

HB1364/703391/1

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL 1364
(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in the sponsor line, strike “and Vitale” and substitute “Vitale, Barkley, Davis, Feldman, Jameson, Love, McHale, Olszewski, and Vaughn”; in line 2, strike “Determination of Independent Contractor Status -”; in line 3, strike “and Unemployment Insurance” and substitute “- Revisions”; strike beginning with “repealing” in line 6 down through “records;” in line 13; strike beginning with “repealing” in line 15 down through “Act;” in line 17; in line 22, strike “repealing a certain notification requirement;” and strike beginning with “repealing” in line 25 down through “individual” in line 28.

On page 2, in line 1, strike “performing the work entered into a certain contract with the employer;” and substitute “altering a certain provision of law regarding the issuance of citations by the Commissioner for violations of the Workplace Fraud Act;”; in line 2, strike “determination of independent contractor status” and substitute “Workplace Fraud Act”; in line 5, strike “through 3-906, 3-913, and 8-205” and substitute “3-905, 3-906, and 3-913”; and after line 7, insert:

“BY adding to

Article – Labor and Employment

Section 3-903.1

Annotated Code of Maryland

(2008 Replacement Volume and 2011 Supplement)”.

AMENDMENT NO. 2

On page 2, in line 17, strike “For” and substitute “**EXCEPT AS PROVIDED IN § 3-903.1 OF THIS SUBTITLE, FOR**”; in line 20, strike the brackets; and in line 31, strike “; **OR**” and substitute a period.

(Over)

On page 3, strike in their entirety lines 1 through 16, inclusive; after line 29, insert:

“3-903.1.

THE PRESUMPTION THAT AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS UNDER § 3-903(C)(1) OF THIS SUBTITLE DOES NOT APPLY IF:

(1) AN EMPLOYER PRODUCES FOR INSPECTION BY THE COMMISSIONER:

(I) A WRITTEN CONTRACT, SIGNED BY THE EMPLOYER AND BUSINESS ENTITY, THAT:

1. DESCRIBES THE NATURE OF THE WORK TO BE PERFORMED BY THE BUSINESS ENTITY;

2. DESCRIBES THE REMUNERATION TO BE PAID FOR THE WORK PERFORMED BY THE BUSINESS ENTITY; AND

3. INCLUDES AN ACKNOWLEDGEMENT BY THE BUSINESS ENTITY OF THE BUSINESS ENTITY’S OBLIGATIONS UNDER THIS ARTICLE TO:

A. WITHHOLD, REPORT AND REMIT PAYROLL TAXES ON BEHALF OF ALL EMPLOYEES WORKING FOR THE BUSINESS ENTITY;

B. PAY UNEMPLOYMENT INSURANCE TAXES FOR ALL EMPLOYEES WORKING FOR THE BUSINESS ENTITY; AND

C. MAINTAIN WORKERS' COMPENSATION INSURANCE;

(II) AN AFFIDAVIT SIGNED BY THE BUSINESS ENTITY INDICATING THAT THE BUSINESS ENTITY IS AN INDEPENDENT CONTRACTOR WHO IS AVAILABLE TO WORK FOR OTHER BUSINESS ENTITIES;

(III) A CURRENT CERTIFICATE OF STATUS OF THE BUSINESS ENTITY, ISSUED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION, INDICATING THAT THE BUSINESS ENTITY IS IN GOOD STANDING; AND

(IV) PROOF THAT THE BUSINESS ENTITY HOLDS ALL OCCUPATIONAL LICENSES REQUIRED BY STATE AND LOCAL AUTHORITIES FOR THE WORK PERFORMED; AND

(2) THE EMPLOYER PROVIDED TO EACH INDIVIDUAL CLASSIFIED AS AN INDEPENDENT CONTRACTOR OR EXEMPT PERSON A WRITTEN NOTICE UNDER § 3-914 OF THIS SUBTITLE.”.

On pages 3 through 5, strike in their entirety the lines beginning with line 30 on page 3 through line 19 on page 5, inclusive.

AMENDMENT NO. 3

On page 5, in line 30, strike “(1)”; in line 31, strike the brackets; and in the same line, strike “(I)”.

On page 6, in line 1, strike the brackets; in the same line, strike “(II)”; in line 3, strike the brackets; in the same line, strike “(III)”; in the same line, strike “SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION,”; strike in their entirety lines 5 through

(Over)

9, inclusive; in line 12, after “produce” insert “FOR COPYING OR INSPECTION”; in line 14, strike the brackets; in the same line, strike “SUBSECTION (C)(1)(III)”; in line 16, strike “SUBSECTION (C)(2) OF THIS SECTION” and substitute “ITEM (I) OF THIS PARAGRAPH”; in line 23, strike “OR COPIES OF RECORDS” and substitute “FOR COPYING OR INSPECTION”; and in line 25, after “request” insert “, OR AN EXTENSION OF TIME MUTUALLY AGREED ON BY BOTH PARTIES,”.

On page 7, strike in their entirety lines 1 through 7, inclusive, and substitute:

“(A) AFTER THE EMPLOYER HAS PROVIDED ALL THE RECORDS REQUESTED UNDER § 3-905(D) OF THIS SUBTITLE, THE COMMISSIONER SHALL ISSUE A CITATION TO THE EMPLOYER OR CLOSE THE INVESTIGATION WITHIN 90 DAYS.”;

strike in their entirety lines 8 and 9 and substitute:

“(B) EACH CITATION SHALL:”;

in line 29, strike “IF THE EMPLOYER REQUESTS A HEARING, THE” and substitute “THE”; and strike beginning with “THE” in line 30 through “WAIVED” in line 31 and substitute “A TIMELY REQUEST IS MADE UNDER THIS SUBSECTION, UNLESS THE EMPLOYER WAIVES THAT RIGHT”.

AMENDMENT NO. 4

On page 8, in lines 15, 18, 22, 30, and 34, in each instance, strike the brackets; in line 15, after the second “a” insert “KNOWING”; strike beginning with “IF” in line 18 down through “BODY.” in line 21; and strike beginning with “RECEIPT” in line 22 down through “SECTION,” in line 23.

AMENDMENT NO. 5

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On page 9, strike in their entirety lines 1 through 27, inclusive; and in line 29, strike “October” and substitute “July”.