

Amendment No. 1 to HB1378

Todd
Signature of Sponsor

AMEND Senate Bill No. 1669

House Bill No. 1378*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 50-1-103(e)(1), is amended by deleting the language "state or local" and substituting instead the language "federal, state or local".

SECTION 2. Tennessee Code Annotated, Section 50-1-103, is further amended by adding the following language as new, appropriately designated subsections:

() The commissioner shall notify the appropriate official making declarations pursuant to § 12-4-124 of a person's violation of this section, as applicable.

() The department shall notify the department of homeland security of any person found in violation of this section.

SECTION 3. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding the following language as a new part:

50-1-701. This part shall be known and may be cited as the "**Tennessee Lawful Employment Act**".

50-1-702. As used in this part:

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

(2) "Department" means the department of labor and workforce development, unless the context provides otherwise;

(3) "Department of homeland security" means the United States department of homeland security, or the appropriate agency or division within such department, or any successor department, agency, or division thereto;

(4) "Economic development incentive" means any grant, loan or performance-based incentive from any governmental entity;

(5) "Employee" means any person for whom an employer must complete Form I-9 pursuant to federal law and regulations, and does not include an independent contractor as defined by federal law and regulations;

(6) "Employer" means private employers and governmental entities;

(7) "E-Verify program" means the federal electronic work authorization verification service provided by the department of homeland security pursuant to the federal Basic Pilot Program Extension and Expansion Act of 2003, P.L. 108-156, or any successor program;

(8) "Governmental entity" means this state or any political subdivision which exercises governmental powers under the laws of this state and uses tax revenues;

(9) "Internet access" means Internet service that is installed and accessible at an employer's place of business;

(10) "License" means any certificate, approval, registration, or similar form of permission issued by a local government with respect to business licensure as described in title 67, chapter 4;

(11) "Non-employee" means any person, other than an employee, for whom an employer shall have to complete a remuneration tax form;

(12) "Person" means an individual, corporation, partnership, or other legal entity;

(13) "Private employer" means any person who transacts business in this state and shall have to complete a remuneration tax form; and

(14) "Remuneration tax form" means any tax form that an employer must complete pursuant to federal law and regulations for the purpose of accounting for remuneration provided to an employee or a non-employee, and includes, but is not

limited to, Form W-2, Form-1099-MISC or Form-1040, Schedule C or C-EZ, or any successor forms thereto.

50-1-703.

(a)

(1) On or after January 1, 2012, all employers shall:

(A) Enroll in the E-Verify program prior to entering into a contract with an employee or a non-employee;

(B) Verify the work authorization status of each employee hired on or after January 1, 2012, by using the E-Verify program; and

(C) For each non-employee that the employer enters into a contract with on or after January 1, 2012, request and maintain a copy of any one (1) of the following documents:

(1) A valid Tennessee driver license or photo identification license issued by the department of safety; or

(2) A valid driver license or photo identification license issued by another state where the issuance requirements are at least as strict as those in Tennessee, as determined by the department. The commissioner, in consultation with the department of safety, shall determine which states have issuance requirements that are at least as strict as Tennessee, and shall develop, and periodically update, a publicly accessible list of such states on the department's web site.

(2) No employer shall be in violation of subdivision (a)(1)(A) or (a)(1)(B) if the employer is awaiting requested assistance pursuant to subdivision (a)(5).

(3) Employers shall maintain a record of all results generated by the E-Verify program in a manner consistent with the E-Verify program's rules.

(4) Nothing in this section shall be construed to prevent an employer from contracting with or otherwise obtaining the services of an e-verify employer agent, or similar third party, for the purpose of complying with this section.

(5) There is created within the department the office of employment verification assistance. The department is authorized to enter into any memorandum of understanding or other agreement required by the E-Verify program to operate this office, and shall create no more than one (1) full-time administrative position to staff the office. If an employer does not have Internet access, then the office shall, at no charge to the employer, enroll the employer in the E-Verify program or conduct work authorization status checks of the employer's employees by using the E-Verify program; provided, that the employer signs a prescribed form, under penalty of perjury, attesting to the employer's lack of Internet access and completes any paperwork required by the E-Verify program to permit the office to provide such assistance.

