

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 a.m. on January 30, 2004 in Room 241-N of the Capitol.

All members were present except:

Representative Broderick Henderson- excused  
Representative Don Hill- excused  
Representative Todd Novascone- excused

Committee staff present:

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

Conferees appearing before the committee: Representative Nile Dillmore  
Representative Tom Holland  
Jim DeHoff, Executive Secretary Treasurer, AFL/CIO  
Paul Rodriguez, Rodriguez Mechanical Contractors  
Marlee Carpenter, Kansas Chamber of Commerce  
Elias Garcia, Executive Director, Kansas Advisory on  
Hispanic Affairs  
Bob Totten, Kansas Contractors Association, Inc.

Others attending:

See Attached List.

The Chairman called the meeting to order and asked if there was anyone in the audience that wanted to introduce a bill.

Representative Tom Holland introduced a new bill dealing with hiring illegal immigrants and increasing fines for the employers.

The Chairman opened the hearing on **HB 2537 - Workers Compensation Advisory Council Amendments.**

Staff gave a briefing stating the bill came out of the summer interim committee.

There were no proponents or opponents testifying on **HB 2537.**

The Chairman closed the hearing on **HB 2537.**

The Chairman opened the hearing on **HB 2479 - Employment of illegal aliens, penalties.**

Staff gave a briefing on **HB 2479.**

Representative Nile Dillmore, sponsor of **HB 2479** stated there were upwards to 50,000 illegal aliens in Kansas. The problem is wide spread across the nation. This is a complicated issue and crosses the lines of legal, ethical, moral, and economic considerations. **HB 2479** is limited in scope to those employers who are doing business with the state and other units of government and provides sanctions against those who have benefitted from tax payer dollars to expand, locate, or enhance their business interest (Attachment 1).

Jim DeHoff, Executive Secretary Treasurer of Kansas AFL/CIO, a proponent, stated that **HB 2479** is very important to their 100,000 members. There are approximately 6,000 illegal workers entering the United States every day, even though the President of the United States continually assures Americans that through the Homeland Security Act, a measure of safety has been obtained and control of our borders has

CONTINUATION SHEET

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE at 9:00 a.m. on January 30, 2004 in Room 241-N of the Capitol.

been achieved.

One of the main reasons that **HB 2479** should be passed is employers cannot get into any legal problem by accepting fake social security numbers or identifications. The only way an employer can face sanctions of the law is when they are notified that a fake identification was submitted (Attachment 2).

Paul Rodriguez, President, Rodriguez Mechanical Contractors, Inc., testified in support of **HB 2479**. Mr. Rodriguez has been in the plumbing business for 27 years, licensed in both Kansas and Missouri. Prior to September 11<sup>th</sup>, 2001, it was reported that his firm was the largest employer of union plumbers in the region. Since September 11<sup>th</sup>, his firm went from employing approximately 143 plumbers down to 35. The current competition utilizes a workforce that does not reside in Kansas permanently and is willing to work for less, with no benefits, and in some cases does not pay taxes (Attachment 3).

Representative Tom Holland supported **HB 2479** believing that the State of Kansas has a strong incentive to ensure that any employer who benefits from state contracts or tax incentives is employing only American citizens or those who are legally entitled to live and work in the United States.

Representative Holland offered an amendment on page 1, line 9 adding after aliens, "amending K.S.A. 21-4409 and K.S.A. 2003 Supp. 21-4503a and repealing the existing sections". Amending on page 2, with adding Sections 6, 7, 8 and renumbering existing Section 6 to Section 9 (Attachment 4).

Susan Tully, Mid-west Field Director, Federation for American Immigration Reform, provided written testimony supporting **HB 2479** (Attachment 5).

Marlee Carpenter, Vice President of Government Affairs, Kansas Chamber of Commerce and Industry, provided written testimony that stated the Chamber supports the intent of the legislation; however, they oppose the bill in its current form. If the Committee works the bill, the Chamber will bring forth an amendment (Attachment 6).

Elias L. Garcia, Executive Director of the Kansas Advisory Committee on Hispanic Affairs, testified in opposition to **HB 2479**. This proposal places responsibility on employers to investigate the residence status of prospective employees and precludes employers from hiring illegal aliens. Employers found in violation would be penalized for doing so by ineligibility for award of state agency public works or purchase contract and forfeiture of amounts equal to the totals value of state benefits received for five years leading up to date of a guilty judgement (Attachment 7).

Bob Totten, Public Affairs Director for the Kansas Contractors Association, provided written testimony in opposition to **HB 2479** (Attachment 8).

The Chairman closed the hearing at 10:10 a.m. and reminded the committee that the next meeting would be February 3, 2004.

COMMERCE AND LABOR COMMITTEE

Date January 30, 2004

NAME	AGENCY
Doug Hollandsworth	State Self Ins Fund
Jim McHaff	Kansas IFF-CIO
Paul Rodriguez	Rodriguez Mechanical
Melinda Lewis	EI Centro, Inc.
Bill Curtis	Ks Assoc of School Bds
Marlee Cooper	Kansas Chamber
Scott Heidner	KS Self Insurers Conn
Dick Cook	KS Ins. Dept.
Kent Dederick	IAFF local 83
The Hummer	KTLA
John M. Ostrowski	KS AFL-CIO
Ernest Kutzley	AARP Kansas
Barb Corant	Ks Trial Lawyers Assoc
Terri Roberts	Ks State Nurses Assn.

NILE DILLMORE

REPRESENTATIVE, 92ND DISTRICT

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TOPEKA

HOUSE OF

REPRESENTATIVES

 COMMITTEE ASSIGNMENTS  
 RANKING DEMOCRAT FINANCIAL INSTITUTIONS  
 MEMBER: CORRECTIONS AND JUVENILE  
 JUSTICE  
 UTILITIES

January 30, 2004

TESTIMONY BEFORE THE HOUSE BUSINESS, COMMERCE AND  
 LABOR COMMITTEE  
 House Bill 2479

Mr. Chairman and committee members:

Much has been made of the issue of the undocumented or illegal immigrants. We are told that upwards of 50,000 illegal aliens are in our state. The problem is wide spread in Kansas and across the nation. This is a complicated issue and crosses the lines of legal, ethical, moral, and economic considerations.

HB 2479 is legislation that will start the debate and address one small part of the overall problem. HB 2479 is limited in scope to those employers who are doing business with the state and other units of government and provides sanctions against those who have benefited from tax payer dollars to expand, locate, or enhance their business interest.

I have found that my constituents believe that those businesses that are producing profits at the expense of tax payer dollars should be held to a strict standard in their employment policies. Current law makes the employment of illegal aliens a Class C misdemeanor, which is hardly an effective deterrent to ignoring employment law. Thus, HB 2479 was written expressly towards those businesses who fail to follow the law while performing public works contracts.

Mr. Chairman, I would like the committee to know that I do not see HB 2479 as an anti-immigration bill. I believe we need to shift the focus of the debate to the main driver of illegal immigration in Kansas; and that is jobs. The undocumented worker is an easily exploited group of workers, who will not complain about unfair or unsafe working conditions. They are a group of workers who keep wage rates artificially low and jobs out of the hands of legal immigrants and Kansas citizens. Unemployment and employment taxes are many times not paid when these workers are treated as "independent contractors", and attached to my testimony I have included information that indicates that practice is prevalent in some industries. The taxpayers of Kansas expect better from the employers who do business with their state, county, city, or school board tax dollars.

Currently California has a similar statute on the books. It provides for a five year sanction on an employer who violated a state of federal law regarding the employment of

Comm Labor  
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undocumented aliens. Idaho, New Jersey, and Tennessee also have enacted laws that specifically deal with the employment of illegal aliens on public works contracts. In those states the sanctions range from fines to permanently barring of a person or business from doing business in the state, not just with the state. Seven other states have addressed this same issue in the past or have legislation pending. I refer you again to my attachments from the National Conference of State Legislators (NCSL).

Mr. Chairman and members of the committee I know there are two sides to every story. Some will say that they fear being the victim of forged documents. Some will say that they can not control their subcontractors. Some will say that the penalty is too harsh. I submit that there are inexpensive, in fact free, tools to verify Taxpayer Identification Numbers, (see attachment) to verify, or at least flag problems, with worker documentation. I submit that the problem of subcontractors will disappear when general contractors have genuine fear of accountability. I submit that those who fear harsh consequence will change the way they do business when the consequence of wrong doing gets high enough to make it profitable to ensure compliance.

