

HOUSE BILL 734

K3, C2

2lr1986
CF SB 600

By: **Delegates Schulz, Aumann, Beitzel, Bromwell, Clagett, Haddaway–Riccio, Hershey, Hogan, Hough, Jacobs, Krebs, McDermott, W. Miller, Minnick, Otto, Ready, Rudolph, Serafini, Smigiel, and Stifler**

Introduced and read first time: February 8, 2012

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Business Regulation – Independent Contractor Registry – Presumptions**
3 **Under Workplace Fraud Act**

4 FOR the purpose of requiring the Department of Labor, Licensing, and Regulation to
5 develop and maintain an Independent Contractor Registry; authorizing an
6 individual who performs work as an independent contractor in certain
7 industries to register with the Registry; requiring the Department, in
8 consultation with the Commissioner of Labor and Industry, to adopt certain
9 regulations; establishing that work performed by an individual registered with
10 the Registry is not presumed to create an employer–employee relationship for
11 the purposes of certain provisions related to workplace fraud; requiring the
12 Commissioner to consider, as strong evidence that an employer did not
13 knowingly fail to properly classify an individual, whether the employer sought
14 and obtained evidence that the individual is an independent contractor
15 registered with the Registry; defining certain terms; and generally relating to
16 independent contractors and workplace fraud.

17 BY adding to
18 Article – Business Regulation
19 Section 19–701 through 19–703 to be under the new subtitle “Subtitle 7.
20 Independent Contractor Registry”
21 Annotated Code of Maryland
22 (2010 Replacement Volume and 2011 Supplement)

23 BY repealing and reenacting, without amendments,
24 Article – Labor and Employment
25 Section 3–901(b) and (f)
26 Annotated Code of Maryland
27 (2008 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY repealing and reenacting, with amendments,
2 Article – Labor and Employment
3 Section 3–903 and 3–904
4 Annotated Code of Maryland
5 (2008 Replacement Volume and 2011 Supplement)

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

8 **Article – Business Regulation**

9 **SUBTITLE 7. INDEPENDENT CONTRACTORS REGISTRY.**

10 **19–701.**

11 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
12 INDICATED.

13 (B) “CONSTRUCTION SERVICES” HAS THE MEANING STATED IN § 3–901
14 OF THE LABOR AND EMPLOYMENT ARTICLE.

15 (C) “LANDSCAPE SERVICES” HAS THE MEANING STATED IN § 3–901 OF
16 THE LABOR AND EMPLOYMENT ARTICLE.

17 (D) “REGISTRY” MEANS THE INDEPENDENT CONTRACTOR REGISTRY
18 ESTABLISHED UNDER § 19–702 OF THIS SUBTITLE.

19 **19–702.**

20 (A) THE DEPARTMENT SHALL DEVELOP AND MAINTAIN AN
21 INDEPENDENT CONTRACTOR REGISTRY.

22 (B) AN INDIVIDUAL WHO PERFORMS CONSTRUCTION SERVICES OR
23 LANDSCAPING SERVICES AS AN INDEPENDENT CONTRACTOR MAY REGISTER
24 WITH THE REGISTRY.

25 **19–703.**

26 THE DEPARTMENT, IN CONSULTATION WITH THE COMMISSIONER OF
27 LABOR AND INDUSTRY, SHALL ADOPT REGULATIONS NECESSARY TO MAINTAIN
28 THE REGISTRY AND QUALIFY INDIVIDUALS AS INDEPENDENT CONTRACTORS.

29 **Article – Labor and Employment**

1 3-901.

2 (b) "Construction services" includes the following services provided in
3 connection with real property:

- 4 (1) building;
- 5 (2) reconstructing;
- 6 (3) improving;
- 7 (4) enlarging;
- 8 (5) painting;
- 9 (6) altering;
- 10 (7) maintaining; and
- 11 (8) repairing.

