

EMPLOYMENT VERIFICATION AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dixon M. Pitcher

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies commerce and trade, and general government provisions, to address verification of employment status.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses requirements to verify new hires;
- ▶ modifies liability protections for participation in verification;
- ▶ requires private employers to indicate compliance with verification on filings related to commerce licenses;
- ▶ expands a database to include any private employer who indicates compliance with verification requirements;
- ▶ requires public employers to indicate compliance with verification requirements on the Utah Public Finance Website;
- ▶ deletes the repeal date for the Private Employer Verification Act;
- ▶ repeals voluntary registration with the Department of Public Safety by private employers certifying participation in verification; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **13-47-102**, as enacted by Laws of Utah 2010, Chapter 403

33 **13-47-201**, as enacted by Laws of Utah 2010, Chapter 403

34 **13-47-202**, as enacted by Laws of Utah 2010, Chapter 403

35 **13-47-203**, as enacted by Laws of Utah 2010, Chapter 403

36 **13-47-204**, as enacted by Laws of Utah 2010, Chapter 403

37 **63G-12-302**, as renumbered and amended by Laws of Utah 2011, Chapter 18

38 **63I-2-213**, as enacted by Laws of Utah 2011, Chapter 18

39 ENACTS:

40 **13-47-205**, Utah Code Annotated 1953

41 REPEALS:

42 **63G-12-304**, as enacted by Laws of Utah 2011, Chapter 18



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

45 Section 1. Section **13-47-102** is amended to read:

46 **13-47-102. Definitions.**

47 As used in this chapter:

48 (1) (a) "Commerce license" means a permit, certificate, approval, registration, charter,
49 or similar form of authorization that is:

50 (i) required by law; and

51 (ii) issued by the department for the purpose of authorizing a person to operate a
52 business in this state.

53 (b) "Commerce license" includes:

54 (i) articles of incorporation or articles of organization under Title 16, Corporations, or
55 Title 48, Partnership;

56 (ii) obtaining an assumed name under Title 42, Chapter 2, Conducting Business Under
57 an Assumed Name, in order to conduct business in this state; and

58 (iii) a license issued by a division of the department.

59 (c) "Commerce license" does not include a license applied for or renewed through a
 60 nationwide or central system, as defined by rule made by the department in accordance with
 61 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

62 [~~1~~] (2) "Department" means the Department of Commerce.

63 [~~2~~] (3) "Employee" means an individual:

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

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

67 [~~3~~] (4) (a) Except as provided in Subsection [~~3~~] (4)(b), "private employer" means a
 68 person who for federal taxation purposes is required to provide a federal form:

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

70 (ii) to report income paid to the individual who performs the services.

71 (b) "Private employer" does not mean a public employer as defined in Section
 72 [~~63G-11-103~~] 63G-12-102.

73 [~~4~~] (5) (a) "Status verification system" means an electronic system operated by the
 74 federal government, through which an employer may inquire to verify the federal legal working
 75 status of an individual who is a newly hired employee.

76 (b) "Status verification system" includes:

77 (i) the electronic verification of the work authorization program of the Illegal
 78 Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. Sec. 1324a;

79 (ii) a federal program equivalent to the program described in Subsection [~~4~~] (5)(b)(i)
 80 that is designated by the United States Department of Homeland Security or other federal
 81 agency authorized to verify the employment eligibility status of a newly hired employee
 82 pursuant to the Immigration Reform and Control Act of 1986;

83 (iii) the Social Security Number Verification Service or similar online verification
 84 process implemented by the United States Social Security Administration; or

85 (iv) an independent third-party system with an equal or higher degree of reliability as
 86 the programs, systems, or processes described in Subsection [~~4~~] (5)(b)(i), (ii), or (iii).

87 Section 2. Section **13-47-201** is amended to read:

88 **13-47-201. Verification required for new hires.**

89 (1) A private employer who employs 15 or more employees as of July 1, 2010, may not

90 hire a new employee on or after July 1, 2010, unless the private employer:

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

93 (b) uses the status verification system to verify the federal legal working status of the
94 new employee in accordance with the requirements of the status verification system~~[-]; and~~

95 (c) complies with any other applicable state statute requiring verification of legal
96 working status of a new employee.

97 (2) This section does not apply to a private employer of a foreign national if the foreign
98 national holds a visa issued in response to a petition by the private employer that is classified as
99 H-2A or H-2B.

100 Section 3. Section **13-47-202** is amended to read:

101 **13-47-202. Liability protections.**

102 (1) A private employer may not be held civilly liable under state law in a cause of
103 action for the private employer's unlawful hiring of an unauthorized alien, as defined in 8
104 U.S.C. Sec. 1324a, if:

105 (a) the private employer complies with Section 13-47-201; and

106 (b) the information obtained in accordance with ~~[the status verification system]~~ Section
107 13-47-201 indicated that the employee's ~~[federal]~~ legal status allowed the private employer to
108 hire the employee.

109 (2) A private employer may not be held civilly liable under state law in a cause of
110 action for the private employer's refusal to hire an individual if:

111 (a) the private employer complies with Section 13-47-201; and

112 (b) the information obtained in accordance with ~~[the status system verification]~~ Section
113 13-47-201 indicated that the individual's ~~[federal]~~ legal status was that of an unauthorized alien
114 as defined in 8 U.S.C. Sec. 1324a, who is not authorized to work in the state.

115 Section 4. Section **13-47-203** is amended to read:

116 **13-47-203. Private employer database of participation in verification.**

117 (1) ~~[(a) A]~~ The department shall register in a database a private employer [may register
118 with the department certifying that the private employer is in] who indicates compliance with
119 Section 13-47-201 in accordance with Section 13-47-205.

