

## SENATE BILL No. 352

By Committee on Commerce

1-26

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1 AN ACT concerning the employment security law; amending K.S.A. 44-  
2 702 and K.S.A. 2011 Supp. 44-703, 44-705, 44-706, 44-709, 44-710,  
3 44-714, 44-715 and 44-717 and repealing the existing sections; also  
4 repealing K.S.A. 2011 Supp. 44-703a and 44-706b.  
5

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

7 Section 1. K.S.A. 44-702 is hereby amended to read as follows: 44-  
8 702. As a guide to the interpretation and application of this act, the public  
9 policy of this state is declared to be as follows: Economic insecurity, due  
10 to unemployment, is a serious menace to health, morals, and welfare of the  
11 people of this state. Involuntary unemployment is therefore a subject of  
12 general interest and concern which requires appropriate action by the  
13 legislature to prevent its spread and to lighten its burden which now so  
14 often falls with crushing force upon the unemployed worker and his  
15 family. The achievement of social security requires protection against this  
16 greatest hazard of our economic life. This can be provided by encouraging  
17 employers to provide more stable employment and by the systematic  
18 accumulation of funds during periods of employment to provide benefits  
19 for periods of unemployment, thus maintaining purchasing power and  
20 limiting the serious social consequences of poor-relief assistance. The  
21 legislature, therefore, declares that in its considered judgment the public  
22 good and the general welfare of the citizens of this state require the  
23 enactment of this measure, under the police powers of the state, for the  
24 compulsory setting aside of unemployment reserves to be used for the  
25 benefit of persons unemployed. *All persons and employers are entitled to*  
26 *a neutral interpretation of the employment security law.*

27 Sec. 2. K.S.A. 2011 Supp. 44-703 is hereby amended to read as  
28 follows: 44-703. As used in this act, unless the context clearly requires  
29 otherwise:

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

32 (2) "Average annual payroll" means the average of the annual  
33 payrolls of any employer for the last three calendar years immediately  
34 preceding the computation date as hereinafter defined if the employer has  
35 been continuously subject to contributions during those three calendar  
36 years and has paid some wages for employment during each of such years.

1 In determining contribution rates for the calendar year, if an employer has  
2 not been continuously subject to contribution for the three calendar years  
3 immediately preceding the computation date but has paid wages subject to  
4 contributions during only the two calendar years immediately preceding  
5 the computation date, such employer's "average annual payroll" shall be  
6 the average of the payrolls for those two calendar years.

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

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

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

25 ~~(B) If an individual lacks sufficient base period wages in order to~~  
26 ~~establish a benefit year in the manner set forth above the claimant shall~~  
27 ~~have an alternative base period substituted for the current base period. For~~  
28 ~~the purposes of this subsection, "alternative base period" means eligibility~~  
29 ~~shall be determined using a base period that consists of the four most~~  
30 ~~recently completed calendar quarters preceding the start of the benefit~~  
31 ~~year.~~

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

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

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

41 (d) "Benefit year" with respect to any individual, means the period  
42 beginning with the first day of the first week for which such individual  
43 files a valid claim for benefits, and such benefit year shall continue for one

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

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

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

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

26 (g) "Employing unit" means any individual or type of organization,  
27 including any partnership, association, limited liability company, agency  
28 or department of the state of Kansas and political subdivisions thereof,  
29 trust, estate, joint-stock company, insurance company or corporation,  
30 whether domestic or foreign including nonprofit corporations, or the  
31 receiver, trustee in bankruptcy, trustee or successor thereof, or the legal  
32 representatives of a deceased person, which has in its employ one or more  
33 individuals performing services for it within this state. All individuals  
34 performing services within this state for any employing unit which  
35 maintains two or more separate establishments within this state shall be  
36 deemed to be employed by a single employing unit for all the purposes of  
37 this act. Each individual employed to perform or to assist in performing  
38 the work of any agent or employee of an employing unit shall be deemed  
39 to be employed by such employing unit for all the purposes of this act,  
40 whether such individual was hired or paid directly by such employing unit  
41 or by such agent or employee, provided the employing unit had actual or  
42 constructive knowledge of the employment.

43 (h) "Employer" means:

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

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

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

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

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

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

26 (ii) such other person shall be treated as having paid cash  
27 remuneration to such individual in an amount equal to the amount of cash  
28 remuneration paid to such individual by the crew leader, either on the crew  
29 leader's own behalf or on behalf of such other person, for the service in  
30 agricultural labor performed for such other person.

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

33 (i) Furnishes individuals to perform service in agricultural labor for  
34 any other person;

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

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

41 (2) (A) Any employing unit which for calendar year 2007 and each  
42 calendar year thereafter: (i) In any calendar quarter in either the current or  
43 preceding calendar year paid for service in employment wages of \$1,500

1 or more, (ii) for some portion of a day in each of 20 different calendar  
2 weeks, whether or not such weeks were consecutive, in either the current  
3 or preceding calendar year, had in employment at least one individual,  
4 whether or not the same individual was in employment in each such day,  
5 or (iii) elects to have an unemployment tax account established at the time  
6 of initial registration in accordance with subsection (c) of K.S.A. 44-711,  
7 and amendments thereto.

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

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

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

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

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

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

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

37 (8) Any employing unit not an employer by reason of any other  
38 paragraph of this subsection (h), for which within either the current or  
39 preceding calendar year services in employment are or were performed  
40 with respect to which such employing unit is liable for any federal tax  
41 against which credit may be taken for contributions required to be paid  
42 into a state unemployment compensation fund; or which, as a condition for  
43 approval of this act for full tax credit against the tax imposed by the

1 federal unemployment tax act, is required, pursuant to such act, to be an  
2 "employer" under this act.

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

10 (i) "Employment" means:

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

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

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

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

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

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

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

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

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

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

42 (2) The term "employment" shall include an individual's entire  
43 service within the United States, even though performed entirely outside

1 this state if:

2 (A) The service is not localized in any state; and

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

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

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

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

14 (B) Services performed entirely without this state, with respect to no  
15 part of which contributions are required and paid under an unemployment  
16 compensation law of any other state or of the federal government, shall be  
17 deemed to be employment subject to this act only if the individual  
18 performing such services is a resident of this state and the secretary  
19 approved the election of the employing unit for whom such services are  
20 performed that the entire service of such individual shall be deemed to be  
21 employment subject to this act.

22 (C) Services covered by an arrangement pursuant to subsection (l) of  
23 K.S.A. 44-714, and amendments thereto, between the secretary and the  
24 agency charged with the administration of any other state or federal  
25 unemployment compensation law, pursuant to which all services  
26 performed by an individual for an employing unit are deemed to be  
27 performed entirely within this state, shall be deemed to be employment if  
28 the secretary has approved an election of the employing unit for whom  
29 such services are performed, pursuant to which the entire service of such  
30 individual during the period covered by such election is deemed to be  
31 insured work.

32 (D) Services performed by an individual for wages or under any  
33 contract of hire shall be deemed to be employment subject to this act  
34 ~~unless and until it is shown to the satisfaction of the secretary that: (i) Such~~  
35 ~~individual has been and will continue to be free from control or direction~~  
36 ~~over the performance of such services, both under the individual's contract~~  
37 ~~of hire and in fact; and (ii) such service is either outside the usual course of~~  
38 ~~the business for which such service is performed or that such service is~~  
39 ~~performed outside of all the places of business of the enterprise for which~~  
40 ~~such service is performed if the business for which activities of the~~  
41 ~~individual are performed retains not only the right to control the end result~~  
42 ~~of the activities performed, but the manner and means by which the end~~  
43 ~~result is accomplished.~~

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

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

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

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

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

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

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

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

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

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

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

43 (ii) a partnership if  $\frac{2}{3}$  or more of the partners are residents of the



1 United States; or

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

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

5 (I) Notwithstanding subsection (i)(2) of this section, all service  
6 performed by an officer or member of the crew of an American vessel or  
7 American aircraft on or in connection with such vessel or aircraft, if the  
8 operating office, from which the operations of such vessel or aircraft  
9 operating within, or within and without, the United States are ordinarily  
10 and regularly supervised, managed, directed and controlled is within this  
11 state.

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

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

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

26 (i) As an elected official;

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

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

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

32 (v) in a position which, under or pursuant to the laws of this state or  
33 tribal law, is designated as a major nontenured policymaking or advisory  
34 position or as a policymaking or advisory position the performance of the  
35 duties of which ordinarily does not require more than eight hours per  
36 week;

37 (B) service with respect to which unemployment compensation is  
38 payable under an unemployment compensation system established by an  
39 act of congress;

40 (C) service performed by an individual in the employ of such  
41 individual's son, daughter or spouse, and service performed by a child  
42 under the age of 21 years in the employ of such individual's father or  
43 mother;

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

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

23 (F) service performed by an individual under the age of 18 in the  
24 delivery or distribution of newspapers or shopping news, not including  
25 delivery or distribution to any point for subsequent delivery or  
26 distribution;

27 (G) service performed by an individual for an employing unit as an  
28 insurance agent or as an insurance solicitor, if all such service performed  
29 by such individual for such employing unit is performed for remuneration  
30 solely by way of commission;

31 (H) service performed in any calendar quarter in the employ of any  
32 organization exempt from income tax under section 501(a) of the federal  
33 internal revenue code of 1986 (other than an organization described in  
34 section 401(a) or under section 521 of such code) if the remuneration for  
35 such service is less than \$50. In construing the application of the term  
36 "employment," if services performed during  $\frac{1}{2}$  or more of any pay period  
37 by an individual for the person employing such individual constitute  
38 employment, all the services of such individual for such period shall be  
39 deemed to be employment; but if the services performed during more than  
40  $\frac{1}{2}$  of any such pay period by an individual for the person employing such  
41 individual do not constitute employment, then none of the services of such  
42 individual for such period shall be deemed to be employment. As used in  
43 this subsection (i)(4)(H) the term "pay period" means a period (of not more

1 than 31 consecutive days) for which a payment of remuneration is  
2 ordinarily made to the individual by the person employing such individual.  
3 This subsection (i)(4)(H) shall not be applicable with respect to services  
4 with respect to which unemployment compensation is payable under an  
5 unemployment compensation system established by an act of congress;

6 (I) services performed in the employ of a church or convention or  
7 association of churches, or an organization which is operated primarily for  
8 religious purposes and which is operated, supervised, controlled, or  
9 principally supported by a church or convention or association of  
10 churches;

11 (J) service performed by a duly ordained, commissioned, or licensed  
12 minister of a church in the exercise of such individual's ministry or by a  
13 member of a religious order in the exercise of duties required by such  
14 order;

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

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

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

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

27 (M) service performed by an inmate of a custodial or correctional  
28 institution;

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

32 (O) service performed by an individual who is enrolled at a nonprofit  
33 or public educational institution which normally maintains a regular  
34 faculty and curriculum and normally has a regularly organized body of  
35 students in attendance at the place where its educational activities are  
36 carried on as a student in a full-time program, taken for credit at such  
37 institution, which combines academic instruction with work experience, if  
38 such service is an integral part of such program, and such institution has so  
39 certified to the employer, except that this subsection (i)(4)(O) shall not  
40 apply to service performed in a program established for or on behalf of an  
41 employer or group of employers;

42 (P) service performed in the employ of a hospital licensed, certified  
43 or approved by the secretary of health and environment, if such service is

1 performed by a patient of the hospital;

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

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

11 (ii) the services performed by the individual are performed pursuant  
12 to a written contract between such individual and the person for whom the  
13 services are performed and such contract provides that the individual will  
14 not be treated as an employee with respect to such services for state tax  
15 purposes;

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

25 (S) services performed by an oil and gas contract pumper. As used in  
26 this subsection (i)(4)(S), "oil and gas contract pumper" means a person  
27 performing pumping and other services on one or more oil or gas leases, or  
28 on both oil and gas leases, relating to the operation and maintenance of  
29 such oil and gas leases, on a contractual basis for the operators of such oil  
30 and gas leases and "services" shall not include services performed for a  
31 governmental entity or any organization described in section 501(c)(3) of  
32 the federal internal revenue code of 1986 which is exempt from income  
33 taxation under section 501(a) of the code;

34 (T) service not in the course of the employer's trade or business  
35 performed in any calendar quarter by an employee, unless the cash  
36 remuneration paid for such service is \$200 or more and such service is  
37 performed by an individual who is regularly employed by such employer  
38 to perform such service. For purposes of this paragraph, an individual shall  
39 be deemed to be regularly employed by an employer during a calendar  
40 quarter only if:

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

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

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

8 (U) service which is performed by any person who is a member of a  
9 limited liability company and which is performed as a member or manager  
10 of that limited liability company; and

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

13 (i) Such person:

14 (a) is engaged in the trade or business of selling or soliciting the sale  
15 of consumer products to any buyer on a buy-sell basis or a deposit-  
16 commission basis for resale, by the buyer or any other person, in the home  
17 or otherwise rather than in a permanent retail establishment; or

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

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

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

29 (iv) for purposes of this act, a sale or a sale resulting exclusively from  
30 a solicitation made by telephone, mail, or other telecommunications  
31 method, or other nonpersonal method does not satisfy the requirements of  
32 this subsection;

33 (W) service performed as an election official or election worker, if the  
34 amount of remuneration received by the individual during the calendar  
35 year for services as an election official or election worker is less than  
36 \$1,000;

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

40 (Y) service performed by an owner-operator of a motor vehicle that is  
41 leased or contracted to a licensed motor carrier with the services of a  
42 driver and is not treated under the terms of the lease agreement or contract  
43 with the licensed motor carrier as an employee for purposes of the federal

1 insurance contribution act, 26 U.S.C. § 3101 *et seq.*, the federal social  
2 security act, 42 U.S.C. § 301 *et seq.*, the federal unemployment tax act, 26  
3 U.S.C. § 3301 *et seq.*, and the federal statutes prescribing income tax  
4 withholding at the source, 26 U.S.C. § 3401 *et seq.* Employees or agents of  
5 the owner-operator shall not be considered employees of the licensed  
6 motor carrier for purposes of employment security taxation or  
7 compensation. As used in this subsection (Y), the following definitions  
8 apply: (i) "Motor vehicle" means any automobile, truck-trailer, semitrailer,  
9 tractor, motor bus or any other self-propelled or motor-driven vehicle used  
10 upon any of the public highways of Kansas for the purpose of transporting  
11 persons or property; (ii) "licensed motor carrier" means any person, firm,  
12 corporation or other business entity that holds a certificate of convenience  
13 and necessity or a certificate of public service from the state corporation  
14 commission or is required to register motor carrier equipment pursuant to  
15 49 U.S.C. § 14504; and (iii) "owner-operator" means a person, firm,  
16 corporation or other business entity that is the owner of a single motor  
17 vehicle that is driven exclusively by the owner under a lease agreement or  
18 contract with a licensed motor carrier.

