

HOUSE BILL No. 2281

By Representatives Swenson and Nichols

2-11

AN ACT concerning employment security law; relating to the Kansas economic stimulus package of 2003; amending K.S.A. 44-704 and 44-757 and K.S.A. 2002 Supp. 44-703, 44-705 and 44-706 and repealing the existing sections.

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

Section 1. K.S.A. 2002 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 last~~ 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) If an individual lacks sufficient base period wages in order to establish a benefit year in the matter 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~~ or the individual has reason to believe such individual would be eligible for an increase in such individ-

1 *ual's total benefit credit if such individual's base period was calculated*
2 *using the last three calendar quarters and any weeks in which wages were*
3 *paid to the individual during the incomplete calendar quarter in which*
4 *the individual files a claim, the claimant shall have an alternative base*
5 *period substituted for the current base period so as not to prevent estab-*
6 *lishment of a valid claim or a claim resulting in reduced benefits. For the*
7 *purposes of this subsection, "alternative base period" means the last four*
8 *three completed calendar quarters immediately preceding the date the*
9 *qualifying injury occurred and any weeks in which wages were paid to*
10 *the individual in the incomplete calendar quarter in which the individual*
11 *files a claim for benefits. Applicants shall have the option to use the*
12 *method of determining base period on the basis of the last three completed*
13 *calendar quarters and any weeks in which wages were paid to the indi-*
14 *vidual during such individual's incomplete calendar quarter, or the last*
15 *four completed calendar quarters, whichever is applicable. In the event*
16 *the wages in the alternative base period have been used on a prior claim,*
17 *then they shall be excluded from the new alternative base period.*

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

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

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

27 (d) "Benefit year" with respect to any individual, means the period
28 beginning with the first day of the first week for which such individual
29 files a valid claim for benefits, and such benefit year shall continue for
30 one full year. In the case of a combined wage claim, the benefit year shall
31 be the benefit year of the paying state. Following the termination of a
32 benefit year, a subsequent benefit year shall commence on the first day
33 of the first week with respect to which an individual next files a claim for
34 benefits. When such filing occurs with respect to a week which overlaps
35 the preceding benefit year, the subsequent benefit year shall commence
36 on the first day immediately following the expiration date of the preceding
37 benefit year. Any claim for benefits made in accordance with subsection
38 (a) of K.S.A. 44-709 and amendments thereto shall be deemed to be a
39 "valid claim" for the purposes of this subsection if the individual has been
40 paid wages for insured work as required under subsection (e) of K.S.A.
41 44-705 and amendments thereto. Whenever a week of unemployment
42 overlaps two benefit years, such week shall, ~~for the purpose of granting~~
43 ~~waiting period credit or benefit payment with respect thereto,~~ be deemed

1 to be a week of unemployment within that benefit year in which the
2 greater part of such week occurs.

3 (e) "Commissioner" or "secretary" means the secretary of human
4 resources.

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

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

13 (g) "Employing unit" means any individual or type of organization,
14 including any partnership, association, limited liability company, agency
15 or department of the state of Kansas and political subdivisions thereof,
16 trust, estate, joint-stock company, insurance company or corporation,
17 whether domestic or foreign including nonprofit corporations, or the re-
18 ceiver, trustee in bankruptcy, trustee or successor thereof, or the legal
19 representatives of a deceased person, which has in its employ one or more
20 individuals performing services for it within this state. All individuals per-
21 forming services within this state for any employing unit which maintains
22 two or more separate establishments within this state shall be deemed to
23 be employed by a single employing unit for all the purposes of this act.
24 Each individual employed to perform or to assist in performing the work
25 of any agent or employee of an employing unit shall be deemed to be
26 employed by such employing unit for all the purposes of this act, whether
27 such individual was hired or paid directly by such employing unit or by
28 such agent or employee, provided the employing unit had actual or con-
29 structive knowledge of the employment.

30 (h) "Employer" means:

31 (1) (A) Any employing unit for which agricultural labor as defined in
32 subsection (w) of this section is performed and which during any calendar
33 quarter in either the current or preceding calendar year paid remunera-
34 tion in cash of \$20,000 or more to individuals employed in agricultural
35 labor or for some portion of a day in each of 20 different calendar weeks,
36 whether or not such weeks were consecutive, in either the current or the
37 preceding calendar year, employed in agricultural labor 10 or more in-
38 dividuals, regardless of whether they were employed at the same moment
39 of time.

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

1 (i) Such crew leader holds a valid certificate of registration under the
2 federal migrant and seasonal agricultural workers protection act or sub-
3 stantially all the members of such crew operate or maintain tractors,
4 mechanized harvesting or cropdusting equipment or any other mecha-
5 nized equipment, which is provided by such crew leader; and

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

8 (C) For the purpose of this subsection (h)(1), in the case of any in-
9 dividual who is furnished by a crew leader to perform service in agricul-
10 tural labor for any other person and who is not treated as an employee
11 of such crew leader:

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

14 (ii) such other person shall be treated as having paid cash remunera-
15 tion to such individual in an amount equal to the amount of cash re-
16 munerated to such individual by the crew leader, either on the crew
17 leader's own behalf or on behalf of such other person, for the service in
18 agricultural labor performed for such other person.

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

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

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

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

29 (2) (A) Any employing unit which: (i) In any calendar quarter in ei-
30 ther the current or preceding calendar year paid for service in employ-
31 ment wages of \$1,500 or more, or (ii) for some portion of a day in each
32 of 20 different calendar weeks, whether or not such weeks were consec-
33 utive, in either the current or preceding calendar year, had in employment
34 at least one individual, whether or not the same individual was in em-
35 ployment in each such day.

36 (B) Employment of individuals to perform domestic service or agri-
37 cultural labor and wages paid for such service or labor shall not be con-
38 sidered in determining whether an employing unit meets the criteria of
39 this subsection (h)(2).

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

42 (4) (A) Any employing unit, whether or not it is an employing unit
43 under subsection (g) of this section, which acquires or in any manner

1 succeeds to (i) substantially all of the employing enterprises, organization,
2 trade or business, or (ii) substantially all the assets, of another employing
3 unit which at the time of such acquisition was an employer subject to this
4 act;

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

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

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

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

22 (8) Any employing unit not an employer by reason of any other par-
23 agraph of this subsection (h), for which within either the current or pre-
24 ceding calendar year services in employment are or were performed with
25 respect to which such employing unit is liable for any federal tax against
26 which credit may be taken for contributions required to be paid into a
27 state unemployment compensation fund; or which, as a condition for ap-
28 proval of this act for full tax credit against the tax imposed by the federal
29 unemployment tax act, is required, pursuant to such act, to be an "em-
30 ployer" under this act.

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

38 (i) "Employment" means:

39 (1) Subject to the other provisions of this subsection, service, includ-
40 ing service in interstate commerce, performed by

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

42 (B) any individual who, under the usual common law rules applicable
43 in determining the employer-employee relationship, has the status of an

1 employee; or

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

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

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

16 For purposes of subsection (i)(1)(D), the term "employment" shall in-
17 clude services described in paragraphs (i) and (ii) above only if:

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

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

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

26 (2) The term "employment" shall include an individual's entire serv-
27 ice within the United States, even though performed entirely outside this
28 state if,

29 (A) The service is not localized in any state, and

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

32 (C) the individual's base of operations is in this state, or if there is no
33 base of operations, then the place from which service is directed or con-
34 trolled is in this state.

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

36 (A) Services performed within this state but not covered by the pro-
37 visions of subsection (i)(1) or subsection (i)(2) shall be deemed to be
38 employment subject to this act if contributions are not required and paid
39 with respect to such services under an unemployment compensation law
40 of any other state or of the federal government.

41 (B) Services performed entirely without this state, with respect to no
42 part of which contributions are required and paid under an unemploy-
43 ment compensation law of any other state or of the federal government,

1 shall be deemed to be employment subject to this act only if the individual
2 performing such services is a resident of this state and the secretary ap-
3 proved the election of the employing unit for whom such services are
4 performed that the entire service of such individual shall be deemed to
5 be employment subject to this act.

