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1 AMENDMENT TO SENATE BILL 797

2 AMENDMENT NO. _____. Amend Senate Bill 797 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Truth 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:

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

16 "Department" means the Department of Revenue.

17 Section 10. Filing by contractors.

18 (a) A contractor for whom a person is performing work on a
19 construction project and is classified as an independent
20 contractor with respect to that work must file with the
21 Department a statement regarding that person. The Department
22 shall adopt rules concerning the form, contents, and filing of

1 the statement. The statement shall be available in English and
2 Spanish and shall include: the name and address of the
3 contractor and the person performing the work; the name and
4 address of the general contractor (if the general contractor is
5 not the contractor for whom the person is performing the work);
6 and any other information required by the Department. A
7 separate statement shall be filed by the contractor for each
8 calendar year during which the worker performs work for the
9 contractor. The statement shall be filed no later than the
10 first date of the calendar year on which the worker performs
11 work for the contractor. The information obtained by the
12 Department through the statement is confidential and shall be
13 used solely for the purposes of this Act.

14 (b) A contractor that is required to file a statement under
15 subsection (a) and does not timely file that statement shall
16 pay, when it files the statement, a \$10 late-filing penalty to
17 the Department.

18 Section 15. Notice.

19 (a) The Department shall post a summary of the requirements
20 of this Act in English and Spanish on its web site and on
21 bulletin boards in each of its offices.

22 (b) A contractor for whom one or more persons classified as
23 independent contractors are performing work shall post and keep
24 posted, in conspicuous places on each job site where those
25 persons work and in each of its offices, a notice in English
26 and Spanish, prepared by the Department, summarizing the
27 requirements of this Act. The Department shall furnish copies
28 of summaries to contractors upon request without charge.

29 Section 20. Investigations.

30 (a) The Department shall commence an investigation if a
31 report is not timely filed under subsection (a) of Section 10
32 or if the Department finds, based on statements filed under

1 this Act or other information supplied to the Department or
2 otherwise obtained by the Department, that there is reason to
3 suspect that a contractor has misclassified one or more
4 employees as independent contractors.

5 (b) A final determination by the United States Internal
6 Revenue Service or a federal court that a person is an employee
7 is deemed correct for all purposes under this Act.

8 (c) The Department shall hire as many investigators as may
9 be necessary to carry out the purposes of this Act.

10 Section 25. Misclassification of employees as independent
11 contractors.

12 (a) If, upon completion of an investigation commenced
13 pursuant to subsection (a) of Section 20 of this Act, the
14 Department determines that a contractor has misclassified one
15 or more employees as independent contractors on a construction
16 project, that contractor is subject to penalties and interest
17 as provided in subsections (c) and (d) of Section 1002 of the
18 Illinois Income Tax Act.

19 (b) If, upon completion of an investigation commenced
20 pursuant to subsection (a) of Section 20 of this Act, the
21 Department determines that a contractor has knowingly or
22 intentionally misclassified one or more employees as
23 independent contractors on a construction project, the
24 Department may: (i) direct the employer to cease its operations
25 on that project; (ii) direct the employer to pay \$200 to the
26 Department for each day during which the violation continues;
27 (iii) direct the employer to pay \$400 to the Department for
28 each day during which a second or subsequent violation occurs
29 that involves different employees than those involved in an
30 earlier violation by that employer; and (iv) require the
31 employer to continue to pay, for 5 days, employees affected by
32 the determination.

33 (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
10 shall refer matters to the Attorney General and the appropriate
11 State's Attorney upon determining that a criminal violation may
12 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 moneys received by the Department under this Act
16 shall be deposited into the Fund. Moneys in the Fund shall be
17 used, subject to appropriation by the General Assembly, by the
18 Department for administration, investigation, and other
19 expenses incurred in carrying out its powers and duties under
20 this Act. Any moneys in the Fund at the end of a fiscal year in
21 excess of a \$1,000,000 reserve shall be transferred to the
22 General Revenue Fund.

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

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

29 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 92. The Illinois Income Tax Act is amended by
19 changing Section 917 as follows:

20 (35 ILCS 5/917) (from Ch. 120, par. 9-917)

21 Sec. 917. Confidentiality and information sharing.

22 (a) Confidentiality. Except as provided in this Section,
23 all information received by the Department from returns filed
24 under this Act, or from any investigation conducted under the
25 provisions of this Act, shall be confidential, except for
26 official purposes within the Department or pursuant to official
27 procedures for collection of any State tax or pursuant to an
28 investigation or audit by the Illinois State Scholarship

1 Commission of a delinquent student loan or monetary award or
2 enforcement of any civil or criminal penalty or sanction
3 imposed by this Act or by another statute imposing a State tax,
4 and any person who divulges any such information in any manner,
5 except for such purposes and pursuant to order of the Director
6 or in accordance with a proper judicial order, shall be guilty
7 of a Class A misdemeanor. However, the provisions of this
8 paragraph are not applicable to information furnished to a
9 licensed attorney representing the taxpayer where an appeal or
10 a protest has been filed on behalf of the taxpayer.

11 (b) Public information. Nothing contained in this Act shall
12 prevent the Director from publishing or making available to the
13 public the names and addresses of persons filing returns under
14 this Act, or from publishing or making available reasonable
15 statistics concerning the operation of the tax wherein the
16 contents of returns are grouped into aggregates in such a way
17 that the information contained in any individual return shall
18 not be disclosed.

