

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

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

All members were present.

Committee staff present:

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

Conferees appearing before the committee:

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

Others attending:

See attached list.

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

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

A video, "Stop Worker Abuse" was shown.

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

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

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

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 20, 2006 in Room 241-N of the Capitol.

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

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

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

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

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

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

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

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

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

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

CONTINUATION SHEET

MINUTES OF THE House Commerce and Labor Committee at 9:00 A.M. on February 20, 2006 in Room 241-N of the Capitol.

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

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

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

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

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

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

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

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

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

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

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

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

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TOPEKA

HOUSE OF
REPRESENTATIVES

COMMITTEE ASSIGNMENTS

TAXATION
FEDERAL AND STATE AFFAIRS
FINANCIAL INSTITUTIONS
ECONOMIC DEVELOPMENT

Chairman Dahl, Vice-Chair Schwab, Ranking Member Ruff and committee, I am pleased to stand in your committee today to discuss an issue that is important to business owners and workers alike. In following Rep. Grange's advice I will not bother to read my testimony to the committee today, I will highlight the brief outline below.

I. Worker misclassification is a large problem

- A. Hurts the natural competition in business practice
- B. Hurts workers
- C. Hurts the Kansas economy
- D. Decreases the State Revenue

II. Harmful to Business

- A. February 11 at an Eggs and Issues Forum
 - 1. Discussed business outlook/climate
 - a. How to improve
 - i. Cut business tax
 - ii. Fair business Practice
 - 2. Masonry contractor
 - a. 35 years in business
 - b. Closed doors last year
 - c. Son will not try to compete
 - d. Cannot compete with unethical business practice
- B. Most Contractors do comply with good business practice
 - 1. Healthy competition makes free markets work
 - 2. More than happy to compete
 - a. New technology
 - b. Improved efficiency
 - c. Strong work ethic
- C. Contractors can not compete with unethical practice
 - 1. Avoid paying employee income tax
 - 2. Avoid paying unemployment
 - 3. Avoid paying Worker's Comp
 - 4. Injured Worker still receives care
 - a. Emergency Care is expensive
 - b. Does not have insurance

Comm Labor
2-20-06
Atch #1

Misclassification of Workers Cont.

c. Legitimate businesses pick up cost through
increased rates

5. In most cases 10% to 15% of total cost

III. Harmful to Workers

- A. Unsafe working conditions
- B. Injured worker has no recourse
 - 1. Emergency Care
 - 2. If injured permanently loses earning power
- C. Limits the worker to lower wages and benefits

IV. Hurts Kansas Economy

- A. Drives legitimate contractors out of business
- B. Health Care costs skyrocketing
- C. Kansans have to spend more on Health Services and less in market place

V. Decreased State Revenue

- A. Asked Legislative Research about fiscal note
 - 1. Could not estimate
 - 2. Study in Massachusetts \$10 Billion
 - 3. Leg. Res. Large problem but unwilling to guess
- B. Unscrupulous Contractors do not pay all taxes
- C. Increased public services in Health Care Industry
- D. Workers paid in cash many times avoiding taxes

VI. Worker Misclassification is Bad for Kansas

- A. Natural Competition damaged in free market
- B. Legitimate business put at competitive disadvantage
- C. Workers put at risk
- D. Kansas economy weakened
- E. State revenues held down

Anthony Brown

From: "sandie abc" <sandie19872002@yahoo.ca>
To: "Anthony Brown" <brown@house.state.ks.us>
Cc: "Richard Hills" <prestigemasonry@hotmail.com>
Sent: Saturday, February 18, 2006 10:56 AM
Subject: 1099 form abuse

Hello Anthony,

It was nice to meet with you last week after the forum an to learn of your intrest in controling the tax cheating contractors. This action will level the feild for better competition and give the State of Kansas millions of dollars in previous uncollected revenue. I fully suport and encourage your continued work in this area. And also the control of unregistered contractors working an not paying taxes to the state. It is a crime if these people are allowed to continue to work and not pay any taxes. I like your idea of making it a class B crime. But if \$500 dollars per day per employee is all you can get so be it.

The AGC (Association of General Contractors) an its members have a lot to do with this problem and profit greatly from it. Many of the GC's (general Contractor) use contract labor and do not pay any taxes because of this loop hole. The GC's very much encourage the subcontractors do 1099 abus! e or even work as unregistered contractors in the state. There encouragement is very simple, you dont gett a job if you can't become the lowest bid for the work. An the state laws do not allow for the lost subcontractor taxes to be collected form the GC or the owner. (a change in this state law wouldstop GC's from using unworthy subcontractors). The owner and GC profit greatly form this tax law abuse. So I hope you do not listen to closely to the AGC when they try to water down your new law.

I am the former president of the "Greater Kansas City Mason Contractors Association" and a current member of the "subcontractors Association of America" I am sure that the subcontractors association would like to help you any way possible. We are a group of subcontractors that are being greatly abused by the members of the AGC. We can not make a decent living with the GC's always hammering down our prices with other subs that use 1099 abuse or other subs that are unregistered contractors not paying any taxes.

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K A N S A S

JOAN WAGNON, SECRETARY

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

February 20, 2006

The Honorable Donald Dahl, Chairperson
House Committee on Commerce & Labor

Re: House Bill No. 2841

Dear Representative Dahl and Members of the Committee:

The Kansas Department of Revenue supports legislation authorizing us to work with the Department of Labor in addressing the serious problem of worker misclassification. House Bill No. 2841 will better enable us administer and enforce the provisions of the Withholding and Declaration of Estimated Tax Act, K.S.A. 79-3296 et seq., as amended, and see that all withholding taxes lawfully due are fully paid.

It has become apparent that some employers intentionally engage in the practice of classifying workers as independent contractors despite the fact that they are required by law to be classified as employees. Reasons for this include the desire to escape responsibility for reporting and remitting withholding taxes and unemployment security contributions.

Legislation was introduced in the 2005 session to address this concern. Since that time, the Department of Revenue has met with individual legislators, the Department of Labor, representatives of the business community and others to discuss certain amendments that would accommodate the concerns of all parties. House Bill No. 2841 contains many of those changes. In addition, we would offer a balloon amendment containing language that: (1) makes clear the bill is aimed at only those employers who knowingly and intentionally violate the law; and (2) places more specific limitations on the information that may be disclosed by the Department of Revenue to the Department of Labor.

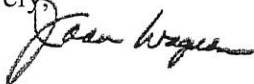
Revenue and Labor agree that it is in their best interests to jointly address instances of worker misclassification through the sharing of information, resources and expertise and have already entered into an interagency Memorandum of Understanding to that effect. Currently, however, a true partnership is not possible due to the statutory limitations on Revenue's ability to disclose any taxpayer information whatsoever. Amending K.S.A. 2005 Supp. 79-3234 would permit Revenue to disclose certain specific taxpayer information to attorneys at the Department of Labor for the limited purpose of investigating and litigating instances of worker misclassification.

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

Finally, we support a provision authorizing the Secretary of Revenue and the Secretary of Labor to adopt rules and regulations for purposes of implementing this legislation. Among other things, administrative regulations can be promulgated to distinguish between employers who knowingly and intentionally engage in worker misclassification and those who may unintentionally misclassify employees due to error, oversight or honest mistake. We recognize and appreciate that this distinction is a legitimate concern of the business community.

Thank you for the opportunity to testify in support of House Bill No. 2841.

Sincerely,

A handwritten signature in cursive script that reads "Joan Wagnon".

Joan Wagnon, Secretary of Revenue

Attachment: Balloon amendment

HOUSE BILL No. 2841

By Committee on Commerce and Labor

2-7

knowingly and intentionally

9 AN ACT concerning employment; relating to the misclassification of em-
10 ployees; amending K.S.A. 2005 Supp. 79-3234 and repealing the ex-
11 isting section.
12

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

14 New Section 1. (a) It shall be unlawful to classify an employee as an
15 independent contractor for purposes of avoiding either state income tax
16 withholding and reporting requirements or state unemployment insur-
17 ance contributions reporting requirements.

18 (b) Any person violating subsection (a) shall be liable to the state for
19 a civil penalty of \$500, per misclassified employee and for each day such
20 violation continues shall be deemed to be a separate violation.

21 New Sec. 2. (a) The department of revenue in conjunction with the
22 department of labor shall establish a website to receive communications
23 concerning information on persons and business entities misclassifying
24 employees in violation of section 1, and amendments thereto.

25 (b) Upon receipt of such information, the department of revenue
26 shall work with the department of labor to investigate alleged violations.
27 The agencies shall cooperate and share information as necessary con-
28 cerning the alleged violations.

29 (c) The secretary of revenue and secretary of labor may apply for,
30 receive and accept moneys from any source for the purposes of estab-
31 lishing the website.

32 (d) The secretary of revenue and secretary of labor shall publicize,
33 distribute and disseminate information on the availability of the website
34 and concerning employee misclassification violations to employment
35 agencies, law enforcement agencies and other interested parties.

36 (e) The chief attorney of the department of labor, appointed pursuant
37 to K.S.A. 75-5722, and amendments thereto, shall be designated as special
38 assistant attorney general for the purposes of investigating, prosecuting
39 and litigating matters under section 1, K.S.A. 44-636 and K.S.A. 44-720,
40 and amendments thereto.

41 New Sec. 3. The secretary of revenue and secretary of labor, are
42 hereby authorized to adopt rules and regulations concerning the imple-
43 mentation of this act.

