

By: Berman

H.B. No. 296

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the enforcement of immigration laws, to the  
3 investigation, prosecution, and punishment of certain criminal  
4 offenses concerning illegal immigration, and to certain employment  
5 and labor practices and requirements regarding immigration and  
6 immigrants; providing civil and criminal penalties.

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

8 SECTION 1. Chapter 2, Code of Criminal Procedure, is  
9 amended by adding Article 2.251 to read as follows:

10 Art. 2.251. COOPERATION AND ASSISTANCE IN ENFORCEMENT OF  
11 FEDERAL IMMIGRATION LAW. (a) In this article, "illegal alien"  
12 means a person who:

13 (1) is not a citizen or national of the United States;

14 and

15 (2) is unlawfully present in the United States  
16 according to the terms of the Immigration Reform and Control Act of  
17 1986 (8 U.S.C. Section 1101 et seq.).

18 (b) During any detention or arrest made by a peace officer  
19 or law enforcement agency of this state or of a political  
20 subdivision of this state, the officer or agency shall make a  
21 reasonable attempt, if practicable, to determine the immigration  
22 status of the person detained or arrested. The investigation of a  
23 person's immigration status may not serve as the grounds for the  
24 detention or arrest and may not unlawfully prolong the period in

1 which the person is detained or is maintained in custody by the  
2 officer or agency.

3 (c) The peace officer or law enforcement agency may not  
4 attempt to determine the person's immigration status under  
5 Subsection (b) if the attempt could hinder or obstruct a criminal  
6 investigation.

7 (d) For purposes of Subsection (b), a person is presumed not  
8 to be an illegal alien if the person provides to the peace officer  
9 or law enforcement agency any of the following documentation:

10 (1) a driver's license or personal identification  
11 certificate issued to the person under Chapter 521, Transportation  
12 Code;

13 (2) a tribal enrollment card or other form of tribal  
14 identification issued to the person; or

15 (3) any other form of identification issued to the  
16 person by the United States, by this state or another state, or by a  
17 political subdivision of this state or another state, if before  
18 issuing that form of identification the applicable entity requires  
19 proof of the person's legal presence in the United States.

20 (e) A person's immigration status may be verified after an  
21 investigation under Subsection (b) by:

22 (1) a peace officer or other law enforcement officer  
23 of this state who is authorized under federal law to verify or  
24 ascertain a person's immigration status; or

25 (2) a federal law enforcement officer, in accordance  
26 with 8 U.S.C. Section 1373(c).

27 (f)(1) Notwithstanding any other law, after a verification

1 of status under this article, a law enforcement agency may securely  
2 transport an illegal alien in the agency's custody to:

- 3 (A) a federal facility in this state; or  
4 (B) any other point of transfer into federal  
5 custody that is outside the jurisdiction of the law enforcement  
6 agency, including a point of transfer located in another state.

7 (2) The law enforcement agency must obtain judicial  
8 authorization before transporting the illegal alien to a point of  
9 transfer that is located in another state.

10 (g) If an illegal alien is convicted of an offense under the  
11 law of this state or of a political subdivision of this state,  
12 United States Immigration and Customs Enforcement or United States  
13 Customs and Border Protection shall be immediately notified of that  
14 fact:

15 (1) on the discharge of the alien from confinement or  
16 on the assessment of any monetary obligation that is imposed on the  
17 alien; and

18 (2) as otherwise required by law.

19 (h) An official or agency of this state or of a political  
20 subdivision of this state may not limit or restrict the enforcement  
21 of federal immigration law to less than the full extent permitted by  
22 federal law.

23 (i) Except as provided by federal law, an official or agency  
24 of this state or of a political subdivision of this state may not be  
25 prohibited or restricted from sending, receiving, or maintaining  
26 information relating to the immigration status of any person or  
27 from exchanging that information with any other governmental entity

1 of the United States, this state, or a political subdivision of this  
2 state for the following purposes:

3 (1) determining eligibility for any public benefit,  
4 service, or license provided by the United States, this state, or a  
5 political subdivision of this state;

6 (2) verifying any claim of residence or domicile if  
7 determination of residence or domicile is required under the law of  
8 this state or under a judicial order issued in a civil or criminal  
9 proceeding in this state;

10 (3) determining whether the person is in compliance  
11 with any applicable registration laws prescribed by Chapter 7,  
12 Title II, Immigration and Nationality Act (8 U.S.C. Section 1301 et  
13 seq.); or

14 (4) in accordance with 8 U.S.C. Sections 1373 and  
15 1644.

16 SECTION 2. Chapter 2, Code of Criminal Procedure, is  
17 amended by adding Article 2.31 to read as follows:

18 Art. 2.31. DETERMINATION REGARDING CITIZENSHIP STATUS. In  
19 the investigation of an offense under Section 20A.03, Penal Code,  
20 the determination of whether a person is an illegal alien may be  
21 made only by:

22 (1) a peace officer or other law enforcement officer  
23 of this state who, under federal law, is authorized to verify or  
24 ascertain a person's immigration status or work authorization; or

25 (2) a federal law enforcement officer, in accordance  
26 with 8 U.S.C. Section 1373(c).

27 SECTION 3. Chapter 6, Code of Criminal Procedure, is

1 amended by adding Article 6.075 to read as follows:

2 Art. 6.075. PREVENTION OF HUMAN TRAFFICKING OFFENSES. (a)  
3 In this article, "motor vehicle" has the meaning assigned by  
4 Section 501.002, Transportation Code.

5 (b) Regardless of whether a peace officer's subjective  
6 intent is to prevent the commission of an offense under Section  
7 20A.02, Penal Code, the officer may stop and detain the operator of  
8 a motor vehicle if the officer has an objectively reasonable  
9 suspicion that the operator has engaged in conduct that  
10 constitutes:

11 (1) an offense under Subtitle C, Title 7,  
12 Transportation Code;

13 (2) a civil traffic offense; or

14 (3) a violation of a county or municipal order or  
15 ordinance regulating traffic.

16 (c) If an officer making a stop under Subsection (b)  
17 observes evidence leading to a reasonable suspicion of the  
18 commission of an offense under Section 20A.03, Penal Code, the  
19 officer may:

20 (1) continue the detention for any period necessary to  
21 investigate the commission of that offense; and

22 (2) arrest without warrant any person the officer has  
23 probable cause to believe has committed that offense.

24 SECTION 4. Articles 14.03(a) and (f), Code of Criminal  
25 Procedure, are amended to read as follows:

26 (a) Any peace officer may arrest, without warrant:

27 (1) persons found in suspicious places and under

1 circumstances which reasonably show that such persons have been  
2 guilty of some felony, violation of Title 9, Chapter 42, Penal Code,  
3 breach of the peace, or offense under Section 49.02, Penal Code, or  
4 threaten, or are about to commit some offense against the laws;

5 (2) persons who the peace officer has probable cause  
6 to believe have committed an assault resulting in bodily injury to  
7 another person and the peace officer has probable cause to believe  
8 that there is danger of further bodily injury to that person;

9 (3) persons who the peace officer has probable cause  
10 to believe have committed an offense defined by Section 25.07,  
11 Penal Code (violation of Protective Order), or by Section 38.112,  
12 Penal Code (violation of Protective Order issued on basis of sexual  
13 assault), if the offense is not committed in the presence of the  
14 peace officer;

15 (4) persons who the peace officer has probable cause  
16 to believe have committed an offense involving family violence;

17 (5) persons who the peace officer has probable cause  
18 to believe have prevented or interfered with an individual's  
19 ability to place a telephone call in an emergency, as defined by  
20 Section 42.062(d), Penal Code, if the offense is not committed in  
21 the presence of the peace officer; ~~or~~

22 (6) a person who makes a statement to the peace officer  
23 that would be admissible against the person under Article 38.21 and  
24 establishes probable cause to believe that the person has committed  
25 a felony; or

26 (7) persons who the peace officer has probable cause  
27 to believe have committed a public offense that, under federal law,

1 makes those persons removable from the United States.

2 (f) In this article:

3 (1) "Family [~~,"family~~ violence" has the meaning  
4 assigned by Section 71.004, Family Code.

5 (2) "Public offense" means:

6 (A) an offense under the law of this state; or

7 (B) an offense under the law of another state, if  
8 the offense contains elements that are substantially similar to the  
9 elements of an offense under the law of this state.

10 SECTION 5. Section 3g(a), Article 42.12, Code of Criminal  
11 Procedure, is amended to read as follows:

12 (a) The provisions of Section 3 of this article do not  
13 apply:

14 (1) to a defendant adjudged guilty of an offense  
15 under:

16 (A) Section 19.02, Penal Code (Murder);

17 (B) Section 19.03, Penal Code (Capital murder);

18 (C) Section 21.11(a)(1), Penal Code (Indecency  
19 with a child);

20 (D) Section 20.04, Penal Code (Aggravated  
21 kidnapping);

22 (E) Section 22.021, Penal Code (Aggravated  
23 sexual assault);

24 (F) Section 29.03, Penal Code (Aggravated  
25 robbery);

26 (G) Chapter 481, Health and Safety Code, for  
27 which punishment is increased under:

1 (i) Section 481.140, Health and Safety  
2 Code; or

3 (ii) Section 481.134(c), (d), (e), or (f),  
4 Health and Safety Code, if it is shown that the defendant has been  
5 previously convicted of an offense for which punishment was  
6 increased under any of those subsections;

7 (H) Section 22.011, Penal Code (Sexual assault);

8 (I) Section 22.04(a)(1), Penal Code (Injury to a  
9 child, elderly individual, or disabled individual), if the offense  
10 is punishable as a felony of the first degree and the victim of the  
11 offense is a child;

12 (J) Section 43.25, Penal Code (Sexual  
13 performance by a child); ~~or~~

14 (K) Section 15.03, Penal Code, if the offense is  
15 punishable as a felony of the first degree; or

16 (L) Section 38.025, Penal Code (Failure to  
17 complete or carry alien registration document); or

18 (2) to a defendant when it is shown that a deadly  
19 weapon as defined in Section 1.07, Penal Code, was used or exhibited  
20 during the commission of a felony offense or during immediate  
21 flight therefrom, and that the defendant used or exhibited the  
22 deadly weapon or was a party to the offense and knew that a deadly  
23 weapon would be used or exhibited. On an affirmative finding under  
24 this subdivision, the trial court shall enter the finding in the  
25 judgment of the court. On an affirmative finding that the deadly  
26 weapon was a firearm, the court shall enter that finding in its  
27 judgment.



1 SECTION 6. Section 4(d), Article 42.12, Code of Criminal  
2 Procedure, is amended to read as follows:

3 (d) A defendant is not eligible for community supervision  
4 under this section if the defendant:

5 (1) is sentenced to a term of imprisonment that  
6 exceeds 10 years;

7 (2) is convicted of a state jail felony for which  
8 suspension of the imposition of the sentence occurs automatically  
9 under Section 15(a);

10 (3) does not file a sworn motion under Subsection (e)  
11 of this section or for whom the jury does not enter in the verdict a  
12 finding that the information contained in the motion is true;

13 (4) is convicted of an offense for which punishment is  
14 increased under Section 481.134(c), (d), (e), or (f), Health and  
15 Safety Code, if it is shown that the defendant has been previously  
16 convicted of an offense for which punishment was increased under  
17 any one of those subsections;

18 (5) is convicted of an offense listed in Section  
19 3g(a)(1)(C), (E), or (H), if the victim of the offense was younger  
20 than 14 years of age at the time the offense was committed;

21 (6) is convicted of an offense listed in Section  
22 3g(a)(1)(D), if the victim of the offense was younger than 14 years  
23 of age at the time the offense was committed and the actor committed  
24 the offense with the intent to violate or abuse the victim sexually;

25 (7) is convicted of an offense listed in Section  
26 3g(a)(1)(J) or (L); or

27 (8) is adjudged guilty of an offense under Section

1 19.02, Penal Code.

2 SECTION 7. Section 5(d), Article 42.12, Code of Criminal  
3 Procedure, is amended to read as follows:

4 (d) In all other cases the judge may grant deferred  
5 adjudication unless:

6 (1) the defendant is charged with an offense:

7 (A) under Sections 49.04-49.08, Penal Code; or

8 (B) for which punishment may be increased under  
9 Section 481.134(c), (d), (e), or (f), Health and Safety Code, if it  
10 is shown that the defendant has been previously convicted of an  
11 offense for which punishment was increased under any one of those  
12 subsections;

13 (2) the defendant:

14 (A) is charged with an offense under Section  
15 21.11, 22.011, or 22.021, Penal Code, regardless of the age of the  
16 victim, or a felony described by Section 13B(b) of this article; and

17 (B) has previously been placed on community  
18 supervision for any offense under Paragraph (A) of this  
19 subdivision; ~~or~~

20 (3) the defendant is charged with an offense under:

21 (A) Section 21.02, Penal Code; or

22 (B) Section 22.021, Penal Code, that is  
23 punishable under Subsection (f) of that section or under Section  
24 12.42(c)(3), Penal Code; or

25 (4) the defendant is charged with an offense under  
26 Section 38.025, Penal Code.

27 SECTION 8. Subchapter B, Chapter 402, Government Code, is

1 amended by adding Section 402.036 to read as follows:

2 Sec. 402.036. IMMIGRATION INVESTIGATION AND ENFORCEMENT.

3 (a) The definitions of terms provided by Chapter 53, Labor Code,  
4 apply to this section.

5 (b) The attorney general shall, at least once every 90 days,  
6 request from the United States Department of Homeland Security a  
7 list of employers in this state that are registered with the  
8 e-verify program. On receipt of the list, the attorney general  
9 shall post the list on the attorney general's Internet website.

10 (c) The attorney general shall retain a copy of each court  
11 order received under Section 53.104(f), Labor Code, and make each  
12 order available on the attorney general's Internet website. The  
13 attorney general shall also include on the attorney general's  
14 Internet website a list of employers in this state that have been  
15 the subject of a court order entered under Section 53.104, Labor  
16 Code.

17 SECTION 9. Subtitle B, Title 2, Labor Code, is amended by  
18 adding Chapter 53 to read as follows:

19 CHAPTER 53. EMPLOYMENT OF ILLEGAL ALIENS

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 53.001. DEFINITIONS. (a) In this chapter:

22 (1) "Economic development incentive" means a grant,  
23 loan, or other form of monetary incentive awarded, given, or paid to  
24 an employer by a governmental entity in exchange for or as a result  
25 of the employer conducting an activity with an economic development  
26 purpose. The term does not include a tax exemption, tax rebate, tax  
27 credit, or tax refund under the laws of this state.

1           (2) "E-verify program" means the electronic  
2 verification of work authorization program of the Illegal  
3 Immigration Reform and Immigration Responsibility Act of 1996 (Pub.  
4 L. No. 104-208, reprinted in note, 8 U.S.C. Section 1324a),  
5 operated by the United States Department of Homeland Security, or a  
6 successor work authorization program designated by the United  
7 States Department of Homeland Security or other federal agency  
8 authorized to verify the work authorization status of newly hired  
9 employees pursuant to the Immigration Reform and Control Act of  
10 1986 (8 U.S.C. Section 1101 et seq.).

