

By: Turner of Tarrant

H.B. No. 3656

Substitute the following for H.B. No. 3656:

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C.S.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" has the meaning 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.

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

3           (3) "Employee" has the meaning assigned by Section  
4 61.001.

5           Sec. 301.202. APPLICABILITY. (a) An individual may not be  
6 considered an employee based solely on the fact that the person for  
7 whom the individual is providing construction services requires  
8 that any employee hired by the individual must:

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

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

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

17           (1) shows that the individual is an independent  
18 contractor;

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

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

27           (c) This subchapter does not apply to services performed by

1 an individual in the employ of:

2 (1) a state, a political subdivision of a state, or an  
3 Indian tribe or an instrumentality of a state, political  
4 subdivision of a state, or Indian tribe that is wholly owned by one  
5 or more states, political subdivisions, or Indian tribes, provided  
6 that the services are excluded from employment as defined in the  
7 Federal Unemployment Tax Act (26 U.S.C. Section 3301 et seq.)  
8 solely because of Section 3306(c)(7) of that Act; or

9 (2) a religious, charitable, educational, or other  
10 organization, provided that the services are excluded from  
11 employment as defined in the Federal Unemployment Tax Act (26  
12 U.S.C. Section 3301 et seq.) solely because of Section 3306(c)(8)  
13 of that Act.

14 Sec. 301.203. EMPLOYEE STATUS. A contractor shall properly  
15 classify each individual providing construction services as either  
16 an employee or an independent contractor in accordance with  
17 commission rules.

18 Sec. 301.204. INFORMATION REGARDING COMPLAINTS. The  
19 commission shall provide on its Internet website information  
20 regarding the procedure for the public to report violations of this  
21 subchapter.

22 Sec. 301.205. ADMINISTRATIVE PENALTY. (a) The commission  
23 may impose an administrative penalty on a contractor who violates  
24 Section 301.203. The amount of the penalty may not exceed:

25 (1) \$100 for each individual who is not properly  
26 classified; and

27 (2) \$1,000 for each individual who is not properly

1 classified for each subsequent violation that occurs after the  
2 imposition of a penalty for a prior violation.

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

5 (1) has one or more owners who jointly control at least  
6 50 percent of the:

7 (A) original employer; and

8 (B) successor business entity; and

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

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

14 Sec. 301.206. NOTIFICATION TO GOVERNMENTAL ENTITY. If the  
15 commission determines that a contractor has violated this  
16 subchapter, the commission shall provide notice of the violation to  
17 each governmental entity that the commission reasonably believes  
18 has received construction services provided by the contractor. The  
19 notice must identify the contractor and, for each violation,  
20 specify the type of service provided and the location at which the  
21 service was provided, if known to the commission. In this section,  
22 "governmental entity" has the meaning assigned by Section 406.096.

23 Sec. 301.207. ANNUAL REPORT. The commission shall issue an  
24 annual report regarding compliance with and enforcement of this  
25 subchapter. The report must include:

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

27 (2) the number of investigated complaints and any

1 resulting findings; and

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

5 (A) violations of this subchapter; or

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

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

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