2-6

1 Sec. 4. K.S.A. 2005 Supp. 79-3234 is hereby amended to read as
2 follows: 79-3234. (a) All reports and returns required by this act shall be
3 preserved for three years and thereafter until the director orders them
4 to be destroyed.

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

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

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

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

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

37 (5) disclose to the secretary of commerce specific taxpayer informa-
38 tion related to financial information previously submitted by the taxpayer
39 to the secretary of commerce concerning or relevant to any income tax
40 credits, for purposes of verification of such information or evaluating the
41 effectiveness of any tax credit program administered by the secretary of
42 commerce;

43 (6) disclose income tax returns to the state gaming agency to be used

1 solely for the purpose of determining qualifications of licensees of and
2 applicants for licensure in tribal gaming. Any information received by the
3 state gaming agency shall be confidential and shall not be disclosed except
4 to the executive director, employees of the state gaming agency and mem-
5 bers and employees of the tribal gaming commission;

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

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

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

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

40 (11) communicate to the executive director of the Kansas racing com-
41 mission as to whether a person, partnership or corporation has failed to
42 meet any tax obligation to the state of Kansas for the purpose of deter-
43 mining whether such person, partnership or corporation is eligible for a

1 facility owner license or facility manager license pursuant to the Kansas
2 parimutuel racing act; ~~and~~

3 (12) provide such information to the executive director of the Kansas
4 public employees retirement system for the purpose of determining that
5 certain individuals' reported compensation is in compliance with the Kan-
6 sas public employees retirement act at K.S.A. 74-4901 et seq., and amend-
7 ments thereto; *and*

8 (13) *provide taxpayer information to staff attorneys of the department*
9 *of labor for the purpose of determining compliance by any person with*
10 *the provisions of section 1, and amendments thereto.*

11 (d) Any person receiving information under the provisions of subsec-
12 tion (c) shall be subject to the confidentiality provisions of subsection (b)
13 and to the penalty provisions of subsection (e).

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

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

23 Sec. 5. K.S.A. 2005 Supp. 79-3234 is hereby repealed.

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

, which information shall be limited to withholding tax and payroll information, the identity of any person that has been or is currently being audited or investigated in connection with the administration and enforcement of the withholding and declaration of estimated tax act, K.S.A. 79-3294 et seq., as amended, and the results or status of such audit or investigation.



KANSAS

DEPARTMENT OF LABOR

Jim Garner, Secretary

KATHLEEN SEBELIUS, Governor

Testimony In Support of HB 2841
House Commerce and Labor Committee
20 February 2006
Jim Garner

Mr. Chairman and Members of the Committee:

Thank you for the opportunity to appear and express my support for House Bill 2841 concerning the misclassification of employees – an issue that directly affects the operations of the Department of Labor.

The deliberate misclassification of employees to avoid payment of taxes is a growing problem and one that disadvantages the overwhelming majority of Kansas employers who do obey the laws, have workers compensation insurance and pay their taxes. Our Unemployment Insurance Contributions (Tax) unit is responsible for making determinations of employer/employee relationship when such issues arise. These issues often come to our attention when an individual who has been laid off of a job files for unemployment benefits and our agency has no records of any wages ever being paid to the individual. Misclassification also impacts workers compensation coverage.

The proposed language for HB 2841 will provide the Kansas Department of Labor with new and needed tools to address the problem of misclassified employees. Not only will it provide for civil penalties for bad actors, but it will allow for improved cooperation between the Departments of Labor and Revenue in investigating these matters. We support the proposed amendment to make clear that this bill is aimed only at those who knowingly and intentionally misclassify employees.

It may seem silly, but currently the two agencies, both a part of the government of the State of Kansas, cannot have much of a conversation about the bad actors skirting the tax laws enforced by the two agencies. This bill will allow for greater cooperation and the sharing of information--but only that information needed for determining the issue of employment vs. independent contractor.

With this new language, we can avoid situations where one week an employer is investigated by Revenue and then two weeks later investigators from Labor show up to gather some of the same information.

House Bill 2841 will definitely improve the ability of both agencies to enforce the laws for which we are each responsible. I urge your support of House Bill 2841. Thank you for the opportunity to appear and share my support for this proposal.

OFFICE OF THE SECRETARY

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Comme Labor
2-20-06
Atch # 3

Commerce and Labor Committee
Kansas Capitol
Room 241
February 20, 2006

Re: House Bill 2841, as amended

I am Bob Dunn, Vice President of Community Affairs at J. E. Dunn Construction Company. I am here on behalf of Tom Whittaker, Vice President and General Counsel of J. E. Dunn Construction Company. Unfortunately, Tom Whittaker could not be here today as planned. I am prepared to offer the following comments in support of House Bill 2841, as amended, that Tom would have made if he been able to be here in person.

J. E. Dunn is one of the largest general contractors and providers of construction services in the Midwest. J. E. Dunn builds or manages millions of dollars of work each year on construction projects in the state of Kansas. These construction projects provide jobs for J. E. Dunn's employees and the employees of many other legitimate subcontractors.

We support the passage of House Bill 2841, as amended, to help prevent those employers that knowingly and intentionally misclassify employees as independent contractors for purposes of avoiding income tax withholdings or unemployment insurance contributions, as well as other related costs associated with maintaining a work force.

Employers such as J. E. Dunn are at a competitive disadvantage when competing on projects against contractors that knowingly and intentionally misclassify employees as independent contractors. Employers that intentionally misclassify employees as independent contractors avoid withholding and paying income tax withholdings, unemployment insurance contributions and premiums for workers compensation insurance. This gives such employers an inequitable advantage over those employers that do not misclassify their employees and pay all the necessary obligations in an employer-employee relationship.

Often, independent contractors are paid based on the amount of work completed and not by the hour or a fixed salary. This allows such an employer to avoid paying overtime or the prevailing wage.

Furthermore, to knowingly and intentionally misclassify employees as independent contractors reduces revenue that is legitimately due the State. Moreover, if a worker is injured and does not receive workers compensation benefits because she or he was misclassified as an independent contractor, State or federally funded medical programs are then at risk for providing needed medical treatment.

We urge you to pass House Bill 2841 as amended and prevent employers from knowingly and intentionally avoiding their obligations to their employees, to other taxpayers and to the State of Kansas. Thank you.

Commerce and Labor Committee
Kansas Capitol
Room 241
February 20, 2006

Re: House Bill 2841, as amended

I am Bob Dunn, Vice President of Community Affairs at J. E. Dunn Construction Company. I am here on behalf of Tom Whittaker, Vice President and General Counsel of J. E. Dunn Construction Company. Unfortunately, Tom Whittaker could not be here today as planned. I am prepared to offer the following comments in support of House Bill 2841, as amended, that Tom would have made if he been able to be here in person.

J. E. Dunn is one of the largest general contractors and providers of construction services in the Midwest. J. E. Dunn builds or manages millions of dollars of work each year on construction projects in the state of Kansas. These construction projects provide jobs for J. E. Dunn's employees and the employees of many other legitimate subcontractors.

We support the passage of House Bill 2841, as amended, to help prevent those employers that knowingly and intentionally misclassify employees as independent contractors for purposes of avoiding income tax withholdings or unemployment insurance contributions, as well as other related costs associated with maintaining a work force.

Employers such as J. E. Dunn are at a competitive disadvantage when competing on projects against contractors that knowingly and intentionally misclassify employees as independent contractors. Employers that intentionally misclassify employees as independent contractors avoid withholding and paying income tax withholdings, unemployment insurance contributions and premiums for workers compensation insurance. This gives such employers an inequitable advantage over those employers that do not misclassify their employees and pay all the necessary obligations in an employer-employee relationship.

Often, independent contractors are paid based on the amount of work completed and not by the hour or a fixed salary. This allows such an employer to avoid paying overtime or the prevailing wage.

Furthermore, to knowingly and intentionally misclassify employees as independent contractors reduces revenue that is legitimately due the State. Moreover, if a worker is injured and does not receive workers compensation benefits because she or he was misclassified as an independent contractor, State or federally funded medical programs are then at risk for providing needed medical treatment.

We urge you to pass House Bill 2841 as amended and prevent employers from knowingly and intentionally avoiding their obligations to their employees, to other taxpayers and to the State of Kansas. Thank you.

3-6

Commerce and Labor Committee
Kansas Capitol
Room 241
February 20, 2006

Re: House Bill 2841, as amended

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We urge you to pass House Bill 2841 as amended and prevent employers from knowingly and intentionally avoiding their obligations to their employees, to other taxpayers and to the State of Kansas. Thank you.

total interiors inc

February 17, 2006

House Commerce and Labor Committee
Representative Don Dahl
Room 241N
HB 2372

Chairman Dahl and Committee Members,

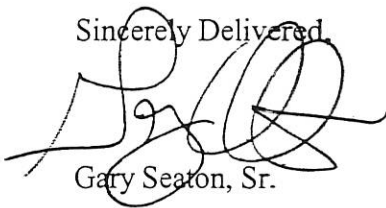
My name is Gary Seaton, Sr., President of Total Interiors, Inc. Our office is located at 110 Greystone Ave, Kansas City, KS 66103.

We have been in the construction business in Kansas City, KS since 1974 and our payroll in 2005 was approximately \$6,400,000. Of that 6 plus million dollars, over 2 million dollars was paid to local, state, and federal agencies for taxes and insurance, not counting what the individual employees paid in taxes and insurance, which could easily be another \$ 350,000 for social security and Medicare.

