

HOUSE BILL No. 2105

By Committee on Commerce, Labor and Economic Development

1-28

1 AN ACT concerning the employment security law; amending K.S.A. 44-
2 702 and K.S.A. 2012 Supp. 44-703, 44-704, 44-705, 44-706, 44-709,
3 44-710, 44-719, 74-5602 and 75-5702 and repealing the existing
4 sections; also repealing K.S.A. 2012 Supp. 44-704c.
5

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

7 Section 1. K.S.A. 44-702 is hereby amended to read as follows: 44-
8 702. As a guide to the interpretation and application of this act, the public
9 policy of this state is declared to be as follows: Economic insecurity, due
10 to unemployment, is a serious menace to health, morals, and welfare of the
11 people of this state. Involuntary unemployment is therefore a subject of
12 general interest and concern which requires appropriate action by the
13 legislature to prevent its spread and to lighten its burden which now so
14 often falls with crushing force upon the unemployed worker and his
15 family. The achievement of social security requires protection against this
16 greatest hazard of our economic life. This can be provided by encouraging
17 employers to provide more stable employment and by the systematic
18 accumulation of funds during periods of employment to provide benefits
19 for periods of unemployment, thus maintaining purchasing power and
20 limiting the serious social consequences of poor-relief assistance. The
21 legislature, therefore, declares that in its considered judgment the public
22 good and the general welfare of the citizens of this state require the
23 enactment of this measure, under the police powers of the state, for the
24 compulsory setting aside of unemployment reserves to be used for the
25 benefit of persons unemployed. *All persons and employers are entitled to*
26 *a neutral interpretation of the employment security law.*

27 Sec. 2. K.S.A. 2012 Supp. 44-703 is hereby amended to read as
28 follows: 44-703. As used in this act, unless the context clearly requires
29 otherwise:

30 (a) (1) "Annual payroll" means the total amount of wages paid or
31 payable by an employer during the calendar year.

32 (2) "Average annual payroll" means the average of the annual
33 payrolls of any employer for the last three calendar years immediately
34 preceding the computation date as hereinafter defined if the employer has
35 been continuously subject to contributions during those three calendar
36 years and has paid some wages for employment during each of such years.

1 In determining contribution rates for the calendar year, if an employer has
2 not been continuously subject to contribution for the three calendar years
3 immediately preceding the computation date but has paid wages subject to
4 contributions during only the two calendar years immediately preceding
5 the computation date, such employer's "average annual payroll" shall be
6 the average of the payrolls for those two calendar years.

7 (3) "Total wages" means the total amount of wages paid or payable
8 by an employer during the calendar year, including that part of
9 remuneration in excess of the limitation prescribed as provided in
10 subsection (o)(1) of this section.

11 (b) "Base period" means the first four of the last five completed
12 calendar quarters immediately preceding the first day of an individual's
13 benefit year, except that the base period in respect to combined wage
14 claims means the base period as defined in the law of the paying state.

15 (1)-(A) If an individual lacks sufficient base period wages in order to
16 establish a benefit year in the ~~matter~~ manner set forth above and satisfies
17 the requirements of subsection (g) of K.S.A. 44-705 and subsection (hh) of
18 K.S.A. 44-703, and amendments thereto, the claimant shall have an
19 alternative base period substituted for the current base period so as not to
20 prevent establishment of a valid claim. For the purposes of this subsection,
21 "alternative base period" means the last four completed quarters
22 immediately preceding the date the qualifying injury occurred. In the event
23 the wages in the alternative base period have been used on a prior claim,
24 then they shall be excluded from the new alternative base period.

25 ~~(B) If an individual lacks sufficient base period wages in order to~~
26 ~~establish a benefit year in the manner set forth above the claimant shall~~
27 ~~have an alternative base period substituted for the current base period. For~~
28 ~~the purposes of this subsection, "alternative base period" means eligibility~~
29 ~~shall be determined using a base period that consists of the four most~~
30 ~~recently completed calendar quarters preceding the start of the benefit~~
31 ~~year.~~

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

34 (c) (1) "Benefits" means the money payments payable to an
35 individual, as provided in this act, with respect to such individual's
36 unemployment.

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

41 (d) "Benefit year" with respect to any individual, means the period
42 beginning with the first day of the first week for which such individual
43 files a valid claim for benefits, and such benefit year shall continue for one

1 full year. In the case of a combined wage claim, the benefit year shall be
2 the benefit year of the paying state. Following the termination of a benefit
3 year, a subsequent benefit year shall commence on the first day of the first
4 week with respect to which an individual next files a claim for benefits.
5 When such filing occurs with respect to a week which overlaps the
6 preceding benefit year, the subsequent benefit year shall commence on the
7 first day immediately following the expiration date of the preceding
8 benefit year. Any claim for benefits made in accordance with subsection
9 (a) of K.S.A. 44-709, and amendments thereto, shall be deemed to be a
10 "valid claim" for the purposes of this subsection if the individual has been
11 paid wages for insured work as required under subsection (e) of K.S.A. 44-
12 705, and amendments thereto. Whenever a week of unemployment
13 overlaps two benefit years, such week shall, for the purpose of granting
14 waiting-period credit or benefit payment with respect thereto, be deemed
15 to be a week of unemployment within that benefit year in which the
16 greater part of such week occurs.

17 (e) "Commissioner" or "secretary" means the secretary of labor.

