

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 and adding Section 13 as  
6 follows:

7 (820 ILCS 55/12)

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

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

20 (a-1) The Illinois Department of Labor (IDOL) shall post  
21 on its website information or links to information from the  
22 United States Government Accountability Office, Westat, or a  
23 similar reliable source independent of the Department of

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

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

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

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

1 maintain the signed original of the attestation form  
2 prescribed by the IDOL, as well as all CBT certificates of  
3 completion and make them available for inspection or  
4 copying by the IDOL at any reasonable time.

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

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

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

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

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

24 (5) to terminate an employee or take any other adverse  
25 employment action against an individual prior to receiving  
26 a final nonconfirmation notice from the Social Security

1 Administration or the Department of Homeland Security;

2 (6) to fail to notify an individual, in writing, of  
3 the employer's receipt of a tentative nonconfirmation  
4 notice, of the individual's right to contest the tentative  
5 nonconfirmation notice, and of the contact information for  
6 the relevant government agency or agencies that the  
7 individual must contact to resolve the tentative  
8 nonconfirmation notice;

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

20 (c-1) Any claim that an employer refused to hire,  
21 segregated, or acted with respect to recruitment, hiring,  
22 promotion, renewal or employment, selection for training or  
23 apprenticeship, discharge, discipline, tenure or terms,  
24 privileges, or conditions of employment without following the  
25 procedures of the Employment Eligibility Verification System,  
26 including the Basic Pilot and E-Verify programs, may be

1 brought under paragraph (G)(2) of Section 2-102 of the  
2 Illinois Human Rights Act.

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

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

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

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

21 (Source: P.A. 95-138, eff. 1-1-08; 96-623, eff. 1-1-10;  
22 96-1000, eff. 7-2-10.)

23 (820 ILCS 55/13 new)

24 Sec. 13. Restrictions on the use of Employment Eligibility  
25 Verification Systems.

1       (a) If an employer receives notification from the Social  
2       Security Administration of a discrepancy between an employee's  
3       name or social security number and the Social Security  
4       Administration's records, and the employer takes any adverse  
5       action against the employee, an employer must:

6               (1) provide the employee with:

7                       (A) the specific document or documents that are  
8                       deemed to be deficient and the reason why the document  
9                       or documents are deemed to be deficient;

10                      (B) instructions on how the employee can correct  
11                      the deficient documents;

12                      (C) an explanation of the employee's right to have  
13                      representation present during the verification or  
14                      re-verification process; and

15                      (D) an explanation of any other rights that the  
16                      employee may have in connection with the verification  
17                      or re-verification process; and

18               (2) grant the employee no less than 30 days of unpaid  
19       leave to correct any verification discrepancy. If the  
20       unpaid leave period has expired and the employee can  
21       reasonably demonstrate an ability to remedy the  
22       discrepancy, the employer and employee may agree to extend  
23       the leave period for an additional 30 days. Only if no  
24       agreement is reached or the additional 30 day period has  
25       expired, can the employer terminate the employee's  
26       employment.

1       (b) When an employer receives notification from any  
2 federal or State agency, including, but not limited to, the  
3 Social Security Administration or Internal Revenue Service, of  
4 a discrepancy, the following rights and protections are  
5 granted to the employee:

6           (1) to choose which work authorization documents to  
7 present to the employer during the verification or  
8 re-verification process; and

9           (2) to choose to be represented by counsel or  
10 represent his or herself in any meetings, discussions, or  
11 proceedings with the employer.

12       (c) If an employer receives notification from any federal  
13 or State agency, including, but not limited to, the Social  
14 Security Administration or the Internal Revenue Service, of a  
15 discrepancy and the discrepancy has been remedied, the  
16 employer must:

17           (1) return the employee to his or her former position,  
18 without loss of seniority, compensation rate or salary, or  
19 benefits; and

20           (2) not consider the discrepancy in future promotion  
21 decisions or continued employment considerations.