



North Carolina Department of Public Safety

Prevent. Protect. Prepare.

Pat McCrory, Governor

Frank L. Perry, Secretary

MEMORANDUM

TO: Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety

FROM: Frank L. Perry, Secretary

RE: Study and Recommendation Regarding Immigration Measures

DATE: March 2014

Pursuant to 1(d) of Session Law 2013-418, *The Department of Public Safety shall report its findings and recommendations regarding Immigration Measures to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety no later than March 1, 2014.*

(A) The Department of Public Safety, in conjunction with the agencies and industries described in subsection (b) of this section, shall study the potential impact on public safety, the State economy, and illegal immigration to this State of adopting any or all of the following measures:

- 1. Increasing the penalties for crimes related to the possession, manufacture, or sale of false drivers licenses and other identification documents.*
- 2. Creating a rebuttable presumption against the pretrial release of undocumented aliens who commit serious crimes.*
- 3. Requiring a secured appearance bond as a condition of pretrial release for undocumented aliens who have committed serious crimes.*
- 4. Requiring undocumented alien prisoners to reimburse the State for the cost of their incarceration after conviction of a crime.*
- 5. Establishing standards of reasonable suspicion to guide law enforcement officers in conducting immigration status checks when conducting a lawful stop, detention, or arrest.*
- 6. Prohibiting the use of consular documents from being considered a valid means of establishing a person's identity by a justice, judge, clerk, magistrate, law enforcement officer, or other State official.*
- 7. Implementing a process for undocumented aliens to obtain a temporary driving privilege. This portion of the study shall:*
 - a. Examine the impact that such a process would have on highway safety, insurance rates, and claims for accidents that occur at the hands of the uninsured.*
 - b. Estimate the number of individuals who would seek to obtain a temporary driving privilege through such a process.*
 - c. Determine whether there are adequate insurance products available to insure individuals who obtain the temporary driving privilege.*
 - d. Examine any other matters that the Division of Motor Vehicles deems relevant.*
- 8. Adopting measures that have been adopted in other States to combat the problem of illegal immigration.*

MAILING ADDRESS:

4233 Mail Service Center
Raleigh, NC 27699-4233

Telephone: (919) 733-4060

Fax: (919) 733-8002



OFFICE LOCATION:

430 N. Salisbury Street
Suite 2056
Raleigh, NC 27603-5926
www.ncdps.gov

(B) In conducting the study required by this section, the Department of Public Safety shall consult with the Department of Insurance, the Division of Motor Vehicles, the Department of Commerce, representatives of the service and agricultural industries, representatives of the immigrant community, and any other agencies, institutions, or individuals that the Department deems appropriate.

(C) The study shall examine the potential impact of the measures described in subsection (a) of this section:

- 1. On the State economy.*
- 2. On the community of lawful immigrants in this State.*
- 3. On the provision of social services.*
- 4. On tax collection.*
- 5. On law enforcement.*
- 6. In light of the impact of similar measures enacted in other states on these areas.*
- 7. In light of their relation to the uncertainty that all businesses, including the high-tech, agriculture, hospitality, and other service sectors endure under our current federal system. The Department of Commerce shall be the lead coordinating agency for purposes of this subdivision.*

(D) The Department of Public Safety shall report its findings and recommendations to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety no later than March 1, 2014. The Department of Public Safety may use funds available to contract for services related to this study.



Session Law 2013-418

Report on Study of Immigration Measures

March 2014

Executive Summary

INTRODUCTION

In 2013, the North Carolina General Assembly passed Session Law 2013-418 directing the North Carolina Department of Public Safety (“DPS”) to study measures for addressing the issues related to illegal immigration.

BILL HISTORY

S.L. 2013-418 was introduced in the North Carolina General Assembly on April 10, 2013. The bill was intended to address several concerns, including: the federal government failing to address the need for enforcement of existing immigration laws and policies; federal courts restricting the efforts of states to uphold and enforce federal immigration laws; and the federal government endowing illegally present immigrants with certain entitlements to be provided by the states through unfunded mandates. Public safety concerns and economic factors were also considered in the bill. While some measures were enacted into law, such as allowing workers employed for less than 9 months to be exempt from E-Verify requirements, the majority of the original bill was modified into a study bill. Pursuant to 1(d) of Session Law 2013-418, the Department of Public Safety was asked to study S.L. 2013-418 and report its findings and recommendations regarding the proposed immigration measures to the General Assembly.

The House of Representatives passed the bill on July 17. On July 25, the Senate also passed the bill, forwarding it to the Governor for signature. Governor Pat McCrory vetoed the bill on August 15, due to concern that loopholes in the bill would make it easier for employers across many industries to hire illegal immigrants, rather than North Carolina citizens. Lieutenant Governor Dan Forest, President of the Senate, urged the General Assembly to sustain the veto and cited similar concerns. The General Assembly reconvened on September 4, overriding the Governor’s veto.

Following passage of the bill, concerns were raised to the Administration by the Commissioner of Labor that the Department of Labor faced challenges in effectively enforcing the state’s E-Verify statutes due to lack of clarity and limited penalty tools in the law as written in 2011 and as modified by S.L. 2013-418.

METHODOLOGY

DPS assembled a workgroup comprised of representatives from State agencies and stakeholders to examine sections 1.(a)(1-7) of the bill. The workgroup conducted listening sessions and interviews with representatives from law enforcement, local governments, legal advocacy groups, community groups, agricultural and other business groups mentioned in the bill. The North Carolina Department of Commerce (DoC) acted as coordinating agency for all research on section 1.(c) and focused on the potential impact of other immigration laws on North Carolina. No funds were appropriated for this study; work was conducted by existing staff in multiple State agencies and other organizations, facilitated by DPS. This report provides background information and summarizes the findings of the workgroup. DPS recommends the General

Assembly take into consideration the impact analysis described in this report when deliberating on potential legislation on these issues.

BACKGROUND INFORMATION

Comprehensive immigration reform has not been carried out on a national level since the Immigration Reform and Control Act of 1986 (P.L. 99-603). While federal immigration reform is currently being debated, it is unclear if changes in federal policy will occur in the near term. Meanwhile, a variety of immigration-related measures have been undertaken by several different states in recent years, ranging from laws focused on enforcement of immigration status to laws granting unauthorized immigrants certain privileges.

Estimates of the net impact of undocumented immigrants on state government expenditures and economies vary. In general, costs to state government include costs for education, health care – including Medicaid – justice and law enforcement, public assistance, and other government services. While unauthorized immigrants also contribute tax revenue, the extent to which this revenue offsets expenditures due to unauthorized immigrants is inconsistent across studies and states.

TRENDS IN IMMIGRATION IN THE UNITED STATES

There is much debate about the exact size of the undocumented immigrant population in the United States and each individual state. The Pew Research Center's Hispanic Trends Project is one of the most reputable and widely cited sources for estimates of the size of the undocumented immigrant population. Pew estimates that in 2012 41.7 million total immigrants lived in the United States and approximately 28 percent of them were "unauthorized immigrants." According to Pew, North Carolina ranked as the ninth largest unauthorized immigrant population with an estimated 325,000 unauthorized immigrants in 2010.¹ The number of unauthorized immigrants in North Carolina has grown significantly since 1990, but stabilized and even declined slightly since the mid to late 2000s.

IMPACT ANALYSIS

Session Law 2013-418 House Bill 786 ("HB786") directs DPS and other agencies to "study the potential impact on public safety, the State economy, and illegal immigration to this State" of adopting several measures outlined in section 1.(a) of the bill. These measures fall into four main categories:

1. Identification documents (increasing penalties for false ID's, prohibiting consular documents from official use, and some aspects of granting driving privileges);
2. Judicial Custody and Law Enforcement measures (restricting pretrial release and requiring secured bonds, requiring reimbursement for incarceration costs, establishing standards to guide law enforcement in conducting immigration status checks);
3. Temporary driving privileges for undocumented immigrants (including public safety, insurance, and other relevant issues); and
4. Measures adopted in other states.

¹ The lower and upper bound estimates are 240,000 and 425,000, respectively.

Section 1.(c) of the bill requires that DPS examine the potential impact of these measures on:

1. The State economy;
2. The community of lawful immigrants in the State;
3. The provision of social services;
4. Tax collection;
5. Law enforcement;
6. Measures enacted in other states; and
7. How businesses fare under our current federal system.

Section 1.(a)(1): Increasing Penalties for False Identification Documents

Impacts include:

- Potential need for additional court and indigent defense resources.
- Potential enhancement of a law enforcement officer's ability to correctly identify a person if the increased penalties deter the use of false identification.

Section 1.(a)(2): Creating a Rebuttable Presumption Against Pretrial Release

Impacts include:

- Potential need for increased training and staff resources for court officials.
- Potential increase in jail population.
- Uncertainty and need for clarification of the roles and responsibilities of various court officials in determining immigration status.
- Potential for less opportunity for a defendant to fail to appear in court.
- Potential reduction in opportunity for the commission of other crimes that might have been committed while the defendant was released pretrial, which could benefit potential victims and the criminal justice system.

Section 1.(a)(3): Requiring a Secured Appearance Bond for Serious Crimes

Impacts include:

- Additional court time, if a secured bond would not already be required.
- Potential increase in jail population, if a secured bond would not already be required and if the bond was not met.
- Potential reduction in opportunity for the commission of other crimes that might have been committed while the defendant was released pretrial, if a secured bond would not already be required and if the bond was not met, which could benefit potential victims and the criminal justice system.
- Potential for less opportunity for a defendant to fail to appear in court.
- Potential increase in bond forfeiture revenue for schools if additional secured bonds are obtained and the defendants fail to appear in court.

Section 1.(a)(4): Requiring Reimbursement for the Cost of Incarceration

Impacts include:

- Administrative costs to the court system.
- Possible loss of federal funds.
- Limited likelihood of collecting money from incarcerated undocumented immigrants

Section 1.(a)(5): Standard of Reasonable Suspicion for Immigration Status Checks

Currently, a law enforcement officer does not need reasonable suspicion to conduct an immigration status check during an otherwise lawful detention, so there appears to be little benefit to establishing such standards.

Section 1.(a)(6): Prohibiting Use of Consular Documents as Identification

Impacts include:

- Challenges for law enforcement and court officials when they interact with an individual whose only form of identification is a consular document.
- Potential conflict with federal law for some benefits received through the Department of Health and Human Services, unless an exemption is made for federal allowances.
- More consistent standards for identification, since consular documents of different countries vary considerably in their security.

Section 1.(a)(7): Allowing a Temporary Driving Privilege

Impacts include:

- Need for more resources for the Division of Motor Vehicles (DMV) for additional workers, operational costs, and funds for interpreters.
- Potential influx of unauthorized immigrants seeking a limited driving privilege, many of whom may not pass the required exam (see Section 1.(a)(7) on Nevada).
- Additional tool for law enforcement to use for identification.
- Challenges with insurance requirements for any undocumented immigrants who do not own a vehicle, because most insurance products are tied to a vehicle, not a driver.
- Potential positive impact on highway safety.

Section 1.(a)(8): Other States

Notable laws in other states include:

- Enforcement-focused immigration status laws, many of which have been rejected in court.
- Limited driving privileges issued to undocumented immigrants, which in some cases has led to a temporary influx of undocumented immigrants into DMV offices and also could lead to issues with automobile insurance.

- Stronger enforcement mechanisms for enforcing E-Verify requirements and holding employers accountable for hiring unauthorized immigrants.

Section 1.(c): Economic and Fiscal Impacts on Section 1.(a)

The potential impact of the provisions in section 1.(a) of S.L. 2013-418 was analyzed using the criteria listed in 1.(c). Additionally, the provisions in section 1.(a) were examined in light of the impact of similar measures enacted in other states. Overall, the potential impact is difficult to quantify because it depends on the details of the law passed and how it might be implemented. A range of potential impacts is discussed in detail in this report. Impact on the provision of social services and on law enforcement are incorporated in the relevant sections in section 1.(a). (Section 1.(c)(3), (5), and (6)).

Section 1.(c)(1): State Economy

North Carolina's unemployment rate has dropped two percentage points in the past year. The seasonally adjusted unemployment rate in December 2013 was 6.9 percent, down from 8.9 percent in December 2012. In July 2013, changes to unemployment insurance were implemented that brought North Carolina more in line with benefits in neighboring states. In the wake of these changes, the unemployment rate went down significantly from June to December 2013 – at a much faster clip than the previous six months and faster than the same time period in 2012. While the reduction in unemployment represents significant progress, there is still more to be done. Too many workers, particularly in certain areas of the state and in certain industry sectors, are still unemployed. Data from the Department of Commerce indicates that the following industry groups had the highest percentage of the total unemployed workforce (November 2013) and of total unemployment claims (FY 2012-13):

NAICS	Industry	Unemployed (11/2013)*		Unemployment Claims (July 2012 - June 2013)^	
		Number	% of Total	Number	% of Total
31	Manufacturing	40,372	13%	63,378	19%
56	Administrative and Support and Waste Management and Remediation Services	24,822	8%	58,893	17%
23	Construction	18,730	6%	42,059	12%
62	Health Care and Social Assistance	27,619	9%	27,100	8%
44	Retail Trade	41,956	13%	26,069	8%
72	Accommodation and Food Services	30,703	10%	22,582	7%

*Source: Economic Modeling Specialists International (EMSI)

^Source: NC Department of Commerce, Labor & Economic Analysis Division. Attached and unattached claims.

The overall potential economic impact of the provisions in section 1.(a) of S.L. 2013-418 is uncertain. It is unknown how the population of unauthorized immigrants would react to the adoption of any provision proposed in 1.(a). Any increase or decrease in the undocumented immigrant population as a result of the provisions in the study bill cannot be quantified due the large amount of uncertainty and no proven method for estimating such deterrent or magnetic

effects. In the absence of this key information, this report cannot quantify the economic impact of these provisions on North Carolina's economy.

Section 1.(c)(2): Community of Lawful Immigrants

The interests of the "lawful community" and the unauthorized immigrant population are often closely intertwined. Many immigrant families are of "mixed status," which means that one or more family member is a lawful immigrant or a citizen, while other family members are unauthorized immigrants. Complex familial situations present challenges to neatly separating out the potential impacts of any proposed measures on the lawful immigrant versus unauthorized immigrant communities. Nevertheless, enforcement measures targeting only unauthorized immigrants often affect lawful immigrants. Immigrant groups have expressed a concern that increased enforcement measures on undocumented immigrants may negatively impact lawful immigrants.

Section 1.(c)(4): Tax Collection

The impact on tax collection depends on the overall economic impact of each measure and is highly uncertain because the economic impact of the study provisions is unknown absent its passage. (See Section 1.(c)(1)). Much of the impact on tax collection depends on the reaction of the undocumented immigrant population to the implementation of the proposed measures in S.L. 2013-418, and on the net impact on tax collections due to any change in the size or makeup of North Carolina's unauthorized immigrant population, neither of which can be quantified at this time.

Section 1.(c)(7): Businesses

Several industries in North Carolina reported a dependence on immigrant labor for a variety of reasons. Farmers depend heavily on seasonal, manual labor by immigrants because certain crops cannot be easily cultivated by mechanized methods.² Some companies state that they rely on immigrant labor due to the lack of citizens who will take these jobs at the offered wages. Data shows that the construction industry depends more heavily on immigrant labor than many other industries.³ While industry representatives discussed a reliance on immigrant labor, the proposals in S.L. 2013-418 would primarily impact those businesses that employ unauthorized immigrants.

Representatives of some industries indicated support for a proposal to provide temporary driving permits to unauthorized immigrants, as they believe it is advantageous for their unauthorized workers to have the ability to legally drive to a work site. Support was not unanimous across industry stakeholders.

Industry representatives also expressed concern that increased enforcement of immigration status checks on unauthorized immigrants may deter these workers from coming to North Carolina. Industries that need seasonal labor stated that they could face significant economic impacts if

² Report on Georgia's agricultural system.

http://agr.georgia.gov/Data/Sites/1/media/ag_administration/legislation/AgLaborReport.pdf

³ <http://www.pewhispanic.org/2009/04/14/iv-social-and-economic-characteristics/>

there is a reduction in this workforce. Depending on market forces, these economic impacts could take the form of labor shortages, or employment of non-immigrant workers, possibly at higher expense.

APPENDICES

Appendix I: S.L. 2013-418 Workgroup Members

Appendix II: List of Industry Groups and Stakeholders Contributing Information and Input to the Study

Appendix III: Comparison of Census Data (2008-2010) v. NCAOC Interpreter Assignments (2009-11)

Appendix IV: State Laws Providing Access to Driver's Licenses or Cards Regardless of Immigration Status (Chart)

INTRODUCTION

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Following passage of the bill, concerns were raised to the Administration by the Commissioner of Labor that the Department of Labor faced challenges in effectively enforcing the state's E-Verify statutes due to lack of clarity and limited penalty tools in the law as written in 2011 and as modified by S.L. 2013-418.

METHODOLOGY

It is difficult to predict the potential impact of any of these measures due to the number and broad scope of the proposed measures, and uncertainty surrounding how any measure might actually be implemented. To complete the study, DPS gathered a workgroup of state agencies and stakeholders, who would likely be affected by these measures, to obtain their views and reviewed information from other states' experiences with similar legislation (See Appendix I).

The workgroup conducted listening sessions and interviews with representatives from law enforcement, local governments, legal advocacy groups, community groups, agricultural and other business groups mentioned in the bill (See Appendix II). The workgroup also reviewed relevant immigration-related legislation in other states and at the federal level. Finally, the workgroup reviewed existing research on the economic impacts of immigration-related legislation.

For the purposes of this report the following terms are meant to be synonymous and used interchangeably: illegal alien, illegal immigrant, undocumented immigrant, undocumented alien, unlawful immigrant, unauthorized immigrant.

BACKGROUND

Comprehensive immigration reform has not occurred at the national level since the Immigration Reform and Control Act of 1986 (P.L. 99-603).⁴ While the possibility for piecemeal immigration reform in Congress exists, it is unclear if changes in federal immigration policy will occur in the short term. Recent presidential executive orders such as the Deferred Action for Childhood Arrivals (DACA)⁵ have changed the immigration enforcement landscape. It is likely that any near-term changes will be similar to an executive order like DACA rather than by the passage of legislation by Congress.

A variety of immigration-related measures have been undertaken in the past several years in various states.⁶ One common trend among states, beginning with Arizona in 2010, was a focus on laws for immigration status enforcement by state and local officials. These laws also tended to include measures to restrict unauthorized immigrants' access to employment, housing, education, and other state-provided benefits. Following Arizona's lead, several other states passed similar

⁴ Full text of the law at <http://www.uscis.gov/sites/default/files/ilink/docView/PUBLAW/HTML/PUBLAW/0-0-0-15.html>

⁵ A description of the DACA process can be found at <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process>

⁶ Annual reports summarizing the numerous proposed and enacted immigration-related pieces of legislation are produced by the National Conference of State Legislatures, see <http://www.ncsl.org/research/immigration/state-laws-related-to-immigration-and-immigrants.aspx>

legislation, including Alabama, Georgia, South Carolina, Indiana, and Utah.⁷ All of these measures have faced legal challenges. Federal courts have blocked the implementation of many of these laws. In some cases provisions have been overturned by the United States Supreme Court. The most well publicized legal issues arose in connection to the Arizona laws.⁸ In 2012, the United States Supreme Court overturned 3 out of 4 provisions of the Arizona law. The Supreme Court did not specifically overturn the “show your papers” provision, but left it open to future challenges.⁹ Alabama recently effectively repealed much of its Arizona-style immigration law in the terms of a settlement for a lawsuit challenging that law.¹⁰

In another more recent trend, several states have extended some type of limited driving privilege to unauthorized immigrants. Only three states had granted some type of driving privilege prior to 2013, but in 2013 eight additional states (as well as the District of Columbia and Puerto Rico) passed similar legislation granting certain driving privileges to unauthorized immigrants. The total number of states providing a driving privilege to unauthorized immigrants stands at eleven.¹¹

A third trend is the enactment of laws requiring the use of the federal E-Verify system by public and private employers as a tool to help ensure that undocumented immigrants are not employed in violation of federal law.

These trends inform the measures DPS studied pursuant to S.L. 2013-418. The experience of other states and decisions of the United States Supreme Court help define acceptable forms of state-accepted identification, custody procedures, and reasonable standards of suspicion to guide law enforcement in checking immigration status. Regarding establishment of a temporary driving privilege, North Carolina can look to several other states that have recently passed similar types of legislation.

TRENDS IN IMMIGRATION AND UNAUTHORIZED IMMIGRATION

Before examining the potential impacts of the specific measures in S.L. 2013-418, it is useful to understand broader national and state-level undocumented immigration trends and impacts.

Estimates of Numbers of Undocumented Immigrants

There is much debate about the exact size of the undocumented immigrant population in the United States and whether that population has increased or decreased over the last few years. The Pew Research Center’s Hispanic Trends Project is one of the most reputable and widely cited sources for estimates of numbers of immigrants at the national and state level. Pew gives an

⁷ See appendix for a selection of state case studies relevant to S.L. 2013-418.

⁸ Full text of the law is at <http://www.azleg.gov/legtext/49leg/2r/bills/sb1070s.pdf>

⁹ Full text of the decision at <http://www.supremecourt.gov/opinions/11pdf/11-182b5e1.pdf>

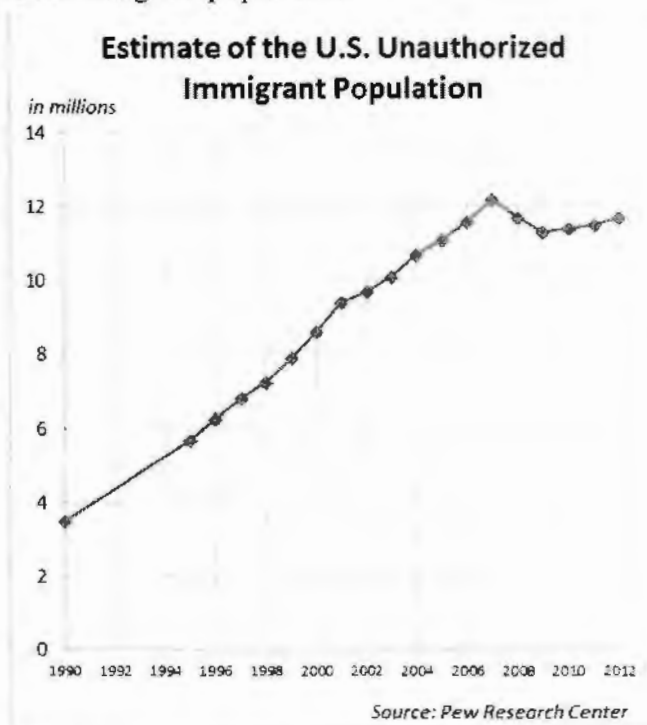
¹⁰ Press release from the Department of Justice at

<http://www.justice.gov/usao/ain/News/November%202013/Nov%2025,%202013%20Alabama%20Immigration.htm>

¹¹ As described in <http://www.ncsl.org/research/immigration/2013-immigration-report.aspx>. Additional details of each state’s provisions can be found at <http://www.nilc.org/DLaccess toolkit2.html#table>

estimate of the total immigrant population and the size of various subgroups including unauthorized immigrants.¹² The general approach that Pew follows for estimating the unauthorized immigrant population is a “residual” calculation. First, Pew estimates the total number of foreign born individuals using Census survey data. Next, Pew subtracts the legal immigrant population which is estimated using historical counts of legal admissions to the United States and assumptions about demographic change over time. The remaining amount or “residual” represents an estimate of unauthorized immigrant population.

Pew estimates that there were 41.7 million total immigrants in the United States in 2012. Seventy-two percent were “legal” or “legal temporary” immigrants, while the other twenty-eight percent were estimated to be “unauthorized immigrants.” In 1995, the estimated total number of immigrants was 26.9 million with twenty-one percent of those being unauthorized.¹³ According to Pew, in 1990 there were an estimated 3.5 million unauthorized immigrants in the United States.¹⁴ In 2007, that estimate grew to a peak of 12.2 million and has decreased slightly since then. This estimated growth rate was about eight percent per year between 1990 and 2007. Since 2007, Pew estimated that the unauthorized immigrant population declined to 11.7 million in 2012. In 2012,



Pew estimated with ninety percent confidence that the actual number of unauthorized immigrants fell between 11.1 million and 12.2 million. Pew estimated about fifty-two percent of the unauthorized immigrant population in 2012 in the United States were actually citizens of Mexico.¹⁵

The last year that Pew published estimates for each separate state was 2010.¹⁶ According to that study, North Carolina had the ninth largest unauthorized immigrant population with an estimated 325,000. Pew estimated that about 250,000 of those unauthorized immigrants were in the State’s labor force (which is the sum of employed and unemployed individuals looking for work).¹⁷

¹² All of the national Pew statistics that follow are from a September 2013 report: “Population Decline of Unauthorized Immigrants Stalls, May Have Reversed,” Passel, Cohn, and Barrera, Sept. 23, 2013, <http://www.pewhispanic.org/files/2013/09/Unauthorized-Sept-2013-FINAL.pdf>

¹³ <http://www.pewhispanic.org/files/2013/09/Unauthorized-Sept-2013-FINAL.pdf>

¹⁴ “Population Decline of Unauthorized Immigrants Stalls, May Have Reversed,” Passel, Cohn, and Barrera, Sept. 23, 2013, <http://www.pewhispanic.org/files/2013/09/Unauthorized-Sept-2013-FINAL.pdf>

¹⁵ <http://www.pewhispanic.org/files/2013/09/Unauthorized-Sept-2013-FINAL.pdf>

¹⁶ “Unauthorized Immigrant Population: National and State Trends, 2010,” Passel and Cohn, Feb. 1, 2011, <http://www.pewhispanic.org/files/reports/133.pdf>

¹⁷ “Unauthorized Immigrant Population: National and State Trends, 2010,” Passel and Cohn, Feb. 1, 2011, <http://www.pewhispanic.org/files/reports/133.pdf>

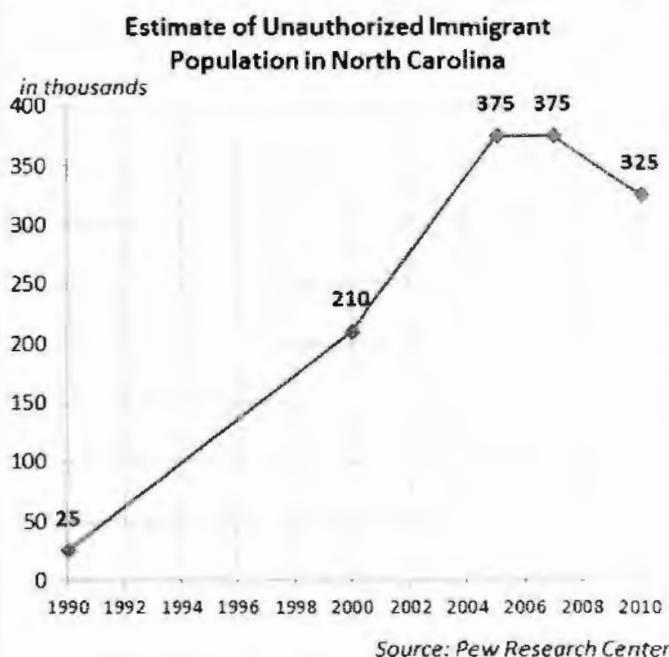
Looking at the Pew estimates over the years, the number of unauthorized immigrants in North Carolina grew significantly from 1990 to the mid to late 2000s, but stabilized and even declined slightly since the peak.¹⁸ Other states in the southeast with large estimated unauthorized immigrant populations include Florida (825,000), Georgia (425,000), and Virginia (210,000).¹⁹

Department of Homeland Security Estimates

Other organizations such as the Department of Homeland Security (DHS) have released estimates of the immigrant population residing in the United States and for each state. DHS estimates that as of January 2011, 11.5 million unauthorized immigrants resided in the United States. DHS estimated that as of January 2011 400,000 unauthorized immigrants resided in North Carolina.²⁰ These DHS estimates are similar to the estimates from Pew. The methodologies used to estimate the unauthorized immigrant population in these two studies were very similar as were the resulting estimates.

