

28 **63G-11-104 (Effective 07/01/09)**, as enacted by Laws of Utah 2008, Chapter 26

29

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

31 Section 1. Section **63G-11-103 (Effective 07/01/09)** is amended to read:

32 **63G-11-103 (Effective 07/01/09). Status verification system -- Registration and**
 33 **use -- Performance of services -- Unlawful practice.**

34 (1) As used in this section:

35 (a) "Contract" means an agreement for the procurement of goods or services that is
 36 awarded through a request for proposals process with a public employer ~~§~~ **→ and includes a sole**
 36a **source contract** ~~←§~~ .

37 ~~[(a)]~~ (b) "Contractor" means a subcontractor, contract employee, staffing agency, ~~§~~ **→ [trade**
 38 **union]** ~~←§~~ , or any contractor regardless of its tier.

39 ~~[(b)]~~ (c) "Public employer" means a department, agency, instrumentality, or political
 40 subdivision of the state.

41 ~~[(c)]~~ (d) (i) "Status Verification System" means an electronic system operated by the
 42 federal government, through which an authorized official of a state agency or a political
 43 subdivision of the state may inquire by exercise of authority delegated pursuant to 8 U.S.C.,
 44 Sec. 1373, to verify the citizenship or immigration status of an individual within the
 45 jurisdiction of the agency or political subdivision for a purpose authorized under this section.

46 (ii) "Status Verification System" includes:

47 (A) the electronic verification of the work authorization program of the Illegal
 48 Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C., Sec. 1324a,
 49 known as the ~~§~~ **→ [Basic Pilot] E-verify** ~~←§~~ Program;

50 (B) an equivalent federal program designated by the United States Department of
 51 Homeland Security or other federal agency authorized to verify the work eligibility status of a
 52 newly hired employee pursuant to the Immigration Reform and Control Act of 1986;

53 (C) the Social Security Number Verification Service or similar online verification
 54 process implemented by the United States Social Security Administration; or

55 (D) an independent third-party system with an equal or higher degree of reliability as
 56 the programs, systems, or processes described in Subsection (1)~~[(c)]~~(d)(ii)(A), (B), or (C).

57 ~~[(d)]~~ (e) "Unauthorized alien" means an alien as defined in 8 U.S.C., Sec. 1324a(h)(3).

58 (2) (a) Each public employer shall register with and use a Status Verification System to

59 verify the federal employment authorization status of a new employee.

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

62 (3) (a) Beginning July 1, 2009:

63 (i) a public employer may not enter into a contract for the physical performance of
64 services within the state with a contractor unless the contractor registers and participates in the
65 Status Verification System to verify the work eligibility status of the contractor's new
66 employees that are employed in the state[-]; and

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

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

73 (ii) Each contractor or subcontractor who works under or for another contractor shall
74 certify to the main contractor by affidavit that the contractor or subcontractor has verified
75 through the Status Verification System the employment status of each new employee of the
76 respective contractor or subcontractor.

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

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

81 (ii) that involves underwriting, remarketing, broker-dealer activities, securities
82 placement, investment advisory, financial advisory, or other financial or investment banking
83 services.

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

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

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

90 (A) that requires equal skill, effort, and responsibility; and
91 (B) which is performed under similar working conditions, as defined in 29 U.S.C., Sec.
92 206 (d)(1), as the job category held by the discharged employee.

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

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

99 Section 2. Section **63G-11-104 (Effective 07/01/09)** is amended to read:

100 **63G-11-104 (Effective 07/01/09). Receipt of state, local, or federal public benefits**
101 **-- Verification -- Exceptions -- Fraudulently obtaining benefits -- Criminal penalties --**
102 **Annual report.**

103 (1) Except as provided in Subsection (3) or where exempted by federal law, an agency
104 or political subdivision of the state shall verify the lawful presence in the United States of an
105 individual at least 18 years of age who has applied for:

- 106 (a) a state or local public benefit as defined in 8 U.S.C., Sec. 1621; or
- 107 (b) a federal public benefit as defined in 8 U.S.C., Sec. 1611, that is administered by an
108 agency or political subdivision of this state.

109 (2) This section shall be enforced without regard to race, religion, gender, ethnicity, or
110 national origin.

