

By: Carona

S.B. No. 676

A BILL TO BE ENTITLED

AN ACT

relating to the classification of certain construction workers and the eligibility of those workers for unemployment benefits; providing penalties.

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

SECTION 1. Subchapter E, Chapter 201, Labor Code, is amended by adding Section 201.079 to read as follows:

Sec. 201.079. SERVICE BY INDEPENDENT CONTRACTOR IN CONSTRUCTION. (a) In this section, "construction" and "independent contractor" have the meanings assigned by Section 301.201.

(b) In this subtitle, "employment" does not include construction performed by an individual as an independent contractor.

SECTION 2. Chapter 301, Labor Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. CLASSIFICATION OF INDIVIDUAL EMPLOYED IN CONSTRUCTION

Sec. 301.201. DEFINITIONS. In this subchapter:

(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,

1 scaffolding, drilling, blasting, and excavating real property.

2 (2) "Contractor" means a person who contracts to
3 perform construction.

4 (3) "Employee" means an individual who performs
5 services for another under an express or implied contract of hire.

6 (4) "Independent contractor" means an individual who
7 is an independent contractor as provided by Section 301.202.

8 Sec. 301.202. INDEPENDENT CONTRACTOR. For purposes of this
9 subchapter, an individual is an independent contractor if the
10 individual satisfies at least five of the following conditions:

11 (1) the individual performs a service under a written
12 contract with the person for whom the service is performed that
13 states that the relationship of the individual to the person for
14 whom the service is performed is that of an independent contractor
15 and not an employee;

16 (2) the individual represents that the individual is
17 an independent contractor and not an employee;

18 (3) the individual is required to submit to the person
19 for whom a service is performed an Internal Revenue Service Form W-9
20 or a similar form providing the same information;

21 (4) the individual operates a business entity in which
22 the individual shares in the profits or losses of the entity;

23 (5) the individual is not prohibited from hiring
24 employees and acting as the employer of any employee of the
25 individual by paying wages, directing activities, and performing
26 other similar functions characteristic of an employer-employee
27 relationship;

1 (6) the individual has substantially invested in, and
2 is required to furnish, necessary tools, supplies, or materials to
3 perform a service;

4 (7) the individual obtains and pays for any
5 occupational license required by this state to perform a service;

6 (8) the individual is free to perform services for any
7 other person; or

8 (9) the individual submits to the person for whom a
9 service is performed evidence of any insurance coverage required by
10 law to perform a construction service.

11 Sec. 301.203. APPLICABILITY; REBUTTABLE PRESUMPTION. (a)

12 An individual may not be considered an employee based solely on the
13 fact that the person for whom the individual is providing a service
14 requires that any employee hired by the individual must:

15 (1) submit to a criminal background check or
16 preemployment drug screening; or

17 (2) possess a certain license or certification
18 relating to the work the employee will perform.

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

22 (c) A person for whom an individual is providing
23 construction services is not required to report to the commission
24 under Subtitle A that the individual is an employee of the person if
25 the person:

26 (1) shows that the individual is an independent
27 contractor as provided by Section 301.202;

1 (2) provides to the individual an Internal Revenue
2 Service Form 1099, or a similar form issued by, or that meets the
3 compliance guidelines of, the Internal Revenue Service, on which
4 the person reports the amount paid to the individual in accordance
5 with Internal Revenue Service requirements; and

6 (3) files the form described by Subdivision (2) with
7 the Internal Revenue Service in accordance with Internal Revenue
8 Service requirements.

9 Sec. 301.204. EMPLOYEE STATUS. A contractor shall properly
10 classify each person providing construction services as either an
11 employee or an independent contractor.

12 Sec. 301.205. INFORMATION REGARDING COMPLAINTS. The
13 commission shall provide on its Internet website information
14 regarding the procedure for the public to report violations of this
15 subchapter.

16 Sec. 301.206. ADMINISTRATIVE PENALTY. (a) The commission
17 may impose an administrative penalty on a contractor who violates
18 Section 301.204. The amount of the penalty may not exceed:

19 (1) \$100 for each individual who is not properly
20 classified; and

21 (2) \$1,000 for each individual who is not properly
22 classified for each subsequent violation that occurs after the
23 imposition of a penalty for a prior violation.

24 (b) Any penalty issued under this section applies to a
25 successor business entity that:

26 (1) has one or more owners who jointly control at least
27 50 percent of the:

1 (A) original employer; and
2 (B) successor business entity; and
3 (2) is engaged in the same or similar business
4 activity.

5 (c) An administrative penalty imposed under this section
6 shall be imposed in the same manner as the commission imposes an
7 administrative penalty under other law.

8 Sec. 301.207. NOTIFICATION TO GOVERNMENTAL ENTITY. If the
9 commission determines that a contractor has violated this
10 subchapter, the commission shall provide notice of the violation to
11 each governmental entity that the commission reasonably believes
12 has received construction services provided by the contractor. The
13 notice must identify the contractor and, for each violation,
14 specify the type of service provided and the location at which the
15 service was provided, if known to the commission. In this section,
16 "governmental entity" has the meaning assigned by Section 406.096.

17 Sec. 301.208. ANNUAL REPORT. The commission shall issue an
18 annual report regarding compliance with and enforcement of this
19 subchapter. The report must include:

20 (1) the number of complaints received from the public;
21 (2) the number of investigated complaints and any
22 resulting findings; and

23 (3) the amount of unemployment taxes, interest,
24 administrative penalties, and fines actually collected as a result
25 of:

26 (A) violations of this subchapter; or
27 (B) the exclusion of construction performed by an

1 individual from the application of Subtitle A, unless the services
2 are excluded by application of Section 201.079.

3 SECTION 3. The change in law made by this Act applies only
4 to a claim for unemployment compensation benefits that is filed
5 with the Texas Workforce Commission on or after the effective date
6 of this Act. A claim filed before the effective date of this Act is
7 governed by the law in effect on the date the claim was filed, and
8 the former law is continued in effect for that purpose.

9 SECTION 4. This Act takes effect September 1, 2013.