

Accountability Through Electronic Verification Act

Section-by-Section (118th Congress)

Section 1 – Short Title: “Accountability Through Electronic Verification Act”

Section 2 – Permanent Reauthorization: E-Verify was originally implemented as a pilot program in 1997 and has been reauthorized several times since. Under current law, it is still a pilot program that is generally reauthorized – along with several other immigration programs – in annual appropriations/spending bills or CRs. This section of the bill would amend current law by permanently reauthorizing the E-Verify program.

Section 3 – Mandatory Participation: This section requires federal government departments and agencies and federal contractors to use the E-Verify program. Within seven days of enactment, the Secretary of Homeland Security is required to conduct an assessment and designate employers that are critical to “the homeland security or national security needs of the United States.” These designated employers, or class of employers, will be required to use E-Verify within 30 days of being so designated. This section requires ***all*** employers in the United States to use E-Verify within one year of enactment.

This section also clarifies that contractors and subcontractors – who are required to use E-Verify under the bill – are required to certify in a contract, subcontract, or exchange that E-Verify is being used to check the work eligibility of individuals. If a certification is not made in such contract, subcontract or exchange, the employer is deemed to have violated the mandatory participation requirement.

Finally, this section allows the Secretary of Homeland Security to require certain employers to use E-Verify prior to one year after enactment if the Secretary has reasonable cause to believe that an employer is or has been engaged in unlawfully employing unauthorized aliens. The Secretary must – within 14 days – provide notice to the employer of their responsibilities and appropriate training materials to comply with the requirements.

Section 4 – Consequences of Failure to Participate: This section clarifies that failure to use E-Verify as required shall be treated as a violation of the Immigration and Nationality Act’s (INA) prohibition on employing unauthorized aliens. Failure to use E-Verify as required also creates a rebuttable presumption that an employer is in violation of the relevant provisions of the INA. Finally, this section increases fines under section 274A of the INA and bars employers from federal contracts should they not use E-Verify.

Section 5 – Preemption and Liability: This section prohibits a state or local government from prohibiting a person or entity from verifying their employees using the E-Verify program. It also reduces the liability that employers face for the wrongful termination of an individual based on good faith reliance on information provided through E-Verify.

Section 6 – Expanded Use of E-Verify: This section permits employers to use E-Verify before a person is hired. Currently, employers can only check the status of an individual after the person is hired, and that must be done within three business days. A business may invest in training and then find out that the individual is not authorized. This section allows the employer to check the individual before they are hired if the individual consents, but not later than the three working days after the person is hired. This gives employers an opportunity to know the immigration status of a potential employee before they invest in or hire the individual.

Finally, this section requires employers to use E-Verify within one year after enactment in order to check the identity and employment eligibility of any employee who has not been previously checked through E-Verify.

Section 7 – Reverification: This section requires employers to re-verify a person's work authorization through E-Verify not later than three days after the date on which their current work authorization is scheduled to expire.

Section 8 – Holding Employers Accountable: This section requires employers to terminate the employment of those found unauthorized to work due to a check through E-Verify. If the employer continues to employ, recruit, or refer the individual after receiving a “final non-confirmation,” a rebuttable presumption is created that the employer has violated section 274A of the Immigration and Nationality Act related to the unlawful employment of unauthorized aliens.

This section also requires that “non-confirmations” be reported from USCIS to ICE for enforcement purposes. When an employer receives a “non-confirmation,” U.S. Citizenship and Immigration Services (USCIS) must share that information, via a weekly report, with Immigration and Customs Enforcement (ICE) for investigative and enforcement purposes.

Section 9 – Information Sharing: Within one year of enactment, this section requires the Social Security Administration, Department of Homeland Security, and the Department of Treasury to jointly establish a program to share information that could lead to the identification of unauthorized aliens, including any no-match letter and any information in the earnings suspense file.

Section 10 – Form I-9 Process: Within 9 months of enactment, this section requires the Secretary of Homeland Security to submit a report to Congress containing recommendations to modify and simplify the Form I-9 process and eliminate the current Form I-9 process.

Section 11 – Algorithm: This section makes a number of amendments to existing statutory text regarding the design and operation of the E-Verify system. Among those amendments is language requiring the development of algorithms to detect potential identity theft and detect misuse of the system by employers or employees. It also requires the development of capabilities to detect anomalies in the use of the E-Verify system that may indicate fraud or misuse.

It also requires that auditing of system use be allowed in order to detect fraud and identity theft. The system must also confirm identity and work authorization through verification of records maintained across federal and state governments including: (1) records maintained by the Social

Security Administration; (2) birth and death records maintained by vital statistics agencies of any state or other jurisdiction in the United States; (3) passport and visa records maintained by the State Department; and (4) state driver's license or identity card information maintained by state DMVs.

Section 12 – Identity Theft: This section amends the criminal code to make clear that possession or use of identity information that is not one's own – without lawful authority and in the commission of another felony – is still punishable for aggravated identity fraud, regardless of the defendant's "knowledge" of the victim. This section is necessary in the wake of the Supreme Court's decision in *Flores-Figueroa v. United States*, which undermined prosecutors' long-standing use of the aggravated identity theft statute. That decision required that prosecutors now also prove that a defendant know he or she was using a real person's identity information, as opposed to counterfeit information not connected to an actual person.

Section 13 – Small Business Demonstration Program: Within 9 months of enactment, this section requires USCIS to establish a demonstration project in rural areas or areas without internet capabilities to assist small businesses in complying with the E-Verify participation requirement. Verification can be done solely through the use of publicly accessible internet terminals – not via phone.

Section 14 – Employer Compliance Inspection Center: This section establishes an Employer Compliance Inspection Center within ICE Homeland Security Investigations. The center will be required to carry out duties related to Form I-9 processing; will ensure that all U.S. businesses are complying with existing laws and regulations regarding employment eligibility; and will carry out such additional duties as may be assigned or delegated by the Director of ICE.