It was decided in the negative ..... { Yeas ..... 159 / Nays 260

¶31.17 [Roll No. 76]

AYES—159

Abercrombie
Andrews
Baesler
Barcia
Bartlett
Becerra
Boehner
Bonior
Boucher
Brown (CA)
Brown (FL)
Brown (OH)
Brownback
Bunn
Bunning
Buyer
Camp
Chabot
Chapman
Chenoweth
Chrysler
Clay
Clayton
Clyburn
Coburn
Coleman
Collins (GA)
Collins (MI)
Conyers
Cooley
Crane
Crapo
Cubin
DeLay
Dellums
Diaz-Balart
Doolittle
Doyle
Durbin
Edwards
Ehlers
Engel
English
Ensign
Evans
Ewing
Fields (LA)
Filner
Flake
Flanagan
Fox
Funderburk
Gibbons
Gillmor
Green
Hall (OH)
Hastings (FL)
Hastings (WA)
Hayworth
Hefner
Hilleary
Hilliard
Hinchey
Hoekstra
Jackson (IL)
Jackson-Lee (TX)
Jacobs
Jefferson
Johnson, E. B.
Johnson, Sam
Jones
King
Kingston
Klug
LaHood
Lewis (GA)
Lewis (KY)
Linder
Longley
Lucas
Manzullo
Martinez
Matsui
McDade
McDermott
McHugh
McIntosh
McNulty
Meek
Menendez
Mica
Miller (FL)
Mink
Mollohan
Murtha
Myers
Myrick
Nethercutt
Ney
Norwood
Oberstar
Obey
Olver
Ortiz
Owens
Oxley
Pastor
Paxon
Payne (NJ)
Pelosi
Petri
Pombo
Portman
Poshard
Quillen
Rahall
Ramstad
Rangel
Reed
Richardson
Roemer
Ros-Lehtinen
Rose
Roybal-Allard
Salmon
Sanders
Sanford
Scarborough
Schroeder
Sensenbrenner
Serrano
Slaughter
Smith (MI)
Smith (NJ)
Smith (WA)
Souder
Stockman
Stupak
Tate
Taylor (NC)
Tejeda
Thompson
Tiahrt
Torkildsen
Torres
Towns
Upton
Velazquez
Vento
Waldholtz
Walsh
Ward
Watt (NC)
Weldon (PA)
White
Woolsey
Wynn
Yates
Young (AK)

NOES—260

Ackerman
Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Baldacci
Ballenger
Barr
Barrett (NE)
Barrett (WI)
Barton
Bass
Bateman
Beilenson
Bentsen
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Bonilla
Bono
Borski
Brewster
Browder
Bryant (TN)
Bryant (TX)
Burr
Burton
Callahan
Calvert
Campbell
Canady
Cardin
Castle
Chambliss
Christensen
Clement
Clinger
Coble
Combest
Condit
Costello
Cox
Coyne
Cramer
Cremeans
Cunningham
Danner
Davis
de la Garza
Deal
DeFazio
DeLauro
Deutsch
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Dornan
Dreier
Duncan
Dunn
Ehrlich
Emerson
Eshoo
Everett
Farr
Fattah
Fawell
Fazio
Fields (TX)
Foglietta
Foley
Forbes
Ford
Fowler
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Furse
Gallegly
Ganske
Gejdenson
Gekas
Gephardt
Geren
Gilchrest
Gilman
Gonzalez
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hayes
Hefley
Heineman
Herger
Hobson
Hoke
Holden
Horn
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson (SD)
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennedy (RI)
Kennelly
Kildee
Kim
Kleczka
Klink
Knollenberg
Kolbe
LaFalce
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Levin
Lewis (CA)
Lightfoot
Lincoln
Lipinski
Livingston
LoBiondo
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martini
Mascara
McCarthy
McCollum
McCrery
McHale
McInnis
McKeon
McKinney
Meehan
Metcalf
Meyers
Miller (CA)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Neal
Neumann
Nussle
Orton
Packard
Pallone
Parker
Payne (VA)
Peterson (FL)
Peterson (MN)
Pickett
Pomeroy
Pryce
Quinn
Regula
Riggs
Rivers
Roberts
Rogers
Rohrabacher
Roth
Roukema
Royce
Sabo
Sawyer
Saxton
Schaefer
Schiff
Schumer
Scott
Seastrand
Shadegg
Shaw
Shays
Shuster
Sisisky
Skaggs
Skeen
Skelton
Smith (TX)
Spence
Spratt
Stearns
Stenholm
Studds
Stump
Talent
Tanner
Tauzin
Taylor (MS)
Thomas
Thornberry
Thornton
Thurman
Torricelli
Traficant
Visclosky
Volkmer
Vucanovich
Walker
Wamp
Watts (OK)
Waxman
Weldon (FL)
Weller
Whitfield
Wicker
Williams
Wilson
Wise
Wolf
Young (FL)
Zeliff
Zimmer

