Approved: March 8, 2005
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 A.M. on February 16, 2005 in Room 241-N of the Capitol.

All members were present.

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research Department
Norm Furse, Office of Revisor of Statutes
Renae Jefferies, Office of Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee:
Representative Nile Dillmore
Jim DeHoff, Kansas AFL-CIO
David Link, Attorney, Wichita
Elias Garcia, Executive Director, Hispanic and Latino Affairs
Andrea Ramos Ortiz, Hispanic American Leadership Organization Executive Board Members at Washburn University

Others attending:
See attached list.

The Chairman opened the hearing on **HB 2008 - Employing illegal aliens, failure to be awarded public works contracts or bids; attorney general establishing a hotline, increase criminal penalty to Class A non-person misdemeanor.**

Staff gave a briefing stating the key definition was "illegal alien". "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 issues 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. The term "illegal alien" shall not mean any person who currently has the legal right to remain in the United States even though such person originally entered the United States in violation of the federal immigration and naturalization act or regulations issued thereunder and is not a citizen of the United States. Knowingly employing an alien illegally within the territory of the United States is a Class A non person 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 $10,000.

Representative Nile Dillmore, sponsor of **HB 2008,** testified as a proponent, stating the bill deals with increased penalties for hiring undocumented workers in general and increased penalties for companies doing business on taxpayer dollars. This bill is exactly the same language that was approved by this committee last year in **HB 2479**. The bill stayed below the line until March 24, 2004. On that date, **HB 2479** was passed on the House floor as an amendment to a capital improvement bill, **HB 2752**. The motion to amend **2479** into **2752** passed on a roll call vote 110-14.

Undocumented workers are denied basic employment benefits such as unemployment insurance, workers compensation coverage, minimum wage protection, and health and safety requirements. The estimates on lost employment taxes run in the millions from state to state, as unscrupulous employers attempt to classify illegal workers as independent contractors (Attachment 1).

Jim DeHoff, Executive Secretary Treasurer of the Kansas AFL-CIO, testified as a proponent for **HB 2008**, stating their 100,000 members believed the bill was very important, not only to Kansas 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.

Employers hire illegal workers because they are cheap labor. There are no workers compensation claims, no unemployment benefits and no overtime provisions. Many workers are paid in cash and are called independent contractors, when in reality they are directly working for the employer. **HB 2008** 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.

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 wages and abused labor (Attachment 2).

David K. Link, Attorney, Wichita, practicing primarily immigration law and criminal defense, testified as an opponent to **HB 2008**. Employment of unauthorized aliens is already prohibited by federal law which preempts the field. The immigration and National Act already prohibits employment of unauthorized aliens. Congress has mandated a system under which every employer must verify a new employee's authorization to work by having and complete a form called an I-9. The law would impose the cost of the federal government's failures on Kansas employers. The implicit premise of this bill is that the federal government has failed in its obligation to control immigration and enforce the prohibition against employment of unauthorized aliens. This law would create an enforcement nightmare (Attachment 3).

Elias L. Garcia, Executive Director, Kansas Hispanic & Latino American Affairs Commission, testified as an opponent to **HB 2008**. First and foremost, it is our position that any state legislation which prohibits the hiring of unauthorized workers or attempts to impose penalties on employers for hiring unauthorized workers in Kansas is unenforceable. Enactment of such an initiative could subject the state of Kansas to unnecessary litigation and a waste of taxpayer's money to defend against this legislation. There are already federal laws in place addressing this issue. Current federal law also prohibits employment discrimination against potential workers based on their national origin or citizenship status (Attachment 4).

Andrea Ramos Ortiz, Hispanic American Leadership Organization Executive Board Member at Washburn University and member of Most Pure Heart of Mary Church, an opponent to **HB 2008**, testified when the Immigration Reform Control Act (IRCA) passed in 1986 many employers admitted to having given foreign-appearing/or foreign sounding applicants a harder time or just refusing to give them the job all together. If **HB 2008** is passed, employers would become that much more discriminatory towards those who have a right to work such as regular citizens, residents, and those with working visas because of their color of skin (Attachment 5)

The Chairman closed the hearing on **HB 2008**.

The following written testimony was submitted: Kevin A. Graham, Assistant Attorney General (Attachment 6); Bob Totten, The Kansas Contractors Association, Inc. (Attachment 7); Corey D. Peterson, Associated General Contractors of Kansas, Inc. (Attachment 8); Melinda K. Lewis, Director of Policy Advocacy and Research, El Centro, Inc.(Attachment 9); and Marlee Carpenter, Vice President of Government Affairs, Kansas Chamber of Commerce (Attachment 10).

The meeting adjourned at 10:35 a.m. The next meeting will be February 17, 2005.

COMMERCE AND LABOR COMMITTEE

Date February 16, 2005

NAME	AGENCY
[illegible]	
Cynthia A. [illegible]	
Jim DeHoff	KS AFL-CIO
David Funk	Self

Testimony on HB 2008
House Commerce and Labor Committee
February 16, 2005

House Bill 2008 deals with increased penalties for hiring undocumented workers in general and increased penalties for companies doing business on taxpayer dollars. This bill is exactly the same language that was approved by this committee last year in HB 2479

The bill provides for the disqualification of future public works contracts for any company that is found to knowingly employ undocumented or illegal workers for five years and provides a claw-back provision for any tax breaks or abatements granted in the last five years. In addition, it increases the penalties for knowingly employing an undocumented worker from a class C misdemeanor to a class A nonperson misdemeanor. In the event of a second or subsequent violation, a $10,000 fine per person shall be levied.

