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Testimony in Opposition to HB 2353
House Commerce, Labor and Economic Development Committee
March 14, 2017

Chairman Mason and members of the Committee:

My name is Mike Burgess. I am the Director of Policy & Outreach at the Disability Rights Center of Kansas (DRC). DRC is a public interest legal advocacy organization that is part of a national network of federally mandated organizations empowered to advocate for Kansans with disabilities. DRC is the officially designated protection and advocacy system in Kansas. DRC is a private, 501(c)(3) nonprofit corporation, organizationally independent of state government and whose sole interest is the protection of the legal rights of Kansans with disabilities.

Mr. Chairman, thank you for the opportunity to share our opposition to the bill as currently drafted and our proposed changes for HB 2353.

As written, HB 2353 would insert new language changing who would qualify as a “qualified vendor” under the use law. Both our organization and many who we have spoken with in the disability community have strong concerns about the addition on page 1, lines 26 through 28. This language explicitly inserts into the current law that those who pay less than minimum wage are eligible to be use law vendors. This language explicitly endorsing subminimum wage has never been in the law defining who can be a use law vendor.

This language is absolutely contrary to the growing national consensus that paying people with disabilities less than the minimum wage is a tired and old business model that is outdated and treats people with disabilities as “less than” their peers without disabilities. Our understanding is the supporters of this bill are arguing that use law vendors have typically been able to pay subminimum wage, even though the law has never been explicit regarding subminimum wage and use law vendors.

If use law vendors have been operating successfully under the current law, which does not spell out subminimum wage as an inherent option, then why do they need a change to the law inserting this language?

This new language inserting subminimum wage also goes against the existing Kansas Employment First law (attached to the back of my testimony), which places a statutory preference for competitive employment in integrated settings. Paying subminimum wage to people with disabilities will never meet the definition of competitive employment under Kansas law. Employing people with disabilities in segregated settings will never meet the definition of an integrated setting under Kansas law.

In 2011, Kansas (with the leadership exhibited by this committee) was the first state in the nation to pass an Employment First law. Kansas policymakers should be rightfully proud that since passing its Employment First law the clear majority of states have followed suit and have either an official policy or law on the books endorsing Employment First.

The new language inserting subminimum wage runs contrary to Kansas policy and the direction of the nation on this issue.

Kansas has been a trailblazer in prioritizing people with disabilities need to be paid competitive wages in integrated settings. This bill is a step in the wrong direction and unfortunately would start to undo the past good work by the Kansas Legislature.

You may be shocked to find out that in this day and age that people with disabilities can be paid less than minimum wage. Unfortunately, this is a real problem. People with disabilities in Kansas can and are paid less than minimum wage. Many are paid mere pennies an hour, or a “piece rate” where they only get a few cents for each task they do. The settings where people with disabilities are being served often segregated, where it is mostly or entirely people with disabilities. This is known as a setting that is “non-integrated.”

Thankfully, the national trend has clearly been to move away from these settings that are non-competitive wages and non-integrated. The national trend is that people with disabilities are more and more being paid a similar wage to anyone else doing the job and at least minimum wage or above, which nationally is referred to as a “competitive” wage. The national trend is that people with

disabilities have jobs in integrated settings where they work alongside people without disabilities.

Many states and the federal government are taking action by creating disincentives for paying less than minimum wage or disallowing it altogether in certain situations. This bill would do the opposite and swims against the growing national tide against paying people with disabilities less than the minimum wage. The following are a few of the provisions that demonstrate the national trend on subminimum wage:

- **Kansas Employment First Act** – Prioritizes competitive, integrated employment for people with disabilities as the first option. This means people with disabilities are paid a competitive wage comparable to people without disabilities in settings that are not segregated. In 2011 Kansas became the first state in the nation to pass an Employment First Law. (This is attached to my testimony.)
- **Workforce Innovation and Opportunities Act (WIOA)**
 - A detailed new process is created, the net effect of which helps discourage the use of non-competitive, non-integrated employment (Section 511 of WIOA).
 - Schools are prohibited from contracting with subminimum wage providers who pay less than minimum wage.
- **Center for Medicare and Medicaid Services “Settings Rule”** – Places strong limitations against using Medicaid dollars for long-term use of sheltered workshop, enclaves and non-integrated settings.
- **Rehabilitation Act**
 - Vocational rehabilitation does not fund sheltered workshop placements where they are not integrated and where less than minimum wage is paid.
 - Businesses such as sheltered workshops, enclaves and others who are established for the purposes of employing people with disabilities are inherently not considered integrated settings under the Act.
 - New Section 511 in Rehab Act includes restrictions for persons under 25 (24 and under) from entering sub-minimum wage employment. The Act also requires Vocational Rehabilitation programs to provide career counseling to all persons known to us who are working for sub-minimum wage employer.

