

BILL ANALYSIS

Senate Research Center
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S.B. 1478
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Generally, employers are required to withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. On the other hand, employers do not generally have to withhold or pay taxes on payments made to independent contractors.

Current standards for determining employee versus independent contractor status are not defined in the Texas law. Instead, common law practices of master and servant and suggestions from the Texas Workforce Commission's administration code are used to identify independent contractors. This lack of statute allows businesses to neglect paying their fair share of unemployment tax and to pass on their burden to others. Any taxes wrongly avoided by any one business will ultimately be paid by all the others collectively. In contrast, rates will decrease for businesses when efforts are made to ensure that businesses do not improperly avoid unemployment taxes.

As proposed, S.B. 1478 amends Title 1, Labor Code, by enumerating specific requirements an individual must meet in order to be classified as an independent contractor. S.B. 1478 also states that classification as an independent contractor can solely be based on the provisions of the Labor Code, thus prohibiting individuals from waiving their status in a contract between the employer and the individual.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 1, Labor Code, by adding Chapter 2, as follows:

CHAPTER 2. CLASSIFICATION AS INDEPENDENT CONTRACTOR

Sec. 2.001. CLASSIFICATION AS INDEPENDENT CONTRACTOR. (a) Requires an individual who performs work or services for an employer, for the purposes of this code, to meet all of the requirements of this section to be classified as an independent contractor rather than as an employee, except as otherwise specifically provided by this code.

(b) Sets forth guidelines for classifying an individual as an independent contractor.

(c) Provides that an individual is not an independent contractor if any other person maintains substantial control over the manner in which the individual performs duties assigned to the individual by the person and retains a significant financial stake in the earnings of the individual.

Sec. 2.002. WAIVER PROHIBITED. Provides that classification as an independent contractor under this code is based solely on the description of that status as established under Section 2.001. Prohibits the classification of a specific individual as an independent contractor from being waived, changed, impaired, or diminished by a

contract, stipulation, or other agreement entered into between the individual and another legal entity for whom the individual performs services or work.

SECTION 2. Amends Section 91.001(10), Labor Code, to redefine "independent contractor."

SECTION 3. Amends Section 406.121(2), Labor Code, to redefine "independent contractor."

SECTION 4. Amends Section 406.141(2), Labor Code, to redefine "independent contractor."

SECTION 5. Amends Subchapter A, Chapter 1501, Insurance Code, as effective April 1, 2005, by adding Section 1501.012, as follows:

Sec. 1501.012. DETERMINATION OF INDEPENDENT CONTRACTOR STATUS.

(a) Defines "independent contractor."

(b) Prohibits a small employer or large employer, in order to limit eligibility for enrollment under a small or large employer health benefit plan, from classifying an individual as an independent contractor rather than as an employee if the individual does not meet the requirements for classification as an independent contractor established under Section 2.001, Labor Code.

SECTION 6. Makes application of Section 1501.012, Insurance Code, as added by this Act, prospective to January 1, 2006.

SECTION 7. Effective date: September 1, 2005.