

HOUSE BILL No. 2154

By Committee on Rural Revitalization

2-6

1 AN ACT concerning employment security law; relating to availability of
2 benefits for certain public employees required to work but not receiving
3 wages; establishing the federal and state essential employee assistance
4 fund; amending K.S.A. 2018 Supp. 44-703, 44-704 and 44-705 and
5 repealing the existing sections.
6

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

8 New Section 1. (a) During fiscal years 2019 and 2020, the secretary
9 of labor shall determine the amount of employment security benefits
10 payable to applicants who are deemed unemployed by the secretary
11 pursuant to K.S.A. 44-703(m)(2), and amendments thereto, and seeking
12 benefits under the special circumstances described in K.S.A. 44-705(c)(2),
13 and amendments thereto. The secretary shall certify to the director of
14 accounts and reports the amount of moneys required to pay the
15 employment security benefits, as determined by the secretary, on the 15th
16 day of each month during fiscal years 2019 and 2020, following the
17 enactment of this section. Upon receipt of a certification, the director of
18 accounts and reports shall transfer the amount certified from the state
19 general fund to the federal and state essential employee assistance fund.
20 The secretary shall transmit a copy of each certification to the director of
21 the budget and the director of legislative research.

22 (b) There is hereby established in the state treasury the federal and
23 state essential employee assistance fund, which shall be administered by
24 the secretary of labor. All expenditures from the federal and state essential
25 employee assistance fund shall be for the payment of employment security
26 benefits as provided in subsection (a). All expenditures from the federal
27 and state essential employee assistance fund shall be made in accordance
28 with appropriation acts upon warrants of the director of accounts and
29 reports issued pursuant to vouchers approved by the secretary of labor or
30 the secretary's designee.

31 (c) Benefits paid pursuant to this section shall be subject to the
32 provisions of K.S.A. 44-706(s), and amendments thereto. All moneys
33 received by the secretary pursuant to the provisions of K.S.A. 44-706(s),
34 and amendments thereto, from applicants who have received benefits
35 pursuant to subsection (a) shall be deposited in the state treasury in
36 accordance with the provisions of K.S.A. 75-4215, and amendments

1 thereto, and credited to the state general fund.

2 (d) This section shall be a part of and supplemental to the
3 employment security law.

4 Sec. 2. K.S.A. 2018 Supp. 44-703 is hereby amended to read as
5 follows: 44-703. As used in this act, unless the context clearly requires
6 otherwise:

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

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

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

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

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

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

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

43 (2) "Regular benefits" means benefits payable to an individual under

1 this act or under any other state law, including benefits payable to federal
2 civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85,
3 other than extended benefits.

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

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

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

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

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

1 the work of any agent or employee of an employing unit shall be deemed
2 to be employed by such employing unit for all the purposes of this act,
3 whether such individual was hired or paid directly by such employing unit
4 or by such agent or employee, provided the employing unit had actual or
5 constructive knowledge of the employment.

6 (h) "Employer" means:

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

15 (B) For the purpose of ~~this subsection~~ ~~(h)~~ *paragraph* (1), any
16 individual who is a member of a crew furnished by a crew leader to
17 perform service in agricultural labor for any other person shall be treated
18 as an employee of such crew leader if:

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

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

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

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

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

37 (D) For the purposes of ~~this subsection~~ ~~(h)~~ *paragraph* (1) "crew
38 leader" means an individual who:

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

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

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

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

14 (B) Employment of individuals to perform domestic service or
15 agricultural labor and wages paid for such service or labor shall not be
16 considered in determining whether an employing unit meets the criteria of
17 ~~this subsection (h) paragraph (2)~~.

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

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

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

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

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

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

43 (8) Any employing unit not an employer by reason of any other

1 paragraph of this subsection~~(h)~~, for which within either the current or
2 preceding calendar year services in employment are or were performed
3 with respect to which such employing unit is liable for any federal tax
4 against which credit may be taken for contributions required to be paid
5 into a state unemployment compensation fund; or which, as a condition for
6 approval of this act for full tax credit against the tax imposed by the
7 federal unemployment tax act, is required, pursuant to such act, to be an
8 "employer" under this act.

