

[Handwritten Signature]
S.L.C.

12:08 pm
AF
BW
4-1-14

AMENDMENT NO. _____ Calendar No. _____

Purpose: To expand the use of E-Verify, to hold employers accountable, and to protect American workers.

IN THE SENATE OF THE UNITED STATES—113th Cong., 2d Sess.

H. R. 3979

To _____ ensure
AMENDMENT NO 2917 en into
 By SESSIONS sibility
 To: AMTS No 2874 on and
 Re _____ and

21

Page(s)
GPO: 2012 77-320 (mac)

AMENDMENT intended to be proposed by Mr. SESSIONS to the amendment (No. 2874) proposed by Mr. REED

Viz:

1 At the appropriate place, insert the following:
 2 **SEC. ____ . ACCOUNTABILITY THROUGH ELECTRONIC**
 3 **VERIFICATION.**

4 (a) **SHORT TITLE.**—This section may be cited as the
 5 “Accountability Through Electronic Verification Act”.

6 (b) **PERMANENT REAUTHORIZATION.**—Section
 7 401(b) of the Illegal Immigration Reform and Immigrant
 8 Responsibility Act of 1996 (division C of Public Law 104–
 9 208; 8 U.S.C. 1324a note) is amended by striking “Unless
 10 the Congress otherwise provides, the Secretary of Home-

1 land Security shall terminate a pilot program on Sep-
2 tember 30, 2015.”.

3 (c) MANDATORY USE OF E-VERIFY.—Section 402 of
4 the Illegal Immigration Reform and Immigrant Responsi-
5 bility Act of 1996 (8 U.S.C. 1324a note) is amended—

6 (1) in subsection (e)—

7 (A) in paragraph (1)—

8 (i) by amending subparagraph (A) to
9 read as 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 (ii) in subparagraph (B), by striking
16 “, that conducts hiring in a State” and all
17 that follows and inserting “shall partici-
18 pate in E-Verify by complying with the
19 terms and conditions set forth in this sec-
20 tion.”;

21 (B) by redesignating paragraphs (2) and
22 (3) as paragraphs (4) and (5), respectively; and

23 (C) by inserting after paragraph (1) the
24 following:

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

6 “(3) DESIGNATION OF CRITICAL EMPLOYERS.—
7 Not later than 7 days after the date of the enact-
8 ment of the Accountability Through Electronic
9 Verification Act, the Secretary of Homeland Security
10 shall—

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

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

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

24 (2) by redesignating subsection (f) as sub-
25 section (g); and

1 (3) by inserting after subsection (e) the fol-
2 lowing:

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

4 “(1) IN GENERAL.—Subject to paragraphs (2)
5 and (3), all employers in the United States shall
6 participate in E-Verify, with respect to all employees
7 recruited, referred, or hired by such employer on or
8 after the date that is 1 year after the date of the
9 enactment of the Accountability Through Electronic
10 Verification Act.

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

19 “(3) INTERIM MANDATORY PARTICIPATION.—

20 “(A) IN GENERAL.—Before the date set
21 forth in paragraph (1), the Secretary of Home-
22 land Security shall require any employer or
23 class of employers to participate in E-Verify,
24 with respect to all employees recruited, referred,
25 or hired by such employer if the Secretary has

1 reasonable cause to believe that the employer is
2 or has been engaged in a material violation of
3 section 274A of the Immigration and Nation-
4 ality Act (8 U.S.C. 1324a).

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

11 “(i) written notification of such re-
12 quirement; and

13 “(ii) appropriate training materials to
14 facilitate compliance with such require-
15 ment.”.

16 (d) CONSEQUENCES OF FAILURE TO PARTICIPATE.—

17 (1) IN GENERAL.—Section 402(e)(5) of the Ille-
18 gal Immigration Reform and Immigrant Responsi-
19 bility Act of 1996 (8 U.S.C. 1324a note), as redesign-
20 nated by subsection (c)(1)(B), is amended to read as
21 follows:

22 “(5) CONSEQUENCES OF FAILURE TO PARTICI-
23 PATE.—If a person or other entity that is required
24 to participate in E-Verify fails to comply with the

1 requirements under this title with respect to an indi-
2 vidual—

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

6 “(B) a rebuttable presumption is created
7 that the person or entity has violated section
8 274A(a)(1)(A).”.

