

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 510

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO UNAUTHORIZED WORKERS; AMENDING TITLE 44, IDAHO CODE, BY THE ADDITION OF A NEW CHAPTER 3, TITLE 44, IDAHO CODE, TO DEFINE TERMS, TO PROHIBIT THE EMPLOYMENT OF CERTAIN PERSONS AND TO REQUIRE THE VERIFICATION OF LEGAL EMPLOYMENT STATUS OF WORKERS, TO PROVIDE FOR ACTIONS BY THE ATTORNEY GENERAL, TO PROVIDE FOR VIOLATIONS, TO PROVIDE FOR DEFENSES, TO PROVIDE FOR EXCLUSIONS FROM LIABILITY, TO PROVIDE FOR INTERPRETATION, AND TO PROVIDE FOR EXCLUSIONS; AND DECLARING AN EMERGENCY AND PROVIDING AN EFFECTIVE DATE.

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

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

CHAPTER 3  
VERIFYING LEGAL EMPLOYMENT STATUS OF WORKERS

44-301. DEFINITIONS. As used in this chapter:

- (1) "Alien" means any person who is not a citizen or national of the United States as described in 8 U.S.C. 1101 et seq.
- (2) "Director" means the director of the department of labor or the director's designated agent.
- (3) "E-verify" or "e-verify program" means the electronic verification of federal employment authorization program of the illegal immigration reform and immigrant responsibility act, 8 U.S.C. 1324a, operated by the United States department of homeland security.
- (4) "Employee" means any person directed, allowed, or permitted to perform labor or service of any kind by an employer. For the purposes of this chapter, the employees of an independent contractor working for a business entity shall not be regarded as the employees of the business entity.
- (5) "Employer" means any individual, person, corporation, department, board, bureau, agency, commission, division, office, company, firm, partnership, council, or committee of the state government, public benefit corporation, public authority, political subdivision of the state, or other business entity that employs or seeks to employ an individual or individuals and that registers with the secretary of state.
- (6) "Federal work authorization program" means any of the electronic verification of work authorization programs operated by the United States department of homeland security or an equivalent federal work authorization program operated by the United States department of homeland security to verify information of newly hired employees under 8 U.S.C. 1324a.
- (7) "Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware by docu-

1 mentation or action that the person's conduct is of that nature or that the  
2 circumstance exists. "Knowingly" includes the failure to request or review  
3 documentation of an employee's legal status or authorization to work.

4 (8) "Lawful presence" or "lawfully present" means a person shall be re-  
5 garded as an alien unlawfully present in the United States only if the per-  
6 son's unlawful immigration status has been verified by the federal govern-  
7 ment pursuant to 8 U.S.C. 1373(c). No officer of this state or any political  
8 subdivision of this state shall attempt to independently make a final deter-  
9 mination of an alien's immigration status. An alien possessing self-identi-  
10 fication in any of the following forms is entitled to the presumption that he  
11 is an alien lawfully present in the United States:

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

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

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

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

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

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

28 (9) "License" means any permit, certificate, approval, registration,  
29 charter, or similar form of authorization that is required by law and that is  
30 issued for the purpose of operating a business in this state.

31 (10) "Unauthorized worker" means a person who does not have the legal  
32 right to be employed or is employed in violation of law or an alien who is not  
33 authorized to work in the United States as defined in 8 U.S.C. 1324a(h) (3).

34 44-302. UNAUTHORIZED WORKERS OR ALIENS -- EMPLOYMENT PROHIBITED. (1)  
35 It is unlawful for any employer to knowingly employ, hire, recruit, or re-  
36 fer, either for the employer itself or on behalf of another, for private or  
37 public employment within the state an unauthorized worker who is not duly au-  
38 thorized to be employed by law. No business entity, employer, or public em-  
39 ployer may knowingly employ, hire for employment, or continue to employ an  
40 unauthorized alien to perform work within the state of Idaho. "Knowingly  
41 employ, hire for employment, or continue to employ an unauthorized alien"  
42 means the actions described in 8 U.S.C. 1324a.

