

AMENDED IN ASSEMBLY MAY 4, 2009

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 1288

Introduced by Assembly Member Fong

February 27, 2009

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 1288, as amended, Fong. 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.

The bill would prohibit the state, or a city, county, city and county, or special district, from requiring an employer other than one of those government entities to use an electronic employment verification system *except when required by federal law or as a condition of receiving federal funds*.

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) Federal law establishes an electronic employment verification
4 system originally known as the Basic Pilot Program (enacted by
5 Section 404 of Public Law 104-208) as an experimental and
6 temporary system available to employers on a voluntary basis.

7 (b) A 2007 independent evaluation commissioned by the federal
8 Department of Homeland Security found that the electronic
9 employment verification database was still not sufficiently up to
10 date to meet requirements for accurate verification. This has led
11 to employers being unable to hire employees in a timely manner
12 and kept workers from earning wages.

13 (c) Mandatory use of an electronic employment verification
14 program would increase the costs of doing business in a difficult
15 economic climate. The United States Chamber of Commerce
16 estimates that the net societal cost of all federal contractors using
17 the Basic Pilot Program would amount to \$10 billion a year,
18 federally.

19 (d) California businesses would face considerable odds in
20 implementing such a program. Employers using the program report
21 that staff must receive additional training that disrupts normal
22 business operations.

23 (e) Employers report that the cost, technological demands, and
24 staff time that an electronic employment verification system
25 requires to use and implement come at a time when they are already
26 struggling.

27 (f) In January 2009, California's unemployment rate rose to
28 over 9 percent, four percentage points in just two years. The state
29 must pursue all avenues in facilitating and incubating job
30 development and economic growth.

31 (g) Therefore, it is the intent of the Legislature that the state
32 maintains the intent of federal law by ensuring that private
33 employers retain the ability to choose whether to participate in the
34 electronic verification program.

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

Article 2.5. Electronic Employment Verification Systems

2811. This article shall be known and may be cited as the Employment Acceleration Act of 2010.

2812. ~~Neither~~ *Except as required by federal law, or as a condition of receiving federal funds, neither* the state nor a city, county, city and county, or special district shall require an employer to use an electronic employment verification system, including under the following circumstances:

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

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

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

2813. For purposes of this article, the following terms have the following meanings:

(a) “Electronic employment verification system” means an employment verification system that allows employers to electronically verify workers’ employment authorization with the federal government. This includes the Basic Pilot Program, enacted by Section 404 of Public Law 104-208, renamed in 2007 as the E-Verify Program, and other pilot programs for electronic employment eligibility confirmation. The term “electronic employment verification system” does not include the I-9 Employment Eligibility Verification form or any other employment eligibility systems that are required by federal law.

(b) “Employer” means an employer other than the state, or a city, county, city and county, or special district.