

AMENDED IN ASSEMBLY APRIL 30, 2008

AMENDED IN ASSEMBLY APRIL 16, 2008

AMENDED IN ASSEMBLY APRIL 3, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2076

Introduced by Assembly Member Fuentes

February 19, 2008

An act to add Article 2.5 (commencing with Section 2811) to Chapter 2 of Division 3 of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2076, as amended, Fuentes. Employment: hiring practices: electronic employment verification.

The E-Verify Program of the United States Department of Homeland Security, in partnership with the United States Social Security Administration, enables participating employers to use the program, on a voluntary basis, to verify that the employees they hire are authorized to work in the United States.

Various provisions of existing state and federal law prohibit discrimination in employment on different bases, including, but not limited to, the race, color, sex, religion, or marital status of a person.

This bill would prohibit the State of California from participating in any electronic employment verification system, as defined, unless required by federal law. The bill would also prohibit a *city*, county ~~or municipality~~, *city and county*, or *special district* from requiring any employer to use an electronic employment verification system.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) California relies on both its diverse workforce and its
4 employers to fuel the world's eighth largest economy. Currently,
5 a system of state and federal laws outline the procedures employers
6 must use to comply with immigration and labor laws, and most
7 employers practice due diligence in complying with these laws.
8 However, the federal government is premature in encouraging the
9 use of a voluntary electronic employment verification program
10 that is still plagued with deficiencies. The purpose of this program,
11 commonly known as E-Verify (enacted by Section 404 of Public
12 Law 104-208), is to allow employers to electronically verify
13 workers' employment eligibility by accessing information in
14 databases maintained by the Department of Homeland Security
15 (DHS) and the Social Security Administration (SSA).

16 (b) E-Verify is often portrayed as a solution to curbing the hiring
17 of unauthorized workers, but the program has been plagued by
18 numerous problems since its inception in 1997. Reports and
19 evaluations commissioned by the former Immigration and
20 Naturalization Service in 2002, by the DHS and the Government
21 Accountability Office (GAO) in 2007, by the Congressional Budget
22 Office, and the SSA's Office of the Inspector General have found
23 that E-Verify has significant weaknesses, including:

24 (1) Reliance on outdated government databases that have
25 unacceptably high error rates. Within the SSA database there are
26 17.8 million discrepancies related to name, date of birth, or
27 citizenship status, with 71 percent of those discrepant records
28 pertaining to United States citizens.

29 (2) Employer misuse of the program to take adverse action
30 against workers. For instance, as often as 22 percent of the time,
31 some employers restrict work assignments of workers tentatively
32 identified as unconfirmed but who still have the right to contest
33 the finding.

34 (3) Undue cost and fiscal burden to employers and localities.
35 E-Verify could cost private employers \$136 million and local
36 governments \$68 million per year.

37 (c) Employers enter into a memorandum of understanding
38 (MOU) with the federal government upon registering for E-Verify,

1 yet there is no enforcement mechanism or penalty associated with
2 failure to comply with the rules and procedures outlined in the
3 MOU.

4 (d) In a hearing before the United States House of
5 Representatives Subcommittee on Ways and Means, expert
6 testimony affirmed that the high error rate of E-Verify affects all
7 workers, but has a disproportionate impact on lawful foreign-born
8 workers who are 30 times more likely than native-born workers
9 to be incorrectly identified as not authorized for employment.
10 Similarly, the 2007 evaluation commissioned by the DHS and the
11 GAO found that foreign-born United States citizens experience
12 the most adverse effects, with almost 10 percent initially being
13 told that they are not authorized to work (versus 0.1 percent for
14 native-born United States citizens).

15 (e) As of February 2008, less than ~~one~~ 1 percent of employers
16 nationwide and a mere 0.3 percent of employers in California are
17 enrolled in the voluntary system. Attempts at the federal level to
18 increase the use of a program that has not passed the basic litmus
19 test of accuracy will make it even more difficult for law-abiding
20 employers to comply with labor and discrimination laws and will
21 expose many authorized workers and United States citizens to
22 unfair and discriminatory practices in the workplace.

23 (f) Therefore, it is the intent of the Legislature that the State of
24 California not participate in the voluntary but flawed system and
25 send a strong signal to other states and employers that E-Verify
26 shall not be used or mandated while deficiencies within the system
27 persist.

28 SEC. 2. Article 2.5 (commencing with Section 2811) is added
29 to Chapter 2 of Division 3 of the Labor Code, to read:

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31 Article 2.5. Electronic Employment Verification Systems

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33 2811. (a) The State of California, as an employer, shall not
34 participate in any electronic employment verification system,
35 unless otherwise required by federal law.

36 (b) While recognizing that participation in the federal electronic
37 employment verification system, E-Verify, is voluntary, the State
38 of California discourages employers from participating in any
39 electronic employment verification system, unless required by

1 federal law, due to concerns with federal database error rates and
2 the discriminatory impact of the system.

3 (c) ~~Counties and municipalities shall not~~ *No city, county, city*
4 *and county, or special district shall* require any employer to use
5 an electronic employment verification system, including, but not
6 limited to, the following circumstances:

7 (1) As a condition of receiving a government contract.

8 (2) As a condition of applying for or maintaining a business
9 license.

10 (3) As a penalty for violating licensing or other similar laws.

11 2812. For purposes of this article, “electronic employment
12 verification system” means any employment verification system
13 that allows employers to electronically verify workers’ employment
14 authorization with the federal government. This includes the Basic
15 Pilot Program, enacted by Section 404 of Public Law 104-208,
16 renamed in 2007 as the E-Verify Program, and other pilot programs
17 for electronic employment eligibility confirmation. The term
18 “electronic employment verification system” does not include the
19 I-9 Employment Eligibility Verification form or any other
20 employment eligibility systems that are required by federal law.