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S.B. 81 Enrolled

1

ILLEGAL IMMIGRATION

2

2008 GENERAL SESSION

3

STATE OF UTAH

4

Chief Sponsor: John W. Hickman

5

House Sponsor: Michael E. Noel

6

7 LONG TITLE

8 General Description:

9 This bill deals with provisions related to the immigration status of individuals within the
10 state.

11 Highlighted Provisions:

12 This bill:

13 . requires a county sheriff to make a reasonable effort to determine the citizenship
14 status of a person confined to a county jail for a period of time and to verify the
15 immigration status of a confined foreign national, and makes it a rebuttable
16 presumption, for the purpose of determining the grant or issuance of a bond, that a
17 person verified by the sheriff's efforts as a foreign national not lawfully admitted into
18 the United States is at risk of flight;

19 . provides that the Alcoholic Beverage Control Commission may not grant a
20 restaurant liquor license or private club license to a person who is not lawfully
21 present in the United States;

22 . provides for the creation and issuance of identification documents and requires that
23 those identification documents issued by public entities go only to United States
24 citizens, nationals, or legal permanent resident aliens with certain exceptions;

25 . provides for exceptions to the issuance of identification documents by public entities
26 based on valid documentation of certain approved or pending immigration status and
27 places time period restrictions on the length of validity of the documents;
28 . requires public employers to register with and use a Status Verification System to
29 verify the federal authorization status of a new employee;

30 . beginning July 1, 2009, provides that a public employer may not enter into a contract
31 for the physical performance of services within the state with a contractor unless the
32 contractor registers and participates in the Status Verification System to verify the
33 work eligibility status of the contractor's new employees;
34 . provides that it is unlawful to discharge a lawful employee while retaining an
35 unauthorized alien in the same job category;
36 . requires an agency or political subdivision of the state to verify the lawful presence
37 in the United States of an individual who has applied for a state or local public
38 benefit, as defined by federal law, or a federal public benefit that is administered by
39 the agency or the political subdivision and provides for exceptions;
40 . requires an applicant for a state or local public benefit to certify the applicant's lawful
41 presence in the United States, and provides penalties for making a false, fictitious, or
42 fraudulent statement or representation in the certification;
43 . provides, subject to the availability of funding, for the establishment of a Fraudulent
44 Documents Identification Unit by the attorney general for the primary purpose of
45 investigating, apprehending, and prosecuting individuals who participate in the sale
46 or distribution of fraudulent identification documents created and prepared for
47 individuals who are unlawfully residing within the state;
48 . requires the attorney general to negotiate a Memorandum of Understanding with the
49 United States Department of Justice or the United States Department of Homeland
50 Security for the enforcement of federal immigration and customs laws within the
51 state by state and local law enforcement personnel;
52 . prohibits a unit of local government from enacting an ordinance or policy that limits
53 or prohibits a law enforcement officer or government employee from communicating
54 or cooperating with federal officials regarding the immigration status of a person
55 within the state; and
56 . makes it a class A misdemeanor for a person to:
57 . transport into this state or for a distance of 100 miles within the state an alien for

58 commercial advantage or private financial gain, knowing that the alien is in the United States in
59 violation of federal law, in furtherance of the illegal presence in the United States; or
60 . conceal, harbor, or shelter from detection an alien, in a place within this state for
61 commercial advantage or private financial gain, knowing or in reckless disregard
62 of the fact that the alien is in the United States in violation of federal law.

63 Monies Appropriated in this Bill:

64 None

65 Other Special Clauses:

66 This bill takes effect on July 1, 2009.

67 This bill coordinates with H.B. 63, Recodification of Title 63 State Affairs in General,
68 by providing technical renumbering.

