

January 25th, 2012

Chairman Owens and Committee Members:

Good morning! My name is Tom Holland and I am the State Senator for the Kansas Senate 3rd District serving portions of Douglas and Leavenworth counties and all of Jefferson County. I am here today to ask for your support of Senate Bill 285, the "Strengthening Misclassification Penalties Act".

My intentions in introducing this legislation are three-fold: 1) to protect honest Kansas businesses who are having to compete on an unlevel playing field, 2) to protect Kansas workers from suffering continued wage erosion and exploitation, and 3) to stop the resulting loss of state income tax collections to the state of Kansas.

1099 (or independent contractor) misclassification occurs when an employer treats a worker as an independent contractor instead of an employee. This allows the employer to avoid paying social security, workers compensation, unemployment insurance, liability insurance, and both overtime and time-off wages. It also often results in the so-called independent contractor failing to properly withhold and report his / her personal federal and state income tax withholdings. 1099 misclassification is rampant throughout the nation and our own state of Kansas, particularly in the commercial and residential construction industries. A 2009 study by the treasury inspector general estimated that misclassification costs the United States \$54 billion in underpayment of employment taxes *and* \$15 billion in unpaid FICA and unemployment taxes. Audit results for Illinois show that the number of employees statewide that were misclassified estimated to have averaged 368,685 annually for the 2001-2005 period. For 2005 alone, the estimated number of employees affected by misclassification had increased to 418,870 (8.5% of the workforce).

There are certain legitimate work situations where an employer may not know how to classify a laborer. In response, the IRS has for several years provided a twenty-question test to assist employers in determining whether a laborer should be treated as an employee or independent contractor. In addition, the 2011 Kansas legislative session saw the passage of Sub. For HB 2135 which revised the procedures used to determine if employees have been misclassified as independent contractors. The legislation also emphasizes the need for the Secretary of Labor to educate businesses on the classification of employees and provides the Secretary with significant latitude in determining whether unemployment insurance and interest can be charged on those

businesses that are in fact misclassifying. My concern with the 2011 legislation is that the bill continues to coddle those employers who would repeatedly misclassify their employees (3 or more times) by subjecting them to a civil penalty class A nonperson misdemeanor. a construction worker takes direction from an employer's representative and is installing employer-supplied material, then that worker should be treated as an employee.

The ONLY reason that an employer would repeatedly misclassify his / her workers is to realize substantial cost savings, typically from 15 to 30% of payroll costs. And these employer savings come with a big price tag for the worker. Misclassification results in no social security benefits, no workers compensation coverage, no health insurance, no unemployment insurance, no overtime wages, and very often substandard wages and health and safety on the job. Unfortunately, misclassification has helped to promote an underground economy in many parts of the Kansas economy, particularly in the construction industry. Compounding the problem is the fact that many workers, once classified as independent contractors, are typically reluctant to demand legal employee status because of tax obligations they have incurred. This reluctance only helps to perpetuate the practice.

Senate Bill 285 would provide the Department of Labor with an additional tool for prosecuting those employers who knowingly and repeatedly violate the law under this act. The bill, if enacted, would subject any person with a second or subsequent misclassification violation to a civil penalty and guilty of a severity level 10, nonperson felony.

I thank you for your thoughtful and considerate deliberation on this most urgent matter. With your favorable consideration, SB 285 will send a strong message to those who would knowingly flaunt Kansas' labor laws.

Sincerely,

Tom Holland  
State Senator – 3rd District