

JAN 28 2015

A BILL FOR AN ACT

RELATING TO EMPLOYMENT SECURITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the economy is
2 changing and increasing numbers of individuals are making a
3 deliberate choice to become entrepreneurs and go into business
4 for themselves. While the department of commerce and consumer
5 affairs, department of taxation, and department of labor and
6 industrial relations have an existing process which enables
7 businesses to quickly register to do business in the State,
8 there is currently no mechanism that enables individuals or
9 organizations wishing to contract with entrepreneurs to quickly
10 confirm that an entrepreneur is an independent contractor before
11 contracting for services.

12 The legislature further finds that for purposes of Hawaii
13 employment security law, a clearer definition of "independent
14 contractor" is needed.

15 The purpose of this Act is to:



- 1 (1) Set forth criteria for determining whether an
2 individual shall be considered an independent
3 contractor;
- 4 (2) Require the department of labor and industrial
5 relations to adopt rules relating to any additional
6 requirements for when an individual shall be
7 considered an independent contractor;
- 8 (3) Require the department of labor and industrial
9 relations to issue a certification to those
10 individuals meeting the definition of an "independent
11 contractor" under the law;
- 12 (4) Require individuals to whom an independent contractor
13 certification is issued to provide copies of the
14 certification to each customer; and
- 15 (5) Require that any individual who has previously been
16 certified as an independent contractor by the
17 department of labor and industrial relations who files
18 a claim for unemployment benefits against a customer,
19 to show proof that an employee-employer relationship
20 exists.



SECTION 2. Section 383-6, Hawaii Revised Statutes, is amended to read as follows:

"§383-6 ~~[Master and servant relationship, not required when.]~~ Independent contractor, defined. (a) ~~[Services performed by an]~~ An individual ~~[for wages or]~~ performing services under any contract of hire shall be deemed to be ~~[employment subject to this chapter irrespective of whether the common law relationship of master and servant exists unless and until it is shown to the satisfaction of the department of labor and industrial relations that:~~

(1) ~~The individual has been and will continue to be free from control or direction over the performance of such service, both under the individual's contract of hire and in fact; and~~

(2) ~~The service is either outside the usual course of the business for which the service is performed or that the service is performed outside of all the places of business of the enterprise for which the service is performed; and~~

(3) ~~The individual is customarily engaged in an independently established trade, occupation,~~



~~profession, or business of the same nature as that
involved in the contract of service.]~~

an independent contractor if the individual meets the
requirements for independent contractor status pursuant to rules
adopted by the department under chapter 91.

(b) Notwithstanding subsection (a), an individual shall be
presumed by the department to be an independent contractor if
the individual has:

(1) A valid employee identification number issued by the
United States Internal Revenue Service;

(2) Registered with the department of commerce and
consumer affairs to do business;

(3) A current general excise tax license issued by the
department of taxation; and

(4) Entered into a written agreement with a customer to
perform services for which the individual has
registered to do business.

(c) An individual who meets the requirements for
independent contractor status under this section shall be
certified by the department as an independent contractor. The



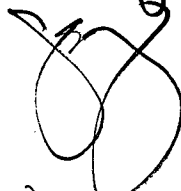
individual shall provide a written copy of the certification to each customer to whom the individual provides services.

(d) If a certified independent contractor files a claim for unemployment insurance benefits against a customer pursuant to this chapter, the burden shall be on the certified independent contract to prove that an employer-employee relationship exists."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY:

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S.B. NO. 1219

Report Title:

Employment Security; Independent Contractor

Description:

Allows the department of labor and industrial relations to set criteria for independent contractor status. Establishes criteria for when the department shall presume an individual is an independent contractor. Requires the department to certify independent contractors. Requires independent contractors to provide a written copy of certification to each customer. Places the burden of proving an employee-employer relationship on the certified independent contractor if the contractor files an unemployment insurance benefits claim against a customer.

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