HOUSE BILL 986

K3 1lr1555
CF 1lr2132

By: **Delegate Harrison**
Introduced and read first time: February 5, 2021
Assigned to: Economic Matters

A BILL ENTITLED

AN ACT concerning

Labor and Employment – Workplace Fraud Act – Rebuttable Presumption of the Employer–Employee Relationship

FOR the purpose of establishing that an employer may overcome the presumption of an employer–employee relationship under the Workplace Fraud Act and establish that a certain individual is acting as an independent contractor on a certain showing; and generally relating to the Workplace Fraud Act.

BY repealing and reenacting, without amendments,
Article – Labor and Employment
Section 3–903
Annotated Code of Maryland
(2016 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
Article – Labor and Employment
Section 3–903.1
Annotated Code of Maryland
(2016 Replacement Volume and 2020 Supplement)

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

Article – Labor and Employment

3–903.

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

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

EXPLANATION: **CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.**
[Brackets**]** indicate matter deleted from existing law.

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) Except as provided in § 3–903.1 of this subtitle, 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) 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.

3–903.1.

(A) 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 acknowledgment 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.

(B) AN EMPLOYER MAY OVERCOME THE PRESUMPTION OF AN EMPLOYER–EMPLOYEE RELATIONSHIP AND ESTABLISH THAT AN INDIVIDUAL PERFORMING SERVICES IS AN INDEPENDENT CONTRACTOR ON A SHOWING THAT THE INDIVIDUAL:

(1) MAY COMPLY WITH A WORK ORDER IN A METHOD OF THE INDIVIDUAL'S CHOOSING;

(2) IS NOT REQUIRED TO ATTEND TRAINING SESSIONS OFFERED BY

THE EMPLOYER;

(3) PROVIDES SERVICES TO THE EMPLOYER THAT ARE NOT INTEGRATED INTO THE REGULAR OPERATIONS OF THE EMPLOYER'S BUSINESS;

(4) IS NOT REQUIRED TO PERFORM SERVICES PERSONALLY;

(5) HIRES AND SUPERVISES OTHERS UNDER A CONTRACT UNDER WHICH THE INDIVIDUAL AGREES TO PROVIDE MATERIAL AND LABOR AND IS RESPONSIBLE ONLY FOR A RESULT;

(6) DOES NOT NECESSARILY HAVE A CONTINUING RELATIONSHIP WITH A PERSON FOR WHOM WORK IS PERFORMED;

(7) IS FREE TO WORK WHEN AND FOR WHOM THE INDIVIDUAL CHOOSES;

(8) MAY ACCOMPLISH THE WORK ASSIGNED IN A PLACE OTHER THAN THE EMPLOYER'S WORKPLACE;

(9) IS NOT REQUIRED TO FILE REGULAR STATUS REPORTS;

(10) IS PAID ACCORDING TO WHEN A PARTICULAR JOB IS COMPLETED RATHER THAN BY AN HOURLY, WEEKLY, OR MONTHLY SCHEDULE;

(11) DETERMINES THE PRICE OF THE SERVICE TO BE PERFORMED;

(12) PROVIDES EQUIPMENT NECESSARY TO COMPLETE WORK;

(13) MAY REALIZE A PROFIT OR SUFFER A LOSS AS A RESULT OF SERVICES RENDERED;

(14) IS FREE TO WORK FOR MORE THAN ONE FIRM AT A TIME; AND

(15) MAKES SERVICES AVAILABLE TO THE GENERAL PUBLIC.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.