



Rep. Dan Reitz

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LRB093 20882 WGH 50319 a

1 AMENDMENT TO HOUSE BILL 4883

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

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

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

10 Section 5. Definition. As used in this Act:

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

17 "Department" means the Department of Revenue.

18 Section 10. Filing by contractors.

19 (a) A contractor for whom a person is performing work on a
20 construction project and is classified as an independent
21 contractor with respect to that work must file with the
22 Department a statement regarding that person. The Department

1 shall adopt rules concerning the form, contents, and filing of
2 the statement. The statement shall be available in English and
3 Spanish and shall include: the name and address of the
4 contractor and the person performing the work; the name and
5 address of the general contractor (if the general contractor is
6 not the contractor for whom the person is performing the work);
7 and any other information required by the Department. A
8 separate statement shall be filed by the contractor for each
9 calendar year during which the worker performs work for the
10 contractor. The statement shall be filed no later than the
11 first date of the calendar year on which the worker performs
12 work for the contractor. The information obtained by the
13 Department through the statement is confidential and shall be
14 used solely for the purposes of this Act.

15 (b) A contractor that is required to file a statement under
16 subsection (a) and does not timely file that statement shall
17 pay, when it files the statement, a \$10 late-filing penalty to
18 the Department.

19 Section 15. Notice.

20 (a) The Department shall post a summary of the requirements
21 of this Act in English and Spanish on its web site and on
22 bulletin boards in each of its offices.

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

30 Section 20. Investigations.

31 (a) The Department shall commence an investigation if a
32 report is not timely filed under subsection (a) of Section 10

1 or if the Department finds, based on statements filed under
2 this Act or other information supplied to the Department or
3 otherwise obtained by the Department, that there is reason to
4 suspect that a contractor has misclassified one or more
5 employees as independent contractors.

6 (b) A final determination by the United States Internal
7 Revenue Service or a federal court that a person is an employee
8 is deemed correct for all purposes under this Act.

9 (c) The Department shall hire as many investigators as may
10 be necessary to carry out the purposes of this Act.

11 Section 25. Misclassification of employees as independent
12 contractors.

13 (a) If, upon completion of an investigation commenced
14 pursuant to subsection (a) of Section 20 of this Act, the
15 Department determines that a contractor has misclassified one
16 or more employees as independent contractors on a construction
17 project, that contractor is subject to penalties and interest
18 as provided in subsections (c) and (d) of Section 1002 of the
19 Illinois Income Tax Act.

20 (b) If, upon completion of an investigation commenced
21 pursuant to subsection (a) of Section 20 of this Act, the
22 Department determines that a contractor has knowingly or
23 intentionally misclassified one or more employees as
24 independent contractors on a construction project, the
25 Department may: (i) direct the employer to cease its operations
26 on that project; (ii) direct the employer to pay \$200 to the
27 Department for each day during which the violation continues;
28 (iii) direct the employer to pay \$400 to the Department for
29 each day during which a second or subsequent violation occurs
30 that involves different employees than those involved in an
31 earlier violation by that employer; and (iv) require the
32 employer to continue to pay, for 5 days, employees affected by
33 the determination.

1 (c) A contractor that knowingly or intentionally
2 misclassifies one or more of its employees as independent
3 contractors on a construction project commits a Class C
4 misdemeanor. A contractor that commits a second or subsequent
5 violation commits a Class 4 felony if the second or subsequent
6 violation involves different employees than those involved in
7 an earlier violation.

8 Section 30. Attorney General; State's Attorneys. Criminal
9 violations of this Act shall be prosecuted by the Attorney
10 General or the appropriate State's Attorney. The Department
11 shall refer matters to the Attorney General and the appropriate
12 State's Attorney upon determining that a criminal violation may
13 have occurred.

14 Section 35. Truth in Employment Fund. The Truth in
15 Employment Fund is created as a special fund in the State
16 treasury. All moneys received by the Department under this Act
17 shall be deposited into the Fund. Moneys in the Fund shall be
18 used, subject to appropriation by the General Assembly, by the
19 Department for administration, investigation, and other
20 expenses incurred in carrying out its powers and duties under
21 this Act. Any moneys in the Fund at the end of a fiscal year in
22 excess of a \$1,000,000 reserve shall be transferred to the
23 General Revenue Fund.

