

State Measures Requiring Applicants for Public Benefits to Verify Status (2004–09)

PART II: IMPLEMENTATION AND INTERPRETATION

State	Benefits Affected	Benefits Determined Not to Be Affected	Rationale	Comments
<p>Arizona</p> <p>Init. Measure I-03-2004, § 6 (Proposition 200) November 2, 2004 A.R.S. § 46-140.01</p> <p>http://www.azsos.gov/election/2004/Info/PubPamphlet/english/prop200.htm</p> <p>Senate Concurrent Resolution 1031 (Proposition 300) June 22, 2006 A.R.S. §§ 15-232, 15-1803, 15-1825, 46-801, & 46-803</p> <p>http://www.azsos.gov/election/2006/Info/PubPamphlet/english/prop300.htm</p> <p>HB 2008 (sections 1-2), September 4, 2009 (effective November 24, 2009), http://www.azgovernor.gov/DMS/upload/PR_090409_HB2008.pdf</p>	<p><i>Proposition 200:</i></p> <p>“State and local public benefits for the purposes of Proposition 200 are those programs within Title 46 that qualify as state and local public benefits pursuant to federal law (8 U.S.C. § 1621)”¹</p> <p>“Although the federal definition of ‘state and local public benefits’ includes matters well beyond the scope of Title 46 . . . Arizona’s new statutory requirement in A.R.S. § 46-140.01 is limited to Title 46 welfare programs.”²</p> <p><i>Programs Affected:</i>³ General Assistance Sight Conservation Neighbors Helping Neighbors Utility Repair, Replacement, and Deposit Supplemental Payment Program</p>	<p><i>Proposition 200:</i></p> <p><i>Arizona Health Care Cost Containment System (AHCCCS)</i> (excluded both as a Title 36 program and as a federal public benefit)⁴</p> <p>Other Programs Outside of Title 46⁵ “For example, 8 U.S.C. § 1621 applies to professional licenses. But Proposition 200 does not alter the screening procedures for applicants for a contractor’s license. To do so, Proposition 200 should have amended Title 32 (which governs most professional licenses, including those for contractors) or some statute that applies generally to all state agencies instead of amending only the statutes that govern certain welfare programs”⁶</p> <p><i>Federally funded public benefits and programs within 8 U.S.C. § 1611</i>, including programs identified as federal public benefits in the DHHS Notice dated August 4, 1998 (these programs are, however, subject to the eligibility restrictions and verification and reporting requirements that apply to federal public benefits as set forth in 8 U.S.C. § 1611 and other federal laws)⁷</p> <p><i>Programs identified in 8 U.S.C. § 1611(b) or 8 U.S.C. § 1621(b) as exceptions</i> to the alienage eligibility restrictions that otherwise apply to federal public benefits and state and local public benefits⁸</p> <p><i>Programs identified in the U.S. Department of Justice Notice of Final Order dated January 16, 2001, as necessary for the protection of life or safety</i> if the programs are community-based, provide in-kind (non-cash) services, and do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual</p>	<p><i>Proposition 200:</i></p> <p><i>Definition of State and Local Public Benefits:</i> “Because [Proposition 200] does not define [the phrase ‘state and local public benefits’], the question of when to apply identification and reporting requirements under Proposition 200 must be determined by applying general principles of statutory construction.”¹⁰</p> <p>“The publicity pamphlet provided the voters with no definitive guidance regarding the scope of public benefits subject to the Proposition”¹¹ . . . Although [the ordinary meaning of the term ‘state and local public benefits’] provides some guidance, alone [it] lacks sufficient specificity.”¹² However, the special meaning of the phrase, in light of its context and placement in the Arizona code, supports the conclusion that Proposition 200 only applies to Title 46 programs. “[T]he drafters placed the portions of Proposition 200 that concerned . . . state and local benefits in Title 46, which is entitled ‘Welfare’ and addresses specific government programs . . . [The Proposition] follows A.R.S. § 46-140, which establishes reporting requirements and criminal penalties for welfare fraud in programs administered under Title 46.” The language of the Proposition and the statutory scheme in Title 46 support the same conclusion. “Title 46 includes programs of different state agencies that are administered at the state and local level. In addition, Proposition 200 establishes that the government agency must ‘verify the identity of each applicant.’ ‘Applicant is defined in A.R.S. § 46-101(2) as ‘a person who has applied for assistance or services under this title’ Significantly, the Proposition did not amend Title 36 (public health programs), Title 1 (general principles), or Title 38 (public officers). ‘Placement of the statute governing ‘state and local public benefits’ in Title 46 indicates that the statute applies to the programs in that title, but not to programs governed by other titles that comprise the Arizona Revised Statutes.”¹³</p> <p>Related federal law confirms this conclusion: “Essentially, Proposition 200 implements the Federal Welfare Reform Act’s eligibility requirements for ‘state and local public benefits’ with regard to programs in Title 46 . . . Although Proposition 200 refers to verifying the identity and eligibility of applicants, A.R.S. § 46-140.01(a), it establishes no eligibility requirements for any programs. The void is filled by the Federal Welfare Reform Act which establishes eligibility requirements based on immigration status.”¹⁴</p>	<p><i>Proposition 200:</i></p> <p>Six months after Proposition 200 became law, state welfare officials had reported only two applicants to immigration authorities for seeking state-sponsored utility benefits; no applicants from the other three programs affected had been reported. The most noticeable effect was on citizens arriving from other states – since January of that year, over 5,000 Arizonans, none believed to be in the country illegally, had been rejected when they tried to register to vote.¹⁹</p> <p><i>HB 2008:</i> Legal challenges are under consideration.</p>

This table compares the how state measures imposing citizenship and immigration status verification requirements on applicants for public benefits have been interpreted and implemented by attorneys general, state agencies, and other sources. A related table (Part I) excerpts the formal originating language of the provisions.

