

PUBLIC CHAPTER NO. 1149**SENATE BILL NO. 3591****By Ketron, Tate, Barnes, Black**

Substituted for: House Bill No. 3163

By Curtiss, Pitts, Shepard, Matheny, Tidwell, Carr, Lollar, Eldridge, Cooper, Brown, White, Moore, McDonald, Curtis Johnson, Stewart, Lundberg, McDaniel, Harry Brooks, Ford, Roach, Towns

AN ACT to amend Tennessee Code Annotated, Title 1, Chapter 3; Title 29; Title 39, Chapter 11; Title 50; Title 56, Title 68 and Chapter ___ of the Public Acts of 2010 (Ex. Sess.)(Senate Bill No. 1/House Bill No. 7 of the First Extraordinary Session), relative to workers' compensation.

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

SECTION 1. Chapter 1 of the Public Acts of 2010 (Ex. Sess.) (Senate Bill No. 1/House Bill No. 7 of the First Extraordinary Session) is amended by deleting Section 2 of the chapter in its entirety and substituting instead the following:

SECTION 2. Tennessee Code Annotated, Section 50-6-113, is amended by deleting subsections (f) and (g) in their entirety.

SECTION 2. Chapter 1 of the Public Acts of 2010 (Ex. Sess.) (Senate Bill No. 1/House Bill No. 7 of the First Extraordinary Session) is amended by deleting the language "March 28, 2011" wherever it occurs in Section 3 of the chapter and substituting instead the language "March 1, 2011".

SECTION 3. Tennessee Code Annotated, Section 50-6-102(10), is amended by adding a new, appropriately designated subdivision:

() "Employee" does not include a construction services provider, as defined in § 50-6-901, who is listed on the construction services provider workers' compensation exemption registry established pursuant to Part 9 of this chapter if the construction services provider is not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services and the construction services provider is rendering services on a:

(i) Construction project that is not a commercial construction project, as defined in § 50-6-901; or

(ii) Construction project that is a commercial construction project, as defined in § 50-6-901, and the general contractor for whom the construction services provider renders construction services complies with § 50-6-914(b)(2);

SECTION 4. Tennessee Code Annotated, Section 50-6-104, is amended by adding the following new subsection:

(d) This section shall not apply to any officer of a corporation, member of a limited liability company, partner, or sole proprietor who is engaged in the construction industry, as defined by § 50-6-901; instead, Part 9 of this chapter shall apply to such officer, member, partner or sole proprietor.

SECTION 5. Tennessee Code Annotated, Section 50-6-113, is amended by adding a new, appropriately designated subsection thereto:

() This section shall not apply to a construction services provider, as defined by § 50-6-901.

SECTION 6. Tennessee Code Annotated, Section 50-6-117, is amended by adding the following language to the end of the section:

This section shall not apply to any officer of a corporation, member of a limited liability company, partner, or sole proprietor who is engaged in the construction industry, as defined by § 50-6-901; instead, Part 9 of this chapter shall apply to such officer, member, partner or sole proprietor.

SECTION 7. Tennessee Code Annotated, Section 50-6-405(d), is amended by deleting the subsection in its entirety and substituting instead the following:

(d)(1) It is an offense for any employer whose employee is entitled to the benefits of this chapter:

(A) To require such employee to pay any portion of the insurance premium paid by the employer; or

(B) To deduct any portion of such premium from the wages or salary of such employee.

(2) A violation of subdivision (d)(1) is a Class C misdemeanor.

(3)(A) In addition to any criminal penalty assessed for a violation of (d)(1), the commissioner is authorized to impose a civil penalty of up to an amount equal to the amount of premiums deducted from such employee's wages or salary.

(B) If a civil penalty is assessed pursuant to subdivision (d)(3)(A), the commissioner shall assess the penalty in a specific dollar amount to be paid directly to the employee.

SECTION 8. Tennessee Code Annotated, Section 50-6-412(d)(2), is amended by deleting the language "one and one half (1 1/2) times the average yearly workers' compensation premium" wherever it appears and substituting instead the language "one and one half (1 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater

of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium".

SECTION 9. Tennessee Code Annotated, Section 50-6-412(e)(1), is amended by deleting the language "one and one half (1 1/2) times the average yearly workers' compensation premium" wherever it appears and substituting instead the language "one and one half (1 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium".

SECTION 10. Tennessee Code Annotated, Section 50-6-412(f), is amended by deleting the language "one and one half (1 1/2) times the average yearly workers' compensation premium" wherever it appears and substituting instead the language "one and one half (1 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of one thousand dollars (\$1,000) or one and one half (1 1/2) times the average yearly workers' compensation premium".