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

22 (k) "Fund" means the employment security fund established by this  
23 act, to which all contributions and reimbursement payments required and  
24 from which all benefits provided under this act shall be paid and including  
25 all money received from the federal government as reimbursements  
26 pursuant to section 204 of the federal-state extended compensation act of  
27 1970, and amendments thereto.

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

31 (m) "Unemployment." An individual shall be deemed "unemployed"  
32 with respect to any week during which such individual performs no  
33 services and with respect to which no wages are payable to such  
34 individual, or with respect to any week of less than full-time work if the  
35 wages payable to such individual with respect to such week are less than  
36 such individual's weekly benefit amount.

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

40 (o) "Wages" means all compensation for services, including  
41 commissions, bonuses, back pay and the cash value of all remuneration,  
42 including benefits, paid in any medium other than cash. The reasonable  
43 cash value of remuneration in any medium other than cash, shall be

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

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

37 (2) the amount of any payment (including any amount paid by an  
38 employing unit for insurance or annuities, or into a fund, to provide for  
39 any such payment), made to, or on behalf of, an employee or any of such  
40 employee's dependents under a plan or system established by an employer  
41 which makes provisions for employees generally, for a class or classes of  
42 employees or for such employees or a class or classes of employees and  
43 their dependents, on account of (A) sickness or accident disability, except

1 in the case of any payment made to an employee or such employee's  
2 dependents, this subparagraph shall exclude from the term "wages" only  
3 payments which are received under a workers compensation law. Any third  
4 party which makes a payment included as wages by reason of this  
5 subparagraph (2)(A) shall be treated as the employer with respect to such  
6 wages, or (B) medical and hospitalization expenses in connection with  
7 sickness or accident disability, or (C) death;

8 (3) any payment on account of sickness or accident disability, or  
9 medical or hospitalization expenses in connection with sickness or  
10 accident disability, made by an employer to, or on behalf of, an employee  
11 after the expiration of six calendar months following the last calendar  
12 month in which the employee worked for such employer;

13 (4) any payment made to, or on behalf of, an employee or such  
14 employee's beneficiary:

15 (A) From or to a trust described in section 401(a) of the federal  
16 internal revenue code of 1986 which is exempt from tax under section  
17 501(a) of the federal internal revenue code of 1986 at the time of such  
18 payment unless such payment is made to an employee of the trust as  
19 remuneration for services rendered as such employee and not as a  
20 beneficiary of the trust;

21 (B) under or to an annuity plan which, at the time of such payment, is  
22 a plan described in section 403(a) of the federal internal revenue code of  
23 1986;

24 (C) under a simplified employee pension as defined in section 408(k)  
25 (1) of the federal internal revenue code of 1986, other than any  
26 contribution described in section 408(k)(6) of the federal internal revenue  
27 code of 1986;

28 (D) under or to an annuity contract described in section 403(b) of the  
29 federal internal revenue code of 1986, other than a payment for the  
30 purchase of such contract which was made by reason of a salary reduction  
31 agreement whether evidenced by a written instrument or otherwise;

32 (E) under or to an exempt governmental deferred compensation plan  
33 as defined in section 3121(v)(3) of the federal internal revenue code of  
34 1986;

35 (F) to supplement pension benefits under a plan or trust described in  
36 any of the foregoing provisions of this subparagraph to take into account  
37 some portion or all of the increase in the cost of living, as determined by  
38 the secretary of labor, since retirement but only if such supplemental  
39 payments are under a plan which is treated as a welfare plan under section  
40 3(2)(B)(ii) of the federal employee retirement income security act of 1974;  
41 or

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



- 1 (5) the payment by an employing unit (,without deduction from the  
2 remuneration of the employee), of the tax imposed upon an employee  
3 under section 3101 of the federal internal revenue code of 1986 with  
4 respect to remuneration paid to an employee for domestic service in a  
5 private home of the employer or for agricultural labor;
- 6 (6) remuneration paid in any medium other than cash to an employee  
7 for service not in the course of the employer's trade or business;
- 8 (7) remuneration paid to or on behalf of an employee if and to the  
9 extent that at the time of the payment of such remuneration it is reasonable  
10 to believe that a corresponding deduction is allowable under section 217 of  
11 the federal internal revenue code of 1986 relating to moving expenses;
- 12 (8) any payment or series of payments by an employer to an  
13 employee or any of such employee's dependents which is paid:
  - 14 (A) Upon or after the termination of an employee's employment  
15 relationship because of (i) death or (ii) retirement for disability; and
  - 16 (B) under a plan established by the employer which makes provisions  
17 for employees generally, a class or classes of employees or for such  
18 employees or a class or classes of employees and their dependents, other  
19 than any such payment or series of payments which would have been paid  
20 if the employee's employment relationship had not been so terminated;
- 21 (9) remuneration for agricultural labor paid in any medium other than  
22 cash;
- 23 (10) any payment made, or benefit furnished, to or for the benefit of  
24 an employee if at the time of such payment or such furnishing it is  
25 reasonable to believe that the employee will be able to exclude such  
26 payment or benefit from income under section 129 of the federal internal  
27 revenue code of 1986 which relates to dependent care assistance programs;
- 28 (11) the value of any meals or lodging furnished by or on behalf of  
29 the employer if at the time of such furnishing it is reasonable to believe  
30 that the employee will be able to exclude such items from income under  
31 section 119 of the federal internal revenue code of 1986;
- 32 (12) any payment made by an employer to a survivor or the estate of  
33 a former employee after the calendar year in which such employee died;
- 34 (13) any benefit provided to or on behalf of an employee if at the time  
35 such benefit is provided it is reasonable to believe that the employee will  
36 be able to exclude such benefit from income under section 74(c), 117 or  
37 132 of the federal internal revenue code of 1986;
- 38 (14) any payment made, or benefit furnished, to or for the benefit of  
39 an employee, if at the time of such payment or such furnishing it is  
40 reasonable to believe that the employee will be able to exclude such  
41 payment or benefit from income under section 127 of the federal internal  
42 revenue code of 1986 relating to educational assistance to the employee; or
- 43 (15) any payment made to or for the benefit of an employee if at the

1 time of such payment it is reasonable to believe that the employee will be  
2 able to exclude such payment from income under section 106(d) of the  
3 federal internal revenue code of 1986 relating to health savings accounts.

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

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

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

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

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

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

31 (t) "American vessel" or "American aircraft" means any vessel or  
32 aircraft documented or numbered or otherwise registered under the laws of  
33 the United States; and any vessel or aircraft which is neither documented  
34 or numbered or otherwise registered under the laws of the United States  
35 nor documented under the laws of any foreign country, if its crew performs  
36 service solely for one or more citizens or residents of the United States or  
37 corporations organized under the laws of the United States or of any state.

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

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

43 (2) is legally authorized in this state to provide a program of

1 education beyond high school;

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

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

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

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

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

28 (A) On a farm, in the employ of any person, in connection with  
29 cultivating the soil, or in connection with raising or harvesting any  
30 agricultural or horticultural commodity, including the raising, shearing,  
31 feeding, caring for, training, and management of livestock, bees, poultry,  
32 and furbearing animals and wildlife.

33 (B) In the employ of the owner or tenant or other operator of a farm,  
34 in connection with the operating, management, conservation,  
35 improvement, or maintenance of such farm and its tools and equipment, or  
36 in salvaging timber or clearing land of brush and other debris left by a  
37 hurricane, if the major part of such service is performed on a farm.

38 (C) In connection with the production or harvesting of any  
39 commodity defined as an agricultural commodity in section (15)(g) of the  
40 agricultural marketing act, as amended (46 Stat. 1500, sec. 3; 12 U.S.C. §  
41 1141j) or in connection with the ginning of cotton, or in connection with  
42 the operation or maintenance of ditches, canals, reservoirs or waterways,  
43 not owned or operated for profit, used exclusively for supplying and

1 storing water for farming purposes.

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

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

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

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

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

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

29 (4) For the purpose of this section, if an employing unit does not  
30 maintain sufficient records to separate agricultural labor from other  
31 employment, all services performed during any pay period by an  
32 individual for the person employing such individual shall be deemed to be  
33 agricultural labor if services performed during  $\frac{1}{2}$  or more of such pay  
34 period constitute agricultural labor; but if the services performed during  
35 more than  $\frac{1}{2}$  of any such pay period by an individual for the person  
36 employing such individual do not constitute agricultural labor, then none  
37 of the services of such individual for such period shall be deemed to be  
38 agricultural labor. As used in this subsection (w), the term "pay period"  
39 means a period of not more than 31 consecutive days for which a payment  
40 of remuneration is ordinarily made to the individual by the person  
41 employing such individual.

42 (x) "Reimbursing employer" means any employer who makes  
43 payments in lieu of contributions to the employment security fund as

1 provided in subsection (e) of K.S.A. 44-710, and amendments thereto.

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

4 (z) "Wage combining plan" means a uniform national arrangement  
5 approved by the United States secretary of labor in consultation with the  
6 state unemployment compensation agencies and in which this state shall  
7 participate, whereby wages earned in one or more states are transferred to  
8 another state, called the "paying state," and combined with wages in the  
9 paying state, if any, for the payment of benefits under the laws of the  
10 paying state and as provided by an arrangement so approved by the United  
11 States secretary of labor.

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

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

20 (cc) "Benefit cost payments" means payments made to the  
21 employment security fund by a governmental entity electing to become a  
22 rated governmental employer.

23 (dd) "Successor employer" means any employer, as described in  
24 subsection (h) of this section, which acquires or in any manner succeeds to  
25 (1) substantially all of the employing enterprises, organization, trade or  
26 business of another employer or (2) substantially all the assets of another  
27 employer.

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

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

35 (gg) "Client lessee" means any individual, organization, partnership,  
36 corporation or other legal entity leasing employees from a lessor  
37 employing unit.

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

42 Sec. 3. K.S.A. 2011 Supp. 44-705 is hereby amended to read as  
43 follows: 44-705. Except as provided by K.S.A. 44-757, and amendments

1 thereto, an unemployed individual shall be eligible to receive benefits with  
2 respect to any week only if the secretary, or a person or persons designated  
3 by the secretary, finds that:

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

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

12 (c) The claimant is able to perform the duties of such claimant's  
13 customary occupation or the duties of other occupations for which the  
14 claimant is reasonably fitted by training or experience, and is available for  
15 work, as demonstrated by the claimant's pursuit of the full course of action  
16 most reasonably calculated to result in the claimant's reemployment except  
17 that, notwithstanding any other provisions of this section, an unemployed  
18 claimant otherwise eligible for benefits shall not become ineligible for  
19 benefits: (1) Because of the claimant's enrollment in and satisfactory  
20 pursuit of approved training, including training approved under section  
21 236(a)(1) of the trade act of 1974; or (2) solely because such individual is  
22 seeking only part-time employment if the individual is available for a  
23 number of hours per week that are comparable to the individual's part-time  
24 work experience in the base period.

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

28 (d) (1) Except as provided further, the claimant has been unemployed  
29 for a waiting period of one week or the claimant is unemployed and has  
30 satisfied the requirement for a waiting period of one week under the shared  
31 work unemployment compensation program as provided in subsection (k)  
32 (4) of K.S.A. 44-757, and amendments thereto, which period of one week,  
33 in either case, occurs within the benefit year which includes the week for  
34 which the claimant is claiming benefits. No week shall be counted as a  
35 week of unemployment for the purposes of this subsection (d):

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

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

39 (C) if an individual is seeking unemployment benefits under the  
40 unemployment compensation law of any other state or of the United  
41 States, except that if the appropriate agency of such state or of the United  
42 States finally determines that the claimant is not entitled to unemployment  
43 benefits under such other law, this subsection (d)(1)(C) shall not apply.

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

9 (e) For benefit years established on and after the effective date of this  
10 act, the claimant has been paid total wages for insured work in the  
11 claimant's base period of not less than 30 times the claimant's weekly  
12 benefit amount and has been paid wages in more than one quarter of the  
13 claimant's base period, except that the wage credits of an individual earned  
14 during the period commencing with the end of a prior base period and  
15 ending on the date on which such individual filed a valid initial claim shall  
16 not be available for benefit purposes in a subsequent benefit year unless, in  
17 addition thereto, such individual has returned to work and subsequently  
18 earned wages for insured work in an amount equal to at least eight times  
19 the claimant's current weekly benefit amount.

20 (f) The claimant participates in reemployment services, such as job  
21 search assistance services, if the individual has been determined to be  
22 likely to exhaust regular benefits and needs reemployment services  
23 pursuant to a profiling system established by the secretary, unless the  
24 secretary determines that: (1) The individual has completed such services;  
25 or (2) there is justifiable cause for the claimant's failure to participate in  
26 such services.