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

16 (i) "Employment" means:

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

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

20 (B) any individual who, under the usual common law rules applicable
21 in determining the employer-employee relationship, has the status of an
22 employee subject to the provisions of subsection (i)(3)(D); or

23 (C) any individual other than an individual who is an employee under
24 subsection (i)(1)(A) or subsection (i)(1)(B)~~above~~ who performs services
25 for remuneration for any person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (D) Services performed by an individual for wages or under any
38 contract of hire shall be deemed to be employment subject to this act if the
39 business for which activities of the individual are performed retains not
40 only the right to control the end result of the activities performed, but the
41 manner and means by which the end result is accomplished.

42 (E) Service performed by an individual in the employ of this state or
43 any instrumentality thereof, any political subdivision of this state or any

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

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

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

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

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

27 (a) The employer is an individual who is a resident of this state;

28 (b) the employer is a corporation which is organized under the laws
29 of this state; or

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

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

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

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

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

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

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

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

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

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

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

24 (i) As an elected official;

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

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

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

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

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

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

42 (D) service performed in the employ of the United States government
43 or an instrumentality of the United States exempt under the constitution of

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

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

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

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

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

1 such individual. This ~~subsection (i)(4)(H)~~ *subparagraph* shall not be
2 applicable with respect to services with respect to which unemployment
3 compensation is payable under an unemployment compensation system
4 established by an act of congress;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (ii) such individual was regularly employed, as determined under

1 subparagraph (T)(i), by such employer in the performance of such service
2 during the preceding calendar quarter.

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

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

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

12 (i) Such person:

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

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

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

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

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

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

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

39 (Y) service performed by an owner-operator of a motor vehicle that is
40 leased or contracted to a licensed motor carrier with the services of a
41 driver and is not treated under the terms of the lease agreement or contract
42 with the licensed motor carrier as an employee for purposes of the federal
43 insurance contribution act, 26 U.S.C. § 3101 et seq., the federal social

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

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

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

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

30 (m) (1) "Unemployment." An individual shall be deemed
31 "unemployed" with respect to any week during which such individual
32 performs no services and with respect to which no wages are payable to
33 such individual, or with respect to any week of less than full-time work if
34 the wages payable to such individual with respect to such week are less
35 than such individual's weekly benefit amount.

36 (2) *An individual may be deemed "unemployed" by the secretary with*
37 *respect to any week during which the individual is required to perform*
38 *services without receiving pay by a federal or state public employer,*
39 *whether or not wages will be paid to the individual for the services*
40 *performed at some future date, as the result of a government shutdown, a*
41 *state or federal lapse in appropriations or lack of funding. The secretary*
42 *may adopt rules and regulations to implement this paragraph.*

43 (n) "Employment security administration fund" means the fund

1 established by this act, from which administrative expenses under this act
2 shall be paid.

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

26 (1) That part of the remuneration which has been paid in a calendar
27 year to an individual by an employer or such employer's predecessor in
28 excess of \$3,000 for all calendar years prior to 1972, in excess of \$4,200
29 for the calendar years 1972 to 1977, inclusive, in excess of \$6,000 for
30 calendar years 1978 to 1982, inclusive, in excess of \$7,000 for the
31 calendar year 1983, in excess of \$8,000 for the calendar years 1984 to
32 2014, inclusive, and in excess of \$12,000 with respect to employment
33 during calendar year 2015, and in excess of \$14,000 with respect to all
34 calendar years thereafter, except that if the definition of the term "wages"
35 as contained in the federal unemployment tax act is amended to include
36 remuneration paid to an individual by an employer under the federal act in
37 excess of \$8,000 for the calendar years 1984-2014, inclusive, and in
38 excess of \$12,000 with respect to employment during calendar year 2015,
39 and in excess of \$14,000 with respect to all calendar years thereafter,
40 wages shall include remuneration paid in a calendar year to an individual
41 by an employer subject to this act or such employer's predecessor with
42 respect to employment during any calendar year up to an amount equal to
43 the dollar limitation specified in the federal unemployment tax act. For the

