

[As Amended by Senate Committee of the Whole]

As Amended by Senate Committee

Session of 2011

SENATE BILL No. 77

By Committee on Commerce

1-31

1 AN ACT concerning the employment security act; creating an
2 assessment for the payment of interest on advances received from
3 the federal government; removing the waiting week extension;
4 pertaining to benefits; amending K.S.A. 2010 Supp. **44-703**, 44-
5 704a, 44-705, 44-706, **44-710**, 44-710a and 44-717 and repealing
6 the existing sections.

7
8 *Be it enacted by the Legislature of the State of Kansas:*

9 ***New Section 1. To provide for the payment to the United States***
10 ***treasury from the state employment security interest assessment fund***
11 ***for interest on loans made to the state employment security fund, for***
12 ***the purpose of paying interest due and owing on funds received from***
13 ***the federal unemployment account under title XII of the social***
14 ***security act. The pooled money investment board is authorized and***
15 ***directed to loan to the department of labor sufficient funds therefor***
16 ***in an amount or amounts which in the aggregate shall not exceed***
17 ***\$3,000,000 and such moneys shall be deposited in the state***
18 ***employment security interest assessment fund. The pooled money***
19 ***investment board is authorized and directed to use any moneys in the***
20 ***operating accounts, investment accounts or other investments, of the***
21 ***state of Kansas to provide funds for such loan upon approval of such***
22 ***loan by the state finance council acting on this matter which is***
23 ***hereby characterized as a matter of legislative delegation and subject***
24 ***to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and***
25 ***amendments thereto. The state finance council shall approve such***
26 ***loan on or before September 12, 2011. The pooled money investment***
27 ***board shall transfer the funds required by the department of labor on***
28 ***or before September 23, 2011, to allow the department of labor to***
29 ***make its interest payment on or before September 30, 2011. The loan***
30 ***shall not bear interest and shall be repaid on or before June 30, 2012.***
31 ***A copy of the terms of the loan shall be submitted to the director of***

1 *the legislative research department. Such loan shall not be deemed to*
2 *be an indebtedness or debt of the state of Kansas within the meaning*
3 *of section 6 of article 11 of the constitution of the state of Kansas.*

4 *Sec. 2. From and after July 1, 2011, K.S.A. 2010 Supp. 44-703 is*
5 *hereby amended to read as follows: 44-703. As used in this act, unless*
6 *the context clearly requires otherwise:*

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

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

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

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

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

- 1 *shall be excluded from the new alternative base period.*
- 2 *(B) If an individual lacks sufficient base period wages in order*
3 *to establish a benefit year in the manner set forth above the claimant*
4 *shall have an alternative base period substituted for the current base*
5 *period. For the purposes of this subsection, "alternative base period"*
6 *means eligibility shall be determined using a base period that consists*
7 *of the four most recently completed calendar quarters preceding the*
8 *start of the benefit year.*
- 9 *(2) For the purposes of this chapter, the term "base period"*
10 *includes the alternative base period.*
- 11 *(c) (1) "Benefits" means the money payments payable to an*
12 *individual, as provided in this act, with respect to such individual's*
13 *unemployment.*
- 14 *(2) "Regular benefits" means benefits payable to an individual*
15 *under this act or under any other state law, including benefits*
16 *payable to federal civilian employees and to ex-servicemen pursuant*
17 *to 5 U.S.C. chapter 85, other than extended benefits.*
- 18 *(d) "Benefit year" with respect to any individual, means the*
19 *period beginning with the first day of the first week for which such*
20 *individual files a valid claim for benefits, and such benefit year shall*
21 *continue for one full year. In the case of a combined wage claim, the*
22 *benefit year shall be the benefit year of the paying state. Following*
23 *the termination of a benefit year, a subsequent benefit year shall*
24 *commence on the first day of the first week with respect to which an*
25 *individual next files a claim for benefits. When such filing occurs*
26 *with respect to a week which overlaps the preceding benefit year, the*
27 *subsequent benefit year shall commence on the first day immediately*
28 *following the expiration date of the preceding benefit year. Any claim*
29 *for benefits made in accordance with subsection (a) of K.S.A. 44-709,*
30 *and amendments thereto, shall be deemed to be a "valid claim" for*
31 *the purposes of this subsection if the individual has been paid wages*
32 *for insured work as required under subsection (e) of K.S.A. 44-705,*
33 *and amendments thereto. Whenever a week of unemployment*
34 *overlaps two benefit years, such week shall, for the purpose of*
35 *granting waiting-period credit or benefit payment with respect*
36 *thereto, be deemed to be a week of unemployment within that benefit*
37 *year in which the greater part of such week occurs.*
- 38 *(e) "Commissioner" or "secretary" means the secretary of*
39 *labor.*

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

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

10 (g) *"Employing unit" means any individual or type of*
11 *organization, including any partnership, association, limited liability*
12 *company, agency or department of the state of Kansas and political*
13 *subdivisions thereof, trust, estate, joint-stock company, insurance*
14 *company or corporation, whether domestic or foreign including*
15 *nonprofit corporations, or the receiver, trustee in bankruptcy, trustee*
16 *or successor thereof, or the legal representatives of a deceased*
17 *person, which has in its employ one or more individuals performing*
18 *services for it within this state. All individuals performing services*
19 *within this state for any employing unit which maintains two or more*
20 *separate establishments within this state shall be deemed to be*
21 *employed by a single employing unit for all the purposes of this act.*
22 *Each individual employed to perform or to assist in performing the*
23 *work of any agent or employee of an employing unit shall be deemed*
24 *to be employed by such employing unit for all the purposes of this*
25 *act, whether such individual was hired or paid directly by such*
26 *employing unit or by such agent or employee, provided the employing*
27 *unit had actual or constructive knowledge of the employment.*

28 (h) *"Employer" means:*

29 (1) (A) *Any employing unit for which agricultural labor as*
30 *defined in subsection (w) of this section is performed and which*
31 *during any calendar quarter in either the current or preceding*
32 *calendar year paid remuneration in cash of \$20,000 or more to*
33 *individuals employed in agricultural labor or for some portion of a*
34 *day in each of 20 different calendar weeks, whether or not such*
35 *weeks were consecutive, in either the current or the preceding*
36 *calendar year, employed in agricultural labor 10 or more individuals,*
37 *regardless of whether they were employed at the same moment of*
38 *time.*

39 (B) *For the purpose of this subsection (h)(1), any individual who*

1 *is a member of a crew furnished by a crew leader to perform service*
2 *in agricultural labor for any other person shall be treated as an*
3 *employee of such crew leader if:*

4 *(i) Such crew leader holds a valid certificate of registration*
5 *under the federal migrant and seasonal agricultural workers*
6 *protection act or substantially all the members of such crew operate*
7 *or maintain tractors, mechanized harvesting or cropdusting*
8 *equipment or any other mechanized equipment, which is provided by*
9 *such crew leader; and*

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

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

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

18 *(ii) such other person shall be treated as having paid cash*
19 *remuneration to such individual in an amount equal to the amount of*
20 *cash remuneration paid to such individual by the crew leader, either*
21 *on the crew leader's own behalf or on behalf of such other person,*
22 *for the service in agricultural labor performed for such other person.*

23 *(D) For the purposes of this subsection (h)(1) "crew leader"*
24 *means an individual who:*

25 *(i) Furnishes individuals to perform service in agricultural labor*
26 *for any other person;*

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

30 *(iii) has not entered into a written agreement with such other*
31 *person under which such individual is designated as an employee of*
32 *such other person.*

33 *(2) (A) Any employing unit which for calendar year 2007 and*
34 *each calendar year thereafter: (i) In any calendar quarter in either*
35 *the current or preceding calendar year paid for service in*
36 *employment wages of \$1,500 or more, (ii) for some portion of a day*
37 *in each of 20 different calendar weeks, whether or not such weeks*
38 *were consecutive, in either the current or preceding calendar year,*
39 *had in employment at least one individual, whether or not the same*

1 *individual was in employment in each such day, or (iii) elects to have*
2 *an unemployment tax account established at the time of initial*
3 *registration in accordance with subsection (c) of K.S.A. 44-711, and*
4 *amendments thereto.*

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

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

11 *(4) (A) Any employing unit, whether or not it is an employing*
12 *unit under subsection (g) of this section, which acquires or in any*
13 *manner succeeds to (i) substantially all of the employing enterprises,*
14 *organization, trade or business, or (ii) substantially all the assets, of*
15 *another employing unit which at the time of such acquisition was an*
16 *employer subject to this act;*

17 *(B) any employing unit which is controlled substantially, either*
18 *directly or indirectly by legally enforceable means or otherwise, by*
19 *the same interest or interests, whether or not such interest or interests*
20 *are an employing unit under subsection (g) of this section, which*
21 *acquires or in any manner succeeds to a portion of an employer's*
22 *annual payroll, which is less than 100% of such employer's annual*
23 *payroll, and which intends to continue the acquired portion as a*
24 *going business.*

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

29 *(6) Any employing unit which having become an employer*
30 *under this subsection (h) has not, under subsection (b) of K.S.A. 44-*
31 *711, and amendments thereto, ceased to be an employer subject to*
32 *this act.*

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

36 *(8) Any employing unit not an employer by reason of any other*
37 *paragraph of this subsection (h), for which within either the current*
38 *or preceding calendar year services in employment are or were*
39 *performed with respect to which such employing unit is liable for any*

1 *federal tax against which credit may be taken for contributions*
2 *required to be paid into a state unemployment compensation fund; or*
3 *which, as a condition for approval of this act for full tax credit*
4 *against the tax imposed by the federal unemployment tax act, is*
5 *required, pursuant to such act, to be an "employer" under this act.*

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

13 (i) *"Employment" means:*

14 (1) *Subject to the other provisions of this subsection, service,*
15 *including service in interstate commerce, performed by*

16 (A) *Any active officer of a corporation; or*

17 (B) *any individual who, under the usual common law rules*
18 *applicable in determining the employer-employee relationship, has*
19 *the status of an employee; or*

20 (C) *any individual other than an individual who is an employee*
21 *under subsection (i)(1)(A) or subsection (i)(1)(B) above who*
22 *performs services for remuneration for any person:*

23 (i) *As an agent-driver or commission-driver engaged in*
24 *distributing meat products, vegetable products, fruit products, bakery*
25 *products, beverages (other than milk), or laundry or dry-cleaning*
26 *services, for such individual's principal; or*

27 (ii) *as a traveling or city salesman, other than as an agent-driver*
28 *or commission-driver, engaged upon a full-time basis in the*
29 *solicitation on behalf of, and the transmission to, a principal (except*
30 *for side-line sales activities on behalf of some other person) of orders*
31 *from wholesalers, retailers, contractors, or operators of hotels,*
32 *restaurants, or other similar establishments for merchandise for*
33 *resale or supplies for use in their business operations.*

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

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

38 (b) *the individual does not have a substantial investment in*
39 *facilities used in connection with the performance of the services*

- 1 *(other than in facilities for transportation); and*
2 *(c) the services are not in the nature of a single transaction that*
3 *is not part of a continuing relationship with the person for whom the*
4 *services are performed.*
5 *(2) The term "employment" shall include an individual's entire*
6 *service within the United States, even though performed entirely*
7 *outside this state if,*
8 *(A) The service is not localized in any state, and*
9 *(B) the individual is one of a class of employees who are*
10 *required to travel outside this state in performance of their duties,*
11 *and*
12 *(C) the individual's base of operations is in this state, or if there*
13 *is no base of operations, then the place from which service is directed*
14 *or controlled is in this state.*
15 *(3) The term "employment" shall also include:*
16 *(A) Services performed within this state but not covered by the*
17 *provisions of subsection (i)(1) or subsection (i)(2) shall be deemed to*
18 *be employment subject to this act if contributions are not required*
19 *and paid with respect to such services under an unemployment*
20 *compensation law of any other state or of the federal government.*
21 *(B) Services performed entirely without this state, with respect to*
22 *no part of which contributions are required and paid under an*
23 *unemployment compensation law of any other state or of the federal*
24 *government, shall be deemed to be employment subject to this act*
25 *only if the individual performing such services is a resident of this*
26 *state and the secretary approved the election of the employing unit*
27 *for whom such services are performed that the entire service of such*
28 *individual shall be deemed to be employment subject to this act.*
29 *(C) Services covered by an arrangement pursuant to subsection*
30 *(l) of K.S.A. 44-714, and amendments thereto, between the secretary*
31 *and the agency charged with the administration of any other state or*
32 *federal unemployment compensation law, pursuant to which all*
33 *services performed by an individual for an employing unit are*
34 *deemed to be performed entirely within this state, shall be deemed to*
35 *be employment if the secretary has approved an election of the*
36 *employing unit for whom such services are performed, pursuant to*
37 *which the entire service of such individual during the period covered*
38 *by such election is deemed to be insured work.*
39 *(D) Services performed by an individual for wages or under any*

1 *contract of hire shall be deemed to be employment subject to this act*
2 *unless and until it is shown to the satisfaction of the secretary that:*
3 *(i) Such individual has been and will continue to be free from control*
4 *or direction over the performance of such services, both under the*
5 *individual's contract of hire and in fact; and (ii) such service is either*
6 *outside the usual course of the business for which such service is*
7 *performed or that such service is performed outside of all the places*
8 *of business of the enterprise for which such service is performed.*

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

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

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

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

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

39 *(A) The employer is an individual who is a resident of this state;*

- 1 *or*
- 2 *(B) the employer is a corporation which is organized under the*
3 *laws of this state; or*
- 4 *(C) the employer is a partnership or a trust and the number of*
5 *the partners or trustees who are residents of this state is greater than*
6 *the number who are residents of any other state; or*
- 7 *(iii) none of the criteria of paragraphs (i) and (ii) above of this*
8 *subsection (i)(3)(G) are met but the employer has elected coverage in*
9 *this state or, the employer having failed to elect coverage in any state,*
10 *the individual has filed a claim for benefits, based on such service,*
11 *under the law of this state.*
- 12 *(H) An "American employer," for purposes of subsection (i)(3)*
13 *(G), means a person who is:*
- 14 *(i) An individual who is a resident of the United States; or*
- 15 *(ii) a partnership if $\frac{2}{3}$ or more of the partners are residents of*
16 *the United States; or*
- 17 *(iii) a trust, if all of the trustees are residents of the United*
18 *States; or*
- 19 *(iv) a corporation organized under the laws of the United States*
20 *or of any state.*
- 21 *(I) Notwithstanding subsection (i)(2) of this section, all service*
22 *performed by an officer or member of the crew of an American vessel*
23 *or American aircraft on or in connection with such vessel or aircraft,*
24 *if the operating office, from which the operations of such vessel or*
25 *aircraft operating within, or within and without, the United States are*
26 *ordinarily and regularly supervised, managed, directed and*
27 *controlled is within this state.*
- 28 *(J) Notwithstanding any other provisions of this subsection (i),*
29 *service with respect to which a tax is required to be paid under any*
30 *federal law imposing a tax against which credit may be taken for*
31 *contributions required to be paid into a state unemployment*
32 *compensation fund or which as a condition for full tax credit against*
33 *the tax imposed by the federal unemployment tax act is required to be*
34 *covered under this act.*
- 35 *(K) Domestic service in a private home, local college club or*
36 *local chapter of a college fraternity or sorority performed for a*
37 *person who paid cash remuneration of \$1,000 or more in any*
38 *calendar quarter in the current calendar year or the preceding*
39 *calendar year to individuals employed in such domestic service.*

1 (4) *The term "employment" shall not include: (A) Service*
2 *performed in the employ of an employer specified in subsection (h)(3)*
3 *of this section if such service is performed by an individual in the*
4 *exercise of duties:*
5 (i) *As an elected official;*
6 (ii) *as a member of a legislative body, or a member of the*
7 *judiciary, of a state, political subdivision or of an Indian tribe;*
8 (iii) *as a member of the state national guard or air national*
9 *guard;*
10 (iv) *as an employee serving on a temporary basis in case of fire,*
11 *storm, snow, earthquake, flood or similar emergency;*
12 (v) *in a position which, under or pursuant to the laws of this*
13 *state or tribal law, is designated as a major nontenured policymaking*
14 *or advisory position or as a policymaking or advisory position the*
15 *performance of the duties of which ordinarily does not require more*
16 *than eight hours per week;*
17 (B) *service with respect to which unemployment compensation is*
18 *payable under an unemployment compensation system established by*
19 *an act of congress;*
20 (C) *service performed by an individual in the employ of such*
21 *individual's son, daughter or spouse, and service performed by a*
22 *child under the age of 21 years in the employ of such individual's*
23 *father or mother;*
24 (D) *service performed in the employ of the United States*
25 *government or an instrumentality of the United States exempt under*
26 *the constitution of the United States from the contributions imposed*
27 *by this act, except that to the extent that the congress of the United*
28 *States shall permit states to require any instrumentality of the United*
29 *States to make payments into an unemployment fund under a state*
30 *unemployment compensation law, all of the provisions of this act*
31 *shall be applicable to such instrumentalities, and to services*
32 *performed for such instrumentalities, in the same manner, to the*
33 *same extent and on the same terms as to all other employers,*
34 *employing units, individuals and services. If this state shall not be*
35 *certified for any year by the federal security agency under section*
36 *3304(c) of the federal internal revenue code of 1986, the payments*
37 *required of such instrumentalities with respect to such year shall be*
38 *refunded by the secretary from the fund in the same manner and*
39 *within the same period as is provided in subsection (f) of K.S.A. 44-*

1 717, and amendments thereto, with respect to contributions
2 erroneously collected;

3 (E) service covered by an arrangement between the secretary
4 and the agency charged with the administration of any other state or
5 federal unemployment compensation law pursuant to which all
6 services performed by an individual for an employing unit during the
7 period covered by such employing unit's duly approved election, are
8 deemed to be performed entirely within the jurisdiction of such other
9 state or federal agency;

10 (F) service performed by an individual under the age of 18 in the
11 delivery or distribution of newspapers or shopping news, not
12 including delivery or distribution to any point for subsequent delivery
13 or distribution;

14 (G) service performed by an individual for an employing unit as
15 an insurance agent or as an insurance solicitor, if all such service
16 performed by such individual for such employing unit is performed
17 for remuneration solely by way of commission;

18 (H) service performed in any calendar quarter in the employ of
19 any organization exempt from income tax under section 501(a) of the
20 federal internal revenue code of 1986 (other than an organization
21 described in section 401(a) or under section 521 of such code) if the
22 remuneration for such service is less than \$50. In construing the
23 application of the term "employment," if services performed during
24 $\frac{1}{2}$ or more of any pay period by an individual for the person
25 employing such individual constitute employment, all the services of
26 such individual for such period shall be deemed to be employment;
27 but if the services performed during more than $\frac{1}{2}$ of any such pay
28 period by an individual for the person employing such individual do
29 not constitute employment, then none of the services of such
30 individual for such period shall be deemed to be employment. As used
31 in this subsection (i)(4)(H) the term "pay period" means a period (of
32 not more than 31 consecutive days) for which a payment of
33 remuneration is ordinarily made to the individual by the person
34 employing such individual. This subsection (i)(4)(H) shall not be
35 applicable with respect to services with respect to which
36 unemployment compensation is payable under an unemployment
37 compensation system established by an act of congress;

38 (I) services performed in the employ of a church or convention
39 or association of churches, or an organization which is operated

- 1 *primarily for religious purposes and which is operated, supervised,*
2 *controlled, or principally supported by a church or convention or*
3 *association of churches;*
- 4 *(J) service performed by a duly ordained, commissioned, or*
5 *licensed minister of a church in the exercise of such individual's*
6 *ministry or by a member of a religious order in the exercise of duties*
7 *required by such order;*
- 8 *(K) service performed in a facility conducted for the purpose of*
9 *carrying out a program of:*
- 10 *(i) Rehabilitation for individuals whose earning capacity is*
11 *impaired by age or physical or mental deficiency or injury, or*
12 *(ii) providing remunerative work for individuals who because of*
13 *their impaired physical or mental capacity cannot be readily absorbed*
14 *in the competitive labor market, by an individual receiving such*
15 *rehabilitation or remunerative work;*
- 16 *(L) service performed as part of an employment work-relief or*
17 *work-training program assisted or financed in whole or in part by*
18 *any federal agency or an agency of a state or political subdivision*
19 *thereof or of an Indian tribe, by an individual receiving such work*
20 *relief or work training;*
- 21 *(M) service performed by an inmate of a custodial or*
22 *correctional institution;*
- 23 *(N) service performed, in the employ of a school, college, or*
24 *university, if such service is performed by a student who is enrolled*
25 *and is regularly attending classes at such school, college or*
26 *university;*
- 27 *(O) service performed by an individual who is enrolled at a*
28 *nonprofit or public educational institution which normally maintains*
29 *a regular faculty and curriculum and normally has a regularly*
30 *organized body of students in attendance at the place where its*
31 *educational activities are carried on as a student in a full-time*
32 *program, taken for credit at such institution, which combines*
33 *academic instruction with work experience, if such service is an*
34 *integral part of such program, and such institution has so certified to*
35 *the employer, except that this subsection (i)(4)(O) shall not apply to*
36 *service performed in a program established for or on behalf of an*
37 *employer or group of employers;*
- 38 *(P) service performed in the employ of a hospital licensed,*
39 *certified or approved by the secretary of health and environment, if*