9 (2) PENALTIES.—Section 274A of the Immigra-
10 tion and Nationality Act (8 U.S.C. 1324a) is amend-
11 ed—

12 (A) in subsection (e)—

13 (i) in paragraph (4)—

14 (I) in subparagraph (A), in the
15 matter preceding clause (i), by insert-
16 ing “, subject to paragraph (10),”
17 after “in an amount”;

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

23 (III) in subparagraph (A)(ii), by
24 striking “not less than \$2,000 and
25 not more than \$5,000” and inserting

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

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

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

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

13 (ii) in paragraph (5)—

14 (I) by inserting “, subject to
15 paragraphs (10) through (12),” after
16 “in an amount”;

17 (II) by striking “\$100” and in-
18 serting “\$1,000”;

19 (III) by striking “\$1,000” and
20 inserting “\$25,000”;

21 (IV) by striking “the size of the
22 business of the employer being
23 charged, the good faith of the em-
24 ployer” and inserting “the good faith
25 of the employer being charged”; and

1 (V) by adding at the end the fol-
2 lowing: “Failure by a person or entity
3 to utilize the employment eligibility
4 verification system as required by law,
5 or providing information to the system
6 that the person or entity knows or
7 reasonably believes to be false, shall
8 be treated as a violation of subsection
9 (a)(1)(A).”; and
10 (iii) by adding at the end the fol-
11 lowing:

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

23 “(11) AUTHORITY TO DEBAR EMPLOYERS FOR
24 CERTAIN VIOLATIONS.—

1 “(A) IN GENERAL.—If a person or entity
2 is determined by the Secretary of Homeland Se-
3 curity to be a repeat violator of paragraph
4 (1)(A) or (2) of subsection (a), or is convicted
5 of a crime under this section, such person or
6 entity may be considered for debarment from
7 the receipt of Federal contracts, grants, or co-
8 operative agreements in accordance with the de-
9 barment standards and pursuant to the debar-
10 ment procedures set forth in the Federal Acqui-
11 sition Regulation.

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

1 “(C) HAS CONTRACT, GRANT, AGREE-
2 MENT.—If the Secretary of Homeland Security
3 or the Attorney General wishes to have a per-
4 son or entity considered for debarment in ac-
5 cordance with this paragraph, and such person
6 or entity holds a Federal contract, grant or co-
7 operative agreement, the Secretary or Attorney
8 General shall advise all agencies or departments
9 holding a contract, grant, or cooperative agree-
10 ment with the person or entity of the Govern-
11 ment’s interest in having the person or entity
12 considered for debarment, and after soliciting
13 and considering the views of all such agencies
14 and departments, the Secretary or Attorney
15 General may waive the operation of this para-
16 graph or refer the matter to any appropriate
17 lead agency to determine whether to list the
18 person or entity on the List of Parties Excluded
19 from Federal Procurement, and if so, for what
20 duration and under what scope.

21 “(D) REVIEW.—Any decision to debar a
22 person or entity under in accordance with this
23 paragraph shall be reviewable pursuant to part
24 9.4 of the Federal Acquisition Regulation.”;
25 and

1 (B) in subsection (f)—

2 (i) by amending paragraph (1) to read
3 as follows:

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

12 (ii) in paragraph (2), by striking “At-
13 torney General” each place it appears and
14 inserting “Secretary of Homeland Secu-
15 rity”.

16 (e) PREEMPTION; LIABILITY.—Section 402 of the Il-
17 legal Immigration Reform and Immigrant Responsibility
18 Act of 1996 (8 U.S.C. 1324a note), as amended by this
19 section, is further amended by adding at the end the fol-
20 lowing:

21 “(h) LIMITATION ON STATE AUTHORITY.—

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

1 “(2) LIABILITY.—A person or other entity that
2 participates in E-Verify may not be held liable under
3 any Federal, State, or local law for any employment-
4 related action taken with respect to the wrongful
5 termination of an individual in good faith reliance on
6 information provided through E-Verify.”.

