

**DEPARTMENT OF TAXATION
2007 Fiscal Impact Statement**

1. Patron Kathy J. Byron

2. Bill Number HB 3130

3. Committee House Finance

House of Origin:

 X **Introduced**

 Substitute

 Engrossed

4. Title Business, Professional, and Occupational
License Tax; Refusal and Revocation of
Licenses

Second House:

 In Committee

 Substitute

 Enrolled

5. Summary/Purpose:

This bill would allow localities to deny the application for a Business, Professional, and Occupational ("BPOL") License or revoke the existing license of any person who is an alien and who cannot provide legal documents indicating that the person is legally eligible to be employed in the United States or who had as an employee a person who is an alien and who cannot provide legal documents indicating that the person is legally eligible to be employed in the United States. This bill would also provide that any person whose business license is revoked is still required to pay the BPOL tax.

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 passed an ordinance authorized by this bill, commissioners of revenue would be required to review each business license applicant's documentation of citizenship and eligibility to be employed in the United States and to enforce this ordinance as to the employees of businesses with a business license, thus increasing the cost to those localities of administering the BPOL tax.

9. Specific agency or political subdivisions affected:

All localities imposing the 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 localities to deny the application for a Business, Professional, and Occupational ("BPOL") License or revoke the existing license of any person who is an alien and who cannot provide legal documents indicating that the person is legally eligible to be employed in the United States or who had as an employee a person who is an alien and who cannot provide legal documents indicating that the person is legally eligible to be employed in the United States.

This bill provides that it would be unlawful for any person who has been refused a business license or whose license has been revoked because of the provisions in this bill to engage in that business. The bill would also provide that any person whose business license is revoked pursuant to the provisions of this bill would still be required to pay the BPOL tax. Currently 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.

Other Legislation

Senate Bill 1118 is identical to this bill.

House Bill 2443 would repeal the local Business, Professional and Occupational License ("BPOL") tax and fee.

House Bill 2675 would authorize localities to require that beginning business applicants must produce evidence that all properly assessed delinquent business license, personal property, meals, transient occupancy, severance, and admissions taxes owed by the business to the county, city, or town have been paid.

House Bill 2559 would authorize the local commissioner of the revenue to accept estimated payments of BPOL tax based on the amount paid by the taxpayer in the immediately preceding taxable year.

House Bill 2806 would require that commissioners of revenue deny any new license and revoke any existing license to any person who is an alien and who cannot provide legal documents indicating that the person is legally eligible to be employed in the United States.

House Bill 2929 would authorize localities to impose a business license fee in an amount not to exceed \$1,000 and to vary the amount of the fee according to the amount of the gross receipts of the business.

House Bill 2930 would require that local business licenses and state licenses would be denied or suspended if the business employs or uses unlawful workers.

Senate Bill 1291 would require that every contractor that is required to have a valid state contractor's license provide proof of the license when applying for and renewing a local business license.

cc : Secretary of Finance

