Approved: 2/17/98
Date

MINUTES OF THE HOUSE COMMITTEE ON BUSINESS, COMMERCE & LABOR.

The meeting was called to order by Chairman Al Lane at 9:05 a.m. on February 5, 1998 in Room 526-S of the Capitol.

All members were present except: Rep. David Adkins - excused
Rep. Broderick Henderson - excused

Committee staff present: Jerry Donaldson, Legislative Research Department
Bob Nugent, Revisor of Statutes
Bev Adams, Committee Secretary

Conferees appearing before the committee: Rep. Ray Cox
Roger Neighbors, Neighbors Construction
Tom Fritzlen, attorney, Overland Park
John Gage, KTLA, Overland Park
A. J. Kotich, KDHR

Others attending: See attached list

Hearing on: **HB 2701 - Statute of limitations on certain wage payment claims.**

Rep. Ray Cox, who asked the committee to introduce the bill, gave a short explanation of the bill and introduced the two conferees, Roger Neighbors and Tom Fritzlen.

Roger Neighbors, Neighbors Construction, Edwardsville, Kansas, testified as a proponent of the bill. In the past several years, his company had been exposed to liability for double payment under the Wage Payment Law. He asked that the law be changed so that claims must be filed within three months of the date the alleged wages are earned, and higher proof required. That way, contractors would be able to investigate and make the responsible party pay. (See Attachment 1)

Thomas J. Fritzlen, Jr. acted as attorney for Neighbors Construction in their wage payment claims. He explained how claims are handled, usually by teleconference, and how wage claimants often need no proof, just their word that they worked on the job. He stated that general contractors, like Neighbors, are required to prove a "negative', that is, the claimant did not perform work. He ended his testimony by answering questions.

Wayne Maichel, Kansas AFL/CIO, an opponent of the bill, provided written testimony on the bill. (See Attachment 2)

John Gage, a practicing attorney from Overland Park, specializing in Employment Law, appeared on behalf of the Kansas Trial Lawyers Association (KTLA) as an opponent of **HB 2701**. He believes that the bill would dilute the law and is not necessary for just one or two cases. He feels that instead of diluting the law, we should be working to strengthen the law instead. (See Attachment 3) He concluded his testimony by answering questions from the committee.

A. J. Kotich, Chief Counsel, Kansas Department of Human Resources (KDHR), spoke from the audience in response to a question from Rep. Boston on the sub-contractor's responsibility to pay his employees. Mr. Kotich cited K.S.A. 44-317. This is one of the statutes that is being amended in the bill.

No others were present to testify for or against the bill and Chairman Lane closed the hearing on **HB 2701**.

Chairman Lane will refer the bill to the Employment Security Advisory Council.

The meeting was adjourned at 9:55 a.m.

The date of the next meeting will be announced.

Unless specifically noted, the individual remarks recorded herein have not been transcribed verbatim. Individual remarks as reported herein have not been submitted to the individuals appearing before the committee for editing or corrections.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE: February 5, 1998

NAME	REPRESENTING
Ray Cox	39th Dist
Roger Neighbors	NCCI
Tom Fritzlen	NCCI
Elaine Frisbie	Div. of the Budget
Craig Lesley	DHR-Employment Standards
Dick Carter, Jr.	RSIA
John B Gage II	KTLA, NELA
[illegible]	KTLA

HOUSE COMMITTEE ON BUSINESS, COMMERCE AND LABOR

To: Honorable Al Lane, Chairman

Re: Kansas Wage Payment Law, K.S.A. Section 44-317
House Bill 2701
Summary of Testimony of Roger H. Neighbors, and
Thomas J. Fritzlen, Jr.

Roger H. Neighbors

I am the President of Neighbors Construction Co., Inc. ("Neighbors") which has been engaged in the construction industry in Kansas since 1951, with our offices in Edwardsville. In the past several years, Neighbors has, through no fault of its own, been exposed to liability for double payment under the Wage Payment Law.

On one matter alone, Neighbors was required to pay wages in the amount of $7,533.50 to several claimed employees of Neighbors' subcontractor, Larry Voyles d/b/a Builders and Remodelers. The subcontractor, Larry Voyles, was fully paid (but apparently applied our payments to wages owed on earlier jobs). *Souders, et al v. Larry Voyles d/b/a Builders & Remodelers and/or Neighbors Construction co., Inc.*, Wage Claim # 196-317,etc (1996). As set forth in the attached charts, the claims were received by the agency months after the claimed wages, and in the case of Mr. Grinder, he was allowed to present a claim <u>on the date of the hearing!</u> Neighbors was forced to defend the claim at the same time it was presented, with no prior notice given or required by the hearing officer. The hearing officer found that Voyles' knowingly violated the law, but Neighbors had to pay twice for wages, without any evidence that the individual claimants ever did work (other than their own testimony). No contract, W-2 or other evidence has been required in this or other cases by the hearing officers in order for them to rule against the general contractor.

