

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 6588

BILL NUMBER: HB 1274

NOTE PREPARED: Jan 9, 2008

BILL AMENDED:

SUBJECT: Illegal Alien Matters.

FIRST AUTHOR: Rep. Tincher

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: GENERAL
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill prohibits a state agency or political subdivision from providing federal, state, or local public benefits to a person who is not a: (1) United States citizen; or (2) qualified alien under the federal Immigration and Nationality Act and lawfully present in the United States. It requires a state agency or a political subdivision to verify the lawful presence in the United States of each individual who: (1) is at least 18 years of age; and (2) applies for federal, state, or local public benefits administered by the agency or political subdivision.

The bill requires a state agency or a political subdivision to: (1) verify the lawful presence of the person by requiring the person to execute a verified affidavit stating that the person is a United States citizen or a qualified alien; (2) verify the lawful presence of certain individuals through the Systematic Alien Verification of Entitlements (SAVE) program; and (3) report errors and significant delays in the SAVE program. The bill also provides that: (1) a state agency or political subdivision may provide variations of the verification of lawful presence requirements; and (2) a person who makes a false, fictitious, or fraudulent statement of representation in an affidavit verifying lawful presence commits a Class D felony. It also requires: (1) a state agency to provide an annual report with respect to the agency's compliance with the verification requirements; and (2) the Secretary of State to file an annual report concerning the reported errors and significant delays in the SAVE program.

The bill requires a state agency or political subdivision (public employer) to use a status verification system to verify the work eligibility status of all employees hired after June 30, 2008. This bill prohibits: (1) a public employer from entering into a public contract for services with a contractor unless the contractor uses a status verification system; and (2) an employer from discharging from employment a person who is a United States citizen or has lawful employment status and hire or continue to employ an unauthorized alien in a similar job category as that of the discharged person. The bill also allows a: (1) person discharged from employment in

violation of these prohibitions to bring a civil action against the employer; and (2) court to award attorney's fees and court costs to the person. It provides that an employer that is using a status verification system to verify the employment eligibility of employees is immune from liability under these provisions.

The bill prohibits an individual who is not lawfully present in the United States from being eligible for any postsecondary education benefit or to pay the resident tuition rate.

This bill also requires a sheriff to make a reasonable effort to determine the citizenship or immigration status of a person who is: (1) charged with a felony or with operating a vehicle while intoxicated; and (2) confined, for any period, in a county jail.

It requires a tax payor to: (1) deduct and retain from a payment for services an amount equal to the amount of the payment multiplied by the tax rate applicable to the payee if the payee is unable to provide certain identification numbers; and (2) meet other requirements concerning the deduction and retention from the payment of services. The bill requires a taxpayer to add to the taxpayer's adjusted gross income any amount in excess of \$600 that is paid in the taxpayer's taxable year to an unauthorized alien and deducted by the taxpayer to determine the taxpayer's adjusted gross income, taxable income, or life insurance taxable income.

The bill makes it a: (1) Class A misdemeanor to transport or move (and a Class D felony for a subsequent offense); and (2) Class A misdemeanor to conceal, harbor, or shield from detection (and a Class D felony for a subsequent offense); an alien, knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law.

Effective Date: January 1, 2008 (retroactive); July 1, 2008; January 1, 2009.

Explanation of State Expenditures: (I) *Restrictions on Public Benefits and the SAVE Program Requirement:* This bill requires state agencies or political subdivisions to utilize the SAVE program to verify if individuals applying for federal, state, and local public assistance are legally present in the United States. Verification with the SAVE program is only required if the individual applying for public benefits signs an affidavit alleging they are a lawfully present alien. This bill may increase expenditures for state agencies or political subdivisions to the extent that the SAVE program was not utilized before when administering public benefits.

Impact on Public Assistance: This legislation will impact state and local expenditures on public assistance only to the extent that state and local benefits are currently provided to illegal aliens. Federal benefits are defined under the bill as: (a) any grant, contract, loan, professional license, or commercial license appropriated funds of the United States, (b) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by appropriated funds of the United States.

Currently, illegal aliens are not banned from receiving care and services necessary for the treatment of an emergency medical condition; short-term, noncash, in-kind emergency disaster relief; public health assistance for immunizations; and other services designated in federal law. Additionally, federal law specifies that illegal aliens are not eligible for any state or local public benefit programs that receive federal funding in full or in part.

As of 2005 there were an estimated 55,000 to 85,000 unauthorized aliens in Indiana and an estimated 128,000

authorized immigrants that were admitted to the U.S. during FY 2006 that claimed Indiana as their state of destination. There have been an additional 55,000 immigrants in the state of Indiana that have been legalized between the years 1997 to 2006.