SECTION 11. Tennessee Code Annotated, Section 50-6-412(f)(4), is amended by deleting the language "two and one half (2 1/2) times the average yearly workers' compensation premium" wherever it appears and substituting instead the language "two and one half (2 1/2) times the average yearly workers' compensation premium, or if the employer is engaged in the construction industry, as defined in § 50-6-901, the greater of two thousand dollars (\$2,000) or two and one half (2 1/2) times the average yearly workers' compensation premium".

SECTION 12. Tennessee Code Annotated, Section 50-6-412, is amended by adding the following new subsections (g) and (h) and redesignating existing subsections accordingly:

(g) The commissioner shall notify the secretary of state when any employer engaged in the construction industry:

(1) Fails to secure payment of compensation, as required by this chapter; and

(2) When any employer who has failed to secure payment of compensation, as required by this chapter, has secured payment of such compensation.

(h)(1) In the event an employer engaged in the construction industry, as defined in § 50-6-901, fails to comply with the requirements of this chapter, by failing to secure payment two (2) or more times within a five (5) year period, then the commissioner shall issue a monetary penalty against the employer that is the greater of three thousand dollars (\$3,000) or three (3) times the average yearly workers' compensation premium for each second or subsequent violation.

(2)(A) In the event an employer engaged in the construction industry, as defined in § 50-6-901, fails to comply with the requirements of this chapter, by failing to secure payment two (2) or more times within a five (5) year period, such employer shall be permanently prohibited from obtaining an exemption pursuant to Part 9 of this chapter and the commissioner shall notify the secretary of state of such prohibition.

(B) For purposes of subdivision (h)(2)(A), "such employer" includes any construction services provider, as defined by § 50-6-901, who applies for or has ever received a workers' compensation exemption pursuant to Part 9 of this chapter using the same federal employer identification number as the employer who fails to comply with the requirements of this chapter.

SECTION 13. Tennessee Code Annotated, Title 50, Chapter 6, is amended by adding a new part thereto:

§ 50-6-901.

For purposes of this part, unless the context otherwise requires:

(1) "Active and in good standing as reflected in the records of the secretary of state" means a corporation, limited liability company, or partnership that is in existence, registered or authorized to transact business in this state as reflected in the records of the secretary of state; and in the case of a corporation, limited liability company, limited liability partnership, or limited partnership, such entity is in good standing with the Tennessee Department of Revenue;

(2) "Board" means the state board for licensing contractors;

(3) "Commercial construction project" means any construction project that is not:

(A) The construction, erection, remodeling, repair, improvement, alteration or demolition of one (1), two (2), three (3) or four (4) family unit residences not exceeding three (3) stories in height or accessory use structures in connection with the residences;

(B) The construction, erection, remodeling, repair, improvement, alteration or demolition of any building or structure for use and occupancy by the general public which, pursuant to § 62-6-112(f)(2), a small commercial building contractor is authorized to bid on and contract for; or

(C) Performed by any person, municipality, county, metropolitan government, cooperative, board, commission, district, or any entity created or authorized by public act, private act or general law to provide electricity, natural gas, water, waste

water services, telephone service, telecommunications service, cable service, or Internet service or any combination thereof, for sale to consumers in any particular service area;

(4) "Construction project" means the construction, erection, remodeling, repair, improvement, alteration or demolition of a building, structure or other undertaking; provided, that if a general contractor contracts to erect, remodel, repair, improve, alter or demolish multiple buildings, structures or undertakings in one (1) contract, all such buildings, structures or undertakings described in such contract shall constitute one (1) construction project;

(5) "Construction services provider" or "provider" means any person or entity engaged in the construction industry;

(6) "Corporate officer" or "officer of a corporation" means any person who fills an office provided for in the corporate charter or articles of incorporation of a corporation that in the case of a domestic corporation is formed under the laws of this state pursuant to Title 48, Chapters 11–68, or in the case of a foreign corporation is authorized to transact business in this state pursuant to Title 48, Chapters 11–68; provided, that a domestic or foreign corporation is active and in good standing as reflected in the records of the secretary of state;

(7) "Direct labor" means the performance of any activity that would be assigned to the contracting group as those classifications are designated by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320, but does not include:

(A) Classification code 5604, or any subsequent classification code, for construction executives, supervisors, or foremen that are responsible only for the oversight of laborers; or

