

## **BILL ANALYSIS**

Senate Research Center  
83R8065 MAW-F

S.B. 676  
By: Carona  
Economic Development  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Worker misclassification is the term used to describe the practice of construction employers who keep their workers off payroll, classifying them as "independent contractors" to avoid paying unemployment insurance and federal income taxes. This practice has serious consequences for the industry, the workforce, and taxpayers.

Texas law defines "employment" as a service "performed by an individual for wages or under an express or implied contract of hire, unless it is shown to the satisfaction of the Texas Workforce Commission that the individual's performance of the service has been and will continue to be free from control or direction under the contract." By implication, an "independent contractor" is a person who has been hired for a service but does not meet this definition. In 2007, The Texas Workforce Commission adopted this "common law" test to help differentiate between an employee and an independent contractor.

S.B. 676 further specifies the characteristics that identify a person as an independent contractor within the construction industry and impose penalties on public and private employers who misclassify their workers. S.B. 676 provides an enforcement penalty for misclassifying workers of \$100 per employee for the first violation and \$1000 per employee for each subsequent violation.

As proposed, S.B. 676 amends current law relating to the classification of certain construction workers and the eligibility of those workers for unemployment benefits, and provides penalties.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter E, Chapter 201, Labor Code, by adding Section 201.079, as follows:

Sec. 201.079. SERVICE BY INDEPENDENT CONTRACTOR IN CONSTRUCTION.  
(a) Defines, in this section, "construction" and "independent contractor."

(b) Defines, in this subtitle, "employment."

SECTION 2. Amends Chapter 301, Labor Code, by adding Subchapter L, as follows:

#### **SUBCHAPTER L. CLASSIFICATION OF INDIVIDUAL EMPLOYED IN CONSTRUCTION**

Sec. 301.201. DEFINITIONS. Defines, in this subchapter, "construction," "contractor," "employee," and "independent contractor."

Sec. 301.202. INDEPENDENT CONTRACTOR. Provides that, for purposes of this subchapter, an individual is an independent contractor if the individual satisfies at least five of the following conditions:

- (1) the individual performs a service under a written contract with the person for whom the service is performed that states that the relationship of the individual to the person for whom the service is performed is that of an independent contractor and not an employee;
- (2) the individual represents that the individual is an independent contractor and not an employee;
- (3) the individual is required to submit to the person for whom a service is performed an Internal Revenue Service Form W-9 or a similar form providing the same information;
- (4) the individual operates a business entity in which the individual shares in the profits or losses of the entity;
- (5) the individual is not prohibited from hiring employees and acting as the employer of any employee of the individual by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship;
- (6) the individual has substantially invested in, and is required to furnish, necessary tools, supplies, or materials to perform a service;
- (7) the individual obtains and pays for any occupational license required by this state to perform a service;
- (8) the individual is free to perform services for any other person; or
- (9) the individual submits to the person for whom a service is performed evidence of any insurance coverage required by law to perform a construction service.

Sec. 301.203. APPLICABILITY; REBUTTABLE PRESUMPTION. (a) Prohibits an individual from being considered an employee based solely on the fact that the person for whom the individual is providing a service requires that any employee hired by the individual is required to submit to a criminal background check or preemployment drug screening, or possess a certain license or certification relating to the work the employee will perform.

(b) Provides that it is a rebuttable presumption that an individual providing construction services is an employee if the individual is not an independent contractor as provided by Section 301.202.

(c) Provides that a person for whom an individual is providing construction services is not required to report to the Texas Workforce Commission (TWC) under Subtitle A that the individual is an employee of the person if the person shows that the individual is an independent contractor as provided by Section 301.202; provides to the individual an Internal Revenue Service Form 1099, or a similar form issued by, or that meets the compliance guidelines of, the Internal Revenue Service, on which the person reports the amount paid to the individual in accordance with Internal Revenue Service requirements; and files the 1099 form described in this subsection with the Internal Revenue Service in accordance with Internal Revenue Service requirements.

Sec. 301.204. EMPLOYEE STATUS. Requires a contractor to properly classify each person providing construction services as either an employee or an independent contractor.

Sec. 301.205. INFORMATION REGARDING COMPLAINTS. Requires TWC to provide on its Internet website information regarding the procedure for the public to report violations of this subchapter.

Sec. 301.206. ADMINISTRATIVE PENALTY. (a) Authorizes TWC to impose an administrative penalty on a contractor who violates Section 301.204. Prohibits the amount of the penalty from exceeding \$100 for each individual who is not properly classified and \$1,000 for each individual who is not properly classified for each subsequent violation that occurs after the imposition of a penalty for a prior violation.

(b) Provides that any penalty issued under this section applies to a successor business entity that has one or more owners who jointly control at least 50 percent of the original employer and successor business entity, and is engaged in the same or similar business activity.

(c) Requires that an administrative penalty imposed under this section be imposed in the same manner as TWC imposes an administrative penalty under other law.

Sec. 301.207. NOTIFICATION TO GOVERNMENTAL ENTITY. Requires TWC, if TWC determines that a contractor has violated this subchapter, to provide notice of the violation to each governmental entity that TWC reasonably believes has received construction services provided by the contractor. Requires that the notice identify the contractor and, for each violation, specify the type of service provided and the location at which the service was provided, if known to TWC. Defines, in this section, "governmental entity."

Sec. 301.208. ANNUAL REPORT. Requires TWC to issue an annual report regarding compliance with and enforcement of this subchapter. Sets forth information required to be included in the report.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2013.