Any unscrupulous contractors that misclassify employees as independent contractors and don't pay the appropriate taxes and insurance are creating an uneven playing field for competition in our industry.

They are also costing local, state, and federal agencies countless dollars in noncollected taxes and insurance.

Sincerely Delivered



Gary Seaton, Sr.

Attachment

Year 2005

Wages (Field & Office)	\$4,360,690
Other Payments:	
Social Security (Company Payment)	\$263,718
Medicare (Company Payment)	\$63,207
State Unemployment	\$97,065
Federal Unemployment	\$9,545
union Fringes (Health Ins., Pensions, ect.)	\$1,438,325
Office Health Insurance	\$33,154
Workers Comperensation Insurance	\$170,824
General Liability Insurance	\$23,500
	<hr/>
	\$2,099,335



8729 South 114th Street
LaVista NE, 68128
(402) 292-8030

February 20, 2005

House Commerce and Labor Committee
Representative Don Dahl
Room 241N
HB 2841

Chairman Dahl and Committee Members,

My name is Jim Steele, Safety Director for Falewitch Construction, Inc. Our company is located in Omaha Nebraska. I was asked to travel to Kansas to testify on behalf of HB 2841 as the issue of "miss-classifying workers" is a serious and unfair challenge for all honorable employers in Nebraska and all across our region. Our hope is that those of us in Nebraska facing this problem can point our legislature to Kansas as an example of measures being taken to fix this problem.

As you are aware, the miss-classification of workers as independent contractors is a lucrative deception employers are tempted to cast to avoid a large portion of labor expenses such as training costs, unemployment insurance, workers compensation insurance, benefits employees might expect such as health insurance, paid vacation, and disability insurance and often federal and state taxes. When Falewitch Construction Inc. bids a job, well over half the revenue is for labor costs. Obviously, when good corporate citizens, such as Falewitch Construction must compete with those willing to dishonestly miss-classify their workforce, we are cheated, the state and federal government are cheated, and ultimately the hard working and honest citizens of our communities are cheated. However, that is not the only effect nor is it the most serious, in my professional judgment.

Business owners and managers who are willing to cheat in this way are also the type people who shortcut the safety, health and welfare of their workforce and the workers and citizens in near proximity to their workforce. Worse yet, the more business these companies get, the more dangerous the work environment becomes. As the safety director for our company, I see this in many stark and chilling ways every time I visit jobsites where such companies work. Here are two examples.



The first involves scaffolding. Our company spends thousands of dollars to train our workers in the proper method of erecting and dismantling scaffolding, and a few weeks ago, it paid off. A wind storm came up suddenly and began to shake our covered scaffold, but it did not fall and our employees were able to safely get off the scaffold because it was built properly by trained, competent workers. However, just across town, the same type scaffold was erected by incompetent workers working for a contractor who did not care about their safety. Large sections of that scaffold blew over into the parking lot where

other workers and pedestrians could have been hit. Fortunately, no one was in the parking lot at the moment and none of the workers were on the sections of scaffold that fell.

Another example happened just a few months ago. I was inspecting a jobsite and as I walked around a corner, I stopped short, as I saw a young worker removing a manhole cover and then walking away. When I asked where he was going, he said to get something he forgot in his truck. I convinced him to cover the hole while he was gone, as people walked through that area all the time. He reluctantly complied saying he was only going to be gone a few minutes. I asked what



Comm + Labor
2-20-06
Atch # 5

company he was with, and he said he worked for himself, but he would not say who he contracted with. This young man had no comprehension of the basic safety rules that applied to the work he performed, and that state and federal regulations dictate. Worse, I doubt he had insurance to cover the catastrophic consequences his mistakes will ultimately cost.

Of course, I have no proof that these workers were miss-classified, but I can tell you that almost without exception, the most egregious safety hazards I see on the jobsites I've inspected happen with companies that our employees say and I suspect often miss-classified workers. It is bad enough that these unscrupulous companies win contracts by cheating, then increase the dangers of everyone working around them, but this problem is compounded by the likelihood that miss-classified workers carry no insurance to cover the cost of the injuries and property damage they cause when their luck runs out. When this happens, the honorable companies and tax paying citizens are left holding the bag. We are all cheated by the miss-classification of workers.

Sincerely,

Jim Steele
Safety Director

February 19, 2006

House Commerce and Labor Committee
Representative Don Dahl
Room 241N
Capital Building
Topeka, KS 66603

Re: House Bill 2841

Chairman Dahl and Respected Committee Members,

I am here to offer my support to this committee and to the State of Kansas. By supporting H.B. 2841, we can improve the conditions of the Great State we call home.

My name is Jim Wilkinson. I am a resident of Olathe, KS (11380 S Woodland St Olathe, KS 66061-8726) and I am also Vice-President of Image Flooring, LLC, a Lenexa based floor covering contractor. I appreciate the opportunity to discuss with you the many problems that can be addressed by moving this bill through committee and ultimately passing it into law.

Many firms in the construction industry, as well as my own, are facing an ever-growing obstacle – **The mis-classification workers as independent self-contractors.**

As a floor covering contractor, it gives me great pride to know the nearly twenty-five **employees** of Image Flooring, LLC are able to earn a living wage, which includes overtime for qualified work. They have benefits for themselves and their families, lessening the burden on the already strained health care system. They are able to receive a sustainable pension through their retirement program and Social Security while we match their contributions. We have liability insurance and Workers' Compensation insurance, yet another way of easing the burden on the health industry. We are proud to offer these and other benefits to our employees and the community while performing some of the best floor covering installations in this and many of the surrounding states!

Unscrupulous contractors who are not providing benefits, pensions, liability and Workers' Compensation insurance, business licensing fees or fair wages and their associated taxes – put 'fair' contractors at a huge competitive disadvantage. Mis-classification affects the Kansas economy on many levels, as well as the solvency of the 'fair' contractors in the various aspects of construction within our state. With each contract awarded to unscrupulous contractors (also known as 1099-ers) and with each day their practices are allowed to flourish, the future of 'fair' businesses in our State becomes more bleak.

By supporting H.B. 2841, you can put an end to the injustices allowed by this practice. The playing field will be leveled for all contractors. Families will have more of an opportunity to invest their living wages in the communities they live in - allowing for

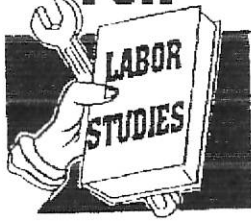
Comm + Labor
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Atch # 6

more sales tax revenue. Public programs (i.e. welfare, school systems, etc...), currently strained to the breaking point can get the money they so very much deserve. In short: This Great State of Kansas will receive the revenue it is entitled to.

Sincerely and Respectfully,

James Wilkinson
Vice-President – Image Flooring, LLC
9828 Plumn
Lenexa, KS 66215-1208
(913) 227-0729

INSTITUTE FOR



UMKC Economics Department, 211 Haag Hall– 5100 Rockhill Road–
Kansas City, Missouri 64110 – (816) 235-1470
Fax (816) 235-2834 – E-mail: ancelj@umkc.edu

House Commerce and Labor Committee
Representative Don Dahl, chairperson
Members: Representatives Schwab, Burgess, Grange, Humerickhouse,
Huntington, Johnson, Kiegerl, Kilpatrick, Masterson, Roth, Sharp, Wolf,
Ruff, Garcia, Grant, Henderson, Pauls, and Ruiz.
Re: HB 2841 Misclassification of Employees
Date: February 20, 2006

Honorable Chairman Dahl and Members of the Committee:

I am Judy Ancel, Director of The Institute for Labor Studies, a joint project of The University of Missouri-Kansas City and Longview Community College. I have lived in for twenty-five years. The Institute for Labor Studies is a labor education program which provides classes about the workplace and labor laws the regular students and working adults. We also research trends in the economy and particular problems involving working people. Our students and research span the state line.

Over the past two decades we have seen a marked growth of what is called the contingent workforce. This includes part-time, temporary, contract, and non-standard forms of employment. Increasingly *traditional* employment relationships: permanent, full-time jobs with employer-provided benefits, are being replaced by what some economists call the *just-in-time workforce*. This trend presents significant challenges to government and includes both legal and illegal forms of employment. Unfortunately, as competitive pressures grow on employers use more contingent labor, the incidence of illegal forms is overtaking the ability of government to enforce our labor laws.

One increasingly common illegal practice is the misclassification of workers. This occurs in two ways: 1) when an employer misclassifies a worker who should be a waged or salaried employee as an independent contractor and reporting that workers earnings on an IRS 1099 form instead of a W-2 form or 2) when an employer fails to classify a worker at all and pays him or her in cash, reporting nothing. Such worker misclassification is injurious to the citizens of our state. It hurts the worker, the government and taxpayers, and law-abiding employers who face unfair conditions of competition. Indeed, misclassification of workers hurts all Kansans by shifting costs which should be properly paid by employers onto the backs of the rest of us. If the incidence of misclassification is left to grow – and it is indeed growing – it will undermine our economy and lead to many more widespread violations.

Misclassification of workers has historically been common in day labor and agriculture and in certain services. Today, however, it is spreading to new sectors of the economy, especially where low-wage jobs proliferate like janitorial work, home health care, delivery services and construction. It is particularly common in industries dominated by employment of immigrants.

I'd like to talk about this cost-shifting phenomenon and then talk about the extent of misclassification in order to give you a better idea of the extent of the problem.

