

SENATE BILL No. 284

AN ACT reconciling amendments to certain statutes and making certain technical changes related thereto; amending K.S.A. 44-704b and 44-709, K.S.A. 2002 Supp. 79-3271, K.S.A. 8-240, as amended by section 1 of 2003 Senate Bill No. 16, K.S.A. 8-1324, as amended by section 3 of 2003 Senate Bill No. 16, K.S.A. 38-1602, as amended by section 2 of 2003 House Bill No. 2314, K.S.A. 2002 Supp. 44-706, as amended by section 6 of 2003 House Bill No. 2353, K.S.A. 72-6409, as amended by section 1 of 2003 House Bill No. 2006, K.S.A. 72-8205, as amended by section 1 of 2003 Senate Bill No. 57, and K.S.A. 2002 Supp. 75-6102, as amended by section 1 of 2003 Senate Bill No. 34, and repealing the existing sections; also repealing K.S.A. 2002 Supp. 75-6102b, 79-1476b, 79-3226c and 79-3271a, K.S.A. 8-240, as amended by section 2 of 2003 House Bill No. 2192, K.S.A. 8-1324, as amended by section 4 of 2003 House Bill No. 2192, K.S.A. 38-1602, as amended by section 1 of 2003 House Bill No. 2016, K.S.A. 2002 Supp. 44-706, as amended by section 2 of 2003 House Bill No. 2332, K.S.A. 72-6409, as amended by section 8 of 2003 Substitute for Senate Bill No. 83, K.S.A. 72-8205, as amended by section 1 of 2003 Senate Bill No. 55, K.S.A. 72-9901, as amended by section 12 of 2003 House Bill No. 2006, and K.S.A. 2002 Supp. 75-6102, as amended by section 1 of 2003 House Bill No. 2068.

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

Section 1. K.S.A. 8-240, as amended by section 1 of 2003 Senate Bill No. 16, is hereby amended to read as follows: 8-240. (a) Every application for an instruction permit shall be made upon a form furnished by the division of vehicles and accompanied by a fee of \$2 for class A, B, C or M and \$5 for all commercial classes. Every other application shall be made upon a form furnished by the division and accompanied by an examination fee of \$3, unless a different fee is required by K.S.A. 8-241, and amendments thereto, and by the proper fee for the license for which the application is made. If the applicant is not required to take an examination the examination fee shall not be required. The examination shall consist of three tests, as follows: (1) Vision; (2) written; and (3) driving. If the applicant fails the vision test, the applicant may have correction of vision made and take the vision test again without any additional fee. If an applicant fails the written test, the applicant may take such test again upon the payment of an additional examination fee of \$1.50. If an applicant fails the driving test, the applicant may take such test again upon the payment of an additional examination fee of \$1.50. If an applicant fails to pass all three of the tests within a period of six months from the date of original application and desires to take additional tests, the applicant shall file an application for reexamination upon a form furnished by the division, which shall be accompanied by a reexamination fee of \$3, except that any applicant who fails to pass the written or driving portion of an examination four times within a six-month period, shall be required to wait a period of six months from the date of the last failed examination before additional examinations may be given. Upon the filing of such application and the payment of such reexamination fee, the applicant shall be entitled to reexamination in like manner and subject to the additional fees and time limitation as provided for examination on an original application. If the applicant passes the reexamination, the applicant shall be issued the classified driver's license for which the applicant originally applied, which license shall be issued to expire as if the applicant had passed the original examination.

(b) (1) For the purposes of obtaining any driver's license or instruction permit, an applicant shall submit, with the application, proof of age or proof of identity, or both, as the division may require. An applicant shall submit the applicant's social security number or a taxpayer identification number if the applicant does not have a social security number, which shall remain confidential and shall not be disclosed, except as provided pursuant to K.S.A. 74-2012, and amendments thereto. If the applicant does not have a social security number or a taxpayer identification number, the applicant shall submit a sworn statement, with the application, stating that the applicant does not have a social security number or taxpayer identification number. The distinguishing number assigned to the license or permit may be the applicant's social security number or a taxpayer identification number if the applicant so requests in writing. If the applicant is applying for an instruction permit or driver's license and the applicant otherwise meets the requirements for such license, the applicant shall receive a temporary license or instruction permit until the division verifies all facts relative to such applicant's right to receive an instruction permit or driver's license, including the age, identity, social security number, taxpayer identification number and residency of the applicant.

(2) An applicant who submits proof of age or of identity issued by an entity other than a state or the United States shall also submit such proof as the division may require that the applicant is lawfully present in the United States.

(3) The division shall not issue any driver's license to any person who is not lawfully present in the United States.

(4) The division shall not issue any driver's license to any person who is not a resident of the state of Kansas, except as provided in K.S.A. 8-2-148, and amendments thereto.

(5) The parent or guardian of an applicant under 16 years of age shall sign the application for any driver's license submitted by such applicant.

