

ILLEGAL IMMIGRATION

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John W. Hickman

House Sponsor: _____

LONG TITLE

General Description:

This bill deals with provisions related to the immigration status of individuals within the state.

Highlighted Provisions:

This bill:

▸ requires a county sheriff to make a reasonable effort to determine the citizenship status of a person confined to a county jail for a period of time and to verify the immigration status of a confined foreign national, and makes it a rebuttable presumption, for the purpose of determining the grant or issuance of a bond, that a person verified by the sheriff's efforts as a foreign national not lawfully admitted into the United States is at risk of flight;

▸ provides that the Alcoholic Beverage Control Commission may not grant a restaurant liquor license or private club license to a person who is not lawfully present in the United States;

▸ restricts the exemption from paying the nonresident portion of total tuition at a state institution of higher education to students without lawful immigration status who meet certain statutory prerequisites and register as an entering student at the institution prior to May 1, 2010;

▸ provides that an individual who is not lawfully present in the United States is not eligible on the basis of residence within the state for a higher education benefit, to



28 include scholarships, financial aid, and resident tuition, with one temporary exception;

29 ▶ provides for the withholding of state income tax at the top rate from an independent

30 contractor who fails to provide documentation to the contracting entity that verifies

31 the independent contractor's employment authorization pursuant to the prohibition

32 against the use of unauthorized alien labor;

33 ▶ provides for the creation and issuance of identification documents and requires that

34 those identification documents issued by public entities go only to United States

35 citizens, nationals, or legal permanent resident aliens with certain exceptions;

36 ▶ provides for exceptions to the issuance of identification documents by public

37 entities based on valid documentation of certain approved or pending immigration

38 status and places time period restrictions on the length of validity of the documents;

39 ▶ requires public employers to register with and use a Status Verification System to

40 verify the federal authorization status of a new employee;

41 ▶ beginning July 1, 2009, provides that a public employer may not enter into a

42 contract for the physical performance of services within the state with a contractor

43 unless the contractor registers and participates in the Status Verification System to

44 verify the work eligibility status of the contractor's new employees;

45 ▶ identifies as a discriminatory employment practice the discharging of a lawful

46 employee while retaining an unauthorized alien in the same job category;

47 ▶ requires an agency or political subdivision of the state to verify the lawful presence

48 in the United States of an individual who has applied for a state or local public

49 benefit, as defined by federal law, or a federal public benefit that is administered by

50 the agency or the political subdivision and provides for exceptions;

51 ▶ requires an applicant for a state or local public benefit to execute an affidavit

52 attesting to the applicant's lawful presence in the United States, and provides

53 penalties for making a false, fictitious, or fraudulent statement or representation in

54 the affidavit;

55 ▶ provides, subject to the availability of funding, for the establishment of a Fraudulent

56 Documents Identification Unit by the attorney general for the primary purpose of

57 investigating, apprehending, and prosecuting individuals who participate in the sale

58 or distribution of fraudulent identification documents created and prepared for

59 individuals who are unlawfully residing within the state;

60 ▶ requires the attorney general to negotiate a Memorandum of Understanding with the
61 United States Department of Justice or the United States Department of Homeland
62 Security for the enforcement of federal immigration and customs laws within the
63 state by state and local law enforcement personnel;

64 ▶ prohibits a unit of local government from enacting an ordinance or policy that limits
65 or prohibits a law enforcement officer or government employee from
66 communicating or cooperating with federal officials regarding the immigration
67 status of a person within the state; and

68 ▶ makes it a class A misdemeanor for a person to:

69 • transport in this state an alien, knowing that the alien is in the United States in
70 violation of federal law, in furtherance of the illegal presence in the United

71 States; or

72 • conceal, harbor, or shelter from detection an alien, in a place within this state,
73 knowing or in reckless disregard of the fact that the alien is in the United States
74 in violation of federal law.

75 **Monies Appropriated in this Bill:**

76 None

77 **Other Special Clauses:**

78 This bill coordinates with H.B. 63, Recodification of Title 63 State Affairs in General,
79 by providing technical renumbering.

80 **Utah Code Sections Affected:**

81 AMENDS:

82 **32A-4-103**, as last amended by Laws of Utah 2003, Chapter 314

83 **32A-5-103**, as last amended by Laws of Utah 2003, Chapter 314

84 **53B-8-106**, as enacted by Laws of Utah 2002, Chapter 230

85 ENACTS:

86 **17-22-9.5**, Utah Code Annotated 1953

87 **53B-8-106.5**, Utah Code Annotated 1953

88 **59-10-409**, Utah Code Annotated 1953

89 **63-99a-101**, Utah Code Annotated 1953

- 90 **63-99a-102**, Utah Code Annotated 1953
- 91 **63-99a-103**, Utah Code Annotated 1953
- 92 **63-99a-104**, Utah Code Annotated 1953
- 93 **67-5-22.5**, Utah Code Annotated 1953
- 94 **67-5-26**, Utah Code Annotated 1953
- 95 **76-10-2701**, Utah Code Annotated 1953



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

98 Section 1. Section **17-22-9.5** is enacted to read:

99 **17-22-9.5. Citizenship determination of incarcerated persons.**

100 (1) The sheriff shall make a reasonable effort to determine the citizenship status of a
101 person charged with a felony or driving under the influence under Section 41-6a-502 when the
102 person is confined to the county jail for a period of time.

