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~~{deleted text}~~ shows text that was in HB0116 but was deleted in HB0116S02.

inserted text shows text that was not in HB0116 but was inserted into HB0116S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative Bill Wright proposes the following substitute bill:

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;

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

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

ENACTS:

35A-8-101, Utah Code Annotated 1953

35A-8-102, Utah Code Annotated 1953

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35A-8-201, Utah Code Annotated 1953
35A-8-202, Utah Code Annotated 1953
35A-8-203, Utah Code Annotated 1953
35A-8-204, Utah Code Annotated 1953
35A-8-301, Utah Code Annotated 1953
35A-8-302, Utah Code Annotated 1953
35A-8-303, Utah Code Annotated 1953
35A-8-304, Utah Code Annotated 1953
35A-8-305, Utah Code Annotated 1953
35A-8-306, Utah Code Annotated 1953
35A-8-307, Utah Code Annotated 1953
35A-8-401, Utah Code Annotated 1953
35A-8-402, Utah Code Annotated 1953
35A-8-403, Utah Code Annotated 1953
35A-8-404, Utah Code Annotated 1953
76-8-1501, Utah Code Annotated 1953
76-8-1502, Utah Code Annotated 1953
76-8-1503, Utah Code Annotated 1953
76-8-1504, Utah Code Annotated 1953
76-8-1505, Utah Code Annotated 1953

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

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

CHAPTER 8. GUEST WORKER PROGRAM ACT

Part 1. General Provisions

35A-8-101. Title.

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

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

35A-8-102. Definitions.

As used in this chapter:

(1) "Basic health insurance plan" means a health plan that is actuarially equivalent to a

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federally qualified high deductible health plan.

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

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

(b) the undocumented individual's grandparent;

(c) the undocumented individual's sibling;

(d) the undocumented individual's grandchild;

(e) the undocumented individual's nephew;

(f) the undocumented individual's niece;

(g) a spouse of an individual described in this Subsection (2); or

(h) an individual who is similar to one listed in this Subsection (2).

(3) "Guest worker" means an undocumented individual who holds a guest worker permit.

(4) "Guest worker permit" means a permit issued in accordance with Section 35A-8-304 to an undocumented individual who meets the eligibility criteria of Section 35A-8-302.

(5) "Immediate family" means for an undocumented individual:

(a) the undocumented individual's spouse; or

(b) a child of the undocumented individual if the child is:

(i) under 21 years of age; and

(ii) unmarried.

(6) "Immediate family permit" means a permit issued in accordance with Section 35A-8-304 to an undocumented individual who meets the eligibility criteria of Section 35A-8-303.

(7) "Lawfully present in the United States" is as defined in 8 C.F.R. Sec. 103.12.

(8) "Permit" means a permit issued under this chapter and includes:

(a) a guest worker permit; and

(b) an immediate family permit.

(9) "Permit holder" means an individual who holds a permit.

(10) "Program" means the Guest Worker Program described in Section 35A-8-201.

(11) "Relevant contact information" means the following for an undocumented individual:

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- (a) the undocumented individual's name;
 - (b) the undocumented individual's residential address;
 - (c) the undocumented individual's residential telephone number;
 - (d) the undocumented individual's personal email address;
 - (e) the name of the person with whom the undocumented individual has a contract for hire;
 - (f) the name of the contact person for the person listed in Subsection (11)(e);
 - (g) the address of the person listed in Subsection (11)(e);
 - (h) the telephone number for the person listed in Subsection (11)(e);
 - (i) the names of the undocumented individual's immediate family members;
 - (j) the names of the family members who reside with the undocumented individual;
- and
- (k) any other information required by the department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

(13) "Serious felony" means a felony under:

- (a) Title 76, Chapter 5, Offenses Against the Person;
 - (b) Title 76, Chapter 5a, Sexual Exploitation of Children;
 - (c) Title 76, Chapter 6, Offenses Against Property;
 - (d) Title 76, Chapter 7, Offenses Against the Family;
 - (e) Title 76, Chapter 8, Offenses Against the Administration of Government;
 - (f) Title 76, Chapter 9, Offenses Against Public Order and Decency; and
 - (g) Title 76, Chapter 10, Offenses Against Public Health, Safety, Welfare, and Morals.
- (14) "Undocumented individual" means an individual who:

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

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

Part 2. Guest Worker Program

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

- (1) The department shall administer a program known as the "Guest Worker Program"

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created by this chapter. Under this program, the department shall:

(a) seek one or more waivers, exemptions, or authorizations to implement the program as provided in Section 35A-8-202;

(b) issue a permit as provided in Section 35A-8-304;

(c) establish fees in accordance with Section 63J-1-504 for a filing or service required by this chapter;

(d) take action under Part 4, Enforcement; and

(e) report annually to the governor and the Legislature.