(c) Every application shall state the name, date of birth, sex and residence address of the applicant, and briefly describe the applicant, and shall state whether the applicant has been licensed as a driver prior to such application, and, if so, when and by what state or country. Such application shall state whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and, if so, the date of and reason for such suspension, revocation or refusal. In addition, applications for commercial drivers' licenses and instruction permits for commercial licenses must include the following: The applicant's social security number; the person's signature; the person's color photograph; certifications, including those required by 49 C.F.R. 383.71(a), effective January 1, 1991; a consent to release driving record information; and, any other information required by the division.

(d) When an application is received from a person previously licensed in another jurisdiction, the division shall request a copy of the driver's record from the other jurisdiction. When received, the driver's record shall become a part of the driver's record in this state with the same force and effect as though entered on the driver's record in this state in the original instance.

(e) When the division receives a request for a driver's record from another licensing jurisdiction the record shall be forwarded without charge.

(f) A fee shall be charged as follows:

(1) For a class C driver's license issued to a person at least 21 years of age, but less than 65 years of age, ~~\$12~~ \$18;

(2) for a class C driver's license issued to a person less than 21 years of age or 65 years of age or older, or a farm permit, ~~\$8~~ \$12;

(3) for a class M driver's license issued to a person at least 21 years of age, but less than 65 years of age, ~~\$6.50~~ \$12.50;

(4) for a class M driver's license issued to a person less than 21 years of age or 65 years of age or older, ~~\$5~~ \$9;

(5) for a class A or B driver's license issued to a person who is at least 21 years of age, but less than 65 years of age, ~~\$18~~ \$24;

(6) for a class A or B driver's license issued to a person less than 21 years of age or 65 years of age or older, ~~\$12~~ \$16; or

(7) for any class of commercial driver's license, ~~\$14~~ \$18.

A fee of \$10 shall be charged for each commercial driver's license endorsement, except air brake endorsements which shall have no charge.

If one fails to make an original application or renewal application for a driver's license within the time required by law, or fails to make application within 60 days after becoming a resident of Kansas, a penalty of \$1 shall be added to the fee charged for the driver's license.

(g) Any person who possesses an identification card as provided in K.S.A. 8-1324, and amendments thereto, shall surrender such identification card to the division upon being issued a valid Kansas driver's license or upon reinstatement and return of a valid Kansas driver's license.

Sec. 2. K.S.A. 8-1324, as amended by section 3 of 2003 Senate Bill No. 16, is hereby amended to read as follows: 8-1324. (a) Any resident who does not hold a current valid Kansas driver's license may make application to the division of vehicles and be issued one identification card, certified by the registrant and attested by the division as to true name, correct age, photograph and other identifying data as the division may require.

(b) An applicant who submits documentary evidence under subsection (a), issued by an entity other than a state or the United States shall also submit such proof as the division may require that the applicant is

lawfully present in the United States. For the purposes of obtaining any identification card, an applicant shall submit, with the application, proof of age or proof of identity, or both, as the division may require. An applicant shall submit the applicant's social security number or a taxpayer identification number if the applicant does not have a social security number, which shall remain confidential and shall not be disclosed, except as provided pursuant to K.S.A. 74-2012, and amendments thereto. If the applicant does not have a social security number or a taxpayer identification number, the applicant shall submit a sworn statement, with the application, stating that the applicant does not have a social security number or taxpayer identification number. The distinguishing number assigned to the identification card may be the applicant's social security number or a taxpayer identification number if the applicant so requests in writing. If the applicant is applying for an identification card and the applicant otherwise meets the requirements for such card, the applicant shall receive a temporary identification card until the division verifies all facts relative to such applicant's right to receive an identification card, including the age, identity, social security number, taxpayer identification number and residency of the applicant.

(c) The division shall not issue an identification card to any person who is not lawfully present in the United States nor to any person who holds a current valid Kansas driver's license unless such driver's license has been physically surrendered pursuant to the provisions of subsection (e) of K.S.A. 8-1002, and amendments thereto.

(d) The parent or guardian of an applicant under 16 years of age shall sign the application for an identification card submitted by such applicant.

(e) The division shall require payment of a fee of ~~\$\$~~ \$14 at the time application for an identification card is made, except that persons who are 65 or more years of age or who are handicapped, as defined in K.S.A. 8-1,124, and amendments thereto, shall be required to pay a fee of only ~~\$4~~ \$10.

(f) For the purposes of K.S.A. 8-1324 through 8-1328, and amendments thereto, a person shall be deemed to be a resident of the state if:

- (1) The person owns, leases or rents a place of domicile in this state;
- (2) the person engages in a trade, business or profession in this state;
- (3) the person is registered to vote in this state;
- (4) the person enrolls the person's child in a school in this state; or
- (5) the person registers the person's motor vehicle in this state.

