

SB0288S01 compared with SB0288

~~{deleted text}~~ shows text that was in SB0288 but was deleted in SB0288S01.

inserted text shows text that was not in SB0288 but was inserted into SB0288S01.

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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

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

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Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ This bill coordinates with H.B. 70, Illegal Enforcement Act, to provide for superseding amendments.~~

~~— This bill coordinates with H.B. 116, Guest Worker Program Act, to provide for superseding amendments.~~

~~— This bill coordinates with H.B. 191, Nonresident Tuition Waiver Amendments, to provide for superseding amendments.~~

~~— This bill coordinates with H.B. 253, Employment of Unauthorized Aliens, to provide for superseding amendments.~~

~~— This bill coordinates with S.B. 35, Construction Licensees Related Amendments, to technically merge substantive amendments.}~~ None

Utah Code Sections Affected:

AMENDS:

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

63G-2-206, as last amended by Laws of Utah 2009, Chapter 344

63G-2-305, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247

63J-1-602.4, as enacted by Laws of Utah 2010, Chapter 265

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

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

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

ENACTS:

63G-12-101, Utah Code Annotated 1953

63G-12-102, Utah Code Annotated 1953

63G-12-103, Utah Code Annotated 1953

63G-12-104, Utah Code Annotated 1953

63G-12-105, Utah Code Annotated 1953

63G-12-106, Utah Code Annotated 1953

63G-12-201, Utah Code Annotated 1953

63G-12-202, Utah Code Annotated 1953

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63G-12-203, Utah Code Annotated 1953

63G-12-204, Utah Code Annotated 1953

63G-12-205, Utah Code Annotated 1953

63G-12-206, Utah Code Annotated 1953

63G-12-207, Utah Code Annotated 1953

63G-12-208, Utah Code Annotated 1953

63G-12-209, Utah Code Annotated 1953

63G-12-210, Utah Code Annotated 1953

63G-12-211, Utah Code Annotated 1953

63G-12-212, Utah Code Annotated 1953

63G-12-301, Utah Code Annotated 1953

63G-12-303, Utah Code Annotated 1953

63G-12-304, Utah Code Annotated 1953

63G-12-305, Utah Code Annotated 1953

63G-12-306, Utah Code Annotated 1953

63G-12-307, Utah Code Annotated 1953

63I-2-173, Utah Code Annotated 1953

76-9-1001, Utah Code Annotated 1953

76-9-1002, Utah Code Annotated 1953

76-9-1003, Utah Code Annotated 1953

76-9-1004, Utah Code Annotated 1953

76-9-1005, Utah Code Annotated 1953

RENUMBERS AND AMENDS:

63G-12-302, (Renumbered from 63G-11-103, as last amended by Laws of Utah 2009, Chapter 138)

63G-12-401, (Renumbered from 63G-11-102, as last amended by Laws of Utah 2010, Chapter 281)

63G-12-402, (Renumbered from 63G-11-104, as last amended by Laws of Utah 2010, Chapter 191)

~~REPEALS:~~

~~**13-47-101**, as enacted by Laws of Utah 2010, Chapter 403~~

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~~13-47-102~~, as enacted by Laws of Utah 2010, Chapter 403
~~13-47-103~~, as enacted by Laws of Utah 2010, Chapter 403
~~13-47-201~~, as enacted by Laws of Utah 2010, Chapter 403
~~13-47-202~~, as enacted by Laws of Utah 2010, Chapter 403
~~13-47-203~~, as enacted by Laws of Utah 2010, Chapter 403
~~13-47-204~~, as enacted by Laws of Utah 2010, Chapter 403
~~63G-11-101~~, as enacted by Laws of Utah 2008, Chapter 26

Utah Code Sections Affected by Coordination Clause:

~~58-55-503~~, as last amended by Laws of Utah 2010, Chapters 278 and 387
~~The sections contained in H.B. 70, Illegal Enforcement Act.~~
~~The sections contained in H.B. 116, Guest Worker Program.~~
~~The sections contained in H.B. 191, Nonresident Tuition Waiver Amendments.~~
~~The sections contained in H.B. 253, Employment of Unauthorized Aliens.~~

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

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

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

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

- (a) attended high school in this state for three or more years;
- (b) graduated from a high school in this state or received the equivalent of a high school diploma in this state; and
- (c) registers as an entering student at an institution of higher education not earlier than the fall of the 2002-03 academic year.

