

2018 Kansas Statutes

44-718. Protection of rights and benefits; penalties; recoupment of food stamp overissuances; withholding of state income tax from unemployment compensation.

(a) *Waiver of rights void.* No agreement by an individual to waive, release or commute such individual's rights to benefits or any other rights under this act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contribution or payments in lieu of contributions required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from remuneration to finance the employer's contributions required from such employer, or require or accept any waiver of any right hereunder by any individual in such employer's employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than \$100 nor more than \$1,000 or be imprisoned for not more than six months, or both.

(b) *Limitation of fees.* No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the secretary of labor or representatives of the secretary or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the secretary of labor or a court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the secretary of labor. Any person who violates any provision of this subsection shall, for each such offense, be fined not less than \$50 nor more than \$500, or imprisoned for not more than six months, or both.

(c) *No assignment of benefits; exemptions.* No assignment, pledge or encumbrance of any right to benefits which are or may become due or payable under this act shall be valid; and such rights to benefits shall be exempt from levy, except in accordance with section 6331 of the federal internal revenue code of 1986, and shall be exempt from, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by an individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or such individual's spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid.

(d) *Support exception.* (1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes support obligations as defined under paragraph (7). If any such individual discloses that such individual owes support obligations, and is determined to be eligible for unemployment compensation, the secretary shall notify the state or local support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

(2) The secretary shall deduct and withhold from any unemployment compensation payable to an individual that owes support obligations as defined under paragraph (7):

(A) The amount specified by the individual to the secretary to be deducted and withheld under this subsection, if neither (B) nor (C) is applicable; or

(B) the amount, if any, determined pursuant to an agreement submitted to the secretary under section 454(20)(B)(i) of the social security act by the state or local support enforcement agency, unless subparagraph (C) is applicable; or

(C) any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process (as that term is defined in section 459(i)(5) of the social security act) properly served upon the secretary.

(3) Any amount deducted and withheld under paragraph (2) shall be paid by the secretary to the appropriate state or local support enforcement agency.

(4) Any amount deducted and withheld under paragraph (2) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local support enforcement agency in satisfaction of the individual's support obligations.

(5) For purposes of paragraphs (1) through (4), "unemployment compensation" means any compensation payable under the employment security law after application of the recoupment provisions of subsection (d) of K.S.A. 44-719, and amendments thereto, (including amounts payable by the secretary pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment).

(6) This subsection applies only if appropriate arrangements have been made for reimbursement by the state or local support enforcement agency for the administrative costs incurred by the secretary under this section which are attributable to support obligations being enforced by the state or local support enforcement agency.

(7) For the purposes of this subsection, "support obligations" means only those obligations which are being enforced pursuant to a plan described in section 454 of the federal social security act which has been approved by the secretary of health and human services under part D of title IV of the federal social security act.

(8) For the purposes of this subsection, "state or local support enforcement agency" means any agency of this state or a political subdivision thereof operating pursuant to a plan described in paragraph (7).

(e) (1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(A) Unemployment compensation is subject to federal, state and local income tax;

(B) requirements exist pertaining to estimated tax payments;

(C) the individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the federal internal revenue code;

(D) the individual may elect to have state income tax deducted and withheld at the rate of 3.5% from the individual's payment of unemployment compensation; and

(E) the individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal or state taxing authority as a payment of income tax.

(3) The secretary shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld under this section only after amounts are deducted and withheld for any overpayments of unemployment compensation, child support obligations, food stamp overissuances or any other amounts required to be deducted and withheld under this act.

(f) (1) An individual filing a new claim for unemployment compensation at the time of filing such claim, shall disclose whether or not such individual owes an uncollected overissuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons. The secretary shall notify the state food stamp agency enforcing such obligation of any individual who discloses that such individual owes an uncollected overissuance of food stamps and who is determined to be eligible for unemployment compensation.

(2) The secretary shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected overissuance:

- (A) The amount specified by the individual to the secretary to be deducted and withheld under this clause;
 - (B) the amount (if any) determined pursuant to an agreement submitted to the state food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977; or
 - (C) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to section 13(c)(3)(B) of such act.
- (3) Any amount deducted and withheld under this section shall be paid by the secretary to the appropriate state food stamp agency.
- (4) Any amount deducted and withheld under subsection (b) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state food stamp agency as repayment of the individual's uncollected overissuance.
- (5) For purposes of this section, the term "unemployment compensation" means any compensation payable under this act including amounts payable by the secretary pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment.
- (6) This section applies only if arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the secretary under this section which are attributable to the repayment of uncollected overissuances to the state food stamp agency.

History: L. 1937, ch. 255, § 18; L. 1973, ch. 205, § 12; L. 1976, ch. 370, § 74; L. 1982, ch. 214, § 5; L. 1985, ch. 115, § 47; L. 1996, ch. 232, § 5; L. 1997, ch. 19, § 3; L. 1998, ch. 124, § 6; L. 2004, ch. 179, § 70; L. 2011, ch. 85, § 9; May 19.