

By: Davis of Dallas

H.B. No. 3240

A BILL TO BE ENTITLED

1 AN ACT
2 relating to requiring employers to participate in the federal
3 E-Verify program and of the Texas Workforce Commission in regard to
4 the E-Verify program; outlining certain duties of employers
5 participation and providing civil penalties.

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

7 SECTION 1. Subtitle B, Title 2, Labor Code, is amended by
8 adding Chapter 53 to read as follows:

9 CHAPTER 53. VERIFICATION OF WORK AUTHORIZATION STATUS

10 SUBCHAPTER A. GENERAL PROVISIONS

11 Sec. 53.001. DEFINITIONS. In this chapter:

12 (1) "Commission" means the Texas Workforce
13 Commission.

14 (2) "Employee" has the meaning assigned by Section
15 21.002.

16 (3) "Employer" has the meaning assigned by Section
17 21.002.

18 (4) "E-Verify program" means the electronic
19 verification of work authorization program of the federal Illegal
20 Immigration Reform and Immigrant Responsibility Act of 1996 (Pub.
21 L. No. 104-208, reprinted in note, 8 U.S.C. Section 1324a),
22 operated by the United States Department of Homeland Security, or a
23 successor work authorization program designated by the United
24 States Department of Homeland Security or other federal agency

1 authorized to verify the work authorization status of newly hired
2 employees under the federal Immigration Reform and Control Act of
3 1986 (8 U.S.C. Section 1101 et seq.).

4 (5) "Governmental entity" means:

5 (A) the state; or

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

8 (6) "License" means a license, certificate,
9 registration, permit, or other authorization that:

10 (A) is issued by a licensing authority;

11 (B) is subject before expiration to renewal,
12 suspension, revocation, forfeiture, or termination by a
13 governmental entity that issues or renews a license; and

14 (C) is required for a person to practice or
15 engage in a particular business, occupation, or profession.

16 Sec. 53.002. RULES. The commission shall adopt rules and
17 prescribe forms to implement this chapter. The commission shall
18 publish the proposed and adopted rules on the commission's website
19 and in the Texas Register.

20 [Sections 53.003-53.050 reserved for expansion]

21 SUBCHAPTER B. DUTIES REGARDING E-VERIFY PROGRAM

22 Sec. 53.051. COMMISSION DUTIES. The commission shall post
23 in a prominent location on its website information or links to
24 information from the United States Government Accountability
25 Office or a similar reliable source independent of the United
26 States Department of Homeland Security selected by the commission
27 regarding:

1 (1) the accuracy of the E-Verify program database;

2 (2) the approximate financial burden and expenditure
3 of time that using the E-Verify program imposes on an employer; and

4 (3) an overview of an employer's duties under federal
5 and state law regarding using the E-Verify program.

6 Sec 53.052 VERIFICATION

7 An employer shall register and participate in the E-Verify
8 program to verify information of all new employees.

9 Sec. 53.053. DUTIES OF EMPLOYER PARTICIPATING IN E-VERIFY
10 PROGRAM; VIOLATION. (a) Before enrolling in the E-Verify program,
11 an employer is urged to consult the commission's website to review
12 current information on an employer's legal duties in regard to
13 participating in the program.

14 (b) On initial enrollment in the E-Verify program, or within
15 30 days for an employer who enrolled in the program before September
16 1, 2011, the effective date of this Act, the employer must attest
17 under penalty of perjury, in the manner and on a form prescribed by
18 the commission and accessible on the commission's website, that:

19 (1) the employer:

20 (A) has received the E-Verify program training
21 materials from the United States Department of Homeland Security;
22 and

23 (B) has posted in a prominent location in the
24 employer's workplace visible to both prospective and current
25 employees of the employer:

26 (i) a notice from the United States
27 Department of Homeland Security indicating that the employer is

1 enrolled in the E-Verify program; and

2 (ii) a right to work poster issued by the
3 Office of Special Counsel for Immigration-Related Unfair
4 Employment Practices of the Civil Rights Division of the United
5 States Department of Justice; and

6 (2) each of the employer's employees who will
7 administer the program has completed the program's computer-based
8 tutorial.

9 (c) An employer shall maintain the signed original of the
10 attestation form described by Subsection (b) and any documentation
11 certifying completion of the E-Verify program's computer-based
12 tutorial by the employer and its employees and make those documents
13 available for inspection or copying by the commission at reasonable
14 times.

15 (d) An employer who participates in the E-Verify program
16 shall ensure that:

17 (1) the program is used by the employer and the
18 employer's authorized employees for the sole purpose of verifying
19 the employment authorization status of newly hired employees; and

20 (2) any information accessible through the E-Verify
21 program and the means of access to the program are not disseminated
22 to any person other than to an authorized employee performing
23 employment verification duties on behalf of the employer.

