

[DISCUSSION DRAFT]

112TH CONGRESS
1ST SESSION

H. R. _____

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.

IN THE HOUSE OF REPRESENTATIVES

Mr. SMITH of Texas introduced the following bill; which was referred to the Committee on _____

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**
5 **Act”]**.

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

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

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

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

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

15 “(i) ATTESTATION.—On or before the
16 date of hiring, recruitment, or referral, the
17 person or entity shall attest, under penalty
18 of perjury and on a form designated or es-
19 tablished by the Secretary by regulation,
20 that it has verified that the individual is
21 not an unauthorized alien by—

22 “(I) obtaining from the indi-
23 vidual the individual’s social security
24 account number and recording the
25 number on the form (if the individual
26 claims to have been issued such a

1 number), and, if the individual does
2 not attest to United States citizenship
3 under subparagraph (B), obtaining
4 such identification or authorization
5 number established by the Depart-
6 ment of Homeland Security for the
7 alien as the Secretary of Homeland
8 Security may specify, and recording
9 such number on the form; and

10 “(II) examining—

11 “(aa) a document described
12 in clause (ii); or

13 “(bb) a document described
14 in clause (iii) and a document de-
15 scribed in clause (iv).

16 “(ii) DOCUMENTS EVIDENCING EM-
17 PLOYMENT AUTHORIZATION AND ESTAB-
18 LISHING IDENTITY.—A document de-
19 scribed in this subparagraph is an individ-
20 ual’s—

21 “(I) unexpired United States
22 passport or passport card;

23 “(II) unexpired permanent resi-
24 dent card that contains a photograph;

1 “(III) unexpired employment au-
2 thorization card that contains a pho-
3 tograph; or

4 “(IV) other document designated
5 by the Secretary of Homeland Secu-
6 rity, if the document—

7 “(aa) contains a photograph
8 of the individual and biometric
9 identification data from the indi-
10 vidual and such other personal
11 identifying information relating
12 to the individual as the Secretary
13 of Homeland Security finds, by
14 regulation, sufficient for purposes
15 of this clause;

16 “(bb) is evidence of author-
17 ization of employment in the
18 United States, and

19 “(cc) contains security fea-
20 tures to make it resistant to tam-
21 pering, counterfeiting, and fraud-
22 ulent use.

23 “(iii) DOCUMENTS EVIDENCING EM-
24 PLOYMENT AUTHORIZATION.—A document

1 described in this subparagraph is an indi-
2 vidual's—

3 “(I) social security account num-
4 ber card (other than such a card
5 which specifies on the face that the
6 issuance of the card does not author-
7 ize employment in the United States);
8 or

9 “(II) a certificate of birth abroad
10 issued by the Secretary of State.

11 “(iv) DOCUMENTS ESTABLISHING
12 IDENTITY OF INDIVIDUAL.—A document
13 described in this subparagraph is—

14 “(I) an individual's unexpired
15 State issued driver's license or identi-
16 fication card if it contains a photo-
17 graph and information such as name,
18 date of birth, gender, height, eye
19 color, and address;

20 “(II) an individual's unexpired
21 U.S. military identification card;

22 “(III) an individual's Native
23 America tribal identification docu-
24 ment; or

1 “(IV) in the case of an individual
2 under 16 years of age, or an indi-
3 vidual under 18 years of age and re-
4 siding in a State that does not provide
5 for issuance of an identification docu-
6 ment (other than a driver’s license)
7 referred to in subclause (I), a parent
8 or legal guardian’s attestation under
9 penalty of law as to the identity and
10 age of the individual.

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

22 “(vi) SIGNATURE.—Such attestation
23 may be manifested by either a hand-writ-
24 ten or electronic signature.

1 “(B) INDIVIDUAL ATTESTATION OF EM-
2 PLOYMENT AUTHORIZATION.—

3 “(i) IN GENERAL.—The individual
4 shall attest, under penalty of perjury on
5 the form designated or established for pur-
6 poses of subparagraph (A), that the indi-
7 vidual is a citizen or national of the United
8 States, an alien lawfully admitted for per-
9 manent residence, or an alien who is au-
10 thorized under this Act or by the Secretary
11 of Homeland Security to be hired, re-
12 cruited, or referred for such employment.
13 Such attestation may be manifested by ei-
14 ther a hand-written or electronic signature.
15 The individual shall also provide that indi-
16 vidual’s social security account number (if
17 the individual claims to have been issued
18 such a number), and, if the individual does
19 not attest to United States citizenship
20 under this subparagraph, such identifica-
21 tion or authorization number established
22 by the Department of Homeland Security
23 for the alien as the Secretary may specify.

24 “(ii) CRIMINAL PENALTY.—

1 “(I) OFFENSES.—Any individual
2 who, pursuant to clause (i), knowingly
3 provides a social security account
4 number or an identification or author-
5 ization number established by the Sec-
6 retary of Homeland Security that does
7 not belong to the individual shall be
8 fined under title 18, United States
9 Code, imprisoned not more than 2
10 years, or both. If the individual know-
11 ingly provides, during and in relation
12 to any felony violation enumerated in
13 section 1028A(c) of title 18, United
14 States Code, a social security account
15 number or an identification or author-
16 ization number established by the Sec-
17 retary of Homeland Security that does
18 not belong to the individual, in addi-
19 tion to the punishment provided for
20 such felony, the individual shall be
21 fined under title 18, United States
22 Code, imprisoned for a term of 2
23 years, or both.

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

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

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

21 “(cc) in determining any
22 term of imprisonment to be im-
23 posed for the felony enumerated
24 in section 1028A(e) of title 18,
25 United States Code, during

1 which the violation of this clause
2 occurred, a court shall not in any
3 way reduce the term to be im-
4 posed for such crime so as to
5 compensate for, or otherwise take
6 into account, any separate term
7 of imprisonment imposed or to be
8 imposed for a violation of this
9 clause; and

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

1 section 994 of title 28, United
2 States Code.

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

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

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

20 “(aa) in the case of the re-
21 cruiting or referral of an indi-
22 vidual, five years after the date
23 of the recruiting or referral;

24 “(bb) in the case of the hir-
25 ing of an individual, the later of

1 five years after the date of such
2 hire or one year after the date
3 the individual's employment is
4 terminated; and

5 “(cc) in the case of the
6 verification of a previously hired
7 individual, the later of five years
8 after the date of such verification
9 or one year after the date the in-
10 dividual's employment is termi-
11 nated;

12 “(II) make an inquiry, as pro-
13 vided in subsection (d), using the
14 verification system to seek verification
15 of the identity and employment eligi-
16 bility of an individual, on or before
17 the date of the hiring, or before the
18 recruiting or referring commences;
19 and

20 “(III) not commence recruitment
21 or referral of the individual until the
22 person or entity receives verification
23 under subparagraph (I) or (III) of
24 clause (ii).

25 “(ii) VERIFICATION.—

1 “(I) VERIFICATION RECEIVED.—
2 If the person or other entity receives
3 an appropriate verification of an indi-
4 vidual’s identity and work eligibility
5 under the verification system within
6 the time period specified, the person
7 or entity shall record on the form an
8 appropriate code that is provided
9 under the system and that indicates a
10 final verification of such identity and
11 work eligibility of the individual.

12 “(II) TENTATIVE
13 NONVERIFICATION RECEIVED.—If the
14 person or other entity receives a ten-
15 tative nonverification of an individ-
16 ual’s identity or work eligibility under
17 the verification system within the time
18 period specified, the person or entity
19 shall so inform the individual for
20 whom the verification is sought. If the
21 individual does not contest the
22 nonverification within the time period
23 specified, the nonverification shall be
24 considered final. The person or entity
25 shall then record on the form an ap-

1 appropriate code which has been pro-
2 vided under the system to indicate a
3 tentative nonverification. If the indi-
4 vidual does contest the
5 nonverification, the individual shall
6 utilize the process for secondary
7 verification provided under subsection
8 (d). The nonverification will remain
9 tentative until a final verification or
10 nonverification is provided by the
11 verification system within the time pe-
12 riod specified. In no case shall an em-
13 ployer terminate employment of an in-
14 dividual because of a failure of the in-
15 dividual to have identity and work eli-
16 gibility confirmed under this section
17 until a nonverification becomes final.
18 Nothing in this clause shall apply to a
19 termination of employment for any
20 reason other than because of such a
21 failure.

22 “(III) FINAL VERIFICATION OR
23 NONVERIFICATION RECEIVED.—If a
24 final verification or nonverification is
25 provided by the verification system re-

1 garding an individual, the person or
2 entity shall record on the form an ap-
3 propriate code that is provided under
4 the system and that indicates a
5 verification or nonverification of iden-
6 tity and work eligibility of the indi-
7 vidual.

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

1 and does not have to provide any ad-
2 ditional proof concerning such inquiry.

3 “(V) CONSEQUENCES OF
4 NONVERIFICATION.—

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

23 “(bb) FAILURE TO NO-
24 TIFY.—If the person or entity
25 fails to provide notice with re-

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

6 “(VI) CONTINUED EMPLOYMENT
7 AFTER FINAL NONVERIFICATION.—If
8 the person or other entity continues to
9 employ (or to recruit or refer) an indi-
10 vidual after receiving final
11 nonverification, a rebuttable presump-
12 tion is created that the person or enti-
13 ty has violated subsection (a)(1)(A).

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

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

23 “(i) IN GENERAL.—Except as pro-
24 vided in clause (iii), the provisions of this
25 paragraph shall apply to a person or other

1 entity hiring an individual for employment
2 in the United States as follows:

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

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

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

1 “(IV) With respect to employers
2 having 1 or more employees in the
3 United States, but less than 20 em-
4 ployees in the United States, on the
5 date of the enactment of the **【Legal**
6 **Workforce Act】**, on the date that is
7 24 months after the date of the enact-
8 ment of such Act.

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

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

1 described in this clause shall not be count-
2 ed for purposes of clause (i).

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

10 “(I) This subsection, as in effect
11 before the enactment of the **Legal**
12 **Workforce Act**].

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

19 “(III) Any other provision of law
20 requiring the person or entity to par-
21 ticipate in the E-Verify Program de-
22 scribed in section 403(a) of the Illegal
23 Immigration Reform and Immigrant
24 Responsibility Act of 1996 (8 U.S.C.
25 1324a note), as in effect before the ef-

1 fective date in section 7(c) of the
2 **【Legal Workforce Act】**, including Ex-
3 ecutive Order 13465 (8 U.S.C. 1324a
4 note; relating to Government procure-
5 ment).

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

8 “(A) IN GENERAL.—Except as provided in
9 subparagraph (B), a person or entity shall
10 make an inquiry, as provided in subsection (d),
11 using the verification system to seek
12 reverification of the identity and employment
13 eligibility of all individuals with a limited period
14 of work authorization employed by the person
15 or entity during the 30-day period ending on
16 the date the employee’s work authorization ex-
17 pires as follows:

18 “(i) With respect to employers having
19 10,000 or more employees in the United
20 States on the date of the enactment of the
21 **【Legal Workforce Act】**, beginning on the
22 date that is 6 months after the date of the
23 enactment of such Act.

24 “(ii) With respect to employers having
25 500 or more employees in the United

1 States, but less than 10,000 employees in
2 the United States, on the date of the en-
3 actment of the **【Legal Workforce Act】**, be-
4 ginning on the date that is 12 months
5 after the date of the enactment of such
6 Act.

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

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

21 “(B) AGRICULTURAL LABOR OR SERV-
22 ICES.—With respect to an employee performing
23 agricultural labor or services (as defined for
24 purposes of section 101(a)(15)(H)(ii)(a)), sub-
25 paragraph (A) shall not apply with respect to

1 the reverification of the employee until the date
2 that is 36 months after the date of the enact-
3 ment of the **【Legal Workforce Act】**. An em-
4 ployee described in this subparagraph shall not
5 be counted for purposes of subparagraph (A).

6 “(C) REVERIFICATION.—Paragraph
7 (1)(C)(ii) shall apply to reverifications pursuant
8 to this paragraph on the same basis as it ap-
9 plies to verifications pursuant to paragraph (1),
10 except that employers shall use a form des-
11 ignated or established by the Secretary by regu-
12 lation for purposes of this paragraph in lieu of
13 the verification form under paragraph (1).

14 “(D) NOTICE.—The Secretary of Home-
15 land Security shall notify a person or entity em-
16 ploying a person with limited work authoriza-
17 tion of the date on which the limited work au-
18 thorization expires.

19 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

20 “(A) ON A MANDATORY BASIS FOR CER-
21 TAIN EMPLOYEES.—

22 “(i) IN GENERAL.—Not later than the
23 date that is 6 months after the date of the
24 enactment of the **【Legal Workforce Act】**,
25 an employer shall make an inquiry, as pro-

1 vided in subsection (d), using the
2 verification system to seek verification of
3 the identity and employment eligibility of
4 any individual described in clause (ii) em-
5 ployed by the employer.

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

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

11 “(II) An employee who works at
12 a critical infrastructure sites (as des-
13 ignated under a Department of
14 Homeland Security directive, a Presi-
15 dential directive, or other Executive
16 order).

17 “(III) An employee assigned to
18 perform work in the United States
19 under a Federal or State contract.

20 “(B) ON A MANDATORY BASIS FOR MIS-
21 MATCHED SOCIAL SECURITY ACCOUNT NUM-
22 BER.—In the case of an employer who is re-
23 quired by this subsection to use the verification
24 system described in subsection (d), or has elect-
25 ed voluntarily to use such system, if the em-

1 employer receives a letter from the Commissioner
2 of Social Security identifying an employee who
3 has a mismatched social security account num-
4 ber, the employer shall, not later than 30 cal-
5 endar days after receipt of such letter, use the
6 system to verify the employment eligibility of
7 the employee in accordance with the instruc-
8 tions in such letter if the individual is still on
9 the payroll of the employer.

10 “(C) ON A MANDATORY BASIS FOR MUL-
11 TIPLE USERS OF SAME SOCIAL SECURITY AC-
12 COUNT NUMBER.—In the case of an employer
13 who is required by this subsection to use the
14 verification system described in subsection (d),
15 or has elected voluntarily to use such system,
16 the employer shall make inquiries to the system
17 in accordance with the following:

18 “(i) The Commissioner of Social Secu-
19 rity shall notify annually employees (at the
20 employer address) who submit a social se-
21 curity account number to which more than
22 one employer reports income. The notifica-
23 tion letter shall identify the number of em-
24 ployers to which, and the States in which,
25 income is being reported as well as suffi-

1 cient information notifying the employee of
2 the process to contact the Social Security
3 Administration Fraud Hotline if the em-
4 ployee believes the employee's identity may
5 have been stolen. The notice shall not
6 share information protected as private, in
7 order to avoid any recipient of the notice
8 being in the position to further identity
9 theft.

10 “(ii) If the person to whom the social
11 security account number was issued by the
12 Social Security Administration has been
13 identified and confirmed by Commissioner,
14 and indicates that the social security ac-
15 count number was used without their
16 knowledge, the Secretary and the Commis-
17 sioner shall lock the social security account
18 number for employment eligibility
19 verification purposes and shall notify the
20 employers of the individuals who wrong-
21 fully submitted the social security account
22 number that the employee may not be
23 work eligible.

24 “(iii) Each employer receiving such
25 notification of invalid social security ac-

1 count number shall use the verification
2 system described in subsection (d) to check
3 the work eligibility status of the applicable
4 employees within 7 business days of receipt
5 of the notification of invalid social security
6 account number under clause (ii).

7 “(D) ON A MANDATORY BASIS FOR CER-
8 TAIN MISMATCHED WAGE AND TAX STATE-
9 MENTS.—

10 “(i) IN GENERAL.—In the case of an
11 employer who receives a notice described in
12 clause (ii) identifying an individual em-
13 ployee, the employer shall, not later than
14 30 calendar days after receipt of such no-
15 tice, use the verification system described
16 in subsection (d) to verify the employment
17 eligibility of the employee in accordance
18 with the instructions in such notice if the
19 individual is still on the payroll of the em-
20 ployer.

21 “(ii) NOTICE.—The Commissioner of
22 Social Security shall issue a notice to an
23 employer submitting one or more mis-
24 matched wage and tax statements or cor-

1 rected wage and tax statements containing
2 the following:

3 “(I) A description of the mis-
4 matched information.

5 “(II) An explanation of the steps
6 that the employer is required to take
7 to correct the mismatched informa-
8 tion.

9 “(III) An explanation of the em-
10 ployment eligibility verification re-
11 quirement described in clause (i).

12 “(E) ON A VOLUNTARY BASIS.—Subject to
13 paragraph (2), beginning on the date that is 30
14 days after the date of the enactment of the
15 **【Legal Workforce Act】**, an employer may make
16 an inquiry, as provided in subsection (d), using
17 the verification system to seek verification of
18 the identity and employment eligibility of any
19 individual employed by the employer, as long as
20 it is done on a nondiscriminatory basis. If an
21 employer chooses to seek verification of any in-
22 dividual employed by the employer (excluding
23 instances of reverification of an employee with
24 a limited period of work authorization pursuant

1 to paragraph (2)), the employer shall seek
2 verification of all individuals so employed.

3 “(4) EARLY COMPLIANCE.—

4 “(A) FORMER E-VERIFY REQUIRED USERS,
5 INCLUDING FEDERAL CONTRACTORS.—Notwith-
6 standing the deadlines in paragraphs (1) and
7 (2), beginning 30 days after the date of the en-
8 actment of the **【Legal Workforce Act】**, the Sec-
9 retary is authorized to commence requiring em-
10 ployers required to participate in the E-Verify
11 Program described in section 403(a) of the Ille-
12 gal Immigration Reform and Immigrant Re-
13 sponsibility Act of 1996 (8 U.S.C. 1324a note),
14 including employers required to participate in
15 such program by reason of Federal acquisition
16 laws (and regulations promulgated under those
17 laws, including the Federal Acquisition Regula-
18 tion), to commence compliance with the require-
19 ments of this subsection (and any additional re-
20 quirements of such Federal acquisition laws and
21 regulation) in lieu of any requirement to par-
22 ticipate in the E-Verify Program.

23 “(B) FORMER E-VERIFY VOLUNTARY
24 USERS AND OTHERS DESIRING EARLY COMPLI-
25 ANCE.—Notwithstanding the deadlines in para-

1 graphs (1) and (2), beginning 30 days after the
2 date of the enactment of the **【Legal Workforce**
3 **Act】**, the Secretary shall provide for the vol-
4 untary compliance with the requirements of this
5 subsection by employers voluntarily electing to
6 participate in the E-Verify Program described
7 in section 403(a) of the Illegal Immigration Re-
8 form and Immigrant Responsibility Act of 1996
9 (8 U.S.C. 1324a note) before such date, as well
10 as by other employers seeking voluntary early
11 compliance.

12 “(5) COPYING OF DOCUMENTATION PER-
13 MITTED.—Notwithstanding any other provision of
14 law, the person or entity may copy a document pre-
15 sented by an individual pursuant to this subsection
16 and may retain the copy, but only (except as other-
17 wise permitted under law) for the purpose of com-
18 plying with the requirements of this subsection.

19 “(6) LIMITATION ON USE OF FORMS.—A form
20 designated or established by the Secretary of Home-
21 land Security under this subsection and any infor-
22 mation contained in or appended to such form, may
23 not be used for purposes other than for enforcement
24 of this Act and sections 1001, 1028, 1546, and 1621
25 of title 18, United States Code.

1 “(7) GOOD FAITH COMPLIANCE.—

2 “(A) IN GENERAL.—Except as otherwise
3 provided in this subsection, a person or entity
4 is considered to have complied with a require-
5 ment of this subsection notwithstanding a tech-
6 nical or procedural failure to meet such require-
7 ment if there was a good faith attempt to com-
8 ply with the requirement.

9 “(B) EXCEPTION IF FAILURE TO CORRECT
10 AFTER NOTICE.—Subparagraph (A) shall not
11 apply if—

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

13 “(ii) the Secretary of Homeland Secu-
14 rity has explained to the person or entity
15 the basis for the failure and why it is not
16 de minimus;

17 “(iii) the person or entity has been
18 provided a period of not less than 30 cal-
19 endar days (beginning after the date of the
20 explanation) within which to correct the
21 failure; and

22 “(iv) the person or entity has not cor-
23 rected the failure voluntarily within such
24 period.

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

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

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

9 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
10 TEM.—

11 “(1) IN GENERAL.—The Secretary of Homeland
12 Security shall establish and administer a verification
13 system through which the Secretary (or a designee
14 of the Secretary, which may be a nongovernmental
15 entity)—

16 “(A) responds to inquiries made by per-
17 sons at any time through a toll-free telephone
18 line and other toll-free electronic media con-
19 cerning an individual’s identity and whether the
20 individual is authorized to be employed; and

21 “(B) maintains records of the inquiries
22 that were made, of verifications provided (or
23 not provided), and of the codes provided to in-
24 quirers as evidence of their compliance with
25 their obligations under this section.

1 “(2) INITIAL RESPONSE.—The verification sys-
2 tem shall provide verification or a tentative
3 nonverification of an individual’s identity and em-
4 ployment eligibility within 3 working days of the ini-
5 tial inquiry. If providing verification or tentative
6 nonverification, the verification system shall provide
7 an appropriate code indicating such verification or
8 such nonverification.

9 “(3) SECONDARY VERIFICATION PROCESS IN
10 CASE OF TENTATIVE NONVERIFICATION.—In cases
11 of tentative nonverification, the Secretary shall
12 specify, in consultation with the Commissioner of
13 Social Security, an available secondary verification
14 process to confirm the validity of information pro-
15 vided and to provide a final verification or
16 nonverification within 10 working days after the
17 date of the tentative nonverification. When final
18 verification or nonverification is provided, the
19 verification system shall provide an appropriate code
20 indicating such verification or nonverification.

21 “(4) DESIGN AND OPERATION OF SYSTEM.—
22 The verification system shall be designed and oper-
23 ated—

24 “(A) to maximize its reliability and ease of
25 use by persons and other entities consistent

1 with insulating and protecting the privacy and
2 security of the underlying information;

3 “(B) to respond to all inquiries made by
4 such persons and entities on whether individ-
5 uals are authorized to be employed and to reg-
6 ister all times when such inquiries are not re-
7 ceived;

8 “(C) with appropriate administrative, tech-
9 nical, and physical safeguards to prevent unau-
10 thorized disclosure of personal information;

11 “(D) to have reasonable safeguards against
12 the system’s resulting in unlawful discrimina-
13 tory practices based on national origin or citi-
14 zenship status, including—

15 “(i) the selective or unauthorized use
16 of the system to verify eligibility; or

17 “(ii) the exclusion of certain individ-
18 uals from consideration for employment as
19 a result of a perceived likelihood that addi-
20 tional verification will be required, beyond
21 what is required for most job applicants;
22 and

23 “(E) to limit the subjects of verification to
24 the following individuals:

1 “(i) Job applicants, during the period
2 beginning on the date on which the appli-
3 cation is submitted and ending on the date
4 on which—

5 “(I) the application is denied; or

6 “(II) if the application is not de-
7 nied, the date on which the individual
8 begins employment.

9 “(ii) Individuals hired, referred, or re-
10 cruited, in accordance with paragraph (1)
11 or (4) of subsection (b).

12 “(iii) Employees, in accordance with
13 paragraph (2), (3), or (4) of subsection
14 (b).

15 “(iv) Individuals seeking to confirm
16 their own employment eligibility on a vol-
17 untary basis.

18 “(5) RESPONSIBILITIES OF COMMISSIONER OF
19 SOCIAL SECURITY.—As part of the verification sys-
20 tem, the Commissioner of Social Security, in con-
21 sultation with the Secretary of Homeland Security
22 (and any designee of the Secretary selected to estab-
23 lish and administer the verification system), shall es-
24 tablish a reliable, secure method, which, within the
25 time periods specified under paragraphs (2) and (3),

1 compares the name and social security account num-
2 ber provided in an inquiry against such information
3 maintained by the Commissioner in order to validate
4 (or not validate) the information provided regarding
5 an individual whose identity and employment eligi-
6 bility must be confirmed, the correspondence of the
7 name and number, and whether the individual has
8 presented a social security account number that is
9 not valid for employment. The Commissioner shall
10 not disclose or release social security information
11 (other than such verification or nonverification) ex-
12 cept as provided for in this section or section
13 205(c)(2)(I) of the Social Security Act.

14 “(6) RESPONSIBILITIES OF SECRETARY OF
15 HOMELAND SECURITY.—As part of the verification
16 system, the Secretary of Homeland Security (in con-
17 sultation with any designee of the Secretary selected
18 to establish and administer the verification system),
19 shall establish a reliable, secure method, which, with-
20 in the time periods specified under paragraphs (2)
21 and (3), compares the name and alien identification
22 or authorization number which are provided in an
23 inquiry against such information maintained by the
24 Secretary in order to validate (or not validate) the
25 information provided, the correspondence of the

1 name and number, and whether the alien is author-
2 ized to be employed in the United States.

3 “(7) OFFENSES.—

4 “(A) IN GENERAL.—Any person or entity
5 that, in making an inquiry under subsection
6 (b)(1)(C)(i)(II), knowingly provides to the
7 verification system a social security account
8 number or an identification or authorization
9 number established by the Secretary of Home-
10 land Security that does not belong to the indi-
11 vidual whose identify and employment author-
12 ization are being verified shall be fined under
13 title 18, United States Code, imprisoned not
14 more than 2 years, or both. If the person or en-
15 tity, in making an inquiry under subsection
16 (b)(1)(C)(i)(II), and during and in relation to
17 any felony violation enumerated in section
18 1028A(e) of title 18, United States Code, know-
19 ingly provides to the verification system a social
20 security account number or an identification or
21 authorization number established by the Sec-
22 retary of Homeland Security that does not be-
23 long to the individual whose identify and em-
24 ployment authorization are being verified, in
25 addition to the punishment provided for such

1 felony, the person or entity shall be fined under
2 title 18, United States Code, imprisoned for a
3 term of 2 years, or both.

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

6 “(i) a court shall not place on proba-
7 tion any person or entity convicted of a
8 violation of this paragraph;

9 “(ii) except as provided in clause (iv),
10 no term of imprisonment imposed on a
11 person or entity under this section shall
12 run concurrently with any other term of
13 imprisonment imposed on the person or en-
14 tity under any other provision of law, in-
15 cluding any term of imprisonment imposed
16 for the felony enumerated in section
17 1028A(c) of title 18, United States Code,
18 during which the violation of this para-
19 graph occurred;

20 “(iii) in determining any term of im-
21 prisonment to be imposed for the felony
22 enumerated in section 1028A(c) of title 18,
23 United States Code, during which the vio-
24 lation of this section occurred, a court
25 shall not in any way reduce the term to be

1 imposed for such crime so as to com-
2 pensate for, or otherwise take into account,
3 any separate term of imprisonment im-
4 posed or to be imposed for a violation of
5 this paragraph; and

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

20 “(8) UPDATING INFORMATION.—The Commis-
21 sioner of Social Security and the Secretary of Home-
22 land Security shall update their information in a
23 manner that promotes the maximum accuracy and
24 shall provide a process for the prompt correction of
25 erroneous information, including instances in which

1 it is brought to their attention in the secondary
2 verification process described in paragraph (3).

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

6 “(A) IN GENERAL.—Notwithstanding any
7 other provision of law, nothing in this section
8 shall be construed to permit or allow any de-
9 partment, bureau, or other agency of the
10 United States Government to utilize any infor-
11 mation, data base, or other records assembled
12 under this subsection for any other purpose
13 other than as provided for under this section.

14 “(B) NO NATIONAL IDENTIFICATION
15 CARD.—Nothing in this section shall be con-
16 strued to authorize, directly or indirectly, the
17 issuance or use of national identification cards
18 or the establishment of a national identification
19 card.

20 “(10) REMEDIES.—If an individual alleges that
21 the individual would not have been dismissed from
22 a job but for an error of the verification mechanism,
23 the individual may seek compensation only through
24 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 “(11) PROTECTION FROM LIABILITY FOR AC-
4 TIONS TAKEN ON THE BASIS OF INFORMATION.—No
5 person or entity shall be civilly or criminally liable
6 for any action taken in good faith reliance on infor-
7 mation provided through the employment eligibility
8 verification mechanism established under this sub-
9 section.”.

10 **SEC. 4. RECRUITMENT AND REFERRAL.**

11 (a) ADDITIONAL CHANGES TO RULES FOR RECRUIT-
12 ING AND REFERRING.—Section 274A(a) of the Immigra-
13 tion and Nationality Act (8 U.S.C. 1324a(a)) is amend-
14 ed—

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

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

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

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

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

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

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

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

11 (c) EFFECTIVE DATE.—The amendments made by
12 this section shall take effect on the date that is 1 year
13 after the date of the enactment of this Act.

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 for fee, or is otherwise obligated to comply with
22 this section) who establishes that it has com-
23 plied in good faith with the requirements of
24 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 applicable under subsection (b), in the case of
21 a person or entity in the United States that
22 hires, or continues to employ, an individual, or
23 recruits or refers an individual for employment,
24 the following requirements 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), seeking
7 verification of the identity and work
8 eligibility of the individual, on or be-
9 fore the date of the hiring, on or be-
10 fore the date specified in subsection
11 (b)(2) for previously hired individuals,
12 or before the recruiting or referring
13 commences, the defense under sub-
14 paragraph (A) shall not be considered
15 to apply with respect to any employ-
16 ment, except as provided in subclause
17 (II).

18 “(II) SPECIAL RULE FOR FAIL-
19 URE OF VERIFICATION MECHANISM.—
20 If such a person or entity in good
21 faith attempts to make an inquiry in
22 order to qualify for the defense under
23 subparagraph (A) and the verification
24 mechanism has registered that not all
25 inquiries were responded to during the

1 relevant time, the person or entity can
2 make an inquiry until the end of the
3 first subsequent working day in which
4 the verification mechanism registers
5 no nonresponses and qualify for such
6 defense.

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

19 **SEC. 6. PREEMPTION.**

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

23 “(2) PREEMPTION.—The provisions of this sec-
24 tion preempt any State or local law, ordinance, pol-
25 icy or rule, including any criminal or civil fine or

1 penalty structure, insofar as they may now or here-
2 after relate to the hiring, continued employment, or
3 status verification for employment eligibility pur-
4 poses, of unauthorized aliens. A State, locality, mu-
5 nicipality, or political subdivision may exercise its
6 authority over business licensing and similar laws as
7 a penalty for failure to use the verification system
8 described in subsection (d) to verify employment eli-
9 gibility when and as required under subsection (b).”.

10 **SEC. 7. REPEAL.**

11 (a) **IN GENERAL.**—Subtitle A of title IV of the Illegal
12 Immigration Reform and Immigrant Responsibility Act of
13 1996 (8 U.S.C. 1234a note) is repealed.

14 (b) **REFERENCES.**—Any reference in any Federal
15 law, Executive order, rule, regulation, or delegation of au-
16 thority, or any document of, or pertaining to, the Depart-
17 ment of Homeland Security or the Social Security Admin-
18 istration, to the employment eligibility confirmation sys-
19 tem established under section 404 of the Illegal Immigra-
20 tion Reform and Immigrant Responsibility Act of 1996
21 (8 U.S.C. 1324a note) is deemed to refer to the employ-
22 ment eligibility confirmation system established under sec-
23 tion 274A(d) of the Immigration and Nationality Act, as
24 amended by section 3 of this Act.

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

4 **SEC. 8. PENALTIES.**

5 Section 274A of the Immigration and Nationality Act
6 (8 U.S.C. 1324a) is amended—

7 (1) in subsection (e)(4)—

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

11 (B) in subparagraph (A)(i), by striking
12 “not less than \$250 and not more than
13 \$2,000” and inserting “not less than \$2,500
14 and not more than \$5,000”;

15 (C) in subparagraph (A)(ii), by striking
16 “not less than \$2,000 and not more than
17 \$5,000” and inserting “not less than \$5,000
18 and not more than \$10,000”;

19 (D) in subparagraph (A)(iii), by striking
20 “not less than \$3,000 and not more than
21 \$10,000” and inserting “not less than \$10,000
22 and not more than \$25,000”; and

23 (E) by amending subparagraph (B) to read
24 as follows:

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

4 (2) in subsection (e)(5)—

5 (A) by inserting “, subject to paragraphs
6 (10) through (12),” after “in an amount”;

7 (B) by striking “\$100” and inserting
8 “\$1,000”;

9 (C) by striking “\$1,000” and inserting
10 “\$25,000”;

11 (D) by striking “the size of the business of
12 the employer being charged, the good faith of
13 the employer” and inserting “the good faith of
14 the employer being charged”; and

15 (E) by adding at the end the following:
16 “Failure by a person or entity to utilize the em-
17 ployment eligibility verification system as re-
18 quired by law, or providing information to the
19 system that the person or entity knows or rea-
20 sonably believes to be false, shall be treated as
21 a violation of subsection (a)(1)(A).”;

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

24 “(10) EXEMPTION FROM PENALTY FOR INITIAL
25 GOOD FAITH VIOLATION.—In the case of imposition

1 of a civil penalty under paragraph (4)(A) with re-
2 spect to a violation of subsection (a)(1)(A) or (a)(2)
3 for hiring or continuation of employment or recruit-
4 ment or referral by person or entity and in the case
5 of imposition of a civil penalty under paragraph (5)
6 for a violation of subsection (a)(1)(B) for hiring or
7 recruitment or referral by a person or entity, the
8 penalty otherwise imposed shall be waived if the vio-
9 lator establishes that it was the first such violation
10 of such provision by the violator and the violator
11 acted in good faith.

12 “(11) AUTHORITY TO DEBAR EMPLOYERS FOR
13 CERTAIN VIOLATIONS.—

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

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

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

1 and considering the views of all such agencies
2 and departments, the Secretary or Attorney
3 General may waive the operation of this para-
4 graph or refer the matter to any appropriate
5 lead agency to determine whether to list the
6 person or entity on the List of Parties Excluded
7 from Federal Procurement, and if so, for what
8 duration and under what scope.

9 “(D) REVIEW.—Any decision to debar a
10 person or entity under in accordance with this
11 paragraph shall be reviewable pursuant to part
12 9.4 of the Federal Acquisition Regulation.”;

13 (4) by amending paragraph (1) of subsection (f)
14 to read as follows:

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

23 (5) in subsection (f)(2), by striking “Attorney
24 General” each place it appears and inserting “Sec-
25 retary of Homeland Security”.

1 **SEC. 9. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**
2 **TION PROGRAMS. .**

3 (a) **FUNDING UNDER AGREEMENT.**—Effective for
4 fiscal years beginning on or after October 1, 2012, the
5 Commissioner of Social Security and the Secretary of
6 Homeland Security shall enter into and maintain an
7 agreement which shall—

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

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

20 (B) responding to individuals who contest
21 a tentative nonconfirmation provided by the em-
22 ployment eligibility verification system estab-
23 lished under such section;

24 (2) provide such funds quarterly in advance of
25 the applicable quarter based on estimating method-
26 ology agreed to by the Commissioner and the Sec-

1 retary (except in such instances where the delayed
2 enactment of an annual appropriation may preclude
3 such quarterly payments); and

4 (3) require an annual accounting and reconcili-
5 ation of the actual costs incurred and the funds pro-
6 vided under the agreement, which shall be reviewed
7 by the Office of Inspector General of the Social Se-
8 curity Administration and the Department of Home-
9 land Security.

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

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

18 **SEC. 10. FRAUD PREVENTION.**

19 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**
20 **NUMBERS.**—The Secretary of Homeland Security and the
21 Commissioner of Social Security shall establish a program
22 in which social security account numbers that have been
23 identified to be subject to unusual multiple use in the em-
24 ployment eligibility verification system established under
25 section 274A(d) of the Immigration and Nationality Act

1 (8 U.S.C. 1324a(d)), as amended by section 3 of this Act,
2 or that are otherwise suspected or determined to have been
3 compromised by identity fraud or other misuse, shall be
4 blocked from use for such system purposes unless the indi-
5 vidual using such number is able to establish, through se-
6 cure and fair additional security procedures, that the indi-
7 vidual is the legitimate holder of the number.

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

22 (c) BLOCKING USE OF CERTAIN SOCIAL SECURITY
23 ACCOUNT NUMBERS.—

24 (1) IN GENERAL.—The Secretary of Homeland
25 Security shall establish a program in which the so-

1 cial security account numbers of an alien described
2 in paragraph (2) shall be blocked from use for pur-
3 poses of the employment eligibility verification sys-
4 tem established under section 274A(d) of the Immi-
5 gration and Nationality Act (8 U.S.C. 1324a(d)), as
6 amended by section 3 of this Act, unless the alien
7 is permitted back into the United States legally and
8 with valid employment authorization status.

9 (2) ALIENS DESCRIBED.—An alien is described
10 in this paragraph if the alien—

11 (A) has a final order of removal from the
12 United States;

13 (B) voluntarily departs the United States;

14 (C) is voluntarily returned; or

15 (D) is a nonimmigrant described in section
16 101(a)(15) of the Immigration and Nationality
17 Act (8 U.S.C. 1101(a)(15)) whose visa or work
18 authorization has expired.

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

21 (a) IN GENERAL.—Not later than 18 months after
22 the date of the enactment of the **【Legal Workforce Act】**,
23 the Secretary of Homeland Security, after consultation
24 with the Commissioner of Social Security and the Director
25 of the National Institute of Standards and Technology,

1 shall establish by regulation a Biometric Employment Eli-
2 gibility Verification pilot program (the “Biometric Pilot”).
3 The purpose of the Biometric Pilot shall be to provide for
4 identity authentication and employment eligibility
5 verification with respect to enrolled new employees which
6 shall be available to subject employers who elect to partici-
7 pate in the Biometric Pilot. Any subject employer may
8 cancel the employer’s participation in the Biometric Pilot
9 after one year after electing to participate without preju-
10 dice to future participation.

11 (b) MINIMUM REQUIREMENTS.—In accordance with
12 the regulations prescribed by the Secretary pursuant to
13 subsection (a), the following shall apply:

14 (1) IDENTITY AUTHENTICATION AND EMPLOY-
15 MENT ELIGIBILITY VERIFICATION BY ENROLLMENT
16 PROVIDERS.—The Biometric Pilot shall utilize the
17 services of private sector entities (“enrollment pro-
18 viders”), with appropriate expertise, which shall be
19 subject to initial and periodic certification by the
20 Secretary, to provide—

21 (A) enrollment under the Biometric Pilot
22 of new employees by means of identity authen-
23 tication in a manner that provides a high level
24 of certainty as to their true identities, using im-
25 migration and identifying information main-

1 tained by the Social Security Administration
2 and the Department of Homeland Security, re-
3 view of identity documents, and background
4 screening verification techniques using publicly
5 available information;

6 (B) protection of the authenticated infor-
7 mation through biometric technology; and

8 (C) verification of employment eligibility of
9 such new employees.

10 (2) DATABASE MANAGEMENT.—The Biometric
11 Pilot shall provide for databases of identifying infor-
12 mation which may be retained by the enrollment
13 providers. Databases controlled by the Commissioner
14 and Secretary of Homeland Security shall be main-
15 tained in a manner to capture new entries and new
16 status information in a timely manner and to inter-
17 act with the private enrollment databases to keep
18 employment authorization status and identifying in-
19 formation current on a daily basis. The information
20 maintained in such databases shall be subject to the
21 requirements established pursuant to subsection (e),
22 except that—

23 (A) use of the data shall be limited to ob-
24 taining employment eligibility verification only,
25 unless the new employee consents to use the

1 data for other purposes, as provided in regula-
2 tions prescribed by the Secretary, and

3 (B) other identifying traits of the new em-
4 ployees shall be stored through an encoding
5 process that keeps their accurate names, dates
6 of birth, social security numbers, and immigra-
7 tion identification numbers (if any) separate,
8 except during electronic verification.

9 (3) ACCESSIBILITY TO EMPLOYERS.—Avail-
10 ability of data maintained in the Biometric Pilot
11 shall be managed so that any subject employer who
12 participates in the Biometric Pilot can obtain
13 verification with respect to any new employee en-
14 rolled with any enrollment provider serving in the
15 Biometric Pilot.

16 (4) LIMITATIONS RELATING TO BIOMETRIC
17 DATA.—Any biometric data maintained in the Bio-
18 metric Pilot relating to any new employee shall be—

19 (A) encrypted and segregated from identi-
20 fying information relating to the new employee,
21 and

22 (B) maintained and linked to identifying
23 information relating to the new employee only
24 by consent of the new employee for the purpose
25 of verifying employment eligibility or approved

1 correction processes or for other purposes spe-
2 cifically authorized by the employee as provided
3 in regulations prescribed by the Secretary.

4 (5) ACCURACY OF ASSOCIATION OF DATA WITH
5 ENROLLED NEW EMPLOYEES.—The enrollment proc-
6 ess under the Biometric Pilot shall be managed, in
7 the case of each new employee enrolled in the Bio-
8 metric Pilot, so as to result in the accurate associa-
9 tion of data consisting of name, date of birth, Social
10 Security number, and immigration identification
11 number (if any) with the established identity of the
12 new employee.

13 (6) LIMITATIONS ON ACCESSIBILITY OF INFOR-
14 MATION.—Data stored in Biometric Pilot relating to
15 any enrolled new employee shall not be accessible to
16 any person other than those operating the Biometric
17 Pilot and for the sole purpose of identity authentica-
18 tion and employment eligibility verification in con-
19 nection with the new employee, except—

20 (A) by the written consent of the new em-
21 ployee given specifically for each instance or
22 category of disclosure for any other purpose as
23 provided in regulations prescribed by the Sec-
24 retary, or

1 (B) in response to a warrant issued by a
2 judicial authority of competent jurisdiction in a
3 criminal proceeding.

4 (7) PUBLIC EDUCATION.—The Secretary shall
5 conduct a program of ongoing, comprehensive public
6 education campaign relating to the Biometric Pilot.

7 (c) EMPLOYER RESPONSIBILITIES.—In accordance
8 with the regulations prescribed by the Secretary pursuant
9 to subsection (a), the following shall apply:

10 (1) USE LIMITED TO ENROLLED NEW EMPLOY-
11 EES.—Use of the Biometric Pilot by subject employ-
12 ers participating in the Biometric Pilot shall be lim-
13 ited to use in connection with the hiring of new em-
14 ployees occurring after their enrollment in the Bio-
15 metric Pilot.

16 (2) USE FOR LIMITED PERIOD.—Use of the Bi-
17 ometric Pilot by any subject employer participating
18 in the Biometric Pilot in connection with any new
19 employee may occur only during the period begin-
20 ning on the date of hire and ending at the end of
21 the third business day after the employee has re-
22 ported for duty. Use of the Biometric Pilot with re-
23 spect to recruitment or referral for a fee may occur
24 only until the first day of such recruitment or refer-
25 ral.

1 (3) RESPONSIBILITY OF EMPLOYERS TO EN-
2 ROLL NEW EMPLOYEES.—In connection with the hir-
3 ing by any subject employer of a new employee who
4 has not been previously enrolled in the Biometric
5 Pilot, enrollment of the new employee shall occur
6 only upon application by the subject employer sub-
7 mitted to an enrollment provider, together with pay-
8 ment of any costs associated with the enrollment.

9 (4) LIMITATIONS ON SELECTIVE USE.—No sub-
10 ject employer may use the Biometric Pilot selectively
11 to verify any class, level, or category of new employ-
12 ees. Nothing in this subparagraph shall be construed
13 to preclude subject employers from utilizing the Bio-
14 metric Pilot in connection with hiring at selected
15 employment locations without implementing such
16 usage at all locations of the employer.

17 (d) EMPLOYEE PROTECTIONS.—In accordance with
18 the regulations prescribed by the Secretary pursuant to
19 subsection (a), the following shall apply:

20 (1) ACCESS FOR EMPLOYEES TO CORRECT AND
21 UPDATE INFORMATION.—Employees enrolled in the
22 Biometric Pilot shall be provided access to the Bio-
23 metric Pilot to verify information relating to their
24 employment authorization and readily available proc-
25 esses to correct and update their enrollment infor-

1 mation and information relating to employment au-
2 thorization.

3 (2) RIGHT TO CANCEL ENROLLMENT.—Each
4 employee enrolled in the Biometric Pilot shall have
5 the right to cancel such employee’s enrollment at
6 any time after the identity authentication and em-
7 ployment eligibility verification processes are com-
8 pleted by the subject employer described in sub-
9 section (c)(3). Such cancellation shall remove from
10 the Biometric Pilot all identifying information and
11 biometrics in connection with such employee without
12 prejudice to future enrollments.

13 (e) MAINTENANCE OF SECURITY AND CONFIDEN-
14 TIALITY OF INFORMATION.—

15 (1) IN GENERAL.—Every person who is a sub-
16 ject employer participating in the Biometric Pilot or
17 an officer or contractor of such a subject employer
18 and who has access to any information obtained at
19 any time from the Department of Homeland Secu-
20 rity shall maintain the security and confidentiality of
21 such information. No such person may disclose any
22 file, record, report, paper, or other item containing
23 information so obtained at any time by any such
24 person from the Secretary or from any officer or em-
25 ployee of the Department of Homeland Security ex-

1 cept as the Secretary may by regulations prescribe
2 or as otherwise provided by Federal law.

3 (2) PENALTY FOR DISCLOSURE IN VIOLATION
4 OF SUBPARAGRAPH (A).—Any person described in
5 paragraph (1) who violates paragraph (1) shall be
6 guilty of a felony and, upon conviction thereof, shall
7 be punished by a fine not exceeding \$10,000 for
8 each occurrence of a violation, or by imprisonment
9 not exceeding 5 years, or both.

10 (3) PENALTY FOR KNOWING DISCLOSURE OF
11 FRAUDULENT INFORMATION.—Any person who will-
12 fully and knowingly accesses, discloses, or uses any
13 information which such person purports to be infor-
14 mation obtained as described in paragraph (1)
15 knowing such information to be false shall be guilty
16 of a felony and, upon conviction thereof, shall be
17 punished by a fine not exceeding \$10,000 for each
18 occurrence of a violation, or by imprisonment not ex-
19 ceeding 5 years, or both.

20 (4) RESTITUTION.—

21 (A) IN GENERAL.—Any Federal court,
22 when sentencing a defendant convicted of an of-
23 fense under this paragraph, may order, in addi-
24 tion to or in lieu of any other penalty author-
25 ized by law, that the defendant make restitution

1 to the victims of such offense specified in sub-
2 paragraph (B). Sections 3612, 3663, and 3664
3 of title 18, United States Code, shall apply with
4 respect to the issuance and enforcement of or-
5 ders of restitution to victims of such offense
6 under this subparagraph. If the court does not
7 order restitution, or orders only partial restitu-
8 tion, under this subsection, the court shall state
9 on the record the reasons therefor.

10 (B) VICTIMS SPECIFIED.—The victims
11 specified in this clause are the following:

12 (i) Any individual who suffers a finan-
13 cial loss as a result of the disclosure de-
14 scribed in paragraph (2) or (3).

15 (ii) The Secretary of Homeland Secu-
16 rity, to the extent that the disclosure de-
17 scribed in paragraph (2) or (3) results in
18 the inappropriate payment of a benefit by
19 the Commissioner of Social Security.

20 (C) DEPOSIT IN THE TRUST FUNDS OF
21 AMOUNTS PAID AS RESTITUTION TO THE COM-
22 MISSIONER.—Funds paid to the Commissioner
23 as restitution pursuant to a court order under
24 this subparagraph shall be deposited in the
25 Federal Old-Age and Survivors Insurance Trust

1 Fund or the Federal Disability Insurance Trust
2 Fund, as appropriate.

3 **SEC. 12. ADMINISTRATIVE PROCEDURES.**

4 A requirement of chapter 5 of title 5, United States
5 Code (commonly referred to as the Administrative Proce-
6 dures Act), or any other law relating to rulemaking, infor-
7 mation collection, or publication in the Federal Register,
8 shall not apply to any action to implement any provision
9 of this Act, or any amendment made by this Act, to the
10 extent the Secretary of Homeland Security determines
11 that compliance with such requirement would impede the
12 expeditious implementation of the provision or amend-
13 ment.