

An Overview of E-Verify Policies At the State Level

By Jon Feere

Executive Summary

In recent years, many states have enacted enforcement-focused immigration laws in an effort to discourage illegal immigration into their jurisdictions. E-Verify, the federally run employment authorization program, has become a central part of this state-level effort as many states now require use of the program for some or all employers. After Arizona's state-wide mandate on E-Verify use was upheld by the U.S. Supreme Court in *Chamber of Commerce v. Whiting* in May 2011, a number of states embraced the program and many more are considering similar mandates.¹ Currently 16 states require use of E-Verify in some form and those laws are detailed in this report.²

E-Verify is an Internet-based system that allows businesses to determine the eligibility of their employees to work in the United States by comparing an employee's Social Security number and other information against millions of government records.³ The program generally provides results in three to five seconds. According to U.S. Citizenship and Immigration Services (USCIS) more than 353,000 employers use E-Verify at nearly 900,000 worksites.⁴ About 1,200 new businesses sign up each week.⁵ In fiscal year 2011, the program ran more than 17.4 million queries.⁶ The federal government requires federal contractors to use E-Verify, but it has not been made mandatory for all employers.⁷

The states using E-Verify are listed below in order from most comprehensive to least comprehensive, by date of passage. Six states have laws requiring all or nearly all businesses to use E-Verify to determine employment eligibility: Arizona, Mississippi, South Carolina, Alabama, Georgia, and North Carolina. Five states require use of E-Verify by public employers and all or most public contractors: Indiana, Nebraska, Oklahoma, Virginia, and Missouri. Three states require only public contractors to use E-Verify: Louisiana, Minnesota, and Pennsylvania. Idaho only requires public employers to use E-Verify, while Florida only requires it for agencies under direction of the governor. Tennessee, Colorado, and Utah encourage use of E-Verify, but allow for alternative means of employment verification. An E-Verify-only mandate in Utah is contingent on the state's effort to create a state-level guestworker program.

Some states have moved in the other direction, arguably perpetuating illegal hiring practices. California has prohibited all jurisdictions within the state from requiring private employers to use E-Verify in most instances. Rhode Island once required executive agencies to use E-Verify, but the executive order requiring such use has been rescinded. Illinois once prohibited all employers from using E-Verify, but reversed the policy after a court found the law to be in violation of the supremacy clause, frustrating federal intent to allow employers access to a means of employment verification; a new version of the law still discourages use.

The earliest of the laws was signed in 2007, but the majority were signed in only 2010 or 2011. Some of the laws have not yet come into full effect. Because the state-level effort is nascent, it remains somewhat premature to analyze the overall effectiveness of this still-developing legislative process. Yet the strengths and weaknesses of some state-level E-Verify policies are becoming apparent.



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Most state E-Verify policies do not include an audit process to determine employer compliance. South Carolina is the only state with an active audit process, and the effort appears to make the state's E-Verify law more effective than it otherwise would be. An audit process necessarily requires a state to obtain a list of employers using E-Verify. Such lists are only available from the federal government. It is clear that better cooperation from federal agencies would make state E-Verify efforts much more effective. Though since resolved, South Carolina originally ran into some difficulty obtaining a list from the Obama administration.

A state's enforcement policy will necessarily dictate compliance rates. Most state E-Verify laws include sanctions for non-compliance, such as license revocation or a ban from public contracts. Some states have made the names of violators public on state websites. Some states have also allowed a business's use of E-Verify to serve as an affirmative defense against state prohibitions on knowingly hiring illegal aliens. A carrot-and-stick approach to E-Verify appears helpful in encouraging adherence to the law.

Finally, state legislatures should consider requiring agencies tasked with regulating E-Verify policies to report on compliance rates in order to determine whether the policy can be improved.

State Policies

Arizona — All Employers

Arizona enacted the "Legal Arizona Workers Act" on July 2, 2007, with an effective date of January 1, 2008. As amended, the law prohibits employers from intentionally and/or knowingly hiring illegal aliens (or a person who employs or contracts with an illegal alien) and requires all employers to use E-Verify during the employment process and keep a record of the verification for the duration of the employee's employment or at least three years, whichever is longer.⁸ Additional legislation prohibits the state government from entering into a contract with any contractor or subcontractor that fails to use E-Verify.⁹ According to USCIS, there are 39,191 employers in Arizona using E-Verify at 84,703 hiring sites.

While the law has been somewhat effective at getting employers to use E-Verify, there remain concerns about the apparent lack of enforcement and the fact that the state does not audit employers. In 2010, the *Arizona Republic* investigated E-Verify use in Arizona and estimated that hundreds of thousands of workers have been hired without being checked against federal records.¹⁰

Under the law, every three months the state's attorney general is required to request from DHS a list of Arizona employers registered with E-verify, and then make the list available on the attorney general's website.¹¹ Employers charged with violations are also listed on the state's website.¹² At the time of this writing, only two companies are listed as being charged with violation of this law. Both are in Maricopa County. Unfortunately, the office of the Arizona Attorney General does not have a standard process for keeping track of the companies charged, making it very difficult to assess the impact of the state's E-Verify law. The Attorney General's office explained to the Center for Immigration Studies that investigations and prosecutions for non-compliance are left to county prosecutors. Such investigations are only initiated if a credible, private complaint is filed with a county attorney.

Staffers with a state legislator instrumental in authoring the E-Verify law explained to CIS that employer compliance remains a concern but that the state government has been largely preoccupied with other immigration laws (e.g., S.B. 1070) and with fending off lawsuits initiated by the Obama administration and a number of organizations.

By January 1, 2008, every employer was required to file a signed, sworn, legal employment affidavit with the secretary of state indicating that the employer "does not knowingly employ an unauthorized alien, that an employer will not direct any other person to employ an unauthorized alien and that an employer makes a good faith effort to comply with all federal and state laws regarding the authorization for employment in the United States of every employee who is employed by the employer in this state." Businesses starting after that date have 30 days to file

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such an affidavit. On receipt of the affidavit, the secretary of state is required to distribute to the employer an informational pamphlet regarding E-Verify and federal immigration laws.

After a finding that a business has knowingly employed an illegal alien, a court must order the employer to end the employment of all illegal aliens. The employer becomes subject to a five-year probationary period for the business location where the illegal aliens performed work. During this period the employer is required to file quarterly reports with the county attorney for each new employee hired to work at the location where the aliens were employed. Additionally, agencies are directed to suspend all relevant business licenses for a minimum of 10 days and the court has discretion to determine the appropriate length of suspension based on the number of illegal aliens employed, any prior misconduct, the degree of harm caused by the violation, the duration of the violation, and other factors.

The employer must also file a signed, sworn affidavit with the county attorney stating that the employer has ended the employment of all illegal aliens employed in Arizona and that the employer will not intentionally or knowingly hire additional illegal aliens in Arizona. If the employer fails to file such an affidavit within three business days of the court's order, agencies must suspend all relevant licenses until the employer files the affidavit.

For a second violation, the court must order the appropriate agencies to permanently revoke all relevant business licenses specific to the business location where the illegal alien performed work.

The law requires the secretary of state to maintain a database of employers that file the employment affidavit and make it publicly available on the secretary of state's website. Under the law, proof of verifying the employment authorization of an employee through E-Verify creates a rebuttable presumption that an employer did not knowingly employ an illegal alien.

The attorney general is required to provide a complaint form for individuals alleging that an employer has knowingly employed an illegal alien. The attorney general is required by the law to investigate any complaint filed via the official complaint form. Anonymous complaints are accepted, but if a complaint is not filed on the official complaint form, the attorney general may investigate, but is not required to do so. County sheriffs and other local law enforcement are permitted to help with any investigation. Complaints based solely on race, color, or national origin are not to be investigated. The filing of false complaints against employers is a Class 3 misdemeanor.

The law also prohibits the state and its political subdivisions from contracting with any contractor or subcontractor that provides services to the state unless the contractor or subcontractor verifies employee work authorization through E-Verify.

In addition, the law requires employers seeking an "economic development incentive from a government entity" — described as any grant, loan, or performance-based incentive from the state or a political subdivision thereof — to use E-Verify. If it is determined that the employer is not complying, the employer is required to repay all monies received within 30 days of the final determination of the noncompliance.

The law also establishes the "Voluntary Employer Enhanced Compliance Program" in which employers can participate by submitting a signed, sworn affidavit to the attorney general. The affidavit must state that the employer agrees to perform all of the following actions in good faith: (1) validate new employees through E-Verify, (2) verify the accuracy of Social Security numbers through the Social Security number verification service for any employee who is not verified through E-Verify, and (3) provide the state's attorney general or a county attorney documents indicating that an employee under investigation was verified through either E-Verify or the Social Security number verification service. Enrollment in this enhanced program and good faith compliance protects the employer from liability under the Arizona Fair and Legal Employment Act for the employee being investigated.

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Mississippi — All Employers

The “Mississippi Employment Protection Act” (S.B. 2988) was signed into law on March 17, 2008. The program was phased in, and all employers (public and private) with 250 or more employees had to be using E-Verify by July 1, 2008. Businesses with 100 to 249 employees had to be using E-Verify by July 1, 2009; those with 30 to 99 had to be using E-Verify by July 1, 2010; and all employers had to be using the program by July 1, 2011.¹³ As of June 2011, a total of 4,336 employers representing more than 9,000 worksites in Mississippi were using E-Verify.¹⁴

Enforcement of the law, and its effectiveness, remains a significant problem. An official at the Mississippi Attorney General’s office explained to the Center for Immigration Studies that his office is tasked with investigating complaints that the public may file about potential violations of the law. However, when asked how often such complaints are filed, he responded, “Rarely.”¹⁵ This is consistent with information from a two-day immigration hearing held at the state capital in 2010. Then, a different spokesperson for the Attorney General’s office explained that the office had received no formal complaints.¹⁶

A state representative told the Center for Immigration Studies that because the state law grants authority over E-Verify regulation to multiple state agencies, no agency has taken the lead and enforcement has been nominal.

