SENATE BILL No. 352

By Committee on Commerce


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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) "Employment" means:

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

(A) Any active officer of a corporation; or

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

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

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

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

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

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

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

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

(2) The term "employment" shall include an individual's entire
service within the United States, even though performed entirely outside
this state if:
   (A) The service is not localized in any state; and
   (B) the individual is one of a class of employees who are required to
   travel outside this state in performance of their duties; and
   (C) the individual's base of operations is in this state, or if there is no
   base of operations, then the place from which service is directed or
   controlled is in this state.

(3) The term "employment" shall also include:
   (A) Services performed within this state but not covered by the
   provisions of subsection (i)(1) or subsection (i)(2) shall be deemed to be
   employment subject to this act if contributions are not required and paid
   with respect to such services under an unemployment compensation law of
   any other state or of the federal government.
   (B) Services performed entirely without this state, with respect to no
   part of which contributions are required and paid under an unemployment
   compensation law of any other state or of the federal government, shall be
   deemed to be employment subject to this act only if the individual
   performing such services is a resident of this state and the secretary
   approved the election of the employing unit for whom such services are
   performed that the entire service of such individual shall be deemed to be
   employment subject to this act.
   (C) Services covered by an arrangement pursuant to subsection (l) of
   K.S.A. 44-714, and amendments thereto, between the secretary and the
   agency charged with the administration of any other state or federal
   unemployment compensation law, pursuant to which all services
   performed by an individual for an employing unit are deemed to be
   performed entirely within this state, shall be deemed to be employment if
   the secretary has approved an election of the employing unit for whom
   such services are performed, pursuant to which the entire service of such
   individual during the period covered by such election is deemed to be
   insured work.
   (D) Services performed by an individual for wages or under any
   contract of hire shall be deemed to be employment subject to this act
   unless and until it is shown to the satisfaction of the secretary that: (i) Such
   individual has been and will continue to be free from control or direction
   over the performance of such services, both under the individual's contract
   of hire and in fact, and (ii) such service is either outside the usual course of
   the business for which such service is performed or that such service is
   performed outside of all the places of business of the enterprise for which
   such service is performed if the business for which activities of the
   individual are performed retains not only the right to control the end result
   of the activities performed, but the manner and means by which the end
   result is accomplished.
(E) Service performed by an individual in the employ of this state or any instrumentality thereof, any political subdivision of this state or any instrumentality thereof, or in the employ of an Indian tribe, as defined pursuant to section 3306(u) of the federal unemployment tax act, any instrumentality of more than one of the foregoing or any instrumentality which is jointly owned by this state or a political subdivision thereof or Indian tribes and one or more other states or political subdivisions of this or other states, provided that such service is excluded from "employment" as defined in the federal unemployment tax act by reason of section 3306(c)(7) of that act and is not excluded from "employment" under subsection (i)(4)(A) of this section. For purposes of this section, the exclusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also be applicable to services performed in the employ of an Indian tribe.

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

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

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

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

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

or

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

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

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

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

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

(ii) a partnership if ⅗ or more of the partners are residents of the
United States; or

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

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

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

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

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

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

(i) As an elected official;

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

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

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

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

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

(C) service performed by an individual in the employ of such individual's son, daughter or spouse, and service performed by a child under the age of 21 years in the employ of such individual's father or mother;
(D) service performed in the employ of the United States government
or an instrumentality of the United States exempt under the constitution of
the United States from the contributions imposed by this act, except that to
the extent that the congress of the United States shall permit states to
require any instrumentality of the United States to make payments into an
unemployment fund under a state unemployment compensation law, all of
the provisions of this act shall be applicable to such instrumentalities, and
to services performed for such instrumentalities, in the same manner, to the
same extent and on the same terms as to all other employers, employing
units, individuals and services. If this state shall not be certified for any
year by the federal security agency under section 3304(c) of the federal
internal revenue code of 1986, the payments required of such
instrumentalities with respect to such year shall be refunded by the
secretary from the fund in the same manner and within the same period as
is provided in subsection (f) of K.S.A. 44-717, and amendments thereto,
with respect to contributions erroneously collected;

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

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

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

(H) service performed in any calendar quarter in the employ of any
organization exempt from income tax under section 501(a) of the federal
internal revenue code of 1986 (other than an organization described in
section 401(a) or under section 521 of such code) if the remuneration for
such service is less than $50. In construing the application of the term
"employment," if services performed during ½ or more of any pay period
by an individual for the person employing such individual constitute
employment, all the services of such individual for such period shall be
deemed to be employment; but if the services performed during more than
½ of any such pay period by an individual for the person employing such
individual do not constitute employment, then none of the services of such
individual for such period shall be deemed to be employment. As used in
this subsection (i)(4)(H) the term "pay period" means a period (of not more
than 31 consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing such individual. This subsection (i)(4)(H) shall not be applicable with respect to services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

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

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

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

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

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

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

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

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

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

(P) service performed in the employ of a hospital licensed, certified or approved by the secretary of health and environment, if such service is
performed by a patient of the hospital;
(Q) services performed as a qualified real estate agent. As used in this subsection (i)(4)(Q) the term "qualified real estate agent" means any individual who is licensed by the Kansas real estate commission as a salesperson under the real estate brokers' and salespersons' license act and for whom:
   (i) Substantially all of the remuneration, whether or not paid in cash, for the services performed by such individual as a real estate salesperson is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and
   (ii) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for state tax purposes;
(R) services performed for an employer by an extra in connection with any phase of motion picture or television production or television commercials for less than 14 days during any calendar year. As used in this subsection, the term "extra" means an individual who pantomimes in the background, adds atmosphere to the set and performs such actions without speaking and "employer" shall not include any employer which is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;
(S) services performed by an oil and gas contract pumper. As used in this subsection (i)(4)(S), "oil and gas contract pumper" means a person performing pumping and other services on one or more oil or gas leases, or on both oil and gas leases, relating to the operation and maintenance of such oil and gas leases, on a contractual basis for the operators of such oil and gas leases and "services" shall not include services performed for a governmental entity or any organization described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;
(T) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $200 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:
   (i) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or
such individual was regularly employed, as determined under subparagraph (i), by such employer in the performance of such service during the preceding calendar quarter.

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

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

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

(i) Such person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(G) under a cafeteria plan within the meaning of section 125 of the federal internal revenue code of 1986;
(5) the payment by an employing unit (without deduction from the
remuneration of the employee), of the tax imposed upon an employee
under section 3101 of the federal internal revenue code of 1986 with
respect to remuneration paid to an employee for domestic service in a
private home of the employer or for agricultural labor;
(6) remuneration paid in any medium other than cash to an employee
for service not in the course of the employer's trade or business;
(7) remuneration paid to or on behalf of an employee if and to the
extent that at the time of the payment of such remuneration it is reasonable
to believe that a corresponding deduction is allowable under section 217 of
the federal internal revenue code of 1986 relating to moving expenses;
(8) any payment or series of payments by an employer to an
employee or any of such employee's dependents which is paid:
(A) Upon or after the termination of an employee's employment
relationship because of (i) death or (ii) retirement for disability; and
(B) under a plan established by the employer which makes provisions
for employees generally, a class or classes of employees or for such
employees or a class or classes of employees and their dependents, other
than any such payment or series of payments which would have been paid
if the employee's employment relationship had not been so terminated;
(9) remuneration for agricultural labor paid in any medium other than
cash;
(10) any payment made, or benefit furnished, to or for the benefit of
an employee if at the time of such payment or such furnishing it is
reasonable to believe that the employee will be able to exclude such
payment or benefit from income under section 129 of the federal internal
revenue code of 1986 which relates to dependent care assistance programs;
(11) the value of any meals or lodging furnished by or on behalf of
the employer if at the time of such furnishing it is reasonable to believe
that the employee will be able to exclude such items from income under
section 119 of the federal internal revenue code of 1986;
(12) any payment made by an employer to a survivor or the estate of
a former employee after the calendar year in which such employee died;
(13) any benefit provided to or on behalf of an employee if at the time
such benefit is provided it is reasonable to believe that the employee will
be able to exclude such benefit from income under section 74(c), 117 or
132 of the federal internal revenue code of 1986;
(14) any payment made, or benefit furnished, to or for the benefit of
an employee, if at the time of such payment or such furnishing it is
reasonable to believe that the employee will be able to exclude such
payment or benefit from income under section 127 of the federal internal
revenue code of 1986 relating to educational assistance to the employee; or
(15) any payment made to or for the benefit of an employee if at the
time of such payment it is reasonable to believe that the employee will be
able to exclude such payment from income under section 106(d) of the
federal internal revenue code of 1986 relating to health savings accounts.

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

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

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

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

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

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

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

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

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

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

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

(4) is a public or other nonprofit institution.

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

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

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

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

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

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

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than ½ of the commodity with respect to which such service is performed;

(ii) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members), in the performance of service described in paragraph (i) above of this subsection (w)(1)(D), but only if such operators produced more than ½ of the commodity with respect to which such service is performed;

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

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

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

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

(4) For the purpose of this section, if an employing unit does not maintain sufficient records to separate agricultural labor from other employment, all services performed during any pay period by an individual for the person employing such individual shall be deemed to be agricultural labor if services performed during ½ or more of such pay period constitute agricultural labor; but if the services performed during more than ½ of any such pay period by an individual for the person employing such individual do not constitute agricultural labor, then none of the services of such individual for such period shall be deemed to be agricultural labor. As used in this subsection (w), the term "pay period" means a period of not more than 31 consecutive days for which a payment of remuneration is ordinarily made to the individual by the person employing such individual.

