

ARIZONA STATE SENATE

RESEARCH STAFF



TO: MEMBERS OF THE SENATE
COMMERCE & WORKFORCE
DEVELOPMENT COMMITTEE

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DATE: March 4, 2016

SUBJECT: Strike everything amendment to H.B. 2114, relating to employment relationships

Purpose

Permits an employing unit and contractor to create a rebuttable presumption of an independent contractor relationship.

Background

Pursuant to A.R.S. § 23-613.01, an *employee* is any individual who performs services for an employing unit and who is subject to the direction, rule or control of the employing unit as to both the method of performing or executing the services and the result to be effected or accomplished. *Employer control* includes the individual's hours of work, location of work, the right to perform services for others and the tools, equipment and expenses necessary to complete said services.

A business may create a *rebuttable presumption* by executing a signed written agreement establishing that an independent contractor is not entitled to workers' compensation (A.R.S. § 23-902). The written agreement must declare that the business does not have the authority to supervise or control the actual work of the independent contractor or the independent contractor's employees. An insurance carrier may not collect a premium on payments by the business to the independent contractor unless the rebuttable presumption is overcome. The agreement must state that the business:

- 1) does not require the independent contractor to perform work exclusively for the business;
- 2) does not provide the independent contractor with any business registrations or licenses required to perform the specific services set forth in the contract;
- 3) does not pay the independent contractor a salary or hourly rate instead of an amount fixed by contract;
- 4) will not terminate the independent contractor before the expiration of the contract period, unless the independent contractor breaches the contract or violates the laws of this state;
- 5) does not provide tools to the independent contractor;
- 6) does not dictate the time of performance;

- 7) pays the independent contractor in the name appearing on the written agreement; and
- 8) will not combine business operations with the person performing the services rather than maintaining these operations separately.

A *rebuttable presumption* means that the trier of fact must find the existence of the fact presumed unless introduced evidence supports a finding of its nonexistence (*Uniform Commercial Code 1-201*).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions:

Declaration of Independent Business Status

1. Prescribes a Declaration of Independent Business Status Form (Declaration Form) that allows an employing unit (contracting party) conducting business with an independent contractor (contractor) to prove the existence of an independent contractor relationship.
2. Allows any employing unit or independent contractor to rely on any Declaration Form provision for the purposes of establishing an employment or independent contractor relationship.
3. Establishes that the execution of a *substantially consistent* Declaration Form, signed and dated by the contractor, creates a rebuttable presumption of an independent contractor relationship.
4. Stipulates that execution of the Declaration Form is not required to establish an independent contractor relationship and that failure to execute a Declaration Form is not admissible evidence to deny an independent contractor relationship or cause for any presumptions.
5. Specifies that a Declaration Form does not operate to the same effect or act as a substitute to a written agreement, prescribed by existing workers' compensation statute, proving the existence of an independent contractor relationship.
6. Requires employing units licensed or required to be licensed by the Registrar of Contractors to additionally record and maintain for three years all of the following information about the contractor signing the Declaration Form:
 - a) the Registrar of Contractors license number;
 - b) the business license;
 - c) the federal tax identification number;
 - d) the certificate of workers' compensation insurance; and
 - e) the certificate of general liability insurance.

Declaration Model Form

7. Requires that the Declaration Form state that the contractor acknowledges that:

- a) the contractor operates their own independent business and is providing services for the contracting party as an independent contractor;
 - b) the contractor is not an employee of the contracting party and services rendered do not establish any right to unemployment benefits or other right arising from an employment relationship; and
 - c) the terms of the Declaration Form apply to the contractor, the contractor's employees and the contractor's independent contractors.
8. Requires that the Declaration Form state that the contractor is responsible for: a) any required registration, licenses or other authorization for services rendered; and b) all tax liability associated with payments received from or through the contracting party.
9. Requires that the Declaration Form state that the contracting party will not withhold any taxes from payments to the contractor.
10. Requires that the Declaration Form state that the contractor acknowledges at least 6 of the following 10 factors:
- a) that the contractor is not insured under the contracting party's health insurance coverage or workers' compensation insurance coverage;
 - b) that the contracting party does not restrict the contractor's ability to accept and perform services for other parties;
 - c) that the contractor has the right to accept or decline requests for services by the contracting party;
 - d) that the contracting party expects that the contractor provides services for other parties;
 - e) that the contractor is not economically dependent on the services performed or in connection with the contracting party;
 - f) that the contracting party does not dictate the performance, methods or process the contractor uses to perform services;
 - g) that the contracting party has the right to impose quality standards and completion deadlines but the contractor may determine the days worked, time of work and other performance aspects;
 - h) that the contractor will be paid by the contracting party on the work established in the contract and that the contracting party is not providing the contractor with a regular salary or any minimum, regular payment;
 - i) that the contractor is responsible for providing and maintaining all tools and equipment associated with services performed; and
 - j) that the contractor is responsible for all expenses incurred in performing services.

Miscellaneous

11. Prohibits from consideration in determining an independent contractor relationship any supervision or control exercised by an employing unit to comply with licensing requirements, professional standards or a federal, state or political subdivision law, unless enforced by the Arizona Division of Occupational Safety and Health.
12. Stipulates that the measure does not affect a party's obligation to comply with existing law.

13. Continues the validity of other title provisions or application if a severable provision is held invalid or statutorily inconsistent.

14. Becomes effective on the general effective date.

House Action

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| COM | 1/20/16 | DPA | 7-1-0-0 |
| Third Read | 2/04/16 | DPA | 34-22-4-0 |

GH/LB/rf