

By: Berman

H.B. No. 266

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to regulating the provision of benefits and services to,  
3 and the verification of the employment status of, immigrants and to  
4 enforcing laws relating to immigrants; providing civil and  
5 criminal penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 ARTICLE 1. FINDINGS AND STATEMENT OF PUBLIC INTEREST

8 SECTION 1.01. The legislature finds that:

9 (1) illegal immigration is causing economic hardship  
10 and lawlessness in this state and is encouraged when an agency of  
11 this state or of a political subdivision of this state provides  
12 public benefits to a person without verifying the person's  
13 immigration status; and

14 (2) the harboring and sheltering of illegal  
15 immigrants, and the encouraging of illegal immigrants to reside in  
16 this state, through the practice of issuing an identification card  
17 to a person without verifying the person's immigration status:

18 (A) impedes the enforcement of federal  
19 immigration laws;

20 (B) undermines the security of our borders; and

21 (C) impermissibly restricts the privileges and  
22 immunities of legal residents of this state.

23 SECTION 1.02. The legislature declares that it is a  
24 compelling public interest of this state to discourage illegal

1 immigration by requiring each agency of this state and of a  
2 political subdivision of this state to cooperate fully with federal  
3 immigration authorities in enforcing federal immigration laws, and  
4 that additional actions are necessary to ensure the integrity of  
5 governmental programs and services in this state.

6 ARTICLE 2. REQUIRED PARTICIPATION IN WORK ELIGIBILITY STATUS  
7 VERIFICATION SYSTEM; UNLAWFUL EMPLOYMENT PRACTICES

8 SECTION 2.01. Subtitle A, Title 6, Government Code, is  
9 amended by adding Chapter 619 to read as follows:

10 CHAPTER 619. VERIFICATION OF EMPLOYEE INFORMATION

11 Sec. 619.001. DEFINITIONS. In this chapter:

12 (1) "Governmental entity" means:

13 (A) the state;

14 (B) a political subdivision of the state,  
15 including a municipality, a county, or any kind of district; or

16 (C) an institution, board, commission, office,  
17 department, court, or other agency:

18 (i) in the executive, judicial, or  
19 legislative branch of state government, including an institution of  
20 higher education as defined by Section 61.003, Education Code; or

21 (ii) of a political subdivision of the  
22 state.

23 (2) "Status verification system" means:

24 (A) the electronic verification of work  
25 authorization program of Section 403(a) of the federal Illegal  
26 Immigration Reform and Immigrant Responsibility Act of 1996 (Pub.  
27 L. No. 104-208, reprinted in note, 8 U.S.C. Section 1324a),

1 operated by the United States Department of Homeland Security and  
2 known as the Basic Pilot Program or E-Verify; or

3 (B) any other federal verification program  
4 designated by the United States Department of Homeland Security or  
5 any other federal agency authorized to verify the work eligibility  
6 status of newly hired employees under the federal Immigration  
7 Reform and Control Act of 1986 (Pub. L. No. 99-603).

8 Sec. 619.002. VERIFICATION. A governmental entity shall  
9 register with and participate in a status verification system to  
10 verify the federal employment authorization status of all new  
11 employees.

12 Sec. 619.003. RULES. The Texas Workforce Commission shall  
13 adopt rules and prescribe forms to implement this chapter. The  
14 Texas Workforce Commission shall publish the proposed and adopted  
15 rules on the commission's website as well as in the Texas Register.

16 SECTION 2.02. (a) Chapter 2252, Government Code, is  
17 amended by adding Subchapter F to read as follows:

18 SUBCHAPTER F. STATUS VERIFICATION SYSTEM

19 Sec. 2252.151. DEFINITIONS. In this chapter:

20 (1) "Governmental entity" means:

21 (A) the state;

22 (B) a political subdivision of the state,  
23 including a municipality, a county, or any kind of district; or

24 (C) an institution, board, commission, office,  
25 department, court, or other agency:

26 (i) in the executive, judicial, or  
27 legislative branch of state government, including an institution of

1 higher education as defined by Section 61.003, Education Code; or  
2 (ii) of a political subdivision of the  
3 state.

