

S.C. Touts Crack Down on Hiring, Ariz. Law Yields Few Results

By Allison Carlton
Arizona State University

South Carolina officials say a statewide auditing system has produced a 92 percent compliance rate with the state's ban on hiring illegal immigrants. Arizona has no auditing system and the state's 'tough' law on hiring has produced three small cases in three years.

Employer Sanctions in South Carolina & Arizona



COLUMBIA, S.C. — Arizona might learn something from South Carolina about how to deal with employers who hire illegal immigrants.

Arizona officials make a lot of headlines but have done little to enforce the state's ban on businesses employing the undocumented.

Only three businesses — all in the Phoenix area — have been prosecuted in the nearly three years since Arizona's much-touted "employer sanctions" law has been in effect. None have been permanently shut down by prosecutors, which is possible under the law. In Arizona's 14 other counties, state funding has been pulled because there has been no enforcement of the law.

By contrast, South Carolina officials make few headlines on immigration but have put into place a law and auditing system that supporters say has drastically reduced the number of illegal immigrants who are hired in their state.

They claim that among large businesses there is 92 percent compliance with the law's requirement to use the federal E-Verify system to ensure workers are in the country legally. South Carolina has cited nearly 150 businesses for being out of compliance since the law was enacted in 2009.

Arizona's Law

The state law aimed at stopping the hiring of undocumented workers in Arizona is known as the Legal Arizona Worker Act (LAWA), or "employer sanctions" law, and is touted as one of the toughest in the nation. It is currently under review by the U.S. Supreme Court because opponents say it illegally encroaches on federal authority. Opponents include civil rights advocates and business organizations.

Under the law, businesses that knowingly or intentionally hire unauthorized workers can have their licenses suspended or revoked, putting them out of business. The law also says businesses must use E-Verify, the federal system for checking workers' legal status.

But no system is in place in Arizona to confirm the use of E-Verify, and no statewide monitoring or auditing system exists. Instead, local prosecuting attorneys take complaints and attempt to build individual cases. As the numbers show, they've made little effort and have had almost no success.

The Arizona legislature passed The Legal Arizona Worker Act in 2007 and it took effect on Jan. 1, 2008. Its passage ignited some apprehension in the state, particularly concerning the use of the federal E-Verify system.

But the law was implemented and survived two challenges in federal district and appeals court. The Supreme Court case will be its last stop on the legal ladder.

Penalties for breaking the law are a business license suspension of 10 days or less for first-time offenders. Those offenders are then put on probation and must file quarterly reports with the local county attorney's office on each new hire. If a second offense occurs during probation a business can have its license permanently revoked — a condition that opponents and supporters refer to as the "death penalty."

But so far the state has failed to execute a single business. In fact, only three prosecutions have been made under the law. All were in Maricopa County, which also receives the most amount of funding to enforce the law — \$3.6 million since the law was enacted. One prosecution involved a water park business, "Waterworld," that had already shut down before its license could be suspended. Another was against the Scottsdale Art Factory, a custom furniture maker whose owners are fighting prosecution in the court system.

The third was a Phoenix Subway sandwich shop owner who was referred to the Maricopa County Attorney's Office by the federal Immigration and Customs Enforcement agency. The shop had been informed by federal officials that one of its employees did not have legal status. The business fired the worker but hired him back under a false identity. In addition to a \$400 federal fine, the business had its license suspended for two days and it has to serve three years of probation.

Most Illegal Immigrants Find Work

The Pew Hispanic Center, a nonpartisan research institute, estimates that 94 percent of male illegal immigrants find jobs in the United States. In 2008, Pew estimated that there were 31,000 illegal immigrants working in Arizona.

As of July, the Arizona Corporation Commission records show that there are more than 630,000 licensed businesses operating in the

state. According to the Arizona Attorney's General Office, there are only 33,000 users of E-Verify, the employee verification system that is mandatory for all businesses under state law.

These numbers indicate that Arizona employers are not complying with E-Verify requirements and are hiring illegal immigrants and getting away with it.

Some local officials say that despite the national focus on Arizona's law to arrest illegal immigrants there have been very few local complaints lodged against those who employ them.

Apache County Attorney Michael Whiting has not received any tips other than a letter over the summer from a person who said illegal workers were taking job opportunities away from legal residents. He said the lack of public awareness and education are part of the reason his county has not received more response from the citizens.

"You know we have a lot of educational efforts as far as stopping drug use or domestic violence, we provide numbers to victims of crime and things of that nature, spend a lot of time, effort and money to get that message across," Whiting said in a phone interview. "I personally have never seen any sustained efforts or campaign efforts, if you will, to educate the public that this is a law in Arizona, you can call this number."

Greenlee County Attorney Derek Rapier says people in his county don't seem to be concerned.

"There just hasn't been as much interest generated in it here in Greenlee County," Rapier said. "I suspect that we do have undocumented aliens in our county but I also suspect that they're fully integrated into the community and so we just haven't heard the complaints."

In Mohave County, 25 citizen tips have been presented but none of them resulted in fines. Yuma County has received a total of two complaints. Jon R. Smith, the Yuma County attorney, says there is not much interest in or support for investigating employer sanctions cases at the local level. He suggests a statewide enforcement system would be more effective and consistent.

"It was difficult in the beginning to see how that would be more beneficial at the county level versus at the state level," Smith said.

Supporters of the employer sanctions law say it is missing a key component to ensure county attorneys are actually able to prosecute businesses that break the law: the ability to subpoena business records.