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

32 (1) The claimant has filed for benefits within four weeks of being  
33 released to return to work by a licensed and practicing health care  
34 provider;:

35 (2) the claimant files for benefits within 24 months of the date the  
36 qualifying injury occurred; *and*

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

40 Sec. 4. K.S.A. 2011 Supp. 44-706 is hereby amended to read as  
41 follows: 44-706. An individual shall be disqualified for benefits:

42 (a) If the individual left work voluntarily without good cause  
43 attributable to the work or the employer, subject to the other provisions of

1 this subsection. Failure to return to work after expiration of approved  
2 personal or medical leave, or both, shall be considered a voluntary  
3 resignation. After a temporary job assignment, failure of an individual to  
4 affirmatively request an additional assignment on the next succeeding  
5 workday, if required by the employment agreement, after completion of a  
6 given work assignment, shall constitute leaving work voluntarily. The  
7 disqualification shall begin the day following the separation and shall  
8 continue until after the individual has become reemployed and has had  
9 earnings from insured work of at least three times the individual's weekly  
10 benefit amount. An individual shall not be disqualified under this  
11 subsection if:

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

23 (2) the individual left temporary work to return to the regular  
24 employer;

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

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

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



1 conditions exist shall include, but shall not be limited to, a consideration of  
2 (A) the safety measures used or the lack thereof, and (B) the condition of  
3 equipment or lack of proper equipment; no work shall be considered  
4 hazardous if the working conditions surrounding the individual's work are  
5 the same or substantially the same as the working conditions generally  
6 prevailing among individuals performing the same or similar work for  
7 other employers engaged in the same or similar type of activity;

8 (6) the individual left work to enter training approved under section  
9 236(a)(1) of the federal trade act of 1974, provided the work left is not of a  
10 substantially equal or higher skill level than the individual's past adversely  
11 affected employment {,as defined for purposes of the federal trade act of  
12 1974}, and wages for such work are not less than 80% of the individual's  
13 average weekly wage as determined for the purposes of the federal trade  
14 act of 1974;

15 (7) the individual left work because of unwelcome harassment of the  
16 individual by the employer or another employee of which the employing  
17 unit had knowledge;

18 (8) the individual left work to accept better work; each determination  
19 as to whether or not the work accepted is better work shall include, but  
20 shall not be limited to, consideration of (A) the rate of pay, the hours of  
21 work and the probable permanency of the work left as compared to the  
22 work accepted, (B) the cost to the individual of getting to the work left in  
23 comparison to the cost of getting to the work accepted, and (C) the  
24 distance from the individual's place of residence to the work accepted in  
25 comparison to the distance from the individual's residence to the work left;

26 (9) the individual left work as a result of being instructed or requested  
27 by the employer, a supervisor or a fellow employee to perform a service or  
28 commit an act in the scope of official job duties which is in violation of an  
29 ordinance or statute;

30 (10) the individual left work because of a violation of the work  
31 agreement by the employing unit and, before the individual left, the  
32 individual had exhausted all remedies provided in such agreement for the  
33 settlement of disputes before terminating;

34 (11) after making reasonable efforts to preserve the work, the  
35 individual left work due to a personal emergency of such nature and  
36 compelling urgency that it would be contrary to good conscience to  
37 impose a disqualification; or

38 (12) (A) the individual left work due to circumstances resulting from  
39 domestic violence, including:

40 (i) The individual's reasonable fear of future domestic violence at or  
41 en route to or from the individual's place of employment; or

42 (ii) the individual's need to relocate to another geographic area in  
43 order to avoid future domestic violence; or

1 (iii) the individual's need to address the physical, psychological and  
2 legal impacts of domestic violence; or

3 (iv) the individual's need to leave employment as a condition of  
4 receiving services or shelter from an agency which provides support  
5 services or shelter to victims of domestic violence; or

6 (v) the individual's reasonable belief that termination of employment  
7 is necessary to avoid other situations which may cause domestic violence  
8 and to provide for the future safety of the individual or the individual's  
9 family.

10 (B) An individual may prove the existence of domestic violence by  
11 providing one of the following:

12 (i) A restraining order or other documentation of equitable relief by a  
13 court of competent jurisdiction; or

14 (ii) a police record documenting the abuse; or

15 (iii) documentation that the abuser has been convicted of one or more  
16 of the offenses enumerated in ~~article~~ *articles 34 and 35 of chapter 21 of*  
17 *the Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of*  
18 *chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2011 Supp. 21-*  
19 *6104, 21-6325, 21-6326 or 21-6418 through ~~2-6421~~ 21-6421, and*  
20 *amendments thereto, where the victim was a family or household member;*  
21 or

22 (iv) medical documentation of the abuse; or

23 (v) a statement provided by a counselor, social worker, health care  
24 provider, clergy, shelter worker, legal advocate, domestic violence or  
25 sexual assault advocate or other professional who has assisted the  
26 individual in dealing with the effects of abuse on the individual or the  
27 individual's family; or

28 (vi) a sworn statement from the individual attesting to the abuse.

29 (C) No evidence of domestic violence experienced by an individual,  
30 including the individual's statement and corroborating evidence, shall be  
31 disclosed by the department of labor unless consent for disclosure is given  
32 by the individual.

33 (b) If the individual has been discharged for misconduct connected  
34 with the individual's work. The disqualification shall begin the day  
35 following the separation and shall continue until after the individual  
36 becomes reemployed and has had earnings from insured work of at least  
37 three times the individual's determined weekly benefit amount, except that  
38 if an individual is discharged for gross misconduct connected with the  
39 individual's work, such individual shall be disqualified for benefits until  
40 such individual again becomes employed and has had earnings from  
41 insured work of at least eight times such individual's determined weekly  
42 benefit amount. In addition, all wage credits attributable to the  
43 employment from which the individual was discharged for gross

1 misconduct connected with the individual's work shall be canceled. No  
2 such cancellation of wage credits shall affect prior payments made as a  
3 result of a prior separation.

4 (1) For the purposes of this subsection, "misconduct" is defined as a  
5 violation of a duty or obligation reasonably owed the employer as a  
6 condition of employment. The term "gross misconduct" as used in this  
7 subsection shall be construed to mean conduct evincing extreme, willful or  
8 wanton misconduct as defined by this subsection. Failure of the employee  
9 to notify the employer of an absence shall be considered prima facie  
10 evidence of a violation of a duty or obligation reasonably owed the  
11 employer as a condition of employment.

12 (2) For the purposes of this subsection, the use of or impairment  
13 caused by alcoholic liquor, a cereal malt beverage or a nonprescribed  
14 controlled substance by an individual while working shall be conclusive  
15 evidence of misconduct and the possession of alcoholic liquor, a cereal  
16 malt beverage or a nonprescribed controlled substance by an individual  
17 while working shall be prima facie evidence of conduct which is a  
18 violation of a duty or obligation reasonably owed to the employer as a  
19 condition of employment. Alcoholic liquor shall be defined as provided in  
20 K.S.A. 41-102, and amendments thereto. Cereal malt beverage shall be  
21 defined as provided in K.S.A. 41-2701, and amendments thereto.  
22 Controlled substance shall be defined as provided in K.S.A. 2011 Supp.  
23 21-5701, and amendments thereto. As used in this paragraph, "required by  
24 law" means required by a federal or state law, a federal or state rule or  
25 regulation having the force and effect of law, a county resolution or  
26 municipal ordinance, or a policy relating to public safety adopted in open  
27 meeting by the governing body of any special district or other local  
28 governmental entity. Chemical test shall include, but is not limited to, tests  
29 of urine, blood or saliva. A positive chemical test shall mean a chemical  
30 result showing a concentration at or above the levels listed in K.S.A. 44-  
31 501, and amendments thereto, for the drugs or abuse listed therein. A  
32 positive breath test shall mean a test result showing an alcohol  
33 concentration of .04 or greater. Alcohol concentration means the number  
34 of grams of alcohol per 210 liters of breath. An individual's refusal to  
35 submit to a chemical test or breath alcohol test shall be conclusive  
36 evidence of misconduct if the test meets the standards of the drug free  
37 workplace act, 41 U.S.C. § 701 *et seq.*; the test was administered as part of  
38 an employee assistance program or other drug or alcohol treatment  
39 program in which the employee was participating voluntarily or as a  
40 condition of further employment; the test was otherwise required by law  
41 and the test constituted a required condition of employment for the  
42 individual's job; the test was requested pursuant to a written policy of the  
43 employer of which the employee had knowledge and was a required

1 condition of employment; or there was probable cause to believe that the  
2 individual used, possessed or was impaired by alcoholic liquor, a cereal  
3 malt beverage or a controlled substance while working. A positive breath  
4 alcohol test or a positive chemical test shall be conclusive evidence to  
5 prove misconduct if the following conditions are met:

6 (A) ~~Either (i) the test was required by law and was administered~~  
7 ~~pursuant to the drug free workplace act, 41 U.S.C. § 701 *et seq.*, (ii) the~~  
8 ~~test was administered as part of an employee assistance program or other~~  
9 ~~drug or alcohol treatment program in which the employee was~~  
10 ~~participating voluntarily or as a condition of further employment, (iii) the~~  
11 ~~test was requested pursuant to a written policy of the employer of which~~  
12 ~~the employee had knowledge and was a required condition of employment,~~  
13 ~~(iv) the test was required by law and the test constituted a required~~  
14 ~~condition of employment for the individual's job, or (v) there was probable~~  
15 ~~cause to believe that the individual used, had possession of, or was~~  
16 ~~impaired by alcoholic liquor, the cereal malt beverage or the controlled~~  
17 ~~substance while working;~~

18 (B) ~~the test sample was collected either (i) as prescribed by the drug~~  
19 ~~free workplace act, 41 U.S.C. § 701 *et seq.*, (ii) as prescribed by an~~  
20 ~~employee assistance program or other drug or alcohol treatment program~~  
21 ~~in which the employee was participating voluntarily or as a condition of~~  
22 ~~further employment, (iii) as prescribed by the written policy of the~~  
23 ~~employer of which the employee had knowledge and which constituted a~~  
24 ~~required condition of employment, (iv) as prescribed by a test which was~~  
25 ~~required by law and which constituted a required condition of employment~~  
26 ~~for the individual's job, or (v) at a time contemporaneous with the events~~  
27 ~~establishing probable cause;~~

28 (C) ~~the collecting and labeling of a chemical test sample was~~  
29 ~~performed by a licensed health care professional or any other individual~~  
30 ~~certified pursuant to paragraph (b)(2)(F) or authorized to collect or label~~  
31 ~~test samples by federal or state law, or a federal or state rule or regulation~~  
32 ~~having the force or effect of law, including law enforcement personnel;~~

33 (D) ~~the chemical test was performed by a laboratory approved by the~~  
34 ~~United States department of health and human services or licensed by the~~  
35 ~~department of health and environment, except that a blood sample may be~~  
36 ~~tested for alcohol content by a laboratory commonly used for that purpose~~  
37 ~~by state law enforcement agencies;~~

38 (E) ~~the chemical test was confirmed by gas chromatography, gas~~  
39 ~~chromatography-mass spectroscopy or other comparably reliable~~  
40 ~~analytical method, except that no such confirmation is required for a blood~~  
41 ~~alcohol sample or a breath alcohol test;~~

42 (F) ~~the breath alcohol test was administered by an individual trained~~  
43 ~~to perform breath tests, the breath testing instrument used was certified~~

1 and operated strictly according to description provided by the  
2 manufacturers and the reliability of the instrument performance was  
3 assured by testing with alcohol standards; and

4 ~~(G) the foundation evidence must establish, beyond a reasonable~~  
5 ~~doubt, that the test results were from the sample taken from the individual.~~

6 (2) (A) For the purposes of this subsection, the following shall be  
7 conclusive evidence of misconduct:

8 (i) The use of alcoholic liquor, a cereal malt beverage or a  
9 nonprescribed controlled substance by an individual while working;

10 (ii) the impairment caused by alcoholic liquor, a cereal malt  
11 beverage or a nonprescribed controlled substance by an individual while  
12 working;

13 (iii) a positive breath alcohol test or a positive chemical test,  
14 provided:

15 (a) The test was:

16 (1) Required by law and was administered pursuant to the drug free  
17 workplace act, 41 U.S.C. § 701 et seq.;

18 (2) administered as part of an employee assistance program or other  
19 drug or alcohol treatment program in which the employee was  
20 participating voluntarily or as a condition of further employment;

21 (3) requested pursuant to a written policy of the employer of which  
22 the employee had knowledge and was a required condition of employment;

23 (4) required by law and the test constituted a required condition of  
24 employment for the individual's job; or

25 (5) probable cause to believe that the individual used, had possession  
26 of or was impaired by alcoholic liquor, the cereal malt beverage or the  
27 controlled substance while working;

28 (b) the test sample was collected:

29 (1) Either as prescribed by:

30 (A) The drug free workplace act, 41 U.S.C. § 701 et seq.;

31 (B) an employee assistance program or other drug or alcohol  
32 treatment program in which the employee was participating voluntarily or  
33 as a condition of further employment;

34 (C) the written policy of the employer of which the employee had  
35 knowledge and which constituted a required condition of employment;

36 (D) a test which was required by law and which constituted a  
37 required condition of employment for the individual's job; or

38 (E) at a time contemporaneous with the events establishing probable  
39 cause;

40 (c) (1) the collecting and labeling of a chemical test sample was  
41 performed by a licensed health care professional; or

42 (2) any other individual, including law enforcement personnel, who  
43 is:

- 1       (A) Certified pursuant to paragraph (b)(2)(A)(iii)(f); or  
2       (B) authorized to collect or label test samples by federal or state law;  
3       (d) the chemical test was performed by a laboratory approved by the  
4 United States department of health and human services or licensed by the  
5 department of health and environment, except that a blood sample may be  
6 tested for alcohol content by a laboratory commonly used for that purpose  
7 by state law enforcement agencies;  
8       (e) the chemical test was confirmed by gas chromatography, gas  
9 chromatography-mass spectroscopy or other comparably reliable  
10 analytical method, except that no such confirmation is required for a  
11 blood alcohol sample or a breath alcohol test;  
12       (f) the breath alcohol test was administered by an individual trained  
13 to perform breath tests, the breath testing instrument used was certified  
14 and operated strictly according to the description provided by the  
15 manufacturers and the reliability of the instrument performance was  
16 assured by testing with alcohol standards; and  
17       (g) the foundation evidence establishes, beyond a reasonable doubt,  
18 that the test results were from the sample taken from the individual.  
19       (iv) An individual's refusal to submit to a chemical test or breath  
20 alcohol test, provided:  
21       (a) The test meets the standards of the drug free workplace act, 41  
22 U.S.C. § 701 et seq.;
- 23       (b) the test was administered as part of an employee assistance  
24 program or other drug or alcohol treatment program in which the  
25 employee was participating voluntarily or as a condition of further  
26 employment;
- 27       (c) the test was otherwise required by law and the test constituted a  
28 required condition of employment for the individual's job;
- 29       (d) the test was requested pursuant to a written policy of the  
30 employer of which the employee had knowledge and was a required  
31 condition of employment; or
- 32       (e) there was probable cause to believe that the individual used,  
33 possessed or was impaired by alcoholic liquor, a cereal malt beverage or  
34 a controlled substance while working.
- 35       (B) For purposes of this subsection, the possession of alcoholic  
36 liquor, a cereal malt beverage or a nonprescribed controlled substance by  
37 an individual while working shall be prima facie evidence of misconduct.
- 38       (C) For purposes of this subsection:
- 39       (i) "Alcohol concentration" means the number of grams of alcohol  
40 per 210 liters of breath.
- 41       (ii) "Alcoholic liquor" shall be defined as provided in K.S.A. 41-102,  
42 and amendments thereto.
- 43       (iii) "Cereal malt beverage" shall be defined as provided in K.S.A.

