



Sen. Javier L. Cervantes

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LRB103 02960 SPS 65212 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. Nothing in this Act shall be
4 construed to require an employer to enroll in any Electronic
5 Employment Verification System, including the E-Verify program
6 and the Basic Pilot program, as authorized by 8 U.S.C. 1324a,
7 Notes, Pilot Programs for Employment Eligibility Confirmation
8 (enacted by P.L. 104-208, div. C, title IV, subtitle A) beyond
9 those obligations that have been imposed upon them by federal
10 law.

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

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

1 website:

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

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

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

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

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

1 CBT;

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

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

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

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

23 (7) to fail to safeguard the information contained in
24 the Employment Eligibility Verification System, and the
25 means of access to the system (such as passwords and other
26 privacy protections). An employer shall ensure that the

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

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

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

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

1 circumstances:

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

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

4 (3) as penalty for violating licensing or other
5 similar laws.

6 This subsection (d) is a denial and limitation of home
7 rule 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 (820 ILCS 55/13 new)

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

14 (a) As used in this Section:

15 "Employee's authorized representative" means an exclusive
16 collective bargaining representative.

17 "Inspecting entity" means the U.S. Immigration and Customs
18 Enforcement, United States Customs and Border Protection, or
19 any other federal entity enforcing civil immigration
20 violations of an employer's I-9 Employment Eligibility
21 Verification forms.

22 (b) An employer shall not impose work authorization
23 verification or re-verification requirements greater than
24 those required by federal law.

25 (c) If an employer contends that there is a discrepancy in

1 an employee's employment verification information, the
2 employer must provide the employee with:

3 (1) The specific document or documents, if made
4 available to the employer, that the employer deems to be
5 deficient and the reason why the document or documents are
6 deficient. Upon request by the employee or the employee's
7 authorized representative, the employer shall give to the
8 employee the original document forming the basis for the
9 employer's contention of deficiency within 7 business
10 days.

11 (2) Instructions on how the employee can correct the
12 alleged deficient documents if required to do so by law.

13 (3) An explanation of the employee's right to have
14 representation present during related meetings,
15 discussions, or proceedings with the employer, if allowed
16 by a memorandum of understanding concerning the federal
17 E-Verify system.

18 (4) An explanation of any other rights that the
19 employee may have in connection with the employer's
20 contention.

21 (d) When an employer receives notification from any
22 federal or State agency, including, but not limited to, the
23 Social Security Administration or the Internal Revenue
24 Service, of a discrepancy as it relates to work authorization,
25 the following rights and protections are granted to the
26 employee:

1 (1) The employer must not take any adverse action
2 against the employee, including re-verification, based on
3 the receipt of the notification.

4 (2) The employer must provide a notice to the employee
5 and, if allowed by a memorandum of understanding
6 concerning the federal E-Verify system, to the employee's
7 authorized representative, if any, as soon as practicable,
8 but not more than 5 business days after the date of receipt
9 of the notification, unless a shorter timeline is provided
10 for under federal law or a collective bargaining
11 agreement. The notice to the employee shall include, but
12 not be limited to: (i) an explanation that the federal or
13 State agency has notified the employer that the employee's
14 work authorization documents presented by the employee do
15 not appear to be valid or reasonably relate to the
16 employee; and (ii) the time period the employee has to
17 contest the federal or State agency's determination. The
18 employer shall notify the employee in person and deliver
19 the notification by hand, if possible. If hand delivery is
20 not possible, then the employer shall notify the employee
21 by mail and email, if the email address of the employee is
22 known, and shall notify the employee's authorized
23 representative. Upon request by the employee or the
24 employee's authorized representative, the employer shall
25 give to the employee the original notice from the federal
26 or State agency, including, but not limited to, the Social

1 Security Administration or the Internal Revenue Service,
2 within 7 business days.

3 (3) The employee may have a representative of the
4 employee's choosing in any meetings, discussions, or
5 proceedings with the employer.

6 (e) Except as otherwise required by federal law, an
7 employer shall provide a notice to each current employee, by
8 posting in English and in any language commonly used in the
9 workplace, of any inspections of I-9 Employment Eligibility
10 Verification forms or other employment records conducted by
11 the inspecting entity within 72 hours after receiving notice
12 of the inspection. Written notice shall also be given within
13 72 hours to the employee's authorized representative, if any.
14 The posted notice shall contain the following information:

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

18 (2) the date that the employer received notice of the
19 inspection;

20 (3) the nature of the inspection to the extent known
21 by the employer; and

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

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

26 (f) On or before 6 months after the effective date of this

1 amendatory Act of the 103rd General Assembly, the Department
2 shall develop a template posting that employers may use to
3 comply with the requirements of subsection (e) to inform
4 employees of a notice of inspection to be conducted of I-9
5 Employment Eligibility Verification forms or other employment
6 records conducted by the inspecting entity. The Department
7 shall make the template available on its website so that it is
8 accessible to any employer.

