

SENATE BILL 444

K3

11r1123
CF 11r2389

By: **Senators Kelley, Benson, Jones–Rodwell, Madaleno, Manno, Pugh, and Raskin**

Introduced and read first time: February 4, 2011

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Labor and Employment – Employment Standards and Conditions –**
3 **Definition of Employer**

4 FOR the purpose of adding a general definition of “employer” for purposes of certain
5 provisions of law relating to employment standards and conditions; making
6 certain conforming changes by altering or repealing definitions of “employer”
7 used in certain provisions of law relating to employment standards and
8 conditions; and generally relating to the definition of “employer” as used in
9 provisions of law relating to employment standards and conditions.

10 BY repealing and reenacting, with amendments,
11 Article – Labor and Employment
12 Section 3–101, 3–301, 3–401, 3–501, 3–702(a), 3–801(a), 3–802(a), and 3–901
13 Annotated Code of Maryland
14 (2008 Replacement Volume and 2010 Supplement)

15 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
16 MARYLAND, That the Laws of Maryland read as follows:

17 **Article – Labor and Employment**

18 3–101.

19 (a) In this title the following words have the meanings indicated.

20 (b) “Commissioner” means the Commissioner of Labor and Industry.

21 (c) (1) “Employ” means to engage an individual to work.

22 (2) “Employ” includes:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 (i) allowing an individual to work; and
2 (ii) instructing an individual to be present at a work site.

3 (D) (1) **“EMPLOYER” MEANS A PERSON ENGAGED IN A BUSINESS,**
4 **INDUSTRY, PROFESSION, TRADE, OR OTHER ENTERPRISE IN THE STATE WHO**
5 **EMPLOYS AN INDIVIDUAL IN THE STATE.**

6 (2) **“EMPLOYER” INCLUDES A PERSON WHO ACTS DIRECTLY OR**
7 **INDIRECTLY IN THE INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.**

8 3–301.

9 (a) In this subtitle the following words have the meanings indicated.

10 (b) [(1)] **“Employer” [means:] INCLUDES:**

11 [(i)] a person engaged in a business, industry, profession, trade,
12 or other enterprise in the State;

13 [(ii)] (1) the State and its units;

14 [(iii)] (2) a county and its units; and

15 [(iv)] (3) a municipal government in the State.

16 [(2) “Employer” includes a person who acts directly or indirectly in the
17 interest of another employer with an employee.]

18 (c) (1) **“Wage” means all compensation for employment.**

19 (2) **“Wage” includes board, lodging, or other advantage provided to an**
20 **employee for the convenience of the employer.**

21 3–401.

22 (a) In this subtitle the following words have the meanings indicated.

23 (b) [“Employer” includes a person who acts directly or indirectly in the
24 interest of another employer with an employee.

25 (c)] **“Federal Act” means the federal Fair Labor Standards Act of 1938.**

26 [(d)] (C) **“Wage” means all compensation that is due to an employee for**
27 **employment.**

1 3-501.

2 (a) In this subtitle the following words have the meanings indicated.

3 (b) “Employer” includes [any person who employs an individual in the State
4 or] a successor of the person **WHO EMPLOYS AN INDIVIDUAL IN THE STATE**.

5 (c) (1) “Wage” means all compensation that is due to an employee for
6 employment.

7 (2) “Wage” includes:

8 (i) a bonus;

9 (ii) a commission;

10 (iii) a fringe benefit;

11 (iv) overtime wages; or

12 (v) any other remuneration promised for service.

13 3-702.

14 (a) In this section, “employer” [means:] **INCLUDES:**

15 (1) [a person engaged in a business, industry, profession, trade, or
16 other enterprise in the State;

17 (2)] the State;

18 [(3)] (2) a county; and

19 [(4)] (3) a municipal corporation in the State.

20 3-801.

21 (a) [(1)] In this section, “employer” [means a person engaged in a business,
22 industry, profession, trade, or other enterprise in the State.

23 (2) “Employer”] includes:

24 [(i)] a unit of State or local government that employs individuals
25 who are not subject to the provisions of Title 9, Subtitle 5 of the State Personnel and
26 Pensions Article[]; and

1 (ii) a person who acts directly or indirectly in the interest of
2 another employer with an employee].

3 3-802.

4 (a) (1) In this section the following words have the meanings indicated.

