

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Truth  
5 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:

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

16 "Department" means the Department of Revenue.

17 Section 10. Filing by contractors.

18 (a) A contractor for whom a person is performing work on a  
19 construction project and is classified as an independent  
20 contractor with respect to that work must file with the  
21 Department a statement regarding that person. The Department  
22 shall adopt rules concerning the form, contents, and filing of  
23 the statement. The statement shall be available in English and  
24 Spanish and shall include: the name and address of the  
25 contractor and the person performing the work; the name and  
26 address of the general contractor (if the general contractor is  
27 not the contractor for whom the person is performing the work);  
28 and any other information required by the Department. A  
29 separate statement shall be filed by the contractor for each  
30 calendar year during which the worker performs work for the

1 contractor. The statement shall be filed no later than 3 days  
2 after the first date of the calendar year on which the worker  
3 performs work for the contractor. The information obtained by  
4 the Department through the statement is confidential and shall  
5 be used solely for the purposes of this Act.

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

10 Section 15. Notice.

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

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

21 Section 20. Investigations.

22 (a) The Department shall commence an investigation if a  
23 report is not timely filed under subsection (a) of Section 10  
24 or if the Department finds, based on statements filed under  
25 this Act or other information supplied to the Department or  
26 otherwise obtained by the Department, that there is reason to  
27 suspect that a contractor has misclassified one or more  
28 employees as independent contractors.

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

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

1 Section 25. Misclassification of employees as independent  
2 contractors.

3 (a) If, upon completion of an investigation commenced  
4 pursuant to subsection (a) of Section 20 of this Act, the  
5 Department determines that a contractor has misclassified one  
6 or more employees as independent contractors on a construction  
7 project, that contractor is subject to penalties and interest  
8 as provided in subsections (c) and (d) of Section 1002 of the  
9 Illinois Income Tax Act. Procedures for notice, protest, and  
10 hearings shall be in accordance with the Illinois Income Tax  
11 Act and the rules adopted under that Act.

12 (b) If, upon completion of an investigation commenced  
13 pursuant to subsection (a) of Section 20 of this Act, the  
14 Department determines that a contractor has knowingly or  
15 intentionally misclassified one or more employees as  
16 independent contractors on a construction project, the  
17 Department may: (i) direct the employer to cease its operations  
18 on that project; (ii) direct the employer to pay \$200 to the  
19 Department for each day during which the violation continues;  
20 (iii) direct the employer to pay \$400 to the Department for  
21 each day during which a second or subsequent violation occurs  
22 that involves different employees than those involved in an  
23 earlier violation by that employer; and (iv) require the  
24 employer to continue to pay, for 5 days, employees affected by  
25 the determination. The Department shall adopt rules governing  
26 notice and protest and establishing procedures for hearings in  
27 accordance with Article 10 of the Illinois Administrative  
28 Procedure Act.

29 (c) A contractor that knowingly or intentionally  
30 misclassifies one or more of its employees as independent  
31 contractors on a construction project commits a Class C  
32 misdemeanor. A contractor that commits a second or subsequent  
33 violation commits a Class 4 felony if the second or subsequent  
34 violation involves different employees than those involved in  
35 an earlier violation.

1           Section 30. Attorney General; State's Attorneys. Criminal  
2 violations of this Act shall be prosecuted by the Attorney  
3 General or the appropriate State's Attorney. The Department  
4 shall refer matters to the Attorney General and the appropriate  
5 State's Attorney upon determining that a criminal violation may  
6 have occurred.

7           Section 35. Truth in Employment Fund. The Truth in  
8 Employment Fund is created as a special fund in the State  
9 treasury. All moneys received by the Department under this Act  
10 shall be deposited into the Fund. Moneys in the Fund shall be  
11 used, subject to appropriation by the General Assembly, by the  
12 Department for administration, investigation, and other  
13 expenses incurred in carrying out its powers and duties under  
14 this Act. Any moneys in the Fund at the end of a fiscal year in  
15 excess of those moneys necessary for the Department to carry  
16 out its powers and duties under this Act shall be transferred  
17 to the General Revenue Fund.

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

21           Section 45. Judicial review. A final administrative  
22 decision of the Department under this Act is subject to  
23 judicial review under the Administrative Review Law.

24           Section 50. No waivers.

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

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

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

1 (20 ILCS 1005/1005-160 new)

2 Sec. 1005-160. Misclassification of employees as  
3 independent contractors. The Department shall cooperate with  
4 the Department of Revenue under the Truth in Employment Act by  
5 providing information to the Department of Revenue concerning  
6 any suspected misclassification by a contractor of one or more  
7 of its employees as independent contractors.

8 Section 90. The State Finance Act is amended by adding  
9 Section 5.641 as follows:

10 (30 ILCS 105/5.641 new)

11 Sec. 5.641. The Truth in Employment Fund.

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

14 (35 ILCS 5/917) (from Ch. 120, par. 9-917)

15 Sec. 917. Confidentiality and information sharing.

16 (a) Confidentiality. Except as provided in this Section,  
17 all information received by the Department from returns filed  
18 under this Act, or from any investigation conducted under the  
19 provisions of this Act, shall be confidential, except for  
20 official purposes within the Department or pursuant to official  
21 procedures for collection of any State tax or pursuant to an  
22 investigation or audit by the Illinois State Scholarship  
23 Commission of a delinquent student loan or monetary award or  
24 enforcement of any civil or criminal penalty or sanction  
25 imposed by this Act or by another statute imposing a State tax,  
26 and any person who divulges any such information in any manner,  
27 except for such purposes and pursuant to order of the Director  
28 or in accordance with a proper judicial order, shall be guilty  
29 of a Class A misdemeanor. However, the provisions of this  
30 paragraph are not applicable to information furnished to (i)  
31 the Department of Public Aid, State's Attorneys, and the  
32 Attorney General for child support enforcement purposes and

1 (ii) a licensed attorney representing the taxpayer where an  
2 appeal or a protest has been filed on behalf of the taxpayer.  
3 If it is necessary to file information obtained pursuant to  
4 this Act in a child support enforcement proceeding, the  
5 information shall be filed under seal.

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

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

1 the Workers' Compensation Act and Workers' Occupational  
2 Diseases Act. The Director may exchange information with the  
3 Illinois Department on Aging for the purpose of verifying  
4 sources and amounts of income for purposes directly related to  
5 confirming eligibility for participation in the programs of  
6 benefits authorized by the Senior Citizens and Disabled Persons  
7 Property Tax Relief and Pharmaceutical Assistance Act.

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

36 The Director may make available to any State agency,

1 including the Illinois Supreme Court, units of local  
2 government, and school districts, information regarding  
3 whether a bidder or contractor is an affiliate of a person who  
4 is not collecting and remitting Illinois Use taxes, for the  
5 limited purpose of enforcing bidder and contractor  
6 certifications.

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

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

29 (d) The Director shall make available for public inspection  
30 in the Department's principal office and for publication, at  
31 cost, administrative decisions issued on or after January 1,  
32 1995. These decisions are to be made available in a manner so  
33 that the following taxpayer information is not disclosed:

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

36 (2) At the sole discretion of the Director, trade

1           secrets or other confidential information identified as  
2           such by the taxpayer, no later than 30 days after receipt  
3           of an administrative decision, by such means as the  
4           Department shall provide by rule.

5           The Director shall determine the appropriate extent of the  
6           deletions allowed in paragraph (2). In the event the taxpayer  
7           does not submit deletions, the Director shall make only the  
8           deletions specified in paragraph (1).

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

16          (e) Nothing contained in this Act shall prevent the  
17          Director from divulging information to any person pursuant to a  
18          request or authorization made by the taxpayer, by an authorized  
19          representative of the taxpayer, or, in the case of information  
20          related to a joint return, by the spouse filing the joint  
21          return with the taxpayer.

22          (Source: P.A. 93-25, eff. 6-20-03; 93-721, eff. 1-1-05; 93-835;  
23          eff. 7-29-04; 93-841, eff. 7-30-04; revised 10-25-04.)

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

26                 (820 ILCS 305/26.1 new)

27                 Sec. 26.1. Misclassification of employees as independent  
28                 contractors. The Commission shall cooperate with the  
29                 Department of Revenue under the Truth in Employment Act by  
30                 providing information to the Department of Revenue concerning  
31                 any suspected misclassification by a contractor of one or more  
32                 of its employees as independent contractors.

33          Section 97. Severability. The provisions of this Act are

1 severable under Section 1.31 of the Statute on Statutes.