

By: Bonnen of Galveston

H.B. No. 2301

A BILL TO BE ENTITLED

AN ACT

1
2 relating to requiring state contractors and governmental entities
3 to participate in the federal electronic verification of work
4 authorization program, or E-Verify, and authorizing the suspension
5 of certain licenses held by private employers for the knowing
6 employment of persons not lawfully present in this state;
7 authorizing a fee.

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

9 SECTION 1. The heading to Chapter 2264, Government Code, is
10 amended to read as follows:

11 CHAPTER 2264. CERTAIN RESTRICTIONS ON [USE OF CERTAIN] PUBLIC
12 SUBSIDIES AND STATE CONTRACTS

13 SECTION 2. Section 2264.101, Government Code, is
14 transferred to Subchapter B, Chapter 2264, Government Code,
15 redesignated as Section 2264.054, Government Code, and amended to
16 read as follows:

17 Sec. 2264.054 [~~2264.101~~]. RECOVERY. (a) A public
18 agency, local taxing jurisdiction, or economic development
19 corporation, or the attorney general on behalf of the state or a
20 state agency, may bring a civil action to recover any amounts owed
21 to the public agency, state or local taxing jurisdiction, or
22 economic development corporation under this subchapter [~~chapter~~].

23 (b) The public agency, local taxing jurisdiction, economic
24 development corporation, or attorney general, as applicable, shall

1 recover court costs and reasonable attorney's fees incurred in an
2 action brought under Subsection (a).

3 (c) A business is not liable for a violation of this
4 subchapter [~~chapter~~] by a subsidiary, affiliate, or franchisee of
5 the business, or by a person with whom the business contracts.

6 SECTION 3. The heading to Subchapter C, Chapter 2264,
7 Government Code, is amended to read as follows:

8 SUBCHAPTER C. E-VERIFY PROGRAM [~~ENFORCEMENT~~]

9 SECTION 4. Subchapter C, Chapter 2264, Government Code, is
10 amended by adding Sections 2264.1011, 2264.102, and 2264.103 to
11 read as follows:

12 Sec. 2264.1011. DEFINITIONS. In this subchapter:

13 (1) "E-Verify program" means the electronic
14 verification of work authorization program of the federal Illegal
15 Immigration Reform and Immigrant Responsibility Act of 1996 (Pub.
16 L. No. 104-208, reprinted in note, 8 U.S.C. Section 1324a),
17 operated by the United States Department of Homeland Security, or a
18 successor work authorization program designated by the United
19 States Department of Homeland Security or other federal agency
20 authorized to verify the work authorization status of newly hired
21 employees pursuant to the federal Immigration Reform and Control
22 Act of 1986 (8 U.S.C. Section 1101 et seq.).

23 (2) "State agency" has the meaning assigned by Section
24 2103.001.

25 Sec. 2264.102. VERIFICATION BY CONTRACTORS. (a) A state
26 agency may not award a contract for goods or services within this
27 state to a contractor unless the contractor and any subcontractor

1 register with and participate in the E-Verify program to verify
2 employee information. The contractor and any subcontractor must
3 continue to participate in the program during the term of the
4 contract.

5 (b) Each contract with a state agency must include the
6 following statement:

7 "_____ (name of contractor) certifies that
8 _____ (name of contractor) is not ineligible to receive this
9 contract under Subchapter C, Chapter 2264, Government Code, and
10 acknowledges that if this certification is inaccurate or becomes
11 inaccurate during the term of the contract, the contractor may be
12 barred from participating in state contracts."

13 (c) If a state agency determines that a contractor was
14 ineligible to have the contract awarded under Subsection (a), that
15 a contractor has ceased participation in the E-Verify program
16 during the term of the contract, or that a subcontractor is not
17 registered with or is not participating in the E-Verify program,
18 the state agency shall refer the matter to the comptroller for
19 action.

20 (d) Each state agency shall develop procedures for the
21 administration of this section.

22 Sec. 2264.103. BARRING FROM STATE CONTRACTS. (a) Using
23 procedures prescribed under Section 2155.077, the comptroller
24 shall bar a contractor from participating in state contracts if the
25 comptroller determines that the contractor:

26 (1) was awarded a contract in violation of Section
27 2264.102;

1 (2) has ceased participation in the E-Verify program
2 during the term of the contract; or

3 (3) hired a subcontractor to perform work under the
4 contract who is not registered with or is not participating in the
5 E-Verify program.

6 (b) Debarment under this section is for a period of one year
7 except that the debarment may be extended by the comptroller for
8 additional one-year periods if the comptroller determines that the
9 grounds for debarment under this section continue to exist.

10 SECTION 5. Subtitle A, Title 6, Government Code, is amended
11 by adding Chapter 619 to read as follows:

12 CHAPTER 619. VERIFICATION OF EMPLOYEE INFORMATION

13 Sec. 619.001. DEFINITIONS. In this chapter:

14 (1) "E-Verify program" means the electronic
15 verification of work authorization program of the federal Illegal
16 Immigration Reform and Immigrant Responsibility Act of 1996 (Pub.
17 L. No. 104-208, reprinted in note, 8 U.S.C. Section 1324a),
18 operated by the United States Department of Homeland Security, or a
19 successor work authorization program designated by the United
20 States Department of Homeland Security or other federal agency
21 authorized to verify the work authorization status of newly hired
22 employees pursuant to the federal Immigration Reform and Control
23 Act of 1986 (8 U.S.C. Section 1101 et seq.).

