

SB 224 Support.pdf

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Position: FAV

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS - LOCAL UNION No. 24

AFFILIATED WITH:

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Baltimore Port Council
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Central MD Labor Council — AFL-CIO
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Written Testimony of

Rico Albacarys, Assistant Business Manager, IBEW LOCAL 24

Before the

Finance Committee On

SB 224 Labor and Employment – Employment Standards and Conditions – Definition of Employer

Support

February 8, 2022

Madame Chair Kelley and Committee Members,

Thank you for the opportunity to submit my testimony in **support** of Senate Bill 224.

My name is Rico Albacarys and I'm an employee and member of the International Brotherhood of Electrical Workers Local 24, in Baltimore.

In my capacity as an employee of Local 24, I often go to job sites to speak to unrepresented workers. When I talk to workers on these sites, the problem of worker misclassification becomes clear. Many construction employees are being treated as independent contractors, which is a form of wage theft. I call it theft because that's exactly what it is. The employers who hire these "independent

contractors” are stealing from the workers and the State, by not paying the full freight that is required when one is an employer. This includes paying minimum wages, overtime, unemployment insurance, workers compensation insurance, and payroll taxes. SB 224 aims to remedy this by more clearly defining what is an employer, therefore, more clearly defining who is an employee. For these reasons, I’m asking you to give SB 224 your **support**.

Sincerely,

A handwritten signature in blue ink, consisting of a large, stylized 'R' followed by a cursive 'l' and a long horizontal flourish extending to the right.

Rico Albacarys

Assistant Business Manager

SB0224_Support.pdf

Uploaded by: David Prater

Position: FAV



Empowerment. Integration. Equality.

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www.DisabilityRightsMD.org

FINANCE COMMITTEE

February 10, 2022

SB 0224 – Employment Standards and Conditions – Definition of Employer

Position: SUPPORT

Disability Rights Maryland (DRM – formerly Maryland Disability Law Center) is the Protection & Advocacy agency in Maryland, mandated to advance the civil rights of people with disabilities. DRM works to increase opportunities for Marylanders with disabilities to be part of their communities by advocating for economic justice through eliminating and reducing barriers to employment for people with disabilities.

DRM supports SB 224. In 2016, Maryland took a bold step to eliminate the legal exploitation of the labor of people with disabilities by phasing out sheltered workshops and subminimum wage employers. People with disabilities now have the right to participate in work as equals with their non-disabled peers, but the reality is that people with disabilities face on-going challenges to accessing jobs and frequently utilize staffing services, or temporary employment agencies to secure employment. SB 224 prevents the exploitation of labor by people with disabilities by clarifying that Maryland follows national best practices by recognizing that employees can have more than one employer in subcontractor, temporary employment, or other outsourced work.

For these reasons DRM urges a favorable report on **SB 224**.

Please do not hesitate to contact me at davidp@disabilityrightsmd.org or by phone at 410-727-6352, ext. 2500.

PJC testimony - SB224.pdf

Uploaded by: David Rodwin

Position: FAV



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SB 224 – Labor & Employment – Employment Standards & Conditions – Definition of Employer
Senate Finance Committee, February 10, 2022

Position: SUPPORT

The Public Justice Center (PJC) is a not-for-profit civil rights and anti-poverty legal services organization that seeks to advance social justice, economic and racial equity, and fundamental human rights in Maryland. Our Workplace Justice Project aims to ensure that our state’s low-wage workers receive fair and full payment for their labor, as well as other basic protections on the job. The PJC **supports SB 224** and urges a **favorable** report.

Maryland state courts already apply the joint employment “economic realities” test to the Maryland Wage Payment and Collection Law (MWPCCL), and SB 224 will simply ensure that all federal courts do so as well.

- For decades, courts have used the “economic realities” test to determine if an employee has multiple employers in connection with the same work. Both Maryland and federal courts have long used this test to determine such “joint employment” under the federal Fair Labor Standards Act (FLSA) and the Maryland Wage and Hour Law.
- Since at least the 2012 decision of *Campusano v. Lusitano Construction LLC*, 208 Md. App. 29 (2012), state courts have also applied this test to the MWPCCL. However, while some federal courts have followed *Campusano*, others have declined to do so.

SB 224 is a narrow, technical fix that will clear up this confusion by adding to the MWPCCL the same definition of employer that already exists in much of the rest of Title 3 of Maryland’s Labor and Employment Article.

- In addition to the federal FLSA, many other Maryland wage laws already include in their definition of “employer” the same language that SB 224 would add to the MWPCCL – “a person who acts directly or indirectly in the interest of another employer with an employee.” This makes sense, as it would be confusing to apply different tests to different wage laws that serve the same purposes of preventing wage theft and providing workers with a remedy when it happens.
- Other wage statutes in Title 3 of Maryland’s Labor and Employment Article that include this same definition of “employer” are the (1) Wage and Hour Law, Md. Code Ann., Lab. & Empl. § 3-401(b), (2) Equal Pay for Equal Work Law, *id.* § 3-301(b)(2), (3) Wage Lien Law, *id.* § 3-1101(b), (4) Parental Leave Act, *id.* § 3-1101(c)(2)(i), (5) Healthy Working Families Act, *id.* § 3-1301(f)(2), (6) Criminal History Screening Law, *id.* § 3-1501(c)(2), and (7) Secure Maryland Wage Act, *id.* § 3-1601(d)(1).

SB 224 will not subject employers to additional liability.

- As mentioned above, state courts and some federal courts already apply the economic realities test to the MWPCCL. But even if that were not so, employers acting in good faith have no cause for concern.

- The MWPCCL permits a court to award treble damages only when the court has previously found that the employer's failure to pay wages owed *was not the result of a bona fide dispute*. See Md. Code Ann., Lab. & Empl. § 3-507.2(b). Good-faith employers that are doing their best to follow the law are not subject to treble damages – such damages are only available when there is a judicial finding that the employer did not have a bona fide reason for failing to ensure that the employer was paid all wages owed.
- Even when the court has found that there was no bona fide dispute for failing to pay all wages owed, the Court of Appeals has made crystal clear that an award of treble damages is *still discretionary* and there is no presumption in favor of enhanced damages. See *Peters v. Early Healthcare Giver, Inc.*, 439 Md. 646, 661 (2014). In other words, even after the court has found that there was no bona fide reason for the failure to pay all wages owed, employees must still convince the judge or jury that the facts of the case warrant enhanced damages. Put simply, treble damages are reserved for truly bad actors and there is no reason to be worried about employers acting in good faith – this bill does not help, hurt, or otherwise affect them.

