

HOUSE BILL No. 2772

AN ACT concerning employment; relating to the employment relationship between an owner-operator and a licensed motor carrier; relating to misclassification of employees; amending K.S.A. 2005 Supp. 79-3234 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

New Section 1. (a) As used in this section:

(1) “Driver” means an individual who operates a motor vehicle which is leased to a licensed motor carrier pursuant to a lease agreement.

(2) “Lease agreement” means a written contract by which an owner grants the use of one or more motor vehicles and agrees to furnish a driver for each such motor vehicle.

(3) “Licensed motor carrier” means any person that holds a certificate of convenience and necessity, a certificate of public service, private carrier permit or an interstate license as an interstate exempt carrier from the state corporation commission, or is required to register motor carrier equipment pursuant to 49 U.S.C. §14504.

(4) “Motor vehicle” means any automobile, truck-trailer, semitrailer, tractor or any other self-propelled or motor driven vehicle used upon any of the public highways of Kansas for the purpose of transporting property.

(5) “Owner” means a person to whom title to a motor vehicle has been issued.

(6) “Owner-operator” means any owner which leases one or more motor vehicles to a licensed motor carrier pursuant to a lease agreement.

(7) “Person” means any individual, partnership, corporation, limited liability company or any other business entity.

(b) For purposes of the employment security law, it is hereby declared to be the policy of this state that, consistent with requirements of 49 C.F.R. §376.12(c)(1), an independent contractor relationship between an owner-operator and a licensed motor carrier may exist when the licensed motor carrier complies with the applicable statutory and regulatory requirements governing a licensed motor carrier’s use of leased vehicles in the transportation of property. To that end, in determining whether an employment relationship exists between a licensed motor carrier and a driver, the fact that the licensed motor carrier, pursuant to a lease agreement, requires the driver to comply with applicable provisions of the regulations of the state corporation commission, federal motor carrier safety administration or other federal agency having jurisdiction of motor carriers shall not be considered as the licensed motor carrier’s exercise of control over the driver.

New Sec. 2. (a) No person shall knowingly and intentionally misclassify an employee as an independent contractor for the sole or primary purpose of avoiding either state income tax withholding and reporting requirements or state unemployment insurance contributions reporting requirements.

(b) Any person violating subsection (a) shall be subject to a penalty pursuant to K.S.A. 79-3228, and amendments thereto.

Sec. 3. K.S.A. 2005 Supp. 79-3234 is hereby amended to read as follows: 79-3234. (a) All reports and returns required by this act shall be preserved for three years and thereafter until the director orders them to be destroyed.

(b) Except in accordance with proper judicial order, or as provided in subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A. 46-1106, K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall be unlawful for the secretary, the director, any deputy, agent, clerk or other officer, employee or former employee of the department of revenue or any other state officer or employee or former state officer or employee to divulge, or to make known in any way, the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information required under this act; and it shall be unlawful for the secretary, the director, any deputy, agent, clerk or other officer or employee engaged in the administration of this act to engage in the business or profession of tax accounting or to accept employment, with or without consideration, from any person, firm or corporation for the purpose, directly or indirectly, of preparing tax returns or reports required by the laws of the state of Kansas, by any other state or by the United States government, or to accept any employment for the purpose of advising, preparing material or data, or the auditing of books or records to be used in an effort to defeat or cancel any tax or part thereof that has

been assessed by the state of Kansas, any other state or by the United States government.

