

By: Fallon

H.B. No. 315

A BILL TO BE ENTITLED

AN ACT

relating to a prohibition against the knowing employment of persons not lawfully present in the United States and the suspension of licenses held by certain employers for the knowing employment of those persons; authorizing a fee.

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

SECTION 1. Subtitle B, Title 2, Labor Code, is amended by adding Chapter 53 to read as follows:

CHAPTER 53. EMPLOYMENT OF PERSONS NOT LAWFULLY PRESENT IN UNITED STATES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. DEFINITIONS. In this chapter:

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

(2) "Employee" means an individual who is employed by an employer for compensation. The term includes an individual employed on a part-time basis.

(3) "Employer" means a person, other than a governmental entity, who:

(A) employs one or more employees; or

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

(4) "Employment" means any service, including service in interstate commerce, that is performed for wages or under a

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

6 (5) "E-verify program" has the meaning assigned by
7 Section 673.001, Government Code.

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

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

16 (A) is issued by a licensing authority;

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

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

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

25 (9) "Person not lawfully present" means a person who,
26 at the time of employment, is not:

27 (A) a citizen or national of the United States;

1 or

2 (B) an alien who is lawfully admitted for
3 permanent residence in the United States under the federal
4 Immigration and Nationality Act (8 U.S.C. Section 1101 et seq.) or
5 authorized to be employed by that Act or the United States attorney
6 general.

7 Sec. 53.002. EMPLOYEE STATUS. An employer may not classify
8 an individual performing services for the employer as an
9 independent contractor instead of as an employee of the employer
10 solely for the purpose of avoiding the requirements applicable to
11 an employer under this chapter.

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

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

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

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

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

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

26 (1) the employer, not more than 14 calendar days after
27 the commencement of the employee's employment, requested from the

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

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

7 (b) An employer has not violated Section 53.051(a) if the
8 employer verified the employment authorization status of the person
9 not more than 14 calendar days after the commencement of the
10 employee's employment through the E-verify program.

11 SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

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

15 (b) A complaint must:

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

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

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

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

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

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

27 (1) verify information regarding the immigration

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

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

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

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

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

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

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

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

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

27 Sec. 53.105. PRELIMINARY DISMISSAL ORDER FINAL IF HEARING

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

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

11 (b) As soon as practicable, but not sooner than the 10th day
12 or later than the 45th day after the date a notice is mailed under
13 Subsection (a), the tribunal shall conduct the hearing.

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

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

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

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

25 (A) requiring the employer to:

26 (i) terminate the employment of each
27 employee who is a person not legally present; and

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

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

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

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

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

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

25 Sec. 53.110. REMOVAL OR TRANSFER OF COMPLAINT PENDING
26 BEFORE HEARING TRIBUNAL. (a) The commission by order may remove to
27 itself or transfer to another hearing tribunal the proceedings on a

1 complaint before a hearing tribunal.

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

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

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

7 The commission may:

8 (1) on its own motion:

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

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

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

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

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

18 (1) the commission's decision; and

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

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

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

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

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

1 Sec. 53.114. JUDICIAL REVIEW. (a) A party who has
2 exhausted the party's administrative remedies under this chapter,
3 other than a motion for rehearing, may bring a suit to appeal the
4 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 Sec. 53.116. OTHER NOTICE ON FINAL ORDER FINDING VIOLATION.

22 (a) On the rendition of a final order under this chapter finding
23 that an employer has knowingly employed a person not lawfully
24 present, the commission shall notify the attorney general of that
25 finding.

26 (b) On receipt of notice under Subsection (a), the attorney
27 general shall promptly notify the United States Immigration and

1 Customs Enforcement and appropriate local law enforcement agencies
2 of the identity and address, if known, of each employee who is a
3 person not lawfully present.

4 SUBCHAPTER D. ACTION BY LICENSING AUTHORITIES

5 Sec. 53.151. ACTION BY LICENSING AUTHORITY. (a) On receipt
6 from the commission of a final order suspending a license, a
7 licensing authority shall immediately determine if the authority
8 has issued a license to the person named on the order and, if a
9 license has been issued:

10 (1) record the suspension of the license in the
11 licensing authority's records;

12 (2) report the suspension as appropriate; and

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

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

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

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

26 (e) A person who continues to engage in the business,
27 occupation, profession, or other licensed activity after the

1 implementation of the order suspending a license by the licensing
2 authority is liable for the same civil and criminal penalties
3 provided for engaging in the licensed activity without a license or
4 while a license is suspended that apply to any other license holder
5 of that licensing authority.

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

9 (g) Except as provided by this chapter, an order suspending
10 a license does not affect the power of a licensing authority to
11 grant, deny, suspend, revoke, terminate, or renew a license.

12 (h) An order issued under this chapter to suspend a license
13 of a person applies to each license issued by the licensing
14 authority subject to the order for which the person is eligible.
15 The licensing authority may not issue or renew any other license for
16 the person during the suspension period.

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

21 SECTION 2. 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 3. This Act takes effect December 1, 2017.