I hope that as you consider this bill you will remember that we have little recourse in Kansas to stopping the flow of illegal immigrants into the United States. We can't built a fence around our borders and check the papers of everyone coming and going. Nor would we want to. We can however send a strong message to employers in Kansas that we are serious about insuring that Kansas employment laws are obeyed. HB 2479 will send that message to employers and to the citizens of Kansas.

Respectfully Submitted



Representative Nile Dillmore



## NATIONAL CONFERENCE of STATE LEGISLATURES

*The Forum for America's Ideas*

### The National Conference of State Legislatures

#### Legislation Regulating or Prohibiting Non-U.S. Citizens from State Contracts

State	Summary	Last Action/Status
Connecticut		
SB 644	Concerns individuals who work on state contracts; requires that workers on state contracts be American citizens, or legal aliens, or have some specialty for which such workers cannot be found in order to prohibit companies that receive state contracts from recruiting workers who live outside the United States and are not United States citizens.	April 7, 2003; Failed Joint Favorable deadline
Florida		
HB 897	Prohibits an alien who is not lawfully admitted for permanent residence in the US or authorized to be employed in the US, or an entity under the control of such an alien, from bidding on or performing work under a contract for a state agency or political subdivision of the state from accepting a bid from, awarding a contract to, or transacting business with an alien, or entity under the control of an alien, who is not authorized to be employed in the US.	March 22, 2002; In HOUSE. Died in committee
SB 928	Defines the term "unauthorized alien" to mean an alien who is not lawfully admitted for permanent residence in the United States or authorized to be employed in the United States; prohibits unauthorized alien, or entity under control of an unauthorized alien, from bidding on or performing work under contract for a state agency or a political subdivision of state	March 22, 2002; In SENATE. Died in committee
Indiana		
SB 4	Concerns award of state contracts; provides that a contract for services entered into by a state agency must specify that only citizens of the United States and individuals authorized to work in the United States may be employed in the performance of services under the contract or subcontract.	Introduced; To Senate Committee on Economic Development and Technology.
Maryland		
HB 176	Prohibiting a procurement unit from awarding a contract for services to be rendered by a contractor or subcontractor from a site that is located outside of the United States; providing exceptions to the prohibition; and establishing that	Introduced; To House Committee on Health and Government Operations

State	Summary	Last Action/Status
	these procurement provisions of law apply to specified procurement	
Michigan		
HB 4940	State; purchasing; requirement for state contracts to be awarded to only citizens or legal residents of the United States	July 2, 2003; Referred to Committee on Government Operations
New Jersey		
AB 2425	Provides that only citizens or legal residents of the United States may be employed in performing of certain State contracts Introduced,	June 13, 2002; To Assembly Committee on State Government
SB 1349	Provides that only citizens or persons authorized to work in the US pursuant to federal law may be employed in performing certain State contracts	Passed the Senate  To Assembly Committee on State Government
New York		
AB 1092	Enacts the "Employment and Job Training Services Act"; requires state or local government agencies and private organizations contracting with the state that provide employment services including job training, retraining or placement, to verify an individual's legal status prior to providing such services; requires notice by such agencies to potential job seekers stating that only citizens of the United States will be eligible for such services	January 14, 2003; To Assembly- Committee on Labor
AB 8331,	Provides that every contract entered into by a state agency for the procurement of equipment, materials or supplies shall contain a statement in which the contractor attests that no foreign made equipment, materials or supplies furnished to the state pursuant to the contract have been produced in whole or in part by forced labor, convict labor or indentured servitude.	April 29, 2003 To Assembly Committee on Labor
North Carolina		
SB 991,	Provides that State government shall require in every contract for the performance of telemarketing services provisions that only citizens of the united states and persons authorized to work in the united states may be employed, and to provide for disclosure of certain information from customer sales and service centers	May 5, 2003; To House Committee on State Government

Source-Statenet

For More Information, Contact: Justin Marks

[Justin.marks@ncsl.org](mailto:Justin.marks@ncsl.org)  
303-856-1465

# The National Conference of State Legislatures

## Illegal Workers on State Contracts

State/Statute	Summary	Penalty
Arizona §34-301	Employment of aliens on public works prohibited	None Identified
California Public Contract Code §6101	Employment of undocumented aliens; violations of state or federal law	No state agency or department, as defined in Section 10357, that is subject to this <b>code</b> , shall award a public works or purchase <b>contract</b> to a bidder or contractor, nor shall a bidder or contractor be eligible to bid for or receive a public works or purchase <b>contract</b> , who has, in the preceding five years, been convicted of violating a state or federal law respecting the employment of undocumented aliens.
Idaho §44-1005	Employment of aliens on public works prohibited	Any person who shall violate any of the provisions of this section, on conviction thereof, shall be punished by a fine of not less than ten dollars (\$10.00) nor more than [one hundred dollars (]\$100[)] for each person so employed, or by imprisonment in the county jail until such fine be paid or until discharged as provided by law.
New Jersey §34:9-1	Employment of aliens on public works forbidden; penalty	Any contractor or officer who shall violate the provisions of this section shall forfeit and pay the sum of one hundred dollars, with costs, to be recovered in an action at law in any court of competent jurisdiction, which penalty when recovered shall be paid into the treasury of the state, or county or municipality within which and under whose authority such officer or contractor claims to act.
Tennessee §50-1-103	Illegal aliens on any contract private or public	the license of any person violating this section shall be revoked and such person shall be forever barred from doing business in this state.



----- Beginning of Story -----

Published

When a worker is not an employee

BY STEVE JORDON AND CINDY GONZALEZ  
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Miguel is paid by the hour.

He is told when to start and finish his workday, when to take breaks and what to do on his shift.

He didn't bid for the job of hanging drywall, and he doesn't risk profit or loss.

He wears a red hard hat bearing the "E & K" insignia of an Omaha contractor, Eliason & Knuth Drywall Co. He cashes a paycheck cut by a second company, an Atlanta-based labor broker called Eagle Managed Subcontractors.

By all appearances, Miguel is somebody's employee.

Yet before he could work on the new Omaha convention center, Miguel, as we're calling him, had to sign a contract declaring himself an independent subcontractor.

Scores of drywallers like Miguel, many of them illegal immigrants who understand little or no English, signed these English-language contracts with Eagle. It was a prerequisite for them to work at area construction sites, including the \$291 million Omaha convention center and the University of Nebraska Medical Center's \$77 million research complex.

The contracts saved Eagle money by avoiding overtime pay and making each worker responsible for submitting his own federal and state taxes. But because the illegal workers tend to not pay such taxes, the U.S. and State of Nebraska treasuries are likely to lose tens of thousands of dollars.

The contracts skirt legal distinctions between employees and subcontractors. And at the Omaha convention center site downtown, they conflict with insurance reports that indicate Eagle's workers are employees, not subcontractors.

A subcontractor arrangement in Tennessee was nullified after authorities determined that laborers actually were employees. That labor broker is now in federal prison.

Eagle's attorney, Thomas DeBerry of Atlanta, said his company operates "well within the bounds of the law." He predicted his client would prevail against any legal challenge.

Nevertheless, after World-Herald inquiries and labor-union complaints, DeBerry said Eagle is offering to convert its subcontract drywallers

into temporary employees for the projects run by contractor Eliason & Knuth.

Workers' recent pay stubs indicate such a change is occurring among some workers at the convention center. However, E & K representatives would not confirm any change. And it's unknown how many workers might be affected, including those at other job sites.

Debate over how to classify workers is not necessarily related to immigration status. Many U.S. employers have shifted work to subcontractors as a way of controlling personnel costs.

But when illegal immigrants are involved, taxes tend to disappear because the workers tend to be low-income, mobile, averse to filing government forms and ignorant of tax rules for subcontractors.

It's impossible to say precisely how much tax revenue is disappearing. The World-Herald estimates that in the metropolitan Omaha area, there are 100 to 120 Eagle drywallers, if not more, working roughly an average of six to nine months.

Allowing for a change in workers' status at the convention center, the potential revenue loss is about \$300,000 in federal taxes and roughly an additional \$30,000 in state taxes.

There are no indications that either state or federal authorities are investigating the situation.

Only recently have government officials and business executives questioned how transient, Spanish-speaking, illegal-immigrant drywallers such as Miguel could be considered independent businessmen.

