

**DEPARTMENT OF TAXATION
2008 Fiscal Impact Statement**

1. Patron Stephen H. Martin

3. Committee Senate Finance

4. Title Business, Professional, and Occupational
License Tax; Certification for Licenses

2. Bill Number SB 385

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would allow the governing body of a locality to require that all applicants seeking a local business license certify that the applicant does not hire persons who cannot provide legal documents indicating that they are legally eligible to be employed in the United States. The Business, Professional and Occupational License ("BPOL") tax is a local tax on businesses for the privilege of engaging in business within the locality.

The effective date of this bill is not specified.

6. Fiscal Impact Estimates are: Not available. (See Line 8.)

7. Budget amendment necessary: No.

8. Fiscal implications:

This bill would have no impact on state revenues. If a locality enacted an ordinance authorized by this bill, each business license applicant would be required to certify that the applicant does not hire persons who cannot provide legal documents indicating that they are legally eligible to be employed in the United States. To the extent that a locality may have fewer applicants because of the requirement, there may be some decrease in local revenues. Under current law, a person who engages in business without obtaining a license or after having been refused a license is still required to pay the BPOL tax.

9. Specific agency or political subdivisions affected:

All localities imposing the Business, Professional and Occupational License ("BPOL") tax.

10. Technical amendment necessary: No.

11. Other comments:

BPOL Tax

The Business, Professional and Occupational License (BPOL) tax is a tax on businesses for the privilege of engaging in business at a definite place of business within a Virginia locality. The measure or basis of the BPOL tax generally is the gross receipts of the business. The BPOL tax is a tax on gross receipts, not net income. Under current BPOL law, any locality may charge a license fee in an amount not to exceed:

- \$100 for any locality with a population greater than 50,000
- \$50 for any locality with a population of 25,000 but no more than 50,000
- \$30 for any locality with a population smaller than 25,000

The locality may not assess a license tax on gross receipts upon which it charges a license fee. Additionally, the locality may not impose a license tax on a business with gross receipts:

- less than \$100,000 in any locality with a population greater than 50,000
- less than \$50,000 in any locality with a population of 25,000 but no more than 50,000.

Any business with gross receipts in excess of these thresholds may be subject to license tax at a rate not to exceed the rates set forth below:

- Contracting - sixteen cents per \$100 of gross receipts
- Retail sales - twenty cents per \$100 of gross receipts
- Financial, real estate and professional services - fifty-eight cents per \$100 of gross receipts
- Repair, personal and business services, and all other businesses - thirty-six cents per \$100 of gross receipts.

Localities that imposed a higher rate structure on January 1, 1978 are allowed to continue to impose the tax at those rates.

The 1996 General Assembly Session enacted House Bill 293 (Chapter 720, 1996 Regular Session) and Senate Bill 587 (Chapter 715, 1996 Regular Session) in an effort to reform and standardize the administration of the BPOL tax throughout the Commonwealth. This legislation requires every locality that imposes a BPOL tax or fee to adopt uniform ordinance provisions, including a March 1 license application due date.

Unauthorized Workers

The Immigration Reform and Control Act ("IRCA") of 1986 criminalized the act of knowingly hiring unauthorized aliens and established penalties for those employing unauthorized aliens. Any alien who has not been lawfully admitted for permanent residence, or authorized to be employed by provisions in the IRCA is considered an

unauthorized alien. Aliens who have been lawfully admitted into the United States and then violated the terms of their admission are also considered unauthorized. Under federal law, it is a crime for unauthorized aliens to work in the United States.

It is a felony for any person or entity to knowingly hire an unauthorized alien or to hire an individual without (i) attesting that the person or entity has examined certain legal documents verifying that the individual is not an unauthorized alien, (ii) requiring the individual to attest that he is not an unauthorized alien, and (iii) keeping such records for 3 years after the individual is hired or 1 year after the individual's employment is terminated, whichever is later.

In order to show that an individual is not unauthorized to work in the United States, the individual can provide to a prospective employer:

- A United States passport; or a resident alien card, alien registration card, or other document designated by the Attorney General, if that document-
 - Contains a photograph of the individual and such other personal identifying information
 - Is evidence of authorization of employment in the United States, and
 - Contains security features to make it resistant to tampering, counterfeiting, and fraudulent use.

An individual can also provide either:

- A social security account number card or other documentation evidencing authorization of employment in the United States which the Attorney General finds by regulations to be acceptable, and
- A driver's license or similar document issued by a state if it contains a photograph of the individual and such other personal identifying information, or other documentation evidencing authorization of employment in the United States which the Attorney General finds by regulations to be acceptable.

If an administrative law judge determines that a person or entity has violated the IRCA, he may issue a cease and desist order and order the person or entity to pay a civil penalty in an amount between \$250 and \$2,000 for each unauthorized alien employed for a first violation, and between \$2,000 and \$10,000 for each unauthorized alien for subsequent violations. Any person or entity that engages in a pattern or practice of violations could be subject to a criminal penalty of not more than \$3,000 and 6 months imprisonment.

The provisions of the IRCA relating to the unlawful employment of aliens preempts any state or local law imposing civil or criminal sanctions, other than through licensing and similar laws, upon those who employ unauthorized aliens.

Proposal

This bill would allow the governing body of a locality to require that all applicants seeking a local business license certify that the applicant does not hire persons who cannot provide legal documents indicating that they are legally eligible to be employed in the United States.

Similar Legislation

House Bill 227 would require all applicants for Class A, B, or C contractor licenses to submit a statement that the applicant will not knowingly employ an undocumented worker and will verify the employment status of all employees.

House Bill 406 would require that every contractor who is required to have a valid state contractor's license provide proof of the license when applying for, or renewing, a local business license.

cc : Secretary of Finance

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