

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on March 15, 2006 in Room 123-S of the Capitol.

All members were present except:

David Wysong- excused

Committee staff present:

Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Larry Magill, Kansas Association of Insurance Agents
Jeff Glendening, Kansas Chamber
Secretary Garner, Department of Labor

Others attending:

See attached list.

Chairperson Brownlee opened the hearing on **HB 2696-Workers compensation; administrative law judges, requirements, salary and application; establishing the workers compensation administrative law judge nominating and review committee** by introducing Helen Pedigo from the Revisors Office to explain the bill. Ms. Pedigo stated the bill was similar to a bill that was in the Committee last year. Ms. Pedigo reviewed the bill stating the requirements for an Administrative Law Judge with the Division of Workers Compensation would be redefined, they must be an attorney for five years, with one of those years being a work comp attorney. She also stated a review commission would be established to make selections of the Administrative Law Judges for the Division of Workers Compensation for a term of four years. After that four years they will be up for re-review for consideration of another four year term. The present ALJ's will have the option to become unclassified employees which will allow them a pay increase of 80% of the district court judges pay, which will be a substantial increase. Upon completion of Ms. Pedigo's review there was some discussion with the Committee on the present selection process for the Administrative Law Judges.

Chairperson Brownlee introduced Larry Magill representing the Kansas Association of Insurance Agents to give his testimony as a proponent for **HB 2696**. Mr. Magill presented written testimony. (Attachment 1) Mr. Magill stated this bill has labor and business on the same side. They worked on the bill for the last three years and came close last year. This bill addresses all the issues on the bill last year. He stated that in the past the decision of Administrative Law Judges is a hiring decision by the Secretary of the Department of Labor. ALJ's have been a classified service with no term limits. **HB 2696** is a fair and balanced approach for selecting and reviewing Administrative Law Judges. The bill allows the ALJ's to continue as classified employees at their current pay grade. If they choose to take the pay increase they must agree to a four year term, if they choose to unclassify and all new ALJ's will be subject to the bill's nomination and re-nomination process. He went on to explain about the budget and how the increase in pay would be funded; by an assessment on all paid workers compensation claims each year. That assessment is currently 2.67% and is capped at 3% of paid claims annually by insured and self insured business. He stated in essence, it would be business that would be footing the bill for a salary increase. The terms of the 10 Administrative Law Judges would be staggered to avoid all their terms expiring at once. The Workers Compensation system must be viewed as fair to all parties. They think this is a way to bring balance and accountability to the ALJ process and attract highly talented people in the bargain. He urged the Committee to pass this bill favorably.

Chairperson Brownlee introduced Jeff Glendening representing the Kansas Chamber to give his testimony as a proponent on **HB 2696**. Mr. Glendening presented written testimony. (Attachment 2) Mr. Glendening stated they are in support of the bill and hope it will make the Workers Compensation System much more fair and unbiased so that all parties have an equal chance. He urged the Committee to consider the bill favorably for passage.

Upon the conclusion of Mr. Glendening's testimony there was discussion with the Committee. Senator Kelly entered the discussion with a question regarding the appeals process. Mr. Magill stated the appeals process will not be affected with the passage of this bill. Senator Wagle entered in the discussion regarding the

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on March 15, 2006 in Room 123-S of the Capitol.

additional costs. Secretary Garner stated the assessment rate will go up. The nominating committee for the ALJ's was discussed.

Chairperson Brownlee called the Committee's attention to the written testimony of Wil Leiker representing the Kansas AFL/CIO as a proponent for **HB 2696**. (Attachment 3)

Chairperson Brownlee introduced Secretary Garner with the Department of Labor to give his testimony as a neutral party with concerns on **HB 2696**. Secretary Garner presented written testimony. (Attachment 4) Secretary Garner stated the bill will significantly increase the pay for the Workers Compensation Administrative Law Judges and would change the method for selecting judges. Secretary Garner has concerns he feels the Committee should be aware of. The increase in pay would impact the Department of Labor's budget by \$302,000.00. The division of Workers Compensation is funded by assessments on insurance carriers based on the amount of benefits they pay to injured workers each year. He also stated the Department of Labor has dedicated lawyers providing valuable services to the state at discount prices and feels they warrant similar attention regarding their pay. He stated there are other ALJ's working in different departments for the state and their pay is not addressed in this bill. He feels that the salaries for both groups should be considered.