Nevertheless, the repercussions of not following the law are significant. An employer found in violation of the law is subject to the cancellation of state or public contracts and becomes ineligible for such contracts for up to three years. The employer is also subject to revocation of any license, permit, certificate, or other document granted to the employer by any agency, department, or government entity in Mississippi for the right to do business in the state for a period of up to one year. Furthermore, the contractor or employer is liable for any additional costs incurred by Mississippi, or any of its political subdivisions, because of the cancellation of the contract or the loss of any license or permit to do business in the state.¹⁷

The act notes the impact of illegal hiring practices on American workers, making it a “discriminatory practice for an employer to discharge an employee working in Mississippi who is a United States citizen or permanent resident alien while retaining an employee who the employing entity knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2008,” provided the job held by the alien and citizen were similar.

The act also focuses on the illegal alien, making it a felony for “any person to accept or perform employment for compensation knowing or in reckless disregard that the person is an unauthorized alien with respect to employment during the period which the unauthorized employment occurred.” Upon conviction, the alien faces imprisonment from one to five years and/or a fine of \$1,000 to \$10,000. For purposes of determining bail, the act makes it a rebuttable presumption that such an alien is a flight risk.

The law provides a safe-harbor of sorts as employers who abide by the law’s provisions “shall be held harmless by the Mississippi Department of Employment Security, provided the employer is not directly involved in the creation of any false documents, and provided that the employer did not knowingly and willfully accept false documents from the employee.”¹⁸

Though Gov. Haley Barbour signed the bill, he did so with some reservations. Among his concerns were the error rate in the E-Verify program.¹⁹ This relatively small error rate is constantly being improved and on June 13, 2011, in an effort to improve E-Verify’s accuracy in Mississippi, Immigration and Customs Enforcement (ICE) launched the “Records and Information from DMVs for E-Verify” (RIDE) program in the state. The RIDE program compares driver’s licenses or other government-issued ID cards against data held by the state’s motor vehicle agency.

As explained by USCIS:

“RIDE helps combat document fraud by enabling E-Verify to confirm the authenticity of an additional identity document. For example, previously, if an employee presented a driver’s license to establish his or her identity and a Social Security card to establish his or her employment authorization, E-Verify would only have been able to confirm the validity of the Social Security card. RIDE enables E-Verify employers in Mississippi to confirm the validity of both documents.”²⁰

Mississippi is the first, and currently the only, state to use RIDE as part of its E-Verify efforts.

Additionally, if requested, the Mississippi Department of Employment Security (MDES) can complete the E-Verify process for employers via the state’s Workforce Investment Network (WIN), an entity created by the federal Workforce Investment Act.²¹ There is no charge and liability shifts from the employer to the MDES if a problem with an employee’s status is later uncovered. Businesses that have filed a job opening with a local WIN office will be contacted by WIN staff if a potential employee becomes available. If the employer wants to hire the individual, WIN completes the E-Verify process on the employer’s behalf. Recently, the MDES was updated to include reverse referrals where an employer finds a potential employee and refers the individual to the WIN office for E-Verify screening. The MDES started using E-Verify in September 2008 and has since verified 283,000 people through the program.

South Carolina — All Employers

The “South Carolina Illegal Immigration Reform Act” (H. 4400) was signed into law on June 4, 2008, and amended on June 27, 2011, (S. 20).²² The original version of the law gave employers the option of confirming the eligibility of new employees through either E-Verify or by checking the validity of driver’s licenses and other identification cards. The 2011 amendment made E-Verify the exclusive method for confirming employment eligibility. The law requires all employers to use E-Verify. South Carolina may have one of the nation’s most effective E-Verify laws in that the state uses an audit process to ensure businesses are in compliance with the law. The effort has been difficult at times, however, as DHS cooperation is necessary for the state to effectively determine which businesses are complying.

The E-Verify law was temporarily suspended after the 2011 amendment because the state legislature wanted to provide employers time to become familiar with changes in the law and to receive training on the E-Verify system. South Carolina sent a written summary of the amended law’s requirements to every employer in the state and conducted free seminars in each of the state’s 46 counties between July 1 and December 31, 2011. Some seminars included federal officials representing ICE and E-Verify.

The E-Verify requirements went back into effect on January 1, 2012. For the first six months, until July 1, 2012, if an employer failed to verify a new hire through E-Verify within three business days the employer would not be punished, but the employer was required to swear or affirm in writing to the state Department of Labor, Licensing, and Regulation (LLR) that the business has started using it and would continue using it for new employees. After July 1, if an employer fails to verify a new employee through E-Verify within three business days of the hire, the employer is placed on probation for a period of one year and required to submit quarterly reports to the LLR demonstrating compliance with the law. A subsequent violation within three years results in a business’s license being revoked from 10 to 30 days.²³

The LLR is tasked with investigating complaints of non-compliance and conducting random audits to assure compliance with the law.²⁴ The ability of the LLR to do its job, however, has recently been a point of contention between South Carolina and federal officials. For months, the state sought information from DHS that would confirm whether or not businesses within the state were using E-Verify, in accordance with the state mandate. On May 27, 2011, South Carolina Gov. Nikki Haley wrote a letter to DHS Secretary Janet Napolitano seeking data from the federal agency so that the state could enforce its E-Verify law.²⁵ Gov. Haley wrote:

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“Given the success of our efforts and yesterday’s U.S. Supreme Court decision upholding a state’s authority to verify the legal status of employees by using E-Verify, we were troubled to learn that the Department of Homeland Security prohibits our investigators from accessing E-Verify documents that certify an employer’s verification of new hires. To be clear, South Carolina is not asking for access to sensitive information — our investigators merely require summary documentation that confirms an employer has E-Verified a new worker.

“Our efforts to resolve this matter with your staff have been unsuccessful, despite repeated requests. In the meantime, nearly two dozen South Carolina immigration inspectors remain unable to perform their jobs. Our state cannot afford to continue to employ these inspectors without results. Therefore, the state Department of Labor, Licensing, and Regulation will be forced to eliminate the inspection jobs unless Homeland Security works with the State to get enforcement back on track.”

Gov. Haley requested that DHS enter into a Memorandum of Understanding (MOU) with the state and grant the state’s regulatory agency access to documents that would allow South Carolina to confirm that employers in the state are using E-Verify. In late June 2011, USCIS wrote a letter to Gov. Haley explaining the agency’s decision to allow the state access to E-Verify information that would allow the LLR to confirm whether businesses within the state were using E-Verify. USCIS concluded that an additional MOU was unnecessary because the LLR audits were a “legitimate purpose” under the existing agreement between DHS and LLR. The decision directed employers to disclose E-Verify data directly to LLR when requested by LLR. Subsequently, USCIS informed all businesses in South Carolina using E-Verify about their disclosure responsibilities and duty to safeguard some employee information.²⁶ Information from DHS indicating the names of South Carolina employers enrolled in E-Verify was expected to be available to LLR when the agency began enforcement of the amended law on January 1, 2012.

As of this writing, South Carolina has conducted approximately 6,000 audits of businesses under the 2008 version of the law. During the first year — July 1, 2009, through June 30, 2010, when the law applied to businesses with 100 or more employees (a total of 2,300 employers) — South Carolina conducted approximately 1,900 audits. The second year, when the law applied to every employer, the state conducted audits of approximately 4,200 businesses.

As part of its audits, South Carolina matches up the names of new hires with the verification, rather than simply compare the number of hires at a place of employment with the number of E-Verify verifications run by the employer. In order to show compliance, employers may provide auditors with a copy of an E-Verify confirmation screen for new hires or simply log on to the E-Verify database while the LLR inspector is present and show the list of verified hires.

Alabama — All Employers

The “Beason-Hammon Alabama Taxpayer and Citizen Protection Act” (H.B. 56) was signed into law on June 9, 2011.²⁷ The act makes it illegal for any business entity, employer, or public employer to “knowingly employ, hire for employment, or continue to employ” an illegal alien to perform work within the state. Effective April 1, 2012, every employer in Alabama must enroll in E-Verify and use the program to check employment authorization. The act creates an incentive for using E-Verify as businesses and subcontractors that enroll in E-Verify are immune from liability for employing an illegal alien. The act requires the Alabama Department of Homeland Security (DHS) to establish and maintain an E-Verify employer service for any employer in the state with 25 or fewer employees that wants assistance. The Alabama DHS will enroll a participating business in E-Verify on its behalf at no cost.

Under the act, every three months the Alabama DHS must request from the federal DHS a list of every employer in the state that is enrolled in E-Verify. On receipt of the list, the Alabama DHS must make the list available on its website.

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In addition, the act makes it a “discriminatory practice” for an employer to fail to hire a job applicant or to discharge an employee who is a United States citizen or an alien who is authorized to work in the United States while hiring or retaining an employee who the employer knows, or reasonably should have known, is an illegal alien.

The act creates an additional incentive for using E-Verify, declaring that “no wage, compensation, whether in money or in kind or in services, or remuneration of any kind for the performance of services paid to an unauthorized alien” will be allowed as a deductible business expense for any state income or business tax purposes in Alabama.

Upon a finding that a business has violated the employment provisions, the act requires a court to (1) order the business to terminate the employment of every illegal alien; (2) order the business to file a signed, sworn affidavit with the local district attorney within three days after the order is issued stating that the business has terminated the employment of every illegal alien and the business will not knowingly or intentionally employ additional illegal aliens; (3) subject the business to a three-year probationary period throughout the state during which the business must file quarterly reports with the local district attorney on each new employee that is hired; and (4) direct the applicable state, county, or municipal governing bodies to suspend any business licenses and permits for a period up to 10 business days specific to the business location where the illegal alien performed work.