24 Section 40. Rulemaking. In addition to any rulemaking
25 required by any other provision of this Act, the Department may
26 adopt reasonable rules to implement and administer this Act.

27 Section 45. Judicial review. A final administrative
28 decision of the Department under this Act is subject to
29 judicial review under the Administrative Review Law.

1 Section 50. No waivers.

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

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

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

8 (20 ILCS 1005/1005-160 new)

9 Sec. 1005-160. Misclassification of employees as
10 independent contractors. The Department shall cooperate with
11 the Department of Revenue under the Truth in Employment Act by
12 providing information to the Department of Revenue concerning
13 any suspected misclassification by a contractor of one or more
14 of its employees as independent contractors.

15 Section 90. The State Finance Act is amended by adding
16 Section 5.625 as follows:

17 (30 ILCS 105/5.625 new)

18 Sec. 5.625. The Truth in Employment Fund.

19 Section 92. The Illinois Income Tax Act is amended by
20 changing Section 917 as follows:

21 (35 ILCS 5/917) (from Ch. 120, par. 9-917)

22 Sec. 917. Confidentiality and information sharing.

23 (a) Confidentiality. Except as provided in this Section,
24 all information received by the Department from returns filed
25 under this Act, or from any investigation conducted under the
26 provisions of this Act, shall be confidential, except for
27 official purposes within the Department or pursuant to official
28 procedures for collection of any State tax or pursuant to an

1 investigation or audit by the Illinois State Scholarship
2 Commission of a delinquent student loan or monetary award or
3 enforcement of any civil or criminal penalty or sanction
4 imposed by this Act or by another statute imposing a State tax,
5 and any person who divulges any such information in any manner,
6 except for such purposes and pursuant to order of the Director
7 or in accordance with a proper judicial order, shall be guilty
8 of a Class A misdemeanor. However, the provisions of this
9 paragraph are not applicable to information furnished to a
10 licensed attorney representing the taxpayer where an appeal or
11 a protest has been filed on behalf of the taxpayer.

12 (b) Public information. Nothing contained in this Act shall
13 prevent the Director from publishing or making available to the
14 public the names and addresses of persons filing returns under
15 this Act, or from publishing or making available reasonable
16 statistics concerning the operation of the tax wherein the
17 contents of returns are grouped into aggregates in such a way
18 that the information contained in any individual return shall
19 not be disclosed.

20 (c) Governmental agencies. The Director may make available
21 to the Secretary of the Treasury of the United States or his
22 delegate, or the proper officer or his delegate of any other
23 state imposing a tax upon or measured by income, for
24 exclusively official purposes, information received by the
25 Department in the administration of this Act, but such
26 permission shall be granted only if the United States or such
27 other state, as the case may be, grants the Department
28 substantially similar privileges. The Director may exchange
29 information with the Illinois Department of Public Aid and the
30 Department of Human Services (acting as successor to the
31 Department of Public Aid under the Department of Human Services
32 Act) for the purpose of verifying sources and amounts of income
33 and for other purposes directly connected with the
34 administration of this Act and the Illinois Public Aid Code.

1 The Director may exchange information with the Director of the
2 Department of Employment Security for the purpose of verifying
3 sources and amounts of income and for other purposes directly
4 connected with the administration of this Act and Acts
5 administered by the Department of Employment Security. The
6 Director may make available to the Illinois Industrial
7 Commission information regarding employers for the purpose of
8 verifying the insurance coverage required under the Workers'
9 Compensation Act and Workers' Occupational Diseases Act.

