

Mrs. Kough received a bachelor's degree in sociology from Whitworth College in Spokane, WA, and a masters degree in the same subject from California State University, Fullerton. In 1978, she graduated from UCLA School of Law, where her desire to be a judge first emerged. Once out of school she worked for the Los Angeles Deputy City Attorney for 3 years then entered into private practice. She quickly became a partner in the Los Angeles firm O'Loughlin, Kough & Katz, she handled cases involving criminal, civil, and family law.

Ms. Kough was appointed to the bench in April 1989 by Governor Deukmejian. When lawyers who have worked in her courtroom are asked about Judge Kough, they consistently comment on her pleasant demeanor and uncommonly objective sentencing. She is known for consistently listening to all sides in a case before coming to any decision and maintaining an open mind until a final verdict is reached. Judge Kough recognizes that the legal system can often overlook the personal and emotional needs of those involved, and she makes a concerted effort to take these factors into consideration on the bench.

Judge Kough prides herself on being able to say, "I've made a difference," at the end of the day. Indeed she has made a difference, and at the end of the day we are all the better for it.

LEGISLATION TO DESIGNATE THE
U.S. BORDER STATION IN PHARR,
TX AS THE "KIKA DE LA GARZA
U.S. BORDER STATION"

HON. JAMES A. TRAFICANT, JR.

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 6, 1997

Mr. TRAFICANT. Mr. Speaker, today I am introducing legislation to designate the U.S. border station located in Pharr, TX, as the "Kika de la Garza U.S. Border Station." I am proud to author this legislation honoring a great legislator, my former House colleague, Kika de la Garza.

Kika de la Garza was born in Mercedes, TX, on September 22, 1927. He earned his law degree from St. Mary's University in San Antonio, TX, in 1952. He served in the Navy from 1945 to 1946, and in the Army from 1950 to 1952. He served in the Texas House of Representatives from 1953 to 1965. In 1964, he was elected to Congress, where he was sent back to Congress by the people of the 15th Congressional District of Texas for 16 terms.

In 1981, Kika became the chairman of the House Agriculture Committee. During his 14-year tenure as chairman, Kika compiled an impressive record of achievement and dedicated service to America's farming community. Most notably, Kika went out of his way to foster a climate of cooperation, inclusive and bipartisanship on the committee. Under his able leadership, the Agriculture Committee was able to form a consensus on a number of important and intricate agricultural issues. In the 103d Congress Kika played a lead role in the enactment of legislation revamping and streamlining the U.S. Department of Agriculture. Under his watchful eye, legislation was crafted that made many needed and important changes—without eviscerating those USDA programs that were effective and need-

ed to help America's farmers and protect the public. The bill that ultimately became law made remarkable changes at USDA. Because of Chairman de la Garza's leadership and sage counsel, the bill represented the right way to reinvent Government.

Throughout his 32-year career in Congress, Kika never lost sight of the folks back home. He fought tirelessly for his constituents. He also proved to be an able and effective advocate for American farmers. In no small measure because of his leadership, American agriculture remains the envy of the world.

Kika also is an amateur linguist and a gourmet cook. On many occasions he conversed with foreign dignitaries in their native tongue. Personally, Kika is my friend. I am proud to sponsor this legislation and I urge all my colleagues to support the bill.

H.R. 769, H.R. 770, AND H.R. 771, THE
MISCLASSIFICATION OF EMPLOY-
EES ACT

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 6, 1997

Mr. LANTOS. Mr. Speaker, I rise today to say a few words about the job classification of workers, and to urge my colleagues to support H.R. 769, H.R. 770, and H.R. 771, the Misclassification of Employees Act. H.R. 771 clarifies our tax laws with regard to employee classification. H.R. 769 and H.R. 770 would require debarment from contracting with the Federal Government of any person who has been determined to have willfully misclassified a worker. Misclassification occurs when an employer wrongfully treats a worker as an independent contractor rather than as an employee. I have introduced H.R. 769, H.R. 770, and H.R. 771 as separate bills because they are referred to separate House committees.

Mr. Speaker, small business men and women have contacted many of us to explain some of the important reasons why Congress should take another look at how workers are classified for Federal income and employment tax purposes, as well as for many nontax purposes. We know that confusion with employee classification rules can lead to costly disputes with the IRS with devastating effects on small businesses. These costs include, among others, assessments of back taxes, interest, and penalties for businesses which misclassify workers as independent contractors, as well as the legal costs involved with coming into compliance with or defending against an IRS audit.

There are other issues relating to the misclassification of workers that arise out of the current procedures for determining who is an employee and who is an independent contractor, including the effect of misclassification on the unsuspecting worker, the effect of misclassification on the honest businessman trying to compete with a competitor who has misclassified his workers, and the effect of misclassification on the Federal budget deficit. H.R. 771 would remedy some of the unintended effects that arise out of the current procedures for determining who is an employee and who is an independent contractor.

I would like to make clear from the outset, however, that I agree with and recognize the

appropriate and valuable roles of those who work as independent contractors. This country has benefitted greatly from the spirit and independence of the self-employed individual and I do not think there is anyone who wants to stifle the creativity of these individuals. It is the misuse of the independent contractor status and its serious adverse effect on both employer and worker that concerns me.

My distinguished colleague and friends, CHRIS SHAYS, and I became interested in the classification of workers several years ago when we served together on the Employment and Housing Subcommittee of the Government Operations Committee. We found that the current means for determining employment status has had several negative effects: First, it results in similarly situated employers being treated very differently under tax law; second, it allows—and actually encourages—businesses to undercut competitors through unfair practices; third, it leaves some workers exploited and unprotected; and fourth, it deprives the Federal Government of significant revenue.

Under current law, workers are classified as either employees or independent contractors in one of three ways. First, some workers are explicitly categorized as either employees or independent contractors by statute. Second, workers may be classified as independent contractors under statutory safe harbors enacted in section 530 of the Revenue Act of 1978. Third, if a worker is not classified statutorily, and cannot be classified under the statutory safe harbors, then the worker is classified by applying a very subjective common law test. Most workers fall under this third category.

Current law also allows some employers to misclassify workers if they have a reasonable basis for classifying employees as independent contractors. For example, an employer may rely upon a widespread industry practice as a reasonable basis for classifying a worker as an independent contractor. In fact, under the recently enacted Small Business Job Protection Act of 1996, the industry practice safe harbor was liberalized so that it may apply even if less than one-quarter of an industry classifies certain workers as independent contractors. Our legislation eliminates the safe harbor provisions entirely, since such provisions allow and encourage the misclassification of employees to continue. We thus restore a level playing field and eliminate the unfair competitive advantages which arise due to the misclassification of workers.

Because the common law test is extremely subjective, employers have trouble in properly determining worker classification, and revenue agents often classify workers differently even where the underlying circumstances of their employment are the same. Since a large part of the misclassification of workers is due to a lack of understanding of the laws, clearer rulings and definitions will eliminate a tremendous amount of uncertainty in this area. Our legislation eliminates the restriction on the IRS to draft regulations and rulings on the employment status of workers for tax purposes.

Mr. Speaker, our investigation found that the economic incentives for businesses to misclassify workers as independent contractors are huge. An employer who misclassifies a worker as an independent contractor escapes many obligations, including paying Social Security taxes, unemployment taxes and