IMMIGRATION RELATED AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: John Dougall

Senate Sponsor: Wayne L. Niederhauser

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- exempts permits under the program from certain requirements for identification; and
- enacts the Utah Pilot Sponsored Resident Immigrant Program Act, including:
  - defining terms;
  - providing for the creation of the program by the governor;
  - granting rulemaking authority;
  - outlining how a foreign national can participate in the program;
  - establishing grounds for ineligibility;
  - addressing sponsorship;
  - providing for the issuance of a permit;
  - addressing employment and taxation obligations;
  - placing restrictions on travel and permitting other requirements to be imposed on a resident immigrant;
  - addressing disqualification from the program; and
  - addressing penalties on sponsors.

Money Appropriated in this Bill:

None

AILA InfoNet Doc. No. 11052760. (Posted 05/27/11)

30 **Other Special Clauses:**
31 This bill coordinates with H.B. 497, Utah Illegal Immigration Enforcement Act, to
32 make substantive amendments.
33 **Utah Code Sections Affected:**
34 AMENDS:
35 **63G-11-102**, as last amended by Laws of Utah 2010, Chapter 281
36 ENACTS:
37 **63G-12-101**, Utah Code Annotated 1953
38 **63G-12-102**, Utah Code Annotated 1953
39 **63G-12-201**, Utah Code Annotated 1953
40 **63G-12-202**, Utah Code Annotated 1953
41 **63G-12-203**, Utah Code Annotated 1953
42 **63G-12-204**, Utah Code Annotated 1953
43 **63G-12-205**, Utah Code Annotated 1953
44 **63G-12-206**, Utah Code Annotated 1953
45 **63G-12-301**, Utah Code Annotated 1953
46 **63G-12-302**, Utah Code Annotated 1953
47 **Utah Code Sections Affected by Coordination Clause:**
48 **76-9-1004**, Utah Code Annotated 1953
49 **76-10-2901**, as enacted by Laws of Utah 2008, Chapter 26
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51 *Be it enacted by the Legislature of the state of Utah:*
52 Section 1. Section **63G-11-102** is amended to read:
53 **63G-11-102. Creation of identity documents -- Issuance to citizens, nationals, and**
54 **legal permanent resident aliens -- Exceptions.**
55 (1) The following entities may create, publish, or otherwise manufacture an
56 identification document, identification card, or identification certificate and possess an
57 engraved plate or other device for the printing of an identification document:

58 (a) a federal, state, or local government agency for employee identification, which is
59 designed to identify the bearer as an employee;
60 (b) a federal, state, or local government agency for purposes authorized or required by
61 law or a legitimate purpose consistent with the duties of the agency, including such documents
62 as voter identification cards, identification cards, passports, birth certificates, and Social
63 Security cards; and
64 (c) a public school or state or private educational institution to identify the bearer as an
65 administrator, faculty member, student, or employee.
66 (2) The name of the issuing entity shall be clearly printed upon the face of the
67 identification document.
68 (3) Except as otherwise provided in Subsections (4) and (5) or by federal law, an entity
69 providing an identity document, card, or certificate under Subsection (1)(b) or (c) shall issue
70 the document, card, or certificate only to:
71 (a) a United States citizen;
72 (b) a national; or
73 (c) a legal permanent resident alien.
74 (4) (a) Subsection (3) does not apply to an applicant for an identification document
75 who presents, in person, valid documentary evidence of the applicant's:
76 (i) unexpired immigrant or nonimmigrant visa status for admission into the United
77 States;
78 (ii) pending or approved application for asylum in the United States;
79 (iii) admission into the United States as a refugee;
80 (iv) pending or approved application for temporary protected status in the United
81 States;
82 (v) approved deferred action status; or
83 (vi) pending application for adjustment of status to legal permanent resident or
84 conditional resident.
85 (b) (i) An entity listed in Subsection (1)(b) or (c) may issue a Subsection (1)(b) or (c)

