

1 **UTAH IMMIGRATION ENFORCEMENT AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: \_\_\_\_\_

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**LONG TITLE**

7 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ addresses the exemption from paying the instate portion of tuition;
- 13 ▶ enacts the Utah Immigration Enforcement Act, including:
  - 14 • defining terms;
  - 15 • creating the Immigration Act Restricted Account;
  - 16 • addressing information related to immigration status being sent, received, or  
17 maintained;
  - 18 • requiring implementation to be consistent with federal laws, civil rights, and  
19 other constitutional protections;
  - 20 • providing for severability of specified provisions;
  - 21 • establishing the guest worker program;
  - 22 • addressing federal waivers, exemptions, or authorizations;
  - 23 • providing for coordination with other federal or state laws or programs,  
24 including income tax withholding;
  - 25 • providing for when a permit is to be obtained and the uses for a permit;
  - 26 • addressing eligibility criteria to obtain or maintain a permit;
  - 27



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

48 **Money Appropriated in this Bill:**

49           None

50 **Other Special Clauses:**

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

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

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

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

59 This bill coordinates with S.B. 35, Construction Licensees Related Amendments, to  
60 technically merge substantive amendments.

61 **Utah Code Sections Affected:**

62 AMENDS:

- 63 **53B-8-106**, as enacted by Laws of Utah 2002, Chapter 230
- 64 **63G-2-206**, as last amended by Laws of Utah 2009, Chapter 344
- 65 **63G-2-305**, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247
- 66 **63J-1-602.4**, as enacted by Laws of Utah 2010, Chapter 265
- 67 **76-10-2901**, as enacted by Laws of Utah 2008, Chapter 26
- 68 **77-7-2**, as last amended by Laws of Utah 2008, Chapter 293

69 ENACTS:

- 70 **63G-12-101**, Utah Code Annotated 1953
- 71 **63G-12-102**, Utah Code Annotated 1953
- 72 **63G-12-103**, Utah Code Annotated 1953
- 73 **63G-12-104**, Utah Code Annotated 1953
- 74 **63G-12-105**, Utah Code Annotated 1953
- 75 **63G-12-106**, Utah Code Annotated 1953
- 76 **63G-12-201**, Utah Code Annotated 1953
- 77 **63G-12-202**, Utah Code Annotated 1953
- 78 **63G-12-203**, Utah Code Annotated 1953
- 79 **63G-12-204**, Utah Code Annotated 1953
- 80 **63G-12-205**, Utah Code Annotated 1953
- 81 **63G-12-206**, Utah Code Annotated 1953
- 82 **63G-12-207**, Utah Code Annotated 1953
- 83 **63G-12-208**, Utah Code Annotated 1953
- 84 **63G-12-209**, Utah Code Annotated 1953
- 85 **63G-12-210**, Utah Code Annotated 1953
- 86 **63G-12-211**, Utah Code Annotated 1953
- 87 **63G-12-212**, Utah Code Annotated 1953
- 88 **63G-12-301**, Utah Code Annotated 1953
- 89 **63G-12-303**, Utah Code Annotated 1953

- 90           **63G-12-304**, Utah Code Annotated 1953
- 91           **63G-12-305**, Utah Code Annotated 1953
- 92           **63G-12-306**, Utah Code Annotated 1953
- 93           **63G-12-307**, Utah Code Annotated 1953
- 94           **76-9-1001**, Utah Code Annotated 1953
- 95           **76-9-1002**, Utah Code Annotated 1953
- 96           **76-9-1003**, Utah Code Annotated 1953
- 97           **76-9-1004**, Utah Code Annotated 1953
- 98           **76-9-1005**, Utah Code Annotated 1953

99   RENUMBERS AND AMENDS:

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

106   REPEALS:

- 107           **13-47-101**, as enacted by Laws of Utah 2010, Chapter 403
- 108           **13-47-102**, as enacted by Laws of Utah 2010, Chapter 403
- 109           **13-47-103**, as enacted by Laws of Utah 2010, Chapter 403
- 110           **13-47-201**, as enacted by Laws of Utah 2010, Chapter 403
- 111           **13-47-202**, as enacted by Laws of Utah 2010, Chapter 403
- 112           **13-47-203**, as enacted by Laws of Utah 2010, Chapter 403
- 113           **13-47-204**, as enacted by Laws of Utah 2010, Chapter 403
- 114           **63G-11-101**, as enacted by Laws of Utah 2008, Chapter 26

115   **Utah Code Sections Affected by Coordination Clause:**

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

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*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 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.**

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

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

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

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

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

162 (e) (i) is:

163 (A) the Legislature;

164 (B) a legislative committee;

165 (C) a member of the Legislature; or

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

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

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

170 (B) appropriations; or

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

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

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

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

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

182 (b) A governmental entity may provide a private, controlled, or protected record or

183 record series to a contractor or a private provider according to the requirements of Subsection  
184 (6)(b).

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

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

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

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

192 (b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection  
193 63G-2-305(4).

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

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

199 (b) if the recipient is not a governmental entity to which this chapter applies, obtain the  
200 recipient's written agreement which may be by mechanical or electronic transmission that it  
201 will abide by those restrictions on access unless a statute, federal regulation, or interstate  
202 agreement otherwise governs the sharing of the record or record series.

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

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

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

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

214 (ii) the record or record series it requests:  
215 (A) is necessary for the performance of a contract with a governmental entity;  
216 (B) will only be used for the performance of the contract with the governmental entity;  
217 (C) will not be disclosed to any other person; and  
218 (D) will not be used for advertising or solicitation purposes; and  
219 (iii) the contractor or private provider gives written assurance to the governmental  
220 entity that is providing the record or record series that it will adhere to the restrictions of this  
221 Subsection (6)(b).

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

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

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

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

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

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

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

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

239 **63G-2-305. Protected records.**

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

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

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



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

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

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

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

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

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

261 (6) records the disclosure of which would impair governmental procurement  
262 proceedings or give an unfair advantage to any person proposing to enter into a contract or  
263 agreement with a governmental entity, except, subject to Subsections (1) and (2), that this  
264 Subsection (6) does not restrict the right of a person to have access to, once the contract or  
265 grant has been awarded, a bid, proposal, or application submitted to or by a governmental  
266 entity in response to:

267 (a) a request for bids;

268 (b) a request for proposals;

269 (c) a grant; or

270 (d) other similar document;

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

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

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

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

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

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

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

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

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

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

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

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

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

304 (d) reasonably could be expected to disclose the identity of a source who is not  
305 generally known outside of government and, in the case of a record compiled in the course of  
306 an investigation, disclose information furnished by a source not generally known outside of

307 government if disclosure would compromise the source; or

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

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

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

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

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

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

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

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

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

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

337 (19) (a) (i) personal files of a state legislator, including personal correspondence to or

338 from a member of the Legislature; and  
339 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of  
340 legislative action or policy may not be classified as protected under this section; and  
341 (b) (i) an internal communication that is part of the deliberative process in connection  
342 with the preparation of legislation between:  
343 (A) members of a legislative body;  
344 (B) a member of a legislative body and a member of the legislative body's staff; or  
345 (C) members of a legislative body's staff; and  
346 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of  
347 legislative action or policy may not be classified as protected under this section;  
348 (20) (a) records in the custody or control of the Office of Legislative Research and  
349 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated  
350 legislation or contemplated course of action before the legislator has elected to support the  
351 legislation or course of action, or made the legislation or course of action public; and  
352 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the  
353 Office of Legislative Research and General Counsel is a public document unless a legislator  
354 asks that the records requesting the legislation be maintained as protected records until such  
355 time as the legislator elects to make the legislation or course of action public;  
356 (21) research requests from legislators to the Office of Legislative Research and  
357 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared  
358 in response to these requests;  
359 (22) drafts, unless otherwise classified as public;  
360 (23) records concerning a governmental entity's strategy about collective bargaining or  
361 pending litigation;  
362 (24) records of investigations of loss occurrences and analyses of loss occurrences that  
363 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the  
364 Uninsured Employers' Fund, or similar divisions in other governmental entities;  
365 (25) records, other than personnel evaluations, that contain a personal recommendation  
366 concerning an individual if disclosure would constitute a clearly unwarranted invasion of  
367 personal privacy, or disclosure is not in the public interest;  
368 (26) records that reveal the location of historic, prehistoric, paleontological, or

