

**SUBSTITUTE for HOUSE BILL No. 2135**

By Committee on Commerce and Economic Development

2-22

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1 AN ACT concerning certain employees; relating to misclassification of  
2 employees to avoid tax withholding, contributions and reporting  
3 requirements; amending K.S.A. 2010 Supp. 44-703, 44-766 and 79-  
4 3234 and repealing the existing sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. The secretary or the secretary's designee shall make  
8 all determinations regarding the proper classification of any worker  
9 pursuant to K.S.A. 44-703(i)(3), and amendments thereto.

10 (b) If the department of revenue has reason to believe that a business  
11 has not properly classified a worker pursuant to K.S.A. 44-703(i)(3), and  
12 amendments thereto, the department of revenue shall request a  
13 determination of such worker's classification pursuant to K.S.A. 44-703(i)  
14 (3), and amendments thereto, from the secretary. The department of  
15 revenue shall submit to the secretary all relevant information, including  
16 withholding tax and payroll information, in the possession of the  
17 department of revenue necessary to make such determination.

18 (1) If the secretary deems it necessary to obtain additional  
19 information from the department of revenue in order to make such  
20 determination or to calculate any assessment of unemployment insurance  
21 contributions due, the secretary shall notify the department of revenue. The  
22 department of revenue shall obtain and remit the requested information to  
23 the secretary.

24 (2) The department of revenue shall accept the secretary's  
25 determination made pursuant to subsection (a) and shall rely on such  
26 determination in the department of revenue's examination and assessment  
27 of the business with regard to such worker.

28 (3) Relying upon the information provided by the department of  
29 revenue pursuant to this section, and amendments thereto, and upon  
30 making the determination required by subsection (a), the secretary shall  
31 notify the business of any unemployment insurance contributions due  
32 pursuant to this act. The secretary shall not engage a separate  
33 investigation into the same matter once a determination has been made  
34 pursuant to subsection (a) based upon information so obtained through the

1 department of revenue.

2 (4) Information shared with the secretary by the department of  
3 revenue pursuant to this section, shall be held by the secretary to the same  
4 confidentiality standards as may be required by statutes governing the  
5 department of revenue.

6 (c) Upon investigation and determination by the secretary that a  
7 business has misclassified a worker, the secretary shall notify the  
8 department of revenue that a determination has been made, referring the  
9 matter for collection of applicable income withholding taxes.

10 (1) Upon request of the department of revenue, the secretary shall  
11 make available for its review any information relied upon by the secretary  
12 in making the determination.

13 (2) Information shared with the department of revenue by the secretary  
14 pursuant to this section shall be held by the department of revenue to the  
15 same confidentiality standards as may be required by statutes governing  
16 the department of labor.

17 (d) Each of the secretary of labor and the secretary of revenue may  
18 adopt rules and regulations necessary to effect the purposes of this section.

19 (e) This section shall be a part of and supplemental to the  
20 employment security law.

21 New Sec. 2. The secretary shall make the determination of  
22 employment required by K.S.A. 44-703(i)(3)(D), and amendments thereto,  
23 by examining the totality of the circumstances in which the individual  
24 renders service and shall exercise strict impartiality in the conduct of any  
25 such determination.

26 (a) The secretary shall first seek to determine whether the business in  
27 question has a reasonable basis upon which it relied when it determined  
28 the classification of a worker as an employee or independent contractor. If  
29 a reasonable basis is found, the classification shall be deemed valid  
30 ***subject to the provisions of K.S.A. 44-703(i)(3)(D), and amendments***  
31 ***thereto***. A business has a reasonable basis for its classification of workers  
32 if:

33 (1) Any of the following circumstances are present:

34 (A) The business reasonably relied upon a judicial decision regarding  
35 employment classification matters rendered by a federal or state court of  
36 competent jurisdiction in the state of Kansas;

37 (B) the business previously received a ruling from the internal  
38 revenue service, the department of revenue, or the department of labor  
39 validating the business' classification of workers;

40 (C) the business has been previously audited by the internal revenue  
41 service, the department of revenue, or the department of labor at a time  
42 when the business classified workers similarly situated in the same manner  
43 to those workers currently in question, and such audit did not result in

1 reclassification of those workers so similarly situated; or

2 (D) the business reasonably relied on the application of worker  
3 classifications customary among a significant segment of its industry; and

4 (2) The business showed consistency in its practices by:

5 (A) The business classified the worker in question and any similarly  
6 situated worker in the same manner; and

7 (B) the business has consistently and properly reported to the  
8 appropriate taxing authorities wages or payments to the workers in  
9 question and those similarly situated.

10 (b) If a reasonable basis as articulated herein cannot be ascertained,  
11 then when making a determination the secretary shall then consider the  
12 following factors:

13 (1) Must the individual comply with specific instructions from the  
14 business regarding when, where, and how to perform services so  
15 provided?

16 (2) Are the activities of the individual integrated into the ongoing  
17 operations of the business?

18 (3) If needed to accomplish the desired end result, does the individual  
19 have the responsibility to hire, supervise and pay assistants?

20 (4) Must the individual work exclusively for the business in question?

21 (5) Is payment by the business to the individual for services  
22 contingent on completion of established benchmarks or tasks?

23 (6) Does the individual provide significant tools, materials or other  
24 equipment used in the accomplishment of the desired end result?

25 (7) Is the individual responsible for any expenses incurred in the  
26 performance of services?

27 (8) Can the individual suffer a loss in the course of performing  
28 services?

29 (c) The secretary shall seek to educate the business by assisting the  
30 business in identifying facts which may establish either classification.

31 (d) If imposition of a penalty or interest could otherwise be imposed  
32 by this act due to a misclassification of a worker, before imposition of such  
33 assessment, the secretary shall consider the appropriateness of the penalty  
34 or interest to the business charged with the violation of misclassifying a  
35 worker given the circumstances in which the misclassification occurred,  
36 ***including whether or not a reasonable basis for the classification exists.***  
37 ***If a reasonable basis for the classification exists, then the secretary shall***  
38 ***not impose penalties or interest or seek recovery of back taxes for the***  
39 ***time period prior to the secretary's determination that a reasonable basis***  
40 ***exists.***

41 (e) This section shall be a part of and supplemental to the  
42 employment security law.

43 Sec. 3. K.S.A. 2010 Supp. 44-703 is hereby amended to read as

1 follows: 44-703. As used in this act, unless the context clearly requires  
2 otherwise:

3 (a) (1) "Annual payroll" means the total amount of wages paid or  
4 payable by an employer during the calendar year.

5 (2) "Average annual payroll" means the average of the annual  
6 payrolls of any employer for the last three calendar years immediately  
7 preceding the computation date as hereinafter defined if the employer has  
8 been continuously subject to contributions during those three calendar  
9 years and has paid some wages for employment during each of such years.  
10 In determining contribution rates for the calendar year, if an employer has  
11 not been continuously subject to contribution for the three calendar years  
12 immediately preceding the computation date but has paid wages subject to  
13 contributions during only the two calendar years immediately preceding  
14 the computation date, such employer's "average annual payroll" shall be  
15 the average of the payrolls for those two calendar years.

16 (3) "Total wages" means the total amount of wages paid or payable  
17 by an employer during the calendar year, including that part of  
18 remuneration in excess of the limitation prescribed as provided in  
19 subsection (o)(1) of this section.

20 (b) "Base period" means the first four of the last five completed  
21 calendar quarters immediately preceding the first day of an individual's  
22 benefit year, except that the base period in respect to combined wage  
23 claims means the base period as defined in the law of the paying state.

24 (1) (A) If an individual lacks sufficient base period wages in order to  
25 establish a benefit year in the matter set forth above and satisfies the  
26 requirements of subsection (g) of K.S.A. 44-705 and subsection (hh) of  
27 K.S.A. 44-703, and amendments thereto, the claimant shall have an  
28 alternative base period substituted for the current base period so as not to  
29 prevent establishment of a valid claim. For the purposes of this  
30 subsection, "alternative base period" means the last four completed  
31 quarters immediately preceding the date the qualifying injury occurred. In  
32 the event the wages in the alternative base period have been used on a  
33 prior claim, then they shall be excluded from the new alternative base  
34 period.