103 (2) If the confined person is a foreign national, the sheriff shall make a reasonable
104 effort to verify that the person:

105 (a) has been lawfully admitted into the United States; and

106 (b) the person's lawful status has not expired.

107 (3) (a) If the sheriff cannot verify the confined person's lawful status from documents
108 in the person's possession, the sheriff shall attempt to verify that status within 48 hours of the
109 person's confinement at the jail through contacting:

110 (i) the Law Enforcement Support Center of the United States Department of Homeland
111 Security; or

112 (ii) an office or agency designated for citizenship status verification by the United
113 States Department of Homeland Security.

114 (b) The sheriff shall notify the United States Department of Homeland Security of a
115 person whose lawful citizenship status cannot be verified under Subsection (2) or (3)(a).

116 (4) It is a rebuttable presumption for the purpose of determining the grant or issuance
117 of a bond that a person who is verified under this section as a foreign national not lawfully
118 admitted into the United States is at risk of flight.

119 Section 2. Section **32A-4-103** is amended to read:

120 **32A-4-103. Qualifications.**

121 (1) (a) The commission may not grant a restaurant liquor license to any person who has
122 been convicted of:

123 (i) a felony under ~~any~~ a federal or state law;

124 (ii) ~~any~~ a violation of ~~any~~ a federal or state law or local ordinance concerning the
125 sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic
126 beverages;

127 (iii) ~~any~~ a crime involving moral turpitude; or

128 (iv) on two or more occasions within the five years before the day on which the license
129 is granted, driving under the influence of alcohol, ~~any~~ a drug, or the combined influence of
130 alcohol and ~~any~~ a drug.

131 (b) In the case of a partnership, corporation, or limited liability company the
132 proscription under Subsection (1)(a) applies if any of the following has been convicted of ~~any~~
133 an offense described in Subsection (1)(a):

134 (i) a partner;

135 (ii) a managing agent;

136 (iii) a manager;

137 (iv) an officer;

138 (v) a director;

139 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
140 the applicant corporation; or

141 (vii) a member who owns at least 20% of the applicant limited liability company.

142 (c) The proscription under Subsection (1)(a) applies if ~~any~~ a person employed to act
143 in a supervisory or managerial capacity for a restaurant has been convicted of ~~any~~ an offense
144 described in Subsection (1)(a).

145 (2) The commission may immediately suspend or revoke a restaurant liquor license if
146 after the day on which the restaurant liquor license is granted, a person described in Subsection
147 (1)(a), (b), or (c):

148 (a) is found to have been convicted of ~~any~~ an offense described in Subsection (1)(a)
149 prior to the license being granted; or

150 (b) on or after the day on which the license is granted:

151 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

152 (ii) (A) is convicted of driving under the influence of alcohol, [any] a drug, or the
153 combined influence of alcohol and [any] a drug; and

154 (B) was convicted of driving under the influence of alcohol, [any] a drug, or the
155 combined influence of alcohol and [any] a drug within five years before the day on which the
156 person is convicted of the offense described in Subsection (2)(b)(ii)(A).

157 (3) The director may take emergency action by immediately suspending the operation
158 of a restaurant liquor license according to the procedures and requirements of Title 63, Chapter
159 46b, Administrative Procedures Act, for the period during which the criminal matter is being
160 adjudicated if a person described in Subsection (1)(a), (b), or (c):

161 (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii);
162 or

163 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
164 [any] a drug, or the combined influence of alcohol and [any] a drug; and

165 (ii) was convicted of driving under the influence of alcohol, [any] a drug, or the
166 combined influence of alcohol and [any] a drug within five years before the day on which the
167 person is arrested on a charge described in Subsection (3)(b)(i).

168 (4) (a) (i) The commission may not grant a restaurant liquor license to [any] a person
169 who has had any type of license, agency, or permit issued under this title revoked within the
170 last three years.