369 biological resources that if known would jeopardize the security of those resources or of  
370 valuable historic, scientific, educational, or cultural information;

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

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

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

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

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

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

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

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

398 (35) records that would reveal negotiations regarding assistance or incentives offered  
399 by or requested from a governmental entity for the purpose of encouraging a person to expand

400 or locate a business in Utah, but only if disclosure would result in actual economic harm to the  
401 person or place the governmental entity at a competitive disadvantage, but this section may not  
402 be used to restrict access to a record evidencing a final contract;

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

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

410 (a) the donor requests anonymity in writing;

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

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

418 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and  
419 73-18-13;

420 (39) a notification of workers' compensation insurance coverage described in Section  
421 34A-2-205;

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

425 (i) unpublished lecture notes;

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

427 (A) relating to research; and

428 (B) of:

429 (I) the institution within the state system of higher education defined in Section  
430 53B-1-102; or

- 431 (II) a sponsor of sponsored research;
- 432 (iii) unpublished manuscripts;
- 433 (iv) creative works in process;
- 434 (v) scholarly correspondence; and
- 435 (vi) confidential information contained in research proposals;
- 436 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 437 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 438 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 439 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 440 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 441 date that audit is completed and made public; and
- 442 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 443 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 444 the records in the custody or control of the Office of Legislative Auditor General that would
- 445 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 446 protected records until the audit is completed and made public;
- 447 (42) records that provide detail as to the location of an explosive, including a map or
- 448 other document that indicates the location of:
- 449 (a) a production facility; or
- 450 (b) a magazine;
- 451 (43) information:
- 452 (a) contained in the statewide database of the Division of Aging and Adult Services
- 453 created by Section 62A-3-311.1; or
- 454 (b) received or maintained in relation to the Identity Theft Reporting Information
- 455 System (IRIS) established under Section 67-5-22;
- 456 (44) information contained in the Management Information System and Licensing
- 457 Information System described in Title 62A, Chapter 4a, Child and Family Services;
- 458 (45) information regarding National Guard operations or activities in support of the
- 459 National Guard's federal mission;
- 460 (46) records provided by any pawn or secondhand business to a law enforcement
- 461 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and

462 Secondhand Merchandise Transaction Information Act;

463 (47) information regarding food security, risk, and vulnerability assessments performed

464 by the Department of Agriculture and Food;

465 (48) except to the extent that the record is exempt from this chapter pursuant to Section

466 63G-2-106, records related to an emergency plan or program prepared or maintained by the

467 Division of Homeland Security the disclosure of which would jeopardize:

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

469 (b) the security of:

470 (i) governmental property;

471 (ii) governmental programs; or

472 (iii) the property of a private person who provides the Division of Homeland Security

473 information;

474 (49) records of the Department of Agriculture and Food relating to the National

475 Animal Identification System or any other program that provides for the identification, tracing,

476 or control of livestock diseases, including any program established under Title 4, Chapter 24,

477 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and

478 Quarantine;

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

480 (a) information or records held by the Department of Health related to a complaint

481 regarding a child care program or residential child care which the department is unable to

482 substantiate; and

483 (b) information or records related to a complaint received by the Department of Health

484 from an anonymous complainant regarding a child care program or residential child care;

485 (51) unless otherwise classified as public under Section 63G-2-301 and except as

486 provided under Section 41-1a-116, an individual's home address, home telephone number, or

487 personal mobile phone number, if:

488 (a) the individual is required to provide the information in order to comply with a law,

489 ordinance, rule, or order of a government entity; and

490 (b) the subject of the record has a reasonable expectation that this information will be

491 kept confidential due to:

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



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

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

496 (a) conducted within the state system of higher education, as defined in Section  
497 53B-1-102; and

498 (b) conducted using animals;

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

501 (54) information collected and a report prepared by the Judicial Performance  
502 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter  
503 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,  
504 the information or report;

505 (55) (a) records of the Utah Educational Savings Plan created under Section  
506 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

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

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

510 (56) records contained in the Management Information System created in Section  
511 62A-4a-1003;

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

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

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

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

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

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

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

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

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

526 **Part 1. General Provisions**

527 **63G-12-101. Title.**

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

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

530 **63G-12-102. Definitions.**

531 As used in this chapter:

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

534 (2) "Department" means the Department of Workforce Services created in Section  
535 35A-1-103.

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

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

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

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

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

546 (b) the undocumented individual's grandparent;

547 (c) the undocumented individual's sibling;

548 (d) the undocumented individual's grandchild;

549 (e) the undocumented individual's nephew;

550 (f) the undocumented individual's niece;

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

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

553 (7) "Federal SAVE program" means the Systematic Alien Verification for Entitlements  
554 Program operated by the United States Department of Homeland Security or an equivalent

555 program designated by the Department of Homeland Security.

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

558 (9) "Guest worker permit" means a permit issued in accordance with Section  
559 63G-12-207 to an undocumented individual who meets the eligibility criteria of Section  
560 63G-12-205.

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

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

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

564 (i) under 21 years of age; and

565 (ii) unmarried.

566 (11) "Immediate family permit" means a permit issued in accordance with Section  
567 63G-12-207 to an undocumented individual who meets the eligibility criteria of Section  
568 63G-12-206.

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

571 (a) a guest worker permit; and

572 (b) an immediate family permit.

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

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

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

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

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

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

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

583 (d) an administrative subunit of a political subdivision.

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

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

586 individual:

587 (a) the undocumented individual's name;

588 (b) the undocumented individual's residential address;

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

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

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

592 hire;

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

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

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

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

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

598 and

599 (k) any other information required by the department by rule made in accordance with

600 Chapter 3, Utah Administrative Rulemaking Act.

601 (19) "Restricted account" means the Immigration Act Restricted Account created in

602 Section 63G-12-103.

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

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

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

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

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

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

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

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

611 (21) (a) "Status verification system" means an electronic system operated by the federal

612 government, through which an authorized official of a state agency or a political subdivision of

613 the state may inquire by exercise of authority delegated pursuant to 8 U.S.C. Sec. 1373, to

614 verify the citizenship or immigration status of an individual within the jurisdiction of the

615 agency or political subdivision for a purpose authorized under this section.

616 (b) "Status verification system" includes:

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

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

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

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

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

627 (a) lives or works in the state; and

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

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

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

633 **63G-12-103. Immigration Act Restricted Account.**

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

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

637 (i) a fee collected under this chapter;

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

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

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

641 (v) interest earned on the restricted account.

642 (b) The restricted account shall earn interest.

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

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

646 (b) the department to administer this chapter;

647 (c) the State Tax Commission for costs associated with implementing Section

648 63G-12-203; and

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

650 (i) litigation related to this chapter;

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

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

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

654 **63G-12-104. Determining immigration status -- Transfer or maintenance of**  
655 **information.**

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

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

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

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

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

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

671 **63G-12-105. Implementation to be consistent with federal law and civil rights.**

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

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

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

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

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

677 **63G-12-106. Severability.**

678 (1) If a provision of Part 2, Guest Worker Program, or the application of a provision to

679 a person or circumstance is held invalid, the remainder of this chapter may not be given effect  
680 without the invalid provision or application so that the provisions of this chapter are not  
681 severable.

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

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

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

685 (c) Section 77-7-2.

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

687 **Part 2. Guest Worker Program**

688 **63G-12-201. Department to create program.**

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

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

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

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

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

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

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

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

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

703 **63G-12-202. Federal waivers, exemptions, or authorizations -- Implementation**  
704 **without waiver, exemption, or authorization.**

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

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

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

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

712 (b) July 1, 2013.

