

**SENATE BILL No. 419**

By Senator Holland

2-12

1 AN ACT concerning employment security law; relating to  
2 misclassification of employees; penalties; order to enjoin doing  
3 business; amending K.S.A. 2019 Supp. 44-766 and repealing the  
4 existing section.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 2019 Supp. 44-766 is hereby amended to read as  
8 follows: 44-766. (a) No person shall knowingly and intentionally  
9 misclassify ~~an employee~~ *one or more employees* as ~~an independent~~  
10 ~~contractor~~ *contractors* for the ~~sole or primary~~ purpose of avoiding either  
11 state income tax withholding and reporting requirements or state  
12 unemployment insurance contributions reporting requirements. *A violation*  
13 *of this subsection is contrary to the public interest and welfare of this state*  
14 *declared by K.S.A. 44-702, and amendments thereto.*

15 (b) (1) Any person violating subsection (a) ~~shall~~, upon first violation,  
16 *shall* be subject to a civil penalty in an amount computed in the manner  
17 prescribed in K.S.A. 79-3228, and amendments thereto.

18 (2) Any person violating subsection (a), upon a second *or subsequent*  
19 violation, shall be subject to a civil penalty *equal to twice the amount*  
20 computed as prescribed in paragraph (1) and in addition, upon conviction,  
21 shall be guilty of ~~a class C nonperson misdemeanor~~ *theft and shall be*  
22 *punished in accordance with the provisions of K.S.A. 2019 Supp. 21-5801,*  
23 *and amendments thereto.*

24 ~~(3) Any person violating subsection (a) upon a third or subsequent~~  
25 ~~violation shall be subject to a civil penalty computed as prescribed in~~  
26 ~~paragraph (1) and in addition, upon conviction, shall be guilty of a class A~~  
27 ~~nonperson misdemeanor.~~

28 (c) Criminal violations of subsection (a) may be prosecuted by the  
29 attorney general or the district or county attorney for the county in which  
30 the violation occurred.

31 (d) *The secretary may order a person subject to the employment*  
32 *security act, who has not complied with the civil penalties described in*  
33 *subsection (b), to cease doing business as an employer in the state of*  
34 *Kansas within a period to be set by the secretary, but not less than 10 days*  
35 *from the date of the order.*

36 (e) *In the event that a person fails to comply with the order of the*

1 *secretary issued as provided in subsection (d), the attorney general, or the*  
2 *district attorney or county attorney of any county where the person is*  
3 *doing business as an employer; shall prepare and file in the district court*  
4 *of any county where the person is doing business as an employer a*  
5 *petition, signed and verified by the secretary, requesting that the court*  
6 *issue an order enjoining the person from doing business as an employer in*  
7 *this state for such period of time as the secretary may deem proper and*  
8 *until the person has complied with the employment security law. The*  
9 *district court shall have jurisdiction and venue to enter its order without*  
10 *requiring a bond or evidence to be filed or presented. In all other respects,*  
11 *such action shall be governed by the laws governing civil procedure.*

12 *(f) Any civil penalty assessed hereunder pursuant to this section shall*  
13 *be remitted to the ~~secretary and deposited in the state treasury~~ state*  
14 *treasurer in accordance with the provisions of K.S.A. 75-4215, and*  
15 *amendments thereto. Upon receipt of each such remittance, the state*  
16 *treasurer shall deposit the entire amount into the state treasury to the*  
17 *credit of the state general fund.*

18 *(~~e~~)(g) Any penalty provided in this section shall be in addition to any*  
19 *other penalty and remedy that may otherwise be imposed under the*  
20 *employment security act and such remedies shall be cumulative.*

21 *(~~f~~)(h) This section shall be a part of and supplemental to the*  
22 *employment security law.*

23 Sec. 2. K.S.A. 2019 Supp. 44-766 is hereby repealed.

24 Sec. 3. This act shall take effect and be in force from and after its  
25 publication in the statute book.