

BILL ANALYSIS

Senate Research Center
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H.B. 2579
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Economic Development
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, Texas employers pay Unemployment Insurance (UI) taxes on wages paid to workers who are classified as employees; they do not pay UI taxes on wages paid to workers who are classified as independent contractors. At any time and for a number of reasons, the Texas Workforce Commission (TWC) tax department may investigate an employer to determine whether the employer has misclassified employees as independent contractors. If misclassified workers are found, an employer must pay taxes on the unreported wages and an interest penalty associated with the late payment of taxes.

In some cases, an employer classified workers based on a court ruling or previous TWC determination that, for purposes of the Texas Unemployment Compensation Act, service performed by an individual was not considered employment. In these cases, if a subsequent ruling or determination finds that the service is employment, the employer is still subject to penalties, interest, and sanctions.

H.B. 2579 seeks to address this issue by providing relief from penalties and sanctions under the Texas Unemployment Compensation Act for an employer who reasonably relied on an initial ruling or determination. This provision is applicable only if TWC determines that the nature of the business and the service in question are substantially unchanged from the time the initial ruling was issued or the initial determination was made.

H.B. 2579 amends current law relating to relief for certain employers from penalties and sanctions under the Texas Unemployment Compensation Act.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 213, Labor Code, by adding Section 213.011, as follows:

Sec. 213.011. EFFECT OF PREVIOUS EMPLOYMENT DETERMINATION. (a) Provides that, subject to Subsection (c), it is reasonable for an employer to rely on a court ruling or Texas Workforce Commission (TWC) determination that, for the purposes of this subtitle, service performed by an individual, including service in interstate commerce, is not employment under this subtitle if:

- (1) the ruling is a judicial decision or precedent, including a published opinion, from a court in this state, or a TWC decision involving the employer as a party or a subject; and
- (2) the ruling or determination has not been reversed or otherwise invalidated.

(b) Requires TWC to relieve an employer that reasonably relies on a ruling or determination described by Subsection (a) from penalties, interest, or sanctions under this chapter or Chapter 214 (Offenses, Penalties, and Sanctions) that result from a subsequent ruling or determination that the service in question is employment. Provides that an employer who receives relief under this subsection is not indebted to the state for the penalties, interest, or sanctions from which the employer is relieved and may not be considered delinquent on the payment of taxes, to the extent of the amount from which the employer is relieved.

(c) Authorizes an employer to reasonably rely on a ruling or determination under Subsection (a) until the earlier of:

(1) the effective date of the subsequent ruling or determination invalidating the ruling or determination on which the employer reasonably relied; or

(2) the third anniversary of the due date of a contribution based on the service in question.

(d) Provides that this section applies only if TWC determines that the nature of the business and the service in question are substantially unchanged from the time the initial ruling was issued or the initial determination was made.

SECTION 2. Effective date: September 1, 2011.