1 purposes of this ~~subsection (e)(1)~~ *paragraph*, the term "employment" shall
2 include service constituting employment under any employment security
3 law of another state or of the federal government;

4 (2) the amount of any payment (including any amount paid by an
5 employing unit for insurance or annuities, or into a fund, to provide for
6 any such payment) made to, or on behalf of, an employee or any of such
7 employee's dependents under a plan or system established by an employer
8 which makes provisions for employees generally, for a class or classes of
9 employees or for such employees or a class or classes of employees and
10 their dependents, on account of: (A) Sickness or accident disability, except
11 in the case of any payment made to an employee or such employee's
12 dependents, this subparagraph shall exclude from the term "wages" only
13 payments which are received under a workers compensation law. Any third
14 party which makes a payment included as wages by reason of this
15 subparagraph ~~(2)(A)~~ shall be treated as the employer with respect to such
16 wages; or (B) medical and hospitalization expenses in connection with
17 sickness or accident disability; or (C) death;

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

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

25 (A) From or to a trust described in section 401(a) of the federal
26 internal revenue code of 1986 which is exempt from tax under section
27 501(a) of the federal internal revenue code of 1986 at the time of such
28 payment unless such payment is made to an employee of the trust as
29 remuneration for services rendered as such employee and not as a
30 beneficiary of the trust;

31 (B) under or to an annuity plan which, at the time of such payment, is
32 a plan described in section 403(a) of the federal internal revenue code of
33 1986;

34 (C) under a simplified employee pension as defined in section 408(k)
35 (1) of the federal internal revenue code of 1986, other than any
36 contribution described in section 408(k)(6) of the federal internal revenue
37 code of 1986;

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

42 (E) under or to an exempt governmental deferred compensation plan
43 as defined in section 3121(v)(3) of the federal internal revenue code of

1 1986;

2 (F) to supplement pension benefits under a plan or trust described in
3 any of the foregoing provisions of this subparagraph to take into account
4 some portion or all of the increase in the cost of living, as determined by
5 the secretary of labor, since retirement but only if such supplemental
6 payments are under a plan which is treated as a welfare plan under section
7 3(2)(B)(ii) of the federal employee retirement income security act of 1974;
8 or

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

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

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

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

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

24 (A) Upon or after the termination of an employee's employment
25 relationship because of: (i) Death; or (ii) retirement for disability; and

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

31 (9) remuneration for agricultural labor paid in any medium other than
32 cash;

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

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

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

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

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

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

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

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

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

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

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

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

41 (t) "American vessel" or "American aircraft" means any vessel or
42 aircraft documented or numbered or otherwise registered under the laws of
43 the United States; and any vessel or aircraft which is neither documented

1 or numbered or otherwise registered under the laws of the United States
2 nor documented under the laws of any foreign country, if its crew performs
3 service solely for one or more citizens or residents of the United States or
4 corporations organized under the laws of the United States or of any state.

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

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

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

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

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

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

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

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

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

43 (B) In the employ of the owner or tenant or other operator of a farm,

1 in connection with the operating, management, conservation,
2 improvement, or maintenance of such farm and its tools and equipment, or
3 in salvaging timber or clearing land of brush and other debris left by a
4 hurricane, if the major part of such service is performed on a farm.

