



180 5th St. E. Ste. 260
St. Paul, MN 55101

651-293-1283
NFIB.com/MN
Twitter: @NFIB_MN

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House File 4444 (Greenman)

Dear Chair Nelson and House Labor & Industry Committee Members,

The National Federation of Independent Business (NFIB) represents over 10,000 small businesses across Minnesota. Our mission is to promote and protect the right of our members to own, operate, and grow their businesses.

NFIB Minnesota appreciates the opportunity to outline just a few of our concerns with HF 4444. Our members want a fair and level playing field and support more consistent, tougher enforcement against those who deliberately misclassify workers to avoid paying taxes and other obligations. However, small business owners oppose new restrictions and additional complexity when it comes to working as or with an independent contractor.

Section 7: This section would allow the Minnesota Department of Labor and Industry (DLI) to impose individual liability on a wide range of principals, managers, and other employees for misclassification violations regardless of whether the person participated in or was aware of the violations. This indiscriminate penalty authority is contrary to long-held standards of responsibility and federal court decisions striking down excessive administrative penalties that lack proportionality or proper relationship to the violation.

Further, this section creates what amounts to a sweeping blacklist that may permanently impair the ability to earn a living for people previously employed by a company subject to a misclassification order by DLI. The list of those subject to blacklist is wide ranging and does not necessarily mean they were involved in, aware of, or in any way responsible for a violation.

Further, the definition differs significantly from how other areas of law determine a successor in business. For instance, Sec. 270C.57, which addresses successor liability of businesses for tax purposes, defines successor as:

"a person who directly or indirectly purchases, acquires, is gifted, or succeeds to the business or stock of goods of any person quitting, selling, or otherwise disposing of a business or stock of goods. Successor does not include a personal representative or beneficiary of an estate, a trustee in bankruptcy, a debtor in possession, a receiver, a secured party, a mortgagee, an assignee of rents, or any other lienholder."

This proposed successor standard proposed is both overly broad and easily evaded.

Section 8: While we appreciate efforts to provide greater statutory clarity for independent contractor rules, several new proposed factors for determining a worker’s status unnecessarily limit the ability to act as or work with an independent contractor. In particular, the prohibition on common contracts – cost-plus, time and material, and other non-lump sum contracts – is detrimental to all parties involved in a working relationship. These contracts are consistent with the current and proposed principle that requires independent contractors be able to realize additional profits or suffer losses depending on the circumstances of a job.

Sections 9-10: NFIB appreciates the effort to better coordinate the interpretation of independent contractor regulations and create more consistent enforcement across state agencies. This was identified as a key priority for small business owners in NFIB’s independent contractor survey conducted in September 2023 (the results of which were submitted to the Office of the Legislative Auditor and Attorney General’s Task Force on Worker Classification).

Unfortunately, these sections do not clearly set the expectation that the intergovernmental partnership creates consistent and clear guidance across agencies. We hope the committee will require partnership entities to improve the education and training of relevant agency employees before unleashing the broad new enforcement powers granted in this proposal.

Section 21: This section would allow DLI to impose a stop work order on all work sites of a person subject to an alleged licensing violation regardless of whether the same conditions or personnel exist across the work sites. This section has the potential to grind construction to a halt across Minnesota.

Section 25: This section continues the guilt-by-association found in section 7 of the bill by tying a construction contractor registration to the violations of anyone with any level of ownership interest in the registered contractor’s business, regardless of whether the registered contractor was aware of or had any involvement in the other person’s violations.

We look forward to providing additional feedback on issues of concern.

Sincerely,



John L. Reynolds
Minnesota State Director
National Federation of Independent Business
john.reynolds@nfib.org