6 (C) Services covered by an arrangement pursuant to subsection (I) of
7 K.S.A. 44-714 and amendments thereto between the secretary and the
8 agency charged with the administration of any other state or federal un-
9 employment compensation law, pursuant to which all services performed
10 by an individual for an employing unit are deemed to be performed en-
11 tirely within this state, shall be deemed to be employment if the secretary
12 has approved an election of the employing unit for whom such services
13 are performed, pursuant to which the entire service of such individual
14 during the period covered by such election is deemed to be insured work.

15 (D) Services performed by an individual for wages or under any con-
16 tract of hire shall be deemed to be employment subject to this act unless
17 and until it is shown to the satisfaction of the secretary that: (i) Such
18 individual has been and will continue to be free from control or direction
19 over the performance of such services, both under the individual's con-
20 tract of hire and in fact; and (ii) such service is either outside the usual
21 course of the business for which such service is performed or that such
22 service is performed outside of all the places of business of the enterprise
23 for which such service is performed.

24 (E) Service performed by an individual in the employ of this state or
25 any instrumentality thereof, any political subdivision of this state or any
26 instrumentality thereof, or in the employ of an Indian tribe, as defined
27 pursuant to section 3306(u) of the federal unemployment tax act, any
28 instrumentality of more than one of the foregoing or any instrumentality
29 which is jointly owned by this state or a political subdivision thereof or
30 Indian tribes and one or more other states or political subdivisions of this
31 or other states, provided that such service is excluded from "employment"
32 as defined in the federal unemployment tax act by reason of section
33 3306(c)(7) of that act and is not excluded from "employment" under
34 subsection (i)(4)(A) of this section. For purposes of this section, the ex-
35 clusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also
36 be applicable to services performed in the employ of an Indian tribe.

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

42 (G) The term "employment" shall include the service of an individual
43 who is a citizen of the United States, performed outside the United States

1 except in Canada, in the employ of an American employer (other than
2 service which is deemed “employment” under the provisions of subsec-
3 tion (i)(2) or subsection (i)(3) or the parallel provisions of another state’s
4 law), if:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (i) As an elected official;

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

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

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

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

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

18 (C) service performed by an individual in the employ of such indi-
19 vidual’s son, daughter or spouse, and service performed by a child under
20 the age of 21 years in the employ of such individual’s father or mother;

21 (D) service performed in the employ of the United States govern-
22 ment or an instrumentality of the United States exempt under the con-
23 stitution of the United States from the contributions imposed by this act,
24 except that to the extent that the congress of the United States shall
25 permit states to require any instrumentality of the United States to make
26 payments into an unemployment fund under a state unemployment com-
27 pensation law, all of the provisions of this act shall be applicable to such
28 instrumentalities, and to services performed for such instrumentalities, in
29 the same manner, to the same extent and on the same terms as to all
30 other employers, employing units, individuals and services. If this state
31 shall not be certified for any year by the federal security agency under
32 section 3304(c) of the federal internal revenue code of 1986, the payments
33 required of such instrumentalities with respect to such year shall be re-
34 funded by the secretary from the fund in the same manner and within
35 the same period as is provided in subsection (f) of K.S.A. 44-717 and
36 amendments thereto with respect to contributions erroneously collected;

37 (E) service covered by an arrangement between the secretary and
38 the agency charged with the administration of any other state or federal
39 unemployment compensation law pursuant to which all services per-
40 formed by an individual for an employing unit during the period covered
41 by such employing unit’s duly approved election, are deemed to be per-
42 formed entirely within the jurisdiction of such other state or federal
43 agency;

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

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

9 (H) service performed in any calendar quarter in the employ of any
10 organization exempt from income tax under section 501(a) of the federal
11 internal revenue code of 1986 (other than an organization described in
12 section 401(a) or under section 521 of such code) if the remuneration for
13 such service is less than \$50. In construing the application of the term
14 "employment," if services performed during $\frac{1}{2}$ or more of any pay period
15 by an individual for the person employing such individual constitute em-
16 ployment, all the services of such individual for such period shall be
17 deemed to be employment; but if the services performed during more
18 than $\frac{1}{2}$ of any such pay period by an individual for the person employing
19 such individual do not constitute employment, then none of the services
20 of such individual for such period shall be deemed to be employment. As
21 used in this subsection (i)(4)(H) the term "pay period" means a period
22 (of not more than 31 consecutive days) for which a payment of remuneration
23 is ordinarily made to the individual by the person employing such
24 individual. This subsection (i)(4)(H) shall not be applicable with respect
25 to services with respect to which unemployment compensation is payable
26 under an unemployment compensation system established by an act of
27 congress;

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

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

37 (K) service performed in a facility conducted for the purpose of car-
38 rying out a program of:

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

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

1 or remunerative work;

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

6 (M) service performed by an inmate of a custodial or correctional
7 institution, unless such service is performed for a private, for-profit
8 employer;

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

12 (O) service performed by an individual who is enrolled at a nonprofit
13 or public educational institution which normally maintains a regular fac-
14 ulty and curriculum and normally has a regularly organized body of stu-
15 dents in attendance at the place where its educational activities are carried
16 on as a student in a full-time program, taken for credit at such institution,
17 which combines academic instruction with work experience, if such serv-
18 ice is an integral part of such program, and such institution has so certified
19 to the employer, except that this subsection (i)(4)(O) shall not apply to
20 service performed in a program established for or on behalf of an em-
21 ployer or group of employers;

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

25 (Q) services performed as a qualified real estate agent. As used in
26 this subsection (i)(4)(Q) the term “qualified real estate agent” means any
27 individual who is licensed by the Kansas real estate commission as a sa-
28 lesperson under the real estate brokers’ and salespersons’ license act and
29 for whom:

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

34 (ii) the services performed by the individual are performed pursuant
35 to a written contract between such individual and the person for whom
36 the services are performed and such contract provides that the individual
37 will not be treated as an employee with respect to such services for state
38 tax purposes;

39 (R) services performed for an employer by an extra in connection
40 with any phase of motion picture or television production or television
41 commercials for less than 14 days during any calendar year. As used in
42 this subsection, the term “extra” means an individual who pantomimes in
43 the background, adds atmosphere to the set and performs such actions

1 without speaking and “employer” shall not include any employer which
2 is a governmental entity or any employer described in section 501(c)(3)
3 of the federal internal revenue code of 1986 which is exempt from income
4 *taxation* under section 501(a) of the code;

5 (S) services performed by an oil and gas contract pumper. As used in
6 this subsection (i)(4)(S), “oil and gas contract pumper” means a person
7 performing pumping and other services on one or more oil or gas leases,
8 or on both oil and gas leases, relating to the operation and maintenance
9 of such oil and gas leases, on a contractual basis for the operators of such
10 oil and gas leases and “services” shall not include services performed for
11 a governmental entity or any organization described in section 501(c)(3)
12 of the federal internal revenue code of 1986 which is exempt from income
13 taxation under section 501(a) of the code;

14 (T) service not in the course of the employer’s trade or business per-
15 formed in any calendar quarter by an employee, unless the cash remun-
16 eration paid for such service is \$200 or more and such service is per-
17 formed by an individual who is regularly employed by such employer to
18 perform such service. For purposes of this paragraph, an individual shall
19 be deemed to be regularly employed by an employer during a calendar
20 quarter only if:

21 (i) On each of some 24 days during such quarter such individual per-
22 forms for such employer for some portion of the day service not in the
23 course of the employer’s trade or business, or

24 (ii) such individual was regularly employed, as determined under sub-
25 paragraph (i), by such employer in the performance of such service during
26 the preceding calendar quarter.

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

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

34 (V) services performed as a qualified direct seller. The term “direct
35 seller” means any person if:

36 (i) Such person:

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

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

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

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

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

13 (W) service performed as an election official or election worker, if
14 the amount of remuneration received by the individual during the cal-
15 endar year for services as an election official or election worker is less
16 than \$1,000.

17 (j) "Employment office" means any office operated by this state and
18 maintained by the secretary of human resources for the purpose of as-
19 sisting persons to become employed.

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

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

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

35 (n) "Employment security administration fund" means the fund es-
36 tablished by this act, from which administrative expenses under this act
37 shall be paid.

38 (o) "Wages" means all compensation for services, including commis-
39 sions, bonuses, back pay and the cash value of all remuneration, including
40 benefits, paid in any medium other than cash. The reasonable cash value
41 of remuneration in any medium other than cash, shall be estimated and
42 determined in accordance with rules and regulations prescribed by the
43 secretary. Compensation payable to an individual which has not been

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

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

34 (2) the amount of any payment (including any amount paid by an
35 employing unit for insurance or annuities, or into a fund, to provide for
36 any such payment) made to, or on behalf of, an employee or any of such
37 employee's dependents under a plan or system established by an em-
38 ployer which makes provisions for employees generally, for a class or
39 classes of employees or for such employees or a class or classes of em-
40 ployees and their dependents, on account of (A) sickness or accident
41 disability, except in the case of any payment made to an employee or such
42 employee's dependents, this subparagraph shall exclude from the term
43 "wages" only payments which are received under a workers compensation

1 law. Any third party which makes a payment included as wages by reason
2 of this subparagraph (2)(A) shall be treated as the employer with respect
3 to such wages, or (B) medical and hospitalization expenses in connection
4 with sickness or accident disability, or (C) death;

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

10 (4) any payment made to, or on behalf of, an employee or such em-
11 ployee's beneficiary:

12 (A) From or to a trust described in section 401(a) of the federal in-
13 ternal revenue code of 1986 which is exempt from tax under section
14 501(a) of the federal internal revenue code of 1986 at the time of such
15 payment unless such payment is made to an employee of the trust as
16 remuneration for services rendered as such employee and not as a ben-
17 efiary of the trust;

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

21 (C) under a simplified employee pension as defined in section
22 408(k)(1) of the federal internal revenue code of 1986, other than any
23 contribution described in section 408(k)(6) of the federal internal revenue
24 code of 1986;

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

29 (E) under or to an exempt governmental deferred compensation plan
30 as defined in section 3121(v)(3) of the federal internal revenue code of
31 1986;

32 (F) to supplement pension benefits under a plan or trust described
33 in any of the foregoing provisions of this subparagraph to take into ac-
34 count some portion or all of the increase in the cost of living, as deter-
35 mined by the secretary of labor, since retirement but only if such sup-
36 plemental payments are under a plan which is treated as a welfare plan
37 under section 3(2)(B)(ii) of the federal employee retirement income se-
38 curity act of 1974; or

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

41 (5) the payment by an employing unit (without deduction from the
42 remuneration of the employee) of the tax imposed upon an employee
43 under section 3101 of the federal internal revenue code of 1986 with

1 respect to remuneration paid to an employee for domestic service in a
2 private home of the employer or for agricultural labor;

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

5 (7) remuneration paid to or on behalf of an employee if and to the
6 extent that at the time of the payment of such remuneration it is reason-
7 able to believe that a corresponding deduction is allowable under section
8 217 of the federal internal revenue code of 1986 relating to moving
9 expenses;

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

12 (A) Upon or after the termination of an employee's employment re-
13 lationship because of (i) death or (ii) retirement for disability; and

14 (B) under a plan established by the employer which makes provisions
15 for employees generally, a class or classes of employees or for such em-
16 ployees or a class or classes of employees and their dependents, other
17 than any such payment or series of payments which would have been paid
18 if the employee's employment relationship had not been so terminated;

19 (9) remuneration for agricultural labor paid in any medium other than
20 cash;

21 (10) any payment made, or benefit furnished, to or for the benefit of
22 an employee if at the time of such payment or such furnishing it is reason-
23 able to believe that the employee will be able to exclude such payment
24 or benefit from income under section 129 of the federal internal revenue
25 code of 1986 which relates to dependent care assistance programs;

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

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

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

36 (14) any payment made, or benefit furnished, to or for the benefit of
37 an employee, if at the time of such payment or such furnishing it is reason-
38 able to believe that the employee will be able to exclude such payment
39 or benefit from income under section 127 of the federal internal revenue
40 code of 1986 relating to educational assistance to the employee.

41 Nothing in any paragraph of subsection (o), other than paragraph (1),
42 shall exclude from the term "wages": (1) Any employer contribution un-
43 der a qualified cash or deferred arrangement, as defined in section 401(k)

1 of the federal internal revenue code of 1986, to the extent that such
2 contribution is not included in gross income by reason of section 402(a)(8)
3 of the federal internal revenue code of 1986; or (2) any amount treated
4 as an employer contribution under section 414(h)(2) of the federal inter-
5 nal revenue code of 1986.

6 Any amount deferred under a nonqualified deferred compensation
7 plan shall be taken into account for purposes of this section as of the later
8 of when the services are performed or when there is no substantial risk
9 of forfeiture of the rights to such amount. Any amount taken into account
10 as wages by reason of this paragraph, and the income attributable thereto,
11 shall not thereafter be treated as wages for purposes of this section. For
12 purposes of this paragraph, the term “nonqualified deferred compensa-
13 tion plan” means any plan or other arrangement for deferral of compen-
14 sation other than a plan described in subsection (o)(4).

15 (p) “Week” means such period or periods of seven consecutive cal-
16 endar days, as the secretary may by rules and regulations prescribe.

17 (q) “Calendar quarter” means the period of three consecutive cal-
18 endar months ending March 31, June 30, September 30 or December
19 31, or the equivalent thereof as the secretary may by rules and regulations
20 prescribe.

21 (r) “Insured work” means employment for employers.

22 (s) “Approved training” means any vocational training course or
23 course in basic education skills approved by the secretary or a person or
24 persons designated by the secretary.

25 (t) “American vessel” or “American aircraft” means any vessel or air-
26 craft documented or numbered or otherwise registered under the laws
27 of the United States; and any vessel or aircraft which is neither docu-
28 mented or numbered or otherwise registered under the laws of the
29 United States nor documented under the laws of any foreign country, if
30 its crew performs service solely for one or more citizens or residents of
31 the United States or corporations organized under the laws of the United
32 States or of any state.

33 (u) “Institution of higher education,” for the purposes of this section,
34 means an educational institution which:

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

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

40 (3) provides an educational program for which it awards a bachelor’s
41 or higher degree, or provides a program which is acceptable for full credit
42 toward such a degree, a program of postgraduate or postdoctoral studies,
43 or a program of training to prepare students for gainful employment in a

1 recognized occupation; and

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

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

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

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

23 (A) On a farm, in the employ of any person, in connection with cul-
24 tivating the soil, or in connection with raising or harvesting any agricul-
25 tural or horticultural commodity, including the raising, shearing, feeding,
26 caring for, training, and management of livestock, bees, poultry, and fur-
27 bearing animals and wildlife.

28 (B) In the employ of the owner or tenant or other operator of a farm,
29 in connection with the operating, management, conservation, improve-
30 ment, or maintenance of such farm and its tools and equipment, or in
31 salvaging timber or clearing land of brush and other debris left by a hur-
32 ricane, if the major part of such service is performed on a farm.

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

40 (D) (i) In the employ of the operator of a farm in handling, planting,
41 drying, packing, packaging, processing, freezing, grading, storing, or de-
42 livering to storage or to market or to a carrier for transportation to market,
43 in its unmanufactured state, any agricultural or horticultural commodity;

1 but only if such operator produced more than $\frac{1}{2}$ of the commodity with
2 respect to which such service is performed;

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

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

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

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

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

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

37 (x) "Reimbursing employer" means any employer who makes pay-
38 ments in lieu of contributions to the employment security fund as pro-
39 vided in subsection (e) of K.S.A. 44-710 and amendments thereto.

