

111<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 137

To require an employer to take action after receiving official notice that an individual's Social Security account number does not match the individual's name, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Mr. GALLEGLY (for himself, Mr. WILSON of South Carolina, Mr. McCAUL, and Mr. BILBRAY) 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 Labor, 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

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## A BILL

To require an employer to take action after receiving official notice that an individual's Social Security account number does not match the individual's name, 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 "Employment Eligibility  
5 Verification and Anti-Identity Theft Act".

1 **SEC. 2. REQUIRING AGENCIES TO SEND “NO-MATCH” LET-**  
2 **TERS.**

3 (a) SOCIAL SECURITY ADMINISTRATION.—The Com-  
4 missioner of the Social Security Administration shall send  
5 a written notice to a person or entity each time that the  
6 combination of name and Social Security account number  
7 submitted by the person or entity for an individual does  
8 not match Social Security Administration records.

9 (b) DEPARTMENT OF HOMELAND SECURITY.—The  
10 Secretary of Homeland Security shall send a written no-  
11 tice to a person or entity each time that such Secretary  
12 determines that an immigration status document or em-  
13 ployment authorization document presented or referenced  
14 by an individual during the process of completing the at-  
15 testations required by the person or entity for employment  
16 eligibility verification was assigned to another person, or  
17 that there is no agency record that the document was as-  
18 signed to any person.

19 **SEC. 3. REQUIRING EMPLOYERS TO TAKE ACTION UPON**  
20 **RECEIPT OF A “NO-MATCH” LETTER.**

21 Beginning on the date that is 6 months after the date  
22 of the enactment of this Act, a person or entity that has  
23 received a written notice under section 2 shall, within 3  
24 business days of receiving such notice, verify the individ-  
25 ual’s employment authorization and identity through the  
26 verification system established under section 4.

1 **SEC. 4. VERIFICATION SYSTEM.**

2 Not later than 6 months after the date of enactment  
3 of this Act, the Secretary of Homeland Security, in con-  
4 sultation with the Commissioner of the Social Security Ad-  
5 ministration, as appropriate, shall establish and admin-  
6 ister a verification system through which persons or enti-  
7 ties that have received written notice under section 2 shall  
8 verify an individual's employment authorization and iden-  
9 tity.

10 **SEC. 5. DESIGN AND OPERATION OF SYSTEM.**

11 The verification system established under section 4  
12 shall be designed and operated—

13 (1) to maximize its reliability and ease of use,  
14 consistent with insulating and protecting the privacy  
15 and security of the underlying information;

16 (2) to respond to all required inquiries under  
17 this Act regarding whether individuals are author-  
18 ized to be employed and to register all times when  
19 such inquiries are not received;

20 (3) with appropriate administrative, technical,  
21 and physical safeguards to prevent unauthorized dis-  
22 closure of personal information; and

23 (4) to have reasonable safeguards against the  
24 system's resulting in unlawful discriminatory prac-  
25 tices based on national origin or citizenship status,  
26 including—

1 (A) the selective or unauthorized use of the  
2 system to verify eligibility;

3 (B) the use of the system prior to an offer  
4 of employment; or

5 (C) the exclusion of certain individuals  
6 from consideration for employment as a result  
7 of a perceived likelihood that additional  
8 verification will be required, beyond what is re-  
9 quired for most job applicants.

10 **SEC. 6. EXTENSION OF TIME.**

11 If a person or entity in good faith attempts to make  
12 an inquiry during the time period specified and the  
13 verification system established under section 4 has reg-  
14 istered that not all inquiries were received during such  
15 time, the person or entity may make an inquiry on the  
16 first subsequent working day in which the verification sys-  
17 tem registers that it has received all inquiries. If the  
18 verification system cannot receive inquiries at all times  
19 during a day, the person or entity merely has to assert  
20 that the entity attempted to make the inquiry on that day  
21 for the previous sentence to apply to such an inquiry, and  
22 does not have to provide any additional proof concerning  
23 such inquiry.

1 **SEC. 7. RETENTION OF PROOF OF VERIFICATION COMPLE-**  
2 **TION.**

3 After completion of the verification process estab-  
4 lished under section 4, a person or entity shall retain a  
5 paper, microfiche, microfilm, or electronic version of the  
6 form received through the verification process (or, in the  
7 case of a telephonic verification, a paper, microfiche,  
8 microfilm, or electronic record of the telephonic  
9 verification code number) and make it available for inspec-  
10 tion by officers of the Department of Homeland Security,  
11 the Special Counsel for Immigration-Related Unfair Em-  
12 ployment Practices, or the Department of Labor for 3  
13 years after the date on which the form or telephonic  
14 verification code number was received.

