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HOUSE BILL NO. 1106

Offered January 10, 2018

Prefiled January 10, 2018

A *BILL to amend the Code of Virginia by adding a section numbered 2.2-509.2, relating to the Office of the Attorney General; misclassification of employees as independent contractors.*

Patrons—Boysko, Convirs-Fowler, Krizek, Levine, Plum, Price, Rasoul and Simon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 2.2-509.2 as follows:

§ 2.2-509.2. Authority of Attorney General; misclassification of employees as independent contractors.

A. Upon reasonable cause to believe that a person is wrongfully misclassifying employees within the Commonwealth as independent contractors, the Attorney General or his authorized representative shall have the authority to issue subpoenas, compel the attendance of witnesses, administer oaths, certify to official acts, take depositions within and without the Commonwealth, as now provided by law, and compel the production of pertinent books, payrolls, accounts, papers, records, documents, and testimony relevant to such investigation. If a person refuses, without good cause, to be examined or to answer a legal and pertinent question, or to produce a document or other evidence when ordered to do so by the Attorney General or his authorized representative, the Attorney General or his authorized representative may apply to the judge of the circuit court of the jurisdiction where such person is in attendance or located, upon affidavit, for an order returnable in no less than two nor more than five days, directing such person to show cause why he should not be examined, answer a legal or pertinent question, or produce a document, record, or other evidence. After a hearing on the motion, if the court determines that such person, without good cause, has refused to be examined or to answer legal or pertinent questions, or to produce a document, record, or other evidence, the court may order compliance with the subpoena and assess all costs and reasonable attorney fees against such person. If the motion for an order is granted and the person thereafter fails to comply with the order, the court may make such orders as are provided for in the Rules of Supreme Court of Virginia. Subpoenas shall be served and witness fees and mileage paid as allowed in civil cases in the circuit courts of the Commonwealth.

B. Upon probable cause that a person has wrongfully misclassified employees employed with the Commonwealth as independent contractors, the Attorney General or his authorized representative shall have the authority to file a complaint in the circuit court of the jurisdiction where such person is located, seeking:

1. Amounts owed to those departments and commissions of Virginia, including the Virginia Employment Commission, the Department of Labor and Industry, the Department of Professional and Occupational Regulation, the State Corporation Commission's Bureau of Insurance, the Department of Taxation, and the Workers Compensation Commission, that were not paid due to the wrongful misclassification;

2. Unpaid wages or overtime pay on behalf of any individuals who were not paid these amounts due to the wrongful misclassification; and

3. Any other losses of benefits, amounts due under the law, and damages the employees may have suffered as a result of the wrongful misclassification.

C. If the court determines that such person is engaged in the wrongful misclassification of employees as independent contractors, the court, in addition to amounts owed under this section, may award prejudgment and postjudgment interest, and assess all costs and reasonable attorney fees against such person.

INTRODUCED

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