

1 **ILLEGAL IMMIGRATION ENFORCEMENT ACT**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Stephen E. Sandstrom**

5 Senate Sponsor: Margaret Dayton

6

LONG TITLE

7 **General Description:**

8 This bill modifies state law and enacts the "Illegal Immigration Enforcement Act."

9 **Highlighted Provisions:**

10 This bill:

11 ▶ requires that an officer verify the immigration status of a detained or arrested person
12 upon reasonable suspicion the person is an illegal alien, and provides enforcement
13 exceptions;

14 ▶ clarifies when passengers in a vehicle where the operator has been detained may
15 also be questioned and their immigration status verified;

16 ▶ requires that a law enforcement officer may not consider race, color, or national
17 origin, except as permitted by Utah and United States constitutions;

18 ▶ states grounds for a presumption of a person's lawful presence in the United States;

19 ▶ provides for transportation of an illegal alien to federal custody by a state or local
20 law enforcement officer;

21 ▶ provides that a state or local agency may not limit ~~H→~~ **[,by any means,] by ordinance,**
22 **regulation, or policy ←H** the authority of

23 any law enforcement or other governmental agency to assist the federal government
24 in the enforcement of any federal immigration law, including the federal
25 requirement to register as an alien or possess an alien registration document;

26 ▶ provides that any state or local governmental agency is not restricted in sending,
27 receiving, or maintaining immigration status information of any person in carrying

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28 out the agency's lawful purposes;

29 ▶ requires verification of immigration status regarding application for public services,
30 benefits, or licenses provided by a state or local governmental agency or
31 subcontractor ~~H→~~ , except as exempted by federal law ~~←H~~ ;

32 ▶ provides that this bill does not implement or authorize the federal REAL ID Act to
33 any extent not currently provided by state law;

34 ~~H→ [→ provides that a legal resident may, after establishing standing, bring action against~~
35 ~~an agency that limits enforcement of federal immigration laws and imposes~~
36 ~~financial penalties for violation;~~

37 ~~→ provides that penalties imposed on the agencies be directed to the multi-agency~~
38 ~~strike force that deals with crime associated with illegal immigration and human~~
39 ~~trafficking;]~~ ~~←H~~

40 ▶ amends the current state law prohibiting transporting or harboring illegal aliens by
41 removing the limitation to transportation of the alien for a distance greater than 100
42 miles;

43 ▶ prohibits the encouraging or inducing of an illegal alien to come to or reside in
44 Utah; and

45 ▶ amends peace officer arrest authority to include making an arrest when the officer
46 has reasonable cause to believe the person is an alien:

- 47 • subject to an immigration removal order; and
- 48 • regarding whom a detainer warrant has been issued who has committed or been
- 49 charged with a felony in another state.

50 **Money Appropriated in this Bill:**

51 None

52 **Other Special Clauses:**

53 This bill takes effect on July 1, 2011.

54 **Utah Code Sections Affected:**

55 AMENDS:

56 **67-5-22.7**, as enacted by Laws of Utah 2009, Chapter 30

57 **76-10-2901**, as enacted by Laws of Utah 2008, Chapter 26

58 **77-7-2**, as last amended by Laws of Utah 2008, Chapter 293

59 ENACTS:

60 76-9-1001, Utah Code Annotated 1953

61 76-9-1002, Utah Code Annotated 1953

62 76-9-1003, Utah Code Annotated 1953

63 76-9-1004, Utah Code Annotated 1953

64 76-9-1005, Utah Code Annotated 1953

65 76-9-1006, Utah Code Annotated 1953

66 76-9-1007, Utah Code Annotated 1953

67 76-9-1008, Utah Code Annotated 1953

68 76-9-1009, Utah Code Annotated 1953

69 ~~H→ [76-9-1010, Utah Code Annotated 1953] ←H~~



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

72 Section 1. Section 67-5-22.7 is amended to read:

73 **67-5-22.7. Multi-agency strike force to combat violent and other major felony**
74 **crimes associated with illegal immigration and human trafficking -- Fraudulent**
75 **Documents Identification Unit -- Funding.**

76 (1) The Office of the Attorney General is authorized to administer and coordinate the
77 operation of a multi-agency strike force to combat violent and other major felony crimes
78 committed within the state that are associated with illegal immigration and human trafficking.

79 (2) The office shall invite officers of the U.S. Immigration and Customs Enforcement
80 and state and local law enforcement personnel to participate in this mutually supportive,
81 multi-agency strike force to more effectively utilize their combined skills, expertise, and
82 resources.

83 (3) The strike force shall focus its efforts on detecting, investigating, deterring, and
84 eradicating violent and other major felony criminal activity related to illegal immigration and
85 human trafficking.

86 (4) In conjunction with the strike force and subject to available funding, the Office of
87 the Attorney General shall establish a Fraudulent Documents Identification Unit:

88 (a) for the primary purpose of investigating, apprehending, and prosecuting individuals
89 or entities that participate in the sale or distribution of fraudulent documents used for

90 identification purposes; and

91 (b) to specialize in fraudulent identification documents created and prepared for
92 individuals who are unlawfully residing within the state.

93 (5) Funding for the strike force shall include funds from penalties imposed under
94 Section 76-9-1009.

95 ~~[(5)]~~ (6) The strike force shall make an annual report on its activities to the governor
96 and the Legislature's Law Enforcement and Criminal Justice Interim Committee by December
97 1, together with any proposed recommendations for modifications to this section.

98 Section 2. Section **76-9-1001** is enacted to read:

99 **Part 10. The Illegal Immigration Enforcement Act**

100 **76-9-1001. Title.**

101 This part is known as "The Illegal Immigration Enforcement Act."

102 Section 3. Section **76-9-1002** is enacted to read:

103 **76-9-1002. Definitions.**

104 As used in this part:

105 (1) "Alien" means a person who is not a citizen or national of the United States.

106 (2) "ICE" means the federal Immigration and Customs Enforcement agency of the
107 United States Department of Homeland Security.

108 (3) "Law enforcement officer" has the same meaning as in Section 53-13-103.

108a **H→ (4) "Reasonable suspicion" is based on a peace officer who is acting under**
108b **Subsection 76-9-1003(1) determining that a person is unable to provide any of the**
108c **documents listed in Subsection 76-9-1004(1).**

109 ~~[(4)]~~ (5) ~~←H~~ "SAVE program" means the federal Systematic Alien Verification for
109a Entitlements

110 program operated by the federal Department of Homeland Security.

111 **H→ [(5)] (6) ←H "State or local governmental agency" includes any private contractor or**
111a **vendor that**

112 **contracts with the agency to provide the agency's functions or services.**

113 **H→ [(6)] (7) ←H "Verify immigration status" or "verification of immigration status"**
113a **means the**

114 **determination of a person's immigration status by:**

115 **(a) a law enforcement officer who is authorized by a federal agency to determine an**
116 **alien's immigration status; or**

117 **(b) the United States Department of Homeland Security, ICE, or other federal agency**
118 **authorized to provide immigration status as provided by 8 U.S.C. 1373(c).**