69 Utah Code Sections Affected:

70 AMENDS:

71 32A-4-103, as last amended by Laws of Utah 2003, Chapter 314

72 32A-5-103, as last amended by Laws of Utah 2003, Chapter 314

73 ENACTS:

74 17-22-9.5, Utah Code Annotated 1953

75 63-99a-101, Utah Code Annotated 1953

76 63-99a-102, Utah Code Annotated 1953

77 63-99a-103, Utah Code Annotated 1953

78 63-99a-104, Utah Code Annotated 1953

79 67-5-22.5, Utah Code Annotated 1953

80 67-5-26, Utah Code Annotated 1953

81 76-10-2701, Utah Code Annotated 1953

82

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

84 Section 1. Section 17-22-9.5 is enacted to read:

85 17-22-9.5. Citizenship determination of incarcerated persons.

86 (1) The sheriff shall make a reasonable effort to determine the citizenship status of a
 87 person charged with a felony or driving under the influence under Section 41-6a-502 when the
 88 person is confined to the county jail for a period of time.

89 (2) If the confined person is a foreign national, the sheriff shall make a reasonable effort
 90 to verify that the person:

91 (a) has been lawfully admitted into the United States; and

92 (b) the person's lawful status has not expired.

93 (3) (a) If the sheriff cannot verify the confined person's lawful status from documents in
 94 the person's possession, the sheriff shall attempt to verify that status within 48 hours of the
 95 person's confinement at the jail through contacting:

96 (i) the Law Enforcement Support Center of the United States Department of Homeland
 97 Security; or

98 (ii) an office or agency designated for citizenship status verification by the United States
 99 Department of Homeland Security.

100 (b) The sheriff shall notify the United States Department of Homeland Security of a
 101 person whose lawful citizenship status cannot be verified under Subsection (2) or (3)(a).

102 (4) It is a rebuttable presumption for the purpose of determining the grant or issuance
 103 of a bond that a person who is verified under this section as a foreign national not lawfully
 104 admitted into the United States is at risk of flight.

105 Section 2. Section 32A-4-103 is amended to read:

106 32A-4-103. Qualifications.

107 (1) (a) The commission may not grant a restaurant liquor license to any person who has
 108 been convicted of:

109 (i) a felony under ~~any~~ a federal or state law;

110 (ii) ~~any~~ a violation of ~~any~~ a federal or state law or local ordinance concerning the
 111 sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic
 112 beverages;

113 (iii) ~~any~~ a crime involving moral turpitude; or

114 (iv) on two or more occasions within the five years before the day on which the license
 115 is granted, driving under the influence of alcohol, ~~any~~ a drug, or the combined influence of
 116 alcohol and ~~any~~ a drug.

117 (b) In the case of a partnership, corporation, or limited liability company the
 118 proscription under Subsection (1)(a) applies if any of the following has been convicted of [any]
 119 an offense described in Subsection (1)(a):

- 120 (i) a partner;
- 121 (ii) a managing agent;
- 122 (iii) a manager;
- 123 (iv) an officer;
- 124 (v) a director;
- 125 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
 126 the applicant corporation; or
- 127 (vii) a member who owns at least 20% of the applicant limited liability company.

128 (c) The proscription under Subsection (1)(a) applies if [any] a person employed to act
 129 in a supervisory or managerial capacity for a restaurant has been convicted of [any] an offense
 130 described in Subsection (1)(a).

131 (2) The commission may immediately suspend or revoke a restaurant liquor license if
 132 after the day on which the restaurant liquor license is granted, a person described in Subsection
 133 (1)(a), (b), or (c):

134 (a) is found to have been convicted of [any] an offense described in Subsection (1)(a)
 135 prior to the license being granted; or

136 (b) on or after the day on which the license is granted:

- 137 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or
- 138 (ii) (A) is convicted of driving under the influence of alcohol, [any] a drug, or the
 139 combined influence of alcohol and [any] a drug; and

140 (B) was convicted of driving under the influence of alcohol, [any] a drug, or the
 141 combined influence of alcohol and [any] a drug within five years before the day on which the

142 person is convicted of the offense described in Subsection (2)(b)(ii)(A).

143 (3) The director may take emergency action by immediately suspending the operation of
 144 a restaurant liquor license according to the procedures and requirements of Title 63, Chapter
 145 46b, Administrative Procedures Act, for the period during which the criminal matter is being
 146 adjudicated if a person described in Subsection (1)(a), (b), or (c):

147 (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii);
 148 or

149 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
 150 [any] a drug, or the combined influence of alcohol and [any] a drug; and

151 (ii) was convicted of driving under the influence of alcohol, [any] a drug, or the
 152 combined influence of alcohol and [any] a drug within five years before the day on which the
 153 person is arrested on a charge described in Subsection (3)(b)(i).

154 (4) (a) (i) The commission may not grant a restaurant liquor license to [any] a person
 155 who has had any type of license, agency, or permit issued under this title revoked within the last
 156 three years.

157 (ii) The commission may not grant a restaurant liquor license to an applicant that is a
 158 partnership, corporation, or limited liability company if [any] a partner, managing agent,
 159 manager, officer, director, stockholder who holds at least 20% of the total issued and
 160 outstanding stock of the applicant corporation, or member who owns at least 20% of the
 161 applicant limited liability company is or was:

162 (A) a partner or managing agent of [any] a partnership that had any type of license,
 163 agency, or permit issued under this title revoked within the last three years;

164 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%

165 of the total issued and outstanding stock of [any] a corporation that had any type of license,
 166 agency, or permit issued under this title revoked within the last three years; or
 167 (C) a manager or member who owns or owned at least 20% of [any] a limited liability
 168 company that had any type of license, agency, or permit issued under this title revoked within
 169 the last three years.

170 (b) An applicant that is a partnership, corporation, or limited liability company may not
 171 be granted a restaurant liquor license if any of the following had any type of license, agency, or
 172 permit issued under this title revoked while acting in that person's individual capacity within the
 173 last three years:

174 (i) a partner or managing agent of the applicant partnership;

175 (ii) [any] a managing agent, officer, director, or stockholder who holds at least 20% of
 176 the total issued and outstanding stock of the applicant corporation; or

177 (iii) a manager or member who owns at least 20% of the applicant limited liability
 178 company.

179 (c) A person acting in an individual capacity may not be granted a restaurant liquor
 180 license if that person was:

181 (i) a partner or managing agent of a partnership that had any type of license, agency, or
 182 permit issued under this title revoked within the last three years;

183 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
 184 total issued and outstanding stock of a corporation that had any type of license, agency, or
 185 permit issued under this title revoked within the last three years; or

186 (iii) a manager or member of a limited liability company who owned at least 20% of the
 187 limited liability company that had any type of license, agency, or permit issued under this title
 188 revoked within the last three years.

189 (5) (a) A minor may not be granted a restaurant liquor license.

190 (b) The commission may not grant a restaurant liquor license to an applicant that is a
 191 partnership, corporation, or limited liability company if any of the following is a minor:

192 (i) a partner or managing agent of the applicant partnership;

193 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
 194 total issued and outstanding stock of the applicant corporation; or

195 (iii) a manager or member who owns at least 20% of the applicant limited liability
 196 company.

197 (6) If [any] a person to whom a license has been issued under this part no longer

198 possesses the qualifications required by this title for obtaining that license, the commission may
 199 suspend or revoke that license.

200 (7) The commission may not grant a restaurant liquor license to an applicant who is not
 201 lawfully present in the United States.

202 Section 3. Section 32A-5-103 is amended to read:

203 32A-5-103. Qualifications.

204 (1) (a) The commission may not grant a private club license to [any] a person who has
 205 been convicted of:

206 (i) a felony under [any] a federal or state law;

207 (ii) [any] a violation of [any] a federal or state law or local ordinance concerning the
 208 sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic
 209 beverages;

210 (iii) [any] a crime involving moral turpitude; or

211 (iv) on two or more occasions within the five years before the day on which the license
 212 is granted, driving under the influence of alcohol, ~~any~~ a drug, or the combined influence of
 213 alcohol and ~~any~~ a drug.

214 (b) In the case of a partnership, corporation, or limited liability company, the
 215 proscription under Subsection (1)(a) applies if any of the following has been convicted of ~~any~~
 216 an offense described in Subsection (1)(a):

217 (i) a partner;

218 (ii) a managing agent;

219 (iii) a manager;

220 (iv) an officer;

221 (v) a director;

222 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
 223 the applicant corporation; or

224 (vii) a member who owns at least 20% of the applicant limited liability company.

