

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 502 (Delegate Miller, *et al.*)
Health and Government Operations

State Procurement - Employment of Unauthorized Aliens and the Federal E-Verify Program

This bill prohibits all State contractors from knowingly or intentionally hiring an unauthorized alien, as defined in federal statute. It also requires all State contractors and any employer receiving a State grant to use the federal Basic Pilot Program to verify the employment eligibility of each employee hired to work on the State procurement contract or grant. Employers who violate these terms are subject to possible suspension or revocation of any State business license they hold.

The bill takes effect October 1, 2009, but applies only to State contracts executed, or grants paid by the State, after December 31, 2009.

Fiscal Summary

State Effect: Potential meaningful increase in general fund expenditures by the Office of the Attorney General (OAG) to investigate complaints and prosecute offenders. *However, OAG did not provide an estimate of the bill's fiscal effect on its own operations.* Potential minimal increase in general fund revenues and expenditures for cases heard in District Court.

Local Effect: Potential meaningful increase in local government expenditures to allow county attorneys to investigate complaints and prosecute offenders. The extent of the increase cannot be reliably determined. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: Anyone who believes that an eligible employer has knowingly or willingly hired an unauthorized alien may file a complaint with the Attorney General or a county attorney. Filing a knowingly false complaint is a misdemeanor. If the Attorney General or county attorney confirms the allegation, the U.S. Immigration and Customs Enforcement and local law enforcement authority must be notified, and an action must be brought against the business in the county where the unauthorized alien is employed.

An employer guilty of a first violation is subject to probation, and must file quarterly reports with the county attorney identifying each new employee hired. Probation lasts either three or five years, depending on the nature of the violation. The employer must also attest and sign an affidavit that he or she has terminated any unauthorized aliens and will not knowingly or intentionally hire any others. The court may order the employer's business licenses to be suspended for up to 10 days, based on factors specified in the bill. Moreover, if the employer fails to sign the required affidavit within three days of the court order, the court must order appropriate agencies to suspend any business licenses held by the employer until the employer signs the affidavit. Agencies must comply with any order to suspend business licenses.

For any employer on probation who commits a second violation, the court must revoke permanently any business license held by the employer. The Attorney General must maintain a database of employers found guilty of a first violation and a list of court orders issued under this bill must be available on the Attorney General's web site.

An employer is any individual or organization that transacts business in the State, has a license issued by the State, and employs one or more individuals who work in the State, including the State, any political subdivision of the State, and self-employed persons.

A business license is defined as any permit, certificate, approval, registration, charter, or similar form of authorization that is required by law and issued by an agency for the purpose of operating a business in the State.

The bill may not be construed to require an employer to take any action that the employer believes in good faith violates State or federal law.

Current Law: Federal immigration law preempts any state law with respect to civil and criminal penalties for knowingly hiring unauthorized aliens, but reserves for states the right to impose penalties related to State licenses.

Federal law defines an unauthorized alien with respect to employment as an alien who is either not lawfully admitted to the country for permanent residence, or not authorized to

be so employed. It is illegal to hire an individual without first making a good faith effort to verify that the individual is not an unauthorized alien. Verification means ensuring that the individual has either:

- a U.S. passport, resident alien card, or other document that verifies the individual's eligibility to work; or
- both a Social Security card or equivalent document and a driver's license or other photo identification approved by the Attorney General.

Under federal law, employers who hire unauthorized aliens are subject to civil and criminal penalties, including fines and/or imprisonment. The severity of the penalties escalates for repeat offenders. The maximum fine is \$10,000 for each unauthorized alien hired and the maximum prison term is six months "for the entire pattern or practice."

Background: Employers certify on federal Form I-9 that they have reviewed employees' documentation and that the documents appear genuine. Employers are not responsible if those documents are later found to be false. According to the U.S. Government Accountability Office (GAO), numerous studies have found that document and identity fraud are prevalent and often sophisticated, and that employers have few tools available to them to combat it.

The Basic Pilot Program began in 1996 as part of the Illegal Immigration Reform and Immigrant Responsibility Act. The program is an attempt to combat the prevalence of document and identity fraud in the employment verification process by providing a voluntary means for employers to verify employee status electronically against federal Social Security and immigration databases. The program was scheduled to terminate in 2001, but was extended twice. In 2005, about 2,300 employers participated in the Basic Pilot Program, out of approximately 5.6 million firms. In 2007, the program was expanded and renamed the E-Verify program. Authorization for E-Verify was scheduled to expire on March 6, 2009; its current status is uncertain.

