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

IN THE SENATE OF THE UNITED STATES
JANUARY 20, 2017

Mr. Grassley (for himself, Mr. Boozman, Mr. Corker, Mr. Cotton, Mr. Enzi, Mr. Lee, Mr. Shelby, 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
4 SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
5 (a) Short Title.—This Act may be cited as the
6 “Accountability Through Electronic Verification Act”.
7 (b) Table of Contents.—The table of contents for
8 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Permanent reauthorization.
Sec. 3. Mandatory use of E-Verify.
Sec. 4. Consequences of failure to participate.
Sec. 5. Preemption; liability.
Sec. 6. Expanded use of E-Verify.
Sec. 7. Reverification.
Sec. 8. Holding employers accountable.
Sec. 9. Information sharing.
Sec. 10. Form I–9 Process.
Sec. 11. Algorithm.
Sec. 12. Identity theft.
Sec. 13. Small Business Demonstration Program.

1 SEC. 2. PERMANENT REAUTHORIZATION.

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

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

(a) FEDERAL GOVERNMENT.—Section 402(e)(1) of
the Illegal Immigration Reform and Immigrant Responsi-
bility Act of 1996 (8 U.S.C. 1324a note) is amended—
(1) by amending subparagraph (A) to read as
follows:

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

(2) in subparagraph (B), by striking “, that
conducts hiring in a State” and all that follows and
inserting “shall participate in E-Verify by complying
with the terms and conditions set forth in this section.”.

(b) **FEDERAL CONTRACTORS; CRITICAL EMPLOYERS.**—Section 402(e) of such Act, as amended by subsection (a), is further amended—

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

(2) by inserting after paragraph (1) the following:

“(2) **UNITED STATES CONTRACTORS.**—Any person, employer, or other entity that enters into a contract with the Federal Government shall participate in E-Verify by complying with the terms and conditions set forth in this section.

“(3) **DESIGNATION OF CRITICAL EMPLOYERS.**—Not later than 7 days after the date of the enactment of this paragraph, the Secretary of Homeland Security shall—

“(A) conduct an assessment of employers that are critical to the homeland security or national security needs of the United States;

“(B) designate and publish a list of employers and classes of employers that are deemed to be critical pursuant to the assessment conducted under subparagraph (A); and
“(C) require that critical employers designated pursuant to subparagraph (B) participate in E-Verify by complying with the terms and conditions set forth in this section not later than 30 days after the Secretary makes such designation.”.

(c) All Employers.—Section 402 of such Act, as amended by this section, is further amended—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following:

“(f) Mandatory Participation in E-Verify.—

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

“(2) Use of Contract Labor.—Any employer who uses a contract, subcontract, or exchange to obtain the labor of an individual in the United States shall certify in such contract, subcontract, or exchange that the employer uses E-Verify. If such certification is not included in a contract, subcontract,
or exchange, the employer shall be deemed to have
violated paragraph (1).

“(3) INTERIM MANDATORY PARTICIPATION.—

“(A) IN GENERAL.—Before the date set
forth in paragraph (1), the Secretary of Home-
land Security shall require any employer or
class of employers to participate in E-Verify,
with respect to all employees recruited, referred,
or hired by such employer if the Secretary has
reasonable cause to believe that the employer is
or has been engaged in a material violation of
section 274A of the Immigration and Nation-

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

“(i) written notification of such re-
requirement; and

“(ii) appropriate training materials to
facilitate compliance with such require-
ment.”.
SEC. 4. CONSEQUENCES OF FAILURE TO PARTICIPATE.