7 (f) EXPANDED USE OF E-VERIFY.—Section
8 403(a)(3)(A) of the Illegal Immigration Reform and Im-
9 migrant Responsibility Act of 1996 (8 U.S.C. 1324a note)
10 is amended to read as follows:

11 “(A) IN GENERAL.—

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

21 “(I) providing the individual em-
22 ployees with private, written notifica-
23 tion of the finding and written refer-
24 ral instructions;

1 “(II) allowing the individual to
2 contest the finding; and

3 “(III) not taking adverse action
4 against the individual if the individual
5 chooses to contest the finding.

6 “(ii) AFTER EMPLOYMENT OFFER.—
7 The person or other entity shall verify the
8 employment eligibility of an individual
9 through E-Verify not later than 3 days
10 after the date of the hiring, recruitment, or
11 referral, as the case may be.

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

21 (g) REVERIFICATION.—Section 403(a) of the Illegal
22 Immigration Reform and Immigrant Responsibility Act of
23 1996 (8 U.S.C. 1324a note) is amended by adding at the
24 end the following:

1 “(5) REVERIFICATION.—Each person or other
2 entity participating in E-Verify shall use the E-
3 Verify confirmation system to reverify the work au-
4 thorization of any individual not later than 3 days
5 after the date on which such individual’s employ-
6 ment authorization is scheduled to expire (as indi-
7 cated by the Secretary or the documents provided to
8 the employer pursuant to section 274A(b) of the Im-
9 migration and Nationality Act (8 U.S.C. 1324a(b))),
10 in accordance with the procedures set forth in this
11 subsection and section 402.”.

12 (h) HOLDING EMPLOYERS ACCOUNTABLE.—

13 (1) CONSEQUENCES OF NONCONFIRMATION.—
14 Section 403(a)(4)(C) of the Illegal Immigration Re-
15 form and Immigrant Responsibility Act of 1996 (8
16 U.S.C. 1324a note) is amended to read as follows:

17 “(C) CONSEQUENCES OF NONCONFIRMA-
18 TION.—

19 “(i) TERMINATION AND NOTIFICA-
20 TION.—If the person or other entity re-
21 ceives a final nonconfirmation regarding an
22 individual, the employer shall imme-
23 diately—

1 “(I) terminate the employment,
2 recruitment, or referral of the indi-
3 vidual; and

4 “(II) submit to the Secretary any
5 information relating to the individual
6 that the Secretary determines would
7 assist the Secretary in enforcing or
8 administering United States immigra-
9 tion laws.

10 “(ii) CONSEQUENCE OF CONTINUED
11 EMPLOYMENT.—If the person or other en-
12 tity continues to employ, recruit, or refer
13 the individual after receiving final noncon-
14 firmation, a rebuttable presumption is cre-
15 ated that the employer has violated section
16 274A of the Immigration and Nationality
17 Act (8 U.S.C. 1324a).”.

18 (2) INTERAGENCY NONCONFIRMATION RE-
19 PORT.—Section 405 of the Illegal Immigration Re-
20 form and Immigrant Responsibility Act of 1996 (8
21 U.S.C. 1324a note) is amended by adding at the end
22 the following:

23 “(c) INTERAGENCY NONCONFIRMATION REPORT.—

24 “(1) IN GENERAL.—The Director of U.S. Citi-
25 zenship and Immigration Services shall submit a

1 weekly report to the Assistant Secretary of Immigra-
2 tion and Customs Enforcement that includes, for
3 each individual who receives final nonconfirmation
4 through E-Verify—

5 “(A) the name of such individual;

6 “(B) his or her Social Security number or
7 alien file number;

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

10 “(D) any other critical information that
11 the Assistant Secretary determines to be appro-
12 priate.

13 “(2) USE OF WEEKLY REPORT.—The Secretary
14 of Homeland Security shall use information provided
15 under paragraph (1) to enforce compliance of the
16 United States immigration laws.”.

