The E-Verify program allows employers to check whether newly hired workers have authorization to work in the United States. Undocumented immigrants are not eligible to work, nor are many people in the country here on short-term visas. Created in 1996 through federal legislation, E-Verify is an internet-based system that uses data from the Social Security Administration and Department of Homeland Security; verification can be instant, and rarely takes more than 24 hours. Individuals who receive “tentative non-confirmations” can challenge the finding.

There is no federal requirement for employers to use E-Verify (they do have to collect and verify I-9 forms), and one criticism is that people with fraudulent documents get through the system. The federal government does very few audits, so there is little enforcement of verification requirements. Still, a number of states have requirements of some kind for employers to use E-Verify (even minus such a state law, some employers use the system; see map).

These state requirements can either apply to all public and private employers (a policy most common in the southern states) or only pertain to public employers or private businesses with public contracts. This more-limited approach is used in the four Midwestern states with some kind of E-Verify requirement: Indiana, Michigan, Minnesota and Nebraska, according to the Federation for American Immigration Reform.

Indiana’s law dates back to 2011 and the passage of SB 590, which compels state and local governments and public contractors and subcontractors to use E-Verify. That same year, the Minnesota Legislature passed a law (SF 12) that applies to state contracts of $50,000 or more. Vendors and subcontractors must use E-Verify to check the status of newly hired employees “who will perform work on behalf of the state.”

Nebraska’s requirement (LB 403, passed in 2009) applies to public employers and contractors. In Michigan, budget bills passed in recent years established E-Verify requirements for two state agencies and their contractors: the departments of Health and Human Services and Transportation.

In addition to the rules in place in these four states, the Kansas secretary of state signed an executive order in 2011 requiring E-Verify participation by the office’s employees and contractors.

Conversely, the Illinois General Assembly passed legislation in 2007 that prohibited private employers from using E-Verify. Inaccuracies in the federal E-Verify database first needed to be fixed, proponents of the law said. This blanket ban was subsequently struck down in federal court, so in 2010, Illinois legislators put in place a revised version. It prevents the state’s private employers from using E-Verify to check the status of current employees or to pre-screen people who have not yet been offered a job.

E-Verify legislation was introduced this biennium in at least four Midwestern states, including: Iowa’s SF 412, which would cover all employers; Nebraska’s LB 165, which would expand the state’s current requirement to include private employers; and Kansas’ SB 133, which would apply to state and local governments and government contractors bidding on projects of at least $50,000. In Michigan, HB 4130 would require public
employers and public contractors to use the E-Verify system, while HB 4730 would prohibit public employers from participating in the E-Verify system or from entering into contracts with those who do. Both proposals include penalties for violations.