

AMENDMENT NO. \_\_\_\_\_ Calendar No. \_\_\_\_\_

Purpose: In the nature of a substitute.

**IN THE SENATE OF THE UNITED STATES—113th Cong., 1st Sess.**

**S. 744**

To provide for comprehensive immigration reform and for  
other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended  
to be proposed by Mr. LEE

Viz:

1       Strike all after the enacting clause and insert the fol-  
2       lowing:

3       **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

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

6       (b) TABLE OF CONTENTS.—The table of contents for  
7       this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Permanent reauthorization.
- Sec. 3. Mandatory use of E-Verify.
- Sec. 4. Consequences of failure to participate.
- Sec. 5. Preemption; liability.
- Sec. 6. Expanded use of E-Verify.
- Sec. 7. Reverification.
- Sec. 8. Holding employers accountable.
- Sec. 9. Information sharing.
- Sec. 10. Form I-9 Process.
- Sec. 11. Algorithm.

Sec. 12. Identity theft.

Sec. 13. Small Business Demonstration Program.

1   **SEC. 2. PERMANENT REAUTHORIZATION.**

2           Section 401(b) of the Illegal Immigration Reform and  
3   Immigrant Responsibility Act of 1996 (division C of Pub-  
4   lic Law 104–208; 8 U.S.C. 1324a note) is amended by  
5   striking “Unless the Congress otherwise provides, the Sec-  
6   retary of Homeland Security shall terminate a pilot pro-  
7   gram on September 30, 2015.”.

8   **SEC. 3. MANDATORY USE OF E-VERIFY.**

9           (a) **FEDERAL GOVERNMENT.**—Section 402(e)(1) of  
10   the Illegal Immigration Reform and Immigrant Responsi-  
11   bility Act of 1996 (8 U.S.C. 1324a note) is amended—

12           (1) by amending subparagraph (A) to read as  
13   follows:

14                   “(A)   **EXECUTIVE DEPARTMENTS AND**  
15                   **AGENCIES.**—Each department and agency of  
16                   the Federal Government shall participate in E-  
17                   Verify by complying with the terms and condi-  
18                   tions set forth in this section.”; and

19           (2) in subparagraph (B), by striking “, that  
20   conducts hiring in a State” and all that follows and  
21   inserting “shall participate in E-Verify by complying  
22   with the terms and conditions set forth in this sec-  
23   tion.”.

1 (b) FEDERAL CONTRACTORS; CRITICAL EMPLOY-  
2 ERS.—Section 402(e) of the Illegal Immigration Reform  
3 and Immigrant Responsibility Act of 1996 (8 U.S.C.  
4 1324a note) is amended—

5 (1) by redesignating paragraphs (2) and (3) as  
6 paragraphs (4) and (5), respectively; and

7 (2) by inserting after paragraph (1) the fol-  
8 lowing:

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

14 “(3) DESIGNATION OF CRITICAL EMPLOYERS.—  
15 Not later than 7 days after the date of the enact-  
16 ment of this paragraph, the Secretary of Homeland  
17 Security shall—

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

21 “(B) designate and publish a list of em-  
22 ployers and classes of employers that are  
23 deemed to be critical pursuant to the assess-  
24 ment conducted under subparagraph (A); and

1           “(C) require that critical employers des-  
2           ignated pursuant to subparagraph (B) partici-  
3           pate in E-Verify by complying with the terms  
4           and conditions set forth in this section not later  
5           than 30 days after the Secretary makes such  
6           designation.”.

7           (c) ALL EMPLOYERS.—Section 402 of the Illegal Im-  
8           migration Reform and Immigrant Responsibility Act of  
9           1996 (8 U.S.C. 1324a note) is amended—

10           (1) by redesignating subsection (f) as sub-  
11           section (g); and

12           (2) by inserting after subsection (e) the fol-  
13           lowing:

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

15           “(1) IN GENERAL.—Subject to paragraphs (2)  
16           and (3), all employers in the United States shall  
17           participate in E-Verify, with respect to all employees  
18           recruited, referred, or hired by such employer on or  
19           after the date that is 1 year after the date of the  
20           enactment of this subsection.

21           “(2) USE OF CONTRACT LABOR.—Any employer  
22           who uses a contract, subcontract, or exchange to ob-  
23           tain the labor of an individual in the United States  
24           shall certify in such contract, subcontract, or ex-  
25           change that the employer uses E-Verify. If such cer-

1       tification is not included in a contract, subcontract,  
2       or exchange, the employer shall be deemed to have  
3       violated paragraph (1).

4               “(3) INTERIM MANDATORY PARTICIPATION.—

5               “(A) IN GENERAL.—Before the date set  
6       forth in paragraph (1), the Secretary of Home-  
7       land Security shall require any employer or  
8       class of employers to participate in E-Verify,  
9       with respect to all employees recruited, referred,  
10      or hired by such employer if the Secretary has  
11      reasonable cause to believe that the employer is  
12      or has been engaged in a material violation of  
13      section 274A of the Immigration and Nation-  
14      ality Act (8 U.S.C. 1324a).

15              “(B) NOTIFICATION.—Not later than 14  
16      days before an employer or class of employers  
17      is required to begin participating in E-Verify  
18      pursuant to subparagraph (A), the Secretary  
19      shall provide such employer or class of employ-  
20      ers with—

21                      “(i) written notification of such re-  
22                      quirement; and

23                      “(ii) appropriate training materials to  
24                      facilitate compliance with such require-  
25                      ment.”.

1 **SEC. 4. CONSEQUENCES OF FAILURE TO PARTICIPATE.**

2 (a) IN GENERAL.—Section 402(e)(5) of the Illegal  
3 Immigration Reform and Immigrant Responsibility Act of  
4 1996 (8 U.S.C. 1324a note), as redesignated by section  
5 3(b)(1), is amended to read as follows:

6 “(5) CONSEQUENCES OF FAILURE TO PARTICI-  
7 PATE.—If a person or other entity that is required  
8 to participate in E-Verify fails to comply with the  
9 requirements under this title with respect to an indi-  
10 vidual—

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

14 “(B) a rebuttable presumption is created  
15 that the person or entity has violated section  
16 274A(a)(1)(A).”.

17 (b) PENALTIES.—Section 274A of the Immigration  
18 and Nationality Act (8 U.S.C. 1324a) is amended—

19 (1) in subsection (e)—

20 (A) in paragraph (4)—

21 (i) in subparagraph (A), in the matter  
22 preceding clause (i), by inserting “, subject  
23 to paragraph (10),” after “in an amount”;

24 (ii) in subparagraph (A)(i), by strik-  
25 ing “not less than \$250 and not more than

1           \$2,000” and inserting “not less than  
2           \$2,500 and not more than \$5,000”;

3           (iii) in subparagraph (A)(ii), by strik-  
4           ing “not less than \$2,000 and not more  
5           than \$5,000” and inserting “not less than  
6           \$5,000 and not more than \$10,000”;

7           (iv) in subparagraph (A)(iii), by strik-  
8           ing “not less than \$3,000 and not more  
9           than \$10,000” and inserting “not less  
10          than \$10,000 and not more than  
11          \$25,000”; and

12          (v) by amending subparagraph (B) to  
13          read as follows:

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

17          (B) in paragraph (5)—

18           (i) by inserting “, subject to para-  
19           graphs (10) through (12),” after “in an  
20           amount”;

21           (ii) by striking “\$100” and inserting  
22           “\$1,000”;

23           (iii) by striking “\$1,000” and insert-  
24           ing “\$25,000”;

1 (iv) by striking “the size of the busi-  
2 ness of the employer being charged, the  
3 good faith of the employer” and inserting  
4 “the good faith of the employer being  
5 charged”; and

6 (v) by adding at the end the following:  
7 “Failure by a person or entity to utilize  
8 the employment eligibility verification sys-  
9 tem as required by law, or providing infor-  
10 mation to the system that the person or  
11 entity knows or reasonably believes to be  
12 false, shall be treated as a violation of sub-  
13 section (a)(1)(A).”; and

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

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



1           “(11) AUTHORITY TO DEBAR EMPLOYERS FOR  
2       CERTAIN VIOLATIONS.—

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

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

1 Procurement, and if so, for what duration and  
2 under what scope.

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

23 “(D) REVIEW.—Any decision to debar a  
24 person or entity under in accordance with this  
25 paragraph shall be reviewable pursuant to part

1           9.4 of the Federal Acquisition Regulation.”;

2           and

3           (2) in subsection (f)—

4                   (A) by amending paragraph (1) to read as  
5           follows:

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

14                   (B) in paragraph (2), by striking “Attor-  
15          ney General” each place it appears and insert-  
16          ing “Secretary of Homeland Security”.

17   **SEC. 5. PREEMPTION; LIABILITY.**

18          Section 402 of the Illegal Immigration Reform and  
19   Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a  
20   note), as amended by this Act, is further amended by add-  
21   ing at the end the following:

22          “(h) LIMITATION ON STATE AUTHORITY.—

23                   “(1) PREEMPTION.—A State or local govern-  
24          ment may not prohibit a person or other entity from

1       verifying the employment authorization of new hires  
2       or current employees through E-Verify.