UNC Chapel-Hill Study

In 2006, the University of North Carolina at Chapel-Hill released a study that focused on the Hispanic population in North Carolina. According to that study, an estimated 601,000 Hispanics lived in North Carolina as of 2004; accounted for more than a quarter of the State's population growth between 1990 and 2004; and accounted for about seven percent of North Carolina's total population.²¹ This study estimated that nearly 334,000 Hispanics had legal authorization to be in the United States, which meant that the remaining 267,000, or about forty-five percent of all Hispanics, were unauthorized. This amounts to about forty-five percent of all Hispanics in North Carolina. Also, the study estimated that seventy-six percent of the Hispanic immigrants who moved to the State from 1995 to 2004 were unauthorized. This study did not attempt to estimate the number of non-Hispanic immigrants in North Carolina. UNC Chapel-Hill expects to release a follow up study later in 2014 that is expected to include analysis of other ethnicities/nationalities in North Carolina in addition to Hispanic immigrants.²²



¹⁸ <http://www.pewhispanic.org/files/reports/133.pdf>

¹⁹ <http://www.pewhispanic.org/files/reports/133.pdf>

²⁰ https://www.dhs.gov/sites/default/files/publications/ois_ill_pe_2011.pdf

²¹ "The Economic Impact of the Hispanic Population on the State of North Carolina," Kasarda and Johnson, Jan. 2006, http://www.kenan-flagler.unc.edu/~media/files/documents/2006_KenanInstitute_HispanicStudy

²² Study group interview, Jim Johnson and Steven Appold, December 18, 2013.

IMPACT ANALYSIS

Section 1.(a)(1): Increasing Penalties for False Identification Documents

Section 1.(a)(1) of S.L. 2013-418 requires the study of the potential impact of “[i]ncreasing the penalties for crimes related to the possession, manufacture, or sale of false drivers licenses and other identification documents.” Although the potential impact cannot be determined until the penalties are more specifically outlined, there would almost certainly be a fiscal impact on the North Carolina court system, prisons, and jails.

The North Carolina Sentencing and Policy Advisory Commission (Commission) must project the impact that any legislation creating new criminal offenses or changing the penalties for existing criminal offenses will have on prisons and jails around the State. In the 2013 Session of the General Assembly the Commission submitted a five-year resource projection for House Bill 786 (2nd edition) to the Fiscal Research Division.²³ The second edition of the bill contained a substantially similar criminal policy to section 1.(a)(1) that the General Assembly instructed DPS to study so that projection should be relevant for this study.

Deterrent Effects

According to the Commission, studies show that for effective criminal deterrence, at least two things must exist: the increase or change in legal sanctions and risks associated with committing a crime must be known to the target population; and the “cost” of the legal sanctions imposed must outweigh the expected “benefit” of the illegal behavior.

The deterrent effect of a new or changed crime is difficult to predict because this information is not typically available before a new criminal offense is enacted or an existing offense is changed. Therefore, when predicting a deterrent effect, the Commission assumes that the proposed change produces no deterrent effect on crime. The Fiscal Research Division of the General Assembly follows the same assumption. Thus, the deterrent effect of passing this measure cannot be known until after it has been adopted and implemented.

Impact on Court System

The proposed change would have a fiscal impact on the court system. The extent of the impact would depend on the specifics of the provisions. However, the Administrative Office of the Courts provided the following cost estimates based on the similar provisions in the 2nd edition of House Bill 786. It would cost the court system an additional \$947,106 in the first year and an additional \$1,894,211 annually thereafter. It would cost Indigent Defense Services: an additional \$97,705 - \$187,564 annually in district court; an additional \$133,222 - \$266,577 annually in superior court without a trial; and an additional \$353,524 - \$707,181 annually in superior court with a trial.²⁴

²³ <http://www.ncleg.net/Sessions/2013/FiscalNotes/House/PDF/HIN0786v2.pdf>

²⁴ <http://www.ncleg.net/Sessions/2013/FiscalNotes/House/PDF/HIN0786v2.pdf>

Impact on State Prisons and Local Jails

An increase in prison sentence for a crime related to the possession, manufacture, or sale of a false identification document would have a fiscal impact on local jails and State prisons. It costs more to incarcerate an inmate longer. The number of offenders to whom this prospective legislation would apply is unknown as is the length of their incarceration. Thus, the increase in the number of offenders a correctional facility could expect is uncertain.

The Commission estimated an impact on prison beds and probation resources that would result in the following costs based on the similar provisions of the 2nd edition of House Bill 786: it would cost prisons an additional \$61,485 in the first year and an additional \$122,970 annually thereafter to house the offenders convicted of this crime, and it would cost Community Corrections an additional \$271,423 annually to supervise offenders convicted of this crime.²⁵

Impact on Law Enforcement

Law enforcement officers constantly interact with people in fulfilling their duties. It is important that an officer be able to establish the identity of these people. Often these individuals are from different states and countries. Law enforcement officers rely heavily on identification documents to establish a person's identity. If increasing the penalties for crimes related to the possession, manufacture, or sale of false driver's licenses and other identification documents deters people from creating or using fraudulent forms of identification, this would positively impact law enforcement.

Section 1.(a)(2): Rebuttable Presumption and Section 1.(a)(3): Secured Bonds

Section 1.(a)(2) of S.L. 2013-418 requires the study of the potential impact of "[c]reating a rebuttable presumption against the pretrial release of undocumented aliens who commit serious crimes." Section 1.(a)(3) requires the study of the potential impact of "[r]equiring a secured appearance bond as a condition of pretrial release for undocumented aliens who have committed serious crimes." The North Carolina court system and jails would be impacted by these sections.

The proposed measures are limited to an undocumented immigrant who committed a serious crime. The term "serious crime" is not currently defined in statute, although crimes such as murder, burglary, arson, and rape are universally considered serious, and Class A through E felonies are generally considered serious felonies. It would be helpful to define this term so a judicial official would have clarity about when this law should apply.

Impact on Law Enforcement and Society/Victims

These sections have the potential to increase the number of defendants who spend their pretrial time in jail, reduce the number of defendants who do not appear in court at an appointed time, increase bond forfeiture funds to the schools, and limit the opportunity for a person accused of committing a felony to commit new crimes while awaiting trial. The positive impacts of these

²⁵ <http://www.ncleg.net/Sessions/2013/FiscalNotes/House/PDF/HIN0786v2.pdf>

outcomes include savings to law enforcement and criminal justice time and resources, and averted crimes and fewer victims.

The North Carolina court system and jails that hold pretrial defendants would be impacted by the proposed measure. To the extent that undocumented immigrants charged with serious crimes are already required to post secured bonds or denied pretrial release, these impacts may be limited.

Section 1(a)(2): Administrative Impact of Rebuttable Presumption Against Release

Pursuant to G.S. 15A-533, there is currently a rebuttable presumption against release that provides that persons who are considered for bond under the applicable sections may only be released by a district or superior court judge upon a finding that there is a reasonable assurance that the person will appear and release does not pose an unreasonable risk of harm to the community.²⁶ For the purpose of this study, DPS assumed that a rebuttable presumption against pretrial release of undocumented immigrants who commit serious crimes would impose the same requirement.

Impact on Court System

It is not clear who would be responsible for providing judicial officials with definitive and official information regarding immigration status of a pretrial defendant. Judicial officials do not perform investigative functions related to immigration status beyond checking available judicial records, such as criminal histories and warrant information. Information related to immigration status of a defendant is not typically included in the information currently provided to judicial officials. Therefore, judicial officials lack information about immigration status during an initial appearance or first appearance. To make the addition of this requirement meaningful, the law would need to also include some mechanism for the provision of this information to judicial officials. This would have to be done in all instances irrespective of whether it might clearly appear that the defendant is a citizen. This would require the expenditure of money and effort by law enforcement or some court support personnel to research and provide this information to judicial officials.

Impact on Jails

Assuming that any rebuttable presumption would require a judicial official, instead of a magistrate, to impose conditions of release, the time required and cost associated with a first appearance hearing would be increased. Again, this process must occur every time that a defendant is accused of committing a qualifying serious crime without regard to a consideration of how the defendant might appear. This would increase costs for prosecutors and defense attorneys because they would spend more time investigating and arguing about this issue. This would also increase costs for jails because more pretrial defendants would be required to stay in jail. The number of defendants to whom this prospective legislation would apply is unknown. Thus, the increase in the number of defendants a jail could expect is uncertain. The impact might be minimal because criminal defendants who are accused of committing a serious crime must already be detained because they are frequently denied pretrial release.

²⁶ N.C.G.S. 15A-533

Section 1.(a)(3): Administrative Impact of Secured Bond

Distinguishing Secured Bonds

A bail bond is an undertaking by a defendant to appear in court as required upon penalty of forfeiting bail to the State in an amount designated by the judge or magistrate.²⁷ A bail bond may be secured or unsecured. Types of bail bonds include: 1) an unsecured appearance bond, 2) an appearance bond secured by cash deposit of the full amount of the bond, 3) an appearance bond secured by a mortgage,²⁸ or 4) an appearance bond secured by at least one solvent surety.²⁹ The primary difference between a secured bond and an unsecured bond is the guarantee of payment by the defendant.

An unsecured bond is a contractual agreement, or written promise to appear, made by a defendant with the State where the defendant guarantees the full amount of the bond will be paid if the defendant does not appear in court.³⁰ This allows a defendant to be released for the period of time before a trial begins without paying the bond upfront. If a defendant fails to appear in court, then the court will demand payment of the bond. The burden is then on local law enforcement to locate the defendant and produce the defendant in court.

A secured bond requires a defendant to post bail upfront by cash, real property, or a guarantee by a licensed bail bondsman pursuant to an agreement between the defendant and the bail bondsman.³¹ If a defendant cannot pay a secured bond, then the defendant will not be granted pretrial release and will remain incarcerated until the completion of trial. If a defendant satisfies a secured bond and is released before trial, the State usually possesses the full amount of the secured bond in cash or collateral in the event the defendant does not appear in court. If the State does not possess the full amount of the secured bond in cash or collateral, then a bail bondsman who guaranteed the bond must produce the defendant within 150 days or pay the full amount of the bond. Either way, the State will collect the full amount of the secured bond if the defendant fails to appear.

Impact on Pretrial Release

An increase in the number of defendants who have secured bonds would likely increase the number of defendants who remain in custody until trial because they cannot satisfy the secured bond. If a defendant does satisfy a secured bond, then there would also be an increase the number of guaranteed bond payments if the defendant subsequently fails to appear in court, as explained above. Since all funds collected on any bond are given to the local school board, then there might also be an increase in funds provided to local schools pursuant to secured bond forfeitures.

²⁷ N.C.G.S. § 15A-531(4)

²⁸ N.C.G.S. § 58-74-5

²⁹ N.C.G.S. § 15A-531(4)

³⁰ N.C.G.S. § 15A-531

³¹ N.C.G.S. § 15A-531

Impact on Court System

A secured bond requires more time and effort for a court to process than an unsecured bond. A court must process payment of a secured bond posted by a defendant prior to releasing the defendant. This is complex and requires more paperwork for both the court and the defendant.³²

Satisfying a secured bond may also take a long time. For example, a secured bond paid in cash could be paid by the defendant fairly quickly. However, an official accepting a secured bond must meet reporting requirements set by the Internal Revenue Service (IRS) and the federal Financial Crimes Enforcement Network (FinCEN).³³ Thus, even if a defendant can produce cash to satisfy a secured bond, it can still take the court a while to comply with all of the associated paperwork. If a defendant pays a secured bond by taking out a mortgage on property, then the process can take several days if not weeks. Even after the process is completed, there would still exist the need to comply with the same paperwork described above. Therefore, any increase in the number of secured bonds required as a condition of pretrial release would create an administrative burden on the court system.

