

Written Testimony Submission
Colorado Chapter, National Association of Insurance and Financial Advisors (NAIFA)
SB21-176

Concerning Protections for Colorado Workers Against Discriminatory Employment Practices

NAIFA is the National Association of Insurance and Financial Advisors. The association has been in existence since 1890. Our stated mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of our members, with the vision to protect and promote the critical role of insurance in a sound financial plan, and the essential role provided by our professional agents and advisors. This testimony is offered to the committee by the Colorado Chapter of NAIFA with regards to SB-176 in support of the amendments clarifying “independent contractor” liability.

NAIFA members are licensed insurance and/or securities professionals. Most members own and operate their own small business, in most cases for over 20 years and in some cases for as long as 50 years. Key to our roles as advisors and brokers is that we represent multiple insurance and financial companies. This is a critical element that allows us to provide the consumer with broad, unbiased advice, representing the client interests as primary. This is in fact critical to our role as fiduciaries. Our clients are not the insurance or financial companies. We serve only the consumer. Under SB176, this role, and our responsibilities, would be altered, away from the consumer.

In our current role, we cannot be hampered by being “captive” to only one employer (ie. an Insurance or financial corporation) lest the consumer have their interests be made subservient to the features of any specific policy or investment.

If advisors or brokers were not allowed to perform their natural role as defined above, the consumer would be left without a trusted advisor to investigate the myriad of alternatives available to them, something that most consumers are not equipped to do.

A 2020 survey of NAIFA members indicated the following:

- Approximately 90% receive income reported on a 1099.
- 95% operating as an independent contractor want to remain so.

The top concerns of members should they be reclassified as “employees” include:

- Loss of business deductions.
- Loss of ability to set one’s own schedule.
- Loss of renewal income if current clients were reassigned.
- Nullification of existing agent contracts.
- Diminished product offerings due to inability to offer products outside of a primary carrier.

Respectfully submitted,

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SB21-176 Protecting Opportunities and Workers' Rights Act | Oppose
Thursday, April 1 2021
Senate Judiciary Committee

I'd like to start by thanking the Chair and committee members for your consideration of this testimony. My name is Kelly Brough and I submit this testimony on behalf of the Denver Metro Chamber of Commerce in opposition to SB176.

The Denver Metro Chamber represents 3,000 businesses and their 400,000 employees, and I want to be clear about our position here. We are opposed to this bill, but that doesn't mean that we think sexual harassment or discrimination is ever ok. It's not. Employers have a responsibility to treat their employees with respect and protect them from harassment and discrimination and when that doesn't work our legal system provides a process by which perpetrators are held responsible for their actions. We are opposed to this bill because it is deeply flawed.

To begin, we support the Colorado Civil Rights Administrative Process. We supported the bill in 2018 to continue the CCRD as an effective way to reach resolution in discrimination claims without lengthy and costly fights in court. This bill completely bypasses that process for the private sector – sending claims straight to court, whether or not probable cause even exists. According to the CCRD annual report, in the last five years probable cause has been found in less than 3% of filings.

Bypassing the CCRD isn't the only way this bill encourages litigation. The definitions and requirements in the bill also create an environment in which frivolous lawsuits could become the norm – and that's bad for employers and employees. The definition of hostile workplace is extremely broad, including anything that *“undermines a person's sense of well-being.”* A definition like that certainly goes beyond discrimination or harassment. Also, workers no longer need to meet the federal standards of conduct to carry a claim forward. Meaning any action an employee believes to be discriminatory is considered an actionable hostile work environment regardless of whether it is “severe or pervasive.” This is an important issue, frivolous claims distract from real issues, cost more money for everybody and really hurt those employees with real claims that deserve the priority and attention of our legal system.

Most employers work hard to do right by our employees and protect them against harassment and discrimination. The systems we have in place today help ensure ALL employers are held accountable to do just that. If there are issues with our current system, we should address those specifically instead of removing an effective process (one that was designed specifically to protect and serve employees) and disregarding federal law.

Please vote no on SB 176.

SB 21-176 – Protecting Opportunities and Workers Rights Act (POWR Act)

Written Testimony: Submitted on behalf of the Special District Association.

