

SENATE BILL No. 71

By Committee on Commerce

1-11

9 AN ACT concerning the minimum wage and maximum hours law; re-
10 pealing the minimum wage provisions; amending K.S.A. 44-1201, 44-
11 1207, 44-1208, 44-1209, 44-1210, 44-1211, 44-1212 and 44-1213 and
12 K.S.A. 2006 Supp. 44-1202 and repealing the existing sections; also
13 repealing K.S.A. 44-1203.

14
15 *Be it enacted by the Legislature of the State of Kansas:*

16 Section 1. K.S.A. 44-1201 is hereby amended to read as follows: 44-
17 1201. ~~On and after January 1, 1978, K.S.A. 44-1201, 44-1202 and 44-1204~~
18 ~~to 44-1213, inclusive, and amendments thereto,~~ shall be known and may
19 be cited as “the ~~minimum wage and~~ maximum hours law.”

20 Sec. 2. K.S.A. 2006 Supp. 44-1202 is hereby amended to read as
21 follows: 44-1202. As used in ~~K.S.A. 44-1201 to 44-1213, inclusive, and~~
22 ~~amendments thereto~~ *the maximum hours law*, unless the context other-
23 wise requires:

- 24 (a) “Secretary” means the secretary of labor.
- 25 (b) “Wage” means compensation due to an employee by reason of
26 the employee’s employment, payable in legal tender of the United States
27 or checks on banks convertible into cash on demand at full face value,
28 subject to such allowances as may be permitted by regulations of the
29 secretary under K.S.A. 44-1207 and amendments thereto.
- 30 (c) “Employ” means to suffer or permit to work.
- 31 (d) “Employer” means any individual, partnership, association, cor-
32 poration, business trust or any person or group of persons acting directly
33 or indirectly in the interest of an employer in relation to an employee,
34 but shall not include any employer who is subject to the provisions of the
35 fair labor standards act of 1938 (29 U.S.C.A. § 201 et seq.) and any other
36 acts amendatory thereof or supplemental thereto.
- 37 (e) “Employee” means any individual employed by an employer, but
38 shall not include: (1) Any individual employed in agriculture; (2) any in-
39 dividual employed in domestic service in or about a private home; (3) any
40 individual employed in a bona fide executive, administrative or profes-
41 sional capacity or in the capacity of an outside commission paid salesman,
42 as such terms are defined and delimited by rules and regulations of the
43 secretary; (4) any individual employed by the United States; (5) any in-

1 individual who renders service gratuitously for a nonprofit organization as
2 such terms are defined by rules and regulations of the secretary; (6) per-
3 sons eighteen years of age or less employed for any purpose on an oc-
4 casional or part-time basis; or (7) any individual employed by a unified
5 school district in an executive, administrative or professional capacity, if
6 the individual is engaged in such capacity 50% or more of the hours
7 during which the individual is so employed.

8 (f) "Occupation" means employment in any service, trade, business,
9 industry or other gainful employment.

10 (g) "Gratuity" means voluntary monetary contribution received by an
11 employee from a guest, patron or customer for services rendered.

12 (h) "Occasional or part-time basis" means any employee working less
13 than 40 hours per week and, for the purposes of this definition, students
14 18 years of age and under working between academic terms shall be
15 considered part-time employees regardless of the number of hours
16 worked.

17 Sec. 3. K.S.A. 44-1207 is hereby amended to read as follows: 44-
18 1207. (a) ~~On and after January 1, 1978,~~ The secretary shall adopt such
19 rules and regulations as are necessary to carry out the purposes and pro-
20 visions of ~~K.S.A. 44-1201 to 44-1213, inclusive,~~ *the maximum hours law*
21 ~~to prevent the circumvention or evasion thereof and to safeguard the~~
22 ~~minimum wage and overtime rates established by this act.~~ Such rules and
23 regulations may include, but are not limited to, regulations defining and
24 governing: Outside salesmen; bonuses; part-time rates; special pay for
25 special or extra work; allowances as part of the wage rates applicable
26 under this act for board, lodging and gratuities; other facilities or services
27 furnished by employers and used by employees; and other special items
28 usual in a particular employer-employee relationship.

