

SB0060S01 compared with SB0060

~~text~~ shows text that was in SB0060 but was deleted in SB0060S01.

inserted text shows text that was not in SB0060 but was inserted into SB0060S01.

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Senator Luz Robles proposes the following substitute bill:

PILOT ACCOUNTABILITY PERMIT PROGRAM AND IDENTITY RELATED AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Robles

House Sponsor: Jeremy A. Peterson

LONG TITLE

General Description:

This bill modifies public safety, labor, and criminal provisions to address issues related to accountability permits and providing identifying information.

Highlighted Provisions:

This bill:

- ▶ enacts the Utah Pilot Accountability Permit Program Act, including:
 - defining terms;
 - establishing the purposes and limitations of permits;
 - addressing charitable activities;
 - providing for the administration of the Utah Pilot Accountability Permit

SB0060S01 compared with SB0060

Program;

- requiring the governor to petition necessary waivers, exemptions, or authority to implement the program;
 - creating the Pilot Accountability Permit Program Restricted Account;
 - addressing withholding under the program;
 - providing for the issuance of permits;
 - providing for the creation of a database related to the program and addressing confidentiality of records;
 - requiring an adult not lawfully present in the United States to obtain a permit;
 - permitting a minor not lawfully present in the United States to obtain a permit under certain circumstances;
 - establishing the criteria to obtain and maintain a permit;
 - creating the application and renewal process;
 - requiring reporting by a permit holder;
 - requiring a permit holder to carry the permit;
 - requiring Type B permit holders to meet certain standards;
 - addressing proficiency in English and civics;
 - imposing requirements on a business to obtain the services of a permit holder;
 - providing for registration of approved businesses;
 - requiring reporting by an approved business;
 - creating a complaint process concerning the participation of approved businesses;
 - requiring compliance with labor laws;
 - establishing prohibited activities;
 - providing for administrative and criminal enforcement; and
 - providing for severability;
- ▶ enacts the Identity Enforcement Act, including:
- defining terms;
 - requiring an individual to present a photographic document if subject to a lawful stop, detention, or arrest by a law enforcement officer;
 - requiring fingerprinting and photographing under certain circumstances;

SB0060S01 compared with SB0060

- imposing penalties;
 - requiring the establishment of a database;
 - providing for the sharing of information with federal agencies under certain circumstances; and
- ▶ makes technical and conforming amendments.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an effective date.

Utah Code Sections Affected:

AMENDS:

32B-1-404 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276

32B-1-406 (Effective 07/01/11), as enacted by Laws of Utah 2010, Chapter 276

46-1-2, as last amended by Laws of Utah 2009, Chapter 315

58-37c-10, as last amended by Laws of Utah 2008, Chapter 322

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

63G-2-302, as last amended by Laws of Utah 2010, Chapters 36 and 379

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-1-602.3, as enacted by Laws of Utah 2010, Chapter 265

76-10-526, as last amended by Laws of Utah 2010, Chapter 62

ENACTS:

53-16-101, Utah Code Annotated 1953

53-16-102, Utah Code Annotated 1953

53-16-103, Utah Code Annotated 1953

53-16-104, Utah Code Annotated 1953

53-16-105, Utah Code Annotated 1953

53-16-201, Utah Code Annotated 1953

53-16-202, Utah Code Annotated 1953

53-16-203, Utah Code Annotated 1953

53-16-204, Utah Code Annotated 1953

SB0060S01 compared with SB0060

53-16-301, Utah Code Annotated 1953
53-16-302, Utah Code Annotated 1953
53-16-303, Utah Code Annotated 1953
53-16-304, Utah Code Annotated 1953
53-16-305, Utah Code Annotated 1953
53-16-307, Utah Code Annotated 1953
53-16-308, Utah Code Annotated 1953
53-16-401, Utah Code Annotated 1953
53-16-402, Utah Code Annotated 1953
53-16-403, Utah Code Annotated 1953
53-16-404, Utah Code Annotated 1953
53-16-405, Utah Code Annotated 1953
53-16-501, Utah Code Annotated 1953
53-16-502, Utah Code Annotated 1953
53-16-503, Utah Code Annotated 1953
53-16-504, 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 **32B-1-404 (Effective 07/01/11)** is amended to read:

32B-1-404 (Effective 07/01/11). Presentation of proof of age upon request.

(1) To obtain one or more of the following, an individual shall present proof of age at the request of a person listed in Subsection (2):

- (a) an alcoholic product;
- (b) admittance to a restricted area; or
- (c) employment that under this title may not be obtained by a minor.

(2) To determine whether the individual described in Subsection (1) is 21 years of age,

SB0060S01 compared with SB0060

the following may request a person described in Subsection (1) to present proof of age:

- (a) an authorized person;
- (b) a peace officer;
- (c) a representative of the State Bureau of Investigation of the Department of Public Safety, established in Section 53-10-301; or
- (d) an authorized department employee.

(3) The following may not be used as evidence of the legal age of an individual for purposes of this part:

- (a) a driving privilege card issued in accordance with Section 53-3-207; or
- (b) an accountability permit issued in accordance with Title 53, Chapter 16, Utah Pilot Accountability Permit Program Act.

Section 2. Section **32B-1-406 (Effective 07/01/11)** is amended to read:

32B-1-406 (Effective 07/01/11). Acceptance of identification.

(1) An authorized person may accept as evidence of the legal age of the individual presenting the following:

- (a) proof of age; or
- (b) if a statement of age is required under Section 32B-1-405:
 - (i) proof of age; and
 - (ii) a statement of age.

(2) A statement of age, if properly completed, signed, and filed in accordance with Section 32B-1-405, may be offered as a defense in a case when there is at issue the legality of:

- (a) selling, offering for sale, or furnishing an alcoholic product to the individual who signed the statement of age;
- (b) admitting the individual who signed the statement of age into a restricted area; or
- (c) allowing the individual who signed the statement of age to be employed in

employment that under this title may not be obtained by a minor.

(3) An authorized person may not accept as evidence of the legal age of an individual:

(a) a driving privilege card issued in accordance with Section 53-3-207 [as evidence of the legal age of an individual.]; or

(b) an accountability permit issued in accordance with Title 53, Chapter 16, Utah Pilot Accountability Permit Program Act.