4 (2) "Status verification system" means an electronic  
5 system operated by the federal government through which a  
6 governmental entity may make an inquiry, by exercise of authority  
7 delegated under 8 U.S.C. Section 1373, to verify or ascertain the  
8 citizenship or immigration status of an individual. The term  
9 includes:

10 (A) the electronic verification of work  
11 authorization program of Section 403(a) of the federal Illegal  
12 Immigration Reform and Immigrant Responsibility Act of 1996 (Pub.  
13 L. No. 104-208, reprinted in note, 8 U.S.C. Section 1324a),  
14 operated by the United States Department of Homeland Security and  
15 known as the Basic Pilot Program or E-Verify;

16 (B) any federal verification program designated  
17 by the United States Department of Homeland Security or any other  
18 federal agency authorized to verify the work eligibility status of  
19 newly hired employees under the federal Immigration Reform and  
20 Control Act of 1986 (Pub. L. No. 99-603);

21 (C) any other independent, third-party system  
22 with an equal or higher degree of reliability as the other programs,  
23 systems, or processes described in this subdivision; and

24 (D) the Social Security Number Verification  
25 Service or another similar online verification process implemented  
26 by the United States Social Security Administration.

27 (3) "Subcontractor" includes a contract employee and

1 staffing agency.

2 Sec. 2252.152. VERIFICATION. (a) A governmental entity  
3 may not enter into a contract for the physical performance of  
4 services within this state with a contractor unless the contractor  
5 registers with and participates in a status verification system to  
6 verify the work eligibility status of all new employees.

7 (b) A contractor may not enter into a contract with a  
8 governmental entity for the physical performance of services in  
9 this state unless the contractor and all subcontractors under the  
10 contract register with and participate in a status verification  
11 system to verify the work eligibility status of all new employees.

12 Sec. 2252.153. RULES. (a) Except as provided by Subsection  
13 (b), the Texas Workforce Commission shall adopt rules and prescribe  
14 forms to implement this subchapter. The Texas Workforce Commission  
15 shall publish the proposed and adopted rules on the commission's  
16 website as well as in the Texas Register.

17 (b) The Texas Department of Transportation shall adopt  
18 rules and prescribe forms relating to state highway contracts to  
19 implement this subchapter. The Texas Department of Transportation  
20 shall publish the proposed and adopted rules on the department's  
21 website as well as in the Texas Register.

22 (b) Subchapter F, Chapter 2252, Government Code, as added by  
23 this section, applies only in relation to a contract or contract  
24 extension made on or after the effective date of this Act.

25 SECTION 2.03. (a) Subchapter B, Chapter 21, Labor Code, is  
26 amended by adding Section 21.062 to read as follows:

27 Sec. 21.062. DISCRIMINATION BASED ON NATIONAL ORIGIN. (a)

1 In this section:

2 (1) "Status verification system" has the meaning  
3 assigned by Section 619.001, Government Code.

4 (2) "Unauthorized alien" has the meaning assigned by 8  
5 U.S.C. Section 1324a(h)(3).

6 (b) An employer commits an unlawful employment practice if  
7 the employer discharges an employee working in this state who is a  
8 United States citizen or permanent resident alien while retaining  
9 an employee who the employer knows or reasonably should know is an  
10 unauthorized alien who is working in this state in a job category:

11 (1) that requires equal skill, effort, and  
12 responsibility as the job category held by the discharged employee;  
13 and

14 (2) under which work is performed in similar working  
15 conditions as in the job category held by the discharged employee.

16 (c) An employer who was enrolled in and used a status  
17 verification system to verify the employment eligibility of its  
18 employees in this state on the date of the discharge described by  
19 Subsection (b) is exempt from liability, investigation, or suit  
20 arising under this section.

21 (d) An employee discharged as described by Subsection (b)  
22 has a cause of action against the employer for violation of this  
23 section.