119 Section 4. Section **76-9-1003** is enacted to read:

120 **76-9-1003. Detention or arrest -- Determination of immigration status.**

- 121 (1) (a) ~~It~~ **[When] Except as provided in Subsections (1)(b), (c), or (d),** ~~it~~
 121a any law enforcement officer acting in the enforcement of any state law or
 122 local ordinance conducts any lawful stop, detention, or arrest of a person, and the officer has a
 123 reasonable suspicion that the person is an alien and is present in the United States unlawfully,
 124 the officer ~~it~~ :
- 124a (i) ~~It~~ shall ~~it~~ **[attempt to verify] request verification of the citizenship or** ~~it~~ the
 124b immigration status of the person ~~it~~ under 8 U.S.C. 1373(c) ~~it~~ , except as allowed under
 125 Subsection (1)(b) ~~it~~ [or] , ~~it~~ (c) ~~it~~ , or (d), if the alleged offense is a class A misdemeanor
 125a or a felony; and
- 125b (ii) may attempt to verify the immigration status of the person, except as exempted
 125c under Subsections (1)(b), (c), or (d), if the alleged offense is a class B or class C misdemeanor,
 125d except that if the person is arrested and booked for a class B or C misdemeanor, the arresting
 125e law enforcement officer or the law enforcement agency booking the person shall attempt to
 125f verify the immigration status of the person ~~it~~ .
- 126 (b) In individual cases, the law enforcement officer may forego the verification of
 127 immigration status under Subsection (1)(a) if the determination could hinder or obstruct a
 128 criminal investigation.
- 129 (c) Subsection (1)(a) does not apply to a law enforcement officer who is acting as a
 130 school resource officer for any elementary or secondary school.
- 130a ~~It~~ (d) Subsection (1)(a) does not apply to a county or municipality when it has only one
 130b law enforcement officer on duty and response support from another law enforcement
 130c agency is not available. ~~It~~
- 131 (2) When a law enforcement officer makes a lawful stop, detention, or arrest under
 132 Subsection (1) of the operator of a vehicle, and while investigating or processing the primary
 133 offense, the officer makes observations that give the officer reasonable suspicion that the
 134 operator or any of the passengers in the vehicle are violating Section 76-5-309, 76-5-310, or
 135 76-10-2901, which concern smuggling and transporting illegal aliens, the officer shall, to the
 136 extent possible within a reasonable period of time:
- 137 (a) detain the occupants of the vehicle to investigate the suspected violations; and
 138 (b) inquire regarding the immigration status of the occupants of the vehicle.
- 139 (3) When a person under Subsection (1) is issued a citation or is arrested and booked
 140 into a jail, juvenile detention facility, or correctional facility, the citing officer or the booking
 141 officer shall ensure that a request for verification of immigration status of the cited or arrested
 142 person is submitted as promptly as is reasonably possible.

152 (1) A person is presumed to be lawfully present in the United States for the purposes of
 153 this section if the person provides one of the following documents to the law enforcement
 154 officer, unless the law enforcement officer has a reasonable suspicion that the document is false
 155 or identifies a person other than the person providing the document:

156 (a) a valid Utah driver license ~~H→~~ issued on or after January 1, 2010 ~~←H~~ ;

157 (b) a valid Utah identification card issued under Section 53-3-804 ~~H→~~ and issued on or
 157a after January 1, 2010 ~~←H~~ ;

158 (c) a valid tribal enrollment card or other valid form of tribal membership identification
 159 that includes photo identification; ~~H→~~ [or] ~~←H~~

160 (d) a valid identification document that:

161 (i) includes a photo or biometric identifier of the holder of the document; and

162 (ii) is issued by a federal, state, or local governmental agency that requires proof or
 163 verification of legal presence in the United States as a condition of issuance of the
 163a document ~~H→~~ ; or

163b (e) a Utah permit to carry a concealed firearm ~~←H~~ .

164 (2) A person is presumed to be a citizen or national of the United States for purposes of
 165 this section if the person makes a statement or affirmation to the law enforcement officer that
 166 the person is a United States citizen or national, unless the officer has a reasonable suspicion
 167 that the statement or affirmation is false.

168 Section 6. Section **76-9-1005** is enacted to read:

169 **76-9-1005. Illegal alien -- Notification of federal government -- Transportation to**
 170 **federal facility.**

171 A state or local law enforcement agency may securely transport an alien who is in the
 172 agency's custody and whom the agency has verified is unlawfully present in the United States
 173 to a federal detention facility in this state or, with the concurrence of the receiving federal
 174 agency, to a federal facility or other point of transfer to federal custody that is outside this state.