171 (ii) The commission may not grant a restaurant liquor license to an applicant that is a
172 partnership, corporation, or limited liability company if [any] a partner, managing agent,
173 manager, officer, director, stockholder who holds at least 20% of the total issued and
174 outstanding stock of the applicant corporation, or member who owns at least 20% of the
175 applicant limited liability company is or was:

176 (A) a partner or managing agent of [any] a partnership that had any type of license,
177 agency, or permit issued under this title revoked within the last three years;

178 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%
179 of the total issued and outstanding stock of [any] a corporation that had any type of license,
180 agency, or permit issued under this title revoked within the last three years; or

181 (C) a manager or member who owns or owned at least 20% of [any] a limited liability
182 company that had any type of license, agency, or permit issued under this title revoked within

183 the last three years.

184 (b) An applicant that is a partnership, corporation, or limited liability company may not
185 be granted a restaurant liquor license if any of the following had any type of license, agency, or
186 permit issued under this title revoked while acting in that person's individual capacity within
187 the last three years:

188 (i) a partner or managing agent of the applicant partnership;

189 (ii) [any] a managing agent, officer, director, or stockholder who holds at least 20% of
190 the total issued and outstanding stock of the applicant corporation; or

191 (iii) a manager or member who owns at least 20% of the applicant limited liability
192 company.

193 (c) A person acting in an individual capacity may not be granted a restaurant liquor
194 license if that person was:

195 (i) a partner or managing agent of a partnership that had any type of license, agency, or
196 permit issued under this title revoked within the last three years;

197 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
198 total issued and outstanding stock of a corporation that had any type of license, agency, or
199 permit issued under this title revoked within the last three years; or

200 (iii) a manager or member of a limited liability company who owned at least 20% of
201 the limited liability company that had any type of license, agency, or permit issued under this
202 title revoked within the last three years.

203 (5) (a) A minor may not be granted a restaurant liquor license.

204 (b) The commission may not grant a restaurant liquor license to an applicant that is a
205 partnership, corporation, or limited liability company if any of the following is a minor:

206 (i) a partner or managing agent of the applicant partnership;

207 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
208 total issued and outstanding stock of the applicant corporation; or

209 (iii) a manager or member who owns at least 20% of the applicant limited liability
210 company.

211 (6) If [any] a person to whom a license has been issued under this part no longer
212 possesses the qualifications required by this title for obtaining that license, the commission
213 may suspend or revoke that license.

214 (7) The commission may not grant a restaurant liquor license to an applicant who is not
215 lawfully present in the United States.

216 Section 3. Section **32A-5-103** is amended to read:

217 **32A-5-103. Qualifications.**

218 (1) (a) The commission may not grant a private club license to [any] a person who has
219 been convicted of:

220 (i) a felony under [any] a federal or state law;

221 (ii) [any] a violation of [any] a federal or state law or local ordinance concerning the
222 sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic
223 beverages;

224 (iii) [any] a crime involving moral turpitude; or

225 (iv) on two or more occasions within the five years before the day on which the license
226 is granted, driving under the influence of alcohol, [any] a drug, or the combined influence of
227 alcohol and [any] a drug.

228 (b) In the case of a partnership, corporation, or limited liability company, the
229 proscription under Subsection (1)(a) applies if any of the following has been convicted of [any]
230 an offense described in Subsection (1)(a):

231 (i) a partner;

232 (ii) a managing agent;

233 (iii) a manager;

234 (iv) an officer;

235 (v) a director;

236 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
237 the applicant corporation; or

238 (vii) a member who owns at least 20% of the applicant limited liability company.

239 (c) The proscription under Subsection (1)(a) applies if [any] a person employed to act
240 in a supervisory or managerial capacity for a private club has been convicted of [any] an
241 offense described in Subsection (1)(a).

242 (2) The commission may immediately suspend or revoke a private club license if after
243 the day on which the private club license is granted, a person described in Subsection (1)(a),
244 (b), or (c):

245 (a) is found to have been convicted of [any] an offense described in Subsection (1)(a)
246 prior to the license being granted; or

247 (b) on or after the day on which the license is granted:

248 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

249 (ii) (A) is convicted of driving under the influence of alcohol, [any] a drug, or the
250 combined influence of alcohol and [any] a drug; and

251 (B) was convicted of driving under the influence of alcohol, [any] a drug, or the
252 combined influence of alcohol and [any] a drug within five years before the day on which the
253 person is convicted of the offense described in Subsection (2)(b)(ii)(A).

254 (3) The director may take emergency action by immediately suspending the operation
255 of a private club license according to the procedures and requirements of Title 63, Chapter 46b,
256 Administrative Procedures Act, for the period during which the criminal matter is being
257 adjudicated if a person described in Subsection (1)(a), (b), or (c):

258 (a) is arrested on a charge for [any] an offense described in Subsection (1)(a)(i), (ii), or
259 (iii); or

260 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
261 [any] a drug, or the combined influence of alcohol and [any] a drug; and

262 (ii) was convicted of driving under the influence of alcohol, [any] a drug, or the
263 combined influence of alcohol and [any] a drug within five years before the day on which the
264 person is arrested on a charge described in Subsection (3)(b)(i).