As you may recall HB 2479 was heard in committee, amended and recommended favorable for passage. It then stayed below the line until March 24, 2004. On that date, 2479 was passed on the House floor as an amendment to a capital improvement bill, HB 2752. The motion to amend 2479 into 2752 passed on a roll call vote 110-14.

How big is this problem of illegal workers in our economy? You don't have to scratch the surface of this problem very hard to find literally hundreds of references in the media. Attached are just a few examples. From Lincoln Nebraska to Wilkes County North Carolina stories abound regarding illegal immigrant workers working from drywallers to meat processors. I invite you to refer to the attachment "Who's Who in Meat" and the article from the Agricultural Personnel Management Program of the University of California.

The exploitation of undocumented workers in nearly all industries has become our dirty little secret. Undocumented workers are denied basic employment benefits such as unemployment insurance, workers compensation coverage, minimum wage protection, and health and safety requirements. The estimates on lost employment taxes run in the millions from state to state, as unscrupulous employers attempt to classify illegal workers as independent contractors.

Comm. Labor
2-16-05
Atch #1

This practice of importation and exploitation of illegal labor artificially drives down labor rates and shifts the tax burden to legal immigrants and citizens of our state.

The question before you today is not why we need this bill. I believe it is obvious that employers have little to no incentive to abide by the law. The question is why would anyone oppose this revision to our states employment law?

Last year opponents complained that they could be caught in a net when they believed they were doing nothing wrong. In your wisdom, this committee provided employers with the same protection as provided in federal law that gives a "good faith" clause to employers.

Last year opponents complained that they had little access to information that would "flag" a suspect applicant. The Social Security Administration has information on-line at http://www.ssa.gov/employer/ssnv.htm to assist in this regard.

I would ask those who oppose this bill what they are afraid of if in fact they are not engaged in this criminal practice. If in fact, they are doing "do diligences" and if in fact, they are as opposed to the exploitation of immigrant workers as this legislature, and I then what do they have to fear?

In closing I would like to direct your attention to the attachment from the National Conference of State Legislatures that provides an overview of what other states have done in regard to this issue. As you can see, California has passed a very similar law. Other states such as Idaho, New Jersey, and Tennessee have passed legislation that provides penalties ranging from fines to being forever barred from doing business in the state.

I urge this committee to recommend that HB 2008 favorable for passage.

Nile Dillmore

Worker reforms target tax loss

BY CINDY GONZALEZ
WORLD-HERALD BUREAU

LINCOLN - Nebraska officials are refining a way to prevent the loss of up to $5.2 million in state income tax revenue from independent subcontractors.

State Tax Commissioner Mary Jane Egr offered a peek at a proposed tax-withholding method during a legislative hearing Friday on how to stop abuse stemming from the misclassification of independent subcontractors.

Three state senators called for the study earlier this year after The World-Herald detailed how at least 100 undocumented immigrant drywallers were being hired as independent subcontractors on major Omaha construction projects.

Despite their classification, the workers appeared to be treated as full-time employees who didn't get such benefits as overtime pay or insurance coverage.

The independent subcontractor status also meant the immigrants were responsible for paying both the employer and employee share of state and federal income taxes.

Many of the workers said they weren't made aware of that tax obligation and didn't plan to pay taxes.

Egr and others said nonpayment of taxes reaches to industries beyond construction. The tax commissioner said the state stands to lose between $1.3 million and $5.2 million in state tax revenue each year from independent subcontractors.

Under the proposed change, she said, businesses that use independent subcontractors would have to withhold state income tax much like a regular employer does with full-time employees.

Details of the proposal, such as which industries would be included, have yet to be ironed out.

State Sens. John Synowiecki of Omaha and Matt Connealy of Decatur, two of the legislators who called for the study, lauded Egr's efforts to collect the tax revenue, but they said a multipronged approach is needed to address broader concerns.

"From a human perspective, (misclassification) is just simply not fair to the worker," Synowiecki said.

A consensus emerging from the dozen speakers at Friday's hearing was for the Legislature to:

• Establish a uniform set of criteria distinguishing employees from legitimate independent subcontractors. Currently, different tests are used by various agencies, creating confusion.

• Stiffen penalties against violators and quicken response to alleged violations.

• Expand Nebraska's contract registration law. Currently, the law requires registration from contractors doing business in Douglas, Sarpy and Lancaster Counties. By including all 93 counties, Synowiecki said, fees could help pay for more enforcement.

Most of the speakers, including labor and immigrant rights advocates, favored some type of change.

Bruce Kevil, executive officer of the Nebraska State Home Builders Association in Lincoln, said he worried that "piling" on more laws and requirements would hurt contractors that want to comply.

Connealy and others said the issue is a national problem but federal officials have not responded.

"I believe we can be an example for the rest of the country," said Pat Nilsen of the Heartland Regional Council of Carpenters.

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

Agricultural Personnel Management Program

University of California

12/20/01 News Report -- The Charlotte Observer

Problems at N.C. plants alleged in probe

Poultry-processing company seen as good neighbor in Wilkesboro

by Stan Choe

Some Wilkesboro residents say they can't believe Wilkes County's largest employer, Tyson Foods Inc., has been indicted on charges of smuggling illegal immigrant workers into its plants and giving them bogus work papers.

