

Anti-Immigrant Legislation 2008 Virginia General Assembly

Compiled by the American Civil Liberties Union of Virginia

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ACLU of Virginia
Legislative Report
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State and Local Immigration Enforcement

Passed

HB 820/SB 609 (Albo; Stolle) Alien Status Determination in Jail or Correctional Facility.

Requires a jail officer to inquire of a person in his custody as to whether the person is a citizen of the United States and to communicate the results of the inquiry to the Local Inmate Data System of the State Compensation Board. The State Compensation Board must submit the data on any such person to the Central Criminal Records Exchange. The State Police must forward this information to the Law Enforcement Support Center of the United States Immigration and Customs Enforcement along with a request that the Law Enforcement Support Center respond as to the person's immigration status. *Final versions of HB 820 and SB 609 passed unanimously by the House of Delegates and the Senate and were signed by the Governor.*

Failed

HB 368 (Carrico) Alien Status of Jail/Correctional Facility Inmates. Requires a jail officer to inquire of a person in his custody as to whether the person is a citizen of the United States and to communicate the results of the inquiry to the Local Inmate Data System of the State Compensation Board. *Incorporated into HB 820 (Albo) on Jan. 29.*

HB 441 (Rust) Correctional Facilities and Enforcement of Federal Immigration Laws.

Requires the officer in charge of a correctional facility to ensure that at least one officer on duty at the facility is authorized to enforce federal civil immigration laws. *Incorporated into HB 820 (Albo).*

HB 444 (Rust) Alien Status Inquiries of Arrestees. Requires a jail officer to inquire of a person in his custody as to whether the person is a citizen of the United States and to communicate the results of the inquiry, including a result specifying that this information is unknown, to the Local Inmate Data System of the State Compensation Board, the Central Criminal Records Exchange, and the Law Enforcement Support Center of the United States Immigration and Customs Enforcement. *Incorporated into HB 820 (Albo) on Jan. 29.*

HB 763 (Rust) Duties of Probation and Parole Officers to Notify ICE. Requires the Central Criminal Records Exchange, probation and parole officers, and correctional facilities to notify the U. S. Bureau of Immigration and Customs Enforcement if someone in custody appears to be an alien. The bill also allows agreements to be made with the Bureau for the transfer of any alien to immigration authorities. *Incorporated into HB 820 (Albo) on Jan. 29.*

HB 764 (Rust) Citizenship Inquiries in Correctional Facilities. Requires the officer in charge of a correctional facility to inquire through the Law Enforcement Support Center of the U.S. Bureau of Immigration and Customs if at any time during a person's commitment it appears that the person is an alien. If it is determined that an alien is found to be within the custody of the facility, the officer in charge shall immediately notify the U.S. Bureau of Immigration and Customs as well as the Central Criminal Records Exchange. Current law only requires that the Central Criminal Records Exchange be notified. *Incorporated into HB 820 (Albo).*

HB 1029 (Frederick) Verification of Citizen Status of Arrestees. Requires that a jailer shall reasonably attempt to verify the citizen status of certain persons who have been arrested and who are confined in jail. The jailer is required to report any person determined to be in the United States illegally to the Law Enforcement Support Center of the Bureau of Immigration and Customs Enforcement. *Incorporated into HB 820 (Albo) on Jan. 29.*

HB 103 (Albo) Verification of Citizenship of Arrestees Requires the director, sheriff, or other officer-in-charge to inquire into the citizenship of anyone arrested and confined in a correctional facility and required the officer to report the suspected alien to the Law Enforcement Support Center of the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security. *Left in House Rules Committee on Feb. 12.*

HB 301 (Nichols) Sheriff's Federal Immigration Functions. Requires the sheriff of a locality with a population greater than 300,000 to enter into a memorandum of agreement with Immigration and Customs Enforcement that would allow designated local law-enforcement officers to perform certain federal immigration law functions. *Left in House Rules Committee on Feb. 12.*