225 (c) The proscription under Subsection (1)(a) applies if ~~any~~ a person employed to act

226 in a supervisory or managerial capacity for a private club has been convicted of ~~any~~ an offense
 227 described in Subsection (1)(a).

228 (2) The commission may immediately suspend or revoke a private club license if after
 229 the day on which the private club license is granted, a person described in Subsection (1)(a), (b),
 230 or (c):

231 (a) is found to have been convicted of ~~any~~ an offense described in Subsection (1)(a)
 232 prior to the license being granted; or

233 (b) on or after the day on which the license is granted:

234 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

235 (ii) (A) is convicted of driving under the influence of alcohol, ~~any~~ a drug, or the
 236 combined influence of alcohol and ~~any~~ a drug; and

237 (B) was convicted of driving under the influence of alcohol, ~~any~~ a drug, or the
 238 combined influence of alcohol and ~~any~~ a drug within five years before the day on which the
 239 person is convicted of the offense described in Subsection (2)(b)(ii)(A).

240 (3) The director may take emergency action by immediately suspending the operation of
 241 a private club license according to the procedures and requirements of Title 63, Chapter 46b,
 242 Administrative Procedures Act, for the period during which the criminal matter is being
 243 adjudicated if a person described in Subsection (1)(a), (b), or (c):

244 (a) is arrested on a charge for ~~any~~ an offense described in Subsection (1)(a)(i), (ii), or
 245 (iii); or

246 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
 247 ~~any~~ a drug, or the combined influence of alcohol and ~~any~~ a drug; and

248 (ii) was convicted of driving under the influence of alcohol, ~~any~~ a drug, or the
 249 combined influence of alcohol and ~~any~~ a drug within five years before the day on which the
 250 person is arrested on a charge described in Subsection (3)(b)(i).

251 (4) (a) (i) The commission may not grant a private club license to ~~any~~ a person who
 252 has had any type of license, agency, or permit issued under this title revoked within the last
 253 three years.

254 (ii) The commission may not grant a private club license to ~~any~~ an applicant that is a
 255 partnership, corporation, or limited liability company if ~~any~~ a partner, managing agent,
 256 manager, officer, director, stockholder who holds at least 20% of the total issued and

257 outstanding stock of an applicant corporation, or member who owns at least 20% of an
 258 applicant limited liability company is or was:

259 (A) a partner or managing agent of ~~[any]~~ a partnership that had any type of license,
 260 agency, or permit issued under this title revoked within the last three years;

261 (B) a managing agent, officer, director, or a stockholder who holds or held at least 20%
 262 of the total issued and outstanding stock of ~~[any]~~ a corporation that had any type of license,
 263 agency, or permit issued under this title revoked within the last three years; or

264 (C) a manager or member who owns or owned at least 20% of ~~[any]~~ a limited liability
 265 company that had any type of license, agency, or permit issued under this title revoked within
 266 the last three years.

267 (b) An applicant that is a partnership, corporation, or limited liability company may not
 268 be granted a private club license if any of the following had any type of license, agency, or
 269 permit issued under this title revoked while acting in that person's individual capacity within the
 270 last three years:

271 (i) ~~[any]~~ a partner or managing agent of the applicant partnership;

272 (ii) ~~[any]~~ a managing agent, officer, director, or stockholder who holds at least 20% of
 273 the total issued and outstanding stock of the applicant corporation; or

274 (iii) ~~[any]~~ a manager or member who owned at least 20% of the applicant limited
 275 liability company.

276 (c) A person acting in an individual capacity may not be granted a private club license if
 277 that person was:

278 (i) a partner or managing agent of a partnership that had any type of license, agency, or
 279 permit issued under this title revoked within the last three years;

280 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
 281 total issued and outstanding stock of a corporation that had any type of license, agency, or

282 permit issued under this title revoked within the last three years; or

283 (iii) a manager or member of a limited liability company who owned at least 20% of the
 284 limited liability company that had any type of license, agency, or permit issued under this title
 285 revoked within the last three years.

