



U.S. CHAMBER OF COMMERCE

Brief summary of E-Verify in the 113th Congress: H.R. 1772 (House E-Verify bill) and S.744 E-Verify Provisions

<u>Issue</u>	<u>H.R. 1772 (Legal Workforce Act)</u>	<u>S. 744 (Senate comprehensive reform bill)</u>
Preemption	Preempts state and local laws related to hiring, continued employment, and status verification for unauthorized aliens. State and local licensing authority is retained with the right to penalize an employer who does not use the federal E-Verify system when mandated by federal law. While no state laws or state court actions are permitted, state and local law enforcement, at their own expense, may implement federal regulations once promulgated.	Preempts state and local laws related to hiring, continued employment, and status verification for unauthorized aliens. State and local licensing authority is retained with the right to penalize an employer who does not use the federal E-Verify system when mandated by federal law.
Reverification of entire current workforce	No mandatory E-Verify for the entire current US workforce already employed. Instead, all new hires are subject to E-Verify (after a fast phase-in of employers, based on company size). Clear language that federal contractors must reverify current workforce only where workers are working on contracts over the simple acquisition threshold, do not have federal security clearances, are not overhead administrative personnel, or are not providing solely COTS goods or services (as defined by the Federal Acquisition Regulation).	No mandatory E-Verify for the entire current US workforce already employed. As with the House bill, most employers will be required to use the System only to verify all <i>new</i> hires and for reverification of expiring work authorizations. Certain employers such as federal contractors, employers in the critical infrastructure sectors and those employers found to have committed violations may be required by DHS to use the System to verify current employees. Although proposed on the Senate side, the final bill retains no authority for DHS to expand reverification generally to current workforce.
Safe harbor	Strong safe harbor provided for good faith employers. A good faith employer may not be liable to a job applicant or employee (or to the federal, state or local government) for any employment-related action made in reliance on information provided in E-Verify. Moreover, once an employer shows good faith use of	Establishes an affirmative defense to a charge of unlawful hiring an unauthorized alien if employer complies in good faith. Recognizes good faith compliance unless employer had knowledge an individual was not authorized to work. Establishes compliance with verification requirements even if there is a technical or procedural error so long as employer



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	<p>E-Verify it has established compliance with its employment verification obligations absent a showing by DHS by clear and convincing evidence that the employer had knowledge that an employee is unauthorized. In addition, good faith employers cannot be penalized for de minimus technical or procedural violations and must be provided at least 30 days to correct any technical or procedural violation.</p>	<p>made good faith efforts to comply, but unlike the House bill there is no burden shifting to the government to prove a knowing violation by clear and convincing evidence. Good faith employers cannot be penalized for de minimus technical or procedural violations and must be provided at least 30 days to correct any technical or procedural violation. Failure to use the system or failure to follow the System requirements or procedures will be considered a penalty (equivalent to a paperwork violation) for each employee involved, creating a rebuttable presumption that the employer knowingly hired an individual if it is determined that he or she is not employment authorized.</p>
Integrated I-9 and E-Verify	<p>Statute is very clear that DHS is required to create an electronic verification system that responds to employment verification inquiries by phone or electronic media and maintains records of employment.</p>	<p>Legislative text unclear but was intended that DHS be required to electronically integrate the verification form with the verification system process. DHS is required to accommodate remote hiring situations by allowing the use of scanning and video conferencing technology.</p>
Phase-in	<p>Mandatory phase-in for all employers starting six months after enactment and ending two years after enactment. DHS must be prepared to start implementation six months after enactment.</p>	<p>Mandatory phase-in for all employers not later than five years after implementing regulations are published. No required timetable for implementing regulations.</p>
Conditional Job Offer	<p>An employer may make job offer conditioned upon the new hire (who has accepted an offer of employment) being successfully confirmed in E-Verify.</p>	<p>Specifically barred as an unfair immigration related employment practice.</p>



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Additional Identity Authentication Programs	Requires DHS and SSA to create a pilot program that allows individuals to lock their SSN and a pilot program that allows parents to suspend use of a SSN for minor children. 48 months after enactment, DHS with SSA and NIST shall establish by regulation not less than two Identity Authentication Employment Eligibility Verification Pilot Programs each using separate and distinct technology.	Development of fraud-resistant SSN cards, programs with States to verify driver's licenses, and SSN locking programs are required, along with reports on the viability of more secure DHS-issued employment authorization documents.
Addressing Delays in SSN Issuance	Where a new hire is authorized for employment and can show s/he has applied for SSN, the verification period ends 3 business days after the SSN is issued.	None
Expanded Unfair Immigration Related Employment Practices and Increased Due Process in E-Verify	None. The current system already provides for administrative review of any final non confirmation (FNC) at any time without any legal proceeding, and the agency review process typically clears any FNC within 48 hours. Current law also punishes any intentional discriminatory employer behavior.	Individuals are provided new rights to appeal any determination in E-Verify that an employee is unauthorized. Employees can't be terminated until they have exhausted right to seek review of determination by agency, and review of an adverse agency determination by DHS or SSA by an ALJ. The ALJ can order either the employer or DHS or SSA to pay back pay, lost wages, and attorneys' fees if agency determination reversed. In addition, the scope of OSC authority significantly increased. Creates 10 new categories of immigration-related discrimination violations for employers' operation of E-Verify, none of which include intent to discriminate as an element of the violation. Makes it an unfair immigration-related practice to withhold employment records from employees who request records employers are required to retain.



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Government data share	No expanded data share, meaning that data provided as part of the employment verification process may only be used by the federal government to enforce federal immigration law and federal criminal law.	DHS and OSC (Office of Special Counsel, responsible for monitoring unfair immigration related employment practices) granted authority to require employers to provide additional information and documentation regarding their use of the employment verification system and a failure to comply with a request also considered a violation.