11           (3) "Governmental entity" means:

12                   (A) this state; or

13                   (B) a political subdivision of this state,  
14 including a municipality, a county, or any kind of district.

15           (4) "Illegal alien" has the meaning assigned to the  
16 term "unauthorized alien" by 8 U.S.C. Section 1324a(h)(3).

17           (5) "Occupational license" means a license, permit, or  
18 other authorization to engage in business in this state that an  
19 employer is required to hold to conduct business generally in this  
20 state, to conduct business at a particular location in this state,  
21 or to engage in a profession or occupation in this state.

22           (b) The definitions of terms provided by Chapter 201 apply  
23 to this chapter.

24           [Sections 53.002-53.050 reserved for expansion]

25           SUBCHAPTER B. VERIFICATION OF WORK AUTHORIZATION

26           Sec. 53.051. VERIFICATION OF WORK AUTHORIZATION REQUIRED.

27           An employer shall:

1           (1) verify through the e-verify program the work  
2 authorization of each employee hired by the employer; and

3           (2) retain a record of the verification received under  
4 Subdivision (1) until the later of:

5                   (A) the third anniversary of the date of the  
6 verification; or

7                   (B) the last day on which the employee is  
8 employed by the employer.

9           Sec. 53.052. EMPLOYER ELIGIBILITY FOR ECONOMIC DEVELOPMENT  
10 INCENTIVE. (a) In addition to any other eligibility requirement an  
11 employer must satisfy before receiving an economic development  
12 incentive, to be eligible to receive an economic development  
13 incentive an employer must:

14                   (1) register with and participate in the e-verify  
15 program; and

16                   (2) provide proof of that registration and  
17 participation to the governmental entity that awards, gives, or  
18 pays the economic development incentive.

19           (b) If a governmental entity that awards, gives, or pays an  
20 economic development incentive determines that an employer is not  
21 in compliance with Subsection (a), the governmental entity:

22                   (1) may not award an economic development incentive to  
23 the employer; and

24                   (2) must notify the employer, by certified mail, of:

25                           (A) the governmental entity's decision to not  
26 award the incentive based on the employer's noncompliance with  
27 Subsection (a); and

1           (B) any right of the employer to appeal the  
2 governmental entity's determination of noncompliance.

3           (c) If the governmental entity's noncompliance  
4 determination remains valid after all appeals of the governmental  
5 entity's determination of noncompliance with Subsection (a) have  
6 been exhausted, the employer, not later than the 30th day after the  
7 date all appeals have been exhausted, shall repay to the  
8 governmental entity any economic development incentive the  
9 employer received from the governmental entity during the period in  
10 which the employer was determined to be not in compliance.

11           [Sections 53.053-53.100 reserved for expansion]

12           SUBCHAPTER C. PROHIBITED EMPLOYMENT AND CONTRACTS

13           Sec. 53.101. CERTAIN EMPLOYMENT AND CONTRACTS PROHIBITED.

14 An employer may not intentionally or knowingly:

- 15           (1) employ or contract with an illegal alien; or  
16           (2) contract or subcontract for the performance of  
17 labor with an individual or another employer that employs or  
18 contracts with an illegal alien to perform work under the contract  
19 or subcontract.

20           Sec. 53.102. COMPLAINT FORM AND PROCEDURE; CRIMINAL  
21 PENALTY. (a) The attorney general shall prescribe a complaint form  
22 and a complaint process through which a person may submit to the  
23 attorney general an alleged violation of Section 53.101. The  
24 attorney general may not require a complainant to include the  
25 complainant's social security number on the complaint form or to  
26 have the form notarized.

27           (b) The attorney general shall investigate each alleged

1 violation of Section 53.101 received through the submission of the  
2 complaint form prescribed under Subsection (a). The attorney  
3 general may investigate an alleged violation of Section 53.101 that  
4 the attorney general receives in a manner other than through the  
5 submission of the complaint form prescribed under Subsection (a).

6 (c) In investigating an alleged violation of Section  
7 53.101, the attorney general shall request verification of the  
8 immigration status and work authorization of an alleged illegal  
9 alien in accordance with 8 U.S.C. Section 1373(c).

10 (d) This section may not be construed to prohibit the filing  
11 of an anonymous complaint that is not submitted on the complaint  
12 form prescribed under Subsection (a).

13 (e) The attorney general may not investigate a complaint  
14 under this subchapter that does not allege a violation of Section  
15 53.101 and that is based solely on the race, color, or national  
16 origin of an individual.

17 (f) A person commits an offense if the person files a false  
18 complaint under this section. An offense under this subsection is a  
19 Class C misdemeanor.

