

By: Bonnen

H.B. No. 2823

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to requiring state contractors and political subdivisions  
3 of this state to participate in the federal electronic verification  
4 of employment authorization program, or E-verify, and authorizing  
5 the suspension of certain licenses held by private employers for  
6 the knowing employment of persons not lawfully present in this  
7 state; 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 agency,  
18 local taxing jurisdiction, or economic development corporation, or  
19 the attorney general on behalf of the state or a state agency, may  
20 bring a civil action to recover any amounts owed to the public  
21 agency, state or local taxing jurisdiction, or economic development  
22 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" has the meaning assigned by  
14 Section 673.001.

15 (2) "State agency" has the meaning assigned by Section  
16 2103.001.

17 Sec. 2264.102. VERIFICATION BY CONTRACTORS. (a) A state  
18 agency may not award a contract for goods or services within this  
19 state to a contractor unless the contractor and any subcontractor  
20 register with and participate in the E-verify program to verify  
21 employee information. The contractor and any subcontractor must  
22 continue to participate in the program during the term of the  
23 contract.

24 (b) Each contract with a state agency must include the  
25 following statement:

26 "\_\_\_\_\_ (name of contractor) certifies that  
27 \_\_\_\_\_ (name of contractor) is not ineligible to receive this

1 contract under Subchapter C, Chapter 2264, Government Code, and  
2 acknowledges that if this certification is inaccurate or becomes  
3 inaccurate during the term of the contract, the contractor may be  
4 barred from participating in state contracts."

5 (c) If a state agency determines that a contractor was  
6 ineligible to have the contract awarded under Subsection (a), that  
7 a contractor has ceased participation in the E-verify program  
8 during the term of the contract, or that a subcontractor is not  
9 registered with or is not participating in the E-verify program,  
10 the state agency shall refer the matter to the comptroller for  
11 action.

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

14 Sec. 2264.103. BARRING FROM STATE CONTRACTS. (a) Using  
15 procedures prescribed under Section 2155.077, the comptroller  
16 shall bar a contractor from participating in state contracts if the  
17 comptroller determines that the contractor:

18 (1) was awarded a contract in violation of Section  
19 2264.102;

20 (2) has ceased participation in the E-verify program  
21 during the term of the contract; or

22 (3) hired a subcontractor to perform work under the  
23 contract who is not registered with or is not participating in the  
24 E-verify program.

25 (b) Debarment under this section is for a period of one year  
26 except that the debarment may be extended by the comptroller for  
27 additional one-year periods if the comptroller determines that the

1 grounds for debarment under this section continue to exist.

2 SECTION 5. Subtitle B, Title 2, Labor Code, is amended by  
3 adding Chapter 53 to read as follows:

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

6 SUBCHAPTER A. GENERAL PROVISIONS

7 Sec. 53.001. DEFINITIONS. In this chapter:

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

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

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

15 (A) employs one or more employees; or

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

18 (4) "Employment" means any service, including service  
19 in interstate commerce, that is performed for wages or under a  
20 contract of hire, whether written or oral or express or implied.  
21 The term does not include any service performed by an individual for  
22 wages if it is shown that the individual is free from control or  
23 direction in the performance of the service, both under any  
24 contract of service and in fact.

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

27 (6) "Lawful resident verification information" means

1 the documentation required by the United States Department of  
2 Homeland Security for completing the employment eligibility  
3 verification form commonly referred to as the I-9. Documentation  
4 that satisfies the requirements of the Form I-9 at the time of  
5 employment is lawful resident verification information.

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

8 (A) is issued by a licensing authority;

9 (B) is subject before expiration to renewal,  
10 suspension, revocation, forfeiture, or termination by a licensing  
11 authority; and

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

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

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

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

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

26 Sec. 53.002. EMPLOYEE STATUS. An employer may not classify  
27 an individual performing services for the employer as an

1 independent contractor instead of as an employee of the employer  
2 solely for the purpose of avoiding the requirements applicable to  
3 an employer under this chapter.

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

6 Sec. 53.004. RULES. The commission shall adopt rules for  
7 the administration of this chapter.

8 SUBCHAPTER B. LICENSE SUSPENSION FOR KNOWING EMPLOYMENT OF PERSON  
9 NOT LAWFULLY PRESENT

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

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

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

18 (1) the employer, at least 14 calendar days after the  
19 commencement of the employee's employment, requested from the  
20 employee and received and documented in the employee's employment  
21 record lawful resident verification information consistent with  
22 employer requirements under the federal Immigration Reform and  
23 Control Act of 1986 (Pub. L. No. 99-603); and

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

26 (b) An employer has not violated Section 53.051(a) if the  
27 employer verified the employment authorization status of the person

1 at least 14 calendar days after the commencement of the employee's  
2 employment through the E-verify program.

3 SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

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

7 (b) A complaint must:

8 (1) be in writing on a form prescribed by the  
9 commission; and

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

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

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

13 (2) by mailing the complaint to an address designated  
14 by the commission.

15 Sec. 53.102. INVESTIGATION AND PRELIMINARY DISMISSAL ORDER  
16 OR REFERRAL ORDER. (a) On receipt of a complaint, an examiner  
17 employed by the commission shall investigate the complaint in an  
18 attempt to:

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

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

23 (b) During the investigation, the employer alleged to have  
24 violated Section 53.051(a) shall specify all licenses held by the  
25 employer.

26 (c) If the examiner determines that there is no substantial  
27 evidence that the employer violated Section 53.051(a), the examiner

1 shall issue a preliminary dismissal order dismissing the complaint.

2 (d) If the examiner determines that there is substantial  
3 evidence that the employer violated Section 53.051(a), the examiner  
4 shall refer the complaint to a hearing tribunal established under  
5 Section 53.103.

