

HOUSE BILL No. 2054

By Committee on Judiciary

1-12

1 AN ACT concerning the department of labor; relating to employment
2 security law; records and reports; amending K.S.A. 2016 Supp. 44-714
3 and repealing the existing section.
4

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

6 Section 1. K.S.A. 2016 Supp. 44-714 is hereby amended to read as
7 follows: 44-714. (a) *Duties and powers of secretary.* It shall be the duty of
8 the secretary to administer this act and the secretary shall have power and
9 authority to adopt, amend or revoke such rules and regulations, to employ
10 such persons, make such expenditures, require such reports, make such
11 investigations, and take such other action as the secretary deems necessary
12 or suitable to that end. Such rules and regulations may be adopted,
13 amended, or revoked by the secretary only after public hearing or
14 opportunity to be heard thereon. The secretary shall determine the
15 organization and methods of procedure in accordance with the provisions
16 of this act, and shall have an official seal which shall be judicially noticed.
17 The secretary shall make and submit reports for the administration of the
18 employment security law in the manner prescribed by K.S.A. 75-3044 to
19 75-3046, inclusive, and 75-3048, and amendments thereto. Whenever the
20 secretary believes that a change in contribution or benefit rates will
21 become necessary to protect the solvency of the fund, the secretary shall
22 promptly so inform the governor and the legislature, and make
23 recommendations with respect thereto.

24 (b) *Publication.* The secretary shall cause to be printed for
25 distribution to the public the text of this act, the secretary's rules and
26 regulations and any other material the secretary deems relevant and
27 suitable and shall furnish the same to any person upon application therefor.

28 (c) *Personnel.* Subject to other provisions of this act, the secretary is
29 authorized to appoint, fix the compensation, and prescribe the duties and
30 powers of such officers, accountants, deputies, attorneys, experts and other
31 persons as may be necessary in carrying out the provisions of this act. The
32 secretary may delegate to any such person so appointed such power and
33 authority as the secretary deems reasonable and proper for the effective
34 administration of this act, and may in the secretary's discretion bond any
35 person handling moneys or signing checks under the employment security
36 law.

1 (d) *Employment stabilization.* The secretary, with the advice and aid
2 of the appropriate divisions of the department of labor, shall take all
3 appropriate steps to reduce and prevent unemployment; to encourage and
4 assist in the adoption of practical methods of vocational training, retraining
5 and vocational guidance; to investigate, recommend, advise, and assist in
6 the establishment and operation, by municipalities, counties, school
7 districts and the state, of reserves for public works to be used in time of
8 business depression and unemployment; to promote the reemployment of
9 unemployed workers throughout the state in every other way that may be
10 feasible; and to these ends to carry on and publish the results of
11 investigations and research studies.

12 (e) *Records and reports.* Each employing unit shall keep true and
13 accurate work records, containing such information as the secretary may
14 prescribe. Such records shall be open to inspection and subject to being
15 copied by the secretary or the secretary's authorized representatives at any
16 reasonable time and shall be preserved for a period of five years from the
17 due date of the contributions or payments in lieu of contributions for the
18 period to which they relate. Only one audit shall be made of any
19 employer's records for any given period of time. Upon request the
20 employing unit shall be furnished a copy of all findings by the secretary or
21 the secretary's authorized representatives, resulting from such audit. A
22 special inquiry or special examination made for a specific and limited
23 purpose shall not be considered to be an audit for the purpose of this
24 subsection. The secretary may require from any employing unit any sworn
25 or unsworn reports, with respect to persons employed by it, which the
26 secretary deems necessary for the effective administration of this act.
27 Information thus obtained or obtained from any individual pursuant to the
28 administration of this act shall be held confidential, except to the extent
29 necessary for the proper presentation of a claim by an employer or
30 employee under the employment security law, and shall not be published
31 or be open to public inspection, other than to public ~~employees~~ *officials or*
32 *the agents or contractors of a public official* in the performance of their
33 public duties, in any manner revealing the individual's or employing unit's
34 identity. The secretary may publish or otherwise disclose appeals records
35 and decisions, and precedential determinations on coverage of employers,
36 employment and wages, provided all social security numbers have been
37 removed. Any claimant or employing unit or their representatives at a
38 hearing before an appeal tribunal or the secretary shall be supplied with
39 information from such records to the extent necessary for the proper
40 presentation of the claim. The transcript made at any such benefits hearing
41 shall not be discoverable or admissible in evidence in any other
42 proceeding, hearing or determination of any kind or nature. In the event of
43 any appeal of a benefits matter, the transcript shall be sealed by the hearing

