

By: Deshotel

H.B. No. 372

A BILL TO BE ENTITLED

AN ACT

relating to establishing the Workplace Fraud Prevention Act;  
providing penalties.

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

SECTION 1. Subtitle B, Title 4, Labor Code, is amended by  
adding Chapter 315 to read as follows:

CHAPTER 315. WORKPLACE FRAUD PREVENTION ACT

Sec. 315.001. SHORT TITLE. This chapter may be cited as the  
Workplace Fraud Prevention Act.

Sec. 315.002. DEFINITIONS. In this chapter:

(1) "Construction" means work related to the erection,  
improvement, alteration, repair, renovation, maintenance, or  
remodeling of a building, structure, appurtenance, road, highway,  
bridge, dam, levee, canal, jetty, or other improvement to or on real  
property, including moving, demolishing, dredging, shoring,  
scaffolding, drilling, blasting, and excavating real property.

(2) "Contractor" means a person who contracts to  
perform construction services, including a subcontractor.

(3) "Employee" means an individual who provides a  
service, including service in interstate commerce, for wages or  
under an express or implied contract of hire.

(4) "Independent contractor" means a person lawfully  
engaged in business who performs a construction service, under  
contract, for another person free from the control or specific

1 direction of that person, and who:

2 (A) is registered with the secretary of state and  
3 possesses a filing number; or

4 (B) possesses a valid tax identification number  
5 and:

6 (i) has unique skills; or

7 (ii) owns and operates a significant  
8 investment in equipment.

9 Sec. 315.003. APPLICABILITY. (a) This chapter does not  
10 apply to a common law or statutory action for tort liability and  
11 does not change or affect the common law interpretation of  
12 independent contractor status as it relates to tort liability or a  
13 workers' compensation claim.

14 (b) An individual is not an employee for purposes of this  
15 chapter if the individual's performance of construction services is  
16 determined by the commission to be free from the control or  
17 direction of the person for whom the services are performed.

18 Sec. 315.004. EMPLOYEE STATUS. A contractor shall properly  
19 classify an individual performing construction services as an  
20 employee.

21 Sec. 315.005. PROHIBITED ACTS. It is a violation of this  
22 chapter for:

23 (1) a contractor to fail to properly designate an  
24 individual as an employee of the contractor;

25 (2) a person to knowingly form or assist in the  
26 formation of a corporation, partnership, limited liability  
27 company, or other business entity, or pay or collect a fee for use

1 of a corporation, partnership, limited liability company, or other  
2 business entity, for the purpose of facilitating a violation of  
3 this chapter; or

4 (3) a person to knowingly assist, aid, or conspire  
5 with an individual in committing a violation of this chapter.

6 Sec. 315.006. TELEPHONE HOTLINE AND INTERNET WEBSITE. The  
7 commission shall provide a toll-free telephone number and Internet  
8 website for use by the public in reporting violations of this  
9 chapter. Information obtained by the commission under this chapter  
10 is confidential.

11 Sec. 315.007. DUTY TO INVESTIGATE. The commission shall  
12 investigate, in a timely manner, any credible complaint made under  
13 Section 315.006 that contains the name and contact information of  
14 the person alleged to have committed a violation, the job site  
15 location at which the alleged violation occurred, and a description  
16 of the alleged violation.

17 Sec. 315.008. ADMINISTRATIVE PENALTY. (a) The commission  
18 may impose an administrative penalty on a contractor or other  
19 person who violates this chapter. The amount of the penalty may not  
20 exceed:

21 (1) \$500 for each individual who is not properly  
22 designated as an employee of the contractor for the first violation  
23 of Section 315.005(1);

24 (2) \$5,000 for each individual who is not properly  
25 designated as an employee of the contractor for each subsequent  
26 violation of Section 315.005(1) that occurs after the imposition of  
27 a penalty for a prior violation of that subdivision and before the

1 fifth anniversary of the date of that imposition;

2 (3) \$500 for the first violation of Section 315.005(2)  
3 or (3); and

4 (4) \$5,000 for each subsequent violation of Section  
5 315.005(2) or (3) that occurs after the imposition of a penalty for  
6 a prior violation of either subdivision and before the fifth  
7 anniversary of the date of that imposition.

