

116TH CONGRESS
1ST SESSION

H. R. 1399

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2019

Mr. BROOKS of Alabama (for himself, Mr. GOSAR, Mr. DUNCAN, Mr. DESJARLAIS, Mr. BABIN, Mr. KING of Iowa, Mr. BUDD, Mr. GIBBS, Mr. GAETZ, Mr. BYRNE, Mr. HUNTER, Mr. HARRIS, Mr. CRAWFORD, Mr. GOHMERT, Mr. FORTENBERRY, Mr. POSEY, and Mr. NORMAN) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Education and Labor, 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

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Permanent reauthorization.
- Sec. 3. Mandatory use of E-Verify.
- Sec. 4. Consequences of failure to participate.
- Sec. 5. Preemption; liability.
- Sec. 6. Expanded use of E-Verify.
- Sec. 7. Reverification.
- Sec. 8. Holding employers accountable.
- Sec. 9. Information sharing.
- Sec. 10. Form I-9 Process.
- Sec. 11. Algorithm.
- Sec. 12. Identity theft.
- Sec. 13. Small Business Demonstration Program.
- Sec. 14. Employer Compliance Inspection Center.

1 SEC. 2. PERMANENT REAUTHORIZATION.

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

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

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

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

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

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

6 (b) FEDERAL CONTRACTORS; CRITICAL EMPLOY-
7 ERS.—Section 402(e) of such Act, as amended by sub-
8 section (a), is further amended—

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

11 (2) by inserting after paragraph (1) the fol-
12 lowing:

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

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

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

1 “(B) designate and publish a list of em-
2 ployers and classes of employers that are
3 deemed to be critical pursuant to the assess-
4 ment conducted under subparagraph (A); and

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

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

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

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

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

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

24 “(2) USE OF CONTRACT LABOR.—Any employer
25 who uses a contract, subcontract, or exchange to ob-

1 tain the labor of an individual in the United States
2 shall certify in such contract, subcontract, or ex-
3 change that the employer, and all parties to such
4 contract, subcontract, or exchange, use E-Verify. If
5 such certification is not included in a contract, sub-
6 contract, or exchange, the employer shall be deemed
7 to have violated paragraph (1).

8 “(3) INTERIM MANDATORY PARTICIPATION.—

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

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

1 “(i) written notification of such re-
2 quirement; and

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

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

7 (a) IN GENERAL.—Section 402(e)(5) of the Illegal
8 Immigration Reform and Immigrant Responsibility Act of
9 1996 (8 U.S.C. 1324a note), as redesignated by section
10 3(b)(1), is amended to read as follows:

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

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

20 “(B) a rebuttable presumption is created
21 that the person or entity has violated section
22 274A(a)(1)(A) of such Act.”.

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

25 (1) in subsection (e)—

1 (A) in paragraph (4)—

2 (i) in subparagraph (A)—

3 (I) in the matter preceding clause

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

6 (II) in clause (i), by striking “not
7 less than \$250 and not more than
8 \$2,000” and inserting “not less than
9 \$2,500 and not more than \$5,000”;

10 (III) in clause (ii), by striking
11 “not less than \$2,000 and not more
12 than \$5,000” and inserting “not less
13 than \$5,000 and not more than
14 \$10,000”; and

15 (IV) in clause (iii), by striking
16 “not less than \$3,000 and not more
17 than \$10,000” and inserting “not less
18 than \$10,000 and not more than
19 \$25,000”; and

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

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

25 (B) in paragraph (5)—

1 (i) by inserting “, subject to para-
2 graphs (10) through (12),” after “in an
3 amount”;

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

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

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

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

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

1 a person or entity and, in the case of the imposition
2 of a civil penalty under paragraph (5) for a violation
3 of subsection (a)(1)(B) for hiring, recruitment, or
4 referral by a person or entity, the penalty otherwise
5 imposed may be waived or reduced if the violator es-
6 tablishes that the violator acted in good faith.

7 “(11) AUTHORITY TO DEBAR EMPLOYERS FOR
8 CERTAIN VIOLATIONS.—

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

20 “(B) DOES NOT HAVE CONTRACT, GRANT,
21 AGREEMENT.—If the Secretary of Homeland
22 Security debars a person or entity in accord-
23 ance with this paragraph, and such person or
24 entity does not hold a Federal contract, grant
25 or cooperative agreement, the Administrator of

1 General Services shall include the person or en-
2 tity on the List of Parties Excluded from Fed-
3 eral Procurement for 5 years.

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

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

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

18 “(D) REVIEW.—Any decision to debar a
19 person or entity under in accordance with this
20 paragraph shall be reviewable pursuant to part
21 9.4 of the Federal Acquisition Regulation.”;
22 and

23 (2) in subsection (f)—

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

1 “(1) CRIMINAL PENALTY.—Any person or enti-
2 ty which engages in a pattern or practice of viola-
3 tions of subsection (a)(1) or (2) shall be fined not
4 more than \$30,000 for each unauthorized alien with
5 respect to which such a violation occurs, imprisoned
6 for not less than 1 year and not more than 10 years,
7 or both, notwithstanding the provisions of any other
8 Federal law relating to fine levels.”; and

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

12 **SEC. 5. PREEMPTION; LIABILITY.**

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

17 “(h) LIMITATION ON STATE AUTHORITY.—

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

22 “(2) LIABILITY.—A person or other entity that
23 participates in E-Verify may not be held liable under
24 any Federal, State, or local law for any employment-
25 related action taken with respect to the wrongful

1 termination of an individual in good faith reliance on
2 information provided through E-Verify.”.

