

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2017 REGULAR SESSION
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Amend printed copy of **HB 3**

On page 30, after line 14, insert the following:

"➔SECTION 14. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ
AS FOLLOWS:

As used in Sections 14 to 16 of this Act, unless the context otherwise requires:

- (1) "Bidder" means a person who submits a bid or any response to a public agency with the intent to obtain a contract with that public agency;
- (2) "Contract" means all types of public agency agreements, including grants and orders, for the purchase or disposal of supplies, services, construction, or any other item;
- (3) "Contractor" means a person having or seeking a contract with a public agency;
- (4) "Employee" has the same meaning as in KRS 337.010(1)(e) and for the purposes of Sections 14 to 16 of this Act includes a person who works for or contracts with another person and receives a Federal Income Tax Form 1099 for the work done;
- (5) "Employer" means an individual or organization that contracts with the Commonwealth or a public agency and employs one (1) or more individuals who perform employment services under a contract with a public agency and includes all subcontractors to a contractor;
- (6) "Federal work authorization program" means any electronic work authorization operated by the United States Department of Homeland Security such as E-Verify or any

Amendment No. HFA 1

Rep. Rep. Chris Harris

Committee Amendment _____

Signed: _____

Floor Amendment _____

LRC Drafter: Manno, Andrew

Adopted: _____

Date: _____

Rejected: _____

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equivalent federal work authorization program operated by the Department of Homeland Security or other federal agency to verify the identity and employment eligibility of employees, pursuant to the Immigration Reform and Control Act of 1986, 8 U.S.C. secs. 1101 et seq.;

(7) "Intentionally" has the same meaning as in KRS 501.020;

(8) "Knowingly" has the same meaning as in KRS 501.020;

(9) "Knowingly employ an unauthorized alien" means the actions made unlawful by 8 U.S.C. sec. 1324a and shall be interpreted consistent with that section and any applicable federal rules and regulations;

(10) "Public agency" means:

(a) A state or local government board, commission, or authority;

(b) A state or local legislative board, commission, or committee;

(c) A county, urban-county, charter county, consolidated local government, unified local government, city, special district board, or municipal corporation, or an agency or instrumentality thereof;

(d) A school district or independent school district;

(e) A public agency of postsecondary education;

(f) A state government agency in the legislative, executive, or judicial branches of government, including the policy-making board of an institution of education, created by or pursuant to state statute, executive order, resolution, or other legislative act;

(g) A local government agency, whether in the legislative or executive branch of government, created by or pursuant to statute, executive order, ordinance, resolution, or other legislative act;

(h) An entity with a governing body the majority of which is appointed by a public

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agency as defined in this subsection, by a member or employee of a public agency, by a state or local officer, or any combination thereof;

(i) A board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency established, created, and controlled by a public agency as defined in this subsection; or

(j) Any other publicly created entity of government;

(11) "Subcontractor" means a person furnishing goods or services to a contractor or bidder, regardless of tier;

(12) "Unauthorized alien" means an alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 U.S.C. sec. 1324a(h)(3); and

(13) "Wantonly" has the same meaning as in KRS 501.020.

➔SECTION 15. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

Notwithstanding any provisions of the Kentucky Revised Statutes to the contrary, beginning on January 1, 2018:

(1) No contract shall be awarded by any public agency until:

(a) The bidder seeking the contract submits a list of all subcontractors, of whatever tier, who will be working under the contract or independently;

(b) The bidder submits a sworn affidavit that the bidder has no unauthorized alien employees, and that the bidder is registered and participating in a federal work authorization program to verify the identity and employment eligibility of employees as required by the Immigration Reform and Control Act of 1986, 8 U.S.C. secs. 1101 et seq.; and

(c) The bidder submits sworn affidavits from each of the bidder's subcontractors, of

- whatever tier, employed or that will be employed under the provisions of the contract, that the subcontractor has no unauthorized alien employees, and that the subcontractor is registered and participating in a federal work authorization program to verify the identity and employment eligibility of employees as required by the Immigration Reform and Control Act of 1986, 8 U.S.C. secs. 1101 et seq.;
- (2) A public agency shall cancel a contract and pay only the documented actual costs and expenses incurred by the contractor for work performed under the contract up to the date of cancellation, if:
- (a) The contractor fails to maintain the contractor's registration, participation, and compliance with a federal work authorization program throughout the term of the contract; or
- (b) Any subcontractor, of whatever tier, fails to maintain its registration, participation, and compliance with a federal work authorization program throughout the term of the contract;
- (3) Prior to receiving a final payment under the contract, the contractor shall submit to the public agency:
- (a) A sworn affidavit that the contractor has not intentionally, knowingly, or wantonly hired any unauthorized alien employees during the contract term; and
- (b) Sworn affidavits from each of the subcontractors used in the performance of the contract, regardless of tier, that each subcontractor has not intentionally, knowingly, or wantonly hired any unauthorized alien employees during the contract term; and
- (4) A subcontractor shall indemnify and hold the general contractor harmless from and against all claims, damages, losses, and expenses, including but not limited to attorney's fees, arising out of or relating to a subcontractor's compliance or failure to comply with

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the implementation, application, or enforcement of this section or Section 16 of this Act.