1 *such service is performed by a patient of the hospital;*
2 *(Q) services performed as a qualified real estate agent. As used*
3 *in this subsection (i)(4)(Q) the term "qualified real estate agent"*
4 *means any individual who is licensed by the Kansas real estate*
5 *commission as a salesperson under the real estate brokers' and*
6 *salespersons' license act and for whom:*
7 *(i) Substantially all of the remuneration, whether or not paid in*
8 *cash, for the services performed by such individual as a real estate*
9 *salesperson is directly related to sales or other output, including the*
10 *performance of services, rather than to the number of hours worked;*
11 *and*
12 *(ii) the services performed by the individual are performed*
13 *pursuant to a written contract between such individual and the*
14 *person for whom the services are performed and such contract*
15 *provides that the individual will not be treated as an employee with*
16 *respect to such services for state tax purposes;*
17 *(R) services performed for an employer by an extra in*
18 *connection with any phase of motion picture or television production*
19 *or television commercials for less than 14 days during any calendar*
20 *year. As used in this subsection, the term "extra" means an*
21 *individual who pantomimes in the background, adds atmosphere to*
22 *the set and performs such actions without speaking and "employer"*
23 *shall not include any employer which is a governmental entity or any*
24 *employer described in section 501(c)(3) of the federal internal*
25 *revenue code of 1986 which is exempt from income taxation under*
26 *section 501(a) of the code;*
27 *(S) services performed by an oil and gas contract pumper. As*
28 *used in this subsection (i)(4)(S), "oil and gas contract pumper"*
29 *means a person performing pumping and other services on one or*
30 *more oil or gas leases, or on both oil and gas leases, relating to the*
31 *operation and maintenance of such oil and gas leases, on a*
32 *contractual basis for the operators of such oil and gas leases and*
33 *"services" shall not include services performed for a governmental*
34 *entity or any organization described in section 501(c)(3) of the*
35 *federal internal revenue code of 1986 which is exempt from income*
36 *taxation under section 501(a) of the code;*
37 *(T) service not in the course of the employer's trade or business*
38 *performed in any calendar quarter by an employee, unless the cash*
39 *remuneration paid for such service is \$200 or more and such service*

- 1 *is performed by an individual who is regularly employed by such*
2 *employer to perform such service. For purposes of this paragraph, an*
3 *individual shall be deemed to be regularly employed by an employer*
4 *during a calendar quarter only if:*
- 5 *(i) On each of some 24 days during such quarter such individual*
6 *performs for such employer for some portion of the day service not in*
7 *the course of the employer's trade or business, or*
- 8 *(ii) such individual was regularly employed, as determined*
9 *under subparagraph (i), by such employer in the performance of*
10 *such service during the preceding calendar quarter.*
- 11 *Such excluded service shall not include any services performed for*
12 *an employer which is a governmental entity or any employer*
13 *described in section 501(c)(3) of the federal internal revenue code of*
14 *1986 which is exempt from income taxation under section 501(a) of*
15 *the code;*
- 16 *(U) service which is performed by any person who is a member*
17 *of a limited liability company and which is performed as a member or*
18 *manager of that limited liability company; and*
- 19 *(V) services performed as a qualified direct seller. The term*
20 *"direct seller" means any person if:*
- 21 *(i) Such person:*
- 22 *(a) is engaged in the trade or business of selling or soliciting the*
23 *sale of consumer products to any buyer on a buy-sell basis or a*
24 *deposit-commission basis for resale, by the buyer or any other*
25 *person, in the home or otherwise rather than in a permanent retail*
26 *establishment; or*
- 27 *(b) is engaged in the trade or business of selling or soliciting the*
28 *sale of consumer products in the home or otherwise than in a*
29 *permanent retail establishment;*
- 30 *(ii) substantially all the remuneration whether or not paid in*
31 *cash for the performance of the services described in subparagraph*
32 *(i) is directly related to sales or other output including the*
33 *performance of services rather than to the number of hours worked;*
- 34 *(iii) the services performed by the person are performed*
35 *pursuant to a written contract between such person and the person*
36 *for whom the services are performed and such contract provides that*
37 *the person will not be treated as an employee for federal and state tax*
38 *purposes;*
- 39 *(iv) for purposes of this act, a sale or a sale resulting exclusively*

1 *from a solicitation made by telephone, mail, or other*
2 *telecommunications method, or other nonpersonal method does not*
3 *satisfy the requirements of this subsection;*

4 *(W) service performed as an election official or election worker,*
5 *if the amount of remuneration received by the individual during the*
6 *calendar year for services as an election official or election worker is*
7 *less than \$1,000;*

8 *(X) service performed by agricultural workers who are aliens*
9 *admitted to the United States to perform labor pursuant to section*
10 *1101 (a)(15)(H)(ii)(a) of the immigration and nationality act; and*

11 *(Y) service performed by an owner-operator of a motor vehicle*
12 *that is leased or contracted to a licensed motor carrier with the*
13 *services of a driver and is not treated under the terms of the lease*
14 *agreement or contract with the licensed motor carrier as an employee*
15 *for purposes of the federal insurance contribution act, 26 U.S.C. §*
16 *3101 et seq., the federal social security act, 42 U.S.C. § 301 et seq.,*
17 *the federal unemployment tax act, 26 U.S.C. § 3301 et seq., and the*
18 *federal statutes prescribing income tax withholding at the source, 26*
19 *U.S.C. § 3401 et seq. Employees or agents of the owner-operator*
20 *shall not be considered employees of the licensed motor carrier for*
21 *purposes of employment security taxation or compensation. As used*
22 *in this subsection (Y), the following definitions apply: (i) "Motor*
23 *vehicle" means any automobile, truck-trailer, semitrailer, tractor,*
24 *motor bus or any other self-propelled or motor-driven vehicle used*
25 *upon any of the public highways of Kansas for the purpose of*
26 *transporting persons or property; (ii) "licensed motor carrier" means*
27 *any person, firm, corporation or other business entity that holds a*
28 *certificate of convenience and necessity or a certificate of public*
29 *service from the state corporation commission or is required to*
30 *register motor carrier equipment pursuant to 49 U.S.C. § 14504; and*
31 *(iii) "owner-operator" means a person, firm, corporation or other*
32 *business entity that is the owner of a single motor vehicle that is*
33 *driven exclusively by the owner under a lease agreement or contract*
34 *with a licensed motor carrier.*

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

38 *(k) "Fund" means the employment security fund established by*
39 *this act, to which all contributions and reimbursement payments*

1 *required and from which all benefits provided under this act shall be*
2 *paid and including all money received from the federal government*
3 *as reimbursements pursuant to section 204 of the federal-state*
4 *extended compensation act of 1970, and amendments thereto.*

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

8 (m) *"Unemployment." An individual shall be deemed*
9 *"unemployed" with respect to any week during which such*
10 *individual performs no services and with respect to which no wages*
11 *are payable to such individual, or with respect to any week of less*
12 *than full-time work if the wages payable to such individual with*
13 *respect to such week are less than such individual's weekly benefit*
14 *amount.*

15 (n) *"Employment security administration fund" means the fund*
16 *established by this act, from which administrative expenses under*
17 *this act shall be paid.*

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

1 *wages shall be allocated to the week or weeks in which such wages,*
2 *in the judgment of the secretary, would have been paid. The term*
3 *"wages" shall not include:*

4 *(1) That part of the remuneration which has been paid in a*
5 *calendar year to an individual by an employer or such employer's*
6 *predecessor in excess of \$3,000 for all calendar years prior to 1972, in*
7 *excess of \$4,200 for the calendar years 1972 to 1977, inclusive, in*
8 *excess of \$6,000 for calendar years 1978 to 1982, inclusive, in excess*
9 *of \$7,000 for the calendar year 1983, and ~~\$8,000~~ with respect to*
10 *employment during any calendar year following 1983 in excess of*
11 *\$8,000 for the calendar years from 1984 to 2011 inclusive, in excess of*
12 *\$9,000 for the calendar year 2012, in excess of \$10,000 for the*
13 *calendar year of 2013, and in excess of \$11,000 for each calendar year*
14 *following 2013, except that if the definition of the term "wages" as*
15 *contained in the federal unemployment tax act is amended to include*
16 *remuneration in excess of ~~\$8,000~~ the amount stated herein paid to an*
17 *individual by an employer under the federal act during any calendar*
18 *year, wages shall include remuneration paid in a calendar year to an*
19 *individual by an employer subject to this act or such employer's*
20 *predecessor with respect to employment during any calendar year up*
21 *to an amount equal to the dollar limitation specified in the federal*
22 *unemployment tax act. For the purposes of this subsection (o)(1), the*
23 *term "employment" shall include service constituting employment*
24 *under any employment security law of another state or of the federal*
25 *government;*

26 *(2) the amount of any payment (including any amount paid by*
27 *an employing unit for insurance or annuities, or into a fund, to*
28 *provide for any such payment) made to, or on behalf of, an employee*
29 *or any of such employee's dependents under a plan or system*
30 *established by an employer which makes provisions for employees*
31 *generally, for a class or classes of employees or for such employees*
32 *or a class or classes of employees and their dependents, on account of*
33 *(A) sickness or accident disability, except in the case of any payment*
34 *made to an employee or such employee's dependents, this*
35 *subparagraph shall exclude from the term "wages" only payments*
36 *which are received under a workers compensation law. Any third*
37 *party which makes a payment included as wages by reason of this*
38 *subparagraph (2)(A) shall be treated as the employer with respect to*
39 *such wages, or (B) medical and hospitalization expenses in*

- 1 *connection with sickness or accident disability, or (C) death;*
2 *(3) any payment on account of sickness or accident disability, or*
3 *medical or hospitalization expenses in connection with sickness or*
4 *accident disability, made by an employer to, or on behalf of, an*
5 *employee after the expiration of six calendar months following the*
6 *last calendar month in which the employee worked for such*
7 *employer;*
8 *(4) any payment made to, or on behalf of, an employee or such*
9 *employee's beneficiary:*
10 *(A) From or to a trust described in section 401(a) of the federal*
11 *internal revenue code of 1986 which is exempt from tax under*
12 *section 501(a) of the federal internal revenue code of 1986 at the time*
13 *of such payment unless such payment is made to an employee of the*
14 *trust as remuneration for services rendered as such employee and not*
15 *as a beneficiary of the trust;*
16 *(B) under or to an annuity plan which, at the time of such*
17 *payment, is a plan described in section 403(a) of the federal internal*
18 *revenue code of 1986;*
19 *(C) under a simplified employee pension as defined in section*
20 *408(k)(1) of the federal internal revenue code of 1986, other than any*
21 *contribution described in section 408(k)(6) of the federal internal*
22 *revenue code of 1986;*
23 *(D) under or to an annuity contract described in section 403(b)*
24 *of the federal internal revenue code of 1986, other than a payment*
25 *for the purchase of such contract which was made by reason of a*
26 *salary reduction agreement whether evidenced by a written*
27 *instrument or otherwise;*
28 *(E) under or to an exempt governmental deferred compensation*
29 *plan as defined in section 3121(v)(3) of the federal internal revenue*
30 *code of 1986;*
31 *(F) to supplement pension benefits under a plan or trust*
32 *described in any of the foregoing provisions of this subparagraph to*
33 *take into account some portion or all of the increase in the cost of*
34 *living, as determined by the secretary of labor, since retirement but*
35 *only if such supplemental payments are under a plan which is treated*
36 *as a welfare plan under section 3(2)(B)(ii) of the federal employee*
37 *retirement income security act of 1974; or*
38 *(G) under a cafeteria plan within the meaning of section 125 of*
39 *the federal internal revenue code of 1986;*

- 1 (5) *the payment by an employing unit (without deduction from*
2 *the remuneration of the employee) of the tax imposed upon an*
3 *employee under section 3101 of the federal internal revenue code of*
4 *1986 with respect to remuneration paid to an employee for domestic*
5 *service in a private home of the employer or for agricultural labor;*
- 6 (6) *remuneration paid in any medium other than cash to an*
7 *employee for service not in the course of the employer's trade or*
8 *business;*
- 9 (7) *remuneration paid to or on behalf of an employee if and to*
10 *the extent that at the time of the payment of such remuneration it is*
11 *reasonable to believe that a corresponding deduction is allowable*
12 *under section 217 of the federal internal revenue code of 1986*
13 *relating to moving expenses;*
- 14 (8) *any payment or series of payments by an employer to an*
15 *employee or any of such employee's dependents which is paid:*
 - 16 (A) *Upon or after the termination of an employee's employment*
17 *relationship because of (i) death or (ii) retirement for disability; and*
 - 18 (B) *under a plan established by the employer which makes*
19 *provisions for employees generally, a class or classes of employees or*
20 *for such employees or a class or classes of employees and their*
21 *dependents, other than any such payment or series of payments*
22 *which would have been paid if the employee's employment*
23 *relationship had not been so terminated;*
- 24 (9) *remuneration for agricultural labor paid in any medium*
25 *other than cash;*
- 26 (10) *any payment made, or benefit furnished, to or for the*
27 *benefit of an employee if at the time of such payment or such*
28 *furnishing it is reasonable to believe that the employee will be able to*
29 *exclude such payment or benefit from income under section 129 of*
30 *the federal internal revenue code of 1986 which relates to dependent*
31 *care assistance programs;*
- 32 (11) *the value of any meals or lodging furnished by or on behalf*
33 *of the employer if at the time of such furnishing it is reasonable to*
34 *believe that the employee will be able to exclude such items from*
35 *income under section 119 of the federal internal revenue code of*
36 *1986;*
- 37 (12) *any payment made by an employer to a survivor or the*
38 *estate of a former employee after the calendar year in which such*
39 *employee died;*

1 (13) *any benefit provided to or on behalf of an employee if at the*
2 *time such benefit is provided it is reasonable to believe that the*
3 *employee will be able to exclude such benefit from income under*
4 *section 74(c), 117 or 132 of the federal internal revenue code of 1986;*

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

11 (15) *any payment made to or for the benefit of an employee if at*
12 *the time of such payment it is reasonable to believe that the employee*
13 *will be able to exclude such payment from income under section*
14 *106(d) of the federal internal revenue code of 1986 relating to health*
15 *savings accounts.*

16 *Nothing in any paragraph of subsection (o), other than paragraph*
17 *(1), shall exclude from the term "wages": (1) Any employer*
18 *contribution under a qualified cash or deferred arrangement, as*
19 *defined in section 401(k) of the federal internal revenue code of*
20 *1986, to the extent that such contribution is not included in gross*
21 *income by reason of section 402(a)(8) of the federal internal revenue*
22 *code of 1986; or (2) any amount treated as an employer contribution*
23 *under section 414(h)(2) of the federal internal revenue code of 1986.*

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

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

37 (q) *"Calendar quarter" means the period of three consecutive*
38 *calendar months ending March 31, June 30, September 30 or*
39 *December 31, or the equivalent thereof as the secretary may by rules*

1 *and regulations prescribe.*

2 (r) *"Insured work" means employment for employers.*

3 (s) *"Approved training" means any vocational training course*
4 *or course in basic education skills, including a job training program*
5 *authorized under the federal workforce investment act of 1998,*
6 *approved by the secretary or a person or persons designated by the*
7 *secretary.*

8 (t) *"American vessel" or "American aircraft" means any vessel*
9 *or aircraft documented or numbered or otherwise registered under*
10 *the laws of the United States; and any vessel or aircraft which is*
11 *neither documented or numbered or otherwise registered under the*
12 *laws of the United States nor documented under the laws of any*
13 *foreign country, if its crew performs service solely for one or more*
14 *citizens or residents of the United States or corporations organized*
15 *under the laws of the United States or of any state.*

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

18 (1) *Admits as regular students only individuals having a*
19 *certificate of graduation from a high school, or the recognized*
20 *equivalent of such a certificate;*

21 (2) *is legally authorized in this state to provide a program of*
22 *education beyond high school;*

23 (3) *provides an educational program for which it awards a*
24 *bachelor's or higher degree, or provides a program which is*
25 *acceptable for full credit toward such a degree, a program of*
26 *postgraduate or postdoctoral studies, or a program of training to*
27 *prepare students for gainful employment in a recognized occupation;*
28 *and*

29 (4) *is a public or other nonprofit institution.*

30 *Notwithstanding any of the foregoing provisions of this subsection*
31 *(u), all colleges and universities in this state are institutions of higher*
32 *education for purposes of this section, except that no college,*
33 *university, junior college or other postsecondary school or institution*
34 *which is operated by the federal government or any agency thereof*
35 *shall be an institution of higher education for purposes of the*
36 *employment security law.*

37 (v) *"Educational institution" means any institution of higher*
38 *education, as defined in subsection (u) of this section, or any*
39 *institution, except private for profit institutions, in which*

1 *participants, trainees or students are offered an organized course of*
2 *study or training designed to transfer to them knowledge, skills,*
3 *information, doctrines, attitudes or abilities from, by or under the*
4 *guidance of an instructor or teacher and which is approved, licensed*
5 *or issued a permit to operate as a school by the state department of*
6 *education or other government agency that is authorized within the*
7 *state to approve, license or issue a permit for the operation of a*
8 *school or to an Indian tribe in the operation of an educational*
9 *institution. The courses of study or training which an educational*
10 *institution offers may be academic, technical, trade or preparation*
11 *for gainful employment in a recognized occupation.*

12 *(w) (I) "Agricultural labor" means any remunerated service:*

13 *(A) On a farm, in the employ of any person, in connection with*
14 *cultivating the soil, or in connection with raising or harvesting any*
15 *agricultural or horticultural commodity, including the raising,*
16 *shearing, feeding, caring for, training, and management of livestock,*
17 *bees, poultry, and furbearing animals and wildlife.*

18 *(B) In the employ of the owner or tenant or other operator of a*
19 *farm, in connection with the operating, management, conservation,*
20 *improvement, or maintenance of such farm and its tools and*
21 *equipment, or in salvaging timber or clearing land of brush and*
22 *other debris left by a hurricane, if the major part of such service is*
23 *performed on a farm.*

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

31 *(D) (i) In the employ of the operator of a farm in handling,*
32 *planting, drying, packing, packaging, processing, freezing, grading,*
33 *storing, or delivering to storage or to market or to a carrier for*
34 *transportation to market, in its unmanufactured state, any*
35 *agricultural or horticultural commodity; but only if such operator*
36 *produced more than ½ of the commodity with respect to which such*
37 *service is performed;*

38 *(ii) in the employ of a group of operators of farms (or a*
39 *cooperative organization of which such operators are members) in*

1 *the performance of service described in paragraph (i) above of this*
2 *subsection (w)(1)(D), but only if such operators produced more than*
3 *½ of the commodity with respect to which such service is performed;*

4 *(iii) the provisions of paragraphs (i) and (ii) above of this*
5 *subsection (w)(1)(D) shall not be deemed to be applicable with*
6 *respect to service performed in connection with commercial canning*
7 *or commercial freezing or in connection with any agricultural or*
8 *horticultural commodity after its delivery to a terminal market for*
9 *distribution for consumption.*

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

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

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

22 *(4) For the purpose of this section, if an employing unit does not*
23 *maintain sufficient records to separate agricultural labor from other*
24 *employment, all services performed during any pay period by an*
25 *individual for the person employing such individual shall be deemed*
26 *to be agricultural labor if services performed during ½ or more of*
27 *such pay period constitute agricultural labor; but if the services*
28 *performed during more than ½ of any such pay period by an*
29 *individual for the person employing such individual do not constitute*
30 *agricultural labor, then none of the services of such individual for*
31 *such period shall be deemed to be agricultural labor. As used in this*
32 *subsection (w), the term "pay period" means a period of not more*
33 *than 31 consecutive days for which a payment of remuneration is*
34 *ordinarily made to the individual by the person employing such*
35 *individual.*

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

39 *(y) "Contributing employer" means any employer other than a*

- 1 *reimbursing employer or rated governmental employer.*
- 2 (z) *"Wage combining plan" means a uniform national*
3 *arrangement approved by the United States secretary of labor in*
4 *consultation with the state unemployment compensation agencies*
5 *and in which this state shall participate, whereby wages earned in*
6 *one or more states are transferred to another state, called the "paying*
7 *state," and combined with wages in the paying state, if any, for the*
8 *payment of benefits under the laws of the paying state and as*
9 *provided by an arrangement so approved by the United States*
10 *secretary of labor.*
- 11 (aa) *"Domestic service" means any service for a person in the*
12 *operation and maintenance of a private household, local college club*
13 *or local chapter of a college fraternity or sorority, as distinguished*
14 *from service as an employee in the pursuit of an employer's trade,*
15 *occupation, profession, enterprise or vocation.*
- 16 (bb) *"Rated governmental employer" means any governmental*
17 *entity which elects to make payments as provided by K.S.A. 44-710d,*
18 *and amendments thereto.*
- 19 (cc) *"Benefit cost payments" means payments made to the*
20 *employment security fund by a governmental entity electing to*
21 *become a rated governmental employer.*
- 22 (dd) *"Successor employer" means any employer, as described in*
23 *subsection (h) of this section, which acquires or in any manner*
24 *succeeds to (1) substantially all of the employing enterprises,*
25 *organization, trade or business of another employer or (2)*
26 *substantially all the assets of another employer.*
- 27 (ee) *"Predecessor employer" means an employer, as described in*
28 *subsection (h) of this section, who has previously operated a business*
29 *or portion of a business with employment to which another employer*
30 *has succeeded.*
- 31 (ff) *"Lessor employing unit" means any independently*
32 *established business entity which engages in the business of*
33 *providing leased employees to a client lessee.*
- 34 (gg) *"Client lessee" means any individual, organization,*
35 *partnership, corporation or other legal entity leasing employees from*
36 *a lessor employing unit.*
- 37 (hh) *"Qualifying injury" means a personal injury by accident*
38 *arising out of and in the course of employment within the coverage of*
39 *the Kansas workers compensation act, K.S.A. 44-501 et seq., and*

1 *amendments thereto.*

2 ~~Section 1.~~ **Sec. 3.** ~~From and after July 1, 2011,~~ K.S.A. 2010 Supp.
3 44-704a is hereby amended to read as follows: 44-704a. (a)
4 *Definitions.* As used in this section, unless the context clearly requires
5 otherwise:

6 (1) "Extended benefit period" means a period which:

7 (A) Begins with the third week after a week for which there is an
8 "on" indicator; and

9 (B) ends with either of the following weeks, whichever occurs
10 later: (i) The third week after the first week for which there is an "off"
11 indicator; or (ii) the 13th consecutive week of such period, except that
12 no extended benefit period may begin by reason of an "on" indicator
13 before the 14th week following the end of a prior extended benefit
14 period which was in effect with respect to this state.

15 (2) For the purposes of this section:

16 (A) There is an "on" indicator for this state for a week if the
17 secretary of labor determines, in accordance with the regulations of the
18 United States secretary of labor, that, for the period consisting of such
19 week and the immediately preceding 12 weeks, the rate of insured
20 unemployment (not seasonally adjusted) under this act: (i) Equaled or
21 exceeded 5% and equaled or exceeded 120% of the average of such
22 rates for the corresponding 13-week period ending in each of the
23 preceding two calendar years; ~~or (ii) and the state of Kansas pays a~~
24 ~~portion of such benefits in accordance with the provisions of K.S.A. 44-~~
25 ~~710(c)(2)(C) and 44-710(e), and amendments thereto; or (ii) equaled~~
26 ~~or exceeded 5% and equaled or exceeded 120% of the average of such~~
27 ~~rates for the corresponding 13-week period ending in any or all of the~~
28 ~~preceding three calendar years and such benefits are funded entirely by~~
29 ~~the United States department of labor~~ ***until on or before the earlier of***
30 ***the latest date permitted under federal law or the end of the fourth***
31 ***week prior to the last week for which federal sharing is provided as***
32 ***authorized by section 2005(a) of public law 111-5 without regard to***
33 ***section 2005(c) of public law 111-5; or (iii) equaled or exceeded 6%;***
34 ~~or (iii)(iv)~~ ***(iv) with respect to benefits for weeks of unemployment***
35 ***beginning after March 6, 1993, (a) the average rate of total***
36 ***unemployment (seasonally adjusted), as determined by the United***
37 ***States secretary of labor, for the period consisting of the most recent***
38 ***three months for which data for all states are published before the close***
39 ***of such week equals or exceeds 6.5%, and (b) the average rate of total***

1 unemployment for this state (seasonally adjusted), as determined by the
2 United States secretary of labor, for the three-month period referred to
3 in clause ~~(iii)(a)~~(iv)(a)(1), equals or exceeds 110% of such average for
4 either or both of the corresponding three-month periods ending in the
5 two preceding calendar years; *or (2) equals or exceeds 110% of such*
6 *average for any or all of the corresponding three-month periods ending*
7 *in any or all of the three preceding calendar years and such benefits*
8 *are funded entirely by the United States department of labor until on or*
9 *before the earlier of the latest date permitted under federal law or the*
10 *end of the fourth week prior to the last week for which federal*
11 *sharing is provided as authorized by section 2005(a) of public law*
12 *111-5 without regard to section 2005(c) of public law 111-5.*

13 (B) (i) There is an "off" indicator for this state for a week if the
14 secretary of labor determines, in accordance with the regulations of the
15 United States secretary of labor, that for the period consisting of such
16 week and the immediately preceding 12 weeks, the rate of insured
17 unemployment (not seasonally adjusted) under this act: (a) (1) Was less
18 than 5% or less than 120% of the average of such rates for the
19 corresponding 13-week period ending in each of the preceding two
20 calendar years; *or (2) was less than 5% or less than 120% of the*
21 *average of such rates for the corresponding 13-week period ending in*
22 *any or all of the three preceding calendar years and such benefits are*
23 *funded entirely by the United States department of labor until on or*
24 *before the earlier of the latest date permitted under federal law or the*
25 *end of the fourth week prior to the last week for which federal*
26 *sharing is provided as authorized by section 2005(a) of public law*
27 *111-5 without regard to section 2005(c) of public law 111-5; and (b)*
28 *was less than 5%.*

29 (ii) There is an "off" indicator for this state for a week only if, for
30 the period consisting of such week and the immediately preceding 12
31 weeks, none of the conditions specified in subsection (a)(2)(A) of this
32 section result in an "on" indicator.

33 (3) "Rate of insured unemployment," for purposes of paragraphs
34 (2)(A) and (2)(B) of this subsection, means the percentage derived by
35 dividing:

36 (A) The average weekly number of individuals filing claims for
37 regular benefits in this state for weeks of unemployment with respect to
38 the most recent 13-consecutive-week period, as determined by the
39 secretary of labor on the basis of reports to the United States secretary

1 of labor; by

2 (B) the average monthly employment covered under this act for
3 the first four of the most recent six completed calendar quarters ending
4 before the end of such 13-week period.

5 (4) "Extended entitlement period" of an individual means the
6 period consisting of the weeks of the individual's benefit year which
7 begin in an extended benefit period and, if the individual's benefit year
8 ends within such extended benefit period, any weeks thereafter which
9 begin in such period.

10 (5) "Extended benefits" means benefits (including benefits payable
11 to federal civilian employees and to ex-service personnel pursuant to 5
12 U.S.C.A. chapter 85) payable to an individual under the provisions of
13 the act for weeks of unemployment in the individual's extended
14 entitlement period.

15 (6) "Exhaustee" means an individual who, with respect to any
16 week of unemployment in the individual's extended entitlement period:

17 (A) Has received, prior to such week, all of the regular benefits
18 that were available to the individual under this act or any other state
19 law (including dependents' allowances and benefits payable to federal
20 civilian employees and ex-service personnel under 5 U.S.C.A. chapter
21 85) in the individual's current benefit year that includes such week,
22 provided that, for the purposes of this paragraph (6)(A), an individual
23 shall be deemed to have received all of the regular benefits that were
24 available to the individual although the individual may subsequently be
25 determined to be entitled to added regular benefits as a result of a
26 pending appeal with respect to wages that were not considered in the
27 original monetary determination of the individual's benefit year; or

28 (B) the individual's benefit year having expired prior to such week,
29 has no, or insufficient, wages on the basis of which the individual could
30 establish a new benefit year that would include such week; and

31 (C) (i) has no right to unemployment benefits or allowances, as the
32 case may be, under the federal railroad unemployment insurance act
33 and such other federal laws as are specified in regulations issued by the
34 United States secretary of labor; and (ii) has not received and is not
35 seeking unemployment benefits under the unemployment compensation
36 law of Canada; but if the individual is seeking such benefits and the
37 appropriate agency finally determines that the individual is not entitled
38 to benefits under such law the individual is considered an exhaustee.

39 (7) "State law" means the unemployment compensation law of any

1 state, approved by the United States secretary of labor under section
2 3304 of the federal internal revenue code of 1986.

3 (b) *Payment of extended benefits.* Extended benefits shall be
4 payable to eligible individuals with respect to weeks of unemployment
5 in their extended entitlement periods. The extended benefits provided
6 by this section and K.S.A. 44-704b, and amendments thereto, shall be
7 payable from the fund. All extended benefits shall be paid through the
8 employment offices, in accordance with such rules and regulations as
9 the secretary of labor may adopt.

10 (c) *Beginning and termination of extended benefit period.* (1)
11 Whenever an extended benefit period is to become effective in this
12 state as a result of an "on" indicator, or an extended benefit period is to
13 be terminated in this state as a result of an "off" indicator, the secretary
14 of labor shall make an appropriate public announcement.

15 (2) Computations required by the provisions of subsection (a)(3)
16 of this section shall be made by the secretary of labor, in accordance
17 with regulations prescribed by the United States secretary of labor.

18 (d) *Weekly extended benefit amount.* The weekly extended benefit
19 amount payable to an individual for a week of total unemployment in
20 the individual's extended entitlement period shall be an amount equal to
21 the regular weekly benefit amount payable to the individual during the
22 individual's applicable benefit year, except that for any week during a
23 period in which federal payments to states under section 204 of the
24 federal-state extended unemployment compensation act of 1970 are
25 reduced pursuant to an order issued under section 252 of the federal
26 balanced budget and emergency deficit control act of 1985, the weekly
27 extended benefit amount payable to an individual for a week of total
28 unemployment in the individual's eligibility period shall be reduced by
29 a percentage amount which is equivalent to the reduction in the federal
30 payment. If such reduced weekly extended benefit amount is not a
31 multiple of \$1, it shall be reduced to the next lower multiple of \$1.

32 (e) *Total extended benefit amount.* (1) Except as otherwise
33 provided in subsection (e)(2) or (e)(3) of this section, the total extended
34 benefit amount payable to any eligible individual with respect to the
35 individual's applicable benefit year shall be the least of the following
36 amounts:

37 (A) Fifty percent of the total amount of regular benefits which
38 were payable to the individual under this act in the individual's
39 applicable benefit year; or

1 (B) thirteen times the individual's weekly benefit amount which
2 was payable to the individual under this act for a week of total
3 unemployment in the applicable benefit year.

4 (2) Effective with respect to weeks beginning in a high
5 unemployment period, the provisions of subsection (e)(1) of this
6 section shall be applied by substituting "80%" for "50%" in
7 subparagraph (A) of that subsection (e)(1), and by substituting "20" for
8 "13" in subparagraph (B) of that subsection (e)(1). For purposes of this
9 subsection (e)(2), the term "high unemployment period" means any
10 period during which an extended benefit period would be in effect if
11 the provisions of subsection (a)(2)(A)(iii) of this section were applied
12 after substituting "8%" for "6.5%" in clause (a) of that subsection (a)(2)
13 (A)(iii).

14 (3) During any fiscal year in which federal payments to states
15 under section 204 of the federal-state extended unemployment
16 compensation act of 1970 are reduced pursuant to an order issued under
17 section 252 of the federal balanced budget and emergency deficit
18 control act of 1985, the total extended benefit amount payable to an
19 individual with respect to the individual's applicable benefit year shall
20 be reduced by an amount equal to the total of all of the reductions
21 under subsection (d) of this section in the weekly extended benefit
22 amounts paid to the individual.

23 (f) *Eligibility requirements for extended benefits.* An individual
24 shall be eligible to receive extended benefits with respect to any week
25 of unemployment in the individual's extended entitlement period only if
26 the secretary of labor, or a person or persons designated by the
27 secretary, finds that with respect to such week:

28 (1) The individual is an "exhaustee" as defined in subsection (a)(6)
29 of this section;

30 (2) the individual is qualified and eligible for extended benefits
31 pursuant to K.S.A. 44-704b, and amendments thereto;

32 (3) the individual is entitled to benefits pursuant to the provisions
33 of this act which apply to claims for, or the payment of regular benefits
34 which are not inconsistent with the provisions of K.S.A. 44-704b, and
35 amendments thereto; and

36 (4) the individual, during the base period, (A) was paid wages for
37 insured work equal to or greater than 1½ times the amount of total
38 wages paid for the quarter in which such wages were highest during the
39 individual's base period; or (B) has been paid an amount equal to or

1 exceeding 40 times the individual's most recent weekly benefit amount
2 in the individual's base period.

3 (g) *Limitation on amount of combined regular, extended and trade*
4 *readjustment act benefits received.* Notwithstanding any other
5 provisions of this section or K.S.A. 44-704b, and amendments thereto,
6 if the benefit year of any individual ends within an extended
7 entitlement period, the remaining balance of extended benefits that the
8 individual would, but for this section, be entitled to receive in that
9 extended entitlement period, with respect to weeks of unemployment
10 beginning after the end of the benefit year, shall be reduced (but not
11 below zero) by the product of the number of weeks for which the
12 individual received any amounts as trade readjustment allowances
13 within that benefit year, multiplied by the individual's weekly benefit
14 amount for extended benefits.

15 ~~Sec. 4.~~ 4. From and after July 1, 2010, K.S.A. 2010 Supp. 44-705
16 is hereby amended to read as follows: 44-705. Except as provided by
17 K.S.A. 44-757, and amendments thereto, an unemployed individual
18 shall be eligible to receive benefits with respect to any week only if the
19 secretary, or a person or persons designated by the secretary, finds that:

20 (a) The claimant has registered for work at and thereafter
21 continued to report at an employment office in accordance with rules
22 and regulations adopted by the secretary, except that, subject to the
23 provisions of subsection (a) of K.S.A. 44-704, and amendments thereto,
24 the secretary may adopt rules and regulations which waive or alter
25 either or both of the requirements of this subsection (a).

26 (b) The claimant has made a claim for benefits with respect to
27 such week in accordance with rules and regulations adopted by the
28 secretary.

29 (c) The claimant is able to perform the duties of such claimant's
30 customary occupation or the duties of other occupations for which the
31 claimant is reasonably fitted by training or experience, and is available
32 for work, as demonstrated by the claimant's pursuit of the full course of
33 action most reasonably calculated to result in the claimant's
34 reemployment except that, notwithstanding any other provisions of this
35 section, an unemployed claimant otherwise eligible for benefits shall
36 not become ineligible for benefits: (1) Because of the claimant's
37 enrollment in and satisfactory pursuit of approved training, including
38 training approved under section 236(a)(1) of the trade act of 1974; or
39 (2) solely because such individual is seeking only part-time

1 employment if the individual is available for a number of hours per
2 week that are comparable to the individual's part-time work experience
3 in the base period.

4 For the purposes of this subsection, an inmate of a custodial or
5 correctional institution shall be deemed to be unavailable for work and
6 not eligible to receive unemployment compensation while incarcerated.

7 (d) (1) Except as provided further, the claimant has been
8 unemployed for a waiting period of one week or the claimant is
9 unemployed and has satisfied the requirement for a waiting period of
10 one week under the shared work unemployment compensation program
11 as provided in subsection (k)(4) of K.S.A. 44-757, and amendments
12 thereto, which period of one week, in either case, occurs within the
13 benefit year which includes the week for which the claimant is claiming
14 benefits. No week shall be counted as a week of unemployment for the
15 purposes of this subsection (d):

16 (A) If benefits have been paid for such week;

17 (B) if the individual fails to meet with the other eligibility
18 requirements of this section; or

19 (C) if an individual is seeking unemployment benefits under the
20 unemployment compensation law of any other state or of the United
21 States, except that if the appropriate agency of such state or of the
22 United States finally determines that the claimant is not entitled to
23 unemployment benefits under such other law, this subsection (d)(1)(C)
24 shall not apply.

25 (2) The waiting week requirement of paragraph (1) shall not apply
26 to new claims, filed on or after July 1, 2007, by claimants who become
27 unemployed as a result of an employer terminating business operations
28 within this state, declaring bankruptcy or initiating a work force
29 reduction pursuant to public law 100-379, the federal worker
30 adjustment and retraining notification act (29 U.S.C. §§ 2101 through
31 2109), as amended. The secretary shall adopt rules and regulations to
32 administer the provisions of this paragraph.

33 ~~(3) a claimant shall become eligible to receive compensation for~~
34 ~~the waiting period of one week, pursuant to paragraph (1), upon~~
35 ~~completion of three weeks of unemployment consecutive to such~~
36 ~~waiting period.~~

37 (e) For benefit years established on and after the effective date of
38 this act, the claimant has been paid total wages for insured work in the
39 claimant's base period of not less than 30 times the claimant's weekly

1 benefit amount and has been paid wages in more than one quarter of the
2 claimant's base period, except that the wage credits of an individual
3 earned during the period commencing with the end of a prior base
4 period and ending on the date on which such individual filed a valid
5 initial claim shall not be available for benefit purposes in a subsequent
6 benefit year unless, in addition thereto, such individual has returned to
7 work and subsequently earned wages for insured work in an amount
8 equal to at least eight times the claimant's current weekly benefit
9 amount.

10 (f) The claimant participates in reemployment services, such as
11 job search assistance services, if the individual has been determined to
12 be likely to exhaust regular benefits and needs reemployment services
13 pursuant to a profiling system established by the secretary, unless the
14 secretary determines that: (1) The individual has completed such
15 services; or (2) there is justifiable cause for the claimant's failure to
16 participate in such services.

17 (g) The claimant is returning to work after a qualifying injury and
18 has been paid total wages for insured work in the claimant's alternative
19 base period of not less than 30 times the claimant's weekly benefit
20 amount and has been paid wages in more than one quarter of the
21 claimant's alternative base period if:

22 (1) The claimant has filed for benefits within four weeks of being
23 released to return to work by a licensed and practicing health care
24 provider.

25 (2) The claimant files for benefits within 24 months of the date the
26 qualifying injury occurred.

27 (3) The claimant attempted to return to work with the employer
28 where the qualifying injury occurred, but the individual's regular work
29 or comparable and suitable work was not available.

30 ~~Sec. 5.~~ From and after July 1, 2011, K.S.A. 2010 Supp. 44-706
31 is hereby amended to read as follows: 44-706. An individual shall be
32 disqualified for benefits:

33 (a) If the individual left work voluntarily without good cause
34 attributable to the work or the employer, subject to the other provisions
35 of this subsection ~~(a)~~. Failure to return to work after expiration of
36 approved personal or medical leave, or both, shall be considered a
37 voluntary resignation. After a temporary job assignment, failure of an
38 individual to affirmatively request an additional assignment on the next
39 succeeding workday, if required by the employment agreement, after

1 completion of a given work assignment, shall constitute leaving work
2 voluntarily. The disqualification shall begin the day following the
3 separation and shall continue until after the individual has become
4 reemployed and has had earnings from insured work of at least three
5 times the individual's weekly benefit amount. An individual shall not be
6 disqualified under this subsection ~~(a)~~ if:

7 (1) The individual was forced to leave work because of illness or
8 injury upon the advice of a licensed and practicing health care provider
9 and, upon learning of the necessity for absence, immediately notified
10 the employer thereof, or the employer consented to the absence, and
11 after recovery from the illness or injury, when recovery was certified by
12 a practicing health care provider, the individual returned to the
13 employer and offered to perform services and the individual's regular
14 work or comparable and suitable work was not available; As used in
15 this paragraph ~~(1)~~ "health care provider" means any person licensed by
16 the proper licensing authority of any state to engage in the practice of
17 medicine and surgery, osteopathy, chiropractic, dentistry, optometry,
18 podiatry or psychology;

19 (2) the individual left temporary work to return to the regular
20 employer;

21 (3) the individual left work to enlist in the armed forces of the
22 United States, but was rejected or delayed from entry;

23 (4) ~~the individual~~ *spouse of an individual who is a member of the*
24 *armed forces of the United States who left work because of the*
25 *voluntary or involuntary transfer of the individual's spouse from one*
26 *job to another job, which is for the same employer or for a different*
27 *employer, at a geographic location which makes it unreasonable for the*
28 *individual to continue work at the individual's job; For the purposes of*
29 *this provision the term "armed forces" means active duty in the army,*
30 *navy, marine corps, air force, coast guard or any branch of the military*
31 *reserves of the United States;*

32 (5) the individual left work because of hazardous working
33 conditions; in determining whether or not working conditions are
34 hazardous for an individual, the degree of risk involved to the
35 individual's health, safety and morals, the individual's physical fitness
36 and prior training and the working conditions of workers engaged in
37 the same or similar work for the same and other employers in the
38 locality shall be considered; as used in this paragraph ~~(5)~~, "hazardous
39 working conditions" means working conditions that could result in a

- 1 danger to the physical or mental well-being of the individual; each
2 determination as to whether hazardous working conditions exist shall
3 include, but shall not be limited to, a consideration of (A) the safety
4 measures used or the lack thereof, and (B) the condition of equipment
5 or lack of proper equipment; no work shall be considered hazardous if
6 the working conditions surrounding the individual's work are the same
7 or substantially the same as the working conditions generally prevailing
8 among individuals performing the same or similar work for other
9 employers engaged in the same or similar type of activity;
- 10 (6) the individual left work to enter training approved under
11 section 236(a)(1) of the federal trade act of 1974, provided the work
12 left is not of a substantially equal or higher skill level than the
13 individual's past adversely affected employment (as defined for
14 purposes of the federal trade act of 1974), and wages for such work are
15 not less than 80% of the individual's average weekly wage as
16 determined for the purposes of the federal trade act of 1974;
- 17 (7) the individual left work because of unwelcome harassment of
18 the individual by the employer or another employee of which the
19 employing unit had knowledge;
- 20 (8) the individual left work to accept better work; each
21 determination as to whether or not the work accepted is better work
22 shall include, but shall not be limited to, consideration of (A) the rate of
23 pay, the hours of work and the probable permanency of the work left as
24 compared to the work accepted, (B) the cost to the individual of getting
25 to the work left in comparison to the cost of getting to the work
26 accepted, and (C) the distance from the individual's place of residence
27 to the work accepted in comparison to the distance from the
28 individual's residence to the work left;
- 29 (9) the individual left work as a result of being instructed or
30 requested by the employer, a supervisor or a fellow employee to
31 perform a service or commit an act in the scope of official job duties
32 which is in violation of an ordinance or statute;
- 33 (10) the individual left work because of a violation of the work
34 agreement by the employing unit and, before the individual left, the
35 individual had exhausted all remedies provided in such agreement for
36 the settlement of disputes before terminating;
- 37 (11) after making reasonable efforts to preserve the work, the
38 individual left work due to a personal emergency of such nature and
39 compelling urgency that it would be contrary to good conscience to

- 1 impose a disqualification; or
2 (12) (A) the individual left work due to circumstances resulting
3 from domestic violence, including:
4 (i) The individual's reasonable fear of future domestic violence at
5 or en route to or from the individual's place of employment; or
6 (ii) the individual's need to relocate to another geographic area in
7 order to avoid future domestic violence; or
8 (iii) the individual's need to address the physical, psychological
9 and legal impacts of domestic violence; or
10 (iv) the individual's need to leave employment as a condition of
11 receiving services or shelter from an agency which provides support
12 services or shelter to victims of domestic violence; or
13 (v) the individual's reasonable belief that termination of
14 employment is necessary to avoid other situations which may cause
15 domestic violence and to provide for the future safety of the individual
16 or the individual's family.
17 (B) An individual may prove the existence of domestic violence
18 by providing one of the following:
19 (i) A restraining order or other documentation of equitable relief
20 by a court of competent jurisdiction; or
21 (ii) a police record documenting the abuse; or
22 (iii) documentation that the abuser has been convicted of one or
23 more of the offenses enumerated in ~~articles 34 and 35 of chapter 21 of~~
24 ~~the Kansas Statutes Annotated~~ *sections 36 through 77, 174, 210, 211 or*
25 *229 through 231 of chapter 136 of the 2010 Session Laws of Kansas,*
26 and amendments thereto, where the victim was a family or household
27 member; or
28 (iv) medical documentation of the abuse; or
29 (v) a statement provided by a counselor, social worker, health care
30 provider, clergy, shelter worker, legal advocate, domestic violence or
31 sexual assault advocate or other professional who has assisted the
32 individual in dealing with the effects of abuse on the individual or the
33 individual's family; or
34 (vi) a sworn statement from the individual attesting to the abuse.
35 (C) No evidence of domestic violence experienced by an
36 individual, including the individual's statement and corroborating
37 evidence, shall be disclosed by the department of labor unless consent
38 for disclosure is given by the individual.
39 (b) If the individual has been discharged for misconduct connected

1 with the individual's work. The disqualification shall begin the day
2 following the separation and shall continue until after the individual
3 becomes reemployed and has had earnings from insured work of at
4 least three times the individual's determined weekly benefit amount,
5 except that if an individual is discharged for gross misconduct
6 connected with the individual's work, such individual shall be
7 disqualified for benefits until such individual again becomes employed
8 and has had earnings from insured work of at least eight times such
9 individual's determined weekly benefit amount. In addition, all wage
10 credits attributable to the employment from which the individual was
11 discharged for gross misconduct connected with the individual's work
12 shall be canceled. No such cancellation of wage credits shall affect
13 prior payments made as a result of a prior separation.

