



Phil Mullin

Bill Analysis

Legislative Service Commission

H.B. 459

125th General Assembly
(As Introduced)

Reps. Trakas, Oelslager, Slaby, D. Stewart, Allen, Perry, Yates

BILL SUMMARY

- Prohibits any state agency or political subdivision from providing economic development assistance to any person who has a history of or whose business plan includes the elimination of employment positions in the United States and the relocation of those positions outside of the country.
- Prohibits a state agency from awarding a contract for services or construction to a person unless, prior to entering into the contract, the person submits to the state agency an affidavit that specifies that the services or construction that are the subject of the proposed contract will be performed in the United States.
- Requires that a contract for services or construction that a state agency enters into contain provisions prohibiting the person awarded the contract from employing individuals to perform work under the contract who are not United States citizens or legal aliens and from entering into a subcontract agreement with a person employing individuals to perform work under the contract who are not United States citizens or legal aliens.
- Requires telephone communications attempting to promote or sell consumer goods or services to disclose, when it is the case, that they are being made from outside the United States, and requires communications made by the Internet for that purpose to disclose, when it is the case, that any resulting transaction will be processed outside the United States.
- Prohibits a person from transferring the credit or other financial information of a consumer in Ohio to any location outside the United States without first obtaining the consumer's written consent.

- Requires an employer that eliminates employment positions in Ohio and relocates them outside the United States to provide written notice of the relocation to each employee whose position will be eliminated, not later than 60 days prior to its elimination.

TABLE OF CONTENTS

Restriction on the provision of economic development assistance.....	2
Prohibition and affidavit.....	2
Written agreement	3
Implementing rules.....	3
Prohibition against performance of state contracts outside the United States	4
Prohibition and affidavit.....	4
Required contract terms	4
Implementing rules.....	4
Prohibition against the performance of state contracts that use the work of individuals who are not United States citizens or legal aliens	4
Prohibition and contract terms	4
Implementing rules.....	5
Requirements and restriction pertaining to certain communications and transfers of financial information related to consumer sales transactions.....	5
Requirements	5
Restriction	5
Noncompliance	5
Required notice to workers whose employment positions will be relocated outside the United States	6

CONTENT AND OPERATION

Restriction on the provision of economic development assistance

Prohibition and affidavit

The bill prohibits any state agency or political subdivision from providing economic development assistance to any person who has a history of or whose business plan includes the elimination of employment positions in the United States and the relocation of those positions outside of the country.¹ A person

¹ The bill defines "political subdivision" as a municipal corporation, township, county, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state (R.C. 9.661(A)(2)). It also defines "economic development assistance" in the same manner as it is defined in a law that requires a person who applies to the state, a state agency, or a political subdivision for economic

seeking that economic development assistance must submit an affidavit to the state agency or political subdivision verifying that it does not have such a history or business plan. Along with the affidavit, the person must submit information documenting the verification contained in the affidavit. A person who submits false information in the affidavit or documenting information is guilty of the existing crime of "falsification" for making a statement with purpose to mislead a public official in performing the public official's official function; this type of falsification is punishable as a misdemeanor of the first degree. (R.C. 9.661(B); R.C. 2921.13(A)(3)--not in, but referred to in, the bill.)

Written agreement

A state agency or political subdivision providing economic development assistance to a person also must enter into a written agreement whereby the person receiving the assistance agrees not to eliminate employment positions that are created or retained as a result of the assistance and relocate those employment positions outside of the United States during the term of the assistance. The agreement must include a provision that requires the recipient of the assistance to repay to the state agency or political subdivision a portion of it (determined in the manner described below) if the person violates the terms of the agreement. The agreement is enforceable in the same manner as a contract. Under the bill, the state agency or political subdivision is responsible for monitoring and enforcing compliance with such an agreement. (R.C. 9.661(C).)

A person who violates an agreement must pay a penalty to the state agency or political subdivision in an amount equal to (1) the percentage of jobs created or retained as a result of the economic development assistance that subsequently have been relocated outside the United States multiplied by (2) the total value of the assistance (R.C. 9.661(D)).

Implementing rules

The bill requires the Director of Development to adopt rules in accordance with the Administrative Procedure Act that establish all of the following: (1) reasonable standards for what constitutes a history of or business plan that includes the elimination of employment positions in the United States and the relocation of those positions outside of the country, (2) the type of documentary information that must be submitted to a state agency or political subdivision and the form and manner by which the information must be presented, (3) the form of

development assistance to indicate on the application for assistance whether the person has any outstanding liabilities owed to the state, a state agency, or a political subdivision (R.C. 9.661(A)(1)). (See COMMENT.)

the written agreements mentioned above, and (4) any other requirements necessary for the implementation of this portion of the bill (R.C. 9.661(E)).

