

HR 142 IH

111th CONGRESS

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H. R. 142

To amend the Internal Revenue Code of 1986 to require the Secretary of the Treasury to notify the Secretary of Homeland Security of employer returns showing the employment of individuals not authorized to be employed in the United States, to notify the employers that they must terminate the employment of those employees, to provide an opportunity for those employees to contest the information, and to establish a procedure for determining whether individuals who are not authorized to be employed in the United States are so employed.

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

Mr. GALLEGLY introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Education and Labor and the Judiciary, 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 amend the Internal Revenue Code of 1986 to require the Secretary of the Treasury to notify the Secretary of Homeland Security of employer returns showing the employment of individuals not authorized to be employed in the United States, to notify the employers that they must terminate the employment of those employees, to provide an opportunity for those employees to contest the information, and to establish a procedure for determining whether individuals who are not authorized to be employed in the United States are so employed.

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 'Enforce Immigration Law Act of 2009'.

SEC. 2. NOTIFICATION OF EMPLOYMENT STATUS OF INDIVIDUALS NOT AUTHORIZED TO WORK IN THE UNITED STATES.

(a) In General- Subsection (i) of section 6103 of the Internal Revenue Code of 1986 (relating to confidentiality and disclosure of returns and return information) is amended by adding at the end the following new paragraph:

(9) DISCLOSURE TO SECRETARY OF HOMELAND SECURITY OF EMPLOYMENT INFORMATION OF EMPLOYEES NOT AUTHORIZED TO BE EMPLOYED IN UNITED

STATES-

` (A) IN GENERAL- If--

` (i) the Secretary receives a return from any person or entity (hereafter in this paragraph referred to as the ` employer') showing wages (as defined in section 3121(a)) paid to any employee, and

` (ii) the TIN of such employee, as shown on such return, indicates that such employee is not authorized to be employed in the United States,

the Secretary shall provide electronically to the Secretary of Homeland Security the following information as shown on such return: the name, address, and TIN of such employee and the name, address, and employer identification number of the employer.

` (B) NOTICE TO EMPLOYER AND EMPLOYEE- Whenever the Secretary sends a notice under subparagraph (A) with respect to any employer and employee, the Secretary also shall notify the employer and the employee in writing that such employee is not authorized to be employed in the United States and that the employee's employment with the employer should be terminated not later than the 30th day after the date of the notice. Such notice shall also describe--

` (i) the employer's obligations under this paragraph,

` (ii) the employee's right under this paragraph to contest the determination that the employee is not authorized to be employed in the United States, and

` (iii) the procedure under this paragraph for contesting such determination.

` (C) Employee'S RIGHT TO CONTEST-

` (i) NOTICE TO EMPLOYEE- If any employer receives such a notice from the Secretary with respect to an employee, the employer shall, within 3 business days after the date the employer received such notice, provide a copy of such notice to the employee.

` (ii) RIGHT TO CONTEST- An employee may contest the accuracy of such notice during the 30-day period beginning on the date that the employer provided the notice under clause (i) to the employee.

` (iii) CONTEST PROCEDURE- If, during such 30-day period, the employee provides the employer with information substantiating such employee's claimed authorization to be employed in the United States, the employer shall, in such form and manner as the Secretary shall prescribe, provide to the Secretary--

` (I) the employee's name, address, and taxpayer identification number,

` (II) the employer's name, address, telephone number, and employer identification number, and

` (III) the information provided by the employee to the employer substantiating such employee's authorization to be employed in the United States.

` (D) VERIFICATION FROM DEPARTMENT OF HOMELAND SECURITY-

` (i) TRANSMITTAL OF INQUIRY- Within 3 business days after receiving the information described in subparagraph (C)(iii), the Secretary shall provide such information electronically to the Secretary of Homeland Security.

` (ii) RESPONSE- Within 7 business days after receiving such information, the Secretary of Homeland Security shall electronically notify the Secretary, and shall notify the employer and employee in writing, as to whether the employee is authorized to be employed in the United States.

` (E) SUSPENSION OF OBLIGATION TO TERMINATE EMPLOYMENT UNTIL RESPONSE RECEIVED-

` (i) IN GENERAL- Except as provided in clause (ii), if the employee meets the requirement of subparagraph (C)(iii), the employer's obligation to terminate the employment of such employee shall be suspended until the employer receives the notice described in subparagraph (D)(ii).