14 (1) For the purposes of this subsection ~~(b)~~, "misconduct" is
15 defined as a violation of a duty or obligation reasonably owed the
16 employer as a condition of employment. The term "gross misconduct"
17 as used in this subsection ~~(b)~~ shall be construed to mean conduct
18 evincing extreme, willful or wanton misconduct as defined by this
19 subsection ~~(b)~~. Failure of the employee to notify the employer of an
20 absence shall be considered prima facie evidence of a violation of a
21 duty or obligation reasonably owed the employer as a condition of
22 employment.

23 (2) For the purposes of this subsection ~~(b)~~, the use of or
24 impairment caused by alcoholic liquor, a cereal malt beverage or a
25 nonprescribed controlled substance by an individual while working
26 shall be conclusive evidence of misconduct and the possession of
27 alcoholic liquor, a cereal malt beverage or a nonprescribed controlled
28 substance by an individual while working shall be prima facie evidence
29 of conduct which is a violation of a duty or obligation reasonably owed
30 to the employer as a condition of employment. Alcoholic liquor shall be
31 defined as provided in K.S.A. 41-102, and amendments thereto. Cereal
32 malt beverage shall be defined as provided in K.S.A. 41-2701, and
33 amendments thereto. Controlled substance shall be defined as provided
34 in K.S.A. 2010 Supp. 21-36a01, and amendments thereto. As used in
35 this ~~subsection (b)(2) paragraph~~, "required by law" means required by a
36 federal or state law, a federal or state rule or regulation having the force
37 and effect of law, a county resolution or municipal ordinance, or a
38 policy relating to public safety adopted in open meeting by the
39 governing body of any special district or other local governmental

1 entity. Chemical test shall include, but is not limited to, tests of urine,
2 blood or saliva. A positive chemical test shall mean a chemical result
3 showing a concentration at or above the levels listed in K.S.A. 44-501,
4 and amendments thereto, for the drugs or abuse listed therein. A
5 positive breath test shall mean a test result showing an alcohol
6 concentration of .04 or greater. Alcohol concentration means the
7 number of grams of alcohol per 210 liters of breath. An individual's
8 refusal to submit to a chemical test or breath alcohol test shall be
9 conclusive evidence of misconduct if the test meets the standards of the
10 drug free workplace act, 41 U.S.C. § 701 et seq.; the test was
11 administered as part of an employee assistance program or other drug
12 or alcohol treatment program in which the employee was participating
13 voluntarily or as a condition of further employment; the test was
14 otherwise required by law and the test constituted a required condition
15 of employment for the individual's job; the test was requested pursuant
16 to a written policy of the employer of which the employee had
17 knowledge and was a required condition of employment; or there was
18 probable cause to believe that the individual used, possessed or was
19 impaired by alcoholic liquor, a cereal malt beverage or a controlled
20 substance while working. A positive breath alcohol test or a positive
21 chemical test shall be conclusive evidence to prove misconduct if the
22 following conditions are met:

23 (A) Either (i) the test was required by law and was administered
24 pursuant to the drug free workplace act, 41 U.S.C. § 701 et seq., (ii) the
25 test was administered as part of an employee assistance program or
26 other drug or alcohol treatment program in which the employee was
27 participating voluntarily or as a condition of further employment, (iii)
28 the test was requested pursuant to a written policy of the employer of
29 which the employee had knowledge and was a required condition of
30 employment, (iv) the test was required by law and the test constituted a
31 required condition of employment for the individual's job, or (v) there
32 was probable cause to believe that the individual used, had possession
33 of, or was impaired by alcoholic liquor, the cereal malt beverage or the
34 controlled substance while working;

35 (B) the test sample was collected either (i) as prescribed by the
36 drug free workplace act, 41 U.S.C. § 701 et seq., (ii) as prescribed by
37 an employee assistance program or other drug or alcohol treatment
38 program in which the employee was participating voluntarily or as a
39 condition of further employment, (iii) as prescribed by the written

1 policy of the employer of which the employee had knowledge and
2 which constituted a required condition of employment, (iv) as
3 prescribed by a test which was required by law and which constituted a
4 required condition of employment for the individual's job, or (v) at a
5 time contemporaneous with the events establishing probable cause;

6 (C) the collecting and labeling of a chemical test sample was
7 performed by a licensed health care professional or any other individual
8 certified pursuant to paragraph (b)(2)(F) or authorized to collect or
9 label test samples by federal or state law, or a federal or state rule or
10 regulation having the force or effect of law, including law enforcement
11 personnel;

12 (D) the chemical test was performed by a laboratory approved by
13 the United States department of health and human services or licensed
14 by the department of health and environment, except that a blood
15 sample may be tested for alcohol content by a laboratory commonly
16 used for that purpose by state law enforcement agencies;

17 (E) the chemical test was confirmed by gas chromatography, gas
18 chromatography-mass spectroscopy or other comparably reliable
19 analytical method, except that no such confirmation is required for a
20 blood alcohol sample or a breath alcohol test;

21 (F) the breath alcohol test was administered by an individual
22 trained to perform breath tests, the breath testing instrument used was
23 certified and operated strictly according to description provided by the
24 manufacturers and the reliability of the instrument performance was
25 assured by testing with alcohol standards; and

26 (G) the foundation evidence must establish, beyond a reasonable
27 doubt, that the test results were from the sample taken from the
28 individual.

29 (3) (A) For the purposes of this subsection (~~b~~), misconduct shall
30 include, but not be limited to repeated absence, including incarceration,
31 resulting in absence from work of three days or longer, excluding
32 Saturdays, Sundays and legal holidays, and lateness, from scheduled
33 work if the facts show:

34 (i) The individual was absent without good cause;

35 (ii) the absence was in violation of the employer's written
36 absenteeism policy;

37 (iii) the employer gave or sent written notice to the individual, at
38 the individual's last known address, that future absence may or will
39 result in discharge; and

1 (iv) the employee had knowledge of the employer's written
2 absenteeism policy.

3 (B) For the purposes of this subsection ~~(b)~~, if an employee
4 disputes being absent without good cause, the employee shall present
5 evidence that a majority of the employee's absences were for good
6 cause. If the employee alleges that the employee's repeated absences
7 were the result of health related issues, such evidence shall include
8 documentation from a licensed and practicing health care provider as
9 defined in subsection (a)(1).

10 (4) An individual shall not be disqualified under this subsection if
11 the individual is discharged under the following circumstances:

12 (A) The employer discharged the individual after learning the
13 individual was seeking other work or when the individual gave notice
14 of future intent to quit;

15 (B) the individual was making a good-faith effort to do the
16 assigned work but was discharged due to: (i) Inefficiency, (ii)
17 unsatisfactory performance due to inability, incapacity or lack of
18 training or experience, (iii) isolated instances of ordinary negligence or
19 inadvertence, (iv) good-faith errors in judgment or discretion, or (v)
20 unsatisfactory work or conduct due to circumstances beyond the
21 individual's control; or

22 (C) the individual's refusal to perform work in excess of the
23 contract of hire.

24 (c) If the individual has failed, without good cause, to either apply
25 for suitable work when so directed by the employment office of the
26 secretary of labor, or to accept suitable work when offered to the
27 individual by the employment office, the secretary of labor, or an
28 employer, such disqualification shall begin with the week in which
29 such failure occurred and shall continue until the individual becomes
30 reemployed and has had earnings from insured work of at least three
31 times such individual's determined weekly benefit amount. In
32 determining whether or not any work is suitable for an individual, the
33 secretary of labor, or a person or persons designated by the secretary,
34 shall consider the degree of risk involved to health, safety and morals,
35 physical fitness and prior training, experience and prior earnings, length
36 of unemployment and prospects for securing local work in the
37 individual's customary occupation or work for which the individual is
38 reasonably fitted by training or experience, and the distance of the
39 available work from the individual's residence. Notwithstanding any

1 other provisions of this act, an otherwise eligible individual shall not be
2 disqualified for refusing an offer of suitable employment, or failing to
3 apply for suitable employment when notified by an employment office,
4 or for leaving the individual's most recent work accepted during
5 approved training, including training approved under section 236(a)(1)
6 of the trade act of 1974, if the acceptance of or applying for suitable
7 employment or continuing such work would require the individual to
8 terminate approved training and no work shall be deemed suitable and
9 benefits shall not be denied under this act to any otherwise eligible
10 individual for refusing to accept new work under any of the following
11 conditions: (1) If the position offered is vacant due directly to a strike,
12 lockout or other labor dispute; (2) if the remuneration, hours or other
13 conditions of the work offered are substantially less favorable to the
14 individual than those prevailing for similar work in the locality; (3) if
15 as a condition of being employed, the individual would be required to
16 join or to resign from or refrain from joining any labor organization; (4)
17 if the individual left employment as a result of domestic violence, and
18 the position offered does not reasonably accommodate the individual's
19 physical, psychological, safety, and/or legal needs relating to such
20 domestic violence.

21 (d) For any week with respect to which the secretary of labor, or a
22 person or persons designated by the secretary, finds that the individual's
23 unemployment is due to a stoppage of work which exists because of a
24 labor dispute or there would have been a work stoppage had normal
25 operations not been maintained with other personnel previously and
26 currently employed by the same employer at the factory, establishment
27 or other premises at which the individual is or was last employed,
28 except that this subsection (d) shall not apply if it is shown to the
29 satisfaction of the secretary of labor, or a person or persons designated
30 by the secretary, that: (1) The individual is not participating in or
31 financing or directly interested in the labor dispute which caused the
32 stoppage of work; and (2) the individual does not belong to a grade or
33 class of workers of which, immediately before the commencement of
34 the stoppage, there were members employed at the premises at which
35 the stoppage occurs any of whom are participating in or financing or
36 directly interested in the dispute. If in any case separate branches of
37 work which are commonly conducted as separate businesses in separate
38 premises are conducted in separate departments of the same premises,
39 each such department shall, for the purpose of this subsection ~~(d)~~ be

1 deemed to be a separate factory, establishment or other premises. For
2 the purposes of this subsection (~~d~~), failure or refusal to cross a picket
3 line or refusal for any reason during the continuance of such labor
4 dispute to accept the individual's available and customary work at the
5 factory, establishment or other premises where the individual is or was
6 last employed shall be considered as participation and interest in the
7 labor dispute.

8 (e) For any week with respect to which or a part of which the
9 individual has received or is seeking unemployment benefits under the
10 unemployment compensation law of any other state or of the United
11 States, except that if the appropriate agency of such other state or the
12 United States finally determines that the individual is not entitled to
13 such unemployment benefits, this disqualification shall not apply.

14 (f) For any week with respect to which the individual is entitled to
15 receive any unemployment allowance or compensation granted by the
16 United States under an act of congress to ex-service men and women in
17 recognition of former service with the military or naval services of the
18 United States.

19 (g) For the period of one year beginning with the first day
20 following the last week of unemployment for which the individual
21 received benefits, or for one year from the date the act was committed,
22 whichever is the later, if the individual, or another in such individual's
23 behalf with the knowledge of the individual, has knowingly made a
24 false statement or representation, or has knowingly failed to disclose a
25 material fact to obtain or increase benefits under this act or any other
26 unemployment compensation law administered by the secretary of
27 labor.

28 (h) For any week with respect to which the individual is receiving
29 compensation for temporary total disability or permanent total
30 disability under the workmen's compensation law of any state or under
31 a similar law of the United States.

32 (i) For any week of unemployment on the basis of service in an
33 instructional, research or principal administrative capacity for an
34 educational institution as defined in subsection (v) of K.S.A. 44-703,
35 and amendments thereto, if such week begins during the period
36 between two successive academic years or terms or, when an
37 agreement provides instead for a similar period between two regular
38 but not successive terms during such period or during a period of paid
39 sabbatical leave provided for in the individual's contract, if the

1 individual performs such services in the first of such academic years or
2 terms and there is a contract or a reasonable assurance that such
3 individual will perform services in any such capacity for any
4 educational institution in the second of such academic years or terms.

5 (j) For any week of unemployment on the basis of service in any
6 capacity other than service in an instructional, research, or
7 administrative capacity in an educational institution, as defined in
8 subsection (v) of K.S.A. 44-703, and amendments thereto, if such week
9 begins during the period between two successive academic years or
10 terms if the individual performs such services in the first of such
11 academic years or terms and there is a reasonable assurance that the
12 individual will perform such services in the second of such academic
13 years or terms, except that if benefits are denied to the individual under
14 this subsection (j) and the individual was not offered an opportunity to
15 perform such services for the educational institution for the second of
16 such academic years or terms, such individual shall be entitled to a
17 retroactive payment of benefits for each week for which the individual
18 filed a timely claim for benefits and for which benefits were denied
19 solely by reason of this subsection (j).

20 (k) For any week of unemployment on the basis of service in any
21 capacity for an educational institution as defined in subsection (v) of
22 K.S.A. 44-703, and amendments thereto, if such week begins during an
23 established and customary vacation period or holiday recess, if the
24 individual performs services in the period immediately before such
25 vacation period or holiday recess and there is a reasonable assurance
26 that such individual will perform such services in the period
27 immediately following such vacation period or holiday recess.

28 (l) For any week of unemployment on the basis of any services,
29 substantially all of which consist of participating in sports or athletic
30 events or training or preparing to so participate, if such week begins
31 during the period between two successive sport seasons or similar
32 period if such individual performed services in the first of such seasons
33 or similar periods and there is a reasonable assurance that such
34 individual will perform such services in the later of such seasons or
35 similar periods.

36 (m) For any week on the basis of services performed by an alien
37 unless such alien is an individual who was lawfully admitted for
38 permanent residence at the time such services were performed, was
39 lawfully present for purposes of performing such services, or was

1 permanently residing in the United States under color of law at the time
2 such services were performed, including an alien who was lawfully
3 present in the United States as a result of the application of the
4 provisions of section 212(d)(5) of the federal immigration and
5 nationality act. Any data or information required of individuals
6 applying for benefits to determine whether benefits are not payable to
7 them because of their alien status shall be uniformly required from all
8 applicants for benefits. In the case of an individual whose application
9 for benefits would otherwise be approved, no determination that
10 benefits to such individual are not payable because of such individual's
11 alien status shall be made except upon a preponderance of the evidence.

12 (n) For any week in which an individual is receiving a
13 governmental or other pension, retirement or retired pay, annuity or
14 other similar periodic payment under a plan maintained by a base
15 period employer and to which the entire contributions were provided by
16 such employer, except that: (1) If the entire contributions to such plan
17 were provided by the base period employer but such individual's
18 weekly benefit amount exceeds such governmental or other pension,
19 retirement or retired pay, annuity or other similar periodic payment
20 attributable to such week, the weekly benefit amount payable to the
21 individual shall be reduced (but not below zero) by an amount equal to
22 the amount of such pension, retirement or retired pay, annuity or other
23 similar periodic payment which is attributable to such week; or (2) if
24 only a portion of contributions to such plan were provided by the base
25 period employer, the weekly benefit amount payable to such individual
26 for such week shall be reduced (but not below zero) by the prorated
27 weekly amount of the pension, retirement or retired pay, annuity or
28 other similar periodic payment after deduction of that portion of the
29 pension, retirement or retired pay, annuity or other similar periodic
30 payment that is directly attributable to the percentage of the
31 contributions made to the plan by such individual; or (3) if the entire
32 contributions to the plan were provided by such individual, or by the
33 individual and an employer (or any person or organization) who is not a
34 base period employer, no reduction in the weekly benefit amount
35 payable to the individual for such week shall be made under this
36 subsection ~~(n)~~; or (4) whatever portion of contributions to such plan
37 were provided by the base period employer, if the services performed
38 for the employer by such individual during the base period, or
39 remuneration received for the services, did not affect the individual's

1 eligibility for, or increased the amount of, such pension, retirement or
2 retired pay, annuity or other similar periodic payment, no reduction in
3 the weekly benefit amount payable to the individual for such week shall
4 be made under this subsection (~~h~~). No reduction shall be made for
5 payments made under the social security act or railroad retirement act
6 of 1974.

7 (o) For any week of unemployment on the basis of services
8 performed in any capacity and under any of the circumstances
9 described in subsection (i), (j) or (k) which an individual performed in
10 an educational institution while in the employ of an educational service
11 agency. For the purposes of this subsection (~~h~~), the term "educational
12 service agency" means a governmental agency or entity which is
13 established and operated exclusively for the purpose of providing such
14 services to one or more educational institutions.

15 (p) For any week of unemployment on the basis of service as a
16 school bus or other motor vehicle driver employed by a private
17 contractor to transport pupils, students and school personnel to or from
18 school-related functions or activities for an educational institution, as
19 defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if
20 such week begins during the period between two successive academic
21 years or during a similar period between two regular terms, whether or
22 not successive, if the individual has a contract or contracts, or a
23 reasonable assurance thereof, to perform services in any such capacity
24 with a private contractor for any educational institution for both such
25 academic years or both such terms. An individual shall not be
26 disqualified for benefits as provided in this subsection (~~h~~) for any week
27 of unemployment on the basis of service as a bus or other motor vehicle
28 driver employed by a private contractor to transport persons to or from
29 nonschool-related functions or activities.

30 (q) For any week of unemployment on the basis of services
31 performed by the individual in any capacity and under any of the
32 circumstances described in subsection (i), (j), (k) or (o) which are
33 provided to or on behalf of an educational institution, as defined in
34 subsection (v) of K.S.A. 44-703, and amendments thereto, while the
35 individual is in the employ of an employer which is a governmental
36 entity, Indian tribe or any employer described in section 501(c)(3) of
37 the federal internal revenue code of 1986 which is exempt from income
38 under section 501(a) of the code.

39 (r) For any week in which an individual is registered at and

1 attending an established school, training facility or other educational
2 institution, or is on vacation during or between two successive
3 academic years or terms. An individual shall not be disqualified for
4 benefits as provided in this subsection (†) provided:

5 (1) The individual was engaged in full-time employment
6 concurrent with the individual's school attendance; or

7 (2) the individual is attending approved training as defined in
8 subsection (s) of K.S.A. 44-703, and amendments thereto; or

9 (3) the individual is attending evening, weekend or limited day
10 time classes, which would not affect availability for work, and is
11 otherwise eligible under subsection (c) of K.S.A. 44-705, and
12 amendments thereto.

13 (s) For any week with respect to which an individual is receiving
14 or has received remuneration in the form of a back pay award or
15 settlement. The remuneration shall be allocated to the week or weeks in
16 the manner as specified in the award or agreement, or in the absence of
17 such specificity in the award or agreement, such remuneration shall be
18 allocated to the week or weeks in which such remuneration, in the
19 judgment of the secretary, would have been paid.

