

**EMPLOYMENT AND VERIFICATION REQUIREMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen E. Sandstrom**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Labor Code, general government provisions, and oversight provisions to adopt the Utah Illegal Employment Act and repeal other verification programs.

**Highlighted Provisions:**

This bill:

▶ enacts the Utah Illegal Employment Act, including:

- defining terms;
- addressing applicability for independent contractors;
- prohibiting knowingly or intentionally employing an unauthorized alien and

creating ~~§~~ [a] ~~§~~ related ~~§~~ [complaint process with] ~~§~~ penalties;

- providing that an employer is not required to take any action that the employer believes in good faith would violate federal or state law;
- requiring employers to participate in e-verify, with exceptions;
- requiring the attorney general to maintain certain information and to post certain

information on a website; and

- requiring the attorney general to established the voluntary employer enhanced compliance program;

▶ repeals the Private Employer Verification Act and removes cross references related to that act;

H.B. 477



- 28           ▶ repeals provisions addressing employment and verification under general
- 29 government provisions; and
- 30           ▶ makes technical and conforming amendments.

31 **Money Appropriated in this Bill:**

32           None

33 **Other Special Clauses:**

34           None

35 **Utah Code Sections Affected:**

36 **AMENDS:**

37           **58-55-503**, as last amended by Laws of Utah 2011, Chapters 195, 340, and 413

38           **63G-12-210**, as enacted by Laws of Utah 2011, Chapter 18

39           **63I-2-213**, as enacted by Laws of Utah 2011, Chapter 18

40 **ENACTS:**

41           **34A-12-101**, Utah Code Annotated 1953

42           **34A-12-102**, Utah Code Annotated 1953

43           **34A-12-103**, Utah Code Annotated 1953

44           **34A-12-201**, Utah Code Annotated 1953

45           **34A-12-202**, Utah Code Annotated 1953

46           **34A-12-301**, Utah Code Annotated 1953

47           **34A-12-302**, Utah Code Annotated 1953

48 **RENUMBERS AND AMENDS:**

49           **63G-12-403**, (Renumbered from 63G-12-302, as renumbered and amended by Laws of  
50 Utah 2011, Chapter 18)

51 **REPEALS:**

52           **13-47-101**, as enacted by Laws of Utah 2010, Chapter 403

53           **13-47-102**, as enacted by Laws of Utah 2010, Chapter 403

54           **13-47-103**, as enacted by Laws of Utah 2010, Chapter 403

55           **13-47-201**, as enacted by Laws of Utah 2010, Chapter 403

56           **13-47-202**, as enacted by Laws of Utah 2010, Chapter 403

57           **13-47-203**, as enacted by Laws of Utah 2010, Chapter 403

58           **13-47-204**, as enacted by Laws of Utah 2010, Chapter 403

- 59           **63G-12-301**, as enacted by Laws of Utah 2011, Chapter 18
- 60           **63G-12-303**, as enacted by Laws of Utah 2011, Chapter 18
- 61           **63G-12-304**, as enacted by Laws of Utah 2011, Chapter 18
- 62           **63G-12-305**, as enacted by Laws of Utah 2011, Chapter 18
- 63           **63G-12-306**, as enacted by Laws of Utah 2011, Chapter 18

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

66           Section 1. Section **34A-12-101** is enacted to read:

67                                   **CHAPTER 12. UTAH ILLEGAL EMPLOYMENT ACT**

68   **Part 1. General Provisions**

69           **34A-12-101. Title.**

70           This chapter is known as the "Utah Illegal Employment Act."

71           Section 2. Section **34A-12-102** is enacted to read:

72           **34A-12-102. Definitions.**

73           As used in this chapter, unless the context otherwise requires:

74           (1) "Agency" means an agency, department, board, or commission of this state or a  
75 county, city, or town that issues a license for purposes of operating a business in this state.

76           (2) "Agriculture" means the science and art of the production of plants and animals  
77 useful to humans including the preparation of plants and animals for human use and disposal  
78 by marketing or otherwise.

79           (3) "Employ" means hiring an employee after May 7, 2012.

80           (4) (a) "Employee" means a person who provides services or labor for an employer in  
81 this state for wages or other remuneration.

82           (b) "Employee" does not include an independent contractor.

83           (5) (a) "Employer" means an individual or type of entity that transacts business in this  
84 state, that has a license issued by an agency in this state, and that employs one or more  
85 employees in this state.

86           (b) "Employer" includes a self-employed person.

87           (c) In the case of an independent contractor, "employer" means the independent  
88 contractor and does not mean the person that uses the contract labor.

89           (d) "Employer" does not mean the state or a political subdivision of the state.

