

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
 TO H.R. 2885  
 OFFERED BY MR. DANIEL E. LUNGREN OF  
 CALIFORNIA

*Ruled*  
*NG*

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the "Legal Workforce Act".

3 **TITLE I—ELECTRONIC EMPLOY-**  
 4 **MENT ELIGIBILITY**  
 5 **VERIFICATION SYSTEM**

6 SEC. 101. EMPLOYMENT ELIGIBILITY VERIFICATION PROC-  
 7 ESS.

8 (a) IN GENERAL.—Section 274A(b) of the Immigra-  
 9 tion and Nationality Act (8 U.S.C. 1324a(b)) is amended  
 10 to read as follows:

11 "(b) EMPLOYMENT ELIGIBILITY VERIFICATION  
 12 PROCESS.—

13 "(1) NEW HIRES, RECRUITMENT, AND REFER-  
 14 RAL.—The requirements referred to in paragraphs  
 15 (1)(B) and (3) of subsection (a) are, in the case of  
 16 a person or other entity hiring, recruiting, or refer-

1 ring an individual for employment in the United  
2 States, the following:

3 “(A) ATTESTATION AFTER EXAMINATION  
4 OF DOCUMENTATION.—

5 “(i) ATTESTATION.—On the date of  
6 hire (as defined in subsection (h)(4)), the  
7 person or entity shall attest, under penalty  
8 of perjury and on a form, including elec-  
9 tronic and telephonic formats, designated  
10 or established by the Secretary by regula-  
11 tion not later than 6 months after the date  
12 of the enactment of the Legal Workforce  
13 Act, that it has verified that the individual  
14 is not an unauthorized alien by—

15 “(I) obtaining from the indi-  
16 vidual the individual’s social security  
17 account number and recording the  
18 number on the form (if the individual  
19 claims to have been issued such a  
20 number), and, if the individual does  
21 not attest to United States nationality  
22 under subparagraph (B), obtaining  
23 such identification or authorization  
24 number established by the Depart-  
25 ment of Homeland Security for the

1 alien as the Secretary of Homeland  
2 Security may specify, and recording  
3 such number on the form; and

4 “(II) examining—

5 “(aa) a document relating to  
6 the individual presenting it de-  
7 scribed in clause (ii); or

8 “(bb) a document relating to  
9 the individual presenting it de-  
10 scribed in clause (iii) and a docu-  
11 ment relating to the individual  
12 presenting it described in clause  
13 (iv).

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

19 “(I) unexpired United States  
20 passport or passport card;

21 “(II) unexpired permanent resi-  
22 dent card that contains a photograph;

23 “(III) unexpired employment au-  
24 thorization card that contains a pho-  
25 tograph;

1                   “(IV) in the case of a non-  
2 immigrant alien authorized to work  
3 for a specific employer incident to sta-  
4 tus, a foreign passport with Form I-  
5 94 or Form I-94A, or other docu-  
6 mentation as designated by the Sec-  
7 retary specifying the alien’s non-  
8 immigrant status as long as the pe-  
9 riod of status has not yet expired and  
10 the proposed employment is not in  
11 conflict with any restrictions or limita-  
12 tions identified in the documentation;

13                   “(V) passport from the Fed-  
14 erated States of Micronesia (FSM) or  
15 the Republic of the Marshall Islands  
16 (RMI) with Form I-94 or Form I-  
17 94A, or other documentation as des-  
18 ignated by the Secretary, indicating  
19 nonimmigrant admission under the  
20 Compact of Free Association Between  
21 the United States and the FSM or  
22 RMI; or

23                   “(VI) other document designated  
24 by the Secretary of Homeland Secu-  
25 rity, if the document—

1                   “(aa) contains a photograph  
2                   of the individual and biometric  
3                   identification data from the indi-  
4                   vidual and such other personal  
5                   identifying information relating  
6                   to the individual as the Secretary |  
7                   of Homeland Security finds, by  
8                   regulation, sufficient for purposes  
9                   of this clause;

10                   “(bb) is evidence of author-  
11                   ization of employment in the  
12                   United States; and

13                   “(cc) contains security fea-  
14                   tures to make it resistant to tam-  
15                   pering, counterfeiting, and fraud-  
16                   ulent use.

17                   “(iii) DOCUMENTS EVIDENCING EM-  
18                   PLOYMENT AUTHORIZATION.—A document  
19                   described in this subparagraph is an indi-  
20                   vidual’s social security account number  
21                   card (other than such a card which speci-  
22                   fies on the face that the issuance of the  
23                   card does not authorize employment in the  
24                   United States).

1                   “(iv) DOCUMENTS ESTABLISHING  
2                   IDENTITY OF INDIVIDUAL.—A document  
3                   described in this subparagraph is—

4                   “(I) an individual’s unexpired  
5                   State issued driver’s license or identi-  
6                   fication card if it contains a photo-  
7                   graph and information such as name,  
8                   date of birth, gender, height, eye  
9                   color, and address;

10                   “(II) an individual’s unexpired  
11                   U.S. military identification card;

12                   “(III) an individual’s unexpired  
13                   Native American tribal identification  
14                   document issued by a tribal entity rec-  
15                   ognized by the Bureau of Indian Af-  
16                   fairs; or

17                   “(IV) in the case of an individual  
18                   under 18 years of age, a parent or  
19                   legal guardian’s attestation under  
20                   penalty of law as to the identity and  
21                   age of the individual.

22                   “(v) AUTHORITY TO PROHIBIT USE OF  
23                   CERTAIN DOCUMENTS.—If the Secretary of  
24                   Homeland Security finds, by regulation,  
25                   that any document described in clause (i),

1 (ii), or (iii) as establishing employment au-  
2 thorization or identity does not reliably es-  
3 tablish such authorization or identity or is  
4 being used fraudulently to an unacceptable  
5 degree, the Secretary may prohibit or place  
6 conditions on its use for purposes of this  
7 paragraph.

8 “(vi) SIGNATURE.—Such attestation  
9 may be manifested by either a hand-writ-  
10 ten or electronic signature.

11 “(B) INDIVIDUAL ATTESTATION OF EM-  
12 PLOYMENT AUTHORIZATION.—

13 “(i) IN GENERAL.—During the  
14 verification period (as defined in subpara-  
15 graph (F)), the individual shall attest,  
16 under penalty of perjury on the form des-  
17 ignated or established for purposes of sub-  
18 paragraph (A), that the individual is a cit-  
19 izen or national of the United States, an  
20 alien lawfully admitted for permanent resi-  
21 dence, or an alien who is authorized under  
22 this Act or by the Secretary of Homeland  
23 Security to be hired, recruited, or referred  
24 for such employment. Such attestation may  
25 be manifested by either a hand-written or

1 electronic signature. The individual shall  
2 also provide that individual's social secu-  
3 rity account number (if the individual  
4 claims to have been issued such a number),  
5 and, if the individual does not attest to  
6 United States nationality under this sub-  
7 paragraph, such identification or author-  
8 ization number established by the Depart-  
9 ment of Homeland Security for the alien  
10 as the Secretary may specify.

11 “(ii) CRIMINAL PENALTY.—

12 “(I) OFFENSES.—Any individual  
13 who, pursuant to clause (i), provides a  
14 social security account number or an  
15 identification or authorization number  
16 established by the Secretary of Home-  
17 land Security that belongs to another  
18 person, knowing that the number does  
19 not belong to the individual providing  
20 the number, shall be fined under title  
21 18, United States Code, imprisoned  
22 not less than 1 year and not more  
23 than 15 years, or both. Any individual  
24 who, pursuant to clause (i), provides,  
25 during and in relation to any felony

1 violation enumerated in section  
2 1028A(c) of title 18, United States  
3 Code, a social security account num-  
4 ber or an identification or authoriza-  
5 tion number established by the Sec-  
6 retary of Homeland Security that be-  
7 longs to another person, knowing that  
8 the number does not belong to the in-  
9 dividual providing the number, in ad-  
10 dition to the punishment provided for  
11 such felony, shall be fined under title  
12 18, United States Code, imprisoned  
13 for a term of 2 years, or both.

