



Sen. Iris Y. Martinez

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LRB095 14852 RLC 46413 a

1 AMENDMENT TO SENATE BILL 1878

2 AMENDMENT NO. _____. Amend Senate Bill 1878 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 as follows:

6 (820 ILCS 55/12)

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

9 (a) Until such time as any Employment Eligibility
10 Verification System, including the E-Verify program and the
11 Basic Pilot program, as authorized by 8 U.S.C. 1324a, Notes,
12 Pilot Programs for Employment Eligibility Confirmation
13 (enacted by P.L. 104-208, div. C, title IV, subtitle A), is
14 able to automatically verify the work authorization status of
15 99% of employees:

16 (1) employers are discouraged from participating in

1 any Employment Eligibility Verification System, unless
2 otherwise required by federal law; and

3 (2) the State of Illinois shall not participate in any
4 Employment Eligibility Verification System, unless
5 otherwise required by federal law. Employers are
6 ~~prohibited from enrolling in any Employment Eligibility~~
7 ~~Verification System, including the Basic Pilot program, as~~
8 ~~authorized by 8 U.S.C. 1324a, Notes, Pilot Programs for~~
9 ~~Employment Eligibility Confirmation (enacted by PL~~
10 ~~104-208, div. C, title IV, subtitle A), until the Social~~
11 ~~Security Administration (SSA) and Department of Homeland~~
12 ~~Security (DHS) databases are able to make a determination~~
13 ~~on 99% of the tentative nonconfirmation notices issued to~~
14 ~~employers within 3 days, unless otherwise required by~~
15 ~~federal law.~~

16 (b) Upon initial enrollment in an Employment Eligibility
17 Verification System or within 30 days after the effective date
18 of this amendatory Act of the 95th General Assembly, an
19 employer enrolled in an Employment Eligibility Verification
20 System must attest, Subject to subsection (a) of this Section,
21 ~~an employer who enrolls in the Basic Pilot program is~~
22 ~~prohibited from the Employment Eligibility Verification~~
23 ~~Systems, to confirm the employment authorization of new hires~~
24 ~~unless the employer attests, under penalty of perjury, on a~~
25 form prescribed by the Department of Labor:

26 (1) that the employer has received the Basic Pilot or

1 E-Verify training materials from the Department of
2 Homeland Security (DHS) ~~DHS~~, and that all employees
3 ~~personnel~~ who will administer the program have completed
4 the Basic Pilot or E-Verify Computer Based Tutorial (CBT);
5 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 prospective
13 employees, ~~and the anti-discrimination notice issued by~~
14 ~~the Illinois Department of Human Rights (IDHR).~~

15 The employer must maintain the signed original of the
16 attestation form prescribed by the Department, as well as
17 copies of all CBT certificates of completion, and make them
18 available for inspection or copying by the Department at any
19 reasonable time.

20 (c) It is a violation of this Act for an employer enrolled
21 in an Employment Eligibility Verification System:
22 ~~Responsibilities of employer using Employment Eligibility~~
23 ~~Verification Systems.~~

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

1 (2) to allow an employee to use an Employment
2 Eligibility Verification System prior to having completed
3 the 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 ~~The employer shall become familiar with~~
10 ~~and comply with the Basic Pilot Manual.~~

11 ~~(4) The employer shall notify all prospective~~
12 ~~employees at the time of application that such employment~~
13 ~~verification system may be used for immigration~~
14 ~~enforcement purposes.~~

15 ~~(5) The employer shall provide all employees who~~
16 ~~receive a tentative nonconfirmation with a referral letter~~
17 ~~and contact information for what agency the employee must~~
18 ~~contact to resolve the discrepancy.~~

19 ~~(6) The employer shall comply with the Illinois Human~~
20 ~~Rights Act and any applicable federal anti-discrimination~~
21 ~~laws.~~

22 ~~(7) The employer shall use the information it receives~~
23 ~~from SSA or DHS only to confirm the employment eligibility~~
24 ~~of newly hired employees after completion of the Form I-9.~~
25 ~~The employer shall safeguard the ~~this~~ information~~
26 contained in the Employment Eligibility Verification

1 System, and the means of access to the System ~~it~~ (such as
2 passwords and other privacy protections). An employer
3 ~~shall, to~~ ensure that the System ~~it~~ is not used for any
4 ~~other~~ purpose other than employment verification of
5 newly-hired employees and shall ensure ~~as necessary to~~
6 ~~protect its confidentiality, including ensuring~~ that the
7 information contained in the System and the means of access
8 to the System are ~~it is~~ not disseminated to any person
9 other than employees ~~of the employer~~ who need such
10 information and access ~~it~~ to perform the employer's
11 employment verification responsibilities. All claims that
12 an employer refused to hire, segregated, or acted with
13 respect to recruitment, hiring, promotion, renewal of
14 employment, selection for training or apprenticeship,
15 discharge, discipline, tenure or terms, privileges, or
16 conditions of employment without following the procedures
17 under the Basic Pilot or E-Verify program shall be brought
18 under paragraph (G) (2) of Section 2-102 of the Illinois
19 Human Rights Act.

20 (d) Preemption. No unit of local government, including a
21 home rule unit, may require any employer to use an Employment
22 Eligibility Verification System, including under the following
23 circumstances:

- 24 (1) as a condition of receiving a government contract;
25 (2) as a condition of receiving a business license; or
26 (3) as penalty for violating licensing or other similar

1 laws.

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

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

6 (820 ILCS 55/15) (from Ch. 48, par. 2865)

7 Sec. 15. Administration and enforcement.

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

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

1 shall have jurisdiction in such actions.

2 (c) If an employer or prospective employer violates this
3 Act, an employee or applicant for employment may commence an
4 action in the circuit court to enforce the provisions of this
5 Act, including actions to compel compliance, where efforts to
6 resolve the employee's or applicant for employment's complaint
7 concerning the violation by conference, conciliation or
8 persuasion under subsection (b) have failed and the Department
9 has not commenced an action in circuit court to redress the
10 violation. An employee or applicant for employment may directly
11 commence an action in the circuit court to enforce Section
12 12(c) (3) of this Act without first filing a complaint with the
13 Department of Labor. The circuit court for the county in which
14 the complainant resides or in which the complainant is employed
15 shall have jurisdiction in such actions.

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

20 (1) Actual damages plus costs.

21 (2) For a willful and knowing violation of this Act,
22 \$200 plus costs, reasonable attorney's fees, and actual
23 damages.

24 (3) For a violation of Section 12(c) (3) of this Act,
25 \$500 per affected employee plus costs, reasonable
26 attorney's fees, and actual damages.

1 (e) Any employer or prospective employer or his agent who
2 violates the provisions of this Act is guilty of a petty
3 offense.

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

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

17 Section 97. Severability. The provisions of this Act are
18 severable under Section 1.31 of the Statute on Statutes.

19 Section 99. Effective date. This Act takes effect upon
20 becoming law."