



STATE LEGISLATIVE UPDATE

This week's ImmigrationWorks update is for [Indiana](#) and [South Carolina](#).

INDIANA

LAWMAKERS FROM BOTH PARTIES DETERMINED TO CRACK DOWN

Out of nowhere, immigration has emerged as a top issue at the Indiana state legislature this session. Lawmakers from both sides of the aisle are under intense pressure from constituents to crack down on illegal immigration in a state with one of the smallest foreign-born populations in the country. Despite opposition from business and Latino leaders, an employer sanctions bill appears to be moving forward.

Legislation Based on the Arizona Model

The proposed Indiana legislation follows the Arizona model and "prohibits an employer, after June 30, 2009, of knowingly hiring an unauthorized alien." If passed into law, it would mandate that employers use the federal E-Verify system to screen new hires. Additionally, if a business is found in violation of the law three times in a five-year period, its state license would be revoked.

The bill's author, Senator Mike Delph, is a Republican considered to be an emerging conservative force in the state. In addition to the employer sanctions measures, the initial bill included language that would make it illegal to transport, harbor or conceal an illegal immigrant and would compel state police to enter into an agreement to cooperate with Immigration and Customs Enforcement.

Business groups have fought hard against the bill, protesting the legislation on grounds of E-Verify's high error rates and also because it violated the principle of federal supremacy in immigration matters. They joined immigrant advocates, who denounced the legislation as a "racist" bill that would lead to profiling. Lawyers for the National Employment Law Project, a national workers organization, raised concerns about how the measure breaks down the firewall between labor and immigration enforcement.

But these protests appear to have had little effect. Despite passionate political wrangling over the specifics, there is broad bipartisan support in the Indiana Statehouse for an employer sanctions bill. In January, the Senate approved a similar bill with a vote of 37 to 11. Last week, the House approved this measure with a vote of 66 to 33.

The next step is a Senate-House Committee where differences will be ironed out. But there are significant legislative hurdles to overcome. Both bills were inserted into other pieces of legislation that have nothing to do with immigration. In addition, there are significant differences between the House and Senate versions. Among key issues to be addressed in committee: whether the bill will be tied to funding (the House allotted \$1.5 million), whether business would be tried under administrative procedures at the Indiana Department of Labor, and the details of

a system for local police to enforce immigration laws.

The *Indianapolis Star* editorial page, though not supportive, predicts the legislation will pass. The newspaper then envisions an Arizona-style court battle. An ImmigrationWorks source is not as certain the bill will move forward this session, saying he doubts all four representatives at the table will be able to agree on specifics. Meanwhile Governor Mitch Daniels, a Republican, is keeping his distance from the debate, declining to stake a position on the legislation until he sees the final bill.

SOUTH CAROLINA

BUSINESS WORKS WITH LEGISLATORS TO CRAFT A BILL

After simmering for many years, immigration hit a boiling point this session in South Carolina. A wide-ranging immigration package addressing workplace, health service and enforcement issues now appears poised to become law. But while the legislation moving forward includes measures targeted at employers, business groups support the bill.

Three Means of Verification

Rather than trying to block an immigration bill outright, business groups played a crucial role in shaping the legislation, backing a limited version and working with lawmakers to adapt it. The resulting package has been heralded by business groups as stepping up enforcement against businesses that intentionally hire illegal immigrants, without stifling those who try to follow the law.

The final bill, which has now passed both the House and Senate, mandates that private businesses verify worker documentation, but uses tools that are already required under federal law. All businesses would be required to confirm employees' legal status with one of three means: I-9 Federal Employment Eligibility Verification forms, a valid South Carolina driver's license or an equivalent form of identification, or the federal government's E-Verify database.

Along with verification standards, a few other measures will apply to businesses, and they too appear acceptable to the business community. In a state with high unemployment, any worker fired from a job and replaced by an illegal immigrant would be granted the right to sue. Businesses would not be able to claim the \$600 expensing deduction for unauthorized employees. Additionally, employers would have to withhold 6 percent of an independent contractor's wage if the employee does not provide a valid tax identification number.

The bill touches on various other immigration issues, most of which are already covered by federal law. Additional measures include: jails would have to check the status of inmates; illegal immigrants would have to pay back any benefits they received using false documents; and illegal immigrants could not own, rent, or borrow guns.

Some South Carolina lawmakers think the legislation does not go far enough. After the bill passed the House, a pair of Republican Senators called the I-9 verification provision a giant loophole because the system does not check to see if Social Security numbers or names are valid. Instead, they offered a proposal to require new hires to present a valid South Carolina driver's license or one from selected other states. If the employee could not provide that identification, the company would be required to verify the worker's legal status through the federal E-Verify system. Business groups strongly resisted this proposal, arguing that the

verification system is faulty and would hurt law-abiding companies.

But in the end this proposal was rejected. So was the idea of penalizing employers who hire illegal immigrants by revoking their business licenses.

