



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB5060

by Rep. Bill Mitchell

#### SYNOPSIS AS INTRODUCED:

See Index

Amends the Employee Classification Act. Provides that the term "employee" does not include an individual who performs services as an operator of a truck, truck tractor, or tractor who meets certain conditions. Provides that an employer or entity that violates any of the provisions of the Act or any rule adopted under the Act shall be subject to a civil penalty not to exceed \$1,000 (rather than \$1,500) for each violation found in the first audit by the Department of Labor. Eliminates provision that in any civil action brought by an interested party for violation of the Act, the circuit court shall award the interested party 10% of the amount recovered. Provides that a prevailing party in any action for violation of the Act is entitled to recover attorney's fees and court costs from the losing party. Repeals provision that whenever it appears that any employer or entity has violated a valid order of the Department issued under the Act, the Director of Labor may commence an action and obtain from the court an order commanding the employer or entity to obey the order of the Department or be adjudged guilty of contempt of court and punished accordingly. Amends various Acts relating to the sharing of information by the Department of Labor, the Department of Employment Security, the Department of Revenue, the Office of the State Comptroller, and the Illinois Workers' Compensation Commission concerning any (instead of suspected misclassification) by an employer or entity of one or more of its employees as independent contractors. Effective immediately.

LRB095 18356 WGH 44441 b

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 5. The State Comptroller Act is amended by changing  
5 Section 9.06 as follows:

6 (15 ILCS 405/9.06)

7 Sec. 9.06. Misclassification of employees as independent  
8 contractors. The Department of Labor, the Department of  
9 Employment Security, the Department of Revenue, the Office of  
10 the State Comptroller, and the Illinois Workers' Compensation  
11 Commission shall cooperate under the Employee Classification  
12 Act by sharing information concerning any ~~suspected~~  
13 misclassification by an employer or entity, as defined in the  
14 Employee Classification Act, or one or more employees as  
15 independent contractors.

16 (Source: P.A. 95-26, eff. 1-1-08.)

17 Section 10. The Department of Employment Security Law of  
18 the Civil Administrative Code of Illinois is amended by  
19 changing Section 1005-160 as follows:

20 (20 ILCS 1005/1005-160)

21 Sec. 1005-160. 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 (Source: P.A. 95-26, eff. 1-1-08.)

10 Section 15. The Department of Labor Law of the Civil  
11 Administrative Code of Illinois is amended by changing Section  
12 1505-125 as follows:

13 (20 ILCS 1505/1505-125)

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

23 (Source: P.A. 95-26, eff. 1-1-08.)

1 Section 20. The Department of Revenue Law of the Civil  
2 Administrative Code of Illinois is amended by changing Section  
3 2505-750 as follows:

4 (20 ILCS 2505/2505-750)

5 Sec. 2505-750. Misclassification of employees as  
6 independent contractors. The Department of Labor, the  
7 Department of Employment Security, the Department of Revenue,  
8 the Office of the State Comptroller, and the Illinois Workers'  
9 Compensation Commission shall cooperate under the Employee  
10 Classification Act by sharing information concerning any  
11 ~~suspected~~ misclassification by an employer or entity, as  
12 defined in the Employee Classification Act, of one or more  
13 employees as independent contractors.

14 (Source: P.A. 95-26, eff. 1-1-08.)

15 Section 25. The Employee Classification Act is amended by  
16 changing Sections 10, 40, 55, 60, and 75 as follows:

17 (820 ILCS 185/10)

18 Sec. 10. Applicability; status of individuals performing  
19 service.

20 (a) For the purposes of this Act, an individual performing  
21 services for a contractor is deemed to be an employee of the  
22 employer except as provided in subsections (b), ~~and~~ (c), and  
23 (c-5) of this Section.

1           (b) An individual performing services for a contractor is  
2 deemed to be an employee of the contractor unless it is shown  
3 that:

4           (1) the individual has been and will continue to be  
5 free from control or direction over the performance of the  
6 service for the contractor, both under the individual's  
7 contract of service and in fact;

8           (2) the service performed by the individual is outside  
9 the usual course of services performed by the contractor;  
10 and

11           (3) the individual is engaged in an independently  
12 established trade, occupation, profession or business; or

13           (4) the individual is deemed a legitimate sole  
14 proprietor or partnership under subsection (c) of this  
15 Section.

