

# KANSAS TRIAL LAWYERS ASSOCIATION



To: Representative Les Mason, Chairperson  
Members of the House Commerce Labor and Economic Development  
Committee

From: Sean McGivern  
218 N. Mosley St., Wichita KS 67202  
(316) 266-5020  
sean@graybillhazlewood.com  
*Testifying on behalf of the Kansas Trial Lawyers Association*

Date: February 13, 2018

**RE: HB 2461; Awarding costs and attorney's fees to employees prevailing in unpaid wage claims under the Kansas Wage Payment Act (SUPPORT)**

My name is Sean McGivern, and I am a Wichita attorney practicing employment law. I am here on behalf of the Kansas Trial Lawyers Association. Thank you for allowing me to testify in support of adding an attorney-fee shift to the Kansas Wage Payment Act to incentivize private enforcement of the law. This legislation is needed to protect wage earners from illegal practices that persist in our State.

Let's start with the Act. It is simple, fair, and reasonable. It says people must be paid what they earned, in money, within prescribed timeframes. The Act prohibits the withholding of wages as penalties or fines, or to pay for certain items the employer should pay for. This law has been around for 45 years. But I'll tell you, it is not being enforced.

Some companies fine their employees for customer complaints. For example, an employee who receives a \$20-piece rate for a job is fined \$50 if the customer complains. Some companies don't pay their laborers if the customer doesn't pay. Some companies deduct 30 minutes per day from employees who don't get lunch breaks. Deductions for breakage, penalties, inventory shortage, or to cover the company's own expenses like gas also occur frequently in Kansas.

And then there is misclassification, which was outlawed in 2006. K.S.A. 44-766(a). Misclassification hurts a lot of people. It means no tax revenue to the State. For workers, it means no unemployment, no workers compensation, no withholdings taxes, no benefits, and not even a credit towards Social Security earnings. When it's all over, misclassified people receive a 1099

and years of tax problems. Misclassification is frequently associated with the illegal practices I mentioned earlier as well as undocumented workers. After all, misclassification is keeping someone "off the books" and outside the protection of the law. We need more enforcement of the Act to diminish the incentives of illegal employment practices.

Most wage disputes involve less than \$2,000.00. Simple economics keeps us from taking on most of these cases. Some we can handle pro bono or find relief under federal law. Still, I tell you in no uncertain terms, we have a set of individuals and businesses who knowingly break the rules. Why? There is not enough enforcement. It is that simple.

HB 2461 fixes the problem by incentivizing the private bar to prosecute claims of wage theft. Frankly, it is the truest form of privatization because it costs the State nothing and lets the market resolve these problems. Only companies found to have violated the law, by a judge or jury, will pay the enforcement costs. The court will determine the reasonable attorneys fee to be assessed after notice and an opportunity to be heard. This is preferable to the State hiring more investigators and law enforcement officers, which can only be accomplished by raising taxes.

If you pass this legislation, the private bar will clean up many wrong, unfair, and illegal employment practices that occur in our great State. Many employees will be put back on the books, the State will collect more in revenues, and the incentives of employing undocumented workers will be diminished. This is a great piece of legislation and it deserves your support. Thank you for this opportunity to testify today.