` (ii) TIMELY RESPONSE NOT RECEIVED- If the employer does not receive such notice before the 30th day after the close such 30-day period, the employer shall so notify the Secretary.

` (F) REBUTTABLE PRESUMPTION OF VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT-

` (i) IN GENERAL- A rebuttable presumption is created that the employer has violated section 274A(a)(1)(A) of the Immigration and Nationality Act if--

` (I) the employer employs an individual with respect to whom a notice is received under subparagraph (B) after the 30 days described in such subparagraph,

` (II) the employer fails to notify the Secretary as required by subparagraph (E)(ii) and employs such individual, or

` (III) the employer refers the individual for employment after receiving a notice under subparagraph (B) with respect to such individual.

` (ii) EXCEPTIONS-

` (I) SUSPENSION PERIOD- Clause (i)(I) shall not apply during the suspension period described in subparagraph (E)(i).

` (II) NOTICE FROM SECRETARY OF HOMELAND SECURITY- Clause (i) shall cease to apply with respect to an individual after the date that the employer is notified by the Secretary of Homeland Security that such

individual is authorized to be employed in the United States.

`(G) REFUNDS DENIED- No refund of any tax imposed by this title shall be made to any individual for any taxable year during any portion of which such individual is employed in the United States without being authorized to be so employed.

`(H) SPECIAL RULES-

`(i) PROTECTION FROM LIABILITY- No employer shall be civilly or criminally liable under any law for any action taken in good faith reliance on information provided by the Secretary or the Secretary of Homeland Security with respect to any individual's eligibility to be employed in the United States.

`(ii) TIMELY MAILING TREATED AS TIMELY NOTICE- Rules similar to the rules of section 7502 shall apply for purposes of this section.

`(iii) LAST KNOWN ADDRESS OF EMPLOYEE- Any notice required to be provided to an employee under this section shall be sufficient if mailed to the employee at the last known address of the employee.'

(b) Conforming Amendment- Paragraph (4) of section 6103(p) of such Code is amended by striking `(5) or (7)' each place it appears and inserting `(5), (7), or (9)'.

(c) Effective Date- The amendments made by this section shall apply to returns received more than 180 days after the date of the enactment of this Act.

SEC. 3. PROCEDURE FOR DETERMINING WHETHER INDIVIDUALS WHO ARE NOT AUTHORIZED TO BE EMPLOYED IN THE UNITED STATES ARE SO EMPLOYED.

(a) In General- Subsection (i) of section 6103 of the Internal Revenue Code of 1986 (relating to confidentiality and disclosure of returns and return information), as amended by section 2, is amended by adding at the end the following new paragraph:

`(10) DISCLOSURE OF EMPLOYMENT INFORMATION TO SECRETARY OF HOMELAND SECURITY-

`(A) IN GENERAL- During December of each calendar year, the Secretary of Homeland Security shall submit electronically a request to the Secretary for the information described in subparagraph (B)(ii) with respect to each individual who had been authorized to be employed in the United States during any prior calendar year but who was not so authorized as of December 31 of the immediately preceding calendar year. Such request shall specify--

`(i) the name and TIN of the individual, and

`(ii) the taxable period or periods for which the information is requested.

`(B) DISCLOSURE OF EMPLOYMENT INFORMATION-

`(i) IN GENERAL- Not later than the first March 5 following the receipt by the

Secretary of such request, the Secretary shall electronically disclose return information described in clause (ii) to officers and employees of the Department of Homeland Security who are personally and directly engaged in the enforcement of the Immigration and Nationality Act.

` (ii) INFORMATION TO BE DISCLOSED- The information described in this clause with respect to any individual is--

` (I) such individual's mailing address,

` (II) the total amount of wages (as defined in section 3121(a)) paid to such individual during the period or periods specified in subparagraph (A)(ii), and

` (III) the name, address, and employer identification number of each employer paying such wages during such period or periods.

` (C) REFUNDS, ETC. WITHHELD- No refund of any tax imposed by this title shall be made, and no credit under section 32 (relating to earned income credit) shall be allowed, to any individual for any taxable year during any portion of which such individual is employed in the United States without being authorized to be so employed.

