

1 **UTAH ILLEGAL IMMIGRATION ENFORCEMENT ACT**

2 2011 GENERAL SESSION

3 STATE OF UTAH

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

5 Senate Sponsor: \_\_\_\_\_

6	Cosponsors:	Keith Grover	Patrick Painter
7	Roger E. Barrus	Stephen G. Handy	Lee B. Perry
8	Derek E. Brown	Neal B. Hendrickson	Val L. Peterson
9	Melvin R. Brown	Christopher N. Herrod	Dixon M. Pitcher
10	David G. Butterfield	Gregory H. Hughes	Kraig Powell
11	David Clark	Don L. Ipson	Paul Ray
12	Brad L. Dee	Bradley G. Last	Holly J. Richardson
13	Susan Duckworth	John G. Mathis	Douglas Sagers
14	Julie Fisher	Michael T. Morley	Kenneth W. Sumsion
15	Gage Froerer	Merlynn T. Newbold	Evan J. Vickers
16	Brad J. Galvez	Jim Nielson	Ryan D. Wilcox
17	Francis D. Gibson	Michael E. Noel	Brad R. Wilson
18	Richard A. Greenwood	Curtis Oda	Carl Wimmer

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20 **LONG TITLE**

21 **General Description:**

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

23 **Highlighted Provisions:**

24 This bill:

25 ▶ requires that an officer verify the immigration status of a person arrested for a  
 26 felony or a class A misdemeanor and a person booked for class B or C  
 27 misdemeanors and requires that an officer attempt to verify immigration status for a  
 28 person detained for a class B or C misdemeanor, and that these actions shall be  
 29 upon reasonable suspicion the person is an illegal alien;

30 ▶ provides enforcement exceptions regarding an officer's verifying immigration  
 31 status;



- 32           ▶ clarifies when passengers in a vehicle where the operator has been detained may
- 33 also be questioned and their immigration status verified;
- 34           ▶ requires that a law enforcement officer may not consider race, color, or national
- 35 origin, except as permitted by Utah and United States constitutions;
- 36           ▶ states grounds for a presumption of a person's lawful presence in the United States;
- 37           ▶ provides for transportation of an illegal alien to federal custody by a state or local
- 38 law enforcement officer;
- 39           ▶ provides that a state or local agency may not limit by ordinance, regulation, or
- 40 policy the authority of any law enforcement or other governmental agency to assist
- 41 the federal government in the enforcement of any federal immigration law,
- 42 including the federal requirement to register as an alien or possess an alien
- 43 registration document;
- 44           ▶ provides that any state or local governmental agency is not restricted in sending,
- 45 receiving, or maintaining immigration status information of any person in carrying
- 46 out the agency's lawful purposes;
- 47           ▶ requires verification of immigration status regarding application for public services
- 48 or benefits provided by a state or local governmental agency or subcontractor,
- 49 except as exempted by federal law;
- 50           ▶ provides that this bill does not implement or authorize the federal REAL ID Act to
- 51 any extent not currently provided by state law;
- 52           ▶ amends the current state law prohibiting transporting or harboring illegal aliens by
- 53 removing the limitation to transportation of the alien for a distance greater than 100
- 54 miles;
- 55           ▶ prohibits the encouraging or inducing of an illegal alien to come to or reside in
- 56 Utah; and
- 57           ▶ amends peace officer arrest authority to include making an arrest when the officer
- 58 has reasonable cause to believe the person is an alien:
  - 59           • subject to an immigration removal order; and
  - 60           • regarding whom a detainer warrant has been issued who has committed or been
  - 61 charged with a felony in another state.

62 **Money Appropriated in this Bill:**

63 None

64 **Other Special Clauses:**

65 This bill takes effect on July 1, 2011.

66 This bill coordinates with S.B. 288, Utah Immigration Enforcement Amendments, by  
67 providing substantive amendments.