175 Section 7. Section **76-9-1006** is enacted to read:

176 **76-9-1006. Enforcement of federal immigration laws.**

177 ~~H→~~ **(1) ~~←H~~ A state or local governmental agency of this state, or any representative of the**
 177a **agency,**

178 **may not:**

179 ~~H→~~ **[(†)] (a) ~~←H~~ limit or ~~H→~~ [by any means] ~~←H~~ restrict by ordinance, regulation, ~~H→~~ or ~~←H~~**
 179a **policy ~~H→~~ [, practice, or in any**

180 **other manner] ~~←H~~ the authority of any law enforcement agency or ~~H→~~ [officer, or any state or**
 180a **local] other ~~←H~~**

181 **governmental agency to assist the federal government in the enforcement of any federal law or**
 182 **regulation governing immigration; or**

183 ~~Ĥ→~~ [(2)] (b) ~~←Ĥ~~ limit or ~~Ĥ→~~ [by any means] ~~←Ĥ~~ restrict by ordinance, regulation,
 183a ~~Ĥ→~~ or ~~←Ĥ~~ policy ~~Ĥ→~~ [~~practice, or in any~~
 184 ~~other manner~~] ~~←Ĥ~~ the authority of any law enforcement agency to investigate or enforce any
 185 violation of the federal misdemeanor offenses of willful failure to register as an alien or willful
 186 failure to personally possess an alien registration document as required by 8 U.S.C. 1304(e) or
 187 1306(a).
 187a ~~Ĥ→~~ (2) **An action under Subsection (1)(a) by a state or local governmental entity or a**
 187b **representative of the entity shall be demonstrated to have been committed with the intent to**
 187c **violate this chapter in order for a cause of action to be established.** ~~←Ĥ~~

188 Section 8. Section **76-9-1007** is enacted to read:

189 **76-9-1007. Determining an alien's immigration status -- Transfer or maintenance**
 190 **of information.**

191 (1) Except as limited by federal law, any state or local governmental agency is not
 192 restricted or prohibited in any way from sending, receiving, or maintaining information related
 193 to the lawful or unlawful immigration status of any person by communicating with any federal,
 194 state, or local governmental entity for any lawful purpose, including:

195 (a) determining a person's eligibility for any public benefit, service, or license provided
 196 by any federal agency, by this state or by any political subdivision of this state;

197 (b) confirming a person's claim of residence or domicile if determination is required by
 198 state law or a judicial order issued pursuant to a civil or criminal proceeding in this state;

199 (c) if the person is an alien, determining if the person is in compliance with the federal
 200 registration laws of Title II, Part 7, Immigration and Nationality Act; or

201 (d) a valid request for verification of the citizenship or immigration status of any
 202 person pursuant to 8 U.S.C. 1373.

203 (2) This section does not implement, authorize, or establish the federal REAL ID Act
 204 of 2005, P.L. 109-13, Division B; 119 Stat. 302, except as provided by Section 53-3-104.5,
 205 regarding limitations on the state implementation of the federal REAL ID Act.

206 Section 9. Section **76-9-1008** is enacted to read:

207 **76-9-1008. Proof of immigration status to receive public benefits.**

208 (1) An agency that provides state or local public benefits as defined in 8 U.S.C.1621
 209 shall comply with Section 63G-11-104 and shall also comply with this section ~~Ĥ→~~ , **except when**
 209a **compliance is exempted by federal law or when compliance could reasonably be expected to be**
 209b **grounds for the federal government to withhold federal Medicaid funding** ~~←Ĥ~~ .

210 (a) The agency shall verify a person's lawful presence in the United States by requiring
 211 that the applicant under this section sign a certificate under penalty of perjury, stating that the
 212 applicant:

213 (i) is a United States citizen; or

214 (ii) is a qualified alien as defined by 8 U.S.C. 1641.

215 (b) The certificate under Subsection (1)(a) shall include a statement advising the signer
216 that providing false information subjects the signer to penalties for perjury.

216a **H→ (c) The signature under this Subsection (1) may be executed in person or electronically.**

217 ~~[(c)-(i)]~~ **(d) ←H** When an applicant who is a qualified alien has executed the certificate under this
218 section, the applicant's eligibility for benefits shall be verified by the agency through the federal
219 SAVE program or an equivalent program designated by the United States Department of
220 Homeland Security.