"It seems almost ludicrous," said Richard Tesarek of the U.S. Labor Department in Omaha.

Perhaps. But the legal issues are murky and sometimes end up in court because different government agencies have different rules, and judges interpret those rules case by case.

"You could put 10 attorneys into a room and come up with five arguing that they're employees and five arguing that they're independent contractors," said Mark Fahleson, a Lincoln attorney who teaches labor law at the University of Nebraska. "It's a balancing act, and sometimes you have to go to court to find out who wins. "

Federal regulations appear to be clear. Although tax, labor and immigration rules vary in certain details, the key difference between an employee and an independent subcontractor is always one of control.

In Miguel's case, he takes orders from an on-site supervisor. He doesn't have his own place of business and doesn't make decisions on buying, leasing or carrying inventory. He doesn't have an investment in the project.

To be sure, Miguel did sign a contract calling himself an independent subcontractor. But the IRS says the "substance of the relationship," not the contract, governs Miguel's status.

In Tennessee, undocumented Spanish-speaking drywallers were classified as independent subcontractors when helping build the Federal Express headquarters near Memphis. A Texas labor broker, Brothers Construction II, did not withhold taxes from their wages.

Last month, Brothers' president, David Cantu Jr., began serving four years in prison after pleading guilty to harboring illegal immigrants and attempted federal income-tax evasion.

DeBerry, the attorney for Eagle Managed Subcontractors, said his company classifies its workers within the law. He pointed to a federal appeals case in Georgia involving nurses who, the judge ruled, were properly classified as subcontractors.

Like Eagle's drywallers, the nurses were paid by a labor broker but worked at other locations for other supervisors.

DeBerry said Eagle is much different than what he calls its "scofflaw" competitors. His company makes extra efforts to ensure that workers receive the IRS forms needed by subcontractors to file their taxes. It completes forms on each worker's immigration status.

"The bottom line is that there are a lot of responsible, successful subcontractors," and Eagle is one of them, DeBerry said.

DeBerry did not explain why Eagle drywallers at the convention center were listed as employees in city insurance records.

And he did not reconcile a related discrepancy - why Eagle deducted 10 percent for insurance from the paychecks of convention center drywallers even though they already have insurance at no cost to Eagle.

"I can't get into the nitty-gritty details," DeBerry said.

The Metropolitan Entertainment and Convention Authority, which was created to build and operate the city-owned convention center, purchases liability and workers' compensation insurance for all workers at the site. Each subcontractor is required to enroll but pays no premium.

None of Eagle's workers showed up as a subcontractor on MECA's insurance reports. Instead, the reports showed their work hours and payroll - 40,173 hours for \$605,000 from October through February - under Eagle's name.

Because of the discrepancy over the workers' status, it's unclear whether Eagle workers were actually covered under the umbrella policy.

The contradiction, though, has a common denominator - apparent profits for Eagle.

The company saved money by not paying an employer's share of Social Security and Medicare taxes; declared its workers eligible for insurance it doesn't pay for; and deducted money for insurance from the workers' checks.

Timothy Welsh, an Omaha attorney who represents employers on labor issues, said he would be concerned if a company classified workers as subcontractors yet listed them as employees on an umbrella insurance policy.

An insurance listing, he said, would be "evidence that they're employees."

Such legal distinctions are lost on undocumented workers like Miguel, who speaks few words of English.

A translator was present but didn't explain the tax obligations stated in the contract.

"They had a form filled out already," Miguel said, "and they showed us where we were supposed to sign."

World-Herald researcher Michelle Gullett contributed to this report.

----- End of Story -----

## Legislative Principles

- Reform the current registration form and fee (currently at \$25). Make the registration form in the language of the worker for full understanding of rights and obligations.
- Adopting IRS's 1099 misc. guidelines but lets not limit classification to this definition, we may create sideline loopholes. If we do adopt these into state law then we have some enforcement at the local level. Also we would have a uniform definition of an employer/subcontractor throughout all departments and throughout the state.
- Expand statewide; this is clearly a statewide issue. We have evidence of this activity in Omaha, Lincoln, Norfolk, North Platte, Grand Island, Scotts Bluff, and in industries other than the construction industry.
- Dept. of Labor, Unemployment Office and Workmen's Comp Office have certification responsibilities. Each time an application for contractor registration goes to the Dept. of Labor, the Dept of Revenue, Unemployment Office and Work Comp. Office must verify that proper credentials exist for this classification, at this time each agency inputs the data into the Data Base managed by the Dept. of Revenue.
- By creating a real-time statewide Data Base managed by NDOR, other departments could have appropriate levels of access to provide instant checks and balances, NDOR will be able to track tax revenue like never before. Also if the database was set up like the Department Of Motor Vehicles/ State Patrol database, information could cross state lines and a habitual abuser could not flock from state to state undetected. This could lend itself to future federal enforcement without the existing one and one-half year backlog *just for review* of a tax fraud case reported to the IRS.
- ENFORCEMENT IS CRITICAL A multi-level approach is imperative, and should include the Attorney General's Office and another department such as the Dept. of Revenue as they manage the database.
- Hold construction manager/general contractors accountable for actions of subcontractors on their jobsite. To perform their "due diligence," all the general contractor needs to do is access the website of the real – time database to see if the sub-contractor is registered.
- Impose heavy fines for penalties i.e.: \$10K for the first offense to \$50K for willful continued abuse. Other states have also imposed a 6-12 month felony jail term. The penalty must be a DETERRENT not an ACCEPTABLE LOSS for a net profit on the project.

- **In 2001 NDOR conservatively confirmed 23,000 miscellaneous contract labor 1099's went unreported. This totaled \$62 - \$280 million in unreported revenue a direct loss of \$1.6 - \$5.2 million in state tax revenue alone.**
- **FUNDING SHOULD BE APPROPRIATED. If we spend \$500K we still get a 1000% return on our investment. We spend \$½ million and recoup \$5 million in lost taxes. Also tie in support of Community Coalitions by giving fines to community development, public libraries, kid's programs, etc. Many of these programs have experienced recent budget cuts due to lack of state funds.**
- **Result: REAL TIME ENFORCEABLE LEGISLATION. As an example of what could be done, can you imagine a more powerful consumer protection device than billboards across the state reading,**

**“IS YOUR SUBCONTRACTOR REGISTERED?”**

**Check at [www.checkmeout.com](http://www.checkmeout.com).”**

**At this point any consumer, homeowner, builder, contractor, etc. could have instant access to the website and determine if their choice of contractor was legitimately registered and therefore up to the minimum registration standards.**

}-''

# Kansas AFL-CIO

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Executive Secretary  
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Betty Vines  
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House Commerce & Labor Committee  
Representative Don Dahl, Chairman  
Room 241N  
HB 2479  
January 30, 2004

Chairman Dahl and Committee Members,

I am Jim DeHoff, Executive Secretary Treasurer of the Kansas AFL CIO. I appear before you today to urge your consideration with a house bill that our 100,000 members believe to be very important. HB 2479 addresses a very important problem, not only to the Kansas workforce but also to state government.

There are approximately 6,000 illegal workers entering the United States every day, even though the President of the United States continually assures Americans that through the Homeland Security Act, a measure of safety has been obtained and control of our borders has been achieved.

These workers enter the United States under a cloud of abuse by a government that has chosen to ignore their welfare. Employers hire illegal workers because they are cheap labor. There are no workers compensation claims, no unemployment benefits and no overtime provisions. Many of these workers are paid in cash and are called independent contractors, when in reality they are directly working for the employer. HB 2479 would make a statement to employers that the State of Kansas does not endorse or condone "slave labor" nor does it endorse businesses not paying taxes that their competition pays.

I have attached a copy of a court case that shows what happens when an illegal worker turns in a claim for workers compensation. You will note this person was charged with fraud due to use of another



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persons identification, although the standard practice is a reproduced social security card or a federal ID number.

One of the main reasons that HB 2479 should be passed is employers cannot get into any legal problem by accepting fake social security numbers or identifications. The only way an employer can face sanctions of the law is when they are notified that a fake ID was submitted.

Labor in Kansas has been losing skilled jobs on a massive basis the past three years. It is noticeable because good employers who adhere to state and federal laws, just can't compete with the low wage, abused labor.