Business Priorities Reflected in Bill

An ImmigrationWorks source said South Carolina's business organizations banded together around three priorities:

1. Preventing local county, city and municipal governments from passing piecemeal immigration ordinances.
2. Holding employers responsible for "direct employees" only, i.e. businesses would not be liable for the actions of subcontractors.
3. Providing safe harbor provisions for employers who do due diligence.

All of these measures were incorporated into the current bill. Also key to the debate was the question of where the limits of state jurisdiction are on immigration.

The next step is conference. Some pressure groups continue to claim that the bill is not tough enough. "The committee's prime concerns should be the elimination of an employee verification option known as the federal I-9 form," the Charleston *Post and Courier* wrote in an editorial. "The option makes the verification process a farce." But in spite of these critics' predictions, IW sources say they are confident that the legislation will pass into law in its current form.

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STATE LEGISLATIVE UPDATE

This is the first of what will be regular ImmigrationWorks updates on immigration-related developments in the states. We're starting this week with **Virginia** and **Arizona**. Watch your screens for more to come.

VIRGINIA ENFORCEMENT BUSINESS CAN LIVE WITH

Virginia lawmakers eager to clamp down on illegal immigration introduced more than 100 bills this session, a record for recent years. But the flurry of proposals is expected to lead to few

actual laws, with a limited impact on employers.

Employer-Related Bills Moving Forward

Two significant employer-related bills are likely to move forward. One would penalize corporations whose officers and directors knowingly hire illegal immigrants by suspending their authority to do business in the state. The second provision would require a clause in contracts of more than \$10,000 affirming that contractors will not knowingly hire illegal immigrants.

In addition, a raft of other immigration-related measures not targeted at employers is under consideration. Bills that moved forward in the House before the crucial half-way point include legislation that would prohibit illegal immigrants from attending public colleges and universities, deny illegal immigrants accused of crimes bail and turn them over directly to federal authorities, and require the governor to enter into an enforcement agreement with federal immigration officers.

The Republican-controlled House is responsible for the vast majority of both employment and non-employment related bills. But it is already evident most will fail to become law. Business groups have played a key role in defeating or amending various bills that could have adversely affected business. The General Assembly Senate, controlled by Democrats, tends to take a more lenient view toward immigration. And Governor Tim Kaine (D) has positioned himself as a defender of the state's immigrants, calling enforcement a federal, not state, issue.

The bill that would revoke a corporation's certificate of authority to do business is the only legislation moving forward that could affect employers on a broad scale. The penalty is contingent on a company's officers and directors are convicted of breaking federal law by engaging in a pattern of knowingly hiring illegal immigrants. Consequently, this bill will likely have a limited impact. The proposed legislation would only cover extreme cases where officers and the controlling group of the business conspire to hire illegal immigrants.

Business groups, including Virginia Employers for Sensible Immigration Policy (VESIP), have backed this bill and our sources say its passage is highly probable.

The second employer-related bill likely to become law would require contracts of more than \$10,000 to include language providing that "the contractor does not, and shall not during the performance of the contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986." This bill is also backed by business groups and passage is expected.

E-Verify Stalls

In contrast, all attempts to mandate an electronic verification system have failed to move forward. In the Senate various bills to use the verification system were killed, and in the House a key bill was carried over to the 2009 session. An ImmigrationWorks source says VA legislators may have been responding to controversies in other states that have recently enlisted E-verify and are experiencing difficulties administering it.

Debate over language in the workplace will likely continue, but it is unexpected that legislation will succeed in mandating use of English. The House passed a bill stating employers who fire an employee for not speaking English while dealing with customers cannot be sued. The sponsor of the bill, Del. Mark Cole (R), said it is designed to protect employers from discrimination lawsuits and help small business owners. The Senate, however, has already killed a similar bill in committee.

On local enforcement of immigration laws, both the House and Senate have passed bills that

would deny an illegal immigrant arrested for certain crimes from being eligible for bail.

Groundswell of Local Anti-Illegal Immigration Action

This year, in addition to the flurry of state legislative proposals, there has been a groundswell of local action in cities and towns in Virginia. Last fall a Coalition on Illegal Aliens was, "formed to formulate action toward deterring illegal aliens from our communities," Steve Jenkins, a Culpeper town councilman and founding member, told the Fairfax County Times. The group now counts more than 26 localities as members.

Some localities have already taken independent legislative action. Most notably Prince Williams County has adopted ordinances that are considered some of the most stringent in the country against illegal immigrants. The ordinances curb access to public services and increase enforcement by local police.

While passage of legislation on a state level has been limited, the charged atmosphere in Virginia looks unlikely to abate. Last week the Prince William Board of County Supervisors Chairman, Corey Steward, the architect of the crackdown there, announced plans to run for lieutenant governor next year, vowing to end the "bottleneck" the Democratic Senate is causing.