Before a business license or permit that been suspended can be reinstated, a legal representative of the business must submit to the court a signed, sworn affidavit stating that the business is in compliance with the provisions of the act and a copy of the Memorandum of Understanding issued to the business at the time of enrollment in E-Verify. A suspension terminates one business day after a valid affidavit is submitted.

For a second violation, the court must direct the governing body to permanently revoke all business licenses and permits held by the business specific to the business location where the illegal alien performed work. The government agency must immediately revoke the licenses and permits. For a subsequent violation, business licenses and permits are forever suspended throughout the state.

If any agency of the state or any political subdivision thereof fails to suspend the business licenses or permits as a result of a violation, the agency is subject to penalties.

Both Alabama’s district attorneys and the state’s attorney general have authority to bring a civil complaint in any court of competent jurisdiction to enforce the requirements of these provisions. Any resident of the state may petition the attorney general to bring an enforcement action against a specific business entity or employer by means of a written, signed petition that includes an allegation that describes the alleged violator or violators as well as the action constituting the violation and the date and location where the action occurred. Petitions that allege violations on the basis of national origin, ethnicity, or race are deemed invalid and shall not be acted upon. The attorney general is required to respond to a petition within 60 days of receiving the petition.

The provisions detailed above do not apply to the relationship between a party and the employees of an independent contractor performing work for the party, nor do they apply to casual domestic labor performed within a household.

E-Verify must also be used by any employer as a condition of an award of any contract, grant, or incentive by the state (or any political subdivision thereof, or any state-funded entity). The business must provide documentation establishing that it is enrolled in E-Verify and the employer must be using E-Verify during the performance of the contract. Additionally, the act makes it illegal for such an employer to knowingly employ, hire for employment, or continue to employ an illegal alien and the employer must attest to such, by sworn affidavit signed before a notary. On or after January 1, 2012, before receiving any contract, grant, or incentive a business must provide proof that the business is enrolled and is participating in E-Verify.

These requirements also apply to subcontractors. However, a contractor is not liable when its direct subcontractor violates the law if the contractor receives a sworn affidavit from the subcontractor (signed before a notary) attesting

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to the fact that the direct subcontractor, in good faith, has verified each of its employees' worker eligibility. This will not apply if the contractor actually knows the direct subcontractor is violating the law.

Upon the first violation of the law, the employer is deemed to be in breach of contract and the state (or political subdivision thereof) may terminate the contract (though it is not mandated) after providing notice and an opportunity to be heard. The state's attorney general may bring an action to suspend business licenses and permits for a period of up to 60 days. A court must order the business entity or employer to file a signed, sworn affidavit with the local district attorney within three days after the order is issued by the court stating that the business has terminated the employment of every illegal alien and will not knowingly or intentionally employ illegal aliens in the state. Before a business license or permit that has been suspended is reinstated, a legal representative of the business must submit to the court a signed, sworn affidavit stating that the business entity or employer is in compliance with the provisions of the law along with a copy of the memorandum of understanding issued to the business at the time of enrollment in E-Verify.

Upon a second or subsequent violation, the business is deemed in breach of contract and the government must terminate the contract after providing notice and an opportunity to be heard. The attorney general may bring an action to permanently revoke the company's business licenses and permits.

As for subcontractors, after a first violation, the outcome is nearly identical. The only difference is that the state may also bar the subcontractor from doing any business with a contractor who contracts with the state, any political subdivision thereof, or any state-funded entity. After a second or subsequent violation, the attorney general may bring an action to permanently suspend the subcontractor's business licenses.

Georgia — Nearly All Employers

The State of Georgia requires both public and private employers to use E-Verify during the hiring process. In 2006 the state passed the "Georgia Security and Immigration Compliance Act" (S.B. 529), which applied to public employers, contractors, and subcontractors and was followed by a number of amendments.²⁸ In 2011, the state passed the "Illegal Immigration Reform and Enforcement Act of 2011" (H.B. 87), which extends required use of E-Verify to private employers.²⁹ Although the law is broad in scope, an official at the state's Department of Labor tells CIS that funding has not been made available for the auditing process rendering the law largely ineffective.³⁰

As of July 1, 2007, all public employers in Georgia were required to use E-Verify for all new employees. With additional amendments, the law now requires all public employees to permanently post the employer's federally issued user identification number and date of authorization on the employer's website. If the public employer does not have a website, then the local government is directed to submit the relevant information to the Carl Vinson Institute of Government of the University of Georgia to be posted by the institute on the website created for local government audit and budget reporting.³¹

A contractor is not permitted to enter into any contract with a public employer for the physical performance of services unless the contractor registers and participates in E-Verify. Similarly, a subcontractor is not permitted to enter into any contract with a contractor unless such subcontractor registers and participates in E-Verify. Before a bid for any such service can be considered by a public employer, contractor, or subcontractor, the bid has to include a signed, notarized affidavit attesting to the following: (1) the affiant has registered with and, is authorized to use, and uses E-Verify; (2) the user identification number and date of authorization for the affiant; (3) the affiant is using and will continue to use E-Verify throughout the contract period; and (4) the affiant will contract for the physical performance of services in satisfaction of such contract only with subcontractors who present an affidavit to the contractor with the same information required in (1), (2), and (3). The affidavit required is considered an open public record once a public employer has entered into a contract.³²

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Any contractor, subcontractor, or sub-subcontractor found to have violated the law shall, on a second or subsequent violations, be prohibited from bidding on or entering into any public contract for 12 months following the date of such finding.³³

By December 31 of each year, public employers are required to submit a compliance report to the state auditor certifying compliance with the provisions of this act. The report must contain the public employer's E-Verify verification user number and date of authorization and the legal name, address, and E-Verify user number of the contractor and the date of the contract between the contractor and public employer.³⁴

The state auditor is directed to conduct annual compliance audits on a minimum of at least one-half of the reporting agencies and to publish the results of such audits annually on the department's website on or before September 30, subject to funding. Additionally, each year the state's Commissioner of Labor must conduct no fewer than 100 random audits of public employers and contractors, and may conduct such an audit upon reasonable grounds to suspect a violation. The results of the audits are published on state websites by December 31 of each year.³⁵

An official at the Georgia Department of Labor told CIS that funding for audits has not been made available. Consequently, no audits have been conducted and no reports have been filed. The department has unsuccessfully sought funding from both the state and the federal government.

Nevertheless, the law requires that if the state auditor finds that a political subdivision is in violation of the law's requirements, the political subdivision is given 30 days to demonstrate to the auditor that all deficiencies have been corrected. If it fails to do so, the political subdivision is excluded from the list of qualified local governments. If a state department or agency is found to be in violation of this law more than twice in a five-year period, the funds appropriated to such state department or agency for the fiscal year following the violation will not be greater than 90 percent of the amount so appropriated in the second year of such noncompliance. Violations are listed publically on the state's website.³⁶

Soon, private employers with more than 10 employees will be required to use the E-Verify program as well. The requirement is being phased in, with all employers expected to be participating by July 1, 2013. Specifically, employers with 500 or more employees were to be in compliance by January 1, 2012; employers with 100 to 499 employees by July 1, 2012; and employers with more than 10 employees but fewer than 100 by July 1, 2013.

Before a business license — and any other document required to operate a business — is issued or renewed, a business seeking the license or renewal must provide evidence that the businesses is either using E-Verify or exempted from using the program (i.e. has fewer than 11 employees) in the form of an affidavit filed with the state's attorney general. The number of employees employed is based on the number employed on January 1 of the year in which the affidavit is filed. Beginning December 31, 2012, and annually thereafter, counties and other entities tasked with issuing licenses must provide the state's Department of Audits and Accounts a report demonstrating compliance. The report must identify each license or certificate issued in the preceding 12 months and include the name of the person and business that received the license and the federally assigned E-Verify user number. The Department of Audits and Accounts is to annually conduct an audit of no fewer than 20 percent of such reporting entities.

Any person presenting false or misleading evidence of state licensure is guilty of a misdemeanor and the state's attorney general is authorized to conduct an investigation and bring any criminal or civil action deemed necessary to ensure compliance. An employer who is found to have committed a good-faith violation of this law has 30 days to demonstrate to the attorney general that it has come into compliance.

As of January 1, 2008, employers acquired a tax incentive to use E-Verify. Under S.B. 184, no payment or compensation or other remuneration (including but not limited to wages, salaries, bonuses, and benefits) paid for labor services to an individual totaling \$600 or more in a taxable year, may be claimed and allowed as a deductible business expense for state income tax purposes unless the employee is legally authorized to work in the United States.

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This applies whether or not an IRS 1099 or W-2 form was used for the services. However, businesses using E-Verify are exempted.³⁷

North Carolina — Nearly All Employers

North Carolina's H.B. 36 was signed into law on June 23, 2011. All counties and municipalities were required to begin using E-Verify by October 1, 2011. The law also requires private businesses to use E-Verify for new employees, but exempts any "seasonal temporary employee who is employed for 90 or fewer days during a 12-consecutive-month period". Employers with 500 or more employees must be using E-Verify by October 1, 2012; employers with 100 to 499 employees must be using E-Verify by January 1, 2013; and employers with 25 to 99 employees must be using E-Verify by July 1, 2013.³⁸ The law does not include a random audit process for determining employer compliance.

For a first violation of the law, the North Carolina Commissioner of Labor is required to order the employer to file a signed, sworn affidavit within three business days stating that the employer has requested a verification of work authorization for the employee(s) through E-Verify. If the employer fails to file an affidavit, the commissioner must order the employer to pay a fine of \$10,000. For a second violation, the commissioner must make a second request for a signed affidavit and order the employer to pay a \$1,000 fine. For a third or subsequent violation, the commissioner must request the affidavit once again, and order the employer to pay a fine of \$2,000 for each required employee verification the employer failed to make. An employer can appeal any decision within 15 days of the decision. The commissioner is required to maintain a database of the employers and business locations that have violated the law and make the orders available on the commission's website.