286 (5) (a) A minor may not be granted a private club license.

287 (b) The commission may not grant a private club license to an applicant that is a
 288 partnership, corporation, or limited liability company if any of the following is a minor:

289 (i) a partner or managing agent of the applicant partnership;

290 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
 291 total issued and outstanding stock of the applicant corporation; or

292 (iii) a manager or member who owns at least 20% of the applicant limited liability
 293 company.

294 (6) If ~~[any]~~ a person or entity to whom a license has been issued under this chapter no
 295 longer possesses the qualifications required by this title for obtaining that license, the
 296 commission may suspend or revoke that license.

297 (7) The commission may not grant a private club license to an applicant who is not
 298 lawfully present in the United States.

299 Section 4. Section 63-99a-101 is enacted to read:

300

CHAPTER 99a. IDENTITY DOCUMENTS AND VERIFICATION

301 63-99a-101. Title.

302 This chapter is known as "Identity Documents and Verification."

303 Section 5. Section 63-99a-102 is enacted to read:

304 **63-99a-102.** Creation of identity documents -- Issuance to citizens, nationals, and
305 legal permanent resident aliens -- Exceptions.

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

309 (a) a federal, state, or local government agency for employee identification, which is

310 designed to identify the bearer as an employee:

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

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

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

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

322 (a) a United States citizen;

323 (b) a national; or

324 (c) a legal permanent resident alien.

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

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

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

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

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

333 (v) approved deferred action status; or

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

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

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

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

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

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

344 (A) that it is temporary; and

345 (B) its expiration date.

346 (c) An individual may renew a document issued under this Subsection (4) only upon

347 presentation of valid documentary evidence that the status by which the individual originally

348 qualified for the identification document has been extended by the United States Citizenship and

349 Immigration Services or other authorized agency of the United States Department of Homeland
 350 Security.

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

353 (i) valid for use on the educational institution's campus or facility; and

354 (ii) includes a statement of the restricted use conspicuously printed upon the face of the
 355 identification document.

356 (b) Subsection (3) does not apply to a driving privilege card issued or renewed under
 357 Section 53-3-207 .

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

360 Section 6. Section 63-99a-103 is enacted to read:

361 **63-99a-103.** Status verification system -- Registration and use -- Performance of
 362 services -- Unlawful practice.

363 (1) As used in this section:

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

366 (b) "Public employer" means a department, agency, instrumentality, or political
 367 subdivision of the state.

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

373 (ii) "Status Verification System" includes:

374 (A) the electronic verification of the work authorization program of the Illegal
 375 Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C., Sec. 1324a, known
 376 as the Basic Pilot Program;

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

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

382 (D) an independent third-party system with an equal or higher degree of reliability as
 383 the programs, systems, or processes described in Subsection (1)(c)(ii)(A), (B), or (C).

384 (d) "Unauthorized alien" means an alien as defined in 8 U.S.C., Sec. 1324a(h)(3).

385 (2) (a) Each public employer shall register with and use a Status Verification System to
 386 verify the federal employment authorization status of a new employee.

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

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

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

394 (ii) a contractor shall register and participate in the Status Verification System in order

395 to enter into a contract with a public employer.

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

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

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

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

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

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

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

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

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

418 (B) which is performed under similar working conditions, as defined in 29 U.S.C., Sec.
 419 206 (d)(1), as the job category held by the discharged employee.

420 (b) An employing entity, which on the date of a discharge in question referred to in
 421 Subsection (4)(a) is enrolled in and using the Status Verification System to verify the

422 employment eligibility of its employees in Utah who are hired on or after July 1, 2009, is exempt
 423 from liability, investigation, or lawsuit arising from an action under this section.

424 (c) A cause of action for a violation of this Subsection (4) arises exclusively from the
 425 provisions of this Subsection (4).