20 Sec. 53.103. ENFORCEMENT. (a) If the attorney general,  
21 after verifying the immigration status and work authorization of an  
22 individual as required by Section 53.102(c), determines that an  
23 employer violated Section 53.101, the attorney general shall  
24 forward a copy of the complaint and the results of the investigation  
25 to:

26 (1) United States Immigration and Customs  
27 Enforcement;

1           (2) the law enforcement agency with primary  
2 jurisdiction over the geographic area in which the alleged illegal  
3 alien resides; and

4           (3) the county attorney for the county in which the  
5 alleged illegal alien is or was last employed by or performed work  
6 for the employer.

7           (b) On receipt of a complaint and the results of an  
8 investigation under Subsection (a), the county attorney shall bring  
9 an action to enforce Section 53.101 and shall request an expedited  
10 hearing on the matter.

11           (c) A county attorney may not bring a second or subsequent  
12 action against an employer to enforce Section 53.101 before any  
13 other action brought under this subchapter is concluded.

14           Sec. 53.104. COURT PROCEEDINGS AND ORDER GENERALLY. (a)  
15 The court in which an action is brought under Section 53.103(b)  
16 shall set a hearing in the matter as soon as possible after the date  
17 the county attorney requests the expedited hearing but not later  
18 than the 30th day after that date.

19           (b) At a hearing under this section, in determining whether  
20 an individual employed by or performing work for an employer is an  
21 illegal alien the court may:

22           (1) rely only on the federal government's  
23 determination of the alleged illegal alien's immigration status and  
24 work authorization received by the attorney general under Section  
25 53.102(c);

26           (2) take judicial notice of the federal government's  
27 determination of the immigration status and work authorization of



1 the alleged illegal alien received by the attorney general under  
2 Section 53.102(c); and

3 (3) in accordance with 8 U.S.C. Section 1373(c),  
4 request the federal government to provide automated or testimonial  
5 verification of the immigration status and work authorization of  
6 the alleged illegal alien.

7 (c) If, after hearing and notice, the court finds that an  
8 employer violated Section 53.101, the court shall:

9 (1) declare any contract that violates Section  
10 53.101(2) void;

11 (2) order the employer to terminate all employment  
12 that violates Section 53.101 and all performance under a contract  
13 declared void under Subdivision (1); and

14 (3) not later than the third day after the date the  
15 court enters the order, file with the county attorney an affidavit  
16 stating that the employer:

17 (A) has terminated all employment or contractual  
18 performance that violates Section 53.101; and

19 (B) will not intentionally or knowingly violate  
20 Section 53.101.

21 (d) If an employer fails to file the affidavit required  
22 under Subsection (c)(3) within the prescribed period, the county  
23 attorney shall notify the court of the employer's failure to file  
24 the affidavit. On receipt of the notification, the court, after  
25 notice and hearing, shall order each applicable state agency to  
26 suspend, until the date on which the employer files the required  
27 affidavit, the following occupational licenses held by the

1 employer:

2 (1) each occupational license held by the employer  
3 that is specific to the location where an illegal alien was employed  
4 by or performed work for the employer; and

5 (2) if the employer is not required to hold an  
6 occupational license described by Subdivision (1), each  
7 occupational license held by the employer:

8 (A) at the employer's primary place of business;

9 or

10 (B) as a requirement to engage in a profession or  
11 occupation in this state.

12 (e) If an employer files the affidavit required under  
13 Subsection (c)(3) after any applicable occupational license held by  
14 the employer has been suspended under Subsection (d), the county  
15 attorney shall immediately notify the court of the filing of the  
16 affidavit. On receipt of the notification, the court shall  
17 immediately order each state agency that was ordered to suspend an  
18 occupational license under Subsection (d) to reinstate the license,  
19 and the agency shall immediately reinstate the license.

20 (f) A court entering an order under this section shall  
21 forward a copy of the order to the attorney general.

22 Sec. 53.105. PROBATIONARY REPORTING PERIOD. (a) A court  
23 that enters an order under Section 53.104 shall require an employer  
24 to file with the county attorney for the period prescribed by  
25 Subsection (b) a quarterly report containing the name and work  
26 authorization of each employee hired by the employer during the  
27 preceding quarter at the location where the illegal alien was

1 employed by or performed work for the employer.

2 (b) A court that requires an employer to make quarterly  
3 filings under this section shall require the employer to continue  
4 the filings until:

5 (1) the third anniversary of the date on which the  
6 court enters an order under Section 53.104, if the court's finding  
7 was that the employer knowingly violated Section 53.101; and

8 (2) the fifth anniversary of the date on which the  
9 court enters an order under Section 53.104, if the court's finding  
10 was that the employer intentionally violated Section 53.101.

11 Sec. 53.106. LICENSE SUSPENSION AND REVOCATION. (a) This  
12 section applies to the following occupational licenses held by an  
13 employer:

14 (1) each occupational license held by the employer  
15 that is specific to the location where an illegal alien was employed  
16 by or performed work for the employer; and

17 (2) if the employer is not required to hold an  
18 occupational license described by Subdivision (1), each  
19 occupational license held by the employer:

20 (A) at the employer's primary place of business;  
21 or

22 (B) as a requirement to engage in a profession or  
23 occupation in this state.

24 (b) A court that finds that an employer knowingly violated  
25 Section 53.101 may order a state agency to suspend, for a period not  
26 to exceed 10 days, any applicable occupational license held by the  
27 employer. A court that finds that an employer intentionally

1 violated Section 53.101 shall order a state agency to suspend, for a  
2 period of at least 10 days, any applicable occupational license  
3 held by the employer.

4 (c) In determining whether or for how long to suspend an  
5 occupational license held by an employer, the court may consider  
6 any fact admitted in evidence during an action brought to enforce  
7 Section 53.101 and shall consider:

8 (1) the number of illegal aliens employed by or  
9 performing work for the employer;

10 (2) any prior misconduct by the employer;

11 (3) the degree of harm, if any, resulting from the  
12 violation of Section 53.101;

13 (4) whether the employer has made good faith attempts  
14 to comply with this chapter;

15 (5) the duration of the violation of Section 53.101;  
16 and

17 (6) the role, if any, of the employer's directors,  
18 officers, or principals in the violation of Section 53.101.

19 (d) If, after the court proceedings described by Section  
20 53.104, the court finds that the employer committed the violation  
21 of Section 53.101 during or after the completion of a probationary  
22 reporting period described by Section 53.105 and at the same  
23 business location at which the employer committed the first  
24 violation that resulted in the probationary reporting period, the  
25 court shall order each applicable state agency to revoke each  
26 occupational license held by the employer. The applicable state  
27 agency shall revoke the occupational license immediately on receipt

1 of the court's order.

2 Sec. 53.107. REBUTTABLE PRESUMPTION; AFFIRMATIVE DEFENSE.

3 (a) A determination of an alleged illegal alien's immigration  
4 status and work authorization made by the federal government in  
5 accordance with 8 U.S.C. Section 1373(c) creates a rebuttable  
6 presumption of the alleged illegal alien's immigration status and  
7 work authorization.

8 (b) Proof that an employer verified the work authorization  
9 of an alleged illegal alien through the e-verify program creates a  
10 rebuttable presumption that the employer did not intentionally or  
11 knowingly violate Section 53.101.

12 (c) It is an affirmative defense to an action brought under  
13 Section 53.103 that an employer complied in good faith with the  
14 requirements of 8 U.S.C. Section 1324a(b). For purposes of this  
15 subsection, an employer's compliance with the requirements of 8  
16 U.S.C. Section 1324a(b) is considered to be in good faith  
17 notwithstanding a technical or procedural failure to meet the  
18 requirements of 8 U.S.C. Section 1324a(b) if the failure is  
19 isolated, sporadic, or accidental in nature.

20 (d) It is an affirmative defense to an action brought under  
21 Section 53.103 that the employer was entrapped into violating  
22 Section 53.101. An employer asserting an affirmative defense under  
23 this subsection must prove, by a preponderance of the evidence,  
24 that:

25 (1) a law enforcement officer or an agent of a law  
26 enforcement officer introduced the concept of violating Section  
27 53.101 to the employer;

1           (2) the law enforcement officer or agent induced the  
2 employer to commit the violation of Section 53.101; and

3           (3) the employer was not predisposed to commit the  
4 violation before the law enforcement officer or agent took the  
5 actions described by Subdivisions (1) and (2).

6           (e) For purposes of Subsection (d):

7           (1) an employer may not prevail on the affirmative  
8 defense of entrapment if the employer was predisposed to commit the  
9 violation of Section 53.101 and the law enforcement officer or an  
10 agent of the law enforcement officer merely provided the employer  
11 with the manner or means to commit the violation;

12           (2) entrapping conduct does not include a law  
13 enforcement officer or an agent of a law enforcement officer merely  
14 using a ruse or concealing the officer or agent's true identity; and

15           (3) the court may consider the conduct of a law  
16 enforcement officer or an agent of a law enforcement officer in  
17 determining if an employer has proven the affirmative defense of  
18 entrapment.

19           Sec. 53.108. POWERS AND DUTIES OF STATE AND LOCAL OFFICIALS  
20 IN INVESTIGATION. (a) Except as provided by Subsection (b), a  
21 sheriff or other local law enforcement agency may assist the  
22 attorney general or a county attorney in the investigation of an  
23 alleged violation of Section 53.101.

24           (b) An official of this state or a political subdivision of  
25 this state may not attempt independently to determine whether an  
26 individual is authorized to work in this country.

27           [Sections 53.109-53.150 reserved for expansion]

1       SUBCHAPTER D. CRIMINAL OFFENSES RELATED TO EMPLOYMENT OF OR  
2                   PERFORMANCE OF WORK BY ILLEGAL ALIENS

3       Sec. 53.151. HIRING OR CONTRACTING FOR WORK FROM CERTAIN  
4 MOTOR VEHICLES. (a) A person commits an offense if, while the  
5 person is an occupant of a motor vehicle that is stopped on a  
6 street, roadway, or highway and that is blocking or impeding the  
7 normal movement of traffic, the person:

8           (1) hires or attempts to hire or contracts or attempts  
9 to contract with an individual for the purpose of that individual  
10 performing work at another location; and

11           (2) picks up a person described by Subdivision (1) as a  
12 passenger in the motor vehicle.

