

By: Deshotel

H.B. No. 2989

A BILL TO BE ENTITLED

AN ACT

relating to establishing the Workplace Fraud Prevention Act;
providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Labor Code, is amended by
adding Chapter 313 to read as follows:

CHAPTER 313. WORKPLACE FRAUD PREVENTION ACT

Sec. 313.001. SHORT TITLE. This chapter may be cited as the
Workplace Fraud Prevention Act.

Sec. 313.002. DEFINITIONS. In this chapter:

(1) "Construction" means work related to the erection,
improvement, alteration, repair, renovation, maintenance, or
remodeling of a building, structure, appurtenance, road, highway,
bridge, dam, levee, canal, jetty, or other improvement to or on real
property, including moving, demolishing, dredging, shoring,
scaffolding, drilling, blasting, and excavating real property.

(2) "Contractor" means a person who contracts to
perform construction services, including a subcontractor.

(3) "Employee" means an individual who performs any
service, including service in interstate commerce, for wages or
under a contract for hire, whether written, oral, express, or
implied, and who is subject to all taxes, obligations, benefits,
and entitlements of an employee under state and federal law. The
term does not include an individual who performs a service for wages

1 if it is shown the individual is free from control or direction in
2 the performance of the service, both under any contract of service
3 and in fact.

4 (4) "Performing service" means the performance of
5 construction service for payment.

6 Sec. 313.003. APPLICABILITY. This chapter does not apply
7 to a common law or statutory action for tort liability and does not
8 change or affect the common law interpretation of independent
9 contractor status as it relates to tort liability or a workers'
10 compensation claim.

11 Sec. 313.004. EMPLOYEE STATUS; PRESUMPTION. (a) A
12 contractor shall properly classify an individual performing
13 construction services as an employee or independent contractor.
14 Evidence of improper classification includes:

15 (1) for an employee, a failure by the contractor to:

16 (A) provide the employee with an employment
17 identification number for federal tax purposes;

18 (B) provide the employee with a W-2 or other
19 relevant federal tax form that correctly records the employee's
20 name and social security number;

21 (C) properly withhold income, Medicare, social
22 security, or unemployment taxes on wages paid to the employee;

23 (D) include the employee in an applicable
24 employee benefits plan; or

25 (E) provide the employee with workers'
26 compensation insurance coverage; or

27 (2) for an independent contractor, a failure by the

1 contractor to include notice of the independent contractor's status
2 as an independent contractor in a contract between the contractor
3 and the independent contractor.

4 (b) An individual performing construction services for a
5 contractor is presumed to be an employee and not an independent
6 contractor for purposes of this chapter unless the individual meets
7 the criteria for an independent contractor under Section
8 406.121(2).

9 Sec. 313.005. PROHIBITED ACTS. It is a violation of this
10 chapter for:

11 (1) a contractor to fail to properly designate an
12 individual as an employee of the contractor;

13 (2) a person to knowingly form or assist in the
14 formation of a corporation, partnership, limited liability
15 corporation, or other business entity, or pay or collect a fee for
16 use of a corporation, partnership, limited liability corporation,
17 or other business entity, for the purpose of facilitating a
18 violation of this chapter; or

19 (3) a person to knowingly assist, aid, or conspire
20 with an individual in committing a violation of this chapter.

21 Sec. 313.006. TELEPHONE HOTLINE AND INTERNET WEBSITE. The
22 commission shall provide a toll-free telephone number and website
23 for use by the public in reporting violations of this chapter.
24 Information obtained by the commission under this chapter is
25 confidential.

26 Sec. 313.007. DUTY TO INVESTIGATE. The commission shall
27 investigate, in a timely manner, any credible complaint made under

1 Section 313.006 that contains the name and contact information of
2 the person alleged to have committed a violation, the job site
3 location at which the alleged violation occurred, and a description
4 of the alleged violation.