Wage theft hurts Maryland's workers, state and local governments, and law-abiding businesses.

- Wage theft – when an employer denies workers the wages or benefits to which they are entitled – is both common and extremely harmful. Violations are most common in low-wage industries like construction, retail, food services, cleaning services, and home health care.¹ In Maryland alone, one study estimated minimum wage violations deprive 580,000 workers of \$875 million in gross wages each year.²
- Wage theft *hurts workers* – particularly low-wage workers – who lose income they need to pay rent, buy food, and provide for their families. It *hurts state and local governments*, which lose tax revenue and must pay for additional social services. And it *hurts law-abiding businesses*, which are forced to compete on an uneven playing field with businesses that save money by breaking the law.
- It is critically important that Maryland's wage laws both deter the practice of wage theft and provide workers victimized by it with an adequate remedy.

For these reasons, the Public Justice Center **SUPPORTS SB 224** and requests a **FAVORABLE** report.

¹ Nicole Hallett, *The Problem of Wage Theft*, 37 Yale L. & Pol'y Rev. 93, 100, 125 (2018).

² Rachel Deutsch & Kate Hamaji, Ctr. for Popular Democracy, *Combating Wage Theft with the Maryland Paystub Transparency Act of 2016* 2 (Feb. 2016), <https://populardemocracy.org/sites/default/files/MD%20Pay%20Stub-web.pdf>.
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SB224_AFSCME_FAV.pdf

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Position: FAV



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Patrick Moran - President

Testimony
SB 224 – Labor and Employment – Employment Standards and
Conditions – Definition of Employer
Finance Committee
February 10, 2022
FAVORABLE

AFSCME Council 3 supports SB 224. This important legislation closes loopholes in the enforcement of employment standards across Maryland by providing a consistent definition of the term “employer” in the Labor and Employment article. SB 224 also widens the definition of “employer” to include joint employers. This change is necessary to ensure that the appropriate actors are held responsible for meeting the Labor standards set forth in Maryland.

As the structure of workforces and workplaces change in our state and nationally, it is important that Maryland Labor stays current to these changes. The employee who will benefit from SB 224 are those who seek equal pay for equal work, and those who want to make sure they are getting paid for the actual hours they have worked. In modern labor, these principles should not be controversial. SB 224 just helps to ensure these principles.

We urge the committee to provide a favorable report on SB 224. Thank you.

Every AFSCME Maryland State and University contract guarantees a right to union representation.
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SB 224 - Definition of Employer.pdf

Uploaded by: Donna Edwards

Position: FAV



MARYLAND STATE & D.C. AFL-CIO

AFFILIATED WITH NATIONAL AFL-CIO

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Donna S. Edwards

Secretary-Treasurer

Gerald W. Jackson

**SB 224 – Labor and Employment – Employment Standards and Conditions –
Definition of Employer
Senate Finance Committee
February 10, 2022**

SUPPORT

**Donna S. Edwards
President**

Maryland State and DC AFL-CIO

Madam Chair and members of the Committee, thank you for the opportunity to submit testimony in support of SB 224 – Labor and Employment – Employment Standards and Conditions – Definition of Employer. My name is Donna S. Edwards, and I am the President of the Maryland State and District of Columbia AFL-CIO. On behalf of Maryland’s 340,000 union members, I offer the following comments.

For over a decade Maryland has been trying to correct the legal problem with the definition of “employer” – within Maryland code – being unclear in its language and allowing some federal courts to rule on labor and employment cases in ways that the law never intended. Recent rulings have narrowed the definition to exclude joint employers for the definition, going against the clear intent, but unfortunately not the letter, of the law. This has led to bad employers creating shell corporations by which to pay their workers, thus being able to avoid following the Maryland Wage Payment and Collection Law (MPCL).

SB 224 corrects this by eliminating any ambiguity within the definition, removing multiple references to it that are semi-contradictory, and placing it in a much more relevant part of the MPCL. Additionally, the new language within SB 224 reflects the same exact language in the Maryland Wage and Hour Law (MWHL), thereby harmonizing the MPCL and MWHL, removing more unwanted ambiguity, and giving courts a much cleaner law with clearer standards by which to adjudicate on Employee/Employer issues.

For these reasons we ask for a favorable report on SB 224.

SB 224 Labor and Employment Employment Standards a

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Position: FAV



- Electrical Workers
- Insulators
- Boilermakers
- United Association
- Plumbers & Gas Fitters
- Sprinkler Fitters
- Steam Fitters
- Roofers
- Cement Masons
- Teamsters
- Laborers
- Bricklayers
- Ironworkers
- Sheet Metal Workers
- Elevator Constructors
- Painters
- Operating Engineers
- Carpenters

Maryland Senate Finance Committee

Chair: Delores G. Kelley

Vice Chair: Brian J. Feldman

Senate Bill 224 Labor and Employment - Employment Standards and Conditions - Definition of Employer

Position: **SUPPORT**

The Baltimore DC Metro Building Trades Council supports House Bill 299. The clear definition of who is and who isn't an employer is critical in determining the fair and equitable obligations of each party. An individual that works set hours of the day or week, has their tools and materials provided for them and may wear a company uniform and works at the direction of a supervisor is an employee and not an independent contractor. Employers that misclassify their employees as such by filing an IRS 1099 form in violation MD law should be made to suffer the consequences. The clearer the definition of an employer and their obligations protects both the employer and employee, from both injurious competition and from incurring violations of State law.

We ask the committee for a favorable vote. Thank you.

Respectfully,

Jeffry Guido

Baltimore-DC Metro Building Trades Council

Value on Display... Everyday.



