

111TH CONGRESS
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H. R. 98

To amend the Immigration and Nationality Act to enforce restrictions on employment in the United States of unauthorized aliens through the use of improved Social Security cards and an Employment Eligibility Database, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 6, 2009

Mr. DREIER (for himself, Mr. REYES, Mr. CALVERT, Mr. BILBRAY, and Mr. ISSA) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on the Judiciary, Homeland Security, 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

A BILL

To amend the Immigration and Nationality Act to enforce restrictions on employment in the United States of unauthorized aliens through the use of improved Social Security cards and an Employment Eligibility Database, 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 “Illegal Immigration
5 Enforcement and Social Security Protection Act of 2009”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

3 (1) This Act is an appropriate response to the
4 need to improve procedures to preclude unauthorized
5 employment of aliens and prevent the entry of ter-
6 rorists into the United States.

7 (2) The economic disparity between the United
8 States and other countries is a prime factor in the
9 desire of foreign nationals to enter the United States
10 illegally.

11 (3) Federal law prohibits the employment of
12 such illegal immigrants in the United States.

13 (4) Nonetheless, illegal immigrants routinely
14 find employment within the United States.

15 (5) Such employment of illegal immigrants un-
16 dermines our system of lawful immigration and has
17 a negative impact on job opportunities for American
18 workers.

19 (6) Employers in the United States currently
20 have difficulty establishing the veracity of the iden-
21 tity documents of prospective employees in order to
22 verify their work eligibility.

23 (7) Pilot programs undertaken by the Federal
24 Government demonstrate that a nationwide employ-
25 ment verification system is feasible.

1 (8) Social Security cards are routinely required
2 to be presented to employers by new employees.

3 (9) Social Security cards remain vulnerable to
4 counterfeiting and fraud.

5 (10) Social Security cards with improved de-
6 fenses against fraudulent use would serve as the best
7 vehicle by which to determine employment eligibility.

8 (11) The Social Security card should not be-
9 come a national identification card.

10 **SEC. 3. AMENDMENTS TO THE SOCIAL SECURITY ACT RE-**
11 **LATING TO IDENTIFICATION OF INDIVID-**
12 **UALS.**

13 (a) ANTIFRAUD MEASURES FOR SOCIAL SECURITY
14 CARDS.—Section 205(c)(2)(G) of the Social Security Act
15 (42 U.S.C. 405(c)(2)(G)) is amended—

16 (1) by inserting “(i)” after “(G)”;

17 (2) by striking “banknote paper” and inserting
18 “durable plastic or similar material”; and

19 (3) by adding at the end the following new
20 clauses:

21 “(ii) Each Social Security card issued under this sub-
22 paragraph shall include an encrypted machine-readable
23 electronic identification strip which shall be unique to the
24 individual to whom the card is issued. The Commissioner
25 shall develop such electronic identification strip in con-

1 sultation with the Secretary of Homeland Security, so as
2 to enable employers to use such strip in accordance with
3 section 274A(a)(1)(B) of the Immigration and Nationality
4 Act (8 U.S.C. 1324a(a)(1)(B)) to obtain access to the Em-
5 ployment Eligibility Database established by such Sec-
6 retary pursuant to section 4 of such Act with respect to
7 the individual to whom the card is issued.

8 “(iii) Each Social Security card issued under this
9 subparagraph shall contain—

10 “(I) physical security features designed to pre-
11 vent tampering, counterfeiting, or duplication of the
12 card for fraudulent purposes; and

13 “(II) a disclaimer stating the following: ‘This
14 card shall not be used for the purpose of identifica-
15 tion.’.

16 “(iv) The Commissioner shall provide for the issuance
17 (or reissuance) to each individual who—

18 “(I) has been assigned a Social Security ac-
19 count number under subparagraph (B),

20 “(II) has attained the minimum age applicable,
21 in the jurisdiction in which such individual engages
22 in employment, for legally engaging in such employ-
23 ment, and

1 “(III) files application for such card under this
2 clause in such form and manner as shall be pre-
3 scribed by the Commissioner,
4 a Social Security card which meets the preceding require-
5 ments of this subparagraph and which includes a recent
6 digitized photograph of the individual to whom the card
7 is issued.

