

2014 -- H 7463

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO LABOR AND LABOR RELATIONS

Introduced By: Representatives Diaz, Slater, Williams, and Almeida

Date Introduced: February 12, 2014

Referred To: House Labor

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 28 of the General Laws entitled "LABOR AND LABOR
2 RELATIONS" is hereby amended by adding thereto the following chapter:

3 CHAPTER 56

4 ELECTRONIC EMPLOYMENT VERIFICATION SYSTEMS

5 **28-56-1. Legislative declaration and findings.** – (a) Federal law established an
6 electronic employment verification system, originally known as the Basic Pilot Program (enacted
7 by Section 404 of Pub. L. 104-208), and currently known as E-Verify, which uses both the
8 databases of the Social Security Administration and the Department of Homeland Security with
9 the goal of verifying employment eligibility of new hires.

10 (b) Both databases are known to contain significant errors, and the database of the Social
11 Security Administration alone contains an estimated seventeen million eight hundred thousand
12 (17,800,000) discrepancies related to name, date of birth, or citizenship status.

13 (c) These erroneous databases result in foreign-born lawful workers being incorrectly
14 identified as not authorized for employment at a rate estimated at thirty (30) times greater than
15 that of native-born United States citizens.

16 (d) These high error rates result in discouraging some employers from hiring perceived
17 foreign-born workers.

18 (e) Some employers across the country have been found to inappropriately use the E-
19 Verify program in a discriminatory manner to pre-screen certain employees based on their

1 national origin or other improper factors and to take adverse action against employees who
2 receive tentative non-confirmation notices.

3 (f) The cost, technological demands, and staff time required to use an electronic
4 employment verification system, and Rhode Island's high unemployment rate make it imperative
5 that private employers retain the ability to choose whether to participate in the electronic
6 employment verification program, while further ensuring that any use of the program be
7 implemented in accordance with safeguards and conditions established by the federal government
8 in order to minimize its utilization in a discriminatory or otherwise improper fashion.

9 **28-56-2. Definition.** – For purposes of this section, "electronic employment verification
10 system" means an employment verification system that allows employers to electronically verify
11 workers' employment authorization with the federal government. This includes the Basic Pilot
12 Program, enacted by Section 404 of Pub. L. 104-208, renamed in 2007 as the E-Verify Program,
13 and any other successor programs for electronic employment eligibility confirmation. The term
14 "electronic employment verification system" does not include the I-9 Employment Eligibility
15 Verification form or any other employment eligibility systems that are required by federal law.

16 **28-56-3. Mandated use of electronic employment verification systems.** – Except as
17 required by federal law or as a condition of receiving federal funds, neither the state nor any
18 municipality shall require an employer to use an electronic employment verification system,
19 including, but not limited to, as a condition of receiving a government contract or applying for or
20 maintaining a business license.

21 **28-56-4. Standards for use of electronic employment verification systems.** – (a) In
22 accordance with federal standards, an employer that enrolls in an electronic employment
23 verification system shall:

24 (1) Ensure that any individual who performs employment verification queries has
25 completed any system tutorial provided by the federal government before that individual initiates
26 any queries;

27 (2) Display, in a prominent place that is clearly visible to prospective employees, any
28 notice provided by the Department of Homeland Security (DHS) indicating that the employer is
29 enrolled in the system and any anti-discrimination notice issued by the Office of Special Counsel
30 for Immigration-Related Unfair Employment Practices;

31 (3) Not use the system for procedures for pre-employment screening of job applicants, for
32 re-verification of employees, for employees hired before the memorandum of understanding with
33 the federal government authorizing participation in the program is in effect, or for any other use
34 not authorized by the memorandum of understanding;

1 (4) Use system procedures in a uniform and non-selective manner;

2 (5) Notify employees of any findings of tentative non-confirmations, provide them
3 written instructions to contest the findings, and not take adverse action against them if they
4 choose to contest the finding;

5 (6) Not take any adverse action against an employee based upon the employee's
6 employment eligibility status while the Social Security Administration (SSA) or the Department
7 of Homeland Security (DHS) is processing the verification request unless the employer obtains
8 knowledge (as defined in 8 C.F.R. 274a.1(1)) that the employee is not work authorized, or unless
9 and until secondary verification by SSA or DHS has been completed and made a final
10 determination of non-confirmation;

11 (7) Comply with the Fair Employment Practices Act and any applicable federal anti-
12 discrimination laws; and

13 (8) Use the information it receives from SSA or DHS only to confirm the employment
14 eligibility of newly-hired employees after completion of the Form I-9; and safeguard this
15 information, and means of access to it to ensure that it is not used or disseminated for any other
16 purpose, as necessary to protect its confidentiality.

17 (b) No provision of this subsection shall apply to the extent it becomes inconsistent with
18 federal law or regulation governing use of an electronic employment verification system.

19 **28-56-5. Remedies.** – (a) An employee, applicant for employment or any organization
20 chartered for the purpose of combating discrimination, racism, or of safeguarding civil liberties,
21 or of promoting full, free, or equal employment opportunities, may seek appropriate relief in a
22 civil action against any employer alleged to have violated this chapter.

23 (b) In any civil action alleging a violation of this chapter, the court may:

24 (1) Award damages and reasonable attorneys' fees and costs to a prevailing plaintiff;

25 (2) Impose a civil penalty of up to one thousand dollars (\$1,000) for each violation; and

26 (3) Afford injunctive relief against any employer that commits or proposes to commit a
27 violation of this chapter.

28 (c) The rights and remedies provided herein shall be in addition to, and not supersede,
29 any other rights and remedies provided by statute or common law, including chapter 5 of this
30 title.

31 **28-56-6. Administration.** – The director of the department of labor and training may
32 promulgate rules and regulations to implement this chapter, which may include the establishment
33 of an informal process before the department to resolve any complaints of violations brought to
34 the department's attention.

1 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO LABOR AND LABOR RELATIONS

1 This act would provide that, except as required by federal law or as a condition of
2 receiving federal funds, neither the state nor its municipalities shall require an employer to use an
3 electronic employment verification system as a condition of receiving a government contract or
4 applying for or maintaining a business license. This act would also create standards for the use of
5 electronic employment verification systems.

6 This act would take effect upon passage.

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