(B) Classification code 5606, or any subsequent classification code, for project managers, construction executives, construction managers and construction superintendents having only administrative or managerial responsibilities for construction projects by exercising operational control indirectly through job supervisors or foremen;

(8) "Engaged in the construction industry" means any person or entity assigned to the contracting group as those classifications are designated by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320;

(9) "Family-owned business" means a business entity in which members of the same family of the applicant have an aggregate of at least ninety-five percent (95%) ownership of such business;

(10) "General contractor" means the person or entity responsible to the owner or developer for the supervision or performance of substantially all of the work, labor, and the furnishing of materials in furtherance of the construction, erection, remodeling, repair, improvement, alteration or demolition of a building, structure or other undertaking and who contracts directly with the owner or developer of the building, structure or other undertaking; "general contractor" includes a prime contractor;

(11) "Good standing with the Tennessee Department of Revenue" means the secretary of state has received and verified through electronic confirmation or a certificate of tax clearance issued by the Commissioner of Revenue that a corporation, limited liability company, limited liability partnership, or limited partnership is current on all fees, taxes, and penalties to the satisfaction of the commissioner;

(12) "Member of a limited liability company" means any member of a limited liability company formed pursuant to Title 48, Chapters 201–249 that is active and in good standing as reflected in the records of the secretary of state;

(13) "Members of the same family of the applicant" means parents, children, siblings, grandparents, grandchildren, stepparents, stepchildren, stepsiblings, or spouses of such, and includes adoptive relationships;

(14) "Partner" means any person who is a member of an association that is formed by two (2) or more persons to carry on as co-owners of a business or other undertaking for profit and such association is active and in good standing as reflected in the records of the secretary of state;

(15) "Person" means only a natural person and does not include a business entity;

(16) "Registry" means the construction services provider workers' compensation exemption registry established pursuant to this part and maintained by the secretary of state; and

(17) "Sole proprietor" means one (1) person who owns a form of business in which that person owns all the assets of such business.

§ 50-6-902.

(a) Except as provided in subsection (b), all construction services providers shall be required to carry workers' compensation insurance on themselves. The requirement set out in this subsection (a) shall apply whether or not the provider employs fewer than five (5) employees.

(b) To the extent there is no restriction on applying for an exemption pursuant to § 50-6-903, a construction services provider shall be exempt from subsection (a) if the provider:

(1) Is a construction services provider rendering services on a construction project that is not a commercial construction project and is listed on the registry;

(2) Is a construction services provider rendering services on a commercial construction project, is listed on the registry and such provider is rendering services to a person or entity that complies with § 50-6-914(b)(2);

(3) Is covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services;

(4) Is a sole proprietor or partner engaged in the construction industry doing work directly for the owner of the property;

(5) Is a sole proprietor or partner building a dwelling or other structure, or performing maintenance, repairs, or making additions to structures, on the sole proprietor or partner's own property for the sole proprietor or partner's own use and for which the sole proprietor or partner receives no compensation; or

(6) Is a provider whose employment at the time of injury is casual as provided in § 50-6-106.

(c) A subcontractor engaged in the construction industry under contract to a general contractor engaged in the construction industry may elect to be covered under any policy of workers' compensation insurance insuring the general contractor upon written agreement of the general contractor, regardless of whether such subcontractor is on the registry established pursuant to this part, by filing written notice of the election, on a form prescribed by the Commissioner of Labor and Workforce Development, with the department. It is the responsibility of the general contractor to file the written notice with the department. Failure of the general contractor to file the written notice shall not operate to relieve or alter the obligation of an insurance company to provide coverage to a subcontractor when the subcontractor can produce evidence of payment of premiums to the insurance company for the coverage. The election shall in no way terminate or affect the independent contractor status of the subcontractor for any other purpose than to permit workers' compensation coverage. The election of coverage may be terminated by the subcontractor or general contractor by providing written notice of the termination to the department and to all other parties consenting to the prior election. The termination shall be effective thirty (30) days from the date of the notice to all other parties consenting to the prior election and to the department.

(d) Nothing in this part shall be construed as exempting or preventing a construction services provider from carrying workers' compensation insurance for any of its employees. The requirement set out in this subsection (d) shall apply whether or not the provider employs fewer than five (5) employees.

§ 50-6-903.

(a) Except as provided in subsections (b) and (c), any construction services provider who meets one (1) of the following criteria may apply for an exemption from § 50-6-902(a):

(1) An officer of a corporation who is engaged in the construction industry; provided, that no more than three (3) officers of one (1) corporation shall be eligible for an exemption;

(2) A member of a limited liability company who is engaged in the construction industry if such member owns at least thirty percent (30%) of such company;

(3) A partner in a limited partnership, limited liability partnership or a general partnership who is engaged in the construction industry if such partner owns at least thirty percent (30%) of such partnership;

(4) A sole proprietor engaged in the construction industry;
or

(5) An owner of any business entity listed in subdivisions (1)-(3) that is family-owned; provided, no more than three (3) owners of one (1) family-owned business may be exempt from § 50-6-902(a).

(b)(1) Notwithstanding subsection (a), if a construction services provider is exempt from § 50-6-902 as an officer of a corporation, a member of a limited liability company, or a partner in a limited partnership, limited liability partnership or a general partnership, then no construction services provider of an affiliate of such an exempted provider shall be eligible to apply for or receive an exemption from § 50-6-902(a).

(2) As used in this subsection (b), affiliate with respect to the corporation, limited liability company, limited partnership, limited liability partnership or general partnership means:

(A) A person that directly or indirectly controls, is controlled by or is under common control with the entity;

(B) An officer of, or a person performing similar functions with respect to, the entity; or

(C) A director or partner of, or a person performing similar functions with respect to, the entity.

(c) A construction services provider shall only be eligible for and may only utilize one (1) exemption, regardless of the number of business entities with which the provider may be associated.

§ 50-6-904.

(a)(1)(A) Any construction services provider applying for an exemption from § 50-6-902(a) who has not been issued a license by the board shall obtain a construction services provider registration from the secretary of state at the same time such provider applies for such exemption.

(B) The secretary of state is authorized and directed to issue the construction services provider registration on behalf of the board. The secretary of state shall issue an identification number assigned to the provider's registration. The board shall obtain such identification number and other identifying information from the secretary of state.

(2) Any construction services provider requesting exemption from § 50-6-902(a) shall submit an application along with the required filing fees to the secretary of state. The applicant shall provide sufficient documentation for the secretary of state to assure that such applicant meets the requirements set out in § 50-6-902, including, but not limited to:

(A) The applicant's full legal name;

(B) The applicant's birth month;

(C) The applicant's physical address; provided, that the applicant may provide a post office box number for purposes of receiving mail from the secretary of state, as long as the applicant also provides a physical address for the business entity for which the applicant is an officer, member, partner or owner;

(D) A telephone number through which the applicant can be reached;

(E) The name of the business entity through which the applicant is seeking the workers' compensation exemption;

(F) The federal employer identification number issued to the applicant if a sole proprietor or a business

entity for which the applicant is an officer, member, partner or owner seeking exemption pursuant to § 50-6-903, and the last four (4) digits of the applicant's social security number;

(G) The contractor license number issued by the board to such applicant or the construction services provider registration number issued by the secretary of state to such applicant;

(H) A current license issued by a local government pursuant to § 67-4-723, if the business entity through which the applicant is seeking the workers' compensation exemption is required by law to obtain such license; and

(I) Any other information the secretary of state deems necessary to identify such applicant.

(3) The secretary of state shall verify that the applicant meets the qualifications set out in § 50-6-902 upon a review of its records and the records provided by such applicant.

(b) The application shall be on a form designed by the secretary of state and shall contain a statement that specifies the eligibility requirements for exemption, contain an attestation that the applicant meets the eligibility requirements and contain a statement that a false statement on such application is subject to the penalties of perjury set out in § 39-16-702.

(c) The application, as well as a process for submission of such application, shall be available through the secretary of state's Web site or by contacting the secretary of state's office in person or by mail.

§ 50-6-905.

(a) If a construction services provider's application delivered to the secretary of state meets the requirements of this part, as determined by the secretary of state, the secretary of state shall file the application and:

(1) Issue a notice to such provider that the provider is listed on the registry; and

(2) Publish on the registry, contained on the secretary of state's Web site, the provider's name and other identifying information, including, but not limited to:

(A) The full legal name of the provider;

(B) The specific identification number issued to the provider by the secretary of state upon filing the application;

(C) The period in which the provider is exempt, including the date and time in which such exemption expires; and

(D) Any other identifying information the secretary of state deems necessary for the public to identify such provider.

(b) The provider shall not be exempt from the requirement of § 50-6-902(a) until the provider's application is filed by the secretary of state and the applicant's name and other identifying information is published on the registry. If a provider's exemption is revoked pursuant to § 50-6-908, such revocation is effective upon the provider's name and other identifying information no longer appearing on the registry after being removed by the secretary of state pursuant to § 50-6-908.