Tyson, the nation's largest meat producer, has been a good neighbor, employing 3,000 in the county and sponsoring blood drives, said Wilkesboro Mayor Norman Call.

"I wouldn't think they would do anything like that," he said.

But a federal grand jury in the U.S. District Court of Tennessee's Eastern District has indicted the Arkansas-based company and six of its current and former managers on 36 counts, ranging from causing the use of illegal documents to conspiracy to defraud and obstruct the Immigration and Naturalization Service. The indictment was unsealed Wednesday. Tyson denies corporate wrongdoing; the individuals could not be reached for comment Thursday.

Tyson has four N.C. divisions - three in Wilkesboro and one in Monroe. None of the six indicted employees is from an N.C. factory.

The 57-page indictment charges that two Wilkesboro plants - the fresh poultry and cooked poultry operations - used two temporary staffing agencies to hire illegal workers from July 1998 to February 2001. The Monroe plant used another two agencies for illegal workers, from August 1998 to January 2001, the document says.

In the fall of 1998, according to the indictment, an unidentified co-conspirator told the personnel manager of the Monroe Tyson plant, "You gotta do what you gotta do. If you need to hire more temps, then hire more temps."

The government contends "temps" was often code for illegal aliens among Tyson management.

Management at the N.C. plants referred questions to Tyson's headquarters.

Tyson officials could not be reached for comment Thursday, but in a statement, the company said it was innocent of conspiracy and of alleged poor working conditions for illegal immigrants, such as fewer breaks. The company also said the indictment came because it refused to agree to "the prosecutors' outrageous financial demands." Tyson did not elaborate on what those demands were.

The company said that, after an internal investigation, it dismissed four of the six managers accused in

the indictment and placed the other two on administrative leave several months ago.

Those managers acted alone, without the company's consent, and broke company policy at five of the company's 57 plants, the company said.

The indictment, though, accuses Tyson of creating a corporate culture of hiring illegal aliens to boost production and cut costs.

The case is the largest against an American company for alleged smuggling, said INS commissioner James Ziglar.

"INS means business and companies, regardless of size, are on notice that INS is committed to enforcing compliance with immigration laws and protecting America's work force," he said.

After a two-and-a-half year investigation, the government accused Tyson of paying undercover agents for delivery of illegal aliens to Tyson plants across the country and providing them with fake Social Security and other identification cards.

The 15 processing plants from Texas to Virginia, including the N.C. sites, welcomed the illegal aliens, according to the indictment.

The government said Tyson preferred the illegal workers because they were paid less, would work with fewer breaks and would be less likely to file for workers' compensation, for fear of deportation.

The INS sent several undercover agents to act as smugglers, helping the aliens "through the river" across the Rio Grande. Tyson paid the agents with corporate checks, according to the indictment.

Many of Tyson's offers were for $100 per smuggled head or more for those who would be guaranteed to be "responsible," according to the indictment. Undercover agents also told Tyson management that bogus Social Security cards would cost $200 each.

The indictment charged that the indicted managers agreed to the payment but wanted to make sure to call them "recruiting" fees.

The Justice Department doesn't know how many total illegal aliens Tyson hired, said spokesman Bryan Sierra, beyond those involved in the investigation. Among the allegations, Tyson asked undercover agents to bring in more than 2,000 illegal immigrants from Mexico to Guatemala.

Most of the smuggling went through a former Tyson employee who called himself "Jefe de Jefes," the boss of the bosses, the government alleges.

The former employee, who was not indicted, worked at a shop in Shelbyville, Tenn., outside a Tyson plant and helped the aliens obtain fake Social Security and other identification cards, according to the indictment.

011232 Illegal Labor Common in Meat Industry

December 26, 2001

Kansas City - A federal crackdown on Tyson Foods Inc. for employing illegal immigrants has exposed an uncomfortable secret -- the U.S. meat-processing industry is dependent on undocumented workers to keep plants running, and experts said change is badly needed.

Whether it is the broken-down trailer truck on the side of a highway with a dozen immigrants locked in the back, or the surprise raid of a meat-packing plant where hundreds of workers are rounded up and deported, evidence has been mounting for years that the hamburgers Americans eat are often produced with labor from undocumented workers.

"This is the tip of the iceberg," said Dan Stein, executive director of the Federation for American Immigration Reform (FAIR). "This kind of recruitment and smuggling has been going on for years."

In the Tyson case, two of the firm's executives and four former managers were indicted on charges of conspiracy to smuggle illegal immigrants in from Mexico to work at 15 Tyson plants in nine U.S. states as a way to boost profits, the Justice Department said.

The 36-count indictment stemmed from a 2-1/2 year undercover investigation by the Immigration and Naturalization Service.

The company has denied the charges of a corporate conspiracy, and said four of the six managers named in the indictment had been fired, and the other two are on administrative leave.

The charges against chicken-processor Tyson came on the heels of a similar case in the beef industry. Nebraska Beef Inc. of Omaha, Nebraska, along with several managers and a company owner, have been charged with conspiring to ship busloads of Mexican workers to Nebraska every few weeks to work in the company's beef-packing plant. The case is to go to trial April 15.

No one seems to have a handle on the actual percentage of illegal workers staffing the low-paying and often dangerous and dirty slaughterhouse jobs, but most experts agree it is high, likely over 50% in many packing plants.

"It's not a very nice job," said Christine McCracken, food and agribusiness industry analyst at Midwest Research Institute. "It's a job that no one wants."

After passage of the Illegal Immigration Reform and Immigrant Responsibility Act in 1996, the INS launched Operation Vanguard to crack down on the meat processing industry's practices of employing illegal workers.

Of an initial 66 facilities investigated, 40 were found employing undocumented workers, the INS said. And out of about 24,000 employment verification checks run from 1998 through 1999, 20% were found to have discrepancies that warranted further investigation.

With each INS raid at a slaughterhouse, illegal workers flee, plants halt or slow production, and the impact is felt up and down the food chain from the farmer to the consumer.

Prior to the attacks of Sept. 11, there was movement in Washington on different fronts to both strengthen verification of worker status in meat-packing and other industries, and to provide for legalization of workers already employed in this country.

Mexican President Vicente Fox and President Bush met in Washington amid talk of some sort of amnesty for illegal immigrants or a guest worker program for Mexicans. Labor unions got on board the business-backed movement seeking blanket amnesty and an end to most sanctions against employers who hire illegals.

But since Sept. 11, the mood of the country has changed dramatically, effectively killing such moves, at least in the short term, said Marielena Hincapie, staff attorney at National Immigration Law Center.

"Now we're dealing with an anti-immigrant sentiment, and also a faltering economy. That is a major factor," she said.

Hincapie said reform is desperately needed, both to protect workers who are induced to come to the United States and work in jobs without adequate pay or safe working conditions, and to make checking legal status of workers easier for employers. The current system is too burdensome on employers, she said.

Greg Denier, spokesman for United Food and Commercial Workers International Union, said the union hoped the Tyson case serves to resurrect the legalization effort.

"There are millions of workers in poultry and food processing who have been induced to come to this country with false hopes and false promises," Denier said.

"They are integral to the functioning of this industry. Now is the time for legalization," said Denier.

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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 **code**, shall award a public works or purchase **contract** to a bidder or contractor, nor shall a bidder or contractor be eligible to bid for or receive a public works or purchase **contract**, 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.

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
303-856-1465

Kansas AFL-CIO

2131 S.W. 36th St. Topeka, KS 66611 785/267-0100 Fax 785/267-2775

Testimony on HB 2008
to the House Commerce & Labor Committee

by Jim DeHoff, Executive Secretary
Kansas AFL-CIO
February 16, 2005

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 2008 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 2008 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 persons identification, although the standard practice is a reproduced social security card or a federal ID number or a false Drivers License.

One of the main reasons that HB 2008 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 2008 would help correct the abuse of illegal workers and return a fair, competitive environment for Kansas business and Kansas workers.

Thank you.

Attachment:
Kansas Supreme Court Case
Workers Compensation

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 FASCIMILE 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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David J. Rebein | D. Shane Bangerter | Tamara L. Davis | Michelle D. Reimert

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

Very truly yours,

D. Shane Bangerter

DSB/amd

IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION 6

IN THE MATTER OF:	)	
	)	
JANE DOE	)	
a/k/a VICTORIA ACOSTA,	)	Case No. 02-C-834
a/k/a DELIA BUTANDA.	)	
	)	

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.

2-5

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 Heger, 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 (a)(1); *Karns 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

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

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 16th day of December, 2002.

Terry L. Bullock
District Judge

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 16th day of December, 2002, by United States mail, postage prepaid thereon to the following:

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Lynn Keezer
LYNN KEEZER
Administrative Assistant

TESTIMONY

in opposition to H.B. 2008

before the Committee on Commerce and Labor

Kansas House of Representatives

by
David K. Link

Room 241 North
State Capitol

Topeka, Kansas
February 16, 2005
9:00 a.m.

Commlabor
2-16-05
Atch #3

Mr. Chairman and distinguished members of the Committee on Commerce and Labor, my name is David Link. I am a practicing lawyer in Wichita, Kansas. I am admitted to practice before all state and federal courts in Kansas. I am an inactive member of the bar in Hawai'i and Guam. I am a member of the Wichita and Kansas bar assocations, the Kansas Association of Criminal Defense Lawyers, the National Association of Criminal Defense Lawyers, and the American Immigration Lawyers Association.

I practice primarily in the areas of Immigration Law and Criminal Defense. I have been practicing law for 14 years; the last 5 in Wichita, where I was born, grew up, and attended school, at least until I finished my bachelor's degree at the University of Kansas. I thank you for giving me the opportunity to appear today to advise you why I believe House Bill 2008 is bad idea, constitutionally suspect, and would create an enforcement nightmare for law enforcement and prosecutors.

I come before you today as an individual, but I am hopeful that my day-to-day experiences "in the trenches" of both criminal defense and immigration law may help you understand the difficulties with this proposed legislation.

1. The Law Probably Violates U.S. Supreme Court Precedent Invalidating State Immigration Laws

Because immigration was virtually unregulated for the first 100 years of this country's existence, coastal states, in the mid 19th century, established mechanisms to monitor and process the accelerating influx of immigrants. By 1875, however, the U.S. Supreme Court had held that all state laws dealing with immigration were unconstitutional because they violated the exclusive federal prerogative in this area. *Henderson v. Mayor of New York*, 92 U.S. 259, (1876).

2. Employment of Unauthorized Aliens is Already Prohibited by Federal Law, which Preempts the Field

The Immigration and National Act already prohibits employment of unauthorized aliens. Congress has mandated a system under which every employer must verify a new employee's authorization to work by having them complete a form called an I-9.