24 (b) Section 21.062, Labor Code, as added by this section,  
25 applies to conduct of an employer occurring on or after the  
26 effective date of this Act. Conduct occurring before that date is  
27 governed by the law in effect on the date the conduct occurred, and

1 the former law is continued in effect for that purpose.

2 ARTICLE 3. PROVISION OF PUBLIC BENEFITS

3 SECTION 3.01. (a) Subchapter Z, Chapter 51, Education  
4 Code, is amended by adding Section 51.954 to read as follows:

5 Sec. 51.954. STATE EDUCATIONAL BENEFITS: LAWFUL PRESENCE  
6 IN UNITED STATES REQUIRED. (a) Notwithstanding any other  
7 provision of this title, except as authorized under Sections 54.052  
8 and 54.053, a person who is not lawfully present in the United  
9 States is not considered to be a resident of this state for purposes  
10 of:

11 (1) receiving from this state an educational benefit,  
12 including a scholarship or other financial aid, for use in  
13 attending a public or private institution of higher education; or

14 (2) determining the amount of tuition or fees charged  
15 to the person by a public institution of higher education.

16 (b) The Texas Higher Education Coordinating Board shall  
17 adopt rules as necessary to administer this section.

18 (b) Section 54.052, Education Code, is amended to read as  
19 follows:

20 Sec. 54.052. DETERMINATION OF RESIDENT STATUS. (a)  
21 Subject to the other applicable provisions of this subchapter  
22 governing the determination of resident status, the following  
23 persons are considered residents of this state for purposes of this  
24 title:

25 (1) a person who:

26 (A) established a domicile in this state not  
27 later than one year before the census date of the academic term in

1 which the person is enrolled in an institution of higher education;  
2 and

3 (B) maintained that domicile continuously for  
4 the year preceding that census date; and

5 (2) a dependent whose parent:

6 (A) established a domicile in this state not  
7 later than one year before the census date of the academic term in  
8 which the dependent is enrolled in an institution of higher  
9 education; and

10 (B) maintained that domicile continuously for  
11 the year preceding that census date.

12 (a-1) The Texas Higher Education Coordinating Board may  
13 adopt rules as the board considers appropriate under which a person  
14 who enrolls as a first-time freshman in an institution of higher  
15 education after the 2008-2009 academic year is considered to be a  
16 resident of this state for purposes of this title if the person:

17 (1) graduated from a public or private high school in  
18 this state;

19 (2) attended a public or private high school in this  
20 state for the two school years, or the equivalent number of  
21 semesters if the person did not graduate at the end of a school  
22 year, preceding the date of graduation;

23 (3) maintained a residence continuously in this state  
24 for:

25 (A) the period prescribed by Subdivision (2); and

26 (B) the year preceding the census date of the  
27 academic term in which the person is enrolled in an institution of



1 higher education; and

2 (4) is a dependent and maintained that residence  
3 continuously with a parent of the person for the period prescribed  
4 by Subdivision (2).

5 (a-2) Subject to the other applicable provisions of this  
6 subchapter governing the determination of resident status, ~~[, and~~

7 ~~[(3)]~~ a person who enrolled as a first-time freshman  
8 in an institution of higher education before the 2009-2010 academic  
9 year is considered to be a resident of this state for purposes of  
10 this title if the person:

11 (1) ~~[(A)]~~ graduated from a public or private high  
12 school in this state or received the equivalent of a high school  
13 diploma in this state; and

14 (2) ~~[(B)]~~ maintained a residence continuously in this  
15 state for:

16 (A) ~~[(i)]~~ the three years preceding the date of  
17 graduation or receipt of the diploma equivalent, as applicable; and

18 (B) ~~[(ii)]~~ the year preceding the census date of  
19 the academic term in which the person is enrolled in an institution  
20 of higher education.

21 (b) For purposes of this section, the domicile of a  
22 dependent's parent is presumed to be the domicile of the dependent  
23 unless the person establishes eligibility for resident status under  
24 Subsection (a-1) or (a-2) ~~[(a)(3)]~~.