Sec. 3. K.S.A. 38-1602, as amended by section 2 of 2003 House Bill 2314, is hereby amended to read as follows: 38-1602. As used in this code, unless the context otherwise requires:

(a) "Juvenile" means a person 10 or more years of age but less than 18 years of age.

(b) "Juvenile offender" means a person who commits an offense while a juvenile which if committed by an adult would constitute the commission of a felony or misdemeanor as defined by K.S.A. 21-3105, and amendments thereto, or who violates the provisions of K.S.A. 21-4204a or K.S.A. 41-727 or subsection (j) of K.S.A. 74-8810, and amendments thereto, but does not include:

- (1) A person 14 or more years of age who commits a traffic offense, as defined in subsection (d) of K.S.A. 8-2117, and amendments thereto;
- (2) a person 16 years of age or over who commits an offense defined in chapter 32 of the Kansas Statutes Annotated;
- (3) a person under 18 years of age who previously has been:
 - (A) Convicted as an adult under the Kansas code of criminal procedure;
 - (B) sentenced as an adult under the Kansas code of criminal procedure following termination of status as an extended jurisdiction juvenile pursuant to K.S.A. 38-16,126, and amendments thereto; or
 - (C) convicted or sentenced as an adult in another state or foreign jurisdiction under substantially similar procedures described in K.S.A. 38-1636, and amendments thereto, or because of attaining the age of majority designated in that state or jurisdiction.

(c) "Parent," when used in relation to a juvenile or a juvenile offender, includes a guardian, conservator and every person who is by law liable to maintain, care for or support the juvenile.

(d) "Law enforcement officer" means any person who by virtue of

that person's office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes.

(e) "Youth residential facility" means any home, foster home or structure which provides twenty-four-hour-a-day care for juveniles and which is licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated.

(f) "Juvenile detention facility" means any secure public or private facility which is used for the lawful custody of accused or adjudicated juvenile offenders and which shall not be a jail.

(g) "Juvenile correctional facility" means a facility operated by the commissioner for juvenile offenders.

(h) "Warrant" means a written order by a judge of the court directed to any law enforcement officer commanding the officer to take into custody the juvenile named or described therein.

(i) "Commissioner" means the commissioner of juvenile justice.

(j) "Jail" means:

(1) An adult jail or lockup; or

(2) a facility in the same building as an adult jail or lockup, unless the facility meets all applicable licensure requirements under law and there is (A) total separation of the juvenile and adult facility spatial areas such that there could be no haphazard or accidental contact between juvenile and adult residents in the respective facilities; (B) total separation in all juvenile and adult program activities within the facilities, including recreation, education, counseling, health care, dining, sleeping, and general living activities; and (C) separate juvenile and adult staff, including management, security staff and direct care staff such as recreational, educational and counseling.

(k) "Court-appointed special advocate" means a responsible adult, other than an attorney appointed pursuant to K.S.A. 38-1606 and amendments thereto, who is appointed by the court to represent the best interests of a child, as provided in K.S.A. 38-1606a, and amendments thereto, in a proceeding pursuant to this code.

(l) "Juvenile intake and assessment worker" means a responsible adult authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

(m) "Institution" means the following institutions: The Kansas juvenile correctional complex, the Atchison juvenile correctional facility, the Beloit juvenile correctional facility, the Larned juvenile correctional facility and the Topeka juvenile correctional facility.

(n) "Sanctions house" means a facility which is operated or structured so as to ensure that all entrances and exits from the facility are under the exclusive control of the staff of the facility, whether or not the person being detained has freedom of movement within the perimeters of the facility, or which relies on locked rooms and buildings, fences, or physical restraint in order to control the behavior of its residents. Upon an order from the court, a licensed juvenile detention facility may serve as a sanctions house.

(o) "Sentencing risk assessment tool" means an instrument administered to juvenile offenders which delivers a score, or group of scores, describing, but not limited to describing, the juvenile's potential risk to the community.

(p) "Educational institution" means all schools at the elementary and secondary levels.

(q) "Educator" means any administrator, teacher or other professional or paraprofessional employee of an educational institution who has exposure to a pupil specified in subsection (a)(1) through (5) of K.S.A. 72-89b03, and amendments thereto.

(r) "*Juvenile corrections officer*" means a certified employee of the juvenile justice authority working at a juvenile correctional facility assigned by the commissioner with responsibility for maintaining custody, security and control of juveniles in the custody of the commissioner at a juvenile correctional facility.

(s) "*Investigator*" means an employee of the juvenile justice authority assigned by the commissioner with the responsibility for investigations concerning employees at the juvenile correctional facilities and juveniles in the custody of the commissioner at a juvenile correctional facility.

