



SUMMARY OF SELECTED IMMIGRATION-RELATED LEGISLATION

This document is not a comprehensive analysis of the bills discussed, but is designed to briefly summarize selected immigration-related legislation that passed during the 2011 General Session.

During the 2011 General Session, the Utah State Legislature passed various pieces of legislation addressing immigration or aliens.¹ This document highlights three key areas: (1) permit or worker programs, (2) enforcement measures, and (3) employer requirements and sanctions. Examples of miscellaneous immigration issues are also addressed.

Highlighted 2011 General Session Bills that Passed:

3rd Sub. HB 116
Utah Immigration Accountability and Enforcement Amendments

HB 466
Migrant Workers and Related Commission Amendments

HB 469
Immigration Related Amendments

1st Sub. HB 497
Utah Illegal Immigration Enforcement Act

5th Sub. SB 138
Driver License Qualification Amendments

Permit or Worker Programs

The Legislature adopted multiple provisions relating to permit programs, worker programs, or sponsorship programs. These provisions are included in H.B. 116, H.B. 466, and H.B. 469.

Guest Worker Program

H.B. 116 establishes a guest worker program within the Department of Public Safety (DPS) that takes effect the earlier of July 1, 2013, or within 120 days of receiving the federal waivers, exemptions, or authorizations necessary to implement the program. DPS, under the direction of the governor, is to seek one or more federal waivers, exemptions, or authorizations needed to implement the program. DPS is also charged with coordinating the implementation of the program with other federal and state laws. Below are additional components of the program.

- The program creates two types of permits - a guest worker permit and an immediate family permit.

- A permit may not be used to obtain work outside of Utah or to obtain public benefits. A permit holder is not eligible for unemployment.
- Before applying for a permit, an undocumented individual is required to pay a fine.
- Examples of eligibility criteria to obtain and maintain a guest worker permit include that an undocumented individual:
 - meets certain age requirements;
 - has worked or lived in Utah before May 10, 2011;
 - provides certain contact information;
 - submits to a criminal background check;
 - has not committed certain felonies;
 - has a contract for employment;
 - establishes that the individual would not be found inadmissible for public health reasons;
 - holds a driving privilege card or agrees to not drive; and



- is covered by a basic health care plan or has no medical debt that is past due.
- Conditions are imposed to maintain a permit, including requiring that a permit holder put forth best efforts to achieve proficiency in English.
- Employers are required to verify the validity of a permit in accordance with a U-verify system to be established by the DPS.
- The State Tax Commission is responsible for establishing a withholding system for state income taxes.

1. This document refers to aliens, illegal aliens, and unauthorized aliens. Alien refers to a person who is not a citizen or national of the United States. An illegal alien generally refers to a person who is not lawfully present in the United States. An unauthorized alien generally refers to a person who under federal law cannot be legally employed in the United States.



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Permit or Worker Programs (Continued from pg 1)

Migrant Worker Visa Pilot Project

Under the Migrant Worker Visa Pilot Project, established by [H.B. 466](#), the governor is authorized to negotiate and enter into a memorandum of understanding (MOU) with the government of the State of Nuevo Leon, Mexico to allow Utah businesses to employ legal foreign migrant workers through the use of United States nonimmigrant visas.

The MOU must include provisions that require:

- certification by a participating Utah business that there are insufficient workers who are able, willing, qualified, and available for the labor;
- proof that employment of an alien will not adversely affect the wages and working conditions of workers in Utah who are similarly employed;
- adherence to federal requirements for a United States nonimmigrant visa by migrant workers;
- passage by migrant workers of a criminal background check;
- testing to satisfy the hiring Utah business that the migrant worker possesses the requisite level of education or skill required for the job to be filled;
- issuance of a tamper-proof identification that includes personal information, a photo, a fingerprint, a visa number, and an expiration date;
- notification to the migrant worker of the date that the migrant worker is required to return to Mexico; and
- notification to the Utah employer and United States Immigration and Customs Enforcement if a migrant worker fails to return to Mexico before the expiration of the migrant worker's visa.

Utah Pilot-Sponsored Resident Immigrant Program

[H.B. 469](#) directs the governor to create the Utah Pilot Sponsored Resident Immigrant Program within the DPS by no later than July 1, 2013. Under this program, a person who is a United States citizen, a resident of Utah, and who meets certain criteria may sponsor a foreign national as a resident immigrant by agreeing to assume financial responsibility of the foreign national.

