

Senator Curtis S. Bramble proposes the following substitute bill:

UTAH IMMIGRATION ENFORCEMENT AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies general government provisions to address issues related to immigration and aliens.

Highlighted Provisions:

This bill:

- ▶ addresses the exemption from paying the instate portion of tuition;
- ▶ enacts the Utah Immigration Enforcement Act, including:
 - defining terms;
 - creating the Immigration Act Restricted Account;
 - addressing information related to immigration status being sent, received, or maintained;
 - requiring implementation to be consistent with federal laws, civil rights, and other constitutional protections;
 - providing for severability of specified provisions;
 - establishing the guest worker program;
 - addressing federal waivers, exemptions, or authorizations;
 - providing for coordination with other federal or state laws or programs, including income tax withholding and the imposition of a fee;



- 26 • providing for when a permit is to be obtained and the uses for a permit;
- 27 • addressing eligibility criteria to obtain or maintain a permit;
- 28 • establishing the application and renewal process;
- 29 • imposing conditions during permit term;
- 30 • addressing proficiency standards for English;
- 31 • addressing verification of permits and the protected status of information;
- 32 • addressing prohibited conduct;
- 33 • providing for administrative and criminal penalties;
- 34 • providing for sharing of information related to enforcement;
- 35 • addressing employee verification and employer sanctions for employing an
- 36 unauthorized alien who does not hold a permit;
- 37 • consolidating provisions in various parts of the Utah Code into the chapter; and
- 38 • imposing additional requirements to verify lawful presence in the United States
- 39 to receive certain public benefits;
- 40 ▶ provides a repeal date for the Private Employer Verification Act;
- 41 ▶ creates the Identity Theft Restricted Account from which victims of identity theft
- 42 may be paid actual damages;
- 43 ▶ enacts the Illegal Immigration Enforcement Act, including:
- 44 • defining terms;
- 45 • providing for when a law enforcement officer is required or permitted to request
- 46 verification of immigration status;
- 47 • establishing what documents are to be provided a law enforcement officer; and
- 48 • requiring implementation to be consistent with federal law, civil rights, and
- 49 other constitutional protections; and
- 50 ▶ makes technical and conforming amendments.

51 **Money Appropriated in this Bill:**

52 None

53 **Other Special Clauses:**

54 None

55 **Utah Code Sections Affected:**

56 AMENDS:

- 57 **53B-8-106**, as enacted by Laws of Utah 2002, Chapter 230
- 58 **63G-2-206**, as last amended by Laws of Utah 2009, Chapter 344
- 59 **63G-2-305**, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247
- 60 **63J-1-602.4**, as enacted by Laws of Utah 2010, Chapter 265
- 61 **67-5-22.7**, as enacted by Laws of Utah 2009, Chapter 30
- 62 **76-10-2901**, as enacted by Laws of Utah 2008, Chapter 26
- 63 **77-7-2**, as last amended by Laws of Utah 2008, Chapter 293

64 ENACTS:

- 65 **63G-12-101**, Utah Code Annotated 1953
- 66 **63G-12-102**, Utah Code Annotated 1953
- 67 **63G-12-103**, Utah Code Annotated 1953
- 68 **63G-12-104**, Utah Code Annotated 1953
- 69 **63G-12-105**, Utah Code Annotated 1953
- 70 **63G-12-106**, Utah Code Annotated 1953
- 71 **63G-12-201**, Utah Code Annotated 1953
- 72 **63G-12-202**, Utah Code Annotated 1953
- 73 **63G-12-203**, Utah Code Annotated 1953
- 74 **63G-12-204**, Utah Code Annotated 1953
- 75 **63G-12-205**, Utah Code Annotated 1953
- 76 **63G-12-206**, Utah Code Annotated 1953
- 77 **63G-12-207**, Utah Code Annotated 1953
- 78 **63G-12-208**, Utah Code Annotated 1953
- 79 **63G-12-209**, Utah Code Annotated 1953
- 80 **63G-12-210**, Utah Code Annotated 1953
- 81 **63G-12-211**, Utah Code Annotated 1953
- 82 **63G-12-212**, Utah Code Annotated 1953
- 83 **63G-12-301**, Utah Code Annotated 1953
- 84 **63G-12-303**, Utah Code Annotated 1953
- 85 **63G-12-304**, Utah Code Annotated 1953
- 86 **63G-12-305**, Utah Code Annotated 1953
- 87 **63G-12-306**, Utah Code Annotated 1953

- 88 **63G-12-307**, Utah Code Annotated 1953
- 89 **63I-2-173**, Utah Code Annotated 1953
- 90 **76-9-1001**, Utah Code Annotated 1953
- 91 **76-9-1002**, Utah Code Annotated 1953
- 92 **76-9-1003**, Utah Code Annotated 1953
- 93 **76-9-1004**, Utah Code Annotated 1953
- 94 **76-9-1005**, Utah Code Annotated 1953

95 RENUMBERS AND AMENDS:

- 96 **63G-12-302**, (Renumbered from 63G-11-103, as last amended by Laws of Utah 2009,
- 97 Chapter 138)
- 98 **63G-12-401**, (Renumbered from 63G-11-102, as last amended by Laws of Utah 2010,
- 99 Chapter 281)
- 100 **63G-12-402**, (Renumbered from 63G-11-104, as last amended by Laws of Utah 2010,
- 101 Chapter 191)

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

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

105 **53B-8-106. Resident tuition -- Requirements -- Rules.**

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

109 (a) attended high school in this state for three or more years;

110 (b) graduated from a high school in this state or received the equivalent of a high
111 school diploma in this state; and

112 (c) registers as an entering student at an institution of higher education not earlier than
113 the fall of the 2002-03 academic year.

114 (2) In addition to the requirements under Subsection (1), a student without lawful
115 immigration status shall file an affidavit with the institution of higher education stating that the
116 student has filed an application to legalize ~~his~~ the student's immigration status, or will file an
117 application as soon as ~~he~~ the student is eligible to do so.

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

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

121 (5) (a) Beginning on the program start date, as defined in Section 63G-12-102, in
122 addition to complying with Subsections (1) and (2), to be exempt from paying the nonresident
123 portion of total tuition a student shall:

124 (i) be the child of a person who holds a guest worker permit, as defined in Section
125 63G-12-102; or

126 (ii) hold a permit, as defined in Section 63G-12-102.

127 (b) If the day before the program start date a student is exempt from paying the
128 nonresident portion of total tuition, but is not exempt under Subsection (5)(a), the student loses
129 the exemption as of the first day of the term or semester immediately following the program
130 start date.

131 Section 2. Section **63G-2-206** is amended to read:

132 **63G-2-206. Sharing records.**

133 (1) A governmental entity may provide a record that is private, controlled, or protected
134 to another governmental entity, a government-managed corporation, a political subdivision, the
135 federal government, or another state if the requesting entity:

136 (a) serves as a repository or archives for purposes of historical preservation,
137 administrative maintenance, or destruction;

138 (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the
139 record is necessary to a proceeding or investigation;

140 (c) is authorized by state statute to conduct an audit and the record is needed for that
141 purpose;

142 (d) is one that collects information for presentence, probationary, or parole purposes; or

143 (e) (i) is:

144 (A) the Legislature;

145 (B) a legislative committee;

146 (C) a member of the Legislature; or

147 (D) a legislative staff member acting at the request of the Legislature, a legislative
148 committee, or a member of the Legislature; and

149 (ii) requests the record in relation to the Legislature's duties including:

- 150 (A) the preparation or review of a legislative proposal or legislation;
- 151 (B) appropriations; or
- 152 (C) an investigation or review conducted by the Legislature or a legislative committee.

153 (2) (a) A governmental entity may provide a private, controlled, or protected record or
154 record series to another governmental entity, a political subdivision, a government-managed
155 corporation, the federal government, or another state if the requesting entity provides written
156 assurance:

157 (i) that the record or record series is necessary to the performance of the governmental
158 entity's duties and functions;

159 (ii) that the record or record series will be used for a purpose similar to the purpose for
160 which the information in the record or record series was collected or obtained; and

161 (iii) that the use of the record or record series produces a public benefit that outweighs
162 the individual privacy right that protects the record or record series.

163 (b) A governmental entity may provide a private, controlled, or protected record or
164 record series to a contractor or a private provider according to the requirements of Subsection
165 (6)(b).

166 (3) (a) A governmental entity shall provide a private, controlled, or protected record to
167 another governmental entity, a political subdivision, a government-managed corporation, the
168 federal government, or another state if the requesting entity:

169 (i) is entitled by law to inspect the record;

170 (ii) is required to inspect the record as a condition of participating in a state or federal
171 program or for receiving state or federal funds; or

172 (iii) is an entity described in Subsection (1)(a), (b), (c), (d), or (e).

173 (b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection
174 63G-2-305(4).

175 (4) Before disclosing a record or record series under this section to another
176 governmental entity, another state, the United States, a foreign government, or to a contractor
177 or private provider, the originating governmental entity shall:

178 (a) inform the recipient of the record's classification and the accompanying restrictions
179 on access; and

180 (b) if the recipient is not a governmental entity to which this chapter applies, obtain the

181 recipient's written agreement which may be by mechanical or electronic transmission that it
182 will abide by those restrictions on access unless a statute, federal regulation, or interstate
183 agreement otherwise governs the sharing of the record or record series.

184 (5) A governmental entity may disclose a record to another state, the United States, or a
185 foreign government for the reasons listed in Subsections (1) and (2) without complying with
186 the procedures of Subsection (2) or (4) if disclosure is authorized by executive agreement,
187 treaty, federal statute, compact, federal regulation, or state statute.

188 (6) (a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this
189 section is subject to the same restrictions on disclosure of the record as the originating entity.

190 (b) A contractor or a private provider may receive information under this section only
191 if:

192 (i) the contractor or private provider's use of the record or record series produces a
193 public benefit that outweighs the individual privacy right that protects the record or record
194 series;

195 (ii) the record or record series it requests:

196 (A) is necessary for the performance of a contract with a governmental entity;

197 (B) will only be used for the performance of the contract with the governmental entity;

198 (C) will not be disclosed to any other person; and

199 (D) will not be used for advertising or solicitation purposes; and

200 (iii) the contractor or private provider gives written assurance to the governmental
201 entity that is providing the record or record series that it will adhere to the restrictions of this
202 Subsection (6)(b).

203 (c) The classification of a record already held by a governmental entity and the
204 applicable restrictions on disclosure of that record are not affected by the governmental entity's
205 receipt under this section of a record with a different classification that contains information
206 that is also included in the previously held record.

207 (7) Notwithstanding any other provision of this section, if a more specific court rule or
208 order, state statute, federal statute, or federal regulation prohibits or requires sharing
209 information, that rule, order, statute, or federal regulation controls.

210 (8) The following records may not be shared under this section:

211 (a) records held by the Division of Oil, Gas, and Mining that pertain to any person and

212 that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and
213 Mining; [~~and~~]

214 (b) records of publicly funded libraries as described in Subsection 63G-2-302(1)(c)[~~;~~];
215 and

216 (c) a record described in Section 63G-12-210.

217 (9) Records that may evidence or relate to a violation of law may be disclosed to a
218 government prosecutor, peace officer, or auditor.

