

Summary of the Title III Substitute Amendment to the Comprehensive Immigration Reform Act of 2006 (S. 2611)¹

The amendment (No. 4177), sponsored by Senators Grassley (R-IA), Kennedy (D-MA), Obama (D-IL), and Baucus (D-MT), passed the Senate on May 23 by a vote of 58 to 40.

PROVISION	SUMMARY
<p>Unlawful employment of immigrants</p>	<ul style="list-style-type: none"> ■ Unlawful for an employer to hire or to recruit or refer for a fee an immigrant with “knowing or reckless disregard” that the immigrant is unauthorized to work. ■ Requires employers to comply with document verification requirements and participate in the EEVS. Good faith defense for employers who do so. ■ The Secretary of Homeland Security (the “Secretary”) can require employer to certify that the employer is in compliance with requirements if the Secretary has “reasonable cause” to believe that the employer is not in compliance. Secretary will publish standards and methods for certification in Federal Register. ■ Prohibits an employer from using a contract, subcontract or exchange with “knowing or reckless disregard” that the immigrant is unauthorized to work, or if the subcontractor didn’t comply with document verification requirements and participate in the EEVS. The employer hiring the immigrant must provide its EIN to the subcontractor (failure to provide the EIN is a recordkeeping violation), and the subcontractor must submit the employer’s EIN to the EEVS. DHS will use this information to identify employers who don’t comply with the requirements of this section.
<p>Document verification requirements</p>	<ul style="list-style-type: none"> ■ Employer must attest on a form that the employer has verified the identity and employment eligibility of employees by examining the documents prescribed in this section. ■ The employer has complied with the requirement to verify documents if a “reasonable person” would conclude that the document examined is genuine and related to the employee. ■ U.S. citizens must present a U.S. passport or driver’s license or identity card that complies with the REAL ID Act as proof of identity. ■ LPRs must present a permanent resident card as proof of identity. ■ Immigrants with employment authorization must present an employment authorization card that (1) contains a photograph of the individual or other identifying information including the individual’s name, date of birth, gender, and address; and (2) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use. ■ If individuals cannot present the documents prescribed, they may present a document designated by the Secretary that (1) contains a photograph of the individual or other identifying information including the individual’s name, date of birth, gender, and address; and (2) contains security features to make the document resistant to tampering, counterfeiting, and fraudulent use. ■ Until an employer participates in the EEVS, employers may accept identity documents acceptable under current law. ■ The Secretary has the authority to prohibit certain documents if they are found not reliable to establish identity or are being fraudulently used to an unacceptable degree. Findings must be published in the Federal Register. ■ Individuals must attest on a form that they are employment-authorized. An individual who falsely represents that he or she is employment-authorized is subject to a fine of no more than \$5,000, a prison term of 3 years, or both.

¹ Summary does not include sections on employer compliance, penalties, and debarment from federal contracts.

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<p>Records that must be kept by employers</p>	<ul style="list-style-type: none"> ■ Employers must retain employer and employee attestations and the document that the employee submitted as proof of identity for 5 years after date of hire, or 1 year after the individual’s employment is terminated, whichever is longer (in the case of recruiting or referral for a free, 5 years after date of recruiting or referral). ■ Employers must also maintain records of any action taken and copies of any correspondence written or received related to the verification of an individual’s identity or employment authorization, including the employer EIN in the case of a subcontractor. ■ Prohibits employers from using retained documents for any purpose other than complying with the requirements in the section.
<p>EEVS: Requirements for participation</p>	<ul style="list-style-type: none"> ■ With respect to new hires, all employers must participate 18 months after the date that not less than \$400 million have been appropriated and made available to implement the EEVS. ■ Employers may participate in the EEVS on a voluntary basis before they are required to. ■ The Secretary has the authority to require the following employers to participate before the 18-month period with respect to <i>all</i> employees: (1) “critical” employers (based on an assessment of homeland security or national security needs); and (2) employers that the Secretary has reasonable cause to believe have engaged in material violations related to unlawful employment of immigrants. ■ Not less than 60 days before an employer’s or class of employers’ required participation in the EEVS is to begin, the Secretary must notify them in writing regarding his/her decision to require them to participate. ■ Upon request, the Secretary must make training materials available to employers who participate in the EEVS. ■ Employers must register to participate in the EEVS. ■ If an employer fails to participate in the EEVS, a rebuttable presumption is created that the employer violated the law related to unlawful employment of immigrants. ■ Employers are not liable for any employment-related action taken in good faith reliance on information provided by the EEVS.
<p>EEVS: Design and operation of the EEVS</p>	<ul style="list-style-type: none"> ■ DHS, in cooperation with SSA, must implement an EEVS to determine whether: <ul style="list-style-type: none"> — The identifying information submitted by the individual worker is consistent with information maintained by DHS and SSA; and — The worker is eligible for employment in the U.S. ■ DHS must: <ul style="list-style-type: none"> — Respond to each inquiry made by a registered employer through the Internet or other electronic media, or over a toll-free telephone line, regarding an individual’s identity and employment authorization; and — Maintain a record of each inquiry and the response provided. ■ SSA must: <ul style="list-style-type: none"> — Establish a reliable, secure method to provide through the EEVS: (1) a determination of whether the name and SSN submitted by a worker is consistent with information maintained by the Commissioner of SSA (the “Commissioner”); (2) a determination of the citizenship status associated with such name and SSN; (3) a determination of whether the name and SSN belong to an individual who is deceased; (4) a determination of whether the name and SSN is blocked (see “Miscellaneous,” below, for information); and (5) a confirmation or nonconfirmation notice in a manner that ensures that other information maintained by the Commissioner is not disclosed or released to employers through the EEVS. — To the maximum extent possible, assign SSNs to employment-authorized immigrants by employing the enumeration procedure administered jointly by the Commissioner, the U.S. Secretary of State, and the Secretary of DHS.