` (D) NOTICE TO EMPLOYER AND EMPLOYEE- If the Secretary of Homeland Security receives information under this paragraph indicating that an individual was employed in the United States after the expiration of the individual's authority to be so employed, such Secretary shall (within 7 business days after receiving such information) notify in writing such individual and each person or entity who was an employer of such individual after such expiration that such individual is not authorized to be employed in the United States and that the individual's employment with the employer should be terminated not later than the 30th day after the date of the notice. Such notice shall also describe--

` (i) the employer's obligations under this paragraph,

` (ii) the employee's right under this paragraph to contest the determination that the employee is not authorized to be employed in the United States, and

` (iii) the procedure under this paragraph for contesting such determination.

` (E) Employee'S RIGHT TO CONTEST-

` (i) NOTICE TO EMPLOYEE- If any employer receives such a notice from the Secretary of Homeland Security with respect to an employee, the employer shall, within 3 business days after the date the employer received such notice, provide a copy of such notice to the employee.

` (ii) RIGHT TO CONTEST- An employee may contest the accuracy of such notice during the 30-day period beginning on the date that the employer provided the notice under clause (i) to the employee.

` (iii) CONTEST PROCEDURE- If, during such 30-day period, the employee

provides the employer with information substantiating such employee's claimed authorization to be employed in the United States, the employer shall, in such form and manner as the Secretary of Homeland Security shall prescribe, provide to such Secretary--

` (I) the employee's name, address, and taxpayer identification number,

` (II) the employer's name, address, telephone number, and employer identification number, and

` (III) the information provided by the employee to the employer substantiating such employee's authorization to be employed in the United States.

` (F) VERIFICATION FROM DEPARTMENT OF HOMELAND SECURITY- Within 7 business days after receiving such information, the Secretary of Homeland Security shall electronically notify the Secretary, and shall notify the employer and employee in writing, as to whether the employee is authorized to be employed in the United States.

` (G) SUSPENSION OF OBLIGATION TO TERMINATE EMPLOYMENT UNTIL RESPONSE RECEIVED-

` (i) IN GENERAL- Except as provided in clause (ii), if the employee meets the requirement of subparagraph (E)(iii), the employer's obligation to terminate the employment of such employee shall be suspended until the employer receives the notice described in subparagraph (F).

` (ii) TIMELY RESPONSE NOT RECEIVED- If the employer does not receive such notice before the 30th day after the close such 30-day period, the employer shall so notify the Secretary of Homeland Security.

` (H) REBUTTABLE PRESUMPTION OF VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT-

` (i) IN GENERAL- A rebuttable presumption is created that the employer has violated section 274A(a)(1)(A) of the Immigration and Nationality Act if--

` (I) the employer employs an individual with respect to whom a notice is received under subparagraph (D) after the 30 days described in such subparagraph,

` (II) the employer fails to notify the Secretary as required by subparagraph (G)(ii) and employs such individual, or

` (III) the employer refers the individual for employment after receiving a notice under subparagraph (D) with respect to such individual.

` (ii) EXCEPTIONS-

` (I) SUSPENSION PERIOD- Clause (i)(I) shall not apply during the suspension period described in subparagraph (G)(i).

` (II) NOTICE FROM SECRETARY OF HOMELAND SECURITY- Clause (i) shall cease to apply with respect to an individual after the date that the employer is notified by the Secretary of Homeland Security that such individual is authorized to be employed in the United States.

` (I) SPECIAL RULES-

` (i) PROTECTION FROM LIABILITY- No employer shall be civilly or criminally liable under any law for any action taken in good faith reliance on information provided by the Secretary or the Secretary of Homeland Security with respect to any individual's eligibility to be employed in the United States.

` (ii) TIMELY MAILING TREATED AS TIMELY NOTICE- Rules similar to the rules of section 7502 shall apply for purposes of this section.

` (iii) LAST KNOWN ADDRESS OF EMPLOYEE- Any notice required to be provided to an employee under this section shall be sufficient if mailed to the employee at the last known address of the employee.

` (iv) EMPLOYMENT-BASED VISAS- For purposes of this section, the determination of whether an individual is authorized to be employed in the United States includes whether the individual has an immigrant visa issued pursuant to the numerical limitation under section 203(b) of the Immigration and Nationality Act (8 U.S.C. 1153(b)) (relating to employment-based visas).'

(b) Conforming Amendment- Paragraph (4) of section 6103(p) of such Code, as amended by subsection (a), is amended by striking `(7), or (7)' each place it appears and inserting `(7), (9), or (10)'.

(c) Effective Date- The amendments made by this section shall apply to requests made in calendar years beginning after the date of the enactment of this Act.

END