The National Employment Law Project estimates that when an employer treats “workers as non-employees [he] immediately saves payroll costs ranging from 15 to 30%. In addition, denying employee status to workers avoids out-of-pocket costs, administrative costs, and . . . [the need] to comply with regulations protecting employees . . .” In addition regular employees have certain rights to sue and make claims against employers who fail to pay overtime and provide other legally required compensation and protections which independent contractors do not have. This puts an additional burden on a misclassified worker to prove the misclassification before he can exercise his rights under the law.

Misclassified workers are denied access to unemployment compensation, workers compensation coverage, employer Social Security and Medicare contributions, overtime pay, common employer-provided benefits like health care, retirement contributions, life and disability insurance, vacations and holidays, sick pay, liability insurance coverage, as well as some expenses incurred while working for the employer. By avoiding such costs the employer shifts the burden onto the employee for his own health care, for the entire amount of Social Security and Medicare contributions – 15% of earnings as opposed to 7.65% - for his own retirement, and leaves him without a safety net if he is injured on the job or is unemployed.

The implications of this are enormous affecting our communities, our schools, other employers, and government at all levels which must bear the costs that misclassifying employers don't pay. In workers compensation alone, even when a misclassifying employer immediately enrolls a worker when he is injured so that he has coverage – a practice that reportedly is common – the rates for law-abiding employers who pay for their workers' coverage throughout their employment end up going up.

Governments are affected by this in two ways: First in a loss of tax revenue and contributions to unemployment and workers compensation funds, and second by increased demand on government services. It's estimated that misclassified workers underreport their personal income by thirty to fifty percent, thus the loss of income tax revenue to state and federal governments is significant. In what now appears to be conservative projection, the U.S. Government Accounting Office in 1989 estimated that misclassification would reduce federal tax revenues by up to \$4.7 billion by 2004.

The same is true for state unemployment compensation funds, since misclassifying employers need not make contributions for their *independent contractors*. A government-sponsored national unemployment audit found \$436 million in underreported wages. A recent study by Harvard University on misclassification in the State Massachusetts found unpaid workers' compensation premiums of \$91 million a year due to independent contractor misclassification; \$7 million of those unpaid premiums were in construction.

The cost shifting that misclassification costs also affects the demand on state and local government services for medical care as uncovered costs from workplace injury and routine healthcare costs for workers and their families get shifted to public health facilities and state health programs for the poor. Hidden demands on the public also come from lost child support on underreported income, housing, food stamps and school lunch expenses, and the costs of supporting people too old to work who have no or reduced retirement income because they were independent contractors.

As law abiding businesses are forced to compete with an increasing number of misclassifying

businesses, they are on a playing field which is markedly tilted against them. They may face bankruptcy, increased unemployment and workers compensation costs, or they may decide to join the ranks of the misclassifiers in order to survive, just exacerbating the problem and the costs to the State.

How extensive is the problem? The answer is that we don't really know because no one is keeping track. As my colleague Kelly Pinkham will tell you, there have been studies in several states, and more are being done. Unfortunately we have only a snapshot view of the extent of the problem in Kansas. In June of last year, Prof. Joshua L. Rosenbloom from the Department of Economics at the University of Kansas did a limited study of the Kansas construction industry. What he found, although it was based on a limited sampling, should give you pause because it showed that the extent of misclassification in Kansas is equal to or exceeds the rate in the Harvard study of Massachusetts.

Rosenbloom's study, which is attached to my testimony, covered 73 construction companies employing 517 people during 2004. The sampling represented less than one percent of employees and employers in the industry. What he found was that 16.4% of the construction companies had at least one misclassified worker, and among this group 24.2% of employees were misclassified.

Rosenbloom projected his results for all construction employers in the state to estimate that 1,236 establishments misclassified 3,135 workers. In terms of the percent of misclassifying businesses the rate in Kansas was higher than Massachusetts (16.4% vs. 14%) although each misclassifying Kansas employer tended to misclassify fewer workers than in Massachusetts. While Rosenbloom's study did not measure misclassification over time, the Massachusetts study did and found that there is a significant increase in the practice, particularly in the percent of misclassified workers in construction.

None of these studies, of course, can track completely unreported wages. The phenomenon of employing people "off the books" and avoiding even a paper trail is growing, particularly in the employment of undocumented immigrants, as is the practice of failing to pay wages at all. Needless to say, this leads to the same abuses that misclassification causes and even greater underreporting of wages and payment of taxes to the State.

The phenomenon of misclassification is a nationwide problem and is generating nationwide attempts to craft legislation to meet the challenge. Last year many states, including ours, considered legislation which ranged from increasing penalties to undertaking study to determine the extent of the problem. Four states enacted laws: Florida redefined the term "employee" in its workers compensation system, Illinois and New Mexico enhanced penalties, and New Hampshire created a study commission. Many other states considered legislation.

House Bill 2841 is a good start on trying to deal with the problem. By instituting meaningful penalties, increasing enforcement, and allowing for the sharing of information and cooperation among government entities with responsibility for enforcement, the State can provide much needed and potentially quite effective tools for dealing with the problem. Passage of this bill will say to Kansas employers and workers that our state stands for fairness and responsibility and that it seeks to create a climate for business and workers in which the law is respected and applied to all on an equal basis.

Thank you for permitting me to share my ideas with you.

An overview of worker misclassification in the Construction Industry

Prepared by Joshua L. Rosenbloom

Department of Economics and Policy Research Institute

University of Kansas

6-7-2005

Sample Information

KS DOL conducted audits of 73 construction companies employing a total of 517 persons during 2004. The most recent data on construction industry employment in Kansas are from the 2002 County Business Patterns, which reports total employment of 63,649 persons at 7,519 establishments.

The audit sample then represents about 0.8% of employees and 0.97% of establishments in construction. It would appear that larger employers were somewhat undersampled in this study. Indeed none of the approximately 200 employers with 50 or more employees was audited.

Worker Misclassification

The audits reveal the following facts:

- 16.4 percent of audited establishments had at least one worker misclassified as an independent contractor
- in establishments that had misclassified workers 24.2% of employees were misclassified.
- Across all establishments only 4.9% of employees were misclassified.

Projecting these results to the state based on the 2002 County Business Patterns data they would imply:

- 1236 establishments with misclassified workers
- 3,135 misclassified employees

Comparison to Massachusetts

- The percentage of establishments in Kansas misclassifying workers is slightly higher than was found in Massachusetts (16.4% vs. 14%);
- But fewer workers were misclassified in these establishments (24% vs. 40%)
- The share of all workers misclassified is comparable to Massachusetts (4.9% vs. 5.9%)

Preliminary* Summary Findings Regarding

The Economic Costs of Employee Misclassification in the State of Illinois

James I. Sturgeon, PhD,
Michael P. Kelsay, PhD
Kelly D. Pinkham, MS

Department of Economics, University of Missouri-Kansas City

February 10, 2006

I. * Introduction to the Preliminary Summary Findings

This report is a first step toward analyzing the economic implications of employee misclassification for the public and private sectors in the state of Illinois. It is based upon audit data for 2001-2004 provided by the Illinois Department of Employment Security (IDES) and the results of similar studies on misclassification in other states. Here, we analyze the scope and trends of misclassification in Illinois. We provide estimates of the impact of misclassification on Illinois state revenues, the unemployment insurance fund, and for workman compensation in Illinois.

These findings are "preliminary" for several reasons. For one, we anticipate receiving data for the year 2005 from the IDES which will be added to the full study. Two, the full study will contain a fuller description of the problems examined, background information, additional charts and tables, reviews of other studies, a discussion of research methodology, references, etc. Also, given the timeliness of the legislative session in Illinois, we were asked to provide a summary of our findings as soon as they could be made available. Despite the above, these summary findings are statistically reliable and authoritative.

II. Brief Discussion of the Problem of Misclassification

Employee misclassification is defined as the case where employers treat workers as independent contractors that would otherwise be wage or salaried employees. If an employee is classified as an independent contractor, the employers are not required to pay a variety of payroll taxes (e.g. social security, unemployment insurance) and the independent contractor is not fully protected by unemployment laws.

The issue of misclassifying employees as an independent contractor is a growing problem for the unemployment insurance system in Illinois and the nation since employers remit their unemployment taxes based upon their payroll. Recent studies have shown that misclassification by employers is increasing.¹

Misclassification negatively impacts the citizens of Illinois in several ways. First, the conditions for a fair and competitive marketplace are sabotaged. Firms that misclassify pay no employment insurance on those

¹ In a report by the National Employment Law Project, it was reported that US DOL quarterly audits found 30,135 employees misclassified in 2002. This was a 42% increase from the prior year.

workers. This places employers who correctly classify their employees at a distinct competitive disadvantage. Misclassification allows employers who violate state statutes to be rewarded. In addition, the Illinois worker who was misclassified by his or her employer also suffers. If this worker needs to apply for unemployment insurance benefits, they are denied those benefits since the state employment agencies have no record of them having worked. Again, the violating employer is rewarded because the laid-off employee is not charged to their unemployment insurance account. Several studies have shown the problem of misclassification to be particularly acute in the construction sector.

