

115TH CONGRESS  
1ST SESSION

# H. R. 3711

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.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 8, 2017

Mr. SMITH of Texas (for himself, Mr. GOODLATTE, Mr. CALVERT, Mr. JODY B. HICE of Georgia, Mr. KING of Iowa, Mr. DUNCAN of South Carolina, Mr. BROOKS of Alabama, Mr. FRANKS of Arizona, Mr. PITTENGER, Mr. SESSIONS, Mr. DUNCAN of Tennessee, Mr. FRANCIS ROONEY of Florida, Mr. CHABOT, Mr. MESSER, Mr. MARCHANT, Mr. LABRADOR, Mr. HUNTER, Mr. GOWDY, Mr. MCCAUL, and Mr. WEBSTER of Florida) 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

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## 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”.

1 **SEC. 2. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-**  
2 **ESS.**

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

6 “(b) EMPLOYMENT ELIGIBILITY VERIFICATION  
7 PROCESS.—

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

14 “(A) ATTESTATION AFTER EXAMINATION  
15 OF DOCUMENTATION.—

16 “(i) ATTESTATION.—During the  
17 verification period (as defined in subpara-  
18 graph (E)), the person or entity shall at-  
19 test, under penalty of perjury and on a  
20 form, including electronic and telephonic  
21 formats, designated or established by the  
22 Secretary by regulation not later than 6  
23 months after the date of the enactment of  
24 the Legal Workforce Act, that it has  
25 verified that the individual is not an unau-  
26 thorized alien by—

1           “(I) obtaining from the indi-  
2           vidual the individual’s social security  
3           account number or United States  
4           passport number and recording the  
5           number on the form (if the individual  
6           claims to have been issued such a  
7           number), and, if the individual does  
8           not attest to United States nationality  
9           under subparagraph (B), obtaining  
10          such identification or authorization  
11          number established by the Depart-  
12          ment of Homeland Security for the  
13          alien as the Secretary of Homeland  
14          Security may specify, and recording  
15          such number on the form; and

16           “(II) examining—

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

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

1           “(ii) DOCUMENTS EVIDENCING EM-  
2 PLOYMENT AUTHORIZATION AND ESTAB-  
3 LISHING IDENTITY.—A document de-  
4 scribed in this subparagraph is an individ-  
5 ual’s—

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

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

10                   “(III) unexpired employment au-  
11 thorization card that contains a pho-  
12 tograph;

13                   “(IV) in the case of a non-  
14 immigrant alien authorized to work  
15 for a specific employer incident to sta-  
16 tus, a foreign passport with Form I-  
17 94 or Form I-94A, or other docu-  
18 mentation as designated by the Sec-  
19 retary specifying the alien’s non-  
20 immigrant status as long as the pe-  
21 riod of status has not yet expired and  
22 the proposed employment is not in  
23 conflict with any restrictions or limita-  
24 tions identified in the documentation;

1           “(V) passport from the Fed-  
2 erated States of Micronesia (FSM) or  
3 the Republic of the Marshall Islands  
4 (RMI) with Form I-94 or Form I-  
5 94A, or other documentation as des-  
6 ignated by the Secretary, indicating  
7 nonimmigrant admission under the  
8 Compact of Free Association Between  
9 the United States and the FSM or  
10 RMI; or

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

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

23           “(bb) is evidence of author-  
24 ization of employment in the  
25 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 speci-  
10                  fies on the face that the issuance of the  
11                  card does not authorize employment in the  
12                  United States).

13                  “(iv) DOCUMENTS ESTABLISHING  
14                  IDENTITY OF INDIVIDUAL.—A document  
15                  described 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  
21                         color, 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

1 document issued by a tribal entity rec-  
2 ognized by the Bureau of Indian Af-  
3 fairs; or

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

9 “(v) AUTHORITY TO PROHIBIT USE OF  
10 CERTAIN DOCUMENTS.—If the Secretary of  
11 Homeland Security finds, by regulation,  
12 that any document described in clause (i),  
13 (ii), or (iii) as establishing employment au-  
14 thorization or identity does not reliably es-  
15 tablish such authorization or identity or is  
16 being used fraudulently to an unacceptable  
17 degree, the Secretary may prohibit or place  
18 conditions on its use for purposes of this  
19 paragraph.

20 “(vi) SIGNATURE.—Such attestation  
21 may be manifested by either a handwritten  
22 or electronic signature.

23 “(B) INDIVIDUAL ATTESTATION OF EM-  
24 PLOYMENT AUTHORIZATION.—During the  
25 verification period (as defined in subparagraph

1 (E)), the individual shall attest, under penalty  
2 of perjury on the form designated or established  
3 for purposes of subparagraph (A), that the indi-  
4 vidual is a citizen or national of the United  
5 States, an alien lawfully admitted for perma-  
6 nent residence, or an alien who is authorized  
7 under this Act or by the Secretary of Homeland  
8 Security to be hired, recruited, or referred for  
9 such employment. Such attestation may be  
10 manifested by either a handwritten or electronic  
11 signature. The individual shall also provide that  
12 individual's social security account number or  
13 United States passport number (if the indi-  
14 vidual claims to have been issued such a num-  
15 ber), and, if the individual does not attest to  
16 United States nationality under this subpara-  
17 graph, such identification or authorization num-  
18 ber established by the Department of Homeland  
19 Security for the alien as the Secretary may  
20 specify.

21 “(C) RETENTION OF VERIFICATION FORM  
22 AND VERIFICATION.—

23 “(i) IN GENERAL.—After completion  
24 of such form in accordance with subpara-



1 graphs (A) and (B), the person or entity  
2 shall—

3 “(I) retain a paper, microfiche,  
4 microfilm, or electronic version of the  
5 form and make it available for inspec-  
6 tion by officers of the Department of  
7 Homeland Security, the Department  
8 of Justice, or the Department of  
9 Labor during a period beginning on  
10 the date of the recruiting or referral  
11 of the individual, or, in the case of the  
12 hiring of an individual, the date on  
13 which the verification is completed,  
14 and ending—

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

19 “(bb) in the case of the hir-  
20 ing of an individual, the later of  
21 3 years after the date the  
22 verification is completed or one  
23 year after the date the individ-  
24 ual’s employment is terminated;  
25 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       RE-  
10           CEIVED.—If the person or other entity  
11           receives an appropriate confirmation  
12           of an individual’s identity and work  
13           eligibility under the verification sys-  
14           tem within the time period specified,  
15           the person or entity shall record on  
16           the form an appropriate code that is  
17           provided under the system and that  
18           indicates a final confirmation of such  
19           identity and work eligibility of the in-  
20           dividual.

