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LEGISLATURE OF THE STATE OF IDAHO  
Sixtieth Legislature Second Regular Session - 2010  
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IN THE \_\_\_\_\_

BILL NO. \_\_\_\_\_

BY \_\_\_\_\_

1 AN ACT  
2 RELATING TO EMPLOYMENT OF UNAUTHORIZED ALIENS; TO PROVIDE LEGISLATIVE  
3 FINDINGS; AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW  
4 CHAPTER 3, TITLE 44, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO PROVIDE  
5 DEFINITIONS, TO PROVIDE PROVISIONS RELATING TO VERIFICATION, TO  
6 PROHIBIT EMPLOYMENT OF UNAUTHORIZED ALIENS, TO PROVIDE FOR CERTAIN  
7 FILINGS, TO PROVIDE PENALTIES, TO PROVIDE THAT NO BUSINESS ENTITY OR  
8 EMPLOYER SHALL KNOWINGLY EMPLOY ANY UNAUTHORIZED ALIEN TO PERFORM  
9 WORK IN THIS STATE, TO PROVIDE FOR A CONDITION FOR THE AWARD OF  
10 CERTAIN CONTRACTS, TO PROVIDE PROVISIONS RELATING TO PARTICIPATION  
11 IN FEDERAL WORK AUTHORIZATION PROGRAMS, TO PROVIDE FOR AN AFFIRMATIVE  
12 DEFENSE AND FOR AN EXCEPTION, TO PROVIDE PROVISIONS RELATING TO  
13 MISCLASSIFICATION OF A WORKER, TO PROVIDE PROVISIONS RELATING TO THE  
14 FILING AND INVESTIGATION OF A COMPLAINT, TO PROVIDE FOR CERTAIN POWERS,  
15 TO PROVIDE A BURDEN OF PROOF, TO PROVIDE FOR AN INJUNCTION, TO PROVIDE  
16 FOR ENFORCING A JUDGMENT AND TO PROVIDE FOR PENALTIES, TO PROVIDE  
17 PROVISIONS RELATING TO THE ENFORCEMENT OF LAWS, TO PROVIDE PROVISIONS  
18 RELATING TO FILING A COMPLAINT, TO PROVIDE PROVISIONS RELATING TO A  
19 CORRECTION OF A VIOLATION, TO PROVIDE FOR PENALTIES, TO PROVIDE FOR  
20 CHALLENGE TO ENFORCEMENT, TO PROVIDE FOR DISMISSAL OF A CASE AND A  
21 PUBLIC REPORT, TO PROVIDE FOR A DETERMINATION BY THE FEDERAL GOVERNMENT  
22 AND FOR A REBUTTABLE PRESUMPTION, TO PROVIDE THAT CERTAIN COMPENSATION  
23 SHALL NOT BE ALLOWED AS A BUSINESS EXPENSE DEDUCTION, TO PROVIDE FOR  
24 AN EXCEPTION AGAINST CERTAIN CLAIMS, TO PROHIBIT CERTAIN TRAFFICKING  
25 AND HARBORING, TO PROVIDE FOR PENALTIES, TO PROVIDE FOR CERTAIN  
26 RIGHTS AFFORDED BY FEDERAL LAW, TO PROHIBIT CERTAIN ACTS RELATING TO  
27 CONCEALING, HARBORING OR SHIELDING FROM DETECTION ANY ALIEN, TO DEFINE  
28 A TERM, TO PROVIDE FOR FELONY HARBORING, TO PROVIDE FOR PENALTIES, TO  
29 PROVIDE FOR RULES, TO PROVIDE FOR A DATABASE, TO PROHIBIT MUNICIPAL  
30 SANCTUARIES, AND TO PROVIDE FOR REVIEW OF LAWS; AMENDING TITLE 44,  
31 IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 4, TITLE 44, IDAHO CODE,  
32 TO PROVIDE A SHORT TITLE, TO PROVIDE DEFINITIONS, TO PROVIDE FOR THE  
33 ROLE OF THE IDAHO STATE POLICE, TO PROHIBIT THE ADOPTION OF A SANCTUARY  
34 POLICY, TO PROVIDE PROVISIONS RELATING TO A COMPLAINT, TO PROVIDE FOR  
35 REQUEST FOR AN ATTORNEY GENERAL OPINION, TO PROVIDE PROVISIONS RELATING  
36 TO CERTAIN GOVERNMENTAL ENTITIES AND CERTAIN MONEYS, TO PROVIDE FOR  
37 CERTAIN WRITTEN NOTICE, TO PROVIDE FOR CERTAIN COOPERATION WITH THE  
38 UNITED STATES BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, TO PROVIDE  
39 FOR THE COLLECTION AND SHARING OF CERTAIN INFORMATION, TO PROVIDE  
40 PROVISIONS RELATING TO SENDING, MAINTAINING OR EXCHANGING CERTAIN  
41 INFORMATION, TO PROHIBIT CERTAIN FUNDING OR GRANTS, TO PROVIDE FOR  
42 LIMITATION OF APPLICATION OF LAWS, TO PROVIDE PROVISIONS RELATING TO  
43 BAIL, TO PROVIDE FOR DETENTION AND NOTIFICATION, TO PROVIDE PROVISIONS  
44 RELATING TO THE RESTRICTION OF DRIVER'S LICENSES, TO PROVIDE FOR THE

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1 EXCLUSION OF CERTAIN BENEFITS, TO DEFINE A TERM, TO REQUIRE CERTAIN  
2 PROOF, TO PROVIDE FOR AN AFFIDAVIT, TO PROVIDE FOR VERIFICATION AND TO  
3 PROVIDE AN EXCEPTION; AND PROVIDING AN EFFECTIVE DATE.

