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Amber Shultz, Secretary

Laura Kelly, Governor

**Testimony on HB2333  
House Commerce, Labor & Economic Development Committee  
Amber Shultz, Secretary KDOL  
February 15, 2023**

Mr. Chairman & Committee Members,

I am Amber Shultz, the Secretary of the Kansas Department of Labor. Please accept this written testimony in response to HB 2333. I want to begin by saying that the agency looks forward to continued collaboration with the legislature to find solutions and to be good partners as we move the agency forward. There are provisions in this bill that we support, some provisions that we feel are policy decisions to be made by this body, and some provisions that we fear could be detrimental to our modernization progress and/or create non-conformity issues with federal law.

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I would like to start by speaking about the provisions that our **agency supports**.

**Allowing for the Legislative Coordinating Council (LCC) and Unemployment Compensation Modernization and Improvement Council (UCMIC) to extend the new Unemployment Compensation Insurance (UI) System implementation to be extended with cause (K.S.A. 44-772(b)).**

This provision provides authority for the LCC and the UCMIC to extend the deadline for the implementation of the new UI system. Also, it requires the secretary, prior to 30 days before the existing deadline, to notify the LCC and UCMIC of the need for an extension. Lastly, it allows a retroactive extension if required. We strongly support the goal of this provision.

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KDOL is **neutral** on the following provisions.

**Notifying all active employers about work search noncompliance reporting options (K.S.A. 44-705(c)(2)).**

The agency takes no issue with notifying employers of avenues for reporting noncompliant work search issues.

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**Making the versions of K.S.A. 44-705(c)(2)(A) and (B) applicable to individuals participating in the My Reemployment Plan, except for those exempt from work search (K.S.A. 44-775(a)(5)).**

Aside from the concerns described below regarding K.S.A.44-705(c)(2), the agency takes no issue with compliance with those participating in the My Reemployment Plan.

**Annual reporting from the Secretaries of Labor and Commerce regarding the My Reemployment Plan (K.S.A. 44-775(d))**

HB 2703 contains provisions for K.S.A. 44-775(d) to provide an annual report on the My Reemployment Plan.

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Finally, the provisions that KDOL **opposes** as written due to potential compliance issues with federal law or concern for risk of existing and future operations.

**Establishing procedures for disqualifying UI claimants from receiving benefits for failing to attend a job interview without notice (K.S.A. 44-705(c)(2)(A), (B), (C), (D))**

HB 2333 assumes all individuals searching for work are unemployed and collecting UI benefits. By law, the agency cannot share with potential employers who is currently claiming unemployment benefits and who is not (K.S.A 44-714(e)). Therefore, in order to implement this section, an employer would have to submit every case of a failure comply with the provisions of the act to KDOL, and each claim submitted through the identified portal would have to be reviewed by the agency to determine whether or not the individual is a current unemployment claimant, and then investigated.

**Avoiding Additional IT Costs for Existing System and Modernization**

As the committee is keenly aware, the agency is 8 months in (1/3 of the way) of a 26-month implementation to a new UI system. While the provisions in HB 2333 are technologically feasible in the current mainframe system, the agency desires to reduce code and data modification to ensure both a clean data migration and mitigate the probability of vulnerabilities due to new workstreams. By requiring the development of an online portal where employers can submit single or multiple complaints of individuals failing to appear at scheduled interviews upon publication in the statute book, this bill would necessitate new development on the legacy system as well as an addition to the scope of work for modernization. Instating this piece solely into the new UI system, as opposed to both, would be much cost effective and efficient than creating new code for a system that we are moving away from. It is also important to note that by adding this, there is an inherent risk that these provisions are outside of the budget and scope of the current modernization contract.

The modernization project is on-time, in scope, and within budget with 18 months until launch. Gap analysis, design, and system configuration and customization are already underway. HB 2333 could put the modernization project at-risk.

### **Existing Process for Reporting Job Refusals**

The agency currently has a process for employers to provide information on job refusals. In 2022, only 202 job refusals were processed. Since the beginning of this year, only 19 have been filed. Once the agency has received notification from the employer, the claimant has 10 days to respond. Changing this to 5 days would require additional staffing. Additionally, claimants must answer if they “refused work” on each weekly claim filed. If they affirm, the agency initiates the same process providing time for the claimant and the employer to respond. Each determination can take from 7-10 days from the due date on the employer form. KDOL would readily commit, in cooperation with the business community, to promote this process to address the intent of HB 2333.

### **Existing Work Search Audits**

Work search audits are currently processed through the My Reemployment Plan by the Department of Commerce. Violations are relayed to KDOL, and a redetermination of benefits is then made. This bill will extract this process from the My Reemployment Plan and redirect it back to KDOL. To process this workload, additional staff will be needed to investigate, adjudicate, and manage the process.

### **Due Process and Timeline for Implementation**

Of significant concern, K.S.A. 44-705(c)(2)(D) functionally provides no opportunity for an individual claiming benefits to respond to an employer’s assertions, which is a violation of the fundamental rule of due process as it does not give the claimant the opportunity to be heard.

Additionally, several provisions impose potentially unworkable deadlines for both the agency and claimants.

### **Federal Funding and Staffing**

The agency would also like to emphatically reiterate that current funding levels from the U.S. Department of Labor (USDOL) are not sufficient to cover day-to-day operating expenses, burndown of the pandemic, and modernization. The agency will require additional staffing to meet the requirements and timelines indicated and will adversely impact the state general fund.

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I would like to thank the committee for their patience with our lengthy testimony. Our agency understands the intent of this legislation and we wanted to address key aspects. This legislation has provisions that the agency supports both as a proponent and neutral, but the agency also opposes some provisions. The committee should be aware that HB 2333 is a significant piece of legislation that touches many aspects of the unemployment system, both in its current and future state. We ask to work with the business community to promote existing avenues to address the intent of the legislation as to mitigate any risk of the UI modernization project as well as lessen the burden on the state general fund. As part of their normal process for all state legislation, USDOL will review this legislation for conformity with the requirements of the Social Security Act (SSA) and the Federal Unemployment Tax Act (FUTA). KDOL has asked USDOL's Legislative Division to expedite review this legislation for any potential conformity issues, but we have not yet received a response at this time.

Mr. Chairman, I thank the committee for your willingness to work with our agency and would like to reiterate our desire to work with you and the stakeholders involved to find the appropriate solutions to the concerns that this bill is designed to address.