



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB5803

by Rep. Bill Mitchell

SYNOPSIS AS INTRODUCED:

820 ILCS 55/12

Amends the Right to Privacy in the Workplace Act. Requires every employer, after hiring an employee, to verify the employment eligibility of the employee through the E-Verify program. Provides that, in addition to any other requirement for an employer to receive a grant, loan, or performance-based incentive from any government entity, the employer shall register with and participate in the E-Verify program. Provides that before receiving the economic development incentive, the employer shall provide proof to the government entity that the employer is registered with and is participating in the E-Verify program. Provides that the State, its political subdivisions, and units of local government, including home rule units, shall require each employer to use an Employment Eligibility Verification System as a condition of receiving a government contract or a business license. Effective immediately.

LRB099 18294 JLS 42666 b

FISCAL NOTE ACT
MAY APPLY

HOME RULE NOTE
ACT MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

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 required.

9 (a) On and after the effective date of this amendatory Act
10 of the 99th General Assembly, every employer, after hiring an
11 employee, shall verify the employment eligibility of the
12 employee through the E-Verify program. In addition to any other
13 requirement for an employer to receive an economic development
14 incentive from a government entity, the employer shall register
15 with and participate in the E-Verify program. Before receiving
16 the economic development incentive, the employer shall provide
17 proof to the government entity that the employer is registered
18 with and is participating in the E-Verify program. If the
19 government entity determines that the employer is not complying
20 with this subsection (a), the government entity shall notify
21 the employer by certified mail of the government entity's
22 determination of noncompliance and the employer's right to
23 appeal the determination to the Department of Labor. On a final

1 determination of noncompliance by the Department of Labor or
2 court, if the decision of the Department of Labor is appealed
3 under the Administrative Review Law, the employer shall repay
4 all moneys received as an economic development incentive to the
5 government entity within 30 days of the final determination.

6 For the purposes of this subsection (a):

7 "Economic development incentive" means any grant,
8 loan, or performance-based incentive from any government
9 entity that is awarded on or after the effective date of
10 this amendatory Act of the 99th General Assembly.

11 "Employee" means a person who is employed by an
12 employer in consideration for direct or indirect monetary
13 wages or profits or a person who volunteers his or her
14 services for a non-profit entity.

15 "Employer" means a person, business, partnership,
16 association, or corporation, including the State, unit of
17 local government, or school district, trust, or non-profit
18 entity, that employs the services of one or more individual
19 persons.

20 "Government entity" means this State and any political
21 subdivision of this State, including a home rule unit.

22 Every 3 months the Department of Labor shall request from
23 the United States Department of Homeland Security a list of
24 employers from this State that are registered with the E-Verify
25 program. On receipt of the list of employers, the Department of
26 Labor shall make the list available on the Department's

1 ~~website. Prior to choosing to voluntarily enroll in any~~
2 ~~Electronic Employment Verification System, including the~~
3 ~~E-Verify program and the Basic Pilot program, as authorized by~~
4 ~~§ U.S.C. 1324a, Notes, Pilot Programs for Employment~~
5 ~~Eligibility Confirmation (enacted by P.L. 104 208, div. C,~~
6 ~~title IV, subtitle A), employers are urged to consult the~~
7 ~~Illinois Department of Labor's website for current information~~
8 ~~on the accuracy of E-Verify and to review and understand an~~
9 ~~employer's legal responsibilities relating to the use of the~~
10 ~~voluntary E-Verify program.~~

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

20 (b) Upon initial enrollment in an Employment Eligibility
21 Verification System or within 30 days after the effective date
22 of this amendatory Act of the 96th General Assembly, an
23 employer enrolled in E-Verify or any other Employment
24 Eligibility Verification System must attest, under penalty of
25 perjury, on a form prescribed by the IDOL available on the IDOL
26 website:

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

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

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

24 (2) to allow any employee to use an Employment
25 Eligibility Verification System prior to having completed
26 CBT;

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

5 (4) to use the Employment Eligibility Verification
6 System to verify the employment eligibility of job
7 applicants prior to hiring or to otherwise use the
8 Employment Eligibility Verification System to screen
9 individuals prior to hiring and prior to the completion of
10 a Form I-9;

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

15 (6) to fail to notify an individual, in writing, of the
16 employer's receipt of a tentative nonconfirmation notice,
17 of the individual's right to contest the tentative
18 nonconfirmation notice, and of the contact information for
19 the relevant government agency or agencies that the
20 individual must contact to resolve the tentative
21 nonconfirmation notice;

22 (7) to fail to safeguard the information contained in
23 the Employment Eligibility Verification System, and the
24 means of access to the system (such as passwords and other
25 privacy protections). An employer shall ensure that the
26 System is not used for any purpose other than employment

1 verification of newly hired employees and shall ensure that
2 the information contained in the System and the means of
3 access to the System are not disseminated to any person
4 other than employees who need such information and access
5 to perform the employer's employment verification
6 responsibilities.

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

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

22 (d) Preemption. ~~The~~ ~~Neither the State,~~ ~~nor any of its~~
23 ~~political subdivisions, and units nor any unit~~ of local
24 ~~government, including a home rule units unit, shall may~~ require
25 each any employer to use an Employment Eligibility Verification
26 System, ~~including~~ under the following circumstances:

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

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

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

11 Section 99. Effective date. This Act takes effect upon
12 becoming law.