SENATE BILL No. 77

By Committee on Commerce

1-31

AN ACT concerning the employment security act; creating an assessment for the payment of interest on advances received from the federal government; removing the waiting week extension; pertaining to benefits; amending K.S.A. 2010 Supp. 44-703, 44-704a, 44-705, 44-706, 44-710, 44-710a and 44-717 and repealing the existing sections.

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

New Section 1. To provide for the payment to the United States treasury from the state employment security interest assessment fund for interest on loans made to the state employment security 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 pooled money investment board is authorized and directed to loan to the department of labor sufficient funds therefor in an amount or amounts which in the aggregate shall not exceed $3,000,000 and such moneys shall be deposited in the state employment security interest assessment fund. The pooled money investment board is authorized and directed to use any moneys in the operating accounts, investment accounts or other investments, of the state of Kansas to provide funds for such loan upon approval of such loan by the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and amendments thereto. The state finance council shall approve such loan on or before September 12, 2011. The pooled money investment board shall transfer the funds required by the department of labor on or before September 23, 2011, to allow the department of labor to make its interest payment on or before September 30, 2011. The loan shall not bear interest and shall be repaid on or before June 30, 2012. A copy of the terms of the loan shall be submitted to the director of the legislative research department. Such loan shall not be deemed to be an indebtedness or debt of the state of Kansas within the meaning of section 6 of article 11 of the constitution of the state of Kansas.

Sec. 2. From and after July 1, 2011, K.S.A. 2010 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; 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.
(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 (f) 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) The employer is an individual who is a resident of this state; or
(B) the employer is a corporation which is organized under the laws of
this state; or

(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 ⅔ 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

(ii) 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) of the immigration and nationality act;

(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 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 $8,000 with respect to employment during any calendar year following
1983 in excess of $8,000 for the calendar years from 1984 to 2011 inclusive, in
excess of $9,000 for the calendar year 2012, in excess of $10,000 for the
calendar year of 2013, and in excess of $11,000 for each calendar year
following 2013, 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 the amount stated herein 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.

Section 1. Sec. 3. From and after July 1, 2011, K.S.A. 2010 Supp. 44-704a is hereby amended to read as follows: 44-704a. (a) Definitions. As used in this section, unless the context clearly requires otherwise:

1. "Extended benefit period" means a period which:
   (A) Begins with the third week after a week for which there is an "on" indicator; and
   (B) ends with either of the following weeks, whichever occurs later: (i) the third week after the first week for which there is an "off" indicator; or (ii) the 13th consecutive week of such period, except that no extended benefit period may begin by reason of an "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state.

2. For the purposes of this section:
   (A) There is an "on" indicator for this state for a week if the secretary of labor determines, in accordance with the regulations of the United States secretary of labor, that, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this act: (i) Equaled or exceeded 5% and equaled or exceeded 120% of the average of such rates for the corresponding 13-week period.
period ending in each of the preceding two calendar years; or (ii) and the state of Kansas pays a portion of such benefits in accordance with the provisions of K.S.A. 44-710(c)(2)(C) and 44-710(e), and amendments thereto; or (ii) equaled or exceeded 5% and equaled or exceeded 120% of the average of such rates for the corresponding 13-week period ending in any or all of the preceding three calendar years and such benefits are funded entirely by the United States department of labor until on or before the earlier of the latest date permitted under federal law or the end of the fourth week prior to the last week for which federal sharing is provided as authorized by section 2005(a) of public law 111-5 without regard to section 2005(c) of public law 111-5; or (iii) equaled or exceeded 6%; or (iii)

(B) (i) There is an "off" indicator for this state for a week if the secretary of labor determines, in accordance with the regulations of the United States secretary of labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted), as determined by the United States secretary of labor, for the three-month period referred to in clause (iii)(a)(iv)(a)(1), equals or exceeds 110% of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years; or (2) equals or exceeds 110% of such average for any or all of the corresponding three-month periods ending in any or all of the three preceding calendar years and such benefits are funded entirely by the United States department of labor until on or before the earlier of the latest date permitted under federal law or the end of the fourth week prior to the last week for which federal sharing is provided as authorized by section 2005(a) of public law 111-5 without regard to section 2005(c) of public law 111-5.

