

## Committee Report on a Study of the Agricultural Migrant Worker Visa

### Noteworthy Immigration Legislation

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Over the last two years, both state and federal legislators have taken steps to respond to the presence within the United States of tens of millions of undocumented persons.

Arizona, Alabama, Georgia and South Carolina have passed laws that require police officers and other public officials to ascertain the immigration status of persons taken into custody or using public resources. Utah passed a similar law but also provided a process for allowing long-term and otherwise law-abiding non-citizens to remain in the state. Indiana attempted to pass a very strict immigration law, but ended up with only modest new restrictions.

Thus far, Michigan has not enacted legislation in this area, although a bill very similar to the Arizona law has been introduced. And, although it may not be taken up in an election year, the U.S. Congress has introduced legislation that would greatly simplify the process for U.S. farmers and growers to obtain temporary workers from abroad.

The following is a summary of the legislation that has been enacted or introduced recently in both state and federal legislatures.

**Arizona SB 1070:** In April 2010, Arizona became the first state to explicitly require all state and local law enforcement officials to arrest individuals who could not prove their lawful presence within the United States following an otherwise lawful "stop, detention, or arrest." Anyone arrested pursuant to this law cannot be released until the federal authorities have confirmed a lawful immigration status. The law also prohibits Arizona government agencies from refusing to enforce federal immigration laws. The federal courts have blocked many of SB 1070's provisions from taking effect. The original sponsor of SB 1070 has since been recalled by the voters of his district.

**Utah HB 116:** In March 2011, Utah followed Arizona's lead and enacted a law requiring all state and local agencies to enforce federal immigration law, but with one potentially important exception. Actual residents of Utah who cannot prove their lawful immigration status can apply for a state-issued permit that would allow them, and their immediate families, to remain in and work within the state. Permit applicants would have to pay a fee, submit fingerprints and undergo state and federal criminal records checks. The state plans to adopt a "U-Verify" system. Once that system is up and running, all Utah

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employers will be required to use both U-Verify and E-Verify before hiring anyone. The federal courts have blocked enforcement of HB 116.

**Indiana SB 590:** In May 2011, after an effort to enact legislation that would require law enforcement officers to verify the immigration status of persons stopped, detained or arrested, the Indiana legislature removed those provisions and enacted a requirement that law enforcement officers need only check to determine if federal immigration holds had been placed on an individual. Even this provision has been blocked by a federal court. Other provisions of Indiana legislation that remain in effect deny several taxpayer-funded benefits to undocumented persons and deny state businesses from claiming tax deductions for wages paid to anyone unless the businesses enrolled in and used the federal E-Verify system.

**Alabama HB 56:** In June 2011, Alabama followed Arizona's lead and went several steps beyond. In addition to requiring all state and local law enforcement officials to ascertain the immigration status of anyone they stop, detain or arrest, the Alabama legislation prohibits any state or local agency from providing any non-emergency benefits to undocumented persons and requires all school districts to identify and report the number of undocumented persons attending school. The law further prohibits the transportation of or the rental of housing to undocumented persons and requires all Alabama employers, including small businesses and farmers, to verify the immigration status of all employees through the federal E-Verify program. As with Arizona's law, the federal courts have blocked many of HB 56's provisions from taking effect.

**Georgia HB 87:** In July 2011, Georgia also enacted a law allowing its state and local law enforcement officials to ascertain the immigration status of anyone who is suspected of committing an offense if the person cannot produce adequate identification. The law further requires all state and local government agencies and all private employers who have more than ten employees to use the federal E-verify system. The law also prohibits motorists from stopping to pick up anyone on a public road if their purpose for stopping was to employ that person. Parts of this law have been blocked by the federal courts.

**South Carolina SB 20:** Also in July 2011, South Carolina enacted a law that requires its state and local law enforcement officials to check the immigration status of anyone they stop for violation of any law if the officials have reason to suspect that the person stopped may be in the U.S. without proper documents. The law also requires employers

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to use the federal E-Verify system and punishes those who employ undocumented workers with suspension or revocation of state business licenses. The law also makes it a felony to transport or provide housing to an undocumented person and requires all non-citizens to carry proper federal documentation at all times. As with other state legislation, a federal court has delayed enforcement of this law.

