

HCS HB 214 -- MISCLASSIFICATION OF WORKERS

SPONSOR: Hill

COMMITTEE ACTION: Voted "Do Pass with HCS" by the Standing Committee on Economic Development by a vote of 7 to 2. Voted "Do Pass" by the Standing Committee on Rules- Legislative Oversight by a vote of 5 to 3.

The following is a summary of the House Committee Substitute for HB 214.

This bill establishes the criteria of a worker to be considered as an independent contractor.

The bill states that any person is conclusively presumed to be an independent contractor who performs work for any employer if:

(1) The person has signed a written contract with the employer that states the employer's intent to retain the services of the person as an independent contractor and the person is required by the contract to hold any state or local business license and to maintain any occupational license necessary to perform such services;

(2) The person has filed, intends to file, or is contractually required to file, in regard to the fees earned from work, an income tax return with the Internal Revenue Service for a business or for earnings from self-employment; or the person provides his or her services through a business entity, including but not limited to, a partnership, limited liability company or corporation, or through a sole proprietorship;

(3) The person has the right to control the manner and means by which the work is to be accomplished, even though he or she may not have control over the final result of the work, provided that the employer may provide orientation, information, guidance, or suggestions about the employer's products, business, services, customers and operating systems, and training otherwise provided by law; and

(4) The person satisfies three or more of the following:

(a) The person controls the amount of time personally spent providing services, provided that an agreement may be made with the employer relating to the final completion or final delivery time or schedule, range of hours, or the time entertainment is to be presented if the work contracted for is entertainment;

(b) The person has control over where the services are performed, except in the case of services that can be performed only at certain locations;

(c) The person is not required to work exclusively with one employer, unless the person meets certain exemptions in the bill;

(d) The person is free to exercise independent initiative in soliciting others to purchase his or her services;

(e) The person is free to hire employees or to contract with assistants, helpers, or substitutes to perform all or some of the work;

(f) The person cannot be required to perform additional services without a new or modified contract;

(g) The person obtains a license or other permission from the employer to utilize any workspace of the employer in order to perform the work for which the person was engaged;

(h) The employer has been subject to an employment audit by the Internal Revenue Service and the Internal Revenue Service has not reclassified the person to be an employee or has not reclassified the category of workers to be employees; or

(i) The person is responsible for maintaining and bearing the costs of any required business licenses, insurance, certifications, or permits required to perform services.

A person who is not conclusively presumed to be an independent contractor for failure to satisfy three or more of the nine previous criteria shall not be presumed to be an employee.

No employer shall be required to classify a person who is considered an independent contractor under this bill as an employee, provided that the employer may choose to hire and classify such person as an employee at any time.

This bill does not apply to:

(1) Service consisting of prearranged passenger transport provided by transportation network drivers through a digital network offered by a transportation network company, as defined in Sections 387.400 to 387.440, RSMo. The independent contractor status of transportation network drivers shall be governed exclusively by Section 387.414;

(2) Entities described in Section 501(c)(3) of the Internal

Revenue Code of 1986, as amended;

(3) State or local government entities; or

(4) Federally recognized Indian tribes.

This bill will not overrule any exemptions from the definition of employee or employment found in other provisions of state law.

Under this bill, no political subdivision of the state can enact, establish, mandate, or otherwise implement any law, ordinance, or regulation in conflict with the provisions of this bill (Section 285.517).

This bill also changes the definition of "employee" by removing the reference to the factors in IRS Rev. Rule 87-41, 1987-1 C.B.296 and stating that an individual who meets the requirements for an independent contractor, as specified in this bill, is not an employee (Section 285.500).

Additionally, this bill modifies provisions of law to determine whether a person is an independent contractor (Sections 287.020 and 288.034).

This bill is similar to HB 1920 (2020) and similar to HCS HB 1137 (2019).

The following is a summary of the public testimony from the committee hearing. The testimony was based on the introduced version of the bill.

PROPOSERS: Supporters say that this bill protects individuals that are current independent contractors from being incorrectly reclassified. Additionally, this language allows the state to provide clear guidance as to who is and is not an independent contractor. This bill prevents court rulings in other states from deciding who is and is not an independent contractor in Missouri.

Testifying for the bill were Representative Hill; Americans For Prosperity; Missouri Chamber of Commerce and Industry; Missouri Insurance Coalition; United States Chamber; and Opportunity Solutions Project.

OPPOSERS: Those who oppose the bill say that the current way to decide if an individual is an independent contractor is clear and preferable because it follows the "ABC" test which 33 other states currently use. The current system prevents illegal labor from being used for certain jobs.

Testifying against the bill were Paul A Leykamp; Missouri AFL-CIO; and St. Louis-Kansas City Carpenters Regional Council.

Written testimony has been submitted for this bill. The full written testimony can be found under Testimony on the bill page on the House website.