



Central Vermont Chamber of Commerce

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Statement Before
Vermont General Assembly
House Committee on Commerce and Economic Development
Presented by
William D. Moore
Central Vermont Chamber of Commerce
March 15, 2017

RE: INDEPENDENT CONTRACTORS H119, H223, H323

Chairman Botzow, Representative O’Sullivan, Honorable Members of the House Committee on Commerce and Economic Development:

My name is William D. Moore. I am the President and CEO of the Central Vermont Chamber of Commerce. The Central Vermont Chamber of Commerce is the largest business organization serving Washington County and a portion of Orange County. Our diverse membership consists of some of the largest businesses in Vermont as well sole proprietorships. Virtually every sector of Vermont's economy is represented in our membership.

Thank you for the opportunity to be before you today to discuss issues concerning independent contractors, specifically H119, H 223 and H323.

The goal that the Committee should set for this hearing is two-fold. First, the Committee should agree upon and establish clear language that defines who or what is an independent contractor in Vermont, language that will be adopted by the General Assembly. This is an issue that has been before the General Assembly before, and will continue to be before the General Assembly until clear, defining language is adopted.

The second goal of the Committee should be to clearly define the type of entity that should be required to carry workers’ compensation insurance and who should be covered by unemployment compensation insurance.

Defining an independent contractor should be relatively simple. There are essentially two types of independent contractors. The first type is an individual doing business in Vermont as a sole proprietor or partner-owner in which there is only one employee, the sole proprietor or partner-owner. The second type is a specialty contractor engaged in business in Vermont with employees that holds itself out for contracting purposes with other businesses.

The sole proprietor or partner-owner independent contractor with one employee should be defined as a company, properly registered (and if necessary licensed) to operate in Vermont (or the state in which it is domiciled) who has a federal tax identification number and is required to file tax returns with both entities. The sole proprietor or partner-owner company with one employee should be one that:

- ✓ Operates a separate and distinct business
- ✓ Holds itself out as in business for itself
- ✓ Offers its services to the general public
- ✓ Is not treated as an employee for tax purposes.

Additional clarification is needed to remove prohibitions on independent contractors performing “like work” as the contracting entity. Interpretation of “like work” requirements have resulted in businesses being fined for hiring truly independent contractors who perform “like work.” Simply because a business is engaged in “like work” should not define its workers as employees of the contracting entity.

Sole proprietors and partner-owner companies with no other employees prefer to be independent contractors because of the freedom that it affords them. They prefer the independence to choose whom to work with and when.

Sole proprietors and partner-owner companies with no other employees should be exempt from workers’ compensation and unemployment compensation insurance. The reason for this is quite simple. As an officer of their company, they do not qualify to benefit from the programs. Sole proprietors and partner-owner companies with no other employees should be able to bring a claim of negligence against a contractor that they are engaged to work for should that contractor be liable for the independent contractor’s injuries.

If all employers are required to have workers’ compensation insurance and unemployment compensation insurance, then coverage should be expanded to cover officers of the company as well.

The second type of independent contractor is a specialty contractor engaged in business in Vermont, with employees, that holds itself out for contracting purposes with other businesses. This is a legitimate business registered in Vermont (or the state in which it is domiciled in), has a federal tax identification number and files a tax return with both the state and federal government.

This type of company normally has multiple employees and is hired on a project-by-project basis to perform work for an entity that may or may not perform “like work.” A general construction contractor should not be fined for not classifying employees of a legitimate independent contractor as its own employees because its employees perform “like work” as that of the contracting entity.

The Central Vermont Chamber of Commerce is a business advocacy organization. We have a registered lobbyist on staff. If we needed additional lobbying services, we would engage a lobbying firm. Under the current law, that firm's lobbyist would have to become an employee of The Chamber because that firm is not engaged in "work that is distinct and separate" from The Chamber's work. This is clearly demonstrating the absurd nature of the current law.

The current Vermont independent contractors law is anti-entrepreneurial and will stymie growth in this vital sector. Consider that the nascent high tech industry in Vermont is comprised of many individuals who truly are independent but who are deemed employees by the Department of Labor because they contract to perform services to high tech companies.

It is time to bring sensibility to the definition of who is and who is not an independent contractor. It is time to revise Vermont's statutes and bring them in line with the realities of the twenty-first century workplace.

Thank you for the opportunity to appear before you today. I will be happy to answer any questions that you might have.