86 identification document to an applicant who satisfies the requirements of Subsection (4)(a).
87 (ii) Except as otherwise provided by federal law, the document is valid only:
88 (A) during the period of time of the individual's authorized stay in the United States; or
89 (B) for one year from the date of issuance if there is no definite end to the individual's
90 period of authorized stay.
91 (iii) An entity issuing an identification document under this Subsection (4) shall clearly
92 indicate on the document:
93 (A) that it is temporary; and
94 (B) its expiration date.
95 (c) An individual may renew a document issued under this Subsection (4) only upon
96 presentation of valid documentary evidence that the status by which the individual originally
97 qualified for the identification document has been extended by the United States Citizenship
98 and Immigration Services or other authorized agency of the United States Department of
99 Homeland Security.
100 (5) (a) Subsection (3) does not apply to an identification document issued under
101 Subsection (1)(c) that:
102 (i) is only valid for use on the educational institution's campus or facility; and
103 (ii) includes a statement of the restricted use conspicuously printed upon the face of the
104 identification document.
105 (b) Subsection (3) does not apply to a license certificate, driving privilege card, or
106 identification card issued or renewed under Title 53, Chapter 3, Uniform Driver License Act.
107 (c) Subsection (3) does not apply to a public transit pass issued by a public transit
108 district as defined in Title 17B, Chapter 2a, Part 8, Public Transit District Act, that:
109 (i) is only valid for use on the public transit system; and
110 (ii) includes a statement of the restricted use conspicuously printed on the face of the
111 public transit pass.
112 <u>(d) Subsection (3) does not apply to a permit issued under Chapter 12, Utah Pilot</u>
113 <u>Sponsored Resident Immigrant Program Act.</u>

114 (6) This section shall be enforced without regard to race, religion, gender, ethnicity, or
115 national origin.
116 Section 2. Section **63G-12-101** is enacted to read:
117 **CHAPTER 12. UTAH PILOT SPONSORED RESIDENT IMMIGRANT**
118 **PROGRAM ACT**
119 **Part 1. General Provisions**
120 **63G-12-101. Title.**
121 This chapter is known as the "Utah Pilot Sponsored Resident Immigrant Program Act."
122 Section 3. Section **63G-12-102** is enacted to read:
123 **63G-12-102. Definitions.**
124 (1) "Department" means the Department of Public Safety created in Section 53-1-103.
125 (2) (a) "Foreign national," except as provided in Subsection (2)(b), means an individual
126 who is a citizen of a foreign country.
127 (b) "Foreign national" does not include an individual who is in the United States, but
128 who is not lawfully present in any of the states of the United States.
129 (3) "Permit" means an identification permit issued in accordance with Section
130 63G-12-204.
131 (4) "Program" means the Utah Pilot Sponsored Resident Immigrant Program created in
132 Section 63G-12-201.
133 (5) "Resident immigrant" means an individual who:
134 (a) is a foreign national; and
135 (b) is accepted into the program in accordance with Section 63G-12-202.
136 (6) "Sponsor" means an individual who agrees to sponsor a foreign national under the
137 program in accordance with Section 63G-12-203.
138 Section 4. Section **63G-12-201** is enacted to read:
139 **Part 2. Utah Pilot Sponsored Resident Immigrant Program**
140 **63G-12-201. Creation of program.**
141 (1) (a) The governor shall create a program known as the "Utah Pilot Sponsored

