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MEMORANDUM

To: Chairman Olson and Senate Committee on Commerce
From: Charles Reimer, Assistant Revisor of Statutes
Date: 3/15/2021
Subject: SUB HB 2196

OUTLINE OF SUB for HB 2196

I. Unemployment Compensation Modernization and Improvement Council

A. Membership and Duties of the Council, Section 1, pages 1-5.

1. Membership and Related Provisions. Pages 1-2.

Original Bill

There are 11 members appointed by the governor to serve four year terms. Four are selected by the workers compensation employment security boards nominating committee to be appointed by the governor, two to be representative of employers and two to be representative of employees. Chairpersons of the standing committees of the Senate and House that customarily address employment security law are also members. The Senate president and speaker of the House may each appoint two legislator members, one of whom is a member of the majority party and one a member of the minority party. The secretary of labor or the secretary's designee is also a member. Pages 1-2.

As Amended by House Committee of the Whole

Council consists of 13 members. Members are not selected by the workers compensation and employment security boards nominating committee and language pertaining to the selection of such members and their terms was removed. Instead, the governor, speaker of the house and

president of the senate each select one member to represent employers and one member to represent employees. The chairpersons of the senate and house committees to which legislation pertaining to employment security law is customarily referred remain members as before. Two members of the senate and two members of the house, one each from the majority and minority of each chamber, respectively, remain members as previously, except that the members from the minority party from each chamber are appointed by the minority leader of the respective chamber, not the speaker of the house and the president of the senate. The secretary of labor or the secretary's designee continues to be a member. Pages 1-2.

Appointment and First Meeting--As Amended by House Committee of the Whole

The members are to be appointed and the council is to hold its first meeting within 30 days of the effective date of the act. Page 2, lines 38-40

Terms--As Amended by the House Commerce Committee

Originally, the bill provided that legislative members were to serve during the legislative session in which they were appointed and other members had a term of four years. The House Commerce Committee amended this to provide that other members would serve for three years or until the council was dissolved, whichever was shorter. Vacancies of such members would be filled in the same manner as the original appointment only for the unexpired portion of the term. Page 2, lines 41-43; page 3, lines 1.

Sunset provision for Council—As Amended by the House Commerce Committee

The council would be dissolved after three years from the date of the council's first meeting. Page 3, lines 2-5.

Compensation for Members

Members of the council may receive compensation and expenses pursuant to rules and regulations to be adopted by the council, to be paid from the employment security administration fund or any account of the state general fund of the department of labor as designated by the secretary. Page 3, lines 6-12.

First Meeting and Chairperson

The original bill provided that the first meeting was to be called by the chairpersons of the standing committees of the Senate and House. The council was to annually organize itself and select a chairperson. Six members constituted a quorum and action by the council required the vote of at least six members. The council was to meet as often as necessary to perform its duties.

Page 3. *These provisions were deleted by the House Committee of the Whole.*

As Amended by the Committee of the Whole

The chairperson of the house committee on commerce, labor and economic development serves as the chairperson of the council for the first two years. The chairperson of the senate committee on commerce serves as the chairperson for the next two years. Thereafter, the office of chairperson alternates between the chambers. Page 3.

2. Duties

The council's function is to examine and recommend changes to the UI system and applicant claim process. Pages 3, lines 33 through page 4. The scope of the council's review includes technological infrastructure, system improvements and upgrades, methods of data sharing across agency systems to enhance UI system efficiency, system integrity including forms of system security and identity verification and protection and synergizing an applicant or employer's experience with respect to the department's programs.

3. *Audit of Department of Labor by Council*

The House Commerce Committee added an amendment that provides for an audit of the department of labor conducted by the new council to examine the effect on the unemployment insurance system of fraudulent claims and the department's response during the period of March 15, 2020 through March 31, 2022. The audit is to be performed by an independent firm. The scope of the audit is to include the amounts and nature of the fraud and improper payments, the possibility of recovery of any amounts and an investigation of the potential that any data breach occurred. A preliminary report is to be completed by May 1, 2022 and a final report by September 1, 2022. The preliminary report is to include an evaluation, with specified components, of the department's systems with access to the payment and processing of claims.

The council may discuss confidential portions of the audit in a confidential executive session. Page 4, lines 19-43 and page 5, lines 1-3.

4. The council is specifically prohibited from examining the solvency of the UI fund or changes that would increase or reduce benefits. Page 5, lines 4-7.

5. The secretary of labor shall appoint an executive secretary for the council. The executive secretary has specified administrative duties and is responsible for handling confidential documents and conducting research and making presentations or reports to the council. Page 5, lines 8-24.

