**KANSAS STATE COUNCIL**

**SOCIETY FOR HUMAN RESOURCE MANAGEMENT**

**Information Testimony on E-Verify**
**House Federal and State Affairs Committee**
**By Natalie Bright**
**February 13, 2012**

Chairman Siegfreid and honorable committee members,

I am Natalie Bright, lobbyist for the Kansas Society for Human Resource Management (KS SHRM), the state's largest association devoted to human resource management. KS SHRM is affiliated with this national association and represents more than 2,300 individual members. Their mission is to serve the needs of human resource professionals, many of who are charged by their employers to recruit qualified workers and check their work-eligibility. KS SHRM, along with the Kansas Business Coalition for Immigration Reform, have worked collectively over the last several years to provide both education and a business perspective on state immigration reform measures. On behalf of KS SHRM and the Kansas Business Coalition, I would like to thank you for the opportunity to provide you with an overview of the E-Verify federal employment verification system.

First, let me note that Kansas employers are committed to hiring only work-authorized individuals and support the use of a reliable federal employment verification system. At the federal level, our SHRM association has endorsed the development of an effective, efficient, national electronic employment verification system that does not rely solely on paper documentation. We believe the current employment verification system, E-Verify, is flawed.

The existing I-9 process places the business owner or HR professional in the role of a document examiner, having to decide whether the 24+ types of documents new employees can provide to confirm identity are legitimate and whether everything written on the I-9 form by the new hire matches what's on the supporting documents they provide. In addition, since it's paper-based, it's prone to clerical errors – such as writing the document number in the wrong place or transposing numbers or letters.

While E-verify could be a step in the right direction, as an electronic system, the information provided through the system is still based on a paper-based database. Despite the US Citizenship & Immigration Service roll out of a photo component to compliment E-Verify, not everyone is in the system and there are still areas of concern. It should be understood that under any state (and federal) requirements, employers are still required to complete the I-9 form along with any proposed mandatory E-Verify. This is often misunderstood. Below is an outline of the issues and concerns faced by employers when E-verify, a voluntary program, is mandated.

## What is E-Verify?
- Internet based system operated by DHS in partnership with SSA
- Designed to allow participating employers to verify eligibility of newly HIRED employees
- Not designed to identify identity theft, but to verify employment eligibility worksite enforcement only

## E-Verify is VOLUNTARY, but NOT FREE:

- According to Bloomberg News Service, making E-Verify mandatory would cost $2.7 billion a year.
- Employers spent an estimated $95 million in fiscal 2010 to participate "for free" in E-Verify.
- It cost a business an average of $63 to run a worker through E-Verify but the cost for small businesses a $127 to run one worker through the system and respond timely to a TNC/final non-confirmation.
- Businesses with fewer than 500 workers bear the greatest cost burden because the fixed costs are spread over fewer hires.

## LIABILITY Concerns for Employers-- Creates significant legal obligations for the employer

- Requires employer to sign MOU with DHS, which is lengthy and requires employer to agree to audits for ALL I-9's (previous and new); ongoing DHS audits and interview with HR and employees to assess effectiveness of E-verify.
- There are many subtle ways in which an employer can violate the E-Verify MOU:
  - Failure to complete I-9 Form in conjunction with E-Verify is common mistake. The E-Verify MOU requires employers to complete I-9's, but often employers stop completing them thinking E-verify replaces I-9 paperwork.
  - Employers often fail to E-Verify Employee within Three Business Days which MOU requires
  - States often offer a "safe harbor" provision promising protection from lawsuits, however, this doesn't carry over to protection from federal claims such as a federal claim of discrimination if a new hire is falsely terminated
- Failure to comply with MOU can create liability for civil penalties of $500-$1,000 per violation
- MOU allows DHS to share all information gathered with ICE
- Terms of the MOU cause waiver of employers ability to claim certain documents privileged in the event of a workplace audit of I-9 and limit ability to raise certain legal defenses in an I-9 audit

## Creates ADDITIONAL WORK and BURDENS for Employer

- E-verify requires employers to submit verification for all new hires within 3 days starting work—must actually offer and hire before they verification can occur
- ALL new hires must be verified once employer signs MOU regardless of citizenship or origin
- Employers must be certified and trained before use of program is allowed. Training cost in time and money is ongoing
- Still have to maintain the paper I-9 process
- Due to problems with DHS and SSA databases (transpose or misspelling of name), false positives occur on TNC. If there is a tentative non match (TNC) for a hire, employer must contact hire and give them *8 business days* to contest the TBC. Employees can return to work until resolved. If not resolved the new hire must be fired or employer risk knowingly employing unauthorized worker

## Significant Burdens on SSA

- If E-Verify is made mandatory for all new hires, SSA would have to process 50 to 60 million queries per year in addition to its current workload.
- In 2007, SSA testified that if E-Verify were mandatory, 3.6 million citizens and lawful immigrants would have to visit an SSA office or lose their jobs.

- Currently, 30% of SSA cases wait more than 270 days and as of Feb. 2011, SSA had 774,000 pending initial disability cases.

## Overall Concerns with State Mandated E-VERIFY

- It is still based on paper documents and subject to human error
- Requiring Kansas employers use E-Verify will not solve the problem with unauthorized employment within our state because E-Verify does not detect identify fraud. Verifying further encourages undocumented workers to obtain false documents in order to pass through E-Verify and obtain employment. This can occur in the following ways:
  - 1) fraudulent document maker using another individual's identity to make fake documents;
  - 2) individuals stealing valid identity documents and selling them to undocumented workers; &
  - 3) undocumented workers using identity documents of family members with lawful status in order to obtain employment.

  *It relies on error-prone databases and fails to flag unauthorized workers 54 percent of the time.*
- Must hire BEFORE you can run name through E-verify.
- Requires allocation of administrative resources and training for inputting data and following up on tentative and final non-confirmations.
- TNC are costly in both time and money to employer and employee. E-Verify immediately notifies employers if a discrepancy exists. If the worker cannot fix the discrepancy, the employer is required to fire the worker. There are many legitimate reasons why a TNC would occur including database errors or failure of the worker to notify the Social Security Administration of a name change. If Kansas employers are mandated to use E-Verify some with legitimate employment authorization will lose their jobs due to the inaccuracy of federal government's records.
- The US Government's own figures suggest errors in a mandatory E-Verify system will cause close to 800,000 Americans to lose their jobs incorrectly and another 3.6 million to spend time correcting government mistakes in order to keep their jobs.
- Looking at broader impacts, mandatory E-Verify will drive economic activity underground, reducing federal tax revenues by $17 billion over 10 years, according to the Congressional Budget Office.
- States need to weigh the public benefits v. public costs. While the Supreme Court said in Whiting that states may mandate employers enroll in the voluntary federal E-Verify system and may also suspend or revoke the business licenses of employers found to have hired unauthorized immigrants it doesn't mean it is the best public policy.

Kansas can and must do better - for our businesses, our economy and the country's balance sheet. What we need is a comprehensive reform of the immigration system, not the mandate of a flawed and costly program like E-Verify that forces small business owners to act as immigration agents and creates new costs both for our businesses and for the country.

Thank you for the opportunity to appear before you on behalf of KS SHRM and the Kansas Business Immigration Coalition. I am happy to stand for questions at the appropriate time.