State	Benefits Affected	Benefits Determined Not to Be Affected	Rationale	Comments
		recipient's income, as required by 8 U.S.C. § 1621(b)(4) ⁹	<p>"This interpretation is both consistent with statutory language and avoids potential challenges based on vagueness or preemption that alternative interpretations might raise."¹⁵</p> <p><i>Federal public benefits:</i> A.R.S. § 46-140.01 expressly applies to only "state and local public benefits"; according to previously issued guidance, the section governs certain programs that are "state and local public benefits" subject to 8 U.S.C. § 1621, which specifically provides that the term "state and local public benefits" does not include "any [f]ederal public benefit under 1611(c) of this title." 8 U.S.C. § 1621(c)(3). Likewise, by its terms, A.R.S. §46-140.01 does not apply to "federal public benefits."¹⁶</p> <p><i>Exceptions:</i> Opinion cites language from DOJ Notice of Interim Guidance on Verification of Citizenship, Qualified Alien Status and Eligibility under Title IV of PRWORA, AG Order No. 2129-97, 62 FR 61344, 61347 (November 17, 1997) and 8 U.S.C. § 1621¹⁷</p> <p><i>Programs Necessary for the Protection of Life or Safety:</i> Opinion cites language from DOJ Notice of Final Specification of Community Programs Necessary for Protection of Life or Safety Under Welfare Reform Legislation, A.G. Order No. 2353-2001, 66 FR 3613, 3616 (Jan. 16, 2001)¹⁸</p>	
<p>Colorado</p> <p>HB 06S-1023 July 31, 2006 C.R.S. §§ 24-76.5-101 to 24-76.5-103</p> <p>http://www.cdhs.state.co.us/adad/PDFs/1023enr.pdf</p> <p>SB 07-211, § 7 May 31, 2007 Amended C.R.S. § 24-76.5-103 to add exemptions</p> <p>http://www.leg.state.co.us/clics/clics2007a/csl.nsf/fsbillcont3/1AF412833E6BDC7387257251007B87E1?Open&file=211_enr.pdf</p> <p>HB 06S-1009</p>	<p><i>HB 1023:</i></p> <p><i>Contracts:</i> Term encompasses "any natural person contracting with the State or a political subdivision"²⁰</p> <p><i>Professional licenses or commercial licenses:</i> Term encompasses "any government authorization or approval required by state or local law to engage in a profession or business," regardless of "whether the document evidencing the authorization or approval is called a 'license'" (if not governed by HB 1009)²¹</p> <p>As a general rule, public benefits administered by a <i>non-governmental third-party intermediary</i> or grantee rather than directly by a state agency or political subdivision are subject to HB 1023 as well.</p> <p>However, "House Bill 1023 imposes no duty on non-governmental agencies to verify an</p>	<p>HB 1023:</p> <p>Those 18 and under²³</p> <p>Parents submitting an application on behalf of their child²⁴</p> <p>Corporations, partnerships, and other entities (HB 1023 applies only to "natural persons")²⁵</p> <p>"[B]enefits that are exempted from verification requirements under either federal law or the terms of HB 1023 itself"²⁶</p> <p>"[P]rograms or services that are exempt from the definition of 'federal public benefit' or 'state and local public benefit' under federal law"²⁷</p> <p>Non-governmental organizations that provide publicly funded benefits without requiring an individualized application process²⁸</p> <p>Licenses and other authorizations issued by the Department of Regulatory Agencies under Titles 10, 11, and 12 of the Colorado Revised</p>	<p><i>HB 1023:</i></p> <p><i>Contracts:</i> "H.B. 1023 defines a public benefit by reference to 8 U.S.C. 1611 and 1621, which in turn defines a public benefit as including any 'contract.' H.B. 1023, however, applies only to 'natural persons' over the age of eighteen. A natural person is a human being, not a corporation, partnership, or any other entity. Thus, the requirements of H.B. 1023 must be applied to any natural person contracting with the State or a political subdivision."³²</p> <p><i>Professional license or commercial license:</i> "In the context of professional or commercial licenses not governed by the provisions of HB 1009, HB 1023 applies to certain government authorizations required to conduct business. More specifically, House Bill 1023 applies to 'state or local public benefits' as defined by federal law (8 U.S.C. § 1621). That law defines 'state or local public benefits' to include 'any . . . professional . . . or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government.' 8 U.S.C. § 1621(c)(1)(A). Some State laws may require an approval or authorization process to engage in a profession or business but use a term other than 'license,' such as permit, registration or certificate. The provisions of the bill, however, should be construed to cover natural persons in a professional or commercial business, rather than</p>	<p><i>HB 1023:</i></p> <p>Though non-governmental agencies are not lawfully bound to verify applicants' lawful presence, the applicable state agency may be required to put into place some sort of verification process just the same: "House Bill 1023 imposes no duty on non-governmental agencies to verify an applicant's lawful presence in the United States. That duty is imposed solely on State agencies and political subdivisions. Each agency and subdivision must determine how it will comply with the requirements of House Bill 1023 for those programs administered by private third-party intermediaries. In general, an agency may comply with the requirements either by requiring the third party (by contract or otherwise) to perform the required verification or by performing the verification itself."³⁶</p>

