
By: Delegates Hecht and Cummings

Introduced and read first time: January 19, 1996

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 13, 1996

CHAPTER ____

1 AN ACT concerning

2 **Workers' Compensation - Exempt Employees of Subcontractors - Liability of Principal**
3 **Contractor**

4 FOR the purpose of clarifying that a principal contractor is not liable for workers'
5 compensation coverage for certain individuals who elect, or who do not elect, to be
6 exempt from coverage under the workers' compensation law; establishing a certain
7 presumption; and generally relating to the exemption from coverage of the workers'
8 compensation law of certain individuals who do work as a subcontractor for a
9 principal contractor.

10 BY repealing and reenacting, without amendments,
11 Article - Labor and Employment
12 Section 9-206, 9-219, and 9-227
13 Annotated Code of Maryland
14 (1991 Volume and 1995 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article - Labor and Employment
17 Section 9-508
18 Annotated Code of Maryland
19 (1991 Volume and 1995 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

2

1 **Article - Labor and Employment**

2 9-206.

3 (a) Subject to subsection (b) of this section, an officer of a corporation or a
4 member of a limited liability company is a covered employee if the officer or member
5 provides a service for the corporation or limited liability company for monetary
6 compensation.

7 (b) An individual who otherwise would be a covered employee under this section
8 may elect to be exempt from coverage if:

9 (1) the individual is an officer of a close corporation, as defined in §
10 4-101(b) of the Corporations and Associations Article;

11 (2) the individual:

12 (i) is an officer of a corporation that earns at least 75% of its income
13 from farm operations; and

14 (ii) owns at least 20% of the outstanding capital stock of the
15 corporation;

16 (3) the individual:

17 (i) is an officer of a professional corporation, as defined in § 5-101(d)
18 of the Corporations and Associations Article;

19 (ii) owns at least 20% of the outstanding capital stock of the
20 corporation; and

21 (iii) performs for the corporation a professional service, as defined in §
22 5-101(e) of the Corporations and Associations Article; or

23 (4) The individual:

24 (i) is a member of a limited liability company; and

25 (ii) owns at least 20% of the outstanding interests in profits of the
26 limited liability company.

27 (c) (1) A corporation or limited liability company shall submit to the
28 Commission and to the insurer of the corporation or limited liability company a written
29 notice that names the individual who has elected to be excluded from coverage.

30 (2) An election under subsection (b)(1) or (b)(4) of this section is not
31 effective until a corporation or limited liability company complies with this subsection.

32 9-219.

33 (a) Unless an election is made in accordance with this section, a partner of a
34 partnership is not a covered employee.

35 (b) A partnership may elect to make a partner a covered employee if the partner
36 devotes full time to the business of the partnership.

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1 (c) An election under this section is not effective until the partnership submits to
2 the Commission and to the insurer of the partnership a written notice that names the
3 individual to be a covered employee.

4 9-227.

5 (a) Unless an election is made in accordance with this section, a sole proprietor is
6 not a covered employee.

7 (b) A sole proprietor may elect to be a covered employee if the proprietor devotes
8 full time to the business of the proprietorship.

9 (c) An election under this section is not effective until the proprietor submits to
10 the Commission and to the insurer of the proprietor a written notice that names the
11 individual who is to be a covered employee.

12 9-508.

13 (a) A principal contractor is liable to pay to a covered employee or the
14 dependents of the covered employee any compensation that the principal contractor
15 would have been liable to pay had the covered employee been employed directly by the
16 principal contractor if:

17 (1) the principal contractor undertakes to perform any work that is part of
18 the business, occupation, or trade of the principal contractor;

19 (2) the principal contractor contracts with a subcontractor for the execution
20 by or under the subcontractor of all or part of the work undertaken by the principal
21 contractor; and

22 (3) the covered employee is employed in the execution of that work.

23 (b) (1) Except as provided in paragraph (2) of this subsection, in a claim filed or
24 proceeding brought against a principal contractor by a covered employee employed to
25 execute work as provided in subsection (a) of this section or a dependent of the covered
26 employee, the principal contractor shall be considered the employer of the covered
27 employee for the purposes of this title.

28 (2) In computing the average weekly wage of the covered employee under §
29 9-602 of this title, the Commission shall use as wages of the covered employee the wages
30 paid by the employer who immediately employs the covered employee.

31 (c) If an employee of a subcontractor or a dependent of the employee files a claim
32 against a principal contractor under this title, the principal contractor may join the
33 subcontractor and any intermediate contractor as defendant or codefendant.

34 (d) If a principal contractor is liable to pay compensation under this section, the
35 principal contractor is entitled to indemnity from any employer who would have been
36 liable to pay compensation independent of this section.

37 (e) This section does not prevent a covered employee or a dependent of a covered
38 employee from recovering compensation from a subcontractor instead of the principal
39 contractor.

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1 (F) ~~(1)~~ A PRINCIPAL CONTRACTOR IS NOT LIABLE TO PAY COMPENSATION
2 TO AN INDIVIDUAL UNDER THIS TITLE IF THE INDIVIDUAL:

3 ~~(1)~~ (I) IS A CORPORATE OFFICER, OR A MEMBER OF A LIMITED
4 LIABILITY COMPANY, WHO ELECTS TO BE EXEMPT FROM COVERAGE UNDER § 9-206
5 OF THIS TITLE;

6 ~~(2)~~ (II) IS A PARTNER IN A PARTNERSHIP AND THE PARTNERSHIP
7 DOES NOT ELECT TO MAKE THE INDIVIDUAL A COVERED EMPLOYEE UNDER § 9-219
8 OF THIS TITLE; OR

9 ~~(3)~~ (III) IS A SOLE PROPRIETOR AND DOES NOT ELECT TO BE A
10 COVERED EMPLOYEE UNDER § 9-227 OF THIS TITLE.

11 (2) AN INDIVIDUAL IS PRESUMED TO BE A SOLE PROPRIETOR WHO IS
12 NOT A COVERED EMPLOYEE UNDER THIS SECTION IF:

13 (I) A SUBSTANTIAL PART OF THE INDIVIDUAL'S INCOME IS
14 DERIVED FROM THE TRADE OR BUSINESS FOR WHICH A PRINCIPAL CONTRACTOR
15 ENGAGES THE INDIVIDUAL AND FROM WHICH THE INDIVIDUAL HAS ATTEMPTED
16 TO EARN TAXABLE INCOME; AND

17 (II) THE INDIVIDUAL HAS FILED THE APPROPRIATE INTERNAL
18 REVENUE FORM 1040, SCHEDULE C OR F, FOR THE PREVIOUS TAXABLE YEAR.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 October 1, 1996.