

## HOUSE BILL No. 2317

By Committee on Commerce and Labor

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9 AN ACT concerning the employment security law; relating to employer  
10 payments; eliminating contractor liability for subcontractor contribu-  
11 tions; amending K.S.A. 2006 Supp. 44-717 and repealing the existing  
12 section.  
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14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section 1. K.S.A. 2006 Supp. 44-717 is hereby amended to read as  
16 follows: 44-717. (a) (1) *Penalties on past-due reports, interest on past-due*  
17 *contributions, payments in lieu of contributions and benefit cost pay-*  
18 *ments.* Any employer or any officer or agent of an employer, who fails to  
19 file any wage report or contribution return by the last day of the month  
20 following the close of each calendar quarter to which they are related  
21 shall pay a penalty as provided by this subsection (a) for each month or  
22 fraction of a month until the report or return is received by the secretary  
23 of labor. The penalty for each month or fraction of a month shall be an  
24 amount equal to .05% of the total wages paid by the employer during the  
25 quarter, except that no penalty shall be less than \$25 nor more than \$200  
26 for each such report or return not timely filed. Contributions and benefit  
27 cost payments unpaid by the last day of the month following the last  
28 calendar quarter to which they are related and payments in lieu of con-  
29 tributions unpaid 30 days after the mailing of the statement of benefit  
30 charges, shall bear interest at the rate of 1% per month or fraction of a  
31 month until payment is received by the secretary of labor except that an  
32 employing unit, which is not theretofore subject to this law and which  
33 becomes an employer and does not refuse to make the reports, returns  
34 and contributions, payments in lieu of contributions and benefit cost pay-  
35 ments required under this law, shall not be liable for such penalty or  
36 interest if the wage reports and contribution returns required are filed  
37 and the contributions, payments in lieu of contributions or benefit cost  
38 payments required are paid within 10 days following notification by the  
39 secretary of labor that a determination has been made fixing its status as  
40 an employer subject to this law. Upon written request and good cause  
41 shown, the secretary of labor may abate any penalty or interest or portion  
42 thereof provided for by this subsection (a). Interest amounting to less  
43 than \$1 shall be waived by the secretary of labor and shall not be collected.

1 Penalties and interest collected pursuant to this subsection shall be paid  
2 into the special employment security fund. For all purposes under this  
3 section, amounts assessed as surcharges under subsection (j) or under  
4 K.S.A. 44-710a, and amendments thereto, shall be considered to be con-  
5 tributions and shall be subject to penalties and interest imposed under  
6 this section and to collection in the manner provided by this section. For  
7 purposes of this subsection, a wage report, a contribution return, a con-  
8 tribution, a payment in lieu of contribution or a benefit cost payment is  
9 deemed to be filed or paid as of the date it is placed in the United States  
10 mail.

11 (2) Notices of payment and reporting delinquency to Indian tribes or  
12 their tribal units shall include information that failure to make full pay-  
13 ment within the prescribed time frame:

14 (i) will cause the Indian tribe to be liable for taxes under FUTA;

15 (ii) will cause the Indian tribe to lose the option to make payments  
16 in lieu of contributions;

17 (iii) could cause the Indian tribe to be excepted from the definition  
18 of “employer,” as provided in paragraph (h)(3) of K.S.A. 44-703, and  
19 amendments thereto, and services in the employ of the Indian tribe, as  
20 provided in paragraph (i)(3)(E) of K.S.A. 44-703, and amendments  
21 thereto, to be excepted from “employment.”

22 (b) *Collection.* (1) If, after due notice, any employer defaults in pay-  
23 ment of any penalty, contributions, payments in lieu of contributions,  
24 benefit cost payments, or interest thereon the amount due may be col-  
25 lected by civil action in the name of the secretary of labor and the em-  
26 ployer adjudged in default shall pay the cost of such action. Civil actions  
27 brought under this section to collect contributions, payments in lieu of  
28 contributions, benefit cost payments, penalties, or interest thereon from  
29 an employer shall be heard by the district court at the earliest possible  
30 date and shall be entitled to preference upon the calendar of the court  
31 over all other civil actions except petitions for judicial review under this  
32 act and cases arising under the workmen’s compensation act. All liability  
33 determinations of contributions due, payments in lieu of contributions or  
34 benefit cost payments due shall be made within a period of five years  
35 from the date such contributions, payments in lieu of contributions or  
36 benefit cost payments were due except such determinations may be made  
37 for any time when an employer has filed fraudulent reports with intent  
38 to evade liability.