6. The council is limited with respect to access to confidential information. Page 5, lines 25-28.

7. The council may request testimony from the secretary, department employees or private sector employers and employees. Page 5, lines 28-33.

8. The original bill provided that the council was to issue an initial report within six months of first meeting. *This deadline was shortened by the House Commerce Committee to 90 days.* The contents of the report are specified to at least include a description of the claim application process and planned improvements to that process. Page 5, lines 34-39.

9. The original bill granted the council authority to adopt rules and regulations. *This was amended by the House Commerce Committee to provide that the council may suggest rules and regulations for adoption by the secretary.* Page 7, lines 2-3.

B. Duties of the Secretary of Labor regarding the Council

1. The secretary will post testimony and other material discussed by the council on a website. Page 5, lines 40-42.

2. The secretary is to notify the council chair of any unauthorized access to department records within five days of discovery. Page 5, line 43; page 6, lines 1-5. The secretary also shall notify the council of any disruption in the benefit application process. Page 6, lines 6-11.

3. The secretary's duties with the assistance of the council:

a. Develop a strategic written staffing plan to be implemented when claims substantially increase or decrease. Page 6, lines 14-17. The plan is to include specifics about use of department employees, employees from other state agencies and employees from private entities. Page 6, lines 26-32. The plan is to be developed within six months of the first meeting of the council and provided to the senate president; speaker of the house and the governor. The secretary is to review the plan annually and provide the most recent plan to the council, senate president, speaker of the house and the governor. Page 6, lines 33-42.

b. Create and maintain at a single place on the secretary's website, a list of all points of contact for use for inquiries by applicants and employers. Page 6, lines 18-21.

c. Develop by rules and regulations a process for the submission of complaints about service by applicants or employers. Page 6, lines 22-25.

II. Upgrade of Department's IT System, Section 2, pages 7-9.

A. The intent of the legislature is to continually develop and upgrade the system. Page 7, lines 6-10.

B. A new system is to be developed and implemented by the department by December 31, 2022. Page 7, lines 15-19.

1. Components of the new IT System are specified to include, but not be limited to, certain listed components as defined by the council in consultation with the secretary. Page 7, lines 20-36. These include components such as component-centric architecture, configurability, reporting,

adaptable and scalable platform, version and change control, data migration or data architecture and legacy integration among others. *Language providing the list was not exclusive was added by the House Commerce Committee.*

2. Features and benefits of the new system are specified to include, but not be limited to, certain listed features and benefits as defined by the council in consultation with the secretary. Page 7 lines 37-43; page 8, lines 1-20. These include features and benefits such as benefit claims and payment management, overpayment and collections management, fraud prevention, integrated employer contribution management functions, appeals filing, tracking and management, correspondence and notices, integrated workflow and self-service features, among others. *Language providing the list was not exclusive was added by the House Commerce Committee. This list also includes automated work opportunity tax credit eligibility determinations, added by the House Commerce Committee, and subsequently technically corrected simply as to number designation by the House Committee of the Whole.*

3. The secretary is to implement program integrity elements and follow the guidance provided by the federal department of labor and the national association of state workforce agencies within 60 days of guidance being issued. Page 8, lines 21-24.

4. Specific program integrity elements to be implemented by the secretary are listed. These program integrity elements include social security number cross-matching, checking of new hire records, verification of citizenship status, checking of prison databases for incarceration, use of various systems to detect duplicate claims filed in other states and identification of internet addresses linked to multiple or international claims, and use of data mining and data analytics to prevent fraud. Page 8, line 25 through page 9, line 7. *The House Committee of the Whole added that the listed program integrity elements were not an exclusive list, adding the “including, but not limited to” language at page 8, line 26.*

C. Secretary is required to cross check new and active claims against the cross-check programs that are required to be implemented. Page 9, lines 8-13.

D. The secretary may execute memorandums of understanding with other agencies for information sharing. Page 9, lines 14-18.

E. The original bill provided that the secretary shall adopt rules and regulations to implement the act. *The House Commerce Committee amended this provision to provide the rules and regulations were for the purpose of carrying out the provisions of the IT modernization section and were to be adopted within 12 months of the effective date of the act. A duplicate reference to the 12-month deadline was removed by the House Committee of the Whole.* Page 9, lines 17-21.

F. The secretary is to provide an annual status update and progress report on IT system modernization to the council and the legislative coordinating council. Page 9, lines 22-25.

III. Tax Information for Applicants, Section 3, page 9.

The secretary is to include tax information about the tax consequences of benefits on a claimant's initial notice of determination. This is to include information about tax withholding. Page 9, line 28-36.