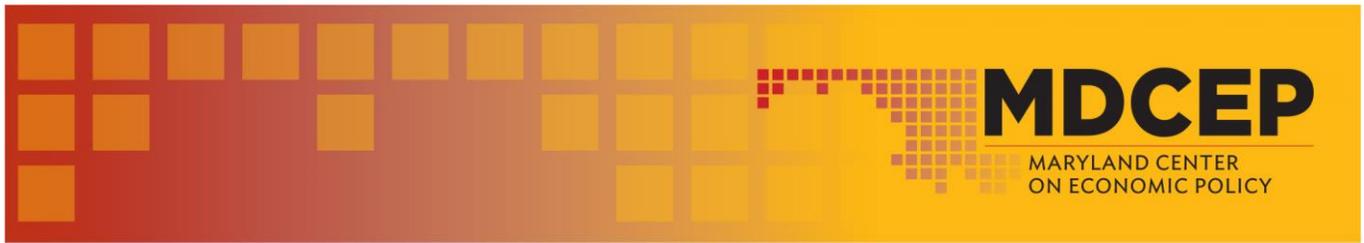
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SB224_MD Center on Economic Policy_FAV.pdf

Uploaded by: Kali Schumitz

Position: FAV



FEBRUARY 10, 2022

Maryland Worker Protections Weakened by Duplication, Inconsistency, Loopholes

Position Statement in Support of Senate Bill 224

Given before the Senate Finance Committee

Strong legal protections for workers are an essential tool to steer our economy along a healthy growth path that delivers broadly shared prosperity. Maryland has made important advances in recent years by guaranteeing most workers the opportunity to earn paid sick days and gradually raising the minimum wage to \$15 per hour. However, our current system of worker protections currently uses multiple overlapping but distinct definitions of “employer” in different sections of law. This leads to unnecessary duplication and confusion. Most importantly, current law includes loopholes that allow companies to shirk their responsibilities to workers through complicated subcontracting schemes. **The Maryland Center on Economic Policy supports Senate Bill 224 because it would create a single, consistent definition of “employer” and close loopholes that harm workers.**

Researchers have linked increased “fissuring” of the workplace to increased levels of labor standard violations and more difficulty enforcing worker protections. Fissuring refers to structures such as subcontracting, franchising, and use of temp agencies (among others) that put middle-men between workers and the entities responsible for making decisions that affect pay, benefits, and working conditions. These structures can allow companies to offload responsibilities to abide by labor law to legally separate entities, even while continuing to make decisions that affect workers’ terms of employment. The Economic Policy Institute identifies three ways that fissuring increases the risk of labor law violations:ⁱ

Growth of fissured workplaces over the past several decades contributes to workplace law violations. Lower-level contractors are often less capitalized and may exist within the underground economy. Also, mid-level firms, such as temp agencies, must make a profit themselves, leaving smaller margins and pressure to cut corners to make a profit by paying less money to workers at the bottom level. In addition, **effective enforcement of minimum wage requirements, overtime pay obligations, and other workplace standards is often more difficult in a fissured workplace, because it can be difficult for enforcers to impose liability on higher-level “up-chain” entities that drive working conditions and have the ability to bring about lasting compliance.**

The consistent definition adopted in Senate Bill 224 would close loopholes in three sections of Maryland labor law that currently open space for employers to shirk their responsibilities:ⁱⁱ

- Maryland Wage Payment and Collection Law (Labor and Employment § 3-501 *et seq.*)

- Use of lie detector tests (Labor and Employment § 3-701 *et seq.*)
- Maryland Workplace Fraud Act (independent contractor misclassification in selected industries) (Labor and Employment § 3-901 *et seq.*)

We should measure the health of our economy not simply by the number of dollars exchanged or the number of people who go to work each day, but by its ability to raise all families' standard of living. Yet our economy has largely moved in the opposite direction over the last half century, as typical workers saw little improvement in their wages despite explosive growth for the wealthiest 1%.ⁱⁱⁱ Basic standards push against this negative trend, helping to ensure that everyone shares in the benefits of a growing economy—and these standards are meaningful only if they are backed by effective enforcement.

For these reasons, the Maryland Center on Economic Policy respectfully requests that the Senate Finance Committee make a favorable report on Senate Bill 224.

Equity Impact Analysis: Senate Bill 224

Bill summary

Senate Bill 224 adopt a single, consistent definition of “employer” for the purposes of Maryland worker protection laws. This standard would ensure that all worker protections apply equally to so-called “joint employers” that employ workers through separate entities such as subcontractors.

Background

Maryland labor law currently uses multiple distinct definitions of “employer” in different sections of law. Some, but not all, labor standards include joint employers in the definition of employer. Researchers have linked workplace fissuring, which includes joint employer relationships, to more frequent violation of worker protections. Recent judicial decisions have further weakened Maryland labor law by exempting joint employers from responsibility to comply with labor standards.

Equity Implications

Current labor law provides especially weak protections to part-time workers, low-wage workers, tipped workers, and workers born outside the United States. These weaknesses heighten economic roadblocks facing many workers who already face obstacles in the labor market. For example, about two-thirds of tipped workers nationwide are women,^{iv} and workers of color—particularly Latinx workers—are more likely than their white counterparts to work for low wages.

Nationwide, wage theft – including minimum wage violations, overtime violations, off-the-clock work, and other forms of illegal underpayment – rivals or exceeds the value of all other forms of theft, according to multiple credible estimates. While limited data on wage theft exist (partly because of inadequate enforcement), a 2017 analysis found that minimum wage violations alone add up to about \$15 billion per year nationwide, more than the sum of robberies, burglaries, larcenies, and motor vehicle thefts.^v

Senate Bill 224 would reduce barriers facing marginalized workers by making it easier for them to enforce their existing rights.

Impact

Senate Bill 224 would likely **improve racial, gender, immigration, and economic equity** in Maryland.

ⁱ Terri Gerstein, “How District Attorneys and State Attorneys General Are Fighting Workplace Abuses,” Economic Policy Institute, 2021, <https://www.epi.org/publication/fighting-workplace-abuses-criminal-prosecutions-of-wage-theft-and-other-employer-crimes-against-workers/>

ⁱⁱ HB 299 Fiscal and Policy Note.

