

VERIFICATION OF EMPLOYMENT ELIGIBILITY

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: D. Chris Butters

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to commerce to address verification of employment eligibility.

Highlighted Provisions:

This bill:

▶ enacts the Private Employer Verification Act, including:

- defining terms;
- addressing private employers' obligations related to verification of federal legal working status; and
- providing for penalties and protections from liability; and

▶ makes technical and conforming amendments.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

58-1-501, as last amended by Laws of Utah 2007, Chapter 162

ENACTS:

13-47-101, Utah Code Annotated 1953



- 28 **13-47-102**, Utah Code Annotated 1953
- 29 **13-47-103**, Utah Code Annotated 1953
- 30 **13-47-201**, Utah Code Annotated 1953
- 31 **13-47-202**, Utah Code Annotated 1953
- 32 **13-47-301**, Utah Code Annotated 1953
- 33 **13-47-302**, Utah Code Annotated 1953
- 34 **13-47-303**, Utah Code Annotated 1953
- 35 **13-47-304**, Utah Code Annotated 1953

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

Section 1. Section **13-47-101** is enacted to read:

CHAPTER 47. PRIVATE EMPLOYER VERIFICATION ACT

Part 1. General Provisions

13-47-101. Title.

This chapter is known as the "Private Employer Verification Act."

Section 2. Section **13-47-102** is enacted to read:

13-47-102. Definitions.

As used in this chapter:

(1) "Contractor" means a person:

(a) with whom a private employer contracts for the physical performance of services;

(b) who is not an employee of a private employer for purposes of providing the performance of services; and

(c) who is a private employer.

(2) "Department" means the Department of Commerce.

(3) "Employee" means an individual:

(a) who is hired to perform services in Utah; and

(b) to whom a private employer provides a federal form required for federal taxation purposes to report income paid to the individual for the services performed.

(4) (a) Except as provided in Subsection (4)(b), "private employer" means a person who for federal taxation purposes is required to provide a federal form:

(i) to an individual who performs services for the person in Utah; and

- 59 (ii) to report income paid to the individual who performs the services.
- 60 (b) "Private employer" does not mean a public employer as defined in Section
- 61 63G-11-103.
- 62 (5) "Procurement contract" means a contract with a public procurement unit.
- 63 (6) "Public procurement unit" is as defined in Section 63G-6-103.
- 64 (7) (a) "Status verification system" means an electronic system operated by the federal
- 65 government, through which an employer may inquire to verify the federal legal working status
- 66 of an individual who is a newly hired employee.
- 67 (b) "Status verification system" includes:
- 68 (i) the electronic verification of the work authorization program of the Illegal
- 69 Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C. Sec. 1324a;
- 70 (ii) a federal program equivalent to the program described in Subsection (7)(b)(i) that
- 71 is designated by the United States Department of Homeland Security or other federal agency
- 72 authorized to verify the employment eligibility status of a newly hired employee pursuant to the
- 73 Immigration Reform and Control Act of 1986;
- 74 (iii) the Social Security Number Verification Service or similar online verification
- 75 process implemented by the United States Social Security Administration; or
- 76 (iv) an independent third-party system with an equal or higher degree of reliability as
- 77 the programs, systems, or processes described in Subsection (7)(b)(i), (ii), or (iii).
- 78 (8) "Subcontractor" means a contractor who is at a different tier than an original
- 79 contractor.
- 80 (9) (a) "Third party employer" means a person who engages in the business of the
- 81 assignment of individuals as a full-time or part-time hire to provide services to another person.
- 82 (b) "Third party employer" includes:
- 83 (i) a professional employer organization, as defined in Section 31A-40-102;
- 84 (ii) a person who assigns individuals on a temporary basis, such as a temporary staffing
- 85 company; or
- 86 (iii) a person similar to a person described in Subsection (9)(b)(i) or (ii).
- 87 Section 3. Section **13-47-103** is enacted to read:
- 88 **13-47-103. Scope of chapter.**
- 89 (1) A private employer shall comply with this section, and this chapter shall be

90 enforced without regard to race, color, national origin, gender, religion, age, disability, familial
91 status, or source of income.