426 Section 7. Section 63-99a-104 is enacted to read:

427 **63-99a-104.** Receipt of state, local, or federal public benefits -- Verification --

428 Exceptions -- Fraudulently obtaining benefits -- Criminal penalties -- Annual report.

429 (1) Except as provided in Subsection (3) or where exempted by federal law, an agency
 430 or political subdivision of the state shall verify the lawful presence in the United States of an
 431 individual at least 18 years of age who has applied for:

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

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

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

437 (3) Verification of lawful presence under this section is not required for:

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

440 (b) assistance for health care items and services that are necessary for the treatment of
 441 an emergency medical condition, as defined in 42 U.S.C., Sec. 1396b(v)(3), of the individual
 442 involved and are not related to an organ transplant procedure;

443 (c) short-term, noncash, in-kind emergency disaster relief;
 444 (d) public health assistance for immunizations with respect to immunizable diseases and
 445 for testing and treatment of symptoms of communicable diseases whether or not the symptoms
 446 are caused by the communicable disease;
 447 (e) programs, services, or assistance such as soup kitchens, crisis counseling and
 448 intervention, and short-term shelter, specified by the United States Attorney General, in the sole
 449 and unreviewable discretion of the United States Attorney General after consultation with

450 appropriate federal agencies and departments, which:
 451 (i) deliver in-kind services at the community level, including through public or private
 452 nonprofit agencies;
 453 (ii) do not condition the provision of assistance, the amount of assistance provided, or
 454 the cost of assistance provided on the income or resources of the individual recipient; and
 455 (iii) are necessary for the protection of life or safety;
 456 (f) the exemption for paying the nonresident portion of total tuition as set forth in
 457 Section 53B-8-106 ; and
 458 (g) an applicant for a license under Section 61-1-4 , if the applicant is registered with the
 459 Financial Industry Regulatory Authority and files an application with the state Division of
 460 Securities through the Central Registration Depository.

461 (4) An agency or political subdivision required to verify the lawful presence in the
 462 United States of an applicant under this section shall require the applicant to certify under
 463 penalty of perjury that:

464 (a) the applicant is a United States citizen; or
 465 (b) the applicant is:
 466 (i) a qualified alien as defined in 8 U.S.C., Sec. 1641; and
 467 (ii) lawfully present in the United States.

468 (5) An agency or political subdivision shall verify a certification required under
 469 Subsection (4) through the Systematic Alien Verification for Entitlements Program, hereafter
 470 referred to in this section as the "program," operated by the United States Department of
 471 Homeland Security or an equivalent program designated by the Department of Homeland
 472 Security.

473 (6) (a) An individual who knowingly and willfully makes a false, fictitious, or fraudulent
 474 statement or representation in a certification under Subsection (4) is subject to the criminal
 475 penalties applicable in this state for:

476 (i) making a written false statement under Subsection 76-8-504 (2); and
 477 (ii) fraudulently obtaining public assistance program benefits under Sections 76-8-1205

478 and 76-8-1206 or unemployment compensation under Section 76-8-1301 .

479 (b) If the certification constitutes a false claim of U.S. citizenship under 18 U.S.C., Sec.
 480 911, the agency or political subdivision shall file a complaint with the United States Attorney
 481 General for the applicable district based upon the venue in which the application was made.

482 (7) An agency or political subdivision may adopt variations to the requirements of this
 483 section which:

484 (a) clearly improve the efficiency of or reduce delay in the verification process; or
 485 (b) provide for adjudication of unique individual circumstances where the verification
 486 procedures in this section would impose an unusual hardship on a legal resident of Utah.

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

489 provisions of this section.

490 (9) Each state agency or department that administers a program of state or local public
 491 benefits shall:

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

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

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

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

500 Section 8. Section 67-5-22.5 is enacted to read:

501 **67-5-22.5.** Fraudulent Documents Identification Unit.

502 Subject to the availability of funding, the attorney general shall establish a Fraudulent
 503 Documents Identification Unit:

504 (1) for the primary purpose of investigating, apprehending, and prosecuting individuals
 505 or entities that participate in the sale or distribution of fraudulent documents used for

506 identification purposes; and

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

509 Section 9. Section 67-5-26 is enacted to read:

510 **67-5-26.** Memorandum of Understanding regarding enforcement of federal
 511 immigration laws -- Communications regarding immigration status -- Private cause of
 512 action.