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

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

26 (g) "Employing unit" means any individual or type of organization,
27 including any partnership, association, limited liability company, agency
28 or department of the state of Kansas and political subdivisions thereof,
29 trust, estate, joint-stock company, insurance company or corporation,
30 whether domestic or foreign including nonprofit corporations, or the
31 receiver, trustee in bankruptcy, trustee or successor thereof, or the legal
32 representatives of a deceased person, which has in its employ one or more
33 individuals performing services for it within this state. All individuals
34 performing services within this state for any employing unit which
35 maintains two or more separate establishments within this state shall be
36 deemed to be employed by a single employing unit for all the purposes of
37 this act. Each individual employed to perform or to assist in performing
38 the work of any agent or employee of an employing unit shall be deemed
39 to be employed by such employing unit for all the purposes of this act,
40 whether such individual was hired or paid directly by such employing unit
41 or by such agent or employee, provided the employing unit had actual or
42 constructive knowledge of the employment.

43 (h) "Employer" means:

1 (1) (A) Any employing unit for which agricultural labor as defined in
2 subsection (w) of this section is performed and which during any calendar
3 quarter in either the current or preceding calendar year paid remuneration
4 in cash of \$20,000 or more to individuals employed in agricultural labor or
5 for some portion of a day in each of 20 different calendar weeks, whether
6 or not such weeks were consecutive, in either the current or the preceding
7 calendar year, employed in agricultural labor 10 or more individuals,
8 regardless of whether they were employed at the same moment of time.

9 (B) For the purpose of this subsection (h)(1), any individual who is a
10 member of a crew furnished by a crew leader to perform service in
11 agricultural labor for any other person shall be treated as an employee of
12 such crew leader if:

13 (i) Such crew leader holds a valid certificate of registration under the
14 federal migrant and seasonal agricultural workers protection act or
15 substantially all the members of such crew operate or maintain tractors,
16 mechanized harvesting or cropdusting equipment or any other mechanized
17 equipment, which is provided by such crew leader; and

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

20 (C) For the purpose of this subsection (h)(1), in the case of any
21 individual who is furnished by a crew leader to perform service in
22 agricultural labor for any other person and who is not treated as an
23 employee of such crew leader:

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

26 (ii) such other person shall be treated as having paid cash
27 remuneration to such individual in an amount equal to the amount of cash
28 remuneration paid to such individual by the crew leader, either on the crew
29 leader's own behalf or on behalf of such other person, for the service in
30 agricultural labor performed for such other person.

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

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

35 (ii) pays, either on such individual's own behalf or on behalf of such
36 other person, the individuals so furnished by such individual for the
37 service in agricultural labor performed by them; and

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

41 (2) (A) Any employing unit which for calendar year 2007 and each
42 calendar year thereafter: (i) In any calendar quarter in either the current or
43 preceding calendar year paid for service in employment wages of \$1,500

1 or more; (ii) for some portion of a day in each of 20 different calendar
2 weeks, whether or not such weeks were consecutive, in either the current
3 or preceding calendar year, had in employment at least one individual,
4 whether or not the same individual was in employment in each such day;
5 or (iii) elects to have an unemployment tax account established at the time
6 of initial registration in accordance with subsection (c) of K.S.A. 44-711,
7 and amendments thereto.

8 (B) Employment of individuals to perform domestic service or
9 agricultural labor and wages paid for such service or labor shall not be
10 considered in determining whether an employing unit meets the criteria of
11 this subsection (h)(2).

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

14 (4) (A) Any employing unit, whether or not it is an employing unit
15 under subsection (g) of this section, which acquires or in any manner
16 succeeds to (i) substantially all of the employing enterprises, organization,
17 trade or business, or (ii) substantially all the assets, of another employing
18 unit which at the time of such acquisition was an employer subject to this
19 act;

20 (B) any employing unit which is controlled substantially, either
21 directly or indirectly by legally enforceable means or otherwise, by the
22 same interest or interests, whether or not such interest or interests are an
23 employing unit under subsection (g) of this section, which acquires or in
24 any manner succeeds to a portion of an employer's annual payroll, which is
25 less than 100% of such employer's annual payroll, and which intends to
26 continue the acquired portion as a going business.

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

31 (6) Any employing unit which having become an employer under this
32 subsection (h) has not, under subsection (b) of K.S.A. 44-711, and
33 amendments thereto, ceased to be an employer subject to this act.

34 (7) Any employing unit which has elected to become fully subject to
35 this act in accordance with subsection (c) of K.S.A. 44-711, and
36 amendments thereto.

37 (8) Any employing unit not an employer by reason of any other
38 paragraph of this subsection (h), for which within either the current or
39 preceding calendar year services in employment are or were performed
40 with respect to which such employing unit is liable for any federal tax
41 against which credit may be taken for contributions required to be paid
42 into a state unemployment compensation fund; or which, as a condition for
43 approval of this act for full tax credit against the tax imposed by the

1 federal unemployment tax act, is required, pursuant to such act, to be an
2 "employer" under this act.

3 (9) Any employing unit described in section 501(c)(3) of the federal
4 internal revenue code of 1986 which is exempt from income tax under
5 section 501(a) of the code that had four or more individuals in
6 employment for some portion of a day in each of 20 different weeks,
7 whether or not such weeks were consecutive, within either the current or
8 preceding calendar year, regardless of whether they were employed at the
9 same moment of time.