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

1 verification system within the time pe-  
2 riod specified, the person or entity  
3 shall so inform the individual for  
4 whom the verification is sought. If the  
5 individual does not contest the non-  
6 confirmation within the time period  
7 specified, the nonconfirmation shall be  
8 considered final. The person or entity  
9 shall then record on the form an ap-  
10 propriate code which has been pro-  
11 vided under the system to indicate a  
12 final nonconfirmation. If the indi-  
13 vidual does contest the nonconfirma-  
14 tion, the individual shall utilize the  
15 process for secondary verification pro-  
16 vided under subsection (d). The non-  
17 confirmation will remain tentative  
18 until a final confirmation or noncon-  
19 firmation is provided by the  
20 verification system within the time pe-  
21 riod specified. In no case shall an em-  
22 ployer terminate employment of an in-  
23 dividual because of a failure of the in-  
24 dividual to have identity and work eli-  
25 gibility confirmed under this section

1           until a nonconfirmation becomes final.  
2           Nothing in this clause shall apply to a  
3           termination of employment for any  
4           reason other than because of such a  
5           failure. In no case shall an employer  
6           rescind the offer of employment to an  
7           individual because of a failure of the  
8           individual to have identity and work  
9           eligibility confirmed under this sub-  
10          section until a nonconfirmation be-  
11          comes final. Nothing in this subclause  
12          shall apply to a rescission of the offer  
13          of employment for any reason other  
14          than because of such a failure.

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

1           “(IV) EXTENSION OF TIME.—If  
2           the person or other entity in good  
3           faith attempts to make an inquiry  
4           during the time period specified and  
5           the verification system has registered  
6           that not all inquiries were received  
7           during such time, the person or entity  
8           may make an inquiry in the first sub-  
9           sequent working day in which the  
10          verification system registers that it  
11          has 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 ad-  
19          ditional proof concerning such inquiry.

20           “(V) CONSEQUENCES OF NON-  
21          CONFIRMATION.—

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  
3 may terminate employment of the  
4 individual (or decline to recruit  
5 or refer the individual). If the  
6 person or entity does not termi-  
7 nate employment of the indi-  
8 vidual or proceeds to recruit or  
9 refer the individual, the person or  
10 entity shall notify the Secretary  
11 of Homeland Security of such  
12 fact through the verification sys-  
13 tem or in such other manner as  
14 the Secretary may specify.

15 “(bb) FAILURE TO NO-  
16 TIFY.—If the person or entity  
17 fails to provide notice with re-  
18 spect to an individual as required  
19 under item (aa), the failure is  
20 deemed to constitute a violation  
21 of subsection (a)(1)(A) with re-  
22 spect to that individual.

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 para-  
10 graph shall apply to a person or other enti-  
11 ty hiring an individual for employment in  
12 the 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  
16 enactment of the Legal Workforce  
17 Act, on the date that is 6 months  
18 after the date of the enactment of  
19 such Act.

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

1 is 12 months after the date of the en-  
2 actment 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 enact-  
10 ment 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 enact-  
18 ment 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



1 months after the date of the enactment of  
2 the Legal 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 30 months after the date of  
9 the enactment of the Legal Workforce Act.  
10 For purposes of the preceding sentence,  
11 the term ‘agricultural labor or services’ has  
12 the meaning given such term by the Sec-  
13 retary of Agriculture in regulations and in-  
14 cludes agricultural labor as defined in sec-  
15 tion 3121(g) of the Internal Revenue Code  
16 of 1986, agriculture as defined in section  
17 3(f) of the Fair Labor Standards Act of  
18 1938 (29 U.S.C. 203(f)), the handling,  
19 planting, drying, packing, packaging, proc-  
20 essing, freezing, or grading prior to deliv-  
21 ery for storage of any agricultural or horti-  
22 cultural commodity in its unmanufactured  
23 state, all activities required for the prepa-  
24 ration, processing or manufacturing of a  
25 product of agriculture (as such term is de-

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

7            “(iv) EXTENSIONS.—Upon request by  
8            an employer having 50 or fewer employees,  
9            the Secretary shall allow a one-time 6-  
10           month extension of the effective date set  
11           out in this subparagraph applicable to such  
12           employer. Such request shall be made to  
13           the Secretary and shall be made prior to  
14           such effective date.

15           “(v) TRANSITION RULE.—Subject to  
16           paragraph (4), the following shall apply to  
17           a person or other entity hiring, recruiting,  
18           or referring an individual for employment  
19           in the United States until the effective  
20           date or dates applicable under clauses (i)  
21           through (iii):

22                    “(I) This subsection, as in effect  
23                    before the enactment of the Legal  
24                    Workforce Act.

1           “(II) Subtitle A of title IV of the  
2           Illegal Immigration Reform and Im-  
3           migrant Responsibility Act of 1996 (8  
4           U.S.C. 1324a note), as in effect be-  
5           fore the effective date in section 7(c)  
6           of the Legal Workforce Act.

7           “(III) Any other provision of  
8           Federal law requiring the person or  
9           entity to participate in the E-Verify  
10          Program described in section 403(a)  
11          of the Illegal Immigration Reform and  
12          Immigrant Responsibility Act of 1996  
13          (8 U.S.C. 1324a note), as in effect be-  
14          fore the effective date in section 7(c)  
15          of the Legal Workforce Act, including  
16          Executive Order 13465 (8 U.S.C.  
17          1324a note; relating to Government  
18          procurement).

19          “(E) VERIFICATION PERIOD DEFINED.—

20                 “(i) IN GENERAL.—For purposes of  
21          this paragraph:

22                 “(I) In the case of recruitment or  
23          referral, the term ‘verification period’  
24          means the period ending on the date  
25          recruiting or referring commences.

1                   “(II) In the case of hiring, the  
2                   term ‘verification period’ means the  
3                   period beginning on the date on which  
4                   an offer of employment is extended  
5                   and ending on the date that is three  
6                   business days after the date of hire,  
7                   except as provided in clause (iii). The  
8                   offer of employment may be condi-  
9                   tioned in accordance with clause (ii).

10                   “(ii) JOB OFFER MAY BE CONDI-  
11                   TIONAL.—A person or other entity may  
12                   offer a prospective employee an employ-  
13                   ment position that is conditioned on final  
14                   verification of the identity and employment  
15                   eligibility of the employee using the proce-  
16                   dures established under this paragraph.

17                   “(iii) SPECIAL RULE.—Notwith-  
18                   standing clause (i)(II), in the case of an  
19                   alien who is authorized for employment  
20                   and who provides evidence from the Social  
21                   Security Administration that the alien has  
22                   applied for a social security account num-  
23                   ber, the verification period ends three busi-  
24                   ness days after the alien receives the social  
25                   security account number.

1           “(2) REVERIFICATION FOR INDIVIDUALS WITH  
2 LIMITED WORK AUTHORIZATION.—

3           “(A) IN GENERAL.—Except as provided in  
4 subparagraph (B), a person or entity shall  
5 make an inquiry, as provided in subsection (d),  
6 using the verification system to seek  
7 reverification of the identity and employment  
8 eligibility of all individuals with a limited period  
9 of work authorization employed by the person  
10 or entity during the three business days after  
11 the date on which the employee’s work author-  
12 ization expires as follows:

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

19           “(ii) With respect to employers having  
20 500 or more employees in the United  
21 States, but less than 10,000 employees in  
22 the United States, on the date of the en-  
23 actment of the Legal Workforce Act, be-  
24 ginning on the date that is 12 months

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

3 “(iii) With respect to employers hav-  
4 ing 20 or more employees in the United  
5 States, but less than 500 employees in the  
6 United States, on the date of the enact-  
7 ment of the Legal Workforce Act, begin-  
8 ning on the date that is 18 months after  
9 the date of the enactment of such Act.

10 “(iv) With respect to employers hav-  
11 ing 1 or more employees in the United  
12 States, but less than 20 employees in the  
13 United States, on the date of the enact-  
14 ment of the Legal Workforce Act, begin-  
15 ning on the date that is 24 months after  
16 the date of the enactment of such Act.

17 “(B) AGRICULTURAL LABOR OR SERV-  
18 ICES.—With respect to an employee performing  
19 agricultural labor or services, or an employee  
20 recruited or referred by a farm labor contractor  
21 (as defined in section 3 of the Migrant and Sea-  
22 sonal Agricultural Worker Protection Act (29  
23 U.S.C. 1801)), subparagraph (A) shall not  
24 apply with respect to the reverification of the  
25 employee until the date that is 30 months after

1 the date of the enactment of the Legal Work-  
2 force Act. For purposes of the preceding sen-  
3 tence, the term ‘agricultural labor or services’  
4 has the meaning given such term by the Sec-  
5 retary of Agriculture in regulations and in-  
6 cludes agricultural labor as defined in section  
7 3121(g) of the Internal Revenue Code of 1986,  
8 agriculture as defined in section 3(f) of the  
9 Fair Labor Standards Act of 1938 (29 U.S.C.  
10 203(f)), the handling, planting, drying, packing,  
11 packaging, processing, freezing, or grading  
12 prior to delivery for storage of any agricultural  
13 or horticultural commodity in its unmanufac-  
14 tured state, all activities required for the prepa-  
15 ration, processing, or manufacturing of a prod-  
16 uct of agriculture (as such term is defined in  
17 such section 3(f)) for further distribution, and  
18 activities similar to all the foregoing as they re-  
19 late to fish or shellfish facilities. An employee  
20 described in this subparagraph shall not be  
21 counted for purposes of subparagraph (A).

22 “(C) REVERIFICATION.—Paragraph  
23 (1)(C)(ii) shall apply to reverifications pursuant  
24 to this paragraph on the same basis as it ap-

1 plies to verifications pursuant to paragraph (1),  
2 except that employers shall—

3 “(i) use a form designated or estab-  
4 lished by the Secretary by regulation for  
5 purposes of this paragraph; and

6 “(ii) retain a paper, microfiche, micro-  
7 film, or electronic version of the form and  
8 make it available for inspection by officers  
9 of the Department of Homeland Security,  
10 the Department of Justice, or the Depart-  
11 ment of Labor during the period beginning  
12 on the date the reverification commences  
13 and ending on the date that is the later of  
14 3 years after the date of such reverification  
15 or 1 year after the date the individual’s  
16 employment is terminated.

17 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

18 “(A) ON A MANDATORY BASIS FOR CER-  
19 TAIN EMPLOYEES.—

20 “(i) IN GENERAL.—Not later than the  
21 date that is 6 months after the date of the  
22 enactment of the Legal Workforce Act, an  
23 employer shall make an inquiry, as pro-  
24 vided in subsection (d), using the  
25 verification system to seek verification of



1 the identity and employment eligibility of  
2 any individual described in clause (ii) em-  
3 ployed by the employer whose employment  
4 eligibility has not been verified under the  
5 E-Verify Program described in section  
6 403(a) of the Illegal Immigration Reform  
7 and Immigrant Responsibility Act of 1996  
8 (8 U.S.C. 1324a note).

9 “(ii) INDIVIDUALS DESCRIBED.—An  
10 individual described in this clause is any of  
11 the following:

12 “(I) An employee of any unit of  
13 a Federal, State, or local government.

14 “(II) An employee who requires a  
15 Federal security clearance working in  
16 a Federal, State or local government  
17 building, a military base, a nuclear  
18 energy site, a weapons site, or an air-  
19 port or other facility that requires  
20 workers to carry a Transportation  
21 Worker Identification Credential  
22 (TWIC).

23 “(III) An employee assigned to  
24 perform work in the United States

1 under a Federal contract, except that  
2 this subclause—

3 “(aa) is not applicable to in-  
4 dividuals who have a clearance  
5 under Homeland Security Presi-  
6 dential Directive 12 (HSPD 12  
7 clearance), are administrative or  
8 overhead personnel, or are work-  
9 ing solely on contracts that pro-  
10 vide Commercial Off The Shelf  
11 goods or services as set forth by  
12 the Federal Acquisition Regu-  
13 latory Council, unless they are  
14 subject to verification under sub-  
15 clause (II); and

16 “(bb) only applies to con-  
17 tracts over the simple acquisition  
18 threshold as defined in section  
19 2.101 of title 48, Code of Federal  
20 Regulations.

21 “(B) ON A MANDATORY BASIS FOR MUL-  
22 TIPLE USERS OF SAME SOCIAL SECURITY AC-  
23 COUNT NUMBER.—In the case of an employer  
24 who is required by this subsection to use the  
25 verification system described in subsection (d),

1 or has elected voluntarily to use such system,  
2 the employer shall make inquiries to the system  
3 in accordance with the following:

4 “(i) The Commissioner of Social Secu-  
5 rity shall notify annually employees (at the  
6 employee address listed on the Wage and  
7 Tax Statement) who submit a social secu-  
8 rity account number to which more than  
9 one employer reports income and for which  
10 there is a pattern of unusual multiple use.  
11 The notification letter shall identify the  
12 number of employers to which income is  
13 being reported as well as sufficient infor-  
14 mation notifying the employee of the proc-  
15 ess to contact the Social Security Adminis-  
16 tration Fraud Hotline if the employee be-  
17 lieves the employee’s identity may have  
18 been stolen. The notice shall not share in-  
19 formation protected as private, in order to  
20 avoid any recipient of the notice from  
21 being in the position to further commit or  
22 begin committing identity theft.

23 “(ii) If the person to whom the social  
24 security account number was issued by the  
25 Social Security Administration has been

1 identified and confirmed by the Commis-  
2 sioner, and indicates that the social secu-  
3 rity account number was used without  
4 their knowledge, the Secretary and the  
5 Commissioner shall lock the social security  
6 account number for employment eligibility  
7 verification purposes and shall notify the  
8 employers of the individuals who wrong-  
9 fully submitted the social security account  
10 number that the employee may not be  
11 work eligible.

12 “(iii) Each employer receiving such  
13 notification of an incorrect social security  
14 account number under clause (ii) shall use  
15 the verification system described in sub-  
16 section (d) to check the work eligibility sta-  
17 tus of the applicable employee within 10  
18 business days of receipt of the notification.

19 “(C) ON A VOLUNTARY BASIS.—Subject to  
20 paragraph (2), and subparagraphs (A) through  
21 (C) of this paragraph, beginning on the date  
22 that is 30 days after the date of the enactment  
23 of the Legal Workforce Act, an employer may  
24 make an inquiry, as provided in subsection (d),  
25 using the verification system to seek verification

1 of the identity and employment eligibility of any  
2 individual employed by the employer. If an em-  
3 ployer chooses voluntarily to seek verification of  
4 any individual employed by the employer, the  
5 employer shall seek verification of all individ-  
6 uals employed at the same geographic location  
7 or, at the option of the employer, all individuals  
8 employed within the same job category, as the  
9 employee with respect to whom the employer  
10 seeks voluntarily to use the verification system.  
11 An employer’s decision about whether or not  
12 voluntarily to seek verification of its current  
13 workforce under this subparagraph may not be  
14 considered by any government agency in any  
15 proceeding, investigation, or review provided for  
16 in this Act.

17 “(D) VERIFICATION.—Paragraph  
18 (1)(C)(ii) shall apply to verifications pursuant  
19 to this paragraph on the same basis as it ap-  
20 plies to verifications pursuant to paragraph (1),  
21 except that employers shall—

22 “(i) use a form designated or estab-  
23 lished by the Secretary by regulation for  
24 purposes of this paragraph; and

1           “(ii) retain a paper, microfiche, micro-  
2           film, or electronic version of the form and  
3           make it available for inspection by officers  
4           of the Department of Homeland Security,  
5           the Department of Justice, or the Depart-  
6           ment of Labor during the period beginning  
7           on the date the verification commences and  
8           ending on the date that is the later of 3  
9           years after the date of such verification or  
10          1 year after the date the individual’s em-  
11          ployment is terminated.

12          “(4) EARLY COMPLIANCE.—

13                 “(A) FORMER E-VERIFY REQUIRED USERS,  
14                 INCLUDING FEDERAL CONTRACTORS.—Notwith-  
15                 standing the deadlines in paragraphs (1) and  
16                 (2), beginning on the date of the enactment of  
17                 the Legal Workforce Act, the Secretary is au-  
18                 thorized to commence requiring employers re-  
19                 quired to participate in the E-Verify Program  
20                 described in section 403(a) of the Illegal Immi-  
21                 gration Reform and Immigrant Responsibility  
22                 Act of 1996 (8 U.S.C. 1324a note), including  
23                 employers required to participate in such pro-  
24                 gram by reason of Federal acquisition laws  
25                 (and regulations promulgated under those laws,

1 including the Federal Acquisition Regulation),  
2 to commence compliance with the requirements  
3 of this subsection (and any additional require-  
4 ments of such Federal acquisition laws and reg-  
5 ulation) in lieu of any requirement to partici-  
6 pate in the E-Verify Program.

7 “(B) FORMER E-VERIFY VOLUNTARY  
8 USERS AND OTHERS DESIRING EARLY COMPLI-  
9 ANCE.—Notwithstanding the deadlines in para-  
10 graphs (1) and (2), beginning on the date of  
11 the enactment of the Legal Workforce Act, the  
12 Secretary shall provide for the voluntary com-  
13 pliance with the requirements of this subsection  
14 by employers voluntarily electing to participate  
15 in the E-Verify Program described in section  
16 403(a) of the Illegal Immigration Reform and  
17 Immigrant Responsibility Act of 1996 (8 U.S.C.  
18 1324a note) before such date, as well as by  
19 other employers seeking voluntary early compli-  
20 ance.

21 “(5) COPYING OF DOCUMENTATION PER-  
22 MITTED.—Notwithstanding any other provision of  
23 law, the person or entity may copy a document pre-  
24 sented by an individual pursuant to this subsection  
25 and may retain the copy, but only (except as other-

1 wise permitted under law) for the purpose of com-  
2 plying with the requirements of this subsection.

3 “(6) LIMITATION ON USE OF FORMS.—A form  
4 designated or established by the Secretary of Home-  
5 land Security under this subsection and any infor-  
6 mation contained in or appended to such form, may  
7 not be used for purposes other than for enforcement  
8 of this Act and any other provision of Federal crimi-  
9 nal law.

10 “(7) GOOD FAITH COMPLIANCE.—

11 “(A) IN GENERAL.—Except as otherwise  
12 provided in this subsection, a person or entity  
13 is considered to have complied with a require-  
14 ment of this subsection notwithstanding a tech-  
15 nical or procedural failure to meet such require-  
16 ment if there was a good faith attempt to com-  
17 ply with the requirement.

18 “(B) EXCEPTION IF FAILURE TO CORRECT  
19 AFTER NOTICE.—Subparagraph (A) shall not  
20 apply if—

21 “(i) the failure is not de minimus;

22 “(ii) the Secretary of Homeland Secu-  
23 rity has explained to the person or entity  
24 the basis for the failure and why it is not  
25 de minimus;



1           “(iii) the person or entity has been  
2           provided a period of not less than 30 cal-  
3           endar days (beginning after the date of the  
4           explanation) within which to correct the  
5           failure; and

6           “(iv) the person or entity has not cor-  
7           rected the failure voluntarily within such  
8           period.

9           “(C) EXCEPTION FOR PATTERN OR PRAC-  
10          TICE VIOLATORS.—Subparagraph (A) shall not  
11          apply to a person or entity that has or is engag-  
12          ing in a pattern or practice of violations of sub-  
13          section (a)(1)(A) or (a)(2).

14          “(8) SINGLE EXTENSION OF DEADLINES UPON  
15          CERTIFICATION.—In a case in which the Secretary  
16          of Homeland Security has certified to the Congress  
17          that the employment eligibility verification system  
18          required under subsection (d) will not be fully oper-  
19          ational by the date that is 6 months after the date  
20          of the enactment of the Legal Workforce Act, each  
21          deadline established under this section for an em-  
22          ployer to make an inquiry using such system shall  
23          be extended by 6 months. No other extension of such  
24          a deadline shall be made except as authorized under  
25          paragraph (1)(D)(iv).”.

1 (b) DATE OF HIRE.—Section 274A(h) of the Immi-  
2 gration and Nationality Act (8 U.S.C. 1324a(h)) is  
3 amended by adding at the end the following:

4 “(4) DEFINITION OF DATE OF HIRE.—As used  
5 in this section, the term ‘date of hire’ means the  
6 date of actual commencement of employment for  
7 wages or other remuneration, unless otherwise speci-  
8 fied.”.

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

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

12 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-  
13 TEM.—

14 “(1) IN GENERAL.—Patterned on the employ-  
15 ment eligibility confirmation system established  
16 under section 404 of the Illegal Immigration Reform  
17 and Immigrant Responsibility Act of 1996 (8 U.S.C.  
18 1324a note), the Secretary of Homeland Security  
19 shall establish and administer a verification system  
20 through which the Secretary (or a designee of the  
21 Secretary, which may be a nongovernmental enti-  
22 ty)—

23 “(A) responds to inquiries made by per-  
24 sons at any time through a toll-free telephone  
25 line and other toll-free electronic media con-

1           cerning an individual’s identity and whether the  
2           individual is authorized to be employed; and

3           “(B) maintains records of the inquiries  
4           that were made, of verifications provided (or  
5           not provided), and of the codes provided to in-  
6           quirers as evidence of their compliance with  
7           their obligations under this section.

8           “(2) INITIAL RESPONSE.—The verification sys-  
9           tem shall provide confirmation or a tentative non-  
10          confirmation of an individual’s identity and employ-  
11          ment eligibility within 3 working days of the initial  
12          inquiry. If providing confirmation or tentative non-  
13          confirmation, the verification system shall provide an  
14          appropriate code indicating such confirmation or  
15          such nonconfirmation.

16          “(3) SECONDARY CONFIRMATION PROCESS IN  
17          CASE OF TENTATIVE NONCONFIRMATION.—In cases  
18          of tentative nonconfirmation, the Secretary shall  
19          specify, in consultation with the Commissioner of  
20          Social Security, an available secondary verification  
21          process to confirm the validity of information pro-  
22          vided and to provide a final confirmation or noncon-  
23          firmation not later than 10 working days after the  
24          date on which the notice of the tentative noncon-  
25          firmation is received by the employee. The Secretary,

1 in consultation with the Commissioner, may extend  
2 this deadline once on a case-by-case basis for a pe-  
3 riod of 10 working days, and if the time is extended,  
4 shall document such extension within the verification  
5 system. The Secretary, in consultation with the  
6 Commissioner, shall notify the employee and em-  
7 ployer of such extension. The Secretary, in consulta-  
8 tion with the Commissioner, shall create a standard  
9 process of such extension and notification and shall  
10 make a description of such process available to the  
11 public. When final confirmation or nonconfirmation  
12 is provided, the verification system shall provide an  
13 appropriate code indicating such confirmation or  
14 nonconfirmation.

15 “(4) DESIGN AND OPERATION OF SYSTEM.—  
16 The verification system shall be designed and oper-  
17 ated—

18 “(A) to maximize its reliability and ease of  
19 use by persons and other entities consistent  
20 with insulating and protecting the privacy and  
21 security of the underlying information;

22 “(B) to respond to all inquiries made by  
23 such persons and entities on whether individ-  
24 uals are authorized to be employed and to reg-

1           ister all times when such inquiries are not re-  
2           ceived;

3           “(C) with appropriate administrative, tech-  
4           nical, and physical safeguards to prevent unau-  
5           thorized disclosure of personal information;

6           “(D) to have reasonable safeguards against  
7           the system’s resulting in unlawful discrimina-  
8           tory practices based on national origin or citi-  
9           zenship status, including—

10                   “(i) the selective or unauthorized use  
11                   of the system to verify eligibility; or

12                   “(ii) the exclusion of certain individ-  
13                   uals from consideration for employment as  
14                   a result of a perceived likelihood that addi-  
15                   tional verification will be required, beyond  
16                   what is required for most job applicants;

17           “(E) to maximize the prevention of iden-  
18           tity theft use in the system; and

19           “(F) to limit the subjects of verification to  
20           the following individuals:

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

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

4                   “(iii) Individuals seeking to confirm  
5                   their own employment eligibility on a vol-  
6                   untary basis.

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

1 under the verification system except as provided for  
2 in this section or section 205(c)(2)(I) of the Social  
3 Security Act.

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

23 “(7) UPDATING INFORMATION.—The Commis-  
24 sioner of Social Security and the Secretary of Home-  
25 land Security shall update their information in a

1 manner that promotes the maximum accuracy and  
2 shall provide a process for the prompt correction of  
3 erroneous information, including instances in which  
4 it is brought to their attention in the secondary  
5 verification process described in paragraph (3).

6 “(8) LIMITATION ON USE OF THE  
7 VERIFICATION SYSTEM AND ANY RELATED SYS-  
8 TEMS.—

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

15 “(B) CRITICAL INFRASTRUCTURE.—The  
16 Secretary may authorize or direct any person or  
17 entity responsible for granting access to, pro-  
18 tecting, securing, operating, administering, or  
19 regulating part of the critical infrastructure (as  
20 defined in section 1016(e) of the Critical Infra-  
21 structure Protection Act of 2001 (42 U.S.C.  
22 5195c(e))) to use the verification system to the  
23 extent the Secretary determines that such use  
24 will assist in the protection of the critical infra-  
25 structure.



1           “(9) REMEDIES.—If an individual alleges that  
2           the individual would not have been dismissed from  
3           a job but for an error of the verification mechanism,  
4           the individual may seek compensation only through  
5           the mechanism of the Federal Tort Claims Act, and  
6           injunctive relief to correct such error. No class ac-  
7           tion may be brought under this paragraph.”.

