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June 20, 2011

To: Members of the California Legislature

Subject: Oppose Senate Bill 459 (CORBETT) Employment: Independent Contractors

The Messenger Courier Association of America (MCAA) respectfully requests that you oppose California Senate 459, which 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.

MCAA is the voice of the same-day under 24 hour delivery industry. Since 1987, MCAA has promoted and advanced the professionalism of the same-day delivery industry through education and advocacy. Couriers carry almost all of the nation's pharmaceuticals, most of the blood supply, a host of financial documents and all manner of commerce to its final destination.

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, I 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. Noticeably, this legislation 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, Senate Bill 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, Senate Bill 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, I respectfully request that you oppose Senate Bill 459.

Sincerely,

A handwritten signature in cursive script, appearing to read "Chris Mackrell".

Chris Mackrell  
MCAA President