

TO AMEND SECTION 274A OF THE IMMIGRATION AND NATIONALITY ACT TO IMPROVE THE PROCESS FOR VERIFYING AN INDIVIDUAL'S ELIGIBILITY FOR EMPLOYMENT

OCTOBER 5, 2004.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H.R. 4306]

[Including Committee Cost Estimate]

The Committee on the Judiciary, to whom was referred the bill (H.R. 4306) to amend section 274A of the Immigration and Nationality Act to improve the process for verifying an individual's eligibility for employment, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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THE AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. IMPROVEMENTS TO EMPLOYMENT VERIFICATION SYSTEM.

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

(1) in paragraph (1)(A), by inserting before “A person or entity has complied” the following: “Such attestation may be manifested by either a hand-written or an electronic signature.”;

(2) in paragraph (2), by adding at the end the following: “Such attestation may be manifested by either a hand-written or an electronic signature.”; and

(3) in paragraph (3), by inserting “a paper, microfiche, microfilm, or electronic version of” after “must retain”.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the earlier of—

(1) the date on which final regulations implementing such amendments take effect; or

(2) 90 days after the date of the enactment of this Act.

PURPOSE AND SUMMARY

H.R. 4306 would amend the Immigration and Nationality Act to allow employers to comply with a statutory mandate to prepare and retain Employment Eligibility Verification Forms (Forms I-9) for their employees electronically.

BACKGROUND AND NEED FOR THE LEGISLATION

All employers in the United States are required to complete and retain Employment Eligibility Verification Forms (Forms I-9) for each individual they hire for employment in the United States.¹ On the form, the employer must identify the employment eligibility and identity documents presented by the employee and verify review of those documents. The employer is not required to file the form with the government, but instead must keep the form in paper form or on microfiche or microfilm, either for 3 years after the date of hire or for 1 year after employment is terminated, whichever is later.

The form must be made available for inspection by Federal officials from U.S. Immigration and Customs Enforcement (“ICE”), the Justice Department’s Civil Rights Division, and the Department of Labor. Government officials who want to inspect those documents must provide the employer with three business days’ notice of such inspection. The documents must be made available for inspection either at the place where the request was made or elsewhere if the employer and government officials agree.

H.R. 4306 would allow employers to electronically complete and store I-9 forms. This legislation is a reasonable extension of the current law. It would not only facilitate employer compliance, but also enhance enforcement of the law.

In allowing for the electronic storage and retrieval of I-9 forms, the bill would facilitate both an employer’s presentation of documents and the government’s inspection of them. Electronic storage would allow an employer to easily maintain a single I-9 storage system for its various facilities throughout the country. This is particularly important to companies that operate multiple worksites in

¹ See section 274A of the Immigration and Nationality Act.

different states. Such a system could be accessed from remote locations by computer and, therefore, could eliminate the practical problem of unearthing and relocating individual forms each time an employee is transferred from one facility to another. Electronically stored I-9 forms could also be retrieved more quickly than paper, microfiche, or microfilm copies, simply by entering the employee's name or identification number into a storage system.

Centralized electronic storage would also facilitate review of the documents and thereby facilitate enforcement of the immigration laws by Federal officials. Currently, in many cases the breadth of the inspection request by the government is unclear. Often, the difficulty of presenting the documents circumscribes the scope of the inspection. For example, if an inspection were scheduled for the I-9 forms of an outlet of a chain store, generally only forms for that outlet would be provided. The presentation of documents from the company as a whole, within the 3 days required by law, would be impractical.

Often, however, the actions of an outlet are indicative of the actions of the company as a whole. If the company were to maintain I-9 forms electronically, government officials could request documents for the company as a whole as easily as they could for any individual outlet. In addition, inspection of the forms themselves, which currently requires examination of writing that is often barely legible, would also be facilitated. Further, ICE, the Justice Department, or the Labor Department could request a company that retains I-9 forms electronically to provide the documents electronically for inspection purposes. Those Federal officials could then perform "virtual audits" of businesses by sending out the requisite notice, and receiving electronic copies of the forms and other requested documents without ever going to the place of employment.

Maintaining sufficient storage space to accommodate hard copies of I-9 forms has become a significant document management challenge for many companies, especially in industries with high turnover rates for employees. This burden is magnified by the length of the retention requirements for I-9 forms. Storing forms electronically would greatly alleviate, if not eliminate, this burden.

Concerns have been raised in the past that paper I-9 forms, which contain a significant amount of personal information on the employee (e.g., name, Social Security number, A-number), can pose a privacy risk if they are improperly used or are stolen. The largely paper-based nature of those documents is one of the main reasons for this concern because access to paper (or even microfiche and microfilm) records can be restricted only by physical security devices. Access to electronically stored records can be restricted effectively to authorized personnel through the use of passwords and access codes, in addition to physical security measures, such as locks.

Electronic storage could greatly increase the organization of Forms I-9, making them both easier to provide and to review. Regardless of the degree of care exercised in storing paper documents, inevitably such documents can be lost, misplaced, misfiled, or physically damaged. This likelihood increases over time, as physical records are removed from and returned to files, or transferred from file to file. In addition to the typical day-to-day damage that paper documents often suffer over time, such documents are subject to complete loss in the event of theft or disaster. Companies have

raised such losses as a defense to non-compliance with the retention and presentation requirements in the past. While no company could be expected to “back up” all their original I-9 forms with photocopies, securely backing up electronic files has become a routine part of any company’s daily procedures.

The electronic completion and storage of I-9 forms is consistent with the Government Paperwork Elimination Act (GPEA).² GPEA gave Federal agencies until October 2003 to provide citizens the option of conducting business with the government electronically. The law also provides that electronic records and their related electronic signatures are not to be denied legal effect, validity, or enforceability merely because they are in electronic form. Moreover, the Electronic Signatures in Global and National Commerce Act³ provides that electronic signatures on contracts and most other legal documents are as valid and enforceable as written signatures. Under this bill, electronic copies of I-9 forms are to be considered legally valid and enforceable. Likewise, the Federal Rules of Evidence provide for the admissibility of electronically stored data and information, specifying that printouts of such information constitute “originals” for evidentiary purposes. Under this bill, therefore, electronic copies of I-9 forms could be submitted in connection with a criminal or administrative proceeding relating to the documents.

HEARINGS

No hearings were held in the Committee on the Judiciary on H.R. 4306.

COMMITTEE CONSIDERATION

On September 14, 2004, the Subcommittee on Immigration, Border Security, and Claims met in open session and ordered favorably reported the bill H.R. 4306, with an amendment, by a voice vote, a quorum being present. On September 30, 2004, the Committee met in open session and ordered favorably reported the bill H.R. 4306 with an amendment, by voice vote, a quorum being present.

VOTE OF THE COMMITTEE

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee notes that there were no recorded votes during the Committee’s consideration of H.R. 4306.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

²Pub. L. No. 105–277 (1998).

³Pub. L. No. 106–229 (2000).

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

COMMITTEE COST ESTIMATE

In compliance with clause 3(d)(2) of rule XIII of the Rules of the House of Representatives, the Committee believes that the bill will have no significant cost for the current fiscal year, and no significant cost for the next five fiscal years. The Committee did not receive any estimates of the costs of this legislation from any other government agency as outlined in clause 3(d)(2)(B) of rule XIII. The bill does not authorize programs so the Committee cannot provide a comparison with relevant programs under current law as outlined in clause 3(d)(2)(C) of rule XIII.

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the bill would amend the Immigration and Nationality Act to allow employers to comply with a statutory mandate to prepare and retain Employment Eligibility Verification Forms (Forms I-9) for their employees electronically, making more efficient the retention of the documents and facilitating their review by the government.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, § 8 of the Constitution.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

The following discussion describes the bill as reported by the Committee.

Sec. 1. Improvements to Employment Verification System.

Subsection 1(a) amends the Immigration and Nationality Act to allow employers to complete Forms I-9 electronically. This section specifically allows employers and employees to complete the attestation required under paragraph 274A(b)(1) of the INA electronically. It also allows employers to retain Forms I-9 electronically, as well as in paper form or on microfilm and microfiche.

Subsection 1(b) provides that the amendments in this bill will take effect on the earlier of the date on which final regulations implementing the regulations take effect, or 90 days after enactment, whichever is earlier.

AGENCY VIEWS

Assistant Secretary for Legislative Affairs
U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

OCT 05 2004

The Honorable F. James Sensenbrenner, Jr.
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515-6216

Dear Mr. Chairman:

The Department of Homeland Security has reviewed and would like to comment on H.R. 4306, a bill pending before the House Committee on the Judiciary. H.R. 4306 would amend section 274A of the Immigration and Nationality Act to authorize employers to prepare, maintain and present for inspection employment eligibility verification forms (Form I-9) in electronic as well as paper format. It would also authorize attestation of employment eligibility to be manifested by electronic signature.

DHS supports the concept of electronic I-9 forms. Electronic preparation and storage of employee attestation forms can be a useful E-government initiative that improves customer service and reduces a substantial regulatory compliance burden on employers. It can also be a useful tool for law enforcement as long as DHS is able to set appropriate regulatory standards relating to indexing, searchability, organization, accessibility, presentation, and format of electronically maintained Forms I-9, as it does now with respect to paper or microfilmed I-9s (see 8 C.F.R. § 274a.2), before the new authority goes into effect. It is important that law enforcement retain the ability to prosecute either the employer or employee for false statements on the electronic forms. Otherwise, the important enforcement missions of these agencies could be compromised and fraud encouraged.

For this reason, DHS supports the bill with an amendment that would delay the bill's effective date for at least 180 days in order to allow the department to amend its regulations to address these electronic I-9 concerns. This will help ensure that worksite, employer sanction, and antidiscrimination enforcement interests will continue to have full access to accurate I-9s, which is essential to their mission. Finally, DHS also recommends that the bill include authorization for funding necessary to implement the bill.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs at (202) 205-4412.

Sincerely,



Pamela J. Turner
Assistant Secretary for Legislative Affairs

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italics and existing law in which no change is proposed is shown in roman):

SECTION 274A OF THE IMMIGRATION AND NATIONALITY ACT

UNLAWFUL EMPLOYMENT OF ALIENS

SEC. 274A. (a) * * *

(b) EMPLOYMENT VERIFICATION SYSTEM.—The requirements referred to in paragraphs (1)(B) and (3) of subsection (a) are, in the case of a person or other entity hiring, recruiting, or referring an individual for employment in the United States, the requirements specified in the following three paragraphs:

(1) ATTESTATION AFTER EXAMINATION OF DOCUMENTATION.—

(A) IN GENERAL.—The person or entity must attest, under penalty of perjury and on a form designated or established by the Attorney General by regulation, that it has verified that the individual is not an unauthorized alien by examining—

(i) * * *

* * * * *

Such attestation may be manifested by either a handwritten or an electronic signature. A person or entity has complied with the requirement of this paragraph with respect to examination of a document if the document reasonably appears on its face to be genuine. If an individual provides a document or combination of documents that reasonably appears on its face to be genuine and that is sufficient to meet the requirements of the first sentence of this paragraph, nothing in this paragraph shall be construed as requiring the person or entity to solicit the production of any other document or as requiring the individual to produce such another document.

(2) INDIVIDUAL ATTESTATION OF EMPLOYMENT AUTHORIZATION.—The individual must attest, under penalty of perjury on the form designated or established for purposes of paragraph (1), that the individual is a citizen or national of the United States, an alien lawfully admitted for permanent residence, or an alien who is authorized under this Act or by the Attorney General to be hired, recruited, or referred for such employment. *Such attestation may be manifested by either a handwritten or an electronic signature.*

(3) RETENTION OF VERIFICATION FORM.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must retain a *paper, microfiche, microfilm, or electronic version* of the form and make it available for inspection by officers of the Service, the Special Counsel for Immigration-Related Unfair Employment Practices, or the Department of Labor during a period beginning on the date of the hiring, recruiting, or referral of the individual and ending—

(A) * * *

* * * * *

MARKUP TRANSCRIPT

BUSINESS MEETING**THURSDAY, SEPTEMBER 30, 2004**HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:05 a.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Chairman SENSENBRENNER. The Committee will come to order. A working quorum is present. The first item on the agenda is H.R. 4306, to amend section 274A of the Immigration and Nationality Act to improve the process for verifying an individual's eligibility for employment. The Chair recognizes the gentleman from Indiana, Mr. Hostettler, the Chairman of the Subcommittee on Immigration, Border Security, and Claims, for a motion.

Mr. HOSTETTLER. Mr. Chairman, the Subcommittee on Immigration, Border Security, and Claims reports favorably the bill H.R. 4306 with the single amendment in the nature of a substitute and moves its favorable recommendation to the full House.

Chairman SENSENBRENNER. Without objection, the bill will be considered as read and open for amendment at any point.

[The bill, H.R. 4306, follows:]

108TH CONGRESS
2D SESSION

H. R. 4306

To amend section 274A of the Immigration and Nationality Act to improve the process for verifying an individual's eligibility for employment.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2004

Mr. CANNON (for himself and Mr. ANDREWS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend section 274A of the Immigration and Nationality Act to improve the process for verifying an individual's eligibility for employment.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. IMPROVEMENTS TO EMPLOYMENT**
4 **VERIFICATION SYSTEM.**

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

7 (1) in paragraph (1), by inserting before “A
8 person or entity has complied” the following:

9 “Such attestation may be manifested by either
10 a hand-written or an electronic signature.”;

2

1 (2) in paragraph (2), by adding at the end the
2 following:

3 “Such attestation may be manifested by either a
4 hand-written or an electronic signature.”; and

5 (3) in paragraph (3), by inserting “a paper or
6 electronic version of” after “must retain”.

○

Chairman SENSENBRENNER. And the Subcommittee amendment in the nature of a substitute which the Members have before them will be considered as read, considered as the original text for purposes of amendment and open for amendment at any point.
[The amendment follows:]

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H.L.G.

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 4306 AS REPORTED BY THE SUB-
COMMITTEE ON IMMIGRATION, BORDER SECU-
RITY, AND CLAIMS**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. IMPROVEMENTS TO EMPLOYMENT VERIFICA-
2 TION SYSTEM.**

3 (a) IN GENERAL.—Section 274A(b) of the Immigra-
4 tion and Nationality Act (8 U.S.C. 1324a(b)) is
5 amended—

6 (1) in paragraph (1)(A), by inserting before “A
7 person or entity has complied” the following: “Such
8 attestation may be manifested by either a hand-writ-
9 ten or an electronic signature.”;

10 (2) in paragraph (2), by adding at the end the
11 following: “Such attestation may be manifested by
12 either a hand-written or an electronic signature.”;
13 and

14 (3) in paragraph (3), by inserting “a paper,
15 microfiche, microfilm, or electronic version of” after
16 “must retain”.



1 (b) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall take effect on the earlier of—

3 (1) the date on which final regulations imple-
4 menting such amendments take effect; or

5 (2) 90 days after the date of the enactment of
6 this Act.



Chairman SENSENBRENNER. The Chair recognizes the gentleman from Indiana, Mr. Hostettler, to strike the last word briefly.

Mr. HOSTETTLER. Thank you, Mr. Chairman. I urge my colleagues to support H.R. 4306, introduced by our colleague Mr. Cannon, which would allow for the electronic preparation and storage of employment eligibility verification forms known as forms I-9.

In the Immigration Reform and Control Act of 1986 Congress prohibited American employers from hiring aliens who lack employment authorization. To assist employers in complying with this requirement, the IRCA mandated that employers review documents establishing their employees employment authorization and ensure that the employees attested to the fact that they were eligible to be employed. Both the employee's attestation and the employer's review of the documents were to be memorialized on the form I-9, a document that was introduced by INS in 1987. Forms I-9 are not filed with the Federal Government. Rather, to ensure that the employer complied with the I-9 requirements and to allow the government the opportunity to ensure that the employer complied with the immigration and labor laws, IRCA required the employer to retain the form for 3 years after hire or 1 year after the employee's termination, whichever was later.

The 1987 regulations implementing this provision allow the employer to keep those forms in one of three ways, on the original paper form, on microfilm or microfiche. While there have been many advances in document preparation and retention technology in the past 17 years, those changes have not been reflected in the employment eligibility verification regulations. As a consequence, there is still only one method for preparing form I-9 and that is on the original form. There are still only three ways to retain those forms, on the original paper, on microfilm and on microfiche.

H.R. 4306 would bring the employment verification process into the 21st century by allowing employers to complete and retain forms I-9 electronically. This proposal would benefit the employer in maintaining records as well as the government in enforcing the immigration and labor laws. Electronic preparation and retention will allow employers to improve efficiency in the hiring process and save resources that they currently spend on preparing and storing paper forms I-9. Further, electronic access to forms I-9 will make it easier for government agents to review those forms and in particular make it easier for the Department of Homeland Security to enforce the employer sanctions provisions of the Immigration and Nationality Act.

For these reasons I urge my colleagues to support H.R. 4306 and yield back the balance of my time.

Chairman SENSENBRENNER. Does the gentleman from Virginia wish to give an opening statement?

Mr. SCOTT. Mr. Chairman, I would ask unanimous consent that a statement from the gentlelady from Texas, Ms. Jackson Lee in support of the bill be entered into the record.

Chairman SENSENBRENNER. Without objection, so ordered. And without objection all Members may include opening statements in the record at this point.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF TEXAS, AND RANKING MEMBER, SUBCOMMITTEE
ON IMMIGRATION, BORDER SECURITY, AND CLAIMS

The regulation 8 CFR §274a2(b)(2) requires United States employers to process and retain I-9 forms for up to 3 years. These forms are used to verify the employment eligibility and identity of all employees in the United States. They are required to be kept on paper or on microfilm or microfiche. This was fine in 1988, when the regulation was promulgated. Computers were expensive and less widely used in 1988. Paper records were an unavoidable burden then, and microfilm and microfiche were being used far more in 1988 than they are now. It is not appropriate to be restricted to such records in the computer age that we live in today.

More than half of the benefits applications that are submitted to the U.S. Citizenship and Immigration Service are filed on its website, but employers are still required to maintain paper I-9 forms. Employers should be permitted to keep the Form I-9 in electronic form. In addition to saving paper and storage space, an electronic storage system would permit a central reservoir of data and allow retrieval of I-9 forms in a fraction of the time it takes to retrieve paper, microfiche, or microfilm copies.

H.R. 4306 simply would allow employers the option of electronic processing and storage of the I-9 forms. This would include electronic signatures. I will vote for H.R. 4306.

Thank you.

Chairman SENSENBRENNER. Are there amendments? If there are no amendments, a reporting quorum is not present, and without objection the previous question is ordered on reporting the bill favorably.

[Intervening business.]

Chairman SENSENBRENNER. The unfinished business is the motion to report favorably the bill, H.R. 4306, to amend section 274A of the Immigration and Nationality Act, to improve the process for verifying an individual's eligibility for employment, on which the previous question is ordered.

The question occurs on the motion to report—or excuse me. A reporting quorum is present. The question occurs on the motion to report the bill, H.R. 4306, favorably. All those in favor will say aye. Opposed, no. The ayes appear to have it. The ayes have it. The motion to report favorably is agreed to.

Without objection, the Chairman is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes, and all Members will be given 2 days as provided by the House rules in which to submit additional, dissenting, supplemental, or minority views.