4 Be It Enacted by the Legislature of the State of Idaho:

5 SECTION 1. LEGISLATIVE FINDINGS. The Legislature finds that this  
6 act complies with the requirements of 8 U.S.C. section 1324a(b) (2),  
7 by discouraging the knowing employment of unauthorized aliens through  
8 licensing and similar laws. It is the intention of the Legislature to ensure  
9 that those who are employed in Idaho are legally authorized to work in this  
10 state. The Legislature recognizes that there are industries in Idaho that  
11 are in need of temporary and seasonal workers, and that historically these  
12 workers have come to the United States from other countries through legal  
13 guest worker programs. While the Legislature encourages our congressional  
14 delegation to pursue development of a guest worker program to meet the needs  
15 of Idaho employers, such a program should not reward those who have already  
16 broken our laws or provide any form of amnesty.

17 SECTION 2. That Title 44, Idaho Code, be, and the same is hereby amended  
18 by the addition thereto of a NEW CHAPTER, to be known and designated as  
19 Chapter 3, Title 44, Idaho Code, and to read as follows:

20 CHAPTER 3  
21 EMPLOYMENT OF UNAUTHORIZED ALIENS

22 44-301. SHORT TITLE. This chapter may be cited as the "Employment of  
23 Unauthorized Aliens Act."

24 44-302. DEFINITIONS. In this chapter, unless the context otherwise  
25 requires:

26 (1) "Agency" means any agency, department, board or commission of this  
27 state or a county or city that issues a permit or license for purposes of  
28 operating a business in this state.

29 (2) "Business entity" means any person or group of persons performing  
30 or engaging in any activity, enterprise, profession, or occupation for  
31 gain, benefit, advantage, or livelihood. The term "business entity" shall  
32 include, but not be limited to, self-employed individuals, partnerships,  
33 corporations, contractors, and subcontractors. The term "business entity"  
34 shall include any business entity that possesses a business permit, license,  
35 or tax certificate issued by the state, any business entity that is exempt by  
36 law from obtaining such a business permit, and any business entity that is  
37 operating unlawfully without such a business permit.

38 (3) "Contractor" means a person, employer, or business entity that  
39 enters into an agreement to perform any service or work or to provide a  
40 certain product in exchange for valuable consideration. This definition  
41 shall include, but not be limited to, a general contractor, subcontractor,  
42 independent contractor, contract employee, project manager, or a recruiting  
43 or staffing entity.

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1 (4) "Employee" means any person who performs services or labor for an  
2 employer in the state for wages or other remuneration. For the purposes  
3 of this chapter, "employee" shall not refer to a person performing casual  
4 domestic labor in or around one's personal abode. For the purposes of  
5 this chapter an employer-employee relationship does not exist between a  
6 contractor and the employees of a subcontractor.

7 (5) "Employer" means an individual, corporation, limited liability  
8 company, partnership or other recognized legal entity, including a public  
9 employer, that transacts business in this state, that has a permit or license  
10 issued by an agency in this state and employs one (1) or more individuals  
11 who perform employment in this state. Employer includes the state of Idaho,  
12 any political subdivisions of the state and self-employed persons. Where  
13 there are two (2) or more putative employers, any person or entity taking a  
14 business tax deduction for the employee in question shall be considered an  
15 employer of that person for purposes of this chapter.

16 (6) "Employment" means the act of employing or state of being employed,  
17 engaged, or hired to perform work or service of any kind or character within  
18 the state of Idaho.

19 (7) "E-Verify," means the electronic verification of work  
20 authorization program of the illegal immigration reform and immigrant  
21 responsibility act of 1996, P.L. 104-208, division C, section 403(a);  
22 8 U.S.C. section 1324a, and operated by the United States department  
23 of homeland security or a successor program established by the federal  
24 government.

25 (8) "Federal work authorization program" means any of the electronic  
26 verification of work authorization programs, such as E-Verify, operated by  
27 the United States department of homeland security or an equivalent federal  
28 work authorization program operated by the United States department of  
29 homeland security to verify information of newly hired employees, under the  
30 immigration reform and control act of 1986 (IRCA), P.L. 99-603.

31 (9) "Knowing," "knowingly" or "knowledge" means direct, clear and  
32 express, actual knowledge, as distinguished from constructive knowledge. A  
33 person acts knowingly or with knowledge:

34 (a) With respect to the person's conduct or to attendant circumstances  
35 when the person is aware of the nature of the person's conduct or that  
36 those circumstances exist; or

37 (b) With respect to a result of the person's conduct when the person  
38 is aware that the person's conduct is practically certain to cause that  
39 result.

40 (10) "Knowingly employ an unauthorized alien" means the actions  
41 described in 8 U.S.C. section 1324a. This term shall be used and interpreted  
42 consistently with 8 U.S.C. section 1324a and any applicable federal rules  
43 and regulations.