Impact on Jails

Requiring a secured bond reduces the likelihood that a defendant will be able to meet the conditions and get released. Therefore, requiring a secured bond would likely increase the time that defendants spend in jail awaiting trial. This would increase costs incurred by a sheriff holding these defendants. The actual increase in the number of defendants held in a jail as a result of this proposed law may not have a big impact on the costs faced by sheriffs because many defendants who commit serious crimes are denied bond anyway. In light of that fact, this provision may have limited practical impact on the costs associated with housing defendants accused of committing serious crimes.

Other Considerations

Judicial officials could also potentially have unreliable information about immigration status during the initial appearance or first appearance (See Section 1.(a)(2) Administrative Impact on Court System).

Section 1.(a)(4): Reimbursement for Incarceration Costs

Section 1.(a)(4) of S.L. 2013-418 requires the study of the potential impact of “[r]equiring undocumented alien prisoners to reimburse the State for the cost of their incarceration after conviction of a crime.” The North Carolina court system, State prisons and jails would be impacted by this section.

³² http://www.sog.unc.edu/sites/www.sog.unc.edu/files/Handout01-taking_bonds-MAG%20conf%202013.pdf.)

³³ Clerks of federal and state courts must report to the Internal Revenue Service (IRS), the federal Financial Crimes Enforcement Network (FinCEN) and certain U.S. Attorneys when they receive cash in excess of \$10,000 as bail for a single defendant. 26 U.S.C. §60501(g), 26 C.F.R. §1.60501-2, 31 U.S.C. §5331, and 31 C.F.R. §1010.331

Potential Administrative Impact on Court System

Requiring reimbursement directly from an incarcerated, undocumented immigrant would increase the administrative burden on the court system. Reimbursement for the costs of incarceration would create a new type of debt that the courts would need to reduce to a civil judgment against an inmate. That could require additional time and information gathering during the sentencing phase because the court would need to assess the amount owed and record that information in the judgment. This would increase associated costs to the court system. However, the exact financial impact is uncertain.

Potential Impact on SCAAP Funds

The federal government already provides payments to state and local custodial facilities that incur correctional officer salary and overtime costs for incarcerating undocumented immigrants who have been convicted of a state crime through the State Criminal Alien Assistance Program (SCAAP).³⁴

The Bureau of Justice Assistance (BJA) together with the Bureau of Immigration and Customs Enforcement (ICE) administer SCAAP. SCAAP funding is based on the State's application for funding.³⁵ The application must include data on undocumented immigrants incarcerated in North Carolina. To be reimbursed for an incarcerated, undocumented immigrant, North Carolina must show that the immigrant has at least one felony or two misdemeanor convictions for violations of State or local law and was incarcerated for at least 4 consecutive days during the reporting period. In 2013, SCAAP awarded \$4,251,469 to NC with \$1,423,913 going to counties and \$2,827,556 going to the State.

It is unclear how requiring undocumented immigrants to reimburse their costs of incarceration would affect North Carolina's ability to receive the SCAAP funds for those same inmates. However, it is unlikely the federal government would allow the State to "double dip" and continue to reimburse the State if the State is already seeking to be reimbursed by an offender.

Potential Impact on the State

Requiring reimbursement directly from an incarcerated, undocumented immigrant would require additional State resources. There would be an increase in administrative costs associated with monitoring SCAAP funds. Particularly if the State must repay the federal government to the extent that it already received SCAAP funds for the incarceration of an undocumented immigrant and then sought to obtain reimbursement from the same undocumented immigrant under this proposed law.

³⁴ SCAAP is governed by Section 241(i) of the Immigration and Nationality Act, 8 USC 1231 (i) as amended, and Title II, Subtitle C, Section 20301 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322.

³⁵ Funding may be subject to federal budget cuts.

Difficulties Recouping Money

It is unlikely the State would be able to recoup a significant amount of money from an incarcerated, undocumented immigrant. The State already has difficulty collecting money, such as restitution, from incarcerated individuals. Incarcerated offenders typically do not have much money. Even if an offender earns wages for working while incarcerated, these wages do not come close to covering the costs of incarceration. If the State were able to recoup money from an inmate, there may be other priorities, such as restitution, that would need to be paid.³⁶

An incarcerated, undocumented immigrant is also often deported at the end of the prison sentence. If the State is not reimbursed before an undocumented immigrant is deported, then it is very unlikely that the State will ever recoup the balance of any money owed. Even if the undocumented immigrant is not deported, he will likely have trouble earning enough money to reimburse the State due to his criminal record and unauthorized status. While it is possible to garnish an undocumented immigrant's wages or tax returns after his release, this process is cumbersome and yields a small return for the effort required. It is difficult to estimate the additional administrative burden this requirement would create, but it is almost certain to outweigh the amount of money that might actually be recouped.

Section 1.(a)(5): Establishing Standards of Reasonable Suspicion

Section 1.(a)(5) of S.L. 2013-418 requires the study of the impact of “[e]stablishing standards of reasonable suspicion to guide law enforcement officers in conducting immigration status checks when conducting a lawful stop, detention, or arrest.” There appears to be little benefit to establishing a specific standard for immigration status checks because a law enforcement officer does not need reasonable suspicion to conduct an immigration status check during an otherwise lawful stop. If a law enforcement officer has reasonable suspicion to conduct a stop or search of an individual, the officer is already authorized to inquire about that person's immigration status.

How a Law Enforcement Officer Can Conduct an Immigration Status Check

A law enforcement officer may typically check the immigration status of a person in two ways. First, the officer may ask the person about his or her immigration status. Second, the officer may contact the Law Enforcement Support Center (LESC), which is a program administered by United States Immigration and Customs Enforcement. The LESC “provides timely immigration status . . . and real-time assistance to local, state, and federal law enforcement agencies.”³⁷ The Supreme Court has described contacting the LESC as “[t]he accepted way to perform [immigration] status checks.”³⁸

An officer can conduct an immigration status check by using LESC by radioing a request to his department communications center. The communications center then contacts the LESC directly by phone. LESC provides information about the immigration status of the person in question. This type of status check may take as little as ten minutes.

³⁶ N.C.G.S. §7A-304; see also N.C.G.S. §148-33.1

³⁷ The quoted passage is taken from the LESC website, <http://www.ice.gov/lesc/>.

³⁸ *Arizona v. United States*, 567 U.S. ___ (2012) (Slip Op. at 20).

Authority to Conduct an Immigration Status Check

A State or local law enforcement officer may conduct an immigration status check during an otherwise lawful stop and arrest without the requirement of some additional reasonable suspicion related to the detained person's immigration status. Neither contacting the LESC nor asking a detained person about his or her immigration status is a search or a seizure under the Fourth Amendment. Just as an officer can look at an individual's license plate and use a computer database to determine if it is current, an officer can similarly contact the LESC to obtain information about the immigration status of an individual. The information that the officer is accessing belongs to a public agency, not an individual. Therefore, so long as an immigration check does not unnecessarily prolong an otherwise lawful detention of an individual, conducting an immigration check does not require separate reasonable suspicion.³⁹

If an officer detains a person that the officer has reasonable suspicion to suspect has committed a crime, the officer may contact the LESC to determine the person's immigration status. Neither State nor federal law limits when such an inquiry can be made. Nor is such an inquiry considered a search or a seizure under the Fourth Amendment.⁴⁰ If a person is arrested, fingerprinted, and booked into jail, that person's immigration status will be checked using the person's fingerprints automatically under the nationwide Secure Communities program, administered jointly by ICE and state and local law enforcement agencies.⁴¹

Other Considerations

Federal law prohibits state and local officers from conducting a stop, detention, or arrest based *solely* on a suspicion that a person is present in the United States illegally.⁴² Therefore, even if a new reasonable suspicion standard is adopted requiring an officer to conduct a status check, the stop must have been made for some reason other than a suspicion that the person is not authorized to be in the United States.

Potential Operational Impacts

A measure that establishes a new standard of reasonable suspicion to guide officers in conducting immigration status checks would have an unknown impact on law enforcement. Law enforcement officers receive training on a regular basis. If standards are added or changed, law enforcement officers must be trained on the new material. Therefore, if there is a new standard of reasonable suspicion, new training materials on that topic would need to be developed and taught to law enforcement officers. Additionally, officers currently have discretion in whether they inquire about a person's immigration status. (See Section 1.(a)(5)). Routine stops, such as a seat belt check, may take longer if an officer is required to check an individual's immigration status.

³⁹ See *Muehler v. Mena*, 544 U.S. 93 (2005).

⁴⁰ See *State v. Chambers*, 2010 WL1287068 (N.C. Ct. App. April 6, 2010) (unpublished). See *United States v. Quintana*, 623 F.3d 1237 (8th Cir. 2010).

⁴¹ See http://www.ice.gov/secure_communities/.

⁴² See *Arizona v. United States*, 567 U.S. __ (2012).

The overall impact of these incrementally longer stops may lead to the need to hire more law enforcement officers to provide the same level of service currently provided.

The General Assembly could adopt a measure requiring a law enforcement officer to conduct an immigration status check during each stop that was made for a separate legitimate reason. This may negatively impact law enforcement by increasing the length of time required for each stop.

Section 1.(a)(6): Prohibiting Consular Documents as Identification

Section 1.(a)(6) of S.L. 2013-418 requires the study of the impact of “[p]rohibiting the use of consular documents from being considered a valid means of establishing a person’s identity by a justice, judge, clerk, magistrate, law enforcement officer, or other [S]tate official.” The North Carolina court system, law enforcement, and social services would be impacted by this section.

Consular Documents defined

A consular document is issued by a consulate or embassy of another country and can be used in determining a person’s identity or residency. It is used by a person who is not a citizen of the United States. It is similar to, but not the same as, a passport. Consular documents from different countries differ in security level and appearance depending on the country of origin. These documents can be issued in the country of origin or by a local consulate office in the United States.

Security Concerns

It is important for government officials such as judges, law enforcement officers, or DHHS to know the identity of an individual with whom they may interact in the performance of their public duties. Authenticity of a consular document is a primary concern when attempting to establish the identity or residency of the document holder.

A variety of security measures may be incorporated to enhance the credibility of a consular document. For example, the Matricula, a consular document issued by the Mexican Government to Mexican citizens, is a water-sealed photo identification card with a unique identifying number that records the date of issuance and an expiration date. It includes a picture, a signature, and a brief description of the individual it identifies (name, date, place of birth, and the address of the individual). Presumably, if the holder of a Matricula has an authentic document, a Mexican Consulate can confirm that fact. Some countries issue laminated consular documents that contain a watermark and a magnetic strip. Consular documents are typically valid for a limited period of time, such as 5 years and require the individual to meet certain requirements during an application process. Thus, the dependability of a consular document depends on the practices of the country issuing it.

Judicial Officials

Prohibiting the use of a consular document to establish the identity of an unlawful immigrant could have a negative impact on the court system. There are many scenarios where a judicial official needs to reasonably establish the identity of a person who is not a citizen. For example, an inability to establish a non-citizen's identity could result in a delay of an initial appearance.⁴³

Depending on the crime, law enforcement officers may need to investigate this issue before judicial proceedings begin. For example, if a defendant is charged with impaired driving and cannot be identified, then the arresting officer must have the person fingerprinted and photographed.⁴⁴ If a defendant is charged with a felony or impaired driving, then the person in charge of the prison or jail where the defendant is housed can also investigate by questioning the defendant, examining identification documents, and contacting ICE.⁴⁵ A judge would also need to adequately establish a defendant's identity before determining the conditions of that defendant's pretrial release.⁴⁶ It is important to know if the defendant has a previous record or if the defendant has connections with the community that may be relevant to a flight risk. If no additional proof is available, then it could be extremely difficult for the judge to establish a non-citizen defendant's identity.⁴⁷ When no written form of identification is available, a judicial official may even allow a responsible member of the community to vouch for the identity of a defendant.⁴⁸ A judicial official has no authority to hold an arrestee based solely on citizenship so it is extremely important a defendant is quickly and accurately identified.⁴⁹

Law Enforcement

Law enforcement officers interact with non-citizens who use consular documents as proof of identification and have no other form of identification. In the absence of another form of identification, it could be difficult for an officer to verify the identity of a non-citizen without relying on a consular document. In some cases, an officer may be required to drive the unidentified non-citizen to a local judicial official for identification purposes.