111 (3) Verification of lawful presence under this section is not required for:

- 112 (a) any purpose for which lawful presence in the United States is not restricted by law,
113 ordinance, or regulation;
- 114 (b) assistance for health care items and services that are necessary for the treatment of
115 an emergency medical condition, as defined in 42 U.S.C., Sec. 1396b(v)(3), of the individual
116 involved and are not related to an organ transplant procedure;
- 117 (c) short-term, noncash, in-kind emergency disaster relief;
- 118 (d) public health assistance for immunizations with respect to immunizable diseases
119 and for testing and treatment of symptoms of communicable diseases whether or not the
120 symptoms are caused by the communicable disease;

121 (e) programs, services, or assistance such as soup kitchens, crisis counseling and
 122 intervention, and short-term shelter, specified by the United States Attorney General, in the
 123 sole and unreviewable discretion of the United States Attorney General after consultation with
 124 appropriate federal agencies and departments, which:

125 (i) deliver in-kind services at the community level, including through public or private
 126 nonprofit agencies;

127 (ii) do not condition the provision of assistance, the amount of assistance provided, or
 128 the cost of assistance provided on the income or resources of the individual recipient; and

129 (iii) are necessary for the protection of life or safety;

130 (f) the exemption for paying the nonresident portion of total tuition as set forth in
 131 Section 53B-8-106; [~~and~~]

132 (g) an applicant for a license under Section 61-1-4, if the applicant is registered with
 133 the Financial Industry Regulatory Authority and files an application with the state Division of
 134 Securities through the Central Registration Depository[~~;~~]; ~~§~~ → [~~and~~] ← ~~§~~

135 (h) a state public benefit to be given to an individual under Title 49, Utah State
 136 Retirement and Insurance Benefit Act ~~§~~ → [~~;~~];

136a (i) a home loan that will be insured, guaranteed, or purchased by:

136b (i) the Federal Housing Administration, the Veterans Administration, or any other
 136c federal agency; or

136d (ii) an enterprise as defined in 12 U.S.C., Sec. 4502; and

136e (j) a subordinate loan or a grant that will be made to an applicant in connection with a
 136f home loan that does not require verification under Subsection (3)(i). ← ~~§~~

137 (4) An agency or political subdivision required to verify the lawful presence in the
 138 United States of an applicant under this section shall require the applicant to certify under
 139 penalty of perjury that:

140 (a) the applicant is a United States citizen; or

141 (b) the applicant is:

142 (i) a qualified alien as defined in 8 U.S.C., Sec. 1641; and

143 (ii) lawfully present in the United States.

144 (5) An agency or political subdivision shall verify a certification required under
 145 Subsection (4) ~~§~~ → (b) ← ~~§~~ through the Systematic Alien Verification for Entitlements Program,
 145a hereafter

146 referred to in this section as the "program," operated by the United States Department of
 147 Homeland Security or an equivalent program designated by the Department of Homeland
 148 Security.

149 (6) (a) An individual who knowingly and willfully makes a false, fictitious, or
 150 fraudulent statement or representation in a certification under Subsection (4) is subject to the
 151 criminal penalties applicable in this state for:

152 (i) making a written false statement under Subsection 76-8-504(2); and
153 (ii) fraudulently obtaining public assistance program benefits under Sections 76-8-1205
154 and 76-8-1206 or unemployment compensation under Section 76-8-1301.

155 (b) If the certification constitutes a false claim of U.S. citizenship under 18 U.S.C.,
156 Sec. 911, the agency or political subdivision shall file a complaint with the United States
157 Attorney General for the applicable district based upon the venue in which the application was
158 made.

159 (7) An agency or political subdivision may adopt variations to the requirements of this
160 section which:

161 (a) clearly improve the efficiency of or reduce delay in the verification process; or

162 (b) provide for adjudication of unique individual circumstances where the verification
163 procedures in this section would impose an unusual hardship on a legal resident of Utah.

164 (8) It is unlawful for an agency or a political subdivision of this state to provide a state,
165 local, or federal benefit, as defined in 8 U.S.C., Sec. 1611 and Sec. 1621, in violation of the
166 provisions of this section.

167 (9) Each state agency or department that administers a program of state or local public
168 benefits shall:

169 (a) provide an annual report to the governor, the president of the Senate, and the
170 speaker of the House regarding its compliance with this section; and

171 (b) (i) monitor the program for application verification errors and significant delays;

172 (ii) provide an annual report on the errors and delays to ensure that the application of
173 the program is not erroneously denying a state or local benefit to a legal resident of the state;
174 and

175 (iii) report delays and errors in the program to the United States Department of
176 Homeland Security.

177 **Section 3. Effective date.**

178 This bill takes effect on July 1, 2009.

Legislative Review Note
as of 12-18-08 1:34 PM

Office of Legislative Research and General Counsel

S.B. 39 - Immigration Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
