

HR 98 IH

111th 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.

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

Mr. DREIER (for himself, Mr. REYES, Mr. CALVERT, Mr. BILBRAY, and Mr. ISSA) 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 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 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.

*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 'Illegal Immigration Enforcement and Social Security Protection Act of 2009'.

**SEC. 2. FINDINGS.**

The Congress finds the following:

- (1) This Act is an appropriate response to the need to improve procedures to preclude unauthorized employment of aliens and prevent the entry of terrorists into the United States.
- (2) The economic disparity between the United States and other countries is a prime factor in the desire of foreign nationals to enter the United States illegally.
- (3) Federal law prohibits the employment of such illegal immigrants in the United States.

- (4) Nonetheless, illegal immigrants routinely find employment within the United States.
- (5) Such employment of illegal immigrants undermines our system of lawful immigration and has a negative impact on job opportunities for American workers.
- (6) Employers in the United States currently have difficulty establishing the veracity of the identity documents of prospective employees in order to verify their work eligibility.
- (7) Pilot programs undertaken by the Federal Government demonstrate that a nationwide employment verification system is feasible.
- (8) Social Security cards are routinely required to be presented to employers by new employees.
- (9) Social Security cards remain vulnerable to counterfeiting and fraud.
- (10) Social Security cards with improved defenses against fraudulent use would serve as the best vehicle by which to determine employment eligibility.
- (11) The Social Security card should not become a national identification card.

### **SEC. 3. AMENDMENTS TO THE SOCIAL SECURITY ACT RELATING TO IDENTIFICATION OF INDIVIDUALS.**

(a) Antifraud Measures for Social Security Cards- Section 205(c)(2)(G) of the Social Security Act (42 U.S.C. 405(c)(2)(G)) is amended--

(1) by inserting `(i)' after `(G)';

(2) by striking `banknote paper' and inserting `durable plastic or similar material'; and

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

`(ii) Each Social Security card issued under this subparagraph shall include an encrypted machine-readable electronic identification strip which shall be unique to the individual to whom the card is issued. The Commissioner shall develop such electronic identification strip in consultation with the Secretary of Homeland Security, so as to enable employers to use such strip in accordance with section 274A(a)(1)(B) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)(B)) to obtain access to the Employment Eligibility Database established by such Secretary pursuant to section 4 of such Act with respect to the individual to whom the card is issued.

`(iii) Each Social Security card issued under this subparagraph shall contain--

`(I) physical security features designed to prevent tampering, counterfeiting, or duplication of the card for fraudulent purposes; and

`(II) a disclaimer stating the following: `This card shall not be used for the purpose of identification.'.

`(iv) The Commissioner shall provide for the issuance (or reissuance) to each individual

who--

` (I) has been assigned a Social Security account number under subparagraph (B),

` (II) has attained the minimum age applicable, in the jurisdiction in which such individual engages in employment, for legally engaging in such employment, and

` (III) files application for such card under this clause in such form and manner as shall be prescribed by the Commissioner,

a Social Security card which meets the preceding requirements of this subparagraph and which includes a recent digitized photograph of the individual to whom the card is issued.

` (v) The Commissioner shall maintain an ongoing effort to develop measures in relation to the Social Security card and the issuance thereof to preclude fraudulent use thereof.'

(b) Sharing of Information With the Secretary of Homeland Security- Section 205(c)(2) of such Act is amended by adding at the end the following new subparagraph:

` (I) Upon the issuance of a Social Security account number under subparagraph (B) to any individual or the issuance of a Social Security card under subparagraph (G) to any individual, the Commissioner of Social Security shall transmit to the Secretary of Homeland Security such information received by the Commissioner in the individual's application for such number or such card as such Secretary determines necessary and appropriate for administration of the Illegal Immigration Enforcement and Social Security Protection Act of 2009. Such information shall be used solely for inclusion in the Employment Eligibility Database established pursuant to section 4 of such Act.'

(c) Effective Dates- The amendment made by subsection (a) shall apply with respect to Social Security cards issued after 2 years after the date of the enactment of this Act. The amendment made by subsection (b) shall apply with respect to the issuance of Social Security account numbers and Social Security cards after 2 years after the date of the enactment of this Act.

#### **SEC. 4. EMPLOYMENT ELIGIBILITY DATABASE.**

(a) In General- The Secretary of Homeland Security shall establish and maintain an Employment Eligibility Database. The Database shall include data comprised of the citizenship status of individuals and the work and residency eligibility information (including expiration dates) with respect to individuals who are not citizens or nationals of the United States but are authorized to work in the United States. Such data shall include all such data maintained by the Department of Homeland Security as of the date of the establishment of such database and information obtained from the Commissioner of Social Security pursuant to section 205(c)(2)(I) of the Social Security Act. The Secretary shall maintain ongoing consultations with the Commissioner to ensure efficient and effective operation of the Database.

