



July 8, 2009

Representative Susan Westrom  
Chairman, Workers' Compensation Insurance Committee  
National Conference of Insurance Legislators  
601 Pennsylvania Ave. N.W.  
Suite 900, South Building  
Washington, D.C. 20004

Dear Chairman Westrom:

On behalf of Associated Builders and Contractors (ABC) and its nearly 25,000 general contractors, subcontractors, material suppliers and construction related firms nationwide, I am writing to express our opposition to the current working draft of the "*Employee Misclassification Workers' Compensation Coverage Model Act*," as it opens the door to the elimination of independent contractors in the construction industry.

The independent contractor relationship is important in the construction industry and can be advantageous for all parties involved. The arrangement provides independent contractors the freedom to choose their own schedule, affords business owners the flexibility to adjust staff demands with seasonal construction volume, and provides the consumer the opportunity to benefit from a reasonably priced, quality product.

Independent contractors are often the perfect answer to a pressing demand for the unique skills often required for specialized, short-term projects. For many businesses in the construction industry, it simply does not make sense to maintain specialized trade craftsmen as employees. These specialists may be needed several times throughout the year, but not frequently enough for full-time or even part-time employment.

ABC generally supports stiffer penalties for the wrongful classification of employees as independent contractors. But it is vital that state efforts to combat wrongful classification of employees as independent contractors do not limit opportunities for lawful independent contractors to thrive in the construction industry, and do not impose employment-based insurance and tax costs on businesses who contract with workers on a non-employee basis, i.e., as bona fide independent contractors.

NCOIL's proposed model act has the admirable objective of ensuring that everyone on a construction jobsite is covered by workers compensation insurance; unfortunately, the proposed measure will effectively eliminate independent contractor status for the purposes of determining workers' compensation coverage liability. By specifically excluding construction industry independent contractors from the multi-part definition of "independent contractors" applied to all other industries in Section 2.F.2, this proposed model act unfairly discriminates against construction industry contractors and imposes potentially significant new insurance burdens on prime contractors, who would apparently be expected to provide coverage to everyone on a construction site, regardless of the actual employer.<sup>1</sup> The model draft would make any construction contractor liable for workers compensation payments on behalf of a separate business entity – the independent contractor – over whom the prime contractor exercises very little if any control. This liability would be imposed even though the independent contractor otherwise meets all existing tests for a separate business entity. This proposed model legislation represents a significant and unnecessary departure from

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<sup>1</sup> Equally objectionable are the provisions of Section 2.D. which unfairly single out and exclude the construction industry from all aspects of the "employee" definition which separate employees from independent contractors.

existing in state capitals throughout the nation, which recognize the independent contractor as a separate business entity in the construction industry for workers' compensation liability purposes.

ABC urges the committee to consider increased outreach and enforcement efforts to combat the wrongful classification of employees. A July 2006 U.S. Government Accountability Office study of the misclassification of workers as independent contractors stated that every \$1 increase in enforcement by the IRS results in a \$4 increase in previously unpaid tax revenue. These findings can be applied at the state-level. Simple measures like requiring informational posters on job sites and creating a hotline to report wrongful classification could help curb the activities of those taking advantage of their workforce without increasing complicated and burdensome regulations on business.

Due to the concerns outlined above, ABC urges NCOIL not to adopt the proposed "*Employee Misclassification Workers' Compensation Coverage Model Act*." ABC requests the opportunity to work with your organization, as we have with various state legislative bodies, to address the independent contractor issue in ways that discourage misclassification while avoiding blanket discrimination against construction industry employers.

Sincerely,

A handwritten signature in black ink, appearing to read "Geoffrey G. Burr". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Geoffrey G. Burr  
Vice President, Government Affairs