Bill ties E-Verify use to business licenses

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Montgomery — A bill in the Alabama Senate is seeking to tighten the rules when it comes to companies screening potentially illegal workers through the federal E-Verify system.

Senate Bill 71 from Sen. Arthur Orr, R-Decatur, would require businesses with five or more employees to swear via affidavit to their usage of the E-Verify system before they could receive a city or county business license. Under the bill, the affidavit would be supplied by the Attorney General's Office, and noncompliance would be a Class C misdemeanor, punishable by a fine of up to $500.

Companies are already required to use the E-Verify system under a mandate from the state's 2011 anti-illegal immigration law. The system works by confirming the eligibility of employees to work in the United States by comparing information provided by the employee to Social Security Administration and U.S. Department of Homeland Security records.

However, only 60 percent of new Alabama hires had their legal status to work confirmed by E-Verify in 2017, according to a report in Stateline, a publication of The Pew Charitable Trusts. Orr said he modeled the bill after a Georgia law that saw improvement of up to 94 percent of new workers screened through E-Verify.

"It's not an intrusive way to accomplish the goal and it's been an effective way to increase compliance in Georgia," Orr said. "We need to do the same."

Requiring companies to submit an affidavit affirming use of the E-Verify system could be another compliance burden for businesses large and small. Rosemary Elebash with the National Federation of Independent Businesses (NFIB) that represents small and medium sized companies said she had already communicated a few concerns about the bill with Orr.

"If we're going to have this extra step for documentation, I would much rather us use the E-Verify form that already exists rather and do this new affidavit from the Attorney General's Office," Elebash said.

NFIB was involved when lawmakers wrote the existing E-Verify requirements in 2011 and engaged in "extensive" compliance education efforts with small business owners ever since, Elebash said.

"We really want to educate our members because, I'm telling you, they don't want to be out of compliance," she said. "All they want to do is run their business and go about their day because there's a hundred other things to do."

Orr said he wants to avoid unnecessary red tape by only requiring the affidavit once, and not for each new employee.

The bill will be discussed at the State House on Tuesday in a meeting of the Senate Governmental Affairs Committee.

Sen. Gerald Allen, R-Tuscaloosa, is a co-sponsor on the bill. He said verifying employees sometimes "fall through the cracks" for businesses and some don't see the importance of complying.

"This is another step in ensuring that the system works in an effective way like it should, like we expect it to work," Allen said. "We have a law in place already and now we're tightening it up."

The E-Verify system is not without its critics. A 2015 report from the Libertarian think tank Cato Institute said E-Verify was "worse than a coin toss at identifying illegal immigrant job seekers." Fifty-four percent of illegal workers run through E-Verify are approved for work, it said.

The National Immigration Forum said in a 2018 report that E-Verify's error rate has improved greatly since the system was initially developed, but it is not perfect, and mistakes still affect thousands of workers and employers each year.

Thomas Eden, an attorney in Opelika who specializes in workplace immigration compliance and training, said he's surprised by that 60 percent statistic.

"I have found compliance to be quite high," he said. Using E-Verify is a "get out of jail free card" for businesses because it protects companies from prosecution if employees are later found to be in the country illegally, Eden said.

Prior to the 2011 law taking effect, only about 14 percent of Alabama hires were screened, according to Pew.

"I don't consider it a huge issue, it's free and most employers don't mind doing it," Eden said.

Expanding federal law

Use of E-Verify is still voluntary in most states. But new legislation in the U.S. Senate and House would require nationwide use and put financial penalties on employers who don't comply.

U.S. Rep. Mo Brooks, R-Huntsville, is sponsoring the House bill.

"American jobs entice illegal aliens to break our laws and come to America. Mandatory E-verify coupled with harsh penalties cuts off illegal aliens from American jobs," Brooks said upon filing the legislation.

The sponsor in the Senate is Sen. Chuck Grassley, R-Iowa, who formerly chaired the Senate Judiciary Committee.

Besides requiring the screening of new employees, the federal legislation would require most employers to screen all current employees within three years. Under Brooks' legislation, employees that were unauthorized to work would have to be terminated.

Brooks' Alabama Republican colleague U.S. Rep. Bradley Byrne, R-Mobile, is a co-sponsor on the legislation. But Democratic U.S. Rep. Terri Sewell, D-Selma, is opposed to the bill.

"It has been against federal law since 1986 to knowingly hire undocumented workers," Sewell said recently. "Why would we nationalize a program that is both burdensome and costly for

small businesses and has not even been fully enforced at the state level? Standalone E-Verify will not fix our broken immigration system – it will drive more economic activity underground.

"We need a comprehensive solution to improve our immigration system that takes into account and minimizes the stresses on our small businesses," Sewell said.

President Donald Trump's 2020 budget proposal cuts E-Verify funding by about 8 percent, Politico reported this month. The White House requested about $122 million in discretionary funds for the program, down from the $133 million that Congress spent in the spending package approved in February.