44 (11) "Legal employment affidavit" means an affidavit that indicates  
45 that an employer does not knowingly employ an unauthorized alien, that an  
46 employer will not direct any other person to employ an unauthorized alien  
47 and that an employer makes a good faith effort to comply with all federal and  
48 state laws regarding the authorization for employment in the United States  
49 of every employee who is employed by the employer in this state.

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1 (12) "License" or "permit" means any agency permit, license,  
2 certificate, approval, registration, charter or similar form of  
3 authorization that is required by law and that is issued by any agency for the  
4 purposes of operating a business in this state but does not include a license  
5 or permit issued by the department of water resources or the department of  
6 environmental quality and does not include any professional license issued  
7 pursuant to title 54, Idaho Code, or the Idaho state bar association.

8 (13) "Political subdivision" means any agency or unit of this state  
9 which now is, or hereafter shall be, authorized to levy taxes or empowered to  
10 cause taxes to be levied.

11 (14) "Public employer" means every department, agency, or  
12 instrumentality of the state or political subdivision of the state.

13 (15) "Unauthorized alien" means an alien who does not have the legal  
14 right or authorization under federal law, to work in the United States as  
15 defined in 8 U.S.C. section 1324a(h)(3).

16 (16) "Work" means any job, task, employment, labor, personal services,  
17 or any other activity for which compensation is provided, expected, or  
18 due including, but not limited to, all activities conducted by business  
19 entities.

20 44-303. VERIFICATION OF EMPLOYMENT ELIGIBILITY -- E-VERIFY --  
21 PENALTIES. (1) After January 1, 2011, every employer, after hiring an  
22 employee, shall verify the employment eligibility of the employee through  
23 E-Verify.

24 (2) An employer shall not employ an alien knowing the alien is an  
25 unauthorized alien, as defined in 8 U.S.C. section 1324a(h)(3) with respect  
26 to such employment.

27 (3) Every employer doing business in this state who employs five (5)  
28 or more employees shall, if applicable, submit federal 1099 miscellaneous  
29 forms to the department of revenue. Such forms shall be submitted to the  
30 department of revenue within the timelines established for the filing of  
31 Idaho 1099 forms.

32 (4) Any employer who intentionally, on five (5) or more occasions,  
33 fails to submit information required under the provisions of subsection (3)  
34 of this section, shall be fined not more than two hundred dollars (\$200) for  
35 each time the employer fails to submit the information on or after the fifth  
36 occurrence.

37 44-304. KNOWINGLY EMPLOY UNAUTHORIZED ALIEN -- PROHIBITION. (1) No  
38 business entity or employer shall knowingly employ, hire for employment, or  
39 continue to employ an unauthorized alien to perform work within the state of  
40 Idaho.

41 (2) As a condition for the award of any contract or grant in excess of  
42 five thousand dollars (\$5,000) by the state or by any political subdivision  
43 of the state to a business entity, or for any business entity receiving  
44 a state-administered or subsidized tax credit, tax abatement, or loan  
45 from the state, the business entity shall affirm its enrollment and  
46 participation in the E-Verify program, by sworn affidavit and provision of  
47 documentation, affirm its enrollment and participation in a federal work  
48 authorization program with respect to the employees working in connection

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1 with the contracted services. Every such business entity shall also sign an  
2 affidavit affirming that it does not knowingly employ any person who is an  
3 unauthorized alien in connection with the contracted services.

4 (3) All recipients of contracts, and public employers shall enroll and  
5 actively participate in a federal work authorization program.

6 (4) An employer may enroll and participate in a federal work  
7 authorization program and shall verify the employment eligibility of  
8 every employee in the employer's hire whose employment commences after the  
9 employer enrolls in a federal work authorization program. The employer  
10 shall retain a copy of the dated verification report received from the  
11 federal government. Any business entity that participates in such program  
12 shall have an affirmative defense that such business entity has not violated  
13 the provisions of subsection (1) of this section.

14 (5) A general contractor or subcontractor of any tier shall not be  
15 liable under the provisions of this chapter when such general contractor  
16 or subcontractor contracts with its direct subcontractor who violates  
17 the provisions of subsection (1) of this section, if the contract binding  
18 the contractor and subcontractor affirmatively states that the direct  
19 subcontractor is not knowingly in violation of the provisions of subsection  
20 (1) of this section and shall not henceforth be in such violation and the  
21 contractor or subcontractor receives a sworn affidavit under the penalty of  
22 perjury attesting to the fact that the direct subcontractor's employees are  
23 lawfully present in the United States.

24 44-305. VIOLATION AND INVESTIGATION. (1) An employer knowingly  
25 misclassifies a worker if that employer fails to claim the worker as an  
26 employee but knows that the worker is an employee.

27 (2) The attorney general may investigate alleged or suspected  
28 violations of the provisions of this chapter and, in addition to powers  
29 provided for elsewhere in Idaho Code, shall have all powers provided for  
30 in this chapter, in connection with any investigation of an alleged or  
31 suspected violation of any provision of this chapter. The attorney general  
32 may serve and enforce subpoenas related to the enforcement of this chapter.

33 44-306. BURDEN OF PROOF. In any action brought under the provisions of  
34 this chapter, the state shall have the burden of proving that the employer  
35 misclassified the worker.

