



Rep. Lou Lang

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LRB094 16772 WGH 58685 a

1 AMENDMENT TO SENATE BILL 2399

2 AMENDMENT NO. _____. Amend Senate Bill 2399 by replacing
3 everything after the enacting clause with the following:

4 "ARTICLE 5.

5 Section 5-1. Short title. This Article 5 may be cited as
6 the Employee Classification Act, and references in this Article
7 to "this Act" mean this Article.

8 Section 5-3. Purpose. This Act is intended to address the
9 practice of misclassifying employees as independent
10 contractors.

11 Section 5-5. Definitions. As used in this Act:

12 "Construction" means building, altering, repairing,
13 improving, or demolishing any structure or building or making
14 improvements of any kind to real property.

15 "Contractor" means any person or entity who is engaged in
16 construction as defined in this Act. "Contractor" includes a
17 general contractor and a subcontractor, but does not include a
18 person or entity who furnishes only materials or supplies.

19 "Department" means the Department of Labor.

20 "Director" means the Director of Labor.

21 "Employer" means any contractor that employs individuals
22 deemed employees under Section 5-10 of this Act; however,

1 "employer" does not include (i) the State of Illinois or its
2 officers, agencies, or political subdivisions or (ii) the
3 federal government.

4 "Entity" means any contractor or subcontractor for which a
5 person is performing any service and is not classified as an
6 employee under Section 5-10 of this Act; however, "entity" does
7 not include (i) the State of Illinois or its officers,
8 agencies, or political subdivisions or (ii) the federal
9 government.

10 Section 5-10. Applicability; status of individuals
11 performing service. For the purposes of this Act, an individual
12 performing any service for a contractor or subcontractor is
13 deemed to be an employee unless it is shown that:

14 (1) the individual has been and will continue to be
15 free from control or direction over the performance of the
16 service, both under his or her contract of service and in
17 fact;

18 (2) the service is either outside the usual course of
19 the business for which the service is performed or the
20 service is performed outside of all the places of business
21 of the enterprise for which the service is performed; and

22 (3) the individual is engaged in an independently
23 established trade, occupation, profession, or business.

24 Provided, however, that this shall not impair the ability of a
25 contractor to subcontract with a subcontractor provided the
26 subcontractor satisfies the provisions of this Section, nor
27 impair the ability of a subcontractor to subcontract with a
28 lower tier subcontractor provided the lower tier subcontractor
29 satisfies the provisions of this Section.

30 Section 5-15. Notice.

31 (a) The Department shall post a summary of the requirements
32 of this Act in English, Spanish, and Polish on its web site and

1 on bulletin boards in each of its offices.

2 (b) An employer or entity for whom one or more persons
3 classified as independent contractors are performing service
4 shall post and keep posted, in conspicuous places on each job
5 site where those persons work and in each of its offices, a
6 notice in English, Spanish, and Polish, prepared by the
7 Department, summarizing the requirements of this Act. The
8 Department shall furnish copies of summaries to employers and
9 entities upon request without charge.

10 Section 5-20. Failure to properly designate or classify
11 persons performing services as employees.

12 (a) Except as provided in subsection (b), it is a violation
13 of this Act for an employer or entity not to designate an
14 individual as an employee under Section 5-10 of this Act unless
15 the employer or entity satisfies the provisions of Section
16 5-10.

17 (b) A general contractor shall not be liable under this Act
18 for any subcontractor's failure to properly designate or
19 classify persons performing services as employees, nor shall a
20 subcontractor be liable for any lower tier subcontractor's
21 failure to properly designate or classify persons performing
22 services as employees.

23 (c) Nothing in this Act shall be deemed to apply to any
24 action arising out of personal injury or tort.

