Regular Session, 2011

HOUSE BILL NO. 646 (Substitute for House Bill No. 175 by Representative Talbot)

BY REPRESENTATIVE TALBOT

EMPLOYMENT: Provides for the verification of citizenship for employment

AN ACT

To amend and reenact R.S. 23:995, relative to the verification of citizenship and authorization for employment; to provide with respect to civil penalties for violations; to require the suspension of permits or licenses for violations; to provide for defenses; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 23:995 is hereby amended and reenacted to read as follows:

§995. Civil penalties

A. No person, either for himself or on behalf of another, shall employ, hire, recruit, or refer, for private or public employment within the state, an alien who is not entitled to lawfully reside or work in the United States.

B. No person shall be subject to civil penalties pursuant to the provisions of this Part upon a showing of either of the following:

(1) The citizenship or work authorization status of every employee has been verified by the United States Citizenship and Immigration Services E-Verify system, hereinafter referred to as E-Verify.

(2) Each employee has provided a picture identification and one of the following documents of which the employer has retained a copy for his records:

(a) United States birth certificate or certified birth card.

(b) Naturalization certificate.

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(c) Certificate of citizenship.

(d) Alien registration receipt card.

(e) United States immigration form I-94 (with employment authorized stamp).

C. Any employer who has utilized the E-Verify system to determine the employment eligibility of an employee is presumed to have been in good faith and is not subject to any penalty as a result of the reliance on the accuracy of the E-Verify system.

D. The executive director of the Louisiana Workforce Commission shall enforce the provisions of this Section. The executive director may assess civil penalties against any person violating the provisions of this Section, or when appropriate, inform the proper governing or licensing authority to suspend a license or permit to do business, as follows:

(1) For a first violation the penalty shall be not more than two hundred fifty dollars for each alien employed, hired, recruited, or referred in violation of this Section.

(2) For a second violation ~~the penalty~~, the appropriate local governing authority or licensing agency shall immediately suspend the violator's permit or license to do business in the state for not less than ten days and a fine shall be assessed that shall be not more than five hundred dollars for each alien employed, hired, recruited, or referred in violation of this Section.

(3) For a third or subsequent violation ~~the penalty~~ , the appropriate local governing authority or licensing agency shall immediately suspend the violator's permit or license to do business in the state for not less than six months and a fine shall be assessed that shall be not more than one thousand dollars for each alien employed, hired, recruited, or referred in violation of this Section.

~~C.~~ E. Civil penalties may be imposed only by a ruling of the executive director pursuant to an adjudicatory hearing held in accordance with the Administrative Procedure Act, R.S. 49:950, et seq.

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~~D.~~ F. The executive director may institute civil proceedings in the Nineteenth Judicial District Court to enforce its rulings. In the event judgment is rendered in said court affirming the civil penalties assessed, the court shall also award to the Louisiana Workforce Commission reasonable attorney fees, and judicial interest on said civil penalties from the date of its assessment by the Louisiana Workforce Commission until paid and all costs.

~~E.~~ G. The executive director may institute civil proceedings in the Nineteenth Judicial District Court seeking injunctive relief to restrain and prevent violations of the provisions of this Part or of the rules and regulations adopted under the provisions of this Part. If the court grants the injunctive relief sought by the Louisiana Workforce Commission, it shall also award reasonable attorney fees and costs to the Louisiana Workforce Commission.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Talbot HB No. 646

Abstract: Provides with respect to the verification of citizenship and employment eligibility.

Present law prohibits an employer from hiring an alien who is not entitled to lawfully reside or work in the U.S. and provides civil penalties for violations.

Proposed law retains present law.

Present law (R.S. 23:992.2) prohibits prosecution of an employer who verifies citizenship of his employees by requiring every employee to present a picture ID as well as a U.S. birth certificate, naturalization certificate, alien registration receipt card, or U.S. immigration form I-94.

Proposed law adopts the provisions of present law (R.S. 23:992.2) to also apply to civil investigations of violations and further provides that the employer may use either a picture ID in addition to a U.S. birth certificate, naturalization certificate, alien registration receipt card, or U.S. immigration form I-94, or utilize the federal E-Verify system to determine employment eligibility.

Proposed law further provides that any employer who relies on the E-Verify system for the verification of employment eligibility of an employee shall not be penalized for any error that results in the employment of a person unauthorized to work in the U.S.

Present law provides that the executive director of the La. Workforce Commission shall enforce present law and shall impose the following civil penalties on noncompliant

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businesses: a fine of not more than $250 for each alien employed upon a first violation, upon a second violation, a fine of not more than $500 for each alien employed, and upon a third or subsequent violation, a fine of not more than $1,000 for each alien employed.

Proposed law retains present law and adds an additional penalty upon a second violation, which is the suspension of the violating party's permit or license to do business in this state, and on a third violation, a suspension of a party's permit or license to do business in this state for not less than six months.

(Amends R.S. 23:995)

Summary of Amendments Adopted by House

House Floor Amendments to the engrossed bill.

1. Required the executive director of LWC to inform, rather than advise local governing authorities regarding the suspension of business permits or licenses of violators.

2. Removed the requirement that a violating party's business permit or license shall be revoked on a third violation, and instead requires an immediate suspension for not less than six months for a third violation.

3. Added technical amendments.

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