

E-VERIFY IN THE STATES SURPRISINGLY DIFFICULT TO PASS

With 2011 legislative sessions coming into the home stretch in many states, the immigration bills getting the most attention are measures modeled on Arizona's controversial policing law, SB 1070. But E-Verify has also been hotly debated in several states – and like 1070 copycat bills, worksite verification mandates have proven surprisingly difficult to pass in many places.

It's not over till it's over, when the final gavel falls, and several states are still considering far-reaching E-Verify mandates. Passage remains possible if not likely in Florida and Georgia. Legislatures in Alabama and Rhode Island are debating measures. And lawmakers in a number of states are talking about using the federal system for purposes other than employment verification, allowing state agencies, for example, to use it to screen clients.

But in several other states, including Kansas, Indiana and Colorado, E-Verify provisions have slowed, faltered or died – often because the broader immigration bills of which they were part were seen as too controversial and likely to undermine the reputation of the state.

Florida

One of the most intense battles, still too close to call, is in Florida. Both chambers of the legislature are considering immigration bills that combine Arizona-like policing measures with worksite verification mandates that would apply to all Florida employers, public and private.

The House bill would phase in E-Verify over two years. Employers with more than a hundred employees would be required to enroll by July 2012. Smaller businesses would have until July 2013 to comply. The measure is sponsored by the chairman of the House Judiciary Committee, Republican Rep. William Snyder, whose committee approved it by an overwhelming margin earlier this month. Powerful Republican House Speaker Dean Cannon also supports the bill.

Things are more complicated in the Florida Senate, where the mandate's sponsor and the chamber's president are at odds over just how strong the workplace verification measure should be.

As initially proposed by Miami Republican Anitere Flores, SB 7066 required all Florida employers, public and private, to enroll in E-Verify. But earlier this month, Sen. Flores said she had become convinced that the federal program was "substantially flawed," and she modified her bill to give employers a choice. In the amended version, businesses can bypass E-Verify by scrutinizing any one of four documents and filling out an I-9 form. The four documents: an unexpired U.S. or foreign passport, an unexpired driver's license from any state or a "secure national identification card."

Republican Senate President Mike Haridopolos immediately took issue with Flores' option, pledging to close the "loophole" she had created and ensure that E-Verify becomes mandatory for all employers. (Haridopolos recently announced that he is running for the U.S. Senate in 2012.)

Nevertheless, the broad immigration bill approved by the Senate Judiciary Committee in mid-March included Flores' option.

Florida's new Republican governor, Rick Scott, campaigned on a promise to crack down on illegal immigration. One of his first steps after taking office was to issue an executive order requiring government agencies to use E-Verify, and he backs extending the requirement to the private sector.

Immigration advocates and the Florida business community have mounted strong public opposition to the E-Verify mandates. Particularly vocal have been representatives of the state's \$7.5 billion agricultural industry. Tea party activists, who played an important part in electing Gov. Scott, have come out loudly in favor of a verification requirement. But last week, state tea party chairman Everett Wilkinson stunned Tallahassee insiders by sending a letter to Haridopolos calling E-Verify "a flawed federal program" and supporting the Flores option.

Both House and Senate bills are awaiting further action. The Florida legislature is scheduled to adjourn on May 6.

Kansas

Immigration enforcement was initially high on the agenda for lawmakers in Kansas, where the newly elected Secretary of State is Kris Kobach, author of many of the tough immigration bills that have passed in recent years in Arizona and other states. But several immigration measures have now run into roadblocks in the Kansas legislature, and it looks increasingly unlikely that anything will pass this year.

The House bill, HB 2372, was a sweeping, multifaceted package that included an Arizona-like policing measure, required proof of citizenship for anyone seeking public benefits and made it a crime to harbor or transport immigrants unlawfully present in the U.S. It also required the state and local governments, as well as government contractors and subcontractors, to use E-Verify.

The verification mandate was strongly opposed by immigrant advocates and business interests – local chambers of commerce and trade associations representing the agribusiness, farm and livestock, construction, restaurant and hospitality industries. Employers argued that the bill was too broad and that the E-Verify provision would unduly burden employers. Local government officials also came out against the measure, arguing that it was an unfunded mandate.

Most of the debate in the legislature centered on the bill's policing provisions, which even some Republican lawmakers found too sweeping. Concerns were raised about the statute's effect on state charities and also its constitutionality.

On March 14, the Kansas House Judiciary Committee voted to table the measure indefinitely. Several efforts to resurrect it failed over the following week. And on March 23, the full House refused to take up the legislation, voting 84 to 40 to kill a last-ditch effort to bypass the committee.

Kansas' legislative session ends on April 27, and opponents are hopeful that immigration enforcement has been sidetracked for the year.

Indiana

A compound immigration enforcement measure – it includes an E-Verify mandate and Arizona-like policing provisions – has also run into trouble in Indiana.

Sponsored by Republican Senator Mike Delph, who has tried and failed several times in past years to pass tough immigration enforcement, the package initially enjoyed strong support and appeared to be on a fast track to passage.

