

By: Bailey

H.B. No. 3191

A BILL TO BE ENTITLED

AN ACT

relating to the reporting and misclassification of employees and independent contractors; providing administrative penalties.

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

SECTION 1. Subchapter B, Chapter 213, Labor Code, is amended by adding sections 213.015 and 213.016 to read as follows:

Sec. 213.015. MISCLASSIFICATION OF EMPLOYEE.

Misclassification of employee means an attempt by an employer to avoid tax liability or reporting requirements for any person in its employment, as that term is defined by Section 201.041, Labor Code, by denoting or treating such person as an "independent contractor," "contract labor," or any other term or category implying the absence of an employment relationship.

Sec. 213.016. PENALTY FOR MISCLASSIFICATION OF EMPLOYEE.

(a) an employer shall pay a penalty for failing to report wages for any employee by reason of attempting to treat such employee as an independent contractor or otherwise misclassifying the employee's employment status.

(b) the penalty shall be over and above any tax or interest due on the employee's wages. The penalty shall be:

(1) an amount equal to the tax due on the employee's taxable wages; or

(2) an amount equal to three times the tax due on the employee's taxable wages if it is shown that the employer's failure

1 to report wages is due to bad faith.

2 (c) bad faith shall require that at least one of the  
3 following conditions exist:

4 (1) after receiving a ruling from the Texas Workforce  
5 Commission or the Internal Revenue Service that an individual  
6 worker or similarly situated workers are employees, the employer  
7 fails to report the individual's wages to the Commission and pay  
8 appropriate taxes; or

9 (2) the employer exercises a high degree of direction  
10 and control over the details of the individual's work, which is  
11 fully within the normal course of the employer's business.

12 (d) any penalty assessed under this section shall apply to  
13 each employee misclassified or not reported.

14 SECTION 2. Section 234.101, Family Code, is amended by  
15 adding Subsection (3) to read as follows:

16 (3) "Independent Contractor" means any individual who  
17 is not an employee but receives compensation or executes a contract  
18 for services performed for the employer.

19 SECTION 3. Section 234.102 and Section 234.104, Family  
20 Code, are amended as follows:

21 Sec. 234.102. OPERATION OF NEW HIRE DIRECTORY. In  
22 cooperation with the Texas Workforce Commission, the Title IV-D  
23 agency shall develop and operate a state directory to which  
24 employers in the state shall report each newly hired or rehired  
25 employee and each newly hired or rehired independent contractor in  
26 accordance with the requirements of 42 U.S.C. Section 653a.

27 Sec. 234.104. Procedures. The Title IV-D agency by rule

1 shall establish procedures for reporting employee and independent  
2 contractor information and for operating a state directory of new  
3 hires meeting the requirements of federal law.

4 SECTION 4. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2005.