36 44-307. ACTION FOR INJUNCTION. Whenever the attorney general has  
37 reason to believe that an employer is engaging in any conduct that would be  
38 a violation of any provision of this chapter, the attorney general may seek  
39 an injunction prohibiting the employer from engaging in such conduct. The  
40 attorney general may bring an action for injunctive relief in the court of  
41 any county where the alleged violation is occurring or about to occur.

42 44-308. ENFORCING THE JUDGMENT. If a court determines that an employer  
43 has knowingly misclassified a worker, the court shall enter a judgment  
44 in favor of the state and award penalties in the amount of fifty dollars  
45 (\$50.00) per day per misclassified worker up to a maximum of fifty thousand

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1 dollars (\$50,000). The attorney general may enter into a consent judgment  
2 with any person alleged to have violated any provision of this chapter.

3 44-309. COMPLAINT -- ENFORCEMENT. (1) The attorney general shall  
4 enforce the requirements of the provisions of this chapter.

5 (2) An enforcement action shall be initiated by means of a written,  
6 signed complaint under penalty of perjury as defined in section 18-5401,  
7 Idaho Code, to the attorney general submitted by any state official,  
8 business entity, or state resident. A valid complaint shall include an  
9 allegation which describes the alleged violator as well as the actions  
10 constituting the violation, and the date and location where such actions  
11 occurred. A complaint which alleges a violation solely or primarily on the  
12 basis of national origin, ethnicity, or race shall be deemed invalid and  
13 shall not be enforced.

14 (3) Upon receipt of a valid complaint, the attorney general shall,  
15 within fifteen (15) business days, request identity information from the  
16 business entity regarding any persons alleged to be unauthorized aliens.  
17 Such request shall be made by certified mail. The attorney general shall  
18 direct the applicable municipal or county governing body to suspend any  
19 applicable license, permit, or exemptions of any business entity which  
20 fails, within fifteen (15) business days after receipt of the request, to  
21 provide such information.

22 (4) The attorney general, after receiving the requested identity  
23 information from the business entity, shall submit identity data required  
24 by the federal government to verify, under 8 U.S.C. section 1373, the  
25 immigration status of such persons, and shall provide the business entity  
26 with written notice of the results of the verification request:

27 (a) If the federal government notifies the attorney general that an  
28 employee is authorized to work in the United States, the attorney  
29 general shall take no further action on the complaint;

30 (b) If the federal government notifies the attorney general that an  
31 employee is not authorized to work in the United States, the attorney  
32 general shall proceed on the complaint as provided in subsection (5) of  
33 this section;

34 (c) If the federal government notifies the attorney general that it  
35 is unable to verify whether an employee is authorized to work in the  
36 United States, the attorney general shall take no further action on the  
37 complaint until a verification from the federal government concerning  
38 the status of the individual is received. If the federal government  
39 notifies the attorney general that it is tentatively unable to confirm  
40 whether the employee is authorized to work in the United States and  
41 that the employee may provide additional information or documentation  
42 to the federal government, the attorney general shall so inform the  
43 employee and shall allow the employee the time specified by the federal  
44 government for providing additional information or documentation.  
45 At no point shall any state official attempt to make an independent  
46 determination of any alien's legal status without verification from the  
47 federal government.

48 (5) (a) If the federal government notifies the attorney general that  
49 an employee is not authorized to work in the United States, and the

1 employer of the unauthorized alien participates in a federal work  
2 authorization program, there shall be a rebuttable presumption that  
3 the employer has met the requirements for an affirmative defense under  
4 the provisions of section 44-304(4), Idaho Code, and the employer shall  
5 comply with the provisions of subsection (6) of this section.

6 (b) If the federal government notifies the attorney general that an  
7 employee is not authorized to work in the United States, the attorney  
8 general shall bring a civil action in the county wherein the business  
9 entity is located if the attorney general reasonably believes the  
10 business entity knowingly violated the provisions of subsection (1) of  
11 section 44-304, Idaho Code.

12 (i) If the court finds that a business entity did not knowingly  
13 violate the provisions of subsection (1) of section 44-304, Idaho  
14 Code, the employer shall have fifteen (15) business days to comply  
15 with the provisions of subsection (6) (a) and (6) (b) (i) of this  
16 section. If the entity fails to do so, the court shall direct  
17 the applicable municipal or county governing body to suspend the  
18 business permit, if such exists, and any applicable licenses  
19 or exemptions of the entity until the entity complies with the  
20 provisions of subsection (6) of this section;

21 (ii) If the court finds that a business entity knowingly violated  
22 the provisions of subsection (1) of section 44-304, Idaho  
23 Code, the court shall direct the applicable municipal or county  
24 governing body to suspend the business permit, if such exists,  
25 and any applicable licenses or exemptions of such business entity  
26 for fourteen (14) days. Permits, licenses, and exemptions shall  
27 be reinstated for entities who comply with the provisions of  
28 subsection (6) of this section at the end of the fourteen (14) day  
29 period.

