SENATE BILL 1351
By Finney L

HOUSE BILL 1520

By Turner M

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 of certain persons.

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

SECTION 1. Tennessee Code Annotated, Section 50-1-103, is amended by deleting the section in its entirety.

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding the following language as a new part:

50-1-701.

As used in this part:

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

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

(4) "Employee":

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

(B) Does not mean an independent contractor;

(5) "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;

(6) "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;

(7) "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 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;

(8) "Knowingly employ an illegal alien" means the actions described in 8 U.S.C. § 1324a, and shall be interpreted consistently with 8 U.S.C. § 1324a and applicable federal rules and regulations relative thereto;

(9) "Private employer" means a person:

(A) Who is not a public employer;

(B) Is engaged in a business; and

(C) Has one (1) or more employees; and

(10) "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.

50-1-702.

(a)

(1) Before January 1, 2012, all public employers shall be registered and participating in the federal work authorization program in compliance with federal law and guidelines relative to the use of the federal work authorization program.

(2) The department shall, upon request from a public employer, provide technical advice or assistance to public employers for the purpose of registering and complying with the federal work authorization program.

(b)

(1) No public employer shall knowingly employ an illegal alien or recruit or refer for a fee for employment an illegal alien.

(2) A public employer has not violated subdivision (b)(1) with respect to a particular employee if the public employer initiates verification of the work

authorization status of the employee by using the federal work authorization program and is complying with federal law and guidelines relative to the use of the federal work authorization program.

(3) A public employer shall verify the work authorization status of any employee hired on or after January 1, 2012.

(c)

(1) If the federal work authorization program returns a tentative nonconfirmation and the employee contests the tentative nonconfirmation, then the public employer shall terminate the employee's employment.

(2)

(A) If the federal work authorization program returns a tentative nonconfirmation and the employee contests the tentative nonconfirmation, then the public employer:

(i) Shall comply with applicable federal law and guidelines to assist the employee in contesting the tentative nonconfirmation; and

(ii) Allow the employee time to contest the tentative nonconfirmation as required by applicable federal law and guidelines.

(B) The public employer shall not take any adverse action against the employee, including, but not limited to, firing, suspending or withholding pay or training, while the employee is contesting a tentative nonconfirmation.

(3) If the federal work authorization program returns a final nonconfirmation, then the public employer shall terminate the employee's employment.

(d)

(1) The commissioner shall conduct an investigation of a public employer:

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

(i) Has reason to believe that a violation of subdivision (a)(1), (b)(1) or (b)(3) has occurred; and

(ii) Files a complaint with the department; or

(B) If the commissioner has reason to believe that a violation of subdivision (a)(1), (b)(1) or (b)(3) has occurred.

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

(e) If there is substantial evidence that a violation of subdivision (a)(1), (b)(1) or (b)(3) 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 the public employer has violated subdivision (a)(1), (b)(1) or (b)(3). The commissioner shall state in the commissioner's findings of fact and

conclusions of law whether there have been previous violations of subdivision (a)(1), (b)(1) or (b)(3) by the public employer.

(f) If the commissioner determines that there is clear and convincing evidence that a public employer has violated subdivision (a)(1), (b)(1) or (b)(3), then the commissioner shall:

(1) Send written notice to:

(A) The governor;

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

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

(2) Post notice of the public employer's violation on the department's web site.

50-1-703.

(a)

(1) No private employer shall knowingly employ an illegal alien, or recruit or refer for a fee for employment an illegal alien.

(2) A private employer has not violated subdivision (a)(1) with respect to a particular employee if:

(A)

(i) The private employer complies with the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1101 et seq.; and

(ii) The lawful resident verification information provided by the employee later was determined to be false; or

(B) The private employer initiates verification of the work authorization status of the employee by using the federal work authorization program and is complying with federal law and guidelines relative to the use of the federal work authorization program.

(3) If the private employer participates in the federal work authorization program and:

(A) If the federal work authorization program returns a tentative nonconfirmation and the employee does not contest the tentative nonconfirmation, then the private employer shall terminate the employee's employment;

(B)

(i) If the federal work authorization program returns a tentative nonconfirmation and the employee contests the tentative nonconfirmation, then the private employer:

(a) Shall comply with applicable federal law and guidelines to assist the employee in contesting the tentative nonconfirmation; and

(b) Allow the employee time to contest the tentative nonconfirmation as required by applicable federal law and guidelines;

(ii) The private employer shall not take any adverse action against the employee, including, but not limited to, firing, suspending or withholding pay or training, while the employee is contesting a tentative nonconfirmation; or

(C) If the federal work authorization program returns a final nonconfirmation, then the private employer shall terminate the employee's employment.

(b)

(1) The commissioner shall conduct an investigation of a private employer:

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

(i) Has reason to believe that a violation of subdivision (a)(1) or subsection (g) has occurred; and

(ii) Files a complaint with the department; or

(B) If the commissioner has reason to believe that a violation of subdivision (a)(1) or subsection (g) has occurred.

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

(c) If there is substantial evidence that a violation of subdivision (a)(1) or subsection (g) 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 the private employer has violated subdivision (a)(1) or subsection (g). The commissioner shall state in the commissioner's findings of

fact and conclusions of law whether there have been previous violations of subdivision (a)(1) or subsection (g) by the private employer.

(d) If the commissioner determines that there is clear and convincing evidence that a private employer has violated subdivision (a)(1) or subsection (g) and the violation occurred while the private employer was acting within the scope of practice of a business license issued by the state or pursuant to title 67, chapter 4, then:

(1) For a first violation of subdivision (a)(1) or subsection (g), the commissioner shall issue an order consistent with § 4-5-320, requiring the appropriate regulatory entity or local government with respect to business licensure pursuant to title 67, chapter 4, to provide written notice to the private employer that further violation of this section shall result in license suspension or permanent revocation;

(2) For a second violation of subdivision (a)(1) or subsection (g), the commissioner shall issue an order consistent with § 4-5-320, requiring the appropriate regulatory entity or local government with respect to business licensure pursuant to title 67, chapter 4, to suspend the private employer's license for one (1) year; and

(3) For a third violation of subdivision (a)(1) or subsection (g), the commissioner shall issue an order consistent with § 4-5-320, requiring the appropriate regulatory entity or local government with respect to business licensure pursuant to title 67, chapter 4, to permanently revoke the license.

(e) 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 (a)(1) or subsection (g)

intentionally, then the commissioner may treat violations accruing from the same investigation as first, second or third violations accordingly.

(f) In addition to the penalties described in subsection (d), the commissioner shall maintain a publicly accessible database of private employers who violate this section on the department's web site.

(g)

(1) Any contractor performing any portion of work required by a contract entered into by a general contractor and the owner or developer, or other such person, of a project, shall submit to the general contractor:

(A) For each employee of the contractor, any records that confirm verification of the employee by completing a Form I-9 or verifying the employee 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 shall maintain the documents described in subdivision (g)(1) for the term of the contract and for one (1) year thereafter.

(h) For purposes of licensure revocation as provided in subdivision (d)(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 3. 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 4. The commissioner of labor and workforce development 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 5. 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 6. 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.