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

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

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

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

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

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

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

40 (4) For the purpose of this section, if an employing unit does not
41 maintain sufficient records to separate agricultural labor from other
42 employment, all services performed during any pay period by an
43 individual for the person employing such individual shall be deemed to be

1 agricultural labor if services performed during $\frac{1}{2}$ or more of such pay
2 period constitute agricultural labor; but if the services performed during
3 more than $\frac{1}{2}$ of any such pay period by an individual for the person
4 employing such individual do not constitute agricultural labor, then none
5 of the services of such individual for such period shall be deemed to be
6 agricultural labor. As used in this subsection ~~(w)~~, the term "pay period"
7 means a period of not more than 31 consecutive days for which a payment
8 of remuneration is ordinarily made to the individual by the person
9 employing such individual.

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

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

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

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

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

31 (cc) "Benefit cost payments" means payments made to the
32 employment security fund by a governmental entity electing to become a
33 rated governmental employer.

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

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

43 (ff) "Lessor employing unit" means any independently established

1 business entity which engages in the business of providing leased
2 employees to a client lessee.

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

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

10 Sec. 3. K.S.A. 2018 Supp. 44-704 is hereby amended to read as
11 follows: 44-704. (a) *Payment of benefits*. All benefits provided herein shall
12 be payable from the fund, *except as provided in section 1, and*
13 *amendments thereto*. All benefits shall be paid through the secretary of
14 labor, in accordance with such rules and regulations as the secretary may
15 adopt. Benefits based on service in employment defined in K.S.A. 44-
16 703(i)(3)(E) and (i)(3)(F), and amendments thereto, shall be payable in the
17 same amount, on the same terms and subject to the same conditions as
18 compensation payable on the basis of other service subject to this act
19 except as provided in K.S.A. 44-705(e) and ~~K.S.A. 44-711(e)(2)~~, and
20 amendments thereto.

21 (b) *Determined weekly benefit amount*. An individual's determined
22 weekly benefit amount shall be an amount equal to 4.25% of the
23 individual's total wages for insured work paid during that calendar quarter
24 of the individual's base period in which such total wages were highest,
25 subject to the following limitations:

26 (1) If an individual's determined weekly benefit amount is less than
27 the minimum weekly benefit amount, it shall be raised to such minimum
28 weekly benefit amount;

29 (2) if the individual's determined weekly benefit amount is more than
30 the maximum weekly benefit amount, it shall be reduced to the maximum
31 weekly benefit amount; and

32 (3) if the individual's determined weekly benefit amount is not a
33 multiple of \$1, it shall be reduced to the next lower multiple of \$1.

34 (c) *Maximum weekly benefit amount*. (1) For initial claims effective
35 prior to July 1, 2015, the maximum weekly benefit amount shall be
36 determined as follows: On July 1 of each year, the secretary shall
37 determine the maximum weekly benefit amount by computing 60% of the
38 average weekly wages paid to employees in insured work during the
39 previous calendar year and shall prior to that date announce the maximum
40 weekly benefit amount so determined, by publication in the Kansas
41 register. Such computation shall be made by dividing the gross wages
42 reported as paid for insured work during the previous calendar year by the
43 product of the average of mid-month employment during such calendar

1 year multiplied by 52. The maximum weekly benefit amount so
2 determined and announced for the twelve-month period shall apply only to
3 those claims filed in that period qualifying for maximum payment under
4 the foregoing formula. All claims qualifying for payment at the maximum
5 weekly benefit amount shall be paid at the maximum weekly benefit
6 amount in effect when the benefit year to which the claim relates was first
7 established, notwithstanding a change in the maximum benefit amount for
8 a subsequent twelve-month period. If the computed maximum weekly
9 benefit amount is not a multiple of \$1, then the computed maximum
10 weekly benefit amount shall be reduced to the next lower multiple of \$1.

