

CHAPTER 80

(SB 39)

AN ACT relating to state government contracts.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 14A.9-010 is amended to read as follows:

- (1) A foreign entity shall not transact business in this state until it obtains a certificate of authority from the Secretary of State.
- (2) The following activities, among others, shall not constitute transacting business within the meaning of subsection (1) of this section:
 - (a) Maintaining, defending, or settling any proceeding;
 - (b) Holding meetings of the board of directors, shareholders, partners, members, managers, beneficial owners, or trustees or carrying on other activities concerning the internal affairs of the foreign entity;
 - (c) Maintaining bank accounts;
 - (d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign entity's own securities or maintaining trustees or depositories with respect to those securities;
 - (e) Selling through independent contractors;
 - (f) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this state before they become contracts;
 - (g) Creating or acquiring indebtedness, mortgages, and security interests in real, personal, or intangible property;
 - (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
 - (i) Owning, without more, real or personal property;
 - (j) Conducting an isolated transaction that is completed within thirty (30) days and that is not one (1) in the course of repeated transactions of a like nature; and
 - (k) Transacting business in interstate commerce.
- (3) The list of activities in subsection (2) of this section is not exhaustive.
- (4) This section shall not apply to:
 - (a) Foreign limited liability partnerships; and
 - (b) Foreign general partnerships.
- (5) This section shall not apply in determining the contacts or activities that may subject a foreign entity to service of process or taxation in this Commonwealth or to regulation under any other law of this Commonwealth.
- (6) ***Notwithstanding any other law to the contrary, a foreign entity exempt under paragraph (j) of subsection (2) of this section or subsection (4) of this section shall obtain a certificate of authority from the Secretary of State under KRS 14A.9-030 to be eligible for award of a state contract under KRS Chapter 45A or 176.***

➔Section 2. KRS 45A.480 is amended to read as follows:

- (1) (a) No state contract for building, construction, reconstruction, renovation, demolition, or maintenance, or for any activity related to building, construction, reconstruction, renovation, demolition, or maintenance shall be awarded by any agency, department, or office of the Commonwealth of Kentucky or any political subdivision of the Commonwealth of Kentucky to any person until that person ~~assures~~ ~~shall assure~~, by affidavit, that all contractors and subcontractors employed, or that will be employed, under the provisions of the contract shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.

- (b) *An agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by Section 1 of this Act to obtain a certificate of authority from the Secretary of State under KRS 14A.9-030 unless the person produces the required certificate of authority within fourteen (14) days of the bid or proposal opening.*
- (2) Any person who fails to comply with the assurances *or to produce the certificate of authority from the Secretary of State* required under subsection (1) of this section, upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed four thousand dollars (\$4,000), or an amount equal to the sum of uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater.
- (3) The penalty imposed in subsection (2) of this section shall be enforced by the county attorney for the county in which the violation occurred.

➔Section 3. KRS 176.085 is amended to read as follows:

- (1) (a) No contract for building, construction, reconstruction, renovation, demolition, or other type work on any state road, waterway, or aviation-related work, shall be awarded by any agency, department, or office of the Commonwealth of Kentucky or any political subdivision of the Commonwealth of Kentucky to any person until that person shall assure, by affidavit, that all contractors and subcontractors employed, or that will be employed, under the provisions of the contract shall be in compliance with Kentucky requirements for workers' compensation insurance according to KRS Chapter 342 and unemployment insurance according to KRS Chapter 341.
- (b) *An agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a contract to a person that is a foreign entity required by Section 1 of this Act to obtain a certificate of authority from the Secretary of State under KRS 14A.9-030 unless the person produces the required certificate of authority within fourteen (14) days of the bid or proposal opening.*
- (2) Any person who fails to comply with the assurances *or to produce the certificate of authority from the Secretary of State* required under subsection (1) of this section, upon such finding by a court of competent jurisdiction, shall be fined an amount not to exceed four thousand dollars (\$4,000), or an amount equal to the sum of uninsured and unsatisfied claims brought under the provisions of KRS Chapter 342 and unemployment insurance claims for which no wages were reported as required by KRS Chapter 341, whichever is greater.
- (3) The penalty imposed in subsection (2) of this section shall be enforced by the county attorney for the county in which the violation occurred.

Signed by Governor March 17, 2011.