

Senate Bill No. 622

Passed the Senate September 12, 2007

Secretary of the Senate

Passed the Assembly September 10, 2007

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2007, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 226.8 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 622, Padilla. Employment: misclassification of employees as independent contractors.

Existing law prescribes comprehensive requirements relating to minimum wages, overtime compensation, and standards for working conditions for the protection of employees applicable to an employment relationship.

This bill would prohibit willful misclassification, as defined, of employees as independent contractors. The bill would authorize the Labor and Workforce Development Agency to assess specified civil penalties from persons or employers violating the bill.

The people of the State of California do enact as follows:

SECTION 1. Section 226.8 is added to the Labor Code, to read:

226.8. (a) It is unlawful for any person or employer to engage in any of the following activities:

(1) Willful misclassification of an employee as an independent contractor.

(2) Charging an employee who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation for any purpose, including, but not limited to, fees or deductions for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the employee's employment where the employer would have been in violation of the law if the employee had not been misclassified.

(b) If the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, or agencies, or a court, finds that any person has engaged in any of the enumerated violations of subdivision (a), a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand

dollars (\$15,000) shall be assessed against the person per violation, in addition to any other penalties or fines permitted by law.

(c) If the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, or agencies, or a court, finds that any person has engaged in any of the enumerated violations of this section and there is evidence that the person has engaged in or is engaging in a pattern or practice of these behaviors, a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) shall be assessed against the person per violation, in addition to any other penalties or fines permitted by law.

(d) For purposes of this section, “willful” means voluntary and intentional.

(e) Nothing in this section is intended to limit any rights or remedies otherwise available at law.

Approved _____, 2007

Governor