

CHAPTER 2024-185

Committee Substitute for Committee Substitute for House Bill No. 1331

An act relating to commodities produced by forced labor; creating s. 287.1346, F.S.; providing definitions; prohibiting a company on the forced labor vendor list from taking certain procurement actions; prohibiting an agency from procuring commodities from certain companies for a certain period; requiring certain solicitations and contracts to include a certain statement; requiring certain contracts to include a certain termination provision; requiring a member of a company's senior management to provide a certain certification; requiring a company to provide a certain notification to the Department of Management Services within a certain period; requiring an agency to provide certain information to the department within a certain period; requiring the department to create and maintain a forced labor vendor list; providing requirements for such list; providing for automatic removal from the list; providing a process for the department to place a company on such list; subjecting a company that submits a false certification or that should have had certain knowledge to a fine; authorizing a company that receives certain notice to file a petition for a certain hearing; providing requirements and procedures for such hearings; providing evidentiary standards for certain proceedings; authorizing a company placed on such list to petition for removal; providing requirements for such petitions; authorizing the removal of a company from such list in certain circumstances; providing construction; requiring the deposit of collected fines into the General Revenue Fund; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 287.1346, Florida Statutes, is created to read:

287.1346 Provision of commodities produced by forced labor; denial or revocation of the right to transact business with agencies.—

(1) As used in this section, the term:

(a) “Forced labor” means work or service exacted from any person, including a minor, under the menace of a penalty for nonperformance and for which the worker does not offer himself or herself voluntarily or an activity that violates s. 787.06.

(b) “Forced labor vendor list” or “list” means the list required to be created and maintained by the department pursuant to paragraph (4)(d).

(c) “Senior management” includes chief executive officers; assistant chief executive officers, including, but not limited to, assistant presidents, vice

presidents, or assistant treasurers; chief financial officers; chief personnel officers; or any employee of an entity performing similar functions.

(2) A company on the forced labor vendor list may not:

(a) Submit a bid, proposal, or reply on a contract to provide any commodities to an agency.

(b) Be awarded a contract or perform work as a contractor, supplier, subcontractor, or consultant with an agency for the provision of commodities.

(c) Transact business for the provision of commodities with any agency.

(3) An agency may not accept a bid, proposal, or reply from, award a contract to, or transact business pertaining to the provision of commodities with a company on the forced labor vendor list, or an entity under the control of such company, for a period of 365 days after the date the company was placed on the list unless the company is removed from the list pursuant to paragraph (5)(d).

(4)(a)1. All invitations to bid, requests for proposals, and invitations to negotiate and any written contract for the provision of commodities by an agency must include a statement informing companies of the requirements of this section.

2. Any contract with an agency for the provision of commodities entered into or renewed on or after July 1, 2024, must include a provision that allows for the termination of such contract at the option of the awarding agency if the company is placed on the forced labor vendor list.

(b) At the time a company submits a bid, proposal, or reply for a contract and before the company enters into or renews a contract with an agency for the provision of commodities, a member of the company's senior management must certify, in writing, that to the best of his or her knowledge the commodities such company is offering to the agency have not been produced, in whole or in part, by forced labor.

(c) A company must notify the department within 30 days after gaining actual knowledge that the company has provided to an agency a commodity produced, in whole or in part, by forced labor. Any agency that receives information that a company has provided to an agency a commodity produced, in whole or in part, by forced labor must provide that information to the department in writing within 10 days.

(d) The department shall create and maintain a forced labor vendor list that contains the name and address of each company that has been disqualified from the public contracting and purchasing process under this section. The department shall publish an updated version of the list quarterly. The updated quarterly list shall be electronically posted on the department's website. Notwithstanding this paragraph, a company

disqualified from the public contracting and purchasing process pursuant to this section shall be disqualified as of the date a final order is entered pursuant to paragraph (e) or paragraph (5)(a). A company is automatically removed from the list 366 days after the date of the final order placing the company on the list.

(e) Upon receiving from any source reasonable and credible information that a company has submitted a false certification or provided to an agency a commodity produced, in whole or in part, by forced labor, the department shall investigate the information and determine whether good cause exists to place that company on the forced labor vendor list and whether such placement is in the public interest. If good cause exists and placement is in the public interest, the department shall notify the company in writing of the department's intent to place the company on the list and of the company's right to a hearing, the procedure that must be followed, and the applicable time requirements. If the company does not request a hearing, the department shall enter a final order placing the company on the forced labor vendor list. A company may not be placed on the forced labor vendor list without receiving an individual notice of intent from the department.