92 (2) This chapter applies to the following:

93 (a) a hire of a new employee on and after July 1, 2010;

94 (b) a contract executed on and after July 1, 2010, between a private employer and a
95 contractor for the physical performance of services;

96 (c) a contract executed on and after July 1, 2010, with a third party employer; and

97 (d) a procurement contract executed on and after July 1, 2010.

98 Section 4. Section **13-47-201** is enacted to read:

99 **Part 2. Requirements Related to Verification**

100 **13-47-201. Verification required for new hires.**

101 (1) A private employer may not hire a new employee unless the private employer:

102 (a) is registered with a status verification system to verify the federal legal working
103 status of any new employee; and

104 (b) uses the status verification system to verify the federal legal working status of the
105 new employee in accordance with the requirements of the status verification system.

106 (2) A private employer may not enter into a procurement contract if the private
107 employer is not in compliance with Subsection (1).

108 (3) A private employer may not apply for, or hold, a license, certificate, registration,
109 permit, student card, or apprentice card authorized under Title 58, Occupations and
110 Professions, if the private employer is not in compliance with Subsection (1).

111 Section 5. Section **13-47-202** is enacted to read:

112 **13-47-202. Contractors -- Third party employers.**

113 (1) (a) A private employer may not contract with a contractor if the contractor does not
114 certify before entering into the contract that the contractor is in compliance with Section
115 13-47-201.

116 (b) A private employer is only responsible for obtaining certification that the contractor
117 is in compliance with Section 13-47-201 from the contractor with whom the private employer
118 directly contracts.

119 (c) A contractor is responsible for determining that a subcontractor of the contractor is
120 in compliance with Section 13-47-201.

121 (2) (a) A third party employer is required to comply with Section 13-47-201 for an
122 individual to whom the third party employer is required for federal taxation purposes to
123 provide a federal form to report income paid to the individual who performs the services
124 notwithstanding that the third party employer does not provide direct supervision or control
125 over the services provided.

126 (b) A third party employer shall provide an employer with whom the third party
127 employer contracts evidence of compliance with Section 13-47-201.

128 Section 6. Section **13-47-301** is enacted to read:

129 **Part 3. Penalties and Liability Protections**

130 **13-47-301. Public procurement penalties.**

131 (1) (a) If a public procurement unit finds that a private employer has violated this
132 chapter, the public procurement unit may terminate any procurement contract that the public
133 procurement unit has with that private employer in accordance with Title 63G, Chapter 6, Utah
134 Procurement Code.

135 (b) A public procurement unit that finds a violation under Subsection (1)(a) shall notify
136 the chief procurement officer, appointed under Section 63G-6-203, of the finding within 10
137 days of the finding.

138 (c) A private employer who violates this chapter is subject to suspension or debarment
139 under Title 63G, Chapter 6, Utah Procurement Code.

140 (2) (a) On and after July 1, 2010, a public procurement unit shall include in a
141 procurement contract:

142 (i) a reference to the rules described in Subsection (3)(b); or

143 (ii) if the public procurement unit has not made the rules described in Subsection
144 (3)(b), a process that provides a private employer reasonable notice and an opportunity to cure
145 a violation of this chapter before suspension or debarment of the private employer in light of
146 the circumstances of the procurement contract or the violation.

147 (b) (i) A private employer who is a contractor is not subject to penalties for the failure
148 of a subcontractor to comply with this chapter.

149 (ii) A private employer who is a subcontractor is not subject to penalties for the failure
150 of a contractor to comply with this chapter.

151 (3) If otherwise authorized to make rules, a public procurement unit shall make rules

152 that establish:

153 (a) the penalties that may be imposed in accordance with this section; and

154 (b) a process that provides a private employer reasonable notice and an opportunity to
155 cure a violation of this chapter before suspension or debarment of the private employer in light
156 of the circumstances of the procurement contract or the violation.