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

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

(4) Nothing in this section limits the ability of institutions of higher education to assess

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nonresident tuition on students who do not meet the requirements under this section.

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

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

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

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

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

63G-2-206. Sharing records.

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

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

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

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

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

(e) (i) is:

(A) the Legislature;

(B) a legislative committee;

(C) a member of the Legislature; or

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

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

(A) the preparation or review of a legislative proposal or legislation;

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(B) appropriations; or

(C) an investigation or review conducted by the Legislature or a legislative committee.

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

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

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

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

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

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

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

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

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

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

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

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

(b) if the recipient is not a governmental entity to which this chapter applies, obtain the recipient's written agreement which may be by mechanical or electronic transmission that it

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will abide by those restrictions on access unless a statute, federal regulation, or interstate agreement otherwise governs the sharing of the record or record series.

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

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

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

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

(ii) the record or record series it requests:

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

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

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

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

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

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

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

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

(a) records held by the Division of Oil, Gas, and Mining that pertain to any person and that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas, and

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Mining; ~~and~~]

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

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

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

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

63G-2-305. Protected records.

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

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

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

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

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

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

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

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

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

(6) records the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or

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agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, once the contract or grant has been awarded, a bid, proposal, or application submitted to or by a governmental entity in response to:

- (a) a request for bids;
- (b) a request for proposals;
- (c) a grant; or
- (d) other similar document;

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

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

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

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

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

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

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

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

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or

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under a duty of confidentiality to the entity;

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

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

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

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

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

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

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

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

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

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

(14) records and audit workpapers that identify audit, collection, and operational

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procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;

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

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

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

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

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

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

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

(A) members of a legislative body;

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

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

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

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

(b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;

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

(22) drafts, unless otherwise classified as public;

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

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

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

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

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

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

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

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

(31) records provided by the United States or by a government entity outside the state

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that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

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

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

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

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

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

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

(a) the donor requests anonymity in writing;

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

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

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

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

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

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

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

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

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

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

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

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

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

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- (a) a production facility; or
- (b) a magazine;
- (43) information:
 - (a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or
 - (b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;
- (44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;
- (45) information regarding National Guard operations or activities in support of the National Guard's federal mission;
- (46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- (47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;
- (48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program prepared or maintained by the Division of Homeland Security the disclosure of which would jeopardize:
 - (a) the safety of the general public; or
 - (b) the security of:
 - (i) governmental property;
 - (ii) governmental programs; or
 - (iii) the property of a private person who provides the Division of Homeland Security information;
- (49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and Quarantine;
- (50) as provided in Section 26-39-501:

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

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

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

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

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

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

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

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

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

(b) conducted using animals;

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

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

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

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

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

(56) records contained in the Management Information System created in Section

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62A-4a-1003;

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

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

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

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

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

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

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

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

CHAPTER 12. UTAH IMMIGRATION ENFORCEMENT ACT

Part 1. General Provisions

63G-12-101. Title.

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

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

63G-12-102. Definitions.

As used in this chapter:

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

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

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

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

(5) "E-verify program" means the electronic verification of the work authorization

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program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C. Sec. 1324a, known as the e-verify program;

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

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

(b) the undocumented individual's grandparent;

(c) the undocumented individual's sibling;

(d) the undocumented individual's grandchild;

(e) the undocumented individual's nephew;

(f) the undocumented individual's niece;

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

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

(7) "Federal SAVE program" means the Systematic Alien Verification for Entitlements

Program operated by the United States Department of Homeland Security or an equivalent program designated by the Department of Homeland Security.

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

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

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

(a) the undocumented individual's spouse; or

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

(i) under 21 years of age; and

(ii) unmarried.