8 (b) Any penalty issued under this chapter applies to a  
9 successor business entity that:

10 (1) has one or more officers in common with the  
11 original employer; and

12 (2) is engaged in the same or similar business  
13 activity.

14 (c) An administrative penalty imposed under this section  
15 shall be imposed in the same manner as the commission imposes an  
16 administrative penalty under other law.

17 Sec. 315.009. NOTIFICATION OF OTHER VIOLATIONS. (a) If the  
18 commission determines that a contractor or other person has  
19 violated this chapter, the commission shall:

20 (1) initiate enforcement proceedings under Chapter  
21 213 to collect unpaid unemployment taxes plus interest;

22 (2) notify the Texas Department of Insurance of the  
23 violation and any possible violations of the Insurance Code; and

24 (3) notify the attorney general and any other  
25 appropriate prosecuting authority of any possible violation of  
26 other law.

27 (b) The commission may enter into an interagency agreement

1 with another state agency and adopt any rules necessary to  
2 administer this section.

3 Sec. 315.010. ANNUAL REPORT. (a) The commission shall  
4 issue an annual report regarding compliance with and enforcement of  
5 this chapter. The report must include:

6 (1) the number of complaints received through the  
7 hotline or Internet website under Section 315.006;

8 (2) the number of investigated complaints and any  
9 resulting findings;

10 (3) the amount of unemployment taxes, interest,  
11 administrative penalties, and fines collected under this chapter;  
12 and

13 (4) the number of referrals to other agencies or  
14 authorities under Section 315.009 and the outcomes of those  
15 referrals.

16 (b) The commission shall submit the report annually to the  
17 governor and legislature.

18 Sec. 315.011. POSTED NOTICE. A contractor shall post in a  
19 conspicuous location on the job site in English and Spanish the  
20 following notice:

21 (1) Every individual working for a contractor has the  
22 right to be properly classified by the contractor as an  
23 employee or independent contractor if the individual  
24 meets the requirements under the Workplace Fraud  
25 Prevention Act.

26 (2) If you believe you or someone else has not been  
27 properly classified as an employee or independent

1 contractor under the Workplace Fraud Prevention Act,  
2 contact the Texas Workforce Commission.

3 Sec. 315.012. CONTRACTOR AFFIDAVIT REQUIRED FOR CONTRACT  
4 WITH STATE OR POLITICAL SUBDIVISION; PENALTY. (a) A contract  
5 between this state or a political subdivision of this state and a  
6 contractor performing construction services must require:

7 (1) the contractor to submit an affidavit executed  
8 under penalty of perjury stating that:

9 (A) each individual performing services for the  
10 contractor has been properly classified as an employee or  
11 independent contractor under this chapter;

12 (B) the contractor is in compliance with the  
13 requirements of Subchapter B, Chapter 234, Family Code; and

14 (C) the contractor is not barred from contracting  
15 with this state or a political subdivision of this state under  
16 Subsection (c); and

17 (2) that a contractor performing construction  
18 services under the contract must comply with this chapter.

19 (b) A violation of this section by a contractor is grounds  
20 for rescission of the contract by this state or a political  
21 subdivision of this state.

22 (c) A contractor who knowingly violates Subsection (a) on  
23 more than one occasion by providing false affidavits shall be  
24 barred from contracting with this state or a political subdivision  
25 of this state until the third anniversary of the date of the most  
26 recent violation.

27 Sec. 315.013. WORKPLACE FRAUD PREVENTION ENFORCEMENT FUND.

1 The workplace fraud prevention enforcement fund is established to  
2 fund the enforcement of this chapter. The commission shall  
3 administer the fund. The fund consists of money appropriated to the  
4 fund by the legislature and any penalties collected under Section  
5 315.008.

6 SECTION 2. Section 315.012, Labor Code, as added by this  
7 Act, applies to a contract entered into on or after the effective  
8 date of this Act. A contract entered into before the effective date  
9 of this Act is governed by the law in effect on the date the contract  
10 was entered into, and the former law is continued in effect for that  
11 purpose.

12 SECTION 3. This Act takes effect September 1, 2013.