

## AMENDMENTS TO HOUSE BILL NO. 400

Sponsor: REPRESENTATIVE LENTZ

Printer's No. 1652

1 Amend Bill, page 3, line 29, by striking out "will continue  
2 to be" and inserting

3 is

4 Amend Bill, page 4, lines 15 through 19, by striking out "For  
5 purposes of this paragraph, an office may be " in line 15 and  
6 all of lines 16 through 19

7 Amend Bill, page 4, line 22, by striking out "scope of"

8 Amend Bill, page 4, line 24, by striking out "independent  
9 contractor to" and inserting

10 personnel to

11 Amend Bill, page 4, lines 25 through 30; page 5, line 1, by  
12 striking out "UNLESS " in line 25, all of lines 26 through 30,  
13 page 4 and "FORCE" in line 1, page 5 and inserting

14 other than employees of the independent contractor and other  
15 contractors that can demonstrate by credible evidence that they  
16 meet the criteria of this subsection

17 Amend Bill, page 6, lines 12 through 14, by striking out  
18 "with the intent of evading the requirements of the " in line 12  
19 and all of lines 13 and 14

20 Amend Bill, page 6, line 21, by inserting after "General"  
21 or the District Attorney of the appropriate county

22 Amend Bill, page 7, by inserting between lines 8 and 9  
23 Section 6.1 Presumption of independent contractor status.

1 (a) Rebuttable presumption.--An employer that enters into a  
2 written contract for construction services containing the  
3 requirements set forth under subsection (b) creates a rebuttable  
4 presumption that the individual contracted with is an  
5 independent contractor and the employer has an affirmative  
6 defense to an allegation under this act that the individual is  
7 an employee if all of the following are true:

8 (1) The contract is signed by both parties.

9 (2) The employer has in its possession the documents  
10 identified in subsection (c).

11 (b) Contract terms.--A written contract between an employer  
12 and an individual presumed to be an independent contractor under  
13 this section must contain all of the following:

14 (1) The name, home and business address of the  
15 individual and the individual's tax identification number or  
16 Social Security Number.

17 (2) A description of the work to be performed under the  
18 contract and plain, precise terms for payment.

19 (3) A section in substantially the following form:  
20 Independent Contractor Status. The parties to this contract  
21 acknowledge that they intend that the Contractor be  
22 considered an independent contractor as described in the act  
23 of \_\_\_\_\_, 2009 (P.L. \_\_\_\_, No. \_\_\_\_), known as the  
24 Construction Workplace Fraud Act (the "Act") and not an  
25 employee of the Hiring Party. In furtherance of that  
26 intention, the parties agree as follows:

27 (A) By his signature on this contract below, the  
28 Contractor certifies that he meets all of the following  
29 criteria:

30 (i) He maintains a separate business location  
31 that is separate from the location of the Hiring  
32 Party, with the Contractor's own office, and  
33 operates with owned or leased equipment and other  
34 facilities.

35 (ii) He operates under contracts which are in  
36 writing and which articulate plainly the precise  
37 terms of payment for work performed, the work to be  
38 performed and a specific prohibition against the  
39 retention by the Contractor of any other personnel  
40 to perform any part of the work described in the  
41 contracts other than employees of the Contractor and  
42 other contractors that can demonstrate, by credible  
43 evidence, that they meet all of the criteria of this  
44 paragraph (A).

45 (iii) He includes income and losses from  
46 services rendered in a Federal income tax schedule  
47 as an independent business or profession.

48 (iv) He will incur the primary expenses related  
49 to the work performed under this contract.

50 (v) He is responsible for the satisfactory  
51 completion of the work to be performed under this

1 contract and is liable for a failure to complete the  
2 work.

3 (vi) He realizes a profit or loss under  
4 contracts to perform work.

5 (vii) The success or failure of his business  
6 depends on the relationship of business receipts to  
7 expenditures.

8 (viii) He has through ownership, or a written and  
9 executed leasing arrangement with a person other than  
10 the Hiring Party, the tools, equipment and other  
11 assets necessary to perform the work under this  
12 contract.

13 (ix) He makes services available to other  
14 businesses, governmental agencies in this  
15 Commonwealth or to the general public through  
16 business advertising, solicitation or other  
17 marketing efforts reasonably calculated to obtain  
18 new contracts to provide similar services.

19 (x) He has continuing or recurring business  
20 liabilities or obligations.

21 (xi) He performs services through a business in  
22 which the Contractor has a principal proprietary  
23 interest.

24 (xii) He is a United States citizen or is  
25 authorized under Federal law to work in the United  
26 States, as defined under section 274A of the  
27 Immigration and Nationality Act (66 Stat. 163, 8  
28 U.S.C. §1324a).

29 The foregoing are collectively referred to herein as the  
30 "Independent Contractor Requirements." Failure of the  
31 Contractor to meet the Independent Contractor  
32 Requirements during the term of this contract shall  
33 constitute a material breach by the Contractor of this  
34 contract. In that event, the Hiring Party shall have  
35 the right to terminate this contract immediately upon  
36 notice to the Contractor without penalty.

37 (B) By his signature on this contract below, the  
38 Hiring Party certifies that he has verified, after  
39 reasonable investigation, that as of the date of this  
40 contract the Contractor meets the Independent Contractor  
41 Requirements except for those requirements set forth in  
42 subparagraphs (iii), (vi), (vii), (ix) and (xi) of  
43 paragraph (A) above, which he has not verified.

44 (C) The Contractor agrees that he shall not engage  
45 any other personnel to perform any part of the work  
46 described in this contract other than employees of the  
47 Contractor and other contractors that can demonstrate by  
48 credible evidence that they meet all of the Independent  
49 Contractor Requirements.

50 (D) The Contractor agrees that he shall maintain  
51 liability insurance during the term of this contract of

1 at least \$1,000,000 and shall provide proof thereof to  
2 the Hiring Party upon request.

3 (c) Documentation.--At the time of entering into the  
4 contract described in subsection (b), the employer shall obtain  
5 from the individual, and maintain for a period of three years  
6 thereafter, the following information:

7 (1) Proof of liability insurance in the amount of at  
8 least \$1,000,000.

9 (2) Proof that the individual is a United States  
10 citizen or is otherwise authorized under Federal law to work  
11 in the United States, as defined under section 274A of the  
12 Immigration and Nationality Act (66 Stat. 163, 8 U.S.C. §  
13 1324a).

14 (d) Loss of presumption.--If, during the term of the  
15 contract, the employer receives knowledge that the individual  
16 does not meet the criteria set forth in section 4(b) and the  
17 employer does not terminate the contract as permitted by the  
18 provisions of the contract set forth in subsection (b), the  
19 employer shall no longer be entitled to the presumption and  
20 affirmative defense set forth in subsection (a).

21 (e) Penalty.--An employer that signs a contract described  
22 in subsection (b) knowing that any of the certifications made by  
23 the employer in the contract is false shall be subject to the  
24 administrative penalties set forth in section 7(b) in addition  
25 to any other penalties for violation of this act to which the  
26 employer may be subject.