The table below provides estimates from other studies of the percentage of employees that are misclassified in a number of states. For the 11 states studied, the moderate rate of misclassification was between 13-23%. In two states, Massachusetts and Maine, the incidence of misclassification in the construction industry is higher than all other industries in their states. For Massachusetts, the moderate statewide rate is 19%, while the rate of misclassification in the construction sector is 24%; for Maine, the low statewide estimate is 11%

Prevalence of Misclassification in All Industries and the Construction Sector			
	Low	Moderate	High
All Industries (9 States) ¹	5-10%	13-23%	29-42%
All Industries (United States) ²		15%	
All Industries (Massachusetts) ³	13%	19%	
All Industries (Maine) ⁴	11%		
Construction Sector (Massachusetts) ⁵	14%	24%	
Construction Sector (Maine) ⁶	14%		
Construction Sector (United States) ⁷		20%	

¹ Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs, February, 2000.
² United States General Accounting Office, 1996.
³ The Social and Economic Costs of Employee Misclassification in Construction. December 17, 2004.
⁴ The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry, April 25, 2005.
⁵ The Social and Economic Costs of Employee Misclassification in Construction. December 17, 2004.
⁶ The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry, April 25, 2005.
⁷ United States General Accounting Office, 1996.

while the incidence rate of misclassification in the construction sector is 14%. In a report by the General Accounting Office, they reported that the percentage of misclassified workers in all industries was 15%, while the percentage of misclassified workers in the construction sector was 20%.

In Illinois, misclassification has contributed to the negative outcomes experienced by the Unemployment Insurance Trust Fund. A review of the Fund's year-end balances shows the trend. From 1987 through 2002, the Trust Fund ended each year with a positive balance. In 2000, the year-end trust fund balance was a positive \$2.051 billion. However, in 2003, the Fund ended the year with a \$511 million deficit which was projected to increase to a \$627 million deficit in 2004.²

States, including Illinois, perform unemployment insurance audits that are both random and targeted. The purpose of performing targeted audits is to search for incidents of misclassification where they are more

² The Unemployment Insurance Trust Fund. Illinois Department of Employment Security. August 19, 2004.

8-2

likely to be discovered than with random audits alone (for example, targeted audits will be triggered when certain criteria are met such as the delinquent filing of reports, late registration, etc.). For our purposes of making informed projections, random audits will provide a lower bound on the prevalence of misclassification while targeted audits will provide an upper bound on the extent of misclassification.

Based upon data provided by the Illinois Department of Employment Security, the audit department conducted 22,032 audits from 2001-2004. Of those audits conducted from 2001-2004, 14,566 or 76.5% of the audits were random audits. Benefit related audits (e.g. targeted audits) were 4,118 or 21.6% of the audits. These two types of audits account for 98.1% of all unemployment insurance audits in Illinois from 2001-2004.

III. Preliminary Findings of Employee Misclassification in Illinois

- For the years 2001-2004, state audits found that 17.3% of the Illinois employers audited had misclassified workers as independent contractors. This translates into approximately 55,245 total employers statewide of which 6,052 were in construction. In just 2004, the rate of misclassification was higher at 21.0%. This translates into 67,745 employers statewide with 7,478 in construction.³ Based upon the fact that 76.5% of these audits were random audits (which provides the lower bound for the prevalence of misclassification) **the rate of misclassification in Illinois is higher than in most other states that have been studied.**
- **When an employer practices misclassification in Illinois, the results show that this behavior is pervasive.** An analysis of the percentage of employees that are misclassified indicates that misclassification is a common occurrence rather than a random occurrence in those companies that do misclassify. According to the data provided by the Illinois Department of Employment Security, 29.0% of workers are misclassified by employers that were found to be misclassifying for the period 2001-2004. The rate of misclassification showed an upward trend as well. In 2001, 22.8% of workers were misclassified at employers who were found to be misclassifying; this had increased to 31.9% in 2004. **The rate of misclassification at violating employers had increased almost 40% from 2001-2004.**
- From our analysis of the labor force of all employers in Illinois (those that misclassify and those that don't), we estimate that 7.3% of employees in Illinois were misclassified as an independent contractor for the period 2001-2004. **The audit results show that misclassification is a growing problem in Illinois.** While 5.5% of employees in Illinois were estimated to be misclassified in 2001, this increased to 9.2% in 2004. **This represents a 67% increase in the misclassification rate in Illinois from 2001 to 2004.**
- The number of employees statewide that are affected by the improper misclassification is estimated to average 360,387 annually for the period 2001-2004. For the year 2004, the estimated number of employees affected by misclassification had increased to 455,187. Within the construction sector for the period 2001-2004, the number of employees affected by misclassification is estimated to average 19,597. In the year 2004, the estimated number of misclassified employees in the construction sector had increased to 24,476.
- **Misclassification of employees has a financial impact on the workers, the unemployment insurance system, and the private sector in Illinois.** The workers are directly impacted by not being the beneficiary of unemployment insurance. The unemployment insurance system in Illinois is adversely affected as well. **We estimate that the unemployment insurance system lost an average of \$36.5 million every year from 2001-2004** in unemployment insurance taxes that are not levied on the payroll of misclassified workers as they should be. **For 2004, we estimate that the unemployment insurance system in**

³ According to the Illinois Department of Employment Security, the average number of employers over 2001-2004 was 34,892 in construction and 318,519 in all industries. In 2004, there were 35,666 construction employers and 323,108 in all industries. These numbers exclude local, state, and federal government.

Illinois has lost \$50 million in unemployment insurance taxes. For the construction sector, we estimate that the unemployment insurance system has lost an average of \$2.0 million annually from 2001-2004 in unemployment insurance taxes that are not levied on the payroll of misclassified workers in construction as they should be. For 2004, we estimate that the unemployment insurance system in Illinois has lost \$2.7 million in unemployment insurance taxes in the construction sector.

- According to published data, workers misclassified as independent contractors are known to underreport their personal income as well; as a result Illinois suffers a loss of income tax revenue. According to the IRS, wage earners report 99% of their wages; non-wage earners (such as independent contractors) report approximately only 68% of their income. This represents a gap of 31%. Other studies estimate the gap to be as high as 50%.

- Based upon the IRS estimate that 30% of the income of misclassified workers in Illinois is not reported, we estimate that \$120.3 million annually of income tax was lost in Illinois from 2001-2004. For 2004, we estimate that \$158.0 million of income tax was lost in Illinois. For the construction sector, we estimate that \$8.5 million annually of income tax is lost in Illinois from 2001-2004. For 2004, we estimate that \$11.0 million of income tax is lost in the construction sector in Illinois.

- Based upon the higher estimate that 50% of the income of misclassified workers is not reported, an estimated \$200.5 million annually of income tax was lost in Illinois from 2001-2004. For 2004, the estimate would be that \$263.4 million of income tax was lost in Illinois. For the construction sector, we estimate that \$14.2 million annually of income tax is lost in Illinois from 2001-2004. For 2004, we estimate that \$18.3 million of income tax is lost in the construction sector in Illinois.

- Misclassification also impacts workman compensation insurance. Among other effects, costs are higher for employers that follow the rules placing them at a distinct competitive disadvantage. A large, national study reported that that the costs of workman compensation are the single most dominant reason why employers misclassify (Planmatics, 2000). Employers can avoid the high cost of paying workman compensation premiums by mandating that persons who work for them have an exemption. This allows employers who misclassify to underbid the legitimate employers who provide coverage for their employees. **In the construction sector, the workers compensation effect from misclassification further destroys the fairness and legitimacy of the bidding process.** It has been reported that many previously misclassified workers were later added to their company's workman compensation policy after they were injured, resulting in payment of benefits even though premiums were not fully collected.

- Based upon statewide average workman compensation insurance premium rates published by the State of Indiana, we estimate that, on average, \$94.8 million of worker premiums are not paid for misclassified workers. For 2004, in Illinois we estimate that that \$104.8 million of worker compensation premiums were not paid.

- **Workers compensation premiums are much higher in the construction trades.** In Illinois the statewide rate for all industries is less than \$3.00 (per \$100 of payroll). However, within construction, rates can range from \$8.01 for electrical wiring to \$27.94 for concrete construction. Using an average rate of \$15, we estimate \$35.5 million in lost workers compensation premium from the construction trades in Illinois.

- **The problem of misclassification is an increasing problem in Illinois.** The effects of increasing misclassification negatively impact workers, employers, small businesses, insurers, taxpayers and tax authorities. **Furthermore, the operation of fair, competitive markets is compromised when the bidding process is undermined by the practice of misclassification.** Illinois will stand to benefit from better documentation on misclassification along with measures that help to improve compliance with state statutes.

The Economic Costs of Employee Misclassification in the State of Kansas

Michael P. Kelsay, PhD

Kelly D. Pinkham, MS

Department of Economics, University of Missouri - Kansas City

February 17, 2006

** Though we have not conducted an independent review of the data provided to us, we believe that the following estimates are reliable for a responsible discussion of the economic effects from employee misclassification in the State of Kansas.*

Brief Discussion of the Problem of Misclassification

Employee misclassification is defined as the case where employers treat workers as independent contractors that would otherwise be wage or salaried employees. If an employee is classified as an independent contractor, the employers are not required to pay a variety of payroll taxes (e.g. social security, unemployment insurance) and the independent contractor is not fully protected by unemployment laws.