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<p>C.R.S. § 24-34-107 (licenses) July 31, 2006</p> <p>http://www.dora.state.co.us/Registrations/HB06S-1009.pdf</p>	<p>applicant's lawful presence in the United States. That duty is imposed solely on State agencies and political subdivisions."²²</p>	<p>Statutes (for these, House Bill 1009 is the exclusive means of verification of lawful presence)²⁹</p> <p>"[A]uthorization required for recreational or non-business activity, such as a recreational hunting or fishing license"³⁰</p> <p>"[L]icenses or permits ancillary to a profession or commercial enterprise" (Example: Agencies must verify the lawful presence of a person applying for an electrician's license under HB 1023, but a city need not verify that person's lawful presence when he applies for a project-specific permit)³¹</p>	<p>the name given to the government-issued document. Therefore, 'professional license or commercial license' applies to any government authorization or approval required by state or local law to engage in a profession or business."³³</p> <p>Third parties: "The term 'public benefit' is defined to include both benefits 'provided by' the federal, state and local government and benefits provided 'by appropriated funds' of the federal, state and local government. 8 U.S.C. § 1611(c)(1) and § 1621(c)(1). This makes clear that the definition of 'public benefits' includes both programs administered by government agencies and programs administered by non-governmental organizations with public funds, and is covered by HB 1023 if the benefit flows directly to natural persons."³⁴</p> <p><i>Non-profits:</i> "House Bill 1023 only applies to 'applicants' for public benefits. If a non-governmental organization provides publicly funded benefits to persons without an individualized application process, the persons who receive the benefits are not 'applicants' and the requirements of House Bill 1023 do not apply."³⁵</p>	
<p>Georgia</p> <p>HB 2, § 3 May 11, 2009 O.C.G.A. § 50-36-1</p> <p>http://www.legis.state.ga.us/legis/2009_10/pdf/hb2.pdf</p> <p>SB 529 April 17, 2006 O.C.G.A. § 50-36-1 (superseded by HB 2)</p> <p>http://www.legis.state.ga.us/legis/2005_06/pdf/sb529.pdf</p>	<p>"Section 50-36-1 does not itself impose eligibility requirements; GSICA [SB 529] requires an electronic verification procedure in Section 50-36-1 to guard against the granting of a public benefit by a Georgia state agency or political subdivision to an applicant in contravention of federal law. That is, with certain exceptions, an alien who does not meet specified conditions 'is not eligible for any Federal public benefit,' 8 U.S.C. § 1311(a), or 'any State or local public benefit,' 8 U.S.C. § 1621(a)."³⁷</p> <p><i>Would a company [engaged by a city to construct a public park] be a recipient of a public benefit subject to verification under O.C.G.A. Section 50-36-1?</i> Only if the company was a sole proprietorship; an artificial person like a corporation or a partnership would not be subject to the law³⁸</p> <p><i>Does the phrase "professional license, or commercial license provided by an agency . . ." include alcoholic beverage licenses granted by [local governments and the Department of Revenue]? Yes³⁹</i></p> <p><i>Benefits Granted by Executive Branch Agencies:</i> Subject to verification (as long as</p>	<p><i>Possibly Occupational Tax Certificates:</i> "If the government imposes the payment of a tax or fee for revenue purposes and issues a 'license' merely to show payment, the license is not likely to be considered a commercial license. However, if the occupation tax certification acts as a precondition or license for engaging in a business, it may be more regulatory in nature and could be considered a commercial license."</p> <p>Indicators that a given document could be a commercial or regulatory license:</p> <ul style="list-style-type: none"> -Requirement to have the license before engaging in a business -Requirement to display the license at the place of business -Existence of criminal penalties for engaging in business without a license, as compared to penalties for not paying the tax -Regulatory fee approximates cost and entails regulatory activity -License or certificate has the ability to "creat[e] the appearance of lawful presence" 	<p><i>Company Engaged by City:</i> "The Section 50-36-1 verification requirements are applied when a 'natural person 18 years of age or older . . . applie[s] for state or local public benefits . . . or for federal public benefits Specification of a natural person is consistent with the federal law in this subject area which is concerned with individuals."⁴⁸</p> <p><i>Alcohol License:</i> The federal definition of "state or local public benefit" includes a "commercial license." A license under the Georgia Alcoholic Beverage Code (O.C.G.A. § 3-3-1) constitutes "regulated permission for commercial activity" and falls within the definition of "commercial license." When such a license is issued to an individual, Section 50-36-1 applies.⁴⁹</p> <p><i>Professional or Commercial Licenses:</i> "The implication from [the relevant] Code Sections is that a local government may impose a business tax for revenue and may also regulate businesses, charging them a fee 'approximat[ing] the reasonable cost of the actual regulatory activity.' If the government imposes the payment of a tax or fee for revenue purposes and issues a 'license' merely to show payment, the license is not likely to be considered a commercial license."⁵⁰</p> <p><i>Judicial and Legislative Branch Agencies:</i> "In the normal case, the state is not bound by the passage of a law unless it is named therein or unless the words of the law are so plain, clear, and unmistakable as to leave no doubt as to the intention of the General Assembly." O.C.G.A. § 1-3-8. Here, the General Assembly has by its express language made the statute applicable to</p>	<p>Legal challenges to HB 2 are under consideration.</p> <p>Note: the implementation information included in this table is based entirely on SB 529, which was superceded by HB 2. Given that HB2, which goes into effect on January 1, 2009, specifically enumerates several types of licenses and public benefits, new interpretative guidance is expected.</p> <p>In a press release posted on July 30, 2008, Gwinnett County Commission Chairman Charles Bannister emphasized his commitment to enforcing SB 529. At that time, Gwinnett County was in the process of verifying information on applicants for housing assistance from the Community Block Grant Development Program. Bannister noted that the county was already using SAVE for specifically-mandated purposes like this one, but would like to extend its use to similar applications, such as those for occupational tax certificates.⁵³</p> <p>Shortly after SB 529 went into effect, the Chairman of the Cobb County Commission, Sam Olens, declared his intention to begin requiring proof of legal residency for all business license applications and renewals.⁵⁴</p>