25 Section 5-25. Enforcement. It shall be the duty of the
26 Department to enforce the provisions of this Act. The
27 Department shall have the power to conduct investigations in
28 connection with the administration and enforcement of this Act
29 and any investigator with the Department shall be authorized to
30 visit and inspect, at all reasonable times, any places covered
31 by this Act and shall be authorized to inspect, at all
32 reasonable times, documents related to the determination of

1 whether a person is an employee under Section 5-10 of this Act.
2 The Director of Labor or his or her representative may compel,
3 by subpoena, the attendance and testimony of witnesses and the
4 production of books, payrolls, records, papers, and other
5 evidence in any investigation or hearing and may administer
6 oaths to witnesses.

7 Section 5-27. Order for violation and public hearing.
8 Whenever the Department believes upon investigation that there
9 has been a violation of any of the provisions of this Act or
10 any rules or regulations promulgated under this Act, the
11 Department may: (i) issue and cause to be served on any party
12 an order to cease and desist from further violation of this
13 Act; (ii) take affirmative or other action as deemed reasonable
14 to eliminate the effect of the violation; and (iii) assess any
15 civil penalty allowed by this Act. The civil penalties assessed
16 by the Department shall be recoverable in an action brought in
17 the name of the People of the State of Illinois by the Attorney
18 General. In any order issued to an offending party under this
19 Act, the Department shall include a summary of its findings,
20 which give evidence of the violation. Any party affected by an
21 order of the Department shall have the right to a hearing
22 before the Department; however, a written request for such
23 hearing shall be served on the Department within 10 days of
24 notice of such order. In the absence of the receipt of a
25 request for hearing, the affected party shall be deemed to have
26 waived its right to a hearing and the Department's order shall
27 become a final administrative decision.

28 Section 5-30. Review under Administrative Review Law. Any
29 party to a proceeding under this Act may apply for and obtain
30 judicial review of an order of the Department entered under
31 this Act in accordance with the provisions of the
32 Administrative Review Law, and the Department in proceedings

1 under the Act may obtain an order from the court for the
2 enforcement of its order.

3 Section 5-35. Contempt. Whenever it appears that any
4 employer or entity has violated a valid order of the Department
5 issued under this Act, the Director of Labor may commence an
6 action and obtain from the court an order commanding the
7 employer or entity to obey the order of the Department or be
8 adjudged guilty of contempt of court and punished accordingly.

9 Section 5-40. Penalties. An employer or entity that
10 violates any of the provisions of this Act or any rule adopted
11 under this Act shall be subject to a civil penalty not to
12 exceed \$1,500 for each violation found in the first audit by
13 the Department. Following a first audit, an employer or entity
14 shall be subject to a civil penalty not to exceed \$2,500 for
15 each repeat violation found by the Department within 5 years.
16 For purposes of this Section, each violation of this Act for
17 each person and for each day the violation continues shall
18 constitute a separate and distinct violation. In determining
19 the amount of a penalty, the Director shall consider the
20 appropriateness of the penalty to the employer or entity
21 charged, upon the determination of the gravity of the
22 violations. The amount of the penalty, when finally determined,
23 may be recovered in a civil action filed in any circuit court
24 by the Director of Labor, or a person aggrieved by a violation
25 of this Act or any rule adopted under this Act. In any civil
26 action brought by an aggrieved person pursuant to this Section,
27 the circuit court shall award the aggrieved person 10% of the
28 amount recovered. In such case the remaining amount recovered
29 shall be submitted to the Director of Labor. Any uncollected
30 amount shall be subject to the provisions of the Illinois State
31 Collection Act of 1986.

1 Section 5-42. Debarments. For any second or subsequent
2 violation determined by the Department which is within 5 years
3 of an earlier violation, the Department shall add the employer
4 or entity's name to a list to be posted on the Department's
5 website. Upon such notice, the Department shall notify the
6 violating employer or entity. No State contract shall be
7 awarded to an employer or entity appearing on the list until 4
8 years have elapsed from the date of the last violation.

9 Section 5-45. Willful violations.

10 (a) Whoever willfully violates any of the provisions of
11 this Act or any rule adopted under this Act or whoever
12 obstructs the Director of Labor, or his or her representatives,
13 or any other person authorized to inspect places of employment
14 under this Act shall be liable for penalties up to double the
15 statutory amount.

