
By: Senator Derr

Introduced and read first time: January 12, 1996

Assigned to: Finance

A BILL ENTITLED

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; and generally relating
7 to the exemption from coverage of the workers' compensation law of certain
8 individuals who do work as a subcontractor for a principal contractor.

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

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

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

21 **Article - Labor and Employment**

22 9-206.

23 (a) Subject to subsection (b) of this section, an officer of a corporation or a
24 member of a limited liability company is a covered employee if the officer or member
25 provides a service for the corporation or limited liability company for monetary
26 compensation.

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

29 (1) the individual is an officer of a close corporation, as defined in §
30 4-101(b) of the Corporations and Associations Article;

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1 (2) the individual:

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

4 (ii) owns at least 20% of the outstanding capital stock of the
5 corporation;

6 (3) the individual:

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

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

11 (iii) performs for the corporation a professional service, as defined in §
12 5-101(e) of the Corporations and Associations Article; or

13 (4) The individual:

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

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

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

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

22 9-219.

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

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

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

30 9-227.

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

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

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

4 9-508.

5 (a) A principal contractor is liable to pay to a covered employee or the
6 dependents of the covered employee any compensation that the principal contractor
7 would have been liable to pay had the covered employee been employed directly by the
8 principal contractor if:

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

11 (2) the principal contractor contracts with a subcontractor for the execution
12 by or under the subcontractor of all or part of the work undertaken by the principal
13 contractor; and

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

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

20 (2) In computing the average weekly wage of the covered employee under §
21 9-602 of this title, the Commission shall use as wages of the covered employee the wages
22 paid by the employer who immediately employs the covered employee.

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

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

29 (e) This section does not prevent a covered employee or a dependent of a covered
30 employee from recovering compensation from a subcontractor instead of the principal
31 contractor.

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

34 (1) IS A CORPORATE OFFICER, OR A MEMBER OF A LIMITED LIABILITY
35 COMPANY, WHO ELECTS TO BE EXEMPT FROM COVERAGE UNDER § 9-206 OF THIS
36 TITLE;

37 (2) IS A PARTNER IN A PARTNERSHIP AND THE PARTNERSHIP DOES NOT
38 ELECT TO MAKE THE INDIVIDUAL A COVERED EMPLOYEE UNDER § 9-219 OF THIS
39 TITLE; OR

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

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