

IMMIGRATION RELATED AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

This bill modifies general government provisions to enact the Utah Pilot Sponsored Resident Immigrant Program Act.

Highlighted Provisions:

This bill:

▶ exempts permits under the program from certain requirements for identification;

and

▶ enacts the Utah Pilot Sponsored Resident Immigrant Program Act, including:

- defining terms;
- providing for the creation of the program by the governor;
- granting rulemaking authority;
- outlining how a foreign national can participate in the program;
- addressing sponsorship;
- establishing grounds for ineligibility;
- providing for the issuance of a permit;
- addressing employment and taxation obligations;
- placing restrictions on travel and permitting other requirements to be imposed on a resident immigrant;
- addressing disqualification from the program; and
- addressing penalties on sponsors.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 This bill coordinates with H.B. ~~§~~→ [70,] 497, Utah ~~←~~§ Illegal Immigration Enforcement

31a Act, to make

32 substantive amendments.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **63G-11-102**, as last amended by Laws of Utah 2010, Chapter 281

36 ENACTS:

37 **63G-12-101**, Utah Code Annotated 1953

38 **63G-12-102**, Utah Code Annotated 1953

39 **63G-12-201**, Utah Code Annotated 1953

40 **63G-12-202**, Utah Code Annotated 1953

41 **63G-12-203**, Utah Code Annotated 1953

42 **63G-12-204**, Utah Code Annotated 1953

43 **63G-12-205**, Utah Code Annotated 1953

44 **63G-12-206**, Utah Code Annotated 1953

45 **63G-12-301**, Utah Code Annotated 1953

46 **63G-12-302**, Utah Code Annotated 1953

47 **Utah Code Sections Affected by Coordination Clause:**

48 **76-9-1004**, Utah Code Annotated 1953

49 **76-10-2901**, as enacted by Laws of Utah 2008, Chapter 26



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

52 Section 1. Section **63G-11-102** is amended to read:

53 **63G-11-102. Creation of identity documents -- Issuance to citizens, nationals, and**
54 **legal permanent resident aliens -- Exceptions.**

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

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

59 designed to identify the bearer as an employee;

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

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

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

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

71 (a) a United States citizen;

72 (b) a national; or

73 (c) a legal permanent resident alien.

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

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

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

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

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

82 (v) approved deferred action status; or

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

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

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

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

89 (B) for one year from the date of issuance if there is no definite end to the individual's

90 period of authorized stay.

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

93 (A) that it is temporary; and

94 (B) its expiration date.

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

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

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

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

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

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

109 (i) is only valid for use on the public transit system; and

110 (ii) includes a statement of the restricted use conspicuously printed on the face of the
111 public transit pass.

112 (d) Subsection (3) does not apply to a permit issued under Chapter 12, Utah Pilot
113 Sponsored Resident Immigrant Program Act.

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

116 Section 2. Section **63G-12-101** is enacted to read:

117 **CHAPTER 12. UTAH PILOT SPONSORED RESIDENT IMMIGRANT**
118 **PROGRAM ACT**

119 **Part 1. General Provisions**

120 **63G-12-101. Title.**

121 This chapter is known as the "Utah Pilot Sponsored Resident Immigrant Program Act."

122 Section 3. Section **63G-12-102** is enacted to read:

123 **63G-12-102. Definitions.**

124 (1) "Department" means the Department of Public Safety created in Section 53-1-103.

125 (2) ~~H→~~ (a) ~~←H~~ "Foreign national" H→ [is] , except as provided in Subsection (2)(b),
 125a means ←H an individual who is a citizen of a foreign country.

125b H→ (b) "Foreign national" does not include an individual who is in the United States, but
 125c who is not lawfully present in any of the states of the United States. ←H

126 (3) "Permit" means an identification permit issued in accordance with Section
 127 63G-12-204.

128 (4) "Program" means the Utah Pilot Sponsored Resident Immigrant Program created in
 129 Section 63G-12-201.

130 (5) "Resident immigrant" means an individual who:

131 (a) is a foreign national; and

132 (b) is accepted into the program in accordance with Section 63G-12-202.

133 (6) "Sponsor" means an individual who agrees to sponsor a foreign national under the
 134 program in accordance with Section 63G-12-203.

135 Section 4. Section **63G-12-201** is enacted to read:

136 **Part 2. Utah Pilot Sponsored Resident Immigrant Program**

137 **63G-12-201. Creation of program.**

138 (1) (a) The governor shall create a program known as the "Utah Pilot Sponsored
 139 Resident Immigrant Program":

140 (i) that is consistent with this chapter; and

141 (ii) under which a resident immigrant may reside, work, and study in Utah, except that
 142 the program may not permit a resident immigrant to travel outside of the state except as
 143 provided in Subsection 63G-12-206(1).