HB 305 (Nichols) Creation of Department of State Police, Division of Legal Presence. Creates a division of legal presence investigation and enforcement within the Department of State Police. The division shall hire at least 100 full-time law-enforcement officers authorized to perform certain immigration functions. *Left in House Rules Committee on Feb. 12.*

HB 459 (Albo) Verification of Citizenship and Alien Status of Arrestees. Clarifies the mandate that any person in charge of a correctional facility shall inquire as to the citizenship status of a person in his facility and to inquire of the Law Enforcement Support Center of the Bureau of Immigration and Customs Enforcement of the United States Department of Homeland Security as to the person's alien status, for purposes of reporting alien status to the Central Criminal Records Exchange. *Left in House Rules Committee on Feb. 12.*

HB 623/SB 433 (Miller, J.H.; Vogel) Governor to Enforce Federal Immigration Law. States that it is the responsibility of the Governor to enter into a memorandum of agreement with Immigration and Customs Enforcement that would allow designated state and local law-enforcement officers to perform certain federal immigration law functions in the Commonwealth (287g agreement). *HB 623 was reported from House Rules (15-Y, 0-N) on Jan. 29 then passed the House of Delegates (89-Y, 11-N) on Feb. 4. It was referred to Senate General Laws and Technology Committee on Feb. 5 then referred to Senate Courts of Justice Committee on Feb. 13, where it failed (7-Y, 5-N, 1-A) on Feb. 28. SB 433 was referred to Senate General Laws and Technology on Jan. 8, re-referred to Senate Courts (14-Y, 0-N) on Jan. 16, and then passed by indefinitely by Senate Courts of Justice (11-Y, 4-N) on Jan. 30.*

HJ 183 (Hall) Governor to Enter Into Agreement to Enforce Federal Immigration Law. Requests the Governor to enter into Memoranda of Agreement with the Department of Homeland Security, Immigration and Customs Enforcement, to allow designated members of the Department of State Police, Department of Corrections, and Department of Motor Vehicles to perform certain federal immigration law functions (287g). *Left in House Rules Committee on Feb. 12.*

Housing

Passed

HB 1107 (Rust) Fines for Overcrowding in Residential Dwellings. Increases the maximum fines for repeat violations of ordinances regulating the number of unrelated persons in single-family residential dwellings. *Passed the House of Delegates (95-Y, 4-N) on Feb. 6. Passed the Senate (39-Y, 0-N) on March 3. Signed by the Governor on March 12.*

Failed

HB 156 (Nichols) Evidence of Legal Presence Required for Mortgage Loan. Makes it unlawful to make a loan secured by a mortgage or deed of trust on real estate unless the individual, prior to settlement, has provided evidence of legal presence. *Left in House Rules Committee on Feb. 12.*

HB 82 (Marshall, R.G.) Zoning Violations for Overcrowding. Provides for enhanced fines for any conviction resulting from a violation of provisions related to overcrowding of residential dwellings. *Left in House Counties, Cities and Towns Committee on Feb. 12.*

HB 184 (Marshall, R.G.) Proof of Legal Presence for Real Property Tax for Renovated Property. Requires that a person seeking tax exemptions or credits on real property taxes for certain rehabilitated, renovated, or replacement property demonstrate that he has the right to be legally present in the United States. *Left in House Rules Committee on Feb. 12.*

HB 200 (Marshall, R.G.) Zoning enforcement; Planning District 8 (Northern Virginia). Provides for enhanced penalties in Planning District 8 for certain violations related to overcrowding of residential dwellings. *Left in House Counties, Cities and Towns Committee on Feb. 12.*

HB 304 (Nichols) Occupancy limits in single-family dwellings. Requires localities to limit occupancy to no more than four unrelated persons. *Tabled in House Counties, Cities and Towns by voice vote on Feb. 08.*

SB 425 (Barker) Proof of Legal Presence for Real Property Tax Exemptions. Authorizes authorized counties, cities, and towns to require that persons seeking real estate tax exemptions and deferrals under current law demonstrate prove that they are legally. *Passed by indefinitely in Senate Courts of Justice Committee (11-Y, 4-N) on Jan. 30.*

