EMPLOYMENT OF UNAUTHORIZED ALIENS
2011 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Christopher N. Herrod
Senate Sponsor: D. Chris Buttars
LONG TITLE
General Description:
This bill modifies provisions related to labor to address verification of an individual's
eligibility under federal law to be employed.
Highlighted Provisions:
This bill:
 enacts the Employment of Unauthorized Aliens Act, including:
• defining terms;
• addressing construction, severability, and compliance with federal and state law;
• prohibiting the knowing or intentional employment of unauthorized aliens;
 requiring verification of employment eligibility;
 imposing verification requirements for economic development incentives;
 providing for voluntary registration;
addressing enforcement; and
• requiring certification by government entities of compliance with verification
requirements; and
 repeals the Private Employer Verification Act.
Money Appropriated in this Bill:
None



26	Other Special Clauses:
27	This bill takes effect on July 1, 2011.
28	Utah Code Sections Affected:
29	ENACTS:
30	34A-12-101 , Utah Code Annotated 1953
31	34A-12-102 , Utah Code Annotated 1953
32	34A-12-103 , Utah Code Annotated 1953
33	34A-12-201 , Utah Code Annotated 1953
34	34A-12-202 , Utah Code Annotated 1953
35	34A-12-203 , Utah Code Annotated 1953
36	34A-12-204 , Utah Code Annotated 1953
37	34A-12-205 , Utah Code Annotated 1953
38	34A-12-301 , Utah Code Annotated 1953
39	34A-12-302 , Utah Code Annotated 1953
40	34A-12-303 , Utah Code Annotated 1953
41	34A-12-304 , Utah Code Annotated 1953
42	REPEALS:
43	13-47-101, as enacted by Laws of Utah 2010, Chapter 403
44	13-47-102, as enacted by Laws of Utah 2010, Chapter 403
45	13-47-103, as enacted by Laws of Utah 2010, Chapter 403
46	13-47-201, as enacted by Laws of Utah 2010, Chapter 403
47	13-47-202, as enacted by Laws of Utah 2010, Chapter 403
48	13-47-203, as enacted by Laws of Utah 2010, Chapter 403
49	13-47-204, as enacted by Laws of Utah 2010, Chapter 403
50	
51	Be it enacted by the Legislature of the state of Utah:
52	Section 1. Section 34A-12-101 is enacted to read:
53	CHAPTER 12. EMPLOYMENT OF UNAUTHORIZED ALIENS ACT
54	Part 1. General Provisions
55	<u>34A-12-101.</u> Title.
56	This chapter is known as the "Employment of Unauthorized Aliens Act."

57	Section 2. Section 34A-12-102 is enacted to read:
58	<u>34A-12-102.</u> Definitions.
59	As used in this chapter:
60	(1) "Agency" means:
61	(a) an agency, department, board, or commission of this state;
62	(b) a political subdivision that issues a license in this state; or
63	(c) an agency, department, board, or commission of a political subdivision described in
64	Subsection (1)(b).
65	(2) "Appropriate agency" means an agency that issues a license to an employer who is
66	subject to an order under Part 3, Enforcement.
67	(3) "Employ" means to hire an employee on or after July 1, 2011.
68	(4) (a) "Employee" means an individual who provides services or labor for an employer
69	in this state for wages or other remuneration.
70	(b) "Employee" does not include an independent contractor.
71	(5) (a) "Employer" means:
72	(i) the state;
73	(ii) a political subdivision of the state;
74	(iii) a self-employed person; and
75	(iv) a person that:
76	(A) transacts business in this state;
77	(B) is issued a license by an agency; and
78	(C) employs one or more employees in this state.
79	(b) For purposes of an independent contractor, "employer" means the independent
80	contractor and does not mean the person that uses the contract labor.
81	(6) (a) "Independent contractor" means a person who:
82	(i) carries on an independent business;
83	(ii) contracts to do a piece of work according to the person's own means and methods;
84	and
85	(iii) is subject to control only as to results.
86	(b) Whether a person entity is an independent contractor is determined on a
87	case-by-case basis through various factors, including whether the person:

88	(i) supplies the tools or materials;
89	(ii) makes services available to the general public;
90	(iii) works or may work for a number of clients at the same time;
91	(iv) has an opportunity for profit or loss as a result of labor or service provided;
92	(v) invests in the facilities for work;
93	(vi) directs the order or sequence in which the work is completed; or
94	(vii) determines the hours when the work is completed.
95	(c) "Independent contractor" includes an individual who performs services and is not
96	an employee pursuant to Section 3508, Internal Revenue Code.
97	(7) "Intentionally" is as defined in Section 76-2-103.
98	(8) (a) "Knowingly employ an unauthorized alien" means an action described in 8
99	<u>U.S.C. Sec. 1324a.</u>
100	(b) "Knowingly employ an unauthorized alien" is to be interpreted consistently with 8
101	U.S.C. Sec. 1324a and applicable federal regulations.
102	(9) (a) "License" means a permit, certificate, approval, registration, charter, or similar
103	form of authorization that is:
104	(i) required by law; and
105	(ii) issued by any agency for the purposes of operating a business in this state.
106	(b) "License" includes:
107	(i) articles of incorporation or articles of organization under Title 16, Corporations, or
108	Title 48, Partnership; and
109	(ii) a license issued under Title 59, Revenue and Taxation.
110	(c) "License" does not include a professional license.
111	(10) "Private employer" means a person listed in Subsection (5)(a)(iii) or (iv).
112	(11) "Professional license" means a license, certificate, or registration issued under:
113	(a) Title 4, Utah Agricultural Code;
114	(b) Title 7, Financial Institutions Act;
115	(c) Title 19, Environmental Quality Code;
116	(d) Title 26, Utah Health Code;
117	(e) Title 31A, Insurance Code;
118	(f) Title 58, Occupational and Professional Licensing;

119	(g) Title 61, Securities Division - Real Estate Division;
120	(h) Title 73, Water and Irrigation; or
121	(i) a license, certificate, or registration similar to one described in this Subsection (12).
122	(12) "Social Security number verification service" means the program administered by
123	the Social Security Administration or any of its successor programs.
124	(13) (a) "Status verification system" means an electronic system operated by the federal
125	government, through which a person may verify the citizenship or immigration status of an
126	individual within the jurisdiction of the agency or political subdivision for a purpose authorized
127	under this section.
128	(b) "Status verification system" includes:
129	(i) the electronic verification of the work authorization program of the Illegal
130	Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C., Sec. 1324a,
131	known as the E-verify Program;
132	(ii) an equivalent federal program designated by the United States Department of
133	Homeland Security or other federal agency authorized to verify the work eligibility status of a
134	newly hired employee pursuant to the Immigration Reform and Control Act of 1986;
135	(iii) the Social Security Number Verification Service or similar online verification
136	process implemented by the United States Social Security Administration; or
137	(iv) an independent third-party system with an equal or higher degree of reliability as
138	the programs, systems, or processes described in Subsection (1)(b)(i), (ii), or (iii).
139	(14) "Unauthorized alien" is as defined in 8 U.S.C. Sec. 1324a(h)(3).
140	Section 3. Section 34A-12-103 is enacted to read:
141	<u>34A-12-103.</u> Construction Federal and state law compliance Severability.
142	(1) A term used in this chapter is to be construed to have the meaning given to the term
143	under federal laws regulating immigration.
144	(2) This chapter is to be implemented in a manner consistent with:
145	(a) federal laws regulating immigration;
146	(b) protecting the civil rights of all persons; and
147	(c) respecting the privileges and immunities of United States citizens.
148	(3) This chapter may not be implemented or construed to implement or establish the
149	REAL ID Act of 2005, Pub. L. 109-13, division B, 119 Stat. 302, including the use of a radio

