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1 AMENDMENT TO HOUSE BILL 2137

2 AMENDMENT NO. _____. Amend House Bill 2137 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:

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

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

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

18 Section 15. Notice.

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

22 (b) 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 in English
26 and Spanish, prepared by the Department, summarizing the
27 requirements of this Act. The Department shall furnish copies
28 of summaries to contractors upon request without charge.

29 Section 20. Investigations.

30 (a) The Department shall commence an investigation if a
31 report is not timely filed under subsection (a) of Section 10
32 or if the Department finds, based on statements filed under

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

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

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

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

12 (a) 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 misclassified one
15 or more employees as independent contractors on a construction
16 project, that contractor is subject to penalties and interest
17 as provided in subsections (c) and (d) of Section 1002 of the
18 Illinois Income Tax Act. Procedures for notice, protest, and
19 hearings shall be in accordance with the Illinois Income Tax
20 Act and the rules adopted under that Act.

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

1 the determination. The Department shall adopt rules governing
2 notice and protest and establishing procedures for hearings in
3 accordance with Article 10 of the Illinois Administrative
4 Procedure Act.

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

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

18 Section 35. Truth in Employment Fund. The Truth in
19 Employment Fund is created as a special fund in the State
20 treasury. All moneys received by the Department under this Act
21 shall be deposited into the Fund. Moneys in the Fund shall be
22 used, subject to appropriation by the General Assembly, by the
23 Department for administration, investigation, and other
24 expenses incurred in carrying out its powers and duties under
25 this Act. Any moneys in the Fund at the end of a fiscal year in
26 excess of those moneys necessary for the Department to carry
27 out its powers and duties under this Act shall be transferred
28 to the General Revenue Fund.

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

1 Section 45. Judicial review. A final administrative
2 decision of the Department under this Act is subject to
3 judicial review under the Administrative Review Law.

4 Section 50. No waivers.

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

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

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

11 (20 ILCS 1005/1005-160 new)

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

18 Section 90. The State Finance Act is amended by adding
19 Section 5.641 as follows:

20 (30 ILCS 105/5.641 new)

21 Sec. 5.641. The Truth in Employment Fund.

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

24 (35 ILCS 5/917) (from Ch. 120, par. 9-917)

25 Sec. 917. Confidentiality and information sharing.

26 (a) Confidentiality. Except as provided in this Section,

1 all information received by the Department from returns filed
2 under this Act, or from any investigation conducted under the
3 provisions of this Act, shall be confidential, except for
4 official purposes within the Department or pursuant to official
5 procedures for collection of any State tax or pursuant to an
6 investigation or audit by the Illinois State Scholarship
7 Commission of a delinquent student loan or monetary award or
8 enforcement of any civil or criminal penalty or sanction
9 imposed by this Act or by another statute imposing a State tax,
10 and any person who divulges any such information in any manner,
11 except for such purposes and pursuant to order of the Director
12 or in accordance with a proper judicial order, shall be guilty
13 of a Class A misdemeanor. However, the provisions of this
14 paragraph are not applicable to information furnished to (i)
15 the Department of Public Aid, State's Attorneys, and the
16 Attorney General for child support enforcement purposes and
17 (ii) a licensed attorney representing the taxpayer where an
18 appeal or a protest has been filed on behalf of the taxpayer.
19 If it is necessary to file information obtained pursuant to
20 this Act in a child support enforcement proceeding, the
21 information shall be filed under seal.

22 (b) Public information. Nothing contained in this Act shall
23 prevent the Director from publishing or making available to the
24 public the names and addresses of persons filing returns under
25 this Act, or from publishing or making available reasonable
26 statistics concerning the operation of the tax wherein the
27 contents of returns are grouped into aggregates in such a way
28 that the information contained in any individual return shall
29 not be disclosed.

30 (c) Governmental agencies. The Director may make available
31 to the Secretary of the Treasury of the United States or his
32 delegate, or the proper officer or his delegate of any other
33 state imposing a tax upon or measured by income, for
34 exclusively official purposes, information received by the

1 Department in the administration of this Act, but such
2 permission shall be granted only if the United States or such
3 other state, as the case may be, grants the Department
4 substantially similar privileges. The Director may exchange
5 information with the Illinois Department of Public Aid and the
6 Department of Human Services (acting as successor to the
7 Department of Public Aid under the Department of Human Services
8 Act) for the purpose of verifying sources and amounts of income
9 and for other purposes directly connected with the
10 administration of this Act and the Illinois Public Aid Code.
11 The Director may exchange information with the Director of the
12 Department of Employment Security for the purpose of verifying
13 sources and amounts of income and for other purposes directly
14 connected with the administration of this Act and Acts
15 administered by the Department of Employment Security. The
16 Director may make available to the Illinois Workers'
17 Compensation Commission information regarding employers for
18 the purpose of verifying the insurance coverage required under
19 the Workers' Compensation Act and Workers' Occupational
20 Diseases Act. The Director may exchange information with the
21 Illinois Department on Aging for the purpose of verifying
22 sources and amounts of income for purposes directly related to
23 confirming eligibility for participation in the programs of
24 benefits authorized by the Senior Citizens and Disabled Persons
25 Property Tax Relief and Pharmaceutical Assistance Act.

26 The Director may make available to any State agency,
27 including the Illinois Supreme Court, which licenses persons to
28 engage in any occupation, information that a person licensed by
29 such agency has failed to file returns under this Act or pay
30 the tax, penalty and interest shown therein, or has failed to
31 pay any final assessment of tax, penalty or interest due under
32 this Act. The Director may make available to any State agency,
33 including the Illinois Supreme Court, information regarding
34 whether a bidder, contractor, or an affiliate of a bidder or

1 contractor has failed to file returns under this Act or pay the
2 tax, penalty, and interest shown therein, or has failed to pay
3 any final assessment of tax, penalty, or interest due under
4 this Act, for the limited purpose of enforcing bidder and
5 contractor certifications. For purposes of this Section, the
6 term "affiliate" means any entity that (1) directly,
7 indirectly, or constructively controls another entity, (2) is
8 directly, indirectly, or constructively controlled by another
9 entity, or (3) is subject to the control of a common entity.
10 For purposes of this subsection (a), an entity controls another
11 entity if it owns, directly or individually, more than 10% of
12 the voting securities of that entity. As used in this
13 subsection (a), the term "voting security" means a security
14 that (1) confers upon the holder the right to vote for the
15 election of members of the board of directors or similar
16 governing body of the business or (2) is convertible into, or
17 entitles the holder to receive upon its exercise, a security
18 that confers such a right to vote. A general partnership
19 interest is a voting security.

20 The Director may make available to any State agency,
21 including the Illinois Supreme Court, units of local
22 government, and school districts, information regarding
23 whether a bidder or contractor is an affiliate of a person who
24 is not collecting and remitting Illinois Use taxes, for the
25 limited purpose of enforcing bidder and contractor
26 certifications.

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

32 The Director may also make available to the Secretary of
33 State information that a corporation which has been issued a
34 certificate of incorporation by the Secretary of State has

1 failed to file returns under this Act or pay the tax, penalty
2 and interest shown therein, or has failed to pay any final
3 assessment of tax, penalty or interest due under this Act. An
4 assessment is final when all proceedings in court for review of
5 such assessment have terminated or the time for the taking
6 thereof has expired without such proceedings being instituted.
7 For taxable years ending on or after December 31, 1987, the
8 Director may make available to the Director or principal
9 officer of any Department of the State of Illinois, information
10 that a person employed by such Department has failed to file
11 returns under this Act or pay the tax, penalty and interest
12 shown therein. For purposes of this paragraph, the word
13 "Department" shall have the same meaning as provided in Section
14 3 of the State Employees Group Insurance Act of 1971.

15 (d) The Director shall make available for public inspection
16 in the Department's principal office and for publication, at
17 cost, administrative decisions issued on or after January 1,
18 1995. These decisions are to be made available in a manner so
19 that the following taxpayer information is not disclosed:

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

22 (2) At the sole discretion of the Director, trade
23 secrets or other confidential information identified as
24 such by the taxpayer, no later than 30 days after receipt
25 of an administrative decision, by such means as the
26 Department shall provide by rule.

27 The Director shall determine the appropriate extent of the
28 deletions allowed in paragraph (2). In the event the taxpayer
29 does not submit deletions, the Director shall make only the
30 deletions specified in paragraph (1).

31 The Director shall make available for public inspection and
32 publication an administrative decision within 180 days after
33 the issuance of the administrative decision. The term
34 "administrative decision" has the same meaning as defined in

1 Section 3-101 of Article III of the Code of Civil Procedure.
2 Costs collected under this Section shall be paid into the Tax
3 Compliance and Administration Fund.

4 (e) Nothing contained in this Act shall prevent the
5 Director from divulging information to any person pursuant to a
6 request or authorization made by the taxpayer, by an authorized
7 representative of the taxpayer, or, in the case of information
8 related to a joint return, by the spouse filing the joint
9 return with the taxpayer.

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

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

14 (820 ILCS 305/26.1 new)

15 Sec. 26.1. Misclassification of employees as independent
16 contractors. The Commission shall cooperate with the
17 Department of Revenue under the Truth in Employment Act by
18 providing information to the Department of Revenue concerning
19 any suspected misclassification by a contractor of one or more
20 of its employees as independent contractors.

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