25 (c) Section 54.053, Education Code, is amended to read as  
26 follows:

27 Sec. 54.053. INFORMATION REQUIRED TO ESTABLISH RESIDENT

1 STATUS; EFFECT OF STATUS ON ELIGIBILITY FOR STATE FINANCIAL

2 AID. (a) A person must [~~shall~~] submit the following information  
3 to an institution of higher education to establish resident status  
4 under this subchapter:

5 (1) if the person applies for resident status under  
6 Section 54.052(a)(1):

7 (A) a statement of the dates and length of time  
8 the person has resided in this state, as relevant to establish  
9 resident status under this subchapter; and

10 (B) a statement by the person that the person's  
11 presence in this state for that period was for a purpose of  
12 establishing and maintaining a domicile;

13 (2) if the person applies for resident status under  
14 Section 54.052(a)(2):

15 (A) a statement of the dates and length of time  
16 any parent of the person has resided in this state, as relevant to  
17 establish resident status under this subchapter; and

18 (B) a statement by the parent or, if the parent is  
19 unable or unwilling to provide the statement, a statement by the  
20 person that the parent's presence in this state for that period was  
21 for a purpose of establishing and maintaining a domicile; or

22 (3) if the person applies for resident status under  
23 Section 54.052 (a-1) or (a-2) [~~(a)(3)~~]:

24 (A) a statement of the dates and length of time  
25 the person has resided in this state, as relevant to establish  
26 resident status under this subchapter; [~~and~~]

27 (B) if the person is a dependent, a statement of

1 the dates and length of time the person has resided in this state  
2 with a parent of the person, as relevant to establish resident  
3 status under this subchapter; and

4 (C) except as permitted by Subsection (b),  
5 appropriate documentation that the person:

6 (i) is a citizen of the United States or is  
7 otherwise lawfully present in the United States; or

8 (ii) has filed an application or petition  
9 with the United States Citizenship and Immigration Services to  
10 legalize the person's immigration status.

11 (b) A person may substitute for the documentation required  
12 by Subsection (a)(3)(C) [~~not a citizen or permanent resident of the~~  
13 ~~United States,~~] an affidavit stating that the person will apply or  
14 petition to legalize the person's immigration status when [~~become a~~  
15 ~~permanent resident of the United States as soon as~~] the person  
16 becomes eligible to so apply or petition and that the person  
17 understands that for the purposes of this subsection the person  
18 must apply or petition on or before:

19 (1) the first anniversary of the date of the person's  
20 enrollment at the institution if a formal process exists for the  
21 person to apply or petition to legalize immigration status without  
22 risk of deportation; or

23 (2) the first anniversary of the date the United  
24 States Citizenship and Immigration Services provides such a process  
25 if Subdivision (1) does not apply to the person when the person  
26 applies for resident status.

27 (c) To retain resident status established in accordance

1 with rules adopted under Section 54.052(a-1), a person who files an  
2 affidavit as permitted by Subsection (b) must submit to the  
3 institution of higher education, not later than the 30th day after  
4 the federal application or petition is filed, appropriate  
5 documentation that the person has timely filed an application or  
6 petition with the United States Citizenship and Immigration  
7 Services to legalize the person's immigration status.

8 (d) An institution of higher education shall maintain in a  
9 person's student records a copy of each document submitted by the  
10 person under this section.

11 (e) A person is not prohibited by Section 51.954 from  
12 receiving state financial aid, including a scholarship, if the  
13 person:

14 (1) is considered to be a resident of this state under  
15 Section 54.052; and

16 (2) submits the appropriate documentation required by  
17 Subsection (a)(3)(C)(i) or (ii).

18 (d) The Texas Higher Education Coordinating Board shall  
19 adopt any rules necessary under Section 51.954, Education Code, as  
20 added by this section, relating to requiring lawful presence in the  
21 United States as a condition for receiving state educational  
22 benefits and paying tuition and fees at resident rates, and any  
23 rules necessary to carry out the purposes of Sections 54.052 and  
24 54.053, Education Code, as amended by this section, relating to the  
25 establishment of resident status, as soon as practicable after the  
26 effective date of this Act. For that purpose, the coordinating  
27 board may adopt the initial rules in the manner provided by law for

1 emergency rules.