68 **Utah Code Sections Affected:**

69 AMENDS:

70 **76-10-2901**, as enacted by Laws of Utah 2008, Chapter 26

71 **77-7-2**, as last amended by Laws of Utah 2008, Chapter 293

72 ENACTS:

73 **76-9-1001**, Utah Code Annotated 1953

74 **76-9-1002**, Utah Code Annotated 1953

75 **76-9-1003**, Utah Code Annotated 1953

76 **76-9-1004**, Utah Code Annotated 1953

77 **76-9-1005**, Utah Code Annotated 1953

78 **76-9-1006**, Utah Code Annotated 1953

79 **76-9-1007**, Utah Code Annotated 1953

80 **76-9-1008**, Utah Code Annotated 1953

81 **76-9-1009**, Utah Code Annotated 1953

82 **Utah Code Sections Affected by Coordination Clause:**

83 **76-9-1001**, Utah Code Annotated 1953

84 **76-9-1002**, Utah Code Annotated 1953

85 **76-9-1003**, Utah Code Annotated 1953

86 **76-9-1004**, Utah Code Annotated 1953

87 **76-9-1005**, Utah Code Annotated 1953

88 **76-10-2901**, as enacted by Laws of Utah 2008, Chapter 26

89 **77-7-2**, as last amended by Laws of Utah 2008, Chapter 293



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

92 Section 1. Section **76-9-1001** is enacted to read:

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

94 **76-9-1001. Title.**

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

96 Section 2. Section **76-9-1002** is enacted to read:

97 **76-9-1002. Definitions.**

98 As used in this part:

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

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

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

103 (4) "SAVE program" means the federal Systematic Alien Verification for Entitlements  
104 program operated by the federal Department of Homeland Security.

105 (5) "State or local governmental agency" includes any private contractor or vendor that  
106 contracts with the agency to provide the agency's functions or services.

107 (6) "Verify immigration status" or "verification of immigration status" means the  
108 determination of a person's immigration status by:

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

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

113 Section 3. Section **76-9-1003** is enacted to read:

114 **76-9-1003. Detention or arrest -- Determination of immigration status.**

115 (1) (a) Except as provided in Subsection (1)(b), (c), or (d), any law enforcement officer  
116 who, acting in the enforcement of any state law or local ordinance, conducts any lawful stop,  
117 detention, or arrest of a person as specified in Subsection (1)(a)(i) or (ii), and the officer has a  
118 reasonable suspicion that the person is an alien and is present in the United States unlawfully,  
119 the officer:

120 (i) shall request verification of the citizenship or the immigration status of the person  
121 under 8 U.S.C. Sec. 1373(c), except as allowed under Subsection (1)(b), (c), or (d), if the  
122 person is arrested for an alleged offense that is a class A misdemeanor or a felony; and

123 (ii) may attempt to verify the immigration status of the person, except as exempted  
124 under Subsection (1)(b), (c), or (d), if the alleged offense is a class B or C misdemeanor, except

125 that if the person is arrested and booked for a class B or C misdemeanor, the arresting law  
126 enforcement officer or the law enforcement agency booking the person shall attempt to verify  
127 the immigration status of the person.

128 (b) In individual cases, the law enforcement officer may forego the verification of  
129 immigration status under Subsection (1)(a) if the determination could hinder or obstruct a  
130 criminal investigation.

131 (c) Subsection (1)(a) does not apply to a law enforcement officer who is acting as a  
132 school resource officer for any elementary or secondary school.

133 (d) Subsection (1)(a) does not apply to a county or municipality when it has only one  
134 law enforcement officer on duty and response support from another law enforcement agency is  
135 not available.

136 (2) When a law enforcement officer makes a lawful stop, detention, or arrest under  
137 Subsection (1) of the operator of a vehicle, and while investigating or processing the primary  
138 offense, the officer makes observations that give the officer reasonable suspicion that the  
139 operator or any of the passengers in the vehicle are violating Section 76-5-309, 76-5-310, or  
140 76-10-2901, which concern smuggling and transporting illegal aliens, the officer shall, to the  
141 extent possible within a reasonable period of time:

142 (a) detain the occupants of the vehicle to investigate the suspected violations; and

143 (b) inquire regarding the immigration status of the occupants of the vehicle.