A violation of the federal prohibition against employment of unauthorized aliens subjects an employer to civil penalties and potential injunctive sanctions. It does not become a criminal offense under federal law until it rises to a "pattern or practice" of violations.

The federal law in this are specifically preempts "any State or local law imposing civil or criminal sanctions" for employment of unauthorized aliens. INA § 274A(h)(2).

3. The Law Would Impose the Cost of the Federal Government's Failures on Kansas Employers

The implicit premise of this bill is that the federal government has failed in its obligation to control immigration and enforce the prohibition against employment of unauthorized aliens. The bill's solution to this perceived failure is to impose the obligation on the state's employers, by providing criminal penalties for the knowing employment of unauthorized immigrants. This would be a cost unique to Kansas employers, that their competitors in other states would not have to bear.

4. The Law Would Create an Enforcement Nightmare

Section One of the bill contains a definition of "illegal alien" that appears nowhere in federal law or regulation. Indeed, "illegal alien" is not a term that appears anywhere in federal law.

The definition in House Bill 2008 of "illegal alien" does not correspond to any of the various classifications under federal law.

Federal immigration law recognizes approximately 60 ever-changing nonimmigrant visa categories in addition to myriad classifications for asylees, refugees, parolees, persons in immigration proceedings, persons under orders of supervision, and applicants for extension, change, or adjustment of status.

Within these categories, there are 57 intersecting and sometimes overlapping categories of aliens who are authorized to work in the United States. These include 16 categories of nonimmigrant visa holders who are authorized to work for any employer by virtue of the type of visa they hold; 19 categories of persons who are authorized to work for a specific employer incident to their status; and 22 categories of persons who may be eligible to apply and obtain authorization to work.

The array of documents issued by USCIS, the State Department, and other agencies as evidence of these classifications is even more perplexing and includes visa stamps, laminated cards, unlaminated handwritten cards, forms, letters, and many other documents or combinations of documents, which, even to the trained eye, often do not clearly show an applicant's status or duration of lawful admission. Additionally, due to extensive delays in application processing, many immigrants and lawful nonimmigrants are unable to present documentation of their status. It is highly unlikely that the law enforcement officers of this state will be able to determine whether a particular document or combination of documents establishes lawful status. This task requires the interpretation and application of a complex body of law.

Because a noncitizen's employment authorization can be time limited, or

terminate automatically depending on the terms of his or her particular visa, this bill would arguably impose a continuing duty on Kansas employers to monitor their employees status or risk criminal liability. For example, an employer may hire an alien based on having been presented with an Employment Authorization Document issued by USCIS. These EADs, as they are known, are small laminated cards that currently are issued for one-year periods. When the card expires, the alien must apply for a renewal, which may or may not arrive prior to the expiration date. An employer who continues to employ an alien after the expiration date on the EAD could risk criminal prosecution under this statute, even though the delay is due to bureaucratic delays, which are not uncommon.

I have had clients whose citizenship was uncertain. It is not unusual in this area to find individuals who were brought to this country as very young children by their parents and whose only knowledge of their status is what their parents told them. I have had clients who believed, based on their family history and birth outside of the country, that they were foreign citizens when, in fact, they were U.S. citizens. One client, born in Mexico, had a minor drug conviction, for which he was placed on probation for one year. He came to the attention of immigration authorities, who began proceedings for deportation. But, it turned out, his father was a U.S. citizen and, as a result, unknown to him and his family, he was born a U.S. citizen. When we were able to produce the requisite evidence of citizenship, the Department of Homeland Security terminated deportation proceedings. This gentleman's employer had suspected all along that he was "illegal," but kept him on because he was such a good worker. Under House Bill 2008, that employer would have been guilty of a crime, even though it turned out his "illegal" employee was a U.S. citizen.

I have a client who is married, has a good job as an executive secretary, and is raising three children, who are all U.S. citizens. Her parents brought her to this

country from Mexico when she was two. Her father purchased bogus documents for her – a "green card" and a social security card – when she was a teenager. She and her employer came to me late last year when she discovered that her documents were counterfeit. They are faced with a seemingly insolvable dilemma. The employer needs her, has refused to let her go, and wants to do whatever is necessary to legitimize her status. Unfortunately, there is very little humanitarian relief available under federal immigration law. This mother's one chance for legitimization may be to seek what is called "cancellation of removal" from an Immigration Judge in deportation proceedings. It is no sure thing. Her employer, who only wants to help, would face criminal charges under this proposed bill.

There are thousands of similar stories throughout this state. If enacted into law, this bill would face immediate legal challenge based on its conflict with federal law, and place hundreds of employers at risk of criminal prosecution based on the application of complex and uncertain federal standards.

Thank you for giving me the opportunity to state my views.

House Commerce & Labor Committee

HB 2008 Testimony

Elias L. Garcia, Executive Director
Kansas Hispanic & Latino American Affairs Commission

Mr. Chair and Members of the Committee, my name is Elias L. Garcia, Executive Director the Kansas Hispanic & Latino American Affairs Commission (KHLAAC) and I thank you for the opportunity to speak in **opposition to HB 2008.** In difference to others who wish to speak on this bill, I will keep my remarks brief and will make four points which serve as base for our opposition to HB 2008.

