

State poised to restrict use of E-Verify database

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California is poised to nullify immigration enforcement ordinances in about a half dozen Inland Empire cities – and to continue to buck a national trend – by restricting the use of E-Verify, the national online database used to check the immigration status of workers.

Under the Employment Acceleration Act, passed by the state Senate last week and currently awaiting Gov. Jerry Brown's signature, state and local governments could not require California businesses to use the database to ferret out undocumented employees.

California's approach is an anomaly. States and cities across the country have passed laws that mandate use of the E-Verify system as part of a strategy to curb illegal immigration and ensure that scarce jobs go to U.S. citizens and legal residents.

The act conflicts with the Legal Workforce Act [PDF], a bill pending in the U.S. House of Representatives that would require the use of E-Verify by all American employers.

The California bill has been cited as a reason that the national legislation, which is being marked up this week in the House Judiciary Committee, is necessary.

"California has the second-highest unemployment rate in the U.S., yet elected officials in Sacramento just sent a bill to the Governor's desk that will further diminish job opportunities," bill sponsor Rep. Lamar Smith, R-Texas, said in a statement. "California's E-Verify opt-out bill shows exactly why we need a federal E-Verify law."

If the Employment Acceleration Act becomes law, it would create ripple effects at the local level, trumping city ordinances adopted in a number of Inland Empire cities – including Temecula, Lake Elsinore, and Lancaster – that currently mandate the use of the E-Verify system as a prerequisite to running a business.

Citing the importance of local control, state senators representing these communities have opposed the bill.

"It usurps local authority to make resolutions to require businesses to use E-Verify," said state Sen. Sharon Runner, R-Lancaster. "We should let local governments do what they need to do to get people employed. The goal here is to put people back to work in California and the American citizens of California should have the first opportunity."

Proponents of the bill, however, argue that E-Verify – an online program that searches Social Security Administration and Department of Homeland Security databases to identify undocumented workers – is inaccurate, costly, and creates roadblocks for employment in California.

"I don't see how mandating a system that is flawed would increase opportunities for people applying for jobs," said Assemblyman Paul Fong, D-Mountain View, who sponsored the bill. "What prompted me to introduce this bill was the ineffectiveness of E-Verify. We need to get more people into work and create jobs; we don't need another hindrance."

A similar bill introduced by Fong in the last legislative session was vetoed by then-Gov. Arnold Schwarzenegger.

There was no official opposition to the bill, and it garnered support from organizations ranging from immigrants rights groups to the California Chamber of Commerce. Among the bill's advocates,

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there's concern that E-Verify is "not yet sufficiently reliable enough to cope with the massive increase in usage that a usage mandate in a large state like California would create," according to a support letter signed by 17 state industry groups.

Immigration advocates like the Immigration Policy Center, for example, estimate that flaws with the E-Verify system would result in about 90,000 U.S. citizens and legally authorized immigrant workers in the state being erroneously flagged as ineligible to work.

A December 2010 GAO report [PDF] found that although improvements have been made to the E-Verify system, it was still subject to a small percentage of error. This was particularly true, the report stated, among those with Spanish and Arab names, which could "create an appearance of discrimination."

There is currently no mechanism for appealing a faulty E-Verify determination.

The GAO report also noted that the system has difficulty detecting identity theft and fraud, and according to a 2009 evaluation [PDF], E-Verify fails to identify unauthorized workers about 50 percent of the time.

Still, E-Verify has become an increasingly popular immigration enforcement tool that was used by nearly 240,000 employers across the country last year. Illinois was the first state to outlaw an E-Verify mandate two years ago, but 18 states have opted to go in the opposite direction by requiring E-Verify's use, effectively creating widely varying laws at the local, state and federal levels.

The inconsistencies throughout the state prompted groups like the California Farm Bureau Federation to support the state bill forbidding an E-Verify mandate.

"We want a consistent policy throughout the state so that businesses and employers are not dealing with a hodgepodge way of handling these issues," says Bryan Little, director of labor affairs at the California Farm Bureau Federation.

Immigration policy experts say that the E-Verify policy disputes are indicative of larger battles to come over immigration.

"What this tells me is that nationally, we have a set of immigration issues that people want addressed," said Kevin R. Johnson, a UC Davis law professor. "If Congress will not pass meaningful reform, we will continue to see actions by state and local governments. Local and state governments are passing immigration laws like there's no tomorrow. This is quite extraordinary in the context of U.S. history."

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