

Approved: SB 3/1/07  
Date

## MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:05 A.M. on March 1, 2007 in Room 231-N of the Capitol.

All members were present except:

Brenda Landwehr- excused  
Delia Garcia- excused  
Kasha Kelley- excused  
Lana Gordon- excused  
Mike Kiegerl- excused

Committee staff present:

Jerry Ann Donaldson, Kansas Legislative Research Department  
Duston Slinkard, Office of Revisor of Statutes  
Stephen Bainum, Committee Assistant

Conferees appearing before the committee:

Tom Whitaker, Executive Director, Kansas Motor Carriers Association

Others attending:

See attached list.

The Chairman asked for approval of the minutes that had been distributed earlier to the committee. Representative Humerickhouse made a motion to approve the minutes, seconded by Representative Grange. The motion passed by voice vote.

The Chairman opened the hearing on **SB 235 - Employment security law exclusions from definition of employment.**

Tom Whitaker, Executive Director, Kansas Motor Carriers Association testified as a proponent of **SB 235 (Attachment 1)**. He indicated that the bill clarifies that an owner-operator leased to a licensed motor carrier is not considered an employee under the provisions of the Employment Security Act. The Kansas Motor Carriers thought that this was taken care of by **HB 2772** which was passed in 2006 but cases continue to come before the Department of Labor. On February 8<sup>th</sup> the Department of Labor brought the issue to the Employment Security Council for discussion. The Council plans to meet on the issue on Monday, March 5, 2007. Passage of **SB 235** would provide Kansas motor carriers a level playing field to compete for owner-operators to move the nation's goods.

Representative Ruff asked if the subject was one truck and one owner, not three or more. Tom answered that that was correct. It applies only to an owner-operator of a truck. If I own three trucks and hire three drivers and then lease them to a trucking company, at that time I am an employer for the three drivers. This bill does not get into that situation.

The Chairman asked how the vote fared in the Senate. Tom replied that it was 39 to 1. This is consistent with what is happening in other states and with the practice that has been extant in the past.

Representative Huntington asked how the shortage of drivers would affect the industry. If our carriers don't have the option in Kansas of using owner-operators then it would put them at a great disadvantage to other states. He mentioned the major concentration of carriers in Joplin, Missouri that use owner-operators. This bill would allow Kansas to do the same.

Representative Pauls asked if there was any opposition to the bill. Tom replied that there was no opposition to their part of the bill and that the Department of Labor like the bill.

No further questions were asked and the Chairman closed the hearing on **SB 235.**

The Chairman adjourned the meeting at 9:20 A.M.

COMMERCE & LABOR COMMITTEE  
DATE: 3-1-07

NAME	REPRESENTING
<i>ROBYN HORTON</i>	<i>KS MOTOR CARRIERS ASSOC.</i>
<i>TOM WHITAKER</i>	<i>KS MOTOR CARRIERS ASSOC.</i>
<i>Beth Martino</i>	<i>Ks Dept of Labor</i>



# Kansas Motor Carriers Association

*Trucking Solutions Since 1936*

## Legislative Testimony

Presented by the Kansas Motor Carriers Association  
Before the House Commerce and Labor Committee

Representative Steve Brunk, Chairman

Thursday, March 1, 2007

**Mike Miller**  
Miller Trucking, LTD  
President

**Calvin Koehn**  
Circle K Transport, Inc.  
Chairman of the Board

**Michael Topp**  
TT&T Towing, Inc.  
First Vice President

**Larry Dinkel**  
Mitten Trucking, Inc.  
Second Vice President

**Greg Orscheln**  
Midwest Express Corp.  
Treasurer

**Larry "Doc" Criqui**  
Kansas Van & Storage  
Criqui Corp.  
Corporate Secretary

**Jerry Arensdorf**  
Arensdorf Trucking, Inc.  
ATA State Vice President

**Ken Leicht**  
Rawhide Trucking, Inc.  
ATA Alternate State VP

**Mike Ross**  
Ross Truck Line of Salina, Inc.  
ProTruck PAC Chairman

**Kelly Kile**  
Wal-Mart Stores, Inc.  
Public Relations Chairman

**Dave Eaton**  
Cummins Central Power, LLC  
Allied Industries Chairman

**Tony Gaston**  
Rawhide Trucking  
Foundation Chairman

**Tom Whitaker**  
Executive Director

## CHAIRMAN BRUNK AND MEMBERS OF THE HOUSE COMMERCE AND LABOR COMMITTEE:

I am Tom Whitaker, executive director of the Kansas Motor Carriers Association. I appear here this morning representing our 1,200 member-firms in support of Senate Bill No. 235. This legislation clarifies that an owner-operator leased to a licensed motor carrier is not considered an employee under the provisions of the Employment Security Act.

For more than 60 years, motor carriers have used independent owner-operators of trucks to supplement their fleets and this provides a source of revenue for these independent businesses. An owner-operator is an individual who owns and operates a truck and chooses to lease to a licensed motor carrier in return for a percentage of the revenue generated by the truck. These owner-operators are independent contractors.

During the 2006 Session of the Kansas Legislature, KMCA successfully sought passage of House Bill No. 2772 which spelled out in the statutes that a motor carrier complying with the safety rules and regulations of the Federal Motor Carriers Safety Administration was not considered as having control over an owner-operator and therefore did not constitute an employer/employee relationship. The 2006 legislation was in response to rulings by the Kansas Department of Labor that threatened the long standing practice of using owner-operators. KMCA thought the adoption of HB 2772 would solve the problem however, cases continue to come before the Department of Labor.

KMCA continues to discuss this issue with the Department of Labor in an effort to solve this situation. On Thursday, February 8, 2007, Secretary Garner brought this issue before the Employment Security Council for discussion. The Council voted to table discussion of SB 235 until their next meeting when more information was available, taking no action either for or against the bill. The Employment Security Council meets again on Monday, March 5, 2007. KMCA continues to discuss this issue with the Department, but feels it is imperative to keep moving this legislation forward in order to provide our carriers with a sound trucking environment when leasing owner-operators.

SB 235 narrowly defines that a motor carrier/owner-operator relationship is not an employer/employee relationship and continues the decades long practice of the trucking industry. According to the Federal Motor Carrier Safety Administration, there are 8,981

**Legislative Testimony**  
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motor carriers in Kansas and of these, 86% operate six or fewer trucks, 95% operate 19 or fewer trucks and only .5% operates more than 100 trucks. It is estimated that 80% of these carriers use owner-operators and this is especially true for those that serve the agricultural industry. The state's trucking industry needs stable ground rules to continue to provide the service necessary to keep the Kansas economy growing.

Nebraska, Missouri and Oklahoma currently have an exception for owner-operators in state law. Passage of Senate Bill No.235 would provide Kansas motor carriers a level playing field to compete for owner-operators to move the nation's goods.

We would request one amendment to SB 235. On Page 13, line 25, following the words "is the owner," and inserting "or lessee" and one line 26 following the word "owner" and inserting "or lessee." (See attached balloon amendment. This amendment will reflect current business practices of buying or leasing a vehicle.)

The Kansas Motor Carriers Association respectfully requests the House Commerce and Labor Committee report Senate Bill No. 235 as amended favorable for passage. We thank you for the opportunity to appear before you today. I would be pleased to stand for questions.

1 than \$1,000; ~~and~~

2 (X) service performed by agricultural workers who are aliens admit-  
3 ted to the United States to perform labor pursuant to section 1101  
4 (a)(15)(H)(ii)(a) of the immigration and nationality act; ~~and~~

5 (Y) ~~any individual who is~~ **service performed by an owner-operator**  
6 **of a motor vehicle that is leased or contracted to a licensed motor carrier**  
7 **with the services of a driver and is not treated under the terms of the**  
8 **lease agreement or contract with the licensed motor carrier as an em-**  
9 **ployee for purposes of the federal insurance contribution act, 26 U.S.C.**  
10 **§ 3101 et seq., the federal social security act, 42 U.S.C. § 301 et seq., the**  
11 **federal unemployment tax act, 26 U.S.C. § 3301 et seq., and the federal**  
12 **statutes prescribing income tax withholding at the source, 26 U.S.C. §**  
13 **3401 et seq. Employees or agents of the owner-operator shall not be con-**  
14 **sidered employees of the licensed motor carrier for purposes of employ-**  
15 **ment security taxation or compensation. As used in this subsection (Y),**  
16 **the following definitions apply: (i) "Motor vehicle" means any automobile,**  
17 **truck-trailer, semitrailer, tractor, motor bus or any other self-propelled**  
18 **or motor-driven vehicle used upon any of the public highways of Kansas**  
19 **for the purpose of transporting persons or property; (ii) "licensed motor**  
20 **carrier" means any person, firm, corporation or other business entity that**  
21 **holds a certificate of convenience and necessity or a certificate of public**  
22 **service from the state corporation commission or is required to register**  
23 **motor carrier equipment pursuant to 49 U.S.C. § 14504; and (iii) "owner-**  
24 **operator" means a person, firm, corporation or other business entity that**  
25 **is the owner of a single motor vehicle that is driven exclusively by the**  
26 **owner under a lease agreement or contract with a licensed motor carrier.**

| or lessee

| or lessee

27  
28 (j) "Employment office" means any office operated by this state and  
29 maintained by the secretary of labor for the purpose of assisting persons  
30 to become employed.

31 (k) "Fund" means the employment security fund established by this  
32 act, to which all contributions and reimbursement payments required and  
33 from which all benefits provided under this act shall be paid and including  
34 all money received from the federal government as reimbursements pur-  
35 suant to section 204 of the federal-state extended compensation act of  
36 1970, and amendments thereto.

37 (l) "State" includes, in addition to the states of the United States of  
38 America, any dependency of the United States, the Commonwealth of  
39 Puerto Rico, the District of Columbia and the Virgin Islands.

40 (m) "Unemployment." An individual shall be deemed "unemployed"  
41 with respect to any week during which such individual performs no serv-  
42 ices and with respect to which no wages are payable to such individual,  
43 or with respect to any week of less than full-time work if the wages payable