

Union Calendar No. 508

113TH CONGRESS
2D SESSION

H. R. 1772

[Report No. 113–677, Part I]

To amend the Immigration and Nationality Act to make mandatory and permanent requirements relating to use of an electronic employment eligibility verification system, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 26, 2013

Mr. SMITH of Texas (for himself, Mr. GOODLATTE, Mr. CALVERT, Mr. GOWDY, Mr. WESTMORELAND, Mr. STIVERS, Mr. LANCE, Mr. KING of New York, Mr. DEFazio, Mr. SENSENBRENNER, Mr. FRANKS of Arizona, Mr. POE of Texas, Mr. SCHWEIKERT, Mr. ROYCE, Mrs. BLACKBURN, Mr. FORBES, Mr. CHAFFETZ, Mr. BURGESS, Mr. LABRADOR, Mr. FARENTHOLD, Mr. HOLDING, Mr. BISHOP of Utah, and Mr. ISSA) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

DECEMBER 16, 2014

Additional sponsors: Mr. HECK of Nevada, Mr. SMITH of New Jersey, Mr. CULBERSON, Mr. BACHUS, Mr. HALL, Mr. SESSIONS, Mr. FRELINGHUYSEN, Mr. KINGSTON, Mr. STEWART, Mr. BROOKS of Alabama, and Mr. MARCHANT

DECEMBER 16, 2014

Reported from the Committee on the Judiciary with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

DECEMBER 16, 2014

The Committees on Ways and Means and Education and the Workforce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on April 26, 2013]

A BILL

To amend the Immigration and Nationality Act to make mandatory and permanent requirements relating to use of an electronic employment eligibility verification system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Legal Workforce Act”.*

5 **SEC. 2. EMPLOYMENT ELIGIBILITY VERIFICATION PROCESS.**

6 *(a) IN GENERAL.—Section 274A(b) of the Immigra-*
 7 *tion and Nationality Act (8 U.S.C. 1324a(b)) is amended*
 8 *to read as follows:*

9 *“(b) EMPLOYMENT ELIGIBILITY VERIFICATION PROC-*
 10 *ESS.—*

11 *“(1) NEW HIRES, RECRUITMENT, AND REFER-*
 12 *RAL.—The requirements referred to in paragraphs*
 13 *(1)(B) and (3) of subsection (a) are, in the case of a*
 14 *person or other entity hiring, recruiting, or referring*
 15 *an individual for employment in the United States,*
 16 *the following:*

17 *“(A) ATTESTATION AFTER EXAMINATION OF*
 18 *DOCUMENTATION.—*

19 *“(i) ATTESTATION.—During the*
 20 *verification period (as defined in subpara-*
 21 *graph (E)), the person or entity shall attest,*
 22 *under penalty of perjury and on a form, in-*
 23 *cluding electronic and telephonic formats,*
 24 *designated or established by the Secretary*
 25 *by regulation not later than 6 months after*

1 *the date of the enactment of the Legal Work-*
2 *force Act, that it has verified that the indi-*
3 *vidual is not an unauthorized alien by—*

4 *“(I) obtaining from the individual*
5 *the individual’s social security account*
6 *number and recording the number on*
7 *the form (if the individual claims to*
8 *have been issued such a number), and,*
9 *if the individual does not attest to*
10 *United States nationality under sub-*
11 *paragraph (B), obtaining such identi-*
12 *fication or authorization number estab-*
13 *lished by the Department of Homeland*
14 *Security for the alien as the Secretary*
15 *of Homeland Security may specify,*
16 *and recording such number on the*
17 *form; and*

18 *“(II) examining—*

19 *“(aa) a document relating to*
20 *the individual presenting it de-*
21 *scribed in clause (ii); or*

22 *“(bb) a document relating to*
23 *the individual presenting it de-*
24 *scribed in clause (iii) and a docu-*
25 *ment relating to the individual*

1 *presenting it described in clause*
2 *(iv).*

3 “(ii) *DOCUMENTS EVIDENCING EM-*
4 *PLOYMENT AUTHORIZATION AND ESTAB-*
5 *LISHING IDENTITY.—A document described*
6 *in this subparagraph is an individual’s—*

7 “(I) *unexpired United States*
8 *passport or passport card;*

9 “(II) *unexpired permanent resi-*
10 *dent card that contains a photograph;*

11 “(III) *unexpired employment au-*
12 *thorization card that contains a photo-*
13 *graph;*

14 “(IV) *in the case of a non-*
15 *immigrant alien authorized to work for*
16 *a specific employer incident to status,*
17 *a foreign passport with Form I–94 or*
18 *Form I–94A, or other documentation*
19 *as designated by the Secretary speci-*
20 *fying the alien’s nonimmigrant status*
21 *as long as the period of status has not*
22 *yet expired and the proposed employ-*
23 *ment is not in conflict with any re-*
24 *strictions or limitations identified in*
25 *the documentation;*

1 “(V) passport from the Federated
2 States of Micronesia (FSM) or the Re-
3 public of the Marshall Islands (RMI)
4 with Form I-94 or Form I-94A, or
5 other documentation as designated by
6 the Secretary, indicating non-
7 immigrant admission under the Com-
8 pact of Free Association Between the
9 United States and the FSM or RMI; or

10 “(VI) other document designated
11 by the Secretary of Homeland Secu-
12 rity, if the document—

13 “(aa) contains a photograph
14 of the individual and biometric
15 identification data from the indi-
16 vidual and such other personal
17 identifying information relating
18 to the individual as the Secretary
19 of Homeland Security finds, by
20 regulation, sufficient for purposes
21 of this clause;

22 “(bb) is evidence of author-
23 ization of employment in the
24 United States; and

1 “(cc) contains security fea-
2 tures to make it resistant to tam-
3 pering, counterfeiting, and fraud-
4 ulent use.

5 “(iii) DOCUMENTS EVIDENCING EM-
6 PLOYMENT AUTHORIZATION.—A document
7 described in this subparagraph is an indi-
8 vidual’s social security account number
9 card (other than such a card which specifies
10 on the face that the issuance of the card does
11 not authorize employment in the United
12 States).

13 “(iv) DOCUMENTS ESTABLISHING
14 IDENTITY OF INDIVIDUAL.—A document de-
15 scribed in this subparagraph is—

16 “(I) an individual’s unexpired
17 State issued driver’s license or identi-
18 fication card if it contains a photo-
19 graph and information such as name,
20 date of birth, gender, height, eye color,
21 and address;

22 “(II) an individual’s unexpired
23 U.S. military identification card;

24 “(III) an individual’s unexpired
25 Native American tribal identification

document issued by a tribal entity recognized by the Bureau of Indian Affairs; or

“(IV) in the case of an individual under 18 years of age, a parent or legal guardian’s attestation under penalty of law as to the identity and age of the individual.

“(v) *AUTHORITY TO PROHIBIT USE OF CERTAIN DOCUMENTS.*—If the Secretary of Homeland Security finds, by regulation, that any document described in clause (i), (ii), or (iii) as establishing employment authorization or identity does not reliably establish such authorization or identity or is being used fraudulently to an unacceptable degree, the Secretary may prohibit or place conditions on its use for purposes of this paragraph.

“(vi) *SIGNATURE.*—Such attestation may be manifested by either a hand-written or electronic signature.

“(B) *INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.*—During the verification period (as defined in subparagraph (E)), the in-

1 *dividual shall attest, under penalty of perjury on*
2 *the form designated or established for purposes of*
3 *subparagraph (A), that the individual is a cit-*
4 *izen or national of the United States, an alien*
5 *lawfully admitted for permanent residence, or an*
6 *alien who is authorized under this Act or by the*
7 *Secretary of Homeland Security to be hired, re-*
8 *cruited, or referred for such employment. Such*
9 *attestation may be manifested by either a hand-*
10 *written or electronic signature. The individual*
11 *shall also provide that individual's social secu-*
12 *rity account number (if the individual claims to*
13 *have been issued such a number), and, if the in-*
14 *dividual does not attest to United States nation-*
15 *ality under this subparagraph, such identifica-*
16 *tion or authorization number established by the*
17 *Department of Homeland Security for the alien*
18 *as the Secretary may specify.*

19 *“(C) RETENTION OF VERIFICATION FORM*
20 *AND VERIFICATION.—*

21 *“(i) IN GENERAL.—After completion of*
22 *such form in accordance with subpara-*
23 *graphs (A) and (B), the person or entity*
24 *shall—*

1 “(I) retain a paper, microfiche,
2 microfilm, or electronic version of the
3 form and make it available for inspec-
4 tion by officers of the Department of
5 Homeland Security, the Special Coun-
6 sel for Immigration-Related Unfair
7 Employment Practices, or the Depart-
8 ment of Labor during a period begin-
9 ning on the date of the recruiting or
10 referral of the individual, or, in the
11 case of the hiring of an individual, the
12 date on which the verification is com-
13 pleted, and ending—

14 “(aa) in the case of the re-
15 cruiting or referral of an indi-
16 vidual, 3 years after the date of
17 the recruiting or referral; and

18 “(bb) in the case of the hir-
19 ing of an individual, the later of
20 3 years after the date the
21 verification is completed or one
22 year after the date the individ-
23 ual’s employment is terminated;
24 and

1 “(II) during the verification pe-
2 riod (as defined in subparagraph (E)),
3 make an inquiry, as provided in sub-
4 section (d), using the verification sys-
5 tem to seek verification of the identity
6 and employment eligibility of an indi-
7 vidual.

