

113TH CONGRESS
1ST SESSION

S. 202

To expand the use of E-Verify, to hold employers accountable, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2013

Mr. GRASSLEY (for himself, Mr. BOOZMAN, Mr. CORKER, Mr. JOHANNES, Mr. LEE, Mr. SESSIONS, Mr. VITTER, Mr. WICKER, Mrs. FISCHER, Mr. HATCH, and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To expand the use of E-Verify, to hold employers accountable, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Accountability Through Electronic Verification Act”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Permanent reauthorization.
- Sec. 3. Mandatory use of E-Verify.
- Sec. 4. Consequences of failure to participate.
- Sec. 5. Preemption; liability.

Sec. 6. Expanded use of E-Verify.
 Sec. 7. Reverification.
 Sec. 8. Holding employers accountable.
 Sec. 9. Information sharing.
 Sec. 10. Form I-9 Process.
 Sec. 11. Algorithm.
 Sec. 12. Identity theft.
 Sec. 13. Small Business Demonstration Program.

1 SEC. 2. PERMANENT REAUTHORIZATION.

2 Section 401(b) of the Illegal Immigration Reform and
 3 Immigrant Responsibility Act of 1996 (division C of Pub-
 4 lic Law 104–208; 8 U.S.C. 1324a note) is amended by
 5 striking “Unless the Congress otherwise provides, the Sec-
 6 retary of Homeland Security shall terminate a pilot pro-
 7 gram on September 30, 2015.”.

8 SEC. 3. MANDATORY USE OF E-VERIFY.

9 (a) FEDERAL GOVERNMENT.—Section 402(e)(1) of
 10 the Illegal Immigration Reform and Immigrant Responsi-
 11 bility Act of 1996 (8 U.S.C. 1324a note) is amended—

12 (1) by amending subparagraph (A) to read as
 13 follows:

14 “(A) EXECUTIVE DEPARTMENTS AND
 15 AGENCIES.—Each department and agency of
 16 the Federal Government shall participate in E-
 17 Verify by complying with the terms and condi-
 18 tions set forth in this section.”; and

19 (2) in subparagraph (B), by striking “, that
 20 conducts hiring in a State” and all that follows and
 21 inserting “shall participate in E-Verify by complying

1 with the terms and conditions set forth in this sec-
2 tion.”.

3 (b) FEDERAL CONTRACTORS; CRITICAL EMPLOY-
4 ERS.—Section 402(e) of the Illegal Immigration Reform
5 and Immigrant Responsibility Act of 1996 (8 U.S.C.
6 1324a note) is amended—

7 (1) by redesignating paragraphs (2) and (3) as
8 paragraphs (4) and (5), respectively; and

9 (2) by inserting after paragraph (1) the fol-
10 lowing:

11 “(2) UNITED STATES CONTRACTORS.—Any per-
12 son, employer, or other entity that enters into a con-
13 tract with the Federal Government shall participate
14 in E-Verify by complying with the terms and condi-
15 tions set forth in this section.

16 “(3) DESIGNATION OF CRITICAL EMPLOYERS.—
17 Not later than 7 days after the date of the enact-
18 ment of this paragraph, the Secretary of Homeland
19 Security shall—

20 “(A) conduct an assessment of employers
21 that are critical to the homeland security or na-
22 tional security needs of the United States;

23 “(B) designate and publish a list of em-
24 ployers and classes of employers that are

1 deemed to be critical pursuant to the assess-
 2 ment conducted under subparagraph (A); and

3 “(C) require that critical employers des-
 4 ignated pursuant to subparagraph (B) partici-
 5 pate in E-Verify by complying with the terms
 6 and conditions set forth in this section not later
 7 than 30 days after the Secretary makes such
 8 designation.”.

9 (c) ALL EMPLOYERS.—Section 402 of the Illegal Im-
 10 migration Reform and Immigrant Responsibility Act of
 11 1996 (8 U.S.C. 1324a note) is amended—

12 (1) by redesignating subsection (f) as sub-
 13 section (g); and

14 (2) by inserting after subsection (e) the fol-
 15 lowing:

16 “(f) MANDATORY PARTICIPATION IN E-VERIFY.—

17 “(1) IN GENERAL.—Subject to paragraphs (2)
 18 and (3), all employers in the United States shall
 19 participate in E-Verify, with respect to all employees
 20 recruited, referred, or hired by such employer on or
 21 after the date that is 1 year after the date of the
 22 enactment of this subsection.

23 “(2) USE OF CONTRACT LABOR.—Any employer
 24 who uses a contract, subcontract, or exchange to ob-
 25 tain the labor of an individual in the United States

1 shall certify in such contract, subcontract, or ex-
2 change that the employer uses E-Verify. If such cer-
3 tification is not included in a contract, subcontract,
4 or exchange, the employer shall be deemed to have
5 violated paragraph (1).

6 “(3) INTERIM MANDATORY PARTICIPATION.—

7 “(A) IN GENERAL.—Before the date set
8 forth in paragraph (1), the Secretary of Home-
9 land Security shall require any employer or
10 class of employers to participate in E-Verify,
11 with respect to all employees recruited, referred,
12 or hired by such employer if the Secretary has
13 reasonable cause to believe that the employer is
14 or has been engaged in a material violation of
15 section 274A of the Immigration and Nation-
16 ality Act (8 U.S.C. 1324a).

17 “(B) NOTIFICATION.—Not later than 14
18 days before an employer or class of employers
19 is required to begin participating in E-Verify
20 pursuant to subparagraph (A), the Secretary
21 shall provide such employer or class of employ-
22 ers with—

23 “(i) written notification of such re-
24 quirement; and

1 “(ii) appropriate training materials to
 2 facilitate compliance with such require-
 3 ment.”.

4 **SEC. 4. CONSEQUENCES OF FAILURE TO PARTICIPATE.**

5 (a) IN GENERAL.—Section 402(e)(5) of the Illegal
 6 Immigration Reform and Immigrant Responsibility Act of
 7 1996 (8 U.S.C. 1324a note), as redesignated by section
 8 3(b)(1), is amended to read as follows:

9 “(5) CONSEQUENCES OF FAILURE TO PARTICI-
 10 PATE.—If a person or other entity that is required
 11 to participate in E-Verify fails to comply with the
 12 requirements under this title with respect to an indi-
 13 vidual—

14 “(A) such failure shall be treated as a vio-
 15 lation of section 274A(a)(1)(B) with respect to
 16 such individual; and

17 “(B) a rebuttable presumption is created
 18 that the person or entity has violated section
 19 274A(a)(1)(A).”.

20 (b) PENALTIES.—Section 274A of the Immigration
 21 and Nationality Act (8 U.S.C. 1324a) is amended—

22 (1) in subsection (e)—

23 (A) in paragraph (4)—

1 (i) in subparagraph (A), in the matter
 2 preceding clause (i), by inserting “, subject
 3 to paragraph (10),” after “in an amount”;

4 (ii) in subparagraph (A)(i), by strik-
 5 ing “not less than \$250 and not more than
 6 \$2,000” and inserting “not less than
 7 \$2,500 and not more than \$5,000”;

8 (iii) in subparagraph (A)(ii), by strik-
 9 ing “not less than \$2,000 and not more
 10 than \$5,000” and inserting “not less than
 11 \$5,000 and not more than \$10,000”;

12 (iv) in subparagraph (A)(iii), by strik-
 13 ing “not less than \$3,000 and not more
 14 than \$10,000” and inserting “not less
 15 than \$10,000 and not more than
 16 \$25,000”; and

17 (v) by amending subparagraph (B) to
 18 read as follows:

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

22 (B) in paragraph (5)—

23 (i) by inserting “, subject to para-
 24 graphs (10) through (12),” after “in an
 25 amount”;

1 (ii) by striking “\$100” and inserting
2 “\$1,000”;

3 (iii) by striking “\$1,000” and insert-
4 ing “\$25,000”;

5 (iv) by striking “the size of the busi-
6 ness of the employer being charged, the
7 good faith of the employer” and inserting
8 “the good faith of the employer being
9 charged”; and

10 (v) by adding at the end the following:
11 “Failure by a person or entity to utilize
12 the employment eligibility verification sys-
13 tem as required by law, or providing infor-
14 mation to the system that the person or
15 entity knows or reasonably believes to be
16 false, shall be treated as a violation of sub-
17 section (a)(1)(A).”; and

18 (C) by adding at the end the following:

19 “(10) EXEMPTION FROM PENALTY.—In the
20 case of imposition of a civil penalty under paragraph
21 (4)(A) with respect to a violation of subsection
22 (a)(1)(A) or (a)(2) for hiring or continuation of em-
23 ployment or recruitment or referral by person or en-
24 tity and in the case of imposition of a civil penalty
25 under paragraph (5) for a violation of subsection

1 (a)(1)(B) for hiring or recruitment or referral by a
2 person or entity, the penalty otherwise imposed may
3 be waived or reduced if the violator establishes that
4 the violator acted in good faith.