(x) "Reimbursing employer" means any employer who makes payments in lieu of contributions to the employment security fund as
provided in subsection (e) of K.S.A. 44-710, and amendments thereto.
(y) "Contributing employer" means any employer other than a
reimbursing employer or rated governmental employer.
(z) "Wage combining plan" means a uniform national arrangement
approved by the United States secretary of labor in consultation with the
state unemployment compensation agencies and in which this state shall
participate, whereby wages earned in one or more states are transferred to
another state, called the "paying state," and combined with wages in the
paying state, if any, for the payment of benefits under the laws of the
paying state and as provided by an arrangement so approved by the United
States secretary of labor.
(aa) "Domestic service" means any service for a person in the
operation and maintenance of a private household, local college club or
local chapter of a college fraternity or sorority, as distinguished from
service as an employee in the pursuit of an employer's trade, occupation,
profession, enterprise or vocation.
(bb) "Rated governmental employer" means any governmental entity
which elects to make payments as provided by K.S.A. 44-710d, and
amendments thereto.
(cc) "Benefit cost payments" means payments made to the
employment security fund by a governmental entity electing to become a
rated governmental employer.
(dd) "Successor employer" means any employer, as described in
subsection (h) of this section, which acquires or in any manner succeeds to
(1) substantially all of the employing enterprises, organization, trade or
business of another employer or (2) substantially all the assets of another
employer.
(ee) "Predecessor employer" means an employer, as described in
subsection (h) of this section, who has previously operated a business or
portion of a business with employment to which another employer has
succeeded.
(ff) "Lessor employing unit" means any independently established
business entity which engages in the business of providing leased
employees to a client lessee.
(gg) "Client lessee" means any individual, organization, partnership,
corporation or other legal entity leasing employees from a lessor
employing unit.
(hh) "Qualifying injury" means a personal injury by accident arising
out of and in the course of employment within the coverage of the Kansas
workers compensation act, K.S.A. 44-501 et seq., and amendments
thereto.
Sec. 3. K.S.A. 2011 Supp. 44-705 is hereby amended to read as
follows: 44-705. Except as provided by K.S.A. 44-757, and amendments
thereto, an unemployed individual shall be eligible to receive benefits with respect to any week only if the secretary, or a person or persons designated by the secretary, finds that:

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

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

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

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

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

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

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

(C) if an individual is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such state or of the United States finally determines that the claimant is not entitled to unemployment benefits under such other law, this subsection (d)(1)(C) shall not apply.
(2) The waiting week requirement of paragraph (1) shall not apply to new claims, filed on or after July 1, 2007, by claimants who become unemployed as a result of an employer terminating business operations within this state, declaring bankruptcy or initiating a work force reduction pursuant to public law 100-379, the federal worker adjustment and retraining notification act (29 U.S.C. §§ 2101 through 2109), as amended. The secretary shall adopt rules and regulations to administer the provisions of this paragraph.

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

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

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

1. The claimant has filed for benefits within four weeks of being released to return to work by a licensed and practicing health care provider;
2. the claimant files for benefits within 24 months of the date the qualifying injury occurred;
3. the claimant attempted to return to work with the employer where the qualifying injury occurred, but the individual's regular work or comparable and suitable work was not available.

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

(a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of
this subsection. Failure to return to work after expiration of approved
personal or medical leave, or both, shall be considered a voluntary
resignation. After a temporary job assignment, failure of an individual to
affirmatively request an additional assignment on the next succeeding
workday, if required by the employment agreement, after completion of a
given work assignment, shall constitute leaving work voluntarily. The
disqualification shall begin the day following the separation and shall
continue until after the individual has become reemployed and has had
earnings from insured work of at least three times the individual's weekly
benefit amount. An individual shall not be disqualified under this
subsection if:

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

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

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

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

(5) the individual left work because of hazardous working conditions;
in determining whether or not working conditions are hazardous for an
individual, the degree of risk involved to the individual's health, safety and
morals, the individual's physical fitness and prior training and the working
conditions of workers engaged in the same or similar work for the same
and other employers in the locality shall be considered; as used in this
paragraph, "hazardous working conditions" means working conditions that
could result in a danger to the physical or mental well-being of the
individual; each determination as to whether hazardous working
conditions exist shall include, but shall not be limited to, a consideration of
(A) the safety measures used or the lack thereof, and (B) the condition of
equipment or lack of proper equipment; no work shall be considered
hazardous if the working conditions surrounding the individual's work are
the same or substantially the same as the working conditions generally
prevailing among individuals performing the same or similar work for
other employers engaged in the same or similar type of activity;

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

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

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

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

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

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

(12) (A) the individual left work due to circumstances resulting from
domestic violence, including:
(i) The individual's reasonable fear of future domestic violence at or
en route to or from the individual's place of employment; or
(ii) the individual's need to relocate to another geographic area in
order to avoid future domestic violence; or
(iii) the individual's need to address the physical, psychological and legal impacts of domestic violence; or

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

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

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

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

(ii) a police record documenting the abuse; or

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

(iv) medical documentation of the abuse; or

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

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

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

(b) If the individual has been discharged for misconduct connected with the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if an individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings from insured work of at least eight times such individual's determined weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross
misconduct connected with the individual's work shall be canceled. No such cancellation of wage credits shall affect prior payments made as a result of a prior separation.

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

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

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

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

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

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

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

(F) the breath alcohol test was administered by an individual trained
to perform breath tests, the breath testing instrument used was certified-
and operated strictly according to description provided by the manufacturers and the reliability of the instrument performance was assured by testing with alcohol standards; and

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

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

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

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

(iii) violation of a written drug or alcohol policy of the employer of which the employee had knowledge and which constituted a required condition of employment;

(iv) a positive breath alcohol test or a positive chemical test, provided:

(a) The test was:

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

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

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

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

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

(b) the test sample was collected:

(1) Either as prescribed by:

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

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

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

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

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

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

(2) any other individual, including law enforcement personnel, who

is:

(A) Certified pursuant to paragraph (b)(2)(A)(iii)(f); or

(B) authorized to collect or label test samples by federal or state law;

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

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

(f) the breath alcohol test was administered by an individual trained to perform breath tests, the breath testing instrument used was certified and operated strictly according to the description provided by the manufacturers and the reliability of the instrument performance was assured by testing with alcohol standards; and

(g) the foundation evidence establishes, beyond a reasonable doubt, that the test results were from the sample taken from the individual;

or

(iv) (v) an individual's refusal to submit to a chemical test or breath alcohol test, provided:

(a) The test meets the standards of the drug free workplace act, 41 U.S.C. § 701 et seq.;

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

(c) the test was otherwise required by law and the test constituted a required condition of employment for the individual's job;

(d) the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment; or

(e) there was probable cause to believe that the individual used, possessed or was impaired by alcoholic liquor, a cereal malt beverage or a controlled substance while working.

(B) For purposes of this subsection, the possession of alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be prima facie evidence of misconduct.

(C) For purposes of this subsection:

(i) “Alcohol concentration” means the number of grams of alcohol per 210 liters of breath.
(ii) “Alcoholic liquor” shall be defined as provided in K.S.A. 41-102, and amendments thereto.
(iii) “Cereal malt beverage” shall be defined as provided in K.S.A. 41-2701, and amendments thereto.
(iv) “Chemical test” shall include, but is not limited to, tests of urine, blood or saliva.
(v) “Controlled substance” shall be defined as provided in K.S.A. 2011 Supp. 21-5701, and amendments thereto.
(vi) “Required by law” means required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance or a policy relating to public safety adopted in open meeting by the governing body of any special district or other local governmental entity.
(vii) “Positive chemical test” shall mean a chemical result showing a concentration at or above the levels listed in K.S.A. 44-501, and amendments thereto, for the drugs or abuse listed therein.
(viii) “Positive breath test” shall mean a test result showing an alcohol concentration of .04 or greater.

(3) (A) Failure of the employee to notify the employer of an absence shall be considered to be prima facie evidence of a violation of any duty or obligation reasonably owed to the employer as a condition of employment.
(B) For the purposes of this subsection, misconduct shall include, but not be limited to, repeated absence, including incarceration, resulting in absence from work of three days or longer, excluding Saturdays, Sundays and legal holidays, and lateness, from scheduled work or lateness from scheduled work shall be conclusive evidence of misconduct if the facts show:
(i) The individual was absent or late without good cause;
(ii) the absence or lateness was in violation of the employer's written absenteeism attendance policy;
(iii) the employer gave or sent written notice to the individual, at the individual's last known address, that future absence or lateness may or will result in discharge; and
(iv) the employee had knowledge of the employer's written absenteeism attendance policy.

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

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

(A) The employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit, except that the individual shall be disqualified after the time at which such individual intended to quit and any individual who commits misconduct after such individual gives notice of such individual's intent to quit shall be disqualified;

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

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

(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of labor, or to accept suitable work when offered to the individual by the employment office, the secretary of labor, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of labor, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence.

Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the
individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization; and (4) if the individual left employment as a result of domestic violence, and the position offered does not reasonably accommodate the individual's physical, psychological, safety, and/or legal needs relating to such domestic violence.

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

1. The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and
2. The individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute.

If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection, failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

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

(f) For any week with respect to which the individual is entitled to receive any unemployment allowance or compensation granted by the United States under an act of congress to ex-service men and women in recognition of former service with the military or naval services of the United States.
(g) For the period of one year two years beginning with the first day following the last week of unemployment for which the individual received benefits, or for one year two years from the date the act was committed, whichever is the later, if the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor.

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

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

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

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

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

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

(n) For any week in which an individual is receiving a governmental
or other pension, retirement or retired pay, annuity or other similar
periodic payment under a plan maintained by a base period employer and
to which the entire contributions were provided by such employer, except
that: (1) If the entire contributions to such plan were provided by the base
period employer but such individual's weekly benefit amount exceeds such
governmental or other pension, retirement or retired pay, annuity or other
similar periodic payment attributable to such week, the weekly benefit
amount payable to the individual shall be reduced (but not below zero), by
an amount equal to the amount of such pension, retirement or retired pay,
annuity or other similar periodic payment which is attributable to such
week; or (2) if only a portion of contributions to such plan were provided
by the base period employer, the weekly benefit amount payable to such
individual for such week shall be reduced (but not below zero), by the
prorated weekly amount of the pension, retirement or retired pay, annuity
or other similar periodic payment after deduction of that portion of the
pension, retirement or retired pay, annuity or other similar periodic
payment that is directly attributable to the percentage of the contributions
made to the plan by such individual; or (3) if the entire contributions to the
plan were provided by such individual, or by the individual and an
employer (or any person or organization), who is not a base period
employer, no reduction in the weekly benefit amount payable to the
individual for such week shall be made under this subsection; or (4)
whatever portion of contributions to such plan were provided by the base
period employer, if the services performed for the employer by such
individual during the base period, or remuneration received for the
services, did not affect the individual's eligibility for, or increased the
amount of, such pension, retirement or retired pay, annuity or other similar
periodic payment, no reduction in the weekly benefit amount payable to
the individual for such week shall be made under this subsection. No
reduction shall be made for payments made under the social security act or

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

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

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

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

1. The individual was engaged in full-time employment concurrent with the individual's school attendance; or
2. the individual is attending approved training as defined in subsection (s) of K.S.A. 44-703, and amendments thereto; or
3. the individual is attending evening, weekend or limited day time classes, which would not affect availability for work, and is otherwise eligible under subsection (c) of K.S.A. 44-705, and amendments thereto.

(s) For any week with respect to which an individual is receiving or has received remuneration in the form of a back pay award or settlement. The remuneration shall be allocated to the week or weeks in the manner as specified in the award or agreement, or in the absence of such specificity in the award or agreement, such remuneration shall be allocated to the week or weeks in which such remuneration, in the judgment of the secretary, would have been paid.

1. For any such weeks that an individual receives remuneration in the form of a back pay award or settlement, an overpayment will be established in the amount of unemployment benefits paid and shall be collected from the claimant.
2. If an employer chooses to withhold from a back pay award or settlement, amounts paid to a claimant while they claimed unemployment benefits, such employer shall pay the department the amount withheld. With respect to such amount, the secretary shall have available all of the collection remedies authorized or provided in K.S.A. 44-717, and amendments thereto.

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

(u) If the individual was found not to have a disqualifying adjudication or conviction under K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and amendments thereto, was hired and then was subsequently convicted of a disqualifying felony under K.S.A. 39-970, and
amendments thereto, or K.S.A. 65-5117, and amendments thereto, and
discharged pursuant to K.S.A. 39-970, and amendments thereto, or K.S.A.
65-5117, and amendments thereto. The disqualification shall begin the day
following the separation and shall continue until after the individual
becomes reemployed and has had earnings from insured work of at least
three times the individual's determined weekly benefit amount.

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

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

(2) The examiner may for good cause reconsider the examiner's decision and shall promptly notify the claimant and the most recent employing unit of the claimant, that the decision of the examiner is to be reconsidered, except that no reconsideration shall be made after the termination of the benefit year.

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

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

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

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

(f) Board of review. (1) There is hereby created a board of review, hereinafter referred to as the board, consisting of three members. Except as provided by paragraph (2) of this subsection, each member of the board shall be appointed for a term of four years as provided in this subsection. Two members shall be appointed by the governor, subject to confirmation
by the senate as provided in K.S.A. 75-4315b, and amendments thereto. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the board, whose appointment is subject to confirmation by the senate, shall exercise any power, duty or function as a member until confirmed by the senate. One member shall be representative of employees, one member shall be representative of employers, and one member shall be representative of the public in general. The appointment of the employee representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas A.F.L.-C.I.O. The appointment of the employer representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas chamber of commerce and industry. The appointment of the public representative member of the board, who, because of vocation, occupation or affiliation may be deemed not to be representative of either management or labor, shall be made by the members appointed by the governor as employee representative and employer representative. If the two members do not agree and fail to make the appointment of the public member within 30 days after the expiration of the public member's term of office, the governor shall appoint the representative of the public. Not more than two members of the board shall belong to the same political party.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Rates and base of contributions. (1) Except as provided in
paragraph (2) of this subsection, each contributing employer shall pay
contributions on wages paid by the contributing employer during each
calendar year with respect to employment as provided in K.S.A. 44-710a,
and amendments thereto. Except that, notwithstanding the federal law
requiring the secretary of labor to annually recalculate the contribution
rate, for calendar years 2010, 2011, 2012, 2013 and 2014, the secretary shall charge each contributing employer in rate groups 1 through 32 the contribution rate in the 2010 original tax rate computation table, with contributing employers in rate groups 33 through 51 being capped at a 5.4% contribution rate.

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The examiner shall notify any base period employer whose
account will be charged with benefits paid following the filing of a valid
new claim and a determination by the examiner based on all information
relating to the claim contained in the records of the division of
employment security. Such notice shall become final and benefits charged
to the base period employer's account in accordance with the claim unless
within 10 calendar days from the date the notice was sent, the base period
employer requests in writing that the examiner reconsider the
determination and furnishes any required information in accordance with
the secretary's rules and regulations. In a similar manner, a notice of an
additional claim followed by the first payment of benefits with respect to
the benefit year, filed by an individual during a benefit year after a period
in such year during which such individual was employed, shall be given to
any base period employer of the individual who has requested such a
notice within 10 calendar days from the date the notice of the valid new
claim was sent to such base period employer. For purposes of this
subsection (c)(3), if the required information is not submitted or
postmarked within a response time limit of 10 days after the base period
employer notice was sent, the base period employer shall be deemed to
have waived its standing as a party to the proceedings arising from the
claim and shall be barred from protesting any subsequent decisions about
the claim by the secretary, a referee, the board of review or any court,
except that the base period employer's response time limit may be waived
or extended by the examiner or upon appeal, if timely response was
impossible due to excusable neglect. The examiner shall notify the
employer of the reconsidered determination which shall be subject to
appeal, or further reconsideration, in accordance with the provisions of
K.S.A. 44-709, and amendments thereto.

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

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

(e) **Election to become reimbursing employer; payment in lieu of
contributions.** (1) Any governmental entity, Indian tribes or tribal units,
(subdivisions, subsidiaries or business enterprises wholly owned by such
Indian tribes), for which services are performed as described in subsection
(i)(3)(E) of K.S.A. 44-703, and amendments thereto, or any nonprofit
organization or group of nonprofit organizations described in section
501(c)(3) of the federal internal revenue code of 1986 which is exempt
from income tax under section 501(a) of such code, that becomes subject
to the employment security law may elect to become a reimbursing
employer under this subsection (e)(1) and agree to pay the secretary for the
employment security fund an amount equal to the amount of regular
benefits and ½ of the extended benefits paid that are attributable to service
in the employ of such reimbursing employer, except that each reimbursing
governmental employer, Indian tribes or tribal units shall pay an amount
equal to the amount of regular benefits and extended benefits paid for
weeks of unemployment beginning after December 31, 1978, for
governmental employers and December 21, 2000, for Indian tribes or
tribal units to individuals for weeks of unemployment which begin during
the effective period of such election.

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

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

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

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

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

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

(A) At the end of each calendar quarter, or at the end of any other period as determined by the secretary, the secretary shall bill each reimbursing employer, except the state of Kansas, (i) an amount to be paid which is equal to the full amount of regular benefits plus ½ of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such reimbursing employer; and (ii) for weeks of unemployment beginning after December 31, 1978,
each reimbursing governmental employer and December 21, 2000, for
Indian tribes or tribal units shall be certified an amount to be paid which is
equal to the full amount of regular benefits and extended benefits paid
during such quarter or other prescribed period that is attributable to service
in the employ of such reimbursing governmental employer.