8 “(ii) CONFIRMATION.—

9 “(I) CONFIRMATION RECEIVED.—
10 If the person or other entity receives an
11 appropriate confirmation of an indi-
12 vidual’s identity and work eligibility
13 under the verification system within
14 the time period specified, the person or
15 entity shall record on the form an ap-
16 propriate code that is provided under
17 the system and that indicates a final
18 confirmation of such identity and work
19 eligibility of the individual.

20 “(II) TENTATIVE NONCONFIRMA-
21 TION RECEIVED.—If the person or
22 other entity receives a tentative non-
23 confirmation of an individual’s iden-
24 tity or work eligibility under the
25 verification system within the time pe-

1 rion specified, the person or entity
2 shall so inform the individual for
3 whom the verification is sought. If the
4 individual does not contest the noncon-
5 firmation within the time period speci-
6 fied, the nonconfirmation shall be con-
7 sidered final. The person or entity
8 shall then record on the form an ap-
9 propriate code which has been provided
10 under the system to indicate a final
11 nonconfirmation. If the individual does
12 contest the nonconfirmation, the indi-
13 vidual shall utilize the process for sec-
14 ondary verification provided under
15 subsection (d). The nonconfirmation
16 will remain tentative until a final con-
17 firmation or nonconfirmation is pro-
18 vided by the verification system within
19 the time period specified. In no case
20 shall an employer terminate employ-
21 ment of an individual because of a
22 failure of the individual to have iden-
23 tity and work eligibility confirmed
24 under this section until a noncon-
25 firmation becomes final. Nothing in

1 *this clause shall apply to a termi-*
2 *nation of employment for any reason*
3 *other than because of such a failure. In*
4 *no case shall an employer rescind the*
5 *offer of employment to an individual*
6 *because of a failure of the individual to*
7 *have identity and work eligibility con-*
8 *firmed under this subsection until a*
9 *nonconfirmation becomes final. Noth-*
10 *ing in this subclause shall apply to a*
11 *recission of the offer of employment for*
12 *any reason other than because of such*
13 *a failure.*

14 “(III) *FINAL CONFIRMATION OR*
15 *NONCONFIRMATION RECEIVED.—If a*
16 *final confirmation or nonconfirmation*
17 *is provided by the verification system*
18 *regarding an individual, the person or*
19 *entity shall record on the form an ap-*
20 *propriate code that is provided under*
21 *the system and that indicates a con-*
22 *firmation or nonconfirmation of iden-*
23 *tity and work eligibility of the indi-*
24 *vidual.*

1 “(IV) *EXTENSION OF TIME.*—If
2 *the person or other entity in good faith*
3 *attempts to make an inquiry during*
4 *the time period specified and the*
5 *verification system has registered that*
6 *not all inquiries were received during*
7 *such time, the person or entity may*
8 *make an inquiry in the first subse-*
9 *quent working day in which the*
10 *verification system registers that it has*
11 *received all inquiries. If the*
12 *verification system cannot receive in-*
13 *quiries at all times during a day, the*
14 *person or entity merely has to assert*
15 *that the entity attempted to make the*
16 *inquiry on that day for the previous*
17 *sentence to apply to such an inquiry,*
18 *and does not have to provide any addi-*
19 *tional proof concerning such inquiry.*

20 “(V) *CONSEQUENCES OF NONCON-*
21 *FIRMATION.*—

22 “(aa) *TERMINATION OR NO-*
23 *TIFICATION OF CONTINUED EM-*
24 *PLOYMENT.*—If the person or
25 other entity has received a final

1 *nonconfirmation regarding an in-*
2 *dividual, the person or entity may*
3 *terminate employment of the indi-*
4 *vidual (or decline to recruit or*
5 *refer the individual). If the person*
6 *or entity does not terminate em-*
7 *ployment of the individual or pro-*
8 *ceeds to recruit or refer the indi-*
9 *vidual, the person or entity shall*
10 *notify the Secretary of Homeland*
11 *Security of such fact through the*
12 *verification system or in such*
13 *other manner as the Secretary*
14 *may specify.*

15 “(bb) *FAILURE TO NOTIFY.—*
16 *If the person or entity fails to*
17 *provide notice with respect to an*
18 *individual as required under item*
19 *(aa), the failure is deemed to con-*
20 *stitute a violation of subsection*
21 *(a)(1)(A) with respect to that in-*
22 *dividual.*

23 “(VI) *CONTINUED EMPLOYMENT*
24 *AFTER FINAL NONCONFIRMATION.—If*
25 *the person or other entity continues to*

1 *employ (or to recruit or refer) an indi-*
2 *vidual after receiving final noncon-*
3 *firmation, a rebuttable presumption is*
4 *created that the person or entity has*
5 *violated subsection (a)(1)(A).*

6 “(D) *EFFECTIVE DATES OF NEW PROCE-*
7 *DURES.—*

8 “(i) *HIRING.—Except as provided in*
9 *clause (iii), the provisions of this paragraph*
10 *shall apply to a person or other entity hir-*
11 *ing an individual for employment in the*
12 *United States as follows:*

13 “(I) *With respect to employers*
14 *having 10,000 or more employees in*
15 *the United States on the date of the en-*
16 *actment of the Legal Workforce Act, on*
17 *the date that is 6 months after the date*
18 *of the enactment of such Act.*

19 “(II) *With respect to employers*
20 *having 500 or more employees in the*
21 *United States, but less than 10,000 em-*
22 *ployees in the United States, on the*
23 *date of the enactment of the Legal*
24 *Workforce Act, on the date that is 12*

1 *months after the date of the enactment*
2 *of such Act.*

3 “(III) *With respect to employers*
4 *having 20 or more employees in the*
5 *United States, but less than 500 em-*
6 *ployees in the United States, on the*
7 *date of the enactment of the Legal*
8 *Workforce Act, on the date that is 18*
9 *months after the date of the enactment*
10 *of such Act.*

11 “(IV) *With respect to employers*
12 *having 1 or more employees in the*
13 *United States, but less than 20 em-*
14 *ployees in the United States, on the*
15 *date of the enactment of the Legal*
16 *Workforce Act, on the date that is 24*
17 *months after the date of the enactment*
18 *of such Act.*

19 “(ii) *RECRUITING AND REFERRING.—*
20 *Except as provided in clause (iii), the pro-*
21 *visions of this paragraph shall apply to a*
22 *person or other entity recruiting or refer-*
23 *ring an individual for employment in the*
24 *United States on the date that is 12 months*

1 *after the date of the enactment of the Legal*
2 *Workforce Act.*

3 “(iii) *AGRICULTURAL LABOR OR SERV-*
4 *ICES.—With respect to an employee per-*
5 *forming agricultural labor or services, this*
6 *paragraph shall not apply with respect to*
7 *the verification of the employee until the*
8 *date that is 24 months after the date of the*
9 *enactment of the Legal Workforce Act. For*
10 *purposes of the preceding sentence, the term*
11 *‘agricultural labor or services’ has the*
12 *meaning given such term by the Secretary*
13 *of Agriculture in regulations and includes*
14 *agricultural labor as defined in section*
15 *3121(g) of the Internal Revenue Code of*
16 *1986, agriculture as defined in section 3(f)*
17 *of the Fair Labor Standards Act of 1938*
18 *(29 U.S.C. 203(f)), the handling, planting,*
19 *drying, packing, packaging, processing,*
20 *freezing, or grading prior to delivery for*
21 *storage of any agricultural or horticultural*
22 *commodity in its unmanufactured state, all*
23 *activities required for the preparation, proc-*
24 *essing or manufacturing of a product of ag-*
25 *riculture (as such term is defined in such*

1 *section 3(f)) for further distribution, and*
2 *activities similar to all the foregoing as they*
3 *relate to fish or shellfish in aquaculture fa-*
4 *cilities. An employee described in this clause*
5 *shall not be counted for purposes of clause*
6 *(i).*