1. First and foremost, it is our position that any state legislation which prohibits the hiring of unauthorized workers or attempts to impose penalties on employers for hiring unauthorized workers in Kansas is **unenforceable.** Questions that arise out of HB 2008 are who is going to ensure compliance of this law and how much is it going to cost?? Furthermore is all this cost and compliance reviews necessary? And for what? To keep people who want to work , from working?

2. Enactment of such a initiative could subject the state of Kansas to unnecessary litigation and a waste of taxpayer's money to defend against this legislation. I am referring to the **legal challenges** that are most certainly forthcoming from both employers and employees who will be affected by this law.
    - *As I reviewed the language in HB 2008 striking omission in the language of this bill that will most certainly draw immediate challenge is in the area of "good faith". HB 2008 does not define what constitutes "good faith" and thus the fertile ground for legal challenge and virtually impossible to implement an evenhanded administration of this policy*

3. There are already **Federal laws in place** addressing this issue. The Immigration Reform and Control Act of **1986 (IRCA)** already prohibits Kansas employers from knowingly hiring any persons who are not authorized to work in the United States. Current federal immigration law USC 1324a(h)(2) pre-empts "any state or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens". The question begs, what is the point of HB 2008?

4. Further, current federal law also prohibits **employment discrimination** against potential workers based on their national origin or citizenship status. The anti-discrimination provisions of the Immigration and Nationality Act also make it unlawful for employers to require more or specific documents than are required by the Employment Eligibility verification System carried out through the I-9. HB 2008 will place Kansas employers in a precarious legal position and possibly subject them to severe civil penalties, particularly if they discriminate against workers who look or sound "foreign" and who are not U.S. citizens.

Ladies and gentlemen of this committee, perhaps foremost in our opposition to this bill is that , intended or un-intended, this bill targets Hispanic & Latino workers. We are talking about a undocumented population who live in the shadows of our society and who contribute significantly to their communities, yet ask nothing in return, save the opportunity to work and provide for their families. There is no question that this country and indeed this state's economy needs immigrant labor. Conversely immigrants documented and undocumented alike, need to work - they need to provide for their families. And I would suggest to you that at the end of day, the laws of land will ultimately succumb to the laws of survival when it comes meeting the needs and general welfare of family.

In closing I will say that debates over the best way to manage U.S. and Kansas employer demand for foreign labor are not new and it is unlikely that the current discussions will resolve themselves any time soon. Studies show that number of undocumented immigrants in the labor pool is very large and no doubt the dialogue on how best to address issue remains twofold: do we take proactive steps to transform the clandestine flow of labor into a legally regulated one or do we step up enforcement to confront that flow? KHLAAC supports the former as opposed to the latter and thus our opposition to HB 2008. At best, HB 2008 is a work in progress and requires further study and analysis and we encourage you to oppose passage of this legislative initiative. Thank you for the opportunity to speak before your committee.

February 16, 2005

Comm. Labor
2-16-05
Atch #4

Legislative Testimony

Bill: HB 2008

Date: February 16, 2005

Testimony before the Kansas House Committee on Health and Human Services by Andrea Ramos Ortiz, Hispanic American Leadership Organization Executive Board Member at Washburn University and member of Most Pure Heart Of Mary Church

Allow me to introduce myself as Andrea Ramos Ortiz, a member of the Hispanic American Leadership Organization at Washburn University. On behalf of this organization and myself, I would like to thank you for giving us the opportunity to inform you why HB 2008 would create more discrimination.

As the child of two immigrants, I have seen the difference the color of skin and being a citizen can make in applying for a job and in everyday actions. I would like to share an incident that my father experienced. He started off working in the shops at Santa Fe Railroad Company. With time he started looking to work a higher position and asked to work as a telegrapher. Because of his accent they thought that he would not be able to perform the job and did not want to grant him the job. With help of a Caucasian friend of my grandfather, my dad was able to get the job as a telegrapher and proved to be the best in the job with no accidents on his record to date. Unfortunately, not everyone has a friend that could speak for them.

When the Immigration Reform Control Act (IRCA) passed in 1986 many employers admitted to having given foreign- appearing/or foreign sounding applicants a harder time or just refusing to give them the job all together. These unjust actions affect the entire United States today. If HB 2008 is passed, employers will become that much more discriminatory towards those who have a right to work such as regular citizens, residents, and those with working visas because of their color of skin.

Kansas would also stand to benefit economically and financially from the revoking of HB 2008. The services HB 2008 propose would have no guarantee of being efficient and promote discrimination that the applicant would not even be aware of. The services would instead, waste Kansas's resources, time, energy, and money.

Commlabor
2-16-05
Atch #5

Having been born in the United States with a foreign appearance has given me a unique experience. Please believe me when I say that this bill could affect more than just employers and applicants. Today's youth take example of how hard the situation becomes for immigrants and will act either more humane or degrading towards immigrants on how they see their mentors treat those looking for opportunity in the United States.

Thank you for allowing me to speak to you today

Andrea Ramos Ortiz

Andrea Ramos Ortiz

STATE OF KANSAS
OFFICE OF THE ATTORNEY GENERAL

PHILL KLINE
ATTORNEY GENERAL

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HOUSE COMMERCE AND LABOR COMMITTEE
House Bill No. 2008
Written testimony of
Kevin A. Graham
Office of the Attorney General

Chairman Dahl and Members of the Committee:

Thank you for allowing me to submit this brief written testimony on behalf of Attorney General Phill Kline regarding HB 2008.