SB0060S01 compared with SB0060

Section 3. Section **46-1-2** is amended to read:

46-1-2. Definitions.

As used in this chapter:

(1) "Acknowledgment" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has admitted, in the presence of the notary, to voluntarily signing a document for the document's stated purpose.

(2) "Commission" means:

(a) to empower to perform notarial acts; and

(b) the written authority to perform those acts.

(3) "Copy certification" means a notarial act in which a notary certifies that a photocopy is an accurate copy of a document that is neither a public record nor publicly recorded.

(4) "Electronic signature" has the same meaning as provided under Section 46-4-102.

(5) "Jurat" means a notarial act in which a notary certifies that a signer, whose identity is personally known to the notary or proven on the basis of satisfactory evidence, has made, in the notary's presence, a voluntary signature and taken an oath or affirmation vouching for the truthfulness of the signed document.

(6) "Notarial act" and "notarization" mean any act that a notary is empowered to perform under this section.

(7) "Notarial certificate" means the part of or attachment to a notarized document for completion by the notary and bearing the notary's signature and seal.

(8) "Notary" means any person commissioned to perform notarial acts under this chapter.

(9) "Oath" or "affirmation" means a notarial act in which a notary certifies that a person made a vow or affirmation in the presence of the notary on penalty of perjury.

(10) "Official misconduct" means a notary's performance of any act prohibited or failure to perform any act mandated by this chapter or by any other law in connection with a notarial act.

(11) "Personal knowledge of identity" means familiarity with an individual resulting from interactions with that individual over a period of time sufficient to eliminate every

SB0060S01 compared with SB0060

reasonable doubt that the individual has the identity claimed.

(12) (a) "Satisfactory evidence of identity" means identification of an individual based on:

(i) valid personal identification with the individual's photograph, signature, and physical description issued by the United States government, any state within the United States, or a foreign government;

(ii) a valid passport issued by any nation; or

(iii) the oath or affirmation of a credible person who is personally known to the notary and who personally knows the individual.

(b) "Satisfactory evidence of identity" does not include:

(i) a driving privilege card under Subsection 53-3-207(10); ~~or~~

(ii) an accountability permit issued in accordance with Title 53, Chapter 16, Utah Pilot Accountability Permit Program Act; or

~~(iii)~~ (iii) another document that is not considered valid for identification.

Section 4. Section **53-16-101** is enacted to read:

CHAPTER 16. UTAH PILOT ACCOUNTABILITY PERMIT PROGRAM ACT

Part 1. General Provisions

53-16-101. Title.

This chapter is known as the "Utah Pilot Accountability Permit Program Act."

Section 5. Section **53-16-102** is enacted to read:

53-16-102. Definitions.

As used in this chapter:

(1) "Approved business" means a person who registers with the department in accordance with Section 53-16-402.

(2) "Database" means the database created under Section 53-16-302.

(3) "Government entity" includes:

(a) the state;

(b) an administrative unit of the state;

(c) a political subdivision of the state;

(d) an administrative unit of a political subdivision of the state; or

(e) an officer or employee of an entity described in Subsections (3)(a) through (d).

SB0060S01 compared with SB0060

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

(5) "Permit" means an accountability permit issued in accordance with this chapter, and includes:

(a) a Type A permit; and

(b) a Type B permit.

(6) "Permit holder" means an individual to whom is issued a permit.

(7) "Proficiency standards in English and civics" means the following determined by the State Office of Education in accordance with Section 53-16-308:

(a) proficiency standards for English; and

(b) proficiency standards for civics and government.

(8) "Program" means the Utah Pilot Accountability Permit Program described in Section 53-16-201.

(9) "Restricted account" means the Pilot Accountability Permit Program Restricted Account created in Section 53-16-203.

(10) "Significant crime" means a crime that the multi-agency strike force combats in accordance with Subsection 67-5-22.7(1).

(11) "Type A permit" means a permit issued to an individual in accordance with Subsection 53-16-304(3)(a).

(12) "Type B permit" means a permit issued to an individual in accordance with Subsection 53-16-304(3)(b).

(13) "Unauthorized alien" is as defined in 8 U.S.C. Sec. 1324A(h)(3).

Section 6. Section **53-16-103** is enacted to read:

53-16-103. Accountability permit purposes and limitations.

(1) (a) A permit only authorizes the individual to whom the permit is issued to participate in the program. An individual may not use a permit for any other government purpose.

(b) The issuance of a permit to an individual does not affect whether the individual is lawfully present in the United States for purposes of a law other than this chapter.

(2) (a) A permit is not considered identification for purposes of Title 63G, Chapter 11, Identity Documents and Verification, except as provided in Title 76, Chapter 8, Part 15, Identity Enforcement Act.

SB0060S01 compared with SB0060

(b) An individual may not use a permit:

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

(ii) as identification or proof of the individual's age for any government required purpose, except as provided in Title 76, Chapter 8, Part 15, Identity Enforcement Act; or

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

(c) A government entity may not accept a permit as proof of personal identification or age, except as provided in Title 76, Chapter 8, Part 15, Identity Enforcement Act.

(3) Notwithstanding any other provision of law, a permit holder is not considered an employee for purposes of the following:

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

(b) Title 35A, Chapter 4, Employment Security Act; and

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

Section 7. Section **53-16-104** is enacted to read:

53-16-104. Application to charitable activities.

This chapter is not intended to discourage a person lawfully present in this state from providing charitable service to an individual who resides in this state to the extent that the charitable service is not expressly prohibited by this chapter.

Section 8. Section **53-16-105** is enacted to read:

53-16-105. Severability.

If a provision of this chapter or the application of a provision to a person or circumstance is held invalid, the remainder of this chapter shall be given effect without the invalid provision or application. The provisions of this chapter are severable.

Section 9. Section **53-16-201** is enacted to read:

Part 2. Administration of the Utah Pilot Accountability Permit Program

53-16-201. General powers and duties.

(1) In accordance with this chapter, the department shall administer this chapter as a program known as the "Utah Pilot Accountability Permit Program."

