

Part 10

The Illegal Immigration Enforcement Act

76-9-1001 Title.

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

Enacted by Chapter 21, 2011 General Session

76-9-1002 Definitions.

As used in this part:

- (1) "Alien" means a person who is not a citizen or national of the United States.
- (2) "ICE" means the federal Immigration and Customs Enforcement agency of the United States Department of Homeland Security.
- (3) "Law enforcement officer" has the same meaning as in Section 53-13-103.
- (4) "SAVE program" means the federal Systematic Alien Verification for Entitlements program operated by the federal Department of Homeland Security.
- (5) "State or local governmental agency" includes any private contractor or vendor that contracts with the agency to provide the agency's functions or services.
- (6) "Verify immigration status" or "verification of immigration status" means the determination of a person's immigration status by:
 - (a) a law enforcement officer who is authorized by a federal agency to determine an alien's immigration status; or
 - (b) the United States Department of Homeland Security, ICE, or other federal agency authorized to provide immigration status as provided by 8 U.S.C. Sec. 1373(c).

Enacted by Chapter 21, 2011 General Session

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

- (1)
 - (a) Except as provided in Subsection (1)(b), (c), or (d), any law enforcement officer who, acting in the enforcement of any state law or local ordinance, conducts any lawful stop, detention, or arrest of a person as specified in Subsection (1)(a)(i) or (ii), and the person is unable to provide to the law enforcement officer a document listed in Subsection 76-9-1004(1) and the officer is otherwise unable to verify the identity of the person, the officer:
 - (i) shall request verification of the citizenship or the immigration status of the person under 8 U.S.C. Sec. 1373(c), except as allowed under Subsection (1)(b), (c), or (d), if the person is arrested for an alleged offense that is a class A misdemeanor or a felony; and
 - (ii) may attempt to verify the immigration status of the person, except as exempted under Subsection (1)(b), (c), or (d), if the alleged offense is a class B or C misdemeanor, except that if the person is arrested and booked for a class B or C misdemeanor, the arresting law enforcement officer or the law enforcement agency booking the person shall attempt to verify the immigration status of the person.
 - (b) In individual cases, the law enforcement officer may forego the verification of immigration status under Subsection (1)(a) if the determination could hinder or obstruct a criminal investigation.
 - (c) Subsection (1)(a) does not apply to a law enforcement officer who is acting as a school resource officer for any elementary or secondary school.

- (d) Subsection (1)(a) does not apply to a county or municipality when it has only one law enforcement officer on duty and response support from another law enforcement agency is not available.
- (2) When a law enforcement officer makes a lawful stop, detention, or arrest under Subsection (1) of the operator of a vehicle, and while investigating or processing the primary offense, the officer makes observations that give the officer reasonable suspicion that the operator or any of the passengers in the vehicle are violating Section 76-5-308, 76-5-308.1, 76-5-308.3, 76-5-308.5, 76-5-310, 76-5-310.1, or 76-10-2901, which concern smuggling, human trafficking, and transporting illegal aliens, the officer shall, to the extent possible within a reasonable period of time:
 - (a) detain the occupants of the vehicle to investigate the suspected violations; and
 - (b) inquire regarding the immigration status of the occupants of the vehicle.
- (3) When a person under Subsection (1) is arrested or booked into a jail, juvenile detention facility, or correctional facility, the arresting officer or the booking officer shall ensure that a request for verification of immigration status of the arrested or booked person is submitted as promptly as is reasonably possible.
- (4) The law enforcement agency that has custody of a person verified to be an illegal alien shall request that the United States Department of Homeland Security issue a detainer requesting transfer of the illegal alien into federal custody.
- (5) A law enforcement officer may not consider race, color, or national origin in implementing this section, except to the extent permitted by the constitutions of the United States and this state.

Amended by Chapter 181, 2022 General Session

76-9-1004 Grounds for presumption of lawful presence in United States -- Statement to officer.