35 (B) If an individual lacks sufficient base period wages in order to  
36 establish a benefit year in the manner set forth above the claimant shall  
37 have an alternative base period substituted for the current base period. For  
38 the purposes of this subsection, "alternative base period" means eligibility  
39 shall be determined using a base period that consists of the four most  
40 recently completed calendar quarters preceding the start of the benefit  
41 year.

42 (2) For the purposes of this chapter, the term "base period" includes  
43 the alternative base period.

1 (c) (1) "Benefits" means the money payments payable to an  
2 individual, as provided in this act, with respect to such individual's  
3 unemployment.

4 (2) "Regular benefits" means benefits payable to an individual under  
5 this act or under any other state law, including benefits payable to federal  
6 civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85,  
7 other than extended benefits.

8 (d) "Benefit year" with respect to any individual, means the period  
9 beginning with the first day of the first week for which such individual  
10 files a valid claim for benefits, and such benefit year shall continue for one  
11 full year. In the case of a combined wage claim, the benefit year shall be  
12 the benefit year of the paying state. Following the termination of a benefit  
13 year, a subsequent benefit year shall commence on the first day of the first  
14 week with respect to which an individual next files a claim for benefits.  
15 When such filing occurs with respect to a week which overlaps the  
16 preceding benefit year, the subsequent benefit year shall commence on the  
17 first day immediately following the expiration date of the preceding  
18 benefit year. Any claim for benefits made in accordance with subsection  
19 (a) of K.S.A. 44-709, and amendments thereto, shall be deemed to be a  
20 "valid claim" for the purposes of this subsection if the individual has been  
21 paid wages for insured work as required under subsection (e) of K.S.A. 44-  
22 705, and amendments thereto. Whenever a week of unemployment  
23 overlaps two benefit years, such week shall, for the purpose of granting  
24 waiting-period credit or benefit payment with respect thereto, be deemed  
25 to be a week of unemployment within that benefit year in which the  
26 greater part of such week occurs.

27 (e) "Commissioner" or "secretary" means the secretary of labor.

28 (f) (1) "Contributions" means the money payments to the state  
29 employment security fund which are required to be made by employers on  
30 account of employment under K.S.A. 44-710, and amendments thereto,  
31 and voluntary payments made by employers pursuant to such statute.

32 (2) "Payments in lieu of contributions" means the money payments to  
33 the state employment security fund from employers which are required to  
34 make or which elect to make such payments under subsection (e) of  
35 K.S.A. 44-710, and amendments thereto.

36 (g) "Employing unit" means any individual or type of organization,  
37 including any partnership, association, limited liability company, agency  
38 or department of the state of Kansas and political subdivisions thereof,  
39 trust, estate, joint-stock company, insurance company or corporation,  
40 whether domestic or foreign including nonprofit corporations, or the  
41 receiver, trustee in bankruptcy, trustee or successor thereof, or the legal  
42 representatives of a deceased person, which has in its employ one or more  
43 individuals performing services for it within this state. All individuals

1 performing services within this state for any employing unit which  
2 maintains two or more separate establishments within this state shall be  
3 deemed to be employed by a single employing unit for all the purposes of  
4 this act. Each individual employed to perform or to assist in performing  
5 the work of any agent or employee of an employing unit shall be deemed  
6 to be employed by such employing unit for all the purposes of this act,  
7 whether such individual was hired or paid directly by such employing unit  
8 or by such agent or employee, provided the employing unit had actual or  
9 constructive knowledge of the employment.

10 (h) "Employer" means:

11 (1) (A) Any employing unit for which agricultural labor as defined in  
12 subsection (w) of this section is performed and which during any calendar  
13 quarter in either the current or preceding calendar year paid remuneration  
14 in cash of \$20,000 or more to individuals employed in agricultural labor or  
15 for some portion of a day in each of 20 different calendar weeks, whether  
16 or not such weeks were consecutive, in either the current or the preceding  
17 calendar year, employed in agricultural labor 10 or more individuals,  
18 regardless of whether they were employed at the same moment of time.

19 (B) For the purpose of this subsection (h)(1), any individual who is a  
20 member of a crew furnished by a crew leader to perform service in  
21 agricultural labor for any other person shall be treated as an employee of  
22 such crew leader if:

23 (i) Such crew leader holds a valid certificate of registration under the  
24 federal migrant and seasonal agricultural workers protection act or  
25 substantially all the members of such crew operate or maintain tractors,  
26 mechanized harvesting or cropdusting equipment or any other mechanized  
27 equipment, which is provided by such crew leader; and

28 (ii) such individual is not in the employment of such other person  
29 within the meaning of subsection (i) of this section.

30 (C) For the purpose of this subsection (h)(1), in the case of any  
31 individual who is furnished by a crew leader to perform service in  
32 agricultural labor for any other person and who is not treated as an  
33 employee of such crew leader:

34 (i) Such other person and not the crew leader shall be treated as the  
35 employer of such individual; and

36 (ii) such other person shall be treated as having paid cash  
37 remuneration to such individual in an amount equal to the amount of cash  
38 remuneration paid to such individual by the crew leader, either on the crew  
39 leader's own behalf or on behalf of such other person, for the service in  
40 agricultural labor performed for such other person.

41 (D) For the purposes of this subsection (h)(1) "crew leader" means an  
42 individual who:

43 (i) Furnishes individuals to perform service in agricultural labor for

1 any other person;

2 (ii) pays, either on such individual's own behalf or on behalf of such  
3 other person, the individuals so furnished by such individual for the  
4 service in agricultural labor performed by them; and

5 (iii) has not entered into a written agreement with such other person  
6 under which such individual is designated as an employee of such other  
7 person.

8 (2) (A) Any employing unit which for calendar year 2007 and each  
9 calendar year thereafter: (i) In any calendar quarter in either the current or  
10 preceding calendar year paid for service in employment wages of \$1,500  
11 or more, (ii) for some portion of a day in each of 20 different calendar  
12 weeks, whether or not such weeks were consecutive, in either the current  
13 or preceding calendar year, had in employment at least one individual,  
14 whether or not the same individual was in employment in each such day,  
15 or (iii) elects to have an unemployment tax account established at the time  
16 of initial registration in accordance with subsection (c) of K.S.A. 44-711,  
17 and amendments thereto.

18 (B) Employment of individuals to perform domestic service or  
19 agricultural labor and wages paid for such service or labor shall not be  
20 considered in determining whether an employing unit meets the criteria of  
21 this subsection (h)(2).

22 (3) Any employing unit for which service is employment as defined  
23 in subsection (i)(3)(E) of this section.

24 (4) (A) Any employing unit, whether or not it is an employing unit  
25 under subsection (g) of this section, which acquires or in any manner  
26 succeeds to (i) substantially all of the employing enterprises, organization,  
27 trade or business, or (ii) substantially all the assets, of another employing  
28 unit which at the time of such acquisition was an employer subject to this  
29 act;

30 (B) any employing unit which is controlled substantially, either  
31 directly or indirectly by legally enforceable means or otherwise, by the  
32 same interest or interests, whether or not such interest or interests are an  
33 employing unit under subsection (g) of this section, which acquires or in  
34 any manner succeeds to a portion of an employer's annual payroll, which is  
35 less than 100% of such employer's annual payroll, and which intends to  
36 continue the acquired portion as a going business.

37 (5) Any employing unit which paid cash remuneration of \$1,000 or  
38 more in any calendar quarter in the current or preceding calendar year to  
39 individuals employed in domestic service as defined in subsection (aa) of  
40 this section.

41 (6) Any employing unit which having become an employer under this  
42 subsection (h) has not, under subsection (b) of K.S.A. 44-711, and  
43 amendments thereto, ceased to be an employer subject to this act.

1 (7) Any employing unit which has elected to become fully subject to  
2 this act in accordance with subsection (c) of K.S.A. 44-711, and  
3 amendments thereto.

4 (8) Any employing unit not an employer by reason of any other  
5 paragraph of this subsection (h), for which within either the current or  
6 preceding calendar year services in employment are or were performed  
7 with respect to which such employing unit is liable for any federal tax  
8 against which credit may be taken for contributions required to be paid  
9 into a state unemployment compensation fund; or which, as a condition for  
10 approval of this act for full tax credit against the tax imposed by the  
11 federal unemployment tax act, is required, pursuant to such act, to be an  
12 "employer" under this act.