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

714 **63G-12-203. Coordination with other federal or state laws or programs.**

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

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

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

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

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

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



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

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

743 **63G-12-204. Obtaining a permit -- Uses of permit.**

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

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

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

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

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

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

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

759 (a) to establish entitlement to a federal, state, or local benefit as described in Section  
760 63G-12-402; or

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

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

763 **63G-12-205. Eligibility criteria to obtain and maintain a guest worker permit.**

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

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

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

768 (b) live in Utah;

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

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

772 Administrative Rulemaking Act;

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

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

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

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

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

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

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

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

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

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

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

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

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

800 (B) the Federal Bureau of Investigation.

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

803 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part  
804 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

805 (ii) complete Federal Bureau of Investigation criminal background checks through the  
806 national criminal history system.

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

810 (e) The department shall:

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

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

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

818 **63G-12-206. Eligibility to obtain and maintain an immediate family permit.**

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

821 (1) live in Utah;

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

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

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

827 **63G-12-207. Application and renewal process.**

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

830 (2) The department shall:

831 (a) create a permit that:

832 (i) is of impervious material that is resistant to wear or damage; and

833 (ii) minimizes the risk that the permit may be forged, falsified, or counterfeited; and

834 (b) ensure that a permit:  
835 (i) includes a photograph of the undocumented individual to whom the permit is  
836 issued;  
837 (ii) prominently states the day on which the permit expires; and  
838 (iii) prominently states the type of permit.  
839 (3) A permit expires two years from the day on which the department issues the permit.  
840 (4) (a) Before an undocumented individual may apply for an initial permit under this  
841 part the undocumented individual shall commit to pay a fine equal to:  
842 (i) \$1,000, if the undocumented individual enters into the United States legally, but at  
843 the time of paying the fine is not in compliance with the Immigration and Nationality Act, 8  
844 U.S.C. Sec. 1101 et seq. with regard to presence in the United States; or  
845 (ii) \$2,500, if the undocumented individual enters into the United States illegally.  
846 (b) The department by rule made in accordance with Chapter 3, Utah Administrative  
847 Rulemaking Act, shall make rules that provide for:  
848 (i) how an undocumented individual demonstrates a commitment to pay the fine  
849 required under Subsection (4)(a);  
850 (ii) one or more payment plans that an undocumented individual may use to pay a fine  
851 required under Subsection (4)(a); and  
852 (iii) the consequences for failure to pay the entire amount of a fine required under  
853 Subsection (4)(a).  
854 (5) After committing to pay the fine in accordance with Subsection (4), to apply for or  
855 renew a permit, an undocumented individual shall submit to the department, in a form  
856 acceptable under this part:  
857 (a) an application;  
858 (b) documentation of meeting the criteria in Section 63G-12-205 or 63G-12-206;  
859 (c) for a renewal, documentation of efforts to comply with Section 63G-12-209;  
860 (d) a signed statement verifying the information in the application and documentation;  
861 and  
862 (e) a fee established by the department in accordance with Section 63J-1-504.  
863 (6) If an undocumented individual submits a complete application under Subsection (5)  
864 and the department determines that the undocumented individual meets the criteria of Section

865 63G-12-205 or 63G-12-206, the department shall issue or renew:

866 (a) a guest worker permit if the undocumented individual qualifies under Section  
867 63G-12-205; and

868 (b) an immediate family permit if the undocumented individual qualifies under Section  
869 63G-12-206.

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

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

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

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

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

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

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

887 **63G-12-208. Conditions during permit term.**

888 (1) A permit holder shall continue to meet the eligibility criteria under Section  
889 63G-12-205 or 63G-12-206 for the type of permit held by the permit holder.

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

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

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

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

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

899 **63G-12-209. Proficiency standards for English.**

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

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

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

906 **63G-12-210. Verification of valid permit -- Protected status of information.**

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

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

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

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

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

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

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

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

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

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

- 927 (c) the determination that a permit is invalid.
- 928 Section 20. Section **63G-12-211** is enacted to read:
- 929 **63G-12-211. Prohibited conduct -- Administrative penalties -- Criminal penalties.**
- 930 (1) A permit holder may not file for or receive unemployment benefits.
- 931 (2) A person may not:
- 932 (a) furnish false or forged information or documentation in support of an application;
- 933 (b) alter the information on a permit;
- 934 (c) if the person is a guest worker, be reported absent from work for 10 consecutive
- 935 days without the approval of the person who hires the guest worker;
- 936 (d) allow an individual to use a permit if the individual is not entitled to use the permit;
- 937 (e) display or represent that a permit is issued to an individual, if the permit is not
- 938 issued to the individual;
- 939 (f) display a revoked permit as a valid permit;
- 940 (g) knowingly or with reckless disregard acquire, use, display, or transfer an item that
- 941 purports to be a valid permit, but that is not a valid permit; or
- 942 (h) otherwise violate this part.
- 943 (3) For a violation described in Subsections (1) and (2), the department may:
- 944 (a) suspend, limit, or revoke and repossess a permit;
- 945 (b) impose a civil penalty not to exceed \$750 for each violation; or
- 946 (c) take a combination of actions under this section.
- 947 (4) A person is guilty of a class C misdemeanor if the person:
- 948 (a) furnishes false or forged information or documentation in support of an application;
- 949 or
- 950 (b) alters the information on a permit.
- 951 Section 21. Section **63G-12-212** is enacted to read:
- 952 **63G-12-212. Sharing of information related to enforcement.**
- 953 (1) The department shall provide the notice described in Subsection (2), if the
- 954 department determines that an undocumented individual:
- 955 (a) has the undocumented individual's permit revoked; or
- 956 (b) permits the undocumented individual's permit to expire and the department has
- 957 reason to believe that the undocumented individual continues to reside in the state.

958 (2) (a) The department shall provide the notice required by Subsection (1) to:  
959 (i) Utah's attorney general;  
960 (ii) the Department of Public Safety; and  
961 (iii) United States Immigration and Customs Enforcement.  
962 (b) The notice described in Subsection (2)(a) shall:  
963 (i) include:  
964 (A) the last known address of the undocumented individual; and  
965 (B) the basis of the notice described in Subsection (1); and  
966 (ii) be sent promptly after the day on which the time to appeal, if any, the action that is  
967 the basis for the notification under Subsection (1) ends.

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

969 **Part 3. Employee Verification and Employer Sanctions**

970 **63G-12-301. Employing unauthorized alien -- Verification of employment**  
971 **eligibility.**

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

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

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

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

983 (ii) through the U-verify program if the individual holds a permit.

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

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

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

988 (4) On and after the program start date, a private employer shall terminate the



989 employment of an undocumented individual if the undocumented individual is determined by  
990 the department to not hold a valid permit.

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

993 ~~[63G-11-103].~~ **63G-12-302. Status verification system -- Registration and**  
994 **use -- Performance of services -- Unlawful practice.**

995 (1) As used in this section:

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

999 (b) "Contractor" means a subcontractor, contract employee, staffing agency, or any  
1000 contractor regardless of its tier.

1001 ~~[(c) "Public employer" means a department, agency, instrumentality, or political~~  
1002 ~~subdivision of the state.]~~

1003 ~~[(d) (i) "Status Verification System" means an electronic system operated by the~~  
1004 ~~federal government, through which an authorized official of a state agency or a political~~  
1005 ~~subdivision of the state may inquire by exercise of authority delegated pursuant to 8 U.S.C.,~~  
1006 ~~Sec. 1373, to verify the citizenship or immigration status of an individual within the~~  
1007 ~~jurisdiction of the agency or political subdivision for a purpose authorized under this section.]~~

1008 ~~[(ii) "Status Verification System" includes:]~~

1009 ~~[(A) the electronic verification of the work authorization program of the Illegal~~  
1010 ~~Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C., Sec. 1324a,~~  
1011 ~~known as the E-verify Program;]~~

1012 ~~[(B) an equivalent federal program designated by the United States Department of~~  
1013 ~~Homeland Security or other federal agency authorized to verify the work eligibility status of a~~  
1014 ~~newly hired employee pursuant to the Immigration Reform and Control Act of 1986;]~~

1015 ~~[(C) the Social Security Number Verification Service or similar online verification~~  
1016 ~~process implemented by the United States Social Security Administration; or]~~

1017 ~~[(D) an independent third-party system with an equal or higher degree of reliability as~~  
1018 ~~the programs, systems, or processes described in Subsection (1)(d)(ii)(A), (B), or (C).]~~

1019 ~~[(e) "Unauthorized alien" means an alien as defined in 8 U.S.C., Sec. 1324a(h)(3).]~~

1020 (2) (a) ~~Each~~ Subject to Subsection (4), a public employer shall register with and use a  
1021 Status Verification System to verify the federal employment authorization status of a new  
1022 employee.