Sec. 4. K.S.A. 2002 Supp. 44-706, as amended by section 6 of 2003 House Bill No. 2353, is hereby amended to read as follows: 44-706. An individual shall be disqualified for benefits:

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

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

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

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

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

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

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

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

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

comparison to the distance from the individual's residence to the work left;

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

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

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

(12) the individual left work due to circumstances resulting from domestic violence, including:

(A) The individual's reasonable fear of future domestic violence at or en route to or from the individual's place of employment; or

(B) the individual's need to relocate to another geographic area in order to avoid future domestic violence; or

(C) the individual's need to address the physical, psychological and legal impacts of domestic violence; or

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

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

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

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

(2) a police record documenting the abuse; or

(3) documentation that the abuser has been convicted of one or more of the offenses enumerated in articles 34 and 35 of chapter 21 of the Kansas Statutes Annotated, and amendments thereto, where the victim was a family or household member; or

(4) medical documentation of the abuse; or

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

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

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

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

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

(2) For the purposes of this subsection (d), the use of or impairment

caused by an alcoholic beverage, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be conclusive evidence of misconduct and the possession of an alcoholic beverage, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be prima facie evidence of conduct which is a violation of a duty or obligation reasonably owed to the employer as a condition of employment. For purposes of this subsection (d), the disqualification of an individual from employment which disqualification is required by the provisions of the drug free workplace act, 41 U.S.C. 701 et seq. or is otherwise required by law because the individual refused to submit to or failed a chemical test which was required by law, shall be conclusive evidence of misconduct. Refusal to submit to a chemical test administered pursuant to an employee assistance program or other drug or alcohol treatment program in which the individual was participating voluntarily or as a condition of further employment shall also be conclusive evidence of misconduct. Alcoholic liquor shall be defined as provided in K.S.A. 41-102 and amendments thereto. Cereal malt beverage shall be defined as provided in K.S.A. 41-2701 and amendments thereto. Controlled substance shall be defined as provided in K.S.A. 65-4101 and amendments thereto of the uniform controlled substances act. As used in this subsection (d)(2), "required by law" means required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in open meeting by the governing body of any special district or other local governmental entity. An individual's refusal to submit to a chemical test shall not be admissible evidence to prove misconduct unless the test is required by and meets the standards of the drug free workplace act, 41 U.S.C. 701 et seq., the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, the test was otherwise required by law and the test constituted a required condition of employment for the individual's job, or, there was probable cause to believe that the individual used, possessed or was impaired by an alcoholic beverage, a cereal malt beverage or a controlled substance while working. The results of a chemical test shall not be admissible evidence to prove misconduct unless the following conditions were met:

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

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

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

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

(E) the test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method,

except that no such confirmation is required for a blood alcohol sample; and

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

(3) For the purposes of this subsection (d), misconduct shall include, but not be limited to repeated absence, including lateness, from scheduled work if the facts show:

(A) The individual was absent without good cause;

(B) the absence was in violation of the employer's written absenteeism policy;

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

(D) the employee had knowledge of the employer's written absenteeism policy; and

(E) if an employee disputes being absent without good cause, the employee shall present evidence that a majority of the employee's absences were for good cause.

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

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

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

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

~~(e)~~ (e) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of human resources, or to accept suitable work when offered to the individual by the employment office, the secretary of human resources, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of human resources, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization; (4) if the individual left employment as a result of domestic violence, and the position offered does not reasonably accommodate the individual's physical, psychological, safety, and/or legal needs relating to said domestic violence.

~~(f)~~ (f) For any week with respect to which the secretary of human

resources, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed, except that this subsection ~~(f)~~ shall not apply if it is shown to the satisfaction of the secretary of human resources, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection ~~(f)~~ be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection ~~(f)~~, failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

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

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

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

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

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

~~(a)~~ (l) For any week of unemployment on the basis of service in any capacity other than service in an instructional, research, or administrative capacity in an educational institution, as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, if such week begins during the period between two successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms, except that if benefits

are denied to the individual under this subsection ~~(j)~~ (l) and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection ~~(j)~~ (l).

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

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

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

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

~~railroad retirement act of 1974, or the corresponding provisions of prior law. Payments made under these acts shall be treated as otherwise provided in this subsection (n). If the reduced weekly benefit amount is not a multiple of \$1, it shall be reduced to the next lower multiple of \$1. No reduction shall be made for payments made under the social security act or railroad retirement act of 1974.~~

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

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

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

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

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

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

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

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

Sec. 5. K.S.A. 44-704b is hereby amended to read as follows: 44-704b. (a) *Cessation of extended benefits when paid under an interstate claim in a state where an extended benefit period is not in effect:*

(1) Except as provided in subsection (a)(2), an individual shall not be eligible for extended benefits for any week if:

(A) Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

(B) no extended benefit period is in effect for such week in the state where the claim for extended benefits was filed.

(2) Subsection (a)(1) shall not apply with respect to the first two weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

(b) *Disqualification conditions.* (1) An individual shall be disqualified for payment of extended benefits for any week of unemployment in the individual's extended entitlement period and until the individual has been employed in each of four subsequent weeks, whether or not consecutive, and has had earnings of at least four times the weekly extended benefit amount if the secretary of human resources finds that during such period:

(A) The individual failed to accept any offer of suitable work, as defined under subsection (b)(2), or failed to apply for any suitable work as defined in subsection (b)(2) to which the individual was referred by the secretary of human resources; or

(B) the individual failed to actively engage in seeking work as prescribed under subsection (b)(4).

(2) For purposes of this subsection (b), the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities, provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:

(A) The individual's weekly extended benefit amount, plus the amount, if any, of supplemental unemployment benefits, as defined in section 501(c)(17)(D) of the internal revenue code of 1954, payable to such individual for such week; and further,

(B) pays wages not less than the higher of:

(i) The minimum wage provided by section 6(a)(1) of the fair labor standards act of 1938, without regard to any exemption; or

(ii) the applicable state or local minimum wage;

(C) except that no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:

(i) The position was not offered to such individual in writing by an employing unit or was not listed with the employment service; or

(ii) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in subsection ~~(e)~~ (e) of K.S.A. 44-706 and amendments thereto to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subsection (b)(2); or

(iii) the individual furnishes satisfactory evidence to the secretary of human resources that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in subsection ~~(e)~~ (e) of K.S.A. 44-706 and amendments thereto without regard to the definition specified by this subsection (b)(2).

(3) No work shall be determined suitable work for an individual which does not accord with the labor standard provisions required by section 3304(a)(5) of the internal revenue code of 1954. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving such individual's most recent work accepted during approved training, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall

not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(B) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(C) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization.

(4) For the purposes of subsection (b)(1)(B), an individual shall be treated as actively engaged in seeking work during any week if:

(A) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(B) the individual furnishes tangible evidence that the individual has engaged in such effort during such week.

(5) The employment service shall refer any individual entitled to extended benefits under this act to any suitable work which meets the criteria prescribed in subsection (b)(2).

(c) Except where inconsistent with the provisions of this act, the terms and conditions of the employment security law which apply to claims for regular benefits and to the payment thereof shall apply to claims for extended benefits and to the payment thereof for weeks of unemployment beginning after June 30, 1993, and ending before January 1, 1995. The provisions of subsection (b) do not apply to claims for extended benefits for weeks of unemployment beginning after June 30, 1993, and ending before January 1, 1995.

Sec. 6. K.S.A. 44-709 is hereby amended to read as follows: 44-709.

(a) *Filing.* Claims for benefits shall be made in accordance with rules and regulations adopted by the secretary. The secretary shall furnish a copy of such rules and regulations to any individual requesting them. Each employer shall post and maintain printed statements furnished by the secretary without cost to the employer in places readily accessible to individuals in the service of the employer.

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

(2) The examiner may for good cause reconsider the examiner's decision and shall promptly notify the claimant and the most recent em-

ploying unit of the claimant, that the decision of the examiner is to be reconsidered, except that no reconsideration shall be made after the termination of the benefit year.

(3) Notwithstanding the provisions of any other statute, a decision of an examiner or special examiner shall be final unless the claimant or the most recent employing unit of the claimant files an appeal from the decision as provided in subsection (c). The appeal must be filed within 16 calendar days after the mailing of notice to the last known addresses of the claimant and employing unit or, if notice is not by mail, within 16 calendar days after the delivery of the notice to the parties.

(c) *Appeals.* Unless the appeal is withdrawn, a referee, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the examiner or special examiner. The parties shall be duly notified of the referee's decision, together with the reasons for the decision. The decision shall be final, notwithstanding the provisions of any other statute, unless a further appeal to the board of review is filed within 16 calendar days after the mailing of the decision to the parties' last known addresses or, if notice is not by mail, within 16 calendar days after the delivery of the decision.

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

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

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

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

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

(4) Each member of the board shall be entitled to receive as compensation for the member's services at the rate of \$15,000 per year, which rate of compensation shall be effective retroactively to the beginning of the first payroll period chargeable to the fiscal year ending June 30, 1994, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties in accordance with rules and regulations adopted by the secretary. Members' compensation and expenses shall be paid from the employment security administration fund.

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

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

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

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

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

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

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

(k) In any proceeding or hearing conducted under this section, a party to the proceeding or hearing may appear before a referee or the board

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

Sec. 7. K.S.A. 72-6409, as amended by section 1 of 2003 House Bill No. 2006, is hereby amended to read as follows: 72-6409. (a) "General fund" means the fund of a district from which operating expenses are paid and in which is deposited the proceeds from the tax levied under K.S.A. 72-6431, and amendments thereto, all amounts of general state aid under this act, payments under K.S.A. 72-7105a, and amendments thereto, payments of federal funds made available under the provisions of title I of public law 874, except amounts received for assistance in cases of major disaster and amounts received under the low-rent housing program, and such other moneys as are provided by law.

