

112TH CONGRESS  
1ST SESSION

# H. R. 2885

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 12, 2011

Mr. SMITH of Texas (for himself, Mr. CALVERT, Mr. GALLEGLY, Mr. MILLER of Florida, Mr. TERRY, Mrs. BLACKBURN, Mr. LEWIS of California, Mr. WESTMORELAND, Mr. KINGSTON, Mr. ROSS of Florida, Mr. BURGESS, Mr. LATHAM, Mr. FRANKS of Arizona, Mr. GARY G. MILLER of California, and Mrs. MYRICK) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and the Workforce and Ways and Means, 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.—On the date of  
17 hire (as defined in subsection (h)(4)), the  
18 person or entity shall attest, under penalty  
19 of perjury and on a form, including elec-  
20 tronic and telephonic formats, designated  
21 or established by the Secretary by regula-  
22 tion not later than 6 months after the date  
23 of the enactment of the Legal Workforce  
24 Act, that it has verified that the individual  
25 is not an unauthorized alien by—

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

15           “(II) examining—

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

19           “(bb) a document relating to  
20           the individual presenting it de-  
21           scribed in clause (iii) and a docu-  
22           ment relating to the individual  
23           presenting it described in clause  
24           (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 hand-writ-  
22 ten or electronic signature.

23 “(B) INDIVIDUAL ATTESTATION OF EM-  
24 PLOYMENT AUTHORIZATION.—

1           “(i) IN GENERAL.—During the  
2 verification period (as defined in subpara-  
3 graph (F)), the individual shall attest,  
4 under penalty of perjury on the form des-  
5 ignated or established for purposes of sub-  
6 paragraph (A), that the individual is a cit-  
7 izen or national of the United States, an  
8 alien lawfully admitted for permanent resi-  
9 dence, or an alien who is authorized under  
10 this Act or by the Secretary of Homeland  
11 Security to be hired, recruited, or referred  
12 for such employment. Such attestation may  
13 be manifested by either a hand-written or  
14 electronic signature. The individual shall  
15 also provide that individual’s social secu-  
16 rity account number (if the individual  
17 claims to have been issued such a number),  
18 and, if the individual does not attest to  
19 United States nationality under this sub-  
20 paragraph, such identification or author-  
21 ization number established by the Depart-  
22 ment of Homeland Security for the alien  
23 as the Secretary may specify.

24           “(ii) CRIMINAL PENALTY.—



1                   “(I) OFFENSES.—Any individual  
2                   who, pursuant to clause (i), provides a  
3                   social security account number or an  
4                   identification or authorization number  
5                   established by the Secretary of Home-  
6                   land Security that belongs to another  
7                   person, knowing that the number does  
8                   not belong to the individual providing  
9                   the number, shall be fined under title  
10                  18, United States Code, imprisoned  
11                  not less than 1 year and not more  
12                  than 15 years, or both. Any individual  
13                  who, pursuant to clause (i), provides,  
14                  during and in relation to any felony  
15                  violation enumerated in section  
16                  1028A(c) of title 18, United States  
17                  Code, a social security account num-  
18                  ber or an identification or authoriza-  
19                  tion number established by the Sec-  
20                  retary of Homeland Security that be-  
21                  longs to another person, knowing that  
22                  the number does not belong to the in-  
23                  dividual providing the number, in ad-  
24                  dition to the punishment provided for  
25                  such felony, shall be fined under title

1 18, United States Code, imprisoned  
2 for a term of 2 years, or both.

3 “(II) CONSECUTIVE SEN-  
4 TENCE.—Notwithstanding any other  
5 provision of law—

6 “(aa) a court shall not place  
7 on probation any individual con-  
8 victed of a violation of this  
9 clause;

10 “(bb) except as provided in  
11 item (dd), no term of imprison-  
12 ment imposed on an individual  
13 under this section shall run con-  
14 currently with any other term of  
15 imprisonment imposed on the in-  
16 dividual under any other provi-  
17 sion of law, including any term of  
18 imprisonment imposed for the  
19 felony enumerated in section  
20 1028A(c) of title 18, United  
21 States Code, during which the  
22 violation of this section occurred;

23 “(cc) in determining any  
24 term of imprisonment to be im-  
25 posed for the felony enumerated

1 in section 1028A(c) of title 18,  
2 United States Code, during  
3 which the violation of this clause  
4 occurred, a court shall not in any  
5 way reduce the term to be im-  
6 posed for such crime so as to  
7 compensate for, or otherwise take  
8 into account, any separate term  
9 of imprisonment imposed or to be  
10 imposed for a violation of this  
11 clause; and

12 “(dd) a term of imprison-  
13 ment imposed on an individual  
14 for a violation of this clause may,  
15 in the discretion of the court, run  
16 concurrently, in whole or in part,  
17 only with another term of impris-  
18 onment that is imposed by the  
19 court at the same time on that  
20 individual for an additional viola-  
21 tion of this clause, except that  
22 such discretion shall be exercised  
23 in accordance with any applicable  
24 guidelines and policy statements  
25 issued by the United States Sen-

1 tencing Commission pursuant to  
2 section 994 of title 28, United  
3 States Code.