43 (2) Employers are required to verify an employee's legal status or au-  
44 thorization to work after employing the individual within the first three  
45 (3) days after the employee's first day of work for pay has elapsed or by no  
46 later than the first day of work for pay if the employee will work for fewer  
47 than three (3) days.

48 (3) For the purpose of this chapter, proof of legal status or authoriza-  
49 tion to work includes but is not limited to a valid social security card, a

1 valid immigration or nonimmigration visa with photo identification, a valid  
2 birth certificate, a valid passport, a valid photo identification card is-  
3 sued by a government agency, a valid work permit or supervision permit autho-  
4 rized by the department of labor, a valid permit issued by the United States  
5 department of justice, or another valid document providing evidence of legal  
6 residence or authorization to work in the United States.

7 (4) For the purpose of enforcing the provisions of this chapter and  
8 notwithstanding any other provision of law to the contrary, the director  
9 may access information maintained by any state agency, including but not  
10 limited to the department of labor and the division of motor vehicles, for  
11 the limited purpose of confirming the validity of a worker's legal status or  
12 authorization to work. The director shall promulgate rules in accordance  
13 with chapter 52, title 67, Idaho Code, to safeguard against the release of  
14 any confidential or identifying information that is not necessary for the  
15 limited purpose of enforcing the provisions of this chapter.

16 (5) On and after January 1, 2025, every business entity and employer  
17 in this state shall enroll in the e-verify program and shall thereafter, ac-  
18 cording to the federal statutes and regulations governing e-verify, verify  
19 the employment eligibility of new hires through e-verify. A business en-  
20 tity or employer that uses e-verify to verify the work authorization of an  
21 employee shall not be considered to have violated this section with respect  
22 to the employment of that employee.

23 (6) As a condition for the award of any contract, grant, or incentive  
24 by this state, any political subdivision of the state, or any state-funded  
25 entity to a business entity or employer that employs one (1) or more employ-  
26 ees, the business entity or employer shall provide documentation establish-  
27 ing that the business entity or employer is enrolled in the e-verify pro-  
28 gram. During the performance of the contract, the business entity or em-  
29 ployer shall participate in the e-verify program and shall verify every em-  
30 ployee that is required to be verified according to the applicable federal  
31 rules and regulations.

32 (7) No subcontractor on a project paid for by contract, grant, or in-  
33 centive by this state, any political subdivision of the state, or any state-  
34 funded entity may knowingly employ, hire for employment, or continue to em-  
35 ploy an unauthorized alien. Such a subcontractor shall enroll in the e-ver-  
36 ify program prior to performing any work on the project and shall verify ev-  
37 ery employee that is required to be verified according to the applicable fed-  
38 eral rules and regulations.

39 (8) Compliance with this section may be verified by state authorities  
40 or law enforcement at any time to ensure a contractual agreement as provided  
41 for in this section is being met.

42 44-303. ACTIONS BY ATTORNEY GENERAL. (1) The attorney general may  
43 bring a civil complaint in any court of competent jurisdiction to enforce the  
44 requirements of this chapter.

45 (2) Any resident of this state may petition the attorney general to  
46 bring an enforcement action against a specific business entity or employer  
47 by means of a written, signed petition. A valid petition shall include an  
48 allegation that describes the alleged violator or violators, as well as  
49 the action constituting the violation, and the date and location where the

1 violation occurred. A petition that alleges a violation on the basis of  
2 national origin, ethnicity, or race shall be considered invalid and may not  
3 be acted upon. The attorney general shall respond to any petition under  
4 this subsection within sixty (60) days of receiving the petition, either by  
5 filing a civil complaint in a court of competent jurisdiction or by inform-  
6 ing the petitioner in writing that the attorney general has determined that  
7 filing a civil complaint is not warranted.

8 44-304. VIOLATIONS. (1) In any court proceedings, the determination  
9 of whether an employee is an unauthorized alien shall be made by the fed-  
10 eral government, pursuant to 8 U.S.C. 1373(c). The court shall consider only  
11 the federal government's determination when deciding whether an employee is  
12 an unauthorized alien. The court may take judicial notice of any verifica-  
13 tion of an individual's immigration status previously provided by the fed-  
14 eral government and may request the federal government to provide further  
15 automated or testimonial verification.