10 The Director may make available to any State agency,
11 including the Illinois Supreme Court, which licenses persons to
12 engage in any occupation, information that a person licensed by
13 such agency has failed to file returns under this Act or pay
14 the tax, penalty and interest shown therein, or has failed to
15 pay any final assessment of tax, penalty or interest due under
16 this Act. The Director may make available to any State agency,
17 including the Illinois Supreme Court, information regarding
18 whether a bidder, contractor, or an affiliate of a bidder or
19 contractor has failed to file returns under this Act or pay the
20 tax, penalty, and interest shown therein, or has failed to pay
21 any final assessment of tax, penalty, or interest due under
22 this Act, for the limited purpose of enforcing bidder and
23 contractor certifications. For purposes of this Section, the
24 term "affiliate" means any entity that (1) directly,
25 indirectly, or constructively controls another entity, (2) is
26 directly, indirectly, or constructively controlled by another
27 entity, or (3) is subject to the control of a common entity.
28 For purposes of this subsection (a), an entity controls another
29 entity if it owns, directly or individually, more than 10% of
30 the voting securities of that entity. As used in this
31 subsection (a), the term "voting security" means a security
32 that (1) confers upon the holder the right to vote for the
33 election of members of the board of directors or similar
34 governing body of the business or (2) is convertible into, or

1 entitles the holder to receive upon its exercise, a security
2 that confers such a right to vote. A general partnership
3 interest is a voting security.

4 The Director may make available to any State agency,
5 including the Illinois Supreme Court, units of local
6 government, and school districts, information regarding
7 whether a bidder or contractor is an affiliate of a person who
8 is not collecting and remitting Illinois Use taxes, for the
9 limited purpose of enforcing bidder and contractor
10 certifications.

11 The Director may make any information concerning a criminal
12 violation that may have occurred under the Truth in Employment
13 Act available to the Attorney General or the appropriate
14 State's Attorney when the Department refers a matter under
15 Section 30 of the Truth in Employment Act.

16 The Director may also make available to the Secretary of
17 State information that a corporation which has been issued a
18 certificate of incorporation by the Secretary of State has
19 failed to file returns under this Act or pay the tax, penalty
20 and interest shown therein, or has failed to pay any final
21 assessment of tax, penalty or interest due under this Act. An
22 assessment is final when all proceedings in court for review of
23 such assessment have terminated or the time for the taking
24 thereof has expired without such proceedings being instituted.
25 For taxable years ending on or after December 31, 1987, the
26 Director may make available to the Director or principal
27 officer of any Department of the State of Illinois, information
28 that a person employed by such Department has failed to file
29 returns under this Act or pay the tax, penalty and interest
30 shown therein. For purposes of this paragraph, the word
31 "Department" shall have the same meaning as provided in Section
32 3 of the State Employees Group Insurance Act of 1971.

33 (d) The Director shall make available for public inspection
34 in the Department's principal office and for publication, at

1 cost, administrative decisions issued on or after January 1,
2 1995. These decisions are to be made available in a manner so
3 that the following taxpayer information is not disclosed:

4 (1) The names, addresses, and identification numbers
5 of the taxpayer, related entities, and employees.

6 (2) At the sole discretion of the Director, trade
7 secrets or other confidential information identified as
8 such by the taxpayer, no later than 30 days after receipt
9 of an administrative decision, by such means as the
10 Department shall provide by rule.

11 The Director shall determine the appropriate extent of the
12 deletions allowed in paragraph (2). In the event the taxpayer
13 does not submit deletions, the Director shall make only the
14 deletions specified in paragraph (1).

15 The Director shall make available for public inspection and
16 publication an administrative decision within 180 days after
17 the issuance of the administrative decision. The term
18 "administrative decision" has the same meaning as defined in
19 Section 3-101 of Article III of the Code of Civil Procedure.
20 Costs collected under this Section shall be paid into the Tax
21 Compliance and Administration Fund.

22 (e) Nothing contained in this Act shall prevent the
23 Director from divulging information to any person pursuant to a
24 request or authorization made by the taxpayer, by an authorized
25 representative of the taxpayer, or, in the case of information
26 related to a joint return, by the spouse filing the joint
27 return with the taxpayer.

28 (Source: P.A. 93-25, eff. 6-20-03.)

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

31 (820 ILCS 305/26.1 new)

32 Sec. 26.1. Misclassification of employees as independent

1 contractors. The Commission shall cooperate with the
2 Department of Revenue under the Truth in Employment Act by
3 providing information to the Department of Revenue concerning
4 any suspected misclassification by a contractor of one or more
5 of its employees as independent contractors.

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