

1-1 By: Patrick S.B. No. 2568
1-2 (In the Senate - Filed April 29, 2009; April 29, 2009, read
1-3 first time and referred to Committee on Transportation and Homeland
1-4 Security; April 30, 2009, reported favorably by the following
1-5 vote: Yeas 5, Nays 4; April 30, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to a prohibition against the knowing employment of persons
1-9 not lawfully present in the United States and the suspension of
1-10 licenses held by certain employers for the knowing employment of
1-11 those persons.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-13 SECTION 1. Subtitle B, Title 2, Labor Code, is amended by
1-14 adding Chapter 53 to read as follows:

1-15 CHAPTER 53. EMPLOYMENT OF PERSONS NOT LAWFULLY PRESENT
1-16 IN UNITED STATES

1-17 SUBCHAPTER A. GENERAL PROVISIONS

1-18 Sec. 53.001. DEFINITIONS. (a) In this chapter:

1-19 (1) "Lawful resident alien" means a person who is
1-20 entitled to lawful residence in the United States under the federal
1-21 Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.).

1-22 (2) "Lawful resident verification information" means
1-23 the documentation required by the United States Department of
1-24 Homeland Security for completing the employment eligibility
1-25 verification form commonly referred to as the I-9. Documentation
1-26 that satisfies the requirements of the Form I-9 at the time of
1-27 employment is lawful resident verification information.

1-28 (3) "License" means a license, certificate,
1-29 registration, permit, or other authorization that:

1-30 (A) is issued by a licensing authority;

1-31 (B) is subject before expiration to renewal,
1-32 suspension, revocation, forfeiture, or termination by a licensing
1-33 authority; and

1-34 (C) is required for a person to practice or
1-35 engage in a particular business, occupation, or profession.

1-36 (4) "Licensing authority" means a department,
1-37 commission, board, office, or other agency of the state or a
1-38 political subdivision of the state that issues or renews a license.

1-39 (5) "Person not lawfully present" means a person who
1-40 at the time of employment is neither an alien who is lawfully
1-41 admitted for permanent residence in the United States under the
1-42 federal Immigration and Nationality Act (8 U.S.C. Section 1101 et
1-43 seq.), nor authorized to be employed by that Act or the United
1-44 States attorney general.

1-45 (b) The definitions in Chapter 201 apply to this chapter.

1-46 Sec. 53.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER;
1-47 EXCEPTION. All licensing authorities are subject to this chapter,
1-48 except that the commission by rule shall adopt a procedure for a
1-49 licensing authority to obtain an exemption from the application of
1-50 this chapter for a license issued by the authority that the
1-51 commission determines is not related to the operation of a
1-52 business.

1-53 Sec. 53.003. RULES. The commission and the comptroller
1-54 shall adopt rules as necessary for the administration of this
1-55 chapter.

1-56 [Sections 53.004-53.050 reserved for expansion]

1-57 SUBCHAPTER B. LICENSE SUSPENSION FOR KNOWING EMPLOYMENT OF PERSON
1-58 NOT LAWFULLY PRESENT

1-59 Sec. 53.051. PROHIBITION AGAINST KNOWING EMPLOYMENT OF
1-60 PERSON NOT LAWFULLY PRESENT; AUTHORIZATION FOR LICENSE SUSPENSION.

1-61 (a) An employer may not knowingly employ a person not lawfully
1-62 present.

1-63 (b) An employer who violates Subsection (a) may be subject
1-64 to the suspension of each license held by the employer as provided

2-1 by this chapter.

2-2 Sec. 53.052. EXCEPTIONS. (a) An employer has not violated
2-3 Section 53.051(a) if:

2-4 (1) the employer, at least 14 calendar days after the
2-5 commencement of the employee's employment, requested from the
2-6 employee and received and documented in the employee's employment
2-7 record, lawful resident verification information consistent with
2-8 employer requirements under the federal Immigration Reform and
2-9 Control Act of 1986 (Pub. L. No. 99-603); and

2-10 (2) the lawful resident verification information
2-11 provided by the employee later was determined to be false.

2-12 (b) An employer has not violated Section 53.051(a) if the
2-13 employer verified the immigration status of the person at least 14
2-14 calendar days after the commencement of the employee's employment
2-15 through an electronic federal work authorization program operated
2-16 by the United States Department of Homeland Security to verify
2-17 information of newly hired employees.