10 (i) "Employment" means:

11 (1) Subject to the other provisions of this subsection, service,
12 including service in interstate commerce, performed by:

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

14 (B) any individual who, under the usual common law rules applicable
15 in determining the employer-employee relationship, has the status of an
16 employee subject to the provisions of subsection (i)(3)(D); or

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

20 (i) As an agent-driver or commission-driver engaged in distributing
21 meat products, vegetable products, fruit products, bakery products,
22 beverages (other than milk), or laundry or dry-cleaning services, for such
23 individual's principal; or

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

31 For purposes of subsection (i)(1)(C), the term "employment" shall
32 include services described in paragraphs (i) and (ii) above only if:

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

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

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

41 (2) The term "employment" shall include an individual's entire
42 service within the United States, even though performed entirely outside
43 this state if:

1 (A) The service is not localized in any state;~~and~~

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

4 (C) the individual's base of operations is in this state, or if there is no
5 base of operations, then the place from which service is directed or
6 controlled is in this state.

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

8 (A) Services performed within this state but not covered by the
9 provisions of subsection (i)(1) or subsection (i)(2) shall be deemed to be
10 employment subject to this act if contributions are not required and paid
11 with respect to such services under an unemployment compensation law of
12 any other state or of the federal government.

13 (B) Services performed entirely without this state, with respect to no
14 part of which contributions are required and paid under an unemployment
15 compensation law of any other state or of the federal government, shall be
16 deemed to be employment subject to this act only if the individual
17 performing such services is a resident of this state and the secretary
18 approved the election of the employing unit for whom such services are
19 performed that the entire service of such individual shall be deemed to be
20 employment subject to this act.

21 (C) Services covered by an arrangement pursuant to subsection (l) of
22 K.S.A. 44-714, and amendments thereto, between the secretary and the
23 agency charged with the administration of any other state or federal
24 unemployment compensation law, pursuant to which all services
25 performed by an individual for an employing unit are deemed to be
26 performed entirely within this state, shall be deemed to be employment if
27 the secretary has approved an election of the employing unit for whom
28 such services are performed, pursuant to which the entire service of such
29 individual during the period covered by such election is deemed to be
30 insured work.

31 (D) Services performed by an individual for wages or under any
32 contract of hire shall be deemed to be employment subject to this act if the
33 business for which activities of the individual are performed retains not
34 only the right to control the end result of the activities performed, but the
35 manner and means by which the end result is accomplished.

36 (E) Service performed by an individual in the employ of this state or
37 any instrumentality thereof, any political subdivision of this state or any
38 instrumentality thereof, or in the employ of an Indian tribe, as defined
39 pursuant to section 3306(u) of the federal unemployment tax act, any
40 instrumentality of more than one of the foregoing or any instrumentality
41 which is jointly owned by this state or a political subdivision thereof or
42 Indian tribes and one or more other states or political subdivisions of this
43 or other states, provided that such service is excluded from "employment"

1 as defined in the federal unemployment tax act by reason of section
2 3306(c)(7) of that act and is not excluded from "employment" under
3 subsection (i)(4)(A) of this section. For purposes of this section, the
4 exclusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall
5 also be applicable to services performed in the employ of an Indian tribe.

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

11 (G) The term "employment" shall include the service of an individual
12 who is a citizen of the United States, performed outside the United States
13 except in Canada, in the employ of an American employer (other than
14 service which is deemed "employment" under the provisions of subsection
15 (i)(2) or subsection (i)(3) or the parallel provisions of another state's law),
16 if:

17 (i) The employer's principal place of business in the United States is
18 located in this state; or

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

20 (a) The employer is an individual who is a resident of this state;

21 (b) the employer is a corporation which is organized under the laws
22 of this state; or

23 (c) the employer is a partnership or a trust and the number of the
24 partners or trustees who are residents of this state is greater than the
25 number who are residents of any other state; or

26 (iii) none of the criteria of paragraphs (i) and (ii) above of this
27 subsection (i)(3)(G) are met but the employer has elected coverage in this
28 state or, the employer having failed to elect coverage in any state, the
29 individual has filed a claim for benefits, based on such service, under the
30 law of this state.

31 (H) An "American employer," for purposes of subsection (i)(3)(G),
32 means a person who is:

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

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

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

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

39 (I) Notwithstanding subsection (i)(2) of this section, all service
40 performed by an officer or member of the crew of an American vessel or
41 American aircraft on or in connection with such vessel or aircraft, if the
42 operating office, from which the operations of such vessel or aircraft
43 operating within, or within and without, the United States are ordinarily

1 and regularly supervised, managed, directed and controlled is within this
2 state.

3 (J) Notwithstanding any other provisions of this subsection (i),
4 service with respect to which a tax is required to be paid under any federal
5 law imposing a tax against which credit may be taken for contributions
6 required to be paid into a state unemployment compensation fund or which
7 as a condition for full tax credit against the tax imposed by the federal
8 unemployment tax act is required to be covered under this act.

9 (K) Domestic service in a private home, local college club or local
10 chapter of a college fraternity or sorority performed for a person who paid
11 cash remuneration of \$1,000 or more in any calendar quarter in the current
12 calendar year or the preceding calendar year to individuals employed in
13 such domestic service.