150	frequency identification chip.
151	(4) This chapter may not be construed to require an employer to take any action that the
152	employer believes in good faith violates federal or state law.
153	(5) If any provision of this chapter or the application of this chapter to any person or
154	circumstance is for any reason held invalid, the remainder of the chapter and the application of
155	the provision to other persons or circumstances shall be given effect without the invalid
156	provision or application. The provisions of this chapter are severable.
157	Section 4. Section 34A-12-201 is enacted to read:
158	Part 2. Employment Practices
159	34A-12-201. Employing unauthorized alien.
160	(1) (a) An employer may not knowingly employ an unauthorized alien.
161	(b) When an employer uses a contract, subcontract, or other independent contractor
162	agreement to obtain the labor of an alien in this state, the employer may not knowingly contract
163	with an unauthorized alien or with a person who employs or contracts with an unauthorized
164	alien to perform the labor.
165	(2) (a) An employer may not intentionally employ an unauthorized alien.
166	(b) When an employer uses a contract, subcontract, or other independent contractor
167	agreement to obtain the labor of an alien in this state, the employer may not intentionally
168	contract with an unauthorized alien or with a person who employs or contracts with an
169	unauthorized alien to perform the labor.
170	Section 5. Section 34A-12-202 is enacted to read:
171	<u>34A-12-202.</u> Verification of employment eligibility.
172	(1) On and after July 1, 2011, a private employer employing $\hat{H} \rightarrow [5] \underline{15} \leftarrow \hat{H}$ or
172a	more employees
173	within the state for each working day in each of 20 calendar weeks or more in the current or
174	preceding calendar year shall verify the employment eligibility of $\hat{H} \rightarrow [an] a new \leftarrow \hat{H}$ employee
174a	through a status
175	verification system.
176	(2) A private employer shall keep a record of the verification required by Subsection
177	(1) for the longer of:
178	(a) the duration of the employee's employment; $\hat{\mathbf{H}} \rightarrow [\underline{\mathbf{or}}] \leftarrow \hat{\mathbf{H}}$
179	(b) at least three years from the date of $\hat{H} \rightarrow [verification]$ employment; or
179a	(c) one year from the date of termination of the employee's employment \leftarrow Ĥ .
180	Section 6. Section 34A-12-203 is enacted to read:

- 6 -

181	<u>34A-12-203.</u> Verification a requirement for economic development incentive.
182	(1) As used in this section:
183	(a) (i) "Economic development incentive" means a grant, loan, or performance-based
184	incentive from any government entity that is awarded on or after July 1, 2011.
185	(ii) "Economic development incentive" does not include an incentive provided under
186	Title 59, Revenue and Taxation.
187	(b) "Government entity" means:
188	(i) the state; or
189	(ii) a political subdivision of this state that receives and uses tax revenues.
190	(2) In addition to any other requirement for an employer to receive an economic
191	development incentive from a government entity, the employer shall register with and
192	participate in a status verification system.
193	(3) (a) Before receiving the economic development incentive, the employer shall
194	provide proof to the government entity that the employer is registered with and is participating
195	in a status verification system.
196	(b) If a government entity determines that the employer is not complying with this
197	section, the government entity shall notify the employer by certified mail of the government
198	entity's determination of noncompliance and the employer's right to appeal the determination in
199	accordance with Title 63G, Chapter 4, Administrative Procedures Act.
200	(c) On a final determination of noncompliance, the employer shall repay the money the
201	employer receives as an economic development incentive to the government entity within 30
202	days of the day on which a determination under this section becomes final.
203	Section 7. Section 34A-12-204 is enacted to read:
204	<u>34A-12-204.</u> Voluntary registration by private employer certifying participation
205	in verification.
206	(1) (a) A private employer may register with the Department of Commerce certifying
207	that the private employer is in compliance with Section 34A-12-202.
208	(b) A private employer may register with the Department of Commerce under this
209	section regardless of whether the private employer is required to comply with Section
210	<u>34A-12-202.</u>
211	(2) To register or renew a registration with the Department of Commerce under this

