




CALIFORNIA FARM BUREAU FEDERATION



VOICE OF INDEPENDENT BROKER-DEALERS AND INDEPENDENT FINANCIAL ADVISORS
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May 6, 2011

TO: Members, Senate Committee on Appropriations

FROM: CalChamber 
California Farm Bureau Federation
California Grocers Association
California Manufacturers & Technology Association
California Newspaper Publishers Association
California Retailers Association
California Trucking Association
Financial Services Institute
Messenger Courier Association of the Americas
Personal Insurance Federation of California
Western Electrical Contractors Association
Western Growers Association

**SUBJECT: SB 459 (CORBETT) EMPLOYMENT: INDEPENDENT CONTRACTORS
OPPOSE
SCHEDULED FOR HEARING – MAY 9, 2011**

The California Chamber of Commerce and other organizations listed above respectfully **OPPOSE SB 459**, as it seeks to hold employers responsible for "willful misclassification" of an employee as an independent contractor, without also clarifying or outlining a clear and objective test that employers may utilize to determine if an individual is an employee or independent contractor.

As stated by the California Department of Industrial Relations on their website regarding the determination of independent contractor status:

"There is no set definition of the term "independent contractor" for all purposes, and the issue of whether a worker is an employee or independent contractor depends upon the particular area of law to be applied. For example, in a wage claim where employment status is an issue, DLSE will often use the five-prong economic realities test to decide the issue. However, in a separate matter before a different state agency with the same parties and same facts, and employment status again being an issue, that agency may be required to use a different test, for example, the "control test," which may result in a different determination. **Thus, it is possible that the**

same individual will be considered an employee for purposes of one law and an independent contractor under another. (emphasis added).

Given the lack of a uniform, definitive test issued by all state agencies for employers to utilize in order to determine whether an individual is an independent contractor, we believe it is completely unfair to subject employers to statutory penalties, up to \$25,000 per violation, for the "willful misclassification" of an individual as an independent contractor, which **SB 459** seeks to do. Noticeably, **SB 459** requires an employer at the time of hire to issue a notice prepared by the Employment Development Department ("EDD") regarding the factors the EDD uses to determine whether a person is an employee or independent contractor, yet allows any agency, board, or commission within the Labor and Workforce Development Agency to determine if there has been a "willful misclassification" of an employee for purposes of imposing a statutory penalty. As the Department of Industrial Relations admits, the tests utilized to determine independent contractor status differs amongst state agencies. Accordingly, the factors the EDD utilizes and discloses in the notice may not be the same as the factors the Labor and Workforce Development Agency utilizes when issuing a statutory penalty. This lack of consistency creates a potentially impossible standard of compliance for employers.

As being proposed as a new section in the Labor Code, **SB 459** also subjects employers to additional litigation under the Private Attorney General's Act. This will add another layer of costs onto businesses due to the litigation fees and expenses they will be forced to incur in defending such actions. Moreover, **SB 459** also burdens "any person or employer" with the requirement to maintain records for two years of all independent contractors that have been hired by that person or employer, and imposes a penalty if the person or employer fails to maintain the documentation.

Determining the status of a person as an independent contractor versus an employee is daunting for many businesses because the process is so ambiguous and complex and provides no certainty for decision-making. Instead of imposing new requirements and liabilities regarding independent contractors, the process should look to ways in which to improve the ability of business to make accurate and sound business decisions regarding the classifications of their employees.

For these and other reasons, we respectfully **OPPOSE SB 459**.

cc: The Honorable Ellen Corbett
Aaron Maguire, Office of the Governor
Bob Franzoia, Senate Appropriations Committee
Mike Petersen, Senate Republican Caucus
Labor and Workforce Development Agency
Senate Floor Analysis