IV. Public Posting of Trust Fund Computations and Data. Section 4, page 9-10.

A. The secretary is required to post trust fund data and computations on a website maintained by the secretary, to include data for each of the most recent 20 fiscal years and on an ongoing basis. The original bill provided that prior year data was to be posted within 90 days of the effective date of the act and that data was to be posted for each fiscal year within 90 days of the end of the year. Page 9, lines 42-43; page 10, lines 1-5. *The House Commerce Committee extended the deadline to 120 days instead of 90.*

B. The computations and data to be posted are specified. Page 10, lines 6-24. This includes distributions of taxable wages by experience factor for each fiscal year including certain specified information such as rate groups, account information and taxable wage information and an average high cost benefit rate information summary.

V. *My Reemployment Plan, Section 5, pages 10-12. Amendment by House Commerce Committee*

This new section 5 added by the House Commerce Committee establishes a plan and procedures, to be jointly implemented by the department of labor and the department of commerce, for providing enhanced reemployment services and job training to claimants, including matching of claimants with employers who have available job positions. The program requires a claimant to provide a resume or work history and a job search plan by the fourth week of benefits, with assistance from the department when requested. The secretary of labor provides oversight and monitors the interview process. Claimants may also be provided with job training or retraining through department of commerce or other programs in lieu of meeting job search requirements. The secretary of labor is to obtain information from employers or claimants regarding interview outcomes and there are requirements for program participation by claimants, including minimum hours of participation. Claimants may be denied benefits for a failure to meet program requirements or to accept an offered position without good cause.

The secretary of labor is required to provide an annual status update and progress report to the house committee on commerce, labor and economic development and the senate committee on commerce during the first month of the 2022 regular legislative session and during the first month of each regular legislative session thereafter.

Pages 10-12.

VI. Transfer of Federal Coronavirus Funds to Employment Security Trust Fund, Section 6, pages 12-13. Amendment by House Commerce Committee and modified by House Committee of the Whole.

This new section from the House Commerce Committee provides for a transfer in the amount of \$450 million to be made to the employment security trust fund on or before July 15, 2021, from federal moneys appropriated to Kansas for coronavirus relief. Subsequently amended by the House Committee of the Whole to allow for a transfer of the maximum amount available if less than \$450,000. Section 6 at pages 12-13.

If the full transfer amount is not made, all contributing employers are to pay the contribution rate as determined by the standard rate schedule for the 2022 year. Page 83, lines 39-43.

In addition, the amendment made the prior provisions in the bill for reimbursement of the employment security trust fund from transfers from the state general fund based on determinations of amounts of fraudulent and improper payments by the secretary, discussed at number XV of this summary, effective only if the full transfer amount did not occur. See Section 15, pages 93, lines 39-43 to page 95.

VII. Report by Secretary to House Commerce Committee on the status and projected status of the employment security trust fund, unemployment benefit claims and employer contributions to the employment security trust fund. Section 7, page 13. Amendment by House Commerce Committee.

This new section added by the House Commerce Committee requires the secretary to report to the House and Senate Commerce committees the status and projected status of the employment security trust fund balance, unemployment benefit claims and employer contributions. The reports are to be made on or before January 31 of each year until the provision sunsets after the 2024 session.

VIII. Duration of Disqualification for Fraud, Section 8, page 22, line 43, page 23, lines 1-4. Amendment by House Committee of the Whole.

This amendment adding a new amendatory section by the House Committee of the Whole changed the disqualification period for benefits that applies in the event a claimant has committed fraud. Current law provides for a five-year disqualification. The amendment provides for a two-year disqualification for the first occurrence or the lifetime of the individual for a second occurrence.

IX. Change to Duration of Benefits. Section 10, page 52, lines 18, 32-38.

The employment rate triggers for determining the duration of benefits from a maximum of 26 weeks to a minimum of 16 weeks are changed for weeks commencing on and after April 1, 2021. The new triggers take effect after the current 26 week benefit period for claims that is independent of any unemployment rate trigger expires.

X. Notification of employment status of claimant by secretary of labor to secretary for children and families, Section 10, page 52, lines 39-43; page 53, lines 1-3. Amendment by House Commerce Committee.

This amendment by the House Commerce Committee provides that the secretary of labor is to notify the department for children and families when a claimant becomes employed, so the claimant's continued eligibility for state or federal benefits provided or facilitated by the department for children and families may be checked. The department of labor and the department for children and families are directed to enter into a memorandum of understanding to provide for the transfer of information. Page 52, lines 39-43 and page 53, lines 1-3.

