

By: Laubenberg

H.B. No. 140

A BILL TO BE ENTITLED

AN ACT

relating to requiring state contractors and grant recipients to participate in the federal electronic verification of work authorization program, or E-verify; adding a civil penalty.

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

SECTION 1. The heading to Chapter 2264, Government Code, is amended to read as follows:

CHAPTER 2264. CERTAIN RESTRICTIONS ON [USE OF CERTAIN] PUBLIC SUBSIDIES AND STATE CONTRACTS AND GRANTS

SECTION 2. Section 2264.101, Government Code, is transferred to Subchapter B, Chapter 2264, Government Code, redesignated as Section 2264.054, Government Code, and amended to read as follows:

Sec. 2264.054 [~~2264.101~~]. RECOVERY. (a) A public agency, local taxing jurisdiction, or economic development corporation, or the attorney general on behalf of the state or a state agency, may bring a civil action to recover any amounts owed to the public agency, state or local taxing jurisdiction, or economic development corporation under this subchapter [~~chapter~~].

(b) The public agency, local taxing jurisdiction, economic development corporation, or attorney general, as applicable, shall recover court costs and reasonable attorney's fees incurred in an action brought under Subsection (a).

(c) A business is not liable for a violation of this

1 subchapter [~~chapter~~] by a subsidiary, affiliate, or franchisee of
2 the business, or by a person with whom the business contracts.

3 SECTION 3. The heading to Subchapter C, Chapter 2264,
4 Government Code, is amended to read as follows:

5 SUBCHAPTER C. E-VERIFY PROGRAM [~~ENFORCEMENT~~]

6 SECTION 4. Subchapter C, Chapter 2264, Government Code, is
7 amended by adding Sections 2264.1011, 2264.102, 2264.103, and
8 2264.104 to read as follows:

9 Sec. 2264.1011. DEFINITIONS. In this subchapter:

10 (1) "E-verify program" means the electronic
11 verification of work authorization program of the federal Illegal
12 Immigration Reform and Immigrant Responsibility Act of 1996 (Pub.
13 L. No. 104-208, reprinted in note, 8 U.S.C. Section 1324a),
14 operated by the United States Department of Homeland Security, or a
15 successor work authorization program designated by the United
16 States Department of Homeland Security or other federal agency
17 authorized to verify the work authorization status of newly hired
18 employees pursuant to the federal Immigration Reform and Control
19 Act of 1986 (8 U.S.C. Section 1101 et seq.).

20 (2) "Grant" has the meaning assigned by Section
21 441.010.

22 (3) "State agency" has the meaning assigned by Section
23 2103.001.

24 Sec. 2264.102. VERIFICATION BY CONTRACTORS. (a) A state
25 agency may not award a contract for goods or services within this
26 state to a contractor unless the contractor registers with and
27 participates in the E-verify program to verify employee

1 information. The contractor must continue to participate in the
2 program during the term of the contract.

3 (b) Each contract with a state agency must include the
4 following statement:

5 "_____ (name of contractor) certifies that
6 _____ (name of contractor) is not ineligible to receive this
7 contract under Subchapter C, Chapter 2264, Government Code, and
8 acknowledges that if this certification is inaccurate or becomes
9 inaccurate during the term of the contract, the contract may be
10 terminated without payment and a civil penalty may be imposed."

11 (c) If a state agency determines that a contractor was
12 ineligible to have the contract awarded under Subsection (a) or has
13 ceased participation in the E-verify program during the term of the
14 contract, the state agency shall refer the matter to the attorney
15 general for action and shall notify the contractor in writing that
16 the contractor must register with and participate in the E-verify
17 program before the 31st day after the date the contractor is
18 notified.

19 (d) The state agency shall terminate the contract without
20 penalty or further obligation to the contractor on the 31st day
21 after the date the contractor is notified under Subsection (c) if,
22 before that date, the contractor has not provided evidence that the
23 contractor has registered with and is participating in the E-verify
24 program.

25 (e) Each state agency shall develop procedures for the
26 administration of this section.

27 Sec. 2264.103. VERIFICATION BY GRANT RECIPIENTS. (a) A

1 state agency may not award a grant unless the grant recipient
2 registers with and participates in the E-verify program to verify
3 employee information. The grant recipient must continue to
4 participate in the program during the funding period of the grant.

5 (b) Each grant contract or agreement with a state agency
6 must include the following statement:

7 "_____ (name of grant recipient) certifies that
8 _____ (name of grant recipient) is not ineligible to receive
9 this grant under Subchapter C, Chapter 2264, Government Code, and
10 acknowledges that if this certification is inaccurate or becomes
11 inaccurate during the funding period of the grant, the grant may be
12 terminated without further payment and a civil penalty may be
13 imposed."

14 (c) If a state agency determines that a grant recipient was
15 ineligible to have the grant awarded under Subsection (a) or has
16 ceased participation in the E-verify program during the funding
17 period of the grant, the state agency shall refer the matter to the
18 attorney general for action and shall notify the grant recipient in
19 writing that the grant recipient must register with and participate
20 in the E-verify program before the 31st day after the date the grant
21 recipient is notified.

22 (d) The state agency shall terminate the grant without
23 further obligation to the grant recipient on the 31st day after the
24 date the grant recipient is notified under Subsection (c) if,
25 before that date, the grant recipient has not provided evidence
26 that the grant recipient has registered with and is participating
27 in the E-verify program.

1 (e) Each state agency shall develop procedures for the
2 administration of this section.

3 Sec. 2264.104. CIVIL PENALTY. (a) The attorney general may
4 institute an action in district court to recover a civil penalty
5 against a:

6 (1) contractor who is awarded a contract in violation
7 of Section 2264.102 or has ceased participation in the E-verify
8 program during the term of the contract; or

9 (2) grant recipient who is awarded a grant in
10 violation of Section 2264.103 or has ceased participation in the
11 E-verify program during the funding period of the grant.

12 (b) A civil penalty imposed under this section against a
13 contractor may not exceed \$500 or one percent of the contract price,
14 whichever is greater, for each violation. A civil penalty imposed
15 under this section against a grant recipient may not exceed \$500 or
16 one percent of the grant amount or value, whichever is greater, for
17 each violation.

18 (c) Each day a contractor or grant recipient holds the
19 contract or grant, as applicable, while in violation of this
20 subchapter constitutes a separate violation for purposes of
21 imposing the penalty.

22 (d) A civil penalty recovered in an action brought by the
23 attorney general shall be deposited in the state treasury.

24 SECTION 5. Sections 2264.1011, 2264.102, 2264.103, and
25 2264.104, Government Code, as added by this Act, apply only in
26 relation to a:

27 (1) contract for which the request for bids or

1 proposals or other applicable expressions of interest is made
2 public on or after the effective date of this Act; and

3 (2) grant for which the notice of funds availability
4 or of funding opportunity is made public on or after the effective
5 date of this Act.

6 SECTION 6. This Act takes effect September 1, 2011.