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

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

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

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

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

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

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

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

(b) July 1, 2013.

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

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

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

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

(i) a fee collected under this chapter;

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

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

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

(v) interest earned on the restricted account.

(b) The restricted account shall earn interest.

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

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

(b) the department to administer the program;

(c) the State Tax Commission for costs associated with implementing Section 35A-8-204;

(d) the attorney general for costs associated with:

(i) litigation related to this chapter;

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

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

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

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

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

(1) To the extent feasible, the department shall coordinate the implementation of the program with other existing state and federal laws that relate to immigration and labor, including laws pertaining to obtaining the privilege to drive and to report citizenship status.

(2) (a) If a ~~{waiver, exemption, or authorization described in Section 35A-8-202 does not provide for the issuance of}~~ ~~permit holder is not issued~~ a Social Security number ~~{to a guest worker}~~, the State Tax Commission shall, by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide a means for a person who receives services from a ~~{guest worker}~~ ~~permit holder~~ to withhold from compensation paid to the ~~{guest worker}~~ ~~permit holder~~ an amount to be determined by State Tax Commission rule that, as closely as possible, equals the income and employment taxes that would be imposed by state and federal law if the ~~{guest worker}~~ ~~permit holder~~ were an employee with a Social Security number.

(b) If a waiver, exemption, or authorization described in Section 35A-8-202 provides for the issuance of a Social Security number to a ~~{guest worker}~~ ~~permit holder~~, a person who

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receives services from a ~~guest worker~~ permit holder is required to withhold from compensation as provided in Title 59, Chapter 10, Part 4, Withholding of Tax.

(c) The rules described in Subsection (2)(a) shall be substantially similar to Title 59, Chapter 10, Part 4, Withholding of Tax.

(d) (i) The State Commission by rules described in Subsection (2)(a) shall provide a method by which the state remits to the federal government the money collected under Subsection (1)(a) that would be owed the federal government if the permit holder were an employee with a Social Security number.

(ii) If a waiver, exemption, or authority is entered into under Section 35A-8-202, the method by which the state remits to the federal government the money collected under (2)(a) shall be consistent with the waiver, exemption, or authority.

(3) The department shall facilitate the use in this state of other employer based work programs that meet the needs of Utah employers by using workers who are not working in Utah and who are not United States citizens. Nothing in this chapter prevents a person from using an employer based work program described in this Subsection (3) that exists under the auspices of a foreign government in cooperation with the United States government.

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

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

Part 3. Permits

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

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

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

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

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

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

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

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purpose.

(3) An individual may not use a permit:

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

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

(4) A ~~guest worker~~ permit holder is not considered an employee for purposes of:

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

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

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

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

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

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

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

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

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

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

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

(f) (i) ~~agree to~~ **provide** a criminal background check ~~described in Subsection (3)~~ conducted by the Utah Bureau of Criminal Identification; and

(ii) not have been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent to a serious felony;

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

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

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

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permit; and

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

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

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

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

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

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

~~_____ (ii) consent to a fingerprint background check by:~~

~~_____ (A) the Utah Bureau of Criminal Identification; and~~

~~_____ (B) the Federal Bureau of Investigation.~~

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

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

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

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

~~_____ (e) The department shall:~~

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

~~_____ (ii) in accordance with Section 63J-1-504, charge the undocumented individual~~

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applying for the permit a fee equal to the aggregate of the costs incurred by the department under this Subsection (3) and amount paid under Subsection (3)(c)(i).

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

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

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

- (1) live in Utah, but not be lawfully present in the United States;
- (2) be a member of a guest worker's immediate family; and
- (3) provide relevant contact information and regularly update the relevant contact information in a manner required by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

- (1) The department may not issue a permit under this chapter until the program is implemented under Section 35A-8-202.
- (2) The department shall:
 - (a) create a permit that:
 - (i) is of impervious material that is resistant to wear or damage; and
 - (ii) minimizes the risk that the permit may be forged, falsified, or counterfeited; and
 - (b) ensure that a permit:
 - (i) includes a photograph of the individual to whom the permit is issued;
 - (ii) prominently states the day on which the permit expires; and
 - (iii) prominently states the type of permit.
- (3) A permit expires two years from the day on which the department issues the permit.
- (4) To apply for or renew a permit, an undocumented individual shall submit to the department, in a form acceptable under this chapter:
 - (a) an application;
 - (b) documentation of meeting the criteria in Section 35A-8-302 or 35A-8-303;
 - (c) for a renewal, documentation of efforts to comply with Section 35A-8-306;
 - (d) a signed statement verifying the information in the application and documentation;
 - (e) a fee established by the department in accordance with Section 63J-1-504; and

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(f) for an initial guest worker permit, a fine of \$750 unless the undocumented individual provides evidence satisfactory to the department that the undocumented individual is covered by a basic health insurance plan.

(5) If an undocumented individual submits a complete application and the department determines that the undocumented individual meets the criteria of Section 35A-8-302 or 35A-8-303, the department shall issue or renew:

(a) a guest worker permit if the undocumented individual qualifies under Section 35A-8-302; and

(b) an immediate family permit if the undocumented individual qualifies under Section 35A-8-303.

(6) An undocumented individual may appeal a denial of a permit under this section in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

Section 11. Section **35A-8-305** is enacted to read:

35A-8-305. Conditions during permit term.

(1) A permit holder shall continue to meet the eligibility criteria under Section 35A-8-302 or 35A-8-303 for the type of permit held by the permit holder.

(2) A permit is automatically revoked if after issuance of the permit:

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Subject to Subsection (2), a person shall terminate ~~{a guest worker}~~ an undocumented individual if the ~~{guest worker}~~ undocumented individual is determined by the department to not hold a valid ~~{guest worker}~~ permit.

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

(b) An undocumented individual may not provide services under a contract for hire to a person for more than 30 days during a two-year calendar period without obtaining a ~~{guest worker}~~ permit as provided under this chapter.

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

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

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

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

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

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

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

(c) the determination that a permit is invalid.

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

Part 4. Enforcement

35A-8-401. Prohibited conduct.

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

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

† ~~(3)~~(2) A person may not:

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

(b) alter the information on a permit;

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

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

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

(f) display a revoked permit as a valid permit;

(g) knowingly or with reckless disregard acquire, use, display, or transfer an item that purports to be a valid permit, but that is not a valid permit; or

(h) otherwise violate this chapter.

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

35A-8-402. Administrative penalties.

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

(1) suspend, limit, or revoke and repossess a permit;

(2) impose a civil penalty not to exceed \$750 for each violation; or

(3) take a combination of actions under this section.

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

35A-8-403. Criminal penalties.

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

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

or

(2) alters the information on a permit.

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

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

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

(a) has the undocumented individual's permit revoked; or

(b) permits the undocumented individual's permit to expire.

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

(i) Utah's attorney general;

(ii) the Department of Public Safety; and

(iii) United States Immigration and Customs Enforcement.

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

(i) include:

(A) the last known address of the undocumented individual; and

(B) the basis of the notice described in Subsection (1); and

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

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

63G-2-206. Sharing records.

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

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

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

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

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purpose;

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

(e) (i) is:

(A) the Legislature;

(B) a legislative committee;

(C) a member of the Legislature; or

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

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

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

(B) appropriations; or

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

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

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

(ii) that the record or record series will be used for a purpose similar to the purpose for which the information in the record or record series was collected or obtained; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) the record or record series it requests:

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

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

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

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

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

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

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

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

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

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

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

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

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

63G-2-305. Protected records.