Adoption of Rules/Ordinances/Resolutions & Written Reports: The bill allows an agency to adopt rules and a political subdivision to adopt an ordinance or a resolution to carry out the requirements of the bill. Additionally, each agency that administers federal, state, or local public benefits is required to provide an annual report detailing their compliance with the requirements of this bill. This will increase the workload of agencies that administer federal, state, or local public benefits. The funds and resources required could be supplied through a variety of sources, including the following: (1) existing staff and resources not currently being used to capacity; (2) existing staff and resources currently being used in another program; (3) authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) funds that, otherwise, would be reverted; or (5) new appropriations. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

(II) Restriction on Education Benefits and Resident Tuition: The bill defines that an unlawfully present individual is considered ineligible for education benefits and resident tuition status. The provisions of this bill could decrease state expenditures on higher education benefits to the extent these benefits were administered to unlawfully present aliens and they are not diverted to other qualifying individuals. The state currently provides an adjustment for state institutions with a history of growth. The adjustment is based on a four-year rolling average. The adjustment for enrollment change was \$1,750 per student in FY 2008 and \$3,500 for FY 2009. This enrollment change calculation does not apply to the following institutions: Indiana University at Bloomington, Purdue University at West Lafayette, Indiana State University, or Ball State University. The reduction in expenditures is expected to be minor.

(III) Employment of Unauthorized Aliens: This legislation affects state employees and state employers as well as state contracting agencies by requiring state agencies to verify the work eligibility status of all employees hired. The bill also limits public contracting by requiring that a contractor utilize a status verification system as a condition of receiving a contract award.

Requiring state employers and contracted employers to utilize verification systems may increase state expenditures or cost estimates contained in request for proposals submitted by contracted employers to reflect the cost of utilizing a status verification system. Actual increases in state expenditures are indeterminable. Increases in state expenditures for state employee verification will depend on (1) current state agency policies regarding status verification and (2) the particular method of verification selected by state agencies that have not used verification in the past. [See *Background Information*, below.]

Increases in cost estimates contained in request for proposals will depend on (1) the type of system selected by the contractor, (2) a contractor's marginal or fixed costs incurred as a result of the implementation of a verification system, (3) how many contractors include verification costs in prior cost estimates, and (4) if the costs associated with the use of the system would be passed on to the contract-issuing authority.

Penalty Provision: Under the bill, a person who makes a false, fictitious, or fraudulent statement of representation in an affidavit executed to verify their legal presence in the United States commits a Class D felony. A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$19,185 in FY 2007. (This does not include the cost of new construction.)

If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$63,138. The average length of stay in Department of Correction (DOC) facilities for all Class D felony offenders is approximately ten months.

Background Information: Indiana Code currently specifies that illegal immigrants are not eligible for Temporary Assistance for Needy Families (TANF), Medicaid, and Unemployment Insurance. This bill would encompass the remaining state and local benefits that do not receive any federal funding. The bill could potentially reduce the number of persons in the state who are eligible for state or local benefits. This could result in savings for the state or allow the state to redirect the funds to other persons needing services within a program for which services were not provided under the bill. Actual savings for the state would depend on the number of persons no longer eligible for services and the type and cost of services that they would otherwise receive. [Note: Some of these programs may be reimbursable by the federal government. Should the state not reallocate the funds to other persons within a program for services, the state could potentially reduce its overall federal funding.]

Currently, the Division of Family Resources (DFR) requires a declaration of citizenship/immigration status during the application process for public benefits. Any inability or unwillingness to complete the application results in the individual being considered an undocumented immigrant for public benefits. DFR does not report these individuals to U.S. Citizenship and Immigration Services (USCIS) unless USCIS has established that the immigrant is unlawfully in the United States. SAVE verification is currently used by DFR, but is not required in the benefit application process. Refusal to sign the declaration of lawful presence will result in ineligibility for public benefits.

Fees are charged to entities that request verification with the SAVE program. A minimum monthly service fee of \$25 is automatically billed to user agencies whose request volume does not equal or exceed \$25 that month. This amount will equal a minimum expense of \$300 a year for SAVE verification for each user agency.

Regarding work eligibility status verification systems, the specific programs mentioned in the legislation are (1) the employment verification pilot program administered by the U.S. Department of Homeland Security (DHS) and U.S. Social Security Administration (SSA) or its successor program, (2) any other federal program designated by DHS or any other federal agency authorized to verify the work eligibility status of employees, (3) the Social Security Number Verification Service provided by SSA, and (4) an independent, third party system with equal or a higher degree of reliability as the other programs mentioned.

The E-Verify program is currently free for use provided an account is registered online and the responsibilities outlined in the user agreement are accepted.

The Social Security Number Verification Service provided by SSA is intended to connect the names and Social Security numbers to information contained in the employee's W-2 earnings form ensuring verification of identifying information and successful processing of annual wage report submission.

