87R11426 RDS-F

By:  Turner of Tarrant H.B. No. 3656

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

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

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

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

Sec. 301.202.  INDEPENDENT CONTRACTOR. 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) An individual may not be 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 must:

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

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

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

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

(2)  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

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

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

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

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

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

(2)  $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)  Any penalty issued under this section applies to a successor business entity that:

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

(A)  original employer; and

(B)  successor business entity; and

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

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

Sec. 301.207.  NOTIFICATION TO GOVERNMENTAL ENTITY. If the commission determines that a contractor has violated this subchapter, the commission shall provide notice of the violation to each governmental entity that the commission reasonably believes has received construction services provided by the contractor. The notice must 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 the commission. In this section, "governmental entity" has the meaning assigned by Section 406.096.

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

(1)  the number of complaints received from the public;

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

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

(A)  violations of this subchapter; or

(B)  the exclusion of construction performed by an individual from the application of Subtitle A, unless the services are excluded by application of Section 201.079.

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

SECTION 4.  This Act takes effect September 1, 2021.