following the consequences in Arizona: a costly legal challenge, millions of dollars lost to boycotts and, hardest to repair, a blot on the state’s reputation – for many, across the country, Arizona had become a pariah state. None of it looked appealing to Utah business leaders – what faster way to damage the state economy?

Enter the Salt Lake Chamber, led by former state Senate president and 2002 Winter Olympics organizer Lane Beattie, who took the first steps to find another way. Months before the legislative session started, the Chamber began conversations with an array of Utah interests concerned about the likely consequences of an Arizona copycat law: not just business leaders, but local law enforcement, faith-based groups and immigrant rights advocates. Their goal: to spur a more constructive dialogue among lawmakers and avoid a zero-sum standoff between pro and con groups – the distressing norm in so many state immigration debates. The emerging coalition also pressed lawmakers to consider what Arizona-style enforcement would mean for the state’s image and economic development.

The next step, in November 2010, was the “Utah Compact,” a set of principles crafted by the Chamber and its allies designed to guide lawmakers as they hammered out a more balanced approach. The compact highlighted the economic contributions of immigrants as workers and taxpayers in Utah. It called for law enforcement to focus on criminal activity rather than civil violations of the immigration code. It opposed breaking up families with immigration enforcement and called for a “humane approach” to the reality of immigrants, legal and illegal, living and working in Utah. It also made crystal clear: immigration enforcement is a federal issue – Utah was stepping in only because it had to, because the feds’ inaction on immigration had left a vacuum. By March 2011, the compact had more than four thousand signatories: elected officials, faith leaders and influential businessmen from across the state lending their names in support.

The compact set the stage for months of legislative maneuvering. A slew of bills, Democrat and Republican, circulated in the capitol. Chamber leaders and other compact signers worked closely with lawmakers to develop legislative language. With both chambers of the legislature heavily dominated by the GOP, business leaders set their sights on moderate Republicans – the key to passing a compromise.

The result emerged in early March: a package of four bills that combined tough enforcement with a guest worker program and work permits for the unauthorized immigrants already living and working in Utah. (For more on the package, see page 12.)
The compromise passed in both chambers and was signed into law in March by Republican Gov. Gary Herbert. But the debate goes on in Utah, and the business community and its allies remain actively involved. The Utah Compact has spawned a national effort, America’s Compact, and Utah supporters are working hard to enlist signatories from all 50 states. Business leaders are also supporting Utah Attorney General Mark Shurtleff as he seeks a waiver from federal authorities for Utah to issue work permits to unauthorized immigrants. And the Chamber has joined GOP legislative leaders fighting to defend the immigration compromise against conservative activists campaigning for its repeal.

None of these initiatives are strictly business efforts. Now, as through the past 18 months, business groups are working with leaders from all sectors of Utah society. But no one can accuse the Utah business community of hanging back or wielding its influence only in private, behind the scenes. Those days are over. A new voice has joined the debate. And Utah is far the better for it, with business’s help, playing a leading role in the national conversation about immigration.

Arizona’s business leaders call for a time-out

In Arizona too business leaders were drawn into the fray by circumstances beyond their control.

The battle over immigration has been raging in Arizona for years. Enforcement-only advocates have been pushing to crack down harder since 2004, advancing ballot initiatives, driving bills through the legislature, rallying local law enforcement and electing hardline candidates. The business community has joined some battles and sat out others. And when employers got involved, most tended to work behind the scenes, wielding their influence quietly – negotiating with elected officials.

All that changed this year in the wake of SB 1070 and the national backlash against it – a backlash likely to cost Arizona several hundred million dollars. (For more of the costs of SB 1070, see page 6.)

For some business leaders, the issue was the direct cost – lost hotel, restaurant or travel business. For others, it was the impact on recruiting. Even highly skilled immigrants with valid visas are now hesitant to take jobs in Arizona, employers say, afraid they might be stopped because they look different. For still others in the business community, what galled them was the damage to the state’s reputation. But whatever the trigger, frustration had been building for nearly a year. And when Senate President Russell Pearce, father of Arizona’s employer sanctions law and SB 1070, announced in February that he was going to be introducing yet more enforcement this year, business leaders came out from behind the scenes and called for a time-out.