1. It is not in the public interest to place a company on the forced labor vendor list if any of the following apply:

a. The company did not provide to an agency a commodity produced, in whole or in part, by forced labor;

b. The provision to an agency of a commodity produced, in whole or in part, by forced labor was committed by an employee of the company without the actual or constructive knowledge of any member of the company's senior management;

c. The member of the company's senior management responsible for the contract under which the company provided to the agency a commodity produced, in whole or in part, by forced labor did not have actual or constructive knowledge that the commodity was produced, in whole or in part, by forced labor and a reasonable person under similar circumstances to that of such member would not have known that the commodity was produced, in whole or in part, by forced labor;

d. The member of the company's senior management responsible for the contract under which the company provided to the agency a commodity produced, in whole or in part, by forced labor is no longer an employee of the company; or

e. The agency head or a designee delegated the authority to execute contracts on behalf of the agency makes a public finding that, absent the provision of such commodities by the company, the agency would be unable to obtain the commodities for which the contract is offered.

2. In determining whether it is in the public interest to place a company on the forced labor vendor list, the following factors shall be considered:

a. The nature and details of the provision of the commodity produced, in whole or in part, by forced labor.

b. The degree of culpability of the company proposed to be placed on the forced labor vendor list.

c. Prior or future self-policing by the company to prevent the provision of a commodity produced, in whole or in part, by forced labor.

d. The company's compliance with paragraph (c).

e. The needs of agencies for additional competition in the procurement of commodities in their respective markets.

f. Mitigation based upon any demonstration of good citizenship by the company, including, but not limited to, the adoption of a formal plan to cease producing or providing commodities produced, in whole or in part, by forced labor.

(f) A company that submits a false certification under paragraph (b) or that should have known that a commodity provided under a contract with an agency was produced, in whole or in part, by forced labor and is subsequently placed on the forced labor vendor list shall be assessed a fine of \$1,000 or an amount equal to 20 percent of the value of the commodity provided to the agency under the contract, whichever is greater.

(5)(a) Within 21 days after receipt of the notice of intent pursuant to paragraph (4)(e), the company may file a petition for a hearing involving disputed issues of material fact pursuant to ss. 120.569 and 120.57(1) to challenge the department's determination that the company's placement on the forced labor vendor list is in the public interest. A company may not file a petition for a hearing not involving disputed issues of material fact under s. 120.57(2). Chapter 120 applies to a hearing under this section except that:

1. The petition shall be filed with the department. The department shall be a party to the proceeding for all purposes.

2. Within 5 days after the filing of the petition, the department shall notify the Division of Administrative Hearings of the request for a hearing pursuant to ss. 120.569 and 120.57(1). The director of the Division of Administrative Hearings shall, within 5 days after receipt of notice from the department, assign an administrative law judge to preside over the proceeding. The administrative law judge, upon request by a party, may consolidate related proceedings.

3. The administrative law judge shall conduct the hearing within 30 days after being assigned, unless otherwise stipulated by the parties.

4. Within 30 days after the hearing or receipt of the hearing transcript, whichever is later, the administrative law judge shall enter a final order, which shall consist of findings of fact, conclusions of law, interpretation of agency rules, and any other information required by law or rule to be contained in the final order. Such final order shall place or not place the company on the forced labor vendor list.

5. The final order of the administrative law judge shall be final agency action for purposes of s. 120.68.

6. At any time after the filing of the petition, informal disposition may be made pursuant to s. 120.57(4). In that event, the administrative law judge shall enter a final order adopting the stipulation, agreed settlement, or consent order.

(b) In any proceeding under this section, the department is required to prove by clear and convincing evidence that it is in the public interest for the company to which the department has provided notice of intent pursuant to paragraph (4)(e) to be placed on the forced labor vendor list. Proof that such company provided to an agency a commodity produced, in whole or in part, by forced labor constitutes a rebuttable presumption that it is in the public interest for the company to be placed on the forced labor vendor list.

(c) Upon establishment of the rebuttable presumption in paragraph (b) that it is in the public interest for the company to be placed on the forced labor vendor list, that company may prove by a preponderance of the evidence that it is not in the public interest for such company to be placed on the list based upon evidence addressing the provisions of sub-subparagraph (4)(e)1. or the factors in sub-subparagraph (4)(e)2.

(d)1. A company on the forced labor vendor list may petition for such company's removal from the list no sooner than 6 months after the date a final order is entered placing the company on the list. The petition shall be filed with the department and the proceeding shall be conducted pursuant to this subsection.

2. A company may be removed from the forced labor vendor list subject to such terms and conditions as may be prescribed by the administrative law judge upon a determination that removal is in the public interest. In determining whether removal is in the public interest, the administrative law judge shall give consideration to any relevant factors, including whether the company has prepared a corrective action plan that addresses the original grounds for placement on the list as well as any additional evidence that the company has in good faith taken significant remedial action.

3. If a petition for removal is denied, the company may not petition for another hearing on removal. The department may petition for removal before the expiration of the 365-day period provided in subsection (3) if, in the department's discretion, the department determines that removal would be in the public interest.

(6) Placement on the forced labor vendor list does not affect any rights or obligations under any contract, franchise, or other binding agreement which predates such placement.

(7) Any fines collected under this section shall be deposited into the General Revenue Fund.

Section 2. This act shall take effect July 1, 2024.

Approved by the Governor May 15, 2024.

Filed in Office Secretary of State May 15, 2024.