

Department of Legislative Services
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 807 (Senator Stone)
Education, Health, and Environmental Affairs

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

This emergency bill prohibits all State contractors and grant recipients, including political subdivisions, from knowingly or intentionally hiring an unauthorized alien. It also requires all State contractors and any employer receiving a State grant that includes any State money 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 and immediate revocation, if found guilty of a second violation within three years, of any State business license they hold.

The bill applies to State contracts executed, or grants paid by the State, after December 31, 2011.

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, but a reliable estimate is not feasible. Potential minimal increase in general fund revenues and expenditures for cases heard in District Court.

Local Effect: Potential 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 as defined in federal law 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. Cases resulting from violations of the bill must receive expedited action from the court.

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 three years, and the court may order the employer's business licenses to be suspended for an unspecified amount of time.

For any employer on probation who commits a second violation, the court must order the permanent revocation of any business license held by the employer, and agencies must comply with revocation orders from the court. 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 website.

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.

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. An employer who submits evidence of verifying the employment eligibility of an employee through the E-Verify program creates an absolute defense that the employer did not knowingly or intentionally employ an unauthorized alien.

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.

A 2009 evaluation of the E-Verify program commissioned by the U.S. Department of Homeland Security raised 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 blamed identity fraud for the system's poor results.

A more recent evaluation by GAO found that the E-Verify program had reduced the number of temporary nonconfirmations, which it issues when it cannot confirm an applicant's eligibility to work, from 8% from 2004 to 2007 to 2.6% in fiscal 2009. Conversely, 97.4% of newly hired employees were immediately confirmed for employment. However, the report found continued challenges in recognizing fraud and potential capacity challenges if E-Verify participation is required of all employers.

In federal fiscal 2010, E-Verify processed more than 16 million queries, almost a 100% increase over fiscal 2009. More than 243,000 employers currently use E-Verify, and about 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 was delayed, but it 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 10 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, a reliable estimate is not feasible. The Attorney General's Office can likely maintain a database of violators and court orders, and post the list on its website, 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 advises that cases requiring expedited processing, as required by the bill, may increase clerical costs. However, it advises that it does not anticipate that the caseload resulting from the bill will have a significant fiscal or operational effect on the court.

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: 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: None.

Information Source(s): Harford and Montgomery counties; Baltimore City; Board of Public Works; Department of Budget and Management; Department of Natural Resources; Department of General Services; Department of Health and Mental Hygiene; Maryland Insurance Administration; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Public Service Commission; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

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