

HR 137 IH

111th CONGRESS

1st Session

H. R. 137

To require an employer to take action after receiving official notice that an individual's Social Security account number does not match the individual's name, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES**January 6, 2009**

Mr. GALLEGLY (for himself, Mr. WILSON of South Carolina, Mr. MCCAUL, and Mr. BILBRAY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committees on Ways and Means and Education and Labor, 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

A BILL

To require an employer to take action after receiving official notice that an individual's Social Security account number does not match the individual's name, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Employment Eligibility Verification and Anti-Identity Theft Act'.

SEC. 2. REQUIRING AGENCIES TO SEND 'NO-MATCH' LETTERS.

(a) Social Security Administration- The Commissioner of the Social Security Administration shall send a written notice to a person or entity each time that the combination of name and Social Security account number submitted by the person or entity for an individual does not match Social Security Administration records.

(b) Department of Homeland Security- The Secretary of Homeland Security shall send a written notice to a person or entity each time that such Secretary determines that an immigration status document or employment authorization document presented or referenced by an individual during the process of completing the attestations required by the person or entity for employment eligibility verification was assigned to another person, or that there is no agency record that the document was assigned to any person.

SEC. 3. REQUIRING EMPLOYERS TO TAKE ACTION UPON RECEIPT OF A 'NO-MATCH' LETTER.

Beginning on the date that is 6 months after the date of the enactment of this Act, a person or entity that has received a written notice under section 2 shall, within 3 business days of receiving such notice, verify the individual's employment authorization and identity through the verification system established under section 4.

SEC. 4. VERIFICATION SYSTEM.

Not later than 6 months after the date of enactment of this Act, the Secretary of Homeland Security, in consultation with the Commissioner of the Social Security Administration, as appropriate, shall establish and administer a verification system through which persons or entities that have received written notice under section 2 shall verify an individual's employment authorization and identity.

SEC. 5. DESIGN AND OPERATION OF SYSTEM.

The verification system established under section 4 shall be designed and operated--

- (1) to maximize its reliability and ease of use, consistent with insulating and protecting the privacy and security of the underlying information;
- (2) to respond to all required inquiries under this Act regarding whether individuals are authorized to be employed and to register all times when such inquiries are not received;
- (3) with appropriate administrative, technical, and physical safeguards to prevent unauthorized disclosure of personal information; and
- (4) to have reasonable safeguards against the system's resulting in unlawful discriminatory practices based on national origin or citizenship status, including--
 - (A) the selective or unauthorized use of the system to verify eligibility;
 - (B) the use of the system prior to an offer of employment; or
 - (C) the exclusion of certain individuals from consideration for employment as a result of a perceived likelihood that additional verification will be required, beyond what is required for most job applicants.

SEC. 6. EXTENSION OF TIME.

If a person or entity in good faith attempts to make an inquiry during the time period specified and the verification system established under section 4 has registered that not all inquiries were received during such time, the person or entity may make an inquiry on the first subsequent working day in which the verification system registers that it has received all inquiries. If the verification system cannot receive inquiries at all times during a day, the person or entity merely has to assert that the entity attempted to make the inquiry on that day for the previous sentence to apply to such an inquiry, and does not have to provide any additional proof concerning such inquiry.

SEC. 7. RETENTION OF PROOF OF VERIFICATION COMPLETION.

After completion of the verification process established under section 4, a person or entity shall retain a paper, microfiche, microfilm, or electronic version of the form received through the verification process (or, in the case of a telephonic verification, a paper, microfiche, microfilm, or electronic record of the telephonic verification code number) and make it available for inspection by officers of the Department of Homeland Security, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor for 3 years after the date on which the form or telephonic verification code number was received.

SEC. 8. TERMINATION OF EMPLOYMENT.

(a) Burden on Individual To Resolve Errors- If a person or entity has received an initial nonverification regarding an individual from the verification system established under section 4, the person or entity shall notify the individual in writing within 1 business day of such receipt. In such notice, the person or entity shall advise the individual that the burden is on the individual to resolve any error in the verification mechanism not later than 30 days after the date on which the notice is issued. Such notice shall also state that the person or entity shall be required to verify once again the individual's employment authorization and identity through the verification system established under section 4, and to terminate any employment in the United States, and any recruitment, hiring, or referral for employment in the United States, of the individual, if a final nonverification is received.

(b) Additional Verification- A person or entity that has issued a notice under subsection (a) shall, within 33 business days of such issuance, verify once again the individual's employment authorization and identity through the verification system established under section 4. Sections 6 and 7 shall apply to such final verification in the same manner as such sections applied to the initial verification.

SEC. 9. FINAL VERIFICATION.

(a) Within 7 days of receiving final nonverification for an individual, the person or entity issued a notice under section 8(a) of this Act shall provide the Commissioner of Social Security with a copy of such individual's verification form as described in section 274A(b)(3) of the Immigration and Nationality Act (8 U.S.C. 1324a(b)(3)) in addition to any other information regarding the last known name, address, and location of such individual.

(b) Within 3 business days of receiving such notification, the Commissioner of Social Security shall provide such information to the Secretary of Homeland Security.

SEC. 10. EMPLOYER VIOLATIONS.

A person or entity shall be considered to have violated section 274A(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)(A)) if the person or entity--

- (1) continues to employ in the United States, or recruits, hires, or refers for employment in the United States, an individual after receiving a final nonverification regarding an individual from the verification system established under section 4; or
- (2) otherwise fails to take an action required under this Act.

SEC. 11. REQUIREMENT TO PARTICIPATE IN PILOT PROGRAM.

Section 402(e)(1) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended by adding at the end the following:

`(C) Any person or entity that, in a calendar year, receives written notice under section 2 of this Act with respect to more than 20 individuals, shall elect to participate in the basic pilot program described in section 403(a) and shall comply with the terms and conditions of such election.'

SEC. 12. LIMITATION ON USE.

(a) In General- Notwithstanding any other provision of law, nothing in this Act shall be construed to permit or allow any department, bureau, or other agency of the United States Government to utilize any information, data base, or other records assembled under this Act for any other purpose other than as provided for under this Act.

(b) No National Identification Card- Nothing in this Act shall be construed to authorize, directly or indirectly, the issuance or use of national identification cards or the establishment of a national identification card.

SEC. 13. FEDERAL TORT CLAIMS ACT REMEDY.

If an individual alleges that the individual would not have been dismissed from a job but for an error of the verification mechanism, the individual may seek compensation only through the mechanism of chapter 171 of title 28, United States Code (popularly known as the Federal Tort Claims Act), and injunctive relief to correct such error. No class action may be brought under this Act.

SEC. 14. PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION.

No person or entity shall be civilly or criminally liable for any action taken in good faith reliance on information provided through the employment eligibility verification mechanism established under this Act.

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