The five bills Pearce planned to move this year were designed to build on Arizona’s tough existing laws, making life more difficult still for illegal immigrants. One measure would have denied birth certificates to children whose parents were unauthorized. Another would have turned doctors, nurses and teachers into immigration agents, requiring them to check the immigration status of patients and students.

The Arizona business community responded with an unprecedented public act – a letter to Pearce signed by 22 Chamber groups and more than 60 CEOs. “Let us be clear,” they declared, business is not “pro-illegal immigration . . . But when Arizona goes it alone on this issue, unintended consequences inevitably occur . . . . We strongly believe it is unwise for the legislature to pass any additional immigration legislation.” Signatories hailed from big business and small; they included Democrats and Republicans – and some of the best known, most respected business names in the state.

Lawsuits aside, it was the first time virtually anyone in Arizona outside the immigrant rights community had stood up to say no to an enforcement bill. And it was remarkable to see individual business owners signing with their own names rather than leaving it to their trade associations.

No one in Arizona imagines that Russell Pearce has had a change of heart – he will almost surely bring these bills up again in the next legislative session. But by taking the stand they took, business leaders helped embolden others in the state legislature, giving moderate Republicans cover to vote against enforcement-only law. “There was a core group of legislators convinced that any further action would do little if anything to provide
additional border security and would cost the state jobs,” explained Glenn Hamer, president of the Arizona Chamber of Commerce and Industry. The CEO letter freed these lawmakers to vote their consciences. Pearce was unable to rally his own caucus, and his package went down in humiliating defeat.

**Modest state victories and a big national win**

In other states, too, business leaders are speaking out.

When lawmakers in Indiana introduced an Arizona-like policing bill in January, two powerful, global companies – pharmaceutical giant Eli Lilly and engine manufacturer Cummins Inc. – issued a public statement denouncing the legislation. Their argument: that it would be harmful to the state’s image, making it harder for Indiana employers to attract foreign employees and do business with foreign companies.

The Kansas Business Coalition was also formed in reaction to a proposed Arizona copycat measure. The coalition launched a campaign against the bill at a public forum in Topeka in March. Among those present at the meeting, which was widely covered in the media: the state’s major agribusiness groups, the Kansas Farm Bureau and the Kansas Livestock Association, plus trade associations representing contractors and restaurant operators and the Unified Government of Wyandotte County and Kansas City.

In Tennessee, business groups came together and spoke out publicly against legislation that would have mandated E-Verify for all employers in the state. The National Federation of Independent Business, the Tennessee Chamber of Commerce, the Tennessee Hospitality Association and the Tennessee Jobs Coalition testified against the legislation and denounced it in the media. Members also floated alternative proposals to lawmakers. The bill that was eventually passed permits employers to request copies of workers’ drivers’ licenses or state-issued photo IDs instead of running the employees through E-Verify.

This was a modest victory for employers, but business’s new public role is a big win – for business owners everywhere who rely on immigrant workers, for their communities and for the U.S. economy.
No state broke the mold more dramatically this year than Utah. One of the most conservative states in the nation, with big Republican majorities in both chambers and a record of ousting elected officials seen to be insufficiently tough on immigration, Utah nevertheless rejected an enforcement-only approach modeled on Arizona’s. The compromise enacted instead combines tough enforcement with a guest worker program and work permits for unauthorized immigrants already employed in the state.

The Utah debate began more than a year ago, when Republican Rep. Stephen Sandstrom declared his intention to introduce an Arizona-like policing measure. Business, religious and law enforcement groups raised objections even before the session started. Concerned about likely damage to the state economy, loath to incur the national opprobrium being heaped on Arizona, the groups came together around five general principles labeled the “Utah Compact.”

The compact endorsed effective law enforcement but declared it should be accompanied by a “business-friendly” approach to immigration driven by “free-market” principles. The coalition’s goal: a “humane,” “reasonable,” multidimensional policy that served business interests and respected family values. And while the group recognized that immigration is ultimately a federal issue, the compact opened the way to a range of proposals for Utah immigration law.

