

SB 191 – AS INTRODUCED

2011 SESSION

11-1077

01/04

SENATE BILL **191**

AN ACT relative to the registration of independent contractors for the purposes of workers' compensation.

SPONSORS: Sen. De Blois, Dist 18

COMMITTEE: Commerce

ANALYSIS

This bill requires an independent contractor to register with the secretary of state as a sole proprietor for purposes of workers' compensation. Under this bill, the secretary of state shall issue a certificate acknowledging that such person is an independent contractor for purposes of workers' compensation. The independent contractor shall present the certificate to the employer which shall satisfy any audit requirement for purposes of RSA 281-A.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to the registration of independent contractors for the purposes of workers' compensation.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Workers' Compensation; Definitions. Amend RSA 281-A:2, V-a to read as follows:

2 V-a. "Domestic," "domestic employee," or "domestic worker" means a person performing
3 domestic services in a private residence of the employer, where the employer is an individual, family,
4 local college club, or local chapter of a college fraternity or sorority and not an agency or other entity
5 engaged in the business of providing domestic workers to the public and the person is not [defined
6 as] an independent contractor [~~under RSA 281-A:2, VI(b)~~] **registered under RSA 5:52.**

7 2 Workers' Compensation; Definitions; Employee With Respect to Private Employment. Amend
8 RSA 281-A:2, VI to read as follows:

9 VI.(a) "Employee," with respect to private employment, means any person in the service of
10 an employer subject to the provisions of this chapter under any express or implied, oral or written
11 contract of hire except a railroad employee engaged in interstate commerce whose rights are
12 governed by the Federal Employers' Liability Act. If they elect to be personally covered by this
13 chapter, "employee" includes persons who regularly operate businesses or practice their trades,
14 professions, or occupations, whether individually, or in partnership, or association with other
15 persons, whether or not they hire others as employees.

16 (b)(1) Subject to the preceding subparagraph, any person, other than a direct seller or
17 qualified real estate broker or agent or real estate appraiser, or person providing services as part of a
18 residential placement for individuals with developmental, acquired, or emotional disabilities, who
19 performs services for pay for an employer, is presumed to be an employee. [~~This presumption may be
20 rebutted by proof that an individual meets all of the following criteria:~~

21 ~~(A) The person possesses or has applied for a federal employer identification
22 number or social security number, or in the alternative, has agreed in writing to carry out the
23 responsibilities imposed on employers under this chapter.~~

24 ~~(B) The person has control and discretion over the means and manner of
25 performance of the work, in that the result of the work, rather than the means or manner by which
26 the work is performed, is the primary element bargained for by the employer.~~

27 ~~(C) The person has control over the time when the work is performed, and the
28 time of performance is not dictated by the employer. However, this shall not prohibit the employer
29 from reaching an agreement with the person as to completion schedule, range of work hours, and
30 maximum number of work hours to be provided by the person, and in the case of entertainment, the~~

1 ~~time such entertainment is to be presented.~~

2 ~~(D) The person hires and pays the person's assistants, if any, and to the extent~~
3 ~~such assistants are employees, supervises the details of the assistants' work.~~

4 ~~(E) The person holds himself or herself out to be in business for himself or~~
5 ~~herself.~~

6 ~~(F) The person has continuing or recurring business liabilities or obligations.~~

7 ~~(G) The success or failure of the person's business depends on the relationship of~~
8 ~~business receipts to expenditures.~~

9 ~~(H) The person receives compensation for work or services performed and~~
10 ~~remuneration is not determined unilaterally by the hiring party.~~

11 ~~(I) The person is responsible in the first instance for the main expenses related~~
12 ~~to the service or work performed. However, this shall not prohibit the employer or person offering~~
13 ~~work from providing the supplies or materials necessary to perform the work.~~

14 ~~(J) The person is responsible for satisfactory completion of work and may be held~~
15 ~~contractually responsible for failure to complete the work.~~

16 ~~(K) The person supplies the principal tools and instrumentalities used in the~~
17 ~~work, except that the employer may furnish tools or instrumentalities that are unique to the~~
18 ~~employer's special requirements or are located on the employer's premises.~~

19 ~~(L) The person is not required to work exclusively for the employer]~~ ***The person***
20 ***may rebut this presumption by presenting to the employer a certificate of registration***
21 ***obtained pursuant to RSA 5:52.***

22 (2) For the purposes of this subparagraph, "qualified real estate broker or agent"
23 means a person who is a licensed real estate broker or licensed real estate salesman duly licensed
24 pursuant to RSA 331-A and whose remuneration as such is directly related to sales or other output
25 including performance of services, rather than to the number of hours worked.