ⁱⁱⁱ Christopher Meyer, “What a \$15 Minimum Wage Would Mean for Maryland: Good Jobs, Secure Families, and a Healthy Economy,” Maryland Center on Economic Policy, 2018, http://www.mdeconomy.org/wp-content/uploads/2018/02/MDCEP_FF15_report-2.pdf

^{iv} Elise Gould and David Cooper, “Seven Facts about Tipped Workers and the Tipped Minimum Wage,” Economic Policy Institute, 2018, <https://www.epi.org/blog/seven-facts-about-tipped-workers-and-the-tipped-minimum-wage/>

^v David Cooper and Teresa Kroeger, “Employers Steal Billions from Workers’ Paychecks Each Year,” Economic Policy Institute, 2017, <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>

MAP_SB 224_FAV.pdf

Uploaded by: Stacey Jefferson

Position: FAV



TESTIMONY IN SUPPORT OF SB 224

Labor & Employment Standards & Conditions – Definition of Employer

Senate Finance Committee

1:00pm

February 10, 2022

Submitted by Julia Gross and Kali Schumitz, Co-Chairs

Member Agencies:

211 Maryland

Advocates for Children and Youth

Baltimore Jewish Council

Behavioral Health System Baltimore

CASH Campaign of Maryland

Catholic Charities

Energy Advocates

Episcopal Diocese of Maryland

Family League of Baltimore

Fuel Fund of Maryland

Health Care for the Homeless

Homeless Persons

Representation Project

Job Opportunities Task Force

Laurel Advocacy & Referral Services,
Inc.

League of Women Voters of Maryland

Loyola University Maryland

Maryland Catholic Conference

Maryland Center on Economic Policy

Maryland Community Action
Partnership

Maryland Family Network

Maryland Food Bank

Maryland Hunger Solutions

Paul's Place

Public Justice Center

St. Vincent de Paul of Baltimore

Welfare Advocates

Marylanders Against Poverty

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Kali Schumitz, Co-Chair

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Marylanders Against Poverty (MAP) strongly supports SB 224, which would add a general definition of “employer” to be used in interpreting provision of law related to employment standards and conditions. SB 224 would correct an issue that is hurting low-wage workers by making it more difficult for them to recover all wages owed when they suffer wage theft.

The language that SB 224 would add to the definition of “employer” in the Maryland Wage Payment and Collection law is already present in *seven other statutes* in Title 3 of the Labor and Employment Article, including the Equal Pay for Equal Work Law, Wage and Hour Law, Wage Lien Law, Parental Leave Act, Healthy Working Families Act, Criminal History Screening Law, and Secure Maryland Wages Act. It is past time for this language to be in the Maryland Wage Payment and Collection Law, as well, in recognition of the increased use of outsourcing, especially in low-wage work.

MAP appreciates your consideration and urges the committee to issue a favorable report for SB 224.

Marylanders Against Poverty (MAP) is a coalition of service providers, faith communities, and advocacy organizations advancing statewide public policies and programs necessary to alleviate the burdens faced by Marylanders living in or near poverty, and to address the underlying systemic causes of poverty.

Maryland NELP Testimony on SB224 FINAL.pdf

Uploaded by: Tsedeye Gebreselassie

Position: FAV

Testimony of Tsedeye Gebreselassie

National Employment Law Project

Support for Labor and Employment – Employment Standards and Conditions – Definition of Employer (SB224)

Hearing before the Maryland Senate Finance Committee

February 10, 2022

Tsedeye Gebreselassie
Director of Work Quality

National Employment Law Project
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The National Employment Law Project (NELP) is a national nonprofit advocacy organization that for more than 50 years has sought to build a just and inclusive economy where all workers have expansive rights and thrive in good jobs. We partner with federal, state, and local lawmakers and local community-based groups on a wide range of workforce issues, including areas such as unemployment insurance, wage and hour enforcement, minimum wage, and workplace protections for excluded and underpaid workers. NELP’s work includes a focus on combatting violations by employers using subcontractors and corporate misclassification of employees as independent contractors. **NELP supports SB224, which follows national best practices to promote uniformity and clarity in Maryland’s wage laws, particularly the Maryland Wage Payment and Collection Law (MWPCL).**

Wage theft is devastating for underpaid workers—especially in “fissured” workplaces where corporations use subcontractors or staffing agencies. In fissured jobs where companies hire their workers via temporary and staffing or other subcontracting firms, it is often difficult to obtain a meaningful remedy for workers whose rights have been violated. As an expert’s recent U.S. Congressional testimony explained,, “[e]ven when labor services contractors and other middlemen companies have been caught committing flagrant violations of federal workplace statutes—and statistics compiled by the Department of Labor and state labor agencies demonstrate a stunningly high frequency of those violations – they are often judgment-proof or unable to pay a significant backpay award or other money judgment.”¹ Thinly-capitalized contractors can declare bankruptcy and the owners of the company can simply incorporate under another name to continue the business. Meanwhile the host company—the company for whose benefit the work is performed and who directly or indirectly controls the workers’ wages and working conditions—can simply cancel its labor services contract at the first sign of a problematic lawsuit and select a competitor contractor².

SB224 does not create a new test or standard—rather, it conforms to a Fair Labor Standards Act (FLSA) standard that Maryland courts already apply and that has existed for more than 70 years. Since at least 1947, the U.S. Supreme Court has recognized that a group of workers may have more than one employer on a particular job, and that in such instances both employers are responsible for any violations of the child labor, minimum wage, and overtime provisions of the FLSA. *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 729 (1947). The FLSA contemplates that more than one employer can and *should* be held responsible for its provisions when a company decides to outsource all or a portion of its workforce to staffing companies or other subcontractors. Under its expansive statutory definitions of employment, the FLSA includes work relationships that were not within the traditional common-law definition of employment. *Id.* The purpose of

¹ Testimony of Michael Rubin, Partner of Altshuler Berzon LLP, before the Subcommittee on Health, Employment, Labor and Pensions and the Subcommittee on Workforce Protections of the Committee on Education and the Workforce, U.S. House of Representatives, Regarding H.R. 3441, the Save Local Business Act, Sept. 13, 2017.

² National Employment Law Project, “Who’s the Boss: Restoring Accountability for Labor Standards in Outsourced Work,” (May 2014), available at: <https://s27147.pcdn.co/wp-content/uploads/2015/02/Whos-the-Boss-Restoring-Accountability-Labor-Standards-Outsourced-Work-Report.pdf>

its broad definitions was to eliminate substandard labor conditions by expanding accountability for violations, to include businesses that insert contractors between themselves and their laborers. *Sec’y of Labor v. Lauritzen*, 835 F.2d 1529, 1545 (7th Cir. 1987) (Easterbrook, J., concurring)³. Such “joint employment” can exist where an employer contracts with a staffing or temp agency or other subcontractor to bring in labor to work at the company. The standard does not deem all employers to be joint employers; the standard is a practical one that looks to the “economic realities” of the situation. Maryland courts have applied this standard under the MWPCCL since the published, precedential decision of *Campusano v. Lusitano Const. LLC*, 208 Md. App. 29, 38 (2012); *Salinas v. Commercial Interiors, Inc.*, 848 F. 3d 125, 136 (4th Cir. 2017). Accordingly, HB299 does not expand liability or create a test that employers are unfamiliar with. Rather, it simply ensures that all courts apply the MWPCCL in the same way—by using a standard already applicable to the FLSA and the Maryland Wage and Hour Law.