16 (b) Whoever willfully violates any of the provisions of
17 this Act or any rule adopted under this Act shall be liable to
18 the employee for punitive damages in an amount equal to the
19 penalties assessed in subsection (a) of this Section.

20 (c) The penalty shall be imposed in cases in which an
21 employer or entity's conduct is proven by a preponderance of
22 the evidence to be willful. The penalty may be recovered in a
23 civil action brought by the Director of Labor in any circuit
24 court. In any such action, the Director of Labor shall be
25 represented by the Attorney General. Any uncollected amount
26 shall be subject to the provisions of the Illinois State
27 Collection Act of 1986.

28 Section 5-50. Employee Classification Fund. All moneys
29 received by the Department as civil penalties under this Act
30 shall be deposited into the Employee Classification Fund and
31 shall be used, subject to appropriation by the General
32 Assembly, by the Department for administration, investigation,

1 and other expenses incurred in carrying out its powers and
2 duties under this Act. The Department shall hire as many
3 investigators and other personnel as may be necessary to carry
4 out the purposes of this Act. Any moneys in the Fund at the end
5 of a fiscal year in excess of those moneys necessary for the
6 Department to carry out its powers and duties under this Act
7 shall be available to the Department for the next fiscal year
8 for any of the Department's duties.

9 Section 5-55. Retaliation.

10 (a) It is a violation of this Act for an employer or
11 entity, or any agent of an employer or entity, to retaliate
12 through discharge or in any other manner against any person for
13 exercising any rights granted under this Act. Such retaliation
14 shall subject an employer or entity to civil penalties pursuant
15 to this Act or a private cause of action.

16 (b) It is a violation of this Act for an employer or entity
17 to retaliate against a person for:

18 (1) making a complaint to an employer or entity, to a
19 co-worker, to a community organization, before a public
20 hearing, or to a State or federal agency that rights
21 guaranteed under this Act have been violated;

22 (2) causing to be instituted any proceeding under or
23 related to this Act; or

24 (3) testifying or preparing to testify in an
25 investigation or proceeding under this Act.

26 Section 5-60. Private right of action.

27 (a) A person aggrieved by a violation of this Act or any
28 rule adopted under this Act by an employer or entity may file
29 suit in circuit court, in the county where the alleged offense
30 occurred or where any person who is party to the action
31 resides, without regard to exhaustion of any alternative
32 administrative remedies provided in this Act. Actions may be

1 brought by one or more persons for and on behalf of themselves
2 and other persons similarly situated. A person whose rights
3 have been violated under this Act by an employer or entity is
4 entitled to collect:

5 (1) the amount of any wages, salary, employment
6 benefits, or other compensation denied or lost to the
7 person by reason of the violation, plus an equal amount in
8 liquidated damages;

9 (2) compensatory damages and an amount up to \$500 for
10 each violation of this Act or any rule adopted under this
11 Act;

12 (3) in the case of unlawful retaliation, all legal or
13 equitable relief as may be appropriate; and

14 (4) attorney's fees and costs.

15 (b) The right of an aggrieved person to bring an action
16 under this Section terminates upon the passing of 3 years from
17 the final date of service to the employer or entity. This
18 limitations period is tolled if an employer or entity has
19 deterred a person's exercise of rights under this Act by
20 contacting or threatening to contact law enforcement agencies.

21 Section 5-65. Rulemaking. The Department may adopt
22 reasonable rules to implement and administer this Act. For
23 purposes of this Act, the General Assembly finds that the
24 adoption of rules to implement this Act is deemed an emergency
25 and necessary for the public interest and welfare.

26 Section 5-70. No waivers.

27 (a) There shall be no waiver of any provision of this Act.

28 (b) It is a Class C misdemeanor for an employer to attempt
29 to induce any individual to waive any provision of this Act.