8 “(v) The Commissioner shall maintain an ongoing ef-
9 fort to develop measures in relation to the Social Security
10 card and the issuance thereof to preclude fraudulent use
11 thereof.”.

12 (b) SHARING OF INFORMATION WITH THE SEC-
13 RETARY OF HOMELAND SECURITY.—Section 205(c)(2) of
14 such Act is amended by adding at the end the following
15 new subparagraph:

16 “(I) Upon the issuance of a Social Security account
17 number under subparagraph (B) to any individual or the
18 issuance of a Social Security card under subparagraph (G)
19 to any individual, the Commissioner of Social Security
20 shall transmit to the Secretary of Homeland Security such
21 information received by the Commissioner in the individ-
22 ual’s application for such number or such card as such
23 Secretary determines necessary and appropriate for ad-
24 ministration of the Illegal Immigration Enforcement and
25 Social Security Protection Act of 2009. Such information

1 shall be used solely for inclusion in the Employment Eligi-
2 bility Database established pursuant to section 4 of such
3 Act.”.

4 (c) EFFECTIVE DATES.—The amendment made by
5 subsection (a) shall apply with respect to Social Security
6 cards issued after 2 years after the date of the enactment
7 of this Act. The amendment made by subsection (b) shall
8 apply with respect to the issuance of Social Security ac-
9 count numbers and Social Security cards after 2 years
10 after the date of the enactment of this Act.

11 **SEC. 4. EMPLOYMENT ELIGIBILITY DATABASE.**

12 (a) IN GENERAL.—The Secretary of Homeland Secu-
13 rity shall establish and maintain an Employment Eligi-
14 bility Database. The Database shall include data com-
15 prised of the citizenship status of individuals and the work
16 and residency eligibility information (including expiration
17 dates) with respect to individuals who are not citizens or
18 nationals of the United States but are authorized to work
19 in the United States. Such data shall include all such data
20 maintained by the Department of Homeland Security as
21 of the date of the establishment of such database and in-
22 formation obtained from the Commissioner of Social Secu-
23 rity pursuant to section 205(c)(2)(I) of the Social Security
24 Act. The Secretary shall maintain ongoing consultations

1 with the Commissioner to ensure efficient and effective op-
2 eration of the Database.

3 (b) INCORPORATION OF ONGOING PILOT PRO-
4 GRAMS.—To the extent that the Secretary determines ap-
5 propriate in furthering the purposes of subsection (a), the
6 Secretary may incorporate the information, processes, and
7 procedures employed in connection with the Citizen Attes-
8 tation Verification Pilot Program and the Basic Pilot Pro-
9 gram into the operation and maintenance of the Database
10 under subsection (a).

11 (c) CONFIDENTIALITY.—

12 (1) IN GENERAL.—No officer or employee of
13 the Department of Homeland Security shall have ac-
14 cess to any information contained in the Database
15 for any purpose other than—

16 (A) the establishment of a system of
17 records necessary for the effective administra-
18 tion of this Act; or

19 (B) any other purpose the Secretary of
20 Homeland Security deems to be in the national
21 security interests of the United States.

22 (2) RESTRICTION.—The Secretary shall restrict
23 access to such information to officers and employees
24 of the United States whose duties or responsibilities

1 require access for the purposes described in para-
2 graph (1).

3 (3) OTHER SAFEGUARDS.—The Secretary shall
4 provide such other safeguards as the Secretary de-
5 termines to be necessary or appropriate to protect
6 the confidentiality of information contained in the
7 Database.

8 (4) CRIMINAL PENALTIES.—Whoever accesses
9 or uses information in the Employment Eligibility
10 Database without authority to do so, or for an unau-
11 thorized purpose, shall be fined under title 18,
12 United States Code, imprisoned for a term of not
13 less than 5, and not more than 7, years, or both.

14 (d) DEADLINE FOR MEETING REQUIREMENTS.—The
15 Secretary shall complete the establishment of the Data-
16 base and provide for the efficient and effective operation
17 of the Database in accordance with this section not later
18 than 2 years after the date of the enactment of this Act.