24 (2) "Governmental entity" means:

25 (A) the state; or

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

1 in interstate commerce, that is performed for wages or under a
2 contract of hire, whether written or oral or express or implied.
3 The term does not include any service performed by an individual for
4 wages if it is shown that the individual is free from control or
5 direction in the performance of the service, both under any
6 contract of service and in fact.

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

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

16 (7) "License" means a license, certificate,
17 registration, permit, or other authorization that:

18 (A) is issued by a licensing authority;

19 (B) is subject before expiration to renewal,
20 suspension, revocation, forfeiture, or termination by a licensing
21 authority; and

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

24 (8) "Licensing authority" means a department,
25 commission, board, office, or other agency of the state or a
26 political subdivision of the state that issues or renews a license.

27 (9) "Person not lawfully present" 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. EMPLOYEE STATUS. An employer may not classify
7 an individual performing services for the employer as an
8 independent contractor instead of as an employee of the employer
9 solely for the purpose of avoiding the requirements applicable to
10 an employer under this chapter.

11 Sec. 53.003. LICENSING AUTHORITIES SUBJECT TO CHAPTER. All
12 licensing authorities are subject to this chapter.

13 Sec. 53.004. RULES. The commission shall adopt rules for
14 the administration of this chapter.

15 SUBCHAPTER B. LICENSE SUSPENSION FOR KNOWING EMPLOYMENT OF PERSON
16 NOT LAWFULLY PRESENT

17 Sec. 53.051. PROHIBITION AGAINST KNOWING EMPLOYMENT OF
18 PERSON NOT LAWFULLY PRESENT; LICENSE SUSPENSION AUTHORIZED. (a) An
19 employer may not knowingly employ a person not lawfully present.

20 (b) An employer who violates Subsection (a) is subject to
21 the suspension of each license held by the employer as provided by
22 this chapter.

23 Sec. 53.052. EXCEPTIONS. (a) An employer has not violated
24 Section 53.051(a) if:

25 (1) the employer, at least 14 calendar days after the
26 commencement of the employee's employment, requested from the
27 employee and received and documented in the employee's employment

1 record lawful resident verification information consistent with
2 employer requirements under the federal Immigration Reform and
3 Control Act of 1986 (Pub. L. No. 99-603); and

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

6 (b) An employer has not violated Section 53.051(a) if the
7 employer verified the immigrant status of the person at least 14
8 calendar days after the commencement of the employee's employment
9 through an electronic federal work authorization program operated
10 by the United States Department of Homeland Security to verify
11 information of newly hired employees.

12 SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

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

16 (b) A complaint must:

17 (1) be in writing on a form prescribed by the
18 commission; and

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

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

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

22 (2) by mailing the complaint to an address designated
23 by the commission.

24 Sec. 53.102. INVESTIGATION AND PRELIMINARY DISMISSAL ORDER
25 OR REFERRAL ORDER. (a) On receipt of a complaint, an examiner
26 employed by the commission shall investigate the complaint in an
27 attempt to:

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

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

5 (b) During the investigation, the employer alleged to have
6 violated Section 53.051(a) shall specify all licenses held by the
7 employer.

8 (c) If the examiner determines that there is no substantial
9 evidence that the employer violated Section 53.051(a), the examiner
10 shall issue a preliminary dismissal order dismissing the complaint.

11 (d) If the examiner determines that there is substantial
12 evidence that the employer violated Section 53.051(a), the examiner
13 shall refer the complaint to a hearing tribunal established under
14 Section 53.103.

15 (e) The examiner shall mail notice of the preliminary
16 dismissal order or referral order to each party at that party's last
17 known address, as reflected by commission records.

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

21 Sec. 53.104. REQUEST FOR HEARING ON PRELIMINARY DISMISSAL
22 ORDER. (a) A party may request a hearing before a hearing tribunal
23 to appeal a preliminary dismissal order made under Section
24 53.102(c).

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

1 Sec. 53.105. PRELIMINARY DISMISSAL ORDER FINAL IF HEARING
2 NOT REQUESTED. If neither party requests a hearing to appeal a
3 preliminary dismissal order made under Section 53.102(c) within the
4 period prescribed by Section 53.104, the order becomes the final
5 order of the commission for all purposes, and neither party is
6 entitled to judicial review of the order under this subchapter.

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

12 (b) As soon as practicable, but not later than the 45th day
13 after the date a notice is mailed under Subsection (a), the tribunal
14 shall conduct the hearing.

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

19 (b) The hearing is not subject to Chapter 2001, Government
20 Code.