As first introduced, the legislation required all Indiana state agencies, local governments, public schools, public libraries and government contractors to use E-Verify. The measure punished employers who hired unauthorized workers by suspending and eventually, after a third offense, revoking their business licenses. This was later modified to prohibit any business that knowingly hired an illegal worker from deducting expenses associated with the employee on its state income tax return. As an incentive to use E-Verify, companies that enrolled in the program would be held harmless and indemnified from any penalties in the law.

The package moved quickly through the Senate, passing in late February by a vote of 31 to 18. But doubts grew stronger across the state as the measure was debated. Concern focused on the policing provisions, which were seen as an invitation to racial profiling and likely to damage the state's image and undermine its business climate. The Indianapolis Convention and Visitors Association warned that several pending convention contracts would be at risk if the law passed. Two of the state's largest employers, the pharmaceutical giant Eli Lilly & Co. and the diesel engine manufacturer Cummins Inc., came out against the bill, as did a group of 120 Indiana mayors who complained that the policing provision was an unfunded mandate. The state's attorney general joined in the outcry, and after passage in the Senate, the chair of that chamber's powerful appropriations committee expressed doubts, arguing that the legislation should be revamped.

Then, on February 22, Democratic members of the Indiana House walked out, leaving the state to avoid taking a vote on a controversial right-to-work bill, and all legislative activity ground to a halt.

More than a month later, it's anyone's guess when House Democrats will return to the state. But lawmakers now face a ticking clock – the legislature is scheduled to adjourn on April 29 – and pressure to deal with several bigger issues, including the state budget and a pending education bill.

Indiana insiders say no one is more relieved than Republican Gov. Mitch Daniels, who is considering a 2012 presidential bid and has hesitated to comment on the enforcement measure. Given the limited timeframe and waning political will, it's growing hard to see an immigration bill landing on his desk this year.

Other states

E-Verify legislation has also been "postponed indefinitely" in **Colorado**. The session started with a hail of immigration bills – 1070 copycat measures in both chambers, separate E-Verify measures in both chambers and a variety of other provisions to crack down on identity theft and make it difficult to be an unauthorized immigrant in Colorado. The E-Verify mandates

would have required all private-sector employers in Colorado to participate in the program, although the Senate version would have exempted temporary agricultural workers.

Immigrant advocates and business representatives rallied to beat back the tide. The Republican-controlled House seemed eager to act, but it soon became clear that the Democrat-controlled Senate was less enthusiastic and that Democratic Gov. John Hickenlooper might not sign whatever landed on desk. By mid-February, committees in both chambers had killed the most controversial bills, including both 1070 measures and both E-Verify mandates. Now, with just five weeks to go before the legislature adjourns, lawmakers are preoccupied with the state's billion-dollar budget deficit, and few insiders expect to see an immigration bill emerge.

In **South Carolina**, where employers are already required to verify employees' immigration status, either using E-Verify or by requesting to see a state driver's license, the legislature considered a bill that would have required the state unemployment agency to use the federal verification system to screen laid-off workers applying for jobless benefits. South Carolina legislators stopped debate pending consultations with federal officials, who told them that E-Verify was for employers only and that the unemployment agency should consider other options. But these are probably not the last lawmakers to consider other potential uses for E-Verify.

Meanwhile, several other states continue to debate worksite verification mandates.

- The **Georgia** state legislature is still on track to pass an Arizona-style immigration law that would also require E-Verify for all but the smallest businesses in the states.
- In **Alabama**, a House committee has approved a bill that requires all employers who receive economic incentives from the state to enroll in E-Verify. Knowingly employing unauthorized immigrants would be against the law under the bill, which also contains a broad Arizona-like policing provision, and employers who violate that prohibition could have their business licenses revoked. Montgomery insiders expect another bill, combining Arizona-like policing measures and a workplace verification requirement, to be introduced this week.
- Lawmakers in **Rhode Island** are considering several immigration bills, including two E-Verify mandates. Under former Republican Gov. Donald Carcieri, state agencies and contractors were required to use the federal system to verify employees. New Gov. Lincoln Chafee, an independent, rescinded that mandate when he took office in January. One of the bills now pending would reinstate Carcieri's requirements. A second would mandate E-Verify for businesses with three or more employees.
- Legislation introduced in **Tennessee** would require all employers in the state to enroll in E-Verify. Powerful lieutenant governor and Senate speaker Ron Ramsey has expressed qualified support but also made clear he does not want immigration to be the focus of the legislative session. "I want to make sure we're addressing those illegal immigration problems," he told journalists in February, "but not putting undue burdens and undue paperwork on small businesses."
- A bill introduced in **Maryland** prohibits state contractors and businesses using state grants from hiring workers without running them through E-Verify. Similar proposals were put forward in 2009 and 2010 and got little traction. Annapolis insiders expect this year's measure to meet the same fate.

Bottom line: immigration enforcement in general and workplace verification mandates in particular still tempt politicians in many states, particularly in places where the immigrant population is growing rapidly – they are an easy way, many feel, to appear in control and appeal to voters frightened and frustrated by the slow pace of the economic recovery. But in the sober light of day, when the bills come up for debate, few legislatures seem prepared to follow Arizona in courting the intense national controversy and opprobrium a 1070-like policing law is likely to incur. And in many states, even stand-alone E-Verify mandates have proved too contentious – what sounded good as a get-tough promise withered when lawmakers considered the costs.