(c) A provider listed on the registry may correct a document filed with the secretary of state if the document contains an incorrect statement or was defectively executed, attested, sealed, verified or acknowledged. A document shall be corrected in a manner established by the secretary of state.

(d) A provider listed on the registry shall maintain a current physical mailing address with the secretary of state. A change of address shall be made in a manner established by the secretary of state.

§ 50-6-906.

(a) If the secretary of state refuses to file an application and list the construction services provider on the registry, the secretary of state shall return such application to the provider within ten (10) business days after the document was received for filing, together with a brief, written explanation of the reason for the secretary of state's refusal to file.

(b) If the secretary of state refuses to file an application and list a provider on the registry, the provider may appeal the refusal to the chancery court of Davidson County. The appeal shall be commenced by petitioning the court to compel listing such provider on the registry and shall attach to the petition the application and the secretary of state's explanation of the secretary of state's refusal to file.

(c) The court may reverse or modify the actions of the secretary of state if the rights of the provider have been prejudiced because the secretary of state's actions are:

(1) In violation of constitutional or statutory provisions;

(2) In excess of the statutory authority of the secretary of state;

(3) Made upon unlawful procedure; or

(4) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(d) After any hearing deemed necessary by the court, the court may summarily order the secretary of state to list such provider on the registry or take other action the court considers appropriate.

(e) The court's final decision may be appealed as in other civil proceedings.

§ 50-6-907.

(a) The exemption obtained pursuant to this part shall be valid for two (2) years from a date and time set by the secretary of state. No more than sixty (60) days prior to the expiration of the exemption period, a construction services provider may file an application to renew an exemption. Renewal of an exemption shall be made in a manner established by the secretary of state.

(b) The secretary of state shall remove the construction services provider's name from the registry at the close of business on the day the provider's exemption expires. If the exemption expires on a day that state offices are closed or the secretary of state's office is closed, the exemption shall expire at the close of business on the next business day.

(c) A construction services provider whose registration expires under this section may renew the exemption by following the procedure outlined in § 50-6-904.

§ 50-6-908.

(a)(1) Any construction services provider who obtains an exemption and subsequently chooses to revoke such exemption shall:

(A) Give notice to the person or entity for whom the provider may currently be providing services of the revocation in accordance with a form prescribed by the secretary of state;

(B) Attest as to whether or not the provider has any employment related injuries at the time of such revocation that occurred while providing services to a person or entity that did not provide coverage under a policy of workers' compensation; and

(C) Within twenty-four (24) hours of such revocation, notify any person or entity for whom the provider is currently providing services that the provider has voluntarily revoked the provider's workers' compensation exemption.

(2) Upon filing such notice, the secretary of state shall remove the construction services provider's name from the registry.

(3) A construction services provider who revokes an exemption under this section may reapply for an exemption by following the procedure set forth in § 50-6-904.

(b)(1) In addition to the revocation set out in subsection (a), a workers' compensation exemption may be revoked by the secretary of state upon:

(A) Notification from the board that the board has revoked or suspended any license issued to the construction services provider by the board;

(B) Notification from the department of any violations of § 50-6-412 by the construction services provider;

(C) A determination by the secretary of state that the construction services provider no longer meets the requirements for an exemption established pursuant to this part; or

(D) A determination by the secretary of state that the construction services provider failed to renew prior to the expiration date of such exemption or the provider failed to pay any fees required to be paid pursuant to this part.

(2) Any notification of a violation made by the department pursuant to subdivision (b)(1)(B) shall include information indicating whether such violation requires a temporary or permanent revocation pursuant to § 50-6-412.

(3) If a provider's exemption is revoked pursuant to this section, the secretary of state shall:

(A) Remove the construction services provider's name from the registry within seven (7) days of receipt of notification from the department or the board, or upon making a determination as provided in subdivision (b)(1)(C) or (D); and

(B) Notify the construction services provider that such provider is required to notify, within twenty-four (24) hours of such revocation, any person or entity for whom the provider is currently providing services that the provider's workers' compensation exemption has been revoked.

(4) If a provider's exemption is revoked pursuant to subdivision (b)(1), the administrative and judicial procedures available to such provider shall be those procedures set out in § 50-6-906.

(c) If a construction services provider's exemption is revoked pursuant to this section, the construction services provider shall be required to carry workers' compensation insurance as provided in § 50-6-902(a); provided, that such construction services provider does not otherwise meet an exemption set out in § 50-6-902(b).

(d) A construction services provider whose exemption is revoked for any reason set out in this part shall be notified of such revocation in writing, and shall not be entitled to a refund of filing fees.

