

## State Actions Regarding E-Verify

### Require Use of E-Verify

#### Alabama

**HB 56** (phased in January 1, 2012—April 1, 2012) the Alabama Taxpayer and Citizen Protection Act, prohibits business entities, employers or public employers from knowingly employing unauthorized workers. As a condition of state contracts or grants, employers must use E-Verify, effective January 1, 2012. All employers are required to use E-Verify effective April 1, 2012. Business licenses can be suspended up to 60 days for a first violation and permanently revoked for a second violation. Text: [Act No. 2011-535](#)

**HB 658** (effective May 18, 2012) revised its 2011 law, HB56, to require contractors and subcontractors to participate in the E-Verify system; however, prime contractors are not liable for their subcontractor complying with E-Verify unless they know of the violation. The first violation could result in termination of the contract. The court must impose a three-year probationary period with quarterly reporting on new hires to the Department of Industrial Relations. If violations are found, the business permit or license will be suspended for up to 60 days at the location of the violation. A second violation within 10 years will result in a 60-120 day suspension, and a third violation would be permanent revocation of all business licenses or permits. The law defines a business entity as employing one or more persons. Text: [Act No. 31-13-9](#)

#### Arizona

The Arizona Fair and Legal Employment Act (**HB 2779**), enacted in 2007, prohibits employers from knowingly hiring unauthorized workers and requires all employers to use the Basic Pilot Program to verify employment eligibility. It establishes substantial penalties and threatens noncompliant employers with suspension and potential revocation of their business licenses. Effective Jan. 1, 2008. Text: [Chapter No. 279](#)

**Arizona HB 2745**, enacted in 2008, prohibits government contracts to any contractor and subcontractor that fails to use E-Verify. It provides that companies can be punished only for unauthorized workers they hired after January 1, 2008 and that a violation at one location of a company shuts down only that location, not the entire corporation. The Arizona Attorney General is required to establish a Voluntary Employer Enhanced Compliance Program. Effective May 1, 2008. Text: [Chapter No. 152](#)

Legal Challenge: **Arizona's** 2007 law (**HB 2779**) was challenged as unconstitutional by plaintiffs representing the business and immigrant communities. Plaintiffs alleged that the 1986 Immigration and Control Act expressly preempts the state because the Act was not a "licensing or similar law" within the meaning of IRCA: The Immigration Reform and Control Act of 1986 (IRCA) preempts any state or local law from imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens. Citation: 8 U.S.C. 1324a(h). The challenged also argued that the law is impliedly preempted because its sanctions provisions and e-verify requirements conflict with federal law and that it violated employers' due process rights. In September, 2008, the 9th Circuit Court

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of Appeals upheld the Arizona law, determining that the law was a licensing law. Plaintiffs appealed and the U.S. Supreme Court accepted the case. The Supreme Court upheld Arizona's 2007 law by a 5-3 vote on May 26, 2011. The Court found that language in IRCA did not preempt the state because it was a licensing law permissible under IRCA. The E-Verify program also did not preempt the state: "although Congress had made the program voluntary at the national level, it had expressed no intent to prevent States from mandating participation." The ruling on the case is "Chamber of Commerce of United States of America v. Whiting ( No. 09-115)."

### Colorado

**HB 1343** (effective August 9, 2006) prohibits state agencies from entering into contract agreements with contractors who knowingly employ illegal immigrants and requires prospective contractors to verify legal work status of all employees through the Basic Pilot Program. If the contractor discovers that an illegal alien is employed, the contractor must alert the state agency within 3 days. Text: HB1343

**SB 139** (effective August 6, 2008) requires that employers be notified of the prohibition against hiring an unauthorized alien and the availability of and participation requirements for the federal E-Verify program. The Act requires the Department of Labor and Employment's website to provide this information. Text: SB139

**SB 193** (effective August 6, 2008) creates a program to allow contractors to verify employment eligibility of all employees under a public contract and requires future participation in the Federal Electronic Employment Eligibility Program or the department program to verify the employment eligibility of certain employees. Text: SB193