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

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

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

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

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

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

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

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

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

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

- (a) a request for bids;
- (b) a request for proposals;
- (c) a grant; or
- (d) other similar document;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(11) records the disclosure of which would jeopardize the security of governmental

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property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

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

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

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

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

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

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

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

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

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

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

(A) members of a legislative body;

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

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

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

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

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

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

(22) drafts, unless otherwise classified as public;

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

(24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;

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

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

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

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in

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accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

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

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

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

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

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

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

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

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

(37) the name of a donor or a prospective donor to a governmental entity, including an

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institution within the state system of higher education defined in Section 53B-1-102, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:

(a) the donor requests anonymity in writing;

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

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

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

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

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

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

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(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

(b) a magazine;

(43) information:

(a) contained in the statewide database of the Division of Aging and Adult Services created by Section 62A-3-311.1; or

(b) received or maintained in relation to the Identity Theft Reporting Information System (IRIS) established under Section 67-5-22;

(44) information contained in the Management Information System and Licensing Information System described in Title 62A, Chapter 4a, Child and Family Services;

(45) information regarding National Guard operations or activities in support of the National Guard's federal mission;

(46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

(47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;

(48) except to the extent that the record is exempt from this chapter pursuant to Section 63G-2-106, records related to an emergency plan or program prepared or maintained by the Division of Homeland Security the disclosure of which would jeopardize:

(a) the safety of the general public; or

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(b) the security of:

(i) governmental property;

(ii) governmental programs; or

(iii) the property of a private person who provides the Division of Homeland Security information;

(49) records of the Department of Agriculture and Food relating to the National Animal Identification System or any other program that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and Quarantine;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

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

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

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

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

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

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

(b) conducted using animals;

(53) an initial proposal under Title 63M, Chapter 1, Part 26, Government Procurement

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Private Proposal Program, to the extent not made public by rules made under that chapter;

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

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

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

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

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

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

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

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

(60) in accordance with Section 73-10-33:

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

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

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

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

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

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

(1) The following entities may create, publish, or otherwise manufacture an identification document, identification card, or identification certificate and possess an

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engraved plate or other device for the printing of an identification document:

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

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

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

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

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

(a) a United States citizen;

(b) a national; or

(c) a legal permanent resident alien.

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

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

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

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

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

(v) approved deferred action status; or

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

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

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

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

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

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

(A) that it is temporary; and

(B) its expiration date.

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

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

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

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

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

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

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

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

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

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

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

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

(1) Appropriations from the Technology Development Restricted Account created in

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Section 31A-3-104.

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

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

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

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

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

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

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

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

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

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

Part 15. Identification Enforcement Act

76-8-1501. Title.

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

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

76-8-1502. Definitions.

As used in this part:

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

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

~~(3)~~ "Guest worker program permit" means a permit issued under Title 35A, Chapter 8, Guest Worker Program Act.

~~(3)~~ (4) (a) "Identification" means a document that is a form of positive identification that:

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

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

(b) "Identification" includes:

(i) an identification card issued by the state;

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

(iii) a driver license issued by any state;

(iv) a United States military identification card;

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

(A) a valid tribal identification card;

(B) a Bureau of Indian Affairs card; or

(C) a tribal treaty card; or

(vi) a guest worker program permit.

(~~4~~5) "Law enforcement agency" means an entity of the federal government, a state, or a political subdivision of a state, including a state institution of higher education, that exists primarily to prevent and detect crime and enforce criminal laws, statutes, and ordinances.

(~~5~~6) "Law enforcement officer" has the same meaning as in Section 53-13-103.

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

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

(1) On and after July 1, 2013, a person shall display at least one form of identification to a law enforcement officer on demand of the law enforcement officer if the law enforcement officer conducts a lawful stop, detention, or arrest of the individual when acting in the enforcement of a state law or local ordinance.

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

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

(b) fingerprint the individual; and

(c) take a photograph of the individual.

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

(4) (a) An individual is guilty of a class C misdemeanor if the individual violates

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Subsection (1).

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

(i) fingerprint the individual; or

(ii) take a photograph of the individual.

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

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

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

76-8-1504. Identification database.

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

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

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

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

(5) The department shall maintain a record created as part of the database for at least three years from the day on which the record is created in the database.

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

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

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

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

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Legislative Review Note

as of ~~{2-15-11 2}~~2-18-11 7:35 PM~~38 AM~~

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. 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.

The bill requires the executive branch 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 unconstitutional because they are preempted by

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federal law as applied through the Supremacy Clause of the Constitution of the United States.

Office of Legislative Research and General Counsel