NOT VOTING—12

Collins (IL)
Hostettler
Johnston
Moakley
Nadler
Porter
Radanovich
Rush
Solomon
Stark
Stokes
Waters

So the amendment, as modified, was not agreed to.

After some further time,

¶31.18 RECORDED VOTE

A recorded vote by electronic device was ordered in the Committee of the Whole on the following amendment, as modified, submitted by Mr. GALLEGLY:

Amend section 401 to read as follows (and conform the table of contents accordingly):

SEC. 401. EMPLOYMENT ELIGIBILITY CONFIRMATION PROCESS.

Section 274A (8 U.S.C. 1324a) is amended—

(1) in subsection (a)(3), by inserting ''(A)'' after ''DEFENSE.—'', and by adding at the end the following:

''(B) FAILURE TO SEEK AND OBTAIN CONFIRMATION.—Subject to subsection (b)(7), in the case of a hiring of an individual for employment in the United States by a person or entity that employs more than 3 employees, the following rules apply:

''(i) FAILURE TO SEEK CONFIRMATION.—

''(I) IN GENERAL.—If the person or entity has not made an inquiry, under the mechanism established under subsection (b)(6), seeking confirmation of the identity, social security number, and work eligibility of the individual, by not later than the end of 3 working days (as specified by the Attorney General) after the date of the hiring, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after such 3 working days, except as provided in subclause (II).

''(II) SPECIAL RULE FOR FAILURE OF CONFIRMATION MECHANISM.—If such a person or entity in good faith attempts to make an inquiry during such 3 working days in order to qualify for the defense under subparagraph (A) and the confirmation mechanism has registered that not all inquiries were responded to during such time, the person or entity can make an inquiry in the first subsequent working day in which the confirmation mechanism registers no nonresponses and qualify for the defense.

''(ii) FAILURE TO OBTAIN CONFIRMATION.—If the person or entity has made the inquiry described in clause (i)(I) but has not received an appropriate confirmation of such identity, number, and work eligibility under such mechanism within the time period specified under subsection (b)(6)(D)(iii) after the time the confirmation inquiry was received, the defense under subparagraph (A) shall not be considered to apply with respect to any employment after the end of such time period.'';

(2) by amending paragraph (3) of subsection (b) to read as follows:

''(3) RETENTION OF VERIFICATION FORM AND CONFIRMATION.—After completion of such form in accordance with paragraphs (1) and (2), the person or entity must—

''(A) if the person employs not more than 3 employees, retain 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—

''(i) in the case of the recruiting or referral for a fee (without hiring) of an individual, three years after the date of the recruiting or referral, and

''(ii) in the case of the hiring of an individual—

''(I) three years after the date of such hiring, or

''(II) one year after the date the individual's employment is terminated, whichever is later; and

''(B) subject to paragraph (7), if the person employs more than 3 employees, seek to have (within 3 working days of the date of hiring) and have (within the time period specified under paragraph (6)(D)(iii)) the identity, social security number, and work eligibility of the individual confirmed in accordance with the procedures established under paragraph (6), except that if the person or entity in good faith attempts to make an inquiry in accordance with the procedures established under paragraph (6) during such 3 working days in order to fulfill the requirements under this subparagraph, and the confirmation mechanism has registered that not all inquiries were responded to during such time, the person or entity shall make an inquiry in the first subsequent working day in which the confirmation mechanism registers no nonresponses.''; and

(3) by adding at the end of subsection (b) the following new paragraphs:

''(6) EMPLOYMENT ELIGIBILITY CONFIRMATION PROCESS.—

''(A) IN GENERAL.—Subject to paragraph (7), the Attorney General shall establish a confirmation mechanism through which the Attorney General (or a designee of the Attorney General which may include a nongovernmental entity)—

''(i) responds to inquiries by employers, made through a toll-free telephone line, other electronic media, or toll-free facsimile

number in the form of an appropriate confirmation code or otherwise, on whether an individual is authorized to be employed by that employer, and

''(ii) maintains a record that such an inquiry was made and the confirmation provided (or not provided)

''(B) EXPEDITED PROCEDURE IN CASE OF NO CONFIRMATION.—In connection with subparagraph (A), the Attorney General shall establish, in consultation with the Commissioner of Social Security and the Commissioner of the Service, expedited procedures that shall be used under the confirmation mechanism in cases in which the confirmation is sought but is not provided through confirmation mechanism.