Any person with a good-faith belief that an employer is violating or has violated the law may file a complaint with the commissioner. A person who knowingly files a false and frivolous complaint is guilty of a Class 2 misdemeanor under state law. The commissioner has the power to issue a subpoena for production of employment records that relate to the recruitment, hiring, employment, or termination policies, practices, or acts of employment as part of the investigation. Officials are prohibited from investigating complaints that are based solely on race, religion, gender, ethnicity, or national origin. If a complaint is found to be valid, the commissioner will hold a hearing to determine whether a violation has occurred and issue fines if necessary. If the commissioner concludes that there is a "reasonable likelihood" that an employee is an illegal alien, the commissioner must notify ICE and local law enforcement agencies.

Indiana — Public Employers and Public Contractors

On July 1, 2011, Indiana enacted S.B. 590.³⁹ Among other things, the law requires state agencies and political subdivisions to use E-Verify to determine work authorization status of all employees hired after June 30, 2011. The requirement to use E-Verify also applies to public contractors. The law does not contain any enforcement provisions or any auditing process to determine employer compliance.

State agencies and political subdivisions are prohibited from entering into (or renewing) a public contract with a contractor that does not determine work eligibility status of all newly hired employees through E-Verify. The requirement to use E-Verify must be contained within the terms of the contract. Public contractors must also sign an affidavit affirming that the contractor does not knowingly employ illegal aliens.

Additionally, a state agency or political subdivision may not award a grant of more than \$1,000 to a business entity unless the employer signs a sworn affidavit that affirms that the business has enrolled and is participating in E-Verify. The employer must also provide documentation proving that the employer is using E-Verify. The employer must also sign an affidavit affirming that the employer does not knowingly hire illegal aliens.

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Public contractors and subcontractors are prohibited from knowingly employing or contracting with an illegal alien or retaining an employee or contract with a person that the contractor or subcontractor learns is an illegal alien. If a contractor violates this section, the state agency must require the contractor to remedy the violation not later than 30 days after the date the state agency notifies the contractor of the violation. There is a rebuttable presumption that a contractor did not knowingly employ an illegal alien if the contractor verified the work eligibility through E-Verify.

If the contractor fails to remedy the violation within the 30-day period, the public contract must be terminated. The only exception is where terminating the contract would be “detrimental to the public interest or public property” in which case it would terminate when the government procures a new contractor. The contractor is liable for any damages resulting from the contract termination.

Any subcontractors employed under a public contract for services must certify to the contractor that the subcontractor does not knowingly employ or contract with illegal aliens and has enrolled and is participating in E-Verify. If the subcontractor violates this requirement, the contractor may — but is not required to — terminate a contract with the subcontractor. The contractor must keep the certification throughout the duration of the term of a contract with the subcontractor.

The law also allows the state to file a civil action to obtain reimbursement of amounts paid by the state as unemployment insurance benefits from an employer that has knowingly employed an illegal alien. The law prohibits the state from filing such a suit against an employer using E-Verify.

Nebraska — Public Employers and Public Contractors

On April 8, 2009, Nebraska’s L.B. 403 was signed into law.⁴⁰ The law requires use of E-Verify by state agencies (and political subdivisions) and by public contractors starting October 1, 2009. Every contract between a public employer and public contractor must contain a provision requiring the public contractor to use E-Verify for new employees physically performing services within Nebraska. The requirement does not apply to public contracts made prior to the operative date of this act. According to state surveys, use of E-Verify appears to be low.

The bill provides tax-based incentives to use E-Verify. It prohibits the Tax Commissioner from approving or granting any tax incentive to any employers under the “Nebraska Advantage Rural Development Act”, the “Nebraska Advantage Act”, the “Nebraska Advantage Research and Development Act”, or the “Nebraska Advantage Microenterprise Tax Credit Act”, that do not provide satisfactory evidence that the taxpayer electronically verified the work eligibility status of all newly hired employees.

The bill required the state’s Department of Labor to report to the state legislature on the use of E-Verify by Nebraska employers no later than December 1, 2011. The resulting report looked at a two-year period from October 1, 2009, to September 30, 2011, and found limited use of E-Verify among private employers and contractors, which is understandable considering that the state’s E-Verify law is focused only on public contractors.⁴¹ The state’s Department of Labor notes that it does not have statistics from E-Verify because it is “owned and maintained by the federal government”, but provided information on its own online survey. The state agency found that there were a total of 138 responses to the survey in 2010 and that 40 respondents indicated they use E-Verify while 98 indicated they do not. In 2011, there were 388 responses to the survey and of that, 155 respondents indicated they use E-Verify while 233 indicated they do not. The respondents appear to be a mix of both private employers and public contractors.

The report also found that there are 17,446 contractors in the state’s Contractor Registration database, which includes all contractors subcontractors, general contractors, and any other person arranging for the performance of work on real property in the state of Nebraska. Of this total, only 3,991 contractors stated that they use E-Verify while 13,455 indicated that they do not.

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Oklahoma — Public Employers and Public Contractors

The “Oklahoma Taxpayer and Citizen Protection Act of 2007” (H.B. 1804) was signed into law on May 9, 2007.⁴² Among other things, the law requires state and local agencies and public contractors and subcontractors to use E-Verify (or a third-party program with an equal or higher degree of reliability, should one appear).

After July 1, 2008, public employers were prohibited from entering into contracts for the physical performance of services within Oklahoma unless the contractor (and any subcontractor) uses E-Verify to verify the work authorization of all new employees.

If an independent contractor, contracting for the physical performance of services in Oklahoma, fails to provide to the contracting entity documentation to verify the independent contractor’s employment authorization, the contracting entity is required to withhold state income tax at the top marginal income tax rate as provided under state law.

The law makes it a “discriminatory practice” for an employer to discharge an employee working in Oklahoma who is a United States citizen or permanent resident alien while retaining an employee who the employer “knows, or reasonably should have known” is an illegal alien. However, a business using E-Verify at the time of the discharge is exempted from such liability.

Virginia — Public Employers and Most Public Contractors

The Commonwealth of Virginia requires both state agencies and businesses contracting with Virginia to use E-Verify, the result of two pieces of legislation.

On April 11, 2010, Virginia’s H.B. 737 was signed into law. It reads:

“All agencies of the Commonwealth shall be enrolled in the E-Verify program by December 1, 2012; and on and after December 1, 2012, use the E-Verify program for each newly hired employee who is to perform work within the Commonwealth.”⁴³

In early 2011, Virginia Gov. Robert McDonnell announced that he would push up the deadline by 18 months to June 1, 2011.⁴⁴ When first introduced the bill was much longer and also would have applied to public contractors, businesses with more than 15 employees, and local governments. Those elements were stripped from the final version of the bill, however.⁴⁵

Then, on March 25, 2011, an E-Verify bill aimed at public contractors was signed into law: H.B. 1859. Effective December 1, 2013, employers with more than an average of 50 employees for the previous 12 months entering into a work or service contract in excess of \$50,000 with any state agency must register and participate in E-Verify.⁴⁶

Failure to comply with the law results in the employer being debarred from contracting with any state agency for a period up to one year. Such debarment ends upon the employer’s registration and participation in E-Verify.⁴⁷

Under existing Virginia law, all public bodies must provide in every written contract that the contractor does not, and shall not knowingly employ an illegal alien during the performance of the contract for goods and services in Virginia.⁴⁸

Furthermore, it is “a Class 1 misdemeanor for any employer or any person acting as an agent for an employer, or any person who, for a fee, refers an alien who cannot provide documents indicating that he or she is legally eligible for employment in the United States for employment to an employer, or an officer, agent or representative of a labor organization to knowingly employ, continue to employ, or refer for employment any alien who cannot provide

documents indicating that he or she is legally eligible for employment in the United States.” In Virginia, a Class 1 misdemeanor is defined as punishment “not more than 12 months” and/or a fine of “not more than \$2,500”.⁴⁹

Missouri — Public Employers and Some Public Contractors

On July 7, 2008, Missouri’s E-Verify bill (H.R. 1549) was signed into law.⁵⁰ It became effective on January 1, 2009. The law prohibits businesses from knowingly employing, hiring, or continuing to employ an illegal alien to perform work within the state of Missouri. The E-Verify portion of the law does not apply to all businesses, but those businesses that do use E-Verify are provided an affirmative defense that the business has not violated the provisions of the law that prohibit the employment of illegal aliens. All public employers are required to “actively participate” in E-Verify.

As a condition for the award of any state (or political subdivision) contract or grant in excess of \$5,000, or for any business entity receiving a state-administered or subsidized tax credit, tax abatement, or loan from the state, a business must, by sworn affidavit and provision of documentation, affirm its enrollment and participation in E-Verify with respect to the employees working in connection with the contracted services. The business must also sign an affidavit affirming that it does not knowingly employ any person who is an illegal alien in connection with the contracted services. Compensation, whether in money or in kind or in services, knowingly provided to an illegal alien is not allowed as a business expense deduction from any income or state business taxes.

An enforcement action can be initiated by means of a written, signed complaint under penalty of perjury and must include an allegation that describes the alleged violator as well as the actions constituting the violation, and the date and location where such actions occurred. Within 15 business days the state’s attorney general is required to request identity information from the business regarding any persons alleged to be illegal aliens. If the business fails to respond, the business’s applicable license, permit, or exemptions are to be suspended.

After receiving the identity information, the attorney general is directed to submit the information to the federal government and then provide a response to the employer. If the federal government notifies the attorney general that an employee is not authorized to work in the United States, and the employer participates in E-Verify, there is a rebuttable presumption that the employer has met the requirements for an affirmative defense under this law. The attorney general must bring a civil action if the attorney general reasonably believes the employer knowingly violated the law’s prohibition on employing illegal aliens.

If the court finds that an employer did not knowingly violate the law, the employer has 15 business days to submit a sworn affidavit stating that the violation has ended that shall include, among other things, a description of the specific measures and actions taken by the business to end the violation. If the employer fails to do so, the court must direct the applicable municipal or county governing body to suspend business permits, any applicable licenses, and any exemptions until the business complies.

If, on the other hand, the court finds that an employer did knowingly violate this law, the court must direct the applicable municipal or county governing body to suspend business permits, any applicable licenses, and any exemptions for 14 days. All are reinstated at the end of the 14-day period if the employer (1) terminates the illegal alien’s employment (or, after acquiring additional information from the employee, requests a secondary or additional verification by the federal government); (2) submits a sworn affidavit stating that the violation has ended, including, among other things, a description of the specific measures and actions taken by the business to end the violation; and (3) submits documentation confirming that the business has enrolled in and is participating in E-Verify.

A second violation results in any applicable business license, permit, or exemption being suspended for one year. A subsequent violation results in a permanent suspension.

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In addition, any business entity awarded a state contract or grant or receiving a state-administered tax credit, tax abatement, or loan from the state, found in violation of the law is considered to be in breach of contract, meaning the state may terminate the contract and suspend or debar the business from doing business with the state for a period of three years. Upon such termination, the state may withhold up to 25 percent of the total amount due to the business. Upon a second or subsequent violation, the state may terminate the contract and permanently suspend or debar the business from doing business with the state; the state may again withhold up to 25 percent of the total amount due to the business.

An employer subject to a complaint and subsequent enforcement, or any employee, may challenge the enforcement of this law. Additionally, any person who submits a frivolous complaint is liable for actual, compensatory, and punitive damages to the alleged violator for holding the alleged violator before the public in a false light.

If any municipal or county governing body fails to enforce the law and suspend the business permit, licenses, or exemptions as directed within 15 days after notification by the state's attorney general, this law requires that the jurisdiction be subject to penalties under existing state law for adopting what amounts to a sanctuary policy.

Louisiana — Public Contractors, Private Businesses Encouraged

On August 15, 2011, two pieces of E-Verify legislation were approved in Louisiana. The first bill, H.B. 342, requires all state and local contractors who seek to do business with Louisiana to use E-Verify. The second bill, H.B. 646, encourages all private businesses to verify the legal status of their new hires by providing employers a safe harbor against sanctions if they use E-Verify or another method for determining worker eligibility.

In authoring H.B. 342, the Louisiana legislature found that when illegal immigrants are living in Louisiana and “are encouraged to reside [in the state] through the benefit of employment without verification of immigration status, the result is that the enforcement of federal immigration law is impeded and obstructed, the security of the nation's borders is undermined, and the privileges and immunities of the citizens of Louisiana are impermissibly restricted.” The legislature also found that it is “a compelling public interest of [Louisiana] to discourage illegal immigration by requiring employers who do business with the state of Louisiana to cooperate fully with federal immigration authorities in the enforcement of federal immigration law.”⁵¹

The law provides that a private employer “shall not bid on or otherwise contract with a public entity for the physical performance of services within the state of Louisiana unless the private employer verifies in a sworn affidavit attesting to” the fact that the private employer is registered and participates in E-Verify and also that the employer will continue, during the term of the contract, to use E-Verify. Furthermore, the private employer is required to make sure all subcontractors submit to the employer a sworn affidavit verifying compliance with the same requirements. Any person, contractor, or employer who complies with the provisions will not be civilly or criminally liable under state law for hiring or retaining an illegal alien if the information obtained through E-Verify indicated that the employee was legally authorized to work. The law applies to all contracts entered into after January 1, 2012.

Violations of this law make an employer subject to cancellation of any public contract and ineligibility for any public contract for a period up to three years. Furthermore, an employer is liable for any costs incurred by a public entity that result from the cancellation of a contract or loss of any license or permit to do business in the state. Employers who are penalized can appeal the ruling.

As to H.B. 646, the act amended existing law on employment of aliens to encourage worker verification. Under existing Louisiana law, it is illegal to “employ, hire, recruit, or refer, for private or public employment within the state, an alien who is not entitled to lawfully reside or work in the United States.” The act amended this provision so that “no person shall be subject to civil penalties” if either (1) worker authorization status is verified through E-Verify; or (2) the employee provided to the employer picture identification and one of the following: a U.S. birth certificate, a naturalization certificate, a certificate of citizenship, an alien registration receipt card, or an I-94 immigration form

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with an employment authorization stamp. The act goes further to encourage E-Verify, stating: “Any employer who has utilized the E-Verify system to determine the employment eligibility of an employee is presumed to have been in good faith and is not subject to any penalty as a result of the reliance on the accuracy of the E-Verify system.”⁵²

The act increases the penalties for knowingly hiring illegal aliens. The first violation of the law can result in a fine up to \$500 for each illegal alien while a second violation can result in a fine up to \$1,000 per alien. After a third violation, violators may have their permit and/or business license revoked for 30 days to six months and may be fined up to \$2,500 per alien. The violator may also be liable for reasonable attorney fees should the Louisiana Workforce Commission need to bring the issue to court.

Minnesota — Some Public Contractors

On January 7, 2008, then-Gov. Tim Pawlenty signed Executive Order 08-01, requiring use of E-Verify for the state’s executive branch employees and for some public contracts. Gov. Mark Dayton allowed the order to lapse in April 2011.⁵³ A new E-Verify provision requires use of E-Verify only for some public contracts.

The 2008 executive order required the Commissioner of Employee Relations to require all hiring authorities within the executive branch of the Minnesota government to use E-Verify, oversee a training process, and conduct annual, random audits of appointing authorities in the executive branch to ensure compliance. It also required that state contracts in excess of \$50,000 be given to vendors in compliance with federal employment laws. This requirement included requiring certification from vendors and subcontractors that they had implemented or were in the process of implementing the E-Verify program for all newly hired employees.⁵⁴

In July 2011, a Minnesota finance omnibus bill reinstated the E-Verify provisions aimed at vendors and subcontractors. It requires state contracts for services in excess of \$50,000 to require certification from vendors and subcontractors that they have implemented or are in the process of implementing the E-Verify program for all newly hired employees who will perform work under the contract. It exempts contracts entered into by the State Board of Investment.⁵⁵

Pennsylvania — Some Public Contractors

The “Public Works Employment Verification Act” (S.B. 637) was signed into law July 5, 2012.⁵⁶ It requires some public works contractors and subcontractors to use E-Verify to determine employment eligibility of all new hires. In order to ensure compliance, employers are subject to complaint-based and random audits. The act takes effect January 1, 2013.

Under the act, “public work” means “construction, reconstruction, demolition, alteration, and/or repair work other than maintenance work, done under contract and paid for in whole or in part out of the funds of a public body” where the estimated cost of the total project is in excess of \$25,000 but does not include work performed under a “rehabilitation or manpower training program.”⁵⁷ It is unclear what percentage of public works contractors and subcontractors in Pennsylvania would meet this threshold.

As a precondition of being awarded a public contract, a contractor must provide the government with a verification form (provided by the state) that certifies that the information contained in the form is true and correct and that the individual signing the form understands that submission of false or misleading information subjects the individual and the contractor to sanctions. Failure to provide the form (or to make a false statement or misrepresentation in completing the form) subjects the contractor or subcontractor to a civil penalty ranging from \$250 to \$1,000 for each violation.

The first instance where a contractor or subcontractor fails to use E-Verify results in a warning letter detailing the violation. The letter is to be posted on the state government’s website. A second violation results in the contractor

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or subcontractor being debarred from public work for 30 days. Third and subsequent violations result in debarment that lasts ranges from 180 days up to one year. However, if a subsequent violation occurs 10 years or more after a prior violation it is considered a first violation.

If the failure to use E-Verify is alleged to have been willful, then the government must bring the issue to court. If the court rules against the contractor or subcontractor and finds that the failure to use E-Verify was willful, then the entity is debarred from public work for a period of three years.

The Department of General Services (DGS) is tasked with overseeing the enforcement of the act. The DGS is required to “accept, review and investigate in a timely manner” any credible complaint that a public works contractor or subcontractor has violated the act. In addition to complaint-based audits, the DGS is required to conduct random audits of public works contractors and subcontractors.

The act also protects against discrimination as public works contractors and subcontractors are prohibited from discriminating against an employee on the basis of race, ethnicity, color, or national origin. In addition, the act protects whistleblowers who file a complaint against a contractor or subcontractor, or otherwise participate in an investigation by making it unlawful for a public works contractor or subcontractor to discharge, threaten, or retaliate or discriminate against such employees.

Idaho — Public Employers

On May 29, 2009, Gov. Butch Otter signed Executive Order 2009-10, mandating, among other things, that state agencies verify that new employees are eligible for employment under federal and state law.⁵⁸ While the order does not specifically reference E-Verify, subsequent internal guidelines resulted in all state agencies using E-Verify to meet the order’s requirements.⁵⁹ The order came into effect on July 1, 2009.

Public contractors and subcontractors are required to declare to the contracting state agency that they have “substantiated that all employees providing services or involved in any way on projects funded directly by or assisted in whole or part by state funds or federal stimulus dollars” are legally authorized to work in the United States. The order mandates that all public contracts are to be entered into only with businesses that can meet such a requirement. According to an official at the state’s Department of Human Resources, public contractors are encouraged, but not required to use E-Verify to meet this requirement.

While penalties for violating the law are not specified, the order declares that they “may include immediate cancellation of the contract, reversion of unspent public funds, and monetary penalties.”

Florida — State Agencies under Direction of the Governor, and Employers Contracting with Them

On January 4, 2011, Gov. Rick Scott signed an executive order requiring agencies under his direction to use E-Verify. It was superseded on May 27, 2011, with a similar E-Verify order that brought the policy more in line with standard E-Verify practices by requiring verification of new employees rather than both new and existing employees.⁶⁰

Specifically, all agencies under the direction of the governor have been directed to verify the employment eligibility of all new employees through E-Verify. Agencies not under the direction of the governor are “encouraged” to follow the same guidelines.⁶¹

All agencies under the direction of the governor must expressly require contractors to use E-Verify for all new employees hired by the contractor during the contract term as a condition of all contracts for the provision of goods and services to the state in excess of nominal value. Additionally, subcontractors performing work pursuant to the contract must use E-Verify. Agencies not under the direction of the governor are encouraged to follow these guidelines as well.