20 (1) For any such weeks that an individual receives remuneration in
21 the form of a back pay award or settlement, an overpayment will be
22 established in the amount of unemployment benefits paid and shall be
23 collected from the claimant.

24 (2) If an employer chooses to withhold from a back pay award or
25 settlement, amounts paid to a claimant while they claimed
26 unemployment benefits, such employer shall pay the department the
27 amount withheld. With respect to such amount, the secretary shall have
28 available all of the collection remedies authorized or provided in
29 K.S.A. 44-717, and amendments thereto.

30 (t) If the individual has been discharged for failing a
31 preemployment drug screen required by the employer and if such
32 discharge occurs not later than seven days after the employer is notified
33 of the results of such drug screen. The disqualification shall begin the
34 day following the separation and shall continue until after the
35 individual becomes reemployed and has had earnings from insured
36 work of at least three times the individual's determined weekly benefit
37 amount.

38 (u) If the individual was found not to have a disqualifying
39 adjudication or conviction under K.S.A. 39-970, and amendments

1 thereto, or K.S.A. 65-5117, and amendments thereto, was hired and
2 then was subsequently convicted of a disqualifying felony under K.S.A.
3 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments
4 thereto, and discharged pursuant to K.S.A. 39-970, and amendments
5 thereto, or K.S.A. 65-5117, and amendments thereto. The
6 disqualification shall begin the day following the separation and shall
7 continue until after the individual becomes reemployed and has had
8 earnings from insured work of at least three times the individual's
9 determined weekly benefit amount.

10 ***Sec. 6. From and after July 1, 2011, K.S.A. 2010 Supp. 44-710 is***
11 ***hereby amended to read as follows: 44-710. (a) Payment.***
12 ***Contributions shall accrue and become payable by each contributing***
13 ***employer for each calendar year in which the contributing employer***
14 ***is subject to the employment security law with respect to wages paid***
15 ***for employment. Such contributions shall become due and be paid by***
16 ***each contributing employer to the secretary for the employment***
17 ***security fund in accordance with such rules and regulations as the***
18 ***secretary may adopt and shall not be deducted, in whole or in part,***
19 ***from the wages of individuals in such employer's employ. In the***
20 ***payment of any contributions, a fractional part of \$.01 shall be***
21 ***disregarded unless it amounts to \$.005 or more, in which case it shall***
22 ***be increased to \$.01. Should contributions for any calendar quarter***
23 ***be less than \$5, no payment shall be required.***

24 ***(b) Rates and base of contributions. (1) Except as provided in***
25 ***paragraph (2) of this subsection, each contributing employer shall***
26 ***pay contributions on wages paid by the contributing employer during***
27 ***each calendar year with respect to employment as provided in K.S.A.***
28 ***44-710a and amendments thereto. Except that, notwithstanding the***
29 ***federal law requiring the secretary of labor to annually recalculate***
30 ***the contribution rate, for calendar years 2010 and ~~2011~~ 2011, 2012,***
31 ***2013 and 2014, the secretary shall charge each contributing employer***
32 ***in rate groups 1 through 32 the contribution rate in the 2010 original***
33 ***tax rate computation table, with contributing employers in rate***
34 ***groups 33 through 51 being capped at a 5.4% contribution rate.***

35 ***(2) (A) If the congress of the United States either amends or***
36 ***repeals the Wagner-Peyser act, the federal unemployment tax act, the***
37 ***federal social security act, or subtitle C of chapter 23 of the federal***
38 ***internal revenue code of 1986, or any act or acts supplemental to or***
39 ***in lieu thereof, or any part or parts of any such law, or if any such***

1 *law, or any part or parts thereof, are held invalid with the effect that*
2 *appropriations of funds by congress and grants thereof to the state of*
3 *Kansas for the payment of costs of administration of the employment*
4 *security law are no longer available for such purposes, or (B) if*
5 *employers in Kansas subject to the payment of tax under the federal*
6 *unemployment tax act are granted full credit against such tax for*
7 *contributions or taxes paid to the secretary of labor, then, and in*
8 *either such case, beginning with the year in which the unavailability*
9 *of federal appropriations and grants for such purpose occurs or in*
10 *which such change in liability for payment of such federal tax occurs*
11 *and for each year thereafter, the rate of contributions of each*
12 *contributing employer shall be equal to the total of .5% and the rate*
13 *of contributions as determined for such contributing employer under*
14 *K.S.A. 44-710a and amendments thereto. The amount of*
15 *contributions which each contributing employer becomes liable to*
16 *pay under this paragraph (2) over the amount of contributions which*
17 *such contributing employer would be otherwise liable to pay shall be*
18 *credited to the employment security administration fund to be*
19 *disbursed and paid out under the same conditions and for the same*
20 *purposes as other moneys are authorized to be paid from the*
21 *employment security administration fund, except that, if the secretary*
22 *determines that as of the first day of January of any year there is an*
23 *excess in the employment security administration fund over the*
24 *amount required to be disbursed during such year, an amount equal*
25 *to such excess as determined by the secretary shall be transferred to*
26 *the employment security fund.*

27 *(c) Charging of benefit payments.(1) The secretary shall*
28 *maintain a separate account for each contributing employer, and*
29 *shall credit the contributing employer's account with all the*
30 *contributions paid on the contributing employer's own behalf.*
31 *Nothing in the employment security law shall be construed to grant*
32 *any employer or individuals in such employer's service prior claims*
33 *or rights to the amounts paid by such employer into the employment*
34 *security fund either on such employer's own behalf or on behalf of*
35 *such individuals. Benefits paid shall be charged against the accounts*
36 *of each base period employer in the proportion that the base period*
37 *wages paid to an eligible individual by each such employer bears to*
38 *the total wages in the base period. Benefits shall be charged to*
39 *contributing employers' accounts and rated governmental employers'*

- 1 *accounts upon the basis of benefits paid during each twelve-month*
2 *period ending on the computation date.*
- 3 *(2) (A) Benefits paid in benefit years established by valid new*
4 *claims shall not be charged to the account of a contributing employer*
5 *or rated governmental employer who is a base period employer if the*
6 *examiner finds that claimant was separated from the claimant's most*
7 *recent employment with such employer under any of the following*
8 *conditions: (i) Discharged for misconduct or gross misconduct*
9 *connected with the individual's work; or (ii) leaving work voluntarily*
10 *without good cause attributable to the claimant's work or the*
11 *employer.*
- 12 *(B) Where base period wage credits of a contributing employer*
13 *or rated governmental employer represent part-time employment and*
14 *the claimant continues in that part-time employment with that*
15 *employer during the period for which benefits are paid, then that*
16 *employer's account shall not be charged with any part of the benefits*
17 *paid if the employer provides the secretary with information as*
18 *required by rules and regulations. For the purposes of this subsection*
19 *(c)(2)(B), "part-time employment" means any employment when an*
20 *individual works concurrently for two or more employers and also*
21 *works less than full-time for at least one of those employers because*
22 *the individual's services are not required for the customary,*
23 *scheduled full-time hours prevailing at the work place or the*
24 *individual does not customarily work the regularly scheduled full-*
25 *time hours due to personal choice or circumstances.*
- 26 *(C) No contributing employer or rated governmental employer's*
27 *account shall be charged with any extended benefits paid in*
28 *accordance with the employment security law, except for weeks of*
29 *unemployment beginning after December 31, 1978, all contributing*
30 *governmental employers and governmental rated employers shall be*
31 *charged an amount equal to all extended benefits paid.*
- 32 *(D) No contributing employer, rated governmental employer or*
33 *reimbursing employer's account shall be charged for any additional*
34 *benefits paid during the period July 1, 2003 through June 30, 2004.*
- 35 *(E) No contributing employer or rated governmental employer's*
36 *account will be charged for benefits paid a claimant while pursuing*
37 *an approved training course as defined in subsection (s) of K.S.A. 44-*
38 *703, and amendments thereto.*
- 39 *(F) No contributing employer or rated governmental employer's*

1 *account shall be charged with respect to the benefits paid to any*
2 *individual whose base period wages include wages for services not*
3 *covered by the employment security law prior to January 1, 1978, to*
4 *the extent that the employment security fund is reimbursed for such*
5 *benefits pursuant to section 121 of public law 94-566 (90 Stat. 2673).*

6 *(G) With respect to weeks of unemployment beginning after*
7 *December 31, 1977, wages for insured work shall include wages paid*
8 *for previously uncovered services. For the purposes of this subsection*
9 *(c)(2)(G), the term "previously uncovered services" means services*
10 *which were not covered employment, at any time during the one-year*
11 *period ending December 31, 1975, except to the extent that assistance*
12 *under title II of the federal emergency jobs and unemployment*
13 *assistance act of 1974 was paid on the basis of such services, and*
14 *which:*

15 *(i) Are agricultural labor as defined in subsection (w) of K.S.A.*
16 *44-703, and amendments thereto, or domestic service as defined in*
17 *subsection (aa) of K.S.A. 44-703, and amendments thereto, or*

18 *(ii) are services performed by an employee of this state or a*
19 *political subdivision thereof, as provided in subsection (i)(3)(E) of*
20 *K.S.A. 44-703, and amendments thereto, or*

21 *(iii) are services performed by an employee of a nonprofit*
22 *educational institution which is not an institution of higher*
23 *education.*

24 *(H) No contributing employer or rated governmental employer's*
25 *account shall be charged with respect to their pro rata share of*
26 *benefit charges if such charges are of \$100 or less.*

27 *(3) The examiner shall notify any base period employer whose*
28 *account will be charged with benefits paid following the filing of a*
29 *valid new claim and a determination by the examiner based on all*
30 *information relating to the claim contained in the records of the*
31 *division of employment security. Such notice shall become final and*
32 *benefits charged to the base period employer's account in accordance*
33 *with the claim unless within 10 calendar days from the date the*
34 *notice was sent, the base period employer requests in writing that the*
35 *examiner reconsider the determination and furnishes any required*
36 *information in accordance with the secretary's rules and regulations.*
37 *In a similar manner, a notice of an additional claim followed by the*
38 *first payment of benefits with respect to the benefit year, filed by an*
39 *individual during a benefit year after a period in such year during*

1 *which such individual was employed, shall be given to any base*
2 *period employer of the individual who has requested such a notice*
3 *within 10 calendar days from the date the notice of the valid new*
4 *claim was sent to such base period employer. For purposes of this*
5 *subsection (c)(3), if the required information is not submitted or*
6 *postmarked within a response time limit of 10 days after the base*
7 *period employer notice was sent, the base period employer shall be*
8 *deemed to have waived its standing as a party to the proceedings*
9 *arising from the claim and shall be barred from protesting any*
10 *subsequent decisions about the claim by the secretary, a referee, the*
11 *board of review or any court, except that the base period employer's*
12 *response time limit may be waived or extended by the examiner or*
13 *upon appeal, if timely response was impossible due to excusable*
14 *neglect. The examiner shall notify the employer of the reconsidered*
15 *determination which shall be subject to appeal, or further*
16 *reconsideration, in accordance with the provisions of K.S.A. 44-709,*
17 *and amendments thereto.*

18 *(4) Time, computation and extension. In computing the period of*
19 *time for a base period employer response or appeals under this*
20 *section from the examiner's or the special examiner's determination*
21 *or from the referee's decision, the day of the act, event or default*
22 *from which the designated period of time begins to run shall not be*
23 *included. The last day of the period shall be included unless it is a*
24 *Saturday, Sunday or legal holiday, in which event the period runs*
25 *until the end of the next day which is not a Saturday, Sunday or legal*
26 *holiday.*

27 *(d) Pooled fund. All contributions and payments in lieu of*
28 *contributions and benefit cost payments to the employment security*
29 *fund shall be pooled and available to pay benefits to any individual*
30 *entitled thereto under the employment security law, regardless of the*
31 *source of such contributions or payments in lieu of contributions or*
32 *benefit cost payments.*

33 *(e) Election to become reimbursing employer; payment in lieu of*
34 *contributions. (1) Any governmental entity, Indian tribes or tribal*
35 *units, (subdivisions, subsidiaries or business enterprises wholly*
36 *owned by such Indian tribes), for which services are performed as*
37 *described in subsection (i)(3)(E) of K.S.A. 44-703, and amendments*
38 *thereto, or any nonprofit organization or group of nonprofit*
39 *organizations described in section 501(c)(3) of the federal internal*

1 *revenue code of 1986 which is exempt from income tax under section*
2 *501(a) of such code, that becomes subject to the employment security*
3 *law may elect to become a reimbursing employer under this*
4 *subsection (e)(1) and agree to pay the secretary for the employment*
5 *security fund an amount equal to the amount of regular benefits and*
6 *½ of the extended benefits paid that are attributable to service in the*
7 *employ of such reimbursing employer, except that each reimbursing*
8 *governmental employer, Indian tribes or tribal units shall pay an*
9 *amount equal to the amount of regular benefits and extended*
10 *benefits paid for weeks of unemployment beginning after December*
11 *31, 1978, for governmental employers and December 21, 2000, for*
12 *Indian tribes or tribal units to individuals for weeks of unemployment*
13 *which begin during the effective period of such election.*

14 *(A) Any employer identified in this subsection (e)(1) may elect to*
15 *become a reimbursing employer for a period encompassing not less*
16 *than four complete calendar years if such employer files with the*
17 *secretary a written notice of such election within the 30-day period*
18 *immediately following January 1 of any calendar year or within the*
19 *30-day period immediately following the date on which a*
20 *determination of subjectivity to the employment security law is issued,*
21 *whichever occurs later.*

22 *(B) Any employer which makes an election to become a*
23 *reimbursing employer in accordance with subparagraph (A) of this*
24 *subsection (e)(1) will continue to be liable for payments in lieu of*
25 *contributions until such employer files with the secretary a written*
26 *notice terminating its election not later than 30 days prior to the*
27 *beginning of the calendar year for which such termination shall first*
28 *be effective.*

29 *(C) Any employer identified in this subsection (e)(1) which has*
30 *remained a contributing employer and has been paying contributions*
31 *under the employment security law for a period subsequent to*
32 *January 1, 1972, may change to a reimbursing employer by filing*
33 *with the secretary not later than 30 days prior to the beginning of any*
34 *calendar year a written notice of election to become a reimbursing*
35 *employer. Such election shall not be terminable by the employer for*
36 *four complete calendar years.*

37 *(D) The secretary may for good cause extend the period within*
38 *which a notice of election, or a notice of termination, must be filed*
39 *and may permit an election to be retroactive but not any earlier than*

1 *with respect to benefits paid after January 1 of the year such election*
2 *is received.*

3 *(E) The secretary, in accordance with such rules and regulations*
4 *as the secretary may adopt, shall notify each employer identified in*
5 *subsection (e)(1) of any determination which the secretary may make*
6 *of its status as an employer and of the effective date of any election*
7 *which it makes to become a reimbursing employer and of any*
8 *termination of such election. Such determinations shall be subject to*
9 *reconsideration, appeal and review in accordance with the provisions*
10 *of K.S.A. 44-710b, and amendments thereto.*

11 *(2) Reimbursement reports and payments. Payments in lieu of*
12 *contributions shall be made in accordance with the provisions of*
13 *paragraph (A) of this subsection (e)(2) by all reimbursing employers*
14 *except the state of Kansas. Each reimbursing employer shall report*
15 *total wages paid during each calendar quarter by filing quarterly*
16 *wage reports with the secretary which shall be filed by the last day of*
17 *the month following the close of each calendar quarter. Wage reports*
18 *are deemed filed as of the date they are placed in the United States*
19 *mail.*

20 *(A) At the end of each calendar quarter, or at the end of any*
21 *other period as determined by the secretary, the secretary shall bill*
22 *each reimbursing employer, except the state of Kansas, (i) an amount*
23 *to be paid which is equal to the full amount of regular benefits plus ½*
24 *of the amount of extended benefits paid during such quarter or other*
25 *prescribed period that is attributable to service in the employ of such*
26 *reimbursing employer; and (ii) for weeks of unemployment*
27 *beginning after December 31, 1978, each reimbursing governmental*
28 *employer and December 21, 2000, for Indian tribes or tribal units*
29 *shall be certified an amount to be paid which is equal to the full*
30 *amount of regular benefits and extended benefits paid during such*
31 *quarter or other prescribed period that is attributable to service in the*
32 *employ of such reimbursing governmental employer.*

33 *(B) Payment of any bill rendered under paragraph (A) of this*
34 *subsection (e)(2) shall be made not later than 30 days after such bill*
35 *was mailed to the last known address of the reimbursing employer, or*
36 *otherwise was delivered to such reimbursing employer, unless there*
37 *has been an application for review and redetermination in*
38 *accordance with paragraph (D) of this subsection (e)(2).*

39 *(C) Payments made by any reimbursing employer under the*

1 *provisions of this subsection (e)(2) shall not be deducted or*
2 *deductible, in whole or in part, from the remuneration of individuals*
3 *in the employ of such employer.*

4 *(D) The amount due specified in any bill from the secretary shall*
5 *be conclusive on the reimbursing employer, unless, not later than 15*
6 *days after the bill was mailed to the last known address of such*
7 *employer, or was otherwise delivered to such employer, the*
8 *reimbursing employer files an application for redetermination in*
9 *accordance with K.S.A. 44-710b, and amendments thereto.*

10 *(E) Past due payments of amounts certified by the secretary*
11 *under this section shall be subject to the same interest, penalties and*
12 *actions required by K.S.A. 44-717, and amendments thereto. (1) If*
13 *any nonprofit organization or group of nonprofit organizations*
14 *described in section 501(c)(3) of the federal internal revenue code of*
15 *1986 or governmental reimbursing employer is delinquent in making*
16 *payments of amounts certified by the secretary under this section, the*
17 *secretary may terminate such employer's election to make payments*
18 *in lieu of contributions as of the beginning of the next calendar year*
19 *and such termination shall be effective for such next calendar year*
20 *and the calendar year thereafter so that the termination is effective*
21 *for two complete calendar years. (2) Failure of the Indian tribe or*
22 *tribal unit to make required payments, including assessment of*
23 *interest and penalty within 90 days of receipt of the bill will cause the*
24 *Indian tribe to lose the option to make payments in lieu of*
25 *contributions as described pursuant to paragraph (e)(1) for the*
26 *following tax year unless payment in full is received before*
27 *contribution rates for the next tax year are calculated. (3) Any Indian*
28 *tribe that loses the option to make payments in lieu of contributions*
29 *due to late payment or nonpayment, as described in paragraph (2),*
30 *shall have such option reinstated, if after a period of one year, all*
31 *contributions have been made on time and no contributions,*
32 *payments in lieu of contributions for benefits paid, penalties or*
33 *interest remain outstanding.*

34 *(F) Failure of the Indian tribe or any tribal unit thereof to make*
35 *required payments, including assessments of interest and penalties,*
36 *after all collection activities deemed necessary by the secretary have*
37 *been exhausted, will cause services performed by such tribe to not be*
38 *treated as employment for purposes of subsection (i)(3)(E) of K.S.A.*
39 *44-703, and amendments thereto. If an Indian tribe fails to make*

1 *payments required under this section, including assessments of*
2 *interest and penalties, within 90 days of a final notice of delinquency,*
3 *the secretary shall immediately notify the United States internal*
4 *revenue service and the United States department of labor. The*
5 *secretary may determine that any Indian tribe that loses coverage*
6 *pursuant to this paragraph may have services performed on behalf of*
7 *such tribe again deemed "employment" if all contributions, payments*
8 *in lieu of contributions, penalties and interest have been paid.*

9 *(G) In the discretion of the secretary, any employer who elects to*
10 *become liable for payments in lieu of contributions and any nonprofit*
11 *organization or group of nonprofit organizations described in section*
12 *501 (c)(3) of the federal internal revenue code of 1986 or*
13 *governmental reimbursing employer or Indian tribe or tribal unit*
14 *who is delinquent in filing reports or in making payments of amounts*
15 *certified by the secretary under this section shall be required within*
16 *60 days after the effective date of such election, in the case of an*
17 *eligible employer so electing, or after the date of notification to the*
18 *delinquent employer under this subsection (e)(2)(G), in the case of a*
19 *delinquent employer, to execute and file with the secretary a surety*
20 *bond, except that the employer may elect, in lieu of a surety bond, to*
21 *deposit with the secretary money or securities as approved by the*
22 *secretary or to purchase and deliver to an escrow agent a certificate*
23 *of deposit to guarantee payment. The amount of the bond, deposit or*
24 *escrow agreement required by this subsection (e)(2)(G) shall not*
25 *exceed 5.4% of the organization's taxable wages paid for employment*
26 *by the eligible employer during the four calendar quarters*
27 *immediately preceding the effective date of the election or the date of*
28 *notification, in the case of a delinquent employer. If the employer did*
29 *not pay wages in each of such four calendar quarters, the amount of*
30 *the bond or deposit shall be as determined by the secretary. Upon the*
31 *failure of an employer to comply with this subsection (e)(2)(G) within*
32 *the time limits imposed or to maintain the required bond or deposit,*
33 *the secretary may terminate the election of such eligible employer or*
34 *delinquent employer, as the case may be, to make payments in lieu of*
35 *contributions, and such termination shall be effective for the current*
36 *and next calendar year.*