Passage of HB 2479 would help correct the abuse of illegal aliens, and return a fair, competitive environment for Kansas business and Kansas workers.

Thank you.



R|B

REBEIN BANGERTER PA  
ATTORNEYS AT LAW

February 19, 2003

Workers Compensation Acting Director  
Phil Harness  
800 SW Jackson, Ste. 600  
Topeka, Kansas 66612

SENT VIA FACSIMILE 785.296.0025

RE: Suggested Amendments to the Review and Modification Statute

Dear Mr. Harness:

In response to the recent Kansas Supreme Court Case, *Victoria Acosta v. National Beef*, I am writing in hopes that you might have some influence on the legislature to amend the statute so that the director has the authority to set aside awards based on fraud or serious misconduct for time periods that predate fifteen (15) weeks prior to an application for review and modification being filed.

As you know, the current statute only allows for awards to be amended for time periods beginning more than six months prior to the date of application for review and modification.

You may recall that the Board of Review found the limiting provisions in 44-528(d) applied only to functional impairment or work disability and thus determined they could look further in cases of fraud or serious misconduct. The Supreme Court, however, disagreed with that interpretation and found that an award could only be modified prospectively beginning six months prior to the date of the application for review and modification.

I thus recommend that the review and modification statute be amended to allow for the correction of fraud and serious misconduct from the very beginning. I further recommend that 44-512(a) be amended to allow for defenses such as fraud and serious misconduct.

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FEB 19 2003  
KS. ST. WORKERS' COMPENSATION

810 Frontview | P.O. Box 1147  
Dodge City, Kansas 67801 | 1147  
PHONE 620 | 227 | 8126  
FAX 620 | 227 | 8451  
www.rebeinbangerters.com  
David J. Rebein | D. Shane Bangertter | Tamara L. Davis | Michelle D. Reinert

2-19

If you have any questions in this regard, please do not hesitate to contact me.

Very truly yours,



D. Shane Bangarter

DSB/amd

RECEIVED  
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KS. ST. WORKERS' COMPENSATION

FILED BY CLERK  
KS. DISTRICT COURT  
THIRD JUDICIAL DIST.  
2002 DEC 16 A 10:04

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS  
DIVISION 6

IN THE MATTER OF: )

JANE DOE )

a/k/a VICTORIA ACOSTA, )

a/k/a DELIA BUTANDA. )

Case No. 02-C-834

MEMORANDUM DECISION AND ORDER

The above captioned matter comes before the Court on an appeal, pursuant to the Kansas Act for Judicial Review and Civil Enforcement of Agency Actions, K.S.A. § 77-601 *et seq.* Petitioner JANE DOE, a/k/a VICTORIA ACOSTA, a/k/a DELIA BUTANDA, appeals the Final Order of Secretary Designee Douglas Hager, dated May 29, 2002. After careful consideration and review of the record, the Court affirms the Final Order of Secretary Designee Hager.

STATEMENT OF FACTS

1. Petitioner Delia Butanda applied for employment with National Beef Packing Co., on January 6, 1994, falsely identifying herself by using the name and social security number of Victoria Acosta.
2. Petitioner presented a Nebraska state identification card and a social security card of Victoria Acosta as proof of identification for her employment.

DEPARTMENT OF  
HUMAN RESOURCES

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3. Petitioner's employment with National Beef began on January 13, 1994.
4. Petitioner suffered a work related injury in October 1995.
5. On December 8, 1995, Petitioner filed application for workers compensation using the false name and social security number of Victoria Acosta.
6. On four different dates (March 18, 1996, November 19, 1996, January 22, 1997, and March 10, 1997), Petitioner lied under oath about her identity in her attempt to obtain Workers compensation benefits.
7. National Beef filed a complaint against Petitioner with the Division of Workers Compensation on August 20, 1999.
8. Investigator Jimmy D. Huff filed an Investigation Summary on November 17, 1999, detailing the information uncovered about Petitioner's fraudulent and abusive acts.
9. On January 3, 2001, the Director of the Workers Compensation Division, Phillip Harness issued a Summary Order charging Petitioner with committing fraudulent and abusive acts under K.S.A. § 44-5,120 (a) and (b).
10. A Fraud and Abuse Hearing was conducted before Hearing Officer Larry Karns on September 21, 2001.
11. On May 2, 2001, Ms. Butanda admitted in a deposition that her real name was Delia Butanda and that she had knowingly used Victoria Acosta's information to obtain employment.

12. In the Amended Order issued by Hearing Officer Larry G. Karns on December 10, 2001, it was decreed that Petitioner pay \$5,000.00 in penalties (\$1,000.00 for each fraudulent act) and \$794.55 in costs.
13. On May 27, 2002, the Secretary of Human Resources' Designee Douglas Hager, affirmed the Amended Order and upheld the penalties imposed on Petitioner.

### STANDARD OF REVIEW

The Kansas Act for Judicial Review and Civil Enforcement of Agency Actions

(KJRA) provides the standard of review in this case. K.S.A. § 77-621 (c) states:

The court shall grant relief only if determines any one or more of the following:

- (1) The agency action, or the statute or rule and regulation on which the agency action is based, is unconstitutional on its face or as applied;
- (2) the agency has acted beyond the jurisdiction conferred by any provision of law;
- (3) the agency has not decided an issue requiring resolution;
- (4) the agency has erroneously interpreted or applied the law;
- (5) the agency has engaged in an unlawful procedure or has failed to follow prescribed procedure;
- (6) the persons taking the agency action were improperly constituted as a decision-making body or subject to disqualification;
- (7) the agency action is based on a determination of fact, made or implied by the agency, that is not supported by the evidence that is substantial when viewed in the light of the record as a whole, which includes the agency record for judicial review, supplemented by any additional evidence received by the court under this act; or
- (8) the agency action is otherwise unreasonable, arbitrary or capricious.

The burden of proof under the KJRA is on the party seeking to prove the invalidity of the

agency action. See, K.S.A. § 77-621 (2)(1); *Karris v. Kansas State Board of Agriculture*, 22 Kan. App. 2d 739, 746, 923 P.2d 78 (1996).

### CONCLUSIONS OF LAW

I. DOES PETITIONER'S USE OF AN ASSUMED NAME IN THE PROSECUTION OF HER WORKERS COMPENSATION CLAIM CONSTITUTE A FRAUDULENT OR ABUSIVE ACT IN VIOLATION OF K.S.A. § 44-5,120 (D) (4) (A) AND (B)?

After having sifted through Petitioner's overly long, and poorly argued brief, it appears the first issue to be addressed is whether Petitioner committed a fraudulent or abusive act. To properly cover this issue, "fraudulent or abusive acts" must be defined. The Workers Compensation Act is complete and exclusive within itself, therefore, there is no need to go outside of the statute for definitions when the legislature has seen fit to provide them within the statute itself. See, *Dinkel v. Graves Truck Line, Inc.*, 10 Kan. App.2d 604, 605, 706 P.2d 470 (1985). The Fraud and Abuse section of the Workers Compensation Act. K.S.A. § 44-5,120 *et seq.* provides:

- (d) Fraudulent or abusive acts or practices for purposes of the Workers Compensation act include, willfully, knowingly or intentionally:
  - (4) obtaining, denying or attempting to obtain or deny payments of workers compensation benefits for any person by:
    - (A) Making a false or misleading statement;
    - (B) misrepresenting or concealing a material fact; . . .

The Kansas legislature has provided a relatively easy test for determining whether Petitioner committed a fraudulent or abusive practice. First, did Petitioner obtain, deny or attempt to obtain or deny workers compensation benefits? It is undisputed that Petitioner received workers compensation benefits. Second, did Petitioner willfully, knowingly, or

intentionally, either 1) make a false or misleading statement or 2) misrepresent or conceal a material fact in order to obtain those benefits? As to the first part, it is evident from the record that Petitioner made numerous false statements as to her identity when she testified on various occasions that she was Victoria Acosta, when in fact, she was not. Petitioner knew she was not Victoria Acosta, yet she intentionally stated on several occasions that she was. The second prong of the second question, concerning whether she misrepresented or concealed a material fact, is a little more difficult to answer in that a definition for "material fact" must be sought.

According to the Kansas Supreme Court "a fact is material if it is one to which a reasonable person would attach importance in determining his choice of action in the transaction involved." *Timi v. Prescott State Bank*, 220 Kan. 377, 389, 553 P.2d 315 (1976). Thus, in the case at hand, the question becomes whether a reasonable person would attach importance to the name given in a workers compensation proceeding.

