

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3711
OFFERED BY MR. SMITH OF TEXAS**

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

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

8 “(b) EMPLOYMENT ELIGIBILITY VERIFICATION
9 PROCESS.—

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

16 “(A) ATTESTATION AFTER EXAMINATION
17 OF DOCUMENTATION.—

1 “(i) ATTESTATION.—During the
2 verification period (as defined in subpara-
3 graph (E)), the person or entity shall at-
4 test, under penalty of perjury and on a
5 form, including electronic and telephonic
6 formats, designated or established by the
7 Secretary by regulation not later than 6
8 months after the date of the enactment of
9 the Legal Workforce Act, that it has
10 verified that the individual is not an unau-
11 thorized alien by—

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

1 Security may specify, and recording
2 such number on the form; and

3 “(II) examining—

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

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

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

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

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

22 “(III) unexpired employment au-
23 thorization card that contains a pho-
24 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 driver’s license or identification card if
6 it was issued by a State or American
7 Samoa and contains a photograph and
8 information such as name, date of
9 birth, gender, height, eye color, and
10 address;

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

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

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

23 “(v) AUTHORITY TO PROHIBIT USE OF
24 CERTAIN DOCUMENTS.—If the Secretary of
25 Homeland Security finds, by regulation,

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

9 “(vi) SIGNATURE.—Such attestation
10 may be manifested by either a handwritten
11 or electronic signature.

12 “(B) INDIVIDUAL ATTESTATION OF EM-
13 PLOYMENT AUTHORIZATION.—During the
14 verification period (as defined in subparagraph
15 (E)), the individual shall attest, under penalty
16 of perjury on the form designated or established
17 for purposes of subparagraph (A), that the indi-
18 vidual is a citizen or national of the United
19 States, an alien lawfully admitted for perma-
20 nent residence, or an alien who is authorized
21 under this Act or by the Secretary of Homeland
22 Security to be hired, recruited, or referred for
23 such employment. Such attestation may be
24 manifested by either a handwritten or electronic
25 signature. The individual shall also provide that

1 individual's social security account number or
2 United States passport number (if the indi-
3 vidual claims to have been issued such a num-
4 ber), and, if the individual does not attest to
5 United States nationality under this subpara-
6 graph, such identification or authorization num-
7 ber established by the Department of Homeland
8 Security for the alien as the Secretary may
9 specify.

10 “(C) RETENTION OF VERIFICATION FORM
11 AND VERIFICATION.—

12 “(i) IN GENERAL.—After completion
13 of such form in accordance with subpara-
14 graphs (A) and (B), the person or entity
15 shall—

16 “(I) retain a paper, microfiche,
17 microfilm, or electronic version of the
18 form and make it available for inspec-
19 tion by officers of the Department of
20 Homeland Security, the Department
21 of Justice, or the Department of
22 Labor during a period beginning on
23 the date of the recruiting or referral
24 of the individual, or, in the case of the
25 hiring of an individual, the date on

1 which the verification is completed,
2 and ending—

3 “(aa) in the case of the re-
4 recruiting or referral of an indi-
5 vidual, 3 years after the date of
6 the recruiting or referral; and

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

14 “(II) during the verification pe-
15 riod (as defined in subparagraph (E)),
16 make an inquiry, as provided in sub-
17 section (d), using the verification sys-
18 tem to seek verification of the identity
19 and employment eligibility of an indi-
20 vidual.

21 “(ii) CONFIRMATION.—

22 “(I) CONFIRMATION RE-
23 CEIVED.—If the person or other entity
24 receives an appropriate confirmation
25 of an individual’s identity and work

1 eligibility under the verification sys-
2 tem within the time period specified,
3 the person or entity shall record on
4 the form an appropriate code that is
5 provided under the system and that
6 indicates a final confirmation of such
7 identity and work eligibility of the in-
8 dividual.

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

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

1 of employment for any reason other
2 than because of such a failure.

3 “(III) FINAL CONFIRMATION OR
4 NONCONFIRMATION RECEIVED.—If a
5 final confirmation or nonconfirmation
6 is provided by the verification system
7 regarding an individual, the person or
8 entity shall record on the form an ap-
9 propriate code that is provided under
10 the system and that indicates a con-
11 firmation or nonconfirmation of iden-
12 tity and work eligibility of the indi-
13 vidual.