1 41-2701, and amendments thereto.

2 (iv) "Chemical test" shall include, but is not limited to, tests of urine,  
3 blood or saliva.

4 (v) "Controlled substance" shall be defined as provided in K.S.A.  
5 2011 Supp. 21-5701, and amendments thereto.

6 (vi) "Required by law" means required by a federal or state law, a  
7 federal or state rule or regulation having the force and effect of law, a  
8 county resolution or municipal ordinance or a policy relating to public  
9 safety adopted in open meeting by the governing body of any special  
10 district or other local governmental entity.

11 (vii) "Positive chemical test" shall mean a chemical result showing a  
12 concentration at or above the levels listed in K.S.A. 44-501, and  
13 amendments thereto, for the drugs or abuse listed therein.

14 (viii) "Positive breath test" shall mean a test result showing an  
15 alcohol concentration of .04 or greater.

16 (3) (A) Failure of the employee to notify the employer of an absence  
17 shall be considered to be prima facie evidence of a violation of any duty or  
18 obligation reasonably owed to the employer as a condition of employment.

19 (B) For the purposes of this subsection, ~~misconduct shall include, but~~  
20 ~~not be limited to,~~ repeated absence, including incarceration, resulting in  
21 absence from work of three days or longer, excluding Saturdays, Sundays  
22 and legal holidays, and lateness, from scheduled work or lateness from  
23 scheduled work shall be conclusive evidence of misconduct if the facts  
24 show:

25 (i) The individual was absent or late without good cause;

26 (ii) the absence or lateness was in violation of the employer's written  
27 ~~absenteeism attendance policy;~~

28 (iii) the employer gave or sent written notice to the individual, ~~at the~~  
29 ~~individual's last known address,~~ that future absence or lateness may or will  
30 result in discharge; and

31 (iv) the employee had knowledge of the employer's written  
32 ~~absenteeism attendance policy.~~

33 ~~(B)~~ (C) For the purposes of this subsection, if an employee disputes  
34 being absent or late without good cause, the employee shall present  
35 evidence that a majority of the employee's absences or lateness were for  
36 good cause. If the employee alleges that the employee's repeated absences  
37 or lateness were the result of health related issues, such evidence shall  
38 include documentation from a licensed and practicing health care provider  
39 as defined in subsection (a)(1).

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

42 (A) The employer discharged the individual after learning the  
43 individual was seeking other work or when the individual gave notice of

1 future intent to quit, *except that the individual shall be disqualified after*  
2 *the time at which such individual intended to quit and any individual who*  
3 *commits misconduct after such individual gives notice of such individual's*  
4 *intent to quit shall be disqualified;*

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

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

13 (c) If the individual has failed, without good cause, to either apply for  
14 suitable work when so directed by the employment office of the secretary  
15 of labor, or to accept suitable work when offered to the individual by the  
16 employment office, the secretary of labor, or an employer, such  
17 disqualification shall begin with the week in which such failure occurred  
18 and shall continue until the individual becomes reemployed and has had  
19 earnings from insured work of at least three times such individual's  
20 determined weekly benefit amount. In determining whether or not any  
21 work is suitable for an individual, the secretary of labor, or a person or  
22 persons designated by the secretary, shall consider the degree of risk  
23 involved to health, safety and morals, physical fitness and prior training,  
24 experience and prior earnings, length of unemployment and prospects for  
25 securing local work in the individual's customary occupation or work for  
26 which the individual is reasonably fitted by training or experience, and the  
27 distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible  
28 individual shall not be disqualified for refusing an offer of suitable  
29 employment, or failing to apply for suitable employment when notified by  
30 an employment office, or for leaving the individual's most recent work  
31 accepted during approved training, including training approved under  
32 section 236(a)(1) of the trade act of 1974, if the acceptance of or applying  
33 for suitable employment or continuing such work would require the  
34 individual to terminate approved training and no work shall be deemed  
35 suitable and benefits shall not be denied under this act to any otherwise  
36 eligible individual for refusing to accept new work under any of the  
37 following conditions: (1) If the position offered is vacant due directly to a  
38 strike, lockout or other labor dispute; (2) if the remuneration, hours or  
39 other conditions of the work offered are substantially less favorable to the  
40 individual than those prevailing for similar work in the locality; (3) if as a  
41 condition of being employed, the individual would be required to join or to  
42 resign from or refrain from joining any labor organization; and (4) if the  
43



1 individual left employment as a result of domestic violence, and the  
2 position offered does not reasonably accommodate the individual's  
3 physical, psychological, safety, ~~and/or~~ or legal needs relating to such  
4 domestic violence.

5 (d) For any week with respect to which the secretary of labor, or a  
6 person or persons designated by the secretary, finds that the individual's  
7 unemployment is due to a stoppage of work which exists because of a  
8 labor dispute or there would have been a work stoppage had normal  
9 operations not been maintained with other personnel previously and  
10 currently employed by the same employer at the factory, establishment or  
11 other premises at which the individual is or was last employed, except that  
12 this subsection (d) shall not apply if it is shown to the satisfaction of the  
13 secretary of labor, or a person or persons designated by the secretary, that:

14 (1) The individual is not participating in or financing or directly interested  
15 in the labor dispute which caused the stoppage of work; and (2) the  
16 individual does not belong to a grade or class of workers of which,  
17 immediately before the commencement of the stoppage, there were  
18 members employed at the premises at which the stoppage occurs any of  
19 whom are participating in or financing or directly interested in the dispute.  
20 If in any case separate branches of work which are commonly conducted  
21 as separate businesses in separate premises are conducted in separate  
22 departments of the same premises, each such department shall, for the  
23 purpose of this subsection be deemed to be a separate factory,  
24 establishment or other premises. For the purposes of this subsection,  
25 failure or refusal to cross a picket line or refusal for any reason during the  
26 continuance of such labor dispute to accept the individual's available and  
27 customary work at the factory, establishment or other premises where the  
28 individual is or was last employed shall be considered as participation and  
29 interest in the labor dispute.

30 (e) For any week with respect to which or a part of which the  
31 individual has received or is seeking unemployment benefits under the  
32 unemployment compensation law of any other state or of the United  
33 States, except that if the appropriate agency of such other state or the  
34 United States finally determines that the individual is not entitled to such  
35 unemployment benefits, this disqualification shall not apply.

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

41 (g) For the period of ~~one year~~ *two years* beginning with the first day  
42 following the last week of unemployment for which the individual  
43 received benefits, or for ~~one year~~ *two years* from the date the act was

1 committed, whichever is the later, if the individual, or another in such  
2 individual's behalf with the knowledge of the individual, has knowingly  
3 made a false statement or representation, or has knowingly failed to  
4 disclose a material fact to obtain or increase benefits under this act or any  
5 other unemployment compensation law administered by the secretary of  
6 labor.

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

11 (i) For any week of unemployment on the basis of service in an  
12 instructional, research or principal administrative capacity for an  
13 educational institution as defined in subsection (v) of K.S.A. 44-703, and  
14 amendments thereto, if such week begins during the period between two  
15 successive academic years or terms or, when an agreement provides  
16 instead for a similar period between two regular but not successive terms  
17 during such period or during a period of paid sabbatical leave provided for  
18 in the individual's contract, if the individual performs such services in the  
19 first of such academic years or terms and there is a contract or a reasonable  
20 assurance that such individual will perform services in any such capacity  
21 for any educational institution in the second of such academic years or  
22 terms.

23 (j) For any week of unemployment on the basis of service in any  
24 capacity other than service in an instructional, research, or administrative  
25 capacity in an educational institution, as defined in subsection (v) of  
26 K.S.A. 44-703, and amendments thereto, if such week begins during the  
27 period between two successive academic years or terms if the individual  
28 performs such services in the first of such academic years or terms and  
29 there is a reasonable assurance that the individual will perform such  
30 services in the second of such academic years or terms, except that if  
31 benefits are denied to the individual under this subsection and the  
32 individual was not offered an opportunity to perform such services for the  
33 educational institution for the second of such academic years or terms,  
34 such individual shall be entitled to a retroactive payment of benefits for  
35 each week for which the individual filed a timely claim for benefits and for  
36 which benefits were denied solely by reason of this subsection.

37 (k) For any week of unemployment on the basis of service in any  
38 capacity for an educational institution as defined in subsection (v) of  
39 K.S.A. 44-703, and amendments thereto, if such week begins during an  
40 established and customary vacation period or holiday recess, if the  
41 individual performs services in the period immediately before such  
42 vacation period or holiday recess and there is a reasonable assurance that  
43 such individual will perform such services in the period immediately

1 following such vacation period or holiday recess.

2 (l) For any week of unemployment on the basis of any services,  
3 substantially all of which consist of participating in sports or athletic  
4 events or training or preparing to so participate, if such week begins during  
5 the period between two successive sport seasons or similar period if such  
6 individual performed services in the first of such seasons or similar periods  
7 and there is a reasonable assurance that such individual will perform such  
8 services in the later of such seasons or similar periods.

9 (m) For any week on the basis of services performed by an alien  
10 unless such alien is an individual who was lawfully admitted for  
11 permanent residence at the time such services were performed, was  
12 lawfully present for purposes of performing such services, or was  
13 permanently residing in the United States under color of law at the time  
14 such services were performed, including an alien who was lawfully present  
15 in the United States as a result of the application of the provisions of  
16 section 212(d)(5) of the federal immigration and nationality act. Any data  
17 or information required of individuals applying for benefits to determine  
18 whether benefits are not payable to them because of their alien status shall  
19 be uniformly required from all applicants for benefits. In the case of an  
20 individual whose application for benefits would otherwise be approved, no  
21 determination that benefits to such individual are not payable because of  
22 such individual's alien status shall be made except upon a preponderance  
23 of the evidence.

24 (n) For any week in which an individual is receiving a governmental  
25 or other pension, retirement or retired pay, annuity or other similar  
26 periodic payment under a plan maintained by a base period employer and  
27 to which the entire contributions were provided by such employer, except  
28 that: (1) If the entire contributions to such plan were provided by the base  
29 period employer but such individual's weekly benefit amount exceeds such  
30 governmental or other pension, retirement or retired pay, annuity or other  
31 similar periodic payment attributable to such week, the weekly benefit  
32 amount payable to the individual shall be reduced ~~(,but not below zero)~~, by  
33 an amount equal to the amount of such pension, retirement or retired pay,  
34 annuity or other similar periodic payment which is attributable to such  
35 week; or (2) if only a portion of contributions to such plan were provided  
36 by the base period employer, the weekly benefit amount payable to such  
37 individual for such week shall be reduced ~~(,but not below zero)~~, by the  
38 prorated weekly amount of the pension, retirement or retired pay, annuity  
39 or other similar periodic payment after deduction of that portion of the  
40 pension, retirement or retired pay, annuity or other similar periodic  
41 payment that is directly attributable to the percentage of the contributions  
42 made to the plan by such individual; or (3) if the entire contributions to the  
43 plan were provided by such individual, or by the individual and an

1 employer (,or any person or organization), who is not a base period  
2 employer, no reduction in the weekly benefit amount payable to the  
3 individual for such week shall be made under this subsection; or (4)  
4 whatever portion of contributions to such plan were provided by the base  
5 period employer, if the services performed for the employer by such  
6 individual during the base period, or remuneration received for the  
7 services, did not affect the individual's eligibility for, or increased the  
8 amount of, such pension, retirement or retired pay, annuity or other similar  
9 periodic payment, no reduction in the weekly benefit amount payable to  
10 the individual for such week shall be made under this subsection. No  
11 reduction shall be made for payments made under the social security act or  
12 railroad retirement act of 1974.