40 (y) "Contributing employer" means any employer other than a re-
41 imbursing employer or rated governmental employer.

42 (z) "Wage combining plan" means a uniform national arrangement
43 approved by the United States secretary of labor in consultation with the

1 state unemployment compensation agencies and in which this state shall
2 participate, whereby wages earned in one or more states are transferred
3 to another state, called the “paying state,” and combined with wages in
4 the paying state, if any, for the payment of benefits under the laws of the
5 paying state and as provided by an arrangement so approved by the
6 United States secretary of labor.

7 (aa) “Domestic service” means any service for a person in the oper-
8 ation and maintenance of a private household, local college club or local
9 chapter of a college fraternity or sorority, as distinguished from service
10 as an employee in the pursuit of an employer’s trade, occupation, pro-
11 fession, enterprise or vocation.

12 (bb) “Rated governmental employer” means any governmental entity
13 which elects to make payments as provided by K.S.A. 44-710d and
14 amendments thereto.

15 (cc) “Benefit cost payments” means payments made to the employ-
16 ment security fund by a governmental entity electing to become a rated
17 governmental employer.

18 (dd) “Successor employer” means any employer, as described in sub-
19 section (h) of this section, which acquires or in any manner succeeds to
20 (1) substantially all of the employing enterprises, organization, trade or
21 business of another employer or (2) substantially all the assets of another
22 employer.

23 (ee) “Predecessor employer” means an employer, as described in
24 subsection (h) of this section, who has previously operated a business or
25 portion of a business with employment to which another employer has
26 succeeded.

27 (ff) “Lessor employing unit” means any independently established
28 business entity which engages in the business of providing leased em-
29 ployees to a client lessee.

30 (gg) “Client lessee” means any individual, organization, partnership,
31 corporation or other legal entity leasing employees from a lessor employ-
32 ing unit.

33 (hh) “Qualifying injury” means a personal injury by accident arising
34 out of and in the course of employment within the coverage of the Kansas
35 workers compensation act, K.S.A. 44-501 *et seq.*, and amendments
36 thereto.

37 (ii) “Sexual harassment” means sexual advances, requests for sexual
38 favors and other verbal or physical conduct of a sexual nature when: (1)
39 Submission to or rejection of such advances, requests or conduct is made
40 either explicitly or implicitly a term or condition of employment or as a
41 basis for employment decisions; (2) such advances, requests or conduct
42 have the purpose or effect of unreasonably interfering with an individual’s
43 work performance; or (3) such advances, requests or conduct have the

1 purpose or effect of creating an intimidating, hostile, humiliating or sex-
2 ually offensive work environment.

3 (jj) “Domestic violence” means abuse committed against an employee
4 or the employee’s dependent child by: (1) A current or former spouse of
5 the employee; (2) a person with whom the employee shares a child in
6 common; (3) a person who is cohabitating with or has cohabitated with
7 the employee; (4) a person who is related by blood or marriage; or (5) a
8 person with whom the employee has or had a dating or engagement
9 relationship.

10 For purposes of this subsection, abuse shall include: (1) Attempting to
11 cause or causing physical harm; (2) placing another in fear of imminent
12 physical harm; (3) causing another to engage involuntarily in sexual re-
13 lations by force, threat or duress or threatening to do so; (4) engaging in
14 mental abuse, which includes threats, intimidation or acts designed to
15 induce terror; (5) depriving another of medical care, housing, food or
16 other necessities of life; and (6) restraining the liberty of another.

17 For the purpose of this subsection, an individual may demonstrate the
18 existence of domestic violence by providing one of the following: (1) A
19 restraining order or other documentation of equitable relief issued by a
20 court of competent jurisdiction; (2) a police record documenting the abuse;
21 (3) medical documentation of the abuse; (4) a statement provided by a
22 counselor, social worker, health worker, member of the clergy, shelter
23 worker, legal advocate or other professional who has assisted the individ-
24 ual in addressing the effects of the abuse on the individual or the individ-
25 ual’s family; or (5) a sworn statement from the individual attesting to the
26 abuse. All evidence of domestic violence experienced by an individual,
27 including the individual’s statement and corroborating evidence, shall not
28 be disclosed unless consent for disclosure is given by the individual.

29 (kk) “Dependent” means: (1) A resident unmarried child under the
30 age of 18 years; (2) a child who is a student under the age of 23 years
31 and who is financially dependent upon the parent; or (3) a resident child
32 of any age who is disabled and dependent upon the parent.

33 Sec. 2. K.S.A. 44-704 is hereby amended to read as follows: 44-704.
34 (a) *Payment of benefits.* All benefits provided herein shall be payable from
35 the fund. All benefits shall be paid through the secretary of human re-
36 sources, in accordance with such rules and regulations as the secretary
37 may adopt. Benefits based on service in employment defined in subsec-
38 tions (i)(3)(E) and (i)(3)(F) of K.S.A. 44-703, and amendments thereto,
39 shall be payable in the same amount, on the same terms and subject to
40 the same conditions as compensation payable on the basis of other service
41 subject to this act except as provided in subsection (e) of K.S.A. 44-705
42 and subsection (e)(2) of K.S.A. 44-711, and ~~any~~ amendments to these
43 ~~statutes~~ thereto.

1 (b) *Determined weekly benefit amount.* An individual's determined
2 weekly benefit amount shall be an amount equal to 4.25% of the individ-
3 ual's total wages for insured work paid during that calendar quarter of
4 the individual's base period in which such total wages were highest, sub-
5 ject to the following ~~limitations~~ conditions:

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

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

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

14 (4) *The amount of \$30 per dependent child shall be added to each*
15 *individual's determined weekly benefit amount. This amount shall not be*
16 *included in calculating an individual's maximum weekly benefit amount.*

17 (c) *Maximum weekly benefit amount.* On July 1 of each year, the
18 secretary shall determine the maximum weekly benefit amount by com-
19 puting ~~60%~~ 100% of the average weekly wages paid to employees in
20 insured work during the previous calendar year and shall prior to that
21 date announce the maximum weekly benefit amount so determined, by
22 publication in the Kansas register. Such computation shall be made by
23 dividing the gross wages reported as paid for insured work during the
24 previous calendar year by the product of the average of midmonth em-
25 ployment during such calendar year multiplied by 52. The maximum
26 weekly benefit amount so determined and announced for the twelve-
27 month period shall apply only to those claims filed in that period quali-
28 fying for maximum payment under the foregoing formula. All claims qual-
29 ifying for payment at the maximum weekly benefit amount shall be paid
30 at the maximum weekly benefit amount in effect when the benefit year
31 to which the claim relates was first established, notwithstanding a change
32 in the maximum benefit amount for a subsequent twelve-month period.
33 If the computed maximum weekly benefit amount is not a multiple of \$1,
34 then the computed maximum weekly benefit amount shall be reduced to
35 the next lower multiple of \$1.

36 (d) *Minimum weekly benefit amount.* The minimum weekly benefit
37 amount payable to any individual shall be ~~25%~~ 10% of the maximum
38 weekly benefit calculated in accordance with subsection (c) and shall be
39 announced by the secretary in conjunction with the published announce-
40 ment of the maximum weekly benefit, also as provided in subsection (c).
41 The minimum weekly benefit amount so determined and announced for
42 the twelve-month period beginning July 1 of each year shall apply only
43 to those claims which establish a benefit year filed within that twelve-

1 month period and shall apply through the benefit year of such claims
2 notwithstanding a change in such amount in a subsequent twelve-month
3 period. If the minimum weekly benefit amount is not a multiple of \$1 it
4 shall be reduced to the next lower multiple of \$1.