5 Sec. 313.008. ADMINISTRATIVE PENALTY. (a) If the
6 commission determines, after notice and hearing, that a contractor
7 or other person has violated this chapter, the contractor or other
8 person shall pay to the commission a penalty in the amount of \$500
9 for the first violation and \$5,000 for each subsequent violation.
10 For purposes of determining a penalty, each individual improperly
11 designated as an employee constitutes a separate violation.

12 (b) Any penalty issued under this chapter applies to a
13 successor business entity that:

14 (1) has one or more officers in common with the
15 original employer; and

16 (2) is in violation of this chapter.

17 Sec. 313.009. NOTIFICATION OF OTHER VIOLATIONS. (a) If the
18 commission determines that a contractor or other person has
19 violated this chapter, the commission shall:

20 (1) initiate enforcement proceedings under Chapter
21 213 to collect unpaid unemployment taxes plus interest;

22 (2) notify the Texas Department of Insurance of the
23 violation and any possible violations of the Insurance Code; and

24 (3) notify the attorney general and any other
25 appropriate prosecuting authority of any possible violation of
26 other law.

27 (b) The commission may enter into interagency agreements

1 with another state agency and adopt any rules necessary to
2 administer this section.

3 Sec. 313.010. ANNUAL REPORT. (a) The commission shall
4 issue an annual report regarding compliance with and enforcement of
5 this chapter. The report must include:

6 (1) the number of complaints received through the
7 hotline or website under Section 313.006;

8 (2) the number of investigated complaints and any
9 resulting findings;

10 (3) the amount of unemployment taxes, interest,
11 administrative penalties, and fines collected under this chapter;
12 and

13 (4) the number of referrals to other agencies or
14 authorities under Section 313.009 and the outcomes of those
15 referrals.

16 (b) The commission shall submit the report annually to the
17 governor and legislature.

18 Sec. 313.011. POSTED NOTICE. A contractor shall post in a
19 conspicuous location on the job site in English and Spanish the
20 following notice:

21 (1) Every individual working for a contractor has the
22 right to be properly classified by the contractor as an
23 employee or independent contractor if the individual
24 meets the requirements under the Workplace Fraud
25 Prevention Act.

1 (2) If you believe you or someone else has not been
2 properly classified as an employee or independent
3 contractor under the Workplace Fraud Prevention Act,
4 contact the Texas Workforce Commission.

5 Sec. 313.012. CONTRACTOR AFFIDAVIT REQUIRED FOR CONTRACT
6 WITH STATE OR POLITICAL SUBDIVISION; PENALTY. (a) A contract
7 between this state or a political subdivision of this state and a
8 contractor performing construction services must require:

9 (1) the contractor to submit an affidavit attesting
10 that:

11 (A) each individual performing services for the
12 contractor has been properly classified as an employee or
13 independent contractor under this chapter;

14 (B) the contractor is in compliance with the
15 requirements of Subchapter B, Chapter 234, Family Code; and

16 (C) the contractor is not barred from contracting
17 with this state or a political subdivision of this state under
18 Subsection (c); and

19 (2) that a contractor performing construction
20 services pursuant to the contract follow the provisions of this
21 chapter.

22 (b) Violation of this section by a contractor is grounds for
23 rescission of the contract by the state or political subdivision.

24 (c) A contractor who knowingly provides a false affidavit
25 under Subsection (a) is subject to the penalty of perjury for the
26 first violation and shall be barred from contracting with this
27 state or a political subdivision of this state for three years on a

1 subsequent violation.

2 Sec. 313.013. WORKPLACE FRAUD PREVENTION ENFORCEMENT FUND.

3 The workplace fraud prevention enforcement fund is established to
4 fund the enforcement of this chapter. The commission shall
5 administer the fund. The fund consists of money appropriated to the
6 fund by the legislature and any penalties collected under Section
7 313.008.

8 SECTION 2. Section 313.012, Labor Code, as added by this
9 Act, applies to a contract entered into on or after the effective
10 date of this Act. A contract entered into before the effective date
11 of this Act is governed by the law in effect on the date the contract
12 was entered into, and the former law is continued in effect for that
13 purpose.

14 SECTION 3. This Act takes effect September 1, 2011.