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

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

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

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

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

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

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

13 (s) For any week with respect to which an individual is receiving or  
14 has received remuneration in the form of a back pay award or settlement.  
15 The remuneration shall be allocated to the week or weeks in the manner as  
16 specified in the award or agreement, or in the absence of such specificity  
17 in the award or agreement, such remuneration shall be allocated to the  
18 week or weeks in which such remuneration, in the judgment of the  
19 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 unemployment  
26 benefits, such employer shall pay the department the amount withheld.  
27 With respect to such amount, the secretary shall have available all of the  
28 collection remedies authorized or provided in K.S.A. 44-717, and  
29 amendments thereto.

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

37 (u) If the individual was found not to have a disqualifying  
38 adjudication or conviction under K.S.A. 39-970, and amendments thereto,  
39 or K.S.A. 65-5117, and amendments thereto, was hired and then was  
40 subsequently convicted of a disqualifying felony under K.S.A. 39-970, and  
41 amendments thereto, or K.S.A. 65-5117, and amendments thereto, and  
42 discharged pursuant to K.S.A. 39-970, and amendments thereto, or K.S.A.  
43 65-5117, and amendments thereto. The disqualification shall begin the day

1 following the separation and shall continue until after the individual  
2 becomes reemployed and has had earnings from insured work of at least  
3 three times the individual's determined weekly benefit amount.

4 Sec. 5. K.S.A. 2011 Supp. 44-709 is hereby amended to read as  
5 follows: 44-709. (a) *Filing*. Claims for benefits shall be made in  
6 accordance with rules and regulations adopted by the secretary. The  
7 secretary shall furnish a copy of such rules and regulations to any  
8 individual requesting them. Each employer shall post and maintain printed  
9 statements furnished by the secretary without cost to the employer in  
10 places readily accessible to individuals in the service of the employer.

11 (b) *Determination*. (1) Except as otherwise provided in this  
12 subsection (b)(1), a representative designated by the secretary, and  
13 hereinafter referred to as an examiner, shall promptly examine the claim  
14 and, on the basis of the facts found by the examiner, shall determine  
15 whether or not the claim is valid. If the examiner determines that the claim  
16 is valid, the examiner shall determine the first day of the benefit year, the  
17 weekly benefit amount and the total amount of benefits payable with  
18 respect to the benefit year. If the claim is determined to be valid, the  
19 examiner shall send a notice to the last employing unit who shall respond  
20 within 10 days by providing the examiner all requested information  
21 including all information required for a decision under K.S.A. 44-706, and  
22 amendments thereto. The information may be submitted by the employing  
23 unit in person at an employment office of the secretary or by mail, by  
24 telefacsimile machine or by electronic mail. If the required information is  
25 not submitted or postmarked within a response time limit of 10 days after  
26 the examiner's notice was sent, the employing unit shall be deemed to have  
27 waived its standing as a party to the proceedings arising from the claim  
28 and shall be barred from protesting any subsequent decisions about the  
29 claim by the secretary, a referee, the board of review or any court, except  
30 that the employing unit's response time limit may be waived or extended  
31 by the examiner or upon appeal, if timely response was impossible due to  
32 excusable neglect. In any case in which the payment or denial of benefits  
33 will be determined by the provisions of subsection (d) of K.S.A. 44-706,  
34 and amendments thereto, the examiner shall promptly transmit the claim to  
35 a special examiner designated by the secretary to make a determination on  
36 the claim after the investigation as the special examiner deems necessary.  
37 The parties shall be promptly notified of the special examiner's decision  
38 and any party aggrieved by the decision may appeal to the referee as  
39 provided in subsection (c). The claimant and the claimant's most recent  
40 employing unit shall be promptly notified of the examiner's or special  
41 examiner's decision.

42 (2) The examiner may for good cause reconsider the examiner's  
43 decision and shall promptly notify the claimant and the most recent

1 employing unit of the claimant, that the decision of the examiner is to be  
2 reconsidered, except that no reconsideration shall be made after the  
3 termination of the benefit year.

4 (3) Notwithstanding the provisions of any other statute, a decision of  
5 an examiner or special examiner shall be final unless the claimant or the  
6 most recent employing unit of the claimant files an appeal from the  
7 decision as provided in subsection (c), *except that the time limit for appeal*  
8 *may be waived or extended by the referee or the board of review if a timely*  
9 *response was impossible due to excusable neglect.* The appeal must be  
10 filed within 16 calendar days after the mailing of notice to the last known  
11 addresses of the claimant and employing unit or, if notice is not by mail,  
12 within 16 calendar days after the delivery of the notice to the parties.

13 (c) *Appeals.* Unless the appeal is withdrawn, a referee, after affording  
14 the parties reasonable opportunity for fair hearing, shall affirm or modify  
15 the findings of fact and decision of the examiner or special examiner. The  
16 parties shall be duly notified of the referee's decision, together with the  
17 reasons for the decision. The decision shall be final, notwithstanding the  
18 provisions of any other statute, unless a further appeal to the board of  
19 review is filed *by a party or a representative of the department of labor*  
20 *appointed by the secretary* within 16 calendar days after the mailing of the  
21 decision to the parties' last known addresses or, if notice is not by mail,  
22 within 16 calendar days after the delivery of the decision *except that the*  
23 *time limit for appeal may be waived or extended by the board of review if*  
24 *a timely response was impossible due to excusable neglect.*

25 (d) *Referees.* The secretary shall appoint, in accordance with  
26 subsection (c) of K.S.A. 44-714, and amendments thereto, one or more  
27 referees to hear and decide disputed claims.

28 (e) *Time, computation and extension.* In computing the period of time  
29 for an employing unit response or for appeals under this section from the  
30 examiner's or the special examiner's determination or from the referee's  
31 decision, the day of the act, event or default from which the designated  
32 period of time begins to run shall not be included. The last day of the  
33 period shall be included unless it is a Saturday, Sunday or legal holiday, in  
34 which event the period runs until the end of the next day which is not a  
35 Saturday, Sunday or legal holiday.

36 (f) *Board of review.* (1) There is hereby created a board of review,  
37 hereinafter referred to as the board, consisting of three members. Except as  
38 provided by paragraph (2) of this subsection, each member of the board  
39 shall be appointed for a term of four years as provided in this subsection.  
40 Two members shall be appointed by the governor, subject to confirmation  
41 by the senate as provided in K.S.A. 75-4315b, and amendments thereto.  
42 Except as provided by K.S.A. 46-2601, and amendments thereto, no  
43 person appointed to the board, whose appointment is subject to

1 confirmation by the senate, shall exercise any power, duty or function as a  
2 member until confirmed by the senate. One member shall be representative  
3 of employees, one member shall be representative of employers, and one  
4 member shall be representative of the public in general. The appointment  
5 of the employee representative member of the board shall be made by the  
6 governor from a list of three nominations submitted by the Kansas A.F.L.-  
7 C.I.O. The appointment of the employer representative member of the  
8 board shall be made by the governor from a list of three nominations  
9 submitted by the Kansas chamber of commerce and industry. The  
10 appointment of the public representative member of the board, who,  
11 because of vocation, occupation or affiliation may be deemed not to be  
12 representative of either management or labor, shall be made by the  
13 members appointed by the governor as employee representative and  
14 employer representative. If the two members do not agree and fail to make  
15 the appointment of the public member within 30 days after the expiration  
16 of the public member's term of office, the governor shall appoint the  
17 representative of the public. Not more than two members of the board shall  
18 belong to the same political party.

19 (2) The terms of members who are serving on the board on the  
20 effective date of this act shall expire on March 15, of the year in which  
21 such member's term would have expired under the provisions of this  
22 section prior to amendment by this act. Thereafter, members shall be  
23 appointed for terms of four years and until their successors are appointed  
24 and confirmed.

25 (3) Each member of the board shall serve until a successor has been  
26 appointed and confirmed. Any vacancy in the membership of the board  
27 occurring prior to expiration of a term shall be filled by appointment for  
28 the unexpired term in the same manner as provided for original  
29 appointment of the member. Each member shall be appointed as  
30 representative of the same special interest group represented by the  
31 predecessor of the member.

32 (4) Each member of the board shall be entitled to receive as  
33 compensation for the member's services at the rate of \$15,000 per year,  
34 together with the member's travel and other necessary expenses actually  
35 incurred in the performance of the member's official duties in accordance  
36 with rules and regulations adopted by the secretary. Members'  
37 compensation and expenses shall be paid from the employment security  
38 administration fund.

39 (5) The board shall organize annually by the election of a chairperson  
40 from among its members. The chairperson shall serve in that capacity for a  
41 term of one year and until a successor is elected. The board shall meet on  
42 the first Monday of each month or on the call of the chairperson or any  
43 two members of the board at the place designated. The secretary of labor



1 shall appoint an executive secretary of the board and the executive  
2 secretary shall attend the meetings of the board.

3 (6) The board, on its own motion, may affirm, modify or set aside any  
4 decision of a referee on the basis of the evidence previously submitted in  
5 the case; may direct the taking of additional evidence; or may permit any  
6 of the parties to initiate further appeal before it. The board shall permit  
7 such further appeal by any of the parties interested in a decision of a  
8 referee which overrules or modifies the decision of an examiner. The board  
9 may remove to itself the proceedings on any claim pending before a  
10 referee. Any proceedings so removed to the board shall be heard in  
11 accordance with the requirements of subsection (c). The board shall  
12 promptly notify the interested parties of its findings and decision.

13 (7) Two members of the board shall constitute a quorum and no  
14 action of the board shall be valid unless it has the concurrence of at least  
15 two members. A vacancy on the board shall not impair the right of a  
16 quorum to exercise all the rights and perform all the duties of the board.

17 (g) *Procedure.* The manner in which disputed claims are presented,  
18 the reports on claims required from the claimant and from employers and  
19 the conduct of hearings and appeals shall be in accordance with rules of  
20 procedure prescribed by the board for determining the rights of the parties,  
21 whether or not such rules conform to common law or statutory rules of  
22 evidence and other technical rules of procedure. A full and complete  
23 record shall be kept of all proceedings and decisions in connection with a  
24 disputed claim. All testimony at any hearing upon a disputed claim shall be  
25 recorded, but need not be transcribed unless the disputed claim is further  
26 appealed. In the performance of its official duties, the board shall have  
27 access to all of the records which pertain to the disputed claim and are in  
28 the custody of the secretary of labor and shall receive the assistance of the  
29 secretary upon request.

30 (h) *Witness fees.* Witnesses subpoenaed pursuant to this section shall  
31 be allowed fees and necessary travel expenses at rates fixed by the board.  
32 Such fees and expenses shall be deemed a part of the expense of  
33 administering this act.

34 (i) *Court review.* Any action of the board is subject to review in  
35 accordance with the Kansas judicial review act. No bond shall be required  
36 for commencing an action for such review. In the absence of an action for  
37 such review, the action of the board shall become final 16 calendar days  
38 after the date of the mailing of the decision. In addition to those persons  
39 having standing pursuant to K.S.A. 77-611, and amendments thereto, the  
40 examiner shall have standing to obtain judicial review of an action of the  
41 board. The review proceeding, and the questions of law certified, shall be  
42 heard in a summary manner and shall be given precedence over all other  
43 civil cases except cases arising under the workers compensation act.

1 (j) Any finding of fact or law, judgment, determination, conclusion or  
2 final order made by the board of review or any examiner, special examiner,  
3 referee or other person with authority to make findings of fact or law  
4 pursuant to the employment security law is not admissible or binding in  
5 any separate or subsequent action or proceeding, between a person and a  
6 present or previous employer brought before an arbitrator, court or judge  
7 of the state or the United States, regardless of whether the prior action was  
8 between the same or related parties or involved the same facts.

9 (k) In any proceeding or hearing conducted under this section, a party  
10 to the proceeding or hearing may appear before a referee or the board  
11 either personally or by means of a designated representative to present  
12 evidence and to state the position of the party. Hearings may be conducted  
13 in person, by telephone or other means of electronic communication. The  
14 hearing shall be conducted by telephone or other means of electronic  
15 communication if none of the parties requests an in-person hearing. If only  
16 one party requests an in-person hearing, the referee shall have the  
17 discretion of requiring all parties to appear in person or allow the party not  
18 requesting an in-person hearing to appear by telephone or other means of  
19 electronic communication. The notice of hearing shall include notice to the  
20 parties of their right to request an in-person hearing and instructions on  
21 how to make the request.

22 Sec. 6. K.S.A. 2011 Supp. 44-710 is hereby amended to read as  
23 follows: 44-710. (a) *Payment.* Contributions shall accrue and become  
24 payable by each contributing employer for each calendar year in which the  
25 contributing employer is subject to the employment security law with  
26 respect to wages paid for employment. Such contributions shall become  
27 due and be paid by each contributing employer to the secretary for the  
28 employment security fund in accordance with such rules and regulations as  
29 the secretary may adopt and shall not be deducted, in whole or in part,  
30 from the wages of individuals in such employer's employ. In the payment  
31 of any contributions, a fractional part of \$.01 shall be disregarded unless it  
32 amounts to \$.005 or more, in which case it shall be increased to \$.01.  
33 Should contributions for any calendar quarter be less than \$5, no payment  
34 shall be required.

35 (b) *Rates and base of contributions.* (1) Except as provided in  
36 paragraph (2) of this subsection, each contributing employer shall pay  
37 contributions on wages paid by the contributing employer during each  
38 calendar year with respect to employment as provided in K.S.A. 44-710a,  
39 and amendments thereto. Except that, notwithstanding the federal law  
40 requiring the secretary of labor to annually recalculate the contribution  
41 rate, for calendar years 2010, 2011, 2012, 2013 and 2014, the secretary  
42 shall charge each contributing employer in rate groups 1 through 32 the  
43 contribution rate in the 2010 original tax rate computation table, with

1 contributing employers in rate groups 33 through 51 being capped at a  
2 5.4% contribution rate.

