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# **Judiciary Committee**

**Thursday, January 27, 2011**

**8:00 AM**

**404 HOB**

**Meeting Packet**

**Dean Cannon  
Speaker**

**William Snyder  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Judiciary Committee

**Start Date and Time:** Thursday, January 27, 2011 08:00 am

**End Date and Time:** Thursday, January 27, 2011 10:00 am

**Location:** 404 HOB

**Duration:** 2.00 hrs

Workshop on Immigration Issues

**NOTICE FINALIZED on 01/20/2011 16:15 by Jones.Missy**

**Immigration Issues**

**Judiciary Committee**

**January 27, 2011**

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**Immigration Issues**

◎ **Two General Components:**

- **Employment Verification**
- **Law Enforcement**

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**Employment Verification**

◎ **Current Law:**

- **Immigration and Nationality Act**
- **The Immigration Reform and Control Act of 1986**
- **The Illegal Immigration Reform and Immigrant Responsibility Act of 1996**
- **Section 448.09, F.S.**

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**Employment Verification**

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**Employment Verification**

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**Employment Verification**

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© **Illegal Immigration Reform and Immigrant Responsibility Act of 1996**

- **Created the Basic Pilot program in 5 states**
- **Congress expanded the program in 2003**
- **Precursor to E-Verify Program (2007)**

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### Employment Verification

◎ Current Law:

- Immigration and Nationality Act
- The Immigration Reform and Control Act of 1986
- The Illegal Immigration Reform and Immigrant Responsibility Act of 1996
- Section 448.09, F.S.

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### Section 448.09, F.S.

Section 448.09 Unauthorized aliens; employment prohibited.—

(1) It shall be unlawful for any person knowingly to employ, hire, recruit, or refer, either for herself or himself or on behalf of another, for private or public employment within the state, an alien who is not duly authorized to work by the immigration laws or the Attorney General of the United States.

(2) The first violation of subsection (1) shall be a noncriminal violation as defined in s. 775.08(3) and, upon conviction, shall be punishable as provided in s. 775.082(5) by a civil fine of not more than \$500, regardless of the number of aliens with respect to whom the violation occurred.

(3) Any person who has been previously convicted for a violation of subsection (1) and who thereafter violates subsection (1), shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Any such subsequent violation of this section shall constitute a separate offense with respect to each unauthorized alien.

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### Arizona's Approach

2007 Law Legal Arizona Workers Act

- Prohibits employers from knowingly hiring an unauthorized alien
- Requires all Arizona employers to participate in the federal E-Verify program
- Rebuttable presumption

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### Arizona's Approach

#### Safe Harbor Provision:

For the purposes of this section, proof of verifying the employment authorization of an employee through the Basic Pilot Program creates a rebuttable presumption that an employer did not intentionally employ an unauthorized alien or knowingly employ an unauthorized alien.

For the purposes of this section, an employer who establishes that it has complied in good faith with the requirements of 8 U.S. Code § 1324b establishes an affirmative defense that the employer did not intentionally or knowingly employ an unauthorized alien.

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### Arizona's Approach

- Chamber of Commerce v. Whiting
  - Withstood legal challenges in Federal District Court and 9<sup>th</sup> Circuit Court of Appeals
  - Oral Arguments Dec. 8, 2010 at U.S. Supreme Court

#### 8 U.S.C. § 1324a(h) Miscellaneous provisions

(2) Preemption -- The provisions of this section preempt any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens.

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### Employment Verification



- U.S. Department of Homeland Security
- Social Security Administration

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**Employment Verification**

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**E-Verify**

- How does it work ?
  - I-9 Form Data Compared Against:
    - 455 Million Records with SSA
    - 80 Million Records with DHS

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**Employment Verification**

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**E-Verify**

- Who is Using E-Verify ?
- Florida ?

