

# SB1745



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

SB1745

Introduced 2/9/2011, by Sen. Chris Lauzen

#### 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).

LRB097 09919 AEK 50082 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;  
20 96-1000, eff. 7-2-10.)