9 (g) Except as otherwise required by federal law, if during
10 an inspection of the employer's I-9 Employment Eligibility
11 Verification forms by an inspecting entity, the inspecting
12 entity makes a determination that the employee's work
13 authorization documents do not establish that the employee is
14 authorized to work in the United States and provide the
15 employer with notice of that determination, the employer shall
16 provide a written notice as set forth in this subsection to the
17 employee within 5 business days, unless a shorter timeline is
18 provided for under federal law or a collective bargaining
19 agreement. The employer's notice to the employee shall relate
20 to the employee only. The employer shall notify the employee
21 in person and deliver the notification by hand, if possible.
22 If hand delivery is not possible, then the employer shall
23 notify the employee by mail and email, if the email address of
24 the employee is known, and shall notify the employee's
25 authorized representative. The employer's notice to the
26 employee shall contain the following information:

1 (1) an explanation that the inspecting entity has
2 determined that the employee's work authorization
3 documents presented by the employee do not appear to be
4 valid or reasonably relate to the employee;

5 (2) the time period for the employee to notify the
6 employer whether the employee is contesting or not
7 contesting the determination by the inspecting entity;

8 (3) if known by the employer, the time and date of any
9 meeting with the employer and employee or with the
10 inspecting entity and employee related to the correction
11 of the inspecting entity's determination that the
12 employee's work authorization documents presented by the
13 employee do not appear to be valid or reasonably relate to
14 the employee; and

15 (4) notice that the employee has the right to
16 representation during any meeting scheduled with the
17 employer and the inspecting entity.

18 If the employee contests the inspecting entity's
19 determination, the employer will notify the employee within 72
20 hours after receipt of any final determination by the
21 inspecting entity related to the employee's work authorization
22 status. Upon request by the employee or the employee's
23 authorized representative, the employer shall give the
24 employee the original notice from the inspecting entity within
25 7 business days.

26 (h) This Section does not require a penalty to be imposed

1 upon an employer or person who fails to provide notice to an
2 employee at the express and specific direction or request of
3 the federal government. In determining the amount of the
4 penalty, the appropriateness of the penalty to the size of the
5 business of the employer charged and the gravity of the
6 violation shall be considered. The penalty may be recovered in
7 a civil action brought by the Director in any circuit court.
8 Upon request by the employee or the employee's authorized
9 representative, the employer shall give the employee the
10 original notice from the inspecting entity within 7 business
11 days.

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

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

17 (820 ILCS 55/15) (from Ch. 48, par. 2865)

18 Sec. 15. Administration and enforcement.

19 (a) The Director of Labor or his authorized representative
20 shall administer and enforce the provisions of this Act. The
21 Director of Labor may issue rules and regulations necessary to
22 administer and enforce the provisions of this Act.

23 (b) If an employee or applicant for employment alleges
24 that he or she has been denied his or her rights under this
25 Act, he or she may file a complaint with the Department of

1 Labor. The Department shall investigate the complaint and
2 shall have authority to request the issuance of a search
3 warrant or subpoena to inspect the files of the employer or
4 prospective employer, if necessary. The Department shall
5 attempt to resolve the complaint by conference, conciliation,
6 or persuasion. If the complaint is not so resolved and the
7 Department finds the employer or prospective employer has
8 violated the Act, the Department may commence an action in the
9 circuit court to enforce the provisions of this Act including
10 an action to compel compliance. The circuit court for the
11 county in which the complainant resides or in which the
12 complainant is employed shall have jurisdiction in such
13 actions.

14 (c) If an employer or prospective employer violates this
15 Act, an employee or applicant for employment may commence an
16 action in the circuit court to enforce the provisions of this
17 Act, including actions to compel compliance, where efforts to
18 resolve the employee's or applicant for employment's complaint
19 concerning the violation by conference, conciliation or
20 persuasion under subsection (b) have failed and the Department
21 has not commenced an action in circuit court to redress the
22 violation. The circuit court for the county in which the
23 complainant resides or in which the complainant is employed
24 shall have jurisdiction in such actions.

25 (d) Failure to comply with an order of the court may be
26 punished as contempt. In addition, the court shall award an

1 employee or applicant for employment prevailing in an action
2 under this Act the following damages:

3 (1) Actual damages plus costs.

4 (2) For a willful and knowing violation of this Act,
5 \$200 plus costs, reasonable attorney's fees, and actual
6 damages.

7 (3) For a willful and knowing violation of Section
8 12(c) or Section 12(c-2) of this Act, \$500 per affected
9 employee plus costs, reasonable attorney's ~~attorneys'~~
10 fees, and actual damages.

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

17 (e) Any employer or prospective employer or his agent who
18 violates the provisions of this Act is guilty of a petty
19 offense.

20 (f) Any employer or prospective employer, or the officer
21 or agent of any employer or prospective employer, who
22 discharges or in any other manner discriminates against any
23 employee or applicant for employment because that employee or
24 applicant for employment has made a complaint to his employer,
25 or to the Director or his authorized representative, or
26 because that employee or applicant for employment has caused

1 to be instituted or is about to cause to be instituted any
2 proceeding under or related to this Act, or because that
3 employee or applicant for employment has testified or is about
4 to testify in an investigation or proceeding under this Act,
5 is guilty of a petty offense.

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