

BILL ANALYSIS

C.S.H.B. 2015
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Economic & Small Business Development
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas employers are required to report to the Texas Workforce Commission (TWC) the number of workers in their employment who are considered employees under the Texas Unemployment Compensation Act. Employers then pay unemployment insurance for these workers. Interested parties note that, if an employer is found to have employees not being reported to TWC, the employer is required to retroactively pay unemployment insurance as well as any future unemployment insurance due for the employees. These parties contend that general contractors awarded a contract for public works do not always properly report individuals performing services under the contract, including individuals working for subcontractors, as employees. C.S.H.B. 2015 seeks to address the proper classification of workers performing services under certain governmental contracts.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2015 amends the Labor Code to require a person who contracts with a governmental entity to provide a service to properly classify, as an employee or independent contractor in accordance with general provisions of the Texas Unemployment Compensation Act, any individual the person directly retains and compensates for services performed in connection with the contract. The bill requires a subcontractor directly retained and compensated by a person who contracts with a governmental entity to provide a service to properly classify, as an employee or independent contractor in accordance with those same provisions, any individual the subcontractor directly retains and compensates for services performed in connection with the contract for which the subcontractor is retained.

C.S.H.B. 2015 requires a person who fails to properly classify an individual as an employee or independent contractor to pay to the Texas Workforce Commission (TWC) a penalty equal to \$200 for each individual that the person has not properly classified. The bill prohibits TWC from taking action to collect such a penalty after the third anniversary of the date on which the violation occurred.

EFFECTIVE DATE

January 1, 2014.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2015 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 214, Labor Code, is amended by adding Section 214.0021 to read as follows:

Sec. 214.0021. MISCLASSIFICATION OF CERTAIN WORKERS; PENALTY. (a)

The commission shall adopt rules establishing criteria for the proper classification, as either an employee or independent contractor, of an individual who provides services under a contract with a governmental entity that is entered into under Chapter 2252, Government Code.

(b) A person who improperly classifies an individual in violation of rules adopted under Subsection (a) shall pay to the commission a penalty equal to \$200 for each individual who is not properly classified.

(c) The commission may not take action to collect a penalty under this section from a person after the third anniversary of the date on which the violation occurred.

SECTION 2. Not later than December 1, 2013, the Texas Workforce Commission shall adopt rules as required by Section 214.0021, Labor Code, as added by this Act.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 214, Labor Code, is amended by adding Section 214.008 to read as follows:

Sec. 214.008. MISCLASSIFICATION OF CERTAIN WORKERS; PENALTY.

(a) A person who contracts with a governmental entity to provide a service as defined by Section 2155.001, Government Code, shall properly classify, as an employee or independent contractor in accordance with Chapter 201, any individual the person directly retains and compensates for services performed in connection with the contract.

(b) In this subsection, "subcontractor" means a person directly retained and compensated by a person who contracts with a governmental entity to provide a service as defined by Section 2155.001, Government Code. A subcontractor shall properly classify, as an employee or independent contractor in accordance with Chapter 201, any individual the subcontractor directly retains and compensates for services performed in connection with the contract for which the subcontractor is retained.

(c) A person who fails to properly classify an individual as required by Subsection (a) or (b) shall pay to the commission a penalty equal to \$200 for each individual that the person has not properly classified.

(d) The commission may not take action to collect a penalty under this section from a person after the third anniversary of the date on which the violation occurred.

No equivalent provision.

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2013.

(b) Section 214.0021, Labor Code, as added by this Act, takes effect January 1, 2014.

SECTION 2. This Act takes effect January 1, 2014.