

By: Pena

H.B. No. 3667

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the establishment and administration of an employment  
3 verification compliance program, deterring the use of unauthorized  
4 foreign workers, imposing powers and duties on executive agencies,  
5 and providing for remedies.

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

7 Section 1. Subtitle A, Title 2, Labor code, is amended by  
8 adding Chapter 23 to read as follows:

9 § 23.001. PURPOSES. The general purposes of this chapter are  
10 to:

11 (1) provide for the execution of the policies of Title  
12 8, section 1324a of the Immigration and Nationality Act and its  
13 subsequent amendments;

14 (2) identify an authority that meets the criteria  
15 under 8 U.S.C. section 1324a(a)(1) and 8 U.S.C. section  
16 1324a(a)(2); and,

17 (3) make available to the state the full productive  
18 capacities of United States Citizens, Lawful Permanent Residents,  
19 and employment-authorized foreign-born nationals in this state.

20 § 23.002. DEFINITIONS. In this chapter:

21 (1) "E-Verify" means the internet-based system that  
22 allows an employer, using information reported on an employee's  
23 Form I-9, Employment Eligibility Verification form, to determine  
24 the eligibility of that employee to work in the United States. The

1 system operated by the United States Department of Homeland  
2 Security in partnership with the Social Security Administration.

3 (2) "knowingly" means having actual knowledge that a  
4 person is an unauthorized foreign national or having a duty imposed  
5 by law to determine the immigration status of an unauthorized  
6 foreign national and failing to perform such duty.

7 (3) "unauthorized foreign national" means a person who  
8 is--at the time of employment--neither an alien who is lawfully  
9 admitted for permanent or conditional residence in the United  
10 States pursuant to the federal Immigration and Nationality Act nor  
11 authorized to be employed by the federal Immigration and  
12 Nationality Act or the United States attorney general.

13 § 23.003 ADMINISTRATIVE OFFENSE OF EMPLOYMENT OF  
14 UNAUTHORIZED FOREIGN NATIONALS

15 (1) An employer shall not knowingly employ, recruit or  
16 refer for a fee for employment, an unauthorized foreign national.

17 (2) An employer has not violated subsection (1) with  
18 respect to a particular employee, if the employer:

19 (a) Requested from the employee, received, and  
20 documented in the Form I-9 at least four (4) business days after  
21 commencement of employment, lawful verification information  
22 consistent with the employer requirements under the Immigration  
23 Reform and Control Act of 1986, and its amendments; and

24 (b) The lawful resident verification information  
25 provided by the person later was determined to be false.

26 (3) An employer has not violated subsection (1) with  
27 respect to a particular employee, if the employer verified the

1 authorization status of the employee at least four (4) business  
2 days after commencement of employment by using E-Verify.

3 (4) If there is substantial evidence that a violation  
4 of subsection (1) has occurred, the commission shall conduct a  
5 hearing on the question of whether the employer has violated  
6 subsection (1). If the commission or the commission's designee  
7 determined that there is clear and convincing evidence that a  
8 person has violated subsection (1) the commission shall state in  
9 its findings of fact and conclusions of law whether there have been  
10 a pattern and practice of violations of subsection (1).

11 (a) For the first violation of subsection (1),  
12 the commission shall issue an order compelling the employer to  
13 request on-site training by the Department of Homeland Security to  
14 assist the employer institute compliance protocols that may prevent  
15 subsequent violations.

16 (b) For the second or subsequent violation of  
17 subsection (1) occurring within two (2) years from the issuance of  
18 the commission's first order, the commission shall order the  
19 payment of an administrative fine to be assessed against the  
20 employer up to an amount not to exceed:

21 (i) \$500 in the case of an employer that has  
22 fewer than 100 employees;

23 (ii) \$1000 in the case of an employer that  
24 has more than 101 employees and fewer than 200 employees;

25 (iii) \$1500 in the case of an employer that  
26 has more than 201 employees and fewer than 300 employees; and,

27 (iv) \$2000 in the case of an employer that

1 has more than 301 employees or more.

2                   (c) For the purposes of subsection (b), in  
3 determining the number of employees of an employer, the requisite  
4 number of employees must be employed by the employer for each of 20  
5 or more calendar weeks in the current or preceding calendar year.

6                   (5) The commission is authorized to promulgate rules  
7 and regulations to effectuate the purposes of this section.