



Rep. Dan Reitz

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LRB093 20882 RCE 49284 a

1 AMENDMENT TO HOUSE BILL 4883

2 AMENDMENT NO. _____. Amend House Bill 4883 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Truth in Employment Act.

6 Section 3. Purpose. This Act is intended to address the
7 practice of misclassifying employees as independent
8 contractors.

9 Section 5. Definition. As used in this Act, "contractor"
10 means any person who, in any capacity other than as the
11 employee of another for wages as the sole compensation,
12 undertakes to construct, alter, repair, move, wreck, or
13 demolish any fixture or structure. "Contractor" includes a
14 subcontractor, but does not include a person who furnishes only
15 materials or supplies.

16 Section 10. Filing by contractors.

17 (a) A contractor for whom a person is performing work and
18 is classified as an independent contractor with respect to that
19 work must file with the Department of Revenue a statement
20 regarding that person, together with a \$5 filing fee. The
21 Department of Revenue shall adopt rules concerning the form,
22 contents, and filing of the statement. The statement shall

1 include: the name and address of the contractor and the person
2 performing the work; the name and address of the general
3 contractor (if the general contractor is not the contractor for
4 whom the person is performing the work); and any other
5 information required by the Department of Revenue. A separate
6 statement shall be filed by the contractor for each calendar
7 year during which the worker performs work for the contractor.
8 The statement shall be filed no later than the first date of
9 the calendar year on which the worker performs work for the
10 contractor.

11 (b) A contractor that is required to file a statement under
12 subsection (a) and does not file the statement as required
13 under subsection (a) shall pay a \$10 penalty in addition to the
14 \$5 filing fee.

15 Section 15. Notice.

16 (a) The Department of Revenue, the Department of Employment
17 Security, and the Industrial Commission shall post a summary of
18 the requirements of this Act on their web sites.

19 (b) The Department of Revenue shall post a summary of the
20 requirements of this Act on bulletin boards in each office of
21 the Department.

22 (c) A contractor for whom one or more persons classified as
23 independent contractors are performing work shall post and keep
24 posted, in conspicuous places on each job site where those
25 persons work and in each of its offices, a notice, prepared by
26 the Department of Revenue, summarizing the requirements of this
27 Act. The Department of Revenue shall furnish copies of
28 summaries to contractors upon request without charge.

29 Section 20. Investigations.

30 (a) The Department of Revenue shall commence an
31 investigation if it finds, based on statements filed under this
32 Act or other information supplied to the Department or

1 otherwise obtained by the Department, that there is reason to
2 suspect that a contractor has misclassified one or more
3 employees as independent contractors.

4 (b) The Department of Revenue shall hire as many
5 investigators as may be necessary to carry out the purposes of
6 this Act.

7 Section 25. Misclassification of employees as independent
8 contractors.

9 (a) If a contractor is a successful bidder for a
10 construction project and knowingly or intentionally
11 misclassifies one or more of its employees as independent
12 contractors, the contractor is liable to an unsuccessful
13 bidder, or an entity contracting with an unsuccessful bidder
14 (including, but not limited to, a labor organization), for
15 damages suffered by the unsuccessful bidder or entity as a
16 result of the unsuccessful bidder's competitive bid for the
17 construction project not being accepted due to the successful
18 bidder's knowing or intentional misclassification of its
19 employees as independent contractors.

20 (b) If, upon completion of an investigation commenced
21 pursuant to subsection (a) of Section 20 of this Act, the
22 Department of Revenue determines that a contractor has
23 knowingly or intentionally misclassified one or more of its
24 employees as independent contractors on a construction
25 project:

26 (1) the Department may: (i) direct the employer to
27 cease its operations; (ii) direct the employer to pay \$250
28 for each day during which the violation continues; (iii)
29 direct the employer to pay \$500 for each day during which a
30 second or subsequent violation occurs that involves
31 different employees than those involved in an earlier
32 violation by that employer; and (iv) require the employer
33 to continue to pay, for 10 days, employees affected by the

1 determination;

2 (2) no licenses or permits of any kind may be issued to
3 the employer by any State agency or officer or any unit of
4 local government nor may any such licenses or permits be
5 renewed by any State agency or officer or any unit of local
6 government until the Department determines that an
7 employer has cured the misclassification; and

8 (3) no State agency or officer may enter into any
9 contracts with the employer until 2 years have elapsed
10 since the Department has determined that an employer has
11 cured the misclassification.

12 (c) A contractor that knowingly or intentionally
13 misclassifies one or more of its employees as independent
14 contractors on a construction project commits a Class C
15 misdemeanor. A contractor that commits a second or subsequent
16 violation commits a Class 4 felony if the second or subsequent
17 violation involves different employees than those involved in
18 an earlier violation.

19 Section 30. Attorney General; State's Attorneys. Criminal
20 violations of this Act shall be prosecuted by the Attorney
21 General or the appropriate State's Attorney. The Department of
22 Revenue shall refer matters to the Attorney General and the
23 appropriate State's Attorney upon determining that a criminal
24 violation may have occurred.

25 Section 35. Truth in Employment Fund. The Truth in
26 Employment Fund is created as a special fund in the State
27 treasury. All fees and penalties received by the Department of
28 Revenue under this Act shall be deposited into the Fund. Moneys
29 in the Fund shall be used, subject to appropriation by the
30 General Assembly, by the Department of Revenue for
31 administration, investigation, and other expenses incurred in
32 carrying out its powers and duties under this Act. Any moneys

1 in the Fund at the end of a fiscal year in excess of a
2 \$1,000,000 reserve shall be transferred to the General Revenue
3 Fund.

4 Section 40. Rulemaking. In addition to any rulemaking
5 required by any other provision of this Act, the Department of
6 Revenue may adopt reasonable rules to implement and administer
7 this Act.

8 Section 45. Judicial review. A final administrative
9 decision of the Department of Revenue under this Act is subject
10 to judicial review under the Administrative Review Law.

11 Section 50. No waivers.

12 (a) There shall be no waiver of any provision of this Act.

13 (b) It is a Class C misdemeanor for a contractor to attempt
14 to induce any individual to waive any provision of this Act.

15 Section 85. The Department of Employment Security Law of
16 the Civil Administrative Code of Illinois is amended by adding
17 Section 1005-160 as follows:

18 (20 ILCS 1005/1005-160 new)

19 Sec. 1005-160. Misclassification of employees as
20 independent contractors. The Department shall cooperate with
21 the Department of Revenue under the Truth in Employment Act by
22 providing information to the Department of Revenue concerning
23 any suspected misclassification by a contractor of one or more
24 of its employees as independent contractors.

25 Section 90. The State Finance Act is amended by adding
26 Section 5.625 as follows:

27 (30 ILCS 105/5.625 new)

1 Sec. 5.625. The Truth in Employment Fund.

2 Section 95. The Workers' Compensation Act is amended by
3 adding Section 26.1 as follows:

4 (820 ILCS 305/26.1 new)

5 Sec. 26.1. Misclassification of employees as independent
6 contractors. The Commission shall cooperate with the
7 Department of Revenue under the Truth in Employment Act by
8 providing information to the Department of Revenue concerning
9 any suspected misclassification by a contractor of one or more
10 of its employees as independent contractors.

11 Section 97. Severability. The provisions of this Act are
12 severable under Section 1.31 of the Statute on Statutes.".