221 **H→ [(ii) Until eligibility verification is made, the certificate may be presumed to be proof of**
222 **lawful presence for the purposes of this section.] ←H**

223 (2) Any person who knowingly and willfully makes a false, fictitious, or fraudulent
224 statement of representation in a certificate executed under this section is guilty of public
225 assistance fraud under Section 76-8-1205.

226 (3) If the certificate constitutes a false claim of United States citizenship under 18
227 U.S.C. Section 911, the agency requiring the certificate shall file a complaint with the United
228 States Attorney for the applicable federal judicial district based upon the venue in which the
229 certificate was executed.

230 (4) Agencies may, with the concurrence of the Office of the Utah Attorney General,
231 adopt variations to the requirements of the provisions of this section which provide for
232 adjudication of unique individual circumstances where the verification procedures in this
233 section would impose unusual hardship on a legal resident of this state.

234 (5) H→ (a) ←H A legal resident of Utah who establishes standing may bring
234a a civil action H→ for a writ of mandamus ←H under
235 Section 76-9-1009 against an agency which does not verify eligibility of applicants for state
236 and local public benefits, in violation of the provisions of this section

236a **H→ (b) If a party prevails in a civil action for a writ of mandamus under Subsection**
236b **(5)(a), the agency against whom the writ is issued is liable for attorney fees and court costs for**
236c **the civil action ←H .**

237 (6) If an agency under Subsection (1) H→ [determines it has reasonable suspicion]
237a receives verification ←H that a
238 person making an application for any benefit, service, or license H→ [has violated or attempted to
239 violate any fraud provision of the Utah Code] is not a qualified alien ←H , the agency shall provide
239a the information to the
240 local law enforcement agency H→ unless prohibited by federal mandate ←H .

241 ~~H→ [Section 10. Section 76-9-1009 is enacted to read:~~
242 ~~—— 76-9-1009. Legal resident may bring action regarding agency that limits~~
243 ~~enforcement of federal immigration laws.~~
244 ~~—— (1) A state or local governmental agency may not adopt or implement a policy that~~

245 ~~limits or restricts the enforcement of federal immigration laws, including 8 U.S.C. 1373 and~~
 246 ~~1644, to less than the full extent permitted by federal law.~~

247 ~~—— (2) ~~↔~~ (a) ~~↔~~ A legal resident of this state who establishes standing may bring~~
 247a ~~an action in~~
 248 ~~district court to challenge any state or local governmental agency that acts in violation of~~
 249 ~~Subsection (1):~~

249a ~~—— ~~↔~~ (b) To establish standing under this section, the complainant shall:~~
 249b ~~—— (i) be a legal resident of the state; and~~
 249c ~~—— (ii) demonstrate that the complainant is or will be directly and concretely injured by a~~
 249d ~~violation of Subsection (1). ~~↔~~~~

250 ~~—— (3) (a) If the court finds that a governmental agency has violated Subsection (1), the~~
 251 ~~court shall order that the governmental agency pay a civil penalty of not less than \$500, but not~~
 252 ~~more than \$5,000, for each day the policy under Subsection (1) has remained in effect~~
 253 ~~subsequent to the fourteenth day after the date the action was filed under Subsection (2):~~

254 ~~—— (b) The penalty shall be paid to the court, which shall transfer the funds for use by the~~
 255 ~~multi-agency strike force created under Section 67-5-22.7.~~

256 ~~—— (4) (a) A law enforcement officer is indemnified by the officer's employing agency~~
 257 ~~against reasonable costs and expenses, including attorney fees, incurred by the officer in~~
 258 ~~connection with any action brought under this section in which the officer may be a defendant~~
 259 ~~by reason of the officer's being or having been employed by a law enforcement agency:~~

260 ~~—— (b) An officer under Subsection (4)(a) ~~↔~~ [is not] shall be ~~↔~~ indemnified~~
 260a ~~~~↔~~ [if the court finds that the~~
 261 ~~officer acted in bad faith] pursuant to Title 63G, Chapter 7, Governmental Immunity Act of~~
 261a ~~Utah ~~↔~~ .~~

