

House Bill 500

By: Representatives Mabra of the 63rd, Hamilton of the 24th, Abrams of the 89th, McClain of the 100th, Kirby of the 114th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to
2 employment security, so as to change certain provisions of a definition in order to provide
3 that services performed by an individual for wages shall be deemed to be employment unless
4 the Department of Labor makes a contrary determination based upon evidence submitted of
5 certain factors demonstrating that such individual has been and will continue to be free from
6 control or direction over the performance of such services; to provide that the Department
7 of Labor shall maintain a web based system of notifying the department of employment that
8 is improperly reported; to provide for investigation of reports of misclassification; to provide
9 for related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Chapter 8 of Title 34 of the Official Code of Georgia Annotated, relating to employment
13 security, is amended in Code Section 34-8-35, relating to the definition of employment
14 applicable to the "Employment Security Law," by revising subsection (f) as follows:
15 "(f) Services performed by an individual for wages shall be deemed to be employment
16 subject to this chapter unless and until it is shown that:

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

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

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

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

- 27 (iv) Has the discretion to set his or her own work schedule;
 28 (v) Receives only minimal instructions and no direct oversight or supervision
 29 regarding the services to be performed, such as the location where the services are to
 30 be performed and any requested deadlines;
 31 (vi) When applicable, has no territorial or geographic restrictions; and
 32 (vii) Is not required to perform, behave, or act or, alternatively, is compelled to
 33 perform, behave, or act in a manner related to the performance of services for wages
 34 which is determined by the Commissioner to demonstrate employment, in accordance
 35 with this Code section and such rules and regulations as the Commissioner may
 36 prescribe; and
 37 (B) Such individual is customarily engaged in an independently established trade,
 38 occupation, profession, or business; or
 39 (2) Such individual and the services performed for wages are the subject of an SS-8
 40 determination by the Internal Revenue Service, which decided against employee status."

41 **SECTION 2.**

42 Said chapter is further amended by adding a new Code section to read as follows:

43 "34-8-257.

44 The department shall create a web based reporting system by which instances of
 45 improperly reported employment may be submitted to the department. The department
 46 shall investigate each credible report."

47 **SECTION 3.**

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