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Testimony in Opposition to HB 2356
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 concerns and proposed changes for HB 2356.

This bill as drafted allows using taxpayer dollars to incentivize the purchasing of goods and services from certain employers, including those who pay people with disabilities less than minimum wage. The incentive is that it allows bidders for state contracts to obtain up to a 10% cushion to bid higher on state contracts if they purchase from certain employers who hire people with disabilities, including those who pay less than minimum wage.

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 are 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 more and more are 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. This bill provides taxpayer funded incentives for those who pay less than minimum wage for people with disabilities.

Proposed Changes

The following are two changes we would like to propose to HB 2356:

Page 1, line 29, after “responsible bid” by inserting: “as long as such qualified vendor otherwise satisfies the requirements of a certified business under subsection (g) of this act”

Page 3, by deleting all of lines 39 through 43 and in its place inserting the following:

“(iii) is an individual with a disability pursuant to the disability standards established by the social security administration as determined by the Kansas disability determination services under the Kansas department for children and families.”

Reasons for these two amendments:

The new language on Page 1 simply clarifies and ensures qualified vendors under 75-3317 who wish to have a taxpayer-funded benefit (and competitive advantage to market their goods and services) must meet the same standards as other Kansas “certified businesses” under the bill (pay at least minimum wage, provide health care, and do not employ persons with disabilities under a subminimum wage certificate). This ensures that the original intent of the law and how it was explained to legislators is included. It is our understanding this is how the program has currently been utilized.

The changes on Page 3 give certified businesses the same incentive to hire any person with a disability, not just those who are eligible for HCBS services or have

the diagnosis of “severe and persistent mental illness.” As the bill is written currently, there is an incentive to hire people with only certain disabilities. This is discriminatory. If someone meets the social security definition of disability (as contained starting on line 26, sub A), then an employer should have the same incentive to hire that person as any other person who meets that definition of disability. The benefits to the state are the same for all people with disabilities who would qualify under this bill after our amendment is adopted. Every dollar that would be covered under private health insurance offered under HB 2356 would save Medicaid a dollar.

Because private health insurance does not cover long term care or HCBS services, there is no reason why the incentive should be limited to HCBS eligible persons or those with label of “severe and persistent mental illness” (SPMI). In fact, thanks to mental health parity, private health insurance programs are far more likely to cover mental health services. Thus, state taxpayers would greatly benefit from anyone with a mental illness that qualifies as a disability under section A (lines 26-29) who is hired under this bill. Much of their mental health care could be covered under private health insurance, saving taxpayers from footing the bill under Medicaid.

Finally, and perhaps most convincingly, under federal law adults over 21 with mental illness CANNOT be served by an HCBS Waiver. Therefore, by limiting this to those who are HCBS eligible or the small number of SPMI Kansans is inherently wrong and smacks of discrimination.

If the proposed changes to both Pages 1 and 3 are adopted by the committee, we would no longer be opposed to HB 2356.

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

