

By: Davis of Dallas

H.B. No. 1117

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain duties of employers voluntarily participating
3 in the federal E-Verify program and of the Texas Workforce
4 Commission in regard to the E-Verify program; providing civil
5 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. DUTIES OF EMPLOYER VOLUNTARILY PARTICIPATING
7 IN E-VERIFY PROGRAM; VIOLATION. (a) Before voluntarily enrolling
8 in the E-Verify program, an employer must consider consulting the
9 commission's website to review current information on the accuracy
10 of the program's database and an employer's legal duties in regard
11 to participating in the program.

12 (b) On initial enrollment in the E-Verify program, or, for
13 an employer who enrolled in the program before September 1, 2011, as
14 soon as practicable after that date, the employer must attest under
15 penalty of perjury, in the manner and on a form prescribed by the
16 commission and accessible on the commission's website, that:

17 (1) the employer:

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

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

24 (i) a notice from the United States
25 Department of Homeland Security indicating that the employer is
26 enrolled in the E-Verify program; and

27 (ii) an antidiscrimination notice issued by

1 the Office of Special Counsel for Immigration-Related Unfair
2 Employment Practices of the Civil Rights Division of the United
3 States Department of Justice; and

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

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

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

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

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

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

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

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

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

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

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

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

15 [Sections 53.053-53.100 reserved for expansion]

16 SUBCHAPTER C. ENFORCEMENT

17 Sec. 53.101. COMMISSION INVESTIGATION; COMPLAINT
18 RESOLUTION; CIVIL ACTION. (a) A person who has reason to believe
19 that an employer has violated Section 53.052 may file a complaint
20 with the commission in accordance with this section.

21 (b) A complaint must:

22 (1) be in writing on a form prescribed by the
23 commission; and

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

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

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

27 (2) by mailing the complaint to an address designated

1 by the commission.

2 (d) On receipt of a complaint, a staff member of the
3 commission designated by the executive director shall investigate
4 the complaint in an attempt to determine whether a violation of
5 Section 53.052 occurred. If the staff member determines that there
6 is no substantial evidence that the employer violated Section
7 53.052, the commission shall dismiss the complaint and inform the
8 complainant in writing by certified mail of the dismissal and of the
9 complainant's right to file a civil action under Section 53.102.

10 (e) If the staff member determines that there is substantial
11 evidence that the employer violated Section 53.052, the commission
12 shall endeavor to resolve the complaint by informal methods of
13 conference, conciliation, and persuasion.

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

20 Sec. 53.102. CIVIL ACTION BY EMPLOYEE OR EMPLOYMENT
21 APPLICANT. A person who is injured by an employer's violation of
22 Section 53.052 may bring a civil action against the employer in a
23 court in the county in which the complainant resides or in which the
24 complainant is employed.

25 Sec. 53.103. CIVIL PENALTY; DAMAGES; LICENSE SUSPENSION.
26 On a finding that an employer violated Section 53.052, the court
27 shall:

1 (1) assess against the employer a civil penalty of not
2 more than \$200 per employee affected by the violation;

3 (2) for a wilful and knowing violation or a second
4 violation, assess against the employer a civil penalty of not more
5 than \$500 per employee affected by the violation; or

6 (3) for a third or subsequent violation:

7 (A) assess against the employer a civil penalty
8 of not more than \$1,000 per employee affected by the violation, as
9 well as actual damages, court costs, and reasonable attorney's
10 fees; and

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

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

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

18 (b) An employer participating in the E-Verify program
19 commits an unlawful employment practice if the employer refuses to
20 hire, segregates, or acts with respect to recruitment, hiring,
21 promotion, renewal of employment, selection for training or
22 apprenticeship, discharge, discipline, tenure, or terms,
23 privileges, or conditions of employment in regard to an individual
24 without following the procedures of the E-Verify program.

25 SECTION 3. Section 21.062, Labor Code, as added by this Act,
26 applies to the conduct of an employer occurring on or after the
27 effective date of this Act. Conduct occurring before that date is

H.B. No. 1117

1 governed by the law in effect on the date the conduct occurred, and
2 the former law is continued in effect for that purpose.

3 SECTION 4. This Act takes effect September 1, 2013.