In a world where individuals are defined more and more by the records maintained by the various agencies and organizations e.g. credit bureaus, the Department of Motor Vehicles, hospitals etc., the manner in which those records are kept and filed has become increasingly important. Most agencies, organizations, and other such entities use a person's name and often their social security number to properly identify and index that person. Thus, that person's name and social security number become essential to later recovering the required information when it is needed. In the case at hand, the State

KUNK-legal services

persuasively argues that a person's name is important to determine the employment and medical history of the injured worker so that a proper award can be calculated. Without a person's name and social security number, an agency or organization would be unable to properly investigate and gather information on that individual, or at the very least, it would be severely handicapped in its efforts to uncover information. As a result, this Court finds a person's name and social security number are important and are, therefore, material facts in a workers compensation action.

The simple truth of the matter is that Petitioner lied about her identity on numerous occasions in order to obtain workers compensation benefits. Her entitlement to those benefits is no excuse for intentionally misrepresenting herself. The question before this Court is not whether she was entitled to benefits but rather whether she made any false statements or misrepresented a material fact in obtaining them. Therefore, it is the opinion of this Court that Petitioner's actions of intentionally misrepresenting and concealing her true identity were fraudulent and abusive acts as defined by the Workers Compensation Act. Petitioner is an adult and therefore responsible for her own actions. Her attempts to divert that responsibility and needlessly cloud the issues in this case are meritless. The Final Order of Secretary Designee Douglas A. Hager was reasonable and was a correct interpretation of the law in Kansas. To hold otherwise would eviscerate the workers compensation system and allow dishonesty, greed and corruption to become commonplace.



II. IS THE FINAL ORDER BASED ON ALIENAGE AND THEREFORE UNCONSTITUTIONAL?

The second issue to be addressed is whether the final order is based on alienage. Petitioner states "the Final Order of the Secretary Designee used the computation of a permanent partial general disability as one of the two (2) bases for affirming the Hearing Officer's decision." (Petitioner's Brief at 28.) There is no indication in the Final Order or the Amended Order Granting Monetary Penalties and Costs that either Secretary Designee Hager or Special Administrative Law Judge Larry Karns ever gave any consideration to Petitioner's alienage when considering whether to assess fines for Petitioner's fraudulent and abusive acts. Petitioner's arguments that the Final Order was unconstitutionally based on alienage are meritless and will receive no further consideration from this Court.

III. IS THE AGENCY PRECLUDED FROM FINDING THAT PETITIONER COMMITTED A FRAUDULENT OR ABUSIVE ACT IF THE EMPLOYER ACTIVELY AND KNOWINGLY PARTICIPATED IN ANY ALLEGED FRAUDULENT OR ABUSIVE ACT?

In regards to whether Petitioner committed fraudulent or abusive acts, the question of whether the employer "actively and knowingly participated" is irrelevant as to Petitioner's guilt. The knowledge or activities of the employer would not make Petitioner any more or any less guilty, therefore, this issue is moot.

IV. WAS THE PETITIONER DENIED DUE PROCESS OF LAW?

Petitioner claims she was denied due process because the Division of Worker Compensation did not notify her of the complaint within 30 days, and it did not approve

or deny the complaint within 90 days after the receipt of the complaint, pursuant to K.S.A. § 77-511. The real issue to be addressed is whether the Workers Compensation Division engaged in any unlawful procedures or failed to follow proper procedure as required by K.S.A. § 77-621 (c) (5).

The procedure that is to be followed whenever the director believes someone has committed a fraudulent or abusive act is outlined in K.S.A. § 44-5,120 (e), which states in pertinent part:

Whenever the director . . . has reason to believe that any person has engaged or is engaging in any fraudulent or abusive act or practice in connection with the conduct of the Kansas workers compensation insurance, claims, benefits or services in this state . . . the director . . . shall issue and serve upon such person a summary order or statement of the charges with respect thereto and shall conduct a hearing thereon in accordance with the provision of the Kansas administrative procedure act. Complaints filed with the director . . . may be dismissed by the director . . . on [his] own initiative, and shall be dismissed upon the written request of the complainant, if the director . . . has not conducted a hearing or taken other administrative action dismissing the complaint within 180 days of the filing of the complaint. (Emphasis added).

In the case at hand, a summary order/complaint was issued by the Director of the Workers Compensation Division, Phillip Harness, on January 3, 2001, thereby making Petitioner aware of the charges against her and satisfying the first requirement of K.S.A. § 44-5,120 (e). Although more than 180 days passed between the filing of the summary order on January 3, 2001 and the fraud and abuse hearing conducted on September 21, 2001, Petitioner apparently never filed a request to have the complaint dismissed pursuant to K.S.A. § 44-5,120 (e), therefore, the issue is moot.

The next requirement of K.S.A. § 44-5,120 (e), mandates a hearing be conducted in accordance with the Kansas Administrative Procedure Act (KAPA) § 77-501 *et seq.* K.S.A. § 77-513 provides guidance on the applicable procedures for hearings, stating:

*When a statute provides for a hearing in accordance with this act, the hearing shall be governed by K.S.A. 77-513 through 77-532, and amendments thereto, except as otherwise provided by:*

- (a) A statute other than this act; or
- (b) K.S.A. 77-533 through 77-541, and amendments thereto.  
(Emphasis added).

Contrary to assertions by Petitioner that she was denied the benefit of a hearing or the opportunity to present evidence, a fraud and abuse hearing was conducted on September 21, 2001, during which time Petitioner was given the opportunity to present evidence for herself. Statements made otherwise by Petitioner in her brief are a blatant misrepresentation of fact and are a disservice to the administration of justice.

The Workers Compensation Act provides for a hearing in accordance with KAPA, which indicates in K.S.A. § 77-513 that hearings are governed by K.S.A. §§ 77-513 through 77-532. The Kansas legislature's intent, concerning which portions of KAPA are to be applied to a hearing, is unambiguous. Arguments made by Petitioner that K.S.A. § 77-511, which is not one of the statutes enumerated by K.S.A. § 77-513, imposes any duties upon the Division of Workers Compensation are erroneous and therefore irrelevant and will not be considered further.

Based on the above reasoning, the Division of Workers Compensation did not engage in any unlawful procedures or fail to follow proper procedure as required by

LEGAL SERVICES

FAX: 785-296-0130

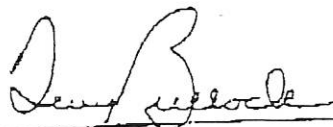
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K.S.A. § 77-621 (c) (5). In addition, the actions taken by the Division of Workers Compensation appear to have been reasonable and were neither arbitrary nor capricious. The decision was based on solid evidence and will not be disturbed by this court.

CONCLUSION

For the reasons listed above, the Final Order of the Kansas Department of Human Resources, Secretary Designee Douglas A. Hager is hereby affirmed. The foregoing shall serve as the Court's final judgment in the above matter. No further journal entry is required.

Dated this 16<sup>th</sup> day of December, 2002.

  
\_\_\_\_\_  
Terry L. Bullock  
District Judge

KDHR-Legal Services Fax: 785-296-0150


CERTIFICATE OF MAILING

I hereby certify that a true and correct file-stamped copy of the above and foregoing Memorandum Decision and Order was mailed on the 16<sup>th</sup> day of December, 2002, by United States mail, postage prepaid thereon to the following:

Diane F. Barger, Esq.  
P.O. Box 4208  
2317 N. Arkansas  
Wichita, KS 67204

Randall E. Fisher, Esq.  
Attorney at Law  
301 N. Main, Suite 201  
Newton, KS 67214

Darren E. Root, Esq.  
Kansas Department of Human Resources  
401 SW Topoka Blvd.  
Topeka, KS 66603-3182

  
LYNN FEIZER  
Administrative Assistant



**RODRIGUEZ**  
**MECHANICAL CONTRACTORS**

House Commerce & Labor Committee  
Representative Don Dahl  
Room 241N  
HB2479  
January 30, 2004

Chairman Dahl and Committee Members.

I am Paul Rodriguez, President of Rodriguez Mechanical Contractors Inc. My company is located in Kansas City, Kansas and I reside at 9000 Rosewood in Prairie Village Kansas, 66207.