13 (9) Any employing unit described in section 501(c)(3) of the federal  
14 internal revenue code of 1986 which is exempt from income tax under  
15 section 501(a) of the code that had four or more individuals in  
16 employment for some portion of a day in each of 20 different weeks,  
17 whether or not such weeks were consecutive, within either the current or  
18 preceding calendar year, regardless of whether they were employed at the  
19 same moment of time.

20 (i) "Employment" means:

21 (1) Subject to the other provisions of this subsection, service,  
22 including service in interstate commerce, performed by:

23 (A) Any active officer of a corporation; or

24 (B) any individual who, under the usual common law rules applicable  
25 in determining the employer-employee relationship, has the status of an  
26 employee, *subject to provisions of K.S.A. 44-703(i)(3)(D), and*  
27 *amendments thereto*; or

28 (C) any individual other than an individual who is an employee under  
29 subsection (i)(1)(A) or subsection (i)(1)(B) above who performs services  
30 for remuneration for any person:

31 (i) As an agent-driver or commission-driver engaged in distributing  
32 meat products, vegetable products, fruit products, bakery products,  
33 beverages (other than milk), or laundry or dry-cleaning services, for such  
34 individual's principal; or

35 (ii) as a traveling or city salesman, other than as an agent-driver or  
36 commission-driver, engaged upon a full-time basis in the solicitation on  
37 behalf of, and the transmission to, a principal (except for side-line sales  
38 activities on behalf of some other person) of orders from wholesalers,  
39 retailers, contractors, or operators of hotels, restaurants, or other similar  
40 establishments for merchandise for resale or supplies for use in their  
41 business operations.

42 For purposes of subsection (i)(1)(C), the term "employment" shall  
43 include services described in paragraphs (i) and (ii) above only if:



1 (a) The contract of service contemplates that substantially all of the  
2 services are to be performed personally by such individual;

3 (b) the individual does not have a substantial investment in facilities  
4 used in connection with the performance of the services (other than in  
5 facilities for transportation); and

6 (c) the services are not in the nature of a single transaction that is not  
7 part of a continuing relationship with the person for whom the services are  
8 performed.

9 (2) The term "employment" shall include an individual's entire  
10 service within the United States, even though performed entirely outside  
11 this state if,

12 (A) The service is not localized in any state, and

13 (B) the individual is one of a class of employees who are required to  
14 travel outside this state in performance of their duties, and

15 (C) the individual's base of operations is in this state, or if there is no  
16 base of operations, then the place from which service is directed or  
17 controlled is in this state.

18 (3) The term "employment" shall also include:

19 (A) Services performed within this state but not covered by the  
20 provisions of subsection (i)(1) or subsection (i)(2) shall be deemed to be  
21 employment subject to this act if contributions are not required and paid  
22 with respect to such services under an unemployment compensation law of  
23 any other state or of the federal government.

24 (B) Services performed entirely without this state, with respect to no  
25 part of which contributions are required and paid under an unemployment  
26 compensation law of any other state or of the federal government, shall be  
27 deemed to be employment subject to this act only if the individual  
28 performing such services is a resident of this state and the secretary  
29 approved the election of the employing unit for whom such services are  
30 performed that the entire service of such individual shall be deemed to be  
31 employment subject to this act.

32 (C) Services covered by an arrangement pursuant to subsection (l) of  
33 K.S.A. 44-714, and amendments thereto, between the secretary and the  
34 agency charged with the administration of any other state or federal  
35 unemployment compensation law, pursuant to which all services  
36 performed by an individual for an employing unit are deemed to be  
37 performed entirely within this state, shall be deemed to be employment if  
38 the secretary has approved an election of the employing unit for whom  
39 such services are performed, pursuant to which the entire service of such  
40 individual during the period covered by such election is deemed to be  
41 insured work.

42 (D) Services performed by an individual for wages or under any  
43 contract of hire shall be deemed to be employment subject to this act

1 unless and until it is shown to the satisfaction of the secretary that: (i) Such  
2 individual has been and will continue to be free from control or direction  
3 over the performance of such services, both under the individual's contract  
4 of hire and in fact; and (ii) such service is either outside the usual course of  
5 the business for which such service is performed or that such service is  
6 performed outside of all the places of business of the enterprise for which  
7 such service is performed. *if the business for which activities of the*  
8 *individual are performed retains not only the right to control the end*  
9 *results of the activities performed, but the manner and means by which the*  
10 *end result is accomplished.*

11 (E) Service performed by an individual in the employ of this state or  
12 any instrumentality thereof, any political subdivision of this state or any  
13 instrumentality thereof, or in the employ of an Indian tribe, as defined  
14 pursuant to section 3306(u) of the federal unemployment tax act, any  
15 instrumentality of more than one of the foregoing or any instrumentality  
16 which is jointly owned by this state or a political subdivision thereof or  
17 Indian tribes and one or more other states or political subdivisions of this  
18 or other states, provided that such service is excluded from "employment"  
19 as defined in the federal unemployment tax act by reason of section  
20 3306(c)(7) of that act and is not excluded from "employment" under  
21 subsection (i)(4)(A) of this section. For purposes of this section, the  
22 exclusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall  
23 also be applicable to services performed in the employ of an Indian tribe.

24 (F) Service performed by an individual in the employ of a religious,  
25 charitable, educational or other organization which is excluded from the  
26 term "employment" as defined in the federal unemployment tax act solely  
27 by reason of section 3306(c)(8) of that act, and is not excluded from  
28 employment under paragraphs (I) through (M) of subsection (i)(4).

29 (G) The term "employment" shall include the service of an individual  
30 who is a citizen of the United States, performed outside the United States  
31 except in Canada, in the employ of an American employer (other than  
32 service which is deemed "employment" under the provisions of subsection  
33 (i)(2) or subsection (i)(3) or the parallel provisions of another state's law),  
34 if:

35 (i) The employer's principal place of business in the United States is  
36 located in this state; or

37 (ii) the employer has no place of business in the United States, but:

38 ~~(A)~~(a) The employer is an individual who is a resident of this state; or

39 ~~(B)~~(b) the employer is a corporation which is organized under the  
40 laws of this state; or

41 ~~(C)~~(c) the employer is a partnership or a trust and the number of the  
42 partners or trustees who are residents of this state is greater than the  
43 number who are residents of any other state; or

1 (iii) none of the criteria of paragraphs (i) and (ii) above of this  
2 subsection (i)(3)(G) are met but the employer has elected coverage in this  
3 state or, the employer having failed to elect coverage in any state, the  
4 individual has filed a claim for benefits, based on such service, under the  
5 law of this state.

6 (H) An "American employer," for purposes of subsection (i)(3)(G),  
7 means a person who is:

8 (i) An individual who is a resident of the United States; or

9 (ii) a partnership if  $\frac{2}{3}$  or more of the partners are residents of the  
10 United States; or

11 (iii) a trust, if all of the trustees are residents of the United States; or

12 (iv) a corporation organized under the laws of the United States or of  
13 any state.

14 (I) Notwithstanding subsection (i)(2) of this section, all service  
15 performed by an officer or member of the crew of an American vessel or  
16 American aircraft on or in connection with such vessel or aircraft, if the  
17 operating office, from which the operations of such vessel or aircraft  
18 operating within, or within and without, the United States are ordinarily  
19 and regularly supervised, managed, directed and controlled is within this  
20 state.

21 (J) Notwithstanding any other provisions of this subsection (i),  
22 service with respect to which a tax is required to be paid under any federal  
23 law imposing a tax against which credit may be taken for contributions  
24 required to be paid into a state unemployment compensation fund or which  
25 as a condition for full tax credit against the tax imposed by the federal  
26 unemployment tax act is required to be covered under this act.

27 (K) Domestic service in a private home, local college club or local  
28 chapter of a college fraternity or sorority performed for a person who paid  
29 cash remuneration of \$1,000 or more in any calendar quarter in the current  
30 calendar year or the preceding calendar year to individuals employed in  
31 such domestic service.