(2) Under the program, the department shall:

(a) issue a permit in accordance with Section 53-16-304;

(b) register an approved business in accordance with Section 53-16-402;

SB0060S01 compared with SB0060

(c) take necessary action under Section 53-16-405;

(d) take administrative action under Section 53-16-502 in accordance with Title 63G, Chapter 4, Administrative Procedures Act; and

(e) annually report to the governor and the Business and Labor Interim Committee related to:

(i) efforts described in Section 53-16-202;

(ii) the number of permits issued in the previous calendar year;

(iii) the number of permits denied, suspended, or revoked in the previous calendar year;

(iv) the number of approved businesses registered in the previous calendar year;

(v) the number and nature of violations found under Part 5, Prohibited Activities and Enforcement, in the previous calendar year; and

(vi) the need, if any, for legislative action.

(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules to provide:

(a) the form for an application submitted under this chapter;

(b) what documentation is required to show compliance under this chapter;

(c) notice of an opportunity for a hearing on a denial of a permit; and

(d) the procedure a person is to follow to verify the validity of a permit under Section 53-16-401.

Section 10. Section **53-16-202** is enacted to read:

53-16-202. Petition federal government -- Cooperative efforts.

(1) (a) The governor, with the assistance of the attorney general, shall petition one or more federal government entities to obtain the necessary waivers, exemptions, or authority to implement the program.

(b) To implement a waiver, exemption, or authority under Subsection (1), the governor may enter into an agreement with a federal government entity to obtain a necessary waiver, exemption, or authority to implement the program, except that the agreement may not:

(i) take effect until the governor reports to the Legislative Management Committee concerning the agreement; and

(ii) contain a provision that is inconsistent with this chapter or other state law.

SB0060S01 compared with SB0060

(c) In seeking a necessary waiver, exemption, or authority under this section, the governor shall negotiate:

(i) appropriate protections for both a permit holder and a person who obtains services from a permit holder;

(ii) effective means for the collection of taxes, fees, and charges owed to federal and state government by a permit holder or person who obtains services from a permit holder; and

(iii) effective enforcement of the laws to which a permit holder or person who obtains services from a permit holder are subject.

(d) The governor shall determine when the state obtains the necessary waivers, exemptions, or authority to implement the program.

(2) The department may enter into one or more agreements with federal, state, and local government entities to coordinate efforts to meet the needs of businesses in this state to obtain necessary labor or services in a manner consistent with this chapter.

Section 11. Section **53-16-203** is enacted to read:

53-16-203. Pilot Accountability Permit Program Restricted Account.

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

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

(i) a fee collected under this chapter;

~~{~~ ~~(ii) money deposited into the restricted account under Section 53-16-204;~~

~~}~~ ~~(iii) civil penalties imposed under Section 53-16-501 or 53-16-502;~~

~~(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 to administer the program;

(b) the State Tax Commission for costs associated with implementing Section 53-16-204;

(c) the attorney general for costs associated with:

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

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

SB0060S01 compared with SB0060

(d) the State Office of Education for costs associated with implementing Section 53-16-308; or

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

Section 12. Section **53-16-204** is enacted to read:

53-16-204. Withholding under the program.

(1) (a) If a waiver, exemption, or authority described in Section 53-16-202 does not provide for the issuance of a Social Security number to a permit holder, 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 permit holder to withhold from compensation paid to the 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 permit holder were an employee with a Social Security number.

(b) If a waiver, exemption, or authority described in Section 53-16-202 provides for the issuance of a Social Security number to a permit holder, a person who receives services from a permit holder is required to withhold from compensation as provided in Title 59, Chapter 10, Part 4, Withholding of Tax.

(2) The rules described in Subsection (1)(a) shall ~~be~~ ~~(a)~~ be substantially similar to Title 59, Chapter 10, Part 4, Withholding of Tax ~~and~~ ~~(b)~~ ~~3~~ ~~provide a method, that is~~ ~~To the extent feasible and~~ consistent with a waiver, exemption, or authority entered into under Section 53-16-202, ~~by which~~ ~~the State Tax Commission shall work with~~ the ~~state remits to the~~ ~~applicable~~ federal government ~~agencies to ensure that~~ the ~~money collected~~ ~~withholding provided for~~ under Subsection ~~(1)(a) that would be owed the federal government if the~~ ~~2~~ ~~is compatible with a federal process by which the income and employment taxes are collected that would be imposed under federal law if a~~ permit holder were an employee with a Social Security number.

Section 13. Section **53-16-301** is enacted to read:

Part 3. Issuance of an Accountability Permit

53-16-301. Issuing a permit.

(1) The department may not issue a permit under this chapter:

SB0060S01 compared with SB0060

(a) before ~~30~~120 days after the day on which the governor notifies that department that the state has obtained the necessary waivers, exemptions, or authority to implement the program; or

(b) after the day on which the necessary waivers, exemptions, or authority described in Subsection (1)(a) terminate.

(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;

(b) distinguish a permit from identification issued by the state by:

(i) using format, color, font, or other means; and

(ii) displaying clearly on the front of a permit a phrase substantially similar to "FOR WORK PRIVILEGES ONLY -- NOT VALID FOR IDENTIFICATION"; and

(c) 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.

Section 14. Section **53-16-302** is enacted to read:

53-16-302. Database -- Status of records.

(1) The department shall maintain a database of individuals who apply for or who are issued a permit.

(2) (a) The database created under this section shall include a record for each individual who applies for a permit of the following:

(i) the individual's name and address;

(ii) the date on which the individual applies for a permit;

(iii) if a permit is issued:

(A) the type of permit issued;

(B) the date on which the permit is issued; and

(C) for a Type A permit, the date on which the permit is renewed;

(iv) if a permit is not issued or, if a Type A permit is not renewed, the grounds for which the permit is not issued or not renewed; and

SB0060S01 compared with SB0060

(v) for a Type B permit, the name and address of the approved business for which a permit holder provides services, as last reported by the permit holder.

(b) The department shall develop and maintain the database so that a person can efficiently access the database under Section 53-16-401.

(3) A record created under this chapter, including the database created under this section, is a protected record under Title 63G, Chapter 2, Government Records Access and Management Act, except that:

(a) a record may not be shared under Section 63G-2-206, unless:

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

(ii) disclosed to a federal government entity in accordance with this chapter or an agreement under Section 53-16-202; and

(b) an individual's individual tax identification number is a private record under Subsection 63G-2-302(1)(h).

