

BILL ANALYSIS

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S.B. 357
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Federal immigration law allows for state or local law to address licensing laws in relation to the employment of unauthorized aliens. When businesses violate both federal and state laws by hiring unauthorized aliens and failing to pay unemployment and other state taxes, the businesses are operating on a different playing field than the rest of the law-abiding businesses in Texas. This places an unfair burden on businesses throughout the state, which must carry the weight for businesses that fail to follow the law and provide safeguards for their workers.

This bill temporarily suspends the business licenses of employers who intentionally hire undocumented workers and operate on a cash-only basis. Before the license is suspended, an employer will be allowed to remedy the problem of an undocumented, unreported worker by terminating the worker from employment. If the employer fails to correct the problem, then the employer's license will be suspended until the employer complies. If the employer violates the law more than once in a two-year period, then the employer's license will be suspended for no less than 30 days. Safeguards will be put into place to ensure that the federal government determines which people are legally or illegally residing in the United States.

As proposed, S.B. 357 creates new law 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.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 1 (Sections 53.002 and 53.003, Labor Code) of this bill.

Rulemaking authority is expressly granted to the comptroller of public accounts in SECTION 1 (Section 53.003, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle B, Title 2, Labor Code, by adding Chapter 53, as follows:

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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 53.001. DEFINITIONS. (a) Defines "lawful resident alien," "lawful resident verification information," "license," "licensing authority," and "person not lawfully present."

(b) Provides that the definitions in Chapter 201 (Unemployment Compensation Act--General Provisions) apply to this chapter.

Sec. 53.002. LICENSING AUTHORITIES SUBJECT TO CHAPTER; EXCEPTION. Provides that all licensing authorities are subject to this chapter, except that the Texas Workforce Commission (TWC) by rule is required to adopt a procedure for a licensing authority to obtain an exemption from the application of this chapter for a license issued by the authority that TWC determines is not related to the operation of a business.

Sec. 53.003. RULES. Requires TWC and the comptroller of public accounts (comptroller) to adopt rules as necessary for the administration of this chapter.

[Reserves Sections 53.004-53.050 for expansion.]

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

Sec. 53.051. PROHIBITION AGAINST KNOWING EMPLOYMENT OF PERSON NOT LAWFULLY PRESENT; AUTHORIZATION FOR LICENSE SUSPENSION. (a) Prohibits an employer from knowingly employing a person not lawfully present.

(b) Provides that an employer who violates Subsection (a) may be subject to the suspension of each license held by the employer as provided by this chapter.

Sec. 53.052. EXCEPTIONS. (a) Provides that an employer has not violated Section 53.051(a) if the employer, at least 14 calendar days after the commencement of the employee's employment, requested from the employee and received and documented in the employee's employment record, lawful resident verification information consistent with employer requirements under the federal Immigration Reform and Control Act of 1986 (Pub. L. No. 99-603), and the lawful resident verification information provided by the employee later was determined to be false.

(b) Provides that an employer has not violated Section 53.051(a) if the employer verified the immigration status of the person at least 14 calendar days after the commencement of the employee's employment through an electronic federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees.

[Reserves Sections 53.053-53.100 for expansion.]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS FOR LICENSE SUSPENSION

Sec. 53.101. FINDING BY COMMISSION; REFERRAL TO COMPTROLLER; MEMORANDUM OF UNDERSTANDING. (a) Requires TWC if, after conducting an audit of an employer under Subchapter D (Other Enforcement Remedies against Employer), Chapter 213 (Enforcement of Texas Unemployment Compensation Act), TWC finds substantial evidence that the employer is operating on a cash-only basis in order to circumvent the requirements of Subtitle A (Texas Unemployment Compensation Act), Title 4 (Employment Services and Unemployment), a rule adopted under Subtitle A, Title 4, or another state law requiring the payment of a tax, and that the employer is knowingly employing a person not lawfully present in violation of Section 53.051(a), to refer its findings to the comptroller.

(b) Requires TWC and the comptroller to adopt a memorandum of understanding to develop and implement procedures for the referral by TWC to the comptroller under Subsection (a).

Sec. 53.102. INVESTIGATION BY COMPTROLLER; HEARING. (a) Requires the comptroller, on receipt of a referral from TWC under Section 53.101, to investigate TWC's findings using the comptroller's contested case and hearing procedures in an attempt to verify information regarding the immigration status of the relevant employee or employees of the employer alleged to have violated Section 53.051(a).