7 “(iv) *TRANSITION RULE.—Subject to*
8 *paragraph (4), the following shall apply to*
9 *a person or other entity hiring, recruiting,*
10 *or referring an individual for employment*
11 *in the United States until the effective date*
12 *or dates applicable under clauses (i)*
13 *through (iii):*

14 “(I) *This subsection, as in effect*
15 *before the enactment of the Legal Work-*
16 *force Act.*

17 “(II) *Subtitle A of title IV of the*
18 *Illegal Immigration Reform and Im-*
19 *migrant Responsibility Act of 1996 (8*
20 *U.S.C. 1324a note), as in effect before*
21 *the effective date in section 7(c) of the*
22 *Legal Workforce Act.*

23 “(III) *Any other provision of Fed-*
24 *eral law requiring the person or entity*
25 *to participate in the E-Verify Program*

1 *described in section 403(a) of the Ille-*
2 *gal Immigration Reform and Immig-*
3 *grant Responsibility Act of 1996 (8*
4 *U.S.C. 1324a note), as in effect before*
5 *the effective date in section 7(c) of the*
6 *Legal Workforce Act, including Execu-*
7 *tive Order 13465 (8 U.S.C. 1324a note;*
8 *relating to Government procurement).*

9 “(E) VERIFICATION PERIOD DEFINED.—

10 “(i) IN GENERAL.—For purposes of
11 *this paragraph:*

12 “(I) *In the case of recruitment or*
13 *referral, the term ‘verification period’*
14 *means the period ending on the date*
15 *recruiting or referring commences.*

16 “(II) *In the case of hiring, the*
17 *term ‘verification period’ means the*
18 *period beginning on the date on which*
19 *an offer of employment is extended and*
20 *ending on the date that is 3 business*
21 *days after the date of hire, except as*
22 *provided in clause (iii). The offer of*
23 *employment may be conditioned in ac-*
24 *cordance with clause (ii).*

1 “(ii) *JOB OFFER MAY BE CONDI-*
2 *TIONAL.—A person or other entity may*
3 *offer a prospective employee an employment*
4 *position that is conditioned on final*
5 *verification of the identity and employment*
6 *eligibility of the employee using the proce-*
7 *dures established under this paragraph.*

8 “(iii) *SPECIAL RULE.—Notwith-*
9 *standing clause (i)(II), in the case of an*
10 *alien who is authorized for employment and*
11 *who provides evidence from the Social Secu-*
12 *rity Administration that the alien has ap-*
13 *plied for a social security account number,*
14 *the verification period ends three business*
15 *days after the alien receives the social secu-*
16 *rity account number.*

17 “(2) *REVERIFICATION FOR INDIVIDUALS WITH*
18 *LIMITED WORK AUTHORIZATION.—*

19 “(A) *IN GENERAL.—Except as provided in*
20 *subparagraph (B), a person or entity shall make*
21 *an inquiry, as provided in subsection (d), using*
22 *the verification system to seek reverification of*
23 *the identity and employment eligibility of all in-*
24 *dividuals with a limited period of work author-*
25 *ization employed by the person or entity during*

1 *the 3 business days after the date on which the*
2 *employee’s work authorization expires as follows:*

3 “(i) *With respect to employers having*
4 *10,000 or more employees in the United*
5 *States on the date of the enactment of the*
6 *Legal Workforce Act, beginning on the date*
7 *that is 6 months after the date of the enact-*
8 *ment of such Act.*

9 “(ii) *With respect to employers having*
10 *500 or more employees in the United States,*
11 *but less than 10,000 employees in the*
12 *United States, on the date of the enactment*
13 *of the Legal Workforce Act, beginning on the*
14 *date that is 12 months after the date of the*
15 *enactment of such Act.*

16 “(iii) *With respect to employers having*
17 *20 or more employees in the United States,*
18 *but less than 500 employees in the United*
19 *States, on the date of the enactment of the*
20 *Legal Workforce Act, beginning on the date*
21 *that is 18 months after the date of the en-*
22 *actment of such Act.*

23 “(iv) *With respect to employers having*
24 *1 or more employees in the United States,*
25 *but less than 20 employees in the United*

1 *States, on the date of the enactment of the*
2 *Legal Workforce Act, beginning on the date*
3 *that is 24 months after the date of the en-*
4 *actment of such Act.*

5 “(B) *AGRICULTURAL LABOR OR SERV-*
6 *ICES.—With respect to an employee performing*
7 *agricultural labor or services, or an employee re-*
8 *cruited or referred by a farm labor contractor (as*
9 *defined in section 3 of the Migrant and Seasonal*
10 *Agricultural Worker Protection Act (29 U.S.C.*
11 *1801)), subparagraph (A) shall not apply with*
12 *respect to the reverification of the employee until*
13 *the date that is 24 months after the date of the*
14 *enactment of the Legal Workforce Act. For pur-*
15 *poses of the preceding sentence, the term ‘agricul-*
16 *tural labor or services’ has the meaning given*
17 *such term by the Secretary of Agriculture in reg-*
18 *ulations and includes agricultural labor as de-*
19 *finied in section 3121(g) of the Internal Revenue*
20 *Code of 1986, agriculture as defined in section*
21 *3(f) of the Fair Labor Standards Act of 1938 (29*
22 *U.S.C. 203(f)), the handling, planting, drying,*
23 *packing, packaging, processing, freezing, or grad-*
24 *ing prior to delivery for storage of any agricul-*
25 *tural or horticultural commodity in its unmanu-*

1 *factured state, all activities required for the*
2 *preparation, processing, or manufacturing of a*
3 *product of agriculture (as such term is defined*
4 *in such section 3(f)) for further distribution, and*
5 *activities similar to all the foregoing as they re-*
6 *late to fish or shellfish in aquaculture facilities.*
7 *An employee described in this subparagraph*
8 *shall not be counted for purposes of subpara-*
9 *graph (A).*

10 “(C) *REVERIFICATION.—Paragraph*
11 *(1)(C)(ii) shall apply to reverifications pursuant*
12 *to this paragraph on the same basis as it applies*
13 *to verifications pursuant to paragraph (1), ex-*
14 *cept that employers shall—*

15 “(i) *use a form designated or estab-*
16 *lished by the Secretary by regulation for*
17 *purposes of this paragraph; and*

18 “(ii) *retain a paper, microfiche, micro-*
19 *film, or electronic version of the form and*
20 *make it available for inspection by officers*
21 *of the Department of Homeland Security,*
22 *the Special Counsel for Immigration-Re-*
23 *lated Unfair Employment Practices, or the*
24 *Department of Labor during the period be-*
25 *ginning on the date the reverification com-*

1 *mences and ending on the date that is the*
2 *later of 3 years after the date of such*
3 *reverification or 1 year after the date the*
4 *individual's employment is terminated.*

5 *“(3) PREVIOUSLY HIRED INDIVIDUALS.—*

6 *“(A) ON A MANDATORY BASIS FOR CERTAIN*
7 *EMPLOYEES.—*

8 *“(i) IN GENERAL.—Not later than the*
9 *date that is 6 months after the date of the*
10 *enactment of the Legal Workforce Act, an*
11 *employer shall make an inquiry, as pro-*
12 *vided in subsection (d), using the*
13 *verification system to seek verification of the*
14 *identity and employment eligibility of any*
15 *individual described in clause (ii) employed*
16 *by the employer whose employment eligi-*
17 *bility has not been verified under the E-*
18 *Verify Program described in section 403(a)*
19 *of the Illegal Immigration Reform and Im-*
20 *migrant Responsibility Act of 1996 (8*
21 *U.S.C. 1324a note).*

22 *“(ii) INDIVIDUALS DESCRIBED.—An*
23 *individual described in this clause is any of*
24 *the following:*

1 “(I) *An employee of any unit of a*
2 *Federal, State, or local government.*

3 “(II) *An employee who requires a*
4 *Federal security clearance working in*
5 *a Federal, State or local government*
6 *building, a military base, a nuclear*
7 *energy site, a weapons site, or an air-*
8 *port or other facility that requires*
9 *workers to carry a Transportation*
10 *Worker Identification Credential*
11 *(TWIC).*

12 “(III) *An employee assigned to*
13 *perform work in the United States*
14 *under a Federal contract, except that*
15 *this subclause—*

16 “(aa) *is not applicable to in-*
17 *dividuals who have a clearance*
18 *under Homeland Security Presi-*
19 *dential Directive 12 (HSPD 12*
20 *clearance), are administrative or*
21 *overhead personnel, or are work-*
22 *ing solely on contracts that pro-*
23 *vide Commercial Off The Shelf*
24 *goods or services as set forth by*
25 *the Federal Acquisition Regu-*

latory Council, unless they are
subject to verification under sub-
clause (II); and

“(bb) only applies to con-
tracts over the simple acquisition
threshold as defined in section
2.101 of title 48, Code of Federal
Regulations.

“(B) ON A MANDATORY BASIS FOR MUL-
TIPLE USERS OF SAME SOCIAL SECURITY AC-
COUNT NUMBER.—In the case of an employer
who is required by this subsection to use the
verification system described in subsection (d), or
has elected voluntarily to use such system, the
employer shall make inquiries to the system in
accordance with the following:

“(i) The Commissioner of Social Secu-
rity shall notify annually employees (at the
employee address listed on the Wage and
Tax Statement) who submit a social secu-
rity account number to which more than
one employer reports income and for which
there is a pattern of unusual multiple use.
The notification letter shall identify the
number of employers to which income is

1 *being reported as well as sufficient informa-*
2 *tion notifying the employee of the process to*
3 *contact the Social Security Administration*
4 *Fraud Hotline if the employee believes the*
5 *employee's identity may have been stolen.*
6 *The notice shall not share information pro-*
7 *tected as private, in order to avoid any re-*
8 *cipient of the notice from being in the posi-*
9 *tion to further commit or begin committing*
10 *identity theft.*

11 “(ii) *If the person to whom the social*
12 *security account number was issued by the*
13 *Social Security Administration has been*
14 *identified and confirmed by the Commis-*
15 *sioner, and indicates that the social security*
16 *account number was used without their*
17 *knowledge, the Secretary and the Commis-*
18 *sioner shall lock the social security account*
19 *number for employment eligibility*
20 *verification purposes and shall notify the*
21 *employers of the individuals who wrongfully*
22 *submitted the social security account num-*
23 *ber that the employee may not be work eli-*
24 *gible.*

1 “(iii) Each employer receiving such
2 notification of an incorrect social security
3 account number under clause (ii) shall use
4 the verification system described in sub-
5 section (d) to check the work eligibility sta-
6 tus of the applicable employee within 10
7 business days of receipt of the notification.

8 “(C) ON A VOLUNTARY BASIS.—Subject to
9 paragraph (2), and subparagraphs (A) through
10 (C) of this paragraph, beginning on the date that
11 is 30 days after the date of the enactment of the
12 Legal Workforce Act, an employer may make an
13 inquiry, as provided in subsection (d), using the
14 verification system to seek verification of the
15 identity and employment eligibility of any indi-
16 vidual employed by the employer. If an employer
17 chooses voluntarily to seek verification of any in-
18 dividual employed by the employer, the employer
19 shall seek verification of all individuals em-
20 ployed at the same geographic location or, at the
21 option of the employer, all individuals employed
22 within the same job category, as the employee
23 with respect to whom the employer seeks volun-
24 tarily to use the verification system. An employ-
25 er’s decision about whether or not voluntarily to

1 *seek verification of its current workforce under*
2 *this subparagraph may not be considered by any*
3 *government agency in any proceeding, investiga-*
4 *tion, or review provided for in this Act.*

5 “(D) VERIFICATION.—Paragraph (1)(C)(ii)
6 *shall apply to verifications pursuant to this*
7 *paragraph on the same basis as it applies to*
8 *verifications pursuant to paragraph (1), except*
9 *that employers shall—*

10 “(i) *use a form designated or estab-*
11 *lished by the Secretary by regulation for*
12 *purposes of this paragraph; and*

13 “(ii) *retain a paper, microfiche, micro-*
14 *film, or electronic version of the form and*
15 *make it available for inspection by officers*
16 *of the Department of Homeland Security,*
17 *the Special Counsel for Immigration-Re-*
18 *lated Unfair Employment Practices, or the*
19 *Department of Labor during the period be-*
20 *ginning on the date the verification com-*
21 *mences and ending on the date that is the*
22 *later of 3 years after the date of such*
23 *verification or 1 year after the date the in-*
24 *dividual’s employment is terminated.*

25 “(4) EARLY COMPLIANCE.—

1 “(A) *FORMER E-VERIFY REQUIRED USERS,*
2 *INCLUDING FEDERAL CONTRACTORS.—Notwith-*
3 *standing the deadlines in paragraphs (1) and*
4 *(2), beginning on the date of the enactment of the*
5 *Legal Workforce Act, the Secretary is authorized*
6 *to commence requiring employers required to*
7 *participate in the E-Verify Program described in*
8 *section 403(a) of the Illegal Immigration Reform*
9 *and Immigrant Responsibility Act of 1996 (8*
10 *U.S.C. 1324a note), including employers re-*
11 *quired to participate in such program by reason*
12 *of Federal acquisition laws (and regulations pro-*
13 *mulgated under those laws, including the Federal*
14 *Acquisition Regulation), to commence compli-*
15 *ance with the requirements of this subsection*
16 *(and any additional requirements of such Fed-*
17 *eral acquisition laws and regulation) in lieu of*
18 *any requirement to participate in the E-Verify*
19 *Program.*

20 “(B) *FORMER E-VERIFY VOLUNTARY USERS*
21 *AND OTHERS DESIRING EARLY COMPLIANCE.—*
22 *Notwithstanding the deadlines in paragraphs (1)*
23 *and (2), beginning on the date of the enactment*
24 *of the Legal Workforce Act, the Secretary shall*
25 *provide for the voluntary compliance with the re-*

1 *quirements of this subsection by employers volun-*
2 *tarily electing to participate in the E-Verify*
3 *Program described in section 403(a) of the Ille-*
4 *gal Immigration Reform and Immigrant Re-*
5 *sponsibility Act of 1996 (8 U.S.C. 1324a note)*
6 *before such date, as well as by other employers*
7 *seeking voluntary early compliance.*

8 “(5) *COPYING OF DOCUMENTATION PER-*
9 *MITTED.—Notwithstanding any other provision of*
10 *law, the person or entity may copy a document pre-*
11 *sented by an individual pursuant to this subsection*
12 *and may retain the copy, but only (except as other-*
13 *wise permitted under law) for the purpose of com-*
14 *plying with the requirements of this subsection.*

15 “(6) *LIMITATION ON USE OF FORMS.—A form*
16 *designated or established by the Secretary of Home-*
17 *land Security under this subsection and any informa-*
18 *tion contained in or appended to such form, may not*
19 *be used for purposes other than for enforcement of this*
20 *Act and any other provision of Federal criminal law.*

21 “(7) *GOOD FAITH COMPLIANCE.—*

22 “(A) *IN GENERAL.—Except as otherwise*
23 *provided in this subsection, a person or entity is*
24 *considered to have complied with a requirement*
25 *of this subsection notwithstanding a technical or*

1 *procedural failure to meet such requirement if*
2 *there was a good faith attempt to comply with*
3 *the requirement.*

4 “(B) *EXCEPTION IF FAILURE TO CORRECT*
5 *AFTER NOTICE.—Subparagraph (A) shall not*
6 *apply if—*

7 “(i) *the failure is not de minimus;*

8 “(ii) *the Secretary of Homeland Secu-*
9 *rity has explained to the person or entity*
10 *the basis for the failure and why it is not*
11 *de minimus;*

12 “(iii) *the person or entity has been*
13 *provided a period of not less than 30 cal-*
14 *endar days (beginning after the date of the*
15 *explanation) within which to correct the*
16 *failure; and*

17 “(iv) *the person or entity has not cor-*
18 *rected the failure voluntarily within such*
19 *period.*

20 “(C) *EXCEPTION FOR PATTERN OR PRAC-*
21 *TICE VIOLATORS.—Subparagraph (A) shall not*
22 *apply to a person or entity that has or is engag-*
23 *ing in a pattern or practice of violations of sub-*
24 *section (a)(1)(A) or (a)(2).*

1 “(8) *SINGLE EXTENSION OF DEADLINES UPON*
2 *CERTIFICATION.*—*In a case in which the Secretary of*
3 *Homeland Security has certified to the Congress that*
4 *the employment eligibility verification system re-*
5 *quired under subsection (d) will not be fully oper-*
6 *ational by the date that is 6 months after the date of*
7 *the enactment of the Legal Workforce Act, each dead-*
8 *line established under this section for an employer to*
9 *make an inquiry using such system shall be extended*
10 *by 6 months. No other extension of such a deadline*
11 *shall be made.”.*

12 (b) *DATE OF HIRE.*—*Section 274A(h) of the Immigra-*
13 *tion and Nationality Act (8 U.S.C. 1324a(h)) is amended*
14 *by adding at the end the following:*

15 “(4) *DEFINITION OF DATE OF HIRE.*—*As used in*
16 *this section, the term ‘date of hire’ means the date of*
17 *actual commencement of employment for wages or*
18 *other remuneration, unless otherwise specified.”.*

19 **SEC. 3. EMPLOYMENT ELIGIBILITY VERIFICATION SYSTEM.**

20 *Section 274A(d) of the Immigration and Nationality*
21 *Act (8 U.S.C. 1324a(d)) is amended to read as follows:*

