

IN THE SENATE

SENATE BILL NO. 1247

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO EMPLOYMENT; AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A
2 NEW CHAPTER 3, TITLE 44, IDAHO CODE, TO PROVIDE A SHORT TITLE, TO DEFINE
3 TERMS, TO REQUIRE COVERED EMPLOYERS TO USE THE E-VERIFY PROGRAM, TO PRO-
4 VIDE FOR ENFORCEMENT AND VIOLATIONS, TO ESTABLISH DEFENSES, TO PROVIDE
5 FOR EXCLUSIONS, TO PROVIDE FOR INTERPRETATION, AND TO PROVIDE RULEMAK-
6 ING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE.
7

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Title 44, Idaho Code, be, and the same is hereby amended
10 by the addition thereto of a NEW CHAPTER, to be known and designated as Chap-
11 ter 3, Title 44, Idaho Code, and to read as follows:

12 CHAPTER 3
13 IDAHO E-VERIFY ACT

14 44-301. SHORT TITLE. This chapter shall be known and may be cited as
15 the "Idaho E-Verify Act."

16 44-302. DEFINITIONS. As used in this chapter:

17 (1) "Alien" means any person who is not a citizen or national of the
18 United States as described in 8 U.S.C. 1101 et seq.

19 (2) "Covered employer" means:

20 (a) Every public agency;

21 (b) Every employer that employs, or has employed, more than one hun-
22 dred fifty (150) employees during more than twenty-six (26) consecutive
23 weeks over the immediate past twenty-four (24) month period and that is
24 party to a contract with a public agency in a manner subject to the re-
25 quirements of chapter 28, title 67, Idaho Code; and

26 (c) Every employer that employs, or has employed, more than one hun-
27 dred fifty (150) employees during more than twenty-six (26) consecutive
28 weeks over the immediate past twenty-four (24) month period and that is
29 party to a contract with an agency, as defined in section 67-9203(3),
30 Idaho Code, if such contract:

31 (i) Has a value that is equal to or greater than one hundred thou-
32 sand dollars (\$100,000); and

33 (ii) Is paid wholly or in part with public funds.

34 (3) "Director" means the director of the Idaho department of labor.

35 (4) "E-verify" or "e-verify program" means the electronic verifica-
36 tion of federal employment authorization program of the illegal immigration
37 reform and immigrant responsibility act, 8 U.S.C. 1324a, operated by the
38 United States department of homeland security.

39 (5) "Employee" means any person directed, allowed, or permitted to
40 perform labor or service of any kind in the state of Idaho by an employer.

1 For the purposes of this chapter, the employees of an independent contractor
2 working for a business entity shall not be regarded as the employees of the
3 business entity.

4 (6) "Employer" means any individual, person, corporation, company,
5 firm, partnership, or other business entity that has employees.

6 (7) "Federal work authorization program" means any of the electronic
7 verification of work authorization programs operated by the United States
8 department of homeland security or an equivalent federal work authorization
9 program operated by the United States department of homeland security to
10 verify information of newly hired employees pursuant to 8 U.S.C. 1324a.

11 (8) "Knowingly" means, with respect to conduct or to a circumstance
12 described by a statute defining an offense, that a person is aware by docu-
13 mentation or action that the person's conduct is of that nature or that the
14 circumstance exists. "Knowingly" includes the failure to request or review
15 documentation of an employee's federal work authorization. The following
16 documentation creates a presumption that a person is not an unauthorized
17 worker:

18 (a) A valid, unexpired Idaho driver's license;

19 (b) A valid, unexpired Idaho identification card issued pursuant to the
20 provisions of section 49-2442, Idaho Code;

21 (c) A valid tribal enrollment card or other form of tribal identifica-
22 tion bearing a photograph or other biometric identifier;

23 (d) Any valid United States federal or state government-issued identi-
24 fication document bearing a photograph or other biometric identifier,
25 if issued by an entity that requires proof of lawful presence in the
26 United States before issuance;

27 (e) A foreign passport with an unexpired United States visa and a corre-
28 sponding stamp or notation by the United States department of homeland
29 security indicating the bearer's admission to the United States; or

30 (f) A foreign passport issued by a visa waiver program-designated coun-
31 try with the corresponding entry stamp and unexpired duration of stay
32 annotation or an I-94W form by the United States department of homeland
33 security indicating the bearer's admission to the United States.

34 (9) "Public agency" means any state, county, city, school district,
35 municipal corporation, independent public body corporate and politic, dis-
36 trict, public health district, public benefit corporation, public author-
37 ity, political subdivision, or any agency, department, bureau, commission,
38 office, council or committee thereof, or any combination thereof.

39 (10) "Unauthorized worker" means an alien who is not authorized to work
40 in the United States as defined in 8 U.S.C. 1324a(h)(3).

41 44-303. COVERED EMPLOYERS REQUIRED TO USE E-VERIFY PROGRAM. (1) On and
42 after January 1, 2027, every covered employer in Idaho shall enroll in the
43 e-verify program and shall thereafter, according to the federal statutes and
44 regulations governing e-verify, verify the employment eligibility of new
45 hires through e-verify. A covered employer that uses e-verify to verify the
46 work authorization of an employee shall not be considered to have knowingly
47 violated this chapter with respect to the employment of such employee.

48 (2) On and after January 1, 2027, it shall be unlawful for any covered
49 employer to knowingly hire, recruit, or refer, either for the employer it-

1 self or on behalf of another, for private or public employment within the
2 state, an employee whose work authorization has not been verified through
3 the e-verify program. Covered employers are required to verify an em-
4 ployee's federal work authorization through the e-verify program within
5 the first three (3) days after the employee's first day of work for pay has
6 elapsed or by no later than the first day of work for pay if the employee will
7 work for fewer than three (3) days.

8 44-304. ENFORCEMENT -- VIOLATIONS. (1) If the director determines
9 that a covered employer is not in compliance with section 44-303, Idaho Code,
10 the director shall notify, in writing, the covered employer of the facts
11 demonstrating noncompliance and provide the noncomplying covered employer
12 with at least thirty (30) days to become compliant and provide evidence of
13 such compliance to the director. If the notified covered employer does not
14 comply within the time allowed, then the director may pursue an enforcement
15 action pursuant to this chapter.

16 (2) The director may bring a civil complaint to enforce the provisions
17 of this chapter in the district court for the county where the covered em-
18 ployer resides or has its principal place of business within the state of
19 Idaho. Such action may only be initiated after the director has complied
20 with the notice provisions of subsection (1) of this section and where com-
21 pliance is not achieved within the time allowed.

22 (3) In any court proceedings pursuant to this section, the determina-
23 tion of whether an employee is an unauthorized worker shall be made by the
24 federal government, pursuant to 8 U.S.C. 1373(c). The court shall consider
25 only the federal government's determination when deciding whether an em-
26 ployee is an unauthorized worker. The court may take judicial notice of
27 any verification of an individual's federal work authorization previously
28 provided by the federal government and may request the federal government to
29 provide further automated or testimonial verification. No officer of the
30 state or any political subdivision of the state shall attempt to indepen-
31 dently make a final determination of an alien's federal work authorization.

32 (4) Upon a finding or determination by clear and convincing evidence
33 that a covered employer has knowingly violated the provisions of section
34 44-303, Idaho Code, a court shall:

35 (a) Order the covered employer to terminate the employment of every
36 unauthorized worker;

37 (b) Subject the covered employer to a one (1) year probationary period,
38 applicable throughout the state of Idaho, during which time the covered
39 employer shall file quarterly reports with the director identifying
40 each new employee who is hired by the covered employer in the state of
41 Idaho; and

42 (c) Order the covered employer to file a signed, sworn affidavit with
43 the director within three (3) days after an order is issued by the court
44 stating that the covered employer has terminated the employment of ev-
45 ery unauthorized worker and that the covered employer will not there-
46 after knowingly or intentionally employ an unauthorized worker in the
47 state of Idaho.

48 (5) If a covered employer that is not a public agency but that is a party
49 to a contract with a public agency is found or determined by a court by clear

1 and convincing evidence to have knowingly violated the provisions of section
2 44-303, Idaho Code, for a second or subsequent time within a three (3) year
3 period, the court may find that the covered employer is in breach of its con-
4 tract with the applicable public agency. Upon a finding of a breach of con-
5 tract pursuant to this subsection, the court may declare such contract to be
6 terminated.

7 44-305. DEFENSES. (1) This chapter may not be construed to deny any
8 procedural mechanisms or legal defenses included in the e-verify program or
9 any other federal work authorization program.

10 (2) A covered employer that establishes that it has complied, or at-
11 tempted to comply, with this chapter shall establish an affirmative defense
12 that such covered employer did not knowingly hire or employ an unauthorized
13 worker.

14 (3) It is an affirmative defense to a violation of this chapter that a
15 covered employer was entrapped. To establish a claim of entrapment, a cov-
16 ered employer must establish the following by clear and convincing evidence:

17 (a) The idea of committing the violation started with law enforcement
18 officers or their agents rather than with the covered employer;

19 (b) The law enforcement officers or their agents urged and induced the
20 covered employer to commit the violation; and

21 (c) The covered employer was not already predisposed to commit the vio-
22 lation before the law enforcement officers or their agents urged and in-
23 duced the covered employer to commit the violation.

24 44-306. EXCLUSIONS. (1) A contractor of any tier shall not be liable
25 under this chapter when its direct subcontractor violates this chapter.

26 (2) This chapter does not apply to the relationship between a party and
27 the employees of an independent contractor performing work for the party.

28 44-307. INTERPRETATION. (1) The provisions of this chapter relating
29 to immigration terminology and definitions shall be construed to have the
30 same meanings as provided under federal immigration law, unless otherwise
31 defined in this chapter.

32 (2) The provisions of this chapter shall be construed and implemented
33 in a manner consistent with federal laws, federal regulations, and interpre-
34 tive case law governing immigration and civil rights.

35 44-308. RULEMAKING AUTHORITY. The director may promulgate rules, sub-
36 ject to legislative approval, in accordance with the provisions of chapter
37 52, title 67, Idaho Code, as necessary to carry out the provisions of this
38 chapter.

39 SECTION 2. This act shall be in full force and effect on and after Jan-
40 uary 1, 2027.