

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on February 20, 2006 in Room 241-N of the Capitol.

All members were present.

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department
Norm Furse, Office of Revisor of Statutes
Renaë Jefferies, Office of Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee:

Representative Anthony Brown
Joan Wagnon, Secretary, Kansas Department of Revenue
Jim Garner, Secretary, Kansas Department of Labor
Bob Dunn, Vice President of Community Affairs, J. E. Dunn Construction Company
Gary Seaton, Sr., Total Interiors, Inc.
Jim Steele, Safety Director, Falewitch Construction Services, Inc.
Jim Wilkinson, Vice President, Image Flooring, LLC, Lenexa
Judy Ancel, Director of The Institute of Labor Studies, UMKC
Kelly D. Pinkham, MS, Department of Economics, University of Missouri-Kansas City
Kevin Krentz, Vice President, Interior Contractors, Inc., Topeka
Colleen White, President of Strategic Workplace Solutions, Inc., Kansas City
Representative Tom Holland
John Donley, Governmental Affairs, Kansas Livestock Association
Jeff Glendening, Vice President of Political Affairs, The Chamber of Commerce
Eric Stafford, Associated General Contractors of Kansas
Representative Judith Loganbill

Others attending:

See attached list.

The Chairman opened the hearing on **HB 2841: Misclassifying employees as independent contractors prohibited.**

Staff briefed the committee on **HB 2841.**

A video, "Stop Worker Abuse" was shown.

Representative Anthony Brown testified as a proponent to **HB 2841.** Workers misclassification is a large problem. This is harmful to business. Most contractors do comply with good business practice. Contractors can not compete with unethical practice as the unethical employers avoid paying employee income tax, avoid paying unemployment, and avoid paying worker's compensation. Injured workers still receive care. Emergency care is expensive and these workers do not have insurance (Attachment 1).

Secretary Joan Wagnon, Kansas Department of Revenue, testified as a proponent to **HB 2841.** The Department of Revenue supports legislation authorizing working with the Department of Labor in addressing the serious problem of worker misclassification. This would better enable the Department of Revenue to administer and enforce the provisions of the Withholding and Declaration of Estimated Tax Act, K.S.A. 79-3296 et seq., as amended, and see that all withholding taxes lawfully due are fully paid.

This bill would also authorize Revenue and Labor to establish a website to assist in joint efforts to administer and enforce the law by: (1) informing the public about the issue of worker misclassification; (2) encouraging concerned groups and individuals to report alleged instances of worker misclassification; and (3) disseminating information regarding violations of worker classification laws.

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The Department of Revenue offered a balloon amendment containing language that: (1) makes clear the bill is aimed at only those employers who knowingly and intentionally violate the law; and (2) places more specific limitations on the information that may be disclosed by the Department of Revenue to the Department of Labor. (Attachment 2).

Secretary Jim Garner, Department of Labor, testified in support of **HB 2841**. Misclassification is an issue that directly affects the operations of the Department of Labor.

The deliberate misclassification of employees to avoid payment of taxes is a growing problem and one that disadvantages the overwhelming majority of Kansas employers who do obey the laws, have workers compensation insurance and pay their taxes (Attachment 3).

Bob Dunn, Vice President of Community Affairs at J. E. Dunn Construction Company, testified as a proponent to **HB 2841**. Passage of **HB 2841** would help prevent those employers that knowingly and intentionally misclassify employees as independent contractors for purposes of avoiding income tax withholdings or unemployment insurance contributions, as well as other related costs associated with maintaining a work force.

Gary Seaton, Sr., Total Interiors, Inc., Kansas City, testified in support of **HB 2841**. Any unscrupulous contractors that misclassify employees as independent contractors and don't pay the appropriate taxes and insurance are creating an uneven playing field for competition in our industry (Attachment 4).

Jim Steele, Safety Director for Falewitch Construction, Inc., Omaha, Nebraska, testified as a proponent for **HB 2841**. It is hoped that those of us in Nebraska facing this problem can point our legislature to Kansas as an example of measures being taken to fix this problem. The misclassification of workers as independent contractors is a lucrative deception employers are tempted to cast to avoid a large portion of labor expenses such as training costs, unemployment insurance, workers compensation insurance, benefits employees might expect such as health insurance, paid vacation, and disability insurance and often federal and state taxes (Attachment 5).