2 (e) Section 51.954, Education Code, as added by this  
3 section, applies beginning with state educational benefits and  
4 tuition and fee rates for the 2009 fall semester.

5 SECTION 3.02. (a) Title 10, Government Code, is amended by  
6 adding Subtitle H to read as follows:

7 SUBTITLE H. PROVISION OF PUBLIC BENEFITS BY STATE AND LOCAL  
8 GOVERNMENTS

9 CHAPTER 2351. VERIFICATION OF ELIGIBILITY FOR PUBLIC BENEFITS

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 2351.001. DEFINITIONS. In this chapter:

12 (1) "Federal public benefit" has the meaning assigned  
13 by 8 U.S.C. Section 1611.

14 (2) "Governmental entity" means an agency of this  
15 state or of a political subdivision of this state.

16 (3) "Public benefit" means a federal, state, or local  
17 public benefit.

18 (4) "State or local public benefit" has the meaning  
19 assigned by 8 U.S.C. Section 1621.

20 Sec. 2351.002. CONFLICTS WITH OTHER LAW. To the extent of a  
21 conflict between this chapter and federal law, including the  
22 federal Deficit Reduction Act of 2005 (Pub. L. No. 109-171), the  
23 federal law prevails.

24 [Sections 2351.003-2351.050 reserved for expansion]

25 SUBCHAPTER B. VERIFICATION OF APPLICANTS' LEGAL PRESENCE AND  
26 ELIGIBILITY FOR PUBLIC BENEFITS

27 Sec. 2351.051. COMPLIANCE WITH SUBCHAPTER REQUIRED BEFORE

1 PROVIDING PUBLIC BENEFITS. A governmental entity may not provide a  
2 public benefit to an individual until the governmental entity  
3 complies with this subchapter.

4 Sec. 2351.052. VERIFICATION OF LAWFUL PRESENCE OF APPLICANT  
5 FOR PUBLIC BENEFITS REQUIRED. (a) Except as provided by Section  
6 2351.053 or federal law, a governmental entity that administers a  
7 public benefit shall verify that an applicant for the public  
8 benefit who is 14 years of age or older is lawfully present in the  
9 United States.

10 (b) The governmental entity shall implement Subsection (a)  
11 without regard to the applicant's race, religion, gender,  
12 ethnicity, or national origin.

13 (c) As verification of the applicant's lawful presence in  
14 the United States, the applicant shall execute an affidavit before  
15 a notary swearing that the applicant is:

16 (1) a United States citizen or other United States  
17 national; or

18 (2) a qualified alien, as defined by 8 U.S.C. Section  
19 1641, and is lawfully present in the United States.

20 (d) The governmental entity shall provide free notary  
21 public services to an applicant for a public benefit for purposes of  
22 this section.

23 Sec. 2351.053. EXEMPTION FROM REQUIREMENT TO VERIFY LAWFUL  
24 PRESENCE OF CERTAIN APPLICANTS. A governmental entity is not  
25 required under Section 2351.052 to verify the lawful presence in  
26 the United States of an applicant if the applicant is applying for  
27 any of the following public benefits:

1           (1) a health care item or service that:

2                   (A) is necessary to treat an emergency medical  
3 condition, as defined by 42 U.S.C. Section 1396b(v)(3), of the  
4 applicant; and

5                   (B) is not related to an organ transplant  
6 procedure;

7           (2) short-term, noncash, in-kind emergency disaster  
8 relief;

9           (3) public health assistance for immunizations or for  
10 testing and treatment of a symptom of a communicable disease,  
11 regardless of whether the symptom is caused by a communicable  
12 disease;

13           (4) a program, service, or other assistance, including  
14 crisis counseling and intervention, short-term shelter, and  
15 assistance provided through a soup kitchen, that:

16                   (A) is specified by the United States attorney  
17 general in the attorney general's sole and unreviewable discretion  
18 after consultation with appropriate federal agencies;

19                   (B) delivers in-kind assistance at the community  
20 level, including through a public or private nonprofit agency;

21                   (C) does not condition the provision of  
22 assistance, the amount of assistance provided, or the cost of the  
23 assistance provided on the recipient's income or resources; and

24                   (D) is necessary for the protection of life or  
25 safety; or

26           (5) any other public benefit for which lawful presence  
27 in the United States is not required by:

1           (A) a federal or state law or regulation; or

2           (B) a local order or ordinance.