13       (b) A person commits an offense if, for the purpose of being  
14 hired by or contracting with an occupant of the motor vehicle to  
15 perform work for the occupant at another location, the person  
16 enters a motor vehicle that is stopped on a street, roadway, or  
17 highway and that is blocking or impeding the normal movement of  
18 traffic.

19       (c) An offense under this section is a Class B misdemeanor.

20       Sec. 53.152. APPLICATION FOR AND PERFORMANCE OR  
21 SOLICITATION OF WORK PROHIBITED. (a) A person commits an offense if  
22 the person is an illegal alien and the person knowingly applies for  
23 work in this state, solicits work in this state while in a public  
24 place, or performs work in this state as an employee or an  
25 independent contractor.

26       (b) An offense under this section is a Class B misdemeanor.

27       Sec. 53.153. ENFORCEMENT AND INVESTIGATION. For purposes

1 of investigating an offense under this subchapter and enforcing  
2 this subchapter, a person's immigration status and work  
3 authorization may be determined only by:

4 (1) a law enforcement officer of this state who, under  
5 federal law, is authorized to verify or ascertain a person's  
6 immigration status or work authorization; or

7 (2) a federal law enforcement officer, in accordance  
8 with 8 U.S.C. Section 1373(c).

9 SECTION 10. Chapter 20A, Penal Code, is amended by adding  
10 Section 20A.03 to read as follows:

11 Sec. 20A.03. UNLAWFUL TRANSPORT OR CONCEALMENT OF ILLEGAL  
12 ALIEN. (a) In this section, "illegal alien" means a person who:

13 (1) is not a citizen or national of the United States;  
14 and

15 (2) is unlawfully present in the United States  
16 according to the terms of the Immigration Reform and Control Act of  
17 1986 (8 U.S.C. Section 1101 et seq.).

18 (b) A person commits an offense if the person knowingly or  
19 with recklessness as to another person's status as an illegal  
20 alien:

21 (1) transports the illegal alien into or through this  
22 state in furtherance of the alien's unlawful presence in the United  
23 States;

24 (2) conceals or otherwise shields the illegal alien  
25 while present in this state from detection by local, state, or  
26 federal law enforcement authorities; or

27 (3) solicits or induces the illegal alien to enter or



1 remain in this state.

2 (c) An offense under this section is a Class B misdemeanor  
3 with a minimum fine of \$1,000, except that the offense is a state  
4 jail felony with a fine of \$10,000 if 10 or more illegal aliens are  
5 transported, concealed or otherwise shielded, or solicited or  
6 induced as described by Subsection (b) during the commission of the  
7 offense.

8 (d) It is a defense to prosecution under this section that  
9 the actor is:

10 (1) an officer or agent of the Department of Family and  
11 Protective Services investigating a report of child abuse or  
12 neglect under Chapter 261, Family Code; or

13 (2) emergency medical services personnel providing  
14 emergency medical services, as those terms are defined by Section  
15 773.003, Health and Safety Code.

16 (e) It is a defense to prosecution under Subsection (b)(1)  
17 that the offense occurred in the provision of a state or local  
18 public benefit described in 8 U.S.C. Section 1621(b).

19 SECTION 11. Chapter 38, Penal Code, is amended by adding  
20 Section 38.025 to read as follows:

21 Sec. 38.025. FAILURE TO COMPLETE OR CARRY ALIEN  
22 REGISTRATION DOCUMENT. (a) A person commits an offense if the  
23 person is in violation of 8 U.S.C. Section 1304(e) or 1306(a).

24 (b) For purposes of this section, a person's immigration  
25 status may be verified by:

26 (1) a peace officer or other law enforcement officer  
27 of this state who is authorized under federal law to verify or

1 ascertain a person's immigration status; or

2 (2) a federal law enforcement officer, in accordance  
3 with 8 U.S.C. Section 1373(c).

4 (c) An offense under this section is a Class B misdemeanor  
5 punishable by a maximum fine of \$100, except that:

6 (1) a first violation is punishable by not more than 20  
7 days in jail; and

8 (2) a second or subsequent violation is punishable by  
9 not more than 30 days in jail.

10 (d) As permitted by Article 42.038, Code of Criminal  
11 Procedure, the court may require the defendant to reimburse the  
12 county for the cost of any confinement of the defendant in the  
13 county jail, in addition to any fine imposed under this section.

14 (e) It is a defense to prosecution under this section that  
15 the actor maintains authorization from the federal government to  
16 remain in the United States.

17 SECTION 12. Subtitle J, Title 7, Transportation Code, is  
18 amended by adding Chapter 731 to read as follows:

19 CHAPTER 731. UNLAWFUL TRANSPORT OR CONCEALMENT OF ILLEGAL ALIENS;  
20 IMPOUNDMENT OF MOTOR VEHICLE

21 Sec. 731.001. DEFINITIONS. In this chapter:

22 (1) "Certificate of title" means an instrument issued  
23 under Section 501.021.

24 (2) "Owner" has the meaning assigned by Section  
25 502.001.