19 (c) Governmental agencies. The Director may make available
20 to the Secretary of the Treasury of the United States or his
21 delegate, or the proper officer or his delegate of any other
22 state imposing a tax upon or measured by income, for
23 exclusively official purposes, information received by the
24 Department in the administration of this Act, but such
25 permission shall be granted only if the United States or such
26 other state, as the case may be, grants the Department
27 substantially similar privileges. The Director may exchange
28 information with the Illinois Department of Public Aid and the
29 Department of Human Services (acting as successor to the
30 Department of Public Aid under the Department of Human Services
31 Act) for the purpose of verifying sources and amounts of income
32 and for other purposes directly connected with the
33 administration of this Act and the Illinois Public Aid Code.
34 The Director may exchange information with the Director of the

1 Department of Employment Security for the purpose of verifying
2 sources and amounts of income and for other purposes directly
3 connected with the administration of this Act and Acts
4 administered by the Department of Employment Security. The
5 Director may make available to the Illinois Industrial
6 Commission information regarding employers for the purpose of
7 verifying the insurance coverage required under the Workers'
8 Compensation Act and Workers' Occupational Diseases Act.

9 The Director may make available to any State agency,
10 including the Illinois Supreme Court, which licenses persons to
11 engage in any occupation, information that a person licensed by
12 such agency has failed to file returns under this Act or pay
13 the tax, penalty and interest shown therein, or has failed to
14 pay any final assessment of tax, penalty or interest due under
15 this Act. The Director may make available to any State agency,
16 including the Illinois Supreme Court, information regarding
17 whether a bidder, contractor, or an affiliate of a bidder or
18 contractor has failed to file returns under this Act or pay the
19 tax, penalty, and interest shown therein, or has failed to pay
20 any final assessment of tax, penalty, or interest due under
21 this Act, for the limited purpose of enforcing bidder and
22 contractor certifications. For purposes of this Section, the
23 term "affiliate" means any entity that (1) directly,
24 indirectly, or constructively controls another entity, (2) is
25 directly, indirectly, or constructively controlled by another
26 entity, or (3) is subject to the control of a common entity.
27 For purposes of this subsection (a), an entity controls another
28 entity if it owns, directly or individually, more than 10% of
29 the voting securities of that entity. As used in this
30 subsection (a), the term "voting security" means a security
31 that (1) confers upon the holder the right to vote for the
32 election of members of the board of directors or similar
33 governing body of the business or (2) is convertible into, or
34 entitles the holder to receive upon its exercise, a security

1 that confers such a right to vote. A general partnership
2 interest is a voting security.

3 The Director may make available to any State agency,
4 including the Illinois Supreme Court, units of local
5 government, and school districts, information regarding
6 whether a bidder or contractor is an affiliate of a person who
7 is not collecting and remitting Illinois Use taxes, for the
8 limited purpose of enforcing bidder and contractor
9 certifications.

10 The Director may make any information concerning a criminal
11 violation that may have occurred under the Truth in Employment
12 Act available to the Attorney General or the appropriate
13 State's Attorney when the Department refers a matter under
14 Section 30 of the Truth in Employment Act.

15 The Director may also make available to the Secretary of
16 State information that a corporation which has been issued a
17 certificate of incorporation by the Secretary of State has
18 failed to file returns under this Act or pay the tax, penalty
19 and interest shown therein, or has failed to pay any final
20 assessment of tax, penalty or interest due under this Act. An
21 assessment is final when all proceedings in court for review of
22 such assessment have terminated or the time for the taking
23 thereof has expired without such proceedings being instituted.
24 For taxable years ending on or after December 31, 1987, the
25 Director may make available to the Director or principal
26 officer of any Department of the State of Illinois, information
27 that a person employed by such Department has failed to file
28 returns under this Act or pay the tax, penalty and interest
29 shown therein. For purposes of this paragraph, the word
30 "Department" shall have the same meaning as provided in Section
31 3 of the State Employees Group Insurance Act of 1971.

32 (d) The Director shall make available for public inspection
33 in the Department's principal office and for publication, at
34 cost, administrative decisions issued on or after January 1,

1 1995. These decisions are to be made available in a manner so
2 that the following taxpayer information is not disclosed:

3 (1) The names, addresses, and identification numbers
4 of the taxpayer, related entities, and employees.

5 (2) At the sole discretion of the Director, trade
6 secrets or other confidential information identified as
7 such by the taxpayer, no later than 30 days after receipt
8 of an administrative decision, by such means as the
9 Department shall provide by rule.

10 The Director shall determine the appropriate extent of the
11 deletions allowed in paragraph (2). In the event the taxpayer
12 does not submit deletions, the Director shall make only the
13 deletions specified in paragraph (1).

14 The Director shall make available for public inspection and
15 publication an administrative decision within 180 days after
16 the issuance of the administrative decision. The term
17 "administrative decision" has the same meaning as defined in
18 Section 3-101 of Article III of the Code of Civil Procedure.
19 Costs collected under this Section shall be paid into the Tax
20 Compliance and Administration Fund.

21 (e) Nothing contained in this Act shall prevent the
22 Director from divulging information to any person pursuant to a
23 request or authorization made by the taxpayer, by an authorized
24 representative of the taxpayer, or, in the case of information
25 related to a joint return, by the spouse filing the joint
26 return with the taxpayer.

27 (Source: P.A. 93-25, eff. 6-20-03.)

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

30 (820 ILCS 305/26.1 new)

31 Sec. 26.1. Misclassification of employees as independent
32 contractors. The Commission shall cooperate with the

1 Department of Revenue under the Truth in Employment Act by
2 providing information to the Department of Revenue concerning
3 any suspected misclassification by a contractor of one or more
4 of its employees as independent contractors.

5 Section 97. Severability. The provisions of this Act are
6 severable under Section 1.31 of the Statute on Statutes.".