

SENATE BILL No. 645

December 8, 2015, Introduced by Senator KOWALL and referred to the Committee on Commerce.

A bill to establish uniform criteria for determining an employee-employer relationship for purposes of the laws of this state; to prohibit misclassification of employees in reports required of employers by this state; and to provide sanctions.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "employee classification act".

3 Sec. 2. (1) As used in this act, "misclassify" means to fail
4 to properly identify an individual as performing services in
5 employment in an employer-employee relationship with an employer.
6 Except for employment in the trucking and messenger courier
7 industries, an employer-employee relationship is determined using
8 the 20-factor test announced by the Internal Revenue Service of the
9 United States Department of Treasury in Revenue Ruling 87-41, 1987-

1 1 C.B. 296. In the trucking and messenger courier industries, an
2 individual who is the operator of a vehicle or vessel is an
3 employee, unless all of the following apply:

4 (a) The individual owns the vehicle or vessel or holds it
5 under a bona fide lease arrangement that is not through an
6 arrangement, loan, or loan guarantee with the contracting entity or
7 any affiliate of the contracting entity. This requirement does not
8 apply to temporary replacement lease agreements.

9 (b) The individual is responsible for substantially all of the
10 principal operating costs of the vehicle or vessel and equipment,
11 including maintenance, fuel, repairs, supplies, vehicle insurance,
12 and personal expenses. If the contracting entity pays the
13 individual only a fuel surcharge and incidental costs, such as
14 tolls, permits, or lumper fees, the individual meets the
15 requirements of this subdivision.

16 (c) The individual is responsible for supplying the necessary
17 services to operate the vehicle or vessel and equipment.

18 (d) The individual's compensation is based on factors related
19 to the work performed, such as a mileage-based rate or a percentage
20 of any schedule of rates, and is not solely based on hours or time
21 expended.

22 (e) The individual substantially controls the means and manner
23 of performing services in conformance with regulatory requirements
24 and specifications of a shipper.

25 (f) The contracting entity and the individual sign and date an
26 agreement that the individual will substantially meet the
27 conditions in subdivisions (a) to (e) and that the individual

1 agrees to be an independent contractor and not an employee. The
2 agreement shall be produced on the demand of the director or the
3 director's agent.

4 (2) An individual from whom an employer is required to
5 withhold federal income tax is prima facie considered to perform
6 services in employment in an employment relationship for purposes
7 of classification as an employee.

8 Sec. 3. An employer or an agent of an employer shall not
9 misclassify an employee in a report required under the laws of this
10 state. If the misclassification results in a lessening or avoidance
11 of a legal obligation to the employee, another individual, or this
12 state, the employer or agent is subject to the sanctions provided
13 in the statute under which the report was required.