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

From: Joseph A. Schremmer

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)**

I am a private citizen and attorney in the state of Kansas. I testify today on my own behalf and not as a representative of any other person including my law firm or the University of Kansas School of Law. I welcome the opportunity to testify before this Committee about HB 2461. This bill would amend the Kansas Wage Payment Act (Act) to award employees who successfully prove a claim for unpaid wages their court costs and attorney's fees. HB 2461 only provides a mechanism for enforcement of the Act's existing requirements—it requires nothing new or more of Kansas employers. This bill is about shifting the burden of enforcing existing law in the fairest and most economically efficient and cost-effective manner. That is why I strongly support HB 2461.

The Legislature passed the Act in 1973, recognizing that Kansas was very near the bottom of states in terms of providing a remedy to employees for not being paid owed wages. The Act was needed to fill a gap in existing federal and state law and bring Kansas in line with other states. It is a straightforward law that simply requires employers to timely pay agreed-upon wages to their employees.

Unfortunately, the Act is not being adequately enforced. The Act empowers unpaid employees to sue their employers to recover wrongfully withheld wages. However, it is often more expensive to hire a lawyer to bring a lawsuit than the amount of the wage claim is worth. As a result, many aggrieved employees file complaints with the Kansas Department of Labor, which is also authorized to enforce the Act. But the Department of Labor lacks the resources to pursue most claims, even worthy ones. In summary, in the status quo employees have the right to be paid their

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owed wages under the Act, but lack a meaningful way to enforce this right. Adding an attorney-fee shift to the Act would fix this problem in a highly efficient and cost-effective manner.

Lack of enforcement has dire consequences not only for the employees who aren't paid, but for honest employers, too. Under the Act as it currently exists, dishonest employers willing to break the law by not paying their employees enjoy a business advantage over honest employers who scrupulously pay their employees. Because the Act does not include an attorney-fee shift, it provides no disincentive to cause dishonest employers to follow the law. This is essentially the same problem as we see in the lax enforcement of immigration employment laws, which gives employers willing to skirt the law a leg up on employers who follow it.

The inescapable conclusion is that the Act must be better enforced. There are primarily two options. Either the State could increase funding to the Department of Labor to provide for more investigators and more state-employed attorneys to focus on wage complaints. Or it could pass HB 2461 to incentivize individual employees and private lawyers to pursue claims outside of the administrative system, essentially privatizing the law's enforcement. This latter option is by far the most economic and efficient method of enforcement.

Privatizing enforcement of the Act would have four distinct advantages to the people of Kansas:

1. It would cost the State budget and taxpayers nothing. Whereas increasing the Department of Labor's budget would be funded by taxpayers, amending the Act to include an attorney-fee shift would require no additional funding. Instead, it would shift the costs of enforcement from the State to the employers who violate the Act. These are the very people whose actions necessitate enforcement. In this way, attorney-fee shifts are highly economically efficient and place the burden of enforcing the law on those that require us to enforce it.
2. It would deter employers from violating the Act and decrease the need for enforcement over time. If the Act included an attorney-fee shift like the one proposed in HB 2461, employers who are found by a court to have violated the Act would owe not only the unpaid

wages, but also the injured employee's costs and attorney's fees. Employers who violate the Act and are required to pay the employee's fees are unlikely to violate the Act again in the future. Likewise, other employers in the same industry or community are likely to follow the Act to avoid the expense of litigating a losing wage claim themselves. As more and more employers become cognizant of this disincentive for violating the Act, the instance of violations will decrease and so will the need for enforcement.

3. It would encourage the speedy resolution of wage disputes. Under HB 2461, employers who receive notice of an employee's meritorious claim for unpaid wages under the Act would have a strong incentive to settle the matter early without the need for litigation before the parties incur large attorney's fees. Employers who receive notice of a frivolous claim, however, have no more incentive to settle under HB 2461 than they do under the status quo.
4. It would incentive only meritorious lawsuits, not frivolous ones. Under HB 2461, employees would receive their costs and attorney's fees *only if they prove their case*. Employees are not entitled to recover their costs and fees if the employer prevails. Thus, if an employee brings a frivolous claim or the employer has a meritorious defense, the employee alone bears her costs of pursuing the lawsuit. HB 2461 therefore would not encourage frivolous lawsuits.

When the Act originally passed, this Committee acknowledged that Kansas was near the very bottom of states in terms of providing a remedy for employees who were not paid their wages. Today, Kansas again finds itself near the very bottom. *Thirty-Nine states* have an attorney-fee shift in their wage payment laws; only seven, including Kansas, do not. The vast majority of other states recognize the advantages of privatized enforcement of wage claims. These are the same advantages that this Legislature recognized when it added an attorney-fee shift to the Kansas Consumer Protection Act and the Kansas Minimum Wage and Maximum Hours Law. As it did in 1973, this Committee should lead Kansas out of the basement by passing HB 2461 and give meaning to the rights enshrined in the Kansas Wage Payment Act.