

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Truth
5 in Employment Act.

6 Section 3. Purpose. This Act is intended to address the
7 practice of misclassifying employees as independent
8 contractors.

9 Section 5. Definition. As used in this Act, "contractor"
10 means any person who, in any capacity other than as the
11 employee of another for wages as the sole compensation,
12 undertakes to construct, alter, repair, move, wreck, or
13 demolish any fixture or structure. "Contractor" includes a
14 subcontractor, but does not include a person who furnishes only
15 materials or supplies.

16 Section 10. Filing by contractors.

17 (a) A contractor for whom a person is performing work and
18 is classified as an independent contractor with respect to that
19 work must file with the Department of Revenue a statement
20 regarding that person, together with a \$5 filing fee. The
21 Department of Revenue shall adopt rules concerning the form,
22 contents, and filing of the statement. The statement shall
23 include: the name and address of the contractor and the person
24 performing the work; the name and address of the general
25 contractor (if the general contractor is not the contractor for
26 whom the person is performing the work); and any other
27 information required by the Department of Revenue. A separate
28 statement shall be filed by the contractor for each calendar
29 year during which the worker performs work for the contractor.
30 The statement shall be filed no later than the first date of

1 the calendar year on which the worker performs work for the
2 contractor.

3 (b) A contractor that is required to file a statement under
4 subsection (a) and does not file the statement as required
5 under subsection (a) shall pay a \$10 penalty in addition to the
6 \$5 filing fee.

7 Section 15. Notice.

8 (a) The Department of Revenue, the Department of Employment
9 Security, and the Industrial Commission shall post a summary of
10 the requirements of this Act on their web sites.

11 (b) The Department of Revenue shall post a summary of the
12 requirements of this Act on bulletin boards in each office of
13 the Department.

14 (c) A contractor for whom one or more persons classified as
15 independent contractors are performing work shall post and keep
16 posted, in conspicuous places on each job site where those
17 persons work and in each of its offices, a notice, prepared by
18 the Department of Revenue, summarizing the requirements of this
19 Act. The Department of Revenue shall furnish copies of
20 summaries to contractors upon request without charge.

21 Section 20. Investigations.

22 (a) The Department of Revenue shall commence an
23 investigation if it finds, based on statements filed under this
24 Act or other information supplied to the Department or
25 otherwise obtained by the Department, that there is reason to
26 suspect that a contractor has misclassified one or more
27 employees as independent contractors.

28 (b) The Department of Revenue shall hire as many
29 investigators as may be necessary to carry out the purposes of
30 this Act.

31 Section 25. Misclassification of employees as independent
32 contractors.

33 (a) If a contractor is a successful bidder for a

1 construction project and knowingly or intentionally
2 misclassifies one or more of its employees as independent
3 contractors, the contractor is liable to an unsuccessful
4 bidder, or an entity contracting with an unsuccessful bidder
5 (including, but not limited to, a labor organization), for
6 damages suffered by the unsuccessful bidder or entity as a
7 result of the unsuccessful bidder's competitive bid for the
8 construction project not being accepted due to the successful
9 bidder's knowing or intentional misclassification of its
10 employees as independent contractors.

11 (b) If, upon completion of an investigation commenced
12 pursuant to subsection (a) of Section 20 of this Act, the
13 Department of Revenue determines that a contractor has
14 knowingly or intentionally misclassified one or more of its
15 employees as independent contractors on a construction
16 project:

17 (1) the Department may: (i) direct the employer to
18 cease its operations; (ii) direct the employer to pay \$250
19 for each day during which the violation continues; (iii)
20 direct the employer to pay \$500 for each day during which a
21 second or subsequent violation occurs that involves
22 different employees than those involved in an earlier
23 violation by that employer; and (iv) require the employer
24 to continue to pay, for 10 days, employees affected by the
25 determination;

26 (2) no licenses or permits of any kind may be issued to
27 the employer by any State agency or officer or any unit of
28 local government nor may any such licenses or permits be
29 renewed by any State agency or officer or any unit of local
30 government until the Department determines that an
31 employer has cured the misclassification; and

32 (3) no State agency or officer may enter into any
33 contracts with the employer until 2 years have elapsed
34 since the Department has determined that an employer has
35 cured the misclassification.

36 (c) A contractor that knowingly or intentionally

1 misclassifies one or more of its employees as independent
2 contractors on a construction project commits a Class C
3 misdemeanor. A contractor that commits a second or subsequent
4 violation commits a Class 4 felony if the second or subsequent
5 violation involves different employees than those involved in
6 an earlier violation.

7 Section 30. Attorney General; State's Attorneys. Criminal
8 violations of this Act shall be prosecuted by the Attorney
9 General or the appropriate State's Attorney. The Department of
10 Revenue shall refer matters to the Attorney General and the
11 appropriate State's Attorney upon determining that a criminal
12 violation may have occurred.

13 Section 35. Truth in Employment Fund. The Truth in
14 Employment Fund is created as a special fund in the State
15 treasury. All fees and penalties received by the Department of
16 Revenue under this Act shall be deposited into the Fund. Moneys
17 in the Fund shall be used, subject to appropriation by the
18 General Assembly, by the Department of Revenue for
19 administration, investigation, and other expenses incurred in
20 carrying out its powers and duties under this Act. Any moneys
21 in the Fund at the end of a fiscal year in excess of a
22 \$1,000,000 reserve shall be transferred to the General Revenue
23 Fund.

24 Section 40. Rulemaking. In addition to any rulemaking
25 required by any other provision of this Act, the Department of
26 Revenue may adopt reasonable rules to implement and administer
27 this Act.

28 Section 45. Judicial review. A final administrative
29 decision of the Department of Revenue under this Act is subject
30 to judicial review under the Administrative Review Law.

31 Section 50. No waivers.

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

2 (b) It is a Class C misdemeanor for a contractor to attempt
3 to induce any individual to waive any provision of this Act.

4 Section 85. The Department of Employment Security Law of
5 the Civil Administrative Code of Illinois is amended by adding
6 Section 1005-160 as follows:

7 (20 ILCS 1005/1005-160 new)

8 Sec. 1005-160. Misclassification of employees as
9 independent contractors. The Department shall cooperate with
10 the Department of Revenue under the Truth in Employment Act by
11 providing information to the Department of Revenue concerning
12 any suspected misclassification by a contractor of one or more
13 of its employees as independent contractors.

14 Section 90. The State Finance Act is amended by adding
15 Section 5.625 as follows:

16 (30 ILCS 105/5.625 new)

17 Sec. 5.625. The Truth in Employment Fund.

18 Section 95. The Workers' Compensation Act is amended by
19 adding Section 26.1 as follows:

20 (820 ILCS 305/26.1 new)

21 Sec. 26.1. Misclassification of employees as independent
22 contractors. The Commission shall cooperate with the
23 Department of Revenue under the Truth in Employment Act by
24 providing information to the Department of Revenue concerning
25 any suspected misclassification by a contractor of one or more
26 of its employees as independent contractors.

27 Section 97. Severability. The provisions of this Act are
28 severable under Section 1.31 of the Statute on Statutes.