

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 Sections 12 and 15 as follows:

6 (820 ILCS 55/12)

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

9 (a) Prior to choosing to voluntarily enroll in any  
10 Electronic Employment Verification System, including the  
11 E-Verify program and the Basic Pilot program, as authorized by  
12 8 U.S.C. 1324a, Notes, Pilot Programs for Employment  
13 Eligibility Confirmation (enacted by P.L. 104-208, div. C,  
14 title IV, subtitle A), employers are urged to consult the  
15 Illinois Department of Labor's website for current information  
16 on the accuracy of E-Verify and to review and understand an  
17 employer's legal responsibilities relating to the use of the  
18 voluntary E-Verify program. Employers are prohibited from  
19 enrolling in any Employment Eligibility Verification System,  
20 including the Basic Pilot program, as authorized by 8 U.S.C.  
21 1324a, Notes, Pilot Programs for Employment Eligibility  
22 Confirmation (enacted by PL 104-208, div. C, title IV, subtitle  
23 A), until the Social Security Administration (SSA) and

1 ~~Department of Homeland Security (DHS) databases are able to~~  
2 ~~make a determination on 99% of the tentative nonconfirmation~~  
3 ~~notices issued to employers within 3 days, unless otherwise~~  
4 ~~required by federal law.~~

5 (a-1) The Illinois Department of Labor (IDOL) shall post on  
6 its website information or links to information from the United  
7 States Government Accountability Office, Westat, or a similar  
8 reliable source independent of the Department of Homeland  
9 Security regarding: (1) the accuracy of the E-Verify databases;  
10 (2) the approximate financial burden and expenditure of time  
11 that use of E-Verify requires from employers; and (3) an  
12 overview of an employer's responsibilities under federal and  
13 state law relating to the use of E-Verify.

14 (b) Upon initial enrollment in an Employment Eligibility  
15 Verification System or within 30 days after the effective date  
16 of this amendatory Act of the 96th General Assembly, an  
17 employer enrolled in E-Verify or any other Employment  
18 Eligibility Verification System must attest, Subject to  
19 ~~subsection (a) of this Section, an employer who enrolls in the~~  
20 ~~Basic Pilot program is prohibited from the Employment~~  
21 ~~Eligibility Verification Systems, to confirm the employment~~  
22 ~~authorization of new hires unless the employer attests, under~~  
23 ~~penalty of perjury, on a form prescribed by the IDOL available~~  
24 on the IDOL website ~~Department of Labor:~~

25 (1) that the employer has received the Basic Pilot or  
26 E-Verify training materials from the Department of

1 Homeland Security (DHS) ~~DHS~~, and that all employees  
2 ~~personnel~~ who will administer the program have completed  
3 the Basic Pilot or E-Verify Computer Based Tutorial (CBT);  
4 and

5 (2) that the employer has posted the notice from DHS  
6 indicating that the employer is enrolled in the Basic Pilot  
7 or E-Verify program and ~~and~~ the anti-discrimination notice  
8 issued by the Office of Special Counsel for  
9 Immigration-Related Unfair Employment Practices (OSC),  
10 Civil Rights Division, U.S. Department of Justice in a  
11 prominent place that is clearly visible to both prospective  
12 and current employees. The employer must maintain the  
13 signed original of the attestation form prescribed by the  
14 IDOL, as well as all CBT certificates of completion and  
15 make them available for inspection or copying by the IDOL  
16 at any reasonable time, ~~and the anti-discrimination notice~~  
17 ~~issued by the Illinois Department of Human Rights (IDHR).~~

18 (c) It is a violation of this Act for an employer enrolled  
19 in an Employment Eligibility Verification System, including  
20 the E-Verify program and the Basic Pilot program:  
21 ~~Responsibilities of employer using Employment Eligibility~~  
22 ~~Verification Systems.~~

23 (1) to fail to ~~The employer shall~~ display the notices  
24 supplied by DHS and ~~and~~ OSC, ~~and IDHR~~ in a prominent place  
25 that is clearly visible to both prospective and current  
26 employees; ~~and~~

1           (2) to allow any employee to use an Employment  
2 Eligibility Verification System prior to having completed  
3 CBT; ~~The employer shall require that all employer~~  
4 ~~representatives performing employment verification queries~~  
5 ~~complete the CBT. The employer shall attest, under penalty~~  
6 ~~of perjury, on a form prescribed by the Department of~~  
7 ~~Labor, that the employer representatives completed the~~  
8 ~~CBT.~~

9           (3) to fail to take reasonable steps to prevent an  
10 employee from circumventing the requirement to complete  
11 the CBT by assuming another employee's E-Verify or Basic  
12 Pilot user identification or password; ~~The employer shall~~  
13 ~~become familiar with and comply with the Basic Pilot~~  
14 ~~Manual.~~

15           (4) to use the Employment Eligibility Verification  
16 System to verify the employment eligibility of job  
17 applicants prior to hiring or to otherwise use the  
18 Employment Eligibility Verification System to screen  
19 individuals prior to hiring and prior to the completion of  
20 a Form I-9; ~~The employer shall notify all prospective~~  
21 ~~employees at the time of application that such employment~~  
22 ~~verification system may be used for immigration~~  
23 ~~enforcement purposes.~~

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; ~~The~~  
2 ~~employer shall provide all employees who receive a~~  
3 ~~tentative nonconfirmation with a referral letter and~~  
4 ~~contact information for what agency the employee must~~  
5 ~~contact to resolve the discrepancy.~~

6 (6) to fail to notify an individual, in writing, of the  
7 employer's receipt of a tentative nonconfirmation notice,  
8 of the individual's right to contest the tentative  
9 nonconfirmation notice, and of the contact information for  
10 the relevant government agency or agencies that the  
11 individual must contact to resolve the tentative  
12 nonconfirmation notice; ~~The employer shall comply with the~~  
13 ~~Illinois Human Rights Act and any applicable federal~~  
14 ~~anti-discrimination laws.~~

15 (7) to fail to ~~The employer shall use the information~~  
16 ~~it receives from SSA or DHS only to confirm the employment~~  
17 ~~eligibility of newly hired employees after completion of~~  
18 ~~the Form I 9. The employer shall safeguard the ~~this~~~~  
19 ~~information~~ contained in the Employment Eligibility  
20 Verification System, and the means of access to the system  
21 ~~it~~ (such as passwords and other privacy protections). ~~.7~~ An  
22 employer shall ~~to~~ ensure that the System ~~it~~ is not used for  
23 any ~~other~~ purpose other than employment verification of  
24 newly hired employees and shall ensure ~~as necessary to~~  
25 ~~protect its confidentiality, including ensuring that the~~  
26 information contained in the System and the means of access

1 to the System are ~~it is~~ not disseminated to any person  
2 other than employees ~~of the employer~~ who need such  
3 information and access ~~it~~ to perform the employer's  
4 employment verification responsibilities; ~~+~~

5 (c-1) Any claim that an employer refused to hire,  
6 segregated, or acted with respect to recruitment, hiring,  
7 promotion, renewal or employment, selection for training or  
8 apprenticeship, discharge, discipline, tenure or terms,  
9 privileges, or conditions of employment without following the  
10 procedures of the Employment Eligibility Verification System,  
11 including the Basic Pilot and E-Verify programs, may be brought  
12 under paragraph (G) (2) of Section 2-102 of the Illinois Human  
13 Rights Act;

14 (c-2) It is a violation of this Section for an individual  
15 to falsely pose as an employer in order to enroll in an  
16 Employment Eligibility Verification System or for an employer  
17 to use an Employment Eligibility Verification System to access  
18 information regarding an individual who is not an employee of  
19 the employer.

20 (d) Preemption. Neither the State nor any of its political  
21 subdivisions, nor any ~~no~~ unit of local government, including a  
22 home rule unit, may require any employer to use an Employment  
23 Eligibility Verification System, including under the following  
24 circumstances:

25 (1) as a condition of receiving a government contract;

26 (2) as a condition of receiving a business license; or

1           (3) as penalty for violating licensing or other similar  
2           laws.

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

6           (Source: P.A. 95-138, eff. 1-1-08.)

7           (820 ILCS 55/15) (from Ch. 48, par. 2865)

8           Sec. 15. Administration and enforcement.

9           (a) The Director of Labor or his authorized representative  
10          shall administer and enforce the provisions of this Act. The  
11          Director of Labor may issue rules and regulations necessary to  
12          administer and enforce the provisions of this Act.

13          (b) If an employee or applicant for employment alleges that  
14          he or she has been denied his or her rights under this Act, he  
15          or she may file a complaint with the Department of Labor. The  
16          Department shall investigate the complaint and shall have  
17          authority to request the issuance of a search warrant or  
18          subpoena to inspect the files of the employer or prospective  
19          employer, if necessary. The Department shall attempt to resolve  
20          the complaint by conference, conciliation, or persuasion. If  
21          the complaint is not so resolved and the Department finds the  
22          employer or prospective employer has violated the Act, the  
23          Department may commence an action in the circuit court to  
24          enforce the provisions of this Act including an action to  
25          compel compliance. The circuit court for the county in which

1 the complainant resides or in which the complainant is employed  
2 shall have jurisdiction in such actions.

3 (c) If an employer or prospective employer violates this  
4 Act, an employee or applicant for employment may commence an  
5 action in the circuit court to enforce the provisions of this  
6 Act, including actions to compel compliance, where efforts to  
7 resolve the employee's or applicant for employment's complaint  
8 concerning the violation by conference, conciliation or  
9 persuasion under subsection (b) have failed and the Department  
10 has not commenced an action in circuit court to redress the  
11 violation. The circuit court for the county in which the  
12 complainant resides or in which the complainant is employed  
13 shall have jurisdiction in such actions.

14 (d) Failure to comply with an order of the court may be  
15 punished as contempt. In addition, the court shall award an  
16 employee or applicant for employment prevailing in an action  
17 under this Act the following damages:

18 (1) Actual damages plus costs.

19 (2) For a willful and knowing violation of this Act,  
20 \$200 plus costs, reasonable attorney's fees, and actual  
21 damages.

22 (3) For a willful and knowing violation of Section  
23 12(c) or Section 12(c-2) of this Act, \$500 per affected  
24 employee plus costs, reasonable attorneys' fees, and  
25 actual damages.

26 (e) Any employer or prospective employer or his agent who

1 violates the provisions of this Act is guilty of a petty  
2 offense.

3 (f) Any employer or prospective employer, or the officer or  
4 agent of any employer or prospective employer, who discharges  
5 or in any other manner discriminates against any employee or  
6 applicant for employment because that employee or applicant for  
7 employment has made a complaint to his employer, or to the  
8 Director or his authorized representative, or because that  
9 employee or applicant for employment has caused to be  
10 instituted or is about to cause to be instituted any proceeding  
11 under or related to this Act, or because that employee or  
12 applicant for employment has testified or is about to testify  
13 in an investigation or proceeding under this Act, is guilty of  
14 a petty offense.

15 (Source: P.A. 87-807.)