

112TH CONGRESS  
1ST SESSION

# H. R. 98

To amend the Immigration and Nationality Act to enforce restrictions on employment in the United States of unauthorized aliens through the use of improved Social Security cards and an Employment Eligibility Database, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 2011

Mr. DREIER (for himself, Mr. REYES, Mr. BILBRAY, Mr. CALVERT, Mr. GALLEGLY, Mr. ISSA, Mr. MCCAUL, Mr. GARY G. MILLER of California, and Mrs. MYRICK) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on the Judiciary, Homeland Security, and Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Immigration and Nationality Act to enforce restrictions on employment in the United States of unauthorized aliens through the use of improved Social Security cards and an Employment Eligibility Database, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Illegal Immigration  
3 Enforcement and Social Security Protection Act of 2011”.

4 **SEC. 2. FINDINGS.**

5 The Congress finds the following:

6 (1) This Act is an appropriate response to the  
7 need to improve procedures to preclude unauthorized  
8 employment of aliens and prevent the entry of ter-  
9 rorists into the United States.

10 (2) The economic disparity between the United  
11 States and other countries is a prime factor in the  
12 desire of foreign nationals to enter the United States  
13 illegally.

14 (3) Federal law prohibits the employment of  
15 such illegal immigrants in the United States.

16 (4) Nonetheless, illegal immigrants routinely  
17 find employment within the United States.

18 (5) Such employment of illegal immigrants un-  
19 dermines our system of lawful immigration and has  
20 a negative impact on job opportunities for American  
21 workers.

22 (6) Employers in the United States currently  
23 have difficulty establishing the veracity of the iden-  
24 tity documents of prospective employees in order to  
25 verify their work eligibility.

1           (7) Pilot programs undertaken by the Federal  
2 Government demonstrate that a nationwide employ-  
3 ment verification system is feasible.

4           (8) Social Security cards are routinely required  
5 to be presented to employers by new employees.

6           (9) Social Security cards remain vulnerable to  
7 counterfeiting and fraud.

8           (10) Social Security cards with improved de-  
9 fenses against fraudulent use would serve as the best  
10 vehicle by which to determine employment eligibility.

11           (11) The Social Security card should not be-  
12 come a national identification card.

13 **SEC. 3. AMENDMENTS TO THE SOCIAL SECURITY ACT RE-**  
14 **LATING TO IDENTIFICATION OF INDIVID-**  
15 **UALS.**

16           (a) ANTIFRAUD MEASURES FOR SOCIAL SECURITY  
17 CARDS.—Section 205(c)(2)(G) of the Social Security Act  
18 (42 U.S.C. 405(c)(2)(G)) is amended—

19           (1) by inserting “(i)” after “(G)”;

20           (2) by striking “banknote paper” and inserting  
21 “durable plastic or similar material”; and

22           (3) by adding at the end the following new  
23 clauses:

24           “(ii) Each Social Security card issued under this sub-  
25 paragraph shall include an encrypted machine-readable

1 electronic identification strip which shall be unique to the  
2 individual to whom the card is issued. The Commissioner  
3 shall develop such electronic identification strip in con-  
4 sultation with the Secretary of Homeland Security, so as  
5 to enable employers to use such strip in accordance with  
6 section 274A(a)(1)(B) of the Immigration and Nationality  
7 Act (8 U.S.C. 1324a(a)(1)(B)) to obtain access to the Em-  
8 ployment Eligibility Database established by such Sec-  
9 retary pursuant to section 4 of such Act with respect to  
10 the individual to whom the card is issued.

11 “(iii) Each Social Security card issued under this  
12 subparagraph shall contain—

13 “(I) physical security features designed to pre-  
14 vent tampering, counterfeiting, or duplication of the  
15 card for fraudulent purposes; and

16 “(II) a disclaimer stating the following: ‘This  
17 card shall not be used for the purpose of identifica-  
18 tion.’.

19 “(iv) The Commissioner shall provide for the issuance  
20 (or reissuance) to each individual who—

21 “(I) has been assigned a Social Security ac-  
22 count number under subparagraph (B),

23 “(II) has attained the minimum age applicable,  
24 in the jurisdiction in which such individual engages

1 in employment, for legally engaging in such employ-  
2 ment, and

3 “(III) files application for such card under this  
4 clause in such form and manner as shall be pre-  
5 scribed by the Commissioner,

6 a Social Security card which meets the preceding require-  
7 ments of this subparagraph and which includes a recent  
8 digitized photograph of the individual to whom the card  
9 is issued.

