

1 LIMITATION ON GOVERNMENT BENEFITS
2 TO ALIENS UNLAWFULLY PRESENT IN THE
3 UNITED STATES

4 2007 GENERAL SESSION

5 STATE OF UTAH

6 Chief Sponsor: Christopher N. Herrod

7 Senate Sponsor: _____

8 Cosponsors:
9 Glenn A. Donnelson

Stephen E. Sandstrom

Carl Wimmer

11 LONG TITLE

12 General Description:

13 This bill prohibits the receipt of a state or local public benefit, with certain specific
14 exceptions that are required to be offered under federal law, by an individual who is not
15 lawfully present in the United States.

16 Highlighted Provisions:

17 This bill:

- 18 ▶ defines state or local public benefit to include grants, contracts, loans, licenses,**
19 retirement, welfare, health, disability, public or assisted housing, postsecondary
20 education, food assistance, or an unemployment benefit or any other similar benefit
21 for which payments, assistance, credits, or reduced rates or fees are provided by an
22 agency or political subdivision of the state or local government;
- 23 ▶ requires an individual 18 years of age or older to provide proof that the individual is**
24 lawfully present in the United States in order to receive a state or local public benefit,
25 except for those public benefits that are required to be offered under federal law;
- 26 ▶ provides a process for state and local governmental entities to follow in verifying**
27 the lawful presence in the United States of an individual who is applying with the



entity for a state or local public benefit;

- ▶ provides that verification of representations made in affidavits required in the process shall be done through the federal Systematic Alien Verification of Entitlement Program operated by the U.S. Department of Homeland Security;

- ▶ provides that the affidavit is presumed to be proof of lawful presence for purposes of receiving a state or local benefit until verification is made;

- ▶ provides for temporary emergency rules or a waiver process;

- ▶ restricts exemptions from payment of nonresident higher education tuition;

- ▶ provides a criminal penalty for making a false, fictitious, or fraudulent statement in an affidavit required under the verification process; and

- ▶ provides that it is unlawful for an agency or political subdivision of the state or local government to provide a state or local benefit in violation of the verification procedure.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53B-8-106, as enacted by Chapter 230, Laws of Utah 2002

ENACTS:

63-38h-101, Utah Code Annotated 1953

63-38h-102, Utah Code Annotated 1953

63-38h-103, Utah Code Annotated 1953

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

Section 1. Section **53B-8-106** is amended to read:

53B-8-106. Resident tuition -- Requirements -- Rules.

(1) If allowed under federal law, a student, other than a nonimmigrant alien within the meaning of paragraph (15) of Subsection (a) of Section 1101 of Title 8 of the United States Code, shall be exempt from paying the nonresident portion of total tuition if the student:

- 59 (a) attended high school in this state for three or more years;
60 (b) graduated from a high school in this state or received the equivalent of a high
61 school diploma in this state; and
62 (c) registers as an entering student at an institution of higher education;
63 (i) not earlier than the fall of the 2002-03 academic year[-]; and
64 (ii) before May 1, 2007.

65 (2) In addition to the requirements under Subsection (1), a student without lawful
66 immigration status shall:

67 (a) file an affidavit with the institution of higher education stating that the student has
68 filed an application to legalize his immigration status, or will file an application as soon as he
69 is eligible to do so; and

70 (b) file an affidavit certifying that the student has not or will not work in the United
71 States until legally allowed to do so.

72 (3) The State Board of Regents shall make rules for the implementation of this section.

73 (4) Nothing in this section limits the ability of institutions of higher education to assess
74 nonresident tuition on students who do not meet the requirements under this section.

75 (5) An institution of higher education shall continue to provide the exemption from
76 paying the nonresident portion of total tuition for a student who entered the institution before
77 May 1, 2007, through the time that the student remains admitted as a student at that institution
78 of higher education in a program of study leading to a degree or certificate.

