By: **Delegate Mitchell**
Introduced and read first time: January 30, 2002
Assigned to: Economic Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 18, 2002

CHAPTER_____

1 AN ACT concerning

2   **Workers' Compensation - Principal Contractor - Liability**

3 FOR the purpose of limiting the liability of a principal contractor for workers'
4   compensation payments if a sole proprietor does not notify the principal
5   contractor of the sole proprietor's status as a covered employee; altering the
6   circumstances under which an individual is presumed to be a sole proprietor
7   who is not a covered employee; providing for a certain presumption that a sole
8   proprietor is not a covered employee if the sole proprietor provides a certain
9   notice to the principal contractor; and generally relating to workers'
10   compensation payments.

11 BY repealing and reenacting, without amendments,
12   Article - Labor and Employment
13   Section 9-227 and 9-508(a)
14   Annotated Code of Maryland
15   (1999 Replacement Volume and 2001 Supplement)

16 BY repealing and reenacting, with amendments,
17   Article - Labor and Employment
18   Section 9-508(f)
19   Annotated Code of Maryland
20   (1999 Replacement Volume and 2001 Supplement)

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

1   **Article - Labor and Employment**

2 9-227.

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

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

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

10 9-508.

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

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

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

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

21   (f)   (1)   A principal contractor is not liable to pay compensation to an
22 individual under this title if the individual:

23   (i)   is a corporate officer, or a member of a limited liability company,
24 who elects to be exempt from coverage under § 9-206 of this title;

25   (ii)   is a partner in a partnership and the partnership does not elect
26 to make the individual a covered employee under § 9-219 of this title; or

27   (iii)   is a sole proprietor who:

28   1.   DOES NOT NOTIFY THE PRINCIPAL CONTRACTOR, ON A
29 FORM APPROVED BY THE COMMISSION, OF THE INDIVIDUAL'S STATUS AS A COVERED
30 EMPLOYEE; and

31   2.   does not elect to be a covered employee under § 9-227 of
32 this title.

33   (2)   An individual is presumed to be a sole proprietor who is not a covered
34 employee under this section if:

1   (i)   a substantial part of the individual's income is derived from the
2 trade or business for which a principal contractor engages the individual and from
3 which the individual has attempted to earn taxable income; [and]

4   (ii)   <u>1.</u>   THE INDIVIDUAL NOTIFIES THE PRINCIPAL CONTRACTOR
5 ON A FORM APPROVED BY THE COMMISSION THAT THE INDIVIDUAL HAS NOT
6 ELECTED TO BECOME A COVERED EMPLOYEE UNDER § 9-227 UNDER THIS TITLE; ~~AND~~
7 <u>OR</u>

8   ~~(III)~~   <u>2.</u>   the individual has filed the appropriate Internal Revenue
9 Form 1040, Schedule C or F, for the previous taxable year.

10   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2002.