

Senate Bill 227

By: Senator McLaurin of the 14th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial
2 relations, so as to provide protections for freelance workers; to provide for a short title; to
3 provide for definitions; to require a contract between a freelance worker and a hiring party
4 to be in writing; to require certain contractual terms between a freelance worker and a hiring
5 party; to provide for timely payment of freelance workers by hiring parties; to require certain
6 contractual terms between a freelance worker and a hiring party; to prohibit retaliation; to
7 provide for a complaint and information facilitating procedure; to provide for duties, powers,
8 and authority of the Commissioner of Labor; to provide for civil enforcement; to provide for
9 enforcement by the Attorney General; to restrict when provisions or contracts are void; to
10 provide for the Department of Labor to conduct a public awareness outreach campaign; to
11 provide for the department to survey complainants; to require the department to track and
12 collect data and report results; to provide for rules and regulations; to provide for related
13 matters; to provide for an effective date and applicability; to repeal conflicting laws; and for
14 other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16

SECTION 1.

17 Title 34 of the Official Code of Georgia Annotated, relating to labor and industrial relations,
18 is amended by revising Chapter 11, which is designated as reserved, as follows:

19

"CHAPTER 11

20 34-11-1.

21 This chapter shall be known and may be cited as the 'Freelance isn't Free Act.'

22 34-11-2.

23 As used in this chapter, the term:

24 (1) 'Construction contractor' means any person, sole proprietor, partnership, firm,
25 corporation, limited liability company, association, or other legal entity who by oneself
26 or through others offers to undertake, holds oneself out as being able to undertake, or
27 does undertake a construction project.

28 (2) 'Construction project' means the providing of any labor or services, and the use of any
29 materials or equipment in order to alter, build, excavate, add to, subtract from, improve,
30 repair, maintain, renovate, move, wreck, or demolish any bridge, building, highway, road,
31 railroad, land, tunnel, sewer, drainage or other structure, project, development, or
32 improvement, or the doing of any part thereof, including the erection of scaffolding or
33 other structures or works in connection therewith.

34 (3) 'Freelance worker' means any natural person residing in this state or organization
35 composed of no more than one natural person residing in this state, whether or not
36 incorporated or employing a trade name, that is hired or retained by a hiring party to
37 provide services in exchange for an amount equal to or greater than \$800.00, either by
38 itself or when aggregated with all contracts for services between the same hiring party
39 and freelance worker during the immediately preceding 120 days, but shall not include

40 any person who, pursuant to the contract at issue, is a sales representative, licensed legal
41 professional, licensed medical professional, or construction contractor.

42 (4) 'Hiring party' means any person who retains a freelance worker to provide any
43 service. Such term shall not include the United States government, the state, or any
44 political subdivision thereof, or any department, agency, or instrumentality of the same.

45 34-11-3.

46 (a) When a hiring party retains the services of a freelance worker, the contract between
47 such party and worker shall be reduced to writing. The hiring party shall furnish a copy
48 of such written contract, either physically or electronically, to the freelance worker, and
49 each party to the written contract shall retain a copy thereof.

50 (b) The written contract shall include, at a minimum, the following information:

51 (1) The name and mailing address of both the hiring party and the freelance worker;

52 (2) An itemization of all services to be provided by the freelance worker, the value of the
53 services to be provided pursuant to the contract, and the rate and method of
54 compensation;

55 (3) The date on which the hiring party must pay the contracted compensation or the
56 mechanism by which such date will be determined; and

57 (4) The date by which a freelance worker must submit a list of services rendered under
58 such contract to the hiring party in order to meet any internal processing deadlines of
59 such hiring party for the purposes of compensation being timely rendered by the
60 agreed-upon date as stipulated in paragraph (3) of this subsection.

61 (c) The Commissioner may by rule or regulation require additional terms to ensure that the
62 freelance worker and the hiring party understand their obligations under the contract.

63 (d) Such hiring party shall be required to keep such contract for a period of no less than
64 six years and shall make such contract available to the Commissioner upon request. The
65 failure of a hiring party to produce such contract, upon request of the Commissioner, shall

66 give rise to a presumption that the terms that the freelance worker has presented are the
67 agreed upon terms.

68 (e) The Commissioner shall make available model contracts on the website of the
69 department for use by the general public at no cost. Such model contracts shall be made
70 available in English and in the five languages most commonly spoken by limited English
71 proficient individuals in the state.

72 34-11-4.

73 (a) Except as otherwise provided by law, the contracted compensation shall be paid to a
74 freelance worker either:

75 (1) On or before the date such compensation is due under the terms of the contract; or

76 (2) If the contract does not specify when the hiring party must pay the contracted
77 compensation or the mechanism by which such date will be determined, no later than 30
78 days after the completion of the freelance worker's services under the contract.

79 (b) Once a freelance worker has commenced performance of the services under the
80 contract, the hiring party shall not require as a condition of timely payment that the
81 freelance worker accept less compensation than the amount of the contracted
82 compensation.

83 34-11-5.