5 (e) *Weekly benefit payable.* Each eligible individual who is unem-
6 ployed with respect to any week, except as to final payment, shall be paid
7 with respect to such week a benefit in an amount equal to such individ-
8 ual's determined weekly benefit amount, less that part of the wage, if any,
9 payable to such individual with respect to such week which is in excess
10 of the amount which is equal to 25% of such individual's determined
11 weekly benefit amount and if the resulting amount is not a multiple of
12 \$1, it shall be reduced to the next lower multiple of \$1.

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

15 (A) Vacation pay that was attributable to a week that the individual
16 claimed benefits while work was temporarily interrupted;

17 (B) holiday pay that was payable with no condition of attendance on
18 other regularly scheduled day or days; and

19 (C) severance pay, if paid as scheduled, and all other employment
20 benefits within the employer's control, as defined in subsection (e)(3), if
21 continued as though the severance had not occurred, except as set out in
22 subsection (e)(2)(D).

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

25 (A) Remuneration received for services performed on a public assis-
26 tance work project;

27 (B) vacation pay, except as set out in subsection (e)(1)(A) above;

28 (C) holiday pay that was not payable unless the individual complied
29 with a condition of attendance on another regularly scheduled day or days;

30 (D) severance pay, in lieu of notice, under the provisions of public
31 law 100-379, the federal worker adjustment and retraining notification
32 act (29 U.S.C.A. 2101 through 2109); and

33 (E) all other severance pay, separation pay, bonuses, wages in lieu of
34 notice or remuneration of a similar nature that is payable after the sev-
35 erance of the employment relationship, except as set out in subsection
36 (e)(1)(C).

37 (3) For the purposes of this subsection (e), "employment benefits
38 within the employer's control" means benefits offered by the employer
39 to employees which are employee benefit plans as defined by section 3
40 of the federal employee retirement income security act of 1974, as
41 amended, (29 U.S.C. 1002) and which the employer has the option to
42 continue to provide to the employee after the last day that the employee
43 worked for that employer.

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

7 (g) For the purposes of this section, wages shall be counted as "wages
8 for insured work" for benefit purposes with respect to any benefit year
9 only if such benefit year begins subsequent to the date on which the
10 employing unit by whom such wages were paid has satisfied the conditions
11 of subsection (h) of K.S.A. 44-703, and amendments thereto, with
12 respect to becoming an employer.

13 Sec. 3. K.S.A. 2002 Supp. 44-705 is hereby amended to read as follows:
14 44-705. Except as provided by K.S.A. 44-757 and amendments
15 thereto, an unemployed individual shall be eligible to receive benefits
16 with respect to any week only if the secretary, or a person or persons
17 designated by the secretary, finds that:

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

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

26 (c) The claimant is able to perform the duties of such claimant's customary
27 occupation or the duties of other occupations for which the claimant
28 is reasonably fitted by training or experience, and is available for work,
29 as demonstrated by the claimant's pursuit of the full course of action most
30 reasonably calculated to result in the claimant's reemployment except
31 that, notwithstanding any other provisions of this section, an unemployed
32 claimant otherwise eligible for benefits shall not become ineligible for
33 benefits because of the claimant's enrollment in and satisfactory pursuit
34 of approved training, including training approved under section 236(a)(1)
35 of the trade act of 1974.

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

39 ~~(d) The claimant has been unemployed for a waiting period of one
40 week or the claimant is unemployed and has satisfied the requirement
41 for a waiting period of one week under the shared work unemployment
42 compensation program as provided in subsection (k)(4) of K.S.A. 44-757
43 and amendments thereto, which period of one week, in either case, occurs~~

1 within the benefit year which includes the week for which the claimant
2 is claiming benefits. No week shall be counted as a week of unemploy-
3 ment for the purposes of this subsection (d):

4 —(1) If benefits have been paid for such week;

5 —(2) if the individual fails to meet with the other eligibility require-
6 ments of this section; or

7 —(3) if an individual is seeking unemployment benefits under the un-
8 employment compensation law of any other state or of the United States,
9 except that if the appropriate agency of such state or of the United States
10 finally determines that the claimant is not entitled to unemployment ben-
11 efits under such other law, this subsection (d)(3) shall not apply.

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

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

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

35 (1) The claimant has filed for benefits within four weeks of being
36 released to return to work by a licensed and practicing health care
37 provider.

38 (2) The claimant files for benefits within 24 months of the date the
39 qualifying injury occurred.

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

43 Sec. 4. K.S.A. 2002 Supp. 44-706 is hereby amended to read as fol-

1 lows: 44-706. An individual shall be disqualified for benefits:

2 (a) If the individual left work voluntarily without good cause attrib-
3 utable to the work or the employer, subject to the other provisions of this
4 subsection (a). After a temporary job assignment, failure of an individual
5 to affirmatively request an additional assignment on the next succeeding
6 workday, if required by the employment agreement, after completion of
7 a given work assignment, shall constitute leaving work voluntarily. The
8 disqualification shall begin the day following the separation and shall con-
9 tinue until after the individual has become reemployed and has had earn-
10 ings from insured work of at least three times the individual's weekly
11 benefit amount. An individual shall not be disqualified under this sub-
12 section (a) if:

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

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

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

28 (4) the individual left work because of the voluntary or involuntary
29 transfer of the individual's spouse from one job to another job, which is
30 for the same employer or for a different employer, at a geographic loca-
31 tion which makes it unreasonable for the individual to continue work at
32 the individual's job;

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

1 of equipment or lack of proper equipment; no work shall be considered
2 hazardous if the working conditions surrounding the individual's work are
3 the same or substantially the same as the working conditions generally
4 prevailing among individuals performing the same or similar work for
5 other employers engaged in the same or similar type of activity;

6 (6) the individual left work to enter training approved under section
7 236(a)(1) of the federal trade act of 1974, provided the work left is not
8 of a substantially equal or higher skill level than the individual's past
9 adversely affected employment (as defined for purposes of the federal
10 trade act of 1974), and wages for such work are not less than 80% of the
11 individual's average weekly wage as determined for the purposes of the
12 federal trade act of 1974;

13 (7) the individual left work because of unwelcome harassment *or sex-*
14 *ual harassment* of the individual by the employer or another employee of
15 which the employing unit had knowledge;

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

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

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

33 (11) after making reasonable efforts to preserve the work, the indi-
34 vidual left work due to a personal emergency of such nature and com-
35 pelling urgency that it would be contrary to good conscience to impose a
36 disqualification; *or*

37 (12) *the individual left work due to circumstances resulting from do-*
38 *mestic violence, including:*

39 (A) *The individual's need to address the physical, psychological and*
40 *legal effects of domestic violence;*

41 (B) *the individual's reasonable fear of future domestic violence at or*
42 *on route to or from the individual's place of employment;*

43 (C) *the individual's need to relocate to another geographic area in*

1 *order to avoid future domestic violence;*

2 *(D) the individual's need to leave employment as a condition of re-*
3 *ceiving services or shelter from an agency which provides support services*
4 *or shelter to victims of domestic violence; and*

5 *(E) any other respect in which domestic violence causes the individual*
6 *to reasonably believe that termination of employment is necessary for the*
7 *future safety of the individual or the individual's family.*

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

21 (1) For the purposes of this subsection (b), "misconduct" is defined
22 as a violation of a duty or obligation reasonably owed the employer as a
23 condition of employment. The term "gross misconduct" as used in this
24 subsection (b) shall be construed to mean conduct evincing extreme, will-
25 ful or wanton misconduct as defined by this subsection (b).

26 (2) For the purposes of this subsection (b), the use of or impairment
27 caused by an alcoholic beverage, a cereal malt beverage or a nonprescri-
28 bed controlled substance by an individual while working shall be conclu-
29 sive evidence of misconduct and the possession of an alcoholic beverage,
30 a cereal malt beverage or a nonprescribed controlled substance by an
31 individual while working shall be prima facie evidence of conduct which
32 is a violation of a duty or obligation reasonably owed to the employer as
33 a condition of employment. For purposes of this subsection (b), the dis-
34 qualification of an individual from employment which disqualification is
35 required by the provisions of the drug free workplace act, 41 U.S.C. 701
36 et seq. or is otherwise required by law because the individual refused to
37 submit to or failed a chemical test which was required by law, shall be
38 conclusive evidence of misconduct. Refusal to submit to a chemical test
39 administered pursuant to an employee assistance program or other drug
40 or alcohol treatment program in which the individual was participating
41 voluntarily or as a condition of further employment shall also be conclu-
42 sive evidence of misconduct. Alcoholic liquor shall be defined as provided
43 in K.S.A. 41-102 and amendments thereto. Cereal malt beverage shall be

1 defined as provided in K.S.A. 41-2701 and amendments thereto. Con-
2 trolled substance shall be defined as provided in K.S.A. 65-4101 and
3 amendments thereto of the uniform controlled substances act. As used
4 in this subsection (b)(2), "required by law" means required by a federal
5 or state law, a federal or state rule or regulation having the force and
6 effect of law, a county resolution or municipal ordinance, or a policy
7 relating to public safety adopted in open meeting by the governing body
8 of any special district or other local governmental entity. An individual's
9 refusal to submit to a chemical test shall not be admissible evidence to
10 prove misconduct unless the test is required by and meets the standards
11 of the drug free workplace act, 41 U.S.C. 701 et seq., the test was ad-
12 ministered as part of an employee assistance program or other drug or
13 alcohol treatment program in which the employee was participating vol-
14 untarily or as a condition of further employment, the test was otherwise
15 required by law and the test constituted a required condition of employ-
16 ment for the individual's job, or, there was probable cause to believe that
17 the individual used, possessed or was impaired by an alcoholic beverage,
18 a cereal malt beverage or a controlled substance while working. The re-
19 sults of a chemical test shall not be admissible evidence to prove miscon-
20 duct unless the following conditions were met:

21 (A) Either (i) the test was required by law, the test was administered
22 pursuant to the drug free workplace act, 41 U.S.C. 701 et seq., (ii) the
23 test was administered as part of an employee assistance program or other
24 drug or alcohol treatment program in which the employee was partici-
25 pating voluntarily or as a condition of further employment, (iii) the test
26 was required by law and the test constituted a required condition of em-
27 ployment for the individual's job, or (iv) there was probable cause to
28 believe that the individual used, had possession of, or was impaired by
29 the alcoholic beverage, the cereal malt beverage or the controlled sub-
30 stance while working;

31 (B) the test sample was collected either (i) as prescribed by the drug
32 free workplace act, 41 U.S.C. 701 et seq., (ii) as prescribed by an em-
33 ployee assistance program or other drug or alcohol treatment program in
34 which the employee was participating voluntarily or as a condition of
35 further employment, (iii) as prescribed by a test which was required by
36 law and which constituted a required condition of employment for the
37 individual's job, or (iv) at a time contemporaneous with the events estab-
38 lishing probable cause;

39 (C) the collecting and labeling of the test sample was performed by
40 a licensed health care professional or any other individual authorized to
41 collect or label test samples by federal or state law, or a federal or state
42 rule or regulation having the force and effect of law, including law en-
43 forcement personnel;

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

6 (E) the test was confirmed by gas chromatography, gas chromatog-
7 raphy-mass spectroscopy or other comparably reliable analytical method,
8 except that no such confirmation is required for a blood alcohol sample;
9 and

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

13 (3) For the purposes of this subsection (b), misconduct shall include,
14 but not be limited to repeated absence, including lateness, from sched-
15 uled work if the facts show:

16 (A) The individual was absent without good cause;

17 (B) the absence was in violation of the employer's written absentee-
18 ism policy;

19 (C) the employer gave or sent written notice to the individual, at the
20 individual's last known address, that future absence may or will result in
21 discharge;

22 (D) the employee had knowledge of the employer's written absen-
23 teeism policy; and

24 (E) if an employee disputes being absent without good cause, the
25 employee shall present evidence that a majority of the employee's ab-
26 sences were for good cause.

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

29 (A) The employer discharged the individual after learning the indi-
30 vidual was seeking other work or when the individual gave notice of future
31 intent to quit;

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

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

40 (c) If the individual has failed, without good cause, to either apply
41 for suitable work when so directed by the employment office of the sec-
42 retary of human resources, or to accept suitable work when offered to
43 the individual by the employment office, the secretary of human re-

1 sources, or an employer, such disqualification shall begin with the week
2 in which such failure occurred and shall continue until the individual
3 becomes reemployed and has had earnings from insured work of at least
4 three times such individual's determined weekly benefit amount. In de-
5 termining whether or not any work is suitable for an individual, the se-
6 cretary of human resources, or a person or persons designated by the
7 secretary, shall consider the degree of risk involved to health, safety and
8 morals, physical fitness and prior training, experience and prior earnings,
9 length of unemployment and prospects for securing local work in the
10 individual's customary occupation or work for which the individual is rea-
11 sonably fitted by training or experience, and the distance of the available
12 work from the individual's residence. Notwithstanding any other provi-
13 sions of this act, an otherwise eligible individual shall not be disqualified
14 for refusing an offer of suitable employment, or failing to apply for suit-
15 able employment when notified by an employment office, or for leaving
16 the individual's most recent work accepted during approved training, in-
17 cluding training approved under section 236(a)(1) of the trade act of 1974,
18 if the acceptance of or applying for suitable employment or continuing
19 such work would require the individual to terminate approved training
20 and no work shall be deemed suitable and benefits shall not be denied
21 under this act to any otherwise eligible individual for refusing to accept
22 new work under any of the following conditions: (1) If the position offered
23 is vacant due directly to a strike, lockout or other labor dispute; (2) if the
24 remuneration, hours or other conditions of the work offered are substan-
25 tially less favorable to the individual than those prevailing for similar work
26 in the locality; (3) if as a condition of being employed, the individual would
27 be required to join or to resign from or refrain from joining any labor
28 organization.

29 (d) For any week with respect to which the secretary of human re-
30 sources, or a person or persons designated by the secretary, finds that the
31 individual's unemployment is due to a stoppage of work which exists be-
32 cause of a labor dispute or there would have been a work stoppage had
33 normal operations not been maintained with other personnel previously
34 and currently employed by the same employer at the factory, establish-
35 ment or other premises at which the individual is or was last employed,
36 except that this subsection (d) shall not apply if it is shown to the satis-
37 faction of the secretary of human resources, or a person or persons des-
38 ignated by the secretary, that: (1) The individual is not participating in or
39 financing or directly interested in the labor dispute which caused the
40 stoppage of work; and (2) the individual does not belong to a grade or
41 class of workers of which, immediately before the commencement of the
42 stoppage, there were members employed at the premises at which the
43 stoppage occurs any of whom are participating in or financing or directly

1 interested in the dispute. If in any case separate branches of work which
2 are commonly conducted as separate businesses in separate premises are
3 conducted in separate departments of the same premises, each such de-
4 partment shall, for the purpose of this subsection (d), be deemed to be
5 a separate factory, establishment or other premises. For the purposes of
6 this subsection (d), failure or refusal to cross a picket line or refusal for
7 any reason during the continuance of such labor dispute to accept the
8 individual's available and customary work at the factory, establishment or
9 other premises where the individual is or was last employed shall be
10 considered as participation and interest in the labor dispute.

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

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

22 (g) For the period of one year beginning with the first day following
23 the last week of unemployment for which the individual received benefits,
24 or for one year from the date the act was committed, whichever is the
25 later, if the individual, or another in such individual's behalf with the
26 knowledge of the individual, has knowingly made a false statement or
27 representation, or has knowingly failed to disclose a material fact to obtain
28 or increase benefits under this act or any other unemployment compen-
29 sation law administered by the secretary of human resources.