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

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

(a) a guest worker permit; and

(b) an immediate family permit.

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(13) "Permit holder" means an undocumented individual who holds a permit.

(14) "Private employer" means an employer who is not the federal government or a public employer.

(15) "Program start date" means the day on which the department is required to implement the program under Subsection 63G-12-202(3).

(16) "Public employer" means an employer that is:

(a) the state of Utah or any administrative subunit of the state;

(b) a state institution of higher education, as defined in Section 53B-3-102;

(c) a political subdivision of the state including a county, city, town, school district, local district, or special service district; or

(d) an administrative subunit of a political subdivision.

(17) "Program" means the Guest Worker Program described in Section 63G-12-201.

(18) "Relevant contact information" means the following for an undocumented individual:

(a) the undocumented individual's name;

(b) the undocumented individual's residential address;

(c) the undocumented individual's residential telephone number;

(d) the undocumented individual's personal email address;

(e) the name of the person with whom the undocumented individual has a contract for hire;

(f) the name of the contact person for the person listed in Subsection (18)(e);

(g) the address of the person listed in Subsection (18)(e);

(h) the telephone number for the person listed in Subsection (18)(e);

(i) the names of the undocumented individual's immediate family members;

(j) the names of the family members who reside with the undocumented individual;

and

(k) any other information required by the department by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act.

(19) "Restricted account" means the Immigration Act Restricted Account created in Section 63G-12-103.

(20) "Serious felony" means a felony under:

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(a) Title 76, Chapter 5, Offenses Against the Person;

(b) Title 76, Chapter 5a, Sexual Exploitation of Children;

(c) Title 76, Chapter 6, Offenses Against Property;

(d) Title 76, Chapter 7, Offenses Against the Family;

(e) Title 76, Chapter 8, Offenses Against the Administration of Government;

(f) Title 76, Chapter 9, Offenses Against Public Order and Decency; and

(g) Title 76, Chapter 10, Offenses Against Public Health, Safety, Welfare, and Morals.

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

(b) "Status verification system" includes:

(i) the e-verify program;

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

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

(iv) an independent third-party system with an equal or higher degree of reliability as the programs, systems, or processes described in Subsection (21)(b)(i), (ii), or (iii).

(22) "Unauthorized alien" is as defined in 8 U.S.C. Sec. 1324a(h)(3).

(23) "Undocumented individual" means an individual who:

(a) lives or works in the state; and

(b) is not in compliance with the Immigration and Nationality Act, 8 U.S.C. Sec. 1101 et seq. with regard to presence in the United States.

(24) "U-verify program" means the verification procedure developed by the department in accordance with Section 63G-12-210.

Section 6. Section **63G-12-103** is enacted to read:

63G-12-103. Immigration Act Restricted Account.

(1) There is created a restricted account within the General Fund known as the

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"Immigration Act Restricted Account."

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

(i) a fee collected under this chapter;

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

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

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

(v) interest earned on the restricted account.

(b) The restricted account shall earn interest.

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

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

(b) the department to administer this chapter;

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

(d) the attorney general for costs associated with:

(i) litigation related to this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

63G-12-106. Severability.

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

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

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

(b) Section 76-10-2901; and

(c) Section 77-7-2.

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

Part 2. Guest Worker Program

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) July 1, 2013.

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

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

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

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

(b) If a waiver, exemption, or authorization described in Section 63G-12-202 provides for the issuance of a Social Security number to a permit holder, a person who receives services from a permit holder is required to withhold from compensation as provided in Title 59, Chapter 10, Part 4, Withholding of Tax.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) An undocumented individual shall obtain a permit:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) live in Utah;

(c) have worked or lived in ~~the United States~~ **Utah** before May 10, 2011;

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

(e) provide documentation of a contract for hire under which the undocumented

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individual begins to provide services within at least 30 days of the day on which the undocumented individual obtains the permit;

(f) (i) agree to a criminal background check described in Subsection (3); and

(ii) not have been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent to a serious felony;