142 Resident Immigrant Program":
143 (i) that is consistent with this chapter; and
144 (ii) under which a resident immigrant may reside, work, and study in Utah, except that
145 the program may not permit a resident immigrant to travel outside of the state except as
146 provided in Subsection 63G-12-206(1).
147 (b) The governor shall:
148 (i) begin implementation of the program by no later than July 1, 2013; and
149 (ii) end operation of the program on June 30, 2018.
150 (c) Under the program, the governor may facilitate transport to Utah for a foreign
151 national who has been accepted into the program.
152 (d) The governor may recommend legislation to the Legislature to address how a
153 resident immigrant is to be treated under statutes that relate to an alien.
154 (2) The department shall administer the program, except to the extent that the governor
155 delegates a power or duty under the program to another state agency. Subject to Subsection
156 (3), the department may make rules in accordance with Chapter 3, Utah Administrative
157 Rulemaking Act, to implement the program to the extent expressly provided for in this chapter.
158 (3) The governor may act by executive order whenever the department is authorized to
159 make rules under this chapter. If there is a conflict between a rule made by the department and
160 an executive order of the governor, the executive order governs.
161 Section 5. Section **63G-12-202** is enacted to read:
162 **63G-12-202. Approval as a resident immigrant -- Ineligibility.**
163 (1) To be considered for approval as a resident immigrant for purposes of the program,
164 a foreign national shall:
165 (a) file an application with the department;
166 (b) at the time of filing the application be living outside of the United States;
167 (c) pass a health and background screening;
168 (d) provide evidence that the foreign national has not been convicted of, pled guilty to,
169 pled no contest to, pled guilty in a similar manner to, or resolved by diversion or its equivalent

170 to a felony or class A misdemeanor;
171 (e) file proof of sponsorship by a sponsor who meets the requirements of Section
172 63G-12-203; and
173 (f) pay a fee established by the department in accordance with Section 63J-1-504.
174 (2) A foreign national is ineligible for the program if the individual:
175 (a) is in the United States at the time of application for the program; or
176 (b) is a citizen of a country:
177 (i) designated by the United States State Department as a state sponsor of terrorism in
178 accordance with section 6(j) of the Export Administration Act, section 40 of the Arms Export
179 Control Act, and section 620A of the Foreign Assistance Act;
180 (ii) against which the United States has declared war; or
181 (iii) against which the United States has imposed sanctions as listed under a sanctions
182 program of the Office of Foreign Assets Control within the United States Department of
183 Treasury.
184 (3) A foreign national may appeal the denial of participation in the program as a
185 resident immigrant in accordance with Chapter 4, Administrative Procedures Act.
186 (4) (a) The department, in consultation with the governor, shall make rules in
187 accordance with Chapter 3, Utah Administrative Rulemaking Act, that provide:
188 (i) what constitutes passing a health screening to be eligible to be accepted into the
189 program, except at a minimum to be eligible to participate in the program an individual may
190 not have a medical condition that would make the individual inadmissible for public health
191 grounds under 8 U.S.C. Sec. 1182;
192 (ii) what constitutes a background screening to be eligible to be accepted into the
193 program;
194 (iii) what constitutes proof of sponsorship to be provided by the foreign national;
195 (iv) the term for which a foreign national is considered a resident immigrant; and
196 (v) the process of obtaining a resident immigrant permit under Section 63G-12-204.
197 (b) When making a rule under this section, the department shall use federal standards

198 as a guideline to avoid unnecessary duplication and additional costs.
199 Section 6. Section **63G-12-203** is enacted to read:
200 **63G-12-203. Sponsorship.**
201 (1) (a) An individual who is a United States citizen and a resident of Utah may sponsor
202 a foreign national as a resident immigrant by agreeing to assume financial responsibility for the
203 foreign national in accordance with this section.
204 (b) An individual described in Subsection (1)(a) may sponsor:
205 (i) two individual foreign nationals; or
206 (ii) each individual in an association of individuals:
207 (A) who live in the same dwelling, sharing its furnishings, facilities, accommodations,
208 and expenses;
209 (B) who are relatives of each other; and
210 (C) at least one of whom is a parent.
211 (2) The department by rule made in accordance with Chapter 3, Utah Administrative
212 Rulemaking Act, shall establish eligibility requirements to be a sponsor, except that at a
213 minimum the eligibility requirements shall require that the sponsor:
214 (a) prove an income level at or above 125% of the federal poverty level; or
215 (b) meet an alternative test created by the department that considers assets as well as
216 income.
217 (3) (a) The department by rule made in accordance with Chapter 3, Utah
218 Administrative Rulemaking Act, shall define what constitutes an assumption of financial
219 responsibility for a resident immigrant, except that at a minimum the rules shall require that the
220 sponsor agrees:
221 (i) to accept responsibility for any financial liability a foreign national incurs while
222 participating in the program;
223 (ii) to an assumption of financial responsibility for the foreign national that is
224 equivalent to the financial responsibility that a parent has for a dependent child; and
225 (iii) that the state may consider the sponsor's income and assets to be available for the