XI. Development and implementation by secretary of procedures regarding refusals by claimants to return to suitable work or accept an offer of suitable work without good cause. Section 11, page 53, lines 40-43 to page 54, lines 1-39. Amendment by House Commerce Committee.

This amendment by the House Commerce Committee requires the secretary to provide a readily accessible means for employers to report a claimant who refuses to return to work or a refusal of a job offer. The secretary is to develop a process and guidelines to review such employment refusals and determining whether the claimant should be denied further benefits on the basis of a failure to meet work search requirements. Within 10 days of receipt of a notice from an employer, the secretary is to provide a notice to the claimant including an explanation of the law regarding the duty to return to work and accept suitable employment, what constitutes suitable employment, that the claimant may be or has been denied benefits due to a refusal to return to work or accept employment and appeal rights if applicable. Section 11, page 53, lines 40-43 to page 54, lines 1-39.

XII. Expansion of Employment Security Board of Review. Section 12, page 58-61. Amendment by House Commerce Committee

This amendment by the House Commerce Committee to K.S.A. 44-709 expanded the board from three to six members who could sit in two panels of three members each to hear cases. Only four of the six members or two members of each panel could be of the same party. The board or a panel could deny a request for an in-person hearing if the requesting party did not show good cause for the request. These provisions were intended to permit the board to address appeals more rapidly. The expanded board would sunset on June 30, 2024. Pages 58-61.

XIII. Protections for Employers from the Effects of Fraudulent Claims

The provisions providing relief to employers include changes in K.S.A. 44-710 and 44-710b, Sections 13 and 15 to:

A. The original bill prevented employer accounts from being charged for any benefits paid beginning on March 15, 2020 through December 31, 2021. Originally at page 36, lines 21-23. *This provision was removed by the House Commerce Committee. The remaining provisions associated with the deleted paragraph holding employers harmless for fraud or improper payments are at page 64 of the Substitute Bill, see below.*

The amendment also expanded the coverage of the employer protection provisions to include protections against charges for improper payments in addition to fraud. ("Improper payments" are defined at K.S.A. 44-710b(e)(2), at page 94, lines 28 to 32 of the bill.) A reference to "employers" was corrected to refer to contributing, governmental rated and reimbursing employers. Section 13, page 64 and Sec. 15, page 92.

B. Hold employers harmless, not require reimbursement and provide credits or refunds for claims that have been identified by the employer as fraudulent and reported to the secretary of labor, unless the secretary determines that the claim is not fraudulent. Reimbursing employers, such as governmental entities, Indian tribes or nonprofit organizations, who pay the state directly for any benefits paid, are to be refunded for any payments for fraudulent claims made after March 15, 2020, that have been reported to the secretary. An amount refunded would become due if the secretary determined that the claim is not fraudulent. Page 64, lines 18-34; page 92, lines 28-43 through page 93, line 1-2.

C. Direct the secretary to credit an employer's account without any request by the employer or the need to hold a hearing upon the secretary's own determination that benefits were fraudulently paid. Page 92, lines 18-27.

D. Waive the time limitation for an employer to dispute a claim as fraud during the time period of March 15, 2020 through December 31, 2022. Page 64, lines 26-30; page 93, lines 3-8.

E. The bill originally directed the secretary to review all reimbursing employer accounts over the past 20 years and apply credits for any benefits previously paid by fraud or in error that were charged against the account and not recovered. Page 93, lines 9-13. *This provision was modified by the House Commerce Committee to remove the 20-year lookback requirement but otherwise maintain the requirement of a review of all reimbursing employer accounts as previously provided.*

**XIV. Changes to the Rate Tables and employment security interest assessment fund,
Section 14.**

A. Obsolete language is removed throughout the section.

B. Originally, the employment security interest assessment fund was abolished. Page 61 of original bill, lines 28-33 (See stricken language now at pages 76-77, 90).

The House Committee of the Whole reinserted some of the deleted language to maintain the existence of the fund due to federal conformity concerns. Page 78, lines 14-28. Page 90, lines 36-43; page 91, lines 1-20.

C. The determination of solvency or credit adjustments, to maintain the UI trust fund balance, to be made to employer rates is changed. New tables are provided for the purpose of making solvency or credit adjustments for purposes of maintaining the UI trust fund balance and determining employer contribution rates. These changes primarily go into effect for rate year 2022 and thereafter. Pages 82-87.

XV. Reimbursements to the UI Trust Fund from the State General Fund for Improper Payments. Section 15, pages 93, lines 39-43, to page 95.