219 Section 3. Section **63G-2-305** is amended to read:

220 **63G-2-305. Protected records.**

221 The following records are protected if properly classified by a governmental entity:

222 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
223 has provided the governmental entity with the information specified in Section 63G-2-309;

224 (2) commercial information or nonindividual financial information obtained from a
225 person if:

226 (a) disclosure of the information could reasonably be expected to result in unfair
227 competitive injury to the person submitting the information or would impair the ability of the
228 governmental entity to obtain necessary information in the future;

229 (b) the person submitting the information has a greater interest in prohibiting access
230 than the public in obtaining access; and

231 (c) the person submitting the information has provided the governmental entity with
232 the information specified in Section 63G-2-309;

233 (3) commercial or financial information acquired or prepared by a governmental entity
234 to the extent that disclosure would lead to financial speculations in currencies, securities, or
235 commodities that will interfere with a planned transaction by the governmental entity or cause
236 substantial financial injury to the governmental entity or state economy;

237 (4) records the disclosure of which could cause commercial injury to, or confer a
238 competitive advantage upon a potential or actual competitor of, a commercial project entity as
239 defined in Subsection 11-13-103(4);

240 (5) test questions and answers to be used in future license, certification, registration,
241 employment, or academic examinations;

242 (6) records the disclosure of which would impair governmental procurement

243 proceedings or give an unfair advantage to any person proposing to enter into a contract or
244 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this
245 Subsection (6) does not restrict the right of a person to have access to, once the contract or
246 grant has been awarded, a bid, proposal, or application submitted to or by a governmental
247 entity in response to:

248 (a) a request for bids;

249 (b) a request for proposals;

250 (c) a grant; or

251 (d) other similar document;

252 (7) records that would identify real property or the appraisal or estimated value of real
253 or personal property, including intellectual property, under consideration for public acquisition
254 before any rights to the property are acquired unless:

255 (a) public interest in obtaining access to the information outweighs the governmental
256 entity's need to acquire the property on the best terms possible;

257 (b) the information has already been disclosed to persons not employed by or under a
258 duty of confidentiality to the entity;

259 (c) in the case of records that would identify property, potential sellers of the described
260 property have already learned of the governmental entity's plans to acquire the property;

261 (d) in the case of records that would identify the appraisal or estimated value of
262 property, the potential sellers have already learned of the governmental entity's estimated value
263 of the property; or

264 (e) the property under consideration for public acquisition is a single family residence
265 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
266 the property as required under Section 78B-6-505;

267 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
268 compensated transaction of real or personal property including intellectual property, which, if
269 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
270 of the subject property, unless:

271 (a) the public interest in access outweighs the interests in restricting access, including
272 the governmental entity's interest in maximizing the financial benefit of the transaction; or

273 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of

274 the value of the subject property have already been disclosed to persons not employed by or
275 under a duty of confidentiality to the entity;

276 (9) records created or maintained for civil, criminal, or administrative enforcement
277 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
278 release of the records:

279 (a) reasonably could be expected to interfere with investigations undertaken for
280 enforcement, discipline, licensing, certification, or registration purposes;

281 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
282 proceedings;

283 (c) would create a danger of depriving a person of a right to a fair trial or impartial
284 hearing;

285 (d) reasonably could be expected to disclose the identity of a source who is not
286 generally known outside of government and, in the case of a record compiled in the course of
287 an investigation, disclose information furnished by a source not generally known outside of
288 government if disclosure would compromise the source; or

289 (e) reasonably could be expected to disclose investigative or audit techniques,
290 procedures, policies, or orders not generally known outside of government if disclosure would
291 interfere with enforcement or audit efforts;

292 (10) records the disclosure of which would jeopardize the life or safety of an
293 individual;

294 (11) records the disclosure of which would jeopardize the security of governmental
295 property, governmental programs, or governmental recordkeeping systems from damage, theft,
296 or other appropriation or use contrary to law or public policy;

297 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
298 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
299 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

300 (13) records that, if disclosed, would reveal recommendations made to the Board of
301 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
302 Board of Pardons and Parole, or the Department of Human Services that are based on the
303 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
304 jurisdiction;

305 (14) records and audit workpapers that identify audit, collection, and operational
306 procedures and methods used by the State Tax Commission, if disclosure would interfere with
307 audits or collections;

308 (15) records of a governmental audit agency relating to an ongoing or planned audit
309 until the final audit is released;

310 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
311 litigation that are not available under the rules of discovery;

312 (17) records disclosing an attorney's work product, including the mental impressions or
313 legal theories of an attorney or other representative of a governmental entity concerning
314 litigation;

315 (18) records of communications between a governmental entity and an attorney
316 representing, retained, or employed by the governmental entity if the communications would be
317 privileged as provided in Section 78B-1-137;

318 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
319 from a member of the Legislature; and

320 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
321 legislative action or policy may not be classified as protected under this section; and

322 (b) (i) an internal communication that is part of the deliberative process in connection
323 with the preparation of legislation between:

324 (A) members of a legislative body;

325 (B) a member of a legislative body and a member of the legislative body's staff; or

326 (C) members of a legislative body's staff; and

327 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
328 legislative action or policy may not be classified as protected under this section;

329 (20) (a) records in the custody or control of the Office of Legislative Research and
330 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
331 legislation or contemplated course of action before the legislator has elected to support the
332 legislation or course of action, or made the legislation or course of action public; and

333 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
334 Office of Legislative Research and General Counsel is a public document unless a legislator
335 asks that the records requesting the legislation be maintained as protected records until such

336 time as the legislator elects to make the legislation or course of action public;

337 (21) research requests from legislators to the Office of Legislative Research and
338 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
339 in response to these requests;

340 (22) drafts, unless otherwise classified as public;

341 (23) records concerning a governmental entity's strategy about collective bargaining or
342 pending litigation;

343 (24) records of investigations of loss occurrences and analyses of loss occurrences that
344 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
345 Uninsured Employers' Fund, or similar divisions in other governmental entities;

346 (25) records, other than personnel evaluations, that contain a personal recommendation
347 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
348 personal privacy, or disclosure is not in the public interest;

349 (26) records that reveal the location of historic, prehistoric, paleontological, or
350 biological resources that if known would jeopardize the security of those resources or of
351 valuable historic, scientific, educational, or cultural information;

352 (27) records of independent state agencies if the disclosure of the records would
353 conflict with the fiduciary obligations of the agency;

354 (28) records of an institution within the state system of higher education defined in
355 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
356 retention decisions, and promotions, which could be properly discussed in a meeting closed in
357 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
358 the final decisions about tenure, appointments, retention, promotions, or those students
359 admitted, may not be classified as protected under this section;

360 (29) records of the governor's office, including budget recommendations, legislative
361 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
362 policies or contemplated courses of action before the governor has implemented or rejected
363 those policies or courses of action or made them public;

364 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
365 revenue estimates, and fiscal notes of proposed legislation before issuance of the final
366 recommendations in these areas;

367 (31) records provided by the United States or by a government entity outside the state
368 that are given to the governmental entity with a requirement that they be managed as protected
369 records if the providing entity certifies that the record would not be subject to public disclosure
370 if retained by it;

371 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
372 except as provided in Section 52-4-206;

373 (33) records that would reveal the contents of settlement negotiations but not including
374 final settlements or empirical data to the extent that they are not otherwise exempt from
375 disclosure;

376 (34) memoranda prepared by staff and used in the decision-making process by an
377 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
378 other body charged by law with performing a quasi-judicial function;

379 (35) records that would reveal negotiations regarding assistance or incentives offered
380 by or requested from a governmental entity for the purpose of encouraging a person to expand
381 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
382 person or place the governmental entity at a competitive disadvantage, but this section may not
383 be used to restrict access to a record evidencing a final contract;

384 (36) materials to which access must be limited for purposes of securing or maintaining
385 the governmental entity's proprietary protection of intellectual property rights including patents,
386 copyrights, and trade secrets;

387 (37) the name of a donor or a prospective donor to a governmental entity, including an
388 institution within the state system of higher education defined in Section 53B-1-102, and other
389 information concerning the donation that could reasonably be expected to reveal the identity of
390 the donor, provided that:

391 (a) the donor requests anonymity in writing;

392 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
393 classified protected by the governmental entity under this Subsection (37); and

394 (c) except for an institution within the state system of higher education defined in
395 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
396 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
397 over the donor, a member of the donor's immediate family, or any entity owned or controlled

398 by the donor or the donor's immediate family;

399 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
400 73-18-13;

401 (39) a notification of workers' compensation insurance coverage described in Section
402 34A-2-205;

403 (40) (a) the following records of an institution within the state system of higher
404 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
405 or received by or on behalf of faculty, staff, employees, or students of the institution:

406 (i) unpublished lecture notes;

407 (ii) unpublished notes, data, and information:

408 (A) relating to research; and

409 (B) of:

410 (I) the institution within the state system of higher education defined in Section
411 53B-1-102; or

412 (II) a sponsor of sponsored research;

413 (iii) unpublished manuscripts;

414 (iv) creative works in process;

415 (v) scholarly correspondence; and

416 (vi) confidential information contained in research proposals;

417 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
418 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

419 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

420 (41) (a) records in the custody or control of the Office of Legislative Auditor General
421 that would reveal the name of a particular legislator who requests a legislative audit prior to the
422 date that audit is completed and made public; and

423 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
424 Office of the Legislative Auditor General is a public document unless the legislator asks that
425 the records in the custody or control of the Office of Legislative Auditor General that would
426 reveal the name of a particular legislator who requests a legislative audit be maintained as
427 protected records until the audit is completed and made public;

428 (42) records that provide detail as to the location of an explosive, including a map or

429 other document that indicates the location of:

430 (a) a production facility; or

431 (b) a magazine;

432 (43) information:

433 (a) contained in the statewide database of the Division of Aging and Adult Services
434 created by Section 62A-3-311.1; or

435 (b) received or maintained in relation to the Identity Theft Reporting Information
436 System (IRIS) established under Section 67-5-22;

437 (44) information contained in the Management Information System and Licensing
438 Information System described in Title 62A, Chapter 4a, Child and Family Services;

439 (45) information regarding National Guard operations or activities in support of the
440 National Guard's federal mission;

441 (46) records provided by any pawn or secondhand business to a law enforcement
442 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
443 Secondhand Merchandise Transaction Information Act;

444 (47) information regarding food security, risk, and vulnerability assessments performed
445 by the Department of Agriculture and Food;

446 (48) except to the extent that the record is exempt from this chapter pursuant to Section
447 63G-2-106, records related to an emergency plan or program prepared or maintained by the
448 Division of Homeland Security the disclosure of which would jeopardize:

449 (a) the safety of the general public; or

450 (b) the security of:

451 (i) governmental property;

452 (ii) governmental programs; or

453 (iii) the property of a private person who provides the Division of Homeland Security
454 information;

455 (49) records of the Department of Agriculture and Food relating to the National
456 Animal Identification System or any other program that provides for the identification, tracing,
457 or control of livestock diseases, including any program established under Title 4, Chapter 24,
458 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
459 Quarantine;

460 (50) as provided in Section 26-39-501:

461 (a) information or records held by the Department of Health related to a complaint
462 regarding a child care program or residential child care which the department is unable to
463 substantiate; and

464 (b) information or records related to a complaint received by the Department of Health
465 from an anonymous complainant regarding a child care program or residential child care;

466 (51) unless otherwise classified as public under Section 63G-2-301 and except as
467 provided under Section 41-1a-116, an individual's home address, home telephone number, or
468 personal mobile phone number, if:

469 (a) the individual is required to provide the information in order to comply with a law,
470 ordinance, rule, or order of a government entity; and

471 (b) the subject of the record has a reasonable expectation that this information will be
472 kept confidential due to:

473 (i) the nature of the law, ordinance, rule, or order; and

474 (ii) the individual complying with the law, ordinance, rule, or order;

475 (52) the name, home address, work addresses, and telephone numbers of an individual
476 that is engaged in, or that provides goods or services for, medical or scientific research that is:

477 (a) conducted within the state system of higher education, as defined in Section
478 53B-1-102; and

479 (b) conducted using animals;

480 (53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement
481 Private Proposal Program, to the extent not made public by rules made under that chapter;

482 (54) information collected and a report prepared by the Judicial Performance
483 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
484 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
485 the information or report;

486 (55) (a) records of the Utah Educational Savings Plan created under Section
487 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

488 (b) proposals submitted to the Utah Educational Savings Plan; and

489 (c) contracts entered into by the Utah Educational Savings Plan and the related
490 payments;

491 (56) records contained in the Management Information System created in Section
492 62A-4a-1003;

493 (57) records provided or received by the Public Lands Policy Coordinating Office in
494 furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

495 (58) information requested by and provided to the Utah State 911 Committee under
496 Section 53-10-602;

497 (59) recorded Children's Justice Center investigative interviews, both video and audio,
498 the release of which are governed by Section 77-37-4; ~~and~~

499 (60) in accordance with Section 73-10-33:

500 (a) a management plan for a water conveyance facility in the possession of the Division
501 of Water Resources or the Board of Water Resources; or

502 (b) an outline of an emergency response plan in possession of the state or a county or
503 municipality[-]; and

504 (61) a record described in Section 63G-12-210.

