

BILL ANALYSIS

Senate Research Center
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S.B. 1254
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current federal law, it is unlawful to hire an undocumented worker, to recruit an undocumented worker, or to refer an undocumented worker for a fee, knowing the alien is unauthorized to work in the United States. An employer can be convicted of a felony for harboring an illegal alien who is his or her employee if he or she takes actions in reckless disregard of the employee's illegal status, such as ordering the employee to obtain false documents, altering records, obstructing Immigration and Naturalization Services (INS) inspections, or taking other actions that facilitate the alien's illegal employment. State and local law enforcement officials have the general power to investigate and arrest violators of federal immigration statutes without prior INS knowledge or approval, as long as they are authorized to do so by state law.

Under current law, Texas businesses that receive taxpayer-subsidized job creation grants and tax abatements must certify that they will not knowingly employ undocumented workers. The law also authorizes a public agency, local taxing jurisdiction, economic development corporation, or the attorney general to bring a civil action to recover funds from a business if the business knowingly hires undocumented workers. Despite these laws, illegal immigrants cost Texas \$3.5 billion a year for health care and other costs. Also, illegal immigrants deprive some Texas citizens of employment because undocumented workers may work for less than the minimum wage. Consequently, as long as employers are hiring undocumented workers, the state's fiscal health may suffer.

S.B.1254 makes it a criminal offense for employers to knowingly and intentionally hire undocumented workers. This offense is punishable by a fine of not more than \$10,000 for the first offense and not more than \$20,000 for the second offense. These more stringent penalties for hiring undocumented workers may help curtail the practice of hiring such workers. It is a defense to prosecution under the bill if the employer, at least 14 days after the employee is hired, requested and received all required documentation and the information provided is determined to be false. It is also a defense to prosecution if the employer used the E-verify system to confirm the employee's immigration status at least 14 days after the employee's employment.

As proposed, S.B. 1254 amends current law relating to the creation of the offense of employing an individual not lawfully present in the United States.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Title 8, Penal Code, to read as follows:

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION; ADMINISTRATION OF
CERTAIN LAWS

SECTION 2. Amends Title 8, Penal Code, by adding Chapter 40, as follows:

CHAPTER 40. CERTAIN EMPLOYMENT PROHIBITED UNDER FEDERAL LAW

Sec. 40.01. DEFINITIONS. Defines "business," "employ," "individual not lawfully present," "lawful resident alien," and "lawful resident verification information" in this chapter.

Sec. 40.02. EMPLOYING INDIVIDUAL NOT LAWFULLY PRESENT. (a) Provides that a business commits an offense if the business intentionally or knowingly employs an individual not lawfully present.

(b) Provides that an offense under this section is punishable by a fine of not more than \$10,000 for the first offense and a fine of not more than \$20,000 or less than \$10,000 for each subsequent offense.

(c) Authorizes the attorney general to offer to a county or district attorney the assistance of the attorney general's office in the prosecution of an offense under this section. Provides that for purposes of this subsection, assistance includes investigative, technical, and litigation assistance.

(d) Authorizes a district attorney, a county attorney, or the attorney general to recover, in addition to the fines described by Subsection (b), reasonable expenses incurred in prosecuting an offense under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs.

Sec. 40.03. AFFIRMATIVE DEFENSES. (a) Provides that it is an affirmative defense to prosecution of a violation of Section 40.02 that:

(1) the business, at least 14 calendar days after the commencement 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 the federal Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603); and

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

(b) Provides that it is an affirmative defense to prosecution of a violation of Section 40.02 that the business verified the immigration status of the individual at least 14 calendar days after the commencement of the employee's employment through an electronic federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees.

SECTION 3. Effective date: September 1, 2011.