Chairperson Brownlee opened the floor for questions from the Committee. Senator Barone has questions regarding the \$302,000.00 fiscal note from Secretary Garner. He inquired if that included benefits and the Secretary stated it did. Senator Reitz asked if other attorneys working for the State were concerned and upset about the unclassification of the ALJ allowing them a pay raise. Secretary Garner stated that there was an ongoing issue because the work comp ALJ's already are two pay grades higher. There was discussion regarding the number of other attorneys in the system. Senator Kelly entered into the discussion asking if there are other ALJ's other than in the work comp system. Secretary Garner stated there were but he did not know how many. Chairperson Brownlee entered into the discussion asking how could they evaluate the work load of the work comp ALJ's to any other ALJ's that are on the same level. Secretary Garner stated he did not know. She stated that the work comp ALJ's may have more responsibilities than the other ALJ's. Senator Wagle entered into the discussion asking Secretary Garner if it would help with the other issues of the other ALJ's not in the work comp system, to change the pay from 80% of the district court judges to 75% of the district court judges. Secretary Garner stated that would have to be a policy change with the decision being made by the Committee.

Chairperson Brownlee stated she has asked the Revisor to look into giving the work comp ALJ's the power of contempt to the bill. The reason being when the ALJ's make a ruling there are some insurance carriers that still refuse to pay for workers injuries. Chairperson Brownlee recognized Senator Reitz. Senator Reitz asked the Chair to please define a little better. Helen Pedigo representing the Revisors' office stated that presently the ALJ's do not have that power. Senator Reitz asked what the next step would be if the ruling of the ALJ's was not followed. Senator Emler entered and stated he thought they could go to district court and he felt the ALJ's would need indirect contempt powers, not direct contempt powers. Dick Thomas from the Division of Workers Compensation, entered into the discussion stating there were two things they could do. They can file for penalties from that same ALJ; that ALJ can issue penalties for not abiding by the order. The second thing they can do is to file with the Insurance Commissioners Office; they have the power to access fines for failure to abide by an order. Chairperson Brownlee stated she is trying to figure the best way to motivate the insurance companies who do not follow the orders issued by the ALJ's. She asked how well the present system was working. Mr. Thomas stated there are time limits and the process should work quickly. Senator Emler has concerns regarding the claimant incurring additional fees to pay. Mr. Thomas stated there could be additional expenses. Senator Emler has concerns if the claimant is out additional charges. Mr. Thomas stated he would have to check on the procedure and get back with the Committee. Senator Reitz stated this issue should be clarified whether the claimant should have to pay additional charges to get the work comp carrier to pay.

With no further questions or discussion, Chairperson Brownlee closed the hearing on **HB 2696**.

Chairperson Brownlee opened the hearing on **HB 2569-Workers compensation fund; duties of commissioner of insurance** by introducing Kathie Sparks from Legislative Research to review the Joint

CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on March 15, 2006 in Room 123-S of the Capitol.

Committee on Economic Development's report on the Workers Compensation Fund Oversight Committee. (Attachment 5) Ms. Sparks stated the Joint Committee reviewed the activities of the Statutory Workers compensation Fund Oversight Committee and studied the need for its continued existence. The Joint Committee on Economic Development recommends the repeal of the Workers Compensation Fund Oversight Committee and recommends the Kansas Insurance Department assume the responsibilities for reporting the fund balance, working with contracted actuarial services and assigning other duties as appropriate. This recommendation comes after a review of the statutory requirements of the Workers Compensation Fund Oversight Committee, coupled with the fact that this Committee has not had a meeting since fall of 1999.

Upon the completion of Ms. Sparks review, Chairperson Jordan introduced Jarrett Forbes from the Insurance Commissioner's Office to give his testimony as a proponent of **HB 2560**. Mr. Forbes did not present written testimony. He stated the Oversight Committee has not met for a number of years and that the bill would require that the Insurance Commissioner present to the Legislature a report which they currently do voluntarily. He stated the Insurance Commissioners Office does not see a problem with making that mandatory.