16 (2) (a) Upon the first violation of section 44-302(6), Idaho Code, by  
17 any business entity or employer awarded a contract by the state, any  
18 political subdivision of the state, or any state-funded entity, the  
19 business entity or employer shall be considered in breach of contract  
20 and the state, political subdivision, or state-funded entity may ter-  
21 minate the contract after providing notice and an opportunity to be  
22 heard. Upon application by the state entity, political subdivision,  
23 or state-funded entity, the attorney general may bring an action to  
24 suspend the business licenses and permits of the business entity or  
25 employer for a period not to exceed sixty (60) days, according to the  
26 procedures described in this section. The court shall order the busi-  
27 ness entity or employer to file a signed, sworn affidavit with the  
28 attorney general within three (3) days after the order is issued by the  
29 court stating that the business entity or employer has terminated the  
30 employment of every unauthorized alien and that the business entity or  
31 employer will not knowingly or intentionally employ an unauthorized  
32 alien in this state.

33 (b) Upon a second or subsequent violation of section 44-302(6), Idaho  
34 Code, by any business entity or employer awarded a contract by the  
35 state, any political subdivision, or any state-funded entity, the busi-  
36 ness entity or employer shall be considered in breach of contract and  
37 the state, political subdivision, or state-funded entity shall ter-  
38 minate the contract after providing notice and an opportunity to be  
39 heard. Upon application by the state entity, political subdivision, or  
40 state-funded entity, the attorney general may bring an action to perma-  
41 nently revoke the business licenses and permits of the business entity  
42 or employer.

43 (3) Upon the first violation of section 44-302(7), Idaho Code, by  
44 a subcontractor, the state or political subdivision of the state may  
45 bar the subcontractor from doing business with the state, any politi-  
46 cal subdivision of the state, or any state-funded entity, or with any  
47 contractor who contracts with the state, any political subdivision of  
48 the state, or any state-funded entity, after providing notice and an op-  
49 portunity to be heard. Upon application by the state entity, political

1 subdivision, or state-funded entity, the attorney general may bring an  
2 action to suspend the business licenses and permits of the subcontractor  
3 for a period not to exceed sixty (60) days. The court shall order  
4 the subcontractor to file a signed, sworn affidavit with the attorney  
5 general within three (3) days after the order is issued by the court  
6 stating that the subcontractor has terminated the employment of every  
7 unauthorized alien and that the subcontractor will not knowingly or  
8 intentionally employ an unauthorized alien in this state.

9 (b) Upon a second or subsequent violation of section 44-302(7), Idaho  
10 Code, by a subcontractor and upon application by the state entity, political  
11 subdivision, or state-funded entity, the attorney general may  
12 bring an action to permanently suspend the business licenses of the  
13 business entity or employer.

14 (4) Upon a finding by a court of competent jurisdiction that a business  
15 entity or employer knowingly violated the provisions of section 44-302(5),  
16 Idaho Code, for the first time, the court shall:

17 (a) Order the business entity or employer to terminate the employment  
18 of every unauthorized alien;

19 (b) Subject the business entity or employer to a three (3) year proba-  
20 tionary period throughout the state. During the probationary period,  
21 the business entity or employer shall file quarterly reports with the  
22 attorney general of each new employee who is hired by the business en-  
23 tity or employer in the state;

24 (c) Order the business entity or employer to file a signed, sworn af-  
25 fidavit with the attorney general within three (3) days after the or-  
26 der is issued by the court stating that the business entity or employer  
27 has terminated the employment of every unauthorized alien and that the  
28 business entity or employer will not knowingly or intentionally employ  
29 an unauthorized alien in this state; and

30 (d) Direct the applicable state, county, or municipal governing bodies  
31 to suspend any business licenses and permits of the business entity or  
32 employer for a period not to exceed ten (10) business days specific to  
33 the business location where the unauthorized alien performed work.

