

AMENDED IN SENATE AUGUST 19, 2008

AMENDED IN SENATE JUNE 19, 2008

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 the state, or a city,

county, city and county, or special district from requiring any employer to use an electronic employment verification system *E-Verify*, as defined.

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~~

10 (b) *In the absence of comprehensive immigration reform, many*
11 *municipalities have begun to enact piecemeal reform measures.*
12 *This results in inconsistent rules throughout the state. Immigration*
13 *reform must come from the federal government and be*
14 *comprehensive, fully vetted by a legislative body, and applied*
15 *uniformly across localities.*

16 (c) *One measure under consideration by local governments in*
17 *California is a voluntary electronic employment verification*
18 ~~program that is still~~ *program, commonly known as E-Verify*
19 *(enacted by Section 404 of Public Law 104-208), that is plagued*
20 *with deficiencies. The purpose of this program, commonly known*
21 ~~as E-Verify (enacted by Section 404 of Public Law 104-208),~~
22 *While some governing bodies have encouraged or even mandated*
23 *the use of E-Verify, others have opposed its use.*

24 (d) *The purpose of E-Verify is to allow employers to*
25 *electronically verify workers’ employment eligibility by accessing*
26 *information in databases maintained by the Department of*
27 *Homeland Security (DHS) and the Social Security Administration*
28 *(SSA).*

29 ~~(b) E-Verify is often portrayed as a solution to curbing the hiring~~
30 ~~of unauthorized workers, but the program has been plagued by~~

31 (e) *E-Verify has been plagued by numerous problems since its*
32 *inception in 1997. Reports and evaluations commissioned by the*
33 *former Immigration and Naturalization Service in 2002, by the*

1 DHS and the Government Accountability Office (GAO) in 2007,
2 by the Congressional Budget Office, and the SSA's Office of the
3 Inspector General have found that E-Verify has significant
4 weaknesses, including:

5 (1) Reliance on outdated government databases that have
6 unacceptably high error rates. Within the SSA database there are
7 17.8 million discrepancies related to name, date of birth, or
8 citizenship status, with 71 percent of those discrepant records
9 pertaining to United States citizens.

10 ~~(2) Employer misuse of the program to take adverse action~~
11 ~~against workers. For instance, as often as 22 percent of the time,~~
12 ~~some employers restrict work assignments of workers tentatively~~
13 ~~identified as unconfirmed but who still have the right to contest~~
14 ~~the finding.~~

15 ~~(3)~~

16 (2) Undue cost and fiscal burden to employers and localities.
17 E-Verify could cost private employers \$136 million and local
18 governments \$68 million per year.

19 ~~(e)~~

20 (f) Employers enter into a memorandum of understanding
21 (MOU) with the federal government upon registering for E-Verify,
22 yet there is no enforcement mechanism or penalty associated with
23 failure to comply with the rules and procedures outlined in the
24 MOU.

25 ~~(d) In a hearing before the United States House of~~
26 ~~Representatives Subcommittee on Ways and Means, expert~~
27 ~~testimony affirmed that the high error rate of E-Verify affects all~~
28 ~~workers, but has a disproportionate impact on lawful foreign-born~~
29 ~~workers who are 30 times more likely than native-born workers~~
30 ~~to be incorrectly identified as not authorized for employment.~~
31 ~~Similarly, the 2007 evaluation commissioned by the DHS and the~~
32 ~~GAO found that foreign-born United States citizens experience~~
33 ~~the most adverse effects, with almost 10 percent initially being~~
34 ~~told that they are not authorized to work (versus 0.1 percent for~~
35 ~~native-born United States citizens).~~

36 ~~(e) As of February 2008, less than 1 percent of employers~~
37 ~~nationwide and a mere 0.3 percent of employers in California are~~
38 ~~enrolled in the voluntary system. Attempts at the federal level to~~
39 ~~increase the use of a program that has not passed the basic litmus~~
40 ~~test of accuracy will make it even more difficult for law-abiding~~

1 employers to comply with labor and discrimination laws and will
2 expose many authorized workers and United States citizens to
3 unfair and discriminatory practices in the workplace.

4 (f)

5 (g) Despite the documented flaws with the voluntary system,
6 the State of Arizona has enacted a statutory requirement that
7 employers use the system or be subject to harsh enforcement,
8 including the loss of business licenses and imprisonment. This has
9 created a dilemma for employers which has led to workforce
10 confusion and instability and harm to Arizona’s economy *because*
11 *of the flight of business from the state.*

12 (g)

13 (h) Therefore, it is the intent of the Legislature that ~~the State of~~
14 ~~California and~~ cities, counties, cities and counties, and special
15 districts not mandate, or otherwise compel, participation in or
16 reliance upon ~~the voluntary but flawed system and send a strong~~
17 ~~signal to other states and employers that E-Verify shall not be used~~
18 ~~or mandated while deficiencies within the system persist. E-Verify.~~
19 *In so doing, it is the intent of the Legislature to prevent the*
20 *economic strife and social tension that is caused when localities*
21 *enforce or implement federal laws on an ad hoc basis. The State*
22 *of California hereby renews its call on the federal government to*
23 *enact a truly comprehensive immigration reform proposal.*

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

26

27 Article 2.5. Electronic Employment Verification Systems

28

29 2811. (a) ~~The State of California, as an employer, shall not~~
30 ~~participate in any electronic employment verification system,~~
31 ~~unless otherwise required by federal law.~~

32 (b) ~~While recognizing that participation in the federal electronic~~
33 ~~employment verification system, E-Verify, is voluntary, the State~~
34 ~~of California discourages employers from participating in any~~
35 ~~electronic employment verification system, unless required by~~
36 ~~federal law, due to concerns with federal database error rates and~~
37 ~~the discriminatory impact of the system.~~

38 (e) ~~Neither~~

39 *Except as required by federal law, or as a condition of receiving*
40 *federal funds, neither the state nor any city, county, city and*

1 county, or special district shall require any employer to use ~~an~~
2 ~~electronic employment verification system~~ *E-Verify*, including,
3 but not limited to, *in* the following circumstances:

4 ~~(1)~~

5 (a) As a condition of receiving a government contract.

6 ~~(2)~~

7 (b) As a condition of applying for or maintaining a business
8 license.

9 ~~(3)~~

10 (c) 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 “E-Verify”~~
15 includes the Basic Pilot Program, enacted by Section 404 of Public
16 Law 104-208, renamed in 2007 as the E-Verify Program, and other
17 pilot programs for electronic employment eligibility confirmation.
18 ~~The term “electronic employment verification system” does not~~
19 ~~include the I-9 Employment Eligibility Verification form or any~~
20 ~~other employment eligibility systems that are required by federal~~
21 ~~law.~~