

SENATE BILL 2297

By Pody

AN ACT to amend Tennessee Code Annotated, Title 50,
Chapter 1, relative to employment.

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

SECTION 1. Tennessee Code Annotated, Section 50-1-103(a), is amended by deleting subdivisions (1), (2), and (6)-(8).

SECTION 2. Tennessee Code Annotated, Section 50-1-103(a), is amended by deleting subdivisions (3) and (9) and substituting:

(3) "Employ" or "employment" means work performed for compensation in money or other valuable consideration and for which a person paying the compensation for the work performed is required to complete a Form I-9;

(9) "Person" means an individual, corporation, partnership, association, governmental entity, or other legal entity.

SECTION 3. Tennessee Code Annotated, Section 50-1-103(a), is amended by adding the following new subdivisions:

() "E-Verify program" or "E-Verify" means the federal electronic employment verification service provided by the United States department of homeland security or a successor program designated by the federal government for verification by employers of the work eligibility of new employees;

() "Governmental entity" means this state; an agency, office, body, institution, component, or other instrumentality of this state; or a political subdivision of this state, including a county, municipality, city, town, consolidated city-county, school district, public school system, utility district, regional governance district, special district,

watershed district, soil conservation district, port authority, airport authority, housing authority, development authority, or development agency;

SECTION 4. Tennessee Code Annotated, Section 50-1-103, is amended by deleting subsection (c).

SECTION 5. Tennessee Code Annotated, Section 50-1-103, is amended by deleting subsection (d) and substituting:

(d) There is a rebuttable presumption that a person has not violated subsection (b) with respect to a particular employee if a person verified that the employee was eligible to work through the E-Verify program prior to the employee performing work.

SECTION 6. Tennessee Code Annotated, Section 50-1-103, is amended by deleting subsections (e)-(g).

SECTION 7. Tennessee Code Annotated, Section 50-1-702, is amended by deleting subdivisions (6)-(8), (10), and (12) and substituting:

(6) "Employer":

(A) Means private employers, governmental entities, public contractors, and public subcontractors with at least six (6) employees; and

(B) Does not include farmers;

(7) "E-Verify program" or "E-Verify" means the federal electronic employment verification service provided by the department of homeland security or a successor program designated by the federal government for verification by employers of the work eligibility of new employees;

(8) "Governmental entity" means this state; an agency, office, body, institution, component, or other instrumentality of this state; or a political subdivision of this state, including a county, municipality, city, town, consolidated city-county, school district,

public school system, utility district, regional governance district, special district, watershed district, soil conservation district, port authority, airport authority, housing authority, development authority, or development agency;

(10) "License" means a franchise, permit, certificate, approval, registration, charter, or similar form of permission or grant of authority required by law;

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

SECTION 8. Tennessee Code Annotated, Section 50-1-702, is amended by adding the following new subdivisions:

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

() "Public contractor" means a person that has entered or is attempting to enter into a contract for the provision of goods or performance of services with a governmental entity in exchange for salary, wages, or other remuneration;

() "Public subcontractor" means a person that provides goods or performs services to or for a public contractor in exchange for salary, wages, or other remuneration, including a subcontractor, contract employee, or staffing agency;

SECTION 9. Tennessee Code Annotated, Section 50-1-703, is amended by deleting the section and substituting:

(a)

(1) Employers shall:

(A) Request and maintain a copy of one (1) of the following documents prior to a non-employee providing labor or services:

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

(ii) A valid driver license or photo identification license issued by another state where the issuance requirements are at least as strict as those in this state, 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 this state and shall develop and periodically update a publicly accessible list of the states on the department's website;

(iii) An official birth certificate issued by a United States state, jurisdiction, or territory;

(iv) A United States government-issued, certified birth certificate;

(v) A valid, unexpired United States passport;

(vi) A United States certificate of birth abroad (DS-1350 or FS-545);

(vii) A report of birth abroad of a citizen of the United States (FS-240);

(viii) A certificate of citizenship (N560 or N561);

(ix) A certificate of naturalization (N550, N570, or N578);

(x) A United States citizen identification card (I-197 or I-179); or

(xi) Valid alien registration documentation or other proof of current immigration registration recognized by the United States department of homeland security containing a complete, legal name and current alien admission number or alien file number;

(B) Use the E-Verify program to verify the work eligibility of an employee prior to the employee providing labor or services and maintain documentation of results generated by the E-Verify program; and

(C) Maintain documentation received pursuant to this subdivision (a)(1) for three (3) years after the documentation is received by the employer or for one (1) year after the non-employee or employee ceases to provide labor or services for the employer, whichever occurs later.

(2) An employer may contract with or otherwise obtain the services of an E-Verify employer agent, or similar third party, for the purpose of complying with subdivision (a)(1)(B).

(3) There is created within the department the office of employment verification assistance. The department may enter into a memorandum of understanding or another agreement required by the E-Verify program to operate this office.

(4) If an employer does not have internet access, the office of employment verification assistance 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 if the employer signs a prescribed form, under penalty of perjury, attesting to the employer's lack of internet access and completes paperwork required by the E-Verify program to permit the office to provide such assistance. It is not a violation of subdivision

(a)(1)(B) if an employer has requested, but not yet received, assistance pursuant to this subdivision (a)(4).

(b) The department shall investigate compliance with subdivision (a)(1) and §§ 50-1-103(b) and 50-1-704:

(1) In conjunction with a pending inquiry, investigation, audit, or inspection of a person by the department; and

(2) Upon the filing of a complaint with the department by a person having reason to believe that a violation of subdivision (a)(1), § 50-1-103(b), or § 50-1-704 has occurred.

(c) As part of an investigation, the department:

(1) Shall request that the federal government, pursuant to 8 U.S.C. § 1373(c), verify the work eligibility status of an employee or non-employee named in a complaint or believed to have violated subdivision (a)(1), § 50-1-103(b), or § 50-1-704, and the department must rely upon such verification. The department shall not independently make a final determination as to whether an employee or non-employee is an illegal alien; and

(2) May issue a subpoena for production of employment records relating to:

(A) Recruitment;

(B) Hiring; or

(C) Termination policies and practices.

(d) If the department determines, after investigation, that a person has violated subdivision (a)(1), § 50-1-103(b), or § 50-1-704, then the department shall issue a notice and initial order, including, at a minimum:

(1) The department's findings and determinations, including whether there have been previous violations;

(2) The penalties that will apply and remedial actions requested by the department;

(3) The process to appeal; and

(4) The process by which the department may waive penalties for a first violation.

(e) A person may appeal, pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, a notice and initial order issued by the department if the person sends written notice to the department within thirty (30) days of the date the notice and initial order are issued. If a person fails to send written notice, then the appeal process is waived and the notice and initial order must be deemed a final order not subject to further review.

(f) If a person timely submits a written notice of appeal to the department, then a contested case hearing must be held pursuant to the Uniform Administrative Procedures Act. The department shall issue a final order following the conclusion of a contested case hearing, including, at a minimum, the findings, applicable penalties, and required remedial action.

(g) Upon a finding of a violation of subdivision (a)(1), § 50-1-103(b), or § 50-1-704, the department shall:

(1) Notify the United States immigration and customs enforcement agency of the identity of the person in violation and each illegal alien involved, including, but not limited to, the physical address at which an illegal alien resides, if known;

(2) Notify the local law enforcement agency of the jurisdiction in which the violation occurred and in which the illegal alien resides;

(3) Notify the appropriate official making declarations pursuant to § 12-3-309 of a violation;

(4) Order the person in violation to terminate the employment of all illegal aliens and take other remedial action deemed necessary by the department to ensure compliance with subdivision (a)(1), § 50-1-103(b), or § 50-1-704;

(5) Order the appropriate agency, regulatory board, local government, or governmental entity to revoke, suspend, or deny all applicable licenses held by the person in violation that are necessary for the person to operate business at the specific location at which an illegal alien performed work. If a license is not necessary to operate the person's business at the location, but is necessary to generally operate the business, then all licenses held by the person at the person's primary place of business must be revoked, suspended, or denied;

(6) Take the following actions:

(A) For a first violation of subdivision (a)(1), § 50-1-103(b), or § 50-1-704, the department shall order license revocation, suspension, or denial until the person shows, to the satisfaction of the department, that the person is no longer in violation of subdivision (a)(1), § 50-1-103(b), or § 50-1-704. The showing may be made by the person filing a sworn statement with the department; or

(B) For a second or subsequent violation of subdivision (a)(1), § 50-1-103(b), or § 50-1-704 occurring within a three-year period, the department shall order license revocation, suspension, or denial for one (1) year; and

(7) Assess the following civil fines against the person in violation:

(A) Five hundred dollars (\$500) for a first violation plus five hundred dollars (\$500) for each additional illegal alien employed and each employee or non-employee misclassified or not verified;

(B) One thousand dollars (\$1,000) for a second violation plus one thousand dollars (\$1,000) for each additional illegal alien employed and each employee or non-employee misclassified or not verified; and

(C) Two thousand five hundred dollars (\$2,500) for a third or subsequent violation plus two thousand five hundred dollars (\$2,500) for each additional illegal alien employed and each employee or non-employee misclassified or not verified.

(h) Within forty-five (45) days of a final order or a notice and initial order becoming final, a person in violation shall submit to the department evidence of remedial action and compliance with subdivision (a)(1) and §§ 50-1-103(b) and 50-1-704. Upon receipt of the evidence, the department shall issue a warning in lieu of all penalties for a first violation that the department determines was not committed knowingly. If a violator fails to submit evidence of remedial action, then the department must assess a penalty of five hundred dollars (\$500) per day for each day that a violation of subdivision (a)(1), § 50-1-103(b), or § 50-1-704 continues to exist after expiration of the remedial period. Additionally, the department may apply to a circuit or chancery court for a judicial order directing a person to comply with the final administrative order.

(i) A second or subsequent violation of subdivision (a)(1), § 50-1-103(b), or § 50-1-704 accrues from a separate inquiry or investigation.

(j) Moneys collected pursuant to this section must be deposited into the lawful employment enforcement fund created by § 50-1-708.

(k) The penalties described in this section are not mutually exclusive and may be imposed in conjunction with other applicable penalties as provided by law.

SECTION 10. Tennessee Code Annotated, Title 50, Chapter 1, Part 1, is amended by adding the following new section:

(a) A person registered with and using the E-Verify program is not civilly liable in a cause of action for:

(1) Unlawful hiring of an illegal alien if the information obtained from the E-Verify program indicated that the work eligibility status was not that of an illegal alien; or

(2) Refusal to hire if the information obtained from the E-Verify program indicated that the individual's work eligibility status was that of an illegal alien.

(b) An employer who in good faith registers with and uses the E-Verify program is considered to have complied with this part and may not be held liable for damages.

The employee is immune from a legal cause of action brought for the use of and reliance upon incorrect information obtained as a result of an isolated, sporadic, or accidental technical or procedural failure, when determining final action on work eligibility status.

SECTION 11. Tennessee Code Annotated, Title 50, Chapter 1, Part 1, is amended by adding the following new section:

(a) As used in this section:

(1) "E-Verify program" or "E-Verify" means the federal electronic employment verification service provided by the United States department of homeland security or a successor program designated by the federal government for verification by employers of the work eligibility of new employees;

(2) "Governmental entity" means this state; an agency, office, body, institution, component, or other instrumentality of this state; or a political

subdivision of this state, including a county, municipality, city, town, consolidated city-county, school district, public school system, utility district, regional governance district, special district, watershed district, soil conservation district, port authority, airport authority, housing authority, development authority, or development agency;

(3) "Illegal alien" means an individual who is, at the time of employment, neither an alien lawfully admitted for permanent residence in the United States pursuant to the federal Immigration and Naturalization Act (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;

(4) "Person" means an individual, corporation, partnership, association, governmental entity, or other legal entity;

(5) "Public contractor" means a person that has entered or is attempting to enter into a contract for the provision of goods or performance of services with a governmental entity in exchange for salary, wages, or other remuneration or for the receipt of any grant, loan, or economic development incentive from a governmental entity; and

(6) "Public subcontractor" means a person that provides goods or performs services to or for a public contractor in exchange for salary, wages, or other remuneration and includes a subcontractor, contract employee, or staffing agency.