Rodriguez Mechanical Contractors has been in the plumbing business for 27 years, licensed in both Kansas and Missouri. We currently employ approximately 70 people, comprised of administrative staff, union plumbers, laborers, and operating engineers.

Prior to September 11<sup>th</sup> 2001, it was reported that our firm was the largest employer of union plumbers in the region. In our area if an apartment complex was to be built, it was said you need to call Rodriguez if you want a quality project and a project built on time.

Since September 11<sup>th</sup>, our nation has seen some uncertain times and has seen some increased unemployment. Our firm went from approximately 143 plumbers down to 35.

My company is currently challenged in trying to compete and to secure contracts for its business and employees.

We no longer are the go to place neither for pricing, nor for the construction of these types of projects. In the last two years, we have come across some competition that doesn't play by the rules nor do they pay all due taxes. This does not allow for fair competition and a level playing field.

My current competition utilizes a workforce that does not reside in Kansas permanently and is willing to work for less, with no benefits and in some cases does not pay taxes.

My current competition in some cases misclassifies the employees as an Independent Contractors, whereby he can pay them less than the prevailing wage. At the end of the project he simply sends them a 1099, which if he cannot find them, now goes as uncollectible taxes.

My current competition in some instances is willing to employ people with a questionable I 9 employee eligibility verification or no documentation at all. Under this scenario, exploitation of the employee can occur. The employer can and at will, threaten the employee to turn them in if the employee does not comply with what ever unjust request that is made of them, in fear of losing their job or to be turned in to the INS for not complying with the request made from the employer. Some examples can be:

Paying little monetary value for, by the piece type work, where in order to make more money the employee now brings the children into the work area in order to produce more for daily output. The more production the more earned.

This scenario exposes the children to unsafe conditions, where they have not been trained for workplace safety.

Shortages in the pay check, paying cash in lieu of check in order to hide the wages paid for an employee and the take it or leave or I will report you.

The immigrant work force in many cases, do not have knowledge of the taxing system and no knowledge of work safety and job conditions. I feel confident that those who choose to break the rules have full knowledge of the rules.

I am not here to separate nor take issue with the Hispanic Community, Republican Party, Democrat party, the Union Community, nor the Non Union Community. **I am not here to address an immigration issue.**

I am here as a matter of survival and I am asking you to level the playing field for my business.

I appear before you today to urge you to consider the passage of HB2479 and encourage you to implement an enforcement procedure.

What this bill is attempting to address is a complex issue, that if it not addressed, my business as well as others may be forced out of business in the future. Allowing by ignoring other business's to operate and avoid paying taxes and exploiting the workforce is an unfair advantage to those who operate by the rules.

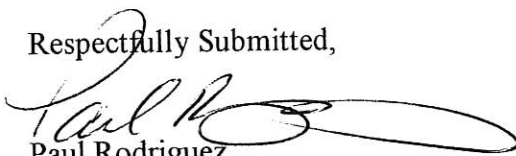
This bill if passed will be the first steps in making an attempt to level the playing field and will enable my business to compete and provide for quality of life with a livable wage, for my employees.

In conclusion:

Republicans in Kansas sponsored and addressed this issue in 1891(see attachments), by being the first State in the Union to pass legislation that later became known as The Davis-Bacon Act of 1931. This bill was not intended to be a union nor a nonunion issue, but rather a livable wage issue.

I urge you to not only pass HB2479, but provide budgeting for implementation, monitoring, and compliance. No bill passed is effective without the above. At the very least, provide funding of a hot line linked to the Attorney Generals office,for reporting violators. The rewards to the State would be capturing unreported taxes and providing real economic growth opportunities for those who choose to live a life with quality and do business in Kansas. In addition to providing a level playing field.

Respectfully Submitted,

  
Paul Rodriguez  
Rodriguez Mechanical Contractors

solidarity

## The Davis-Bacon Act of 1931

In 1931, laws were enacted both in Washington and in Wisconsin to guarantee fair competition on federal and state construction projects. Over the years these laws, the Davis-Bacon Act and the state Prevailing Wage law, have become recognized by workers both inside and outside the construction industry, as important milestones in the history of organized labor.

It is fitting that workers, particularly those in construction, understand the important role prevailing wage laws have played over the years in protecting workers on public works projects. It is equally important to remember the conditions and circumstances under which these laws got on the books.

Today, many people believe the Davis-Bacon Act was a product of the great depression. While it is true the Davis-Bacon Act was passed two years after the stock market crash of 1929, the fact is the Act had little to do with the so-called “pump-priming” policies of that era.

By the time the Davis-Bacon Act became law, seven states had already enacted prevailing wage statutes — most notably, Kansas, which passed the first state prevailing wage law in 1891.

New York also had a prevailing wage statute on the books before the turn of the century, nearly 30 years before the first version of the Act was introduced in Congress in 1926 — in the midst of the roaring twenties.

By the middle of the 1920s, the United States government was already greatly involved in heavy construction projects ranging from flood control and dam building to expanding and housing the institutions of government.

Federal and state governments were preparing to become even more active and sought to protect themselves from falling victim to “fly-by-night” “cut throat” contractors who performed “shoddy” work with “exploited”, “low-skilled” and “imported” workforce.

Interestingly enough, those were not the words of labor, but were the words of the bill’s primary sponsors, Congressman Robert Bacon and Pennsylvania Senator James Davis, who viewed their bill not so much as a means to protect workers, but more as a way of providing some market stability in what was, and still is, an inherently unstable construction industry.

Then as now, construction is a time and materials industry. Low bid requirements on public projects allowed contractors from outside an area to bid and win work based on substandard wages and helped create the situation where contractors literally “imported” low-wage workers from around the country rather than use the local labor force.

Abuses were wide spread in the years preceding the Acts passage. Bacon, a former Banker, explained the need for the law when he detailed for his colleagues during debate on the bill how a construction firm from Alabama transported thousands of unskilled workers to a public project in New York.

“They were herded onto this job, they were housed in shacks, they were paid a very low wage, and ... it

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seems to me that the federal government should not engage in construction work in any state and undermine the labor conditions and the labor wages paid in that state.”

Davis, the former Secretary of Labor under Presidents Harding, Coolidge and Hoover, went on to argue that “the least the Federal Government can do is comply with the local standards of wages and labor prevailing in the locality where the building construction is to take place.”

By establishing a local wage standard that contractors had to pay workers on public projects, the authors intended to provide a level playing field on which contractors could compete for work based on wages that “prevailed” in the area, rather than rewarding the practice of slashing worker’s wages in order to win work.

Laborers of the period, because so many were recent immigrants, because they performed “unskilled” work, and because they were easily replaced, were particularly vulnerable to these practices. Recognizing the direct impact of the Act of protecting Laborers, the General Executive Board of the Laborers International Union voted to endorse the Davis-Bacon Act in 1931.

[Back to WI Laborers](#)

STATE OF KANSAS

TOM HOLLAND

REPRESENTATIVE 10TH DISTRICT  
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BALDWIN CITY, KANSAS 66006  
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tomholland23@hotmail.com



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TOPEKA  
HOUSE OF  
REPRESENTATIVES

January 30<sup>th</sup>, 2004

Chairman Dahl and Committee Members:

Good morning! I am here this morning to voice my support for HB 2479. I believe the State of Kansas has a strong incentive to ensure that any employer who benefits from state contracts or tax incentives is employing only American citizens or those who are legally entitled to live and work in the United States. However, I also believe that the bill as currently written is too narrowly focused; therefore, I wish to offer an amendment that, if enacted, would discourage any Kansas employer from knowingly employing illegal immigrants.

Specifically, my amendment would raise the penalty for any business knowingly employing illegal immigrants or from offering subcontracting work to independent contractors who are illegal immigrants. My amendment raises the current penalty from a class C non-person misdemeanor (up to one month imprisonment and a \$500 fine) to a Class A non-person misdemeanor (up to one year imprisonment and a \$2,500 fine). Any subsequent violations cited for the employer would result in an additional fine of \$25,000.

Throughout Kansas, small businesses that employ trained and skilled workers are losing business to unscrupulous subcontractors that hire illegal immigrants as independent contractors. This problem is particularly pervasive in industries including the housing construction, roofing, and plumbing industries and is rapidly spreading throughout the commercial construction sector as well. What message do we send to our small Kansas businesses struggling in today's uncertain economic conditions when we require them to pay taxes and workers compensation insurance premiums and yet at the same time turn a blind eye towards those dishonest "fly-by-night" operators that are taking jobs away from Kansas citizens and tax revenues from our state? My fervent hope is that this amendment, if enacted, will make Kansans more aware of this unfair business practice that is destroying honest small businesses and depressing our state's economy.