The issue of misclassifying employees as an independent contractor is an emerging issue in Kansas and the nation, as employers remit their unemployment taxes based upon their payroll. Recent studies have shown that misclassification by employers is a growing problem.¹

Misclassification negatively impacts the citizens of Kansas in several ways. First, the conditions for a fair and competitive marketplace are sabotaged. Firms that misclassify pay no employment insurance on those workers. This places employers who correctly classify their employees at a distinct competitive disadvantage. Misclassification allows employers who violate state statutes to be rewarded. In addition, the Kansas worker who was misclassified by his or her employer also suffers. If this worker needs to apply for unemployment insurance benefits, they are denied those benefits since the state employment agencies have no record of them having worked. Again, the violating employer is rewarded because the laid-off employee is not charged to their

¹ In a report by the National Employment Law Project, it was reported that US DOL quarterly audits found 30,135 employees misclassified in 2002. This was a 42% increase from the prior year.

unemployment insurance account. Several studies have shown the problem of misclassification to be particularly acute in the construction sector.²

Table 1 provides estimates of the percentage of employees that are misclassified in a number of states. For the 13 states where studies have been conducted or in progress (University of Missouri – Kansas City on the State of Illinois and Michigan State University on the State of Michigan), the moderate rate of misclassification was between 13-23%. In two states (Massachusetts and Maine), the incidence of misclassification in the construction industry is higher than all industries in their states. For Massachusetts, the moderate statewide rate is 19%, while the rate of misclassification in the construction sector is 24%; for Maine, the

TABLE 1			
Prevalence of Misclassification in All Industries and the Construction Sector			
	Low	Moderate	High
All Industries (9 States) ¹	5-10%	13-23%	29-42%
All Industries (United States) ²		15%	
All Industries (Massachusetts ³)	13%	19%	
All Industries (Maine ⁴)	11%		
All Industries (Illinois – Preliminary)		17.3%	
Construction Sector (Massachusetts ⁵)	14%	24%	
Construction Sector (Maine ⁶)	14%		
Construction Sector (United States ⁷)		20%	
¹ Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs, February, 2000. ² United States General Accounting Office, 1996. ³ The Social and Economic Costs of Employee Misclassification in Construction. December 17, 2004. ⁴ The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry, April 25, 2005. ⁵ The Social and Economic Costs of Employee Misclassification in Construction. December 17, 2004. ⁶ The Social and Economic Costs of Employee Misclassification in the Maine Construction Industry, April 25, 2005. ⁷ United States General Accounting Office, 1996.			

low statewide estimate is 11% while the incidence rate of misclassification in the construction sector is 14%. In a report by the General Accounting Office (GAO) in 1996, they reported that the percentage of misclassified workers in all industries was 15%, while the percentage of misclassified workers in the construction sector was 20%.

² The General Accounting Office (1996) reported that the estimated percentage of employees with misclassified workers was 13.4%, while the estimated percentage in the construction sector was the highest of all industry groups at 19.8%.

9-2

Based upon data about construction sector audits in Kansas, unemployment insurance audits were conducted upon 73 contractors with 517 employees in 2004.³ We do not know if these were random or targeted audits. The purpose of performing targeted audits is to search for incidents of misclassification where they are more likely to be discovered than with random audits alone (for example, targeted audits will be triggered when certain criteria are met such as the delinquent filing of reports, past infractions, late registration, etc.). For the purpose of making informed projections, random audits would provide a lower bound for estimates on the prevalence of misclassification while targeted audits would provide an upper bound.

Employee Misclassification in Kansas

- During 2004, 16.4% of construction employers misclassified workers as independent contractors.⁴ This translates into an estimate of 1,266 construction employers in Kansas. Based upon a misclassification rate of 16.4% statewide, this translates into 12,295 employers statewide.⁵
- When employers misclassify, they do so extensively. A key measure of misclassification is the severity of its impact within employers who misclassify. This measure indicates that misclassification is a common occurrence rather than a random occurrence in companies that do misclassify. According to the data, 24.2% of construction employees are misclassified in employers that are found to be misclassifying for 2004.⁶
- Based upon the data, across all establishments, 4.9% of employees were misclassified in 2004.⁷ The total number of employees statewide that are affected by improper misclassification is estimated at 54,384 and is estimated at 3,124 construction employees.⁸
- Misclassification of employees has a financial impact on the workers, the unemployment insurance system, and the private sector in Kansas. Workers are directly impacted by not being the beneficiary of unemployment insurance. The unemployment insurance system in Kansas is adversely affected as well. A proper research study could help to determine the level of uncollected unemployment insurance taxes in Kansas. In a separate study we are conducting on the State of

³ These figures for Kansas Department of Labor unemployment insurance audit activity were provided by Dr. Joshua L. Rosenbloom, Kansas University Department of Economics, in his one-page summary, *An Overview of Worker Misclassification in the Construction Industry*, June 7, 2005.

⁴ See Footnote No. 3

⁵ These estimates are based upon data from The Department of Commerce, County Business Patterns, 2003.

⁶ See Footnote No. 3

⁷ See Footnote No. 3

⁸ These estimates are based upon data from The Department of Commerce, County Business Patterns, 2003.

Illinois, we estimate that the unemployment insurance system lost approximately \$50 million in 2004 due to misclassification.

- According to published data, workers misclassified as independent contractors are known to underreport their personal income as well; as a result, Kansas suffers a loss of income tax revenue. According to the IRS, wage earners report 99% of their wages; self-employed individuals (such as independent contractors) formally report only 68% of their income. This represents a gap of 31%. Other studies estimate the gap to be as high as 50%.
- Based upon the lower IRS estimate that 30% of the income of misclassified workers in Kansas is not reported, we estimate that \$38.8 million in state income tax was lost in Kansas in 2004. For the construction sector, we estimate that \$2.1 million in state income tax was lost in Kansas from 2004.⁹
- Misclassification also impacts the workman compensation insurance system. Among other effects, costs are higher for employers that follow the rules placing them at a distinct competitive disadvantage. Workers compensation premiums are much higher in the construction trades. In Illinois, for example, the statewide rate for all industries is less than \$3.00 (per \$100 of payroll). However, within construction, rates can range from \$8.01 for electrical wiring to \$27.94 for concrete construction. A large, national study reported that the costs of workman compensation are the single most dominant reason why employers misclassify (Planmatics, 2000). Employers can avoid the high cost of paying workman compensation premiums by mandating that persons who work for them have an exemption. This allows employers who misclassify to underbid the legitimate employers who properly classify their employees. In the construction sector, the workers compensation effect from misclassification further destroys the fairness and legitimacy of the bidding process. Furthermore, it has been reported that many previously misclassified workers were later added to their company's workman compensation policy after they were injured, resulting in payment of benefits even though premiums were not fully collected.
- The problem of misclassification is receiving increased attention in many states. The effects of misclassification negatively impact workers, employers, small businesses, insurers, taxpayers and tax authorities. Furthermore, the operation of fair, competitive markets is compromised when the bidding process is undermined by the practice of misclassification. Like other states, Kansas will likely benefit from better documentation on misclassification along with measures that help to improve compliance with state statutes.

⁹ These estimates are based upon average statewide earnings in Kansas and for the construction sub-sector as reported by the Bureau of Labor Statistics, U.S. Department of Commerce. We use an average marginal tax rate of 6.25% (for incomes between \$15,000 and 30,000).

9-5

TABLE 1
Employment in Kansas in 2003 ¹

Industry	NAICS	KANSAS			
		Number of Employers	Percent of State Employers	Number of Employees	Percent of State Employees
Forestry, Fishing, Hunting, and Agriculture Support	11	217	0.3%	754	0.1%
Mining	21	864	1.2%	6,968	0.6%
Utilities	22	268	0.4%	7,239	0.7%
Construction	23	7,722	10.3%	63,746	5.7%
Manufacturing	31-33	3,159	4.2%	175,387	15.8%
Wholesale Trade	42	4,590	6.1%	63,762	5.7%
Retail Trade	44-45	11,834	15.8%	149,354	13.5%
Transportation & Warehousing	48-49	2,576	3.4%	40,898	3.7%
Information	51	1,516	2.0%	48,296	4.4%
Finance and Insurance	52	5,569	7.4%	58,634	5.3%
Real Estate & Rental & Leasing	53	3,007	4.0%	16,061	1.4%
Professional, Scientific & Technical Services	54	6,793	9.1%	52,782	4.8%
Management of Companies & Enterprises	55	561	0.7%	23,808	2.1%
Administrative Support, Waste Management & Remediation Services	56	3,189	4.3%	59,205	5.3%
Educational Services	61	663	0.9%	16,922	1.5%
Health Care & Social Assistance	62	7,129	9.5%	163,452	14.7%
Arts, Entertainment & Recreation	71	1,045	1.4%	12,743	1.1%
Accommodations and Food Service	72	5,635	7.5%	96,084	8.7%
Other Services (Except Public Administration)	81	8,411	11.2%	53,483	4.8%
Auxiliaries (Executive Corporate, Subsidiary & Regional Management)	95	0	0.0%	0	0.0%
Unclassified Establishments.	99	224	0.3%	291	0.0%
TOTALS		74,972	100.0%	1,109,869	100.0%

SOURCE: County Business Patterns. United States Department of Commerce. 2003

Interior Contractors INC.

Acoustical, Drywall, Plastering, Stucco,
Demountable Partitions, Access Floors,
Ceramic Tile, Floor Coverings

P.O. Box 2622
Topeka, Kansas 66601
Phone (785) 234-2604

House Commerce & Labor Committee
Representative Tom Holland
Room 241 North
HB 2841
February 20, 2006

Chairman Holland and Committee Members,

I am Kevin Krentz, Vice President of Interior Contractors Inc. My company is located at 2350 NW Water Works Dr. in Topeka, Kansas 66606. Interior Contractors Inc. has been a union contractor since it's incorporation over 25 years ago. I.C.I. is a Midwest construction company licensed within the states of Kansas, Missouri, Nebraska, Colorado, and Oklahoma. Both I.C.I., as well as myself are licensed as a General Contractor within the City of Topeka. I.C.I.'s main focus of work is within the great State of Kansas. We have been the General Contractor on many jobs, but perform most work as a Subcontractor.