26 (3) For the purposes of this subparagraph, "direct seller" means a person:

27 (A) Engaged in selling or soliciting the sale of consumer products, services or
28 intangibles to any buyer on a buy-sell basis, deposit-commission basis or any similar basis for resale
29 by the buyer or any other person in the home or other than in a permanent retail establishment; or
30 engaged in selling or soliciting the sale of consumer products, services, or intangibles in the home or
31 otherwise than in a permanent retail establishment; and

32 (B) Who receives substantially all remuneration as such in a direct relationship
33 to sales or other output including the performance of services, rather than the number of hours
34 worked and whose services are performed pursuant to a written contract with the person for whom
35 the services are performed, which provides that the individual will not be treated as an employee for
36 federal tax purposes. For purposes of this subparagraph a mortgage originator as defined by RSA
37 397-A:1, XVII who meets the conditions of this subparagraph shall be deemed a direct seller.

1 (4) For the purposes of this subparagraph, “real estate appraiser” means a person
2 who is a real estate appraiser and whose remuneration as such is by way of a fee and is directly
3 related to services or other work product rather than to the number of hours worked.

4 (c) A written agreement signed by the employer and the person providing services, on or
5 about the date such person was engaged, which describes the services to be performed and [affirms
6 that such services are to be performed in accordance with each of the criteria in subparagraphs
7 (b)(1)(A)–(L) is prima facie evidence that the criteria have been met. Nothing in this subparagraph
8 shall require such an agreement to establish that the criteria have been met.

9 (d) ~~If the commissioner finds that an employer has misrepresented the relationship
10 between the employer and the person providing services, the commissioner may assess a civil
11 penalty of up to \$2, 500; in addition, such employer may be assessed a civil penalty of \$100 per
12 employee for each day of noncompliance. The fines may be assessed from the first day of the
13 infraction but not to exceed one year. Notwithstanding any provision of law to the contrary, any
14 person with control or responsibility over decisions to disburse funds and salaries and who
15 knowingly violates the provisions of this subparagraph shall be held personally liable for payments
16 of fines. All funds collected under this subparagraph shall be continually appropriated and deposited
17 into a nonlapsing workers’ compensation fraud fund dedicated to the investigation and compliance
18 activities required by this section and related sections pertaining to labor and insurance law. The
19 commissioner of labor shall appoint as many individuals as necessary to carry out the department’s
20 responsibilities under this section]~~ ***a certificate of registration under RSA 5:52 is prima facie
21 evidence that the person providing services is an independent contractor for purposes of
22 this chapter.***

23 3 New Subdivision; Registration for Independent Contractors. Amend RSA 5 by inserting after
24 section 51 the following new subdivision:

25 Registration for Independent Contractors

26 5:52 Registration for Independent Contractors Required for Workers’ Compensation.

27 I. Every person doing business in this state as an independent contractor for the purposes of
28 workers’ compensation under RSA 281-A shall register as a sole proprietor in the manner provided
29 in paragraph II.

30 II. Every person engaged as an independent contractor doing business in this state shall file
31 in the office of the secretary of state a form signed by such person stating the name under which the
32 business is to be conducted and the principal place of said business. The secretary of state may
33 charge a fee for filing of registration and issuance of a certificate of registration.

34 III. The secretary of state shall adopt rules, pursuant to RSA 541-A, relative to any fee to be
35 charged and forms required for the purposes of this subdivision.

36 4 Effective Date. This act shall take effect 60 days after its passage.