

By: Representative Bain

To: Judiciary A

HOUSE BILL NO. 683

1 AN ACT TO REQUIRE A CONTRACTOR WHO SUBMITS A BID ON A PUBLIC
 2 PROJECT UNDER THE BIDDING LAWS OF THIS STATE TO HAVE A STATE TAX
 3 IDENTIFICATION NUMBER AND WORKERS' COMPENSATION INSURANCE WHICH
 4 COVERS ALL EMPLOYEES OF THE CONTRACTOR; TO REQUIRE THE CONTRACTOR
 5 TO SHOW PROOF OF THOSE REQUIRED DOCUMENTS UPON REQUEST; TO PROVIDE
 6 PENALTIES FOR THOSE WHO FAIL TO POSSESS THOSE DOCUMENTS; TO
 7 PROVIDE FINES FOR THOSE WHO MISCLASSIFY EMPLOYEES FOR PURPOSES OF
 8 AFFECTING PROCEDURES AND PAYMENTS UNDER WORKERS' COMPENSATION OR
 9 UNEMPLOYMENT INSURANCE; TO REQUIRE CERTAIN AGENCIES TO WORK
 10 TOGETHER TO INVESTIGATE VIOLATIONS OF THIS ACT; TO AMEND SECTION
 11 71-3-5, MISSISSIPPI CODE OF 1972, TO CONFORM TO THE PROVISIONS OF
 12 THIS ACT; AND FOR RELATED PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 **SECTION 1.** (1) Any contractor who submits a bid on a public
 15 project under the bidding laws of this state shall have a state
 16 tax identification number and workers' compensation insurance that
 17 covers all employees of the contractor. Any contractor who
 18 submits a bid on a public project under the bidding laws of this
 19 state shall show, upon request, proof of a state tax
 20 identification number and workers' compensation insurance that
 21 covers all employees of the contractor.

22 (2) Any person who fails to possess or show proof upon
 23 request of the information described in subsection (1) of this



24 section shall be fined by the Mississippi Department of Revenue in
25 an amount not to exceed ten percent (10%) of the contractor's
26 total bid, which amount shall be in addition to any other
27 penalties authorized by law.

28 (3) Any contractor that intentionally misclassifies
29 individuals as independent contractors rather than employees, for
30 the purpose of affecting withholding, social security,
31 unemployment tax or workers' compensation insurance premium
32 payments, shall be fined by the Department of Revenue in an amount
33 not to exceed ten percent (10%) of the contractor's total bid,
34 which amount shall be in addition to any other penalties
35 authorized by law.

36 **SECTION 2.** The Mississippi Department of Revenue, the
37 Department of Employment Security and the Workers' Compensation
38 Commission shall share information and coordinate investigative
39 and enforcement efforts for the purpose of detecting those
40 contractors who intentionally misclassify individuals as
41 independent contractors rather than employees for the purpose of
42 affecting procedures and payments relating to withholding and
43 social security, unemployment tax or workers' compensation
44 insurance premium. The agencies described in this section shall
45 create a secure database of information accessible by agency
46 representatives responsible for enforcement and shall be further
47 authorized to enter into contracts and interagency agreements and



48 promulgate any rules that may be necessary to implement this
49 section.

50 **SECTION 3.** Section 71-3-5, Mississippi Code of 1972, is
51 amended as follows:

52 71-3-5. The following shall constitute employers subject to
53 the provisions of this chapter:

54 Every person, firm and private corporation, including any
55 public service corporation but excluding, however, all nonprofit
56 charitable, fraternal, cultural, or religious corporations or
57 associations, that have in service five (5) or more workmen or
58 operatives regularly in the same business or in or about the same
59 establishment under any contract of hire, express or implied. Any
60 contractor who submits a bid on a public project under the bidding
61 laws of this state.