4 “(C) RETENTION OF VERIFICATION FORM  
5 AND VERIFICATION.—

6 “(i) IN GENERAL.—After completion  
7 of such form in accordance with subpara-  
8 graphs (A) and (B), the person or entity  
9 shall—

10 “(I) retain a paper, microfiche,  
11 microfilm, or electronic version of the  
12 form and make it available for inspec-  
13 tion by officers of the Department of  
14 Homeland Security, the Special Coun-  
15 sel for Immigration-Related Unfair  
16 Employment Practices, or the Depart-  
17 ment of Labor during a period begin-  
18 ning on the date of the recruiting or  
19 referral of the individual, or, in the  
20 case of the hiring of an individual, the  
21 date on which the verification is com-  
22 pleted, and ending—

23 “(aa) in the case of the re-  
24 cruiting or referral of an indi-

1           vidual, 3 years after the date of  
2           the recruiting or referral; and

3           “(bb) in the case of the hir-  
4           ing of an individual, the later of  
5           3 years after the date the  
6           verification is completed or one  
7           year after the date the individ-  
8           ual’s employment is terminated;  
9           and

10          “(II) during the verification pe-  
11          riod (as defined in subparagraph (F)),  
12          make an inquiry, as provided in sub-  
13          section (d), using the verification sys-  
14          tem to seek verification of the identity  
15          and employment eligibility of an indi-  
16          vidual.

17          “(ii) CONFIRMATION.—

18                 “(I)         CONFIRMATION         RE-  
19                 CEIVED.—If the person or other entity  
20                 receives an appropriate confirmation  
21                 of an individual’s identity and work  
22                 eligibility under the verification sys-  
23                 tem within the time period specified,  
24                 the person or entity shall record on  
25                 the form an appropriate code that is

1 provided under the system and that  
2 indicates a final confirmation of such  
3 identity and work eligibility of the in-  
4 dividual.

5 “(II) TENTATIVE NONCONFIRMA-  
6 TION RECEIVED.—If the person or  
7 other entity receives a tentative non-  
8 confirmation of an individual’s iden-  
9 tity or work eligibility under the  
10 verification system within the time pe-  
11 riod specified, the person or entity  
12 shall so inform the individual for  
13 whom the verification is sought. If the  
14 individual does not contest the non-  
15 confirmation within the time period  
16 specified, the nonconfirmation shall be  
17 considered final. The person or entity  
18 shall then record on the form an ap-  
19 propriate code which has been pro-  
20 vided under the system to indicate a  
21 final nonconfirmation. If the indi-  
22 vidual does contest the nonconfirma-  
23 tion, the individual shall utilize the  
24 process for secondary verification pro-  
25 vided under subsection (d). The non-

1 confirmation will remain tentative  
2 until a final confirmation or noncon-  
3 firmation is provided by the  
4 verification system within the time pe-  
5 riod specified. In no case shall an em-  
6 ployer terminate employment of an in-  
7 dividual because of a failure of the in-  
8 dividual to have identity and work eli-  
9 gibility confirmed under this section  
10 until a nonconfirmation becomes final.  
11 Nothing in this clause shall apply to a  
12 termination of employment for any  
13 reason other than because of such a  
14 failure. In no case shall an employer  
15 rescind the offer of employment to an  
16 individual because of a failure of the  
17 individual to have identity and work  
18 eligibility confirmed under this sub-  
19 section until a nonconfirmation be-  
20 comes final. Nothing in this subclause  
21 shall apply to a rescission of the offer  
22 of employment for any reason other  
23 than because of such a failure.

24 “(III) FINAL CONFIRMATION OR  
25 NONCONFIRMATION RECEIVED.—If a

1 final confirmation or nonconfirmation  
2 is provided by the verification system  
3 regarding an individual, the person or  
4 entity shall record on the form an ap-  
5 propriate code that is provided under  
6 the system and that indicates a con-  
7 firmation or nonconfirmation of iden-  
8 tity and work eligibility of the indi-  
9 vidual.

10 “(IV) EXTENSION OF TIME.—If  
11 the person or other entity in good  
12 faith attempts to make an inquiry  
13 during the time period specified and  
14 the verification system has registered  
15 that not all inquiries were received  
16 during such time, the person or entity  
17 may make an inquiry in the first sub-  
18 sequent working day in which the  
19 verification system registers that it  
20 has received all inquiries. If the  
21 verification system cannot receive in-  
22 quires at all times during a day, the  
23 person or entity merely has to assert  
24 that the entity attempted to make the  
25 inquiry on that day for the previous



1 sentence to apply to such an inquiry,  
2 and does not have to provide any ad-  
3 ditional proof concerning such inquiry.

4 “(V) CONSEQUENCES OF NON-  
5 CONFIRMATION.—

6 “(aa) TERMINATION OR NO-  
7 TIFICATION OF CONTINUED EM-  
8 PLOYMENT.—If the person or  
9 other entity has received a final  
10 nonconfirmation regarding an in-  
11 dividual, the person or entity  
12 may terminate employment of the  
13 individual (or decline to recruit  
14 or refer the individual). If the  
15 person or entity does not termi-  
16 nate employment of the indi-  
17 vidual or proceeds to recruit or  
18 refer the individual, the person or  
19 entity shall notify the Secretary  
20 of Homeland Security of such  
21 fact through the verification sys-  
22 tem or in such other manner as  
23 the Secretary may specify.

24 “(bb) FAILURE TO NO-  
25 TIFY.—If the person or entity

1 fails to provide notice with re-  
2 spect to an individual as required  
3 under item (aa), the failure is  
4 deemed to constitute a violation  
5 of subsection (a)(1)(A) with re-  
6 spect to that individual.

7 “(VI) CONTINUED EMPLOYMENT  
8 AFTER FINAL NONCONFIRMATION.—If  
9 the person or other entity continues to  
10 employ (or to recruit or refer) an indi-  
11 vidual after receiving final noncon-  
12 firmation, a rebuttable presumption is  
13 created that the person or entity has  
14 violated subsection (a)(1)(A).

15 “(D) CONTINUATION OF SEASONAL AGRI-  
16 CULTURAL EMPLOYMENT.—An individual shall  
17 not be considered a new hire subject to  
18 verification under this paragraph if the indi-  
19 vidual is engaged in seasonal agricultural em-  
20 ployment and is returning to work for an em-  
21 ployer that previously employed the individual.

