MISSISSIPPI LEGISLATURE REGULAR SESSION 2021

By: Representative Yancey

To: Workforce Development

# HOUSE BILL NO. 752

AN ACT TO AMEND SECTION 71-11-3, MISSISSIPPI CODE OF 1972, TO PROVIDE THAT ANY EMPLOYER VIOLATING THE PROVISIONS OF THE MISSISSIPPI EMPLOYMENT PROTECTION ACT SHALL BE SUBJECT TO ADMINISTRATIVE DISSOLUTION OR REVOCATION OF THE OFFENDING ENTITY; TO AMEND SECTIONS 79-4-14.20, 79-4-15.30, 79-29-821 AND 79-29-1021, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PRECEDING SECTION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 71-11-3, Mississippi Code of 1972, is amended as follows:

71-11-3. (1) This chapter shall be known as the "Mississippi Employment Protection Act."

(2) The provisions of this section shall be enforced without regard to race, gender, religion, ethnicity or national origin.

(3) For the purpose of this section only, the following words shall have the meanings ascribed herein unless the content clearly states otherwise:

(a) "Employer" is any person or business that is required by federal or state law to issue a United States Internal

Revenue Service Form W-2 or Form 1099 to report income paid to employed or contracted personnel in Mississippi.

(b) "Employee" is any person or entity that is hired to perform work within the State of Mississippi and to whom a United States Internal Revenue Service Form W-2 or Form 1099 must be issued.

(c) "Third-party employer" is any person or company that provides workers for another person or company. This includes, but is not limited to, leasing companies and contract employers.

(d) "Status verification system" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Public Law 104-208, Division C, Section 403(a); 8 USC, Section 1324a, and operated by the United States Department of Homeland Security, known as the E-Verify Program.

(e) "Unauthorized alien" means an alien as defined in Section 1324a(h)(3) of Title 8 of the United States Code.

(f) "Public employer" means every department, agency or instrumentality of the state or a political subdivision of the state.

(g) "Subcontractor" means a subcontractor, contract employee, staffing agency or any contractor regardless of its tier.

(4) (a) Employers in the State of Mississippi shall only hire employees who are legal citizens of the United States of America or are legal aliens. For purposes of this section, a legal alien is an individual who was lawfully present in the United States at the time of employment and for the duration of employment, or was permanently residing in the United States under color of law at the time of employment and for the duration of employment.

(b) (i) Every employer shall register with and utilize the status verification system to verify the federal employment authorization status of all newly hired employees.

(ii) No contractor or subcontractor shall hire any employee unless the contractor or subcontractor registers and participates in the status verification system to verify the work eligibility status of all newly hired employees.

(iii) No contractor or subcontractor who enters into a contract with a public employer shall enter into such a contract or subcontract unless the contractor or subcontractor registers and participates in the status verification system to verify information of all newly hired employees.

(c) The provision of this section shall not apply to any contracts entered into on or before July 1, 2008.

(d) It shall be a discriminatory practice for an employer to discharge an employee working in Mississippi who is a United States citizen or permanent resident alien while retaining

an employee who the employing entity knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2008, and who is working in Mississippi in a job category that requires equal skill, effort and responsibility, and which is performed under similar working conditions, as defined by 29 USC, Section 206(d)(1), as the job category held by the discharged employee.

(e) An employing entity which, on the date of the discharge in question, was enrolled in and used the status verification system to verify the employment eligibility of its employees in Mississippi hired after July 1, 2008, shall be exempt from liability, investigation or suit arising from any action under this section.

(f) No cause of action for a violation of this section shall lie under any other Mississippi law but shall arise solely from the provisions of this section.

(5) Any employer that complies with the requirements of this section shall be held harmless by the Mississippi Department of Employment Security, provided the employer is not directly involved in the creation of any false documents, and provided that the employer did not knowingly and willfully accept false documents from the employee.

(6) (a) All third-party employers that conduct business in Mississippi shall register to do business in Mississippi with the Mississippi Department of Employment Security before placing employees into the workforce in Mississippi.

(b) Third-party employers shall provide proof of registration and any participation in the status verification system to any Mississippi employer with whom they do business.

(7) (a) State of Mississippi agencies and political subdivisions, public contractors and public subcontractors and private employers with two hundred fifty (250) or more employees shall meet verification requirements not later than July 1, 2008.

(b) Employers with at least one hundred (100) but less than two hundred fifty (250) employees shall meet verification requirements not later than July 1, 2009.

(c) Employers with at least thirty (30) but less than one hundred (100) employees shall meet verification requirements not later than July 1, 2010.

(d) All employers shall meet verification requirements not later than July 1, 2011.

(e) (i) Notwithstanding any other provision of law to the contrary, any employer violating the provisions of this section shall be subject to the cancellation of any state or public contract, resulting in ineligibility for any state or public contract for up to three (3) years, administrative dissolution or revocation of the offending entity, the loss of any license, permit, certificate or other document granted to the employer by any agency, department or government entity in the State of Mississippi for the right to do business in Mississippi for up to one (1) year, or both.

(ii) The contractor or employer shall be liable for any additional costs incurred by the agencies and institutions of the State of Mississippi, or any of its political subdivisions, because of the cancellation of the contract or the loss of any license or permit to do business in the state.

(iii) Any person or entity penalized under this section shall have the right to appeal to the appropriate entity bringing charges or to the circuit court of competent jurisdiction.

(f) The Department of Employment Security, *** * *** Department of Revenue, Secretary of State, Department of Human Services and the Attorney General shall have the authority to seek penalties under this section and to bring charges for noncompliance against any employer or employee and may draft regulations implementing enforcement pursuant to this section.

(8) (a) There shall be no liability under this section in the following circumstances:

(i) An employer who hires an employee through a state or federal work program that requires verification of the employee's social security number and provides for verification of the employee's lawful presence in the United States in an employment-authorized immigration status;

(ii) Any candidate for employment referred by the Mississippi Department of Employment Security, if the Mississippi Department of Employment Security has verified the social security

number and provides for verification of the candidate's lawful presence in the United States in an employment-authorized immigration status; or

(iii) Individual homeowners who hire workers on their private property for noncommercial purposes, unless required by federal law to do so.

(b) (i) Compliance with the sections of this statute shall not exempt the employer from regulations and requirements related to any federal laws or procedures related to employers.

(ii) This section shall not be construed as an attempt to preempt federal law.

(c) (i) It shall be a felony for any person to accept or perform employment for compensation knowing or in reckless disregard that the person is an unauthorized alien with respect to employment during the period in which the unauthorized employment occurred. Upon conviction, a violator shall be subject to imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars ($1,000.00) nor more than Ten Thousand Dollars ($10,000.00), or both.

(ii) For purposes of determining bail for persons who are charged under this section, it shall be a rebuttable presumption that a defendant who has entered and remains in the United States unlawfully is deemed at risk of flight for purposes of bail determination.

**SECTION 2.** Section 79-4-14.20, Mississippi Code of 1972, is amended as follows:

79-4-14.20. The Secretary of State may commence a proceeding under Section 79-4-14.21 to administratively dissolve a corporation if:

(1) The corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Sections 79-4-1.01 et seq. or other law;

(2) The corporation does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(3) The corporation is without a registered agent in this state for sixty (60) days or more;

(4) The corporation does not notify the Secretary of State within sixty (60) days that its registered agent has been changed, or that its registered agent has resigned;

(5) The corporation's period of duration stated in its articles of incorporation expires; *** * ***

(6) An incorporator, director, officer or agent of the corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing *** * ***; or

(7) The corporation is in violation of the Mississippi Employment Protection Act.

**SECTION 3.** Section 79-4-15.30, Mississippi Code of 1972, is amended as follows:

79-4-15.30. The Secretary of State may commence a proceeding under Section 79-4-15.31 to revoke the certificate of authority of a foreign corporation authorized to transact business in this state if:

(1) The foreign corporation does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(2) The foreign corporation does not pay within sixty (60) days after they are due any franchise taxes or penalties imposed by Sections 79-4-1.01 et seq. or other law;

(3) The foreign corporation is without a registered agent in this state for sixty (60) days or more;

(4) The foreign corporation does not inform the Secretary of State by an appropriate filing that its registered agent has changed or that its registered agent has resigned, within sixty (60) days of the change or resignation;

(5) An incorporator, director, officer or agent of the foreign corporation signed a document he knew was false in any material respect with intent that the document be delivered to the Secretary of State for filing;

(6) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger *** * ***; or

(7) The foreign corporation is in violation of the Mississippi Employment Protection Act.

**SECTION 4.** Section 79-29-821, Mississippi Code of 1972, is amended as follows:

79-29-821. The Secretary of State may commence a proceeding under Section 79-29-823 to administratively dissolve a limited liability company if:

(a) The limited liability company does not pay within sixty (60) days after they are due any fees imposed by this chapter or other law;

(b) The limited liability company does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(c) The limited liability company is without a registered agent in this state for sixty (60) days or more;

(d) The limited liability company does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or that its registered agent has resigned; *** * ***

(e) The Department of Revenue notifies the Secretary of State that the limited liability company is delinquent in any payments or tax owed by the limited liability company to the State of Mississippi; *** * ***

(f) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record

submitted by the limited liability company to the Secretary of State pursuant to this chapter *** * ***; or

(g) The limited liability company is in violation of the Mississippi Employment Protection Act.

**SECTION 5.** Section 79-29-1021, Mississippi Code of 1972, is amended as follows:

79-29-1021. (1) The Secretary of State may commence a proceeding under Section 79-29-1023 to administratively revoke the registration of a foreign limited liability company authorized to transact business in this state if:

(a) The foreign limited liability company does not pay within sixty (60) days after they are due any fees imposed by this chapter or other law;

(b) The foreign limited liability company does not deliver its annual report to the Secretary of State within sixty (60) days after it is due;

(c) The foreign limited liability company is without a registered agent in this state for sixty (60) days or more;

(d) The foreign limited liability company does not notify the Secretary of State within sixty (60) days that its registered agent has been changed or that its registered agent has resigned;

(e) The Secretary of State receives a duly authenticated certificate from the Secretary of State or other public official having custody of corporate records in the state

or country under whose law the foreign limited liability company is organized stating that it has been dissolved or ceased to exist as the result of a merger; *** * ***

(f) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the foreign limited liability company to the Secretary of State pursuant to this chapter *** * ***; or

(g) The foreign limited liability company is in violation of the Mississippi Employment Protection Act.

(2) The Secretary of State may not administratively revoke a registration of a foreign limited liability company unless the Secretary of State sends the foreign limited liability company notice of the administrative revocation under Section 79-29-1023, at least sixty (60) days before its effective date, by a record addressed to its registered agent, or to the foreign limited liability company if the foreign limited liability company fails to appoint and maintain a proper agent in this state. The notice must specify the cause for the administrative revocation of the registration. The authority of the foreign limited liability company to transact business in this state ceases on the effective date of the administrative revocation unless the foreign limited liability company cures the failure before that date.

**SECTION 6.** This act shall take effect and be in force from and after July 1, 2021.