

AMENDED IN ASSEMBLY MARCH 31, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1236**

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**Introduced by Assembly Member Fong**

February 18, 2011

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An act to ~~amend Section 1391.1~~ *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 1236, as amended, Fong. ~~Working hours: minors.~~ *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.*

~~Existing law allows minors who are 16 years of age or older and under the age of 18 years and enrolled in work experience or cooperative vocational education programs approved by the State Department of Education or in work experience education programs conducted by private schools to work between the hours of 10 p.m. and 12:30 a.m., as provided.~~

~~This bill would make nonsubstantive changes to that provision.~~

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*
- 4 *verification system, originally known as the Basic Pilot Program*
- 5 *(enacted by Section 404 of Public Law 104-208) and renamed in*
- 6 *2007 as the E-Verify Program, as an experimental and temporary*
- 7 *system available to employers on a voluntary basis.*
- 8     (b) *A 2007 independent evaluation commissioned by the federal*
- 9 *Department of Homeland Security found that the electronic*
- 10 *employment verification database was still not sufficiently up to*
- 11 *date to meet requirements for accurate verification. This has led*
- 12 *to employers being unable to hire employees in a timely manner*
- 13 *and kept workers from earning wages.*
- 14     (c) *Mandatory use of an electronic employment verification*
- 15 *program would increase the costs of doing business in a difficult*
- 16 *economic climate. The United States Chamber of Commerce*
- 17 *estimates that the net societal cost of all federal contractors using*
- 18 *the E-Verify Program would amount to \$10 billion a year,*
- 19 *federally.*
- 20     (d) *California businesses would face considerable odds in*
- 21 *implementing such a program. Employers using the program report*
- 22 *that staff must receive additional training that disrupts normal*
- 23 *business operations. If E-Verify had been made mandatory for all*
- 24 *employers in 2010, it would have cost businesses \$2.7 billion, \$2.6*
- 25 *billion of which would have been borne by the small businesses,*
- 26 *which drive our economy.*
- 27     (e) *Employers report that the cost, technological demands, and*
- 28 *staff time that an electronic employment verification system*
- 29 *requires to use and implement come at a time when they are*
- 30 *already struggling.*
- 31     (f) *California’s unemployment rate has risen to 11 percent. The*
- 32 *state must pursue all avenues in facilitating and incubating job*
- 33 *development and economic growth.*
- 34     (g) *Therefore, it is the intent of the Legislature that the state*
- 35 *maintain the intent of federal law by ensuring that private*

1 employers retain the ability to choose whether to participate in  
2 the electronic verification program.

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

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6 Article 2.5. *Electronic Employment Verification Systems*

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8 2811. This article shall be known and may be cited as the  
9 Employment Acceleration Act of 2011.

10 2812. Except as required by federal law, or as a condition of  
11 receiving federal funds, neither the state nor a city, county, city  
12 and county, or special district shall require an employer to use an  
13 electronic employment verification system, including under the  
14 following circumstances:

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

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

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

19 2813. For purposes of this article, the following terms have  
20 the following meanings:

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

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

33 SECTION 1. Section 1391.1 of the Labor Code is amended to  
34 read:

35 ~~1391.1. A minor who is at least 16 years of age but less than~~  
36 ~~18 years of age and enrolled in work experience or a cooperative~~  
37 ~~vocational education program approved by the State Department~~  
38 ~~of Education or in a work experience education program conducted~~  
39 ~~by a private school may work after 10 p.m. but not later than 12:30~~  
40 ~~a.m., providing such employment is not detrimental to the health,~~

1 education, or welfare of the minor and the approval of the parent  
2 and the work experience coordinator has been obtained. However,  
3 if a minor described in this section works any time during the hours  
4 from 10 p.m. to 12:30 a.m., he or she shall be paid for work during  
5 that time at a rate which is not less than the minimum wage paid  
6 to adults.

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