The bill would reimburse the unemployment insurance trust fund from the state general fund for improper benefit payments (as defined at page 94, lines 28-32) made during the period of March 15, 2020 through December 31, 2022, as identified by the secretary through review of federal department of labor and state department of labor information. The secretary shall identify such amounts within 60 days of information becoming available. The governor, with the approval of the state finance council, may designate the transfer to be from a state account other than the state general fund. Page 93, lines 39-43 to page 94, lines 1-21.

Originally, the bill included a provision that was intended to encourage the legislature to direct federal pandemic-related funds to the unemployment insurance trust fund and a provision clarifying that any federal unemployment insurance benefit program established because of COVID-19 is not to be continued after the ending date of the federal program by the use of unemployment insurance fund contributions by Kansas employers. Page 64 of original bill, lines 34-42. *This provision was deleted by the House Commerce Committee as part of the amendment described below.*

The House Commerce Committee amended this provision to make the immediate transfers from the state general fund pursuant to the original bill effective only if the full transfer from federal coronavirus funds of \$450 million, pursuant to Section 6 of the bill at pages 12-13, does not occur. Page 94, lines 3-4.

In addition, the House Committee added a provision for payment of improper payments recovered by the secretary to the state general fund to avoid “double-dipping” in the event recovery of fraudulent payments was made. Page 94, lines 22-27.

The amendment also added a provision that requires the secretary to determine the total amount of fraudulent and improper payments made during the period of March 15, 2020 through December 31, 2022, not later than December 31, 2022. If the total amount of the fraudulent and improper payments are more than the amount of the transfer made pursuant to Section 6, the difference is to be transferred to the employment security trust fund from the state general fund

in equal amounts over a period of five years. If the amount is less, that amount is to be transferred from the employment security trust fund to the state general fund at one time and used for COVID-19 related purposes. Page 94, lines 33-43; page 95, lines 1-7, 15-24.

With the approval of the state finance council, the governor is granted limited discretion to change the funds utilized for the process. Page 95, lines 8-14; 25-31.

XVI. Changes to the Work Share Program, Section 16, pages 95-101.

- A. Includes changes to clarify the statutory language and definitions. See e.g. page 96.

- B. The bill directs the secretary to create and manage a promotional plan for the program. Page 96, lines 42-43; page 97, lines 1-20. The promotional plan is to include:
 - 1. Promotion of the program with other state agencies, the governor’s office, legislators, workforce investment boards and chambers of commerce. *The House Committee of the Whole amended this provision by adding labor unions to the list of entities with whom the secretary is to engage.*

 - 2. Dedication of a department team to interact with employers.

 - 3. Development of presentation materials for distribution to employer groups and workforce investment boards.

 - 4. Proactive outreach and engagement with employers who are in economic stress or layoffs.

 - 5. Development of an automated application, claims and weekly certification process that facilitates participation by employers.

C. Negative Account Employers Eligibility for Shared Work Program.

The original bill provided that after the provisions of the federal CARES act are no longer in effect, a negative account employer may only participate within a year of a recession. The secretary was to determine if a recession in Kansas existed and if so, make an announcement that a recession was in effect for purposes of this provision. A negative account employer could only be approved for participation for one plan year during any five-year period of time. Originally page 67, lines 28-37.

The House Commerce Committee amended this provision to provided that, after the federal CARES act was no longer in effect, a negative account employer would be eligible for the shared work program if the negative account employer's most recent calculated reserve ration has improved from the previous reporting year's reserve ratio. Page 98, lines 21-27.

D. Expansion of Employee Eligibility for Program

An employee is not required to meet work availability or work search requirements but must be available for the employee's normal work week. Page 99, lines 39-43.

The employee's normal work hours need only be reduced by at least 10% and not more than 50% to be eligible for the program, and the program will reduce the normal weekly hours for an employee in the affected unit by not less than 10% and more more than 50%, expanding the current eligibility limits with respect to work hours. Page 97, lines 34-36. Page 100, lines 6-8.

Other Provisions

A. Services performed by a petroleum landman are excluded from the definition of "employment" for purposes of employment security law. Section 9, page 40-41. This exclusion was 2020 HB 2705, which was heard in House Commerce Committee on February 18, 2020 and passed out of committee favorably but died without further action. *This provision was amended*

by the House Commerce Committee to include language necessary for federal conformity purposes that a petroleum landman does not include an active officer of a corporation and that services performed for a federally recognized Indian tribe would not be subject to the exclusion.

B. The bill removes a current restriction on lessor employing units from leasing individual proprietors, partners, or corporate officers who are shareholders or members of the corporation's board of directors. Section 17, page 101, lines 12-16.

Effective Date

Originally, if passed, the bill would become effective July 1, 2021. *The House Commerce Committee changes the effective date to upon publication in the Kansas register.*