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	<p>benefits are within definitions in §§ 1611 and 1621)⁴⁰</p> <p><i>Benefits Granted by Judicial and Legislative Branch Agencies:</i> Question left unresolved for the time being⁴¹</p> <p><i>Public Employee Benefits:</i> Verification required of public employees when they apply for a health benefit at open enrollment or for retirement⁴²</p> <p><i>Division of Mental Health, Developmental Disabilities & Addictive Diseases (MHDDAD) Services (except for MHDDAD Emergency Services)</i> “MHDDAD Services refers to (a) services provided by the Department of Human Resources (DHR) Division of Mental Health, Developmental Disabilities & Addictive Diseases, through its hospitals and state-operated community services, as well as (b) community behavioral health or developmental disabilities services that are fully or partially paid for by funds from DHR Division of Mental Health, Developmental Disabilities & Addictive Diseases via a contract, provider agreement or letter of agreement”⁴³</p>	<p>Applying these factors would have to be done on a case by case basis by the local governments responsible for these activities.⁴⁴</p> <p><i>Possibly Homestead Exemption</i>⁴⁵ “Tax law and policy are distinct, substantial subjects in their own right, and an application of a major, different substantive law to the area is more likely in conventional drafting to be stated expressly than left to implication. The issue is apparently an unsettled matter. As stated in materials prepared for members of Congress: ‘The Internal Revenue Code generally does not distinguish between resident aliens who are lawfully present . . . and those who are not (with the exception of the [earned income tax credit].) It appears that the Internal Revenue Service (IRS) permits unauthorized resident aliens to claim the additional child tax credit. There is no indication, moreover, that the IRS general considers refundable tax credits to be federal public benefits that unauthorized migrants are barred from receiving. It is possible that refundable tax credits could fall within the types of benefits described by [PRWORA]. Under this interpretation, the refundable nature of a credit makes it equivalent to a “grant” or “payment or assistance” provided by federal agency or appropriated funds’ In the absence of further guidance from Congress, one should be reluctant to interpret 8 U.S.C. §§ 1611 and 1621 to apply to the tax laws of federal or state governments.”⁴⁶</p> <p><i>MHDDAD Emergency Services</i> “MHDDAD Emergency Services are those services that would be provided to an individual who meets the criteria for inpatient services, as well as services designed to address the needs of consumers who are in emergency situations.”⁴⁷</p>	<p>state ‘agencies’ The question then becomes whether GSICA has made the statute applicable to legislative and judicial branches ‘in clear and unmistakable terms’ An apparent regulatory object of O.C.G.A. § 50-36-1 – insuring that public benefits are limited to those lawfully present in the United States – appears to be susceptible of application to each of the three branches of government . . . these Code Sections are, in fact, probably applicable to all three branches of Georgia state government, under federal law. However, it is one thing to say that Congress has exercised its power to make aliens ineligible for certain benefits, and another to say that the General Assembly intends to require the judicial and legislative branches to comply with a verification process which is voluntary under federal law Resolving that question at the present time is . . . unnecessary.”⁵¹</p> <p><i>Public Employee Benefits:</i> “The statutory use of the word ‘similar’ suggests that the list has one or more common threads or themes by which to gauge ‘similarity,’ and the existence of a common theme could be used to exclude some meanings of words expressly listed It has been suggested welfare is such a theme in the federal definitions Here there is contemporaneous agency interpretation contrary which implies that the list does not have a pure ‘welfare theme.’ The Interim Guidance, in a passage on ‘exceptions’ to the prohibition, has this example: ‘Any wages, pensions, annuities, or other earned payments to which an alien is entitled as a result of federal, state, or local government employment, provided that the alien is not residing or present in the United States and provided that the employment was not prohibited under the immigration laws.’ In other words, if an alien now not able to be lawfully present is somewhere else, and was lawfully present when earning the employment benefit, it may be paid. Stated conversely (although the Guidance does not say so expressly), this might be understood as saying that a public employee’s retirement benefit and health benefit and other ‘earned payments’ are public benefits for which an unauthorized alien is ineligible.”⁵²</p>	<p>This dramatically broadened the county’s initial interpretation of the law, which was only thought to require the verification of the 1,098 business licenses issued. Now, all registered businesses, including the 27,668 that received only an occupational tax certificate, would be required to undergo verification.⁵⁵</p> <p>As of the date on which interpretive guidance was released by the Attorney General, the Office of Bar Admissions had plans to institute informal procedures which would comply with the procedures set out in Section 50-36-1⁵⁶</p>

