

HB0070S01 compared with HB0070

~~deleted text~~ shows text that was in HB0070 but was deleted in HB0070S01.

inserted text shows text that was not in HB0070 but was inserted into HB0070S01.

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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

Cosponsors:

Derek E. Brown

David Clark

Brad L. Dee

Susan Duckworth

Steve Eliason

Julie Fisher

Gage Froerer

Brad J. Galvez

Francis D. Gibson

Richard A. Greenwood

Keith Grover

Stephen G. Handy

Neal B. Hendrickson

Christopher N. Herrod

Gregory H. Hughes

Don L. Ipson

Bradley G. Last

John G. Mathis

Michael T. Morley

Merlynn T. Newbold

Jim Nielson

Michael E. Noel

Curtis Oda

Lee B. Perry

Val L. Peterson

Dixon M. Pitcher

Paul Ray

Douglas Sagers

Kenneth W. Sumsion

Evan J. Vickers

Ryan D. Wilcox

Brad R. Wilson

Carl Wimmer

LONG TITLE

General Description:

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

Highlighted Provisions:

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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,}~~ ordinance, regulation, or policy 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 out the agency's lawful purposes;
- ▶ requires verification of immigration status regarding application for public services, benefits, or licenses provided by a state or local governmental agency or subcontractor, except as exempted by federal law;
- ▶ provides that this bill does not implement or authorize the federal REAL ID Act to any extent not currently provided by state law;
- ~~{~~ → provides that a legal resident may, after establishing standing, bring action against an agency that limits enforcement of federal immigration laws and imposes financial penalties for violation;
- provides that penalties imposed on the agencies be directed to the multi-agency strike force that deals with crime associated with illegal immigration and human trafficking;
- ~~}~~ ▶ amends the current state law prohibiting transporting or harboring illegal aliens by

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removing the limitation to transportation of the alien for a distance greater than 100 miles;

- ▶ prohibits the encouraging or inducing of an illegal alien to come to or reside in Utah; and
- ▶ amends peace officer arrest authority to include making an arrest when the officer has reasonable cause to believe the person is an alien:
 - subject to an immigration removal order; and
 - regarding whom a detainer warrant has been issued who has committed or been charged with a felony in another state.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2011.

Utah Code Sections Affected:

AMENDS:

~~{ 67-5-22.7, as enacted by Laws of Utah 2009, Chapter 30~~

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

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

ENACTS:

76-9-1001, Utah Code Annotated 1953

76-9-1002, Utah Code Annotated 1953

76-9-1003, Utah Code Annotated 1953

76-9-1004, Utah Code Annotated 1953

76-9-1005, Utah Code Annotated 1953

76-9-1006, Utah Code Annotated 1953

76-9-1007, Utah Code Annotated 1953

76-9-1008, Utah Code Annotated 1953

76-9-1009, Utah Code Annotated 1953

~~{ 76-9-1010, Utah Code Annotated 1953~~

}

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

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Section 1. Section ~~{67-5-22.7 is amended to read:~~

~~67-5-22.7. Multi-agency strike force to combat violent and other major felony crimes associated with illegal immigration and human trafficking -- Fraudulent Documents Identification Unit -- Funding.~~

~~(1) The Office of the Attorney General is authorized to administer and coordinate the operation of a multi-agency strike force to combat violent and other major felony crimes committed within the state that are associated with illegal immigration and human trafficking.~~

~~(2) The office shall invite officers of the U.S. Immigration and Customs Enforcement and state and local law enforcement personnel to participate in this mutually supportive, multi-agency strike force to more effectively utilize their combined skills, expertise, and resources.~~

~~(3) The strike force shall focus its efforts on detecting, investigating, deterring, and eradicating violent and other major felony criminal activity related to illegal immigration and human trafficking.~~

~~(4) In conjunction with the strike force and subject to available funding, the Office of the Attorney General shall establish a Fraudulent Documents Identification Unit:~~

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

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

~~(5) Funding for the strike force shall include funds from penalties imposed under Section 76-9-1009.~~

~~[(5)] (6) The strike force shall make an annual report on its activities to the governor and the Legislature's Law Enforcement and Criminal Justice Interim Committee by December 1, together with any proposed recommendations for modifications to this section.~~

~~Section 2. Section 76-9-1001 is enacted to read:~~

~~76-9-1001 is enacted to read:~~

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Part 10. The Illegal Immigration Enforcement Act

76-9-1001. Title.