(b) Provides that during an investigation conducted by the comptroller under Subsection (a), the employer alleged to have violated Section 53.051(a) is required to specify all licenses held by the employer, and the comptroller is required to provide notice regarding the investigation to the United States Immigration and Customs Enforcement agency of the federal Department of

Homeland Security and each licensing authority that issued any license held by the employer, and request the United States Immigration and Customs Enforcement agency of the federal Department of Homeland Security to verify, under 8 U.S.C. Section 1373(c), the employment authorization of each relevant employee.

(c) Authorizes the comptroller to make a final determination of whether an employer has committed a violation of Section 53.051(a) only after the comptroller has received verification from the United States Immigration and Customs Enforcement agency of the federal Department of Homeland Security under 8 U.S.C. Section 1373(c), regarding the employment authorization of each relevant employee.

Sec. 53.103. ORDER FOR TERMINATION OF EMPLOYMENT AND FILING OF AFFIDAVIT. (a) Requires the comptroller on a final determination by the comptroller that an employer has violated Section 53.051(a), to:

(1) issue an order requiring the employer to terminate the employment of each employee who is a person not legally present, and file with the comptroller, within 10 business days after the date the order is issued, a sworn affidavit stating certain information regarding the actions taken by the employer regarding the employee's employment; and

(2) notify the United States Immigration and Customs Enforcement agency of the federal Department of Homeland Security and the applicable local law enforcement agency of the identity and address, if known, of each employee who is a person not lawfully present.

(b) Provides that, notwithstanding any other provision of this subchapter, during the pendency of an action taken under Subsection (a)(1)(B)(ii) or (iii) (relating to certain actions an employer is required to undertake with employees determined to be not legally present), the employer is not required to terminate the employment of any employee determined by the comptroller to be a person not lawfully present, and the comptroller may not order the suspension of any license held by the employer.

Sec. 53.104. ORDER OF LICENSE SUSPENSION; NOTICE TO LICENSING AUTHORITIES. (a) Requires the comptroller, if an employer fails to comply with an order issued under Section 53.103, except as provided by Subsection (b), to order the suspension of each license held by the employer until the comptroller finds that the employer has complied with the requirements of Section 53.103.

(b) Requires the comptroller to order the suspension of each license held by the employer for period of at least 30 days on a final determination by the comptroller that an employer has violated Section 53.051(a) more than one time during a two-year period. Prohibits a license suspended under this subsection from being reinstated until the comptroller finds that the employer has complied with the requirements of Section 53.103.

(c) Requires the comptroller to promptly send to the appropriate licensing authorities a copy of any order issued by the comptroller under this section.

(d) Requires the comptroller to maintain in a prominent location on the comptroller's Internet website a database accessible to the public containing copies of each order issued under this section.

[Reserves Sections 53.105-53.150 for expansion.]

SUBCHAPTER D. ACTION BY LICENSING AUTHORITIES

Sec. 53.151. ACTION BY LICENSING AUTHORITY. (a) Requires a licensing authority, on receipt from the comptroller of an order suspending a license, to immediately determine if the authority has issued a license to the person named on the order, and, if a license has been issued, record the suspension of the license in the licensing authority's records, report the suspension as appropriate, and demand surrender of the suspended license if required by law for other cases in which a license is suspended.

(b) Requires a licensing authority to implement the terms of the comptroller's final order suspending a license without additional review or hearing. Authorizes the authority to provide notice as appropriate to the license holder or to others concerned with the license.

(c) Prohibits a licensing authority from modifying, remanding, reversing, vacating, or staying an order suspending a license issued under this chapter and from reviewing, vacating, or reconsidering the terms of a final order suspending a license.

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

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

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

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

(h) Provides that an order issued under this chapter to suspend a license of a person applies to each license for which the person is eligible issued by the licensing authority subject to the order. Prohibits the licensing authority from issuing or renewing any other license for the person during the suspension period.

Sec. 53.152. FEE BY LICENSING AUTHORITY. Authorizes a licensing authority to charge a fee to a person that is the subject of an order suspending a license in an amount sufficient to recover the administrative costs incurred by the authority under this chapter.

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

SECTION 3. Requires TWC and the comptroller to adopt the rules and memorandum of understanding required by Chapter 53, Labor Code, as added by this Act, as soon as practicable after the effective date of this Act.

SECTION 4. Effective date: September 1, 2009.