The clarity and accountability that SB224 would bring is especially important given that outsourced work is a pervasive part of the economy today. In many fast-growing industries, including warehouse and logistics, janitorial, hospitality, waste management, and manufacturing – outsourcing has become deeply entrenched and the number of workers employed by temporary staffing agencies has increased dramatically.⁴ Workers in these positions generally face lower wages, fewer benefits, more hazardous work, and less job security.⁵ By inserting temporary and staffing agencies and other types of subcontractors between themselves and workers, contracting companies can degrade work conditions and more successfully avoid liability for violations of workplace laws even as they benefit from and have the right to control the work itself. Because each level of a subcontracted structure requires a financial return for its work, the further down the subcontracted entity is, the slimmer the remaining profit margins. At the same time, the further down on a subcontracted structure an entity is, labor typically represents a larger share of overall costs—and one of the only costs in direct control by those entities. This creates incentives to cut corners, leading to violations of wage laws. Maryland’s laws must ensure that outsourcing employers are not incentivized to contract away their legal duties and immunize themselves from responsibility for the workplace conditions they create.

For these reasons, NELP supports SB224 and urges a FAVORABLE report.

³ Bruce Goldstein et al, *Enforcing Fair Labor Standards in the Modern American Sweatshop: Rediscovering the Statutory Definition of Employment*, 46 UCLA L. Rev. 983 (1998) (noting that subcontracted garment sweatshops were among the ills the FLSA intended to address via its broad definitions of employment.)

⁴ See National Employment Law Project, Federal Comments on RIN-1235-AA26, Joint Employer Status under the Fair Labor Standards Act (June 2019) (citing data), <https://s27147.pcdn.co/wp-content/uploads/Comments-USDOL-Joint-Employer-Status-FLSA.pdf>

⁵ *America’s Nonstandard Workforce Faces Wage, Benefit Penalties, According to U.S. Data*, NELP, June 7, 2018, available at <https://www.nelp.org/news-releases/americas-nonstandard-workforce-faces-wage-benefit-penalties-according-us-data/>. For example, full-time staffing and temporary help agency workers earn 41 percent less than do workers in standard work arrangements. They also experience large benefit penalties relative to their counterparts in standard work arrangements. Over 50 percent of workers in standard arrangements receive an employer-provided health insurance benefit, compared to only 12.8 percent of temporary and staffing help agency workers.

2022-02-10 SB 224 (Support).pdf

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Position: FWA

BRIAN E. FROSH
Attorney General



ELIZABETH F. HARRIS
Chief Deputy Attorney General

CAROLYN QUATTROCKI
Deputy Attorney General

STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL

FACSIMILE NO.

WRITER'S DIRECT DIAL NO.

410-576-6584

February 10, 2022

TO: The Honorable Delores G. Kelley
Chair, Finance Committee

FROM: Brian E. Frosh
Attorney General

RE: SB0224 – Labor and Employment – Employment Standards and Conditions –
Definition of Employer – **Support with Sponsor Amendments**

The Office of Attorney General urges this Committee to adopt the sponsor amendments and favorably report SB 224. If passed, our priority bill will take effect on October 1, 2022.

Wage theft is a widespread problem in Maryland, due in part to the increased use of outsourcing in the workplace. Companies that at one time would have hired employees directly instead insert an intermediary between themselves and their workers. Often these intermediaries—staffing agencies, contractors, and subcontractors—are undercapitalized. As a result, workers in highly outsourced sectors characterized by extensive contracting are particularly vulnerable to wage theft, with large numbers not getting paid overtime, minimum wage, or back wages owed at termination.

As noted in the preamble to the introduced bill, several “federal district court decisions have narrowed the definition of ‘employer’ under [the Maryland Wage Payment and Collection Law] to exclude joint employers, frustrating the intended purpose of the law to ‘provide a meaningful remedy to the harm flowing from the refusal of employers to pay wages lawfully due[.]’” This bill, as introduced, would add a standard definition of “employer” to Labor & Employment § 3-101 to ensure that the employment statutes of Title 3 are applied equally and predictably.

Currently, Title 3 contains several slightly different definitions of “employer.” The Maryland Wage and Hour Law (“MWHL”), along with other Title 3 statutes, defines “employer” to “include[] a person who acts directly or indirectly in the interest of another employer with an employee.” Md. Code Ann., Lab. & Empl. § 3-401(b). The Maryland Wage Payment and Collection Law (“MWPCCL”) currently defines “employer” to “include[] any person who

employs an individual in the State or a successor of the person.” Md. Code Ann., Lab. & Empl. § 3-501(b).

The Maryland Court of Special Appeals has held that, despite the differences in the definition of “employer” between the two statutes, the same test should be applied to determine whether an employee has more than one employer under the MWPCL and MWHL. *See Campusano v. Lusitano Const. LLC*, 208 Md. App. 29, *36 (2012). Certain federal district courts have followed *Campusano* and applied the economic realities test to the MWPCL as well.¹ The economic realities test for joint employment has been applied to Fair Labor Standards Act claims for decades; it is well-known to judges and employers alike. Other federal district courts have declined to follow *Campusano*,² instead limiting liability under the MWPCL to only those employers directly “involved in the payment of wages.”³ The amended definition of employer in the bill would ensure the consistent application of the MWPCL by all courts, state and federal.

If the sponsor amendments appended to this testimony are adopted, the amended version of the bill would change the definition of employer in the MWPCL to harmonize it with that in the MWHL, instead of adding a general definition to Subtitle 1 of Title 3. The amendments simplify the bill while addressing the problem of inconsistent application of the MWPCL.

For the foregoing reasons, I urge adoption of the sponsor amendments and a favorable report of Senate Bill 224, as amended.