15 **SEC. 8. TERMINATION OF EMPLOYMENT.**

16 (a) **BURDEN ON INDIVIDUAL TO RESOLVE ER-**  
17 **RORS.**—If a person or entity has received an initial  
18 nonverification regarding an individual from the  
19 verification system established under section 4, the person  
20 or entity shall notify the individual in writing within 1  
21 business day of such receipt. In such notice, the person  
22 or entity shall advise the individual that the burden is on  
23 the individual to resolve any error in the verification mech-  
24 anism not later than 30 days after the date on which the  
25 notice is issued. Such notice shall also state that the per-  
26 son or entity shall be required to verify once again the

1 individual's employment authorization and identity  
2 through the verification system established under section  
3 4, and to terminate any employment in the United States,  
4 and any recruitment, hiring, or referral for employment  
5 in the United States, of the individual, if a final  
6 nonverification is received.

7 (b) **ADDITIONAL VERIFICATION.**—A person or entity  
8 that has issued a notice under subsection (a) shall, within  
9 33 business days of such issuance, verify once again the  
10 individual's employment authorization and identity  
11 through the verification system established under section  
12 4. Sections 6 and 7 shall apply to such final verification  
13 in the same manner as such sections applied to the initial  
14 verification.

15 **SEC. 9. FINAL VERIFICATION.**

16 (a) Within 7 days of receiving final nonverification  
17 for an individual, the person or entity issued a notice  
18 under section 8(a) of this Act shall provide the Commis-  
19 sioner of Social Security with a copy of such individual's  
20 verification form as described in section 274A(b)(3) of the  
21 Immigration and Nationality Act (8 U.S.C. 1324a(b)(3))  
22 in addition to any other information regarding the last  
23 known name, address, and location of such individual.

1 (b) Within 3 business days of receiving such notifica-  
2 tion, the Commissioner of Social Security shall provide  
3 such information to the Secretary of Homeland Security.

4 **SEC. 10. EMPLOYER VIOLATIONS.**

5 A person or entity shall be considered to have violated  
6 section 274A(a)(1)(A) of the Immigration and Nationality  
7 Act (8 U.S.C. 1324a(a)(1)(A)) if the person or entity—

8 (1) continues to employ in the United States, or  
9 recruits, hires, or refers for employment in the  
10 United States, an individual after receiving a final  
11 nonverification regarding an individual from the  
12 verification system established under section 4; or

13 (2) otherwise fails to take an action required  
14 under this Act.

15 **SEC. 11. REQUIREMENT TO PARTICIPATE IN PILOT PRO-**  
16 **GRAM.**

17 Section 402(e)(1) of the Illegal Immigration Reform  
18 and Immigrant Responsibility Act of 1996 (8 U.S.C.  
19 1324a note) is amended by adding at the end the fol-  
20 lowing:

21 “(C) Any person or entity that, in a cal-  
22 endar year, receives written notice under section  
23 2 of this Act with respect to more than 20 indi-  
24 viduals, shall elect to participate in the basic  
25 pilot program described in section 403(a) and

1           shall comply with the terms and conditions of  
2           such election.”.

3 **SEC. 12. LIMITATION ON USE.**

4           (a) **IN GENERAL.**—Notwithstanding any other provi-  
5 sion of law, nothing in this Act shall be construed to per-  
6 mit or allow any department, bureau, or other agency of  
7 the United States Government to utilize any information,  
8 data base, or other records assembled under this Act for  
9 any other purpose other than as provided for under this  
10 Act.

11          (b) **NO NATIONAL IDENTIFICATION CARD.**—Nothing  
12 in this Act shall be construed to authorize, directly or indi-  
13 rectly, the issuance or use of national identification cards  
14 or the establishment of a national identification card.

15 **SEC. 13. FEDERAL TORT CLAIMS ACT REMEDY.**

16          If an individual alleges that the individual would not  
17 have been dismissed from a job but for an error of the  
18 verification mechanism, the individual may seek com-  
19 pensation only through the mechanism of chapter 171 of  
20 title 28, United States Code (popularly known as the Fed-  
21 eral Tort Claims Act), and injunctive relief to correct such  
22 error. No class action may be brought under this Act.



1 **SEC. 14. PROTECTION FROM LIABILITY FOR ACTIONS**  
2 **TAKEN ON THE BASIS OF INFORMATION.**

3 No person or entity shall be civilly or criminally liable  
4 for any action taken in good faith reliance on information  
5 provided through the employment eligibility verification  
6 mechanism established under this Act.

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