

By: Davis of Dallas

H.B. No. 997

A BILL TO BE ENTITLED

1 AN ACT  
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 EMPLOYMENT 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 employment authorization program of the federal  
20 Illegal Immigration Reform and Immigrant Responsibility Act of 1996  
21 (Pub. 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 employment authorization program designated by the  
24 United States Department of Homeland Security or other federal

1 agency authorized to verify the employment authorization status of  
2 newly hired employees under the federal Immigration Reform and  
3 Control Act of 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 SUBCHAPTER B. DUTIES REGARDING E-VERIFY PROGRAM

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

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

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

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

5           Sec. 53.052. DUTIES OF EMPLOYER VOLUNTARILY PARTICIPATING  
6 IN E-VERIFY PROGRAM; VIOLATION. (a) Before voluntarily enrolling  
7 in the E-Verify program, an employer must consider consulting the  
8 commission's website to review current information on the accuracy  
9 of the program's database and an employer's legal duties in regard  
10 to participating in the program.

11           (b) On initial enrollment in the E-Verify program, or, for  
12 an employer who enrolled in the program before September 1, 2015, as  
13 soon as practicable after that date, the employer must attest under  
14 penalty of perjury, in the manner and on a form prescribed by the  
15 commission and accessible on the commission's website, that:

16           (1) the employer:

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

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

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

26                           (ii) an antidiscrimination notice issued by  
27 the Office of Special Counsel for Immigration-Related Unfair

1 Employment Practices of the Civil Rights Division of the United  
2 States Department of Justice; and

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

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

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

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

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

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

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

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

27 (3) fails to take reasonable steps to prevent an

1 employee from assuming another employee's E-Verify program user  
2 identification or password in order to circumvent completing the  
3 program's computer-based tutorial;

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

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

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

14 SUBCHAPTER C. ENFORCEMENT

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

19 (b) A complaint must:

20 (1) be in writing on a form prescribed by the  
21 commission; and

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

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

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

25 (2) by mailing the complaint to an address designated  
26 by the commission.

27 (d) On receipt of a complaint, a staff member of the

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

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

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

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

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

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

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

4           (3) for a third or subsequent violation:

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

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

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

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

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

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

1 SECTION 4. This Act takes effect September 1, 2015.