39 (2) Any employing unit which is not a resident of this state and which  
40 exercises the privilege of having one or more individuals perform service  
41 for it within this state and any resident employing unit which exercises  
42 that privilege and thereafter removes from this state, shall be deemed  
43 thereby to appoint the secretary of state as its agent and attorney for the

1 acceptance of process in any civil action under this subsection. In insti-  
2 tuting such an action against any such employing unit the secretary of  
3 labor shall cause such process or notice to be filed with the secretary of  
4 state and such service shall be sufficient service upon such employing  
5 unit and shall be of the same force and validity as if served upon it per-  
6 sonally within this state. The secretary of labor shall send notice imme-  
7 diately of the service of such process or notice, together with a copy  
8 thereof, by registered or certified mail, return receipt requested, to such  
9 employing unit at its last-known address and such return receipt, the  
10 affidavit of compliance of the secretary of labor with the provisions of this  
11 section, and a copy of the notice of service, shall be appended to the  
12 original of the process filed in the court in which such civil action is  
13 pending.

14 ~~(3) Any contractor, who is or becomes an employer under the pro-~~  
15 ~~visions of this act, who contracts with any subcontractor, who also is or~~  
16 ~~becomes an employer under the provisions of this act, shall be directly~~  
17 ~~liable for such contributions, penalties and interest due from the subcon-~~  
18 ~~tractor and the secretary of labor shall have all of the remedies of collec-~~  
19 ~~tion against the contractor under the provisions of this act as though the~~  
20 ~~services in question were performed directly for the contractor, unless~~  
21 ~~the contractor requires the subcontractor to provide a good and sufficient~~  
22 ~~bond guaranteeing payment of all contributions, penalties and interest~~  
23 ~~due or to become due with respect to wages paid for employment on the~~  
24 ~~contract. For the purpose of this subsection (b)(3), the words, "contract-~~  
25 ~~or" and "subcontractor" mean and include individuals, partnerships,~~  
26 ~~firms or corporations, or other associations of persons engaged in the~~  
27 ~~business of the construction, alteration, repairing, dismantling or demo-~~  
28 ~~lition of buildings, roads, bridges, viaducts, sewers, water and gas mains,~~  
29 ~~streets, disposal plants, water filters, tanks and towers, airports, dams,~~  
30 ~~levees and canals, oil and gas wells, water wells, pipelines, and every other~~  
31 ~~type of structure, project, development or improvement coming within~~  
32 ~~the definition of real property.~~

33 ~~—(4) The district courts of this state shall entertain, in the manner~~  
34 ~~provided in subsections (b)(1); and (b)(2) and (b)(3), actions to collect~~  
35 ~~contributions, payments in lieu of contributions, benefit cost payments~~  
36 ~~and other amounts owed including interest thereon for which liability has~~  
37 ~~accrued under the employment security law of any other state or of the~~  
38 ~~federal government.~~

39 (c) *Priorities under legal dissolutions or distributions.* In the event of  
40 any distribution of employer's assets pursuant to an order of any court  
41 under the laws of this state, including but not limited to any probate  
42 proceeding, interpleader, receivership, assignment for benefit of credi-  
43 tors, adjudicated insolvency, composition or similar proceedings, contri-

1 contributions or payments in lieu of contributions then or thereafter due shall  
2 be paid in full from the moneys which shall first come into the estate,  
3 prior to all other claims, except claims for wages of not more than \$250  
4 to each claimant, earned within six months of the commencement of the  
5 proceedings. In the event of an employer's adjudication in bankruptcy,  
6 judicially confirmed extension proposal, or composition, under the federal  
7 bankruptcy act of 1898, as amended, contributions then or thereafter due  
8 shall be entitled to such priority as is provided in that act for taxes due  
9 any state of the United States.