79 Section 2. Section **63-38h-101** is enacted to read:

80 **CHAPTER 38h. RESTRICTIONS ON PUBLIC BENEFITS ACT**

81 **63-38h-101. Title.**

82 This chapter is known as the "Restrictions on Public Benefits Act."

83 Section 3. Section **63-38h-102** is enacted to read:

84 **63-38h-102. Definitions.**

85 As used in this chapter, "state or local public benefit" means:

86 (1) a grant, contract, loan, or license provided by an agency or political subdivision of
87 the state or local government or by appropriated funds of the state or a local government; or

88 (2) a retirement, welfare, health, disability, public or assisted housing, postsecondary
89 education, food assistance, or unemployment benefit or any other similar benefit for which

90 payments, assistance, credits, or reduced rates or fees are provided to an individual, household,
91 or family eligibility unit by an agency or political subdivision of the state or local government
92 or by appropriated funds of the state or local government.

93 Section 4. Section **63-38h-103** is enacted to read:

94 **63-38h-103. Receipt of state and local public benefits -- Verification.**

95 (1) An individual 18 years of age or older shall provide proof that the individual is
96 lawfully present in the United States in order to receive a state or local public benefit, except
97 for those public benefits that are required to be offered under 8 U.S.C. Sec. 1621 or Section
98 53B-8-106.

99 (2) An agency or political subdivision of the state or local government shall verify the
100 lawful presence in the United States of each person who is 18 years of age or older and
101 applying for a state or local public benefit by requiring the applicant to:

102 (a) produce:

103 (i) a valid Utah driver license or identification card issued by the Driver License
104 Division of the Department of Public Safety;

105 (ii) a United States military card or a military dependent's identification card;

106 (iii) a United States Coast Guard Merchant Mariner card; or

107 (iv) a Native American tribal document;

108 (b) execute an affidavit stating that the applicant is:

109 (i) a United States citizen or legal permanent resident; or

110 (ii) otherwise lawfully present in the United States pursuant to federal law; and

111 (c) the affidavit shall include the applicant's Social Security number and an explanation
112 of the penalties associated with making a false, fictitious, or fraudulent statement or
113 misrepresentation in the affidavit.

114 (3) (a) Verification of the representation made in an affidavit under Subsection (2)(b)
115 shall be done through the federal Systematic Alien Verification of Entitlement Program
116 operated by the U.S. Department of Homeland Security or a successor program designated by
117 the Department of Homeland Security.

118 (b) The affidavit is presumed to be proof of lawful presence for purposes of receiving a
119 state or local public benefit under this section until verification is made under Subsection

120 (3)(a).

121 (4) Verification of lawful presence in the United States is not required for any purpose
122 for which lawful presence in the United States is not required by law, ordinance, or rule.

123 (5) Notwithstanding the requirements of Subsection (2)(a), the commissioner of public
124 safety may make emergency rules, to be effective until January 1, 2008, providing for
125 additional forms of identification or a waiver process to ensure that:

126 (a) an individual seeking a state or local public benefit under this section proves lawful
127 presence in the United States; and

128 (b) certain individuals lawfully present in the United States receive authorized state or
129 local public benefits, including homeless state citizens.

130 (6) (a) An applicant who knowingly makes a false, fictitious, or fraudulent statement or
131 representation in an affidavit executed under Subsection (2)(b) is guilty of a violation of
132 Subsection 76-8-504(2).

133 (b) It is a separate violation of Subsection 76-8-504(2) each time a person receives a
134 state or local public benefit based upon the statement or representation referred to in
135 Subsection (6)(a).

136 (7) (a) It is unlawful for an agency or political subdivision of the state or local
137 government to provide a state or local public benefit in violation of this section.

138 (b) Each state agency or department that administers a program that provides a state or
139 local public benefit shall provide an annual report regarding compliance with this section to the
140 Government Operations Interim Committee by no later than November 1.

Legislative Review Note

as of 2-6-07 4:38 PM

Office of Legislative Research and General Counsel