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

17 (i) As an elected official;

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

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

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

23 (v) in a position which, under or pursuant to the laws of this state or
24 tribal law, is designated as a major nontenured policymaking or advisory
25 position or as a policymaking or advisory position the performance of the
26 duties of which ordinarily does not require more than eight hours per
27 week;

28 (B) service with respect to which unemployment compensation is
29 payable under an unemployment compensation system established by an
30 act of congress;

31 (C) service performed by an individual in the employ of such
32 individual's son, daughter or spouse, and service performed by a child
33 under the age of 21 years in the employ of such individual's father or
34 mother;

35 (D) service performed in the employ of the United States government
36 or an instrumentality of the United States exempt under the constitution of
37 the United States from the contributions imposed by this act, except that to
38 the extent that the congress of the United States shall permit states to
39 require any instrumentality of the United States to make payments into an
40 unemployment fund under a state unemployment compensation law, all of
41 the provisions of this act shall be applicable to such instrumentalities, and
42 to services performed for such instrumentalities, in the same manner, to the
43 same extent and on the same terms as to all other employers, employing

1 units, individuals and services. If this state shall not be certified for any
2 year by the federal security agency under section 3304(c) of the federal
3 internal revenue code of 1986, the payments required of such
4 instrumentalities with respect to such year shall be refunded by the
5 secretary from the fund in the same manner and within the same period as
6 is provided in subsection (f) of K.S.A. 44-717, and amendments thereto,
7 with respect to contributions erroneously collected;

8 (E) service covered by an arrangement between the secretary and the
9 agency charged with the administration of any other state or federal
10 unemployment compensation law pursuant to which all services performed
11 by an individual for an employing unit during the period covered by such
12 employing unit's duly approved election, are deemed to be performed
13 entirely within the jurisdiction of such other state or federal agency;

14 (F) service performed by an individual under the age of 18 in the
15 delivery or distribution of newspapers or shopping news, not including
16 delivery or distribution to any point for subsequent delivery or
17 distribution;

18 (G) service performed by an individual for an employing unit as an
19 insurance agent or as an insurance solicitor, if all such service performed
20 by such individual for such employing unit is performed for remuneration
21 solely by way of commission;

22 (H) service performed in any calendar quarter in the employ of any
23 organization exempt from income tax under section 501(a) of the federal
24 internal revenue code of 1986 (other than an organization described in
25 section 401(a) or under section 521 of such code) if the remuneration for
26 such service is less than \$50. In construing the application of the term
27 "employment," if services performed during $\frac{1}{2}$ or more of any pay period
28 by an individual for the person employing such individual constitute
29 employment, all the services of such individual for such period shall be
30 deemed to be employment; but if the services performed during more than
31 $\frac{1}{2}$ of any such pay period by an individual for the person employing such
32 individual do not constitute employment, then none of the services of such
33 individual for such period shall be deemed to be employment. As used in
34 this subsection (i)(4)(H) the term "pay period" means a period (of not more
35 than 31 consecutive days) for which a payment of remuneration is
36 ordinarily made to the individual by the person employing such individual.
37 This subsection (i)(4)(H) shall not be applicable with respect to services
38 with respect to which unemployment compensation is payable under an
39 unemployment compensation system established by an act of congress;

40 (I) services performed in the employ of a church or convention or
41 association of churches, or an organization which is operated primarily for
42 religious purposes and which is operated, supervised, controlled, or
43 principally supported by a church or convention or association of

1 churches;

2 (J) service performed by a duly ordained, commissioned, or licensed
3 minister of a church in the exercise of such individual's ministry or by a
4 member of a religious order in the exercise of duties required by such
5 order;

6 (K) service performed in a facility conducted for the purpose of
7 carrying out a program of:

8 (i) Rehabilitation for individuals whose earning capacity is impaired
9 by age or physical or mental deficiency or injury; or

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

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

18 (M) service performed by an inmate of a custodial or correctional
19 institution;

20 (N) service performed, in the employ of a school, college, or
21 university, if such service is performed by a student who is enrolled and is
22 regularly attending classes at such school, college or university;

23 (O) service performed by an individual who is enrolled at a nonprofit
24 or public educational institution which normally maintains a regular
25 faculty and curriculum and normally has a regularly organized body of
26 students in attendance at the place where its educational activities are
27 carried on as a student in a full-time program, taken for credit at such
28 institution, which combines academic instruction with work experience, if
29 such service is an integral part of such program, and such institution has so
30 certified to the employer, except that this subsection (i)(4)(O) shall not
31 apply to service performed in a program established for or on behalf of an
32 employer or group of employers;

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

36 (Q) services performed as a qualified real estate agent. As used in this
37 subsection (i)(4)(Q) the term "qualified real estate agent" means any
38 individual who is licensed by the Kansas real estate commission as a
39 salesperson under the real estate brokers' and salespersons' license act and
40 for whom:

41 (i) Substantially all of the remuneration, whether or not paid in cash,
42 for the services performed by such individual as a real estate salesperson is
43 directly related to sales or other output, including the performance of

1 services, rather than to the number of hours worked; and

2 (ii) the services performed by the individual are performed pursuant
3 to a written contract between such individual and the person for whom the
4 services are performed and such contract provides that the individual will
5 not be treated as an employee with respect to such services for state tax
6 purposes;

7 (R) services performed for an employer by an extra in connection
8 with any phase of motion picture or television production or television
9 commercials for less than 14 days during any calendar year. As used in this
10 subsection, the term "extra" means an individual who pantomimes in the
11 background, adds atmosphere to the set and performs such actions without
12 speaking and "employer" shall not include any employer which is a
13 governmental entity or any employer described in section 501(c)(3) of the
14 federal internal revenue code of 1986 which is exempt from income
15 taxation under section 501(a) of the code;