26 (3) "Vehicle registration" has the meaning assigned by  
27 Section 601.002.

1       Sec. 731.002. IMPOUNDMENT OF MOTOR VEHICLE. A peace  
2 officer shall impound a motor vehicle that the officer has probable  
3 cause to believe is being used in the commission of an offense under  
4 Section 20A.03, Penal Code.

5       Sec. 731.003. DURATION OF IMPOUNDMENT. The duration of an  
6 impoundment under this chapter is 30 days.

7       Sec. 731.004. NOTICE TO OWNER. The law enforcement agency  
8 that impounds a motor vehicle under this chapter shall provide  
9 notice to the owner of the vehicle in the manner described by  
10 Section 2303.151, Occupations Code.

11       Sec. 731.005. COST FOR TOWING AND IMPOUNDMENT. (a) Except  
12 as provided by Subsection (b) and subject to Subsection (d), the  
13 owner of an impounded motor vehicle is liable for any costs incurred  
14 by a law enforcement agency in towing and impounding the vehicle.

15       (b) If the owner of a motor vehicle reported the vehicle  
16 stolen to a law enforcement agency before the impoundment of the  
17 vehicle, the person who was operating the vehicle at the time the  
18 vehicle was impounded is responsible for any costs incurred by a law  
19 enforcement agency in towing and impounding the vehicle.

20       (c) The costs incurred by a law enforcement agency in towing  
21 and impounding a stolen motor vehicle do not create a lien on the  
22 vehicle.

23       (d) The cost for storing a motor vehicle impounded under  
24 this chapter may not exceed \$15 a day.

25       Sec. 731.006. RELEASE OF IMPOUNDED MOTOR VEHICLE AFTER 30  
26 DAYS. On payment of the costs described by Section 731.005 and the  
27 expiration of the 30-day impoundment period, a law enforcement

1 agency that impounds a motor vehicle under this chapter shall  
2 release the vehicle to the owner of the vehicle if the owner  
3 presents to the law enforcement agency:

4 (1) a driver's license;

5 (2) a certificate of title or vehicle registration;

6 and

7 (3) proof of financial responsibility described by  
8 Section 601.051.

9 Sec. 731.007. RELEASE OF IMPOUNDED MOTOR VEHICLE BEFORE 30  
10 DAYS. A law enforcement agency that impounds a motor vehicle under  
11 this chapter shall release the vehicle to the owner of the vehicle  
12 regardless of whether the 30-day impoundment period has expired if  
13 the owner was not the operator of the vehicle at the time of the  
14 commission of the offense under Section 20A.03, Penal Code, and the  
15 owner presents proof satisfactory to the law enforcement agency  
16 that, at that time, the vehicle:

17 (1) was reported stolen to a law enforcement agency;

18 (2) was operated by an employee of the owner who was  
19 acting outside the scope of the employee's duties; or

20 (3) was leased to the operator by an owner that holds a  
21 license to lease motor vehicles under Chapter 2301, Occupations  
22 Code, or that is not required to hold a license under that chapter.

23 Sec. 731.008. ADMINISTRATIVE HEARINGS. (a) The Department  
24 of Public Safety, at the request of the owner of a motor vehicle  
25 impounded under this chapter, shall hold an administrative hearing  
26 to determine if the vehicle was properly impounded.

27 (b) If it is determined at the administrative hearing that

1 the motor vehicle was improperly impounded, the law enforcement  
2 agency that impounded the vehicle shall immediately release the  
3 vehicle to the owner of the vehicle who requested the hearing.

4 Sec. 731.009. DISPOSAL OF ABANDONED IMPOUNDED VEHICLE. If  
5 an owner does not make a claim for a motor vehicle impounded under  
6 this chapter before the expiration of the 30-day impoundment  
7 period:

8 (1) the vehicle is considered an abandoned vehicle;

9 and

10 (2) the law enforcement agency that impounded the  
11 vehicle under this chapter shall dispose of the vehicle in the  
12 manner described by Section 683.034.

13 SECTION 13. (a) This state, a political subdivision of this  
14 state, and an agency of this state or a political subdivision of  
15 this state shall implement the changes in law made by this Act in  
16 the manner that:

17 (1) burdens the resources and interferes with the  
18 policy priorities of the federal government and agencies of the  
19 federal government as little as possible; and

20 (2) is most consistent with federal laws, rules, and  
21 regulations regulating immigration and the enforcement of  
22 immigration laws by the states.

23 (b) Nothing in this Act may be construed to implement any  
24 provision of the REAL ID Act of 2005 (Pub. L. No. 109-13, Div. B) not  
25 otherwise implemented by other state law.

26 SECTION 14. Chapter 53, Labor Code, as added by this Act,  
27 applies only to a violation that occurs on or after the effective

1 date of this Act.

2           SECTION 15. The attorney general shall prescribe the  
3 complaint form described by Section 53.102, Labor Code, as added by  
4 this Act, and adopt any rules necessary to implement Chapter 53,  
5 Labor Code, as added by this Act, as soon as practicable after the  
6 effective date of this Act.

7           SECTION 16. This Act takes effect September 1, 2011.