

Assembly Bill No. 1236

CHAPTER 691

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

[Approved by Governor October 9, 2011. Filed with
Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1236, 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.

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

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

(a) Federal law establishes an electronic employment verification system, originally known as the Basic Pilot Program (enacted by Section 404 of Public Law 104-208) and renamed in 2007 as the E-Verify Program, as an experimental and temporary system available to employers on a voluntary basis.

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

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

(d) California businesses would face considerable odds in implementing such a program. Employers using the program report that staff must receive

additional training that disrupts normal business operations. If E-Verify had been made mandatory for all employers in 2010, it would have cost businesses \$2.7 billion, \$2.6 billion of which would have been borne by the small businesses, which drive our economy.

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

(f) California's unemployment rate has risen to 11 percent. The state must pursue all avenues in facilitating and incubating job development and economic growth.

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

SEC. 2. Article 2.5 (commencing with Section 2811) is added 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 2011.

2812. 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 and 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.