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Idaho SB 1157 March 30, 2007 I.C. §§ 67-7901 to 67-7903 http://www3.state.id.us/oasis/2007/S1157.html SB 1110 April 16, 2009 Amended I.C. § 67-7903 to add lawfully present individuals with refugee or asylee status to the list of eligible groups for public benefits http://www.legislature.idaho.gov/legislation/2009/S1110.pdf				
Missouri HB 1549 July 7, 2008 § 208.009 R.S.Mo. http://www.house.mo.gov/billtracking/bills081/biltxt/truly/HB1549T.HTM	Blind Pension	Family Support Division-administered programs other than Blind Pension		
Nebraska LB 403 April 8, 2009 R.R.S. Neb. §§ 4-108 to 4-114 http://uniweb.legislature.ne.gov/FloorDocs/Current/PDF/Slip/LB403.pdf	In October 2009, Nebraska began to distribute informal sub-regulatory materials indicating which programs in the areas of "Behavioral Health," "Children and Family Services," "Developmental Disabilities," "Medicaid and Long-Term Care," and "Public Health" were affected or not affected by LB 403. In addition, the state Department of Motor Vehicles posted a notice on its website stating that applicants for drivers licenses, permits, and state identification cards, would have to comply with the bill's requirements.			Legal challenges are under consideration.

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Oklahoma HB 1804, § 8 May 8, 2007 56 Okl. St. § 71 http://webserver1.lsb.state.ok.us/TextOfMeasures/TextOfMeasures.aspx	<p>"The requirements of this subsection are triggered when an application for a 'state or local public benefit' is applied for by: 'a natural person, fourteen years of age or older, who is physically present in the United States.'" ⁵⁷</p> <p><i>Professional and business licenses:</i> Term encompasses "any right or permission granted to engage in a business, profession or occupation by any agency or political subdivision of the State of Oklahoma to an individual, fourteen years of age or older, who is physically present in the United States Although the particular requirements for a professional or business license under the related licensing statutes may not specifically require the licensee to be lawfully present in the United States [possibly implicating the "any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation" exception], this statute, nonetheless, requires verification of lawful presence to obtain the license if the person is physically present in the United States and fourteen years of age or older." ⁵⁸</p> <p><i>Family Health Services:</i> Children's First Program Dental Loan Program</p> <p><i>Protective Health Services:</i> All licenses, permits, and/or certificates issued to an individual ⁵⁹</p>	<p>"[C]orporations, or any other 'artificial person,' such as partnerships, limited liability companies, associations or trusts. On the other hand, the owner of a sole proprietorship who obtains a professional or commercial license would come under the requirements of this statute." ⁶⁰</p> <p><i>Specific exemptions</i> contained in House Bill 1804: Diagnosis or treatment of a communicable disease; immunizations; individuals under the age of 14 at the time service is provided ⁶¹</p> <p><i>List of exclusion provided by Office of General Counsel (see column to the right for rationale for each exclusion):</i></p> <p>Disease and Prevention Services: Public health laboratory service, acute disease service, chronic disease service, HIV / STD service, immunization service Terrorism preparedness and responses service</p> <p>Family Health Services: Maternal and child health, including child and adolescent health, women's health, MCH assessment, screening and special services (newborn screening, Oklahoma Birth Defects Registry, lead poisoning prevention, genetics) SoonerStart Early Childhood Intervention Dental health services (except the Dental Loan Program) Child guidance service Women, Infants, and Children Service (WIC) ⁶²</p> <p>Community Health Services: Nursing service Office of Community Development (Turning Point, health equity and resource opportunities, health promotion, minority health, primary care and rural health development) Record evaluation and support ⁶³</p>	<p>Professional and business licenses: "The terms 'professional license' and 'commercial license' are not otherwise defined within the federal statutes. 'A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.' <i>Perrin v. United States</i>, 444 U.S. 37, 42 (1979). 'License' is defined as 'a right or permission granted in accordance with law by a competent authority to engage in some business or occupation, to do some act, or to engage in some transaction which but for such license would be unlawful.' WEBSTER'S THIRD INTERNATIONAL DICTIONARY, 1304 (3d ed. 1993). The common meaning of 'professional' is 'of, relating to, or characteristic of a profession or calling.' <i>Id.</i> at 1811. The common definition of 'commercial' is 'of, in, or relating to commerce.' <i>Id.</i> at 456." ⁶⁴</p> <p><i>Authority for Items on List of Exclusion:</i></p> <p>Section 8, (C)(4)</p> <p>Section 8, (C)(5)</p> <p>Federal Register, Vol. 63, No. 14, page 41658, August 4, 1998</p> <p>Section 8, (A)(14 or under years of age) Section 8, (A)(not a public benefit)</p> <p>Section 8, (A)(under 14 years of age) Section 8, (C)(1)</p> <p>Section 8, (A)(lack of a federal or state or local public benefit) ⁶⁵</p>	<p>WIC program maintained Hispanic caseload after law went into effect</p> <p>As of late 2007, the Health Department and other agencies were treating all professional licenses and certificates (plumbers, social workers, food handlers) as public benefits and requiring an affidavit; the Department of Public Safety was requiring proof of legal status to renew driver's licenses</p>

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South Carolina H. 4400 Act No. 280 June 4, 2008 S.C. Code Ann. § 8-29-10 http://www.scstatehouse.gov/sess117_2007-2008/bills/4400.htm	<i>First Steps Program</i> ⁶⁶ <i>Attendance at a public higher education institution in South Carolina</i> ⁶⁷ <i>Higher education public benefits</i> including, but not limited to, scholarships, grants, financial aid or resident tuition (for both public and independent institutions) ⁶⁸	<i>First Steps Partnerships</i> <u>However</u> : “While First Steps partnerships do have some of the characteristics of an agency, as they are created by statute and their employees are considered state employees for purposes of health and dental insurance, we believe they lack some of the characteristics cited in our prior opinions. In addition, while these partnerships receive state funding through grants provided by First Steps and are subject to some oversight by First Steps, they appear to be independent entities. Accordingly, we believe a court would be less likely to find that First Steps partnerships are agencies for purposes of section 8-29-10. Thus, we do not believe these partnerships are required to comply with this provision of the Act. However, this determination is not free from doubt. As such, it may be prudent for these partnerships to comply with the provisions of the Act.” ⁶⁹ <i>Issuance of transcripts</i> from institutions of higher education ⁷⁰	<i>First Steps Program</i> : “‘This provision does not distinguish between those applying for the benefit and the person receiving the benefit. Accordingly, even if the person receiving the benefit is under the age of eighteen and the person actually submitting the application or requesting the benefit is over the age of eighteen, this provision appears to require the agency or political subdivision to verify the applicant’s immigration status.’” ⁷¹ First Steps would not be considered a political subdivision. ⁷² “Nonetheless, given the authority given to First Steps by the Legislature, the fact that its employees are treated as state employees, and the composition and method of appointment of its board, we are of the opinion that a court would likely find First Steps is an agency for purposes of section 8-29-10. Given this possibility, we would advise First Steps to comply with section 8-29-10’s provisions in order to ensure compliance with the Act.” ⁷³ <i>Issuance of Transcripts</i> : “The South Carolina Illegal Immigration Reform Act defers to the federal definition of a public benefit, which can be found in Sections 8 USC, 1611 [and] 1621 Both sections indicate that public benefits are ‘payments or assistance’ from government agencies. From these sections, we can derive that a postsecondary benefit is monetary in nature, whereby the student is receiving a payment or assistance of some kind. Section 1623 further states that ‘an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States.’ Because a college transcript is not a monetary benefit, it would not be included in this definition of a public benefit. In addition, out-of-state residents and foreign nationals who attend South Carolina institutions are also able to obtain college transcripts from their respective universities as long as they remain in good standing. This would suggest that a transcript is not a higher education benefit, and is not reserved solely for South Carolina residents. Further support for this position can be found in the case of <i>Equal Access Education v Merten</i> , 305 F. Supp. 2d 585 (E.D. Va 2004).” “In addition . . . the issuance of transcripts was not included in the discussion of what defines a public benefit when the legislation was created and passed into law. To make a determination that the issuance of transcripts would be included in the definition of public benefit could misrepresent the original intent of the legislation.” ⁷⁴	A South Carolina Attorney General’s opinion interpreting the Act contains the following pronouncement: “Based on our interpretation of section 8-29-10 of the South Carolina Code, we read this provision as requiring agencies and political subdivisions to verify the status of a person applying for benefits if the person applying is over the age of eighteen. Thus, whether or not an agency or political subdivision must check the immigration status of an individual depends on the age of the person applying and not the age of the person receiving the benefit.” ⁷⁵ There have been reports of entities like public libraries and vital records offices being told that they must verify the status of applicants for library cards or for parents seeking birth certificates for their children

State	Benefits Affected	Benefits Determined Not to Be Affected	Rationale	Comments
Utah SB 81 March 13, 2008 Utah Code Ann. § 63G-11-104 http://le.utah.gov/~2008/bills/sbillenr/sb0081.pdf SB 39 March 23, 2009 Amended Utah Code Ann. § 63G-11-104 to add retirement and loan exemptions http://le.utah.gov/~2009/bills/sbillenr/sb0039.pdf	<i>SB 81:</i> Contracts, grants, loans ⁷⁶ "ID cards must not be issued to the person identified on the card without verifying that the person is a citizen. Driver's licenses, voter identification cards, and birth certificates are examples. Special rules apply to public school identification cards." ⁷⁷	<i>SB 81:</i> "Individuals over age 18" (conflicts with statutory language of "[individuals] at least 18 years of age") Partnerships or corporations registered with the State Diagnosis and treatment of symptoms of communicable disease, even if not caused by communicable disease Health care items and services for treatment of emergency medical condition (EMTALA definition), except for organ transplant procedures Short-term, noncash, in-kind emergency disaster relief Soup kitchens, crisis counseling and short-term shelter as specified by U.S. Attorney General Exemption for paying nonresident portion of tuition per Section 53B-8-106 of the Utah Code Application for FHA or VA mortgages State retirement benefit Many public health programs, other than Medicaid and CHIP – i.e. cancer screening, Baby your Baby, and Tobacco Control WIC Program Birth certificates will be issued to citizen children, without requiring the requesting person to verify citizenship ⁷⁸		

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Virginia (Medical Benefits) HB 1798 March 28, 2005 Va. Code Ann. § 32.1-325.03 http://leg1.state.va.us/cgi-bin/legp504.exe?051+ful+HB1798ER+pdf				
Virginia (Other Benefits) HB 1798 March 28, 2005 Va. Code Ann. § 32.1-325.03 http://leg1.state.va.us/cgi-bin/legp504.exe?051+ful+HB1798ER+pdf				
Wisconsin No state statute; Opinion by Wisconsin Att'y Gen J. B. Van Hollen, OAG-3-07 (October 25, 2007). http://www.doj.state.wi.us/ag/opinions/2007_10_DRL-OAG.pdf	<i>State professional licenses:</i> "I have concluded, notwithstanding the absence of any Wisconsin statute limiting eligibility for professional licenses or credentials to persons who are in the country legally, that federal law is controlling so that DRL [Department of Regulation and Licensing and its affiliated licensing and credentialing boards] is prohibited from granting any professional license or credential to an alien who is present in the United States illegally. And because DRL is prohibited from issuing professional licenses or credentials to illegal aliens, it must put in place some kind of procedure practicably designed to reasonably insure that it does not issue licenses or credentials in violation of federal law." ⁷⁹		<p>"The federal government has broad power to determine which aliens should be admitted to the United States and to regulate their conduct while they are here. <i>DeCanas v. Bica</i>, 424 U.S. 351, 358 (1976). The states, having no such power, can neither add to nor take from the conditions lawfully imposed by Congress on the admission and residence of aliens in the United States or the several states. <i>Id.</i></p> <p>"In enacting [the Personal Responsibility and Work Opportunities Reconciliation Act of 1996], Congress expressly declared a national policy to remove the incentive for illegal immigration provided by the availability of public benefits . . . Thus, Congress intended to preempt existing state laws dealing with the eligibility of aliens for public benefits . . . and eliminate any eligibility illegal aliens had under those laws."</p> <p>"Illegal aliens can only become eligible for state public benefits . . . through the enactment of a new state law expressly making them eligible . . . In the absence of any such law, states are prohibited from providing illegal aliens with any public benefits other than those few benefits specifically excepted under federal law."</p> <p>"Wisconsin has not enacted any law affirmatively providing that an alien who is not lawfully present in the United States would be eligible for a public benefit for which the alien would not otherwise be eligible under federal law. Indeed, the Wisconsin Legislature has enacted some laws denying benefits to illegal aliens . . . So DRL may not issue a professional license or credential to any person who is not in this country legally."⁸⁰</p>	DRL oversees 350,000 license holders, including 50,000 new credentials a year, and regulates 128 types of credentials in 57 professional fields; agency did not expect the policy to affect many applicants as of implementation, but did not have specific numbers ⁸¹

NILC wishes to acknowledge the research assistance of Morgan Maxwell.

Please report any additional information and updates on these measures to Jonathan Blazer, NILC public benefits policy attorney, blazer@nilc.org.