"It's very difficult often times to prosecute cases under this particular statute and one of the reasons for the difficulty is that the Legislature in their wisdom determined not to afford subpoena power to investigators so that they would be able to compel the production of documents," said Barnett Lotstein, a former Maricopa County prosecutor.

State Rep. John Kavanagh supports the employer sanctions law and would like to grant subpoena power to prosecutors. But he says the business community, represented by the local and state chambers of commerce, has successfully dissuaded the legislature from granting subpoena power.

During the last session, legislators were once again a few votes short of passing a bill to give local prosecutors subpoena power. Kavanagh said a lot of members were convinced by business interests to vote no. He said supporters would continue to bring the issue up in the legislature.

In spite of the very low prosecution numbers, the law's supporters say it has had a positive effect.

"After its passage a number of indirect reports came in that illegal immigrants have been leaving Arizona," Kavanagh said. "While I like to think they're going back to their home countries, my suspicion is that they're relocating to other U.S. states, but that still reduces the problem in Arizona." Rep. Kavanagh lives in Fountain Hills, Ariz., and says he has directly seen the impact of the employer sanctions law in the area.

"For the past five, six years I stopped seeing high school students working in restaurants and similar kids' job venues and I saw more and more strange adults who I don't even think lived in town," Kavanagh said. "And when we suddenly cracked down with the employer sanctions law, the strange adults who didn't live in town disappeared and our students were making pin money. I think that's a great thing."

But Kavanagh said the poor economy may also be to blame for decreasing immigrant populations in the state.

"Clearly the major reason why there's a great decrease in the illegal immigration population is the economy, but the employer sanctions law has also taken its toll on these illegal aliens," he said.

Even Maricopa County Sheriff Joe Arpaio, the self-styled "Toughest Sheriff in America," has had trouble busting violators under the employer sanctions law.

Arpaio's office has conducted 88 investigations under the Legal Arizona Workers Act that were either completed or closed without action, according to the Maricopa County Attorney's Office. As of May, the sheriff's office has 16 investigations open.

In Maricopa County, the sheriff's office has traditionally received the lion's share of funding allocated to the counties for the enforcement of the employer sanctions law. But when Arpaio's political ally, County Attorney Andrew Thomas, stepped down to run for attorney general, the new interim county attorney, Rick Romley, changed the funding plan and the county's entire enforcement approach.

Romley announced in a news release on July 1 that the \$1.2 million allocated to his office annually to enforce the employer sanctions

law would be used to coordinate investigations with all the law enforcement departments in his county that are willing to be involved.

He also said that law enforcement would concentrate on education and individual investigations of violators instead of workplace raids preferred by Arpaio. Romley further said that his office would reallocate \$700,000 the sheriff's office previously received for the raids.

During the raids, employees of a particular business are usually detained and asked about their immigration status. Critics of the raids have said they target the workers while letting business owners off the hook.

Arpaio is facing an investigation by the U.S. Justice Department, which is looking into whether his officers have racially profiled the people they detained and whether they have illegally detained citizens or legal residents.

Romley, who served as county attorney from 1989 to 2004 and was re-appointed to the office by the Maricopa County Board of Supervisors after Thomas stepped down to run for attorney general, has often clashed with Arpaio.

Romley is now running for re-election as County Attorney. It would be his fifth term.

"[P]ast enforcement has been ineffective and unproductive," Romley said in a campaign message about the employer sanctions law. "After three years and over \$3.5 million taxpayer dollars being spent, there has been only one successful prosecution. So rather than just have one law enforcement agency responsible for enforcement; I am making money available to all 26 police agencies for enforcement purposes. And I've also created a program to work with employers "UP-FRONT" to ensure they hire legal residents in the first place."

Arpaio's office responded by accusing Romley of playing politics and claimed that its raids had resulted in 415 total arrests and 277 people being charged with identity theft.

There are no political fights over employer sanctions money in Arizona's other 14 counties because their funding has been removed due to lack of action.

Representative Kavanagh says that local prosecutors are falling down on the job. "[I]deally local government should be stepping up and doing their job," he said. "We shouldn't have to push them or supplant them."

South Carolina's System

In South Carolina, the Illegal Immigration Reform Act took effect in 2009. It was aimed at halting the hiring of illegal immigrants.

Randy Austin, founder & president of Austin International in South Carolina shares his opinion on employer sanctions laws.

The law states that all businesses in South Carolina must verify the legal status of their employees by using the federal E-Verify system or through verification of a driver's license from a state that only issues licenses to legal residents. These verifications must take place within five days of the hire.

The law was phased in over two years. Large businesses, those with 100 or more employees had to comply with the law by July 1, 2009. Those with fewer than 100 employees had to comply by July 1, 2010.

Penalties include fines of up to \$1,000 for each violation and possible revocation of the business license.

In 2009, the state Department of Labor, Licensing and Regulation, which is in charge of enforcing the law, began auditing the companies with 100 employees or more to make sure they were following the law's requirements. The department concentrated on up-front enforcement. The department also launched an education and information campaign shortly after the law's passage and the audits were announced ahead of time.

The department found that the state had an overall 92 percent compliance rate among the larger companies, meaning they were using the E-Verify system to weed out illegal workers. As of July 2010 1,750 audits out of 2,300 had been completed of the large companies in the state. Nearly 150 of those businesses were issued citations; the majority of those were cited for failing to verify the status of their new hires within the five-day period.