

1 **DRIVER LICENSE REQUIREMENTS FOR**
2 **ILLEGAL ALIENS**
3 2005 GENERAL SESSION
4 STATE OF UTAH
5 **Sponsor: Aaron Tilton**

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Public Safety Code by amending driver license provisions for
10 certain licensees.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ requires the Driver License Division to:
- 14 • make rules for acceptable documentation of an applicant's identity, Utah
15 residence address, proof of legal presence, and proof of citizenship;
 - 16 • establish procedures and standards to:
 - 17 • certify and decertify specialized immigrant service providers to provide
18 certain services; and
 - 19 • receive enrollment records for persons enrolled in a specialized
20 immigrant services program; and
 - 21 • establish certain fees to cover the division's cost to implement certain new
22 duties;
 - 23 ▶ defines "specialized immigrant services" to mean an organization certified by the
24 division that:
 - 25 • provides programs for English language instruction to individuals who are not
26 United States citizens and who are not lawfully admitted aliens; and
 - 27 • maintains a database of individual enrollees;



28 ▶ provides that a person who obtains a driver license using a temporary identification
29 number (ITIN):

30 • is granted the privilege on condition that the person enrolls in and maintains
31 enrollment in a specialized immigrant service program; and

32 • beginning July 1, 2005, any new application for a license may not be granted
33 until 90 days following the date the application was made;

34 ▶ allows a specialized immigrant service provider to charge fees for enrollees and
35 requires the fees to be clearly and conspicuously posted;

36 ▶ requires a database of a specialized immigrant service program to:

37 • provide biometric security; and

38 • allow 24-hour enrollee access to verify that the specialized immigrant service
39 program has given the enrollee the correct credit in the program;

40 ▶ allows a person to be exempt from enrolling in a specialized immigrant service
41 program if at the time of application for a license or a subsequent time the person
42 provides to the satisfaction of the division:

43 • proof that the applicant is a citizen of a country other than the United States;

44 • proof that the applicant does not qualify for a Social Security number; and

45 • proof of legal presence in the United States, as authorized under federal law;

46 ▶ allows the division to immediately suspend the license of a person that is not
47 enrolled in a specialized immigrant service program if required and allows the
48 person the right to a hearing on the matter;

49 ▶ provides that if required by federal law, the division shall only issue a driving
50 privilege card to a person who does not provide proof of legal presence in the
51 United States and requires the division shall distinguish a driving privilege card
52 from a license certificate by certain means; and

53 ▶ makes technical changes.

54 **Monies Appropriated in this Bill:**

55 None

56 **Other Special Clauses:**

57 This bill takes effect on July 1, 2005.

58 **Utah Code Sections Affected:**

59 AMENDS:

60 **53-3-104**, as last amended by Chapter 85, Laws of Utah 2001

61 ENACTS:

62 **53-3-110**, Utah Code Annotated 1953

63 **53-3-111**, Utah Code Annotated 1953



65 *Be it enacted by the Legislature of the state of Utah:*

66 Section 1. Section **53-3-104** is amended to read:

67 **53-3-104. Division duties.**

68 The division shall:

69 (1) in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
70 make rules:

71 (a) for examining applicants for a license, as necessary for the safety and welfare of the
72 traveling public;

73 (b) for acceptable documentation of an applicant's identity, Utah residence address,
74 proof of legal presence, proof of citizenship, and other proof or documentation required under
75 this chapter;

76 ~~(b)~~ (c) regarding the restrictions to be imposed on a person driving a motor vehicle
77 with a temporary learner permit; and

78 ~~(c)~~ (d) for exemptions from licensing requirements as authorized in this chapter;

79 (2) examine each applicant according to the class of license applied for;

80 (3) license motor vehicle drivers;

81 (4) file every application for a license received by it and shall maintain indices
82 containing:

83 (a) all applications denied and the reason each was denied;

84 (b) all applications granted; and

85 (c) the name of every licensee whose license has been suspended, disqualified, or
86 revoked by the division and the reasons for the action;

87 (5) suspend, revoke, disqualify, cancel, or deny any license issued in accordance with
88 this chapter;

89 (6) file all accident reports and abstracts of court records of convictions received by it

90 under state law;

91 (7) maintain a record of each licensee showing his convictions and the traffic accidents
92 in which he has been involved where a conviction has resulted;

93 (8) consider the record of a licensee upon an application for renewal of a license and at
94 other appropriate times;

95 (9) search the license files, compile, and furnish a report on the driving record of any
96 person licensed in the state in accordance with Section 53-3-109;

97 (10) develop and implement a record system as required by Section 41-6-48.5;

98 (11) in accordance with Section 53A-13-208, establish:

99 (a) procedures and standards to certify teachers of driver education classes to
100 administer knowledge and skills tests;

101 (b) minimal standards for the tests; and

102 (c) procedures to enable school districts to administer or process any tests for students
103 to receive a class D operator's license;

104 (12) in accordance with Section 53-3-510, establish:

105 (a) procedures and standards to certify licensed instructors of commercial driver
106 training school courses to administer the skills test;

107 (b) minimal standards for the test; and

108 (c) procedures to enable licensed commercial driver training schools to administer or
109 process skills tests for students to receive a class D operator's license; ~~and~~

110 (13) provide administrative support to the Driver License Medical Advisory Board
111 created in Section 53-3-303[-]; and

112 (14) in accordance with Section 53-3-110, establish:

113 (a) procedures and standards to qualify, certify, and decertify specialized immigrant
114 service providers to provide the services under Section 53-3-110;

115 (b) procedures and standards to receive enrollment records for persons enrolled in a
116 specialized immigrant services program in order to enforce the provisions of Sections 53-3-110
117 and 53-3-221;

118 (c) standards and specifications for a database required under Section 53-3-110; and

119 (d) fees, in accordance with Section 63-38-3.2, to cover the division's cost to

120 implement the provisions of this Subsection (14) and Section 53-3-110.

121 Section 2. Section **53-3-110** is enacted to read:

122 **53-3-110. Specialized immigrant services -- Definitions -- License conditioned on**
123 **enrollment -- Fees -- Exceptions -- Suspensions -- Hearings.**

124 (1) As used in this section:

125 (a) "Biometric security" means using the unique characteristics of fingerprints, voice,
126 facial, or iris patterns to confirm a person's identity.

127 (b) "Specialized immigrant service" means an organization certified by the division
128 that:

129 (i) provides programs for English language instruction and for United States and Utah
130 government instruction to individuals who are:

131 (A) not citizens of the United States; and

132 (B) not lawfully admitted aliens; and

133 (ii) maintains a database:

134 (A) of individuals who have enrolled to receive services described in Subsection

135 (1)(b)(i) through the organization; and

136 (B) that is reported to the division in compliance with this section.

137 (2) A person who obtains the privilege to operate a motor vehicle under this chapter
138 using a temporary identification number (ITIN) under Subsection 53-3-205(9)(a)(i):

139 (a) subject to Subsection (2)(b), is granted the privilege on condition that the person
140 enrolls in and maintains enrollment in a specialized immigrant service program under this
141 section; and

142 (b) beginning July 1, 2005, any new application for a license may not be granted until
143 90 days following the date the application was made to the division.

144 (3) A specialized immigrant service program:

145 (a) may charge fees for a person to enroll in a specialized immigrant services program;
146 and

147 (b) shall clearly and conspicuously post and disclose all its current fees for the
148 specialized immigrant services program in a place where each enrollee can see the fee amounts
149 at any time during the business hours of the specialized immigrant service provider.

150 (4) The database under Subsection (1)(b)(ii) shall:

151 (a) provide biometric security; and

152 (b) allow 24-hour enrollee access to verify that the specialized immigrant service has
153 given the enrollee the correct credit in the program.