5 “(11) AUTHORITY TO DEBAR EMPLOYERS FOR
6 CERTAIN VIOLATIONS.—

7 “(A) IN GENERAL.—If a person or entity
8 is determined by the Secretary of Homeland Se-
9 curity to be a repeat violator of paragraph
10 (1)(A) or (2) of subsection (a), or is convicted
11 of a crime under this section, such person or
12 entity may be considered for debarment from
13 the receipt of Federal contracts, grants, or co-
14 operative agreements in accordance with the de-
15 barment standards and pursuant to the debar-
16 ment procedures set forth in the Federal Acqui-
17 sition Regulation.

18 “(B) DOES NOT HAVE CONTRACT, GRANT,
19 AGREEMENT.—If the Secretary of Homeland
20 Security or the Attorney General wishes to have
21 a person or entity considered for debarment in
22 accordance with this paragraph, and such an
23 person or entity does not hold a Federal con-
24 tract, grant or cooperative agreement, the Sec-
25 retary or Attorney General shall refer the mat-

1 ter to the Administrator of General Services to
2 determine whether to list the person or entity
3 on the List of Parties Excluded from Federal
4 Procurement, and if so, for what duration and
5 under what scope.

6 “(C) HAS CONTRACT, GRANT, AGREE-
7 MENT.—If the Secretary of Homeland Security
8 or the Attorney General wishes to have a per-
9 son or entity considered for debarment in ac-
10 cordance with this paragraph, and such person
11 or entity holds a Federal contract, grant or co-
12 operative agreement, the Secretary or Attorney
13 General shall advise all agencies or departments
14 holding a contract, grant, or cooperative agree-
15 ment with the person or entity of the Govern-
16 ment’s interest in having the person or entity
17 considered for debarment, and after soliciting
18 and considering the views of all such agencies
19 and departments, the Secretary or Attorney
20 General may waive the operation of this para-
21 graph or refer the matter to any appropriate
22 lead agency to determine whether to list the
23 person or entity on the List of Parties Excluded
24 from Federal Procurement, and if so, for what
25 duration and under what scope.

1 “(D) REVIEW.—Any decision to debar a
 2 person or entity under in accordance with this
 3 paragraph shall be reviewable pursuant to part
 4 9.4 of the Federal Acquisition Regulation.”;
 5 and
 6 (2) in subsection (f)—

7 (A) by amending paragraph (1) to read as
 8 follows:

9 “(1) CRIMINAL PENALTY.—Any person or enti-
 10 ty which engages in a pattern or practice of viola-
 11 tions of subsection (a)(1) or (2) shall be fined not
 12 more than \$15,000 for each unauthorized alien with
 13 respect to which such a violation occurs, imprisoned
 14 for not less than 1 year and not more than 10 years,
 15 or both, notwithstanding the provisions of any other
 16 Federal law relating to fine levels.”; and

17 (B) in paragraph (2), by striking “Attor-
 18 ney General” each place it appears and insert-
 19 ing “Secretary of Homeland Security”.

20 **SEC. 5. PREEMPTION; LIABILITY.**

21 Section 402 of the Illegal Immigration Reform and
 22 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a
 23 note), as amended by this Act, is further amended by add-
 24 ing at the end the following:

25 “(h) LIMITATION ON STATE AUTHORITY.—

1 “(1) PREEMPTION.—A State or local govern-
 2 ment may not prohibit a person or other entity from
 3 verifying the employment authorization of new hires
 4 or current employees through E-Verify.

5 “(2) LIABILITY.—A person or other entity that
 6 participates in E-Verify may not be held liable under
 7 any Federal, State, or local law for any employment-
 8 related action taken with respect to the wrongful
 9 termination of an individual in good faith reliance on
 10 information provided through E-Verify.”.

11 **SEC. 6. EXPANDED USE OF E-VERIFY.**

12 Section 403(a)(3)(A) of the Illegal Immigration Re-
 13 form and Immigrant Responsibility Act of 1996 (8 U.S.C.
 14 1324a note) is amended to read as follows:

15 “(A) IN GENERAL.—

16 “(i) BEFORE HIRING.—The person or
 17 other entity may verify the employment eli-
 18 gibility of an individual through E-Verify
 19 before the individual is hired, recruited, or
 20 referred if the individual consents to such
 21 verification. If an employer receives a ten-
 22 tative nonconfirmation for an individual,
 23 the employer shall comply with procedures
 24 prescribed by the Secretary, including—

1 “(I) providing the individual em-
2 ployees with private, written notifica-
3 tion of the finding and written refer-
4 ral instructions;

5 “(II) allowing the individual to
6 contest the finding; and

7 “(III) not taking adverse action
8 against the individual if the individual
9 chooses to contest the finding.

