

BUSINESS ADVOCATE

New Legislation May Upend Businesses

*Pending House bill could impact
Michigan's independent contractors*



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LETTER from the President

Summer is over and Fall has begun. Like the changing of the seasons, so goes legislation when there is a power shift in the legislature.

With that shift comes a lot of legislation that is aimed at virtually undoing the past 10 years; much of it very harmful for business in Michigan.

In this edition of the Business Advocate, we have done the analysis of legislation that would enact a California-style law changing qualifications and regulations for independent contractors and other entrepreneurs.

This is just one of the many bills being introduced in Lansing that we're tracking and weighing in on. In other words, there is something affecting nearly every business in Michigan.

From an ill-thought-out requirement that Michigan be 100% carbon neutral, to rolling back auto insurance reforms (which will increase rate payers auto insurance rates) to labor requirements, the list goes on and on.

We are actively advocating our position to our Michigan Legislators. Fortunately, we have a good working relationship with our Saginaw County and Great Lakes Bay Region elected officials, and they are responsive.

We will issue action alerts to you via email when critical legislation is pending and ask you to contact them as well.

We're hoping you take a little time and enjoy this season of color, football, and sweater weather!



Veronica L. Horn

Veronica Horn, President/CEO
Saginaw County Chamber of Commerce



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New Legislation May Upend Businesses

Pending House Bill 4390 redefines “independent contractor”

The longstanding and reliable Merriam-Webster dictionary defines an independent contractor as “a person hired to do work who controls how the work is done.” That is in the simplest of terms. Independent contractors, often referred to as “freelancers,” are self-employed and choose when, where and how they work. They are people who embrace the freedom, flexibility and control of their livelihoods. But new pending legislation in the Michigan House of Representatives in House Bill 4390—part of a 16-bill package—is looking to change that definition extensively. The new definition must include:

- **The individual is free from control and direction of the payer in connection with the performance of the work, both under a contract and in fact.**
- **The individual performs work that is outside the usual course of the payer’s business.**
- **The individual is customarily engaged in an independently established trade, occupation or business of the same work performed by the individual for the payer.**

What is HB 4390 trying to solve?

Recently, worker classification initiatives have been a top priority for the IRS, the Department of Labor and state agencies. Michigan HB 4390 is another attempt at the same effort. But, unlike other

introduced legislation with a transparent goal, the legislators have never clarified the purpose of this bill, and no one is quite sure what it is trying to achieve or why.

Veronica Horn, President/CEO of the Saginaw County Chamber of Commerce said, “It’s frustrating to see legislators try to offer a quick fix to perceived problems without properly vetting the legislation. This causes unintended consequences for those people that have to live by these laws.”

The Michigan Chamber of Commerce believes this new bill actually relates to unionization at its core. “You can only be organized if you are an actual employee,” said Wendy Block, Senior Vice President of Business Advocacy for the Chamber. “Legislation forces more people into a more traditional employment model that increases the pool of people who can be unionized.” And more unionization equals more money for the unions for political campaigns and other unionized activities.

How will this law impact independent contractors?

Independent contractors are present in all industries across the board. For example, truck drivers often own their own rigs, and delivery services range from general merchandise and newspapers to groceries and meals. More than 210,000 people work for DoorDash alone in the state of Michigan.

Traveling nurses help alleviate the shortage of healthcare professionals, while medical

specialists can support multiple hospitals. Many creative people are self-employed as hairstylists, artists, designers, writers and editors. DJs, karaoke jockeys and others in the entertainment industry can juggle many clients and performances.

This bill removes life choices for many. People find that contract work fits their lifestyle, and they like working for themselves. A parent of young children might be a freelance graphic designer so they have more time at home with their kids, or an IT professional might choose remote contracting work so they can take care of an elderly parent. And most recently, a great case in point, is the sign language interpreters for the governor’s televised updates during the pandemic. How would those interpreters make a living without having multiple clients? Really, the examples are inexhaustible.

Horn said of HB 4390, “It would force workers into traditional employment arrangements. When that happens, these people may have to find daycare, transportation for their children and lose quality time they have as an independent worker.”

The new legislation would also limit the opportunities for entrepreneurs to start a business, take on a side hustle, or take on multiple jobs to maximize or earn additional income. Mike Pomerantz, Public Policy and Engagement for DoorDash, said that 88% of Dashers already have another form of income, but “in a time with rising inflation and high cost of living, our Dashers know a couple hundred extra dollars a week after a few hours of work can make a huge difference.”

How will this law impact businesses?

If the bill is passed, the impact to businesses both large and small is multifaceted. For example, in the manufacturing sector, companies will often use consultants to help with the occupational health section, especially with the assessment and enforcement of health and safety standards. These consultants service multiple plants, and most manufacturers cannot afford to “employ” a specialist in this field. Manufacturers will also lose contractors in public relations, website programmers and designers, payment solutions, janitorial services and plant security. ▶▶

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That means all these contractors would have to become part-time or full-time employees. The costs for business owners to maintain employees are significantly higher than the costs associated with hiring independent contractors. And with this new bill, misclassification of workers would incur monetary fines that would be ten-fold greater than they are today. In the most drastic scenario, an honest administrative mistake in getting the classification wrong could have a company employee serving prison time.