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

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

12 Sec. 53.104. REQUEST FOR HEARING ON PRELIMINARY DISMISSAL  
13 ORDER. (a) A party may request a hearing before a hearing tribunal  
14 to appeal a preliminary dismissal order made under Section  
15 53.102(c).

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

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

25 Sec. 53.106. NOTICE OF AND TIME FOR HEARING. (a) A notice  
26 regarding a hearing conducted under this subchapter must be mailed  
27 by the hearing tribunal not later than the 21st day after the date



1 the referral order or request for the hearing is received by the  
2 commission.

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

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

10 (b) The hearing is not subject to Chapter 2001, Government  
11 Code.

12 Sec. 53.108. ORDER AFTER HEARING. (a) After a hearing, if  
13 the hearing tribunal finds by clear and convincing evidence that  
14 the employer has violated Section 53.051(a), the hearing tribunal  
15 shall:

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

17 (A) requiring the employer to:

18 (i) terminate the employment of each  
19 employee who is a person not lawfully present; and

20 (ii) file with the hearing tribunal, within  
21 30 business days after the date the order is entered, a sworn  
22 affidavit stating that the employer has terminated the employment  
23 of each of those employees; and

24 (B) notifying the employer that failure to file  
25 the affidavit required by Paragraph (A)(ii) will result in the  
26 suspension of the employer's licenses as provided by Subdivision

27 (2); or

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

5           (b) After a hearing, if the hearing tribunal does not find  
6 by clear and convincing evidence that the employer has violated  
7 Section 53.051(a), the hearing tribunal shall enter a written order  
8 dismissing the complaint.

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

14           (b) The order of the hearing tribunal becomes final on the  
15 14th day after the date the order is mailed unless a further appeal  
16 to the commission is initiated as provided by this subchapter.

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

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

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

25           Sec. 53.111. COMMISSION REVIEW OF HEARING TRIBUNAL ORDER.  
26 The commission may:

27           (1) on its own motion:

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

4           (B) direct the taking of additional evidence; or  
5           (2) permit any of the parties affected by the order to  
6 initiate an appeal before the commission.

7           Sec. 53.112. NOTICE OF COMMISSION ACTION TO PARTIES. (a)  
8 The commission shall mail to each party to an appeal under Section  
9 53.111 notice of:

10           (1) the commission's decision; and

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

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

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

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

18           (2) a party to the appeal files a written motion for  
19 rehearing.

20           Sec. 53.114. JUDICIAL REVIEW. (a) A party who has  
21 exhausted the party's administrative remedies under this  
22 subchapter, other than a motion for rehearing, may bring a suit to  
23 appeal the order.

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

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

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

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

9       Sec. 53.115. NOTICE TO LICENSING AUTHORITY OF FINAL ORDER  
10 SUSPENDING LICENSE. The commission shall promptly mail to the  
11 appropriate licensing authority a final order suspending a license  
12 entered under this chapter.

13               SUBCHAPTER D. ACTION BY LICENSING AUTHORITIES

14       Sec. 53.151. ACTION BY LICENSING AUTHORITY. (a) On receipt  
15 from the commission of a final order suspending a license, a  
16 licensing authority shall immediately determine if the authority  
17 has issued a license to the person named on the order and, if a  
18 license has been issued:

19               (1) record the suspension of the license in the  
20 licensing authority's records;

21               (2) report the suspension as appropriate; and

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

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

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

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

8       (e) A person who continues to engage in the business,  
9 occupation, profession, or other licensed activity after the  
10 implementation of the order suspending a license by the licensing  
11 authority is liable for the same civil and criminal penalties  
12 provided for engaging in the licensed activity without a license or  
13 while a license is suspended that apply to any other license holder  
14 of that licensing authority.

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

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

21       (h) An order issued under this chapter to suspend a license  
22 of a person applies to each license issued by the licensing  
23 authority subject to the order for which the person is eligible.  
24 The licensing authority may not issue or renew any other license for  
25 the person during the suspension period.

26       Sec. 53.152. FEE BY LICENSING AUTHORITY. A licensing  
27 authority may charge a fee to a person who is the subject of an order

1 suspending a license in an amount sufficient to recover the  
2 administrative costs incurred by the authority under this chapter.

3 SECTION 6. Subtitle C, Title 5, Local Government Code, is  
4 amended by adding Chapter 179 to read as follows:

5 CHAPTER 179. VERIFICATION OF EMPLOYEE INFORMATION

6 Sec. 179.001. DEFINITIONS. In this chapter:

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

9 (2) "Political subdivision" means a county,  
10 municipality, school district, junior college district, other  
11 special district, or other subdivision of state government.

12 Sec. 179.002. VERIFICATION. A political subdivision shall  
13 register and participate in the E-verify program to verify  
14 information of all new employees.

15 Sec. 179.003. TERMINATION OF EMPLOYMENT. An employee of a  
16 political subdivision who is responsible for verifying information  
17 of new employees of the political subdivision as required by  
18 Section 179.002 is subject to immediate termination of employment  
19 if the employee fails to comply with that section.

20 SECTION 7. Each state agency subject to Subchapter C,  
21 Chapter 2264, Government Code, as amended by this Act, shall  
22 develop the procedures required under Section 2264.102(d),  
23 Government Code, as added by this Act, not later than October 1,  
24 2021.

25 SECTION 8. Sections 2264.1011, 2264.102, and 2264.103,  
26 Government Code, as added by this Act, apply only in relation to a  
27 contract for which the request for bids or proposals or other

1 applicable expression of interest is made public on or after the  
2 effective date of this Act.

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

6 SECTION 10. This Act takes effect September 1, 2021.