

MINUTES OF THE SENATE COMMERCE COMMITTEE

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

All members were present.

Committee staff present:

Kathie Sparks, Kansas Legislative Research Department
Helen Pedigo, Revisor of Statutes
Jackie Lunn, Committee Secretary

Conferees appearing before the committee:

Tom Whitaker-Kansas Motor Carriers Association
Sandie Ghilino-Greater Kansas City Mason Contractors
Corey Peterson-Association of General Contractors of Kansas
Marlee Carpenter-Kansas Chamber
Representative Anthony Brown
Jim Stelle-Safety Director, Falewitch Construction Services, Inc.
JE Dunn Construction Company
Gary Seaton Sr.-Total Interiors, Inc.
Kelly Pinkham-UMKC
Judy Ancel-UMKC
Paul Rodriguez-Rodriguez Mechanical Contractor, Inc.
Jim Wilkinson-Olathe, KS Floor Contractor

Others attending:

See attached list.

Chairperson Brownlee opened the hearing on **HB 2772-Employment relationship between owner-operators and licensed motor carrier operators for employment security law purposes** by introducing Kathie Sparks from Legislative Research to review the bill. Ms. Sparks reviewed **HB 2772**. Upon completion of her review, Chairperson Brownlee stated **HB 2772** started out with a narrow scope and ballooned. The amendment added was the same as SB 531; the Committee will evaluate which language will be preferred. Ms. Sparks outlined the differences between **HB 2772** and **SB531-Misclassification of employees as independent contractors to avoid withholding income tax; investigations by departments of revenue and labor**. During her explanation there was discussion with the Committee regarding their concerns about the definition of independent contractor.

Chairperson Brownlee introduced Tom Whitaker, Executive Director of the Kansas Motor Carrier Association to give his testimony as a proponent of **HB 2772**. Mr. Whitaker presented written testimony. (Attachment 1) Mr. Whitaker stated in the trucking industry, an owner/operator will lease his/her equipment to a licensed motor carrier to operate under the carrier's operation authority granted by the state or federal government. In return, the owner/operator receives a percentage of the freight revenue generated by such equipment lease. Owner/operators are small businesses. **HB 2772** does not change the factors used to determine whether an owner/operator is an independent contractor or employee. The bill merely removes any doubt that required compliance with federal and state safety rules shall not enter into the determination of an owner/operator's status. He stated the Employment Security Advisory Council stated they took no position on the bill. In closing, Mr. Whitaker stated the Kansas Motor Carriers Association respectfully requests the Senate Commerce Committee report the motor carrier portion of **HB 2772** favorably.

Chairperson Brownlee introduced Sandie Ghilino to give his testimony as a proponent for **HB 2772**. Mr. Ghilino presented written testimony. (Attachment 2) Mr. Ghilino stated he was testifying on behalf of the Greater Kansas City Mason Contractors Association. He stated 1099 abuse has made the taxpaying contractors non competitive in today's shrinking market. They would like to recommend that the penalties extend to the general contractor, home builder and project owners who encourage, and profit greatly from 1099 abuse. He stated he would like to recommend maximum penalties so that this abuse will stop. He went on to say there was another area of abuse and that was unregistered contractors working in the State of Kansas and not paying any taxes. They come to Kansas build a few projects and leave with the State of Kansas never knowing they were here working. They don't pay state and federal taxes.

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Chairperson Brownlee introduced Corey Peterson representing the Associated General Contractors of Kansas, to give his testimony as a neutral party. Mr. Peterson presented written testimony. (Attachment 3) Mr. Peterson stated that AGC of Kansas stands neutral on **SB 531** and **HB 2772** as written but with concerns. The concerns with **HB2772** are regarding the offering of a first time warning for offenders. AGC is concerned the bill would create problems for legitimate small businesses that believe they are doing business properly to be found to have interpreted the law incorrectly and thus face penalties that could put them out of business. He also stated there is a small segment of the construction industry, primarily companies from out of state, which is apparently skirting current IRS and state laws by intentionally misclassifying workers as independent contractors. AGC agrees that the state and federal government should enforce the existing law and bring these companies to justice.

Upon conclusion of Mr. Peterson's testimony there was discussion with the Committee and Mr. Peterson regarding his concerns with the bill.

Chairperson Brownlee introduced Marlee Carpenter representing the Kansas Chamber, to give her testimony as an opponent of **HB 2772**. Ms. Carpenter presented written testimony. (Attachment 4) Ms. Carpenter stated the Kansas Chamber believes the bills were drafted with the best of intentions of addressing a problem in Kansas, but has gone too far in doing so. Ms. Carpenter offered amendments for both **HB2772** and **SB 531**. Ms. Carpenter explained her amendments to the bill; on New Section 2. (a) would read "No person shall knowingly and intentionally misclassify an employee as an independent contractor for the sole and primary purposes of avoiding either state income tax withholding and reporting requirements or state unemployment insurance contributions reporting requirements". She would also like to strike part of Section 2, (b) and add language stating there shall be no penalty for first time violators.

Upon the conclusion of Ms. Carpenter's testimony there was discussion with the Committee regarding the amendments she is offering on the bill. The Committee has concerns regarding the hiring of independent contractors and when you are audited you find out the independent contractor is an employee according to the federal guidelines used to determine independent contractor.

Chairperson Brownlee introduced Representative Anthony Brown to give his testimony as a proponent of **HB 2772**. Representative Brown offered written testimony. (Attachment 5) Representative Brown stated that worker misclassification is a large problem in the state of Kansas. It is harmful to business. Most contractors do comply with good business practices but those that do not comply and do so intentionally to avoid paying the necessary taxes makes it difficult to compete in the market place. Representative Brown called the attention of the Committee to Representative John C. Grange's written testimony and stated Representative Grange could not be in the Committee meeting today. (Attachment 6) Representative Brown went on to say that in Representative Grange's written testimony he stated he owns a small mechanical contracting company with 12 employees. Representative Grange went on to say, in his written testimony, his payroll for 2005 was over \$497,000. He further stated if he had purposely misclassified these employees as independent contractors, he would have saved his company \$70,000. Additionally he would not have to collect federal or state income tax and this in turn would allow him to offer their services at a reduced rate.

Upon completion of Representative Brown's testimony there was discussion with the Committee regarding independent contractor and the difference between employee and independent contractor.

Chairperson Brownlee closed the hearing on **HB 2772** and opened the hearing on **SB 531**.

Chairperson Brownlee announced Joe Hudson, Political Director for the Carpenters Union would be showing a video regarding misclassification of employees. (Attachment 6)

Upon completion of the video, Chairperson Brownlee introduced Jim Steel, Safety Director for Falewitch Construction, Inc. of Omaha, Nebraska to give his testimony as a proponent of **SB 531**. Mr. Steel offered written testimony. (Attachment 7) Mr. Steel gave a brief summary of his testimony stating business owners and managers who are willing to cheat in this way are also the type people who shortcut the safety, health and welfare of their workforce and the workers and citizens in near proximity to their workforce. The more business these companies get, the more dangerous the work environment becomes.

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Chairperson Brownlee introduced Mr. Tyler Henson, Counsel for JE. Dunn Construction Company, to give testimony on behalf of J.E.Dunn. (Attachment 8) Mr. Henson stated that J.E. Dunn supports **SB 531** as amended to help prevent those employers that knowingly and intentionally misclassify employees as independent contractors for purposes of avoiding income tax withholdings or unemployment insurance contributions, as well as other related costs associated with maintaining a work force.

Chairperson Brownlee introduced Gary Seaton Sr., President of Total Interiors, Inc. Of Kansas City, Kansas to give his testimony as a proponent of **SB 531**. Mr. Seaton presented written testimony. (Attachment 9) Mr. Seaton stated any unscrupulous contractors that misclassify employees as independent contractors and don't pay the appropriate taxes and insurance are creating an uneven playing field for competition in their industry. He stated he is in support of **SB 531** and urged the Committee to give it their support.

Chairperson Brownlee introduced Mr. Kelly D. Pinkham, MS with the Department of Economics for the University of Missouri-Kansas City to give his testimony as a proponent of **SB 531**. Mr. Pinkham presented written testimony. (Attachment 10) Mr. Pinkham gave a brief review of his testimony stating the issue of misclassification is a growing problem around the county. He stated the University of Missouri-Kansas had done studies on this issue and stated misclassification negatively impacts the citizens in many ways. In his study the results verified the main reason for misclassifying is the savings of the insurance premiums.

Chairperson Brownlee introduced Judy Ancel, Director of the Institute for Labor Studies, a joint project of the University of Missouri-Kansas City and Longview Community College, to give her testimony as a proponent of **SB 531**. Ms. Ancel presented written testimony. (Attachment 12) She gave a brief review of her testimony stating one increasingly common illegal practice is the misclassification of workers. Where this has historically been common in day labor and agriculture and in certain services, today it is spreading to new sectors of the economy, especially where low-wage jobs proliferate like janitorial work, home health care, delivery services and construction. She stated **SB 531** is a good start on trying to deal with the ever increasing problem. The passage of this bill will say to Kansas employers and workers that our state stands for fairness and responsibility and that it seeks to create a climate for business and workers in which the law is respected and applied to all on an equal basis.

Chairperson Brownlee introduced Ron Rodriquez representing the Rodriquez Mechanical Contractors, Inc. in Kansas City, Kansas, to give his testimony as a proponent of **SB 531**. Mr. Rodriquez presented written testimony. (Attachment 12) Mr. Rodriquez gave a brief review of his testimony stating Rodriquez Mechanical Contractors, Inc. is a plumbing business which has been operating for 30 years. He stated that because his company is competing with companies that misclassify he is losing work due to the fact he cannot compete with them in the market place.

Chairperson Brownlee introduced Jim Wilkinson, Vice-President of Image Flooring, LLC, a Lenexa based floor covering contractor, to give his testimony as a proponent of **SB 531**. Mr. Wilkinson presented written testimony. (Attachment 13) Mr. Wilkinson stated the misclassifying of workers and independent self-contractors is an ever-growing obstacle that many firms in the construction industry are facing. Unscrupulous contractors who are not providing benefits, pensions, liability and Worker's Compensation insurance, business licensing fees or fair wages and the associated taxes put fair contractors at a huge competitive disadvantage. He is in support of **SB 531**.

Upon completion of Mr. Wilkinson's testimony, Chairperson Brownlee announced the Committee would continue the hearing to tomorrow and instructed anyone that wishing to testify tomorrow on **SB 531**, should tell the committee secretary.

Meeting was adjourned at 9:30 a.m. with the next scheduled meeting to be tomorrow, March 8, 2006 at 8:30 a.m. in room 123S.