Above and beyond all these extremes, the legislation also directs the attorney general to establish an enforcement unit, complete with approximately 25 investigators. And whistleblowers could get up to 30% of the penalties collected through such enforcement.

For companies like DoorDash, they would be forced to change their business model. But more importantly, Pomerantz said, is that model would not be able to offer the freedom, flexibility and income options their contractors have now. "Today, Dashers aren't required to commit to shifts or be on the clock, so when they're not delivering an order, their time is theirs. HB 4390 would change that forever."

California-style ABC test is flunking.

HB 4390 strongly mimics similar California legislation that has ongoing problems. Their legislature has already passed 109 exemptions from their law. The 100+ amendments to the California law triggered a ballot proposal that has prompted even more exemptions. They are now spending time and taxpayer dollars to backtrack and "fix" legislation that was supposed to address a perceived problem.

Dave Worthams, Director of Employment Policy for the Michigan Manufacturers Association, said of this bill, "I don't think there is any fixing this bill so that it's salvageable. This is not a fixable bill. Five years later, and California's bill is still not right."

There are already laws in place.

If House Bill 4390 is passed, and there is always a possibility it will be, many industries and contractors will be left in a tailspin. HB 4390 has the strictest standards for defining an independent contractor and provides for significant penalties for those employers who misclassify workers.

The irony is that Michigan already has an independent contractor test in place. The six-factor economic-reality test is used for classification by the following:

- **Permanency of relationship;**
- **Degree of skill;**
- **Worker's investment in tools;**
- **Worker's opportunity for profit/loss;**
- **Degree of control over the work; and**
- **Whether the service rendered is an integral part of the employer's business.**

Instead of writing new laws, expending all the time and money for them to be introduced and administered, would it not be better to concentrate on enforcing the current laws? Instead of steadying the workforce, which is already struggling, this pending legislation will drive people out of the job marketplace. Pomerantz said, "This legislation is a top-down attempt to force everyone in Michigan into one type of employment in a way that eliminates choices that people not only want, but embrace."

Even the U.S. Department of Labor acknowledges that independent contractors play a key role in the economy. ▶▶

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Pomerantz agrees. “Last year, through the direct, indirect and induced impacts of their work, Dashers contributed a whopping \$18.7 billion to the US GDP.”

There is still time.

Saginaw County, like the rest of the state, would be grossly impacted by this broad-brush approach and poorly written legislation. The good news is the package of bills, headed by HB 4390, still has not passed.

The Saginaw County Chamber of Commerce urges businesses, independent contractors and all individuals to contact your state representative, state senator and the governor’s office and urge them to oppose this legislation. “The Saginaw County Chamber of Commerce is proud of our working relationship with legislators on both sides of the aisle. We would like them to know that vetting and transparency are critical to good legislation,” said Horn.

Block also urged the same. “We would encourage outreach to your local representative to make your voice heard to help make lawmakers understand the dangers of this proposal, not only for business but for workers themselves. And don’t give up and keep at it.”

During the pandemic, many discovered their entrepreneurial spirit and switched from traditional employment to startups and contracting, often from home. The pandemic showed many the importance of work-life balance, which they pursued with gusto, but the core of this proposal is working against what people have done to adjust to a changing world.

“I think we’ve seen an increase in independent contractors, an increase in other small business startups, and so I think people should keep embracing that spirit and keep spreading that spirit and share that with the legislators. Let them know it’s ideas like this, badly formed ideas like this, that will crush that spirit and send Michigan backwards,” said Worthams. ■

“I don’t think there is any fixing this bill so that it’s salvageable. This is not a fixable bill.”

Dave Worthams,
Director of Employment Policy for the
Michigan Manufacturers Association



Insurance bills will lead to more lawsuits, higher premiums

Written by Veronica Horn, President and CEO of the Saginaw County Chamber of Commerce

Note: This piece originally appeared in the Detroit News on October 1, 2023.

As the president and CEO of the Saginaw County Chamber of Commerce, it is my responsibility to advocate for policies that foster economic growth, job creation, and overall prosperity for our community and state.

I am deeply concerned about the potential ramifications of **Michigan Senate Bill (SB) 329** and **House Bill (HB) 4681**, legislation that would make it easier for trial attorneys to sue insurance companies and win. The bills would place burdensome new demands on insurance companies, except health insurers.

But additionally, this legislation could lead to a surge in lawsuits, benefiting primarily plaintiffs’ attorneys who stand to profit from inflated settlements. Such lawsuits, driven by the new legal avenues these bills would open, could inundate our legal system and drain precious resources. Meanwhile, the costs of this litigation would inevitably be passed on to hardworking Michigan taxpayers.

Michiganians are already worried about inflation and the rising cost of living. Unfortunately, if these bills move forward, they will also have to worry about higher insurance premiums. Some families could even be forced to choose between paying this raised cost and forgoing coverage altogether. This would affect Michigan’s low-income families in the worst way.

Looking at the experience of other states that have similar laws in place, such as Florida, it becomes clear the consequences are dire and we should heed the warnings. These states have faced dramatic surges in fraudulent claims and frivolous lawsuits. Such actions significantly escalate costs for both businesses and consumers.

The future of Michigan depends on the success of its residents and the health of its small businesses. A sudden and substantial increase in insurance costs, which could be a direct result of SB 329 and HB 4681, would force many businesses to reevaluate their workforce and could lead to reduced hiring, layoffs, or even closures.

Insurance is a fundamental component of financial security for Michigan families. It provides protection in times of need, whether it is health insurance for medical emergencies, auto insurance for accidents or homeowners’ insurance for property protection. The affordability of insurance premiums directly impacts the financial stability of hardworking Michiganians.

Higher insurance premiums can force individuals and families to make difficult choices. It might mean diverting funds away from other essential expenses like housing, education, or savings for the future. For businesses, it translates into increased operating costs, potentially leading to higher prices for goods and services. Everyone feels the impact of rising insurance premiums in one way or another.

Moreover, these consequences are not limited to the present; they have massive long-term implications for Michigan’s economic stability. As insurance premiums continue to climb, they become a financial burden that can deter individuals from living in our state or businesses from establishing or expanding operations here. This could hinder our state’s ability to attract and retain talent and investments, slowing our state’s growth and prosperity.

As we contemplate the implications of SB 329 and HB 4681, we must recognize the potential for these measures to place a significant and lasting burden on the shoulders of Michiganians. ■

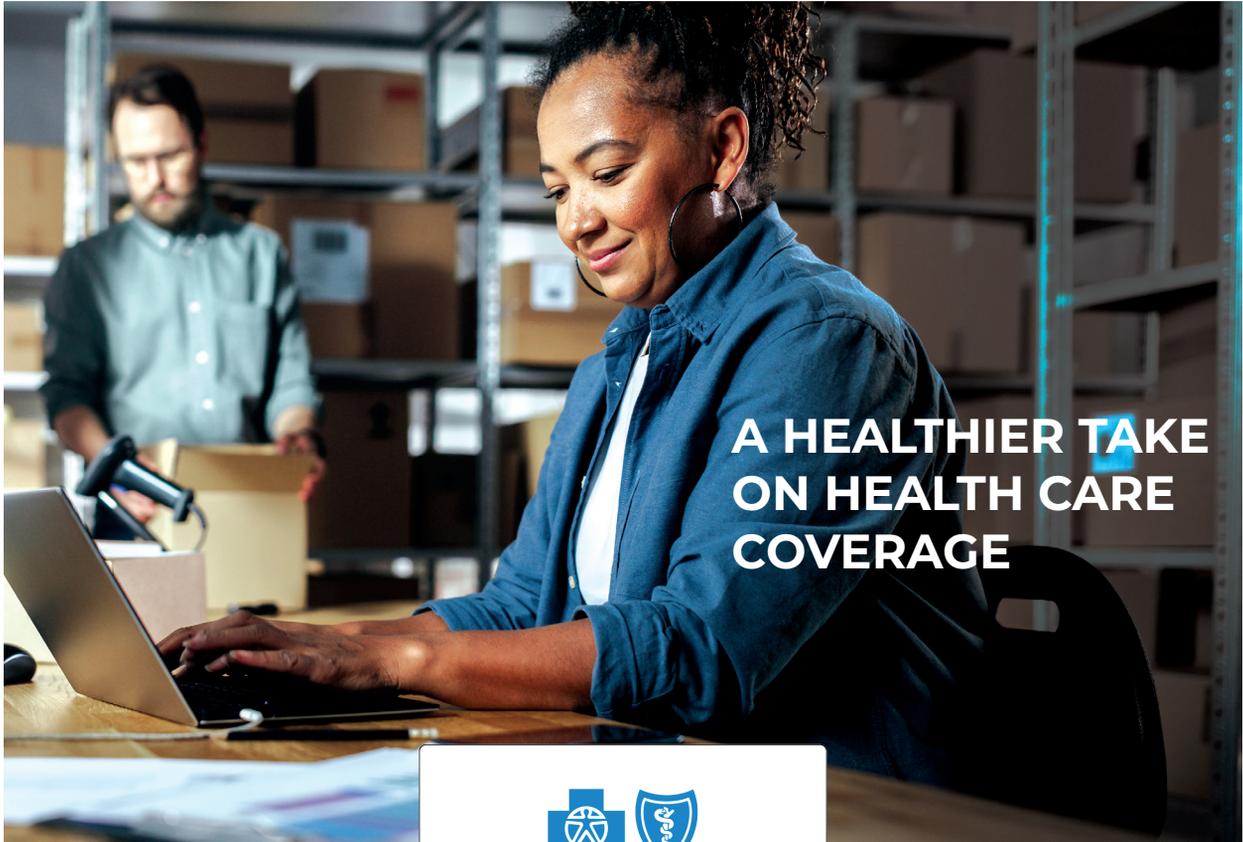


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