

KENTUCKY GENERAL ASSEMBLY AMENDMENT FORM
2016 REGULAR SESSION
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Amend printed copy of HB 477/HCS 1

On page 3, line 13 to page 4, line 23, delete Section 3 in its entirety and insert the following in lieu thereof:

"➔SECTION 3. A NEW SECTION OF KRS CHAPTER 337 IS CREATED TO READ AS FOLLOWS:

(1) Misclassification of an employee as an independent contractor is a violation of this section, and a contractor that violates this section shall be assessed a civil penalty under Section 11 of this Act.

(2) A person performing services for a contractor is presumed to be an employee of the contractor and not an independent contractor unless the person is engaged in a distinct occupation or business and meets all the following criteria:

(a) The person is performing the services free from the direction or control of the contractor over the details of the services provided, subject only to the right of the contractor, for whom the service is provided, to specify the desired result;

(b) The person has the right to perform similar services and make those services available to the general public or the business community on a continuing basis;

(c) The person hires, if necessary, his or her own employees without contractor approval and pays the employees without reimbursement from the contractor;

Amendment No. HFA 8

Sponsor: Rep. Thomas Kerr

Committee Amendment: _____

Signed: _____

Floor Amendment: _____

LRC Drafter: Manno, Andrew

Adopted: _____

Date: _____

Rejected: _____

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- (d) The person furnishes the tools and equipment necessary to perform the services;
- (e) The person gains the profits and bears the losses of the distinct occupation or business; and
- (f) The contractor does not represent the person or the distinct business or occupation as an employee of the contractor to its customers.
- (3) The failure to withhold federal or state income taxes or to pay unemployment compensation contributions or workers' compensation premiums with respect to an individual's wages shall not be considered in making a determination under this section, except as set forth in subsection (2) of this section.
- (4) An individual's act of securing workers' compensation insurance with a carrier as a sole proprietor, partnership, or otherwise shall not be binding on any determination under this section.
- (5) When a person meets the criteria set forth in subsection (2) of this section, he or she shall be considered a contractor subject to Sections 1 to 10 of this Act in regard to the classification of individuals performing services for it."