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

34 (i) For any week of unemployment on the basis of service in an in-
35 structional, research or principal administrative capacity for an educa-
36 tional institution as defined in subsection (v) of K.S.A. 44-703 and amend-
37 ments thereto, if such week begins during the period between two
38 successive academic years or terms or, when an agreement provides in-
39 stead for a similar period between two regular but not successive terms
40 during such period or during a period of paid sabbatical leave provided
41 for in the individual's contract, if the individual performs such services in
42 the first of such academic years or terms and there is a contract or a
43 reasonable assurance that such individual will perform services in any

1 such capacity for any educational institution in the second of such aca-
2 demic years or terms.

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

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

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

32 (m) For any week on the basis of services performed by an alien
33 unless such alien is an individual who was lawfully admitted for perma-
34 nent residence at the time such services were performed, was lawfully
35 present for purposes of performing such services, or was permanently
36 residing in the United States under color of law at the time such services
37 were performed, including an alien who was lawfully present in the
38 United States as a result of the application of the provisions of section
39 212(d)(5) of the federal immigration and nationality act. Any data or in-
40 formation required of individuals applying for benefits to determine
41 whether benefits are not payable to them because of their alien status
42 shall be uniformly required from all applicants for benefits. In the case
43 of an individual whose application for benefits would otherwise be ap-

1 proved, no determination that benefits to such individual are not payable
2 because of such individual's alien status shall be made except upon a
3 preponderance of the evidence.

4 (n) For any week in which an individual is receiving a governmental
5 or other pension, retirement or retired pay, annuity or other similar pe-
6 riodic payment under a plan maintained by a base period employer and
7 to which the entire contributions were provided by such employer, except
8 that: (1) If the entire contributions to such plan were provided by the
9 base period employer but such individual's weekly benefit amount ex-
10 ceeds such governmental or other pension, retirement or retired pay,
11 annuity or other similar periodic payment attributable to such week, the
12 weekly benefit amount payable to the individual shall be reduced (but
13 not below zero) by an amount equal to the amount of such pension,
14 retirement or retired pay, annuity or other similar periodic payment
15 which is attributable to such week; or (2) if only a portion of contributions
16 to such plan were provided by the base period employer, the weekly
17 benefit amount payable to such individual for such week shall be reduced
18 (but not below zero) by the prorated weekly amount of the pension, re-
19 tirement or retired pay, annuity or other similar periodic payment after
20 deduction of that portion of the pension, retirement or retired pay, an-
21 nuity or other similar periodic payment that is directly attributable to the
22 percentage of the contributions made to the plan by such individual; or
23 (3) if the entire contributions to the plan were provided by such individ-
24 ual, or by the individual and an employer (or any person or organization)
25 who is not a base period employer, no reduction in the weekly benefit
26 amount payable to the individual for such week shall be made under this
27 subsection (n); or (4) whatever portion of contributions to such plan were
28 provided by the base period employer, if the services performed for the
29 employer by such individual during the base period, or remuneration
30 received for the services, did not affect the individual's eligibility for, or
31 increased the amount of, such pension, retirement or retired pay, annuity
32 or other similar periodic payment, no reduction in the weekly benefit
33 amount payable to the individual for such week shall be made under this
34 subsection (n). The conditions specified in clause (4) of this subsection
35 (n) shall not apply to payments made under the ~~social security act or the~~
36 ~~railroad retirement act of 1974, or the corresponding provisions of prior~~
37 ~~law. This subsection (n) shall not apply to payments made under the social~~
38 ~~security act. Payments made under these acts shall be treated as otherwise~~
39 ~~provided in this subsection (n). If the reduced weekly benefit amount is~~
40 ~~not a multiple of \$1, it shall be reduced to the next lower multiple of \$1.~~

41 (o) For any week of unemployment on the basis of services per-
42 formed in any capacity and under any of the circumstances described in
43 subsection (i), (j) or (k) which an individual performed in an educational

1 institution while in the employ of an educational service agency. For the
2 purposes of this subsection (o), the term “educational service agency”
3 means a governmental agency or entity which is established and operated
4 exclusively for the purpose of providing such services to one or more
5 educational institutions.

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

20 (q) For any week of unemployment on the basis of services per-
21 formed by the individual in any capacity and under any of the circum-
22 stances described in subsection (i), (j), (k) or (o) which are provided to
23 or on behalf of an educational institution, as defined in subsection (v) of
24 K.S.A. 44-703 and amendments thereto, while the individual is in the
25 employ of an employer which is a governmental entity, Indian tribe or
26 any employer described in section 501(c)(3) of the federal internal rev-
27 enue code of 1986 which is exempt from income under section 501(a) of
28 the code.

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

34 (1) The individual was engaged in full-time employment concurrent
35 with the individual’s school attendance; or

36 (2) the individual is attending approved training as defined in sub-
37 section (s) of K.S.A. 44-703 and amendments thereto; or

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

41 (s) For any week with respect to which an individual is receiving or
42 has received remuneration in the form of a back pay award or settlement.
43 The remuneration shall be allocated to the week or weeks in the manner

1 as specified in the award or agreement, or in the absence of such speci-
2 ficity in the award or agreement, such remuneration shall be allocated to
3 the week or weeks in which such remuneration, in the judgment of the
4 secretary, would have been paid.

5 (1) For any such weeks that an individual receives remuneration in
6 the form of a back pay award or settlement, an overpayment will be
7 established in the amount of unemployment benefits paid and shall be
8 collected from the claimant.

9 (2) If an employer chooses to withhold from a back pay award or
10 settlement, amounts paid to a claimant while they claimed unemployment
11 benefits, such employer shall pay the department the amount withheld.
12 With respect to such amount, the secretary shall have available all of the
13 collection remedies authorized or provided in K.S.A. 44-717, and amend-
14 ments thereto.

15 Sec. 5. K.S.A. 44-757 is hereby amended to read as follows: 44-757.
16 *Shared work unemployment compensation program.* (a) As used in this
17 section:

18 (1) “Affected unit” means a specified department, shift or other unit
19 of two or more employees that is designated by an employer to participate
20 in a shared work plan.

21 (2) “Fringe benefit” means health insurance, a retirement benefit
22 received under a pension plan, a paid vacation day, a paid holiday, sick
23 leave, and any other analogous employee benefit that is provided by an
24 employer.

25 (3) “Fund” has the meaning ascribed thereto by subsection (k) of
26 K.S.A. 44-703 and amendments thereto.

27 (4) “Normal weekly hours of work” means the lesser of 40 hours or
28 the average obtained by dividing the total number of hours worked per
29 week during the preceding twelve-week period by the number 12.

30 (5) “Participating employee” means an employee who works a re-
31 duced number of hours under a shared work plan.

32 (6) “Participating employer” means an employer who has a shared
33 work plan in effect.

34 (7) “Secretary” means the secretary of human resources or the sec-
35 retary’s designee.

36 (8) “Shared work benefit” means an unemployment compensation
37 benefit that is payable to an individual in an affected unit because the
38 individual works reduced hours under an approved shared work plan.

39 (9) “Shared work plan” means a program for reducing unemployment
40 under which employees who are members of an affected unit share the
41 work remaining after a reduction in their normal weekly hours of work.

42 (10) “Shared work unemployment compensation program” means a
43 program designed to reduce unemployment and stabilize the work force

1 by allowing certain employees to collect unemployment compensation
2 benefits if the employees share the work remaining after a reduction in
3 the total number of hours of work and a corresponding reduction in
4 wages.

5 (b) The secretary shall establish a voluntary shared work unemploy-
6 ment compensation program as provided by this section. The secretary
7 may adopt rules and regulations and establish procedures necessary to
8 administer the shared work unemployment compensation program.

9 (c) An employer who wishes to participate in the shared work un-
10 employment compensation program must submit a written shared work
11 plan to the secretary for the secretary's approval. As a condition for ap-
12 proval, a participating employer must agree to furnish the secretary with
13 reports relating to the operation of the shared work plan as requested by
14 the secretary. The employer shall monitor and evaluate the operation of
15 the established shared work plan as requested by the secretary and shall
16 report the findings to the secretary.

17 (d) The secretary may approve a shared work plan if:

18 (1) The shared work plan applies to and identifies a specific affected
19 unit;

20 (2) the employees in the affected unit are identified by name and
21 social security number;

22 (3) the shared work plan reduces the normal weekly hours of work
23 for an employee in the affected unit by not less than 20% and not more
24 than 40%;

25 (4) the shared work plan applies to at least 10% of the employees in
26 the affected unit;

27 (5) the shared work plan describes the manner in which the partici-
28 pating employer treats the fringe benefits of each employee in the af-
29 fected unit;

30 (6) the employer certifies that the implementation of a shared work
31 plan and the resulting reduction in work hours is in lieu of temporary
32 layoffs that would affect at least 10% of the employees in the affected
33 unit and that would result in an equivalent reduction in work hours;

34 (7) the employer has filed all reports required to be filed under the
35 employment security law for all past and current periods and has paid all
36 contributions, benefit cost payments, or if a reimbursing employer has
37 made all payments in lieu of contributions due for all past and current
38 periods; and

39 (8) (A) a contributing employer must be eligible for a rate compu-
40 tation under subsection (a)(2) of K.S.A. 44-710a and amendments thereto
41 and is not a negative account employer as defined by subsection (d) of
42 K.S.A. 44-710a and amendments thereto; (B) a rated governmental em-
43 ployer must be eligible for a rate computation under subsection (g) of

1 K.S.A. 44-710d and amendments thereto.

2 (e) If any of the employees who participate in a shared work plan
3 under this section are covered by a collective bargaining agreement, the
4 shared work plan must be approved in writing by the collective bargaining
5 agent.

6 (f) A shared work plan may not be implemented to subsidize seasonal
7 employers during the off-season or to subsidize employers who have tra-
8 ditionally used part-time employees.

9 (g) The secretary shall approve or deny a shared work plan no later
10 than the 30th day after the day the shared work plan is received by the
11 secretary. The secretary shall approve or deny a shared work plan in
12 writing. If the secretary denies a shared work plan, the secretary shall
13 notify the employer of the reasons for the denial.

14 (h) A shared work plan is effective on the date it is approved by the
15 secretary, except for good cause a shared work plan may be effective at
16 any time within a period of 14 days prior to the date such plan is approved
17 by the secretary. The shared work plan expires on the last day of the 12th
18 full calendar month after the effective date of the shared work plan.

19 (i) An employer may modify a shared work plan created under this
20 section to meet changed conditions if the modification conforms to the
21 basic provisions of the shared work plan as approved by the secretary.
22 The employer must report the changes made to the shared work plan in
23 writing to the secretary before implementing the changes. If the original
24 shared work plan is substantially modified, the secretary shall reevaluate
25 the shared work plan and may approve the modified shared work plan if
26 it meets the requirements for approval under subsection (d). The approval
27 of a modified shared work plan does not affect the expiration date origi-
28 nally set for that shared work plan. If substantial modifications cause the
29 shared work plan to fail to meet the requirements for approval, the sec-
30 retary shall deny approval to the modifications as provided by subsection
31 (g).

32 (j) Notwithstanding any other provisions of the employment security
33 law, an individual is unemployed and is eligible for shared work benefits
34 in any week in which the individual, as an employee in an affected unit,
35 works for less than the individual's normal weekly hours of work in ac-
36 cordance with an approved shared work plan in effect for that week. The
37 secretary may not deny shared work benefits for any week to an otherwise
38 eligible individual by reason of the application of any provision of the
39 employment security law that relates to availability for work, active search
40 for work or refusal to apply for or accept work with an employer other
41 than the participating employer.

42 (k) An individual is eligible to receive shared work benefits with re-
43 spect to any week in which the secretary finds that:

1 (1) The individual is employed as a member of an affected unit sub-
2 ject to a shared work plan that was approved before the week in question
3 and is in effect for that week;

4 (2) the individual is able to work and is available for additional hours
5 of work or full-time work with the participating employer; *and*

6 (3) the individual's normal weekly hours of work have been reduced
7 by at least 20% but not more than 40%, with a corresponding reduction
8 in wages; ~~and~~

9 ~~(4) the individual's normal weekly hours of work and wages have been
10 reduced as described in paragraph (3) of this subsection (k) for a waiting
11 period of one week which occurs within the period the shared work plan
12 is in effect, which period includes the week for which the individual is
13 claiming shared work benefits.~~

14 (l) The secretary shall pay an individual who is eligible for shared
15 work benefits under this section a weekly shared work benefit amount
16 equal to the individual's regular weekly benefit amount for a period of
17 total unemployment multiplied by the nearest full percentage of reduc-
18 tion of the individual's hours as set forth in the employer's shared work
19 plan. If the shared benefit amount is not a multiple of \$1, the secretary
20 shall reduce the amount to the next lowest multiple of \$1. All shared work
21 benefits under this section shall be payable from the fund.

22 (m) The secretary may not pay an individual shared work benefits for
23 any week in which the individual performs paid work for the participating
24 employer in excess of the reduced hours established under the shared
25 work plan.

26 (n) An individual may not receive shared work benefits and regular
27 unemployment compensation benefits in an amount that exceeds the
28 maximum total amount of benefits payable to that individual in a benefit
29 year as provided by subsection (f) of K.S.A. 44-704 and amendments
30 thereto.

31 (o) An individual who has received all of the shared work benefits
32 and regular unemployment compensation benefits available in a benefit
33 year is an exhaustee under K.S.A. 44-704a and 44-704b and amendments
34 thereto and is entitled to receive extended benefits under such statutes
35 if the individual is otherwise eligible under such statutes.

36 (p) The secretary may terminate a shared work plan for good cause
37 if the secretary determines that the shared work plan is not being exe-
38 cuted according to the terms and intent of the shared work unemploy-
39 ment compensation program.

40 (q) Notwithstanding any other provisions of this section, an individual
41 shall not be eligible to receive shared work benefits for more than 26
42 calendar weeks during the twelve-month period of the shared work plan.
43 No week shall be counted as a week for which an individual is eligible

1 for shared work benefits for the purposes of this section unless the week
2 occurs within the twelve-month period of the shared work plan.

3 (r) No shared work benefit payment shall be made under any shared
4 work plan or this section for any week which commences before April 1,
5 1989.

6 (s) This section shall be construed as part of the employment security
7 law.

8 New Sec. 6. (a) The secretary of human resources shall implement
9 a training curriculum for employees who will interact with claimants un-
10 der the provisions of section 4, and amendments thereto. Such curriculum
11 shall be approved by the centers for disease control or the health and
12 human services designated state domestic violence and sexual assault
13 coalition.

14 (b) All officers and employees implementing the employment secu-
15 rity law and who may interact with such claimants shall be trained in this
16 curriculum no later than 60 days from the effective date of this section.
17 The secretary shall develop an on going plan for employees of the de-
18 partment who interact with such claimants to be trained in the nature
19 and dynamics of domestic violence so that employment separations stem-
20 ming from domestic violence are reliably screened and adjudicated, and
21 so victims of domestic violence are able to take advantage of the full range
22 of job services provided under the employment security law.

23 (c) The secretary of human resources shall adopt rules and regula-
24 tions to implement the provisions of this section.

25 New Sec. 7. No contributing employer or rated governmental em-
26 ployer's account shall be charged with respect to the benefits paid to a
27 claimant who is eligible to receive employment security benefits due to
28 domestic violence or sexual harassment as set forth in section 4, and
29 amendments thereto.

30 Sec. 8. K.S.A. 44-704 and 44-757 and K.S.A. 2002 Supp. 44-703, 44-
31 705 and 44-706 are hereby repealed.

32 Sec. 9. This act shall take effect and be in force from and after its
33 publication in the statute book.

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