84 No hiring party shall threaten, intimidate, discipline, harass, deny a work opportunity to,
85 or discriminate against a freelance worker, or take any other action that penalizes a
86 freelance worker for, or is reasonably likely to deter a freelance worker from, exercising
87 or attempting to exercise any right provided for in this chapter, or from obtaining any
88 future work opportunity because the freelance worker has done so.

89 34-11-6.

90 (a) Any freelance worker or his or her authorized representative may file with the
91 Commissioner a complaint alleging a violation of this chapter, requesting an investigation
92 of such complaint, and stating the appropriate remedy, if any. The Commissioner is
93 authorized to request or require any information deemed relevant to the complaint. The
94 department shall provide the complainant with a notice of the anticipated processing of the
95 complaint, including any investigation, information facilitation, or case conferences.

96 (b) Complaints shall be reviewed by the department to determine whether there is cause
97 for the department to initiate the process of facilitating the exchange of information
98 between the freelance worker and the hired party. When the Commissioner determines
99 there is such cause, the Commissioner shall send the notice of complaint to the other party
100 by certified mail. The Commissioner shall keep the names of freelance workers who are
101 the subject of an investigation confidential until such time that disclosure is necessary for
102 resolution of an investigation or a complaint.

103 (c) Within 20 days of receiving the notice of complaint, the hiring party shall submit a
104 response to the Commissioner. Failure to respond to such notice within 20 days shall
105 create a rebuttable presumption in any civil action commenced in accordance with this
106 chapter that the hiring party committed the violation alleged in the complaint.

107 (d) Within 20 days of receiving written response from the hiring party, the Commissioner
108 shall send the freelance worker a copy of the hiring party's response, any accompanying
109 enclosures, and materials informing the freelance worker about the rights provided for in
110 this chapter. If the Commissioner receives no response from the hiring party, the
111 Commissioner shall mail a notice of nonresponse to both the freelance worker and the
112 hiring party. Upon satisfying the requirements of this subsection, the Commissioner may
113 close the case.

114 (e) Failure of a hiring party to keep adequate records or provide a written contract as
115 required under Code Section 34-11-3, in addition to exposing such hiring party to penalties

116 authorized under such Code section, shall not operate as a bar to filing of a complaint by
117 a freelance worker. In such a case, the hiring party in violation shall bear the burden of
118 proving that the complainant was paid in accordance with Code Section 34-11-2 and that
119 the hiring party is in compliance with this chapter.

120 (f) Each freelance worker and his or her authorized representative shall be notified in
121 writing of any case conference before it is held and given the opportunity to attend and of
122 any award and collection of civil penalties.

123 34-11-7.

124 (a) The Commissioner shall investigate completed complaints provided for in Code
125 Section 34-11-6 and, if the Commissioner deems it necessary or advisable, shall attempt
126 to adjust equitably controversies between freelance workers and hiring parties relating to
127 this chapter.

128 (b) The Commissioner may, to the extent provided for by any reciprocal agreement entered
129 into by law or with any agency of another state, maintain actions in the courts of such other
130 state for the collection of claims and judgments for wages and may assign such claims and
131 judgments to the labor department or agency of such other state for collection to the extent
132 that such an assignment may be permitted or provided for by the law of such state or by
133 reciprocal agreement.

134 (c) The Commissioner may, upon the written consent of the labor department or other
135 corresponding agency of any other state or of any person, board, officer, or commission of
136 such state authorized to act on behalf of such labor department or corresponding agency,
137 maintain actions in the courts of this state for wages arising in such other state in the same
138 manner and to the same extent that such actions by the Commissioner are authorized when
139 arising in this state. However, such actions may be maintained only in cases where such
140 other state by law or reciprocal agreement extends a like comity to cases arising in this
141 state.

142 34-11-8.

143 (a)(1) A freelance worker alleging a violation of this chapter may bring an action in any
144 court of competent jurisdiction for damages.

145 (2) Any action alleging a violation of Code Section 34-11-3 shall be brought within two
146 years after the acts alleged to have violated this chapter occurred.

147 (3) Any action alleging a violation of Code Section 34-11-4 or 34-11-5 shall be brought
148 within six years after the acts alleged to have violated this chapter occurred.

149 (4) Within ten days after having commenced a civil action pursuant to this chapter, a
150 plaintiff shall serve a copy of the complaint upon an authorized representative of the
151 Commissioner. Failure to so serve a complaint shall not adversely affect any plaintiff's
152 cause of action.

153 (5) A plaintiff who solely alleges a violation of Code Section 34-11-3 must prove that
154 such plaintiff requested a written contract before the contracted work began.

155 (b)(1) A plaintiff who prevails on a claim alleging a violation of Code Section 34-11-4
156 shall be awarded damages as described in this subsection and an award of reasonable
157 attorneys' fees and costs.

158 (2)(A) A plaintiff who prevails on a claim alleging a violation of Code Section 34-11-3
159 shall be awarded statutory damages of \$250.00.