1023 (b) This section shall be enforced without regard to race, religion, gender, ethnicity, or  
1024 national origin.

1025 (3) (a) Beginning July 1, 2009:

1026 (i) a public employer may not enter into a contract for the physical performance of  
1027 services within the state with a contractor unless the contractor registers and participates in the  
1028 Status Verification System to verify the work eligibility status of the contractor's new  
1029 employees that are employed in the state; and

1030 (ii) a contractor shall register and participate in the Status Verification System in order  
1031 to enter into a contract with a public employer.

1032 (b) (i) For purposes of compliance with Subsection (3)(a), a contractor is individually  
1033 responsible for verifying the employment status of only new employees who work under the  
1034 contractor's supervision or direction and not those who work for another contractor or  
1035 subcontractor, except as otherwise provided in Subsection (3)(b)(ii).

1036 (ii) Each contractor or subcontractor who works under or for another contractor shall  
1037 certify to the main contractor by affidavit that the contractor or subcontractor has verified  
1038 through the Status Verification System the employment status of each new employee of the  
1039 respective contractor or subcontractor.

1040 (c) Subsection (3)(a) does not apply to a contract:

1041 (i) entered into by the entities referred to in Subsection (3)(a) prior to July 1, 2009,  
1042 even though the contract may involve the physical performance of services within the state on  
1043 or after July 1, 2009; or

1044 (ii) that involves underwriting, remarketing, broker-dealer activities, securities  
1045 placement, investment advisory, financial advisory, or other financial or investment banking  
1046 services.

1047 ~~[(4) (a) It is unlawful for an employing entity in the state to discharge an employee~~  
1048 ~~working in Utah who is a United States citizen or permanent resident alien and replace the~~  
1049 ~~employee with, or have the employee's duties assumed by, an employee who:]~~

1050 ~~[(i) the employing entity knows, or reasonably should have known, is an unauthorized~~

1051 ~~alien hired on or after July 1, 2009; and]~~  
 1052  ~~[(ii) is working in the state in a job category:]~~  
 1053  ~~[(A) that requires equal skill, effort, and responsibility; and]~~  
 1054  ~~[(B) which is performed under similar working conditions, as defined in 29 U.S.C.,~~  
 1055  ~~Sec. 206 (d)(1), as the job category held by the discharged employee.]~~  
 1056  ~~[(b) An employing entity, which on the date of a discharge in question referred to in~~  
 1057  ~~Subsection (4)(a) is enrolled in and using the Status Verification System to verify the~~  
 1058  ~~employment eligibility of its employees in Utah who are hired on or after July 1, 2009, is~~  
 1059  ~~exempt from liability, investigation, or lawsuit arising from an action under this section.]~~  
 1060  ~~[(c) A cause of action for a violation of this Subsection (4) arises exclusively from the~~  
 1061  ~~provisions of this Subsection (4).]~~  
 1062 (4) On and after the program start date:  
 1063 (a) a public employer, after hiring an employee, shall verify the employment eligibility  
 1064 of the new employee:  
 1065 (i) through the status verification system if the individual does not hold a permit; and  
 1066 (ii) through the U-verify program if the individual holds a permit; and  
 1067 (b) a contractor is considered to be in compliance with this section if, after hiring an  
 1068 employee, the contractor verifies the employment eligibility of the new employee:  
 1069 (i) through the status verification system if the individual does not hold a permit; and  
 1070 (ii) through the U-verify program if the individual holds a permit.  
 1071 Section 24. Section **63G-12-303** is enacted to read:  
 1072 **63G-12-303. Liability protections.**  
 1073 (1) A private employer may not be held civilly liable under state law in a cause of  
 1074 action for the private employer's unlawful hiring of an unauthorized alien if:  
 1075 (a) the private employer complies with Subsection 63G-12-301(2); and  
 1076 (b) the information obtained after verification under Subsection 63G-12-301(2)  
 1077 indicates that:  
 1078 (i) the employee's federal legal status allowed the private employer to hire the  
 1079 employee; or  
 1080 (ii) on and after the program start date, the employee held a valid permit.  
 1081 (2) A private employer may not be held civilly liable under state law in a cause of

1082 action for the private employer's refusal to hire an individual if:

1083 (a) the private employer complies with Subsection 63G-12-301(2); and

1084 (b) the information obtained after verification under Subsection 63G-12-301(2)

1085 indicates that the employee:

1086 (i) was an unauthorized alien; and

1087 (ii) on and after the program start date, does not hold a valid permit.

1088 (3) This chapter does not create a cause of action, on the basis of discrimination or  
1089 otherwise, for not hiring an individual who holds a permit.

1090 Section 25. Section **63G-12-304** is enacted to read:

1091 **63G-12-304. Voluntary registration by private employer certifying participation**  
1092 **in verification.**

1093 (1) (a) A private employer may register with the department certifying that the private  
1094 employer is in compliance with Subsection 63G-12-301(2).

1095 (b) A private employer may register with the department under this section regardless  
1096 of whether the private employer is required to comply with Subsection 63G-12-301(2).

1097 (2) To register or renew a registration with the department under this part, a private  
1098 employer shall:

1099 (a) file a registration statement with the department that certifies compliance with  
1100 Subsection 63G-12-301(2); and

1101 (b) pay a fee established by the department in accordance Section 63J-1-504 that  
1102 reflects the cost of registering employers under this section and publishing the list described in  
1103 Subsection (5).

1104 (3) A registration under this part expires every two years on the anniversary of the day  
1105 on which the registration is filed with the department.

1106 (4) In accordance with Chapter 3, Utah Administrative Rulemaking Act, the  
1107 department may make rules to provide for:

1108 (a) the form of a registration statement under this section;

1109 (b) the process of filing a registration statement under this section; and

1110 (c) the process of renewing a registration statement under this section.

1111 (5) On and after July 1, 2011, the department shall publish electronically a list of  
1112 private employers who register under this section on a website accessible to the general public

1113 without a charge.

1114 (6) The department shall coordinate with the Department Commerce to transfer the  
1115 registration operated by the Department of Commerce as of May 9, 2011, to the department  
1116 effective May 10, 2011.

1117 Section 26. Section **63G-12-305** is enacted to read:

1118 **63G-12-305. Unlawful employment practices.**

1119 (1) An employer may not discharge an employee working in Utah who is a United  
1120 States citizen or permanent resident alien and replace the employee with, or have the  
1121 employee's duties assumed by, an employee who:

1122 (i) the employer knows, or reasonably should have known, is an unauthorized alien  
1123 hired on or after July 1, 2009; and

1124 (ii) is working in the state in a job category:

1125 (A) that requires equal skill, effort, and responsibility; and

1126 (B) which is performed under similar working conditions, as defined in 29 U.S.C. Sec.  
1127 206(d)(1), as the job category held by the discharged employee.

1128 (2) An employer that on the date of a discharge referred to in Subsection (1) complies  
1129 with Subsection 63G-12-301(2) to verify the employment eligibility of its employees in Utah  
1130 who are hired on or after July 1, 2009, is exempt from liability, investigation, or lawsuit arising  
1131 from an action under this section.

1132 (3) A cause of action for a violation of this section arises exclusively from this section.

1133 Section 27. Section **63G-12-306** is enacted to read:

1134 **63G-12-306. Administrative actions -- Defenses.**

1135 (1) On and after the program start date and in accordance with Chapter 4,  
1136 Administrative Procedures Act, the department may bring agency action against a private  
1137 employer who violates Subsection 63G-12-301(1).