154 (5) (a) The provisions of Subsection (2)(a) do not apply to a person who obtains the
155 privilege to operate a motor vehicle under this chapter using a temporary identification number
156 (ITIN) under Subsection 53-3-205(9)(a)(i), if at the time of application or at a subsequent time
157 the person provides to the satisfaction of the division:

158 (i) proof that the applicant is a citizen of a country other than the United States;

159 (ii) proof that the applicant does not qualify for a Social Security number; and

160 (iii) proof of legal presence in the United States, as authorized under federal law.

161 (b) The exception granted under this Subsection (5) expires on the date of the
162 expiration of the person's foreign visa, permit, or other document granting legal presence in the
163 United States.

164 (6) (a) By following the emergency procedures in Title 63, Chapter 46b,
165 Administrative Procedures Act, the division may immediately suspend the license of a person
166 if the division has reason to believe that the person is not enrolled in a specialized immigrant
167 service program as required under this section.

168 (b) If the division exercises the right of immediate suspension granted under this
169 Subsection (6), the notice and hearing provisions of Subsection 53-3-221(5) apply.

170 (c) A person whose license suspension has been suspended or whose license has been
171 revoked by the division under this Subsection (6) may file a request for a hearing.

172 Section 3. Section **53-3-111** is enacted to read:

173 **53-3-111. Driving privilege card -- Definitions -- Driving privilege card issued if**
174 **federal law requires -- Distinguished from other license certificate.**

175 (1) As used in this section:

176 (a) "Driving privilege" means the privilege granted under this chapter to drive a motor
177 vehicle.

178 (b) "Driving privilege card" means the evidence of the privilege granted and issued
179 under this chapter to drive a motor vehicle.

180 (2) If required by federal law, the division shall only issue a driving privilege card to a
181 person who does not provide proof of legal presence in the United States, as authorized under
182 federal law.

- 183 (3) The division shall distinguish a driving privilege card from a license certificate by:
184 (a) use of a format, color, font, or other means; and
185 (b) clearly displaying on the front of the driving privilege card a phrase substantially
186 similar to "FOR DRIVING PRIVILEGES ONLY -- NOT VALID FOR IDENTIFICATION".
187 (4) If issued, the provisions, requirements, classes, endorsements, fees, restrictions, and
188 sanctions under this code apply to a:
189 (a) driving privilege in the same way as a license issued under this chapter; and
190 (b) driving privilege card in the same way as a license certificate issued under this
191 chapter.
192 Section 4. **Effective date.**
193 This bill takes effect on July 1, 2005.
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Legislative Review Note
as of 2-15-05 12:08 PM

This legislation requires driver license applicants that are unable to prove that they are citizens of a country other than the United States, do not qualify for a Social Security Number, and are legally present in the United States to enroll in a specialized immigrant service program and pay a fee for that enrollment to be eligible for a driver license certificate. These requirements have a high probability of being preempted and held invalid under the Immigration Reform and Control Act of 1986. Under 8 U.S.C. Sec. 1324(a)(1)(D), an individual is prohibited from encouraging or inducing "an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law." This legislation may encourage or induce an alien to reside in the United States knowing or in reckless disregard of the fact that such residence will be in violation of law.

In addition, this legislation has a high probability of being preempted under federal immigration law. In *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941), a federal system of alien registration was held to supersede a state system of registration. This legislation may be construed to require a state system of alien registration by requiring persons who are unable to prove that they are legally present in the United States to enroll in a state certified specialized immigrant service program that maintains a database of enrollees in order to be eligible for a driver license certificate.

Office of Legislative Research and General Counsel

State Impact

It is estimated that the Department of Public Safety, Driver License Division will require an appropriation from the Transportation Fund Restricted, Department of Public Safety Restricted Funds for FY 2006 of \$533,700 and an ongoing appropriation beginning FY 2007 of \$419,600. The Division is empowered by the bill to establish fees in implementing provisions of this bill. It is not known at this time what, if any, fees will be established and what amount of revenues they will generate.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
Restricted Funds	\$533,700	\$419,600	\$0	\$0
TOTAL	\$533,700	\$419,600	\$0	\$0

Individual and Business Impact

Providers of specialized immigrant services as stipulated in the bill will benefit.