30 (6) The correction of a violation with respect to the employment of an  
31 unauthorized alien shall include the following actions:

32 (a) (i) The business entity terminates the unauthorized  
33 alien's employment. If the business entity attempts to terminate  
34 the unauthorized alien's employment and such termination is  
35 challenged in a court of the state of Idaho, the fifteen (15)  
36 business day period for providing information to the attorney  
37 general referenced in subsection (3) of this section shall be  
38 tolled while the business entity pursues the termination of the  
39 unauthorized alien's employment in such forum; or

40 (ii) The business entity, after acquiring additional  
41 information from the employee, requests a secondary or  
42 additional verification by the federal government of the  
43 employee's authorization, under the procedures of a federal work  
44 authorization program. While this verification is pending, the  
45 fifteen (15) business day period for providing information to the  
46 attorney general referenced in subsection (3) of this section  
47 shall be tolled; and

48 (b) A legal representative of the business entity submits, at an office  
49 designated by the attorney general, the following:

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1 (i) A sworn affidavit stating that the violation has ended that  
2 shall include a description of the specific measures and actions  
3 taken by the business entity to end the violation, and the name,  
4 address, and other adequate identifying information for any  
5 unauthorized aliens related to the complaint; and

6 (ii) Documentation acceptable to the attorney general which  
7 confirms that the business entity has enrolled in and is  
8 participating in a federal work authorization program.

9 (7) The suspension of a business license or licenses under the  
10 provisions of subsection (5) of this section shall terminate one (1)  
11 business day after a legal representative of the business entity submits  
12 the affidavit and other documentation required under the provisions of  
13 subsection (6) of this section following any period of restriction required  
14 under the provisions of subsection (5) of this section.

15 (8) For an entity that violates the provisions of subsection (1) of  
16 section 44-304, Idaho Code, for a second time, the court shall direct the  
17 applicable municipal or county governing body to suspend, for one (1)  
18 year, the business permit, if such exists, and any applicable license or  
19 exemptions of the business entity. For a subsequent violation, the court  
20 shall direct the applicable municipal or county governing body to forever  
21 suspend the business permit, if such exists, and any applicable license or  
22 exemptions of the business entity.

23 (9) In addition to the penalties in subsections (5) and (8) of this  
24 section:

25 (a) Upon the first violation of the provisions of subsection (1) of  
26 section 44-304, Idaho Code, by any business entity awarded a state  
27 contract or grant or receiving a state-administered tax credit, tax  
28 abatement, or loan from the state, the business entity shall be deemed  
29 in breach of contract and the state may terminate the contract and  
30 suspend or debar the business entity from doing business with the state  
31 for a period of three (3) years. Upon such termination, the state may  
32 withhold up to twenty-five percent (25%) of the total amount due to the  
33 business entity;

34 (b) Upon a second or subsequent violation of the provisions of  
35 subsection (1) of section 44-304, Idaho Code, by any business entity  
36 awarded a state contract or grant or receiving a state-administered  
37 tax credit, tax abatement, or loan from the state, the business entity  
38 shall be deemed in breach of contract and the state may terminate the  
39 contract and permanently suspend or debar the business entity from  
40 doing business with the state. Upon such termination, the state may  
41 withhold up to twenty-five percent (25%) of the total amount due to the  
42 business entity.

43 (10) The provisions of this chapter shall not be construed to deny  
44 any procedural mechanisms or legal defenses included in a federal work  
45 authorization program.

46 (11) Any business entity subject to a complaint and subsequent  
47 enforcement under the provisions of this chapter, or any employee of such a  
48 business entity, may challenge the enforcement of this section with respect  
49 to such entity or employee in the courts of the state of Idaho.

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1 (12) If the court finds that any complaint is frivolous in nature or  
2 finds no probable cause to believe that there has been a violation, the court  
3 shall dismiss the case. For purposes of this subsection, "frivolous" shall  
4 mean a complaint not shown by clear and convincing evidence to be valid.  
5 Any person who submits a frivolous complaint shall be liable for actual,  
6 compensatory, and punitive damages to the alleged violator for holding the  
7 alleged violator before the public in a false light. If the court finds that  
8 a complaint is frivolous or that there is not probable cause to believe there  
9 has been a violation, the attorney general shall issue a public report to the  
10 complainant and the alleged violator stating with particularity its reasons  
11 for dismissal of the complaint. Upon such issuance, the complaint and all  
12 materials relating to the complaint shall be a public record as defined in  
13 chapter 3, title 9, Idaho Code.

14 (13) The determination of whether a worker is an unauthorized alien  
15 shall be made by the federal government. A determination of such status of an  
16 individual by the federal government shall create a rebuttable presumption  
17 as to that individual's status in any judicial proceedings brought under  
18 this section. The court may take judicial notice of any verification of  
19 an individual's status previously provided by the federal government and  
20 may request the federal government to provide automated or testimonial  
21 verification.

22 (14) Compensation, whether in money or in kind or in services, knowingly  
23 provided to any unauthorized alien shall not be allowed as a business expense  
24 deduction from any income or business taxes of this state.

25 (15) Any business entity which terminates an employee in accordance  
26 with this section shall not be liable for any claims made against the  
27 business entity under chapter 59, title 67, Idaho Code, related to such  
28 termination.

29 44-310. TRAFFICKING AND HARBORING PROHIBITED -- PENALTIES. (1) It  
30 shall be unlawful for any person to knowingly transport, move, or attempt to  
31 transport in the state of Idaho any illegal alien who is not lawfully present  
32 in the United States, according to the terms of 8 U.S.C. section 1101, et  
33 seq., for the purposes of trafficking in violation of chapter 86, title 18,  
34 Idaho Code, drug trafficking in violation of chapter 27, title 37, Idaho  
35 Code, prostitution in violation of chapter 56, title 18, Idaho Code, or  
36 employment.

