

## **SB 370 -2 STAFF MEASURE SUMMARY**

### **Senate Committee On Workforce**

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**Prepared By:** Ellen Osoinach, LPRO Analyst

**Meeting Dates:** 2/19, 4/2

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#### **WHAT THE MEASURE DOES:**

Requires employer to provide notice to employees containing specified information regarding upcoming inspection by federal agency of documentation used by the employer to verify identity and employment eligibility of employees. Authorizes employer to refuse to consent to agency request for entry into non-public areas unless federal agency obtains judicial search warrant. Requires Commissioner of Bureau of Labor and Industries (BOLI) to generate standardized notice template and provide assistance and training to employers.

#### **ISSUES DISCUSSED:**

- Potential for federal pre-emption based on California litigation regarding warrant requirement for searches
- History of federal inspections in Oregon
- Simplifying bill to require effective notice to affected employees of upcoming inspection

#### **EFFECT OF AMENDMENT:**

-2 Removes language authorizing employers to refuse to consent to search in absence of judicial warrant. Requires employers to make reasonable attempts to individually distribute required notification to employees. Refine what is required in the notice by adding the date of the inspection as opposed to just the date the employer received the notice and contact information for a “raid resistance hotline currently being used.” Remove requirement that notice describe employee rights. Require BOLI to translate the notice template into the top five Limited English Proficiency (LEP) languages spoken in Oregon. Require BOLI every five years to update notice. Require posting of notice within three business days of receipt of inspection notice.

#### **BACKGROUND:**

Immigrations and Custom Enforcement (ICE), a federal agency established in 2003, implements the Immigration Reform and Control Act of 1986. That Act requires employers to verify the identity and employment eligibility of their employees using the Employment Eligibility Verification Form I-9 (Form I-9). Employers are required to maintain for inspection original I-9 forms for all current employees. In the case of former employees, retention of I-9 forms is required for a period of at least three years from the date of hire or for one year after the employee is no longer employed, whichever is later. Any person or entity required to retain I-9 forms must be provided with at least three business days notice prior to an inspection of the forms by an officer of an authorized agency of the United States. (8 CFR § 274a.2(b)(2)(ii))

According to ICE website (<https://www.ice.gov/factsheets/i9-inspection>), the inspection process begins when ICE serves a Notice of Inspection compelling an employer to produce its I-9 forms. If ICE personnel determine that an employer's workforce includes unauthorized workers, they must notify the employer and may take legal or administrative actions, such as issuing a Notice of Suspect Document.

Senate Bill 370 requires an employer to provide employees notice containing specified information, by posting in the language the employer normally uses to communicate employment information, of an inspection of I-9 forms or other employment records used by the employer to verify the identity and employment eligibility conducted by

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a federal agency within 72 hours of receiving the federal notice of inspection. SB 370 requires the Commissioner of the Bureau of Labor and Industries (BOLI) to create a template for these purposes and make it available, as specified.

SB 370 also authorizes employers to refuse to consent to the entry of a federal agency into any non-public areas of a business in the absence of a judicial search warrant and allows BOLI to provide training to employers about their rights regarding federal inspections.