



## U.S. CHAMBER OF COMMERCE: CHAIRMAN SMITH'S E-VERIFY LEGISLATION

**WASHINGTON D.C.**—U.S. Chamber of Commerce Senior Vice President of Labor, Immigration, and Employee Benefits Randy Johnson, issued the following statement in support of the “Legal Workforce Act,” introduced by Rep. Lamar Smith, Chairman of the House Judiciary Committee:

The Chamber commends Chairman Smith for introducing a new E-Verify bill that has strong preemption language for state and local laws mandating the use of E-Verify or establishing state or local employment verification schemes, mirrors the existing FAR rules for federal contractors using E-Verify on current workforce, and establishes a fully electronic employment verification obligation with a clear safe harbor for employers that act in good faith.

While some concerns and technical issues may arise as the bill is subject to hearings and line by line analysis, this legislation represents a legitimate balancing of many competing interests. We hope to continue to work with the Chairman to resolve any impediments to passage as the legislation moves forward.

The Chamber believes a workable employment verification system addresses only one part of our nation's dysfunctional immigration system in need of reform. It is our hope that Congress can also move legislation concerning other aspects of immigration reform, recognizing that compromises will be necessary.



## SOCIETY FOR HUMAN RESOURCE MANAGEMENT: BILL WOULD MANDATE E-VERIFY FOR ALL U.S. EMPLOYERS

Legislation that would change how American employers verify the eligibility of job candidates and new hires was introduced in the House of Representatives on June 14, 2011. The Legal Workforce Act of 2011 ([H.R. 2164](#)) would require all employers in the country to use E-Verify, the federal government's electronic verification system, and would eliminate the I-9 immigration status form.

According to a summary of the proposal, the new employment verification processes would be phased in over two years once the bill is enacted. Rep. Lamar Smith, R-Texas, the chief sponsor of the bill, told reporters that the measure had the potential to open up millions of jobs to individuals who are eligible to work in the United States.

"Jobs are scarce," said Smith, who is chairman of the House Judiciary Committee. "Despite record unemployment, 7 million people work in the U.S. illegally. These jobs should go to legal workers."

Sources familiar with the issue say the legislation could move quickly and gain approval in the House. The House Judiciary Subcommittee on Immigration Policy and Enforcement was scheduled to hold a hearing on the proposal on June 15, 2011. Smith stated that he would like to see the bill approved by the full Judiciary Committee before the first week of August 2011, when Congress is set to go on recess.

### **Support in Both Chambers**

The legislation has strong support among GOP leaders in the House, and observers say that several House Democrats have indicated that they would vote for passage of the bill. While it remains unclear if companion legislation will be introduced in the Senate, the House proposal might have a good chance of moving in the Senate, sources agree. Over the past three years, the Senate has voted to approve extending the E-Verify program. And several Democratic leaders in the Senate have explored the options of developing biometric verification processes to support the challenging employee verification process.

According to sources, President Barack Obama has expressed interest in developing a nationwide electronic verification system and would most likely sign H.R. 2164.

The law would phase in the requirement that employers use E-Verify for new hires. In the first six months after enactment, businesses with more than 10,000 employees would be

required to use E-Verify. After one year, the law would require businesses with 500 to 9,999 employees to use E-Verify. The requirement would apply after 18 months to employers with 20 to 499 employees, and in two years businesses with one to 19 employees would be mandated to use E-Verify.

The measure would eliminate use of the I-9 verification form and replace it with a more sweeping electronic verification system. The bill would establish a pilot program for biometric verification under which biometric verification techniques would be tested in several states.

In addition, the bill would pre-empt any state law that requires employers to use E-Verify to verify the work eligibility of employees. The proposal, however, would give state and municipal governments the right to require that businesses use E-Verify in order to qualify for business licenses and contracts from state and local governments.

Agriculture-based employers, and employees performing "agricultural labor or services," would be subject to E-Verify checks three years after the bill was signed. According to the agriculture provision, individuals who perform seasonal agricultural work are not considered new hires if they worked for the same employer previously.

Employers and business groups worked closely with Smith and his staff to help draft the proposal. While employer and industry groups were busily analyzing the measure immediately after its release, some groups did praise the effort.

"We applaud the legislation for embracing the latest technology to make the E-Verify system uniform for all employers and for including a biometric pilot program, which we believe is a necessary component to ensuring the accuracy and reliability of any employment verification system," Lynn Shotwell, executive director of the American Council on International Personnel in Washington, D.C., said in a written statement. "Our members uniquely know the challenges that a patchwork of state and local verification laws could pose, and we applaud you for including federal pre-emption of such a disparate network of laws in your legislation."

*Bill Leonard is a senior writer for SHRM.*



## AMERICAN COUNCIL ON INTERNATIONAL PERSONNEL: SUPPORT FOR LEGAL WORKFORCE ACT

Dear Chairman Smith:

On behalf of the American Council on International Personnel (ACIP), I am writing to thank you for introducing the *Legal Workforce Act*, legislation that would rightly create one, federal electronic employment eligibility system.