The order does not specify any penalties for non-compliance.

A bill that would have required all employers to use E-Verify under threat of suspension of business licenses died in the state senate in May 2011.⁶² The issue is likely to be raised in the future as Gov. Scott ran on a platform promising that he “will require all Florida employers to use the free E-Verify system to ensure that their workers are legal.”⁶³

Not Quite E-Verify

Tennessee — E-Verify or Alternative Programs for Nearly All Employers

The “Tennessee Lawful Employment Act” (H.B. 1378) was signed into law on June 7, 2011.⁶⁴ The bill requires verification of worker eligibility either through E-Verify or through certain documentation as listed in the act. The requirement is phased in over time and all governmental entities and private employers with 500 or more employees were required to adhere to the act by January 1, 2012. Private employers with 200 to 499 employees had to comply by July 1, 2012, while private employers with six to 199 employees must comply by January 1, 2013.

Although in its original form the bill mandated use of E-Verify, the final version of the bill does not mandate use of the program. Employers not wishing to use E-Verify can meet the requirements of the act by requesting from the employee either a valid Tennessee driver’s license, a driver’s license from a different state (provided that the requirements are at least as strict as those in Tennessee), a U.S. birth certificate, certain alien registration documents, or one of a number of other documents. What methodology the state will use for verifying the validity of these documents remains unclear.

Any lawful residents of Tennessee or employees of a federal agency may file a complaint alleging a violation of the Tennessee Lawful Employment Act. The state’s Department of Labor and Workforce Development must provide written notification to the employer of the inquiry as well as a request for documentation establishing compliance. The employer has 30 days to respond with the documentation. If the state determines that an employer has violated the act, the commissioner who oversees the program issues an order detailing the findings, penalties that will apply if a final order is issued, a process for contesting the finding, and a process by which the commissioner will waive all penalties for a first violation.

If it is an employer’s first violation, the commissioner must issue a warning in lieu of all penalties if the employer complies with all remedial action requested by the department within 60 days of the date of the initial order, and if the commissioner determines that the violation was not a “knowing violation”.

If the commissioner issues a final order for a violation of the act, the commissioner must assess the following penalties: \$500 for a first violation, plus an additional \$500 for each non-verified employee; \$1,000 for a second violation, plus an additional \$1,000 for each non-verified employee; or \$2,500 for a third or subsequent violation, plus an additional \$2,500 for each non-verified employee.

Beginning February 1, 2012, and on a monthly basis thereafter, Tennessee will post a publicly accessible list of any employer against whom a final order has been issued on the department’s website.

The bill creates an office of “Employment Verification Assistance” that is directed to assist employers who do not have Internet access. The bill allows for the creation of “no more than one (1) full-time administrative position.”

Colorado — E-Verify or Alternative Programs for Public Contractors

Colorado's E-Verify law became effective on August 7, 2006, and was amended on May 13, 2008, (H.B. 06-1343, amended by H.B. 07-1073 and S.B. 08-193).⁶⁵ The amendment created the "Department Program" and is offered as an alternative to E-Verify. Public contractors must participate in either E-Verify or the Department Program.

The law prohibits state agencies (and political subdivisions) from entering into or renewing contracts for services with contractors that knowingly employ or contract with illegal aliens, or contractors that subcontract with subcontractors that knowingly employ illegal aliens. Prior to executing a public contract for services, each prospective contractor is required to certify that it does not knowingly employ or contract with an illegal alien who will perform work under the public contract and that the contractor will use E-Verify (or the Department Program, discussed below) to confirm the employment eligibility of all employees who are newly hired to perform work under the public contract.

If the contractor obtains actual knowledge that a subcontractor performing work under the public contract is employing an illegal alien, the contractor must notify the subcontractor and the contracting state agency or political subdivision about the illegal act within three days. The contractor must terminate the subcontract if within three days of receiving the notice the subcontractor does not stop employing or contracting with the illegal alien. However, the subcontract is not to be terminated if the subcontractor provides information to establish that the subcontractor "has not knowingly employed or contracted with an illegal alien".

If a contractor violates a provision of this law, the state agency or political subdivision may terminate the contract for a breach of the contract. The contractor becomes liable for actual and consequential damages to the state agency or political subdivision. The Colorado Secretary of State is required to keep a list of all contractors found to have violated the provisions of this law. The list is to be made available to the public via the Internet for two years from the date of the violation.

Contractors that participate in the alternative "Department Program" are required to notify the Department of Labor and Employment as well as the contracting state agency (or political subdivision) of such participation. Within 20 days after hiring a new employee who is to perform work under the public contract, the contractor must affirm that the contractor has examined the employee's legal work status, retained file copies of I-9 and employment authorization documents, and not altered or falsified the identification documents. The contractor must provide a written, notarized copy of the affirmation to the contracting state agency or political subdivision.

The state's Department of Labor and Employment is tasked with investigating complaints and can conduct on-site inspections and random audits of state agencies. It has the authority to request and review citizenship documentation of persons performing work on public contracts.⁶⁶ Under the "Department Program" public contractors must consent to random audits to assess compliance with the law.

Utah — E-Verify or Alternative Programs for Public and Private Employers

The "Private Employer Verification Act" (S.B. 251) was signed into law on March 31, 2010.⁶⁷ The law provides that a private employer who employs 15 or more people as of July 1, 2010, is not allowed to hire a new employee after that date unless the employer is registered with a verification system and uses it for hiring purposes, though not necessarily E-Verify. The law exempts employers of aliens on H-2A (temporary agricultural) and H-2B (temporary, non-agricultural) visas. Compliance with the law protects an employer from civil liability arising from the unlawful hiring of an illegal alien.

In order to be in compliance with the law, employers can use a number of "status verification programs". As an alternative to E-Verify, businesses can use any other federal program the state deems equivalent to E-Verify, including "the Social Security Number Verification Service or similar online verification process implemented by the United States Social Security Administration".⁶⁸ An expert at the Social Security Administration tells CIS that the program

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is not sufficient for determining immigration status. Finally, employers can be in compliance with the law by using “an independent third-party system with an equal or higher degree of reliability” as the other programs.

The act requires the state’s Department of Commerce to publish a list of registered private employers participating in employee verification. The list is accessible to the public at no charge.⁶⁹ Employers are not required to register with the state’s Department of Commerce, but employers may register in order to get the company’s name on a list maintained on the agency’s website. To register, employers must pay a fee, renew the registration every two years, and check a box that reads, “Under penalty of perjury, I certify that I am in compliance [with Utah’s Private Employer Verification Act].”

Although the list contains the name of hundreds of businesses, the state provides no way of determining whether the business has used E-Verify or an alternative program to meet the requirements of the law. And a significant number of businesses on the list are in expired status, having failed to renew their registration; of the first 15 businesses listed, one-third are expired.⁷⁰ Furthermore, Utah’s Division of Corporations — which oversees the list — explained to CIS that no audits on the companies are conducted, suggesting that the list is largely unreliable.

Additionally, there are no penalties for non-compliance with the Private Employer Verification Act. The law’s lack of enforcement measures remains the focus of ongoing legislative efforts and controversial new guestworker legislation which, barring any lawsuit, will go into effect in 2013 and replace this law.

The guestworker legislation, called the “Utah Immigration Accountability and Enforcement Act,” (H.B. 116) will require use of E-Verify — by not allowing for use of “similar” programs — but it also creates a state-level guestworker program, among other things.⁷¹ As written, the E-Verify requirement in the act will not come into effect until the guestworker program starts. It is generally understood that the State of Utah must apply for a federal waiver in order to initiate a state-level guestworker program, meaning that the start date for the contingent E-Verify provisions should be considered uncertain. However, according to the language of the act, the guestworker program start date is 120 days after the state receives the necessary waiver, or July 1, 2013, which ever comes sooner. CIS was able to confirm with an attorney who helped draft the act that Utah intends to initiate a guestworker program by July 1, 2013, even if the state does not receive a waiver from the federal government. This unilateral move will likely generate controversy, if not a lawsuit. Again, the E-Verify provision will be contingent on the outcome of any legal challenge to the guestworker plan, making an actual start date too difficult to determine.

According to H.B. 116, on and after the guestworker program start date, a private employer “employing 15 or more employees within the state for each working day in each of 20 calendar weeks or more in the current or preceding calendar year, after hiring an employee, shall verify the employment eligibility of the new employee ... through the E-Verify program if the individual does not hold a [guestworker] permit.” If the person does hold a guestworker permit obtained through the state-level guestworker program, the person is to be verified through something called the “U-Verify” program, a system to be created by the State of Utah.

Private employers are required to keep a record of the verification for the duration of the employee’s employment or at least three years from the date of verification, whichever is longer. If it is determined that an employee does not have a valid permit, the act requires that the person be terminated.

Similar to the earlier bill, there are liability protections for employers using E-Verify if it is later determined, in contradiction to information provided through E-Verify, that the employee is an illegal immigrant. Additionally, employers may also register with the Department of Commerce under this act.

Unlike current law, H.B. 116 contains penalties for non-compliance. Under the law, if an employer is caught knowingly employing an illegal alien, a fine of up to \$100 is to be imposed for each illegal alien employed. A second violation results in a fine up to \$500 for each illegal alien employed. A third or subsequent violation results in applicable licenses being revoked for a period up to one year; if there are no applicable licenses, the state must impose a penalty up to \$10,000.