Dear Mr. Chair, Members of the Judiciary Committee, Senators Winter and Pettersen.

My name is Ann Terry and I am the Executive Director of the Colorado Special District Association.

Thank you for the opportunity to provide this written testimony of the Special District Association regarding SB 21-176 - Protecting Opportunities and Workers Rights Act.

We are thankful for the lines of communication that Senator Winters and the proponents have opened with my association and other entities who have raised significant concerns with this legislation. While we have not reached a compromise on any issues, should the bill move forward today, we commit to stay engaged in the conversation that seeks compromise. **However, without significant amendments to this legislation we must request you to vote no on this legislation.** This week, Senator Winter and the proponents of the legislation shared several amendments that are intended to address our concerns. While we are appreciative of these efforts and some of these amendments would improve the bill, these amendments do not remove our opposition to the legislation.

Below, I have outlined our areas of continued concern along with a brief discussion of the potential impact of the bill as introduced.

Independent Contractors and Volunteers as “Employees”

SB 21-176 includes independent contractors and volunteers within the definition of “employee,” which creates liability for public entities beyond the span of control and direction of an employer under agency law.

Special districts contract with independent contractors for purposes of efficiency and expertise. Further, under these contracts, public entities do not have control or direct the work. Characterizing the relationship as one of “employment” for purposes of a complaint or suit filed will increase costs of government; further, this would serve to undermine how public entities are able to manage scarce funds while still providing essential services.

“Caregiver” as a Protected Class

SB 21-176 creates a new class of persons protected under CADA: “caregiver.” This new, protected class will have a huge impact on employers and principals, considering how many people will, at one point or another in their daily lives, meet the definition of “caregiver.”

Special district employees were the first responders and essential workers in the COVID-19 crisis, many of whom are care providers for family members or people in a family-like relationship. The special district community has found and will continue to seek district-specific approaches to providing flexibilities for care givers. However, the SB21-176 approach is too ambiguous and prescriptive.

“Reasonableness” and Unfair Employment Practices

Under SB 21-176, an employer’s failure to take “reasonable” actions to prevent, to investigate, to punish, to establish a program... are recited. However, in each instance of setting a statutory requirement for an employer’s actions, SB 21-176 sets vague standards which are likely to lead to years of litigation on how these provisions can be interpreted and/or applied.

Increases Costs of Public Entities

SB 21-176 removes the requirement that administrative remedies must be pursued prior to filing suit for employment discrimination or harassment. However, administrative remedies serve to expeditiously and efficiently resolve compliant before to filing a civil action. Without an administrative process on the front-end, SB 21-176 will increase public entity defense significantly.

Further, an individual can file suit 14 days after tendering a written demand to the employer. Under current law, and further amended in the bill, employers must investigate these types of claims. Such investigations, let alone a resolution of the issue, can take significant amounts of time. This is another reason that a front-end administrative exhaustion requirement is helpful, which is to allow employers an opportunity to investigate and resolve complaints.

These standards will not help employers, including special district employers, or employees understand what actions are legally required and enforceable.

Thank you for your time and attention,

Ann Terry
Executive Director, SDA



April 1, 2021

Sb 21-276

NFIB Position: **OPPOSED**

I am Tony Gagliardi, NFIB Colorado State Director. Currently NFIB Colorado has approximately 7,000 members. Ninety-two percent of my membership have fewer than 20 employees. NFIB is a non-profit association with approximately 300,000 members across American involved in every aspect of industry. The main tenet of NFIB is to protect the right of every individual to own, operate and grow their business.

I am here today in opposition to Sb 21-176

At a time when small businesses are attempting to get back on their feet, allow their employees to return to work, and assure returning customers and workers are protected against the remnants of COVID' is not the time for a bill like SB 176. We believe passage would possibly lead to reductions in employment due to owners limiting their risk of frivolous lawsuits.

If SB 176 passes it would make one, ask why they would want to locate or start a new business in Colorado.

By removing the requirement proof of harassment be Severe or Pervasive is removed in place of a lower, more lenient standard. This creates a defensive position of the business.