8   **SEC. 4. RECRUITMENT, REFERRAL, AND CONTINUATION OF**  
9                                   **EMPLOYMENT.**

10           (a) ADDITIONAL CHANGES TO RULES FOR RECRUIT-  
11   MENT, REFERRAL, AND CONTINUATION OF EMPLOY-  
12   MENT.—Section 274A(a) of the Immigration and Nation-  
13   ality Act (8 U.S.C. 1324a(a)) is amended—

14           (1) in paragraph (1)(A), by striking “for a fee”;

15           (2) in paragraph (1), by amending subpara-  
16   graph (B) to read as follows:

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

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

1 (b) DEFINITION.—Section 274A(h) of the Immigra-  
2 tion and Nationality Act (8 U.S.C. 1324a(h)), as amended  
3 by section 2(b) of this Act, is further amended by adding  
4 at the end the following:

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

1        sons or entities referring for remuneration (whether  
2        on a retainer or contingency basis) are included in  
3        the definition, except that union hiring halls that  
4        refer union members or nonunion individuals who  
5        pay union membership dues are included in this defi-  
6        nition whether or not they receive remuneration, as  
7        are labor service entities or labor service agencies,  
8        whether public, private, for-profit, or nonprofit that  
9        recruit, dispatch, or otherwise facilitate the hiring of  
10       laborers for any period of time by a third party.”.

11       (c) EFFECTIVE DATE.—The amendments made by  
12       this section shall take effect on the date that is 1 year  
13       after the date of the enactment of this Act, except that  
14       the amendments made by subsection (a) shall take effect  
15       6 months after the date of the enactment of this Act inso-  
16       far as such amendments relate to continuation of employ-  
17       ment.

18       **SEC. 5. GOOD FAITH DEFENSE.**

19       Section 274A(a)(3) of the Immigration and Nation-  
20       ality Act (8 U.S.C. 1324a(a)(3)) is amended to read as  
21       follows:

22                “(3) GOOD FAITH DEFENSE.—

23                        “(A) DEFENSE.—An employer (or person  
24                        or entity that hires, employs, recruits, or refers  
25                        (as defined in subsection (h)(5)), or is otherwise

1 obligated to comply with this section) who es-  
2 tablishes that it has complied in good faith with  
3 the requirements of subsection (b)—

4 “(i) shall not be liable to a job appli-  
5 cant, an employee, the Federal Govern-  
6 ment, or a State or local government,  
7 under Federal, State, or local criminal or  
8 civil law for any employment-related action  
9 taken with respect to a job applicant or  
10 employee in good-faith reliance on informa-  
11 tion provided through the system estab-  
12 lished under subsection (d); and

13 “(ii) has established compliance with  
14 its obligations under subparagraphs (A)  
15 and (B) of paragraph (1) and subsection  
16 (b) absent a showing by the Secretary of  
17 Homeland Security, by clear and con-  
18 vincing evidence, that the employer had  
19 knowledge that an employee is an unau-  
20 thorized alien.

21 “(B) MITIGATION ELEMENT.—For pur-  
22 poses of subparagraph (A)(i), if an employer  
23 proves by a preponderance of the evidence that  
24 the employer uses a reasonable, secure, and es-  
25 tablished technology to authenticate the identity

1 of the new employee, that fact shall be taken  
2 into account for purposes of determining good  
3 faith use of the system established under sub-  
4 section (d).

5 “(C) FAILURE TO SEEK AND OBTAIN  
6 VERIFICATION.—Subject to the effective dates  
7 and other deadlines applicable under subsection  
8 (b), in the case of a person or entity in the  
9 United States that hires, or continues to em-  
10 ploy, an individual, or recruits or refers an indi-  
11 vidual for employment, the following require-  
12 ments 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  
18 under subsection (d) and in accord-  
19 ance with the timeframes established  
20 under subsection (b), seeking  
21 verification of the identity and work  
22 eligibility of the individual, the de-  
23 fense under subparagraph (A) shall  
24 not be considered to apply with re-

1           spect to any employment, except as  
2           provided in subclause (II).

3           “(II) SPECIAL RULE FOR FAIL-  
4           URE OF VERIFICATION MECHANISM.—

5           If such a person or entity in good  
6           faith attempts to make an inquiry in  
7           order to qualify for the defense under  
8           subparagraph (A) and the verification  
9           mechanism has registered that not all  
10          inquiries were responded to during the  
11          relevant time, the person or entity can  
12          make an inquiry until the end of the  
13          first subsequent working day in which  
14          the verification mechanism registers  
15          no nonresponses and qualify for such  
16          defense.

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

1 paragraph (A) shall not be considered to  
2 apply with respect to any employment after  
3 the end of such time period.”.

4 **SEC. 6. PREEMPTION AND STATES' RIGHTS.**

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

8 “(2) PREEMPTION.—

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

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

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

1 employment eligibility when and as re-  
2 quired under subsection (b).

3 “(ii) GENERAL RULES.—A State, at  
4 its own cost, may enforce the provisions of  
5 this section, but only insofar as such State  
6 follows the Federal regulations imple-  
7 menting this section, applies the Federal  
8 penalty structure set out in this section,  
9 and complies with all Federal rules and  
10 guidance concerning implementation of this  
11 section. Such State may collect any fines  
12 assessed under this section. An employer  
13 may not be subject to enforcement, includ-  
14 ing audit and investigation, by both a Fed-  
15 eral agency and a State for the same viola-  
16 tion under this section. Whichever entity,  
17 the Federal agency or the State, is first to  
18 initiate the enforcement action, has the  
19 right of first refusal to proceed with the  
20 enforcement action. The Secretary must  
21 provide copies of all guidance, training,  
22 and field instructions provided to Federal  
23 officials implementing the provisions of  
24 this section to 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  
6 law, Executive order, rule, regulation, or delegation of au-  
7 thority, or any document of, or pertaining to, the Depart-  
8 ment of Homeland Security, Department of Justice, or the  
9 Social Security Administration, to the employment eligi-  
10 bility confirmation system established under section 404  
11 of the Illegal Immigration Reform and Immigrant Respon-  
12 sibility Act of 1996 (8 U.S.C. 1324a note) is deemed to  
13 refer to the employment eligibility confirmation system es-  
14 tablished under section 274A(d) of the Immigration and  
15 Nationality Act, as amended by section 3 of this Act.

16 (c) EFFECTIVE DATE.—This section shall take effect  
17 on the date that is 30 months after the date of the enact-  
18 ment of this Act.