22 “(E) EFFECTIVE DATES OF NEW PROCE-  
23 DURES.—

24 “(i) HIRING.—Except as provided in  
25 clause (iii), the provisions of this para-

1 graph shall apply to a person or other enti-  
2 ty hiring an individual for employment in  
3 the United States as follows:

4 “(I) With respect to employers  
5 having 10,000 or more employees in  
6 the United States on the date of the  
7 enactment of the Legal Workforce  
8 Act, on the date that is 6 months  
9 after the date of the enactment of  
10 such Act.

11 “(II) With respect to employers  
12 having 500 or more employees in the  
13 United States, but less than 10,000  
14 employees in the United States, on  
15 the date of the enactment of the  
16 Legal Workforce Act, on the date that  
17 is 12 months after the date of the en-  
18 actment of such Act.

19 “(III) With respect to employers  
20 having 20 or more employees in the  
21 United States, but less than 500 em-  
22 ployees in the United States, on the  
23 date of the enactment of the Legal  
24 Workforce Act, on the date that is 18

1 months after the date of the enact-  
2 ment of such Act.

3 “(IV) With respect to employers  
4 having 1 or more employees in the  
5 United States, but less than 20 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 24  
9 months after the date of the enact-  
10 ment of such Act.

11 “(ii) RECRUITING AND REFERRING.—  
12 Except as provided in clause (iii), the pro-  
13 visions of this paragraph shall apply to a  
14 person or other entity recruiting or refer-  
15 ring an individual for employment in the  
16 United States on the date that is 12  
17 months after the date of the enactment of  
18 the Legal Workforce Act.

19 “(iii) AGRICULTURAL LABOR OR SERV-  
20 ICES.—With respect to an employee per-  
21 forming agricultural labor or services (as  
22 defined for purposes of section  
23 101(a)(15)(H)(ii)(a)), this paragraph shall  
24 not apply with respect to the verification of  
25 the employee until the date that is 36

1 months after the date of the enactment of  
2 the Legal Workforce Act. An employee de-  
3 scribed in this clause shall not be counted  
4 for purposes of clause (i).

5 “(iv) TRANSITION RULE.—Subject to  
6 paragraph (4), the following shall apply to  
7 a person or other entity hiring, recruiting,  
8 or referring an individual for employment  
9 in the United States until the effective  
10 date or dates applicable under clauses (i)  
11 through (iii):

12 “(I) This subsection, as in effect  
13 before the enactment of the Legal  
14 Workforce Act.

15 “(II) Subtitle A of title IV of the  
16 Illegal Immigration Reform and Im-  
17 migrant Responsibility Act of 1996 (8  
18 U.S.C. 1324a note), as in effect be-  
19 fore the effective date in section 7(c)  
20 of the Legal Workforce Act.

21 “(III) Any other provision of  
22 Federal law requiring the person or  
23 entity to participate in the E-Verify  
24 Program described in section 403(a)  
25 of the Illegal Immigration Reform and

1 Immigrant Responsibility Act of 1996  
2 (8 U.S.C. 1324a note), as in effect be-  
3 fore the effective date in section 7(c)  
4 of the Legal Workforce Act, including  
5 Executive Order 13465 (8 U.S.C.  
6 1324a note; relating to Government  
7 procurement).

8 “(F) VERIFICATION PERIOD DEFINED.—

9 “(i) IN GENERAL.—For purposes of  
10 this paragraph:

11 “(I) In the case of recruitment or  
12 referral, the term ‘verification period’  
13 means the period ending on the date  
14 recruiting or referring commences.

15 “(II) In the case of hiring, the  
16 term ‘verification period’ means the  
17 period beginning on the date on which  
18 an offer of employment is extended  
19 and ending on the date that is 3 busi-  
20 ness days after the date of hire, ex-  
21 cept as provided in clause (iii). The  
22 offer of employment may be condi-  
23 tioned in accordance with clause (ii).

24 “(ii) JOB OFFER MAY BE CONDI-  
25 TIONAL.—A person or other entity may

1 offer a prospective employee an employ-  
2 ment position that is conditioned on final  
3 verification of the identity and employment  
4 eligibility of the employee using the proce-  
5 dures established under this paragraph.

6 “(iii) SPECIAL RULE.—Notwith-  
7 standing clause (i)(II), in the case of an  
8 alien who is authorized for employment  
9 and who provides evidence from the Social  
10 Security Administration that the alien has  
11 applied for a social security account num-  
12 ber, the verification period ends three busi-  
13 ness days after the alien receives the social  
14 security account number.

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

17 “(A) IN GENERAL.—Except as provided in  
18 subparagraph (B), a person or entity shall  
19 make an inquiry, as provided in subsection (d),  
20 using the verification system to seek  
21 reverification of the identity and employment  
22 eligibility of all individuals with a limited period  
23 of work authorization employed by the person  
24 or entity during the 3 business days before the

1 date on which the employee’s work authoriza-  
2 tion expires as follows:

3 “(i) With respect to employers having  
4 10,000 or more employees in the United  
5 States on the date of the enactment of the  
6 Legal Workforce Act, beginning on the  
7 date that is 6 months after the date of the  
8 enactment of such Act.

9 “(ii) With respect to employers having  
10 500 or more employees in the United  
11 States, but less than 10,000 employees in  
12 the United States, on the date of the en-  
13 actment of the Legal Workforce Act, be-  
14 ginning on the date that is 12 months  
15 after the date of the enactment of such  
16 Act.

17 “(iii) With respect to employers hav-  
18 ing 20 or more employees in the United  
19 States, but less than 500 employees in the  
20 United States, on the date of the enact-  
21 ment of the Legal Workforce Act, begin-  
22 ning on the date that is 18 months after  
23 the date of the enactment of such Act.