10 (d) *Assessments.* If any employer fails to file a report or return re-  
11 quired by the secretary of labor for the determination of contributions,  
12 or payments in lieu of contributions, or benefit cost payments, the sec-  
13 retary of labor may make such reports or returns or cause the same to be  
14 made, on the basis of such information as the secretary may be able to  
15 obtain and shall collect the contributions, payments in lieu of contribu-  
16 tions or benefit cost payments as determined together with any interest  
17 due under this act. The secretary of labor shall immediately forward to  
18 the employer a copy of the assessment by registered or certified mail to  
19 the employer's address as it appears on the records of the agency, and  
20 such assessment shall be final unless the employer protests such assess-  
21 ment and files a corrected report or return for the period covered by the  
22 assessment within 15 days after the mailing of the copy of assessment.  
23 Failure to receive such notice shall not invalidate the assessment. Notice  
24 in writing shall be presumed to have been given when deposited as cer-  
25 tified or registered matter in the United States mail, addressed to the  
26 person to be charged with notice at such person's address as it appears  
27 on the records of the agency.

28 (e) (1) *Lien.* If any employer or person who is liable to pay contri-  
29 butions, payments in lieu of contributions or benefit cost payments ne-  
30 glects or refuses to pay the same after demand, the amount, including  
31 interest and penalty, shall be a lien in favor of the state of Kansas, sec-  
32 retary of labor, upon all property and rights to property, whether real or  
33 personal, belonging to such employer or person. Such lien shall not be  
34 valid as against any mortgagee, pledgee, purchaser or judgment creditor  
35 until notice thereof has been filed by the secretary of labor in the office  
36 of register of deeds in any county in the state of Kansas, in which such  
37 property is located, and when so filed shall be notice to all persons claim-  
38 ing an interest in the property of the employer or person against whom  
39 filed. The register of deeds shall enter such notices in the financing state-  
40 ment record and shall also record the same in full in miscellaneous record  
41 and index the same against the name of the delinquent employer. The  
42 register of deeds shall accept, file, and record such notice without pre-  
43 payment of any fee, but lawful fees shall be added to the amount of such

1 lien and collected when satisfaction is presented for entry. Such lien shall  
2 be satisfied of record upon the presentation of a certificate of discharge  
3 by the state of Kansas, secretary of labor. Nothing contained in this sub-  
4 section (e) shall be construed as an invalidation of any lien or notice filed  
5 in the name of the unemployment compensation division or the employ-  
6 ment security division and such liens shall be and remain in full force and  
7 effect until satisfied as provided by this subsection (e).

8 (2) *Authority of secretary or authorized representative.* If any employ-  
9 er or person who is liable to pay any contributions, payments in lieu  
10 of contributions or benefit cost payments, including interest and penalty,  
11 neglects or refuses to pay the same within 10 days after notice and de-  
12 mand therefor, the secretary or the secretary's authorized representative  
13 may collect such contributions, payments in lieu of contributions or ben-  
14 efit cost payments, including interest and penalty, and such further  
15 amount as is sufficient to cover the expenses of the levy, by levy upon all  
16 property and rights to property which belong to the employer or person  
17 or which have a lien created thereon by this subsection (e) for the pay-  
18 ment of such contributions, payments in lieu of contributions or benefit  
19 cost payments, including interest and penalty. As used in this subsection  
20 (e), "property" includes all real property and personal property, whether  
21 tangible or intangible, except such property which is exempt under K.S.A.  
22 60-2301 *et seq.* and amendments thereto. Levy may be made upon the  
23 accrued salary or wages of any officer, employee or elected official of any  
24 state or local governmental entity which is subject to K.S.A. 60-723, and  
25 amendments thereto, by serving a notice of levy as provided in subsection  
26 (d) of K.S.A. 60-304 and amendments thereto. If the secretary or the  
27 secretary's authorized representative makes a finding that the collection  
28 of the amount of such contributions, payments in lieu of contributions or  
29 benefit cost payments, including interest and penalty, is in jeopardy, no-  
30 tice and demand for immediate payment of such amount may be made  
31 by the secretary or the secretary's authorized representative and, upon  
32 failure or refusal to pay such amount, immediate collection of such  
33 amount by levy shall be lawful without regard to the 10-day period pro-  
34 vided in this subsection (e).

