

SB3187



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB3187

Introduced 2/9/2010, by Sen. J. Bradley Burzynski

SYNOPSIS AS INTRODUCED:

820 ILCS 55/12

Amends the Right to Privacy in the Workplace Act. Requires employers to enroll in an Electronic Employment Verification System or the E-Verify program and the Basic Pilot program (rather than permitting an employer to voluntarily enroll).

LRB096 19993 RLC 35478 b

A BILL FOR

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 changing Section 12 as follows:

6 (820 ILCS 55/12)

7 Sec. 12. Use of Employment Eligibility Verification
8 Systems.

9 (a) Each employer shall enroll in an ~~Prior to choosing to~~
10 ~~voluntarily enroll in any~~ Electronic Employment Verification
11 System or ~~, including~~ the E-Verify program and the Basic Pilot
12 program, as authorized by 8 U.S.C. 1324a, Notes, Pilot Programs
13 for Employment Eligibility Confirmation (enacted by P.L.
14 104-208, div. C, title IV, subtitle A). Employers, ~~employers~~
15 are urged to consult the Illinois Department of Labor's website
16 for current information on the accuracy of E-Verify and to
17 review and understand an employer's legal responsibilities
18 relating to the use of the ~~voluntary~~ E-Verify program.

19 (a-1) The Illinois Department of Labor (IDOL) shall post on
20 its website information or links to information from the United
21 States Government Accountability Office, Westat, or a similar
22 reliable source independent of the Department of Homeland
23 Security regarding: (1) the accuracy of the E-Verify databases;

1 (2) the approximate financial burden and expenditure of time
2 that use of E-Verify requires from employers; and (3) an
3 overview of an employer's responsibilities under federal and
4 state law relating to the use of E-Verify.

5 (b) Upon initial enrollment in an Employment Eligibility
6 Verification System or within 30 days after the effective date
7 of this amendatory Act of the 96th General Assembly, an
8 employer enrolled in E-Verify or any other Employment
9 Eligibility Verification System must attest, under penalty of
10 perjury, on a form prescribed by the IDOL available on the IDOL
11 website:

12 (1) that the employer has received the Basic Pilot or
13 E-Verify training materials from the Department of
14 Homeland Security (DHS), and that all employees who will
15 administer the program have completed the Basic Pilot or
16 E-Verify Computer Based Tutorial (CBT); and

17 (2) that the employer has posted the notice from DHS
18 indicating that the employer is enrolled in the Basic Pilot
19 or E-Verify program and the anti-discrimination notice
20 issued by the Office of Special Counsel for
21 Immigration-Related Unfair Employment Practices (OSC),
22 Civil Rights Division, U.S. Department of Justice in a
23 prominent place that is clearly visible to both prospective
24 and current employees. The employer must maintain the
25 signed original of the attestation form prescribed by the
26 IDOL, as well as all CBT certificates of completion and

1 make them available for inspection or copying by the IDOL
2 at any reasonable time.

3 (c) It is a violation of this Act for an employer enrolled
4 in an Employment Eligibility Verification System, including
5 the E-Verify program and the Basic Pilot program:

6 (1) to fail to display the notices supplied by DHS and
7 OSC in a prominent place that is clearly visible to both
8 prospective and current employees;

9 (2) to allow any employee to use an Employment
10 Eligibility Verification System prior to having completed
11 CBT;

12 (3) to fail to take reasonable steps to prevent an
13 employee from circumventing the requirement to complete
14 the CBT by assuming another employee's E-Verify or Basic
15 Pilot user identification or password;

16 (4) to use the Employment Eligibility Verification
17 System to verify the employment eligibility of job
18 applicants prior to hiring or to otherwise use the
19 Employment Eligibility Verification System to screen
20 individuals prior to hiring and prior to the completion of
21 a Form I-9;

22 (5) to terminate an employee or take any other adverse
23 employment action against an individual prior to receiving
24 a final nonconfirmation notice from the Social Security
25 Administration or the Department of Homeland Security;

26 (6) to fail to notify an individual, in writing, of the

1 employer's receipt of a tentative nonconfirmation notice,
2 of the individual's right to contest the tentative
3 nonconfirmation notice, and of the contact information for
4 the relevant government agency or agencies that the
5 individual must contact to resolve the tentative
6 nonconfirmation notice;

7 (7) to fail to safeguard the information contained in
8 the Employment Eligibility Verification System, and the
9 means of access to the system (such as passwords and other
10 privacy protections). An employer shall ensure that the
11 System is not used for any purpose other than employment
12 verification of newly hired employees and shall ensure that
13 the information contained in the System and the means of
14 access to the System are not disseminated to any person
15 other than employees who need such information and access
16 to perform the employer's employment verification
17 responsibilities.†

18 (c-1) Any claim that an employer refused to hire,
19 segregated, or acted with respect to recruitment, hiring,
20 promotion, renewal or employment, selection for training or
21 apprenticeship, discharge, discipline, tenure or terms,
22 privileges, or conditions of employment without following the
23 procedures of the Employment Eligibility Verification System,
24 including the Basic Pilot and E-Verify programs, may be brought
25 under paragraph (G) (2) of Section 2-102 of the Illinois Human
26 Rights Act.†

1 (c-2) It is a violation of this Section for an individual
2 to falsely pose as an employer in order to enroll in an
3 Employment Eligibility Verification System or for an employer
4 to use an Employment Eligibility Verification System to access
5 information regarding an individual who is not an employee of
6 the employer.

7 (d) (Blank). ~~Preemption. Neither the State nor any of its~~
8 ~~political subdivisions, nor any unit of local government,~~
9 ~~including a home rule unit, may require any employer to use an~~
10 ~~Employment Eligibility Verification System, including under~~
11 ~~the following circumstances:~~

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

16 ~~This subsection (d) is a denial and limitation of home rule~~
17 ~~powers and functions under subsection (h) of Section 6 of~~
18 ~~Article VII of the Illinois Constitution.~~

19 (Source: P.A. 95-138, eff. 1-1-08; 96-623, eff. 1-1-10; revised
20 11-4-09.)