24 “(iv) With respect to employers hav-  
25 ing 1 or more employees in the United



1 States, but less than 20 employees in the  
2 United States, on the date of the enact-  
3 ment of the Legal Workforce Act, begin-  
4 ning on the date that is 24 months after  
5 the date of the enactment of such Act.

6 “(B) AGRICULTURAL LABOR OR SERV-  
7 ICES.—With respect to an employee performing  
8 agricultural labor or services (as defined for  
9 purposes of section 101(a)(15)(H)(ii)(a)), or an  
10 employee recruited or referred by a farm labor  
11 contractor (as defined in section 3 of the Mi-  
12 grant and Seasonal Agricultural Worker Protec-  
13 tion Act (29 U.S.C. 1801)), subparagraph (A)  
14 shall not apply with respect to the reverification  
15 of the employee until the date that is 36  
16 months after the date of the enactment of the  
17 Legal Workforce Act. An employee described in  
18 this subparagraph shall not be counted for pur-  
19 poses of subparagraph (A).

20 “(C) REVERIFICATION.—Paragraph  
21 (1)(C)(ii) shall apply to reverifications pursuant  
22 to this paragraph on the same basis as it ap-  
23 plies to verifications pursuant to paragraph (1),  
24 except that employers shall—

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

4           “(ii) retain a paper, microfiche, micro-  
5           film, or electronic version of the form and  
6           make it available for inspection by officers  
7           of the Department of Homeland Security,  
8           the Special Counsel for Immigration-Related  
9           Unfair Employment Practices, or the  
10          Department of Labor during the period be-  
11          ginning on the date the reverification com-  
12          mences and ending on the date that is the  
13          later of 3 years after the date of such  
14          reverification or 1 year after the date the  
15          individual’s employment is terminated.

16          “(3) PREVIOUSLY HIRED INDIVIDUALS.—

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

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

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

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

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

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

22 “(III) An employee assigned to  
23 perform work in the United States  
24 under a Federal contract, except that  
25 this subclause—

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

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

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

1 the employer shall make inquiries to the system  
2 in accordance with the following:

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

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

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

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

18 “(C) ON A MANDATORY BASIS FOR CER-  
19 TAIN MISMATCHED WAGE AND TAX STATE-  
20 MENTS.—

21 “(i) IN GENERAL.—In the case of an  
22 employer who is required by this sub-  
23 section to use the verification system de-  
24 scribed in subsection (d), or has elected  
25 voluntarily to use such system, and who re-

1 ceives a notice described in clause (ii) iden-  
2 tifying an individual employee, the em-  
3 ployer shall, not later than 30 calendar  
4 days after receipt of such notice, use the  
5 verification system described in subsection  
6 (d) to verify the employment eligibility of  
7 the employee in accordance with the in-  
8 structions in such notice if the individual is  
9 still on the payroll of the employer.

10 “(ii) NOTICE.—The Commissioner of  
11 Social Security shall issue a notice to an  
12 employer submitting one or more mis-  
13 matched wage and tax statements or cor-  
14 rected wage and tax statements containing  
15 the following:

16 “(I) A description of the mis-  
17 matched information.

18 “(II) An explanation of the steps  
19 that the employer is required to take  
20 to correct the mismatched informa-  
21 tion.

22 “(III) An explanation of the em-  
23 ployment eligibility verification re-  
24 quirement described in clause (i).

1           “(D) ON A VOLUNTARY BASIS.—Subject to  
2 paragraph (2), and subparagraphs (A) through  
3 (C) of this paragraph, beginning on the date  
4 that is 30 days after the date of the enactment  
5 of the Legal Workforce Act, an employer may  
6 make an inquiry, as provided in subsection (d),  
7 using the verification system to seek verification  
8 of the identity and employment eligibility of any  
9 individual employed by the employer. If an em-  
10 ployer chooses voluntarily to seek verification of  
11 any individual employed by the employer, the  
12 employer shall seek verification of all individ-  
13 uals so employed. An employer’s decision about  
14 whether or not voluntarily to seek verification  
15 of its current workforce under this subpara-  
16 graph may not be considered by any govern-  
17 ment agency in any proceeding, investigation,  
18 or review provided for in this Act.

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



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

4           “(ii) retain a paper, microfiche, micro-  
5           film, or electronic version of the form and  
6           make it available for inspection by officers  
7           of the Department of Homeland Security,  
8           the Special Counsel for Immigration-Related  
9           Unfair Employment Practices, or the  
10          Department of Labor during the period be-  
11          ginning on the date the verification com-  
12          mences and ending on the date that is the  
13          later of 3 years after the date of such  
14          verification or 1 year after the date the in-  
15          dividual’s employment is terminated.

16          “(4) EARLY COMPLIANCE.—

17                 “(A) FORMER E-VERIFY REQUIRED USERS,  
18                 INCLUDING FEDERAL CONTRACTORS.—Notwith-  
19                 standing the deadlines in paragraphs (1) and  
20                 (2), beginning on the date of the enactment of  
21                 the Legal Workforce Act, the Secretary is au-  
22                 thorized to commence requiring employers re-  
23                 quired to participate in the E-Verify Program  
24                 described in section 403(a) of the Illegal Immi-  
25                 gration Reform and Immigrant Responsibility

1 Act of 1996 (8 U.S.C. 1324a note), including  
2 employers required to participate in such pro-  
3 gram by reason of Federal acquisition laws  
4 (and regulations promulgated under those laws,  
5 including the Federal Acquisition Regulation),  
6 to commence compliance with the requirements  
7 of this subsection (and any additional require-  
8 ments of such Federal acquisition laws and reg-  
9 ulation) in lieu of any requirement to partici-  
10 pate in the E-Verify Program.

11 “(B) FORMER E-VERIFY VOLUNTARY  
12 USERS AND OTHERS DESIRING EARLY COMPLI-  
13 ANCE.—Notwithstanding the deadlines in para-  
14 graphs (1) and (2), beginning on the date of  
15 the enactment of the Legal Workforce Act, the  
16 Secretary shall provide for the voluntary com-  
17 pliance with the requirements of this subsection  
18 by employers voluntarily electing to participate  
19 in the E-Verify Program described in section  
20 403(a) of the Illegal Immigration Reform and  
21 Immigrant Responsibility Act of 1996 (8 U.S.C.  
22 1324a note) before such date, as well as by  
23 other employers seeking voluntary early compli-  
24 ance.

1           “(5) COPYING OF DOCUMENTATION PER-  
2           MITTED.—Notwithstanding any other provision of  
3           law, the person or entity may copy a document pre-  
4           sented by an individual pursuant to this subsection  
5           and may retain the copy, but only (except as other-  
6           wise permitted under law) for the purpose of com-  
7           plying with the requirements of this subsection.

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

15          “(7) GOOD FAITH COMPLIANCE.—

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

23                 “(B) EXCEPTION IF FAILURE TO CORRECT  
24                 AFTER NOTICE.—Subparagraph (A) shall not  
25                 apply if—

1 “(i) the failure is not de minimus;

2 “(ii) the Secretary of Homeland Secu-  
3 rity has explained to the person or entity  
4 the basis for the failure and why it is not  
5 de minimus;

6 “(iii) the person or entity has been  
7 provided a period of not less than 30 cal-  
8 endar days (beginning after the date of the  
9 explanation) within which to correct the  
10 failure; and

11 “(iv) the person or entity has not cor-  
12 rected the failure voluntarily within such  
13 period.

14 “(C) EXCEPTION FOR PATTERN OR PRAC-  
15 TICE VIOLATORS.—Subparagraph (A) shall not  
16 apply to a person or entity that has or is engag-  
17 ing in a pattern or practice of violations of sub-  
18 section (a)(1)(A) or (a)(2).

19 “(8) SINGLE EXTENSION OF DEADLINES UPON  
20 CERTIFICATION.—In a case in which the Secretary  
21 of Homeland Security has certified to the Congress  
22 that the employment eligibility verification system  
23 required under subsection (d) will not be fully oper-  
24 ational by the date that is 6 months after the date  
25 of the enactment of the Legal Workforce Act, each

1 deadline established under this section for an em-  
2 ployer to make an inquiry using such system shall  
3 be extended by 6 months. No other extension of such  
4 a deadline shall be made.”.

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

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

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

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

16 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-  
17 TEM.—

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

1 Secretary, which may be a nongovernmental enti-  
2 ty)—

3 “(A) responds to inquiries made by per-  
4 sons at any time through a toll-free telephone  
5 line and other toll-free electronic media con-  
6 cerning an individual’s identity and whether the  
7 individual is authorized to be employed; and

8 “(B) maintains records of the inquiries  
9 that were made, of verifications provided (or  
10 not provided), and of the codes provided to in-  
11 quirers as evidence of their compliance with  
12 their obligations under this section.

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

21 “(3) SECONDARY CONFIRMATION PROCESS IN  
22 CASE OF TENTATIVE NONCONFIRMATION.—In cases  
23 of tentative nonconfirmation, the Secretary shall  
24 specify, in consultation with the Commissioner of  
25 Social Security, an available secondary verification

1 process to confirm the validity of information pro-  
2 vided and to provide a final confirmation or noncon-  
3 firmation not later than 10 working days after the  
4 date on which the notice of the tentative noncon-  
5 firmation is received by the employee. The Secretary,  
6 in consultation with the Commissioner, may extend  
7 this deadline on a case-by-case basis, and if the time  
8 is extended, shall document such extension within  
9 the verification system. When final confirmation or  
10 nonconfirmation is provided, the verification system  
11 shall provide an appropriate code indicating such  
12 confirmation or nonconfirmation.

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

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

20 “(B) to respond to all inquiries made by  
21 such persons and entities on whether individ-  
22 uals are authorized to be employed and to reg-  
23 ister all times when such inquiries are not re-  
24 ceived;

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

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

8                   “(i) the selective or unauthorized use  
9                   of the system to verify eligibility; or

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

16           “(E) to limit the subjects of verification to  
17           the following individuals:

18                   “(i) Individuals hired, referred, or re-  
19                   cruited, in accordance with paragraph (1)  
20                   or (4) of subsection (b).

21                   “(ii) Employees and prospective em-  
22                   ployees, in accordance with paragraph (1),  
23                   (2), (3), or (4) of subsection (b).



1                   “(iii) Individuals seeking to confirm  
2                   their own employment eligibility on a vol-  
3                   untary basis.

4                   “(5) RESPONSIBILITIES OF COMMISSIONER OF  
5                   SOCIAL SECURITY.—As part of the verification sys-  
6                   tem, the Commissioner of Social Security, in con-  
7                   sultation with the Secretary of Homeland Security  
8                   (and any designee of the Secretary selected to estab-  
9                   lish and administer the verification system), shall es-  
10                  tablish a reliable, secure method, which, within the  
11                  time periods specified under paragraphs (2) and (3),  
12                  compares the name and social security account num-  
13                  ber provided in an inquiry against such information  
14                  maintained by the Commissioner in order to validate  
15                  (or not validate) the information provided regarding  
16                  an individual whose identity and employment eligi-  
17                  bility must be confirmed, the correspondence of the  
18                  name and number, and whether the individual has  
19                  presented a social security account number that is  
20                  not valid for employment. The Commissioner shall  
21                  not disclose or release social security information  
22                  (other than such confirmation or nonconfirmation)  
23                  under the verification system except as provided for  
24                  in this section or section 205(c)(2)(I) of the Social  
25                  Security Act.