Encl. Appendix of Sponsor Amendments

cc: Committee Members

¹ *See Rivera v. Mo’s Fisherman Exchange, Inc.*, No. ELH-15-1427, 2018 WL 2020423 (D. Md. May 1, 2018).

² *See, e.g., Deras v. Verizon Maryland, Inc.*, No. DKC-09-0791, 2010 WL 3038812 (D. Md. July 30, 2010); *Jennings v. Rapid Response Delivery, Inc.*, No. WDQ-11-0092, 2011 WL 2470483, at *5 (D. Md. June 16, 2011); *Odjaghian v. EngagePoint, Inc.*, No. JKB-18-0151, 2018 U.S. Dist. LEXIS 112367 (D. Md. July 6, 2018).

³ *Pridgen v. Appen Butler Hill, Inc.*, No. JKB-18-61, 2019 U.S. Dist. LEXIS 35283, at *13 (D. Md. Mar. 4, 2019).

SENATE BILL
224

K3

2lr1526
CF HB 299

By: **The President (By Request – Office of the Attorney General)**
Introduced and read first time:
January 19, 2022 Assigned to:

Economic Matters

A
BILL
ENTI
TLED

1 AN ACT concerning

**2 Labor and Employment – Employment Standards and Conditions –
3 Definition of**

4 Employer

4 FOR the purpose of changing the definition of “employer” in the Maryland Wage
Payment Collection Law.

5 BY repealing and reenacting, with amendments,

6 Article – Labor and Employment

9 Section 3–501

10 Annotated Code of Maryland

11 (2016 Replacement Volume and 2021 Supplement)

12 Preamble

13 WHEREAS, The Maryland Wage Payment and Collection Law (MWPCCL) is a

14 “statutory cause of action, the purpose of which is to provide a vehicle for
employees to

15 collect, and an incentive for employers to pay, back wages,” *Cunningham v. Feinberg*,

441 16 Md. 310, 322–23 (Md. 2015); and

17 WHEREAS, A series of federal district court decisions have narrowed the
definition

18 of “employer” under MWPCCL to exclude joint employers, frustrating the intended
purpose

19 of the law to “provide a meaningful remedy to the harm flowing from the refusal of

20 employers to pay wages lawfully due,” *Marshal v. Safeway, Inc.* 437 Md. 542, 559 (Md.

21 2014); now, therefore,

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 That the Laws of Maryland read as follows:

2

**Article –
Labor
and
Employment**

3 3-501.

4 (a) In this subtitle the following words have the meanings indicated.

5 (b) "Employer" includes:

6 (1) any person who employs an individual in the State or a
successor of 7 the person; or

(2) A PERSON WHO ACTS DIRECTLY OR INDIRECTLY IN THE 8
INTEREST OF ANOTHER EMPLOYER WITH AN EMPLOYEE.

9 (c) (1) "Wage" means all compensation that is due to an employee for
10 employment.

11 (2) "Wage" includes:

12 (i) a bonus;

13 (ii) a commission;

14 (iii) a fringe benefit;

15 (iv) overtime wages; or

16 (v) any other remuneration promised for service.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2022.

SB224 - Labor and Employment - Employment Standard

Uploaded by: Jane Redicker

Position: UNF



OUR MISSION:

Working to enhance the economic prosperity of greater Silver Spring through robust promotion of our member businesses and unrelenting advocacy on their behalf.

**SB224 – Labor and Employment - Employment Standards and Conditions - Definition of Employer
Finance Committee
February 10, 2022
UNFAVORABLE**

On behalf of the Greater Silver Spring Chamber of Commerce, representing 400 member organizations, including very small businesses with fewer than ten employees and several nonprofits, in the greater Silver Spring area of Montgomery County, I write to express our opposition to SB224 - Labor and Employment – Labor and Employment - Employment Standards and Conditions - Definition of Employer.

As we understand the language of the bill, HB 299 seeks to add a new but uniform definition of “employer” throughout certain areas of the State’s Labor and Employment regulations. Specifically, HB 299 seeks to expand the definition of “employer” to include a joint employer but adding the language, “*a person who acts directly or indirectly in the interest of another employer with an employee.*”

As such, it seems that HB 299 is adding new liability exposure to third party entities, such as employment agencies, subcontractors, and franchisors, even homeowners, for violations of Maryland Wage Payment and Collection Law (MWPCCL). The Chamber is *extremely concerned* about the potential impacts on Maryland businesses, particularly small businesses, resulting from the expanded liability exposure, especially as business still struggle to overcome the challenges of a two-year pandemic.

As we understand the intent of the bill, a small business that hires, for example, a cleaning company could become responsible for back wages and damages up to *three times higher* than the wages owed if the cleaning company does not pay the employees who did the work. When a business hires another business in good faith, and pays that business for work performed, the hiring business should not be liable for wrongdoing by the hired entity. If that is the result of this bill, it is simply wrong.

For these reasons, the Greater Silver Spring Chamber of Commerce respectfully requests a **UNFAVORABLE committee report on SB224.**

Jane Redicker

President & CEO

Greater Silver Spring Chamber of Commerce

8601 Georgia Avenue #203

Silver Spring, MD 20910

Office: (301) 565-3777

Mobile: (301) 466-8997

www.gsscc.org

SB224 - Labor and Employment - Employment Standard

Uploaded by: Jane Redicker

Position: UNF



OUR MISSION:

Working to enhance the economic prosperity of greater Silver Spring through robust promotion of our member businesses and unrelenting advocacy on their behalf.

**SB224 – Labor and Employment - Employment Standards and Conditions - Definition of Employer
Finance Committee
February 10, 2022
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As such, it seems that SB224 is adding new liability exposure to third party entities, such as employment agencies, subcontractors, and franchisors, even homeowners, for violations of Maryland Wage Payment and Collection Law (MWPCCL). The Chamber is *extremely concerned* about the potential impacts on Maryland businesses, particularly small businesses, resulting from the expanded liability exposure, especially as business still struggle to overcome the challenges of a two-year pandemic.

As we understand the intent of the bill, a small business that hires, for example, a cleaning company could become responsible for back wages and damages up to *three times higher* than the wages owed if the cleaning company does not pay the employees who did the work. When a business hires another business in good faith, and pays that business for work performed, the hiring business should not be liable for wrongdoing by the hired entity. If that is the result of this bill, it is simply wrong.