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

1 inquiries at all times during a day, the
2 person or entity merely has to assert
3 that the entity attempted to make the
4 inquiry on that day for the previous
5 sentence to apply to such an inquiry,
6 and does not have to provide any ad-
7 ditional proof concerning such inquiry.

8 “(V) CONSEQUENCES OF NON-
9 CONFIRMATION.—

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

1 tem or in such other manner as
2 the Secretary may specify.

3 “(bb) FAILURE TO NO-
4 TIFY.—If the person or entity
5 fails to provide notice with re-
6 spect to an individual as required
7 under item (aa), the failure is
8 deemed to constitute a violation
9 of subsection (a)(1)(A) with re-
10 spect to that individual.

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

19 “(D) EFFECTIVE DATES OF NEW PROCE-
20 DURES.—

21 “(i) HIRING.—Except as provided in
22 clause (iii), the provisions of this para-
23 graph shall apply to a person or other enti-
24 ty hiring an individual for employment in
25 the United States as follows:

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

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

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

24 “(IV) With respect to employers
25 having 1 or more employees in the

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

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

15 “(iii) AGRICULTURAL LABOR OR SERV-
16 ICES.—With respect to an employee per-
17 forming agricultural labor or services, this
18 paragraph shall not apply with respect to
19 the verification of the employee until the
20 date that is 30 months after the date of
21 the enactment of the Legal Workforce Act.
22 For purposes of the preceding sentence,
23 the term ‘agricultural labor or services’ has
24 the meaning given such term by the Sec-
25 retary of Agriculture in regulations and in-

1 includes agricultural labor as defined in sec-
2 tion 3121(g) of the Internal Revenue Code
3 of 1986, agriculture as defined in section
4 3(f) of the Fair Labor Standards Act of
5 1938 (29 U.S.C. 203(f)), the handling,
6 planting, drying, packing, packaging, proc-
7 essing, freezing, or grading prior to deliv-
8 ery for storage of any agricultural or horti-
9 cultural commodity in its unmanufactured
10 state, all activities required for the prepa-
11 ration, processing or manufacturing of a
12 product of agriculture (as such term is de-
13 fined in such section 3(f)) for further dis-
14 tribution, and activities similar to all the
15 foregoing as they relate to fish or shellfish
16 facilities. An employee described in this
17 clause shall not be counted for purposes of
18 clause (i).

19 “(iv) EXTENSIONS.—Upon request by
20 an employer having 50 or fewer employees,
21 the Secretary shall allow a one-time 6-
22 month extension of the effective date set
23 out in this subparagraph applicable to such
24 employer. Such request shall be made to

1 the Secretary and shall be made prior to
2 such effective date.

3 “(v) 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
20 Federal law requiring the person or
21 entity to participate in the E-Verify
22 Program described in section 403(a)
23 of the Illegal Immigration Reform and
24 Immigrant Responsibility Act of 1996
25 (8 U.S.C. 1324a note), as in effect be-

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

6 “(E) VERIFICATION PERIOD DEFINED.—

7 “(i) IN GENERAL.—For purposes of
8 this paragraph:

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

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

22 “(ii) JOB OFFER MAY BE CONDI-
23 TIONAL.—A person or other entity may
24 offer a prospective employee an employ-
25 ment position that is conditioned on final

1 verification of the identity and employment
2 eligibility of the employee using the proce-
3 dures established under this paragraph.

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

13 “(2) REVERIFICATION FOR INDIVIDUALS WITH
14 LIMITED WORK AUTHORIZATION.—

15 “(A) IN GENERAL.—Except as provided in
16 subparagraph (B), a person or entity shall
17 make an inquiry, as provided in subsection (d),
18 using the verification system to seek
19 reverification of the identity and employment
20 eligibility of all individuals with a limited period
21 of work authorization employed by the person
22 or entity during the three business days after
23 the date on which the employee’s work author-
24 ization expires as follows:

1 “(i) With respect to employers having
2 10,000 or more employees in the United
3 States on the date of the enactment of the
4 Legal Workforce Act, beginning on the
5 date that is 6 months after the date of the
6 enactment of such Act.

7 “(ii) With respect to employers having
8 500 or more employees in the United
9 States, but less than 10,000 employees in
10 the United States, on the date of the en-
11 actment of the Legal Workforce Act, be-
12 ginning on the date that is 12 months
13 after the date of the enactment of such
14 Act.

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

22 “(iv) With respect to employers hav-
23 ing 1 or more employees in the United
24 States, but less than 20 employees in the
25 United States, on the date of the enact-

1 ment of the Legal Workforce Act, begin-
2 ning on the date that is 24 months after
3 the date of the enactment of such Act.

4 “(B) AGRICULTURAL LABOR OR SERV-
5 ICES.—With respect to an employee performing
6 agricultural labor or services, or an employee
7 recruited or referred by a farm labor contractor
8 (as defined in section 3 of the Migrant and Sea-
9 sonal Agricultural Worker Protection Act (29
10 U.S.C. 1801)), subparagraph (A) shall not
11 apply with respect to the reverification of the
12 employee until the date that is 30 months after
13 the date of the enactment of the Legal Work-
14 force Act. For purposes of the preceding sen-
15 tence, the term ‘agricultural labor or services’
16 has the meaning given such term by the Sec-
17 retary of Agriculture in regulations and in-
18 cludes agricultural labor as defined in section
19 3121(g) of the Internal Revenue Code of 1986,
20 agriculture as defined in section 3(f) of the
21 Fair Labor Standards Act of 1938 (29 U.S.C.
22 203(f)), the handling, planting, drying, packing,
23 packaging, processing, freezing, or grading
24 prior to delivery for storage of any agricultural
25 or horticultural commodity in its unmanufac-

1 tured state, all activities required for the prepa-
2 ration, processing, or manufacturing of a prod-
3 uct of agriculture (as such term is defined in
4 such section 3(f)) for further distribution, and
5 activities similar to all the foregoing as they re-
6 late to fish or shellfish facilities. An employee
7 described in this subparagraph shall not be
8 counted for purposes of subparagraph (A).

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

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

17 “(ii) retain a paper, microfiche, micro-
18 film, or electronic version of the form and
19 make it available for inspection by officers
20 of the Department of Homeland Security,
21 the Department of Justice, or the Depart-
22 ment of Labor during the period beginning
23 on the date the reverification commences
24 and ending on the date that is the later of
25 3 years after the date of such reverification

1 or 1 year after the date the individual's
2 employment is terminated.

3 “(3) PREVIOUSLY HIRED INDIVIDUALS.—

4 “(A) ON A MANDATORY BASIS FOR CER-
5 TAIN EMPLOYEES.—

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

20 “(ii) INDIVIDUALS DESCRIBED.—An
21 individual described in this clause is any of
22 the following:

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

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

10 “(III) An employee assigned to
11 perform work in the United States
12 under a Federal contract, except that
13 this subclause—

14 “(aa) is not applicable to in-
15 dividuals who have a clearance
16 under Homeland Security Presi-
17 dential Directive 12 (HSPD 12
18 clearance), are administrative or
19 overhead personnel, or are work-
20 ing solely on contracts that pro-
21 vide Commercial Off The Shelf
22 goods or services as set forth by
23 the Federal Acquisition Regu-
24 latory Council, unless they are

1 subject to verification under sub-
2 clause (II); and

3 “(bb) only applies to con-
4 tracts over the simple acquisition
5 threshold as defined in section
6 2.101 of title 48, Code of Federal
7 Regulations.

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

16 “(i) The Commissioner of Social Secu-
17 rity shall notify annually employees (at the
18 employee address listed on the Wage and
19 Tax Statement) who submit a social secu-
20 rity account number to which more than
21 one employer reports income and for which
22 there is a pattern of unusual multiple use.
23 The notification letter shall identify the
24 number of employers to which income is
25 being reported as well as sufficient infor-

1 mation notifying the employee of the proc-
2 ess to contact the Social Security Adminis-
3 tration Fraud Hotline if the employee be-
4 lieves the employee's identity may have
5 been stolen. The notice shall not share in-
6 formation protected as private, in order to
7 avoid any recipient of the notice from
8 being in the position to further commit or
9 begin committing identity 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 the Commis-
14 sioner, and indicates that the social secu-
15 rity account number was used without
16 their knowledge, the Secretary and the
17 Commissioner shall lock the social security
18 account 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 an incorrect social security

1 account number under clause (ii) shall use
2 the verification system described in sub-
3 section (d) to check the work eligibility sta-
4 tus of the applicable employee within 10
5 business days of receipt of the notification.

