

By: Chisum

H.B. No. 3252

A BILL TO BE ENTITLED

1 AN ACT
2 relating to a prohibition against the knowing employment of
3 unauthorized foreign nationals; providing administrative
4 penalties.

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

6 SECTION 1. The purpose of this Act is to provide for the
7 execution of the policies of the federal Immigration and
8 Nationality Act (8 U.S.C. Section 1101 et seq.), identify employers
9 whose employment practices violate Sections 1324(a)(1) and (a)(2)
10 of that Act, and make available to this state the full productive
11 employment capacities of United States citizens, lawful permanent
12 residents, and employment-authorized foreign-born nationals in
13 this state.

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

16 CHAPTER 53. EMPLOYMENT OF UNAUTHORIZED FOREIGN NATIONALS

17 SUBCHAPTER A. GENERAL PROVISIONS

18 Sec. 53.001. DEFINITIONS. In this chapter:

19 (1) "Commission" means the Texas Workforce
20 Commission.

21 (2) "Employee" means an individual who is employed by
22 an employer for compensation.

23 (3) "Employer" means a person who:

24 (A) employs one or more employees; or

1 (B) acts directly or indirectly in the interests
2 of an employer in relation to an employee.

3 (4) "E-Verify program" means the electronic
4 verification of work authorization program of the federal Illegal
5 Immigration Reform and Immigrant Responsibility Act of 1996 (Pub.
6 L. No. 104-208, reprinted in note, 8 U.S.C. Section 1324a),
7 operated by the United States Department of Homeland Security, or a
8 successor work authorization program designated by the United
9 States Department of Homeland Security or another federal agency
10 authorized to verify the work authorization status of newly hired
11 employees under the federal Immigration Reform and Control Act of
12 1986 (8 U.S.C. Section 1101 et seq.).

13 (5) "Knowingly" means, with respect to employing,
14 recruiting, or referring an unauthorized foreign national, having
15 actual knowledge that a person is an unauthorized foreign national
16 or failing to perform a legal duty to determine the employment
17 eligibility status of an unauthorized foreign national.

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

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

27 (8) "Unauthorized foreign national" means a person who

1 at the time of employment is neither an alien who is lawfully
2 admitted for permanent residence in the United States under the
3 federal Immigration and Nationality Act (8 U.S.C. Section 1101 et
4 seq.) nor authorized to be employed by that Act or the United States
5 attorney general.

6 Sec. 53.002. RULES. The commission shall adopt rules for
7 the administration of this chapter.

8 [Sections 53.003-53.050 reserved for expansion]

9 SUBCHAPTER B. PROHIBITION AGAINST KNOWING EMPLOYMENT OF
10 UNAUTHORIZED FOREIGN NATIONAL

11 Sec. 53.051. PROHIBITION AGAINST KNOWING EMPLOYMENT OF
12 UNAUTHORIZED FOREIGN NATIONAL. (a) An employer may not knowingly
13 employ, or recruit or refer for a fee for employment, an
14 unauthorized foreign national.

15 (b) An employer has not violated Subsection (a) in regard to
16 a particular employee if:

17 (1) the employer, at least four calendar days after
18 the commencement of the employee's employment, requested from the
19 employee and received and documented in the employee's employment
20 record lawful resident verification information consistent with
21 employer requirements under the federal Immigration Reform and
22 Control Act of 1986 (8 U.S.C. Section 1101 et seq.); and

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

25 (c) An employer has not violated Subsection (a) in regard to
26 a particular employee if the employer verified the immigrant status
27 of the person at least four calendar days after the commencement of

1 the employee's employment through the E-Verify program.

2 [Sections 53.052-53.100 reserved for expansion]

3 SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

4 Sec. 53.101. FILING COMPLAINT. (a) A person who has reason
5 to believe that an employer has violated Section 53.051(a) may file
6 a complaint with the commission in accordance with this subchapter.

7 (b) A complaint must:

8 (1) be in writing on a form prescribed by the
9 commission; and

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

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

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

13 (2) by mailing the complaint to an address designated
14 by the commission.

15 Sec. 53.102. INVESTIGATION AND PRELIMINARY DISMISSAL ORDER
16 OR REFERRAL ORDER. (a) On receipt of a complaint, an examiner
17 employed by the commission shall investigate the complaint in an
18 attempt to:

19 (1) verify information regarding the immigration
20 status of the relevant employee or employees of the employer
21 alleged to have violated Section 53.051(a); and

22 (2) determine whether a hearing should be conducted.

23 (b) If the examiner determines that there is no substantial
24 evidence that the employer violated Section 53.051(a), the examiner
25 shall issue a preliminary dismissal order dismissing the complaint.

26 (c) If the examiner determines that there is substantial
27 evidence that the employer violated Section 53.051(a), the examiner

1 shall refer the complaint to a hearing tribunal established under
2 Section 53.103.

3 (d) The examiner shall mail notice of the preliminary
4 dismissal order or referral order to each party at that party's last
5 known address, as reflected by commission records.

6 Sec. 53.103. ESTABLISHMENT OF HEARING TRIBUNALS. The
7 commission shall establish one or more impartial hearing tribunals
8 to hear and decide complaints under this chapter.

9 Sec. 53.104. REQUEST FOR HEARING ON PRELIMINARY DISMISSAL
10 ORDER. (a) A party may request a hearing before a hearing tribunal
11 to appeal a preliminary dismissal order made under Section
12 53.102(b).

13 (b) The request for the hearing must be made in writing not
14 later than the 21st day after the date the examiner mails the notice
15 of the preliminary dismissal order.