24 (e) An employer enrolled in the E-Verify program violates
25 this section if the employer:

26 (1) fails to display the notices required by
27 Subsection (b) in the manner prescribed by that subsection;

1 (2) allows an employee to use an E-Verify program
2 before completing the program's computer-based tutorial;

3 (3) fails to take reasonable steps to prevent an
4 employee from assuming another employee's E-Verify program user
5 identification or password in order to circumvent completing the
6 program's computer-based tutorial;

7 (4) uses the E-Verify program to verify the employment
8 eligibility of a job applicant before hiring the applicant or to
9 otherwise use the program to screen an applicant before hiring and
10 completing a Form I-9 in regard to the applicant;

11 (5) accesses information through the E-Verify program
12 regarding an individual who is not an employee of the employer; or

13 (6) fails to safeguard the information accessible
14 through the E-Verify program and the means of access to the program,
15 including user identifications, passwords, and other privacy
16 protections.

17 [Sections 53.054-53.100 reserved for expansion]

18 SUBCHAPTER C. ENFORCEMENT

19 Sec. 53.101. COMMISSION INVESTIGATION; COMPLAINT
20 RESOLUTION; CIVIL ACTION. (a) A person who has reason to believe
21 that an employer has violated Section 53.053 may file a complaint
22 with the commission in accordance with this section.

23 (b) A complaint must:

24 (1) be in writing on a form prescribed by the
25 commission; and

26 (2) be verified by the person making the complaint.

27 (c) A person may file a complaint under this section:

1 (1) in person at an office of the commission; or

2 (2) by mailing the complaint, by certified mail, to an
3 address designated by the commission.

4 (d) On receipt of a complaint, a staff member of the
5 commission designated by the executive director shall investigate
6 the complaint in an attempt to determine whether a violation of
7 Section 53.053 occurred. If the staff member determines that there
8 is no substantial evidence that the employer violated Section
9 53.053, the commission shall dismiss the complaint and inform the
10 complainant in writing by certified mail of the dismissal and of the
11 complainant's right to file a civil action under Section 53.102.

12 (e) If the staff member determines that there is substantial
13 evidence that the employer violated Section 53.053, the commission
14 shall endeavor to resolve the complaint by informal methods of
15 conference, conciliation, and persuasion.

16 (f) If the commission does not resolve the complaint under
17 Subsection (e), the commission may commence a civil action in a
18 court in the county in which the complainant resides or in which the
19 complainant is employed to compel compliance by the employer. The
20 commission shall recover court costs and reasonable attorney's fees
21 in an action brought by the commission under this subsection.

22 Sec. 53.102. CIVIL ACTION BY EMPLOYEE OR EMPLOYMENT
23 APPLICANT. A person who is injured by an employer's violation of
24 Section 53.053 may bring a civil action against the employer in a
25 court in the county in which the complainant resides or in which the
26 complainant is employed.

27 Sec. 53.103. CIVIL PENALTY; DAMAGES; LICENSE SUSPENSION.

1 On a finding that an employer violated Section 53.053, the court
2 shall:

3 (1) assess against the employer a civil penalty of not
4 more than \$200 per employee affected by the violation, as well as
5 court cost, and reasonable attorney's fees;

6 (2) for a wilful and knowing violation or a second
7 violation, assess against the employer a civil penalty of not more
8 than \$500 per employee affected by the violation, as well as court
9 cost, and reasonable attorney's fees; or

10 (3) for a third or subsequent violation:

11 (A) assess against the employer a civil penalty
12 of not more than \$1000 per employee affected by the violation, as
13 well as actual damages, court costs, and reasonable attorney's
14 fees; and

15 (B) order the suspension for at least 90 days of
16 each license held by the employer.

17 SECTION 2. Subchapter B, Chapter 21, Labor Code, is amended
18 by adding Section 21.062 to read as follows:

19 Sec. 21.062. DISCRIMINATION BY EMPLOYER PARTICIPATING IN
20 E-VERIFY PROGRAM. (a) In this section, "E-Verify program" has the
21 meaning assigned by Section 53.001.

22 (b) An employer participating in the E-Verify program
23 commits an unlawful employment practice if the employer refuses to
24 hire, segregates, or acts with respect to recruitment, hiring,
25 promotion, renewal of employment, selection for training or
26 apprenticeship, discharge, discipline, tenure, or terms,
27 privileges, or conditions of employment in regard to an individual

1 without following the procedures of the E-Verify program.

2 SECTION 3. Section 21.062, Labor Code, as added by this Act,
3 applies to the conduct of an employer occurring on or after the
4 effective date of this Act. Conduct occurring before that date is
5 governed by the law in effect on the date the conduct occurred, and
6 the former law is continued in effect for that purpose.

7 SECTION 4. This Act takes effect September 1, 2011.