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

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

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

(E) Past due payments of amounts certified by the secretary under
this section shall be subject to the same interest, penalties and actions
required by K.S.A. 44-717, and amendments thereto. (1) If any nonprofit
organization or group of nonprofit organizations described in section
501(c)(3) of the federal internal revenue code of 1986 or governmental
reimbursing employer is delinquent in making payments of amounts
certified by the secretary under this section, the secretary may terminate
such employer's election to make payments in lieu of contributions as of
the beginning of the next calendar year and such termination shall be
effective for such next calendar year and the calendar year thereafter so
that the termination is effective for two complete calendar years. (2)
Failure of the Indian tribe or tribal unit to make required payments,
including assessment of interest and penalty within 90 days of receipt of
the bill will cause the Indian tribe to lose the option to make payments in
lieu of contributions as described pursuant to paragraph (e)(1) for the
following tax year unless payment in full is received before contribution
rates for the next tax year are calculated. (3) Any Indian tribe that loses the
option to make payments in lieu of contributions due to late payment or
nonpayment, as described in paragraph (2), shall have such option
reinstated, if after a period of one year, all contributions have been made
on time and no contributions, payments in lieu of contributions for benefits
paid, penalties or interest remain outstanding.
(F) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalties, after all collection activities deemed necessary by the secretary have been exhausted, will cause services performed by such tribe to not be treated as employment for purposes of subsection (i)(3)(E) of K.S.A. 44-703, and amendments thereto. If an Indian tribe fails to make payments required under this section, including assessments of interest and penalties, within 90 days of a final notice of delinquency, the secretary shall immediately notify the United States internal revenue service and the United States department of labor. The secretary may determine that any Indian tribe that loses coverage pursuant to this paragraph may have services performed on behalf of such tribe again deemed "employment" if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(G) In the discretion of the secretary, any employer who elects to become liable for payments in lieu of contributions and any nonprofit organization or group of nonprofit organizations described in section 501(c)(3) of the federal internal revenue code of 1986 or governmental reimbursing employer or Indian tribe or tribal unit who is delinquent in filing reports or in making payments of amounts certified by the secretary under this section shall be required within 60 days after the effective date of such election, in the case of an eligible employer so electing, or after the date of notification to the delinquent employer under this subsection (e)(2)(G), in the case of a delinquent employer, to execute and file with the secretary a surety bond, except that the employer may elect, in lieu of a surety bond, to deposit with the secretary money or securities as approved by the secretary or to purchase and deliver to an escrow agent a certificate of deposit to guarantee payment. The amount of the bond, deposit or escrow agreement required by this subsection (e)(2)(G) shall not exceed 5.4% of the organization's taxable wages paid for employment by the eligible employer during the four calendar quarters immediately preceding the effective date of the election or the date of notification, in the case of a delinquent employer. If the employer did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the secretary. Upon the failure of an employer to comply with this subsection (e)(2)(G) within the time limits imposed or to maintain the required bond or deposit, the secretary may terminate the election of such eligible employer or delinquent employer, as the case may be, to make payments in lieu of contributions, and such termination shall be effective for the current and next calendar year.

(H) The state of Kansas shall make reimbursement payments quarterly at a fiscal year rate which shall be based upon: (i) The available balance in the state's reimbursing account as of December 31 of each calendar year; (ii) the historical unemployment experience of all covered
state agencies during prior years; (iii) the estimate of total covered wages
to be paid during the ensuing calendar year; (iv) the applicable fiscal year
rate of the claims processing and auditing fee under K.S.A. 75-3798, and
amendments thereto; and (v) actuarial and other information furnished to
the secretary by the secretary of administration. In accordance with K.S.A.
75-3798, and amendments thereto, the claims processing and auditing fees
charged to state agencies shall be deducted from the amounts collected for
the reimbursement payments under this paragraph (H) prior to making the
quarterly reimbursement payments for the state of Kansas. The fiscal year
rate shall be expressed as a percentage of covered total wages and shall be
the same for all covered state agencies. The fiscal year rate for each fiscal
year will be certified in writing by the secretary to the secretary of
administration on July 15 of each year and such certified rate shall become
effective on the July 1 immediately following the date of certification. A
detailed listing of benefit charges applicable to the state's reimbursing
account shall be furnished quarterly by the secretary to the secretary of
administration and the total amount of charges deducted from previous
reimbursing payments made by the state. On January 1 of each year, if it is
determined that benefit charges exceed the amount of prior reimbursing
payments, an upward adjustment shall be made therefor in the fiscal year
rate which will be certified on the ensuing July 15. If total payments
exceed benefit charges, all or part of the excess may be refunded, at the
discretion of the secretary, from the fund or retained in the fund as part of
the payments which may be required for the next fiscal year.

(3) **Allocation of benefit costs.** The reimbursing account of each
reimbursing employer shall be charged the full amount of regular benefits
and ½ of the amount of extended benefits paid except that each
reimbursing governmental employer's account shall be charged the full
amount of regular benefits and extended benefits paid for weeks of
unemployment beginning after December 31, 1978, to individuals whose
entire base period wage credits are from such employer. When benefits
received by an individual are based upon base period wage credits from
more than one employer then the reimbursing employer's or reimbursing
governmental employer's account shall be charged in the same ratio as
base period wage credits from such employer bear to the individual's total
base period wage credits. Notwithstanding any other provision of the
employment security law, no reimbursing employer's or reimbursing
governmental employer's account shall be charged for payments of
extended benefits which are wholly reimbursed to the state by the federal
government.

(A) **Proportionate allocationcalar when fewer than all reimbursing base
period employers are liable.** If benefits paid to an individual are based on
wages paid by one or more reimbursing employers and on wages paid by
one or more contributing employers or rated governmental employers, the
amount of benefits payable by each reimbursing employer shall be an
amount which bears the same ratio to the total benefits paid to the
individual as the total base period wages paid to the individual by such
employer bears to the total base period wages paid to the individual by all
of such individual's base period employers.

(B) Proportionate allocation when all base period employers are
reimbursing employers. If benefits paid to an individual are based on
wages paid by two or more reimbursing employers, the amount of benefits
payable by each such employer shall be an amount which bears the same
ratio to the total benefits paid to the individual as the total base period
wages paid to the individual by such employer bear to the total base period
wages paid to the individual by all of such individual's base period
employers.

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

Sec. 7. K.S.A. 2011 Supp. 44-710a is hereby amended to read as
follows: 44-710a. (a) Classification of employers by the secretary. The
term "employer" as used in this section refers to contributing employers.
The secretary shall classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts with a view of fixing such contribution rates as will reflect such experience. If, as of the date such classification of employers is made, the secretary finds that any employing unit has failed to file any report required in connection therewith, or has filed a report which the secretary finds incorrect or insufficient, the secretary shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to the secretary at the time, and notify the employing unit thereof by mail addressed to its last known address. Unless such employing unit shall file the report or a corrected or sufficient report as the case may be, within 15 days after the mailing of such notice, the secretary shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increase but not to reduction on the basis of subsequently ascertained information. The secretary shall determine the contribution rate of each employer in accordance with the requirements of this section.

(1) New employers. (A) No employer will be eligible for a rate computation until there have been 24 consecutive calendar months immediately preceding the computation date throughout which benefits could have been charged against such employer's account.

(B) (i) For the rate year 2007 and each rate year thereafter, each employer who is not eligible for a rate contribution shall pay contributions equal to 4% of wages paid during each calendar year with regard to employment except such employers engaged in the construction industry shall pay a rate equal to 6%.

(ii) For rate years prior to 2007, employers who are not eligible for a rate computation shall pay contributions at an assigned rate equal to the sum of 1% plus the greater of the average rate assigned in the preceding calendar year to all employers in such industry sector or the average rate assigned to all covered employers during the preceding calendar year, except that in no instance shall any such assigned rate be less than 2%. Employers engaged in more than one type of industrial activity shall be classified by principal activity. All rates assigned will remain in effect for a complete calendar year. If the sale or acquisition of a new establishment would require reclassification of the employer to a different industry sector, the employer would be promptly notified, and the contribution rate applicable to the new industry sector would become effective the following January 1.

(iii) For purposes of this subsection (a), employers shall be classified by industrial activity in accordance with standard procedures
as set forth in rules and regulations adopted by the secretary.

(C) "Computation date" means June 30 of each calendar year with respect to rates of contribution applicable to the calendar year beginning with the following January 1. In arriving at contribution rates for each calendar year, contributions paid on or before July 31 following the computation date for employment occurring on or prior to the computation date shall be considered for each contributing employer who has been subject to this act for a sufficient period of time to have such employer's rate computed under this subsection (a).

(2) Eligible employers. (A) A reserve ratio shall be computed for each eligible employer by the following method: Total benefits charged to the employer's account for all past years shall be deducted from all contributions paid by such employer for all such years. The balance, positive or negative, shall be divided by the employer's average annual payroll, and the result shall constitute the employer reserve ratio.

(B) Negative account balance employers as defined in subsection (d) shall pay contributions at the rate of 5.4% for each calendar year.

(C) Eligible employers, other than negative account balance employers, who do not meet the average annual payroll requirements as stated in subsection (a)(2) of K.S.A. 44-703, and amendments thereto, will be issued the maximum rate indicated in subsection (a)(3)(C) of this section until such employer establishes a new period of 24 consecutive calendar months immediately preceding the computation date throughout which benefits could have been charged against such employer's account by resuming the payment of wages. Contribution rates effective for each calendar year thereafter shall be determined as prescribed below.

