

By: Thompson of Harris

H.B. No. 434

A BILL TO BE ENTITLED

AN ACT

relating to the classification of certain construction workers and complaints filed with the Texas Workforce Commission; providing a penalty.

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

SECTION 1. Subchapter B, Chapter 213, Labor Code, is amended by adding Sections 213.026 and 213.027 to read as follows:

Sec. 213.026. CONSTRUCTION EMPLOYER REQUIREMENT TO REPORT EMPLOYEES; PENALTY. (a) In this section, "construction employer" means an employer who employs an individual to provide services directly related to the erection, alteration, repair, renovation, maintenance, or remodeling of a building, structure, appurtenance, road, highway, bridge, dam, levee, canal, jetty, or other improvement to or on real property, including moving, demolishing, dredging, shoring, scaffolding, drilling, blasting, or excavating real property.

(b) A construction employer shall properly report the employment status of each employee of the construction employer for the purposes of this subtitle and as required by commission rule.

(c) In addition to any other penalty under this subchapter, a construction employer who violates this section shall pay to the commission:

(1) a penalty in the amount of \$100 for each employee not properly reported for an initial violation by the employer; and

1 (2) a penalty not to exceed \$1,000 for each employee
2 not properly reported for each subsequent violation that occurs
3 after an initial violation by the employer.

4 (d) In determining the amount of a penalty under Subsection
5 (c)(2), the commission shall consider:

6 (1) the seriousness of the violation, including the
7 nature, circumstances, consequences, extent, and gravity of the
8 violation;

9 (2) any history of previous violations by the
10 construction employer;

11 (3) the demonstrated good faith of the construction
12 employer, including actions taken to rectify the consequences of
13 the violation;

14 (4) the amount of a penalty necessary to deter future
15 violations; and

16 (5) any other matter that justice may require.

17 (e) Based on the criteria listed in Subsection (d), the
18 commission by rule shall adopt a schedule of penalties for a
19 violation described by Subsection (c)(2) to ensure that the amount
20 of a penalty imposed is appropriate to the violation.

21 (f) For a construction employer's initial violation of this
22 section, the commission shall assess a penalty against the employer
23 as provided by Subsection (c)(1) for each violation determined by
24 the commission to have occurred, regardless of the reporting period
25 in which the violation occurred.

26 (g) An unpaid penalty assessed under this section applies to
27 a successor business entity that:

1 (1) has one or more owners who jointly control at least
2 50 percent of the:

3 (A) original construction employer; and

4 (B) successor business entity; and

5 (2) is engaged in the same or a similar business
6 activity as the original construction employer.

7 (h) Except as provided by Subsection (g), the employer of an
8 employee who is not properly reported is the only person liable for
9 a penalty assessed under this section.

10 Sec. 213.027. APPEAL REGARDING CONSTRUCTION EMPLOYER
11 REQUIREMENT TO REPORT EMPLOYEES. (a) In this section,
12 "construction employer" has the meaning assigned by Section
13 213.026.

14 (b) A determination that a construction employer has
15 violated Section 213.026 and any penalty assessed for the violation
16 may be reviewed and appealed in the same manner as a disputed claim
17 under Subchapters C, D, and E, Chapter 212.

18 (c) In ruling on an appeal, the facts and circumstances
19 supporting the construction employer's appeal must be considered,
20 including:

21 (1) the contents of any written contract between the
22 construction employer and the individual whose employment status
23 was not properly reported;

24 (2) documentation that the individual represents that
25 the individual is an independent contractor;

26 (3) an Internal Revenue Service Form W-9 pertaining to
27 the individual or a similar form providing the same information as

1 that form;

2 (4) an Internal Revenue Service Form 1099, or similar
3 form issued by, or that meets the compliance guidelines of, the
4 Internal Revenue Service, on which the construction employer has
5 reported the amount paid to the individual and that was filed in
6 accordance with Internal Revenue Service requirements;

7 (5) whether the individual is not prohibited from
8 hiring employees;

9 (6) whether the individual has a substantial
10 investment in, and is required to furnish, necessary equipment;

11 (7) whether the individual is free to perform services
12 for others;

13 (8) whether the individual has provided evidence of
14 any insurance for the individual's business activity;

15 (9) the construction employer's need to control the
16 work of the individual if:

17 (A) customary to the type of work being
18 performed; or

19 (B) required by a general contractor or
20 construction project owner in order that the general contractor or
21 owner may maintain specific control and direction of the worksite
22 or the flow of work being performed; or

23 (10) whether the failure to properly report the
24 employment status was intentional.

25 SECTION 2. Section 301.023, Labor Code, is amended to read
26 as follows:

27 Sec. 301.023. COMPLAINTS AGAINST COMMISSION. (a) The

1 commission shall maintain a file on each written complaint filed
2 with the commission and each complaint received by telephone or
3 submitted through the commission's Internet website. The file must
4 include:

5 (1) the name of the person who filed the complaint, if
6 available;

7 (2) the date the complaint is received by the
8 commission;

9 (3) the subject matter of the complaint;

10 (4) the name of each person contacted in relation to
11 the complaint;

12 (5) a summary of the results of the review or
13 investigation of the complaint; and

14 (6) an explanation of the reason the file was closed,
15 if the commission closed the file without taking action other than
16 to investigate the complaint.

17 (b) The commission shall provide to the person filing the
18 complaint, if the person's name and contact information are
19 available, and to each person who is a subject of the complaint a
20 copy of the commission's policies and procedures relating to
21 complaint investigation and resolution.

22 (c) The commission, at least quarterly until final
23 disposition of the complaint, shall notify the person filing the
24 complaint, if the person's name and contact information are
25 available, and each person who is a subject of the complaint of the
26 status of the investigation unless the notice would jeopardize an
27 undercover investigation.

SECTION 3. Subchapter D, Chapter 301, Labor Code, is amended by adding Section 301.0612 to read as follows:

Sec. 301.0612. DUTIES REGARDING CONSTRUCTION INDUSTRY. (a) It is the policy of this state that each worker in the construction industry must be properly classified as an employee or independent contractor.

(b) The commission shall review its policies and procedures for the enforcement of Subtitle A and any commission rule regarding the construction industry. The commission shall adopt rules and procedures to encourage and enforce the proper classification of workers in the construction industry as employees or independent contractors.

(c) As soon as practicable after the end of each fiscal year, the commission shall submit a report to the governor and the legislature regarding the efforts of the commission to ensure the proper classification of workers in the construction industry. The report must include with respect to the construction industry:

(1) the number of investigated complaints by the commission and any findings; and

(2) the amount of unemployment taxes, interest, and administrative penalties collected as a result of enforcement actions taken under Chapter 213.

(d) The report under Subsection (c) may not include identifying information about a person subject to this title or a complainant.

SECTION 4. Section 213.026, Labor Code, as added by this Act, applies only to conduct that occurs on or after the effective

1 date of this Act. Conduct that occurs before the effective date of
2 this Act is governed by the law in effect immediately before the
3 effective date of this Act, and the former law is continued in
4 effect for that purpose.

5 SECTION 5. The Texas Workforce Commission shall submit the
6 first report required by Section 301.0612, Labor Code, as added by
7 this Act, not later than December 1, 2016.

8 SECTION 6. This Act takes effect January 1, 2016.