(b) "Operating expenses" means the total expenditures and lawful transfers from the general fund of a district during a school year for all purposes, except expenditures for the purposes specified in K.S.A. 72-6430, and amendments thereto.

(c) "General fund budget" means the amount budgeted for operating expenses in the general fund of a district.

(d) "Budget per pupil" means the general fund budget of a district divided by the enrollment of the district.

(e) "Program weighted fund" means and includes the following funds of a district: ~~Transportation fund,~~ Vocational education fund, and bilingual education fund.

(f) "Categorical fund" means and includes the following funds of a district: Special education fund, food service fund, driver training fund, adult education fund, adult supplementary education fund, area vocational school fund, professional development fund, parent education program fund, summer program fund, extraordinary school program fund, and educational excellence grant program fund.

Sec. 8. K.S.A. 72-8205, as amended by section 1 of 2003 Senate Bill No. 57, is hereby amended to read as follows: 72-8205. (a) The board shall meet at least once each month. ~~At some time~~ During the month of July of each year, the board shall adopt a resolution specifying a regular meeting time of the board and ~~such resolution shall specify~~ the regular hour of commencement of the meeting, as well as the day of the week and the week of the month. Such resolution also shall ~~provide that~~ *specify the alternative date and time of any meeting* if the regular meeting date occurs on a Sunday or on a legal holiday or on a holiday specified by the board, ~~such regular meeting shall be held on the day following commencing at the same hour.~~ Such resolution also shall specify the regular meeting place of the board and may specify that any regular meeting may be adjourned to another time and place. *If the board cancels a regularly-scheduled meeting because of an emergency, within 24 hours of such cancellation, the board shall establish and give notice of the new meeting date and time.* Special meetings may be called at any time by the president of the board or by joint action of any three members of the board. Unless waived, written notice, stating the time and place of any special meeting and the purpose for which called shall be given each member of the board at least two days in advance of the special meeting and no business other than that stated in the notice shall be transacted at such meeting. A majority of the full membership of the board shall constitute a quorum for the purpose of conducting any business of the school district, and the vote of a majority of the full membership of the board shall be required for the passage of any motion or resolution. Any member who abstains from voting shall be counted as having voted against the motion or resolution. If a member announces a conflict of interest with regard to the issue, the member may leave the meeting until the voting on the issue is concluded

and the member who abstains from voting thereby shall not be counted as having voted.

(b) Except as otherwise provided by law, the board shall have and may exercise the same powers and authorities as were immediately prior to this act conferred uniformly upon boards of education in cities of the first class, and, in addition thereto, the powers and authority expressly conferred by law.

(c) The board shall have authority to prescribe courses of study for each year of the school program and to adopt rules and regulations for teaching in the school district and general government thereof, and to approve and adopt suitable textbooks and study material for use therein subject to the plans, methods, rules and regulations of the state board of education.

(d) The board may provide legal counsel at district expense to any members of the board of education, or school district officers or employees who are sued in situations relating to and arising out of the performance of their office or employment. No teacher or other employment contract shall make reference to or incorporate the provisions of this subsection, nor shall the provisions of this subsection be construed as any part of the consideration of employment of any teacher, officer or other employee of the board.

(e) (1) The board may transact all school district business and adopt policies that the board deems appropriate to perform its constitutional duty to maintain, develop and operate local public schools.

(2) The power granted by this subsection shall not be construed to relieve a board from compliance with state law.

The power granted by this subsection shall not be construed to relieve any other unit of government of its duties and responsibilities which are prescribed by law, nor to create any responsibility on the part of a school district to assume the duties or responsibilities which are required of another unit of government.

(3) The board shall exercise the power granted by this subsection by resolution of the board of education.

Sec. 9. K.S.A. 2002 Supp. 75-6102, as amended by section 1 of 2003 Senate Bill No. 34, is hereby amended to read as follows: 75-6102. As used in K.S.A. 75-6101 through 75-6118, and amendments thereto, unless the context clearly requires otherwise:

(a) "State" means the state of Kansas and any department or branch of state government, or any agency, authority, institution or other instrumentality thereof.

(b) "Municipality" means any county, township, city, school district or other political or taxing subdivision of the state, or any agency, authority, institution or other instrumentality thereof.

(c) "Governmental entity" means state or municipality.

(d) "Employee" means any officer, employee, servant or member of a board, commission, committee, division, department, branch or council of a governmental entity, including elected or appointed officials and persons acting on behalf or in service of a governmental entity in any official capacity, whether with or without compensation and a charitable health care provider. Employee includes any steward or racing judge appointed pursuant to K.S.A. 74-8818, and amendments thereto, regardless of whether the services of such steward or racing judge are rendered pursuant to contract as an independent contractor, but does not otherwise include any independent contractor under contract with a governmental entity except (1) employees of the United States marshal's service engaged in the transportation of inmates on behalf of the secretary of corrections, (2) a person who is an employee of a nonprofit independent contractor, other than a municipality, under contract to provide educational or vocational training to inmates in the custody of the secretary of corrections and who is engaged in providing such service in an institution under the control of the secretary of corrections provided that such employee does not otherwise have coverage for such acts and omissions within the scope of their employment through a liability insurance contract of such independent contractor; and (3) a person who is an employee or volunteer of a nonprofit program, other than a municipality, who has contracted with the commissioner of juvenile justice or with another nonprofit program that has contracted with the commissioner of juvenile

justice to provide a juvenile justice program for juvenile offenders in a judicial district provided that such employee or volunteer does not otherwise have coverage for such acts and omissions within the scope of their employment or volunteer activities through a liability insurance contract of such nonprofit program. “Employee” also includes an employee of an indigent health care clinic. “Employee” also includes former employees for acts and omissions within the scope of their employment during their former employment with the governmental entity. “Employee” also includes any member of a regional medical emergency response team, created under the provisions of K.S.A. 48-928, and amendments thereto, in connection with authorized training or upon activation for an emergency response.

(e) “Community service work” means public or community service performed by a person (1) as a result of a contract of diversion entered into by such person as authorized by law, (2) pursuant to the assignment of such person by a court to a community corrections program, (3) as a result of suspension of sentence or as a condition of probation pursuant to court order, (4) in lieu of a fine imposed by court order or (5) as a condition of placement ordered by a court pursuant to K.S.A. 38-1663, and amendments thereto.

(f) “Charitable health care provider” means a person licensed by the state board of healing arts as an exempt licensee or a federally active licensee, a person issued a limited permit by the state board of healing arts, a physician assistant licensed by the state board of healing arts or a health care provider as the term “health care provider” is defined under K.S.A. 65-4921, and amendments thereto, who has entered into an agreement with:

(1) The secretary of health and environment under K.S.A. 75-6120, and amendments thereto, who, pursuant to such agreement, gratuitously renders professional services to a person who has provided information which would reasonably lead the health care provider to make the good faith assumption that such person meets the definition of medically indigent person as defined by this section or to a person receiving medical assistance from the programs operated by the department of social and rehabilitation services, and who is considered an employee of the state of Kansas under K.S.A. 75-6120, and amendments thereto;

(2) the secretary of health and environment and who, pursuant to such agreement, gratuitously renders professional services in conducting children’s immunization programs administered by the secretary;

(3) a local health department or indigent health care clinic, which renders professional services to medically indigent persons or persons receiving medical assistance from the programs operated by the department of social and rehabilitation services gratuitously or for a fee paid by the local health department or indigent health care clinic to such provider and who is considered an employee of the state of Kansas under K.S.A. 75-6120 and amendments thereto. Professional services rendered by a provider under this paragraph (3) shall be considered gratuitous notwithstanding fees based on income eligibility guidelines charged by a local health department or indigent health care clinic and notwithstanding any fee paid by the local health department or indigent health care clinic to a provider in accordance with this paragraph (3); or

(4) the secretary of health and environment to provide dentistry services defined by K.S.A. 65-1422 *et seq.* and amendments thereto or dental hygienist services defined by K.S.A. 65-1456 and amendments thereto that are targeted, but are not limited to medically indigent persons, and are provided on a gratuitous basis at a location sponsored by a not-for-profit organization that is not the dentist or dental hygienist office location. Except that such dentistry services and dental hygienist services shall not include “oral and maxillofacial surgery” as defined by Kansas administrative regulation 71-2-2, or use sedation or general anesthesia that result in “deep sedation” or “general anesthesia” as defined by Kansas administrative regulation 71-5-1.

(g) “Medically indigent person” means a person who lacks resources to pay for medically necessary health care services and who meets the eligibility criteria for qualification as a medically indigent person established by the secretary of health and environment under K.S.A. 75-6120, and amendments thereto.

(h) “Indigent health care clinic” means an outpatient medical care

clinic operated on a not-for-profit basis which has a contractual agreement in effect with the secretary of health and environment to provide health care services to medically indigent persons.

(i) “Local health department” shall have the meaning ascribed to such term under K.S.A. 65-241 and amendments thereto.

(j) “*Fire control, fire rescue or emergency medical services equipment*” means any vehicle, firefighting tool, protective clothing, breathing apparatus and any other supplies, tools or equipment used in firefighting or fire rescue or in the provision of emergency medical services.

Sec. 10. K.S.A. 2002 Supp. 79-3271 is hereby amended to read as follows: 79-3271. As used in this act, unless the context otherwise requires: (a) “Business income” means income arising from transactions and activity in the regular course of the taxpayer’s trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer’s regular trade or business operations, except that for taxable years commencing after December 31, 1995, a taxpayer may elect that all income ~~derived from the acquisition, management, use or disposition of tangible or intangible property~~ constitutes business income. The election shall be effective and irrevocable for the taxable year of the election and the following nine taxable years. The election shall be binding on all members of a unitary group of corporations.

