

Department of Legislative Services  
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 844 (Senator Kittleman, *et al.*)  
Education, Health, and Environmental Affairs

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

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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 E-Verify 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 applies only to State contracts executed, or grants paid by the State, after December 31, 2010.

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**Fiscal Summary**

**State Effect:** Potential increase in general fund expenditures by the Office of the Attorney General (OAG) to investigate complaints and maintain the required database, but the extent of the resources necessary cannot be reliably determined. No effect on revenues.

**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.

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## Analysis

**Bill Summary:** Anyone who believes that an eligible employer has knowingly or intentionally 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. Even for complaints initially filed with the Attorney General, the county attorney must bring an action against the business in the county where the unauthorized alien is employed.

An employer guilty of a first violation is subject to probation for three years, and must file quarterly reports with the county attorney identifying each new employee hired. 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 10 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 order permanent revocation of 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 federal 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. In 2007, the program was expanded and renamed the E-Verify program. Authorization for E-Verify has been renewed multiple times, most recently in 2009. It is scheduled to terminate in September 2012.

The most recent evaluation of the E-Verify program commissioned by the U.S. Department of Homeland Security raises concerns about its effectiveness. The evaluation found that 96% of E-Verify results for cases submitted between April and June 2008 were consistent with a worker's true employment status. However, of workers who are *not* eligible for employment, the system authorized more than half (54%) as eligible to work. The evaluation blames identity fraud for the system's poor results.

In federal fiscal year 2009, E-Verify processed more than 8.7 million records, a 28% increase over fiscal 2008. More than 184,000 employers currently use E-Verify, and more than 1,000 new employers enroll every week.

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, but took effect September 8, 2009. Thirteen 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. 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. However, the Attorney General's Office did not provide an estimate of the fiscal effect of this bill on its own operations.

State agencies that issue business licenses can implement court orders to suspend or revoke those licenses with existing resources.

**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. As the bill requires county attorneys to bring all actions, even those initially investigated by the Attorney General, the offices may also need additional resources to 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 or the potential impact on the circuit court.

**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.

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### **Additional Information**

**Prior Introductions:** SB 696 of 2009, a similar bill, received an unfavorable report from the Senate Education, Health, and Environmental Affairs committee. Its cross file, HB 502, received an unfavorable report from the House Health and Government Operations committee.

**Cross File:** Although HB 721 (Delegate Miller, *et al.* – Health and Government Operations) is identified as a cross file, it is different.

**Information Source(s):** Baltimore, Charles, Frederick, and Somerset counties; Town of Bladensburg; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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