37 *(H) The state of Kansas shall make reimbursement payments*
38 *quarterly at a fiscal year rate which shall be based upon: (i) The*
39 *available balance in the state's reimbursing account as of December*

1 *31 of each calendar year; (ii) the historical unemployment experience*
2 *of all covered state agencies during prior years; (iii) the estimate of*
3 *total covered wages to be paid during the ensuing calendar year; (iv)*
4 *the applicable fiscal year rate of the claims processing and auditing*
5 *fee under K.S.A. 75-3798, and amendments thereto; and (v) actuarial*
6 *and other information furnished to the secretary by the secretary of*
7 *administration. In accordance with K.S.A. 75-3798, and amendments*
8 *thereto, the claims processing and auditing fees charged to state*
9 *agencies shall be deducted from the amounts collected for the*
10 *reimbursement payments under this paragraph (H) prior to making*
11 *the quarterly reimbursement payments for the state of Kansas. The*
12 *fiscal year rate shall be expressed as a percentage of covered total*
13 *wages and shall be the same for all covered state agencies. The fiscal*
14 *year rate for each fiscal year will be certified in writing by the*
15 *secretary to the secretary of administration on July 15 of each year*
16 *and such certified rate shall become effective on the July 1*
17 *immediately following the date of certification. A detailed listing of*
18 *benefit charges applicable to the state's reimbursing account shall be*
19 *furnished quarterly by the secretary to the secretary of administration*
20 *and the total amount of charges deducted from previous reimbursing*
21 *payments made by the state. On January 1 of each year, if it is*
22 *determined that benefit charges exceed the amount of prior*
23 *reimbursing payments, an upward adjustment shall be made therefor*
24 *in the fiscal year rate which will be certified on the ensuing July 15.*
25 *If total payments exceed benefit charges, all or part of the excess may*
26 *be refunded, at the discretion of the secretary, from the fund or*
27 *retained in the fund as part of the payments which may be required*
28 *for the next fiscal year.*

29 *(3) Allocation of benefit costs. The reimbursing account of each*
30 *reimbursing employer shall be charged the full amount of regular*
31 *benefits and ½ of the amount of extended benefits paid except that*
32 *each reimbursing governmental employer's account shall be charged*
33 *the full amount of regular benefits and extended benefits paid for*
34 *weeks of unemployment beginning after December 31, 1978, to*
35 *individuals whose entire base period wage credits are from such*
36 *employer. When benefits received by an individual are based upon*
37 *base period wage credits from more than one employer then the*
38 *reimbursing employer's or reimbursing governmental employer's*
39 *account shall be charged in the same ratio as base period wage*

1 *credits from such employer bear to the individual's total base period*
2 *wage credits. Notwithstanding any other provision of the employment*
3 *security law, no reimbursing employer's or reimbursing*
4 *governmental employer's account shall be charged for payments of*
5 *extended benefits which are wholly reimbursed to the state by the*
6 *federal government.*

7 *(A) Proportionate allocation (when fewer than all reimbursing*
8 *base period employers are liable). If benefits paid to an individual are*
9 *based on wages paid by one or more reimbursing employers and on*
10 *wages paid by one or more contributing employers or rated*
11 *governmental employers, the amount of benefits payable by each*
12 *reimbursing employer shall be an amount which bears the same ratio*
13 *to the total benefits paid to the individual as the total base period*
14 *wages paid to the individual by such employer bears to the total base*
15 *period wages paid to the individual by all of such individual's base*
16 *period employers.*

17 *(B) Proportionate allocation (when all base period employers are*
18 *reimbursing employers). If benefits paid to an individual are based*
19 *on wages paid by two or more reimbursing employers, the amount of*
20 *benefits payable by each such employer shall be an amount which*
21 *bears the same ratio to the total benefits paid to the individual as the*
22 *total base period wages paid to the individual by such employer bear*
23 *to the total base period wages paid to the individual by all of such*
24 *individual's base period employers.*

25 *(4) Group accounts. Two or more reimbursing employers may*
26 *file a joint application to the secretary for the establishment of a*
27 *group account for the purpose of sharing the cost of benefits paid*
28 *that are attributable to service in the employment of such*
29 *reimbursing employers. Each such application shall identify and*
30 *authorize a group representative to act as the group's agent for the*
31 *purposes of this subsection (e)(4). Upon approval of the application,*
32 *the secretary shall establish a group account for such employers*
33 *effective as of the beginning of the calendar quarter in which the*
34 *secretary receives the application and shall notify the group's*
35 *representative of the effective date of the account. Such account shall*
36 *remain in effect for not less than four years and thereafter such*
37 *account shall remain in effect until terminated at the discretion of the*
38 *secretary or upon application by the group. Upon establishment of*
39 *the account, each member of the group shall be liable for payments*

1 *in lieu of contributions with respect to each calendar quarter in the*
2 *amount that bears the same ratio to the total benefits paid in such*
3 *quarter that are attributable to service performed in the employ of all*
4 *members of the group as the total wages paid for service in*
5 *employment by such member in such quarter bear to the total wages*
6 *paid during such quarter for service performed in the employ of all*
7 *members of the group. The secretary shall adopt such rules and*
8 *regulations as the secretary deems necessary with respect to*
9 *applications for establishment, maintenance and termination of*
10 *group accounts that are authorized by this subsection (e)(4), for*
11 *addition of new members to, and withdrawal of active members from*
12 *such accounts, and for the determination of the amounts that are*
13 *payable under this subsection (e)(4) by members of the group and the*
14 *time and manner of such payments.*

15 Sec. 4-7. K.S.A. 2010 Supp. 44-710a is hereby amended to read as
16 follows: 44-710a. (a) *Classification of employers by the secretary.* The
17 term "employer" as used in this section refers to contributing
18 employers. The secretary shall classify employers in accordance with
19 their actual experience in the payment of contributions on their own
20 behalf and with respect to benefits charged against their accounts with a
21 view of fixing such contribution rates as will reflect such experience.
22 If, as of the date such classification of employers is made, the secretary
23 finds that any employing unit has failed to file any report required in
24 connection therewith, or has filed a report which the secretary finds
25 incorrect or insufficient, the secretary shall make an estimate of the
26 information required from such employing unit on the basis of the best
27 evidence reasonably available to the secretary at the time, and notify
28 the employing unit thereof by mail addressed to its last known address.
29 Unless such employing unit shall file the report or a corrected or
30 sufficient report as the case may be, within 15 days after the mailing of
31 such notice, the secretary shall compute such employing unit's rate of
32 contributions on the basis of such estimates, and the rate as so
33 determined shall be subject to increase but not to reduction on the basis
34 of subsequently ascertained information. The secretary shall determine
35 the contribution rate of each employer in accordance with the
36 requirements of this section.

37 (1) *New employers.* (A) No employer will be eligible for a rate
38 computation until there have been 24 consecutive calendar months
39 immediately preceding the computation date throughout which benefits

- 1 could have been charged against such employer's account.
- 2 (B) (i) For the rate year 2007 and each rate year thereafter, each
3 employer who is not eligible for a rate contribution shall pay
4 contributions equal to 4% of wages paid during each calendar year with
5 regard to employment except such employers engaged in the
6 construction industry shall pay a rate equal to 6%.
- 7 (ii) For rate years prior to 2007, employers who are not eligible for
8 a rate computation shall pay contributions at an assigned rate equal to
9 the sum of 1% plus the greater of the average rate assigned in the
10 preceding calendar year to all employers in such industry sector or the
11 average rate assigned to all covered employers during the preceding
12 calendar year, except that in no instance shall any such assigned rate be
13 less than 2%. Employers engaged in more than one type of industrial
14 activity shall be classified by principal activity. All rates assigned will
15 remain in effect for a complete calendar year. If the sale or acquisition
16 of a new establishment would require reclassification of the employer
17 to a different industry sector, the employer would be promptly notified,
18 and the contribution rate applicable to the new industry sector would
19 become effective the following January 1.
- 20 (iii) For purposes of this subsection (a), employers shall be
21 classified by industrial activity in accordance with standard procedures
22 as set forth in rules and regulations adopted by the secretary.
- 23 (C) "Computation date" means June 30 of each calendar year with
24 respect to rates of contribution applicable to the calendar year
25 beginning with the following January 1. In arriving at contribution rates
26 for each calendar year, contributions paid on or before July 31
27 following the computation date for employment occurring on or prior
28 to the computation date shall be considered for each contributing
29 employer who has been subject to this act for a sufficient period of time
30 to have such employer's rate computed under this subsection (a).
- 31 (2) *Eligible employers.* (A) A reserve ratio shall be computed for
32 each eligible employer by the following method: Total benefits charged
33 to the employer's account for all past years shall be deducted from all
34 contributions paid by such employer for all such years. The balance,
35 positive or negative, shall be divided by the employer's average annual
36 payroll, and the result shall constitute the employer reserve ratio.
- 37 (B) Negative account balance employers as defined in subsection
38 (d) shall pay contributions at the rate of 5.4% for each calendar year.
- 39 (C) Eligible employers, other than negative account balance

1 employers, who do not meet the average annual payroll requirements as
2 stated in subsection (a)(2) of K.S.A. 44-703, and amendments thereto,
3 will be issued the maximum rate indicated in subsection (a)(3)(C) of
4 this section until such employer establishes a new period of 24
5 consecutive calendar months immediately preceding the computation
6 date throughout which benefits could have been charged against such
7 employer's account by resuming the payment of wages. Contribution
8 rates effective for each calendar year thereafter shall be determined as
9 prescribed below.

10 (D) As of each computation date, the total of the taxable wages
11 paid during the 12-month period prior to the computation date by all
12 employers eligible for rate computation, except negative account
13 balance employers, shall be divided into 51 approximately equal parts
14 designated in column A of schedule I as "rate groups," except, with
15 regard to a year in which the taxable wage base changes. The taxable
16 wages used in the calculation for such a year and the following year
17 shall be an estimate of what the taxable wages would have been if the
18 new taxable wage base had been in effect during the entire twelve-
19 month period prior to the computation date. The lowest numbered of
20 such rate groups shall consist of the employers with the most favorable
21 reserve ratios, as defined in this section, whose combined taxable
22 wages paid are less than 1.96% of all taxable wages paid by all eligible
23 employers. Each succeeding higher numbered rate group shall consist
24 of employers with reserve ratios that are less favorable than those of
25 employers in the preceding lower numbered rate groups and whose
26 taxable wages when combined with the taxable wages of employers in
27 all lower numbered rate groups equal the appropriate percentage of
28 total taxable wages designated in column B of schedule I. Each eligible
29 employer, other than a negative account balance employer, shall be
30 assigned an experience factor designated under column C of schedule I
31 in accordance with the rate group to which the employer is assigned on
32 the basis of the employer's reserve ratio and taxable payroll. If an
33 employer's taxable payroll falls into more than one rate group the
34 employer shall be assigned the experience factor of the lower numbered
35 rate group. If one or more employers have reserve ratios identical to
36 that of the last employer included in the next lower numbered rate
37 group, all such employers shall be assigned the experience factor
38 designated to such last employer, notwithstanding the position of their
39 taxable payroll in column B of schedule I.

1			
2		SCHEDULE I—Eligible Employers	
3	Column A	Column B	Column C
4	Rate	Cumulative	Experience factor
5	group	taxable payroll	(Ratio to total wages)
6	1	Less than 1.96%.....	025%
7	2	1.96% but less than 3.92.....	40
8	3	3.92 but less than 5.88.....	80
9	4	5.88 but less than 7.84.....	12
10	5	7.84 but less than 9.80.....	16
11	6	9.80 but less than 11.76.....	20
12	7	11.76 but less than 13.72.....	24
13	8	13.72 but less than 15.68.....	28
14	9	15.68 but less than 17.64.....	32
15	10	17.64 but less than 19.60.....	36
16	11	19.60 but less than 21.56.....	40
17	12	21.56 but less than 23.52.....	44
18	13	23.52 but less than 25.48.....	48
19	14	25.48 but less than 27.44.....	52
20	15	27.44 but less than 29.40.....	56
21	16	29.40 but less than 31.36.....	60
22	17	31.36 but less than 33.32.....	64
23	18	33.32 but less than 35.28.....	68
24	19	35.28 but less than 37.24.....	72
25	20	37.24 but less than 39.20.....	76
26	21	39.20 but less than 41.16.....	80
27	22	41.16 but less than 43.12.....	84
28	23	43.12 but less than 45.08.....	88
29	24	45.08 but less than 47.04.....	92
30	25	47.04 but less than 49.00.....	96
31	26	49.00 but less than 50.96.....	1.00
32	27	50.96 but less than 52.92.....	1.04
33	28	52.92 but less than 54.88.....	1.08
34	29	54.88 but less than 56.84.....	1.12
35	30	56.84 but less than 58.80.....	1.16
36	31	58.80 but less than 60.76.....	1.20
37	32	60.76 but less than 62.72.....	1.24
38	33	62.72 but less than 64.68.....	1.28
39	34	64.68 but less than 66.64.....	1.32

1	35	66.64 but less than 68.60.....	1.36
2	36	68.60 but less than 70.56.....	1.40
3	37	70.56 but less than 72.52.....	1.44
4	38	72.52 but less than 74.48.....	1.48
5	39	74.48 but less than 76.44.....	1.52
6	40	76.44 but less than 78.40.....	1.56
7	41	78.40 but less than 80.36.....	1.60
8	42	80.36 but less than 82.32.....	1.64
9	43	82.32 but less than 84.28.....	1.68
10	44	84.28 but less than 86.24.....	1.72
11	45	86.24 but less than 88.20.....	1.76
12	46	88.20 but less than 90.16.....	1.80
13	47	90.16 but less than 92.12.....	1.84
14	48	92.12 but less than 94.08.....	1.88
15	49	94.08 but less than 96.04.....	1.92
16	50	96.04 but less than 98.00.....	1.96
17	51	98.00 and over.....	2.00

18

19 (E) Negative account balance employers shall, in addition to

20 paying the rate provided for in subsection (a)(2)(B) of this section, pay

21 a surcharge based on the size of the employer's negative reserve ratio,

22 the calculation which is provided for in subsection (a)(2) of this

23 section. The amount of the surcharge shall be determined from ~~column~~

24 ~~B of schedule II of this section~~ **column B2 of schedule II of this**

25 **section for calendar years 2012, 2013, 2014 and from column B1 of**

26 **schedule II of this section for each calendar year after 2014.** Each

27 negative account balance employer who does not satisfy the

28 requirements to have an average annual payroll, as defined by

29 subsection (a)(2) of K.S.A. 44-703, and amendments thereto, shall be

30 assigned a surcharge of ~~2%~~ **equal to the maximum negative ratio**

31 **surcharge from column B2 of schedule II of this section for calendar**

32 **years 2012, 2013 and 2014. From calendar year 2015 forward each**

33 **negative account balance employer who does not satisfy the**

34 **requirements to have an average annual payroll, as defined by**

35 **subsection (a)(2) of K.S.A. 44-703, and amendments thereto, shall be**

36 **assigned a surcharge equal to the maximum negative ratio surcharge**

37 **from column B1 of schedule II of this section.** Contribution payments

38 made pursuant to this subsection (a)(2)(E) shall be credited to the

39 appropriate account of such negative account balance employer. Funds

1 *from the surcharge paid according to this subsection (a)(2)(E), and*
2 *amendments thereto, shall be used to pay principal and interest due on*
3 *funds received from the federal unemployment account under title XII*
4 *of the social security act, (42 U.S.C. § 1321 to 1324), in the following*
5 *manner:*

6 (i) *For the ~~calendar~~ calendar year 2011, 50% of any such*
7 *surcharge shall be **designated an interest assessment surcharge and***
8 *paid into the employment security interest assessment fund for the*
9 *purpose of paying interest due and owing on funds received from the*
10 *federal unemployment account under title XII of the social security act.*
11 *The remaining surcharge shall be used to retire the principal on funds*
12 *received from the federal unemployment account under title XII of the*
13 *social security act **and shall be deposited in the Kansas***
14 ***unemployment insurance trust fund;***

15 (ii) *for any succeeding year in which interest is due and owing on*
16 *funds received from the federal unemployment account under title XII*
17 *of the social security act, the secretary of labor may adjust the amount*
18 *of such surcharge necessary to pay such interest;*

19 (iii) *the portion of such surcharge used for the payment of such*
20 *interest shall not be included in the calculation of such employers*
21 *reserve ratio pursuant to subsection (a)(2). The portion of such*
22 *surcharge used for the payment of principal shall be included in the*
23 *calculation of such employers reserve ratio pursuant to subsection (a)*
24 *(2); and*

25 (iv) *if the amounts collected under this subsection are in excess of*
26 *the amounts needed to pay interest due, the amounts in excess shall*
27 *remain in the employment security interest assessment fund to be used*
28 *to pay interest in future years. Whenever the secretary certifies all*
29 *interest payments have been paid pursuant to this section, any excess*
30 *funds remaining in the employment security interest assessment fund*
31 *shall be transferred to the employment security trust fund for the*
32 *purpose of paying any remaining principal amount due for advances*
33 *described in this section. In the event that the amount transferred from*
34 *the employment security interest assessment fund exceeds such*
35 *remaining amount of principal due, the balance shall be used for the*
36 *purposes of the employment security trust fund.*

37

38 SCHEDULE II—Surcharge on Negative Accounts

39 Column A

Column B

1	Negative Reserve Ratio	Surcharge as a percent
2		of taxable wages
3	Less than 2.0%.....	0.20%
4	2.0% but less than 4.0.....	.40
5	4.0 but less than 6.0.....	.60
6	6.0 but less than 8.0.....	.80
7	8.0 but less than 10.0.....	1.00
8	10.0 but less than 12.0.....	1.20
9	12.0 but less than 14.0.....	1.40
10	14.0 but less than 16.0.....	1.60
11	16.0 but less than 18.0.....	1.80
12	18.0 and over.....	2.00

13			
14	Column A	Column B1	Column B2
15	Negative Reserve Ratio	Surcharge as a percent	Surcharge as a
16	percent		percent
17		of taxable wages	of taxable wages

18			
19			
20	<i>Less than 2.0%.....</i>	<i>0.20%.....</i>	<i>0.30%</i>
21	<i>2.0% but less than 4.0.....</i>	<i>0.40.....</i>	<i>0.50</i>
22	<i>4.0 but less than 6.0.....</i>	<i>0.60.....</i>	<i>0.70</i>
23	<i>6.0 but less than 8.0.....</i>	<i>0.80.....</i>	<i>0.90</i>
24	<i>8.0 but less than 10.0.....</i>	<i>1.00.....</i>	<i>1.10</i>
25	<i>10.0 but less than 12.0.....</i>	<i>1.20.....</i>	<i>1.30</i>
26	<i>12.0 but less than 14.0.....</i>	<i>1.40.....</i>	<i>1.50</i>
27	<i>14.0 but less than 16.0.....</i>	<i>1.60.....</i>	<i>1.70</i>
28	<i>16.0 but less than 18.0.....</i>	<i>1.80.....</i>	<i>1.90</i>
29	<i>18.0 but less than 20.0.....</i>	<i>2.00.....</i>	<i>2.10</i>
30	<i>20.0 but less than 22.0.....</i>	<i>2.20.....</i>	<i>2.20</i>
31	<i>22.0 but less than 24.0.....</i>	<i>2.40.....</i>	<i>2.40</i>
32	<i>24.0 but less than 26.0.....</i>	<i>2.60.....</i>	<i>2.60</i>
33	<i>26.0 but less than 28.0.....</i>	<i>2.80.....</i>	<i>2.80</i>
34	<i>28.0 but less than 30.0.....</i>	<i>3.00.....</i>	<i>3.00</i>
35	<i>30.0 but less than 32.0.....</i>	<i>3.20.....</i>	<i>3.20</i>
36	<i>32.0 but less than 34.0.....</i>	<i>3.40.....</i>	<i>3.40</i>
37	<i>34.0 but less than 36.0.....</i>	<i>3.60.....</i>	<i>3.60</i>
38	<i>36.0 but less than 38.0.....</i>	<i>3.80.....</i>	<i>3.80</i>
39	<i>38.0 and over.....</i>	<i>4.00.....</i>	<i>4.00</i>

1 (3) *Planned yield.* (A) The average required yield shall be
 2 determined from schedule III of this section, and the planned yield on
 3 total wages in column B of schedule III shall be determined by the
 4 reserve fund ratio in column A of schedule III. The reserve fund ratio
 5 shall be determined by dividing total assets in the employment security
 6 fund provided for in subsection (a) of K.S.A. 44-712, and amendments
 7 thereto, excluding all moneys credited to the account of this state
 8 pursuant to section 903 of the federal social security act, as amended,
 9 which have been appropriated by the state legislature, whether or not
 10 withdrawn from the trust fund, and excluding contributions not yet paid
 11 on July 31 by total payrolls for contributing employers for the
 12 preceding fiscal year which ended June 30.

