



Maryland Chamber of Commerce

Legislative Position

**HB 819
OPPOSE
Economic
Matters
Committee
03/03/09**

HB 819

Workplace Fraud Act of 2009

Brief Summary of Bill:

House Bill 819 prohibits employers in the construction, landscaping and package delivery service businesses from misclassifying employees as independent contractors. This bill would increase fines and penalties for employers who intentionally misclassify employees and independent contractors. It awards damages and wages for violations of the Act. It requires the use of the ABC DLLR test to determine misclassification, which presumes an employer/employee relationship unless the employer can prove otherwise.

Maryland Chamber's Position:

The Maryland Chamber of Commerce opposes HB 819 as currently drafted. The Maryland Chamber condemns companies that knowingly misclassify individuals as independent contractors when they clearly work as "employees" of such companies. When companies do this, they do not simply harm the individuals who are misclassified, but their law abiding competitors who pay for the tax contributions and benefit costs associated with employing workers properly. Dealing with the law breakers does not, however, require new laws that define an independent contractor so narrowly as to outlaw legitimately independent relationships.

While this legislation is much improved over last year's bill, HB 1590, the Maryland Chamber continues to have concerns with certain components of this bill as currently drafted. The concerns include, but are not limited to:

- The presumption that anyone who works for an employer is an employee, with testing requirements for independent contractor status being more stringent than other employment laws such as worker's compensation, discrimination, tax, and labor relations.
- The provision of a right to private action (the ability to sue) with a damages provision that would create a tremendous incentive for plaintiffs to bring lawsuits directly rather than proceeding through DLLR, which would have a significant negative impact on small businesses in particular.
- There appears to be no administrative remedy for dispute resolution prior to court action.
- The timeframes for providing employee information to the Labor and Licensing Commissioner are too short and the document production requirements are too burdensome on business.

Many businesses start out as an individual providing his or her services to willing buyers in the marketplace and then, over time, expanding by hiring his or her own employees as a network of relationships is built. This model of entrepreneurship is what causes an economy to grow and what permits individuals with nothing but their talents, tools and labor to become employers in the future and business owners. HB 819 rejects this model in favor of an employer/employee paradigm. The evil that it seeks to address – knowing misclassification of workers who clearly meet the existing definition of “employee” – does not require this broad new law.

It can be argued that new legislation to address this issue is unnecessary, due to provisions already in statute that gives DLLR regulatory authority to appropriately address intentional misclassification of employees.

The Maryland Chamber has expressed its concerns regarding this legislation with the DLLR staff, as well as Secretaries Perez and McDonough. Attached is a copy of the letter of concerns submitted to Secretaries Perez and McDonough, which details the concerns of the business community.

We understand that amendments will be offered to address some of the business concerns, as well as a possible work group on the issue. The Maryland Chamber will review the amendments offered, and welcomes the opportunity to work with the sponsor and proponents of this legislation to address the concerns of the business community.

For these reasons, the Maryland Chamber respectfully requests that the Committee give House Bill 819 an unfavorable report.

If questions please contact Allyson Black, ablack@mdchamber.org