144 (b) The governor shall:

145 (i) begin implementation of the program by no later than July 1, 2013; and

146 (ii) end operation of the program on June 30, 2018.

147 (c) Under the program, the governor may facilitate transport to Utah for a foreign
 148 national who has been accepted into the program.

149 (d) The governor may recommend legislation to the Legislature to address how a
 150 resident immigrant is to be treated under statutes that relate to an alien.

151 (2) The department shall administer the program, except to the extent that the governor

152 delegates a power or duty under the program to another state agency. Subject to Subsection
 153 (3), the department may make rules in accordance with Chapter 3, Utah Administrative
 154 Rulemaking Act, to implement the program to the extent expressly provided for in this chapter.

155 (3) The governor may act by executive order whenever the department is authorized to
 156 make rules under this chapter. If there is a conflict between a rule made by the department and
 157 an executive order of the governor, the executive order governs.

158 Section 5. Section **63G-12-202** is enacted to read:

159 **63G-12-202. Approval as a resident immigrant -- Sponsorship -- Ineligibility.**

160 (1) To be considered for approval as a resident immigrant for purposes of the program,
 161 a foreign national shall:

162 (a) file an application with the department;

162a **H→ (b) at the time of filing the application be living outside of the United States;**

163 ~~[(b)] (c) ←H~~ pass a health and background screening;

164 **H→ ~~[(c)] (d) ←H~~ provide evidence that the foreign national has not been convicted of,**
 164a pled guilty to,

165 pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent
 166 to a felony or class A misdemeanor;

167 **H→ ~~[(d)] (e) ←H~~ file proof of sponsorship by a sponsor who meets the**
 167a requirements of Section

168 63G-12-203; and

169 **H→ ~~[(e)] (f) ←H~~ pay a fee established by the department in accordance with**
 169a Section 63J-1-504.

170 (2) A foreign national is ineligible for the program if the individual **H→ :**

170a **(a) is in the United States at the time of application for the program; or**

170b **(b) ←H is a citizen of a**

171 country:

172 **H→ ~~[(a)] (i) ←H~~ designated by the United States State Department as a state sponsor of**
 172a terrorism in

173 accordance with section 6(j) of the Export Administration Act, section 40 of the Arms Export
 174 Control Act, and section 620A of the Foreign Assistance Act;

175 **H→ ~~[(b)] (ii) ←H~~ against which the United States has declared war; or**

176 **H→ ~~[(c)] (iii) ←H~~ against which the United States has imposed sanctions as**
 176a listed under a sanctions

177 program of the Office of Foreign Assets Control within the United States Department of
 178 Treasury.

179 (3) A foreign national may appeal the denial of participation in the program as a
 180 resident immigrant in accordance with Chapter 4, Administrative Procedures Act.

181 (4) (a) The department, in consultation with the governor, shall make rules in
 182 accordance with Chapter 3, Utah Administrative Rulemaking Act, that provide:

183 (i) what constitutes passing a health screening to be eligible to be accepted into the
184 program, except at a minimum to be eligible to participate in the program an individual may
185 not have a medical condition that would make the individual inadmissible for public health
186 grounds under 8 U.S.C. Sec. 1182;

187 (ii) what constitutes a background screening to be eligible to be accepted into the
188 program;

189 (iii) what constitutes proof of sponsorship to be provided by the foreign national;

190 (iv) the term for which a foreign national is considered a resident immigrant; and

191 (v) the process of obtaining a resident immigrant permit under Section 63G-12-204.

192 (b) When making a rule under this section, the department shall use federal standards
193 as a guideline to avoid unnecessary duplication and additional costs.

194 Section 6. Section **63G-12-203** is enacted to read:

195 **63G-12-203. Sponsorship.**

196 (1) (a) An individual who is a United States citizen and a resident of Utah may sponsor
197 a foreign national as a resident immigrant by agreeing to assume financial responsibility for the
198 foreign national in accordance with this section.

199 (b) An individual described in Subsection (1)(a) may sponsor:

200 (i) two individual foreign nationals; or

201 (ii) each individual in an association of individuals:

202 (A) who live in the same dwelling, sharing its furnishings, facilities, accommodations,
203 and expenses;

204 (B) who are relatives of each other; and

205 (C) at least one of whom is a parent.