265 (4) (a) (i) The commission may not grant a private club license to [any] a person who
266 has had any type of license, agency, or permit issued under this title revoked within the last
267 three years.

268 (ii) The commission may not grant a private club license to [any] an applicant that is a
269 partnership, corporation, or limited liability company if [any] a partner, managing agent,
270 manager, officer, director, stockholder who holds at least 20% of the total issued and
271 outstanding stock of an applicant corporation, or member who owns at least 20% of an
272 applicant limited liability company is or was:

273 (A) a partner or managing agent of [any] a partnership that had any type of license,
274 agency, or permit issued under this title revoked within the last three years;

275 (B) a managing agent, officer, director, or a stockholder who holds or held at least 20%

276 of the total issued and outstanding stock of [any] a corporation that had any type of license,
277 agency, or permit issued under this title revoked within the last three years; or

278 (C) a manager or member who owns or owned at least 20% of [any] a limited liability
279 company that had any type of license, agency, or permit issued under this title revoked within
280 the last three years.

281 (b) An applicant that is a partnership, corporation, or limited liability company may not
282 be granted a private club license if any of the following had any type of license, agency, or
283 permit issued under this title revoked while acting in that person's individual capacity within
284 the last three years:

285 (i) [any] a partner or managing agent of the applicant partnership;

286 (ii) [any] a managing agent, officer, director, or stockholder who holds at least 20% of
287 the total issued and outstanding stock of the applicant corporation; or

288 (iii) [any] a manager or member who owned at least 20% of the applicant limited
289 liability company.

290 (c) A person acting in an individual capacity may not be granted a private club license
291 if that person was:

292 (i) a partner or managing agent of a partnership that had any type of license, agency, or
293 permit issued under this title revoked within the last three years;

294 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
295 total issued and outstanding stock of a corporation that had any type of license, agency, or
296 permit issued under this title revoked within the last three years; or

297 (iii) a manager or member of a limited liability company who owned at least 20% of
298 the limited liability company that had any type of license, agency, or permit issued under this
299 title revoked within the last three years.

300 (5) (a) A minor may not be granted a private club license.

301 (b) The commission may not grant a private club license to an applicant that is a
302 partnership, corporation, or limited liability company if any of the following is a minor:

303 (i) a partner or managing agent of the applicant partnership;

304 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
305 total issued and outstanding stock of the applicant corporation; or

306 (iii) a manager or member who owns at least 20% of the applicant limited liability

307 company.

308 (6) If ~~[any]~~ a person or entity to whom a license has been issued under this chapter no
309 longer possesses the qualifications required by this title for obtaining that license, the
310 commission may suspend or revoke that license.

311 (7) The commission may not grant a private club license to an applicant who is not
312 lawfully present in the United States.

313 Section 4. Section **53B-8-106** is amended to read:

314 **53B-8-106. Resident tuition -- Requirements -- Rules.**

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

- 318 (a) attended high school in this state for three or more years;
- 319 (b) graduated from a high school in this state or received the equivalent of a high
320 school diploma in this state; and

321 (c) registers as an entering student at an institution of higher education;

322 (i) not earlier than the fall of the 2002-03 academic year[-]; and

323 (ii) before May 1, 2010.

324 (2) In addition to the requirements under Subsection (1), a student without lawful
325 immigration status shall file an affidavit with the institution of higher education stating that the
326 student has filed an application to legalize his immigration status, or will file an application as
327 soon as ~~[he]~~ the student is eligible to do so.

328 (3) An institution of higher education shall continue to provide the exemption from
329 paying the nonresident portion of total tuition for a student who entered the institution before
330 May 1, 2010, through the time that the student remains admitted as a student at that institution
331 in a program of study leading to a degree or a certificate.

332 ~~[(3)]~~ (4) The State Board of Regents shall make rules for the implementation of this
333 section.

334 ~~[(4)]~~ (5) Nothing in this section limits the ability of institutions of higher education to
335 assess nonresident tuition on students who do not meet the requirements under this section.

336 Section 5. Section **53B-8-106.5** is enacted to read:

337 **53B-8-106.5. Limitation on higher education benefits.**

338 Except as otherwise provided in Section 53B-8-106, an individual who is not lawfully
339 present in the United States is not eligible on the basis of residence within the state for a higher
340 education benefit, to include:

- 341 (1) scholarships;
- 342 (2) financial aid; and
- 343 (3) resident tuition.

