

SUBJECT: Requiring classification of certain employees by employers

COMMITTEE: Business & Industry — favorable, without amendment

VOTE: 9 ayes — Longoria, Vasut, Cole, Frazier, J. González, Hinojosa, Isaac, Lambert, Neave Criado

0 nays

WITNESSES: For — Amanda Posson, Every Texan (formerly CPPP); Daniela Hernandez, Workers Defense Action Fund (*Registered, but did not testify*; Ryan Pollock, IBEW Local 520; Emily Amps, Texas AFL-CIO; Thomas Kennedy, Texas Building Trades Council; Jacob Smith, Texas Employment Lawyers Association; Julie Wheeler, Travis County Commissioners Court; Cynthia Van Maanen, Travis County Democratic Party; David Chincanchan, Workers Defense Action Fund; Idona Griffith; Ren Morris; Tory Morris; Susan Stewart)

Against — Ned Muñoz, Texas Association of Builders (*Registered, but did not testify*; Annie Spilman, NFIB; Matt Abel, Texas Association of Business)

On — Eric Holen, Texas Workforce Commission

BACKGROUND: Some have suggested that preventing employers from improperly classifying workers would help to ensure that workers may access their benefits under the law.

DIGEST: HB 1054 would require a contractor to properly classify each individual providing construction services as either an employee or an independent contractor in accordance with Texas Workforce Commission (TWC) rules.

Applicability. An individual could not be considered an employee based solely on the fact that the employer required any employee hired to submit a criminal background check or drug screening, possessed a certain

license, or certification relating to the work the employee would perform.

A person for whom an individual was providing construction services would not be required to report to TWC under the Texas Unemployment Compensation Act that the individual was an employee of the person if the person:

- showed that the individual was an independent contractor; and
- provided to the individual a 1099 tax form, or a similar form, on which the person reported the amount paid to the individual in accordance with the IRS requirements and filed these forms with the IRS.

The bill would not apply to an individual employed by the state, a political subdivision, an Indian tribe, or a religious, charitable, educational or other organization provided that the services were excluded from employment as defined by federal law.

Administrative penalty. TWC could impose an administrative penalty on a contractor who did not properly classify individuals in accordance with the bill's provisions. The administrative penalty could not exceed \$100 for each individual who was not properly classified and \$1,000 for each individual who was not properly classified for each subsequent violation that occurred after the imposition of a penalty. A penalty issued would apply to a successor business entity that:

- had one or more owners who jointly controlled 50 percent of the original employer and successor entity; and
- was engaged in the same or similar business activity.

Notification to governmental entity. If TWC determined that a contractor had violated provisions of the bill, the commissioner would provide notice of the violation to each governmental entity that TWC reasonably believed had received services provided by the contractor. The notice would have to identify the contractor and, for each violation, the specific type of service provided and the location at which the services

were provided, if known.

TWC would be required to provide on its website information regarding the procedure for the public to report violations of the bill's provisions.

Annual report. TWC would be required to issue an annual report with certain information specified in the bill regarding compliance and enforcement of the bill's provisions.

Conforming changes. HB 1054 would, for the purposes of the Texas Unemployment Act, the definition of the term employment would not include construction performed by an independent contractor.

The bill would take effect September 1, 2023 and would apply only to a claim for unemployment benefits on or after the effective date.

NOTES:

According to the Legislative Budget Board, HB 1054 would have a negative impact of \$1,963,224 through fiscal 24-25.