90 (6) "E-verify program" means the employment verification pilot program as jointly  
91 administered by the United States Department of Homeland Security and the Social Security  
92 Administration or any of its successor programs.

93 (7) "Independent contractor" means an individual or entity that carries on an  
94 independent business, that contracts to do a piece of work according to the individual's or  
95 entity's own means and methods and that is subject to control only as to results. Whether an  
96 individual or entity is an independent contractor is determined on a case-by-case basis through  
97 various factors, including whether the individual or entity:

98 (a) supplies the tools or materials;

99 (b) makes services available to the general public;

100 (c) works or may work for a number of clients at the same time;

101 (d) has an opportunity for profit or loss as a result of labor or service provided;

102 (e) invests in the facilities for work;

103 (f) directs the order or sequence in which the work is completed; or

104 (g) determines the hours when the work is completed.

105 (8) "Intentionally" has the same meaning prescribed in Section 76-2-103.

106 (9) "Knowingly employ an unauthorized alien" means the actions described in 8 U.S.C.  
107 Sec. 1324a. This term shall be interpreted consistently with 8 U.S.C. Sec. 1324a and any  
108 applicable federal regulations.

109 (10) (a) "License" means an agency permit, certificate, approval, registration, charter,  
110 or similar form of authorization that is required by law and that is issued by any agency for the  
111 purposes of operating a business in this state.

112 (b) "License" includes:

113 (i) articles of incorporation under Title 16, Corporations;

114 (ii) a certificate of partnership, a partnership registration, articles of organization, or a  
115 similar document under Title 48, Partnerships;

116 (iii) a grant of authority issued under Title 16, Chapter 10a, Part 15, Authority of  
117 Foreign Corporation to Transact Business; and

118 (iv) a sales and use tax license issued under Section 59-12-106.

119 (c) "License" does not include:

120 (i) a license issued pursuant to Title 19, Environmental Quality Code, or Title 73,

121 Water and Irrigation, or rules adopted pursuant to those titles; or

122 (ii) a professional license.

123 (11) "Social Security Number Verification Service" means the program administered  
 124 by the Social Security Administration or any of its successor programs.

125 (12) "Unauthorized alien" means an alien who does not have the legal right or  
 126 authorization under federal law to work in the United States as described in 8 U.S.C. Sec.  
 127 1324a(h)(3).

128 Section 3. Section **34A-12-103** is enacted to read:

129 **34A-12-103. Independent contractors -- Applicability.**

130 For the purposes of this chapter, independent contractor status applies to an individual  
 131 who performs services and is not an employee pursuant to Section 3508, Internal Revenue  
 132 Code.

133 Section 4. Section **34A-12-201** is enacted to read:

134 **Part 2. Employing Unauthorized Aliens Prohibited**

135 **34A-12-201. Knowingly or intentionally employing unauthorized aliens --**

136 **Prohibition -- False and frivolous complaints -- Violation -- Classification -- License**  
 137 **suspension -- Affirmative defense.**

138 (1) An employer may not knowingly employ an unauthorized alien or intentionally  
 139 employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract, or  
 140 other independent contractor agreement to obtain the labor of an alien in this state, the  
 141 employer knowingly or intentionally contracts with an unauthorized alien or with a person who  
 142 employs or contracts with an unauthorized alien to perform the labor, the employer violates this  
 143 Subsection (1).

144 ~~**H→ (2)(a) The attorney general shall prescribe a complaint form for a person to allege a**~~  
 145 ~~**violation of Subsection (1). The complainant may not be required to list the complainant's**~~  
 146 ~~**Social Security number on the complaint form or to have the complaint form notarized.**~~

147 ~~**(b) On receipt of a complaint on a prescribed complaint form that an employer**~~  
 148 ~~**allegedly knowingly employs an unauthorized alien or intentionally employs an unauthorized**~~  
 149 ~~**alien, the attorney general or county attorney shall investigate whether the employer has**~~  
 150 ~~**violated Subsection (1). If a complaint is received but is not submitted on a prescribed**~~  
 151 ~~**complaint form, the attorney general or county attorney may investigate whether the employer**~~

152 ~~has violated Subsection (1):~~

153 ~~—— (c) The attorney general or county attorney may not investigate an anonymous~~  
 154 ~~complaint:~~

155 ~~—— (d) The attorney general or county attorney may not investigate complaints that are~~  
 156 ~~based solely on race, color, or national origin:~~

157 ~~—— (e) A complaint that is submitted to a county attorney shall be submitted to the county~~  
 158 ~~attorney in the county in which the alleged unauthorized alien is or was employed by the~~  
 159 ~~employer. The county sheriff or any other local law enforcement agency may assist in~~  
 160 ~~investigating a complaint:~~