19 **SEC. 5. REQUIREMENTS RELATING TO INDIVIDUALS COM-**
20 **MENCING WORK IN THE UNITED STATES.**

21 (a) REQUIREMENTS FOR EMPLOYERS AND EMPLOY-
22 EES.—Section 274A(a)(1) of the Immigration and Nation-
23 ality Act (8 U.S.C. 1324a(a)(1)) is amended to read as
24 follows:

25 “(1) IN GENERAL.—

1 “(A) REQUIREMENTS FOR EMPLOYEES.—

2 No individual may commence employment with
3 an employer in the United States unless such
4 individual has—

5 “(i) obtained a Social Security card
6 issued by the Commissioner of Social Secu-
7 rity meeting the requirements of section
8 205(c)(2)(G)(iii) of the Social Security
9 Act; and

10 “(ii) displayed such card to the em-
11 ployer pursuant to the employer’s request
12 for purposes of the verification required
13 under subparagraph (B).

14 “(B) REQUIREMENTS FOR EMPLOYERS.—

15 “(i) IN GENERAL.—No employer may
16 hire for employment an individual in the
17 United States in any capacity unless such
18 employer verifies under this subparagraph
19 that such individual has in his or her pos-
20 session a Social Security card issued to
21 such individual pursuant to section
22 205(c)(2)(G) of the Social Security Act
23 which bears a photograph of such indi-
24 vidual and that such individual is author-
25 ized to work in the United States in such

1 capacity. Such verification shall be made in
2 accordance with procedures prescribed by
3 the Secretary of Homeland Security for the
4 purposes of ensuring against fraudulent
5 use of the card and accurate and prompt
6 verification of the authorization of such in-
7 dividual to work in the United States in
8 such capacity.

9 “(ii) VERIFICATION PROCEDURES.—

10 Such procedures shall include use of—

11 “(I) a phone verification system
12 which shall be established by the Sec-
13 retary; or

14 “(II) a card-reader verification
15 system employing a device approved
16 by the Secretary as capable of reading
17 the electronic identification strip
18 borne by the card so as to verify the
19 identity of the card holder and the
20 card holder’s authorization to work,
21 and which is made available at mini-
22 mal cost to the employer.

23 “(iii) SECURITY AND EFFECTIVE-
24 NESS.—The Secretary shall ensure that
25 the phone verification system described in

1 subparagraph (I) of clause (ii) is as secure
2 and effective as the card-reader verification
3 system described in subparagraph (II) of
4 such clause.

5 “(iv) ACCESS TO DATABASE.—The
6 Secretary shall ensure that, by means of
7 such procedures, the employer will have
8 such access to the Employment Eligibility
9 Database established and operated by the
10 Secretary pursuant to section 4 of the Ille-
11 gal Immigration Enforcement and Social
12 Security Protection Act of 2009 as to en-
13 able the employer to obtain information,
14 relating to the citizenship, residency, and
15 work eligibility of the individual seeking
16 employment by the employer in any capac-
17 ity, which is necessary to inform the em-
18 ployer as to whether the individual is au-
19 thorized to work for the employer in the
20 United States in such capacity.

21 “(v) DEFENSE.—An employer who es-
22 tablishes that the employer complied in
23 good faith with the requirements of this
24 subparagraph shall not be liable for hiring
25 an unauthorized alien, if—

1 “(I) such hiring occurred due to
2 an error in the phone verification sys-
3 tem, the card-reader verification sys-
4 tem, or the Employment Eligibility
5 Database which was unknown to the
6 employer at the time of such hiring;
7 and

8 “(II) the employer terminates
9 that employment of the alien upon
10 being informed of the error.”.