ARIZONA STILL ROILING, STILL THE LEADING EDGE

The furious legal battle over immigration in Arizona refuses to let up. The border state, still roiling over legal challenges to a 2007 employment sanctions law, maintains its spot at the forefront of national legislative trends with a new guest worker proposal.

E-Verify Challenged

In the wake of a lower court's recent decision upholding Arizona's controversial employer sanctions law, the state is now waiting to see whether the Court of Appeals for the Ninth Circuit will accept the case. The 2007 Legal Arizona Workers Act prohibits businesses from knowingly hiring an illegal immigrant and rescinds on second offense the license of an employer that does so. In addition, the law requires when hiring new employees all companies must use the Department of Homeland Security's E-Verify system to screen immigration status. Business groups protested that the law may unjustly punish employers that follow the federal I-9 process. They then sued to stop the law from going into effect on the grounds that it was an unconstitutional effort by a state to regulate immigration. But earlier this month U.S. District Court Judge Neil Wake flatly dismissed the lawsuit, stating it did not violate federal immigration law.

The case is now pending at the unpredictable Court of Appeals for the Ninth Circuit, known for bucking convention on several issues including immigration. In the interim, the plaintiffs are hopeful the court will issue a motion for an emergency stay, which could set aside the employer sanctions law for the six to nine months it will likely take the court to decide the case. An ImmigrationWorks source says by March 1, when Arizona county attorneys plan to begin enforcing the law, the court should have decided how to proceed.

Dueling Efforts to Change Employer Sanctions Law

While the Legal Arizona Workers Act is considered in the courts, a ballot initiative race is

underway on the streets. Rep. Russell Pearce (R), the Arizona House Appropriations Committee chair and chief architect of last year's law, is behind one initiative. A nationally recognized voice for increasing immigration regulation and protecting Arizona from what he calls an "invasion" from Mexico, Pearce is advocating pulling a business' license on first offense rather than the second as the law stands now. In response, business groups have stepped up a rival initiative intended to shift the focus on employer sanctions to the underground cash economy.

Before the warring ballot initiatives go before the voters, lawmakers will likely head them off at the legislature. Pearce introduced a bill that seeks to clarify the 2007 law without weakening it, while also adding relatively uncontroversial new measures such as cracking down on the cash economy.

Key changes to the existing law include:

- Clarifies that when an employer hires an independent contractor, the contractor is liable under the employer sanctions law and not the person or entity that hires the contractor.
- Limits suspension of licenses to the business location where the violation occurred if an investigation results in a suspension of business licenses.
- Creates a formalized complaint process, although it still allows anonymous complaints at the county attorney's discretion.

Other issues addressed in this bill include:

- Makes adopting the identity of another person a class 4 felony.
- Expands the definition of the crimes of taking or trafficking in the identity of another person.
- Adds requirements that employers must comply with all laws regarding income tax withholding, payment of unemployment insurance and workers' comp premiums.

In addition, Pearce has introduced a stack of legislation intended to drive illegal immigrants out of the state. Initiatives touch on everything from requiring illegal immigrants to reimbursing the state for the value of any social services provided to ending birthright citizenship. But the bulk of these proposals are not expected to become law.

A challenger to Pearce on employer regulation is Rep. Bill Konopnicki (R), a McDonald's franchisee who has introduced a separate bundle of legislation. Most of his proposals work to change the employer sanctions law by limiting E-Verify and protecting employers from lawsuits.

Guest Worker Program Proposed

Konopnicki and employer groups are also shifting to the offensive with a proposal to create the country's first state-administered guest worker program. The bill, co-sponsored by Sen. Marsha Arzberger (D), would allow employers that cannot find American workers to recruit in Mexico. To be eligible, a worker could not be an illegal immigrant already living in Arizona. After

passing a criminal background check, Mexican workers would receive a two-year visa to travel freely between Mexico and the United States, but would be barred from entering other American states. Sources say passage will be difficult, and the chance of it moving beyond the state level and then getting federal approval in Congress - which would be required - is thought to be next to impossible.

Nevertheless, the proposal is garnering public attention nationwide and other states, notably Colorado and Nebraska, are considering similar pilot temporary-worker proposals.

Exodus of Immigrants

Meanwhile, the consequences of rising tensions and stepped-up enforcement are already being felt in Arizona. Laws passed in the past four years halted state health care to illegal immigrants, barred them from receiving state funding for higher education, and established English as the official language. More recently, the Maricopa County sheriff, Joe Arpaio, created a hotline for citizens to report suspected illegal immigrants. Journalists are reporting drops in school enrollment in immigrant heavy districts, employers losing their workforce, and apartments going empty.

Looking forward, the spiral in Arizona is still unscripted. All the maneuvering in state will shift depending on the 9th circuit's upcoming decision. Whatever the outcome, it will likely lead to another landmark legislative session and election year in Arizona.