

By: Jackson

H.B. No. 2450

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the offense of employing an individual not lawfully present in the United States.

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

SECTION 1. The heading to Title 8, Penal Code, is amended to read as follows:

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

SECTION 2. Title 8, Penal Code, is amended by adding Chapter 40 to read as follows:

CHAPTER 40. CERTAIN EMPLOYMENT PROHIBITED UNDER FEDERAL LAW

Sec. 40.01. DEFINITIONS. In this chapter:

(1) "Business" means a commercial enterprise or establishment, including a sole proprietorship, joint venture, partnership, corporation, or other legally recognizable entity, whether for profit or not for profit, that engages in a business operation in this state.

(2) "Employ" means to agree or promise to provide compensation for labor or services rendered.

(3) "Individual not lawfully present" means an individual who, at the time of employment, is an alien who is not lawfully admitted for permanent residence in the United States under the federal Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) or not otherwise authorized to be employed by that Act

1 or the United States attorney general.

2 (4) "Lawful resident alien" means a person who is
3 entitled to lawful residence in the United States under the federal
4 Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.).

5 (5) "Lawful resident verification information" means
6 the documentation required by the United States Department of
7 Homeland Security for completing the employment eligibility
8 verification form commonly referred to as the I-9. Documentation
9 that satisfies the requirements of the Form I-9 at the time of
10 employment is lawful resident verification information.

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

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

17 (c) The attorney general may offer to a county or district
18 attorney the assistance of the attorney general's office in the
19 prosecution of an offense under this section. For purposes of this
20 subsection, assistance includes investigative, technical, and
21 litigation assistance.

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

27 Sec. 40.03. AFFIRMATIVE DEFENSES. (a) It is an affirmative

1 defense to prosecution of a violation of Section 40.02 that:

2 (1) the business, at least 14 calendar days after the
3 commencement of the employee's employment, requested from the
4 employee and received and documented in the employee's employment
5 record, lawful resident verification information consistent with
6 employer requirements under the federal Immigration Reform and
7 Control Act of 1986 (Pub. L. No. 99-603); and

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

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

17 SECTION 3. This Act takes effect September 1, 2011.