



Rep. Larry McKeon

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LRB094 15270 WGH 56763 a

1 AMENDMENT TO HOUSE BILL 5002

2 AMENDMENT NO. _____. Amend House Bill 5002, 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 Employee Classification Act.

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

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

11 "Construction" means building, altering, repairing,
12 improving, or demolishing any structure or building or making
13 improvements of any kind to real property.

14 "Contractor" means any person or entity who is engaged in
15 construction as defined in this Act. "Contractor" includes a
16 general contractor and a subcontractor, but does not include a
17 person or entity who furnishes only materials or supplies.

18 "Department" means the Department of Labor.

19 "Director" means the Director of Labor.

20 "Employer" means any contractor that employs individuals
21 deemed employees under Section 10 of this Act; however,
22 "employer" does not include (i) the State of Illinois or its
23 officers, agencies, or political subdivisions or (ii) the

1 federal government.

2 "Entity" means any contractor for which a person is
3 performing any service and is not classified as an employee
4 under Section 10 of this Act; however, "entity" does not
5 include (i) the State of Illinois or its officers, agencies, or
6 political subdivisions or (ii) the federal government.

7 Section 10. Applicability; status of individuals
8 performing service. For the purposes of this Act, an individual
9 performing any service for a contractor is deemed to be an
10 employee unless it is shown that:

11 (1) the individual has been and will continue to be
12 free from control or direction over the performance of the
13 service, both under his or her contract of service and in
14 fact;

15 (2) the service is either outside the usual course of
16 the business for which the service is performed or the
17 service is performed outside of all the places of business
18 of the enterprise for which the service is performed; and

19 (3) the individual is engaged in an independently
20 established trade, occupation, profession, or business.

21 Provided however, that this shall not impair the ability of a
22 contractor to subcontract with a subcontractor provided the
23 subcontractor satisfies the provisions of this Section, nor
24 impair the ability of a subcontractor to subcontract with a
25 lower tiered subcontractor provided the lower tiered
26 subcontractor satisfies the provisions of this Section.

27 Section 15. Notice.

28 (a) The Department shall post a summary of the requirements
29 of this Act in English, Spanish, and Polish on its web site and
30 on bulletin boards in each of its offices.

31 (b) An employer or entity for whom one or more persons
32 classified as independent contractors are performing service

1 shall post and keep posted, in conspicuous places on each job
2 site where those persons work and in each of its offices, a
3 notice in English, Spanish, and Polish, prepared by the
4 Department, summarizing the requirements of this Act. The
5 Department shall furnish copies of summaries to employers and
6 entities upon request without charge.

7 Section 20. Failure to properly designate or classify
8 persons performing services as employees.

9 (a) Except as provided in subsection (b), it is a violation
10 of this Act for an employer or entity not to designate an
11 individual as an employee under Section 10 of this Act unless
12 the employer or entity satisfies the provisions of Section 10.

13 (b) Subsection (a) does not apply to any designation of an
14 individual by an employer or entity in accordance with the
15 requirements of any other law, rule, or regulation. However, a
16 general contractor shall not be liable under this Act for a
17 lower tier subcontractor's failure to properly designate or
18 classify persons performing services as employees, nor shall a
19 subcontractor be liable for a lower tiered subcontractor's
20 failure to properly designate or classify persons performing
21 services as employees.

22 (c) Nothing in this Section shall be deemed to apply to any
23 action arising out of personal injury or tort.

24 Section 25. Enforcement. It shall be the duty of the
25 Department to enforce the provisions of this Act. The
26 Department shall have the power to conduct investigations in
27 connection with the administration and enforcement of this Act
28 and any investigator with the Department shall be authorized to
29 visit and inspect, at all reasonable times, any places covered
30 by this Act and shall be authorized to inspect, at all
31 reasonable times, documents related to the determination of
32 whether a person is an employee under Section 10 of this Act.

1 The Director of Labor or his or her representative may compel,
2 by subpoena, the attendance and testimony of witnesses and the
3 production of books, payrolls, records, papers, and other
4 evidence in any investigation or hearing and may administer
5 oaths to witnesses.

6 Section 27. Order for violation and public hearing.
7 Whenever the Department believes upon investigation that there
8 has been a violation of any of the provisions of this Act or
9 any rules or regulations promulgated under this Act, the
10 Department may: (i) issue and cause to be served on any party
11 an order to cease and desist from further violation of this
12 Act; (ii) take affirmative or other action as deemed reasonable
13 to eliminate the effect of the violation; and (iii) assess any
14 civil penalty allowed by this Act. The civil penalties assessed
15 by the Department shall be recoverable in an action brought in
16 the name of the People of the State of Illinois by the Attorney
17 General. In any order issued to an offending party under this
18 Act, the Department shall include a summary of its findings,
19 which give evidence of the violation. Any party affected by an
20 order of the Department shall have the right to a hearing
21 before the Department; however, a written request for such
22 hearing shall be served on the Department within 10 days of
23 notice of such order. In the absence of the receipt of a
24 request for hearing, the affected party shall be deemed to have
25 waived its right to a hearing and the Department's order shall
26 become a final administrative decision.

27 Section 30. Review under Administrative Review Law. Any
28 party to a proceeding under this Act may apply for and obtain
29 judicial review of an order of the Department entered under
30 this Act in accordance with the provisions of the
31 Administrative Review Law, and the Department in proceedings
32 under the Act may obtain an order from the court for the

1 enforcement of its order.

2 Section 35. Contempt. Whenever it appears that any employer
3 or entity has violated a valid order of the Department issued
4 under this Act, the Director of Labor may commence an action
5 and obtain from the court an order commanding the employer or
6 entity to obey the order of the Department or be adjudged
7 guilty of contempt of court and punished accordingly.

8 Section 40. Penalties. An employer or entity that violates
9 any of the provisions of this Act or any rule adopted under
10 this Act shall be subject to a civil penalty not to exceed
11 \$1,500 for each violation found in the first audit by the
12 Department. Following a first audit, an employer or entity
13 shall be subject to a civil penalty not to exceed \$2,500 for
14 each repeat violation found by the Department within 5 years.
15 For purposes of this Section, each violation of this Act for
16 each person and for each day the violation continues shall
17 constitute a separate and distinct violation. In determining
18 the amount of a penalty, the Director shall consider the
19 appropriateness of the penalty to the employer or entity
20 charged, upon the determination of the gravity of the
21 violations. The amount of the penalty, when finally determined,
22 may be recovered in a civil action filed in any circuit court
23 by the Director of Labor, or a person aggrieved by a violation
24 of this Act or any rule adopted under this Act. For any second
25 or subsequent violation determined by the Department which is
26 within 5 years of an earlier violation, the Department shall
27 add the employer or entity's name to a list to be posted on the
28 Department's website. Upon such determination the Department
29 shall notify the violating employer or entity. Such employer or
30 entity shall then have 10 working days to request a hearing by
31 the Department on the alleged violations. The amount of the
32 penalty, when finally determined, may be recovered in a civil

1 action filed in any circuit court by the Director of Labor or a
2 person aggrieved by a violation of this Act or any rule adopted
3 under this Act. In any civil action brought by an aggrieved
4 person pursuant to this Section, the circuit court shall award
5 the aggrieved person 10% of the amount recovered. In such case
6 the remaining amount recovered shall be submitted to the
7 Director of Labor. Any uncollected amount shall be subject to
8 the provisions of the Illinois State Collection Act of 1986.

9 Section 42. Debarments. For any second or subsequent
10 violation determined by the Department which is within 5 years
11 of an earlier violation, the Department shall add the employer
12 or entity's name to a list to be posted on the Department's
13 website. Upon such notice, the Department shall notify the
14 violating employer or entity. No State contract shall be
15 awarded to an employer or entity appearing on the list until 4
16 years have elapsed from the date of the last violation.

17 Section 45. Willful violations.

18 (a) Whoever willfully violates any of the provisions of
19 this Act or any rule adopted under this Act or whoever
20 obstructs the Director of Labor, or his or her representatives,
21 or any other person authorized to inspect places of employment
22 under this Act shall be liable for penalties up to double the
23 statutory amount.

24 (b) Whoever willfully violates any of the provisions of
25 this Act or any rule adopted under this Act shall be liable to
26 the employee for punitive damages in an amount equal to the
27 penalties assessed in subsection (a) of this Section.

28 (c) The penalty shall be imposed in cases in which an
29 employer or entity's conduct is proven by a preponderance of
30 the evidence to be willful. The penalty may be recovered in a
31 civil action brought by the Director of Labor in any circuit
32 court. In any such action, the Director of Labor shall be

1 represented by the Attorney General. Any uncollected amount
2 shall be subject to the provisions of the Illinois State
3 Collection Act of 1986.

4 Section 50. Employee Classification Fund. All moneys
5 received by the Department as fees and civil penalties under
6 this Act shall be deposited into the Employee Classification
7 Fund and shall be used, subject to appropriation by the General
8 Assembly, by the Department for administration, investigation,
9 and other expenses incurred in carrying out its powers and
10 duties under this Act. The Department shall hire as many
11 investigators and other personnel as may be necessary to carry
12 out the purposes of this Act. Any moneys in the Fund at the end
13 of a fiscal year in excess of those moneys necessary for the
14 Department to carry out its powers and duties under this Act
15 shall be available to the Department for the next fiscal year
16 for any of the Department's duties.

17 Section 55. Retaliation.

18 (a) It is a violation of this Act for an employer or
19 entity, or any agent of an employer or entity, to retaliate
20 through discharge or in any other manner against any person for
21 exercising any rights granted under this Act. Such retaliation
22 shall subject an employer or entity to civil penalties pursuant
23 to this Act or a private cause of action.

24 (b) It is a violation of this Act for an employer or entity
25 to retaliate against a person for:

26 (1) making a complaint to an employer or entity, to a
27 co-worker, to a community organization, before a public
28 hearing, or to a State or federal agency that rights
29 guaranteed under this Act have been violated;

30 (2) causing to be instituted any proceeding under or
31 related to this Act; or

32 (3) testifying or preparing to testify in an

1 investigation or proceeding under this Act.

2 Section 60. Private right of action.

3 (a) A person aggrieved by a violation of this Act or any
4 rule adopted under this Act by an employer or entity may file
5 suit in circuit court, in the county where the alleged offense
6 occurred or where any person who is party to the action
7 resides, without regard to exhaustion of any alternative
8 administrative remedies provided in this Act. Actions may be
9 brought by one or more persons for and on behalf of themselves
10 and other persons similarly situated. A person whose rights
11 have been violated under this Act by an employer or entity is
12 entitled to collect:

13 (1) the amount of any wages, salary, employment
14 benefits, or other compensation denied or lost to the
15 person by reason of the violation, plus an equal amount in
16 liquidated damages;

17 (2) compensatory damages and an amount up to \$500 for
18 each violation of this Act or any rule adopted under this
19 Act;

20 (3) in the case of unlawful retaliation, all legal or
21 equitable relief as may be appropriate; and

22 (4) attorney's fees and costs.

23 (b) The right of an aggrieved person to bring an action
24 under this Section terminates upon the passing of 3 years from
25 the final date of service to the employer or entity. This
26 limitations period is tolled if an employer or entity has
27 deterred a person's exercise of rights under this Act by
28 contacting or threatening to contact law enforcement agencies.

29 Section 65. Rulemaking. The Department may adopt
30 reasonable rules to implement and administer this Act. For
31 purposes of this Act, the General Assembly finds that the
32 adoption of rules to implement this Act is deemed an emergency

1 and necessary for the public interest and welfare.

2 Section 70. No waivers.

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

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

6 Section 75. Cooperation. The Department of Labor, the
7 Department of Employment Security, the Department of Revenue,
8 the Office of the State Comptroller, and the Illinois Workers'
9 Compensation Commission shall cooperate under this Act by
10 sharing information concerning any suspected misclassification
11 by an employer of one or more of its employees as independent
12 contractors. Upon determining that an employer or entity has
13 misclassified employees as independent contractors in
14 violation of this Act, the Department of Labor shall notify the
15 Department of Employment Security, the Department of Revenue,
16 the Office of the State Comptroller, and the Illinois Workers'
17 Compensation Commission who shall be obliged to check such
18 employer or entity's compliance with their laws, utilizing
19 their own definitions, standards, and procedures.

20 Section 900. The State Comptroller Act is amended by adding
21 Section 9.06 as follows:

22 (15 ILCS 405/9.06 new)

23 Sec. 9.06. Misclassification of employees as independent
24 contractors. The Department of Labor, the Department of
25 Employment Security, the Department of Revenue, the Office of
26 the State Comptroller, and the Illinois Workers' Compensation
27 Commission shall cooperate under the Employee Classification
28 Act by sharing information concerning any suspected
29 misclassification by an employer or entity, as defined in the
30 Employee Classification Act, of one or more employees as

1 independent contractors.

2 Section 901. The Department of Employment Security Law of
3 the Civil Administrative Code of Illinois is amended by adding
4 Section 1005-160 as follows:

5 (20 ILCS 1005/1005-160 new)

6 Sec. 1005-160. Misclassification of employees as
7 independent contractors. The Department of Labor, the
8 Department of Employment Security, the Department of Revenue,
9 the Office of the State Comptroller, and the Illinois Workers'
10 Compensation Commission shall cooperate under the Employee
11 Classification Act by sharing information concerning any
12 suspected misclassification by an employer or entity, as
13 defined in the Employee Classification Act, of one or more
14 employees as independent contractors.

15 Section 905. The Department of Labor Law of the Civil
16 Administrative Code of Illinois is amended by adding Section
17 1505-125 as follows:

18 (20 ILCS 1505/1505-125 new)

19 Sec. 1505-125. Misclassification of employees as
20 independent contractors. The Department of Labor, the
21 Department of Employment Security, the Department of Revenue,
22 the Office of the State Comptroller, and the Illinois Workers'
23 Compensation Commission shall cooperate under the Employee
24 Classification Act by sharing information concerning any
25 suspected misclassification by an employer or entity, as
26 defined in the Employee Classification Act, of one or more
27 employees as independent contractors.

28 Section 910. The Department of Revenue Law of the Civil
29 Administrative Code of Illinois is amended by adding Section

1 2505-750 as follows:

2 (20 ILCS 2505/2505-750 new)

3 Sec. 2505-750. Misclassification of employees as
4 independent contractors. The Department of Labor, the
5 Department of Employment Security, the Department of Revenue,
6 the Office of the State Comptroller, and the Illinois Workers'
7 Compensation Commission shall cooperate under the Employee
8 Classification Act by sharing information concerning any
9 suspected misclassification by an employer or entity, as
10 defined in the Employee Classification Act, of one or more
11 employees as independent contractors.

12 Section 915. The State Finance Act is amended by adding
13 Section 5.663 as follows:

14 (30 ILCS 105/5.663 new)

15 Sec. 5.663. The Employee Classification Fund.

16 Section 920. The Illinois Procurement Code is amended by
17 changing Section 50-70 as follows:

18 (30 ILCS 500/50-70)

19 Sec. 50-70. Additional provisions. This Code is subject to
20 applicable provisions of the following Acts:

- 21 (1) Article 33E of the Criminal Code of 1961;
- 22 (2) the Illinois Human Rights Act;
- 23 (3) the Discriminatory Club Act;
- 24 (4) the Illinois Governmental Ethics Act;
- 25 (5) the State Prompt Payment Act;
- 26 (6) the Public Officer Prohibited Activities Act; ~~and~~
- 27 (7) the Drug Free Workplace Act; and
- 28 (8) the Employee Classification Act.

29 (Source: P.A. 90-572, eff. 2-6-98.)

1 Section 925. The Workers' Compensation Act is amended by
2 adding Section 26.1 as follows:

3 (820 ILCS 305/26.1 new)

4 Sec. 26.1. Misclassification of employees as independent
5 contractors. The Department of Labor, the Department of
6 Employment Security, the Department of Revenue, the Office of
7 the State Comptroller, and the Illinois Workers' Compensation
8 Commission shall cooperate under the Employee Classification
9 Act by sharing information concerning any suspected
10 misclassification by an employer or entity, as defined in the
11 Employee Classification Act, of one or more employees as
12 independent contractors.

13 Section 990. Severability. The provisions of this Act are
14 severable under Section 1.31 of the Statute on Statutes.

15 Section 999. Effective date. This Act takes effect July 1,
16 2006.".