16 (S) services performed by an oil and gas contract pumper. As used in
17 this subsection (i)(4)(S), "oil and gas contract pumper" means a person
18 performing pumping and other services on one or more oil or gas leases, or
19 on both oil and gas leases, relating to the operation and maintenance of
20 such oil and gas leases, on a contractual basis for the operators of such oil
21 and gas leases and "services" shall not include services performed for a
22 governmental entity or any organization described in section 501(c)(3) of
23 the federal internal revenue code of 1986 which is exempt from income
24 taxation under section 501(a) of the code;

25 (T) service not in the course of the employer's trade or business
26 performed in any calendar quarter by an employee, unless the cash
27 remuneration paid for such service is \$200 or more and such service is
28 performed by an individual who is regularly employed by such employer
29 to perform such service. For purposes of this paragraph, an individual shall
30 be deemed to be regularly employed by an employer during a calendar
31 quarter only if:

32 (i) On each of some 24 days during such quarter such individual
33 performs for such employer for some portion of the day service not in the
34 course of the employer's trade or business; or

35 (ii) such individual was regularly employed, as determined under
36 subparagraph (i), by such employer in the performance of such service
37 during the preceding calendar quarter.

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

42 (U) service which is performed by any person who is a member of a
43 limited liability company and which is performed as a member or manager

1 of that limited liability company; and

2 (V) services performed as a qualified direct seller. The term "direct
3 seller" means any person if:

4 (i) Such person:

5 (a) Is engaged in the trade or business of selling or soliciting the sale
6 of consumer products to any buyer on a buy-sell basis or a deposit-
7 commission basis for resale, by the buyer or any other person, in the home
8 or otherwise rather than in a permanent retail establishment; or

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

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

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

20 (iv) for purposes of this act, a sale or a sale resulting exclusively from
21 a solicitation made by telephone, mail, or other telecommunications
22 method, or other nonpersonal method does not satisfy the requirements of
23 this subsection;

24 (W) service performed as an election official or election worker, if the
25 amount of remuneration received by the individual during the calendar
26 year for services as an election official or election worker is less than
27 \$1,000;

28 (X) service performed by agricultural workers who are aliens
29 admitted to the United States to perform labor pursuant to section 1101 (a)
30 (15)(H)(ii)(a) of the immigration and nationality act; and

31 (Y) service performed by an owner-operator of a motor vehicle that is
32 leased or contracted to a licensed motor carrier with the services of a
33 driver and is not treated under the terms of the lease agreement or contract
34 with the licensed motor carrier as an employee for purposes of the federal
35 insurance contribution act, 26 U.S.C. § 3101 et seq., the federal social
36 security act, 42 U.S.C. § 301 et seq., the federal unemployment tax act, 26
37 U.S.C. § 3301 et seq., and the federal statutes prescribing income tax
38 withholding at the source, 26 U.S.C. § 3401 et seq. Employees or agents of
39 the owner-operator shall not be considered employees of the licensed
40 motor carrier for purposes of employment security taxation or
41 compensation. As used in this subsection (Y), the following definitions
42 apply: (i) "Motor vehicle" means any automobile, truck-trailer, semitrailer,
43 tractor, motor bus or any other self-propelled or motor-driven vehicle used

1 upon any of the public highways of Kansas for the purpose of transporting
2 persons or property; (ii) "licensed motor carrier" means any person, firm,
3 corporation or other business entity that holds a certificate of convenience
4 and necessity or a certificate of public service from the state corporation
5 commission or is required to register motor carrier equipment pursuant to
6 49 U.S.C. § 14504; and (iii) "owner-operator" means a person, firm,
7 corporation or other business entity that is the owner of a single motor
8 vehicle that is driven exclusively by the owner under a lease agreement or
9 contract with a licensed motor carrier.

10 (j) "Employment office" means any office operated by this state and
11 maintained by the secretary of labor for the purpose of assisting persons to
12 become employed.

13 (k) "Fund" means the employment security fund established by this
14 act, to which all contributions and reimbursement payments required and
15 from which all benefits provided under this act shall be paid and including
16 all money received from the federal government as reimbursements
17 pursuant to section 204 of the federal-state extended compensation act of
18 1970, and amendments thereto.

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

22 (m) "Unemployment." An individual shall be deemed "unemployed"
23 with respect to any week during which such individual performs no
24 services and with respect to which no wages are payable to such
25 individual, or with respect to any week of less than full-time work if the
26 wages payable to such individual with respect to such week are less than
27 such individual's weekly benefit amount.

28 (n) "Employment security administration fund" means the fund
29 established by this act, from which administrative expenses under this act
30 shall be paid.

31 (o) "Wages" means all compensation for services, including
32 commissions, bonuses, back pay and the cash value of all remuneration,
33 including benefits, paid in any medium other than cash. The reasonable
34 cash value of remuneration in any medium other than cash, shall be
35 estimated and determined in accordance with rules and regulations
36 prescribed by the secretary. Compensation payable to an individual which
37 has not been actually received by that individual within 21 days after the
38 end of the pay period in which the compensation was earned shall be
39 considered to have been paid on the 21st day after the end of that pay
40 period. Effective January 1, 1986, gratuities, including tips received from
41 persons other than the employing unit, shall be considered wages when
42 reported in writing to the employer by the employee. Employees must
43 furnish a written statement to the employer, reporting all tips received if