3 (2) (A) If the congress of the United States either amends or repeals  
4 the Wagner-Peyser act, the federal unemployment tax act, the federal  
5 social security act, or subtitle C of chapter 23 of the federal internal  
6 revenue code of 1986, or any act or acts supplemental to or in lieu thereof,  
7 or any part or parts of any such law, or if any such law, or any part or parts  
8 thereof, are held invalid with the effect that appropriations of funds by  
9 congress and grants thereof to the state of Kansas for the payment of costs  
10 of administration of the employment security law are no longer available  
11 for such purposes, or (B) if employers in Kansas subject to the payment of  
12 tax under the federal unemployment tax act are granted full credit against  
13 such tax for contributions or taxes paid to the secretary of labor, then, and  
14 in either such case, beginning with the year in which the unavailability of  
15 federal appropriations and grants for such purpose occurs or in which such  
16 change in liability for payment of such federal tax occurs and for each year  
17 thereafter, the rate of contributions of each contributing employer shall be  
18 equal to the total of .5% and the rate of contributions as determined for  
19 such contributing employer under K.S.A. 44-710a, and amendments  
20 thereto. The amount of contributions which each contributing employer  
21 becomes liable to pay under this paragraph (2) over the amount of  
22 contributions which such contributing employer would be otherwise liable  
23 to pay shall be credited to the employment security administration fund to  
24 be disbursed and paid out under the same conditions and for the same  
25 purposes as other moneys are authorized to be paid from the employment  
26 security administration fund, except that, if the secretary determines that as  
27 of the first day of January of any year there is an excess in the employment  
28 security administration fund over the amount required to be disbursed  
29 during such year, an amount equal to such excess as determined by the  
30 secretary shall be transferred to the employment security fund.

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

1 ending on the computation date.

2 (2) (A) Benefits paid in benefit years established by valid new claims  
3 shall not be charged to the account of a contributing employer or rated  
4 governmental employer who is a base period employer if the examiner  
5 finds that claimant was separated from the claimant's most recent  
6 employment with such employer under any of the following conditions: (i)  
7 Discharged for misconduct or gross misconduct connected with the  
8 individual's work; or (ii) leaving work voluntarily without good cause  
9 attributable to the claimant's work or the employer.

10 (B) Where base period wage credits of a contributing employer or  
11 rated governmental employer represent part-time employment and the  
12 claimant continues in that part-time employment with that employer  
13 during the period for which benefits are paid, then that employer's account  
14 shall not be charged with any part of the benefits paid if the employer  
15 provides the secretary with information as required by rules and  
16 regulations. For the purposes of this subsection (c)(2)(B), "part-time  
17 employment" means any employment when an individual works  
18 ~~concurrently for two or more employers and also works less than full-time~~  
19 ~~for at least one of those employers less than full-time~~ because the  
20 individual's services are not required for the customary, scheduled full-  
21 time hours prevailing at the work place or the individual does not  
22 customarily work the regularly scheduled full-time hours due to personal  
23 choice or circumstances.

24 (C) No contributing employer or rated governmental employer's  
25 account shall be charged with any extended benefits paid in accordance  
26 with the employment security law, except for weeks of unemployment  
27 beginning after December 31, 1978, all contributing governmental  
28 employers and governmental rated employers shall be charged an amount  
29 equal to all extended benefits paid.

30 (D) No contributing employer, rated governmental employer or  
31 reimbursing employer's account shall be charged for any additional  
32 benefits paid during the period July 1, 2003 through June 30, 2004.

33 (E) No contributing employer or rated governmental employer's  
34 account will be charged for benefits paid a claimant while pursuing an  
35 approved training course as defined in subsection (s) of K.S.A. 44-703,  
36 and amendments thereto.

37 (F) No contributing employer or rated governmental employer's  
38 account shall be charged with respect to the benefits paid to any individual  
39 whose base period wages include wages for services not covered by the  
40 employment security law prior to January 1, 1978, to the extent that the  
41 employment security fund is reimbursed for such benefits pursuant to  
42 section 121 of public law 94-566 (90 Stat. 2673).

43 (G) With respect to weeks of unemployment beginning after

1 December 31, 1977, wages for insured work shall include wages paid for  
2 previously uncovered services. For the purposes of this subsection (c)(2)  
3 (G), the term "previously uncovered services" means services which were  
4 not covered employment, at any time during the one-year period ending  
5 December 31, 1975, except to the extent that assistance under title II of the  
6 federal emergency jobs and unemployment assistance act of 1974 was paid  
7 on the basis of such services, and which:

8 (i) Are agricultural labor as defined in subsection (w) of K.S.A. 44-  
9 703, and amendments thereto, or domestic service as defined in subsection  
10 (aa) of K.S.A. 44-703, and amendments thereto; or

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

14 (iii) are services performed by an employee of a nonprofit educational  
15 institution which is not an institution of higher education.

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

19 (3) The examiner shall notify any base period employer whose  
20 account will be charged with benefits paid following the filing of a valid  
21 new claim and a determination by the examiner based on all information  
22 relating to the claim contained in the records of the division of  
23 employment security. Such notice shall become final and benefits charged  
24 to the base period employer's account in accordance with the claim unless  
25 within 10 calendar days from the date the notice was sent, the base period  
26 employer requests in writing that the examiner reconsider the  
27 determination and furnishes any required information in accordance with  
28 the secretary's rules and regulations. In a similar manner, a notice of an  
29 additional claim followed by the first payment of benefits with respect to  
30 the benefit year, filed by an individual during a benefit year after a period  
31 in such year during which such individual was employed, shall be given to  
32 any base period employer of the individual who has requested such a  
33 notice within 10 calendar days from the date the notice of the valid new  
34 claim was sent to such base period employer. For purposes of this  
35 subsection (c)(3), if the required information is not submitted or  
36 postmarked within a response time limit of 10 days after the base period  
37 employer notice was sent, the base period employer shall be deemed to  
38 have waived its standing as a party to the proceedings arising from the  
39 claim and shall be barred from protesting any subsequent decisions about  
40 the claim by the secretary, a referee, the board of review or any court,  
41 except that the base period employer's response time limit may be waived  
42 or extended by the examiner or upon appeal, if timely response was  
43 impossible due to excusable neglect. The examiner shall notify the

1 employer of the reconsidered determination which shall be subject to  
2 appeal, or further reconsideration, in accordance with the provisions of  
3 K.S.A. 44-709, and amendments thereto.

4 (4) *Time, computation and extension.* In computing the period of time  
5 for a base period employer response or appeals under this section from the  
6 examiner's or the special examiner's determination or from the referee's  
7 decision, the day of the act, event or default from which the designated  
8 period of time begins to run shall not be included. The last day of the  
9 period shall be included unless it is a Saturday, Sunday or legal holiday, in  
10 which event the period runs until the end of the next day which is not a  
11 Saturday, Sunday or legal holiday.

12 (d) *Pooled fund.* All contributions and payments in lieu of  
13 contributions and benefit cost payments to the employment security fund  
14 shall be pooled and available to pay benefits to any individual entitled  
15 thereto under the employment security law, regardless of the source of  
16 such contributions or payments in lieu of contributions or benefit cost  
17 payments.

18 (e) *Election to become reimbursing employer; payment in lieu of*  
19 *contributions.* (1) Any governmental entity, Indian tribes or tribal units,  
20 (subdivisions, subsidiaries or business enterprises wholly owned by such  
21 Indian tribes), for which services are performed as described in subsection  
22 (i)(3)(E) of K.S.A. 44-703, and amendments thereto, or any nonprofit  
23 organization or group of nonprofit organizations described in section  
24 501(c)(3) of the federal internal revenue code of 1986 which is exempt  
25 from income tax under section 501(a) of such code, that becomes subject  
26 to the employment security law may elect to become a reimbursing  
27 employer under this subsection (e)(1) and agree to pay the secretary for the  
28 employment security fund an amount equal to the amount of regular  
29 benefits and  $\frac{1}{2}$  of the extended benefits paid that are attributable to service  
30 in the employ of such reimbursing employer, except that each reimbursing  
31 governmental employer, Indian tribes or tribal units shall pay an amount  
32 equal to the amount of regular benefits and extended benefits paid for  
33 weeks of unemployment beginning after December 31, 1978, for  
34 governmental employers and December 21, 2000, for Indian tribes or  
35 tribal units to individuals for weeks of unemployment which begin during  
36 the effective period of such election.

37 (A) Any employer identified in this subsection (e)(1) may elect to  
38 become a reimbursing employer for a period encompassing not less than  
39 four complete calendar years if such employer files with the secretary a  
40 written notice of such election within the 30-day period immediately  
41 following January 1 of any calendar year or within the 30-day period  
42 immediately following the date on which a determination of subjectivity to  
43 the employment security law is issued, whichever occurs later.

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

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

14 (D) The secretary may for good cause extend the period within which  
15 a notice of election, or a notice of termination, must be filed and may  
16 permit an election to be retroactive but not any earlier than with respect to  
17 benefits paid after January 1 of the year such election is received.

18 (E) The secretary, in accordance with such rules and regulations as  
19 the secretary may adopt, shall notify each employer identified in  
20 subsection (e)(1) of any determination which the secretary may make of its  
21 status as an employer and of the effective date of any election which it  
22 makes to become a reimbursing employer and of any termination of such  
23 election. Such determinations shall be subject to reconsideration, appeal  
24 and review in accordance with the provisions of K.S.A. 44-710b, and  
25 amendments thereto.

26 (2) *Reimbursement reports and payments.* Payments in lieu of  
27 contributions shall be made in accordance with the provisions of paragraph  
28 (A) of this subsection (e)(2) by all reimbursing employers except the state  
29 of Kansas. Each reimbursing employer shall report total wages paid during  
30 each calendar quarter by filing quarterly wage reports with the secretary  
31 which shall be filed by the last day of the month following the close of  
32 each calendar quarter. Wage reports are deemed filed as of the date they  
33 are placed in the United States mail.

34 (A) At the end of each calendar quarter, or at the end of any other  
35 period as determined by the secretary, the secretary shall bill each  
36 reimbursing employer, except the state of Kansas, (i) an amount to be paid  
37 which is equal to the full amount of regular benefits plus  $\frac{1}{2}$  of the amount  
38 of extended benefits paid during such quarter or other prescribed period  
39 that is attributable to service in the employ of such reimbursing employer;  
40 and (ii) for weeks of unemployment beginning after December 31, 1978,  
41 each reimbursing governmental employer and December 21, 2000, for  
42 Indian tribes or tribal units shall be certified an amount to be paid which is  
43 equal to the full amount of regular benefits and extended benefits paid

1 during such quarter or other prescribed period that is attributable to service  
2 in the employ of such reimbursing governmental employer.

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

9 (C) Payments made by any reimbursing employer under the  
10 provisions of this subsection (e)(2) shall not be deducted or deductible, in  
11 whole or in part, from the remuneration of individuals in the employ of  
12 such employer.

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

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

41 (F) Failure of the Indian tribe or any tribal unit thereof to make  
42 required payments, including assessments of interest and penalties, after  
43 all collection activities deemed necessary by the secretary have been



1 exhausted, will cause services performed by such tribe to not be treated as  
2 employment for purposes of subsection (i)(3)(E) of K.S.A. 44-703, and  
3 amendments thereto. If an Indian tribe fails to make payments required  
4 under this section, including assessments of interest and penalties, within  
5 90 days of a final notice of delinquency, the secretary shall immediately  
6 notify the United States internal revenue service and the United States  
7 department of labor. The secretary may determine that any Indian tribe that  
8 loses coverage pursuant to this paragraph may have services performed on  
9 behalf of such tribe again deemed "employment" if all contributions,  
10 payments in lieu of contributions, penalties and interest have been paid.

11 (G) In the discretion of the secretary, any employer who elects to  
12 become liable for payments in lieu of contributions and any nonprofit  
13 organization or group of nonprofit organizations described in section 501  
14 (c)(3) of the federal internal revenue code of 1986 or governmental  
15 reimbursing employer or Indian tribe or tribal unit who is delinquent in  
16 filing reports or in making payments of amounts certified by the secretary  
17 under this section shall be required within 60 days after the effective date  
18 of such election, in the case of an eligible employer so electing, or after the  
19 date of notification to the delinquent employer under this subsection (e)(2)  
20 (G), in the case of a delinquent employer, to execute and file with the  
21 secretary a surety bond, except that the employer may elect, in lieu of a  
22 surety bond, to deposit with the secretary money or securities as approved  
23 by the secretary or to purchase and deliver to an escrow agent a certificate  
24 of deposit to guarantee payment. The amount of the bond, deposit or  
25 escrow agreement required by this subsection (e)(2)(G) shall not exceed  
26 5.4% of the organization's taxable wages paid for employment by the  
27 eligible employer during the four calendar quarters immediately preceding  
28 the effective date of the election or the date of notification, in the case of a  
29 delinquent employer. If the employer did not pay wages in each of such  
30 four calendar quarters, the amount of the bond or deposit shall be as  
31 determined by the secretary. Upon the failure of an employer to comply  
32 with this subsection (e)(2)(G) within the time limits imposed or to  
33 maintain the required bond or deposit, the secretary may terminate the  
34 election of such eligible employer or delinquent employer, as the case may  
35 be, to make payments in lieu of contributions, and such termination shall  
36 be effective for the current 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 available  
39 balance in the state's reimbursing account as of December 31 of each  
40 calendar year; (ii) the historical unemployment experience of all covered  
41 state agencies during prior years; (iii) the estimate of total covered wages  
42 to be paid during the ensuing calendar year; (iv) the applicable fiscal year  
43 rate of the claims processing and auditing fee under K.S.A. 75-3798, and

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

22 (3) *Allocation of benefit costs.* The reimbursing account of each  
23 reimbursing employer shall be charged the full amount of regular benefits  
24 and  $\frac{1}{2}$  of the amount of extended benefits paid except that each  
25 reimbursing governmental employer's account shall be charged the full  
26 amount of regular benefits and extended benefits paid for weeks of  
27 unemployment beginning after December 31, 1978, to individuals whose  
28 entire base period wage credits are from such employer. When benefits  
29 received by an individual are based upon base period wage credits from  
30 more than one employer then the reimbursing employer's or reimbursing  
31 governmental employer's account shall be charged in the same ratio as  
32 base period wage credits from such employer bear to the individual's total  
33 base period wage credits. Notwithstanding any other provision of the  
34 employment security law, no reimbursing employer's or reimbursing  
35 governmental employer's account shall be charged for payments of  
36 extended benefits which are wholly reimbursed to the state by the federal  
37 government.