10 “(ii) AFTER EMPLOYMENT OFFER.—
11 The person or other entity shall verify the
12 employment eligibility of an individual
13 through E-Verify not later than 3 days
14 after the date of the hiring, recruitment, or
15 referral, as the case may be.

16 “(iii) EXISTING EMPLOYEES.—Not
17 later than 3 years after the date of the en-
18 actment of the Accountability Through
19 Electronic Verification Act, the Secretary
20 shall require all employers to use E-Verify
21 to verify the identity and employment eligi-
22 bility of any individual who has not been
23 previously verified by the employer through
24 E-Verify.”.

1 **SEC. 7. REVERIFICATION.**

2 Section 403(a) of the Illegal Immigration Reform and
3 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a
4 note) is amended by adding at the end the following:

5 “(5) REVERIFICATION.—Each person or other
6 entity participating in E-Verify shall use the E-
7 Verify confirmation system to reverify the work au-
8 thorization of any individual not later than 3 days
9 after the date on which such individual’s employ-
10 ment authorization is scheduled to expire (as indi-
11 cated by the Secretary or the documents provided to
12 the employer pursuant to section 274A(b) of the Im-
13 migration and Nationality Act (8 U.S.C. 1324a(b))),
14 in accordance with the procedures set forth in this
15 subsection and section 402.”.

16 **SEC. 8. HOLDING EMPLOYERS ACCOUNTABLE.**

17 (a) CONSEQUENCES OF NONCONFIRMATION.—Sec-
18 tion 403(a)(4)(C) of the Illegal Immigration Reform and
19 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a
20 note) is amended to read as follows:

21 “(C) CONSEQUENCES OF NONCONFIRMA-
22 TION.—

23 “(i) TERMINATION AND NOTIFICA-
24 TION.—If the person or other entity re-
25 ceives a final nonconfirmation regarding an

1 individual, the employer shall imme-
2 diately—

3 “(I) terminate the employment,
4 recruitment, or referral of the indi-
5 vidual; and

6 “(II) submit to the Secretary any
7 information relating to the individual
8 that the Secretary determines would
9 assist the Secretary in enforcing or
10 administering United States immigra-
11 tion laws.

12 “(ii) CONSEQUENCE OF CONTINUED
13 EMPLOYMENT.—If the person or other en-
14 tity continues to employ, recruit, or refer
15 the individual after receiving final noncon-
16 firmation, a rebuttable presumption is cre-
17 ated that the employer has violated section
18 274A of the Immigration and Nationality
19 Act (8 U.S.C. 1324a).”.

20 (b) INTERAGENCY NONCONFIRMATION REPORT.—
21 Section 405 of the Illegal Immigration Reform and Immi-
22 grant Responsibility Act of 1996 (8 U.S.C. 1324a note)
23 is amended by adding at the end the following:

24 “(c) INTERAGENCY NONCONFIRMATION REPORT.—

1 “(1) IN GENERAL.—The Director of U.S. Citi-
2 zenship and Immigration Services shall submit a
3 weekly report to the Assistant Secretary of Immigra-
4 tion and Customs Enforcement that includes, for
5 each individual who receives final nonconfirmation
6 through E-Verify—

7 “(A) the name of such individual;

8 “(B) his or her Social Security number or
9 alien file number;

10 “(C) the name and contact information for
11 his or her current employer; and

12 “(D) any other critical information that
13 the Assistant Secretary determines to be appro-
14 priate.

15 “(2) USE OF WEEKLY REPORT.—The Secretary
16 of Homeland Security shall use information provided
17 under paragraph (1) to enforce compliance of the
18 United States immigration laws.”.

19 **SEC. 9. INFORMATION SHARING.**

20 The Commissioner of Social Security, the Secretary
21 of Homeland Security, and the Secretary of the Treasury
22 shall jointly establish a program to share information
23 among such agencies that may or could lead to the identi-
24 fication of unauthorized aliens (as defined under section
25 274A(h)(3) of the Immigration and Nationality Act), in-

cluding any no-match letter and any information in the
earnings suspense file.

