



State of Tennessee
PUBLIC CHAPTER NO. 422

SENATE BILL NO. 1550

By Ketron, Barnes

Substituted for: House Bill No. 2030

By Curtiss, Pitts, Matheny, Eldridge, Stewart

AN ACT to amend Tennessee Code Annotated, Title 50 and Title 56, relative to workers' compensation.

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

SECTION 1. Tennessee Code Annotated, Section 50-6-102(10)(E), is amended by deleting the subdivision in its entirety and substituting instead the following:

(E) "Employee" does not include a construction services provider, as defined in § 50-6-901, if the construction services provider is:

(i) Listed on the registry established pursuant to Part 9 of this chapter as having a workers' compensation exemption and is working in the service of the business entity through which the provider obtained such an exemption;

(ii) Not covered under a policy of workers' compensation insurance maintained by the person or entity for whom the provider is providing services; and

(iii) Rendering services on a construction project that:

(A) Is not a commercial construction project, as defined in § 50-6-901; or

(B) 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 2. Tennessee Code Annotated, Section 50-6-103(a), is amended by deleting the language "any employee who is a corporate officer of the employer" and substituting instead the language "any person who has an exemption pursuant to § 50-6-104 or Part 9 of this chapter".

SECTION 3. Tennessee Code Annotated, Section 50-6-901(8), is amended by deleting the subdivision in its entirety and substituting instead the following:

(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; provided, where more than one (1) classification applies, the governing classification, as that term is defined by the rate service organization designated by the Commissioner of Commerce and Insurance as provided in § 56-5-320, shall be used to determine whether the person or entity is engaged in the construction industry;

SECTION 4. Tennessee Code Annotated, Section 50-6-902(b), is amended by deleting subdivisions (4) and (5) and by substituting instead the following:

(4) Is a construction services provider performing work directly for the owner of the property; provided, however that this subdivision (4) shall not apply to a construction services provider who acts as a general or intermediate contractor and who subsequently subcontracts any of the work contracted to be performed on behalf of the owner;

(5) Is a construction services provider building a dwelling or other structure, or performing maintenance, repairs, or making additions to structures, on the construction service provider's own property; or

SECTION 5. Tennessee Code Annotated, Section 50-6-903, is amended by deleting the section in its entirety and substituting instead the following:

(a) 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 five (5) 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 twenty percent (20%) 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 twenty percent (20%) 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 five (5) owners of one (1) family-owned business may be exempt from § 50-6-902(a).

(b) A construction services provider may be eligible for and may utilize multiple exemptions if the construction services provider meets the requirements set out in subsection (a) for each such exemption and complies with § 50-6-904 for each such exemption in which the construction services provider seeks to obtain; provided, however, a construction services provider applying for a second or subsequent exemption shall not be required to pay the fees set out in § 50-6-912(a)(1) and (a)(2), but shall instead pay the fee set out in § 50-6-912(a)() for each subsequent workers' compensation exemption registration and shall pay the fee set out in § 50-6-912(a)() for each subsequent registration renewal.

SECTION 6. Tennessee Code Annotated, Section 50-6-908(b)(1), is amended by deleting the language "may be revoked" and substituting instead the language "shall be revoked".

SECTION 7. Tennessee Code Annotated, Section 50-6-908(b)(1)(A), is amended by deleting the subdivision in its entirety and substituting instead the following:

(A) Notification from the board that the board has revoked or suspended any license issued to the construction services provider by the board, including a license issued to a business entity through which the construction services provider obtained such an exemption. For purposes of this subdivision (b)(1)(A), if a construction services provider's license is revoked, whether or not such license is in the provider's individual name or in the name of a business entity through which the provider obtained an exemption, then any exemption obtained through such business entity shall be revoked;

SECTION 8. Tennessee Code Annotated, Section 50-6-908(b)(1)(B), is amended by deleting the subdivision in its entirety and substituting instead the following:

(B) Notification from the department of any violations of § 50-6-412 by the construction services provider, including any violation against a business entity through which the construction services provider obtained such an exemption. For purposes of this subdivision (b)(1)(B), if a construction services provider has violated § 50-6-412, whether or not such violation was committed by the individual or a business entity through which the provider obtained an exemption, then any exemption obtained through such business entity shall be revoked and all exemptions in the provider's name shall be subject to revocation;

SECTION 9. Tennessee Code Annotated, Section 50-6-910, is amended by deleting the section in its entirety and substituting instead the following:

(a) Any action to recover damages for injury, as defined by § 50-6-102, by a construction services provider shall proceed as at common law, and the defendant in the suit may make use of all common law defenses if, at the time of the injury, the construction services provider was:

(1) Listed on the registry as having a workers' compensation exemption and working in the service of a business entity through which the construction services provider obtained such an exemption;

(2) 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

(3) Eligible for an exemption pursuant to § 50-6-914(b)(2), if such eligibility requirements apply, at the time of such injury.

(b) Any construction services provider proceeding as at common law pursuant to subsection (a) shall forego the right to sue to establish or reestablish workers' compensation coverage.

SECTION 10. Tennessee Code Annotated, Section 50-6-912(a), is amended by adding the following new, appropriately designated subdivisions:

() The issuance of a second or subsequent construction services provider workers' compensation exemption registration..... \$20 per registration

() The filing of a second or subsequent construction services provider workers' compensation exemption renewal..... \$20 per renewal

SECTION 11. Tennessee Code Annotated, Section 50-6-914(b)(2), is amended by deleting the subdivision in its entirety and substituting instead the following:

(2)(A) No more than three (3) construction services providers 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 selected by the general contractor. The limit of three (3) set out in subdivision (b)(2)(A) shall be three (3) individuals listed on the registry as having a workers' compensation exemption and working in the service of a business entity through which the construction services provider obtained such an exemption.

(C) If a general contractor allows a construction services provider to provide services on a commercial construction project while such provider is utilizing an exemption pursuant to this part, the general contractor shall:

(i) Notify each such construction services provider in writing that the provider has been chosen by the general contractor as one of the three (3) construction services providers performing direct labor who may be exempt from § 50-6-902(a); and

(ii) Maintain a record identifying each such construction services provider. The general contractor shall make the record maintained pursuant to this subdivision (b)(2)(C)(ii) available for inspection upon request by the general contractor's insurance provider, the department, and the Department of Commerce and Insurance.

SECTION 12. Tennessee Code Annotated, Section 50-6-921, is amended by deleting the language "under current law" and substituting instead the language "prior to March 1, 2011".

SECTION 13. If any policyholder chooses to cancel a policy of insurance as a result of obtaining an exemption pursuant to this act and cancels prior to February 1, 2012, then the policy of insurance shall be canceled as if the insured were retiring from the business in which the policy of insurance was required.

SECTION 14. For purposes of the secretary of state making necessary provisions for the implementation of this act, this act shall take effect upon becoming law; for all other purposes, this act shall take effect October 1, 2011, the public welfare requiring it.

SENATE BILL NO. 1550

PASSED: May 21, 2011



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 6 day of June 2011



BILL HASLAM, GOVERNOR