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

20           “(7) OFFENSES.—

21           “(A) IN GENERAL.—Any person or entity  
22           that, in making an inquiry under subsection  
23           (b)(1)(C)(i)(II), provides to the verification sys-  
24           tem a social security account number or an  
25           identification or authorization number estab-

1           lished by the Secretary of Homeland Security  
2           that belongs to a person other than the indi-  
3           vidual whose identity and employment author-  
4           ization are being verified, knowing that the  
5           number does not belong to the individual whose  
6           identity and employment authorization are  
7           being verified, shall be fined under title 18,  
8           United States Code, imprisoned not less than 1  
9           year and not more than 15 years, or both. If  
10          the person or entity, in making an inquiry  
11          under subsection (b)(1)(C)(i)(II), during and in  
12          relation to any felony violation enumerated in  
13          section 1028A(c) of title 18, United States  
14          Code, provides to the verification system a so-  
15          cial security account number or an identifica-  
16          tion or authorization number established by the  
17          Secretary of Homeland Security that belongs to  
18          a person other than the individual whose iden-  
19          tity and employment authorization are being  
20          verified, knowing that the number does not be-  
21          long to the individual whose identity and work  
22          authorization are being verified, in addition to  
23          the punishment provided for such felony, shall  
24          be fined under title 18, United States Code, im-  
25          prisoned for a term of 2 years, or both.

1           “(B) CONSECUTIVE SENTENCE.—Notwith-  
2 standing any other provision of law—

3           “(i) a court shall not place on proba-  
4 tion any person or entity convicted of a  
5 violation of this paragraph;

6           “(ii) except as provided in clause (iv),  
7 no term of imprisonment imposed on a  
8 person or entity under this section shall  
9 run concurrently with any other term of  
10 imprisonment imposed on the person or en-  
11 tity under any other provision of law, in-  
12 cluding any term of imprisonment imposed  
13 for the felony enumerated in section  
14 1028A(c) of title 18, United States Code,  
15 during which the violation of this para-  
16 graph occurred;

17           “(iii) in determining any term of im-  
18 prisonment to be imposed for the felony  
19 enumerated in section 1028A(c) of title 18,  
20 United States Code, during which the vio-  
21 lation of this section occurred, a court  
22 shall not in any way reduce the term to be  
23 imposed for such crime so as to com-  
24 pensate for, or otherwise take into account,  
25 any separate term of imprisonment im-

1 posed or to be imposed for a violation of  
2 this paragraph; and

3 “(iv) a term of imprisonment imposed  
4 on a person or entity for a violation of this  
5 paragraph may, in the discretion of the  
6 court, run concurrently, in whole or in  
7 part, only with another term of imprison-  
8 ment that is imposed by the court at the  
9 same time on that person or entity for an  
10 additional violation of this paragraph, ex-  
11 cept that such discretion shall be exercised  
12 in accordance with any applicable guide-  
13 lines and policy statements issued by the  
14 United States Sentencing Commission pur-  
15 suant to section 994 of title 28, United  
16 States Code.

17 “(8) UPDATING INFORMATION.—The Commis-  
18 sioner of Social Security and the Secretary of Home-  
19 land Security shall update their information in a  
20 manner that promotes the maximum accuracy and  
21 shall provide a process for the prompt correction of  
22 erroneous information, including instances in which  
23 it is brought to their attention in the secondary  
24 verification process described in paragraph (3).

1           “(9) LIMITATION ON USE OF THE  
2 VERIFICATION SYSTEM AND ANY RELATED SYS-  
3 TEMS.—

4           “(A) NO NATIONAL IDENTIFICATION  
5 CARD.—Nothing in this section shall be con-  
6 strued to authorize, directly or indirectly, the  
7 issuance or use of national identification cards  
8 or the establishment of a national identification  
9 card.

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

21           “(10) REMEDIES.—If an individual alleges that  
22 the individual would not have been dismissed from  
23 a job but for an error of the verification mechanism,  
24 the individual may seek compensation only through  
25 the mechanism of the Federal Tort Claims Act, and

1 injunctive relief to correct such error. No class ac-  
2 tion may be brought under this paragraph.”.

3 **SEC. 4. RECRUITMENT, REFERRAL, AND CONTINUATION OF**  
4 **EMPLOYMENT.**

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

- 9 (1) in paragraph (1)(A), by striking “for a fee”;  
10 (2) in paragraph (1), by amending subpara-  
11 graph (B) to read as follows:

12 “(B) to hire, continue to employ, or to re-  
13 cruit or refer for employment in the United  
14 States an individual without complying with the  
15 requirements of subsection (b).”;

- 16 (3) in paragraph (2), by striking “after hiring  
17 an alien for employment in accordance with para-  
18 graph (1),” and inserting “after complying with  
19 paragraph (1),”; and

- 20 (4) in paragraph (3), by striking “hiring,” and  
21 inserting “hiring, employing,” each place it appears.

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

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



1 pay union membership dues are included in this defi-  
2 nition whether or not they receive remuneration, as  
3 are labor service entities or labor service agencies,  
4 whether public, private, for-profit, or nonprofit that  
5 recruit, dispatch, or otherwise facilitate the hiring of  
6 laborers for any period of time by a third party.”.