16           (c) The sole proprietor or partnership performing services  
17 for a contractor as a subcontractor is deemed legitimate if it  
18 is shown that:

19           (1) the sole proprietor or partnership is performing  
20 the service free from the direction or control over the  
21 means and manner of providing the service, subject only to  
22 the right of the contractor for whom the service is  
23 provided to specify the desired result;

24           (2) the sole proprietor or partnership is not subject  
25 to cancellation or destruction upon severance of the  
26 relationship with the contractor;

1           (3) the sole proprietor or partnership has a  
2 substantial investment of capital in the sole  
3 proprietorship or partnership beyond ordinary tools and  
4 equipment and a personal vehicle;

5           (4) the sole proprietor or partnership owns the capital  
6 goods and gains the profits and bears the losses of the  
7 sole proprietorship or partnership;

8           (5) the sole proprietor or partnership makes its  
9 services available to the general public or the business  
10 community on a continuing basis;

11           (6) the sole proprietor or partnership includes  
12 services rendered on a Federal Income Tax Schedule as an  
13 independent business or profession;

14           (7) the sole proprietor or partnership performs  
15 services for the contractor under the sole  
16 proprietorship's or partnership's name;

17           (8) when the services being provided require a license  
18 or permit, the sole proprietor or partnership obtains and  
19 pays for the license or permit in the sole proprietorship's  
20 or partnership's name;

21           (9) the sole proprietor or partnership furnishes the  
22 tools and equipment necessary to provide the service;

23           (10) if necessary, the sole proprietor or partnership  
24 hires its own employees without contractor approval, pays  
25 the employees without reimbursement from the contractor  
26 and reports the employees' income to the Internal Revenue

1 Service;

2 (11) the contractor does not represent the sole  
3 proprietorship or partnership as an employee of the  
4 contractor to its customers; and

5 (12) the sole proprietor or partnership has the right  
6 to perform similar services for others on whatever basis  
7 and whenever it chooses.

8 (c-5) The term "employee" does not include an individual  
9 who performs services as an operator of a truck, truck tractor,  
10 or tractor, provided the person or entity to which the  
11 individual is contracted for service shows that the individual:

12 (1) is either:

13 (i) registered or licensed as a motor carrier of  
14 real or personal property by the Illinois Commerce  
15 Commission, the Interstate Commerce Commission, or any  
16 successor agencies, or

17 (ii) operating the equipment under an owner  
18 operator lease contract with the person or entity, when  
19 the person or entity is registered, licensed, or both,  
20 as a motor carrier of real or personal property  
21 licensed by the Illinois Commerce Commission, the  
22 Interstate Commerce Commission, or any successor  
23 agencies; and

24 (2) has the right to terminate the lease contract and  
25 thereafter has the right to perform the same or similar  
26 services, on whatever basis and whenever he or she chooses,

1 for persons or entities other than the person or entity to  
2 which the individual is contracted for services;

3 (3) is not required by the person or entity to which  
4 the individual is contracted for services to perform  
5 services, or be available to perform services, at specific  
6 times or according to a schedule or for a number of hours  
7 specified by the person or entity, provided that pickup or  
8 delivery times specified by a shipper or receiver shall not  
9 be deemed specified by the person or entity;

10 (4) either leases the equipment or holds title to the  
11 equipment, provided that the individual or entity from  
12 which the equipment is leased, or which holds any security  
13 or other interest in the equipment, is not:

14 (i) the person or entity to which the individual is  
15 contracted for service; or

16 (ii) owned, controlled, or operated by or in common  
17 with, to any extent, whether directly or indirectly,  
18 the person or entity to which the individual is  
19 contracted for services or a family member of a  
20 shareholder, owner, or partner of the person or entity;

21 (5) pays all costs of licensing and operating the  
22 equipment (except when federal or State law or regulation  
23 requires the carrier to pay), and the costs are not  
24 separately reimbursed by any other individual or entity;  
25 and

26 (6) maintains a separate business identity, offering



1 or advertising his or her services to the public, by  
2 displaying its name and address on the equipment or  
3 otherwise.

4 The definition of "truck owner-operator" under this  
5 Section does not apply:

6 (1) if, as a condition for retaining the individual's  
7 services, the person or entity to which the individual is  
8 contracted specifies the person or entity from which the  
9 equipment is to be leased or purchased; or

10 (2) to any services that are required to be covered as  
11 a condition of approval of this Act by the United States  
12 Secretary of Labor under Section 3304(a)(6)(A) of the  
13 Federal Unemployment Tax Act.

14 Nothing in this definition of "truck owner-operator" shall  
15 be construed or used to effect the existence or nonexistence of  
16 an employment relationship other than for purposes of this Act.

17 For purposes of this definition of "truck owner-operator":

18 (1) "Family member" means any parent, sibling, child,  
19 sibling of a parent, or any of the foregoing relations by  
20 marriage.

21 (2) "Ownership", "control", or "operation" may be  
22 through any one or more natural persons or proxies, powers  
23 of attorney, nominees, proprietorships, partnerships,  
24 associations, corporations, trusts, joint stock companies,  
25 or other entities or devices, or any combination thereof.

26 (3) "Person or entity" means a sole proprietorship,

1 partnership, association, corporation, or any other legal  
2 entity.

3 (d) Where a sole proprietor or partnership performing  
4 services for a contractor as a subcontractor is deemed not  
5 legitimate under subsection (c) of this Section, the sole  
6 proprietorship or partnership shall be deemed an individual for  
7 purposes of this Act.

8 (e) Subcontractors or lower tiered contractors are subject  
9 to all provisions of this Act.

10 (f) A contractor shall not be liable under this Act for any  
11 subcontractor's failure to properly classify persons  
12 performing services as employees, nor shall a subcontractor be  
13 liable for any lower tiered subcontractor's failure to properly  
14 classify persons performing services as employees.