1 they total \$20 or more for a calendar month whether the tips are received
2 directly from a person other than the employer or are paid over to the
3 employee by the employer. This includes amounts designated as tips by a
4 customer who uses a credit card to pay the bill. Notwithstanding the other
5 provisions of this subsection (o), wages paid in back pay awards or
6 settlements shall be allocated to the week or weeks and reported in the
7 manner as specified in the award or agreement, or, in the absence of such
8 specificity in the award or agreement, such wages shall be allocated to the
9 week or weeks in which such wages, in the judgment of the secretary,
10 would have been paid. The term "wages" shall not include:

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

28 (2) the amount of any payment (including any amount paid by an
29 employing unit for insurance or annuities, or into a fund, to provide for
30 any such payment) made to, or on behalf of, an employee or any of such
31 employee's dependents under a plan or system established by an employer
32 which makes provisions for employees generally, for a class or classes of
33 employees or for such employees or a class or classes of employees and
34 their dependents, on account of (A) sickness or accident disability, except
35 in the case of any payment made to an employee or such employee's
36 dependents, this subparagraph shall exclude from the term "wages" only
37 payments which are received under a workers compensation law. Any third
38 party which makes a payment included as wages by reason of this
39 subparagraph (2)(A) shall be treated as the employer with respect to such
40 wages, or (B) medical and hospitalization expenses in connection with
41 sickness or accident disability, or (C) death;

42 (3) any payment on account of sickness or accident disability, or
43 medical or hospitalization expenses in connection with sickness or

1 accident disability, made by an employer to, or on behalf of, an employee
2 after the expiration of six calendar months following the last calendar
3 month in which the employee worked for such employer;

4 (4) any payment made to, or on behalf of, an employee or such
5 employee's beneficiary:

6 (A) From or to a trust described in section 401(a) of the federal
7 internal revenue code of 1986 which is exempt from tax under section
8 501(a) of the federal internal revenue code of 1986 at the time of such
9 payment unless such payment is made to an employee of the trust as
10 remuneration for services rendered as such employee and not as a
11 beneficiary of the trust;

12 (B) under or to an annuity plan which, at the time of such payment, is
13 a plan described in section 403(a) of the federal internal revenue code of
14 1986;

15 (C) under a simplified employee pension as defined in section 408(k)
16 (1) of the federal internal revenue code of 1986, other than any
17 contribution described in section 408(k)(6) of the federal internal revenue
18 code of 1986;

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

23 (E) under or to an exempt governmental deferred compensation plan
24 as defined in section 3121(v)(3) of the federal internal revenue code of
25 1986;

26 (F) to supplement pension benefits under a plan or trust described in
27 any of the foregoing provisions of this subparagraph to take into account
28 some portion or all of the increase in the cost of living, as determined by
29 the secretary of labor, since retirement but only if such supplemental
30 payments are under a plan which is treated as a welfare plan under section
31 3(2)(B)(ii) of the federal employee retirement income security act of 1974;
32 or

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

35 (5) the payment by an employing unit (without deduction from the
36 remuneration of the employee) of the tax imposed upon an employee
37 under section 3101 of the federal internal revenue code of 1986 with
38 respect to remuneration paid to an employee for domestic service in a
39 private home of the employer or for agricultural labor;

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

42 (7) remuneration paid to or on behalf of an employee if and to the
43 extent that at the time of the payment of such remuneration it is reasonable

1 to believe that a corresponding deduction is allowable under section 217 of
2 the federal internal revenue code of 1986 relating to moving expenses;

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

5 (A) Upon or after the termination of an employee's employment
6 relationship because of (i) death or (ii) retirement for disability; and

7 (B) under a plan established by the employer which makes provisions
8 for employees generally, a class or classes of employees or for such
9 employees or a class or classes of employees and their dependents, other
10 than any such payment or series of payments which would have been paid
11 if the employee's employment relationship had not been so terminated;

12 (9) remuneration for agricultural labor paid in any medium other than
13 cash;

14 (10) any payment made, or benefit furnished, to or for the benefit of
15 an employee if at the time of such payment or such furnishing it is
16 reasonable to believe that the employee will be able to exclude such
17 payment or benefit from income under section 129 of the federal internal
18 revenue code of 1986 which relates to dependent care assistance programs;

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

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

25 (13) any benefit provided to or on behalf of an employee if at the time
26 such benefit is provided it is reasonable to believe that the employee will
27 be able to exclude such benefit from income under section 74(c), 117 or
28 132 of the federal internal revenue code of 1986;

29 (14) any payment made, or benefit furnished, to or for the benefit of
30 an employee, if at the time of such payment or such furnishing it is
31 reasonable to believe that the employee will be able to exclude such
32 payment or benefit from income under section 127 of the federal internal
33 revenue code of 1986 relating to educational assistance to the employee; or

34 (15) any payment made to or for the benefit of an employee if at the
35 time of such payment it is reasonable to believe that the employee will be
36 able to exclude such payment from income under section 106(d) of the
37 federal internal revenue code of 1986 relating to health savings accounts.

38 Nothing in any paragraph of subsection (o), other than paragraph (1),
39 shall exclude from the term "wages": (1) Any employer contribution under
40 a qualified cash or deferred arrangement, as defined in section 401(k) of
41 the federal internal revenue code of 1986, to the extent that such
42 contribution is not included in gross income by reason of section 402(a)(8)
43 of the federal internal revenue code of 1986; or (2) any amount treated as

1 an employer contribution under section 414(h)(2) of the federal internal
2 revenue code of 1986.

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

12 (p) "Week" means such period or periods of seven consecutive
13 calendar days, as the secretary may by rules and regulations prescribe.

14 (q) "Calendar quarter" means the period of three consecutive calendar
15 months ending March 31, June 30, September 30 or December 31, or the
16 equivalent thereof as the secretary may by rules and regulations prescribe.