As you are aware, New Section 6 of the bill requires the Attorney General to establish a toll free number to receive telephone calls concerning information on persons and business entities employing illegal aliens in violation of Kansas law. The bill further requires the Attorney General to forward such information to local law enforcement agencies and to "publicize, distribute and disseminate information on the availability of the hotline to employment agencies, law enforcement agencies and interested parties." While the Attorney General make every possible effort to perform all the required duties should HB 2008 become law, it must be noted that the required duties can not be performed cost-free.

A fiscal note has been prepared for this bill by the Director of the Budget, and within that fiscal note is information provided by the Office of the Attorney General indicating implementation of the bill would involve costs to the Office of the Attorney General totaling $54,525 in SFY 2006 (and future years.) While HB 2008 provides the Attorney General authority to "apply for, receive and accept moneys from any source for the purposes of establishing the hotline" at this time the Office of the Attorney General is unaware of any other private or public funding source (other than the State General Fund) that would provide funding for this service.

Thank you again for the opportunity to provide this information.

Respectfully submitted,

OFFICE OF THE ATTORNEY GENERAL
PHILL KLINE

Kevin A. Graham
Assistant Attorney General

Comm. Labor
2-16-05
Atch #6

THE KANSAS CONTRACTORS ASSOCIATION, INC.

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Testimony

By the Kansas Contractors Association before the House

Commerce and Labor Committee regarding HB 2008

February 16, 2005

Mr. Chairman and members of the House and Commerce Committee regarding HB 2008, 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 voice our opposition to House Bill 2008 and relay some of our concerns over this issue.

The Kansas Contractors Association believes this proposed legislation is unnecessary and redundant. After reading this proposal and then referring to Title 8 of the US Code, I find there are already sufficient federal penalties for hiring undocumented immigrants.

There are fines of $2,000 per offense for knowingly hiring an illegal alien and it appears to us as overkill to have this law put into place. If you read New Section 3 of this

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2-16-05
Atch #7

measure, it restricts the opportunity to do business with the state for five years if you knowingly hire an illegal alien.

That penalty seems too severe for an offense that is adequately applied on the federal level. We realize there is a growing problem regarding undocumented immigrants but to cause the state to hire more people to do the enforcement that should be handled by the federal government is unnecessary.

In addition, I have been led to believe that the problem is centered more on the home builders. If that is the case, this measure does not center its concern at that industry it appears to give its attention to those who have government contracts. From the highway industry's standpoint, our wages are certified and can be verified at KDOT…. And many times I am told the AFL-CIO reviews different contracts to make sure the prevailing wages are paid.

It is our contention illegal aliens is a concern for the federal government and to add additional penalties to the system will not change any one's behavior. It is doubtful this legislation will cause any more enforcement of the present situation unless the federal government makes a more diligent effort to keep illegals or undocumented immigrants out of the country.

I thank you for the opportunity to voice our concerns.

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AGC of KANSAS
Building a Better Kansas Since 1934
200 SW 33rd St. Topeka, KS 66611 785-266-4015

WRITTEN TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE HOUSE COMMITTEE ON COMMERCE
HB 2008

February 15, 2005

By Corey D Peterson, Associated General Contractors of Kansas, Inc.

Mister Chairman and members of the committee, my name is Corey D Peterson, Executive Vice President of the Associated General Contractors of Kansas, Inc. The AGC of Kansas is a trade association representing the commercial building construction industry, including general contractors, subcontractors and suppliers throughout Kansas (with the exception of Johnson and Wyandotte counties).

The **AGC of Kansas opposes House Bill 2008 and requests that you not recommend it for passage.**

While AGC of Kansas strongly encourages its members to comply with all labor laws, AGC feels the punishment outlined in HB 2008 seems overly severe. The penalties outlined in HB 2008 are so severe they provide a realistic potential to put a contractor out of business. Complicating this is the difficulty for contractors to be 100% certain they are not hiring an "illegal alien" and that it is virtually impossible to know if they contracted with a subcontractor that has not done so.

Confirming employees are "legal" is difficult. Counterfeit documents are often times impossible to distinguish from legitimate documents. The chance of inadvertently hiring an "illegal" is real.

AGC is most opposed to Section 7 (c), which would hold contractors responsible for the hiring practices of its subcontractors. This would be an impossible task for a contractor to monitor and enforce. If a subcontractor was found to be in violation of the law according to the terms of this bill, the contractor would then be subject to the same extreme penalties, penalties that could easily put a company out of business.

AGC of Kansas and the Kansas Contractors Association co-sponsored a human resource educational seminar in February 3 & 4, 2005 that included a session on the Hispanic workforce. Following over two months of trying, AGC and KCA were unable to find one person from the state or federal government that would be willing to speak to the group on ways to insure compliance with immigration labor laws, including ways to prevent the hiring of "illegals." Calls were made to the INS, Department of Labor (both US and KS), and Kansas Highway Patrol, but none of which would speak to the construction industry, nor could they make recommendations of someone that could assist with the seminar.

The AGC of Kansas **respectfully asks that you not recommend SB 80 for passage**. Thank you for your consideration.

Comm. Labor
2-16-05
Atch # 8

El Centro, Inc.