(ii) There is an "off" indicator for this state for a week only if, for the period consisting of such week and the immediately preceding 12 weeks, none
of the conditions specified in subsection (a)(2)(A) of this section result in an
"on" indicator.
(3) "Rate of insured unemployment," for purposes of paragraphs (2)(A) and (2)(B) of this subsection, means the percentage derived by dividing:
(A) The average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13-consecutive-week period, as determined by the secretary of labor on the basis of reports to the United States secretary of labor; by
(B) the average monthly employment covered under this act for the first four of the most recent six completed calendar quarters ending before the end of such 13-week period.
(4) "Extended entitlement period" of an individual means the period consisting of the weeks of the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.
(5) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C.A. chapter 85) payable to an individual under the provisions of the act for weeks of unemployment in the individual's extended entitlement period.
(6) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's extended entitlement period:
(A) Has received, prior to such week, all of the regular benefits that were available to the individual under this act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-service personnel under 5 U.S.C.A. chapter 85) in the individual's current benefit year that includes such week, provided that, for the purposes of this paragraph (6)(A), an individual shall be deemed to have received all of the regular benefits that were available to the individual although the individual may subsequently be determined to be entitled to added regular benefits as a result of a pending appeal with respect to wages that were not considered in the original monetary determination of the individual's benefit year; or
(B) the individual's benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which the individual could establish a new benefit year that would include such week; and
(C) (i) has no right to unemployment benefits or allowances, as the case may be, under the federal railroad unemployment insurance act and such other federal laws as are specified in regulations issued by the United States secretary of labor; and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law the individual is considered an exhaustee.
(7) "State law" means the unemployment compensation law of any state,
approved by the United States secretary of labor under section 3304 of the federal internal revenue code of 1986.

(b) Payment of extended benefits. Extended benefits shall be payable to eligible individuals with respect to weeks of unemployment in their extended entitlement periods. The extended benefits provided by this section and K.S.A. 44-704b, and amendments thereto, shall be payable from the fund. All extended benefits shall be paid through the employment offices, in accordance with such rules and regulations as the secretary of labor may adopt.

(c) Beginning and termination of extended benefit period. (1) Whenever an extended benefit period is to become effective in this state as a result of an "on" indicator, or an extended benefit period is to be terminated in this state as a result of an "off" indicator, the secretary of labor shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection (a)(3) of this section shall be made by the secretary of labor, in accordance with regulations prescribed by the United States secretary of labor.

(d) Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's extended entitlement period shall be an amount equal to the regular weekly benefit amount payable to the individual during the individual's applicable benefit year, except that for any week during a period in which federal payments to states under section 204 of the federal-state extended unemployment compensation act of 1970 are reduced pursuant to an order issued under section 252 of the federal balanced budget and emergency deficit control act of 1985, the weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be reduced by a percentage amount which is equivalent to the reduction in the federal payment. If such reduced weekly extended benefit amount is not a multiple of $1, it shall be reduced to the next lower multiple of $1.

(e) Total extended benefit amount. (1) Except as otherwise provided in subsection (e)(2) or (e)(3) of this section, the total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit year shall be the least of the following amounts:

(A) Fifty percent of the total amount of regular benefits which were payable to the individual under this act in the individual's applicable benefit year; or

(B) thirteen times the individual's weekly benefit amount which was payable to the individual under this act for a week of total unemployment in the applicable benefit year.