16 Sec. 53.105. PRELIMINARY DISMISSAL ORDER FINAL IF HEARING
17 NOT REQUESTED. If neither party requests a hearing to appeal a
18 preliminary dismissal order made under Section 53.102(b) within the
19 period prescribed by Section 53.104, the order becomes the final
20 order of the commission for all purposes, and neither party is
21 entitled to judicial review of the order under this subchapter.

22 Sec. 53.106. NOTICE OF AND TIME FOR HEARING. (a) A notice
23 regarding a hearing conducted under this subchapter must be mailed
24 by the hearing tribunal not later than the 21st day after the date
25 the referral order or request for the hearing is received by the
26 commission.

27 (b) As soon as practicable, but not later than the 45th day

1 after the date a notice is mailed under Subsection (a), the tribunal
2 shall conduct the hearing.

3 Sec. 53.107. HEARING PROCEDURES. (a) A hearing conducted
4 under this subchapter is subject to the rules and hearings
5 procedures used by the commission in the determination of a claim
6 for unemployment compensation benefits.

7 (b) The hearing is not subject to Chapter 2001, Government
8 Code.

9 Sec. 53.108. ORDER AFTER HEARING; ADMINISTRATIVE PENALTY.

10 (a) After a hearing, if the hearing tribunal finds by clear and
11 convincing evidence that the employer has violated Section
12 53.051(a), the hearing tribunal shall:

13 (1) for a first violation, enter a written order
14 requiring the employer to request on-site training by the United
15 States Department of Homeland Security to assist the employer in
16 instituting compliance protocols that may prevent subsequent
17 violations; or

18 (2) for a second or subsequent violation occurring
19 before the second anniversary of the date of the hearing tribunal's
20 order under Subdivision (1), enter a written order assessing an
21 administrative penalty against the employer in an amount not to
22 exceed:

23 (A) \$50,000, if the employer employs fewer than
24 100 employees in this state;

25 (B) \$100,000, if the employer employs at least
26 100 but fewer than 200 employees in this state;

27 (C) \$200,000, if the employer employs at least

1 200 but fewer than 300 employees in this state; and

2 (D) \$300,000, if the employer employs 300 or more
3 employees in this state.

4 (b) For purposes of determining the number of employees
5 employed by an employer under Subsection (a)(2), the requisite
6 number of employees must have been employed by the employer for each
7 of at least 20 calendar weeks during the current or preceding
8 calendar year.

9 (c) After a hearing, if the hearing tribunal does not find
10 by clear and convincing evidence that the employer has violated
11 Section 53.051(a), the hearing tribunal shall enter a written order
12 dismissing the complaint.

13 Sec. 53.109. NOTICE TO PARTIES AND FINALITY OF HEARING
14 TRIBUNAL ORDER. (a) The hearing tribunal shall mail to each party to
15 the hearing notice of the tribunal's decision. The notice shall be
16 mailed to a party's last known address, as reflected by commission
17 records.

18 (b) The order of the hearing tribunal becomes final on the
19 14th day after the date the order is mailed unless a further appeal
20 to the commission is initiated as provided by this subchapter.

21 Sec. 53.110. REMOVAL OR TRANSFER OF COMPLAINT PENDING
22 BEFORE HEARING TRIBUNAL. (a) The commission by order may remove to
23 itself or transfer to another hearing tribunal the proceedings on a
24 complaint before a hearing tribunal.

25 (b) The commission promptly shall mail to the parties to the
26 affected hearing notice of the order under Subsection (a).

27 (c) A quorum of the commission shall hear a proceeding

1 removed to the commission under Subsection (a).

2 Sec. 53.111. COMMISSION REVIEW OF HEARING TRIBUNAL ORDER.

3 The commission may:

4 (1) on its own motion:

5 (A) affirm, modify, or set aside an order issued
6 under Section 53.108 on the basis of the evidence previously
7 submitted in the case; or

8 (B) direct the taking of additional evidence; or

9 (2) permit any of the parties affected by the order to
10 initiate an appeal before the commission.

11 Sec. 53.112. NOTICE OF COMMISSION ACTION TO PARTIES. (a)

12 The commission shall mail to each party to an appeal under Section
13 53.111 notice of:

14 (1) the commission's decision; and

15 (2) the parties' right to judicial review of the order.

16 (b) The notice shall be mailed to a party's last known
17 address, as reflected by commission records.

18 Sec. 53.113. FINALITY OF COMMISSION ORDER. An order of the
19 commission becomes final on the 14th day after the date the order is
20 mailed unless before that date:

21 (1) the commission by order reopens the appeal; or

22 (2) a party to the appeal files a written motion for
23 rehearing.

24 Sec. 53.114. JUDICIAL REVIEW. (a) A party who has exhausted
25 the party's administrative remedies under this chapter, other than
26 a motion for rehearing, may bring a suit to appeal the order.

27 (b) The suit must be filed not later than the 30th day after

1 the date the final order is mailed to the party.

2 (c) The commission and any other party to the proceeding
3 before the commission must be made defendants in the suit.

4 (d) The suit must be brought in the county of residence of
5 the party seeking judicial review. If the party is not a resident
6 of this state, the suit must be brought in the county in this state
7 in which the employer has its principal place of business.

8 (e) An appeal under this subchapter is by trial de novo with
9 the substantial evidence rule being the standard of review in the
10 manner as applied to an appeal from a final decision under Subtitle
11 A, Title 4.

12 SECTION 3. Chapter 53, Labor Code, as added by this Act,
13 applies only to a violation that occurs on or after the effective
14 date of this Act.

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