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SENATE BILL DRS15083-TM-5 (03/15)

Short Title: Employee Misclassification Reform. (Public)

Sponsors: Senator Wells (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT THE EMPLOYEE FAIR CLASSIFICATION ACT.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 143 of the General Statutes is amended by adding a new
5 Article to read:

6 "Article 82.
7 "Employee Fair Classification Act.

8 **"§ 143-761. Title.**

9 This Article shall be known and may be cited as the "Employee Fair Classification Act."

10 **"§ 143-762. Definitions; scope.**

11 (a) The following definitions apply in this Article:

12 (1) Chairman. – The Chairman of the Industrial Commission.

13 (2) Employ. – As defined by G.S. 95-25.2(3). For the purposes of this Article,
14 an entity or individual shall not be deemed to be an employer of an
15 individual hired or otherwise engaged by or through the entity or individual's
16 independent contractor.

17 (3) Employee. – Any individual that is defined as an employee by either
18 G.S. 95-25.2(4), 96-1(10), 97-2(2), or 105-163.1(4). The term does not mean
19 an individual who is an independent contractor.

20 (4) Employee Classification Section or Section. – The Employee Classification
21 Section within the Industrial Commission.

22 (5) Employee misclassification. – Avoiding tax liabilities and other obligations
23 imposed by Chapter 95, 96, 97, 105, or 143 of the General Statutes by
24 misclassifying an employee as an independent contractor.

25 (6) Employer. – Any individual or entity that employs one or more employees
26 as defined by G.S. 97-2(3).

27 (7) Public notice statement. – Notice as set forth in G.S. 143-764(a)(5).

28 (b) Nothing in this Article shall be construed or is intended to change the definition of
29 "employer" or "employee" under any other provision of law.

30 **"§ 143-763. Establishment of Employee Classification Section.**

31 (a) The Employee Classification Section is established within the Industrial
32 Commission.

33 (b) The Chairman shall appoint a director of the Section to serve at the Chairman's
34 pleasure with such authority as the Chairman deems necessary to direct and oversee the Section
35 in carrying out the purposes of this Article.



1 (c) The Chairman may employ clerical staff, investigators, and other staff within the
2 Section as is necessary for the Section to perform its duties under this Article.

3 (d) The Office of the State Chief Information Officer shall ensure that the Section is
4 provided with all necessary access to the Government Data Analytics Center and all other
5 information technology services.

6 (e) The Secretary of Revenue, the Commissioner of Labor, the Chairman, and the
7 Assistant Secretary of Commerce for the Division of Employment Security shall each designate
8 an employee of their respective agencies to serve as liaisons to the Section.

9 **"§ 143-764. Section powers and duties.**

10 (a) The Section shall have the following duties:

11 (1) Be available during business hours to receive reports of employee
12 misclassification by telephonic, written, or electronic communication.

13 (2) Investigate reports of employee misclassification and coordinate with and
14 assist all relevant State agencies in recovering any back taxes, wages,
15 benefits, penalties, or other monies owed as a result of an employer engaging
16 in employee misclassification.

17 (3) Coordinate with relevant State agencies and District Attorneys' offices in the
18 prosecution of employers and individuals who fail to pay civil assessments
19 or penalties assessed as a result of the employer's or individual's involvement
20 in employee misclassification.

21 (4) Provide all relevant information pertaining to each instance of reported
22 employee misclassification to the North Carolina Department of Labor, the
23 Division of Employment Security within the North Carolina Department of
24 Commerce, the North Carolina Department of Revenue, and the North
25 Carolina Industrial Commission to facilitate investigation of potential
26 violations of Chapter 95, 96, 97, 105, or 143 of the General Statutes.

27 (5) Create a publicly available notice that includes the definition of employee
28 misclassification.

29 (6) Develop methods and strategies for information sharing between State
30 agencies in order to proactively identify possible instances of employee
31 misclassification.

32 (7) Develop methods and strategies to educate employers, employees, and the
33 public about proper classification of employees and the prevention of
34 employee misclassification.

35 (b) No later than October 1 of each year, the Section shall publish annually to the Office
36 of the Governor and to the Joint Legislative Commission on Governmental Operations a report
37 of the administration of this Article, together with any recommendations as the Section deems
38 advisable. This report shall include, at a minimum, the number of reports of employee
39 misclassification received, the number and amount of back taxes, wages, benefits, penalties, or
40 other monies assessed, the amount of back taxes, wages, benefits, penalties, or other monies
41 collected, and the number of cases referred to each State agency.

42 (c) The Section may adopt rules in accordance with Article 2A of Chapter 150B of the
43 General Statutes for the purpose of carrying out the provisions of this Article and establishing
44 the processes and procedures to be used under this Article.

45 **"§ 143-765. Occupational licensing boards and commissions; notice requirement;**
46 **applicant certification and disclosure.**

47 (a) Every State occupational licensing board or commission that is authorized to issue
48 any license, permit, or certification shall include on every application for licensure, permit, or
49 certification, or application for renewal of the same, the following:

50 (1) Certification by the applicant that the applicant has read and understands the
51 public notice statement.

1 (2) Disclosure by the applicant of any investigations for employee
2 misclassification and the result of the investigations for a time period
3 determined by the occupational licensing board or commission.

4 (b) An occupational licensing board or commission shall deny the license, permit, or
5 certification application of any applicant who fails to comply with the certification and
6 disclosure requirements of this section.

7 "**§ 143-766. Confidentiality; access to records.**

8 (a) The records of the Section are not public records under G.S. 132-1.

9 (b) The Section shall exchange information as required by this Article.

10 (c) The Section may share information with other State and federal agencies as
11 permitted or required by law.

12 "**§ 143-767. Exchange of information among coordinating agencies.**

13 The North Carolina Department of Revenue, the North Carolina Department of Labor, the
14 Division of Employment Security within the North Carolina Department of Commerce, and the
15 North Carolina Industrial Commission shall disclose all reports and investigations of employee
16 misclassification to the Section. The Section shall distribute the information to the other
17 agencies to allow each agency to conduct an investigation."

18 **SECTION 2.** G.S. 105-259(b) is amended by adding a new subdivision to read:

19 "(53) To furnish to the North Carolina Department of Labor, the Division of
20 Employment Security within the North Carolina Department of Commerce,
21 the North Carolina Industrial Commission, and the Employee Classification
22 Section within the Industrial Commission employee misclassification
23 information pursuant to Article 82 of Chapter 143 of the General Statutes."

24 **SECTION 3.** G.S. 95-25.15(c) reads as rewritten:

25 "(c) A poster summarizing the major provisions of this Article shall be displayed in
26 every establishment subject to this Article. This poster shall also include notice indicating the
27 following in plain language:

28 (1) Any worker who is defined as an employee by either G.S. 95-25.2(4),
29 143-761(2), 96-1(10), 97-2(2), or 105-163.1(4) shall be treated as an
30 employee unless the individual is an independent contractor.

31 (2) Any employee who believes that the employee has been misclassified as an
32 independent contractor by the employee's employer may report the suspected
33 misclassification to the Employee Classification Section within the Industrial
34 Commission.

35 (3) The physical location, mailing address, telephone number, and e-mail
36 address where alleged incidents of employee misclassification may be
37 reported to the Employee Classification Section within the Industrial
38 Commission."

39 **SECTION 4.** This act becomes effective October 1, 2017.