1 officer and shall be available only to any reviewing authority who shall
2 reseal the transcript after making a review of it. In no event shall such
3 transcript be deemed a public record. Nothing in this subsection shall be
4 construed to prohibit disclosure of any information obtained under the
5 employment security law, including hearing transcripts, upon request of
6 either of the parties, for the purpose of administering or adjudicating a
7 claim for benefits under the provisions of any other state program, except
8 that any party receiving such information shall be prohibited from further
9 disclosure and shall be subject to the same duty of confidentiality
10 otherwise imposed by this subsection and shall be subject to the penalties
11 imposed by this subsection for violations of such duty of confidentiality.
12 Nothing in this subsection shall be construed to prohibit disclosure of any
13 information obtained under the employment security law, including
14 hearing transcripts, for use as evidence in a criminal investigation or in
15 open court in a criminal prosecution or at an appeal hearing under the
16 employment security law. Nothing in this subsection shall be construed to
17 prohibit disclosure of any information obtained under the employment
18 security law, including hearing transcripts to an agent or contractor of a
19 public official to whom disclosure is permissible under the employment
20 security law, except that any party receiving such information shall be
21 prohibited from further disclosure, *except for use in the performance of*
22 *such party's official duties*, and shall be subject to the same duty of
23 confidentiality otherwise imposed by this subsection and shall be subject
24 to the penalties imposed by this subsection for violations of such duty of
25 confidentiality. ~~If the secretary or any officer or employee of the secretary~~
26 *Any individual that* violates any provisions of this subsection, ~~the secretary~~
27 ~~or such officer or employee~~ shall be fined not less than \$20 nor more than
28 \$200 or imprisoned for not longer than 90 days, or both. Original records
29 of the agency and original paid benefit warrants of the state treasurer may
30 be made available to the employment security agency of any other state or
31 the federal government to be used as evidence in prosecution of violations
32 of the employment security law of such state or federal government.
33 Photostatic copies of such records shall be made and where possible shall
34 be substituted for original records introduced in evidence and the originals
35 returned to the agency.

36 (f) *Oaths and witnesses.* In the discharge of the duties imposed by the
37 employment security law, the chairperson of an appeal tribunal, an appeals
38 referee, the secretary or any duly authorized representative of the secretary
39 shall have power to administer oaths and affirmations, take depositions,
40 issue interrogatories, certify to official acts, and issue subpoenas to compel
41 the attendance of witnesses and the production of books, papers,
42 correspondence, memoranda and other records deemed necessary as
43 evidence in connection with a disputed claim or the administration of the

1 employment security law.

2 (g) *Subpoenas, service.* Upon request, service of subpoenas shall be
3 made by the sheriff of a county within that county, by the sheriff's deputy,
4 by any other person who is not a party and is not less than 18 years of age
5 or by some person specially appointed for that purpose by the secretary of
6 labor or the secretary's designee. A person not a party as described above
7 or a person specially appointed by the secretary or the secretary's designee
8 to serve subpoenas may make service any place in the state. The subpoena
9 shall be served as follows:

10 (1) *Individual.* Service upon an individual, other than a minor or
11 incapacitated person, shall be made: (A) By delivering a copy of the
12 subpoena to the individual personally; (B) by leaving a copy at such
13 individual's dwelling house or usual place of abode with some person of
14 suitable age and discretion then residing therein; (C) by leaving a copy at
15 the business establishment of the employer with an officer or employee of
16 the establishment; (D) by delivering a copy to an agent authorized by
17 appointment or by law to receive service of process, but if the agent is one
18 designated by a statute to receive service, such further notice as the statute
19 requires shall be given; or (E) if service as prescribed above in
20 subparagraphs (A), (B), (C) or (D) cannot be made with due diligence, by
21 leaving a copy of the subpoena at the individual's dwelling house, usual
22 place of abode or usual business establishment, and by mailing a notice by
23 first-class mail to the place that the copy has been left.

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

34 (3) *Refusal to accept service.* In all cases when the person to be
35 served, or an agent authorized by such person to accept service of petitions
36 and summonses shall refuse to receive copies of the subpoena, the offer of
37 the duly authorized process server to deliver copies thereof and such
38 refusal shall be sufficient service of such subpoena.

39 (4) *Proof of service.* (A) Every officer to whom a subpoena or other
40 process shall be delivered for service within or without the state, shall
41 make return thereof in writing stating the time, place and manner of
42 service of such writ and shall sign such officer's name to such return.

43 (B) If service of the subpoena is made by a person appointed by the

1 secretary or the secretary's designee to make service, or any other person
2 described in subsection (g), such person shall make an affidavit as to the
3 time, place and manner of service thereof in a form prescribed by the
4 secretary or the secretary's designee.

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

11 (h) *Subpoenas, enforcement.* In case of contumacy by or refusal to
12 obey a subpoena issued to any person, any court of this state within the
13 jurisdiction of which the inquiry is carried on or within the jurisdiction of
14 which such person guilty of contumacy or refusal to obey is found, resides
15 or transacts business, upon application by the secretary or the secretary's
16 duly authorized representative, shall have jurisdiction to issue to such
17 person an order requiring such person to appear before the secretary, or the
18 secretary's duly authorized representative, to produce evidence, if so
19 ordered, or to give testimony relating to the matter under investigation or
20 in question. Failure to obey such order of the court may be punished by the
21 court as a contempt thereof. Any person who, without just cause, shall fail
22 or refuse to attend and testify or to answer any lawful inquiry or to
23 produce books, papers, correspondence, memoranda or other records in
24 obedience to the subpoena of the secretary or the secretary's duly
25 authorized representative shall be punished by a fine of not less than \$200
26 or by imprisonment of not longer than 60 days, or both, and each day such
27 violation continued shall be deemed to be a separate offense.

28 (i) *State-federal cooperation.* In the administration of this act, the
29 secretary shall cooperate to the fullest extent consistent with the provisions
30 of this act, with the federal security agency, shall make such reports, in
31 such form and containing such information as the federal security
32 administrator may from time to time require, and shall comply with such
33 provisions as the federal security administrator may from time to time find
34 necessary to assure the correctness and verification of such reports; and
35 shall comply with the regulations prescribed by the federal security agency
36 governing the expenditures of such sums as may be allotted and paid to
37 this state under title III of the social security act for the purpose of
38 assisting in the administration of this act. Upon request therefor the
39 secretary shall furnish to any agency of the United States charged with the
40 administration of public works or assistance through public employment,
41 the name, address, ordinary occupation, and employment status of each
42 recipient of benefits and such recipient's rights to further benefits under
43 this act.

1 (j) *Reciprocal arrangements.* The secretary shall participate in
2 making reciprocal arrangements with appropriate and duly authorized
3 agencies of other states or of the federal government, or both, whereby:

4 (1) Services performed by an individual for a single employing unit
5 for which services are customarily performed in more than one state shall
6 be deemed to be services performed entirely within any one of the states:
7 (A) In which any part of such individual's service is performed; (B) in
8 which such individual maintains residence; or (C) in which the employing
9 unit maintains a place of business, provided there is in effect as to such
10 services, an election, approved by the agency charged with the
11 administration of such state's unemployment compensation law, pursuant
12 to which all the services performed by such individual for such employing
13 units are deemed to be performed entirely within such state;

14 (2) service performed by not more than three individuals, on any
15 portion of a day but not necessarily simultaneously, for a single employing
16 unit which customarily operates in more than one state shall be deemed to
17 be service performed entirely within the state in which such employing
18 unit maintains the headquarters of its business; provided that there is in
19 effect, as to such service, an approved election by an employing unit with
20 the affirmative consent of each such individual, pursuant to which service
21 performed by such individual for such employing unit is deemed to be
22 performed entirely within such state;

23 (3) potential rights to benefits accumulated under the employment
24 compensation laws of one or more states or under one or more such laws
25 of the federal government, or both, may constitute the basis for the
26 payments of benefits through a single appropriate agency under terms
27 which the secretary finds will be fair and reasonable as to all affected
28 interests and will not result in any substantial loss to the fund;

