

HOUSE BILL 1408

By Ferguson

AN ACT to amend Tennessee Code Annotated, Title 50,  
Chapter 6, relative to workers' compensation.

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

SECTION 1. Tennessee Code Annotated, Section 50-6-412, is amended by deleting the section in its entirety and by substituting instead the following:

50-6-412.

(a) For the purposes of this section, "securing the payment of workers' compensation" means obtaining coverage that meets the requirements of this chapter and title 56. However, if at any time an employer materially understates or conceals payroll, materially misrepresents or conceals employee duties so as to avoid proper classification for premium calculations, or materially misrepresents or conceals information pertinent to the computation and application of an experience rating modification factor, such employer shall be deemed to have failed to secure payment of workers' compensation and shall be subject to the sanctions set forth in this section. A stop-work order issued because an employer is deemed to have failed to secure the payment of workers' compensation required under this chapter because the employer has materially understated or concealed payroll, materially misrepresented or concealed employee duties so as to avoid proper classification for premium calculations, or materially misrepresented or concealed information pertinent to the computation and application of an experience rating modification factor shall have no effect upon an employer's or carrier's duty to provide benefits under this chapter or

upon any of the employer's or carrier's rights and defenses under this chapter, including exclusive remedy.

(b) The department shall enforce workers' compensation coverage requirements, including the requirement that the employer secure the payment of workers' compensation, and the requirement that the employer provide the carrier with information to accurately determine payroll and correctly assign classification codes. In addition to any other powers under this chapter, the department shall have the power to:

(1) Conduct investigations for the purpose of ensuring employer compliance;

(2) Enter and inspect any place of business at any reasonable time for the purpose of investigating employer compliance;

(3) Examine and copy business records;

(4) Administer oaths and affirmations;

(5) Certify to official acts;

(6) Issue and serve subpoenas for attendance of witnesses or production of business records, books, papers, correspondence memoranda, and other records;

(7) Issue stop-work orders, penalty assessment orders, and any other orders necessary for the administration of this section;

(8) Enforce the terms of a stop-work order;

(9) Levy and pursue actions to recover penalties; and

(10) Seek injunctions and other appropriate relief.

(c) The department shall designate representatives who may serve subpoenas and other process of the department issued under this section.

(d) The department shall specify by rule the business records that employers must maintain and produce to comply with this section.

(e) If a person has refused to obey a subpoena to appear before the department or its authorized representative or produce evidence requested by the department or to give testimony about the matter that is under investigation, a court has jurisdiction to issue an order requiring compliance with the subpoena if the court has jurisdiction in the geographical area where the inquiry is being carried on or in the area where the person who has refused the subpoena is found, resides, or transacts business. Failure to obey such a court order may be punished by the court as contempt, either civilly or criminally. Costs, including reasonable attorney's fees, incurred by the department to obtain an order granting, in whole or in part, a petition to enforce a subpoena or a subpoena duces tecum shall be taxed against the subpoenaed party.

(f)

(1) Whenever the department determines that an employer who is required to secure the payment to such employer's employees of the compensation provided for by this chapter has failed to secure the payment of workers' compensation required by this chapter or to produce the required business records under subsection (d) within five (5) business days after receipt of the written request of the department, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the department of a stop-work order on the employer, requiring the cessation of all business operations. If the department makes such a determination, the department shall issue a stop-work order within seventy-two (72) hours.

The order shall take effect when served upon the employer or, for a particular employer worksite, when served at that worksite. In addition to serving a stop-work order at a particular worksite which shall be effective immediately, the department shall immediately proceed with service upon the employer which shall be effective upon all employer worksites in the state for which the employer is not in compliance; provided that, if the employer cannot be found and served after due diligence the department may execute service by publishing the stop work order in a news publication having general circulation in the Memphis, Nashville and Knoxville metropolitan areas. A stop-work order may be served with regard to an employer's worksite by posting a copy of the stop-work order in a conspicuous location at the worksite. The order shall remain in effect until the department issues an order releasing the stop-work order upon a finding that the employer has come into compliance with the coverage requirements of this chapter and has paid any penalty assessed under this section. The department may issue an order of conditional release from a stop-work order to an employer upon a finding that the employer has complied with coverage requirements of this chapter and has agreed to remit periodic payments of the penalty pursuant to a payment agreement schedule with the department. If an order of conditional release is issued, failure by the employer to meet any term or condition of such penalty payment agreement shall result in the immediate reinstatement of the stop-work order and the entire unpaid balance of the penalty shall become immediately due. The department may require an employer who is found to have failed to comply with the coverage

requirements of this chapter to file with the department, as a condition of release from a stop-work order, periodic reports for a probationary period that shall not exceed two (2) years that demonstrate the employer's continued compliance with this chapter. The department shall by rule specify the reports required and the time for filing under this subsection (f).

(2) Stop-work orders and penalty assessment orders issued under this chapter against a corporation, partnership, or sole proprietorship shall be in effect against any successor corporation or business entity that has one or more of the same principals or officers as the corporation or partnership against which the stop-work order was issued and are engaged in the same or equivalent trade or activity.

(3)

(A) The department shall assess a penalty of one thousand dollars (\$1,000) per day against an employer for each day that the employer conducts business operations that are in violation of a stop-work order.

(B) In addition, an employer that conducts business operations that are in violation of a stop-work order shall be guilty of a Class E felony.

(g) Any subsequent violation within five (5) years after the most recent violation shall, in addition to the penalties set forth in subsection (f), be deemed a knowing act.

(h) The department shall adopt rules to administer this section.

(i) The department may bring an action in circuit court to recover penalties assessed under this section including any interest owed to the department pursuant to this chapter. In any action brought by the department pursuant to this section in which it prevails, the circuit court shall award costs, including the reasonable costs of investigation and a reasonable attorney's fee.

(j) Any law enforcement agency in the state may, at the request of the department, render any assistance necessary to carry out this section, including, but not limited to, preventing any employee or other person from remaining at a place of employment or job site after a stop-work order or injunction has taken effect.

(k) Agency action by the department under this section, if contested, must be contested as provided in the Uniform Administrative Procedures Act compiled in title 4, chapter 5.

SECTION 2. This act shall take effect July 1, 2009, the public welfare requiring it.