

Senator Margaret Dayton proposes the following substitute bill:

ILLEGAL IMMIGRATION ENFORCEMENT ACT

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: Margaret Dayton

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



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;



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

57 Money Appropriated in this Bill:

58 None

59 Other Special Clauses:

60 This bill takes effect on July 1, 2011.

61 **Utah Code Sections Affected:**

62 AMENDS:

63 **76-10-2901**, as enacted by Laws of Utah 2008, Chapter 26

64 **77-7-2**, as last amended by Laws of Utah 2008, Chapter 293

65 ENACTS:

66 **76-9-1001**, Utah Code Annotated 1953

67 **76-9-1002**, Utah Code Annotated 1953

68 **76-9-1003**, Utah Code Annotated 1953

69 **76-9-1004**, Utah Code Annotated 1953

70 **76-9-1005**, Utah Code Annotated 1953

71 **76-9-1006**, Utah Code Annotated 1953

72 **76-9-1007**, Utah Code Annotated 1953

73 **76-9-1008**, Utah Code Annotated 1953

74 **76-9-1009**, Utah Code Annotated 1953



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

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

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

79 **76-9-1001. Title.**

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

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

82 **76-9-1002. Definitions.**

83 As used in this part:

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

85 (2) "ICE" means the federal Immigration and Customs Enforcement agency of the

86 United States Department of Homeland Security.

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

88 (4) "Reasonable suspicion" is based on a peace officer who is acting under Subsection

89 76-9-1003(1) determining that a person is unable to provide any of the documents listed in

90 Subsection 76-9-1004(1).

91 (5) "SAVE program" means the federal Systematic Alien Verification for Entitlements
92 program operated by the federal Department of Homeland Security.

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

95 (7) "Verify immigration status" or "verification of immigration status" means the
96 determination of a person's immigration status by:

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

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

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

102 **76-9-1003. Detention or arrest -- Determination of immigration status.**

103 (1) (a) Except as provided in Subsections (1)(b), (c), or (d), any law enforcement
104 officer acting in the enforcement of any state law or local ordinance conducts any lawful stop,
105 detention, or arrest of a person, and the officer has a reasonable suspicion that the person is an
106 alien and is present in the United States unlawfully, the officer:

107 (i) shall request verification of the citizenship or the immigration status of the person
108 under 8 U.S.C. 1373(c), except as allowed under Subsection (1)(b), (c), or (d), if the alleged
109 offense is a class A misdemeanor or a felony; and

110 (ii) may attempt to verify the immigration status of the person, except as exempted
111 under Subsections (1)(b), (c), or (d), if the alleged offense is a class B or C misdemeanor,
112 except that if the person is arrested and booked for a class B or C misdemeanor, the arresting
113 law enforcement officer or the law enforcement agency booking the person shall attempt to
114 verify the immigration status of the person.

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

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

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

122 not available.

123 (2) When a law enforcement officer makes a lawful stop, detention, or arrest under
124 Subsection (1) of the operator of a vehicle, and while investigating or processing the primary
125 offense, the officer makes observations that give the officer reasonable suspicion that the
126 operator or any of the passengers in the vehicle are violating Section 76-5-309, 76-5-310, or
127 76-10-2901, which concern smuggling and transporting illegal aliens, the officer shall, to the
128 extent possible within a reasonable period of time:

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

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

131 (3) When a person under Subsection (1) is issued a citation or is arrested and booked
132 into a jail, juvenile detention facility, or correctional facility, the citing officer or the booking
133 officer shall ensure that a request for verification of immigration status of the cited or arrested
134 person is submitted as promptly as is reasonably possible.

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

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

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

142 **76-9-1004. Grounds for presumption of lawful presence in United States --**
143 **Statement to officer.**

144 (1) A person is presumed to be lawfully present in the United States for the purposes of
145 this part if the person provides one of the following documents to the law enforcement officer,
146 unless the law enforcement officer has a reasonable suspicion that the document is false or
147 identifies a person other than the person providing the document:

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

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

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

153 (d) a valid identification document that:
154 (i) includes a photo or biometric identifier of the holder of the document; and
155 (ii) is issued by a federal, state, or local governmental agency that requires proof or
156 verification of legal presence in the United States as a condition of issuance of the document;

157 or

158 (e) a Utah permit to carry a concealed firearm.

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

163 (3) A person is presumed to be a citizen or national of the United States for purposes of
164 this part if the person lawfully stopped by a peace officer provides to the peace officer
165 information that:

166 (a) the peace officer is able to verify is accurate at the time of the of the lawful stop;

167 and

168 (b) the peace officer has reasonable cause to believe the verified information indicates
169 that the person is lawfully present in the United States.