Chairperson Brownlee closed the hearing on **HB 2560**. Chairperson Brownlee recognized Senator Jordan. **Senator Jordan made a motion to pass the bill out favorably and put on the consent calender. Senator Emler seconded. Motion carried.**

Chairperson Brownlee called the Committee's attention to **HB 2772-Employment relationship between owner-operators and licensed motor carrier operators for employment security law purposes** and to the proposed amendment dated March 15, 2006. (Attachment 6) Chairperson Brownlee stated Ms. Sparks memo shows there are already significant penalties in place. Chairperson Brownlee explained the proposed amendment. Chairperson Brownlee recognized Secretary Garner to explain his chart on the present statute on penalties and rates. (Attachment 7) Secretary Garner asked the Committee to include updating the rate of penalties in this bill.

Upon the conclusion of Secretary Garner's review of the present rates and penalties, there was discussion with the Committee. Several members joined the discussion on the present penalties and fines along with the number of investigations the Department of Labor has done regarding this issue. Secretary Garner stated that over 1200 cases for misclassification in the construction industry were investigated last year.

Senator Wagle made a motion to accept the proposed amendment dated March 15, 2006. Senator Jordan seconded. Motion carried.

Senator Jordan made a motion to move the bill out favorably as amended. Senator Schodorf seconded. Motion carried.

Meeting adjourned at 9:30 a.m. with the next meeting scheduled for March 16, 2006 at 8:30 a.m. in room 123S.



Testimony on House Bill 2696
Before the Senate Commerce Committee
By Larry Magill
March 15, 2006

Thank you madam Co-Chair, mister Co-Chair and members of the Committee for the opportunity to appear today in support of House Bill 2696 which changes the way workers compensation administrative law judges (ALJ's) are appointed, reviewed and compensated. My name is Larry Magill and I'm representing the Kansas Association of Insurance Agents. We have approximately 550 member agencies and branches throughout the state and our members write approximately 70% of the commercial insurance in Kansas including workers compensation. Our members are free to represent many different insurance companies.

House Bill 2696 is an outgrowth of a number of bills the last few sessions addressing this same issue. You have heard from Judge Moore, an Administrative Law Judge from Salina, on this issue and it has been discussed a number of times by the Workers Compensation Council. We worked with the Kansas Chamber and a number of interested businesses on a draft of this bill during the interim.

The feedback I have received from attorneys who specialize in Workers Compensation cases, agents and insurers, is that there is no more important area of reform of the workers compensation system, than this proposal.

The issue was held up last year in the Senate due to concerns over constitutional issues surrounding changing classified employees to unclassified that are addressed below.

Fair and Balanced Approach

One area of the workers compensation act that we did not try to reform in 1993 was the process for selecting and reviewing administrative law judges. Not because there weren't concerns expressed by management and members of the insurance industry that the judges tended to always side with the injured workers, but because no one could come up with a better system to replace the current one. Under the present arrangement, ALJ's are in the classified service.

Everyone had agreed in the past that it made no sense to replace the current process with one that had the ALJ's serving at the pleasure of the Governor for fear that decisions would swing like a pendulum with every changing of the guard in the Governor's office. The system needs to be viewed by both sides as fair and balanced.

In 1993's reforms a new concept was added when the legislature created an Appeals Panel composed of judges nominated by labor and business. Each nominee has to be approved by both sides, guaranteeing in theory, that they will be impartial. And the Appeals Judges serve a term of four years and then must be re-nominated. That gives both sides an opportunity to



evaluate performance and weigh the known, the incumbent, against the unknown, any possible successor. The Appeals Panel judges are compensated the same as District Court judges.

Now, thirteen years later, we have an opportunity to step back and see how the Appeals Panel system of selecting judges is working. And from what I can tell, it appears to be working quite well.

Constitutional Issues

We feel that this bill addresses the constitutional concern in a very positive way. There is a Kansas Supreme Court case involving the legislature switching Water Authority employees to the unclassified service that essentially said you can't take the classified employee's "property right" away by switching them to the unclassified service.

HB 2696 addresses that concern by allowing all the existing ALJ's to continue as classified employees at their current pay grade. If they choose to take the pay increase from approximately \$56,000 per year to 80% of the District Court judge pay or approximately \$80,000+ per year, they must agree to a four-year term and a re-nomination process every four years. Every existing ALJ is guaranteed one four-year term, if they choose, and all new ALJ's will be subject to the bill's nomination and re-nomination process.

For the last two years, the ALJ's appealed to the Workers Compensation Council to recommend a substantial raise in pay. It has been pointed out that a student just out of law school who graduated near the top of their class could expect to start at close to the \$56,000 figure in Kansas. Yet our ALJ's have years of legal experience and usually years of experience as Administrative Law Judges.

Unconstitutional Delegation of Authority

One of the changes made by the House Commerce & Labor Committee with our support was to address another constitutional concern with the way the bill was originally drafted. After the 1993 reforms, the process of nominating and appointing the Appeals Panel judges was challenged because the Secretary of Labor had to accept the nominee agreed to by business and labor representatives. The court found that to be an unconstitutional delegation of power. We had made the same mistake originally in HB 2696 and the House amendment corrected it.

Greater Accountability

The ALJs' salaries are paid with an assessment on business through their workers compensation claims expense. It is part of the budget of the Division of Workers Compensation, which is funded by an assessment on all paid workers compensation claims each year. That assessment is currently about 2.67% and is capped at 3% of paid claims annually by insured and self insured businesses. In essence, it would be business that would be footing the bill for a salary increase for ALJ's of approximately 43%. That is substantial by any measure.

But for that kind of increase, there must be greater accountability and an option to review performance and not reappoint those that are not balanced in their approach to the system. That seems to be a fair bargain.



Staggered Terms

A second change requested by the House was to stagger the terms of the 10 ALJ's. There is an indication that all the current judges may elect to become unclassified and this will avoid all their terms expiring at once.

In 2004 we proposed something similar to this to the House Commerce & Labor Committee.

The Workers Compensation system must be viewed as fair to all the parties. Any attempt to tilt the scales one way or the other is not likely to succeed. We think this is a way to bring balance and accountability to the ALJ process and attract highly talented people in the bargain. We urge the committee to take this opportunity to improve a critical aspect of our workers compensation system.



Legislative Testimony

HB 2696

March 15, 2006

Testimony before the Kansas Senate Commerce Committee
By Jeff Glendening, Vice President of Political Affairs

Madam Chair and members of the Committee, thank you for allowing me to appear before you today as a proponent of HB 2696. My name is Jeff Glendening, and I am representing the over 10,000 member businesses of The Kansas Chamber. This measure changes the way workers compensation administrative law judges are appointed, compensated, and reviewed.

HB 2696 allows all current ALJ's to choose between two career paths. The first option allows them to continue as classified employees at their current pay rate. However, if the judges wish to take the increase in salary from approximately \$56,000 per year to 80% of the District Court judge salary, they must agree to a four year term and the renomination process at the end of each term.

The Administrative Law Judges have appealed to the Workers Compensation Advisory Council for a substantial pay raise. Despite years of service, these judges are currently being paid about the same as a recent law school graduate.

ALJ's are paid through a budget at the Division of Workers Compensation, which is funded each year by an assessment on all paid workers compensation claims. The salary increase, which is approximately 43%, would be funded by business. For this large of an increase, we believe there must be greater accountability for these judges and have the ability to not reappoint those that are not performing.

Our hope is that this will make the workers compensation system much more fair and unbiased so that all parties have an equal chance. Thank you for your time and we urge the committee to consider this bill favorably for passage.

Senate Commerce Committee
March 15, 2006

Attachment 2-1

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



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WRITTEN TESTIMONY ON HB 2696 TO THE SENATE COMMERCE COMMITTEE

BY WIL LEIKER, EXECUTIVE VICE PRESIDENT
KANSAS AFL-CIO
March 15, 2006

Co-Chairs Jordan and Brownlee and Committee Members:

HB 2696 is, in essence, identical to SB 259 on which the Kansas AFL-CIO previously testified. The Kansas AFL-CIO and KCWS support in principle HB 2696. More particularly, the organizations support a raise for the administrative law judges. We are not convinced that a complete overhaul of the appointment process is necessary. Quite frankly, we believe that simply moving the salaries to a level more in tune with the job performed would attract more qualified applicants. However, if it is determined that a change is necessary, the procedure outlined in HB 2696 is acceptable. As you are aware, the appointment process contained in HB 2696 draws on the successful appointment process for members appointed to the Appeals Board.

Unfortunately, HB 2696 fails, as did its predecessor SB 259, to address the conflict between sitting judges who are part of the civil service system and the newly appointed judges. Under this proposal, newly appointed judges would be paid substantially more than the current judges, and would not be part of the civil service system. It is our understanding that it is unconstitutional to have co-employees in state government performing identical services for different rates of pay. That is the problem we see presented by HB 2696.