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

42 (4) *Successive seizures.* Whenever any property or right to property  
43 upon which levy has been made under this subsection (e) is not sufficient

1 to satisfy the claim of the secretary for which levy is made, the secretary  
2 or the secretary's authorized representative may proceed thereafter and  
3 as often as may be necessary, to levy in like manner upon any other  
4 property or rights to property which belongs to the employer or person  
5 against whom such claim exists or upon which a lien is created by this  
6 subsection (e) until the amount due from the employer or person, to-  
7 gether with all expenses, is fully paid.

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

21 (1) *Individual*. Service upon an individual, other than a minor or in-  
22 capacitated person, shall be made by delivering a copy of the final notice  
23 to the individual personally or by leaving a copy at such individual's dwell-  
24 ing house or usual place of abode with some person of suitable age and  
25 discretion then residing therein, by leaving a copy at the business estab-  
26 lishment of the employer with an officer or employee of the establish-  
27 ment, or by delivering a copy to an agent authorized by appointment or  
28 by law to receive service of process, but if the agent is one designated by  
29 a statute to receive service, such further notice as the statute requires  
30 shall be given. If service as prescribed above cannot be made with due  
31 diligence, the secretary or the secretary's designee may order service to  
32 be made by leaving a copy of the final notice at the employer's dwelling  
33 house, usual place of abode or business establishment.

34 (2) *Corporations and partnerships*. Service upon a domestic or for-  
35 eign corporation or upon a partnership or other unincorporated associa-  
36 tion, when by law it may be sued as such, shall be made by delivering a  
37 copy of the final notice to an officer, partner or resident managing or  
38 general agent thereof by leaving a copy at any business office of the em-  
39 ployer with the person having charge thereof or by delivering a copy to  
40 any other agent authorized by appointment or required by law to receive  
41 service of process, if the agent is one authorized by law to receive service  
42 and, if the law so requires, by also mailing a copy to the employer.

43 (3) *Refusal to accept service*. In all cases when the person to be

1 served, or an agent authorized by such person to accept service of peti-  
2 tions and summonses, shall refuse to receive copies of the final notice,  
3 the offer of the duly authorized process server to deliver copies thereof  
4 and such refusal shall be sufficient service of such notice.

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

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

13 (5) *Time for return.* The officer or other person receiving a final no-  
14 tice shall make a return of service promptly and shall send such return  
15 to the secretary or the secretary's designee in any event within 10 days  
16 after the service is effected. If the final notice cannot be served it shall  
17 be returned to the secretary or the secretary's designee within 30 days  
18 after the date of issue with a statement of the reason for the failure to  
19 serve the same. The original return shall be attached to and filed with  
20 any warrant thereafter filed.

21 (6) *Service by mail.* (A) Upon direction of the secretary or the sec-  
22 retary's designee, service by mail may be effected by forwarding a copy  
23 of the notice to the employer by registered or certified mail to the em-  
24 ployer's address as it appears on the records of the agency. A copy of the  
25 return receipt shall be attached to and filed with any warrant thereafter  
26 filed.

27 (B) The secretary of labor or an authorized representative of the sec-  
28 retary may file the warrant for record in the office of the clerk of the  
29 district court in the county in which the employer owing such contribu-  
30 tions, payments in lieu of contributions, benefit cost payments, interest,  
31 or penalty has business property. The warrant shall certify the amount of  
32 contributions, payments in lieu of contributions, benefit cost payments,  
33 interest and penalty due, and the name of the employer liable for such  
34 amount. It shall be the duty of the clerk of the district court to file such  
35 warrant of record and enter the warrant in the records of the district  
36 court for judgment and decrees under the procedure prescribed for filing  
37 transcripts of judgment.

38 (C) The clerk shall enter, on the day the warrant is filed, the case on  
39 the appearance docket, together with the amount and the time of filing  
40 the warrant. From the time of filing such warrant, the amount of the  
41 contributions, payments in lieu of contributions, benefit cost payments,  
42 interest, and penalty, certified therein, shall have the force and effect of  
43 a judgment of the district court until the same is satisfied by the secretary

1 of labor or an authorized representative or attorney for the secretary.  
2 Execution shall be issuable at the request of the secretary of labor, an  
3 authorized representative or attorney for the secretary, as is provided in  
4 the case of other judgments.