10 “(v) The Commissioner shall maintain an ongoing ef-  
11 fort to develop measures in relation to the Social Security  
12 card and the issuance thereof to preclude fraudulent use  
13 thereof.”

14 (b) SHARING OF INFORMATION WITH THE SEC-  
15 RETARY OF HOMELAND SECURITY.—Section 205(c)(2) of  
16 such Act is amended by adding at the end the following  
17 new subparagraph:

18 “(I) Upon the issuance of a Social Security account  
19 number under subparagraph (B) to any individual or the  
20 issuance of a Social Security card under subparagraph (G)  
21 to any individual, the Commissioner of Social Security  
22 shall transmit to the Secretary of Homeland Security such  
23 information received by the Commissioner in the individ-  
24 ual’s application for such number or such card as such  
25 Secretary determines necessary and appropriate for ad-

1 ministration of the Illegal Immigration Enforcement and  
2 Social Security Protection Act of 2011. Such information  
3 shall be used solely for inclusion in the Employment Eligi-  
4 bility Database established pursuant to section 4 of such  
5 Act.”.

6 (c) EFFECTIVE DATES.—The amendment made by  
7 subsection (a) shall apply with respect to Social Security  
8 cards issued after 2 years after the date of the enactment  
9 of this Act. The amendment made by subsection (b) shall  
10 apply with respect to the issuance of Social Security ac-  
11 count numbers and Social Security cards after 2 years  
12 after the date of the enactment of this Act.

13 **SEC. 4. EMPLOYMENT ELIGIBILITY DATABASE.**

14 (a) IN GENERAL.—The Secretary of Homeland Secu-  
15 rity shall establish and maintain an Employment Eligi-  
16 bility Database. The Database shall include data com-  
17 prised of the citizenship status of individuals and the work  
18 and residency eligibility information (including expiration  
19 dates) with respect to individuals who are not citizens or  
20 nationals of the United States but are authorized to work  
21 in the United States. Such data shall include all such data  
22 maintained by the Department of Homeland Security as  
23 of the date of the establishment of such database and in-  
24 formation obtained from the Commissioner of Social Secu-  
25 rity pursuant to section 205(c)(2)(I) of the Social Security

1 Act. The Secretary shall maintain ongoing consultations  
2 with the Commissioner to ensure efficient and effective op-  
3 eration of the Database.

4 (b) INCORPORATION OF ONGOING PROGRAMS.—To  
5 the extent that the Secretary determines appropriate in  
6 furthering the purposes of subsection (a), the Secretary  
7 may incorporate the information, processes, and proce-  
8 dures employed in connection with the Citizen Attestation  
9 Verification Pilot Program and the E-Verify Program into  
10 the operation and maintenance of the Database under sub-  
11 section (a).

12 (c) CONFIDENTIALITY.—

13 (1) IN GENERAL.—No officer or employee of  
14 the Department of Homeland Security shall have ac-  
15 cess to any information contained in the Database  
16 for any purpose other than—

17 (A) the establishment of a system of  
18 records necessary for the effective administra-  
19 tion of this Act; or

20 (B) any other purpose the Secretary of  
21 Homeland Security deems to be in the national  
22 security interests of the United States.

23 (2) RESTRICTION.—The Secretary shall restrict  
24 access to such information to officers and employees  
25 of the United States whose duties or responsibilities

1 require access for the purposes described in para-  
2 graph (1).

3 (3) OTHER SAFEGUARDS.—The Secretary shall  
4 provide such other safeguards as the Secretary de-  
5 termines to be necessary or appropriate to protect  
6 the confidentiality of information contained in the  
7 Database.

8 (4) CRIMINAL PENALTIES.—Whoever accesses  
9 or uses information in the Employment Eligibility  
10 Database without authority to do so, or for an unau-  
11 thorized purpose, shall be fined under title 18,  
12 United States Code, imprisoned for a term of not  
13 less than 5, and not more than 7, years, or both.

14 (d) DEADLINE FOR MEETING REQUIREMENTS.—The  
15 Secretary shall complete the establishment of the Data-  
16 base and provide for the efficient and effective operation  
17 of the Database in accordance with this section not later  
18 than 2 years after the date of the enactment of this Act.

19 **SEC. 5. REQUIREMENTS RELATING TO INDIVIDUALS COM-**  
20 **MENCING WORK IN THE UNITED STATES.**

21 (a) REQUIREMENTS FOR EMPLOYERS AND EMPLOY-  
22 EES.—Section 274A(a)(1) of the Immigration and Nation-  
23 ality Act (8 U.S.C. 1324a(a)(1)) is amended to read as  
24 follows:

25 “(1) IN GENERAL.—



1           “(A) REQUIREMENTS FOR EMPLOYEES.—

2           No individual may commence employment with  
3           an employer in the United States unless such  
4           individual has—

5                   “(i) obtained a Social Security card  
6                   issued by the Commissioner of Social Secu-  
7                   rity meeting the requirements of section  
8                   205(c)(2)(G)(iii) of the Social Security  
9                   Act; and

10                   “(ii) displayed such card to the em-  
11                   ployer pursuant to the employer’s request  
12                   for purposes of the verification required  
13                   under subparagraph (B).

14           “(B) REQUIREMENTS FOR EMPLOYERS.—

15                   “(i) IN GENERAL.—No employer may  
16                   hire for employment an individual in the  
17                   United States in any capacity unless such  
18                   employer verifies under this subparagraph  
19                   that such individual has in his or her pos-  
20                   session a Social Security card issued to  
21                   such individual pursuant to section  
22                   205(c)(2)(G) of the Social Security Act  
23                   which bears a photograph of such indi-  
24                   vidual and that such individual is author-  
25                   ized to work in the United States in such

1 capacity. Such verification shall be made in  
2 accordance with procedures prescribed by  
3 the Secretary of Homeland Security for the  
4 purposes of ensuring against fraudulent  
5 use of the card and accurate and prompt  
6 verification of the authorization of such in-  
7 dividual to work in the United States in  
8 such capacity.

9 “(ii) VERIFICATION PROCEDURES.—

10 Such procedures shall include use of—

11 “(I) a phone verification system  
12 which shall be established by the Sec-  
13 retary; or

14 “(II) a card-reader verification  
15 system employing a device approved  
16 by the Secretary as capable of reading  
17 the electronic identification strip  
18 borne by the card so as to verify the  
19 identity of the card holder and the  
20 card holder’s authorization to work,  
21 and which is made available at mini-  
22 mal cost to the employer.

23 “(iii) SECURITY AND EFFECTIVE-  
24 NESS.—The Secretary shall ensure that  
25 the phone verification system described in

1           subparagraph (I) of clause (ii) is as secure  
2           and effective as the card-reader verification  
3           system described in subparagraph (II) of  
4           such clause.

5           “(iv) ACCESS TO DATABASE.—The  
6           Secretary shall ensure that, by means of  
7           such procedures, the employer will have  
8           such access to the Employment Eligibility  
9           Database established and operated by the  
10          Secretary pursuant to section 4 of the Ille-  
11          gal Immigration Enforcement and Social  
12          Security Protection Act of 2011 as to en-  
13          able the employer to obtain information,  
14          relating to the citizenship, residency, and  
15          work eligibility of the individual seeking  
16          employment by the employer in any capac-  
17          ity, which is necessary to inform the em-  
18          ployer as to whether the individual is au-  
19          thorized to work for the employer in the  
20          United States in such capacity.

21          “(v) DEFENSE.—An employer who es-  
22          tablishes that the employer complied in  
23          good faith with the requirements of this  
24          subparagraph shall not be liable for hiring  
25          an unauthorized alien, if—

1                   “(I) such hiring occurred due to  
2                   an error in the phone verification sys-  
3                   tem, the card-reader verification sys-  
4                   tem, or the Employment Eligibility  
5                   Database which was unknown to the  
6                   employer at the time of such hiring;  
7                   and

8                   “(II) the employer terminates  
9                   that employment of the alien upon  
10                  being informed of the error.”.

11           (b) CONFORMING AMENDMENTS.—Section 274A of  
12 the Immigration and Nationality Act (8 U.S.C. 1324a) is  
13 amended—

14           (1) in subsection (a), by striking paragraphs  
15           (3), (5), and (6) and redesignating paragraphs (4)  
16           and (7) as paragraphs (3) and (4), respectively;

17           (2) in subsection (b)—

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

21           (B) by amending the matter preceding  
22           paragraph (2) to read as follows:

23           “(b) EMPLOYMENT VERIFICATION FORMS.—

24           “(1) EMPLOYER ATTESTATION OF COMPLI-  
25           ANCE.—The verification procedures prescribed under

1 subsection (a)(1)(B) shall include an attestation,  
2 made under penalty of perjury and on a form des-  
3 ignated or established by the Secretary of Homeland  
4 Security by regulation, that the employer has com-  
5 plied with such procedures.”; and

6 (C) by striking paragraph (6);

7 (3) by striking subsection (d); and

8 (4) by amending subsection (h)(3) to read as  
9 follows:

10 “(3) DEFINITIONS.—For purposed of this sec-  
11 tion:

12 “(A) The term ‘authorized to work in the  
13 United States’, when applied to an individual,  
14 means that the individual is not an unauthor-  
15 ized alien.

16 “(B) The term ‘employer’ means—

17 “(i) any person or entity who hires an  
18 individual; or

19 “(ii) any individual earning self-em-  
20 ployment income (as defined in section  
21 211(b) of the Social Security Act (42  
22 U.S.C. 411(b))).

23 “(C) The term ‘employee’ shall have the  
24 meaning given such term in section 210(j) of  
25 the Social Security Act (42 U.S.C. 410(j)).

1           “(D) The term ‘hire’ means to hire an in-  
2           dividual, or to recruit or refer for a fee an indi-  
3           vidual, for employment in the United States.

4           “(E) The term ‘unauthorized alien’ means,  
5           with respect to the employment of an alien at  
6           a particular time, that the alien is not at that  
7           time—

8                     “(i) an alien lawfully admitted for  
9                     permanent residence; or

10                    “(ii) authorized to be so employed by  
11                    this Act or by the Secretary of Homeland  
12                    Security.”.

13           (c) EFFECTIVE DATE.—The amendments made by  
14 this section shall take effect 2 years after the date of the  
15 enactment of this Act and shall apply to employment of  
16 any individual in any capacity commencing on or after  
17 such effective date.

18 **SEC. 6. COMPLIANCE.**

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

22                     “(e) COMPLIANCE.—

23                             “(1) CIVIL PENALTY.—

24                                     “(A) IN GENERAL.—The Secretary of  
25                                     Homeland Security may assess a penalty, pay-

1 able to the Secretary, against any employer  
2 who—

3 “(i) hires an individual for employ-  
4 ment in the United States in any capacity  
5 who is known by the employer not to be  
6 authorized to work in the United States in  
7 such capacity; or

8 “(ii) fails to comply with the proce-  
9 dures prescribed by the Secretary pursuant  
10 to this section in connection with the em-  
11 ployment of any individual.

12 “(B) AMOUNT.—Such penalty shall not ex-  
13 ceed \$50,000 for each occurrence of a violation  
14 described in subparagraph (A) with respect to  
15 the individual, plus, in the event of the removal  
16 of such individual from the United States based  
17 on findings developed in connection with the as-  
18 sessment or collection of such penalty, the costs  
19 incurred by the Federal Government, cooper-  
20 ating State and local governments, and State  
21 and local law enforcement agencies, in connec-  
22 tion with such removal.

23 “(2) ACTIONS BY SECRETARY.—If any person is  
24 assessed under paragraph (1) and fails to pay the  
25 assessment when due, or any person otherwise fails

1 to meet any requirement of this section, the Sec-  
2 retary may bring a civil action in any district court  
3 of the United States within the jurisdiction of which  
4 such person's assets are located or in which such  
5 person resides or is found for the recovery of the  
6 amount of the assessment or for appropriate equi-  
7 table relief to redress the violation or enforce the  
8 provisions of this section, and process may be served  
9 in any other district. The district courts of the  
10 United States shall have jurisdiction over actions  
11 brought under this section by the Secretary without  
12 regard to the amount in controversy.

13 “(3) CRIMINAL PENALTY.—Any person who—

14 “(A) hires for employment any individual  
15 in the United States in any capacity who such  
16 person knows not to be authorized to work in  
17 the United States in such capacity; or

18 “(B) hires for employment any individual  
19 in the United States and fails to comply with  
20 the procedures prescribed by the Secretary pur-  
21 suant to section 5(b) in connection with the hir-  
22 ing of such individual;

23 “shall upon conviction be fined in accordance  
24 with title 18, United States Code, or imprisoned for  
25 not more than 5 years, or both”.



1 (b) CONFORMING AMENDMENTS.—Section 274A of  
2 the Immigration and Nationality Act (8 U.S.C. 1324a) is  
3 amended—

4 (1) in subsection (g)(2), by striking “hearing  
5 under subsection (e),” and inserting “hearing,”;

6 (2) by striking subsection (f); and

7 (3) by redesignating subsections (e), (g), and  
8 (h) as subsections (d), (e), and (f), respectively.

9 (c) EFFECTIVE DATE.—The amendments made by  
10 this section shall take effect 2 years after the date of the  
11 enactment of this Act and shall apply to employment of  
12 any individual in any capacity commencing on or after  
13 such effective date.

14 **SEC. 7. GRANTS FOR TECHNOLOGIES TO COMBAT ILLEGAL**  
15 **BORDER CROSSINGS.**

16 (a) IN GENERAL.—The Secretary of Homeland Secu-  
17 rity is authorized to make grants for the purpose of im-  
18 proving and developing new technologies to combat illegal  
19 border crossings into the United States.

20 (b) AUTHORIZATION OF APPROPRIATIONS.—There  
21 are authorized to be appropriated to carry out subsection  
22 (a) \$10,000,000 for each of fiscal years 2011 through  
23 2013.

1 **SEC. 8. INCREASE IN PERSONNEL ENSURING COMPLIANCE**  
2 **WITH PROHIBITIONS ON UNLAWFUL EMPLOY-**  
3 **MENT OF ALIENS.**

4 Beginning in fiscal year 2011, the Secretary of  
5 Homeland Security shall, subject to the availability of ap-  
6 propriations for such purpose, increase by not less than  
7 10,000 the number of positions within the Department of  
8 Homeland Security for full-time personnel charged with  
9 carrying out section 274A(d) of the Immigration and Na-  
10 tionality Act (8 U.S.C. 1324a(d)), as amended by section  
11 6 of this Act, above the number of such positions for which  
12 funds were made available for fiscal year 2010.

13 **SEC. 9. INTEGRATION OF FINGERPRINTING DATABASES.**

14 The Secretary of Homeland Security and the Attor-  
15 ney General of the United States shall jointly undertake  
16 to integrate the fingerprint database maintained by the  
17 Department of Homeland Security with the fingerprint  
18 database maintained by the Federal Bureau of Investiga-  
19 tion. The integration of databases pursuant to this section  
20 shall be completed not later than 2 years after the date  
21 of the enactment of this Act.

22 **SEC. 10. AUTHORIZATIONS OF APPROPRIATIONS.**

23 (a) DEPARTMENT OF HOMELAND SECURITY.—Ex-  
24 cept as otherwise provided in this Act, there are author-  
25 ized to be appropriated to the Department of Homeland  
26 Security for each fiscal year beginning on or after October

1 1, 2011, such sums as may be necessary to carry out this  
2 Act and the amendments made by this Act, of which not  
3 less than \$100,000,000 shall be for the purpose of car-  
4 rying out section 274A(d) of the Immigration and Nation-  
5 ality Act (8 U.S.C. 1324a(d)), as amended by section 6  
6 of this Act.

7 (b) SOCIAL SECURITY ADMINISTRATION.—There are  
8 authorized to be appropriated to the Social Security Ad-  
9 ministration for each fiscal year beginning on or after Oc-  
10 tober 1, 2011, such sums as are necessary to carry out  
11 the amendments made by section 3.

12 **SEC. 11. RULES OF CONSTRUCTION.**

13 (a) IN GENERAL.—Nothing in this Act shall be con-  
14 strued—

15 (1) to require the presentation of a Social Secu-  
16 rity card for any purpose other than—

17 (A) for the administration and enforce-  
18 ment of the Social Security laws of the United  
19 States; or

20 (B) for the purpose of implementing and  
21 enforcing this Act and the amendments made  
22 by this Act; or

23 (2) to require the Social Security card to be  
24 carried by an individual.

1           (b) NO NATIONAL IDENTIFICATION CARD.—It is the  
2 policy of the United States that the Social Security card  
3 shall not be used as a national identification card.

○