

MEMORANDUM

TO: All Members of the House of Representatives

FROM: Representative John P. Sabatina, Jr.

DATE: April 4, 2012

SUBJECT: Co-sponsorship of Legislation – Prohibiting Employee Misclassification in the Commercial Carrier Industry

In the near future, I will be introducing legislation to reduce the practice of intentionally misclassifying employees as independent contractors in the commercial carrier industry. My legislation will be similar to legislation enacted last session that was limited to workers in the construction industry – the Construction Workplace Misclassification Act (Act 72 of 2010).

As you may know, intentional misclassification of workers occurs when unscrupulous employers attempt to reduce overhead costs by designating their workers as independent contractors instead of as employees or by hiring them “off the books.” Under these schemes, employers avoid paying income taxes, minimum or overtime wages, workers’ compensation premiums and contributions to the unemployment compensation system. They also avoid coverage by the federal Americans with Disabilities Act, the Occupational Safety and Health Act, and the Fair Labor Standards Act. Among its many consequences, this practice provides dishonest employers with an unfair advantage over employers who play by the rules and pay their share taxes. Moreover, misclassification causes our state to lose out on significant revenues, and it denies workers important employment rights and benefits that they may truly need to rely on. Misclassification is already illegal, but we cannot effectively curb the practices based on existing laws.

As proof that misclassification is occurring, the Pennsylvania Compensation Rating Bureau (PCRB) estimated in 2008 that estimated that 9% of all employees in our state are misclassified. At the time of the PCRB study, it was estimated that the cost of misclassification to the Unemployment Compensation Trust Fund alone was 7.7% of the total tax obligation, or approximately \$200 million in 2008. A 2009 report commissioned by the Government Accountability Office (GAO) further demonstrates the urgency of this problem – it that found that misclassification cost federal revenues \$2.72 billion in year 2006 alone. Misclassification is often identified in the common carrier industry, and in recent years, 40 states have made investigatory or legislative efforts in an attempt to protect these workers.

My legislation would follow the requirements and penalties set forth in Act 72 of 2010. Specifically, it applies fair criteria to determine whether a worker may be considered an independent contractor; it provides for enforcement by the Department of Labor & Industry and creates criminal and administrative penalties for violations; and it protects workers who make a complaint of misclassification from retaliation by employers.

I hope you will join me in sponsoring this important legislation. If you would like to be added, please contact my Legislative Assistant Bryden McGarry at (717) 772-4032 or bmcgarry@pahouse.net.