32 (4) The term "employment" shall not include: (A) Service performed  
33 in the employ of an employer specified in subsection (h)(3) of this section  
34 if such service is performed by an individual in the exercise of duties:

35 (i) As an elected official;

36 (ii) as a member of a legislative body, or a member of the judiciary, of  
37 a state, political subdivision or of an Indian tribe;

38 (iii) as a member of the state national guard or air national guard;

39 (iv) as an employee serving on a temporary basis in case of fire,  
40 storm, snow, earthquake, flood or similar emergency;

41 (v) in a position which, under or pursuant to the laws of this state or  
42 tribal law, is designated as a major nontenured policymaking or advisory  
43 position or as a policymaking or advisory position the performance of the

1 duties of which ordinarily does not require more than eight hours per  
2 week;

3 (B) service with respect to which unemployment compensation is  
4 payable under an unemployment compensation system established by an  
5 act of congress;

6 (C) service performed by an individual in the employ of such  
7 individual's son, daughter or spouse, and service performed by a child  
8 under the age of 21 years in the employ of such individual's father or  
9 mother;

10 (D) service performed in the employ of the United States government  
11 or an instrumentality of the United States exempt under the constitution of  
12 the United States from the contributions imposed by this act, except that to  
13 the extent that the congress of the United States shall permit states to  
14 require any instrumentality of the United States to make payments into an  
15 unemployment fund under a state unemployment compensation law, all of  
16 the provisions of this act shall be applicable to such instrumentalities, and  
17 to services performed for such instrumentalities, in the same manner, to the  
18 same extent and on the same terms as to all other employers, employing  
19 units, individuals and services. If this state shall not be certified for any  
20 year by the federal security agency under section 3304(c) of the federal  
21 internal revenue code of 1986, the payments required of such  
22 instrumentalities with respect to such year shall be refunded by the  
23 secretary from the fund in the same manner and within the same period as  
24 is provided in subsection (f) of K.S.A. 44-717, and amendments thereto,  
25 with respect to contributions erroneously collected;

26 (E) service covered by an arrangement between the secretary and the  
27 agency charged with the administration of any other state or federal  
28 unemployment compensation law pursuant to which all services performed  
29 by an individual for an employing unit during the period covered by such  
30 employing unit's duly approved election, are deemed to be performed  
31 entirely within the jurisdiction of such other state or federal agency;

32 (F) service performed by an individual under the age of 18 in the  
33 delivery or distribution of newspapers or shopping news, not including  
34 delivery or distribution to any point for subsequent delivery or  
35 distribution;

36 (G) service performed by an individual for an employing unit as an  
37 insurance agent or as an insurance solicitor, if all such service performed  
38 by such individual for such employing unit is performed for remuneration  
39 solely by way of commission;

40 (H) service performed in any calendar quarter in the employ of any  
41 organization exempt from income tax under section 501(a) of the federal  
42 internal revenue code of 1986 (other than an organization described in  
43 section 401(a) or under section 521 of such code) if the remuneration for

1 such service is less than \$50. In construing the application of the term  
 2 "employment," if services performed during  $\frac{1}{2}$  or more of any pay period  
 3 by an individual for the person employing such individual constitute  
 4 employment, all the services of such individual for such period shall be  
 5 deemed to be employment; but if the services performed during more than  
 6  $\frac{1}{2}$  of any such pay period by an individual for the person employing such  
 7 individual do not constitute employment, then none of the services of such  
 8 individual for such period shall be deemed to be employment. As used in  
 9 this subsection (i)(4)(H) the term "pay period" means a period (of not more  
 10 than 31 consecutive days) for which a payment of remuneration is  
 11 ordinarily made to the individual by the person employing such individual.  
 12 This subsection (i)(4)(H) shall not be applicable with respect to services  
 13 with respect to which unemployment compensation is payable under an  
 14 unemployment compensation system established by an act of congress;

15 (I) services performed in the employ of a church or convention or  
 16 association of churches, or an organization which is operated primarily for  
 17 religious purposes and which is operated, supervised, controlled, or  
 18 principally supported by a church or convention or association of  
 19 churches;

20 (J) service performed by a duly ordained, commissioned, or licensed  
 21 minister of a church in the exercise of such individual's ministry or by a  
 22 member of a religious order in the exercise of duties required by such  
 23 order;

24 (K) service performed in a facility conducted for the purpose of  
 25 carrying out a program of:

26 (i) Rehabilitation for individuals whose earning capacity is impaired  
 27 by age or physical or mental deficiency or injury; or

28 (ii) providing remunerative work for individuals who because of their  
 29 impaired physical or mental capacity cannot be readily absorbed in the  
 30 competitive labor market, by an individual receiving such rehabilitation or  
 31 remunerative work;

32 (L) service performed as part of an employment work-relief or work-  
 33 training program assisted or financed in whole or in part by any federal  
 34 agency or an agency of a state or political subdivision thereof or of an  
 35 Indian tribe, by an individual receiving such work relief or work training;

36 (M) service performed by an inmate of a custodial or correctional  
 37 institution;

38 (N) service performed, in the employ of a school, college, or  
 39 university, if such service is performed by a student who is enrolled and is  
 40 regularly attending classes at such school, college or university;

41 (O) service performed by an individual who is enrolled at a nonprofit  
 42 or public educational institution which normally maintains a regular  
 43 faculty and curriculum and normally has a regularly organized body of

1 students in attendance at the place where its educational activities are  
2 carried on as a student in a full-time program, taken for credit at such  
3 institution, which combines academic instruction with work experience, if  
4 such service is an integral part of such program, and such institution has so  
5 certified to the employer, except that this subsection (i)(4)(O) shall not  
6 apply to service performed in a program established for or on behalf of an  
7 employer or group of employers;

8 (P) service performed in the employ of a hospital licensed, certified  
9 or approved by the secretary of health and environment, if such service is  
10 performed by a patient of the hospital;

11 (Q) services performed as a qualified real estate agent. As used in this  
12 subsection (i)(4)(Q) the term "qualified real estate agent" means any  
13 individual who is licensed by the Kansas real estate commission as a  
14 salesperson under the real estate brokers' and salespersons' license act and  
15 for whom:

16 (i) Substantially all of the remuneration, whether or not paid in cash,  
17 for the services performed by such individual as a real estate salesperson is  
18 directly related to sales or other output, including the performance of  
19 services, rather than to the number of hours worked; and

20 (ii) the services performed by the individual are performed pursuant  
21 to a written contract between such individual and the person for whom the  
22 services are performed and such contract provides that the individual will  
23 not be treated as an employee with respect to such services for state tax  
24 purposes;

25 (R) services performed for an employer by an extra in connection  
26 with any phase of motion picture or television production or television  
27 commercials for less than 14 days during any calendar year. As used in this  
28 subsection, the term "extra" means an individual who pantomimes in the  
29 background, adds atmosphere to the set and performs such actions without  
30 speaking and "employer" shall not include any employer which is a  
31 governmental entity or any employer described in section 501(c)(3) of the  
32 federal internal revenue code of 1986 which is exempt from income  
33 taxation under section 501(a) of the code;

34 (S) services performed by an oil and gas contract pumper. As used in  
35 this subsection (i)(4)(S), "oil and gas contract pumper" means a person  
36 performing pumping and other services on one or more oil or gas leases, or  
37 on both oil and gas leases, relating to the operation and maintenance of  
38 such oil and gas leases, on a contractual basis for the operators of such oil  
39 and gas leases and "services" shall not include services performed for a  
40 governmental entity or any organization described in section 501(c)(3) of  
41 the federal internal revenue code of 1986 which is exempt from income  
42 taxation under section 501(a) of the code;

43 (T) service not in the course of the employer's trade or business

1 performed in any calendar quarter by an employee, unless the cash  
 2 remuneration paid for such service is \$200 or more and such service is  
 3 performed by an individual who is regularly employed by such employer  
 4 to perform such service. For purposes of this paragraph, an individual shall  
 5 be deemed to be regularly employed by an employer during a calendar  
 6 quarter only if:

7 (i) On each of some 24 days during such quarter such individual  
 8 performs for such employer for some portion of the day service not in the  
 9 course of the employer's trade or business; or

10 (ii) such individual was regularly employed, as determined under  
 11 subparagraph (i), by such employer in the performance of such service  
 12 during the preceding calendar quarter.