161 ~~—— (f) (2) ←Ĥ When investigating Ĥ→ [a complaint] ←Ĥ , the attorney general or county~~  
 161a ~~attorney shall verify~~  
 162 ~~the work authorization of all alleged unauthorized aliens with the federal government pursuant~~  
 163 ~~to 8 U.S.C. Sec. 1373(c). A state, county, or local official may not attempt to independently~~  
 164 ~~make a final determination on whether an alien is authorized to work in the United States. An~~  
 165 ~~alien's immigration status or work authorization status shall be verified with the federal~~  
 166 ~~government pursuant to 8 U.S.C. Sec. 1373(c).~~

167 ~~Ĥ→ [(g) A person who knowingly or recklessly files a false and frivolous complaint under~~  
 168 ~~this Subsection (2) is guilty of a class C misdemeanor.] ←Ĥ~~

169 ~~(3) If, after an investigation, the attorney general or county attorney determines that~~  
 169a ~~Ĥ→ [the~~  
 170 ~~complaint is not false and frivolous] a violation of Subsection (1) has occurred ←Ĥ :~~

171 ~~(a) the attorney general or county attorney shall notify the United States Immigration~~  
 172 ~~and Customs Enforcement of the unauthorized alien;~~

173 ~~(b) the attorney general or county attorney shall notify the local law enforcement~~  
 174 ~~agency of the unauthorized alien; and~~

175 ~~(c) the attorney general shall notify the appropriate county attorney to bring an action~~  
 176 ~~pursuant to Subsection (4) if Ĥ→ [the complaint was originally filed with] the violation was~~  
 176a ~~originally investigated by ←Ĥ the attorney general.~~

177 ~~(4) An action for a violation of Subsection (1) shall be brought against the employer by~~  
 178 ~~the county attorney in the county where the unauthorized alien employee is or was employed by~~  
 179 ~~the employer. The county attorney may not bring an action against any employer for any~~  
 180 ~~violation of Subsection (1) that occurs before May 8, 2012.~~

181 ~~(5) For any action in district court under this section, the district court shall expedite~~  
 182 ~~the action.~~

183           (6) On a finding of a violation of Subsection (1):  
184           (a) For a first violation, as described in Subsection (6)(d):  
185           (i) The court shall order the employer to be subject to a three-year probationary period  
186 for the business location where the unauthorized alien performed work. During the  
187 probationary period the employer shall file quarterly reports in the form provided in Section  
188 35A-7-104 with the county attorney of each new employee who is hired by the employer at the  
189 business location where the unauthorized alien performed work.  
190           (ii) The court shall order the employer to terminate the employment of all employees  
191 the attorney general or county attorney determine in accordance with Subsection (2)(f) to be  
192 unauthorized aliens.  
193           (iii) (A) The court shall order the employer to file a signed sworn affidavit with the  
194 county attorney within three business days after the order is issued. The affidavit shall state  
195 that the employer has terminated the employment of the unauthorized aliens described in  
196 Subsection (6)(a)(ii) and that the employer will not intentionally or knowingly employ an  
197 unauthorized alien in this state.  
198           (B) The court shall order the appropriate agencies to suspend all licenses subject to this  
199 Subsection (6)(a) that are held by the employer if the employer fails to file a signed sworn  
200 affidavit with the county attorney within three business days after the order is issued. All  
201 licenses that are suspended under this Subsection (6)(a) shall remain suspended until the  
202 employer files a signed sworn affidavit with the county attorney.  
203           (C) Notwithstanding any other law, on filing of the affidavit the suspended licenses  
204 shall be reinstated immediately by the appropriate agencies.  
205           (iv) The court shall order the employer to pay to the agency issuing the license that is  
206 on probation any fee or other amount imposed by the agency to remove a license issued by the  
207 agency from probation.  
208           (v) (A) The court shall order the employer to participate in training concerning e-verify  
209 and the hiring of aliens that is administered by the attorney general.  
210           (B) The employer shall pay a fee to participate in the training required by this  
211 Subsection (6)(a)(v). The attorney general shall set the fee amount in accordance with Section  
212 63J-1-504. The fee shall be deposited into the Immigration Act Restricted Account created in  
213 Section 63G-12-103.

214 (b) For a second violation, as described in Subsection (6)(d), the court shall order the  
215 appropriate agencies to suspend for 14 days all licenses that are held by the employer specific  
216 to the business location where the unauthorized alien performed work. If the employer does  
217 not hold a license specific to the business location where the unauthorized alien performed  
218 work, but a license is necessary to operate the employer's business in general in Utah, the court  
219 shall order the appropriate agencies to suspend for 14 days all licenses that are held by the  
220 employer at the employer's primary place of business within Utah. On receipt of the order and  
221 notwithstanding any other law, the appropriate agencies shall immediately suspend the  
222 licenses.