11 (b) CONFORMING AMENDMENTS.—Section 274A of
12 the Immigration and Nationality Act (8 U.S.C. 1324a) is
13 amended—

14 (1) in subsection (a), by striking paragraphs
15 (3), (5), and (6) and redesignating paragraphs (4)
16 and (7) as paragraphs (3) and (4), respectively;

17 (2) in subsection (b)—

18 (A) by striking “Attorney General” each
19 place such term appears and inserting “Sec-
20 retary of Homeland Security”;

21 (B) by amending the matter preceding
22 paragraph (2) to read as follows:

23 “(b) EMPLOYMENT VERIFICATION FORMS.—

24 “(1) EMPLOYER ATTESTATION OF COMPLI-
25 ANCE.—The verification procedures prescribed under

1 subsection (a)(1)(B) shall include an attestation,
2 made under penalty of perjury and on a form des-
3 ignated or established by the Secretary of Homeland
4 Security by regulation, that the employer has com-
5 plied with such procedures.”; and

6 (C) by striking paragraph (6);

7 (3) by striking subsection (d); and

8 (4) by amending subsection (h)(3) to read as
9 follows:

10 “(3) DEFINITIONS.—For purposed of this sec-
11 tion:

12 “(A) The term ‘authorized to work in the
13 United States’, when applied to an individual,
14 means that the individual is not an unauthor-
15 ized alien.

16 “(B) The term ‘employer’ means—

17 “(i) any person or entity who hires an
18 individual; or

19 “(ii) any individual earning self-em-
20 ployment income (as defined in section
21 211(b) of the Social Security Act (42
22 U.S.C. 411(b))).

23 “(C) The term ‘employee’ shall have the
24 meaning given such term in section 210(j) of
25 the Social Security Act (42 U.S.C. 410(j)).

1 “(D) The term ‘hire’ means to hire an in-
2 dividual, or to recruit or refer for a fee an indi-
3 vidual, for employment in the United States.

4 “(E) The term ‘unauthorized alien’ means,
5 with respect to the employment of an alien at
6 a particular time, that the alien is not at that
7 time—

8 “(i) an alien lawfully admitted for
9 permanent residence; or

10 “(ii) authorized to be so employed by
11 this Act or by the Secretary of Homeland
12 Security.”.

13 (c) EFFECTIVE DATE.—The amendments made by
14 this section shall take effect 2 years after the date of the
15 enactment of this Act and shall apply to employment of
16 any individual in any capacity commencing on or after
17 such effective date.

18 **SEC. 6. COMPLIANCE.**

19 (a) IN GENERAL.—Section 274A(e) of the Immigra-
20 tion and Nationality Act (8 U.S.C. 1324a(e)) is amended
21 to read as follows:

22 “(e) COMPLIANCE.—

23 “(1) CIVIL PENALTY.—

24 “(A) IN GENERAL.—The Secretary of
25 Homeland Security may assess a penalty, pay-

1 able to the Secretary, against any employer
2 who—

3 “(i) hires an individual for employ-
4 ment in the United States in any capacity
5 who is known by the employer not to be
6 authorized to work in the United States in
7 such capacity; or

8 “(ii) fails to comply with the proce-
9 dures prescribed by the Secretary pursuant
10 to this section in connection with the em-
11 ployment of any individual.

12 “(B) AMOUNT.—Such penalty shall not ex-
13 ceed \$50,000 for each occurrence of a violation
14 described in subparagraph (A) with respect to
15 the individual, plus, in the event of the removal
16 of such individual from the United States based
17 on findings developed in connection with the as-
18 sessment or collection of such penalty, the costs
19 incurred by the Federal Government, cooper-
20 ating State and local governments, and State
21 and local law enforcement agencies, in connec-
22 tion with such removal.

23 “(2) ACTIONS BY SECRETARY.—If any person is
24 assessed under paragraph (1) and fails to pay the
25 assessment when due, or any person otherwise fails

1 to meet any requirement of this section, the Sec-
2 retary may bring a civil action in any district court
3 of the United States within the jurisdiction of which
4 such person's assets are located or in which such
5 person resides or is found for the recovery of the
6 amount of the assessment or for appropriate equi-
7 table relief to redress the violation or enforce the
8 provisions of this section, and process may be served
9 in any other district. The district courts of the
10 United States shall have jurisdiction over actions
11 brought under this section by the Secretary without
12 regard to the amount in controversy.

13 “(3) CRIMINAL PENALTY.—Any person who—

14 “(A) hires for employment any individual
15 in the United States in any capacity who such
16 person knows not to be authorized to work in
17 the United States in such capacity; or

18 “(B) hires for employment any individual
19 in the United States and fails to comply with
20 the procedures prescribed by the Secretary pur-
21 suant to section 5(b) in connection with the hir-
22 ing of such individual;

23 shall upon conviction be fined in accordance with
24 title 18, United States Code, or imprisoned for not
25 more than 5 years, or both”.