NOTES

- ¹ State and Local Public Benefits Subject to Proposition 200, Op. Ariz. Att'y Gen. No. 104-010 (R04-036), 1 (November 12, 2004), available at <http://www.azag.gov/opinions/2004/104-010.pdf>.
- ² *Id.* at 11.
- ³ Elvia Diaz and Robbie Sherwood, *Prop. 200's effect minimal; Political fallout may loom large in '06 races*, AZCENTRAL.COM, June 5, 2005, <http://www.azcentral.com/php-bin/clicktrack/print.php?referer=http://www.azcentral.com/12news/news/articles/0605lmigration-illegal05-CP.html>.
- ⁴ State and Local Public Benefits Subject to Proposition 200, Op. Ariz. Att'y Gen. No. 104-010 (R04-036), 9 (November 12, 2004), available at <http://www.azag.gov/opinions/2004/104-010.pdf>.
- ⁵ *Id.*
- ⁶ *Id.* at 11.
- ⁷ Public Benefits under Federal Law and A.R.S. § 46-140.01, Op. Ariz. Att'y Gen. No. 105-009 (R04-040), 2 (December 29, 2005).
- ⁸ *Id.*
- ⁹ *Id.*
- ¹⁰ State and Local Public Benefits Subject to Proposition 200, Op. Ariz. Att'y Gen. No. 104-010 (R04-036), 4 (November 12, 2004), available at <http://www.azag.gov/opinions/2004/104-010.pdf>.
- ¹¹ *Id.* at 6.
- ¹² *Id.* at 7.
- ¹³ *Id.* at 8.
- ¹⁴ *Id.* at 10-11.
- ¹⁵ *Id.* at 11.
- ¹⁶ Public Benefits under Federal Law and A.R.S. § 46-140.01, Op. Ariz. Att'y Gen. No. 105-009 (R04-040), 3 (December 29, 2005).
- ¹⁷ *Id.* at 8.
- ¹⁸ *Id.* at 10.
- ¹⁹ Susan Carroll, Proposition 200 having little effect on illegal immigrants 6 months after implementation, TUCSON CITIZEN, June 6, 2005.
- ²⁰ Implementation of House Bill 1023, Op. Colo. Att'y Gen., 4 (July 19, 2006).
- ²¹ Implementation of House Bill 1023 and related statutes (Part 2), Op. Colo. Att'y Gen., 2 (July 28, 2006).
- ²² *Id.*
- ²³ Implementation of House Bill 1023, Op. Colo. Att'y Gen., 4 (July 19, 2006).
- ²⁴ *Id.*
- ²⁵ *Id.*
- ²⁶ Implementation of House Bill 1023 and related statutes (Part 2), Op. Colo. Att'y Gen., 3 (July 28, 2006).
- ²⁷ *Id.*
- ²⁸ *Id.*
- ²⁹ *Id.* at 1.
- ³⁰ *Id.* at 2.
- ³¹ *Id.*
- ³² Implementation of House Bill 1023, Op. Colo. Att'y Gen., 4 (July 19, 2006).
- ³³ Implementation of House Bill 1023 and related statutes (Part 2), Op. Colo. Att'y Gen., 2 (July 28, 2006).
- ³⁴ *Id.*
- ³⁵ *Id.* at 3.
- ³⁶ *Id.*
- ³⁷ The Georgia Security and Immigration Compliance Act, Op. Ga. Att'y Gen., 4 (January 26, 2009).
- ³⁸ *Id.* at 10.
- ³⁹ *Id.* at 11.
- ⁴⁰ *Id.* at 12.
- ⁴¹ *Id.* at 13.
- ⁴² *Id.* at 15.
- ⁴³ Verification of lawful presence in United States for individuals seeking MHDDAD services, Ga. Dep't of Human Res. Div. of Mental Health, Developmental Disabilities & Addictive Diseases Directive #6001-501, 1-2 (June 20, 2008).
- ⁴⁴ The Georgia Security and Immigration Compliance Act, Op. Ga. Att'y Gen., 12 (January 26, 2009).
- ⁴⁵ *Id.* at 17.
- ⁴⁶ *Id.* at 16-17.
- ⁴⁷ Verification of lawful presence in United States for individuals seeking MHDDAD services, Ga. Dep't of Human Res. Div. of Mental Health, Developmental Disabilities & Addictive Diseases Directive #6001-501, 1-2 (June 20, 2008).
- ⁴⁸ The Georgia Security and Immigration Compliance Act, Op. Ga. Att'y Gen., 10 (January 26, 2009).
- ⁴⁹ *Id.* at 11.
- ⁵⁰ *Id.* at 11-12.
- ⁵¹ *Id.* at 13.
- ⁵² *Id.* at 14-15.
- ⁵³ Press Release, Charles Bannister, Gwinnet County to Step up Security and Immigration Compliance (July 30, 2008).
- ⁵⁴ Tom Opdyke, *Chairman Sam Olens will ask county commission to approve change*, THE ATLANTA JOURNAL-CONSTITUTION (July 25, 2008).
- ⁵⁵ Ashley Hungerford, *Cobb to verify all business applicants' status*, MARIETTA DAILY (July 25, 2008).
- ⁵⁶ The Georgia Security and Immigration Compliance Act, Op. Ga. Att'y Gen., 13 (January 26, 2009).
- ⁵⁷ Op. Okla. Att'y Gen., 4 (July 7, 2008).
- ⁵⁸ *Id.* at 3.
- ⁵⁹ Section 8 of HB 1804; general guidelines for implementation of the lawful presence verification requirement incidental to the offer of services and benefits, Memorandum Providing Operational Guidance, Op. Okla. Dep't of Health Office Of Gen. Counsel, 2 (November 1, 2007).
- ⁶⁰ Op. Okla. Att'y Gen., 4 (July 7, 2008).
- ⁶¹ Section 8 of HB 1804; general guidelines for implementation of the lawful presence verification requirement incidental to the offer of services and benefits, Memorandum Providing Operational Guidance, Op. Okla. Dep't of Health Office of Gen. Counsel, 1 (November 1, 2007).
- ⁶² *Id.* at 2.
- ⁶³ *Id.* at 3.
- ⁶⁴ Op. Okla. Att'y Gen., 4 (July 7, 2008).
- ⁶⁵ Section 8 of HB 1804; general guidelines for implementation of the lawful presence verification requirement incidental to the offer of services and benefits, Memorandum Providing Operational Guidance, Op. Okla. Dep't of Health Office of Gen. Counsel, 2 (November 1, 2007).
- ⁶⁶ Op S.C. Att'y Gen., 7 (February 2, 2009), available at <http://www.scattorneygeneral.org/opinions/pdf/2009/devenny%20s%20os-8709%202-2-09%20sc%20illegal%20immigration%20reform%20act.PDF>.
- ⁶⁷ Issuance of transcripts to non-verified students, Op. S.C. Comm'n on Higher Educ. (January 16, 2009).
- ⁶⁸ *Id.*
- ⁶⁹ Op S.C. Att'y Gen., 8 (February 2, 2009), available at <http://www.scattorneygeneral.org/opinions/pdf/2009/devenny%20s%20os-8709%202-2-09%20sc%20illegal%20immigration%20reform%20act.PDF>.
- ⁷⁰ Issuance of transcripts to non-verified students, Op. S.C. Comm'n on Higher Educ. (January 16, 2009).
- ⁷¹ Op S.C. Att'y Gen., 9 (February 2, 2009), available at <http://www.scattorneygeneral.org/opinions/p>
- ⁷² *Id.* at 4.
- ⁷³ *Id.* at 7.
- ⁷⁴ *Id.*
- ⁷⁵ Op S.C. Att'y Gen., 9 (February 2, 2009), available at <http://www.scattorneygeneral.org/opinions/pdf/2009/devenny%20s%20os-8709%202-2-09%20sc%20illegal%20immigration%20reform%20act.PDF>.
- ⁷⁶ Summary of SB 81 Illegal Immigration, Op. Utah Dep't of Health Div. of Cmty. And Family Health Services (2008).
- ⁷⁷ *Id.*
- ⁷⁸ *Id.*
- ⁷⁹ Op. Wis. Att'y Gen. OAG-3-07 (October 25, 2007).
- ⁸⁰ *Id.*
- ⁸¹ Stacy Forster, Applicants for Professional Licenses Must Give Immigration Status, MILWAUKEE JOURNAL SENTINEL (July 31, 2008).