

BILL # HB 2467

TITLE: licensing eligibility; lawful presence; verification

SPONSOR: Pearce

STATUS: House Engrossed

PREPARED BY: Jay Chilton

FISCAL ANALYSIS

Description

This bill would require any state or local agency issuing a license for the purpose of operating a business in the state of Arizona to verify that the applicant is lawfully present in the United States.

Estimated Impact

The fiscal impact of this bill cannot be determined with certainty. The bill would result in additional workload, but the magnitude is not known. The impact will depend on the level of effort required by agencies to verify the lawful presence of applicants, which is not defined by the bill. The impact will also depend on the number of agencies required to comply with the bill.

The following agencies were asked for information and cost estimates: the Department of Revenue, the Secretary of State, the Department of Health Services, the Structural Pest Control Commission, the Department of Insurance, the Department of Financial Institutions, the Department of Racing, and the Department of Real Estate, and the Corporation Commission. None of the agencies have yet provided cost estimates.

Analysis

The bill defines “agency” as “any agency, department, board or commission of the state, or county, city, or town that issues a license for the purposes of operating a business.” At least 9 state agencies seem to meet these criteria and may be affected by the bill.

The Department of Revenue (DOR) issues Transaction Privilege Tax (TPT) licenses to businesses and reports in excess of 175,000 existing TPT licenses. Currently, TPT license applicants can apply on DOR’s Web site or by mail. In order to complete the application, it is necessary to provide either a Social Security Number or an Employer Identification Number, also known as a Federal Tax Identification Number. The DOR does not confirm the validity of the Social Security Numbers and Employer Identification numbers used on TPT license applications.

Business partnerships must be registered through the Secretary of State’s office. The Secretary of State’s office requires only the names, addresses, and signatures of the applicants for partnership registration, but does not require any other identifying information. Registrations can be completed by mail.

Child care businesses, assisted living and long-term care facilities, and all other medical and behavioral health businesses are licensed by the Department of Health Services (DHS). Currently there are 6,450 facilities licensed by DHS. Facilities must renew their licenses each year, with the exception of child care facilities, which renew once every 3 years. The department does not currently verify the lawful presence of the business owner or license holder.

The Structural Pest Control Commission licenses professional pest control companies and does not currently verify the legal presence of its business applicants. The commission currently licenses approximately 1,000 businesses, all of which must renew their licenses annually.

The Department of Insurance licenses insurers in the state. There are currently 1,924 insurers that have to renew their authority annually, but the department does not verify the lawful presence of license applicants. Insurers submit their renewal fees by mail as part of their annual statements each year.

The Department of Financial Institutions regulates state-chartered financial entities. This includes issuing licenses for businesses such as mortgage brokers, motor vehicle dealers, escrow agents, payday loan stores, and other financial institutions. In FY 2006, there were 59 state-chartered entities—charters do not have to be renewed—and 4,218 licensed businesses. Each license must be renewed each year, and most renewals are completed by mail. The department does not verify the lawful presence of applicants.

The Department of Racing issues permits and licenses for businesses such as racetracks and off-track betting businesses. Currently, the department requires applicants for most businesses to provide identification that documents legal status if the applicant claims legal status. If the applicant claims to be a United States citizen and provides a Social Security Number, the department does not verify the lawful presence of the applicant. However, the department does require a fingerprint card, which is obtained from the Department of Public Safety (DPS). DPS requires a valid Social Security Number that must match the individual applying for the fingerprint card. For racetrack owners, the Department of Racing conducts background checks, but does not verify legal residency status. There are currently at least 112 businesses holding licenses or permits from the department.

The Real Estate Department licenses businesses involved in the sale of real estate. There are currently 193 real estate schools licensed by the department and over 8,000 other businesses, which include self-employed brokers, small businesses, and corporations. The department does not currently verify the legal presence of applicants. Most business licenses can be issued and renewed through the mail or on the Internet.

The Arizona Corporation Commission regulates the creation of new corporations and the registration of foreign corporations in the state of Arizona. Since an applicant to do business in the state may be a corporation itself, rather than an individual person, it is not clear whose lawful presence would need to be verified, or if any verification would be necessary at all. The applicability of the bill to the Corporation Commission needs to be determined. The Commission currently requires the name and address of each incorporator, member of the board of directors, and the statutory agent, but does not require any other identifying information from any person involved in the creation or registration of a corporation.

While it is clear that the bill may affect the agencies discussed above, there may be additional agencies affected, and it is unclear which agencies would be required to verify the lawful presence of applicants in certain situations. For example, some businesses may require licenses from multiple state and local agencies. It is unclear whether or not all of the licensing entities would be required to verify the lawful presence of the applicant separately, or if the possession of a license from one entity that verifies lawful presence would be sufficient documentation for all.

Many state licensing agencies have not been included in this analysis, as the licenses that those agencies issue are generally for the purpose of enabling the licensee to perform a service or engage in a certain occupation, and are not specifically for the purpose of operating a business. For example, the Board of Dental Examiners licenses dentists and other dental professionals, but does not issue licenses to operate a dental related business.

Beyond considering which agencies could be affected by the bill, there are also issues related to the verification process. Legislative Council has indicated that, under the bill, licensing agencies would not be required to verify the lawful residence of all current license holders. However, if a license must be renewed, agencies would be required to verify the lawful presence of the licensee prior to issuing a renewal license.

The bill would require agencies to verify an applicant's lawful presence in the United States, but does not define how verification is to be done. Agency effort and the associated cost to verify legal presence will depend on how the statute is ultimately interpreted by the agencies. Currently, many applications for new and renewal licenses, permits, certificates, and registrations are done via mail or the Internet. Requiring an agency to verify the legal presence of applicants may require agencies to change their methods of issuing and renewing licenses.

For example, it is possible that verification may ultimately take the form of requesting an Arizona Driver License Number. A licensing agency could explore with the Arizona Department of Transportation the possibility of confirming the validity of the number with the Arizona Motor Vehicle Division as an online transaction. However, if it were to become necessary to see an acceptable document, such as a birth certificate or passport, prior to issuing a license, agencies that currently issue and renew licenses via the mail or the Internet may have to require applicants to be physically present in offices to obtain licenses. This may require additional personnel and space in order to meet with applicants and verify documentation of their lawful presence in the United States.

Local Government Impact

There may also be a local government impact, although the magnitude of the impact cannot be determined with certainty. Most cities have local TPT, so businesses covered by the TPT in those cities also must obtain a TPT license from the city. Cities do not generally issue general business licenses for all businesses in the city, though many cities issue licenses to regulate certain types of businesses that the state does not regulate. For those types of businesses, the cities may have to verify the lawful presence of the applicants. For example, many cities issue licenses for street vendors. As above, if the cities currently issue licenses via mail or the Internet, there may be significant costs to verifying the lawful presence of applicants.

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