

Senate Bill 402

By: Senators Henson of the 41st, Orrock of the 36th, Fort of the 39th and Thompson of the 5th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 9 of Chapter 8 of Title 34 of the Official Code of Georgia Annotated,
2 relating to prohibited and void acts and overpayments applicable to the "Employment
3 Security Law," so as to provide for a civil penalty for employment misclassification; to
4 specify what actions shall be considered first violations and separate violations; to provide
5 for the penalty to be paid to the Department of Labor; to provide that an employing unit that
6 repeatedly misclassifies the services performed by individuals for wages shall undergo an
7 audit by the Department of Labor of the classification of every individual performing
8 services for wages paid such employing unit; to provide for related matters; to provide for
9 effective dates, contingent effectiveness, and applicability; to repeal conflicting laws; and for
10 other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Article 9 of Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to
14 prohibited and void acts and overpayments applicable to the "Employment Security Law,"
15 is amended by adding a new Code section to read as follows:

16 "34-8-257.

17 (a) An employing unit shall properly classify services performed by an individual for
18 wages as employment pursuant to subsections (d) through (i), (k), or (l) of Code Section
19 34-8-35, Code Section 34-8-150, and Code Section 34-8-165.

20 (b)(1)(A) An employing unit that violates this Code section shall be subject to a civil
21 penalty as follows:

22 (i) For a first violation and a second or subsequent violation which occurs less than
23 210 days from the date of the first violation, a civil penalty in the amount of \$100.00;
24 and

25 (ii) For a second or subsequent violation which occurs 210 days or more from the
26 date of the first violation, a civil penalty in the amount of \$1,000.00.

27 (B) Any violation which occurs more than 1,825 days from the date of the last
28 violation committed by the employing unit shall be considered a first violation.

29 (2) Each violation of this Code section shall constitute a separate violation irrespective
30 of whether the violation is committed as to classification of services performed by the
31 same individual or a different individual.

32 (c) The civil penalty provided for in this Code section shall be paid to the department and
33 shall be in addition to any other civil or criminal penalties set out in this chapter.

34 (d) An employing unit which violates this Code section shall, upon a second or subsequent
35 violation which occurs 210 days or more from the date of the first violation, undergo an
36 audit by the department of the classification of every individual performing services for
37 wages paid by such employing unit."

38 **SECTION 2.**

39 (a) Subsection (c) of Section 1 of this Act shall become effective only upon the effective
40 date of a specific appropriation of funds for the purposes of such subsection of this Act as
41 expressed in a line item making specific reference to such funds in a General Appropriations
42 Act enacted by the General Assembly. All other provisions of this Act shall become
43 effective on July 1, 2014.

44 (b) This Act shall apply to all violations occurring on or after July 1, 2014.

45 **SECTION 3.**

46 All laws and parts of laws in conflict with this Act are repealed.