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

“(5) Consequences of Failure to Participate.—If a person or other entity that is required to participate in E-Verify fails to comply with the requirements under this title with respect to an individual—

“(A) such failure shall be treated as a violation of section 274A(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1324a) with respect to such individual; and

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

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

(1) in subsection (e)—

(A) in paragraph (4)—

(i) in subparagraph (A)—

(I) in the matter preceding clause (i), by inserting “, subject to paragraph (10),” after “in an amount”;
(II) in clause (i), by striking “not less than $250 and not more than $2,000” and inserting “not less than $2,500 and not more than $5,000”; 

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

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

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

“(B) may require the person or entity to take such other remedial action as is appropriate.”;

(B) in paragraph (5)—

(i) by inserting “, subject to paragraphs (10) through (12),” after “in an amount”;
(ii) by striking “$100 and not more than $1,000” and inserting “$1,000 and not more than $25,000”;

(iii) by striking “the size of the business of the employer being charged, the good faith of the employer” and inserting “the good faith of the employer being charged”; and

(iv) by adding at the end the following: “Failure by a person or entity to utilize the employment eligibility verification system as required by law, or providing information to the system that the person or entity knows or reasonably believes to be false, shall be treated as a violation of subsection (a)(1)(A).”; and

(C) by adding at the end the following:

“(10) EXEMPTION FROM PENALTY.—In the case of the imposition of a civil penalty under paragraph (4)(A) with respect to a violation of paragraph (1)(A) or (2) of subsection (a) for hiring, continuation of employment, recruitment, or referral by a person or entity and, in the case of the imposition of a civil penalty under paragraph (5) for a violation of subsection (a)(1)(B) for hiring, recruitment, or
referral by a person or entity, the penalty otherwise imposed may be waived or reduced if the violator establishes that the violator acted in good faith.

“(11) Authority to debar employers for certain violations.—

“(A) In general.—If a person or entity is determined by the Secretary of Homeland Security to be a repeat violator of paragraph (1)(A) or (2) of subsection (a), or is convicted of a crime under this section, such person or entity may be considered for debarment from the receipt of Federal contracts, grants, or cooperative agreements in accordance with the debarment standards and pursuant to the debarment procedures set forth in the Federal Acquisition Regulation.

“(B) Does not have contract, grant, agreement.—If the Secretary of Homeland Security or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such an person or entity does not hold a Federal contract, grant or cooperative agreement, the Secretary or the Attorney General shall refer the matter to the Administrator of General Services
to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.

“(C) HAS CONTRACT, GRANT, AGREEMENT.—If the Secretary of Homeland Security or the Attorney General wishes to have a person or entity considered for debarment in accordance with this paragraph, and such person or entity holds a Federal contract, grant or cooperative agreement, the Secretary or the Attorney General shall advise all agencies or departments holding a contract, grant, or cooperative agreement with the person or entity of the Government’s interest in having the person or entity considered for debarment, and after soliciting and considering the views of all such agencies and departments, the Secretary or the Attorney General may waive the operation of this paragraph or refer the matter to any appropriate lead agency to determine whether to list the person or entity on the List of Parties Excluded from Federal Procurement, and if so, for what duration and under what scope.
“(D) REVIEW.—Any decision to debar a person or entity under in accordance with this paragraph shall be reviewable pursuant to part 9.4 of the Federal Acquisition Regulation.”; and

(2) in subsection (f)—

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

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

(B) in paragraph (2), by striking “Attorney General” each place it appears and inserting “Secretary of Homeland Security”.

SEC. 5. PREEMPTION; LIABILITY.

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

“(h) LIMITATION ON STATE AUTHORITY.—
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“(1) PREEMPTION.—A State or local government may not prohibit a person or other entity from verifying the employment authorization of new hires or current employees through E-Verify.

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

SEC. 6. EXPANDED USE OF E-VERIFY.

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

“(A) IN GENERAL.—

“(i) BEFORE HIRING.—The person or other entity may verify the employment eligibility of an individual through E-Verify before the individual is hired, recruited, or referred if the individual consents to such verification. If an employer receives a tentative nonconfirmation for an individual, the employer shall comply with procedures prescribed by the Secretary of Homeland Security, including—
“(I) providing the individual employees with private, written notification of the finding and written referral instructions;

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

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

“(ii) After employment offer.—The person or other entity shall verify the employment eligibility of an individual through E-Verify not later than 3 days after the date of the hiring, recruitment, or referral, as the case may be.