**Michigan HB 4024:** As introduced in January 2011, this bill would require all Michigan state and local agencies (including Michigan Works!), and all state and local contractors to use the federal E-Verify system before hiring. The bill was referred to the Commerce Committee but has not been reported by that committee.

**Michigan HB 4026:** Introduced as a companion measure to HB 4024, this bill would require all state-licensed private employment agencies in Michigan to use the federal E-Verify system before referring a client to any Michigan employer. This bill was also referred to the Commerce Committee but has not been reported by that committee.

**Michigan HB 4305:** In February 2011, Representative Ray Franz co-sponsored a bill almost identical to Arizona SB 1070 -- it even has the same name -- the Support Our Law Enforcement and Save Neighborhoods Act. If enacted, HB 4305 would require all state and local law enforcement officers, in the course of any lawful stop, to verify immigration status if the law enforcement officer reasonably suspects a person of being in the United States unlawfully. In addition, the bill would require every state agency and political subdivision to verify the immigration status of any person 18 years of age or older who applies for public benefits. The bill also would allow any person to file suit against any official or agency that adopts or implements a policy limiting or restricting enforcement of federal immigration laws. The person bringing a successful suit is entitled to court costs and attorney fees. HB 4306 has been referred to the Justice Committee but has not been reported by that committee.

## PROPOSED FEDERAL LEGISLATION

**H.R. 2847:** Introduced by Texas Congressman Lamar Smith in September 2011, the **American Specialty Agriculture Act** would establish an H-2C nonimmigrant visa for up to 500,000 foreign agricultural workers who have no intention of abandoning their foreign residences. Responsibility for the program would be transferred from the Department of Labor to the Department of Agriculture. The H-2C visas would be limited

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to a ten-month period after which the workers would have to leave the United States. The H-2C visas would not extend to a worker's spouse or children. The bill also contains provisions regarding: penalties, working conditions, wages, and transportation reimbursement, admissions and extensions, abandonment of employment and worker replacement, legal assistance, arbitration and mediation. The bill has been referred to the Subcommittee on Immigration Policy and Enforcement of the House Judiciary Committee.

**H.R. 3017:** Introduced by California Congressman Howard Berman, and co-sponsored by Michigan Congressman John Conyers, in September 2011, the **Agricultural Labor Market Reform Act** would establish a new program to supplement the H-2A visa. Congressman Berman introduced similar legislation in 2009 under the title **Agricultural Job Opportunities, Benefits, and Security Act (AgJobs)**. Based on demonstrated participation in U.S. agricultural work for two or more years, up to one million otherwise law abiding undocumented agricultural workers could obtain "blue cards" that would allow the workers to continue working in U.S. agriculture and eventually to qualify for permanent resident (green card) status after they had worked in U.S. agriculture for five consecutive years. The blue cards would contain machine readable fingerprints and photographs. Unlike H.R. 2847, the spouses and children of blue cardholders would also be allowed to remain in the U.S. and would not count against the one million blue cardholder limit. H.R. 3017 has been referred to the Subcommittee on Immigration Policy and Enforcement of the House Judiciary Committee.

**S. 1258:** Introduced by New Jersey's Senator Robert Menendez in July 2011, the **Comprehensive Immigration Reform Act**; includes most of H.R. 3017's temporary agricultural worker "blue card" program. However, S. 1258, as the name implies, is a much broader, 679 page bill that attempts to address many other areas of U.S. immigration law and policy that go well beyond the scope of this study. Included within the bill are provisions to grant instate college tuition to undocumented high school graduates, the Dream Act to allow undocumented college students and members of the military to obtain citizenship, as well as provisions to grant temporary status to undocumented family members of U.S. citizens and green card status to highly skilled foreign graduates of U.S. colleges and universities. The bill has been referred to the Senate Judiciary Committee.