

GUEST WORKER PROGRAM ACT

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Bill Wright

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Utah Workforce Services Code to establish a guest worker program that provides for the issuance of permits to undocumented individuals.

Highlighted Provisions:

This bill:

▶ enacts the Guest Worker Program Act, including:

- defining terms;
- directing the Department of Workforce Services to administer the program;
- requiring the department and governor to seek waivers, exemptions, or authorizations;
- addressing the timing of implementation;
- creating a restricted account;
- addressing coordination with other laws or programs;
- providing for two types of permits;
- establishing eligibility criteria;
- creating an application and renewal process;
- imposing conditions during permit term;
- addressing English proficiency;
- providing for verification of a valid permit;
- addressing protected status of records;



- 28 • prohibiting certain conduct;
- 29 • creating administrative and criminal penalties; and
- 30 • providing for the sharing of information related to enforcement; and
- 31 ▶ enacts the Identification Enforcement Act, including:
 - 32 • defining terms;
 - 33 • imposing requirements related to identification;
 - 34 • allowing for fingerprinting and photographing under certain circumstances;
 - 35 • creating an identification database; and
 - 36 • providing for the sharing of information with federal agencies.

37 **Money Appropriated in this Bill:**

38 None

39 **Other Special Clauses:**

40 None

41 **Utah Code Sections Affected:**

42 **AMENDS:**

43 **63G-2-206**, as last amended by Laws of Utah 2009, Chapter 344

44 **63G-2-305**, as last amended by Laws of Utah 2010, Chapters 6, 113, and 247

45 **63G-11-102**, as last amended by Laws of Utah 2010, Chapter 281

46 **63J-1-602.2**, as enacted by Laws of Utah 2010, Chapter 265 and last amended by

47 Coordination Clause, Laws of Utah 2010, Chapter 265

48 **ENACTS:**

49 **35A-8-101**, Utah Code Annotated 1953

50 **35A-8-102**, Utah Code Annotated 1953

51 **35A-8-201**, Utah Code Annotated 1953

52 **35A-8-202**, Utah Code Annotated 1953

53 **35A-8-203**, Utah Code Annotated 1953

54 **35A-8-204**, Utah Code Annotated 1953

55 **35A-8-301**, Utah Code Annotated 1953

56 **35A-8-302**, Utah Code Annotated 1953

57 **35A-8-303**, Utah Code Annotated 1953

58 **35A-8-304**, Utah Code Annotated 1953

- 59 **35A-8-305**, Utah Code Annotated 1953
- 60 **35A-8-306**, Utah Code Annotated 1953
- 61 **35A-8-307**, Utah Code Annotated 1953
- 62 **35A-8-401**, Utah Code Annotated 1953
- 63 **35A-8-402**, Utah Code Annotated 1953
- 64 **35A-8-403**, Utah Code Annotated 1953
- 65 **35A-8-404**, Utah Code Annotated 1953
- 66 **76-8-1501**, Utah Code Annotated 1953
- 67 **76-8-1502**, Utah Code Annotated 1953
- 68 **76-8-1503**, Utah Code Annotated 1953
- 69 **76-8-1504**, Utah Code Annotated 1953
- 70 **76-8-1505**, Utah Code Annotated 1953



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

73 Section 1. Section **35A-8-101** is enacted to read:

74 **CHAPTER 8. GUEST WORKER PROGRAM ACT**

75 **Part 1. General Provisions**

76 **35A-8-101. Title.**

77 This chapter is known as the "Guest Worker Program Act."

78 Section 2. Section **35A-8-102** is enacted to read:

79 **35A-8-102. Definitions.**

80 As used in this chapter:

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

83 (2) "Family member" means for an undocumented individual:

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

85 (b) the undocumented individual's grandparent;

86 (c) the undocumented individual's sibling;

87 (d) the undocumented individual's grandchild;

88 (e) the undocumented individual's nephew;