19 (d) CLERICAL AMENDMENT.—The table of sections,  
20 in section 1(d) of the Illegal Immigration Reform and Im-  
21 migrant Responsibility Act of 1996, is amended by strik-  
22 ing 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  
13 \$2,000” and inserting “not less than \$2,500  
14 and not more than \$5,000”;

15 (C) in subparagraph (A)(ii), by striking  
16 “not less than \$2,000 and not more than  
17 \$5,000” and inserting “not less than \$5,000  
18 and not 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)  
2 to 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 rea-  
20 sonably believes to be false, shall be treated as  
21 a violation of subsection (a)(1)(A).”;

22 (4) by adding at the end of subsection (e) the  
23 following:

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 hir-  
3 ing or continuation of employment or recruitment or  
4 referral by person or entity and in the case of impo-  
5 sition of a civil penalty under paragraph (5) for a  
6 violation of subsection (a)(1)(B) for hiring or re-  
7 cruitment or referral by a person or entity, the pen-  
8 alty otherwise imposed may be waived or reduced if  
9 the violator establishes that the violator acted in  
10 good faith.

11 “(11) MITIGATION ELEMENT.—For purposes of  
12 paragraph (4), the size of the business shall be  
13 taken into account when assessing the level of civil  
14 money penalty.

15 “(12) AUTHORITY TO DEBAR EMPLOYERS FOR  
16 CERTAIN VIOLATIONS.—

17 “(A) IN GENERAL.—If a person or entity  
18 is determined by the Secretary of Homeland Se-  
19 curity to be a repeat violator of paragraph  
20 (1)(A) or (2) of subsection (a), or is convicted  
21 of a crime under this section, such person or  
22 entity may be considered for debarment from  
23 the receipt of Federal contracts, grants, or co-  
24 operative agreements in accordance with the de-  
25 barment standards and pursuant to the debar-

1           ment procedures set forth in the Federal Acqui-  
2           sition Regulation.

3           “(B) DOES NOT HAVE CONTRACT, GRANT,  
4           AGREEMENT.—If the Secretary of Homeland  
5           Security or the Attorney General wishes to have  
6           a person or entity considered for debarment in  
7           accordance with this paragraph, and such an  
8           person or entity does not hold a Federal con-  
9           tract, grant or cooperative agreement, the Sec-  
10          retary or Attorney General shall refer the mat-  
11          ter to the Administrator of General Services to  
12          determine whether to list the person or entity  
13          on the List of Parties Excluded from Federal  
14          Procurement, and if so, for what duration and  
15          under what scope.

16          “(C) HAS CONTRACT, GRANT, AGREE-  
17          MENT.—If the Secretary of Homeland Security  
18          or the Attorney General wishes to have a per-  
19          son or entity considered for debarment in ac-  
20          cordance with this paragraph, and such person  
21          or entity holds a Federal contract, grant or co-  
22          operative agreement, the Secretary or Attorney  
23          General shall advise all agencies or departments  
24          holding a contract, grant, or cooperative agree-  
25          ment with the person or entity of the Govern-

1           ment’s interest in having the person or entity  
2           considered for debarment, and after soliciting  
3           and considering the views of all such agencies  
4           and departments, the Secretary or Attorney  
5           General may refer the matter to any appro-  
6           priate lead agency to determine whether to list  
7           the person or entity on the List of Parties Ex-  
8           cluded from Federal Procurement, and if so, for  
9           what duration and under what scope.

10           “(D) REVIEW.—Any decision to debar a  
11           person or entity in accordance with this para-  
12           graph shall be reviewable pursuant to part 9.4  
13           of the Federal Acquisition Regulation.

14           “(13) OFFICE FOR STATE AND LOCAL GOVERN-  
15           MENT COMPLAINTS.—The Secretary of Homeland  
16           Security shall establish an office—

17           “(A) to which State and local government  
18           agencies may submit information indicating po-  
19           tential violations of subsection (a), (b), or  
20           (g)(1) that were generated in the normal course  
21           of law enforcement or the normal course of  
22           other official activities in the State or locality;

23           “(B) that is required to indicate to the  
24           complaining State or local agency within five  
25           business days of the filing of such a complaint

1 by identifying whether the Secretary will fur-  
2 ther investigate the information provided;

3 “(C) that is required to investigate those  
4 complaints filed by State or local government  
5 agencies that, on their face, have a substantial  
6 probability of validity;

7 “(D) that is required to notify the com-  
8 plaining State or local agency of the results of  
9 any such investigation conducted; and

10 “(E) that is required to report to the Con-  
11 gress annually the number of complaints re-  
12 ceived under this paragraph, the States and lo-  
13 calities that filed such complaints, and the reso-  
14 lution of the complaints investigated by the Sec-  
15 retary.”; and

16 (5) by amending paragraph (1) of subsection (f)  
17 to read as follows:

18 “(1) CRIMINAL PENALTY.—Any person or enti-  
19 ty which engages in a pattern or practice of viola-  
20 tions of subsection (a)(1) or (2) shall be fined not  
21 more than \$5,000 for each unauthorized alien with  
22 respect to which such a violation occurs, imprisoned  
23 for not more than 18 months, or both, notwith-  
24 standing the provisions of any other Federal law re-  
25 lating to fine levels.”.

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

2 Section 1546(b) of title 18, United States Code, is  
3 amended—

4 (1) in paragraph (1), by striking “identification  
5 document,” and inserting “identification document  
6 or document meant to establish work authorization  
7 (including the documents described in section  
8 274A(b) of the Immigration and Nationality Act),”;  
9 and

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

15 **SEC. 10. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**  
16 **TION PROGRAMS.**

17 (a) **FUNDING UNDER AGREEMENT.**—Effective for  
18 fiscal years beginning on or after October 1, 2019, the  
19 Commissioner of Social Security and the Secretary of  
20 Homeland Security shall enter into and maintain an  
21 agreement which shall—

22 (1) provide funds to the Commissioner for the  
23 full costs of the responsibilities of the Commissioner  
24 under section 274A(d) of the Immigration and Na-  
25 tionality Act (8 U.S.C. 1324a(d)), as amended by



1 section 3 of this Act, including (but not limited  
2 to)—

3 (A) acquiring, installing, and maintaining  
4 technological equipment and systems necessary  
5 for the fulfillment of the responsibilities of the  
6 Commissioner under such section 274A(d), but  
7 only that portion of such costs that are attrib-  
8 utable exclusively to such responsibilities; and

9 (B) responding to individuals who contest  
10 a tentative nonconfirmation provided by the em-  
11 ployment eligibility verification system estab-  
12 lished under such section;

13 (2) provide such funds annually in advance of  
14 the applicable quarter based on estimating method-  
15 ology agreed to by the Commissioner and the Sec-  
16 retary (except in such instances where the delayed  
17 enactment of an annual appropriation may preclude  
18 such quarterly payments); and

19 (3) require an annual accounting and reconcili-  
20 ation of the actual costs incurred and the funds pro-  
21 vided under the agreement, which shall be reviewed  
22 by the Inspectors General of the Social Security Ad-  
23 ministration and the Department of Homeland Secu-  
24 rity.

