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S.B. No. 357

A BILL TO BE ENTITLED

AN ACT

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

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. (a) In this chapter:

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

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

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

(A) is issued by a licensing authority;

1 (B) is subject before expiration to renewal,
2 suspension, revocation, forfeiture, or termination by a licensing
3 authority; and

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

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

9 (5) "Person not lawfully present" means a person who
10 at the time of employment is neither an alien who is lawfully
11 admitted for permanent residence in the United States under the
12 federal Immigration and Nationality Act (8 U.S.C. Section 1101 et
13 seq.), nor authorized to be employed by that Act or the United
14 States attorney general.

15 (b) The definitions in Chapter 201 apply to this chapter.

16 Sec. 53.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER;
17 EXCEPTION. All licensing authorities are subject to this chapter,
18 except that the commission by rule shall adopt a procedure for a
19 licensing authority to obtain an exemption from the application of
20 this chapter for a license issued by the authority that the
21 commission determines is not related to the operation of a
22 business.

23 Sec. 53.003. RULES. The commission and the comptroller
24 shall adopt rules as necessary for the administration of this
25 chapter.

26 [Sections 53.004-53.050 reserved for expansion]

1 SUBCHAPTER B. LICENSE SUSPENSION FOR KNOWING EMPLOYMENT OF PERSON

2 NOT LAWFULLY PRESENT

3 Sec. 53.051. PROHIBITION AGAINST KNOWING EMPLOYMENT OF
4 PERSON NOT LAWFULLY PRESENT; AUTHORIZATION FOR LICENSE SUSPENSION.

5 (a) An employer may not knowingly employ a person not lawfully
6 present.

7 (b) An employer who violates Subsection (a) may be subject
8 to the suspension of each license held by the employer as provided
9 by this chapter.

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

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

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

20 (b) An employer has not violated Section 53.051(a) if the
21 employer verified the immigration status of the person at least 14
22 calendar days after the commencement of the employee's employment
23 through an electronic federal work authorization program operated
24 by the United States Department of Homeland Security to verify
25 information of newly hired employees.

26 [Sections 53.053-53.100 reserved for expansion]

1 SUBCHAPTER C. ADMINISTRATIVE PROVISIONS FOR

2 LICENSE SUSPENSION

3 Sec. 53.101. FINDING BY COMMISSION; REFERRAL TO
4 COMPTROLLER; MEMORANDUM OF UNDERSTANDING. (a) If, after
5 conducting an audit of an employer under Subchapter D, Chapter 213,
6 the commission finds substantial evidence that the employer is
7 operating on a cash-only basis in order to circumvent the
8 requirements of Subtitle A, Title 4, a rule adopted under Subtitle
9 A, Title 4, or another state law requiring the payment of a tax, and
10 that the employer is knowingly employing a person not lawfully
11 present in violation of Section 53.051(a), the commission shall
12 refer the commission's findings to the comptroller.

13 (b) The commission and the comptroller shall adopt a
14 memorandum of understanding to develop and implement procedures for
15 the referral by the commission to the comptroller under Subsection
16 (a).

17 Sec. 53.102. INVESTIGATION BY COMPTROLLER; HEARING. (a)
18 On receipt of a referral from the commission under Section 53.101,
19 the comptroller shall investigate the commission's findings using
20 the comptroller's contested case and hearing procedures in an
21 attempt to verify information regarding the immigration status of
22 the relevant employee or employees of the employer alleged to have
23 violated Section 53.051(a).

24 (b) During an investigation conducted by the comptroller
25 under Subsection (a):

26 (1) the employer alleged to have violated Section
27 53.051(a) shall specify all licenses held by the employer; and

1 (2) the comptroller shall:

2 (A) provide notice regarding the investigation
3 to:

4 (i) the United States Immigration and
5 Customs Enforcement agency of the federal Department of Homeland
6 Security; and

7 (ii) each licensing authority that issued
8 any license held by the employer; and

9 (B) request the United States Immigration and
10 Customs Enforcement agency of the federal Department of Homeland
11 Security to verify, under 8 U.S.C. Section 1373(c), the employment
12 authorization of each relevant employee.

13 (c) The comptroller may make a final determination of
14 whether an employer has committed a violation of Section 53.051(a)
15 only after the comptroller has received verification from the
16 United States Immigration and Customs Enforcement agency of the
17 federal Department of Homeland Security under 8 U.S.C. Section
18 1373(c) regarding the employment authorization of each relevant
19 employee.

