
Amber Shultz, Secretary

Laura Kelly, Governor

Neutral, Written Only Testimony on HB 2399
Committee on House Commerce, Labor, and Economic Development
Kansas Secretary of Labor Amber Shultz
February 20, 2023

Mr. Chairman & Committee Members,

I am Amber Shultz, the Secretary of Labor at the Kansas Department of Labor. I am submitting neutral, written testimony on House Bill 2399.

HB 2399 requires the Secretary of Labor to develop contract criteria for freelance workers and make available model contracts on the Department of Labor website. Provisions of the bill include protections for freelance workers including payment within 30 days unless otherwise contractually specified; requiring written contracts; forbidding clients from demanding reductions in compensation for timely payment; prohibiting retaliation against freelance workers who seek payment; authorizing the secretary of labor to investigate alleged violations and the attorney general to enforce orders against violators and setting forth penalties for such violations; providing for a private cause of action by freelance workers or by nonprofit organizations on behalf of such workers; establishing an assistance program for freelance workers to be administered by the secretary of labor.

The Secretary shall implement rules and regulations to oversee violations of this act and investigate complaints from freelance workers. Results of the investigation shall be submitted to the Attorney General's Office. The Secretary shall establish a freelance worker assistance program that provides the following:

1. General court information and information about procedures under this act
2. Information about available templates and relevant court forms
3. General information about classifying persons as employees or independent contractors
4. Information about obtaining translation and interpretation services and other courtroom services
5. A list of organizations that may be used for the identification of attorneys
6. Information about the roles of the secretary and the attorney general in enforcing the provisions of this act
7. Information about the legal options, remedies available and filing deadlines for freelance workers who may have suffered a violation of this act; and
8. Other information as determined by the secretary pertaining to submission of a complaint or commencement of a civil action.

The assistance program shall also include an outreach and education component. The freelance worker assistance program shall not provide legal advice.

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The agency will need to create this program from the ground level. KDOL does not have funding available for this program. KDOL will need additional SGF funding to cover the costs of creating and implementing this.

Under current rules the Freelance Worker would have to hire a private attorney to seek recovery of the alleged nonpayment. The attorney costs alone can be more than the nonpayment resulting in no action being taken by the Freelance Worker to recover their money. This statute would offer protection to the Freelance Worker and give them another option of recovery.

KDOL Labor Conciliator's would provide the aggrieved parties an avenue to settlement ,thus avoiding future expenses litigating the dispute. KDOL Labor Conciliator's already administer the Kansas Wage Payment Act, which investigations and conciliation would follow a similar path.

Although Labor Conciliator's provide mediation there would be a "grey" area in determining if the Freelance Worker fulfilled the duties of the contract. This "grey" area could result in flawed decisions.

We request that this policy be accompanied by SGF. KDOL's estimated cost for building a database to organize and track the information submitted by claimants is \$150,000. Program staffing of 2 FTE - \$290,000 (includes benefits and overhead). Staff is made up of 1 Labor Conciliator and one Attorney. If these and any other unforeseen costs created by this legislation are not funded, we ask for a delay in creation and implementation until the funding is provided.

Mr. Chairman, that concludes my testimony on HB 2399. I thank you and the committee for your time and willingness to work with our agency.