### Florida

**Executive Order 11-02** (Superseded) required all state agencies, contractors and subcontractors to use E-Verify. Text: EO 11-02

**Executive Order 11-116** (effective May 27, 2011) supersedes EO 11-02. It requires all state agencies to use E-Verify and specifies that contractors and subcontractors who have contracts "for the provision of goods and services to the state in excess of nominal value" must also use the program. All other employers are encouraged to use E-Verify. Text: EO 11-116

### Georgia

**SB 529**, (phased in July 1, 2008—July 1, 2009) the Georgia Security and Immigration Compliance Act, requires public employers, contractors and subcontractors with 500 or

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more employees to participate in E-Verify for all new employees beginning July 1, 2007. The law is phased in: contractors and subcontractors with 100 or more employees effective July 1, 2008; all employers by July 1, 2009. Text: [Act No. 457](#)

**HB 2** (effective January 1, 2010) requires every public employer, including municipalities, counties, contractors and subcontractors to verify employment eligibility of all newly-hired employees with the federal work authorization program. No employer, agency or political subdivision shall be subject to lawsuit or liability arising from any act to comply with these requirements. Text: [Act No. 339](#)

**SB 447** (effective July 1, 2010) requires public employers to retain for five years affidavits submitted by state contractors affirming their participation in the federal work authorization program and requires contractors to notify public employers of new subcontractors. SB 447 also requires the Commissioner to conduct 100 random audits annually of public employers and contractors and to seek funding from the U.S. Secretary of Labor. Violations convicted for false statements on affidavits shall be prohibited from public contracts for 12 months. Text: [Act No. 421](#)

**HB 87** (effective July 1, 2011) requires private employers to register and use the federal work authorization program. It is phased in: those with more than 500 employees, by January, 2012; those with 100-500 employees by July, 2012; and those with 11-100 employees by July 1, 2013 (Section 12). It requires contractors to include in a bid for a publicly funded project an affidavit that the contractor and any subcontractor use E-Verify. Contractors can be barred from bidding on public contracts for 12 months for violations. Public employers must submit annual compliance reports. Funds for political subdivisions can be reduced 10 percent for noncompliance. Section 17 (regarding documents required by applicant) of HB 87 shall become effective on January 1, 2012. All other sections became effective on July 1, 2011. Text: [Act No. 252](#)

**HB 1027** (effective May 2, 2012) expands the definition of business enterprise in the entertainment industry to include affiliates that are registered for and authorized to use the E-Verify system. Text: [HB1027, Sec. 1-1](#)

**HB 742** (effective May 7, 2012) appropriates \$20,000 for reimbursements to the Immigration Enforcement Review Board for expenses related to enforcing E-Verify requirements.

### Idaho

**Executive Order 2009-10** (effective July 1, 2009) requires that state agencies evaluate existing procedures that ensure all employees in the state are legally eligible to work, and calls for the implementation of new necessary procedures regarding the same. All workers employed to the state through contractors must be from companies that

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have verified their employees' eligibility to work in the United States. This order repeals and replaces Executive Order 2006-40. Text: [EO 2009-10](#)

**Executive Order 2006-40** (Repealed by EO 2009-10) requires that state agencies evaluate existing procedures that ensure all employees in the state are legally eligible to work, and calls for the implementation of new necessary procedures regarding the same. Text: [EO 2006-40](#); [EO 2009-10](#)

### Indiana

**SB 590** (effective July 1, 2011) requires state agencies, political subdivisions, contractors with public contracts and certain business entities to use E-Verify for newly hired employees after June 30, 2011. It requires certain subcontractors to certify that they use E-Verify. State agencies or political subdivisions may terminate a public contract if the contractor knowingly employs an unauthorized alien. Text: [Public Law No. 171-2011](#)

### Louisiana

**HB 342** (effective January 1, 2012) requires private contractors seeking business with a state or local government to use E-Verify. Firms that do not use E-verify will be barred from bidding on other projects for up to 3 years. Text: [Act No. 376](#)