Other State Officials

Prohibiting the use of consular documents as a valid means of establishing the identity of a non-citizen will have an impact on State officials administering social services benefits. The Department of Health and Human Services (DHHS) reports that unauthorized immigrants currently have the ability to receive a limited set of social services. Prohibiting the use of

⁴³ Smith, Jessica. UNC School of Government Blog, North Carolina Criminal Law. January 19th, 2012. <http://nccriminallaw.sog.unc.edu/?p=3223>

⁴⁴ N.C.G.S. § 15A-502

⁴⁵ N.C.G.S. § 162-62

⁴⁶ Smith, Jessica. UNC School of Government Blog, North Carolina Criminal Law. January 19th, 2012. <http://nccriminallaw.sog.unc.edu/?p=3223>

⁴⁷ Smith, Jessica. UNC School of Government Blog, North Carolina Criminal Law. January 19th, 2012. <http://nccriminallaw.sog.unc.edu/?p=3223>

⁴⁸ Smith, Jessica. UNC School of Government Blog, North Carolina Criminal Law. January 19th, 2012. <http://nccriminallaw.sog.unc.edu/?p=3223>

⁴⁹ N.C.G.S. § 162-62

consular document as a valid means of establishing the identity of a non-citizen will have an impact on the application process for social services currently available to unauthorized immigrants or their family members who might be citizens. There are federal, State, and local benefits which an unauthorized immigrant is eligible to receive despite unlawful status. For example, emergency medical services and public health assistance will be made available to an undocumented immigrant who seeks the service.⁵⁰ Likewise, undocumented immigrant children may participate in NC Pre-K programs and Head Start educational programs irrespective of citizenship status. The eligibility of an undocumented immigrant to receive these services will not be impacted, even if a consular document is prohibited as a valid form of identification. This could mean that someone who is eligible but only has a consular document as identification might be denied access to a service because they cannot present another form of identification.

Other services are not available to undocumented immigrants, but may be available to the citizen-child of an undocumented immigrant. For example, if the child is a citizen of the United States, then the child of an undocumented immigrant is eligible for Child Care Subsidies⁵¹ and Temporary Assistance to Needy Families (TANF)⁵² benefits. Other programs, such as the federal Child Care & Development Fund (CCDF) only consider the child's citizenship status for eligibility.⁵³ Nevertheless, these programs still require the undocumented immigrant parent must apply for the benefit on behalf of the child. Since these types of programs currently require proof of residency and identification, then an undocumented immigrant applying on behalf of a citizen-child must provide this proof before the child may obtain the service. Consular documents are currently accepted as proof of residency. If a consular document cannot be accepted, then the provider of the service would have to adjust policy to clarify other forms of residency or identification may be allowed to receive the benefit. If the applicant has no other form of identification or proof, then the applicant may be denied. This could reduce the number of eligible citizen-children who receive these benefits.

The federal government has declared that a consular document is a reasonable form of identification for some federal benefits, such as SNAP benefits.⁵⁴ If State officials are prohibited from considering consular documents as proof of identification, then the applicant may be denied these benefits. This may reduce the number of unauthorized immigrants approved for social services that they may be eligible to receive. If the State denies an applicant for a federal benefit that recognizes consular documents solely because the State prohibits the use of a consular document, then the State will be in conflict with federal law. The State might instead allow the use of a consular document in circumstances where federal law requires it.

⁵⁰ 8 U.S.C. 1611(b)(1)

⁵¹ 12B.3.(i) of S.L. 2013-360

⁵² TANF State Plan Act: <http://www.ncdhhs.gov/dss/workfirst/docs/NC%20TANF%20State%20%20Plan%202010-2013%20web%20posting.pdf>:

⁵³ See <http://www.acf.hhs.gov/programs/occ/resource/pi-cc-98-08>.

⁵⁴ C.F.R. 273.2(f)(1)

Other Considerations

Many banks currently accept consular documents for the purpose of establishing a person's identity. For example, Wells Fargo Bank will accept matricula consular cards as a valid form of identification for new account openings and over-the-counter transactions. It will not accept consular documents to cash a check if the person does not already have an account open with Wells Fargo.⁵⁵ A private bank will not be affected by a measure that prohibits state officials from accepting consular documents as valid forms of identification.

Section 1.(a)(7): Limited Driving Privilege for Undocumented Immigrants

Section 1.(a)(7) of S.L. 2013-418 requires the study of the potential impact of “[i]mplementing a process for undocumented aliens to obtain a temporary driving privilege.” In addition, the study should specifically:

- a. “Examine the impact that such a process would have on highway safety, insurance rates, and claims for accidents that occur at the hands of the uninsured[;]
- b. Estimate the number of individuals who would seek to obtain a restricted drivers permit through such a process[;]
- c. Determine whether there are adequate insurance products available to insure individuals who obtain the temporary driving privilege[; and]
- d. Examine any other matters that the Division of Motor Vehicles deems relevant.”

Highway Safety

When a driver obtains a license it allows the State to determine that the driver has a minimal level of skill and understanding of North Carolina traffic laws. The threat of losing the driving privilege motivates a licensed driver to comply with traffic laws. This generally increases safety through greater compliance. According to DMV, the number of unlicensed drivers involved in crashes in 2013 was approximately 97,801. Increasing the amount of licensed drivers among those operating vehicles in the State should lead to safer driving in North Carolina. However, there is no established statistical basis of comparison or methodology to verify this conclusion.

Insurance Rates and Claims for Accidents Caused by Uninsured Drivers

Without knowing the number of unlawful immigrants seeking to obtain a temporary driving privilege, DoI cannot predict the potential effects of this proposal. In any event, DoI believes that any rate impact would not present itself for at least five years after the enactment of a proposed law.

In North Carolina, any applicant seeking a driver's license must provide proof of liability insurance to the DMV before the applicant can receive a driver's license.⁵⁶ This requirement can

⁵⁵ See <https://www.wellsfargo.com/press/matricula20011109b>.

⁵⁶ <http://www.ncdot.gov/dmv/driver/license/>

be satisfied if an applicant provides insurance documents that show the applicant's name, effective date of the policy, the expiration date of the policy, and the date that the policy was issued. There are several forms of acceptable insurance documents, including: Form DL-123; vehicle insurance policy; an insurance binder; or an insurance card.⁵⁷ A Form DL-123 can be obtained from the applicant's insurance company. If the applicant cannot supply proof of insurance, then the applicant may still obtain a restricted license, but only if the applicant is a driver of a fleet vehicle. Otherwise, the applicant will be denied.

If a measure is adopted that allows an undocumented immigrant to apply for a temporary driving privilege, then the State could require the recipient to purchase and provide proof of liability insurance. This would be similar to the requirements for all other applicants seeking a North Carolina driver's license. According to the DMV, immigrant applicants who are currently eligible to apply for a driving privilege, such as people who have been granted DACA status, must already provide the same proof of insurance as required of a North Carolina resident who is a United States citizen.

However, it may be difficult for an undocumented immigrant to obtain liability insurance in North Carolina. Insurance companies require proof of identity before insuring a customer. Form DL-123 may provide a solution to this issue, since it is often issued by an insurance company after reviewing an applicant's request for insurance but before the applicant receives a license. Since this form is acceptable as proof of liability insurance for a driver's license, DMV could issue a temporary drivers privilege based on the same form.

An undocumented immigrant who does not own a vehicle or drive a fleet vehicle may also encounter additional difficulty obtaining liability insurance. In North Carolina, liability insurance is almost always tied to a vehicle and not a driver. However, some major insurance carriers offer a non-owner policy for a customer who is seeking to obtain a driver's license even though the customer does not own a vehicle. Not all insurance providers in North Carolina carry these policies. If a measure is adopted that allows an undocumented immigrant to apply for a driving privilege, it is uncertain if insurance companies in North Carolina would expand policies to accommodate an undocumented immigrant who do not own a vehicle.

Adequate Insurance Products

Liability insurance required to obtain a driver's license must be purchased from a company licensed to do business in the State.⁵⁸ There are more than 160 companies selling car insurance in North Carolina. Additionally, North Carolina is a "take all comers" state. That means that an insurance company must accept an applicant for liability insurance, such as car insurance. Liability insurance may not encompass other insurance products, such as collision insurance. However, as explained above, many insurance companies in North Carolina do not currently carry policies that accommodate customers who do not own a vehicle registered in North Carolina. Therefore, while any potential increase in the number of insurance requests could be handled by insurance companies licensed in North Carolina, there still may be some applicants who are unable to obtain insurance. In addition, since an undocumented immigrant would not

⁵⁷ <http://www.ncdot.gov/dmv/driver/license/>

⁵⁸ <http://www.ncdot.gov/dmv/driver/license/>

have an existing driving record, insurance products offered to an undocumented immigrant would likely be policies for an inexperienced driver, which tend to have higher premiums.

Estimated Demand for Temporary Driving Privilege

It is difficult to estimate the number of unlawful immigrants who would be potentially eligible and actually seek a restricted driver's permit. A few states have adopted legislation allowing some form of temporary driving privilege for undocumented immigrants but none have the exact same process and requirements that were proposed in S.L. 2013-418.⁵⁹ Recently in Nevada, thousands of unauthorized immigrants applied for the state's new temporary driving privilege.⁶⁰ Nevada DMV locations could not accommodate the throng of applicants who showed up to apply on the day it came into effect. Many applicants were turned away and told to return later. Of those applicants who applied, about 75% failed the required tests and were not issued a driving privilege.⁶¹ Thus, while demand may be high, many potential applicants may not be able to pass the test, and therefore may not be able to obtain a temporary driving privilege.

DMV would bear the burden of accommodating any increase in demand for driving privileges. For example, non-English speaking applicants would need to communicate with DMV employees. While DMV has some bilingual employees, applicants needing interpreters are currently directed to contact DHHS to request assistance. Another possible solution to this issue would be for DMV to hire contract interpreters to serve at each DMV location, as is commonly done in courthouses at a cost to the State. This solution could require DMV to pay for these translators at a direct cost to the State (See Appendix III). DMV may also need to provide materials in additional languages. For example, the Driver's Handbooks distributed by DMV is currently available in English and Spanish.⁶² While Spanish is the most common non-English language used in North Carolina, the State also has fairly large immigrant populations speaking, among others, Vietnamese, Chinese, and Korean. According to DMV, the written portion of the driving test is currently administered in 8 different languages. If North Carolina offered a temporary driving privilege to unauthorized immigrants, DMV would likely need more money and staff to handle the increase in demand along with the current demand.

Other Considerations

DMV has no additional capacity to increase the current level of background verification or biometric identification features on an unauthorized immigrant's driving credential beyond what is typically required for a citizen or authorized immigrant. If DMV was required to do more than what it currently does (for example, using a scanned copy of the applicant's thumbprint), it would require substantial additional staff and equipment. DMV would also need to create a new card for a temporary driving privilege. This would require more funding for DMV, but this amount cannot be estimated until there are specific provisions. It is possible that DMV could

⁵⁹ http://www.aamva.org/uploadedFiles/MainSite/Content/EventsEducation/Event_Materials/2013/2013_Annual_International_Conference/8-27-13%20Driver%20Licensing%20for%20Undocumented%20Immigrants%20White%20Paper.pdf

⁶⁰ <http://legiscan.com/NV/text/SB303/2013>

⁶¹ <http://www.examiner.com/article/75-percent-of-illegal-aliens-failing-test-for-nevada-driver-s-licenses>

⁶² http://www.ncdot.gov/download/dmv/handbooks_NCDL_Spanish.pdf

pass along any increase to the unauthorized immigrant applicant to minimize or fully replace this cost.

The REAL ID Act of 2005 (“REAL ID Act”)⁶³ is a federal regulation enacted as a result of the recommendation of the 9/11 Commission to set standards for the issuance of identification cards and driver’s license.⁶⁴ The REAL ID Act will prohibit federal agencies and airlines from accepting identification cards issued from states not meeting minimum requirements as of 2016.⁶⁵ Under the REAL ID Act, states must require a minimum amount of verification information before issuing a driver’s license. Each applicant for a state-provided driver’s license or identification card must show evidence of lawful status in the United States. If a state issues a driver’s license to an applicant who has unlawful status, then that violates the REAL ID Act. If North Carolina issues driver’s licenses that are not in compliance with the REAL ID Act, then the North Carolina driver’s licenses will not be accepted by the federal government for any purpose, such as access to airline flights. Nevertheless, a state has discretion to issue a temporary driving privilege, rather than a driver’s license, to an applicant with unlawful status. To be in compliance with REAL ID Act, the temporary driving privilege must not extend beyond the ability to drive in that state and will not be accepted by airlines for travel or federal agencies for services. Many states have already adopted measures which provide a temporary driving privilege to an undocumented immigrant. Requirements and restrictions differ depending on the state. (See Appendix IV).

Section 1.(a)(8): Measures Adopted by Other States

Section 1.(a)(8) of S.L. 2013-418 requires the study of the impact of “[a]dopting measures that have been adopted in other [s]tates to combat the problem of illegal immigration.”

Many states have adopted legislation to address illegal immigration since 2010 when Arizona first passed its immigration reform package. States, such as Alabama, Georgia, South Carolina, have adopted immigration status enforcement-focused legislation similar to Arizona. Other states, such as Nevada, Utah and Washington have adopted legislation that provides a temporary driving privilege to undocumented immigrants (See Appendix IV). Some states have attempted to address illegal immigration through the enforcement of federal laws using E-Verify for public and private employers. The recent experiences of Arizona, Alabama, Georgia, South Carolina, Utah and Washington are described below.

Enforcement Measures of Other States

Arizona: Arizona enacted SB 1070⁶⁶ and HB 2162 in 2010 to address immigration. These bills focused on immigration status enforcement measures and added several new state requirements, crimes and penalties that were specific to undocumented immigrants. Most notably, the enforcement measures under SB 1070 required state and local law enforcement to determine the immigration status of each person involved in a lawful stop, detention, or arrest. This legislation

⁶³ REAL ID Act <http://www.dhs.gov/xlibrary/assets/real-id-act-text.pdf>

⁶⁴ <http://www.dhs.gov/sites/default/files/publications/real-id-enforcement-in-brief-20140205.pdf>

⁶⁵ REAL ID Act <http://www.dhs.gov/xlibrary/assets/real-id-act-text.pdf>

⁶⁶ http://www.azleg.gov/FormatDocument.asp?inDoc=/legtext/51leg/2r/bills/sb1070p.htm&Session_ID=112

also created penalties for the following: failure to complete or carry an alien registration document; transporting or harboring unlawful immigrants; and employing unlawful immigrants, among others.⁶⁷

There were concerns about the constitutionality of SB 1070.⁶⁸ Arizona HB 2162 amended SB 1070 to address concerns about racial profiling. Arizona HB 2162 clarified that law enforcement officers could not consider race, color or national origin when enforcing the provisions of SB 1070.⁶⁹ HB 2162 also clarified the standard of “reasonable suspicion” for the purpose of a law enforcement officer checking the immigration status of an undocumented immigrant involved in a lawful stop, detention or arrest. After adopting these measures, Arizona faced litigation. In 2012 the Supreme Court ruled on Arizona SB 1070 overturning most of the provisions.⁷⁰

Alabama: In 2011, Alabama enacted HB 56.⁷¹ The bill mandated that every employer use the E-Verify system and gave local law enforcement the ability to check immigration status of a person suspected of being in the country illegally if the person was stopped for another legitimate reason.⁷² It also required public schools to determine the immigration status of students and required school districts to submit reports to the school board.⁷³

In 2013, Alabama entered into a settlement with the Department of Justice regarding the lawsuit about HB 56.⁷⁴ As a result of this settlement, many of the provisions of this law were blocked. Seven provisions in HB 56 were permanently enjoined.⁷⁵ These provisions affected an unauthorized immigrant’s ability to seek employment and enter into contracts.⁷⁶ The settlement also severely limited the law’s “stop and verify” provisions that allowed local law enforcement officers to check the immigration status of criminal suspects. The Alabama provisions are not similar to the proposed provisions in North Carolina.

Georgia: In 2011, Georgia enacted HB 87 also titled the “Illegal Immigration Reform and Enforcement Act.”⁷⁷ The bill contained similar provisions to those in the Alabama and Arizona immigration laws. After Georgia was forced to defend the constitutionality of the law in federal court, a federal judge enjoined two of the twenty-three provisions in the bill.⁷⁸

⁶⁷ <http://www.ncsl.org/research/immigration/analysis-of-arizonas-immigration-law.aspx>

⁶⁸ <http://www.ncsl.org/research/immigration/analysis-of-arizonas-immigration-law.aspx>

⁶⁹ <http://www.ncsl.org/research/immigration/analysis-of-arizonas-immigration-law.aspx>

⁷⁰ *Arizona V. United States*, 132 S.Ct. 2492 (2012)

⁷¹ [HB 56 of 2011 Alabama Regular Session](#)

⁷² [HB 56 of 2011 Alabama Regular Session](#)

⁷³ [HB 56 of 2011 Alabama Regular Session](#)

⁷⁴ [http://www.justice.gov/usao/aln/News/November%202013/Nov%2025,%202013%20Alabama%20Immigration.h](http://www.justice.gov/usao/aln/News/November%202013/Nov%2025,%202013%20Alabama%20Immigration.htm)
[tm](#)

⁷⁵ [http://www.justice.gov/usao/aln/News/November%202013/Nov%2025,%202013%20Alabama%20Immigration.h](http://www.justice.gov/usao/aln/News/November%202013/Nov%2025,%202013%20Alabama%20Immigration.htm)
[tm](#)

⁷⁶ [http://www.justice.gov/usao/aln/News/November%202013/Nov%2025,%202013%20Alabama%20Immigration.h](http://www.justice.gov/usao/aln/News/November%202013/Nov%2025,%202013%20Alabama%20Immigration.htm)
[tm](#)

⁷⁷ [Illegal Immigration Reform and Enforcement Act of 2011](#)

⁷⁸ *Order, Georgia Latino Alliance v. Deal* (N.D.G.A. 2011) (No. 11 Civ. 1804).

Georgia HB 87 affected the Georgia agriculture industry which experienced labor shortages.⁷⁹ In 2011, Georgia Agriculture Commissioner Gary Black testified to the United States Congress on the challenges faced by the agriculture community in Georgia after the Illegal Immigration Reform and Enforcement Act of 2011 was signed into law. During his testimony, Commissioner Black spoke on the labor shortages experienced in the agricultural sector.⁸⁰ In June 2011, he testified that over 11,000 jobs were left unfilled in Georgia's agriculture sector. To help alleviate the shortage, the Georgia Agriculture Department worked with the Georgia Department of Labor to place unemployed Georgians in the positions. Commissioner Black also worked with the Georgia Department of Corrections to develop a pilot program utilizing probationers to fill the needs of the agriculture sector.⁸¹ One hundred-four probationers worked on one farm until the farmer eventually found 15 to 20 reliable workers. Commissioner Black testified that "in Georgia, even with current high unemployment rates, it is difficult for farmers to fill their labor needs."⁸² However, Commissioner Black also noted the growing season of 2011 was affected by unusually high heat and lack of rain, causing an unexpected rush in harvest. Georgia attempted to refine the bill in 2013 with SB 160.⁸³

South Carolina: In 2011, South Carolina followed Arizona's lead and passed SB 20.⁸⁴ It mandated that every public and private employer in the state participate in the E-Verify system.⁸⁵ South Carolina gave citations to approximately 323 businesses for failure to comply with E-Verify during the first year of the requirement.⁸⁶ Similar to other states implementing new immigration laws, South Carolina SB 20 faced federal lawsuits.⁸⁷ One main issue litigated with South Carolina concerned federal preemption.⁸⁸

In South Carolina, employers must use E-Verify.⁸⁹ The South Carolina Department of Labor, Licensing and Regulation (SC DLLR) is charged with auditing employers to ensure compliance with E-Verify.⁹⁰ Employers may have some employees who SC DLLR will not audit.⁹¹ Some of the exemptions are employees performing agricultural services and domestic services in private residences.⁹² Services performed by a duly ordained, commissioned or licensed minister are also exempt.⁹³

⁷⁹ <http://www.judiciary.senate.gov/hearings/hearing.cfm?id=0bd5589287f5bbb3d229c1850f7b44e2>

⁸⁰ Commissioner Black's testimony before Chairman Schumer's Judiciary Committee on "America's Agricultural Labor Crisis: Enacting a Practical Solution."

⁸¹ Commissioner Black's testimony before Chairman Schumer's Judiciary Committee on "America's Agricultural Labor Crisis: Enacting a Practical Solution."

⁸² Commissioner Black's testimony before Chairman Schumer's Judiciary Committee on "America's Agricultural Labor Crisis: Enacting a Practical Solution."

⁸³ [SB 160 of 2013 Georgia Regular Session](#)

⁸⁴ [SB 20 of 2011 South Carolina Session](#)

⁸⁵ [SB 20 of 2011 South Carolina Session](#)

⁸⁶ <http://www.thestate.com/2013/03/24/2692722/sc-cites-more-than-300-businesses.html>

⁸⁷ <http://www.cnn.com/2011/10/31/politics/south-carolina-immigration-suit/>

⁸⁸ [United States v. South Carolina, 720 F.3d 518 \(4th Cir. 2013\)](#)

⁸⁹ S.C. Code Ann. Regs. 41-8-20

⁹⁰ S.C. Code Ann. Regs. 41-8

⁹¹ According to the SC DLLR

⁹² S.C. Code Ann. Regs. 41-8, 12-8-10, 12-8-520

⁹³ S.C. Code Ann. Regs. 41-8, 12-8-10, 12-8-520

Temporary Driving Privileges of Other States

In a different trend that has emerged, several states have enacted laws extending privileges to unauthorized immigrants, most commonly in the form of a driving privilege. Prior to 2013, only New Mexico, Utah, and Washington granted some type of driving privilege.⁹⁴ The experience of some of these states may be useful in anticipating the impact of any measures described in S.L. 2013-418 that might be enacted. (See Appendix IV chart summarizing state laws providing access to driver's licenses or cards regardless of immigration status).

Utah: Utah allows an unauthorized immigrant to obtain a driving privilege through a Driving Privilege Card.⁹⁵ A person who is unable to establish that he or she is legally present in the United States or is ineligible for a United States Social Security Number could get a Driving Privilege Card in Utah. The only requirement to get a Driving Privilege Card is the person must be a resident of Utah. A Driving Privilege Card cannot be used as a means of identification by any Utah government entity.⁹⁶

Washington: In Washington, the Department of Motor Vehicles produces two types of driver's licenses: a driver's license that is for valid identification purposes and a driver's license that is *not* for valid identification purposes.⁹⁷ An applicant for an "identification" driver's license may use various identification forms as proof of identity.⁹⁸ This includes a Washington state identicard, United States passport, or "other available documentation in order to ascertain identity."⁹⁹ If an applicant cannot produce any of the statutorily specified identification forms, then the Department of Motor Vehicles can still provide the person with a license but it is "not valid for identification purposes."¹⁰⁰

E-Verify Legislation and Enforcement Comparison

E-Verify is a federal initiative operated by the United States Department of Homeland Security and other federal agencies created to allow employers to verify the work authorization status of employees. Many states have since adopted E-Verify laws that create internal mechanisms and requirements for an employer to verify the work authorization status of employees. In 2011, North Carolina adopted the Verification of Work Authorization law, which phased in requirements so that, as of July 2013, an employer who employs 25 or more employees in North Carolina was required to verify the work authorization status of all newly hired employees through the federal E-Verify system.¹⁰¹ This law was amended in September 2013 to exempt employees who are employed for nine months or less from the requirement of E-Verify.

⁹⁴ <http://www.ncsl.org/research/immigration/2013-immigration-report.aspx>. Georgia and Maine also clarify qualifications for driving privileges for certain sets of immigrants, primarily those who previously held a license and have legal authorization.

⁹⁵ http://le.utah.gov/code/TITLE53/htm/53_03_020700.htm

⁹⁶ <http://publicsafety.utah.gov/dld/dpc.html>

⁹⁷ Wash. Rev. Code § 46.20.035

⁹⁸ Wash. Rev. Code § 46.20.035

⁹⁹ Wash. Rev. Code § 46.20.035

¹⁰⁰ Wash. Rev. Code § 46.20.035

¹⁰¹ Article 2 of Chapter 64 of the North Carolina General Statutes (Verification of Work Authorization)

The law directs the Department of Labor (DoL) to accept and investigate valid complaints from any person with a good faith belief that an eligible employer has failed to properly verify the work authorization of new employees. DoL investigates any valid complaint it receives and decides whether the employer used the proper verification process.¹⁰² If DoL substantiates the complaint, then a first-time violator must file an affidavit that it has requested verification of its non-verified employees through the E-Verify system.¹⁰³ A subsequent violation could result in a civil penalty in the form of a monetary fine of up to 2,000 dollars for each employee the employer failed to verify.¹⁰⁴

Provisions in the 2011 and 2013 North Carolina laws pose enforcement challenges for the Department of Labor. Approaches from other states may help to strengthen North Carolina's E-Verify enforcement.

Penalties: North Carolina uses monetary civil penalties to enforce its E-Verify law, and DoL does not have authority to require an employer to terminate an employee who lacks work authorization status. Many other states take a different approach. For example, in South Carolina, an employer who fails to use E-Verify is placed on probation and required to submit quarterly reports showing compliance for a period of one year.¹⁰⁵ In South Carolina, Mississippi, and Alabama, an employer's business license can be suspended (and even revoked) if the employer knowingly employs an unauthorized immigrant. These types of penalties tend to have a greater impact on an employer and could better deter an employer from knowingly violating a state's verification laws.

Investigation: A lack of clarity in North Carolina's 2011 legislation, compounded by changes enacted in 2013, places North Carolina's DoL at a disadvantage in ensuring that North Carolina employers comply with E-Verify requirements.

Under current law, there is no specific timeframe for compliance. This means that an employer can use E-Verify after DoL begins an investigation, and be in compliance with the law. As an example, a requirement that employers use E-Verify within 3 business days after each new employee is hired would be consistent with federal procedures and provide clear guidance to DoL.

The exclusion of employees employed for less than 9 months in a calendar year exacerbates the timeframe issue. This means an employer is not required to verify whether a newly hired employee has appropriate work authorization status if the employee will work less than 9 months in the calendar year. However, if an employee continues to work beyond the 9 month period the employer may or may not verify the employee's work authorization status. If DoL begins an investigation under these circumstances, the employer can E-Verify the employee and claim the employee's term of employment was intended to be less than 9 months. If the employee is then entered in the E-Verify system, then DoL has no ability to dispute the claim and there are no repercussions for the employer.

¹⁰² N.C.G.S. § 64-29

¹⁰³ N.C.G.S. § 64-31

¹⁰⁴ N.C.G.S. § 64-32 and 33

If an employer was required to notify an employee in writing at the time of hire that the term of employment is for a period of 9 months or less, then this written notification would prevent an employer from later claiming that the employer intended to employ the employee for less than 9 months if that employee has worked longer than 9 months. If E-Verify must be used on all new hires, then it would also be helpful to provide a specific time frame for compliance.