62 Any state agency, state institution, state department, or
63 subdivision thereof, including counties, municipalities and school
64 districts, or the singular thereof, not heretofore included under
65 the Workers' Compensation Law, may elect, by proper action of its
66 officers or department head, to come within its provisions and, in
67 such case, shall notify the commission of such action by filing
68 notice of compensation insurance with the commission. Payment for
69 compensation insurance policies so taken may be made from any
70 appropriation or funds available to such agency, department or
71 subdivision thereof, or from the general fund of any county or
72 municipality.



73 From and after July 1, 1990, all offices, departments,
74 agencies, bureaus, commissions, boards, institutions, hospitals,
75 colleges, universities, airport authorities or other
76 instrumentalities of the "state" as such term is defined in
77 Section 11-46-1, Mississippi Code of 1972, shall come under the
78 provisions of the Workers' Compensation Law. Payment for
79 compensation insurance policies so taken may be made from any
80 appropriation or funds available to such office, department,
81 agency, bureau, commission, board, institution, hospital, college,
82 university, airport authority or other instrumentality of the
83 state.

84 From and after October 1, 1990, counties and municipalities
85 shall come under the provisions of the Workers' Compensation Law.
86 Payment for compensation insurance policies so taken may be made
87 from any funds available to such counties and municipalities.

88 From and after October 1, 1993, all "political subdivisions,"
89 as such term is defined in Section 11-46-1, Mississippi Code of
90 1972, except counties and municipalities shall come under the
91 provisions of the Workers' Compensation Law. Payment for
92 compensation insurance policies so taken may be made from any
93 funds available to such political subdivisions.

94 From and after July 1, 1988, the "state" as such term is
95 defined in Section 11-46-1, Mississippi Code of 1972, may elect to
96 become a self-insurer under the provisions elsewhere set out by
97 law, by notifying the commission of its intent to become a



98 self-insurer. The cost of being such a self-insurer, as provided
99 otherwise by law, may be paid from funds available to the offices,
100 departments, agencies, bureaus, commissions, boards, institutions,
101 hospitals, colleges, universities, airport authorities or other
102 instrumentalities of the state.

103 The Mississippi Transportation Commission, the Department of
104 Public Safety and the Mississippi Industries for the Blind may
105 elect to become self-insurers under the provisions elsewhere set
106 out by law by notifying the commission of their intention of
107 becoming such a self-insurer. The cost of being such a
108 self-insurer, as provided elsewhere by law, may be paid from funds
109 available to the Mississippi Transportation Commission, the
110 Department of Public Safety or the Mississippi Industries for the
111 Blind.

112 The Mississippi State Senate and the Mississippi House of
113 Representatives may elect to become self-insurers under provisions
114 elsewhere set out by law by notifying the commission of their
115 intention of becoming such self-insurers. The cost of being such
116 self-insurers, as provided elsewhere by law, may be paid from
117 funds available to the Mississippi State Senate and the
118 Mississippi House of Representatives. The Mississippi State
119 Senate and the Mississippi House of Representatives are authorized
120 and empowered to provide workers' compensation benefits for
121 employees after January 1, 1970.



122 Any municipality of the State of Mississippi having forty
123 thousand (40,000) population or more desiring to do so may elect
124 to become a self-insurer under provisions elsewhere set out by law
125 by notifying the commission of its intention of becoming such an
126 insurer. The cost of being such a self-insurer, as provided
127 elsewhere by law, may be provided from any funds available to such
128 municipality.

129 The commission may, under such rules and regulations as it
130 prescribes, permit two (2) or more "political subdivisions," as
131 such term is defined in Section 11-46-1, Mississippi Code of 1972,
132 to pool their liabilities to participate in a group workers'
133 compensation self-insurance program. The governing authorities of
134 any political subdivision may authorize the organization and
135 operation of, or the participation in such a group self-insurance
136 program with other political subdivisions, provided such program
137 is approved by the commission. The cost of participating in a
138 group self-insurance program may be provided from any funds
139 available to a political subdivision.

