

HOUSE BILL No. 2841

By Committee on Commerce and Labor

2-7

9 AN ACT concerning employment; relating to the misclassification of em-
10 ployees; amending K.S.A. 2005 Supp. 79-3234 and repealing the ex-
11 isting section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) It shall be unlawful to classify an employee as an
15 independent contractor for purposes of avoiding either state income tax
16 withholding and reporting requirements or state unemployment insur-
17 ance contributions reporting requirements.

18 (b) Any person violating subsection (a) shall be liable to the state for
19 a civil penalty of \$500, per misclassified employee and for each day such
20 violation continues shall be deemed to be a separate violation.

21 New Sec. 2. (a) The department of revenue in conjunction with the
22 department of labor shall establish a website to receive communications
23 concerning information on persons and business entities misclassifying
24 employees in violation of section 1, and amendments thereto.

25 (b) Upon receipt of such information, the department of revenue
26 shall work with the department of labor to investigate alleged violations.
27 The agencies shall cooperate and share information as necessary con-
28 cerning the alleged violations.

29 (c) The secretary of revenue and secretary of labor may apply for,
30 receive and accept moneys from any source for the purposes of estab-
31 lishing the website.

32 (d) The secretary of revenue and secretary of labor shall publicize,
33 distribute and disseminate information on the availability of the website
34 and concerning employee misclassification violations to employment
35 agencies, law enforcement agencies and other interested parties.

36 (e) The chief attorney of the department of labor, appointed pursuant
37 to K.S.A. 75-5722, and amendments thereto, shall be designated as special
38 assistant attorney general for the purposes of investigating, prosecuting
39 and litigating matters under section 1, K.S.A. 44-636 and K.S.A. 44-720,
40 and amendments thereto.

41 New Sec. 3. The secretary of revenue and secretary of labor, are
42 hereby authorized to adopt rules and regulations concerning the imple-
43 mentation of this act.

1 Sec. 4. K.S.A. 2005 Supp. 79-3234 is hereby amended to read as
2 follows: 79-3234. (a) All reports and returns required by this act shall be
3 preserved for three years and thereafter until the director orders them
4 to be destroyed.

5 (b) Except in accordance with proper judicial order, or as provided
6 in subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A. 46-1106,
7 K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall
8 be unlawful for the secretary, the director, any deputy, agent, clerk or
9 other officer, employee or former employee of the department of revenue
10 or any other state officer or employee or former state officer or employee
11 to divulge, or to make known in any way, the amount of income or any
12 particulars set forth or disclosed in any report, return, federal return or
13 federal return information required under this act; and it shall be unlawful
14 for the secretary, the director, any deputy, agent, clerk or other officer
15 or employee engaged in the administration of this act to engage in the
16 business or profession of tax accounting or to accept employment, with
17 or without consideration, from any person, firm or corporation for the
18 purpose, directly or indirectly, of preparing tax returns or reports required
19 by the laws of the state of Kansas, by any other state or by the United
20 States government, or to accept any employment for the purpose of ad-
21 vising, preparing material or data, or the auditing of books or records to
22 be used in an effort to defeat or cancel any tax or part thereof that has
23 been assessed by the state of Kansas, any other state or by the United
24 States government.

25 (c) The secretary or the secretary's designee may: (1) Publish statis-
26 tics, so classified as to prevent the identification of particular reports or
27 returns and the items thereof;

28 (2) allow the inspection of returns by the attorney general or other
29 legal representatives of the state;

30 (3) provide the post auditor access to all income tax reports or returns
31 in accordance with and subject to the provisions of subsection (g) of
32 K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto;

33 (4) disclose taxpayer information from income tax returns to persons
34 or entities contracting with the secretary of revenue where the secretary
35 has determined disclosure of such information is essential for completion
36 of the contract and has taken appropriate steps to preserve confidentiality;

37 (5) disclose to the secretary of commerce specific taxpayer informa-
38 tion related to financial information previously submitted by the taxpayer
39 to the secretary of commerce concerning or relevant to any income tax
40 credits, for purposes of verification of such information or evaluating the
41 effectiveness of any tax credit program administered by the secretary of
42 commerce;