20 Sec. 53.103. ORDER FOR TERMINATION OF EMPLOYMENT AND FILING
21 OF AFFIDAVIT. (a) On a final determination by the comptroller that
22 an employer has violated Section 53.051(a), the comptroller shall:

23 (1) issue an order requiring the employer to:

24 (A) terminate the employment of each employee who
25 is a person not legally present; and

26 (B) file with the comptroller, within 10 business
27 days after the date the order is issued, a sworn affidavit stating

1 that the employer has:

2 (i) terminated the employment of each of
3 those employees;

4 (ii) after consulting with each employee
5 who is a person not legally present, requested a secondary or
6 additional verification of employment authorization using an
7 electronic federal work authorization program operated by the
8 United States Department of Homeland Security or I-9 Employment
9 Eligibility Verification Program; or

10 (iii) attempted to terminate the employment
11 of each employee who is a person not legally present and that
12 termination has been challenged in a court; and

13 (2) notify the United States Immigration and Customs
14 Enforcement agency of the federal Department of Homeland Security
15 and the applicable local law enforcement agency of the identity and
16 address, if known, of each employee who is a person not lawfully
17 present.

18 (b) Notwithstanding any other provision of this subchapter,
19 during the pendency of an action taken under Subsection
20 (a)(1)(B)(ii) or (iii):

21 (1) the employer is not required to terminate the
22 employment of any employee determined by the comptroller to be a
23 person not lawfully present; and

24 (2) the comptroller may not order the suspension of
25 any license held by the employer.

26 Sec. 53.104. ORDER OF LICENSE SUSPENSION; NOTICE TO
27 LICENSING AUTHORITIES. (a) Except as provided by Subsection (b),

1 if an employer fails to comply with an order issued under Section
2 53.103, the comptroller shall order the suspension of each license
3 held by the employer until the comptroller finds that the employer
4 has complied with the requirements of Section 53.103.

5 (b) On a final determination by the comptroller that an
6 employer has violated Section 53.051(a) more than one time during a
7 two-year period, the comptroller shall order the suspension of each
8 license held by the employer for a period of at least 30 days. A
9 license suspended under this subsection may not be reinstated until
10 the comptroller finds that the employer has complied with the
11 requirements of Section 53.103.

12 (c) The comptroller shall promptly send to the appropriate
13 licensing authorities a copy of any order issued by the comptroller
14 under this section.

15 (d) The comptroller shall maintain in a prominent location
16 on the comptroller's Internet website a database accessible to the
17 public containing copies of each order issued under this section.

18 [Sections 53.105-53.150 reserved for expansion]

19 SUBCHAPTER D. ACTION BY LICENSING AUTHORITIES

20 Sec. 53.151. ACTION BY LICENSING AUTHORITY. (a) On receipt
21 from the comptroller of an order suspending a license, a licensing
22 authority shall immediately determine if the authority has issued a
23 license to the person named on the order and, if a license has been
24 issued:

25 (1) record the suspension of the license in the
26 licensing authority's records;

27 (2) report the suspension as appropriate; and

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

3 (b) A licensing authority shall implement the terms of the
4 comptroller's final order suspending a license without additional
5 review or hearing. The authority may provide notice as appropriate
6 to the license holder or to others concerned with the license.

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

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

14 (e) A person who continues to engage in the business,
15 occupation, profession, or other licensed activity after the
16 implementation of the order suspending a license by the licensing
17 authority is liable for the same civil and criminal penalties
18 provided for engaging in the licensed activity without a license or
19 while a license is suspended that apply to any other license holder
20 of that licensing authority.

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

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

27 (h) An order issued under this chapter to suspend a license

1 of a person applies to each license for which the person is eligible
2 issued by the licensing authority subject to the order. The
3 licensing authority may not issue or renew any other license for the
4 person during the suspension period.

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

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

12 SECTION 3. The Texas Workforce Commission and the
13 comptroller of public accounts shall adopt the rules and memorandum
14 of understanding required by Chapter 53, Labor Code, as added by
15 this Act, as soon as practicable after the effective date of this
16 Act.

17 SECTION 4. This Act takes effect September 1, 2009.