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AB-622 Employment: E-Verify system: unlawful business practices. (2015-2016)

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Assembly Bill No. 622

CHAPTER 696

An act to add Section 2814 to the Labor Code, relating to employment.

[Approved by Governor October 09, 2015. Filed with Secretary of State October 09, 2015.]

LEGISLATIVE COUNSEL'S DIGEST

AB 622, Roger Hernández. Employment: E-Verify system: unlawful business practices.

The federal E-Verify system, administered by the United States Citizenship and Immigration Services, the United States Department of Homeland Security, and the United States Social Security Administration, enables participating employers to use the system, on a voluntary basis, to verify that the employees they hire are authorized to work in the United States.

Existing law prohibits 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, including E-Verify, except when required by federal law or as a condition of receiving federal funds. Existing law prohibits an employer or any other person or entity from engaging in unfair immigration-related practices, as defined, against any person for the purpose of retaliating against the person for exercising specified rights.

This bill would expand the definition of an unlawful employment practice to prohibit an employer or any other person or entity from using the E-Verify system at a time or in a manner not required by a specified federal law or not authorized by a federal agency memorandum of understanding to check the employment authorization status of an existing employee or an applicant who has not received an offer of employment, except as required by federal law or as a condition of receiving federal funds. The bill would also require an employer that uses the E-Verify system to provide to the affected employee any notification issued by the Social Security Administration or the United States Department of Homeland Security containing information specific to the employee's E-Verify case or any tentative nonconfirmation notice. The bill would provide for a civil penalty of \$10,000 for an employer for each violation of these provisions. The bill would include a statement of intent.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 2814 is added to the Labor Code, to read:

2814. (a) (1) Except as required by federal law or as a condition of receiving federal funds, it shall be unlawful for an employer, or any other person or entity to use the federal electronic employment verification system known as E-Verify to check the employment authorization status of an existing employee or an applicant who has not been offered employment at a time or in a manner not required under subsection (b) of Section 1324a of Title 8 of the United States Code or not authorized under any federal agency memorandum of understanding governing the use of a federal electronic employment verification system.

(2) Nothing in this section shall prohibit an employer from utilizing the federal E-Verify system, in accordance with federal law, to check the employment authorization status of a person who has been offered employment.

(b) Upon using the federal E-Verify system to check the employment authorization status of a person, if the employer receives a tentative nonconfirmation issued by the Social Security Administration or the United States Department of Homeland Security, which indicates the information entered in E-Verify did not match federal records, the employer shall comply with the required employee notification procedures under any memorandum of understanding governing the use of the federal E-Verify system. The employer shall furnish to the employee any notification issued by the Social Security Administration or the United States Department of Homeland Security containing information specific to the employee's E-Verify case or any tentative nonconfirmation notice. The notification shall be furnished as soon as practicable.

(c) In addition to other remedies available, an employer who violates this section is liable for a civil penalty not to exceed ten thousand dollars (\$10,000) for each violation of this section. Each unlawful use of the E-Verify system on an employee or applicant constitutes a separate violation.

(d) This section is intended to prevent discrimination in employment rather than to sanction the potential hiring and employment of persons who are not authorized for employment under federal law.