206 (2) The department by rule made in accordance with Chapter 3, Utah Administrative
207 Rulemaking Act, shall establish eligibility requirements to be a sponsor, except that at a
208 minimum the eligibility requirements shall require that the sponsor:

209 (a) prove an income level at or above 125% of the federal poverty level; or

210 (b) meet an alternative test created by the department that considers assets as well as
211 income.

212 (3) (a) The department by rule made in accordance with Chapter 3, Utah
213 Administrative Rulemaking Act, shall define what constitutes an assumption of financial

214 responsibility for a resident immigrant, except that at a minimum the rules shall require that the
215 sponsor agrees:

216 (i) to accept responsibility for any financial liability a foreign national incurs while
217 participating in the program;

218 (ii) to an assumption of financial responsibility for the foreign national that is
219 equivalent to the financial responsibility that a parent has for a dependent child; and

220 (iii) that the state may consider the sponsor's income and assets to be available for the
221 support of the resident immigrant sponsored by the sponsor.

222 (b) A sponsor violates this chapter if the sponsor fails to pay a financial liability of a
223 resident immigrant that is not paid by the resident immigrant and that is subject to the sponsor's
224 assumption of financial responsibility for the resident immigrant.

225 (4) (a) To terminate the sponsorship of a resident alien, an individual shall:

226 (i) notify the department; and

227 (ii) provide evidence satisfactory to the department that the resident alien no longer
228 resides in the United States.

229 (b) A sponsorship is terminated the day on which the department certifies that the
230 sponsor has complied with Subsection (4)(a).

231 (5) A sponsor shall prove to the satisfaction of the department that a resident
232 immigrant leaves the United States if:

233 (a) the resident alien is disqualified from the program; or

234 (b) the sponsor terminates sponsorship.

235 Section 7. Section **63G-12-204** is enacted to read:

236 **63G-12-204. Resident immigrant permit.**

237 (1) The department shall:

238 (a) create a resident immigrant permit to be issued to an individual who is a resident
239 immigrant that:

240 (i) is of impervious material that is resistant to wear or damage; and

241 (ii) minimizes the risk that the permit may be forged, falsified, or counterfeited; and

242 (b) ensure that a permit:

243 (i) includes a photograph of the individual to whom the permit is issued;

244 (ii) prominently states the day on which the permit expires;

245 (iii) prominently states the type of permit; and

246 (iv) includes a unique identifier.

247 (2) The department shall establish the fee under Section 63G-12-202 to be adequate to
248 pay the costs incurred to issue a permit.

249 Section 8. Section **63G-12-205** is enacted to read:

250 **63G-12-205. Employment and taxation obligations under the program.**

251 (1) A person in the state may employ a resident immigrant.

252 (2) A resident immigrant, or a resident immigrant's employer, shall pay all income
253 taxes and employment taxes, fees, or charges in accordance with the program.

254 (3) (a) The State Tax Commission shall, by rule made in accordance with Chapter 3,
255 Utah Administrative Rulemaking Act, provide a means that is effective as of the day on which
256 the governor begins implementation of the program under which a person who receives
257 services from a resident immigrant to withhold from compensation paid to the resident
258 immigrant an amount to be determined by State Tax Commission rule that, as closely as
259 possible, equals the income taxes that would be withheld under state law if the resident
260 immigrant were an employee with a Social Security number.

261 (b) The rules described in Subsection (3)(a) shall be substantially similar to Title 59,
262 Chapter 10, Part 4, Withholding of Tax.

263 (c) As part of the program the governor shall provide a method by which there is
264 collected and remitted to the federal government the money collected that is equivalent to the
265 income and employment taxes that would be withheld under federal law if a resident immigrant
266 were an employee with a Social Security number.

267 Section 9. Section **63G-12-206** is enacted to read:

268 **63G-12-206. Restrictions on activities of resident immigrant.**

269 (1) (a) A resident immigrant may not travel outside of the state without the express
270 written approval of the department.

271 (b) The department shall by rule, made in accordance with Chapter 3, Utah
272 Administrative Rulemaking Act, provide a process by which a person obtains approval to
273 travel as required by Subsection (1)(a).

274 (2) The department may by rule, made in accordance with Chapter 3, Utah
275 Administrative Rulemaking Act, impose other requirements to maintain the status of a resident

276 immigrant that are consistent with this chapter.