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

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

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

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

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

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

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

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

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

(ii) consent to a fingerprint background check by:

(A) the Utah Bureau of Criminal Identification; ~~and~~

(B) the Federal Bureau of Investigation ~~and~~; and

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

(c) For an undocumented individual who submits a fingerprint card and consents to a fingerprint background check under Subsection (3)(b), the department may request:

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

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

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

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

(e) The department shall:

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

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

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

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

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

(1) live in Utah;

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

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

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

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

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

(2) The department shall:

(a) create a permit that:

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- (i) is of impervious material that is resistant to wear or damage; and
- (ii) minimizes the risk that the permit may be forged, falsified, or counterfeited; and
- (b) ensure that a permit:
 - (i) includes a photograph of the undocumented individual to whom the permit is issued;
 - (ii) prominently states the day on which the permit expires; and
 - (iii) prominently states the type of permit.
- (3) A permit expires two years from the day on which the department issues the permit.
- (4) (a) Before an undocumented individual may apply for an initial permit under this part the undocumented individual shall commit to pay a fine equal to:
 - (i) \$1,000, if the undocumented individual enters into the United States legally, but at the time of paying the fine is not in compliance with the Immigration and Nationality Act, 8 U.S.C. Sec. 1101 et seq. with regard to presence in the United States; or
 - (ii) \$2,500, if the undocumented individual enters into the United States illegally.
- (b) The department by rule made in accordance with Chapter 3, Utah Administrative Rulemaking Act, shall make rules that provide for:
 - (i) how an undocumented individual demonstrates a commitment to pay the fine required under Subsection (4)(a);
 - (ii) one or more payment plans that an undocumented individual may use to pay a fine required under Subsection (4)(a); and
 - (iii) the consequences for failure to pay the entire amount of a fine required under Subsection (4)(a).
- (5) After committing to pay the fine in accordance with Subsection (4), to apply for or renew a permit, an undocumented individual shall submit to the department, in a form acceptable under this part:
 - (a) an application;
 - (b) documentation of meeting the criteria in Section 63G-12-205 or 63G-12-206;
 - (c) for a renewal, documentation of efforts to comply with Section 63G-12-209;
 - (d) a signed statement verifying the information in the application and documentation;
- and
 - (e) a fee established by the department in accordance with Section 63J-1-504.

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(6) If an undocumented individual submits a complete application under Subsection (5) and the department determines that the undocumented individual meets the criteria of Section 63G-12-205 or 63G-12-206, the department shall issue or renew:

(a) a guest worker permit if the undocumented individual qualifies under Section 63G-12-205; and

(b) an immediate family permit if the undocumented individual qualifies under Section 63G-12-206.

(7) An undocumented individual may appeal a denial of a permit under this section in accordance with Chapter 4, Administrative Procedures Act.

(8) (a) If a waiver, exemption, or authorization provides for the following, in addition to the requirements of Subsection (5), for an application to be considered complete for purposes of Subsection (6) an undocumented individual shall:

(i) post a bond with the department in the amount of \$10,000 against which the department may bring an action for a violation of this part; or

(ii) provide written certification by the undocumented individual's country of origin in accordance with Subsection (8)(b) of a guarantee of compliance with this part.

(b) (i) In accordance with Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing for what the department would consider being a "guarantee of compliance" by a country of origin for purposes of Subsection (8)(a).

(ii) A rule made under this Subsection (8)(b) shall provide that the department may not accept a guarantee of compliance from a specific foreign country if the department determines a significant percentage of the guest workers who submit a guarantee of compliance from that foreign country cannot be located after or during the term of a guest worker permit.

Section 17. Section **63G-12-208** is enacted to read:

63G-12-208. Conditions during permit term.

(1) A permit holder shall continue to meet the eligibility criteria under Section 63G-12-205 or 63G-12-206 for the type of permit held by the permit holder.

(2) A permit is automatically revoked if after issuance of the permit:

(a) the permit holder to whom it is issued is convicted of, pleads guilty to, pleads no contest to, pleads guilty in a similar manner to, or has resolved by diversion or its equivalent a serious felony;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the design, implementation, or operation of a verification procedure under this part;

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(b) the collection and disclosure of information as part of a verification procedure under this part; or

(c) the determination that a permit is invalid.

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

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

(1) A permit holder may not file for or receive unemployment benefits.

(2) A person may not:

(a) furnish false or forged information or documentation in support of an application;

(b) alter the information on a permit;

(c) if the person is a guest worker, be reported absent from work for 10 consecutive days without the approval of the person who hires the guest worker;

(d) allow an individual to use a permit if the individual is not entitled to use the permit;

(e) display or represent that a permit is issued to an individual, if the permit is not issued to the individual;

(f) display a revoked permit as a valid permit;

(g) knowingly or with reckless disregard acquire, use, display, or transfer an item that purports to be a valid permit, but that is not a valid permit; or

(h) otherwise violate this part.

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

(a) suspend, limit, or revoke and repossess a permit;

(b) impose a civil penalty not to exceed \$750 for each violation; or

(c) take a combination of actions under this section.

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

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

or

(b) alters the information on a permit.

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

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

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

(a) has the undocumented individual's permit revoked; or

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(b) permits the undocumented individual's permit to expire and the department has reason to believe that the undocumented individual continues to reside in the state.

(2) (a) The department shall provide the notice required by Subsection (1) to:

(i) Utah's attorney general;

(ii) the Department of Public Safety; and

(iii) United States Immigration and Customs Enforcement.

(b) The notice described in Subsection (2)(a) shall:

(i) include:

(A) the last known address of the undocumented individual; and

(B) the basis of the notice described in Subsection (1); and

(ii) be sent promptly after the day on which the time to appeal, if any, the action that is the basis for the notification under Subsection (1) ends.

Section 22. Section **63G-12-301** is enacted to read:

Part 3. Employee Verification and Employer Sanctions

63G-12-301. Employing unauthorized alien -- Verification of employment eligibility.

(1) On and after the program start date, an employer may not knowingly employ an unauthorized alien who does not hold a permit.

(2) ~~{(a) Subject to Subsection (2)(b)}~~ ~~On and after the program start date~~, a private employer employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year, after hiring an employee, shall verify the employment eligibility of the new employee ~~{ through the e-verify program.~~

~~—— (b) On and after the program start date, a private employer employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year, after hiring an employee, shall verify the employment eligibility of the new employee}:~~

~~{(i)}~~ ~~a~~ through the e-verify program if the individual does not hold a permit; and

~~{(ii)}~~ ~~b~~ through the ~~{U-verify}~~ ~~u-verify~~ program if the individual holds a permit.

(3) A private employer shall keep a record of the verification required by Subsection (2) for the longer of:

(a) the duration of the employee's employment; or

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(b) at least three years from the date of verification.

(4) On and after the program start date, a private employer shall terminate the employment of an undocumented individual if the undocumented individual is determined by the department to not hold a valid permit.

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

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

(1) As used in this section:

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

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

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

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

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

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

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

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

~~[(D) an independent third-party system with an equal or higher degree of reliability as~~

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~~the programs, systems, or processes described in Subsection (1)(d)(ii)(A), (B), or (C).]~~

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

(2) (a) ~~[Each]~~ Subject to Subsection (4), a public employer shall register with and use a Status Verification System to verify the federal employment authorization status of a new employee.

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

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

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

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

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

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

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

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

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

~~[(4) (a) It is unlawful for an employing entity in the state to discharge an employee working in Utah who is a United States citizen or permanent resident alien and replace the~~

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employee with, or have the employee's duties assumed by, an employee who:]

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

~~[(ii) is working in the state in a job category:]~~

~~[(A) that requires equal skill, effort, and responsibility; and]~~

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

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

~~[(c) A cause of action for a violation of this Subsection (4) arises exclusively from the provisions of this Subsection (4).]~~

(4) On and after the program start date:

(a) a public employer, after hiring an employee, shall verify the employment eligibility of the new employee:

(i) through the status verification system if the individual does not hold a permit; and

(ii) through the ~~{U-verify}~~u-verify program if the individual holds a permit; and

(b) a contractor is considered to be in compliance with this section if, after hiring an employee, the contractor verifies the employment eligibility of the new employee:

(i) through the status verification system if the individual does not hold a permit; and

(ii) through the ~~{U-verify}~~u-verify program if the individual holds a permit.