157 (4) The failure of a private employer to meet the requirements of this chapter:

158 (a) may not be the basis for a protest or other action from a prospective bidder, offeror,
159 or other private employer under Title 63G, Chapter 6, Part 8, Legal and Contractual Remedies;
160 and

161 (b) may not be used by a public procurement unit, a prospective bidder, an offeror, or a
162 private employer a basis for an action that would suspend, disrupt, or terminate the project
163 under a procurement contract.

164 (5) For purposes of this chapter, a public procurement unit is not required to audit,
165 monitor, or take any other action to ensure compliance with this chapter.

166 (6) This section does not apply if the public procurement unit determines that the
167 application of this section would severely disrupt the operation of a government agency to the
168 detriment of the government agency or the general public, including:

169 (a) jeopardizing the receipt of federal funds;

170 (b) the procurement contract being a sole source contract; or

171 (c) the procurement contract being an emergency procurement.

172 Section 7. Section **13-47-302** is enacted to read:

173 **13-47-302. Occupational and professional licensing penalties.**

174 (1) (a) A private employer who violates this chapter is engaged in unlawful conduct as
175 provided in Section 58-1-501.

176 (b) Except as provided in Subsection (2), a private employer who is engaged in
177 unlawful conduct is subject to disciplinary proceedings as provided in Title 58, Occupations
178 and Professions.

179 (2) Before suspending or revoking a license, certificate, registration, permit, student
180 card, or apprentice card authorized under Title 58, Occupations and Professions, the Division
181 of Occupational and Professional Licensing shall provide a private employer reasonable notice
182 and an opportunity to cure a violation of this chapter.

183 Section 8. Section **13-47-303** is enacted to read:

184 **13-47-303. Liability protections.**

185 A private employer may not be held civilly liable under state law in a cause of action
186 that alleges that the private employer unlawfully hired an unauthorized alien, as defined in 8

187 U.S.C. Sec. 1324a, if:

188 (1) the private employer complies with this chapter; and

189 (2) the information obtained in accordance with the status verification system indicated
190 that the employee's federal legal status allowed the private employer to hire the employee.

191 Section 9. Section **13-47-304** is enacted to read:

192 **13-47-304. Criminal penalties.**

193 A person is guilty of a class B misdemeanor if the person violates Section 13-47-201.

194 Section 10. Section **58-1-501** is amended to read:

195 **58-1-501. Unlawful and unprofessional conduct.**

196 (1) "Unlawful conduct" means conduct, by any person, that is defined as unlawful
197 under this title and includes:

198 (a) practicing or engaging in, representing oneself to be practicing or engaging in, or
199 attempting to practice or engage in any occupation or profession requiring licensure under this
200 title if the person is:

201 (i) not licensed to do so or not exempted from licensure under this title; or

202 (ii) restricted from doing so by a suspended, revoked, restricted, temporary,
203 probationary, or inactive license;

204 (b) impersonating another licensee or practicing an occupation or profession under a
205 false or assumed name, except as permitted by law;

206 (c) knowingly employing any other person to practice or engage in or attempt to
207 practice or engage in any occupation or profession licensed under this title if the employee is
208 not licensed to do so under this title;

209 (d) knowingly permitting the person's authority to practice or engage in any occupation
210 or profession licensed under this title to be used by another, except as permitted by law;

211 (e) obtaining a passing score on a licensure examination, applying for or obtaining a
212 license, or otherwise dealing with the division or a licensing board through the use of fraud,
213 forgery, or intentional deception, misrepresentation, misstatement, or omission; [~~or~~]

214 (f) (i) unless Subsection (2)(m) or (4) applies, issuing, or aiding and abetting in the
215 issuance of, an order or prescription for a drug or device to a person located in this state:

216 (A) without prescriptive authority conferred by a license issued under this title, or by
217 an exemption to licensure under this title;

218 (B) with prescriptive authority conferred by an exception issued under this title or a
219 multistate practice privilege recognized under this title, if the prescription was issued:

220 (I) without first obtaining information, in the usual course of professional practice, that
221 is sufficient to establish a diagnosis, to identify underlying conditions, and to identify
222 contraindications to the proposed treatment; or

223 (II) based on a questionnaire completed by the patient on the Internet, or toll-free
224 telephone number, when there exists no other bona fide patient-practitioner relationship; or

225 (C) in violation of Subsection (2)(m), when the licensed person who issued, or aided
226 and abetted another in the issuance of the prescription has violated Subsection (2)(m) on more
227 than 100 prescriptions within a 30 day period of time; and

228 (ii) Subsection (1)(f) does not apply to treatment rendered in an emergency, on-call or
229 cross coverage situation, provided that the person who issues the prescription has prescriptive
230 authority conferred by a license under this title, or is exempt from licensure under this title[-];
231 or

232 (g) violating Title 13, Chapter 47, Private Employer Verification Act.

