

ILLEGAL IMMIGRATION ENFORCEMENT ACT

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: Margaret Dayton

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ requires that an officer verify the immigration status of a detained or arrested person upon reasonable suspicion the person is an illegal alien, and provides enforcement exceptions;
- ▶ clarifies when passengers in a vehicle where the operator has been detained may also be questioned and their immigration status verified;
- ▶ requires that a law enforcement officer may not consider race, color, or national origin, except as permitted by Utah and United States constitutions;
- ▶ states grounds for a presumption of a person's lawful presence in the United States;
- ▶ provides for transportation of an illegal alien to federal custody by a state or local law enforcement officer;
- ▶ provides that a state or local agency may not limit, by any means, the authority of any law enforcement or other governmental agency to assist the federal government in the enforcement of any federal immigration law, including the federal requirement to register as an alien or possess an alien registration document;
- ▶ provides that any state or local governmental agency is not restricted in sending, receiving, or maintaining immigration status information of any person in carrying



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;

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 ▶ 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;

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 **76-9-1010**, Utah Code Annotated 1953

70

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.

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

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

113 (6) "Verify immigration status" or "verification of immigration status" 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) When 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 shall attempt to verify the immigration status of the person, except as allowed under
125 Subsection (1)(b) or (c).

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.

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.

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

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

149 Section 5. Section **76-9-1004** is enacted to read:

150 **76-9-1004. Grounds for presumption of lawful presence in United States --**
151 **Statement to officer.**

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;
157 (b) a valid Utah identification card issued under Section 53-3-804;
158 (c) a valid tribal enrollment card or other valid form of tribal membership identification
159 that includes photo identification; or

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 document.

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

179 (1) limit or by any means restrict by ordinance, regulation, policy, practice, or in any
180 other manner the authority of any law enforcement agency or officer, or any state or local
181 governmental agency to assist the federal government in the enforcement of any federal law or
182 regulation governing immigration; or

183 (2) limit or by any means restrict by ordinance, regulation, policy, practice, or in any
184 other manner 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).

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.

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.

217 (c) (i) 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 (ii) Until eligibility verification is made, the certificate may be presumed to be proof of
222 lawful presence for the purposes of this section.

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) A legal resident of Utah who establishes standing may bring a civil action 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.

237 (6) If an agency under Subsection (1) determines it has reasonable suspicion that a
238 person making an application for any benefit, service, or license has violated or attempted to
239 violate any fraud provision of the Utah Code, the agency shall provide the information to the
240 local law enforcement agency.

241 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 legal resident of this state who establishes standing may bring an action in
248 district court to challenge any state or local governmental agency that acts in violation of
249 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 indemnified if the court finds that the
261 officer acted in bad faith.

262 Section 11. Section **76-9-1010** is enacted to read:

263 **76-9-1010. Implementation to be consistent with federal law and 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 12. 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 [~~or for a 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 13. 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

307 officer; and

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

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

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

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

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

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

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

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

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

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

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

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

328 Section 14. **Effective date.**

329 This bill takes effect on July 1, 2011.

Legislative Review Note
as of 1-24-11 3:49 PM

Office of Legislative Research and General Counsel