(D) As of each computation date, the total of the taxable wages paid during the 12-month period prior to the computation date by all employers eligible for rate computation, except negative account balance employers, shall be divided into 51 approximately equal parts designated in column A of schedule I as "rate groups," except, with regard to a year in which the taxable wage base changes. The taxable wages used in the calculation for such a year and the following year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during the entire twelve-month period prior to the computation date. The lowest numbered of such rate groups shall consist of the employers with the most favorable reserve ratios, as defined in this section, whose combined taxable wages paid are less than 1.96% of all taxable wages paid by all eligible employers. Each succeeding higher numbered rate group shall consist of employers with reserve ratios that are less favorable than those of employers in the preceding lower numbered rate groups and whose taxable wages when
combined with the taxable wages of employers in all lower numbered
rate groups equal the appropriate percentage of total taxable wages
designated in column B of schedule I. Each eligible employer, other
than a negative account balance employer, shall be assigned an
experience factor designated under column C of schedule I in
accordance with the rate group to which the employer is assigned on the
basis of the employer's reserve ratio and taxable payroll. If an
employer's taxable payroll falls into more than one rate group the
employer shall be assigned the experience factor of the lower numbered
rate group. If one or more employers have reserve ratios identical to that
of the last employer included in the next lower numbered rate group, all
such employers shall be assigned the experience factor designated to
such last employer, notwithstanding the position of their taxable payroll
in column B of schedule I.

**SCHEDULE I—Eligible Employers**

<table>
<thead>
<tr>
<th>Rate group</th>
<th>Column A</th>
<th>Column B</th>
<th>Column C</th>
</tr>
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<td>Less than 1.96%</td>
<td>..........................</td>
<td>.025%</td>
</tr>
<tr>
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<td>1.96% but less than 3.92</td>
<td>.........................</td>
<td>.40</td>
</tr>
<tr>
<td>3</td>
<td>3.92 but less than 5.88</td>
<td>..........................</td>
<td>.80</td>
</tr>
<tr>
<td>4</td>
<td>5.88 but less than 7.84</td>
<td>..........................</td>
<td>.12</td>
</tr>
<tr>
<td>5</td>
<td>7.84 but less than 9.80</td>
<td>..........................</td>
<td>.16</td>
</tr>
<tr>
<td>6</td>
<td>9.80 but less than 11.76</td>
<td>..........................</td>
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</tr>
<tr>
<td>7</td>
<td>11.76 but less than 13.72</td>
<td>..........................</td>
<td>.24</td>
</tr>
<tr>
<td>8</td>
<td>13.72 but less than 15.68</td>
<td>..........................</td>
<td>.28</td>
</tr>
<tr>
<td>9</td>
<td>15.68 but less than 17.64</td>
<td>..........................</td>
<td>.32</td>
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<tr>
<td>10</td>
<td>17.64 but less than 19.60</td>
<td>..........................</td>
<td>.36</td>
</tr>
<tr>
<td>11</td>
<td>19.60 but less than 21.56</td>
<td>..........................</td>
<td>.40</td>
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<td>12</td>
<td>21.56 but less than 23.52</td>
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<tr>
<td>16</td>
<td>29.40 but less than 31.36</td>
<td>..........................</td>
<td>.60</td>
</tr>
<tr>
<td>17</td>
<td>31.36 but less than 33.32</td>
<td>..........................</td>
<td>.64</td>
</tr>
<tr>
<td>18</td>
<td>33.32 but less than 35.28</td>
<td>..........................</td>
<td>.68</td>
</tr>
<tr>
<td>19</td>
<td>35.28 but less than 37.24</td>
<td>..........................</td>
<td>.72</td>
</tr>
<tr>
<td>20</td>
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</tr>
<tr>
<td>21</td>
<td>39.20 but less than 41.16</td>
<td>..........................</td>
<td>.80</td>
</tr>
<tr>
<td>22</td>
<td>41.16 but less than 43.12</td>
<td>..........................</td>
<td>.84</td>
</tr>
<tr>
<td>23</td>
<td>43.12 but less than 45.08</td>
<td>..........................</td>
<td>.88</td>
</tr>
<tr>
<td>24</td>
<td>45.08 but less than 47.04</td>
<td>..........................</td>
<td>.92</td>
</tr>
<tr>
<td>25</td>
<td>47.04 but less than 49.00</td>
<td>..........................</td>
<td>.96</td>
</tr>
<tr>
<td></td>
<td>26</td>
<td>49.00 but less than 50.96</td>
<td>...</td>
</tr>
<tr>
<td>---</td>
<td>----</td>
<td>--------------------------</td>
<td>-----</td>
</tr>
<tr>
<td>2</td>
<td>27</td>
<td>50.96 but less than 52.92</td>
<td>...</td>
</tr>
<tr>
<td>3</td>
<td>28</td>
<td>52.92 but less than 54.88</td>
<td>...</td>
</tr>
<tr>
<td>4</td>
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<td>7</td>
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<td>8</td>
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<td>...</td>
</tr>
<tr>
<td>9</td>
<td>34</td>
<td>64.68 but less than 66.64</td>
<td>...</td>
</tr>
<tr>
<td>10</td>
<td>35</td>
<td>66.64 but less than 68.60</td>
<td>...</td>
</tr>
<tr>
<td>11</td>
<td>36</td>
<td>68.60 but less than 70.56</td>
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<tr>
<td>12</td>
<td>37</td>
<td>70.56 but less than 72.52</td>
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<td>13</td>
<td>38</td>
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<td>14</td>
<td>39</td>
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<td>15</td>
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<td>76.44 but less than 78.40</td>
<td>...</td>
</tr>
<tr>
<td>16</td>
<td>41</td>
<td>78.40 but less than 80.36</td>
<td>...</td>
</tr>
<tr>
<td>17</td>
<td>42</td>
<td>80.36 but less than 82.32</td>
<td>...</td>
</tr>
<tr>
<td>18</td>
<td>43</td>
<td>82.32 but less than 84.28</td>
<td>...</td>
</tr>
<tr>
<td>19</td>
<td>44</td>
<td>84.28 but less than 86.24</td>
<td>...</td>
</tr>
<tr>
<td>20</td>
<td>45</td>
<td>86.24 but less than 88.20</td>
<td>...</td>
</tr>
<tr>
<td>21</td>
<td>46</td>
<td>88.20 but less than 90.16</td>
<td>...</td>
</tr>
<tr>
<td>22</td>
<td>47</td>
<td>90.16 but less than 92.12</td>
<td>...</td>
</tr>
<tr>
<td>23</td>
<td>48</td>
<td>92.12 but less than 94.08</td>
<td>...</td>
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<tr>
<td>24</td>
<td>49</td>
<td>94.08 but less than 96.04</td>
<td>...</td>
</tr>
<tr>
<td>25</td>
<td>50</td>
<td>96.04 but less than 98.00</td>
<td>...</td>
</tr>
<tr>
<td>26</td>
<td>51</td>
<td>98.00 and over</td>
<td>...</td>
</tr>
</tbody>
</table>

(E) Negative account balance employers shall, in addition to paying the rate provided for in subsection (a)(2)(B) of this section, pay a surcharge based on the size of the employer's negative reserve ratio, the calculation which is provided for in subsection (a)(2) of this section. The amount of the surcharge shall be determined from column B2 of schedule II of this section for calendar years 2012, 2013, 2014 and from column B1 of schedule II of this section for each calendar year after 2014. Each negative account balance employer who does not satisfy the requirements to have an average annual payroll, as defined by subsection (a)(2) of K.S.A. 44-703, and amendments thereto, shall be assigned a surcharge of equal to the maximum negative ratio surcharge from column B2 of schedule II of this section for calendar years 2012, 2013 and 2014. From calendar year 2015 forward each negative account balance employer who does not satisfy the requirements to have an average annual payroll, as defined by subsection (a)(2) of K.S.A. 44-703, and amendments thereto, shall be assigned a surcharge equal to the maximum negative ratio surcharge from column B1 of schedule II of
this section. Funds from the surcharge paid according to this subsection (a)(2)(E), and amendments thereto, shall be used to pay principal and interest due on funds received from the federal unemployment account under title XII of the social security act, (42 U.S.C. § 1321 to 1324), in the following manner:

(i) For each calendar year 2012, 2013 and 2014, an additional 0.10% of the taxable wages paid by all negative account balance employers with a negative reserve ratio between 0.0% and 19.9% shall be designated an interest assessment surcharge and paid into the employment security interest assessment fund for the purpose of paying interest due and owing on funds received from the federal unemployment account under title XII of the social security act. The total surcharges assessed, including the additional 0.10% surcharge mentioned above, on such employers are listed in schedule II column B2. For the calendar year 2015, and each calendar year thereafter, the surcharge rate for negative balance employers with a negative reserve ratio between 0.0% and 19.9% shall be as listed in schedule II column B1.

(ii) For the calendar year 2012, and each calendar year thereafter, an additional surcharge on negative balance employers with negative reserve ratio of 20.0% and higher shall be designated an interest assessment surcharge and deposited in the employment security interest assessment fund. The additional surcharge shall be used for the purposes of paying interest due and owing on fund received from the federal unemployment account under title XII of the social security act. The total surcharge including the additional surcharge on such employers is listed in schedule II column B3 of this section.

