

HOUSE BILL 2867
By DuBois

AN ACT to amend Tennessee Code Annotated, relative to
the "Fair Legally Eligible Employment Act".

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

SECTION 1.

(a) This act shall be known and may be cited as the "Fair Legally Eligible Employment Act".

(b) The Fair Legally Eligible Employment Act authorizes the state to act as the designated agent through which employers in Tennessee may take advantage of the federal web basic pilot program.

(c) The commissioner of labor and workforce development shall be the program administrator of the Fair Legally Eligible Employment Act.

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Web basic pilot program" means the program created under Section 401(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), authorized by the Basic Pilot Program Extension and Expansion Act of 2003 (Pub. Law 108-156), and administered by the U.S. Citizenship and Immigration Service (USCIS)'s Systematic Alien Verification for Entitlements (SAVE) Program;

(2) "Designated agent" means the state of Tennessee acting in compliance with established United States Citizenship and Immigration Service guidelines on behalf of those employers in Tennessee choosing to participate in the federal web basic pilot program;

(3) "Program administrator" means the commissioner of labor and workforce development, who shall designate such other personnel, users, and administrators as may be necessary to enable the state to fulfill, with the highest possible level of service to the employers and the people of the state, the function of designated agent;

(4) "Memorandum of understanding" means a signed agreement between the relevant parties that sets forth the responsibilities of the designated agent, the United States Citizenship and Immigration Service and the Social Security Administration in accordance with United States Citizenship and Immigration Service rules; and

(5) "Relief memorandum of understanding" means a signed agreement between an employer electing to participate in the Fair Legally Eligible Employment Act program, the state acting as its designated agent, the United States Citizenship and Immigration Service, and the Social Security Administration setting forth the responsibilities of all parties.

SECTION 3.

(a) All governmental entities of the state of Tennessee are required to participate in the Fair Legally Eligible Employment program.

(b) The commissioner of labor and workforce development shall act as the program administrator for all agencies participating in the program.

(c) No governmental entity of the state may contract for services from a private firm, or hire a private enterprise, that does not prove within thirty (30) calendar days of the effective date of this act full participation in the Fair Legally Eligible Employment Program.

SECTION 4.

(a)

(1) Any employer registering in Tennessee with a county clerk or designated city official pursuant to § 67-4-706 after the effective date of this act shall be considered to have given its consent to have the department of labor and workforce development enroll such employer in the federal web basic pilot program and act as its designated agent to conduct employee verification activities on its behalf.

(2) A business license applicant described in subdivision (1) may choose not to participate in the federal web basic pilot program by indicating its desire to opt out of the program in its business license application, a space for such option to be indicated on the business license application form. A business license applicant shall be provided a clear and concise explanation of the program's components that emphasizes the program's benefits.

(b)

(1) Any employer already registered in Tennessee with a county clerk or designated city official pursuant to § 67-4-706 may choose to have the department of labor and workforce development enroll the employer in the federal web basic pilot program and act as its designated agent to conduct employee verification activities on its behalf. The department of labor and workforce development shall be required to notify all presently licensed employers at the time of enactment of this act of the availability of the program by sending such employers notification by mail no later than thirty (30) calendar days after the effective date of this act.

(2) A second mailing shall be sent within sixty (60) days of the postage date of the notification mailing in subsection (b)(1) to all employers not responding to the initial mailing within thirty (30) days;

(3) Thereafter, non-participating employers shall be notified of the availability of the Fair Legally Eligible Employment service, which shall be accompanied by a clear and concise definition of the program at least once semi-annually by means of an insert in an already scheduled mailing, or, in the event no regularly scheduled mailing is executed, by postcard, presorted bulk mail.

(b)

(1) Any private employer choosing to participate in the Fair Legally Eligible Employment program may, at any time, terminate its participation by indicating on a signed written form, submitted to the commissioner of labor and workforce development, that it no longer wishes to participate in the program;

(2) The program administrator shall make available online or by telephone order a termination form upon which the legal consequences of termination are explained and which:

(A) Requires a physical signature;

(B) Goes into effect upon receipt by the department of labor and workforce development; and

(C) Shall be made a part of the permanent state archives and searchable online by the general public.