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Previously, on July 1, 2009, Utah started requiring public employers, public contractors, and subcontractors to use a status verification program (e.g. E-Verify or the Social Security Number Verification Service, etc.) to verify worker eligibility. The law also made it unlawful for an employer to discharge an employee working in Utah who is a United States citizen or permanent resident alien and replace the employee with, or have the employee's duties assumed by, an employee who the employer "knows, or reasonably should have known, is an unauthorized alien ... is working in the state in a job category ... that requires equal skill, effort, and responsibility; and ... which is performed under similar working conditions ... as the job category held by the discharged employee."⁷²

Recent Changes in California, Rhode Island, and Illinois

California Prohibits E-Verify Mandates

In October 2011, Gov. Jerry Brown signed into law the "Employment Acceleration Act of 2011" (A.B. 1236), an act that prohibits California municipalities from requiring businesses within their jurisdiction to use E-Verify.⁷³ As written, the act prohibits "the state, or a city, county, city and county, or special district, from requiring an employer other than one of those government entities to use an electronic employment verification system except when required by federal law or as a condition of receiving federal funds."⁷⁴

The Center for Immigration Studies found that at the time of the bill's signing at least 20 municipalities in California required use of E-Verify for either city contractors or all businesses within city limits: Mission Viejo, Palmdale, San Clemente, Murrieta, Lake Elsinore, Lancaster, Temecula, Escondido, Menifee, Hemet, Wildomar, San Juan Capistrano, Hesperia, Norco, San Bernardino County, Rancho Santa Margarita, Yorba Linda, Placentia, Orange, and Simi Valley.⁷⁵ Many more California cities use E-Verify for government employees, though such use is not prohibited by the new state bill.

Rhode Island Requirement Rescinded

On March 27, 2008, Gov. Donald Carcieri issued Executive Order 08-01, also known as the "Illegal Immigration Control Order".⁷⁶

Among other things, the order required the Rhode Island government to use E-Verify "to ensure that all employees of the Executive Branch are legally eligible to be employed in the United States and take appropriate action against those that are not eligible for employment, consistent with federal and state law." The order also required "all persons and businesses, including grantees, contractors and their subcontractors, and vendors doing business with the State of Rhode Island" to use E-Verify.

On January 5, 2011, less than 24 hours after his swearing-in, Gov. Lincoln Chafee rescinded Executive Order 08-01, calling it "an agent of divisiveness, incivility, and distrust among the state's citizens."⁷⁷ In defending his move, Gov. Chafee incorrectly claimed on at least two occasions that Rhode Island was one of only six states with an E-Verify mandate.⁷⁸

Illinois No Longer Prohibiting E-Verify

In 2007, the Illinois legislature passed an act prohibiting employers from enrolling in any employment eligibility program — including E-Verify — out of alleged concerns over database accuracy. Specifically, the act prohibited use "until the Social Security Administration (SSA) and Department of Homeland Security (DHS) databases are able to make a determination on 99 percent of the tentative nonconfirmation notices issued to employers within three days ..."⁷⁹ The act also added state-level requirements to the use of E-Verify in the instance that the federal agencies met this criteria. Finally, the act prohibited municipalities from requiring use of E-Verify in any instance.

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The federal government filed a lawsuit against Illinois, seeking to have the act declared invalid under the U.S. Constitution's Supremacy Clause. On March 11, 2009, the U.S. District Court for the Central District of Illinois agreed with the federal government, noting that "Congress put the Federal Program in place to allow all employers access to a means to verify the employment eligibility of new hires", and that the federal statute creating E-Verify "states that any employer may participate."⁸⁰ The court continued:

"The Illinois Act frustrates Congress' purpose by prohibiting Illinois employers from participating in the Federal Program unless the Federal Program meets Illinois' standard for accuracy and speed. Illinois cannot dictate to Congress the standards that federal programs must meet. This clearly frustrates the Congressional purpose of making the Federal Program available to all employers. The Illinois Act is invalid under the Supremacy Clause."⁸¹

After the ruling, the Illinois legislature passed a new version of the law that did not prohibit private use of E-Verify, but added procedures employers will have to follow in order to use the program.⁸² The change does not represent an embrace of E-Verify; the additional procedures are arguably designed to discourage use.

Now, upon enrollment in E-Verify, a private employer must attest under penalty of perjury, on a form provided by the Illinois Department of Labor (IDOL) that (1) the employer has received E-Verify training materials from DHS, and that all employees who will administer the program have completed an E-Verify tutorial, and (2) that the employer has posted the notice from DHS indicating that the employer is enrolled in E-Verify and the "anti-discrimination notice issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice in a prominent place that is clearly visible to both prospective and current employees." The employer is also required to "maintain the signed original of the attestation form prescribed by the IDOL, as well as all [online training] certificates of completion and make them available for inspection or copying by the IDOL at any reasonable time."

It is a violation of act for an employer:

"(1) to fail to display the notices supplied by DHS and OSC in a prominent place that is clearly visible to both prospective and current employees; (2) to allow any employee to use an Employment Eligibility Verification System prior to having completed [online training]; (3) to fail to take reasonable steps to prevent an employee from circumventing the requirement to complete the [online training] by assuming another employee's E-Verify ... user identification or password; (4) to use [E-Verify] to verify the employment eligibility of job applicants prior to hiring or to otherwise use [E-Verify] to screen individuals prior to hiring and prior to the completion of a Form I-9; (5) to terminate an employee or take any other adverse employment action against an individual prior to receiving a final nonconfirmation notice from the Social Security Administration or the Department of Homeland Security; (6) to fail to notify an individual, in writing, of the employer's receipt of a tentative nonconfirmation notice, of the individual's right to contest the tentative nonconfirmation notice, and of the contact information for the relevant government agency or agencies that the individual must contact to resolve the tentative nonconfirmation notice; (7) to fail to safeguard the information contained in [E-Verify], and the means of access to the system (such as passwords and other privacy protections). An employer shall ensure that the System is not used for any purpose other than employment verification of newly hired employees and shall ensure that the information contained in the System and the means of access to the System are not disseminated to any person other than employees who need such information and access to perform the employer's employment verification responsibilities."

The act also sets up opportunities for lawsuits under the state's human rights laws. Specifically, any claim that an employer "refused to hire, segregated, or acted with respect to recruitment, hiring, promotion, renewal or employment, selection for training or apprenticeship, discharge, discipline, tenure or terms, privileges, or conditions of employment without following the procedures of the Employment Eligibility Verification System, including the Basic Pilot and E-Verify programs, may be brought under paragraph (G)(2) of Section 2-102 of the Illinois Human Rights Act." It is also a violation of that act for an individual to "falsely pose as an employer in order to enroll in

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an Employment Eligibility Verification System or for an employer to use an Employment Eligibility Verification System to access information regarding an individual who is not an employee of the employer.”

The law also requires the Illinois DOL to post on its website “information from the United States Government Accountability Office, Westat, or a similar reliable source independent of the Department of Homeland Security regarding: (1) the accuracy of the E-Verify databases; (2) the approximate financial burden and expenditure of time that use of E-Verify requires from employers; and (3) an overview of an employer’s responsibilities under federal and state law relating to the use of E-Verify.”

The act sets up opportunities for a lawsuit against an employer alleged to have violated the act. Specifically, “If an employee or applicant for employment alleges that he or she has been denied his or her rights under this Act, he or she may file a complaint with the Department of Labor. The Department shall investigate the complaint and shall have authority to request the issuance of a search warrant or subpoena to inspect the files of the employer or prospective employer, if necessary. The Department shall attempt to resolve the complaint by conference, conciliation, or persuasion. If the complaint is not so resolved and the Department finds the employer or prospective employer has violated the Act, the Department may commence an action in the circuit court to enforce the provisions of this Act”⁸³

If the employee (or applicant for employment) is successful on the claim, the court must award the individual actual damages, plus costs. But for a “willful and knowing violation” of the act, the award is \$200 plus costs, reasonable attorney’s fees, and actual damages. For a “willful and knowing violation” of the human rights provisions, the court must award \$500 per affected employee plus costs, reasonable attorneys’ fees, and actual damages.”

Under the act, any employer or prospective employer or his agent who violates the provisions of the act is guilty of a petty offense. The Illinois Department of Labor reminds employers interested in using E-Verify that “a petty offense carries a maximum penalty of \$1,000.”⁸⁴

Municipalities in Illinois remain barred from requiring use of E-Verify.

DISCLAIMER: This is not to be considered legal advice. All persons seeking detailed information about state and local E-Verify provisions should contact an attorney in their area and/or the state agency overseeing employment verification.

End Notes

- ¹ *Chamber of Commerce of the United States v. Whiting* (2011), <http://www.scotusblog.com/case-files/cases/chamber-of-commerce-of-the-united-states-v-candelaria/>.
- ² Additionally, some cities and counties require use of E-Verify, though they are not studied here.
- ³ E-Verify publications, Center for Immigration Studies, <http://www.cis.org/EVerifyElectronicVerification>.
- ⁴ <http://www.dhs.gov/ynews/testimony/20111026-napolitano-house-judiciary.shtm>.
- ⁵ <http://www.uscis.gov/vgn-ext-templating/v/index.jsp?vgnextoid=e94888e60a405110VgnVCM1000004718190aRCRD&vgnnextchannel=e94888e60a405110VgnVCM1000004718190aRCRD>.
- ⁶ <http://www.dhs.gov/ynews/testimony/20111026-napolitano-house-judiciary.shtm>.
- ⁷ A bill before congress would make E-Verify mandatory for most employers in the United States: The Legal Workforce Act (H.R. 2164), <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:h.r.2164>. See also, Lamar Smith, “Make E-Verify the law of the entire land”, *Washington Times*, June 17, 2011, <http://www.washingtontimes.com/news/2011/jun/17/make-e-verify-the-law-of-the-entire-land/>.
- ⁸ <http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=23>; see also, http://www.azleg.gov//FormatDocument.asp?inDoc=/legtext/48leg/1r/summary/s.2779approp_aspassedbyleg.doc.htm&Session_ID=85.
- ⁹ http://www.azleg.gov//FormatDocument.asp?inDoc=/legtext/48leg/2R/laws/0152.htm&Session_ID=86.
- ¹⁰ Jahna Berry, “Most Arizona employers aren’t using E-Verify”, *Arizona Republic*, July 28, 2010, <http://www.azcentral.com/arizonarepublic/news/articles/2010/07/28/20100728arizona-employers-ignoring-e-verify.html>.
- ¹¹ Arizona’s E-Verify list is available at <http://www.azag.gov/LegalAZWorkersAct/EVerifyList.html>
- ¹² <http://www.azag.gov/LegalAZWorkersAct/CourtOrders.html>.
- ¹³ <http://billstatus.ls.state.ms.us/documents/2008/pdf/SB/2900-2999/SB2988SG.pdf>.
- ¹⁴ <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=e72badec01a80310VgnVCM100000082ca60aRCRD&vgnnextchannel=8a2f6d26d17df110VgnVCM1000004718190aRCRD>.
- ¹⁵ Phone conversation with official at Mississippi Office of the Attorney General, Public Integrity Division, February 16, 2012.
- ¹⁶ Elizabeth Crisp, “Hearing: E-Verify Law Not Enforced”, *Clarion-Ledger* (Jackson, Mississippi), September 30, 2010.
- ¹⁷ <http://billstatus.ls.state.ms.us/documents/2008/pdf/SB/2900-2999/SB2988SG.pdf>.
- ¹⁸ <http://billstatus.ls.state.ms.us/documents/2008/pdf/SB/2900-2999/SB2988SG.pdf>.
- ¹⁹ <http://www.governorbarbour.com/news/archive/news/2008/mar/SB2988.htm>.

