

1 HB497
2 136409-3
3 By Representatives Shiver, Jackson, Grimsley, Baker and Drake
4 RFD: Commerce and Small Business
5 First Read: 08-MAR-12

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ENROLLED, An Act,

To amend Section 25-5-50 of the Code of Alabama 1975, relating to the exemption from workers' compensation coverage for certain independent contractors; to qualify sports officials as independent contractors; to exempt sports officials from workers' compensation coverage and to further provide that sports officials shall not be subject to liability in any civil action for injuries or damages claimed in connection with his or her duties at sporting events.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 25-5-50 of the Code of Alabama 1975, is amended to read as follows:

"§25-5-50.

"(a) This article and Article 2 of this chapter shall not be construed or held to apply to an employer of a domestic employee; an employer of a farm laborer; an employer of a person whose employment at the time of the injury is casual and not in the usual course of the trade, business, profession, or occupation of the employer; an employer who regularly employs less than five employees in any one business, other than the business of constructing or assisting on-site in the construction of new single-family, detached residential dwellings; or a municipality having a population of less than 2,000 according to the most recent federal

1 decennial census. An employer who regularly employs less than
2 five employees in any one business; a farm-labor employer; an
3 employer of a domestic employee; or a municipality having a
4 population of less than 2,000 according to the most recent
5 federal decennial census, may accept and become subject to
6 this article and Article 4 of this chapter by filing written
7 notice thereof with the Department of Industrial Relations, a
8 copy thereof to be posted at the place of business of the
9 employer; provided further, that an employer who has so
10 elected to accept this article and Article 4 of this chapter
11 may at any time withdraw the acceptance by giving like notice
12 of withdrawal. Notwithstanding the foregoing, an employer
13 electing not to accept coverage under this article and Article
14 4 of this chapter shall notify in writing each employee of the
15 withdrawal of coverage. Additionally, the employer shall post
16 a notice in a conspicuous place notifying all employees and
17 applicants for employment that workers' compensation insurance
18 coverage is not available.

19 "(b) Notwithstanding subsection (a), an officer of a
20 corporation may elect annually to be exempt from coverage by
21 filing written certification of the election with the
22 department and the employer's insurance carrier.

23 "At the end of any calendar year, a corporate
24 officer who has been exempted, by proper certification from
25 coverage, may revoke the exemption and thereby accept coverage

1 by filing written certification of his or her election to be
2 covered with the department and the employer's insurance
3 carrier.

4 "The certification for exemption or reinstatement of
5 coverage shall become effective on the first day of the
6 calendar month following the filing of the certification of
7 exemption or reinstatement of coverage with the department.

8 "If the corporate officer elects to be exempt from
9 coverage, the election shall not relieve the employer from
10 continuing coverage for all other eligible employees who may
11 have been covered prior to the election or who may
12 subsequently be employed by the firm.

13 "(c) This section shall not be construed to mandate
14 any school board to provide coverage until sufficient funds
15 are appropriated from the Education Trust Fund to implement
16 the provisions. Nothing contained herein shall prohibit any
17 school board that voluntarily elects to provide such coverage
18 from doing so with local or other available funds.

19 "(d) This section shall provide for voluntary
20 coverage of certified volunteer fire departments as described
21 in Section 9-3-17 and legally organized rescue squads that
22 meet the minimum personnel and equipment standards as
23 established by the Alabama Association of Rescue Squads, that
24 are engaged in fighting a fire or performing other duties
25 involving any emergency incident and while performing any

1 official supervised duties of the organization, including
2 maintaining equipment and attending official training classes,
3 and while traveling to and from an emergency incident.

4 "(e) In all cases where an injury that is
5 compensable under the terms of the Alabama Workers'
6 Compensation Law is received by a volunteer fire fighter or
7 rescue squad member, the wages for purposes of computing the
8 average weekly wage shall be equal to 66 2/3 percent of what
9 he or she is earning at his or her regular place of employment
10 or 66 2/3 percent of the minimum wage, whichever is greater.

11 "(f) State certified volunteer fire departments and
12 legally organized rescue squads are herein granted the right
13 to purchase workers' compensation medical or disability
14 insurance, or both, but in no event are they required to do
15 so.

16 "In no event shall the regular employer of a
17 volunteer fire fighter or rescue squad member be liable for a
18 compensable injury under this section.

19 "(g) A licensed real estate agent operating under a
20 licensed broker shall not be considered an employee for the
21 purposes of this chapter.

22 "(h) An individual who performs services as a
23 product demonstrator shall not be considered an employee for
24 purposes of this chapter. The term "product demonstrator"

1 shall mean any individual who satisfies both of the following
2 requirements:

3 "(1) Is engaged in the trade or business of
4 demonstrating, exhibiting, or soliciting the purchase of food,
5 food-related products offered for sale, or other consumer
6 products offered for sale to any buyer on the premises of a
7 grocery store, dry good store, or similar retail
8 establishment, or trade show;

9 "(2) Who performs those services pursuant to a
10 written contract between the individual and a person whose
11 principal business is providing demonstrators to third parties
12 for such purposes and the contract provides that the
13 individual will not be treated as an employee with respect to
14 the services for federal tax purposes.

15 "(i) (1) For purposes of this subsection, sports
16 official means an individual who is a neutral participant in a
17 sports event, including, without limitation, an umpire, a
18 referee, judge, linesman, scorekeeper, or timekeeper. Sports
19 official does not include any person, otherwise employed by an
20 organization or entity sponsoring a sports event, who performs
21 services as a sports official as a part of his or her regular
22 employment.

23 "(2) A person who performs services as a sports
24 official for an entity sponsoring an interscholastic or
25 intercollegiate sports event or if such person performs

1 services as a sports official for a public entity or a
2 private, nonprofit organization which sponsors an amateur
3 sports event shall be an independent contractor and not an
4 employee.

5 "(3) Any sports official who officiates a sports
6 event at any level of competition in Alabama shall not be
7 liable to any person or entity in any civil action for
8 injuries or damages claimed to have arisen by virtue of
9 actions or inaction related in any manner to officiating
10 duties at a sports event, provided the official does not act
11 willfully, maliciously, fraudulently, or in a manner that is
12 contrary to how a reasonably prudent official would act under
13 the same or similar circumstances."

14 Section 2. This act shall become effective on the
15 first day of the third month following its passage and
16 approval by the Governor, or its otherwise becoming law.

