

By: Riddle

H.B. No. 48

A BILL TO BE ENTITLED

AN ACT

relating to the suspension of certain licenses held by employers for the knowing employment of persons not lawfully present in the United States.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 2, Labor Code, is amended by adding Chapter 53 to read as follows:

CHAPTER 53. EMPLOYMENT OF PERSONS NOT LAWFULLY PRESENT IN UNITED STATES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Workforce Commission.

(2) "Employee" means an individual who is employed by an employer for compensation.

(3) "Employer" means a person who:  
(A) employs one or more employees; or  
(B) acts directly or indirectly in the interests of an employer in relation to an employee.

(4) "Employment" means any service, including service in interstate commerce, that is performed for wages or under a contract of hire, whether written or oral or express or implied. The term does not include any service performed by an individual for wages if it is shown that the individual is free from control or

1 direction in the performance of the service, both under any  
2 contract of service and in fact.

3 (5) "Lawful resident alien" means a person who is  
4 entitled to lawful residence in the United States under the federal  
5 Immigration and Nationality Act (8 U.S.C. Sec. 1101 et seq.).

6 (6) "Lawful resident verification information" means  
7 the documentation required by the United States Department of  
8 Homeland Security when completing the employment eligibility  
9 verification form commonly referred to as the I-9. Documentation  
10 that satisfies the requirements of the Form I-9 at the time of  
11 employment is lawful resident verification information.

12 (7) "License" means a license, certificate,  
13 registration, permit, or other authorization that:

14 (A) is issued by a licensing authority;

15 (B) is subject before expiration to renewal,  
16 suspension, revocation, forfeiture, or termination by a licensing  
17 authority; and

18 (C) is required for a person to practice or  
19 engage in a particular business, occupation, or profession.

20 (8) "Licensing authority" means a department,  
21 commission, board, office, or other agency of the state or a  
22 political subdivision of the state that issues or renews a license.

23 (9) "Person not lawfully present" means a person who  
24 at the time of employment is neither an alien who is lawfully  
25 admitted for permanent residence in the United States under the  
26 federal Immigration and Nationality Act (8 U.S.C. Sec. 1101 et  
27 seq.), nor authorized to be employed by that act or the United

1 States attorney general.

2 Sec. 53.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER. All  
3 licensing authorities are subject to this chapter.

4 Sec. 53.003. RULES. The commission shall adopt rules for  
5 the administration of this chapter.

6 [Sections 53.004-53.050 reserved for expansion]

7 SUBCHAPTER B. LICENSE SUSPENSION FOR KNOWING EMPLOYMENT OF PERSON  
8 NOT LAWFULLY PRESENT

9 Sec. 53.051. PROHIBITION AGAINST KNOWING EMPLOYMENT OF  
10 PERSON NOT LAWFULLY PRESENT; LICENSE SUSPENSION AUTHORIZED. (a) An  
11 employer may not knowingly employ a person not lawfully present.

12 (b) An employer who violates Subsection (a) is subject to  
13 the suspension of each license held by the employer as provided by  
14 this chapter.

15 Sec. 53.052. EXCEPTIONS. (a) An employer has not violated  
16 Section 53.051(a) if:

17 (1) the employer, at least 14 calendar days after the  
18 commencement of the employee's employment, requested from the  
19 employee and received and documented in the employee's employment  
20 record, lawful resident verification information consistent with  
21 employer requirements under the federal Immigration Reform and  
22 Control Act of 1986 (Pub. L. No. 99-603); and

23 (2) the lawful resident verification information  
24 provided by the employee later was determined to be false.

25 (b) An employer has not violated Section 53.051(a) if the  
26 employer verified the immigrant status of the person at least 14  
27 calendar days after the commencement of the employee's employment

1 through an electronic federal work authorization program operated  
2 by the United States Department of Homeland Security to verify  
3 information of newly hired employees.

4 [Sections 53.053-53.100 reserved for expansion]

5 SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

6 Sec. 53.101. FILING COMPLAINT. (a) A person who has reason  
7 to believe that an employer has violated Section 53.051(a) may file  
8 a complaint with the commission in accordance with this subchapter.

9 (b) A complaint must:

10 (1) be in writing on a form prescribed by the  
11 commission; and

12 (2) be verified by the person making the complaint.

13 (c) A person may file a complaint under this section:

14 (1) in person at an office of the commission; or

15 (2) by mailing the complaint to an address designated  
16 by the commission.