344 Section 6. Section **59-10-409** is enacted to read:

345 **59-10-409. Withholding of state income tax when lacking verification of lawful**
346 **immigration status -- Noncompliance.**

347 (1) If an individual independent contractor, contracting for the physical performance of
348 services in this state, fails to provide to the contracting entity documentation to verify the
349 independent contractor's employment authorization pursuant to the prohibition against the use
350 of unauthorized alien labor through contract set forth in 8 U.S.C., Sec. 1324a (a)(4), the
351 contracting entity shall withhold state income tax at the top marginal income tax rate as
352 provided in Title 59, Chapter 10, Part 4, Withholding of Tax, as applied to compensation paid
353 to the individual for the performance of the services within this state which exceeds the
354 minimum amount of compensation the contracting entity is required to report as income to the
355 United States Internal Revenue Service pursuant to federal law.

356 (2) A contracting entity who fails to comply with the withholding requirements of this
357 section is liable for the taxes required to have been withheld unless exempt from federal
358 withholding with respect to the individual pursuant to Section 1441 of the United States
359 Internal Revenue Code.

360 (3) For purposes of this section, "individual" means a resident or nonresident
361 individual as defined in Section 59-10-103.

362 Section 7. Section **63-99a-101** is enacted to read:

363 **CHAPTER 99a. IDENTITY DOCUMENTS AND VERIFICATION**

364 **63-99a-101. Title.**

365 This chapter is known as "Identity Documents and Verification."

366 Section 8. Section **63-99a-102** is enacted to read:

367 **63-99a-102. Creation of identity documents -- Issuance to citizens, nationals, and**
368 **legal permanent resident aliens -- Exceptions.**

369 (1) The following entities may create, publish, or otherwise manufacture an
370 identification document, identification card, or identification certificate and possess an
371 engraved plate or other device for the printing of an identification document:

372 (a) a business, company, corporation, service organization, or federal, state, or local
373 government agency for employee identification, which is designed to identify the bearer as an
374 employee;

375 (b) a business, company, corporation, or service organization for customer
376 identification, which is designed to identify the bearer as a customer or member;

377 (c) a federal, state, or local government agency for purposes authorized or required by
378 law or a legitimate purpose consistent with the duties of the agency, including such documents
379 as voter identification cards, driver licenses, identification cards, passports, birth certificates,
380 and Social Security cards;

381 (d) a public school or state or private educational institution to identify the bearer as an
382 administrator, faculty member, student, or employee;

383 (e) a professional organization or labor union to identify the bearer as a member of the
384 professional organization or labor union; and

385 (f) a business, corporation, or company that manufactures medical-alert identification
386 for individuals required to have the identification on their persons.

387 (2) The name of the issuing entity shall be clearly printed upon the face of the
388 identification document.

389 (3) Except as otherwise provided in Subsections (4) and (5) or by federal law, an entity
390 providing an identity document, card, or certificate under Subsection (1)(c) or (d) shall issue
391 the document, card, or certificate only to:

392 (a) a United States citizen;

393 (b) a national; or

394 (c) a legal permanent resident alien.

395 (4) (a) Subsection (3) does not apply to an applicant for an identification document
396 who presents, in person, valid documentary evidence of the applicant's:

397 (i) unexpired immigrant or nonimmigrant visa status for admission into the United
398 States;

399 (ii) pending or approved application for asylum in the United States;

400 (iii) admission into the United States as a refugee;
401 (iv) pending or approved application for temporary protected status in the United
402 States;
403 (v) approved deferred action status; or
404 (vi) pending application for adjustment of status to legal permanent resident or
405 conditional resident.

406 (b) (i) An entity listed in Subsection (1)(c) or (d) may issue a Subsection (1)(c) or (d)
407 identification document to an applicant who satisfies the requirements of Subsection (4)(a).

408 (ii) Except as otherwise provided by federal law, the document is valid only:
409 (A) during the period of time of the individual's authorized stay in the United States; or
410 (B) for one year from the date of issuance if there is no definite end to the individual's
411 period of authorized stay.

412 (iii) An entity issuing an identification document under this Subsection (4) shall clearly
413 indicate on the document:

414 (A) that it is temporary; and
415 (B) its expiration date.

416 (c) An individual may renew a document issued under this Subsection (4) only upon
417 presentation of valid documentary evidence that the status by which the individual originally
418 qualified for the identification document has been extended by the United States Citizenship
419 and Immigration Services or other authorized agency of the United States Department of
420 Homeland Security.

421 (5) (a) Subsection (3) does not apply to an identification document issued under
422 Subsection (1)(d) that is only:

423 (i) valid for use on the educational institution's campus or facility; and
424 (ii) includes a statement of the restricted use conspicuously printed upon the face of the
425 identification document.

426 (b) Subsection (3) does not apply to a driving privilege card issued or renewed under
427 Section 53-3-207.

