



**STATEMENT RE:**

**Senate Bill 92**

*“An Act relative to the definition of employee and clarifying the criteria for exempting workers from employee status.”*

**TO:**

Commerce, Labor and Consumer  
Protection Committee

**BY:**

Professional Insurance Agents  
Of New Hampshire

**ON:**

March 27, 2007

**PROFESSIONAL  
INSURANCE  
AGENTS**

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Professional Insurance Agents of New Hampshire Inc. (PIANH), an association of independent insurance agents throughout the state and their employees, urges this committee to oppose Senate Bill 92 as currently worded. Without amendments, the bill will lead to inaccurate status determinations for many workers.

In part, S.B. 92 states that any person who meets all of the twelve listed criteria will not be considered an employee. The determination of whether a worker is an employee or an independent contractor is significant for workers' compensation insurance purposes because an employers' premium is predicated upon the number of employees that work for the employer.

PIANH is primarily concerned with proposed R.S.A. sections 275:4 II(c) and (i). First, the term 'time' in subsection II(c) is overly broad and could potentially be misinterpreted in a way that lead to erroneous determinations of status as an employee. Further, this provision should be amended in order to be more consistent with the language in the second sentence of subsection II(c). The provision would be clearer if it simply stated "The person has control over his or her daily work schedule." Along with the remaining language of the subsection, this change would recognize the fact that an independent contractor routinely cedes some control over his long term schedule while retaining control over the particulars of his daily schedule. To be consistent, this change should be made in each statutory section amended by the bill.

Next, the wording of subsection II(i) runs counter to working arrangements that are commonly entered into by independent contractors. For example, construction subcontractors routinely work with materials supplied by the general contractors at their own expense. Subsection II(i), however, would require these subcontractors to be considered employees of the general contractor. In fact, of all twelve criteria, this subsection will often be the only one that a worker will be unable to satisfy. PIANH recommends this language be removed from the various places it appears the bill.

Finally, from a technical standpoint, the bill's language would be more accurate if the term employer were replaced with another term. Simply put, it is counterintuitive to include the term 'employer' in the list of criteria used to determine who is not an

employee. Although the term is necessary in other statutory sections, it is premature to use the term in the provisions added by this bill because a person or company does not take on employer status until the workers' status is determined.

PIANH commends the legislature for addressing this difficult subject in an effort to make worker status determinations clearer and more predictable. While S.B. 92 generally is a step in the right direction, other complimentary statutes may also need attention. For example, the statutes that exempt sole-proprietors from the requirement of carrying workers' compensation insurance, including the definition of employer, may still allow for multiple interpretations and potentially conflicting results despite the changes proposed by SB 92. So even though a sole proprietor may not be required to carry workers' compensation insurance, S.B. 92 could make it more likely that the sole proprietor will be considered an employee of a contractor who hires him. As a result, the contractor's workers' compensation carrier will be entitled to charge the contractor an appropriate amount of premium upon audit, often leading to an untenable financial burden for the contractor.

Although PIANH cannot support this bill as it is currently written, we can lend our support to the bill if the amendments discussed above are made. PIANH welcomes the opportunity to work with the committee to draft appropriate amendments.