

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 706

(Chair, Judicial Proceedings Committee)(By Request -
Departmental - Human Services)

Judicial Proceedings

Judiciary

**Child Support - Reporting of Employment Information - Independent
Contractors**

This departmental bill requires an independent contractor’s employer to report specified information to the Child Support Administration (CSA) of the Department of Human Services (DHS). The bill also adds the definition of an “independent contractor” and “employee,” and alters the definitions of “earnings” and “employer” in statutory provisions related to child support enforcement. DHS may adopt rules and regulations to implement the employer reporting requirements under the bill.

Fiscal Summary

State Effect: Any potential civil penalty revenues are assumed to be minimal. The bill is otherwise not anticipated to materially affect State operations or finances.

Local Effect: The bill is not anticipated to materially affect local government operations or finances.

Small Business Effect: DHS has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary/Current Law:

Definitions

The bill defines an “independent contractor” as a person who (1) provides services to an employer in the course of the employer’s trade or business and (2) receives earnings from an employer that the employer reports or expects to report on Internal Revenue Service (IRS) Form 1099.

Under current law, “earnings” includes any form of periodic payment to an individual, including an annuity, a pension, Social Security payments, workers’ compensation payments, and unemployment insurance benefits, as well as any commissions or fees paid in connection with the obligor’s employment. The bill expands the definition of “earnings” to include any payment received by an independent contractor from an employer for services provided in the course of the employer’s trade or business and that the employer reports, or expects to report, on IRS Form 1099.

Under current law, an employer is any person who is paying earnings to an obligor and includes a governmental entity. The bill specifies that (1) an “employer” includes a person who is paying earnings to an independent contractor for services provided during the course of the employer’s trade or business that the employer reports or expects to report on IRS Form 1099 and (2) an “employee” is an individual who is employed by an employer for a wage or other compensation in the trade or business of the employer.

Independent Contractor’s Employer Reporting Requirements

Section 8-626.1 of the Labor and Employment Article contains provisions requiring an employing unit, as specified, to report specific information about a new employee to the Secretary of Labor. An employing unit that fails to report as required is subject to sanctions and may appeal any assessment to the Secretary, who may refer the matter to the Office of Administrative Hearings (OAH). The bill applies similar provisions of §8-626.1 of the Labor and Employment Article to an independent contractor’s employer and CSA.

The bill requires that, except as specified, within 20 days after an independent contractor begins employment, the independent contractor’s employer must submit to CSA:

- the Social Security number of the independent contractor;
- the name of the independent contractor;
- the address of the independent contractor;

- the date of employment;
- the employer's name and address;
- the independent contractor's rate of compensation or earnings;
- a statement indicating whether the independent contractor has health insurance provided by the employer; and
- the federal employer identification number of the employer.

The employer must report the required information by mail, magnetically or electronically, or by other means as determined by CSA. If an employer chooses to transmit data magnetically or electronically at a rate of twice per month, the reports must be submitted no less than 12 days nor more than 16 days apart.

An employer that fails to report as required must be (1) given a written warning for the first violation and (2) subject to a civil penalty of \$20 for each month in which a subsequent violation occurs, or \$500 if the failure is the result of a conspiracy between the employer and the independent contractor to not supply the required report or to supply a false or incomplete report, unless CSA waives the penalty for cause. An assessment is final unless, within 15 days after mailing the assessment, the employer applies to CSA for a hearing, which may be forwarded to OAH for adjudication. An employer that in good faith reports information to CSA is not liable for the disclosure under State law.

Child Support Collections

Under current law, pursuant to statutory provisions, CSA within DHS oversees child support services provided by the local departments of social services and other offices, including the establishment of paternity and/or child support orders and the collection and distribution of child support payments. Statutory provisions specify a process by which child support payments may be deducted from the earnings of a child support obligor. The bill includes payments received by an independent contractor from an employer as earnings that may be withheld from an obligor to pay child support.

Background: Employers report information regarding individuals who are newly hired to the State Directory of New Hires (SDNH). SDNH forwards information to the National Directory of New Hires, where new hire reports are matched against state and national child support records to locate parents who owe child support. Adding provisions related to independent contractors is intended to allow for increased child support collections for families.

According to the U.S. Department of Health and Human Services (Administration for Children and Families), numerous states require the reporting of all independent

contractors, including California, Colorado, Florida, Iowa, Maine, Massachusetts, Nebraska, New Jersey, New York, Texas, Utah, and Virginia.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Human Services; Maryland Department of Labor; Office of Administrative Hearings; U.S. Department of Health and Human Services; Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2023
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Child Support-Independent Contractors

BILL NUMBER: SB0706

PREPARED BY: Department of Human Services

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS