SENATE BILL 1983
By Stewart

HOUSE BILL 2105

By Turner M

AN ACT to amend Tennessee Code Annotated, Title 4; Title 12; Title 16; Title 38; Title 39; Title 45; Title 50 and Title 70 relative to employment of persons unlawfully present in the United States.

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

SECTION 1. It is the public policy of this state that the state and political subdivisions of the state will assist the federal government in enforcing its immigration laws, and that laws enacted in this state to assist in such shall not be inconsistent on their face or in their application with federal law.

SECTION 2. Tennessee Code Annotated, Section 12-4-124, is amended by deleting the language “one (1) year” wherever it appears and substituting instead the language “three (3) years”.

SECTION 3. Tennessee Code Annotated, Section 12-4-124(c), is amended by deleting the language “one-year” and substituting instead the language “three-year”.

SECTION 4. Tennessee Code Annotated, Section 12-4-124, is amended by adding the following new appropriately designated subsection thereto:

(e)

(1) The chief procurement officer appointed pursuant to § 4-56-104(b) shall conduct a random audit of persons who have contracted with the state to provide goods or services. The chief procurement officer shall randomly select a minimum of five percent (5%) of the total number of state contracts per year to be audited pursuant to this subsection (e). The chief procurement officer shall audit each person who has contracted with the state and whose contract has been

randomly selected to be audited to determine whether the person has complied with this section.

(2) After conducting an audit pursuant to subdivision (e)(1), if the chief procurement officer finds that there are reasonable grounds to suspect that a person has violated this section, then the officer shall report these findings to the commissioner of the department of labor and workforce development for appropriate action pursuant to this section and § 50-1-103.

SECTION 5. Tennessee Code Annotated, Section 50-1-103, is amended by deleting the section in its entirety and substituting instead the following:

(a) As used in this section, unless the context otherwise requires:

(1) “Department” means the department of labor and workforce development;

(2) "Economic development incentive " means any grant, loan or performance-based incentive from any state or local government entity that is awarded after October 1, 2011; provided, however, that economic development incentive shall not include any tax provision under title 67;

(3) "Employ" or "employment" means any work engaged in for compensation in money or other valuable consideration and for which a person paying the compensation for the work performed is required to submit a Form W-2 or Form 1099 to the United States Internal Revenue Service;

(4) "Employer" means a person employing or seeking to employ any individual for hire and includes any governmental entity including the state and all political subdivisions of the state;

(5) "Governmental entity" means any branch, department, agency, commission or instrumentality of state government, and any official or other person acting under color of state law or any political subdivision of the state;

(6) "Illegal alien" means a person who is, at the time of employment, neither an alien who is lawfully admitted for permanent residence in the United States pursuant to the federal Immigration and Naturalization Act, compiled in 8 U.S.C. § 1101 et seq., nor authorized to be employed by the federal Immigration and Naturalization Act or the United States attorney general;

(7) "Knowingly" means having actual knowledge that a person is an illegal alien or having a duty imposed by law to determine the immigration status of an illegal alien and failing to perform that duty;

(8) "Lawful resident alien" means a person who is entitled to lawful residence in the United States pursuant to the federal Immigration and Naturalization Act;

(9) "Lawful resident verification information" means the documentation that is required by the United States department of homeland security when completing the employment eligibility verification form commonly referred to as Form I-9. Documentation that later proves to be falsified, but submitted at the time of employment to satisfy the requirements of Form I-9, is lawful resident verification information;

(10) "License" means any certificate, approval, registration or similar form of permission required by law;

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

(12) "Status verification system" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, and operated by the United States department of homeland security, known as the E-Verify program, or any successor program.

(b) A person shall not knowingly employ, recruit or refer for a fee for employment an illegal alien.

(c) A person has not violated subsection (b) with respect to a particular employee if the person verified the work authorization status of the employee pursuant to subsection (e) and the verification system returned confirmation showing that:

(1) Such employee was eligible to work;

(2) Such employee was ineligible to work, but the employee has appealed such confirmation and the appeal has not been resolved; or

(3) Such employee was ineligible to work, the employee has not appealed such confirmation, but the time for such employee to appeal pursuant to federal law has not expired.

(d)

(1)

(A) If any state or local governmental agency, officer, employee or entity has reason to believe that a violation of subsection (b) has occurred, then the agency, officer, employee or entity shall file a complaint with the department.

(B) In addition to subdivision (d)(1)(A), the department shall conduct random audits of private employers in this state in order to ensure compliance with subsection (b). Audits conducted pursuant to this subdivision (d)(1)(B) shall include, but not be limited to, verification by the

department that the employer has in its possession the documentation required to be maintained pursuant to subdivision (e)(1), and that such documentation is consistent with the personnel records of the applicable employees. The department shall conduct a minimum of five hundred (500) audits per year; provided, however, such audits shall be conducted in conjunction with current audits and investigations of employers in this state that are conducted by the department pursuant to state law, including but not limited to, unemployment compensation audits and investigations.

