

BILL ANALYSIS

C.S.H.B. 38
By: Solomons
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The federal Immigration Reform and Control Act of 1986 (IRCA) legally mandates that U.S. employers verify the employment eligibility status of newly-hired employees. IRCA made it unlawful for employers to knowingly hire or continue to employ unauthorized workers. In response to the law, the Immigration and Naturalization Service (INS), now an integrated component of the Department of Homeland Security (DHS), created Form I-9 and mandated its accurate and timely completion by all U.S. employers and their employees. State law does not require the same standards of verification of employment eligibility status for applicants for a license by a state agency or a political subdivision.

C.S.H.B. 38 requires an applicant to establish employment eligibility when applying or renewing a business license issued by a department, board, office or other agency of this state or a political subdivision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the each licensing authority in SECTION 3 of this bill.

ANALYSIS

SECTION 1. Amends the Occupations Code by adding Chapter 60, Employment Eligibility in United States Required for Business, Occupational, or Professional License.

Sec. 60.001 defines employment eligibility, license, and licensing authority.

Sec. 60.002 provides that an applicant for a license must establish employment eligibility if the applicant is applying for an original license or renewing a license and the applicant has not previously established employment eligibility. The bill prohibits the licensing authority from issuing or renewing a license unless the applicant establishes employment eligibility.

Sec. 60.003 requires an applicant to provide to the licensing authority for inspection an original or copy of one of the following documents to establish employment eligibility: a United States passport, unexpired or expired; a Certificate of United States Citizenship; a Certificate of Naturalization; an unexpired foreign passport, with I-551 stamp or attached Form I-94 indicating unexpired employment authorization; a Permanent Resident Card or Alien Registration Receipt Card with photograph; an unexpired Temporary Resident Card; an unexpired Employment Authorization Card; an unexpired reentry permit; an unexpired Refugee Travel Document; or an unexpired Employment Authorization Document issued by the United States Department of Homeland Security that contains a photograph.

The bill requires an applicant to provide to the licensing authority for inspection two original or copies of the following documents, one from each list, to establish employment eligibility if an applicant is not able to provide one of the documents listed above: one of the following documents: a driver's license or identification card that is issued by a state or outlying possession of the United States and that contains the applicant's photograph or information, including the applicant's name, date of birth, sex, height, eye color, and address; an identification card that is issued by a federal, state, or local government agency and that contains the applicant's photograph or information, including the applicant's name, date of birth, sex, height, eye color, and address; a voter registration certificate; a United States military card or draft record; a
C.S.H.B. 38 80(R)

military dependent's identification card; a United States Coast Guard Merchant Mariner Card; a Native American tribal document; or a driver's license issued by a Canadian government authority. In addition to one of the following documents: a social security card issued by the Social Security Administration, other than a card stating it is not valid for employment; a Certification of Birth Abroad issued by the United States Department of State; an original or certified copy of a birth certificate issued by a state, county, municipality, or outlying possession of the United States bearing an official seal; a Native American tribal document; a United States Citizen Identification Card; an Identification Card for Use of Resident Citizen in the United States; or an unexpired Employment Authorization Document issued by the United States Department of Homeland Security.

Additionally, the bill authorizes an applicant to establish employment eligibility by submitting to a licensing authority a document verifying that the applicant provided to their current or most recent employer a true and correct Form I-9 along with authentic supporting documents. The bill provides that documents required to prove employment eligibility must be submitted with the license application unless an applicant submits an application through the TexasOnline system or another electronic means. The bill requires an applicant to submit the documentation not later than 30 days after the date the application is submitted electronically.

Sec. 60.004 authorizes a licensing authority to issue a temporary license, which expires on the 21st day after the date the temporary license is issued, to an applicant which has submitted all documentation that will be required for a licensing authority to verify the applicant's employment eligibility. The bill requires the licensing authority to determine the applicant's employment eligibility not later than the day the temporary license expires.

Sec. 60.005 authorizes a licensing authority to audit some or all of the applications submitted to the licensing authority for compliance with this chapter, including documents used to establish employment eligibility.

Sec. 60.006 provides that information provided by an applicant under this chapter that is not subject to disclosure under other law is confidential and not subject to disclosure under Chapter 552, Government Code.

Sec. 60.007 requires a licensing authority to implement this Act without discriminating against an applicant's race, religion, sex, ethnicity, or national origin.

SECTION 2 provides that the purpose of this Act is to assist in the enforcement of 8 U.S.C., Chapter 12.

SECTION 3 provides the same definitions for license and license authority as provided in SECTION 1. The bill requires each licensing authority to adopt rules under Chapter 60, Occupations Code, not later than January 1, 2008. The bill provides that the change in law made by this Act applies only to an application for the issuance or renewal of a license that is filed with a licensing authority on or after March 1, 2008.

SECTION 4 provides the effective date.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

SECTION 1. C.S.H.B. 38 differs from the original in Section 60.001(2)(B) by changing the word "person" to "individual" to reflect that employment eligibility is to be proved only by an individual, whereas the term person could include a person or a corporation. The substitute makes conforming changes to the original section.

The substitute deletes the requirement in the original that an applicant prove employment eligibility when renewing a license where their previously established eligibility documents have expired before the renewal date of the license and the requirement that a licensing authority must

C.S.H.B. 38 80(R)

keep record of each document used to prove eligibility. The substitute clarifies that an original or a copy of the documents required to prove employment eligibility are required for inspection whereas the original did not.

C.S.H.B. 38 removes language from the original stating, "For purposes of this chapter, a person's employment eligibility does not expire on the expiration date of a document that is not required by Subsection (a) to be unexpired. A person's license does not expire immediately on the expiration of a document used to establish the person's employment eligibility. However, renewal of the license is subject to Section 60.002." The substitute adds language to provide that in addition to the documents listed in the original, an applicant is authorized to establish employment eligibility by submitting a document verifying that the applicant provided their current or most recent employer a true and correct Form I-9 along with supporting documents. The substitute provides that documents required to prove employment eligibility must be submitted with the license application unless an applicant applies for a license through TexasOnline or other electronic means. The substitute requires an applicant to submit the documents not later than 30 days after the date the application is submitted electronically.

C.S.H.B. 38 also allows for a licensing authority to issue a temporary license, which expires on the 21st day after the date the temporary license is issued, to an applicant which has submitted documents to prove employment eligibility if the licensing authority has not yet verified the documents. The licensing authority shall determine the applicant's employment eligibility not later than the expiration of the temporary license. The substitute also allows a licensing authority to audit some or all of the applications submitted for compliance with this chapter, including the documents used to establish employment eligibility.

SECTION 2. C.S.H.B.38 adds a new SECTION 2 to provide that the purpose of this Act is to assist in the enforcement of 8 U.S.C., Chapter 12. The substitute makes conforming changes to the original section and renumbers the remaining SECTIONS of the bill.

SECTION 3 of the substitute makes conforming changes to SECTION 2 of the original.

SECTION 4 of the substitute is identical to SECTION 3 of the original.