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

Section ~~{3}~~2. Section **76-9-1002** is enacted to read:

76-9-1002. Definitions.

As used in this part:

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

(2) "ICE" means the federal Immigration and Customs Enforcement agency of the United States Department of Homeland Security.

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

(4) "Reasonable suspicion" is based on a peace officer who is acting under Subsection 76-9-1003(1) determining that a person is unable to provide any of the documents listed in Subsection 76-9-1004(1).

(~~{4}~~5) "SAVE program" means the federal Systematic Alien Verification for Entitlements program operated by the federal Department of Homeland Security.

(~~{5}~~6) "State or local governmental agency" includes any private contractor or vendor that contracts with the agency to provide the agency's functions or services.

(~~{6}~~7) "Verify immigration status" or "verification of immigration status" means the determination of a person's immigration status by:

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

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

Section ~~{4}~~3. Section **76-9-1003** is enacted to read:

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

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

(i) shall request verification of the citizenship or the immigration status of the person under 8 U.S.C. 1373(c), except as allowed under Subsection (1)(b), (c), or (d), if the alleged

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offense is a class A misdemeanor or a felony; and

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

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

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

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

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

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

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

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

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

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

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States and this state.

Section ~~{5}~~4. Section 76-9-1004 is enacted to read:

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

Statement to officer.

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

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

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

(c) a valid tribal enrollment card or other valid form of tribal membership identification that includes photo identification; ~~{or}~~

(d) a valid identification document that:

(i) includes a photo or biometric identifier of the holder of the document; and

(ii) is issued by a federal, state, or local governmental agency that requires proof or verification of legal presence in the United States as a condition of issuance of the document ~~{,}; or~~

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

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

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

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

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

Section ~~{6}~~5. Section 76-9-1005 is enacted to read:

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

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

Section ~~{7}~~6. Section **76-9-1006** is enacted to read:

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

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

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

(2) limit or ~~{by any means}~~ restrict by ordinance, regulation, or policy~~{, practice, or in any other manner}~~ the authority of any law enforcement agency to investigate or enforce any violation of the federal misdemeanor offenses of willful failure to register as an alien or willful failure to personally possess an alien registration document as required by 8 U.S.C. 1304(e) or 1306(a).

Section ~~{8}~~7. Section **76-9-1007** is enacted to read:

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

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

(a) determining a person's eligibility for any public benefit, service, or license provided by any federal agency, by this state, or by any political subdivision of this state;

(b) confirming a person's claim of residence or domicile if determination is required by state law or a judicial order issued pursuant to a civil or criminal proceeding in this state;

(c) if the person is an alien, determining if the person is in compliance with the federal

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registration laws of Title II, Part 7, Immigration and Nationality Act; or

(d) a valid request for verification of the citizenship or immigration status of any person pursuant to 8 U.S.C. 1373.

(2) This section does not implement, authorize, or establish the federal REAL ID Act of 2005, P.L. 109-13, Division B; 119 Stat. 302, except as provided by Section 53-3-104.5, regarding limitations on the state implementation of the federal REAL ID Act.

Section ~~{9}~~8. Section **76-9-1008** is enacted to read:

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

(1) An agency that provides state or local public benefits as defined in 8 U.S.C.1621 shall comply with Section 63G-11-104 and shall also comply with this section, except when compliance is exempted by federal law or when compliance could reasonably be expected to be grounds for the federal government to withhold federal Medicaid funding.

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

(i) is a United States citizen; or

(ii) is a qualified alien as defined by 8 U.S.C. 1641.