37 (2) Any person violating the provisions of subsection (1) of this  
38 section shall be guilty of a felony for which the authorized term of  
39 imprisonment is a term of not less than one (1) year, or by a fine in an  
40 amount not less than one thousand dollars (\$1,000), or by both such fine and  
41 imprisonment.

42 (3) Nothing in this section shall be construed to deny any victim  
43 of an offense under the provisions of this chapter of rights afforded by  
44 the federal trafficking victims protection act of 2000, P.L. 106-386, as  
45 amended.

46 (4) Any person who conceals, harbors, or shields from detection in any  
47 place, including any building or means of transportation, any alien who is  
48 in the United States in violation of law commits a crime. "Harboring" means  
49 any conduct that tends to substantially facilitate an alien to remain in

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1 the United States illegally. The sheltering need not be clandestine, and  
2 harboring covers aliens arrested outdoors, as well as in a building. This  
3 provision includes harboring an alien who entered the United States legally  
4 but has since lost his legal status.

5 (5) An employer can be convicted of the felony of harboring illegal  
6 aliens who are his employees if he takes actions in reckless disregard of  
7 their illegal status, such as ordering them to obtain false documents,  
8 altering records, obstructing INS inspections, or taking other actions that  
9 facilitate the alien's illegal employment.

10 (6) Any person who within any twelve (12) month period hires ten (10)  
11 or more individuals with actual knowledge that they are illegal aliens or  
12 unauthorized workers is guilty of felony harboring. It is also a felony to  
13 encourage or induce an alien to come to or reside in the United States knowing  
14 or recklessly disregarding the fact that the alien's entry or residence is  
15 in violation of the law. This crime applies to any person, rather than just  
16 employers of illegal aliens.

17 (7) The penalty for felony harboring is a fine and imprisonment for  
18 up to five (5) years. The penalty for felony alien smuggling is a fine  
19 and up to ten (10) years imprisonment. Where the crime causes serious  
20 bodily injury or places the life of any person in jeopardy, the penalty is  
21 a fine and up to twenty (20) years imprisonment. If the criminal smuggling  
22 or harboring results in the death of any person, the penalty can include  
23 life imprisonment. Convictions for aiding, abetting, or conspiracy to  
24 commit alien smuggling or harboring, carry the same penalties. Courts can  
25 impose consecutive prison sentences for each alien smuggled or harbored.  
26 A court may order a convicted smuggler to pay restitution if the alien  
27 smuggled qualifies as a victim under the victim and witness protection  
28 act. Conspiracy to commit crimes of sheltering, harboring, or employing  
29 illegal aliens is a separate federal offense punishable by a fine of up to ten  
30 thousand dollars (\$10,000) or five (5) years imprisonment.

31 44-311. ATTORNEY GENERAL AND ENFORCEMENT. The attorney general shall  
32 promulgate rules to implement the provisions of this chapter. Any rule or  
33 portion of a rule that is created under the authority provided for in this  
34 section shall become effective only if it complies with and is subject to all  
35 of the provisions of chapter 52, title 67, Idaho Code.

36 44-312. ATTORNEY GENERAL DATABASE. The attorney general shall  
37 maintain a database that documents any business entity whose permit,  
38 license, or exemption has been suspended or state contract has been  
39 terminated.

40 44-313. SANCTUARY POLICY -- MUNICIPALITY FAILURE TO ACT. If any  
41 municipal or county governing body fails to suspend the business permit,  
42 if such exists, and applicable licenses or exemptions as directed by the  
43 attorney general as a result of a violation of any provision of this chapter  
44 within fifteen (15) days after notification by the attorney general, the  
45 municipality shall be deemed to have adopted a sanctuary policy as defined  
46 in chapter 4, title 44, Idaho Code, and shall be subject to the penalties  
47 thereunder.

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1 44-314. LEGISLATIVE REVIEW. Should the federal government  
2 discontinue or fail to authorize or implement any federal work authorization  
3 program, the state legislature shall review this chapter for the purpose  
4 of determining whether the sections are no longer applicable and should be  
5 repealed.

6 SECTION 3. That Title 44, Idaho Code, be, and the same is hereby amended  
7 by the addition thereto of a NEW CHAPTER, to be known and designated as  
8 Chapter 4, Title 44, Idaho Code, and to read as follows:

9 CHAPTER 4  
10 IDAHO ENFORCEMENT THROUGH ATTRITION ACT

11 44-401. SHORT TITLE. This chapter may be cited as the "Enforcement  
12 Through Attrition Act."

13 44-402. DEFINITIONS. In this chapter, unless the context otherwise  
14 requires:

15 (1) "Law enforcement officer" means a sheriff or peace officer of a  
16 municipality with the duty and power of arrest for violation of the general  
17 criminal laws of the state or for violation of ordinances of municipalities.

18 (2) "Municipality" means any county, city or town.

19 (3) "Municipality official" means any elected or appointed official or  
20 any law enforcement officer serving the municipality.

21 (4) "Sanctuary policy" means any municipality's order or ordinance,  
22 enacted or followed that:

23 (a) Limits or prohibits any municipality official or person employed  
24 by the municipality from communicating or cooperating with federal  
25 agencies or officials to verify or report the immigration status of any  
26 alien within such municipality; or

27 (b) Grants to illegal aliens the right to lawful presence or status  
28 within the municipality in violation of federal law.