(iii) For any succeeding year in which interest is due and owing on funds received from the federal unemployment account under title XII of the social security act, the secretary of labor may adjust the surcharge amounts necessary to pay such interest;

(iv) the portion of such surcharge used for the payment of such interest shall not be included in the calculation of such employers reserve ratio pursuant to subsection (a)(2). The portion of such surcharge used for the payment of principal shall be included in the calculation of such employers reserve ratio pursuant to subsection (a)(2); and

(v) if the amounts collected under this subsection are in excess of the amounts needed to pay interest due, the amounts in excess shall remain in the employment security interest assessment fund to be used to pay interest in future years. Whenever the secretary certifies all interest payments have been paid pursuant to this section, any excess funds remaining in the employment security interest assessment fund shall be
transferred to the employment security trust fund for the purpose of paying any remaining principal amount due for advances described in this section. In the event that the amount transferred from the employment security interest assessment fund exceeds such remaining amount of principal due, the balance shall be used for the purposes of the employment security trust fund.

**SCHEDULE II—Surcharge on Negative Accounts**

<table>
<thead>
<tr>
<th>Column A</th>
<th>Column B1</th>
<th>Column B2</th>
<th>Column B3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negative Reserve Ratio</td>
<td>Surcharge as a percent of taxable wages</td>
<td>Surcharge as a percent of taxable wages</td>
<td>Surcharge as a percent of taxable wages</td>
</tr>
<tr>
<td>Less than 2.0%</td>
<td>0.20%</td>
<td>0.30%</td>
<td></td>
</tr>
<tr>
<td>2.0% but less than 4.0</td>
<td>0.40%</td>
<td>0.50%</td>
<td></td>
</tr>
<tr>
<td>4.0 but less than 6.0</td>
<td>0.60%</td>
<td>0.70%</td>
<td></td>
</tr>
<tr>
<td>6.0 but less than 8.0</td>
<td>0.80%</td>
<td>0.90%</td>
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<td>1.10%</td>
<td></td>
</tr>
<tr>
<td>10.0 but less than 12.0</td>
<td>1.20%</td>
<td>1.30%</td>
<td></td>
</tr>
<tr>
<td>12.0 but less than 14.0</td>
<td>1.40%</td>
<td>1.50%</td>
<td></td>
</tr>
<tr>
<td>14.0 but less than 16.0</td>
<td>1.60%</td>
<td>1.70%</td>
<td></td>
</tr>
<tr>
<td>16.0 but less than 18.0</td>
<td>1.80%</td>
<td>1.90%</td>
<td></td>
</tr>
<tr>
<td>18.0 but less than 20.0</td>
<td>2.00%</td>
<td>2.10%</td>
<td></td>
</tr>
<tr>
<td>20.0 but less than 22.0</td>
<td>2.20%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>22.0 but less than 24.0</td>
<td>2.40%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>24.0 but less than 26.0</td>
<td>2.60%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>26.0 but less than 28.0</td>
<td>2.80%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>28.0 but less than 30.0</td>
<td>3.00%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>30.0 but less than 32.0</td>
<td>3.20%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>32.0 but less than 34.0</td>
<td>3.40%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>34.0 but less than 36.0</td>
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<td></td>
</tr>
<tr>
<td>36.0 but less than 38.0</td>
<td>3.80%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>38.0 and over</td>
<td>4.00%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(3) Planned yield. (A) The average required yield shall be determined from schedule III of this section, and the planned yield on total wages in column B of schedule III shall be determined by the reserve fund ratio in column A of schedule III. The reserve fund ratio shall be determined by dividing total assets in the employment security fund provided for in subsection (a) of K.S.A. 44-712, and amendments thereto, excluding all moneys credited to the account of this state pursuant to section 903 of the federal social security act, as amended, which have been appropriated by the state legislature, whether or not withdrawn from the trust fund, and excluding contributions not yet paid on July 31 by total payrolls for contributing employers for the preceding fiscal year which ended June 30.
<table>
<thead>
<tr>
<th>Column A</th>
<th>Column B</th>
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<td>0.07</td>
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</tr>
<tr>
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</tr>
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<td>3.200 but less than 3.250</td>
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</tr>
<tr>
<td>3.150 but less than 3.200</td>
<td>0.37</td>
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<td>Range</td>
<td>Value</td>
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</tr>
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</tr>
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<td>2.800 but less than 2.850</td>
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</tr>
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</tr>
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</tr>
<tr>
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<tr>
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</tr>
<tr>
<td>2.200 but less than 2.250</td>
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(B) Adjustment to taxable wages. The planned yield as a percent of total wages, as determined in this subsection (a)(3), shall be adjusted to taxable wages by multiplying by the ratio of total wages to taxable wages for all contributing employers for the preceding fiscal year ending June 30, except, with regard to a year in which the taxable wage base changes. The taxable wages used in the calculation for such a year and the following year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during all of the preceding fiscal year ending June 30.

(C) Effective rates. (i) Except with regard to rates for negative account balance employers, employer contribution rates to be effective for the ensuing calendar year shall be computed by adjusting proportionately the experience factors from schedule I of this section to the required yield on taxable wages. For the purposes of this subsection
(a)(3), all rates computed shall be rounded to the nearest .01% and for calendar year 1983 and ensuing calendar years, the maximum effective contribution rate shall not exceed 5.4%.

(ii) For rate year 2007 and subsequent rate years, employers who are current in filing quarterly wage reports and in payment of all contributions due and owing, shall be issued a contribution rate based upon the following reduction: for rate groups 1 through 5, the rates would be reduced to 0.00%; for rate groups 6 through 28, the rates would be reduced by 50%; for rate groups 29 through 51, the rates would be reduced by 40%.

(iii) In order to be eligible for the reduced rates for rate year 2007, the employer must file all late reports and pay all contributions due and owing within a 30-day period following the date of mailing of the amended rate notice.

(iv) In order to be eligible for the reduced rates for rate year 2008 and subsequent rate years, employers must file all reports due and pay all contributions due and owing on or before January 31 of the applicable year, except that the reduced rates for otherwise eligible employers shall not be effective for any rate year if the average high cost multiple of the employment security trust fund balance falls below 1.2 as of the computation date of that year's rates. For the purposes of this provision, the average high cost multiple is the reserve fund ratio, as defined by subsection (a)(3)(A), divided by the average high benefit cost rate. The average high benefit cost rate shall be determined by averaging the three highest benefit cost rates over the last 20 years from the preceding fiscal year which ended June 30. The high benefit cost rate is defined by dividing total benefits paid in the fiscal year by total payrolls for covered employers in the fiscal year.

(b) Successor classification. (1) (A) For the purposes of this subsection (b), whenever an employing unit, whether or not it is an "employing unit" within the meaning of subsection (g) of K.S.A. 44-703, and amendments thereto, becomes an employer pursuant to subsection (h)(4) of K.S.A. 44-703, and amendments thereto, or is an employer at the time of acquisition and meets the definition of a "successor employer" as defined by subsection (dd) of K.S.A. 44-703, and amendments thereto, and thereafter transfers its trade or business, or any portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. These experience factors consist of all contributions paid, benefit experience and annual payrolls of the predecessor employer. The transfer of some or all of an employer's
workforce to another employer shall be considered a transfer of trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and such trade or business is performed by the employer to whom the workforce is transferred.

(B) If, following a transfer of experience under subparagraph (A), the secretary determines that a substantial purpose of the transfer or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(2) A successor employer as defined by subsection (h)(4) or subsection (dd) of K.S.A. 44-703, and amendments thereto, may receive the experience rating factors of the predecessor employer if an application is made to the secretary or the secretary's designee in writing within 120 days of the date of the transfer.

(3) Whenever an employing unit, whether or not it is an "employing unit" within the meaning of subsection (g) of K.S.A. 44-703, and amendments thereto, acquires or in any manner succeeds to a percentage of an employer’s annual payroll which is less than 100% and intends to continue the acquired percentage as a going business, the employing unit may acquire the same percentage of the predecessor's experience factors if: (A) The predecessor employer and successor employing unit make an application in writing on the form prescribed by the secretary, (B) the application is submitted within 120 days of the date of the transfer, (C) the successor employing unit is or becomes an employer subject to this act immediately after the transfer, (D) the percentage of the experience rating factors transferred shall not be thereafter used in computing the contribution rate for the predecessor employer, and (E) the secretary finds that such transfer will not tend to defeat or obstruct the object and purposes of this act.

(4) (A) The rate of both employers in a full or partial successorship under paragraph (1) of this subsection shall be recalculated and made effective on the first day of the next calendar quarter following the date of transfer of trade or business.

(B) If a successor employer is determined to be qualified under paragraph (2) or (3) of this subsection to receive the experience rating factors of the predecessor employer, the rate assigned to the successor employer for the remainder of the contributions year shall be determined by the following:

(i) If the acquiring employing unit was an employer subject to this act prior to the date of the transfer, the rate of contribution shall be the same as the contribution rate of the acquiring employer on the date of the transfer.
(ii) If the acquiring employing unit was not an employer subject to this act prior to the date of the transfer, the successor employer shall have a newly computed rate for the remainder of the contribution year which shall be based on the transferred experience rating factors as they existed on the most recent computation date immediately preceding the date of acquisition. These experience rating factors consist of all contributions paid, benefit experience and annual payrolls.

(5) Whenever an employing unit is not an employer at the time it acquires the trade or business of an employer, the unemployment experience factors of the acquired business shall not be transferred to such employing unit if the secretary finds that such employing unit acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such employing unit shall be assigned the applicable industry rate for a "new employer" as described in subsection (a)(1) of this section. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the secretary shall use objective factors which may include the cost of acquiring the business, whether the employer continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(6) Whenever an employer's account has been terminated as provided in subsections (d) and (e) of K.S.A. 44-711, and amendments thereto, and the employer continues with employment to liquidate the business operations, that employer shall continue to be an "employer" subject to the employment security law as provided in subsection (h)(8) of K.S.A. 44-703, and amendments thereto. The rate of contribution from the date of transfer to the end of the then current calendar year shall be the same as the contribution rate prior to the date of the transfer. At the completion of the then current calendar year, the rate of contribution shall be that of a "new employer" as described in subsection (a)(1) of this section.