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Jane Redicker

President & CEO

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Office: (301) 565-3777

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www.gsscc.org

SB224 difinition of employer 2.pdf

Uploaded by: Kirk McCauley

Position: UNF



WMDA/CAR Service Station and Automotive Repair Association

February 8, 2022

Chair: Kelley
Members of Senate Finance Committee

RE: SB 224– Employment Standards and Conditions – Definition of Employer

Position: In opposition

WMDA/Car was not going to take a position on this bill, but after hearing O.A.G. . testify on bill in the house we had to change course. They were very ambiguous about what kind of net this would cast and who it would affect including a franchiser and franchisee.

A franchiser that does not have any input into selection, hiring or paying employees should not be held liable for franchisees obligations to employees.

This would drive the cost up to a franchisee and eliminate some young entrepreneur that are the backbone of small business. This could also raise the percentage of a dollar that franchisee pays for advertising and cost of product to Franchiser. Franchiser will have to allow for the possibility that they would be left holding the bag on franchisee obligations to employees and raise cost accordingly.

Please give SB 224 an unfavorable report

WMDA/CAR is a trade association that has represented service stations, convenience stores and repair shops since 1937. Any questions can be addressed to Kirk McCauley 301-775-0221 or kmccauley@wmda.net

SB224- LE Def of Employer.pdf

Uploaded by: Kristi Simon

Position: UNF



Central Maryland Chamber
The Center of Intelligent Business

Senate Bill 224

Labor and Employment- Employment Standards and Conditions- Definition of Employer

Senate Budget & Taxation Committee

January 31, 2022

Dear Senator Guzzone and Members of the Committee,

The Central Maryland Chamber of Commerce (CMC) was formed in 2017, a merger of two existing chambers- The Baltimore Washington Corridor Chamber (originally founded in 1948) and the West Anne Arundel County Chamber (originally founded in 1962). The CMC is a regional organization representing approximately 350 businesses in the Central Maryland corridor and exists to be the primary business resource and advocate as the area experiences exponential growth.

The Central Maryland Chamber is writing to oppose SB224- Labor & Employment Standards and Provisions. This bill, as written, attempts to redefine the definition of employer and may add additional liability exposure impacting the relationship between franchise and franchisees. It can also impact subcontractors and employment agencies under the Maryland Wage Payment and Collection Law.

The Chamber is concerned that the unintended consequences of this bill may significantly affect our small businesses and cause additional liability exposure, at a very bad time to put more requirements on our state's small business.

The broad language in the bill is our primary concern and could impact a significant number of businesses and business relationships throughout the state. Such a change will put businesses at risk who have operated for many years under the current standards and may be determined to be in violation unintentionally due to the lack of clarity in SB224.

While the Chamber would traditionally support anything that is intended to standardize language and definitions, this bill is problematic as proposed. For these reasons, the Central Maryland Chamber opposes SB224.

Sincerely,

Kristi Simon
President & CEO
Central Maryland Chamber of Commerce

SB 224_MDCC_Labor&Employment-Definition of Employe

Uploaded by: Maddy Voytek

Position: UNF



LEGISLATIVE POSITION:

Unfavorable

Senate Bill 224

**Labor and Employment - Employment Standards and Conditions - Definition of Employer
Senate Finance Committee**

Thursday, February 10, 2022

Dear Chairwoman Kelley and Members of the Committee:

Founded in 1968, the Maryland Chamber of Commerce is the leading voice for business in Maryland. We are a statewide coalition of more than 5,500 members and federated partners working to develop and promote strong public policy that ensures sustained economic recovery, stability and growth for Maryland businesses, employees, and families.

As introduced, SB 224 seeks to add a new but uniform definition of “employer” throughout certain areas of the State’s Labor and Employment Article. More specifically, SB 224 expands the definition of “employer” to include a joint employer but adding the language, “*a person who acts directly or indirectly in the interest of another employer with an employee.*”

It is the understanding of the Maryland Chamber and its members that SB 224 is adding new liability exposure to third party entities, such as employment agencies, subcontractors, and franchisors, for violations of Maryland Wage Payment and Collection Law (MWPCCL). The Chamber is extremely concerned about the potential impacts on Maryland businesses, particularly small businesses, resulting from the expanded liability exposure. Even more so during the current difficult economic conditions. Small businesses could be responsible for damages up to *three times higher* than backed wages owed because of SB 224.

The Attorney General’s office has shared an amended and simpler version of SB 224 with the Maryland Chamber. However, our concerns remain as the use of the language “*indirectly in the interest of another employer*” is extremely broad and could encompass a wide array of potential agents who could be construed to be acting on behalf of a Maryland business.

Finally, we have concern that changing these well-known and established definitions could result in employers suddenly finding themselves mired in lawsuits without ever being aware of the definition change.

Additionally, this bills cross-file (HB 299) was recently voted unfavorably in the House Economic Matters Committee. For these reasons, the Maryland Chamber of Commerce respectfully requests an **unfavorable report** on **SB 224**.



SB224_ABC_UNF

Uploaded by: Marcus Jackson

Position: UNF



**Maryland Joint
Legislative Committee**

The Voice of Merit Construction

February 8, 2022

Mike Henderson

*President
Greater Baltimore Chapter
mhenderson@abcbaltimore.org*

Chris Garvey

*President & CEO
Chesapeake Shores Chapter
cgarvey@abc-chesapeake.org*

Dan Bond CAE

*President & CEO
Metro Washington Chapter
dbond@abcmetrowashington.org*

Amos McCoy

*President & CEO
Cumberland Valley Chapter
amos@abccvc.com*

Gregory Brown

*Chairman
Joint Legislative Committee
greg@waynesboroconstruction.com*

Marcus Jackson

*Director of Government Affairs
Metro Washington Chapter
mjackson@abcmetrowashington.org*

Additional representation by:
Harris Jones & Malone, LLC

6901 Muirkirk Meadows Drive
Suite F
Beltsville, MD 20705
(T) (301) 595-9711
(F) (301) 595-9718

TO: FINANCE COMMITTEE
FROM: ASSOCIATED BUILDERS AND CONTRACTORS
**RE: S.B. 224 – EMPLOYMENT STANDARDS AND CONDITIONS –
DEFINITION OF EMPLOYER**
POSITION: OPPOSE

Associated Builders and Contractors (ABC) opposes S.B. 224 which is before you today for consideration. This bill as written, proposes to add a general and overly broad definition of “employer” for purposes of certain provisions of Maryland law relating to employment standards and conditions.