17 (i) INFORMATION SHARING.—The Commissioner of
18 Social Security, the Secretary of Homeland Security, and
19 the Secretary of the Treasury shall jointly establish a pro-
20 gram to share information among such agencies that may
21 or could lead to the identification of unauthorized aliens
22 (as defined in section 274A(h)(3) of the Immigration and
23 Nationality Act), including any no-match letter and any
24 information in the earnings suspense file.

1 (j) FORM I-9 PROCESS.—Not later than 9 months
2 after date of the enactment of this Act, the Secretary of
3 Homeland Security shall submit a report to Congress that
4 contains recommendations for—

5 (1) modifying and simplifying the process by
6 which employers are required to complete and retain
7 a Form I-9 for each employee pursuant to section
8 274A of the Immigration and Nationality Act (8
9 U.S.C. 1324a); and

10 (2) eliminating the process described in para-
11 graph (1).

12 (k) ALGORITHM.—Section 404(d) of the Illegal Immi-
13 gration Reform and Immigrant Responsibility Act of 1996
14 (8 U.S.C. 1324a note) is amended to read as follows:

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

17 “(1) to maximize its reliability and ease of use
18 by employers;

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

21 “(3) to maintain appropriate administrative,
22 technical, and physical safeguards to prevent unau-
23 thorized disclosure of personal information;

1 “(4) to respond accurately to all inquiries made
2 by employers on whether individuals are authorized
3 to be employed;

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

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

8 “(7) to preserve the security of the information
9 in all of the system by—

10 “(A) developing and using algorithms to
11 detect potential identity theft, such as multiple
12 uses of the same identifying information or doc-
13 uments;

14 “(B) developing and using algorithms to
15 detect misuse of the system by employers and
16 employees;

17 “(C) developing capabilities to detect
18 anomalies in the use of the system that may in-
19 dicate potential fraud or misuse of the system;
20 and

21 “(D) auditing documents and information
22 submitted by potential employees to employers,
23 including authority to conduct interviews with
24 employers and employees;

1 “(8) to confirm identity and work authorization
2 through verification of records maintained by the
3 Secretary, other Federal departments, States, the
4 Commonwealth of the Northern Mariana Islands, or
5 an outlying possession of the United States, as de-
6 termined necessary by the Secretary, including—

7 “(A) records maintained by the Social Se-
8 curity Administration;

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

12 “(C) passport and visa records (including
13 photographs) maintained by the Department of
14 State; and

15 “(D) State driver’s license or identity card
16 information (including photographs) maintained
17 by State department of motor vehicles;

18 “(9) to electronically confirm the issuance of
19 the employment authorization or identity document;
20 and

21 “(10) to display the digital photograph that the
22 issuer placed on the document so that the employer
23 can compare the photograph displayed to the photo-
24 graph on the document presented by the employee
25 or, in exceptional cases, if a photograph is not avail-

1 able from the issuer, to provide for a temporary al-
2 ternative procedure, specified by the Secretary, for
3 confirming the authenticity of the document.”.

4 (l) IDENTITY THEFT.—Section 1028 of title 18,
5 United States Code, is amended—

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

9 (2) in subsection (b)(3)—

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

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

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

15 “(D) to facilitate or assist in harboring or
16 hiring unauthorized workers in violation of sec-
17 tion 274, 274A, or 274C of the Immigration
18 and Nationality Act (8 U.S.C. 1324, 1324a,
19 and 1324e).”.

20 (m) SMALL BUSINESS DEMONSTRATION PRO-
21 GRAM.—Section 403 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 subsection (d) as sub-
25 section (e); and

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

3 “(d) SMALL BUSINESS DEMONSTRATION PRO-
4 GRAM.—Not later than 9 months after the date of the en-
5 actment of the Accountability Through Electronic
6 Verification Act, the Director of U.S. Citizenship and Im-
7 migration Services shall establish a demonstration pro-
8 gram that assists small businesses in rural areas or areas
9 without internet capabilities to verify the employment eli-
10 gibility of newly hired employees solely through the use
11 of publicly accessible internet terminals.”.