



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5002

Introduced 01/23/06, by Rep. Gary Hannig

SYNOPSIS AS INTRODUCED:

New Act

20 ILCS 1005/1005-160 new

20 ILCS 2505/2505-750 new

30 ILCS 105/5.663 new

30 ILCS 500/50-70

820 ILCS 305/26.1 new

Creates the Employee Classification Act. States that the Act is intended to address the practice of misclassifying employees as independent contractors. Provides that an individual performing any service is deemed to be an employee unless specified conditions are met. Requires summaries of the requirements of the Act to be posted by specified methods. Provides that it is a violation of the Act to misclassify persons performing services as employees. Contains provisions regarding: enforcement; investigations; hearings; remedies; review; contempt as a remedy; civil penalties for violations; creation of an Employee Classification Fund and the uses of moneys in the Fund; retaliation; creation of a private right of action; adoption of rules; criminal penalties; and other matters. Amends the State Finance Act to include the Fund as a special fund. Amends the Department of Employment Security Law, the Department of Revenue Law, and the Workers' Compensation Act to require cooperation with the Department of Labor. Amends the Illinois Procurement Act to conform to the new Act. Contains a severability clause. Effective July 1, 2006.

LRB094 15270 WGH 54774 b

CORRECTIONAL
BUDGET AND
IMPACT NOTE ACT
MAY APPLY

FISCAL NOTE ACT
MAY APPLY

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
5 Employee Classification Act.

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

9 Section 5. Definitions. As used in this Act:

10 "Break in service" means a person not classified as an
11 employee under Section 10 of this Act that performs any service
12 for an entity but fails to perform any service for a period of
13 120 business days.

14 "Consecutive services" means a person not classified as an
15 employee under Section 10 of this Act that performs any service
16 for an entity with no break in service.

17 "Employer" means any individual, firm, partnership,
18 corporation, limited liability company, association, or other
19 legal entity permitted by law to do business within the State
20 of Illinois, the State of Illinois, or any political
21 subdivision thereof and includes every school district,
22 county, city, township, irrigation, utility, reclamation
23 improvement or other district and every other political
24 subdivision, district, or municipality of the State whether
25 such political subdivision, municipality, or district operates
26 under a special charter or not, but excepting the federal
27 government who employ individuals deemed employees under
28 Section 10 of this Act.

29 "Entity" means any individual, firm, partnership,
30 corporation, limited liability company, association, or other
31 legal entity permitted by law to do business within the State

1 of Illinois, the State of Illinois, or any political
2 subdivision thereof and includes every school district,
3 county, city, township, irrigation, utility, reclamation
4 improvement or other district and every other political
5 subdivision, district, or municipality of the State whether
6 such political subdivision, municipality, or district operates
7 under a special charter or not, but excepting the federal
8 government for which a person is performing any service and is
9 not classified as an employee under Section 10 of this Act.

10 "Department" means the Department of Labor.

11 "Director" means the Director of Labor.

12 Section 10. Status of individuals performing service. For
13 the purposes of this Act, an individual performing any service
14 is deemed to be an employee unless it is shown by proof beyond
15 a reasonable doubt that:

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

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

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

26 Section 15. Notice.

27 (a) The Department shall post a summary of the requirements
28 of this Act in English, Spanish, and Polish on its web site and
29 on bulletin boards in each of its offices.

30 (b) An employer or entity for whom one or more persons
31 classified as independent contractors are performing service
32 shall post and keep posted, in conspicuous places on each job
33 site where those persons work and in each of its offices, a
34 notice in English, Spanish, and Polish, prepared by the

1 Department, summarizing the requirements of this Act. The
2 Department shall furnish copies of summaries to employers and
3 entities upon request without charge.

4 Section 20. Failure to properly classify persons
5 performing services as employees. It is a violation of this Act
6 for an employer or entity to misclassify persons performing
7 services as employees under Section 10 of this Act.

8 Section 25. Enforcement. It shall be the duty of the
9 Department to enforce the provisions of this Act. The
10 Department shall have the power to conduct investigations in
11 connection with the administration and enforcement of this Act
12 and any investigator with the Department shall be authorized to
13 visit and inspect, at all reasonable times, any places covered
14 by this Act and shall be authorized to inspect, at all
15 reasonable times, documents related to the determination of
16 whether a person is an employee under Section 10 of this Act.
17 The Department shall conduct hearings in accordance with the
18 Illinois Administrative Procedure Act upon written complaint
19 by an investigator of the Department or any interested person
20 of a violation of the Act. After the hearing, if supported by
21 the evidence, the Department may (i) issue and cause to be
22 served on any party an order to cease and desist from further
23 violation of the Act, (ii) take affirmative or other action as
24 deemed reasonable to eliminate the effect of the violation,
25 and (iii) determine the amount of any civil penalty allowed by
26 the Act. The Director of Labor or his or her representative may
27 compel, by subpoena, the attendance and testimony of witnesses
28 and the production of books, payrolls, records, papers, and
29 other evidence in any investigation or hearing and may
30 administer oaths to witnesses.

31 Section 30. Review under Administrative Review Law. Any
32 party to a proceeding under this Act may apply for and obtain
33 judicial review of an order of the Department entered under

1 this Act in accordance with the provisions of the
2 Administrative Review Law, and the Department in proceedings
3 under the Act may obtain an order from the court for the
4 enforcement of its order.

