

VERIFICATION OF EMPLOYMENT STATUS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Curtis Oda

LONG TITLE

General Description:

This bill modifies the provision related to status verification of public employers and government contractors to require certification of compliance.

Highlighted Provisions:

This bill:

- ▶ requires certification of compliance;
- ▶ requires incorporation of the certification into an audit or annual report;
- ▶ requires that the certification be provided to the public upon request; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-11-103, as last amended by Laws of Utah 2009, Chapter 138

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

Section 1. Section **63G-11-103** is amended to read:

63G-11-103. Status verification system -- Registration and use -- Performance of



28 **services -- Unlawful practice -- Certification.**

29 (1) As used in this section:

30 (a) "Contract" means an agreement for the procurement of goods or services that is
31 awarded through a request for proposals process with a public employer and includes a sole
32 source contract.

33 (b) "Contractor" means a subcontractor, contract employee, staffing agency, or any
34 contractor regardless of its tier.

35 (c) "Public employer" means a department, agency, instrumentality, or political
36 subdivision of the state.

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

42 (ii) "Status Verification System" includes:

43 (A) the electronic verification of the work authorization program of the Illegal
44 Immigration Reform and Immigration Responsibility Act of 1996, 8 U.S.C., Sec. 1324a,
45 known as the E-verify Program;

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

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

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

53 (e) "Unauthorized alien" means an alien as defined in 8 U.S.C., Sec. 1324a(h)(3).

54 (2) (a) Each public employer shall register with and use a Status Verification System to
55 verify the federal employment authorization status of a new employee.

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

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

59 (i) a public employer may not enter into a contract for the physical performance of
60 services within the state with a contractor unless the contractor registers and participates in the
61 Status Verification System to verify the work eligibility status of the contractor's new
62 employees that are employed in the state; and

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

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

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

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

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

77 (ii) that involves underwriting, remarketing, broker-dealer activities, securities
78 placement, investment advisory, financial advisory, or other financial or investment banking
79 services.

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

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

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

86 (A) that requires equal skill, effort, and responsibility; and

87 (B) which is performed under similar working conditions, as defined in 29 U.S.C., Sec.
88 206 (d)(1), as the job category held by the discharged employee.

89 (b) An employing entity, which on the date of a discharge in question referred to in

90 Subsection (4)(a) is enrolled in and using the Status Verification System to verify the
91 employment eligibility of its employees in Utah who are hired on or after July 1, 2009, is
92 exempt from liability, investigation, or lawsuit arising from an action under this section.

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

95 (5) (a) The chief executive officer of a public employer ~~§~~, or a person designated by
95a the chief executive officer, ~~←~~§ shall in writing annually certify
96 on behalf of the public employer whether the government entity was in compliance with this
97 section in the previous calendar year.

98 (b) If a public employer is otherwise required to prepare an annual report or audit, the
99 public employer shall include the certification required under Subsection (5)(a) as part of the
100 annual report or audit.

101 (c) A public employer shall provide a copy of the certification to a person at the request
102 of the person.

Legislative Review Note
as of 2-15-11 10:42 AM

Office of Legislative Research and General Counsel

FISCAL NOTE

S.B. 238

SHORT TITLE: **Verification of Employment Status**

SPONSOR: **Hinkins, D.**

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.