SECTION 5. The Tennessee department of labor and workforce development shall:

(1) Register each state government employer and participating private employer in the federal web basic pilot program;

(2) Act as a designated agent for each state government employer and participating private employer;

(3) Advise each employer of its responsibilities under the program, including:

(A) All Form I-9 requirements and other federal procedural requirements of the web basic pilot program;

(B) Time limitations and deadlines associated with the web basic pilot program;

(C) Limitations and prohibitions on verification of employees under the web basic pilot program;

(D) Any such regulations as may be promulgated from time to time by Congress or other controlling federal authority;

(4) Establish procedures to monitor, investigate, and prosecute clear violations of federal and state anti-discrimination laws and take proactive measures to prevent activity inconsistent with the web basic pilot program or with the provisions of this act; and

(5) Promulgate rules and regulations pursuant to title 4, chapter 5, as necessary to discharge its responsibilities under this section.

SECTION 6.

(a) Any employer electing to take part in the Fair Legally Eligible Employment Act program shall display in a prominent place clearly visible to prospective employees basic pilot notices as determined by the department of homeland security.

(b) A sticker or stickers shall be supplied by the department of labor and workforce development to an employer upon enrollment in the program, indicating that the employer is a participant in the program.

(c) Any employer that terminates its participation in the program pursuant to Section 4 of this act must remove immediately any of the notices described in subsection (a).

(d) The commissioner of labor and workforce development shall create, with an emphasis on clarity and brevity, a free weekly opt-in e-mail digest for employers, which is made available to the general public, which shall contain:

(1) Information concerning employment law and issues pertaining to the Form I-9 policy and procedures as released by the Public Affairs Office of the United States Citizenship and Immigration Service;

(2) Information contained in the "Employer Bulletins" issued by the Office of Business Liaison, the United States Citizenship and Immigration Service office responsible for publishing information valuable to employers;

(3) Citations and links to original source of information; and

(4) Information pertinent to the purpose of this act that, in the judgment of the commissioner of labor and workforce development, may be useful to employers.

SECTION 7.

(a) No employer or representative of any employer participating in the Fair Legally Eligible Employment Act program shall be civilly or criminally liable for the good faith discharge of an individual following final confirmation that the individual is not work authorized.

(b) No employer participating in the Fair Legally Eligible Employment Act program shall be civilly liable for knowingly creating a public or private nuisance, or for knowingly creating dangerous or unsafe conditions, when such liability rests

substantially on the employment of an individual determined to be ineligible for employment.

(c) In the event of an investigation into its hiring practices, a participating employer will receive from the state a presumption of innocence regarding relevant state laws congruent with the presumption of non-violation of sanctions laws granted by the department of homeland security in the particular instance.

SECTION 8.

Any costs incurred by the state in the funding of the Fair Legally Eligible Employment program shall be weighed against any increase in state revenue that may be attributable to the Fair Legally Eligible Employment program due to a reduction in the "off the books" economy.

SECTION 9.

(a) A review of the program to determine whether there are identifiable steps available to make it a more valuable tool for the state's employers, or make it more beneficial to the general public, or whether the program is, in fact, a valuable tool for the state's employers, and a benefit to the general public, or, in the event the federal web basic pilot program ends without extension in November, 2008, whether components of the program may be salvaged and continued under a new program that would serve the goals expressed in this subsection, shall be undertaken by:

- (1) The comptroller of the treasury; or
- (2) The commissioner of labor and workforce development;

(b) The findings of such review shall be presented to each member of the general assembly and to the governor.

SECTION 10. For the purpose 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 on September 1, 2006, the public welfare requiring it. The provisions of this act shall expire and shall be repealed November 1, 2008, the public welfare requiring it.