17 (r) "Insured work" means employment for employers.

18 (s) "Approved training" means any vocational training course or
19 course in basic education skills, including a job training program
20 authorized under the federal workforce investment act of 1998, approved
21 by the secretary or a person or persons designated by the secretary.

22 (t) "American vessel" or "American aircraft" means any vessel or
23 aircraft documented or numbered or otherwise registered under the laws of
24 the United States; and any vessel or aircraft which is neither documented
25 or numbered or otherwise registered under the laws of the United States
26 nor documented under the laws of any foreign country, if its crew performs
27 service solely for one or more citizens or residents of the United States or
28 corporations organized under the laws of the United States or of any state.

29 (u) "Institution of higher education," for the purposes of this section,
30 means an educational institution which:

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

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

36 (3) provides an educational program for which it awards a bachelor's
37 or higher degree, or provides a program which is acceptable for full credit
38 toward such a degree, a program of postgraduate or postdoctoral studies,
39 or a program of training to prepare students for gainful employment in a
40 recognized occupation; and

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

42 Notwithstanding any of the foregoing provisions of this subsection (u),
43 all colleges and universities in this state are institutions of higher education

1 for purposes of this section, except that no college, university, junior
2 college or other postsecondary school or institution which is operated by
3 the federal government or any agency thereof shall be an institution of
4 higher education for purposes of the employment security law.

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

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

19 (A) On a farm, in the employ of any person, in connection with
20 cultivating the soil, or in connection with raising or harvesting any
21 agricultural or horticultural commodity, including the raising, shearing,
22 feeding, caring for, training, and management of livestock, bees, poultry,
23 and furbearing animals and wildlife.

24 (B) In the employ of the owner or tenant or other operator of a farm,
25 in connection with the operating, management, conservation,
26 improvement, or maintenance of such farm and its tools and equipment, or
27 in salvaging timber or clearing land of brush and other debris left by a
28 hurricane, if the major part of such service is performed on a farm.

29 (C) In connection with the production or harvesting of any
30 commodity defined as an agricultural commodity in section (15)(g) of the
31 agricultural marketing act, as amended (46 Stat. 1500, sec. 3; 12 U.S.C. §
32 1141j) or in connection with the ginning of cotton, or in connection with
33 the operation or maintenance of ditches, canals, reservoirs or waterways,
34 not owned or operated for profit, used exclusively for supplying and
35 storing water for farming purposes.

36 (D) (i) In the employ of the operator of a farm in handling, planting,
37 drying, packing, packaging, processing, freezing, grading, storing, or
38 delivering to storage or to market or to a carrier for transportation to
39 market, in its unmanufactured state, any agricultural or horticultural
40 commodity; but only if such operator produced more than ½ of the
41 commodity with respect to which such service is performed;

42 (ii) in the employ of a group of operators of farms (or a cooperative
43 organization of which such operators are members) in the performance of

1 service described in paragraph (i) above of this subsection (w)(1)(D), but
2 only if such operators produced more than ½ of the commodity with
3 respect to which such service is performed;

4 (iii) the provisions of paragraphs (i) and (ii) above of this subsection
5 (w)(1)(D) shall not be deemed to be applicable with respect to service
6 performed in connection with commercial canning or commercial freezing
7 or in connection with any agricultural or horticultural commodity after its
8 delivery to a terminal market for distribution for consumption.

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

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

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

20 (4) For the purpose of this section, if an employing unit does not
21 maintain sufficient records to separate agricultural labor from other
22 employment, all services performed during any pay period by an
23 individual for the person employing such individual shall be deemed to be
24 agricultural labor if services performed during ½ or more of such pay
25 period constitute agricultural labor; but if the services performed during
26 more than ½ of any such pay period by an individual for the person
27 employing such individual do not constitute agricultural labor, then none
28 of the services of such individual for such period shall be deemed to be
29 agricultural labor. As used in this subsection (w), the term "pay period"
30 means a period of not more than 31 consecutive days for which a payment
31 of remuneration is ordinarily made to the individual by the person
32 employing such individual.

33 (x) "Reimbursing employer" means any employer who makes
34 payments in lieu of contributions to the employment security fund as
35 provided in subsection (e) of K.S.A. 44-710, and amendments thereto.

36 (y) "Contributing employer" means any employer other than a
37 reimbursing employer or rated governmental employer.

38 (z) "Wage combining plan" means a uniform national arrangement
39 approved by the United States secretary of labor in consultation with the
40 state unemployment compensation agencies and in which this state shall
41 participate, whereby wages earned in one or more states are transferred to
42 another state, called the "paying state," and combined with wages in the
43 paying state, if any, for the payment of benefits under the laws of the

1 paying state and as provided by an arrangement so approved by the United
2 States secretary of labor.

3 (aa) "Domestic service" means any service for a person in the
4 operation and maintenance of a private household, local college club or
5 local chapter of a college fraternity or sorority, as distinguished from
6 service as an employee in the pursuit of an employer's trade, occupation,
7 profession, enterprise or vocation.

8 (bb) "Rated governmental employer" means any governmental entity
9 which elects to make payments as provided by K.S.A. 44-710d, and
10 amendments thereto.

11 (cc) "Benefit cost payments" means payments made to the
12 employment security fund by a governmental entity electing to become a
13 rated governmental employer.