(7) No rate computation will be permitted an employing unit succeeding to the experience of another employing unit pursuant to this section for any period subsequent to such succession except in accordance with rules and regulations adopted by the secretary. Any such regulations shall be consistent with federal requirements for additional credit allowance in section 3303 of the federal internal revenue code of 1986, and consistent with the provisions of this act.

(c) Voluntary contributions. Notwithstanding any other provision of the employment security law, any employer may make voluntary payments for the purpose of reducing or maintaining a reduced rate in
addition to the contributions required under this section. Such voluntary payments may be made only during the thirty-day period immediately following the date of mailing of experience rating notices for a calendar year. All such voluntary contribution payments shall be paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective at any time. The amount of voluntary contributions shall be credited to the employer's account as of the next preceding computation date and the employer's rate shall be computed accordingly, except that no employer's rate shall be reduced more than five rate groups as provided in schedule I of this section as the result of a voluntary payment. An employer not having a negative account balance may have such employer's rate reduced not more than five rate groups as provided in schedule I of this section as a result of a voluntary payment. An employer having a negative account balance may have such employer's rate reduced to that prescribed for rate group 51 of schedule I of this section by making a voluntary payment in the amount of such negative account balance or to that rate prescribed for rate groups 50 through 47 of schedule I of this section by making an additional voluntary payment that would increase such employer's reserve ratio to the lower limit required for such rate groups 50 through 47. Under no circumstances shall voluntary payments be refunded in whole or in part.

(d) As used in this section, "negative account balance employer" means an eligible employer whose total benefits charged to such employer's account for all past years have exceeded all contributions paid by such employer for all such years.

(e) There is hereby established in the state treasury, separate and apart from all public moneys or funds of this state, an employment security interest assessment fund, which shall be administered by the secretary as provided in this act. Moneys in the employment security fund established by K.S.A 44-712, and amendments thereto, and employment security interest assessment fund established by 44-710, and amendments thereto, shall not be invested in the pooled money investment portfolio established under K.S.A 75-4234, and amendments thereto. Notwithstanding the provisions of subsection (a) of K.S.A. 44-712, K.S.A. 44-716, K.S.A. 44-717 and K.S.A. 75-4234, and amendments thereto, or any like provision the secretary shall remit all moneys received from employers pursuant to the interest payment assessment established in section (a)(2)(E), and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the employment security interest assessment fund. All moneys in this fund which are received
from employers pursuant to the interest payment assessment established in section (a)(2)(E), and amendments thereto, shall be expended solely for the purposes and in the amounts found by the secretary necessary to pay any principal and interest due and owing the United States department of labor resulting from any advancements made to the Kansas employment security fund pursuant to the provisions of title XII of the social security act (42 U.S.C. § 1321 to 1324) except as may be otherwise provided under section (a)(2)(E), and amendments thereto. Notwithstanding any provision of this section, all moneys received and credited to this fund pursuant to section (a)(2)(E), and amendments thereto, pursuant to section (a)(2)(E), and amendments thereto, shall remain part of the employment security interest assessment fund and shall be used only in accordance with the conditions specified in section (a)(2)(E), and amendments thereto.

(f) The secretary of labor shall annually prepare and submit a certification as to the solvency and adequacy of the amount credited to the state of Kansas' account in the federal employment security trust fund to the governor and the employment security advisory council. The certification shall be submitted on or before December 1 of each calendar year and shall be for the 12-month period ending on June 30 of that calendar year. In arriving at the certification contributions paid on or before July 31 following the 12-month period ending date of June 30 shall be considered. Each certification shall be used to determine the need for any adjustment to schedule III in subsection (a)(3)(A) and to assist in preparing legislation to accomplish any such adjustment.

Sec. 7. K.S.A. 2011 Supp. 44-714 is hereby amended to read as follows: 44-714. (a) Duties and powers of secretary. It shall be the duty of the secretary to administer this act and the secretary shall have power and authority to adopt, amend or revoke such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the secretary deems necessary or suitable to that end. Such rules and regulations may be adopted, amended, or revoked by the secretary only after public hearing or opportunity to be heard thereon. The secretary shall determine the organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. The secretary shall make and submit reports for the administration of the employment security law in the manner prescribed by K.S.A. 75-3044 to 75-3046, inclusive, and 75-3048, and amendments thereto. Whenever the secretary believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, the secretary shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.
(b) **Publication.** The secretary shall cause to be printed for distribution to the public the text of this act, the secretary's rules and regulations and any other material the secretary deems relevant and suitable and shall furnish the same to any person upon application therefor.

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

(2) No employee engaged in the administration of the employment security law shall directly or indirectly solicit or receive or be in any manner concerned with soliciting or receiving any assistance, subscription or contribution for any political party or political purpose, other than soliciting and receiving contributions for such person's personal campaign as a candidate for a nonpartisan elective public office, nor shall any employee engaged in the administration of the employment security law participate in any form of political activity except as a candidate for a nonpartisan elective public office, nor shall any employee champion the cause of any political party or the candidacy of any person other than such person's own personal candidacy for a nonpartisan elective public office. Any employee engaged in the administration of the employment security law who violates these provisions shall be immediately discharged. No person shall solicit or receive any contribution for any political purpose from any employee engaged in the administration of the employment security law and any such action shall be a misdemeanor and shall be punishable by a fine of not less than $100 nor more than $1,000 or by imprisonment in the county jail for not less than 30 days nor more than six months, or both. Employees engaged in the administration of the
employment security law are free to engage in political activity to the
widest extent consistent with the restrictions imposed by law. Employees
may participate in all political activity not specifically restricted by law
including candidacy for office in a nonpartisan election and candidacy for
political party office.

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

(d) Advisory councils. The secretary shall appoint a state employment
security advisory council and may appoint local advisory councils,
composed in each case of men and women which shall include an equal
number of employer representatives and employee representatives who
may fairly be regarded as representative because of their vocation,
employment, or affiliations, and of such members representing the general
public as the secretary may designate. Each such member shall serve a
four-year term. On July 1, 1996, the secretary shall designate term lengths
for seated members of the council. One-half of the seated members
representing employers, 1/2 of the seated members representing employees
and 1/2 of the members representing the general public shall be designated
by the secretary to serve two-year terms. The remaining seated members of
the council shall be designated to serve four-year terms. When the term of
any member expires, the secretary shall appoint the member's successor to
a four-year term. If a position on the council becomes vacant prior to the
expiration of the vacating member's term, the secretary may appoint an
otherwise qualified individual to fulfill the remainder of such unexpired
term. Such councils shall aid the secretary in formulating policies and
discussing problems related to the administration of this act and in
securing impartiality and freedom from political influence in the solution
of such problems. Members of the state employment security advisory
council attending meetings of such council, or attending a subcommittee
meeting thereof authorized by such council, shall be paid amounts
provided in subsection (e) of K.S.A. 75-3223, and amendments thereto.
Service on the state employment security advisory council shall not in and
of itself be sufficient to cause any member of the state employment
security advisory council to be classified as a state officer or employee.

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

(f) Records and reports. Each employing unit shall keep true and accurate work records, containing such information as the secretary may prescribe. Such records shall be open to inspection and subject to being copied by the secretary or the secretary's authorized representatives at any reasonable time and shall be preserved for a period of five years from the due date of the contributions or payments in lieu of contributions for the period to which they relate. Only one audit shall be made of any employer's records for any given period of time. Upon request the employing unit shall be furnished a copy of all findings by the secretary or the secretary's authorized representatives, resulting from such audit. A special inquiry or special examination made for a specific and limited purpose shall not be considered to be an audit for the purpose of this subsection. The secretary may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the secretary deems necessary for the effective administration of this act. Information thus obtained or obtained from any individual pursuant to the administration of this act shall be held confidential, except to the extent necessary for the proper presentation of a claim by an employer or employee under the employment security law, and shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity. Any claimant or employing unit or their representatives at a hearing before an appeal tribunal or the secretary shall be supplied with information from such records to the extent necessary for the proper presentation of the claim. The transcript made at any such benefits hearing shall not be discoverable or admissible in evidence in any other proceeding, hearing or determination of any kind or nature. In the event of any appeal of a benefits matter, the transcript shall be sealed by the hearing officer and shall be available only to any reviewing authority who shall reseal the transcript after making a review of it. In no event shall such transcript be deemed a public record. Nothing in this subsection (f) shall be construed to prohibit disclosure of any information obtained under the employment security law, including hearing transcripts, upon request of either of the parties, for the purpose of administering or adjudicating a claim for benefits under the provisions of any other state program, except that any party receiving such information shall be prohibited from further disclosure and shall be subject to the same duty of confidentiality otherwise imposed by this subsection (f) and shall be subject to the penalties imposed by this subsection (f) for violations of
such duty of confidentiality. Nothing in this subsection (f) shall be construed to prohibit disclosure of any information obtained under the employment security law, including hearing transcripts, for use as evidence in open court in a criminal prosecution for perjury at an appeal hearing under the employment security law or for any criminal violation of the employment security law. If the secretary or any officer or employee of the secretary violates any provisions of this subsection (f), the secretary or such officer or employee shall be fined not less than $20 nor more than $200 or imprisoned for not longer than 90 days, or both. Original records of the agency and original paid benefit warrants of the state treasurer may be made available to the employment security agency of any other state or the federal government to be used as evidence in prosecution of violations of the employment security law of such state or federal government. Photostatic copies of such records shall be made and where possible shall be substituted for original records introduced in evidence and the originals returned to the agency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(o) The secretary is hereby authorized to fix, charge and collect fees
for copies made of public documents, as defined by subsection (c) of
K.S.A. 45-204, and amendments thereto, by xerographic, thermographic or
other photocopying or reproduction process, in order to recover all or part
of the actual costs incurred, including any costs incurred in certifying such
copies. All moneys received from fees charged for copies of such
documents shall be remitted to the state treasurer in accordance with the
provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
each such remittance, the state treasurer shall deposit the entire amount in
the state treasury to the credit of the employment security administration
fund. No such fees shall be charged or collected for copies of documents
that are made pursuant to a statute which requires such copies to be
furnished without expense.

