

By: Howard of Fort Bend

H.B. No. 878

A BILL TO BE ENTITLED

AN ACT

relating to the participation of governmental entities and other employers in a federal work authorization verification program; establishing an unlawful employment practice.

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

SECTION 1. Subtitle A, Title 6, Government Code, is amended by adding Chapter 619 to read as follows:

CHAPTER 619. VERIFICATION OF EMPLOYEE INFORMATION

Sec. 619.001. DEFINITIONS. In this chapter:

(1) "Governmental entity" means:

(A) the state;

(B) a political subdivision of the state, including a municipality, a county, or any kind of district; or

(C) an institution, board, commission, office, department, court, or other agency:

(i) in the executive, judicial, or legislative branch of state government, including an institution of higher education as defined by Section 61.003, Education Code; or

(ii) of a political subdivision of the state.

(2) "Status verification system" means:

(A) the electronic verification of work authorization program of the federal Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Pub. L. No. 104-208,

1 reprinted in note, 8 U.S.C. Section 1324a), operated by the United
2 States Department of Homeland Security and known as the Basic Pilot
3 Program or E-Verify; or

4 (B) any other federal verification program
5 designated by the United States Department of Homeland Security or
6 any other federal agency authorized to verify the work
7 authorization status of newly hired employees under the federal
8 Immigration Reform and Control Act of 1986 (8 U.S.C. Section 1101 et
9 seq.).

10 Sec. 619.002. VERIFICATION. A governmental entity shall
11 register with and participate in a status verification system to
12 verify the federal employment authorization status of all new
13 employees.

14 Sec. 619.003. RULES. The Texas Workforce Commission shall
15 adopt rules and prescribe forms to implement this chapter. The
16 Texas Workforce Commission shall publish the proposed and adopted
17 rules on the commission's website as well as in the Texas Register.

18 SECTION 2. The heading to Chapter 2264, Government Code, is
19 amended to read as follows:

20 CHAPTER 2264. CERTAIN RESTRICTIONS ON [USE OF CERTAIN] PUBLIC
21 SUBSIDIES AND GOVERNMENTAL CONTRACTS

22 SECTION 3. Section 2264.101, Government Code, is
23 transferred to Subchapter B, Chapter 2264, Government Code,
24 redesignated as Section 2264.054, Government Code, and amended to
25 read as follows:

26 Sec. 2264.054 [~~2264.101~~]. RECOVERY. (a) A public
27 agency, local taxing jurisdiction, or economic development

1 corporation, or the attorney general on behalf of the state or a
2 state agency, may bring a civil action to recover any amounts owed
3 to the public agency, state or local taxing jurisdiction, or
4 economic development corporation under this subchapter [~~chapter~~].

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

9 (c) A business is not liable for a violation of this
10 subchapter [~~chapter~~] by a subsidiary, affiliate, or franchisee of
11 the business, or by a person with whom the business contracts.

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

14 SUBCHAPTER C. STATUS VERIFICATION SYSTEM [~~ENFORCEMENT~~]

15 SECTION 5. Subchapter C, Chapter 2264, Government Code, is
16 amended by adding Sections 2264.1011, 2264.102, and 2264.103 to
17 read as follows:

18 Sec. 2264.1011. DEFINITIONS. In this subchapter:

19 (1) "Governmental entity" has the meaning assigned by
20 Section 619.001.

21 (2) "Status verification system" means an electronic
22 system operated by the federal government through which a
23 governmental entity may make an inquiry, by exercise of authority
24 delegated under 8 U.S.C. Section 1373, to verify or ascertain the
25 citizenship or immigration status of an individual. The term
26 includes:

27 (A) the electronic verification of work

1 authorization program of the federal Illegal Immigration Reform and
2 Immigrant Responsibility Act of 1996 (Pub. L. No. 104-208,
3 reprinted in note, 8 U.S.C. Section 1324a), operated by the United
4 States Department of Homeland Security and known as the Basic Pilot
5 Program or E-Verify;

6 (B) any federal verification program designated
7 by the United States Department of Homeland Security or any other
8 federal agency authorized to verify the work authorization status
9 of newly hired employees under the federal Immigration Reform and
10 Control Act of 1986 (8 U.S.C. Section 1101 et seq.);

11 (C) any other independent, third-party system
12 with an equal or higher degree of reliability as the other programs,
13 systems, or processes described in this subdivision; and

14 (D) the Social Security Number Verification
15 Service or another similar online verification process implemented
16 by the United States Social Security Administration.

17 (3) "Subcontractor" includes a contract employee and
18 staffing agency.

19 Sec. 2264.102. VERIFICATION. (a) A governmental entity
20 may not enter into a contract for the physical performance of
21 services within this state with a contractor unless the contractor
22 registers with and participates in a status verification system to
23 verify the work authorization status of all new employees.

24 (b) A contractor may not enter into a contract with a
25 governmental entity for the physical performance of services in
26 this state unless the contractor and all subcontractors under the
27 contract register with and participate in a status verification

1 system to verify the work authorization status of all new
2 employees.

3 Sec. 2264.103. RULES. The Texas Workforce Commission shall
4 adopt rules and prescribe forms to implement this subchapter. The
5 Texas Workforce Commission shall publish the proposed and adopted
6 rules on the commission's website as well as in the Texas Register.

7 SECTION 6. Subchapter B, Chapter 21, Labor Code, is amended
8 by adding Section 21.062 to read as follows:

9 Sec. 21.062. DISCRIMINATION BASED ON NATIONAL ORIGIN. (a)
10 In this section:

11 (1) "Status verification system" has the meaning
12 assigned by Section 619.001, Government Code.

13 (2) "Unauthorized alien" has the meaning assigned by 8
14 U.S.C. Section 1324a(h)(3).

15 (b) An employer commits an unlawful employment practice if
16 the employer discharges an employee working in this state who is a
17 United States citizen or permanent resident alien while retaining
18 an employee who the employer knows or reasonably should know is an
19 unauthorized alien who is working in this state in a job category:

20 (1) that requires equal skill, effort, and
21 responsibility as the job category held by the discharged employee;
22 and

23 (2) under which work is performed in similar working
24 conditions as in the job category held by the discharged employee.

25 (c) An employer who was enrolled in and used a status
26 verification system to verify the employment authorization of its
27 employees in this state on the date of the discharge described by

1 Subsection (b) is exempt from liability, investigation, or suit
2 arising under this section.

3 SECTION 7. (a) Sections 2264.1011, 2264.102, and 2264.103,
4 Government Code, as added by this Act, apply only in relation to a
5 contract or contract extension made on or after the effective date
6 of this Act.

7 (b) Section 21.062, Labor Code, as added by this Act,
8 applies to conduct of an employer occurring on or after the
9 effective date of this Act. Conduct occurring before that date is
10 governed by the law in effect on the date the conduct occurred, and
11 the former law is continued in effect for that purpose.

12 SECTION 8. This Act takes effect September 1, 2011.