By: Shapleigh S.B. No. 1478

A BILL TO BE ENTITLED

AN ACT

relating to classification as an independent contractor for purposes of certain labor and insurance laws.

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

SECTION 1. Title 1, Labor Code, is amended by adding Chapter 2 to read as follows:

CHAPTER 2. CLASSIFICATION AS INDEPENDENT CONTRACTOR

Sec. 2.001. CLASSIFICATION AS INDEPENDENT CONTRACTOR. (a) Except as otherwise specifically provided by this code, for purposes of this code, an individual who performs work or services for an employer must meet all of the requirements of this section to be classified as an independent contractor rather than as an employee.

(b) An individual is an independent contractor if the individual:

(1) maintains a business separate from that of the employer with separate office facilities, equipment, materials, and other related facilities;

(2) holds or applies for a federal employer identification number;

(3) operates under a contract, under the terms of which the individual:

(A) performs specific services or works for specific amounts of money; and

(B) controls the means of performing the services or work;

(4) incurs the main expenses related to the services or work;

(5) is responsible for the satisfactory performance of the services or completion of the work and is liable for any failure to perform the services or complete the work;

(6) receives compensation for the performance of the services or completion of the work only on a commission, per job, or competitive bid basis;

(7) realizes a profit or incurs a loss under the contract;

(8) has continuing or recurring business liabilities or obligations; and

(9) succeeds or fails depending on the relationship of business receipts to expenditures.

(c) An individual is not an independent contractor if any other person:

(1) maintains substantial control over the manner in which the individual performs duties assigned to the individual by the person; and

(2) retains a significant financial stake in the earnings of the individual.

Sec. 2.002. WAIVER PROHIBITED. Classification as an independent contractor under this code is based solely on the description of that status as established under Section 2.001. The classification of a specific individual as an independent

contractor may not be waived, changed, impaired, or diminished by a contract, stipulation, or other agreement entered into between the individual and another legal entity for whom the individual performs services or work.

SECTION 2. Section 91.001(10), Labor Code, is amended to read as follows:

(10) "Independent contractor" means a person classified as an independent contractor under Section 2.001 [~~who contracts to perform work or provide a service for the benefit of another and who:~~

[~~(A) is paid by the job, not by the hour or some other time-measured basis;~~

[~~(B) is free to hire as many helpers as the person desires and to determine what each helper will be paid; and~~

[~~(C) is free to work for other contractors, or to send helpers to work for other contractors, while under contract to the hiring employer~~].

SECTION 3. Section 406.121(2), Labor Code, is amended to read as follows:

(2) "Independent contractor" means a person classified as an independent contractor under Section 2.001 [~~who contracts to perform work or provide a service for the benefit of another and who ordinarily:~~

[~~(A) acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;~~

[~~(B) is free to determine the manner in which the work or service is performed, including the hours of labor of or method of payment to any employee;~~

[~~(C) is required to furnish or to have employees, if any, furnish necessary tools, supplies, or materials to perform the work or service; and~~

[~~(D) possesses the skills required for the specific work or service~~].

SECTION 4. Section 406.141(2), Labor Code, is amended to read as follows:

(2) "Independent contractor" means a person classified as an independent contractor under Section 2.001 [~~who contracts to perform work or provide a service for the benefit of another and who:~~

[~~(A) is paid by the job and not by the hour or some other time-measured basis;~~

[~~(B) is free to hire as many helpers as desired and may determine the pay of each helper; and~~

[~~(C) is free to, while under contract to the hiring contractor, work for other contractors or is free to send helpers to work for other contractors~~].

SECTION 5. Subchapter A, Chapter 1501, Insurance Code, as effective April 1, 2005, is amended by adding Section 1501.012 to read as follows:

Sec. 1501.012. DETERMINATION OF INDEPENDENT CONTRACTOR STATUS. (a) For purposes of this chapter, an independent contractor is an individual who is classified as an independent

contractor under Section 2.001, Labor Code.

(b) A small employer or large employer may not, in order to limit eligibility for enrollment under a small or large employer health benefit plan, classify an individual as an independent contractor rather than as an employee if the individual does not meet the requirements for classification as an independent contractor established under Section 2.001, Labor Code.

SECTION 6. Section 1501.012, Insurance Code, as added by this Act, applies only to an insurance policy, certificate, or contract or an evidence of coverage delivered, issued for delivery, or renewed on or after January 1, 2006. A policy, certificate, or contract or evidence of coverage delivered, issued for delivery, or renewed before January 1, 2006, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 7. This Act takes effect September 1, 2005.