144 (3) When a person under Subsection (1) is arrested or booked into a jail, juvenile  
145 detention facility, or correctional facility, the arresting officer or the booking officer shall  
146 ensure that a request for verification of immigration status of the arrested or booked person is  
147 submitted as promptly as is reasonably possible.

148 (4) The law enforcement agency that has custody of a person verified to be an illegal  
149 alien shall request that the United States Department of Homeland Security issue a detainer  
150 requesting transfer of the illegal alien into federal custody.

151 (5) A law enforcement officer may not consider race, color, or national origin in  
152 implementing this section, except to the extent permitted by the constitutions of the United  
153 States and this state.

154 Section 4. Section **76-9-1004** is enacted to read:

155 **76-9-1004. Grounds for presumption of lawful presence in United States --**

156 **Statement to officer.**

157 (1) A person is presumed to be lawfully present in the United States for the purposes of  
158 this part if the person provides one of the following documents to the law enforcement officer  
159 or if the person provides information that allows the officer to verify the existence of one of the  
160 following documents, unless the law enforcement officer has a reasonable suspicion that the  
161 document is false or identifies a person other than the person providing the document:

162 (a) a valid Utah driver license issued on or after January 1, 2010;

163 (b) a valid Utah identification card issued under Section 53-3-804 and issued on or  
164 after January 1, 2010;

165 (c) a valid tribal enrollment card or other valid form of tribal membership identification  
166 that includes photo identification; or

167 (d) a valid identification document that:

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

169 (ii) is issued by a federal, state, or local governmental agency that requires proof or  
170 verification of legal presence in the United States as a condition of issuance of the document.

171 (2) A person is presumed to be a citizen or national of the United States for purposes of  
172 this part if the person makes a statement or affirmation to the law enforcement officer that the  
173 person is a United States citizen or national, unless the officer has a reasonable suspicion that  
174 the statement or affirmation is false.

175 Section 5. Section **76-9-1005** is enacted to read:

176 **76-9-1005. Illegal alien -- Notification of federal government -- Transportation to**  
177 **federal facility.**

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

182 Section 6. Section **76-9-1006** is enacted to read:

183 **76-9-1006. Enforcement of federal immigration laws.**

184 A state or local governmental agency of this state, or any representative of the agency,  
185 may not:

186 (1) limit or restrict by ordinance, regulation, or policy the authority of any law

187 enforcement agency or other governmental agency to assist the federal government in the  
188 enforcement of any federal law or regulation governing immigration; or  
189 (2) limit or restrict by ordinance, regulation, or policy the authority of any law  
190 enforcement agency to investigate or enforce any violation of the federal misdemeanor offenses  
191 of willful failure to register as an alien or willful failure to personally possess an alien  
192 registration document as required by 8 U.S.C. Sec. 1304(e) or 1306(a).

193 Section 7. Section **76-9-1007** is enacted to read:

194 **76-9-1007. Determining an alien's immigration status -- Transfer or maintenance**  
195 **of information.**

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

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

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

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

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

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

211 Section 8. Section **76-9-1008** is enacted to read:

212 **76-9-1008. Proof of immigration status to receive public benefits.**

213 (1) (a) An agency that provides state or local public benefits as defined in 8 U.S.C. Sec.  
214 1621 shall comply with Section 63G-11-104 and shall also comply with this section, except:

215 (i) as provided in Subsections 63G-11-104(4)(g) or (k); or

216 (ii) when compliance is exempted by federal law or when compliance could reasonably  
217 be expected to be grounds for the federal government to withhold federal Medicaid funding.

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

221 (i) is a United States citizen; or

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

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

225 (d) The signature under this Subsection (1) may be executed in person or  
226 electronically.

227 (e) When an applicant who is a qualified alien has executed the certificate under this  
228 section, the applicant's eligibility for benefits shall be verified by the agency through the federal  
229 SAVE program or an equivalent program designated by the United States Department of  
230 Homeland Security.

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

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

238 (4) Agencies may, with the concurrence of the Utah Attorney General, adopt variations  
239 to the requirements of the provisions of this section that provide for adjudication of unique  
240 individual circumstances where the verification procedures in this section would impose  
241 unusual hardship on a legal resident of this state.

