

# SENATE BILL 297

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CF 9lr1688

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By: **Senator Exum**

Introduced and read first time: January 28, 2009

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Workers' Compensation - Sole Proprietors - Coverage**

3 FOR the purpose of establishing that a certain sole proprietor is a covered employee  
4 under workers' compensation law unless the sole proprietor makes a certain  
5 election on a certain form; altering the requirements for submission of a certain  
6 form; eliminating the circumstances under which an individual is presumed to  
7 be a sole proprietor who is not a covered employee; and generally relating to  
8 covered employment for sole proprietors.

9 BY repealing and reenacting, with amendments,  
10 Article - Labor and Employment  
11 Section 9-227 and 9-508  
12 Annotated Code of Maryland  
13 (2008 Replacement Volume)

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

16 **Article - Labor and Employment**

17 9-227.

18 (a) Unless an election is made in accordance with this section, a sole  
19 proprietor is [not] a covered employee.

20 (b) A sole proprietor may elect to **NOT** be a covered employee [if the  
21 proprietor devotes full time to the business of the proprietorship].

22 (c) An election under this section is not effective until the proprietor submits  
23 to the Commission [and to the insurer of the proprietor] **AND TO THE PRINCIPAL**  
24 **CONTRACTOR OR OTHER EMPLOYER OF THE PROPRIETOR** a **SIGNED AND**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **NOTARIZED** written notice that names the individual who [is] **HAS ELECTED** to **NOT**  
2 be a covered employee.

3 9–508.

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

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

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

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

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

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

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

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

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

31 (f) [(1)] A principal contractor is not liable to pay compensation to an  
32 individual under this title if the individual:

33 [(i)] (1) is a corporate officer, or a member of a limited liability  
34 company, who elects to be exempt from coverage under § 9–206 of this title;

1                    [(ii)] (2) is a partner in a partnership and the partnership does  
2 not elect to make the individual a covered employee under § 9–219 of this title; or

3                    [(iii)] (3) is a sole proprietor who[:

4                    1. does not notify the principal contractor, on a form  
5 approved by the Commission, of the individual’s status as a covered employee; and

6                    2. does not elect] **HAS ELECTED** to **NOT** be a covered  
7 employee under § 9–227 of this title.

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

10                    (i) a substantial part of the individual’s income is derived from  
11 the trade or business for which a principal contractor engages the individual and from  
12 which the individual has attempted to earn taxable income; and

13                    (ii) 1. the individual notifies the principal contractor on a  
14 form approved by the Commission that the individual has not elected to become a  
15 covered employee under § 9–227 under this title; or

16                    2. the individual has filed the appropriate Internal  
17 Revenue Form 1040, Schedule C or F, for the previous taxable year.]

18                    SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2009.