In March, after months of intense debate and jockeying in the legislature, lawmakers passed the “Utah Solution” – a compromise package comprised of four separate immigration bills. The Utah Illegal Immigration Enforcement Act (HB 497) is a policing measure modeled on Arizona’s but with the most controversial language removed. Rather than relying on police discretion – the “reasonable suspicion” that is the centerpiece of Arizona’s law – the Utah measure requires police to check suspects’ immigration status only after they have been arrested for an alleged felony or misdemeanor.

The second component of the package, the Utah Immigration Accountability and Enforcement Amendments (HB 116), creates a guest worker program for unauthorized immigrants already on the job in Utah. Applicants must pass background checks, pay a fine ($1000 or $2500, depending on their immigration history) and prove they have been living and working in the state since May 10, 2011. The measure does not offer legal status or citizenship, but would allow unauthorized workers who meet its criteria to continue working in Utah. The provision requires a federal waiver and does not go into effect until 2013.

The Migrant Workers and Related Commission Amendments (HB 466) would create a program that allows Utah companies to recruit workers from the Mexican state of Nuevo Leon. The Immigration Related Amendments (HB 469) enable American citizens to sponsor foreigners who want to work or study in the U.S.

The package was signed into law in March by Republican Gov. Gary Herbert, but that was far from the end of the debate.
Within weeks, the American Civil Liberties Union and the National Immigration Law Center filed suit challenging the constitutionality of the policing measure, and in May a U.S. District Court issued an order preventing that provision from taking effect. The next hearing on the matter will take place on July 14.

Many Utah conservatives are also unhappy with the compromise. In June, the Utah Republican Party annual convention voted in favor of repeal of the guest worker law. The vote was close – clearly the party is divided. Gov. Herbert, Attorney General Mark Shurtleff and the leadership in both chambers strongly support the Utah Solution. And in June, the Mormon Church issued a groundbreaking statement endorsing a temperate immigration policy along the lines of the compromise package. “The Church supports an approach,” the statement read, “where undocumented immigrants are allowed to square themselves with the law and continue to work without this necessarily leading to citizenship.”

Gov. Herbert is expected to call the legislature into special session this summer, but lawmakers do not expect to take up repeal of the Utah Solution.

The House bill was sponsored by the chairman of the Judiciary Committee, Republican Rep. William Snyder, and supported by Republican Speaker, Dean Cannon. It would have required all employers in the state to use E-Verify within two years.

The bill introduced in the Senate would also have mandated the program for all employers. But its sponsor, Miami Republican Anitere Flores, was one or the first lawmakers to listen to concerns aired by the business community and others, and she amended her bill to give employers a choice: check an employee through E-Verify or scrutinize one of four possible forms of ID and fill out an I-9 form. Republican Senate President Mike Haridopolos, running for U.S. Senator in 2012, took issue with what he called Flores’ “loophole” and tried to circumvent her by asking Republican Sen. J.D. Alexander to take over managing the bill.

Among the measure’s most vocal opponents were representatives of the state’s $7.5 billion agricultural industry, who were concerned primarily about the E-Verify requirement. Other business interests focused on the policing provision, arguing that it would damage the state’s “brand” and trigger boycotts that could devastate the tourism industry. As opposition mounted, immigrant rights groups sent protestors to the Capitol. And even tea party activists began having second thoughts. At the height of the debate, in April, state tea party chairman Everett Wilkinson sent a letter to Haridopolos questioning the wisdom of requiring all state businesses to enroll in a vast, burdensome federal regulatory program.

What Haridopolos didn’t bargain for: Sen. Alexander, who is also a citrus grower, opposed requiring employers to use E-Verify. Although the Senate eventually approved an enforcement measure, just before the end of the session, it did not require Florida businesses to participate in E-Verify – an unacceptable omission to many in the House. And by then, there was no time left for the House to take up or modify the bill.