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

14 **SEC. 5. GOOD FAITH DEFENSE.**

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

18 “(3) GOOD FAITH DEFENSE.—

19 “(A) DEFENSE.—An employer (or person  
20 or entity that hires, employs, recruits, or refers  
21 (as defined in subsection (h)(5)), or is otherwise  
22 obligated to comply with this section) who es-  
23 tablishes that it has complied in good faith with  
24 the requirements of subsection (b)—

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

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

18           “(B) FAILURE TO SEEK AND OBTAIN  
19           VERIFICATION.—Subject to the effective dates  
20           and other deadlines applicable under subsection  
21           (b), in the case of a person or entity in the  
22           United States that hires, or continues to em-  
23           ploy, an individual, or recruits or refers an indi-  
24           vidual for employment, the following require-  
25           ments apply:

1                   “(i)       FAILURE       TO       SEEK  
2                   VERIFICATION.—

3                   “(I) IN GENERAL.—If the person  
4                   or entity has not made an inquiry,  
5                   under the mechanism established  
6                   under subsection (d) and in accord-  
7                   ance with the timeframes established  
8                   under subsection (b), seeking  
9                   verification of the identity and work  
10                  eligibility of the individual, the de-  
11                  fense under subparagraph (A) shall  
12                  not be considered to apply with re-  
13                  spect to any employment, except as  
14                  provided in subclause (II).

15                  “(II) SPECIAL RULE FOR FAIL-  
16                  URE OF VERIFICATION MECHANISM.—  
17                  If such a person or entity in good  
18                  faith attempts to make an inquiry in  
19                  order to qualify for the defense under  
20                  subparagraph (A) and the verification  
21                  mechanism has registered that not all  
22                  inquiries were responded to during the  
23                  relevant time, the person or entity can  
24                  make an inquiry until the end of the  
25                  first subsequent working day in which

1 the verification mechanism registers  
2 no nonresponses and qualify for such  
3 defense.

4 “(ii) FAILURE TO OBTAIN  
5 VERIFICATION.—If the person or entity  
6 has made the inquiry described in clause  
7 (i)(I) but has not received an appropriate  
8 verification of such identity and work eligi-  
9 bility under such mechanism within the  
10 time period specified under subsection  
11 (d)(2) after the time the verification in-  
12 quiry was received, the defense under sub-  
13 paragraph (A) shall not be considered to  
14 apply with respect to any employment after  
15 the end of such time period.”.

16 **SEC. 6. PREEMPTION.**

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

20 “(2) PREEMPTION.—The provisions of this sec-  
21 tion preempt any State or local law, ordinance, pol-  
22 icy, or rule, including any criminal or civil fine or  
23 penalty structure, insofar as they may now or here-  
24 after relate to the hiring, continued employment, or  
25 status verification for employment eligibility pur-

1 poses, of unauthorized aliens. A State, locality, mu-  
2 nicipality, or political subdivision may exercise its  
3 authority over business licensing and similar laws as  
4 a penalty for failure to use the verification system  
5 described in subsection (d) to verify employment eli-  
6 gibility when and as required under subsection (b).”.

7 **SEC. 7. REPEAL.**

8 (a) **IN GENERAL.**—Subtitle A of title IV of the Illegal  
9 Immigration Reform and Immigrant Responsibility Act of  
10 1996 (8 U.S.C. 1234a note) is repealed.

11 (b) **REFERENCES.**—Any reference in any Federal  
12 law, Executive order, rule, regulation, or delegation of au-  
13 thority, or any document of, or pertaining to, the Depart-  
14 ment of Homeland Security, Department of Justice, or the  
15 Social Security Administration, to the employment eligi-  
16 bility confirmation system established under section 404  
17 of the Illegal Immigration Reform and Immigrant Respon-  
18 sibility Act of 1996 (8 U.S.C. 1324a note) is deemed to  
19 refer to the employment eligibility confirmation system es-  
20 tablished under section 274A(d) of the Immigration and  
21 Nationality Act, as amended by section 3 of this Act.

22 (c) **EFFECTIVE DATE.**—This section shall take effect  
23 on the date that is 36 months after the date of the enact-  
24 ment of this Act.

1 **SEC. 8. PENALTIES.**

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

4 (1) in subsection (e)(1)—

5 (A) by striking “Attorney General” each  
6 place such term appears and inserting “Sec-  
7 retary of Homeland Security”; and

8 (B) by striking “Service” and inserting  
9 “Department of Homeland Security”;

10 (2) in subsection (e)(4)—

11 (A) in subparagraph (A), in the matter be-  
12 fore clause (i), by inserting “, subject to para-  
13 graph (10),” after “in an amount”;

14 (B) in subparagraph (A)(i), by striking  
15 “not less than \$250 and not more than  
16 \$2,000” and inserting “not less than \$2,500  
17 and not more than \$5,000”;

18 (C) in subparagraph (A)(ii), by striking  
19 “not less than \$2,000 and not more than  
20 \$5,000” and inserting “not less than \$5,000  
21 and not more than \$10,000”;

22 (D) in subparagraph (A)(iii), by striking  
23 “not less than \$3,000 and not more than  
24 \$10,000” and inserting “not less than \$10,000  
25 and not more than \$25,000”; and

1 (E) by amending subparagraph (B) to read  
2 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”;

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) AUTHORITY TO DEBAR EMPLOYERS FOR  
12 CERTAIN VIOLATIONS.—

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

24 “(B) DOES NOT HAVE CONTRACT, GRANT,  
25 AGREEMENT.—If the Secretary of Homeland



1 Security or the Attorney General wishes to have  
2 a person or entity considered for debarment in  
3 accordance with this paragraph, and such an  
4 person or entity does not hold a Federal con-  
5 tract, grant or cooperative agreement, the Sec-  
6 retary or Attorney General shall refer the mat-  
7 ter to the Administrator of General Services to  
8 determine whether to list the person or entity  
9 on the List of Parties Excluded from Federal  
10 Procurement, and if so, for what duration and  
11 under what scope.

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

1           General may refer the matter to any appro-  
2           priate lead agency to determine whether to list  
3           the person or entity on the List of Parties Ex-  
4           cluded from Federal Procurement, and if so, for  
5           what duration and under what scope.