Section 24. Section **63G-12-303** is enacted to read:

63G-12-303. Liability protections.

(1) A private employer may not be held civilly liable under state law in a cause of action for the private employer's unlawful hiring of an unauthorized alien if:

(a) the private employer complies with Subsection 63G-12-301(2); and

(b) the information obtained after verification under Subsection 63G-12-301(2)

indicates that:

(i) the employee's federal legal status allowed the private employer to hire the employee; or

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(ii) on and after the program start date, the employee held a valid permit.

(2) A private employer may not be held civilly liable under state law in a cause of action for the private employer's refusal to hire an individual if:

(a) the private employer complies with Subsection 63G-12-301(2); and

(b) the information obtained after verification under Subsection 63G-12-301(2)

indicates that the employee:

(i) was an unauthorized alien; and

(ii) on and after the program start date, does not hold a valid permit.

(3) This chapter does not create a cause of action, on the basis of discrimination or otherwise, for not hiring an individual who holds a permit.

Section 25. Section **63G-12-304** is enacted to read:

63G-12-304. Voluntary registration by private employer certifying participation in verification.

(1) (a) A private employer may register with the department certifying that the private employer is in compliance with Subsection 63G-12-301(2).

(b) A private employer may register with the department under this section regardless of whether the private employer is required to comply with Subsection 63G-12-301(2).

(2) To register or renew a registration with the department under this part, a private employer shall:

(a) file a registration statement with the department that certifies compliance with Subsection 63G-12-301(2); and

(b) pay a fee established by the department in accordance Section 63J-1-504 that reflects the cost of registering employers under this section and publishing the list described in Subsection (5).

(3) A registration under this part expires every two years on the anniversary of the day on which the registration is filed with the department.

(4) In accordance with Chapter 3, Utah Administrative Rulemaking Act, the department may make rules to provide for:

(a) the form of a registration statement under this section;

(b) the process of filing a registration statement under this section; and

(c) the process of renewing a registration statement under this section.

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(5) On and after ~~{July 1, 2011}~~the program start date, the department shall publish electronically a list of private employers who register under this section on a website accessible to the general public without a charge.

(6) The department shall coordinate with the Department Commerce to transfer the registration operated by the Department of Commerce ~~{as of May 9, 2011, }~~to the department effective ~~{May 10, 2011}~~on the program start date.

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

63G-12-305. Unlawful employment practices.

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

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

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

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

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

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

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

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

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

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

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

(b) The federal government's determination creates a rebuttable presumption of the

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employee's lawful status. The department may request the federal government to provide automated or testimonial verification pursuant to 8 U.S.C. Sec. 1373(c).

(3) For the purposes of this part, proof of verifying the employment authorization in accordance with Subsection 63G-12-301(2) creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien who does not hold a valid permit.

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

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

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

63G-12-307. Penalties.

(1) As used in this section:

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

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

(ii) Title 58, Occupations and Professions; or

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

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

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

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

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

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

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unauthorized alien who does not hold a valid permit.

(c) For a second violation of Subsection 63G-12-301(1), the department shall impose a civil penalty on the private employer not to exceed \$500 for each individual employed by the private employer during the time period specified in the notice of agency action who is an unauthorized alien who does not hold a valid permit.

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

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

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

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

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

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

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

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

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

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

(ii) prior misconduct by the private employer;

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

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

(v) the duration of the violation;

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

(vii) any other factor the department considers appropriate.

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

(a) (i) if the Department of Commerce or Alcoholic Beverage Control Commission has issued an applicable license to an individual described in Subsection (2)(d)(i), notwithstanding any other law, revoke the applicable license; and

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

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

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

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

Part 4. Identification and General Verification

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

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

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

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

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

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

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

- (a) a United States citizen;
- (b) a national; or
- (c) a legal permanent resident alien.