**HB 646** (effective January 1, 2012) requires all private businesses to use E-Verify or keep photo IDs (birth certificate, naturalization certificate, certificate of citizenship, an alien registration receipt card or an I-94 immigration form with employment authorization) on file. Penalties for violations include: up to \$500 fine per worker for a first offense, up to \$1,000 for a second and up to \$2,500 for a third offense. After the third offense the business license can also be suspended for a minimum of 30 days and no more than 6 months. Employers using E-Verify are presumed to be in good faith and not subject to penalties. Text: [Act No. 402](#)

**HB 996** (effective May 14, 2012) clarifies the types of public works contracts for which the E-Verify system is required. A public work includes, "the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity." Text: [Act. No 142](#)

### Michigan

**HB 5365** (effective June 26, 2012) requires the use of E-Verify by contractors and subcontractors of the transportation department for construction, maintenance, and engineering services. Text: [Act No. 200](#)

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### Minnesota

**Executive Order 08-01** (Expired), issued by Governor Tim Pawlenty in January 2008, stated that all hiring authorities within the executive branch of state government as well as any employer seeking to enter into a state contract worth in excess of \$50,000 must participate in the E-Verify program. Governor Mark Dayton let the order expire in 2011. Text: [EO 08-01](#)

### Mississippi

**SB 2988** (phased in July 1, 2008—July 1, 2011) requires public and private employers to participate in E-Verify. The phase-in period is: all government agencies and businesses with more than 250 employees by July 1, 2008; companies with 100 to 250 employees by July 1, 2009; those with 30 to 100 employees by July 1, 2010; and all remaining companies by July 1, 2011. An employer violating the law is subject to the cancellation of public contracts, ineligibility for contracts for up to three years, and loss of business license for up to one year. The law also makes it a felony to accept or perform employment knowing or in reckless disregard of the immigrant's ineligibility to work, with penalties from one to five years of imprisonment and/or \$1,000 to \$10,000 in fines. Text: [Chapter No. 312](#)

### Missouri

**HB 1549** (effective January 1, 2009) requires E-Verify use for public employers, contractors and subcontractors. If a court finds that a business knowingly employed someone not authorized to work, the company's business permit and licenses shall be suspended for 14 days. Upon the first violation, the state may terminate contracts and bar the company from doing business with the state for 3 years. Upon the second violation, the state may permanently debar the company from doing business with the state. HB 1549 became effective on January 1, 2009, with the exception of section 292.675 of section A, which became effective on August 28, 2009. Text: [HB1549](#)

**HB 390** (effective August 28, 2009) specifies that the requirement for certain businesses to participate in a federal work authorization program will not apply after the federal government discontinues or fails to authorize or implement the program. Public contractors are required to provide affidavits of participation in the federal work authorization program annually. Text: [HB0390](#)

### Nebraska

**LB 403** (effective October 1, 2009) requires every public employer and every public contractor to use a federal immigration verification system. Text: [LB 403](#)

### North Carolina

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**SB 1523** (effective January 1, 2007) requires all state agencies, offices, and universities to use E-Verify. This applies to employees hired on or after January 1, 2007, except for employees of local education agencies hired on or after March 1, 2007. Text: [Session Law No. 2006-259](#)

**HB 36** (phased in October 1, 2012—July 1, 2013) requires counties, cities and employers to use the federal E-verify program to verify work authorization of newly hired employees. Private employers are required to complete and maintain federal employment eligibility verification forms. Employers who hire seasonal temporary employees who are employed for 90 or fewer days during a 12-consecutive-month period do not need to use E-verify. The effective date is phased in: private companies with more than 500 employees must verify all employees on or after October 1, 2012; those with 100 to 499 employees on or after January 1, 2013; and those with 25 or more but less than 100 employees, on or after July 1, 2013. Employers with less than 6 employees will not have to use E-verify. An employer who knowingly employs unauthorized workers will be penalized. On the first violation, the Commissioner will order the employer to file a signed sworn affidavit within three business days stating that the employer has, after consultation with the employee, requested a verification of work authorization through E-Verify. If an employer does not file an affidavit the North Carolina Commissioner shall order the employer to pay a civil penalty of \$10,000. For the second violation, the employer is required to pay a civil penalty of \$1,000, regardless of the number of required employee verifications the employer failed to make. On the third violation, the employer is ordered to pay a civil penalty of \$2,000 for each required employee verification the employer failed to make. Text: [Session Law No. 2011-263](#)

### Oklahoma

**HB 1804** (effective November 1, 2007), known as The Oklahoma Taxpayer and Citizen Protection Act of 2007, requires public employers, contractors and subcontractors to participate in a federal electronic employment verification system and requires income tax withholding for independent contractors who do not have valid Social Security numbers. Text: [HB1804](#)

### Pennsylvania

**SB 637** (effective January 1, 2013), enacted July 5, 2012, requires public works contractors and subcontractors to verify employment eligibility through the E-Verify program. The first violation results in a warning letter. The second violation within 10 years leads to a 30 day suspension of an employer's license or permit and a fine ranging from \$250-\$1,000 per violation. A third violation suspends an employer's license or permit for 180 days to one year. The law also establishes good faith immunity for employers who follow program procedures. Text: [Chapter No. 127](#)

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### Rhode Island

**Executive Order 08-01** (Repealed), signed on March 27, 2008 by Governor Carcieri, required executive agencies and all persons and businesses, including grantees, contractors and their subcontractors and vendors to use E-Verify. Governor Chafee signed a repeal of the order effective January 5, 2011. Text: [E.O. 08-01](#)

### South Carolina

**HB 4400** (phased in January 1, 2009—January 1, 2010) requires public employers and public contractors to register and participate in E-Verify. Public and private employers with more than 100 employees and public contractors with more than 500 employees must comply with the law's provisions on or after January 1, 2009; contractors with more than 100 employees on July 1, 2009; and all other contractors on January 1, 2010. The penalty for knowingly hiring unauthorized immigrants is a felony and punishable with up to five years in prison. The law provides for a private cause of action for an authorized employee if he or she is discharged and replaced with an unauthorized employee. Text: [HB4400](#)

**SB 20** (effective January 1, 2012) requires all private employers to complete and maintain federal employment eligibility verification forms. After being hired, an employer has 3 days to check an employee's verification in E-Verify. Public contractors may not knowingly employ unauthorized aliens. If a private employer is caught knowingly hiring illegal workers, the employer must pay a reasonable civil penalty of no more than \$15,000 for each violation. If a private employer fails to pay the penalty within 10 days, a private employer's license is suspended and must remain suspended for at least 10 days but not more than 30 days. During the period of suspension, a private employer may not engage in business, open to the public, employ an employee, or otherwise operate. For a second occurrence, the private employer must pay a penalty of not more than \$30,000 for each violation. If an employer fails to pay the penalty within 10 days, their license is suspended, and must remain suspended for at least 30 days but not more than 60 days. For a third violation, the private employer must pay a civil penalty of not more than \$50,000 for each violation. Failure to pay the penalty within 10 days will result in the employer's business licenses being revoked. After 5 years, the labor director may grant reinstatement of licenses if the private employer goes on probation for 3 years, terminated the unauthorized alien, and pays a reinstatement fee equal to the cost of investigating and adjudicating the matter. Text: [Act No. 69](#)

**HB 4813** (effective July 1, 2012), enacted August 3, 2012, requests the establishment and maintenance of a twenty-four hour toll free hotline to report alleged immigration violations, including but not limited to E-verify or other work authorization violations. Text: [Act No. 288, Sec. 65.10](#)

