



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB1744

Introduced 2/23/2007, by Rep. Cynthia Soto

SYNOPSIS AS INTRODUCED:

820 ILCS 55/12 new

Amends the Right to Privacy in the Workplace Act. Provides that employers are prohibited from enrolling in any Employment Eligibility Verification System, including the Basic Pilot program, as authorized by federal law, until the Social Security Administration and Department of Homeland Security databases are able to make a determination on 99% of the tentative nonconfirmation notices issued to employers within 3 days, unless otherwise required by federal law. Provides that an employer who enrolls in the Basic Pilot program is prohibited from the Employment Eligibility Verification Systems, to confirm the employment authorization of new hires unless the employer attests, under penalty of perjury, on a form prescribed by the Department of Labor, to certain specified information. Preempts the exercise of home rule powers. Provides that the Department of Human Rights shall establish a statewide advisory council to study the effects of Employment Eligibility Verification Systems, including the Basic Pilot program, on employers and employees in Illinois. Provides that the advisory council shall, 18 months after the effective date of this amendatory Act, submit a report to the Department of Human Rights and the Department of Labor.

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FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Right to Privacy in the Workplace Act is
5 amended by adding Section 12 as follows:

6 (820 ILCS 55/12 new)

7 Sec. 12. Restrictions on use of Employment Eligibility
8 Verification Systems.

9 (a) Employers are prohibited from enrolling in any
10 Employment Eligibility Verification System, including the
11 Basic Pilot program, as authorized by 8 U.S.C. 1324a, Notes,
12 Pilot Programs for Employment Eligibility Confirmation
13 (enacted by PL 104-208, div. C, title IV, subtitle A), until
14 the Social Security Administration (SSA) and Department of
15 Homeland Security (DHS) databases are able to make a
16 determination on 99% of the tentative nonconfirmation notices
17 issued to employers within 3 days, unless otherwise required by
18 federal law.

19 (b) An employer who enrolls in the Basic Pilot program is
20 prohibited from the Employment Eligibility Verification
21 Systems, to confirm the employment authorization of new hires
22 unless the employer attests, under penalty of perjury, on a
23 form prescribed by the Department of Labor:

1 (1) that the employer has received the Basic Pilot
2 training materials from DHS, and that personnel who will
3 administer the program have completed the Basic Pilot
4 Computer Based Tutorial (CBT); and

5 (2) that the employer has posted the notice from DHS
6 indicating that the employer is enrolled in the Basic Pilot
7 program, the anti-discrimination notice issued by the
8 Office of Special Counsel for Immigration-Related Unfair
9 Employment Practices (OSC), Civil Rights Division, U.S.
10 Department of Justice, and the anti-discrimination notice
11 issued by the Illinois Department of Human Rights (IDHR).

12 (c) Responsibilities of employer using Employment
13 Eligibility Verification Systems.

14 (1) The employer shall display the notices supplied by
15 DHS, OSC, and IDHR in a prominent place that is clearly
16 visible to prospective employees.

17 (2) The employer shall require that all employer
18 representatives performing employment verification queries
19 complete the CBT. The employer shall attest, under penalty
20 of perjury, on a form prescribed by the Department of
21 Labor, that the employer representatives completed the
22 CBT.

23 (3) The employer shall become familiar with and comply
24 with the Basic Pilot Manual.

25 (4) The employer shall notify all prospective
26 employees at the time of application that such employment

1 verification system may be used for immigration
2 enforcement purposes.

3 (5) The employer shall provide all employees who
4 receive a tentative nonconfirmation with a referral letter
5 and instruct the employee how to resolve the discrepancy
6 with SSA, DHS, or the appropriate federal agency.

7 (6) The employer shall comply with the Illinois Human
8 Rights Act and any applicable federal anti-discrimination
9 laws.

10 (7) The employer shall use the information it receives
11 from SSA or DHS only to confirm the employment eligibility
12 of newly-hired employees after completion of the Form I-9.
13 The employer shall safeguard this information, and means of
14 access to it (such as passwords and other privacy
15 protections), to ensure that it is not used for any other
16 purpose and as necessary to protect its confidentiality,
17 including ensuring that it is not disseminated to any
18 person other than employees of the employer who need it to
19 perform the employer's responsibilities.

20 (d) Privacy requirement. It shall be unlawful for any
21 employer to collect and maintain data that is not required by
22 the Basic Pilot program.

23 (e) Preemption. No unit of local government, including a
24 home rule unit, may require any employer to use an Employment
25 Eligibility Verification System, including under the following
26 circumstances:

1 (1) as a condition of receiving a government contract;
2 (2) as a condition of receiving a business license; or
3 (3) as penalty for violating licensing or other similar
4 laws.

5 This subsection (e) is a denial and limitation of home rule
6 powers and functions under subsection (h) of Section 6 of
7 Article VII of the Illinois Constitution.

8 (f) Advisory Council; report and audit.

9 (1) Formation and representation. The Department of
10 Human Rights shall establish a statewide advisory council,
11 as authorized by Section 7-107 of the Illinois Human Rights
12 Act, to study the effects of Employment Eligibility
13 Verification Systems, including the Basic Pilot program,
14 on employers and employees in Illinois. The council shall
15 be composed of representatives from the Department of Human
16 Rights and the Department of Labor as well as an equal
17 number of representatives from each of the following
18 constituencies: the business community; labor unions;
19 civil rights organizations; immigrant rights
20 organizations; and privacy rights organizations.

21 (2) Purpose of the advisory council. The advisory
22 council shall, 18 months after the effective date of this
23 amendatory Act of the 95th General Assembly, submit a
24 report to the Department of Human Rights and the Department
25 of Labor that includes the following: (a) an assessment of
26 the impact of the Basic Pilot program on the employment of

1 unauthorized workers, including whether it has resulted in
2 an increase in exploitation of unauthorized workers; (b) an
3 assessment of the accuracy of the Basic Pilot program's
4 databases in approving employment-authorized individuals;
5 (c) an assessment of the timeliness of the Basic Pilot
6 program responses to employers; (d) an assessment of
7 whether the Basic Pilot program is being implemented in a
8 nondiscriminatory and non-retaliatory manner; (e) an
9 assessment of the privacy and confidentiality of the Basic
10 Pilot program and of its overall security with respect to
11 cyber-theft and theft or misuse of private data; and (f) an
12 assessment of the costs of the Basic Pilot program to
13 employers and employees.

14 (3) Appropriation of funds. The advisory council shall
15 receive technical and clerical assistance and reimbursement of
16 its actual expenses from the Department of Human Rights,
17 including sufficient funds to retain an independent researcher
18 or academic institution to carry out the assessments and
19 produce the report required by this Section.

20 Section 97. Severability. The provisions of this Act are
21 severable under Section 1.31 of the Statute on Statutes.