



## Years after they became mandatory, Arizona's E-Verify checks are spotty

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WASHINGTON -- Five years after it took effect and more than a year after it was upheld by the U.S. Supreme Court, an Arizona law requiring that businesses check the citizenship of every new hire is often disregarded and rarely enforced.

The Legal Arizona Workers Act mandates that every business in the state verify the legal status of new employees against the federal E-Verify database and it lets the state strip licenses of businesses that knowingly hire undocumented workers.

But the Department of Homeland Security reported that Arizona businesses used the database just 982,593 times in 2011, even though the Census Bureau said there were 1.5 million new hires in the state that year, a 66 percent compliance rate.

Fewer than half of Arizona businesses -- 43 percent -- had enrolled in the system by this month, according to Homeland Security enrollment figures and Census Bureau statistics on the number of Arizona businesses. That rate falls to 19 percent for businesses with four or fewer employees, or less than one business in five.

For businesses that chose to ignore the law there is little repercussion: The Arizona attorney general's office reported only two E-Verify cases since the law took effect in 2008.

"When we first introduced it there were a lot of skeptics," said state Sen. Rich Crandall, R-Mesa, a co-sponsor of the legislation while a member of the House. "Even myself, I thought it was going to cause all sorts of problems.

"Not even did it not cause any problems, it doesn't do jack-squat. It possibly could stop people from applying for a job, but of course we can't measure that," Crandall said.

But those less-than-impressive numbers are largely because of the way the law was designed. Unlike South Carolina, which has audited thousands of businesses this year for compliance with its version of E-Verify, Arizona designed its law to encourage business participation and avoid what Crandall called the "bureaucratic nightmare" of checking up on every business in the state.

If an Arizona business is found to be employing undocumented workers, the state will not check to see if the employer used E-Verify -- but the employer can use E-Verify as a defense.

"The thought was if you use it, then you can use it as a defense when Sherriff Joe [Arpaio] raids your business," Crandall said. "But I don't know of anybody that has been raided by Sheriff Joe and then said, 'Hey, I use E-Verify,' and they were in the system."

That creates "a little bit of a conundrum to how the state might enforce" the law, said Julie Pace, an attorney who represented several business groups in a challenge of the act that reached the U.S. Supreme Court in 2010.

"Arizona hasn't chosen to go down that path and hasn't spent any resources verifying whether people are actually using E-Verify or not," Pace said.

"South Carolina has adopted a program where they actually ask companies to demonstrate that they're registered for E-Verify," she said. "They look at the document to verify, so South Carolina has been a lot stronger on verifying companies than Arizona."

Unlike Arizona, South Carolina put one state agency in charge of enforcing the mandatory use of E-Verify, which was phased in and finally applied to every state business Jan. 1, 2012.

And state lawmakers appropriated funds for enforcement, said Jim Knight, administrator for the Office of Immigrant Worker Compliance in South Carolina's Department of Labor, Licensing and Regulation.

In Arizona, county attorneys and sheriffs' offices investigate businesses only on a formal complaint that a business is employing undocumented workers. Complaints submitted in the proper format must be investigated; those that are submitted without the proper paperwork may be investigated at the prosecutor's discretion, according to the attorney general's office.

Arizona originally appropriated funds to educate businesses on E-Verify and to enforce the law, but that money has dried up.

"Nobody was willing to put any money into it," Crandall said.

In South Carolina, by contrast, Knight said his office has completed 4,500 random audits of businesses so far this year, finding a 94 percent compliance rate among businesses.

The Office of Immigrant Worker Compliance there cited 41 businesses for failing to check new hires against E-Verify, put them on probation and had them enroll with E-Verify, according to data on the office's website.

But just because a business is enrolled in E-Verify does not mean they are using it, Pace said.

"A lot of time they sign-up, but with the economy the way it is, they don't use it," she said.

Small businesses, in particular, claim E-Verify is an unfair financial and legal burden, causing many to simply ignore the mandate, experts say.

"Small businesses don't have lawyers on staff or HR [human resources] departments to handle this," said Alex Nowrasteh, a Cato Institute immigration policy analyst. "Big businesses have that and it won't cost them a lot more to verify."

Nowrasteh's report, "The Economic Case Against Arizona's Immigration Laws," put the cost of a single E-Verify query at \$147, for labor, paperwork and additional steps an employer might take to fully comply with the law.

With many small businesses operating on slimmer profit margins, Nowrasteh said he was surprised that 19 percent of Arizona firms with four or fewer employees were enrolled in E-Verify.

"I'm surprised that it is that high," he said. "It shows how conscientious some small-business owners are, even when it is financially devastating for them."

For Anna Johnson, who owns Super Embroidery and Screenprinting in Phoenix, participating in E-Verify makes business sense.

She recalled the day in 1996 when the Immigration and Naturalization Service notified Johnson that a random audit of her staff had been scheduled: After that, 28 of her roughly 50 employees did not show up to work again.

Their disappearance cost Johnson more than just a large portion of her staff, as she faced the challenge of finding and training new workers.

"That cost me hundreds of thousands of dollars' worth of business," Johnson said. "It takes about six months for an operator to know what they're doing. It isn't something that you just do."

Johnson began using E-Verify at about 2005, when it was still a voluntary federal system. Now enrolled under the state law, Johnson said she feels more secure when hiring. If she was not using E-Verify and was audited again, she "would be scared to death."

Johnson downplays issues with E-Verify.

"It is not a burden at all," she said. "You have to fill out paperwork anyways for the state with every employee that you hire. So how is it any different from already having to do that?"