When SB 259 was debated, the AFL-CIO offered an amendment to potentially cure the constitutional issue. Basically, the current administrative law judges, if they so desire, would be transferred to a similarly classified position thereby protecting their property rights. This would be done by the Secretary of Labor within one year from the closure of a sixty day election period. In short, the sitting administrative law judges would be permitted to continue in the civil service system (in a different position) without interruption of pay or benefits.

Thank you for this opportunity to present our thoughts to your committee.



Senate Commerce Committee

March 15, 2006

Attachment 3-1

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KANSAS

DEPARTMENT OF LABOR
Jim Garner, Secretary

KATHLEEN SEBELIUS, Governor

Testimony Concerning 2006 HB 2696
Senate Commerce Committee
15 March 2006
Jim Garner
Secretary of Labor

Co-Chairs Brownlee and Jordan and Members of the Committee:

Thank you for the opportunity to appear and to allow me to share some thoughts and concerns on House Bill 2696. This bill would significantly increase the pay of Workers Compensation Administrative Law Judges (ALJ's) and would create a new method of selecting these ALJ's. The issue of pay and selection are policy matters within the discretion of the Legislature. However, I do have responsibility to share some information I believe will be helpful as you consider this piece of legislation.

1. Fiscal impact. Currently ALJ's are at pay grade level 33 employees within the state's classified system. Current pay is from \$54,000 to \$69,000. Under this bill, ALJ's would have the option of becoming unclassified employees and their pay would increase to 80% of the annual salary paid to district court judges for a total pay of \$84,000 (District Judges are currently paid a little over \$105,000). If all ALJ's took the new option (and ultimately all ALJs will come under the new system) the annual budget impact would be \$302,000.

The division of Workers Compensation is funded by assessments on insurance carriers based on the amount of benefits they pay to injured workers each year. State law has capped the assessment rate at 3% of benefits paid by such carriers (KSA 74-713). This assessment rate has not been adjusted since 1961. The Agency continues to face increased expenses for operating the division of Workers Compensation within this cap. Pay increases for employees, increases in employees benefit costs and the recent decisions to move some expenses from state general funding to fee funds have placed additional mandates on workers compensation fee funds. As these increase costs continue, it becomes more difficult for the agency to operate within the 3% assessment cap. If House Bill 2696 is enacted it will place a new and additional \$300,000 burden of expenses for funding the Workers Compensation system. If you choose to work this bill, you should be mindful of the pressure these increasing mandates on the operating costs of the Workers Compensation system will have on the assessment cap.

2. Other similarly situated employees. I very much appreciate the issue of pay for our Workers Compensation ALJs. We have dedicated lawyers providing a valuable service to the state at discount prices. However, this is not an issue just for Workers Compensation ALJs. Within the Kansas Department of Labor, we have other dedicated and talented lawyers providing similar duties and who warrant similar attention regarding their pay. Our Unemployment Insurance hearing officers are classified as pay grade level 31 employees with a range of pay between \$48,000 to \$62,700. This bill will simply widen the disparity in pay between these two types of lawyers in state service. In addition, there are ALJs in the Department of Administration whose pay is not addressed

in this bill. If we are to look at salaries for one of these groups of lawyers, we ought to look at the other group as well.

3. Classified vs. Unclassified There are problems, in my opinion, with Section 2(c) of the bill. It creates a new, unique type of state employee. Under this bill, the ALJs will become unclassified employees but unclassified employees who can only be disciplined or terminated for cause. If they are to become unclassified employees, they should be treated as all other unclassified employees who are basically employees at will. In addition, the language in Section 2(c) actually removes the job protections provided in that section from those ALJs who chose to remain in the classified service. If you do work this bill, this section needs attention and language reworked.

In conclusion, the decision on classification and selection of these ALJ's are matters I leave for your deliberations. However, I want to make you aware of the fiscal and other impacts of this legislation.

Thank you for the opportunity to appear and share my comments and concerns on this matter.

Joint Committee on Economic Development

WORKERS COMPENSATION FUND OVERSIGHT COMMITTEE

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee on Economic Development recommends the repeal of the Workers Compensation Fund Oversight Committee and recommends the Kansas Insurance Department assume the responsibilities for reporting the fund balance, working with contracted actuarial services and assigning other duties as appropriate. This recommendation comes after a review of the statutory requirements of the Workers Compensation Fund Oversight Committee, coupled with the fact that this Committee has not had a meeting since the fall of 1999.

Proposed Legislation: The Committee recommends the introduction of four bills.

