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To: Senate Judiciary Committee
Senator Tim Owens, Chair

From: Aaron Popelka, Vice President of Legal & Government Affairs
Kansas Livestock Association

Re: Statement in opposition to SB 285

Date: January 25, 2012

The Kansas Livestock Association has concerns with this legislation. The underlying statute 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 a 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 fence builder 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?

The above scenario illustrates that this area of the law is an area that must give considerable weight to the facts surrounding the classification. In most situations, a prudent business person would make a conscious choice to classify the fence builder as an independent contractor because the classification would entail less tax expense and bureaucratic red tape. Such a common sense choice could put a business owner in jeopardy of violating this statute. Given the uncertainty surrounding these situations and the intense pressure on state agencies to find every last drop of potential tax revenue, it does not make sense to make misclassification a felony.

Furthermore, just last year, the Senate changed the penalty for subsequent violations of K.S.A. § 44-766. Therefore, it seems imprudent to increase penalties before we know how the recently enacted penalties are affecting incidences of misclassification and the business community as a whole. KLA opposed creation of the underlying statute in 2006 and today stands opposed to Senate Bill 285 that would make a violation of the misclassification statute a felony.