(2)

(A) Upon receipt of a complaint alleging that an employer may have violated subsection (b), or upon finding that an employer may have violated subsection (b) after conducting a random audit pursuant to subdivision (d)(1)(B) or after the completion of an audit required pursuant to § 12-4-124, the department shall conduct an investigation. If there is substantial evidence that a violation of subsection (b) has occurred, the department shall conduct a contested case hearing pursuant to the Uniform Administrative Procedures Act, complied in title 4, chapter 5, on the question of whether the person has violated subsection (b). If the department determines that there is clear and convincing evidence that a person has violated subsection (b) and 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, the department shall request an order consistent with § 4-5-320, requiring the appropriate regulatory board, or local government with respect to business licensure pursuant to

title 67, chapter 4, to revoke, suspend, or deny the person's license. If the department determines that there is clear and convincing evidence that a person has violated subsection (b), the department shall notify the secretary of state of such, and the secretary of state shall make such finding available on its web site. The department shall state in the department's findings of fact and conclusions of law whether there have been previous violations of subsection (b).

(B) Except as provided in subdivision (d)(2)(D), for the first violation of subsection (b), the department shall:

(i) Order that the regulatory board or local government suspend the person's license until the person shows to the satisfaction of the department that the person is no longer in violation of subsection (b). The showing may be made by the person filing a sworn statement with the department stating that the person is no longer in violation of subsection (b); and

(ii) Require that the person be included in the random audits conducted pursuant to (d)(1)(B) for three (3) years following the person's violation.

(C) Except as provided in subdivision (d)(2)(D), for a second or subsequent violation of subsection (b) occurring within three (3) years from the issuance of the department's first order, the department shall order that the regulatory agency or local government permanently revoke the person's license and shall assess a fine of one thousand dollars ($1,000).

(D) If the person who violated subsection (b) is:

(i) The state, the department shall file a complaint in the chancery court of Davidson county requesting that a court issue a writ of mandamus against the state ordering the state to comply with this section. If the state fails to comply with the writ of mandamus, the court may hold the state in contempt; or

(ii) A local governmental entity, the local governmental entity shall not be eligible to receive its share of state shared taxes until such time as the local governmental entity can show that it is no longer in violation of this section.

(3) Upon receiving a complaint alleging that an employer may have violated subsection (b), the department shall inform the person against whom the complaint is made that the person may request the name of the state or local governmental agency, officer, employee or entity after the conclusion of the contested case hearing. If the person requests such information, the department shall provide the name requested within thirty (30) days of such request.

(e)

(1) All employers in this state shall register with E-verify no later than January 1, 2012. An employer shall verify the employment eligibility of all current employees hired on or after the date that the employer registered with E-Verify through the E-verify system; provided, however, only employees for which the employer is required to submit a Form W-2 to the United States Internal Revenue Service shall be subject to required verification. Each such employer shall maintain a copy of documentation verifying the eligibility of the applicant for a period of no less than one (1) year from the employee's last date of employment.

(2) In addition to any other requirement for an employer to receive an economic development incentive from a governmental entity, the employer shall provide proof to the governmental entity that the employer is registered with and is participating in the status verification system. If the governmental entity determines that the employer is not complying with this subsection (e), then the governmental entity shall notify the employer by certified mail of the governmental entity's determination of noncompliance and the employer's right to appeal the determination. On a final determination of noncompliance by the governmental entity, the employer shall repay all monies received as an economic development incentive to the governmental entity within thirty (30) days of the final determination.

(f)

(1) Every three (3) months the secretary of state shall request from the United States department of homeland security a list of employers from this state that are registered with the E-Verify program. On receipt of the list of employers, the secretary of state shall make the list available on its web site.

(2) If the department finds that any person is in violation of § 50-1-103, the department shall notify the secretary of state in a manner determined by the secretary of state. The secretary of state shall publish a list of the persons whose licenses have been suspended or revoked pursuant to § 50-1-103.

(g) It is an offense for any employer to misclassify an employee as an independent contractor for purposes of violating this section. A violation of this subsection (g) is a Class A misdemeanor.

SECTION 6. The department of labor and workforce development shall develop a program that will assist employers who have violated any provision of this act, but who still

retain a license to operate business in this state, in interviewing and hiring individuals who are currently receiving unemployment benefits from the state.

SECTION 7. This act shall be enforced without regard to race, religion, gender, ethnicity or national origin.

SECTION 8. 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 9. 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 October 1, 2011, the public welfare requiring it.