

BNA Snapshot
Immigration

House Judiciary Committee Approves Smith's Mandatory E-Verify Legislation

H.R. 2885: Legal Workforce Act

Key Development: House Judiciary Committee approves the bill on a party-line vote of 22-13. The bill would mandate E-Verify use for all new hires by U.S. employers.

Next Steps: The bill now moves to consideration on the House floor, but a date for such a vote has not yet been set. By Amber McKinney

The House Judiciary Committee Sept. 21 approved the proposed Legal Workforce Act (H.R. 2885), a bill that would mandate the use of E-Verify for all new hires by U.S. employers, by a party-line vote of 22-13.

The bill, introduced by Judiciary Committee Chairman Lamar Smith (R-Texas), revived debate about nationally mandating the federal government's electronic employment verification program (179 DLR A-16, 9/15/11).

Most Republicans see an E-Verify mandate as a positive step toward freeing up jobs currently held by undocumented workers for unemployed Americans. Smith praised the committee vote, saying anyone who cares about helping unemployed Americans should care about opening up jobs for them.

Meanwhile, Democrats criticized the bill, arguing that it would push undocumented workers into the underground economy and would

disproportionately impact the agricultural sector.

During the committee markup of the bill, a wide range of amendments was offered, most of which were not approved. Amendments that would have addressed the needs of agricultural workers were struck down, as was an amendment that would have removed a section of the bill preempting state or local laws related to the hiring, continued employment, or status verification for employment eligibility of unauthorized aliens.

Committee Votes to Close Loophole.'

However, the Judiciary Committee passed an amendment offered by Rep. Howard Berman (D-Calif.) intended to remove the loophole in the legislation that would have allowed returning seasonal agricultural workers to be exempt from E-Verify.

The amendment, passed on a 19-12 vote, closes a loophole that would have allowed a worker not to be considered a new hire subject to verification if the individual is working in seasonal agriculture and is returning to work for a previous employer.

The provision was intended to provide an additional cushion to farmers who often face a shortage of laborers and need a period of time to adjust to an E-Verify mandate, Smith said.

Returning seasonal agricultural workers would not be run through E-Verify because any other option would hurt the agricultural industry, he said.

Berman, who sponsored the amendment, said the provision amounted to a massive loophole, and was predicated on employers attesting that a worker was in fact a returning employee. This would amount to laughable de facto amnesty, he said.

Rep. Melvin Watt (D-Calif.) agreed, calling the returning worker exemption a loophole big enough to drive freight trucks, airplanes, locomotives all

filled with illegal workers through.

He added that it is ironic that those publicly, adamantly opposed to illegal immigration are now supporting this provision in the bill.

Rep. Steve King (R-Iowa) agreed with the Democrats, stating that any exemption from the rule of law troubles me.

Amendment Related to Agriculture Not Germane.'

A large portion of the H.R. 2885 markup was devoted to discussing the impact of an E-Verify mandate on the agricultural sector.

Most estimates indicate that at least half of all farmworkers in the United States are undocumented workers, and an E-Verify mandate has the potential to halt production at farms across the country if employers are not able to obtain enough legal workers.

Rep. Dan Lungren (R-Calif.) said he has grave concerns about what farmers will do if an E-Verify mandate is passed. The impact of mandatory E-Verify would be to devastate the agricultural industry, he said. We need to deal with this issue in a practical fashion.

Lungren proposed adding to H.R. 2885 a new guestworker program that would permit more legal foreign workers to come to the United States and work in the agricultural sector. However, his amendment was struck down as not germane to the underlying bill because it would add an entirely new visa program to the legislation.

Bill Contains Other Measures to Address Farmworkers

Although a new agricultural amendment was not attached to the bill, H.R. 2885 does contain provisions intended to address the unique needs of the agricultural sector.

Under the bill, agricultural employers would have three years to comply with provisions of the bill.

Smith also introduced the proposed American Specialty Agriculture Act (H.R. 2847), a bill that would replace the current H-2A agricultural guestworker program with a new attestation-based visa program administered by the Agriculture Department (173 DLR A-12, 9/7/11).

According to Smith, the bill would allow agricultural employers to more easily obtain guestworkers.

Preemption Provision Left Intact

Rep. Zoe Lofgren (D-Calif.) introduced an amendment to strike a section of the legislation that would preempt states from mandating E-Verify use. The amendment was rejected by the committee.

Lofgren said she and King don't agree on much, but do agree that preempting states from mandating E-Verify is a bad idea.

We have diverse views in the country on how to proceed on E-Verify, and the U.S. Supreme Court has determined states can pass E-Verify legislation, Lofgren said. We ought to go with what the Supreme Court has said on this.

Smith disagreed, arguing that Congress has power over immigration policy and preemption is consistent with a common sense reading of the Constitution.

According to Smith, it is important to preempt state and local E-Verify laws because American businesses need one federal standard for E-Verify, not 50 or more laws.

The Federation for American Immigration Reform Sept. 21 said they urged members of Congress to strip the preemption provision, and it is disappointing that Berman's amendment did not pass.