38 (A) *Proportionate allocation* ~~if, when fewer than all reimbursing base~~  
39 ~~period employers are liable~~. If benefits paid to an individual are based on  
40 wages paid by one or more reimbursing employers and on wages paid by  
41 one or more contributing employers or rated governmental employers, the  
42 amount of benefits payable by each reimbursing employer shall be an  
43 amount which bears the same ratio to the total benefits paid to the

1 individual as the total base period wages paid to the individual by such  
2 employer bears to the total base period wages paid to the individual by all  
3 of such individual's base period employers.

4 (B) *Proportionate allocation* ~~{when all base period employers are~~  
5 ~~reimbursing employers}~~. If benefits paid to an individual are based on  
6 wages paid by two or more reimbursing employers, the amount of benefits  
7 payable by each such employer shall be an amount which bears the same  
8 ratio to the total benefits paid to the individual as the total base period  
9 wages paid to the individual by such employer bear to the total base period  
10 wages paid to the individual by all of such individual's base period  
11 employers.

12 (4) *Group accounts*. Two or more reimbursing employers may file a  
13 joint application to the secretary for the establishment of a group account  
14 for the purpose of sharing the cost of benefits paid that are attributable to  
15 service in the employment of such reimbursing employers. Each such  
16 application shall identify and authorize a group representative to act as the  
17 group's agent for the purposes of this subsection (e)(4). Upon approval of  
18 the application, the secretary shall establish a group account for such  
19 employers effective as of the beginning of the calendar quarter in which  
20 the secretary receives the application and shall notify the group's  
21 representative of the effective date of the account. Such account shall  
22 remain in effect for not less than four years and thereafter such account  
23 shall remain in effect until terminated at the discretion of the secretary or  
24 upon application by the group. Upon establishment of the account, each  
25 member of the group shall be liable for payments in lieu of contributions  
26 with respect to each calendar quarter in the amount that bears the same  
27 ratio to the total benefits paid in such quarter that are attributable to service  
28 performed in the employ of all members of the group as the total wages  
29 paid for service in employment by such member in such quarter bear to the  
30 total wages paid during such quarter for service performed in the employ  
31 of all members of the group. The secretary shall adopt such rules and  
32 regulations as the secretary deems necessary with respect to applications  
33 for establishment, maintenance and termination of group accounts that are  
34 authorized by this subsection (e)(4), for addition of new members to, and  
35 withdrawal of active members from such accounts, and for the  
36 determination of the amounts that are payable under this subsection (e)(4)  
37 by members of the group and the time and manner of such payments.

38 Sec. 7. K.S.A. 2011 Supp. 44-714 is hereby amended to read as  
39 follows: 44-714. (a) *Duties and powers of secretary*. It shall be the duty of  
40 the secretary to administer this act and the secretary shall have power and  
41 authority to adopt, amend or revoke such rules and regulations, to employ  
42 such persons, make such expenditures, require such reports, make such  
43 investigations, and take such other action as the secretary deems necessary

1 or suitable to that end. Such rules and regulations may be adopted,  
2 amended, or revoked by the secretary only after public hearing or  
3 opportunity to be heard thereon. The secretary shall determine the  
4 organization and methods of procedure in accordance with the provisions  
5 of this act, and shall have an official seal which shall be judicially noticed.  
6 The secretary shall make and submit reports for the administration of the  
7 employment security law in the manner prescribed by K.S.A. 75-3044 to  
8 75-3046, inclusive, and 75-3048, and amendments thereto. Whenever the  
9 secretary believes that a change in contribution or benefit rates will  
10 become necessary to protect the solvency of the fund, the secretary shall  
11 promptly so inform the governor and the legislature, and make  
12 recommendations with respect thereto.

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

17 (c) *Personnel.* (1) Subject to other provisions of this act, the secretary  
18 is authorized to appoint, fix the compensation, and prescribe the duties and  
19 powers of such officers, accountants, deputies, attorneys, experts and other  
20 persons as may be necessary in carrying out the provisions of this act. The  
21 secretary shall classify all positions and shall establish salary schedules  
22 and minimum personnel standards for the positions so classified. The  
23 secretary shall provide for the holding of examinations to determine the  
24 qualifications of applicants for the positions so classified, and, except to  
25 temporary appointments not to exceed six months in duration, shall  
26 appoint all personnel on the basis of efficiency and fitness as determined in  
27 such examinations. ~~The secretary shall not appoint or employ any person~~  
28 ~~who is an officer or committee member of any political party organization~~  
29 ~~or who holds or is a candidate for a partisan elective public office.~~ The  
30 secretary shall adopt and enforce fair and reasonable rules and regulations  
31 for appointment, promotions and demotions, based upon ratings of  
32 efficiency and fitness and for terminations for cause. The secretary may  
33 delegate to any such person so appointed such power and authority as the  
34 secretary deems reasonable and proper for the effective administration of  
35 this act, and may in the secretary's discretion bond any person handling  
36 moneys or signing checks under the employment security law.

37 (2) ~~No employee engaged in the administration of the employment~~  
38 ~~security law shall directly or indirectly solicit or receive or be in any~~  
39 ~~manner concerned with soliciting or receiving any assistance, subscription~~  
40 ~~or contribution for any political party or political purpose, other than~~  
41 ~~soliciting and receiving contributions for such person's personal campaign~~  
42 ~~as a candidate for a nonpartisan elective public office, nor shall any~~  
43 ~~employee engaged in the administration of the employment security law~~

1 participate in any form of political activity except as a candidate for a  
2 nonpartisan elective public office, nor shall any employee champion the  
3 cause of any political party or the candidacy of any person other than such  
4 person's own personal candidacy for a nonpartisan elective public office.  
5 Any employee engaged in the administration of the employment security  
6 law who violates these provisions shall be immediately discharged. No  
7 person shall solicit or receive any contribution for any political purpose  
8 from any employee engaged in the administration of the employment  
9 security law and any such action shall be a misdemeanor and shall be  
10 punishable by a fine of not less than \$100 nor more than \$1,000 or by  
11 imprisonment in the county jail for not less than 30 days nor more than six  
12 months, or both. *Employees engaged in the administration of the*  
13 *employment security law are free to engage in political activity to the*  
14 *widest extent consistent with the restrictions imposed by law. Employees*  
15 *may participate in all political activity not specifically restricted by law*  
16 *including candidacy for office in a nonpartisan election and candidacy for*  
17 *political party office.*

18 (3) *Any employee engaged in the administration of the employment*  
19 *security law who violates a restriction on political activity shall be*  
20 *immediately discharged.*

21 (d) *Advisory councils.* The secretary shall appoint a state employment  
22 security advisory council and may appoint local advisory councils,  
23 composed in each case of men and women which shall include an equal  
24 number of employer representatives and employee representatives who  
25 may fairly be regarded as representative because of their vocation,  
26 employment, or affiliations, and of such members representing the general  
27 public as the secretary may designate. Each such member shall serve a  
28 four-year term. On July 1, 1996, the secretary shall designate term lengths  
29 for seated members of the council. One-half of the seated members  
30 representing employers,  $\frac{1}{2}$  of the seated members representing employees  
31 and  $\frac{1}{2}$  of the members representing the general public shall be designated  
32 by the secretary to serve two-year terms. The remaining seated members of  
33 the council shall be designated to serve four-year terms. When the term of  
34 any member expires, the secretary shall appoint the member's successor to  
35 a four-year term. If a position on the council becomes vacant prior to the  
36 expiration of the vacating member's term, the secretary may appoint an  
37 otherwise qualified individual to fulfill the remainder of such unexpired  
38 term. Such councils shall aid the secretary in formulating policies and  
39 discussing problems related to the administration of this act and in  
40 securing impartiality and freedom from political influence in the solution  
41 of such problems. Members of the state employment security advisory  
42 council attending meetings of such council, or attending a subcommittee  
43 meeting thereof authorized by such council, shall be paid amounts

1 provided in subsection (e) of K.S.A. 75-3223, and amendments thereto.  
2 Service on the state employment security advisory council shall not in and  
3 of itself be sufficient to cause any member of the state employment  
4 security advisory council to be classified as a state officer or employee.

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

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

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

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

38 (h) *Subpoenas, service.* Upon request, service of subpoenas shall be  
39 made by the sheriff of a county within that county, by the sheriff's deputy,  
40 by any other person who is not a party and is not less than 18 years of age  
41 or by some person specially appointed for that purpose by the secretary of  
42 labor or the secretary's designee. A person not a party as described above  
43 or a person specially appointed by the secretary or the secretary's designee

1 to serve subpoenas may make service any place in the state. The subpoena  
2 shall be served as follows:

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

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

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

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

36 (B) If service of the subpoena is made by a person appointed by the  
37 secretary or the secretary's designee to make service, or any other person  
38 described in subsection (h) of this section, such person shall make an  
39 affidavit as to the time, place and manner of service thereof in a form  
40 prescribed by the secretary or the secretary's designee.

41 (5) *Time for return.* The officer or other person receiving a subpoena  
42 shall make a return of service promptly and shall send such return to the  
43 secretary or the secretary's designee in any event within 10 days after the



1 service is effected. If the subpoena cannot be served it shall be returned to  
2 the secretary or the secretary's designee within 30 days after the date of  
3 issue with a statement of the reason for the failure to serve the same.

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

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

37 (k) *Reciprocal arrangements.* The secretary shall participate in  
38 making reciprocal arrangements with appropriate and duly authorized  
39 agencies of other states or of the federal government, or both, whereby:

40 (1) Services performed by an individual for a single employing unit  
41 for which services are customarily performed in more than one state shall  
42 be deemed to be services performed entirely within any one of the states  
43 (A) in which any part of such individual's service is performed, (B) in

1 which such individual maintains residence, or (C) in which the employing  
2 unit maintains a place of business, provided there is in effect as to such  
3 services, an election, approved by the agency charged with the  
4 administration of such state's unemployment compensation law, pursuant  
5 to which all the services performed by such individual for such employing  
6 units are deemed to be performed entirely within such state;

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

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

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

36 (5) (A) contributions due under this act with respect to wages for  
37 insured work shall be deemed for the purposes of K.S.A. 44-717, and  
38 amendments thereto, to have been paid to the fund as of the date payment  
39 was made as contributions therefor under another state or federal  
40 unemployment compensation law, but no such arrangement shall be  
41 entered into unless it contains provisions for such reimbursements to the  
42 fund of such contributions and the actual earnings thereon as the secretary  
43 finds will be fair and reasonable as to all affected interests;

1 (B) reimbursements paid from the fund pursuant to subsection (k)(4)  
2 of this section shall be deemed to be benefits for the purpose of K.S.A. 44-  
3 704 and 44-712, and amendments thereto; the secretary is authorized to  
4 make to other state or federal agencies, and to receive from such other  
5 state or federal agencies, reimbursements from or to the fund, in  
6 accordance with arrangements entered into pursuant to the provisions of  
7 this section or any other section of the employment security law;

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

22 (D) to the extent permissible under the laws and constitution of the  
23 United States, the secretary is authorized to enter into or cooperate in  
24 arrangements whereby facilities and services provided under this act and  
25 facilities and services provided under the unemployment compensation  
26 law of any foreign government may be utilized for the taking of claims and  
27 the payment of benefits under the employment security law of this state or  
28 under a similar law of such government.

29 (l) *Records available.* The secretary may furnish the railroad  
30 retirement board, at the expense of such board, such copies of the records  
31 as the railroad retirement board deems necessary for its purposes.

32 (m) *Destruction of records, reproduction and disposition.* The  
33 secretary may provide for the destruction, reproduction, temporary or  
34 permanent retention, and disposition of records, reports and claims in the  
35 secretary's possession pursuant to the administration of the employment  
36 security law provided that prior to any destruction of such records, reports  
37 or claims the secretary shall comply with K.S.A. 75-3501 to 75-3514,  
38 inclusive, and amendments thereto.

39 (n) *Federal cooperation.* The secretary may afford reasonable  
40 cooperation with every agency of the United States charged with  
41 administration of any unemployment insurance law.

42 (o) The secretary is hereby authorized to fix, charge and collect fees  
43 for copies made of public documents, as defined by subsection (c) of

1 K.S.A. 45-204, and amendments thereto, by xerographic, thermographic or  
2 other photocopying or reproduction process, in order to recover all or part  
3 of the actual costs incurred, including any costs incurred in certifying such  
4 copies. All moneys received from fees charged for copies of such  
5 documents shall be remitted to the state treasurer in accordance with the  
6 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of  
7 each such remittance, the state treasurer shall deposit the entire amount in  
8 the state treasury to the credit of the employment security administration  
9 fund. No such fees shall be charged or collected for copies of documents  
10 that are made pursuant to a statute which requires such copies to be  
11 furnished without expense.

