

VIRGINIA ACTS OF ASSEMBLY -- 2005 SESSION

CHAPTER 892

An Act to amend and reenact § 60.2-212 of the Code of Virginia, relating to unemployment compensation; independent contractors.

[S 1047]

Approved March 28, 2005

Be it enacted by the General Assembly of Virginia:

1. That § 60.2-212 of the Code of Virginia is amended and reenacted as follows:

§ 60.2-212. Employment.

A. "Employment" means:

1. Any service including service in interstate commerce, performed for remuneration or under any contract of hire, written or oral, express or implied; and

2. Any service, of whatever nature, performed by an individual for any employing unit, for remuneration or under any contract of hire, written or oral, and irrespective of citizenship or residence of either,

a. Within the United States, or

b. On or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the individual is employed on the vessel or aircraft it touches at a port in the United States, if such individual performs such services on or in connection with such vessel or aircraft when outside the United States, provided that the operating office, from which the operations of the vessel or aircraft are ordinarily and regularly supervised, managed, directed or controlled, is within the Commonwealth.

B. Notwithstanding subdivision 2 b of subsection A of this section, "employment" means all service performed by an officer or member of the crew of an American vessel on or in connection with such vessel, if the operating office from which the operations of such vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within ~~this~~ *the* Commonwealth.

C. Services performed by an individual for remuneration shall be deemed to be employment subject to this title unless:

~~1. Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and~~

~~2. Such service is either outside the usual course of the business for which such service is performed, or such service is performed outside of all the places of business of the enterprise for which such service is performed; or such individual, in the performance of such service, is engaged in an independently established trade, occupation, profession or business the Commission determines that such individual is not an employee for purposes of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, based upon an application of the 20 factors set forth in Internal Revenue Service Revenue Ruling 87-41, issued pursuant to 26 C.F.R. 31.3306(i)-1 and 26 C.F.R. 31.3121(d)-1.~~

D. Notwithstanding the provisions of subsection C, an individual who performs services as a real estate salesperson, under direction of a real estate broker under Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1, or as a real estate appraiser under Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1 pursuant to an executed independent contractor agreement and for remuneration solely by way of commission or fee, shall not be an employee for purposes of this chapter.