BACKGROUND

The Joint Committee on Economic Development is statutorily authorized to set its own agenda. During the 2005 interim, the Legislative Coordinating Council (LCC) charged the Committee with reviewing the activities of the statutory Workers Compensation Fund Oversight Committee and to study the need for its continued existence.

COMMITTEE ACTIVITIES

In compliance with the LCC directive, the Committee heard testimony from a representative of the Kansas Insurance Department and the Director of the Division of Workers Compensation.

The representative of the Kansas Insurance Department explained that in 1993, legislation was passed that completely revised workers compensation in Kansas. The Second Injury Fund was dissolved and the Kansas Workers Compensation Fund was created. The Kansas Workers Compensation Fund continues to pay old claims that were established under the prior Second Injury Fund, and to pay new claims for employers who do not carry workers compensation insurance. However, the

Fund is brought into a case only after litigation has occurred. In addition, if the employers do not carry workers compensation insurance, the Division of Workers Compensation will pursue the employers through the criminal courts.

In 1993, part of the reform legislation provided for the Workers Compensation Fund Oversight Committee. However, this Committee has not met regularly since 1994, and the last time the Committee did meet was 1999, according to the representative of the Kansas Insurance Department. After stating these points, the representative did note that it is the position of the Kansas Insurance Commissioner that the Committee continue, however, as an unpaid Committee.

Outside of the Committee activities, the Kansas Insurance Department has issued annual reports on the Fund to the LCC. Each report includes all the information and statistics from the prior year activity of the Fund. In addition, the Department contracted for actuarial services of Milliman Consultants and Actuaries for a review of the Fund as of December 31, 2002.

The Committee heard testimony that the number of old cases continues to decline, however, new cases occur when an employer fails to secure workers

Senate Commerce Committee

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compensation insurance and an employee is injured.

The Director of Workers Compensation, a statutory member of the Oversight Committee, explained that the Kansas Department of Labor, Division of Workers Compensation has been implementing new technology to improve its work process and service to the citizens of Kansas. The Division is currently using Electronic Data Interchange, which allows the electronic transmission of claims or coverage information, and improves the timeliness and accuracy of reporting. It also has recently implemented a new alternative proof of coverage system, which improves the process of getting workers compensation coverage data and ensures employer

compliance. The Division also has added Coverage Verification Service, an online search engine for the general public to use to research proof of coverage issues.

CONCLUSIONS AND RECOMMENDATIONS

After listening to testimony and exploring potential reasons to continue with the Workers Compensation Oversight Committee, the Joint Committee on Economic Development directed staff to draft legislation to abolish the Committee and give the appropriate duties and responsibilities to the Kansas Department of Insurance.

[As Amended by House Committee of the Whole]

As Amended by House Committee

Session of 2006

HOUSE BILL No. 2772

By Committee on Commerce and Labor

1-31

PROPOSED AMENDMENT
Senator Brownlee
March 15, 2006

Senate Commerce Committee
March 15, 2006
Attachment 6-1

13 AN ACT ~~[concerning employment]~~ **[concerning employment security**
14 **law]**; relating to the employment relationship between an owner-op-
15 erator and a licensed motor carrier]; **relating to misclassification of**
16 **employees** ~~amending K.S.A. 2005 Supp. 79-3234 and repealing~~
17 ~~the existing section].~~

18
19 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

26 (3) "Licensed motor carrier" means any person that holds a certificate
27 of convenience and necessity, a certificate of public service, private carrier
28 permit or an interstate license as an interstate exempt carrier from the
29 state corporation commission, or is required to register motor carrier
30 equipment pursuant to 49 U.S.C. §11506 **14504**.

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

34 (5) "Owner" means a person to whom title to a motor vehicle has
35 been issued.

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

38 (7) "Person" means any individual, partnership, corporation, limited
39 liability company or any other business entity.

40 (b) For purposes of the employment security law, it is hereby de-
41 clared to be the policy of this state that, consistent with requirements of
42 49 C.F.R. §376.12(c)(1), an independent contractor relationship between

2-9

1 an owner-operator and a licensed motor carrier may exist when the li-
2 censed motor carrier complies with the applicable statutory and regula-
3 tory requirements governing a licensed motor carrier's use of leased ve-
4 hicles in the transportation of property. To that end, in determining
5 whether an employment relationship exists between a licensed motor car-
6 rier and a driver, the fact that the licensed motor carrier, pursuant to a
7 lease agreement, requires the driver to comply with applicable provisions
8 of the regulations of the state corporation commission, federal motor
9 carrier safety administration or other federal agency having jurisdiction
10 of motor carriers shall not be considered as the licensed motor carrier's
11 exercise of control over the driver.

12 [New Sec. 2. (a) No person shall knowingly and intentionally
13 ~~classify an employee as an independent contractor for purposes of~~
14 ~~avoiding either state income tax withholding and reporting~~
15 ~~requirements or state unemployment insurance contributions re-~~
16 ~~porting requirements.~~

the sole or primary purpose

misclassify

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

21 ~~[(b) There shall be no penalty under subsection (b) for a first~~
22 ~~violation of subsection (a).] Any person violating subsection (a) [for~~
23 ~~a second or subsequent time shall be liable to the state for a civil~~
24 ~~penalty of \$500 per misclassified employee and each day such vi-~~
25 ~~olation continues shall be deemed to be a separate violation.]~~

shall be subject to a penalty pursuant to K. S. A. 79-3228, and amendments thereto

26 [New Sec. 3. (a) The department of revenue in conjunction
27 with the department of labor and the attorney general shall estab-
28 lish a website to receive communications concerning information
29 on persons and business entities misclassifying employees in vio-
30 lation of section 1, and amendments thereto.

31 ~~[(b) Upon receipt of such information, the department of rev-~~
32 ~~enue, the department of labor and the attorney general shall work~~
33 ~~together to investigate alleged violations. The agencies shall co-~~
34 ~~operate and share information as necessary concerning the alleged~~
35 ~~violations.~~

36 ~~[(c) The secretary of revenue, secretary of labor and attorney~~
37 ~~general may apply for, receive and accept moneys from any source~~
38 ~~for the purposes of establishing the website.~~

39 ~~[(d) The secretary of revenue, secretary of labor and attorney~~
40 ~~general shall publicize, distribute and disseminate information on~~
41 ~~the availability of the website and concerning employee misclas-~~
42 ~~sification violations to employment agencies, law enforcement~~
43 ~~agencies and other interested parties.]~~

1 ~~[(c) The attorney general shall enforce and administer the pro-~~
2 ~~visions of this act. Other state agencies shall cooperate and assist~~
3 ~~the attorney general in the investigation and enforcement of any~~
4 ~~violations of this act. The attorney general is hereby authorized to~~
5 ~~adopt rules and regulations concerning the implementation and~~
6 ~~enforcement of the provisions of this act.]~~

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

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

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

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

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

42 [(4) disclose taxpayer information from income tax returns to
43 persons or entities contracting with the secretary of revenue where

RENUMBER REMAINING SECTIONS.

1 the secretary has determined disclosure of such information is es-
2 sential for completion of the contract and has taken appropriate
3 steps to preserve confidentiality;

4 [(5) disclose to the secretary of commerce specific taxpayer in-
5 formation related to financial information previously submitted by
6 the taxpayer to the secretary of commerce concerning or relevant
7 to any income tax credits, for purposes of verification of such in-
8 formation or evaluating the effectiveness of any tax credit program
9 administered by the secretary of commerce;

10 [(6) disclose income tax returns to the state gaming agency to
11 be used solely for the purpose of determining qualifications of li-
12 censees of and applicants for licensure in tribal gaming. Any in-
13 formation received by the state gaming agency shall be confiden-
14 tial and shall not be disclosed except to the executive director,
15 employees of the state gaming agency and members and employ-
16 ees of the tribal gaming commission;

17 [(7) disclose the taxpayer's name, last known address and res-
18 idency status to the department of wildlife and parks to be used
19 solely in its license fraud investigations;

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

34 [(9) permit the commissioner of internal revenue of the United
35 States, or the proper official of any state imposing an income tax,
36 or the authorized representative of either, to inspect the income
37 tax returns made under this act and the secretary of revenue may
38 make available or furnish to the taxing officials of any other state
39 or the commissioner of internal revenue of the United States or
40 other taxing officials of the federal government, or their author-
41 ized representatives, information contained in income tax reports
42 or returns or any audit thereof or the report of any investigation
43 made with respect thereto, filed pursuant to the income tax laws,

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1 as the secretary may consider proper, but such information shall
2 not be used for any other purpose than that of the administration
3 of tax laws of such state, the state of Kansas or of the United States;