(b) Incorporation of Ongoing Pilot Programs- To the extent that the Secretary determines appropriate in furthering the purposes of subsection (a), the Secretary may incorporate the information, processes, and procedures employed in connection with the Citizen Attestation Verification Pilot Program and the Basic Pilot Program into the operation and maintenance of

the Database under subsection (a).

(c) Confidentiality-

(1) IN GENERAL- No officer or employee of the Department of Homeland Security shall have access to any information contained in the Database for any purpose other than--

(A) the establishment of a system of records necessary for the effective administration of this Act; or

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

(2) RESTRICTION- The Secretary shall restrict access to such information to officers and employees of the United States whose duties or responsibilities require access for the purposes described in paragraph (1).

(3) OTHER SAFEGUARDS- The Secretary shall provide such other safeguards as the Secretary determines to be necessary or appropriate to protect the confidentiality of information contained in the Database.

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

(d) Deadline for Meeting Requirements- The Secretary shall complete the establishment of the Database and provide for the efficient and effective operation of the Database in accordance with this section not later than 2 years after the date of the enactment of this Act.

## **SEC. 5. REQUIREMENTS RELATING TO INDIVIDUALS COMMENCING WORK IN THE UNITED STATES.**

(a) Requirements for Employers and Employees- Section 274A(a)(1) of the Immigration and Nationality Act (8 U.S.C. 1324a(a)(1)) is amended to read as follows:

`(1) IN GENERAL-

`(A) REQUIREMENTS FOR EMPLOYEES- No individual may commence employment with an employer in the United States unless such individual has--

`(i) obtained a Social Security card issued by the Commissioner of Social Security meeting the requirements of section 205(c)(2)(G)(iii) of the Social Security Act; and

`(ii) displayed such card to the employer pursuant to the employer's request for purposes of the verification required under subparagraph (B).

`(B) REQUIREMENTS FOR EMPLOYERS-

`(i) IN GENERAL- No employer may hire for employment an individual in the

United States in any capacity unless such employer verifies under this subparagraph that such individual has in his or her possession a Social Security card issued to such individual pursuant to section 205(c)(2)(G) of the Social Security Act which bears a photograph of such individual and that such individual is authorized to work in the United States in such capacity. Such verification shall be made in accordance with procedures prescribed by the Secretary of Homeland Security for the purposes of ensuring against fraudulent use of the card and accurate and prompt verification of the authorization of such individual to work in the United States in such capacity.

` (ii) VERIFICATION PROCEDURES- Such procedures shall include use of--

` (I) a phone verification system which shall be established by the Secretary; or

` (II) a card-reader verification system employing a device approved by the Secretary as capable of reading the electronic identification strip borne by the card so as to verify the identity of the card holder and the card holder's authorization to work, and which is made available at minimal cost to the employer.

` (iii) SECURITY AND EFFECTIVENESS- The Secretary shall ensure that the phone verification system described in subparagraph (I) of clause (ii) is as secure and effective as the card-reader verification system described in subparagraph (II) of such clause.

` (iv) ACCESS TO DATABASE- The Secretary shall ensure that, by means of such procedures, the employer will have such access to the Employment Eligibility Database established and operated by the Secretary pursuant to section 4 of the Illegal Immigration Enforcement and Social Security Protection Act of 2009 as to enable the employer to obtain information, relating to the citizenship, residency, and work eligibility of the individual seeking employment by the employer in any capacity, which is necessary to inform the employer as to whether the individual is authorized to work for the employer in the United States in such capacity.

` (v) DEFENSE- An employer who establishes that the employer complied in good faith with the requirements of this subparagraph shall not be liable for hiring an unauthorized alien, if--

` (I) such hiring occurred due to an error in the phone verification system, the card-reader verification system, or the Employment Eligibility Database which was unknown to the employer at the time of such hiring; and

` (II) the employer terminates that employment of the alien upon being informed of the error.'.

(b) Conforming Amendments- Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended--

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

(2) in subsection (b)--

(A) by striking `Attorney General' each place such term appears and inserting `Secretary of Homeland Security';

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

`(b) Employment Verification Forms-

`(1) EMPLOYER ATTESTATION OF COMPLIANCE- The verification procedures prescribed under subsection (a)(1)(B) shall include an attestation, made under penalty of perjury and on a form designated or established by the Secretary of Homeland Security by regulation, that the employer has complied with such procedures.'; and

(C) by striking paragraph (6);

(3) by striking subsection (d); and

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

`(3) DEFINITIONS- For purposed of this section:

`(A) The term `authorized to work in the United States', when applied to an individual, means that the individual is not an unauthorized alien.

`(B) The term `employer' means--

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

(ii) any individual earning self-employment income (as defined in section 211(b) of the Social Security Act (42 U.S.C. 411(b))).