89 (f) the undocumented individual's niece;

- 90 (g) a spouse of an individual described in this Subsection (2); or
- 91 (h) an individual who is similar to one listed in this Subsection (2).
- 92 (3) "Guest worker" means an undocumented individual who holds a guest worker
- 93 permit.
- 94 (4) "Guest worker permit" means a permit issued in accordance with Section
- 95 35A-8-304 to an undocumented individual who meets the eligibility criteria of Section
- 96 35A-8-302.
- 97 (5) "Immediate family" means for an undocumented individual:
- 98 (a) the undocumented individual's spouse; or
- 99 (b) a child of the undocumented individual if the child is:
- 100 (i) under 21 years of age; and
- 101 (ii) unmarried.
- 102 (6) "Immediate family permit" means a permit issued in accordance with Section
- 103 35A-8-304 to an undocumented individual who meets the eligibility criteria of Section
- 104 35A-8-303.
- 105 (7) "Lawfully present in the United States" is as defined in 8 C.F.R. Sec. 103.12.
- 106 (8) "Permit" means a permit issued under this chapter and includes:
- 107 (a) a guest worker permit; and
- 108 (b) an immediate family permit.
- 109 (9) "Permit holder" means an individual who holds a permit.
- 110 (10) "Program" means the Guest Worker Program described in Section 35A-8-201.
- 111 (11) "Relevant contact information" means the following for an undocumented
- 112 individual:
- 113 (a) the undocumented individual's name;
- 114 (b) the undocumented individual's residential address;
- 115 (c) the undocumented individual's residential telephone number;
- 116 (d) the undocumented individual's personal email address;
- 117 (e) the name of the person with whom the undocumented individual has a contract for
- 118 hire;
- 119 (f) the name of the contact person for the person listed in Subsection (11)(e);
- 120 (g) the address of the person listed in Subsection (11)(e);

- 121 (h) the telephone number for the person listed in Subsection (11)(e);
- 122 (i) the names of the undocumented individual's immediate family members;
- 123 (j) the names of the family members who reside with the undocumented individual;
- 124 and
- 125 (k) any other information required by the department by rule made in accordance with
- 126 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

127 (12) "Restricted account" means the Guest Worker Permit Restricted Account created
 128 in Section 35A-8-203.

- 129 (13) "Serious felony" means a felony under:
- 130 (a) Title 76, Chapter 5, Offenses Against the Person;
- 131 (b) Title 76, Chapter 5a, Sexual Exploitation of Children;
- 132 (c) Title 76, Chapter 6, Offenses Against Property;
- 133 (d) Title 76, Chapter 7, Offenses Against the Family;
- 134 (e) Title 76, Chapter 8, Offenses Against the Administration of Government;
- 135 (f) Title 76, Chapter 9, Offenses Against Public Order and Decency; and
- 136 (g) Title 76, Chapter 10, Offenses Against Public Health, Safety, Welfare, and Morals.

137 (14) "Undocumented individual" means an individual who:

- 138 (a) lives or works in the state; and
- 139 (b) is not lawfully present in the United States.

140 Section 3. Section **35A-8-201** is enacted to read:

Part 2. Guest Worker Program

35A-8-201. Department to create program.

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

- 145 (a) seek one or more waivers, exemptions, or authorizations to implement the program
 146 as provided in Section 35A-8-202;
- 147 (b) issue a permit as provided in Section 35A-8-304;
- 148 (c) establish fees in accordance with Section 63J-1-504 for a filing or service required
 149 by this chapter;
- 150 (d) take action under Part 4, Enforcement; and
- 151 (e) report annually to the governor and the Legislature.

152 (2) The department may make rules in accordance with Title 63G, Chapter 3, Utah
153 Administrative Rulemaking Act, to the extent expressly provided for in this chapter.

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

156 Section 4. Section **35A-8-202** is enacted to read:

157 **35A-8-202. Federal waivers, exemptions, or authorizations -- Implementation**
158 **without waiver, exemption, or authorization.**

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

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

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

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

166 (b) July 1, 2013.

167 Section 5. Section **35A-8-203** is enacted to read:

168 **35A-8-203. Guest Worker Permit Restricted Account.**

169 (1) There is created a restricted account within the General Fund known as the "Guest
170 Worker Permit Restricted Account."

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

172 (i) a fee collected under this chapter;

173 (ii) a fine collected under Section 35A-8-304;

174 (iii) civil penalties imposed under Part 4, Enforcement;

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

176 (v) interest earned on the restricted account.

177 (b) The restricted account shall earn interest.

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

179 (a) the department and the Office of the Governor to pay the costs associated with the
180 implementation of Section 35A-8-202;

181 (b) the department to administer the program;

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

183 35A-8-204;

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

185 (i) litigation related to this chapter;

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

187 (iii) a memorandum of understanding executed under Section 67-5-28; or

188 (e) fund the costs associated with Title 76, Chapter 8, Part 15, Identification

189 Enforcement Act.

190 Section 6. Section **35A-8-204** is enacted to read:

191 **35A-8-204. Coordination with other federal or state laws or programs.**

192 (1) To the extent feasible, the department shall coordinate the implementation of the

193 program with other existing state and federal laws that relate to immigration and labor,

194 including laws pertaining to obtaining the privilege to drive and to report citizenship status.

195 (2) (a) If a waiver, exemption, or authorization described in Section 35A-8-202 does

196 not provide for the issuance of a Social Security number to a guest worker, the State Tax

197 Commission shall, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative

198 Rulemaking Act, provide a means for a person who receives services from a guest worker to

199 withhold from compensation paid to the guest worker an amount to be determined by State Tax

200 Commission rule that, as closely as possible, equals the income and employment taxes that

201 would be imposed by state and federal law if the guest worker were an employee with a Social

202 Security number.

203 (b) If a waiver, exemption, or authorization described in Section 35A-8-202 provides

204 for the issuance of a Social Security number to a guest worker, a person who receives services

205 from a guest worker is required to withhold from compensation as provided in Title 59,

206 Chapter 10, Part 4, Withholding of Tax.

207 (c) The rules described in Subsection (2)(a) shall be substantially similar to Title 59,

208 Chapter 10, Part 4, Withholding of Tax.

209 (3) The department shall facilitate the use in this state of other employer based work

210 programs that meet the needs of Utah employers by using workers who are not working in Utah

211 and who are not United States citizens. Nothing in this chapter prevents a person from using

212 an employer based work program described in this Subsection (3) that exists under the auspices

213 of a foreign government in cooperation with the United States government.

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

215 Section 7. Section **35A-8-301** is enacted to read:

216 **Part 3. Permits**

217 **35A-8-301. Requirement to have permit -- Purpose of permit.**

218 (1) (a) An undocumented individual who is eligible to obtain a permit under this
219 chapter may obtain a permit in accordance with this chapter.

220 (b) An undocumented individual shall obtain a guest worker permit:

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

222 (ii) in accordance with Subsection 35A-8-307(2), by no later than 30 days from the day
223 on which the undocumented individual enters into a contract for hire.

224 (c) An undocumented individual who holds an immediate family permit under this
225 chapter may not provide services in this state under a contract for hire.

226 (2) Subject to Subsection (3), a permit is considered an identification document for
227 purposes of Title 63G, Chapter 11, Identity Documents and Verification, and may be used as
228 identification or proof of the permit holder's age for any state or local government required
229 purpose.

230 (3) An individual may not use a permit:

231 (a) to establish entitlement to a federal, state, or local benefit as described in Section
232 63G-11-104; or

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

234 (4) A guest worker is not considered an employee for purposes of:

235 (a) Title 13, Chapter 47, Private Employer Verification Act; and

236 (b) Title 63G, Chapter 11, Identity Documents and Verification.

237 Section 8. Section **35A-8-302** is enacted to read:

238 **35A-8-302. Eligibility criteria to obtain and maintain a guest worker permit.**

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

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

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

243 (b) live in Utah, but not be lawfully present in the United States;

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

245 (d) provide relevant contact information and regularly update the relevant contact
246 information in a manner required by rule made in accordance with Title 63G, Chapter 3, Utah
247 Administrative Rulemaking Act;

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

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

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

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

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

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

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

263 (2) The department may by rule made in accordance with Title 63G, Chapter 3, Utah
264 Administrative Rulemaking Act, provide for the documentation required to establish eligibility
265 under Subsection (1). When making a rule under this section, the department shall use federal
266 standards as a guideline to avoid unnecessary duplication and additional costs.

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

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

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

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

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

275 (B) the Federal Bureau of Investigation.

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

278 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
279 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

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

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

285 (e) The department shall:

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

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

292 Section 9. Section **35A-8-303** is enacted to read:

293 **35A-8-303. Eligibility to obtain and maintain an immediate family permit.**

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

296 (1) live in Utah, but not be lawfully present in the United States;

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

298 (3) provide relevant contact information and regularly update the relevant contact
299 information in a manner required by rule made in accordance with Title 63G, Chapter 3, Utah
300 Administrative Rulemaking Act.

301 Section 10. Section **35A-8-304** is enacted to read:

302 **35A-8-304. Application and renewal process.**

303 (1) The department may not issue a permit under this chapter until the program is
304 implemented under Section 35A-8-202.

305 (2) The department shall:

306 (a) create a permit that:

- 307 (i) is of impervious material that is resistant to wear or damage; and
308 (ii) minimizes the risk that the permit may be forged, falsified, or counterfeited; and
309 (b) ensure that a permit:
310 (i) includes a photograph of the individual to whom the permit is issued;
311 (ii) prominently states the day on which the permit expires; and
312 (iii) prominently states the type of permit.
313 (3) A permit expires two years from the day on which the department issues the permit.
314 (4) To apply for or renew a permit, an undocumented individual shall submit to the
315 department, in a form acceptable under this chapter:
316 (a) an application;
317 (b) documentation of meeting the criteria in Section 35A-8-302 or 35A-8-303;
318 (c) for a renewal, documentation of efforts to comply with Section 35A-8-306;
319 (d) a signed statement verifying the information in the application and documentation;
320 (e) a fee established by the department in accordance with Section 63J-1-504; and
321 (f) for an initial guest worker permit, a fine of \$750 unless the undocumented
322 individual provides evidence satisfactory to the department that the undocumented individual is
323 covered by a basic health insurance plan.
324 (5) If an undocumented individual submits a complete application and the department
325 determines that the undocumented individual meets the criteria of Section 35A-8-302 or
326 35A-8-303, the department shall issue or renew:
327 (a) a guest worker permit if the undocumented individual qualifies under Section
328 35A-8-302; and
329 (b) an immediate family permit if the undocumented individual qualifies under Section
330 35A-8-303.
331 (6) An undocumented individual may appeal a denial of a permit under this section in
332 accordance with Title 63G, Chapter 4, Administrative Procedures Act.
333 Section 11. Section **35A-8-305** is enacted to read:
334 **35A-8-305. Conditions during permit term.**
335 (1) A permit holder shall continue to meet the eligibility criteria under Section
336 35A-8-302 or 35A-8-303 for the type of permit held by the permit holder.
337 (2) A permit is automatically revoked if after issuance of the permit:

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

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

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

345 Section 12. Section **35A-8-306** is enacted to read:

346 **35A-8-306. Proficiency standards for English.**

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

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

352 Section 13. Section **35A-8-307** is enacted to read:

353 **35A-8-307. Verification of valid permit -- Protected status of information.**

354 (1) (a) A person who hires a guest worker shall verify with the department that the
355 guest worker permit is valid in accordance with a procedure established by the department by
356 rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

357 (b) The verification procedure adopted under this Subsection (1) shall be substantially
358 similar to the employer requirements to verify federal employment status under:

359 (i) Title 13, Chapter 47, Private Employer Verification Act; and

360 (ii) Title 63G, Chapter 11, Identity Documents and Verification.

361 (c) Subject to Subsection (2), a person shall terminate a guest worker if the guest
362 worker is determined by the department to not hold a valid guest worker permit.

363 (2) (a) By rule made in accordance with Title 63G, Chapter 3, Utah Administrative
364 Rulemaking Act, the department shall provide a procedure under which a person may hire an
365 undocumented individual who does not hold a guest worker permit pending the undocumented
366 individual obtaining a guest worker permit within 30 days of the day on which the
367 undocumented individual is hired to provide services.

368 (b) An undocumented individual may not provide services under a contract for hire to a

369 person for more than 30 days during a two-year calendar period without obtaining a guest
370 worker permit as provided under this chapter.

371 (3) An undocumented individual may appeal a determination that a permit is invalid in
372 accordance with Title 63G, Chapter 4, Administrative Procedures Act.

373 (4) Subject to Section 35A-8-404, a record under this chapter is a protected record
374 under Title 63G, Chapter 2, Government Records Access and Management Act, except that a
375 record may not be shared under Section 63G-2-206, unless:

376 (a) requested by the Office of Legislative Auditor General in accordance with Section
377 36-12-15; or

378 (b) disclosed to a federal government entity in accordance with this chapter or a
379 waiver, exemption, or authorization described in Section 35A-8-202.

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

381 (a) the design, implementation, or operation of a verification procedure under this
382 chapter;

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

385 (c) the determination that a permit is invalid.

386 Section 14. Section **35A-8-401** is enacted to read:

387 **Part 4. Enforcement**

388 **35A-8-401. Prohibited conduct.**

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

390 (2) A permit holder who holds an immediate family permit may not apply for or obtain
391 a contract for hire for services in this state.

392 (3) A person may not:

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

394 (b) alter the information on a permit;

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

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

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

- 400 (f) display a revoked permit as a valid permit;
- 401 (g) knowingly or with reckless disregard acquire, use, display, or transfer an item that
- 402 purports to be a valid permit, but that is not a valid permit; or
- 403 (h) otherwise violate this chapter.

404 Section 15. Section **35A-8-402** is enacted to read:

405 **35A-8-402. Administrative penalties.**

406 For a violation described in Section 35A-8-401, the department may:

- 407 (1) suspend, limit, or revoke and repossess a permit;
- 408 (2) impose a civil penalty not to exceed \$750 for each violation; or
- 409 (3) take a combination of actions under this section.

410 Section 16. Section **35A-8-403** is enacted to read:

411 **35A-8-403. Criminal penalties.**

412 A person is guilty of a class C misdemeanor if the person:

- 413 (1) furnishes false or forged information or documentation in support of an application;

414 or

- 415 (2) alters the information on a permit.

416 Section 17. Section **35A-8-404** is enacted to read:

417 **35A-8-404. Sharing of information related to enforcement.**

418 (1) The department shall provide the notice described in Subsection (2), if the
419 department determines that an undocumented individual who is not lawfully present in the
420 United States:

- 421 (a) has the undocumented individual's permit revoked; or
- 422 (b) permits the undocumented individual's permit to expire.

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

- 424 (i) Utah's attorney general;
- 425 (ii) the Department of Public Safety; and
- 426 (iii) United States Immigration and Customs Enforcement.

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

- 428 (i) include:
- 429 (A) the last known address of the undocumented individual; and
- 430 (B) the basis of the notice described in Subsection (1); and

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

433 Section 18. Section **63G-2-206** is amended to read:

434 **63G-2-206. Sharing records.**

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

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

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

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

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

445 (e) (i) is:

446 (A) the Legislature;

447 (B) a legislative committee;

448 (C) a member of the Legislature; or

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

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

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

453 (B) appropriations; or

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

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

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

461 (ii) that the record or record series will be used for a purpose similar to the purpose for

462 which the information in the record or record series was collected or obtained; and

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

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

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

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

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

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

475 (b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection
476 63G-2-305(4).

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

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

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

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

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

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

493 if:

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

497 (ii) the record or record series it requests:

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

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

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

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

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

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

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

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

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

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

518 (c) subject to Section 35A-8-307, a record under Title 35A, Chapter 8, Guest Worker
519 Program Act.

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

522 Section 19. Section **63G-2-305** is amended to read:

523 **63G-2-305. Protected records.**

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

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

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

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

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

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

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

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

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

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

551 (a) a request for bids;

552 (b) a request for proposals;

553 (c) a grant; or

554 (d) other similar document;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

617 litigation;

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

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

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

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

627 (A) members of a legislative body;

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

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

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

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

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

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

643 (22) drafts, unless otherwise classified as public;

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

646 (24) records of investigations of loss occurrences and analyses of loss occurrences that
647 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the

648 Uninsured Employers' Fund, or similar divisions in other governmental entities;

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

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

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

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

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

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

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

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

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

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

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

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

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

694 (a) the donor requests anonymity in writing;

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

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

702 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
703 73-18-13;

704 (39) a notification of workers' compensation insurance coverage described in Section
705 34A-2-205;

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

709 (i) unpublished lecture notes;

- 710 (ii) unpublished notes, data, and information:
- 711 (A) relating to research; and
- 712 (B) of:
- 713 (I) the institution within the state system of higher education defined in Section
- 714 53B-1-102; or
- 715 (II) a sponsor of sponsored research;
- 716 (iii) unpublished manuscripts;
- 717 (iv) creative works in process;
- 718 (v) scholarly correspondence; and
- 719 (vi) confidential information contained in research proposals;
- 720 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public
- 721 information required pursuant to Subsection 53B-16-302(2)(a) or (b); and
- 722 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;
- 723 (41) (a) records in the custody or control of the Office of Legislative Auditor General
- 724 that would reveal the name of a particular legislator who requests a legislative audit prior to the
- 725 date that audit is completed and made public; and
- 726 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
- 727 Office of the Legislative Auditor General is a public document unless the legislator asks that
- 728 the records in the custody or control of the Office of Legislative Auditor General that would
- 729 reveal the name of a particular legislator who requests a legislative audit be maintained as
- 730 protected records until the audit is completed and made public;
- 731 (42) records that provide detail as to the location of an explosive, including a map or
- 732 other document that indicates the location of:
- 733 (a) a production facility; or
- 734 (b) a magazine;
- 735 (43) information:
- 736 (a) contained in the statewide database of the Division of Aging and Adult Services
- 737 created by Section 62A-3-311.1; or
- 738 (b) received or maintained in relation to the Identity Theft Reporting Information
- 739 System (IRIS) established under Section 67-5-22;
- 740 (44) information contained in the Management Information System and Licensing