Jim Wilkinson, Vice-President of Image Flooring, LLC, Lenexa, KS, testified in support of **HB 2841**. Unscrupulous contractors who are not providing benefits, pensions, liability and workers' compensation insurance, business licensing fees or fair wages and their associated taxes put 'fair' contractors at a huge competitive disadvantage. Misclassification affects the Kansas economy on many levels, as well as the solvency of the 'fair' contractors in the various aspects of construction within Kansas (Attachment 6).

Judy Ancel, Director of The Institute for Labor Studies, The University of Missouri-Kansas City and Longview Community College, testified as a proponent for **HB 2841**. One increasingly common illegal practice is the misclassification of workers. This occurs in two ways: (1) when an employer misclassifies a worker who should be a waged or salaried employee as an independent contractor and reporting that workers earnings on an IRS 1099 form, instead of a W-2 form or (2) when an employer fails to classify a worker at all and pays him or her in cash, reporting nothing (Attachment 7).

Kelly D. Pinkham, MS, Department of Economics, University of Missouri-Kansas City, testified as a proponent for **HB 2841**. Employee misclassification is defined as the case where employers treat workers as independent contractors that would otherwise be wage or salaried employees. If an employee is classified as an independent contractor, the employers are not required to pay a variety of payroll taxes (e.g.; social security, unemployment insurance) and the independent contractor is not fully protected by unemployment laws (Attachment 8 & 9).

Kevin Krentz, Vice President of Interior Contractors, Inc., testified in support of **HB 2841**. The concept is to pay one check to an independent contractor and he usually pays his crew in cash. The competition has turned into unscrupulous contractors paying in cash and skipping social security paid both by employer and employee. They also do not pay federal and state withholding taxes, workers' compensation, health, and general liability insurance for their skilled laborers of vagabonds, gypsies, and drifters because of their past working history or criminal record (Attachment 10).

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Colleen White, President of Strategic Workplace Solutions, Inc., Kansas, testified in support of **HB 2841**. During her time with the Labor Standards, she encountered the use of “independent contractors” in many instances where the designation was neither legal nor appropriate. Workers were regularly classified as independent contractors when they actually met the definition of “employee” (Attachment 11).

Representative Tom Holland testified in support of **HB 2841**. The form 1099 misclassification is a destructive business practice that is devastating to both Kansas businesses and state revenues (Attachment 12).

John Donley, KLA Government Affairs, Kansas Livestock Association, testified in opposition to **HB 2841**. The bill is well intended; however, KLA members have some serious concerns with the legislation. This affects a gray area of the law. A rancher may hire an individual to build a fence for him. He may tell the fence builder that he wants a five-wire fence with the posts one rod apart and the wires spaced 8 inches apart with the bottom wire 16 inches off the ground. The general consensus would be that the fence builder would be an independent contractor. However, what if the rancher drives by to check on the progress of the fence and notices that the fence is not meeting his specifications or that the fence builder is loosely tying the wire to the posts instead of fastening the wire securely? If the rancher tells the fence builder that he would like the fence to be done correctly, does the fence builder then become an employee of the rancher once the rancher is involved with the means and methods used to accomplish the result of the desired work (Attachment 13).

Jeff Glendening, Vice President of Political Affairs, The Kansas Chamber, testified in opposition of **HB 2841**. The bill has gone too far in addressing the problem of misclassification. There is no clear and authoritative interpretation of employee classification (Attachment 14).

Eric Stafford, Associated General Contractors of Kansas, testified in the neutral position of **HB 2841**. There are concerns as it supports the concept of identifying companies that are purposely breaking laws in an effort to avoid taxes and making these companies accountable per the laws that currently exist. However, the bill creates too many questions and concerns for full support (Attachment 15).

The Chairman closed the hearing on **HB 2841**.

The Chairman opened the hearing on **HB 2928: Leave from employment for victims of domestic violence or sexual crimes.**

Staff briefed the committee on **HB 2928**.

Representative Judith Loganbill testified as a proponent to **HB 2928**. This bill affords to those individuals who need to take time off from work to obtain relief due to domestic violence or sexual assault the assurance that they will not suffer discrimination or retaliation from their employer (Attachment 16).

Due to time restraints the Chairman said the hearing on **HB 2928** would be continued on February 21.

Written testimony as proponents to **HB 2841** was distributed: Carman Schell, Senior Estimator for PCS Dahmer, Grandview, Missouri (Attachment 17) and Paul Rodriguez, Rodriguez Mechanical Contractors (Attachment 18).

The meeting adjourned at 10:50 a.m. The next meeting will be February 21, 2006.