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<p>EEVS: Verification process</p>	<ul style="list-style-type: none"> ■ Requires employer to use the EEVS to seek confirmation of an individual's identity and employment eligibility not later than 3 days after the date of hire. ■ Employers must obtain from the individual and record: <ul style="list-style-type: none"> — The individual's name and date of birth, and the state in which the person was born; — The individual's SSN; — The EIN of the individual's employer during any one of the 5 most recently completed calendar years (the employer is required to provide the EIN upon request from the individual);² and — In the case that the individual does not attest that he or she is a U.S. national, an "alien" identification or authorization number as the Secretary shall require. ■ The Secretary, through the EEVS, must provide a response to the employer no later than 10 days after the initial inquiry. <ul style="list-style-type: none"> — If the EEVS is able to confirm the individual's identity and employment eligibility, DHS must provide a confirmation notice with an appropriate code. — If the initial verification results in the EEVS being unable to confirm the individual's identity and employment eligibility, DHS must conduct an automatic secondary manual verification. If after the secondary manual verification the EEVS still cannot confirm the individual's identity and employment eligibility, DHS must provide tentative nonconfirmation notice with an appropriate code. ■ If the employer receives a tentative nonconfirmation notice, the employer must record the code provided in the notice and provide the worker with a form (to be developed by the Secretary) not later than 3 days after receiving the notice that is available in a language other than English "as necessary and reasonable." The worker must acknowledge receipt of such notice in writing. The notice from the employer must include: <ul style="list-style-type: none"> — Information about the reason for the notice; — The right to contest the notice; — Contact information for the appropriate agency and instructions for initiating a contest; and — A 24-hour toll-free number to respond to inquiries related to the notice. ■ If a tentative nonconfirmation notice is issued, the employee has 10 days to submit appropriate information to contest the notice. ■ If the employee does not contest the tentative nonconfirmation notice within 10 days of receiving it, the nonconfirmation notice becomes final. An individual's failure to contest should not be considered an admission that he or she is not authorized to work.
<p>EEVS: Automatic final notice</p>	<ul style="list-style-type: none"> ■ If a final confirmation or nonconfirmation notice is not issued by the Secretary within 30 days after the individual contests a tentative nonconfirmation, the individual will automatically be confirmed as employment-authorized. The notice will remain in effect (1) during any continuous period of employment, unless the Secretary determines that the individual committed identity fraud; or (2) during the period that a person is temporarily authorized to be employed. ■ The process of issuing an automatic final notice will remain in effect until the GAO can certify that the EEVS can issue a final confirmation of work eligibility to individuals who are eligible for employment within 30 days of the initial inquiry at least 99 percent of the time. If the GAO makes this certification, the automatic notice will be a final nonconfirmation notice. DHS has the authority to change this notice to a final confirmation notice, and must record the results of the determination in the EEVS within 12 months.
<p>EEVS: Consequences of final nonconfirmation notice</p>	<ul style="list-style-type: none"> ■ Employer must terminate worker. If employer fails to terminate worker, a rebuttable presumption of violation is created. ■ Requires employer to report to the Secretary any information relating to the worker that the Secretary determines would assist the enforcement or administration of the immigration laws.

² If the individual was not employed in the last 5 years, must affirmatively state on a form provided that the EIN is not provided because the individual was not employed in the U.S.

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<p>EEVS: Annual reports and certification</p>	<ul style="list-style-type: none"> ■ Requires the Secretary to submit to Congress annual reports (first report not more than 24 months after the date that not less than \$400 million have been appropriated and made available to the Secretary) that include: <ul style="list-style-type: none"> — An assessment of whether the EEVS is able to correctly issue, within 30 days, a final confirmation notice in at least 99 percent of the cases in which the final notice relates to an individual who is employment-authorized. — If the system is able to issue final notices in at least 99 percent of cases, a certification of such assessment. ■ Requires the GAO to conduct annual studies and submit to Congress annual reports (first report not more than 24 months after the date that not less than \$400 million have been appropriated and made available to the Secretary) that evaluate the accuracy, integrity, and impact of the EEVS. The report must include, at minimum, the following: <ul style="list-style-type: none"> — An assessment of DHS's annual report and certification regarding database accuracy; — An assessment of EEVS performance with respect to the rate at which individuals who are eligible for employment are correctly approved within 30 days, including a separate assessment of such rate for nationals and immigrants; — An assessment of the privacy and security of the EEVS and its effects on identity theft or misuse of private data; — An assessment of the impact of the EEVS on the employment of unauthorized workers; — An assessment of the effects of the EEVS, including the effects of tentative nonconfirmations on unfair immigration-related employment practices and employment discrimination based on national origin or citizenship status; — An assessment of whether DHS and SSA have adequate resources to carry out the EEVS.
<p>EEVS: Due process</p>	<ul style="list-style-type: none"> ■ The Secretary, in consultation with the Commissioner of SSA, must establish a process to permit individuals who contest an EEVS decision, or who seek to verify their own employment eligibility, are able to contact the appropriate agency to correct or update information in the EEVS in a "timely manner." ■ Creates an administrative and judicial review process. ■ Individuals have 60 days after termination from employment to file an administrative appeal. <ul style="list-style-type: none"> — DHS and SSA will develop procedures for reviewing appeals. — If the appeal results in a confirmation of the individual's employment eligibility, DHS must determine if it was agency error. — If DHS determines that it was agency error, the individual is entitled to compensation for wages lost (calculated based on the wage rate and work schedule that prevailed prior to termination) beginning on the first scheduled work day after employment was terminated and ending 180 days after completion of the administrative review process or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first. Compensation will not include any period that the individual was ineligible for employment in the U.S. ■ Individuals have 60 days after the administrative review decision to obtain judicial review of the decision by a civil action. <ul style="list-style-type: none"> — A civil action must be brought in the district court for the judicial district in which the plaintiff resides or has a place of business, or, if the plaintiff does not reside within any such judicial district, in the District Court of the U.S. for the District of Columbia. — As part of the judicial review, DHS must file a certified copy of the administrative record compiled during the administrative appeal. The court has the power to affirm or reverse the administrative decision, with or without remanding the case for a rehearing. — If the court overturns the administrative decision, the individual is entitled to compensation for wages lost (calculated based on the wage rate and work schedule that prevailed prior to termination) beginning on the first scheduled work day after employment was terminated and ending 180 days after completion of the judicial review process or the day after the individual is reinstated or obtains employment elsewhere, whichever occurs first. Compensation will not include any period that the individual was ineligible for employment in the U.S.

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<p>EEVS: Protections against discrimination</p>	<ul style="list-style-type: none"> ■ Amends section 274B of the INA relating to unfair immigration-related employment practices to explicitly apply to employment decisions related to the new EEVS; ■ Expands the definition of “protected individual” under Section 274B to include LPRs, immigrants granted temporary residence, refugees, asylees, immigrants granted temporary protected status, nonimmigrants under 101(a)(15)(H)(ii)(c),³ and immigrants granted parole. ■ Makes it an unfair immigration-related employment practice to: <ul style="list-style-type: none"> — Terminate or take adverse action based on a tentative nonconfirmation notice; — Use the EEVS for screening of an applicant prior to an offer of employment; — Use the EEVS for current employees beyond the first three days of their hire, or for reverification of an employee who has satisfied the EEVS requirements; or — Require an individual to make an inquiry under the self-verification procedures. ■ Increases fines for violation of section 274B as follows: <ul style="list-style-type: none"> — For the first violation, a civil penalty of not less than \$1,000 and not more than \$4,000 for each individual discriminated against; — In the case of a person or entity previously subject to a single order, a civil penalty of not less than \$4,000 and not more than \$10,000 for each individual discriminated against; — In the case of a person or entity previously subject to more than one order, a civil penalty of not less than \$6,000 and not more than \$20,000 for each individual discriminated against; and — In the case of an employer requesting additional or different documentation than is required under the law, a civil penalty of not less than \$500 and not more than \$5,000 for each individual discriminated against. ■ Provides an additional \$40 million to the Office of Special Counsel for Immigration-Related Unfair Employment Practices for an information campaign for each fiscal years 2007–09. ■ The new provisions take effect 180 days after enactment.
<p>EEVS: ID theft prevention and privacy protections</p>	<ul style="list-style-type: none"> ■ The EEVS can only collect and maintain the minimum data necessary to operate the system, and in no case can the data be other than: <ul style="list-style-type: none"> — Information necessary to register employers; — Information necessary to initiate and respond to inquiries or contests; — Information necessary to establish and enforce compliance; — Information necessary to detect and prevent related identity fraud; and — Such information that the Secretary determined is necessary, subject to a 180 day notice and comment period in the Federal Register. ■ Makes it a misdemeanor (with a fine of \$1,000 for each violation) for anyone to willfully and knowingly collect and maintain data that is not required. ■ Makes it a felony (with a fine under Title 18 or prison term of not more than 5 years, or both) to knowingly access, disclose, or use any information in the EEVS (1) for the purpose of committing identify fraud or assisting another person in committing identify fraud as defined by 18 USC § 1028; (2) for the purpose of unlawfully obtaining employment; or (3) for any purpose other than provided for under any provision of law.
<p>Preemption of state and local law</p>	<ul style="list-style-type: none"> ■ Prohibits states and localities from imposing sanctions on employers who hire undocumented immigrants.

³ Immigrants granted the H-2C temporary guest worker status under S 2611.

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<p>Information-sharing</p>	<ul style="list-style-type: none"> ■ Creates new exemption to confidentiality provisions of § 6103 of the Internal Revenue Code that would require SSA, upon written request by DHS, to disclose to DHS: <ul style="list-style-type: none"> — Employer taxpayer identity information if the employer has filed W-2s that have more than 100 names that did not match SSA records or more than 10 employees with the same SSN; — Employer taxpayer identity information of employers who filed W-2s when SSA believes there is identity fraud due to multiple persons filing returns of the same taxpayer identifying number; — Employer taxpayer identity information of employers who filed W-2s when SSA believes they are not participating in EEVS; — Upon certification by DHS that employer is not registered as participating in EEVS, taxpayer identity information on all its employees; and — Employer taxpayer identity information for every EEVS employer and taxpayer identity information for new employees. ■ Restricts disclosure to establishing and enforcing employer participation in the EEVS, enforcement of many provisions of the INA, and the civil operation of the Alien Terrorist Removal Court. ■ Provision sunsets after 3 years. ■ Authorizes SSA to carry out responsibilities under this provision only to the extent DHS provides, in advance, funds to cover SSA costs.
<p>Miscellaneous</p>	<ul style="list-style-type: none"> ■ Creates an “employer compliance fund” that will collect all civil monetary penalties for unauthorized employment of immigrants. Funds will be used for enhancing and enforcing employer compliance with the law. ■ Authorizes an annual increase (subject to appropriations) of not less than 2,200 ICE personnel for a 5-year period. Also requires DHS to ensure that not less than 25% of all hours expended by ICE personnel are used for immigration enforcement at the worksite. ■ Requires the Commissioner to prevent fraudulent or other misuse of SSNs by establishing procedures under which an individual can block the use of his or her SSN under the EEVS and remove such block. ■ Implementation of the new H-2C guest worker program relating to immigrants who are outside the U.S. may not be implemented until 18 months after \$400 million are appropriated to implement the EEVS. ■ Requires the Secretary, in issuing documentation to employment authorized immigrants, to conspicuously state if there are any limits with respect to the limit or type of employment or employer.