

SENATE BILL 1355

By Finney L

AN ACT to amend Tennessee Code Annotated, Title 3;
Title 4; Title 5; Title 6; Title 7; Title 8; Title 12 and
Title 50, relative to employment.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 12-4-124, is amended by deleting the section in its entirety and by substituting instead the following language:

12-4-124.

(a) As used in this section:

(1) "Business" means any activity engaged in by any person, or caused to be engaged in by the person, with the object of gain, benefit or advantage, either direct or indirect;

(2) "Chief procurement officer" means the person appointed by the governor pursuant to § 4-56-104;

(3) "Commissioner" means the commissioner of labor and workforce development, or the commissioner's designee;

(4) "Department" means the department of labor and workforce development;

(5) "Employee":

(A) Means any person who works for or performs any service for salary, wages or other compensation for a public employer or person, including but not limited to permanent employees, temporary employees, full-time employees or part-time employees; and

(B) Does not mean an independent contractor;

(6) "Federal work authorization program" means the federal electronic work authorization verification service provided by the United States department of homeland security pursuant to the federal Basic Pilot Program Extension and Expansion Act of 2003, PL 108-156, or any successor program;

(7) "Illegal alien" means a person who has illegally entered or remained in the United States, as determined by the bureau of immigration and customs enforcement of the United States department of homeland security;

(8) "Independent contractor" means an individual or entity that carries on an independent business, that contracts to do a piece of work according to the individual's or entity's own means and methods and that is subject to control only as to results. In a work relationship, in order to determine whether an individual is an "employee" or an "independent contractor," the following factors shall be considered:

- (A) The right to control the conduct of the work;
- (B) The right of termination;
- (C) The method of payment;
- (D) The freedom to select and hire helpers;
- (E) The furnishing of tools and equipment;
- (F) Self-scheduling of working hours; and
- (G) The freedom to offer services to other entities;

(9) "Oversight authority" means:

- (A) The chief procurement officer, if the public employer is the state or any agency, board, commission or other entity created under the general law of this state as a state entity; or

(B) The comptroller of the treasury if the public employer is a county, city, town or municipality, or any board, commission, district or other entity created by a county, city, town or municipality and funded in whole or in part by tax revenue or created pursuant to the general law whose jurisdiction is limited to a defined area;

(10) "Person" means an individual, corporation, partnership, association or any other legal entity;

(11) "Public contract" means any contract for goods or services entered into by a person and a public employer; and

(12) "Public employer" means:

(A) This state;

(B) Any agency, board, commission or other entity created under the general law of this state as a state entity;

(C) A county, city, town or municipality; or

(D) Any board, commission, district or other entity created by a county, city, town or municipality and funded in whole or in part by tax revenue or created pursuant to the general law whose jurisdiction is limited to a defined area.

(b)

(1) No public employer shall enter into a public contract with any person who:

(A) Utilizes the services of illegal aliens in the performance of a public contract;

(B) Does not first attest in writing, under penalty of perjury, to the public employer that the person shall not utilize the services of illegal

aliens in the performance of the public contract, and shall not utilize the services of any other persons who will utilize the services of illegal aliens in the performance of a public contract;

(C) Does not verify the work authorization status of all employees hired on or after January 1, 2012, by using the federal work authorization program prior to entering into a public contract or submitting a bid to enter into a public contract;

(D) Does not require any other persons performing work or services in connection with the performance of the public contract to verify the work authorization status of such other persons' employees hired on or after January 1, 2012, by using the federal work authorization program prior to engaging in the performance of work or services in connection with the performance of the public contract; and

(E) Does not comply with subsection (k).

(2) No person may enter into a public contract or submit a bid to enter into a public contract if the person:

(A) Utilizes the services of illegal aliens in the performance of a public contract;

(B) Does not first attest in writing, under penalty of perjury, to the public employer that the person shall not utilize the services of illegal aliens in the performance of the public contract, and shall not utilize the services of any other persons who will utilize the services of illegal aliens in the performance of a public contract;

(C) Does not verify the work authorization status of all employees hired on or after January 1, 2012, by using the federal work authorization

program prior to entering into a public contract or submitting a bid to enter into a public contract;

(D) Does not require any other persons performing work or providing services in connection with the performance of the public contract to verify the work authorization status of such other persons' employees hired on or after January 1, 2012, by using the federal work authorization program prior to engaging in the performance of work or services in the performance of the public contract; and

(E) Does not comply with subsection (k).

(3) No person may perform work or provide services in connection with the performance of a public contract if the person:

(A) Is an illegal alien;

(B) Utilizes the services of illegal aliens in the performance of a public contract;

(C) Does not verify the work authorization status of all employees hired on or after January 1, 2012, by using the federal work authorization program prior to entering into a public contract or submitting a bid to enter into a public contract; and

(D) Does not comply with subsection (k).

(c)

(1) The commissioner shall conduct an investigation of a public employer, any person submitting a bid for a public contract, any person entering into a public contract or any person performing work or providing services in connection with the performance of a public contract:

(A) If an officer or employee of a public employer:

(i) Has reason to believe that a violation of subsection (b) or (k) has occurred; and

(ii) Files a complaint with the department;

(B) If a complaint is filed by a public employer who has reason to believe that a violation of subsection (b) or (k) has occurred; or

(C) If the commissioner has reason to believe that a violation of subsection (b) or (k) has occurred.

