

By: Deshotel

H.B. No. 2989

Substitute the following for H.B. No. 2989:

By: Quintanilla

C.S.H.B. No. 2989

A BILL TO BE ENTITLED

AN ACT

relating to establishing the Workplace Fraud Prevention Act;
providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 4, Labor Code, is amended by
adding Chapter 313 to read as follows:

CHAPTER 313. WORKPLACE FRAUD PREVENTION ACT

Sec. 313.001. SHORT TITLE. This chapter may be cited as the
Workplace Fraud Prevention Act.

Sec. 313.002. DEFINITIONS. In this chapter:

(1) "Construction" means work related to the erection,
improvement, alteration, repair, renovation, maintenance, or
remodeling of a building, structure, appurtenance, road, highway,
bridge, dam, levee, canal, jetty, or other improvement to or on real
property, including moving, demolishing, dredging, shoring,
scaffolding, drilling, blasting, and excavating real property.

(2) "Contractor" means a person who contracts to
perform construction services, including a subcontractor.

(3) "Employee" means an individual who provides a
service, including service in interstate commerce, for wages or
under an express or implied contract of hire, unless it is shown to
the satisfaction of the commission that the individual's
performance of the service has been and will continue to be free
from control or direction under the contract and in fact.

1 (4) "Independent contractor" means a person lawfully
2 engaged in business who performs a service, under contract, for
3 another person free from the control or specific direction of that
4 person, and who:

5 (A) is registered with the secretary of state and
6 possesses a filing number; or

7 (B) possesses a valid social security number and:

8 (i) has unique skills; or

9 (ii) owns and operates a significant
10 investment in equipment.

11 (5) "Performing service" means the performance of
12 construction service for payment.

13 Sec. 313.003. APPLICABILITY. This chapter does not apply
14 to a common law or statutory action for tort liability and does not
15 change or affect the common law interpretation of independent
16 contractor status as it relates to tort liability or a workers'
17 compensation claim.

18 Sec. 313.004. EMPLOYEE STATUS. A contractor shall properly
19 classify an individual performing construction services as an
20 employee.

21 Sec. 313.005. PROHIBITED ACTS. It is a violation of this
22 chapter for:

23 (1) a contractor to fail to properly designate an
24 individual as an employee of the contractor;

25 (2) a person to knowingly form or assist in the
26 formation of a corporation, partnership, limited liability
27 corporation, or other business entity, or pay or collect a fee for

use of a corporation, partnership, limited liability corporation, or other business entity, for the purpose of facilitating a violation of this chapter; or

(3) a person to knowingly assist, aid, or conspire with an individual in committing a violation of this chapter.

Sec. 313.006. TELEPHONE HOTLINE AND INTERNET WEBSITE. The commission shall provide a toll-free telephone number and website for use by the public in reporting violations of this chapter. Information obtained by the commission under this chapter is confidential.

Sec. 313.007. DUTY TO INVESTIGATE. The commission shall investigate, in a timely manner, any credible complaint made under Section 313.006 that contains the name and contact information of the person alleged to have committed a violation, the job site location at which the alleged violation occurred, and a description of the alleged violation.

Sec. 313.008. ADMINISTRATIVE PENALTY. (a) If the commission determines that a contractor or other person has violated this chapter, the contractor or other person shall pay to the commission a penalty in an amount not to exceed:

(1) \$500 per individual who is not properly designated as an employee of the contractor for the first violation of Section 313.005(1);

(2) \$5,000 per individual who is not properly designated as an employee of the contractor for each subsequent violation of Section 313.005(1);

(3) \$500 for the first violation of Section 313.005(2)

1 or (3); and

2 (4) \$5,000 for each subsequent violation of Section
3 313.005(2) or (3).

4 (b) Any penalty issued under this chapter applies to a
5 successor business entity that:

6 (1) has one or more officers in common with the
7 original employer; and

8 (2) is engaged in the same or similar business
9 activity.

10 (c) An administrative penalty imposed under this section
11 shall be imposed in the same manner as the commission imposes an
12 administrative penalty under other law.

13 Sec. 313.009. NOTIFICATION OF OTHER VIOLATIONS. (a) If the
14 commission determines that a contractor or other person has
15 violated this chapter, the commission shall:

16 (1) initiate enforcement proceedings under Chapter
17 213 to collect unpaid unemployment taxes plus interest;

18 (2) notify the Texas Department of Insurance of the
19 violation and any possible violations of the Insurance Code; and

20 (3) notify the attorney general and any other
21 appropriate prosecuting authority of any possible violation of
22 other law.

23 (b) The commission may enter into interagency agreements
24 with another state agency and adopt any rules necessary to
25 administer this section.

26 Sec. 313.010. ANNUAL REPORT. (a) The commission shall
27 issue an annual report regarding compliance with and enforcement of

1 this chapter. The report must include:

2 (1) the number of complaints received through the
3 hotline or website under Section 313.006;

4 (2) the number of investigated complaints and any
5 resulting findings;

6 (3) the amount of unemployment taxes, interest,
7 administrative penalties, and fines collected under this chapter;
8 and

9 (4) the number of referrals to other agencies or
10 authorities under Section 313.009 and the outcomes of those
11 referrals.

12 (b) The commission shall submit the report annually to the
13 governor and legislature.

14 Sec. 313.011. POSTED NOTICE. A contractor shall post in a
15 conspicuous location on the job site in English and Spanish the
16 following notice:

17 (1) Every individual working for a contractor has the
18 right to be properly classified by the contractor as an
19 employee or independent contractor if the individual
20 meets the requirements under the Workplace Fraud
21 Prevention Act.

22 (2) If you believe you or someone else has not been
23 properly classified as an employee or independent
24 contractor under the Workplace Fraud Prevention Act,
25 contact the Texas Workforce Commission.

26 Sec. 313.012. CONTRACTOR AFFIDAVIT REQUIRED FOR CONTRACT
27 WITH STATE OR POLITICAL SUBDIVISION; PENALTY. (a) A contract

between this state or a political subdivision of this state and a contractor performing construction services must require:

(1) the contractor to submit an affidavit attesting that:

(A) each individual performing services for the contractor has been properly classified as an employee or independent contractor under this chapter;

(B) the contractor is in compliance with the requirements of Subchapter B, Chapter 234, Family Code; and

(C) the contractor is not barred from contracting with this state or a political subdivision of this state under Subsection (c); and

(2) that a contractor performing construction services pursuant to the contract follow the provisions of this chapter.

(b) Violation of this section by a contractor is grounds for rescission of the contract by the state or political subdivision.

(c) A contractor who knowingly provides a false affidavit under Subsection (a) is subject to the penalty of perjury for the first violation and shall be barred from contracting with this state or a political subdivision of this state for three years on a subsequent violation.

Sec. 313.013. WORKPLACE FRAUD PREVENTION ENFORCEMENT FUND. The workplace fraud prevention enforcement fund is established to fund the enforcement of this chapter. The commission shall administer the fund. The fund consists of money appropriated to the fund by the legislature and any penalties collected under Section

1 313.008.

2 SECTION 2. Section 313.012, Labor Code, as added by this
3 Act, applies to a contract entered into on or after the effective
4 date of this Act. A contract entered into before the effective date
5 of this Act is governed by the law in effect on the date the contract
6 was entered into, and the former law is continued in effect for that
7 purpose.

8 SECTION 3. This Act takes effect September 1, 2011.