12 Sec. 8. K.S.A. 2011 Supp. 44-715 is hereby amended to read as  
13 follows: 44-715. (a) *State employment service.* The secretary of ~~labor~~  
14 *commerce* shall establish and maintain employment offices in such number  
15 and in such places as may be necessary for the proper administration of  
16 this act and for the purposes of performing such duties as are within the  
17 purview of the act of congress entitled "An act to provide for the  
18 establishment of a national employment system and for cooperation with  
19 the states in the promotion of such system, and for other purposes,"  
20 approved June 6, 1933 (48 Stat. 113; U.S.C., title 29, ~~see~~: § 49 (c) as  
21 amended). The secretary of ~~labor~~ *commerce* shall be charged with the duty  
22 of cooperating with any official or agency of the United States having  
23 powers or duties under the provisions of such act of congress, as amended,  
24 and to do and perform all things necessary to secure to this state the  
25 benefits of such act of congress, as amended, in the promotion and  
26 maintenance of a system of employment offices. The provisions of such  
27 act of congress, as amended, are hereby accepted by this state, in  
28 conformity with such act, and this state will observe and comply with the  
29 requirements thereof. The secretary of ~~labor~~ *commerce* is hereby  
30 designated and constituted the agency of this state for the purpose of such  
31 act. The secretary of ~~labor~~ *commerce* shall appoint such officers and  
32 employees as may be necessary for the administration of the act of which  
33 this section is amendatory. Such appointments shall be made in accordance  
34 with regulations prescribed by the director of the United States  
35 employment service. The secretary of ~~labor~~ *commerce* may cooperate with  
36 or enter into agreements with the railroad retirement board with respect to  
37 the establishment, maintenance, and use of free employment service  
38 facilities.

39 (b) *Financing.* All moneys received by this state under such act of  
40 congress, as amended, shall be paid into the employment security  
41 administration fund, and such moneys are hereby made available to the  
42 secretary of ~~labor~~ *commerce* to be expended as provided by this section  
43 and by such act of congress. For the purpose of establishing and

1 maintaining free public employment offices, the secretary is authorized to  
2 enter into agreements with the railroad retirement board, or any other  
3 agency of the United States charged with the administration of an  
4 unemployment compensation law, with any political subdivision of this  
5 state or with any private nonprofit organization, and as a part of any such  
6 agreement the secretary of ~~labor~~ *commerce* may accept moneys, services,  
7 or quarters as a contribution to the employment service account, and the  
8 political subdivisions of this state are hereby authorized to raise and  
9 expend moneys, services, or quarters as contribution to the employment  
10 service account.

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

1 any penalty or interest or portion thereof provided for by this subsection.  
2 Interest amounting to less than \$5 shall be waived by the secretary of labor  
3 and shall not be collected. Penalties and interest collected pursuant to this  
4 subsection shall be paid into the special employment security fund. For all  
5 purposes under this section, amounts assessed as surcharges under  
6 subsection (j) or under K.S.A. 44-710a, and amendments thereto, shall be  
7 considered to be contributions and shall be subject to penalties and interest  
8 imposed under this section and to collection in the manner provided by  
9 this section. For all purposes under this section, amounts assessed under  
10 K.S.A. 44-710a, and amendments thereto, shall be subject to penalties and  
11 interest imposed under this section and to collection in the manner  
12 provided in this section. For purposes of this subsection, a wage report, a  
13 contribution return, a contribution, a payment in lieu of contribution, a  
14 benefit cost payment or an interest assessment made pursuant to K.S.A.  
15 44-710a, and amendments thereto, is deemed to be filed or paid as of the  
16 date it is placed in the United States mail.

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

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

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

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

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

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

29 (c) *Priorities under legal dissolutions or distributions.* In the event of  
30 any distribution of employer's assets pursuant to an order of any court  
31 under the laws of this state, including but not limited to any probate  
32 proceeding, interpleader, receivership, assignment for benefit of creditors,  
33 adjudicated insolvency, composition or similar proceedings, contributions  
34 payments in lieu of contributions or interest assessments made under  
35 K.S.A. 44-710a, and amendments thereto, then or thereafter due shall be  
36 paid in full from the moneys which shall first come into the estate, prior to  
37 all other claims, except claims for wages of not more than \$250 to each  
38 claimant, earned within six months of the commencement of the  
39 proceedings. In the event of an employer's adjudication in bankruptcy,  
40 judicially confirmed extension proposal, or composition, under the federal  
41 bankruptcy act of 1898, as amended, contributions then or thereafter due  
42 shall be entitled to such priority as is provided in that act for taxes due any  
43 state of the United States.

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

18 (e) (1) *Lien.* If any employer or person who is liable to pay  
19 contributions, payments in lieu of contributions, benefit cost payments and  
20 interest assessments made pursuant to K.S.A. 44-710a, and amendments  
21 thereto, neglects or refuses to pay the same after demand, the amount,  
22 including interest and penalty, shall be a lien in favor of the state of  
23 Kansas, secretary of labor, upon all property and rights to property,  
24 whether real or personal, belonging to such employer or person. Such lien  
25 shall not be valid as against any mortgagee, pledgee, purchaser or  
26 judgment creditor until notice thereof has been filed by the secretary of  
27 labor in the office of register of deeds in any county in the state of Kansas,  
28 in which such property is located, and when so filed shall be notice to all  
29 persons claiming an interest in the property of the employer or person  
30 against whom filed. The register of deeds shall enter such notices in the  
31 financing statement record and shall also record the same in full in  
32 miscellaneous record and index the same against the name of the  
33 delinquent employer. The register of deeds shall accept, file, and record  
34 such notice without prepayment of any fee, but lawful fees shall be added  
35 to the amount of such lien and collected when satisfaction is presented for  
36 entry. Such lien shall be satisfied of record upon the presentation of a  
37 certificate of discharge by the state of Kansas, secretary of labor. Nothing  
38 contained in this subsection shall be construed as an invalidation of any  
39 lien or notice filed in the name of the unemployment compensation  
40 division or the employment security division and such liens shall be and  
41 remain in full force and effect until satisfied as provided by this  
42 subsection.

43 (2) *Authority of secretary or authorized representative.* If any



1 employer or person who is liable to pay any contributions, payments in  
2 lieu of contributions, benefit cost payments and interest assessments made  
3 pursuant to K.S.A. 44-710a, and amendments thereto, including interest  
4 and penalty, neglects or refuses to pay the same within 10 days after notice  
5 and demand therefor, the secretary or the secretary's authorized  
6 representative may collect such contributions, payments in lieu of  
7 contributions, benefit cost payments and interest assessments made  
8 pursuant to K.S.A. 44-710a, and amendments thereto, including interest  
9 and penalty, and such further amount as is sufficient to cover the expenses  
10 of the levy, by levy upon all property and rights to property which belong  
11 to the employer or person or which have a lien created thereon by this  
12 subsection for the payment of such contributions, payments in lieu of  
13 contributions, benefit cost payments and interest assessments made  
14 pursuant to K.S.A. 44-710a, and amendments thereto, including interest  
15 and penalty. As used in this subsection, "property" includes all real  
16 property and personal property, whether tangible or intangible, except such  
17 property which is exempt under K.S.A. 60-2301 *et seq.*, and amendments  
18 thereto. Levy may be made upon the accrued salary or wages of any  
19 officer, employee or elected official of any state or local governmental  
20 entity which is subject to K.S.A. 60-723, and amendments thereto, by  
21 serving a notice of levy as provided in subsection (d) of K.S.A. 60-304,  
22 and amendments thereto. If the secretary or the secretary's authorized  
23 representative makes a finding that the collection of the amount of such  
24 contributions, payments in lieu of contributions, benefit cost payments and  
25 interest assessments made pursuant to K.S.A. 44-710a, and amendments  
26 thereto, including interest and penalty, is in jeopardy, notice and demand  
27 for immediate payment of such amount may be made by the secretary or  
28 the secretary's authorized representative and, upon failure or refusal to pay  
29 such amount, immediate collection of such amount by levy shall be lawful  
30 without regard to the 10-day period provided in this subsection.

31 (3) *Seizure and sale of property.* The authority to levy granted under  
32 this subsection includes the power of seizure by any means. A levy shall  
33 extend only to property possessed and obligations existing at the time  
34 thereof. In any case in which the secretary or the secretary's authorized  
35 representative may levy upon property or rights to property, the secretary  
36 or the secretary's authorized representative may seize and sell such  
37 property or rights to property.

38 (4) *Successive seizures.* Whenever any property or right to property  
39 upon which levy has been made under this subsection is not sufficient to  
40 satisfy the claim of the secretary for which levy is made, the secretary or  
41 the secretary's authorized representative may proceed thereafter and as  
42 often as may be necessary, to levy in like manner upon any other property  
43 or rights to property which belongs to the employer or person against

1 whom such claim exists or upon which a lien is created by this subsection  
2 until the amount due from the employer or person, together with all  
3 expenses, is fully paid.

4 (f) *Warrant.* In addition or as an alternative to any other remedy  
5 provided by this section and provided that no appeal or other proceeding  
6 for review permitted by this law shall then be pending and the time for  
7 taking thereof shall have expired, the secretary of labor or an authorized  
8 representative of the secretary may issue a warrant certifying the amount  
9 of contributions, payments in lieu of contributions, benefit cost payments,  
10 interest or penalty, and the name of the employer liable for same after  
11 giving 15 days prior notice. Upon request, service of final notices shall be  
12 made by the sheriff within the sheriff's county, by the sheriff's deputy or  
13 some person specially appointed by the secretary for that purpose, or by  
14 the secretary's designee. A person specially appointed by the secretary or  
15 the secretary's designee to serve final notices may make service any place  
16 in the state. Final notices shall be served as follows:

17 (1) *Individual.* Service upon an individual, other than a minor or  
18 incapacitated person, shall be made by delivering a copy of the final notice  
19 to the individual personally or by leaving a copy at such individual's  
20 dwelling house or usual place of abode with some person of suitable age  
21 and discretion then residing therein, by leaving a copy at the business  
22 establishment of the employer with an officer or employee of the  
23 establishment, or by delivering a copy to an agent authorized by  
24 appointment or by law to receive service of process, but if the agent is one  
25 designated by a statute to receive service, such further notice as the statute  
26 requires shall be given. If service as prescribed above cannot be made with  
27 due diligence, the secretary or the secretary's designee may order service  
28 to be made by leaving a copy of the final notice at the employer's dwelling  
29 house, usual place of abode or business establishment.

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

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

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

5 (B) If service of the notice is made by a person appointed by the  
6 secretary or the secretary's designee to make service, such person shall  
7 make an affidavit as to the time, place and manner of service thereof in a  
8 form prescribed by the secretary or the secretary's designee.

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

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

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

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

1 labor, an authorized representative or attorney for the secretary, as is  
2 provided in the case of other judgments.

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

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

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

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

1 claimant as the result of such determination. For all taxable years  
2 commencing after December 31, 1997, interest at the rate ~~prescribed in~~  
3 ~~K.S.A. 79-2968, and amendments thereto~~ *equal to the rate payable to the*  
4 *state's account in the federal unemployment trust fund, pursuant to section*  
5 *903 of the social security act, 42 U.S.C.A. § 1103, as amended, shall be*  
6 allowed on a contribution or benefit cost payment which the secretary has  
7 determined was erroneously collected pursuant to this section.

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

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

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

33 (j) Any officer, major stockholder or other person who has charge of  
34 the affairs of an employer, which is an employing unit described in section  
35 501(c)(3) of the federal internal revenue code of 1954 or which is any  
36 other corporate organization or association, or any member or manager of  
37 a limited liability company, or any public official, who willfully fails to  
38 pay the amount of contributions, payments in lieu of contributions, benefit  
39 cost payments and interest assessments made pursuant to K.S.A. 44-710a,  
40 and amendments thereto, required to be paid under the employment  
41 security law on the date on which such amount becomes delinquent, shall  
42 be personally liable for the total amount of the contributions, payments in  
43 lieu of contributions, benefit cost payments and interest assessments made

1 pursuant to K.S.A. 44-710a, and amendments thereto, and any penalties  
2 and interest due and unpaid by such employing unit. The secretary or the  
3 secretary's authorized representative may assess such person for the total  
4 amount of contributions, payments in lieu of contributions, benefit cost  
5 payments and interest assessments made pursuant to K.S.A. 44-710a, and  
6 amendments thereto, and any penalties, and interest computed as due and  
7 owing. With respect to such persons and such amounts assessed, the  
8 secretary shall have available all of the collection remedies authorized or  
9 provided by this section.

10 (k) *Electronic filing of wage report and contribution return and*  
11 *electronic payment of contributions, benefit cost payments, reimbursing*  
12 *payments or interest assessments under K.S.A. 44-710a, and amendments*  
13 *thereto.* The following employers or third party administrators shall file all  
14 wage reports and contribution returns and make payment of contributions,  
15 benefit cost payments or reimbursing payments electronically as follows:

16 (1) Wage reports, contribution returns and payments due after June  
17 30, 2008, for those employers with 250 or more employees or third party  
18 administrators with 250 or more client employees at the time such filing or  
19 payment is first due;

20 (2) wage reports, contribution returns and payments due after June  
21 30, 2009, for those employers with 100 or more employees or third party  
22 administrators with 100 or more client employees at the time such filing or  
23 payment is first due; and

24 (3) wage reports, contribution returns, payments and interest  
25 assessments made pursuant to K.S.A. 44-710a, and amendments thereto,  
26 due after June 30, 2010, for those employers with 50 or more employees  
27 and for those third party administrators with 50 or more client employees  
28 at the time such filing or payment is first due; and

29 (4) *wage reports, contribution returns and payments due after June*  
30 *30, 2012, for those employers with 14 or more employees or third-party*  
31 *administrators with 14 or more client employees at the time such filing or*  
32 *payment is first due.*

33 The requirements of this subsection may be waived by the secretary for  
34 an employer if the employer demonstrates a hardship in complying with  
35 this subsection.

36 Sec. 10. K.S.A. 44-702 and K.S.A. 2011 Supp. 44-703, 44-703a, 44-  
37 705, 44-706, 44-706b, 44-709, 44-710, 44-714, 44-715 and 44-717 are  
38 hereby repealed.

39 Sec. 11. This act shall take effect and be in force from and after its  
40 publication in the statute book.