4 [(10) communicate to the executive director of the Kansas lot-
5 tery information as to whether a person, partnership or corpora-
6 tion is current in the filing of all applicable tax returns and in the
7 payment of all taxes, interest and penalties to the state of Kansas,
8 excluding items under formal appeal, for the purpose of deter-
9 mining whether such person, partnership or corporation is eligible
10 to be selected as a lottery retailer;

11 [(11) communicate to the executive director of the Kansas rac-
12 ing commission as to whether a person, partnership or corporation
13 has failed to meet any tax obligation to the state of Kansas for the
14 purpose of determining whether such person, partnership or cor-
15 poration is eligible for a facility owner license or facility manager
16 license pursuant to the Kansas parimutuel racing act; and

17 [(12) provide such information to the executive director of the
18 Kansas public employees retirement system for the purpose of de-
19 termining that certain individuals' reported compensation is in
20 compliance with the Kansas public employees retirement act at
21 K.S.A. 74-4901 et seq., and amendments thereto, and

22 [(13) provide taxpayer information to the attorney general for the
23 purpose of determining compliance by any person with the provisions of
24 section 2, and amendments thereto, which information shall be limited to
25 withholding tax and payroll information, the identity of any person that
26 has been or is currently being audited or investigated in connection with
27 the administration and enforcement of the withholding and declaration
28 of estimated tax act, K.S.A. 79-3294 et seq., as amended, and the results
29 or status of such audit or investigation.

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

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

36 [(f) Nothing in this section shall be construed to allow disclo-
37 sure of the amount of income or any particulars set forth or dis-
38 closed in any report, return, federal return or federal return in-
39 formation, where such disclosure is prohibited by the federal
40 internal revenue code as in effect on September 1, 1996, and
41 amendments thereto, related federal internal revenue rules or
42 regulations, or other federal law.

43 [Sec. 5. K.S.A. 2005 Supp. 79-3234 is hereby repealed.]

of persons suspected of violating section 2, and
amendments thereto,

staff attorneys of the department of labor

1 Sec. ~~2~~ [6]. This act shall take effect and be in force from and after
2 its publication in the statute book.

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Statute	Reason	Penalty/fine	Current Amount	Last Changed*	Current Value **	Suggested
44-717(a)	Employer failure to file	Penalty	.05% total wages during the quarter (Not less than \$25.00 nor more than \$200.00)	1986 Session Laws Ch 191 §5	Not less than \$45.23 nor more than \$361.86	Current Value
44-719(a)	False statement in order to obtain or increase benefits	Crime	Theft (K.S.A. 21-3701)***			
44-719(b)	Employer false reporting or information to reduce or avoid tax	Fine	Not less than \$20.00 nor more than \$200.00 or 60 days imprisonment, or both. Each day a separate offense	Original enactment 1937.	Not less than \$275. nor more than \$2,754.00	\$200. - \$2,000.
44-719(c)	Any willful violation of the Act where no specific penalty.	Fine	Not less than \$20.00 nor more than \$200.00 or 60 days imprisonment, or both. Each day a separate offense	Original enactment 1937.	Not less than \$275. nor more than \$2,754.00	\$200. - \$2,000.
44-719(f)	SUTA Dumping (Employer obtains company with low experience rating for purpose of lowering a high experience rating. Example: shell game)	Penalty Fine Crime	Employer - charged highest rate allowed by law for four years. If already at highest rate - 2% above highest rate for four years. Non- employer - not more than \$5,000.00. Level 9 non-person felony	Enacted in 2005 (Feds recommended not less than \$5,000.00 nor more the \$25,000.00)		No Change.
44-718(a)	Attempt to make employee pay tax	Fine	Not less than \$100.00 nor more than \$1,000.00 and/or 6 months imprisonment.	Original enactment 1937.	Not less than \$1,377.00 or more than \$13,770.00	\$1,000. - \$10,000.

* Based upon legal review of Statutes and Session Laws by KDOL Legal Staff..

** Based upon increase in consumer price index from date of original enactment to present day, as per KDOL LMIS.

*** Theft of < \$1,000.00 Class A Misdemeanor; \$1,000.00 < \$25,000.00 Level 9 non-person felony; \$25,001.00 < \$100,000.00 Level 7 non-person felony; \$100,000.00 Level 5 non-person felony.

Senate Commerce Committee
March 15, 2006
Attachment 7-1