

HOUSE BILL 764

By Shipley

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

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

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, Part 1, is amended by adding the following language as a new, appropriately designated section:

50-1-1____.

(a) 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;

(3) "Employee" means any person who works for or performs any service for salary, wages or other compensation for a public employer;

(4) "Employment" means the act of employing or the state of being employed, engaged, or hired;

(5) "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;

(6) "Public employer" means:

(A) The state;

(B) A county, city, town, municipality or any other political subdivision of the state; or

(C) Any other public corporation, agency or instrumentality or unit of government which exercises governmental powers under the laws of the state; and

(7) "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, P.L. 108-156, or any successor program.

(b)

(1) A public employer shall not knowingly employ, recruit or refer for a fee for employment an illegal alien.

(2) On or after August 1, 2011, a public employer shall not hire any employee until the public employer verifies the employment eligibility of the employee by using the work authorization program.

(3) On or before January 1, 2012, a public employer shall have verified the work authorization status of all currently employed employees by using the work authorization program. If a current employee is not authorized to work according to the work authorization program, the public employer shall allow the employee to appeal the results of the work authorization program's findings. After such appeals process is completed, if such employee is still not authorized to work according to the work authorization program, then such public employer shall immediately terminate the employment of the employee.

(4) Each public employer shall maintain a copy of documentation verifying the eligibility of the employee for a period of no less than three (3) years.

(c)

(1) The commissioner shall conduct an investigation of a public employer if any state or local governmental agency, officer, employee or entity, including but not limited to the commissioner, has reason to believe that a violation of subdivision (b)(1) has occurred, and such agency, officer, employee or entity files a complaint with the department.

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

(d) If there is substantial evidence that a violation of subdivision (b)(1) has occurred, 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 person has violated subdivision (b)(1).

(e) If the commissioner determines that there is clear and convincing evidence that a public employer has violated subdivision (b)(1), then such public employer shall immediately terminate the employment of the employee.

SECTION 2. The commissioner is 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 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, P.L. 108-156, or any successor program, expires and a

successor program is not implemented prior to such expiration, then the provisions of this Act shall be void.

SECTION 4. 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 5. 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 July 1, 2011, the public welfare requiring it.