Times have seemed to change; a generation ago a good carpenter or a tradesman would have been one of the highest paid salaries with excellent health benefits and retirement without having a college degree. The General Contractors performed most of the work within their own company. Most every job had Davis Bacon Wage Rates and with no shortage of work. The certified jobs, though a paper burden, were comforting jobs. A good hard working skilled craftsman good always find a job. As a result of driving the wages down and the lack of benefits, the good hardworking blue collar working family man is hard to find. Now most all General Contractors have one project manager and try to shop out the work and pass on as much liability as possible.

The concept is to pay one check to an independent contractor and he usually pays his crew in cash. The competition has turned into unscrupulous contractors paying in cash and skipping social security paid both by employer and employee. They also do not pay federal and state withholding taxes, workman's comp., health, and general liability insurance for their skilled laborers of vagabonds, gypsies, and drifters because of their past working history or criminal record. The cash for work was occurred mostly only in residential construction with the owner being the general contractor. It has become more and more prevalent on smaller jobs such as, strip malls, apartments, hotels, etc..

Comme Labor
2-20-06
Atch # 10

The problem is due largely in part to the out of town independent contractor. The out of town independent contractors come into town to supply labor only for cash and fail to comply with wage and hour laws. The unscrupulous contractor will in most cases supply the material to make sure the supplier is paid and pays in one check at the end of the job to the independent contractor paying by unit price production.

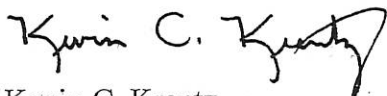
The big percent of payroll not being paid by the independent contractor has cause a huge uneven playing field for the honest employers. The uneven playing field exerts enormous pressure on legitimate employers by forcing us to find ever more ways of reducing costs. Through the years, many good companies have been forced to close their doors, some even forced to bankruptcy. It is not uncommon to see businesses join in the unlawful practice of misclassifying employees as independent contractors by shopping work to stay competitive.

Furthermore, the independent contractor gets hurt, has no worker's compensation or health insurance and often passes these costs on to the taxpayers. The employee has to go to the emergency room and get treated. The medical liability is picked up by the honest citizens in the community paying their taxes. The citizens of Kansas wonder why such things as our schools are being under funded.

In summary, the intentional misclassification of workers as independent contractors instead of employees by dishonest employers is a serious problem with serious consequences. These include: significant losses in revenue to federal and state governments; legitimate employers suffering a competitive disadvantage due to the fact that we incur a greater tax burden, contribute to Social Security, and are required to purchase worker's compensation insurance; the likelihood is unscrupulous employers will fail to comply with other employment- related rules and laws on overtime, hiring illegal alien laborers, and utilizing unskilled workers.

Clearly, misclassification has negative effects on legitimate employers, workers, and society as a whole. This bill will go a long way in combating this problem as it occurs in the state of Kansas. This bill will also enable Interior Contractors Inc. and many other honest companies in this community to compete and provide quality of life with a livable wage, for fair employees.

Sincerely,



Kevin C. Krentz
Interior Contractors Inc.

Testimony Before the
Kansas House Commerce and Labor Committee
On House Bill 2841
February 20, 2006

Thank you for the opportunity to present my testimony to the House Commerce and Labor Committee today. My name is Colleen White, President of Strategic Workplace Solutions, Inc., in Kansas City. I am here today to testify in support of HB 2841. Just recently, I ended over twelve years of public service as Director of the Missouri state Division of Labor Standards in the Department of Labor and Industrial Relations. I was responsible for enforcing and administering certain labor laws and programs, including prevailing wage, child labor, general wage and hour and workplace safety. In my current position, I continue to assist persons involved in construction and other industries with assuring compliance with numerous labor laws, including proper use of independent contractors.

During my time with Labor Standards, I encountered the use of “independent contractors” in many instances where the designation was neither legal nor appropriate. Workers were regularly classified as independent contractors when they actually met the definition of “employee”. We saw these abuses occurring regularly – generally every month we had cases involving this type of illegal activity. This deprived the state out of large amounts of tax revenues and unemployment insurance deposits, and also involved non-compliance with workers’ compensation requirements. In addition, hundreds of workers lost wages and benefits due them, and many local contractors lost bids to unscrupulous contractors who fully intended to circumvent the legal systems by this type of cheating. Some workers were apparently even supported by tax dollars due to their inability to pay for medical care or food.

A recent case occurring at Northwest Missouri State University in Maryville, less than an hour from the Kansas border, involved the illegal use of over 150 “independent contractors” by a prime contractor from Kansas. Through creation of a multi-state-agency task force, we assessed and collected over ½ million dollars in wages due workers. Our Department of Labor settled for the unemployment tax deposits due them, and our Department of Revenue addressed the unpaid tax issue. The state’s Workers’ Compensation Fraud Unit was able to handle the coverage and premium requirement for all employees previously called independent contractors. There were also workplace safety complaints, for which federal OSHA was called in. In addition, we discovered the same contractor was involved in abuses on a similar construction project at Purdue University in Indiana. Through joint work and communication between the two states’ departments of labor, we were able to assist Indiana in their investigation. Indiana promptly removed this contractor from their project and debarred them from future work on state projects.

This is just one example of the abuse that occurs regularly with the illegal use of independent contractors. The parties harmed are the states themselves, their local

1
CommeLabor
2-20-06
Atch # 11

contractors, and their workers. States lose precious revenues – in these days of tight budgets, every dollar is important – and the thousands lost every year to cheating needs to be curtailed. Local and state contractors that operate legally should be able to bid on a level playing field, instead of constantly losing bids to contractors who plan to cheat up front, thereby undercutting our good, honest, and reliable contractors. And workers should be paid the wages that are due them, which honest contractors plan to pay and include in their bids.

In some cases, the label of independent contractors is placed on undocumented workers who are abused by these unscrupulous contractors, but either do not know their rights, or are afraid to do anything about it. Many times workers are trafficked across the country's borders and forced to work for lower wages, and are under threat of deportation, physical harm to themselves or their loved ones, or removal from the income they so desperately need if they speak up for themselves. These scenarios are called "Human Trafficking", and happen in our states. I served with the U.S. Attorney's Office in St. Louis, the FBI, and Immigration and Customs Enforcement, among others, on the Eastern Missouri Human Trafficking Task Force, where we identified projects in eastern Missouri where workers were trafficked. It is typical to find these situations occurring on construction projects, and involving illegal use of independent contractors. I guarantee you, this is also happening in the state of Kansas – just ask your local FBI representative.

All of these issues that are solidly addressed within HB 2841, and will benefit and assist the state in assuring they collect the monies due them, your local contractors in receiving bids they should, thus ultimately paying more in taxes to the state and local governments, and workers being paid what they should be, who in turn spend those monies in their local economies.

I thank you again for the opportunity to present my testimony to this committee. I would be happy to answer any questions.

Sincerely,



Colleen A. White, President
Strategic Workplace Solutions, Inc.
P.O. Box 853
Raymore, MO 64083
816-322-7808
cwhite@swsinfo.com

STATE OF KANSAS



TOPEKA

HOUSE OF
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COMMITTEE

February 20th, 2006

Chairman Dahl and Committee Members:

Good morning! My name is Tom Holland and I am the State Representative for the Kansas House 10th District serving the communities of south Lawrence, Baldwin City, Wellsville, and north Ottawa. I am here today to ask for your support of House Bill 2841, the "1099 Misclassification Act".

As you have just learned from the speakers who have preceded me, 1099 misclassification is a destructive business practice that is devastating to both Kansas businesses and state revenues. In today's hearing we have brought before you a wide variety of business owners, state officials, and university academia. Each of these individuals has unequivocally described the significant financial harm that occurs as a result of these practices. Their compelling testimony demands that we face this challenge head on and work to ensure that all Kansas businesses compete on a level playing field.

As elected officials to the Kansas Legislature, I know that each and every one of us here today is committed to both growing our state's economy and protecting its citizens. We simply can no longer afford to be detracted by those self-serving interests who would ask us to stick our heads in the sand and act as if these practices do not exist. They do exist, they are hurting our state's economy, and they must be addressed now.

Please join me in taking the appropriate and morally correct stand by supporting HB 2841.

Thank you,

A handwritten signature in blue ink, appearing to read "Tom", with a long, sweeping underline that extends to the right.

Tom Holland
State Representative – 10th District

Comm Labor
2-20-06
Atch # 12



Since 1894

TESTIMONY

To: The House Commerce and Labor Committee
Rep. Don Dahl, Chairperson

From: John Donley, KLA Government Affairs

Date: February 20, 2006

Subject: **House Bill 2841 - Misclassification of employees.**

The Kansas Livestock Association (KLA), formed in 1894, is a trade association representing over 6,000 members on legislative and regulatory issues. KLA members are involved in many aspects of the livestock industry, including seed stock, cow-calf and stocker production, cattle feeding, grazing land management and diversified farming operations.

Good Morning Mr. Chairman and members of the Committee. My name is John Donley. I am here today representing the Kansas Livestock Association and to express KLA's opposition to House Bill 2841.

While I have no doubts that House Bill 2841 is a well-intentioned bill, our members have some serious concerns with this legislation. This bill affects a gray area of the law. The factors that distinguish an independent contractor from an employee are not always the easiest to sort through. It is decision that is reliant on the specific facts of each individual situation. The general rule is that if an employer has the right to control or direct only the result of the work done and not the means and methods of accomplishing the result, then the work was done by an independent contractor and not an employee. While this rule may be fairly easy to state, it is not always as easy to apply.