14 “(II) CONSECUTIVE SEN-  
15 TENCE.—Notwithstanding any other  
16 provision of law—

17 “(aa) a court shall not place  
18 on probation any individual con-  
19 victed of a violation of this  
20 clause;

21 “(bb) except as provided in  
22 item (dd), no term of imprison-  
23 ment imposed on an individual  
24 under this section shall run con-  
25 currently with any other term of

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imprisonment imposed on the individual under any other provision of law, including any term of imprisonment imposed for the felony enumerated in section 1028A(c) of title 18, United States Code, during which the violation of this section occurred;

“(cc) in determining any term of imprisonment to be imposed for the felony enumerated in section 1028A(c) of title 18, United States Code, during which the violation of this clause occurred, a court shall not in any way reduce the term to be imposed for such crime so as to compensate for, or otherwise take into account, any separate term of imprisonment imposed or to be imposed for a violation of this clause; and

“(dd) a term of imprisonment imposed on an individual for a violation of this clause may,

1 in the discretion of the court, run  
2 concurrently, in whole or in part,  
3 only with another term of impris-  
4 onment that is imposed by the  
5 court at the same time on that  
6 individual for an additional viola-  
7 tion of this clause, except that  
8 such discretion shall be exercised  
9 in accordance with any applicable  
10 guidelines and policy statements  
11 issued by the United States Sen-  
12 tencing Commission pursuant to  
13 section 994 of title 28, United  
14 States Code.

15 “(C) RETENTION OF VERIFICATION FORM  
16 AND VERIFICATION.—

17 “(i) IN GENERAL.—After completion  
18 of such form in accordance with subpara-  
19 graphs (A) and (B), the person or entity  
20 shall—

21 “(I) retain a paper, microfiche,  
22 microfilm, or electronic version of the  
23 form and make it available for inspec-  
24 tion by officers of the Department of  
25 Homeland Security, the Special Coun-

1 sel for Immigration-Related Unfair  
2 Employment Practices, or the Depart-  
3 ment of Labor during a period begin-  
4 ning on the date of the recruiting or  
5 referral of the individual, or, in the  
6 case of the hiring of an individual, the  
7 date on which the verification is com-  
8 pleted, and ending—

9 “(aa) in the case of the re-  
10 cruiting or referral of an indi-  
11 vidual, 3 years after the date of  
12 the recruiting or referral; and

13 “(bb) in the case of the hir-  
14 ing of an individual, the later of  
15 3 years after the date the  
16 verification is completed or one  
17 year after the date the individ-  
18 ual’s employment is terminated;  
19 and

20 “(II) during the verification pe-  
21 riod (as defined in subparagraph (F)),  
22 make an inquiry, as provided in sub-  
23 section (d), using the verification sys-  
24 tem to seek verification of the identity

1 and employment eligibility of an indi-  
2 vidual.

3 “(ii) CONFIRMATION.—

4 “(I) CONFIRMATION RE-  
5 CEIVED.—If the person or other entity  
6 receives an appropriate confirmation  
7 of an individual’s identity and work  
8 eligibility under the verification sys-  
9 tem within the time period specified,  
10 the person or entity shall record on  
11 the form an appropriate code that is  
12 provided under the system and that  
13 indicates a final confirmation of such  
14 identity and work eligibility of the in-  
15 dividual.

16 “(II) TENTATIVE NONCONFIRMA-  
17 TION RECEIVED.—If the person or  
18 other entity receives a tentative non-  
19 confirmation of an individual’s iden-  
20 tity or work eligibility under the  
21 verification system within the time pe-  
22 riod specified, the person or entity  
23 shall so inform the individual for  
24 whom the verification is sought. If the  
25 individual does not contest the non-

1 confirmation within the time period  
2 specified, the nonconfirmation shall be  
3 considered final. The person or entity  
4 shall then record on the form an ap-  
5 propriate code which has been pro-  
6 vided under the system to indicate a  
7 final nonconfirmation. If the indi-  
8 vidual does contest the nonconfirma-  
9 tion, the individual shall utilize the  
10 process for secondary verification pro-  
11 vided under subsection (d). The non-  
12 confirmation will remain tentative  
13 until a final confirmation or noncon-  
14 firmation is provided by the  
15 verification system within the time pe-  
16 riod specified. In no case shall an em-  
17 ployer terminate employment of an in-  
18 dividual because of a failure of the in-  
19 dividual to have identity and work eli-  
20 gibility confirmed under this section  
21 until a nonconfirmation becomes final.  
22 Nothing in this clause shall apply to a  
23 termination of employment for any  
24 reason other than because of such a  
25 failure. In no case shall an employer

1 rescind the offer of employment to an  
2 individual because of a failure of the  
3 individual to have identity and work  
4 eligibility confirmed under this sub-  
5 section until a nonconfirmation be-  
6 comes final. Nothing in this subclause  
7 shall apply to a rescission of the offer  
8 of employment for any reason other  
9 than because of such a failure.

10 “(III) FINAL CONFIRMATION OR  
11 NONCONFIRMATION RECEIVED.—If a  
12 final confirmation or nonconfirmation  
13 is provided by the verification system  
14 regarding an individual, the person or  
15 entity shall record on the form an ap-  
16 propriate code that is provided under  
17 the system and that indicates a con-  
18 firmation or nonconfirmation of iden-  
19 tity and work eligibility of the indi-  
20 vidual.

21 “(IV) EXTENSION OF TIME.—If  
22 the person or other entity in good  
23 faith attempts to make an inquiry  
24 during the time period specified and  
25 the verification system has registered

1 that not all inquiries were received  
2 during such time, the person or entity  
3 may make an inquiry in the first sub-  
4 sequent working day in which the  
5 verification system registers that it  
6 has received all inquiries. If the  
7 verification system cannot receive in-  
8 quiries at all times during a day, the  
9 person or entity merely has to assert  
10 that the entity attempted to make the  
11 inquiry on that day for the previous  
12 sentence to apply to such an inquiry,  
13 and does not have to provide any ad-  
14 ditional proof concerning such inquiry.

15 “(V) CONSEQUENCES OF NON-  
16 CONFIRMATION.—

17 “(aa) TERMINATION OR NO-  
18 TIFICATION OF CONTINUED EM-  
19 PLOYMENT.—If the person or  
20 other entity has received a final  
21 nonconfirmation regarding an in-  
22 dividual, the person or entity  
23 may terminate employment of the  
24 individual (or decline to recruit  
25 or refer the individual). If the

1 person or entity does not termi-  
2 nate employment of the indi-  
3 vidual or proceeds to recruit or  
4 refer the individual, the person or  
5 entity shall notify the Secretary  
6 of Homeland Security of such  
7 fact through the verification sys-  
8 tem or in such other manner as  
9 the Secretary may specify.

10 “(bb) FAILURE TO NO-  
11 TIFY.—If the person or entity  
12 fails to provide notice with re-  
13 spect to an individual as required  
14 under item (aa), the failure is  
15 deemed to constitute a violation  
16 of subsection (a)(1)(A) with re-  
17 spect to that individual.

18 “(VI) CONTINUED EMPLOYMENT  
19 AFTER FINAL NONCONFIRMATION.—If  
20 the person or other entity continues to  
21 employ (or to recruit or refer) an indi-  
22 vidual after receiving final noncon-  
23 firmation, a rebuttable presumption is  
24 created that the person or entity has  
25 violated subsection (a)(1)(A).

1           “(D) CONTINUATION OF SEASONAL AGRI-  
2           CULTURAL EMPLOYMENT.—An individual shall  
3           not be considered a new hire subject to  
4           verification under this paragraph if the indi-  
5           vidual is engaged in seasonal agricultural em-  
6           ployment and is returning to work for an em-  
7           ployer that previously employed the individual.

8           “(E) EFFECTIVE DATES OF NEW PROCE-  
9           DURES.—

10           “(i) HIRING.—Except as provided in  
11           clause (iii), the provisions of this para-  
12           graph shall apply to a person or other enti-  
13           ty hiring an individual for employment in  
14           the United States as follows:

15           “(I) With respect to employers  
16           having 10,000 or more employees in  
17           the United States on the date of the  
18           enactment of the Legal Workforce  
19           Act, on the date that is 6 months  
20           after the date of the enactment of  
21           such Act.

22           “(II) With respect to employers  
23           having 500 or more employees in the  
24           United States, but less than 10,000  
25           employees in the United States, on

1 the date of the enactment of the  
2 Legal Workforce Act, on the date that  
3 is 12 months after the date of the en-  
4 actment of such Act.

5 “(III) With respect to employers  
6 having 20 or more employees in the  
7 United States, but less than 500 em-  
8 ployees in the United States, on the  
9 date of the enactment of the Legal  
10 Workforce Act, on the date that is 18  
11 months after the date of the enact-  
12 ment of such Act.

13 “(IV) With respect to employers  
14 having 1 or more employees in the  
15 United States, but less than 20 em-  
16 ployees in the United States, on the  
17 date of the enactment of the Legal  
18 Workforce Act, on the date that is 24  
19 months after the date of the enact-  
20 ment of such Act.

21 “(ii) RECRUITING AND REFERRING.—  
22 Except as provided in clause (iii), the pro-  
23 visions of this paragraph shall apply to a  
24 person or other entity recruiting or refer-  
25 ring an individual for employment in the

1 United States on the date that is 12  
2 months after the date of the enactment of  
3 the Legal Workforce Act.

4 “(iii) AGRICULTURAL LABOR OR SERV-  
5 ICES.—With respect to an employee per-  
6 forming agricultural labor or services (as  
7 defined for purposes of section  
8 101(a)(15)(H)(ii)(a)), this paragraph shall  
9 not apply with respect to the verification of  
10 the employee until the date that is 36  
11 months after the date of the enactment of  
12 the Legal Workforce Act, or the date that  
13 is 6 months after the implementation of  
14 the amendments made by section 201 of  
15 such Act, whichever occurs later. An em-  
16 ployee described in this clause shall not be  
17 counted for purposes of clause (i).

18 “(iv) TRANSITION RULE.—Subject to  
19 paragraph (4), the following shall apply to  
20 a person or other entity hiring, recruiting,  
21 or referring an individual for employment  
22 in the United States until the effective  
23 date or dates applicable under clauses (i)  
24 through (iii):

1           “(I) This subsection, as in effect  
2 before the enactment of the Legal  
3 Workforce Act.

4           “(II) Subtitle A of title IV of the  
5 Illegal Immigration Reform and Im-  
6 migrant Responsibility Act of 1996 (8  
7 U.S.C. 1324a note), as in effect be-  
8 fore the effective date in section  
9 106(c) of the Legal Workforce Act.

10           “(III) Any other provision of  
11 Federal law requiring the person or  
12 entity to participate in the E-Verify  
13 Program described in section 403(a)  
14 of the Illegal Immigration Reform and  
15 Immigrant Responsibility Act of 1996  
16 (8 U.S.C. 1324a note), as in effect be-  
17 fore the effective date in section  
18 106(c) of the Legal Workforce Act,  
19 including Executive Order 13465 (8  
20 U.S.C. 1324a note; relating to Gov-  
21 ernment procurement).

22           “(F) VERIFICATION PERIOD DEFINED.—

23           “(i) IN GENERAL.—For purposes of  
24 this paragraph:

1                   “(I) In the case of recruitment or  
2                   referral, the term ‘verification period’  
3                   means the period ending on the date  
4                   recruiting or referring commences.

5                   “(II) In the case of hiring, the  
6                   term ‘verification period’ means the  
7                   period beginning on the date on which  
8                   an offer of employment is extended  
9                   and ending on the date that is 3 busi-  
10                  ness days after the date of hire, ex-  
11                  cept as provided in clause (iii). The  
12                  offer of employment may be condi-  
13                  tioned in accordance with clause (ii).

14                  “(ii) JOB OFFER MAY BE CONDI-  
15                  TIONAL.—A person or other entity may  
16                  offer a prospective employee an employ-  
17                  ment position that is conditioned on final  
18                  verification of the identity and employment  
19                  eligibility of the employee using the proce-  
20                  dures established under this paragraph.

21                  “(iii) SPECIAL RULE.—Notwith-  
22                  standing clause (i)(II), in the case of an  
23                  alien who is authorized for employment  
24                  and who provides evidence from the Social  
25                  Security Administration that the alien has

1           applied for a social security account num-  
2           ber, the verification period ends three busi-  
3           ness days after the alien receives the social  
4           security account number.

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

7           “(A) IN GENERAL.—Except as provided in  
8           subparagraph (B), a person or entity shall  
9           make an inquiry, as provided in subsection (d),  
10          using the verification system to seek  
11          reverification of the identity and employment  
12          eligibility of all individuals with a limited period  
13          of work authorization employed by the person  
14          or entity during the 3 business days before the  
15          date on which the employee’s work authoriza-  
16          tion expires as follows:

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

23                 “(ii) With respect to employers having  
24                 500 or more employees in the United  
25                 States, but less than 10,000 employees in

1 the United States, on the date of the en-  
2 actment of the Legal Workforce Act, be-  
3 ginning on the date that is 12 months  
4 after the date of the enactment of such  
5 Act.

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

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

20 “(B) AGRICULTURAL LABOR OR SERV-  
21 ICES.—With respect to an employee performing  
22 agricultural labor or services (as defined for  
23 purposes of section 101(a)(15)(H)(ii)(a)), or an  
24 employee recruited or referred by a farm labor  
25 contractor (as defined in section 3 of the Mi-

1 grant and Seasonal Agricultural Worker Protec-  
2 tion Act (29 U.S.C. 1801)), subparagraph (A)  
3 shall not apply with respect to the reverification  
4 of the employee until the date that is 36  
5 months after the date of the enactment of the  
6 Legal Workforce Act, or the date that is 6  
7 months after the implementation of the amend-  
8 ments made by section 201 of such Act, which-  
9 ever occurs later. An employee described in this  
10 subparagraph shall not be counted for purposes  
11 of subparagraph (A).

12 “(C) REVERIFICATION.—Paragraph  
13 (1)(C)(ii) shall apply to reverifications pursuant  
14 to this paragraph on the same basis as it ap-  
15 plies to verifications pursuant to paragraph (1),  
16 except that employers shall—

17 “(i) use a form designated or estab-  
18 lished by the Secretary by regulation for  
19 purposes of this paragraph; and

20 “(ii) retain a paper, microfiche, micro-  
21 film, or electronic version of the form and  
22 make it available for inspection by officers  
23 of the Department of Homeland Security,  
24 the Special Counsel for Immigration-Rel-  
25 ated Unfair Employment Practices, or the

1 Department of Labor during the period be-  
2 ginning on the date the reverification com-  
3 mences and ending on the date that is the  
4 later of 3 years after the date of such  
5 reverification or 1 year after the date the  
6 individual's employment is terminated.

7 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

8 “(A) ON A MANDATORY BASIS FOR CER-  
9 TAIN EMPLOYEES.—

10 “(i) IN GENERAL.—Not later than the  
11 date that is 6 months after the date of the  
12 enactment of the Legal Workforce Act, an  
13 employer shall make an inquiry, as pro-  
14 vided in subsection (d), using the  
15 verification system to seek verification of  
16 the identity and employment eligibility of  
17 any individual described in clause (ii) em-  
18 ployed by the employer whose employment  
19 eligibility has not been verified under the  
20 E-Verify Program described in section  
21 403(a) of the Illegal Immigration Reform  
22 and Immigrant Responsibility Act of 1996  
23 (8 U.S.C. 1324a note).

1                   “(ii) INDIVIDUALS DESCRIBED.—An  
2 individual described in this clause is any of  
3 the following:

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

6                   “(II) An employee who requires a  
7 Federal security clearance working in  
8 a Federal, State or local government  
9 building, a military base, a nuclear  
10 energy site, a weapons site, or an air-  
11 port or other facility that requires  
12 workers to carry a Transportation  
13 Worker Identification Credential  
14 (TWIC).

15                   “(III) An employee assigned to  
16 perform work in the United States  
17 under a Federal contract, except that  
18 this subclause—

19                   “(aa) is not applicable to in-  
20 dividuals who have a clearance  
21 under Homeland Security Presi-  
22 dential Directive 12 (HSPD 12  
23 clearance), are administrative or  
24 overhead personnel, or are work-  
25 ing solely on contracts that pro-

1           vide Commercial Off The Shelf  
2           goods or services as set forth by  
3           the Federal Acquisition Regu-  
4           latory Council, unless they are  
5           subject to verification under sub-  
6           clause (II); and

7                     “(bb) only applies to con-  
8                     tracts over the simple acquisition  
9                     threshold as defined in section  
10                    2.101 of title 48, Code of Federal  
11                    Regulations.

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

20                             “(i) The Commissioner of Social Secu-  
21                             rity shall notify annually employees (at the  
22                             employee address listed on the Wage and  
23                             Tax Statement) who submit a social secu-  
24                             rity account number to which more than  
25                             one employer reports income and for which

1           there is a pattern of unusual multiple use.  
2           The notification letter shall identify the  
3           number of employers to which income is  
4           being reported as well as sufficient infor-  
5           mation notifying the employee of the proc-  
6           ess to contact the Social Security Adminis-  
7           tration Fraud Hotline if the employee be-  
8           lieves the employee's identity may have  
9           been stolen. The notice shall not share in-  
10          formation protected as private, in order to  
11          avoid any recipient of the notice from  
12          being in the position to further commit or  
13          begin committing identity theft.

14                 “(ii) If the person to whom the social  
15                 security account number was issued by the  
16                 Social Security Administration has been  
17                 identified and confirmed by the Commis-  
18                 sioner, and indicates that the social secu-  
19                 rity account number was used without  
20                 their knowledge, the Secretary and the  
21                 Commissioner shall lock the social security  
22                 account number for employment eligibility  
23                 verification purposes and shall notify the  
24                 employers of the individuals who wrong-  
25                 fully submitted the social security account

1 number that the employee may not be  
2 work eligible.

3 “(iii) Each employer receiving such  
4 notification of an incorrect social security  
5 account number under clause (ii) shall use  
6 the verification system described in sub-  
7 section (d) to check the work eligibility sta-  
8 tus of the applicable employee within 10  
9 business days of receipt of the notification.

10 “(C) ON A MANDATORY BASIS FOR CER-  
11 TAIN MISMATCHED WAGE AND TAX STATE-  
12 MENTS.—

13 “(i) IN GENERAL.—In the case of an  
14 employer who is required by this sub-  
15 section to use the verification system de-  
16 scribed in subsection (d), or has elected  
17 voluntarily to use such system, and who re-  
18 ceives a notice described in clause (ii) iden-  
19 tifying an individual employee, the em-  
20 ployer shall, not later than 30 calendar  
21 days after receipt of such notice, use the  
22 verification system described in subsection  
23 (d) to verify the employment eligibility of  
24 the employee in accordance with the in-

1 instructions in such notice if the individual is  
2 still on the payroll of the employer.

3 “(ii) NOTICE.—The Commissioner of  
4 Social Security shall issue a notice to an  
5 employer submitting one or more mis-  
6 matched wage and tax statements or cor-  
7 rected wage and tax statements containing  
8 the following:

9 “(I) A description of the mis-  
10 matched information.

11 “(II) An explanation of the steps  
12 that the employer is required to take  
13 to correct the mismatched informa-  
14 tion.

15 “(III) An explanation of the em-  
16 ployment eligibility verification re-  
17 quirement described in clause (i).

18 “(D) ON A VOLUNTARY BASIS.—Subject to  
19 paragraph (2), and subparagraphs (A) through  
20 (C) of this paragraph, beginning on the date  
21 that is 30 days after the date of the enactment  
22 of the Legal Workforce Act, an employer may  
23 make an inquiry, as provided in subsection (d),  
24 using the verification system to seek verification  
25 of the identity and employment eligibility of any

1 individual employed by the employer. If an em-  
2 ployer chooses voluntarily to seek verification of  
3 any individual employed by the employer, the  
4 employer shall seek verification of all individ-  
5 uals so employed. An employer's decision about  
6 whether or not voluntarily to seek verification  
7 of its current workforce under this subpara-  
8 graph may not be considered by any govern-  
9 ment agency in any proceeding, investigation,  
10 or review provided for in this Act.

11 “(E) VERIFICATION.—Paragraph  
12 (1)(C)(ii) shall apply to verifications pursuant  
13 to this paragraph on the same basis as it ap-  
14 plies to verifications pursuant to paragraph (1),  
15 except that employers shall—

16 “(i) use a form designated or estab-  
17 lished by the Secretary by regulation for  
18 purposes of this paragraph; and

19 “(ii) retain a paper, microfiche, micro-  
20 film, or electronic version of the form and  
21 make it available for inspection by officers  
22 of the Department of Homeland Security,  
23 the Special Counsel for Immigration-Rel-  
24 ated Unfair Employment Practices, or the  
25 Department of Labor during the period be-

1                   ginning on the date the verification com-  
2                   mences and ending on the date that is the  
3                   later of 3 years after the date of such  
4                   verification or 1 year after the date the in-  
5                   dividual's employment is terminated.

6                   “(4) EARLY COMPLIANCE.—

7                   “(A) FORMER E-VERIFY REQUIRED USERS,  
8                   INCLUDING FEDERAL CONTRACTORS.—Notwith-  
9                   standing the deadlines in paragraphs (1) and  
10                  (2), beginning on the date of the enactment of  
11                  the Legal Workforce Act, the Secretary is au-  
12                  thorized to commence requiring employers re-  
13                  quired to participate in the E-Verify Program  
14                  described in section 403(a) of the Illegal Immi-  
15                  gration Reform and Immigrant Responsibility  
16                  Act of 1996 (8 U.S.C. 1324a note), including  
17                  employers required to participate in such pro-  
18                  gram by reason of Federal acquisition laws  
19                  (and regulations promulgated under those laws,  
20                  including the Federal Acquisition Regulation),  
21                  to commence compliance with the requirements  
22                  of this subsection (and any additional require-  
23                  ments of such Federal acquisition laws and reg-  
24                  ulation) in lieu of any requirement to partici-  
25                  pate in the E-Verify Program.

1           “(B) FORMER E-VERIFY VOLUNTARY  
2           USERS AND OTHERS DESIRING EARLY COMPLI-  
3           ANCE.—Notwithstanding the deadlines in para-  
4           graphs (1) and (2), beginning on the date of  
5           the enactment of the Legal Workforce Act, the  
6           Secretary shall provide for the voluntary com-  
7           pliance with the requirements of this subsection  
8           by employers voluntarily electing to participate  
9           in the E-Verify Program described in section  
10          403(a) of the Illegal Immigration Reform and  
11          Immigrant Responsibility Act of 1996 (8 U.S.C.  
12          1324a note) before such date, as well as by  
13          other employers seeking voluntary early compli-  
14          ance.

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

22          “(6) LIMITATION ON USE OF FORMS.—A form  
23          designated or established by the Secretary of Home-  
24          land Security under this subsection and any infor-  
25          mation contained in or appended to such form, may

1 not be used for purposes other than for enforcement  
2 of this Act and any other provision of Federal crimi-  
3 nal law.

4 “(7) GOOD FAITH COMPLIANCE.—

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

12 “(B) EXCEPTION IF FAILURE TO CORRECT  
13 AFTER NOTICE.—Subparagraph (A) shall not  
14 apply if—

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

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

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

1                   “(iv) the person or entity has not cor-  
2                   rected the failure voluntarily within such  
3                   period.

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

9                   “(8) SINGLE EXTENSION OF DEADLINES UPON  
10                  CERTIFICATION.—In a case in which the Secretary  
11                  of Homeland Security has certified to the Congress  
12                  that the employment eligibility verification system  
13                  required under subsection (d) will not be fully oper-  
14                  ational by the date that is 6 months after the date  
15                  of the enactment of the Legal Workforce Act, each  
16                  deadline established under this section for an em-  
17                  ployer to make an inquiry using such system shall  
18                  be extended by 6 months. No other extension of such  
19                  a deadline shall be made.”.

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

23                  “(4) DEFINITION OF DATE OF HIRE.—As used  
24                  in this section, the term ‘date of hire’ means the  
25                  date of actual commencement of employment for

1 wages or other remuneration, unless otherwise speci-  
2 fied.”.

3 **SEC. 102. EMPLOYMENT ELIGIBILITY VERIFICATION SYS-**  
4 **TEM.**

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

7 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-  
8 TEM.—

9 “(1) IN GENERAL.—Patterned on the employ-  
10 ment eligibility confirmation system established  
11 under section 404 of the Illegal Immigration Reform  
12 and Immigrant Responsibility Act of 1996 (8 U.S.C.  
13 1324a note), the Secretary of Homeland Security  
14 shall establish and administer a verification system  
15 through which the Secretary (or a designee of the  
16 Secretary, which may be a nongovernmental enti-  
17 ty)—

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

23 “(B) maintains records of the inquiries  
24 that were made, of verifications provided (or  
25 not provided), and of the codes provided to in-

1           quirers as evidence of their compliance with  
2           their obligations under this section.

3           “(2) INITIAL RESPONSE.—The verification sys-  
4           tem shall provide confirmation or a tentative non-  
5           confirmation of an individual’s identity and employ-  
6           ment eligibility within 3 working days of the initial  
7           inquiry. If providing confirmation or tentative non-  
8           confirmation, the verification system shall provide an  
9           appropriate code indicating such confirmation or  
10          such nonconfirmation.

11          “(3) SECONDARY CONFIRMATION PROCESS IN  
12          CASE OF TENTATIVE NONCONFIRMATION.—In cases  
13          of tentative nonconfirmation, the Secretary shall  
14          specify, in consultation with the Commissioner of  
15          Social Security, an available secondary verification  
16          process to confirm the validity of information pro-  
17          vided and to provide a final confirmation or noncon-  
18          firmation not later than 10 working days after the  
19          date on which the notice of the tentative noncon-  
20          firmation is received by the employee. The Secretary,  
21          in consultation with the Commissioner, may extend  
22          this deadline on a case-by-case basis, and if the time  
23          is extended, shall document such extension within  
24          the verification system. When final confirmation or  
25          nonconfirmation is provided, the verification system

1 shall provide an appropriate code indicating such  
2 confirmation or nonconfirmation.

3 “(4) DESIGN AND OPERATION OF SYSTEM.—

4 The verification system shall be designed and oper-  
5 ated—

6 “(A) to maximize its reliability and ease of  
7 use by persons and other entities consistent  
8 with insulating and protecting the privacy and  
9 security of the underlying information;

10 “(B) to respond to all inquiries made by  
11 such persons and entities on whether individ-  
12 uals are authorized to be employed and to reg-  
13 ister all times when such inquiries are not re-  
14 ceived;

15 “(C) with appropriate administrative, tech-  
16 nical, and physical safeguards to prevent unau-  
17 thorized disclosure of personal information;

18 “(D) to have reasonable safeguards against  
19 the system’s resulting in unlawful discrimina-  
20 tory practices based on national origin or citi-  
21 zenship status, including—

22 “(i) the selective or unauthorized use  
23 of the system to verify eligibility; or

24 “(ii) the exclusion of certain individ-  
25 uals from consideration for employment as

1 a result of a perceived likelihood that addi-  
2 tional verification will be required, beyond  
3 what is required for most job applicants;  
4 and

5 “(E) to limit the subjects of verification to  
6 the following individuals:

7 “(i) Individuals hired, referred, or re-  
8 cruited, in accordance with paragraph (1)  
9 or (4) of subsection (b).

10 “(ii) Employees and prospective em-  
11 ployees, in accordance with paragraph (1),  
12 (2), (3), or (4) of subsection (b).

13 “(iii) Individuals seeking to confirm  
14 their own employment eligibility on a vol-  
15 untary basis.

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

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

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

1 the correspondence of the name and number, wheth-  
2 er the alien is authorized to be employed in the  
3 United States, or to the extent that the Secretary  
4 determines to be feasible and appropriate, whether  
5 the records available to the Secretary verify the  
6 identity or status of a national of the United States.

7 “(7) OFFENSES.—

8 “(A) IN GENERAL.—Any person or entity  
9 that, in making an inquiry under subsection  
10 (b)(1)(C)(i)(II), provides to the verification sys-  
11 tem a social security account number or an  
12 identification or authorization number estab-  
13 lished by the Secretary of Homeland Security  
14 that belongs to a person other than the indi-  
15 vidual whose identity and employment author-  
16 ization are being verified, knowing that the  
17 number does not belong to the individual whose  
18 identity and employment authorization are  
19 being verified, shall be fined under title 18,  
20 United States Code, imprisoned not less than 1  
21 year and not more than 15 years, or both. If  
22 the person or entity, in making an inquiry  
23 under subsection (b)(1)(C)(i)(II), during and in  
24 relation to any felony violation enumerated in  
25 section 1028A(c) of title 18, United States

1 Code, provides to the verification system a so-  
2 cial security account number or an identifica-  
3 tion or authorization number established by the  
4 Secretary of Homeland Security that belongs to  
5 a person other than the individual whose iden-  
6 tity and employment authorization are being  
7 verified, knowing that the number does not be-  
8 long to the individual whose identity and work  
9 authorization are being verified, in addition to  
10 the punishment provided for such felony, shall  
11 be fined under title 18, United States Code, im-  
12 prisoned for a term of 2 years, or both.

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

15 “(i) a court shall not place on proba-  
16 tion any person or entity convicted of a  
17 violation of this paragraph;

18 “(ii) except as provided in clause (iv),  
19 no term of imprisonment imposed on a  
20 person or entity under this section shall  
21 run concurrently with any other term of  
22 imprisonment imposed on the person or en-  
23 tity under any other provision of law, in-  
24 cluding any term of imprisonment imposed  
25 for the felony enumerated in section

1 1028A(c) of title 18, United States Code,  
2 during which the violation of this para-  
3 graph occurred;

4 “(iii) in determining any term of im-  
5 prisonment to be imposed for the felony  
6 enumerated in section 1028A(c) of title 18,  
7 United States Code, during which the vio-  
8 lation of this section occurred, a court  
9 shall not in any way reduce the term to be  
10 imposed for such crime so as to com-  
11 pensate for, or otherwise take into account,  
12 any separate term of imprisonment im-  
13 posed or to be imposed for a violation of  
14 this paragraph; and

15 “(iv) a term of imprisonment imposed  
16 on a person or entity for a violation of this  
17 paragraph may, in the discretion of the  
18 court, run concurrently, in whole or in  
19 part, only with another term of imprison-  
20 ment that is imposed by the court at the  
21 same time on that person or entity for an  
22 additional violation of this paragraph, ex-  
23 cept that such discretion shall be exercised  
24 in accordance with any applicable guide-  
25 lines and policy statements issued by the

1 United States Sentencing Commission pur-  
2 suant to section 994 of title 28, United  
3 States Code.

4 “(8) UPDATING INFORMATION.—The Commis-  
5 sioner of Social Security and the Secretary of Home-  
6 land Security shall update their information in a  
7 manner that promotes the maximum accuracy and  
8 shall provide a process for the prompt correction of  
9 erroneous information, including instances in which  
10 it is brought to their attention in the secondary  
11 verification process described in paragraph (3).

12 “(9) LIMITATION ON USE OF THE  
13 VERIFICATION SYSTEM AND ANY RELATED SYS-  
14 TEMS.—

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

21 “(B) CRITICAL INFRASTRUCTURE.—The  
22 Secretary may authorize or direct any person or  
23 entity responsible for granting access to, pro-  
24 tecting, securing, operating, administering, or  
25 regulating part of the critical infrastructure (as

1 defined in section 1016(e) of the Critical Infra-  
2 structure Protection Act of 2001 (42 U.S.C.  
3 5195c(e)) to use the verification system to the  
4 extent the Secretary determines that such use  
5 will assist in the protection of the critical infra-  
6 structure.

7 “(10) REMEDIES.—If an individual alleges that  
8 the individual would not have been dismissed from  
9 a job but for an error of the verification mechanism,  
10 the individual may seek compensation only through  
11 the mechanism of the Federal Tort Claims Act, and  
12 injunctive relief to correct such error. No class ac-  
13 tion may be brought under this paragraph.”.

14 **SEC. 103. RECRUITMENT, REFERRAL, AND CONTINUATION**  
15 **OF EMPLOYMENT.**

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

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

23 “(B) to hire, continue to employ, or to re-  
24 cruit or refer for employment in the United

1 States an individual without complying with the  
2 requirements of subsection (b).”;

3 (3) in paragraph (2), by striking “after hiring  
4 an alien for employment in accordance with para-  
5 graph (1),” and inserting “after complying with  
6 paragraph (1),”; and

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

9 (b) DEFINITION.—Section 274A(h) of the Immigra-  
10 tion and Nationality Act (8 U.S.C. 1324a(h)), as amended  
11 by section 101(b) of this Act, is further amended by add-  
12 ing at the end the following:

13 “(5) DEFINITION OF RECRUIT OR REFER.—As  
14 used in this section, the term ‘refer’ means the act  
15 of sending or directing a person who is in the United  
16 States or transmitting documentation or information  
17 to another, directly or indirectly, with the intent of  
18 obtaining employment in the United States for such  
19 person. Only persons or entities referring for remu-  
20 neration (whether on a retainer or contingency  
21 basis) are included in the definition, except that  
22 union hiring halls that refer union members or non-  
23 union individuals who pay union membership dues  
24 are included in the definition whether or not they re-  
25 ceive remuneration, as are labor service entities or

1 labor service agencies, whether public, private, for-  
2 profit, or nonprofit, that refer, dispatch, or other-  
3 wise facilitate the hiring of laborers for any period  
4 of time by a third party. As used in this section, the  
5 term 'recruit' means the act of soliciting a person  
6 who is in the United States, directly or indirectly,  
7 and referring the person to another with the intent  
8 of obtaining employment for that person. Only per-  
9 sons or entities referring for remuneration (whether  
10 on a retainer or contingency basis) are included in  
11 the definition, except that union hiring halls that  
12 refer union members or nonunion individuals who  
13 pay union membership dues are included in this defi-  
14 nition whether or not they receive remuneration, as  
15 are labor service entities or labor service agencies,  
16 whether public, private, for-profit, or nonprofit that  
17 recruit, dispatch, or otherwise facilitate the hiring of  
18 laborers for any period of time by a third party.”.

19 (c) EFFECTIVE DATE.—The amendments made by  
20 this section shall take effect on the date that is 1 year  
21 after the date of the enactment of this Act, except that  
22 the amendments made by subsection (a) shall take effect  
23 6 months after the date of the enactment of this Act inso-  
24 far as such amendments relate to continuation of employ-  
25 ment.

1 **SEC. 104. GOOD FAITH DEFENSE.**

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

5 “(3) GOOD FAITH DEFENSE.—

6 “(A) DEFENSE.—An employer (or person  
7 or entity that hires, employs, recruits, or refers  
8 (as defined in subsection (h)(5)), or is otherwise  
9 obligated to comply with this section) who es-  
10 tablishes that it has complied in good faith with  
11 the requirements of subsection (b)—

12 “(i) shall not be liable to a job appli-  
13 cant, an employee, the Federal Govern-  
14 ment, or a State or local government,  
15 under Federal, State, or local criminal or  
16 civil law for any employment-related action  
17 taken with respect to a job applicant or  
18 employee in good-faith reliance on informa-  
19 tion provided through the system estab-  
20 lished under subsection (d); and

21 “(ii) has established compliance with  
22 its obligations under subparagraphs (A)  
23 and (B) of paragraph (1) and subsection  
24 (b) absent a showing by the Secretary of  
25 Homeland Security, by clear and con-  
26 vincing evidence, that the employer had

1 knowledge that an employee is an unau-  
2 thorized alien.

3 “(B) FAILURE TO SEEK AND OBTAIN  
4 VERIFICATION.—Subject to the effective dates  
5 and other deadlines applicable under subsection  
6 (b), in the case of a person or entity in the  
7 United States that hires, or continues to em-  
8 ploy, an individual, or recruits or refers an indi-  
9 vidual for employment, the following require-  
10 ments apply:

11 “(i) FAILURE TO SEEK  
12 VERIFICATION.—

13 “(I) IN GENERAL.—If the person  
14 or entity has not made an inquiry,  
15 under the mechanism established  
16 under subsection (d) and in accord-  
17 ance with the timeframes established  
18 under subsection (b), seeking  
19 verification of the identity and work  
20 eligibility of the individual, the de-  
21 fense under subparagraph (A) shall  
22 not be considered to apply with re-  
23 spect to any employment, except as  
24 provided in subclause (II).

1                   “(II) SPECIAL RULE FOR FAIL-  
2                   URE OF VERIFICATION MECHANISM.—

3                   If such a person or entity in good  
4                   faith attempts to make an inquiry in  
5                   order to qualify for the defense under  
6                   subparagraph (A) and the verification  
7                   mechanism has registered that not all  
8                   inquiries were responded to during the  
9                   relevant time, the person or entity can  
10                  make an inquiry until the end of the  
11                  first subsequent working day in which  
12                  the verification mechanism registers  
13                  no nonresponses and qualify for such  
14                  defense.

15                  “(ii) FAILURE TO OBTAIN  
16                  VERIFICATION.—If the person or entity  
17                  has made the inquiry described in clause  
18                  (i)(I) but has not received an appropriate  
19                  verification of such identity and work eligi-  
20                  bility under such mechanism within the  
21                  time period specified under subsection  
22                  (d)(2) after the time the verification in-  
23                  quiry was received, the defense under sub-  
24                  paragraph (A) shall not be considered to

1                   apply with respect to any employment after  
2                   the end of such time period.”.

3 **SEC. 105. PREEMPTION.**

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

7           “(2) **PREEMPTION.**—The provisions of this sec-  
8 tion preempt any State or local law, ordinance, pol-  
9 icy, or rule, including any criminal or civil fine or  
10 penalty structure, insofar as they may now or here-  
11 after relate to the hiring, continued employment, or  
12 status verification for employment eligibility pur-  
13 poses, of unauthorized aliens. A State, locality, mu-  
14 nicipality, or political subdivision may exercise its  
15 authority over business licensing and similar laws as  
16 a penalty for failure to use the verification system  
17 described in subsection (d) to verify employment eli-  
18 gibility when and as required under subsection (b).”.

19 **SEC. 106. REPEAL.**

20           (a) **IN GENERAL.**—Subtitle A of title IV of the Illegal  
21 Immigration Reform and Immigrant Responsibility Act of  
22 1996 (8 U.S.C. 1234a note) is repealed.

23           (b) **REFERENCES.**—Any reference in any Federal  
24 law, Executive order, rule, regulation, or delegation of au-  
25 thority, or any document of, or pertaining to, the Depart-

1 ment of Homeland Security, Department of Justice, or the  
2 Social Security Administration, to the employment eligi-  
3 bility confirmation system established under section 404  
4 of the Illegal Immigration Reform and Immigrant Respon-  
5 sibility Act of 1996 (8 U.S.C. 1324a note) is deemed to  
6 refer to the employment eligibility confirmation system es-  
7 tablished under section 274A(d) of the Immigration and  
8 Nationality Act, as amended by section 102 of this Act.

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

12 **SEC. 107. PENALTIES.**

13 Section 274A of the Immigration and Nationality Act  
14 (8 U.S.C. 1324a) is amended—

15 (1) in subsection (e)(1)—

16 (A) by striking “Attorney General” each  
17 place such term appears and inserting “Sec-  
18 retary of Homeland Security”; and

19 (B) by striking “Service” and inserting  
20 “Department of Homeland Security”;

21 (2) in subsection (e)(4)—

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

1 (B) in subparagraph (A)(i), by striking  
2 “not less than \$250 and not more than  
3 \$2,000” and inserting “not less than \$2,500  
4 and not more than \$5,000”;

5 (C) in subparagraph (A)(ii), by striking  
6 “not less than \$2,000 and not more than  
7 \$5,000” and inserting “not less than \$5,000  
8 and not more than \$10,000”;

9 (D) in subparagraph (A)(iii), by striking  
10 “not less than \$3,000 and not more than  
11 \$10,000” and inserting “not less than \$10,000  
12 and not more than \$25,000”; and

13 (E) by amending subparagraph (B) to read  
14 as follows:

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

18 (3) in subsection (e)(5)—

19 (A) in the paragraph heading, strike “PA-  
20 PERWORK”;

21 (B) by inserting “, subject to paragraphs  
22 (10) through (12),” after “in an amount”;

23 (C) by striking “\$100” and inserting  
24 “\$1,000”;

1 (D) by striking "\$1,000" and inserting  
2 "\$25,000";

3 (E) by adding at the end the following:  
4 "Failure by a person or entity to utilize the em-  
5 ployment eligibility verification system as re-  
6 quired by law, or providing information to the  
7 system that the person or entity knows or rea-  
8 sonably believes to be false, shall be treated as  
9 a violation of subsection (a)(1)(A).";

10 (4) by adding at the end of subsection (e) the  
11 following:

12 "(10) EXEMPTION FROM PENALTY FOR GOOD  
13 FAITH VIOLATION.—In the case of imposition of a  
14 civil penalty under paragraph (4)(A) with respect to  
15 a violation of subsection (a)(1)(A) or (a)(2) for hir-  
16 ing or continuation of employment or recruitment or  
17 referral by person or entity and in the case of impo-  
18 sition of a civil penalty under paragraph (5) for a  
19 violation of subsection (a)(1)(B) for hiring or re-  
20 cruitment or referral by a person or entity, the pen-  
21 alty otherwise imposed may be waived or reduced if  
22 the violator establishes that the violator acted in  
23 good faith.

24 "(11) AUTHORITY TO DEBAR EMPLOYERS FOR  
25 CERTAIN VIOLATIONS.—

1           “(A) IN GENERAL.—If a person or entity  
2           is determined by the Secretary of Homeland Se-  
3           curity to be a repeat violator of paragraph  
4           (1)(A) or (2) of subsection (a), or is convicted  
5           of a crime under this section, such person or  
6           entity may be considered for debarment from  
7           the receipt of Federal contracts, grants, or co-  
8           operative agreements in accordance with the de-  
9           barment standards and pursuant to the debar-  
10          ment procedures set forth in the Federal Acqui-  
11          sition Regulation.

12           “(B) DOES NOT HAVE CONTRACT, GRANT,  
13          AGREEMENT.—If the Secretary of Homeland  
14          Security or the Attorney General wishes to have  
15          a person or entity considered for debarment in  
16          accordance with this paragraph, and such an  
17          person or entity does not hold a Federal con-  
18          tract, grant or cooperative agreement, the Sec-  
19          retary or Attorney General shall refer the mat-  
20          ter to the Administrator of General Services to  
21          determine whether to list the person or entity  
22          on the List of Parties Excluded from Federal  
23          Procurement, and if so, for what duration and  
24          under what scope.

1           “(C) HAS CONTRACT, GRANT, AGREE-  
2           MENT.—If the Secretary of Homeland Security  
3           or the Attorney General wishes to have a per-  
4           son or entity considered for debarment in ac-  
5           cordance with this paragraph, and such person  
6           or entity holds a Federal contract, grant or co-  
7           operative agreement, the Secretary or Attorney  
8           General shall advise all agencies or departments  
9           holding a contract, grant, or cooperative agree-  
10          ment with the person or entity of the Govern-  
11          ment’s interest in having the person or entity  
12          considered for debarment, and after soliciting  
13          and considering the views of all such agencies  
14          and departments, the Secretary or Attorney  
15          General may refer the matter to any appro-  
16          priate lead agency to determine whether to list  
17          the person or entity on the List of Parties Ex-  
18          cluded from Federal Procurement, and if so, for  
19          what duration and under what scope.

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

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

4                   “(A) to which State and local government  
5                   agencies may submit information indicating po-  
6                   tential violations of subsection (a), (b), or  
7                   (g)(1) that were generated in the normal course  
8                   of law enforcement or the normal course of  
9                   other official activities in the State or locality;

10                   “(B) that is required to indicate to the  
11                   complaining State or local agency within 5 busi-  
12                   ness days of the filing of such a complaint by  
13                   identifying whether the Secretary will further  
14                   investigate the information provided;

15                   “(C) that is required to investigate those  
16                   complaints filed by State or local government  
17                   agencies that, on their face, have a substantial  
18                   probability of validity;

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

22                   “(E) that is required to report to the Con-  
23                   gress annually the number of complaints re-  
24                   ceived under this paragraph, the States and lo-  
25                   calities that filed such complaints, and the reso-

1 lution of the complaints investigated by the Sec-  
2 retary.”; and

3 (5) by amending paragraph (1) of subsection (f)  
4 to read as follows:

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

13 **SEC. 108. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**  
14 **TION PROGRAMS.**

15 (a) FUNDING UNDER AGREEMENT.—Effective for  
16 fiscal years beginning on or after October 1, 2012, the  
17 Commissioner of Social Security and the Secretary of  
18 Homeland Security shall enter into and maintain an  
19 agreement which shall—

20 (1) provide funds to the Commissioner for the  
21 full costs of the responsibilities of the Commissioner  
22 under section 274A(d) of the Immigration and Na-  
23 tionality Act (8 U.S.C. 1324a(d)), as amended by  
24 section 102 of this Act, including (but not limited  
25 to)—

1 (A) acquiring, installing, and maintaining  
2 technological equipment and systems necessary  
3 for the fulfillment of the responsibilities of the  
4 Commissioner under such section 274A(d), but  
5 only that portion of such costs that are attrib-  
6 utable exclusively to such responsibilities; and

7 (B) responding to individuals who contest  
8 a tentative nonconfirmation provided by the em-  
9 ployment eligibility verification system estab-  
10 lished under such section;

11 (2) provide such funds annually in advance of  
12 the applicable quarter based on estimating method-  
13 ology agreed to by the Commissioner and the Sec-  
14 retary (except in such instances where the delayed  
15 enactment of an annual appropriation may preclude  
16 such quarterly payments); and

17 (3) require an annual accounting and reconcili-  
18 ation of the actual costs incurred and the funds pro-  
19 vided under the agreement, which shall be reviewed  
20 by the Inspectors General of the Social Security Ad-  
21 ministration and the Department of Homeland Secu-  
22 rity.

