



October 21, 2011

TO ALL MEMBERS OF THE HOUSE OF REPRESENTATIVES

The National Small Business Association (NSBA) urges you to oppose the Legal Workforce Act (H.R. 2885) recently reported out of the House Judiciary Committee. It is bad policy. Moreover, we are firmly convinced that Congress would regret passing this legislation. Once implemented, there is likely to be a storm of protest from American citizens who would be either denied employment by this legislation or forced to navigate a months-long bureaucratic process to exercise their right to earn a living. Moreover, small employers will react very negatively to the cost and uncertainty associated with mandated use of E-verify.

The bill mandates that all employers in the U.S. use E-Verify to determine that their employees are legal. If passed, small businesses will have 12 to 24 months to comply with the law, depending on their size.

Bloomberg news has estimated that businesses with fewer than 500 workers would bear the greatest burden of E-verify, spending about \$2.6 billion a year, compared with less than \$100 million for the 4 percent that used it in 2010.

Both the Government Accountability Office and Westat, a Rockville, Maryland-based social science research firm under contract to USCIS, have found that the system continues to be highly inaccurate. More unauthorized workers are deemed authorized by the system (3.3 percent of all E-verify cases) than are found unauthorized to work (2.9 percent of all E-verify cases).

On average, 0.7 percent of authorized workers are found unauthorized initially (a tentative non-confirmation or TNC). There are four to five million new hires in the U.S. per month. That means that E-verify will deny employment opportunities for about 28,000 to 35,000 Americans per month (340,000 to 420,000 annually) or force them to navigate a bureaucratic morass, usually for months. USCIS and SSA estimate that about 60 million queries would be generated annually under E-Verify if the program were made mandatory for new hires nationwide. These agencies estimate that 164,000 people will be given a TNC for name-related reasons alone.

The system generates erroneous tentative confirmations for 3.2 percent of naturalized citizens (one in 31), 2.1 percent of lawful resident aliens (one in 48) and 0.1 percent of U.S. born citizens (one in a 1000). Thus tens of thousands of American citizens will be deemed unauthorized to work by the system each month. It takes months to resolve database mistakes. Meanwhile, both the employer and employee are in legal and business limbo. The employer is forced to pay the employee although there is a high chance that he or she will eventually be deemed unauthorized. And the employer and

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employee will be forced to navigate a complex bureaucratic morass just to exercise their right to work.

There are also a large number of erroneous final non-confirmations. Thus, a large but unknown number of Americans will be denied employment because of E-verify. This is unjust.

E-verify does not address the major problem of false documents being used. GAO found that “identity fraud continues to be a challenge for E-Verify as well as for current employment verification processes. We have previously reported that weaknesses in the Form I-9 system, such as difficulty in detecting document and identity fraud and the large number of acceptable documents for proving work eligibility, have undermined the effectiveness of the employment verification process. Because E-Verify is an automated system based on the Form I-9, it possesses the same inherent weaknesses.”

Under the legislation, businesses would be subject to civil fines up to \$25,000 and criminal penalties up to 10 years in prison and criminal fines of \$15,000 per illegal immigrant for non-compliance. If this legislation passes, the penalties imposed on non-compliant businesses would be absurdly disproportionate to the severity of the offense. The proposed prison sentence is as severe as the punishment for second degree murder in many states and twice the median sentence for kidnapping or drug trafficking, according to the Bureau for Justice Statistics.

Passing H.R. 2885 is ill-advised and we urge you to oppose this bill if it reaches the floor of the House of Representatives.

Sincerely,

A handwritten signature in black ink, appearing to read "Todd McCracken", with a long horizontal line extending to the right.

Todd McCracken
President