(4) 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 15. Section **53-16-303** is enacted to read:

53-16-303. Requirement to have a permit -- Criteria to obtain a permit --

Criminal background check -- Minor.

(1) (a) During the period of time that under Subsection 53-16-301(1) the department may issue a permit under this chapter, an individual who resides in Utah shall obtain a permit under this chapter if the individual is:

(i) an alien not lawfully present in the United States; and

(ii) 18 years of age or older.

(b) Failure to obtain a permit as required by this Subsection (1)(a) is a violation of this chapter subject to administrative action under Section 53-16-502.

(c) During the period of time that under Subsection 53-16-301(1) the department may issue a permit under this chapter, an individual who resides in Utah may obtain a permit under this chapter if the individual:

(i) is an alien not lawfully present in the United States;

(ii) is younger than 18 years of age;

SB0060S01 compared with SB0060

(iii) has the permission of the individual's parent or guardian; and

(iv) is seeking work to the extent permitted under Title 34, Chapter 23, Employment of Minors.

(2) To obtain a permit an individual shall:

(a) apply for the permit in accordance with Section 53-16-304;

(b) meet the criteria for a Type A or Type B permit as described in Subsection (3);

(c) 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 a significant crime;

(d) submit to a criminal background check in accordance with Subsection (4);

(e) if a waiver, exemption, or authority described in Section 53-16-202 does not provide for the issuance of a Social Security number to a permit holder, have an individual tax identification number issued by the Internal Revenue Service;

(f) agree to participate in withholding as provided in Section 53-16-204;

(g) agree to use the permit only for purposes of the program and not use a permit to obtain work or provide services in a state other than Utah;

(h) for a Type B permit, agree to provide services to an approved business as required by Section 53-16-307; and

(i) agree to comply with Section 53-16-308 related to meeting proficiency standards in English and civics.

(3) (a) To obtain a Type A permit, the individual shall have had as the individual's primary household, a household located in Utah continuously for at least two years from the day on which the individual applies for a Type A permit.

(b) To obtain a Type B permit, on the day on which the individual applies for a Type B permit, the individual shall demonstrate an agreement to provide services to an approved business beginning at least 30 days from the day on which the permit is issued.

(4) (a) The department shall require an individual applying for a permit, or renewing a Type A permit, to submit to a criminal background check as a condition of receiving or renewing the permit.

(b) An individual required to submit to a criminal background check under Subsection (4)(a), shall:

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

SB0060S01 compared with SB0060

(ii) consent to a fingerprint background check by:

(A) the Utah Bureau of Criminal Identification; and

(B) the Federal Bureau of Investigation.

(c) For a person who submits a fingerprint card and consents to a fingerprint background check under Subsection (4)(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 (4) 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 (4); and

(ii) in accordance with Section 63J-1-504, charge the person applying for the permit a fee equal to the aggregate of the costs incurred by the department under this Subsection (4) and amount paid under Subsection (4)(e)(i).

(5) (a) If an individual described in Subsection (1)(c) is unable to apply for a permit, the individual's parent or guardian may apply for the permit on behalf of the individual.

(b) A parent or guardian applying for a permit on behalf of an individual described in Subsection (5)(a) shall provide documentation that the parent or guardian is the parent or guardian of the individual.

Section 16. Section **53-16-304** is enacted to read:

53-16-304. Application and issuance process -- Reporting to federal agencies.

(1) Subject to Subsection (2), to apply for a permit, an individual shall submit to the department, in a form acceptable under this chapter:

(a) an application;

(b) documentation of meeting the criteria in Section 53-16-303;

(c) a signed statement verifying the information in the application and documentation;

SB0060S01 compared with SB0060

and

(d) a fee established by the department in accordance with Section 63J-1-504.

(2) An individual applying for a permit, or renewing a Type A permit, shall appear in person at a location designated by the department to submit the information required by Subsection (1).

(3) If an individual submits a complete application and the department determines that the person meets the criteria of Section 53-16-303, the department shall issue:

(a) a Type A permit if the individual qualifies under Subsection 53-16-303(3)(a); and

(b) a Type B permit if the individual qualifies under Subsection 53-16-303(3)(b).

(4) (a) If the department denies an application for a permit, the department shall immediately notify the individual who applies for the permit to provide the individual an opportunity for a hearing in the county where the individual resides.

(b) The department shall document a hearing under this section.

(c) As part of a hearing under this section, the department or its authorized agent may:

(i) administer an oath;

(ii) issue a subpoena for the attendance of a witness or the production of information;

or

(iii) permit a party or witness to attend or to testify by means of telephone or live audiovisual.

(d) After a hearing the department shall rescind or extend its order of denial.

(e) An individual who requests a hearing under this Subsection (4) shall pay the costs of the hearing.

(f) An individual denied a permit by the department following an administrative hearing may seek judicial review of the order in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(5) (a) If the department denies issuance of a permit, the individual who is denied issuance of a permit shall leave this state within 60 calendar days of the day on which the time for appeal of the denial ends, except that on request by the individual, the department may provide additional days for the individual to leave this state.

(b) If the department denies issuance of a permit because the applicant is found to have been convicted of, pled guilty to, pled no contest to, pled guilty in a similar manner to, or

SB0060S01 compared with SB0060

resolved by diversion or its equivalent a significant crime, the department shall notify Immigration and Customs Enforcement that the applicant is found to 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 significant crime.

(c) The notice described in Subsection (5)(b) shall:

(i) include the address of the applicant as it appears on the application; and

(ii) be sent promptly after the time for appeal under Subsection (4) ends.

Section 17. Section **53-16-305** is enacted to read:

53-16-305. Terms of permits -- Renewal process for Type A permit.

(1) (a) A Type A permit expires two years after the day on which it is issued and may be renewed in accordance with Subsection (2).

(b) A Type B permit expires two years after the day on which it is first issued and may not be renewed.

(2) To renew a Type A permit, an individual shall submit to the department, in a form acceptable under this chapter:

(a) an application;

(b) the documentation of meeting the criteria in Section 53-16-303;

(c) evidence that the permit holder in accordance with Section 53-16-308:

(i) participates in at least an aggregate of 160 hours of training to meet proficiency standards in English and civics during the previous two-year term of the permit; or

(ii) has met:

(A) the proficiency standards for English; and

(B) the proficiency standards for civics and government;

(d) a statement verifying the information in the application and documentation; and

(e) a fee established by the department in accordance with Section 63J-1-504.