30 Section 5-75. Cooperation. The Department of Labor, the
31 Department of Employment Security, the Department of Revenue,

1 the Office of the State Comptroller, and the Illinois Workers'
2 Compensation Commission shall cooperate under this Act by
3 sharing information concerning any suspected misclassification
4 by an employer of one or more of its employees as independent
5 contractors. Upon determining that an employer or entity has
6 misclassified employees as independent contractors in
7 violation of this Act, the Department of Labor shall notify the
8 Department of Employment Security, the Department of Revenue,
9 the Office of the State Comptroller, and the Illinois Workers'
10 Compensation Commission who shall be obliged to check such
11 employer or entity's compliance with their laws, utilizing
12 their own definitions, standards, and procedures.

13 Section 5-80. Effect of final decision. Any final
14 administrative decision made pursuant to this Act is for the
15 purpose of enforcing this Act and is not admissible or binding
16 against a party in any other proceeding.

17 Section 5-900. The State Comptroller Act is amended by
18 adding Section 9.06 as follows:

19 (15 ILCS 405/9.06 new)

20 Sec. 9.06. Misclassification of employees as independent
21 contractors. The Department of Labor, the Department of
22 Employment Security, the Department of Revenue, the Office of
23 the State Comptroller, and the Illinois Workers' Compensation
24 Commission shall cooperate under the Employee Classification
25 Act by sharing information concerning any suspected
26 misclassification by an employer or entity, as defined in the
27 Employee Classification Act, of one or more employees as
28 independent contractors.

29 Section 5-901. The Department of Employment Security Law of
30 the Civil Administrative Code of Illinois is amended by adding

1 Section 1005-160 as follows:

2 (20 ILCS 1005/1005-160 new)

3 Sec. 1005-160. Misclassification of employees as
4 independent contractors. The Department of Labor, the
5 Department of Employment Security, the Department of Revenue,
6 the Office of the State Comptroller, and the Illinois Workers'
7 Compensation Commission shall cooperate under the Employee
8 Classification Act by sharing information concerning any
9 suspected misclassification by an employer or entity, as
10 defined in the Employee Classification Act, of one or more
11 employees as independent contractors.

12 Section 5-905. The Department of Labor Law of the Civil
13 Administrative Code of Illinois is amended by adding Section
14 1505-125 as follows:

15 (20 ILCS 1505/1505-125 new)

16 Sec. 1505-125. Misclassification of employees as
17 independent contractors. The Department of Labor, the
18 Department of Employment Security, the Department of Revenue,
19 the Office of the State Comptroller, and the Illinois Workers'
20 Compensation Commission shall cooperate under the Employee
21 Classification Act by sharing information concerning any
22 suspected misclassification by an employer or entity, as
23 defined in the Employee Classification Act, of one or more
24 employees as independent contractors.

25 Section 5-910. The Department of Revenue Law of the Civil
26 Administrative Code of Illinois is amended by adding Section
27 2505-750 as follows:

28 (20 ILCS 2505/2505-750 new)

29 Sec. 2505-750. Misclassification of employees as

1 independent contractors. The Department of Labor, the
2 Department of Employment Security, the Department of Revenue,
3 the Office of the State Comptroller, and the Illinois Workers'
4 Compensation Commission shall cooperate under the Employee
5 Classification Act by sharing information concerning any
6 suspected misclassification by an employer or entity, as
7 defined in the Employee Classification Act, of one or more
8 employees as independent contractors.

9 Section 5-915. The State Finance Act is amended by adding
10 Section 5.663 as follows:

11 (30 ILCS 105/5.663 new)

12 Sec. 5.663. The Employee Classification Fund.

13 Section 5-920. The Illinois Procurement Code is amended by
14 changing Section 50-70 as follows:

15 (30 ILCS 500/50-70)

16 Sec. 50-70. Additional provisions. This Code is subject to
17 applicable provisions of the following Acts:

18 (1) Article 33E of the Criminal Code of 1961;

19 (2) the Illinois Human Rights Act;

20 (3) the Discriminatory Club Act;

21 (4) the Illinois Governmental Ethics Act;

22 (5) the State Prompt Payment Act;

23 (6) the Public Officer Prohibited Activities Act; ~~and~~

24 (7) the Drug Free Workplace Act; and

25 (8) the Employee Classification Act.