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913-362-8203 fax

NeighborWorks CHARTERED MEMBER NCLR

February 16, 2005

Chairman Don Dahl and Honorable Members of the House Commerce and Labor Committee,

El Centro, Inc. wishes to express our opposition to HB2008, which we feel is a misguided effort that may have serious negative consequences for our state. While we recognize the urgent need to reform our immigration laws to address the many problems created when large sectors of our workforce lack immigration status and, therefore, labor protections. We are one of the leading voices in Kansas urging such action in Congress, and we also recognize the right of our state to take necessary and legal steps to deal, within our limited powers, with the consequences of Congress' lack of action in this area. It is from this vantage point that we conclude that HB2008 not only does not appropriately address the underlying issue of our nation's broken immigration laws but also does not conform to existing federal law.

Federal immigration law preempts HB2008 because it penalizes employers for knowingly hiring undocumented workers.

Federal immigration law preempts any state or local government from doing exactly what House Bill No. 2008 proposes to do. Specifically, the federal law prohibits, "any State or local law imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens." *See, 8 USC § 1324a(h)(2).* Any state legislation that prohibits the hiring of unauthorized workers or attempts to impose penalties on employers for hiring unauthorized workers in Kansas is not legally enforceable. Because of this, enactment of such a bill will subject Kansas to unnecessary litigation and a waste of taxpayers' money to defend legislation clearly prohibited by federal law. Other states have attempted to enact or enforce similar state laws only to find that federal law preempts them. Recently, for example, police in Lake Worth, Florida began notifying employers who hire day laborers that they would be penalized under a Florida statute (similar to existing K.S.A. § 21-4409) prohibiting employers from knowingly hiring undocumented workers. Based on potential litigation the city is now facing, the City of Lake Worth has suspended those notices to employers and is seeking a more comprehensive solution to this community challenge. Furthermore, while we are seriously examining Kansas' liability in relation to our laws pertaining to the employment of undocumented immigrants, any enforcement of existing Kansas law § 21-4409 is preempted as well. While we might find fault with the ways in which the federal government manages immigration policy and its enforcement, the U.S. Constitution and subsequent Congressional policy relating to immigration make it clear that the state is restricted from taking over these functions.

In addition to our concerns about litigation resulting from attempts to enforce HB2008, we also fear that the creation of any new penalties against employers will result in confusion and fear among companies. Because employers cannot tell by looking at someone whether they are authorized to work in the United States, employers will require those individuals who sound or appear to be "foreign born" to provide additional documentation proving they are authorized to work. The concern over increased discrimination is well founded. The General Accounting Office's (GAO) reports after the enactment of the Immigration Reform and Control Act, which created the system of employer sanctions found that employer sanctions had indeed resulted in widespread discrimination. One in five employers reported some form of employment discrimination against

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those workers they perceived to be undocumented because they were "foreign sounding" or "foreign looking". *See, Immigration Reform: Employer Sanctions and the Question of Discrimination,* GAO/GGD 90-62 (Mar. 1990). It is highly probable that due to fear of the Kansas employer sanctions, employers will prefer not to hire anyone who sounds or appears to be "foreign born". This will deny many documented immigrants and other native-born minorities access to jobs unfairly.

Even more importantly, however, HB2008 exposes workers and our state as a whole to these risks without addressing the problem it assumedly seeks to solve. Prohibiting state agencies or other governmental units from contracting with subcontractors or employers who have been convicted of hiring undocumented immigrants will not solve the problem of unlawful immigration. As the AFL-CIO recognized in its historic shift on employer sanctions, "current efforts to improve immigration enforcement, while failing to stop the flow of undocumented people into the United States, have resulted in a system that causes discrimination and leaves unpunished unscrupulous employers who exploit undocumented workers, thus denying labor rights for all workers." Moreover, "unscrupulous employers have systematically used the I-9 (employment eligibility verification) process in their efforts to retaliate against workers who seek to join unions, improve their working conditions, and otherwise assert their rights."

If the Kansas Legislature wishes to solve the problems created by employers hiring undocumented workers, it should support Congressional members seeking comprehensive immigration reform as a solution to the large undocumented population who work hard and pay taxes, rather than wasting taxpayers' money on legislation that is flawed and preempted by federal law. To effectively use state contracts as both a carrot and a stick with which to encourage responsible behavior, Kansas should focus on prohibiting contracts with employers and subcontractors who have been found liable for violating the state's labor and employment laws, or for attempting to circumvent their obligations by misclassifying employees – often times immigrant workers – as independent contractors. These tests would not be preempted by federal law, dependent upon a flawed system of employee verification and its even more flawed enforcement, or a distraction from the difficult but very necessary work of fixing our nation's immigration laws. El Centro, Inc. would be delighted to work with the Legislature on such initiatives.

Most sincerely,

Melinda K. Lewis

Melinda K. Lewis
Director of Policy Advocacy and Research
El Centro, Inc.

Legislative Testimony

HB 2008

February 16, 2005

Testimony before the Kansas House Commerce Committee
By Marlee Carpenter, Vice President of Government Affairs

THE KANSAS CHAMBER

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I am Marlee Carpenter with the Kansas Chamber of Commerce representing over 10,000 small, medium and large businesses from all parts of Kansas. The Kansas Chamber supports the intent of the legislation, however, in its current form we must oppose this measure.

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 of federal or state law.

For 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 are not acceptable. The only exception is certified copiers 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 in regards to the employment laws. There are no good faith provisions in HB 2008. A good faith provision would have to be inserted for the Kansas Chamber to remove its opposition.

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

The Kansas Chamber, with headquarters in Topeka, is the statewide business advocacy group moving Kansas towards becoming the best state in America to do business. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have more than 10,000 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, medium and large employers all across Kansas.

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