Section 18. Section **53-16-307** is enacted to read:

53-16-307. Permit holder reporting and working requirements -- Carrying permit -- Special requirements for Type B permit.

(1) A permit holder shall notify the department in writing within three days of being convicted of, pleading guilty to, pleading no contest to, pleading guilty in a similar manner to, or resolving by diversion or its equivalent a significant crime.

SB0060S01 compared with SB0060

(2) In addition to complying with Subsection (1), a permit holder to whom is issued a Type B permit, shall notify the department in writing within three days of one of the following:

(a) a change of address of the permit holder; or

(b) the day on which the permit holder's term of service begins or ends with an approved business.

(3) (a) A Type B permit is automatically revoked if after issuance of the Type B permit, the permit holder to whom it is issued is not employed by an approved employer for more than 30 consecutive days.

(b) The department shall treat a permit revoked under this Subsection (3) in the same manner as a revoked permit described in Section 53-16-503.

(4) A permit holder shall carry the permit issued to the permit holder and have the permit in the permit holder's personal possession at all times that the permit holder is in the state.

Section 19. Section **53-16-308** is enacted to read:

53-16-308. Proficiency standards for English and civics.

(1) (a) By no later than 120 days after the day on which the department may first issue a permit under Section 53-16-301, the State Office of Education shall establish by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

(i) proficiency standards for English;

(ii) proficiency standards for civics and government; and

(iii) the procedure for a permit holder to take a test to determine if the permit holder meets:

(A) the proficiency standards for English; or

(B) the proficiency standards for civics and government.

(b) (i) The proficiency standards for English shall demonstrate that a permit holder is proficient in the English language at or above the level of intermediate on the basis of a language proficiency assessment test used by the State Office of Education for purposes of secondary school students.

(ii) The proficiency standards for civics and government shall demonstrate that a permit holder is proficient in civics and government at or above the level of necessary to pass the civics test administered by the United States Citizenship and Immigration Services for

SB0060S01 compared with SB0060

purposes of naturalization.

(2) (a) A permit holder shall:

(i) participate in at least an aggregate of 160 hours of training during the two-year term of the permit to prepare to meet:

(A) the proficiency standards for English under this section; or

(B) the proficiency standards for civics and government under this section; or

(ii) before renewal of the permit meet:

(A) the proficiency standards for English under this section; and

(B) the proficiency standards for civics and government under the section.

(b) A permit holder shall pay the costs of complying with this section.

(3) The state may charge a permit holder a fee established by the State Office of Education in accordance with Section 63J-1-504 to take a test described in Subsection (1).

(4) In accordance with Title 63G, Chapter 6, Utah Procurement Code, the State Office of Education may contract with a third party to provide the testing required under this section. The State Office of Education shall supervise the contract.

Section 20. Section **53-16-401** is enacted to read:

Part 4. Business Obligations

53-16-401. Obtaining the services of a permit holder.

(1) (a) To obtain the services of a permit holder, a person shall contact the department to verify that the permit held by the permit holder is valid.

(b) A person shall contact the department at the same point at which the person would contact a status verification system if the permit holder were subject to verification as an employee under Title 13, Chapter 47, Private Employer Verification Act.

(2) (a) The department may by rule provide the procedure to be followed under this section.

(b) Verification may be provided through the Internet or other electronic medium, if the department determines that sufficient security is provided to ensure compliance with Section 53-16-302.

Section 21. Section **53-16-402** is enacted to read:

53-16-402. Registration of approved business -- Renewal.

(1) Subject to the other provisions of this section, to be an approved business, at least

SB0060S01 compared with SB0060

10 days before the day on which the person first obtains the services of a permit holder who is issued a Type B permit, the person shall register with the department by submitting to the department in a form acceptable under this chapter:

(a) a registration application that requires the person to:

(i) agree that the person will participate in withholding as provided in Section 53-16-204;

(ii) provide evidence that the person participates in a status verification system if required under Title 13, Chapter 47, Private Employer Verification Act;

(iii) describe the labor shortage experienced by the person; and

(iv) explain the person's efforts to find local workers with the necessary skills to provide services to the person; and

(b) a registration fee established by the department in accordance with Section 63J-1-504.

(2) (a) A registration under this section expires five years after the day on which registration is complete under Subsection (1).

(b) To renew a registration, an approved business shall submit to the department in a form acceptable under this chapter:

(i) a renewal application, except that the renewal application shall contain the requirements described in Subsection (1)(a); and

(ii) a registration fee established by the department in accordance with Section 63J-1-504.

(3) On and after 120 days after the day on which the department may first issue a permit under Section 53-16-301, the department shall publish electronically a list of approved employers on a website accessible to the general public without a charge.

(4) Nothing in this section prohibits an approved business from terminating the term of service of a permit holder in the ordinary course of business.

Section 22. Section **53-16-403** is enacted to read:

53-16-403. Approved business reporting and records.

An approved business shall notify the department in writing within three days of the day on which a term of service begins or ends for a permit holder to whom a Type B permit is issued.

SB0060S01 compared with SB0060

Section 23. Section **53-16-404** is enacted to read:

53-16-404. Complaints against participation of approved business.

(1) As used in this section, "local worker" may be defined by the department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(2) A person lawfully present in the United States may file a complaint with the department if a local worker is terminated or not hired as a result of an approved business' participation in the program.

(3) The department shall evaluate a complaint filed under this section and if the department determines that sufficient complaints are received by the department against a specific approved business, the department shall reexamine the approved business' registration to participate in the program.

(4) The department may revoke an approved business' registration to participate in the program if the department determines that the approved business did not take sufficient measures to obtain local workers.

Section 24. Section **53-16-405** is enacted to read:

53-16-405. Labor laws.

(1) A person who obtains the services of a permit holder shall comply with the applicable labor laws prescribed by the federal government and this state.

(2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, for a violation of this section, in addition to any other remedy, the department may revoke an approved business' registration.

(3) The Labor Commission shall notify the department within 30 business days of the day on which an order of the Labor Commission becomes final and unappealable that finds a violation of a labor law under the jurisdiction of the Labor Commission.

Section 25. Section **53-16-501** is enacted to read:

Part 5. Prohibited Activities and Enforcement

53-16-501. Prohibited activities.

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

(2) (a) A person may not employ, hire, or contract for services from an individual who is:

(i) an unauthorized alien; and

SB0060S01 compared with SB0060

(ii) not a permit holder.

(b) Notwithstanding Section 53-16-502, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the department may impose a civil fine not to exceed:

(i) for the first violation of this Subsection (2), \$10,000;

(ii) for a second violation of Subsection (2), \$15,000; and

(iii) for each additional violation, an amount calculated by adding \$5,000 to the amount imposed for the previous violation of Subsection (2).

Section 26. Section **53-16-502** is enacted to read:

53-16-502. Violations -- Administrative remedies.

(1) (a) For a violation described in Subsection (1)(b), the department:

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

(ii) may impose a civil fine not to exceed \$1,000 for each violation.

(b) The department shall take an action under this Subsection (1), if a permit holder:

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

(ii) alters the information on a permit;

(iii) is reported absent from work for 10 consecutive days without the approval of the person who obtains the services of the permit holder; or

(iv) is convicted of, pleads guilty to, pleads no contest to, pleads guilty in a similar manner to, or resolves by diversion or its equivalent a significant crime.

(2) (a) For a violation described in Subsection (2)(b), the department may:

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

(ii) impose a civil fine not to exceed \$1,000 for each violation; or

(iii) take an action under both Subsections (2)(a)(i) and (ii).

(b) The department may take an action under this Subsection (2) if a person:

(i) fails to comply with a reporting requirement;

(ii) fails to comply with Subsection 53-16-307(4);

(iii) allows an individual to use a permit if the individual is not entitled to use the permit;

(iv) displays or represents that a permit is issued to an individual, if the permit is not issued to the individual;

(v) displays a revoked permit as a valid permit;

SB0060S01 compared with SB0060

(vi) knowingly or with reckless disregard acquires, uses, displays, or transfers an item that purports to be a valid permit, but that is not a valid permit;

(vii) who holds a Type B permit, is unable to be located by the approved business for which the person provides services; or

(viii) otherwise violates this chapter.

(c) Notwithstanding the other provisions of this Subsection (2), the department shall revoke and repossess a permit if the permit holder to whom the permit is issued has had administrative action taken against the permit holder under this section twice before the violation that subjects the permit holder to an action under this Subsection (2).

Section 27. Section **53-16-503** is enacted to read:

53-16-503. Effects of revocation of permit -- Effects of expiration of a permit.

(1) (a) If the department revokes a permit, the permit holder to whom the permit was issued shall leave this state within 60 calendar days, except that on request by the permit holder, the department may provide additional days for the permit holder to leave this state.

(b) If the department revokes a permit, the department shall notify Immigration and Customs Enforcement that the permit holder is no longer authorized to provide services within the state.

(c) The notice described in Subsection (1)(b) shall:

(i) include the last-known address of the permit holder; and

(ii) be sent promptly after the time for appeal of the revocation ends.

(2) (a) If a permit holder's Type A permit expires, the permit holder to whom the permit is issued shall leave this state within 60 calendar days, except that on request by the permit holder, the department may provide additional days for the permit holder to leave this state.

(b) If a permit holder's Type B permit expires, the permit holder to whom the permit is issued shall within 60 days of the day on which the Type B permit expires:

(i) leave the state; or

(ii) obtain a Type A permit.

Section 28. Section **53-16-504** is enacted to read:

53-16-504. Criminal penalties.

(1) It is a class C misdemeanor for a person to knowingly or with reckless disregard:

SB0060S01 compared with SB0060

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

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

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

(d) acquire, use, display, or transfer an item that purports to be a valid permit, if it is not a valid permit;

(e) fail to surrender a permit to the department upon demand;

(f) use a false name or give a false address for any purpose under this chapter;

(g) make a false statement, or conceal a material fact in an application; or

(h) alter the information on a permit.

(2) It is a third degree felony if a person knowingly acquires, uses, displays, or transfers a false or altered permit to:

(a) aid or further the person's efforts to fraudulently obtain goods or services; or

(b) aid or further the person's efforts to commit a violent felony.

Section 29. Section **58-37c-10** is amended to read:

58-37c-10. Reporting and recordkeeping.

(1) Any person who engages in a regulated transaction, unless excepted under the provisions of Subsections 58-37c-8(3) and (4), shall submit a report with respect to such transaction and shall maintain records of inventories in accordance with rules adopted by the division.

(2) The division shall provide reporting forms upon which regulated transactions shall be reported.

(3) The division shall furnish copies of reports of transactions under this section to appropriate law enforcement agencies.

(4) The division shall adopt rules regulating:

(a) records which shall be maintained and reports which shall be submitted by regulated distributors and regulated purchasers with respect to listed controlled substance precursors obtained, distributed, and held in inventory;

(b) records which shall be maintained and reports which shall be submitted by regulated distributors and regulated purchasers with respect to extraordinary or unusual regulated transactions and a requirement that in such cases the report must be received at least

SB0060S01 compared with SB0060

three working days prior to transfer of the listed controlled substance precursor;

(c) identification which must be presented by a purchaser of any listed controlled substance precursor before the sale or transfer can be completed and recordkeeping requirements related to such identification presented;

(d) filing by each licensee the identification of all locations where any listed controlled substance precursor is held in inventory or stored and amending such filing when any change in location is made;

(e) reports and actions which must be taken by a regulated distributor or regulated purchaser in the event of any theft, loss, or shortage of a listed controlled substance precursor;

(f) reports and actions which must be taken by a regulated distributor relating to a regulated transaction with an out-of-state purchaser;

(g) reports and actions which must be taken by a regulated purchaser relating to a regulated transaction with an out-of-state distributor; and

(h) regulated transactions to the extent such regulation is reasonable and necessary to protect the public health, safety, or welfare.

(5) A person who engages in a regulated transaction may not accept as proof of identification as required under Subsection (4)(c):

(a) a driving privilege card issued in accordance with Section 53-3-207 [as proof of identification as required under Subsection (4)(c)]; or

(b) an accountability permit issued in accordance with Title 53, Chapter 16, Utah Pilot Accountability Permit Program Act.

Section 30. 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

SB0060S01 compared with SB0060

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

SB0060S01 compared with SB0060

(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).

SB0060S01 compared with SB0060

(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 53-16-302, a record created under Title 53, Chapter 16, Utah Pilot Accountability Permit 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 31. Section **63G-2-302** is amended to read:

63G-2-302. Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received by or generated by or for:

(i) the Independent Legislative Ethics Commission, except for:

(A) the commission's summary data report that is required under legislative rule; and

(B) any other document that is classified as public under legislative rule; or

(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints,

SB0060S01 compared with SB0060

unless the record is classified as public under legislative rule;

(e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(f) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;

(g) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;

(h) that part of a record indicating a person's Social Security number, individual taxpayer identification number, or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202, 31A-26-202, 53-16-302, 58-1-301, 61-1-4, or 61-2f-203;

(i) that part of a voter registration record identifying a voter's driver license or identification card number, Social Security number, or last four digits of the Social Security number;

(j) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(k) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(2)(a);

SB0060S01 compared with SB0060

(ii) Subsection 31A-23a-302(3); or

(iii) Subsection 31A-26-210(3);

(l) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(m) information provided by an offender that is:

(i) required by the registration requirements of Section 77-27-21.5; and

(ii) not required to be made available to the public under Subsection 77-27-21.5(27);

and

(n) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security.

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63G-2-301(2);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

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

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it; and

(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a

SB0060S01 compared with SB0060

person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics, doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.

Section 32. 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;

(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;

SB0060S01 compared with SB0060

(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

(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

SB0060S01 compared with SB0060

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 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

SB0060S01 compared with SB0060

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

(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

SB0060S01 compared with SB0060

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 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

SB0060S01 compared with SB0060

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 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;

SB0060S01 compared with SB0060

(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

(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

SB0060S01 compared with SB0060

(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

(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

SB0060S01 compared with SB0060

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 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,

SB0060S01 compared with SB0060

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 53-16-302, a record created under Title 53, Chapter 16, Utah Pilot Accountability Permit Program Act; and

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

Section 33. 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 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

SB0060S01 compared with SB0060

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:

(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

SB0060S01 compared with SB0060

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:

- (i) a license certificate, driving privilege card, or identification card issued or renewed under Title 53, Chapter 3, Uniform Driver License Act[-]; or

- (ii) an accountability permit issued in accordance with Title 53, Chapter 16, Utah Pilot Accountability Permit Program 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.

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

Section 34. Section **63J-1-602.3** is amended to read:

63J-1-602.3. List of nonlapsing funds and accounts -- Title 46 through Title 60.

(1) Certain funds associated with the Law Enforcement Operations Account, as provided in Section 51-9-411.

(2) The Public Safety Honoring Heroes Restricted Account created in Section 53-1-118.

SB0060S01 compared with SB0060

(3) Funding for the Search and Rescue Financial Assistance Program, as provided in Section 53-2-107.

(4) Appropriations made to the Department of Public Safety from the Department of Public Safety Restricted Account, as provided in Section 53-3-106.

(5) Appropriations to the Motorcycle Rider Education Program, as provided in Section 53-3-905.

(6) The DNA Specimen Restricted Account created in Section 53-10-407.

(7) The Pilot Accountability Permit Program Restricted Account created in Section 53-16-203.

~~[(7)]~~ (8) Appropriations to the State Board of Education, as provided in Section 53A-17a-105.

~~[(8)]~~ (9) Certain funds appropriated from the Uniform School Fund to the State Board of Education for new teacher bonus and performance-based compensation plans, as provided in Section 53A-17a-148.

~~[(9)]~~ (10) Certain funds appropriated from the Uniform School Fund to the State Board of Education for implementation of proposals to improve mathematics achievement test scores, as provided in Section 53A-17a-152.

~~[(10)]~~ (11) The School Building Revolving Account created in Section 53A-21-401.

~~[(11)]~~ (12) Money received by the State Office of Rehabilitation for the sale of certain products or services, as provided in Section 53A-24-105.

~~[(12)]~~ (13) The State Board of Regents, as provided in Section 53B-6-104.

~~[(13)]~~ (14) Certain funds appropriated from the General Fund to the State Board of Regents for teacher preparation programs, as provided in Section 53B-6-104.

~~[(14)]~~ (15) A certain portion of money collected for administrative costs under the School Institutional Trust Lands Management Act, as provided under Section 53C-3-202.

~~[(15)]~~ (16) Certain surcharges on residence and business telecommunications access lines imposed by the Public Service Commission, as provided in Section 54-8b-10.

~~[(16)]~~ (17) Certain fines collected by the Division of Occupational and Professional Licensing for violation of unlawful or unprofessional conduct that are used for education and enforcement purposes, as provided in Section 58-17b-505.

~~[(17)]~~ (18) The Nurse Education and Enforcement Account created in Section

SB0060S01 compared with SB0060

58-31b-103.

~~[(18)]~~ (19) The Certified Nurse Midwife Education and Enforcement Account created in Section 58-44a-103.

~~[(19)]~~ (20) Certain fines collected by the Division of Occupational and Professional Licensing for use in education and enforcement of the Security Personnel Licensing Act, as provided in Section 58-63-103.

~~[(20)]~~ (21) The Professional Geologist Education and Enforcement Account created in Section 58-76-103.

~~[(21)]~~ (22) Certain money in the Water Resources Conservation and Development Fund, as provided in Section 59-12-103.

Section 35. Section **76-8-1501** is enacted to read:

Part 15. Identity Enforcement Act

76-8-1501. Title.

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

Section 36. Section **76-8-1502** is enacted to read:

76-8-1502. Definitions.

As used in this part:

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

(2) "Department" means the Department of Public Safety.

~~[(2)]~~ (3) "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.

~~[(3)]~~ (4) "Law enforcement officer" has the same meaning as in Section 53-13-103.

~~[(4)]~~ (5) (a) "Photographic document" means a document that is:

(i) a form of positive identification that:

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

(B) contains a numerical identifier and a photograph of the person identified; or

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

(B) an accountability permit issued in accordance with Title 53, Chapter 16, Utah Pilot Accountability Permit Program Act.

(b) "Photographic document" includes:

SB0060S01 compared with SB0060

(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; or

(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.

Section 37. Section **76-8-1503** is enacted to read:

76-8-1503. Providing photographic document -- Fingerprinting and photographing.

