BILL # HB 2745 **TITLE:** employer sanctions

SPONSOR: Pearce **STATUS:** As Amended by House COW

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FISCAL ANALYSIS

Description

The bill addresses several issues related to illegal immigration and immigration enforcement. Among the major policy changes, the bill:

1) Requires any state or local agency issuing a license in the state of Arizona to verify that the applicant is lawfully present in the United States. A list of eligible verification documents is included in the bill.
2) Expands the crime of identification (ID) theft to specifically include trafficking false IDs or using a false ID to obtain or continue employment and knowingly possessing a false ID.
3) Requires cash paying employers to comply with income tax withholding, New Hire Directory filing, unemployment and workers' compensation. Violating employers must pay a civil penalty of 3 times that amount that the employer failed to remit or $5,000 per employee related to the violation, whichever is greater. Collected monies are equally distributed to the Department of Education and the Department of Health Services from the General Fund.
4) Establishes the Voluntary Enhanced Employer Compliance Program, which allows employers to voluntarily comply with certain verification requirements in cooperation with the Attorney General's office.
5) Does not allow an employer to take a business expense deduction for compensation paid to an employee if that employer does not comply with E-Verify statutes beginning August 1, 2008.

Estimated Impact

The fiscal impact of this bill cannot be determined with certainty. The primary direct impact will be the additional workload associated with verifying the legal presence of license holders, but a number of other provisions could potentially have a fiscal impact.

<u>Direct Impacts</u>

Licensing

The licensing portion of this bill would cause additional workload for state agencies, boards and commissions, and city and county entities due to employee verification requirements for issuing licenses; however, the magnitude cannot be determined in advance. 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, the Department of Real Estate, the Corporation Commission, the Attorney General, and the Registrar of Contractors. None of these agencies have yet provided cost estimates. A number of other agencies, especially the "90-10" regulatory boards, could also be affected by the bill.

ID Theft

HB 2745 may result in an undetermined increase in jail and prison populations due to a potential increase in ID theft crime convictions for both traffickers and possessors of false IDs in order to obtain or maintain employment.

Cash Employer Fines

The number of potential cash paying employers that would be found in violation of laws prescribed by HB 2745 cannot be determined in advance. Any penalties collected as a result of their successful adjudication would be equally appropriated to the Department of Education (ADE) and the Department of Health Services (DHS), therefore resulting in an unknown amount of additional revenue to the state.

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Compliance Program
The Attorney General (AG) does not anticipate any additional technology costs to result from maintaining a database of voluntary program participants under the Voluntary Enhanced Employer Compliance Program. According to the AG, however, this bill would increase caseloads and the need for additional attorneys, investigators, and support staff, but no cost estimate information could be provided at this time.

<u>Broader Impacts</u>
The bill could have broader consequences on both state revenues and expenditures. To the extent that increased verification procedures reduce employment opportunities, the level of illegal immigration would likely decline. Lower levels of immigration would reduce participation in state-funded programs, which would then affect spending.

Reduced immigration levels would also impact state revenues. The growth in general tax collections would decline with a reduced immigrant population. This reduction may be offset somewhat if wages increase to remaining residents in an attempt to offset the overall decline in the labor supply.

The magnitude of these broader revenue and spending impacts will depend on the effects of the bill on the level of immigration, which cannot be determined in advance.

Analysis

Current Law
As of January 1, 2008, employers operating under an Arizona business license must be in compliance with the Legal Arizona Workers Act. All employers in Arizona are required to use the federal government's E-Verify system (previously known as the Basic Pilot Program) to check the legal status of employees.

License Verification
HB 2745 amends Title 23 and 41 to require state agencies, boards and commissions and county and city entities to verify legal eligibility of all license applicants.

<u>Title 23</u>
Title 23 defines an agency as "any agency, department, board or commission of this state or a county, city or town that issues a license for purposes of operating a business in this state." HB 2745 is amended to require Title 23 agencies to use the E-Verify system to check the lawful presence of employees prior to issuing a license. This title, in particular, would apply to the Department of Revenue Transaction Privilege Tax (TPT) licenses and various state agencies that issue licenses to operate a business. There is no charge to use the E-Verify system; however, agencies may incur additional staffing costs to complete this verification process.

At least 9 state agencies fall under the agency definition criteria under Title 23 and may be affected by the bill's E-Verify provisions and most will also be required to verify via documentation under Title 41, with the exception of the Department of Revenue's Transaction Privilege Tax (TPT). Title 41 will be subsequently discussed.

The Department of Revenue (DOR) issues TPT licenses to businesses and reports 231,000 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 7,648 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.

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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 1,300 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 or electronically 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. As of March 2008, there were 60 state-chartered entities—charters do not have to be renewed—and 4,239 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 99 businesses holding licenses or permits from the department.