23 (b) CONTINUATION OF EMPLOYMENT VERIFICATION  
24 IN ABSENCE OF TIMELY AGREEMENT.—In any case in  
25 which the agreement required under subsection (a) for any

1 fiscal year beginning on or after October 1, 2012, has not  
2 been reached as of October 1 of such fiscal year, the latest  
3 agreement between the Commissioner and the Secretary  
4 of Homeland Security providing for funding to cover the  
5 costs of the responsibilities of the Commissioner under  
6 section 274A(d) of the Immigration and Nationality Act  
7 (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-  
8 terim basis for such fiscal year until such time as an  
9 agreement required under subsection (a) is subsequently  
10 reached, except that the terms of such interim agreement  
11 shall be modified by the Director of the Office of Manage-  
12 ment and Budget to adjust for inflation and any increase  
13 or decrease in the volume of requests under the employ-  
14 ment eligibility verification system. In any case in which  
15 an interim agreement applies for any fiscal year under this  
16 subsection, the Commissioner and the Secretary shall, not  
17 later than October 1 of such fiscal year, notify the Com-  
18 mittee on Ways and Means, the Committee on the Judici-  
19 ary, and the Committee on Appropriations of the House  
20 of Representatives and the Committee on Finance, the  
21 Committee on the Judiciary, and the Committee on Ap-  
22 propriations of the Senate of the failure to reach the  
23 agreement required under subsection (a) for such fiscal  
24 year. Until such time as the agreement required under  
25 subsection (a) has been reached for such fiscal year, the

1 Commissioner and the Secretary shall, not later than the  
2 end of each 90-day period after October 1 of such fiscal  
3 year, notify such Committees of the status of negotiations  
4 between the Commissioner and the Secretary in order to  
5 reach such an agreement.

6 **SEC. 109. FRAUD PREVENTION.**

7 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**  
8 **NUMBERS.**—The Secretary of Homeland Security, in con-  
9 sultation with the Commissioner of Social Security, shall  
10 establish a program in which social security account num-  
11 bers that have been identified to be subject to unusual  
12 multiple use in the employment eligibility verification sys-  
13 tem established under section 274A(d) of the Immigration  
14 and Nationality Act (8 U.S.C. 1324a(d)), as amended by  
15 section 102 of this Act, or that are otherwise suspected  
16 or determined to have been compromised by identity fraud  
17 or other misuse, shall be blocked from use for such system  
18 purposes unless the individual using such number is able  
19 to establish, through secure and fair additional security  
20 procedures, that the individual is the legitimate holder of  
21 the number.

22 (b) **ALLOWING SUSPENSION OF USE OF CERTAIN SO-**  
23 **CIAL SECURITY ACCOUNT NUMBERS.**—The Secretary of  
24 Homeland Security, in consultation with the Commis-  
25 sioner of Social Security, shall establish a program which

1 shall provide a reliable, secure method by which victims  
2 of identity fraud and other individuals may suspend or  
3 limit the use of their social security account number or  
4 other identifying information for purposes of the employ-  
5 ment eligibility verification system established under sec-  
6 tion 274A(d) of the Immigration and Nationality Act (8  
7 U.S.C. 1324a(d)), as amended by section 102 of this Act.  
8 The Secretary may implement the program on a limited  
9 pilot program basis before making it fully available to all  
10 individuals.

11 **SEC. 110. BIOMETRIC EMPLOYMENT ELIGIBILITY**  
12 **VERIFICATION PILOT PROGRAM.**

13 Not later than 48 months after the date of the enact-  
14 ment of the Legal Workforce Act, the Secretary of Home-  
15 land Security, after consultation with the Commissioner  
16 of Social Security and the Director of the National Insti-  
17 tute of Standards and Technology, shall establish by regu-  
18 lation a Biometric Employment Eligibility Verification  
19 pilot program (the "Biometric Pilot"). The purpose of the  
20 Biometric Pilot shall be to provide for identity authentica-  
21 tion and employment eligibility verification with respect to  
22 enrolled new employees which shall be available to subject  
23 employers who elect to participate in the Biometric Pilot.  
24 Any subject employer may cancel the employer's participa-

1 tion in the Biometric Pilot after one year after electing  
2 to participate without prejudice to future participation.

3 **TITLE II—NONIMMIGRANT AGRICULTURAL WORKER PRO-**  
4 **GRAM**

6 **SEC. 201. NONIMMIGRANT AGRICULTURAL PROGRAM.**

7 (a) NEW “W” NONIMMIGRANT CLASSIFICATION FOR  
8 NONIMMIGRANT AGRICULTURAL WORKERS.—Section  
9 101(a)(15) of the Immigration and Nationality Act (8  
10 U.S.C. 1101(a)(15)) is amended—

11 (1) by striking “or” at the end of the subpara-  
12 graph (U);

13 (2) by striking the period at the end of sub-  
14 paragraph (V) and inserting “; or”; and

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

16 “(W) an alien having a residence in a for-  
17 eign country which the alien has no intention of  
18 abandoning who is coming to the United States  
19 for a temporary period (as defined in section  
20 220(o)) to perform services or labor in agricul-  
21 tural employment, as defined in section 3 of the  
22 Migrant and Seasonal Agricultural Worker Pro-  
23 tection Act (29 U.S.C. 1802), who meets the  
24 requirements specified in section 220, and with  
25 respect to whom the Secretary of Agriculture



1           “(A) A process developed by the Secretary  
2           of Agriculture for the submission of data and  
3           information by agricultural employers that will  
4           allow such Secretary to determine the number  
5           of nonimmigrant agricultural workers required  
6           by month and annually for a 10-month period.

7           “(B) A process developed by the Secretary  
8           of Agriculture for the enrollment of qualified  
9           agricultural employers in the program that re-  
10          quires enrolled employers to abide by the obli-  
11          gations described in subsection (f).

12          “(C) A process developed by the Depart-  
13          ment of Homeland Security, based upon the de-  
14          termination made under subsection (d) by the  
15          Secretary of Agriculture, on the need for non-  
16          immigrant agricultural workers, for imposition  
17          of monthly and annual numerical limitations,  
18          established under such subsection, on the  
19          issuance of nonimmigrant visas for non-  
20          immigrant agricultural employment. These visas  
21          shall be made available subject to such limita-  
22          tions on such workers in accordance with the  
23          preference system established under subsection  
24          (g).

1           “(D) A process developed by the Secretary  
2           of Homeland Security, in consultation with the  
3           Secretary of Agriculture, by which such Secre-  
4           taries can determine that persons employing  
5           nonimmigrant agricultural workers are enrolled  
6           in the program and that the nonimmigrant ag-  
7           ricultural workers so employed possess a valid  
8           visa pursuant to section 101(a)(15)(W).

9           “(E) A nonimmigrant visa issued pursuant  
10          to subsection (g) shall not limit the geo-  
11          graphical area within which an alien may be  
12          employed or limit the type of agricultural em-  
13          ployment the alien may perform, except that  
14          the employment shall only be with a qualified  
15          agricultural employer enrolled in the program.

16          “(b) PRE-ENROLLMENT REQUIREMENTS.—

17          “(1) RECRUITMENT OF UNITED STATES WORK-  
18          ERS.—Not later than 30 days before filing a request  
19          to enroll in the nonimmigrant agricultural worker  
20          program pursuant to subsection (c), each person fil-  
21          ing such a request shall list with the Department of  
22          Labor’s Employment and Training Administration’s  
23          Electronic Job Registry a description of the antici-  
24          pated period for which workers will be needed ex-  
25          pected beginning and ending dates) , as well as a de-

1       description of the wages and other terms and condi-  
2       tions of agricultural employment that satisfy the dis-  
3       closure requirements of sections 201 and 301 of the  
4       Migrant and Seasonal Agricultural Worker Protec-  
5       tion Act (29 U.S.C. 1821; 1831), except that noth-  
6       ing in this paragraph shall cause such listing to be  
7       treated as an interstate job order under section 653  
8       of title 20, Code of Federal Regulations.

9               “(2) RECORD OF UNITED STATES WORKERS.—

10       A person or entity shall keep a record of all eligible  
11       able, willing, and qualified United States workers  
12       applying for employment with the person in response  
13       to its filing on the Electronic Job Registry and pro-  
14       vide such record in its request to enroll filed under  
15       subsection (c).

16               “(c) ENROLLMENT IN THE NONIMMIGRANT AGRI-  
17       CULTURAL WORKER PROGRAM.—

18               “(1) IN GENERAL.—A person who employs indi-  
19       viduals to perform agricultural employment (includ-  
20       ing an association of such persons and a person who  
21       contracts for the performance of agricultural em-  
22       ployment) with respect to agricultural commodities  
23       may submit to the Secretary of Agriculture, at such  
24       time and in such manner as the Secretary specifies,