To be considered for approval as a resident immigrant for purposes of the program, the foreign national must, among other things, be living outside of the United States at the time of filing the application. Once a person becomes a resident immigrant, the person may reside, work, and study in Utah. A resident immigrant may not travel outside of Utah without the express written consent of the DPS.

Enforcement



The Legislature adopted several laws relating to the enforcement of immigration laws. The bulk of enforcement provisions were included in [H.B. 497](#). H.B. 497 includes the following:

- requiring that an officer verify the immigration

status of a person arrested for a felony or a class A misdemeanor or a person booked for a class B or C misdemeanor and requires that an officer attempt to verify immigration status for a person detained for a class B or C misdemeanor;

- providing enforcement exceptions regarding an officer's effort to verify immigration status;
- clarifying when passengers in a vehicle where the operator has been detained may also be questioned and their immigration status verified;

Enforcement (Continued from pg 2)

- stating that a law enforcement officer may not consider race, color, or national origin, except as permitted by Utah and United States constitutions;
- stating grounds for a presumption of a person's lawful presence in the United States;
- providing for transportation of an illegal alien to federal custody by a state or local law enforcement officer;
- providing that a state or local agency may not limit by ordinance, regulation, or policy the authority of any law enforcement or other governmental agency to provide immigration status information to the federal government in the enforcement of any federal immigration law, including the federal requirement to register as an alien or possess an alien registration document;
- providing that any state or local governmental agency is not restricted in sending, receiving, or maintaining immigration status information of any person in carrying out the agency's lawful purposes;
- requiring verification of immigration status regarding application for public services or benefits provided by a state or local governmental agency or subcontractor, except applications for professional licenses and as exempted by federal law;
- amending the current state law prohibiting transporting or harboring illegal aliens by removing the exemption for transporting an alien for a distance less than 100 miles;
- prohibiting the encouraging or inducing of an illegal alien to come to or reside in Utah; and
- amending peace officer arrest authority to include authority to arrest when the officer has reasonable cause to believe the person is an alien:
 - subject to an immigration removal order;
 - regarding whom a detainer warrant has been issued; or
 - who has committed or been charged with a felony in another state.



Employer Sanctions

[H.B. 116](#) addresses the verification of employment eligibility, employment of an unauthorized alien, and employer sanctions. The bill provides that on and after the guest worker program start date, an employer may not knowingly employ an unauthorized alien who does not hold a permit.

On and after the guest worker program start date, a private employer who employs 15 or more employees must verify the employment eligibility of

new employees using E-verify for traditional employees and U-verify for permit holders.

As of the guest worker program start date, the bill incorporates provisions previously enacted in Utah into the employer sanction provisions, including:

- protection from certain state liability if the employer participates in verification program; and
- voluntary participation in a public registry for those who participate in verification program.

The following penalties are established for an employer that knowingly employs an unauthorized alien who does not hold a permit on or after the guest worker program start date:

- First violation: \$100 for each unauthorized worker;
- Second violation: \$500 for each unauthorized worker; and
- Subsequent violation: Revocation of applicable license for up to one year or a civil penalty of up to \$10,000.





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Miscellaneous

The following are examples of other issues addressed by legislative action during the 2011 General Session.

Utah Commission on Immigration and Migration

[H.B. 466](#) creates the Utah Commission on Immigration and Migration and charges the commission with studying immigration-related laws and issues.

Driving Privilege Card Changes

[S.B. 138](#) provides for changes to the driving privilege card, including:

- requiring a person who is renewing or applying for a card to submit fingerprints and a photograph with an application to the Driver License Division; and
- requiring the Bureau of Criminal Identification to compare card applicant or cardholder fingerprints with criminal databases and notify law enforcement agencies when appropriate.
- addresses state and local governments' abilities to send, receive, or maintain information related to an individual's immigration status;
- consolidates various immigration provisions into a single chapter, which allows for integration of the guest worker program into these provisions;
- creates the Identity Theft Victims Restricted Account, which is to be expended to pay claims to individuals who are victims of identity theft; and
- outlines what is severable or not severable should a provision of the bill be found invalid.

Miscellaneous Provisions of H.B. 116

The following are selected provisions of [H.B. 116](#):

- creates an Immigration Act Restricted Account that consists of various fees, fines, and civil penalties; money in the account is subject to legislative appropriation and can be used for a variety of purposes, including costs of implementation and enforcement activities;