- (1) A person is presumed to be lawfully present in the United States for the purposes of this part if the person provides one of the following documents to the law enforcement officer, unless the law enforcement officer has a reasonable suspicion that the document is false or identifies a person other than the person providing the document:
 - (a) a valid Utah driver license issued on or after January 1, 2010;
 - (b) a valid Utah identification card issued under Section 53-3-804 and issued on or after January 1, 2010;
 - (c) a valid tribal enrollment card or other valid form of tribal membership identification that includes photo identification;
 - (d) a valid identification document that:
 - (i) includes a photo or biometric identifier of the holder of the document; and
 - (ii) is issued by a federal, state, or local governmental agency that requires proof or verification of legal presence in the United States as a condition of issuance of the document; or
 - (e) a valid resident immigrant permit issued under Section 63G-14-204.
- (2) A person is presumed to be a citizen or national of the United States for purposes of this part if the person makes a statement or affirmation to the law enforcement officer that the person is a United States citizen or national, unless the officer has a reasonable suspicion that the statement or affirmation is false.

Amended by Chapter 20, 2011 General Session, (Coordination Clause)

Enacted by Chapter 21, 2011 General Session

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

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

Enacted by Chapter 21, 2011 General Session

76-9-1006 Enforcement of federal immigration laws.

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

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

Enacted by Chapter 21, 2011 General Session

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

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

- (1) determining a person's eligibility for any public benefit, service, or license provided by any federal agency, by this state, or by any political subdivision of this state;
- (2) confirming a person's claim of residence or domicile if determination is required by state law or a judicial order issued pursuant to a civil or criminal proceeding in this state;
- (3) if the person is an alien, determining if the person is in compliance with the federal registration laws of Title II, Part 7, Immigration and Nationality Act; or
- (4) a valid request for verification of the citizenship or immigration status of any person pursuant to 8 U.S.C. Sec. 1373.

Amended by Chapter 2, 2018 Special Session 3

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

- (1)
 - (a) An agency that provides state or local public benefits as defined in 8 U.S.C. Sec. 1621 shall comply with Section 63G-12-402 and shall also comply with this section, except:
 - (i) as provided in Subsection 63G-12-402(3)(g) or (k); or
 - (ii) when compliance is exempted by federal law or when compliance could reasonably be expected to be grounds for the federal government to withhold federal Medicaid funding.
 - (b) The agency shall verify a person's lawful presence in the United States by requiring that the applicant under this section sign a certificate under penalty of perjury, stating that the applicant:

- (i) is a United States citizen; or
 - (ii) is a qualified alien as defined by 8 U.S.C. Sec. 1641.
 - (c) The certificate under Subsection (1)(b) shall include a statement advising the signer that providing false information subjects the signer to penalties for perjury.
 - (d) The signature under this Subsection (1) may be executed in person or electronically.
 - (e) When an applicant who is a qualified alien has executed the certificate under this section, the applicant's eligibility for benefits shall be verified by the agency through the federal SAVE program or an equivalent program designated by the United States Department of Homeland Security.
- (2) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in a certificate executed under this section is guilty of public assistance fraud under Section 76-8-1205.
 - (3) If the certificate constitutes a false claim of United States citizenship under 18 U.S.C. Sec. 911, the agency requiring the certificate shall file a complaint with the United States Attorney for the applicable federal judicial district based upon the venue in which the certificate was executed.
 - (4) Agencies may, with the concurrence of the Utah Attorney General, adopt variations to the requirements of the provisions of this section that provide for adjudication of unique individual circumstances where the verification procedures in this section would impose unusual hardship on a legal resident of this state.
 - (5) If an agency under Subsection (1) receives verification that a person making an application for any benefit, service, or license is not a qualified alien, the agency shall provide the information to the local law enforcement agency for enforcement of Section 76-8-1205 unless prohibited by federal mandate.

Amended by Chapter 278, 2013 General Session

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

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

Enacted by Chapter 21, 2011 General Session