223 (c) For a third ~~H~~→ or subsequent ←~~H~~ violation, as described in Subsection (6)(d), the  
223a court shall order the  
224 appropriate agencies to suspend for 120 days all licenses that are held by the employer specific  
225 to the business location where the unauthorized alien performed work. If the employer does  
226 not hold a license specific to the business location where the unauthorized alien performed  
227 work, but a license is necessary to operate the employer's business in general in Utah, the court  
228 shall order the appropriate agencies to suspend for 120 days all licenses that are held by the  
229 employer at the employer's primary place of business within Utah. On receipt of the order and  
230 notwithstanding any other law, the appropriate agencies shall immediately suspend the  
231 licenses.

232 (d) A violation shall be considered:

233 (i) a first violation by an employer at a business location if the violation does not occur  
234 during a probationary period ordered by the court under Subsection (6)(a) to that employer's  
235 business location;

236 (ii) a second violation by an employer at a business location if the violation occurs  
237 during a probationary period ordered by the court under Subsection (6)(a) for that employer's  
238 business location; or

239 (iii) a third ~~H~~→ or subsequent ←~~H~~ violation by an employer at a business location if the  
239a violation occurs:

240 (A) during the probationary period ordered by the court under Subsection (6)(a) for that  
241 employer's business location; and

242 (B) after a second ~~H~~→ or subsequent ←~~H~~ violation that occurs during the same  
242a probationary period.

243 (e) An action taken against an employer under this Subsection (6) applies to an entity  
244 that is materially the same as the employer. To determine whether an entity is materially the



245 same as an employer one or more of the following may be considered:

- 246 (i) the entity has one or more of the same executive officers as the prior entity;  
247 (ii) the entity conducts operations in the same location as the prior entity;  
248 (iii) the entity employs two or more agents from the prior entity;  
249 (iv) the entity solicits or serves two or more customers of the prior entity;  
250 (v) the entity has a name similar to the prior entity; or  
251 (vi) another factor showing a relationship between the entity and the prior entity.

252 (7) The attorney general shall:

- 253 (a) maintain a copy of a court order that is received pursuant to Subsection (6);  
254 (b) maintain a database of the employers and business locations that have a first

255 violation or second violation of Subsection (1); and

256 (c) make the court orders available on the attorney general's website for a period of  
257 three years from the day on which the court order is issued.

258 (8) On determining whether an employee is an unauthorized alien, the court shall  
259 consider only the federal government's determination pursuant to 8 U.S.C. Sec. 1373(c). The  
260 federal government's determination creates a rebuttable presumption of the employee's lawful  
261 status. The court may take judicial notice of the federal government's determination and may  
262 request the federal government to provide automated or testimonial verification pursuant to 8  
263 U.S.C. Sec. 1373(c).

264 (9) For the purposes of this section, proof of verifying the employment authorization of  
265 an employee through the e-verify program creates a rebuttable presumption that an employer  
266 did not knowingly employ an unauthorized alien.

267 (10) For the purposes of this section, an employer that establishes that the employer has  
268 complied in good faith with the requirements of 8 U.S.C. Sec. 1324a(b) establishes an  
269 affirmative defense that the employer did not knowingly employ an unauthorized alien or  
270 intentionally employs an unauthorized alien. An employer is considered to have complied with  
271 the requirements of 8 U.S.C. Sec. 1324a(b), notwithstanding an isolated, sporadic, or  
272 accidental technical or procedural failure to meet the requirements, if there is a good faith  
273 attempt to comply with the requirements.

274 (11) (a) It is an affirmative defense to a violation of Subsection (1) that the employer  
275 was entrapped. To claim entrapment, the employer must admit by the employer's testimony or

276 other evidence the substantial elements of the violation. An employer who asserts an  
 277 entrapment defense has the burden of proving the following by a preponderance of the  
 278 evidence:

279 (i) the idea of committing the violation started with a law enforcement officer or an  
 280 agent of a law enforcement officer rather than with the employer;

281 (ii) the law enforcement officer or agent urged and induced the employer to commit the  
 282 violation; and

283 (iii) the employer was not predisposed to commit the violation before the law  
 284 enforcement officer or agent urged and induced the employer to commit the violation.

285 (b) An employer does not establish entrapment if the employer was predisposed to  
 286 violate Subsection (1) and a law enforcement officer or agent of the law enforcement officer  
 287 merely provided the employer with an opportunity to commit the violation. It is not  
 288 entrapment for a law enforcement officer or agent merely to use a ruse or to conceal the law  
 289 enforcement officer's or agent's identity. The conduct of a law enforcement officer or agent  
 290 may be considered in determining if an employer has proven entrapment.