HB 452 (Rust) Jail Terms Allowed for Overcrowding Violations. Removes the prohibition against jail terms for violating certain zoning provisions related to overcrowding of residential dwellings. *Stricken from the docket in House Counties, Cities and Towns Committee on Feb 8.*

Denial of Bail

Passed

HB 440/SB 623 (Rust; Stolle) Presumption against Bail for Illegal Aliens. Automatically denies bail, subject to rebuttal, if a person is charged with certain offenses and the court determines that the person is illegally present in the United States. This presumption shall not exist unless the United States Immigration and Customs Enforcement has guaranteed that, in all such cases in the Commonwealth, it will issue a detainer for the initiation of removal proceedings and agrees to reimburse for the cost of incarceration from the time of the issuance of the detainer. *HB 440 passed the House (98-Y, 0-N) on Feb. 11 then passed the Senate with a substitute (33-Y, 7-N) on Feb. 25. Senate substitute agreed to by the House (84-Y, 13-N) on Feb. 27. HB 440 was signed by the Governor on March 8. SB 623 passed the Senate (34-Y, 6-N) on Feb. 12. SB 623 passed the House with an amendment (94-Y, 2-N) on March 5. House's SB 623 amendment rejected by the Senate (3-Y, 37-N) on March 6. The House insisted on the amendment to SB 623 on March 6. SB 623 is in conference committee on March 6. SB 623 conference report agreed to by the Senate (39-Y, 1-N) on March 8. SB 623 conference reported adopted by the House (99-Y, 0-N) on March 8. SB 623 was signed by the Governor on April 11.*

Failed

Presumption Against Bail. Although HB 440 and SB 623 passed (see above, there were ten additional, similar bills introduced that did not pass or were incorporated into HB 440/SB 623: HB 47 (Cole); HB 757 (Poindexter); HB 779 (Kilgore); HB 1435 (Poindexter); HB 929 (Gilbert); HB 762 (Rust); HB 155 (Nichols); SB 152 (Stuart); SB 183 (Herring); HB 996 (Bell).

Proof of Citizenship

Failed

HB 186 (Marshall, R.G.) Proof of Citizenship for Driver's Licenses. Requires presentation to the DMV of proof of U.S. citizenship prior to the issuance or renewal of any license, permit or special identification card. *Left in House Rules Committee on Feb. 12.*

HB 68 (Marshall, R.G.) Proof of Citizenship to Vote. Requires a person registering to vote to provide a photocopy of a birth certificate, U.S. passport, documents approved by the Immigration Reform and Control Act, U.S. naturalization documents, or a Bureau of Indian Affairs card number, tribal treaty card number, or tribal enrollment number. *Left in House Rules Committee on Feb. 12.*

HB 151 (Lewis) Proof of Citizenship to Change Name. As passed by the House, requires that every application for a change of name contain proof that the applicant is a United States citizen. The Senate amended the bill striking the proof of U.S. citizenship requirement. *Passed the House of Delegates (94-Y, 3-N) on Jan. 25. Passed the Senate with amendments (34-Y, 6-N) on Feb. 20. Senate amendments rejected by the House of Delegates (4-Y, 92-N) on Feb. 25. Senate insisted on the amendments (40-Y, 0-N) on Feb. 27. Conference committee arranged on Feb. 28. No further action was taken and the bill failed on March 13.*

Education

Failed

HB 14 (Peace) Illegal Aliens Ineligible for Admission to Public Colleges. Prohibits admission of any unlawfully present alien in the United States into an institution of higher education in Commonwealth. *Passed the House of Delegates (72-Y, 27-N) on Feb. 4. Passed by indefinitely in Senate Education and Health Committee (9-Y, 6-N) on Feb. 28.*

HB 123 (Hargrove) Illegal Aliens Ineligible for Admission to Public Colleges. Provides that any alien must present legal documentation of residence or educational status to be eligible for initial enrollment in any public institution of higher education in Virginia. *This bill was incorporated into HB 14 (Peace).*

