

EMPLOYMENT AND VERIFICATION REQUIREMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: _____

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



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.~~

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

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