290a **H→ (12) (a) An employer engaged in agriculture is exempt from any penalty imposed**  
 290b **under this section for purposes of the employer's employees who are hired to perform work**  
 290c **related to agriculture.**

290d **(b) An employer who employs an unauthorized alien who under a program**  
 290e **implemented by the state is authorized to work in the state is exempt from any penalty**  
 290f **imposed under this section related to hiring that unauthorized alien. ←H**

291 Section 5. Section **34A-12-202** is enacted to read:

292 **34A-12-202. Employer actions -- Federal or state law compliance.**

293 This chapter may not be construed to require an employer to take any action that the  
 294 employer believes in good faith would violate federal or state law.

295 Section 6. Section **34A-12-301** is enacted to read:

296 **Part 3. Verification of Employment Eligibility**

297 **34A-12-301. Verification of employment eligibility -- E-verify program.**

298 (1) After September 1, 2012, and except as provided in Subsection (2), every employer,  
 299 after hiring an employee, shall verify the employment eligibility of the employee through the  
 300 e-verify program and shall keep a record of the verification for the duration of the employee's  
 301 employment or at least three years, whichever is longer.

302 (2) H→ (a) ←H An employer engaged in agriculture is exempt from Subsection (1) for  
 302a purposes of

303 the employer's employees who are hired to perform work related to agriculture.

303a **Ĥ→ (b) An employer who employs an unauthorized alien who under a program**  
303b **implemented by the state is authorized to work in this state is exempt from Subsection (1) for**  
303c **purposes of that unauthorized alien. ←Ĥ**

304 Section 7. Section **34A-12-302** is enacted to read:

305 **34A-12-302. Voluntary employer enhanced compliance program -- Program**  
306 **termination.**

307 (1) The attorney general shall establish the voluntary employer enhanced compliance  
 308 program. The program is voluntary and an employer is not required to enroll in the program.

309 (2) An employer that is on probation under Section 34A-12-201 may not enroll in the  
 310 voluntary employer enhanced compliance program. A court may not consider nonenrollment  
 311 in the voluntary employer enhanced compliance program as a factor when determining whether  
 312 to place on probation or suspend a license under Section 34A-12-201.

313 (3) To enroll in the voluntary employer enhanced compliance program, an employer  
 314 shall submit a signed sworn affidavit to the attorney general. The affidavit shall state that the  
 315 employer agrees to perform all of the following actions in good faith:

316 (a) After hiring an employee, the employer shall verify the employment eligibility of  
 317 the employee through the e-verify program.

318 (b) (i) To ensure the accuracy of reporting wages to the Social Security Administration,  
 319 the employer shall verify the accuracy of Social Security numbers through the Social Security  
 320 Number Verification Service for any employee who is not verified through the e-verify  
 321 program. Within 30 days after enrolling in the voluntary employer enhanced compliance  
 322 program, the employer shall submit the necessary information to the Social Security Number  
 323 Verification Service, including the full name, the Social Security number, the date of birth, and  
 324 the gender of each employee.

325 (ii) On receipt of a failed verification result, the employer shall notify the employee of  
 326 the date on which the employer received the failed result and instruct the employee to resolve  
 327 the discrepancy with the Social Security Administration within 90 days after that date. The  
 328 employer and employee shall resolve any failed result within 90 days after the date on which  
 329 the employer received the failed result. If the failed result is not resolved within the 90-day  
 330 period but the employer and employee are continuing to actively and consistently work toward  
 331 resolving the failed result with the Social Security Administration, the 90-day period does not  
 332 apply as long as the employer and employee have documented proof of these ongoing efforts to  
 333 resolve the failed result in good faith and have provided the documented proof to the attorney  
 334 general. The employer shall verify the accuracy of the Social Security numbers and resolve any  
 335 failed verification results in a consistent manner for all employees.

336 (c) In response to a written request by the attorney general or county attorney stating  
 337 the name of an employee ~~for whom a complaint has been received under~~  
 337a ~~Section 34A-12-201~~ ~~for whom a complaint has been received under~~

338 the employer shall provide the attorney general or county attorney the documents indicating  
 339 that the employee was verified through the e-verify program or that the accuracy of the  
 340 employee's wage report was verified through the Social Security Number Verification Service  
 341 under this section.

342 (4) An employer that is enrolled in the voluntary employer enhanced compliance  
 343 program is not in violation of Subsection 34A-12-201(1) regarding an employee ~~H→~~ [named in a  
 344 complaint under Section 34A-12-201] ~~←H~~ if the employer has completed both of the following:

345 (a) in good faith verified the employment eligibility of the employee ~~H→~~ [named in the  
 346 complaint] ~~←H~~ through the e-verify program or in good faith verified the accuracy of the Social  
 347 Security number of the employee ~~H→~~ [named in the complaint] ~~←H~~ through the Social Security  
 347a Number

348 Verification System as required by Subsections (3)(a) and (b); and

349 (b) provided the attorney general or county attorney with the documents, as required by  
 350 Subsection (3)(c), indicating that the employer verified the employee ~~H→~~ [named in the  
 350a complaint] ~~←H~~ .

351 (5) The attorney general shall maintain a list of employers enrolled in the voluntary  
 352 employer enhanced compliance program and make the list available on the attorney general's  
 353 website.

354 (6) The attorney general shall develop a form of recognition that an employer may  
 355 display to the general public for enrolling in the voluntary employer enhanced compliance  
 356 program.

357 (7) If an employer does not fully comply with this section, the attorney general shall  
 358 terminate the employer's enrollment in the voluntary employer enhanced compliance program.  
 359 At any time, an employer may voluntarily withdraw from the voluntary employer enhanced  
 360 compliance program by notifying the attorney general. Beginning on the date of termination or  
 361 withdrawal, Subsection (4) no longer applies to the employer and the employer shall  
 362 immediately remove any form of recognition from public display that is authorized under this  
 363 section.

364 (8) The program established by this section ends on July 1, 2021.

365 Section 8. Section **58-55-503** is amended to read:

366 **58-55-503. Penalty for unlawful conduct -- Citations.**

367 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),  
 368 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (22), (23), (24), (25), or (26), or Subsection

369 58-55-504(2), or who fails to comply with a citation issued under this section after it is final, is  
370 guilty of a class A misdemeanor.

371 (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an  
372 individual and does not include a sole proprietorship, joint venture, corporation, limited  
373 liability company, association, or organization of any type.

374 (b) A person who violates the provisions of Subsection 58-55-501(8) may not be  
375 awarded and may not accept a contract for the performance of the work.

376 (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an  
377 infraction unless the violator did so with the intent to deprive the person to whom money is to  
378 be paid of the money received, in which case the violator is guilty of theft, as classified in  
379 Section 76-6-412.

380 (3) Grounds for immediate suspension of the licensee's license by the division and the  
381 commission include the issuance of a citation for violation of Subsection 58-55-308(2), Section  
382 58-55-501, or Subsection 58-55-504(2), or the failure by a licensee to make application to,  
383 report to, or notify the division with respect to any matter for which application, notification, or  
384 reporting is required under this chapter or rules adopted under this chapter, including applying  
385 to the division for a new license to engage in a new specialty classification or to do business  
386 under a new form of organization or business structure, filing with the division current  
387 financial statements, notifying the division concerning loss of insurance coverage, or change in  
388 qualifier.

389 (4) (a) If upon inspection or investigation, the division concludes that a person has  
390 violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9),  
391 (10), (12), (14), (19), (21), (22), (23), (24), (25), or (26), or Subsection 58-55-504(2), or any  
392 rule or order issued with respect to these subsections, and that disciplinary action is  
393 appropriate, the director or the director's designee from within the division shall promptly issue  
394 a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a  
395 stipulated settlement, or notify the person to appear before an adjudicative proceeding  
396 conducted under Title 63G, Chapter 4, Administrative Procedures Act.

397 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),  
398 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), (21), (22), (23), (24), (25), or (26),  
399 or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or

400 by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this  
401 Subsection (4) and may, in addition to or in lieu of, be ordered to cease and desist from  
402 violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19),  
403 (21), (24), (25), or (26), or Subsection 58-55-504(2).

404 (ii) Except for a cease and desist order, the licensure sanctions cited in Section  
405 58-55-401 may not be assessed through a citation.

406 (b) (i) A citation shall be in writing and describe with particularity the nature of the  
407 violation, including a reference to the provision of the chapter, rule, or order alleged to have  
408 been violated.

409 (ii) A citation shall clearly state that the recipient must notify the division in writing  
410 within 20 calendar days of service of the citation if the recipient wishes to contest the citation  
411 at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

412 (iii) A citation shall clearly explain the consequences of failure to timely contest the  
413 citation or to make payment of any fines assessed by the citation within the time specified in  
414 the citation.

415 (c) A citation issued under this section, or a copy of a citation, may be served upon a  
416 person upon whom a summons may be served:

417 (i) in accordance with the Utah Rules of Civil Procedure;

418 (ii) personally or upon the person's agent by a division investigator or by a person  
419 specially designated by the director; or

420 (iii) by mail.

421 (d) (i) If within 20 calendar days from the service of a citation, the person to whom the  
422 citation was issued fails to request a hearing to contest the citation, the citation becomes the  
423 final order of the division and is not subject to further agency review.

424 (ii) The period to contest a citation may be extended by the division for cause.

425 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation  
426 the license of a licensee who fails to comply with a citation after it becomes final.

427 (f) The failure of an applicant for licensure to comply with a citation after it becomes  
428 final is a ground for denial of license.

429 (g) A citation may not be issued under this section after the expiration of six months  
430 following the occurrence of a violation.

431 (h) The director or the director's designee shall assess a fine in accordance with the  
432 following:

433 (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;

434 (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;

435 and

436 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to  
437 \$2,000 for each day of continued offense.

438 (i) (i) For purposes of issuing a final order under this section and assessing a fine under  
439 Subsection (4)(h), an offense constitutes a second or subsequent offense if:

440 (A) the division previously issued a final order determining that a person committed a  
441 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),  
442 (3), (9), (10), (12), (14), (19), (24), (25), or (26), or Subsection 58-55-504(2); or

443 (B) (I) the division initiated an action for a first or second offense;

444 (II) a final order has not been issued by the division in the action initiated under  
445 Subsection (4)(i)(i)(B)(I);

446 (III) the division determines during an investigation that occurred after the initiation of  
447 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent  
448 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),  
449 (10), (12), (14), (19), (24), (25), or (26), or Subsection 58-55-504(2); and

450 (IV) after determining that the person committed a second or subsequent offense under  
451 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under  
452 Subsection (4)(i)(i)(B)(I).

453 (ii) In issuing a final order for a second or subsequent offense under Subsection  
454 (4)(i)(i), the division shall comply with the requirements of this section.

455 (j) In addition to any other licensure sanction or fine imposed under this section, the  
456 division shall revoke the license of a licensee that violates Subsection 58-55-501(24) or (25)  
457 two or more times within a 12-month period, unless, with respect to a violation of Subsection  
458 58-55-501(24), the licensee can demonstrate that the licensee successfully verified the federal  
459 legal working status of the individual who was the subject of the violation using a status  
460 verification system, as defined in Section [~~13-47-102~~] 63G-12-102.

461 (k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(24) or (25)



462 for each individual is considered a separate violation.

463 (5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited  
464 into the Commerce Service Account created by Section 13-1-2.

465 (b) A penalty that is not paid may be collected by the director by either referring the  
466 matter to a collection agency or bringing an action in the district court of the county in which  
467 the person against whom the penalty is imposed resides or in the county where the office of the  
468 director is located.

469 (c) A county attorney or the attorney general of the state is to provide legal assistance  
470 and advice to the director in any action to collect the penalty.

471 (d) In an action brought to enforce the provisions of this section, reasonable attorney  
472 fees and costs shall be awarded.

473 Section 9. Section **63G-12-210** is amended to read:

474 **63G-12-210. Verification of valid permit -- Protected status of information.**

475 (1) (a) The department shall develop a verification procedure by rule made in  
476 accordance with Chapter 3, Utah Administrative Rulemaking Act, for a person who hires a  
477 permit holder to verify with the department that the permit is valid [~~as required by Section~~  
478 ~~63G-12-301~~].

479 (b) The verification procedure adopted under this Subsection (1) shall:

480 (i) be substantially similar to the employer requirements to verify federal employment  
481 status under the e-verify program; and

482 (ii) provide that an undocumented individual may appeal a determination that a permit  
483 is invalid in accordance with Chapter 4, Administrative Procedures Act.

484 (2) Subject to Section 63G-12-212, a record under this part is a protected record under  
485 Chapter 2, Government Records Access and Management Act, except that a record may not be  
486 shared under Section 63G-2-206, unless:

487 (a) requested by the Office of Legislative Auditor General in accordance with Section  
488 36-12-15;

489 (b) disclosed to the State Tax Commission as provided in Subsection  
490 63G-12-203(2)(e)(vi); or

491 (c) disclosed to a federal government entity in accordance with this part or a waiver,  
492 exemption, or authorization described in Section 63G-12-202.

- 493 (3) The state is not liable to any person for:
- 494 (a) the design, implementation, or operation of a verification procedure under this part;
- 495 (b) the collection and disclosure of information as part of a verification procedure
- 496 under this part; or
- 497 (c) the determination that a permit is invalid.

498 Section 10. Section **63G-12-403**, which is renumbered from Section 63G-12-302 is  
499 renumbered and amended to read:

500 ~~[63G-12-302].~~ **63G-12-403. Status verification system -- Registration and**  
501 **use -- Performance of services -- Unlawful practice.**

502 (1) As used in this section:

503 (a) "Contract" means an agreement for the procurement of goods or services that is  
504 awarded through a request for proposals process with a public employer and includes a sole  
505 source contract.