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

(b) Financing. All moneys received by this state under such act of congress, as amended, shall be paid into the employment security administration fund, and such moneys are hereby made available to the secretary of labor-commerce to be expended as provided by this section and by such act of congress. For the purpose of establishing and maintaining free public employment offices, the secretary is authorized to enter into agreements with the railroad retirement board, or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state or with any private nonprofit organization, and as a part of any such agreement the secretary of labor-commerce may accept moneys, services, or quarters as a contribution to the employment service account, and the political subdivisions of this state are hereby authorized to raise and expend moneys, services, or quarters as contribution to the employment service account.

Sec. 9: 10. K.S.A. 2011 Supp. 44-717 is hereby amended to read as follows: 44-717. (a) (1) Penalties on past-due reports, interest on past-due
contributions, payments in lieu of contributions, benefit cost payments and interest assessments made under K.S.A. 44-710a, and amendments thereto.

Any employer or any officer or agent of an employer, who fails to file any wage report or contribution return by the last day of the month following the close of each calendar quarter to which they are related shall pay a penalty as provided by this subsection for each month or fraction of a month until the report or return is received by the secretary of labor except that for calendar years 2010 and 2011 an employer or any officer or agent of the employer shall have up to 90 days past the due date for any of the first three calendar quarters in a calendar year to pay such employer's contribution without being charged any interest, however, when the 90 day period has passed, the provisions of this section shall apply. The penalty for each month or fraction of a month shall be an amount equal to .05% of the total wages paid by the employer during the quarter, except that no penalty shall be less than $25 nor more than $200 for each such report or return not timely filed. Contributions, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, unpaid by the last day of the month following the last calendar quarter to which they are related and payments in lieu of contributions unpaid 30 days after the mailing of the statement of benefit charges, shall bear interest at the rate of 1% per month or fraction of a month until payment is received by the secretary of labor except that an employing unit, which is not theretofore subject to this law and which becomes an employer and does not refuse to make the reports, returns and contributions, payments in lieu of contributions and benefit cost payments required under this law, shall not be liable for such penalty or interest if the wage reports and contribution returns required are filed and the contributions, payments in lieu of contributions or benefit cost payments required are paid within 10 days following notification by the secretary of labor that a determination has been made fixing its status as an employer subject to this law. Upon written request and good cause shown, the secretary of labor may abate any penalty or interest or portion thereof provided for by this subsection. Interest amounting to less than $5 shall be waived by the secretary of labor and shall not be collected. Penalties and interest collected pursuant to this subsection shall be paid into the special employment security fund. For all purposes under this section, amounts assessed as surcharges under subsection (j) or under K.S.A. 44-710a, and amendments thereto, shall be considered to be contributions and shall be subject to penalties and interest imposed under this section and to collection in the manner provided by this section. For all purposes under this section, amounts assessed under K.S.A. 44-710a, and amendments thereto, shall be subject to penalties and interest imposed under this section and to collection in the manner provided in this section. For purposes of this subsection, a wage report, a
contribution return, a contribution, a payment in lieu of contribution, a
benefit cost payment or an interest assessment made pursuant to K.S.A.
44-710a, and amendments thereto, is deemed to be filed or paid as of the
date it is placed in the United States mail.

(2) Notices of payment and reporting delinquency to Indian tribes or
their tribal units shall include information that failure to make full payment
within the prescribed time frame:
(i) Will cause the Indian tribe to be liable for taxes under FUTA;
(ii) will cause the Indian tribe to lose the option to make payments in
liue of contributions;
(iii) could cause the Indian tribe to be excepted from the definition of
"employer," as provided in paragraph (h)(3) of K.S.A. 44-703, and
amendments thereto, and services in the employ of the Indian tribe, as
provided in paragraph (i)(3)(E) of K.S.A. 44-703, and amendments
thereto, to be excepted from "employment."

(b) Collection. (1) If, after due notice, any employer defaults in
payment of any penalty, contributions, payments in lieu of contributions,
benefit cost payments, interest assessments made pursuant to K.S.A. 44-
710a, and amendments thereto, or interest thereon the amount due may be
collected by civil action in the name of the secretary of labor and the
employer adjudged in default shall pay the cost of such action. Civil
actions brought under this section to collect contributions, payments in lieu
of contributions, benefit cost payments, interest assessments made
pursuant to K.S.A. 44-710a, and amendments thereto, penalties, or interest
thereon from an employer shall be heard by the district court at the earliest
possible date and shall be entitled to preference upon the calendar of the
court over all other civil actions except petitions for judicial review under
this act and cases arising under the workmen's compensation act. All
liability determinations of contributions due, payments in lieu of
contributions, benefit cost payments and interest assessments made
pursuant to K.S.A. 44-710a, and amendments thereto, due shall be made
within a period of five years from the date such contributions, payments in
liue of contributions, benefit cost payments and interest assessments made
pursuant to K.S.A. 44-710a, and amendments thereto, were due except
such determinations may be made for any time when an employer has filed
fraudulent reports with intent to evade liability.

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

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

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

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

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

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

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

(4) **Successive seizures.** Whenever any property or right to property upon which levy has been made under this subsection is not sufficient to satisfy the claim of the secretary for which levy is made, the secretary or the secretary's authorized representative may proceed thereafter and as often as may be necessary, to levy in like manner upon any other property or rights to property which belongs to the employer or person against whom such claim exists or upon which a lien is created by this subsection until the amount due from the employer or person, together with all expenses, is fully paid.

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Refunds. If any individual, governmental entity or organization makes application for refund or adjustment of any amount paid as contributions, benefit cost payments, interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, or interest under this law and the secretary of labor determines that such amount or any portion thereof was erroneously collected, except for amounts less than $5, the secretary of labor shall allow such individual or organization to make an adjustment thereof, in connection with subsequent contribution payments, or if such adjustment cannot be made the secretary of labor shall refund the amount, except for amounts less than $5, from the employment security fund, except that all interest erroneously collected which has been paid into the special employment security fund shall be refunded out of the special employment security fund. No adjustment or refund shall be allowed with respect to a payment as contributions, interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, or interest unless an application therefor is made on or before whichever of the following dates is later: (1) One year from the date on which such payment was made; or (2) three years from the last day of the period with respect to which such payment was made. For like cause and within the same period adjustment or refund may be so made on the secretary's own initiative. The secretary of labor shall not be required to refund any contributions, payments in lieu of contributions or benefit cost payments based upon wages paid which have been used as base-period wages in a determination of a claimant's benefit rights when justifiable and correct payments have been made to the claimant as the result of such determination. For all taxable years commencing after December 31, 1997, interest at the rate prescribed in K.S.A. 79-2968, and amendments thereto, equal to the rate payable to the state's account in the federal unemployment trust fund, pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, shall be allowed on a contribution or benefit cost payment which the secretary has determined was erroneously collected pursuant to this section.

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

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

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

(j) Any officer, major stockholder or other person who has charge of the affairs of an employer, which is an employing unit described in section 501(c)(3) of the federal internal revenue code of 1954 or which is any other corporate organization or association, or any member or manager of a limited liability company, or any public official, who willfully fails to pay the amount of contributions, payments in lieu of contributions, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, required to be paid under the employment security law on the date on which such amount becomes delinquent, shall be personally liable for the total amount of the contributions, payments in lieu of contributions, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, and any penalties and interest due and unpaid by such employing unit. The secretary or the secretary's authorized representative may assess such person for the total amount of the contributions, payments in lieu of contributions, benefit cost payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, and any penalties, and interest computed as due and owing. With respect to such persons and such amounts assessed, the secretary shall have available all of the collection remedies authorized or provided by this section.

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

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

2. Wage reports, contribution returns and payments due after June 30, 2009, for those employers with 100 or more employees or third party administrators with 100 or more client employees at the time such filing or payment is first due; and

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

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

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

Sec. 11. K.S.A. 44-702 and K.S.A. 2011 Supp. 44-703, 44-703a, 44-705, 44-706, 44-706b, 44-709, 44-710, 44-710a, 44-714, 44-715 and 44-717 are hereby repealed.

Sec. 12. This act shall take effect and be in force from and after its publication in the statute book.