2-18 [Sections 53.053-53.100 reserved for expansion]

2-19 SUBCHAPTER C. ADMINISTRATIVE PROVISIONS FOR
2-20 LICENSE SUSPENSION

2-21 Sec. 53.101. FINDING BY COMMISSION; REFERRAL TO
2-22 COMPTROLLER; MEMORANDUM OF UNDERSTANDING. (a) If, after
2-23 conducting an audit of an employer under Subchapter D, Chapter 213,
2-24 the commission finds substantial evidence that the employer is
2-25 operating on a cash-only basis in order to circumvent the
2-26 requirements of Subtitle A, Title 4, a rule adopted under Subtitle
2-27 A, Title 4, or another state law requiring the payment of a tax, and
2-28 that the employer is knowingly employing a person not lawfully
2-29 present in violation of Section 53.051(a), the commission shall
2-30 refer the commission's findings to the comptroller.

2-31 (b) The commission and the comptroller shall adopt a
2-32 memorandum of understanding to develop and implement procedures for
2-33 the referral by the commission to the comptroller under Subsection
2-34 (a).

2-35 Sec. 53.102. INVESTIGATION BY COMPTROLLER; HEARING.
2-36 (a) On receipt of a referral from the commission under Section
2-37 53.101, the comptroller shall investigate the commission's
2-38 findings using the comptroller's contested case and hearing
2-39 procedures in an attempt to verify information regarding the
2-40 immigration status of the relevant employee or employees of the
2-41 employer alleged to have violated Section 53.051(a).

2-42 (b) During an investigation conducted by the comptroller
2-43 under Subsection (a):

2-44 (1) the employer alleged to have violated Section
2-45 53.051(a) shall specify all licenses held by the employer; and

2-46 (2) the comptroller shall:
2-47 (A) provide notice regarding the investigation
2-48 to:

2-49 (i) the United States Immigration and
2-50 Customs Enforcement agency of the federal Department of Homeland
2-51 Security; and

2-52 (ii) each licensing authority that issued
2-53 any license held by the employer; and

2-54 (B) request the United States Immigration and
2-55 Customs Enforcement agency of the federal Department of Homeland
2-56 Security to verify, under 8 U.S.C. Section 1373(c), the employment
2-57 authorization of each relevant employee.

2-58 (c) The comptroller may make a final determination of
2-59 whether an employer has committed a violation of Section 53.051(a)
2-60 only after the comptroller has received verification from the
2-61 United States Immigration and Customs Enforcement agency of the
2-62 federal Department of Homeland Security under 8 U.S.C. Section
2-63 1373(c) regarding the employment authorization of each relevant
2-64 employee.

2-65 Sec. 53.103. ORDER FOR TERMINATION OF EMPLOYMENT AND FILING
2-66 OF AFFIDAVIT. (a) On a final determination by the comptroller
2-67 that an employer has violated Section 53.051(a), the comptroller
2-68 shall:

2-69 (1) issue an order requiring the employer to:

3-1 (A) terminate the employment of each employee who
3-2 is a person not legally present; and
3-3 (B) file with the comptroller, within 10 business
3-4 days after the date the order is issued, a sworn affidavit stating
3-5 that the employer has:
3-6 (i) terminated the employment of each of
3-7 those employees;
3-8 (ii) after consulting with each employee
3-9 who is a person not legally present, requested a secondary or
3-10 additional verification of employment authorization using an
3-11 electronic federal work authorization program operated by the
3-12 United States Department of Homeland Security or I-9 Employment
3-13 Eligibility Verification Program; or
3-14 (iii) attempted to terminate the employment
3-15 of each employee who is a person not legally present and that
3-16 termination has been challenged in a court; and
3-17 (2) notify the United States Immigration and Customs
3-18 Enforcement agency of the federal Department of Homeland Security
3-19 and the applicable local law enforcement agency of the identity and
3-20 address, if known, of each employee who is a person not lawfully
3-21 present.
3-22 (b) Notwithstanding any other provision of this subchapter,
3-23 during the pendency of an action taken under Subsection
3-24 (a)(1)(B)(ii) or (iii):
3-25 (1) the employer is not required to terminate the
3-26 employment of any employee determined by the comptroller to be a
3-27 person not lawfully present; and
3-28 (2) the comptroller may not order the suspension of
3-29 any license held by the employer.
3-30 Sec. 53.104. ORDER OF LICENSE SUSPENSION; NOTICE TO
3-31 LICENSING AUTHORITIES. (a) Except as provided by Subsection (b),
3-32 if an employer fails to comply with an order issued under Section
3-33 53.103, the comptroller shall order the suspension of each license
3-34 held by the employer until the comptroller finds that the employer
3-35 has complied with the requirements of Section 53.103.
3-36 (b) On a final determination by the comptroller that an
3-37 employer has violated Section 53.051(a) more than one time during a
3-38 two-year period, the comptroller shall order the suspension of each
3-39 license held by the employer for a period of at least 30 days. A
3-40 license suspended under this subsection may not be reinstated until
3-41 the comptroller finds that the employer has complied with the
3-42 requirements of Section 53.103.
3-43 (c) The comptroller shall promptly send to the appropriate
3-44 licensing authorities a copy of any order issued by the comptroller
3-45 under this section.
3-46 (d) The comptroller shall maintain in a prominent location
3-47 on the comptroller's Internet website a database accessible to the
3-48 public containing copies of each order issued under this section.
3-49 [Sections 53.105-53.150 reserved for expansion]
3-50 SUBCHAPTER D. ACTION BY LICENSING AUTHORITIES
3-51 Sec. 53.151. ACTION BY LICENSING AUTHORITY. (a) On
3-52 receipt from the comptroller of an order suspending a license, a
3-53 licensing authority shall immediately determine if the authority
3-54 has issued a license to the person named on the order and, if a
3-55 license has been issued:
3-56 (1) record the suspension of the license in the
3-57 licensing authority's records;
3-58 (2) report the suspension as appropriate; and
3-59 (3) demand surrender of the suspended license if
3-60 required by law for other cases in which a license is suspended.
3-61 (b) A licensing authority shall implement the terms of the
3-62 comptroller's final order suspending a license without additional
3-63 review or hearing. The authority may provide notice as appropriate
3-64 to the license holder or to others concerned with the license.
3-65 (c) A licensing authority may not modify, remand, reverse,
3-66 vacate, or stay an order suspending a license issued under this
3-67 chapter and may not review, vacate, or reconsider the terms of a
3-68 final order suspending a license.
3-69 (d) A person who is the subject of a final order suspending a

4-1 license is not entitled to a refund for any fee or deposit paid to
4-2 the licensing authority.

4-3 (e) A person who continues to engage in the business,
4-4 occupation, profession, or other licensed activity after the
4-5 implementation of the order suspending a license by the licensing
4-6 authority is liable for the same civil and criminal penalties
4-7 provided for engaging in the licensed activity without a license or
4-8 while a license is suspended that apply to any other license holder
4-9 of that licensing authority.

4-10 (f) A licensing authority is exempt from liability to a
4-11 license holder for any act authorized under this chapter performed
4-12 by the authority.

4-13 (g) Except as provided by this chapter, an order suspending
4-14 a license does not affect the power of a licensing authority to
4-15 grant, deny, suspend, revoke, terminate, or renew a license.

4-16 (h) An order issued under this chapter to suspend a license
4-17 of a person applies to each license for which the person is eligible
4-18 issued by the licensing authority subject to the order. The
4-19 licensing authority may not issue or renew any other license for the
4-20 person during the suspension period.

4-21 Sec. 53.152. FEE BY LICENSING AUTHORITY. A licensing
4-22 authority may charge a fee to a person that is the subject of an
4-23 order suspending a license in an amount sufficient to recover the
4-24 administrative costs incurred by the authority under this chapter.

4-25 SECTION 2. Chapter 53, Labor Code, as added by this Act,
4-26 applies only to a violation that occurs on or after the effective
4-27 date of this Act.

4-28 SECTION 3. The Texas Workforce Commission and the
4-29 comptroller of public accounts shall adopt the rules and memorandum
4-30 of understanding required by Chapter 53, Labor Code, as added by
4-31 this Act, as soon as practicable after the effective date of this
4-32 Act.

4-33 SECTION 4. This Act takes effect September 1, 2009.

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