

House Bill 1440

By: Representatives Wilson of the 80th, McClain of the 100th, Schofield of the 60th, and
Nguyen of the 89th

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 the definition of employment to include services
3 performed by an individual for wages unless the Department of Labor makes a contrary
4 determination based upon evidence that such individual is independent of the hiring
5 organization in connection with the performance of such services; to provide for related
6 matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

12 "(f) Except as otherwise provided in this Code section, services ~~Services~~ performed by an
13 individual for wages shall be deemed to be employment subject to this chapter unless and
14 until it is shown that:

15 (1)(A) Such individual ~~has been and will continue to be free from control or direction~~
16 over is independent of the hiring organization in connection with the performance of

17 such services, both under the individual's contract of service and in fact, as
18 demonstrated by evidence timely submitted to the department upon which the
19 department determines by analyzing the totality of the circumstances on a case-by-case
20 basis that the individual:

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

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

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

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

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

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

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

36 (B) Such individual performs work that is outside of the scope of business in which the
37 hiring organization is customarily engaged; and

38 ~~(B)~~(C) Such individual is customarily engaged in an independently established trade,
39 occupation, profession, or business that is the same as the work being requested and
40 performed; or

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

43

SECTION 2.

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