“(iii) Existing employees.—Not later than 3 years after the date of the enactment of the Accountability Through Electronic Verification Act, the Secretary shall require all employers to use E-Verify to verify the identity and employment eligibility of any individual who has not been previously verified by the employer through E-Verify.”.
SEC. 7. REVERIFICATION.

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

“(5) Reverification.—Each person or other entity participating in E-Verify shall use the E-Verify confirmation system to reverify the work authorization of any individual not later than 3 days after the date on which such individual’s employment authorization is scheduled to expire (as indicated by the Secretary or the documents provided to the employer pursuant to section 274A(b) of the Immigration and Nationality Act (8 U.S.C. 1324a(b))), in accordance with the procedures set forth in this subsection and section 402.”.

SEC. 8. HOLDING EMPLOYERS ACCOUNTABLE.

(a) Consequences of Nonconfirmation.—Section 403(a)(4)(C) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended to read as follows:

“(C) Consequences of nonconfirmation.—

“(i) Termination and notification.—If the person or other entity receives a final nonconfirmation regarding an
individual, the employer shall imme-
diately—

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

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

“(ii) Consequence of continued
employment.—If the person or other en-
tity continues to employ, recruit, or refer
the individual after receiving final noncon-
firmation, a rebuttable presumption is cre-
ated that the employer has violated section
274A of the Immigration and Nationality
Act (8 U.S.C. 1324a).”.

(b) Interagency Nonconfirmation Report.—

Section 405 of the Illegal Immigration Reform and Immigrant
is amended by adding at the end the following:

“(c) Interagency Nonconfirmation Report.—
“(1) IN GENERAL.—The Director of U.S. Citizenship and Immigration Services shall submit a weekly report to the Assistant Secretary of Immigration and Customs Enforcement that includes, for each individual who receives final nonconfirmation through E-Verify—

“(A) the name of such individual;

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

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

“(D) any other critical information that the Assistant Secretary determines to be appropriate.

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

SEC. 9. INFORMATION SHARING.

The Commissioner of Social Security, the Secretary of Homeland Security, and the Secretary of the Treasury shall jointly establish a program to share information among such agencies that may or could lead to the identification of unauthorized aliens (as defined under section 274A(h)(3) of the Immigration and Nationality Act (8
U.S.C. 1324a(h)(3)), including no-match letters and any information in the earnings suspense file.

SEC. 10. FORM I-9 PROCESS.

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

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

(2) eliminating the process described in paragraph (1).

SEC. 11. ALGORITHM.

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

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

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

“(2) to insulate and protect the privacy and security of the underlying information;
“(3) to maintain appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information;

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

“(5) to register any time when E-Verify is unable to receive inquiries;

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

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

“(A) developing and using algorithms to detect potential identity theft, such as multiple uses of the same identifying information or documents;

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

“(C) developing capabilities to detect anomalies in the use of the system that may indicate potential fraud or misuse of the system; and

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

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

“(A) records maintained by the Social Security Administration;

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

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

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

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

“(10) to display the digital photograph that the issuer placed on the document so that the employer can compare the photograph displayed to the photo-
graph on the document presented by the employee or, in exceptional cases, if a photograph is not available from the issuer, to provide for a temporary alternative procedure, specified by the Secretary, for confirming the authenticity of the document.”.

SEC. 12. IDENTITY THEFT.

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

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

and

(2) in subsection (b)(3)—

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

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

(C) by adding at the end the following:

“(D) to facilitate or assist in harboring or hiring unauthorized workers in violation of section 274, 274A, or 274C of the Immigration and Nationality Act (8 U.S.C. 1324, 1324a, and 1324c).”.

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SEC. 13. SMALL BUSINESS DEMONSTRATION PROGRAM.

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

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

“(d) SMALL BUSINESS DEMONSTRATION PROGRAM.—Not later than 9 months after the date of the enactment of the Accountability Through Electronic Verification Act, the Director of U.S. Citizenship and Immigration Services shall establish a demonstration program that assists small businesses in rural areas or areas without internet capabilities to verify the employment eligibility of newly hired employees solely through the use of publicly accessible internet terminals.”.

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