The Real Estate Department licenses businesses involved in the sale of real estate. A maximum of 3 licenses can be issued to one individual and a business license can consist of multiple individuals. Most business licenses can be issued and renewed through the mail or on the Internet and the applications and renewals will need to be altered to reflect the verification components that would be required by this bill.

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.

Title 41

Title 41 defines an agency as "any board, commission, department, officer or other administrative unit of this state…" and includes requirements for professional licenses issued by boards and commissions, as well as other agencies. HB 2745 amends Title 41 to require these agencies to present specific documents, such as a passport, birth certificate or drivers license issued after 1996, to prove lawful presence before obtaining a license.

Over 40 state boards and commissions will be required to verify applicant eligibility for licenses, permits or other permissions of law via documentation listed in HB 2745. This would include entities such as the Board of Dental Examiners that licenses dentists and other dental professionals, and the Registrar of Contractors (ROC) that licenses contractors to provide construction services. Some agencies, such as the ROC, issue licenses to over 50,000 contractors or professionals in Arizona. As a result, various agencies will incur a greater workload and potential additional cost as a result of these verification requirements. Currently, some applications for new and renewal licenses, permits, certificates, and registrations are also done via mail or electronically. The bill may require agencies to change their methods of issuing and renewing licenses, which may also present an additional fiscal impact to those entities. The estimated costs to boards and commissions are unknown.

According to Legislative Council, there are different methods of compliance for different types of licenses. If a license falls under the definition and stipulations of Title 23, the agency will need to complete the E-Verify process. If the license and agency apply to the Title 41 definitions, the documents necessitated by HB 2745 in Title 41 will need to be presented in order to obtain the license. If both Title 23 and 41 apply, both processes must be completed to comply with the bill.

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

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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.

Identity Theft
This bill adds language that would expand the crime of ID theft to include individuals who knowingly possess or use the identity of another person to obtain or maintain employment. This also includes traffickers of those ID's. It is unclear how many new individuals would be sentenced under this bill. If additional offenders are successfully adjudicated and sentenced as a result of these provisions, there would be an additional Department of Corrections cost to house these offenders.

Cash Paying Employers
This bill would require an employer with 2 or more cash paid employees to comply with income tax withholding, unemployment, workers' compensation and New Hire Directory filing. New Hire Directory filing requires the employer to submit the employer name, address, and tax identification number and the new hire's name, address, and Social Security Number within 20 days of hire to the Department of Economic Security (DES). Since all employees working in this state are currently required to pay income tax on earnings and meet the other filing requirements, this does not change current employer practice.

The Attorney General is permitted to bring Superior Court actions against any violator of this provision. This could result in additional costs for investigations and prosecutions, the magnitude of which cannot be predicted. For any successful adjudication, the violating employer would be required to pay a civil penalty. The penalty is 3 times the amount that the employer failed to report under these employment laws or $5,000 for each employee considered in the violation, whichever penalty is greater.

The minimum impact of this legislation would be an employer cost of $5,000 per employee that is deemed by the court as not in compliance with these requirements. For each employee, a minimum of $2,500 each would be distributed to DHS and ADE for social programs. The full magnitude of new state revenue generated cannot be determined in advance.

Voluntary Enhanced Employer Compliance Program
HB 2745 establishes a Voluntary Enhanced Employer Compliance Program that allows employers to meet certain eligibility requirements and, if in full program compliance, would exempt those employers from employer sanctions. Requirements include signing a sworn affidavit that is filed with the AG, utilizing a Social Security Verification Service for all employees, and providing any employee information requested by the AG. The AG is required to maintain a list of program participants on its website.

To date, the Attorney General has indicated that there will be no additional cost associated with maintaining or creating this program related website, however, there will be additional unknown staff costs as a result of the AG verifying program participants' compliance with the program requirements.

Tax Deductions
This bill would prohibit an employer from taking a business expense deduction for compensation paid to an employee if that employer does not comply with E-Verify statutes beginning August 1, 2008. The level of employer compliance with this new tax provision cannot be determined. As a result, the state cost of implementing this provision is unknown.

Local Government Impact

There may also be a local government impact, although the magnitude of the impact cannot be determined with certainty.

The bill could increase costs for City Attorney's Offices and County Attorney's Offices to investigate and enforce employer compliance with the provisions of the bill; however, each government entity would receive a certain portion of the fines for cases initiated by their respective attorney's offices. The bill would also increase costs for local government agencies that issue a license.

Because the bill could impact local agencies that administer benefits, any potential costs and savings identified above also apply to local governments. Similarly, any of the economic costs and benefits described above would have effects both at the state and local levels.