1 (b) CONTINUATION OF EMPLOYMENT VERIFICATION  
2 IN ABSENCE OF TIMELY AGREEMENT.—In any case in  
3 which the agreement required under subsection (a) for any  
4 fiscal year beginning on or after October 1, 2019, has not  
5 been reached as of October 1 of such fiscal year, the latest  
6 agreement between the Commissioner and the Secretary  
7 of Homeland Security providing for funding to cover the  
8 costs of the responsibilities of the Commissioner under  
9 section 274A(d) of the Immigration and Nationality Act  
10 (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-  
11 terim basis for such fiscal year until such time as an  
12 agreement required under subsection (a) is subsequently  
13 reached, except that the terms of such interim agreement  
14 shall be modified by the Director of the Office of Manage-  
15 ment and Budget to adjust for inflation and any increase  
16 or decrease in the volume of requests under the employ-  
17 ment eligibility verification system. In any case in which  
18 an interim agreement applies for any fiscal year under this  
19 subsection, the Commissioner and the Secretary shall, not  
20 later than October 1 of such fiscal year, notify the Com-  
21 mittee on Ways and Means, the Committee on the Judici-  
22 ary, and the Committee on Appropriations of the House  
23 of Representatives and the Committee on Finance, the  
24 Committee on the Judiciary, and the Committee on Ap-  
25 propriations of the Senate of the failure to reach the

1 agreement required under subsection (a) for such fiscal  
2 year. Until such time as the agreement required under  
3 subsection (a) has been reached for such fiscal year, the  
4 Commissioner and the Secretary shall, not later than the  
5 end of each 90-day period after October 1 of such fiscal  
6 year, notify such Committees of the status of negotiations  
7 between the Commissioner and the Secretary in order to  
8 reach such an agreement.

9 **SEC. 11. FRAUD PREVENTION.**

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

1           (b) ALLOWING SUSPENSION OF USE OF CERTAIN SO-  
2       CIAL SECURITY ACCOUNT NUMBERS.—The Secretary of  
3       Homeland Security, in consultation with the Commis-  
4       sioner of Social Security, shall establish a program which  
5       shall provide a reliable, secure method by which victims  
6       of identity fraud and other individuals may suspend or  
7       limit the use of their social security account number or  
8       other identifying information for purposes of the employ-  
9       ment eligibility verification system established under sec-  
10      tion 274A(d) of the Immigration and Nationality Act (8  
11      U.S.C. 1324a(d)), as amended by section 3 of this Act.  
12      The Secretary may implement the program on a limited  
13      pilot program basis before making it fully available to all  
14      individuals.

15           (c) ALLOWING PARENTS TO PREVENT THEFT OF  
16      THEIR CHILD’S IDENTITY.—The Secretary of Homeland  
17      Security, in consultation with the Commissioner of Social  
18      Security, shall establish a program which shall provide a  
19      reliable, secure method by which parents or legal guard-  
20      ians may suspend or limit the use of the social security  
21      account number or other identifying information of a  
22      minor under their care for the purposes of the employment  
23      eligibility verification system established under 274A(d) of  
24      the Immigration and Nationality Act (8 U.S.C. 1324a(d)),  
25      as amended by section 3 of this Act. The Secretary may

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

3 **SEC. 12. USE OF EMPLOYMENT ELIGIBILITY VERIFICATION**

4 **PHOTO TOOL.**

5 An employer who uses the photo matching tool used  
6 as part of the E-Verify System shall match the photo tool  
7 photograph to both the photograph on the identity or em-  
8 ployment eligibility document provided by the employee  
9 and to the face of the employee submitting the document  
10 for employment verification purposes.

11 **SEC. 13. IDENTITY AUTHENTICATION EMPLOYMENT ELIGI-**

12 **BILITY VERIFICATION PILOT PROGRAMS.**

13 Not later than 24 months after the date of the enact-  
14 ment of this Act, the Secretary of Homeland Security,  
15 after consultation with the Commissioner of Social Secu-  
16 rity and the Director of the National Institute of Stand-  
17 ards and Technology, shall establish by regulation not less  
18 than 2 Identity Authentication Employment Eligibility  
19 Verification pilot programs, each using a separate and dis-  
20 tinct technology (the “Authentication Pilots”). The pur-  
21 pose of the Authentication Pilots shall be to provide for  
22 identity authentication and employment eligibility  
23 verification with respect to enrolled new employees which  
24 shall be available to any employer that elects to participate  
25 in either of the Authentication Pilots. Any participating

1 employer may cancel the employer's participation in the  
2 Authentication Pilot after one year after electing to par-  
3 ticipate without prejudice to future participation. The Sec-  
4 retary shall report to the Committee on the Judiciary of  
5 the House of Representatives and the Committee on the  
6 Judiciary of the Senate the Secretary's findings on the  
7 Authentication Pilots, including the authentication tech-  
8 nologies chosen, not later than 12 months after com-  
9 mencement of the Authentication Pilots.

10 **SEC. 14. INSPECTOR GENERAL AUDITS.**

11 (a) IN GENERAL.—Not later than 1 year after the  
12 date of the enactment of this Act, the Inspector General  
13 of the Social Security Administration shall complete audits  
14 of the following categories in order to uncover evidence  
15 of individuals who are not authorized to work in the  
16 United States:

17 (1) Workers who dispute wages reported on  
18 their social security account number when they be-  
19 lieve someone else has used such number and name  
20 to report wages.

21 (2) Children's social security account numbers  
22 used for work purposes.

23 (3) Employers whose workers present signifi-  
24 cant numbers of mismatched social security account  
25 numbers or names for wage reporting.

1           (b) SUBMISSION.—The Inspector General of the So-  
2 cial Security Administration shall submit the audits com-  
3 pleted under subsection (a) to the Committee on Ways and  
4 Means of the House of Representatives and the Committee  
5 on Finance of the Senate for review of the evidence of  
6 individuals who are not authorized to work in the United  
7 States. The Chairmen of those Committees shall then de-  
8 termine information to be shared with the Secretary of  
9 Homeland Security so that such Secretary can investigate  
10 the unauthorized employment demonstrated by such evi-  
11 dence.

○