506 (b) "Contractor" means a subcontractor, contract employee, staffing agency, or any  
507 contractor regardless of its tier.

508 (2) (a) Subject to Subsection (5), a public employer shall register with and use a Status  
509 Verification System to verify the federal employment authorization status of a new employee.

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

512 (3) (a) Subject to Subsection (5), beginning July 1, 2009:

513 (i) a public employer may not enter into a contract for the physical performance of  
514 services within the state with a contractor unless the contractor registers and participates in the  
515 Status Verification System to verify the work eligibility status of the contractor's new  
516 employees that are employed in the state; and

517 (ii) a contractor shall register and participate in the Status Verification System in order  
518 to enter into a contract with a public employer.

519 (b) (i) For purposes of compliance with Subsection (3)(a), a contractor is individually  
520 responsible for verifying the employment status of only new employees who work under the  
521 contractor's supervision or direction and not those who work for another contractor or  
522 subcontractor, except as otherwise provided in Subsection (3)(b)(ii).

523 (ii) Each contractor or subcontractor who works under or for another contractor shall

524 certify to the main contractor by affidavit that the contractor or subcontractor has verified  
525 through the Status Verification System the employment status of each new employee of the  
526 respective contractor or subcontractor.

527 (c) Subsection (3)(a) does not apply to a contract:

528 (i) entered into by the entities referred to in Subsection (3)(a) prior to July 1, 2009,  
529 even though the contract may involve the physical performance of services within the state on  
530 or after July 1, 2009; or

531 (ii) that involves underwriting, remarketing, broker-dealer activities, securities  
532 placement, investment advisory, financial advisory, or other financial or investment banking  
533 services.

534 (4) (a) It is unlawful for an employing entity in the state to discharge an employee  
535 working in Utah who is a United States citizen or permanent resident alien and replace the  
536 employee with, or have the employee's duties assumed by, an employee who:

537 (i) the employing entity knows, or reasonably should have known, is an unauthorized  
538 alien hired on or after July 1, 2009; and

539 (ii) is working in the state in a job category:

540 (A) that requires equal skill, effort, and responsibility; and

541 (B) which is performed under similar working conditions, as defined in 29 U.S.C.[7]  
542 Sec. 206 (d)(1), as the job category held by the discharged employee.

543 (b) An employing entity, which on the date of a discharge in question referred to in  
544 Subsection (4)(a) is enrolled in and using the Status Verification System to verify the  
545 employment eligibility of its employees in Utah who are hired on or after July 1, 2009, is  
546 exempt from liability, investigation, or lawsuit arising from an action under this section.

547 (c) A cause of action for a violation of this Subsection (4) arises exclusively from the  
548 provisions of this Subsection (4).

549 (5) On and after the program start date:

550 (a) a public employer, after hiring an employee, shall verify the employment eligibility  
551 of the new employee:

552 (i) through the status verification system if the individual does not hold a permit; and

553 (ii) through the u-verify program if the individual holds a permit; and

554 (b) a contractor is considered to be in compliance with this section if, after hiring an

555 employee, the contractor verifies the employment eligibility of the new employee:  
556 (i) through the status verification system if the individual does not hold a permit; and  
557 (ii) through the u-verify program if the individual holds a permit.  
558 Section 11. Section **63I-2-213** is amended to read:  
559 **63I-2-213. Repeal dates -- Title 13.**  
560 [~~Title 13, Chapter 47, Private Employer Verification Act, is repealed on the program~~  
561 ~~start date, as defined in Section 63G-12-102.~~]  
562 Section 12. **Repealer.**  
563 This bill repeals:  
564 Section **13-47-101, Title.**  
565 Section **13-47-102, Definitions.**  
566 Section **13-47-103, Scope of chapter.**  
567 Section **13-47-201, Verification required for new hires.**  
568 Section **13-47-202, Liability protections.**  
569 Section **13-47-203, Voluntary registration by private employer certifying**  
570 **participation in verification.**  
571 Section **13-47-204, Department to publish list of registered private employers.**  
572 Section **63G-12-301, Employing unauthorized alien -- Verification of employment**  
573 **eligibility.**  
574 Section **63G-12-303, Liability protections.**  
575 Section **63G-12-304, Voluntary registration by private employer certifying**  
576 **participation in verification.**  
577 Section **63G-12-305, Administrative actions -- Defenses.**  
578 Section **63G-12-306, Penalties.**

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**Legislative Review Note**  
as of 2-14-12 12:35 PM

**Office of Legislative Research and General Counsel**