

112TH CONGRESS  
1ST SESSION

# S. 1196

To expand the use of E-Verify, to hold employers accountable, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 14, 2011

Mr. GRASSLEY (for himself, Mr. SESSIONS, Mr. RUBIO, Mr. WICKER, Mr. BOOZMAN, Mr. LEE, Mr. HATCH, Mr. VITTER, Mr. COBURN, and Mr. CORKER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To expand the use of E-Verify, to hold employers accountable, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Accountability  
5 Through Electronic Verification Act”.

6 **SEC. 2. PERMANENT REAUTHORIZATION.**

7 Section 401(b) of the Illegal Immigration Reform and  
8 Immigrant Responsibility Act of 1996 (division C of Pub-  
9 lic Law 104–208; 8 U.S.C. 1324a note) is amended by

1 striking “Unless the Congress otherwise provides, the Sec-  
2 retary of Homeland Security shall terminate a pilot pro-  
3 gram on September 30, 2012.”.

4 **SEC. 3. MANDATORY USE OF E-VERIFY.**

5 (a) FEDERAL GOVERNMENT.—Section 402(e)(1) of  
6 the Illegal Immigration Reform and Immigrant Responsi-  
7 bility Act of 1996 (8 U.S.C. 1324a note) is amended—

8 (1) by amending subparagraph (A) to read as  
9 follows:

10 “(A) EXECUTIVE DEPARTMENTS AND  
11 AGENCIES.—Each department and agency of  
12 the Federal Government shall participate in E-  
13 Verify by complying with the terms and condi-  
14 tions set forth in this section.”; and

15 (2) in subparagraph (B), by striking “, that  
16 conducts hiring in a State” and all that follows and  
17 inserting “shall participate in E-Verify by complying  
18 with the terms and conditions set forth in this sec-  
19 tion.”.

20 (b) FEDERAL CONTRACTORS; CRITICAL EMPLOY-  
21 ERS.—Section 402(e) of the Illegal Immigration Reform  
22 and Immigrant Responsibility Act of 1996 (8 U.S.C.  
23 1324a note) is amended—

24 (1) by redesignating paragraphs (2) and (3) as  
25 paragraphs (4) and (5), respectively; and

1           (2) by inserting after paragraph (1) the fol-  
2           lowing:

3           “(2) UNITED STATES CONTRACTORS.—Any per-  
4           son, employer, or other entity that enters into a con-  
5           tract with the Federal Government shall participate  
6           in E-Verify by complying with the terms and condi-  
7           tions set forth in this section.

8           “(3) DESIGNATION OF CRITICAL EMPLOYERS.—  
9           Not later than 7 days after the date of the enact-  
10          ment of this paragraph, the Secretary of Homeland  
11          Security shall—

12                   “(A) conduct an assessment of employers  
13                   that are critical to the homeland security or na-  
14                   tional security needs of the United States;

15                   “(B) designate and publish a list of em-  
16                   ployers and classes of employers that are  
17                   deemed to be critical pursuant to the assess-  
18                   ment conducted under subparagraph (A); and

19                   “(C) require that critical employers des-  
20                   ignated pursuant to subparagraph (B) partici-  
21                   pate in E-Verify by complying with the terms  
22                   and conditions set forth in this section not later  
23                   than 30 days after the Secretary makes such  
24                   designation.”.

1 (c) ALL EMPLOYERS.—Section 402 of the Illegal Im-  
2 migration Reform and Immigrant Responsibility Act of  
3 1996 (8 U.S.C. 1324a note) is amended—

4 (1) by redesignating subsection (f) as sub-  
5 section (g); and

6 (2) by inserting after subsection (e) the fol-  
7 lowing:

8 “(f) MANDATORY PARTICIPATION IN E-VERIFY.—

9 “(1) IN GENERAL.—Subject to paragraphs (2)  
10 and (3), all employers in the United States shall  
11 participate in E-Verify, with respect to all employees  
12 recruited, referred, or hired by such employer on or  
13 after the date that is 1 year after the date of the  
14 enactment of this subsection.

15 “(2) USE OF CONTRACT LABOR.—Any employer  
16 who uses a contract, subcontract, or exchange to ob-  
17 tain the labor of an individual in the United States  
18 shall certify in such contract, subcontract, or ex-  
19 change that the employer uses E-Verify. If such cer-  
20 tification is not included in a contract, subcontract,  
21 or exchange, the employer shall be deemed to have  
22 violated paragraph (1).

23 “(3) INTERIM MANDATORY PARTICIPATION.—

24 “(A) IN GENERAL.—Before the date set  
25 forth in paragraph (1), the Secretary of Home-

1 land Security shall require any employer or  
2 class of employers to participate in E-Verify,  
3 with respect to all employees recruited, referred,  
4 or hired by such employer if the Secretary has  
5 reasonable cause to believe that the employer is  
6 or has been engaged in a material violation of  
7 section 274A of the Immigration and Nation-  
8 ality Act (8 U.S.C. 1324a).

9 “(B) NOTIFICATION.—Not later than 14  
10 days before an employer or class of employers  
11 is required to begin participating in E-Verify  
12 pursuant to subparagraph (A), the Secretary  
13 shall provide such employer or class of employ-  
14 ers with—

15 “(i) written notification of such re-  
16 quirement; and

17 “(ii) appropriate training materials to  
18 facilitate compliance with such require-  
19 ment.”.

20 **SEC. 4. CONSEQUENCES OF FAILURE TO PARTICIPATE.**

21 (a) IN GENERAL.—Section 402(e)(5) of the Illegal  
22 Immigration Reform and Immigrant Responsibility Act of  
23 1996 (8 U.S.C. 1324a note), as redesignated by section  
24 3(b)(1), is amended to read as follows:

1           “(5) CONSEQUENCES OF FAILURE TO PARTICI-  
2           PATE.—If a person or other entity that is required  
3           to participate in E-Verify fails to comply with the  
4           requirements under this title with respect to an indi-  
5           vidual—

6                   “(A) such failure shall be treated as a vio-  
7                   lation of section 274A(a)(1)(B) with respect to  
8                   such individual; and

9                   “(B) a rebuttable presumption is created  
10                  that the person or entity has violated section  
11                  274A(a)(1)(A).”.

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

14                  (1) in subsection (e)—

15                          (A) in paragraph (4)—

16                                  (i) in subparagraph (A), in the matter  
17                                  preceding clause (i), by inserting “, subject  
18                                  to paragraph (10),” after “in an amount”;

19                                  (ii) in subparagraph (A)(i), by strik-  
20                                  ing “not less than \$250 and not more than  
21                                  \$2,000” and inserting “not less than  
22                                  \$2,500 and not more than \$5,000”;

23                                  (iii) in subparagraph (A)(ii), by strik-  
24                                  ing “not less than \$2,000 and not more

1 than \$5,000” and inserting “not less than  
2 \$5,000 and not more than \$10,000”;

3 (iv) in subparagraph (A)(iii), by strik-  
4 ing “not less than \$3,000 and not more  
5 than \$10,000” and inserting “not less  
6 than \$10,000 and not more than  
7 \$25,000”; and

8 (v) by amending subparagraph (B) to  
9 read as follows:

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

13 (B) in paragraph (5)—

14 (i) by inserting “, subject to para-  
15 graphs (10) through (12),” after “in an  
16 amount”;

17 (ii) by striking “\$100” and inserting  
18 “\$1,000”;

19 (iii) by striking “\$1,000” and insert-  
20 ing “\$25,000”;

21 (iv) by striking “the size of the busi-  
22 ness of the employer being charged, the  
23 good faith of the employer” and inserting  
24 “the good faith of the employer being  
25 charged”; and

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

2 “Failure by a person or entity to utilize  
3 the employment eligibility verification sys-  
4 tem as required by law, or providing infor-  
5 mation to the system that the person or  
6 entity knows or reasonably believes to be  
7 false, shall be treated as a violation of sub-  
8 section (a)(1)(A).”;

9 (C) by adding at the end the following:

10 “(10) EXEMPTION FROM PENALTY.—In the  
11 case of imposition of a civil penalty under paragraph  
12 (4)(A) with respect to a violation of subsection  
13 (a)(1)(A) or (a)(2) for hiring or continuation of em-  
14 ployment or recruitment or referral by person or en-  
15 tity and in the case of imposition of a civil penalty  
16 under paragraph (5) for a violation of subsection  
17 (a)(1)(B) for hiring or recruitment or referral by a  
18 person or entity, the penalty otherwise imposed may  
19 be waived or reduced if the violator establishes that  
20 the violator acted in good faith.

21 “(11) AUTHORITY TO DEBAR EMPLOYERS FOR  
22 CERTAIN VIOLATIONS.—

23 “(A) IN GENERAL.—If a person or entity  
24 is determined by the Secretary of Homeland Se-  
25 curity to be a repeat violator of paragraph



1 (1)(A) or (2) of subsection (a), or is convicted  
2 of a crime under this section, such person or  
3 entity may be considered for debarment from  
4 the receipt of Federal contracts, grants, or co-  
5 operative agreements in accordance with the de-  
6 barment standards and pursuant to the debar-  
7 ment procedures set forth in the Federal Acqui-  
8 sition Regulation.

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

22 “(C) HAS CONTRACT, GRANT, AGREE-  
23 MENT.—If the Secretary of Homeland Security  
24 or the Attorney General wishes to have a per-  
25 son or entity considered for debarment in ac-

1 cordance with this paragraph, and such person  
2 or entity holds a Federal contract, grant or co-  
3 operative agreement, the Secretary or Attorney  
4 General shall advise all agencies or departments  
5 holding a contract, grant, or cooperative agree-  
6 ment with the person or entity of the Govern-  
7 ment's interest in having the person or entity  
8 considered for debarment, and after soliciting  
9 and considering the views of all such agencies  
10 and departments, the Secretary or Attorney  
11 General may waive the operation of this para-  
12 graph or refer the matter to any appropriate  
13 lead agency to determine whether to list the  
14 person or entity on the List of Parties Excluded  
15 from Federal Procurement, and if so, for what  
16 duration and under what scope.

17 “(D) REVIEW.—Any decision to debar a  
18 person or entity under in accordance with this  
19 paragraph shall be reviewable pursuant to part  
20 9.4 of the Federal Acquisition Regulation.”;  
21 and

22 (2) in subsection (f)—

23 (A) by amending paragraph (1) to read as  
24 follows:

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

9                       (B) in paragraph (2), by striking “Attor-  
10           ney General” each place it appears and insert-  
11           ing “Secretary of Homeland Security”.

12 **SEC. 5. PREEMPTION; LIABILITY.**

13           Section 402 of the Illegal Immigration Reform and  
14           Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a  
15           note), as amended by this Act, is further amended by add-  
16           ing at the end the following:

17           “(h) LIMITATION ON STATE AUTHORITY.—

18                       “(1) PREEMPTION.—A State or local govern-  
19           ment may not prohibit a person or other entity from  
20           verifying the employment authorization of new hires  
21           or current employees through E-Verify.

22                       “(2) LIABILITY.—A person or other entity that  
23           participates in E-Verify may not be held liable under  
24           any Federal, State, or local law for any employment-  
25           related action taken with respect to the wrongful

1 termination of an individual in good faith reliance on  
2 information provided through E-Verify.”.

3 **SEC. 6. EXPANDED USE OF E-VERIFY.**

4 Section 403(a)(3)(A) of the Illegal Immigration Re-  
5 form and Immigrant Responsibility Act of 1996 (8 U.S.C.  
6 1324a note) is amended to read as follows:

7 “(A) IN GENERAL.—

8 “(i) BEFORE HIRING.—The person or  
9 other entity may verify the employment eli-  
10 gibility of an individual through E-Verify  
11 before the individual is hired, recruited, or  
12 referred if the individual consents to such  
13 verification. If an employer receives a ten-  
14 tative nonconfirmation for an individual,  
15 the employer shall comply with procedures  
16 prescribed by the Secretary, including—

17 “(I) providing the individual em-  
18 ployees with private, written notifica-  
19 tion of the finding and written refer-  
20 ral instructions;

21 “(II) allowing the individual to  
22 contest the finding; and

23 “(III) not taking adverse action  
24 against the individual if the individual  
25 chooses to contest the finding.

1           “(ii) AFTER EMPLOYMENT OFFER.—

2           The person or other entity shall verify the  
3           employment eligibility of an individual  
4           through E-Verify not later than 3 days  
5           after the date of the hiring, recruitment, or  
6           referral, as the case may be.

7           “(iii) EXISTING EMPLOYEES.—Not  
8           later than 3 years after the date of the en-  
9           actment of the Accountability Through  
10          Electronic Verification Act, the Secretary  
11          shall require all employers to use E-Verify  
12          to verify the identity and employment eligi-  
13          bility of any individual who has not been  
14          previously verified by the employer through  
15          E-Verify.”.

16 **SEC. 7. REVERIFICATION.**

17          Section 403(a) of the Illegal Immigration Reform and  
18          Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a  
19          note) is amended by adding at the end the following:

20               “(5) REVERIFICATION.—Each person or other  
21          entity participating in E-Verify shall use the E-  
22          Verify confirmation system to reverify the work au-  
23          thorization of any individual not later than 3 days  
24          after the date on which such individual’s employ-  
25          ment authorization is scheduled to expire (as indi-

1 cated by the Secretary or the documents provided to  
 2 the employer pursuant to section 274A(b) of the Im-  
 3 migration and Nationality Act (8 U.S.C. 1324a(b)),  
 4 in accordance with the procedures set forth in this  
 5 subsection and section 402.”.

6 **SEC. 8. HOLDING EMPLOYERS ACCOUNTABLE.**

7 (a) CONSEQUENCES OF NONCONFIRMATION.—Sec-  
 8 tion 403(a)(4)(C) of the Illegal Immigration Reform and  
 9 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a  
 10 note) is amended to read as follows:

11 “(C) CONSEQUENCES OF NONCONFIRMA-  
 12 TION.—

13 “(i) TERMINATION AND NOTIFICA-  
 14 TION.—If the person or other entity re-  
 15 ceives a final nonconfirmation regarding an  
 16 individual, the employer shall imme-  
 17 diately—

18 “(I) terminate the employment,  
 19 recruitment, or referral of the indi-  
 20 vidual; and

21 “(II) submit to the Secretary any  
 22 information relating to the individual  
 23 that the Secretary determines would  
 24 assist the Secretary in enforcing or

1 administering United States immigra-  
2 tion laws.

3 “(ii) CONSEQUENCE OF CONTINUED  
4 EMPLOYMENT.—If the person or other en-  
5 tity continues to employ, recruit, or refer  
6 the individual after receiving final noncon-  
7 firmation, a rebuttable presumption is cre-  
8 ated that the employer has violated section  
9 274A of the Immigration and Nationality  
10 Act (8 U.S.C. 1324a).”.

11 (b) INTERAGENCY NONCONFIRMATION REPORT.—  
12 Section 405 of the Illegal Immigration Reform and Immi-  
13 grant Responsibility Act of 1996 (8 U.S.C. 1324a note)  
14 is amended by adding at the end the following:

15 “(c) INTERAGENCY NONCONFIRMATION REPORT.—  
16 “(1) IN GENERAL.—The Director of U.S. Citi-  
17 zenship and Immigration Services shall submit a  
18 weekly report to the Assistant Secretary of Immigra-  
19 tion and Customs Enforcement that includes, for  
20 each individual who receives final nonconfirmation  
21 through E-Verify—

22 “(A) the name of such individual;

23 “(B) his or her Social Security number or  
24 alien file number;

1           “(C) the name and contact information for  
2           his or her current employer; and

3           “(D) any other critical information that  
4           the Assistant Secretary determines to be appro-  
5           priate.

6           “(2) USE OF WEEKLY REPORT.—The Secretary  
7           of Homeland Security shall use information provided  
8           under paragraph (1) to enforce compliance of the  
9           United States immigration laws.”.

10 **SEC. 9. INFORMATION SHARING.**

11           The Commissioner of Social Security, the Secretary  
12           of Homeland Security, and the Secretary of the Treasury  
13           shall jointly establish a program to share information  
14           among such agencies that may or could lead to the identi-  
15           fication of unauthorized aliens (as defined under section  
16           274A(h)(3) of the Immigration and Nationality Act), in-  
17           cluding any no-match letter and any information in the  
18           earnings suspense file.

19 **SEC. 10. FORM I-9 PROCESS.**

20           Not later than 9 months after date of the enactment  
21           of this Act, the Secretary of Homeland Security shall sub-  
22           mit a report to Congress that contains recommendations  
23           for—

24           (1) modifying and simplifying the process by  
25           which employers are required to complete and retain



1 a Form I-9 for each employee pursuant to section  
2 274A of the Immigration and Nationality Act (8  
3 U.S.C. 1324a); and

4 (2) eliminating the process described in para-  
5 graph (1).

6 **SEC. 11. ALGORITHM.**

7 Section 404(d) of the Illegal Immigration Reform and  
8 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a  
9 note) is amended to read as follows:

10 “(d) DESIGN AND OPERATION OF SYSTEM.—E-  
11 Verify shall be designed and operated—

12 “(1) to maximize its reliability and ease of use  
13 by employers;

14 “(2) to insulate and protect the privacy and se-  
15 curity of the underlying information;

16 “(3) to maintain appropriate administrative,  
17 technical, and physical safeguards to prevent unau-  
18 thorized disclosure of personal information;

19 “(4) to respond accurately to all inquiries made  
20 by employers on whether individuals are authorized  
21 to be employed;

22 “(5) to register any times when E-Verify is un-  
23 able to receive inquiries;

24 “(6) to allow for auditing use of the system to  
25 detect fraud and identify theft;

1           “(7) to preserve the security of the information  
2 in all of the system by—

3           “(A) developing and using algorithms to  
4 detect potential identity theft, such as multiple  
5 uses of the same identifying information or doc-  
6 uments;

7           “(B) developing and using algorithms to  
8 detect misuse of the system by employers and  
9 employees;

10          “(C) developing capabilities to detect  
11 anomalies in the use of the system that may in-  
12 dicate potential fraud or misuse of the system;  
13 and

14          “(D) auditing documents and information  
15 submitted by potential employees to employers,  
16 including authority to conduct interviews with  
17 employers and employees;

18          “(8) to confirm identity and work authorization  
19 through verification of records maintained by the  
20 Secretary, other Federal departments, States, the  
21 Commonwealth of the Northern Mariana Islands, or  
22 an outlying possession of the United States, as de-  
23 termined necessary by the Secretary, including—

24           “(A) records maintained by the Social Se-  
25 curity Administration;

1           “(B) birth and death records maintained  
2           by vital statistics agencies of any State or other  
3           jurisdiction in the United States;

4           “(C) passport and visa records (including  
5           photographs) maintained by the Department of  
6           State; and

7           “(D) State driver’s license or identity card  
8           information (including photographs) maintained  
9           by State department of motor vehicles;

10          “(9) to electronically confirm the issuance of  
11          the employment authorization or identity document;  
12          and

13          “(10) to display the digital photograph that the  
14          issuer placed on the document so that the employer  
15          can compare the photograph displayed to the photo-  
16          graph on the document presented by the employee  
17          or, in exceptional cases, if a photograph is not avail-  
18          able from the issuer, to provide for a temporary al-  
19          ternative procedure, specified by the Secretary, for  
20          confirming the authenticity of the document.”.

21 **SEC. 12. IDENTITY THEFT.**

22          Section 1028 of title 18, United States Code, is  
23          amended—

1 (1) in subsection (a)(7), by striking “of another  
2 person” and inserting “that is not his or her own”;  
3 and

4 (2) in subsection (b)(3)—

5 (A) in subparagraph (B), by striking “or”  
6 at the end;

7 (B) in subparagraph (C), by adding “or”  
8 at the end; and

9 (C) by adding at the end the following:

10 “(D) to facilitate or assist in harboring or  
11 hiring unauthorized workers in violation of sec-  
12 tion 274, 274A, or 274C of the Immigration  
13 and Nationality Act (8 U.S.C. 1324, 1324a,  
14 and 1324e).”.

15 **SEC. 13. SMALL BUSINESS DEMONSTRATION PROGRAM.**

16 Section 403 of the Illegal Immigration Reform and  
17 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a  
18 note) is amended—

19 (1) by redesignating subsection (d) as sub-  
20 section (e); and

21 (2) by inserting after subsection (c) the fol-  
22 lowing:

23 “(d) SMALL BUSINESS DEMONSTRATION PRO-  
24 GRAM.—Not later than 9 months after the date of the en-  
25 actment of the Accountability Through Electronic

1 Verification Act, the Director of U.S. Citizenship and Im-  
2 migration Services shall establish a demonstration pro-  
3 gram that assists small businesses in rural areas or areas  
4 without internet capabilities to verify the employment eli-  
5 gibility of newly hired employees solely through the use  
6 of publicly accessible internet terminals.”.

7 **SEC. 14. RESCISSION OF UNSPENT FEDERAL FUNDS TO**  
8 **OFFSET LOSS IN REVENUES.**

9 (a) IN GENERAL.—Notwithstanding any other provi-  
10 sion of law, of all available unobligated funds that have  
11 been appropriated for discretionary purposes, an amount  
12 equal to the amount necessary to carry out this Act and  
13 the amendments made by this Act is rescinded.

14 (b) IMPLEMENTATION.—The Director of the Office of  
15 Management and Budget shall—

16 (1) determine the amount of the rescission re-  
17 quired under subsection (a);

18 (2) use all unobligated funds from the Depart-  
19 ment of Homeland Security before using funds from  
20 other executive branch departments and agencies;

21 (3) identify the appropriation accounts from  
22 which the rescission under subsection (a) shall  
23 apply; and

24 (4) identify the amount of such rescission that  
25 shall be applied to each such account.

1           (c) REPORT.—Not later than 60 days after the date  
2 of the enactment of this Act, the Director shall submit  
3 a report to Congress and the Secretary of the Treasury  
4 that describes the accounts and amounts determined and  
5 identified for rescission under subsection (b).

6           (d) EXCEPTION.—In determining and identifying the  
7 accounts and amounts of rescinded funds under subsection  
8 (b), the Director shall exclude the unobligated funds of—

- 9                   (1) the Department of Defense;
- 10                   (2) the Department of Veterans Affairs; and
- 11                   (3) the National Nuclear Security Administra-  
12           tion Weapons Activities and Naval Reactors Ac-  
13           counts.

○