AN ACT concerning employment.

Be it enacted by the People of the State of Illinois, represented in the General Assembly:

Section 5. The Right to Privacy in the Workplace Act is amended by changing Sections 12 and 15 and adding Section 13 as follows:

(820 ILCS 55/12)

Sec. 12. Use of Employment Eligibility Verification Systems.

(a) Prior to enrolling ~~choosing to voluntarily enroll~~ in any Electronic Employment Verification System, including the E-Verify program and the Basic Pilot program, as authorized by 8 U.S.C. 1324a, Notes, Pilot Programs for Employment Eligibility Confirmation (enacted by P.L. 104-208, div. C, title IV, subtitle A), employers are urged to consult the Illinois Department of Labor's website for current information on the accuracy of E-Verify and to review and understand an employer's legal responsibilities relating to the use of the ~~voluntary~~ E-Verify program. Nothing in this Act shall be construed to require an employer to enroll in any Electronic Employment Verification System, including the E-Verify program and the Basic Pilot program, as authorized by 8 U.S.C. 1324a, Notes, Pilot Programs for Employment Eligibility Confirmation

(enacted by P.L. 104-208, div. C, title IV, subtitle A) beyond those obligations that have been imposed upon them by federal law.

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

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

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

(2) that the employer has posted the notice from DHS

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

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

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

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

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

(4) to use the Employment Eligibility Verification System to verify the employment eligibility of job

applicants prior to hiring or to otherwise use the Employment Eligibility Verification System to screen individuals prior to hiring and prior to the completion of a Form I-9;

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

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

(7) to fail to safeguard the information contained in the Employment Eligibility Verification System, and the means of access to the system (such as passwords and other privacy protections). An employer shall ensure that the System is not used for any purpose other than employment verification of newly hired employees and shall ensure that the information contained in the System and the means of access to the System are not disseminated to any person other than employees who need such information and access to perform the employer's employment verification responsibilities.

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

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

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

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

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

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

This subsection (d) is a denial and limitation of home rule powers and functions under subsection (h) of Section 6 of

Article VII of the Illinois Constitution.

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

(820 ILCS 55/13 new)

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

(a) As used in this Section:

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

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

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

(c) If an employer contends that there is a discrepancy in an employee's employment verification information, the employer must provide the employee with:

(1) The specific document or documents, if made available to the employer, that the employer deems to be deficient and the reason why the document or documents are deficient. Upon request by the employee or the employee's authorized representative, the employer shall give to the

employee the original document forming the basis for the employer's contention of deficiency within 7 business days.

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

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

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

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

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

(2) The employer must provide a notice to the employee and, if allowed by a memorandum of understanding concerning the federal E-Verify system, to the employee's authorized representative, if any, as soon as practicable,

but not more than 5 business days after the date of receipt of the notification, unless a shorter timeline is provided for under federal law or a collective bargaining agreement. The notice to the employee shall include, but not be limited to: (i) an explanation that the federal or State agency has notified the employer that the employee's work authorization documents presented by the employee do not appear to be valid or reasonably relate to the employee; and (ii) the time period the employee has to contest the federal or State agency's determination. The employer shall notify the employee in person and deliver the notification by hand, if possible. If hand delivery is not possible, then the employer shall notify the employee by mail and email, if the email address of the employee is known, and shall notify the employee's authorized representative. Upon request by the employee or the employee's authorized representative, the employer shall give to the employee the original notice from the federal or State agency, including, but not limited to, the Social Security Administration or the Internal Revenue Service, within 7 business days. This original notice shall be redacted in compliance with State and federal privacy laws and shall relate only to the employee receiving the notification.

(3) The employee may have a representative of the employee's choosing in any meetings, discussions, or

proceedings with the employer.

The procedures described in this subsection do not apply to inspections of an employer's I-9 Employment Verification Forms by an inspecting entity or any relevant procedure otherwise described in subsection (g).

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

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

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

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

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

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

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

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

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

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

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

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

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

If the employee contests the inspecting entity's determination, the employer will notify the employee within 72 hours after receipt of any final determination by the inspecting entity related to the employee's work authorization status. Upon request by the employee or the employee's authorized representative, the employer shall give the employee the original notice from the inspecting entity within 7 business days. This original notice shall be redacted in compliance with State and federal privacy laws and shall

relate only to the employee receiving the notification.

(h) This Section does not require a penalty to be imposed upon an employer or person who fails to provide notice to an employee at the express and specific direction or request of the federal government. In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the employer charged and the gravity of the violation shall be considered. The penalty may be recovered in a civil action brought by the Director in any circuit court. Upon request by the employee or the employee's authorized representative, the employer shall give the employee the original notice from the inspecting entity within 7 business days.

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

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

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

Sec. 15. Administration and enforcement.

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

(b) If an employee or applicant for employment alleges

that he or she has been denied his or her rights under this Act, he or she may file a complaint with the Department of Labor. The Department shall investigate the complaint and shall have authority to request the issuance of a search warrant or subpoena to inspect the files of the employer or prospective employer, if necessary. The Department shall attempt to resolve the complaint by conference, conciliation, or persuasion. If the complaint is not so resolved and the Department finds the employer or prospective employer has violated the Act, the Department may commence an action in the circuit court to enforce the provisions of this Act including an action to compel compliance. The circuit court for the county in which the complainant resides or in which the complainant is employed shall have jurisdiction in such actions.

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

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

(1) Actual damages plus costs.

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

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

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

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

(f) Any employer or prospective employer, or the officer or agent of any employer or prospective employer, who discharges or in any other manner discriminates against any employee or applicant for employment because that employee or applicant for employment has made a complaint to his employer,

or to the Director or his authorized representative, or because that employee or applicant for employment has caused to be instituted or is about to cause to be instituted any proceeding under or related to this Act, or because that employee or applicant for employment has testified or is about to testify in an investigation or proceeding under this Act, is guilty of a petty offense.

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