11 (2) For initial claims effective on or after July 1, 2015, the maximum
12 weekly benefit amount shall be determined as follows: On July 1 of each
13 year, the secretary shall determine the maximum weekly benefit amount by
14 computing 55% of the average weekly wages paid to employees in insured
15 work during the previous calendar year, but not to be less than \$474, and
16 shall, prior to that date, announce the maximum weekly benefit amount so
17 determined by publication in the Kansas register. Such computation shall
18 be made by dividing the gross wages reported as paid for insured work
19 during the previous calendar year by the product of the average of mid-
20 month employment during such calendar year multiplied by 52. The
21 maximum weekly benefit amount so determined and announced for the
22 12-month period shall apply only to those claims filed in that period
23 qualifying for maximum payment under the foregoing formula. All claims
24 qualifying for payment at the maximum weekly benefit amount shall be
25 paid at the maximum weekly benefit amount in effect when the benefit
26 year to which the claim relates was first established, notwithstanding a
27 change in the maximum benefit amount for a subsequent 12-month period.
28 If the computed maximum weekly benefit amount is not a multiple of \$1,
29 then the computed maximum weekly benefit amount shall be reduced to
30 the next lower multiple of \$1.

31 (d) *Minimum weekly benefit amount.* The minimum weekly benefit
32 amount payable to any individual shall be 25% of the maximum weekly
33 benefit amount effective as of the beginning of the individual's benefit
34 year. If the minimum weekly benefit amount is not a multiple of \$1 it shall
35 be reduced to the next lower multiple of \$1. The minimum weekly benefit
36 amount shall apply through the benefit year, notwithstanding a change in
37 the minimum weekly benefit amount.

38 (e) All claims qualifying for payment at the maximum weekly benefit
39 amount shall be paid at the maximum weekly benefit amount in effect
40 when the benefit year to which the claim relates was first established,
41 notwithstanding a subsequent change in the maximum weekly benefit
42 amount.

43 (f) *Weekly benefit payable.* Each eligible individual who is

1 unemployed with respect to any week, except as to final payment, shall be
2 paid with respect to such week a benefit in an amount equal to such
3 individual's determined weekly benefit amount, less that part of the wage,
4 if any, payable to such individual with respect to such week which is in
5 excess of the amount which is equal to 25% of such individual's
6 determined weekly benefit amount and if the resulting amount is not a
7 multiple of \$1, it shall be reduced to the next lower multiple of \$1.

8 (1) For the purposes of this section, remuneration received under the
9 following circumstances shall be construed as wages:

10 (A) Vacation or holiday pay that was attributable to a week that the
11 individual claimed benefits; and

12 (B) severance pay, if paid as scheduled, and all other employment
13 benefits within the employer's control, as defined in subsection (f)(3), if
14 continued as though the severance had not occurred, except as set out in
15 subsection (f)(2)(C).

16 (2) For the purposes of this section, remuneration received under the
17 following circumstances shall not be construed as wages:

18 (A) Remuneration received for services performed on a public
19 assistance work project;

20 (B) severance pay, in lieu of notice, under the provisions of public
21 law 100-379, the federal worker adjustment and retraining notification act,
22 (29 U.S.C.A. §§ 2101 through 2109);

23 (C) all other severance pay, separation pay, bonuses, wages in lieu of
24 notice or remuneration of a similar nature that is payable after the
25 severance of the employment relationship, except as set out in subsection
26 (f)(1)(B); and

27 (D) moneys received as federal social security payments.

28 (3) For the purposes of this subsection—~~(f)~~, "employment benefits
29 within the employer's control" means benefits offered by the employer to
30 employees which are employee benefit plans as defined by section 3 of the
31 federal employee retirement income security act of 1974, as amended, (29
32 U.S.C. § 1002) and which the employer has the option to continue to
33 provide to the employee after the last day that the employee worked for
34 that employer.

35 (g) *Duration of benefits.* Any otherwise eligible individual shall be
36 entitled during any benefit year to a total amount of benefits equal to
37 whichever is the lesser of 26 times such individual's weekly benefit
38 amount, or $\frac{1}{3}$ of such individual's wages for insured work paid during such
39 individual's base period. Such total amount of benefits, if not a multiple of
40 \$1, shall be reduced to the next lower multiple of \$1.

