

**SENATE BILL No. 157**

By Committee on Commerce

2-9

1 AN ACT concerning employment; relating to misclassification of  
2 employees; amending K.S.A. 2010 Supp. 44-766 and repealing the  
3 existing section.  
4

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

6 New Section 1. As used in sections 1 and 2 and K.S.A. 2010 Supp.  
7 44-766, and amendments thereto:

8 (a) "Employee" means any individual who performs services for an  
9 employer that would indicate an employer-employee relationship in  
10 satisfaction of the factors in internal revenue service Rev. Rule 87-41,  
11 1987-1 C.B. 296.

12 (b) "Employer" means any individual, organization partnership,  
13 political subdivision, corporation or other legal entity which employs a  
14 person for hire.

15 (c) "Knowingly" means a person acts knowingly or with knowledge:

16 (1) With respect to the person's conduct or to attendant  
17 circumstances when the person is aware of the nature of the person's  
18 conduct or that those circumstances exist; or

19 (2) with respect to a result of the person's conduct when the person  
20 is aware that the person's conduct is practically certain to cause that  
21 result.

22 New Sec. 2. (a) Whenever the attorney general has reason to  
23 believe that an employer is engaging in any conduct that would be a  
24 violation of K.S.A. 44-766, and amendments thereto, the attorney general  
25 may seek an injunction prohibiting the employer from engaging in such  
26 conduct. The attorney general may bring an action for injunctive relief in  
27 the district court of any county where the alleged violation is occurring or  
28 about to occur.

29 (b) The attorney general may investigate alleged or suspected  
30 violations of this section and shall have the power to issue, serve or cause  
31 to be issued or served subpoenas or other process in aid of investigations,  
32 the power to administer oaths and take sworn statements under penalty of  
33 perjury, the power to serve and execute in any county, search warrants  
34 which relate to investigations authorized by this section and the powers of  
35 a district or county attorney.

36 (c) In any action brought under this section, the state shall have the

1 burden of proving that the employer misclassified the employee.

2 Sec. 3. K.S.A. 2010 Supp. 44-766 is hereby amended to read as  
3 follows: 44-766. (a) No person shall knowingly and intentionally  
4 misclassify an employee as an independent contractor for the sole or  
5 primary purpose of avoiding either state income tax withholding and  
6 reporting requirements or state unemployment insurance contributions  
7 reporting requirements.

8 (b) Any person violating subsection (a) shall be subject to a penalty  
9 pursuant to K.S.A. 79-3228, and amendments thereto.

10 (c) *In addition to any penalty imposed pursuant to subsection (b), if*  
11 *a court determines that an employer has violated subsection (a) in an*  
12 *action brought pursuant to section 2, and amendments thereto, the court*  
13 *shall enter a judgment in favor of the state and award penalties in the*  
14 *amount of \$50 per day per misclassified employee up to a maximum*  
15 *amount of \$50,000.*

16 Sec. 4. K.S.A. 2010 Supp. 44-766 is hereby repealed.

17 Sec. 5. This act shall take effect and be in force from and after its  
18 publication in the statute book.

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