29 (b) ~~On and after January 1, 1978,~~ In order to prevent curtailment of
30 opportunities for employment, ~~and avoid undue hardship and safeguard~~
31 ~~the minimum wage rates under K.S.A. 44-1201 to 44-1213, inclusive~~ *the*
32 *maximum hours law*, the secretary also may adopt rules and regulations
33 providing for: (1) The employment of handicapped workers or patient
34 laborers at state institutions or hospitals at wages lower than the ~~wage~~
35 ~~overtime rates applicable under K.S.A. 44-1201 to 44-1213, inclusive,~~ *the*
36 *maximum hours law* under permits and for such periods of time as spec-
37 ified therein; and (2) the employment of learners and apprentices at
38 ~~wages overtime rates lower than the wage overtime rates applicable under~~
39 ~~this act~~ *the maximum hours law*, under permits and subject to such lim-
40 itations on number, proportion, length of learning period, occupations
41 and other conditions as the secretary may prescribe.

42 (c) ~~On and after January 1, 1978,~~ The secretary is authorized to ap-
43 point an advisory committee, composed of any equal number of not more

1 than three ~~(3)~~ representatives of each of employers, employees and dis-
2 interested persons representing the general public, with whom the sec-
3 retary may consult concerning the making and revising of the rules and
4 regulations. Members of the advisory committee attending meetings of
5 such committee, or attending a subcommittee meeting thereof authorized
6 by the committee, shall be paid amounts provided in subsection (e) of
7 K.S.A. 75-3223 and amendments thereto.

8 Sec. 4. K.S.A. 44-1208 is hereby amended to read as follows: 44-
9 1208. Any action of the secretary or the secretary's representatives in
10 administering ~~K.S.A. 44-1201 through 44-1213, and amendments thereto,~~
11 *the maximum hours law* is subject to review in accordance with the act
12 for judicial review and civil enforcement of agency actions.

13 Sec. 5. K.S.A. 44-1209 is hereby amended to read as follows: 44-
14 1209. ~~On and after January 1, 1978,~~ Every employer subject to any pro-
15 vision of ~~K.S.A. 44-1201 to 44-1213, inclusive,~~ *the maximum hours law*
16 or of any rule and regulation adopted pursuant thereto, shall make and
17 keep, for a period of not less than three ~~(3)~~ years, in or about the premises
18 wherein any employee is employed, a record of the name and occupation
19 of each employee, the rate of pay and the amount paid each pay period
20 to each such employee, the hours worked each day and each work week
21 by each such employee and such other information as the secretary may
22 prescribe by rules and regulations as being necessary or appropriate for
23 the enforcement of the provisions of ~~K.S.A. 44-1201 to 44-1213, inclusive,~~
24 *the maximum hours law* or of the rules and regulations adopted pursuant
25 thereto. In lieu of the records required under this section, any employer
26 who is covered under the provisions of the fair labor standards act of
27 1938, as amended (29 U.S.C.A. § 201 et seq.) and as further amended by
28 the fair labor standards amendments of 1974 and any other acts amen-
29 datory thereof or supplemental thereto, may keep and maintain the re-
30 cords required under ~~said~~ *the* fair labor standards act of 1938, as
31 amended. Such records shall be open for inspection or transcription by
32 the secretary or the authorized representative of the secretary at any
33 reasonable time.

34 Sec. 6. K.S.A. 44-1210 is hereby amended to read as follows: 44-
35 1210. (a) ~~On and after January 1, 1978,~~ Any employer who is convicted
36 of violating any provisions of ~~K.S.A. 44-1201 to 44-1213, inclusive,~~ *the*
37 *maximum hours law* or falsifying any record pertaining thereto shall be
38 fined not less than ~~two hundred fifty dollars (\$250)~~ \$250 nor more than
39 ~~one thousand dollars (\$1,000)~~ \$1,000.