SEC. 10. FORM I-9 PROCESS.

Not later than 9 months after date of the enactment
of this Act, the Secretary of Homeland Security shall sub-
mit a report to Congress that contains recommendations
for—

(1) modifying and simplifying the process by
which employers are required to complete and retain
a Form I-9 for each employee pursuant to section
274A of the Immigration and Nationality Act (8
U.S.C. 1324a); and

(2) eliminating the process described in para-
graph (1).

SEC. 11. ALGORITHM.

Section 404(d) of the Illegal Immigration Reform and
Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a
note) is amended to read as follows:

“(d) DESIGN AND OPERATION OF SYSTEM.—E-
Verify shall be designed and operated—

“(1) to maximize its reliability and ease of use
by employers;

“(2) to insulate and protect the privacy and se-
curity of the underlying information;

1 “(3) to maintain appropriate administrative,
2 technical, and physical safeguards to prevent unau-
3 thorized disclosure of personal information;

4 “(4) to respond accurately to all inquiries made
5 by employers on whether individuals are authorized
6 to be employed;

7 “(5) to register any times when E-Verify is un-
8 able to receive inquiries;

9 “(6) to allow for auditing use of the system to
10 detect fraud and identify theft;

11 “(7) to preserve the security of the information
12 in all of the system by—

13 “(A) developing and using algorithms to
14 detect potential identity theft, such as multiple
15 uses of the same identifying information or doc-
16 uments;

17 “(B) developing and using algorithms to
18 detect misuse of the system by employers and
19 employees;

20 “(C) developing capabilities to detect
21 anomalies in the use of the system that may in-
22 dicate potential fraud or misuse of the system;
23 and

24 “(D) auditing documents and information
25 submitted by potential employees to employers,

1 including authority to conduct interviews with
2 employers and employees;

3 “(8) to confirm identity and work authorization
4 through verification of records maintained by the
5 Secretary, other Federal departments, States, the
6 Commonwealth of the Northern Mariana Islands, or
7 an outlying possession of the United States, as de-
8 termined necessary by the Secretary, including—

9 “(A) records maintained by the Social Se-
10 curity Administration;

11 “(B) birth and death records maintained
12 by vital statistics agencies of any State or other
13 jurisdiction in the United States;

14 “(C) passport and visa records (including
15 photographs) maintained by the Department of
16 State; and

17 “(D) State driver’s license or identity card
18 information (including photographs) maintained
19 by State department of motor vehicles;

20 “(9) to electronically confirm the issuance of
21 the employment authorization or identity document;
22 and

23 “(10) to display the digital photograph that the
24 issuer placed on the document so that the employer
25 can compare the photograph displayed to the photo-

1 graph on the document presented by the employee
 2 or, in exceptional cases, if a photograph is not avail-
 3 able from the issuer, to provide for a temporary al-
 4 ternative procedure, specified by the Secretary, for
 5 confirming the authenticity of the document.”.

6 **SEC. 12. IDENTITY THEFT.**

7 Section 1028 of title 18, United States Code, is
 8 amended—

9 (1) in subsection (a)(7), by striking “of another
 10 person” and inserting “that is not his or her own”;
 11 and

12 (2) in subsection (b)(3)—

13 (A) in subparagraph (B), by striking “or”
 14 at the end;

15 (B) in subparagraph (C), by adding “or”
 16 at the end; and

17 (C) by adding at the end the following:

18 “(D) to facilitate or assist in harboring or
 19 hiring unauthorized workers in violation of sec-
 20 tion 274, 274A, or 274C of the Immigration
 21 and Nationality Act (8 U.S.C. 1324, 1324a,
 22 and 1324c).”.

1 **SEC. 13. SMALL BUSINESS DEMONSTRATION PROGRAM.**

2 Section 403 of the Illegal Immigration Reform and
3 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a
4 note) is amended—

5 (1) by redesignating subsection (d) as sub-
6 section (e); and

7 (2) by inserting after subsection (c) the fol-
8 lowing:

9 “(d) SMALL BUSINESS DEMONSTRATION PRO-
10 GRAM.—Not later than 9 months after the date of the en-
11 actment of the Accountability Through Electronic
12 Verification Act, the Director of U.S. Citizenship and Im-
13 migration Services shall establish a demonstration pro-
14 gram that assists small businesses in rural areas or areas
15 without internet capabilities to verify the employment eli-
16 gibility of newly hired employees solely through the use
17 of publicly accessible internet terminals.”.

○