212	section, a private employer shall:
213	(a) file a registration statement with the Department of Commerce that certifies
214	compliance with Section 34A-12-202; and
215	(b) pay a fee established by the department in accordance with Section 63J-1-504 that
216	reflects the cost of registering employers under this section and publishing the list described in
217	Subsection (5).
218	(3) A registration under this section expires every two years on the anniversary of the
219	day on which the registration is filed with the Department of Commerce.
220	(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
221	Department of Commerce may make rules to provide for:
222	(a) the form of a registration statement under this section;
223	(b) the process of filing a registration statement under this section; and
224	(c) the process of renewing a registration statement under this section.
225	(5) The Department of Commerce shall publish electronically a list of private
226	employers who register under this section on a website accessible to the general public without
227	<u>a charge.</u>
228	Section 8. Section 34A-12-205 is enacted to read:
229	<u>34A-12-205.</u> Liability protections.
230	(1) An employer may not be held civilly liable under state law in a cause of action for
231	the employer's unlawful hiring of an unauthorized alien, as defined in 8 U.S.C. Sec. 1324a, if:
232	(a) the private employer complies with Section 34A-12-202 or 63G-11-103; and
233	(b) the information obtained in accordance with the status verification system indicates
234	that the employee's federal legal status allows the employer to hire the employee.
235	(2) An employer may not be held civilly liable under state law in a cause of action for
236	the employer's refusal to hire an individual if:
237	(a) the employer complies with Section 34A-12-202 or 63G-11-103; and
238	(b) the information obtained in accordance with the status verification system indicates
239	that the individual's federal legal status is that of an unauthorized alien as defined in 8 U.S.C.
240	<u>Sec. 1324a.</u>
241	Section 9. Section 34A-12-301 is enacted to read:
242	Part 3. Enforcement

243	Section 10. Section 34A-12-301 is enacted to read:
244	<u>34A-12-301.</u> Investigation process.
245	(1) The attorney general or county attorney may not investigate a complaint that is
246	based solely on race, color, or national origin.
247	(2) The county sheriff or any other local law enforcement agency may assist in
248	investigating a complaint.
249	(3) (a) When investigating a complaint, the attorney general or county attorney may
250	only verify the work authorization of the alleged unauthorized alien with the federal
251	government pursuant to 8 U.S.C. Sec. 1373(c).
252	(b) The state or a county, city, or town official may not attempt to independently make
253	a final determination on whether an alien is authorized to work in the United States. An alien's
254	immigration status or work authorization status may only be verified with the federal
255	government pursuant to 8 U.S.C. Sec. 1373(c).
256	(4) If, after an investigation, the attorney general or county attorney determines that a
257	complaint is not false and frivolous:
258	(a) the attorney general or county attorney may notify the United States Immigration
259	and Customs Enforcement of the unauthorized alien;
260	(b) the attorney general or county attorney may notify the local law enforcement agency
261	of the unauthorized alien; and
262	(c) the attorney general may notify the appropriate county attorney to bring an action
263	pursuant to Section 34A-12-303 if the complaint was originally filed with the attorney general.
264	Section 11. Section 34A-12-302 is enacted to read:
265	<u>34A-12-302.</u> Enforcement action.
266	(1) The county attorney in the county where an unauthorized alien employee is or was
267	employed by an employer may bring an action against the employer for a violation of Section
268	34A-12-201. A county attorney may not bring an action against any employer for a violation of
269	Section 34A-12-201 that occurs before July 1, 2011.
270	(2) (a) To determine whether an employee is an unauthorized alien, the court shall
271	consider only the federal government's determination pursuant to 8 U.S.C. Sec. 1373(c).
272	(b) The federal government's determination creates a rebuttable presumption of the
273	employee's lawful status. The court may:

274	(i) take judicial notice of the federal government's determination; and
275	(ii) request the federal government to provide automated or testimonial verification
276	pursuant to 8 U.S.C. Sec. 1373(c).
277	(3) For the purposes of this section, proof of verifying the employment authorization of
278	an employee through a status verification system creates a rebuttable presumption that an
279	employer did not knowingly employ an unauthorized alien.
280	(4) (a) For the purposes of this section, an employer that establishes that the employer
281	has complied in good faith with the requirements of 8 U.S.C. Sec. 1324a(b) establishes an
282	affirmative defense that the employer did not knowingly employ an unauthorized alien.
283	(b) An employer is considered to have complied with the requirements of 8 U.S.C. Sec.
284	1324a(b), notwithstanding an isolated, sporadic, or accidental technical or procedural failure to
285	meet the requirements, if there is a good faith attempt to comply with the requirements.
286	(5) (a) It is an affirmative defense to a violation of Subsection 34A-12-201(1) that an
287	employer is entrapped.
288	(b) To claim entrapment, an employer shall admit by the employer's testimony or other
289	evidence the substantial elements of the violation.
290	(c) An employer who asserts an entrapment defense has the burden of proving the
291	following by a preponderance of the evidence:
292	(i) the idea of committing the violation starts with a law enforcement officer or agent
293	rather than with the employer;
294	(ii) the law enforcement officer or agent urges and induces the employer to commit the
295	violation; and
296	(iii) the employer is not predisposed to commit the violation before the law
297	enforcement officer or agent urges and induces the employer to commit the violation.
298	(d) An employer does not establish entrapment if the employer is predisposed to
299	violate Subsection 34A-12-201(1) and the law enforcement officer or agent merely provides
300	the employer with an opportunity to commit the violation.
301	(e) It is not entrapment for a law enforcement officer or agent to use a ruse or to
302	conceal the law enforcement officer's or agent's identity. The conduct of a law enforcement
303	officer or agent may be considered in determining if an employer proves entrapment.
304	Section 12. Section 34A-12-303 is enacted to read:

305	<u>34A-12-303.</u> Penalties.
306	If a court finds a violation of Section 34A-12-201, the following applies:
307	(1) (a) For a first violation, the court shall order:
308	(i) the employer to terminate the employment of unauthorized aliens;
309	(ii) the employer to file a quarterly report in the form provided in Section 35A-7-104
310	with the county attorney for an employee who is hired by the employer at the business location
311	where the unauthorized alien performed work during:
312	(A) for a violation of Subsection 34A-12-201(1), a three-year probationary period; or
313	(B) for a violation of Subsection 34A-12-201(2), a five-year probationary period;
314	(iii) the employer to file a signed $\hat{\mathbf{H}} \rightarrow , \leftarrow \hat{\mathbf{H}}$ sworn affidavit with the county
314a	attorney within 15
315	days after the order is issued that states that the employer:
316	(A) has terminated the employment of any unauthorized alien in this state; and
317	(B) will not intentionally or knowingly employ an unauthorized alien in this state; and
318	(iv) the appropriate agencies to suspend each license described in Subsection (4) held
319	by the employer:
320	(A) for a violation of Subsection 34A-12-201(1), if the employer fails to
320a	<u>file a signed</u> Ĥ→ , ←Ĥ
321	sworn affidavit with the county attorney within 15 days after the order is issued; or
322	(B) for a violation of Subsection $\hat{\mathbf{H}} \rightarrow [34a-12-201] 34A-12-201 \leftarrow \hat{\mathbf{H}}$ (2), for a minimum of
322a	three days.
323	(b) For a first violation of Subsection 34A-12-201(1), in addition to the penalties under
324	Subsection (1)(a), a court may order the appropriate agencies to suspend each license described
325	in Subsection (4) held by the employer for a period not to exceed three days.
326	(c) For a second violation, the court shall order an appropriate agency to permanently
327	revoke each license described in Subsection (4) held by the employer.
328	(d) On receipt of an order under $\hat{H} \rightarrow [\underline{this}] \leftarrow \hat{H}$ Subsection (1)(c) and
328a	notwithstanding any other
329	law, an appropriate agency shall immediately revoke a license according to the court's order.
330	(2) (a) On receipt of a court's order and notwithstanding any other law, an appropriate
331	agency shall suspend a license according to the court's order.
332	(b) A license that is suspended under Subsection (1)(a)(iv)(A) shall remain suspended
333	until the employer files a signed $\hat{\mathbf{H}} \rightarrow$, $\leftarrow \hat{\mathbf{H}}$ sworn affidavit with the county attorney.
334	(c) Notwithstanding any other law, for a license suspended under Subsection
335	(1)(a)(iv)(A), once an employer files an affidavit as required by Subsection (1)(a)(iii), an

