

By: Fallon

H.B. No. 3792

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 the Form I-9.  
12 Documentation that satisfies the requirements of the Form I-9 at  
13 the time of 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 neither an alien who is lawfully  
27 admitted for permanent residence in the United States under the

1 federal Immigration and Nationality Act (8 U.S.C. Section 1101 et  
2 seq.) nor authorized to be employed by that Act or the United States  
3 attorney general.

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

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

11 Sec. 53.004. RULES. The commission shall adopt rules for  
12 the administration of this chapter.

13 SUBCHAPTER B. LICENSE SUSPENSION FOR KNOWING EMPLOYMENT OF PERSON  
14 NOT LAWFULLY PRESENT

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

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

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

23 (1) the employer, at least 14 calendar days after the  
24 commencement of the employee's employment, requested from the  
25 employee and received and documented in the employee's employment  
26 record lawful resident verification information consistent with  
27 employer requirements under the federal Immigration Reform and

1 Control Act of 1986 (Pub. L. No. 99-603); and

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

4 (b) An employer has not violated Section 53.051(a) if the  
5 employer verified the employment authorization status of the person  
6 at least 14 calendar days after the commencement of the employee's  
7 employment through the E-verify program.

8 SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

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

12 (b) A complaint must:

13 (1) be in writing on a form prescribed by the  
14 commission; and

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

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

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

18 (2) by mailing the complaint to an address designated  
19 by the commission.

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

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

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

1        (b) During the investigation, the employer alleged to have  
2 violated Section 53.051(a) shall specify all licenses held by the  
3 employer.

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

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

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

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

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

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

24        Sec. 53.105. PRELIMINARY DISMISSAL ORDER FINAL IF HEARING  
25 NOT REQUESTED. If neither party requests a hearing to appeal a  
26 preliminary dismissal order made under Section 53.102(c) within the  
27 period prescribed by Section 53.104, the order becomes the final

1 order of the commission for all purposes, and neither party is  
2 entitled to judicial review of the order under this subchapter.

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

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

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

15 (b) The hearing is not subject to Chapter 2001, Government  
16 Code.

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

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

22 (A) requiring the employer to:

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

25 (ii) file with the hearing tribunal, within  
26 30 business days after the date the order is entered, a sworn  
27 affidavit stating that the employer has terminated the employment

1 of each of those employees; and

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

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

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

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

19 (b) The order of the hearing tribunal becomes final on the  
20 14th day after the date the order is mailed unless a further appeal  
21 to the commission is initiated as provided by this subchapter.

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

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

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

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

4 The commission may:

5            (1) on its own motion:

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

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

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

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

13 The commission shall mail to each party to an appeal under Section  
14 53.111 notice of:

15            (1) the commission's decision; and

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

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

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

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

23            (2) a party to the appeal files a written motion for  
24 rehearing.

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



1 order.

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

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

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

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

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

18 Sec. 53.116. OTHER NOTICE ON FINAL ORDER FINDING VIOLATION.

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

23 (b) On receipt of notice under Subsection (a), the attorney  
24 general shall promptly notify the United States Immigration and  
25 Customs Enforcement and appropriate local law enforcement agencies  
26 of the identity and address, if known, of each employee who is a  
27 person not lawfully present.

1           SUBCHAPTER D. ACTION BY LICENSING AUTHORITIES

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

7                   (1) record the suspension of the license in the  
8 licensing authority's records;

9                   (2) report the suspension as appropriate; and

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

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

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

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

23           (e) A person who continues to engage in the business,  
24 occupation, profession, or other licensed activity after the  
25 implementation of the order suspending a license by the licensing  
26 authority is liable for the same civil and criminal penalties  
27 provided for engaging in the licensed activity without a license or

1 while a license is suspended that apply to any other license holder  
2 of that licensing authority.

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

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

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

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

18 SECTION 2. Chapter 53, Labor Code, as added by this Act,  
19 applies only to a violation that occurs on or after the effective  
20 date of this Act.

21 SECTION 3. This Act takes effect September 1, 2017.