The issue is sure to come up again next year.
Indiana lawmakers threatened to pass a harsh doubled-barreled immigration enforcement bill that combined Arizona-like policing measures with tough employer sanctions. But the bill that passed took a milder approach, with fewer employer requirements and scaled back policing measures. And now, even that softer measure is under challenge in court.

When Republican Sen. Mike Delph first introduced a doubled-barreled bill in January, it appeared to be on a fast track to passage and moved quickly through the Senate. But doubts began to build across the state as the measure was debated. Concern focused on the policing provisions, which were seen as an invitation to racial profiling, likely to damage the state’s image and undermine its business climate.

A number of Indiana business and civic groups came out in force against the bill, including the Indianapolis Convention and Visitors Association, the Indiana Chamber of Commerce, pharmaceutical giant Eli Lilly & Company and diesel engine manufacturer Cummins, Inc. They were joined by the state’s attorney general and a group of 120 Indiana mayors, who said the policing provisions represented an unfunded mandate. The chair of the Senate’s powerful appropriations committee expressed doubts. And Republican Gov. Mitch Daniels weighed in, telling the media he wanted the measure to focus on employers who hire illegal immigrants, avoiding policing measures that could lead to racial profiling.

Discussion about the bill was cut off in February, when Democratic lawmakers left the state to avoid taking a vote on a controversial public union bill. And when debate resumed in April, the House passed a much milder version of the measure without an Arizona-style policing provision.

This moderation prevailed when the House and Senate versions were reconciled in April. The compromise enacted as law mandates E-Verify for all state agencies, contractors and subcontractors doing business with the state. Subcontractors must certify that they participate in the system and do not knowingly employ illegal immigrants.

The measure creates a new penalty for employers who knowingly hire illegal immigrants: they are prohibited from deducting expenses associated with those employees on their state income tax returns. But employers who use E-Verify are exempted from the penalty: a safe harbor that lawmakers hope will create an incentive for businesses to enroll in the program.

The policing measures in the final bill are also much less stringent than what was originally proposed – a virtual copy of Arizona’s SB 1070. The measure that passed grants police new authority to arrest immigrants with deportation orders and those who authorities suspect have been convicted of aggravated felonies.

Gov. Daniels signed the measure into law in May. The American Civil Liberties Union and the National Immigration Law Center immediately filed suit, arguing that the statute is unconstitutional. In June, a federal district court judge blocked the provision targeting immigrants with deportation orders. The case is moving up through the courts.

In Tennessee too, lawmakers began the session promising to pass an array of immigration enforcement measures that included an Arizona-style policing provision and tough employer sanctions. But several measures died as the session wore on, and though lawmakers did eventually approve an E-Verify mandate, it does not apply to all employers in the state.

In February, lawmakers were contemplating four immigration bills: two separate Arizona-style policing measures, language mandating E-Verify for all employers and a provision requiring state and local governments to verify anyone receiving public benefits.

By April, three of these bills were dead or dying – lawmakers couldn’t justify the cost – and the focus narrowed to E-Verify. Republicans Sen. Jim Tracy and Rep. Joe Carr introduced companion bills mandating the program for all employers. Business groups objected strongly, arguing at hearings and in the media that the law would create additional expenses for business, hampering the economic recovery of the state.

The resulting bill was a compromise. It requires public and private employers with more than six employees to verify the legal status of all new hires. But business owners are given a choice: a company can enroll in E-Verify or it can request a copy of a worker’s driver’s license or state-issued photo ID. Employers who knowingly accept false identification are liable for penalties; those who use E-Verify are not – a strong incentive to enroll in the program.

The verification requirement is phased in over 18 months. Employers with more than 500 employees must comply by January 2012, employers with more than 200 employees by July 2012 and employers with more than six employees by January 2013.

Not everyone in the state is happy with this compromise. Lawmakers advocating mandatory E-Verify for all employers accuse business groups and the governor of gutting the E-Verify mandate, and hardliners have promised to revisit the issue next year. Their priorities: an Arizona-style policing law and legislation to deny state benefits to illegal immigrants.
More than a dozen immigration enforcement bills were considered in the Virginia General Assembly this year, and many of them were approved in the House. But only one survived to be signed into law: an E-Verify mandate for state contractors.

