

SENATE

BILL 2398

By Watson

AN ACT to amend Tennessee Code Annotated, Title 40;  
Title 53; Title 55 and Title 68, relative to certain  
mobile food and beverage vendors.

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

SECTION 1. Tennessee Code Annotated, Title 68, Chapter 14, is amended by adding Sections 2 through 11, inclusive, as a new part.

SECTION 2. This act may be known and cited as the "Ice Cream Truck Worker Registration Act."

SECTION 3. As used in this act:

(1) "Department" means the department of health;

(2) "Ice cream truck" means a motor vehicle engaged in the curbside vending or sale of frozen or refrigerated desserts, confections, or novelties commonly known as ice cream or prepackaged candies, prepackaged snack foods, or soft drinks, primarily intended for the sale to children under thirteen (13) years of age;

(3) "Ice cream truck worker" means any individual who operates, including an owner, or who is employed to operate or to work in an ice cream truck, including but not limited to the driver of an ice cream truck; and

(4) "Owner" means a person who owns, leases, controls or manages the operations of an ice cream truck.

SECTION 4. On and after January 1, 2011, every ice cream truck worker must annually apply for an Ice Cream Truck Worker Identification Card. The person shall apply to the department on forms provided by the department. The department shall set fees by rule for the cost of application for or issuance of an Ice Cream Truck Worker Identification Card; provided,

that fees may not exceed the amount required to cover the costs of processing and issuing the cards by the department. The card shall be effective for one (1) year from the date of issuance and may be renewed. The applicant may work as an ice cream truck worker for up to fourteen (14) days pending issuance of an Ice Cream Truck Worker Identification Card. If the department denies the application, the applicant may not work as an ice cream truck worker in the state of Tennessee. If the application is approved, the department shall send the card to the applicant. If the application is denied, the department shall send a notice of denial to the applicant. The department shall send a duplicate copy of any card issued and any notice of denial to the ice cream truck employer listed on the identification card application. The department shall establish a process for appeal and administrative review of any application denial.

SECTION 5. The department shall provide application forms for persons applying for an Ice Cream Truck Worker Identification Card. The form shall request the following information:

- (1) Name of applicant;
- (2) Address of applicant's home or residence;
- (3) Date of birth of applicant; and
- (4) Name and address of current ice cream truck employer; listing the applicant if the applicant is self-employed.

SECTION 6.

(a) The department shall require of each employer that each applicant for an Ice Cream Truck Worker Identification Card must, as a condition of initial employment, comply with the requirements of this section. The ice cream truck employer of each applicant is solely responsible for payment of any fee charged by the Tennessee bureau of investigation for conducting the criminal history records check, which shall not exceed the cost of the inquiry.

(b) Each applicant shall complete a criminal history disclosure form in a manner approved by the department, and shall agree to release all records involving the person relating criminal history of such person to the owner and to the department for the purpose of verifying the accuracy of criminal violation information contained on the disclosure form required by this section.

(c) Each applicant shall also supply a fingerprint sample in a manner prescribed by the Tennessee bureau of investigation, shall submit to a fingerprint based criminal history records check to be conducted by the Tennessee bureau of investigation, and shall submit to a review of such person's status on the department of health's vulnerable persons registry under title 68, chapter 11, part 10.

(d) The owner shall be responsible for obtaining from the applicant and submitting to the department the applicant's fingerprint sample and any information necessary to process the criminal history records check required by this section.

(e) The form shall notify the person that falsification of required information may subject the person to criminal prosecution, and that the person's employment is conditional pending a criminal records history review regarding the person's criminal history status.

(f) A copy of the disclosure form shall be maintained in the owner's records for review by the department, and the department shall maintain a copy of the disclosure form in the records of the applicant and the owner.

(g) The disclosure form, or information contained on the form, obtained pursuant to this section, together with the fingerprints of the person shall be submitted by the owner for its applicants, to the appropriate department staff in such format as required by the department and the Tennessee bureau of investigation. The department will

transmit the necessary information to the Tennessee bureau of investigation for completion of the criminal background check.

(h) The Tennessee bureau of investigation shall compare the information and the fingerprint sample received with the computer criminal history files maintained by the bureau and, to the extent permitted by federal law, with federal criminal databases, and shall conduct the fingerprint and criminal history background check for the person pursuant to § 38-6-109. It shall report the existence of any criminal history involving the person to the department, which shall inform the owner of the results of the inquiry.

(i) The results of the inquiry to the Tennessee bureau of investigation shall be documented in the records of the owner for the applicant for whom the background check is sought, and the department shall also maintain a record of the results of all persons for whom a criminal background history is received.

(j) The department shall notify in writing the appropriate district attorney general of any falsification of the information on the criminal history disclosure form.

SECTION 7. An application for an Ice Cream Truck Worker Identification Card shall be denied if the applicant:

(1) does not possess a certificate showing that the person is free from disease or diseases transmissible through food that has been signed by a physician as required by Section 53-8-111;

(2) is an offender required to register under title 40, chapter 39, whose victim was a minor; or

(3) has been convicted of a felony offense in violation of title 39, chapter 13, parts 1-5.

SECTION 8. Each ice cream truck worker, in addition to applying for and receiving an Ice Cream Truck Worker Identification Card, must:

- (1) Be at least sixteen (16) years of age at the time of application;
- (2) Have completed any employment application required by the ice cream truck owner;
- (3) Be in possession of a valid driver's license;
- (4) If required by the ice cream truck owner, wear a standard operator's uniform that identifies the individual as an ice cream truck worker;
- (5) Be in possession of a certificate issued pursuant to Section 53-8-111, and
- (6) Be lawfully able to work in Tennessee and, if not a United States citizen, be currently permitted to work by the U.S. Citizenship and Immigration Services.

#### SECTION 9.

(a) Subject to Section 4, an ice cream truck owner, upon the request of the municipality or county within which the ice cream truck is to operate must provide copies of all Ice Cream Truck Worker Identification Cards for employees who will work upon the ice cream truck. The municipality or county must request copies of Ice Cream Truck Worker Identification Cards at least fourteen (14) days before the ice cream truck is to begin operating within the municipality or county. If the ice cream truck owner has provided copies of Ice Cream Truck Worker Identification Cards, has complied with subsection (b) and a local permit is necessary for lawful operation of the ice cream truck, then the issuance of a permit may not be delayed or denied on the basis that an ice cream truck owner has failed to provide the name, address, or background of or any other information related to ice cream truck workers.

(b) Each year prior to any ice cream truck beginning operation in any municipality or county and prior to issuance of any such permit, the department shall cause to be inspected each ice cream truck, including its equipment, records, and operational procedures, annually, or whenever such inspection is deemed necessary in order to

protect the health and safety of the public. The periodic inspection shall be in addition to any other state or local safety or motor vehicle inspection required for such vehicles. Each truck shall also be subject to inspection as a food service establishment under this chapter. The department is authorized to charge a reasonable fee for such inspections which shall not exceed the cost of the inspection. The department is authorized to contract with appropriate vendors or local governments to provide the inspections. The department or its vendor or government with which it contracts shall issue a certificate of inspection for each inspected vehicle which meets applicable health and safety requirements. The certificate shall be in effect for a period of one (1) year. The owner of each ice cream truck shall maintain a copy of the certificate of inspection in each vehicle during all times of operation.

SECTION 10. Any person who knowingly violates any provision of Sections 4, 6, 7, 8 or 9 of this act commits a Class A misdemeanor.

SECTION 11. The commissioner of health 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 12. For rulemaking purposes this act shall take effect upon becoming a law and for all other purposes, this act shall take effect on January 1, 2011, the public welfare requiring it.