DISABILITY RIGHTS CENTER of KANSAS
EQUALITY ♦ LAW ♦ JUSTICE

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February 9, 2023
Opponent for HB 2275
Oral Testimony

Chairman Tarwater 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. Our sole interest is the protection and enhancement of the rights of Kansans with disabilities.

We stand in strong opposition to HB 2275 as written, as it would for the first time ever expand the tax credit in current law to now benefit sheltered workshop providers that pay people with disabilities less than minimum wage.

Current law is clear. If an entity pays people with disabilities less than minimum wage, they cannot benefit from this program. This undoes that.

Most Americans have no idea that you can pay people with disabilities less than minimum wage. This practice, often called “sub-minimum wage,” is a relic of the past. People are often shocked and in disbelief to find out that you can pay people with disabilities less than minimum wage.

Paying people with disabilities less than minimum wage is bad enough. Allowing non-profits that pay people with disabilities less than minimum wage to benefit from this tax credit program adds insult to the injuries Kansans with disabilities have already suffered.

Under the current law, to access these tax credits certified businesses and non-profits are required to pay their workers at least minimum wage, in addition to other requirements to qualify for this incentive (health insurance, etc.). This bill changes that current policy to instead allow sheltered workshops that pay people with disabilities less than minimum wage to benefit from this tax credit program. Here is how. All a sheltered workshop would have to do is have a separate enclave of employees who they do pay at least minimum wage, and they could then access these income tax credits and use them to get employers to buy their products from this enclave, or “division” as the bill reads. The providers that run sheltered workshops could then use the revenue they get from these contracts to prop up and subsidize their sheltered workshops operations.

Thankfully, it is getting harder and harder to pay people with disabilities less than minimum wage. As a nation, we are moving away from paying people with disabilities less than minimum wage. Numerous states have done away with this practice altogether. Nationally, leaders in Congress from both parties are working on provisions to have providers move away from subminimum through transformation initiatives. News media exposes have educated the public about this unjust practice of paying people with disabilities less minimum wage. Thankfully, Kansas is also moving away from paying people with disabilities less than minimum wage. All of the Goodwill Industries in Kansas have stopped paying people with disabilities less than minimum wage. Additionally, the number of I/DD providers paying people with disabilities less than minimum wage has decreased by 40% over the last couple of years – decreasing from 38 providers engaging in this practice in 2018 to only 23 today. There are now only a small handful of Kansas providers left that engage in these tactics, and those numbers are shrinking. Many Kansas I/DD providers have stopped paying subminimum wage altogether.

More and more Kansas businesses are deciding not to do business with entities that pay people with disabilities less than minimum wage. Under this bill, entities that pay subminimum wage can use these tax breaks to drive more business their way, and use that new revenue to underwrite and support the unjust practice of subminimum wage.

We have made a lot of progress in Kansas moving away from paying people with disabilities less than minimum wage. We still have a ways to go. However, this bill as drafted would take Kansas in the opposite direction and undo that progress by giving sheltered workshop providers additional revenue to keep treating people with disabilities unjustly.

Five years ago DRC worked with other stakeholders and this Committee to help create the current incentive to help increase competitive, integrated employment opportunities for people with disabilities. That bill included a clause to sunset the credit after five years.

We understand that tax credits in the current law go away at the end of tax year 2023. While we are absolutely opposed to this bill as currently drafted, there are several ways the committee could amend the bill to bring DRC and many other stakeholders in the disability community on board to support it.

I will cover three different ways the committee could do that with valid policy considerations for each.

Option 1 - Simply change the sunset in the current law to extend the tax credits to 2028. Disability stakeholders came together 5 years ago and agreed to the provisions in the current law. It was a delicate compromise. This option would continue the tax credits but respect and abide by that compromise. We are also okay with increasing the total amount of the tax credit from $5 million to $10 million if the committee desires to do so.

Option 2 – If you want expand the tax credit to other entities, then keep the provisions in the law that do not allow entities who pay people with disabilities less than minimum wage to offer these tax breaks and benefit from this program. However, under this option, the bill would be amended to allow all I/DD providers that do <u>not</u> pay subminimum wage to access this program, even if they do not meet the threshold of percentage of persons with disabilities employed. This would meet the goals of the organization pushing this bill, because more disability providers would be able to access and benefit from this program. By far, the vast majority of I/DD service providers do not utilize a 14c certificate and do not pay sub-minimum wage. Option 2 would be a reward for current I/DD providers that have already done away with sub-minimum wage. It would also be a great incentive to those few providers that still pay sub-minimum wage to move away from it in order to gain access to these tax credits (As was mentioned earlier in my testimony, there are currently only 23 I/DD service providers in Kansas who have a 14c certificate.)

Option 3 – Amend the bill to allow those who have a 14c certificate to access this credit for their divisions that do competitive, integrated employment (as proposed in the bill), but <u>**ONLY IF**</u> the entity agrees to phase out and eliminates paying sub-minimum wage over 3 years, with a provision that requires them to payback the tax credits if they don't follow-through and stop paying sub-minimum wage by the end of that period. This is another way to offer an incentive to for the remaining 23 14c certificate holders to transition to competitive, integrated employment.

As I said before, we absolutely want to see this program be extended beyond the current sunset, but want to see it continued in one of the 3 ways I outlined above.

Thank you for the opportunity to speak on this bill. I would be happy to stand for questions at the appropriate time.