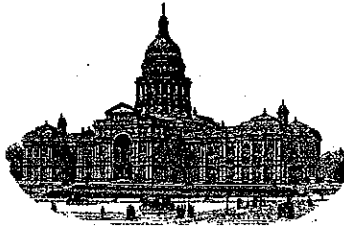


# TEXAS HOUSE OF REPRESENTATIVES

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OPINION COMMITTEE

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The Honorable Greg Abbott  
Attorney General  
Price Daniel, Sr. Building, 8th Floor  
209 West 14th Street  
Austin, Texas 78701-8701

FRANK J. CORTE JR.

FILE # ML-45787-08

ID # 45787

RQ-0732-GA

Dear General Abbott:

Immigration reform is a pressing national issue which has not been addressed by Congress. In response, several states have introduced legislation to address the issue. State legislation relating to immigration issues, such as laws recently enacted in Oklahoma and Arizona, concern employment regulation, cooperation with the federal government, and verification of immigrant status, among other issues. Although immigration law is primarily a federal concern, the question arises as to whether a state has any authority, statutory or otherwise, to enact laws related to immigration regulation. To that effect, we respectfully request an Attorney General's opinion regarding whether state legislation affecting employers of unauthorized aliens is permissible under federal law.

The federal Immigration Reform and Control Act, section 1324a(h)(2) provides the following:

The provisions of this section preempt any State or local law imposing civil or criminal sanctions (*other than through licensing and similar laws*) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens. 8 U.S.C. §1324a(h)(2).

Arizona recently passed legislation built on the exception language of § 1324a(h)(2). The Legal Arizona Workers' Act, signed into law July 2, 2007, includes business licensing regulations for employers. The Act prohibits an employer from intentionally or knowingly employing an unauthorized alien. The Act also requires employers to comply with the federal E-Verify Program to verify and prove the immigration status of employees. Finally, the Act provides for the suspension and ultimate revocation of a business license upon repeated violations of the Act.

A federal court in Arizona addressed the issue of the state's regulation of business licensing in *Arizona Contractors Ass'n et. al v. Candelaria et. al*, No. CV07-2496-PHX (District of Arizona). In the case, a group of non-profit corporations and business and trade associations presented a constitutional challenge to the Legal Arizona Workers' Act. The plaintiffs challenged the Act's granting of authority to the Superior Court of Arizona to suspend or revoke the business licenses of employers who intentionally or knowingly employed unauthorized aliens.



DISTRICT 122

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After considering the facial challenge, the federal court found that the state regulation of business licenses was expressly authorized by Congress in the exception language of section 1324a(h)(2) of the Immigration Reform and Control Act. The court also found that, because the Act requires the state to rely upon a binding federal, not state determination of the immigration status of employees, the state was not imposing immigration regulation, but instead was relying upon federal law to impose state employment regulation. The court noted that under the Act, the federal determination is to be obtained pursuant to section 1373(c) of the Immigration Reform and Control Act, which imposes an obligation on the federal government to respond to inquiries by federal, state, or local government agencies seeking verification of immigration status of an individual within the jurisdiction of the requesting party.

The Arizona court relied upon the Supreme Court case *De Canas v. Bica*, 424 U.S. 351 (1976) to further support its finding that states have a strong local interest in prohibiting the employment of unauthorized aliens. In regard to the plaintiffs' arguments of conflict preemption with federal immigration law, the court found that, because the Act tracked federal employer sanctions law, there was no conflict between the Act and the purposes and objectives of Congress regarding immigration policy. The legislation therefore has survived its initial constitutional challenge, although the 9th Circuit is expected to hear the constitutional questions in the near future.

Finally, Texas agencies are already focusing on business-related licenses in an effort to address illegal immigration issues. The Texas Department of Public Safety will revoke commercial drivers' licenses upon a conviction of felony smuggling. Although the initiative targets a driver license, rather than a business license, the impact is essentially the same; commercial livelihood is affected.

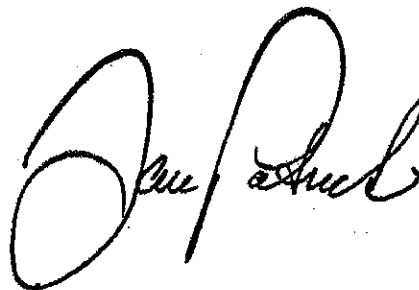
If Texas legislation (1) provided for the suspension or revocation of the business licensure of employers of unauthorized aliens; (2) relied solely upon a federal determination of immigration status; and (3) did not impose civil or criminal sanctions, would the law be permissible under the U.S. Constitution?

We appreciate your attention to this matter.

Sincerely,



Frank J. Corte, Jr.



Dan Patrick