22 “(d) *EMPLOYMENT ELIGIBILITY VERIFICATION SYS-*
23 *TEM.*—

24 “(1) *IN GENERAL.*—*Patterned on the employ-*
25 *ment eligibility confirmation system established under*

1 *section 404 of the Illegal Immigration Reform and*
2 *Immigrant Responsibility Act of 1996 (8 U.S.C.*
3 *1324a note), the Secretary of Homeland Security*
4 *shall establish and administer a verification system*
5 *through which the Secretary (or a designee of the Sec-*
6 *retary, which may be a nongovernmental entity)—*

7 *“(A) responds to inquiries made by persons*
8 *at any time through a toll-free telephone line*
9 *and other toll-free electronic media concerning*
10 *an individual’s identity and whether the indi-*
11 *vidual is authorized to be employed; and*

12 *“(B) maintains records of the inquiries that*
13 *were made, of verifications provided (or not pro-*
14 *vided), and of the codes provided to inquirers as*
15 *evidence of their compliance with their obliga-*
16 *tions under this section.*

17 *“(2) INITIAL RESPONSE.—The verification sys-*
18 *tem shall provide confirmation or a tentative noncon-*
19 *firmation of an individual’s identity and employment*
20 *eligibility within 3 working days of the initial in-*
21 *quiry. If providing confirmation or tentative noncon-*
22 *firmation, the verification system shall provide an*
23 *appropriate code indicating such confirmation or*
24 *such nonconfirmation.*

1 “(3) *SECONDARY CONFIRMATION PROCESS IN*
2 *CASE OF TENTATIVE NONCONFIRMATION.—In cases of*
3 *tentative nonconfirmation, the Secretary shall specify,*
4 *in consultation with the Commissioner of Social Se-*
5 *curity, an available secondary verification process to*
6 *confirm the validity of information provided and to*
7 *provide a final confirmation or nonconfirmation not*
8 *later than 10 working days after the date on which*
9 *the notice of the tentative nonconfirmation is received*
10 *by the employee. The Secretary, in consultation with*
11 *the Commissioner, may extend this deadline once on*
12 *a case-by-case basis for a period of 10 working days,*
13 *and if the time is extended, shall document such ex-*
14 *tension within the verification system. The Secretary,*
15 *in consultation with the Commissioner, shall notify*
16 *the employee and employer of such extension. The*
17 *Secretary, in consultation with the Commissioner,*
18 *shall create a standard process of such extension and*
19 *notification and shall make a description of such*
20 *process available to the public. When final confirma-*
21 *tion or nonconfirmation is provided, the verification*
22 *system shall provide an appropriate code indicating*
23 *such confirmation or nonconfirmation.*

24 “(4) *DESIGN AND OPERATION OF SYSTEM.—The*
25 *verification system shall be designed and operated—*

1 “(A) to maximize its reliability and ease of
2 use by persons and other entities consistent with
3 insulating and protecting the privacy and secu-
4 rity of the underlying information;

5 “(B) to respond to all inquiries made by
6 such persons and entities on whether individuals
7 are authorized to be employed and to register all
8 times when such inquiries are not received;

9 “(C) with appropriate administrative, tech-
10 nical, and physical safeguards to prevent unau-
11 thorized disclosure of personal information;

12 “(D) to have reasonable safeguards against
13 the system’s resulting in unlawful discrimina-
14 tory practices based on national origin or citi-
15 zenship status, including—

16 “(i) the selective or unauthorized use of
17 the system to verify eligibility; or

18 “(ii) the exclusion of certain individ-
19 uals from consideration for employment as
20 a result of a perceived likelihood that addi-
21 tional verification will be required, beyond
22 what is required for most job applicants;

23 “(E) to maximize the prevention of identity
24 theft use in the system; and

1 “(F) to limit the subjects of verification to
2 the following individuals:

3 “(i) Individuals hired, referred, or re-
4 cruited, in accordance with paragraph (1)
5 or (4) of subsection (b).

6 “(ii) Employees and prospective em-
7 ployees, in accordance with paragraph (1),
8 (2), (3), or (4) of subsection (b).

9 “(iii) Individuals seeking to confirm
10 their own employment eligibility on a vol-
11 untary basis.

12 “(5) *RESPONSIBILITIES OF COMMISSIONER OF*
13 *SOCIAL SECURITY.*—As part of the verification sys-
14 tem, the Commissioner of Social Security, in con-
15 sultation with the Secretary of Homeland Security
16 (and any designee of the Secretary selected to estab-
17 lish and administer the verification system), shall es-
18 tablish a reliable, secure method, which, within the
19 time periods specified under paragraphs (2) and (3),
20 compares the name and social security account num-
21 ber provided in an inquiry against such information
22 maintained by the Commissioner in order to validate
23 (or not validate) the information provided regarding
24 an individual whose identity and employment eligi-
25 bility must be confirmed, the correspondence of the

1 *name and number, and whether the individual has*
2 *presented a social security account number that is not*
3 *valid for employment. The Commissioner shall not*
4 *disclose or release social security information (other*
5 *than such confirmation or nonconfirmation) under*
6 *the verification system except as provided for in this*
7 *section or section 205(c)(2)(I) of the Social Security*
8 *Act.*

9 *“(6) RESPONSIBILITIES OF SECRETARY OF*
10 *HOMELAND SECURITY.—As part of the verification*
11 *system, the Secretary of Homeland Security (in con-*
12 *sultation with any designee of the Secretary selected*
13 *to establish and administer the verification system),*
14 *shall establish a reliable, secure method, which, within*
15 *the time periods specified under paragraphs (2) and*
16 *(3), compares the name and alien identification or*
17 *authorization number (or any other information as*
18 *determined relevant by the Secretary) which are pro-*
19 *vided in an inquiry against such information main-*
20 *tained or accessed by the Secretary in order to vali-*
21 *date (or not validate) the information provided, the*
22 *correspondence of the name and number, whether the*
23 *alien is authorized to be employed in the United*
24 *States, or to the extent that the Secretary determines*
25 *to be feasible and appropriate, whether the records*

1 *available to the Secretary verify the identity or status*
2 *of a national of the United States.*

3 “(7) *UPDATING INFORMATION.—The Commis-*
4 *sioner of Social Security and the Secretary of Home-*
5 *land Security shall update their information in a*
6 *manner that promotes the maximum accuracy and*
7 *shall provide a process for the prompt correction of*
8 *erroneous information, including instances in which*
9 *it is brought to their attention in the secondary*
10 *verification process described in paragraph (3).*

11 “(8) *LIMITATION ON USE OF THE VERIFICATION*
12 *SYSTEM AND ANY RELATED SYSTEMS.—*

13 “(A) *NO NATIONAL IDENTIFICATION*
14 *CARD.—Nothing in this section shall be con-*
15 *strued to authorize, directly or indirectly, the*
16 *issuance or use of national identification cards*
17 *or the establishment of a national identification*
18 *card.*

19 “(B) *CRITICAL INFRASTRUCTURE.—The*
20 *Secretary may authorize or direct any person or*
21 *entity responsible for granting access to, pro-*
22 *tecting, securing, operating, administering, or*
23 *regulating part of the critical infrastructure (as*
24 *defined in section 1016(e) of the Critical Infra-*
25 *structure Protection Act of 2001 (42 U.S.C.*

1 5195c(e))) to use the verification system to the
 2 extent the Secretary determines that such use
 3 will assist in the protection of the critical infra-
 4 structure.

5 “(9) *REMEDIES.*—If an individual alleges that
 6 the individual would not have been dismissed from a
 7 job but for an error of the verification mechanism, the
 8 individual may seek compensation only through the
 9 mechanism of the Federal Tort Claims Act, and in-
 10 junctive relief to correct such error. No class action
 11 may be brought under this paragraph.”.

12 **SEC. 4. RECRUITMENT, REFERRAL, AND CONTINUATION OF**
 13 **EMPLOYMENT.**

14 (a) *ADDITIONAL CHANGES TO RULES FOR RECRUIT-*
 15 *MENT, REFERRAL, AND CONTINUATION OF EMPLOYMENT.*—
 16 Section 274A(a) of the Immigration and Nationality Act
 17 (8 U.S.C. 1324a(a)) is amended—

18 (1) in paragraph (1)(A), by striking “for a fee”;
 19 (2) in paragraph (1), by amending subpara-
 20 graph (B) to read as follows:

21 “(B) to hire, continue to employ, or to re-
 22 cruit or refer for employment in the United
 23 States an individual without complying with the
 24 requirements of subsection (b).”; and

1 (3) in paragraph (2), by striking “after hiring
2 an alien for employment in accordance with para-
3 graph (1),” and inserting “after complying with
4 paragraph (1),”.

5 (b) *DEFINITION.*—Section 274A(h) of the Immigration
6 and Nationality Act (8 U.S.C. 1324a(h)), as amended by
7 section 2(b) of this Act, is further amended by adding at
8 the end the following:

9 “(5) *DEFINITION OF RECRUIT OR REFER.*—As
10 used in this section, the term ‘refer’ means the act of
11 sending or directing a person who is in the United
12 States or transmitting documentation or information
13 to another, directly or indirectly, with the intent of
14 obtaining employment in the United States for such
15 person. Only persons or entities referring for remun-
16 eration (whether on a retainer or contingency basis)
17 are included in the definition, except that union hir-
18 ing halls that refer union members or nonunion indi-
19 viduals who pay union membership dues are included
20 in the definition whether or not they receive remun-
21 eration, as are labor service entities or labor service
22 agencies, whether public, private, for-profit, or non-
23 profit, that refer, dispatch, or otherwise facilitate the
24 hiring of laborers for any period of time by a third
25 party. As used in this section, the term ‘recruit’

1 *means the act of soliciting a person who is in the*
 2 *United States, directly or indirectly, and referring the*
 3 *person to another with the intent of obtaining em-*
 4 *ployment for that person. Only persons or entities re-*
 5 *ferring for remuneration (whether on a retainer or*
 6 *contingency basis) are included in the definition, ex-*
 7 *cept that union hiring halls that refer union members*
 8 *or nonunion individuals who pay union membership*
 9 *dues are included in this definition whether or not*
 10 *they receive remuneration, as are labor service entities*
 11 *or labor service agencies, whether public, private, for-*
 12 *profit, or nonprofit that recruit, dispatch, or other-*
 13 *wise facilitate the hiring of laborers for any period of*
 14 *time by a third party.”.*

15 (c) *EFFECTIVE DATE.*—*The amendments made by this*
 16 *section shall take effect on the date that is 1 year after the*
 17 *date of the enactment of this Act, except that the amend-*
 18 *ments made by subsection (a) shall take effect 6 months*
 19 *after the date of the enactment of this Act insofar as such*
 20 *amendments relate to continuation of employment.*

21 **SEC. 5. GOOD FAITH DEFENSE.**

22 *Section 274A(a)(3) of the Immigration and Nation-*
 23 *ality Act (8 U.S.C. 1324a(a)(3)) is amended to read as fol-*
 24 *lows:*

25 “(3) *GOOD FAITH DEFENSE.*—

1 “(A) *DEFENSE.*—An employer (or person or
2 entity that hires, employs, recruits, or refers (as
3 defined in subsection (h)(5)), or is otherwise obli-
4 gated to comply with this section) who estab-
5 lishes that it has complied in good faith with the
6 requirements of subsection (b)—

7 “(i) shall not be liable to a job appli-
8 cant, an employee, the Federal Government,
9 or a State or local government, under Fed-
10 eral, State, or local criminal or civil law for
11 any employment-related action taken with
12 respect to a job applicant or employee in
13 good-faith reliance on information provided
14 through the system established under sub-
15 section (d); and

16 “(ii) has established compliance with
17 its obligations under subparagraphs (A)
18 and (B) of paragraph (1) and subsection (b)
19 absent a showing by the Secretary of Home-
20 land Security, by clear and convincing evi-
21 dence, that the employer had knowledge that
22 an employee is an unauthorized alien.

23 “(B) *MITIGATION ELEMENT.*—For purposes
24 of subparagraph (A)(i), if an employer proves by
25 a preponderance of the evidence that the em-

1 *ployer uses a reasonable, secure, and established*
2 *technology to authenticate the identity of the new*
3 *employee, that fact shall be taken into account*
4 *for purposes of determining good faith use of the*
5 *system established under subsection (d).*

6 “(C) *FAILURE TO SEEK AND OBTAIN*
7 *VERIFICATION.—Subject to the effective dates and*
8 *other deadlines applicable under subsection (b),*
9 *in the case of a person or entity in the United*
10 *States that hires, or continues to employ, an in-*
11 *dividual, or recruits or refers an individual for*
12 *employment, the following requirements apply:*

13 “(i) *FAILURE TO SEEK*
14 *VERIFICATION.—*

15 “(I) *IN GENERAL.—If the person*
16 *or entity has not made an inquiry,*
17 *under the mechanism established under*
18 *subsection (d) and in accordance with*
19 *the timeframes established under sub-*
20 *section (b), seeking verification of the*
21 *identity and work eligibility of the in-*
22 *dividual, the defense under subpara-*
23 *graph (A) shall not be considered to*
24 *apply with respect to any employment,*
25 *except as provided in subclause (II).*

1 “(II) *SPECIAL RULE FOR FAILURE*
2 *OF VERIFICATION MECHANISM.*—*If such*
3 *a person or entity in good faith at-*
4 *tempts to make an inquiry in order to*
5 *qualify for the defense under subpara-*
6 *graph (A) and the verification mecha-*
7 *nism has registered that not all inquir-*
8 *ies were responded to during the rel-*
9 *evant time, the person or entity can*
10 *make an inquiry until the end of the*
11 *first subsequent working day in which*
12 *the verification mechanism registers no*
13 *nonresponses and qualify for such de-*
14 *fense.*

15 “(ii) *FAILURE TO OBTAIN*
16 *VERIFICATION.*—*If the person or entity has*
17 *made the inquiry described in clause (i)(I)*
18 *but has not received an appropriate*
19 *verification of such identity and work eligi-*
20 *bility under such mechanism within the*
21 *time period specified under subsection*
22 *(d)(2) after the time the verification inquiry*
23 *was received, the defense under subpara-*
24 *graph (A) shall not be considered to apply*

1 *with respect to any employment after the*
 2 *end of such time period.”.*

3 **SEC. 6. PREEMPTION AND STATES’ RIGHTS.**

4 *Section 274A(h)(2) of the Immigration and Nation-*
 5 *ality Act (8 U.S.C. 1324a(h)(2)) is amended to read as fol-*
 6 *lows:*

7 “(2) *PREEMPTION.*—

8 “(A) *SINGLE, NATIONAL POLICY.*—*The pro-*
 9 *visions of this section preempt any State or local*
 10 *law, ordinance, policy, or rule, including any*
 11 *criminal or civil fine or penalty structure, inso-*
 12 *far as they may now or hereafter relate to the*
 13 *hiring, continued employment, or status*
 14 *verification for employment eligibility purposes,*
 15 *of unauthorized aliens.*

16 “(B) *STATE ENFORCEMENT OF FEDERAL*
 17 *LAW.*—

18 “(i) *BUSINESS LICENSING.*—*A State,*
 19 *locality, municipality, or political subdivi-*
 20 *sion may exercise its authority over busi-*
 21 *ness licensing and similar laws as a pen-*
 22 *alty for failure to use the verification sys-*
 23 *tem described in subsection (d) to verify em-*
 24 *ployment eligibility when and as required*
 25 *under subsection (b).*

1 “(ii) *GENERAL RULES.—A State, at its*
2 *own cost, may enforce the provisions of this*
3 *section, but only insofar as such State fol-*
4 *lows the Federal regulations implementing*
5 *this section, applies the Federal penalty*
6 *structure set out in this section, and com-*
7 *plies with all Federal rules and guidance*
8 *concerning implementation of this section.*
9 *Such State may collect any fines assessed*
10 *under this section. An employer may not be*
11 *subject to enforcement, including audit and*
12 *investigation, by both a Federal agency and*
13 *a State for the same violation under this*
14 *section. Whichever entity, the Federal agen-*
15 *cy or the State, is first to initiate the en-*
16 *forcement action, has the right of first re-*
17 *fusal to proceed with the enforcement ac-*
18 *tion. The Secretary must provide copies of*
19 *all guidance, training, and field instruc-*
20 *tions provided to Federal officials imple-*
21 *menting the provisions of this section to*
22 *each State.”.*

1 **SEC. 7. REPEAL.**

2 (a) *IN GENERAL.*—Subtitle A of title IV of the *Illegal*
 3 *Immigration Reform and Immigrant Responsibility Act of*
 4 *1996 (8 U.S.C. 1324a note)* is repealed.

5 (b) *REFERENCES.*—Any reference in any Federal law,
 6 *Executive order, rule, regulation, or delegation of authority,*
 7 *or any document of, or pertaining to, the Department of*
 8 *Homeland Security, Department of Justice, or the Social*
 9 *Security Administration, to the employment eligibility con-*
 10 *firmation system established under section 404 of the Illegal*
 11 *Immigration Reform and Immigrant Responsibility Act of*
 12 *1996 (8 U.S.C. 1324a note)* is deemed to refer to the employ-
 13 *ment eligibility confirmation system established under sec-*
 14 *tion 274A(d) of the Immigration and Nationality Act, as*
 15 *amended by section 3 of this Act.*

16 (c) *EFFECTIVE DATE.*—This section shall take effect
 17 on the date that is 36 months after the date of the enactment
 18 of this Act.