13 Such excluded service shall not include any services performed for an  
 14 employer which is a governmental entity or any employer described in  
 15 section 501(c)(3) of the federal internal revenue code of 1986 which is  
 16 exempt from income taxation under section 501(a) of the code;

17 (U) service which is performed by any person who is a member of a  
 18 limited liability company and which is performed as a member or manager  
 19 of that limited liability company; and

20 (V) services performed as a qualified direct seller. The term "direct  
 21 seller" means any person if:

22 (i) Such person:

23 (a) Is engaged in the trade or business of selling or soliciting the sale  
 24 of consumer products to any buyer on a buy-sell basis or a deposit-  
 25 commission basis for resale, by the buyer or any other person, in the home  
 26 or otherwise rather than in a permanent retail establishment; or

27 (b) is engaged in the trade or business of selling or soliciting the sale  
 28 of consumer products in the home or otherwise than in a permanent retail  
 29 establishment;

30 (ii) substantially all the remuneration whether or not paid in cash for  
 31 the performance of the services described in subparagraph (i) is directly  
 32 related to sales or other output including the performance of services rather  
 33 than to the number of hours worked;

34 (iii) the services performed by the person are performed pursuant to a  
 35 written contract between such person and the person for whom the services  
 36 are performed and such contract provides that the person will not be  
 37 treated as an employee for federal and state tax purposes;

38 (iv) for purposes of this act, a sale or a sale resulting exclusively from  
 39 a solicitation made by telephone, mail, or other telecommunications  
 40 method, or other nonpersonal method does not satisfy the requirements of  
 41 this subsection;

42 (W) service performed as an election official or election worker, if the  
 43 amount of remuneration received by the individual during the calendar

1 year for services as an election official or election worker is less than \$1,000;

(X) service performed by agricultural workers who are aliens admitted to the United States to perform labor pursuant to section 1101 (a) (15)(H)(ii)(a) of the immigration and nationality act; and

(Y) service performed by an owner-operator of a motor vehicle that is leased or contracted to a licensed motor carrier with the services of a driver and is not treated under the terms of the lease agreement or contract with the licensed motor carrier as an employee for purposes of the federal insurance contribution act, 26 U.S.C. § 3101 et seq., the federal social security act, 42 U.S.C. § 301 et seq., the federal unemployment tax act, 26 U.S.C. § 3301 et seq., and the federal statutes prescribing income tax withholding at the source, 26 U.S.C. § 3401 et seq. Employees or agents of the owner-operator shall not be considered employees of the licensed motor carrier for purposes of employment security taxation or compensation. As used in this subsection (Y), the following definitions apply: (i) "Motor vehicle" means any automobile, truck-trailer, semitrailer, tractor, motor bus or any other self-propelled or motor-driven vehicle used upon any of the public highways of Kansas for the purpose of transporting persons or property; (ii) "licensed motor carrier" means any person, firm, corporation or other business entity that holds a certificate of convenience and necessity or a certificate of public service from the state corporation commission or is required to register motor carrier equipment pursuant to 49 U.S.C. § 14504; and (iii) "owner-operator" means a person, firm, corporation or other business entity that is the owner of a single motor vehicle that is driven exclusively by the owner under a lease agreement or contract with a licensed motor carrier.

(j) "Employment office" means any office operated by this state and maintained by the secretary of labor for the purpose of assisting persons to become employed.

(k) "Fund" means the employment security fund established by this act, to which all contributions and reimbursement payments required and from which all benefits provided under this act shall be paid and including all money received from the federal government as reimbursements pursuant to section 204 of the federal-state extended compensation act of 1970, and amendments thereto.

(l) "State" includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the District of Columbia and the Virgin Islands.

(m) "Unemployment." An individual shall be deemed "unemployed" with respect to any week during which such individual performs no services and with respect to which no wages are payable to such individual, or with respect to any week of less than full-time work if the



1 wages payable to such individual with respect to such week are less than  
2 such individual's weekly benefit amount.

3 (n) "Employment security administration fund" means the fund  
4 established by this act, from which administrative expenses under this act  
5 shall be paid.

6 (o) "Wages" means all compensation for services, including  
7 commissions, bonuses, back pay and the cash value of all remuneration,  
8 including benefits, paid in any medium other than cash. The reasonable  
9 cash value of remuneration in any medium other than cash, shall be  
10 estimated and determined in accordance with rules and regulations  
11 prescribed by the secretary. Compensation payable to an individual which  
12 has not been actually received by that individual within 21 days after the  
13 end of the pay period in which the compensation was earned shall be  
14 considered to have been paid on the 21st day after the end of that pay  
15 period. Effective January 1, 1986, gratuities, including tips received from  
16 persons other than the employing unit, shall be considered wages when  
17 reported in writing to the employer by the employee. Employees must  
18 furnish a written statement to the employer, reporting all tips received if  
19 they total \$20 or more for a calendar month whether the tips are received  
20 directly from a person other than the employer or are paid over to the  
21 employee by the employer. This includes amounts designated as tips by a  
22 customer who uses a credit card to pay the bill. Notwithstanding the other  
23 provisions of this subsection (o), wages paid in back pay awards or  
24 settlements shall be allocated to the week or weeks and reported in the  
25 manner as specified in the award or agreement, or, in the absence of such  
26 specificity in the award or agreement, such wages shall be allocated to the  
27 week or weeks in which such wages, in the judgment of the secretary,  
28 would have been paid. The term "wages" shall not include:

29 (1) That part of the remuneration which has been paid in a calendar  
30 year to an individual by an employer or such employer's predecessor in  
31 excess of \$3,000 for all calendar years prior to 1972, \$4,200 for the  
32 calendar years 1972 to 1977, inclusive, \$6,000 for calendar years 1978 to  
33 1982, inclusive, \$7,000 for the calendar year 1983, and \$8,000 with  
34 respect to employment during any calendar year following 1983, except  
35 that if the definition of the term "wages" as contained in the federal  
36 unemployment tax act is amended to include remuneration in excess of  
37 \$8,000 paid to an individual by an employer under the federal act during  
38 any calendar year, wages shall include remuneration paid in a calendar  
39 year to an individual by an employer subject to this act or such employer's  
40 predecessor with respect to employment during any calendar year up to an  
41 amount equal to the dollar limitation specified in the federal  
42 unemployment tax act. For the purposes of this subsection (o)(1), the term  
43 "employment" shall include service constituting employment under any

- 1 employment security law of another state or of the federal government;
- 2 (2) the amount of any payment (including any amount paid by an  
3 employing unit for insurance or annuities, or into a fund, to provide for  
4 any such payment) made to, or on behalf of, an employee or any of such  
5 employee's dependents under a plan or system established by an employer  
6 which makes provisions for employees generally, for a class or classes of  
7 employees or for such employees or a class or classes of employees and  
8 their dependents, on account of: (A) Sickness or accident disability, except  
9 in the case of any payment made to an employee or such employee's  
10 dependents, this subparagraph shall exclude from the term "wages" only  
11 payments which are received under a workers compensation law. Any third  
12 party which makes a payment included as wages by reason of this  
13 subparagraph (2)(A) shall be treated as the employer with respect to such  
14 wages; or (B) medical and hospitalization expenses in connection with  
15 sickness or accident disability; or (C) death;
- 16 (3) any payment on account of sickness or accident disability, or  
17 medical or hospitalization expenses in connection with sickness or  
18 accident disability, made by an employer to, or on behalf of, an employee  
19 after the expiration of six calendar months following the last calendar  
20 month in which the employee worked for such employer;
- 21 (4) any payment made to, or on behalf of, an employee or such  
22 employee's beneficiary:
- 23 (A) From or to a trust described in section 401(a) of the federal  
24 internal revenue code of 1986 which is exempt from tax under section  
25 501(a) of the federal internal revenue code of 1986 at the time of such  
26 payment unless such payment is made to an employee of the trust as  
27 remuneration for services rendered as such employee and not as a  
28 beneficiary of the trust;
- 29 (B) under or to an annuity plan which, at the time of such payment, is  
30 a plan described in section 403(a) of the federal internal revenue code of  
31 1986;
- 32 (C) under a simplified employee pension as defined in section 408(k)  
33 (1) of the federal internal revenue code of 1986, other than any  
34 contribution described in section 408(k)(6) of the federal internal revenue  
35 code of 1986;
- 36 (D) under or to an annuity contract described in section 403(b) of the  
37 federal internal revenue code of 1986, other than a payment for the  
38 purchase of such contract which was made by reason of a salary reduction  
39 agreement whether evidenced by a written instrument or otherwise;
- 40 (E) under or to an exempt governmental deferred compensation plan  
41 as defined in section 3121(v)(3) of the federal internal revenue code of  
42 1986;
- 43 (F) to supplement pension benefits under a plan or trust described in