513 (1) The attorney general shall negotiate the terms of a Memorandum of Understanding
 514 between the state and the United States Department of Justice or the United States Department
 515 of Homeland Security as provided in 8 U.S.C., Sec. 1357(g) for the enforcement of federal
 516 immigration and customs laws within the state by state and local law enforcement personnel, to
 517 include investigations, apprehensions, detentions, and removals of persons who are illegally
 518 present in the United States.

519 (2) The attorney general, the governor, or an individual otherwise required by the
 520 appropriate federal agency referred to in Subsection (1) shall sign the Memorandum of
 521 Understanding on behalf of the state.

522 (3) (a) A unit of local government, whether acting through its governing body or by an
 523 initiative or referendum, may not enact an ordinance or policy that limits or prohibits a law
 524 enforcement officer, local official, or local government employee from communicating or
 525 cooperating with federal officials regarding the immigration status of a person within the state.

526 (b) Notwithstanding any other provision of law, a government entity or official within
 527 the state may not prohibit or in any way restrict a government entity or official from sending to,
 528 or receiving from, the United States Department of Homeland Security information regarding
 529 the citizenship or immigration status, lawful or unlawful, of an individual.

530 (c) Notwithstanding any other provision of law, a person or agency may not prohibit or
 531 in any way restrict a public employee from doing the following regarding the immigration status,
 532 lawful or unlawful, of an individual:

533 (i) sending information to or requesting or receiving information from the United States

534 Department of Homeland Security:

535 (ii) maintaining the information referred to in Subsection (3)(c)(i); and
 536 (iii) exchanging the information referred to in Subsection (3)(c)(i) with any other
 537 federal, state, or local government entity.
 538 (d) This Subsection (3) allows for a private right of action by a natural or legal person
 539 lawfully domiciled in this state to file for a writ of mandamus to compel a noncompliant local or
 540 state governmental agency to comply with the reporting laws of this Subsection (3).
 541 Section 10. Section 76-10-2701 is enacted to read:
 542

Part 27. Transporting or Harboring of Illegal Aliens

543 **76-10-2701.** Transporting or harboring aliens -- Definition -- Penalty.
 544 (1) For purposes of this part, "alien" means an individual who is illegally present in the
 545 United States.
 546 (2) It is unlawful for a person to:
 547 (a) transport, move, or attempt to transport into this state or for a distance of greater
 548 than 100 miles within the state an alien for commercial advantage or private financial gain,
 549 knowing or in reckless disregard of the fact that the alien is in the United States in violation of
 550 federal law, in furtherance of the illegal presence of the alien in the United States; or
 551 (b) knowingly, with the intent to violate federal immigration law, conceal, harbor, or
 552 shelter from detection an alien in a place within this state, including a building or means of
 553 transportation for commercial advantage or private financial gain, knowing or in reckless
 554 disregard of the fact that the alien is in the United States in violation of federal law.
 555 (3) A person who violates Subsection (2)(a) or (b) is guilty of a class A misdemeanor.
 556 (4) Nothing in this part prohibits or restricts the provision of:
 557 (a) a state or local public benefit described in 8 U.S.C., Section 1621(b); or
 558 (b) charitable or humanitarian assistance, including medical care, housing, counseling,
 559 food, victim assistance, religious services and sacraments, and transportation to and from a
 560 location where the assistance is provided, by a charitable, educational, or religious organization
 561 or its employees, agents, or volunteers, using private funds.

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

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

570 Section 11. Effective date.

571 This bill takes effect on July 1, 2009.

572 Section 12. Coordinating S.B. 81 with H.B. 63 -- Technical renumbering.

573 If this S.B. 81 and H.B. 63, Recodification of Title 63 State Affairs in General, both
 574 pass, it is the intent of the Legislature that the Office of Legislative Research and General
 575 Counsel, in preparing the Utah Code database for publication renumber Title 63, Chapter 99a to
 576 Title 63G, Chapter 11 and Sections 63-99a-101 through 63-99a-104 to Sections 63G-11-101
 577 through 63G-11-104.

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