

**Testimony before Senate Judiciary Committee**  
**Senate Bill 285- Misclassification**  
**Presented by Eric Stafford, Senior Director of Government Affairs**



**Wednesday, January 25, 2012**

Mister Chairman and members of the committee:

We appreciate the opportunity to provide testimony in opposition to Senate Bill 285 which changes misclassification penalties from a second offense class C nonperson misdemeanor to a severity level 10 felony.

Just last year, the legislature passed HB 2135 which amended the statutory provision of the division under Department of Labor specifically tasked with investigating alleged claims of misclassification of employees. HB 2135 offered more clear guidelines for both the Department of Revenue and Department of Labor to follow in cases where improper misclassification of employees was suspected.

Also last year, in a floor amendment offered by Senator Apple, the Senate voted 26-10 to change the third violation, which this bill deletes, from a felony to a class A nonperson misdemeanor.

In 2006, the Kansas legislature passed HB 2772 which created this new division in the department of labor. The Chamber opposed this legislation with concerns over the perceived problem of misclassification versus the reality of the problem in our state. A study conducted in 2006 stated Kansas was missing out on \$40 million in unpaid taxes due to misclassification. This couldn't be further from the truth.

In 2006, the Kansas Chamber also voiced concerns about the need to create a division to investigate claims of misclassification as numerous laws are in place for companies who intentionally fail to withhold or pay taxes for employees (see page 2). Now, as then, we believe that intentionally fraudulent classification of an employee should be penalized. However, current law allows anonymous claims to be filed whether or not there is merit to the claim, automatically opening an investigation into the company's business practices. Proponents of the 2006 legislation assured committee members that meritless investigations would not occur. The Chamber supports efforts by the state to investigate legitimate claims of misclassification if reasonable suspicion exists and those parties should be required to provide their contact information, not file a claim anonymously behind the comfort of their computer.

Changes made by the legislature last session satisfied these concerns and established clear guidelines to help make the determination as to whether a company is intentionally misclassifying employees as independent contractors. I would like to thank the committee for the opportunity to speak in opposition to SB 285 and I would be happy to answer any questions.



*The Kansas Chamber, with headquarters in Topeka, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to do business. The Chamber represents small, medium and large employers all across Kansas.*

## **Summary of Existing Penalties for Failure to Pay or Withhold Taxes (Department of Revenue)**

- The statute establishing penalties for failure to pay income taxes is 79-3228. In this statute, if one without intent to evade, fails to file a return but voluntarily files a correct return or pay tax due within 6 months, there is a 10% fine of the unpaid balance plus interest.
- If one fails to file a return within 6 months, in addition to the unpaid amount, there is a 25% penalty, plus interest added.
- If any taxpayer who has failed to file a return or has filed an incorrect return, and after notice from the director refuses or neglects within 20 days to file a proper return, the face a penalty of 50% of the unpaid balance plus interest.
- Any person who with fraudulent intent fails to pay any tax shall be assessed a penalty equal to the amount of the unpaid balance plus interest. Such person shall also be guilty of a misdemeanor and if convicted, faces a maximum fine of \$1,000 or imprisonment not less than 30 days and no more than one year.
- Any person who willfully signs a fraudulent return shall be guilty of a felony and upon conviction face imprisonment for no more than 5 years.
- A similar statute is in place for withholding tax with the same penalties found in 79-3228.

## **Department of Labor Provisions**

- Penalties currently in place for the Department of Labor to enforce are found in 44-717 and 44-719.
  - 44-717 covers collection of employer payments, penalties and interest for past due payments. The penalty for each month or fraction of a month for the calendar quarter which they failed to pay is equal to .05% of the total wages paid by the employer during the quarter, except no penalty shall be less than \$25 or more than \$200.
  - Statute 44-719 establishes a penalty equal to 100% of the unpaid taxes if the employer willfully fails to pay contributions.