1 any of the foregoing provisions of this subparagraph to take into account  
2 some portion or all of the increase in the cost of living, as determined by  
3 the secretary of labor, since retirement but only if such supplemental  
4 payments are under a plan which is treated as a welfare plan under section  
5 3(2)(B)(ii) of the federal employee retirement income security act of 1974;  
6 or

7 (G) under a cafeteria plan within the meaning of section 125 of the  
8 federal internal revenue code of 1986;

9 (5) the payment by an employing unit (without deduction from the  
10 remuneration of the employee) of the tax imposed upon an employee  
11 under section 3101 of the federal internal revenue code of 1986 with  
12 respect to remuneration paid to an employee for domestic service in a  
13 private home of the employer or for agricultural labor;

14 (6) remuneration paid in any medium other than cash to an employee  
15 for service not in the course of the employer's trade or business;

16 (7) remuneration paid to or on behalf of an employee if and to the  
17 extent that at the time of the payment of such remuneration it is reasonable  
18 to believe that a corresponding deduction is allowable under section 217 of  
19 the federal internal revenue code of 1986 relating to moving expenses;

20 (8) any payment or series of payments by an employer to an  
21 employee or any of such employee's dependents which is paid:

22 (A) Upon or after the termination of an employee's employment  
23 relationship because of (i) death or (ii) retirement for disability; and

24 (B) under a plan established by the employer which makes provisions  
25 for employees generally, a class or classes of employees or for such  
26 employees or a class or classes of employees and their dependents, other  
27 than any such payment or series of payments which would have been paid  
28 if the employee's employment relationship had not been so terminated;

29 (9) remuneration for agricultural labor paid in any medium other than  
30 cash;

31 (10) any payment made, or benefit furnished, to or for the benefit of  
32 an employee if at the time of such payment or such furnishing it is  
33 reasonable to believe that the employee will be able to exclude such  
34 payment or benefit from income under section 129 of the federal internal  
35 revenue code of 1986 which relates to dependent care assistance programs;

36 (11) the value of any meals or lodging furnished by or on behalf of  
37 the employer if at the time of such furnishing it is reasonable to believe  
38 that the employee will be able to exclude such items from income under  
39 section 119 of the federal internal revenue code of 1986;

40 (12) any payment made by an employer to a survivor or the estate of  
41 a former employee after the calendar year in which such employee died;

42 (13) any benefit provided to or on behalf of an employee if at the time  
43 such benefit is provided it is reasonable to believe that the employee will

1 be able to exclude such benefit from income under section 74(c), 117 or  
 2 132 of the federal internal revenue code of 1986;

3 (14) any payment made, or benefit furnished, to or for the benefit of  
 4 an employee, if at the time of such payment or such furnishing it is  
 5 reasonable to believe that the employee will be able to exclude such  
 6 payment or benefit from income under section 127 of the federal internal  
 7 revenue code of 1986 relating to educational assistance to the employee; or

8 (15) any payment made to or for the benefit of an employee if at the  
 9 time of such payment it is reasonable to believe that the employee will be  
 10 able to exclude such payment from income under section 106(d) of the  
 11 federal internal revenue code of 1986 relating to health savings accounts.

12 Nothing in any paragraph of subsection (o), other than paragraph (1),  
 13 shall exclude from the term "wages": (1) Any employer contribution under  
 14 a qualified cash or deferred arrangement, as defined in section 401(k) of  
 15 the federal internal revenue code of 1986, to the extent that such  
 16 contribution is not included in gross income by reason of section 402(a)(8)  
 17 of the federal internal revenue code of 1986; or (2) any amount treated as  
 18 an employer contribution under section 414(h)(2) of the federal internal  
 19 revenue code of 1986.

20 Any amount deferred under a nonqualified deferred compensation plan  
 21 shall be taken into account for purposes of this section as of the later of  
 22 when the services are performed or when there is no substantial risk of  
 23 forfeiture of the rights to such amount. Any amount taken into account as  
 24 wages by reason of this paragraph, and the income attributable thereto,  
 25 shall not thereafter be treated as wages for purposes of this section. For  
 26 purposes of this paragraph, the term "nonqualified deferred compensation  
 27 plan" means any plan or other arrangement for deferral of compensation  
 28 other than a plan described in subsection (o)(4).

29 (p) "Week" means such period or periods of seven consecutive  
 30 calendar days, as the secretary may by rules and regulations prescribe.

31 (q) "Calendar quarter" means the period of three consecutive calendar  
 32 months ending March 31, June 30, September 30 or December 31, or the  
 33 equivalent thereof as the secretary may by rules and regulations prescribe.

34 (r) "Insured work" means employment for employers.

35 (s) "Approved training" means any vocational training course or  
 36 course in basic education skills, including a job training program  
 37 authorized under the federal workforce investment act of 1998, approved  
 38 by the secretary or a person or persons designated by the secretary.

39 (t) "American vessel" or "American aircraft" means any vessel or  
 40 aircraft documented or numbered or otherwise registered under the laws of  
 41 the United States; and any vessel or aircraft which is neither documented  
 42 or numbered or otherwise registered under the laws of the United States  
 43 nor documented under the laws of any foreign country, if its crew performs

1 service solely for one or more citizens or residents of the United States or  
2 corporations organized under the laws of the United States or of any state.

3 (u) "Institution of higher education," for the purposes of this section,  
4 means an educational institution which:

5 (1) Admits as regular students only individuals having a certificate of  
6 graduation from a high school, or the recognized equivalent of such a  
7 certificate;

8 (2) is legally authorized in this state to provide a program of  
9 education beyond high school;

10 (3) provides an educational program for which it awards a bachelor's  
11 or higher degree, or provides a program which is acceptable for full credit  
12 toward such a degree, a program of postgraduate or postdoctoral studies,  
13 or a program of training to prepare students for gainful employment in a  
14 recognized occupation; and

15 (4) is a public or other nonprofit institution.

16 Notwithstanding any of the foregoing provisions of this subsection (u),  
17 all colleges and universities in this state are institutions of higher education  
18 for purposes of this section, except that no college, university, junior  
19 college or other postsecondary school or institution which is operated by  
20 the federal government or any agency thereof shall be an institution of  
21 higher education for purposes of the employment security law.

22 (v) "Educational institution" means any institution of higher  
23 education, as defined in subsection (u) of this section, or any institution,  
24 except private for profit institutions, in which participants, trainees or  
25 students are offered an organized course of study or training designed to  
26 transfer to them knowledge, skills, information, doctrines, attitudes or  
27 abilities from, by or under the guidance of an instructor or teacher and  
28 which is approved, licensed or issued a permit to operate as a school by the  
29 state department of education or other government agency that is  
30 authorized within the state to approve, license or issue a permit for the  
31 operation of a school or to an Indian tribe in the operation of an  
32 educational institution. The courses of study or training which an  
33 educational institution offers may be academic, technical, trade or  
34 preparation for gainful employment in a recognized occupation.

35 (w) (1) "Agricultural labor" means any remunerated service:

36 (A) On a farm, in the employ of any person, in connection with  
37 cultivating the soil, or in connection with raising or harvesting any  
38 agricultural or horticultural commodity, including the raising, shearing,  
39 feeding, caring for, training, and management of livestock, bees, poultry,  
40 and furbearing animals and wildlife.

41 (B) In the employ of the owner or tenant or other operator of a farm,  
42 in connection with the operating, management, conservation,  
43 improvement, or maintenance of such farm and its tools and equipment, or

1 in salvaging timber or clearing land of brush and other debris left by a  
2 hurricane, if the major part of such service is performed on a farm.

3 (C) In connection with the production or harvesting of any  
4 commodity defined as an agricultural commodity in section (15)(g) of the  
5 agricultural marketing act, as amended (46 Stat. 1500, sec. 3; 12 U.S.C. §  
6 1141j) or in connection with the ginning of cotton, or in connection with  
7 the operation or maintenance of ditches, canals, reservoirs or waterways,  
8 not owned or operated for profit, used exclusively for supplying and  
9 storing water for farming purposes.