§ 50-6-909.

(a) Except as provided in § 50-6-412(h)(2), a construction services provider whose exemption is revoked pursuant to § 50-6-908 may apply to reinstate such exemption in the same manner as provided for in this part for an initial application.

(b) A construction services provider whose exemption is revoked under § 50-6-908(b) may only be granted a reinstatement of exemption:

(1) Upon notification to the secretary of state from the board that such provider's license is no longer revoked or suspended;

(2) Upon notification from the Department of Labor and Workforce Development to the secretary of state that the provider qualified for reinstatement pursuant to § 50-6-412(g); and

(3) If the secretary of state determines that the provider meets the requirements for an exemption established pursuant to this part.

(c) Upon verification by the secretary of state that the requirements of subsection (b) are met, the secretary of state shall file the application in accordance with § 50-6-905.

§ 50-6-910.

Any action to recover damages for injury, as defined by § 50-6-102, by a construction services provider who was on the registry at the time of such injury, who was not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider was providing services at the time of such injury, and was a provider who was eligible for an exemption pursuant to § 50-6-914(b)(2) at the time of such injury, shall proceed as at common law, and the defendant in the suit may make use of all common law defenses; provided, however, such construction services provider shall forego

the right to sue to establish or reestablish workers' compensation coverage for any injuries that occurred while the construction services provider was listed on the registry.

§ 50-6-911.

(a)(1) The secretary of state shall provide notice on its Web site that the registry is for purposes of establishing providers who are exempt from workers' compensation coverage and in no way reflects licensing or certification of any construction services provider.

(2) The board, the Department of Commerce and Insurance and the Department of Labor and Workforce Development shall each develop a notice provision to inform the public that any person or entity interested in determining whether a construction services provider is exempt from workers' compensation coverage shall review the secretary of state's Web site. Such notice provision shall be prominently displayed on the Web sites of the board, the Department of Commerce and Insurance and the Department of Labor and Workforce Development.

(b)(1) The secretary of state shall provide notice to the Department of Labor and Workforce Development, the board and the Department of Commerce and Insurance when a construction services provider is added to or removed from the registry.

(2) If any construction services provider has a license issued by the board, and such license is revoked or suspended, the board shall immediately notify the secretary of state, in order for the secretary of state to revoke such provider's exemption pursuant to § 50-6-908(b).

§ 50-6-912.

(a) The secretary of state may charge the following maximum fees for each of the following:

(1) The issuance of a construction services provider registration to providers who have not been issued a license by the board.....\$100

(2) The issuance of a construction services provider workers' compensation exemption.....\$100

(3) The filing of correction information pursuant to § 50-6-905(c)..... \$20

(4) The filing of change of address information pursuant to § 50-6-905(d) \$20

(5) The filing of a construction services provider workers' compensation exemption renewal\$100

(6) The filing of a construction services provider registration renewal to providers who have not been issued a license by the board.....\$100

(7) The filling of a revocation pursuant to § 50-6-908(a)..... \$20

(8) The issuance of a copy of the notice issued pursuant to § 50-6-905(a)(1)..... \$20

(b) In addition to the maximum fees authorized in subsection (a), the secretary of state is authorized to charge an online transaction fee to cover costs associated with processing payments for applications submitted online.

(c) Except as provided in subsections (a) and (b), no other fees shall be charged by the secretary of state to administer this part.

§ 50-6-913.

(a) There is created a fund to be known as the "Employee Misclassification Education and Enforcement Fund". Any fee collected pursuant to § 50-6-912(a) shall be deposited in the Employee Misclassification Education and Enforcement Fund. Monies in the fund shall be invested by the state treasurer in accordance with the provisions of § 9-4-603. The fund shall be administered by the Commissioner of Labor and Workforce Development.

(b) All costs of the secretary of state associated with the administration of this part shall be paid by the Commissioner of Labor and Workforce Development from the Employee Misclassification Education and Enforcement Fund. Monies remaining in the fund after such payment may be expended, subject to appropriation by the general assembly, at the direction of the Commissioner of Labor and Workforce Development for education of employers and employees regarding the requirements of this part and in support of the ongoing investigation and prosecution of employee misclassification.

(c) Any amount in the Employee Misclassification Education and Enforcement Fund at the end of any fiscal year shall not revert to the general fund, but shall remain available for the purposes set forth in subdivision. Interest accruing on investments and deposits of the Employee Misclassification Education and Enforcement Fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

§ 50-6-914.

(a) Except as provided for in subsection (b), a general contractor, intermediate contractor or subcontractor shall be liable for compensation to any employee injured while in the employ of any of the subcontractors of the general contractor, intermediate contractor or subcontractor and engaged upon the subject matter of the contract to the same extent as the immediate employer.

(b)(1) Notwithstanding subsection (a) and subject to subdivision (b)(2), a general contractor, intermediate contractor or subcontractor shall not be liable for workers' compensation to a construction services provider listed on the registry established pursuant to this part.

(2)(A) No more than three (3) construction services providers who are performing direct labor on a commercial construction project may be exempt from § 50-6-902(a).

(B) For purposes of subdivision (b)(2)(A), the three (3) construction services providers shall be the first three (3) construction services providers listed on the registry who sign a contract to provide services on a commercial construction project.

(C) It shall be the responsibility of the general contractor to provide notice to any construction services provider who provides services to such general contractor and who is listed on the registry that such provider is not eligible for an exemption pursuant to this part while working on the general contractor's commercial construction project.

(c) Any general contractor, intermediate contractor or subcontractor who pays compensation under subsection (a) may recover the amount paid from any person or entity who, independently of this section, would have been liable to pay compensation to the injured employee, or from any subcontractor.

(d) Every claim for compensation under this section shall be presented first to and instituted against the immediate employer, but the proceedings shall not constitute a waiver of the employee's rights to recover compensation under this chapter from the general contractor, intermediate contractor or subcontractor; provided, that the collection of full compensation from one (1) employer shall bar recovery by the employee against any others, and the employee shall not collect from all employers a total compensation in excess of the amount for which any of the contractors is liable.

(e) This section applies only in cases where the injury occurred on, in, or about the premises on which the general contractor has undertaken to execute work or that are otherwise under the general contractor's control or management.

§ 50-6-915.

Notwithstanding any law to the contrary, records maintained by the secretary of state relative to the construction services provider registration and to the workers' compensation exemption registration, other than records displayed on the registry established pursuant to this part, shall not constitute a public record as defined in § 10-7-503 and shall not be open for public inspection.

§ 50-6-916.

Nothing in this part shall be construed as preventing or prohibiting any contractor from requiring a certificate of workers' compensation insurance from any of its subcontractors or any construction services providers providing services to such contractor.

§ 50-6-917.

A policy of workers' compensation insurance issued through the assigned risk plan as provided in § 56-5-314 that insures a person engaged in the construction industry shall be governed by this part, and a state agency shall not impose requirements relative to this part on such a policy other than those imposed by this part.

§ 50-6-918.

Beginning with fiscal year 2012-2013, and each fiscal year thereafter, the Employee Misclassification Advisory Taskforce created pursuant to § 50-6-919 shall make recommendations to the general assembly regarding programs and services to be funded from the Employee Misclassification Education and Enforcement Fund created pursuant to § 50-6-913.

§ 50-6-919.

(a) There is created the Employee Misclassification Advisory Taskforce to study and make recommendations regarding issues relative to employee misclassification in the construction industry.

(b) The taskforce shall study issues relative to employee misclassification in the construction industry, including, but not limited to:

(1) The impact of employee misclassification on state and local governments of this state and the amount of state revenue, if any, that is lost or not collected due to employee misclassification;

(2) The lost earnings of the insurance industry due to employee misclassification;

(3) The estimates of the frequency of occurrence and economic impact of employee misclassification and whether

particular industries are more likely to engage in the misclassification of employees;

(4) Whether state law should specify a uniform definition of the employment relationship and, if so, how it should be defined;

(5) Whether existing Tennessee laws aimed at preventing, investigating and taking enforcement action against the failure of employers to properly classify individuals as employees are effective;

(6) Whether there are ways to facilitate the sharing of information among agencies represented by taskforce members relative to violations of laws by employers who fail to classify individuals as employees;

(7) Whether there are new ways to pool, focus and target investigative and enforcement resources relative to employee misclassification;

(8) New strategies for systematically investigating the failure of employers to properly classify individuals as employees;

(9) Whether improvements are needed to facilitate the filing of complaints and identify potential violators, including, but not limited to, soliciting referrals and other relevant information from the public;

(10) Changes in the law, if any, that need to be made in order to ensure that agencies represented by taskforce members investigating the failure of employers to properly classify individuals as employees under their own statutory or administrative enforcement mechanism have the authority to refer a matter to other participating agencies for assessment of potential liability under the other agencies' relevant statutory or administrative enforcement mechanisms;

(11) Innovative ways to prevent misclassification of employees by employers, such as through disseminating educational materials regarding the legal differences between independent contractors and employees;

(12) Methods by which public awareness of the illegal nature and harms inflicted by the failure of employers to properly classify individuals as employees can be increased; and

(13) Any other issues relative to employee misclassification in the construction industry.

