

117TH CONGRESS
1ST SESSION

S. 71

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

IN THE SENATE OF THE UNITED STATES

JANUARY 27, 2021

Mr. GRASSLEY (for himself, Ms. ERNST, Mr. INHOFE, Mrs. BLACKBURN, Mrs. CAPITO, Mr. COTTON, Mr. LEE, Mr. BOOZMAN, Mrs. HYDE-SMITH, Mr. THUNE, and Mr. WICKER) 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.
 Sec. 14. Employer Compliance Inspection Center.

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 such Act, as amended by sub-
5 section (a), is further amended—

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

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

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

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

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

22 “(B) designate and publish a list of em-
23 ployers and classes of employers that are
24 deemed to be critical pursuant to the assess-
25 ment conducted under subparagraph (A); and

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

7 (c) ALL EMPLOYERS.—Section 402 of such Act, as
 8 amended by this section, is further amended—

9 (1) by redesignating subsection (f) as sub-
 10 section (g); and

11 (2) by inserting after subsection (e) the fol-
 12 lowing:

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

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

20 “(2) USE OF CONTRACT LABOR.—Any employer
 21 who uses a contract, subcontract, or exchange to ob-
 22 tain the labor of an individual in the United States
 23 shall certify in such contract, subcontract, or ex-
 24 change that the employer, and all parties to such
 25 contract, subcontract, or exchange, use E-Verify. If

1 such certification is not included in a contract, sub-
2 contract, or exchange, the employer shall be deemed
3 to have violated paragraph (1).

4 “(3) INTERIM MANDATORY PARTICIPATION.—

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

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

21 “(i) written notification of such re-
22 quirement; and

23 “(ii) appropriate training materials to
24 facilitate compliance with such require-
25 ment.”.

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

2 (a) IN GENERAL.—Section 402(e)(5) of the Illegal
3 Immigration Reform and Immigrant Responsibility Act of
4 1996 (8 U.S.C. 1324a note), as redesignated by section
5 3(b)(1), is amended to read as follows:

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

11 “(A) such failure shall be treated as a vio-
12 lation of section 274A(a)(1)(B) of the Immigra-
13 tion and Nationality Act (8 U.S.C. 1324a) with
14 respect to such individual; and

15 “(B) a rebuttable presumption is created
16 that the person or entity has violated section
17 274A(a)(1)(A) of such Act.”.

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

20 (1) in subsection (e)—

21 (A) in paragraph (4)—

22 (i) in subparagraph (A)—

23 (I) in the matter preceding clause

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

1 (II) in clause (i), by striking “not
 2 less than \$250 and not more than
 3 \$2,000” and inserting “not less than
 4 \$2,500 and not more than \$5,000”;

5 (III) in clause (ii), by striking
 6 “not less than \$2,000 and not more
 7 than \$5,000” and inserting “not less
 8 than \$5,000 and not more than
 9 \$10,000”; and

10 (IV) in clause (iii), by striking
 11 “not less than \$3,000 and not more
 12 than \$10,000” and inserting “not less
 13 than \$10,000 and not more than
 14 \$25,000”; and

15 (ii) by amending subparagraph (B) to
 16 read as follows:

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

20 (B) in paragraph (5)—

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

1 (ii) by striking “\$100 and not more
2 than \$1,000” and inserting “\$1,000 and
3 not more than \$25,000”;

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

9 (iv) by adding at the end the fol-
10 lowing: “Failure by a person or entity to
11 utilize the employment eligibility
12 verification system as required by law, or
13 providing information to the system that
14 the person or entity knows or reasonably
15 believes to be false, shall be treated as a
16 violation of subsection (a)(1)(A).”; and

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

18 “(10) EXEMPTION FROM PENALTY.—In the
19 case of the imposition of a civil penalty under para-
20 graph (4)(A) with respect to a violation of para-
21 graph (1)(A) or (2) of subsection (a) for hiring, con-
22 tinuation of employment, recruitment, or referral by
23 a person or entity and, in the case of the imposition
24 of a civil penalty under paragraph (5) for a violation
25 of subsection (a)(1)(B) for hiring, recruitment, or

1 referral by a person or entity, the penalty otherwise
2 imposed may be waived or reduced if the violator es-
3 tablishes that the violator acted in good faith.

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

6 “(A) IN GENERAL.—If a person or entity
7 is determined by the Secretary of Homeland Se-
8 curity to be a repeat violator of paragraph
9 (1)(A) or (2) of subsection (a), or is convicted
10 of a crime under this section, the Secretary of
11 Homeland Security shall debar such person or
12 entity from the receipt of Federal contracts,
13 grants, or cooperative agreements in accordance
14 with the debarment standards and pursuant to
15 the debarment procedures set forth in the Fed-
16 eral Acquisition Regulation.

17 “(B) DOES NOT HAVE CONTRACT, GRANT,
18 AGREEMENT.—If the Secretary of Homeland
19 Security debars a person or entity in accord-
20 ance with this paragraph, and such person or
21 entity does not hold a Federal contract, grant,
22 or cooperative agreement, the Administrator of
23 General Services shall include the person or en-
24 tity on the List of Parties Excluded from Fed-
25 eral Procurement for 5 years.

1 “(C) HAS CONTRACT, GRANT, AGREE-
 2 MENT.—If the Secretary of Homeland Security
 3 debars a person or entity in accordance with
 4 this paragraph, and such person or entity holds
 5 a Federal contract, grant, or cooperative agree-
 6 ment, the Secretary—

7 “(i) shall notify all agencies or depart-
 8 ments holding a contract, grant, or cooper-
 9 ative agreement with the debarred person
 10 or entity of such debarment; and

11 “(ii) after soliciting and considering
 12 the views of all such agencies and depart-
 13 ments, may waive the operation of this
 14 paragraph.

15 “(D) REVIEW.—Any decision to debar a
 16 person or entity under in accordance with this
 17 paragraph shall be reviewable pursuant to part
 18 9.4 of the Federal Acquisition Regulation.”;
 19 and
 20 (2) in subsection (f)—

21 (A) by amending paragraph (1) to read as
 22 follows:

23 “(1) CRIMINAL PENALTY.—Any person or enti-
 24 ty which engages in a pattern or practice of viola-
 25 tions of subsection (a)(1) or (2) shall be fined not

1 more than \$30,000 for each unauthorized alien with
 2 respect to which such a violation occurs, imprisoned
 3 for not less than 1 year and not more than 10 years,
 4 or both, notwithstanding the provisions of any other
 5 Federal law relating to fine levels.”; and

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

9 **SEC. 5. PREEMPTION; LIABILITY.**

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

14 “(h) LIMITATION ON STATE AUTHORITY.—

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

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

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

2 Section 403(a)(3)(A) of the Illegal Immigration Re-
 3 form and Immigrant Responsibility Act of 1996 (8 U.S.C.
 4 1324a note) is amended to read as follows:

5 “(A) IN GENERAL.—

6 “(i) BEFORE HIRING.—The person or
 7 other entity may verify the employment eli-
 8 gibility of an individual through E-Verify
 9 before the individual is hired, recruited, or
 10 referred if the individual consents to such
 11 verification. If an employer receives a ten-
 12 tative nonconfirmation for an individual,
 13 the employer shall comply with procedures
 14 prescribed by the Secretary of Homeland
 15 Security, including—

16 “(I) providing the individual em-
 17 ployees with private, written notifica-
 18 tion of the finding and written refer-
 19 ral instructions;

20 “(II) allowing the individual to
 21 contest the finding; and

22 “(III) not taking adverse action
 23 against the individual if the individual
 24 chooses to contest the finding.

25 “(ii) AFTER EMPLOYMENT OFFER.—
 26 The person or other entity shall verify the

1 employment eligibility of an individual
2 through E-Verify not later than 3 days
3 after the date of the hiring, recruitment, or
4 referral, as the case may be.

5 “(iii) EXISTING EMPLOYEES.—Not
6 later than 1 year after the date of the en-
7 actment of the Accountability Through
8 Electronic Verification Act, the Secretary
9 shall require all employers to use E-Verify
10 to verify the identity and employment eligi-
11 bility of any individual who has not been
12 previously verified by the employer through
13 E-Verify.”.

14 **SEC. 7. REVERIFICATION.**

15 Section 403(a) of the Illegal Immigration Reform and
16 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a
17 note), as amended by section 6, is further amended by
18 adding at the end the following:

19 “(5) REVERIFICATION.—Each person or other
20 entity participating in E-Verify shall use the E-
21 Verify confirmation system to reverify the work au-
22 thorization of any individual not later than 3 days
23 after the date on which such individual’s employ-
24 ment authorization is scheduled to expire (as indi-
25 cated by the Secretary or the documents provided to

1 the employer pursuant to section 274A(b) of the Im-
 2 migration and Nationality Act (8 U.S.C. 1324a(b))),
 3 in accordance with the procedures set forth in this
 4 subsection and section 402.”.

5 **SEC. 8. HOLDING EMPLOYERS ACCOUNTABLE.**

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

10 “(C) CONSEQUENCES OF NONCONFIRMA-
 11 TION.—

12 “(i) TERMINATION AND NOTIFICA-
 13 TION.—If the person or other entity re-
 14 ceives a final nonconfirmation regarding an
 15 individual, the employer shall imme-
 16 diately—

17 “(I) terminate the employment,
 18 recruitment, or referral of the indi-
 19 vidual; and

20 “(II) submit to the Secretary any
 21 information relating to the individual
 22 that the Secretary determines would
 23 assist the Secretary in enforcing or
 24 administering United States immigra-
 25 tion laws.

1 “(ii) CONSEQUENCE OF CONTINUED
 2 EMPLOYMENT.—If the person or other en-
 3 tity continues to employ, recruit, or refer
 4 the individual after receiving final noncon-
 5 firmation, a rebuttable presumption is cre-
 6 ated that the employer has violated section
 7 274A of the Immigration and Nationality
 8 Act (8 U.S.C. 1324a).”.

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

13 “(c) INTERAGENCY NONCONFIRMATION REPORT.—
 14 “(1) IN GENERAL.—The Director of U.S. Citi-
 15 zenship and Immigration Services shall submit a
 16 weekly report to the Assistant Secretary of Immigra-
 17 tion and Customs Enforcement that includes, for
 18 each individual who receives final nonconfirmation
 19 through E-Verify—

20 “(A) the name of such individual;

21 “(B) his or her Social Security number or
 22 alien file number;

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

1 “(D) any other critical information that
2 the Assistant Secretary determines to be appro-
3 priate.

4 “(2) USE OF WEEKLY REPORT.—The Secretary
5 of Homeland Security shall use information provided
6 under paragraph (1) to enforce compliance of the
7 United States immigration laws.”.

8 **SEC. 9. INFORMATION SHARING.**

9 Not later than 1 year after the date of the enactment
10 of this Act, the Commissioner of Social Security, the Com-
11 missioner of Internal Revenue, the Secretary of Homeland
12 Security, and the Secretary of the Treasury shall jointly
13 establish a program to share information among such
14 agencies that may or could lead to the identification of
15 unauthorized aliens (as defined under section 274A(h)(3)
16 of the Immigration and Nationality Act (8 U.S.C.
17 1324a(h)(3)), including no-match letters and any informa-
18 tion in the earnings suspense file.

19 **SEC. 10. FORM I-9 PROCESS.**

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

24 (1) modifying and simplifying the process by
25 which employers are required to complete and retain

1 a Form I–9 for each employee pursuant to section
 2 274A of the Immigration and Nationality Act (8
 3 U.S.C. 1324a); and

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

6 **SEC. 11. ALGORITHM.**

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

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

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

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

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

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

22 “(5) to register any time when E-Verify is un-
 23 able to receive inquiries;

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

1 “(7) to preserve the security of the information
2 in all of the system by—

3 “(A) developing and using algorithms to
4 detect potential identity theft, such as multiple
5 uses of the same identifying information or doc-
6 uments;

7 “(B) developing and using algorithms to
8 detect misuse of the system by employers and
9 employees;

10 “(C) developing capabilities to detect
11 anomalies in the use of the system that may in-
12 dicate potential fraud or misuse of the system;
13 and

14 “(D) auditing documents and information
15 submitted by potential employees to employers,
16 including authority to conduct interviews with
17 employers and employees;

