

BILL ANALYSIS

H.B. 2242
By: Vo
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

It has been noted that the Texas Workforce Commission (TWC) assesses unemployment insurance taxes against an employer that should have been paid for an employee who has misclassified a worker as an independent contractor. In instances where an employer misclassified workers who are working on a public works contract, employers are assessed a penalty by TWC for every misclassified worker, but revenue generated from this penalty is not returned to TWC to assist in its efforts to identify and prevent misclassification. H.B. 2242 seeks to address this issue by establishing the individuals presumed to be employees of an employer and authorizing TWC to assess a related penalty to be used to identify, investigate, and prevent worker misclassification.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2242 amends the Labor Code to establish that, for purposes of employment under the Texas Unemployment Compensation Act, an individual performing a service for wages or under an express or implied contract of hire, other than certain excluded services, is presumed to be an employee of the person for whom the service is performed. The bill authorizes such a presumption to be rebutted if the person for whom the service is performed shows to the satisfaction of the Texas Workforce Commission (TWC) that the individual's performance of the service has been and will continue to be free from control or direction under the contract and in fact.

H.B. 2242 requires a person, other than a person who contracts with a governmental entity to provide a labor or professional service or such a person's subcontractor, to properly classify as an employee or independent contractor in accordance with the act, and pay a contribution on wages for employment as required by the act, for any individual the person directly retains and compensates for the performance of a service. The bill authorizes the TWC to assess a penalty against a person who fails to properly classify, or pay a contribution on wages for, an individual as required if the TWC determines that the person has previously failed to properly classify, or pay a contribution on wages for, one or more individuals as required. The bill caps the amount of an assessed penalty at \$200 for each individual that the person has not properly classified or for whom the person has not paid a contribution on wages for employment and requires the penalty amount to be based on the seriousness of the violation, the history of previous violations, the

amount necessary to deter future violations, or efforts to correct the violation. The bill requires money credited to the unemployment compensation special administration fund from such penalties to be used only to pay costs related to identifying, investigating, and preventing worker misclassification.

EFFECTIVE DATE

September 1, 2019.