

Senate Bill 401

By: Senators Orrock of the 36th, Henson of the 41st, Fort of the 39th and Thompson of the 5th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 34-8-35 of the Official Code of Georgia Annotated, relating to the
2 definition of employment applicable to the "Employment Security Law," so as to change
3 certain provisions of such definition in order to provide that services performed by an
4 individual for wages shall be deemed to be employment unless the Department of Labor
5 makes a contrary determination based upon evidence submitted of certain factors
6 demonstrating that such individual has been and will continue to be free from control or
7 direction over the performance of such services; to provide for related matters; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Code Section 34-8-35 of the Official Code of Georgia Annotated, relating to the definition
12 of employment applicable to the "Employment Security Law," is amended by revising
13 subsection (f) as follows:

14 "(f) Services performed by an individual for wages shall be deemed to be employment
15 subject to this chapter unless and until it is shown that:

16 (1)(A) Such individual has been and will continue to be free from control or direction
17 over the performance of such services, both under the individual's contract of service
18 and in fact as demonstrated by evidence timely submitted to the department upon which
19 the department determines that the individual:

20 (i) Is not prohibited from working for other companies or holding other employment
21 contemporaneously;

22 (ii) Is free to accept or reject work assignments without consequence;

23 (iii) Is not prescribed minimum hours to work or, in the case of sales, does not have
24 a minimum number of orders to be obtained;

25 (iv) Has the discretion to set his or her own work schedule;

26 (v) Receives only minimal instructions and no direct oversight or supervision
27 regarding the services to be performed, such as the location where the services are to
28 be performed and any requested deadlines;

29 (vi) When applicable, has no territorial or geographic restrictions; and

30 (vii) Is not required to perform, behave, or act or, alternatively, is compelled to
31 perform, behave, or act in a manner related to the performance of services for wages
32 which is determined by the Commissioner to demonstrate employment, in accordance
33 with this Code section and such rules and regulations as the Commissioner may
34 prescribe; and

35 (B) Such individual is customarily engaged in an independently established trade,
36 occupation, profession, or business; or

37 (2) Such individual and the services performed for wages are the subject of an SS-8
38 determination by the Internal Revenue Service, which decided against employee status."

39 **SECTION 2.**

40 All laws and parts of laws in conflict with this Act are repealed.