17 Sec. 53.102. INVESTIGATION AND PRELIMINARY DISMISSAL ORDER  
18 OR REFERRAL ORDER. (a) On receipt of a complaint, an examiner  
19 employed by the commission shall investigate the complaint in an  
20 attempt to:

21 (1) verify information regarding the immigration  
22 status of the relevant employee or employees of the employer  
23 alleged to have violated Section 53.051(a); and

24 (2) determine whether a hearing should be conducted.

25 (b) During the investigation, the employer alleged to have  
26 violated Section 53.051(a) shall specify all licenses held by the  
27 employer.

1       (c) If the examiner determines that there is no substantial  
2 evidence that the employer violated Section 53.051(a), the examiner  
3 shall issue a preliminary dismissal order dismissing the complaint.

4       (d) If the examiner determines that there is substantial  
5 evidence that the employer violated Section 53.051(a), the examiner  
6 shall refer the complaint to a hearing tribunal established under  
7 Section 53.103.

8       (e) The examiner shall mail notice of the preliminary  
9 dismissal order or referral order to each party at that party's last  
10 known address, as reflected by commission records.

11       Sec. 53.103. ESTABLISHMENT OF HEARING TRIBUNALS. The  
12 commission shall establish one or more impartial hearing tribunals  
13 to hear and decide complaints under this chapter.

14       Sec. 53.104. REQUEST FOR HEARING ON PRELIMINARY DISMISSAL  
15 ORDER. (a) A party may request a hearing before a hearing tribunal  
16 to appeal a preliminary dismissal order made under Section  
17 53.102(c).

18       (b) The request for the hearing must be made in writing not  
19 later than the 21st day after the date the examiner mails the notice  
20 of the preliminary dismissal order.

21       Sec. 53.105. PRELIMINARY DISMISSAL ORDER FINAL IF HEARING  
22 NOT REQUESTED. If neither party requests a hearing to appeal a  
23 preliminary dismissal order made under Section 53.102(c) within the  
24 period prescribed by Section 53.104, the order becomes the final  
25 order of the commission for all purposes, and neither party is  
26 entitled to judicial review of the order under this subchapter.

27       Sec. 53.106. NOTICE OF AND TIME FOR HEARING. (a) A notice

1 regarding a hearing conducted under this subchapter must be mailed  
2 by the hearing tribunal not later than the 21st day after the date  
3 the referral order or request for the hearing is received by the  
4 commission.

5 (b) As soon as practicable, but not later than the 45th day  
6 after the date a notice is mailed under Subsection (a), the tribunal  
7 shall conduct the hearing.

8 Sec. 53.107. HEARING PROCEDURES. (a) A hearing conducted  
9 under this subchapter is subject to the rules and hearings  
10 procedures used by the commission in the determination of a claim  
11 for unemployment compensation benefits.

12 (b) The hearing is not subject to Chapter 2001, Government  
13 Code.

14 Sec. 53.108. ORDER AFTER HEARING. After a hearing, the  
15 hearing tribunal shall:

16 (1) if the hearing tribunal finds by clear and  
17 convincing evidence that the employer has violated Section  
18 53.051(a), enter a written order suspending for a period of one year  
19 any license held by the employer; or

20 (2) if the hearing tribunal does not find by clear and  
21 convincing evidence that the employer has violated Section  
22 53.051(a), enter a written order dismissing the complaint.

23 Sec. 53.109. NOTICE TO PARTIES AND FINALITY OF HEARING  
24 TRIBUNAL ORDER. (a) The hearing tribunal shall mail to each party to  
25 the hearing notice of the tribunal's decision. The notice shall be  
26 mailed to a party's last known address, as reflected by commission  
27 records.

1       (b) The order of the hearing tribunal becomes final on the  
2 14th day after the date on which it is mailed unless a further  
3 appeal to the commission is initiated as provided by this  
4 subchapter.

5       Sec. 53.110. REMOVAL OR TRANSFER OF COMPLAINT PENDING  
6 BEFORE HEARING TRIBUNAL. (a) The commission by order may remove to  
7 itself or transfer to another hearing tribunal the proceedings on a  
8 complaint before a hearing tribunal.

9       (b) The commission promptly shall mail to the parties to the  
10 affected hearing notice of the order under Subsection (a).

11       (c) A quorum of the commission shall hear a proceeding  
12 removed to the commission under Subsection (a).

