

SB1851



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1851

Introduced 2/9/2011, by Sen. Gary Forby

SYNOPSIS AS INTRODUCED:

820 ILCS 185/5
820 ILCS 185/10

Amends the Employee Classification Act. Provides that the term "employment" does not include services performed by an individual as an operator of a truck, truck-tractor, or tractor if certain specified conditions are met. Provides that an individual performing services for a contractor is deemed to be an employee of the employer, unless the contractor is a truck owner-operator as defined in the Act.

LRB097 05258 AEK 45310 b

A BILL FOR

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 5. The Employee Classification Act is amended by
5 changing Sections 5 and 10 as follows:

6 (820 ILCS 185/5)

7 Sec. 5. Definitions. As used in this Act:

8 "Construction" means any constructing, altering,
9 reconstructing, repairing, rehabilitating, refinishing,
10 refurbishing, remodeling, remediating, renovating, custom
11 fabricating, maintenance, landscaping, improving, wrecking,
12 painting, decorating, demolishing, and adding to or
13 subtracting from any building, structure, highway, roadway,
14 street, bridge, alley, sewer, ditch, sewage disposal plant,
15 water works, parking facility, railroad, excavation or other
16 structure, project, development, real property or improvement,
17 or to do any part thereof, whether or not the performance of
18 the work herein described involves the addition to, or
19 fabrication into, any structure, project, development, real
20 property or improvement herein described of any material or
21 article of merchandise. Construction shall also include moving
22 construction related materials on the job site to or from the
23 job site.

1 "Contractor" means any sole proprietor, partnership, firm,
2 corporation, limited liability company, association or other
3 legal entity permitted by law to do business within the State
4 of Illinois who engages in construction as defined in this Act.

5 "Contractor" includes a general contractor and a
6 subcontractor.

7 "Department" means the Department of Labor.

8 "Director" means the Director of the Department of Labor.

9 "Employer" means any contractor that employs individuals
10 deemed employees under Section 10 of this Act; however,
11 "employer" does not include (i) the State of Illinois or its
12 officers, agencies, or political subdivisions or (ii) the
13 federal government.

14 "Entity" means any contractor for which an individual is
15 performing services and is not classified as an employee under
16 Section 10 of this Act; however, "entity" does not include (i)
17 the State of Illinois or its officers, agencies, or political
18 subdivisions or (ii) the federal government.

19 "Interested party" means a person with an interest in
20 compliance with this Act.

21 "Performing services" means the performance of any
22 constructing, altering, reconstructing, repairing,
23 rehabilitating, refinishing, refurbishing, remodeling,
24 remediating, renovating, custom fabricating, maintenance,
25 landscaping, improving, wrecking, painting, decorating,
26 demolishing, and adding to or subtracting from any building,

1 structure, highway, roadway, street, bridge, alley, sewer,
2 ditch, sewage disposal plant, water works, parking facility,
3 railroad, excavation or other structure, project, development,
4 real property or improvement, or to do any part thereof,
5 whether or not the performance of the work herein described
6 involves the addition to, or fabrication into, any structure,
7 project, development, real property or improvement herein
8 described of any material or article of merchandise.
9 Construction shall also include moving construction related
10 materials on the job site to or from the job site.

11 "Employment" does not include services performed by an
12 individual as an operator of a truck, truck-tractor, or
13 tractor, if the person or entity to which the individual is
14 contracted for service shows that the individual:

15 (1) is either:

16 (i) registered or licensed as a motor carrier of
17 real or personal property by the Illinois Commerce
18 Commission, the Interstate Commerce Commission, or any
19 successor agencies; or

20 (ii) operating the equipment under an
21 owner-operator lease contract with the person or
22 entity, when the person or entity is registered,
23 licensed, or both, as a motor carrier of real or
24 personal property licensed by the Illinois Commerce
25 Commission, the Interstate Commerce Commission, or any
26 successor agencies;

1 (2) has the right to terminate the lease contract and
2 thereafter has the right to perform the same or similar
3 services, on whatever basis and whenever he or she chooses,
4 for persons or entities other than the person or entity to
5 which the individual is contracted for services;

6 (3) is not required by the person or entity to which
7 the individual is contracted for services to perform
8 services, or be available to perform services, at specific
9 times or according to a schedule or for a number of hours
10 specified by the person or entity; pickup or delivery times
11 specified by a shipper or receiver shall not be deemed
12 specified by the person or entity;

13 (4) either leases the equipment or holds title to the
14 equipment, if the individual or entity from which the
15 equipment is leased, or which holds any security or other
16 interest in the equipment, is not:

17 (i) the person or entity to which the individual is
18 contracted for service; or

19 (ii) owned, controlled, or operated by or in common
20 with, to any extent, whether directly or indirectly,
21 the person or entity to which the individual is
22 contracted for services or a family member of a
23 shareholder, owner, or partner of the person or entity;

24 (5) pays all costs of licensing and operating the
25 equipment (except when federal or State law or regulation
26 requires the carrier to pay), and the costs are not

1 separately reimbursed by any other individual or entity;

2 and

3 (6) maintains a separate business identity, offering
4 or advertising his or her services to the public, by
5 displaying its name and address on the equipment or
6 otherwise.

7 The definition of "truck owner-operator" under this
8 Section does not apply:

9 (1) if, as a condition for retaining the individual's
10 services, the person or entity to which the individual is
11 contracted specifies the person or entity from which the
12 equipment is to be leased or purchased; or

13 (2) to any services that are required to be covered as
14 a condition of approval of this Act by the United States
15 Secretary of Labor under Section 3304(a)(6)(A) of the
16 Federal Unemployment Tax Act.

17 Nothing in this definition of "truck owner-operator" shall
18 be construed or used to effect the existence or non-existence
19 of an employment relationship other than for purposes of this
20 Act. For purposes of this definition of "truck owner-operator":

21 (1) "Family member" means any parent, sibling, child,
22 sibling of a parent, or any of the foregoing relations by
23 marriage.

24 (2) "Ownership", "control", or "operation" may be
25 through any one or more natural persons or proxies, powers
26 of attorney, nominees, proprietorships, partnerships,

1 associations, corporations, trusts, joint stock companies,
2 or other entities or devices, or any combination thereof.

3 (3) "Persons or entity" means a sole proprietorship,
4 partnership, association, corporation, or any other legal
5 entity.

6 (Source: P.A. 95-26, eff. 1-1-08.)

7 (820 ILCS 185/10)

8 Sec. 10. Applicability; status of individuals performing
9 service.

10 (a) For the purposes of this Act, an individual performing
11 services for a contractor is deemed to be an employee of the
12 employer except as provided in subsections (b), ~~and~~ (c), and
13 (d) of this Section.

14 (b) An individual performing services for a contractor is
15 deemed to be an employee of the contractor unless it is shown
16 that:

17 (1) the individual has been and will continue to be
18 free from control or direction over the performance of the
19 service for the contractor, both under the individual's
20 contract of service and in fact;

21 (2) the service performed by the individual is outside
22 the usual course of services performed by the contractor;
23 and

24 (3) the individual is engaged in an independently
25 established trade, occupation, profession or business; or

1 (4) the individual is deemed a legitimate sole
2 proprietor or partnership under subsection (c) of this
3 Section.

4 (c) The sole proprietor or partnership performing services
5 for a contractor as a subcontractor is deemed legitimate if it
6 is shown that:

7 (1) the sole proprietor or partnership is performing
8 the service free from the direction or control over the
9 means and manner of providing the service, subject only to
10 the right of the contractor for whom the service is
11 provided to specify the desired result;

12 (2) the sole proprietor or partnership is not subject
13 to cancellation or destruction upon severance of the
14 relationship with the contractor;

15 (3) the sole proprietor or partnership has a
16 substantial investment of capital in the sole
17 proprietorship or partnership beyond ordinary tools and
18 equipment and a personal vehicle;

19 (4) the sole proprietor or partnership owns the capital
20 goods and gains the profits and bears the losses of the
21 sole proprietorship or partnership;

22 (5) the sole proprietor or partnership makes its
23 services available to the general public or the business
24 community on a continuing basis;

25 (6) the sole proprietor or partnership includes
26 services rendered on a Federal Income Tax Schedule as an

1 independent business or profession;

2 (7) the sole proprietor or partnership performs
3 services for the contractor under the sole
4 proprietorship's or partnership's name;

5 (8) when the services being provided require a license
6 or permit, the sole proprietor or partnership obtains and
7 pays for the license or permit in the sole proprietorship's
8 or partnership's name;

9 (9) the sole proprietor or partnership furnishes the
10 tools and equipment necessary to provide the service;

11 (10) if necessary, the sole proprietor or partnership
12 hires its own employees without contractor approval, pays
13 the employees without reimbursement from the contractor
14 and reports the employees' income to the Internal Revenue
15 Service;

16 (11) the contractor does not represent the sole
17 proprietorship or partnership as an employee of the
18 contractor to its customers; and

19 (12) the sole proprietor or partnership has the right
20 to perform similar services for others on whatever basis
21 and whenever it chooses.

22 (d) Where a sole proprietor or partnership performing
23 services for a contractor as a subcontractor is deemed not
24 legitimate under subsection (c) of this Section, the sole
25 proprietorship or partnership shall be deemed an individual for
26 purposes of this Act. An individual performing services for a

1 contractor is deemed to be an employee of the employer, unless
2 the contractor is a truck owner-operator as defined in Section
3 5 of this Act.

4 (e) Subcontractors or lower tiered contractors are subject
5 to all provisions of this Act.

6 (f) A contractor shall not be liable under this Act for any
7 subcontractor's failure to properly classify persons
8 performing services as employees, nor shall a subcontractor be
9 liable for any lower tiered subcontractor's failure to properly
10 classify persons performing services as employees.

11 (Source: P.A. 95-26, eff. 1-1-08.)