

**UTAH EMPLOYMENT VERIFICATION ACT**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Glenn A. Donnelson**

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

---

**LONG TITLE****General Description:**

This bill modifies provisions related to workforce services, economic development, and procurement to require employers to participate in a federal program to verify employment eligibility of employees.

**Highlighted Provisions:**

This bill:

- ▶ enacts the Utah Employment Verification Act including:
  - defining terms;
  - addressing interpretation of the act;
  - providing for severability;
  - requiring participation in the federal employment verification program;
  - requiring recordkeeping; and
  - providing for enforcement;
- ▶ addresses eligibility for economic development incentives; and
- ▶ addresses state and local procurement.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill takes effect on July 1, 2007.

**Utah Code Sections Affected:**

ENACTS:

**35A-8-101**, Utah Code Annotated 1953

**35A-8-102**, Utah Code Annotated 1953

**35A-8-103**, Utah Code Annotated 1953

**35A-8-104**, Utah Code Annotated 1953

**35A-8-201**, Utah Code Annotated 1953

**35A-8-202**, Utah Code Annotated 1953

**35A-8-301**, Utah Code Annotated 1953

**35A-8-302**, Utah Code Annotated 1953

**35A-8-303**, Utah Code Annotated 1953

**63-38f-206**, Utah Code Annotated 1953

**63-56-427**, Utah Code Annotated 1953

---

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

Section 1. Section **35A-8-101** is enacted to read:

**CHAPTER 8. UTAH EMPLOYMENT VERIFICATION ACT**

**Part 1. General Provisions**

**35A-8-101. Title.**

This chapter is known as the "Utah Employment Verification Act."

Section 2. Section **35A-8-102** is enacted to read:

**35A-8-102. Definitions.**

As used in this chapter:

(1) "Department" means the Department of Workforce Services created in Section 35A-1-103.

(2) "Employee" means an employee as defined in Section 3401, Internal Revenue Code.

(3) "Employer" means an employer as defined in Section 3401, Internal Revenue Code.

(4) "Federal employment verification program" means a program to electronically verify employment eligibility that is:

(a) operated by the United States Department of Homeland Security to verify information of employees pursuant to the Illegal Immigration Reform and Immigrant

Responsibility Act of 1996, P.L. 104-128, 110 Stat. 3009, Title IV, Subtitle A, (as amended 2002, 2003); or

(b) a similar program operated by the United States Department of Homeland Security.

(5) "State" means any of the following of the state:

(a) a department;

(b) a division;

(c) a commission;

(d) a council;

(e) a board;

(f) a bureau;

(g) a committee;

(h) an institution;

(i) a government corporation; or

(j) other establishment, official, or employee.

Section 3. Section **35A-8-103** is enacted to read:

**35A-8-103. Interpretation of chapter.**

This chapter shall be interpreted so as to be fully consistent with:

(1) federal immigration and labor laws;

(2) Title 34, Labor in General;

(3) Title 34A, Utah Labor Code; and

(4) this title.

Section 4. Section **35A-8-104** is enacted to read:

**35A-8-104. Severability.**

If any provision of this chapter or the application of a provision to any person or circumstance is held invalid, the invalidity may not affect other provisions or applications of this chapter. The provisions of this chapter are severable.

Section 5. Section **35A-8-201** is enacted to read:

**Part 2. Participation in Federal Employment Verification Program**

**35A-8-201. Participation in federal employment verification program required for employer.**

(1) By the later of July 1, 2007 or the day on which the employer first employs an

employee in this state, an employer employing an employee in this state, including the state or a political subdivision of the state, shall participate in the federal employment verification program.

(2) An employer that employs an employee in this state shall verify the employment eligibility of each employee that the employer hires on or after the day on which the employer executes the documentation required under the federal employment verification program to participate in that program.

Section 6. Section 35A-8-202 is enacted to read:

**35A-8-202. Recordkeeping.**

(1) An employer shall at all times maintain a current copy of the documentation required under the federal employment verification program to participate in that program.

(2) An employer shall keep a record of verifying the employment eligibility in accordance with Section 35A-8-201 for each employee described in Subsection 35A-8-201(2) for the longer of:

(a) the time period required under the federal employment verification program; or

(b) the period:

(i) beginning with the day on which the employee's eligibility is verified under the federal employment verification programs; and

(ii) ending one year after the day on which the employee is no longer employed by the employer.

Section 7. Section 35A-8-301 is enacted to read:

**Part 3. Enforcement**

**35A-8-301. Enforcement in general.**

(1) The department shall enforce this chapter in accordance with this part.

(2) The department may:

(a) conduct audits of employers; and

(b) investigate complaints.

Section 8. Section 35A-8-302 is enacted to read:

**35A-8-302. Violations -- Penalty -- Dedicated credit.**

(1) The department may impose a civil penalty of \$1,000 for:

(a) each employee for which the employer does not maintain a record of verifying the

employment eligibility in accordance with this chapter; and

(b) the employer's failure to maintain a current copy of the documentation required under the federal employment verification program to participate in that program.

(2) An imposition of a civil penalty under this section is subject to review in the same manner that a decision or determination involving contribution liability is subject to review under Section 35A-4-508.