In the Voyles case, Voyles claimed the workers were not employees but independent contractors. The result allows unscrupulous subcontractors to avoid payroll taxes by claiming workers as independent contractors, then sticking the general contractor with the wages. The workers who go along with the scheme get the full amount of wages <u>without</u> withholding for taxes.

By way of an even more recent example, one Dale L. Smith filed a wage claim with the Department of Human Resources alleging that he had not been paid wages by Neighbors' subcontractor, DD, Inc. Neighbors paid DD, Inc. (controlled by Don Demming) for the period in which Smith claimed wages, but DD, Inc. allegedly did not pay Smith, and Demming and DD, Inc. subsequently disappeared. Smith

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claimed he did work for a period of five days from August 7 to 11, 1995, even though he produced no evidence of being an employee other than his testimony. He produced no time sheets, W-2, or any other document. Smith filed his claim in August of 1995, but Neighbors was not notified until May 13, 1996, and a hearing was not held until April 1997, after Demming and DD, Inc. were long gone. By this time there was no way to track down DD, Inc. and Neighbors was required to pay gross wages without withholding to Smith.

Surely the Wage Payment Law was not intended to allow claimants to simply claim "I did work" and receive compensation years later without any evidence that they did work, and without any meaningful opportunity to Neighbors to investigate and dispute the claim. Unless claimants are required to show by a higher standard of proof (such as check stubs or W-2, or other tax forms) that they were truly entitled to wages, the taxes will be avoided and general contractors will be stuck with the bill. The Department of Human Resources is simply the claimant's rubber stamp.

The Department had suggested that we require performance bonds from all subcontractors, or require all subcontractor's paychecks to their employees be delivered at Neighbors' offices. Obviously, this would be unworkable, and add tremendous expense to the projects that we bid, which would impact adversely on our ability to be competitive.

At a minimum, the law should be changed so that claims must be filed within three months of the date the alleged wages are earned, and higher proof required. That way, contractors would be able to investigate and make the responsible party pay.

Thomas J. Fritzlen, Jr.

I am an attorney at law, licensed to practice in Kansas, and have acted as attorney for Neighbors Construction Co., Inc. In addition to Mr. Neighbors' testimony, the proof required must be changed to even the playing field. Currently, general contractors, like Neighbors, are required to prove a "negative", i.e. that a claimant did not perform work. This can only be shown by the absence of check stubs for prior periods, no W-2 or W-4 forms, or income tax statements. Without requiring more evidence, the door is open to fraudulent claims (which are likewise unsupported by any documents). Due process notions of reasonable notice and an opportunity to be heard are defeated under the current system. The amendments in House Bill 2701 will not prevent any valid wage claim from proceeding, but will level the field for general contractors, and prevent fraudulent claims.

VOYLES	PAUL D. ATKINS	HOWARD O. JENKINS	PHILIP R. NICKEL	RICHARD SOUDERS	GRINDER
Claim:	1,817.00	1,952.00	858.00	1,364.00	1,542.00
Claim No.:	196-402	196-443	196-470	196-317	
Officer:	Triggs	Triggs	Triggs	Triggs	Triggs
Agreement:	oral	oral	oral/quit	oral/quit	
Alleged work:	10-17-95 to 12-11-95	11-95 to 1-96	11-95 to 1-23-95	11-16-95 to 12-9-95	
Claim filed:	KS Rec'd 4/3/96 Dated 2-28-96	KS Rec'd 5-1-96 Dated 2-26-96	5-17-96	1-28-96	9-16-96
Neighbors notified:	6-25-96	6-25-96	6-25-96	7-29-96	9-16-96
Hearing:	9-16-96	9-16-96	9-16-96	9-16-96	9-16-96
Award:	1,817.00 10-21-96	1,952.00 10-2-96	858.00 10-2-96	1,364.00 10-2-96	1,542.00
Paid:	1,817.00	1,952.00	858.00	1,364.00	1,542.00

D&D	DALE SMITH
Claim:	422.77
Claim No.:	296-82
Officer:	Triggs
Agreement:	oral
Alleged work:	8-7-95 to 8-11-95
Claim filed:	Rec'd 8-28-95
Neighbors notified:	5-13-96
Hearing:	4-3-97
Award:	422.77 5-7-97
Paid:	5-23-97

Testimony Presented to
The Business, Commerce & Labor Committee
on H.B. 2701

Presented by Wayne Maichel, Executive Vice President
Kansas AFL-CIO

Mr. Chairman, members of the committee, my name is Wayne Maichel, and I represent the Kansas AFL-CIO. We appear before your committee in opposition to H.B. 2701.