(6) Except as otherwise provided in subsection (b), the department shall conduct an inquiry concerning an employer's compliance with subdivision (a)(1) in conjunction with any pending inquiry, investigation, or inspection of the employer by the department's division of labor standards or workers' compensation division, or any successor divisions thereto. The inquiry shall include written notification to the employer of the inquiry and a request for documentation proving compliance with subdivision (a)(1) within thirty (30) days from receipt of such request. If the employer fails to respond with documentation within the thirty-day period, then the commissioner shall presume a violation.

(b)

(1) Any lawful resident of this state or employee of a federal agency may allege a violation of subdivision (a)(1) to the department. The complaint shall, at

a minimum, include the name of the person filing the complaint, and satisfactory evidence of a violation as determined by the commissioner.

(2) On receipt of a complaint, the commissioner shall determine if the complaint contains satisfactory evidence of a violation; provided, that the commissioner shall inform the person filing the complaint the basis for such determination. The commissioner shall not investigate complaints that are based solely on race, color or national origin.

(3) If the commissioner determines that the complaint contains satisfactory evidence of a violation, then the commissioner shall conduct an inquiry. The inquiry shall include written notification of the alleged violation and a request for documentation proving compliance with subdivision (a)(1) within thirty (30) days from receipt of such request. The department shall provide the employer with the name of the person filing a complaint, upon request.

(4) Upon the expiration of the thirty-day period in subdivision (b)(3), the commissioner shall make a determination of whether a violation occurred. If the employer fails to respond with documentation within the thirty-day period, then the commissioner shall presume a violation. If documentation is submitted within the thirty-day period, then the commissioner shall determine whether there is clear and convincing evidence of a violation based on the documentation submitted, the evidence from the complaint, and other applicable evidence.

(c)

(1) If the commissioner finds a violation by a private employer pursuant to subdivision (a)(6) or (b)(4), then the commissioner shall issue a preliminary order that shall include, at a minimum:

(A) The commissioner's findings and determinations;

(B) The penalties that will apply if a final order is issued;

(C) The process to request a contested case hearing; and

(D) The process by which the commissioner shall waive all penalties for a first violation as provided in subdivision (c)(3).

(2) The commissioner shall promulgate rules and regulations to implement a contested case hearing process whereby a private employer may challenge the commissioner's findings and determinations if the private employer sends written notice to the commissioner within thirty (30) days of the date of the preliminary order. If the private employer fails to send such written notice, then the contested case hearing process is waived.

(3) The commissioner shall issue a warning in lieu of all penalties for a first violation of subdivision (a)(1) if:

(A) The private employer complies with all remedial action requested by the department to remedy the violation within thirty (30) days of the date of the preliminary order; and

(B) The commissioner determines the violation was unintentional.

(d) The commissioner shall issue a final order, as applicable, on the date the contested case hearing concludes or is waived, or as required pursuant to subsection (e), and shall assess penalties in accordance with subsections (e) - (i).

(e)

(1) If a final order is issued for a first violation of subdivision (a)(1)(A) by a private employer, then the commissioner shall assess a civil penalty of one thousand dollars (\$1,000); provided, that if the employer does not remedy a violation of subdivision (a)(1)(A) within thirty (30) days from the issuance of the final order, then the employer shall have committed a second violation of subdivision (a)(1)(A).

(2) If a final order is issued for a second violation of subdivision (a)(1)(A) by a private employer, then the commissioner shall assess a civil penalty of two thousand five hundred dollars (\$2,500); provided, that if the employer does not remedy a second violation of subdivision (a)(1)(A) within thirty (30) days from the issuance of the final order of the second violation, then the employer shall have committed a third violation of subdivision (a)(1)(A).

(3) If a final order is issued for a third violation of subdivision (a)(1)(A) by a private employer, then the commissioner shall assess a civil penalty of five thousand dollars (\$5,000) and request an order consistent with § 4-5-320, requiring the appropriate local government with respect to business licensure pursuant to title 67, chapter 4, to suspend the person's license until the employer remedies the violation of subdivision (a)(1)(A).