13       Sec. 53.111. COMMISSION REVIEW OF HEARING TRIBUNAL ORDER.  
14 The commission may:

15           (1) on its own motion:

16                   (A) affirm, modify, or set aside an order issued  
17 under Section 53.108 on the basis of the evidence previously  
18 submitted in the case; or

19                   (B) direct the taking of additional evidence; or

20           (2) permit any of the parties affected by the order to  
21 initiate an appeal before the commission.

22       Sec. 53.112. NOTICE OF COMMISSION ACTION TO PARTIES. (a)  
23 The commission shall mail to each party to the appeal under Section  
24 53.111 notice of:

25           (1) the commission's decision; and

26           (2) the parties' right to judicial review of the order.

27       (b) The notice shall be mailed to a party's last known

1 address, as reflected by commission records.

2 Sec. 53.113. FINALITY OF COMMISSION ORDER. An order of the  
3 commission becomes final on the 14th day after the date the order is  
4 mailed unless before that date:

5 (1) the commission by order reopens the appeal; or

6 (2) a party to the appeal files a written motion for  
7 rehearing.

8 Sec. 53.114. JUDICIAL REVIEW. (a) A party who has exhausted  
9 the party's administrative remedies under this chapter, other than  
10 a motion for rehearing, may bring a suit to appeal the order.

11 (b) The suit must be filed not later than the 30th day after  
12 the date the final order is mailed to the party.

13 (c) The commission and any other party to the proceeding  
14 before the commission must be made defendants in the suit.

15 (d) The suit must be brought in the county of residence of  
16 the party seeking judicial review. If the party is not a resident  
17 of this state, the suit must be brought in the county in this state  
18 in which the employer has its principal place of business.

19 (e) An appeal under this subchapter is by trial de novo with  
20 the substantial evidence rule being the standard of review in the  
21 manner as applied to an appeal from a final decision under Subtitle  
22 A, Title 4.

23 Sec. 53.115. NOTICE TO LICENSING AUTHORITY OF FINAL ORDER  
24 SUSPENDING LICENSE. The commission shall promptly mail to the  
25 appropriate licensing authority a final order suspending a license  
26 entered under this chapter.

27 [Sections 53.116-53.150 reserved for expansion]



1           SUBCHAPTER D. ACTION BY LICENSING AUTHORITIES

2           Sec. 53.151. ACTION BY LICENSING AUTHORITY. (a) On receipt  
3 from the commission of a final order suspending a license, a  
4 licensing authority shall immediately determine if the authority  
5 has issued a license to the person named on the order and, if a  
6 license has been issued:

7                   (1) record the suspension of the license in the  
8 licensing authority's records;

9                   (2) report the suspension as appropriate; and

10                   (3) demand surrender of the suspended license if  
11 required by law for other cases in which a license is suspended.

12           (b) A licensing authority shall implement the terms of a  
13 final order suspending a license without additional review or  
14 hearing. The authority may provide notice as appropriate to the  
15 license holder or to others concerned with the license.

16           (c) A licensing authority may not modify, remand, reverse,  
17 vacate, or stay an order suspending a license issued under this  
18 chapter and may not review, vacate, or reconsider the terms of a  
19 final order suspending a license.

20           (d) A person who is the subject of a final order suspending a  
21 license is not entitled to a refund for any fee or deposit paid to  
22 the licensing authority.

23           (e) A person who continues to engage in the business,  
24 occupation, profession, or other licensed activity after the  
25 implementation of the order suspending a license by the licensing  
26 authority is liable for the same civil and criminal penalties  
27 provided for engaging in the licensed activity without a license or

1 while a license is suspended that apply to any other license holder  
2 of that licensing authority.

3 (f) A licensing authority is exempt from liability to a  
4 license holder for any act authorized under this chapter performed  
5 by the authority.

6 (g) Except as provided by this chapter, an order suspending  
7 a license does not affect the power of a licensing authority to  
8 grant, deny, suspend, revoke, terminate, or renew a license.

9 (h) An order issued under this chapter to suspend a license  
10 of a person applies to each license issued by the licensing  
11 authority subject to the order for which the person is eligible.  
12 The licensing authority may not issue or renew any other license for  
13 the person during the suspension period.

14 Sec. 53.152. FEE BY LICENSING AUTHORITY. A licensing  
15 authority may charge a fee to a person that is the subject of an  
16 order suspending a license in an amount sufficient to recover the  
17 administrative costs incurred by the authority under this chapter.

18 SECTION 2. Chapter 53, Labor Code, as added by this Act,  
19 applies only to a violation that occurs on or after the effective  
20 date of this Act.

21 SECTION 3. This Act takes effect September 1, 2009.