10 (D) (i) In the employ of the operator of a farm in handling, planting,  
11 drying, packing, packaging, processing, freezing, grading, storing, or  
12 delivering to storage or to market or to a carrier for transportation to  
13 market, in its unmanufactured state, any agricultural or horticultural  
14 commodity; but only if such operator produced more than  $\frac{1}{2}$  of the  
15 commodity with respect to which such service is performed;

16 (ii) in the employ of a group of operators of farms (or a cooperative  
17 organization of which such operators are members) in the performance of  
18 service described in paragraph (i) above of this subsection (w)(1)(D), but  
19 only if such operators produced more than  $\frac{1}{2}$  of the commodity with  
20 respect to which such service is performed;

21 (iii) the provisions of paragraphs (i) and (ii) above of this subsection  
22 (w)(1)(D) shall not be deemed to be applicable with respect to service  
23 performed in connection with commercial canning or commercial freezing  
24 or in connection with any agricultural or horticultural commodity after its  
25 delivery to a terminal market for distribution for consumption.

26 (E) On a farm operated for profit if such service is not in the course  
27 of the employer's trade or business.

28 (2) "Agricultural labor" does not include service performed prior to  
29 January 1, 1980, by an individual who is an alien admitted to the United  
30 States to perform service in agricultural labor pursuant to sections 214(c)  
31 and 101(a)(15)(H) of the federal immigration and nationality act.

32 (3) As used in this subsection (w), the term "farm" includes stock,  
33 dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations,  
34 ranches, nurseries, ranges, greenhouses, or other similar structures used  
35 primarily for the raising of agricultural or horticultural commodities, and  
36 orchards.

37 (4) For the purpose of this section, if an employing unit does not  
38 maintain sufficient records to separate agricultural labor from other  
39 employment, all services performed during any pay period by an  
40 individual for the person employing such individual shall be deemed to be  
41 agricultural labor if services performed during  $\frac{1}{2}$  or more of such pay  
42 period constitute agricultural labor; but if the services performed during  
43 more than  $\frac{1}{2}$  of any such pay period by an individual for the person

1 employing such individual do not constitute agricultural labor, then none  
2 of the services of such individual for such period shall be deemed to be  
3 agricultural labor. As used in this subsection (w), the term "pay period"  
4 means a period of not more than 31 consecutive days for which a payment  
5 of remuneration is ordinarily made to the individual by the person  
6 employing such individual.

7 (x) "Reimbursing employer" means any employer who makes  
8 payments in lieu of contributions to the employment security fund as  
9 provided in subsection (e) of K.S.A. 44-710, and amendments thereto.

10 (y) "Contributing employer" means any employer other than a  
11 reimbursing employer or rated governmental employer.

12 (z) "Wage combining plan" means a uniform national arrangement  
13 approved by the United States secretary of labor in consultation with the  
14 state unemployment compensation agencies and in which this state shall  
15 participate, whereby wages earned in one or more states are transferred to  
16 another state, called the "paying state," and combined with wages in the  
17 paying state, if any, for the payment of benefits under the laws of the  
18 paying state and as provided by an arrangement so approved by the United  
19 States secretary of labor.

20 (aa) "Domestic service" means any service for a person in the  
21 operation and maintenance of a private household, local college club or  
22 local chapter of a college fraternity or sorority, as distinguished from  
23 service as an employee in the pursuit of an employer's trade, occupation,  
24 profession, enterprise or vocation.

25 (bb) "Rated governmental employer" means any governmental entity  
26 which elects to make payments as provided by K.S.A. 44-710d, and  
27 amendments thereto.

28 (cc) "Benefit cost payments" means payments made to the  
29 employment security fund by a governmental entity electing to become a  
30 rated governmental employer.

31 (dd) "Successor employer" means any employer, as described in  
32 subsection (h) of this section, which acquires or in any manner succeeds  
33 to: (1) Substantially all of the employing enterprises, organization, trade or  
34 business of another employer; or (2) substantially all the assets of another  
35 employer.

36 (ee) "Predecessor employer" means an employer, as described in  
37 subsection (h) of this section, who has previously operated a business or  
38 portion of a business with employment to which another employer has  
39 succeeded.

40 (ff) "Lessor employing unit" means any independently established  
41 business entity which engages in the business of providing leased  
42 employees to a client lessee.

43 (gg) "Client lessee" means any individual, organization, partnership,

1 corporation or other legal entity leasing employees from a lessor  
2 employing unit.

3 (hh) "Qualifying injury" means a personal injury by accident arising  
4 out of and in the course of employment within the coverage of the Kansas  
5 workers compensation act, K.S.A. 44-501 et seq., and amendments  
6 thereto.

7 Sec. 4. K.S.A. 2010 Supp. 44-766 is hereby amended to read as  
8 follows: 44-766. (a) No person shall knowingly and intentionally  
9 misclassify an employee as an independent contractor for the sole or  
10 primary purpose of avoiding either state income tax withholding and  
11 reporting requirements or state unemployment insurance contributions  
12 reporting requirements.

13 ~~(b) Any person violating subsection (a) shall be subject to a penalty~~  
14 ~~pursuant to K.S.A. 79-3228, and amendments thereto. (b) (1) Any person~~  
15 ~~violating subsection (a) shall upon first violation be subject to a civil~~  
16 ~~penalty in an amount computed in the manner prescribed in K.S.A. 79-~~  
17 ~~3228, and amendments thereto.~~

18 (2) Any person violating subsection (a) upon a second violation shall  
19 be subject to a civil penalty computed as prescribed in paragraph (1) and  
20 in addition, upon conviction, shall be guilty of a class C nonperson  
21 misdemeanor.

22 (3) Any person violating subsection (a) upon a third or subsequent  
23 violation shall be subject to a civil penalty computed as prescribed in  
24 paragraph (1) and in addition, upon conviction, shall be guilty of a  
25 ~~severity level 10, nonperson felony~~**[class A nonperson misdemeanor]**.

26 (c) Criminal violations of subsection (a) may be prosecuted by the  
27 attorney general or the district or county attorney for the county in which  
28 the violation occurred.

29 (d) Any civil penalty assessed hereunder shall be remitted to the  
30 secretary and deposited in the state treasury.

31 (e) Any penalty provided in this section shall be in addition to any  
32 other penalty and remedy that may otherwise be imposed under the  
33 employment security act and such remedies shall be cumulative.

34 (f) This section shall be part of and supplemental to the employment  
35 security law.

36 Sec. 5. K.S.A. 2010 Supp. 79-3234 is hereby amended to read as  
37 follows: 79-3234. (a) All reports and returns required by this act shall be  
38 preserved for three years and thereafter until the director orders them to be  
39 destroyed.

40 (b) Except in accordance with proper judicial order, or as provided in  
41 subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A. 46-1106,  
42 K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall be  
43 unlawful for the secretary, the director, any deputy, agent, clerk or other



1 officer, employee or former employee of the department of revenue or any  
 2 other state officer or employee or former state officer or employee to  
 3 divulge, or to make known in any way, the amount of income or any  
 4 particulars set forth or disclosed in any report, return, federal return or  
 5 federal return information required under this act; and it shall be unlawful  
 6 for the secretary, the director, any deputy, agent, clerk or other officer or  
 7 employee engaged in the administration of this act to engage in the  
 8 business or profession of tax accounting or to accept employment, with or  
 9 without consideration, from any person, firm or corporation for the  
 10 purpose, directly or indirectly, of preparing tax returns or reports required  
 11 by the laws of the state of Kansas, by any other state or by the United  
 12 States government, or to accept any employment for the purpose of  
 13 advising, preparing material or data, or the auditing of books or records to  
 14 be used in an effort to defeat or cancel any tax or part thereof that has been  
 15 assessed by the state of Kansas, any other state or by the United States  
 16 government.