(f)

(1) If a final order is issued for a first violation of subdivision (a)(1)(B) or (a)(1)(C) by a private employer, then the commissioner shall assess a civil penalty of one thousand dollars (\$1,000); provided, that if the violation involves more than one (1) employee or non-employee, then a separate civil penalty of one thousand dollars (\$1,000) shall be assessed for each employee or non-employee not verified in violation of subdivision (a)(1)(B) or for whom a document was not requested or maintained in violation of subdivision (a)(1)(C).

(2) If a final order is issued for a second violation of subdivision (a)(1)(B) or (a)(1)(C) by a private employer, then the commissioner shall assess a civil penalty of two thousand five hundred dollars (\$2,500); provided, that if the violation involves more than one (1) employee or non-employee, then a separate civil penalty of two thousand five hundred dollars (\$2,500) shall be assessed for each employee or non-employee not verified in violation of subdivision (a)(1)(B)

or for whom a document was not requested or maintained in violation of subdivision (a)(1)(C).

(3) If a final order is issued for a third or subsequent violation of subdivision (a)(1)(B) or (a)(1)(C) by a private employer, then the commissioner shall assess a civil penalty of five thousand dollars (\$5,000); provided, that if the violation involves more than one (1) employee or non-employee, then a separate civil penalty of five thousand dollars (\$5,000) shall be assessed for each employee or non-employee not verified in violation of subdivision (a)(1)(B) or for whom a document was not requested or maintained in violation of subdivision (a)(1)(C).

(g) Except as provided in subsection (e), a second or subsequent violation shall accrue from a separate inquiry conducted under subdivision (a)(6) or (b)(3).

(h) All moneys collected pursuant to this section shall be deposited into the lawful employment enforcement fund, created by § 50-1-708.

(i) The penalties described in this section shall not be mutually exclusive, and may be imposed in conjunction with any applicable penalties as provided by law.

50-1-704. If the department determines that an employer knowingly misclassified a person as a non-employee in order to avoid the requirements of § 50-1-703(a)(1)(A) or (a)(1)(B), then the department shall pursue appropriate sanctions against the employer as provided by law including, but not limited to, this part and title 50, chapters 1, 6 and 7.

50-1-705. Beginning February 1, 2012, and on a monthly basis thereafter, the department shall post a publicly accessible list on the department's web site of private employers that have received a final order pursuant to this part. The list shall state, at a minimum, the employer's name, the place of business where the violation occurred, a brief description of the violation, a designation of the violation as a first or subsequent violation, and

penalties assessed. The lists shall remain on the web site for such time as determined by the commissioner.

50-1-706. Any person alleging a violation of this part shall have all protections under § 50-1-304 and § 8-50-116, and any other applicable protections as provided by law.

50-1-707. On or after January 1, 2012, in addition to any other requirement to receive an economic development incentive, a private employer shall be in compliance with this part.

50-1-708.

(a) There is created in the state treasury a fund to be known as the lawful employment enforcement fund. Moneys collected by the department pursuant to this part shall be deposited in this fund and shall only be used by the department to implement and administer the purposes set forth in this part, including, but not limited to, enforcement and education. Moneys in the fund shall not revert to the general fund of the state, but shall remain available to be used as provided for in this section.

(b) Interest accruing on investments and deposits of the lawful employment enforcement fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

(c) Moneys in the lawful employment enforcement fund account shall be invested by the state treasurer in accordance with § 9-4-603.

50-1-709. This part is enforceable without regard to race, color, or national origin.

50-1-710. Nothing in this part shall be construed to abrogate any obligations by an employer to comply with federal immigration law, including, but not limited to, the proper completing and maintaining of federal employment eligibility verification forms or documents.

50-1-711. This chapter shall be interpreted so as to be fully consistent with all federal laws, including, but not limited to, federal laws regulating immigration and labor.

SECTION 4. The commissioners of labor and workforce development and safety are authorized to promulgate rules and regulations to effectuate the purposes of this act. All rules

and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 5. 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, P.L. 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.

SECTION 6. 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 7. 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.