

By: Hughes

S.B. No. 1928

A BILL TO BE ENTITLED

AN ACT

relating to requiring state contractors and political subdivisions of this state to participate in the federal electronic verification of employment authorization program, or E-verify, and authorizing the suspension of certain licenses held by private employers for the knowing employment of unauthorized aliens; authorizing a fee.

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

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

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

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

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

(b) The public agency, local taxing jurisdiction, economic development corporation, or attorney general, as applicable, shall recover court costs and reasonable attorney's fees incurred in an

1 action brought under Subsection (a).

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

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

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

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

11 Sec. 2264.1011. DEFINITIONS. In this subchapter:

12 (1) "E-verify program" has the meaning assigned by
13 Section 673.001.

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

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

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

25 "(name of contractor) certifies that (name of contractor) is
26 not ineligible to receive this contract under Subchapter C, Chapter
27 2264, Government Code, and acknowledges that if this certification

1 is inaccurate or becomes inaccurate during the term of the
2 contract, the contractor may be barred from participating in state
3 contracts."

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

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

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

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

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

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

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

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

3 CHAPTER 53. EMPLOYMENT OF UNAUTHORIZED ALIENS

4 SUBCHAPTER A. GENERAL PROVISIONS

5 Sec. 53.001. DEFINITIONS. In this chapter:

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

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

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

13 (A) employs one or more employees; or

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

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

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

25 (6) "Lawful resident verification information" means
26 the documentation required by the United States Department of
27 Homeland Security for completing the employment eligibility

1 verification form commonly referred to as the I-9. Documentation
2 that satisfies the requirements of the Form I-9 at the time of
3 employment is lawful resident verification information.

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

6 (A) is issued by a licensing authority;

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

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

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

15 (9) "Unauthorized alien" means an unauthorized alien
16 as defined by 8 U.S.C. § 1324a(h)(3).

17 Sec. 53.002. EMPLOYEE STATUS. An employer may not classify
18 an individual performing services for the employer as an
19 independent contractor instead of as an employee of the employer
20 solely for the purpose of avoiding the requirements applicable to
21 an employer under this chapter.

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

24 Sec. 53.004. RULES. The commission shall adopt rules for
25 the administration of this chapter.

26 SUBCHAPTER B. LICENSE SUSPENSION FOR KNOWING EMPLOYMENT OF
27 UNAUTHORIZED ALIENS

1 Sec. 53.051. PROHIBITION AGAINST KNOWING EMPLOYMENT OF
2 UNAUTHORIZED ALIENS; LICENSE SUSPENSION AUTHORIZED. (a) An
3 employer may not knowingly employ an unauthorized alien as provided
4 by 8 U.S.C. § 1324a.

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

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

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

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

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

22 SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

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

26 (b) A complaint must:

27 (1) be in writing on a form prescribed by the

1 commission; and

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

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

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

5 (2) by mailing the complaint to an address designated
6 by the commission.

7 Sec. 53.102. INVESTIGATION AND PRELIMINARY DISMISSAL ORDER
8 OR REFERRAL ORDER. (a) On receipt of a complaint, an examiner
9 employed by the commission shall investigate the complaint in an
10 attempt to:

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

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

15 (b) During the investigation, the employer alleged to have
16 violated Section 53.051(a) shall specify all licenses held by the
17 employer.

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

21 (d) If the examiner determines that there is substantial
22 evidence that the employer violated Section 53.051(a), the examiner
23 shall refer the complaint to a hearing tribunal established under
24 Section 53.103.

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

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

4 Sec. 53.104. REQUEST FOR HEARING ON PRELIMINARY DISMISSAL
5 ORDER. (a) A party may request a hearing before a hearing tribunal
6 to appeal a preliminary dismissal order made under Section
7 53.102(c).

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

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

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

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

25 Sec. 53.107. HEARING PROCEDURES. (a) A hearing conducted
26 under this subchapter is subject to the rules and hearings
27 procedures used by the commission in the determination of a claim

1 for unemployment compensation benefits.

2 (b) The hearing is not subject to Chapter 2001, Government
3 Code.

4 Sec. 53.108. ORDER AFTER HEARING. (a) After a hearing, if
5 the hearing tribunal finds by clear and convincing evidence that
6 the employer has violated Section 53.051(a), the hearing tribunal
7 shall:

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

9 (A) requiring the employer to:

10 (i) terminate the employment of each
11 employee who is an unauthorized alien; and

12 (ii) file with the hearing tribunal, within
13 30 business days after the date the order is entered, a sworn
14 affidavit stating that the employer has terminated the employment
15 of each of those employees; and

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

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

24 (b) After a hearing, if the hearing tribunal does not find
25 by clear and convincing evidence that the employer has violated
26 Section 53.051(a), the hearing tribunal shall enter a written order
27 dismissing the complaint.

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

6 (b) The order of the hearing tribunal becomes final on the
7 14th day after the date the order is mailed unless a further appeal
8 to the commission is initiated as provided by this subchapter.

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

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

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

17 Sec. 53.111. COMMISSION REVIEW OF HEARING TRIBUNAL ORDER.
18 The commission may:

19 (1) on its own motion:

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

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

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

26 Sec. 53.112. NOTICE OF COMMISSION ACTION TO PARTIES. (a)
27 The commission shall mail to each party to an appeal under Section

1 53.111 notice of:

2 (1) the commission's decision; and

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

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

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

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

10 (2) a party to the appeal files a written motion for
11 rehearing.

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

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

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

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

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

1 Sec. 53.115. NOTICE TO LICENSING AUTHORITY OF FINAL ORDER
2 SUSPENDING LICENSE. The commission shall promptly mail to the
3 appropriate licensing authority a final order suspending a license
4 entered under this chapter.

5 SUBCHAPTER D. ACTION BY LICENSING AUTHORITIES

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

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

13 (2) report the suspension as appropriate; and

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

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

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

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

27 (e) A person who continues to engage in the business,

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

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

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

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

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

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

24 CHAPTER 179. VERIFICATION OF EMPLOYEE INFORMATION

25 Sec. 179.001. DEFINITIONS. In this chapter:

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

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

4 Sec. 179.002. VERIFICATION. A political subdivision shall
5 register and participate in the E-verify program to verify
6 information of all new employees.

7 Sec. 179.003. TERMINATION OF EMPLOYMENT. An employee of a
8 political subdivision who is responsible for verifying information
9 of new employees of the political subdivision as required by
10 Section 179.002 is subject to immediate termination of employment
11 if the employee fails to comply with that section.

12 SECTION 7. Each state agency subject to Subchapter C,
13 Chapter 2264, Government Code, as amended by this Act, shall
14 develop the procedures required under Section 2264.102(d),
15 Government Code, as added by this Act, not later than October 1,
16 2021.

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

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

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