242 (5) If an agency under Subsection (1) receives verification that a person making an  
243 application for any benefit, service, or license is not a qualified alien, the agency shall provide  
244 the information to the local law enforcement agency unless prohibited by federal mandate.

245 Section 9. Section **76-9-1009** is enacted to read:

246 **76-9-1009. Implementation to be consistent with federal law and civil rights.**

247 All state and local agencies shall implement this part in a manner that is consistent with  
248 federal laws that regulate immigration, protect the civil rights of all persons, and establish the

249 privileges and immunities of United States citizens.

250 Section 10. Section **76-10-2901** is amended to read:

251 **76-10-2901. Transporting or harboring aliens -- Definition -- Penalties.**

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

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

255 (a) transport, move, or attempt to transport into this state [~~or for a distance of greater~~  
256 ~~than 100 miles~~] or within the state an alien for commercial advantage or private financial gain,  
257 knowing or in reckless disregard of the fact that the alien is in the United States in violation of  
258 federal law, in furtherance of the illegal presence of the alien in the United States; [~~or~~]

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

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

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

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

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

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

272 (a) a state or local public benefit described in 8 U.S.C., [~~Section~~] Sec. 1621(b); or

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

277 (5) (a) It is not a violation of this part for a religious denomination or organization or  
278 an agent, officer, or member of a religious denomination or organization to encourage, invite,  
279 call, allow, or enable an alien to perform the vocation of a minister or missionary for the

280 denomination or organization in the United States as a volunteer who is not compensated as an  
281 employee, notwithstanding the provision of room, board, travel, medical assistance, and other  
282 basic living expenses.

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

285 Section 11. Section **77-7-2** is amended to read:

286 **77-7-2. Arrest by peace officers.**

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

289 (1) (a) for any public offense committed or attempted in the presence of any peace  
290 officer; and

291 (b) as used in this Subsection (1), "presence" includes all of the physical senses or any  
292 device that enhances the acuity, sensitivity, or range of any physical sense, or records the  
293 observations of any of the physical senses;

294 (2) when the peace officer has reasonable cause to believe a felony or a class A  
295 misdemeanor has been committed and has reasonable cause to believe that the person arrested  
296 has committed it;

297 (3) when the peace officer has reasonable cause to believe the person has committed a  
298 public offense, and there is reasonable cause for believing the person may:

299 (a) flee or conceal himself to avoid arrest;

300 (b) destroy or conceal evidence of the commission of the offense; or

301 (c) injure another person or damage property belonging to another person; [or]

302 (4) when the peace officer has reasonable cause to believe the person has committed  
303 the offense of failure to disclose identity under Section 76-8-301.5[-]; or

304 (5) when the peace officer has reasonable cause to believe that the person is an alien:

305 (a) subject to a civil removal order issued by an immigration judge;

306 (b) regarding whom a civil detainer warrant has been issued by the federal Department  
307 of Homeland Security;

308 (c) who has been charged or convicted in another state with one or more aggravated  
309 felonies as defined by 8 U.S.C. Sec. 1101(a)(43); or

310 (d) who has willfully failed to comply with federal alien registration laws.

311 Section 12. **Effective date.**  
312 This bill takes effect on July 1, 2011.  
313 Section 13. **Coordinating H.B. 497 with S.B. 288 -- Substantive amendments.**  
314 If this H.B. 497 and S.B. 288, Utah Immigration Enforcement Amendments, both pass,  
315 it is the intent of the Legislature that:  
316 (1) Sections 76-9-1001 through 76-9-1005 in this H.B. 497 supersede Sections  
317 76-9-1001 through 76-9-1005 in S.B. 288;  
318 (2) Subsection 76-10-2901(3)(a) in H.B. 497 supersedes Subsection 76-10-2901(3)(a)  
319 in S.B. 288; and  
320 (3) Subsection 77-7-2(5)(d) in S.B. 288 supersedes Subsection 77-7-2(5)(d) in H.B.  
321 497.

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**Legislative Review Note**  
as of 3-3-11 1:25 PM

**Office of Legislative Research and General Counsel**