(b) “Commercial domicile” means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) “Compensation” means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) “Financial organization” means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, or any type of insurance company, but such term shall not be deemed to include any business entity, other than those hereinbefore enumerated, whose primary business activity is making consumer loans or purchasing retail installment contracts from one or more sellers.

(e) “Nonbusiness income” means all income other than business income.

(f) “Public utility” means any business entity which owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, oil, oil products or gas.

(g) “Original return” means the first return filed to report the income of a taxpayer for a taxable year or period, irrespective of whether such return is filed on a single entity basis or a combined basis.

(h) “Sales” means all gross receipts of the taxpayer not allocated under K.S.A. 79-3274 through 79-3278, and amendments thereto.

(i) “State” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(j) “Telecommunications company” means any business entity or unitary group of entities whose primary business activity is the transmission of communications in the form of voice, data, signals or facsimile communications by wire or fiber optic cable.

(k) “Distressed area taxpayer” means a corporation which: (1) Is located in a county which has a population of not more than 45,000 persons and which, as certified by the department of commerce and housing, has sustained an adverse economic impact due to the closure of a state hospital in such county pursuant to the recommendations of the hospital closure commission; and (2) which has a total annual payroll of \$20,000,000 or more for employees employed within such county.

(l) For the purposes of this subsection and subsection (b)(5) of K.S.A. 79-3279, and amendments thereto, the following terms are defined:

(1) “Administration services” include clerical, fund or shareholder accounting, participant record keeping, transfer agency, bookkeeping, data processing, custodial, internal auditing, legal and tax services performed for an investment company;

(2) “distribution services” include the services of advertising, servic-

ing, marketing, underwriting or selling shares of an investment company, but, in the case of advertising, servicing or marketing shares, only where such service is performed by a person who is, or in the case of a closed end company, was, either engaged in the services of underwriting or selling investment company shares or affiliated with a person who is engaged in the service of underwriting or selling investment company shares. In the case of an open end company, such service of underwriting or selling shares must be performed pursuant to a contract entered into pursuant to 15 U.S.C. §80a-15(b), as in effect on the effective date of this act;

(3) “investment company”, means any person registered under the federal Investment Company Act of 1940, as in effect on the effective date of this act, or a company which would be required to register as an investment company under such act except that such person is exempt to such registration pursuant to §80a-3(c)(1) of such act;

(4) “investment funds service corporation” includes any corporation or S corporation headquartered in and doing business in this state which derives more than 50% of its gross income from the provision of management, distribution or administration services to or on behalf of an investment company or from trustees, sponsors and participants of employee benefit plans which have accounts in an investment company;

(5) “management services” include the rendering of investment advice to an investment company making determinations as to when sales and purchases of securities are to be made on behalf of the investment company, or the selling or purchasing of securities constituting assets of an investment company, and related activities, but only where such activity or activities are performed:

(A) Pursuant to a contract with the investment company entered into pursuant to 15 U.S.C. §80a-15(a), in effect on the effective date of this act; or

(B) for a person that has entered into such contract with the investment company;

(6) “qualifying business income” is business income derived from the provision of management, distribution or administration services to or on behalf of an investment company or from trustees, sponsors and participants of employee benefit plans which have accounts in an investment company; and

(7) “residence” is the fund shareholder’s primary residence address.

Sec. 11. K.S.A. 44-704b and 44-709, K.S.A. 2002 Supp. 75-6102b, 79-1476b, 79-3226c, 79-3271 and 79-3271a, K.S.A. 8-240, as amended by section 1 of 2003 Senate Bill No. 16, and 8-240, as amended by section 2 of 2003 House Bill No. 2192, K.S.A. 8-1324, as amended by section 3 of 2003 Senate Bill No. 16, and 8-1324, as amended by section 4 of 2003 House Bill No. 2192, K.S.A. 38-1602, as amended by section 2 of 2003 House Bill No. 2314 and 38-1602, as amended by section 1 of 2003 House Bill No. 2016, K.S.A. 2002 Supp. 44-706, as amended by section 6 of 2003 House Bill No. 2353, and 44-706, as amended by section 2 of 2003 House Bill No. 2332, K.S.A. 72-6409, as amended by section 1 of 2003 House Bill No. 2006, and 72-6409, as amended by section 8 of 2003 Substitute for Senate Bill No. 83, K.S.A. 72-8205, as amended by section 1 of 2003 Senate Bill No. 57, and 72-8205, as amended by section 1 of 2003 Senate Bill No. 55, K.S.A. 72-9901, as amended by section 12 of 2003 House Bill No. 2006, K.S.A. 2002 Supp. 75-6102, as amended by section 1 of 2003 Senate Bill No. 34, and 75-6102, as amended by section 1 of 2003 House Bill No. 2068, are hereby repealed.

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

President of the Senate.

Secretary of the Senate.

Passed the HOUSE _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.