Two evaluations of the Basic Pilot Program have found that it has been effective in reducing document fraud in the employment verification process, but also found several critical weaknesses. An August 2005 GAO report on the Basic Pilot Program found that 20 of the 22 participating employers interviewed for the study indicated that the program helped them reliably verify the employment eligibility of new hires. However, GAO also found that the program was unable to detect identity fraud and suffered from data entry delays that hampered its reliability. Of perhaps greater significance, officials from the U.S. Citizenship and Immigration Services told GAO that the current program could not continue to complete timely and accurate verifications if the number of participating employers significantly increased.

Increased funding for the Basic Pilot Program addressed the last concern and prompted a rapid expansion of the program, but concerns about its accuracy remain. As of January 2009, about 100,000 employers are registered to use E-Verify. The program's current capacity is 30 million queries per year, but there are an estimated 60 million new hires every year. A 2007 evaluation by Westat concluded that the program was still not accurate enough to be a mandated program. Westat found discrepancies in 4.1% of the system's records, of which about two-thirds were for American citizens. On average, 96% of employees attesting to be U.S. citizens were automatically confirmed to work, compared with 72% of legal residents and 63% of immigrants authorized to work.

An executive order signed in June 2008 requires all federal contractors with contracts worth more than \$100,000 or subcontracts worth more than \$3,000 to verify employment eligibility using E-Verify effective January 15, 2009. Implementation of the executive order has been delayed twice and now takes effect May 1, 2009. Twelve states require at least some employers to use E-Verify, but requirements vary. In three states (Arizona, Mississippi, and South Carolina), the requirement extends to all public and private employers; the remaining states require different combinations of state agencies, all public employers, and state contractors or subcontractors to use E-Verify.

State Fiscal Effect: The bill has no direct fiscal effect on the State because, in accordance with federal immigration law, there are no civil or criminal fines or prison terms associated with violations of the bill's provisions. However, to the extent that individuals file complaints against employers for violating the bill's provisions with the Attorney General's Office, the Attorney General may require additional personnel and resources to investigate the complaints and prosecute those offenders. However, the Attorney General's Office did not provide an estimate of the fiscal effect of this bill on its own operations. The Attorney General's Office can likely maintain a database of violators and court orders, and post the list on its web site, with existing resources.

State agencies that issue business licenses can implement court orders to suspend or revoke those licenses with existing resources. Legislative Services believes that given the nature of the bill and proposed penalties, violations are referred to District Court. The Administrative Office of the Courts did not provide an estimate of potential costs.

Local Fiscal Effect: All local governments receive State grants, and are therefore required to use E-Verify to confirm the employment eligibility of candidates for employment. Employer use of E-Verify is free and linked to existing employment verification requirements, so local governments can implement that provision with existing resources. Several local governments advise that they already use E-Verify.

To the extent that individuals file complaints against employers for violating the bill's provisions with county attorneys, those offices may require additional personnel and

resources to investigate the complaints and prosecute offenders. The number of complaints cannot be estimated reliably, so Legislative Services cannot determine the extent to which local governments may require additional resources.

Small Business Effect: Small businesses that are State contractors or receive State grants and knowingly hire unauthorized aliens are subject to the suspension or revocation of their business licenses. State contractors and firms that receive State grants must use E-Verify to confirm the employment eligibility of new hires. To the extent that the interpretation of “license” includes corporation charters, articles of organization of limited partnerships and limited liability corporations, and other related documents that authorize entities to do business in Maryland, the bill may affect every firm that does business with the State or that receives a State grant.

Additional Information

Prior Introductions: None.

Cross File: SB 696 (Senator Kittleman) - Education, Health, and Environmental Affairs.

Information Source(s): U.S. Government Accountability Office; National Conference of State Legislatures; Carroll, Harford, Montgomery, and St. Mary’s counties; Office of the Attorney General; Department of Business and Economic Development; Board of Public Works; Department of Natural Resources; Department of Health and Mental Hygiene; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of State Police; Office of the Public Defender; State’s Attorneys’ Association; University System of Maryland; Department of Legislative Services

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