(3) The department may collect a civil penalty imposed under this section in the same manner that the Unemployment Insurance Division may collect a contribution liability under Chapter 4, Employment Security Act, including imposing interest or other charges.

(4) Any monies collected under this section shall be deposited into the General Fund as a dedicated credit to pay for the costs to the department of implementing this chapter.

Section 9. Section **35A-8-303** is enacted to read:

**35A-8-303. Access to records.**

(1) The records required by Section 35A-8-202 shall be open to inspection and subject to being copied by the department or the department's authorized representatives at reasonable times and as often as may be necessary.

(2) An employer subject to this chapter shall make the personnel records of the employer available to the department to the extent the department determines is necessary to enforce this chapter.

Section 10. Section **63-38f-206** is enacted to read:

**63-38f-206. Employment verification as a requirement for economic development incentives.**

(1) As used in this section:

(a) the terms used in Title 35A, Chapter 8, Utah Employment Verification Act, shall have the same meaning for this section; and

(b) "economic development incentive" means one or more of the following:

(i) a loan, grant, or other financial assistance described in Part 9, Industrial Assistance Fund;

(ii) a partial rebate described in Part 13, Aerospace and Aviation Zone;

(iii) a partial rebate described in Part 17, Economic Development Incentives Act;

(iv) an incentive described in Part 18, Motion Picture Incentive Fund;

152 (v) monies distributed under Part 19, Economic Development on Military Installations;  
153 or

154 (vi) monies or other incentives distributed under Part 21, Economic Development --  
155 Government Procurement Contracts.

156 (2) The office shall require as a condition for receipt of an economic development  
157 incentive that an employer verify the employer's compliance with Title 35A, Chapter 8, Utah  
158 Employment Verification Act.

159 (3) If an employer is found by the Department of Workforce Services to have violated  
160 Title 35A, Chapter 8, Utah Employment Verification Act, within one year after the day on  
161 which the employer receives or otherwise claims an economic development incentive, the  
162 office may require the employer to repay to the state up to the full value of the economic  
163 development incentive on the day on which the employer receives or otherwise claims the  
164 economic development incentive.

165 (4) An employer described in Subsection (3) shall notify the office of a finding  
166 described in Subsection (3) within five business days of the day on which the finding described  
167 in Subsection (3) is final.

168 Section 11. Section **63-56-427** is enacted to read:

169 **63-56-427. Participation in federal employment verification program.**

170 (1) A public procurement unit shall require as a condition of any agreement to procure  
171 supplies, services, and construction that if an employer submits in response to a request for  
172 proposals a bid, the employer include with the employer's response:

173 (a) a current copy of the documentation required by the federal employment  
174 verification program, as defined in Section 35A-8-102, that the employer participates in the  
175 federal employment verification program; and

176 (b) if the employer employs an individual in this state, a statement signed by a person  
177 having authority to bind the employer that the employer has not been found by the Department  
178 of Workforce Services to have violated Title 35A, Chapter 8, Utah Employment Verification  
179 Act, within one year before the day on which the employer submits its response to a bid.

180 (2) (a) An employer described in Subsection (1) is subject to the penalties of  
181 Subsection (2)(b) if the employer on or after the day on which the employer submits a bid, but  
182 before the termination of any agreement with a public procurement unit to procure supplies,

183 services, and construction:

184 (i) is found to not participate in the federal employment verification program by the  
185 United States Department of Homeland Security;

186 (ii) is found by the United States Department of Homeland Security to violate the  
187 requirements of the federal employment verification program; or

188 (iii) for an employer who employs an individual in this state, is found by the  
189 Department of Workforce Services to have violated Title 35A, Chapter 8, Utah Employment  
190 Verification Act.

191 (b) An employer described in Subsection (2)(a) may not enter into a new agreement or  
192 renew an agreement to provide supplies, services, or construction to a public procurement unit:

193 (i) if it is a first violation of Subsection (2)(a), for one year beginning on the later of:

194 (A) the day on which the finding described in Subsection (2)(a) becomes final; or

195 (B) the day on which the employer pays in full any civil penalty imposed by the  
196 Department of Workforce Services under Title 35A, Chapter 8, Utah Employment Verification  
197 Act; or

198 (ii) if it is a second or subsequent violation of Subsection (2)(a), for five years  
199 beginning on the later of:

200 (A) the day on which the finding described in Subsection (2)(a) becomes final; or

201 (B) the day on which the employer pays in full any civil penalty imposed by the  
202 Department of Workforce Services under Title 35A, Chapter 8, Utah Employment Verification  
203 Act.

204 (c) If an employer described in Subsection (2)(a) has an agreement to provide supplies,  
205 services, or contraction to a public procurement unit, the employer shall notify the public  
206 procurement unit of a finding described in Subsection (2)(a) within five business days of the  
207 day on which the finding described in Subsection (2)(a) is final.

208 **Section 12. Effective date.**

209 This bill takes effect on July 1, 2007.

---

---

**Legislative Review Note**  
**as of 1-30-07 4:46 PM**

**Office of Legislative Research and General Counsel**