Prohibition against performance of state contracts outside the United States

Prohibition and affidavit

The bill prohibits a state agency from awarding a contract for services or construction to a person unless, prior to entering into the contract, the person submits to the state agency an affidavit that specifies that the services or construction that are the subject of the proposed contract will be performed in the United States. A person who submits false information on such an affidavit submitted to a state agency is guilty of the existing crime of "falsification," as previously discussed. (R.C. 125.25(A).)

Required contract terms

A contract for services or construction that a state agency enters into must contain provisions: (1) prohibiting the person awarded the contract from performing any portion of the services or construction outside of the United States, (2) prohibiting the person from entering into a subcontract with any person that will perform any portion of the services or construction outside of the United States, (3) mandating damages for violating provision (1) or (2) above, and (4) mandating that the damages must be in an amount equal to the value of the contract performed outside of the United States (R.C. 125.25(B)).

Implementing rules

The Director of Administrative Services must adopt rules in accordance with the Administrative Procedure Act that are applicable to all state agencies and that establish the form and content of the affidavits and required contractual provisions mentioned above (R.C. 125.25(C)).

Prohibition against the performance of state contracts that use the work of individuals who are not United States citizens or legal aliens

Prohibition and contract terms

The bill requires that a contract for services or construction that a state agency enters into contain provisions prohibiting the person awarded the contract from: (1) employing individuals to perform work under the contract who are not United States citizens or legal aliens or (2) entering into a subcontract agreement with a person employing individuals to perform work under the contract who are not United States citizens or legal aliens. The contract also must include a provision for damages for violating either of these prohibitions and specify that

damages will be in an amount equal to half the value of the contract. (R.C. 125.26(A).)

Implementing rules

The Director of Administrative Services must adopt rules in accordance with the Administrative Procedure Act that are applicable to all state agencies and that establish the form and content of the contractual provisions mentioned above (R.C. 125.26(B)).

Requirements and restriction pertaining to certain communications and transfers of financial information related to consumer sales transactions

Requirements

Under the bill, if a communication is transmitted by or on behalf of a seller of goods or services and by or through a telephone call or the Internet to a consumer in Ohio and if the communication either represents a price or the quality or availability of goods or services or is used to induce the consumer to purchase goods or services, the communication must include the following information: (1) in the case of a communication via the telephone, the location from which the call originates if that location *is outside* the United States and (2) in the case of a communication via the Internet, the location at which any resulting transaction with the consumer will be processed if that location *is outside* the United States (R.C. 1349.03(B)).²

Restriction

The bill further prohibits a person from transferring the credit or other financial information of a consumer in Ohio to any location *outside* the United States without first obtaining the consumer's written consent (R.C. 1349.04).

Noncompliance

A failure to comply with the requirements or restriction mentioned above is an unfair or deceptive act or practice under the Consumer Sales Practices (CSP) Law (R.C. 1349.05). The CSP Law authorizes the Attorney General to investigate alleged unfair or deceptive acts or practices and allows the Attorney General and

² *The bill defines "goods or services" as any real property or any tangible or intangible personal property, or services of any kind provided or offered to a consumer (R.C. 1349.03(A)(2)). And, it defines "consumer" as an individual who is involved in a transaction primarily for personal, family, or household purposes (R.C. 1349.03(A)(1)).*

individual consumers to bring legal actions relating to those acts or practices (R.C. 1345.06, 1345.07, and 1345.09--not in the bill).

Required notice to workers whose employment positions will be relocated outside the United States

Under the bill, an employer that eliminates employment positions in Ohio and relocates them outside the United States must provide written notice of the relocation to each employee whose position will be eliminated, not later than 60 days prior to its elimination. This requirement applies, however, only if no federal requirement governing the notification of employees regarding employee layoffs or terminations is applicable. (R.C. 4113.24(A).)

An employer who fails to comply with that requirement must pay to each employee to whom it failed to give timely notice a monetary penalty equal in amount to the employee's daily wage, up to eight hours, for each day the notice is late, not to exceed an amount equal to 60 days worth of wages. This penalty is in addition to any severance pay or other compensation provided to the employee. An employee may bring a civil action to recover such a penalty owed by the employer. (R.C. 4113.24(B).)

COMMENT

R.C. 9.66 (not in the bill) defines "economic development assistance" as all of the following:

- (a) The programs and assistance provided or administered by the Department of Development under the Department of Development Law, the Economic Development Program Law, and any other law under which the Department provides or administers economic development assistance;
- (b) The programs and assistance provided or administered by a political subdivision under the Urban Renewal Debt Retirement Fund Law, the Community Redevelopment Corporation Law, the Community Reinvestment Areas Law, the Enterprise Zones Law, the Township Tax Increment Financing Law, or the County Public Infrastructure Improvements Law and any other law under which a political subdivision provides economic development assistance;
- (c) Assistance provided under any other statute under which the state or a state agency provides or administers economic development assistance.

- (d) The tax credits for eligible employee training costs (R.C. 5725.31, 5729.07, 5733.42, and 5747.39).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-08-04	pp. 1757-1758

h0459-i-125.doc/kl