- New regulations to Rehab Act, Title I declares that any "business" whose primary purpose for which it was established is employment for people with disabilities is not considered as meeting the definition of "integrated" as used in the Rehab Act and therefore, Kansas Employment First Law (it uses the definition from the Rehab Act when put into law).
- **States of New Hampshire and Maryland** – Have banned paying people with disabilities less than minimum wage entirely, statewide.
- **State of Washington** – Has closed the front door to sheltered workshops which pay subminimum wage in segregated settings.
- **Vocational Rehabilitation programs** in every state are prohibited from supporting sub-minimum wage employment and also cannot support jobs in non-integrated settings even if wages are higher than minimum wage.

In closing, if lines 26 through 28 are removed from the bill, we would no longer be opposed to it.

Thank you for the opportunity to share our concerns with you. I would be happy to stand for questions at the appropriate time.

Attachment 1

Kansas Statute Chapter 44; Article 11; Section 36-38 Kansas Employment First Law

44-1136. Kansas employment first initiative act; definitions; policy declaration.

(a) This act shall be known as and cited as the Kansas employment first initiative act. As used in this act:

(1) "Competitive employment" means work in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(2) "Integrated setting" means with respect to an employment outcome, a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(b) It is hereby declared to be the policy of the state of Kansas that competitive and integrated employment shall be considered its first option when serving persons with disabilities who are of working age to obtain employment. This policy applies to programs and services that provide services and support to help obtain employment for persons with disabilities. All state agencies shall follow this policy and ensure that it is effectively implemented in their programs and services. Nothing in this section shall be construed to require any employer to give preference to hiring people with a disability.

History: L. 2011, ch. 102, § 1; July 1.

44-1137. State agencies; competitive integrated employment of disabled individuals; rules and regulations. (a) All state agencies shall coordinate efforts and shall collaborate within and among such agencies to ensure that state programs, policies, procedures and funding support competitive and integrated employment of individuals with disabilities. All state agencies shall, whenever feasible, share data and information across systems in order to track progress toward full implementation of the act.

(b) State agencies are authorized to adopt rules and regulations to implement this act.

History: L. 2011, ch. 102, § 2; July 1.

44-1138. Kansas employment first oversight commission; membership; duties. (a) There is hereby established a Kansas employment first oversight commission consisting of seven members. The commission shall consist of the following members who shall serve for a three-year term:

(1) Four members who are persons with a disability or who are knowledgeable of disability issues and who are not state employees, of whom:

(A) One shall be appointed by the speaker of the house of representatives;

(B) one shall be appointed by the minority leader of the house of representatives;

(C) one shall be appointed by the president of the senate; and

(D) one shall be appointed by the minority leader of the senate;

(2) three members shall be appointed by the governor as follows:

(A) One member who is experienced with employment service programs;

(B) one member who has disability employment experience; and

(C) one member with business employment experience.

(b) The governor shall designate one member to convene and organize the first meeting of the commission at which the commission shall elect a chairperson and a vice-person [vice-chairperson] from among its members. The commission shall meet at least four times a year and, additionally, whenever called by the chairperson. A quorum shall consist of four members. All actions of the commission shall be taken by a majority of the members of the commission.

(c) Each member of the commission shall be paid mileage and other expenses as provided by K.S.A. 75-3212, and amendments thereto.

(d) The focus of the commission shall be on increasing the number of Kansans with disabilities in competitive integrated employment. To increase the number of Kansans with disabilities achieving competitive integrated employment, the commission shall work collaboratively with state agencies that provide services specifically to assist Kansans with disabilities to become employed, and privately owned or operated organizations, non-profit organizations and community-based organizations that receive moneys from the state or federal government, or both, to provide services and support that assist individuals with disabilities to obtain, maintain or regain competitive and integrated employment. In addition the commission may promote and educate state agencies and stakeholders regarding the employment first initiative.

(e) At the commencement of each regular session of the legislature, the commission, in the form of an annual report, may make recommendations to the governor, legislature and state agencies

on strategies to increase the number of Kansans with disabilities in competitive integrated employment. The lead agency shall cause the report to be published on the internet on the lead agency's web site.

(f) The governor shall select from the cabinet agencies the lead agency responsible for compiling data and coordinating the preparation of the annual report at the direction of the commission. The activities of the commission and lead agency pursuant to this section shall be done within existing grants and resources.

History: L. 2011, ch. 102, § 3; L. 2013, ch. 84, § 1; July 1.