428 Section 9. Section **63-99a-103** is enacted to read:

429 **63-99a-103. Status verification system -- Registration and use -- Performance of**
430 **services -- Discriminatory practice.**

431 (1) As used in this section:

432 (a) "Contractor" means a subcontractor, contract employee, staffing agency, or any
433 contractor regardless of its tier.

434 (b) "Public employer" means a department, agency, instrumentality, or political
435 subdivision of the state.

436 (c) (i) "Status Verification System" means an electronic system operated by the federal
437 government, through which an authorized official of a state agency or a political subdivision of
438 the state may inquire by exercise of authority delegated pursuant to 8 U.S.C., Sec. 1373, to
439 verify the citizenship or immigration status of an individual within the jurisdiction of the
440 agency or political subdivision for a purpose authorized under this section.

441 (ii) "Status Verification System" includes:

442 (A) the electronic verification of the work authorization program of the Illegal
443 Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C., Sec. 1324a,
444 known as the Basic Pilot Program;

445 (B) an equivalent federal program designated by the United States Department of
446 Homeland Security or other federal agency authorized to verify the work eligibility status of a
447 newly hired employee pursuant to the Immigration and Reform Control Act of 1986;

448 (C) the Social Security Number Verification Service or similar online verification
449 process implemented by the United States Social Security Administration; or

450 (D) an independent third-party system with an equal or higher degree of reliability as
451 the programs, systems, or processes described in Subsection (1)(a)(ii)(A), (B), or (C).

452 (d) "Unauthorized alien" means an alien as defined in 8 U.S.C., Sec. 1324a(h)(3).

453 (2) Each public employer shall register with and use a Status Verification System to
454 verify the federal employment authorization status of a new employee.

455 (3) (a) Beginning July 1, 2009:

456 (i) a public employer may not enter into a contract for the physical performance of
457 services within the state with a contractor unless the contractor registers and participates in the
458 Status Verification System to verify the work eligibility status of the contractor's new
459 employees.

460 (ii) a contractor shall register and participate in the Status Verification System in order
461 to enter into a contract with a public employer.

462 (b) Subsection (3)(a) does not apply to a contract entered into by the entities referred to
463 in Subsection (3)(a) prior to July 1, 2009, even though the contract may involve the physical
464 performance of services within the state on or after July 1, 2009.

465 (4) (a) It is a discriminatory practice for an employing entity in the state to discharge an
466 employee working in Utah who is a United States citizen or permanent resident alien while
467 retaining an employee who:

468 (i) the employing entity knows, or reasonably should have known, is an unauthorized
469 alien hired on or after July 1, 2009; and

470 (ii) is working in the state in a job category:

471 (A) that requires equal skill, effort, and responsibility; and

472 (B) which is performed under similar working conditions, as defined in 29 U.S.C., Sec.
473 206 (d)(1), as the job category held by the discharged employee.

474 (b) An employing entity, which on the date of a discharge in question referred to in
475 Subsection (4)(a) is enrolled in and using the Status Verification System to verify the
476 employment eligibility of its employees in Utah who are hired on or after July 1, 2009, is
477 exempt from liability, investigation, or lawsuit arising from an action under this section.

478 (c) A cause of action for a violation of this Subsection (4) arises exclusively from the
479 provisions of this Subsection (4).

480 Section 10. Section **63-99a-104** is enacted to read:

481 **63-99a-104. Receipt of state, local, or federal public benefits -- Verification --**
482 **Exceptions -- Fraudulently obtaining benefits -- Criminal penalties -- Annual report.**

483 (1) Except as provided in Subsection (3) or where exempted by federal law, an agency
484 or political subdivision of the state shall verify the lawful presence in the United States of an
485 individual at least 18 years of age who has applied for:

486 (a) a state or local public benefit as defined in 8 U.S.C., Sec. 1621; or

487 (b) a federal public benefit as defined in 8 U.S.C., Sec. 1611, that is administered by an
488 agency or political subdivision of this state.

489 (2) This section shall be enforced without regard to race, religion, gender, ethnicity, or
490 national origin.

491 (3) Verification of lawful presence under this section is not required for:

492 (a) any purpose for which lawful presence in the United States is not restricted by law,

493 ordinance, or regulation;

494 (b) assistance for health care items and services that are necessary for the treatment of
495 an emergency medical condition, as defined in 42 U.S.C., Sec. 1396b(v)(3), of the individual
496 involved and are not related to an organ transplant procedure;

497 (c) short-term, noncash, in-kind emergency disaster relief;

498 (d) public health assistance for immunizations with respect to immunizable diseases
499 and for testing and treatment of symptoms of communicable diseases whether or not the
500 symptoms are caused by the communicable disease;

501 (e) programs, services, or assistance such as soup kitchens, crisis counseling and
502 intervention, and short-term shelter, specified by the United States Attorney General, in the
503 sole and unreviewable discretion of the United States Attorney General after consultation with
504 appropriate federal agencies and departments, which:

505 (i) deliver in-kind services at the community level, including through public or private
506 nonprofit agencies;

507 (ii) do not condition the provision of assistance, the amount of assistance provided, or
508 the cost of assistance provided on the income or resources of the individual recipient; and

509 (iii) are necessary for the protection of life or safety; and

510 (f) the exemption for paying the nonresident portion of total tuition for the time periods
511 set forth in Section 53B-8-106.