Thank you,

State Representative Tom Holland  
10<sup>th</sup> District

Comm & Labor  
1-30-04  
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**HOUSE BILL No. 2479**

By Representative Dillmore

12-5

Rep. Tom Holland  
Proposed amendment  
January 29, 2004

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AN ACT concerning employment of illegal aliens

; amending K.S.A. 21-4409 and K.S.A. 2003 Supp. 21-4503a and repealing the existing sections

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

Section 1. As used in this act:

(a) "Employer" means any person, including any partnership, firm, subcontractor, vendor, corporation or association, or agent thereof, who engages or utilizes the personal services of one or more individuals for a salary or wage;

(b) "illegal alien" means any person not a citizen of the United States who has entered the United States in violation of the federal immigration and naturalization act or regulations issued thereunder, who has legally entered but without the right to be employed in the country, or who has legally entered subject to a time limit but has remained illegally after the expiration of such time limit;

(c) "secretary" means the secretary of human resources;

(d) "state agency" means any state office or officer, department, board, commission, institution, bureau or any agency, division or unit within any office, department, board, commission or other state authority or any person requesting a state appropriation;

(e) "state benefit" means any state-administered or subsidized tax credit, tax abatement, tax exemption, loan or loan guarantee; and

(f) "unit of government" means any school board, city or county council or commission, including, but not limited to, any governmental entity which is wholly or partially taxpayer funded or any entity which is the beneficiary of any state benefit.

Sec. 2. The legislature finds that employers of the state have the responsibility to investigate the residence status of prospective employees and are precluded from hiring illegal aliens and can be penalized for doing so. Additionally, employers owe a duty to the legal residents of the state to uphold the intent and integrity of the general workforce due to the potential loss of revenue to the state through loss of taxes, unemployment premiums and workers' compensation premiums.

Sec. 3. (a) No state agency or unit of government shall award a public works or purchase contract to a bidder, contractor or employer, nor shall a bidder, contractor or employer be eligible to bid for or receive a public

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1 works contract, who has, in the preceding five years: (1) Been convicted  
2 of violating a state or federal law respecting the employment of illegal  
3 aliens, or (2) been a party to a state agency proceeding in which a penalty  
4 or sanction was ordered, either by hearing or final order, or through  
5 stipulation and agreement, for violation of a state or federal law respecting  
6 the employment of illegal aliens.

7 (b) Any employer found to be in violation of this section shall, in  
8 addition to all available administrative penalties and sanctions, forfeit and  
9 be liable for an amount equal to the total value of the state benefit such  
10 employer has received or been the beneficiary of for the period of five  
11 years leading up to the date of the finding of guilt, final order or  
12 stipulation.

13 Sec. 4. The secretary of the department of human resources shall be  
14 responsible for administering the provisions of this act.

15 Sec. 5. The provisions of the Kansas administrative procedure act,  
16 K.S.A. 77-501 *et seq.*, and amendments thereto, shall govern all proceed-  
17 ings initiated under this act.

18 Sec. 6. This act shall take effect and be in force from and after its  
19 publication in the statute book.

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Sec. 6. K.S.A. 21-4409 see attached.

Sec. 7. K.S.A. 2003 Supp. 21-4503a see attached.

Sec. 8. K.S.A. 21-4409 and K.S.A. 2003 Supp. 21-4503a are hereby repealed.  
Renumbering Sec. 6 as Sec. 9.

Sec. 6. K.S.A. 21-4409 is hereby amended to read as follows: 21-4409. (a) Knowingly employing an alien illegally within the territory of the United States is the employment of such alien within the state of Kansas by an employer who knows such person to be illegally within the territory of the United States. The provisions of this section shall not apply to aliens who have entered the United States illegally and thereafter are permitted to remain within the United States, temporarily or permanently, pursuant to federal law.

(b) Knowingly employing an alien illegally within the territory of the United States is a class ~~C~~ A nonperson misdemeanor. On the second or subsequent conviction of a violation of this section, in addition to any other sentence imposed, a person shall be fined \$25,000.

(c) As used in this section, "employment" shall include subcontractors' employees if the employer of the subcontractor has knowledge that the subcontractor is employing persons or subcontracting with persons who are illegally within the territory of the United States.

Sec. 7. K.S.A. 2003 Supp. 21-4503a is hereby amended to read as follows: 21-4503a. (a) A person who has been convicted of a felony may, in addition to the sentence authorized by law, be ordered to pay a fine which shall be fixed by the court as follows:

(1) For any off-grid felony crime or any felony ranked in severity level 1 of the drug grid as provided in K.S.A. 21-4705 and amendments thereto, a sum not exceeding \$500,000.

(2) For any felony ranked in severity levels 1 through 5 of the nondrug grid as provided in K.S.A. 21-4704 and amendments thereto or in severity levels 2 or 3 of the drug grid as provided in K.S.A. 21-4705 and amendments thereto, a sum not exceeding \$300,000.

(3) For any felony ranked in severity levels 6 through 10 of the nondrug grid as provided in K.S.A. 21-4704 and amendments thereto or in severity level 4 of the drug grid as provided in K.S.A. 21-4705 and amendments thereto, a sum not exceeding \$100,000.

(b) Except as otherwise provided in statute, a person who has been convicted of a

misdemeanor, in addition to or instead of the imprisonment authorized by law, may be sentenced to pay a fine which shall be fixed by the court as follows:

(1) For a class A misdemeanor, a sum not exceeding \$2,500.

(2) For a class B misdemeanor, a sum not exceeding \$1,000.

(3) For a class C misdemeanor, a sum not exceeding \$500.

(4) For an unclassified misdemeanor, any sum authorized by the statute that defines the crime. If no penalty is provided in such law, the fine shall not exceed the fine provided herein for a class C misdemeanor.

(c) As an alternative to any of the above fines, the fine imposed may be fixed at any greater sum not exceeding double the pecuniary gain derived from the crime by the offender.

(d) A person who has been convicted of a traffic infraction may be sentenced to pay a fine which shall be fixed by the court, not exceeding \$500.

(e) A person who has been convicted of a cigarette or tobacco infraction shall be sentenced to pay a fine of \$25.

(f) The provisions of this section shall apply to crimes committed on or after July 1, 1993.

**Rep Dillmore**

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**From:** "Susan Tully" <stully@mwt.net>  
**To:** <repdillmore@worldnet.att.net>  
**Sent:** Thursday, January 29, 2004 4:06 PM  
**Subject:** HB 2479

FAIR the Federation for American Immigration Reform would like to express our support for HB 2479. Representative Dillmore's Bill is an example of what State Legislatures can do to support and enforce the immigration laws of the United States.

With the current illegal alien population at about 10 million, millions of jobs are being done by illegal aliens. Because of the mass population of these illegal aliens will to do jobs for less than American's can afford to do them, millions of American workers have been displaced. The wages in jobs which used to pay a living wage has been reduced to at best, minimum wage. While employers can make bigger profit margins with cheap labor, American taxpayers make up the low wage earners lack of wage with social service assistances, education and health care for the illegal aliens and their families. The profits are seen privately and the cost are borne publicly.

This bill holds accountable, employers who receive contracts from the State of Kansas, to the task of making sure that every employee that works for them has a legal and legitimate right to work in the United States. This bill will help insure that jobs are given only to the people who are entitled to hold them, American Citizens and Legal Immigrants. Only legal employees should benefit from job created by taxpayer money.

Illegal alien supporters claim that illegal aliens pay taxes also, but the truth is very few own property, and if they pay income taxes at all, it is by using someone else Social Security Number, (identity theft) and generally speaking, they claim as many dependents as possible. They only tax they may legitimately pay is sales tax on the items they purchase.

With so many American job being sent overseas, and the millions of illegal aliens here taken away American jobs, we need to do whatever we can at the State and Local levels in government to make sure at the very least, jobs performed at tax payer expense, and being done by legal means.

The verification program in place at Social Security is fast and convenient, and in the summer of 2004 should be automated to allow employers to verify social security numbers on-line. FAIR would like to see all State Legislatures and all employers take advantage of the service and help preserve American jobs for American workers!