277 Section 10. Section **63G-12-301** is enacted to read:

278 **Part 3. Enforcement**

279 **63G-12-301. Disqualification from program.**

280 (1) A resident immigrant is disqualified from the program if after becoming a resident
281 immigrant the individual:

282 (a) is convicted of, pleads guilty to, pleads no contest to, pleads guilty in a similar
283 manner to, or is resolved by diversion or its equivalent to a felony or class A misdemeanor; or

284 (b) violates the terms and restrictions of the program.

285 (2) In accordance with Chapter 4, Administrative Procedures Act, the department may
286 bring an action to terminate a resident immigrant's participation in the program for a violation
287 described in Subsection (1).

288 Section 11. Section **63G-12-302** is enacted to read:

289 **63G-12-302. Penalties on sponsors.**

290 In accordance with Chapter 4, Administrative Procedures Act, the department may:

291 (1) impose a fine on a sponsor who violates Subsection 63G-12-203(5) not to exceed
292 \$5,000; and

293 (2) prohibit a sponsor from sponsoring another resident alien for a period of five years
294 for a violation described in Subsection 63G-12-203(3)(b).

295 Section 12. **Coordinates H.B. 469 with H.B. 70 -- Substantive amendments.**

296 If this H.B. 469 and H.B. ~~§~~→ [70,] 497, Utah ~~←~~§ Illegal Immigration Enforcement Act,
296a both pass, it is the
297 intent of the Legislature that the Office of Legislative Research and General Counsel make the
298 following changes:

299 (1) delete the "or" at the end of Subsection 76-9-1004(1) ~~§~~→ [(d)] (c) ~~←~~§ enacted in H.B.
299a ~~§~~→ [70] 497 ~~←~~§ ;

300 (2) delete the "." and insert "; or" at the end of Subsection 76-9-1004(1) ~~§~~→ [(e)] (d) ~~←~~§
300a enacted in

301 H.B. ~~§~~→ [70] 497 ~~←~~§ ;

302 (3) insert a new Subsection (1) ~~§~~→ [(f)] (e) ~~←~~§ in Section 76-9-1004 enacted in H.B.
302a ~~§~~→ [70] 497 ~~←~~§ that reads:

303 " ~~§~~→ [(f)] (e) ~~←~~§ a valid resident immigrant permit issued under Section 63G-12-204."; and

304 (4) insert a new Subsection (6) in Section 76-10-2901 amended in H.B. ~~§~~→ [70] 497 ~~←~~§ that
304a reads:

305 "(6) An individual's participation in Title 63G, Chapter 12, Utah Pilot Sponsored
306 Resident Immigrant Program Act, either as a sponsor or resident alien does not constitute

307 encouraging or inducing an alien to come to, enter, or reside in this state in violation of
308 Subsection (2)(c)."

Legislative Review Note
as of 2-25-11 12:54 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.

In colonial time colonies exercised authority with regard to immigration, and in the early years of our country both states and the federal government exercised authority with regard to immigration. However, the purview of the federal government has expanded overtime. 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, 8 U.S.C. Sec. 1101 et seq. (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?

This bill addresses areas also addressed by federal law such as when an individual may legally be present in the state, entry into the state, and the ability of an individual to work within the state. The statutes enacted under this bill differ from the regulations under federal law. For example, this bill provides a means by which a person may employ an unauthorized alien in

this state if the unauthorized alien is approved as a resident immigrant. 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. There is a high probability that a court would find that portions of this bill are unconstitutional because they 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

FISCAL NOTE

H.B. 469

SHORT TITLE: Immigration Related Amendments

SPONSOR: Dougall, J.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill will cost the Department of Public Safety \$878,900 in one-time General Fund in FY 2013 for start-up costs. The bill will cost the Utah State Tax Commission \$487,200 one-time from the General Fund in FY 2013 for programming costs.

Enactment of this bill may allow additional income tax withholding of an estimated \$5.7 million ongoing to the Education Fund beginning in FY 2014.

The Utah State Tax Commission will collect and remit to the federal government an estimated \$69.7 million in revenue for FY 2014 and each year thereafter.

Ongoing costs for the Department of Public Safety are estimated at \$2.1 million per year in dedicated credits beginning in FY 2014. An equal amount of revenue will presumably accrue in fees as dedicated credits authorized in this bill.

The Legislative General Counsel has attached a detailed Legislative Review note to this bill. If provisions in the bill are challenged in court, there will be costs associated with defending those provisions.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
General Fund, One-Time	\$0	\$0	\$1,366,100
Total Expenditure	\$0	\$0	\$1,366,100
Net Impact, All Funds (Rev.-Exp.)	\$0	\$0	(\$1,366,100)
Net Impact, General/Education Funds	\$0	\$0	(\$1,366,100)

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.