336	appropriate agency shall reinstate a suspended license immediately.
337	(3) For purposes of Subsection (1)(a)(iv)(B) or (1)(b), a court shall base the court's
338	decision on the length of the suspension under this section on evidence or information
339	submitted to the court during the action for a violation of Section 34A-12-201, and consider the
340	following factors, if relevant:
341	(a) the number of unauthorized aliens employed by the employer;
342	(b) prior misconduct by the employer;
343	(c) the degree of harm resulting from the violation;
344	(d) whether the employer made good faith efforts to comply with any applicable
345	requirements;
346	(e) the duration of the violation;
347	(f) the role of the directors, officers, or principals of the employer in the violation; and
348	(g) any other factor the court considers appropriate.
349	(4) (a) For the purposes of this section, a license that is subject to suspension or
350	revocation under this section is a license that is:
351	(i) held by an employer; and
352	(ii) specific to the business location where an unauthorized alien performs work.
353	(b) Notwithstanding Subsection (4)(a), if an employer does not hold a license specific
354	to the business location where an unauthorized alien performs work, but a license is necessary
355	to operate the employer's business in general, a license that is subject to suspension or
356	revocation under this section is a license that is held by the employer at the employer's primary
357	place of business.
358	$\hat{H} \rightarrow [(5)$ A court shall send a copy of the court's order to the attorney general and the
359	attorney general shall maintain the copy pursuant to Subsection (7).
360	[(6)] (5) ←Ĥ (a) A violation is considered:
361	(i) a first violation by an employer at a business location if the violation does not occur
362	during a probationary period ordered by the court under Subsection (1)(a) for that employer's
363	business location; or
364	(ii) a second violation by an employer at a business location if the violation occurs
365	during a probationary period ordered by the court under Subsection (1)(a) for that employer's
366	business location.

367	(b) A second violation of this section shall be based only on an unauthorized alien who
368	is or was employed by the employer after an action has been brought for a violation of Section
369	<u>34A-12-201.</u>
370	Section 13. Section 34A-12-304 is enacted to read:
371	<u>34A-12-304.</u> Government entity verification enforcement.
372	(1) As used in this section:
373	(a) "Government entity" means:
374	(i) the state, including:
375	(A) a department;
376	(B) an institution;
377	(C) a board;
378	(D) a division;
379	(E) a bureau;
380	(F) an office:
381	(G) a commission;
382	(H) a committee; or
383	(I) an elected official; and
384	(ii) a political subdivision of the state, including:
385	(A) a county:
386	(B) a city:
387	(C) a town;
388	(D) a school district;
389	(E) a public transit district; or
390	(F) a special improvement district.
391	(b) "Verification requirement" means a requirement imposed on a government entity
392	under this chapter or Section 63G-11-103.
393	(2) (a) The chief executive officer of a government entity shall in writing annually
394	certify on behalf of the government entity whether the government entity was in compliance
395	with the verification requirements in the previous calendar year.
396	(b) A chief executive officer who certifies that a government entity was in compliance
397	with the verification requirements for the previous calendar year knowing that the government

398	entity was not in compliance is guilty of violating Section 76-8-504.
399	(3) If a government entity is otherwise required to prepare an annual report or audit, the
400	government entity shall include the certification required under Subsection (2) in the annual
401	report or audit.
402	(4) A government entity shall provide a copy of the certification to a person at the
403	request of the person.
404	Section 14. Repealer.
405	This bill repeals:
406	Section 13-47-101, Title.
407	Section 13-47-102, Definitions.
408	Section 13-47-103, Scope of chapter.
409	Section 13-47-201, Verification required for new hires.
410	Section 13-47-202, Liability protections.
411	Section 13-47-203, Voluntary registration by private employer certifying
412	participation in verification.
413	Section 13-47-204, Department to publish list of registered private employers.
414	Section 15. Effective date.
415	This bill takes effect on July 1, 2011.

FISCAL NOTE

H.B. 253 1st Sub. (Buff)

SHORT TITLE: Employment of Unauthorized Aliens

SPONSOR: Herrod, C.

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b)) Enactment of this bill likely will not materially impact the state budget.

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

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

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d)) Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.

2/22/2011, 03:42 PM, Lead Analyst: Syphus, G./Attorney: PO

Office of the Legislative Fiscal Analyst