18 “(8) to confirm identity and work authorization
19 through verification of records maintained by the
20 Secretary, other Federal departments, States, the
21 Commonwealth of the Northern Mariana Islands, or
22 an outlying possession of the United States, as de-
23 termined necessary by the Secretary, including—

24 “(A) records maintained by the Social Se-
25 curity Administration;

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

4 “(C) passport and visa records (including
5 photographs) maintained by the Department of
6 State; and

7 “(D) State driver’s license or identity card
8 information (including photographs) maintained
9 by State department of motor vehicles;

10 “(9) to electronically confirm the issuance of
11 the employment authorization or identity document;
12 and

13 “(10) to display the digital photograph that the
14 issuer placed on the document so that the employer
15 can compare the photograph displayed to the photo-
16 graph on the document presented by the employee
17 or, in exceptional cases, if a photograph is not avail-
18 able from the issuer, to provide for a temporary al-
19 ternative procedure, specified by the Secretary, for
20 confirming the authenticity of the document.”.

21 **SEC. 12. IDENTITY THEFT.**

22 Section 1028 of title 18, United States Code, is
23 amended—

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

4 (2) in subsection (b)(3)—

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

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

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

10 “(D) to facilitate or assist in harboring or
 11 hiring unauthorized workers in violation of sec-
 12 tion 274, 274A, or 274C of the Immigration
 13 and Nationality Act (8 U.S.C. 1324, 1324a,
 14 and 1324c).”.

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

16 Section 403 of the Illegal Immigration Reform and
 17 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a
 18 note), as amended by this Act, is further amended—

19 (1) by redesignating subsection (d) as sub-
 20 section (e); and

21 (2) by inserting after subsection (c) the fol-
 22 lowing:

23 “(d) SMALL BUSINESS DEMONSTRATION PRO-
 24 GRAM.—Not later than 9 months after the date of the en-
 25 actment of the Accountability Through Electronic

1 Verification Act, the Director of U.S. Citizenship and Im-
 2 migration Services shall establish a demonstration pro-
 3 gram that assists small businesses in rural areas or areas
 4 without internet capabilities to verify the employment eli-
 5 gibility of newly hired employees solely through the use
 6 of publicly accessible internet terminals.”.

7 **SEC. 14. EMPLOYER COMPLIANCE INSPECTION CENTER.**

8 (a) ESTABLISHMENT.—There is established, within
 9 Homeland Security Investigations of U.S. Immigration
 10 and Customs Enforcement, the Employer Compliance In-
 11 spection Center (referred to in this section as the “Cen-
 12 ter”).

13 (b) PURPOSES.—The establishment of the Center is
 14 intended—

15 (1) to create a culture of compliance for all
 16 United States businesses by imposing more effective,
 17 efficient, and standardized consequences, including
 18 civil and criminal penalties, on employers who fail to
 19 comply with the employment eligibility verification
 20 requirements; and

21 (2) to consolidate worksite enforcement audits
 22 at a centralized location to ensure a standardized
 23 process and uniform application of the fine matrix.

24 (c) DUTIES.—The Center shall—

1 (1) carry out duties related to the processing of
2 the Employment Eligibility Verification Form I-9,
3 including audits, and related worksite enforcement
4 investigations;

5 (2) ensure that all United States businesses ad-
6 here to existing laws and regulations regarding em-
7 ployment eligibility; and

8 (3) carry out such additional duties as may be
9 assigned or delegated by the Director of U.S. Immi-
10 gration and Customs Enforcement.

11 (d) RESPONSE TIME.—The Center shall respond as
12 quickly as practicable to employer inquiries based on the
13 facts and circumstances of the employer making the in-
14 quiry.

15 (e) TASK FORCE.—The Center shall establish a task
16 force, utilizing existing information sharing agreements
17 with other Federal agencies, including the Social Security
18 Administration, U.S. Citizenship and Immigration Serv-
19 ices, the Department of Labor, and the Internal Revenue
20 Service, to serve as a force multiplier to proactively inves-
21 tigate crimes, including Social Security fraud, tax fraud,
22 and wage and hour violations.

○