SENATE BILL No. 157

By Committee on Commerce

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

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

New Section 1. As used in sections 1 and 2 and K.S.A. 2010 Supp. 44-766, and amendments thereto:
   (a) "Employee" means any individual who performs services for an employer that would indicate an employer-employee relationship in satisfaction of the factors in internal revenue service Rev. Rule 87-41, 1987-1 C.B. 296.
   (b) "Employer" means any individual, organization partnership, political subdivision, corporation or other legal entity which employs a person for hire.
   (c) "Knowingly" means a person acts knowingly or with knowledge:
      (1) With respect to the person's conduct or to attendant circumstances when the person is aware of the nature of the person's conduct or that those circumstances exist; or
      (2) with respect to a result of the person's conduct when the person is aware that the person's conduct is practically certain to cause that result.

New Sec. 2. (a) Whenever the attorney general has reason to believe that an employer is engaging in any conduct that would be a violation of K.S.A. 44-766, and amendments thereto, the attorney general may seek an injunction prohibiting the employer from engaging in such conduct. The attorney general may bring an action for injunctive relief in the district court of any county where the alleged violation is occurring or about to occur.
   (b) The attorney general may investigate alleged or suspected violations of this section and shall have the power to issue, serve or cause to be issued or served subpoenas or other process in aid of investigations, the power to administer oaths and take sworn statements under penalty of perjury, the power to serve and execute in any county, search warrants which relate to investigations authorized by this section and the powers of a district or county attorney.
   (c) In any action brought under this section, the state shall have the
burden of proving that the employer misclassified the employee.

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

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

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

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

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