Virginia lawmakers have been debating immigration for several years, and in 2010 they enacted law requiring state agencies to use E-Verify. In March, Republican Gov. Bob McDonnell issued an executive order speeding up implementation of that requirement so that it kicked in on July 1, 2011. And when this year’s legislative session began in January, lawmakers were eager to go further still.

The House passed more than a dozen bills in the first weeks of the session: an Arizona-like policing law, a requirement that the state verify the legal status of anyone seeking social services and a provision requiring schools to report students who could not produce birth certificates, among others.

The House’s sweeping E-Verify mandate applied to state agencies, local governments, public contractors and employers with 15 or more employees, all of whom would be required to enroll in the system by the end of 2011.

But something happened on the way to the Senate. In past years, Democratic Sen. George Barker helped lead the charge to pass tough immigration law. This year, he worked with business groups to negotiate a compromise, and the verification requirement passed by the Senate in February covers only state contractors with more than 50 employees and contracts worth more than $50,000. Companies that fail to check employees will be banned from doing business with the commonwealth for up to one year. But a contractor can end a ban by enrolling in E-Verify.

House Republicans resisted fiercely but to no avail. And in March, Gov. McDonnell signed the compromise into law. Contractors have until December 2013 to comply with the mandate.

Lawmakers in Kansas began the 2011 session itching to crack down on illegal immigration. Newly elected secretary of state Kris Kobach, author of Arizona’s tough employer sanctions and policing laws, was determined that his state pass a measure modeled on SB 1070. And he had a powerful ally in Republican Rep. Lance Kinzer, chairman of the House Judiciary Committee.

But the business community stood up to oppose the bill, and it died a quick death the very month it was introduced.

HB 2372 mandated E-Verify for all public employers and private businesses with state or city contracts worth more than $5,000. Its policing provision was similar to SB 1070: a local law enforcement officer with a “reasonable suspicion” would be required to inquire about the immigration status of anyone stopped in the course of routine policing. The bill also made it a misdemeanor to conceal, harbor or shield unauthorized immigrants. It raised penalties for selling forged documents and prohibited illegal immigrants from receiving state benefits.

A coalition of Kansas business groups and local elected officials strongly opposed the proposal on the grounds that it would damage business and undermine municipal governments. The coalition aired its complaints at a public forum in Topeka in March. Among those present: the state’s major agribusiness groups, the Kansas Farm Bureau and the Kansas Livestock Association, plus trade associations representing contractors and restaurant operators and the Unified Government of Wyandotte County and Kansas City.

Lawmakers quickly backed down. Kinzer’s own committee voted to kill the enforcement bill. Republican Rep. Greg Smith tried to circumvent the committee and bring the measure to the House floor for a vote. But he and others failed to produce the necessary 70 votes, and the bill died in committee.
With the GOP firmly in control of the Texas statehouse, many expected it to follow Arizona and most Southeastern states, cracking down hard on illegal immigration.

More than a hundred bills were filed before the session began: policing measures, a provision to end birthright citizenship, a law requiring schools to report the number of unauthorized students they enroll. At least a dozen separate bills mandated E-Verify – for all employers, for state contractors, for state agencies or some combination.

But in the end, even after a special session, the only measures enacted were a $66 million appropriation for border security and a law requiring applicants for Texas drivers' licenses to prove they are in the U.S. legally.

Most of the debate about immigration centered on a policing provision strongly backed by Republican Gov. Rick Perry. Taking off from Arizona SB 1070, it would permit Texas law enforcement officers to inquire about the immigration status of detained suspects. But unlike in other states, it was labeled a “sanctuary city” bill – because it levied financial penalties on municipalities that declined to authorize this type of police activity.

Two prominent Republican Party donors, homebuilder Bob Perry and grocery chain owner Charles Butt, strongly opposed the measure, arguing that it would be harmful for the state economy – particularly the construction and retail industries. Others in the GOP expressed concerns about its divisive impact on the party in a state where more than 20 percent of voters are Hispanic.

