



## Memorandum

To: Honorable Members of the House Labor Committee

From: Chris Fisher, President  
ABC of Michigan

Date: May 5, 2010 

RE: Opposition to House Bill 5962  
Independent Contractor Misclassification Legislation

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Like all employer organizations ABC of Michigan takes the issue of independent contractor misclassification seriously, in particular those instances where an unscrupulous employer may seek to gain an unfair advantage against a competitor. However, the legislation under consideration is highly flawed and lacks the input of key employer groups and industry stakeholders. As such, we are in strong opposition to this poorly drafted legislation. Specific concerns include:

- The penalties are nothing short of excessive and unjustifiably punitive for not only intentional offenses, but most alarmingly, for unintentional offenses as well.
  - For example, unintentional fines in Michigan would be higher than intentional fines in other states. In fact a fine for a mistaken or *unknowing* violation in Michigan would be DOUBLE the fine in nearby Illinois for a *willful* violation! (*Note: Adopted in 2008, Illinois' independent contractor misclassification law is widely regarded as the strongest such law in the United States.*)

Both the exorbitant fines and jail time need to be consistent with levels seen elsewhere.

- It inappropriately allows a single individual, in this case an agency director, to bring work on a construction project to an immediate halt resulting in project owners having their project disrupted for something that is not the fault of an owner. The rights of an owner who is paying for construction services needs to be taken into account.
- A prime contractor can be subjected to disruption of their project if there is a subcontractor in violation of the act. Not allowing work to continue can unfairly impose economic hardship on law abiding employers and their employees. The work-stop provision needs to be entirely removed.

- The bill states that a court may award attorney fees to someone who has not been properly classified, yet that same “loser pays” protection is not also afforded to employers who prevail against a frivolous misclassification claim. Adequate and fair loser pays protections for everyone are essential.
- Frivolous misclassification claims are another valid concern. This bill opens up the complaint process to third party organizations, such as labor unions, who can file claims with little or no merit. This results in business owners who are perhaps the target of a labor organization being subjected to red tape, costly legal fees and other hassles to prove their compliance. Third party complaints are a non-starter.
- In addition to the establishment of fines for violating the act itself, fines referred to as “administrative penalties” may be further assessed at a rate up to \$2500 to \$5000 per offense. Unlike the other penalties prescribed in this bill, there is no differential between knowing and unknowing violations. As it does elsewhere, state law and regulations should recognize the difference between a mistaken violation that is remedied by an honest employer and a willful violation that goes unaddressed by an unscrupulous employer.
- If an employer dismisses an employee within three months of that employee filing a misclassification complaint, the act creates a “rebuttable presumption” that the employer automatically did so in retaliation for the complaint having been filed. This rebuttable presumption means that the employer is essentially considered guilty until proven innocent of the charge of unfair retaliation, even if the worker was justly dismissed for a different valid reason. The inclusion of such language is entirely unreasonable.

Given these serious flaws we are in strong opposition to HB 5962 and encourage you not to report this legislation out of committee. Thank you for your time and consideration.