3           Sec. 2351.054. VERIFICATION OF ELIGIBILITY OF CERTAIN  
4 APPLICANTS FOR PUBLIC BENEFITS REQUIRED. (a) A governmental  
5 entity shall verify the eligibility of an applicant for a public  
6 benefit who executes an affidavit under Section 2351.052 for that  
7 public benefit using:

8           (1) the Systematic Alien Verification for  
9 Entitlements (SAVE) program operated by the United States  
10 Department of Homeland Security; or

11           (2) an equivalent program designated by that  
12 department.

13           (b) A governmental entity shall presume that an applicant  
14 for a public benefit who executes an affidavit under Section  
15 2351.052 is lawfully present in the United States for purposes of  
16 this subchapter until the governmental entity verifies the  
17 applicant's eligibility in the manner required by Subsection (a).

18           Sec. 2351.055. ALTERNATE PROCEDURES FOR EFFICIENCY OR TO  
19 REDUCE HARDSHIP AUTHORIZED. A governmental entity may adopt rules  
20 that provide procedures that vary from the requirements of this  
21 subchapter if the governmental entity's procedures:

22           (1) demonstrably improve efficiency or reduce delay in  
23 verifying that an applicant is eligible for a public benefit, as  
24 compared to the requirements of this subchapter; or

25           (2) apply only for an applicant who is a legal resident  
26 of this state and with respect to whom the governmental entity  
27 determines that the requirements of this subchapter would impose an



1 unusual hardship because of the applicant's circumstances.

2 [Sections 2351.056-2351.100 reserved for expansion]

3 SUBCHAPTER C. REPORTING REQUIREMENTS

4 Sec. 2351.101. REPORTING OF ERRORS AND DELAYS. (a) A  
5 governmental entity shall monitor the occurrence of errors made,  
6 and any significant delays caused, by the eligibility verification  
7 program used under Section 2351.054.

8 (b) Not later than December 1 of each year, the governmental  
9 entity shall submit a report to the United States Department of  
10 Homeland Security regarding the occurrence during the previous year  
11 of errors and delays described by Subsection (a). The report must  
12 include:

13 (1) a determination of whether the eligibility  
14 verification program is wrongfully denying public benefits to  
15 individuals who are lawfully present in the United States; and

16 (2) recommendations for ensuring that the errors and  
17 delays do not continue to occur.

18 (c) The governmental entity shall make the report submitted  
19 under Subsection (b) available to the public.

20 Sec. 2351.102. ANNUAL COMPLIANCE REPORT. Not later than  
21 December 1 of each year, each governmental entity that administers  
22 a state or local public benefit shall submit to the governor,  
23 lieutenant governor, and the speaker of the house of  
24 representatives a report regarding the governmental entity's  
25 compliance with this chapter.

26 [Sections 2351.103-2351.150 reserved for expansion]

1                    SUBCHAPTER D. ENFORCEMENT

2                    Sec. 2351.151. CRIMINAL PENALTY FOR FRAUDULENT AFFIDAVIT.

3                    (a) An individual commits an offense if the individual knowingly  
4                    makes a false or otherwise fraudulent statement in an affidavit  
5                    executed under Section 2351.052.

6                    (b) An offense under this section is a state jail felony.

7                    (c) If conduct that constitutes an offense under this  
8                    section also constitutes an offense under any other law, the actor  
9                    may be prosecuted under this section or the other law.

10                   Sec. 2351.152. REPORTING OF FEDERAL CRIMINAL CONDUCT. If  
11                   an applicant for a public benefit submits to a governmental entity  
12                   an affidavit executed under Section 2351.052 containing a statement  
13                   that constitutes a false and wilful representation of United States  
14                   citizenship under 18 U.S.C. Section 911, the governmental entity  
15                   shall report that conduct to the United States attorney for the  
16                   district in which the affidavit was submitted.

17                   (b) Subtitle H, Title 10, Government Code, as added by this  
18 section, applies to an application for a federal, state, or local  
19 public benefit that is pending or filed on or after the effective  
20 date of this Act.

21                   (c) If before implementing any provision of this section a  
22 state agency determines that a waiver or authorization from a  
23 federal agency is necessary for implementation of that provision,  
24 the agency affected by the provision shall request the waiver or  
25 authorization and may delay implementing that provision until the  
26 waiver or authorization is granted.

ARTICLE 4. ENFORCEMENT OF FEDERAL IMMIGRATION LAWS AND OTHER LAWS  
RELATING TO IMMIGRANTS

SECTION 4.01. (a) Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.245 to read as follows:

Art. 2.245. SHERIFF OR OTHER OFFICER TO DETERMINE IMMIGRATION STATUS OF CERTAIN DEFENDANTS. (a) In this section, "intoxication offense" means an offense under Section 49.04, 49.05, 49.06, or 49.065, Penal Code.

(b) The sheriff or any other officer in charge of a correctional facility in which a defendant is confined awaiting trial for a felony or an intoxication offense shall immediately, on receiving the defendant, make a reasonable effort to determine the defendant's citizenship status.

(c) If the sheriff or other officer has reason to believe the defendant is a foreign national, the sheriff or officer shall make a reasonable effort to verify that:

(1) the defendant has been lawfully admitted to the United States; and

(2) if lawfully admitted, the defendant's lawful status has not expired.

(d) If the sheriff or other officer cannot verify the defendant's immigration status under Subsection (c) from documents in the defendant's possession, the sheriff or other officer, not later than 48 hours after the defendant is received at the correctional facility, shall contact the Law Enforcement Support Center of the United States Department of Homeland Security, or other office or agency designated for that purpose by the

1 Department of Homeland Security, to verify the defendant's  
2 immigration status.

3 (e) The sheriff or other officer shall notify the judge or  
4 magistrate authorized to grant or deny the defendant's release on  
5 bail under Chapter 17 and the Department of Homeland Security if the  
6 sheriff or officer determines that:

7 (1) the defendant was not lawfully admitted to the  
8 United States; or

9 (2) although lawfully admitted, the defendant's lawful  
10 status has expired.

11 (f) The Commission on Jail Standards shall prepare and issue  
12 guidelines and procedures to ensure compliance with this section.

13 (b) Chapter 17, Code of Criminal Procedure, is amended by  
14 adding Article 17.153 to read as follows:

15 Art. 17.153. BAIL FOR CERTAIN IMMIGRANTS. If under Article  
16 2.245 a sheriff or other officer notifies a judge or magistrate that  
17 a defendant was not lawfully admitted to the United States or that,  
18 although lawfully admitted, the defendant's lawful status has  
19 expired, there is a rebuttable presumption at any proceeding before  
20 the judge or magistrate concerning the defendant's release on bail  
21 that the defendant is at risk of flight.

22 (c) Article 2.245, Code of Criminal Procedure, as added by  
23 this section, applies only to a defendant admitted to a  
24 correctional facility on or after the effective date of this Act. A  
25 defendant admitted to a correctional facility before the effective  
26 date of this Act is covered by the law in effect on the date the  
27 defendant was admitted, and the former law is continued in effect

1 for that purpose.

2 SECTION 4.02. Subchapter D, Chapter 411, Government Code,  
3 is amended by adding Section 411.0422 to read as follows:

4 Sec. 411.0422. FRAUDULENT IDENTIFICATION UNIT. (a) The  
5 director shall create a fraudulent identification unit to be  
6 operated by the department.