(1) (a) Except as otherwise provided in this Subsection (1), on and after the day on which the Department of Public Safety may issue an accountability permit under Section 53-16-301, a law enforcement officer shall require an individual to provide the law enforcement officer at least one form of photographic document 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.

(b) If a law enforcement officer requires an individual to provide a photographic document under Subsection (1)(a) and the individual is a permit holder, as defined in Section 53-16-102, the individual shall provide the law enforcement officer the accountability permit issued to the individual in accordance with Title 53, Chapter 16, Utah Pilot Accountability Permit Program Act.

(c) On a case-by-case basis, a law enforcement officer may elect not to request that the individual provide a photographic document as required under this Subsection (1) if the law enforcement officer determines that to require the photographic document could hinder or obstruct a criminal investigation.

(2) If an individual fails to provide a law enforcement officer a photographic document as required under Subsection (1), the law enforcement officer shall:

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

SB0060S01 compared with SB0060

(b) fingerprint the individual; and

(c) take a photograph of the individual.

(3) (a) An individual is guilty of a class C misdemeanor if the individual violates Subsection (1), except that the fine is \$1,000.

(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.

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

(5) 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 38. Section **76-8-1504** is enacted to read:

76-8-1504. Identity 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 39. Section **76-8-1505** is enacted to read:

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

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

SB0060S01 compared with SB0060

laws.

Section 40. Section **76-10-526** is amended to read:

76-10-526. Criminal background check prior to purchase of a firearm -- Fee -- Exemption for concealed firearm permit holders.

(1) For purposes of this section, "valid permit to carry a concealed firearm" does not include a temporary permit issued pursuant to Section 53-5-705.

(2) (a) To establish personal identification and residence in this state for purposes of this part, a dealer shall require an individual receiving a firearm to present one photo identification on a form issued by a governmental agency of the state.

(b) A dealer may not accept [~~a driving privilege card issued in accordance with Section 53-3-207~~] as proof of identification for the purpose of establishing personal identification and residence in this state as required under this Subsection (2)[-]:

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

(ii) an accountability permit issued in accordance with Title 53, Chapter 16, Utah Pilot Accountability Permit Program Act.

(3) A criminal history background check is required for the sale of a firearm by a licensed firearm dealer in the state.

(4) (a) An individual, except a dealer, purchasing a firearm from a dealer shall consent in writing to a criminal background check, on a form provided by the bureau.

(b) The form shall contain the following information:

(i) the dealer identification number;

(ii) the name and address of the individual receiving the firearm;

(iii) the date of birth, height, weight, eye color, and hair color of the individual receiving the firearm; and

(iv) the Social Security number or any other identification number of the individual receiving the firearm.

(5) (a) The dealer shall send the form required by Subsection (4) to the bureau immediately upon its completion.

(b) A dealer may not sell or transfer a firearm to an individual until the dealer has provided the bureau with the information in Subsection (4) and has received approval from the bureau under Subsection (7).

SB0060S01 compared with SB0060

(6) The dealer shall make a request for criminal history background information by telephone or other electronic means to the bureau and shall receive approval or denial of the inquiry by telephone or other electronic means.

(7) When the dealer calls for or requests a criminal history background check, the bureau shall:

(a) review the criminal history files, including juvenile court records, to determine if the individual is prohibited from purchasing, possessing, or transferring a firearm by state or federal law;

(b) inform the dealer that:

(i) the records indicate the individual is so prohibited; or

(ii) the individual is approved for purchasing, possessing, or transferring a firearm;

(c) provide the dealer with a unique transaction number for that inquiry; and

(d) provide a response to the requesting dealer during the call for a criminal background, or by return call, or other electronic means, without delay, except in case of electronic failure or other circumstances beyond the control of the bureau, the bureau shall advise the dealer of the reason for the delay and give the dealer an estimate of the length of the delay.

(8) (a) The bureau may not maintain any records of the criminal history background check longer than 20 days from the date of the dealer's request if the bureau determines that the individual receiving the gun is not prohibited from purchasing, possessing, or transferring the firearm under state or federal law.

(b) However, the bureau shall maintain a log of requests containing the dealer's federal firearms number, the transaction number, and the transaction date for a period of 12 months.

(9) If the criminal history background check discloses information indicating that the individual attempting to purchase the firearm is prohibited from purchasing, possessing, or transferring a firearm, the bureau shall inform the law enforcement agency in the jurisdiction where the person resides.

(10) If an individual is denied the right to purchase a firearm under this section, the individual may review the individual's criminal history information and may challenge or amend the information as provided in Section 53-10-108.

(11) The bureau shall make rules as provided in Title 63G, Chapter 3, Utah

SB0060S01 compared with SB0060

Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records provided by the division pursuant to this part are in conformance with the requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

(12) (a) (i) A dealer shall collect a criminal history background check fee related to the sale of a firearm under this section, which is \$7.50.

(ii) This fee remains in effect until changed by the bureau through the process under Section 63J-1-504.

(b) (i) The dealer shall forward at one time all fees collected for criminal history background checks performed during the month to the bureau by the last day of the month following the sale of a firearm.

(ii) The bureau shall deposit the fees in the General Fund as dedicated credits to cover the cost of administering and conducting the criminal history background check program.

(13) An individual with a concealed firearm permit issued pursuant to Title 53, Chapter 5, Part 7, Concealed Firearm Act, is exempt from the background check and corresponding fee required in this section for the purchase of a firearm if:

(a) the individual presents the individual's concealed firearm permit to the dealer prior to purchase of the firearm; and

(b) the dealer verifies with the division that the individual's concealed firearm permit is valid.

Section 41. **Effective date.**

(1) Except as provided in Subsection (2), this bill takes effect on May 10, 2011.

(2) The amendments to the following sections take effect on July 1, 2011:

(a) Section 32B-1-404 (Effective 07/01/11); and

(b) Section 32B-1-406 (Effective 07/01/11).

Legislative Review Note

as of ~~2-1-11 10:03 AM~~ 2-15-11 2:55 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

SB0060S01 compared with SB0060

information relevant to legislators' consideration of this bill. The note is not a substitute for the judgment of the judiciary, which has authority to determine the constitutionality of a law in the context of a specific case.

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

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

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

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

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