

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1621
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Business & Commerce
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current Texas law, only certain entities are required to register and participate in E-verify: state agencies, institutions of higher education, and sexually oriented businesses. State contractors and subcontractors must enroll in E-verify in order to qualify for certain public contracts. However, there is no mechanism in place to ensure all Texas employers are employing individuals legally authorized to work in this state.

S.B. 1621 would ensure all employees in Texas are legally authorized to work in the state by requiring all employers, public and private, to use the federal E-verify system. Additionally, state contractors and subcontractors would be required to participate in E-verify during the duration of their contract. The Comptroller of Public Accounts of the State of Texas (comptroller) would be authorized to take action against any contractors found to be in violation of this law.

C.S.S.B. 1621 amends the debarment provision to ensure the comptroller has discretion in the process and creates an affirmative defense for a contractor that did not know they hired a subcontractor who was not using E-verify or stopped using E-verify during the contract period. It also excludes subcontractors who act exclusively as a supplier.

C.S.S.B. 1621 amends the definition of employer to exclude sole proprietorships.

C.S.S.B. 1621 amends the provision of adopting rules to require all appropriate agencies to adopt rules and prescribe forms.

C.S.S.B. 1621 delays the required implementation for employers and political subdivisions until January 1, 2025.

C.S.S.B. 1621 amends current law 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.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to each appropriate state agency in SECTION 5 (Section 53.004, Labor Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 2264, Government Code, to read as follows:

CHAPTER 2264. CERTAIN RESTRICTIONS ON PUBLIC SUBSIDIES AND STATE CONTRACTS

SECTION 2. Transfers Section 2264.101, Government Code, to Subchapter B, Chapter 2264, Government Code, redesignates it as Section 2264.054, Government Code, and amends it, as follows:

Sec. 2264.054. RECOVERY. (a) Authorizes a public agency, local taxing jurisdiction, economic development corporation, or the attorney general on behalf of the state or a

state agency, to bring a civil action to recover any amounts owed to the public agency, state or local taxing jurisdiction, or economic development corporation under Subchapter B (Restrictions on Use of Certain Public Subsidies to Employ Undocumented Workers), rather than under this chapter.

(b) Makes no changes to this subsection.

(c) Provides that a business is not liable for a violation of this subchapter, rather than a violation of this chapter, by a subsidiary, affiliate, or franchisee of the business, or by a person with whom the business contracts.

SECTION 3. Amends the heading to Subchapter C, Chapter 2264, Government Code, to read as follows:

SUBCHAPTER C. E-VERIFY PROGRAM

SECTION 4. Amends Subchapter C, Chapter 2264, Government Code, by adding Sections 2264.1011, 2264.102, and 2264.103, as follows:

Sec. 2264.1011. DEFINITIONS. Defines "E-verify program" and "state agency."

Sec. 2264.102. VERIFICATION BY CONTRACTORS. (a) Prohibits a state agency from awarding a contract for goods or services within this state to a contractor unless the contractor and any subcontractor register with and participate in the E-verify program to verify employee information. Requires the contractor and any subcontractor to continue to participate in the E-verify program during the term of the contract.

(b) Requires that each contract with a state agency include a certain statement. Sets forth the language required to be included in the statement.

(c) Requires a state agency, if the state agency determines that a contractor was ineligible to have the contract awarded under Subsection (a), that a contractor has ceased participation in the E-verify program during the term of the contract, or that a subcontractor is not registered with or is not participating in the E-verify program, to refer the matter to the Comptroller of Public Accounts of the State of Texas (comptroller) for action.

(d) Requires each state agency to develop procedures for the administration of this section.

Sec. 2264.103. BARRING FROM STATE CONTRACTS. (a) Requires the comptroller, using procedures prescribed under Section 2155.077 (Barring Vendor from Participation in State Contracts), to bar a contractor from participating in state contracts if the comptroller determines that the contractor:

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

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

(3) knowingly hired a subcontractor, other than a subcontractor who acts exclusively as a supplier for the contract, to perform work under the contract who is not registered with or is not participating in the E-verify program.

(b) Provides that debarment under this section is for a period of one year except that the debarment is authorized to be extended by the comptroller for additional one-year periods if the comptroller determines that the grounds for debarment under this section continue to exist.

(c) Provides that it is an affirmative defense to a debarment proceeding under this section that the contractor did not know that a subcontractor hired to perform work under the contract is not registered with or is not participating in the E-verify program.

SECTION 5. Amends Subtitle B, Title 2, Labor Code, by adding Chapter 53, as follows:

CHAPTER 53. VERIFICATION OF EMPLOYEE INFORMATION

Sec. 53.001. DEFINITIONS. Defines "commission," "employee," "employer," "employment," and "E-verify program."

Sec. 53.002. EMPLOYEE STATUS. Prohibits an employer from classifying an individual performing services for the employer as an independent contractor instead of as an employee of the employer solely for the purpose of avoiding the requirements applicable to an employer under this chapter.

Sec. 53.003. VERIFICATION. Requires an employer to register and participate in the E-verify program to verify information of all new employees.

Sec. 53.004. ENFORCEMENT BY STATE AGENCIES; RULES. (a) Provides that each appropriate state agency, notwithstanding any other law, is required to ensure that employers in this state comply with Section 53.003 and is authorized to require compliance with that section as a condition of a license, certificate, registration, permit, or other authorization issued by the agency that is required for a person to practice or engage in a particular business, occupation, or profession in this state.

(b) Requires each appropriate state agency to adopt rules and prescribe forms as necessary to implement this section.

SECTION 6. Amends Subtitle C, Title 5, Local Government Code, by adding Chapter 181, as follows:

CHAPTER 181. VERIFICATION OF EMPLOYEE INFORMATION

Sec. 181.001. DEFINITIONS. Defines "E-verify program" and "political subdivision."

Sec. 181.002. VERIFICATION. Requires a political subdivision to register and participate in the E-verify program to verify information of all new employees.

Sec. 181.003. TERMINATION OF EMPLOYMENT. Provides that an employee of a political subdivision who is responsible for verifying information of new employees of the political subdivision as required by Section 181.002 is subject to immediate termination of employment if the employee fails to comply with that section.

SECTION 7. Requires each state agency subject to Subchapter C, Chapter 2264, Government Code, as amended by this Act, to develop the procedures required under Section 2264.102(d), Government Code, as added by this Act, not later than December 31, 2023.

SECTION 8. Makes application of Sections 2264.1011, 2264.102, and 2264.103, Government Code, as added by this Act, prospective.

SECTION 9. Requires each appropriate state agency subject to Section 53.004, Labor Code, as added by this Act, as soon as practicable after the effective date of this Act, to adopt rules and prescribe forms as required by that section.

SECTION 10. Provides that Sections 53.003, Labor Code, and 181.002, Local Government Code, as added by this Act, apply beginning January 1, 2025.

SECTION 11. Effective date: September 1, 2023.