Susan Tully  
Mid-West Field Director  
FAIR

Comme Labor  
1/30/2004  
Atch # 5

# LEGISLATIVE TESTIMONY

## HB 2479

January 30, 2004

By Marlee Carpenter, Vice President of Government Affairs  
Kansas Chamber of Commerce and Industry

Chairman Dahl and members of the committee;

Mr. Chairman and members of the committee my name is Marlee Carpenter and I am with the Kansas Chamber. We support the intent of the legislation however, in its current form we oppose House Bill 2479.

Kansas businesses strive to comply with federal and state laws regarding employment. When a Kansas business, in bad faith, disregards the requirement to verify documentation they should be subject to the current penalties federal law imposes.

For the purposes of providing background information, the Immigration Reform and Control Act (IRCA) of 1986 made it unlawful for any employer in the United States to knowingly employ someone who is not authorized to work. No new employee can be allowed to work until the employer has fully completed an Employment Verification Form (I-9) for that prospective employee.

This law holds the employer responsible for proper completion of the entire form, including all of the sections completed by the prospective employee. Penalties (to the employer, not the employee) for incomplete I-9's can range up to \$1,000 per I-9. An employer who has been found in violation of this act may also face additional civil and criminal penalties.

Only original documents, unexpired documents that appear genuine on their face and relate to the new hire can be accepted under the law. Photocopies

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are not acceptable. The only exception is certified copies of birth certificates presented by U. S. citizens, whether born in the U. S. or abroad.

The federal law states that an employer must have acted in good faith. There are no good faith provisions in HB 2479. If a company hires an illegal alien, even if they act in good faith, they may be required to forfeit their tax credits, abatements or exemptions. A good faith provision would have to be inserted in this bill for the Kansas Chamber to remove its opposition.

Thank you for your time and I will be happy to answer any questions.

**About the Kansas Chamber of Commerce and Industry**

The Kansas Chamber of Commerce and Industry is the leading broad-based business organization in Kansas. The Kansas Chamber is dedicated to the promotion of economic growth and job creation and to the protection and support of the private competitive enterprise system.

The Kansas Chamber is comprised of nearly 7,500 businesses, which includes 200 local and regional chambers of commerce and trade organizations that represent more than 161,000 business men and women. The organization represents both small, medium and large employers in Kansas. The Kansas Chamber receives no government funding.

**HB 2479**

Elias L. Garcia, Executive Director, Ks. Advisory Committee on Hispanic Affairs  
January 27, 2004

Mr. Chairman and honorable members of the Committee, my name is Elias L. Garcia, Executive Director of the Kansas Advisory Committee on Hispanic Affairs and I thank you for the opportunity to speak in opposition to HB 2479.

This legislation proposes to place responsibility on employers to:

- ◆ investigate the residence status of prospective employees
- ◆ precludes employers from hiring illegal aliens

Employers found in violation will be penalized for doing so by:

- ◆ ineligibility for award of state agency public works or purchase contracts
- ◆ forfeiture of amounts equal to the total value of state benefits received for five years leading up to date of guilty judgement

Ladies and Gentlemen of the committee, we oppose this legislation for various reasons, foremost is which is that we already have current Federal Laws in place, specifically, Title 8 USC Sec. 1324a that addresses this issue, and, while theoretically, the intent of HB 2479 would be to serve as an added layer of deterrent regarding this practice, pragmatically, the fact is, employers and workers alike will continue to conduct business as usual, irrespective of this bill.

Honorable committee members, over 200,000 companies in our society hire undocumented workers. Like it or not, acknowledge it or not, we are talking about a culture that has been in place for as long as anyone can remember. The President of the United States Chamber of Commerce recently was quoted as saying that "...if all the immigrant labor in this country decided to pack up and go home, the United States would have to shut down...".

It's always been a matter of survival, both from the companies standpoint and from the workers standpoint. In 2004, perhaps more than ever, employers are facing a tremendous and overwhelming challenge in just trying to find enough people to fill a work-crew. In fact, its been my experience that more often than not, companies (at least in the construction industry) usually work one man short on each crew and work longer hours to meet production goals. The reality is that employers simply cannot find temporary workers, part-time workers, good workers, qualified workers, or any workers to fill job openings. The truth is that dilemma is only going to get worse. Therefore, before we add the burden of yet another layer of law upon our business community we encourage you to give this initiative reconsideration and further study.

We also oppose HB 2479 because, intended or un-intended, it targets a group of people in Kansas that invariably and mainly consist of Hispanic and Latino individuals who we know that in the not to distant future, will assimilate, acculturate and integrate into our Kansas communities. Also, it is common knowledge that the individuals described as "illegal aliens" in HB2479 are an invaluable and irreplaceable resource to the business community, a community that has had a common and longstanding industry practice of utilizing this human capital. We will not pass judgement on undocumented immigrants as we can only respect their efforts to work and provide for their families.

In earlier testimony to this respective committee, I discussed a collective vision for the future of Kansas that included embracing the fact that Kansas needs all the hard working people we can attract to help maintain our communities and more importantly to help contribute to and maintain our local, state and federal tax bases. This includes non-native populations, specifically the Kansas Hispanic and Latino community.

While we appreciate the legislative efforts behind this initiative, we find that HB 2479 is not consistent with the collective vision for Kansas that is inclusive of the Hispanic community, it proposes additional enforcement responsibilities and un-funded mandates to the Department of Human Resources Department, is not sensitive to the plight of the present day Kansas business community and it is redundant to federal law that currently exists. The Kansas Hispanic and Latino American Affairs Commission appreciates the opportunity to voice our position before this committee, and for reasons as stated, we ask you to oppose HB 2479 and thank you.

Comm & Labor  
1-30-04  
Atch # 7

# THE KANSAS CONTRACTORS ASSOCIATION, INC.



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Great Bend, Kansas

## Testimony

By the Kansas Contractors Association

before the House Commerce Committee

January 30, 2004

Mr. Chairman and members of the Committee, I am Bob Totten, Public Affairs Director for the Kansas Contractors Association. Our organization represents over 400 companies who are involved in the construction of highways and water treatment facilities in Kansas and the Midwest.

Today, I want to tell you of our opposition to HB 2479. We are greatly concerned about various elements of this bill and question its necessity as we see it as a duplication of regulations already spelled out in federal law.

First off the bid procurement system is designed to insure the respective governmental entities are getting the best goods and most responsible contractors in the country. This system is not designed to be an enforcement arena and I would urge you to let this system provide the benefits it was designed to do...and have any concerns over immigration left to the immigration laws.

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1-30-04  
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At the present time, we do not believe this is a problem or concern in the area of Highway contracting. Our members indicate they follow the procedures outlined which include having each employee fill out an I-9 form. Our members ask every potential employee to provide identification for this process. In most cases, it amounts to a driver's license and a social security card. Whether this information is valid, there is little we can do to authenticate it although some companies do inquire with the governmental agencies to determine if a name does coincide with the information provided.

I have learned that if a company violates the requirement, they face a \$100 to \$1000 fine from the federal government.

Addressing the issue of hiring someone who has immigrated to this country illegally, federal law already provides for penalties. Our general counsel in Washington told me, the first offense is between \$250 and \$1000, the second is between \$2,000 and \$5000 and the third is between \$3000 to \$10000. Besides the fines, I have been told the penalty is also \$3000 per alien hired plus a six month jail sentence.

It seems to me these penalties are already quite effective in making sure Kansas Contractors comply with the law and another law like the one being considered in this matter is not necessary.

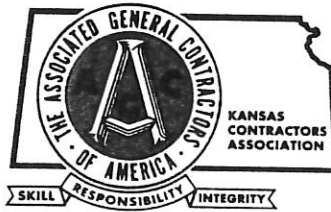
In addition, if our members were exploiting employees with low wages, it would be difficult. By and large, our members work for the Kansas Department of Transportation (KDOT). KDOT requires Davis Bacon wages to be paid on projects in the Comprehensive Transportation Program. If that was not done correctly, our members would already be in jeopardy. I learned last week, the AFL CIO periodically checks the

payrolls submitted to KDOT to make sure the wages are paid according to what the rates are. It appears that if our members were in jeopardy, we would have already heard about it.

I guess what I am saying, we know the highway contractors should not be involved in this issue and urge to Not to pass this bill.

I stand for questions.

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8-4

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