Sb 21-176 Clouds the definition of an independent contractor. Proponents are using the terms Employer and Independent Contractor interchangeably.

The issue of control has not been discussed. Should an employer face a harassment charge by an employee of the Independent Contractor, it could be decided that the Independent Contractor is an employee of the original employer. This situation could result in investigations by the Department of Labor and State and Federal Tax authorities.

We request you OPPOSE Sb 21-176.

Tony Gagliardi – State Director
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SB21-176 Protecting Opportunities and Workers' Rights Act | Oppose
Thursday, April 1, 2021
Senate Judiciary Committee
Helen Drexler, CEO, Delta Dental of Colorado

To whom it may concern:

This letter is intended to share my views, as the leader of an employer and business headquartered in the State of Colorado, in opposition to Senate Bill 176. I urge legislators to vote no on SB 176, which—if passed—would change long-established civil rights laws, increase litigation costs for workers and employers, and could ultimately hurt both of those parties. Please hear me out.

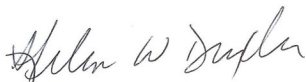
As the CEO of Delta Dental of Colorado, the leading dental insurance company in Colorado and a non-profit organization committed to the work of improving oral health and advancing oral health equity, I am passionate about the culture we have created and continue to cultivate inside our workplace. We hold ourselves to very high standards of excellence with respect to team member relations and we, like many other businesses, have core values around “doing what’s right.” There is no place for discrimination, bullying, or harassment in our workplace. When any such allegations arise, we take them seriously, thoroughly investigate the matter, and then take appropriate action (up to and including termination) based on the outcome of our investigation.

Unfortunately, SB 176 will harm both employers and employees. We already have an established system of state and federal civil rights laws within which business must operate. These laws have flaws—they are often redundant, they allow plaintiffs to file lawsuits under the more favorable set of laws, and unfairly allow Plaintiffs to recover attorneys’ fees if they prevail while precluding defendants from doing so regardless of how spurious the allegations. Still, the current system does work to protect employees from bad employers. As an employer and a female CEO, I take pride in knowing that my organization employs over 200 team members and that my leaders make decisions and take action every day to ensure that our culture is inclusive, aligned with our values, and creates opportunities for everyone to be a part of our commitment to provide affordable access to dental care.

I appreciate the desire to ensure workplaces are free of discrimination. The processes by which employers do this is a critical part of creating a healthy workplace culture. Unfortunately, this bill does not move Colorado workplaces any closer to freedom from discrimination. Instead, this bill further disadvantages businesses who are trying to do the right thing by reducing their ability to defend themselves, adding unnecessary layers of complexity, increasing the cost of doing business in Colorado, and doing nothing to protect businesses from spurious lawsuits. This bill allows Plaintiffs lawyers to play “gotcha” because it conflicts with federal law. This bill will be a boon for the Plaintiffs’ bar, allows Plaintiffs to circumvent the Colorado Civil Rights Administrative Process, and places additional burden and cost on the already overcrowded State court system. Finally, this bill prohibits confidentiality, which can often be something valued by both the employee or the employer and is often the cornerstone of any potential resolution.

I write today to ensure that my legislators know that DDCO is fully supportive of the position of the Denver Metro Chamber of Commerce in urging legislators to VOTE NO on SB 176.

Sincerely,



Helen Drexler
President and CEO
Delta Dental of CO

April 1, 2021

Written Testimony Concerning SB21- 174

Members of the Senate Judiciary Committee:

My name is Maureen Cain and I am submitting this written testimony on behalf of the Colorado State Public Defender's Office. While there are many good things in SB21-174, our office remains concerned that there is significant **limitation** on what information shall be disclosed to the Office of the District Attorney in the context of a disclosure regarding a police officer's credibility, commonly known as a "Brady disclosure", in the bill.

We are hopeful that there is consideration of an amendment(s) to this section and we would be happy to collaborate on such an amendment(s).

It is the position of the OSPD that information (not covered by HIPPA) considered and supporting the issuance of a letter regarding a police officer's credibility should be available as discovery in a criminal case.

Thank you for your attention.

Maureen Cain
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Director of Legislative Policy and External Communications
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