13
 14 SCHEDULE III—Fund Control
 15 Ratios to Total Wages

16 Column A	17 Column B
18 Reserve Fund Ratio	19 Planned Yield
20 4.500 and over.....	0.00
21 4.475 but less than 4.500.....	0.01
22 4.450 but less than 4.475.....	0.02
23 4.425 but less than 4.450.....	0.03
24 4.400 but less than 4.425.....	0.04
25 4.375 but less than 4.400.....	0.05
26 4.350 but less than 4.375.....	0.06
27 4.325 but less than 4.350.....	0.07
28 4.300 but less than 4.325.....	0.08
29 4.275 but less than 4.300.....	0.09
30 4.250 but less than 4.275.....	0.10
31 4.225 but less than 4.250.....	0.11
32 4.200 but less than 4.225.....	0.12
33 4.175 but less than 4.200.....	0.13
34 4.150 but less than 4.175.....	0.14
35 4.125 but less than 4.150.....	0.15
36 4.100 but less than 4.125.....	0.16
37 4.075 but less than 4.100.....	0.17
38 4.050 but less than 4.075.....	0.18
39 4.025 but less than 4.050.....	0.19
4.000 but less than 4.025.....	0.20
3.950 but less than 4.000.....	0.21

1	3.900 but less than 3.950.....	0.22
2	3.850 but less than 3.900.....	0.23
3	3.800 but less than 3.850.....	0.24
4	3.750 but less than 3.800.....	0.25
5	3.700 but less than 3.750.....	0.26
6	3.650 but less than 3.700.....	0.27
7	3.600 but less than 3.650.....	0.28
8	3.550 but less than 3.600.....	0.29
9	3.500 but less than 3.550.....	0.30
10	3.450 but less than 3.500.....	0.31
11	3.400 but less than 3.450.....	0.32
12	3.350 but less than 3.400.....	0.33
13	3.300 but less than 3.350.....	0.34
14	3.250 but less than 3.300.....	0.35
15	3.200 but less than 3.250.....	0.36
16	3.150 but less than 3.200.....	0.37
17	3.100 but less than 3.150.....	0.38
18	3.050 but less than 3.100.....	0.39
19	3.000 but less than 3.050.....	0.40
20	2.950 but less than 3.000.....	0.41
21	2.900 but less than 2.950.....	0.42
22	2.850 but less than 2.900.....	0.43
23	2.800 but less than 2.850.....	0.44
24	2.750 but less than 2.800.....	0.45
25	2.700 but less than 2.750.....	0.46
26	2.650 but less than 2.700.....	0.47
27	2.600 but less than 2.650.....	0.48
28	2.550 but less than 2.600.....	0.49
29	2.500 but less than 2.550.....	0.50
30	2.450 but less than 2.500.....	0.51
31	2.400 but less than 2.450.....	0.52
32	2.350 but less than 2.400.....	0.53
33	2.300 but less than 2.350.....	0.54
34	2.250 but less than 2.300.....	0.55
35	2.200 but less than 2.250.....	0.56
36	2.150 but less than 2.200.....	0.57
37	2.100 but less than 2.150.....	0.58
38	2.050 but less than 2.100.....	0.59
39	2.000 but less than 2.050.....	0.60

1	1.975 but less than 2.000.....	0.61
2	1.950 but less than 1.975.....	0.62
3	1.925 but less than 1.950.....	0.63
4	1.900 but less than 1.925.....	0.64
5	1.875 but less than 1.900.....	0.65
6	1.850 but less than 1.875.....	0.66
7	1.825 but less than 1.850.....	0.67
8	1.800 but less than 1.825.....	0.68
9	1.775 but less than 1.800.....	0.69
10	1.750 but less than 1.775.....	0.70
11	1.725 but less than 1.750.....	0.71
12	1.700 but less than 1.725.....	0.72
13	1.675 but less than 1.700.....	0.73
14	1.650 but less than 1.675.....	0.74
15	1.625 but less than 1.650.....	0.75
16	1.600 but less than 1.625.....	0.76
17	1.575 but less than 1.600.....	0.77
18	1.550 but less than 1.575.....	0.78
19	1.525 but less than 1.550.....	0.79
20	1.500 but less than 1.525.....	0.80
21	1.475 but less than 1.500.....	0.81
22	1.450 but less than 1.475.....	0.82
23	1.425 but less than 1.450.....	0.83
24	1.400 but less than 1.425.....	0.84
25	1.375 but less than 1.400.....	0.85
26	1.350 but less than 1.375.....	0.86
27	1.325 but less than 1.350.....	0.87
28	1.300 but less than 1.325.....	0.88
29	1.275 but less than 1.300.....	0.89
30	1.250 but less than 1.275.....	0.90
31	1.225 but less than 1.250.....	0.91
32	1.200 but less than 1.225.....	0.92
33	1.175 but less than 1.200.....	0.93
34	1.150 but less than 1.175.....	0.94
35	1.125 but less than 1.150.....	0.95
36	1.100 but less than 1.125.....	0.96
37	1.075 but less than 1.100.....	0.97
38	1.050 but less than 1.075.....	0.98
39	1.025 but less than 1.050.....	0.99

1 1.000 but less than 1.025.....1.00
2 0.900 but less than 1.000.....1.01
3 0.800 but less than 0.900.....1.02
4 0.700 but less than 0.800.....1.03
5 0.600 but less than 0.700.....1.04
6 0.500 but less than 0.600.....1.05
7 0.400 but less than 0.500.....1.06
8 0.300 but less than 0.400.....1.07
9 0.200 but less than 0.300.....1.08
10 0.100 but less than 0.200.....1.09
11 Less than 0.100%.....1.10

12
13 (B) *Adjustment to taxable wages.* ~~The (i) Except as provided in~~
14 ~~clause (ii), the~~ planned yield as a percent of total wages, as determined
15 in this subsection (a)(3), shall be adjusted to taxable wages by
16 multiplying by the ratio of total wages to taxable wages for all
17 contributing employers for the preceding fiscal year ending June 30,
18 ~~except, with regard to a year in which the taxable wage base changes.~~
19 ~~The taxable wages used in the calculation for such a year and the~~
20 ~~following year shall be an estimate of what the taxable wages would~~
21 ~~have been if the new taxable wage base had been in effect during all of~~
22 ~~the preceding fiscal year ending June 30.~~

23 (ii) *For the calendar years 2012, 2013 and 2014, the planned*
24 *yield as a percent of total wages, as determined in this subsection (a)*
25 *(3), shall be adjusted to taxable wages by multiplying by the ratio of*
26 *total wages to taxable wages for all contributing employers at the*
27 *taxable wage base of \$8,000. Any revenue generated by increasing*
28 *the taxable wage base above \$8,000 shall be in addition to the*
29 *planned yield established pursuant to schedule III of this section. The*
30 *provisions of this clause shall expire on December 31, 2014.*

31 (C) *Effective rates.* (i) Except with regard to rates for negative
32 account balance employers, employer contribution rates to be effective
33 for the ensuing calendar year shall be computed by adjusting
34 proportionately the experience factors from schedule I of this section to
35 the required yield on taxable wages. For the purposes of this subsection
36 (a)(3), all rates computed shall be rounded to the nearest .01% and for
37 calendar year 1983 and ensuing calendar years, the maximum effective
38 contribution rate shall not exceed 5.4%.

39 (ii) For rate year 2007 and subsequent rate years, employers who

1 are current in filing quarterly wage reports and in payment of all
2 contributions due and owing, shall be issued a contribution rate based
3 upon the following reduction: for rate groups 1 through 5, the rates
4 would be reduced to 0.00%; for rate groups 6 through 28, the rates
5 would be reduced by 50%; for rate groups 29 through 51, the rates
6 would be reduced by 40%.

7 (iii) In order to be eligible for the reduced rates for rate year 2007,
8 the employer must file all late reports and pay all contributions due and
9 owing within a 30-day period following the date of mailing of the
10 amended rate notice.

11 (iv) In order to be eligible for the reduced rates for rate year 2008
12 and subsequent rate years, employers must file all reports due and pay
13 all contributions due and owing on or before January 31 of the
14 applicable year, except that the reduced rates for otherwise eligible
15 employers shall not be effective for any rate year if the average high
16 cost multiple of the employment security trust fund balance falls below
17 1.2 as of the computation date of that year's rates. For the purposes of
18 this provision, the average high cost multiple is the reserve fund ratio,
19 as defined by subsection (a)(3)(A), divided by the average high benefit
20 cost rate. The average high benefit cost rate shall be determined by
21 averaging the three highest benefit cost rates over the last 20 years from
22 the preceding fiscal year which ended June 30. The high benefit cost
23 rate is defined by dividing total benefits paid in the fiscal year by total
24 payrolls for covered employers in the fiscal year.

25 (b) *Successor classification.* (1) (A) For the purposes of this
26 subsection (b), whenever an employing unit, whether or not it is an
27 "employing unit" within the meaning of subsection (g) of K.S.A. 44-
28 703, and amendments thereto, becomes an employer pursuant to
29 subsection (h)(4) of K.S.A. 44-703, and amendments thereto, or is an
30 employer at the time of acquisition and meets the definition of a
31 "successor employer" as defined by subsection (dd) of K.S.A. 44-703,
32 and amendments thereto, and thereafter transfers its trade or business,
33 or any portion thereof, to another employer and, at the time of the
34 transfer, there is substantially common ownership, management or
35 control of the two employers, then the unemployment experience
36 attributable to the transferred trade or business shall be transferred to
37 the employer to whom such business is so transferred. These
38 experience factors consist of all contributions paid, benefit experience
39 and annual payrolls of the predecessor employer. The transfer of some

1 or all of an employer's workforce to another employer shall be
2 considered a transfer of trade or business when, as the result of such
3 transfer, the transferring employer no longer performs trade or business
4 with respect to the transferred workforce, and such trade or business is
5 performed by the employer to whom the workforce is transferred.

6 (B) If, following a transfer of experience under subparagraph (A),
7 the secretary determines that a substantial purpose of the transfer or
8 business was to obtain a reduced liability for contributions, then the
9 experience rating accounts of the employers involved shall be
10 combined into a single account and a single rate assigned to such
11 account.

12 (2) A successor employer as defined by subsection (h)(4) or
13 subsection (dd) of K.S.A. 44-703, and amendments thereto, may
14 receive the experience rating factors of the predecessor employer if an
15 application is made to the secretary or the secretary's designee in
16 writing within 120 days of the date of the transfer.

17 (3) Whenever an employing unit, whether or not it is an
18 "employing unit" within the meaning of subsection (g) of K.S.A. 44-
19 703, and amendments thereto, acquires or in any manner succeeds to a
20 percentage of an employer's annual payroll which is less than 100%
21 and intends to continue the acquired percentage as a going business, the
22 employing unit may acquire the same percentage of the predecessor's
23 experience factors if: (A) The predecessor employer and successor
24 employing unit make an application in writing on the form prescribed
25 by the secretary, (B) the application is submitted within 120 days of the
26 date of the transfer, (C) the successor employing unit is or becomes an
27 employer subject to this act immediately after the transfer, (D) the
28 percentage of the experience rating factors transferred shall not be
29 thereafter used in computing the contribution rate for the predecessor
30 employer, and (E) the secretary finds that such transfer will not tend to
31 defeat or obstruct the object and purposes of this act.

32 (4) (A) The rate of both employers in a full or partial
33 successorship under paragraph (1) of this subsection shall be
34 recalculated and made effective on the first day of the next calendar
35 quarter following the date of transfer of trade or business.

36 (B) If a successor employer is determined to be qualified under
37 paragraph (2) or (3) of this subsection to receive the experience rating
38 factors of the predecessor employer, the rate assigned to the successor
39 employer for the remainder of the contributions year shall be

1 determined by the following:

2 (i) If the acquiring employing unit was an employer subject to this
3 act prior to the date of the transfer, the rate of contribution shall be the
4 same as the contribution rate of the acquiring employer on the date of
5 the transfer.

6 (ii) If the acquiring employing unit was not an employer subject to
7 this act prior to the date of the transfer, the successor employer shall
8 have a newly computed rate for the remainder of the contribution year
9 which shall be based on the transferred experience rating factors as they
10 existed on the most recent computation date immediately preceding the
11 date of acquisition. These experience rating factors consist of all
12 contributions paid, benefit experience and annual payrolls.

13 (5) Whenever an employing unit is not an employer at the time it
14 acquires the trade or business of an employer, the unemployment
15 experience factors of the acquired business shall not be transferred to
16 such employing unit if the secretary finds that such employing unit
17 acquired the business solely or primarily for the purpose of obtaining a
18 lower rate of contributions. Instead, such employing unit shall be
19 assigned the applicable industry rate for a "new employer" as described
20 in subsection (a)(1) of this section. In determining whether the business
21 was acquired solely or primarily for the purpose of obtaining a lower
22 rate of contributions, the secretary shall use objective factors which
23 may include the cost of acquiring the business, whether the employer
24 continued the business enterprise of the acquired business, how long
25 such business enterprise was continued, or whether a substantial
26 number of new employees were hired for performance of duties
27 unrelated to the business activity conducted prior to acquisition.

28 (6) Whenever an employer's account has been terminated as
29 provided in subsections (d) and (e) of K.S.A. 44-711, and amendments
30 thereto, and the employer continues with employment to liquidate the
31 business operations, that employer shall continue to be an "employer"
32 subject to the employment security law as provided in subsection (h)(8)
33 of K.S.A. 44-703, and amendments thereto. The rate of contribution
34 from the date of transfer to the end of the then current calendar year
35 shall be the same as the contribution rate prior to the date of the
36 transfer. At the completion of the then current calendar year, the rate of
37 contribution shall be that of a "new employer" as described in
38 subsection (a)(1) of this section.

39 (7) No rate computation will be permitted an employing unit

1 succeeding to the experience of another employing unit pursuant to this
2 section for any period subsequent to such succession except in
3 accordance with rules and regulations adopted by the secretary. Any
4 such regulations shall be consistent with federal requirements for
5 additional credit allowance in section 3303 of the federal internal
6 revenue code of 1986, and consistent with the provisions of this act.

7 (c) *Voluntary contributions.* Notwithstanding any other provision
8 of the employment security law, any employer may make voluntary
9 payments for the purpose of reducing or maintaining a reduced rate in
10 addition to the contributions required under this section. Such voluntary
11 payments may be made only during the thirty-day period immediately
12 following the date of mailing of experience rating notices for a calendar
13 year. All such voluntary contribution payments shall be paid prior to the
14 expiration of 120 days after the beginning of the year for which such
15 rates are effective. The amount of voluntary contributions shall be
16 credited to the employer's account as of the next preceding computation
17 date and the employer's rate shall be computed accordingly, except that
18 no employer's rate shall be reduced more than five rate groups as
19 provided in schedule I of this section as the result of a voluntary
20 payment. An employer not having a negative account balance may have
21 such employer's rate reduced not more than five rate groups as
22 provided in schedule I of this section as a result of a voluntary
23 payment. An employer having a negative account balance may have
24 such employer's rate reduced to that prescribed for rate group 51 of
25 schedule I of this section by making a voluntary payment in the amount
26 of such negative account balance or to that rate prescribed for rate
27 groups 50 through 47 of schedule I of this section by making an
28 additional voluntary payment that would increase such employer's
29 reserve ratio to the lower limit required for such rate groups 50 through
30 47. Under no circumstances shall voluntary payments be refunded in
31 whole or in part.

32 (d) As used in this section, "negative account balance employer"
33 means an eligible employer whose total benefits charged to such
34 employer's account for all past years have exceeded all contributions
35 paid by such employer for all such years.

36 (e) *There is hereby established in the state treasury, separate and*
37 *apart from all public moneys or funds of this state, an employment*
38 *security interest assessment fund, which shall be administered by the*
39 *secretary as provided in this act. Moneys in the employment security*

1 *fund established by K.S.A 44-712, and amendments thereto, and*
2 *employment security interest assessment fund established by 44-710,*
3 *and amendments thereto, shall not be invested in the pooled money*
4 *investment portfolio established under K.S.A 75-4234, and amendments*
5 *thereto. Notwithstanding the provisions of subsection (a) of K.S.A. 44-*
6 *712, K.S.A. 44-716, K.S.A. 44-717 and K.S.A. 75-4234, and*
7 *amendments thereto, or any like provision the secretary shall remit all*
8 *moneys received from employers pursuant to the interest payment*
9 *assessment established in section (a)(2)(E), and amendments thereto,*
10 *to the state treasurer in accordance with the provisions of K.S.A. 75-*
11 *4215, and amendments thereto. Upon receipt of each such remittance,*
12 *the state treasurer shall deposit the entire amount in the employment*
13 *security interest assessment fund. All moneys in this fund which are*
14 *received from employers pursuant to the interest payment assessment*
15 *established in section (a)(2)(E), and amendments thereto, shall be*
16 *expended solely for the purposes and in the amounts found by the*
17 *secretary necessary to pay any principal and interest due and owing*
18 *the United States department of labor resulting from any advancements*
19 *made to the Kansas employment security fund pursuant to the*
20 *provisions of title XII of the social security act (42 U.S.C. § 1321 to*
21 *1324) except as may be otherwise provided under section (a)(2)(E),*
22 *and amendments thereto. Notwithstanding any provision of this section,*
23 *all moneys received and credited to this fund pursuant to section (a)(2)*
24 *(E), and amendments thereto, pursuant to section (a)(2)(E), and*
25 *amendments thereto, shall remain part of the employment security*
26 *interest assessment fund and shall be used only in accordance with the*
27 *conditions specified in section (a)(2)(E), and amendments thereto.*

28 ~~(e)~~ (f) The secretary of labor shall annually prepare and submit a
29 certification as to the solvency and adequacy of the amount credited to
30 the state of Kansas' account in the federal employment security trust
31 fund to the governor and the employment security advisory council.
32 The certification shall be submitted on or before December 1 of each
33 calendar year and shall be for the 12-month period ending on June 30
34 of that calendar year. In arriving at the certification contributions paid
35 on or before July 31 following the 12-month period ending date of June
36 30 shall be considered. Each certification shall be used to determine the
37 need for any adjustment to schedule III in subsection (a)(3)(A) and to
38 assist in preparing legislation to accomplish any such adjustment.

39 ~~Sec.-5:~~ **8.** K.S.A. 2010 Supp. 44-717 is hereby amended to read as

1 follows: 44-717. (a) (1) *Penalties on past-due reports, interest on past-*
2 *due contributions, payments in lieu of contributions and benefit cost*
3 *payments, benefit cost payments and interest assessments made under*
4 *K.S.A. 44-710a, and amendments thereto.* Any employer or any officer
5 or agent of an employer, who fails to file any wage report or
6 contribution return by the last day of the month following the close of
7 each calendar quarter to which they are related shall pay a penalty as
8 provided by this subsection (~~a~~) for each month or fraction of a month
9 until the report or return is received by the secretary of labor except that
10 for calendar years 2010 and 2011 an employer or any officer or agent
11 of the employer shall have up to 90 days past the due date for any of
12 the first three calendar quarters in a calendar year to pay such
13 employer's contribution without being charged any interest, however,
14 when the 90 day period has passed, the provisions of this section shall
15 apply. The penalty for each month or fraction of a month shall be an
16 amount equal to .05% of the total wages paid by the employer during
17 the quarter, except that no penalty shall be less than \$25 nor more than
18 \$200 for each such report or return not timely filed. Contributions ~~and~~
19 *benefit cost payments, benefit cost payments and interest assessments*
20 *made pursuant to K.S.A. 44-710a, and amendments thereto,* unpaid by
21 the last day of the month following the last calendar quarter to which
22 they are related and payments in lieu of contributions unpaid 30 days
23 after the mailing of the statement of benefit charges, shall bear interest
24 at the rate of 1% per month or fraction of a month until payment is
25 received by the secretary of labor except that an employing unit, which
26 is not theretofore subject to this law and which becomes an employer
27 and does not refuse to make the reports, returns and contributions,
28 payments in lieu of contributions and benefit cost payments required
29 under this law, shall not be liable for such penalty or interest if the
30 wage reports and contribution returns required are filed and the
31 contributions, payments in lieu of contributions or benefit cost
32 payments required are paid within 10 days following notification by the
33 secretary of labor that a determination has been made fixing its status
34 as an employer subject to this law. Upon written request and good
35 cause shown, the secretary of labor may abate any penalty or interest or
36 portion thereof provided for by this subsection (~~a~~). Interest amounting
37 to less than \$5 shall be waived by the secretary of labor and shall not be
38 collected. Penalties and interest collected pursuant to this subsection
39 shall be paid into the special employment security fund. For all

1 purposes under this section, amounts assessed as surcharges under
2 subsection (j) or under K.S.A. 44-710a, and amendments thereto, shall
3 be considered to be contributions and shall be subject to penalties and
4 interest imposed under this section and to collection in the manner
5 provided by this section. *For all purposes under this section, amounts*
6 *assessed under K.S.A. 44-710a, and amendments thereto, shall be*
7 *subject to penalties and interest imposed under this section and to*
8 *collection in the manner provided in this section.* For purposes of this
9 subsection, a wage report, a contribution return, a contribution, a
10 payment in lieu of contribution ~~or a benefit cost payment~~, *a benefit cost*
11 *payment or an interest assessment made pursuant to K.S.A. 44-710a,*
12 *and amendments thereto,* is deemed to be filed or paid as of the date it
13 is placed in the United States mail.

14 (2) Notices of payment and reporting delinquency to Indian tribes
15 or their tribal units shall include information that failure to make full
16 payment within the prescribed time frame:

- 17 (i) Will cause the Indian tribe to be liable for taxes under FUTA;
18 (ii) will cause the Indian tribe to lose the option to make payments
19 in lieu of contributions;
20 (iii) could cause the Indian tribe to be excepted from the definition
21 of "employer," as provided in paragraph (h)(3) of K.S.A. 44-703, and
22 amendments thereto, and services in the employ of the Indian tribe, as
23 provided in paragraph (i)(3)(E) of K.S.A. 44-703, and amendments
24 thereto, to be excepted from "employment."