261b ~~~~↔~~ (5) This section does not apply to a discretionary decision made by a law enforcement~~
 261c ~~officer regarding the verification of immigration status of a person under Section 76-9-103 if~~
 261d ~~the alleged offense is a class B or C misdemeanor, unless the person is booked:~~

261e ~~(6) Notice and limitation of action on a claim under this section shall be in accordance with~~
 261f ~~Title 63G, Chapter 7, Governmental Immunity Act of Utah. ~~↔~~ ~~↔~~~~

262 Section ~~↔~~ [H] 10 ~~↔~~ . Section ~~↔~~ [76-9-1010] 76-9-1009 ~~↔~~ is enacted to read:
 263 ~~↔~~ [76-9-1010.] 76-9-1009. ~~↔~~ Implementation to be consistent with federal law and
 263a civil rights.

264 All state and local agencies shall implement this part in a manner that is consistent with
 265 federal laws that regulate immigration, protect the civil rights of all persons, and establish the
 266 privileges and immunities of United States citizens.

267 Section ~~H→~~ [12] 11 ~~←H~~ . Section 76-10-2901 is amended to read:

268 **76-10-2901. Transporting or harboring aliens -- Definition -- Penalties.**

269 (1) [~~For purposes of~~] As used in this part, "alien" means an individual who is illegally
270 present in the United States.

271 (2) It is unlawful for a person to:

272 (a) transport, move, or attempt to transport into this state ~~H→~~ or ~~←H~~ [~~or for a~~
272a ~~distance of greater~~

273 ~~than 100 miles~~] within the state an alien for commercial advantage or private financial gain,

274 knowing or in reckless disregard of the fact that the alien is in the United States in violation of

275 federal law, in furtherance of the illegal presence of the alien in the United States; [~~or~~]

276 (b) knowingly, with the intent to violate federal immigration law, conceal, harbor, or
 277 shelter from detection an alien in a place within this state, including a building or means of
 278 transportation for commercial advantage or private financial gain, knowing or in reckless
 279 disregard of the fact that the alien is in the United States in violation of federal law[-];

280 (c) encourage or induce an alien to come to, enter, or reside in this state, knowing or in
 281 reckless disregard of the fact that the alien's coming to, entry, or residence is or will be in
 282 violation of law; or

283 (d) engage in any conspiracy, for commercial advantage or private financial gain, to
 284 commit any of the offenses listed in this Subsection (2).

285 (3) (a) A person who violates Subsection (2)(a), (c), or (d) is guilty of a third degree
 286 felony.

287 (b) A person who violates Subsection (2)(b) is guilty of a class A misdemeanor.

288 (4) Nothing in this part prohibits or restricts the provision of:

289 (a) a state or local public benefit described in 8 U.S.C., Section 1621(b); or

290 (b) charitable or humanitarian assistance, including medical care, housing, counseling,
 291 food, victim assistance, religious services and sacraments, and transportation to and from a
 292 location where the assistance is provided, by a charitable, educational, or religious organization
 293 or its employees, agents, or volunteers, using private funds.

294 (5) (a) It is not a violation of this part for a religious denomination or organization or
 295 an agent, officer, or member of a religious denomination or organization to encourage, invite,
 296 call, allow, or enable an alien to perform the vocation of a minister or missionary for the
 297 denomination or organization in the United States as a volunteer who is not compensated as an
 298 employee, notwithstanding the provision of room, board, travel, medical assistance, and other
 299 basic living expenses.

300 (b) Subsection (5)(a) applies only to an alien who has been a member of the religious
 301 denomination or organization for at least one year.

302 Section ~~H~~→ [13] 12 ←~~H~~ . Section 77-7-2 is amended to read:

303 **77-7-2. Arrest by peace officers.**

304 A peace officer may make an arrest under authority of a warrant or may, without
 305 warrant, arrest a person:

306 (1) (a) for any public offense committed or attempted in the presence of any peace