

HB 1642 -- EMPLOYEE RECLASSIFICATION ACT

SPONSOR: Bahr

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Workforce Development and Workplace Safety by a vote of 7 to 3.

This bill establishes the Employee Reclassification Act. In its main provisions, the bill:

- (1) Requires the Department of Labor and Industrial Relations to provide a clear and concise rule for defining "independent contractor" and a procedure for changing an individual's classification from an independent contractor to an employee;
- (2) Specifies that for purposes of the workers compensation, unemployment compensation, and tax withholding laws, payments made to an entity organized under Chapter 347, RSMo, certain state or locally licensed service providers, or to a licensed attorney will be presumed to be made to an independent contractor and not to an employee;
- (3) Authorizes individuals and employers to request an opinion letter from the department on the classification of a particular person as an independent contractor or an employee. An employer classifying someone as an independent contractor based on the department's opinion letter cannot be fined if the department subsequently determines that the person is an employee;
- (4) Gives an employer 60 days to comply with the reclassification of an employee after the department audits the employer, and the employer, in the absence of fraud, will not be liable for any taxes, interest, or fines for the misclassification;
- (5) Allows an employer to appeal the department's audit findings, and the fine and assessment of interest levied against an employer for employee misclassification as an independent contractor will be tolled during the appeal, absent fraud on the part of the employer;
- (6) Requires the department to take public comments before issuing the final rule and requires a copy of the final rule to be mailed to every employer registered with the department and the Department of Revenue; and
- (7) Requires all pending investigations of employee misclassification, including those not finalized by a court, to be terminated permanently upon the effective date of the bill. The department's definition of employee misclassification must be provided to employers after the public comment period ends, and all

employers will be given 180 days to comply.

The bill also provides that for a taxpayer undergoing an audit by the department regarding classification of an individual as an independent contractor or employee, if the taxpayer has been granted relief from the imposition of federal employment taxes under Section 530 of the Internal Revenue Code of 1986, as amended, for an individual, with the result that the taxpayer can continue to classify the individual as an independent contractor for purposes of federal employment taxes, the department must allow the taxpayer to classify the individual as an independent contractor for purposes of Missouri employment taxes.

PROPONENTS: Supporters say that this bill would limit the Department of Labor and Industrial Relations' discretion in how it applies or weighs the factors it considers when making the determination of whether an individual is an independent contractor or an employee. This would bring certainty and fairness to businesses.

Testifying for the bill were Representative Bahr; Chad Remley, DFM Ltd.; Associated Industries of Missouri; and National Federation of Independent Business.

OPPONENTS: Those who oppose the bill say that the current "20 questions" process for determining whether an individual is an independent contractor or an employee has flexibility built into it and it should not be changed.

Testifying against the bill were John Boyd, Missouri AFL-CIO; and Fred Bryant, Missouri Association of Trial Attorneys.