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

- (i) unexpired immigrant or nonimmigrant visa status for admission into the United States;
- (ii) pending or approved application for asylum in the United States;
- (iii) admission into the United States as a refugee;
- (iv) pending or approved application for temporary protected status in the United States;
- (v) approved deferred action status; or
- (vi) pending application for adjustment of status to legal permanent resident or conditional resident.

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

(ii) Except as otherwise provided by federal law, the document is valid only:

- (A) during the period of time of the individual's authorized stay in the United States; or
- (B) for one year from the date of issuance if there is no definite end to the individual's period of authorized stay.

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

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

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

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Homeland Security.

(5) (a) Subsection (3) does not apply to an identification document issued under Subsection (1)(c) that:

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

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

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

- (i) is only valid for use on the public transit system; and
- (ii) includes a statement of the restricted use conspicuously printed on the face of the public transit pass.

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

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

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

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

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

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

- (a) a state or local public benefit as defined in 8 U.S.C. Sec. 1621; or
- (b) a federal public benefit as defined in 8 U.S.C. Sec. 1611, that is administered by an agency or political subdivision of this state.

~~[(3)]~~ (2) This section shall be enforced without regard to race, religion, gender,

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ethnicity, or national origin.

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

(a) any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation;

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

(i) are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Sec. 1396b(v)(3), of the individual involved; and

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

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

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

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

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

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

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

(f) the exemption for paying the nonresident portion of total tuition as set forth in Section 53B-8-106;

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

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

(ii) files an application with the state Division of Securities through the Central Registration Depository;

(h) a state public benefit to be given to an individual under Title 49, Utah State Retirement and Insurance Benefit Act;

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

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

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federal agency; or

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

(j) a subordinate loan or a grant that will be made to an applicant in connection with a home loan that does not require verification under Subsection ~~[(4)]~~ (3)(i); and

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

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

(A) a United States citizen;

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

(C) lawfully present in the United States; and

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

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

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

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

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

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

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

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

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

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

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

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

(ii) fraudulently obtaining:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 31. Section ~~{63J-1-602.4}~~ 63I-2-173 is ~~{amended}~~ enacted to read:

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

Title 13, Chapter 47, Private Employer Verification Act, is repealed on the program

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state date, as defined in Section 63G-12-102.

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

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

- (1) The Utah Housing Opportunity Restricted Account created in Section 61-2-204.
- (2) Funds paid to the Division of Real Estate for the cost of a criminal background check for a mortgage loan license, as provided in Section 61-2c-202.
- (3) Funds paid to the Division of Real Estate for the cost of a criminal background check for principal broker, associate broker, and sales agent licenses, as provided in Section 61-2f-204.
- (4) Certain funds donated to the Department of Human Services, as provided in Section 62A-1-111.
- (5) Certain funds donated to the Division of Child and Family Services, as provided in Section 62A-4a-110.
- (6) Appropriations to the Division of Services for People with Disabilities, as provided in Section 62A-5-102.
- (7) Certain donations to the Division of Substance Abuse and Mental Health, as provided in Section 62A-15-103.
- (8) Assessments for DUI violations that are forwarded to an account created by a county treasurer, as provided in Section 62A-15-503.
- (9) The Risk Management Fund created under Section 63A-4-201.
- (10) The Child Welfare Parental Defense Fund created in Section 63A-11-203.
- (11) The Constitutional Defense Restricted Account created in Section 63C-4-103.
- (12) A portion of the funds appropriated to the Utah Seismic Safety Commission, as provided in Section 63C-6-104.
- (13) Funding for the Medical Education Program administered by the Medical Education Council, as provided in Section 63C-8-102.
- (14) Certain money payable for commission expenses of the Pete Suazo Utah Athletic Commission, as provided under Section 63C-11-301.
- (15) Funds collected for publishing the Division of Administrative Rules' publications, as provided in Section 63G-3-402.
- (16) The Immigration Act Restricted Account created in Section 63G-12-103.

