

Summary of S. 1196 the “Accountability Through Electronic Verification Act”

as introduced June 14, 2011

SECTION 1. SHORT TITLE

Designates short title of bill as “Accountability Through Electronic Verification Act”.

SECTION 2. PERMANENT REAUTHORIZATION

S. 1196 makes E-Verify program *permanent* and amends the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996 to change the program’s name from “a pilot program” to “E-Verify”.

SECTION 3. MANDATORY USE OF E-VERIFY

Makes E-Verify *mandatory for all employers.*

S. 1196 requires **federal agencies and contractors with the federal government to participate in E-Verify upon enactment; all employers are required to use E-Verify within a year.** Employers using a contract, subcontract, or exchange to obtain labor must certify that they utilize E-Verify (failure to do so is considered a violation of the mandatory E-Verify provision).

Prior to the implementation dates of S. 1196, Homeland Security (DHS) shall require employers to participate in E-Verify if the DHS has reasonable cause to believe that the employer is in material violation of the employment eligibility verification process set forth in INA § 274A. Finally, it requires DHS to provide employers with written notification of the new E-Verify requirement as well as training materials at least 14 days before an employer is required to begin using the program.

SECTION 4. CONSEQUENCES OF FAILURE TO PARTICIPATE

Provides for consequences for an employer’s failure to participate in mandatory E-Verify.

S. 1196 treats an employer’s failure to use E-Verify as a violation of the INA’s requirement to verify employment eligibility under §274A(a)(1)(B) and creates a *rebuttable presumption* that the employer knowingly hired, recruited, or referred an illegal alien.

Civil Penalties

The bill *increases the civil fines* for knowingly hiring, recruiting, and referring illegal aliens under INA § 274A(e)(4) or for failure to use E-Verify:

- **First Violation:** \$2,500 - \$5,000 for each illegal alien employed (current law: \$250 - \$2,000)
- **Second Violation:** \$5,000 - \$10,000 for each illegal alien (current law: \$2,000 - \$5,000)
- **Subsequent Violations:** \$10,000 - \$25,000 for each illegal alien (current law: \$3,000 - \$10,000)

S. 1196 also *increases the civil fines for paperwork violations* under INA § 274A(e)(5) from the range of \$100 to \$1,000 for each individual to \$1,000 to \$25,000. The bill also grants DHS the authority to *debar* employers from federal contracts, grants, or cooperative agreements (in accordance with the Federal Acquisition Regulation) for failure to use E-Verify.

Provides a “good faith” defense for employers in violation of the Act who establish the offense is their first violation and they acted in good faith in attempting to comply with the mandatory E-Verify provision.

Criminal Penalties

The bill also *increases the criminal penalties* for employers engaging in a pattern or practice of knowingly hiring, recruiting, and referring illegal aliens under INA § 274A(f) or for failure to use E-Verify by:

- Increasing the criminal fine to not more than \$15,000 for each illegal alien employed (current law: not more than \$3,000 for each illegal alien);
- Making a violation of subsection a *felony* by increasing the term of imprisonment to “not less than one year” (current law: not more than six months for the entire pattern or practice)

SECTION 5. PREEMPTION; LIABILITY

Provides that *state and local governments may not prohibit* employers from using E-Verify to verify the employment eligibility of new hires or current employees. It also provides that employers are not liable under any federal, state, or local law for the wrongful termination of employees due to *good faith reliance* on the results provided by E-Verify.

SECTION 6. EXPANDED USE OF E-VERIFY

Expands the window of time during which employers may verify the employment eligibility of employees by permitting the verification of individuals *before* they are hired, recruited, or referred *so long as the individual consents*. S. 1196 maintains current law by requiring employers to verify employment eligibility *not later than three days* of the date of hire, recruitment, or referral. Finally, three years after the date of enactment the Act requires all employers to use E-Verify for any individual who has not been previously verified by the employer using the program.

SECTION 7. RE-VERIFICATION

Requires employers to re-verify the work authorization of individuals not later than three days after the date on which their employment authorization is due to expire.

SECTION 8. HOLDING EMPLOYERS ACCOUNTABLE

Requires employers to terminate an employee following the receipt of a *final nonconfirmation* from E-Verify *and* submit to DHS information DHS determines would assist the agency in enforcing or administering U.S. immigration laws.

Employers continuing to employ, recruit, or refer individuals following receipt of a final nonconfirmation create a *rebuttable presumption* that they violated § 274A of the INA.

Requires U.S. Citizenship and Immigration Services (USCIS) to submit a weekly report to Immigration and Customs Enforcement (ICE) that includes the following information for each individual receiving a *final nonconfirmation* through E-Verify:

- Name;
- Social Security Number, individual taxpayer identification number, or alien file number;
- Name and contact information of current employer; and
- Any other critical information deemed appropriate by the Assistant Secretary.

The reports shall be used by DHS to enforce U.S. immigration laws.

SECTION 9. INFORMATION SHARING

Requires the Social Security Administration, DHS, and the U.S. Treasury (i.e. IRS) to jointly establish an information sharing program among the three agencies that may or could lead to the identification of illegal aliens, including no-match letters and any information in the Social Security earnings suspense file.

SECTION 10. FORM I-9 PROCESS

Requires DHS, not later than nine months after enactment, to submit a report to Congress recommending ways to modify, simplify, and eliminate the I-9 process that exists under current law.

SECTION 11. ALGORITHM

Requires the development and use of algorithms for the E-Verify program to:

- Maximize reliability and ease of use;
- Insulate and protect privacy;
- Prevent unauthorized disclosure of personal information;
- Respond accurately to all inquiries;
- Register when E-Verify is unable to receive inquiries;
- Allow for auditing use of the system to detect fraud and identity theft;
- Preserve the security of the information in all of the system;
- Confirm identify and work authorization through verification records;
- Electronically confirm the issuance of the employment authorization or identity document; and
- Display the digital photograph that the issuer placed on the document so the employer can compare the photograph displayed to the photograph on the document presented by the employee (or alternative procedure as determined by DHS).

SECTION 12. IDENTITY THEFT

Amends the federal criminal code, Title 18, to clarify that illegal aliens possessing or otherwise using false identification information not their own (rather than specifically belonging to someone else) can be punished for identity fraud under 8 U.S.C. 1028. If this offense, or any other offense listed under 8 U.S.C. 1028 is done in furtherance of harboring or hiring illegal aliens in violation of INA § 274, 274A, or 274C, the offense is punishable by a fine and/or penalty of up to 20 years imprisonment.

SECTION 13. SMALL BUSINESS DEMONSTRATION PROGRAM

Requires USCIS, within nine months of enactment, to establish a demonstration program to assist small businesses in rural areas or areas without internet capabilities to verify the employment eligibility of newly hired employees solely through the use of publicly accessible internet terminals.

SECTION 14. RESCISSION OF UNSPENT FEDERAL FUNDS TO OFFSET LOSS IN REVENUES

Provides that the funding needed to carry out this Act will consist of all available unobligated discretionary funds, the amount to be determined by the Office of Management and Budget. Unobligated funds will come from Homeland Security first (before rescinding funds from other executive departments or agencies). Agencies precluded from providing unobligated funds include: the Department of Defense; the Department of Veterans Affairs; and the National Nuclear Security Administration Weapons Activities and Naval Reactors Accounts.