

SENATE BILL No. 285

By Committee on Commerce

1-17

1 AN ACT concerning the misclassification of employees; pertaining to the
2 penalty for violations; amending K.S.A. 2011 Supp. 44-766 and
3 repealing the existing section.

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

6 Sec. 1. K.S.A. 2011 Supp. 44-766 is hereby amended to read as
7 follows: 44-766. (a) No person shall knowingly and intentionally
8 misclassify an employee as an independent contractor for the sole or
9 primary purpose of avoiding either state income tax withholding and
10 reporting requirements or state unemployment insurance contributions
11 reporting requirements.

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

15 (2) Any person violating subsection (a) upon a second *or subsequent*
16 violation shall be subject to a civil penalty computed as prescribed in
17 paragraph (1) and in addition, upon conviction, shall be guilty of a ~~class C~~
18 ~~nonperson misdemeanor severity level 10, nonperson felony.~~

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

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

26 (d) Any civil penalty assessed hereunder shall be remitted to the
27 secretary and deposited in the state treasury.

28 (e) Any penalty provided in this section shall be in addition to any
29 other penalty and remedy that may otherwise be imposed under the
30 employment security act and such remedies shall be cumulative.

31 (f) This section shall be part of and supplemental to the employment
32 security law.

33 Sec. 2. K.S.A. 2011 Supp. 44-766 is hereby repealed.

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

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