Explanation of State Revenues: (I) *Tax Revenue:* This bill does not allow any taxpayer to deduct from their adjusted gross income any wages paid to unauthorized aliens that exceed \$600 in a taxable year. Employers are exempt from liability if an employee presents them with identification issued by the Bureau of Motor Vehicles. Additionally, it makes employers liable for wage withholdings of employees that fail to provide

correct taxpayer identifying information and requires employers to withhold estimated taxes from wages paid to these employees that are considered money of the state. If individuals that are required to withhold taxes paid on wages under the legislation fail to pay additional taxes required by state tax law, fees are assessed against the employer.

The provisions of this bill will increase revenue to the General Fund to the extent that employers (1) previously employed unauthorized aliens, (2) dispersed more than \$600 in wages per unauthorized alien employed, (3) did not previously withhold taxes on wages for individuals that did not submit complete taxpayer identifying information, and (4) claimed these wages as a deduction to their adjusted gross income on tax filings.

(II) Restriction on Education Benefits and Resident Tuition: Universities could experience an increase in tuition fee revenue by requiring unlawfully present aliens to pay nonresident tuition. This revenue will increase to the extent that unlawfully present aliens (1) attend post-secondary institutions, (2) previously paid resident tuition rates instead of nonresident rates, and (3) crowd out resident tuition-paying students at Indiana post-secondary institutions. The difference in resident and nonresident tuition ranges from \$6,000 to \$11,000 depending on the state institution. Increases in tuition paid to post-secondary institutions is expected to be minor.

(III) Employment of Unauthorized Aliens: Court Fee Revenue: Additional civil actions can occur to the extent that employees that were terminated and replaced by illegal aliens seek redress in court.

(IV) Offenses Related to Illegal Aliens: The bill also creates two new types of penalties for aiding illegal aliens. An individual who transports or moves an illegal alien commits “transporting an illegal alien”, a Class A misdemeanor for the first offense and a Class D felony for a second. Additionally, a person who helps conceal, harbor, or shield from detection an illegal alien commits “harboring an illegal alien”, a Class A misdemeanor for the first offense and a Class D felony for a second. This provision does not pertain to providing a state or local benefit or providing regulated public health care from a private charity using private funds. This provision will increase revenue to the General Fund to the extent that individuals are convicted of harboring or transporting illegal aliens in the state of Indiana.

Penalty Provision: Court Fee Revenue: If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. If additional criminal cases are filed as a result of this legislation, revenue to the state General Fund will increase. If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund.

In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$17), public defense administration fee (\$3), court administration fee (\$3), the judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case. The maximum civil judgment for a Class D infraction is \$25. Any increase in revenue from this provision is likely to be small.

If additional criminal court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. Individuals that transport, move, conceal, harbor, or shield from

detection an illegal alien with a prior, unrelated conviction commits a Class D felony. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

Explanation of Local Expenditures: *(I) Public Benefits for Unauthorized Aliens:* This bill will increase the expenditures of local governments and local government agencies that would be required to utilize the SAVE program to verify legal presence of benefit applicants that identify as legal nonresidents. Expenditures will increase to the extent that the SAVE program was not utilized before to verify legal resident status. The ability of local political subdivisions to utilize the SAVE program as well as the funding status of each political subdivision that provides public benefits is indeterminable.

Local political subdivisions will also be required to create reports detailing their adherence to the provisions of the legislation. This can impact the workload and resources of these local agencies to the extent these tasks were not performed before.

(II) Employment of Unauthorized Aliens: The legislation provides that employers may not terminate the employment of U.S. citizens or individuals that are legally authorized to work in the United States and hire or continue to employ an unauthorized alien. Individuals that are terminated and replaced by unauthorized aliens are able to bring civil actions against a violating employer. This legislation may increase court caseload by increasing the number of civil proceedings requested in the state. Increases in caseload are expected to be small.

(III) Offenses Related to Illegal Aliens: This legislation requires county sheriffs to make a reasonable effort to determine or verify the citizenship status and lawful presence of a person that is charged with a felony or with operating a vehicle while intoxicated and is confined in a county jail. If the sheriff is unable to perform this task, the sheriff is required to notify the U.S. Department of Homeland Security of this occurrence. This will increase the workload of a county sheriff's department.

Penalty Provision: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. However, any additional expenditures would likely be small. The average daily cost to incarcerate a prisoner in a county jail is approximately \$44.

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil and criminal court actions occur as a result of the legislation, local governments would receive revenue from court fees and the following sources. The county general fund would receive 27% of the \$100 civil costs fee and \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

State Agencies Affected: All.

Local Agencies Affected: Trial courts, city and town courts, local law enforcement agencies; Local political subdivisions that administer public benefits.

Information Sources: Indiana Sheriffs' Association; DOC; U.S. Department of Homeland Security; U.S. Social Security Administration; PEW Hispanic Center; U.S. Citizenship and Immigration Services; U.S. Census Bureau; Jim Dunn, FSSA; Elizabeth Barrett, Indiana Department of Administration.

Fiscal Analyst: Bill Brumbach, 232-9559.