
**Keystone Chapter**
**Central Pennsylvania Chapter**
**Western Pennsylvania Chapter**

## Testimony: HOUSE BILL 2400

Thank you Mr. Chairman, members of the House Labor Relations Committee and Representative Lentz for hosting this hearing and for allowing us the opportunity to testify before you today. My name is David Dvorchak and I am Vice President of Murray Risk Management & Insurance, Inc. in Lancaster, PA. I am also the current Chairman of the Board of Associated Builders and Contractors, Inc., the Keystone Chapter and I am here today speaking on behalf of our Central Pennsylvania Chapter and our Western Pennsylvania Chapter. The Southeast Pennsylvania Chapter also concurs in our testimony.

The Keystone Chapter is a construction trade association representing the commercial, industrial, and institutional markets with over 800 member companies. Together with the Central and Western Chapters, we have over 1,000 member companies covering most of the Commonwealth. In total, over 1700 companies are members of ABC throughout the state. We are the only construction association that represents equally the entire construction team. Despite what you may have heard, we are NOT against or anti any group. However, it is our mission to be the leading authority in the construction industry by promoting, protecting and defending free enterprise in construction; promoting, protecting

and defending principled competition for our members; providing education and training opportunities and expanding business development opportunities.

**We oppose House Bill 2400.**

An issue of employee misclassification exists. We acknowledge that something should be done to curtail intentional and illegal practices surrounding the improper classification of employees for the purposes of workers' compensation, unemployment compensation, and taxation. We in no way condone intentional employee misclassification by those seeking to circumvent the law to the detriment of workers and the revenue department. Abuses of this nature create an unfair advantage for those dishonest businesses intentionally choosing to skirt the law for the bottom line. Workers and honest employers must be protected. However, House Bill 2400, in its current form, is not the answer.

Allow me to explain.

The legislative intent of House bill 2400 states that the General Assembly wishes to target employers who improperly classify employees because it puts businesses who comply with applicable law at a competitive disadvantage with those who do not. Even Representative Lentz' media advisory announcing this hearing stated that House bill 2400 "would crack down on employers that intentionally misclassify workers to avoid paying state and federal taxes and workers' compensation premiums." We believe that a distinction must be made between those intentionally and unintentionally violating the law.

For example, unintentional violations of the act result in criminal penalties ranging from a fine of $2,500 and 180 days imprisonment for a first offense to fines of $5,000 and not more than one year in prison for subsequent unintentional violations. It is inherently unfair to punish unintentional actions in this manner.

Additionally, the Act allows for civil actions and remedies. The civil actions and remedies make no distinction between intentional and unintentional violations. If the purpose of the Act is to stop unscrupulous and dishonest employers from gaining unfair advantages over those making every good faith effort to comply with the law, a distinction should be made with the penalties imposed for intentional and unintentional violations. Why, for example, should a company with an honest and solid track record face debarment for an unintentional violation? An employer who has consistently followed the law should not face the loss reputation, debarment and jail time for unintentional violations.

Following this same line of thought, House Bill 2400 fails to provide any safe harbors for honest companies similar to those found in Section 530 of the Federal Revenue Act of 1978. Section 530 of the Revenue Act provides safe harbor protection for employers that have a reasonable basis for classifying a worker as an independent contractor. Under Section 530, a reasonable basis for treating a worker as an independent contractor exists if the taxpayer or entity relied on past IRS audits, published rulings, established past practices, or any other reasonable basis.

House Bill 2400 should not serve as a means for disrupting a legitimate business. A company, for whatever reason or purpose, should not be made to answer and defend multiple and frivolous claims. Clear remedies exist within House Bill 2400 to ensure that complaints can be made against an employer by an individual or by a "representative, including a labor organization". The bill allows for an award of attorney's fees, court costs, and damages. Similar protection should be afforded to an employer should a claim filed against that employer is found to be without merit. A legitimate employer should have the same protections against any person or group representing that person who makes an unsubstantiated claim.

House Bill 2400 is very clear that retaliation for action is prohibited. No employee or group who acts in good faith, even upon failure to prevail on the merits, suffers any consequence for using this act as ammunition against an employer.

This is not the type of one-sidedness that creates a level playing field. As I stated earlier, we do not condone dishonest employers' actions. They hurt our members as much as they hurt anyone. However, we must protect the honest employers from repeated claims and attacks that can potentially put someone out of work for acts either non-existent or unintentional.

Stop-work orders are another remedy afforded for misclassification. Once again, no distinction is made between intentional and unintentional violations. Furthermore, a stop work order can remain in effect "until the secretary issues an order releasing the stop-work order or upon finding that the employer has properly classified the individual as an employee." The discretion granted to the secretary is too broad and should contain a provision for making decisions in a specified time period. If an employer is found to have committed an unintentional and minor violation, a stop-work order not handled in an expedited manner will result in a penalty far exceeding any violation.

There are other parts of House Bill 2400 that are troubling. For example, the definition outlined in section 4 lacks the clarity needed by employers to follow the law. It appears that, based on the definition listed, that one contractor cold not sub work to another in the same trade. Moreover, the 3-part test in Section 4 (a) is vague. It includes undefined terms and phrases such as "free from direction and control", service that is "outside the usual course of business" and "independently established trade, occupation, profession or business", without defining what that means.

We would like to propose several solutions and alternatives. First, we can increase outreach, education and enforcement of current laws. A study preformed in July 2006 by the U.S. Government

Accountability Office (GAO) on the misclassification of workers showed that for every $1 spent on increased enforcement by the IRS resulted in a $4 increase in previously unpaid tax revenue. Simple yet effective tools can be put in place to educate employers and employees alike. Job site informational posters and a state run hotline to report wrongful misclassification would be a start.

Next, any state laws established need to be consistent with the Federal laws. There is no need to subject honest employers to multiple "tests" to determine whether an employee is an independent contractor. Clear and consistent standards are vital to help law-abiding employers properly classify their employees.

These are not the only solutions. Rather they are a starting point for good faith discussions. Companies not following the law hurt all of us. However, House Bill 2400 should not serve as a weapon to harass, intimidate, or provoke. Clear and consistent definitions and fair remedies will go a long way in proving that this problem will be dealt with in a reasonable manner.

In summary, while a need to properly classify employees may exist, House Bill 2400, in its current form, is not the solution. House Bill 2400 contains too many inconsistencies, too many inequitable and unclear definitions, too many unfair and over burdensome requirements for honest employers and too many opportunities for abuses and harsh penalties that will potentially rob law-abiding employers of work, reputation and possibly freedoms.

Thank you for allowing us the opportunity to speak today. We look forward to continuing our participation in this process.