1 (b) CONFORMING AMENDMENTS.—Section 274A of
2 the Immigration and Nationality Act (8 U.S.C. 1324a) is
3 amended—

4 (1) in subsection (g)(2), by striking “hearing
5 under subsection (e),” and inserting “hearing,”;

6 (2) by striking subsection (f); and

7 (3) by redesignating subsections (e), (g), and
8 (h) as subsections (d), (e), and (f), respectively.

9 (c) EFFECTIVE DATE.—The amendments made by
10 this section shall take effect 2 years after the date of the
11 enactment of this Act and shall apply to employment of
12 any individual in any capacity commencing on or after
13 such effective date.

14 **SEC. 7. GRANTS FOR TECHNOLOGIES TO COMBAT ILLEGAL**
15 **BORDER CROSSINGS.**

16 (a) IN GENERAL.—The Secretary of Homeland Secu-
17 rity is authorized to make grants for the purpose of im-
18 proving and developing new technologies to combat illegal
19 border crossings into the United States.

20 (b) AUTHORIZATION OF APPROPRIATIONS.—There
21 are authorized to be appropriated to carry out subsection
22 (a) \$10,000,000 for each of fiscal years 2009 through
23 2011.

1 **SEC. 8. INCREASE IN PERSONNEL ENSURING COMPLIANCE**
2 **WITH PROHIBITIONS ON UNLAWFUL EMPLOY-**
3 **MENT OF ALIENS.**

4 Beginning in fiscal year 2009, the Secretary of
5 Homeland Security shall, subject to the availability of ap-
6 propriations for such purpose, increase by not less than
7 10,000 the number of positions within the Department of
8 Homeland Security for full-time personnel charged with
9 carrying out section 274A(d) of the Immigration and Na-
10 tionality Act (8 U.S.C. 1324a(d)), as amended by section
11 6 of this Act, above the number of such positions for which
12 funds were made available for fiscal year 2004.

13 **SEC. 9. INTEGRATION OF FINGERPRINTING DATABASES.**

14 The Secretary of Homeland Security and the Attor-
15 ney General of the United States shall jointly undertake
16 to integrate the fingerprint database maintained by the
17 Department of Homeland Security with the fingerprint
18 database maintained by the Federal Bureau of Investiga-
19 tion. The integration of databases pursuant to this section
20 shall be completed not later than 2 years after the date
21 of the enactment of this Act.

22 **SEC. 10. AUTHORIZATIONS OF APPROPRIATIONS.**

23 (a) DEPARTMENT OF HOMELAND SECURITY.—Ex-
24 cept as otherwise provided in this Act, there are author-
25 ized to be appropriated to the Department of Homeland
26 Security for each fiscal year beginning on or after October

1 1, 2009, such sums as may be necessary to carry out this
2 Act and the amendments made by this Act, of which not
3 less than \$100,000,000 shall be for the purpose of car-
4 rying out section 274A(d) of the Immigration and Nation-
5 ality Act (8 U.S.C. 1324a(d)), as amended by section 6
6 of this Act.

7 (b) SOCIAL SECURITY ADMINISTRATION.—There are
8 authorized to be appropriated to the Social Security Ad-
9 ministration for each fiscal year beginning on or after Oc-
10 tober 1, 2009, such sums as are necessary to carry out
11 the amendments made by section 3.

12 **SEC. 11. RULES OF CONSTRUCTION.**

13 (a) IN GENERAL.—Nothing in this Act shall be con-
14 strued—

15 (1) to require the presentation of a Social Secu-
16 rity card for any purpose other than—

17 (A) for the administration and enforce-
18 ment of the Social Security laws of the United
19 States; or

20 (B) for the purpose of implementing and
21 enforcing this Act and the amendments made
22 by this Act; or

23 (2) to require the Social Security card to be
24 carried by an individual.

1 (b) NO NATIONAL IDENTIFICATION CARD.—It is the
2 policy of the United States that the Social Security card
3 shall not be used as a national identification card.

○