(2) Effective with respect to weeks beginning in a high unemployment period, the provisions of subsection (e)(1) of this section shall be applied by substituting "80%" for "50%" in subparagraph (A) of that subsection (e)(1),
and by substituting "20" for "13" in subparagraph (B) of that subsection (e)(1).
For purposes of this subsection (e)(2), the term "high unemployment period"
means any period during which an extended benefit period would be in effect
if the provisions of subsection (a)(2)(A)(iii) of this section were applied after
substituting "8%" for "6.5%" in clause (a) of that subsection (a)(2)(A)(iii).
(3) During any fiscal year in which federal payments to states under
section 204 of the federal-state extended unemployment compensation act of
1970 are reduced pursuant to an order issued under section 252 of the federal
balanced budget and emergency deficit control act of 1985, the total extended
benefit amount payable to an individual with respect to the individual's
applicable benefit year shall be reduced by an amount equal to the total of all
of the reductions under subsection (d) of this section in the weekly extended
benefit amounts paid to the individual.
(f) Eligibility requirements for extended benefits. An individual shall be
eligible to receive extended benefits with respect to any week of
unemployment in the individual's extended entitlement period only if the
secretary of labor, or a person or persons designated by the secretary, finds that
with respect to such week:
(1) The individual is an "exhaustee" as defined in subsection (a)(6) of this
section;
(2) the individual is qualified and eligible for extended benefits pursuant
to K.S.A. 44-704b, and amendments thereto;
(3) the individual is entitled to benefits pursuant to the provisions of this
act which apply to claims for, or the payment of regular benefits which are not
inconsistent with the provisions of K.S.A. 44-704b, and amendments thereto; and
(4) the individual, during the base period, (A) was paid wages for insured
work equal to or greater than 1½ times the amount of total wages paid for the
quarter in which such wages were highest during the individual's base period;
or (B) has been paid an amount equal to or exceeding 40 times the individual's
most recent weekly benefit amount in the individual's base period.
(g) Limitation on amount of combined regular, extended and trade
readjustment act benefits received. Notwithstanding any other provisions of
this section or K.S.A. 44-704b, and amendments thereto, if the benefit year of
any individual ends within an extended entitlement period, the remaining
balance of extended benefits that the individual would, but for this section, be
entitled to receive in that extended entitlement period, with respect to weeks of
unemployment beginning after the end of the benefit year, shall be reduced
(but not below zero) by the product of the number of weeks for which the
individual received any amounts as trade readjustment allowances within that
benefit year, multiplied by the individual's weekly benefit amount for extended
benefits.
Sec. 2. From and after July 1, 2010, K.S.A. 2010 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
(d) 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.

(3) A claimant shall become eligible to receive compensation for the waiting period of one week, pursuant to paragraph (1), upon completion of three weeks of unemployment consecutive to such waiting period.

(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—§ 5. From and after July 1, 2011, K.S.A. 2010 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
(a). 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 (a) 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 (1) "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 individual 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
(5), "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, sections 36 through 77, 174, 210, 211 or 229 through 231 of chapter 136 of the 2010 Session Laws of Kansas, 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 (b), "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 (b) shall be construed to mean conduct evincing extreme, willful or wanton
misconduct as defined by this subsection (b). 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 (b), 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. 2010 Supp. 21-36a01, and amendments thereto.
As used in this subsection (b)(2) 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 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 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.

(3) (A) For the purposes of this subsection (B), 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 if the facts show:

(i) The individual was absent without good cause;

(ii) the absence was in violation of the employer's written absenteeism
(iii) the employer gave or sent written notice to the individual, at the
individual's last known address, that future absence may or will result in
discharge; and
(iv) the employee had knowledge of the employer's written absenteeism
policy.
(B) For the purposes of this subsection (B), if an employee disputes being
absent without good cause, the employee shall present evidence that a majority
of the employee's absences were for good cause. If the employee alleges that
the employee's repeated absences 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;
   (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; (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 (d) be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection (d), 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 beginning with the first day following the
last week of unemployment for which the individual received benefits, or for
one year 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
thereo, 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 (j) 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
(j).
(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 (n); 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 (n). No reduction shall be made for
payments made under the social security act or railroad retirement act of 1974.

(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
(o), 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 (p) 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. 6. From and after July 1, 2011, K.S.A. 2010 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 and 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 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 allocation (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.-4-7. K.S.A. 2010 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.

| Column A | Column B | Column C
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<td>Experience factor (Ratio to total wages)</td>
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(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 B of schedule II of this section **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 2% 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. Contribution payments made pursuant to this subsection (a)(2)(E) shall be credited to the appropriate account of such negative account balance employer. 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 the calendar calendar year 2011, 50% of any such surcharge 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 remaining surcharge shall be used to retire the principal on funds received from the federal unemployment account under title XII of the social security act and shall be deposited in the Kansas unemployment insurance trust fund;

(ii) 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 amount of such surcharge necessary to pay such interest;

