



**Testimony on Senate Bill 285  
An Act regarding penalties for Misclassification of employees  
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Working Kansas Alliance**

Chairman Owens and members of the Committee:

Thank you for the opportunity to submit this testimony on behalf of the Working Kansas Alliance, a group of union and non-union organizations representing Kansas workers and their families. The bill before you today is a step back in the right direction in dealing with the problem of employee misclassification in the State of Kansas, reinstating the severity level for penalties included in the 2006 misclassification law but eliminated in 2011. We ask you to give favorable consideration to the bill.

Worker misclassification occurs when workers who should properly be classified as employees are instead classified as independent contractors. Misclassification wrongfully deprives the State of Kansas of payroll and withholding taxes that are required to be paid by employers on their employees—tax revenue the State can ill-afford to forego. The deliberate misclassification of employees to avoid payment of taxes unfairly disadvantages the overwhelming majority of Kansas employers who obey the laws and pay their taxes.

Solid, law-abiding businesses, which properly classify employees and are at a competitive disadvantage when competing directly against companies which wrongfully classify their employees as independent contractors. The problem is particularly noticeable and rampant in industries like the construction industry, where companies bid for jobs. There can never be a fair and competitive bid process when companies that misclassify can bid for work without having to account for normal payroll costs. The misclassifying company will always have the lower bid and will be able to take work away from the law-abiding company. The result is that the “good” companies receive fewer jobs, employ fewer workers, and may eventually be driven out of business.

Not only does misclassification harm law-abiding businesses, it also harms the misclassified workers themselves. When employees are not properly classified, costs that should be borne by the employer (such as unemployment insurance, social security tax, and workers compensation insurance) are illegally shifted to the individual worker. As a result, many workers do not make contributions to the unemployment, social security or workers compensation systems and are left with little to no safety net in the event of layoff or on the job injury.

Worker misclassification is a very real problem in Kansas. The Department of Labor found more than 1800 workers were misclassified in Kansas in 2010, alone and some \$10 million in wages was subject to withholding taxes. This Committee considers many bills that modify penalties, which are often described as giving law enforcement another "tool" to discourage certain crimes. Senate Bill 285 is a modest tool to discourage the practice of worker misclassification and hold accountable those who wantonly break the law.