

SENATE BILL 1428

By Stanley

AN ACT to amend Tennessee Code Annotated, Title 62,
relative to hospitality industries.

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

SECTION 1. Tennessee Code Annotated, Title 62, is amended by adding Sections 2 through 11 of this act as a new chapter thereto.

SECTION 2. Except as otherwise provided in this chapter, it is unlawful for any person to act as a hospitality industry without having first obtained a license from the commissioner.

SECTION 3. For the purposes of this chapter, unless the context otherwise requires:

(1) "Caterers" means businesses with five (5) or more employees primarily engaged in providing single event based food and beverages services;

(2) "Hospitality industry" means businesses with five (5) or more employees that provide products and services such as clubs, gaming, attractions, entertainment and recreation; and

(3) "Staffing company" means a company that assists their clients in the employment process or by supplying temporary employees.

SECTION 4. An application for a hospitality industry license shall be filed with the commissioner on the prescribed form. The application shall include:

(1)

(A) The full name and business address of the applicant; or

(i) If the applicant is a partnership or a limited liability partnership, the name and address of each partner; or

(ii) If the applicant is a corporation or a limited liability company, the name and address of the qualifying agent;

(B) The name under which the applicant intends to do business;

(C) The address of the principal place of business and all branch offices of the applicant within this state;

(D) Evidence of its compliance with the provisions of § 50-6-405 relative to workers' compensation insurance or qualification as a self-insurer;

(E) As to each individual applicant, or, if the applicant is a partnership, as to each partner, or, if the applicant is a corporation, as to the qualifying agent, the following information:

(i) Full name;

(ii) Date and place of birth;

(iii) All residences during the immediate past five (5) years;

(iv) All employment or occupations engaged in during the immediate past five (5) years; and

(v) A list of all convictions and pending charges of commission of a felony or misdemeanor in any jurisdiction;

(F) If the applicant is a corporation, the following information:

(i) The correct legal name of the corporation;

(ii) The state and date of incorporation;

(iii) The date the corporation qualified to do business in this state;

(iv) The address of the corporate headquarters, if located outside this state; and

(v) The names of two (2) principal corporate officers other than the qualifying agent, and the business address, residence address, and the office held by each in the corporation; and

(G) Such other information as the commissioner may reasonably require.

(2) The application shall be subscribed and sworn to:

- (A) By the applicant, if the applicant is an individual;
- (B) By each partner, if the applicant is a partnership; or
- (C) By the qualifying agent, if the applicant is a corporation.

(3) Any individual signing the application must be at least twenty-one (21) years of age.

SECTION 5. Each individual applicant, or, if the applicant is a partnership, each partner, or, if the applicant is a corporation, the qualifying agent, must:

- (1) Be at least twenty-one (21) years of age;
- (2) Be a citizen of the United States or a resident alien;
- (3) Not have been declared by any court of competent jurisdiction incompetent by reason of mental defect or disease unless a court of competent jurisdiction has since declared the applicant competent; and
- (4) Be of good moral character.

SECTION 6.

(a) Persons who are employed by a hospitality industry company to perform hospitality services are employees as provided by § 50-6-102. A licensed hospitality industry company shall be deemed an employer of its employees and shall perform the following responsibilities, unless the employees are supplied by a licensed staffing company:

- (1) Pay wages and collect, report and pay employment taxes from its own accounts;
- (2) Pay state unemployment premiums as required by law; and

(3) Report all new employees, including independent contractors who provide hospitality services, to the department of human services pursuant to § 36-5-1104;

(b) A client shall be jointly and severally liable with an unlicensed hospitality industry company for state unemployment premiums for each of such unlicensed hospitality industry company's employees that are employed by or for such client.

(c) A licensed hospitality industry shall:

(1) Ensure that its Tennessee employees are covered by workers' compensation insurance provided in accordance with title 50 and the applicable Tennessee insurance laws and regulations;

(2) Provide to the commissioner, before issuance of any license pursuant to this chapter, evidence of workers' compensation coverage for all its employees in this state who are subject to the Tennessee Workers' Compensation Law compiled in title 50, chapter 6;

(3) Notify the commissioner and its clients within ten (10) days of any notice of cancellation of its workers' compensation coverage;

(4) Notify the commissioner, and its workers' compensation carrier, if applicable, of the termination of the hospitality industry's relationship with any client to which employees within this state are assigned; and

(5) Report to the department of human services each newly hired or newly re-hired employee as provided by title 36, chapter 5, part 11.

SECTION 7. Every license issued under this chapter shall be posted conspicuously in the licensee's principal place of business in this state.

SECTION 8.

(a) A hospitality industry license, or renewal thereof, shall be valid for a period of three (3) years from the date of issuance. The commissioner of commerce and insurance shall provide each licensee with a renewal application form sixty (60) days prior to the expiration of the license. Licensure fees shall not exceed five hundred dollars (\$500) per license issued pursuant to this act.

(b) The fee for timely renewal of a license shall be in accordance with the schedule promulgated by the commissioner. A penalty fee as prescribed by the commissioner will be assessed on any renewal application postmarked after the expiration date of the license.

(c) Licenses may be renewed up to three (3) months after their expiration by the payment of the renewal fee, plus a penalty established by the commissioner for each month or portion thereof which elapses before payment is tendered.

SECTION 9. Except for a bona fide business tax, no licensee or registrant shall be required to obtain any authorization, permit, or license from or to pay any other fee or post a bond in any municipality, county or other political subdivision of this state to engage in any business or activity regulated under this act.

SECTION 10. If, after notice and opportunity for a hearing, the commissioner of commerce and insurance finds that a person has violated this chapter, or any administrative rule and regulation issued pursuant thereto, the commissioner may order the person to cease and desist violating the chapter or any administrative rules and regulations issued pursuant thereto. Any person who violates a cease and desist order of the commissioner under this section while such order is in effect may, after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to any one (1) or more of the following:

(1) A civil penalty of not more than ten thousand dollars (\$10,000) for each and every act or violation;

- (2) Suspension or revocation of such person's license; or
- (3) Such other relief as is reasonable and appropriate.

SECTION 11. Except as otherwise provided, a violation of this chapter is a Class A misdemeanor.

SECTION 12. The commissioner of commerce and insurance is authorized to promulgate rules and regulations pursuant to title 4, chapter 5, to implement the provisions of this act.

SECTION 13. For the 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 September 1, 2009, the public welfare requiring it.