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

10           “(12) OFFICE FOR STATE AND LOCAL GOVERN-  
11           MENT COMPLAINTS.—The Secretary of Homeland  
12           Security shall establish an office—

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

19           “(B) that is required to indicate to the  
20           complaining State or local agency within 5 busi-  
21           ness days of the filing of such a complaint by  
22           identifying whether the Secretary will further  
23           investigate the information provided;

24           “(C) that is required to investigate those  
25           complaints filed by State or local government

1 agencies that, on their face, have a substantial  
2 probability of validity;

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

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

12 (5) by amending paragraph (1) of subsection (f)  
13 to read as follows:

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

22 **SEC. 9. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**  
23 **TION PROGRAMS.**

24 (a) FUNDING UNDER AGREEMENT.—Effective for  
25 fiscal years beginning on or after October 1, 2012, the

1 Commissioner of Social Security and the Secretary of  
2 Homeland Security shall enter into and maintain an  
3 agreement which shall—

4 (1) provide funds to the Commissioner for the  
5 full costs of the responsibilities of the Commissioner  
6 under section 274A(d) of the Immigration and Na-  
7 tionality Act (8 U.S.C. 1324a(d)), as amended by  
8 section 3 of this Act, including (but not limited  
9 to)—

10 (A) acquiring, installing, and maintaining  
11 technological equipment and systems necessary  
12 for the fulfillment of the responsibilities of the  
13 Commissioner under such section 274A(d), but  
14 only that portion of such costs that are attrib-  
15 utable exclusively to such responsibilities; and

16 (B) responding to individuals who contest  
17 a tentative nonconfirmation provided by the em-  
18 ployment eligibility verification system estab-  
19 lished under such section;

20 (2) provide such funds annually in advance of  
21 the applicable quarter based on estimating method-  
22 ology agreed to by the Commissioner and the Sec-  
23 retary (except in such instances where the delayed  
24 enactment of an annual appropriation may preclude  
25 such quarterly payments); and

1           (3) require an annual accounting and reconcili-  
2           ation of the actual costs incurred and the funds pro-  
3           vided under the agreement, which shall be reviewed  
4           by the Inspectors General of the Social Security Ad-  
5           ministration and the Department of Homeland Secu-  
6           rity.

7           (b) CONTINUATION OF EMPLOYMENT VERIFICATION  
8           IN ABSENCE OF TIMELY AGREEMENT.—In any case in  
9           which the agreement required under subsection (a) for any  
10          fiscal year beginning on or after October 1, 2012, has not  
11          been reached as of October 1 of such fiscal year, the latest  
12          agreement between the Commissioner and the Secretary  
13          of Homeland Security providing for funding to cover the  
14          costs of the responsibilities of the Commissioner under  
15          section 274A(d) of the Immigration and Nationality Act  
16          (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-  
17          terim basis for such fiscal year until such time as an  
18          agreement required under subsection (a) is subsequently  
19          reached, except that the terms of such interim agreement  
20          shall be modified by the Director of the Office of Manage-  
21          ment and Budget to adjust for inflation and any increase  
22          or decrease in the volume of requests under the employ-  
23          ment eligibility verification system. In any case in which  
24          an interim agreement applies for any fiscal year under this  
25          subsection, the Commissioner and the Secretary shall, not

1 later than October 1 of such fiscal year, notify the Com-  
2 mittee on Ways and Means, the Committee on the Judici-  
3 ary, and the Committee on Appropriations of the House  
4 of Representatives and the Committee on Finance, the  
5 Committee on the Judiciary, and the Committee on Ap-  
6 propriations of the Senate of the failure to reach the  
7 agreement required under subsection (a) for such fiscal  
8 year. Until such time as the agreement required under  
9 subsection (a) has been reached for such fiscal year, the  
10 Commissioner and the Secretary shall, not later than the  
11 end of each 90-day period after October 1 of such fiscal  
12 year, notify such Committees of the status of negotiations  
13 between the Commissioner and the Secretary in order to  
14 reach such an agreement.

15 **SEC. 10. FRAUD PREVENTION.**

16 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**  
17 **NUMBERS.**—The Secretary of Homeland Security, in con-  
18 sultation with the Commissioner of Social Security, shall  
19 establish a program in which social security account num-  
20 bers that have been identified to be subject to unusual  
21 multiple use in the employment eligibility verification sys-  
22 tem established under section 274A(d) of the Immigration  
23 and Nationality Act (8 U.S.C. 1324a(d)), as amended by  
24 section 3 of this Act, or that are otherwise suspected or  
25 determined to have been compromised by identity fraud

1 or other misuse, shall be blocked from use for such system  
2 purposes unless the individual using such number is able  
3 to establish, through secure and fair additional security  
4 procedures, that the individual is the legitimate holder of  
5 the number.

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

20 **SEC. 11. BIOMETRIC EMPLOYMENT ELIGIBILITY**  
21 **VERIFICATION PILOT PROGRAM.**

22 Not later than 48 months after the date of the enact-  
23 ment of the Legal Workforce Act, the Secretary of Home-  
24 land Security, after consultation with the Commissioner  
25 of Social Security and the Director of the National Insti-

1 tute of Standards and Technology, shall establish by regu-  
2 lation a Biometric Employment Eligibility Verification  
3 pilot program (the “Biometric Pilot”). The purpose of the  
4 Biometric Pilot shall be to provide for identity authentica-  
5 tion and employment eligibility verification with respect to  
6 enrolled new employees which shall be available to subject  
7 employers who elect to participate in the Biometric Pilot.  
8 Any subject employer may cancel the employer’s participa-  
9 tion in the Biometric Pilot after one year after electing  
10 to participate without prejudice to future participation.

○