226 support of the resident immigrant sponsored by the sponsor.
227 (b) A sponsor violates this chapter if the sponsor fails to pay a financial liability of a
228 resident immigrant that is not paid by the resident immigrant and that is subject to the sponsor's
229 assumption of financial responsibility for the resident immigrant.
230 (4) (a) To terminate the sponsorship of a resident alien, an individual shall:
231 (i) notify the department; and
232 (ii) provide evidence satisfactory to the department that the resident alien no longer
233 resides in the United States.
234 (b) A sponsorship is terminated the day on which the department certifies that the
235 sponsor has complied with Subsection (4)(a).
236 (5) A sponsor shall prove to the satisfaction of the department that a resident
237 immigrant leaves the United States if:
238 (a) the resident alien is disqualified from the program; or
239 (b) the sponsor terminates sponsorship.
240 Section 7. Section **63G-12-204** is enacted to read:
241 **63G-12-204. Resident immigrant permit.**
242 (1) The department shall:
243 (a) create a resident immigrant permit to be issued to an individual who is a resident
244 immigrant that:
245 (i) is of impervious material that is resistant to wear or damage; and
246 (ii) minimizes the risk that the permit may be forged, falsified, or counterfeited; and
247 (b) ensure that a permit:
248 (i) includes a photograph of the individual to whom the permit is issued;
249 (ii) prominently states the day on which the permit expires;
250 (iii) prominently states the type of permit; and
251 (iv) includes a unique identifier.
252 (2) The department shall establish the fee under Section 63G-12-202 to be adequate to
253 pay the costs incurred to issue a permit.

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

255 **63G-12-205. Employment and taxation obligations under the program.**

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

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

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

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

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

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

273 **63G-12-206. Restrictions on activities of resident immigrant.**

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

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

279 (2) The department may by rule, made in accordance with Chapter 3, Utah
280 Administrative Rulemaking Act, impose other requirements to maintain the status of a resident
281 immigrant that are consistent with this chapter.

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

283 **Part 3. Enforcement**

284 **63G-12-301. Disqualification from program.**

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

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

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

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

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

294 **63G-12-302. Penalties on sponsors.**

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

296 (1) impose a fine on a sponsor who violates Subsection 63G-12-203(5) not to exceed
297 $5,000; and

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

300 Section 12. **Coordinates H.B. 469 with H.B. 497 -- Substantive amendments.**

301 If this H.B. 469 and H.B. 497, Utah Illegal Immigration Enforcement Act, both pass, it
302 is the intent of the Legislature that the Office of Legislative Research and General Counsel
303 make the following changes:

304 (1) delete the "or" at the end of Subsection 76-9-1004(1)(c) enacted in H.B. 497;

305 (2) delete the "." and insert "; or" at the end of Subsection 76-9-1004(1)(d) enacted in
306 H.B. 497;

307 (3) insert a new Subsection (1)(e) in Section 76-9-1004 enacted in H.B. 497 that reads:

308 "(e) a valid resident immigrant permit issued under Section 63G-12-204."; and

309 (4) insert a new Subsection (6) in Section 76-10-2901 amended in H.B. 497 that reads:

310 "(6) An individual's participation in Title 63G, Chapter 12, Utah Pilot Sponsored
311 Resident Immigrant Program Act, either as a sponsor or resident alien does not constitute
312 encouraging or inducing an alien to come to, enter, or reside in this state in violation of
313 Subsection (2)(c)."