As it relates to the construction industry, the proposed definition of “employer” would include those who “act directly or indirectly in the interest of another employer with an employee.” This broad definition of “employer” would encompass practically any relationship between a general contractor and a subcontractor or between a subcontractor and a sub-subcontractor. The proposed definition of “employer” would even include the relationship between a general contractor and any subcontractor at any tier, even those sub-subcontractors with whom the general contractor has no contractual or daily relationship. To put it another way, under the proposed definition, a general contractor would be considered an “employer” of a subcontractor’s or a lower-tier subcontractor’s employees (and similarly, a subcontractor would be considered an “employer” of a lower-tier subcontractor’s employees).

The proposed legislation would subject the general contractor and their subcontractors to liability for the failure of their subcontractors at any tier to pay their employees, which includes treble damages and attorneys’ fees. The proposed legislation would also subject general contractors and their subcontractors to liability for the failure of their subcontractors at any tier to comply with, among other things, equal pay and paid leave laws.

While the construction industry believes strongly in an employee’s right to fair pay and employment benefits, the proposed legislation seeks to implement an overly broad definition of “employer.” This overly broad definition will, in turn, subject law-abiding employers to vicarious liability for any employment law violations of a bad actor employer regardless of whether the first employer has any direct connection or control over the bad actor.

For these reasons, and on behalf of the over 1,500 ABC members in Maryland, we respectfully request an unfavorable report on S.B. 224.

Marcus Jackson, Director of
Government Affairs

SB 224_MAA_UNF.pdf

Uploaded by: Rachel Clark

Position: UNF

CHAIRMAN:
Rob Scrivener
VICE CHAIRMAN
Brian Russell

MARYLAND ASPHALT ASSOCIATION



SECRETARY:
David Slaughter
TREASURER:
Jeff Graf
PRESIDENT:
G. Marshall Klinefelter

February 10th, 2022

Senator Delores G. Kelley, Chair
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: Senate Bill 224 – UNFAVORABLE – Labor and Employment – Employment Standards and Conditions – Definition of Employer

Dear Chair Kelley and Members of the Finance Committee:

The Maryland Asphalt Association is comprised of 18 producer members representing more than 47 production facilities, 24 contractor members, 24 consulting engineer firms and 41 other associate members. We proactively work with regulatory agencies to represent the interests of the asphalt industry both in the writing and interpretation of state and federal regulations that may affect our members. We also advocate for adequate state and federal funding for Maryland's multimodal transportation system.

Senate Bill 224 would expand the applicability of the definition of employer to include a joint employer, meaning "a person who acts directly or indirectly in the interest of another employer with an employee." As noted in the fiscal and policy note prepared by the Department of Legislative Services, the impact to small businesses is meaningful. They state that by expanding the definition of employer it would expand liability for third parties, such as a subcontractor, to damages that are three times higher than the wages owed to an employee. This is extremely concerning to our members, many of whom are small businesses. At a time when our businesses are struggling significantly, we simply cannot support legislation that adds additional burdens and costs to our members.

We appreciate you taking the time to address this important issue, and we urge an unfavorable report on Senate Bill 224.

Thank you,

Marshall Klinefelter
President

CHAIRMAN:
Rob Scrivener
VICE CHAIRMAN
Brian Russell

MARYLAND ASPHALT ASSOCIATION



SECRETARY:
David Slaughter
TREASURER:
Jeff Graf
PRESIDENT:
G. Marshall Klinefelter

Maryland Asphalt Association

SB 224_MTBMA_UNF.pdf

Uploaded by: Rachel Clark

Position: UNF



February 10th, 2022

Senator Delores G. Kelley, Chair
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401

RE: Senate Bill 224 – UNFAVORABLE – Labor and Employment – Employment Standards and Conditions – Definition of Employer

Dear Chair Kelley and Members of the Finance Committee:

The Maryland Transportation Builders and Materials Association (“MTBMA”) has been and continues to serve as the voice for Maryland’s construction transportation industry since 1932. Our association is comprised of 200 members. MTBMA encourages, develops, and protects the prestige of the transportation construction and materials industry in Maryland by establishing and maintaining respected relationships with federal, state, and local public officials. We proactively work with regulatory agencies and governing bodies to represent the interests of the transportation industry and advocate for adequate state and federal funding for Maryland’s multimodal transportation system.

Senate Bill 224 would expand the applicability of the definition of employer to include a joint employer, meaning “a person who acts directly or indirectly in the interest of another employer with an employee.” As noted in the fiscal and policy note prepared by the Department of Legislative Services, the impact to small businesses is meaningful. They state that by expanding the definition of employer it would expand liability for third parties, such as a subcontractor, to damages that are three times higher than the wages owed to an employee. This is extremely concerning to our members, many of whom are small businesses. At a time when our businesses are struggling significantly, we simply cannot support legislation that adds additional burdens and costs to our members.

We appreciate you taking the time to address this important issue, and we urge an unfavorable report on Senate Bill 224.

Thank you,

A handwritten signature in blue ink, appearing to read "Michael Sakata", is written over a faint, light blue circular watermark or seal. The signature is fluid and cursive.

Michael Sakata
President and CEO
Maryland Transportation Builders and Materials Association

SB 224_ MDL_ Letter of Information.pdf

Uploaded by: Andrew Fulginiti

Position: INFO

Senate Bill 224

Date: February 10, 2022

Committee: Senate Finance

Bill Title: Labor and Employment - Employment Standards and Conditions - Definition of Employer

RE: **Letter of Information**

SB0224 changes the definition of employer for Subtitle 5 of Title 3. Employment Standards and Conditions in the Labor and Employment Article to include “a person that acts directly or indirectly in the interest of another employer with an employee”, known as a “joint employer”. The Department supports the clarification of the joint employer definition for Subtitle 5, the Wage Payment and Collection law (as stated in the preamble to the bill). Prior case law extended the concept of joint employer into Subtitle 5, and this bill will clarify what is already established by adding it into the definition section of Subtitle 5.

The Department had concerns that this legislation could create confusion by extending the joint employer definition to other parts of Title 3. However, it is our understanding that the Bill Sponsor intends to submit a sponsor amendment that would limit the definition change to just subtitle 5. With this amendment, the Department would no longer have concerns with the impact of this legislation.