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E-Verify Laws Across Southern Red States Are Barely Enforced

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In 2011 states across the Southeast passed laws that threatened private employers with dire consequences—including losing their license to do business—if they didn’t enroll with a federal data service called E-Verify to check the legal status of new hires. Modeled after 2008 measures in Arizona and Mississippi and billed as a rebuke to a do-nothing Obama administration, the laws went further than those in the 13 states that required checks for new hires only by state agencies or their contractors.

Seven years later, those laws appear to have been more political bark than bite. None of the Southern states that extended E-Verify to the private sector have canceled a single business license, and only one, Tennessee, has assessed any fines. Most businesses caught violating the laws have gotten a pass.

In Georgia the department charged with auditing compliance with the E-Verify law has never been given money to do so. In Louisiana, where the law against hiring unverified employees can lead to cancellation of public contracts or loss of business licenses, no contract has been canceled, no licenses have been suspended, and the state reports zero “actionable” complaints since the mandate went into effect in 2012. In Mississippi no one seems to know who enforces the E-Verify law. The mandate appears to give that job to its Department of Employment Security, which knows nothing about it and referred questions to the attorney general’s office, which says it doesn’t know who’s responsible.

The same is true in Alabama, where the state labor department points to the Alabama Law Enforcement Agency, which neither enforces the law nor knows who does. District attorneys, who field complaints under the mandate, say enforcement falls to the state attorney general’s office, which hadn’t heard that. “What is it we’re supposed to be doing?” spokeswoman Joy Patterson asks. “I’m not aware of anything like that.”

Scott Beason, a former state senator who championed Alabama’s law, laments the lack of enforcement. “We seem to have entered a new age in the state of Alabama, where if the executive branch doesn’t want to enforce a law, they all say they don’t know who is supposed to do it.” More than that, the failure to enforce E-Verify laws underscores how complicated the immigration debate is.

Even in deep-red states enamored of immigration crackdowns, punishing business is bad politics. Lawmakers “got all the political benefits of supporting immigration enforcement but not the political cost of hurting business,” says Cato Institute analyst Alex Nowrasteh. “These are states that very much want to enforce immigration laws, where the electorate is solidly behind it and the politics is behind it, and even there they don’t want to enforce it.”

The Legal Workforce Act, a bill that would institute a national E-Verify system, is expected to be debated on the floor of the U.S. House of Representatives in September. Sponsored by Virginia Republican Bob Goodlatte, chairman of the House Judiciary Committee, some form of the measure has been pushed for a number of years by immigration hard-liners. It’s failed to get out of the House. The Federation for American Immigration Reform (FAIR) is preparing a digital ad campaign meant to embarrass business opponents of the proposed act, especially produce growers in the West. FAIR President Daniel Stein says that’s just one example of the fissures between “the group that underwrites the Republican Party and the Republican base.”

Introduced in the 1990s as a voluntary program, E-Verify became mandatory for federal contractors in 2009. Businesses enroll by signing a memorandum of understanding with the U.S. Department of Homeland Security saying they will use the system for new hires. The department doesn’t enforce compliance but does collect data that suggest not all enrollees are using it. Georgia, for instance, has 101,667 enrolled businesses, the most in the country. It also has the lowest percentage—23 percent—of enrollees that e-verified a hire in the past year.

For businesses that do e-verify, the motivation may be fear of federal immigration raids rather than a state crackdown, since participation helps protect employers from federal prosecution. It’s been against federal law since 1986 to knowingly hire undocumented workers. The “knowingly” language spawned a cottage industry of fake documents, layered hiring—subcontractors who hire subcontractors who hire subcontractors—and the use of temp agencies and independent contractors, all shielding employers from knowledge of a worker’s status. Critics say E-Verify encourages discrimination and is filled with loopholes. It failed to flag the illegal status of Cristhian Rivera, who was accused in the recent death of Iowa college student Mollie Tibbetts.

The laws typically require employers to submit affidavits showing they’ve enrolled in E-Verify to get their business licenses renewed. South Carolina is the only one of the nine private E-Verify states that conducts audits. A three-person staff at the state’s Department of Labor, Licensing and Regulation sends mailings to about 2 percent of employers a year asking for lists of hires and proof of verification. About 17 percent of last year’s auditees were out of compliance. The state cited 1,631 employers from 2013 to 2017. None were punished beyond having to submit quarterly reports for a year.

Many states with E-Verify laws built in loopholes from the start, including exemptions for seasonal workers (North Carolina) and farmworkers, fishermen, maids, and nannies (South Carolina). Business groups fought hard for those loopholes. “It was us against the Georgia Chamber, the [Atlanta] metro Chamber, and Big Ag,” says D.A. King, president of the Dustin Inman Society, an anti-immigration group named after a teenager killed in a car accident where the other vehicle was driven by a person in the U.S. illegally. Georgia doesn’t enforce the E-

Verify mandate for the private sector and has a board to hear complaints about the public sector. Of the 22 complaints it's received in six years, 20 came from King.

Almost as evidence of their own futility, the E-Verify laws were absent from Georgia's recent GOP gubernatorial primary. Despite campaigning on how tough they would be on immigrants, neither candidate referred to the laws. The winner, Brian Kemp, ran ads saying he'd haul illegals away in his pickup. "They talked about sanctuary cities and rounding up criminal aliens in a truck, all these distractions," King says. "The root cause of illegal immigration is illegal employment. And none of our candidates made a peep about that."