



Sen. Javier L. Cervantes

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10300SB0508sam003

LRB103 02960 SPS 64869 a

1 AMENDMENT TO SENATE BILL 508

2 AMENDMENT NO. _____. Amend Senate Bill 508 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Right to Privacy in the Workplace Act is
5 amended by changing Sections 12 and 15 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

1 on the accuracy of E-Verify and to review and understand an
2 employer's legal responsibilities relating to the use of the
3 ~~voluntary~~ E-Verify program.

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

21 (1) that the employer has received the Basic Pilot or
22 E-Verify training materials from the Department of
23 Homeland Security (DHS), and that all employees who will
24 administer the program have completed the Basic Pilot or
25 E-Verify Computer Based Tutorial (CBT); and

26 (2) that the employer has posted the notice from DHS

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

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

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

18 (2) to allow any employee to use an Employment
19 Eligibility Verification System prior to having completed
20 CBT;

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

25 (4) to use the Employment Eligibility Verification
26 System to verify the employment eligibility of job

1 applicants prior to hiring or to otherwise use the
2 Employment Eligibility Verification System to screen
3 individuals prior to hiring and prior to the completion of
4 a Form I-9;

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

9 (6) to fail to notify an individual, in writing, of
10 the employer's receipt of a tentative nonconfirmation
11 notice, of the individual's right to contest the tentative
12 nonconfirmation notice, and of the contact information for
13 the relevant government agency or agencies that the
14 individual must contact to resolve the tentative
15 nonconfirmation notice;

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

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

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

16 (d) Preemption. Neither the State nor any of its political
17 subdivisions, nor any unit of local government, including a
18 home rule unit, may require any employer to use an Employment
19 Eligibility Verification System, including under the following
20 circumstances:

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

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

23 (3) as penalty for violating licensing or other
24 similar laws.

25 This subsection (d) is a denial and limitation of home
26 rule powers and functions under subsection (h) of Section 6 of

1 Article VII of the Illinois Constitution.

2 (Source: P.A. 95-138, eff. 1-1-08; 96-623, eff. 1-1-10;
3 96-1000, eff. 7-2-10.)

4 (820 ILCS 55/13 new)

5 Sec. 13. Restrictions on the use of Employment Eligibility
6 Verification Systems.

7 (a) As used in this Section, "employee's authorized
8 representative" means an exclusive collective bargaining
9 representative.

10 (b) An employer shall not impose work authorization
11 verification or re-verification requirements greater than
12 those required by federal law.

13 (c) If an employer contends there is a discrepancy in an
14 employee's employment verification information, the employer
15 must provide the employee with:

16 (1) the specific document or documents that the
17 employer deems to be deficient and the reason why the
18 document or documents are deficient;

19 (2) instructions on how the employee can correct the
20 alleged deficient documents;

21 (3) an explanation of the employee's right to have
22 representation present during related meetings,
23 discussions, or proceedings with the employer; and

24 (4) an explanation of any other rights that the
25 employee may have in connection with the employer's

1 contention.

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

7 (1) the employer must not take any adverse action
8 against the employee, including re-verification, based on
9 the receipt of the notification;

10 (2) the employer must provide a copy of the
11 notification to the employee and to the employee's
12 authorized representative, if any, as soon as practicable,
13 but not more than 3 business days after the date of receipt
14 of the notification. The notification shall be delivered
15 by hand at the workplace if possible and, if hand delivery
16 is not possible, by mail and email, if the email address of
17 the employee is known, and to the employee's authorized
18 representative; and

19 (3) the employee may have a representative of the
20 employee's choosing in any meetings, discussions, or
21 proceedings with the employer.

22 (e) Except as otherwise required by federal law, an
23 employer shall provide a notice to each current employee, by
24 posting in English and in any language commonly used in the
25 workplace, of any inspections of I-9 Employment Eligibility
26 Verification forms or other employment records conducted by

1 the U.S. Immigration and Customs Enforcement, United States
2 Customs and Border Protection, or any other federal entity
3 enforcing civil immigration violations within 72 hours after
4 receiving notice of the inspection. Written notice shall also
5 be given within 72 hours to the employee's authorized
6 representative, if any. The posted notice shall contain the
7 following information:

8 (1) the name of the entity conducting the inspections
9 of I-9 Employment Eligibility Verification forms or other
10 employment records;

11 (2) the date that the employer received notice of the
12 inspection;

13 (3) the nature of the inspection to the extent known
14 by the employer; and

15 (4) a copy of the notice received by the employer.

16 An employer, upon reasonable request, shall provide an
17 employee a copy of the Notice of Inspection of I-9 Employment
18 Eligibility Verification forms.

19 (f) On or before 6 months after the effective date of this
20 amendatory Act of the 103rd General Assembly, the Department
21 shall develop a template posting that employers may use to
22 comply with the requirements of subsection (e) to inform
23 employees of a notice of inspection to be conducted of I-9
24 Employment Eligibility Verification forms or other employment
25 records conducted by the U.S. Immigration and Customs
26 Enforcement, United States Customs and Border Protection, or

1 any other federal entity enforcing civil immigration
2 violations. The Department shall make the template available
3 on its website so that it is accessible to any employer.

4 (g) Except as otherwise required by federal law, an
5 employer shall provide to each current employee, and to the
6 employee's authorized representative, if any, a copy of the
7 written notice that provides the results of the inspection of
8 I-9 Employment Eligibility Verification forms or other
9 employment records within 72 hours after its receipt of the
10 notice. Within 72 hours after its receipt of this notice, the
11 employer shall also provide to each employee, and to the
12 employee's authorized representative, if any, written notice
13 of the obligations of the employer and the employee arising
14 from the results of the inspection of I-9 Employment
15 Eligibility Verification forms or other employment records.
16 The notice shall relate to the employee only and shall be
17 delivered by hand at the workplace if possible and, if hand
18 delivery is not possible, by mail and email, if the email
19 address of the employee is known, and to the employee's
20 authorized representative. The notice shall contain the
21 following information:

22 (1) a description of any and all deficiencies or other
23 items identified in the written immigration inspection
24 results notice related to the employee;

25 (2) the time period for correcting any potential
26 deficiencies identified by the U.S. Immigration and

1 Customs Enforcement, United States Customs and Border
2 Protection, or any other federal entity enforcing civil
3 immigration violations;

4 (3) the time and date of any meeting with the employer
5 to correct any identified deficiencies; and

6 (4) notice that the employee has the right to
7 representation during any meeting scheduled with the
8 employer.

9 (h) This Section does not require a penalty to be imposed
10 upon an employer or person who fails to provide notice to an
11 employee at the express and specific direction or request of
12 the federal government. In determining the amount of the
13 penalty, the appropriateness of the penalty to the size of the
14 business of the employer charged and the gravity of the
15 violation shall be considered. The penalty may be recovered in
16 a civil action brought by the Director in any circuit court.

17 (i) This Section applies to public and private employers.

18 (j) Nothing in this Section shall be interpreted,
19 construed, or applied to restrict or limit an employer's
20 compliance with a memorandum of understanding concerning the
21 use of the federal E-Verify system.

22 (820 ILCS 55/15) (from Ch. 48, par. 2865)

23 Sec. 15. Administration and enforcement.

24 (a) The Director of Labor or his authorized representative
25 shall administer and enforce the provisions of this Act. The

1 Director of Labor may issue rules and regulations necessary to
2 administer and enforce the provisions of this Act.

3 (b) If an employee or applicant for employment alleges
4 that he or she has been denied his or her rights under this
5 Act, he or she may file a complaint with the Department of
6 Labor. The Department shall investigate the complaint and
7 shall have authority to request the issuance of a search
8 warrant or subpoena to inspect the files of the employer or
9 prospective employer, if necessary. The Department shall
10 attempt to resolve the complaint by conference, conciliation,
11 or persuasion. If the complaint is not so resolved and the
12 Department finds the employer or prospective employer has
13 violated the Act, the Department may commence an action in the
14 circuit court to enforce the provisions of this Act including
15 an action to compel compliance. The circuit court for the
16 county in which the complainant resides or in which the
17 complainant is employed shall have jurisdiction in such
18 actions.

19 (c) If an employer or prospective employer violates this
20 Act, an employee or applicant for employment may commence an
21 action in the circuit court to enforce the provisions of this
22 Act, including actions to compel compliance, where efforts to
23 resolve the employee's or applicant for employment's complaint
24 concerning the violation by conference, conciliation or
25 persuasion under subsection (b) have failed and the Department
26 has not commenced an action in circuit court to redress the

1 violation. The circuit court for the county in which the
2 complainant resides or in which the complainant is employed
3 shall have jurisdiction in such actions.

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

8 (1) Actual damages plus costs.

9 (2) For a willful and knowing violation of this Act,
10 \$200 plus costs, reasonable attorney's fees, and actual
11 damages.

12 (3) For a willful and knowing violation of Section
13 12(c) or Section 12(c-2) of this Act, \$500 per affected
14 employee plus costs, reasonable attorney's ~~attorneys'~~
15 fees, and actual damages.

16 (4) For a willful and knowing violation of Section 13,
17 a civil penalty of a minimum of \$2,000 up to a maximum of
18 \$5,000 for a first violation and a civil penalty of a
19 minimum of \$5,000 up to a maximum of \$10,000 for each
20 subsequent violation per affected employee plus costs,
21 reasonable attorney's fees, and actual damages.

22 (e) Any employer or prospective employer or his agent who
23 violates the provisions of this Act is guilty of a petty
24 offense.

25 (f) Any employer or prospective employer, or the officer
26 or agent of any employer or prospective employer, who

1 discharges or in any other manner discriminates against any
2 employee or applicant for employment because that employee or
3 applicant for employment has made a complaint to his employer,
4 or to the Director or his authorized representative, or
5 because that employee or applicant for employment has caused
6 to be instituted or is about to cause to be instituted any
7 proceeding under or related to this Act, or because that
8 employee or applicant for employment has testified or is about
9 to testify in an investigation or proceeding under this Act,
10 is guilty of a petty offense.

11 (Source: P.A. 96-623, eff. 1-1-10.)".