741 Information System described in Title 62A, Chapter 4a, Child and Family Services;
742 (45) information regarding National Guard operations or activities in support of the
743 National Guard's federal mission;
744 (46) records provided by any pawn or secondhand business to a law enforcement
745 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
746 Secondhand Merchandise Transaction Information Act;
747 (47) information regarding food security, risk, and vulnerability assessments performed
748 by the Department of Agriculture and Food;
749 (48) except to the extent that the record is exempt from this chapter pursuant to Section
750 63G-2-106, records related to an emergency plan or program prepared or maintained by the
751 Division of Homeland Security the disclosure of which would jeopardize:
752 (a) the safety of the general public; or
753 (b) the security of:
754 (i) governmental property;
755 (ii) governmental programs; or
756 (iii) the property of a private person who provides the Division of Homeland Security
757 information;
758 (49) records of the Department of Agriculture and Food relating to the National
759 Animal Identification System or any other program that provides for the identification, tracing,
760 or control of livestock diseases, including any program established under Title 4, Chapter 24,
761 Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
762 Quarantine;
763 (50) as provided in Section 26-39-501:
764 (a) information or records held by the Department of Health related to a complaint
765 regarding a child care program or residential child care which the department is unable to
766 substantiate; and
767 (b) information or records related to a complaint received by the Department of Health
768 from an anonymous complainant regarding a child care program or residential child care;
769 (51) unless otherwise classified as public under Section 63G-2-301 and except as
770 provided under Section 41-1a-116, an individual's home address, home telephone number, or
771 personal mobile phone number, if:

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

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

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

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

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

780 (a) conducted within the state system of higher education, as defined in Section
781 53B-1-102; and

782 (b) conducted using animals;

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

785 (54) information collected and a report prepared by the Judicial Performance
786 Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter
787 12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public,
788 the information or report;

789 (55) (a) records of the Utah Educational Savings Plan created under Section
790 53B-8a-103 if the disclosure of the records would conflict with its fiduciary obligations;

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

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

794 (56) records contained in the Management Information System created in Section
795 62A-4a-1003;

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

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

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

802 (60) in accordance with Section 73-10-33;

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

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

807 (61) subject to Section 35A-8-307, a record under Title 35A, Chapter 8, Guest Worker
808 Program Act; and

809 (62) subject to Section 76-8-1505, the database created in Section 76-8-1504.

810 Section 20. Section **63G-11-102** is amended to read:

811 **63G-11-102. Creation of identity documents -- Issuance to citizens, nationals, and**
812 **legal permanent resident aliens -- Exceptions.**

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

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

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

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

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

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

829 (a) a United States citizen;

830 (b) a national; or

831 (c) a legal permanent resident alien.

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

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

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

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

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

840 (v) approved deferred action status; or

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

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

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

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

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

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

851 (A) that it is temporary; and

852 (B) its expiration date.

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

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

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

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

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

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

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

870 (d) Subsection (3) does not apply to a permit issued by the Department of Workforce
871 Services under Title 35A, Chapter 8, Guest Worker Program Act.

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

874 Section 21. Section **63J-1-602.2** is amended to read:

875 **63J-1-602.2. List of nonlapsing funds and accounts -- Title 31 through Title 45.**

876 (1) Appropriations from the Technology Development Restricted Account created in
877 Section 31A-3-104.

878 (2) Appropriations from the Criminal Background Check Restricted Account created in
879 Section 31A-3-105.

880 (3) Appropriations from the Captive Insurance Restricted Account created in Section
881 31A-3-304, except to the extent that Section 31A-3-304 makes the money received under that
882 section free revenue.

883 (4) Appropriations from the Title Licensee Enforcement Restricted Account created in
884 Section 31A-23a-415.

885 (5) The fund for operating the state's Federal Health Care Tax Credit Program, as
886 provided in Section 31A-38-104.

887 (6) The Special Administrative Expense Account created in Section 35A-4-506.

888 (7) The Guest Worker Permit Restricted Account created in Section 35A-8-205.

889 [~~7~~] (8) Funding for a new program or agency that is designated as nonlapsing under
890 Section 36-24-101.

891 [~~8~~] (9) The Oil and Gas Conservation Account created in Section 40-6-14.5.

892 [~~9~~] (10) The Off-Highway Access and Education Restricted Account created in
893 Section 41-22-19.5.