(b) The certificate under Subsection (1)(a) shall include a statement advising the signer that providing false information subjects the signer to penalties for perjury.

(c) The signature under this Subsection ~~{11}~~1 may be executed in person or electronically.

(d) When an applicant who is a qualified alien has executed the certificate under this section, the applicant's eligibility for benefits shall be verified by the agency through the federal SAVE program or an equivalent program designated by the United States Department of Homeland Security.

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

~~‡~~ (2) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in a certificate executed under this section is guilty of public assistance fraud under Section 76-8-1205.

(3) If the certificate constitutes a false claim of United States citizenship under 18

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U.S.C. Section 911, the agency requiring the certificate shall file a complaint with the United States Attorney for the applicable federal judicial district based upon the venue in which the certificate was executed.

(4) Agencies may, with the concurrence of the Office of the Utah Attorney General, adopt variations to the requirements of the provisions of this section which provide for adjudication of unique individual circumstances where the verification procedures in this section would impose unusual hardship on a legal resident of this state.

(5) ~~A legal resident of Utah who establishes standing may bring a civil action under Section 76-9-1009 against an agency which does not verify eligibility of applicants for state and local public benefits, in violation of the provisions of this section:~~

~~—— (6) ~~If an agency under Subsection (1) ~~determines it has reasonable suspicion~~ receives verification that a person making an application for any benefit, service, or license ~~has violated or attempted to violate any fraud provision of the Utah Code~~ is not a qualified alien,~~ the agency shall provide the information to the local law enforcement agency:~~

~~—— Section 10. Section 76-9-1009 is enacted to read:~~

~~—— 76-9-1009. Legal resident may bring action regarding agency that limits enforcement of federal immigration laws:~~

~~—— (1) A state or local governmental agency may not adopt or implement a policy that limits or restricts the enforcement of federal immigration laws, including 8 U.S.C. 1373 and 1644, to less than the full extent permitted by federal law:~~

~~—— (2) A legal resident of this state who establishes standing may bring an action in district court to challenge any state or local governmental agency that acts in violation of Subsection (1):~~

~~—— (3) (a) If the court finds that a governmental agency has violated Subsection (1), the court shall order that the governmental agency pay a civil penalty of not less than \$500, but not more than \$5,000, for each day the policy under Subsection (1) has remained in effect subsequent to the fourteenth day after the date the action was filed under Subsection (2):~~

~~—— (b) The penalty shall be paid to the court, which shall transfer the funds for use by the multi-agency strike force created under Section 67-5-22.7:~~

~~—— (4) (a) A law enforcement officer is indemnified by the officer's employing agency against reasonable costs and expenses, including attorney fees, incurred by the officer in~~

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~~connection with any action brought under this section in which the officer may be a defendant by reason of the officer's being or having been employed by a law enforcement agency.~~

~~— (b) An officer under Subsection (4)(a) is not indemnified if the court finds that the officer acted in bad faith.~~

~~— Section 11} unless prohibited by federal mandate.~~

Section 9. Section ~~{76-9-1010}~~76-9-1009 is enacted to read:

~~{76-9-1010}~~76-9-1009. **Implementation to be consistent with federal law and civil rights.**

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

Section ~~{12}~~10. Section **76-10-2901** is amended to read:

76-10-2901. Transporting or harboring aliens -- Definition -- Penalties.

(1) ~~[For purposes of]~~ As used in this part, "alien" means an individual who is illegally present in the United States.

(2) It is unlawful for a person to:

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

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

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

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

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

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

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

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

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

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

(b) Subsection (5)(a) applies only to an alien who has been a member of the religious denomination or organization for at least one year.

Section ~~13~~11. Section 77-7-2 is amended to read:

77-7-2. Arrest by peace officers.

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

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

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

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

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

(a) flee or conceal himself to avoid arrest;

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

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

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

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

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

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

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

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

Section ~~{14}~~12. **Effective date.**

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}~~