512 (4) (a) An agency or political subdivision required to verify the lawful presence in the
513 United States of an applicant under this section shall require the applicant to execute an
514 affidavit under penalty of perjury stating that:

515 (i) the applicant is a United States citizen; or

516 (ii) the applicant is:

517 (A) a qualified alien as defined in 8 U.S.C., Sec. 1641; and

518 (B) lawfully present in the United States.

519 (b) An agency or political subdivision providing a state or local benefit under this
520 section shall provide notary public services at no cost to an applicant.

521 (5) (a) An agency or political subdivision shall verify an affidavit executed under
522 Subsection (4) through the Systematic Alien Verification for Entitlements Program, hereafter
523 referred to in this section as the "Program", operated by the United States Department of

524 Homeland Security or an equivalent program designated by the Department of Homeland
525 Security.

526 (b) The affidavit is presumed proof of lawful presence in the United States until
527 eligibility verification is made under Subsection (5)(a).

528 (6) (a) An individual who knowingly and willfully makes a false, fictitious, or
529 fraudulent statement or representation in an affidavit executed under Subsection (4)(a) is
530 subject to the criminal penalties applicable in this state for:

531 (i) making a written false statement under Subsection 76-8-504(2); and

532 (ii) fraudulently obtaining public assistance program benefits under Sections 76-8-1205
533 and 76-8-1206.

534 (b) If the affidavit constitutes a false claim of U.S. citizenship under 18 U.S.C., Sec.
535 911, the agency or political subdivision shall file a complaint with the United States Attorney
536 General for the applicable district based upon the venue in which the affidavit was executed.

537 (7) An agency or political subdivision may adopt variations to the requirements of this
538 section which:

539 (a) clearly improve the efficiency of or reduce delay in the verification process; or

540 (b) provide for adjudication of unique individual circumstances where the verification
541 procedures in this section would impose an unusual hardship on a legal resident of Utah.

542 (8) It is unlawful for an agency or a political subdivision of this state to provide a state,
543 local, or federal benefit, as defined in 8 U.S.C., Sec. 1611 and Sec. 1621, in violation of the
544 provisions of this section.

545 (9) Each state agency or department that administers a program of state or local public
546 benefits shall:

547 (a) provide an annual report to the governor, the president of the Senate, and the
548 speaker of the House regarding its compliance with this section; and

549 (b) (i) monitor the Program for application verification errors and significant delays;

550 (ii) provide an annual report on the errors and delays to ensure that the application of
551 the Program is not erroneously denying a state or local benefit to a legal resident of the state;

552 and

553 (iii) report delays and errors in the Program to the United States Department of
554 Homeland Security.

555 Section 11. Section **67-5-22.5** is enacted to read:

556 **67-5-22.5. Fraudulent Documents Identification Unit.**

557 Subject to the availability of funding, the attorney general shall establish a Fraudulent
558 Documents Identification Unit:

559 (1) for the primary purpose of investigating, apprehending, and prosecuting individuals
560 or entities that participate in the sale or distribution of fraudulent documents used for
561 identification purposes; and

562 (2) to specialize in fraudulent identification documents created and prepared for
563 individuals who are unlawfully residing within the state.

564 Section 12. Section **67-5-26** is enacted to read:

565 **67-5-26. Memorandum of Understanding regarding enforcement of federal**
566 **immigration laws -- Communications regarding immigration status -- Private cause of**
567 **action.**

568 (1) The attorney general shall negotiate the terms of a Memorandum of Understanding
569 between the state and the United States Department of Justice or the United States Department
570 of Homeland Security as provided in 8 U.S.C., Sec. 1357(g) for the enforcement of federal
571 immigration and customs laws within the state by state and local law enforcement personnel, to
572 include investigations, apprehensions, detentions, and removals of persons who are illegally
573 present in the United States.

574 (2) The attorney general, the governor, or an individual otherwise required by the
575 appropriate federal agency referred to in Subsection (1) shall sign the Memorandum of
576 Understanding on behalf of the state.

577 (3) (a) A unit of local government, whether acting through its governing body or by an
578 initiative or referendum, may not enact an ordinance or policy that limits or prohibits a law
579 enforcement officer, local official, or local government employee from communicating or
580 cooperating with federal officials regarding the immigration status of a person within the state.