### Tennessee

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**HB 1378** (phased in January 1, 2012—January 1, 2013), the Tennessee Lawful Employment Act, prohibits employers from knowingly hiring unauthorized workers and requires all state and local government employers to use E-verify to verify employment eligibility. The effective date is phased in: private companies with more than 500 employees must verify all employees beginning January 1, 2012; those with 200 to 499 employees beginning July 1, 2012; those with six to 199 employees beginning January 1, 2013. Employers with less than six employees will not have to use E-verify. This act requires that employers maintain records for three years after the date of the employee's hire or for one year after the employee's employment is terminated. For non-employees who are paid directly by the employer in exchange for the individual's labor or services, employers must request and maintain one form of identification. This could be a copy of a valid Tennessee driver's license, photo identification from another state, birth certificate, an unexpired U.S passport, or other proof of employee's immigration status. Text: [Public Chapter No. 436](#)

### Utah

**SB 81** (effective July 1, 2009) requires public employers, contractors and subcontractors to register and use the federal work authorization program. It is unlawful to discharge a lawful employee while retaining an unauthorized alien in the same job category. Text: [SB81](#)

**SB 39** (effective July 1, 2009) redefines a contract to mean an agreement for the procurement of goods or services that is awarded through a request for proposals process with a public employer, and includes a sole source contract. Text: [SB39](#)

**SB 251** (effective July 1, 2010) requires private employers with more than 15 employees to verify the legal status of new employees via a federally approved employment verification system. Text: [SB251](#)

**HB 116** requires the Utah Workforce Development department to administer a new guest worker program (pending a federal waiver) and to establish a verification requirement substantially similar to E-Verify. The original private employer mandate, SB 251, shall be repealed once a guest worker program is enacted. Text: [Chapter No. 18](#)

### Virginia

**HB 737** (effective December 1, 2012) requires state agencies to enroll in the E-Verify program by December 1, 2012, and to use the program for each newly hired employee who will work in Virginia. Text: [Chapter No. 633](#)

**HB 1859/SB 1049** (effective December 1, 2013) requires public contractors with more than 50 employees in contracts worth more than \$50,000 to participate in E-Verify or be

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debarred for one year. State agencies shall deny prequalification to contractors who fail to participate. Text: [Chapter No. 573](#)

### West Virginia

**SB 659** (effective June 10, 2012) requires new employees working on the grounds of the Capitol Complex to submit to an employment eligibility check through E-Verify. Text: [Chapter No. 154](#)

## Encourage Use of E-Verify

### Pennsylvania

**HB 2319** (effective April 14, 2006) prohibits the use of illegal immigrant labor on projects and provides an affirmative defense if the contractor certifies compliance with Section 274A of the Immigration Reform and Control Act of 1986. Text: [Act No. 43](#)

### New Hampshire

**HB 158** (effective August 17, 2012) extends an affirmative defense in identify fraud cases to employers who have verified employees' work authorization using E-Verify, the Social Security Administration, or any other reputable organization. Text: [Chapter No. 2012-244](#)

### Tennessee

**HB 729** (effective January 1, 2008) states that employers who "knowingly employ, recruit or refer for a fee for employment an illegal alien" are subject to a temporary suspension of their business license; repeat offenders are subject to a one-year suspension. Employers who comply with the requirements of the current I-9 process or who verify new hires through the E-Verify within 14 days of employment are shielded from sanctions. Text: [Public Chapter No. 529](#)

**HB 1378** (phased in January 1, 2012—January 1, 2013), the Tennessee Lawful Employment Act, requires all employers to 1) request and maintain a copy of one of 11 identification documents or 2) enroll and maintain active participation in the E-Verify program. On or after January 1, 2012, the law would apply to governmental entities and private employers with at least 500 employees. On or after July 1, 2012, the above provisions would apply to private employers with between 200 and 499 employees. On

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or after January 1, 2013, the above provisions would apply to private employers with between six and 199 employees. Text: [Public Chapter No. 436](#)

### Limit Use of E-Verify

#### California

**AB 1236** (effective October 9, 2011) prohibits the state, city and county governments from mandating the use of E-Verify "except as required by federal law or as a condition of receiving federal funds." Text: [Chapter No. 691](#)

**AB 1288 (VETOED)** was passed by the California legislature in 2009 and would have prohibited states, localities or special districts from requiring employers to use E-verify except when required by federal law or as a condition of receiving federal funds. The law was vetoed by the governor in October 2009. Text: [AB 1288](#)