505 Section 4. Section **63G-12-101** is enacted to read:

506 **CHAPTER 12. UTAH IMMIGRATION ENFORCEMENT ACT**

507 **Part 1. General Provisions**

508 **63G-12-101. Title.**

509 This chapter is known as the "Utah Immigration Enforcement Act."

510 Section 5. Section **63G-12-102** is enacted to read:

511 **63G-12-102. Definitions.**

512 As used in this chapter:

513 (1) "Basic health insurance plan" means a health plan that is actuarially equivalent to a
514 federally qualified high deductible health plan.

515 (2) "Department" means the Department of Workforce Services created in Section
516 35A-1-103.

517 (3) "Employee" means an individual employed by an employer under a contract for
518 hire.

519 (4) "Employer" means a person that has one or more employees employed in the same
520 business, or in or about the same establishment, under any contract of hire, express or implied,
521 oral or written.

522 (5) "E-verify program" means the electronic verification of the work authorization
523 program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8
524 U.S.C. Sec. 1324a, known as the e-verify program;

525 (6) "Family member" means for an undocumented individual:

526 (a) a member of the undocumented individual's immediate family;

527 (b) the undocumented individual's grandparent;

528 (c) the undocumented individual's sibling;

529 (d) the undocumented individual's grandchild;

530 (e) the undocumented individual's nephew;

531 (f) the undocumented individual's niece;

532 (g) a spouse of an individual described in this Subsection (6); or

533 (h) an individual who is similar to one listed in this Subsection (6).

534 (7) "Federal SAVE program" means the Systematic Alien Verification for Entitlements
535 Program operated by the United States Department of Homeland Security or an equivalent
536 program designated by the Department of Homeland Security.

537 (8) "Guest worker" means an undocumented individual who holds a guest worker
538 permit.

539 (9) "Guest worker permit" means a permit issued in accordance with Section
540 63G-12-207 to an undocumented individual who meets the eligibility criteria of Section
541 63G-12-205.

542 (10) "Immediate family" means for an undocumented individual:

543 (a) the undocumented individual's spouse; or

544 (b) a child of the undocumented individual if the child is:

545 (i) under 21 years of age; and

546 (ii) unmarried.

547 (11) "Immediate family permit" means a permit issued in accordance with Section
548 63G-12-207 to an undocumented individual who meets the eligibility criteria of Section
549 63G-12-206.

550 (12) "Permit" means a permit issued under Part 2, Guest Worker Program, and
551 includes:

552 (a) a guest worker permit; and

- 553 (b) an immediate family permit.
- 554 (13) "Permit holder" means an undocumented individual who holds a permit.
- 555 (14) "Private employer" means an employer who is not the federal government or a
- 556 public employer.
- 557 (15) "Program start date" means the day on which the department is required to
- 558 implement the program under Subsection 63G-12-202(3).
- 559 (16) "Public employer" means an employer that is:
- 560 (a) the state of Utah or any administrative subunit of the state;
- 561 (b) a state institution of higher education, as defined in Section 53B-3-102;
- 562 (c) a political subdivision of the state including a county, city, town, school district,
- 563 local district, or special service district; or
- 564 (d) an administrative subunit of a political subdivision.
- 565 (17) "Program" means the Guest Worker Program described in Section 63G-12-201.
- 566 (18) "Relevant contact information" means the following for an undocumented
- 567 individual:
- 568 (a) the undocumented individual's name;
- 569 (b) the undocumented individual's residential address;
- 570 (c) the undocumented individual's residential telephone number;
- 571 (d) the undocumented individual's personal email address;
- 572 (e) the name of the person with whom the undocumented individual has a contract for
- 573 hire;
- 574 (f) the name of the contact person for the person listed in Subsection (18)(e);
- 575 (g) the address of the person listed in Subsection (18)(e);
- 576 (h) the telephone number for the person listed in Subsection (18)(e);
- 577 (i) the names of the undocumented individual's immediate family members;
- 578 (j) the names of the family members who reside with the undocumented individual;
- 579 and
- 580 (k) any other information required by the department by rule made in accordance with
- 581 Chapter 3, Utah Administrative Rulemaking Act.
- 582 (19) "Restricted account" means the Immigration Act Restricted Account created in
- 583 Section 63G-12-103.

- 584 (20) "Serious felony" means a felony under:
585 (a) Title 76, Chapter 5, Offenses Against the Person;
586 (b) Title 76, Chapter 5a, Sexual Exploitation of Children;
587 (c) Title 76, Chapter 6, Offenses Against Property;
588 (d) Title 76, Chapter 7, Offenses Against the Family;
589 (e) Title 76, Chapter 8, Offenses Against the Administration of Government;
590 (f) Title 76, Chapter 9, Offenses Against Public Order and Decency; and
591 (g) Title 76, Chapter 10, Offenses Against Public Health, Safety, Welfare, and Morals.
592 (21) (a) "Status verification system" means an electronic system operated by the federal
593 government, through which an authorized official of a state agency or a political subdivision of
594 the state may inquire by exercise of authority delegated pursuant to 8 U.S.C. Sec. 1373, to
595 verify the citizenship or immigration status of an individual within the jurisdiction of the
596 agency or political subdivision for a purpose authorized under this section.
597 (b) "Status verification system" includes:
598 (i) the e-verify program;
599 (ii) an equivalent federal program designated by the United States Department of
600 Homeland Security or other federal agency authorized to verify the work eligibility status of a
601 newly hired employee pursuant to the Immigration Reform and Control Act of 1986;
602 (iii) the Social Security Number Verification Service or similar online verification
603 process implemented by the United States Social Security Administration; or
604 (iv) an independent third-party system with an equal or higher degree of reliability as
605 the programs, systems, or processes described in Subsection (21)(b)(i), (ii), or (iii).
606 (22) "Unauthorized alien" is as defined in 8 U.S.C. Sec. 1324a(h)(3).
607 (23) "Undocumented individual" means an individual who:
608 (a) lives or works in the state; and
609 (b) is not in compliance with the Immigration and Nationality Act, 8 U.S.C. Sec. 1101
610 et seq. with regard to presence in the United States.
611 (24) "U-verify program" means the verification procedure developed by the department
612 in accordance with Section 63G-12-210.
613 Section 6. Section **63G-12-103** is enacted to read:
614 **63G-12-103. Immigration Act Restricted Account.**

615 (1) There is created a restricted account within the General Fund known as the
616 "Immigration Act Restricted Account."

617 (2) (a) The restricted account shall consist of:

618 (i) a fee collected under this chapter;

619 (ii) a fine collected under Section 63G-12-207;

620 (iii) civil penalties imposed under Section 63G-12-211 or 63G-12-307;

621 (iv) money appropriated to the restricted account by the Legislature; and

622 (v) interest earned on the restricted account.

623 (b) The restricted account shall earn interest.

624 (3) The Legislature may appropriate money from the restricted account to:

625 (a) the department and the Office of the Governor to pay the costs associated with the
626 implementation of Section 63G-12-202;

627 (b) the department to administer this chapter;

628 (c) the State Tax Commission for costs associated with implementing Section
629 63G-12-203; and

630 (d) the attorney general for costs associated with:

631 (i) litigation related to this chapter;

632 (ii) a multi-agency strike force created under Section 67-5-22.7; or

633 (iii) a memorandum of understanding executed under Section 67-5-28.

634 Section 7. Section **63G-12-104** is enacted to read:

635 **63G-12-104. Determining immigration status -- Transfer or maintenance of**
636 **information.**

637 Except as limited by federal law and this chapter, any state or local governmental
638 agency is not restricted or prohibited in any way from sending, receiving, or maintaining
639 information related to the lawful or unlawful immigration status of an individual by
640 communicating with any federal, state, or local governmental entity for any lawful purpose,
641 including:

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

644 (2) confirming an individual's claim of residence or domicile if determination is
645 required by state law or a judicial order issued pursuant to a civil or criminal proceeding in this

646 state;

647 (3) if the individual is an alien, determining if the individual is in compliance with the
648 federal registration laws under 8 U.S.C. Sec. 1301 through 1306; or

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

651 Section 8. Section **63G-12-105** is enacted to read:

652 **63G-12-105. Implementation to be consistent with federal law and civil rights.**

653 A state or local agency shall implement this part in a manner that:

654 (1) is consistent with federal laws that regulate immigration;

655 (2) protects the civil rights of all persons; and

656 (3) respects the privileges and immunities of United States citizens.

657 Section 9. Section **63G-12-106** is enacted to read:

658 **63G-12-106. Severability.**

659 (1) If a provision of Part 2, Guest Worker Program, or the application of a provision to
660 a person or circumstance is held invalid, the remainder of this chapter may not be given effect
661 without the invalid provision or application so that the provisions of this chapter are not
662 severable.

663 (2) The following provisions are severable from this chapter:

664 (a) Title 76, Chapter 9, Part 10, Illegal Immigration Enforcement Act;

665 (b) Section 76-10-2901; and

666 (c) Section 77-7-2.

667 Section 10. Section **63G-12-201** is enacted to read:

668 **Part 2. Guest Worker Program**

669 **63G-12-201. Department to create program.**

670 (1) The department shall administer a program known as the "Guest Worker Program"
671 created by this part. Under this program, the department shall:

672 (a) seek one or more waivers, exemptions, or authorizations to implement the program
673 as provided in Section 63G-12-202;

674 (b) issue a permit as provided in Section 63G-12-207;

675 (c) establish fees in accordance with Section 63J-1-504 for a filing or service required
676 by this part;

677 (d) take action under Section 63G-12-211; and

678 (e) report annually to the governor and the Legislature.

679 (2) The department may make rules in accordance with Chapter 3, Utah Administrative
680 Rulemaking Act, to the extent expressly provided for in this part.

681 (3) In implementing this part, the department shall cooperate with other state agencies
682 to minimize any duplication in databases or services required under this part.

683 Section 11. Section **63G-12-202** is enacted to read:

684 **63G-12-202. Federal waivers, exemptions, or authorizations -- Implementation**
685 **without waiver, exemption, or authorization.**

686 (1) The department, under the direction of the governor, shall seek one or more federal
687 waivers, exemptions, or authorizations to implement the program.

688 (2) The governor shall actively participate in the effort to obtain one or more federal
689 waivers, exemptions, or authorizations under this section.

690 (3) The department shall implement the program the sooner of:

691 (a) 120 days after the day on which the governor finds that the state has the one or
692 more federal waivers, exemptions, or authorizations needed to implement the program; or

693 (b) July 1, 2013.

694 Section 12. Section **63G-12-203** is enacted to read:

695 **63G-12-203. Coordination with other federal or state laws or programs.**

696 (1) To the extent feasible, the department shall coordinate the implementation of the
697 program with other existing state and federal laws that relate to immigration and labor,
698 including laws pertaining to obtaining the privilege to drive and to report citizenship status.

699 (2) (a) If a permit holder is not issued a Social Security number, the State Tax
700 Commission shall, by rule made in accordance with Chapter 3, Utah Administrative
701 Rulemaking Act, provide a means for a person who receives services from a permit holder to
702 withhold from compensation paid to the permit holder an amount to be determined by State
703 Tax Commission rule that, as closely as possible, equals the income taxes that would be
704 imposed by state law if the permit holder were an employee with a Social Security number.

705 (b) If a waiver, exemption, or authorization described in Section 63G-12-202 provides
706 for the issuance of a Social Security number to a permit holder, a person who receives services
707 from a permit holder is required to withhold from compensation as provided in Title 59,

708 Chapter 10, Part 4, Withholding of Tax.

709 (c) The rules described in Subsection (2)(a) shall be substantially similar to Title 59,
710 Chapter 10, Part 4, Withholding of Tax.

711 (d) To the extent feasible and consistent with a waiver, exemption, or authority entered
712 into under Section 63G-12-202, the State Tax Commission shall work with the applicable
713 federal government agencies to ensure that the withholding provided for under this Subsection
714 (2) is compatible with a federal process by which the income and employment taxes are
715 collected that would be imposed under federal law if a permit holder were an employee with a
716 Social Security number.

