

HOUSE BILL No. 2399

By Committee on Commerce, Labor and Economic Development

2-10

1 AN ACT concerning labor and employment; providing protections for
2 freelance workers including payment within 30 days unless otherwise
3 contractually specified; requiring written contracts; forbidding clients
4 from demanding reductions in compensation for timely payment;
5 prohibiting retaliation against freelance workers who seek payment;
6 authorizing the secretary of labor to investigate alleged violations and
7 the attorney general to enforce orders against violators and setting forth
8 penalties for such violations; providing for a private cause of action by
9 freelance workers or by nonprofit organizations on behalf of such
10 workers; establishing an assistance program for freelance workers to be
11 administered by the secretary of labor.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. Sections 1 through 12, and amendments thereto, shall be
15 known and may be cited as the freelance isn't free act.

16 Sec. 2. For purposes of sections 1 through 12, and amendments
17 thereto:

18 (a) "Act" means the freelance isn't free act.

19 (b) "Freelance worker" means any natural person or any organization
20 composed of not more than one natural person, whether or not
21 incorporated or employing a trade name, that is hired or retained as an
22 independent contractor by a hiring party to provide services in exchange
23 for compensation. "Freelance worker" does not include:

24 (1) Any person who, pursuant to the contract at issue, is a sales
25 representative;

26 (2) any person engaged in the practice of law pursuant to the contract
27 at issue and who is a member in good standing of the bar of the highest
28 court of any state, possession, territory, commonwealth or the District of
29 Columbia and who is not under any order of any court suspending,
30 enjoining, restraining, disbaring or otherwise restricting such person in
31 the practice of law; and

32 (3) any person who is a licensed medical professional.

33 (c) "Hiring party" means any person who retains a freelance worker
34 to provide any service. "Hiring party" shall not include:

35 (1) The United States government;

36 (2) the state of Kansas, including any office, department, agency,

1 authority or other body of the state and including the legislative and the
2 judicial branches;

3 (3) a city, including any office, department, agency or other body of a
4 city;

5 (4) a county, municipality or township or any other local
6 governmental entity; or

7 (5) any foreign government.

8 (d) "Sales representative" means a person that solicits orders in
9 Kansas and is an independent contractor, but does not include a person that
10 places orders for the person's own account for resale.

11 (e) "Secretary" means the secretary of labor or the secretary's
12 designee.

13 Sec. 3. (a) Whenever a hiring party retains the services of a freelance
14 worker and the contract between them has a value of \$500 or more, either
15 by itself or when aggregated with all contracts for services between the
16 same hiring party and freelance worker during the immediately preceding
17 120 days, the contract shall be reduced to writing. Each party to the written
18 contract shall retain a copy thereof.

19 (b) The written contract shall include, at a minimum, the following
20 information:

21 (1) The name and mailing address of both the hiring party and the
22 freelance worker;

23 (2) an itemization of all services to be provided by the freelance
24 worker, the value of the services to be provided pursuant to the contract
25 and the rate and method of compensation; and

26 (3) the date on which the hiring party shall pay the contracted
27 compensation or the mechanism by which such date will be determined.

28 (c) The secretary may require additional terms to ensure that the
29 freelance worker and the hiring party understand their obligations under
30 the contract pursuant to rules and regulations adopted by the secretary as
31 provided by section 12, and amendments thereto.

32 Sec. 4. (a) Except as otherwise provided by law, the contracted
33 compensation shall be paid to the freelance worker either:

34 (1) On or before the date such compensation is due under the terms of
35 the contract; or

36 (2) if the contract does not specify when the hiring party must pay the
37 contracted compensation or the mechanism by which such date will be
38 determined, not later than 30 days after the completion of the freelance
39 worker's services under the contract.

40 (b) After a freelance worker has commenced performance of the
41 services under the contract, the hiring party shall not require as a condition
42 of timely payment that the freelance worker accept less compensation than
43 the amount of the contracted compensation.

1 Sec. 5. No hiring party shall threaten, intimidate, discipline, harass,
2 deny a work opportunity to or discriminate against a freelance worker or
3 take any other action that penalizes a freelance worker for, or is reasonably
4 likely to deter a freelancer worker from, exercising or attempting to
5 exercise any right guaranteed under this act or from obtaining future work
6 opportunity because the freelance worker has done so.

7 Sec. 6. (a) A freelance worker who is aggrieved by a violation of this
8 act may file a complaint with the secretary within two years after the acts
9 alleged to have violated this chapter occurred. The secretary shall
10 prescribe the form of the complaint, which shall include, at a minimum:

11 (1) The name and mailing address of the freelance worker and of the
12 hiring party alleged to have violated this act;

13 (2) a statement detailing the terms of the freelance contract, including
14 a copy of such contract if available;

15 (3) the freelance worker's occupation;

16 (4) a statement detailing the alleged violations of this act; and

17 (5) a signed affirmation that all facts alleged in the complaint are true.

18 (b) At the time the secretary receives a complaint alleging a violation
19 of this act, the secretary shall refer the freelance worker to the freelance
20 worker assistance program established in section 10, and amendments
21 thereto.

22 (c) (1) The secretary shall not have jurisdiction over a complaint if:

23 (A) Either party to the contract has initiated a civil action in a court of
24 competent jurisdiction alleging a violation of this act or a breach of
25 contract arising out of the contract that is the subject of the complaint filed
26 under subsection (a), unless such civil action has been dismissed without
27 prejudice to future claims; or

28 (B) either party to the contract has filed a claim or complaint before
29 any administrative agency under any local, state or federal law alleging a
30 breach of contract that is the subject of the complaint filed under
31 subsection (a), unless the administrative claim or complaint has been
32 withdrawn or dismissed without prejudice to future claims.

33 (2) Where the secretary lacks jurisdiction over a complaint, the
34 secretary shall notify the following, in writing, within 10 days of
35 discovering the lack of jurisdiction:

36 (A) The freelance worker; and

37 (B) the hiring party, if the secretary discovered the lack of jurisdiction
38 after sending a notice to the hiring party pursuant to subsection (d).

39 (d) Within 20 days of receiving a complaint alleging a violation of
40 this act, the secretary shall send the hiring party named in the complaint a
41 written notice of complaint. Such notice shall inform the hiring party that a
42 complaint has been filed alleging violations of this act, detail the remedies
43 available to a freelance worker for violations of this act by a hiring party

1 and include a copy of the complaint and notice that failure to respond to
2 the complaint creates a rebuttable presumption in any civil action
3 commenced pursuant to this act that the hiring party committed the
4 violations alleged in the complaint. The secretary shall send such notice by
5 certified mail and shall bear the cost of sending such notice.

6 (e) (1) Within 20 days of receiving the notice of complaint, the hiring
7 party identified in the complaint shall send the secretary one of the
8 following:

9 (A) A written statement that the freelance worker has been paid in full
10 and proof of such payment; or

11 (B) a written statement that the freelance worker has not been paid in
12 full and the reasons for the failure to provide such payment.

13 (2) Within 20 days of receiving the written response, the secretary
14 shall send the freelance worker a copy of:

15 (A) The response;

16 (B) any enclosures submitted to the secretary with the response;

17 (C) materials informing the freelance worker that such freelance
18 worker may bring an action in a court of competent jurisdiction or proceed
19 with the complaint through the department of labor and the relevant
20 procedures and deadlines;

21 (D) any other information about the status of the complaint; and

22 (E) information about the freelance worker assistance program
23 established in section 10, and amendments thereto.

24 (3) If the secretary receives no response to the notice of complaint
25 from the hiring party within the time provided by paragraph (1), the
26 secretary shall mail a notice of non-response to both the freelance worker
27 and the hiring party by regular mail and include with such notice proof that
28 the secretary previously mailed the notice of complaint to the hiring party
29 by certified mail. Upon completing an investigation of the complaint based
30 on the facts available to the secretary, the secretary shall provide the
31 results of the investigation pursuant to section 7, and amendments thereto,
32 to the attorney general and close the case.

33 (f) The failure of the hiring party to respond to the complaint shall
34 create a rebuttable presumption in any civil action commenced pursuant to
35 this act that the hiring party committed the violations alleged in the
36 complaint.

37 Sec. 7. (a) The secretary shall promptly commence an investigation of
38 each complaint filed pursuant to section 6, and amendments thereto, if the
39 secretary has jurisdiction as provided by section 6, and amendments
40 thereto. The secretary shall complete such investigation and, except when
41 a case is closed due to a lack of response from the hiring party as provided
42 by section 6, and amendments thereto, shall issue a final order within 60
43 calendar days after the filing of the complaint. If the case has been closed

1 due to a lack of response from the hiring party, the secretary shall report to
2 the attorney general the results of its investigation and shall advise the
3 freelance worker that the freelance worker may either pursue an action as
4 provided by section 8, and amendments thereto, or may request the
5 attorney general to pursue the action as provided by subsection (d)(2).

6 (b) Upon completing the investigation, the secretary shall issue an
7 order containing findings and conclusions as to whether the hiring party
8 violated this act and provide such order to the freelance worker and the
9 hiring party. Such order is a final order for purposes of judicial review and
10 shall state the right of the freelance worker or the hiring party to appeal as
11 provided in the Kansas judicial review act.

12 (c) If the secretary issues a final order finding that a hiring party
13 violated this act, the secretary shall provide such order to the freelance
14 worker, the hiring party and the attorney general.

15 (d) (1) Upon receipt of an order from the secretary of labor pursuant
16 to subsection (c), the attorney general shall file an action in an appropriate
17 district court to enforce the order and recover damages on behalf of the
18 freelance worker. If the attorney general prevails, damages shall be
19 awarded by the court as provided by section 8, and amendments thereto. If
20 the hiring party is found to have engaged in a pattern or practice of
21 violations of this act in such action, civil penalties shall also be imposed
22 by the court as provided by section 9, and amendments thereto. If the
23 attorney general prevails, the attorney general shall be awarded reasonable
24 costs and expenses.

25 (2) Upon request of the freelance worker and receipt of the report of
26 the investigation by the secretary, the attorney general may pursue an
27 action as otherwise provided by this act against a hiring party that did not
28 respond to the complaint to recover damages on behalf of the freelance
29 worker. Such action shall be in lieu of a civil action by the freelance
30 worker or an organization on behalf of the freelance worker as provided by
31 section 8, and amendments thereto. If the attorney general prevails, the
32 attorney general shall be awarded reasonable costs and expenses.

33 (3) Damages assessed and collected by the attorney general under this
34 subsection shall be remitted to the freelance worker. Penalties based on a
35 finding that the hiring party engaged in a pattern or practice of violations
36 of this act as provided by section 9, and amendments thereto, shall be
37 remitted to the state treasurer in accordance with the provisions of K.S.A.
38 75-4215, and amendments thereto. Upon receipt of each such remittance,
39 the state treasurer shall deposit the entire amount in the state treasury to
40 the credit of the state general fund.

41 (4) The attorney general shall not file a civil action against a hiring
42 party if the secretary's investigation shows that the hiring party only
43 violated section 3 or section 4, and amendments thereto, and that the hiring

1 party has paid the freelance worker in full for all services rendered. The
2 provisions of this paragraph shall not prohibit any action by the attorney
3 general under section 9, and amendments thereto.

4 Sec. 8. (a) (1) A freelance worker alleging a violation of this act may
5 bring an action in any court of competent jurisdiction for damages.

6 (2) A nonprofit organization may bring an action in any court of
7 competent jurisdiction for damages on behalf of a freelance worker if a
8 request is made in writing by the freelance worker, the nonprofit
9 organization provides such service free of charge to the freelance worker
10 and any award of damages is paid in full to the freelance worker. If the
11 organization prevails, the organization shall be awarded reasonable
12 attorney's fees, costs and expenses.

13 (b) Notwithstanding any other limitations contained in article 5 of
14 chapter 60 of the Kansas Statutes Annotated, and amendments thereto:

15 (1) Any action alleging a violation of section 3, and amendments
16 thereto, shall be brought within two years after the acts alleged to have
17 violated this act occurred;

18 (2) any action alleging a violation of section 4, and amendments
19 thereto, shall be brought within five years after the acts alleged to have
20 violated this act occurred; and

21 (3) any action alleging a violation of section 5, and amendments
22 thereto, shall be brought within six years after the acts alleged to have
23 violated this act occurred.

24 (c) Within 10 days after having commenced a civil action pursuant to
25 subsection (a), a plaintiff shall serve a copy of the complaint upon the
26 secretary and the attorney general. Failure to serve such complaint shall
27 not adversely affect any plaintiff's cause of action.

28 (d) A plaintiff who solely alleges a violation of section 3, and
29 amendments thereto, shall bear the burden of proof to establish that such
30 plaintiff requested a written contract before the contracted work began.

31 (e) (1) A plaintiff who prevails on a claim alleging a violation of this
32 act shall be awarded damages as described in this subsection and an award
33 of reasonable attorney fees and costs.

34 (2) (A) A plaintiff who prevails on a claim alleging a violation of
35 section 3, and amendments thereto, shall be awarded damages of \$250.

36 (B) A plaintiff who prevails on a claim alleging a violation of section
37 3, and amendments thereto, and on one or more claims under other
38 provisions of this act shall be awarded damages equal to the value of the
39 underlying contract or \$500, whichever is greater, for the violation of
40 section 3, and amendments thereto, in addition to the remedies specified in
41 this act for the other violations.

42 (3) In addition to any other damages awarded pursuant to this act, a
43 plaintiff who prevails on a claim alleging a violation of section 4, and

1 amendments thereto, shall be entitled to an award for double damages,
2 injunctive relief and other such remedies as may be appropriate.

3 (4) In addition to any other damages awarded pursuant to this act, a
4 plaintiff who prevails on a claim alleging a violation of section 5, and
5 amendments thereto, shall be entitled to damages equal to \$2,000 or the
6 value of the underlying contract, whichever is greater, for each violation
7 arising under such section.

8 (f) An action brought under this section by a freelance worker shall
9 not prevent an action based on the same facts brought by the attorney
10 general pursuant to section 9, and amendments thereto.

11 Sec. 9. (a) (1) When the attorney general determines that reasonable
12 cause exists to believe that a hiring party has engaged in a pattern or
13 practice of violations of this act, the attorney general may commence a
14 civil action on behalf of the state in a court of competent jurisdiction. Such
15 determination may be made by the attorney general independently, based
16 on any investigation made by the secretary as provided by section 7, and
17 amendments thereto, or based upon facts made known by any civil action
18 or actions brought pursuant to section 8, and amendments thereto.

19 (2) An action by the attorney general pursuant to paragraph (1) shall
20 be commenced by filing a complaint setting forth facts relating to such
21 pattern or practice and requesting relief, which may include injunctive
22 relief, civil penalties and any other appropriate relief.

23 (3) Nothing in this section prohibits:

24 (A) A person alleging a violation of this act from filing a civil action
25 pursuant to section 8, and amendments thereto, based on the same facts as
26 a civil action commenced by the attorney general pursuant to this section;
27 and

28 (B) the secretary from sending a notice of complaint pursuant to
29 section 6, and amendments thereto, unless otherwise barred from doing so.

30 (b) In any civil action commenced by the attorney general pursuant to
31 subsection (a), the trier of fact may impose a civil penalty of not more than
32 \$25,000 upon a finding that a hiring party has engaged in a pattern or
33 practice of violations of this act. If the attorney general prevails, the court
34 shall award reasonable costs and expenses of the action and any
35 investigation to the attorney general.

36 (c) All civil penalties assessed and collected under this subsection
37 shall be remitted to the state treasurer in accordance with the provisions of
38 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
39 remittance, the state treasurer shall deposit the entire amount in the state
40 treasury to the credit of the state general fund.

41 (d) Notwithstanding any other limitations contained in article 5 of
42 chapter 60 of the Kansas Statutes Annotated, and amendments thereto, any
43 action by the attorney general alleging a violation of this section shall be

1 brought within six years after the acts alleged to have violated this act
2 occurred.

3 Sec. 10. (a) The secretary shall establish a freelance worker assistance
4 program that provides information and assistance, as set forth in
5 subsection (c), relating to the provisions of this act. Such program shall
6 include assistance by a natural person by phone and email and shall
7 include online information.

8 (b) The secretary shall make available model contracts on the website
9 of the department of labor for use by the general public at no cost. Such
10 model contracts shall be made available in English and Spanish and may
11 be made available in any other language as determined by the secretary.

12 (c) The freelance worker assistance program shall provide the
13 following:

14 (1) General court information and information about procedures
15 under this act;

16 (2) information about available templates and relevant court forms;

17 (3) general information about classifying persons as employees or
18 independent contractors;

19 (4) information about obtaining translation and interpretation services
20 and other courtroom services;

21 (5) a list of organizations that may be used for the identification of
22 attorneys;

23 (6) information about the roles of the secretary and the attorney
24 general in enforcing the provisions of this act;

25 (7) information about the legal options, remedies available and filing
26 deadlines for freelance workers who may have suffered a violation of this
27 act; and

28 (8) other information, as determined by the secretary, related to the
29 submission of a complaint by a freelance worker or the commencement of
30 a civil action pursuant to this act by a freelance worker.

31 (d) The freelance worker assistance program shall include outreach
32 and education to the public on the provisions of this act.

33 (e) The freelance worker assistance program shall not provide legal
34 advice.

35 Sec. 11. (a) Except as otherwise provided by law, any provision of a
36 contract purporting to waive rights under this act is void as against public
37 policy.

38 (b) The provisions of this act supplement, and do not diminish or
39 replace, any other basis of liability or requirement established by state or
40 federal law or common law.

41 (c) Failure to comply with the provisions of this act does not render
42 any contract between a hiring party and a freelance worker void or
43 voidable or otherwise impair any obligation, claim or right related to such

1 contract or constitute a defense to any action or proceeding to enforce, or
2 for breach of, such contract.

3 (d) No provision of this act shall be construed as providing a
4 determination about the legal classification of any individual as an
5 employee or independent contractor.

6 (e) Personal jurisdiction over the parties, including any nonresident,
7 in any civil action brought under this act shall be in any district court in
8 this state having jurisdiction over:

- 9 (1) The freelance worker's place of business or residence;
- 10 (2) the hiring party's place of business or residence;
- 11 (3) the location where the contract was offered or accepted; or
- 12 (4) the location or principal location where the services by the
13 freelance worker were performed.

14 Sec. 12. The secretary of labor and the attorney general may adopt
15 such rules and regulations as necessary to implement the provisions of this
16 act.

17 Sec. 13. This act shall take effect and be in force from and after its
18 publication in the statute book.