1138 (2) (a) To determine whether an employee is an unauthorized alien for purposes of  
1139 Subsection (1), the department shall consider only the federal government's determination  
1140 pursuant to 8 U.S.C. Sec. 1373(c).

1141 (b) The federal government's determination creates a rebuttable presumption of the  
1142 employee's lawful status. The department may request the federal government to provide  
1143 automated or testimonial verification pursuant to 8 U.S.C. Sec. 1373(c).

1144 (3) For the purposes of this part, proof of verifying the employment authorization in  
1145 accordance with Subsection 63G-12-301(2) creates a rebuttable presumption that an employer  
1146 did not knowingly employ an unauthorized alien who does not hold a valid permit.

1147 (4) (a) For the purposes of this section, an employer that establishes that the employer  
1148 has complied in good faith with the requirements of 8 U.S.C. Sec. 1324a(b) establishes an  
1149 affirmative defense that the employer did not knowingly employ an unauthorized alien.

1150 (b) An employer is considered to have complied with the requirements of 8 U.S.C. Sec.  
1151 1324a(b), notwithstanding an isolated, sporadic, or accidental technical or procedural failure to  
1152 meet the requirements, if there is a good faith attempt to comply with the requirements.

1153 Section 28. Section **63G-12-307** is enacted to read:

1154 **63G-12-307. Penalties.**

1155 (1) As used in this section:

1156 (a) "Applicable license" means a license issued under:

1157 (i) Title 32B, Alcoholic Beverage Control Act;

1158 (ii) Title 58, Occupations and Professions; or

1159 (iii) Title 61, Securities Division - Real Estate Division.

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

1163 (c) "Second violation" means the second time the department imposes a penalty under  
1164 this section, regardless of the number of individuals the private employer hired in violation of  
1165 Subsection 63G-12-301(1).

1166 (d) "Third or subsequent violation" means a violation of Subsection 63G-12-301(1)  
1167 committed after a second violation.

1168 (2) (a) A private employer who violates Subsection 63G-12-301(1) is subject to a  
1169 penalty provided in this section.

1170 (b) For a first violation of Subsection 63G-12-301(1), the department shall impose a  
1171 civil penalty on the private employer not to exceed \$100 for each individual employed by the  
1172 private employer during the time period specified in the notice of agency action who is an  
1173 unauthorized alien who does not hold a valid permit.

1174 (c) For a second violation of Subsection 63G-12-301(1), the department shall impose a

1175 civil penalty on the private employer not to exceed \$500 for each individual employed by the  
1176 private employer during the time period specified in the notice of agency action who is an  
1177 unauthorized alien who does not hold a valid permit.

1178 (d) For a third or subsequent violation of Subsection 63-12-301(1), the department  
1179 shall:

1180 (i) order the revocation of the one or more applicable licenses that are issued to an  
1181 owner, officer, director, manager, or other individual in a similar position for the private  
1182 employer for a period not to exceed one year; or

1183 (ii) if no individual described in Subsection (2)(d)(i) holds an applicable license,  
1184 impose a civil penalty on the private employer not to exceed \$10,000.

1185 (3) (a) If the department finds a third or subsequent violation, the department shall  
1186 notify the Department of Commerce and the Department of Alcoholic Beverage Control.

1187 (b) The notice required under Subsection (3)(a) shall state:

1188 (i) that the department has found a third or subsequent violation;

1189 (ii) that any applicable license held by an individual described in Subsection (2)(d)(i) is  
1190 to be revoked; and

1191 (iii) the time period for the revocation, not to exceed one year.

1192 (c) The department shall base its determination of the length of revocation under this  
1193 section on evidence or information submitted to the department during the action under which  
1194 a third or subsequent violation is found, and shall consider the following factors, if relevant:

1195 (i) the number of unauthorized aliens who do not hold a permit that are employed by  
1196 the private employer;

1197 (ii) prior misconduct by the private employer;

1198 (iii) the degree of harm resulting from the violation;

1199 (iv) whether the private employer made good faith efforts to comply with any  
1200 applicable requirements;

1201 (v) the duration of the violation;

1202 (vi) the role of the individuals described in Subsection (2)(d)(i) in the violation; and

1203 (vii) any other factor the department considers appropriate.

1204 (4) Within 10 business days of receipt of notice under Subsection (3), the Department  
1205 of Commerce and the Department of Alcoholic Beverage Control shall:

1206 (a) (i) if the Department of Commerce or Alcoholic Beverage Control Commission has  
1207 issued an applicable license to an individual described in Subsection (2)(d)(i), notwithstanding  
1208 any other law, revoke the applicable license; and

1209 (ii) notify the department that the applicable license is revoked; or

1210 (b) if the Department of Commerce or Alcoholic Beverage Control Commission has  
1211 not issued an applicable license to an individual described in Subsection (2)(d)(i), notify the  
1212 department that an applicable license has not been issued to an individual described in  
1213 Subsection (2)(d)(i).

1214 (5) If an individual described in Subsection (2)(d)(i) is licensed to practice law in the  
1215 state and the department finds a third or subsequent violation of Subsection 63G-12-301(1), the  
1216 department shall notify the Utah State Bar of the third and subsequent violation.

1217 Section 29. Section **63G-12-401**, which is renumbered from Section 63G-11-102 is  
1218 renumbered and amended to read:

1219 **Part 4. Identification and General Verification**

1220 ~~[63G-11-102].~~ **63G-12-401. Creation of identity documents -- Issuance to**  
1221 **citizens, nationals, and legal permanent resident aliens -- Exceptions.**

1222 (1) The following entities may create, publish, or otherwise manufacture an  
1223 identification document, identification card, or identification certificate and possess an  
1224 engraved plate or other device for the printing of an identification document:

1225 (a) a federal, state, or local government agency for employee identification, which is  
1226 designed to identify the bearer as an employee;

1227 (b) a federal, state, or local government agency for purposes authorized or required by  
1228 law or a legitimate purpose consistent with the duties of the agency, including such documents  
1229 as voter identification cards, identification cards, passports, birth certificates, and Social  
1230 Security cards; and

1231 (c) a public school or state or private educational institution to identify the bearer as an  
1232 administrator, faculty member, student, or employee.

1233 (2) The name of the issuing entity shall be clearly printed upon the face of the  
1234 identification document.

1235 (3) Except as otherwise provided in Subsections (4) and (5) or by federal law, an entity  
1236 providing an identity document, card, or certificate under Subsection (1)(b) or (c) shall issue



1237 the document, card, or certificate only to:

1238 (a) a United States citizen;

1239 (b) a national; or

1240 (c) a legal permanent resident alien.

1241 (4) (a) Subsection (3) does not apply to an applicant for an identification document  
1242 who presents, in person, valid documentary evidence of the applicant's:

1243 (i) unexpired immigrant or nonimmigrant visa status for admission into the United  
1244 States;

1245 (ii) pending or approved application for asylum in the United States;

1246 (iii) admission into the United States as a refugee;

1247 (iv) pending or approved application for temporary protected status in the United  
1248 States;

1249 (v) approved deferred action status; or

1250 (vi) pending application for adjustment of status to legal permanent resident or  
1251 conditional resident.

1252 (b) (i) An entity listed in Subsection (1)(b) or (c) may issue a Subsection (1)(b) or (c)  
1253 identification document to an applicant who satisfies the requirements of Subsection (4)(a).

1254 (ii) Except as otherwise provided by federal law, the document is valid only:

1255 (A) during the period of time of the individual's authorized stay in the United States; or

1256 (B) for one year from the date of issuance if there is no definite end to the individual's  
1257 period of authorized stay.

1258 (iii) An entity issuing an identification document under this Subsection (4) shall clearly  
1259 indicate on the document:

1260 (A) that it is temporary; and

1261 (B) its expiration date.

1262 (c) An individual may renew a document issued under this Subsection (4) only upon  
1263 presentation of valid documentary evidence that the status by which the individual originally  
1264 qualified for the identification document has been extended by the United States Citizenship  
1265 and Immigration Services or other authorized agency of the United States Department of  
1266 Homeland Security.