581 (b) Notwithstanding any other provision of law, a government entity or official within
582 the state may not prohibit or in any way restrict a government entity or official from sending to,
583 or receiving from, the United States Department of Homeland Security information regarding
584 the citizenship or immigration status, lawful or unlawful, of an individual.

585 (c) Notwithstanding any other provision of law, a person or agency may not prohibit or

586 in any way restrict a public employee from doing the following regarding the immigration
587 status, lawful or unlawful, of an individual:

588 (i) sending information to or requesting or receiving information from the United
589 States Department of Homeland Security;

590 (ii) maintaining the information referred to in Subsection (3)(c)(i); and

591 (iii) exchanging the information referred to in Subsection (3)(c)(i) with any other
592 federal, state, or local government entity.

593 (d) This Subsection (3) allows for a private right of action by a natural or legal person
594 lawfully domiciled in this state to file for a writ of mandamus to compel a noncompliant local
595 or state governmental agency to comply with the reporting laws of this Subsection (3).

596 Section 13. Section **76-10-2701** is enacted to read:

597 **76-10-2701. Transporting or harboring aliens -- Definition -- Penalty.**

598 (1) For purposes of this part, "alien" means an individual who is illegally present in the
599 United States.

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

601 (a) transport, move, or attempt to transport in this state an alien, knowing or in reckless
602 disregard of the fact that the alien is in the United States in violation of federal law, in
603 furtherance of the illegal presence of the alien in the United States; or

604 (b) conceal, harbor, or shelter from detection an alien in a place within this state,
605 including a building or means of transportation, knowing or in reckless disregard of the fact
606 that the alien is in the United States in violation of federal law.

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

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

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

610 (b) regulated public health services provided by a private charity using private funds.

611 Section 14. **Coordinating S.B. 81 with H.B. 63 -- Technical renumbering.**

612 If this S.B. 81 and H.B. 63, Recodification of Title 63 State Affairs in General, both
613 pass, it is the intent of the Legislature that the Office of Legislative Research and General
614 Counsel, in preparing the Utah Code database for publication renumber Title 63, Chapter 99a
615 to Title 63G, Chapter 11 and Sections 63-99a-101 through 63-99a-104 to Sections 63G-11-101
616 through 63G-11-104.

Legislative Review Note
as of 1-30-08 9:49 AM

Office of Legislative Research and General Counsel

S.B. 81 - Illegal Immigration

Fiscal Note

2008 General Session
State of Utah

State Impact

This bill requires specific state and local agencies to verify the citizenship status of an individual prior to their receiving certain State services. Costs for additional employees for investigation and verification at the Department of Commerce, Department of Health, Department of Human Services, and the Attorney General's office are estimated at \$755,200 in FY 2009 and \$542,500 in FY 2010. The Department of Health estimates savings from not providing services at \$185,500 annually.

The Drivers License Division would be required to verify all new and renewal applications. This would require notification to all license holders and prevent renewal by mail or internet for one complete renewal cycle (five years). The estimated cost of the notification and the FTEs is \$1,039,400. Assuming that the notification and verification would occur during the regular license renewal, an additional 15 FTE in the field offices would be needed for one complete renewal cycle. Additional one-time costs are estimated at \$239,700. Revenue from new licenses is estimated at \$15,200 in FY 2009.

The provision requiring independent contractors to withhold state income tax may increase income tax collections by as much as \$15 million per year.

| | <u>FY 2008</u> <u>Approp.</u> | <u>FY 2009</u> <u>Approp.</u> | <u>FY 2010</u> <u>Approp.</u> | <u>FY 2008</u> <u>Revenue</u> | <u>FY 2009</u> <u>Revenue</u> | <u>FY 2010</u> <u>Revenue</u> |
|-------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|----------------------------------|
| General Fund | \$0 | \$1,348,000 | \$1,348,000 | \$0 | \$0 | \$0 |
| General Fund, One-Time | \$0 | \$450,400 | \$0 | \$0 | \$0 | \$0 |
| General Fund Restricted | \$0 | \$0 | \$0 | \$0 | \$15,200 | \$0 |
| Education Fund | \$0 | \$0 | \$0 | \$0 | \$15,000,000 | \$15,000,000 |
| Federal Funds | \$0 | \$50,400 | \$48,400 | \$0 | \$0 | \$0 |
| Total | \$0 | \$1,848,800 | \$1,396,400 | \$0 | \$15,015,200 | \$15,000,000 |

Individual, Business and/or Local Impact

Individuals who are not in this country legally and are currently receiving state services would lose those services. Local Health Departments would need to increase their workforces to determine citizenship and eligibility. Businesses may incur additional costs associated with administering payroll and withholding taxes.