160 (B) A plaintiff who prevails on a claim alleging a violation of Code Section 34-11-3
161 and on one or more claims under other provisions of this chapter shall be awarded
162 statutory damages equal to the value of the underlying contract for the violation in
163 addition to the remedies specified in this chapter for such other violations.

164 (3) In addition to other damages awarded pursuant to this chapter, a plaintiff who
165 prevails on a claim alleging a violation of Code Section 34-11-4 shall be entitled to an
166 award of double damages, injunctive relief, and other such remedies as may be
167 appropriate.

168 (4) In addition to any other damages awarded pursuant to this chapter, a plaintiff who
169 prevails on a claim alleging a violation of Code Section 34-11-5 shall be entitled to
170 statutory damages equal to the value of the underlying contract for each violation arising
171 under such Code section.

172 34-11-9.

173 (a)(1) Where reasonable cause exists to believe that a hiring party is engaged in a pattern
174 or practice of violations of this chapter, the Attorney General may commence a civil
175 action on behalf of the state in a court of competent jurisdiction.

176 (2) An action pursuant to paragraph (1) of this subsection shall be commenced by filing
177 a complaint setting forth facts relating to such pattern or practice and requesting relief,
178 which may include injunctive relief, civil penalties, and any other appropriate relief.

179 (3) Nothing in this Code section prohibits:

180 (A) A person alleging a violation of this chapter from filing a civil action based on the
181 same facts as a civil action commenced by the Attorney General pursuant to this Code
182 section; or

183 (B) The Commissioner from sending a notice of complaint, unless otherwise barred
184 from doing so.

185 (b) In any civil action commenced pursuant to this Code section, the trier of fact may
186 impose a civil penalty of not more than \$25,000.00 for a finding that a hiring party has
187 engaged in a pattern or practice of violations of this chapter. Any civil penalty so
188 recovered shall be paid into the general fund of the state treasury.

189 34-11-10.

190 (a) Except as otherwise provided by law, any provision of a contract purporting to waive
191 rights under this chapter shall be void as against public policy.

192 (b) The provisions of this chapter supplement and do not diminish or replace any other
193 basis of liability or requirement established by statute or common law.

194 (c) Failure to comply with the provisions of this chapter shall not render any contract
195 between a hiring party and a freelance worker void or voidable or otherwise impair any
196 obligation, claim, or right related to such contract or constitute a defense to any action or
197 proceeding to enforce, or for breach of, such contract.

198 34-11-11.

199 The department shall conduct a public awareness outreach campaign, which shall include
200 making information available on its internet website, otherwise informing hiring parties of
201 the provisions of this chapter, and establishing a means for assistance by a natural person
202 through phone and email.

203 34-11-12.

204 (a) No later than six months after the Commissioner sends to a freelance worker either a
205 hiring party's response and accompanying materials or a notice of nonresponse, the
206 Commissioner shall send the freelance worker a survey requesting additional information
207 about the resolution of the freelance worker's claims. Such survey shall ask whether or not
208 the freelance worker pursued any such claims in court or through an alternative dispute
209 resolution process and whether or not the hiring party ultimately paid any or all of the
210 compensation the freelance worker alleged was due or if the matter was resolved in a
211 different manner. Such survey shall state clearly that response to the survey is voluntary.

212 (b) The Commissioner shall collect and track information about complaints alleging
213 violations of this chapter. The information collected shall include, at minimum:

214 (1) The identity of the hiring party alleged to have violated this chapter;

215 (2) The freelance worker's occupation;

216 (3) The Code section of this chapter that was alleged to have been violated;

217 (4) The value of the contract;
218 (5) The response or nonresponse from the hiring party; and
219 (6) Information from a completed survey identified in subsection (a) of this Code
220 section.
221 (c) One year after the effective date of this chapter, and every fifth year thereafter by
222 November first, the Commissioner shall submit to the legislature and publish on its internet
223 website a report regarding the effectiveness of the applicable provisions of this chapter at
224 improving freelance contracting and payment practices. Such report shall include, at a
225 minimum:
226 (1) The number of complaints the Commissioner has received pursuant to such
227 provisions;
228 (2) The value of the contracts disaggregated into ranges of \$500.00 and by Code section
229 of this chapter alleged to have been violated;
230 (3) The numbers of responses and nonresponses received by the Commissioner
231 disaggregated by contract value into ranges of \$500.00 and by Code section of this
232 chapter alleged to have been violated;
233 (4) The proportion of surveys received from freelance workers that indicate that they
234 pursued their claims in court and the proportion of surveys received from freelance
235 workers that indicate that they pursued their claims through an alternative dispute
236 resolution process and a summary of the outcomes of such cases; and
237 (5) Legislative recommendations, including consideration of whether certain occupations
238 should be exempted from the scope of the definition of freelance worker in this chapter.

239 34-11-13.
240 The Commissioner shall promulgate rules and regulations necessary to implement the
241 provisions of this chapter."

242

SECTION 2.

243 This Act shall become effective upon its approval by the Governor or upon its becoming law
244 without such approval, and shall apply to all contracts in this state entered into on or after
245 such date.

246

SECTION 3.

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