717 (e) (i) The State Tax Commission shall impose a fee on a person who hires a permit
718 holder as an employee in accordance with this Subsection (5):

719 (A) if as of the program start date the federal government does not collect or provide
720 for the withholding of federal employment taxes;

721 (B) beginning the first day of the calendar quarter immediately following the program
722 start date; and

723 (C) ending the last day of the calendar quarter in which the federal government begins
724 to collect or provide for the withholding of federal employment taxes.

725 (ii) The State Tax Commission shall set the fee equal to the amount that, as closely as
726 possible, equals the federal employment taxes that would be imposed by federal law if the
727 permit holder were hired as an employee with a Social Security number.

728 (iii) The State Tax Commission shall collect the fee in the same manner that it collects
729 state income taxes withheld in accordance with this Subsection (2).

730 (iv) The State Tax Commission may make rules in accordance with Chapter 3, Utah
731 Administrative Rulemaking Act, to establish the procedures for the collection of the fee.

732 (v) The State Tax Commission shall deposit the fee into the restricted account.

733 (3) The department shall facilitate the use in this state of other employer based work
734 programs that meet the needs of Utah employers by using workers who are not working in Utah
735 and who are not United States citizens. Nothing in this part prevents a person from using an
736 employer based work program described in this Subsection (3) that exists under the auspices of
737 a foreign government in cooperation with the United States government.

738 (4) A permit holder is not eligible for unemployment compensation.

739 Section 13. Section **63G-12-204** is enacted to read:

740 **63G-12-204. Obtaining a permit -- Uses of permit.**

741 (1) An undocumented individual shall obtain a permit:

742 (a) before providing services to a person in this state under a contract for hire; or

743 (b) in accordance with Subsection (2), by no later than 30 days from the day on which
744 the undocumented individual enters into a contract for hire.

745 (2) (a) By rule made in accordance with Chapter 3, Utah Administrative Rulemaking
746 Act, the department shall provide a procedure under which a person may hire an undocumented
747 individual who does not hold a permit pending the undocumented individual obtaining a permit
748 within 30 days of the day on which the undocumented individual is hired to provide services.

749 (b) An undocumented individual may not provide services under a contract for hire to a
750 person for more than 30 days during a two-year calendar period without obtaining a permit as
751 provided under this part.

752 (3) Subject to Subsection (4), a permit is considered an identification document for
753 purposes of Section 63G-12-401, and may be used as identification or proof of the permit
754 holder's age for any state or local government required purpose.

755 (4) An undocumented individual may not use a permit:

756 (a) to establish entitlement to a federal, state, or local benefit as described in Section
757 63G-12-402; or

758 (b) to obtain work or provide services in a state other than Utah.

759 Section 14. Section **63G-12-205** is enacted to read:

760 **63G-12-205. Eligibility criteria to obtain and maintain a guest worker permit.**

761 (1) To be eligible to obtain or maintain a guest worker permit, an undocumented
762 individual shall:

763 (a) (i) be 18 years of age or older; or

764 (ii) if younger than 18 years of age, have the permission of a parent or guardian;

765 (b) live in Utah;

766 (c) have worked or lived in Utah before May 10, 2011;

767 (d) provide relevant contact information and regularly update the relevant contact
768 information in a manner required by rule made in accordance with Chapter 3, Utah

769 Administrative Rulemaking Act;

770 (e) provide documentation of a contract for hire under which the undocumented
771 individual begins to provide services within at least 30 days of the day on which the
772 undocumented individual obtains the permit;

773 (f) (i) agree to a criminal background check described in Subsection (3); and
774 (ii) not have been convicted of, pled guilty to, pled no contest to, pled guilty in a
775 similar manner to, or resolved by diversion or its equivalent to a serious felony;

776 (g) provide evidence satisfactory to the department that the person would not be
777 inadmissible for public health grounds under 8 U.S.C. Sec. 1182;

778 (h) (i) be covered by a basic health insurance plan; or

779 (ii) provide evidence satisfactory to the department that the undocumented individual
780 has no medical debt that is past due and agrees to have no medical debt that is past due during
781 the term of the permit; and

782 (i) (i) hold a driving privilege card issued in accordance with Section 53-3-207; or

783 (ii) provide evidence satisfactory to the department that the undocumented individual
784 will not drive a motor vehicle in the state.

785 (2) The department may by rule made in accordance with Chapter 3, Utah
786 Administrative Rulemaking Act, provide for the documentation required to establish eligibility
787 under Subsection (1). When making a rule under this section, the department shall use federal
788 standards as a guideline to avoid unnecessary duplication and additional costs.

789 (3) (a) The department shall require an undocumented individual applying for a guest
790 worker permit, or renewing a guest worker permit, to submit to a criminal background check as
791 a condition of receiving or renewing the guest worker permit.

792 (b) An undocumented individual required to submit to a criminal background check
793 under Subsection (3)(a), shall:

794 (i) submit a fingerprint card in a form acceptable to the department; and

795 (ii) consent to a fingerprint background check by:

796 (A) the Utah Bureau of Criminal Identification;

797 (B) the Federal Bureau of Investigation; and

798 (C) the secure communities system operated by the Department of Homeland Security
799 and Department of Justice.

800 (c) For an undocumented individual who submits a fingerprint card and consents to a

801 fingerprint background check under Subsection (3)(b), the department may request:

802 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
803 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification;

804 (ii) complete Federal Bureau of Investigation criminal background checks through the
805 national criminal history system; and

806 (iii) complete criminal background checks through the secure communities system of
807 the Department of Homeland Security and Department of Justice.

808 (d) Information obtained by the department from the review of criminal history records
809 received under this Subsection (3) shall be used by the department to determine eligibility to
810 obtain a permit.

811 (e) The department shall:

812 (i) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
813 of Investigation in providing the department criminal background information under this
814 Subsection (3); and

815 (ii) in accordance with Section 63J-1-504, charge the undocumented individual
816 applying for the permit a fee equal to the aggregate of the costs incurred by the department
817 under this Subsection (3) and amount paid under Subsection (3)(e)(i).

818 Section 15. Section **63G-12-206** is enacted to read:

819 **63G-12-206. Eligibility to obtain and maintain an immediate family permit.**

820 To be eligible to obtain or maintain an immediate family permit, an undocumented
821 individual shall:

822 (1) live in Utah;

823 (2) be a member of a guest worker's immediate family; and

824 (3) provide relevant contact information and regularly update the relevant contact
825 information in a manner required by rule made in accordance with Chapter 3, Utah
826 Administrative Rulemaking Act.

827 Section 16. Section **63G-12-207** is enacted to read:

828 **63G-12-207. Application and renewal process.**

829 (1) The department may not issue a permit under this part until the program is
830 implemented under Section 63G-12-202.

831 (2) The department shall:

832 (a) create a permit that:
833 (i) is of impervious material that is resistant to wear or damage; and
834 (ii) minimizes the risk that the permit may be forged, falsified, or counterfeited; and
835 (b) ensure that a permit:
836 (i) includes a photograph of the undocumented individual to whom the permit is
837 issued;
838 (ii) prominently states the day on which the permit expires; and
839 (iii) prominently states the type of permit.
840 (3) A permit expires two years from the day on which the department issues the permit.
841 (4) (a) Before an undocumented individual may apply for an initial permit under this
842 part the undocumented individual shall commit to pay a fine equal to:
843 (i) \$1,000, if the undocumented individual enters into the United States legally, but at
844 the time of paying the fine is not in compliance with the Immigration and Nationality Act, 8
845 U.S.C. Sec. 1101 et seq. with regard to presence in the United States; or
846 (ii) \$2,500, if the undocumented individual enters into the United States illegally.
847 (b) The department by rule made in accordance with Chapter 3, Utah Administrative
848 Rulemaking Act, shall make rules that provide for:
849 (i) how an undocumented individual demonstrates a commitment to pay the fine
850 required under Subsection (4)(a);
851 (ii) one or more payment plans that an undocumented individual may use to pay a fine
852 required under Subsection (4)(a); and
853 (iii) the consequences for failure to pay the entire amount of a fine required under
854 Subsection (4)(a).
855 (5) After committing to pay the fine in accordance with Subsection (4), to apply for or
856 renew a permit, an undocumented individual shall submit to the department, in a form
857 acceptable under this part:
858 (a) an application;
859 (b) documentation of meeting the criteria in Section 63G-12-205 or 63G-12-206;
860 (c) for a renewal, documentation of efforts to comply with Section 63G-12-209;
861 (d) a signed statement verifying the information in the application and documentation;
862 and

- 863 (e) a fee established by the department in accordance with Section 63J-1-504.
- 864 (6) If an undocumented individual submits a complete application under Subsection (5)
865 and the department determines that the undocumented individual meets the criteria of Section
866 63G-12-205 or 63G-12-206, the department shall issue or renew:
- 867 (a) a guest worker permit if the undocumented individual qualifies under Section
868 63G-12-205; and
- 869 (b) an immediate family permit if the undocumented individual qualifies under Section
870 63G-12-206.
- 871 (7) An undocumented individual may appeal a denial of a permit under this section in
872 accordance with Chapter 4, Administrative Procedures Act.
- 873 (8) (a) If a waiver, exemption, or authorization provides for the following, in addition
874 to the requirements of Subsection (5), for an application to be considered complete for
875 purposes of Subsection (6) an undocumented individual shall:
- 876 (i) post a bond with the department in the amount of \$10,000 against which the
877 department may bring an action for a violation of this part; or
- 878 (ii) provide written certification by the undocumented individual's country of origin in
879 accordance with Subsection (8)(b) of a guarantee of compliance with this part.
- 880 (b) (i) In accordance with Chapter 3, Utah Administrative Rulemaking Act, the
881 department shall make rules providing for what the department would consider being a
882 "guarantee of compliance" by a country of origin for purposes of Subsection (8)(a).
- 883 (ii) A rule made under this Subsection (8)(b) shall provide that the department may not
884 accept a guarantee of compliance from a specific foreign country if the department determines
885 a significant percentage of the guest workers who submit a guarantee of compliance from that
886 foreign country cannot be located after or during the term of a guest worker permit.
- 887 Section 17. Section **63G-12-208** is enacted to read:
- 888 **63G-12-208. Conditions during permit term.**
- 889 (1) A permit holder shall continue to meet the eligibility criteria under Section
890 63G-12-205 or 63G-12-206 for the type of permit held by the permit holder.
- 891 (2) A permit is automatically revoked if after issuance of the permit:
- 892 (a) the permit holder to whom it is issued is convicted of, pleads guilty to, pleads no
893 contest to, pleads guilty in a similar manner to, or has resolved by diversion or its equivalent a

894 serious felony;

895 (b) for a guest worker permit, the permit holder to whom it is issued does not provide
896 services under a contract for hire for more than one year; or

897 (c) for an immediate family permit, the guest worker permit under which the
898 immediate family member's permit is issued is revoked or expires under this part.

899 Section 18. Section **63G-12-209** is enacted to read:

900 **63G-12-209. Proficiency standards for English.**

901 (1) A permit holder shall in good faith use best efforts to become proficient in the
902 English language at or above the equivalent to an intermediate level on a language proficiency
903 assessment test used by the State Office of Education for purposes of secondary school
904 students.

905 (2) An undocumented individual shall pay the costs of complying with this section.

906 Section 19. Section **63G-12-210** is enacted to read:

907 **63G-12-210. Verification of valid permit -- Protected status of information.**

908 (1) (a) The department shall develop a verification procedure by rule made in
909 accordance with Chapter 3, Utah Administrative Rulemaking Act, for a person who hires a
910 permit holder to verify with the department that the permit is valid as required by Section
911 63G-12-301.

912 (b) The verification procedure adopted under this Subsection (1) shall:

913 (i) be substantially similar to the employer requirements to verify federal employment
914 status under the e-verify program; and

915 (ii) provide that an undocumented individual may appeal a determination that a permit
916 is invalid in accordance with Chapter 4, Administrative Procedures Act.

917 (2) Subject to Section 63G-12-212, a record under this part is a protected record under
918 Chapter 2, Government Records Access and Management Act, except that a record may not be
919 shared under Section 63G-2-206, unless:

920 (a) requested by the Office of Legislative Auditor General in accordance with Section
921 36-12-15; or

922 (b) disclosed to a federal government entity in accordance with this part or a waiver,
923 exemption, or authorization described in Section 63G-12-202.