120 ~~[(b) A private employer may register with the department under this section regardless~~

121 of whether the private employer is required to comply with Section 13-47-201.]

122 [~~(2) To register or renew a registration with the department under this part, a private~~
123 ~~employer shall:]~~

124 [~~(a) file a registration statement with the department that certifies compliance with~~
125 ~~Section 13-47-201; and]~~

126 [~~(b) pay a fee established by the department in accordance Section 63J-1-504 that~~
127 ~~reflects the cost of registering employers under this section and publishing the list described in~~
128 ~~Section 13-47-204.]~~

129 [~~(3)~~] (2) A registration under this part expires every two years on the anniversary of the
130 day on which the [~~registration is filed~~] private employer last indicates compliance with Section
131 13-47-201 with the department in accordance with Section 13-47-205.

132 [~~(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,~~
133 ~~the department may make rules to provide for:]~~

134 [~~(a) the form of a registration statement under this section;]~~

135 [~~(b) the process of filing a registration statement under this section; and]~~

136 [~~(c) the process of renewing a registration statement under this section.]~~

137 Section 5. Section **13-47-204** is amended to read:

138 **13-47-204. Department to publish list of registered private employers.**

139 On and after July 1, 2010, the department shall publish electronically a list of private
140 employers who [~~register~~] are registered under Section 13-47-203 on a website accessible to the
141 general public without a charge.

142 Section 6. Section **13-47-205** is enacted to read:

143 **13-47-205. Indicating compliance on commerce license filings.**

144 (1) A person applying for or renewing a commerce license shall indicate on an
145 application for issuance of the commerce license, an application for renewal of the commerce
146 license, or other similar filing related to the commerce license, that the person:

147 (a) is in compliance with Section 13-47-201; or

148 (b) is not in compliance with Section 13-47-201.

149 (2) The department may provide the format for a person to comply with Subsection (1).

150 (3) The department shall include on an application or filing described in Subsection (1)

151 that is provided by the department:

- 152 (a) a brief summary of the requirements of Section 13-47-201; or
- 153 (b) if the application or filing is in an electronic format, an electronic link to Section
- 154 13-47-201.

155 Section 7. Section **63G-12-302** is amended to read:

156 **63G-12-302. Status verification system -- Registration and use -- Performance of**

157 **services -- Unlawful practice -- Statement of compliance.**

158 (1) As used in this section:

159 (a) "Contract" means an agreement for the procurement of goods or services that is

160 awarded through a request for proposals process with a public employer and includes a sole

161 source contract.

162 (b) "Contractor" means a subcontractor, contract employee, staffing agency, or any

163 contractor regardless of its tier.

164 (2) (a) Subject to Subsection (5), a public employer shall register with and use a Status

165 Verification System to verify the federal employment authorization status of a new employee.

166 (b) This section shall be enforced without regard to race, religion, gender, ethnicity, or

167 national origin.

168 (3) (a) Subject to Subsection (5), beginning July 1, 2009:

169 (i) a public employer may not enter into a contract for the physical performance of

170 services within the state with a contractor unless the contractor registers and participates in the

171 Status Verification System to verify the work eligibility status of the contractor's new

172 employees that are employed in the state; and

173 (ii) a contractor shall register and participate in the Status Verification System in order

174 to enter into a contract with a public employer.

175 (b) (i) For purposes of compliance with Subsection (3)(a), a contractor is individually

176 responsible for verifying the employment status of only new employees who work under the

177 contractor's supervision or direction and not those who work for another contractor or

178 subcontractor, except as otherwise provided in Subsection (3)(b)(ii).

179 (ii) Each contractor or subcontractor who works under or for another contractor shall

180 certify to the main contractor by affidavit that the contractor or subcontractor has verified

181 through the Status Verification System the employment status of each new employee of the

182 respective contractor or subcontractor.

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

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

187 (ii) that involves underwriting, remarketing, broker-dealer activities, securities
188 placement, investment advisory, financial advisory, or other financial or investment banking
189 services.

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

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

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

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

197 (B) which is performed under similar working conditions, as defined in 29 U.S.C., Sec.
198 206 (d)(1), as the job category held by the discharged employee.

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

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

205 (5) On and after the program start date:

206 (a) a public employer, after hiring an employee, shall verify the employment eligibility
207 of the new employee:

208 (i) through the status verification system if the individual does not hold a permit; and

209 (ii) through the u-verify program if the individual holds a permit; and

210 (b) a contractor is considered to be in compliance with this section if, after hiring an
211 employee, the contractor verifies the employment eligibility of the new employee:

212 (i) through the status verification system if the individual does not hold a permit; and

213 (ii) through the u-verify program if the individual holds a permit.

214 (6) (a) A public employer required to post or provide an electronic link to public
215 financial information on the Utah Public Finance Website under Title 63A, Chapter 3, Part 4,
216 Utah Transparency Advisory Board, shall annually include with the public financial
217 information a statement as to whether the public employer:

- 218 (i) is in compliance with this section; or
- 219 (ii) is not in compliance with this section.

220 (b) In accordance with Section 63A-3-404, the Division of Finance may make rules
221 regarding the format of the statement required under Subsection (6)(a).

222 Section 8. Section **63I-2-213** is amended to read:

223 **63I-2-213. Repeal dates -- Title 13.**

224 [~~Title 13, Chapter 47, Private Employer Verification Act, is repealed on the program~~
225 ~~start date, as defined in Section 63G-12-102.]~~

226 Section 9. **Repealer.**

227 This bill repeals:

228 Section **63G-12-304, Voluntary registration by private employer certifying**
229 **participation in verification.**

Legislative Review Note
as of 7-10-12 6:55 AM

Office of Legislative Research and General Counsel