29 44-403. ROLE OF STATE POLICE. Subject to appropriation, the director  
30 of the Idaho state police shall designate that some or all members of  
31 the Idaho state police be trained in accordance with a memorandum of  
32 understanding between the state of Idaho and the United States department of  
33 homeland security concerning the enforcement of federal immigration laws  
34 during the course of their normal duties in the state of Idaho, in accordance  
35 with 8 U.S.C. section 1357(g). The director shall have the authority to  
36 negotiate the terms of such memorandum. The memorandum shall be signed by  
37 the director and the governor.

38 44-404. SANCTUARY CITIES. (1) No municipality shall enact or  
39 adopt any sanctuary policy. Any municipality that enacts or adopts a  
40 sanctuary policy shall be ineligible for any moneys provided through grants  
41 administered by any state agency or department until the sanctuary policy is  
42 repealed or is no longer in effect. Upon the complaint of any state resident  
43 regarding a specific governmental entity, agency, or political subdivision  
44 of this state or prior to the provision of funds or awarding of any grants

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1 to a governmental entity, agency, or political subdivision of this state,  
2 any member of the Idaho legislature may request that the attorney general of  
3 the state of Idaho issue an opinion stating whether the governmental entity,  
4 agency, or political subdivision has current policies in contravention of  
5 this section.

6 (2) The governing body, sheriff, or chief of police of each  
7 municipality shall provide each law enforcement officer with written notice  
8 of their duty to cooperate with state and federal agencies and officials  
9 on matters pertaining to enforcement of state and federal laws governing  
10 immigration.

11 (3) Notwithstanding any other provision of law, no government  
12 entity, political subdivision, or government official within the state  
13 of Idaho shall prohibit, or in any way restrict, any governmental entity  
14 or official from communicating or cooperating with the United States  
15 bureau of immigration and customs enforcement regarding the citizenship or  
16 immigration status, lawful or unlawful, of any individual.

17 (4) Municipalities and political subdivisions may collect and share  
18 the identity of persons by the same means the federal bureau of investigation  
19 or its successor agency uses in its integrated automated fingerprint  
20 identification system or its successor program.

21 (5) No person or agency within the state of Idaho shall prohibit,  
22 or in any way restrict, a public employee from doing any of the following  
23 with respect to information regarding the immigration status, lawful or  
24 unlawful, of any individual:

25 (a) Sending such information to, or requesting or receiving such  
26 information from, the United States bureau of immigration and customs  
27 enforcement;

28 (b) Maintaining such information; or

29 (c) Exchanging such information with any other federal, state, or local  
30 governmental entity.

31 (6) Upon the complaint of any state resident regarding a specific  
32 governmental entity, agency, or political subdivision of this state or prior  
33 to the provision of funds or awarding of any grants to a governmental entity,  
34 agency, or political subdivision of this state, any member of the Idaho  
35 legislature may request that the attorney general of the state of Idaho issue  
36 an opinion stating whether the governmental entity, agency, or political  
37 subdivision has current policies in contravention of the provisions of  
38 subsections (3) and (5) of this section.

39 (7) No state agency or department shall provide any funding or award  
40 any monetary grants to any governmental entity, agency, or political  
41 subdivision determined under the provisions of subsection (6) of this  
42 section to have a policy in contravention of the provisions of subsections  
43 (3) and (5) of this section until the policy is repealed or no longer in  
44 effect.

45 (8) The provisions of subsections (3) and (5) of this section shall  
46 not apply to any state or local agency administering one (1) or more federal  
47 public benefit programs as such term is defined in 8 U.S.C. section 1612.

48 44-405. FLIGHT RISK. For any Idaho court, in awarding bail, there  
49 shall be a presumption that the person is a flight risk for bail, and that

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1 releasing the person under any conditions, as provided in chapter 28, title  
2 19, Idaho Code, shall not reasonably assure the appearance of the person  
3 as required if the court reasonably believes that the person is an alien  
4 unlawfully present in the United States. If such presumption exists, the  
5 person shall be committed to jail, until such person provides verification  
6 of his or her lawful presence in the United States to rebut such presumption.  
7 If the person adequately proves his or her lawful presence, the court shall  
8 review the issue of release, as provided for in chapter 28, title 19, Idaho  
9 Code, without regard to previous issues concerning whether the person is  
10 lawfully present in the United States. If the person cannot prove his or her  
11 lawful presence, the person shall continue to be committed to the jail and  
12 remain until discharged by due course of law.

13 44-406. DETENTION AND NOTIFICATION. (1) If verification of the  
14 nationality or lawful immigration status of any person who is charged and  
15 confined to jail for any period of time cannot be made from documents in  
16 the possession of the prisoner or after a reasonable effort on the part of  
17 the arresting agency to determine the nationality or immigration status of  
18 the person so confined, verification shall be made by the arresting agency  
19 within forty-eight (48) hours through a query to the law enforcement support  
20 center (LESC) of the United States department of homeland security or other  
21 office or agency designated for that purpose by the United States department  
22 of homeland security. If it is determined that the prisoner is in the United  
23 States unlawfully, the arresting agency shall notify the United States  
24 department of homeland security.

25 (2) Nothing in this section shall be construed to deny any person bond  
26 or prevent a person from being released from confinement if such person is  
27 otherwise eligible for release.