17 (c) The secretary or the secretary's designee may: (1) Publish  
 18 statistics, so classified as to prevent the identification of particular reports  
 19 or returns and the items thereof;

20 (2) allow the inspection of returns by the attorney general or other  
 21 legal representatives of the state;

22 (3) provide the post auditor access to all income tax reports or returns  
 23 in accordance with and subject to the provisions of subsection (g) of  
 24 K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto;

25 (4) disclose taxpayer information from income tax returns to persons  
 26 or entities contracting with the secretary of revenue where the secretary  
 27 has determined disclosure of such information is essential for completion  
 28 of the contract and has taken appropriate steps to preserve confidentiality;

29 (5) disclose to the secretary of commerce the following: (A) Specific  
 30 taxpayer information related to financial information previously submitted  
 31 by the taxpayer to the secretary of commerce concerning or relevant to any  
 32 income tax credits, for purposes of verification of such information or  
 33 evaluating the effectiveness of any tax credit or economic incentive  
 34 program administered by the secretary of commerce; (B) the amount of  
 35 payroll withholding taxes an employer is retaining pursuant to K.S.A.  
 36 2010 Supp. 74-50,212, and amendments thereto; (C) information received  
 37 from businesses completing the form required by K.S.A. 2010 Supp. 74-  
 38 50,217, and amendments thereto; and (D) findings related to a compliance  
 39 audit conducted by the department of revenue upon the request of the  
 40 secretary of commerce pursuant to K.S.A. 2010 Supp. 74-50,215, and  
 41 amendments thereto;

42 (6) disclose income tax returns to the state gaming agency to be used  
 43 solely for the purpose of determining qualifications of licensees of and

1 applicants for licensure in tribal gaming. Any information received by the  
 2 state gaming agency shall be confidential and shall not be disclosed except  
 3 to the executive director, employees of the state gaming agency and  
 4 members and employees of the tribal gaming commission;

5 (7) disclose the taxpayer's name, last known address and residency  
 6 status to the department of wildlife and parks to be used solely in its  
 7 license fraud investigations;

8 (8) disclose the name, residence address, employer or Kansas  
 9 adjusted gross income of a taxpayer who may have a duty of support in a  
 10 title IV-D case to the secretary of the Kansas department of social and  
 11 rehabilitation services for use solely in administrative or judicial  
 12 proceedings to establish, modify or enforce such support obligation in a  
 13 title IV-D case. In addition to any other limits on use, such use shall be  
 14 allowed only where subject to a protective order which prohibits  
 15 disclosure outside of the title IV-D proceeding. As used in this section,  
 16 "title IV-D case" means a case being administered pursuant to part D of  
 17 title IV of the federal social security act (42 U.S.C. § 651 et seq.) and  
 18 amendments thereto. Any person receiving any information under the  
 19 provisions of this subsection shall be subject to the confidentiality  
 20 provisions of subsection (b) and to the penalty provisions of subsection  
 21 (e);

22 (9) permit the commissioner of internal revenue of the United States,  
 23 or the proper official of any state imposing an income tax, or the  
 24 authorized representative of either, to inspect the income tax returns made  
 25 under this act and the secretary of revenue may make available or furnish  
 26 to the taxing officials of any other state or the commissioner of internal  
 27 revenue of the United States or other taxing officials of the federal  
 28 government, or their authorized representatives, information contained in  
 29 income tax reports or returns or any audit thereof or the report of any  
 30 investigation made with respect thereto, filed pursuant to the income tax  
 31 laws, as the secretary may consider proper, but such information shall not  
 32 be used for any other purpose than that of the administration of tax laws of  
 33 such state, the state of Kansas or of the United States;

34 (10) communicate to the executive director of the Kansas lottery  
 35 information as to whether a person, partnership or corporation is current in  
 36 the filing of all applicable tax returns and in the payment of all taxes,  
 37 interest and penalties to the state of Kansas, excluding items under formal  
 38 appeal, for the purpose of determining whether such person, partnership or  
 39 corporation is eligible to be selected as a lottery retailer;

40 (11) communicate to the executive director of the Kansas racing  
 41 commission as to whether a person, partnership or corporation has failed  
 42 to meet any tax obligation to the state of Kansas for the purpose of  
 43 determining whether such person, partnership or corporation is eligible for

1 a facility owner license or facility manager license pursuant to the Kansas  
2 parimutuel racing act;

3 (12) provide such information to the executive director of the Kansas  
4 public employees retirement system for the purpose of determining that  
5 certain individuals' reported compensation is in compliance with the  
6 Kansas public employees retirement act, at K.S.A. 74-4901 et seq., and  
7 amendments thereto; and

8 ~~(13) provide taxpayer information of persons suspected of violating~~  
9 ~~K.S.A. 2010 Supp. 44-766, and amendments thereto, to the staff attorneys~~  
10 ~~of the department of labor for the purpose of determining compliance by~~  
11 ~~any person with the provisions of K.S.A. 2010 Supp. 44-766, and~~  
12 ~~amendments thereto, which information shall be limited to withholding tax~~  
13 ~~and payroll information, the identity of any person that has been or is~~  
14 ~~currently being audited or investigated in connection with the~~  
15 ~~administration and enforcement of the withholding and declaration of~~  
16 ~~estimated tax act, K.S.A. 79-3294 et seq., as amended, and the results or~~  
17 ~~status of such audit or investigation.~~

18 *(13) (i) provide taxpayer information of persons suspected of violating*  
19 *K.S.A. 2010 Supp. 44-766, and amendments thereto, to the secretary of*  
20 *labor or such secretary's designee for the purpose of determining*  
21 *compliance by any person with the provisions of K.S.A. 44-703(i)(3)(D)*  
22 *and K.S.A. 2010 Supp. 44-766, and amendments thereto. The information*  
23 *to be provided shall include all relevant information in the possession of*  
24 *the department of revenue necessary for the secretary of labor to make a*  
25 *proper determination of compliance with the provisions of K.S.A. 44-*  
26 *703(i)(3)(D) and K.S.A. 2010 Supp. 44-766, and amendments thereto, and*  
27 *to calculate any unemployment contribution taxes due. Such information*  
28 *to be provided by the department of revenue shall include, but not be*  
29 *limited to, withholding tax and payroll information, the identity of any*  
30 *person that has been or is currently being audited or investigated in*  
31 *connection with the administration and enforcement of the withholding*  
32 *and declaration of estimated tax act, K.S.A. 79-3294 et seq., and*  
33 *amendments thereto, and the results or status of such audit or*  
34 *investigation.*

35 *(ii) Any person receiving tax information under the provisions of this*  
36 *paragraph shall be subject to the same duty of confidentiality imposed by*  
37 *law upon the personnel of the department of revenue and shall be subject*  
38 *to any civil or criminal penalties imposed by law for violations of such*  
39 *duty of confidentiality.*

40 *(iii) Each of the secretary of labor and the secretary of revenue may*  
41 *adopt rules and regulations necessary to effect the provisions of this*  
42 *paragraph.*

43 *(d) Any person receiving information under the provisions of*

1 subsection (c) shall be subject to the confidentiality provisions of  
2 subsection (b) and to the penalty provisions of subsection (e).

3 (e) Any violation of subsection (b) or (c) is a class A nonperson  
4 misdemeanor and, if the offender is an officer or employee of the state,  
5 such officer or employee shall be dismissed from office.

6 (f) Nothing in this section shall be construed to allow disclosure of  
7 the amount of income or any particulars set forth or disclosed in any  
8 report, return, federal return or federal return information, where such  
9 disclosure is prohibited by the federal internal revenue code as in effect on  
10 September 1, 1996, and amendments thereto, related federal internal  
11 revenue rules or regulations, or other federal law.

12 *[New Sec. 6. On or before January 31 of each year, the secretary*  
13 *shall transmit annually to the standing committee of commerce on the*  
14 *senate and the standing committee on commerce and economic*  
15 *development of the house of representatives or any successor committee,*  
16 *a report, based on information received or developed by the department*  
17 *of labor concerning misclassification of employees and any*  
18 *investigations related thereto. Such report shall contain the following*  
19 *information for the preceding calendar year:*

20 (a) *The number of investigations initiated;*

21 (b) *the number of investigations which were closed:*

22 (1) *With no assessment being made;*

23 (2) *with assessment being made which includes the following*  
24 *information:*

25 (A) *An estimate of the amount of unreported payroll;*

26 (B) *an estimate of the unpaid taxes or taxes which have not been*  
27 *withheld on such unreported payroll amount;*

28 (C) *the amount of unpaid contributions or other amounts required*  
29 *to be paid under the employment security act related to such unreported*  
30 *payroll amount;*

31 (D) *the total amount of interest assessed;*

32 (E) *the total amount of penalties assessed; and*

33 (F) *the number of employers found to be employing undocumented*  
34 *workers;*

35 (c) *the total amounts collected for each of the categories listed in*  
36 *subsection (b).]*

37 ~~Sec. 6.]~~ K.S.A. 2010 Supp. 44-703, 44-766 and 79-3234 are  
38 hereby repealed.

39 ~~Sec. 7.]~~ This act shall take effect and be in force from and after its  
40 publication in the statute book.