7 (b) The fraudulent identification unit shall investigate  
8 and arrest individuals determined to have committed offenses  
9 involving the production, sale, or distribution of fraudulent  
10 documents or instruments that purport to contain a person's  
11 identifying information. The unit shall primarily focus on the  
12 investigation of the production of fraudulent documents or  
13 instruments for use by individuals who are unlawfully present in  
14 this state.

15 (c) The department shall employ sufficient personnel to  
16 maintain efficient operation of the unit.

17 SECTION 4.03. Section 421.071, Government Code, is amended  
18 to read as follows:

19 Sec. 421.071. COOPERATION AND ASSISTANCE; IMMIGRATION. (a)  
20 A state or local agency that performs a homeland security activity  
21 or a nongovernmental entity that contracts with a state or local  
22 agency to perform a homeland security activity shall cooperate with  
23 and assist the office of the governor, the Homeland Security  
24 Council, the Texas Infrastructure Protection Communications  
25 Center, and the National Infrastructure Protection Center in the  
26 performance of their duties under this chapter and other state or  
27 federal law.

1       (b) A local agency may not adopt a rule, policy, or  
2 ordinance that limits or prohibits an agency official, employee, or  
3 law enforcement officer from communicating or cooperating with  
4 federal officials with regard to the immigration status of an  
5 individual in this state.

6       (c) Notwithstanding any other provision of law, a state or  
7 local agency in this state may not prohibit or in any way restrict  
8 an agency official, employee, or law enforcement officer from:

9               (1) maintaining information regarding the citizenship  
10 or immigration status of an individual; or

11               (2) sending to or receiving from the United States  
12 Department of Homeland Security or any other governmental agency  
13 the information described by Subdivision (1).

14       (d) A resident of this state may bring an action in a  
15 district court alleging a violation of Subsection (b) or (c) to  
16 compel a state or local agency to comply with Subsection (b) or (c)  
17 or with 8 U.S.C. Section 1373.

18       SECTION 4.04. Subchapter Z, Chapter 421, Government Code,  
19 is amended by adding Section 421.902 to read as follows:

20       Sec. 421.902. IMMIGRATION ENFORCEMENT. (a) Subject to  
21 approval by the governor, the attorney general of this state shall  
22 enter into an agreement under 8 U.S.C. Section 1357(g) with the  
23 United States Office of the Attorney General or other appropriate  
24 federal agency relating to the enforcement by this state of federal  
25 immigration and customs laws in this state, including detentions,  
26 removals, and investigations.

27       (b) The agreement entered into under Subsection (a) shall be

1 signed on behalf of this state by the attorney general of this state  
2 and the governor or as otherwise required by the appropriate  
3 federal agency.

4 SECTION 4.05. Chapter 20A, Penal Code, is amended by adding  
5 Section 20A.03 to read as follows:

6 Sec. 20A.03. UNLAWFUL TRANSPORT OR CONCEALMENT OF ILLEGAL  
7 ALIEN. (a) In this section, "illegal alien" means a person who:

8 (1) is not a citizen or national of the United States;  
9 and

10 (2) is unlawfully present in the United States  
11 according to the terms of 8 U.S.C. Section 1101 et seq.

12 (b) A person commits an offense if the person, with  
13 recklessness as to another person's status as an illegal alien:

14 (1) transports the illegal alien in furtherance of the  
15 alien's unlawful presence in the United States; or

16 (2) conceals the illegal alien from detection by  
17 local, state, or federal law enforcement authorities.

18 (c) An offense under this section is a state jail felony.

19 (d) If conduct constituting an offense under this section  
20 also constitutes an offense under another section of this code, the  
21 actor may be prosecuted under either section.

22 (e) It is an exception to the application of Subsection  
23 (b)(1) that the offense occurred in the provision of:

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

26 (2) regulated public health services by a private  
27 charity using private funds.

1                                   ARTICLE 5. EFFECTIVE DATE  
2                   SECTION 5.01. This Act takes effect September 1, 2009.