5 (2) "Child" means an adopted, biological, or foster child, a stepchild, or
6 a legal ward who is:

7 (i) under the age of 18 years; or

8 (ii) at least 18 years old and incapable of self-care due to a
9 mental or physical disability.

10 (3) [(i) "Employer" means a person that is engaged in a business,
11 industry, profession, trade, or other enterprise in the State.

12 (ii) "Employer" includes a person who acts directly or indirectly
13 in the interest of another employer with an employee.

14 (4)] "Immediate family" means a child, spouse, or parent.

15 [(5)] (4) (i) "Leave with pay" means paid time away from work
16 that is earned and available to an employee:

17 1. based on hours worked; or

18 2. as an annual grant of a fixed number of hours or days
19 of leave for performance of service.

20 (ii) "Leave with pay" includes sick leave, vacation time, paid
21 time off, and compensatory time.

22 (iii) "Leave with pay" does not include:

23 1. a benefit provided under an employee welfare benefit
24 plan subject to the federal Employee Retirement Income Security Act of 1974;

25 2. an insurance benefit, including benefits from an
26 employer's self-insured plan;

27 3. workers' compensation;

28 4. unemployment compensation;

29 5. a disability benefit; or

1 6. a similar benefit.

2 **[(6)] (5)** “Parent” means an adoptive, biological, or foster parent, a
3 stepparent, a legal guardian, or a person standing in loco parentis.

4 3-901.

5 (a) In this subtitle the following words have the meanings indicated.

6 (b) “Construction services” includes the following services provided in
7 connection with real property:

8 (1) building;

9 (2) reconstructing;

10 (3) improving;

11 (4) enlarging;

12 (5) painting;

13 (6) altering;

14 (7) maintaining; and

15 (8) repairing.

16 **[(c)** “Employer” means any person that employs an individual in the State.]

17 **[(d)] (C)** “Exempt person” means an individual who:

18 (1) performs services in a personal capacity and employs no
19 individuals other than:

20 (i) a spouse of the exempt person;

21 (ii) children of the exempt person; or

22 (iii) parents of the exempt person;

23 (2) performs services free from direction and control over the means
24 and manner of providing the services, subject only to the right of the person or entity
25 for whom services are provided to specify the desired result;

26 (3) furnishes the tools and equipment necessary to provide the service;

1 (4) operates a business that is considered inseparable from the
2 individual for purposes of taxes, profits, and liabilities:

3 (i) in which the individual:

4 1. owns all of the assets and profits of the business; and

5 2. has sole, unlimited, personal liability for all of the
6 debts and liabilities of the business, unless the business is organized as a
7 single-owned corporate entity, to which sole, unlimited personal liability does not
8 apply; and

9 (ii) for which:

10 1. the individual does not pay taxes for the business
11 separately but reports business income and losses on the individual's personal tax
12 return; and

13 2. if the business is organized as a corporate entity and
14 the individual otherwise qualifies as an exempt person under this subsection, the
15 individual files a separate federal informational tax return for the entity as required
16 by law;

17 (5) exercises complete control over the management and operations of
18 the business; and

19 (6) exercises the right and opportunity on a continuing basis to
20 perform the services of the business for multiple entities at the individual's sole choice
21 and discretion.

22 **[(e) (D)]** "Knowingly" means having actual knowledge, deliberate ignorance,
23 or reckless disregard for the truth.

24 **[(f) (E)]** "Landscaping services" includes the following services:

25 (1) garden maintenance and planting;

26 (2) lawn care including fertilizing, mowing, mulching, seeding, and
27 spraying;

28 (3) seeding and mowing of highway strips;

29 (4) sod laying;

30 (5) turf installation, except artificial;

1 (6) ornamental bush planting, pruning, bracing, spraying, and
2 removal; and

3 (7) ornamental tree planting, pruning, bracing, spraying, and removal.

4 **[(g)] (F)** (1) “Place of business” means the office or headquarters of the
5 employer.

6 (2) “Place of business” does not include a work site at which the
7 employer has been contracted to perform services.

8 **[(h)] (G)** “Public body” means:

9 (1) the State;

10 (2) a unit of State government or an instrumentality of the State; or

11 (3) any political subdivision, agency, person, or entity that is a party
12 to a contract for which 50% or more of the money used is State money.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 October 1, 2011.