

Regular Session, 2011

SENATE BILL NO. 66

BY SENATORS RISER AND CHEEK

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

EMPLOYMENT. Requires verification of legal work status of employees by private employers seeking to contract with state agencies. (8/15/11)

1 AN ACT
2 To enact R.S. 23:998, relative to the verification of legal status of certain aliens prior to
3 employment in public contract work; to provide for definitions; to provide for the
4 scope of applicability; to provide for the cost of such verification; to provide relative
5 to a de-funding of such federal program; and to provide for related matters.
6 Be it enacted by the Legislature of Louisiana:
7 Section 1. R.S. 23:998 is hereby enacted to read as follows:
8 **§998. Verification of residency of aliens engaged in public contract work**
9 **A. Findings. (1) The legislature finds that illegal immigrants have been**
10 **living in this state and encouraged to reside here through the benefit of**
11 **employment without verifying immigration status, these practices impede and**
12 **obstruct the enforcement of federal immigration law, undermine the security**
13 **of our borders, and impermissibly restrict the privileges and immunities of the**
14 **citizens of Louisiana.**
15 **(2) The legislature finds that it is a compelling public interest of this**
16 **state to ensure that public monies are not spent to employ aliens that are not**
17 **legally residing in the United States or not authorized to work in the United**

1 **States thereby assuring taxpayers that their dollars are not spent in support of**
2 **such illegal aliens.**

3 **B. Definitions. For the purposes of this Section, the following terms**
4 **shall have the following meanings unless the context clearly indicates otherwise:**

5 **(1) "Legal alien" is a person who is or was lawfully present in the United**
6 **States at the time of employment and remains so for the duration of**
7 **employment, or a person who is or was permanently residing legally in the**
8 **United States at the time of employment and remains so for the duration of**
9 **employment.**

10 **(2) "Status verification system" is the electronic verification of work**
11 **authorization program of the Illegal Immigration Reform and Immigration**
12 **Responsibility Act of 1996, 8 U.S.C. 1324a, operated by the Department of**
13 **Homeland Security, known currently as the "E-Verify Program".**

14 **C. A private employer shall not bid on or otherwise contract with a state**
15 **agency for the physical performance of services unless the private employer**
16 **attests in a sworn affidavit to both of the following:**

17 **(1) The private employer is registered with and participates in a status**
18 **verification system to verify that new employees to be employed on the project**
19 **for which a state agency is soliciting bids are legal citizens of the United States**
20 **or are legal aliens.**

21 **(2) The private employer shall continue, during the term of the contract,**
22 **to utilize such status verification system to verify the legal status of new**
23 **employees employed directly by the private employer.**

24 **D. All costs to use the status verification system shall be borne by the**
25 **entity seeking or participating in a public contract.**

26 **E. Penalties; employer liability; appeal. (1) Any private employer**
27 **violating the provisions of this Section shall, for the convenience of the**
28 **contracting state agency, be subject to the cancellation of the contract with the**
29 **state agency. Upon such cancellation, the private employer shall be**

1 compensated for the private employer's cost to the date of cancellation, plus the
2 pro rata share of its overhead and profit or fee earned to the date of
3 cancellation. A private employer whose participation in a state contract is
4 canceled for violation of this Section shall be ineligible to seek or participate in
5 any state contract for a period not to exceed three years.

6 (2) Any private employer penalized under the provisions of this Section
7 shall have the right to appeal to the appropriate entity sanctioning the employer
8 or to the state district court of competent jurisdiction. If the penalty is found
9 not to be supported by evidence or law, the private employer may recover
10 reasonable attorney fees and court costs together with any lost profits.

11 (3) Any person, contractor, or employer who complies with the
12 provisions of this Section shall not be liable, either criminally or civilly, under
13 state law for the hiring of an unauthorized alien, as defined in 8 U.S.C. §1324a,
14 if the information obtained in accordance with the status verification system
15 indicated that the individual's federal legal status allowed the employer to hire
16 the employee.

17 (4) Any person, contractor, or employer who complies with the
18 provisions of this Section shall not be liable, either criminally or civilly, under
19 state law for a refusal to hire an individual if the information obtained in
20 accordance with the status verification system indicated that the individual's
21 federal legal status was that of an unauthorized alien, as defined in 8 U.S.C.
22 §1324a.

23 F. The provisions of this Section shall only apply to contracts entered
24 into or bids offered on or after January 1, 2012.

25 G. In the event the status verification system expires or is de-funded and
26 extensions are not approved by the federal government, the provisions of this
27 Section shall no longer apply.

The original instrument was prepared by Mary Dozier O'Brien. The following digest, which does not constitute a part of the legislative instrument, was prepared by Dawn Romero Watson.

DIGEST

Riser (SB 66)

Proposed law prohibits a private employer from bidding or otherwise contracting with a state agency unless the private employer attests in a sworn affidavit to:

- (1) Registered with and participates in a status verification system to verify that any new employees to be employed on the state project are legal citizens of the United States or are legal aliens.
- (2) Continue, during the term of the contract, to utilize the status verification system to verify the legal status of any new employees employed directly by the employer.

Proposed law provides that all costs to use the status verification system shall be borne by the entity seeking to participating in the public contract.

Proposed law provides for a penalty for violations of proposed law including cancellation of the contract and a prohibition of further state contracting for a period not to exceed three years.

Proposed law provides a right of appeal for any private employer penalized under proposed law.

Proposed law provides that any person, contractor, or employer who complies with proposed law shall not be liable, criminally or civilly, under state law for hiring an unauthorized alien if the information obtained in accordance with the state verification system indicated that the individual's federal legal status allowed the employer to hire the employee.

Proposed law only applies on contracts entered into or bids offered on or after January 1, 2012.

Proposed law provides that if the federal status verification system expires or is de-funded and extensions are not approved by the federal government, the provisions of the proposed law will no longer apply.

Effective August 15, 2011.

(Adds R.S. 23:998)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Labor and Industrial Relations to the original bill.

1. Amendments provide that any person, contractor, or employer who utilizes the E-Verify system as required by this Act, shall not be liable, either civilly or criminally for incorrect information regarding any employee's legal status obtained through the E-Verify system.

Senate Floor Amendments to engrossed bill.

1. Limits application of proposed law ~~from~~ contracts with public entities ~~to~~ contracts with state agencies.
2. Adds payment by the state agency to the private employer of costs incurred and profit lost upon cancellation of a contract for proposed law violations.
3. Removes provisions requiring payments by the private employer to the state agency for additional costs associated with cancellation of a contract.
4. Adds authority for recovery of reasonable attorney fees and costs for the private employer if the penalty is not found to be supported by evidence or law.