ACIP is the leading trade association that advocates for sound business immigration policy. Our members consist of over 220 of America's largest companies, universities and non-profit research institutions. We represent the in-house human resource and legal professionals responsible for hiring and verifying the employment eligibility of employees at locations across the United States.

Our members uniquely know the challenges that a patchwork of state and local verification laws could pose, and we applaud you for including federal preemption of such a disparate network of laws in your legislation. Given the recent U.S. Supreme Court decision in *Chamber of Commerce of the United States of America et al. v. Whiting et al.*, federal preemption is the right direction.

We also applaud the legislation for embracing the latest technology to make the E-Verify system uniform for all employers and for including a biometric pilot program, which we believe is a necessary component to ensuring the accuracy and reliability of any employment verification system. Employers work hard to balance their verification duties with nondiscrimination requirements, and they must be able to hire with confidence, knowing that the person they clear for hiring is in fact the person he or she claims to be.

We thank you again for introducing the *Legal Workforce Act*, and we look forward to working with you to ensure the system created is workable for all employers.

Respectfully submitted,

Lynn Shotwell  
Executive Director, ACIP



## ESSENTIAL WORKER IMMIGRATION COALITION: LEGAL WORKFORCE ACT: BRIEF SUMMARY

To Whom It May Concern:

We write this letter in support of the work done on H.R. 2164, The Legal Workforce Act introduced by House Judiciary Chairman Lamar Smith on June 14, 2011. This is a bill that, if passed, would mandate an improved E-Verify program on all employers and for all new hires.

EWIC is a coalition of businesses, trade associations, and other organizations from across the industry spectrum that support reform of U.S. immigration policy to facilitate a sustainable workforce for the American economy while ensuring our national security and prosperity. We want to underscore the need for establishing a workable, reliable and efficient worksite enforcement employment eligibility system. A new E-Verify mandate would impact every business in the United States as well as every employee. It is imperative that this new system function properly and be administered in the proper environment.

Some of the most important goals for EWIC include:

- Clarification that federal jurisdiction preempts state and local laws. (H.R. 2164 levels the field, by providing one standard for business to comply with and eliminating the morass of state and local employment verification laws);
- safe harbors for employers that use E-Verify in good faith; (H.R. 2164 has such safe harbors);
- a toll-free telephonic option, so all businesses can start using the system without additional expenses (H.R. 2164 has such an option);
- fully electronic version will be available to employers. The fully electronic version will provide reminders to employers when temporary work authorization is expiring, and will provide printable and searchable records for employers. (H.R. 2164 has this electronic version);
- adequate funding with resources available to implement the program with more than six million employers (H.R. 2164 attempts to address this);
- not burdensome to employers from either a cost or an administrative perspective (H.R. 2164 attempts to address this);

- focus on a new verification system that only applies to new hires - no mandatory retroactive reverification for entire current workforce (H.R. 2164 does not include a universal reverification. It does require verification when a current employee's wage and tax records don't match. This is an issue for the EWIC community);
- a reasonable number of reliable documents to reduce fraud (H.R. 2164 includes this);
- a reasonable definition of "critical infrastructure" employers (H.R. 2164 includes this definition);
- a "knowing" intent standard for liability for both employers and contractors that have subcontractor relationships (H.R. 2164 includes this);
- a reasonable system response times (H.R. 2164 has such response times);
- an option for employers to begin the verification process once an offer has been officially made (H.R.2164 includes this);
- accountability for errors when employers and/or employees are given inaccurate information (H.R. 2164 addresses this);
- an investigative and enforcement system that takes into consideration concerns of small business and is fair, with penalties commensurate to the offense including provisions to protect first-time good faith offenders caught in the web of ever-changing federal regulations (H.R. 2164 includes this); and
- recognition that automatic debarment of employers from federal government contracts is not an authority that should be given to DHS and must be handled through current law under the Federal Acquisition Regulations ("FAR") (H.R. 2164 includes this).

Congress still needs to fix our immigration system to recognize the ongoing need of the American economy for workers when not enough American workers are available, and to separate those who wish to harm our nation from those who wish to help build it. The current system does not work for anyone, and Congress needs to address the issue in a coherent manner that serves both our national security and economic interests. We are prepared to continue to work with all involved to establish a functional, reliable and efficient system. We believe Chairman Smith's bill takes very significant steps to achieving the goals important to EWIC for an improved E-Verify system. It represents a legitimate balancing of many competing interests. We will work with the Chairman to defend the bill's language and, then, resolve any impediments to passage.

Sincerely,

American Staffing Association  
 Associated Builders & Contractors, Inc.  
 Associated General Contractors of America  
 Associated Landscape Contractors of Colorado  
 Federation of Employers and Workers of America  
 Golf Course Superintendents Association of America

ImmigrationWorks USA  
International Franchise Association  
National Association of Home Builders  
National Council of Chain Restaurants  
National Restaurant Association  
National Roofing Contractors Association  
Tree Care Industry Association  
U.S. Chamber of Commerce