

BILL ANALYSIS

C.S.H.B. 3252
By: Chisum
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Although under federal law a person may not bring an unauthorized alien into the United States, the rules governing employer responsibilities for hiring unauthorized aliens are vague and confusing. Concern has been expressed by some observers that an employer violating the federal law generally may not be penalized under state law and an employer making a good faith effort to employ lawful residents is offered little, if any, protection for an unknowing violation.

C.S.H.B. 3252 seeks to protect Texas employers by clarifying an employer's responsibilities in verifying residency as well as the protections for an employer that demonstrated due diligence.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 3252 amends the Labor Code to prohibit an employer from knowingly employing, or recruiting or referring for a fee for employment, an unauthorized foreign national. The bill establishes that an employer has not violated the prohibition in regard to a particular employee if the employer, at least four calendar days after the start of the employee's employment, requested from the employee and received and documented in the employee's employment record lawful resident verification information consistent with employer requirements under federal law and the lawful resident verification information provided by the employee later was determined to be false or if the employer verified the person's immigrant status at least four calendar days after the start of the employee's employment through the E-Verify program.

C.S.H.B. 3252 authorizes a person who has reason to believe that an employer has violated the prohibition against knowingly employing an unauthorized foreign national to file a complaint with the Texas Workforce Commission (TWC). The bill requires a complaint to be in writing on a form prescribed by the TWC and verified by the person making the complaint. The bill authorizes a person to file a complaint in person at a TWC office or by mailing the complaint to a TWC-designated address.

C.S.H.B. 3252 requires the TWC, not later than November 1 of each even-numbered year, to prepare and submit to the governor and the legislature a written report based on nonidentifiable, summary data compiled by the TWC from complaints filed under the bill's provisions during the two preceding state fiscal years. The bill requires the report to include any relevant information and analysis the TWC determines would assist the legislature in making informed decisions regarding the issue of illegal immigration as it relates to employment in Texas but prohibits the report from including any information that could reasonably be expected to reveal the identity of a particular employer or employee or of a person who files a complaint with the TWC.

C.S.H.B. 3252 establishes that the purpose of the bill is to provide for the execution of the

policies of certain federal law, identify employment practices that violate certain provisions of such law, and make available to this state the full productive employment capacities of United States citizens, lawful permanent residents, and employment-authorized foreign-born nationals in Texas.

C.S.H.B. 3252 requires the TWC to adopt rules for the administration of the bill's provisions. The bill defines "commission," "employee," "employer," "E-verify program," "knowingly," "lawful resident alien," "lawful resident verification information," and "unauthorized foreign national."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3252 differs from the original, in provisions setting out the purpose of the bill, by establishing such a purpose as the identification of employment practices that violate certain provisions of federal law, rather than the identification of employers whose employment practices violate such law, as in the original.

C.S.H.B. 3252 contains provisions not included in the original requiring the Texas Workforce Commission (TWC) to prepare and submit to the governor and the legislature a written report based on nonidentifiable, summary data compiled by the TWC from complaints filed under the bill's provisions during the two preceding state fiscal years, and setting out related provisions.

C.S.H.B. 3252 omits provisions included in the original relating to an investigation and preliminary dismissal order or referral order, providing for an examiner employed by the TWC to investigate a complaint and, if the examiner determines that there is substantial evidence that the employer violated the bill's prohibition against the knowing employment of an unauthorized foreign national, refer the complaint to a hearing tribunal. The substitute omits provisions included in the original relating to the establishment of hearing tribunals, a request for a hearing on a preliminary dismissal order, a final preliminary dismissal order if a hearing is not requested, notice of and time for a hearing, hearing procedures, an order after a hearing and an administrative penalty, notice to parties and finality of a hearing tribunal order, removal or transfer of a complaint pending before a hearing tribunal, TWC review of a hearing tribunal order, notice of TWC action to parties, finality of a TWC order, and judicial review.

C.S.H.B. 3252 differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions.