



INSTITUTE FOR THE AMERICAN WORKER

Testimony of Jonathan Wolfson

Visiting Fellow, Institute for the American Worker

Before the Kansas House Committee on Insurance

Hearing on H.B. 2602 Establishing requirements for a portable benefit plan for independent contractors, determining types of contributions to such plans and providing a subtraction modification for Kansas income tax purposes.

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Good Afternoon. My name is Jonathan Wolfson and I am a Visiting Fellow at the Institute for the American Worker (I4AW). I4AW is a 501(c)(3) nonprofit organization dedicated to championing worker freedom, fair competition, and modern labor policy for a modern workforce. Our ultimate goal is to empower workers to thrive in the 21st century economy. We educate policymakers and the public on the benefits of freedom, innovation, and collaboration between workers and job creators. More information can be found on www.i4aw.org, a one-stop shop for the best resources on the labor policy debates facing our country.

I previously served as the head of the policy office at the United States Department of Labor during the first Trump administration where I had many occasions to meet independent workers, small business owners, and entrepreneurs who wanted nothing more than to start and run their own business and fulfil their own American dreams.

America's workers are the backbone of our economy and the foundation of our shared prosperity. Yet, many of our labor and employment laws were written for the Industrial Revolution, with one-size-fits-all contracts and that promote adversarial relationships between workers and employers. Yet one-size-fits-all doesn't work, because today, our workforce is dynamic, diverse, and independent. Millions of Americans build careers in finance, health care, retail, professional services, and self-employment. They are entrepreneurs, employees, small business owners, and independent contractors—each pursuing opportunity in their own way. In fact, there are over 70 million Americans who work as independent contractors today, building, designing, helping, and caring for their neighbors near and far.

At the Institute for the American Worker, we support the rights of workers and businesses to enter into agreements that best suit their needs, whether that is full or part time employment, independent work, or other arrangements.



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One way many independent workers would like to arrange payment is by having some portion of their agreed rate diverted into an account used to pay for health insurance, health care, retirement, or other kinds of private social insurance programs. Many people refer to these accounts as “portable benefits accounts” because the accounts belong to the worker and can be used to acquire benefits for the worker on the private market.

Unfortunately, because most labor and employment laws were designed for an era where independent and freelance work were small segments of the economy, this kind of account poses a risk to the businesses that hire an independent worker, which means most businesses refuse to enter into such an arrangement.

That’s because Kansas, like most states, has a multi-factor balancing test to determine whether a worker is properly classified as independent. One of the factors Kansas and other states use in their test is whether the business provides “employee benefits” to the worker. Thus, under current law, if a business offers its employees a tax-preferred healthcare debit card for paying deductibles and other out of pocket healthcare expenses, that business would refuse to offer a similar type of payment to its non-employee contractors because it would increase the risk the Kansas Department of Labor would find that contractor to be “misclassified.”

HB 2602 fixes that problem by taking two steps:

1. Paying a contractor with dollars in a benefit account does not change the contractor into an employee
2. Contractors who receive dollars in a benefit account do not pay Kansas income tax on those dollars

We would anticipate that many businesses and workers will decide to create and fund portable benefits accounts once these legal changes occur. Businesses will be interested in finding ways to encourage workers to continue to perform beneficial work, without increasing legal risks. And independent workers will appreciate having a tax-advantaged way to pay for insurance, retirement, child care, and healthcare.

Independent workers and the businesses that hire them should be free to make this compensation decision and we applaud the legislature for proposing to clarify the law and ensure these kinds of beneficial arrangements are allowed and encouraged in Kansas.

Thank you for your time. I am happy to answer any questions you may have.