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**Employment Verification**

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**E-Verify**

Gov. Scott, Ex. Order 11-02:

**"I hereby direct all agencies under the direction of the Governor to verify the employment eligibility of all current and prospective agency employees through the U.S. Department of Homeland Security's E-Verify system."**

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**Employment Verification**

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**E-Verify**

- How effective is it ?
  - 2009 Westat Report
  - December 2010 GAO Report

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**Westat 2009 Report**

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**2.1. General Findings –**  
 The model-based estimate of the total inaccuracy rate was 4.1 percent ... in April through June 2008. Among the 1.73 million initial findings ... , there were an estimated 12,500 workers who received TNCs who should have been found work authorized and approximately 58,000 workers without employment authorization who were found to be work authorized. Thus, the estimated total number of inaccurate responses is approximately 70,500 out of the 1.73 million cases submitted to E-Verify (4.1 percent).

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**Westat 2009 Report**

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**1,000 person population:**

- 62 unauthorized for employment
  - Of which 29 are correctly excluded by E-Verify
  - Leaving 33 unauthorized, but not caught by E-Verify

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**2010 GAO Report**

- 97.4 % of employees automatically confirmed as authorized to work
- 2.6 % receive initial system mismatches
  - 0.3 % of the 2.6 %
  - 2.3 % are not found work authorized

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**Employment Verification**



- Policy Options for Florida

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**Arizona's Approach**

- SB 1070 Enacted Into Law April 2010

**Law Enforcement Approach to Illegal Immigration**

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### Arizona's Approach

Section 2(B) of S.B. 1070 provides:

For any lawful stop, detention or arrest made by [an Arizona] law enforcement official or . . . law enforcement agency . . . in the enforcement of any other law or ordinance of a county, city or town of this state where reasonable suspicion exists that the person is an alien and is unlawfully present in the United States, a reasonable attempt shall be made, when practicable, to determine the immigration status of the person, except if the determination may hinder or obstruct an investigation. Any person who is arrested shall have the person's immigration status determined before the person is released.

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### Arizona's Approach

Presumption one is here legally if:

- (1) a valid Arizona driver license;
- (2) a valid Arizona nonoperating identification license;
- (3) a valid tribal enrollment card or other form of tribal identification; or
- (4) a valid United States federal, state, or local form of identification, provided that the issuing entity requires proof of citizenship before issuance.

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### Arizona's Approach

New State Criminal Law Offense Based on Current Federal Law :

Section 3 of S.B. 1070 provides:

"a person is guilty of willful failure to complete or carry an alien registration document if the person is in violation of [8 U.S.C. §§] 1304(e) or 1306(a)"

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**Federal Law**

8 U.S.C. § 1304 Forms for registration and fingerprinting

...  
(e) Personal possession of registration or receipt card; penalties Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed \$100 or be imprisoned not more than thirty days, or both.

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**Federal Law**

8 U.S.C. § 1306. Penalties

(a) Willful failure to register – Any alien required to apply for registration and to be fingerprinted in the United States who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed \$1,000 or be imprisoned not more than six months, or both.

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**Arizona's Approach**

Concerns regarding SB 1070:

- Racial Profiling Concerns
- Law Enforcement Resources

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**Legal Challenge to SB 1070**

Federal District Court temporarily enjoined:

Section 2 of S.B. 1070:

requiring that an officer make a reasonable attempt to determine the immigration status of a person stopped, detained or arrested if there is a reasonable suspicion that the person is unlawfully present in the United States, and requiring verification of the immigration status of Any person arrested prior to releasing that person

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**Legal Challenge to SB 1070**

Federal District Court temporarily enjoined:

Section 3 of S.B. 1070:

creating a crime for the failure to apply for or carry alien registration papers

Section 5 of S.B. 1070:

creating a crime for an unauthorized alien to solicit, apply for, or perform work

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**Legal Challenge to SB 1070**

• Case argued at the 9<sup>th</sup> Circuit Court of Appeals on November 1, 2010

• Primary issue on appeal: Supremacy Clause of the U.S. Constitution — does federal immigration law pre-empt Arizona from passing and enforcing the immigrations laws set forth in SB 1070?

• Arguments for and against federal preemption

• Expected to be at the U.S. Supreme Court in 2011-12 term

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**Possible Florida Approach**

● Immigration Enforcement Through Law Enforcement Methods

- Give LEOs option to check immigration status of a subject of a criminal investigation upon reasonable suspicion he/she is here illegally
  - Shall vs. May
- Require one's immigration status be checked upon arrest
- Criteria for bail determination
- Sentence enhancement - Illegal Alien Multiplier

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**Immigration Issues**

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