6 “(C) ON A VOLUNTARY BASIS.—Subject to
7 paragraph (2), and subparagraphs (A) through
8 (C) of this paragraph, beginning on the date
9 that is 30 days after the date of the enactment
10 of the Legal Workforce Act, an employer may
11 make an inquiry, as provided in subsection (d),
12 using the verification system to seek verification
13 of the identity and employment eligibility of any
14 individual employed by the employer. If an em-
15 ployer chooses voluntarily to seek verification of
16 any individual employed by the employer, the
17 employer shall seek verification of all individ-
18 uals employed at the same geographic location
19 or, at the option of the employer, all individuals
20 employed within the same job category, as the
21 employee with respect to whom the employer
22 seeks voluntarily to use the verification system.
23 An employer’s decision about whether or not
24 voluntarily to seek verification of its current
25 workforce under this subparagraph may not be

1 considered by any government agency in any
2 proceeding, investigation, or review provided for
3 in this Act.

4 “(D) VERIFICATION.—Paragraph
5 (1)(C)(ii) shall apply to verifications pursuant
6 to this paragraph on the same basis as it ap-
7 plies to verifications pursuant to paragraph (1),
8 except that employers shall—

9 “(i) use a form designated or estab-
10 lished by the Secretary by regulation for
11 purposes of this paragraph; and

12 “(ii) retain a paper, microfiche, micro-
13 film, or electronic version of the form and
14 make it available for inspection by officers
15 of the Department of Homeland Security,
16 the Department of Justice, or the Depart-
17 ment of Labor during the period beginning
18 on the date the verification commences and
19 ending on the date that is the later of 3
20 years after the date of such verification or
21 1 year after the date the individual’s em-
22 ployment is terminated.

23 “(4) EARLY COMPLIANCE.—

24 “(A) FORMER E-VERIFY REQUIRED USERS,
25 INCLUDING FEDERAL CONTRACTORS.—Notwith-

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

18 “(B) FORMER E-VERIFY VOLUNTARY
19 USERS AND OTHERS DESIRING EARLY COMPLI-
20 ANCE.—Notwithstanding the deadlines in para-
21 graphs (1) and (2), beginning on the date of
22 the enactment of the Legal Workforce Act, the
23 Secretary shall provide for the voluntary com-
24 pliance with the requirements of this subsection
25 by employers voluntarily electing to participate

1 in the E-Verify Program described in section
2 403(a) of the Illegal Immigration Reform and
3 Immigrant Responsibility Act of 1996 (8 U.S.C.
4 1324a note) before such date, as well as by
5 other employers seeking voluntary early compli-
6 ance.

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

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

21 “(7) GOOD FAITH COMPLIANCE.—

22 “(A) IN GENERAL.—Except as otherwise
23 provided in this subsection, a person or entity
24 is considered to have complied with a require-
25 ment of this subsection notwithstanding a tech-

1 nical or procedural failure to meet such require-
2 ment if there was a good faith attempt to com-
3 ply with the requirement.

4 “(B) EXCEPTION IF FAILURE TO CORRECT
5 AFTER NOTICE.—Subparagraph (A) shall not
6 apply if—

7 “(i) the failure is not de minimus;

8 “(ii) the Secretary of Homeland Secu-
9 rity has explained to the person or entity
10 the basis for the failure and why it is not
11 de minimus;

12 “(iii) the person or entity has been
13 provided a period of not less than 30 cal-
14 endar days (beginning after the date of the
15 explanation) within which to correct the
16 failure; and

17 “(iv) the person or entity has not cor-
18 rected the failure voluntarily within such
19 period.

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

1 “(8) SINGLE EXTENSION OF DEADLINES UPON
2 CERTIFICATION.—In a case in which the Secretary
3 of Homeland Security has certified to the Congress
4 that the employment eligibility verification system
5 required under subsection (d) will not be fully oper-
6 ational by the date that is 6 months after the date
7 of the enactment of the Legal Workforce Act, each
8 deadline established under this section for an em-
9 ployer to make an inquiry using such system shall
10 be extended by 6 months. No other extension of such
11 a deadline shall be made except as authorized under
12 paragraph (1)(D)(iv).”.

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

16 “(4) DEFINITION OF DATE OF HIRE.—As used
17 in this section, the term ‘date of hire’ means the
18 date of actual commencement of employment for
19 wages or other remuneration, unless otherwise speci-
20 fied.”.

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

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

24 “(d) EMPLOYMENT ELIGIBILITY VERIFICATION SYS-
25 TEM.—

1 “(1) IN GENERAL.—Patterned on the employ-
2 ment eligibility confirmation system established
3 under section 404 of the Illegal Immigration Reform
4 and Immigrant Responsibility Act of 1996 (8 U.S.C.
5 1324a note), the Secretary of Homeland Security
6 shall establish and administer a verification system
7 through which the Secretary (or a designee of the
8 Secretary, which may be a nongovernmental enti-
9 ty)—

10 “(A) responds to inquiries made by per-
11 sons at any time through a toll-free telephone
12 line and other toll-free electronic media con-
13 cerning an individual’s identity and whether the
14 individual is authorized to be employed; and

15 “(B) maintains records of the inquiries
16 that were made, of verifications provided (or
17 not provided), and of the codes provided to in-
18 quirers as evidence of their compliance with
19 their obligations under this section.

20 “(2) INITIAL RESPONSE.—The verification sys-
21 tem shall provide confirmation or a tentative non-
22 confirmation of an individual’s identity and employ-
23 ment eligibility within 3 working days of the initial
24 inquiry. If providing confirmation or tentative non-
25 confirmation, the verification system shall provide an

1 appropriate code indicating such confirmation or
2 such nonconfirmation.

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

1 appropriate code indicating such confirmation or
2 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 “(E) to maximize the prevention of iden-
5 tity theft use in the system; and

6 “(F) to limit the subjects of verification to
7 the following individuals:

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

11 “(ii) Employees and prospective em-
12 ployees, in accordance with paragraph (1),
13 (2), (3), or (4) of subsection (b).

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

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

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

1 validate (or not validate) the information provided,
2 the correspondence of the name and number, wheth-
3 er the alien is authorized to be employed in the
4 United States, or to the extent that the Secretary
5 determines to be feasible and appropriate, whether
6 the records available to the Secretary verify the
7 identity or status of a national of the United States.

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

16 “(8) LIMITATION ON USE OF THE
17 VERIFICATION SYSTEM AND ANY RELATED SYS-
18 TEMS.—

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

1 “(B) CRITICAL INFRASTRUCTURE.—The
2 Secretary may authorize or direct any person or
3 entity responsible for granting access to, pro-
4 tecting, securing, operating, administering, or
5 regulating part of the critical infrastructure (as
6 defined in section 1016(e) of the Critical Infra-
7 structure Protection Act of 2001 (42 U.S.C.
8 5195c(e))) to use the verification system to the
9 extent the Secretary determines that such use
10 will assist in the protection of the critical infra-
11 structure.

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

19 **SEC. 4. RECRUITMENT, REFERRAL, AND CONTINUATION OF**
20 **EMPLOYMENT.**

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

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

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

3 “(B) to hire, continue to employ, or to re-
4 cruit or refer for employment in the United
5 States an individual without complying with the
6 requirements of subsection (b).”; and

7 (3) in paragraph (2), by striking “after hiring
8 an alien for employment in accordance with para-
9 graph (1),” and inserting “after complying with
10 paragraph (1),”.

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

15 “(5) DEFINITION OF RECRUIT OR REFER.—As
16 used in this section, the term ‘refer’ means the act
17 of sending or directing a person who is in the United
18 States or transmitting documentation or information
19 to another, directly or indirectly, with the intent of
20 obtaining employment in the United States for such
21 person. Only persons or entities referring for remun-
22 eration (whether on a retainer or contingency
23 basis) are included in the definition, except that
24 union hiring halls that refer union members or non-
25 union individuals who pay union membership dues

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

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

1 far as such amendments relate to continuation of employ-
2 ment.

3 **SEC. 5. GOOD FAITH DEFENSE.**

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

7 “(3) GOOD FAITH DEFENSE.—

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

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

23 “(ii) has established compliance with
24 its obligations under subparagraphs (A)
25 and (B) of paragraph (1) and subsection

1 (b) absent a showing by the Secretary of
2 Homeland Security, by clear and con-
3 vincing evidence, that the employer had
4 knowledge that an employee is an unau-
5 thorized alien.

6 “(B) MITIGATION ELEMENT.—For pur-
7 poses of subparagraph (A)(i), if an employer
8 proves by a preponderance of the evidence that
9 the employer uses a reasonable, secure, and es-
10 tablished technology to authenticate the identity
11 of the new employee, that fact shall be taken
12 into account for purposes of determining good
13 faith use of the system established under sub-
14 section (d).

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

23 “(i) FAILURE TO SEEK
24 VERIFICATION.—

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

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

1 no nonresponses and qualify for such
2 defense.

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

15 **SEC. 6. PREEMPTION AND STATES’ RIGHTS.**

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

19 “(2) PREEMPTION.—

20 “(A) SINGLE, NATIONAL POLICY.—The
21 provisions of this section preempt any State or
22 local law, ordinance, policy, or rule, including
23 any criminal or civil fine or penalty structure,
24 insofar as they may now or hereafter relate to
25 the hiring, continued employment, or status

1 verification for employment eligibility purposes,
2 of unauthorized aliens.

3 “(B) STATE ENFORCEMENT OF FEDERAL
4 LAW.—

5 “(i) BUSINESS LICENSING.—A State,
6 locality, municipality, or political subdivi-
7 sion may exercise its authority over busi-
8 ness licensing and similar laws as a pen-
9 alty for failure to use the verification sys-
10 tem described in subsection (d) to verify
11 employment eligibility when and as re-
12 quired under subsection (b).

13 “(ii) GENERAL RULES.—A State, at
14 its own cost, may enforce the provisions of
15 this section, but only insofar as such State
16 follows the Federal regulations imple-
17 menting this section, applies the Federal
18 penalty structure set out in this section,
19 and complies with all Federal rules and
20 guidance concerning implementation of this
21 section. Such State may collect any fines
22 assessed under this section. An employer
23 may not be subject to enforcement, includ-
24 ing audit and investigation, by both a Fed-
25 eral agency and a State for the same viola-

1 tion under this section. Whichever entity,
2 the Federal agency or the State, is first to
3 initiate the enforcement action, has the
4 right of first refusal to proceed with the
5 enforcement action. The Secretary must
6 provide copies of all guidance, training,
7 and field instructions provided to Federal
8 officials implementing the provisions of
9 this section to each State.”.

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. 1324a 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, Department of Justice, or the
18 Social Security Administration, to the employment eligi-
19 bility confirmation system established under section 404
20 of the Illegal Immigration Reform and Immigrant Respon-
21 sibility Act of 1996 (8 U.S.C. 1324a note) is deemed to
22 refer to the employment eligibility confirmation system es-
23 tablished under section 274A(d) of the Immigration and
24 Nationality Act, as amended by section 3 of this Act.

1 (c) EFFECTIVE DATE.—This section shall take effect
2 on the date that is 30 months after the date of the enact-
3 ment of this Act.

4 (d) CLERICAL AMENDMENT.—The table of sections,
5 in section 1(d) of the Illegal Immigration Reform and Im-
6 migrant Responsibility Act of 1996, is amended by strik-
7 ing the items relating to subtitle A of title IV.

8 **SEC. 8. PENALTIES.**

9 Section 274A of the Immigration and Nationality Act
10 (8 U.S.C. 1324a) is amended—

11 (1) in subsection (e)(1)—

12 (A) by striking “Attorney General” each
13 place such term appears and inserting “Sec-
14 retary of Homeland Security”; and

15 (B) in subparagraph (D), by striking
16 “Service” and inserting “Department of Home-
17 land Security”;

18 (2) in subsection (e)(4)—

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

22 (B) in subparagraph (A)(i), by striking
23 “not less than \$250 and not more than
24 \$2,000” and inserting “not less than \$2,500
25 and not more than \$5,000”;

1 (C) in subparagraph (A)(ii), by striking
2 “not less than \$2,000 and not more than
3 \$5,000” and inserting “not less than \$5,000
4 and not more than \$10,000”;

5 (D) in subparagraph (A)(iii), by striking
6 “not less than \$3,000 and not more than
7 \$10,000” and inserting “not less than \$10,000
8 and not more than \$25,000”; and

9 (E) by moving the margin of the continu-
10 ation text following subparagraph (B) two ems
11 to the left and by amending subparagraph (B)
12 to read as follows:

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

16 (3) in subsection (e)(5)—

17 (A) in the paragraph heading, strike “PA-
18 PERWORK”;

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

21 (C) by striking “\$100” and inserting
22 “\$1,000”;

23 (D) by striking “\$1,000” and inserting
24 “\$25,000”; and

1 (E) by adding at the end the following:

2 “Failure by a person or entity to utilize the em-
3 ployment eligibility verification system as re-
4 quired by law, or providing information to the
5 system that the person or entity knows or rea-
6 sonably believes to be false, shall be treated as
7 a violation of subsection (a)(1)(A).”;

8 (4) by adding at the end of subsection (e) the
9 following:

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

22 “(11) MITIGATION ELEMENT.—For purposes of
23 paragraph (4), the size of the business shall be
24 taken into account when assessing the level of civil
25 money penalty.

1 “(12) AUTHORITY TO DEBAR EMPLOYERS FOR
2 CERTAIN VIOLATIONS.—

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

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

1 Procurement, and if so, for what duration and
2 under what scope.

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

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

1 “(13) 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 five
12 business days of the filing of such a complaint
13 by identifying whether the Secretary will fur-
14 ther 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 \$5,000 for each unauthorized alien with
9 respect to which such a violation occurs, imprisoned
10 for not more than 18 months, or both, notwith-
11 standing the provisions of any other Federal law re-
12 lating to fine levels.”.

13 **SEC. 9. FRAUD AND MISUSE OF DOCUMENTS.**

14 Section 1546(b) of title 18, United States Code, is
15 amended—

16 (1) in paragraph (1), by striking “identification
17 document,” and inserting “identification document
18 or document meant to establish work authorization
19 (including the documents described in section
20 274A(b) of the Immigration and Nationality Act),”;
21 and

22 (2) in paragraph (2), by striking “identification
23 document” and inserting “identification document or
24 document meant to establish work authorization (in-

1 including the documents described in section 274A(b)
2 of the Immigration and Nationality Act),”.

3 **SEC. 10. PROTECTION OF SOCIAL SECURITY ADMINISTRA-**
4 **TION PROGRAMS.**

5 (a) **FUNDING UNDER AGREEMENT.**—Effective for
6 fiscal years beginning on or after October 1, 2019, the
7 Commissioner of Social Security and the Secretary of
8 Homeland Security shall enter into and maintain an
9 agreement which shall—

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

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

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

1 (2) provide such funds annually in advance of
2 the applicable quarter based on estimating method-
3 ology agreed to by the Commissioner and the Sec-
4 retary (except in such instances where the delayed
5 enactment of an annual appropriation may preclude
6 such quarterly payments); and

7 (3) require an annual accounting and reconcili-
8 ation of the actual costs incurred and the funds pro-
9 vided under the agreement, which shall be reviewed
10 by the Inspectors General of the Social Security Ad-
11 ministration and the Department of Homeland Secu-
12 rity.

13 (b) CONTINUATION OF EMPLOYMENT VERIFICATION
14 IN ABSENCE OF TIMELY AGREEMENT.—In any case in
15 which the agreement required under subsection (a) for any
16 fiscal year beginning on or after October 1, 2019, has not
17 been reached as of October 1 of such fiscal year, the latest
18 agreement between the Commissioner and the Secretary
19 of Homeland Security providing for funding to cover the
20 costs of the responsibilities of the Commissioner under
21 section 274A(d) of the Immigration and Nationality Act
22 (8 U.S.C. 1324a(d)) shall be deemed in effect on an in-
23 terim basis for such fiscal year until such time as an
24 agreement required under subsection (a) is subsequently
25 reached, except that the terms of such interim agreement

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

21 **SEC. 11. FRAUD PREVENTION.**

22 (a) **BLOCKING MISUSED SOCIAL SECURITY ACCOUNT**
23 **NUMBERS.**—The Secretary of Homeland Security, in con-
24 sultation with the Commissioner of Social Security, shall
25 establish a program in which social security account num-

1 bers that have been identified to be subject to unusual
2 multiple use in the employment eligibility verification sys-
3 tem established under section 274A(d) of the Immigration
4 and Nationality Act (8 U.S.C. 1324a(d)), as amended by
5 section 3 of this Act, or that are otherwise suspected or
6 determined to have been compromised by identity fraud
7 or other misuse, shall be blocked from use for such system
8 purposes unless the individual using such number is able
9 to establish, through secure and fair additional security
10 procedures, that the individual is the legitimate holder of
11 the number.

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

1 (c) ALLOWING PARENTS TO PREVENT THEFT OF
2 THEIR CHILD'S IDENTITY.—The Secretary of Homeland
3 Security, in consultation with the Commissioner of Social
4 Security, shall establish a program which shall provide a
5 reliable, secure method by which parents or legal guard-
6 ians may suspend or limit the use of the social security
7 account number or other identifying information of a
8 minor under their care for the purposes of the employment
9 eligibility verification system established under 274A(d) of
10 the Immigration and Nationality Act (8 U.S.C. 1324a(d)),
11 as amended by section 3 of this Act. The Secretary may
12 implement the program on a limited pilot program basis
13 before making it fully available to all individuals.

14 **SEC. 12. USE OF EMPLOYMENT ELIGIBILITY VERIFICATION**
15 **PHOTO TOOL.**

16 An employer or entity who uses the photo matching
17 tool, if required by the Secretary as part of the verification
18 system, shall match, either visually, or using facial rec-
19 ognition or other verification technology approved or re-
20 quired by the Secretary, the photo matching tool photo-
21 graph to the photograph on the identity or employment
22 eligibility document provided by the individual or to the
23 face of the employee submitting the document for employ-
24 ment verification purposes, or both, as determined by the
25 Secretary.

1 **SEC. 13. IDENTITY AUTHENTICATION EMPLOYMENT ELIGI-**
2 **BILITY VERIFICATION PILOT PROGRAMS.**

3 Not later than 24 months after the date of the enact-
4 ment of this Act, the Secretary of Homeland Security,
5 after consultation with the Commissioner of Social Secu-
6 rity and the Director of the National Institute of Stand-
7 ards and Technology, shall establish by regulation not less
8 than 2 Identity Authentication Employment Eligibility
9 Verification pilot programs, each using a separate and dis-
10 tinct technology (the “Authentication Pilots”). The pur-
11 pose of the Authentication Pilots shall be to provide for
12 identity authentication and employment eligibility
13 verification with respect to enrolled new employees which
14 shall be available to any employer that elects to participate
15 in either of the Authentication Pilots. Any participating
16 employer may cancel the employer’s participation in the
17 Authentication Pilot after one year after electing to par-
18 ticipate without prejudice to future participation. The Sec-
19 retary shall report to the Committee on the Judiciary of
20 the House of Representatives and the Committee on the
21 Judiciary of the Senate the Secretary’s findings on the
22 Authentication Pilots, including the authentication tech-
23 nologies chosen, not later than 12 months after com-
24 mencement of the Authentication Pilots.

1 **SEC. 14. INSPECTOR GENERAL AUDITS.**

2 (a) IN GENERAL.—Not later than 1 year after the
3 date of the enactment of this Act, the Inspector General
4 of the Social Security Administration shall complete audits
5 of the following categories in order to uncover evidence
6 of individuals who are not authorized to work in the
7 United States:

8 (1) Workers who dispute wages reported on
9 their social security account number when they be-
10 lieve someone else has used such number and name
11 to report wages.

12 (2) Children's social security account numbers
13 used for work purposes.

14 (3) Employers whose workers present signifi-
15 cant numbers of mismatched social security account
16 numbers or names for wage reporting.

17 (b) SUBMISSION.—The Inspector General of the So-
18 cial Security Administration shall submit the audits com-
19 pleted under subsection (a) to the Committee on Ways and
20 Means of the House of Representatives and the Committee
21 on Finance of the Senate for review of the evidence of
22 individuals who are not authorized to work in the United
23 States. The Chairmen of those Committees shall then de-
24 termine information to be shared with the Secretary of
25 Homeland Security so that such Secretary can investigate

1 the unauthorized employment demonstrated by such evi-
2 dence.