28 44-407. RESTRICTIONS ON DRIVER'S LICENSES. (1) The Idaho  
29 transportation department shall not issue any driver's license to an illegal  
30 alien nor to any person who cannot prove his or her lawful presence pursuant  
31 to the provisions of this chapter. A driver's license issued to an illegal  
32 alien in another state shall not be honored by the state of Idaho and the  
33 Idaho transportation department for any purpose. The state of Idaho hereby  
34 declares that granting driver's licenses to illegal aliens is repugnant to  
35 the public policy of Idaho and therefor Idaho shall not extend full faith  
36 and credit to out-of-state driver's licenses issued to illegal aliens. As  
37 used in this section, the term "illegal alien" shall mean an alien who is not  
38 lawfully present in the United States, according to the terms of 8 U.S.C.  
39 section 1101, et seq.

40 (2) The written portion of the test required to obtain an Idaho state  
41 driver's license shall only be administered in the English language. No  
42 translators shall be allowed for applicants taking the test.

43 44-408. EXCLUSION OF STATE AND LOCAL BENEFITS. (1) Except for state  
44 or local public benefits that may be offered under 8 U.S.C. 1621(b), no  
45 alien unlawfully present in the United States shall receive any state or  
46 local public benefit, including in-state tuition, state resident tuition  
47 rates and/or fees at public postsecondary institutions. Nothing in this

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1 section shall be construed to prohibit the rendering of emergency medical  
2 care, prenatal care, services offering alternatives to abortion, emergency  
3 assistance, or legal assistance to any person.

4 (2) As used in this section, "public benefit" means any grant,  
5 contract or loan provided by an agency of state or local government; or any  
6 retirement, welfare, health, postsecondary education tuition or benefits,  
7 state grants and scholarships, disability, housing, or food assistance  
8 benefit under which payments, assistance, credits, or reduced rates or fees  
9 are provided. The unemployment insurance program shall verify the lawful  
10 presence of an alien for the purpose of determining eligibility for benefits  
11 in accordance with its own procedures.

12 (3) In addition to providing proof of other eligibility requirements,  
13 at the time of application for any state or local public benefit, an  
14 applicant who is eighteen (18) years of age or older shall provide  
15 affirmative proof that the applicant is a citizen or a permanent resident  
16 of the United States or is lawfully present in the United States, provided  
17 however, that in the case of state grants and scholarships, such proof shall  
18 be provided before the applicant receives any state grant or scholarship.  
19 Such affirmative proof shall include documentary evidence recognized by  
20 the Idaho transportation department when processing an application for a  
21 driver's license, an Idaho driver's license, as well as any document issued  
22 by the federal government that confirms an alien's lawful presence in the  
23 United States. In processing applications for public benefits, an employee  
24 of an agency of state or local government shall not inquire about the legal  
25 status of a custodial parent or guardian applying for a public benefit on  
26 behalf of his or her dependent child who is a citizen or permanent resident  
27 of the United States.

28 (4) An applicant who cannot provide the proof required under the  
29 provisions of this section at the time of application may alternatively  
30 sign an affidavit under oath, attesting to either United States citizenship  
31 or classification by the United States as an alien lawfully admitted for  
32 permanent residence, in order to receive temporary benefits or a temporary  
33 identification document as provided in this section. The affidavit shall be  
34 on or consistent with forms prepared by the state or local government agency  
35 administering the state or local public benefits and shall include the  
36 applicant's social security number or any applicable federal identification  
37 number and an explanation of the penalties under state law for obtaining  
38 public assistance benefits fraudulently.

39 (5) An applicant who has provided the sworn affidavit required under  
40 subsection (4) of this section is eligible to receive temporary public  
41 benefits as follows:

42 (a) For ninety (90) days or until such time that it is determined that  
43 the applicant is not lawfully present in the United States, whichever is  
44 earlier; or

45 (b) Indefinitely if the applicant provides a copy of a completed  
46 application for a birth certificate that is pending in Idaho or  
47 some other state. An extension granted under this subsection shall  
48 terminate upon the applicant's receipt of a birth certificate or a  
49 determination that a birth certificate does not exist because the  
50 applicant is not a United States citizen.

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1 (6) An applicant who is an alien shall not receive any state or local  
2 public benefit unless the alien's lawful presence in the United States  
3 is first verified by the federal government. State and local agencies  
4 administering public benefits in this state shall cooperate with the United  
5 States department of homeland security in achieving verification of an  
6 alien's lawful presence in the United States in furtherance of this section.  
7 The system utilized may include the systematic alien verification for  
8 entitlements program operated by the United States department of homeland  
9 security.

10 (7) The provisions of this section shall not be construed to require any  
11 nonprofit organization organized under the Internal Revenue Code to enforce  
12 the provisions of this section, nor does it prohibit such an organization  
13 from providing aid.

14 (8) Any agency that administers public benefits shall provide  
15 assistance in obtaining appropriate documentation to persons applying  
16 for public benefits who sign the affidavit required by the provisions of  
17 subsection (4) of this section stating they are eligible for such benefits  
18 but lack the documents required under the provisions of subsection (3) of  
19 this section.

20 SECTION 4. This act shall be in full force and effect on and after  
21 January 1, 2011.

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1 EMPLOYMENT - UNAUTHORIZED ALIENS - Adds to existing law relating to  
2 employment and the prohibition of employing unauthorized aliens.