➔ SECTION 16. A NEW SECTION OF KRS CHAPTER 45A IS CREATED TO READ AS FOLLOWS:

Beginning on January 1, 2018:

- (1) On receipt of a complaint that an employer, contractor, or subcontractor intentionally, knowingly, or wantonly, is employing or has employed during the term of the contract an unauthorized alien employee, the Attorney General, Commonwealth's attorney, or county attorney shall send a copy of the complaint to the United States Department of Homeland Security, Immigration and Customs Enforcement for verification of the complaint and for further action;*
- (2) An employer, contractor, or subcontractor who pleads guilty to, is found guilty of, or enters an Alford plea to an offense of intentionally, knowingly, or wantonly hiring an unauthorized alien in Kentucky, in a Kentucky court, in federal court, or in a federal administrative proceeding is guilty of violating this section or Section 15 of this Act and shall be banned from contracting with a public agency for a period of one (1) year for a first offense and for a period of five (5) years for a second and any subsequent offense;*
- (3) The Attorney General, a county attorney, a Commonwealth's attorney, or a private citizen may apply to a Circuit Court of competent jurisdiction for an injunction or appropriate relief to enforce the provisions of Sections 14 to 16 of this Act, and upon a proper showing of evidence of a violation of Sections 14 to 16 of this Act, the Circuit Court shall enforce any ban provided for in this section for the period specified in this section;*
- (4) The Attorney General shall maintain copies of the federal and state court orders relating to violations that are received pursuant to this section and shall make a database of the employers, contractors, and subcontractors who have been banned from public contracts*

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and the period of the bans available to the public on the Attorney General's Web site;

(5) It shall be a defense to any action pursuant to Sections 14 to 16 of this Act that the employer, contractor, or subcontractor in good faith provided information on an employee or prospective employee to a federal work authorization program and received authorization to hire the employee; and

(6) Any public agency soliciting or advertising bids for services or products covered by Sections 14 to 16 of this Act shall cause to be inserted in the proposal and contract, a stipulation that bidders and contractors shall comply with the provisions of Sections 14 to 16 of this Act and shall make the language of Sections 14 to 16 of this Act available upon request in writing by mail or electronically on the public agency's Web site or by e-mail.

➔SECTION 17. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO READ AS FOLLOWS:

As used in this section and Section 18 of this Act:

(1) "Employee" has the same meaning as in KRS 337.010(1)(e) and for the purposes of this section and Section 18 of this Act includes a person who works for or contracts with another person and receives a Federal Income Tax Form 1099 for the work done;

(2) "Federal work authorization program" means any electronic work authorization operated by the United States Department of Homeland Security such as E-Verify or any equivalent federal work authorization program operated by the Department of Homeland Security or other federal agency to verify the identity and employment eligibility of employees, pursuant to the Immigration Reform and Control Act of 1986, 8 U.S.C. secs. 1101 et seq.;

(3) "Public agency" means:

(a) A state or local government board, commission, or authority;

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- (b) A state or local legislative board, commission, or authority;
 - (c) A county, urban-county, charter county, consolidated local government, unified local government, city, special district board, or municipal corporation, or an agency or instrumentality thereof;
 - (d) A school district or independent school district;
 - (e) A public agency of postsecondary education;
 - (f) A state government agency in the legislative, executive, or judicial branches of government, including the policy-making board of an institution of education, created by or pursuant to state statute, executive order, resolution, or other legislative act;
 - (g) A local government agency, whether in the legislative or executive branch of government, created by or pursuant to statute, executive order, ordinance, resolution, or other legislative act;
 - (h) An entity with a governing body the majority of which is appointed by a public agency as defined in this subsection, by a member or employee of a public agency, by a state or local officer, or any combination thereof;
 - (i) A board, commission, committee, subcommittee, ad hoc committee, advisory committee, council, or agency established, created, and controlled by a public agency as defined in this subsection; or
 - (j) Any other publicly created entity of government; and
- (4) "Unauthorized alien" means an alien who does not have the legal right or authorization under federal law to work in the United States as described in 8 U.S.C. sec. 1324a(h)(3).
- ➔SECTION 18. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO READ AS FOLLOWS:
- (1) All public agencies shall be enrolled in the federal E-Verify program or an equivalent

federal work authorization program by January 1, 2018.

(2) Beginning on January 1, 2018, each public agency, after hiring an employee, shall verify the employment eligibility of the employee through the federal E-Verify program or an equivalent federal work authorization program.

➔SECTION 19. A NEW SECTION OF KRS CHAPTER 65 IS CREATED TO READ AS FOLLOWS:

(1) As used in this section, "public agency" has the same meaning as in Section 17 of this Act.

(2) Beginning on January 1, 2018, a public agency policy, ordinance, resolution, administrative regulation under KRS Chapter 13A, or law that revokes, limits, or restricts the requirements of Sections 14 to 16 of this Act or Sections 17 and 18 of this Act shall be null, void, and unenforceable.

➔Section 20. Public agencies may take such actions as necessary to implement the provisions of this Act prior to January 1, 2018, at any time following the effective date of this Act."; and

Re-number subsequent sections accordingly.