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To: Chairman Madden, Vice Chair Lagana and Members of the Senate Labor Committee
From: Ray Cantor, Vice President
Date: June 16, 2021
RE: S-3920 - Concerns enforcement of employee misclassification and stop-work order laws.

Good morning and thank you for the opportunity to testify today on Senate Bill No. 3920 concerning enhanced enforcement for worker misclassification. My name is Ray Cantor and I am Vice President for Government Affairs with the New Jersey Business and Industry Association. NJBIA is the nation's largest statewide business association whose members employ about one million people in the state of New Jersey.

While worker misclassification is against the law, the actual interpretation of what constitutes misclassification is one of varying interpretations and nuance. The courts have routinely struck down efforts by the New Jersey Department of Labor and Workforce Development to aggressively enforce their interpretation of the ABC test. It is against this background that we review S-3920.

There are several significant concerns with this legislation. Because this bill was only recently introduced and is still being reviewed by experts versed in the area of employment law, we may have additional concerns in addition to the ones listed below. While we understand that there is a need to be able to enforce misclassification laws, this bill is too broad and would vest too much authority in the Commissioner of Labor and Workforce Development.

- Vague Underlying Law - The bill significantly enhances penalties for misclassification of employees under various state laws. Because those laws are often subject to different interpretations, clarity should first be given to the underlying law before penalties are enhanced.
- Overbroad Enforcement - The bill significantly enhances the authority of the Commissioner to enforce various misclassification and related laws. These authorities include a wide range of powers, from administrative, civil, criminal, and injunctive. The Commissioner also is given a wide range of investigatory powers. The power invested in the Commissioner is overbroad in its breadth with little oversight or control by the courts.
- Private Lawsuits and Potential for Abuse - The bill would allow the Commissioner to file a civil suit for an alleged injured person rather than the person filing his or her own private suit. Thus, the Commissioner (*i.e.* the State) is acting as the private law firm of an individual but acting with the full authority of State while doing so and being able to leverage various authorities, compulsions, and penalties not available to a private actor. The playing field is not level. The Commissioner would also be taking positions on behalf of an injured person that may not necessarily be

in the interests of that person. This is clearly an overstepping of authority and use of State resources and functions.

- Use of Private Law Firms - This bill would authorize the Commissioner to enlist the use of private law firms to perform these lawsuits and even engage in a class action lawsuit without even needing to gain the consent of the persons in the class. Legal fees can be recovered in these suits, which is also not available to a private party. Such use of private law firms to hunt potential defendants can easily lead to an abuse of power because a private law firm is interested in profit, not sound public policy.
- Expansion of Stop Work Orders can be Coercive - The bill allows a stop work order to apply to all of a business' locations, even if the other locations were not involved or related to the alleged violation. Additionally, employers must pay all employees for ten days under such a stop work order. The potential economic harm if such a stop work order is issued would lead to a coercive environment whereby an employer could not afford to contest an allegation and would need to give up their rights for fear of being put out of business.

New Jersey has a reputation for being unfriendly to business. This bill, which places so much enforcement authority in the Commissioner of Labor and Workforce Development to aggressively enforce a vague set of misclassification laws, will only enhance that reputation. Using private attorneys as a tool to attack businesses and stop work orders to compel compliance goes too far.

Given the problems inherent in this legislation, the short time given for a thorough review and discussion, and the potential impact to New Jersey businesses, we ask that this committee hold this legislation today.

Thank you for your consideration.