1267 (5) (a) Subsection (3) does not apply to an identification document issued under

1268 Subsection (1)(c) that:

- 1269 (i) is only valid for use on the educational institution's campus or facility; and
- 1270 (ii) includes a statement of the restricted use conspicuously printed upon the face of the
- 1271 identification document.

1272 (b) Subsection (3) does not apply to a license certificate, driving privilege card, or  
1273 identification card issued or renewed under Title 53, Chapter 3, Uniform Driver License Act.

1274 (c) Subsection (3) does not apply to a public transit pass issued by a public transit  
1275 district as defined in Title 17B, Chapter 2a, Part 8, Public Transit District Act, that:

- 1276 (i) is only valid for use on the public transit system; and
- 1277 (ii) includes a statement of the restricted use conspicuously printed on the face of the
- 1278 public transit pass.

1279 (d) Subsection (3) does not apply to a permit issued under Section 63G-12-207.

1280 (6) This section shall be enforced without regard to race, religion, gender, ethnicity, or  
1281 national origin.

1282 Section 30. Section **63G-12-402**, which is renumbered from Section 63G-11-104 is  
1283 renumbered and amended to read:

1284 ~~**[63G-11-104].**~~ **63G-12-402. Receipt of state, local, or federal public benefits**  
1285 **-- Verification -- Exceptions -- Fraudulently obtaining benefits -- Criminal penalties --**  
1286 **Annual report.**

1287 [~~(1)~~ As used in this section, "federal program" means the Systematic Alien Verification  
1288 for Entitlements Program operated by the United States Department of Homeland Security or  
1289 an equivalent program designated by the Department of Homeland Security.]

1290 [~~(2)~~] (1) Except as provided in Subsection [~~(4)~~] (3) or when exempted by federal law,  
1291 an agency or political subdivision of the state shall verify the lawful presence in the United  
1292 States of an individual at least 18 years of age who applies for:

- 1293 (a) a state or local public benefit as defined in 8 U.S.C. Sec. 1621; or
- 1294 (b) a federal public benefit as defined in 8 U.S.C. Sec. 1611, that is administered by an
- 1295 agency or political subdivision of this state.

1296 [~~(3)~~] (2) This section shall be enforced without regard to race, religion, gender,  
1297 ethnicity, or national origin.

1298 [~~(4)~~] (3) Verification of lawful presence under this section is not required for:

- 1299 (a) any purpose for which lawful presence in the United States is not restricted by law,  
1300 ordinance, or regulation;
- 1301 (b) assistance for health care items and services that:
- 1302 (i) are necessary for the treatment of an emergency medical condition, as defined in 42  
1303 U.S.C. Sec. 1396b(v)(3), of the individual involved; and
- 1304 (ii) are not related to an organ transplant procedure;
- 1305 (c) short-term, noncash, in-kind emergency disaster relief;
- 1306 (d) public health assistance for immunizations with respect to immunizable diseases  
1307 and for testing and treatment of symptoms of communicable diseases whether or not the  
1308 symptoms are caused by the communicable disease;
- 1309 (e) programs, services, or assistance such as soup kitchens, crisis counseling and  
1310 intervention, and short-term shelter, specified by the United States Attorney General, in the  
1311 sole and unreviewable discretion of the United States Attorney General after consultation with  
1312 appropriate federal agencies and departments, that:
- 1313 (i) deliver in-kind services at the community level, including through public or private  
1314 nonprofit agencies;
- 1315 (ii) do not condition the provision of assistance, the amount of assistance provided, or  
1316 the cost of assistance provided on the income or resources of the individual recipient; and
- 1317 (iii) are necessary for the protection of life or safety;
- 1318 (f) the exemption for paying the nonresident portion of total tuition as set forth in  
1319 Section 53B-8-106;
- 1320 (g) an applicant for a license under Section 61-1-4, if the applicant:
- 1321 (i) is registered with the Financial Industry Regulatory Authority; and
- 1322 (ii) files an application with the state Division of Securities through the Central  
1323 Registration Depository;
- 1324 (h) a state public benefit to be given to an individual under Title 49, Utah State  
1325 Retirement and Insurance Benefit Act;
- 1326 (i) a home loan that will be insured, guaranteed, or purchased by:
- 1327 (i) the Federal Housing Administration, the Veterans Administration, or any other  
1328 federal agency; or
- 1329 (ii) an enterprise as defined in 12 U.S.C. Sec. 4502;

1330 (j) a subordinate loan or a grant that will be made to an applicant in connection with a  
1331 home loan that does not require verification under Subsection [~~(4)~~] (3)(i); and

1332 (k) an applicant for a license issued by the Department of Commerce, if the applicant  
1333 provides the Department of Commerce:

1334 (i) certification, under penalty of perjury, that the applicant is:

1335 (A) a United States citizen;

1336 (B) a qualified alien as defined in 8 U.S.C. Sec. 1641; or

1337 (C) lawfully present in the United States; and

1338 (ii) a valid driver license number for a driver license issued by:

1339 (A) Utah; or

1340 (B) a state other than Utah that as part of issuing the driver license verifies an  
1341 individual's lawful presence in the United States.

1342 [~~(5)~~] (4) (a) An agency or political subdivision required to verify the lawful presence in  
1343 the United States of an applicant under this section shall require the applicant to certify under  
1344 penalty of perjury that:

1345 [~~(a)~~] (i) the applicant is a United States citizen; or

1346 [~~(b)~~] (ii) the applicant is:

1347 [~~(i)~~] (A) a qualified alien as defined in 8 U.S.C. Sec. 1641; and

1348 [~~(ii)~~] (B) lawfully present in the United States.

1349 (b) The certificate required under this Subsection (4) shall include a statement advising  
1350 the signer that providing false information subjects the signer to penalties for perjury.

1351 [~~(6)~~] (5) An agency or political subdivision shall verify a certification required under  
1352 Subsection [~~(5)~~] (4)(b) through the federal SAVE program.

1353 [~~(7)~~] (6) (a) An individual who knowingly and willfully makes a false, fictitious, or  
1354 fraudulent statement or representation in a certification under Subsection [~~(4)~~] (3)(k) or [~~(5)~~]  
1355 (4) is subject to the criminal penalties applicable in this state for:

1356 (i) making a written false statement under Subsection 76-8-504(2); and

1357 (ii) fraudulently obtaining:

1358 (A) public assistance program benefits under Sections 76-8-1205 and 76-8-1206; or

1359 (B) unemployment compensation under Section 76-8-1301.

1360 (b) If the certification constitutes a false claim of United States citizenship under 18

1361 U.S.C. Sec. 911, the agency or political subdivision shall file a complaint with the United  
1362 States Attorney General for the applicable district based upon the venue in which the  
1363 application was made.

1364 (c) If an agency or political subdivision receives verification that a person making an  
1365 application for a benefit, service, or license is not a qualified alien, the agency or political  
1366 subdivision shall provide the information to the Office of the Attorney General unless  
1367 prohibited by federal mandate.

1368 [~~(8)~~] (7) An agency or political subdivision may adopt variations to the requirements of  
1369 this section that:

1370 (a) clearly improve the efficiency of or reduce delay in the verification process; or

1371 (b) provide for adjudication of unique individual circumstances where the verification  
1372 procedures in this section would impose an unusual hardship on a legal resident of Utah.

1373 [~~(9)~~] (8) It is unlawful for an agency or a political subdivision of this state to provide a  
1374 state, local, or federal benefit, as defined in 8 U.S.C. Sec. 1611 and 1621, in violation of this  
1375 section.

1376 [~~(10)~~] (9) A state agency or department that administers a program of state or local  
1377 public benefits shall:

1378 (a) provide an annual report to the governor, the president of the Senate, and the  
1379 speaker of the House regarding its compliance with this section; and

1380 (b) (i) monitor the federal SAVE program for application verification errors and  
1381 significant delays;

1382 (ii) provide an annual report on the errors and delays to ensure that the application of  
1383 the federal SAVE program is not erroneously denying a state or local benefit to a legal resident  
1384 of the state; and

1385 (iii) report delays and errors in the federal SAVE program to the United States  
1386 Department of Homeland Security.