29 (4) wages or services, upon the basis of which an individual may
30 become entitled to benefits under an unemployment compensation law of
31 another state or of the federal government, shall be deemed to be wages
32 for insured work for the purpose of determining such individual's rights to
33 benefits under this act, and wages for insured work, on the basis of which
34 an individual may become entitled to benefits under this act, shall be
35 deemed to be wages or services on the basis of which unemployment
36 compensation under such law of another state or of the federal government
37 is payable, but no such arrangement shall be entered into unless it contains
38 provisions for reimbursements to the fund for such of the benefits paid
39 under this act upon the basis of such wages or services, and provisions for
40 reimbursements from the fund for such of the compensation paid under
41 such other law upon the basis of wages for insured work, as the secretary
42 finds will be fair and reasonable as to all affected interests; and

43 (5) (A) contributions due under this act with respect to wages for

1 insured work shall be deemed for the purposes of K.S.A. 44-717, and
2 amendments thereto, to have been paid to the fund as of the date payment
3 was made as contributions therefor under another state or federal
4 unemployment compensation law, but no such arrangement shall be
5 entered into unless it contains provisions for such reimbursements to the
6 fund of such contributions and the actual earnings thereon as the secretary
7 finds will be fair and reasonable as to all affected interests;

8 (B) reimbursements paid from the fund pursuant to subsection (j)(4)
9 shall be deemed to be benefits for the purpose of K.S.A. 44-704 and 44-
10 712, and amendments thereto; the secretary is authorized to make to other
11 state or federal agencies, and to receive from such other state or federal
12 agencies, reimbursements from or to the fund, in accordance with
13 arrangements entered into pursuant to the provisions of this section or any
14 other section of the employment security law;

15 (C) the administration of this act and of other state and federal
16 unemployment compensation and public employment service laws will be
17 promoted by cooperation between this state and such other states and the
18 appropriate federal agencies in exchanging services and in making
19 available facilities and information; the secretary is therefore authorized to
20 make such investigations, secure and transmit such information, make
21 available such services and facilities and exercise such of the other powers
22 provided herein with respect to the administration of this act as the
23 secretary deems necessary or appropriate to facilitate the administration of
24 any such unemployment compensation or public employment service law
25 and, in like manner, to accept and utilize information, service and facilities
26 made available to this state by the agency charged with the administration
27 of any such other unemployment compensation or public employment
28 service law; and

29 (D) to the extent permissible under the laws and constitution of the
30 United States, the secretary is authorized to enter into or cooperate in
31 arrangements whereby facilities and services provided under this act and
32 facilities and services provided under the unemployment compensation
33 law of any foreign government may be utilized for the taking of claims and
34 the payment of benefits under the employment security law of this state or
35 under a similar law of such government.

36 (k) *Records available.* The secretary may furnish the railroad
37 retirement board, at the expense of such board, such copies of the records
38 as the railroad retirement board deems necessary for its purposes.

39 (l) *Destruction of records, reproduction and disposition.* The
40 secretary may provide for the destruction, reproduction, temporary or
41 permanent retention, and disposition of records, reports and claims in the
42 secretary's possession pursuant to the administration of the employment
43 security law provided that prior to any destruction of such records, reports

1 or claims the secretary shall comply with K.S.A. 75-3501 to 75-3514,
2 inclusive, and amendments thereto.

3 (m) *Federal cooperation.* The secretary may afford reasonable
4 cooperation with every agency of the United States charged with
5 administration of any unemployment insurance law.

6 (n) The secretary is hereby authorized to fix, charge and collect fees
7 for copies made of public documents, as defined by K.S.A. 45-217(c), and
8 amendments thereto, by xerographic, thermographic or other photocopying
9 or reproduction process, in order to recover all or part of the actual costs
10 incurred, including any costs incurred in certifying such copies. All
11 moneys received from fees charged for copies of such documents shall be
12 remitted to the state treasurer in accordance with the provisions of K.S.A.
13 75-4215, and amendments thereto. Upon receipt of each such remittance,
14 the state treasurer shall deposit the entire amount in the state treasury to
15 the credit of the employment security administration fund. No such fees
16 shall be charged or collected for copies of documents that are made
17 pursuant to a statute which requires such copies to be furnished without
18 expense.

19 Sec. 2. K.S.A. 2016 Supp. 44-714 is hereby repealed.

20 Sec. 3. This act shall take effect and be in force from and after its
21 publication in the statute book.