12 (f) "Landscaping services" includes the following services:

- 13 (1) garden maintenance and planting;
- 14 (2) lawn care including fertilizing, mowing, mulching, seeding, and
15 spraying;
- 16 (3) seeding and mowing of highway strips;
- 17 (4) sod laying;
- 18 (5) turf installation, except artificial;
- 19 (6) ornamental bush planting, pruning, bracing, spraying, and
20 removal; and
- 21 (7) ornamental tree planting, pruning, bracing, spraying, and removal.

22 3-903.

23 (a) An employer may not fail to properly classify an individual who performs
24 work for remuneration paid by the employer.

(b) An employer has failed to properly classify an individual when an employer–employee relationship exists as determined under subsection (c) of this section but the employer has not classified the individual as an employee.

(c) (1) For purposes of enforcement of this subtitle only, work performed by an individual for remuneration paid by an employer shall be presumed to create an employer–employee relationship, unless:

(i) the individual is an exempt person; [or]

(II) THE INDIVIDUAL IS AN INDEPENDENT CONTRACTOR REGISTERED WITH THE INDEPENDENT CONTRACTOR REGISTRY ESTABLISHED UNDER § 19–702 OF THE BUSINESS REGULATION ARTICLE; OR

[(ii)] (III) an employer demonstrates that:

1. the individual who performs the work is free from control and direction over its performance both in fact and under the contract;

2. the individual customarily is engaged in an independent business or occupation of the same nature as that involved in the work; and

3. the work is:

A. outside of the usual course of business of the person for whom the work is performed; or

B. performed outside of any place of business of the person for whom the work is performed.

(2) Work is outside of the usual course of business of the person for whom it is performed under paragraph (1) of this subsection if:

(i) the individual performs the work off the employer’s premises;

(ii) the individual performs work that is not integrated into the employer’s operation; or

(iii) the work performed is unrelated to the employer’s business.

(3) By contract, an employer may engage another business entity, which may have its own employees, to do the same type of work in which the employer engages, at the same location where the employer is working, without establishing an employer–employee relationship between the two contracting entities.

(d) The Commissioner shall adopt regulations to explain further and provide specific examples of the application of subsection (c) of this section.

3–904.

(a) An employer may not knowingly fail to properly classify an individual who performs work for remuneration paid by the employer.

(b) An employer has knowingly failed to properly classify an individual when:

(1) an employer–employee relationship exists as determined under § 3–903(c) of this subtitle; and

(2) the employer has knowingly failed to properly classify the individual as an employee.

(c) The Commissioner shall consider, as strong evidence that the employer did not knowingly fail to properly classify an individual, whether:

(1) before a complaint was filed against the employer or the Commissioner began an investigation of the employer, the employer:

(i) sought and obtained evidence that the individual:

1. is an exempt person; [or]

2. IS AN INDEPENDENT CONTRACTOR REGISTERED WITH THE INDEPENDENT CONTRACTOR REGISTRY ESTABLISHED UNDER § 19–702 OF THE BUSINESS REGULATION ARTICLE; OR

[2.] 3. as an **UNREGISTERED** independent contractor:

A. withholds, reports, and remits payroll taxes on behalf of all individuals working for the independent contractor;

B. pays unemployment insurance taxes for all individuals working for the independent contractor; and

C. maintains workers' compensation insurance; and

(ii) provided to the exempt person or independent contractor a written notice as required by § 3–914 of this subtitle; or

(2) the employer:

1 (i) 1. classifies all workers who perform the same or
2 substantially the same tasks for the employer as independent contractors; and

3 2. reports the income of the workers to the Internal
4 Revenue Service as required by federal law; and

5 (ii) has received a determination from the Internal Revenue
6 Service that the individual or a worker who performs the same or substantially the
7 same task as the individual is an independent contractor.

8 (d) The Commissioner shall adopt regulations to provide guidance as to what
9 constitutes the evidence relevant to the determination of whether an employer
10 knowingly failed to properly classify an employee.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 2012.