34 (5) For a second violation of section 44-302(5), Idaho Code, by a  
35 business entity or employer, the court shall direct the applicable state,  
36 county, or municipal governing body to permanently revoke any business li-  
37 censes and permits held by the business entity or employer specific to the  
38 business location where the unauthorized alien performed work. Upon receipt  
39 of the order and notwithstanding any other law, the appropriate agencies  
40 shall immediately revoke the licenses and permits held by the business en-  
41 tity or employer.

42 (6) For a third or subsequent violation of section 44-302(5), Idaho  
43 Code, the court shall direct the applicable governing bodies to permanently  
44 suspend any business licenses and permits of the business entity or employer  
45 throughout the state.

46 (7) The suspension of a business license or permit pursuant to subsec-  
47 tion (2) (a), (3) (a), or (4) (a) of this section shall terminate one (1) busi-  
48 ness day after a legal representative of the business entity, employer, or  
49 subcontractor submits to the court a signed, sworn affidavit stating that  
50 the business entity, employer, or subcontractor is in compliance with the

1 provisions of this chapter, along with a copy of the memorandum of under-  
2 standing issued at the time of enrollment in the e-verify program.

3 (8) If an employee of any agency of the state or any political subdi-  
4 vision of the state fails to suspend the business licenses or permits of any  
5 business entity or employer as a result of a violation of this chapter, the  
6 agency shall be deemed to have violated section 44-302(1), Idaho Code, and  
7 may be compelled to enforce this chapter by a writ of mandamus brought by the  
8 attorney general in any court of competent jurisdiction.

9 (9) The secretary of state shall promulgate rules for legislative ap-  
10 proval in accordance with chapter 52, title 67, Idaho Code, as necessary to  
11 provide for the suspension, reinstatement, and cancellation of business li-  
12 censes required under this chapter.

13 44-305. DEFENSES. (1) This chapter may not be construed to deny any  
14 procedural mechanisms or legal defenses included in the e-verify program or  
15 any other federal work authorization program. A business entity, employer,  
16 subcontractor, or other person that establishes that it has complied in good  
17 faith with section 44-302(5), Idaho Code, establishes an affirmative de-  
18 fense that the business entity, employer, or subcontractor did not knowingly  
19 hire or employ an unauthorized alien.

20 (2) It is an affirmative defense to a violation of section 44-302(1),  
21 Idaho Code, that a business entity or employer was entrapped. To claim en-  
22 trapment, the business entity or employer must admit by testimony or other  
23 evidence the substantial elements of the violation. A business entity or em-  
24 ployer who asserts an entrapment defense has the burden of proving by clear  
25 and convincing evidence the following:

26 (a) The idea of committing the violation started with law enforcement  
27 officers or their agents rather than with the business entity or em-  
28 ployer;

29 (b) The law enforcement officers or their agents urged and induced the  
30 business entity or employer to commit the violation; and

31 (c) The business entity or employer was not already predisposed to com-  
32 mit the violation before the law enforcement officers or their agents  
33 urged and induced the employer to commit the violation.

34 44-306. EXCLUSIONS FROM LIABILITY. (1) A contractor of any tier shall  
35 not be liable under this chapter when its direct subcontractor violates sec-  
36 tion 44-302, Idaho Code, if the contractor receives a sworn affidavit from  
37 the subcontractor signed before a notary that the direct subcontractor, in  
38 good faith, has complied with respect to verifying each employee's eligibil-  
39 ity for employment, unless the contractor knows the direct subcontractor is  
40 violating this section.

41 (2) Any business entity or employer that terminates the employment of  
42 an employee to comply with this chapter shall not be liable for any claims  
43 made against the business entity or employer by the terminated employee if  
44 such termination is made without regard to the race, ethnicity, or national  
45 origin of the employee.

1           44-307. INTERPRETATION. The provisions of this chapter shall be in-  
2     terpreted consistently with 8 U.S.C. 1324a and any applicable federal rules  
3     and regulations.

4           44-308. EXCLUSIONS. This chapter does not apply to the relationship  
5     between a party and the employees of an independent contractor performing  
6     work for the party and does not apply to casual domestic labor performed  
7     within a household.

8           SECTION 2. An emergency existing therefor, which emergency is hereby  
9     declared to exist, this act shall be in full force and effect on and after  
10    July 1, 2024.