

Good morning. My name is Sam Denisco. I am Director of Government Affairs for the PA Chamber of Business and Industry. The Pennsylvania Chamber of Business and Industry is the state's largest broad-based business advocacy association, serving more than 24,000 members and customers. PA Chamber membership comprises nearly 50 percent of the private workforce. PA Chamber membership ranges from Fortune 100 companies to sole proprietors, and crosses all industry sectors.

Thank you for giving the Chamber the opportunity to testify today on the issue classification of individuals in the commercial and residential construction industry. The PA Chamber supports the premise of maintaining a uniform playing field for all businesses. The PA Chamber also supports the Department in creating a fair mechanism to properly classify individuals who make up Pennsylvania's diverse and dynamic workforce. The business community wants to ensure that all employers are paying the appropriate UC and WC taxes so that a burden is not shifted onto other employers and the state.

Independent contractors serve a vital function in our workforce as they often answer the pressing need for special skills and experience needed on the job site. The flexibility an independent contractor provides to a small, fledging operation as well as larger enterprises creates numerous advantages for all parties involved. Lawful utilization of independent contractors provides a good source of labor for projects where the contractor

does not need to exercise the type of control that would necessitate the hiring of an employee.

The Chamber understands the desire to seek statutory provisions that may allow for uniform enforcement of worker classification. However, HB 400, in its current form, is overly broad and may encompass individuals that would otherwise be properly classified as an independent contractor. That being said, I encourage the committee to review the Internal Revenue Service factors set out in IRS Revenue Ruling 87-41. This 20 part test sets forth guidelines that are used to determine the classification of a worker. Since every working relationship is unique, these factors provide ample guidance to properly classify workers while not setting forth rigid statutory principles that are overly inclusive.

The business community would also like the committee to consider including “safe harbor” language in the bill. Such ideas that have been mentioned in prior negotiations are an affidavit process, an independent contractor registry and reliance on professional advice or an employment contract. Although, the Chamber does not have a preference as to what form a “safe harbor” provision must take, such a provision is necessary to protect employers who act in good faith when classifying their workforce.

That being said, I respectfully ask the committee to review Act 132 of 2008 also known as the Home Improvement Consumer Protection Act. This law requires that all contractors who perform at least \$5,000 worth of home improvements per year register with the Attorney General's Office. Anyone who owns or operates a home improvement business or who offers, performs, or agrees to perform home improvements in Pennsylvania must register with the Office of Attorney General pursuant to this Act. All contractors, including self-employed contractors and sole proprietorships, subcontractors and independent contractors must register. Since the Attorney General will have a listing of independent contractors, it may be prudent for the Department to review the registrations in order to seek compliance with its laws that are covered by HB 400. Additionally, the Department can work with the Attorney General to catch the intentional and repeated violators of misclassification.

The business community feels that HB 400 is overly punitive in nature by providing for criminal penalties, debarment, administrative penalties, stop work orders and civil actions. While the business community acknowledges that those employers who knowingly misclassify individuals with the intent of evading the law must be brought into compliance, the means by which HB 400 seeks to accomplish this simply is beyond the pale. A balance needs to be struck that properly punishes intentional and repeated violators of the act without such penalties merely being a slap on the wrist.

One inconsistency in the bill is that it creates a violation of the act for intentionally evading the requirements of the enumerated laws in the bill and at the same time creates a criminal penalty for negligently failing to properly classify an individual. Intentionally is acting in direct and clear awareness of one's actions while negligently acting is a failure to exercise a degree of care as someone of ordinary prudence would have exercised. Therefore, the question arises as to who is intended to be captured by the provisions of the bill – those who act with knowledge or those who act unintentionally or both.

The stop work order provisions are overreaching in that a foreseeable outcome would be the shutdown of a large construction project and its various crews for one person who violates the act. The entire project should not suffer delays for someone who acted in bad faith. Furthermore, expressly allowing an individual to file a civil action is not needed in the bill as that right is reserved under existing law. Additionally, creating another private right of action by permitting a labor organization to file a civil action on behalf an aggrieved person adds to the punitive nature of this bill.

Thank you for the opportunity to present remarks on this subject. The Chamber looks forward to having a continuous dialogue on the bill with the goal of crafting a bill that is unambiguous and less punitive.

