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AN ACT

RELATING TO EMPLOYMENT; ESTABLISHING A PRESUMPTION OF  
EMPLOYER AND EMPLOYEE RELATIONSHIP IN THE CONSTRUCTION  
INDUSTRIES; SETTING STANDARDS TO INDICATE WHEN A WORKER IS AN  
INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE; REQUIRING THE  
LABOR DEPARTMENT TO ADMINISTER AND ENFORCE THE STANDARDS;  
IMPOSING CRIMINAL PENALTIES AND LICENSE SANCTIONS FOR  
IMPROPERLY REPORTING AN EMPLOYEE AS AN INDEPENDENT  
CONTRACTOR; PROVIDING AN EXCEPTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. EMPLOYER AND EMPLOYEE RELATIONSHIP--  
INDEPENDENT CONTRACTOR--IMPROPER REPORTING--PENALTY--LICENSE  
SANCTIONS.--

A. Except as provided in Subsection D of this  
section, for purposes of the employer and employee  
relationship within those construction industries subject to  
the Construction Industries Licensing Act, a contractor who  
is an employer shall consider a person providing labor or  
services to the contractor for compensation to be an employee  
of the contractor and not an independent contractor unless  
the following standards indicative of an independent  
contractor are met:

(1) the person providing labor or services  
is free from direction and control over the means and manner

1 of providing the labor or services, subject only to the right  
2 of the person for whom the labor or services are provided to  
3 specify the desired results;

4 (2) the person providing labor or services  
5 is responsible for obtaining business registrations or  
6 licenses required by state law or local ordinance for the  
7 person to provide the labor or services;

8 (3) the person providing labor or services  
9 furnishes the tools or equipment necessary to provide the  
10 labor or services;

11 (4) the person providing labor or services  
12 has the authority to hire and fire employees to perform the  
13 labor or services;

14 (5) payment for labor or services is made  
15 upon completion of the performance of specific portions of a  
16 project or is made on the basis of a periodic retainer; and

17 (6) the person providing labor or services  
18 represents to the public that the labor or services are to be  
19 provided by an independently established business. A person  
20 is engaged in an independently established business when four  
21 or more of the following circumstances exist:

22 (a) labor or services are primarily  
23 performed at a location separate from the person's residence  
24 or in a specific portion of the residence that is set aside  
25 for performing labor or services;

1 (b) commercial advertising or business  
2 cards are purchased by the person, or the person is a member  
3 of a trade or professional association;

4 (c) telephone or email listings used  
5 for the labor or services are different from the person's  
6 personal listings;

7 (d) labor or services are performed  
8 only pursuant to a written contract;

9 (e) labor or services are performed for  
10 two or more persons within a period of one year; or

11 (f) the person assumes financial  
12 responsibility for errors and omissions in labor or services  
13 as evidenced by insurance, performance bonds and warranties  
14 relating to the labor or services being provided.

15 B. The labor department shall administer and  
16 enforce the provisions of Subsection A of this section,  
17 including coordination with the construction industries  
18 division of the regulation and licensing department.

19 C. A contractor who intentionally and willfully  
20 reports to a state agency or other client that an employee is  
21 an independent contractor or who, for the purposes of a  
22 program administered by a state agency, intentionally and  
23 willfully treats or otherwise lists an employee as an  
24 independent contractor when the employee's status does not  
25 meet the standards indicative of an independent contractor as

1 identified in Subsection A of this section is guilty of a  
2 misdemeanor and shall be punished by a fine of not more than  
3 five thousand dollars (\$5,000) or by imprisonment for a  
4 definite term not to exceed six months or both. For the  
5 purposes of this subsection, "state agency" means an  
6 administration, board, commission, department or division of  
7 this state.

8 D. Conviction of a contractor for violating  
9 Subsection C of this section shall be grounds for the  
10 construction industries commission to take action to suspend,  
11 revoke or refuse to renew a license issued to that contractor  
12 by the construction industries division of the regulation and  
13 licensing department.

14 E. Subsections A, B and C of this section shall  
15 not be construed to affect or apply to a common law or  
16 statutory action providing for recovery in torts and shall  
17 not be construed to affect or change the common law  
18 interpretation of independent contractor status as it relates  
19 to tort liability. \_\_\_\_\_

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