15 (Source: P.A. 95-26, eff. 1-1-08.)

16 (820 ILCS 185/40)

17 Sec. 40. Penalties. An employer or entity that violates any  
18 of the provisions of this Act or any rule adopted under this  
19 Act shall be subject to a civil penalty not to exceed \$1,000  
20 ~~\$1,500~~ for each violation found in the first audit by the  
21 Department. Following a first audit, an employer or entity  
22 shall be subject to a civil penalty not to exceed \$2,500 for  
23 each repeat violation found by the Department within a 5 year  
24 period. For purposes of this Section, each violation of this  
25 Act for each person and for each day the violation continues

1 shall constitute a separate and distinct violation. In  
2 determining the amount of a penalty, the Director shall  
3 consider the appropriateness of the penalty to the employer or  
4 entity charged, upon the determination of the gravity of the  
5 violations. The amount of the penalty, when finally determined,  
6 may be recovered in a civil action filed in any circuit court  
7 by the Director of Labor, or a person aggrieved by a violation  
8 of this Act or any rule adopted under this Act. ~~In any civil  
9 action brought by an interested party pursuant to this Section,  
10 the circuit court shall award the interested party 10% of the  
11 amount recovered. In such case, the remaining amount recovered  
12 shall be submitted to the Director of Labor.~~ Any uncollected  
13 amount shall be subject to the provisions of the Illinois State  
14 Collection Act of 1986.

15 (Source: P.A. 95-26, eff. 1-1-08.)

16 (820 ILCS 185/55)

17 Sec. 55. Retaliation.

18 (a) It is a violation of this Act for an employer or  
19 entity, or any agent of an employer or entity, to retaliate  
20 through discharge or in any other manner against any person for  
21 exercising any rights granted under this Act. Such retaliation  
22 shall subject an employer or entity to civil penalties pursuant  
23 to this Act or a private cause of action, or both.

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

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

5           (2) causing to be instituted any proceeding under or  
6           related to this Act; or

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

9           (c) The prevailing party in any action under this Section  
10          is entitled to recover attorney's fees and other costs from the  
11          losing party.

12          (Source: P.A. 95-26, eff. 1-1-08.)

13           (820 ILCS 185/60)

14           Sec. 60. Private right of action.

15           (a) An interested party or person aggrieved by a violation  
16           of this Act or any rule adopted under this Act by an employer  
17           or entity may file suit in circuit court, in the county where  
18           the alleged offense occurred or where any person who is party  
19           to the action resides, without regard to exhaustion of any  
20           alternative administrative remedies provided in this Act.  
21           Actions may be brought by one or more persons for and on behalf  
22           of themselves and other persons similarly situated. A person  
23           whose rights have been violated under this Act by an employer  
24           or entity is entitled to collect:

25           (1) the amount of any wages, salary, employment

1 benefits, or other compensation denied or lost to the  
2 person by reason of the violation, plus an equal amount in  
3 liquidated damages;

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

7 (3) in the case of unlawful retaliation, all legal or  
8 equitable relief as may be appropriate. ~~and~~

9 (4) (blank) ~~attorney's fees and costs.~~

10 (a-5) The prevailing party in any action brought under this  
11 Section is entitled to recover attorney's fees and court costs  
12 from the losing party.

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

19 (Source: P.A. 95-26, eff. 1-1-08.)

20 (820 ILCS 185/75)

21 Sec. 75. Cooperation. The Department of Labor, the  
22 Department of Employment Security, the Department of Revenue,  
23 and the Illinois Workers' Compensation Commission shall  
24 cooperate under this Act by sharing information concerning any  
25 ~~suspected~~ misclassification by an employer or entity of one or

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

10 (Source: P.A. 95-26, eff. 1-1-08.)

11 (820 ILCS 185/35 rep.)

12 Section 30. The Employee Classification Act is amended by  
13 repealing Section 35.

14 Section 35. The Workers' Compensation Act is amended by  
15 changing Section 26.1 as follows:

16 (820 ILCS 305/26.1)

17 Sec. 26.1. Misclassification of employees as independent  
18 contractors. The Department of Labor, the Department of  
19 Employment Security, the Department of Revenue, the Office of  
20 the State Comptroller, and the Illinois Workers' Compensation  
21 Commission shall cooperate under the Employee Classification  
22 Act by sharing information concerning any ~~suspected~~  
23 misclassification by an employer or entity, as defined in the

1 Employee Classification Act, of one or more employees as  
2 independent contractors.

3 (Source: P.A. 95-26, eff. 1-1-08.)

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

1 INDEX

2 Statutes amended in order of appearance

3 15 ILCS 405/9.06

4 20 ILCS 1005/1005-160

5 20 ILCS 1505/1505-125

6 20 ILCS 2505/2505-750

7 820 ILCS 185/10

8 820 ILCS 185/40

9 820 ILCS 185/55

10 820 ILCS 185/60

11 820 ILCS 185/75

12 820 ILCS 185/35 rep.

13 820 ILCS 305/26.1