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

4 Section 403(a)(3)(A) of the Illegal Immigration Re-
5 form and Immigrant Responsibility Act of 1996 (8 U.S.C.
6 1324a note) is amended to read as follows:

7 “(A) IN GENERAL.—

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

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

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

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

4 “(ii) AFTER EMPLOYMENT OFFER.—
5 The person or other entity shall verify the
6 employment eligibility of an individual
7 through E-Verify not later than 3 days
8 after the date of the hiring, recruitment, or
9 referral, as the case may be.

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

19 **SEC. 7. REVERIFICATION.**

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

24 “(5) REVERIFICATION.—Each person or other
25 entity participating in E-Verify shall use the E-

1 Verify confirmation system to reverify the work au-
2 thorization of any individual not later than 3 days
3 after the date on which such individual’s employ-
4 ment authorization is scheduled to expire (as indi-
5 cated by the Secretary or the documents provided to
6 the employer pursuant to section 274A(b) of the Im-
7 migration and Nationality Act (8 U.S.C. 1324a(b))),
8 in accordance with the procedures set forth in this
9 subsection and section 402.”.

10 **SEC. 8. HOLDING EMPLOYERS ACCOUNTABLE.**

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

15 “(C) CONSEQUENCES OF NONCONFIRMA-
16 TION.—

17 “(i) TERMINATION AND NOTIFICA-
18 TION.—If the person or other entity re-
19 ceives a final nonconfirmation regarding an
20 individual, the employer shall imme-
21 diately—

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

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

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

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

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

1 “(A) the name of such individual;

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

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

6 “(D) any other critical information that
7 the Assistant Secretary determines to be appro-
8 priate.

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

13 **SEC. 9. INFORMATION SHARING.**

14 Not later than 1 year after the date of the enactment
15 of this Act, the Commissioner of Social Security, the Com-
16 missioner of Internal Revenue, the Secretary of Homeland
17 Security, and the Secretary of the Treasury shall jointly
18 establish a program to share information among such
19 agencies that may or could lead to the identification of
20 unauthorized aliens (as defined under section 274A(h)(3)
21 of the Immigration and Nationality Act (8 U.S.C.
22 1324a(h)(3))), including no-match letters and any infor-
23 mation in the earnings suspense file.

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

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

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

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

13 **SEC. 11. ALGORITHM.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 “(A) records maintained by the Social Se-
8 curity Administration;

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

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

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

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

21 “(10) to display the digital photograph that the
22 issuer placed on the document so that the employer
23 can compare the photograph displayed to the photo-
24 graph on the document presented by the employee
25 or, in exceptional cases, if a photograph is not avail-

1 able from the issuer, to provide for a temporary al-
2 ternative procedure, specified by the Secretary, for
3 confirming the authenticity of the document.”.

4 **SEC. 12. IDENTITY THEFT.**

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

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

10 (2) in subsection (b)(3)—

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

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

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

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

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

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

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

3 (2) by inserting after subsection (c) the fol-
4 lowing:

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

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

15 (a) ESTABLISHMENT.—There is established, within
16 Homeland Security Investigations of U.S. Immigration
17 and Customs Enforcement, the Employer Compliance In-
18 spection Center (referred to in this section as the “Cen-
19 ter”).

20 (b) PURPOSES.—The establishment of the Center is
21 intended—

22 (1) to create a culture of compliance for all
23 United States businesses by imposing more effective,
24 efficient, and standardized consequences, including
25 civil and criminal penalties, on employers who fail to

1 comply with the employment eligibility verification
2 requirements; and

3 (2) to consolidate worksite enforcement audits
4 at a centralized location to ensure a standardized
5 process and uniform application of the fine matrix.

6 (c) DUTIES.—The Center shall—

7 (1) carry out duties related to the processing of
8 the Employment Eligibility Verification Form I–9,
9 including audits, and related worksite enforcement
10 investigations;

11 (2) ensure that all United States businesses ad-
12 here to existing laws and regulations regarding em-
13 ployment eligibility; and

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

17 (d) RESPONSE TIME.—The Center shall respond as
18 quickly as practicable to employer inquiries based on the
19 facts and circumstances of the employer making the in-
20 quiry.

21 (e) TASK FORCE.—The Center shall establish a task
22 force, utilizing existing information sharing agreements
23 with other Federal agencies, including the Social Security
24 Administration, U.S. Citizenship and Immigration Serv-
25 ices, the Department of Labor, and the Internal Revenue

- 1 Service, to serve as a force multiplier to proactively inves-
- 2 tigate crimes, including Social Security fraud, tax fraud,
- 3 and wage and hour violations.