(c) The taskforce shall seek public input and may conduct public hearings or appoint study groups as necessary to obtain information necessary to conduct its study.

(d) Membership on the taskforce shall be as follows:

(1) The Commissioner of Labor and Workforce Development or the commissioner's designee;

(2) The Commissioner of Commerce and Insurance or the commissioner's designee; and

(3) The executive director of the board for licensing contractors or the director's designee.

(e) The secretary of state or the secretary of state's designee, the attorney general and reporter or the attorney general's designee, the chairman of the advisory council on workers' compensation or the chairman's designee, the executive director of the district attorneys general conference or the director's designee, and the director of the Tennessee Bureau of Investigation or the director's designee shall all serve as ex officio nonvoting members of the taskforce. The taskforce may appoint additional ex officio nonvoting members as it deems appropriate.

(f) The Commissioner of the Department of Labor and Workforce Development shall convene the first meeting of the taskforce on or after February 1, 2011, at which meeting the taskforce shall elect its officers from the voting members and otherwise organize itself as it deems appropriate.

(g) On or before February 1, 2012, and on or before February 1 annually thereafter, the taskforce shall submit a report on its findings and progress to the Commerce, Labor and Agriculture Committee of the Senate, and the Consumer and Employee Affairs Committee of the House of Representatives.

(h) To the extent permitted by law, every agency, department, office, division or public authority of this state shall cooperate with the taskforce and furnish such information that the taskforce determines is reasonably necessary to accomplish its purposes.

(i) In accordance with procedures set forth in Title 4, Chapter 5, Part 2, the Department of Labor and Workforce Development, the Department of Commerce and Insurance, and the board for licensing contractors may individually implement recommendations of the taskforce; provided, that such implementation is authorized under the existing statutory authority of the respective departments or board.

§ 50-6-920.

(a) It is an offense for any employer to knowingly:

(1) Coerce or attempt to coerce, as a precondition to employment or otherwise, a job applicant to obtain an exemption pursuant to this part; or

(2) Coerce, attempt to coerce, discharge or take any adverse employment action against an employee because the employee has failed to obtain an exemption pursuant to this part.

(b) A violation of subsection (a) is a Class A misdemeanor.

SECTION 14. Tennessee Code Annotated, Section 50-6-102(11), is amended by deleting the language "except as provided in § 50-6-113" and substituting instead "except as provided in § 50-6-902".

SECTION 15. Tennessee Code Annotated, Section 50-6-106(5), is amended by deleting the language "except as provided in § 50-6-113" and substituting instead "except as provided in § 50-6-902".

SECTION 16. The Employee Misclassification Advisory Taskforce created by this act shall terminate on June 30, 2014, unless continued by the general assembly.

SECTION 17. The provisions of this act shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this act unless such funds are specifically appropriated by the General Appropriations Act.

SECTION 18. 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 19. (a) The secretary of state 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; provided, that the secretary of state shall permit:

(1) Construction services providers not currently licensed by the board for licensing contractors, but who qualify for a construction services provider registration, to apply for a workers' compensation exemption on or after January 1, 2011; and

(2) Construction services providers licensed by the board for licensing contractors to apply for a workers' compensation exemption on or after February 1, 2011.

(b) The construction services provider workers' compensation exemption for any provider not exempt under current law who has been placed on the workers' compensation exemption registry by the secretary of state shall be in effect beginning at 12:00 a.m. on March 1, 2011, regardless of such provider's

date of application; provided, that any person exempt under provisions of law in effect prior to March 1, 2011, shall maintain such exemption until March 1, 2011.

SECTION 20. (a) Section 19 of this act shall take effect upon becoming a law, the public welfare requiring it.

(b) Sections 7, 8, 9, 10, 11 and subsection (g) and subdivision (h)(1) in Section 12 of this act shall take effect July 1, 2011, the public welfare requiring it.

(c) Subdivision (h)(2) in Section 12 of this act shall take effect March 1, 2012, the public welfare requiring it, and shall apply only to a failure to secure payment for compensation that occurs on or after such date.

(d) For all other purposes, this act shall take effect March 1, 2011, the public welfare requiring it.

PASSED: June 4, 2010



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 30th day of June 2010



PHIL BREDESEN, GOVERNOR