H.B. 2701 would limit the time an employee could file for a wage claim to three months. The present statute of limitations is:

1. Three years under oral agreement.
2. Five years when an agreement is in writing.

When an employee, working for a subcontractor, files a wage claim, the subcontractor and the general contractor are both given notice by the Wage and Hour Division of the Department of Human Resources. This solves most wage claims. The general contractor simply notifies the subcontractor that if he owes wages to an employee, he should pay them. The reason this handles most cases is we seriously doubt the general contractor would use that subcontractor again if he didn't pay the wages he was committed to. Another reason this step handles the problem is because if the subcontractor doesn't pay, the general contractor is obligated to do so.

In the many years this statute has been in affect, we don't recall there ever being a problem. An employee may spend considerably more than 90 days just trying to find the subcontractor and collect the wages owed them before they file a wage claim. We do not believe this legislation is necessary.

Mr. Chairman, we thank you for the opportunity to present our views on H.B. 2701 to your committee.

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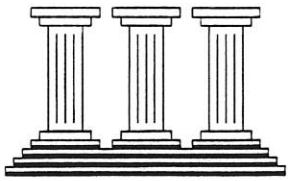

KANSAS TRIAL LAWYERS ASSOCIATION
Lawyers Representing Consumers

Testimony on HB 2701

TO: Business, Commerce and Labor Committee

FROM: John Gage

DATE: February 4, 1998

Mr. Chairman and Members of the Committee:

I am John Gage, a practicing attorney from Overland Park, specializing in Employment Law. I appear today on behalf of KTLA and in my capacity as President of the Kansas affiliate of the National Employment Lawyers Association. It is my opinion that the proposed changes water down the protection the Kansas Wage payment Act affords employees against unscrupulous employers who withhold wages after termination or resignation without justification. In representing clients on both sides of the state line, I have always been proud as a Kansas resident to inform them that Kansas provides employees much more effective protection, with respect to unpaid wages, than Missouri, which has no administrative enforcement mechanism and relegates its citizens to small claims court or other legal action to obtain payment.

The proposed amendments to the Wage Payment Act, rather than advancing clearly articulated Kansas public policy that employees should be paid wages owed them, dilute it. Limiting employee claims for wages to those made "within three months of the payday when such wages were due," arbitrarily imposes an unjustifiably short statute of limitations for initiating administrative proceedings. An employee who has been discharged or who has resigned is ordinarily involved in the process of either obtaining new employment or serving a 90-day probationary period in connection with such new employment. When combined with family and other obligations, this leaves him or her with less time to attempt to resolve wage disputes. Should an employee choose the unquestionably reasonable course of action of attempting to negotiate wage disputes

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with an employer before filing an administrative claim, that employee necessarily places himself or herself in jeopardy of running afoul of the three-month bar. After three months, the employee's only recourse would be the same as that available to Missouri employees-- initiating action in our state courts. Our state court's dockets are congested enough already without amendments to the Kansas Wage Payment Act, which will only increase civil caseloads.

I can see no justification, whatsoever, for requiring an employee to prove by "clear and convincing evidence" that he or she was employed by his or her employer. In 99.9% of the claims filed, the employment status of the claimant is not at issue. Requiring a "clear and convincing evidence" standard for establishment of an employment relationship extends an open invitation to employers to litigate whether the employee was even employed by that employer at all, and promises to substantially complicate administrative proceedings for the obtainment of wages due and owing.

Our Kansas Wage Payment Act is something that we should be attempting to strengthen, not dilute. That Act sets up employees as private attorneys general for the purpose of advancing an important Kansas public policy, seeing that employees are paid what is owed them. If anything, KSA 44-315 should be amended to provide for reasonable attorney's fees and expenses to employees who successfully prosecute claims for unpaid wages. This is true especially in light of the fact that agency action on such claims is subject to review in accordance with the Kansas Judicial Act for Judicial Review and Enforcement of Agency Action, a highly technical act with which most Kansas lawyers, much less laymen, are not even familiar. If an employee is to fulfill his or her role as a private attorney general in a case which is hotly contested by his or her employer, that employee can only be expected to do so if he or she is afforded the incentive of recovering attorney's fees expended in the process. That is the precise justification behind the authorization for an award of attorney's fees to prevailing parties in civil rights suits provided by 42 USC 1988, and is ample justification for similar language in the Kansas Wage Payment Act providing for attorney's fees and expenses.

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