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

11 Section 40. Penalties.

12 (a) An employer or entity that violates any of the
13 provisions of this Act or any rule adopted under this Act shall
14 be subject to a civil penalty not to exceed \$6,000 for
15 violations found in the first audit by the Department.
16 Following a first audit, an employer or entity shall be subject
17 to a civil penalty not to exceed \$2,500 for each repeat
18 violation found by the Department within 4 years. For purposes
19 of this subsection, each violation of this Act for each person
20 and for each day the violation continues shall constitute a
21 separate and distinct violation. In determining the amount of a
22 penalty, the Director shall consider the appropriateness of the
23 penalty to the employer or entity charged, upon the
24 determination of the gravity of the violations. For any
25 violation determined by the Department to be willful which is
26 within 4 years of an earlier violation, the Department shall
27 add the employer or entity's name to a list to be posted on the
28 Department's website. No State contract may be awarded to an
29 employer or entity who is posted or should be posted to this
30 list until 4 years have elapsed from the date of a second or
31 subsequent violation. The amount of the penalty, when finally
32 determined, may be:

33 (1) Recovered in a civil action brought by the Director
34 of Labor in any circuit court. In this litigation, the

1 Director of Labor shall be represented by the Attorney
2 General.

3 (2) Ordered by the court, in an action brought by any
4 party for a violation under this Act, to be paid to the
5 Director of Labor.

6 (b) The Department shall adopt rules for violation hearings
7 and penalties for violations of this Act or the Department's
8 rules in conjunction with the penalties set forth in this Act.
9 Any administrative determination by the Department as to the
10 amount of each penalty shall be final unless reviewed as
11 provided in Section 30 of this Act.

12 Section 45. Willful violations.

13 (a) Whoever willfully violates any of the provisions of
14 this Act or any rule adopted under this Act, or whoever
15 obstructs the Department of Labor, its inspectors or deputies,
16 or any other person authorized to inspect places of employment
17 under this Act shall be liable for penalties up to double the
18 statutory amount.

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

23 (c) The Director may promulgate rules for the collection of
24 these penalties. The penalty shall be imposed in cases in which
25 an employer or entity's conduct is proven by a preponderance of
26 the evidence to be willful. The penalty may be recovered in a
27 civil action brought by the Director of Labor in any circuit
28 court. In any such action, the Director of Labor shall be
29 represented by the Attorney General.

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

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

9 Section 55. Retaliation.

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

16 (b) Protected Acts from Retaliation. It is a violation of
17 this Act for an employer or entity to retaliate against a
18 person for:

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

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

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

27 Section 60. Private Right of Action.

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

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

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

8 (2) compensatory damages and an amount up to \$500 for
9 the violation of each subpart of each Section;

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

12 (4) attorney's fees and costs.

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

19 Section 65. Rulemaking. In addition to any rulemaking
20 required by any other provision of this Act, the Department may
21 adopt reasonable rules to implement and administer this Act.
22 For purposes of this Act, the General Assembly finds that the
23 adoption of rules to implement this Act is deemed an emergency
24 and necessary for the public interest and welfare.

25 Section 70. No waivers.

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

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

29 Section 900. The Department of Employment Security Law of
30 the Civil Administrative Code of Illinois is amended by adding
31 Section 1005-160 as follows:

32 (20 ILCS 1005/1005-160 new)

1 Sec. 1005-160. Misclassification of employees as
2 independent contractors. The Department of Employment Security
3 and the Department of Labor shall cooperate with each other
4 under the Employee Classification Act by providing information
5 to each other concerning any suspected misclassification by an
6 employer of one or more of its employees as independent
7 contractors.

8 Section 902. The Department of Revenue Law of the Civil
9 Administrative Code of Illinois is amended by adding Section
10 2505-750 as follows:

11 (20 ILCS 2505/2505-750 new)

12 Sec. 2505-750. Misclassification of employees as
13 independent contractors. The Department of Revenue and the
14 Department of Labor shall cooperate with each other under the
15 Employee Classification Act by providing information to each
16 other concerning any suspected misclassification by an
17 employer of one or more of its employees as independent
18 contractors.

19 Section 905. The State Finance Act is amended by adding
20 Section 5.663 as follows:

21 (30 ILCS 105/5.663 new)

22 Sec. 5.663. The Employee Classification Fund.

23 Section 910. The Illinois Procurement Code is amended by
24 changing Section 50-70 as follows:

25 (30 ILCS 500/50-70)

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

- 28 (1) Article 33E of the Criminal Code of 1961;
29 (2) the Illinois Human Rights Act;
30 (3) the Discriminatory Club Act;

- 1 (4) the Illinois Governmental Ethics Act;
- 2 (5) the State Prompt Payment Act;
- 3 (6) the Public Officer Prohibited Activities Act; ~~and~~
- 4 (7) the Drug Free Workplace Act; and
- 5 (8) the Employee Classification Act.

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

7 Section 915. The Workers' Compensation Act is amended by
8 adding Section 26.1 as follows:

9 (820 ILCS 305/26.1 new)

10 Sec. 26.1. Misclassification of employees as independent
11 contractors. The Illinois Workers' Compensation Commission and
12 the Department of Labor shall cooperate with each other under
13 the Employee Classification Act by providing information to
14 each other concerning any suspected misclassification by an
15 employer of one or more of its employees as independent
16 contractors.

17 Section 990. Severability. The provisions of this Act are
18 severable under Section 1.31 of the Statute on Statutes.

19 Section 999. Effective date. This Act takes effect July 1,
20 2006.