924 (3) The state is not liable to any person for:

- 925 (a) the design, implementation, or operation of a verification procedure under this part;
- 926 (b) the collection and disclosure of information as part of a verification procedure
- 927 under this part; or
- 928 (c) the determination that a permit is invalid.

929 Section 20. Section **63G-12-211** is enacted to read:

930 **63G-12-211. Prohibited conduct -- Administrative penalties -- Criminal penalties.**

- 931 (1) A permit holder may not file for or receive unemployment benefits.
- 932 (2) A person may not:
 - 933 (a) furnish false or forged information or documentation in support of an application;
 - 934 (b) alter the information on a permit;
 - 935 (c) if the person is a guest worker, be reported absent from work for 10 consecutive
 - 936 days without the approval of the person who hires the guest worker;
 - 937 (d) allow an individual to use a permit if the individual is not entitled to use the permit;
 - 938 (e) display or represent that a permit is issued to an individual, if the permit is not
 - 939 issued to the individual;
 - 940 (f) display a revoked permit as a valid permit;
 - 941 (g) knowingly or with reckless disregard acquire, use, display, or transfer an item that
 - 942 purports to be a valid permit, but that is not a valid permit; or
 - 943 (h) otherwise violate this part.

944 (3) For a violation described in Subsections (1) and (2), the department may:

- 945 (a) suspend, limit, or revoke and repossess a permit;
- 946 (b) impose a civil penalty not to exceed \$750 for each violation; or
- 947 (c) take a combination of actions under this section.

948 (4) A person is guilty of a class C misdemeanor if the person:

- 949 (a) furnishes false or forged information or documentation in support of an application;
- 950 or

951 (b) alters the information on a permit.

952 Section 21. Section **63G-12-212** is enacted to read:

953 **63G-12-212. Sharing of information related to enforcement.**

- 954 (1) The department shall provide the notice described in Subsection (2), if the
- 955 department determines that an undocumented individual:

956 (a) has the undocumented individual's permit revoked; or
957 (b) permits the undocumented individual's permit to expire and the department has
958 reason to believe that the undocumented individual continues to reside in the state.
959 (2) (a) The department shall provide the notice required by Subsection (1) to:
960 (i) Utah's attorney general;
961 (ii) the Department of Public Safety; and
962 (iii) United States Immigration and Customs Enforcement.
963 (b) The notice described in Subsection (2)(a) shall:
964 (i) include:
965 (A) the last known address of the undocumented individual; and
966 (B) the basis of the notice described in Subsection (1); and
967 (ii) be sent promptly after the day on which the time to appeal, if any, the action that is
968 the basis for the notification under Subsection (1) ends.
969 Section 22. Section **63G-12-301** is enacted to read:
970 **Part 3. Employee Verification and Employer Sanctions**
971 **63G-12-301. Employing unauthorized alien -- Verification of employment**
972 **eligibility.**
973 (1) On and after the program start date, an employer may not knowingly employ an
974 unauthorized alien who does not hold a permit.
975 (2) On and after the program start date, a private employer employing 15 or more
976 employees within the state for each working day in each of 20 calendar weeks or more in the
977 current or preceding calendar year, after hiring an employee, shall verify the employment
978 eligibility of the new employee:
979 (a) through the e-verify program if the individual does not hold a permit; and
980 (b) through the u-verify program if the individual holds a permit.
981 (3) A private employer shall keep a record of the verification required by Subsection
982 (2) for the longer of:
983 (a) the duration of the employee's employment; or
984 (b) at least three years from the date of verification.
985 (4) On and after the program start date, a private employer shall terminate the
986 employment of an undocumented individual if the undocumented individual is determined by

987 the department to not hold a valid permit.

988 Section 23. Section **63G-12-302**, which is renumbered from Section 63G-11-103 is
989 renumbered and amended to read:

990 ~~[63G-11-103].~~ **63G-12-302. Status verification system -- Registration and**
991 **use -- Performance of services -- Unlawful practice.**

992 (1) As used in this section:

993 (a) "Contract" means an agreement for the procurement of goods or services that is
994 awarded through a request for proposals process with a public employer and includes a sole
995 source contract.

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

998 ~~[(c) "Public employer" means a department, agency, instrumentality, or political~~
999 ~~subdivision of the state.]~~

1000 ~~[(d) (i) "Status Verification System" means an electronic system operated by the~~
1001 ~~federal government, through which an authorized official of a state agency or a political~~
1002 ~~subdivision of the state may inquire by exercise of authority delegated pursuant to 8 U.S.C.,~~
1003 ~~Sec. 1373, to verify the citizenship or immigration status of an individual within the~~
1004 ~~jurisdiction of the agency or political subdivision for a purpose authorized under this section.]~~

1005 ~~[(ii) "Status Verification System" includes:]~~

1006 ~~[(A) the electronic verification of the work authorization program of the Illegal~~
1007 ~~Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C., Sec. 1324a,~~
1008 ~~known as the E-verify Program;]~~

1009 ~~[(B) an equivalent federal program designated by the United States Department of~~
1010 ~~Homeland Security or other federal agency authorized to verify the work eligibility status of a~~
1011 ~~newly hired employee pursuant to the Immigration Reform and Control Act of 1986;]~~

1012 ~~[(C) the Social Security Number Verification Service or similar online verification~~
1013 ~~process implemented by the United States Social Security Administration; or]~~

1014 ~~[(D) an independent third-party system with an equal or higher degree of reliability as~~
1015 ~~the programs, systems, or processes described in Subsection (1)(d)(ii)(A), (B), or (C).]~~

1016 ~~[(e) "Unauthorized alien" means an alien as defined in 8 U.S.C., Sec. 1324a(h)(3).]~~

1017 (2) (a) ~~[Each]~~ Subject to Subsection (4), a public employer shall register with and use a

1018 Status Verification System to verify the federal employment authorization status of a new
1019 employee.

1020 (b) This section shall be enforced without regard to race, religion, gender, ethnicity, or
1021 national origin.

1022 (3) (a) Beginning July 1, 2009:

1023 (i) a public employer may not enter into a contract for the physical performance of
1024 services within the state with a contractor unless the contractor registers and participates in the
1025 Status Verification System to verify the work eligibility status of the contractor's new
1026 employees that are employed in the state; and

1027 (ii) a contractor shall register and participate in the Status Verification System in order
1028 to enter into a contract with a public employer.

1029 (b) (i) For purposes of compliance with Subsection (3)(a), a contractor is individually
1030 responsible for verifying the employment status of only new employees who work under the
1031 contractor's supervision or direction and not those who work for another contractor or
1032 subcontractor, except as otherwise provided in Subsection (3)(b)(ii).

1033 (ii) Each contractor or subcontractor who works under or for another contractor shall
1034 certify to the main contractor by affidavit that the contractor or subcontractor has verified
1035 through the Status Verification System the employment status of each new employee of the
1036 respective contractor or subcontractor.

1037 (c) Subsection (3)(a) does not apply to a contract:

1038 (i) entered into by the entities referred to in Subsection (3)(a) prior to July 1, 2009,
1039 even though the contract may involve the physical performance of services within the state on
1040 or after July 1, 2009; or

1041 (ii) that involves underwriting, remarketing, broker-dealer activities, securities
1042 placement, investment advisory, financial advisory, or other financial or investment banking
1043 services.

1044 [~~(4) (a) It is unlawful for an employing entity in the state to discharge an employee
1045 working in Utah who is a United States citizen or permanent resident alien and replace the
1046 employee with, or have the employee's duties assumed by, an employee who:]~~

1047 [~~(i) the employing entity knows, or reasonably should have known, is an unauthorized
1048 alien hired on or after July 1, 2009; and]~~

1049 ~~[(ii) is working in the state in a job category:]~~
 1050 ~~[(A) that requires equal skill, effort, and responsibility; and]~~
 1051 ~~[(B) which is performed under similar working conditions, as defined in 29 U.S.C.,~~
 1052 ~~Sec. 206 (d)(1), as the job category held by the discharged employee.]~~
 1053 ~~[(b) An employing entity, which on the date of a discharge in question referred to in~~
 1054 ~~Subsection (4)(a) is enrolled in and using the Status Verification System to verify the~~
 1055 ~~employment eligibility of its employees in Utah who are hired on or after July 1, 2009, is~~
 1056 ~~exempt from liability, investigation, or lawsuit arising from an action under this section.]~~
 1057 ~~[(c) A cause of action for a violation of this Subsection (4) arises exclusively from the~~
 1058 ~~provisions of this Subsection (4).]~~
 1059 (4) On and after the program start date:
 1060 (a) a public employer, after hiring an employee, shall verify the employment eligibility
 1061 of the new employee:
 1062 (i) through the status verification system if the individual does not hold a permit; and
 1063 (ii) through the u-verify program if the individual holds a permit; and
 1064 (b) a contractor is considered to be in compliance with this section if, after hiring an
 1065 employee, the contractor verifies the employment eligibility of the new employee:
 1066 (i) through the status verification system if the individual does not hold a permit; and
 1067 (ii) through the u-verify program if the individual holds a permit.
 1068 Section 24. Section **63G-12-303** is enacted to read:
 1069 **63G-12-303. Liability protections.**
 1070 (1) A private employer may not be held civilly liable under state law in a cause of
 1071 action for the private employer's unlawful hiring of an unauthorized alien if:
 1072 (a) the private employer complies with Subsection 63G-12-301(2); and
 1073 (b) the information obtained after verification under Subsection 63G-12-301(2)
 1074 indicates that:
 1075 (i) the employee's federal legal status allowed the private employer to hire the
 1076 employee; or
 1077 (ii) on and after the program start date, the employee held a valid permit.
 1078 (2) A private employer may not be held civilly liable under state law in a cause of
 1079 action for the private employer's refusal to hire an individual if:

1080 (a) the private employer complies with Subsection 63G-12-301(2); and
1081 (b) the information obtained after verification under Subsection 63G-12-301(2)
1082 indicates that the employee:
1083 (i) was an unauthorized alien; and
1084 (ii) on and after the program start date, does not hold a valid permit.
1085 (3) This chapter does not create a cause of action, on the basis of discrimination or
1086 otherwise, for not hiring an individual who holds a permit.
1087 Section 25. Section **63G-12-304** is enacted to read:
1088 **63G-12-304. Voluntary registration by private employer certifying participation**
1089 **in verification.**
1090 (1) (a) A private employer may register with the department certifying that the private
1091 employer is in compliance with Subsection 63G-12-301(2).
1092 (b) A private employer may register with the department under this section regardless
1093 of whether the private employer is required to comply with Subsection 63G-12-301(2).
1094 (2) To register or renew a registration with the department under this part, a private
1095 employer shall:
1096 (a) file a registration statement with the department that certifies compliance with
1097 Subsection 63G-12-301(2); and
1098 (b) pay a fee established by the department in accordance Section 63J-1-504 that
1099 reflects the cost of registering employers under this section and publishing the list described in
1100 Subsection (5).
1101 (3) A registration under this part expires every two years on the anniversary of the day
1102 on which the registration is filed with the department.
1103 (4) In accordance with Chapter 3, Utah Administrative Rulemaking Act, the
1104 department may make rules to provide for:
1105 (a) the form of a registration statement under this section;
1106 (b) the process of filing a registration statement under this section; and
1107 (c) the process of renewing a registration statement under this section.
1108 (5) On and after the program start date, the department shall publish electronically a
1109 list of private employers who register under this section on a website accessible to the general
1110 public without a charge.

1111 (6) The department shall coordinate with the Department Commerce to transfer the
1112 registration operated by the Department of Commerce to the department effective on the
1113 program start date.

1114 Section 26. Section **63G-12-305** is enacted to read:

1115 **63G-12-305. Unlawful employment practices.**

1116 (1) An employer may not discharge an employee working in Utah who is a United
1117 States citizen or permanent resident alien and replace the employee with, or have the
1118 employee's duties assumed by, an employee who:

1119 (i) the employer knows, or reasonably should have known, is an unauthorized alien
1120 hired on or after July 1, 2009; and

1121 (ii) is working in the state in a job category:

1122 (A) that requires equal skill, effort, and responsibility; and

1123 (B) which is performed under similar working conditions, as defined in 29 U.S.C. Sec.
1124 206(d)(1), as the job category held by the discharged employee.

1125 (2) An employer that on the date of a discharge referred to in Subsection (1) complies
1126 with Subsection 63G-12-301(2) to verify the employment eligibility of its employees in Utah
1127 who are hired on or after July 1, 2009, is exempt from liability, investigation, or lawsuit arising
1128 from an action under this section.

1129 (3) A cause of action for a violation of this section arises exclusively from this section.

1130 Section 27. Section **63G-12-306** is enacted to read:

1131 **63G-12-306. Administrative actions -- Defenses.**

1132 (1) On and after the program start date and in accordance with Chapter 4,
1133 Administrative Procedures Act, the department may bring agency action against a private
1134 employer who violates Subsection 63G-12-301(1).

1135 (2) (a) To determine whether an employee is an unauthorized alien for purposes of
1136 Subsection (1), the department shall consider only the federal government's determination
1137 pursuant to 8 U.S.C. Sec. 1373(c).

1138 (b) The federal government's determination creates a rebuttable presumption of the
1139 employee's lawful status. The department may request the federal government to provide
1140 automated or testimonial verification pursuant to 8 U.S.C. Sec. 1373(c).

1141 (3) For the purposes of this part, proof of verifying the employment authorization in

1142 accordance with Subsection 63G-12-301(2) creates a rebuttable presumption that an employer
1143 did not knowingly employ an unauthorized alien who does not hold a valid permit.

1144 (4) (a) For the purposes of this section, an employer that establishes that the employer
1145 has complied in good faith with the requirements of 8 U.S.C. Sec. 1324a(b) establishes an
1146 affirmative defense that the employer did not knowingly employ an unauthorized alien.

1147 (b) An employer is considered to have complied with the requirements of 8 U.S.C. Sec.
1148 1324a(b), notwithstanding an isolated, sporadic, or accidental technical or procedural failure to
1149 meet the requirements, if there is a good faith attempt to comply with the requirements.

1150 Section 28. Section **63G-12-307** is enacted to read:

1151 **63G-12-307. Penalties.**

1152 (1) As used in this section:

1153 (a) "Applicable license" means a license issued under:

1154 (i) Title 32B, Alcoholic Beverage Control Act;

1155 (ii) Title 58, Occupations and Professions; or

1156 (iii) Title 61, Securities Division - Real Estate Division.

1157 (b) "First violation" means the first time the department imposes a penalty under this
1158 section, regardless of the number of individuals the private employer hired in violation of
1159 Subsection 63G-12-301(1).

1160 (c) "Second violation" means the second time the department imposes a penalty under
1161 this section, regardless of the number of individuals the private employer hired in violation of
1162 Subsection 63G-12-301(1).

1163 (d) "Third or subsequent violation" means a violation of Subsection 63G-12-301(1)
1164 committed after a second violation.

1165 (2) (a) A private employer who violates Subsection 63G-12-301(1) is subject to a
1166 penalty provided in this section.

1167 (b) For a first violation of Subsection 63G-12-301(1), the department shall impose a
1168 civil penalty on the private employer not to exceed \$100 for each individual employed by the
1169 private employer during the time period specified in the notice of agency action who is an
1170 unauthorized alien who does not hold a valid permit.

1171 (c) For a second violation of Subsection 63G-12-301(1), the department shall impose a
1172 civil penalty on the private employer not to exceed \$500 for each individual employed by the

1173 private employer during the time period specified in the notice of agency action who is an
1174 unauthorized alien who does not hold a valid permit.

1175 (d) For a third or subsequent violation of Subsection 63-12-301(1), the department
1176 shall:

1177 (i) order the revocation of the one or more applicable licenses that are issued to an
1178 owner, officer, director, manager, or other individual in a similar position for the private
1179 employer for a period not to exceed one year; or

1180 (ii) if no individual described in Subsection (2)(d)(i) holds an applicable license,
1181 impose a civil penalty on the private employer not to exceed \$10,000.

1182 (3) (a) If the department finds a third or subsequent violation, the department shall
1183 notify the Department of Commerce and the Department of Alcoholic Beverage Control.

1184 (b) The notice required under Subsection (3)(a) shall state:

1185 (i) that the department has found a third or subsequent violation;

1186 (ii) that any applicable license held by an individual described in Subsection (2)(d)(i) is
1187 to be revoked; and

1188 (iii) the time period for the revocation, not to exceed one year.

1189 (c) The department shall base its determination of the length of revocation under this
1190 section on evidence or information submitted to the department during the action under which
1191 a third or subsequent violation is found, and shall consider the following factors, if relevant:

1192 (i) the number of unauthorized aliens who do not hold a permit that are employed by
1193 the private employer;

1194 (ii) prior misconduct by the private employer;

1195 (iii) the degree of harm resulting from the violation;

1196 (iv) whether the private employer made good faith efforts to comply with any
1197 applicable requirements;

1198 (v) the duration of the violation;

1199 (vi) the role of the individuals described in Subsection (2)(d)(i) in the violation; and

1200 (vii) any other factor the department considers appropriate.

1201 (4) Within 10 business days of receipt of notice under Subsection (3), the Department
1202 of Commerce and the Department of Alcoholic Beverage Control shall:

1203 (a) (i) if the Department of Commerce or Alcoholic Beverage Control Commission has

1204 issued an applicable license to an individual described in Subsection (2)(d)(i), notwithstanding
1205 any other law, revoke the applicable license; and

1206 (ii) notify the department that the applicable license is revoked; or

1207 (b) if the Department of Commerce or Alcoholic Beverage Control Commission has
1208 not issued an applicable license to an individual described in Subsection (2)(d)(i), notify the
1209 department that an applicable license has not been issued to an individual described in
1210 Subsection (2)(d)(i).

1211 (5) If an individual described in Subsection (2)(d)(i) is licensed to practice law in the
1212 state and the department finds a third or subsequent violation of Subsection 63G-12-301(1), the
1213 department shall notify the Utah State Bar of the third and subsequent violation.

1214 Section 29. Section **63G-12-401**, which is renumbered from Section 63G-11-102 is
1215 renumbered and amended to read:

1216 **Part 4. Identification and General Verification**

1217 **~~[63G-11-102].~~ 63G-12-401. Creation of identity documents -- Issuance to**
1218 **citizens, nationals, and legal permanent resident aliens -- Exceptions.**

1219 (1) The following entities may create, publish, or otherwise manufacture an
1220 identification document, identification card, or identification certificate and possess an
1221 engraved plate or other device for the printing of an identification document:

1222 (a) a federal, state, or local government agency for employee identification, which is
1223 designed to identify the bearer as an employee;

1224 (b) a federal, state, or local government agency for purposes authorized or required by
1225 law or a legitimate purpose consistent with the duties of the agency, including such documents
1226 as voter identification cards, identification cards, passports, birth certificates, and Social
1227 Security cards; and

1228 (c) a public school or state or private educational institution to identify the bearer as an
1229 administrator, faculty member, student, or employee.

1230 (2) The name of the issuing entity shall be clearly printed upon the face of the
1231 identification document.

1232 (3) Except as otherwise provided in Subsections (4) and (5) or by federal law, an entity
1233 providing an identity document, card, or certificate under Subsection (1)(b) or (c) shall issue
1234 the document, card, or certificate only to:

- 1235 (a) a United States citizen;
- 1236 (b) a national; or
- 1237 (c) a legal permanent resident alien.
- 1238 (4) (a) Subsection (3) does not apply to an applicant for an identification document
- 1239 who presents, in person, valid documentary evidence of the applicant's:
- 1240 (i) unexpired immigrant or nonimmigrant visa status for admission into the United
- 1241 States;
- 1242 (ii) pending or approved application for asylum in the United States;
- 1243 (iii) admission into the United States as a refugee;
- 1244 (iv) pending or approved application for temporary protected status in the United
- 1245 States;
- 1246 (v) approved deferred action status; or
- 1247 (vi) pending application for adjustment of status to legal permanent resident or
- 1248 conditional resident.
- 1249 (b) (i) An entity listed in Subsection (1)(b) or (c) may issue a Subsection (1)(b) or (c)
- 1250 identification document to an applicant who satisfies the requirements of Subsection (4)(a).
- 1251 (ii) Except as otherwise provided by federal law, the document is valid only:
- 1252 (A) during the period of time of the individual's authorized stay in the United States; or
- 1253 (B) for one year from the date of issuance if there is no definite end to the individual's
- 1254 period of authorized stay.
- 1255 (iii) An entity issuing an identification document under this Subsection (4) shall clearly
- 1256 indicate on the document:
- 1257 (A) that it is temporary; and
- 1258 (B) its expiration date.
- 1259 (c) An individual may renew a document issued under this Subsection (4) only upon
- 1260 presentation of valid documentary evidence that the status by which the individual originally
- 1261 qualified for the identification document has been extended by the United States Citizenship
- 1262 and Immigration Services or other authorized agency of the United States Department of
- 1263 Homeland Security.
- 1264 (5) (a) Subsection (3) does not apply to an identification document issued under
- 1265 Subsection (1)(c) that:

1266 (i) is only valid for use on the educational institution's campus or facility; and
1267 (ii) includes a statement of the restricted use conspicuously printed upon the face of the
1268 identification document.

1269 (b) Subsection (3) does not apply to a license certificate, driving privilege card, or
1270 identification card issued or renewed under Title 53, Chapter 3, Uniform Driver License Act.

1271 (c) Subsection (3) does not apply to a public transit pass issued by a public transit
1272 district as defined in Title 17B, Chapter 2a, Part 8, Public Transit District Act, that:

1273 (i) is only valid for use on the public transit system; and

1274 (ii) includes a statement of the restricted use conspicuously printed on the face of the
1275 public transit pass.

1276 (d) Subsection (3) does not apply to a permit issued under Section 63G-12-207.

1277 (6) This section shall be enforced without regard to race, religion, gender, ethnicity, or
1278 national origin.

1279 Section 30. Section **63G-12-402**, which is renumbered from Section 63G-11-104 is
1280 renumbered and amended to read:

1281 ~~[63G-11-104].~~ **63G-12-402. Receipt of state, local, or federal public benefits**
1282 **-- Verification -- Exceptions -- Fraudulently obtaining benefits -- Criminal penalties --**
1283 **Annual report.**

1284 [~~(1) As used in this section, "federal program" means the Systematic Alien Verification~~
1285 ~~for Entitlements Program operated by the United States Department of Homeland Security or~~
1286 ~~an equivalent program designated by the Department of Homeland Security.]~~

1287 [~~(2)~~] (1) Except as provided in Subsection [~~(4)~~] (3) or when exempted by federal law,
1288 an agency or political subdivision of the state shall verify the lawful presence in the United
1289 States of an individual at least 18 years of age who applies for:

1290 (a) a state or local public benefit as defined in 8 U.S.C. Sec. 1621; or

1291 (b) a federal public benefit as defined in 8 U.S.C. Sec. 1611, that is administered by an
1292 agency or political subdivision of this state.

1293 [~~(3)~~] (2) This section shall be enforced without regard to race, religion, gender,
1294 ethnicity, or national origin.

1295 [~~(4)~~] (3) Verification of lawful presence under this section is not required for:

1296 (a) any purpose for which lawful presence in the United States is not restricted by law,

1297 ordinance, or regulation;

1298 (b) assistance for health care items and services that:

1299 (i) are necessary for the treatment of an emergency medical condition, as defined in 42

1300 U.S.C. Sec. 1396b(v)(3), of the individual involved; and

1301 (ii) are not related to an organ transplant procedure;

1302 (c) short-term, noncash, in-kind emergency disaster relief;

1303 (d) public health assistance for immunizations with respect to immunizable diseases

1304 and for testing and treatment of symptoms of communicable diseases whether or not the

1305 symptoms are caused by the communicable disease;

1306 (e) programs, services, or assistance such as soup kitchens, crisis counseling and

1307 intervention, and short-term shelter, specified by the United States Attorney General, in the

1308 sole and unreviewable discretion of the United States Attorney General after consultation with

1309 appropriate federal agencies and departments, that:

1310 (i) deliver in-kind services at the community level, including through public or private

1311 nonprofit agencies;

1312 (ii) do not condition the provision of assistance, the amount of assistance provided, or

1313 the cost of assistance provided on the income or resources of the individual recipient; and

1314 (iii) are necessary for the protection of life or safety;

1315 (f) the exemption for paying the nonresident portion of total tuition as set forth in

1316 Section 53B-8-106;

1317 (g) an applicant for a license under Section 61-1-4, if the applicant:

1318 (i) is registered with the Financial Industry Regulatory Authority; and

1319 (ii) files an application with the state Division of Securities through the Central

1320 Registration Depository;

1321 (h) a state public benefit to be given to an individual under Title 49, Utah State

1322 Retirement and Insurance Benefit Act;

1323 (i) a home loan that will be insured, guaranteed, or purchased by:

1324 (i) the Federal Housing Administration, the Veterans Administration, or any other

1325 federal agency; or

1326 (ii) an enterprise as defined in 12 U.S.C. Sec. 4502;

1327 (j) a subordinate loan or a grant that will be made to an applicant in connection with a

1328 home loan that does not require verification under Subsection [~~(4)~~] (3)(i); and

1329 (k) an applicant for a license issued by the Department of Commerce, if the applicant
1330 provides the Department of Commerce:

1331 (i) certification, under penalty of perjury, that the applicant is:

1332 (A) a United States citizen;

1333 (B) a qualified alien as defined in 8 U.S.C. Sec. 1641; or

1334 (C) lawfully present in the United States; and

1335 (ii) a valid driver license number for a driver license issued by:

1336 (A) Utah on or after January 1, 2010; or

1337 (B) a state other than Utah that as part of issuing the driver license verifies an
1338 individual's lawful presence in the United States.

1339 [~~(5)~~] (4) (a) An agency or political subdivision required to verify the lawful presence in
1340 the United States of an applicant under this section shall require the applicant to certify under
1341 penalty of perjury that:

1342 [~~(a)~~] (i) the applicant is a United States citizen; or

1343 [~~(b)~~] (ii) the applicant is:

1344 [~~(i)~~] (A) a qualified alien as defined in 8 U.S.C. Sec. 1641; and

1345 [~~(ii)~~] (B) lawfully present in the United States.

1346 (b) The certificate required under this Subsection (4) shall include a statement advising
1347 the signer that providing false information subjects the signer to penalties for perjury.

1348 [~~(6)~~] (5) An agency or political subdivision shall verify a certification required under
1349 Subsection [~~(5)~~] (4)(b) through the federal SAVE program.

1350 [~~(7)~~] (6) (a) An individual who knowingly and willfully makes a false, fictitious, or
1351 fraudulent statement or representation in a certification under Subsection [~~(4)~~] (3)(k) or [~~(5)~~]
1352 (4) is subject to the criminal penalties applicable in this state for:

1353 (i) making a written false statement under Subsection 76-8-504(2); and

1354 (ii) fraudulently obtaining:

1355 (A) public assistance program benefits under Sections 76-8-1205 and 76-8-1206; or

1356 (B) unemployment compensation under Section 76-8-1301.

1357 (b) If the certification constitutes a false claim of United States citizenship under 18
1358 U.S.C. Sec. 911, the agency or political subdivision shall file a complaint with the United

1359 States Attorney General for the applicable district based upon the venue in which the
1360 application was made.

1361 (c) If an agency or political subdivision receives verification that a person making an
1362 application for a benefit, service, or license is not a qualified alien, the agency or political
1363 subdivision shall provide the information to the Office of the Attorney General unless
1364 prohibited by federal mandate.

1365 [~~(8)~~] (7) An agency or political subdivision may adopt variations to the requirements of
1366 this section that:

1367 (a) clearly improve the efficiency of or reduce delay in the verification process; or

1368 (b) provide for adjudication of unique individual circumstances where the verification
1369 procedures in this section would impose an unusual hardship on a legal resident of Utah.

1370 [~~(9)~~] (8) It is unlawful for an agency or a political subdivision of this state to provide a
1371 state, local, or federal benefit, as defined in 8 U.S.C. Sec. 1611 and 1621, in violation of this
1372 section.

1373 [~~(10)~~] (9) A state agency or department that administers a program of state or local
1374 public benefits shall:

1375 (a) provide an annual report to the governor, the president of the Senate, and the
1376 speaker of the House regarding its compliance with this section; and

1377 (b) (i) monitor the federal SAVE program for application verification errors and
1378 significant delays;

1379 (ii) provide an annual report on the errors and delays to ensure that the application of
1380 the federal SAVE program is not erroneously denying a state or local benefit to a legal resident
1381 of the state; and

1382 (iii) report delays and errors in the federal SAVE program to the United States
1383 Department of Homeland Security.

1384 Section 31. Section **63I-2-173** is enacted to read:

1385 **63I-2-173. Repeal dates -- Title 13.**

1386 Title 13, Chapter 47, Private Employer Verification Act, is repealed on the program
1387 state date, as defined in Section 63G-12-102.

1388 Section 32. Section **63J-1-602.4** is amended to read:

1389 **63J-1-602.4. List of nonlapsing funds and accounts -- Title 61 through Title 63M.**

- 1390 (1) The Utah Housing Opportunity Restricted Account created in Section 61-2-204.
- 1391 (2) Funds paid to the Division of Real Estate for the cost of a criminal background
1392 check for a mortgage loan license, as provided in Section 61-2c-202.
- 1393 (3) Funds paid to the Division of Real Estate for the cost of a criminal background
1394 check for principal broker, associate broker, and sales agent licenses, as provided in Section
1395 61-2f-204.
- 1396 (4) Certain funds donated to the Department of Human Services, as provided in
1397 Section 62A-1-111.
- 1398 (5) Certain funds donated to the Division of Child and Family Services, as provided in
1399 Section 62A-4a-110.
- 1400 (6) Appropriations to the Division of Services for People with Disabilities, as provided
1401 in Section 62A-5-102.
- 1402 (7) Certain donations to the Division of Substance Abuse and Mental Health, as
1403 provided in Section 62A-15-103.
- 1404 (8) Assessments for DUI violations that are forwarded to an account created by a
1405 county treasurer, as provided in Section 62A-15-503.
- 1406 (9) The Risk Management Fund created under Section 63A-4-201.
- 1407 (10) The Child Welfare Parental Defense Fund created in Section 63A-11-203.
- 1408 (11) The Constitutional Defense Restricted Account created in Section 63C-4-103.
- 1409 (12) A portion of the funds appropriated to the Utah Seismic Safety Commission, as
1410 provided in Section 63C-6-104.
- 1411 (13) Funding for the Medical Education Program administered by the Medical
1412 Education Council, as provided in Section 63C-8-102.
- 1413 (14) Certain money payable for commission expenses of the Pete Suazo Utah Athletic
1414 Commission, as provided under Section 63C-11-301.
- 1415 (15) Funds collected for publishing the Division of Administrative Rules' publications,
1416 as provided in Section 63G-3-402.
- 1417 (16) The Immigration Act Restricted Account created in Section 63G-12-103.
- 1418 [~~16~~] (17) Money received by the military installation development authority, as
1419 provided in Section 63H-1-504.
- 1420 [~~17~~] (18) The appropriation to fund the Governor's Office of Economic

1421 Development's Enterprise Zone Act, as provided in Section 63M-1-416.

1422 ~~[(18)]~~ (19) The Tourism Marketing Performance Account, as provided in Section
1423 63M-1-1406.

1424 ~~[(19)]~~ (20) Certain money in the Development for Disadvantaged Rural Communities
1425 Restricted Account, as provided in Section 63M-1-2003.

1426 ~~[(20)]~~ (21) Appropriations to the Utah Science Technology and Research Governing
1427 Authority, created under Section 63M-2-301, as provided under Section 63M-2-302.

1428 ~~[(21)]~~ (22) Certain money in the Rural Broadband Service Account, as provided in
1429 Section 63M-1-2303.

1430 Section 33. Section ~~67-5-22.7~~ is amended to read:

1431 **67-5-22.7. Multi-agency strike force to combat violent and other major felony**
1432 **crimes associated with illegal immigration and human trafficking -- Fraudulent**
1433 **Documents Identification Unit.**

1434 (1) The Office of the Attorney General is authorized to administer and coordinate the
1435 operation of a multi-agency strike force to combat violent and other major felony crimes
1436 committed within the state that are associated with illegal immigration and human trafficking.

1437 (2) The office shall invite officers of the U.S. Immigration and Customs Enforcement
1438 and state and local law enforcement personnel to participate in this mutually supportive,
1439 multi-agency strike force to more effectively utilize their combined skills, expertise, and
1440 resources.

1441 (3) The strike force shall focus its efforts on detecting, investigating, deterring, and
1442 eradicating violent and other major felony criminal activity related to illegal immigration and
1443 human trafficking.

1444 (4) In conjunction with the strike force and subject to available funding, the Office of
1445 the Attorney General shall establish a Fraudulent Documents Identification Unit:

1446 (a) for the primary purpose of investigating, apprehending, and prosecuting individuals
1447 or entities that participate in the sale or distribution of fraudulent documents used for
1448 identification purposes; ~~and~~

1449 (b) to specialize in fraudulent identification documents created and prepared for
1450 individuals who are unlawfully residing within the state~~[-]; and~~

1451 (c) to administer the Identity Theft Victims Restricted Account created under

1452 Subsection (5).

1453 (5) (a) There is created a restricted account in the General Fund known as the "Identity
1454 Theft Victims Restricted Account."

1455 (b) The Identity Theft Victims Restricted Account shall consist of money appropriated
1456 to the Identity Theft Victims Restricted Account by the Legislature.

1457 (c) Subject to appropriations from the Legislature, the Fraudulent Documents
1458 Identification Unit may expend the money in the Identity Theft Victims Restricted Account to
1459 pay a claim as provided in this Subsection (5) to a person who is a victim of identity theft
1460 prosecuted under Section 76-6-1102 or 76-10-1801.

1461 (d) To obtain payment from the Identity Theft Victims Restricted Account, a person
1462 shall file a claim with the Fraudulent Documents Identification Unit by no later than one year
1463 after the day on which an individual is convicted, pleads guilty, pleads no contest to, pleads
1464 guilty in a similar manner to, or resolved by diversion or its equivalent an offense under
1465 Section 76-6-1102 or 76-10-1801 for the theft of the identity of the person filing the claim.

1466 (e) A claim filed under this Subsection (5) shall include evidence satisfactory to the
1467 Fraudulent Documents Identification Unit:

1468 (i) that the person is the victim of identity theft described in Subsection (5)(d); and

1469 (ii) of the actual damages experienced by the person as a result of the identity theft that
1470 are not recovered from a public or private source.

1471 (f) The Fraudulent Documents Identification Unit shall pay a claim from the Identity
1472 Theft Victims Restricted Account:

1473 (i) if the Fraudulent Documents Identification Unit determines that the person has
1474 provided sufficient evidence to meet the requirements of Subsection (5)(e);

1475 (ii) in the order that claims are filed with the Fraudulent Documents Identification
1476 Unit; and

1477 (iii) to the extent that it there is money in the Identity Theft Victims Restricted
1478 Account.

1479 (g) If there is insufficient money in the Identity Theft Victims Restrict Account when a
1480 claim is filed under this Subsection (5) to pay the claim in full, the Fraudulent Documents
1481 Identification Unit may pay a claim when there is sufficient money in the account to pay the
1482 claim in the order that the claims are filed.

1483 ~~[(5)]~~ (6) The strike force shall make an annual report on its activities to the governor
1484 and the Legislature's Law Enforcement and Criminal Justice Interim Committee by December
1485 1, together with any proposed recommendations for modifications to this section.

1486 Section 34. Section **76-9-1001** is enacted to read:

1487 **Part 10. Illegal Immigration Enforcement Act**

1488 **76-9-1001. Title.**

1489 This part is known as the "Illegal Immigration Enforcement Act."

1490 Section 35. Section **76-9-1002** is enacted to read:

1491 **76-9-1002. Definitions.**

1492 As used in this part:

1493 (1) "Alien" means a person who is not a citizen or national of the United States.

1494 (2) "Law enforcement agency" means an entity of the federal government, a state, or a
1495 political subdivision of a state, including a state institution of higher education, that exists
1496 primarily to prevent and detect crime and enforce criminal laws, statutes, and ordinances.

1497 (3) "Law enforcement officer" has the same meaning as in Section 53-13-103.

1498 (4) "Lawfully present in the United States" is as defined in 8 C.F.R. Sec. 103.12,
1499 except that on or after the program start date, as defined in Section 63G-12-102, an individual
1500 who holds a valid permit, as defined in Section 63G-12-102, is considered lawfully present in
1501 the United States for purposes of this part.

1502 (5) "Verify immigration status" or "verification of immigration status" means the
1503 determination of a person's immigration status by:

1504 (a) a law enforcement officer who is authorized by a federal agency to determine an
1505 alien's immigration status; or

1506 (b) the United States Department of Homeland Security, including Immigration and
1507 Customs Enforcement, or other federal agency authorized to provide immigration status as
1508 provided by 8 U.S.C. Sec. 1373(c).

1509 Section 36. Section **76-9-1003** is enacted to read:

1510 **76-9-1003. Detention or arrest -- Determination of immigration status.**

1511 (1) (a) Except as otherwise provided in this Subsection (1), a law enforcement officer:

1512 (i) shall request verification of the immigration status of an individual when the law
1513 enforcement officer acting in the enforcement of a state law or local ordinance:

1514 (A) conducts a lawful stop, detention, or arrest of the individual for an alleged offense
1515 that is a class A misdemeanor or a felony; and

1516 (B) the individual is unable to provide to the law enforcement officer a document listed
1517 in Section 76-9-1004; and

1518 (ii) may request verification of the immigration status of an individual when the law
1519 enforcement officer acting in the enforcement of a state law or local ordinance:

1520 (A) conducts a lawful stop, detention, or arrest of the individual for an alleged offense
1521 that is a class B misdemeanor or a class C misdemeanor; and

1522 (B) the individual is unable to provide to the law enforcement officer a document listed
1523 in Section 76-9-1004.

1524 (b) In an individual case, the law enforcement officer may forego a request for
1525 verification of immigration status under Subsection (1)(a) if the verification of immigration
1526 status could hinder or obstruct a criminal investigation.

1527 (c) Subsection (1)(a) does not apply to a law enforcement officer who is acting as a
1528 school resource officer for any elementary or secondary school.

1529 (d) Subsection (1)(a) does not apply to a law enforcement officer for a county, city, or
1530 town if the county, city, or town has only one law enforcement officer on duty and response
1531 support from another law enforcement agency is not available.

1532 (2) When a law enforcement officer makes a lawful stop, detention, or arrest under
1533 Subsection (1) of the operator of a vehicle, and while investigating or processing the primary
1534 offense, the law enforcement officer makes observations that give the officer reasonable
1535 suspicion that the operator or a passenger in the vehicle is violating Section 76-5-309,
1536 76-5-310, or 76-10-2901, the law enforcement officer shall, to the extent possible within a
1537 reasonable period of time:

1538 (a) detain the one or more occupants of the vehicle to investigate the suspected
1539 violation; and

1540 (b) request verification of immigration status of the one or more occupants of the
1541 vehicle.

1542 (3) When an individual described in Subsection (1) is issued a citation or is arrested
1543 and booked into a jail, juvenile detention facility, or correctional facility, the citing law
1544 enforcement officer or the booking law enforcement officer shall ensure that a request for

1545 verification of immigration status of the cited or arrested individual is submitted as promptly as
1546 is reasonably possible.

1547 (4) The law enforcement agency that has custody of an individual verified to be an
1548 alien who is not lawfully present in the United States shall request that the United States
1549 Department of Homeland Security issue a detainer requesting transfer of the illegal alien into
1550 federal custody.

1551 (5) A law enforcement officer may not consider race, color, or national origin in
1552 implementing this section, except to the extent permitted by the constitutions of the United
1553 States and this state.

1554 Section 37. Section **76-9-1004** is enacted to read:

1555 **76-9-1004. Documents to be provided a law enforcement officer -- Statement to**
1556 **law enforcement officer of citizenship.**

1557 A document specified in Subsection 76-9-1003(1) includes the following:

1558 (1) a valid Utah driver license issued on or after January 1, 2010;

1559 (2) a valid Utah identification card issued under Section 53-3-804 issued on or after
1560 January 1, 2010;

1561 (3) a valid tribal enrollment card or other valid form of tribal membership
1562 identification that includes photo identification;

1563 (4) notwithstanding Section 53-3-207, a valid driving privilege card issued under
1564 Section 53-3-207;

1565 (5) a valid permit issued under Section 63G-12-207;

1566 (6) a valid permit to carry a concealed firearm issued under Section 53-5-704; or

1567 (7) a valid identification document that:

1568 (a) includes a photo or biometric identifier of the holder of the document; and

1569 (b) is issued by a federal, state, or local governmental agency that requires proof or
1570 verification of legal presence in the United States as a condition of issuance of the document.

1571 Section 38. Section **76-9-1005** is enacted to read:

1572 **76-9-1005. Implementation to be consistent with federal law and civil rights.**

1573 A state or local agency shall implement this part in a manner that is consistent with
1574 federal laws that regulate immigration, protect the civil rights of all persons, and establish the
1575 privileges and immunities of United States citizens.

1576 Section 39. Section **76-10-2901** is amended to read:

1577 **76-10-2901. Transporting or harboring aliens -- Definition -- Penalty.**

1578 (1) [~~For purposes of~~] As used in this part[-];

1579 (a) Except as provided in Subsection (1)(b), "alien" means an individual who is
1580 illegally present in the United States.

1581 (b) On or after the program start date, as defined in Section 63G-12-102, "alien" does
1582 not include an individual who holds a valid permit, as defined in Section 63G-12-102.

1583 (2) It is unlawful for a person to:

1584 (a) transport, move, or attempt to transport into this state or for a distance of greater
1585 than 100 miles within the state an alien for commercial advantage or private financial gain,
1586 knowing or in reckless disregard of the fact that the alien is in the United States in violation of
1587 federal law, in furtherance of the illegal presence of the alien in the United States; [~~or~~]

1588 (b) knowingly, with the intent to violate federal immigration law, conceal, harbor, or
1589 shelter from detection an alien in a place within this state, including a building or means of
1590 transportation for commercial advantage or private financial gain, knowing or in reckless
1591 disregard of the fact that the alien is in the United States in violation of federal law[-];

1592 (c) encourage or induce an alien to come to, enter, or reside in this state, knowing or in
1593 reckless disregard of the fact that the alien's coming to, entry, or residence is or will be in
1594 violation of law; or

1595 (d) engage in a conspiracy, for commercial advantage or private financial gain, to
1596 commit an offense listed in this Subsection (2).

1597 (3) (a) A person who violates Subsection (2)(a) is guilty of a third degree felony.

1598 (b) A person who violates Subsection (2)(b) is guilty of a class A misdemeanor.

1599 (4) Nothing in this part prohibits or restricts the provision of:

1600 (a) a state or local public benefit described in 8 U.S.C., Section 1621(b); or

1601 (b) charitable or humanitarian assistance, including medical care, housing, counseling,
1602 food, victim assistance, religious services and sacraments, and transportation to and from a
1603 location where the assistance is provided, by a charitable, educational, or religious organization
1604 or its employees, agents, or volunteers, using private funds.

1605 (5) (a) It is not a violation of this part for a religious denomination or organization or
1606 an agent, officer, or member of a religious denomination or organization to encourage, invite,

1607 call, allow, or enable an alien to perform the vocation of a minister or missionary for the
1608 denomination or organization in the United States as a volunteer who is not compensated as an
1609 employee, notwithstanding the provision of room, board, travel, medical assistance, and other
1610 basic living expenses.

1611 (b) Subsection (5)(a) applies only to an alien who has been a member of the religious
1612 denomination or organization for at least one year.

1613 Section 40. Section 77-7-2 is amended to read:

1614 **77-7-2. Arrest by peace officers.**

1615 A peace officer may make an arrest under authority of a warrant or may, without
1616 warrant, arrest a person:

1617 (1) (a) for any public offense committed or attempted in the presence of any peace
1618 officer; and

1619 (b) as used in this Subsection (1), "presence" includes all of the physical senses or any
1620 device that enhances the acuity, sensitivity, or range of any physical sense, or records the
1621 observations of any of the physical senses;

1622 (2) when the peace officer has reasonable cause to believe a felony or a class A
1623 misdemeanor has been committed and has reasonable cause to believe that the person arrested
1624 has committed it;

1625 (3) when the peace officer has reasonable cause to believe the person has committed a
1626 public offense, and there is reasonable cause for believing the person may:

1627 (a) flee or conceal himself to avoid arrest;

1628 (b) destroy or conceal evidence of the commission of the offense; or

1629 (c) injure another person or damage property belonging to another person; ~~or~~

1630 (4) when the peace officer has reasonable cause to believe the person has committed
1631 the offense of failure to disclose identity under Section 76-8-301.5[-]; or

1632 (5) when the peace officer has reasonable cause to believe that the person is an alien:

1633 (a) subject to a civil removal order issued by an immigration judge;

1634 (b) regarding whom a civil detainer warrant has been issued by the federal Department
1635 of Homeland Security;

1636 (c) who has been charged or convicted in another state with one or more aggravated
1637 felonies as defined by 8 U.S.C. Sec. 1101(a)(43); or

1638 (d) who has willfully failed to comply with federal alien registration laws, except this
1639 Subsection (5)(d) does not apply on or after the program start date, as defined in Section
1640 63G-12-102, and the person holds a valid permit, as defined in Section 63G-12-102.

Legislative Review Note
as of 3-1-11 12:06 PM

As required by legislative rule and practice, the Office of Legislative Research and General Counsel provides the following legislative review note to assist the Legislature in making its own determination as to the constitutionality of the bill. The note is based on an analysis of relevant state and federal constitutional law as applied to the bill. The note is not written for the purpose of influencing whether the bill should become law, but is written to provide information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

The Constitution of the United States grants authority to the federal government to regulate foreign commerce and to adopt a uniform rule of naturalization. The United States Supreme Court has also found inherent federal authority to regulate immigration on the basis of federal sovereignty and the power to engage in foreign affairs: this is sometimes referred to as the "plenary power," which in more recent years has been made subject to certain constitutional limits. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678 (2001); *Fong Yue Ting v. United States*, 149 U.S. 698 (1893); *Hernandez-Carrera v. Carlson*, 547 F.3d 1237 (10th Cir. 2009). Federal immigration law generally consists of both civil and criminal laws regarding admission of foreign nationals, including the criteria and means for selection and the basis and procedure for removal; citizenship by birth or by naturalization; criminal actions, such as transporting or harboring an alien; and related laws such as access to public benefits, employment of unauthorized aliens, issuance of driver licenses, *etc.* The key federal statute is the Immigration and Nationality Act, 8 U.S.C. Sec. 1101 et seq. (INA).

When a state regulates in the area of immigration, the issue arises of whether the state action is preempted by federal law. To determine whether preemption exists, courts generally examine whether the state regulation fails at least one of three tests: Is it preempted because of a conflict with federal law? Is it preempted because federal law has so occupied the field that states are not allowed to regulate in the area? Is there an express preemption of state action?

The bill addresses areas also addressed by federal law such as accessing and disclosing immigration information. Significantly, this bill provides a means by which a person may employ an unauthorized alien in this state if the unauthorized alien is issued a state permit, and the bill imposes state specific penalties that include both fines and loss of professional licenses for hiring an unauthorized alien without a permit. Federal law, in 8 U.S.C. Sec. 1324a, makes it unlawful to hire, recruit, or refer for a fee, an alien for employment in the United States knowing that the alien is an unauthorized alien. This section further provides that "The

provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens."

The bill requires the executive branch to seek waivers that would authorize the state program, but provides for implementation in the absence of such a waiver. Although federal law contains measures to allow cooperation between the federal government and a state, the INA and related regulations do not have an express process to provide a waiver that grants states authority to act in areas that are governed by federal law. In the absence of an effective waiver recognized as valid by the courts, under current law, there is a high probability that a court would find that portions of this bill as unconstitutional because they are preempted by federal law as applied through the Supremacy Clause of the Constitution of the United States.

Office of Legislative Research and General Counsel