



Sen. Javier L. Cervantes

**Filed: 10/20/2023**

10300SB0508sam002

LRB103 02960 SPS 64821 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 Section 12 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) An employer who fails to provide the notices required  
10 by this Section or any other violation of this Act shall be  
11 subject to a civil penalty of a minimum of \$2,000 up to a  
12 maximum of \$5,000 for a first violation and a civil penalty of  
13 a minimum of \$5,000 up to a maximum of \$10,000 for each  
14 subsequent violation. This Section does not require a penalty  
15 to be imposed upon an employer or person who fails to provide  
16 notice to an employee at the express and specific direction or  
17 request of the federal government. In determining the amount  
18 of the penalty, the appropriateness of the penalty to the size  
19 of the business of the employer charged and the gravity of the  
20 violation shall be considered. The penalty may be recovered in  
21 a civil action brought by the Director in any circuit court.

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

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