

By: Toth

H.B. No. 3846

A BILL TO BE ENTITLED

AN ACT

relating to requiring state contractors, political subdivisions of this state, and private employers to participate in the federal electronic verification of employment authorization program, or E-verify.

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 action brought under Subsection (a).

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

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

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

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

10 Sec. 2264.1011. DEFINITIONS. In this subchapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

27 SECTION 5. Subtitle B, Title 2, Labor Code, is amended by

1 adding Chapter 53 to read as follows:

2 CHAPTER 53. VERIFICATION OF EMPLOYEE INFORMATION

3 Sec. 53.001. DEFINITIONS. In this chapter:

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

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

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

11 (A) employs one or more employees; or

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

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

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

23 Sec. 53.002. EMPLOYEE STATUS. An employer may not classify
24 an individual performing services for the employer as an
25 independent contractor instead of as an employee of the employer
26 solely for the purpose of avoiding the requirements applicable to
27 an employer under this chapter.

1 Sec. 53.003. VERIFICATION. An employer shall register and
2 participate in the E-verify program to verify information of all
3 new employees.

4 Sec. 53.004. ENFORCEMENT BY STATE AGENCIES.
5 Notwithstanding any other law, each appropriate state agency shall
6 ensure that employers in this state comply with Section 53.003 and
7 may require compliance with that section as a condition of a
8 license, certificate, registration, permit, or other authorization
9 issued by the agency that is required for a person to practice or
10 engage in a particular business, occupation, or profession in this
11 state.

12 Sec. 53.005. RULES. The commission shall adopt rules and
13 prescribe forms for the implementation of this chapter.

14 SECTION 6. Subtitle C, Title 5, Local Government Code, is
15 amended by adding Chapter 181 to read as follows:

16 CHAPTER 181. VERIFICATION OF EMPLOYEE INFORMATION

17 Sec. 181.001. DEFINITIONS. In this chapter:

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

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

23 Sec. 181.002. VERIFICATION. A political subdivision shall
24 register and participate in the E-verify program to verify
25 information of all new employees.

26 Sec. 181.003. TERMINATION OF EMPLOYMENT. An employee of a
27 political subdivision who is responsible for verifying information

1 of new employees of the political subdivision as required by
2 Section 181.002 is subject to immediate termination of employment
3 if the employee fails to comply with that section.

4 SECTION 7. Each state agency subject to Subchapter C,
5 Chapter 2264, Government Code, as amended by this Act, shall
6 develop the procedures required under Section 2264.102(d),
7 Government Code, as added by this Act, not later than October 1,
8 2023.

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

14 SECTION 9. This Act takes effect September 1, 2023.