''(C) DESIGN AND OPERATION OF MECHANISM.—The confirmation mechanism shall be designed and operated—

''(i) to maximize the reliability of the confirmation process, and the ease of use by employers, recruiters, and referrers, consistent with insulating and protecting the privacy and security of the underlying information, and

''(ii) to respond to all inquiries made by employers on whether individuals are authorized to be employed by those employers, recruiters, or referrers registering all times when such response is not possible.

''(D) CONFIRMATION PROCESS.—(i) As part of the confirmation mechanism, the Commissioner of Social Security shall establish a reliable, secure method, which within the time period specified under clause (iii), compares the name and social security account number provided against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided and whether the individual has presented a social security account number that is not valid for employment. The Commissioner shall not disclose or release social security information.

''(ii) As part of the confirmation mechanism, the Commissioner of the Service shall establish a reliable, secure method, which, within the time period specified under clause (iii), compares the name and alien identification number (if any) provided against such information maintained by the Commissioner in order to confirm (or not confirm) the validity of the information provided and whether the alien is authorized to be employed in the United States.

''(iii) For purposes of this section, the Attorney General (or a designee of the Attorney General) shall provide through the confirmation mechanism confirmation or a tentative nonconfirmation of an individual's employment eligibility within 3 working days of the initial inquiry. In cases of tentative nonconfirmation, the Attorney General shall specify, in consultation with the Commissioner of Social Security and the Commissioner of the Service, an expedited time period not to exceed 10 working days within which final confirmation or denial must be provided through the confirmation mechanism in accordance with the procedures under subparagraph (B).

''(iv) The Commissioners shall update their information in a manner that promotes the maximum accuracy and shall provide a process for the prompt correction of erroneous information.

''(E) PROTECTIONS.—(i) In no case shall an individual be denied employment because of inaccurate or inaccessible data under the confirmation mechanism.

''(ii) The Attorney General shall assure that there is a timely and accessible process to challenge nonconfirmations made through the mechanism.

''(iii) If an individual would not have been dismissed from a job but for an error of the confirmation mechanism, the individual will be entitled to compensation through the mechanism of the Federal Tort Claims Act.

''(F) TESTER PROGRAM.—As part of the confirmation mechanism, the Attorney General shall implement a program of testers and investigative activities (similar to testing and other investigative activities assisted under the fair housing initiatives program under section 561 of the Housing and Community Development Act of 1987 to enforce rights under the Fair Housing Act) in order to monitor and prevent unlawful discrimination under the mechanism.

''(G) PROTECTION FROM LIABILITY FOR ACTIONS TAKEN ON THE BASIS OF INFORMATION PROVIDED BY THE EMPLOYMENT ELIGIBILITY CONFIRMATION MECHANISM.—No person shall be civilly or criminally liable for any action taken in good faith reliance on information provided through the employment eligibility confirmation mechanism established under this paragraph (including any pilot program established under paragraph (7)).

''(7) APPLICATION OF CONFIRMATION MECHANISM THROUGH PILOT PROJECTS.—

''(A) IN GENERAL.—Subsection (a)(3)(B) and paragraph (3) shall only apply to individuals hired if they are covered under a pilot project established under this paragraph.

''(B) UNDERTAKING PILOT PROJECTS.—For purposes of this paragraph, the Attorney General shall undertake pilot projects for all employers in at least 5 of the 7 States with the highest estimated population of unauthorized aliens, in order to test and assure that the confirmation mechanism described in paragraph (6) is reliable and easy to use. Such projects shall be initiated not later than 6 months after the date of the enactment of this paragraph. The Attorney General, however, shall not establish such mechanism in other States unless Congress so provides by law. The pilot projects shall terminate on such dates, not later than October 1, 1999, as the Attorney General determines. At least one such pilot project shall be carried out through a nongovernmental entity as the confirmation mechanism.

''(C) REPORT.—The Attorney General shall submit to the Congress annual reports in 1997, 1998, and 1999 on the development and implementation of the confirmation mechanism under this paragraph. Such reports may include an analysis of whether the mechanism implemented—

''(i) is reliable and easy to use;

''(ii) limits job losses due to inaccurate or unavailable data to less than 1 percent;

''(iii) increase or decreases discrimination;

''(iv) protects individual privacy with appropriate policy and technological mechanisms; and

''(v) burdens individual employers with costs or additional administrative requirements.''.

It was decided in the negative ..... { Yeas ..... 86 / Nays 331

¶31.19 [Roll No. 77]

AYES—86

Baker (CA)
Barton
Bateman
Beilenson
Bereuter
Berman
Bilbray
Bilirakis
Bono
Borski
Bryant (TX)
Burton
Calvert
Campbell
Canady
Cardin
Castle
Condit
Cunningham
Deal
DeFazio
DeLauro
Dreier
Duncan
Eshoo
Farr
Foglietta
Foley
Frank (MA)
Furse
Gallegly
Gejdenson
Geren
Gilchrest
Goodlatte
Goss
Holden
Horn
Hunter
Jacobs
Johnson (SD)
Kennedy (MA)
Kennedy (RI)
Kim
LaFalce
Leach
Levin
Lewis (CA)
Lowey
Manton
Markey
Martinez
McCollum
McKeon
McKinney
Meehan
Metcalf
Meyers
Miller (CA)
Moorhead
Neal
Obey
Packard
Pallone
Payne (VA)
Rohrabacher
Roth
Roukema
Royce
Sabo
Schumer
Seastrand
Shays
Smith (NJ)
Smith (TX)
Stenholm
Torricelli
Traficant
Vento
Visclosky
Vucanovich
Waxman
Wilson
Wynn
Young (AK)
Young (FL)

NOES—331

Abercrombie
Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (LA)
Baldacci
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Bass
Becerra
Bentsen
Bevill
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bonior
Boucher
Brewster
Browder
Brown (CA)
Brown (FL)
Brown (OH)
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Buyer
Callahan
Camp
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clay
Clayton
Clement
Clinger
Clyburn
Coble
Coburn
Coleman
Collins (GA)
Collins (MI)
Combest
Conyers
Cooley
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cremeans
Cubin
Danner
Davis
de la Garza
DeLay
Dellums
Deutsch
Diaz-Balart
Dickey
Dicks
Dingell
Dixon
Doggett
Dooley
Doolittle
Dornan
Doyle
Dunn
Durbin
Edwards
Ehlers
Ehrlich
Emerson
Engel
English
Ensign
Evans
Everett
Ewing
Fattah
Fawell
Fazio
Fields (LA)
Fields (TX)
Filner
Flake
Flanagan
Forbes
Ford
Fowler
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Frost
Funderburk
Ganske
Gekas
Gephardt
Gibbons
Gillmor
Gilman
Gonzalez
Goodling
Gordon
Graham
Green
Greenwood
Gunderson
Gutierrez
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (FL)
Hastings (WA)
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hilliard
Hinchey
Hobson
Hoekstra
Hoke
Houghton
Hoyer
Hutchinson
Hyde
Inglis
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennelly
Kildee
King
Kingston
Kleczka
Klink
Klug
Knollenberg
Kolbe
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Lewis (GA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lucas
Luther
Maloney
Manzullo
Martini
Mascara
Matsui
McCarthy
McCrery
McDade
McDermott
McHale
McHugh
McInnis
McIntosh
McNulty
Meek
Menendez
Mica
Miller (FL)
Minge
Mink
Molinari
Mollohan
Montgomery
Moran
Morella
Murtha
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oberstar
Olver
Ortiz
Orton
Owens
Oxley
Parker
Pastor
Paxon
Payne (NJ)
Pelosi
Peterson (FL)
Peterson (MN)
Petri
Pickett
Pombo
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Rahall
Ramstad
Rangel
Reed
Regula
Richardson
Riggs
Rivers
Roberts
Roemer
Rogers
Ros-Lehtinen
Roybal-Allard
Rush
Salmon
Sanders
Sanford
Sawyer
Saxton
Scarborough
Schaefer
Schiff
Schroeder