

BILL ANALYSIS

H.B. 1054
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Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Employee misclassification occurs when an employer improperly classifies a worker as an independent contractor rather than as an employee. In 2014, an investigation by the *Fort Worth Star-Telegram* found that 37.7 percent of Texas construction employees were misclassified as independent contractors. Misclassified workers are denied important rights and benefits, including the right to minimum wages and overtime pay, workers' compensation, health insurance, and unemployment benefits. In addition, when an employer commits payroll fraud, the employer shifts their share of payroll taxes onto the worker, meaning that the worker, who is often earning poverty-level wages, is required to pay both their own share and their employer's share in payroll taxes. Current law only addresses misclassification on government contracts and the Texas Workforce Commission lacks the tools needed to prevent it. H.B. 1054 seeks to address these issues by providing for the classification of certain construction workers and the eligibility of those workers for unemployment benefits.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 1054 amends the Labor Code to require a contractor to properly classify each individual providing construction services as either an employee or an independent contractor in accordance with Texas Workforce Commission (TWC) rules and to exclude construction, as defined by the bill, performed by an individual as an independent contractor from the term "employment" for purposes of the Texas Unemployment Compensation Act. An individual may not be considered an employee based solely on the fact that the person for whom the individual is providing construction services requires that any hired employee submit to a criminal background check or preemployment drug screening or possess a certain license or certification relating to the work the employee will perform. The bill establishes that a person for whom an individual is providing construction services is not required to report to TWC under the act that the individual is the person's employee if the person does the following:

- shows that the individual is an independent contractor;
- provides to the individual a certain form on which the person reports the amount paid to the individual in accordance with IRS requirements; and
- files the form with the IRS in accordance with IRS requirements.

The bill exempts from its provisions certain services that are performed by an individual in the employ of a state, political subdivision, certain Indian tribes, and certain religious, charitable,

educational, or other organizations and that are excluded from employment as defined in the Federal Unemployment Tax Act.

H.B. 1054 requires TWC to provide on its website information regarding the procedure for the public to report violations of the classification requirement and authorizes TWC to impose an administrative penalty on a contractor who violates the classification requirement in maximum amounts of \$100 for each individual who is not properly classified and \$1,000 for each such individual for each subsequent violation that occurs. Any issued penalty applies to a successor business entity that meets certain ownership criteria and that is engaged in the same or similar business activity. The bill requires TWC, on the determination that a contractor has violated the classification requirement, to provide notice of the violation to each governmental entity that TWC reasonably believes has received construction services provided by the contractor and sets out the required contents of the notice.

H.B. 1054 requires TWC to issue an annual report regarding compliance with and enforcement of the classification requirement that includes the following information:

- the number of complaints received from the public;
- the number of investigated complaints and any resulting findings; and
- the amount of unemployment taxes, interest, administrative penalties, and fines actually collected as a result of the following:
 - violations of the classification requirement; or
 - the exclusion of construction performed by an individual from the act, unless those services are excluded because the individual is an independent contractor.

The bill applies only to a claim for unemployment compensation benefits that is filed with TWC on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.