894 Section 22. Section **76-8-1501** is enacted to read:

895 **Part 15. Identification Enforcement Act**

896 **76-8-1501. Title.**

897 This part is known as the "Identification Enforcement Act."

898 Section 23. Section **76-8-1502** is enacted to read:

899 **76-8-1502. Definitions.**

900 As used in this part:

901 (1) "Database" means the identification database created in Section 76-8-1504.

902 (2) "Guest worker program permit" means a permit issued under Title 35A, Chapter 8,
903 Guest Worker Program Act.

904 (3) (a) "Identification" means a document that is a form of positive identification that:

905 (i) is issued by a federal, state, or tribal government entity; and

906 (ii) contains a numerical identifier and a photograph of the person identified.

907 (b) "Identification" includes:

908 (i) an identification card issued by the state;

909 (ii) an identification card issued by another state that is similar to an identification card
910 issued by this state;

911 (iii) a driver license issued by any state;

912 (iv) a United States military identification card;

913 (v) one of the following if it contains a photograph of the individual:

914 (A) a valid tribal identification card;

915 (B) a Bureau of Indian Affairs card; or

916 (C) a tribal treaty card; or

917 (vi) a guest worker program permit.

918 (4) "Law enforcement agency" means an entity of the federal government, a state, or a
919 political subdivision of a state, including a state institution of higher education, that exists

920 primarily to prevent and detect crime and enforce criminal laws, statutes, and ordinances.

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

922 Section 24. Section **76-8-1503** is enacted to read:

923 **76-8-1503. Identification requirements -- Fingerprinting and photographing.**

924 (1) On and after July 1, 2013, a person shall display at least one form of identification
925 to a law enforcement officer on demand of the law enforcement officer if the law enforcement

926 officer conducts a lawful stop, detention, or arrest of the individual when acting in the

927 enforcement of a state law or local ordinance.

928 (2) If an individual fails to display to a law enforcement officer identification as
929 required under Subsection (1), the law enforcement officer may:

930 (a) make a record of the time and location where the lawful stop, detention, or arrest
931 occurs;

932 (b) fingerprint the individual; and

933 (c) take a photograph of the individual.

934 (3) It is a defense to a charge under this section that the person charged produces in
935 court identification that is issued to the person and is valid at the time of citation or arrest.

936 (4) (a) An individual is guilty of a class C misdemeanor if the individual violates
937 Subsection (1).

938 (b) An individual is guilty of a class B misdemeanor if the individual refuses to allow a
939 law enforcement officer to do the following as required by Subsection (2):

940 (i) fingerprint the individual; or

941 (ii) take a photograph of the individual.

942 (5) An arrest made under this section shall be conducted in accordance with Section
943 77-7-2.

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

947 Section 25. Section **76-8-1504** is enacted to read:

948 **76-8-1504. Identification database.**

949 (1) A law enforcement agency shall forward the information described in Subsection
950 76-8-1503(2) to the department in an electronic format.

951 (2) The department shall maintain a database of the information provided to the
952 department under Subsection (1).

953 (3) The department shall develop and maintain the database to facilitate the disclosures
954 required by Section 76-8-1505.

955 (4) The database created under this section is a protected record under Title 63G,
956 Chapter 2, Government Records Access and Management Act.

957 (5) The department shall maintain a record created as part of the database for at least

958 three years from the day on which the record is created in the database.

959 Section 26. Section **76-8-1505** is enacted to read:

960 **76-8-1505. Sharing of information with federal agencies.**

961 (1) In accordance with a memorandum of understanding entered into by the state under
962 Section 67-5-28, the department shall share one or more records in the database with the
963 United States Department of Justice or the United States Department of Homeland Security as
964 provided in 8 U.S.C. Sec. 1357(g) for the enforcement of federal immigration and customs
965 laws.

966 (2) Notwithstanding Subsection (1), the department may not share a record under this
967 section related to the holder of a valid guest worker program permit.

Legislative Review Note

as of 2-3-11 1:02 PM

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

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

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

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

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

Office of Legislative Research and General Counsel