19 (d) *CLERICAL AMENDMENT.*—The table of sections, in
 20 section 1(d) of the *Illegal Immigration Reform and Immi-*
 21 *grant Responsibility Act of 1996*, is amended by striking
 22 the items relating to subtitle A of title IV.

23 **SEC. 8. PENALTIES.**

24 Section 274A of the *Immigration and Nationality Act*
 25 *(8 U.S.C. 1324a)* is amended—

26 (1) in subsection (e)(1)—

1 (A) by striking “Attorney General” each
2 place such term appears and inserting “Sec-
3 retary of Homeland Security”; and

4 (B) in subparagraph (D), by striking
5 “Service” and inserting “Department of Home-
6 land Security”;

7 (2) in subsection (e)(4)—

8 (A) in subparagraph (A), in the matter be-
9 fore clause (i), by inserting “, subject to para-
10 graph (10),” after “in an amount”;

11 (B) in subparagraph (A)(i), by striking
12 “not less than \$250 and not more than \$2,000”
13 and inserting “not less than \$2,500 and not
14 more than \$5,000”;

15 (C) in subparagraph (A)(ii), by striking
16 “not less than \$2,000 and not more than \$5,000”
17 and inserting “not less than \$5,000 and not
18 more than \$10,000”;

19 (D) in subparagraph (A)(iii), by striking
20 “not less than \$3,000 and not more than
21 \$10,000” and inserting “not less than \$10,000
22 and not more than \$25,000”; and

23 (E) by moving the margin of the continu-
24 ation text following subparagraph (B) two ems

1 to the left and by amending subparagraph (B) to
2 read as follows:

3 “(B) may require the person or entity to
4 take such other remedial action as is appro-
5 priate.”;

6 (3) in subsection (e)(5)—

7 (A) in the paragraph heading, strike “PA-
8 PERWORK”;

9 (B) by inserting “, subject to paragraphs
10 (10) through (12),” after “in an amount”;

11 (C) by striking “\$100” and inserting
12 “\$1,000”;

13 (D) by striking “\$1,000” and inserting
14 “\$25,000”; and

15 (E) by adding at the end the following:
16 “Failure by a person or entity to utilize the em-
17 ployment eligibility verification system as re-
18 quired by law, or providing information to the
19 system that the person or entity knows or reason-
20 ably believes to be false, shall be treated as a vio-
21 lation of subsection (a)(1)(A).”;

22 (4) by adding at the end of subsection (e) the fol-
23 lowing:

24 “(10) EXEMPTION FROM PENALTY FOR GOOD
25 FAITH VIOLATION.—In the case of imposition of a

1 *civil penalty under paragraph (4)(A) with respect to*
 2 *a violation of subsection (a)(1)(A) or (a)(2) for hiring*
 3 *or continuation of employment or recruitment or re-*
 4 *ferral by person or entity and in the case of imposi-*
 5 *tion of a civil penalty under paragraph (5) for a vio-*
 6 *lation of subsection (a)(1)(B) for hiring or recruit-*
 7 *ment or referral by a person or entity, the penalty*
 8 *otherwise imposed may be waived or reduced if the vi-*
 9 *olator establishes that the violator acted in good faith.*

10 “(11) *AUTHORITY TO DEBAR EMPLOYERS FOR*
 11 *CERTAIN VIOLATIONS.—*

12 “(A) *IN GENERAL.—If a person or entity is*
 13 *determined by the Secretary of Homeland Secu-*
 14 *rity to be a repeat violator of paragraph (1)(A)*
 15 *or (2) of subsection (a), or is convicted of a*
 16 *crime under this section, such person or entity*
 17 *may be considered for debarment from the re-*
 18 *ceipt of Federal contracts, grants, or cooperative*
 19 *agreements in accordance with the debarment*
 20 *standards and pursuant to the debarment proce-*
 21 *dures set forth in the Federal Acquisition Regu-*
 22 *lation.*

23 “(B) *DOES NOT HAVE CONTRACT, GRANT,*
 24 *AGREEMENT.—If the Secretary of Homeland Se-*
 25 *curity or the Attorney General wishes to have a*

1 *person or entity considered for debarment in ac-*
2 *cordance with this paragraph, and such an per-*
3 *son or entity does not hold a Federal contract,*
4 *grant or cooperative agreement, the Secretary or*
5 *Attorney General shall refer the matter to the*
6 *Administrator of General Services to determine*
7 *whether to list the person or entity on the List*
8 *of Parties Excluded from Federal Procurement,*
9 *and if so, for what duration and under what*
10 *scope.*

11 “(C) *HAS CONTRACT, GRANT, AGREE-*
12 *MENT.—If the Secretary of Homeland Security*
13 *or the Attorney General wishes to have a person*
14 *or entity considered for debarment in accordance*
15 *with this paragraph, and such person or entity*
16 *holds a Federal contract, grant or cooperative*
17 *agreement, the Secretary or Attorney General*
18 *shall advise all agencies or departments holding*
19 *a contract, grant, or cooperative agreement with*
20 *the person or entity of the Government’s interest*
21 *in having the person or entity considered for de-*
22 *barment, and after soliciting and considering the*
23 *views of all such agencies and departments, the*
24 *Secretary or Attorney General may refer the*
25 *matter to any appropriate lead agency to deter-*

1 *mine whether to list the person or entity on the*
2 *List of Parties Excluded from Federal Procure-*
3 *ment, and if so, for what duration and under*
4 *what scope.*

5 *“(D) REVIEW.—Any decision to debar a*
6 *person or entity in accordance with this para-*
7 *graph shall be reviewable pursuant to part 9.4 of*
8 *the Federal Acquisition Regulation.*

9 *“(12) OFFICE FOR STATE AND LOCAL GOVERN-*
10 *MENT COMPLAINTS.—The Secretary of Homeland Se-*
11 *curity shall establish an office—*

12 *“(A) to which State and local government*
13 *agencies may submit information indicating po-*
14 *tential violations of subsection (a), (b), or (g)(1)*
15 *that were generated in the normal course of law*
16 *enforcement or the normal course of other official*
17 *activities in the State or locality;*

18 *“(B) that is required to indicate to the com-*
19 *plaining State or local agency within 5 business*
20 *days of the filing of such a complaint by identi-*
21 *fying whether the Secretary will further inves-*
22 *tigate the information provided;*

23 *“(C) that is required to investigate those*
24 *complaints filed by State or local government*

1 *agencies that, on their face, have a substantial*
2 *probability of validity;*

3 *“(D) that is required to notify the com-*
4 *plaining State or local agency of the results of*
5 *any such investigation conducted; and*

6 *“(E) that is required to report to the Con-*
7 *gress annually the number of complaints received*
8 *under this paragraph, the States and localities*
9 *that filed such complaints, and the resolution of*
10 *the complaints investigated by the Secretary.”;*
11 *and*

12 *(5) by amending paragraph (1) of subsection (f)*
13 *to read as follows:*

14 *“(1) CRIMINAL PENALTY.—Any person or entity*
15 *which engages in a pattern or practice of violations*
16 *of subsection (a)(1) or (2) shall be fined not more*
17 *than \$5,000 for each unauthorized alien with respect*
18 *to which such a violation occurs, imprisoned for not*
19 *more than 18 months, or both, notwithstanding the*
20 *provisions of any other Federal law relating to fine*
21 *levels.”.*

22 **SEC. 9. FRAUD AND MISUSE OF DOCUMENTS.**

23 *Section 1546(b) of title 18, United States Code, is*
24 *amended—*

1 (1) in paragraph (1), by striking “identification
2 document,” and inserting “identification document or
3 document meant to establish work authorization (in-
4 cluding the documents described in section 274A(b) of
5 the Immigration and Nationality Act),”; and

6 (2) in paragraph (2), by striking “identification
7 document” and inserting “identification document or
8 document meant to establish work authorization (in-
9 cluding the documents described in section 274A(b) of
10 the Immigration and Nationality Act),”.

