

By: Longoria

H.B. No. 1304

A BILL TO BE ENTITLED

AN ACT

relating to the classification of workers for purposes of the Texas Unemployment Compensation Act; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 201.041, Labor Code, is amended to read as follows:

Sec. 201.041. GENERAL DEFINITION OF EMPLOYMENT; PRESUMPTION OF EMPLOYMENT. (a) In this subtitle, "employment" means a service, including service in interstate commerce, performed by an individual for wages or under an express or implied contract of hire.

(b) An individual performing a service for wages or under an express or implied contract of hire is presumed to be an employee of the person for whom the service is performed.

(c) A presumption under Subsection (b) may be rebutted if the person for whom the service is performed shows~~[, unless it is shown]~~ to the satisfaction of the commission that the individual's performance of the service has been and will continue to be free from control or direction under the contract and in fact.

SECTION 2. Section 203.202, Labor Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding Subsection (a), money credited to the special administration fund from penalties assessed under Section 214.008(c-1) shall be used only to pay costs related to

1 identifying, investigating, and preventing worker
2 misclassification.

3 SECTION 3. The heading to Section 214.008, Labor Code, is
4 amended to read as follows:

5 Sec. 214.008. MISCLASSIFICATION OF [~~CERTAIN~~] WORKERS;
6 PENALTY.

7 SECTION 4. Section 214.008, Labor Code, is amended by
8 adding Subsections (b-1) and (c-1) to read as follows:

9 (b-1) A person, other than a person to whom Subsection (a)
10 or (b) applies, shall properly classify, as an employee or
11 independent contractor in accordance with Chapter 201, any
12 individual the person directly retains and compensates for the
13 performance of a service.

14 (c-1) The commission may assess a penalty against a person
15 who fails to properly classify an individual as required by
16 Subsection (b-1), in an amount not to exceed \$200 for each
17 individual that the person has not properly classified. The amount
18 of the penalty may be based on:

19 (1) the seriousness of the violation, including the
20 nature, circumstances, extent, and gravity of any prohibited acts;

21 (2) the history of previous violations;

22 (3) the amount necessary to deter future violations;

23 or

24 (4) efforts to correct the violation.

25 SECTION 5. Section 214.008, Labor Code, as amended by this
26 Act, applies only to service performed by an individual on or after
27 the effective date of this Act. Service performed by an individual

1 before the effective date of this Act is governed by the law in
2 effect on the date the service was performed, and the former law is
3 continued in effect for that purpose.

4 SECTION 6. This Act takes effect September 1, 2017.