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~~[(16)]~~ (17) Money received by the military installation development authority, as provided in Section 63H-1-504.

~~[(17)]~~ (18) The appropriation to fund the Governor's Office of Economic Development's Enterprise Zone Act, as provided in Section 63M-1-416.

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

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

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

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

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

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

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

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

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

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

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

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

~~(5)†~~; and

(c) to administer the Identity Theft Victims Restricted Account created under Subsection (5).

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

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~{32}~~ 34. Section **76-9-1001** is enacted to read:

Part 10. Illegal Immigration Enforcement Act

76-9-1001. Title.

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

Section ~~{33}~~ 35. Section **76-9-1002** is enacted to read:

76-9-1002. Definitions.

As used in this part:

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

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

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

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

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

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

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

Section ~~{34}~~ 36. Section **76-9-1003** is enacted to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) request verification of immigration status of the one or more occupants of the

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vehicle.

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

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

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

Section ~~35~~37. Section **76-9-1004** is enacted to read:

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

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

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

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

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

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

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

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

(7) a valid identification document that:

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

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

Section ~~36~~38. Section **76-9-1005** is enacted to read:

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

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

Section ~~37~~39. Section **76-10-2901** is amended to read:

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

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

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

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

(2) It is unlawful for a person to:

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

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

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

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

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

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

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

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

(b) charitable or humanitarian assistance, including medical care, housing, counseling, food, victim assistance, religious services and sacraments, and transportation to and from a

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location where the assistance is provided, by a charitable, educational, or religious organization or its employees, agents, or volunteers, using private funds.

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

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

Section ~~38~~40. Section 77-7-2 is amended to read:

77-7-2. Arrest by peace officers.

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

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

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

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

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

(a) flee or conceal himself to avoid arrest;

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

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

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

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

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

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

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

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

~~{ Section 39. Repealer:~~

~~— This bill repeals:~~

~~— Section 13-47-101, Title:~~

~~— Section 13-47-102, Definitions:~~

~~— Section 13-47-103, Scope of chapter:~~

~~— Section 13-47-201, Verification required for new hires:~~

~~— Section 13-47-202, Liability protections:~~

~~— Section 13-47-203, Voluntary registration by private employer certifying participation in verification:~~

~~— Section 13-47-204, Department to publish list of registered private employers:~~

~~— Section 63G-11-101, Title:~~

~~— Section 40. Coordinates S.B. 288 with H.B. 70 -- Superseding amendments:~~

~~— If this S.B. 288 and H.B. 70, Illegal Enforcement Act, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel not give effect to the amendments and enactments in H.B. 70:~~

~~— Section 41. Coordinates S.B. 288 with H.B. 116 -- Superseding amendments:~~

~~— If this S.B. 288 and H.B. 116, Guest Worker Program, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel not give effect to the amendments and enactments in H.B. 116:~~

~~— Section 42. Coordinates S.B. 288 with H.B. 191 -- Superseding amendments:~~

~~— If this S.B. 288 and H.B. 191, Nonresident Tuition Waiver Amendments, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel not give effect to the amendments and enactments in H.B. 191:~~

~~— Section 43. Coordinates S.B. 288 with H.B. 253 -- Superseding amendments:~~

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~~If this S.B. 288 and H.B. 253, Employment of Unauthorized Aliens, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel not give effect to the amendments and enactments in H.B. 253.~~

~~Section 44. Coordinates S.B. 288 with S.B. 35 -- Technically merging substantive amendments.~~

~~If this S.B. 288 and S.B. 35, Construction Licensees Related Amendments, both pass, it is the intent of the Legislature that the Office of Legislative Research and General Counsel, in preparing the Utah Code database for publication, change the reference in Subsection 58-55-503(4)(j) enacted in S.B. 35 from "Section 13-47-102" to "Section 63G-12-102."~~

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Legislative Review Note

as of ~~{2-25-11 10}~~3-1-11 12:~~{02 AM}~~06 PM

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†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

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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