

# SENATE BILL 272

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By: **Senators Peters, Astle, Kittleman, and Klausmeier**

Introduced and read first time: January 26, 2012

Assigned to: Finance

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## A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Workplace Fraud Act – Revisions**

3 FOR the purpose of repealing a certain presumption that certain work performed by  
4 an individual creates an employer–employee relationship except under certain  
5 circumstances; defining the term “independent contractor” as used in the  
6 Workplace Fraud Act; making conforming changes; and generally relating to the  
7 Workplace Fraud Act.

8 BY renumbering

9 Article – Labor and Employment  
10 Section 3–901(e) through (h), respectively  
11 to be Section 3–901(f) through (i), respectively  
12 Annotated Code of Maryland  
13 (2008 Replacement Volume and 2011 Supplement)

14 BY adding to

15 Article – Labor and Employment  
16 Section 3–901(e)  
17 Annotated Code of Maryland  
18 (2008 Replacement Volume and 2011 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – Labor and Employment  
21 Section 3–903 and 3–904  
22 Annotated Code of Maryland  
23 (2008 Replacement Volume and 2011 Supplement)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
25 MARYLAND, That Section(s) 3–901(e) through (h), respectively, of Article – Labor and  
26 Employment of the Annotated Code of Maryland be renumbered to be Section(s)  
27 3–901(f) through (i), respectively.

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
2 read as follows:

3 **Article – Labor and Employment**

4 3–901.

5 **(E) “INDEPENDENT CONTRACTOR” MEANS AN INDIVIDUAL WHO IS NOT**  
6 **AN EMPLOYEE FOR PURPOSES OF THE FEDERAL INSURANCE CONTRIBUTIONS**  
7 **ACT AND THE FEDERAL UNEMPLOYMENT TAX ACT, BASED ON APPLICATION OF**  
8 **THE 20 FACTORS SET FORTH IN THE INTERNAL REVENUE SERVICE REVENUE**  
9 **RULING 87–41, ISSUED UNDER 26 C.F.R. 31.3306(I)–1 AND 26 C.F.R.**  
10 **31.3121(D)–1.**

11 3–903.

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

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

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

20 (i) the individual is an exempt person; or

21 (ii) an employer demonstrates that:

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

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

27 3. the work is:

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

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



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

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

5                   C.     maintains workers' compensation insurance; and

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

8                   (2)    the employer:

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

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

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

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

19                   SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 October 1, 2012.