41 (h) For the purposes of this section, wages shall be counted as "wages
42 for insured work" for benefit purposes with respect to any benefit year
43 only if such benefit year begins subsequent to the date on which the

1 employing unit by whom such wages were paid has satisfied the
2 conditions of K.S.A. 44-703(h), and amendments thereto, with respect to
3 becoming an employer.

4 (i) Notwithstanding any other provisions of this section to the
5 contrary, any benefit otherwise payable for any week shall be reduced by
6 the amount of any separation, termination, severance or other similar
7 payment paid to a claimant at the time of or after the claimant's separation
8 from employment during the benefit year.

9 (1) If any payment pursuant to this subsection is paid with respect to
10 a month, then the amount deemed to be received with respect to any week
11 during such month shall be computed by multiplying such monthly
12 amount by 12 and dividing the product by 52. If there is no designation of
13 the period with respect to which payments to an individual are made under
14 this section, then an amount equal to such individual's normal weekly
15 wage shall be attributed to and deemed paid with respect to the first and
16 each succeeding week following payment of the separation pay to the
17 individual until such amount so paid is exhausted.

18 (2) If benefits for any week, when reduced as provided in this
19 subsection, result in an amount not a multiple of one dollar, such benefits
20 shall be rounded to the next lower multiple of one dollar.

21 (3) Notwithstanding the reemployment provisions of K.S.A. 44-
22 705(e), and amendments thereto, any individual whose benefit amount is
23 completely reduced under this subsection for 52 or more weeks shall, upon
24 exhaustion of the separation pay, be entitled to a new benefit year based
25 upon entitlement from the base period of the claim that was reduced.

26 (j) For weeks commencing on and after January 1, 2014, if at the
27 beginning of the benefit year, the three month seasonally adjusted average
28 unemployment rate for the state of Kansas is: (1) Less than 4.5%, a
29 claimant shall be eligible for a maximum of 16 weeks of benefits; (2) at
30 least 4.5% but less ~~that~~ than 6%, a claimant shall be eligible for a
31 maximum of 20 weeks of benefits; or (3) at least 6%, a claimant shall be
32 eligible for a maximum of 26 weeks of benefits.

33 Sec. 4. K.S.A. 2018 Supp. 44-705 is hereby amended to read as
34 follows: 44-705. Except as provided by K.S.A. 44-757, and amendments
35 thereto, an unemployed individual shall be eligible to receive benefits with
36 respect to any week only if the secretary, or a person or persons designated
37 by the secretary, finds that:

38 (a) The claimant has registered for work at and thereafter continued
39 to report at an employment office in accordance with rules and regulations
40 adopted by the secretary, except that, subject to the provisions of
41 ~~subsection (a) of~~ K.S.A. 44-704(a), and amendments thereto, the secretary
42 may adopt rules and regulations which waive or alter either or both of the
43 requirements of this subsection. *The secretary may adopt rules and*

1 *regulations that waive or alter either or both of the requirements of this*
2 *subsection to address special circumstances as described in subsection (c)*
3 *(2).*

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

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

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

22 (2) *The secretary may adopt rules and regulations that waive or alter*
23 *the requirements of this subsection to address special circumstances where*
24 *an individual is required to work without receiving pay by a federal or*
25 *state public employer, whether or not wages will be paid to the individual*
26 *for the work performed at a future date, as the result of a government*
27 *shutdown, state or federal lapse in appropriations or lack of funding.*

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(k)(4), and amendments thereto, which period of one
33 week, in either case, occurs within the benefit year which includes the
34 week for which the claimant is claiming benefits. No week shall be
35 counted as a week of unemployment for the purposes of this subsection:

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 subparagraph 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. 5. K.S.A. 2018 Supp. 44-703, 44-704 and 44-705 are hereby
41 repealed.

42 Sec. 6. This act shall take effect and be in force from and after its
43 publication in the Kansas register.