

By: Hinojosa

S.B. No. 1868

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the classification of workers for purposes of the Texas
3 Unemployment Compensation Act; providing an administrative
4 penalty.

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

6 SECTION 1. Section 201.041, Labor Code, is amended to read
7 as follows:

8 Sec. 201.041. GENERAL DEFINITION OF EMPLOYMENT;
9 PRESUMPTION OF EMPLOYMENT. (a) In this subtitle, "employment"
10 means a service, including service in interstate commerce,
11 performed by an individual for wages or under an express or implied
12 contract of hire.

13 (b) An individual performing a service for wages or under an
14 express or implied contract of hire, other than a service described
15 by Subchapter E, is presumed to be an employee of the person for
16 whom the service is performed.

17 (c) A presumption under Subsection (b) may be rebutted if
18 the person for whom the service is performed shows~~[, unless it is~~
19 ~~shown]~~ to the satisfaction of the commission that the individual's
20 performance of the service has been and will continue to be free
21 from control or direction under the contract and in fact.

22 SECTION 2. Section 203.202, Labor Code, is amended by
23 adding Subsection (a-1) to read as follows:

24 (a-1) Notwithstanding Subsection (a), money credited to the

1 special administration fund from penalties assessed under Section
2 214.008(c-1) shall be used only to pay costs related to
3 identifying, investigating, and preventing worker
4 misclassification.

5 SECTION 3. The heading to Section 214.008, Labor Code, is
6 amended to read as follows:

7 Sec. 214.008. MISCLASSIFICATION OF [~~CERTAIN~~] WORKERS;
8 PENALTY.

9 SECTION 4. Section 214.008, Labor Code, is amended by
10 adding Subsections (b-1), (c-1), and (c-2) to read as follows:

11 (b-1) A person, other than a person to whom Subsection (a)
12 or (b) applies, shall properly classify as an employee or
13 independent contractor in accordance with Chapter 201 and pay a
14 contribution on wages for employment as required by Section 204.002
15 for any individual the person directly retains and compensates for
16 the performance of a service.

17 (c-1) The commission may assess a penalty against a person
18 who fails to properly classify, or pay a contribution on wages for,
19 an individual as required by Subsection (b-1) if the commission
20 determines that the person has previously failed to properly
21 classify, or pay a contribution on wages for, one or more
22 individuals as required by that subsection.

23 (c-2) The amount of a penalty assessed under Subsection
24 (c-1) may not exceed \$200 for each individual that the person has
25 not properly classified or for whom the person has not paid a
26 contribution on wages for employment. The amount of the penalty
27 must be based on:

1 (1) the seriousness of the violation, including the
2 nature, circumstances, extent, and gravity of any prohibited acts;

3 (2) the history of previous violations;

4 (3) the amount necessary to deter future violations;

5 or

6 (4) efforts to correct the violation.

7 SECTION 5. Section [214.008](#), Labor Code, as amended by this
8 Act, applies only to service performed by an individual on or after
9 the effective date of this Act. Service performed by an individual
10 before the effective date of this Act is governed by the law in
11 effect on the date the service was performed, and the former law is
12 continued in effect for that purpose.

13 SECTION 6. This Act takes effect September 1, 2019.