HB 417 (Marshall, R.G.) Required Information on Birth Certificates for Entrance to Public Schools. Requires school principals to record in a student's permanent school record the place and country of birth collected from information obtained on the birth certificate or affidavit submitted in lieu of the birth certificate. *Left in House Rules Committee on Feb. 12.*

HB 425 (Marshall, R.G.) Birth Certificate Required for Admission to Public Colleges. Requires every public college/university in Virginia to require first-time entering freshmen to submit a certified copy of their birth certificate, or an affidavit in the absence of the birth certificate, noting the place and country of birth. Students who fail to submit a certified birth certificate or an affidavit are ineligible for reduced in-state tuition and other state financial aid. *This bill was incorporated into HB 14 (Peace) on Jan. 29.*

HB 1010 (Hugo) Prohibition of In-state Tuition for Aliens. Provides that an alien who is unlawfully present in the United States and therefore ineligible to establish domicile shall not be eligible on the basis of residency within Virginia for any postsecondary educational benefit, including in-state tuition. *This bill was incorporated into HB 14 (Peace) on Jan. 29.*

SB 434 (Vogel) Prohibition of In-State Tuition Eligibility for Undocumented Students. Provides that an alien who is unlawfully present in the United States shall not be eligible on the basis of residency within Virginia for any postsecondary educational benefit including, but not limited to, in-state tuition and state financial aid. *Passed by indefinitely in Senate Education and Health Committee (9-Y, 6-N) on Jan. 31.*

SB 745 (Hanger) Verification of Legal Presence in School. Requires all public schools to verify each child's legal presence and if appropriate, to develop a plan to assist the child in attaining legal presence, or to take other appropriate action as determined by the locality. *Passed by indefinitely in Senate Education and Health Committee (12-Y, 3-N) on Jan. 31.*

Public Benefits

Failed

HB 1026 (Frederick) Restrictions on Public Benefits for Undocumented Persons. Prohibits localities from granting public benefits to persons who are not citizens, legal permanent residents, or conditional resident aliens of the United States. The bill also provides that failure to determine immigration status shall result in the termination of all funds appropriated in the general appropriations act except those funds required by the Constitution of the Commonwealth and federal law. *Left in House Rules Committee on Feb. 12.*

HB 439 (Miller, J.H.) Denial of State and Local Public Benefits. Provides that no state or local funds will be disbursed to any organization when the disbursement is made to circumvent the requirement that organizations determine the legal status of applicants before granting assistance. *Left in House Rules Committee on Feb. 12.*

First Amendment –Right to Assemble

Passed

HB 470 (Watts) Loitering in the Rights-of-Way of Certain Highways. Prohibits loitering in the right-of-way of any highway where it has been determined that loitering presents a public safety hazard and the VDOT Commissioner or the local governing body has posted signs prohibiting such activity. *Passed the House of Delegates (97-Y, 0-N) on Jan. 22. Passed the Senate with a substitute (40-Y, 0-N) on Feb. 26. Senate substitute agreed to by the House of Delegates (95-Y, 1-N) on Feb. 28. Signed by the Governor on March 10.*

Prohibiting Assistance to Undocumented Persons

Failed

HB 367 (Carrico) Sanctuary for Undocumented Immigrants Prohibited. Prohibits a local governing body from adopting a policy to protect undocumented immigrants from deportation. Furthermore, no locality shall prohibit its employees from asking a person about his immigration status. *Left in House Rules Committee on Feb. 12.*

HB 45 (Tata) Fraudulent Assistance of Illegal Aliens. Makes it a crime to knowingly assist an illegal immigrant attempting to acquire a service to which the illegal alien is not entitled. *Left in House Rules Committee on Feb. 12.*

Language-Related Bills

Failed

SB 339 (Cuccinelli) English-Only in the Work Place. Provides that an employee's refusal to speak English at the workplace, when required by an employer, constitutes misconduct, thereby disqualifying the person of unemployment benefits. *Passed by indefinitely in Senate Commerce and Labor Committee (15-Y, 0-N) on Jan. 28.*