For example, a rancher may hire an individual to build a fence for him. He may tell the fence builder that he wants a five-wire fence with the posts one rod apart and the wires spaced 8 inches apart with the bottom wire 16 inches off the ground. The general consensus would be that the fence builder would be an independent contractor. However, what if the rancher drives by to check on the progress of the fence and notices that the fence is not meeting his specifications or that the fence builder is loosely tying the wire to the posts instead of fastening the wire securely? If the rancher tells the rancher the means that he would like the fence to be done correctly, does the fence builder then become an employee of the rancher once the rancher is involved with the means and methods used to accomplish the result of the desired work?

That is just one example of many that illustrates that this area of the law is an area that must give considerable weight to the facts surrounding the classification. Therefore, it seems imprudent to issue such harsh penalties on an individual if he misapplies the law in a questionable situation. Furthermore, it also does not seem prudent for the public to have the ability to report potential misclassifications of employees. Given the fact that this is such a fact-sensitive classification, it seems improper for a third-party to be able to report suspected misclassifications, and then require the accused party the cost of defending themselves or paying a fine for an honest mistake or misapplication of the law.

In closing, the Kansas Livestock Association stands opposed to House Bill 2841 due to the gray areas of the law that would harm accused parties by forcing them to pay the costs of potential fines and the cost to defend themselves even when they may have simply misapplied the rule to a set of facts that would not have an absolutely clear answer.

Mr. Chairman, thank you for your time and consideration. I would be happy to stand for questions at the appropriate time.

Legislative Testimony

HB 2841

February 20, 2006

**Testimony before the Kansas House Commerce and Labor Committee
By Jeff Glendening, Vice President of Political Affairs**

Thank you Mr. Chairman and members of the committee for this opportunity to testify on HB 2841. My name is Jeff Glendening, and I am representing over 10,000 member companies of The Kansas Chamber.

I am here today in opposition of HB 2841. HB 2841 was drafted with the best intentions of addressing a problem in Kansas, but it has gone too far in doing so. There are twenty common law factors in determining the classification of an employee. This area of the law is grey at best. Certain employment circumstances are easily classified and defined, however many others simply are not. There is no clear and authoritative interpretation of employee classifications.

It is also important to note there are federal guidelines for misclassifying an employee and these penalties are in place to address the problems the proponents of the bill are trying to address. The fine provisions are very steep and could potentially put an employer out of businesses. In addition, we have concerns with the sharing of information between the Department of Labor and the Department of Revenue. We have worked with the Secretary of Labor and the Secretary of Revenue on this issue and understand their intent, but if there is a change in the administration or leadership, these understandings may not be followed.

We hope that a fair approach to confronting this problem will emerge. Thank you again for the opportunity to voice our concerns of this bill.

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.

Comm + Labor
2-20-06
Atch # 14



**THE KANSAS
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**TESTIMONY OF
ASSOCIATED GENERAL CONTRACTORS OF KANSAS
BEFORE HOUSE COMMITTEE ON COMMERCE AND LABOR
HB 2841**

February 20, 2006

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).

AGC of Kansas stands neutral on HB 2841 as written with concerns. It supports the concept of identifying companies that are purposely breaking laws in an effort to avoid taxes and making these companies accountable per the laws that currently exist. However, the bill creates too many questions and concerns for full AGC support.

The rules of classifying employees and independent contractors are not clear cut and are open for considerable interpretation. AGC is concerned that any law with such significant penalties should have safeguards to insure that only those intentionally breaking such laws are investigated and penalized.

AGC is concerned the bill would create possibilities for legitimate small businesses that believe they are doing business properly to be found to have interpreted the law incorrectly and thus face penalties that could put them out of business.

It has been brought to the attention of AGC that there is a small segment of the construction industry, primarily companies from out of state, which is apparently skirting current IRS and state laws by intentionally misclassifying workers as independent contractors. AGC agrees that the state and federal government should fully enforce the existing law and bring these companies to justice.

Because of the above noted complexities with the issue of employee classification, AGC would welcome the opportunity to work with proponents of the bill and others to find a fair approach that would enable immigration and tax laws to be enforced, while protecting legitimate companies from unintended consequences.

Thank you for considering AGC of Kansas' perspective on **HB 2841**.

Comm & Labor
2-20-06
Atch # 15

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TOPEKA
HOUSE OF
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House Bill 2928
**An act concerning employment; requiring employers to allow leave for certain purposes;
providing penalties and remedies for violations.**

Chairman Dahl, Vice-chair Schwab, Representative Ruff, and members of the Commerce Committee;

Thank-you for this opportunity to come before you to present testimony on **HB 2928**.

HB 2928 is a bill which will afford to those individuals who need to take time off from work to obtain relief due to domestic violence or sexual assault, the assurance that they will not suffer discrimination or retaliation from their employer.

When one has been the victim of domestic violence or sexual assault, being able to obtain a restraining order or ensuring the safety of oneself or the safety and health of one's child is uppermost in that survivor's mind. Facing the reality though, that you might just lose your job because you need to be gone, is unfortunately a reality that happens far too often.

This bill seeks to assure that individual that they will be able to report, to protect themselves, or to protect their family, and know that they will not lose their job by doing so. This bill does not ask the employer to give them paid leave. It simply sets out language that provides for the employee to give reasonable notice that they need to take this time off. If there is not time for advance notification the bill lays out what the employee is to provide to their employer. It further defines what types of different leaves an employee may use.

Abusers are powerful people. They know how to twist words. They know what to do to ensure that the recipient of their abuse knows just how far they can and cannot go. If you were certain that you would lose your job because you had to take time off to go to court to obtain a Protection From Abuse order, would you go? Many do not. The abuser is aware of that and uses it to their advantage. I want us to put a stop to that twisted power.

I am told that the number of sexual offenders that are currently incarcerated represents less than 5% of the actual offenders. If this state is truly committed to dealing with the seriousness of sexual offense and assault, then we must supply people with necessary tools to help bring those offenders to justice. HB 2928 is one such tool. It is a place to begin.

Respectfully,

Rep. Judy Loganbill
Representative Judith Loganbill

Comm + Labor
2-20-06
Atch # 16



1203 Main Street
Grandview, Missouri 64030
816/765-1722 FAX 816/765-9023

House Commerce & Labor Committee
Representative Don Dahl
Room 241N
HB2841
February 17, 2006

I am Carmen Schell, Senior Estimator for PCI Dahmer a walls and ceiling Contractor in the Kansas City area who's holding company Performance Contracting Group is located in Lenexa, Kansas. PCG has contracting locations from Boston to San Diego and up the west coast to Seattle.

I was born and raised in Marysville and after graduating high school I joined the Wood, Wire and Metal Lathers trade union and worked as a Lather in the Kansas City area. After 13 years I was invited to join management and spent another 13 years working as Manager and Estimator until I started my own construction company a Kansas Corporation that after 20 years I sold and took a three year sabbatical.

Three years ago I was offered my present position with PCI Dahmer. While I found few changes in my honest tax paying previous competitors I have noticed a large increase in the unscrupulous employers who misclassify their employees as independent contractors in order to avoid paying workers compensation insurance and all the required taxes directed by Kansas State Law.

My wife and I live in Louisburg and we are concerned when we hear that our Great Grand Daughter's Desoto Schools are under funded.

Therefore we urge you to pass legislation and provide the tools to enforce the collection of the taxes we as honest contractors have always paid.

These unscrupulous contractors also would not be paying the Kansas Remodel Tax either.

Sincerely yours,

Carmen Schell

Comm & Labor
2-20-06
Atch # 17

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House Commerce & Labor Committee
Representative Don Dahl
Room 241N
HB-2372-2841
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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 has been in the plumbing business for twenty-eight years, licensed in both Kansas and Missouri. We currently employ approximately 70 people, comprised of administrative staff, plumbers, laborers, and operating engineers.

Prior to September 11th, 2001, it was reported that our firm was the largest employer of union plumbers in the region. In our area if an apartment project was to be built, it was noted that you needed to call Rodriguez, if you want a quality project and a project built on time and in budget.

Since September 11th, our nation has seen some uncertain times and has seen increased unemployment. Our firm went from 143 plumbers down to 35 and now up to 70 for the past two years.

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 construction of these types of projects. In the last four years, we have encountered some competition that does not play by the rules nor do they pay all due taxes and acquire all their obligated requirements as a business. This does not allow for fair competition and a level playing field.

My current competition utilizes a workforce that does not always 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 Contractor, whereby he can pay them less than the prevailing wage for the area and no other obligations. 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 also pays by piece work, where in order to make more money the misclassified employee now brings the children into the work area in order to produce more daily output. The more production the more earned.

Comm + Labor
2-20-06
Atch # 18

Misclassified Independent Contractors do not sign separate contracts related to the project, do not always have an occupational license, do not pay their full tax obligation, do not pay any benefits, do not pay into the Social Security System, do not carry liability and workers compensation insurance.

It is obvious that if they do not pay any of their obligations, this simply creates an unfair level playing field for those who play by 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.

I appear before you today to urge you to consider the passage of HB2372 and encourage you to implement an enforcement procedure.

What this bill is attempting to address is a complex issue, that if 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 I urge you to pass and move this bill forward.

Respectfully Voiced and Submitted

Paul Rodriguez
Rodriguez Mechanical Contractors Inc.