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

7 (E) Warrants shall be satisfied of record by payment to the clerk of  
8 the district court of the contributions, payments in lieu of contributions,  
9 benefit cost payments, penalty, interest to date, and court costs. Warrants  
10 may also be satisfied of record by payment to the clerk of the district  
11 court of all court costs accrued in the case and by filing a certificate by  
12 the secretary of labor, certifying that the contributions, payments in lieu  
13 of contributions, benefit cost payments, interest and penalty have been  
14 paid.

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

20 (h) *Refunds.* If any individual, governmental entity or organization  
21 makes application for refund or adjustment of any amount paid as con-  
22 tributions, benefit cost payments or interest under this law and the sec-  
23 retary of labor determines that such amount or any portion thereof was  
24 erroneously collected, except for amounts less than \$1, the secretary of  
25 labor shall allow such individual or organization to make an adjustment  
26 thereof, in connection with subsequent contribution payments, or if such  
27 adjustment cannot be made the secretary of labor shall refund the  
28 amount, except for amounts less than \$1, from the employment security  
29 fund, except that all interest erroneously collected which has been paid  
30 into the special employment security fund shall be refunded out of the  
31 special employment security fund. No adjustment or refund shall be al-  
32 lowed with respect to a payment as contributions, benefit cost payments  
33 or interest unless an application therefor is made on or before whichever  
34 of the following dates is later: (1) One year from the date on which such  
35 payment was made; or (2) three years from the last day of the period with  
36 respect to which such payment was made. For like cause and within the  
37 same period adjustment or refund may be so made on the secretary's own  
38 initiative. The secretary of labor shall not be required to refund any con-  
39 tributions, payments in lieu of contributions or benefit cost payments  
40 based upon wages paid which have been used as base-period wages in a  
41 determination of a claimant's benefit rights when justifiable and correct  
42 payments have been made to the claimant as the result of such deter-  
43 mination. For all taxable years commencing after December 31, 1997,

1 interest at the rate prescribed in K.S.A. 79-2968, and amendments  
2 thereto, shall be allowed on a contribution or benefit cost payment which  
3 the secretary has determined was erroneously collected pursuant to this  
4 section.

5 (i) (1) *Cash deposit or bond.* If any contributing employer is delin-  
6 quent in making payments under the employment security law during any  
7 two quarters of the most recent four-quarter period, the secretary or the  
8 secretary's authorized representative shall have the discretionary power  
9 to require such contributing employer either to deposit cash or to file a  
10 bond with sufficient sureties to guarantee the payment of contributions,  
11 penalty and interest owed by such employer.

12 (2) The amount of such cash deposit or bond shall be not less than  
13 the largest total amount of contributions, penalty and interest reported  
14 by the employer in two of the four calendar quarters preceding any de-  
15 linquency. Such cash deposit or bond shall be required until the employer  
16 has shown timely filing of reports and payment of contributions for four  
17 consecutive calendar quarters.

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

27 (j) Any officer, major stockholder or other person who has charge of  
28 the affairs of an employer, which is an employing unit described in section  
29 501(c)(3) of the federal internal revenue code of 1954 or which is any  
30 other corporate organization or association, or any member or manager  
31 of a limited liability company, or any public official, who willfully fails to  
32 pay the amount of contributions, payments in lieu of contributions or  
33 benefit cost payments required to be paid under the employment security  
34 law on the date on which such amount becomes delinquent, shall be  
35 personally liable for the total amount of the contributions, payments in  
36 lieu of contributions or benefit cost payments and any penalties and in-  
37 terest due and unpaid by such employing unit. The secretary or the sec-  
38 retary's authorized representative may assess such person for the total  
39 amount of contributions, payments in lieu of contributions or benefit cost  
40 payments and any penalties, and interest computed as due and owing.  
41 With respect to such persons and such amounts assessed, the secretary  
42 shall have available all of the collection remedies authorized or provided  
43 by this section.

- 1     Sec. 2. K.S.A. 2006 Supp. 44-717 is hereby repealed.
- 2     Sec. 3. This act shall take effect and be in force from and after its
- 3     publication in the statute book.