233 (2) "Unprofessional conduct" means conduct, by a licensee or applicant, that is defined
234 as unprofessional conduct under this title or under any rule adopted under this title and
235 includes:

236 (a) violating, or aiding or abetting any other person to violate, any statute, rule, or order
237 regulating an occupation or profession under this title;

238 (b) violating, or aiding or abetting any other person to violate, any generally accepted
239 professional or ethical standard applicable to an occupation or profession regulated under this
240 title;

241 (c) engaging in conduct that results in conviction, a plea of nolo contendere, or a plea
242 of guilty or nolo contendere which is held in abeyance pending the successful completion of
243 probation with respect to a crime of moral turpitude or any other crime that, when considered
244 with the functions and duties of the occupation or profession for which the license was issued

245 or is to be issued, bears a reasonable relationship to the licensee's or applicant's ability to safely
246 or competently practice the occupation or profession;

247 (d) engaging in conduct that results in disciplinary action, including reprimand,
248 censure, diversion, probation, suspension, or revocation, by any other licensing or regulatory
249 authority having jurisdiction over the licensee or applicant in the same occupation or profession
250 if the conduct would, in this state, constitute grounds for denial of licensure or disciplinary
251 proceedings under Section 58-1-401;

252 (e) engaging in conduct, including the use of intoxicants, drugs, narcotics, or similar
253 chemicals, to the extent that the conduct does, or might reasonably be considered to, impair the
254 ability of the licensee or applicant to safely engage in the occupation or profession;

255 (f) practicing or attempting to practice an occupation or profession regulated under this
256 title despite being physically or mentally unfit to do so;

257 (g) practicing or attempting to practice an occupation or profession regulated under this
258 title through gross incompetence, gross negligence, or a pattern of incompetency or negligence;

259 (h) practicing or attempting to practice an occupation or profession requiring licensure
260 under this title by any form of action or communication which is false, misleading, deceptive,
261 or fraudulent;

262 (i) practicing or attempting to practice an occupation or profession regulated under this
263 title beyond the scope of the licensee's competency, abilities, or education;

264 (j) practicing or attempting to practice an occupation or profession regulated under this
265 title beyond the scope of the licensee's license;

266 (k) verbally, physically, mentally, or sexually abusing or exploiting any person through
267 conduct connected with the licensee's practice under this title or otherwise facilitated by the
268 licensee's license;

269 (l) acting as a supervisor without meeting the qualification requirements for that
270 position that are defined by statute or rule;

271 (m) unless Subsection (4) applies, issuing, or aiding and abetting in the issuance of, an
272 order or prescription for a drug or device:

273 (i) without first obtaining information in the usual course of professional practice, that
274 is sufficient to establish a diagnosis, to identify conditions, and to identify contraindications to
275 the proposed treatment; or

276 (ii) based on a questionnaire completed by the patient on the Internet, or toll free
277 telephone number when there exists no other bona fide patient-practitioner relationship or bona
278 fide referral by a practitioner involved in an existing patient-practitioner relationship; or

279 (n) violating a provision of Section 58-1-501.5.

280 (3) Subsection (2)(m) does not apply to treatment rendered in an emergency, on-call, or
281 cross coverage situation.

282 (4) Notwithstanding Subsections (1)(f) and (2)(m), the division may permit a person
283 licensed to prescribe under this title to prescribe a legend drug to a person located in this state
284 if the division in collaboration with the appropriate professional board has permitted the
285 specific prescriptive practice of the legend drug by rule.

Legislative Review Note
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Office of Legislative Research and General Counsel