

H-8423

1 Amend House File 2772 as follows:

2 1. Page 19, after line 15 by inserting:

3 <DIVISION ____

4 MISCLASSIFICATION OF EMPLOYEES

5 Sec. ____ . Section 84A.5, subsection 3, Code 2026, is amended
6 to read as follows:

7 3. The department of workforce development is responsible
8 for administration of unemployment compensation benefits
9 and collection of employer contributions under [chapter 96](#),
10 providing for the delivery of free public employment services
11 established pursuant to [chapter 96](#), other job placement and
12 training programs established pursuant to [section 84A.6](#),
13 employment agencies under [chapter 84I](#), enforcement of chapter
14 95 relating to misclassification, and the delivery of services
15 located throughout the state.

16 Sec. ____ . NEW SECTION. 95.1 Definitions.

17 As used in this chapter, unless the context otherwise
18 requires:

19 1. "*Department*" means the department of workforce
20 development.

21 2. "*Employee*" means an individual who performs services in
22 this state for an employer in return for remuneration and who
23 is considered an employee under regulations or guidelines of
24 the federal internal revenue service in effect as of the date
25 of an alleged misclassification.

26 3. "*Employer*" means a person who employs an individual in
27 this state for wages.

28 4. "*Independent contractor*" means an individual who
29 performs services in this state for an employer in return for
30 remuneration and who is considered an independent contractor
31 under regulations or guidelines of the federal internal
32 revenue service in effect as of the date of an alleged
33 misclassification.

34 5. "*Misclassify*" or "*misclassification*" means to classify an
35 individual for employment purposes as an independent contractor

1 rather than an employee, contrary to regulations or guidelines
2 of the federal internal revenue service in effect as of the
3 date of an alleged misclassification, with the effect of
4 denying the individual eligibility for an employment benefit
5 provided by law or for a government program.

6 Sec. _____. NEW SECTION. **95.2 Misclassification of employees**
7 **prohibited.**

8 An employer shall not willfully misclassify an individual.

9 Sec. _____. NEW SECTION. **95.3 Civil penalty — procedures.**

10 1. An employer who violates section 95.2 shall be subject
11 to a civil penalty of up to five thousand dollars per
12 misclassified individual for a first offense, up to seven
13 thousand five hundred dollars per misclassified individual
14 for a second offense, and up to ten thousand dollars per
15 misclassified individual for each subsequent offense.

16 2. The department shall provide written notice to an
17 employer prior to imposition of a civil penalty under this
18 section. An employer may contest and seek judicial review of a
19 determination of the department under this chapter pursuant to
20 chapter 17A; however, for purposes of this section, an employer
21 shall bear the burden to demonstrate by a preponderance of the
22 evidence that the employer did not violate section 95.2.

23 3. Upon a final determination of the department that an
24 employer violated section 95.2 and the conclusion of the period
25 for any appeals, all of the following apply:

26 a. The department shall bring an action in district court to
27 collect the penalties provided in this section. The department
28 shall remit any penalties collected to the treasurer of state
29 for deposit in the general fund.

30 b. The department shall refer the violation to a county
31 attorney. A county attorney shall not be bound by any
32 determination of the department.

33 Sec. _____. NEW SECTION. **95.4 Criminal penalty.**

34 In addition to the civil penalties provided in section 95.3,
35 an employer who violates section 95.2 commits a class "D"

1 felony.

2 Sec. _____. NEW SECTION. **95.5 Enforcement — rules.**

3 1. The department shall enforce this chapter. The
4 department may establish additional procedures to implement
5 this chapter and may employ inspectors and any other personnel
6 deemed necessary to implement this chapter, subject to the
7 provisions of chapter 8A, subchapter IV.

8 2. The department shall adopt rules pursuant to chapter 17A
9 to administer this chapter.

10 Sec. _____. APPLICABILITY. This division of this Act applies
11 to misclassification, as defined in section 95.1, as enacted by
12 this Act, of an individual by an employer occurring on or after
13 the effective date of this Act.>

14 2. Title page, by striking lines 5 and 6 and inserting
15 <certain regents institutions; codifying the housing renewal
16 program; and prohibiting the misclassification of employees;
17 providing penalties, and including applicability provisions.>

18 3. By renumbering as necessary.

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