21 Sec. 53.108. ORDER AFTER HEARING. (a) After a hearing, if
22 the hearing tribunal finds by clear and convincing evidence that
23 the employer has violated Section 53.051(a), the hearing tribunal
24 shall:

25 (1) for a first violation, enter a written order:

26 (A) requiring the employer to:

27 (i) terminate the employment of each

1 employee who is a person not legally present; and

2 (ii) file with the hearing tribunal, within
3 30 business days after the date the order is entered, a sworn
4 affidavit stating that the employer has terminated the employment
5 of each of those employees; and

6 (B) notifying the employer that failure to file
7 the affidavit required by Paragraph (A)(ii) will result in the
8 suspension of the employer's licenses as provided by Subdivision
9 (2); or

10 (2) for a second or subsequent violation, or on a
11 finding that an employer has failed to file an affidavit required by
12 Subdivision (1)(A)(ii), enter a written order suspending for a
13 period of one year any license held by the employer.

14 (b) After a hearing, if the hearing tribunal does not find
15 by clear and convincing evidence that the employer has violated
16 Section 53.051(a), the hearing tribunal shall enter a written order
17 dismissing the complaint.

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

23 (b) The order of the hearing tribunal becomes final on the
24 14th day after the date the order is mailed unless a further appeal
25 to the commission is initiated as provided by this subchapter.

26 Sec. 53.110. REMOVAL OR TRANSFER OF COMPLAINT PENDING
27 BEFORE HEARING TRIBUNAL. (a) The commission by order may remove to

1 itself or transfer to another hearing tribunal the proceedings on a
2 complaint before a hearing tribunal.

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

5 (c) A quorum of the commission shall hear a proceeding
6 removed to the commission under Subsection (a).

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

8 The commission may:

9 (1) on its own motion:

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

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

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

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

17 The commission shall mail to each party to an appeal under Section
18 53.111 notice of:

19 (1) the commission's decision; and

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

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

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

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

27 (2) a party to the appeal files a written motion for

1 rehearing.

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

5 (b) The suit must be filed not later than the 30th day after
6 the date the final order is mailed to the party.

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

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

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

17 Sec. 53.115. NOTICE TO LICENSING AUTHORITY OF FINAL ORDER
18 SUSPENDING LICENSE. The commission shall promptly mail to the
19 appropriate licensing authority a final order suspending a license
20 entered under this chapter.

21 SUBCHAPTER D. ACTION BY LICENSING AUTHORITIES

22 Sec. 53.151. ACTION BY LICENSING AUTHORITY. (a) On receipt
23 from the commission of a final order suspending a license, a
24 licensing authority shall immediately determine if the authority
25 has issued a license to the person named on the order and, if a
26 license has been issued:

27 (1) record the suspension of the license in the

1 licensing authority's records;

2 (2) report the suspension as appropriate; and

3 (3) demand surrender of the suspended license if
4 required by law for other cases in which a license is suspended.

5 (b) A licensing authority shall implement the terms of a
6 final order suspending a license without additional review or
7 hearing. The authority may provide notice as appropriate to the
8 license holder or to others concerned with the license.

9 (c) A licensing authority may not modify, remand, reverse,
10 vacate, or stay an order suspending a license issued under this
11 chapter and may not review, vacate, or reconsider the terms of a
12 final order suspending a license.

13 (d) A person who is the subject of a final order suspending a
14 license is not entitled to a refund for any fee or deposit paid to
15 the licensing authority.

16 (e) A person who continues to engage in the business,
17 occupation, profession, or other licensed activity after the
18 implementation of the order suspending a license by the licensing
19 authority is liable for the same civil and criminal penalties
20 provided for engaging in the licensed activity without a license or
21 while a license is suspended that apply to any other license holder
22 of that licensing authority.

23 (f) A licensing authority is exempt from liability to a
24 license holder for any act authorized under this chapter performed
25 by the authority.

26 (g) Except as provided by this chapter, an order suspending
27 a license does not affect the power of a licensing authority to

1 grant, deny, suspend, revoke, terminate, or renew a license.

2 (h) An order issued under this chapter to suspend a license
3 of a person applies to each license issued by the licensing
4 authority subject to the order for which the person is eligible.
5 The licensing authority may not issue or renew any other license for
6 the person during the suspension period.

7 Sec. 53.152. FEE BY LICENSING AUTHORITY. A licensing
8 authority may charge a fee to a person who is the subject of an order
9 suspending a license in an amount sufficient to recover the
10 administrative costs incurred by the authority under this chapter.

11 SECTION 7. Each state agency subject to Subchapter C,
12 Chapter 2264, Government Code, as amended by this Act, shall
13 develop the procedures required under Section 2264.102(d),
14 Government Code, as added by this Act, not later than October 1,
15 2013.

16 SECTION 8. Sections 2264.1011, 2264.102, and 2264.103,
17 Government Code, as added by this Act, apply only in relation to a
18 contract for which the request for bids or proposals or other
19 applicable expression of interest is made public on or after the
20 effective date of this Act.

21 SECTION 9. Chapter 53, Labor Code, as added by this Act,
22 applies only to a violation that occurs on or after the effective
23 date of this Act.

24 SECTION 10. This Act takes effect September 1, 2013.