`(C) The term `employee' shall have the meaning given such term in section 210(j) of the Social Security Act (42 U.S.C. 410(j)).

`(D) The term `hire' means to hire an individual, or to recruit or refer for a fee an individual, for employment in the United States.

`(E) The term `unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time--

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

(ii) authorized to be so employed by this Act or by the Secretary of Homeland Security.'.

(c) Effective Date- The amendments made by this section shall take effect 2 years after the date of the enactment of this Act and shall apply to employment of any individual in any capacity commencing on or after such effective date.

## SEC. 6. COMPLIANCE.

(a) In General- Section 274A(e) of the Immigration and Nationality Act (8 U.S.C. 1324a(e)) is amended to read as follows:

`(e) Compliance-

`(1) CIVIL PENALTY-

`(A) IN GENERAL- The Secretary of Homeland Security may assess a penalty, payable to the Secretary, against any employer who--

`(i) hires an individual for employment in the United States in any capacity who is known by the employer not to be authorized to work in the United States in such capacity; or

`(ii) fails to comply with the procedures prescribed by the Secretary pursuant to this section in connection with the employment of any individual.

`(B) AMOUNT- Such penalty shall not exceed \$50,000 for each occurrence of a violation described in subparagraph (A) with respect to the individual, plus, in the event of the removal of such individual from the United States based on findings developed in connection with the assessment or collection of such penalty, the costs incurred by the Federal Government, cooperating State and local governments, and State and local law enforcement agencies, in connection with such removal.

`(2) ACTIONS BY SECRETARY- If any person is assessed under paragraph (1) and fails to pay the assessment when due, or any person otherwise fails to meet any requirement of this section, the Secretary may bring a civil action in any district court of the United States within the jurisdiction of which such person's assets are located or in which such person resides or is found for the recovery of the amount of the assessment or for appropriate equitable relief to redress the violation or enforce the provisions of this section, and process may be served in any other district. The district courts of the United States shall have jurisdiction over actions brought under this section by the Secretary without regard to the amount in controversy.

`(3) CRIMINAL PENALTY- Any person who--

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

`(B) hires for employment any individual in the United States and fails to comply with the procedures prescribed by the Secretary pursuant to section 5(b) in connection with the hiring of such individual;

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

(b) Conforming Amendments- Section 274A of the Immigration and Nationality Act (8 U.S.C. 1324a) is amended--

(1) in subsection (g)(2), by striking `hearing under subsection (e),' and inserting `hearing,';

(2) by striking subsection (f); and

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

(c) Effective Date- The amendments made by this section shall take effect 2 years after the date of the enactment of this Act and shall apply to employment of any individual in any capacity commencing on or after such effective date.

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

(a) In General- The Secretary of Homeland Security is authorized to make grants for the purpose of improving and developing new technologies to combat illegal border crossings into the United States.

(b) Authorization of Appropriations- There are authorized to be appropriated to carry out subsection (a) \$10,000,000 for each of fiscal years 2009 through 2011.

## **SEC. 8. INCREASE IN PERSONNEL ENSURING COMPLIANCE WITH PROHIBITIONS ON UNLAWFUL EMPLOYMENT OF ALIENS.**

Beginning in fiscal year 2009, the Secretary of Homeland Security shall, subject to the availability of appropriations for such purpose, increase by not less than 10,000 the number of positions within the Department of Homeland Security for full-time personnel charged with carrying out section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)), as amended by section 6 of this Act, above the number of such positions for which funds were made available for fiscal year 2004.

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

The Secretary of Homeland Security and the Attorney General of the United States shall jointly undertake to integrate the fingerprint database maintained by the Department of Homeland Security with the fingerprint database maintained by the Federal Bureau of Investigation. The integration of databases pursuant to this section shall be completed not later than 2 years after the date of the enactment of this Act.

## **SEC. 10. AUTHORIZATIONS OF APPROPRIATIONS.**

(a) Department of Homeland Security- Except as otherwise provided in this Act, there are authorized to be appropriated to the Department of Homeland Security for each fiscal year beginning on or after October 1, 2009, such sums as may be necessary to carry out this Act and the amendments made by this Act, of which not less than \$100,000,000 shall be for the

purpose of carrying out section 274A(d) of the Immigration and Nationality Act (8 U.S.C. 1324a(d)), as amended by section 6 of this Act.

(b) Social Security Administration- There are authorized to be appropriated to the Social Security Administration for each fiscal year beginning on or after October 1, 2009, such sums as are necessary to carry out the amendments made by section 3.

## **SEC. 11. RULES OF CONSTRUCTION.**

(a) In General- Nothing in this Act shall be construed--

(1) to require the presentation of a Social Security card for any purpose other than--

(A) for the administration and enforcement of the Social Security laws of the United States; or

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

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

(b) No National Identification Card- It is the policy of the United States that the Social Security card shall not be used as a national identification card.

*END*