

Business

<i>House Bills</i>
HB 06S-1001 Incentives for Economic Development Incentives
HB 06S-1009 Deny Business Permits to Illegal Aliens
HB 06S-1015 Withhold State Taxes for Services
HB 06S-1016 Withhold State Taxes for Services
HB 06S-1017 Employer Fines for Fraudulent Documents
HB 06S-1018 Verification of Employee Identification
HB 06S-1020 Unauthorized Alien Labor Tax Deduction
HB 06S-1021 Withhold Income If No Tax ID Number

During the 2006 Special Session, three bills, **HB 06S-1015**, **HB 06S-1016**, and **HB 06S-1021**, were introduced concerning the verification of taxpayer identification numbers (TIN) by employers. The sponsors of the bills ultimately consolidated the three bills into one, **HB 06S-1015**.

For income tax years beginning January 1, 2008, **HB 06S-1015** requires a business that pays a contractor for services to deduct and withhold state income tax if the contractor or contractor's employee fails to provide a correct taxpayer identification number (TIN) or uses a TIN issued by the Internal Revenue Service (IRS) for nonresident aliens. Individuals who are not U.S. citizens and who are not eligible to obtain a social security number may apply for an individual taxpayer identification number. For tax purposes, a TIN is available to both resident and non-resident aliens; it does not however, indicate a person's lawful presence in the United States.

The withholding requirement for state income tax purposes will become effective for

the 2008 income tax year if the state establishes a work eligibility verification database that will allow a business to verify the validity of a TIN. The bill requires the Governor's Office of Innovation and Technology to issue a report with an implementation plan that establishes the database. The plan includes the cost of having a database in place by January 1, 2008, and includes information about programs that are already available to allow an employer to verify a TIN.

HB 06S-1009 requires the Department of Regulatory Agencies (DORA) and local governments to issue and renew licenses, permits, registrations, and other authorizations to conduct business in the state only to individuals who are lawfully present in the United States. It further requires these entities to revoke an individual's authorization to conduct business if it is found that the person is not lawfully present in the United States. The bill specifies that these requirements must be enforced without regard to race, religion, gender, ethnicity, or national origin.

The bill requires individuals applying for an authorization to conduct business to prove their identity with a "secure and verifiable document." A secure and verifiable document is defined in state law as a document issued by a state or federal jurisdiction, or recognized by the United States government, and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies.

HB 06S-1017 requires Colorado employers to attest that:

- the legal status of employees has been checked;
- copies of documents required by the I-9 employment eligibility verification form are being retained;

- no employee identification documents have been altered or falsified; and
- the employer has not knowingly hired an unauthorized alien.

The Division of Labor, Department of Labor and Employment, is authorized to conduct random audits on employers to verify compliance. Additionally, documentation may be requested upon receipt of a credible complaint. Fines are established for failure to submit information or for submission of false information.

Another bill, **HB 06S-1020**, referred a question to the voters at the November 2006 election. The referendum, which was passed by the voters, eliminates the ability of businesses to claim wages for unauthorized aliens as an expense for state income tax purposes. An unauthorized alien is one that violates federal law regarding employment eligibility. The employer must pay an individual at least \$600 a year in order to be governed under the measure. An employer must be found to have known or reasonably should have known that the employee was an unauthorized alien.

The provisions of the referendum do not apply to any of the following:

- any business exempt from complying with federal employment verification procedures;
- employees hired prior to January 1, 2008;
- any workers not paid directly by the employer; or
- wages paid to an employee that presents a valid driver license or identification card issued by the Colorado Department of Revenue.

A bill that did not pass during the Special Session was **HB 06S-1018**. Under the bill, a job applicant would have been required to provide a valid driver's license or identification card to his or her prospective employer. The identification card would have had to include the applicant's photograph, name, date of birth, gender, height, eye color, and address. The employer was to retain documentation to demonstrate compliance following a complaint to the Colorado Department of Labor and Employment. The Division of Labor would have had to fine any employer who could not produce the documentation upon the division's request.

HB 06S-1001 requires employers to provide proof to the Colorado Economic Development Commission that all of its employees are U.S. citizens, or are lawfully present in the state and authorized to work, in order to be eligible for economic development incentives. If the commission determines that an employer who received an incentive is not in compliance with federal immigration employment law, the employer has to repay the incentive within 30 days and is ineligible to receive incentives for 5 years.