40 (b) ~~On and after January 1, 1978,~~ Any employer who discharges or
41 in any other manner discriminates against any employee because such
42 employee has made any complaint to ~~his or her~~ *the* employer or the
43 secretary, or to the authorized representative of the secretary, that ~~he or~~

1 ~~she~~ *the employee* has not been paid wages in accordance with ~~K.S.A. 44-~~
2 ~~1201 to 44-1213, inclusive~~ *the maximum hours law*, or rules or regulations
3 issued thereunder, or because such employee has caused to be instituted,
4 or is about to cause to be instituted, any proceeding under or related to
5 ~~K.S.A. 44-1201 to 44-1213, inclusive~~, *the maximum hours law* or because
6 such employee has testified or is about to testify in any such proceeding,
7 shall be deemed in violation of ~~K.S.A. 44-1201 to 44-1213, inclusive~~, *the*
8 *maximum hours law* and, upon conviction therefor, shall be fined not less
9 than ~~two hundred fifty dollars (\$250)~~ \$250 nor more than ~~one thousand~~
10 ~~dollars (\$1,000)~~ \$1,000.

11 Sec. 7. K.S.A. 44-1211 is hereby amended to read as follows: 44-
12 1211. (a) ~~On and after January 1, 1978~~, Any employer who pays an em-
13 ployee less than the wages and overtime compensation to which such
14 employee is entitled, under or by virtue of ~~K.S.A. 44-1201 to 44-1213,~~
15 ~~inclusive~~, *the maximum hours law* shall be liable to such employee af-
16 fected for the full amount of such wages and overtime compensation, less
17 any amount actually paid to such employee by the employer, and for costs
18 and such reasonable attorney fees as may be allowed by the court in an
19 action for the recovery of such wages and overtime compensation. Any
20 agreement between such employee and the employer to work for less
21 than the applicable wage rate shall be no defense to such action. Such
22 action may be maintained in any court of competent jurisdiction by any
23 one or more employees for and in behalf of such employee or employees.

24 (b) ~~On and after January 1, 1978~~, At the written request of any em-
25 ployee who has been paid less than the amount to which ~~he or she~~ *the*
26 *employee* is entitled under the provisions of ~~this act~~ *the maximum hours*
27 *law*, the secretary may take an assignment of such wage claim in trust for
28 the assigning employee and may bring any legal action necessary to collect
29 such claim, and the employer shall be required to pay the costs and such
30 reasonable attorneys' fees as may be allowed by the court. The secretary
31 in case of suit shall have power to join various claimants against the same
32 employer in one action.

33 Sec. 8. K.S.A. 44-1212 is hereby amended to read as follows: 44-
34 1212. ~~On and after January 1, 1978~~, Any standards relating to ~~minimum~~
35 ~~wages~~, maximum hours, overtime compensation or other working con-
36 ditions in effect under any other law of this state on the effective date of
37 this act which are more favorable to employees than those applicable
38 hereunder shall not be deemed to be amended, rescinded or otherwise
39 affected by ~~K.S.A. 44-1201 to 44-1213, inclusive~~, *the maximum hours law*
40 but shall continue in full force and effect until they are specifically su-
41 perseded by standards more favorable to such employees by operation of
42 or in accordance with ~~K.S.A. 44-1201 to 44-1213, inclusive~~, *the maximum*
43 *hours law* or rules and regulations adopted hereunder.

1 Sec. 9. K.S.A. 44-1213 is hereby amended to read as follows: 44-
2 1213. Nothing in ~~K.S.A. 44-1201 to 44-1213, inclusive,~~ *the maximum*
3 *hours law* shall be deemed to interfere with, impede or in any way di-
4 minish the right of employees to bargain collectively with their employers,
5 through representatives of their own choosing, in order to establish wages,
6 *overtime* or other conditions of work in excess of the applicable minimum
7 requirements of ~~K.S.A. 44-1201 to 44-1213, inclusive~~ *the maximum hours*
8 *law*.

9 Sec. 10. K.S.A. 44-1201, 44-1203, 44-1207, 44-1208, 44-1209, 44-
10 1210, 44-1211, 44-1212 and 44-1213 and K.S.A. 2006 Supp. 44-1202 are
11 hereby repealed.

12 Sec. 11. This act shall take effect and be in force from and after its
13 publication in the statute book.