

Good morning. My name is Sam Denisco. I am Director of Government Affairs for the PA Chamber of Business and Industry. The Pennsylvania Chamber of Business and Industry is the state's largest broad-based business advocacy association, serving more than 24,000 members and customers. PA Chamber membership comprises nearly 50 percent of the private workforce. PA Chamber membership ranges from Fortune 100 companies to sole proprietors, and crosses all industry sectors.

Thank you for giving the Chamber the opportunity to testify today on the issue of employee verification in the construction industry and public works projects. I would like to commend Representative Galloway for his diligent work in crafting these initiatives in order to address the growing problem of illegal immigration in Commonwealth and the nation. Since the mandates proposed in the bills that are before you today work in conjunction with a federal government program and in light of recent actions taken by the Obama Administration, significant investigation on this particular prong of immigration reform and how employers currently use the system must be discussed in great detail before any state initiative moves forward.

At the Federal level, the Chamber supports legislative initiatives to develop and implement an electronic employment verification system that is effective, efficient, and manageable that finds the right balance between deterring illegal immigration, avoiding unnecessary economic disruption, and preventing employment discrimination.

As you may know, the Congress has created a detailed system of employment verification and has, by statute, approved a variety of verification options from which every employer in the country may choose. Congress created the Basic Pilot Program as an experimental and strictly voluntary addition to this menu of choices. E-Verify is a web-based program that allows employers to electronically verify the information provided on the Form I-9 including social security numbers with databases of the Social Security Administration (SSA) and the Department of Homeland Security (DHS). As part of registration process, the employer must sign a memorandum of understanding, which outlines the responsibilities and obligations of the employer, DHS, and SSA under E-Verify. There are three possible results from E-Verify: 1) Confirmation; 2) Tentative Non-Confirmation (TNC); and 3) Final Non-Confirmation.

In addition to the administrative burdens of the additional work required to participate in E-Verify, there has been a raging debate about both its effectiveness and its accuracy. Governmental oversight bodies, such as the SSA Office of the Inspector General and the Government Accountability Office, along with independent research firms, businesses, and civil liberties groups have all identified problems with the administration of the program as well as the hardships for both employees and employers when false non-confirmation findings are imposed.

The E-Verify system produces false tentative non-confirmations when the SSA or DHS databases are incomplete or have inaccurate data. There is broad disagreement regarding the error rate of the underlying databases, but even a small rate (i.e., less than one percent) results in significant non-confirmations. The government acknowledges that the error rate in the Social Security database can mean up to 17 million people's names may not be exactly correct or that there was an error when information like date of birth was entered.

For the individual eligible to work but for whom the databases are unable to confirm eligibility, the loss of a job based upon this "small" error rate becomes a life altering problem. Both DHS and SSA have been working to correct the known errors by including additional databases and correcting the discovered problems, but it is an ongoing process that is far from complete. While there are some safeguards built into the system, E-Verify often adds stress and administrative expense to the hiring process.

By way of illustration, Intel, headquartered in Santa Clara, California, is one of the world's leading technology companies and among the nation's largest employers, with a domestic workforce exceeding 46,000. Through the third quarter of 2008, Intel had initiated nearly 1400 new hire queries through E-Verify. Intel's E-Verify TNC rate far exceeds the estimated rate of non-confirmations published by E-Verify and the US Citizen and Immigration Services. Intel's actual experience is a TNC rate of a stunning 12.21% for the year to date (143 of 1363 inquiries). All of Intel's TNCs have ultimately

been cleared by E-Verify as work authorized, but only after significant investment of time and money and lost productivity.

Any expansion of E-Verify under the proposed Federal rule will catch employers and work-authorized employees in an awful dilemma. Employers will be forced to choose between continuing to employ suspect employees, risking an Immigration and Customs Enforcement referral and investigation for civil or criminal charges on the one hand, versus the risk of Office of Special Council investigations, employment law claims and loss of valuable trained personnel on the other.

House Bills 1502 and 1503 attempt to address employer protections by way of good faith immunity provisions. However, the immunity is limited in scope as it only provides for protections from enforcement and prosecution by our Labor Secretary. No such protections are afforded to employers for other potential causes of action and federal investigations. For instance, if an employer makes a good faith verification effort which results in an incorrect match notice, the employer will subsequently be open to investigation by the Federal government for the employment of undocumented individuals. Furthermore, in the case of firing individuals who received an E-Verify TNC which eventually comes back as “cleared”, employers may find themselves in court defending their actions in an employment/Title VII discrimination case. In order to address some of these concerns, the federal regulations must be clarified explicitly to

extend immunity for any contractor who takes adverse action against a current employee. If there is no statutory basis for such immunity, then it is premature to impose the E-verify burden on employers to query current employees. It makes no sense that employers would have complete statutory immunity for actions taken against new hires as a result of E-Verify but would be fully at risk of liability for current employee claims.

Attempting to enforce immigration law by using an SSA program that is ill-equipped to accomplish the task, however, is not the answer. Undocumented workers are not going to leave the country because policymakers make it harder for them to work here. Rather, without a broad legalization program in place, they and their employers will simply circumvent any immigration worksite enforcement system by not following program rules, seeking out more sophisticated fraudulent documents, or moving into the underground economy. Because this policy will have such a damaging impact on U.S. citizen and lawful immigrant workers, businesses and the economy, movement on these state initiatives is ill timed.

Clearly Congress did not intend on making this a mandatory program and the Obama Administration has delayed implementation for a fourth time until September 8, 2009 of a mandatory E-Verify system specific to federal government contractors. Pending litigation and uncertainty in the current federal administration can only lead one to believe that a mandatory e-verify program is not ready for prime time.

In conclusion, The Chamber is optimistic that Federal lawmakers will work with the business community to create a unified, and workable, E-Verify system within the context of comprehensive immigration reform. This includes:

- * A single, federal system with regard to worksite enforcement that would preclude state and local governments from imposing multiple layers of sanctions on employers;

- * An overall system that is fast, accurate, and reliable under practical real world working conditions;

- * A system that provides adequate work visas to address labor shortages in our country; and

- * A system that does not impose undue burdens on non-citizens or create incentives for employers to treat applicants unequally based on citizenship.

Thank you for the opportunity to present remarks on this subject. I am happy to take any questions at this time.