11 **SEC. 10. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**
12 **TION PROGRAMS.**

13 (a) *FUNDING UNDER AGREEMENT.*—Effective for fis-
14 cal years beginning on or after October 1, 2013, the Com-
15 missioner of Social Security and the Secretary of Homeland
16 Security shall enter into and maintain an agreement which
17 shall—

18 (1) provide funds to the Commissioner for the
19 full costs of the responsibilities of the Commissioner
20 under section 274A(d) of the Immigration and Na-
21 tionality Act (8 U.S.C. 1324a(d)), as amended by sec-
22 tion 3 of this Act, including (but not limited to)—

23 (A) acquiring, installing, and maintaining
24 technological equipment and systems necessary
25 for the fulfillment of the responsibilities of the

1 Commissioner under such section 274A(d), but
 2 only that portion of such costs that are attrib-
 3 utable exclusively to such responsibilities; and

4 (B) responding to individuals who contest a
 5 tentative nonconfirmation provided by the em-
 6 ployment eligibility verification system estab-
 7 lished under such section;

8 (2) provide such funds annually in advance of
 9 the applicable quarter based on estimating method-
 10 ology agreed to by the Commissioner and the Sec-
 11 retary (except in such instances where the delayed en-
 12 actment of an annual appropriation may preclude
 13 such quarterly payments); and

14 (3) require an annual accounting and reconcili-
 15 ation of the actual costs incurred and the funds pro-
 16 vided under the agreement, which shall be reviewed by
 17 the Inspectors General of the Social Security Admin-
 18 istration and the Department of Homeland Security.

19 (b) *CONTINUATION OF EMPLOYMENT VERIFICATION IN*
 20 *ABSENCE OF TIMELY AGREEMENT.*—In any case in which
 21 the agreement required under subsection (a) for any fiscal
 22 year beginning on or after October 1, 2013, has not been
 23 reached as of October 1 of such fiscal year, the latest agree-
 24 ment between the Commissioner and the Secretary of Home-
 25 land Security providing for funding to cover the costs of

1 *the responsibilities of the Commissioner under section*
2 *274A(d) of the Immigration and Nationality Act (8 U.S.C.*
3 *1324a(d)) shall be deemed in effect on an interim basis for*
4 *such fiscal year until such time as an agreement required*
5 *under subsection (a) is subsequently reached, except that the*
6 *terms of such interim agreement shall be modified by the*
7 *Director of the Office of Management and Budget to adjust*
8 *for inflation and any increase or decrease in the volume*
9 *of requests under the employment eligibility verification*
10 *system. In any case in which an interim agreement applies*
11 *for any fiscal year under this subsection, the Commissioner*
12 *and the Secretary shall, not later than October 1 of such*
13 *fiscal year, notify the Committee on Ways and Means, the*
14 *Committee on the Judiciary, and the Committee on Appro-*
15 *priations of the House of Representatives and the Com-*
16 *mittee on Finance, the Committee on the Judiciary, and*
17 *the Committee on Appropriations of the Senate of the fail-*
18 *ure to reach the agreement required under subsection (a)*
19 *for such fiscal year. Until such time as the agreement re-*
20 *quired under subsection (a) has been reached for such fiscal*
21 *year, the Commissioner and the Secretary shall, not later*
22 *than the end of each 90-day period after October 1 of such*
23 *fiscal year, notify such Committees of the status of negotia-*
24 *tions between the Commissioner and the Secretary in order*
25 *to reach such an agreement.*

1 **SEC. 11. FRAUD PREVENTION.**

2 (a) *BLOCKING MISUSED SOCIAL SECURITY ACCOUNT*
3 *NUMBERS.*—*The Secretary of Homeland Security, in con-*
4 *sultation with the Commissioner of Social Security, shall*
5 *establish a program in which social security account num-*
6 *bers that have been identified to be subject to unusual mul-*
7 *tiple use in the employment eligibility verification system*
8 *established under section 274A(d) of the Immigration and*
9 *Nationality Act (8 U.S.C. 1324a(d)), as amended by section*
10 *3 of this Act, or that are otherwise suspected or determined*
11 *to have been compromised by identity fraud or other misuse,*
12 *shall be blocked from use for such system purposes unless*
13 *the individual using such number is able to establish,*
14 *through secure and fair additional security procedures, that*
15 *the individual is the legitimate holder of the number.*

16 (b) *ALLOWING SUSPENSION OF USE OF CERTAIN SO-*
17 *CIAL SECURITY ACCOUNT NUMBERS.*—*The Secretary of*
18 *Homeland Security, in consultation with the Commissioner*
19 *of Social Security, shall establish a program which shall*
20 *provide a reliable, secure method by which victims of iden-*
21 *tity fraud and other individuals may suspend or limit the*
22 *use of their social security account number or other identi-*
23 *fying information for purposes of the employment eligibility*
24 *verification system established under section 274A(d) of the*
25 *Immigration and Nationality Act (8 U.S.C. 1324a(d)), as*
26 *amended by section 3 of this Act. The Secretary may imple-*

1 *ment the program on a limited pilot program basis before*
 2 *making it fully available to all individuals.*

3 (c) *ALLOWING PARENTS TO PREVENT THEFT OF*
 4 *THEIR CHILD’S IDENTITY.*—*The Secretary of Homeland*
 5 *Security, in consultation with the Commissioner of Social*
 6 *Security, shall establish a program which shall provide a*
 7 *reliable, secure method by which parents or legal guardians*
 8 *may suspend or limit the use of the social security account*
 9 *number or other identifying information of a minor under*
 10 *their care for the purposes of the employment eligibility*
 11 *verification system established under 274A(d) of the Immi-*
 12 *gration and Nationality Act (8 U.S.C. 1324a(d)), as*
 13 *amended by section 3 of this Act. The Secretary may imple-*
 14 *ment the program on a limited pilot program basis before*
 15 *making it fully available to all individuals.*

16 **SEC. 12. USE OF EMPLOYMENT ELIGIBILITY VERIFICATION**
 17 **PHOTO TOOL.**

18 *An employer who uses the photo matching tool used*
 19 *as part of the E-Verify System shall match the photo tool*
 20 *photograph to both the photograph on the identity or em-*
 21 *ployment eligibility document provided by the employee*
 22 *and to the face of the employee submitting the document*
 23 *for employment verification purposes.*

1 **SEC. 13. IDENTITY AUTHENTICATION EMPLOYMENT ELIGI-**
2 **BILITY VERIFICATION PILOT PROGRAMS.**

3 *Not later than 48 months after the date of the enact-*
4 *ment of this Act, the Secretary of Homeland Security, after*
5 *consultation with the Commissioner of Social Security and*
6 *the Director of the National Institute of Standards and*
7 *Technology, shall establish by regulation not less than 2*
8 *Identity Authentication Employment Eligibility*
9 *Verification pilot programs, each using a separate and dis-*
10 *tinct technology (the “Authentication Pilots”). The purpose*
11 *of the Authentication Pilots shall be to provide for identity*
12 *authentication and employment eligibility verification with*
13 *respect to enrolled new employees which shall be available*
14 *to subject employers who elect to participate in either of*
15 *the Authentication Pilots. Any subject employer may cancel*
16 *the employer’s participation in the Authentication Pilot*
17 *after one year after electing to participate without prejudice*
18 *to future participation. The Secretary shall report to the*
19 *Committee on the Judiciary of the House of Representatives*
20 *and the Committee on the Judiciary of the Senate the Sec-*
21 *retary’s findings on the Authentication Pilots, including the*
22 *authentication technologies chosen, not later than 12*
23 *months after commencement of the Authentication Pilots.*

24 **SEC. 14. INSPECTOR GENERAL AUDITS.**

25 *(a) IN GENERAL.—Not later than 1 year after the date*
26 *of the enactment of this Act, the Inspector General of the*

1 *Social Security Administration shall complete audits of the*
2 *following categories in order to uncover evidence of individ-*
3 *uals who are not authorized to work in the United States:*

4 (1) *Workers who dispute wages reported on their*
5 *social security account number when they believe*
6 *someone else has used such number and name to re-*
7 *port wages.*

8 (2) *Children's social security account numbers*
9 *used for work purposes.*

10 (3) *Employers whose workers present significant*
11 *numbers of mismatched social security account num-*
12 *bers or names for wage reporting.*

13 (b) *SUBMISSION.—The Inspector General of the Social*
14 *Security Administration shall submit the audits completed*
15 *under subsection (a) to the Committee on Ways and Means*
16 *of the House of Representative and the Committee on Fi-*
17 *nance of the Senate for review of the evidence of individuals*
18 *who are not authorized to work in the United States. The*
19 *Chairmen of those Committees shall then determine infor-*
20 *mation to be shared with the Secretary of Homeland Secu-*
21 *rity so that such Secretary can investigate the unauthorized*
22 *employment demonstrated by such evidence.*

Union Calendar No. 508

113TH CONGRESS
2^D Session

H. R. 1772

[Report No. 113-677, Part I]

A BILL

To amend the Immigration and Nationality Act to make mandatory and permanent requirements relating to use of an electronic employment eligibility verification system, and for other purposes.

DECEMBER 16, 2014

Reported from the Committee on the Judiciary with an amendment

DECEMBER 16, 2014

The Committees on Ways and Means and Education and the Workforce discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed