

MINUTES OF THE SENATE COMMERCE COMMITTEE

The meeting was called to order by Chairperson Karin Brownlee at 8:30 A.M. on March 9, 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:

Secretary Wagon, Department of Revenue  
Secretary Garner, Department of Labor  
Representative Tom Holland  
Brent Hadden, Kansas Livestock Association

Others attending:

See attached list.

Chairperson Brownlee announced today would be a continuation of the hearing on **SB 531-Misclassification of employees as independent contractors to avoid withholding income tax; investigations by departments of revenue and labor**. Chairperson Brownlee introduced Secretary Joan Wagon, Department of Revenue to give her testimony as a proponent of **SB 531**. Secretary Wagon presented written testimony. (Attachment 1) Secretary Wagon referred the Committee to her written testimony and stated she would like to call the Committee's attention to the balloon on the last two pages. She stated the balloon would add the language "knowingly and intentionally" to Section 1, line 14, which would make it easier to determine whether they are hiring independent contractors and without knowing or if they are intentionally doing so. This balloon would help greatly with the issue of misclassification. The Department of Revenue's intention is to go after the "bad actors" that are intentionally cheating the system. This bill would allow the Department of Labor and the Department of Revenue to form a partnership and work together on this issue. She also stated the balloon would add language on line 10, page 4, "which information shall be limited to withholding tax and payroll information, the identity of any person has been or is currently being audited or investigated in connection with the administration and enforcement of the withholding and declaration of estimated tax act, K.S.A. 79-3294 et seq., as amended and the results or status of such audit or investigation. " Secretary Wagon referred to a flow chart she passed out to the Committee on how the partnership with the Department of Labor would work. (Attachment 2) She explained the flow chart to the Committee.

Chairperson Brownlee introduced Secretary Garner, Department of Labor to give his testimony as a proponent on **SB 531** (Attachment 3) and an opponent on **HB 2772-Employment relationship between owner-operators and licensed motor carrier operators for employment security law purposes**. (Attachment 4) Secretary Garner called the Committee's attention to both testimonies and stated he would like the Committee to look over. He stated he would be comparing both bills and explaining the differences. He stated misclassifying is a growing problem in Kansas and is important to the Department of Labor. The Department of Labor's tax unit is responsible for review of the issue whether a person is properly classified as an employee or independent contractor. It impacts the Department of Labor because it determines whether people are paying into the unemployment trust fund. It also determines if someone is covered under the work comp system. In comparing the two bills he stated one difference is **SB 531** has a civil a civil penalty of \$500 per day for each knowing and intentional misclassified employee. **HB 2772** has a first violation free pass and then the \$500 fine. Secretary Garner feels the free pass would just encourage and allow the "bad actor" to continue misclassifying employees to avoid paying taxes. He stated that **HB 2772** would put the entire investigation and investigation into the Attorney Generals office. At this time, the investigating is done by the Department of Labor and feels that is best to leave it in the Department of Labor and the Department of Revenue and not add a third entity; the Attorney General's Office. The purpose of **SB 531** is to streamline this process and not have so many people investigating the same issue. **SB 531** allows the Department of Revenue to share limited information with the Department of Labor and therefore; make the process faster. Next Secretary Garner called the Committee's attention to documentation, 44-703, Chapter 44-Labor and Industries, Article 7, the Employment Security Law which he passed out to the Committee and staff. (Attachment 5) He stated this is standard language on how to determine if there has been a misclassification.

## CONTINUATION SHEET

MINUTES OF THE Senate Commerce Committee at 8:30 A.M. on March 9, 2006 in Room 123-S of the Capitol.

In closing, Secretary Garner distributed a flow chart to the Committee showing how the determination process would work. (Attachment 6) He stated they are only looking for the “bad actors” and **SB 531** would be the best bill to streamline that process.

Upon conclusion of Secretary Garner’s testimony there was discussion with the Committee and Secretary Garner, and Secretary Wagnon regarding the process of determining who is an independent contractor or employee and the guide lines used. Secretary Garner made reference to a case which the Department of Labor had spent 360 hours thus far in investigation and are not through with that process yet. At this point the Department of Revenue, who is also investigating the same company, cannot share information making the process take longer. **SB 532** is designed to make a much smarter and streamline way to investigate the people that are deliberately not paying taxes. There was also discussion on how the process works for those who follow the rules and unknowingly hire someone who is not registered contract labor. How much authority the Department of Labor has to do audits and to enforce was also discussed. Secretary Wagnon stated they need a better way to find out about the “bad actors” with this bill they would be able to share information with the Department of Labor and it would speed up the process. There was discussion on adding language to the bill tying down the definition of independent contractor.

Upon the conclusion of the discussion with Secretary Wagnon and Secretary Garner, Chairperson Brownlee introduced Representative Holland to give his testimony as a proponent of **SB 531**. Representative Holland presented written testimony. (Attachment 7) Representative Holland stated 1099 missclassification is a destructive business practice that is devastating to Kansas business owners, state officials, and university academia. He stated that if the state of Kansas does not do something about the “bad actors” who are intentionally cheating the government and not paying taxes, the “good actors” who follow the rules will eventually see that others not following the rules are getting by with it. and they will eventually do the same thing. He urged the Committee to support the bill..

Chairperson Brownlee introduced Brent Hayden representing the Kansas Livestock Association, to give his testimony as an opponent of **SB 531**. Mr. Hayden presented written testimony. (Attachment 8) Mr. Hayden stated the Kansas Livestock Association is opposed to **SB 531** in its present form but supports **HB 2772**. They have issues with **SB 531** because of the ambiguity of standards within the law that might create a situation in which an accused employer would incur the expense of legal fees and fines, even when the employer may have simply misapplied the rule to a set of facts that do not have an absolutely clear answer.

Chairperson Brownlee called the Committee’s attention to written testimony of proponents; Bob Jacobi, President, Labor Management Council of Greater Kansas City; Mr. Carmen Schell; PCI Dahmer; Kevin A. Graham, Attorney General’s Office.

With no other questions or discussion Chairperson Brownlee closed the hearing on **SB 531**. She stated her plan was to work this bill on Tuesday morning. She stated tomorrow morning the Committee will work the gift certificate bill and the prompt pay bill. She also stated she had planned to work the IMPACT bill today but due to the time they would work it tomorrow morning.

Chairperson Brownlee adjourned the meeting at 9:30 a.m. with the next scheduled meeting tomorrow, March 10, 2006 at 8:30 a.m. in room 123S.