(b) A governmental entity, public contractor, or public subcontractor shall not enter into a contract with one another unless each party to the contract registers with and uses the E-Verify program to verify the work eligibility status of all new employees.

(c) If a public contractor enters into a contract with a public subcontractor, then the public subcontractor shall certify to the public contractor in a manner that does not violate federal law that the public subcontractor, at the time of such certification, does not employ, contract, or subcontract with an illegal alien. A public contractor shall maintain a copy of the certification for the duration of the contract with the public subcontractor.

(d) A governmental entity, public contractor, or public subcontractor that has actual evidence that a person with which it is contracting has knowingly violated this section shall require the person to remedy the violation within sixty (60) days. If a contractor or subcontractor does not remedy the violation within sixty (60) days, then the governmental entity may terminate the contract.

(e) A governmental entity that has actual evidence that a public subcontractor knowingly violated this section, but the public contractor otherwise complied with this section, shall promptly notify the public contractor and order the public contractor to immediately terminate the contract with the public subcontractor.

(f) A contract terminated pursuant to this section is not a breach of contract.

(g) A governmental entity, public contractor, or public subcontractor may file an action with a circuit or chancery court to challenge a termination under this section no later than twenty (20) calendar days after the date on which the contract was terminated.

(h) If a governmental entity terminates a contract with a public contractor pursuant to this section, then the public contractor shall not be awarded a public contract for at least one (1) year after the date on which the contract was terminated.

(i) Upon the initial termination of a contract under this section, the person or entity terminating the contract may withhold up to ten percent (10%) of the total amount due and owing at the time of termination based upon a first violation of this section.

Upon a second or subsequent violation of this section, the person or entity terminating the contract may withhold up to twenty percent (20%) of the total amount due and owing at the time of termination.

(j) This section must be construed in a manner so as to comply with applicable federal laws or regulations.

(k) This section applies to contracts entered into on or after the effective date of this act.

SECTION 12. Tennessee Code Annotated, Section 50-1-709, is amended by deleting "§ 50-1-103" and substituting "§ 50-1-703".

SECTION 13. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity shall not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are severable.

SECTION 14. This act takes effect July 1, 2022, the public welfare requiring it, and applies to contracts entered into, amended, or renewed on or after that date.

Amendment No. _____

Signature of Sponsor

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

AMEND Senate Bill No. 2297

House Bill No. 1636*

by adding the following as new subdivisions (a)(1) and (a)(2) in SECTION 11 and renumbering the current subdivisions (a)(1) and (a)(2), and all other remaining subdivisions, accordingly:

(1) "Central procurement office" means the government agency established in § 4-56-104;

(2) "Chief procurement officer" means the person holding the position established in § 4-56-104, as the head of the central procurement office and with the powers and duties set forth in § 4-56-105;

AND FURTHER AMEND SECTION 11 by deleting subsections (d), (e), (g), (h), and (i) and substituting the following:

(d) If the department has actual evidence that a violation of this section has occurred, then the department shall require the person to remedy the violation within sixty (60) days of the department's findings.

(e) If the department determines that a person did not remedy the violation within the sixty-day period described in subsection (d), then the department shall refer its findings to the chief procurement officer for a determination or hearing in accordance with § 12-3-309.

(g) A hearing or determination by the chief procurement officer of a violation of this section is not a contested case hearing, as set forth in the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(h) A person appealing a hearing or determination by the chief procurement officer relative to this section must exhaust all administrative remedies provided by the



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chief procurement officer prior to the initiation of judicial review of the hearing or determination.

(i) An appeal of a hearing conducted by the chief procurement officer relative to this section is by common law writ of certiorari. The scope of review in the hearing or determination by the chief procurement officer is limited to the record made before the chief procurement officer and must involve only an inquiry into whether the chief procurement officer exceeded the officer's jurisdiction, followed an unlawful procedure, or acted illegally, fraudulently, or arbitrarily without material evidence to support the officer's action.