

SENATE BILL No. 419

By Senator Holland

2-12

1 AN ACT concerning employment security law; relating to
2 misclassification of employees; penalties; order to enjoin doing
3 business; amending K.S.A. 2019 Supp. 44-766 and repealing the
4 existing section.

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

7 Section 1. K.S.A. 2019 Supp. 44-766 is hereby amended to read as
8 follows: 44-766. (a) No person shall knowingly and intentionally
9 misclassify ~~an employee~~ *one or more employees* as ~~an independent~~
10 ~~contractor~~ *contractors* for the ~~sole or primary~~ purpose of avoiding either
11 state income tax withholding and reporting requirements or state
12 unemployment insurance contributions reporting requirements. *A violation*
13 *of this subsection is contrary to the public interest and welfare of this state*
14 *declared by K.S.A. 44-702, and amendments thereto.*

15 (b) (1) Any person violating subsection (a) ~~shall~~, upon first violation,
16 *shall* be subject to a civil penalty in an amount computed in the manner
17 prescribed in K.S.A. 79-3228, and amendments thereto.

18 (2) Any person violating subsection (a), upon a second *or subsequent*
19 violation, shall be subject to a civil penalty *equal to twice the amount*
20 computed as prescribed in paragraph (1) and in addition, upon conviction,
21 shall be guilty of ~~a class C nonperson misdemeanor~~ *theft and shall be*
22 *punished in accordance with the provisions of K.S.A. 2019 Supp. 21-5801,*
23 *and amendments thereto.*

24 ~~(3) Any person violating subsection (a) upon a third or subsequent~~
25 ~~violation shall be subject to a civil penalty computed as prescribed in~~
26 ~~paragraph (1) and in addition, upon conviction, shall be guilty of a class A~~
27 ~~nonperson misdemeanor.~~

28 (c) Criminal violations of subsection (a) may be prosecuted by the
29 attorney general or the district or county attorney for the county in which
30 the violation occurred.

31 (d) *The secretary may order a person subject to the employment*
32 *security act, who has not complied with the civil penalties described in*
33 *subsection (b), to cease doing business as an employer in the state of*
34 *Kansas within a period to be set by the secretary, but not less than 10 days*
35 *from the date of the order.*

36 (e) *In the event that a person fails to comply with the order of the*

1 *secretary issued as provided in subsection (d), the attorney general, or the*
2 *district attorney or county attorney of any county where the person is*
3 *doing business as an employer; shall prepare and file in the district court*
4 *of any county where the person is doing business as an employer a*
5 *petition, signed and verified by the secretary, requesting that the court*
6 *issue an order enjoining the person from doing business as an employer in*
7 *this state for such period of time as the secretary may deem proper and*
8 *until the person has complied with the employment security law. The*
9 *district court shall have jurisdiction and venue to enter its order without*
10 *requiring a bond or evidence to be filed or presented. In all other respects,*
11 *such action shall be governed by the laws governing civil procedure.*

12 *(f) Any civil penalty assessed hereunder pursuant to this section shall*
13 *be remitted to the ~~secretary and deposited in the state treasury~~ state*
14 *treasurer in accordance with the provisions of K.S.A. 75-4215, and*
15 *amendments thereto. Upon receipt of each such remittance, the state*
16 *treasurer shall deposit the entire amount into the state treasury to the*
17 *credit of the state general fund.*

18 *(~~e~~)(g) Any penalty provided in this section shall be in addition to any*
19 *other penalty and remedy that may otherwise be imposed under the*
20 *employment security act and such remedies shall be cumulative.*

21 *(~~f~~)(h) This section shall be a part of and supplemental to the*
22 *employment security law.*

23 Sec. 2. K.S.A. 2019 Supp. 44-766 is hereby repealed.

24 Sec. 3. This act shall take effect and be in force from and after its
25 publication in the statute book.