(2) Upon initiation of an investigation pursuant to this subsection (c), the commissioner shall inform the person or the public employer against whom the complaint is made that the person or the public employer may request the name of the employee filing the complaint, or if the complaint is filed by the public employer, the name of the employee who caused the complaint to be filed. If the person or the public employer requests the name, the commissioner shall provide the name requested.

(d) After completion of the investigation pursuant to subsection (c), if there is substantial evidence that a violation of subsection (b) or (k) has occurred, then the commissioner shall conduct a contested case hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, on the question of whether any person or public employer has violated subsection (b) or (k). The commissioner shall state in the commissioner's findings of fact and conclusions of law whether there have been previous violations of subsection (b) or (k).

(e) If the commissioner determines that there is clear and convincing evidence that a public employer has violated subdivision (b)(1), then the commissioner shall send written notice to:

(1) The governor;

(2) The speaker of the senate and the speaker of the house of representatives;

(3) The majority and minority leadership of the senate and the house of representatives; and

(4) The applicable oversight authority.

(f) If the commissioner determines, after the contested case hearing described in subsection (d), that there is clear and convincing evidence that a person has violated subdivision (b)(2), (b)(3) or subsection (k), then the commissioner shall send written notice to the person of the violation and allow the person to appeal the violation within fifteen (15) days of receipt of the written notice from the commissioner. If the person fails to appeal the violation within fifteen (15) days of receipt of the written notice, then the person shall have waived the appeals process. The commissioner shall establish an appeals process in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(g) After the person has either exhausted or waived the appeals process described in subsection (f), and if the violation occurred while the person was acting within the scope of practice of a license issued by the state or pursuant to title 67, chapter 4, then:

(1) For a first violation of subdivision (b)(2) or (b)(3), or subsection (k), the commissioner shall issue an order requiring the appropriate regulatory board or local government with respect to business licensure pursuant to title 67, chapter 4, to provide written notice to the person that further violation of this section shall result in license suspension or permanent revocation;

(2) For a second violation of subdivision (b)(2) or (b)(3), or subsection (k), the commissioner shall issue an order requiring the appropriate regulatory

board or local government with respect to business licensure pursuant to title 67, chapter 4, to suspend the person's business license for one (1) year; and

(3) For a third violation of subdivision (b)(2) or (b)(3), or subsection (k), the commissioner shall issue an order requiring the appropriate regulatory board or local government with respect to business licensure pursuant to title 67, chapter 4, to permanently revoke the license.

(h) For purposes of this section, a second violation of this section shall accrue from an investigation separate from a first violation of this section; provided that, if the commissioner determines that a person violated subdivision (b)(2) or (b)(3), or subsection (k) intentionally, then the commissioner may treat violations accruing from the same investigation as first, second or third violations accordingly.

(i) If the oversight authority receives written notice from the commissioner pursuant to subsection (e):

(1) For a first violation of subdivision (b)(2) or (b)(3), or subsection (k), the oversight authority shall provide written notice to the person that further violation of this section shall result in either a temporary or permanent prohibition of the person contracting with or submitting a bid for any public contract;

(2) For a second violation of subdivision (b)(2) or (b)(3), or subsection (k), the oversight authority shall issue an order prohibiting the person from contracting with or submitting a bid for any public contract for a period of one (1) year from the date of the order; and

(3) For a third violation of subdivision (b)(2) or (b)(3), or subsection (k), the oversight authority shall issue an order permanently prohibiting the person from contracting with or submitting a bid for any public contract.

(j) The commissioner shall post the name and business address of every person or public employer found to be in violation of subsection (b) or (k) on the department's web site.

(k)

(1) Any contractor performing any portion of work required by a public contract shall submit to the general contractor whom has entered into the public contract with the public employer:

(A) For each employee of the contractor who was hired on or after January 1, 2012, any records that confirm verification of the employee by using the federal work authorization program; and

(B) For the contractor and each independent contractor working for the contractor, copies of any two (2) of the following three (3) documents:

(i) An unexpired Tennessee driver or photo license, or a driver or photo license from another state; provided that, the other state has, at a minimum, the same requirements for issuance as a Tennessee driver or photo license;

(ii) A signed social security card; or

(iii) A certificate of birth issued by the United States, or any state or territory of the United States.

(2) A general contractor whom has entered into the public contract with the public employer shall maintain the documents described in subdivision (k)(1) for the term of the contract and for one (1) year thereafter.

(l) For purposes of licensure revocation as provided in subdivision (i)(3), if the license is held by a legal entity other than an individual, then any individual who owns

more than fifty-one percent (51%) of such legal entity shall be permanently prohibited from owning another legal entity with the same type of license if the individuals owns more than fifty-one percent (51%) of such other legal entity.

SECTION 2. If the federal electronic work authorization verification service provided by the United States department of homeland security pursuant to the federal Basic Pilot Program Extension and Expansion Act of 2003, PL 108-156, or any successor program, expires and a successor program is not implemented prior to such expiration date, then any new sections created by this act shall cease to be effective as of such expiration date and any existing section of Tennessee Code Annotated affected by this act shall read as the section appeared immediately prior to the effective date of this act.

SECTION 3. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 5. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect January 1, 2012, the public welfare requiring it, and shall apply to public contracts entered into on or after the effective date of this act.