

HOUSE BILL No. 2372

By Representative Holland

2-9

9 AN ACT concerning employment; relating to the misclassification of em-
10 ployees; amending K.S.A. 2004 Supp. 79-3234 and repealing the ex-
11 isting section.
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13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. (a) Misclassifying an employee is knowingly and in-
15 tentiously classifying an employee as an independent contractor to avoid
16 federal and state income tax withholding requirements.

17 (b) Misclassifying an employee is a class A nonperson misdemeanor.

18 (c) This section shall be a part of and supplemental to the Kansas
19 criminal code.

20 New Sec. 2. (a) The department of revenue in conjunction with the
21 department of labor shall establish a toll free number and website to
22 receive communications concerning information on persons and business
23 entities misclassifying employees in violation of section 1, and amend-
24 ments thereto.

25 (b) Upon receipt of such information, the department of revenue
26 shall work with the department of labor to investigate alleged violations.
27 The agencies shall cooperate and share information as necessary con-
28 cerning the alleged violations.

29 (c) The secretary of revenue may apply for, receive and accept mon-
30 eys from any source for the purposes of establishing the hotline and
31 website.

32 (d) The secretary of revenue shall publicize, distribute and dissemi-
33 nate information on the availability of the hotline and website to employ-
34 ment agencies, law enforcement agencies and other interested parties.

35 (e) The secretary of revenue is hereby authorized to adopt rules and
36 regulations concerning the implementation of this section.

37 (f) The attorney general, with the approval of the secretary of reve-
38 nue, shall appoint an assistant attorney general who shall be assigned to
39 the department of revenue to investigate all information received pur-
40 suant to subsection (a), and who shall receive an annual salary fixed by
41 the attorney general with the approval of the secretary of revenue and
42 the state finance council.

43 Sec. 3. K.S.A. 2004 Supp. 79-3234 is hereby amended to read as

1 follows: 79-3234. (a) All reports and returns required by this act shall be
2 preserved for three years and thereafter until the director orders them
3 to be destroyed.

4 (b) Except in accordance with proper judicial order, or as provided
5 in subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A. 46-1106,
6 K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall
7 be unlawful for the director, any deputy, agent, clerk or other officer,
8 employee or former employee of the department of revenue or any other
9 state officer or employee or former state officer or employee to divulge,
10 or to make known in any way, the amount of income or any particulars
11 set forth or disclosed in any report, return, federal return or federal return
12 information required under this act; and it shall be unlawful for the di-
13 rector, any deputy, agent, clerk or other officer or employee engaged in
14 the administration of this act to engage in the business or profession of
15 tax accounting or to accept employment, with or without consideration,
16 from any person, firm or corporation for the purpose, directly or indi-
17 rectly, of preparing tax returns or reports required by the laws of the state
18 of Kansas, by any other state or by the United States government, or to
19 accept any employment for the purpose of advising, preparing material
20 or data, or the auditing of books or records to be used in an effort to
21 defeat or cancel any tax or part thereof that has been assessed by the
22 state of Kansas, any other state or by the United States government.

23 (c) Nothing in this section shall be construed to prohibit the publi-
24 cation of statistics, so classified as to prevent the identification of partic-
25 ular reports or returns and the items thereof, or the inspection of returns
26 by the attorney general or other legal representatives of the state. Nothing
27 in this section shall prohibit the post auditor from access to all income
28 tax reports or returns in accordance with and subject to the provisions of
29 subsection (g) of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments
30 thereto. Nothing in this section shall be construed to prohibit the disclo-
31 sure of taxpayer information from income tax returns to persons or en-
32 tities contracting with the secretary of revenue where the secretary has
33 determined disclosure of such information is essential for completion of
34 the contract and has taken appropriate steps to preserve confidentiality.
35 Nothing in this section shall be construed to prohibit the disclosure of
36 job creation and investment information derived from tax schedules re-
37 quired to be filed under the Kansas income tax act to the secretary of
38 commerce. Nothing in this section shall be construed to prohibit the
39 disclosure of income tax returns to the state gaming agency to be used
40 solely for the purpose of determining qualifications of licensees of and
41 applicants for licensure in tribal gaming. Any information received by the
42 state gaming agency shall be confidential and shall not be disclosed except
43 to the executive director, employees of the state gaming agency and mem-

1 bers and employees of the tribal gaming commission. Nothing in this
2 section shall be construed to prohibit the disclosure of the taxpayer's
3 name, last known address and residency status to the department of wild-
4 life and parks to be used solely in its license fraud investigations. Nothing
5 in this section shall prohibit the disclosure of the name, residence address,
6 employer or Kansas adjusted gross income of a taxpayer who may have a
7 duty of support in a title IV-D case to the secretary of the Kansas de-
8 partment of social and rehabilitation services for use solely in administra-
9 tive or judicial proceedings to establish, modify or enforce such support
10 obligation in a title IV-D case. In addition to any other limits on use, such
11 use shall be allowed only where subject to a protective order which pro-
12 hibits disclosure outside of the title IV-D proceeding. As used in this
13 section, "title IV-D case" means a case being administered pursuant to
14 part D of title IV of the federal social security act (42 U.S.C. § 651 *et*
15 *seq.*) and amendments thereto. *Nothing in this section shall be construed*
16 *to prohibit the disclosure of income tax returns to the secretary of labor*
17 *to be used solely to investigate violations of section 1, and amendments*
18 *thereto.* Any person receiving any information under the provisions of this
19 subsection shall be subject to the confidentiality provisions of subsection
20 (b) and to the penalty provisions of subsection (d).

21 (d) Any violation of subsection (b) or (c) is a class B nonperson mis-
22 demeanor and, if the offender is an officer or employee of the state, such
23 officer or employee shall be dismissed from office.

24 (e) Notwithstanding the provisions of this section, the secretary of
25 revenue may permit the commissioner of internal revenue of the United
26 States, or the proper official of any state imposing an income tax, or the
27 authorized representative of either, to inspect the income tax returns
28 made under this act and the secretary of revenue may make available or
29 furnish to the taxing officials of any other state or the commissioner of
30 internal revenue of the United States or other taxing officials of the fed-
31 eral government, or their authorized representatives, information con-
32 tained in income tax reports or returns or any audit thereof or the report
33 of any investigation made with respect thereto, filed pursuant to the in-
34 come tax laws, as the secretary may consider proper, but such information
35 shall not be used for any other purpose than that of the administration
36 of tax laws of such state, the state of Kansas or of the United States.

37 (f) Notwithstanding the provisions of this section, the secretary of
38 revenue may:

39 (1) Communicate to the executive director of the Kansas lottery in-
40 formation as to whether a person, partnership or corporation is current
41 in the filing of all applicable tax returns and in the payment of all taxes,
42 interest and penalties to the state of Kansas, excluding items under formal
43 appeal, for the purpose of determining whether such person, partnership

1 or corporation is eligible to be selected as a lottery retailer;

2 (2) communicate to the executive director of the Kansas racing com-
3 mission as to whether a person, partnership or corporation has failed to
4 meet any tax obligation to the state of Kansas for the purpose of deter-
5 mining whether such person, partnership or corporation is eligible for a
6 facility owner license or facility manager license pursuant to the Kansas
7 parimutuel racing act; and

8 (3) provide such information to the president of Kansas, Inc. as re-
9 quired by K.S.A. 74-8017, and amendments thereto. The president and
10 any employees or former employees of Kansas, Inc. receiving any such
11 information shall be subject to the confidentiality provisions of subsection
12 (b) and to the penalty provisions of subsection (d).

13 (g) Nothing in this section shall be construed to allow disclosure of
14 the amount of income or any particulars set forth or disclosed in any
15 report, return, federal return or federal return information, where such
16 disclosure is prohibited by the federal internal revenue code as in effect
17 on September 1, 1996, and amendments thereto, related federal internal
18 revenue rules or regulations, or other federal law.

19 Sec. 4. K.S.A. 2004 Supp. 79-3234 is hereby repealed.

20 Sec. 5. This act shall take effect and be in force from and after its
21 publication in the statute book.