

HOUSE No. 1036

The Commonwealth of Massachusetts

PRESENTED BY:

Shaunna L. O'Connell

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to clarify the definition of independent contractor.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>
<i>Geoff Diehl</i>	<i>7th Plymouth</i>
<i>Leonard Mirra</i>	<i>2nd Essex</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>

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By Mrs. O'Connell of Taunton, a petition (accompanied by bill, House, No. 1036) of Shaunna L. O'Connell and others relative to the definitions of and profile of independent contractors. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1755 OF 2015-2016.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act to clarify the definition of independent contractor.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Paragraph (a) of Section 148B of Chapter 149 of the General Laws, as appearing in the
2 2014 Official Edition, is hereby amended by striking out paragraph (a) and inserting in place
3 thereof the following paragraph:—

4 (a) (1) any person performing services for a contractor shall be classified as an employee
5 unless the person is a separate business entity under subparagraph (2) of this section or all of the
6 following criteria are met, in which case the person shall be an independent contractor:

7 (a) the person is free from control and direction in performing the job, both under
8 the contract and in fact;

9 (b) the service is performed outside the usual course of business of the contractor
10 for which the service is performed; and

11 (c) the person is customarily engaged in an independently established trade,
12 occupation, profession, or business that is similar to the service at issue.

13 (2) a business entity, including any sole proprietor, partnership, corporation or entity that
14 may be a contractor under this section shall be considered a separate business entity from the
15 contractor where all the following criteria are met:

16 (a) the business entity is performing the service free from the direction or control over the
17 means and manner of providing the service, subject only to the right of the contractor for whom
18 the service is provided to specify the desired result;

19 (b) the business entity is not subject to cancellation or destruction upon severance of the
20 relationship with the contractor;

21 (c) the business entity has a substantial investment of capital or education or experience
22 or knowledge in the business entity beyond ordinary tools and equipment and a personal vehicle;

23 (d) the business entity owns the capital goods and gains the profits and bears the losses of
24 the business entity;

25 (e) the business entity makes its services available to the general public or the business
26 community on a continuing basis;

27 (f) the business entity includes services rendered on a federal income tax schedule as an
28 independent business or profession;

29 (g) the business entity performs services for the contractor under the business entity's
30 name;

31 (h) when the services being provided require a license or permit, the business entity
32 obtains and pays for the license or permit in the business entity's name;

33 (i) the business entity furnishes the tools and equipment necessary to provide the service;

34 (j) if necessary, the business entity hires its own employees without contractor approval,
35 pays the employees without reimbursement from the contractor and reports the employees'
36 income to the internal revenue service;

37 (k) the contractor does not represent the business entity as an employee of the contractor
38 to its customers; and

39 (l) the business entity has the right to perform similar services for others on whatever
40 basis and whenever it chooses.