(iii) 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

(iv) 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>
</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>
</tr>
<tr>
<td>Less than 2.0%</td>
<td>0.20%</td>
<td>0.30%</td>
</tr>
<tr>
<td>2.0% but less than 4.0</td>
<td>0.40%</td>
<td>0.50%</td>
</tr>
<tr>
<td>4.0 but less than 6.0</td>
<td>0.60%</td>
<td>0.70%</td>
</tr>
<tr>
<td>6.0 but less than 8.0</td>
<td>0.80%</td>
<td>0.90%</td>
</tr>
<tr>
<td>8.0 but less than 10.0</td>
<td>1.00%</td>
<td>1.10%</td>
</tr>
<tr>
<td>10.0 but less than 12.0</td>
<td>1.20%</td>
<td>1.30%</td>
</tr>
<tr>
<td>12.0 but less than 14.0</td>
<td>1.40%</td>
<td>1.50%</td>
</tr>
<tr>
<td>14.0 but less than 16.0</td>
<td>1.60%</td>
<td>1.70%</td>
</tr>
<tr>
<td>16.0 but less than 18.0</td>
<td>1.80%</td>
<td>1.90%</td>
</tr>
<tr>
<td>18.0 but less than 20.0</td>
<td>2.00%</td>
<td>2.10%</td>
</tr>
<tr>
<td>20.0 but less than 22.0</td>
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<td>2.20%</td>
</tr>
<tr>
<td>22.0 but less than 24.0</td>
<td>2.40%</td>
<td>2.40%</td>
</tr>
<tr>
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<td>3.60%</td>
</tr>
<tr>
<td>36.0 but less than 38.0</td>
<td>3.80%</td>
<td>3.80%</td>
</tr>
<tr>
<td>38.0 and over</td>
<td>4.00%</td>
<td>4.00%</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 Planned Yield</th>
</tr>
</thead>
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<tr>
<td>Reserve Fund Ratio</td>
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<td>4.500 and over</td>
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<td>4.275 but less than 4.300</td>
<td>0.09</td>
</tr>
<tr>
<td>4.250 but less than 4.275</td>
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<td>SB 77—Am. by SC</td>
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<td>Wage Range</td>
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</tr>
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<td>1.350 but less than 1.375</td>
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<tr>
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<td>0.92</td>
</tr>
<tr>
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</tr>
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</tr>
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<tr>
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<tr>
<td>0.400 but less than 0.500</td>
<td>1.06</td>
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<tr>
<td>0.300 but less than 0.400</td>
<td>1.07</td>
</tr>
<tr>
<td>0.200 but less than 0.300</td>
<td>1.08</td>
</tr>
<tr>
<td>0.100 but less than 0.200</td>
<td>1.09</td>
</tr>
<tr>
<td>Less than 0.100%</td>
<td>1.10</td>
</tr>
</tbody>
</table>

(B) Adjustment to taxable wages. The (i) Except as provided in clause
(ii) 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.

(ii) For the calendar years 2012, 2013 and 2014, 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 at the taxable wage base of $8,000. Any revenue generated by increasing the taxable wage base above $8,000 shall be in addition to the planned yield established pursuant to schedule III of this section. The provisions of this clause shall expire on December 31, 2014.

(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.

(2) 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. 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.

(e) (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.—5. K.S.A. 2010 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 and benefit cost payments, 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 (e) 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 and benefit cost payments, 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 (a). 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 or a benefit cost payment, 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 lieu 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 or benefit cost payments, 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 lieu of contributions or benefit cost payments, 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, benefit cost payments 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 or payments in lieu of 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 or benefit cost payments, 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 (e) 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 (e).

(2) Authority of secretary or authorized representative. If any employer
or person who is liable to pay any contributions, payments in lieu of
contributions or benefit cost payments, 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 or benefit cost payments, 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 (e) for the payment of such contributions, payments in lieu
of contributions or benefit cost payments, 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 (e), "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 or benefit cost payments,
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 (e).

(3) Seizure and sale of property. The authority to levy granted under this
subsection (e) 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 (e) 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 (e) 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 the 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, benefit cost
payments, 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, 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)
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 or benefit cost payments, 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 or benefit cost payments, 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 contributions, payments in lieu of contributions or benefit cost payments, 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 or reimbursing payments or interest assessments under K.S.A. 44-710a, and amendments thereto. 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 and payments, payments and interest assessments made pursuant to K.S.A. 44-710a, and amendments thereto, due after June 30, 2010, for those third party administrators with 50 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.-6. 9. K.S.A. 2010 Supp. 44-704a, 44-710a and 44-717 are hereby repealed.


Sec.-8. 11. This act shall take effect and be in force from and after its publication in the Kansas register.