HB 1472 (Cole) Language Discrimination Allowed in Workplace. Provides that discharging an employee on the basis of the employee's failure to comply with his employer's requirement that English is spoken at work shall not be discrimination on the basis of national origin. Currently, employers with more than five but less than 15 employees are prohibited from discharging an employee on the basis of national origin. *Passed the House of Delegates (70-Y, 29-N) on Feb. 12. Failed to report from Senate General Laws and Technology Committee (7-Y, 7-N, 1-A) on Feb. 20.*

HB 55 (Lingamfelter) English as the Official Language of Virginia. Makes English the official language of Virginia and prohibited any state or local agency from publishing any literature in any other language. *Continued to 2009 in House Rules Committee on Feb. 5.*

HB 367 (Marsden) Driver's License Exam in English-Only. Requires that all examinations of applicants for driver's licenses be conducted exclusively in the English language and the use of interpreters is prohibited. *Left in House Rules Committee on Feb. 12.*

HB 624 (Miller, J.H.) Cost of Court Interpreter for Non-English Speaking Defendant. Requires that the cost for an interpreter for a non-English speaking defendant shall be paid for by the defendant if he is convicted at trial of a criminal offense. *Left in House Courts of Justice Committee on Feb. 12*

HJ 124 (Joannou) English as the Official Language. Amends the Virginia Constitution to state that English is the official language of Virginia. *Continued to 2009 in House Privileges and Elections Committee on Jan. 18.*

Employment- Related Bills

Passed

HB 926/SB 782 (Byron; Obenshain) Disciplinary Action Against Employers. Allows regulatory boards to take disciplinary action against employers who have been convicted of a state or federal law prohibiting the employment of illegal aliens. *HB 926 passed the House of Delegates (98-Y, 0-N) on Feb. 12. HB 926 passed the Senate with a substitute (40-Y, 0-N) on Feb. 27. Senate substitute HB 926 was adopted by the House of Delegates (98-Y, 0-N) on Feb. 29. HB 926 was signed by the Governor on March 12. SB 782 passed the Senate (34-Y, 6-N) on Feb. 11. SB 782 passed the House of Delegates with a substitute (97-Y, 0-N) on March 5. House of Delegates' substitute SB 782 agreed to by the Senate (36-Y, 4-N) on March 6. SB 782 was signed by the Governor on March 27.*

HB 1298/SB 517 (Frederick; Cuccinelli) Disciplining Employers Who Violate Immigration Law. Requires that all public bodies provide in every written contract that the contractor does not knowingly employ an unauthorized performance of the contract for goods and services in the Commonwealth. *HB 1298 passed the House (96-Y, 3-N) on Feb. 12. HB 1298 passed the Senate with an amendment (40-Y, 0-N) on Feb. 27. Senate HB 1298 amendment was adopted by the House of Delegates (97-Y, 0-N) on Feb. 29. HB 1298 was signed by the Governor on March 12. SB 517 passed the Senate (35-Y, 5-N) on Feb. 11. SB 517 passed the House of Delegates with a substitute (97-Y, 0-N) on March 5. House of Delegates' substitute SB 517 was agreed to by the Senate (39-Y, 0-N) on March 6. SB 517 was signed by the Governor on March 27.*

HJ 51 (Morgan) Study to Limit Unemployment Compensation Benefits for Seasonal/Temporary Workers. Directs the Commission on Unemployment Compensation to study the need for limitations on the eligibility of seasonal or temporary employees for unemployment compensation benefits. *Passed the House of Delegates (98-Y, 0-N) on Feb. 8. The Senate agreed to the resolution by a voice vote on March 4.*

Failed

HB 227 (Cosgrove) Contractor's License to Require Statement of Adherence to Immigration Law. Contractors must submit a statement certifying that they will not knowingly employ an undocumented worker or otherwise violate federal or state law and will continue to verify the lawful employment status of all employees by means of a work-authorization program issued by the U.S. Bureau of Citizenship and Immigration Services. *This bill was incorporated into HB 926 (Byron).*

HB 90 (Nichols) Verification of Legal Presence. Requires all public contractors to register and participate in a federal Electronic Work Verification Program or similar electronic verification of work authorization program to determine that their employees and individual independent contractors are legally eligible for employment in the United States. *Left in House Rules Committee on Feb. 12.*

HB 1047 (Watts) Document Verification for Employment of Illegal Immigrants. Provides that each day an employer continues unlawful employment of an alien worker constitutes a separate civil offense punishable by a \$100 civil penalty. The measure also made it a Class 1 misdemeanor to falsely represent that an alien worker has documentation indicating that he is legally eligible for employment and amended the existing prohibition on employing such aliens to provide that it is unlawful to continue employing such person who cannot provide the required documentation of eligibility. *Left in House Rules Committee on Feb. 12.*

HJ 164 (Cosgrove) Commission to Study Undocumented Workers. Asks the Virginia Commission on Immigration to study the pervasiveness of licensed contractors in Virginia hiring undocumented workers or otherwise violating the federal Immigration and Reform Act and the impact of such activities on Virginia's workforce and economy. *Left in House Rules Committee on Feb. 12.*

SB 90 (Colgan) Employment Verification of Employees. Prohibits an employer from allowing an individual to start work unless the employer has conducted the identity verification

process through the electronic employment verification system and the worker is eligible. *Passed by indefinitely in House Commerce and Labor Committee (13-Y, 2-N) on Jan. 30.*

SB 385 (Martin) Local Business Required To Certify Employee Immigration Status.

Requires applicants seeking a local business license to certify that they do not employ persons who cannot provide legal documents proving they are legally eligible to work in the United States. *Passed by indefinitely in Senate Courts of Justice Committee (15-Y, 0-N) on Jan. 30.*

SB 426 (Barker) Contractors to Verify Legal Presence of Workers. Requires all public contractors to participate in a federal Electronic Work Verification Program or similar electronic verification of work authorization program to determine that their employees and individual independent contractors are legally eligible for employment in the United States. *Passed by indefinitely in Senate Courts of Justice Committee (15-Y, 0-N) on Jan. 30.*

SB 516 (Cuccinelli) Employment Verification Required. Prohibits state and local government agencies from knowingly employing any person who is not a citizen of the United States or who does not provide employment eligibility verification documentation. An intentional violation of this prohibition by any state employee or official, after notice from the Governor, or his designees, to desist, shall subject him to suspension or permanent dismissal from employment or office. *The bill was stricken at the request of patron in Senate Courts of Justice Committee (14-Y, 0-N) on Jan. 30.*

Other Anti-Immigrant Bills

HB 928 (Gilbert) Omnibus Anti-Immigration Bill. An omnibus anti-immigration bill that among other provisions requires all public bodies and their contractors to register and participate in a federal work authorization program, requires all agencies providing benefits to verify the recipient's immigration status, and state institutions of higher education are prohibited from providing in-state tuition to illegal aliens. The bill also makes it a felony to harbor, transport, or conceal an illegal alien. The immigration status of any individual arrested on suspicion of a felony or of driving under the influence is required to be verified. The Attorney General is authorized to negotiate the terms of a memorandum of understanding with the Department of Homeland Security that will allow law-enforcement officers in the Commonwealth to perform certain immigration functions. *Left in House Rules Committee on Feb. 12.*

SJ 93 (Stolle) Memorializing Congress to Act on Illegal Immigration. Asks Congress to provide federal agencies with the necessary resources for the enforcement of existing federal immigration laws or, if Congress chooses not to provide those resources, to enact legislation giving states the authority and funding to address the problem of illegal immigration. *This resolution was incorporated into SJR 120 (Colgan) on Feb. 8.*

SJ 120 (Colgan) Memorializing Congress' Responsibility of Immigration Reform.

Memorializes Congress to develop a comprehensive immigration policy and to demonstrate leadership on the matter of illegal immigration. *This resolution incorporates SJR 93 (Stolle). Passed the Senate by a voice vote on Feb. 12. Left in House Rules Committee on March 3.*