(c) The secretary or the secretary's designee may: (1) Publish statistics, so classified as to prevent the identification of particular reports or returns and the items thereof;

(2) allow the inspection of returns by the attorney general or other legal representatives of the state;

(3) provide the post auditor access to all income tax reports or returns in accordance with and subject to the provisions of subsection (g) of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto;

(4) disclose taxpayer information from income tax returns to persons or entities contracting with the secretary of revenue where the secretary has determined disclosure of such information is essential for completion of the contract and has taken appropriate steps to preserve confidentiality;

(5) disclose to the secretary of commerce specific taxpayer information related to financial information previously submitted by the taxpayer to the secretary of commerce concerning or relevant to any income tax credits, for purposes of verification of such information or evaluating the effectiveness of any tax credit program administered by the secretary of commerce;

(6) disclose income tax returns to the state gaming agency to be used solely for the purpose of determining qualifications of licensees of and applicants for licensure in tribal gaming. Any information received by the state gaming agency shall be confidential and shall not be disclosed except to the executive director, employees of the state gaming agency and members and employees of the tribal gaming commission;

(7) disclose the taxpayer's name, last known address and residency status to the department of wildlife and parks to be used solely in its license fraud investigations;

(8) disclose the name, residence address, employer or Kansas adjusted gross income of a taxpayer who may have a duty of support in a title IV-D case to the secretary of the Kansas department of social and rehabilitation services for use solely in administrative or judicial proceedings to establish, modify or enforce such support obligation in a title IV-D case. In addition to any other limits on use, such use shall be allowed only where subject to a protective order which prohibits disclosure outside of the title IV-D proceeding. As used in this section, "title IV-D case" means a case being administered pursuant to part D of title IV of the federal social security act (42 U.S.C. §651 et seq.;) and amendments thereto. Any person receiving any information under the provisions of this subsection shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection ~~(d)~~ (e);

(9) permit the commissioner of internal revenue of the United States, or the proper official of any state imposing an income tax, or the authorized representative of either, to inspect the income tax returns made under this act and the secretary of revenue may make available or furnish to the taxing officials of any other state or the commissioner of internal revenue of the United States or other taxing officials of the federal government, or their authorized representatives, information contained in income tax reports or returns or any audit thereof or the report of any investigation made with respect thereto, filed pursuant to the income tax laws, as the secretary may consider proper, but such information shall not be used for any other purpose than that of the administration of tax laws of such state, the state of Kansas or of the United States;

(10) communicate to the executive director of the Kansas lottery information as to whether a person, partnership or corporation is current in the filing of all applicable tax returns and in the payment of all taxes, interest and penalties to the state of Kansas, excluding items under formal appeal, for the purpose of determining whether such person, partnership or corporation is eligible to be selected as a lottery retailer;

(11) communicate to the executive director of the Kansas racing commission as to whether a person, partnership or corporation has failed to meet any tax obligation to the state of Kansas for the purpose of determining whether such person, partnership or corporation is eligible for a facility owner license or facility manager license pursuant to the Kansas parimutuel racing act; ~~and~~

(12) provide such information to the executive director of the Kansas public employees retirement system for the purpose of determining that

certain individuals' reported compensation is in compliance with the Kansas public employees retirement act at K.S.A. 74-4901 et seq., and amendments thereto; and

(13) provide taxpayer information of persons suspected of violating section 2, and amendments thereto, to the staff attorneys of the department of labor for the purpose of determining compliance by any person with the provisions of section 2, and amendments thereto, which information shall be limited to withholding tax and payroll information, the identity of any person that has been or is currently being audited or investigated in connection with the administration and enforcement of the withholding and declaration of estimated tax act, K.S.A. 79-3294 et seq., as amended, and the results or status of such audit or investigation.

(d) Any person receiving information under the provisions of subsection (c) shall be subject to the confidentiality provisions of subsection (b) and to the penalty provisions of subsection (e).

(e) Any violation of subsection (b) or (c) is a class A nonperson misdemeanor and, if the offender is an officer or employee of the state, such officer or employee shall be dismissed from office.

(f) Nothing in this section shall be construed to allow disclosure of the amount of income or any particulars set forth or disclosed in any report, return, federal return or federal return information, where such disclosure is prohibited by the federal internal revenue code as in effect on September 1, 1996, and amendments thereto, related federal internal revenue rules or regulations, or other federal law.

Sec. 4. K.S.A. 2005 Supp. 79-3234 is hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.