Section 1.(c): Potential Impacts of S.L. 2013-418 Section 1.(a) Provisions

Section 1.(c) directs the study to examine the potential impact of the measures described in subsection (a):

- (1) On the State economy.
- (2) On the community of lawful immigrants in this State.
- (3) On the provision of social services.
- (4) On tax collection.
- (5) On law enforcement.
- (6) In light of the impact of similar measures enacted in other states on these areas.
- (7) In light of their relation to the uncertainty that all businesses, including the high-tech, agriculture, hospitality, and other service sectors endure under our current federal system. The Department of Commerce shall be the lead coordinating agency for purposes of this subdivision.

The following sections discuss potential impacts of the measures proposed in S.L. 2013-418 based on a review of existing research and feedback from stakeholders in North Carolina. Impact on the provision of social services and on law enforcement are incorporated in the relevant sections in section 1.(a).

National Studies on Undocumented Immigrants

Overall, studies identified costs to state governments due to health care – including Medicaid – education, and criminal justice systems. Benefits were identified in the form of tax collections and job generation.

Estimates of the net impact of undocumented immigrants on North Carolina's state government expenditures and on North Carolina's economy vary. Some studies address the overall impact of an immigrant workforce, regardless of legal status. Other studies attempt to separate out the impact of unauthorized immigrants.

In 2012, researchers from Arizona State University and the University of Utah examined the economic costs and benefits of undocumented immigrants in the United States.¹⁰⁶ These researchers found that at the federal level undocumented immigrants tend to contribute more money in taxes than they consume in services. Undocumented immigrants do not qualify for the vast majority of federal programs, but they still contribute billions of dollars to Social Security and Medicare through income taxes using ITINs and false SSNs. At the state level, the net

¹⁰⁶ "Fear vs. Facts: Examining the Economic Impact of Undocumented Immigrants in the U.S.," Becerra, Androff, Ayón, and Castillo, Dec. 2012, *Journal of Sociology & Social Welfare*.

economic benefit or cost of undocumented immigrants varies across states. The authors of the study found that “undocumented immigrants do contribute to the economies of federal, state, and local governments through taxes and can stimulate job growth, but the cost of providing law enforcement, health care, and education impacts federal, state, and local governments differently.”

A 2007 CBO study also shed some light on the impact of unauthorized immigrants on state and local government budgets by looking at a variety of other studies.¹⁰⁷ While methodologies, assumptions, and data varied significantly from study to study, the CBO study concluded that tax revenues generated by unauthorized immigrants do not completely offset the total cost of services provided to these immigrants. Furthermore, the CBO found that state and local governments have limited options for avoiding or minimizing the costs associated with unauthorized immigrants.

George Borjas conducted another key study regarding the impact of immigration on the economy.¹⁰⁸ Borjas found that a typical immigrant household received more of certain types of benefits, such as welfare, from the federal government. Borjas compared this cost to the potential benefit of immigrant households based on the income they generate. He found that the costs of unauthorized immigrants to the welfare system outweigh their potential contributions to the federal government. The study did not include other government programs, such as Social Security. This study does not address the costs and benefits of immigrants at the state level nor does it directly address the costs and benefits of unauthorized immigrants.

In a more narrowly tailored study that gives some indication of the type of services accessed by undocumented immigrants, a 2007 article in the *Journal of the American Medical Association*,¹⁰⁹ which looked at births paid for by Medicaid in North Carolina from 2001 to 2004, found: “A total of 48,391 individuals received services reimbursed under Emergency Medicaid during the 4-year period of this study. The patient population was 99% undocumented, 93% Hispanic, 95% female, and 89% in the 18- to 40-year age group.”

Impact of Federal Immigration Reform

Given the current uncertainty of immigration reform at the federal level, two studies have researched the potential impact of potential federal reform on the states. It is unknown how any potential federal reform might impact North Carolina because the specifics of any such reform are highly uncertain. In general, these studies suggest that federal immigration reform would lead to positive economic and employment impacts with minimal or small negative impacts on the wages of certain segments of the existing labor force.¹¹⁰

¹⁰⁷ “The Impact of Unauthorized Immigrant on the Budgets of State and Local Governments,” Congressional Budget Office, Dec. 2007, <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/87xx/doc8711/12-6-immigration.pdf>

¹⁰⁸ “The Economics of Immigration,” Borjas, George, *Journal of Economic Literature*, Dec. 1994

¹⁰⁹ DuBard, C. Annette and Mark W. Massing, “Trends in Emergency Medicaid Expenditures for Recent and Undocumented Immigrants,” *Journal of the American Medical Association*, March 14, 2007.

¹¹⁰ For specific studies, see Urban Institute (*Understanding the Economic and Fiscal Impacts of Immigration Reform*), and REMI (*Key Components of Immigration Reform – US study, NC-specific analysis*).

Section 1.(c)(1): State Economy

The overall potential economic impact of the provisions in section 1.(a) of S.L. 2013-418 is uncertain. The net impact of these provisions on the size and makeup of the unauthorized immigrant population in North Carolina cannot be determined. Further, while it is clear from the above studies that unauthorized immigrants do consume government services, it was not possible to quantify the net impact of unauthorized immigrants – as distinct from the overall immigrant population – on North Carolina’s economy.

The judicial and enforcement provisions could provide a net deterrent effect to unauthorized immigrants who might otherwise consider moving to North Carolina, particularly those that are engaged in criminal activity. Some unauthorized immigrants who reside in the State may move elsewhere. The interests of lawful immigrants and unauthorized immigrant populations are often closely intertwined. Many immigrants live in “mixed status” families with both authorized and unauthorized family members living in one household. However, it is uncertain how the population of unauthorized immigrants would react to these provisions. Their reaction depends on the specific details and enforcement of the provisions, the climate in other states, and the status of federal immigration reform.

Issuing a temporary driving privilege to unauthorized immigrants could potentially attract unauthorized immigrants to North Carolina. Some states have experienced a situation where unauthorized immigrants temporarily move to a state to obtain a driving privilege and then quickly move back out of the state once they receive the temporary driving privilege.

The net effect on the unauthorized immigrant population largely depends on how the various provisions would ultimately be implemented and how that process is perceived by both authorized and unauthorized immigrants. The workgroup cannot quantify any decrease or increase in the undocumented immigrant population as a result of the provisions in the study bill since there is no proven method for estimating such deterrent or magnetic effects. In the absence of this key information, this report cannot quantify the economic impact of these provisions on North Carolina’s economy.

Section 1.(c)(2): Community of Lawful Immigrants

The community of “lawful immigrants” may include individuals in several different legal categories, including: 1) noneitizens with temporary legal authorization to be in the country through tourist, business, student, and foreign guest worker visas, 2) noncitizens who are legally permitted to be in the country while they are in the process of working towards permanent legal residency, 3) noncitizens who have already achieved permanent legal residency, 4) naturalized citizens, 5) qualified refugees and asylum-seekers, or 6) noncitizens with deferred action through the Deferred Action for Childhood Arrivals (DACA) policy.¹¹¹

¹¹¹ A description of the DACA process can be found at <http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process>

Many immigrant families are of “mixed status.” That means that one or more family member is a lawful immigrant or a citizen, while other family members are unauthorized immigrants. For instance, a child born in the United States is a citizen by birth, irrespective of the immigration status of the child’s parents. If a parent of a child born in the United States is an unauthorized immigrant, then that is a mixed status family. The interests of the “lawful community” and the unauthorized population are often closely intertwined. These complex familial situations present challenges to neatly separating out the potential impacts of any proposed measures on the authorized immigrant versus unauthorized immigrant communities. Enforcement measures targeting only unauthorized immigrants often affect authorized immigrants. If the unauthorized immigrant parent of a child who is a citizen by birth faces deportation, that citizen-child will likely be impacted as well.

Immigrant groups have expressed a concern that increased immigrant status enforcement may negatively impact the willingness of members of the unauthorized immigrant community to report crimes to law enforcement officers because officers will be seen as potential agents of deportation. They state that a member of a mixed-status family may avoid law enforcement officers to avoid drawing attention to family members who are unauthorized immigrants, which could result in reduced reporting of crimes committed by and upon both unauthorized and legal immigrant communities.

Section 1.(c)(3): Social Services

The impact of measures outlined in Section 1.(a) of S.L. 2013-418 on social services is discussed in Section 1.(a)(6) (Prohibiting Use of Consular Documents as Identification: Other State Officials).

Section 1.(c)(4): Tax Collection

The impact on tax collection depends on the overall economic impact of each measure and is uncertain because the economic impact of the study provisions is unknown absent its passage. (See Section 1.(c)(1)). Much of the impact on tax collection depends on the reaction of the undocumented immigrant population to the implementation of the proposed measures in S.L. 2013-418, and on the net impact on tax collections due to any change in the size or makeup of North Carolina’s unauthorized immigrant population, neither of which can be quantified at this time.

Implementing a process for an undocumented immigrant to obtain a temporary driving privilege could increase tax revenue. North Carolina would be one of few states offering an undocumented immigrant eligibility for a driving privilege. This may incentivize undocumented immigrants in other states to move to North Carolina. This increase in population would lead to an increase in demand for local goods and services, which would likely generate more revenue for the State from an increase in State income and sales tax collections. As noted previously, the net effect of this potential influx might be neutral or even negative based on offsetting expenditures spent to support the same population. Any increase in tax revenue could also be offset in part by loss of tax revenue from other potential employees.

Section 1.(c)(5): Law Enforcement

The impact of measures outlined in Section 1.(a) of S.L. 2013-418 on law enforcement is discussed in Section 1.(a)(1) (Increasing Penalties for False Identification Documents); Section 1.(a)(2) (Creating a Rebuttable Presumption Against Pretrial Release); Section 1.(a)(3) (Requiring a Secured Appearance Bond for Serious Crimes); Section 1.(a)(5) (Standard of Reasonable Suspicion for Immigration Status Checks); and Section 1.(a)(6) (Prohibiting Use of Consular Documents as Identification).

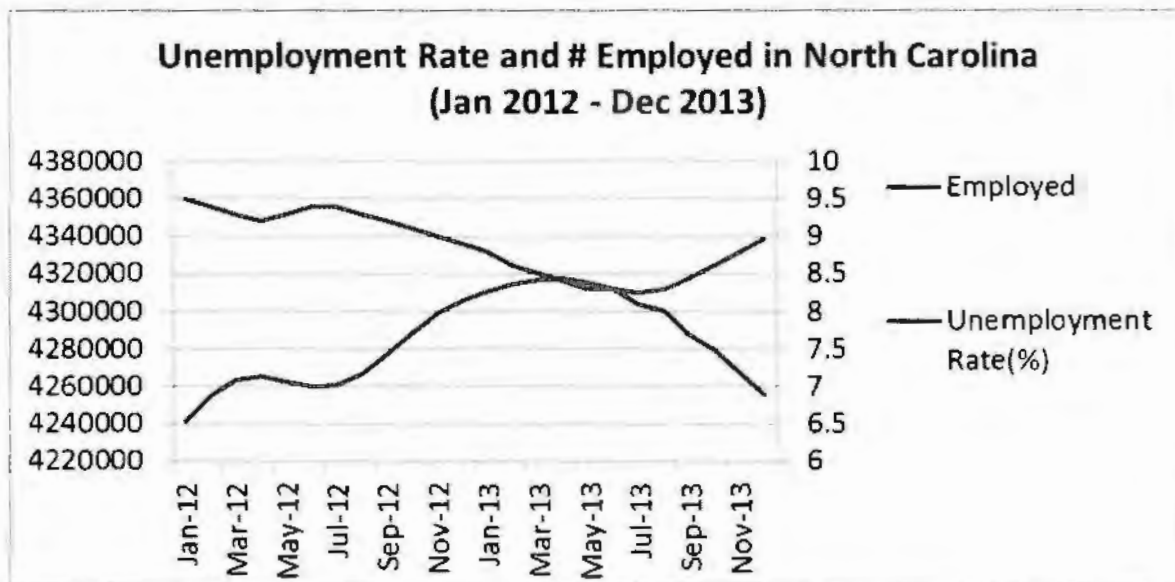
Section 1.(c)(6): Other States

The impact of measures outlined in Section 1.(a) of S.L. 2013-418, in light of the impact of similar measures enacted in other states on these areas, is discussed in Section 1.(a)(8) (Measures Adopted by Other States).

Section 1.(c)(7): Businesses

The effects of undocumented immigration on a state's economy depend on the specific set of industries that employ undocumented immigrants and the skills and availability of current authorized workers. Data is not available that separates the wage and employment effects of undocumented immigrants versus legal immigrants, so it is difficult to draw any conclusions about how unauthorized immigrants might impact this based on the overall immigrant population.

North Carolina's seasonally adjusted unemployment rate in December 2013 was 6.9 percent, down from 8.9 percent in December 2012. In July 2013, changes to unemployment insurance were implemented that brought North Carolina more in line with benefits in neighboring states. In the wake of these changes, the unemployment rate went down significantly from June to December 2013 – at a much faster clip than the previous six months and faster than the same time period in 2012. The number of unemployed also went down significantly from June to December 2013 – at a much faster clip than the previous six months and faster than the same time period in 2012. The number of employed also went up from June to December 2013.



Source: Local Area Unemployment Statistics (LAUS)

Data from the Department of Commerce indicates that the following industry groups in North Carolina had the highest percentage of the total unemployed workforce (November 2013) and of total unemployment claims (FY 2012-13):

NAICS	Industry	Unemployed (11/2013)*		Unemployment Claims (July 2012 - June 2013)^	
		Number	% of Total	Number	% of Total
31	Manufacturing	40,372	13%	63,378	19%
56	Administrative and Support and Waste Management and Remediation Services	24,822	8%	58,893	17%
23	Construction	18,730	6%	42,059	12%
62	Health Care and Social Assistance	27,619	9%	27,100	8%
44	Retail Trade	41,956	13%	26,069	8%
72	Accommodation and Food Services	30,703	10%	22,582	7%

*Source: Economic Modeling Specialists International (EMSI)

^Source: NC Department of Commerce, Labor & Economic Analysis Division. Attached and unattached claims.

The potential impacts of the study provisions “in light of their relation to the uncertainty that all business, including the high-tech, agriculture, hospitality, and other service sectors endure under our current federal system” were examined by the Department of Commerce (DoC).¹¹²

¹¹² HB786, section 1.(c) subsection 7

Industry Groups and Stakeholders

DoC held meetings with industry groups to discuss the provisions of the study bill and the current federal immigration system (See Appendix II). The following is a summary of these meetings.

Several industries in North Carolina reported a dependence on immigrant labor for a variety of reasons. Farmers depend heavily on seasonal, manual labor by immigrants because certain crops cannot be easily cultivated by mechanized methods.¹¹³ Sometimes picking crops by hand is the most efficient and effective method. Food manufacturing groups also have a strong demand for labor. Some employ up to 5,000 employees at a given time. Typically there is a high turnover rate with workers in these jobs. Food manufacturing groups usually employ a different group of workers than those seasonal workers employed by farmers. These companies state that they rely on immigrant labor due to the lack of citizens who will take these jobs at the offered wages. Data shows that the construction industry depends more heavily on immigrant labor than many other industries.¹¹⁴ While these industries discussed a reliance on immigrant labor, the proposals in S.L. 2013-418 would primarily impact those businesses that employ unauthorized immigrants.

Representatives of some industries indicated support for a proposal to provide temporary driving permits to unauthorized immigrants, as they believe it is advantageous for their unauthorized workers to have the ability to legally drive to a work site. Support was not unanimous across industry stakeholders.

Industry representatives also expressed concern that increased enforcement of immigration status checks on unauthorized immigrants may deter these workers from coming to North Carolina. Industries that need seasonal labor stated that they could face significant economic impacts if there is a reduction in this workforce. Depending on market forces, these economic impacts could take the form of labor shortages, or employment of non-immigrant workers, possibly at higher expense.

The United States Department of Labor currently facilitates the H-2A program for agricultural employers who anticipate a shortage of domestic workers to allow nonimmigrant foreigners to fill the labor gaps.¹¹⁵ Farmers in North Carolina currently use the H-2A program. However, this guest worker program is complicated and requires extensive paperwork for the applicant.¹¹⁶ The program is also limited to temporary agricultural workers. This means a farm that does not operate on a seasonal schedule, such as a hog farm, is ineligible for assistance under the H-2A program. The program represents only a small amount of the immigrant workforce currently utilized in the State.

¹¹³ Report on Georgia's agricultural system.

http://agr.georgia.gov/Data/Sites/1/media/ag_administration/legislation/AgLaborReport.pdf

¹¹⁴ <http://www.pewhispanic.org/2009/04/14/iv-social-and-economic-characteristics/>

¹¹⁵ United States Department of Labor: <http://www.dol.gov/compliance/guide/taw.htm>

¹¹⁶ North Carolina Agriculture Workforce Report, February 2013
http://www.ncfb.org/portals/0/pdf/spotlight_2013NCAWPreport.pdf

Other businesses do not depend on unauthorized immigrants as much for a work force, but rather as customers. Grocery retailers, local shops, and restaurants will be impacted if any segment of North Carolina's population decreases. Retailers typically do not distinguish between types of customers, whether an unauthorized immigrant or a citizen. If more unauthorized immigrants mean an overall increase in customers, then retailers will likely sell more products and make more profit. In fact, some retailers have begun to cater specifically to immigrant population preferences by expanding their available products in response to particular demand represented by immigrant communities in a particular region. However, just as most increases in population lead to economic benefits for retailers, population increases also lead to an increased burden on infrastructure, schools, and other government services that must be paid for with tax dollars generated by residents and businesses.

APPENDICES

Appendix I: S.L. 2013-418 Workgroup Members

Appendix II: List of Industry Groups and Stakeholders Contributing Information and Input to the Study

Appendix III: Comparison of Census Data (2008-2010) v. NCAOC Interpreter Assignments (2009-11)

Appendix IV: State Laws Providing Access to Driver's Licenses or Cards Regardless of Immigration Status (Chart)

**Appendix I: S.L. 2013-418 Workgroup Members
(Listed in Alphabetical Order)**

**S.L. 2013-418 Workgroup Members
(Listed in Alphabetical Order)**

North Carolina Administrative Office of the Courts

North Carolina Association of Police Chiefs

North Carolina Department of Commerce

North Carolina Department of Health and Human Services

North Carolina Department of Insurance

North Carolina Department of Justice, Criminal Standards Division

North Carolina Department of Labor

North Carolina Department of Public Safety

North Carolina Department of Revenue

North Carolina Department of Transportation

North Carolina Sentencing & Policy Advisory Commission

NC Sheriff's Association

UNC School of Government

**Appendix II: List of Industry Groups and Stakeholders Contributing Information and
Input to the Study
(Inclusion does not imply concurrence with impact analysis)**

List of Industry Groups and Stakeholders Contributing Information and Input to the Study

American Civil Liberties Union of North Carolina

Carolinas Association of General Contractors

Consulate of Mexico in Raleigh

North Carolina Association of County Commissioners

North Carolina Bail Association

North Carolina Blueberry Council

North Carolina Chamber of Commerce

North Carolina Department of Agriculture

North Carolina Department of Labor

North Carolina Farm Bureau

North Carolina Fire

North Carolina Hispanic Chamber

North Carolina Homebuilders Association

North Carolina Hospitality Alliance

North Carolina Justice Center

North Carolina Listen

North Carolina Police Chiefs' Association

North Carolina Pork Council

North Carolina Poultry Federation

North Carolina Restaurants and Lodging Association

North Carolina Sweet Potato Commission

Retail Merchants Association

**Appendix III: Comparison of Census Data (2008-2010) v. NCAOC Interpreter
Assignments (2009-11)**

Comparison of Census Data (2008-2010) v. NCAOC Interpreter Assignments (2009-11)

	American Community Survey (B16001)¹¹⁷ Percentage of North Carolinians who speak English less than "very well" by language spoken at home	NCAOC Interpreter Assignments (2009-11) Percentage of requests for interpreter assistance by language other than Spanish
1	Spanish (3.78 %)	Spanish (N/A)
2	Vietnamese (0.14 %)	Vietnamese (20.2%)
3	Chinese (0.14 %)	Russian (11.9%)
4	Korean (0.09 %)	Mandarin (6.6%)
5	Arabic (0.06 %)	Arabic (6.0%)
6	French (0.06 %)	French (5.6%)
7	Gujurati (0.04)	Korean (5.6%)
8	Russian (0.04 %)	Burmese (5.6%)

*Information provided by the North Carolina Administrative Office of the Courts

¹¹⁷ U.S. Census Bureau, 2008-2010 American Community Survey. *Selected Social Characteristics in the United States*, 2008-2010 American Community Survey (DP02). http://factfinder2.census.gov/rest/dnldController/deliver?_ts=354811325872.

**Appendix IV: State Laws Providing Access to Driver's Licenses or
Cards Regardless of Immigration Status**

State Laws Providing Access to Driver's Licenses or Cards Regardless of Immigration Status

NOVEMBER 2013

State	Bill No.	Date Signed	Effective Date	Description/Requirements
CA	<u>AB 60</u>	October 3, 2013	Jan 1, 2015, or earlier if the DMV is ready	Driver's license for individuals who cannot show proof of authorized presence. DMV, with input from stakeholders, to designate documents required to establish identity & state residence. Distinguishing feature, such as "DP" rather than "DL," on front of license, in same font size with no other distinguishing feature. "This card is not acceptable for official federal purposes. This license is issued only as a license to drive a motor vehicle..." DMV may make other changes to the extent necessary to comply with REAL ID. Antidiscrimination and privacy protections. Additional fee may be required until 2017.
CO	<u>SB 13-251</u>	June 5, 2013	August 1, 2014	Driver's license or state ID card for individuals who provide proof that a Colorado income tax return was filed in the prior year and current state residence, or an Individual Taxpayer Identification Number with proof of 24 months continuous state residence; and a passport, consular ID card, or military ID document. DLs issued under this provision shall be marked "Not valid for federal identification, voting, or public benefits purposes." Provides licenses to individuals who are temporarily lawfully present in the U.S.
CT	<u>HB 6495</u>	June 6, 2013	January 1, 2015	Driver's license for individuals who cannot show proof of lawful presence or SSN, if show proof of identity, residency, affidavit promising to legalize when eligible. Excludes those who have been convicted of a felony in Connecticut. License is "for driving purposes only" and cannot be used as proof of identity for voting. Shall include an indication that the license is not acceptable for federal identification purposes. Working group will examine methods of verifying foreign documents.
DC	<u>B20-275</u>	November 18, 2013	May 1, 2014	Driver's license, valid for 8 years, for individuals who have resided in DC for more than 6 months, have not been assigned or are ineligible for an SSN, provide proof of identity, date of birth and residency. "Not valid for official federal purposes" on face of card in smallest font size otherwise on the card. Additional changes only to make the card more similar to other licenses or to the minimum extent necessary to comply with DHS requirements. License cannot be used to consider an individual's citizenship or immigration status or as a basis for criminal investigation, arrest, or detention. Includes confidentiality provisions.

LOS ANGELES (Headquarters)
 3435 Wilshire Blvd., Suite 2850
 Los Angeles, CA 90010
 213 639-3900
 213 639-3911 fax



WASHINGTON, DC
 1444 Eye Street, NW, Suite 1110
 Washington, DC 20005
 202 216-0261
 202 216-0266 fax

State	Bill No.	Date Signed	Effective Date	Description/Requirements
IL	<u>SB 957</u>	January 27, 2013	November 28, 2013	Temporary visitor's license for drivers ineligible for Social Security number who do not have proof of authorized presence. Must present an unexpired passport or consular ID. License may not be used for identification and must contain a notice on its face stating this in capital letters.
MD	<u>SB 715</u>	May 2, 2013	January 1, 2014	ID or DL for otherwise eligible individuals who do not have evidence of a lawful status or a Social Security number. Must show that filed Maryland tax return or resided in Maryland and was claimed as dependent on tax return for past two years. Not acceptable for official federal purposes. Distinguishable in color or design from other licenses/IDs. Must state on its face and in machine-readable zone that it is not acceptable by federal agencies for official purposes. May not be used to purchase a firearm.
NM	<u>HB 173</u>	March 18, 2003	2003	Driver's license available for individuals who do not have a Social Security number, if they provide an ITIN or other document designated by the department, along with proof of identity and residency.
NV	<u>SB 303</u>	May 31, 2013	January 1, 2014	Driver authorization card available for one-year periods, for individuals who can present documents establishing proof of identity, age and residence. Distinguishable only in the minimal manner necessary to comply with REAL ID criteria. May not be used to determine eligibility for benefits.
OR	<u>SB 833</u>	May 1, 2013	January 1, 2014	Driver card valid for up to four year periods for individuals who cannot show lawful presence. Must present unexpired foreign passport, consular ID or other documents designated by the department. Proof of at least one year of state residency (own/lease property or filed taxes). Must contain "driver card" as well as a distinguishing feature to be determined by the department.
PR	<u>P 0900</u>	Aug. 7, 2013	Aug. 7, 2014	Three-year provisional driver's licenses for individuals who cannot show proof of authorized presence and who have lived in Puerto Rico for at least one year. Must present consular ID or passport. Licenses will have distinct design or color and will indicate that they are not acceptable by federal agencies for ID or other official purposes. Regulations will specify documents needed to establish identity, residence, ineligibility for a Social Security number, and will ensure that records are not used to discriminate against provisional license holders, and limiting disclosure, in the spirit of protecting confidentiality.
UT	<u>SB 227</u>	March 8, 2005	March 8, 2005	One-year driving privilege card for individuals who do not present a Social Security number. Must show documents verifying identity and Utah residence. Driving privilege card is distinguished from driver's licenses and includes the statement "FOR DRIVING PRIVILEGES ONLY—NOT VALID FOR IDENTIFICATION."

State	Bill No.	Date Signed	Effective Date	Description/Requirements
VT	S 38	June 5, 2013	January 1, 2014	Operator's privilege card or state ID card for individuals who cannot establish proof of legal presence, if establish name, date and place of birth. Foreign passports, consular IDs, and various documents proving Vermont residence accepted. Lawfully present individuals ineligible for a REAL ID-compliant license shall be eligible for an operator's privilege card. Cards will be marked "not valid for federal identification or official purposes." Expire on second birthday after issuance.
WA	SB 5428	March 31, 2004	June 10, 2004	Driver's licenses available for individuals who cannot show proof of legal presence, if they can present proof of identity as established by the department. Current list of acceptable documents posted on department's website .