140 Domestic servants, farmers and farm labor are not included
141 under the provisions of this chapter, but this exemption does not
142 apply to the processing of agricultural products when carried on
143 commercially. Any purchaser of timber products shall not be
144 liable for workers' compensation for any person who harvests and
145 delivers timber to such purchaser if such purchaser is not liable
146 for unemployment tax on the person harvesting and delivering the



147 timber as provided by United States Code Annotated, Title 26,
148 Section 3306, as amended. Provided, however, nothing in this
149 section shall be construed to exempt an employer who would
150 otherwise be covered under this section from providing workers'
151 compensation coverage on those employees for whom he is liable for
152 unemployment tax.

153 Employers exempted by this section may assume, with respect
154 to any employee or classification of employees, the liability for
155 compensation imposed upon employers by this chapter with respect
156 to employees within the coverage of this chapter. The purchase
157 and acceptance by such employer of valid workers' compensation
158 insurance applicable to such employee or classification of
159 employees shall constitute, as to such employer, an assumption by
160 him of such liability under this chapter without any further act
161 on his part notwithstanding any other provisions of this chapter,
162 but only with respect to such employee or such classification of
163 employees as are within the coverage of the state fund. Such
164 assumption of liability shall take effect and continue from the
165 effective date of such workers' compensation insurance and as long
166 only as such coverage shall remain in force, in which case the
167 employer shall be subject with respect to such employee or
168 classification of employees to no other liability than the
169 compensation as provided for in this chapter.

170 An owner/operator, and his drivers, must provide a
171 certificate of insurance of workers' compensation coverage to the



172 motor carrier or proof of coverage under a self-insured plan or an
173 occupational accident policy. Any such occupational accident
174 policy shall provide a minimum of One Million Dollars
175 (\$1,000,000.00) of coverage. Should the owner/operator fail to
176 provide written proof of coverage to the motor carrier, then the
177 owner/operator, and his drivers, shall be covered under the motor
178 carrier's workers' compensation insurance program and the motor
179 carrier is authorized to collect payment of the premium from the
180 owner/operator. In the event that coverage is obtained by the
181 owner/operator under a workers' compensation policy or through a
182 self-insured or occupational accident policy, then the
183 owner/operator, and his drivers, shall not be entitled to benefits
184 under the motor carrier's workers' compensation insurance program
185 unless the owner/operator has elected in writing to be covered
186 under the carrier's workers' compensation program or policy or if
187 the owner/operator is covered by the carrier's plan because he
188 failed to obtain coverage. Coverage under the motor carrier's
189 workers' compensation insurance program does not terminate the
190 independent contractor status of the owner/operator under the
191 written contract or lease agreement. Nothing shall prohibit or
192 prevent an owner/operator from having or securing an occupational
193 accident policy in addition to any workers' compensation coverage
194 authorized by this section. Other than the amendments to this
195 section by Chapter 523, Laws of 2006, the provisions of this



196 section shall not be construed to have any effect on any other
197 provision of law, judicial decision or any applicable common law.

198 This chapter shall not apply to transportation and maritime
199 employments for which a rule of liability is provided by the laws
200 of the United States.

201 This chapter shall not be applicable to a mere direct
202 buyer-seller or vendor-vendee relationship where there is no
203 employer-employee relationship as defined by Section 71-3-3, and
204 any insurance carrier is hereby prohibited from charging a premium
205 for any person who is a seller or vendor rather than an employee.

206 Any employer may elect, by proper and written action of its
207 own governing authority, to be exempt from the provisions of the
208 Workers' Compensation Law as to its sole proprietor, its partner
209 in a partnership or to its employee who is the owner of fifteen
210 percent (15%) or more of its stock in a corporation, if such sole
211 proprietor, partner or employee also voluntarily agrees thereto in
212 writing. Any sole proprietor, partner or employee owning fifteen
213 percent (15%) or more of the stock of his/her corporate employer
214 who becomes exempt from coverage under the Workers' Compensation
215 Law shall be excluded from the total number of workers or
216 operatives toward reaching the mandatory coverage threshold level
217 of five (5).

218 **SECTION 4.** This act shall take effect and be in force from
219 and after its passage.