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²⁰ <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextchannel=a2dd6d26d17df110VgnVCM1000004718190aRCRD&vgnnextoid=304cadec01a80310VgnVCM100000082ca60aRCRD>.

²¹ <http://www.mdes.ms.gov/Home/EmployerServices/index.html>. See also, <http://msbusiness.com/business-blog/2011/07/14/pleasant-surprise/>.

²² http://www.scstatehouse.gov/sess117_2007-2008/bills/4400.htm; http://www.scstatehouse.gov/sess119_2011-2012/bills/20.htm.

²³ <http://www.llr.state.sc.us/immigration/>.

²⁴ <http://www.llr.state.sc.us/immigration/>.

²⁵ Letter from South Carolina Governor Nikki Haley to DHS Secretary Janet Napolitano (May 27, 2011), <http://www.governor.sc.gov/Documents/Letter%20to%20Secretary%20Janet%20Napolitano%205%2027%202011.pdf>.

²⁶ The letters from USCIS to both Gov. Haley and employers in South Carolina are on file with the Center for Immigration Studies.

²⁷ <http://alisondb.legislature.state.al.us/acas/searchableinstruments/2011rs/bills/hb56.htm>.

²⁸ http://www1.legis.ga.gov/legis/2005_06/fulltext/sb529.htm.

²⁹ http://www1.legis.ga.gov/legis/2011_12/fulltext/hb87.htm.

³⁰ A FOX News affiliate in Atlanta confirmed the lack of enforcement in a video report that found lax hiring practices at a number of workplaces: Randy Travis, “I-Team: Illegal Workers”, FOX News, February 13, 2012, <http://www.myfoxatlanta.com/dpp/news/iteam/I-Team-Illegal-Workers-20120213-pm-pk>.

³¹ http://www1.legis.ga.gov/legis/2011_12/fulltext/hb87.htm.

³² http://www1.legis.ga.gov/legis/2011_12/fulltext/hb87.htm.

³³ http://www1.legis.ga.gov/legis/2011_12/fulltext/hb87.htm.

³⁴ http://www1.legis.ga.gov/legis/2011_12/fulltext/hb87.htm.

³⁵ http://www1.legis.ga.gov/legis/2011_12/fulltext/hb87.htm.

³⁶ http://www1.legis.ga.gov/legis/2011_12/fulltext/hb87.htm.

³⁷ http://www1.legis.ga.gov/legis/2007_08/fulltext/sb184.htm.

³⁸ <http://www.ncleg.net/Sessions/2011/Bills/House/PDF/H36v8.pdf>.

³⁹ <http://www.in.gov/legislative/bills/2011/SE/SE0590.1.html>.

⁴⁰ <http://nebraskalegislature.gov/FloorDocs/101/PDF/Slip/LB403.pdf>.

⁴¹ The report is on file with the Center for Immigration Studies.

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- ⁴² <http://ssl.csg.org/dockets/29cycle/29A/2009adocketbills/1929A04ok.pdf>.
- ⁴³ <http://lis.virginia.gov/cgi-bin/legp604.exe?101+ful+CHAP0633>.
- ⁴⁴ www.washingtontimes.com/news/2011/mar/21/virginia-to-advance-date-for-e-verify-to-june-1/.
- ⁴⁵ www.washingtontimes.com/news/2011/mar/21/virginia-to-advance-date-for-e-verify-to-june-1/.
- ⁴⁶ <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4308.2>.
- ⁴⁷ <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-4308.2>.
- ⁴⁸ <http://leg1.state.va.us/cgi-bin/legp504.exe?000+coh+2.2-4311.1+704272>.
- ⁴⁹ <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+18.2-11>.
- ⁵⁰ <http://www.house.mo.gov/billtracking/bills081/billpdf/truly/HB1549T.PDF>.
- ⁵¹ <http://www.legis.state.la.us/billdata/streamdocument.asp?did=760867>.
- ⁵² <http://www.legis.state.la.us/billdata/streamdocument.asp?did=760907>.
- ⁵³ <http://minnesota.publicradio.org/display/web/2011/08/19/budget-deal-brings-everify-back/>.
- ⁵⁴ <http://www.leg.state.mn.us/archive/ExecOrders/08-01.pdf>.
- ⁵⁵ See, Section 29, <http://www.house.leg.state.mn.us/ss2011/11-3590.htm>.
- ⁵⁶ <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2011&sessInd=0&billBody=S&billTyp=B&billNbr=0637&pn=2347>.
- ⁵⁷ The act refers to the Pennsylvania Prevailing Wage Act of 1961 for this definition.
- ⁵⁸ http://gov.idaho.gov/mediacenter/execorders/eo09/eo_2009_10.html.
- ⁵⁹ Telephone conversation, Idaho Dept. of Human Resources, Nov. 10, 2011.
- ⁶⁰ <http://www.flgov.com/wp-content/uploads/orders/2011/11-116-suspend.pdf>.
- ⁶¹ <http://www.flgov.com/wp-content/uploads/orders/2011/11-116-suspend.pdf>.
- ⁶² <http://www.flsenate.gov/Session/Bill/2011/518>.
- ⁶³ <http://web.archive.org/web/20101125100352/http://www.rickscottforflorida.com/home/issues/border-security/>.
- ⁶⁴ <http://state.tn.us/sos/acts/107/pub/pc0436.pdf>.

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⁶⁵ <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251695475820&ssbinary=true>; see also, “Fact Sheet: Colorado Public Contracts for Services and Illegal Aliens Law”, <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251691080684&ssbinary=true>.

⁶⁶ For more information, see: <http://www.colorado.gov/cs/Satellite?blobcol=urldata&blobheader=application%2Fpdf&blobkey=id&blobtable=MungoBlobs&blobwhere=1251616385411&ssbinary=true>.

⁶⁷ <http://le.utah.gov/~2010/bills/sbillenr/sb0251.pdf>.

⁶⁸ <http://www.ssa.gov/employer/ssnv.htm>.

⁶⁹ <https://secure.utah.gov/verifyreg/index.html>.

⁷⁰ See, e.g., <https://secure.utah.gov/bes/action/details?entity=2065303-0160>; <https://secure.utah.gov/bes/action/details?entity=7838706-0111>; <https://secure.utah.gov/bes/action/details?entity=6694073-0151>.

⁷¹ <http://le.utah.gov/~2011/bills/hbillenr/hb0116.htm>.

⁷² <http://le.utah.gov/~2008/bills/sbillenr/sb0081.htm>.

⁷³ <http://www.cis.org/feere/california-limits-everify>.

⁷⁴ http://leginfo.ca.gov/pub/11-12/bill/asm/ab_1201-1250/ab_1236_bill_20110909_enrolled.pdf.

⁷⁵ <http://www.cis.org/feere/california-limits-everify>.

⁷⁶ http://www.riaclu.org/documents/Carcieri_Executive_Order_immigration.pdf.

⁷⁷ <http://www.ri.gov/press/view/12942>; see also, http://www.governor.ri.gov/documents/executiveorders/2011/Executive_Order_11-02.pdf.

⁷⁸ <http://www.politifact.com/rhode-island/statements/2010/nov/19/lincoln-chafee/chafee-says-only-six-states-use-e-verify/>.

⁷⁹ <http://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=095-0138>.

⁸⁰ *United States v. Illinois*, 2009 U.S. Dist. LEXIS 19533 at *6.

⁸¹ *Ibid.*

⁸² Right to Privacy in the Workplace Act, § 820 ILCS 55/12, “Use of Employment Eligibility Verification Systems”, <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2398&ChapterID=68>; see also, <http://www.state.il.us/Agency/idol/Forms/PDFs/everify.pdf>.

⁸³ <http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2398&ChapterID=68>.

⁸⁴ <http://www.state.il.us/Agency/idol/Forms/PDFs/everify.pdf>.



An Overview of E-Verify Policies At the State Level

By Jon Feere

In recent years, many states have enacted enforcement-focused immigration laws in an effort to discourage illegal immigration into their jurisdictions. E-Verify, the federally run employment authorization program, has become a central part of this state-level effort as many states now require use of the program for some or all employers. After Arizona's state-wide mandate on E-Verify use was upheld by the U.S. Supreme Court in *Chamber of Commerce v. Whiting* in May 2011, a number of states embraced the program and many more are considering similar mandates. Currently 16 states require use of E-Verify in some form and those laws are detailed in this report.

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