1387 Section 31. Section **63J-1-602.4** is amended to read:

1388 **63J-1-602.4. List of nonlapsing funds and accounts -- Title 61 through Title 63M.**

1389 (1) The Utah Housing Opportunity Restricted Account created in Section 61-2-204.

1390 (2) Funds paid to the Division of Real Estate for the cost of a criminal background  
1391 check for a mortgage loan license, as provided in Section 61-2c-202.

1392 (3) Funds paid to the Division of Real Estate for the cost of a criminal background  
1393 check for principal broker, associate broker, and sales agent licenses, as provided in Section  
1394 61-2f-204.

1395 (4) Certain funds donated to the Department of Human Services, as provided in  
1396 Section 62A-1-111.

1397 (5) Certain funds donated to the Division of Child and Family Services, as provided in  
1398 Section 62A-4a-110.

1399 (6) Appropriations to the Division of Services for People with Disabilities, as provided  
1400 in Section 62A-5-102.

1401 (7) Certain donations to the Division of Substance Abuse and Mental Health, as  
1402 provided in Section 62A-15-103.

1403 (8) Assessments for DUI violations that are forwarded to an account created by a  
1404 county treasurer, as provided in Section 62A-15-503.

1405 (9) The Risk Management Fund created under Section 63A-4-201.

1406 (10) The Child Welfare Parental Defense Fund created in Section 63A-11-203.

1407 (11) The Constitutional Defense Restricted Account created in Section 63C-4-103.

1408 (12) A portion of the funds appropriated to the Utah Seismic Safety Commission, as  
1409 provided in Section 63C-6-104.

1410 (13) Funding for the Medical Education Program administered by the Medical  
1411 Education Council, as provided in Section 63C-8-102.

1412 (14) Certain money payable for commission expenses of the Pete Suazo Utah Athletic  
1413 Commission, as provided under Section 63C-11-301.

1414 (15) Funds collected for publishing the Division of Administrative Rules' publications,  
1415 as provided in Section 63G-3-402.

1416 (16) The Immigration Act Restricted Account created in Section 63G-12-103.

1417 [~~16~~] (17) Money received by the military installation development authority, as  
1418 provided in Section 63H-1-504.

1419 [~~17~~] (18) The appropriation to fund the Governor's Office of Economic  
1420 Development's Enterprise Zone Act, as provided in Section 63M-1-416.

1421 [~~18~~] (19) The Tourism Marketing Performance Account, as provided in Section  
1422 63M-1-1406.

1423 [~~(19)~~] (20) Certain money in the Development for Disadvantaged Rural Communities  
1424 Restricted Account, as provided in Section 63M-1-2003.

1425 [~~(20)~~] (21) Appropriations to the Utah Science Technology and Research Governing  
1426 Authority, created under Section 63M-2-301, as provided under Section 63M-2-302.

1427 [~~(21)~~] (22) Certain money in the Rural Broadband Service Account, as provided in  
1428 Section 63M-1-2303.

1429 Section 32. Section **76-9-1001** is enacted to read:

1430 **Part 10. Illegal Immigration Enforcement Act**

1431 **76-9-1001. Title.**

1432 This part is known as the "Illegal Immigration Enforcement Act."

1433 Section 33. Section **76-9-1002** is enacted to read:

1434 **76-9-1002. Definitions.**

1435 As used in this part:

1436 (1) "Alien" means a person who is not a citizen or national of the United States.

1437 (2) "Law enforcement agency" means an entity of the federal government, a state, or a  
1438 political subdivision of a state, including a state institution of higher education, that exists  
1439 primarily to prevent and detect crime and enforce criminal laws, statutes, and ordinances.

1440 (3) "Law enforcement officer" has the same meaning as in Section 53-13-103.

1441 (4) "Lawfully present in the United States" is as defined in 8 C.F.R. Sec. 103.12,  
1442 except that on or after the program start date, as defined in Section 63G-12-102, an individual  
1443 who holds a valid permit, as defined in Section 63G-12-102, is considered lawfully present in  
1444 the United States for purposes of this part.

1445 (5) "Verify immigration status" or "verification of immigration status" means the  
1446 determination of a person's immigration status by:

1447 (a) a law enforcement officer who is authorized by a federal agency to determine an  
1448 alien's immigration status; or

1449 (b) the United States Department of Homeland Security, including Immigration and  
1450 Customs Enforcement, or other federal agency authorized to provide immigration status as  
1451 provided by 8 U.S.C. Sec. 1373(c).

1452 Section 34. Section **76-9-1003** is enacted to read:

1453 **76-9-1003. Detention or arrest -- Determination of immigration status.**

1454 (1) (a) Except as otherwise provided in this Subsection (1), a law enforcement officer:  
1455 (i) shall request verification of the immigration status of an individual when the law  
1456 enforcement officer acting in the enforcement of a state law or local ordinance:  
1457 (A) conducts a lawful stop, detention, or arrest of the individual for an alleged offense  
1458 that is a class A misdemeanor or a felony; and  
1459 (B) the individual is unable to provide to the law enforcement officer a document listed  
1460 in Section 76-9-1004; and  
1461 (ii) may request verification of the immigration status of an individual when the law  
1462 enforcement officer acting in the enforcement of a state law or local ordinance:  
1463 (A) conducts a lawful stop, detention, or arrest of the individual for an alleged offense  
1464 that is a class B misdemeanor or a class C misdemeanor; and  
1465 (B) the individual is unable to provide to the law enforcement officer a document listed  
1466 in Section 76-9-1004.  
1467 (b) In an individual case, the law enforcement officer may forego a request for  
1468 verification of immigration status under Subsection (1)(a) if the verification of immigration  
1469 status could hinder or obstruct a criminal investigation.  
1470 (c) Subsection (1)(a) does not apply to a law enforcement officer who is acting as a  
1471 school resource officer for any elementary or secondary school.  
1472 (d) Subsection (1)(a) does not apply to a law enforcement officer for a county, city, or  
1473 town if the county, city, or town has only one law enforcement officer on duty and response  
1474 support from another law enforcement agency is not available.  
1475 (2) When a law enforcement officer makes a lawful stop, detention, or arrest under  
1476 Subsection (1) of the operator of a vehicle, and while investigating or processing the primary  
1477 offense, the law enforcement officer makes observations that give the officer reasonable  
1478 suspicion that the operator or a passenger in the vehicle is violating Section 76-5-309,  
1479 76-5-310, or 76-10-2901, the law enforcement officer shall, to the extent possible within a  
1480 reasonable period of time:  
1481 (a) detain the one or more occupants of the vehicle to investigate the suspected  
1482 violation; and  
1483 (b) request verification of immigration status of the one or more occupants of the  
1484 vehicle.



1485 (3) When an individual described in Subsection (1) is issued a citation or is arrested  
1486 and booked into a jail, juvenile detention facility, or correctional facility, the citing law  
1487 enforcement officer or the booking law enforcement officer shall ensure that a request for  
1488 verification of immigration status of the cited or arrested individual is submitted as promptly as  
1489 is reasonably possible.

1490 (4) The law enforcement agency that has custody of an individual verified to be an  
1491 alien who is not lawfully present in the United States shall request that the United States  
1492 Department of Homeland Security issue a detainer requesting transfer of the illegal alien into  
1493 federal custody.

1494 (5) A law enforcement officer may not consider race, color, or national origin in  
1495 implementing this section, except to the extent permitted by the constitutions of the United  
1496 States and this state.

1497 Section 35. Section **76-9-1004** is enacted to read:

1498 **76-9-1004. Documents to be provided a law enforcement officer -- Statement to**  
1499 **law enforcement officer of citizenship.**

1500 A document specified in Subsection 76-9-1003(1) includes the following:

1501 (1) a valid Utah driver license;

1502 (2) a valid Utah identification card issued under Section 53-3-804;

1503 (3) a valid tribal enrollment card or other valid form of tribal membership  
1504 identification that includes photo identification;

1505 (4) notwithstanding Section 53-3-207, a valid driving privilege card issued under  
1506 Section 53-3-207;

1507 (5) a valid permit issued under Section 63G-12-207;

1508 (6) a valid permit to carry a concealed firearm issued under Section 53-5-704; or

1509 (7) a valid identification document that:

1510 (a) includes a photo or biometric identifier of the holder of the document; and

1511 (b) is issued by a federal, state, or local governmental agency that requires proof or  
1512 verification of legal presence in the United States as a condition of issuance of the document.