26 (Source: P.A. 90-572, eff. 2-6-98.)

27 Section 5-925. The Workers' Compensation Act is amended by
28 adding Section 26.1 as follows:

1 (820 ILCS 305/26.1 new)

2 Sec. 26.1. Misclassification of employees as independent
3 contractors. The Department of Labor, the Department of
4 Employment Security, the Department of Revenue, the Office of
5 the State Comptroller, and the Illinois Workers' Compensation
6 Commission shall cooperate under the Employee Classification
7 Act by sharing information concerning any suspected
8 misclassification by an employer or entity, as defined in the
9 Employee Classification Act, of one or more employees as
10 independent contractors.

11 ARTICLE 10.

12 Section 10-5. The Prevailing Wage Act is amended by
13 changing Section 5 as follows:

14 (820 ILCS 130/5) (from Ch. 48, par. 39s-5)

15 Sec. 5. Certified payroll.

16 (a) While participating on public works, the contractor and
17 each subcontractor shall:

18 (1) make and keep, for a period of not less than 3
19 years, records of all laborers, mechanics, and other
20 workers employed by them on the project; the records shall
21 include each worker's name, address, telephone number when
22 available, social security number, classification or
23 classifications, the hourly wages paid in each pay period,
24 the number of hours worked each day, and the starting and
25 ending times of work each day; and

26 (2) submit monthly, in person, by mail, or
27 electronically a certified payroll to the public body in
28 charge of the project. The certified payroll shall consist
29 of a complete copy of the records identified in paragraph
30 (1) of this subsection (a), but may exclude the starting
31 and ending times of work each day. The certified payroll

1 shall be accompanied by a statement signed by the
2 contractor or subcontractor which avers that: (i) such
3 records are true and accurate; (ii) the hourly rate paid to
4 each worker is not less than the general prevailing rate of
5 hourly wages required by this Act; and (iii) the contractor
6 or subcontractor is aware that filing a certified payroll
7 that he or she knows to be false is a Class B misdemeanor.
8 A general contractor is not prohibited from relying on the
9 certification of a lower tier subcontractor, provided the
10 general contractor does not knowingly rely upon a
11 subcontractor's false certification. Any contractor or
12 subcontractor subject to this Act who fails to submit a
13 certified payroll or knowingly files a false certified
14 payroll is in violation of this Act and guilty of a Class B
15 misdemeanor. The public body in charge of the project shall
16 keep the records submitted in accordance with this
17 paragraph (2) of subsection (a) for a period of not less
18 than 3 years. The records submitted in accordance with this
19 paragraph (2) of subsection (a) shall be considered public
20 records, except an employee's address, telephone number,
21 and social security number, and made available in
22 accordance with the Freedom of Information Act. The public
23 body shall accept any reasonable submissions by the
24 contractor that meet the requirements of this Section.

25 (b) Upon 7 ~~2~~ business days' notice, the contractor and each
26 subcontractor shall make available for inspection the records
27 identified in paragraph (1) of subsection (a) of this Section
28 to the public body in charge of the project, its officers and
29 agents, and to the Director of Labor and his deputies and
30 agents. Upon 7 ~~2~~ business days' notice, the contractor and each
31 subcontractor shall make such records available at all
32 reasonable hours at a location within this State.

33 (Source: P.A. 93-38, eff. 6-1-04; 94-515, eff. 8-10-05.)

1

ARTICLE 99.

2

Section 99-97. Severability. The provisions of this Act are
3 severable under Section 1.31 of the Statute on Statutes.

4

Section 99-99. Effective date. This Act takes effect upon
5 becoming law.".