#### Illinois

**HB 1743** (effective August 13, 2007) creates privacy and antidiscrimination protections for workers if employers participating in E-Verify don't follow the program's procedures. Text: [Public Act No. 095-0137](#)

**HB 1744 (RESCINDED)**, enacted in 2007, barred Illinois companies from enrolling in any Employment Eligibility Verification System until accuracy and timeliness issues are resolved. In 2009, the federal district court in Illinois ruled that the state law violated the Supremacy Clause of the U.S. Constitution (*United States v. Illinois*), and HB 1744 was rescinded. Text: [Public Act No. 095-0138](#)

**SB 1133** (effective August 24, 2009) amends the Right to Privacy in the Workplace Act and urges employers, before enrolling in E-Verify, to consult the State Department of Labor's website for current information on the accuracy of E-Verify and to review and understand an employer's legal responsibilities relating to the use of the voluntary program. It prohibits the state or localities from requiring employers to use an employment eligibility verification system. Text: [Public Act No. 096-0623](#)

#### North Dakota

**HCR 3045** (effective April 6, 2011) directs the Legislative Management to study the feasibility and desirability of requiring private or public employers or both to use the federal E-Verify program for new hires. Text: [HCR 3045](#)

### Preemption Issues and Court Challenges

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The Immigration Reform and Control Act of 1986 (IRCA) preempts any state or local law from imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens. Citation: 8 U.S.C. 1324a(h)

### Arizona

Arizona's 2007 immigration law, **HB 2779**, was challenged as unconstitutional by plaintiffs representing the business and immigrant communities. Plaintiffs allege that the 1986 Immigration and Control Act expressly preempts the state because the Act was not a "licensing or similar law" within the meaning of IRCA; it is impliedly preempted because its sanctions provisions and e-verify requirements conflict with federal law; and the Act violated employers' due process rights. In September, 2008, the 9th Circuit Court of Appeals upheld the Arizona law, determining that the law was a licensing law. Plaintiffs appealed and the U.S. Supreme Court accepted the case. The court heard *Chamber of Commerce v. Whiting* (09-115) on December 8, 2010. On May 26, 2011, the Supreme Court upheld Arizona's 2007 law that requires Arizona employers to use E-Verify.

### Illinois

The provision of **HB 1744** limiting use of e-verify was challenged by the U.S. Department of Homeland Security on the grounds that it conflicts with federal law and is preempted by the Supremacy Clause of the U.S. Constitution. Enforcement of this provision, scheduled to begin in 2008, was delayed until the lawsuit was decided. In 2009, the federal district court in Illinois ruled that the state law violated the Supremacy Clause of the U.S. Constitution (*United States v. Illinois*).

### Oklahoma

The employment provisions of the 2007 law (**HB 1804**) were challenged by the U.S. Chamber of Commerce and Oklahoma business associations for interfering with federal law, alleging that Sections 7(B), 7(C) and 9 of the Oklahoma act were expressly and impliedly preempted by federal law and unconstitutional under the Supremacy Clause. See U.S. Const. art. VI, cl. 2; 8 U.S.C. § 1324a(h)(2). Section 7B would require businesses to use E-Verify. Section 7C makes it a discriminatory practice for an employer to fire a worker while retaining an employee that the employee knows or reasonably should know is unauthorized to work. Section 9 would require contractors to verify employees or withhold taxes from them. In June, 2008, the Federal District Court for the Western District of Oklahoma postponed enforcement of these sections of the law, including the E-Verify mandate. On February 3, 2010, the 10th Circuit federal appeals court upheld the injunction, finding that federal law preempted Sections 7C and 9, but allowed Section 7B, relating to the E-Verify mandate, to be enforced.

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### **Prepared by:**

Ann Morse, Program Director  
Immigrant Policy Project  
National Conference of State Legislatures  
202-624-5400

### **Contributors:**

Allison Johnston  
Brooke Meyers  
Joy Segreto  
Marie Lawrence  
Dirk Hegen  
Lee De Cleene  
Jonathan Jakubowski