25 (b) *Collection.* (1) If, after due notice, any employer defaults in
26 payment of any penalty, contributions, payments in lieu of
27 contributions, benefit cost payments, *interest assessments made*
28 *pursuant to K.S.A. 44-710a, and amendments thereto,* or interest
29 thereon the amount due may be collected by civil action in the name of
30 the secretary of labor and the employer adjudged in default shall pay
31 the cost of such action. Civil actions brought under this section to
32 collect contributions, payments in lieu of contributions, benefit cost
33 payments, *interest assessments made pursuant to K.S.A. 44-710a, and*
34 *amendments thereto,* penalties, or interest thereon from an employer
35 shall be heard by the district court at the earliest possible date and shall
36 be entitled to preference upon the calendar of the court over all other
37 civil actions except petitions for judicial review under this act and cases
38 arising under the workmen's compensation act. All liability
39 determinations of contributions due, payments in lieu of contributions

1 ~~or benefit cost payments,~~ *benefit cost payments and interest*
2 *assessments made pursuant to K.S.A. 44-710a, and amendments*
3 *thereto,* due shall be made within a period of five years from the date
4 such contributions, payments in lieu of contributions ~~or benefit cost~~
5 ~~payments,~~ *benefit cost payments and interest assessments made*
6 *pursuant to K.S.A. 44-710a, and amendments thereto,* were due except
7 such determinations may be made for any time when an employer has
8 filed fraudulent reports with intent to evade liability.

9 (2) Any employing unit which is not a resident of this state and
10 which exercises the privilege of having one or more individuals
11 perform service for it within this state and any resident employing unit
12 which exercises that privilege and thereafter removes from this state,
13 shall be deemed thereby to appoint the secretary of state as its agent
14 and attorney for the acceptance of process in any civil action under this
15 subsection. In instituting such an action against any such employing
16 unit the secretary of labor shall cause such process or notice to be filed
17 with the secretary of state and such service shall be sufficient service
18 upon such employing unit and shall be of the same force and validity as
19 if served upon it personally within this state. The secretary of labor
20 shall send notice immediately of the service of such process or notice,
21 together with a copy thereof, by registered or certified mail, return
22 receipt requested, to such employing unit at its last-known address and
23 such return receipt, the affidavit of compliance of the secretary of labor
24 with the provisions of this section, and a copy of the notice of service,
25 shall be appended to the original of the process filed in the court in
26 which such civil action is pending.

27 (3) The district courts of this state shall entertain, in the manner
28 provided in subsections (b)(1) and (b)(2), actions to collect
29 contributions, payments in lieu of contributions, ~~benefit cost payments~~
30 *interest assessments made pursuant to K.S.A. 44-710a, and*
31 *amendments thereto,* and other amounts owed including interest
32 thereon for which liability has accrued under the employment security
33 law of any other state or of the federal government.

34 (c) *Priorities under legal dissolutions or distributions.* In the event
35 of any distribution of employer's assets pursuant to an order of any
36 court under the laws of this state, including but not limited to any
37 probate proceeding, interpleader, receivership, assignment for benefit
38 of creditors, adjudicated insolvency, composition or similar
39 proceedings, ~~contributions or payments in lieu of contributions~~

1 *payments in lieu of contributions or interest assessments made under*
2 *K.S.A. 44-710a, and amendments thereto*, then or thereafter due shall
3 be paid in full from the moneys which shall first come into the estate,
4 prior to all other claims, except claims for wages of not more than \$250
5 to each claimant, earned within six months of the commencement of
6 the proceedings. In the event of an employer's adjudication in
7 bankruptcy, judicially confirmed extension proposal, or composition,
8 under the federal bankruptcy act of 1898, as amended, contributions
9 then or thereafter due shall be entitled to such priority as is provided in
10 that act for taxes due any state of the United States.

11 (d) *Assessments*. If any employer fails to file a report or return
12 required by the secretary of labor for the determination of
13 contributions, or payments in lieu of contributions, or benefit cost
14 payments, the secretary of labor may make such reports or returns or
15 cause the same to be made, on the basis of such information as the
16 secretary may be able to obtain and shall collect the contributions,
17 payments in lieu of contributions or benefit cost payments as
18 determined together with any interest due under this act. The secretary
19 of labor shall immediately forward to the employer a copy of the
20 assessment by registered or certified mail to the employer's address as
21 it appears on the records of the agency, and such assessment shall be
22 final unless the employer protests such assessment and files a corrected
23 report or return for the period covered by the assessment within 15 days
24 after the mailing of the copy of assessment. Failure to receive such
25 notice shall not invalidate the assessment. Notice in writing shall be
26 presumed to have been given when deposited as certified or registered
27 matter in the United States mail, addressed to the person to be charged
28 with notice at such person's address as it appears on the records of the
29 agency.

30 (e) (1) *Lien*. If any employer or person who is liable to pay
31 contributions, payments in lieu of contributions ~~or benefit cost~~
32 ~~payments~~, *benefit cost payments and interest assessments made*
33 *pursuant to K.S.A. 44-710a, and amendments thereto*, neglects or
34 refuses to pay the same after demand, the amount, including interest
35 and penalty, shall be a lien in favor of the state of Kansas, secretary of
36 labor, upon all property and rights to property, whether real or personal,
37 belonging to such employer or person. Such lien shall not be valid as
38 against any mortgagee, pledgee, purchaser or judgment creditor until
39 notice thereof has been filed by the secretary of labor in the office of

1 register of deeds in any county in the state of Kansas, in which such
2 property is located, and when so filed shall be notice to all persons
3 claiming an interest in the property of the employer or person against
4 whom filed. The register of deeds shall enter such notices in the
5 financing statement record and shall also record the same in full in
6 miscellaneous record and index the same against the name of the
7 delinquent employer. The register of deeds shall accept, file, and record
8 such notice without prepayment of any fee, but lawful fees shall be
9 added to the amount of such lien and collected when satisfaction is
10 presented for entry. Such lien shall be satisfied of record upon the
11 presentation of a certificate of discharge by the state of Kansas,
12 secretary of labor. Nothing contained in this subsection ~~(e)~~ shall be
13 construed as an invalidation of any lien or notice filed in the name of
14 the unemployment compensation division or the employment security
15 division and such liens shall be and remain in full force and effect until
16 satisfied as provided by this subsection ~~(e)~~.

17 (2) *Authority of secretary or authorized representative.* If any
18 employer or person who is liable to pay any contributions, payments in
19 lieu of contributions ~~or benefit cost payments~~, *benefit cost payments*
20 *and interest assessments made pursuant to K.S.A. 44-710a, and*
21 *amendments thereto*, including interest and penalty, neglects or refuses
22 to pay the same within 10 days after notice and demand therefor, the
23 secretary or the secretary's authorized representative may collect such
24 contributions, payments in lieu of contributions ~~or benefit cost~~
25 ~~payments~~, *benefit cost payments and interest assessments made*
26 *pursuant to K.S.A. 44-710a, and amendments thereto*, including
27 interest and penalty, and such further amount as is sufficient to cover
28 the expenses of the levy, by levy upon all property and rights to
29 property which belong to the employer or person or which have a lien
30 created thereon by this subsection ~~(e)~~ for the payment of such
31 contributions, payments in lieu of contributions ~~or benefit cost~~
32 ~~payments~~, *benefit cost payments and interest assessments made*
33 *pursuant to K.S.A. 44-710a, and amendments thereto*, including interest
34 and penalty. As used in this subsection ~~(e)~~, "property" includes all real
35 property and personal property, whether tangible or intangible, except
36 such property which is exempt under K.S.A. 60-2301 et seq., and
37 amendments thereto. Levy may be made upon the accrued salary or
38 wages of any officer, employee or elected official of any state or local
39 governmental entity which is subject to K.S.A. 60-723, and

1 amendments thereto, by serving a notice of levy as provided in
2 subsection (d) of K.S.A. 60-304, and amendments thereto. If the
3 secretary or the secretary's authorized representative makes a finding
4 that the collection of the amount of such contributions, payments in lieu
5 of contributions ~~or benefit cost payments~~, *benefit cost payments and*
6 *interest assessments made pursuant to K.S.A. 44-710a, and*
7 *amendments thereto*, including interest and penalty, is in jeopardy,
8 notice and demand for immediate payment of such amount may be
9 made by the secretary or the secretary's authorized representative and,
10 upon failure or refusal to pay such amount, immediate collection of
11 such amount by levy shall be lawful without regard to the 10-day
12 period provided in this subsection ~~(e)~~.

13 (3) *Seizure and sale of property*. The authority to levy granted
14 under this subsection ~~(e)~~ includes the power of seizure by any means. A
15 levy shall extend only to property possessed and obligations existing at
16 the time thereof. In any case in which the secretary or the secretary's
17 authorized representative may levy upon property or rights to property,
18 the secretary or the secretary's authorized representative may seize and
19 sell such property or rights to property.

20 (4) *Successive seizures*. Whenever any property or right to
21 property upon which levy has been made under this subsection ~~(e)~~ is
22 not sufficient to satisfy the claim of the secretary for which levy is
23 made, the secretary or the secretary's authorized representative may
24 proceed thereafter and as often as may be necessary, to levy in like
25 manner upon any other property or rights to property which belongs to
26 the employer or person against whom such claim exists or upon which
27 a lien is created by this subsection ~~(e)~~ until the amount due from the
28 employer or person, together with all expenses, is fully paid.

29 (f) *Warrant*. In addition or as an alternative to any other remedy
30 provided by this section and provided that no appeal or other
31 proceeding for review permitted by this law shall then be pending and
32 the time for taking thereof shall have expired, the secretary of labor or
33 an authorized representative of the secretary may issue a warrant
34 certifying the amount of contributions, payments in lieu of
35 contributions, benefit cost payments, interest or penalty, and the name
36 of the employer liable for same after giving 15 days prior notice. Upon
37 request, service of final notices shall be made by the sheriff within the
38 sheriff's county, by the sheriff's deputy or some person specially
39 appointed by the secretary for that purpose, or by the secretary's

1 designee. A person specially appointed by the secretary or the
2 secretary's designee to serve final notices may make service any place
3 in the state. Final notices shall be served as follows:

4 (1) *Individual.* Service upon an individual, other than a minor or
5 incapacitated person, shall be made by delivering a copy of the final
6 notice to the individual personally or by leaving a copy at such
7 individual's dwelling house or usual place of abode with some person
8 of suitable age and discretion then residing therein, by leaving a copy at
9 the business establishment of the employer with an officer or employee
10 of the establishment, or by delivering a copy to an agent authorized by
11 appointment or by law to receive service of process, but if the agent is
12 one designated by a statute to receive service, such further notice as the
13 statute requires shall be given. If service as prescribed above cannot be
14 made with due diligence, the secretary or the secretary's designee may
15 order service to be made by leaving a copy of the final notice at the
16 employer's dwelling house, usual place of abode or business
17 establishment.

18 (2) *Corporations and partnerships.* Service upon a domestic or
19 foreign corporation or upon a partnership or other unincorporated
20 association, when by law it may be sued as such, shall be made by
21 delivering a copy of the final notice to an officer, partner or resident
22 managing or general agent thereof by leaving a copy at any business
23 office of the employer with the person having charge thereof or by
24 delivering a copy to any other agent authorized by appointment or
25 required by law to receive service of process, if the agent is one
26 authorized by law to receive service and, if the law so requires, by also
27 mailing a copy to the employer.

28 (3) *Refusal to accept service.* In all cases when the person to be
29 served, or an agent authorized by such person to accept service of
30 petitions and summonses, shall refuse to receive copies of the final
31 notice, the offer of the duly authorized process server to deliver copies
32 thereof and such refusal shall be sufficient service of such notice.

33 (4) *Proof of service.* (A) Every officer to whom a final notice or
34 other process shall be delivered for service within or without the state,
35 shall make return thereof in writing stating the time, place and manner
36 of service of such writ, and shall sign such officer's name to such
37 return.

38 (B) If service of the notice is made by a person appointed by the
39 secretary or the secretary's designee to make service, such person shall

1 make an affidavit as to the time, place and manner of service thereof in
2 a form prescribed by the secretary or the secretary's designee.

3 (5) *Time for return.* The officer or other person receiving a final
4 notice shall make a return of service promptly and shall send such
5 return to the secretary or the secretary's designee in any event within 10
6 days after the service is effected. If the final notice cannot be served it
7 shall be returned to the secretary or the secretary's designee within 30
8 days after the date of issue with a statement of the reason for the failure
9 to serve the same. The original return shall be attached to and filed with
10 any warrant thereafter filed.

11 (6) *Service by mail.* (A) Upon direction of the secretary or the
12 secretary's designee, service by mail may be effected by forwarding a
13 copy of the notice to the employer by registered or certified mail to the
14 employer's address as it appears on the records of the agency. A copy of
15 the return receipt shall be attached to and filed with any warrant
16 thereafter filed.

17 (B) The secretary of labor or an authorized representative of the
18 secretary may file the warrant for record in the office of the clerk of the
19 district court in the county in which the employer owing such
20 contributions, payments in lieu of contributions, benefit cost payments,
21 *interest assessments made pursuant to K.S.A. 44-710a, and*
22 *amendments thereto*, interest, or penalty has business property. The
23 warrant shall certify the amount of contributions, payments in lieu of
24 contributions, benefit cost payments, interest and penalty due, and the
25 name of the employer liable for such amount. It shall be the duty of the
26 clerk of the district court to file such warrant of record and enter the
27 warrant in the records of the district court for judgment and decrees
28 under the procedure prescribed for filing transcripts of judgment.

29 (C) The clerk shall enter, on the day the warrant is filed, the case
30 on the appearance docket, together with the amount and the time of
31 filing the warrant. From the time of filing such warrant, the amount of
32 the contributions, payments in lieu of contributions, benefit cost
33 payments, *interest assessments made pursuant to K.S.A. 44-710a, and*
34 *amendments thereto*, interest, and penalty, certified therein, shall have
35 the force and effect of a judgment of the district court until the same is
36 satisfied by the secretary of labor or an authorized representative or
37 attorney for the secretary. Execution shall be issuable at the request of
38 the secretary of labor, an authorized representative or attorney for the
39 secretary, as is provided in the case of other judgments.

1 (D) Postjudgment procedures shall be the same as for judgments
2 according to the code of civil procedure.

3 (E) Warrants shall be satisfied of record by payment to the clerk of
4 the district court of the contributions, payments in lieu of contributions,
5 benefit cost payments, *interest assessments made pursuant to K.S.A.*
6 *44-710a, and amendments thereto*, penalty, interest to date, and court
7 costs. Warrants may also be satisfied of record by payment to the clerk
8 of the district court of all court costs accrued in the case and by filing a
9 certificate by the secretary of labor, certifying that the contributions,
10 payments in lieu of contributions, benefit cost payments, *interest*
11 *assessments made pursuant to K.S.A. 44-710a, and amendments*
12 *thereto*, interest and penalty have been paid.

13 (g) *Remedies cumulative*. The foregoing remedies shall be
14 cumulative and no action taken shall be construed as an election on the
15 part of the state or any of its officers to pursue any remedy or action
16 under this section to the exclusion of any other remedy or action for
17 which provision is made.

18 (h) *Refunds*. If any individual, governmental entity or organization
19 makes application for refund or adjustment of any amount paid as
20 contributions, benefit cost payments, *interest assessments made*
21 *pursuant to K.S.A. 44-710a, and amendments thereto*, or interest under
22 this law and the secretary of labor determines that such amount or any
23 portion thereof was erroneously collected, except for amounts less than
24 \$5, the secretary of labor shall allow such individual or organization to
25 make an adjustment thereof, in connection with subsequent
26 contribution payments, or if such adjustment cannot be made the
27 secretary of labor shall refund the amount, except for amounts less than
28 \$5, from the employment security fund, except that all interest
29 erroneously collected which has been paid into the special employment
30 security fund shall be refunded out of the special employment security
31 fund. No adjustment or refund shall be allowed with respect to a
32 payment as contributions, ~~benefit cost payments~~, *interest assessments*
33 *made pursuant to K.S.A. 44-710a, and amendments thereto*, or interest
34 unless an application therefor is made on or before whichever of the
35 following dates is later: (1) One year from the date on which such
36 payment was made; or (2) three years from the last day of the period
37 with respect to which such payment was made. For like cause and
38 within the same period adjustment or refund may be so made on the
39 secretary's own initiative. The secretary of labor shall not be required to

1 refund any contributions, payments in lieu of contributions or benefit
2 cost payments based upon wages paid which have been used as base-
3 period wages in a determination of a claimant's benefit rights when
4 justifiable and correct payments have been made to the claimant as the
5 result of such determination. For all taxable years commencing after
6 December 31, 1997, interest at the rate prescribed in K.S.A. 79-2968,
7 and amendments thereto, shall be allowed on a contribution or benefit
8 cost payment which the secretary has determined was erroneously
9 collected pursuant to this section.

10 (i) (1) *Cash deposit or bond.* If any contributing employer is
11 delinquent in making payments under the employment security law
12 during any two quarters of the most recent four-quarter period, the
13 secretary or the secretary's authorized representative shall have the
14 discretionary power to require such contributing employer either to
15 deposit cash or to file a bond with sufficient sureties to guarantee the
16 payment of contributions, *interest assessments made pursuant to K.S.A.*
17 *44-710a, and amendments thereto,* penalty and interest owed by such
18 employer.

19 (2) The amount of such cash deposit or bond shall be not less than
20 the largest total amount of contributions, *interest assessments made*
21 *pursuant to K.S.A. 44-710a, and amendments thereto,* penalty and
22 interest reported by the employer in two of the four calendar quarters
23 preceding any delinquency. Such cash deposit or bond shall be required
24 until the employer has shown timely filing of reports and payment of
25 contributions *and interest assessments made pursuant to K.S.A. 44-*
26 *710a, and amendments thereto,* for four consecutive calendar quarters.

27 (3) Failure to file such cash deposit or bond shall subject the
28 employer to a surcharge of 2.0% which shall be in addition to the rate
29 of contributions assigned to the employer under K.S.A. 44-710a, and
30 amendments thereto. Contributions paid as a result of this surcharge
31 shall not be credited to the employer's experience rating account. This
32 surcharge shall be effective during the next full calendar year after its
33 imposition and during each full calendar year thereafter until the
34 employer has filed the required cash deposit or bond or has shown
35 timely filing of reports and payment of contributions for four
36 consecutive calendar quarters.

37 (j) Any officer, major stockholder or other person who has charge
38 of the affairs of an employer, which is an employing unit described in
39 section 501(c)(3) of the federal internal revenue code of 1954 or which

1 is any other corporate organization or association, or any member or
2 manager of a limited liability company, or any public official, who
3 willfully fails to pay the amount of contributions, payments in lieu of
4 contributions ~~or benefit cost payments~~, *benefit cost payments and*
5 *interest assessments made pursuant to K.S.A. 44-710a, and*
6 *amendments thereto*, required to be paid under the employment security
7 law on the date on which such amount becomes delinquent, shall be
8 personally liable for the total amount of the contributions, payments in
9 lieu of contributions ~~or benefit cost payments~~, *benefit cost payments*
10 *and interest assessments made pursuant to K.S.A. 44-710a, and*
11 *amendments thereto*, and any penalties and interest due and unpaid by
12 such employing unit. The secretary or the secretary's authorized
13 representative may assess such person for the total amount of
14 contributions, payments in lieu of contributions ~~or benefit cost~~
15 ~~payments~~, *benefit cost payments and interest assessments made*
16 *pursuant to K.S.A. 44-710a, and amendments thereto*, and any
17 penalties, and interest computed as due and owing. With respect to such
18 persons and such amounts assessed, the secretary shall have available
19 all of the collection remedies authorized or provided by this section.

20 (k) *Electronic filing of wage report and contribution return and*
21 *electronic payment of contributions, benefit cost payments or,*
22 *reimbursing payments or interest assessments under K.S.A. 44-710a,*
23 *and amendments thereto.* The following employers or third party
24 administrators shall file all wage reports and contribution returns and
25 make payment of contributions, benefit cost payments or reimbursing
26 payments electronically as follows:

27 (1) Wage reports, contribution returns and payments due after June
28 30, 2008, for those employers with 250 or more employees or third
29 party administrators with 250 or more client employees at the time such
30 filing or payment is first due;

31 (2) wage reports, contribution returns and payments due after June
32 30, 2009, for those employers with 100 or more employees or third
33 party administrators with 100 or more client employees at the time such
34 filing or payment is first due; and

35 (3) wage reports, contribution returns ~~and payments~~, *payments*
36 *and interest assessments made pursuant to K.S.A. 44-710a, and*
37 *amendments thereto*, due after June 30, 2010, for those third party
38 administrators with 50 or more client employees at the time such filing
39 or payment is first due.

1 The requirements of this subsection may be waived by the secretary
2 for an employer if the employer demonstrates a hardship in complying
3 with this subsection.

4 ~~Sec.-6: 9.~~ K.S.A. 2010 Supp. 44-704a, 44-710a and 44-717 are
5 hereby repealed.

6 ~~Sec.-7: 10.~~ On July 1, 2011, K.S.A. 2010 Supp. ~~44-705 and 44-~~
7 ~~706~~~~44-703, 44-705, 44-706 and 44-710~~ are hereby repealed.

8 ~~Sec.-8: 11.~~ This act shall take effect and be in force from and after
9 its publication in the Kansas register.

10