Tea party activists were furious when the legislature ended the regular session without sending a sanctuary city bill to Perry’s desk. Under intense pressure, the governor called lawmakers back into session, and named this as one of a few priorities. Still, the bill made no headway, and the special session adjourned at the end of June.

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**STATE E-VERIFY LAWS**

- Private employers with more than 24 workers
- State agencies, state contractors
- State contractors
Colorado lawmakers began the session determined to crack down on immigration. SB 1070 copycat measures were introduced in both chambers along with separate E-Verify mandates seen as likely to pass even if the policing provisions didn’t.

The House E-Verify mandate would have applied to all employers in the state. The Senate version would have exempted temporary agricultural workers.

Immigrant rights advocates and business groups rallied against the bills. The Democrat-controlled Senate made clear it was uneasy with the proposals.

And when Democratic Gov. John Hickenlooper declared that he would veto an Arizona-style policing measure, the push for enforcement ran out of steam. In mid-February, a Senate committee killed one policing proposal, and the House indefinitely postponed consideration of another.

### STATE E-VERIFY LAWS

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ALABAMA

- Prohibits businesses from knowingly employing unauthorized workers.
- Businesses found to have knowingly hired unauthorized workers after January 1, 2012 face loss of business licenses.
- Requires employers to use E-Verify for new workers starting January 1, 2012.
- Makes it a “discriminatory practice” to fire or fail to hire a legal resident when an unauthorized worker is on the payroll.
- Prohibits unauthorized immigrants from applying to jobs.
- Prohibits the transport of unauthorized immigrants.
* See also POLICING MEASURES below.

FLORIDA executive order

- Requires state agencies and companies that have contracts with state agencies to use E-Verify.

GEORGIA

- Requires businesses with more than ten employees to enroll in E-Verify.
- Businesses with 500 or more employees must use E-Verify beginning January 1, 2012, businesses with between 100 and 500 employees must use E-Verify beginning July 1, 2012, and businesses with between ten and 100 employees must use E-Verify beginning July 1, 2013.
- Requires use of E-Verify before a business can obtain a business license or renewal.
- Makes it a felony to present false documents or information when applying for a job.
* See also POLICING MEASURES below.

INDIANA

- Requires all state agencies and local government agencies to use E-Verify.
- State agencies may renew contracts only with employers who use E-Verify and sign an affidavit affirming that they do not knowingly employ unauthorized workers.
- Prohibits state agencies and local governments from awarding a grant of more than $1,000 to any business that does not use E-Verify.
- Prohibits a business that knowingly hires unauthorized workers from deducting expenses associated with those employees in the calculation of its state income taxes.

LOUISIANA

- Prohibits hiring unauthorized workers. Penalties are $500 per worker for first violation, $1,000 per worker for second violation and $2,500 per worker and at least 30-day revocation of business license for a third.
- Employers who use E-Verify or specified documents to verify employees’ status are not subject to penalties.
- Requires public contractors and subcontractors to use E-Verify for employees working on contracts entered into after January 1, 2012.
- Contractors not using E-Verify can be barred from contract work for up to three years.
- Contractors whose work is canceled because they are not using E-Verify will pay any additional costs incurred by the government.

* See also POLICING MEASURES below.
Provisions of Concern To Employers

NORTH CAROLINA

- Requires businesses with more than 24 workers to use E-Verify.
- Businesses with more than 500 employees must use E-Verify by October 1, 2012, businesses with more than 100 employees by January 1, 2013 and businesses with more than 24 employees by July 1, 2013.
- E-Verify is not mandatory for temporary employees who work 90 days or less in a twelve-month period.

SOUTH CAROLINA

- Removes driver’s license provision from 2008 law.

TENNESSEE

- Prohibits employers from knowingly hiring unauthorized workers.
- Requires employers with six or more employees to enroll in E-Verify or confirm that employees have drivers’ licenses from states with license requirements as strict as Tennessee’s.
- Employees who enroll in E-Verify must start using the system on October 1, 2011 and maintain records of all results.
- Fines employers $1,000 for knowingly hiring unauthorized workers, suspends business licenses 30 days for a first offense, one year for a second offense and permanently for a third.