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

9   **SEC. 6. EXPANDED USE OF E-VERIFY.**

10       Section 403(a)(3)(A) of the Illegal Immigration Re-  
11   form and Immigrant Responsibility Act of 1996 (8 U.S.C.  
12   1324a note) is amended to read as follows:

13               “(A) IN GENERAL.—

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

23               “(I) providing the individual em-  
24       ployees with private, written notifica-

1                   tion of the finding and written refer-  
2                   ral instructions;

3                   “(II) allowing the individual to  
4                   contest the finding; and

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

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

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

1 **SEC. 7. REVERIFICATION.**

2 Section 403(a) of the Illegal Immigration Reform and  
3 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a  
4 note) is amended by adding at the end the following:

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

16 **SEC. 8. HOLDING EMPLOYERS ACCOUNTABLE.**

17 (a) CONSEQUENCES OF NONCONFIRMATION.—Sec-  
18 tion 403(a)(4)(C) of the Illegal Immigration Reform and  
19 Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a  
20 note) is amended to read as follows:

21 “(C) CONSEQUENCES OF NONCONFIRMA-  
22 TION.—

23 “(i) TERMINATION AND NOTIFICA-  
24 TION.—If the person or other entity re-  
25 ceives a final nonconfirmation regarding an

1 individual, the employer shall imme-  
2 diately—

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

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

12 “(ii) CONSEQUENCE OF CONTINUED  
13 EMPLOYMENT.—If the person or other en-  
14 tity continues to employ, recruit, or refer  
15 the individual after receiving final noncon-  
16 firmation, a rebuttable presumption is cre-  
17 ated that the employer has violated section  
18 274A of the Immigration and Nationality  
19 Act (8 U.S.C. 1324a).”.

20 (b) INTERAGENCY NONCONFIRMATION REPORT.—  
21 Section 405 of the Illegal Immigration Reform and Immi-  
22 grant Responsibility Act of 1996 (8 U.S.C. 1324a note)  
23 is amended by adding at the end the following:

24 “(c) INTERAGENCY NONCONFIRMATION REPORT.—

1           “(1) IN GENERAL.—The Director of U.S. Citi-  
2           zenship and Immigration Services shall submit a  
3           weekly report to the Assistant Secretary of Immigra-  
4           tion and Customs Enforcement that includes, for  
5           each individual who receives final nonconfirmation  
6           through E-Verify—

7                   “(A) the name of such individual;

8                   “(B) his or her Social Security number or  
9           alien file number;

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

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

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

19   **SEC. 9. INFORMATION SHARING.**

20           The Commissioner of Social Security, the Secretary  
21           of Homeland Security, and the Secretary of the Treasury  
22           shall jointly establish a program to share information  
23           among such agencies that may or could lead to the identi-  
24           fication of unauthorized aliens (as defined under section  
25           274A(h)(3) of the Immigration and Nationality Act), in-



cluding any no-match letter and any information in the earnings suspense file.

**SEC. 10. FORM I-9 PROCESS.**

Not later than 9 months after date of the enactment of this Act, the Secretary of Homeland Security shall submit a report to Congress that contains recommendations for—

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

(2) eliminating the process described in paragraph (1).

**SEC. 11. ALGORITHM.**

Section 404(d) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a note) is amended to read as follows:

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

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

“(2) to insulate and protect the privacy and security of the underlying information;

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

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

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

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

11          “(7) to preserve the security of the information  
12          in all of the system by—

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

17               “(B) developing and using algorithms to  
18               detect misuse of the system by employers and  
19               employees;

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

24               “(D) auditing documents and information  
25               submitted by potential employees to employers,

1 including authority to conduct interviews with  
2 employers and employees;

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

9 “(A) records maintained by the Social Se-  
10 curity Administration;

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

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

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

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

23 “(10) to display the digital photograph that the  
24 issuer placed on the document so that the employer  
25 can compare the photograph displayed to the photo-

1 graph on the document presented by the employee  
2 or, in exceptional cases, if a photograph is not avail-  
3 able from the issuer, to provide for a temporary al-  
4 ternative procedure, specified by the Secretary, for  
5 confirming the authenticity of the document.”.

6 **SEC. 12. IDENTITY THEFT.**

7 Section 1028 of title 18, United States Code, is  
8 amended—

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

12 (2) in subsection (b)(3)—

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

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

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

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

1   **SEC. 13. SMALL BUSINESS DEMONSTRATION PROGRAM.**

2           Section 403 of the Illegal Immigration Reform and  
3   Immigrant Responsibility Act of 1996 (8 U.S.C. 1324a  
4   note) is amended—

5           (1) by redesignating subsection (d) as sub-  
6   section (e); and

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

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