1513 Section 36. Section **76-9-1005** is enacted to read:

1514 **76-9-1005. Implementation to be consistent with federal law and civil rights.**

1515 A state or local agency shall implement this part in a manner that is consistent with

1516 federal laws that regulate immigration, protect the civil rights of all persons, and establish the  
1517 privileges and immunities of United States citizens.

1518 Section 37. Section **76-10-2901** is amended to read:

1519 **76-10-2901. Transporting or harboring aliens -- Definition -- Penalty.**

1520 (1) [~~For purposes of~~] As used in this part[;]:

1521 (a) Except as provided in Subsection (1)(b), "alien" means an individual who is  
1522 illegally present in the United States.

1523 (b) On or after the program start date, as defined in Section 63G-12-102, "alien" does  
1524 not include an individual who holds a valid permit, as defined in Section 63G-12-102.

1525 (2) It is unlawful for a person to:

1526 (a) transport, move, or attempt to transport into this state or for a distance of greater  
1527 than 100 miles within the state an alien for commercial advantage or private financial gain,  
1528 knowing or in reckless disregard of the fact that the alien is in the United States in violation of  
1529 federal law, in furtherance of the illegal presence of the alien in the United States; [~~or~~]

1530 (b) knowingly, with the intent to violate federal immigration law, conceal, harbor, or  
1531 shelter from detection an alien in a place within this state, including a building or means of  
1532 transportation for commercial advantage or private financial gain, knowing or in reckless  
1533 disregard of the fact that the alien is in the United States in violation of federal law[;];

1534 (c) encourage or induce an alien to come to, enter, or reside in this state, knowing or in  
1535 reckless disregard of the fact that the alien's coming to, entry, or residence is or will be in  
1536 violation of law; or

1537 (d) engage in a conspiracy, for commercial advantage or private financial gain, to  
1538 commit an offense listed in this Subsection (2).

1539 (3) (a) A person who violates Subsection (2)(a) is guilty of a third degree felony.

1540 (b) A person who violates Subsection (2)(b) is guilty of a class A misdemeanor.

1541 (4) Nothing in this part prohibits or restricts the provision of:

1542 (a) a state or local public benefit described in 8 U.S.C., Section 1621(b); or

1543 (b) charitable or humanitarian assistance, including medical care, housing, counseling,  
1544 food, victim assistance, religious services and sacraments, and transportation to and from a  
1545 location where the assistance is provided, by a charitable, educational, or religious organization  
1546 or its employees, agents, or volunteers, using private funds.

1547 (5) (a) It is not a violation of this part for a religious denomination or organization or  
1548 an agent, officer, or member of a religious denomination or organization to encourage, invite,  
1549 call, allow, or enable an alien to perform the vocation of a minister or missionary for the  
1550 denomination or organization in the United States as a volunteer who is not compensated as an  
1551 employee, notwithstanding the provision of room, board, travel, medical assistance, and other  
1552 basic living expenses.

1553 (b) Subsection (5)(a) applies only to an alien who has been a member of the religious  
1554 denomination or organization for at least one year.

1555 Section 38. Section **77-7-2** is amended to read:

1556 **77-7-2. Arrest by peace officers.**

1557 A peace officer may make an arrest under authority of a warrant or may, without  
1558 warrant, arrest a person:

1559 (1) (a) for any public offense committed or attempted in the presence of any peace  
1560 officer; and

1561 (b) as used in this Subsection (1), "presence" includes all of the physical senses or any  
1562 device that enhances the acuity, sensitivity, or range of any physical sense, or records the  
1563 observations of any of the physical senses;

1564 (2) when the peace officer has reasonable cause to believe a felony or a class A  
1565 misdemeanor has been committed and has reasonable cause to believe that the person arrested  
1566 has committed it;

1567 (3) when the peace officer has reasonable cause to believe the person has committed a  
1568 public offense, and there is reasonable cause for believing the person may:

1569 (a) flee or conceal himself to avoid arrest;

1570 (b) destroy or conceal evidence of the commission of the offense; or

1571 (c) injure another person or damage property belonging to another person; ~~or~~

1572 (4) when the peace officer has reasonable cause to believe the person has committed  
1573 the offense of failure to disclose identity under Section 76-8-301.5~~(7)~~; or

1574 (5) when the peace officer has reasonable cause to believe that the person is an alien:

1575 (a) subject to a civil removal order issued by an immigration judge;

1576 (b) regarding whom a civil detainer warrant has been issued by the federal Department  
1577 of Homeland Security;

1578 (c) who has been charged or convicted in another state with one or more aggravated  
1579 felonies as defined by 8 U.S.C. Sec. 1101(a)(43); or

1580 (d) who has willfully failed to comply with federal alien registration laws, except this  
1581 Subsection (5)(d) does not apply on or after the program start date, as defined in Section  
1582 63G-12-102, and the person holds a valid permit, as defined in Section 63G-12-102.

1583 **Section 39. Repealer.**

1584 This bill repeals:

1585 **Section 13-47-101, Title.**

1586 **Section 13-47-102, Definitions.**

1587 **Section 13-47-103, Scope of chapter.**

1588 **Section 13-47-201, Verification required for new hires.**

1589 **Section 13-47-202, Liability protections.**

1590 **Section 13-47-203, Voluntary registration by private employer certifying**  
1591 **participation in verification.**

1592 **Section 13-47-204, Department to publish list of registered private employers.**

1593 **Section 63G-11-101, Title.**

1594 **Section 40. Coordinates S.B. 288 with H.B. 70 -- Superseding amendments.**

1595 If this S.B. 288 and H.B. 70, Illegal Enforcement Act, both pass, it is the intent of the  
1596 Legislature that the Office of Legislative Research and General Counsel not give effect to the  
1597 amendments and enactments in H.B. 70.

1598 **Section 41. Coordinates S.B. 288 with H.B. 116 -- Superseding amendments.**

1599 If this S.B. 288 and H.B. 116, Guest Worker Program, both pass, it is the intent of the  
1600 Legislature that the Office of Legislative Research and General Counsel not give effect to the  
1601 amendments and enactments in H.B. 116.

1602 **Section 42. Coordinates S.B. 288 with H.B. 191 -- Superseding amendments.**

1603 If this S.B. 288 and H.B. 191, Nonresident Tuition Waiver Amendments, both pass, it is  
1604 the intent of the Legislature that the Office of Legislative Research and General Counsel not  
1605 give effect to the amendments and enactments in H.B. 191.

1606 **Section 43. Coordinates S.B. 288 with H.B. 253 -- Superseding amendments.**

1607 If this S.B. 288 and H.B. 253, Employment of Unauthorized Aliens, both pass, it is the  
1608 intent of the Legislature that the Office of Legislative Research and General Counsel not give

1609 effect to the amendments and enactments in H.B. 253.

1610 Section 44. **Coordinates S.B. 288 with S.B. 35 -- Technically merging substantive**  
1611 **amendments.**

1612 If this S.B. 288 and S.B. 35, Construction Licensees Related Amendments, both pass, it  
1613 is the intent of the Legislature that the Office of Legislative Research and General Counsel, in  
1614 preparing the Utah Code database for publication, change the reference in Subsection  
1615 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 10:02 AM**

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

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

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

The bill addresses areas also addressed by federal law such as accessing and disclosing immigration information. Significantly, this bill provides a means by which a person may employ an unauthorized alien in this state if the unauthorized alien is issued a state permit, and the bill imposes state specific penalties that include both fines and loss of professional licenses for hiring an unauthorized alien without a permit. Federal law, in 8 U.S.C. Sec. 1324a, makes it unlawful to hire, recruit, or refer for a fee, an alien for employment in the United States knowing that the alien is an unauthorized alien. This section further provides that "The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens."

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

**Office of Legislative Research and General Counsel**