43 (6) disclose income tax returns to the state gaming agency to be used

1 solely for the purpose of determining qualifications of licensees of and
2 applicants for licensure in tribal gaming. Any information received by the
3 state gaming agency shall be confidential and shall not be disclosed except
4 to the executive director, employees of the state gaming agency and mem-
5 bers and employees of the tribal gaming commission;

6 (7) disclose the taxpayer's name, last known address and residency
7 status to the department of wildlife and parks to be used solely in its
8 license fraud investigations;

9 (8) disclose the name, residence address, employer or Kansas ad-
10 justed gross income of a taxpayer who may have a duty of support in a
11 title IV-D case to the secretary of the Kansas department of social and
12 rehabilitation services for use solely in administrative or judicial proceed-
13 ings to establish, modify or enforce such support obligation in a title IV-
14 D case. In addition to any other limits on use, such use shall be allowed
15 only where subject to a protective order which prohibits disclosure out-
16 side of the title IV-D proceeding. As used in this section, "title IV-D
17 case" means a case being administered pursuant to part D of title IV of
18 the federal social security act (42 U.S.C. § 651 et seq.) and amendments
19 thereto. Any person receiving any information under the provisions of
20 this subsection shall be subject to the confidentiality provisions of sub-
21 section (b) and to the penalty provisions of subsection ~~(d)~~ (e);

22 (9) permit the commissioner of internal revenue of the United States,
23 or the proper official of any state imposing an income tax, or the author-
24 ized representative of either, to inspect the income tax returns made
25 under this act and the secretary of revenue may make available or furnish
26 to the taxing officials of any other state or the commissioner of internal
27 revenue of the United States or other taxing officials of the federal gov-
28 ernment, or their authorized representatives, information contained in
29 income tax reports or returns or any audit thereof or the report of any
30 investigation made with respect thereto, filed pursuant to the income tax
31 laws, as the secretary may consider proper, but such information shall not
32 be used for any other purpose than that of the administration of tax laws
33 of such state, the state of Kansas or of the United States;

34 (10) communicate to the executive director of the Kansas lottery in-
35 formation as to whether a person, partnership or corporation is current
36 in the filing of all applicable tax returns and in the payment of all taxes,
37 interest and penalties to the state of Kansas, excluding items under formal
38 appeal, for the purpose of determining whether such person, partnership
39 or corporation is eligible to be selected as a lottery retailer;

40 (11) communicate to the executive director of the Kansas racing com-
41 mission as to whether a person, partnership or corporation has failed to
42 meet any tax obligation to the state of Kansas for the purpose of deter-
43 mining whether such person, partnership or corporation is eligible for a

1 facility owner license or facility manager license pursuant to the Kansas
2 parimutuel racing act; ~~and~~
3 (12) provide such information to the executive director of the Kansas
4 public employees retirement system for the purpose of determining that
5 certain individuals' reported compensation is in compliance with the Kan-
6 sas public employees retirement act at K.S.A. 74-4901 et seq., and amend-
7 ments thereto; *and*
8 (13) *provide taxpayer information to staff attorneys of the department*
9 *of labor for the purpose of determining compliance by any person with*
10 *the provisions of section 1, and amendments thereto.*
11 (d) Any person receiving information under the provisions of subsec-
12 tion (c) shall be subject to the confidentiality provisions of subsection (b)
13 and to the penalty provisions of subsection (e).
14 (e) Any violation of subsection (b) or (c) is a class A nonperson mis-
15 demeanor and, if the offender is an officer or employee of the state, such
16 officer or employee shall be dismissed from office.
17 (f) Nothing in this section shall be construed to allow disclosure of
18 the amount of income or any particulars set forth or disclosed in any
19 report, return, federal return or federal return information, where such
20 disclosure is prohibited by the federal internal revenue code as in effect
21 on September 1, 1996, and amendments thereto, related federal internal
22 revenue rules or regulations, or other federal law.
23 Sec. 5. K.S.A. 2005 Supp. 79-3234 is hereby repealed.
24 Sec. 6. This act shall take effect and be in force from and after its
25 publication in the statute book.