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

171 **76-9-1005. Illegal alien -- Notification of federal government -- Transportation to**
172 **federal facility.**

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

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

178 **76-9-1006. Enforcement of federal immigration laws.**

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

181 (1) limit or restrict by ordinance, regulation, or policy the authority of any law
182 enforcement agency or other governmental agency to assist the federal government in the
183 enforcement of any federal law or regulation governing immigration; or

184 (2) limit or restrict by ordinance, regulation, or policy the authority of any law
185 enforcement agency to investigate or enforce any violation of the federal misdemeanor offenses
186 of willful failure to register as an alien or willful failure to personally possess an alien
187 registration document as required by 8 U.S.C. 1304(e) or 1306(a).

188 Section 7. 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 8. 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, except when
210 compliance is exempted by federal law or when compliance could reasonably be expected to be
211 grounds for the federal government to withhold federal Medicaid funding.

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

215 (i) is a United States citizen; or
216 (ii) is a qualified alien as defined by 8 U.S.C. 1641.
217 (b) The certificate under Subsection (1)(a) shall include a statement advising the signer
218 that providing false information subjects the signer to penalties for perjury.
219 (c) The signature under this Subsection (1) may be executed in person or electronically.
220 (d) When an applicant who is a qualified alien has executed the certificate under this
221 section, the applicant's eligibility for benefits shall be verified by the agency through the federal
222 SAVE program or an equivalent program designated by the United States Department of
223 Homeland Security.
224 (2) Any person who knowingly and willfully makes a false, fictitious, or fraudulent
225 statement of representation in a certificate executed under this section is guilty of public
226 assistance fraud under Section 76-8-1205.
227 (3) If the certificate constitutes a false claim of United States citizenship under 18
228 U.S.C. Section 911, the agency requiring the certificate shall file a complaint with the United
229 States Attorney for the applicable federal judicial district based upon the venue in which the
230 certificate was executed.
231 (4) Agencies may, with the concurrence of the Office of the Utah Attorney General,
232 adopt variations to the requirements of the provisions of this section which provide for
233 adjudication of unique individual circumstances where the verification procedures in this
234 section would impose unusual hardship on a legal resident of this state.
235 (5) If an agency under Subsection (1) receives verification that a person making an
236 application for any benefit, service, or license is not a qualified alien, the agency shall provide
237 the information to the local law enforcement agency unless prohibited by federal mandate.
238 Section 9. Section **76-9-1009** is enacted to read:
239 **76-9-1009. Implementation to be consistent with federal law and civil rights.**
240 All state and local agencies shall implement this part in a manner that is consistent with
241 federal laws that regulate immigration, protect the civil rights of all persons, and establish the
242 privileges and immunities of United States citizens.
243 Section 10. Section **76-10-2901** is amended to read:
244 **76-10-2901. Transporting or harboring aliens -- Definition -- Penalties.**
245 (1) [~~For purposes of~~] As used in this part, "alien" means an individual who is illegally

246 present in the United States.

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

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

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

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

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

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

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

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

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

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

270 (5) (a) It is not a violation of this part for a religious denomination or organization or
271 an agent, officer, or member of a religious denomination or organization to encourage, invite,
272 call, allow, or enable an alien to perform the vocation of a minister or missionary for the
273 denomination or organization in the United States as a volunteer who is not compensated as an
274 employee, notwithstanding the provision of room, board, travel, medical assistance, and other
275 basic living expenses.

276 (b) Subsection (5)(a) applies only to an alien who has been a member of the religious

277 denomination or organization for at least one year.

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

279 **77-7-2. Arrest by peace officers.**

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

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

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

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

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

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

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

294 (c) injure another person or damage property belonging to another person; ~~or~~

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

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

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

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

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

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

304 Section 12. **Effective date.**

305 This bill takes effect on July 1, 2011.

FISCAL NOTE

H.B. 70 1st Sub. (Buff)

SHORT TITLE: **Illegal Immigration Enforcement Act**

SPONSOR: **Sandstrom, S.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill may cost the Department of Public Safety an estimated \$162,200 in FY 2012 and \$116,700 in FY 2013 from the Transportation Restricted - Public Safety Account for training.

To the extent that state law enforcement agencies choose to detain additional individuals for verification of immigration status, those agencies could incur a cost of about \$100 per stop.

To the extent that the bill results in cases of public assistance fraud, the Courts would incur a cost of up to \$259 per incident. To the extent that the bill results in cases of encouraging aliens to enter illegally or in cases of transporting illegal immigrants less than 100 miles, the Courts would incur a cost of up to \$465 per case.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
Restricted Funds	\$0	\$162,200	\$116,700
Total Expenditure	\$0	\$162,200	\$116,700
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$162,200)	(\$116,700)
Net Impact, General/Education Funds	\$0	\$0	\$0

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

To the extent that local law enforcement officials choose to detain additional individuals for verification of immigration status, local governments could incur a cost of about \$100 per stop.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Residents or businesses in violation of newly defined crimes of encouraging aliens to enter illegally or enhanced crimes of transporting illegal immigrants may pay judgement fines of up to \$5,000.