SENNATE BILL No. 419
By Senator Holland
2-12

AN ACT concerning employment security law; relating to
misclassification of employees; penalties; order to enjoin doing
business; amending K.S.A. 2019 Supp. 44-766 and repealing the
existing section.

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

Section 1. K.S.A. 2019 Supp. 44-766 is hereby amended to read as
follows: 44-766. (a) No person shall knowingly and intentionally
misclassify an employee one or more employees as an independent
contractor contractors for the sole or primary purpose of avoiding either
state income tax withholding and reporting requirements or state
unemployment insurance contributions reporting requirements. A violation
of this subsection is contrary to the public interest and welfare of this state
declared by K.S.A. 44-702, and amendments thereto.

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

(2) Any person violating subsection (a), upon a second or subsequent
violation, shall be subject to a civil penalty equal to twice the amount
computed as prescribed in paragraph (1) and in addition, upon conviction,
shall be guilty of a class C nonperson misdemeanor theft and shall be
punished in accordance with the provisions of K.S.A. 2019 Supp. 21-5801,
and amendments thereto.

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

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

(d) The secretary may order a person subject to the employment
security act, who has not complied with the civil penalties described in
subsection (b), to cease doing business as an employer in the state of
Kansas within a period to be set by the secretary, but not less than 10 days
from the date of the order.

(e) In the event that a person fails to comply with the order of the
secretary issued as provided in subsection (d), the attorney general, or the
district attorney or county attorney of any county where the person is
doing business as an employer, shall prepare and file in the district court
of any county where the person is doing business as an employer a
petition, signed and verified by the secretary, requesting that the court
issue an order enjoining the person from doing business as an employer in
this state for such period of time as the secretary may deem proper and
until the person has complied with the employment security law. The
district court shall have jurisdiction and venue to enter its order without
requiring a bond or evidence to be filed or presented. In all other respects,
such action shall be governed by the laws governing civil procedure.

(f) Any civil penalty assessed hereunder pursuant to this section shall
be remitted to the secretary and deposited in the state treasury state
treasurer in accordance with the provisions of K.S.A. 75-4215, and
amendments thereto. Upon receipt of each such remittance, the state
treasurer shall deposit the entire amount into the state treasury to the
credit of the state general fund.

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

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

Sec. 2. K.S.A. 2019 Supp. 44-766 is hereby repealed.

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