UTAH*

- Creates a guest worker program for unauthorized immigrants living in Utah.
- To be entitled to a guest worker permit, an applicant must have lived in Utah prior to May 11, 2011, pay a $2500 fine and pass a criminal background check.
- Utah will cooperate with the Mexican state of Nuevo Leon to bring in workers to meet future labor needs.
- Utah to request a federal waiver for the guest worker program, scheduled to begin operation on July 1, 2013.

* See also POLICING MEASURES below.

VIRGINIA

- Requires state agencies to enroll in E-Verify as of June 1, 2011.
- Requires public contractors with more than 50 employees and contracts worth more than $50,000 to participate in E-Verify or be debarred for one year.
POLICING MEASURES
ARIZONA SB 1070 AND BILLS MODELED ON IT

ALABAMA (2011)
- "Upon any lawful stop, detention, or arrest made by a state, county, or municipal law enforcement officer of this state in the enforcement of any state law or ordinance of any political subdivision thereof, where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the citizenship and immigration status of the person, except if the determination may hinder or obstruct an investigation."
- "Requires law enforcement to detain any alien whose lawful immigration status cannot be verified."

ARIZONA (2010)
- "For any lawful contact made by a law enforcement official . . . where reasonable suspicion exists that the person is an alien who is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person."
- Requires law enforcement to verify the immigration status of any person arrested prior to their release.
STATUS Ninth U.S. Circuit Court of Appeals upheld injunction against some policing provisions.

GEORGIA (2011)
- "During any investigation of a criminal suspect by a peace officer, when such officer has probable cause to believe that a suspect has committed a criminal violation, the officer shall be authorized to seek to verify such suspect's immigration status."
- "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 take any action authorized by state and federal law, including, but not limited to, detaining such suspected illegal alien."
STATUS U.S. District Court issued injunction against policing provisions.

SOUTH CAROLINA (2011)
- "If a law enforcement officer . . . lawfully stops, detains, investigates, or arrests a person for a criminal offense, and during the commission of the stop, detention, investigation, or arrest the officer has reasonable suspicion to believe that the person is unlawfully present in the United States, the officer shall make a reasonable effort, when practicable, to determine whether the person is lawfully present in the United States, unless the determination would hinder or obstruct an investigation."

UTAH (2011)
- “Any law enforcement officer who, acting in the enforcement of any state law or local ordinance, conducts any lawful stop, detention, or arrest of a person . . . and the person is unable to provide to the law enforcement officer a document [that verifies his or her legal status] . . . and the officer is otherwise unable to verify the identity of the person, the officer shall request verification of the citizenship or the immigration status of the person.”
- Requires police to check the immigration status of individuals arrested for felonies and serious misdemeanors.
STATUS U.S. District Court issued temporary restraining order against policing provisions.
HOW THE LAW IS ENFORCED IN THE STATES

South Carolina (strong enforcement)

- The Department of Labor, Licensing and Regulation oversees enforcement.
- Authorities are able to scrutinize businesses’ hiring records.
- If authorities find unauthorized immigrants on the payroll, businesses have 72 hours to correct the problem.
- Businesses that fail to do so can be fined up to $1,000 for each violation and face possible revocation of business licenses.
- State program is available to educate employers about the legal consequences of hiring unauthorized workers.
- The state frequently alerts the media about employers found to have hired unauthorized workers.

RESULT Since 2009, the state has cited more than 200 businesses for hiring unauthorized workers and collected more than $700,000 in fines. Ninety-two percent of large South Carolina companies are enrolled in E-Verify.

Arizona (weak enforcement)

- No statewide agency oversees enforcement.
- Prosecutors lack access to employer records.
- County attorneys and sheriff’s offices wait for complaints to be filed, then conduct individual investigations.
- County prosecutors must prepare a case for each employer suspected of hiring unauthorized immigrants.
- Only a limited education program is available for employers.

RESULT Only three businesses were prosecuted in 2008, the first year of mandatory E-Verify.