14 (dd) "Successor employer" means any employer, as described in
15 subsection (h) of this section, which acquires or in any manner succeeds to
16 (1) substantially all of the employing enterprises, organization, trade or
17 business of another employer or (2) substantially all the assets of another
18 employer.

19 (ee) "Predecessor employer" means an employer, as described in
20 subsection (h) of this section, who has previously operated a business or
21 portion of a business with employment to which another employer has
22 succeeded.

23 (ff) "Lessor employing unit" means any independently established
24 business entity which engages in the business of providing leased
25 employees to a client lessee.

26 (gg) "Client lessee" means any individual, organization, partnership,
27 corporation or other legal entity leasing employees from a lessor
28 employing unit.

29 (hh) "Qualifying injury" means a personal injury by accident arising
30 out of and in the course of employment within the coverage of the Kansas
31 workers compensation act, K.S.A. 44-501 et seq., and amendments
32 thereto.

33 Sec. 3. K.S.A. 2012 Supp. 44-704 is hereby amended to read as
34 follows: 44-704. (a) *Payment of benefits*. All benefits provided herein shall
35 be payable from the fund. All benefits shall be paid through the secretary
36 of labor, in accordance with such rules and regulations as the secretary
37 may adopt. Benefits based on service in employment defined in
38 subsections (i)(3)(E) and (i)(3)(F) of K.S.A. 44-703, and amendments
39 thereto, shall be payable in the same amount, on the same terms and
40 subject to the same conditions as compensation payable on the basis of
41 other service subject to this act except as provided in subsection (e) of
42 K.S.A. 44-705 and subsection (e)(2) of K.S.A. 44-711, and amendments
43 thereto.

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

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

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

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

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

33 (d) *Minimum weekly benefit amount.* The minimum weekly benefit
34 amount payable to any individual shall be 25% of the maximum weekly
35 benefit calculated in accordance with subsection (c) and shall be
36 announced by the secretary in conjunction with the published
37 announcement of the maximum weekly benefit, also as provided in
38 subsection (c). The minimum weekly benefit amount so determined and
39 announced for the twelve-month period beginning July 1 of each year shall
40 apply only to those claims which establish a benefit year filed within that
41 twelve-month period and shall apply through the benefit year of such
42 claims notwithstanding a change in such amount in a subsequent twelve-
43 month period. If the minimum weekly benefit amount is not a multiple of

1 \$1 it shall be reduced to the next lower multiple of \$1.

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

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

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

14 (B) holiday pay that was ~~payable with no condition of attendance on~~
15 ~~other regularly scheduled day or days attributable to a week that the~~
16 ~~individual claimed benefits;~~ and

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

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

23 (A) Remuneration received for services performed on a public
24 assistance work project;

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

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

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

31 (E) ~~(C)~~ all other severance pay, separation pay, bonuses, wages in lieu
32 of notice or remuneration of a similar nature that is payable after the
33 severance of the employment relationship, except as set out in subsection
34 (e)(1)(C); and

35 (F) ~~(D)~~ moneys received as federal social security payments.

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

43 (f) *Duration of benefits.* Any otherwise eligible individual shall be

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

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

12 Sec. 4. K.S.A. 2012 Supp. 44-705 is hereby amended to read as
13 follows: 44-705. Except as provided by K.S.A. 44-757, and amendments
14 thereto, an unemployed individual shall be eligible to receive benefits with
15 respect to any week only if the secretary, or a person or persons designated
16 by the secretary, finds that:

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

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

25 (c) The claimant is able to perform the duties of such claimant's
26 customary occupation or the duties of other occupations for which the
27 claimant is reasonably fitted by training or experience, and is available for
28 work, as demonstrated by the claimant's pursuit of the full course of action
29 most reasonably calculated to result in the claimant's reemployment except
30 that, notwithstanding any other provisions of this section, an unemployed
31 claimant otherwise eligible for benefits shall not become ineligible for
32 benefits: (1) Because of the claimant's enrollment in and satisfactory
33 pursuit of approved training, including training approved under section
34 236(a)(1) of the trade act of 1974; or (2) solely because such individual is
35 seeking only part-time employment if the individual is available for a
36 number of hours per week that are comparable to the individual's part-time
37 work experience in the base period.

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

41 (d) (1) Except as provided further, the claimant has been unemployed
42 for a waiting period of one week or the claimant is unemployed and has
43 satisfied the requirement for a waiting period of one week under the shared

1 work unemployment compensation program as provided in subsection (k)
2 (4) of K.S.A. 44-757, and amendments thereto, which period of one week,
3 in either case, occurs within the benefit year which includes the week for
4 which the claimant is claiming benefits. No week shall be counted as a
5 week of unemployment for the purposes of this subsection ~~(d)~~:

6 (A) If benefits have been paid for such week;

7 (B) if the individual fails to meet with the other eligibility
8 requirements of this section; or

9 (C) if an individual is seeking unemployment benefits under the
10 unemployment compensation law of any other state or of the United
11 States, except that if the appropriate agency of such state or of the United
12 States finally determines that the claimant is not entitled to unemployment
13 benefits under such other law, this ~~subsection (d)(1)~~ ~~(C)~~ *subparagraph*
14 shall not apply.

15 (2) The waiting week requirement of paragraph (1) shall not apply to
16 new claims, filed on or after July 1, 2007, by claimants who become
17 unemployed as a result of an employer terminating business operations
18 within this state, declaring bankruptcy or initiating a work force reduction
19 pursuant to public law 100-379, the federal worker adjustment and
20 retraining notification act (29 U.S.C. §§ 2101 through 2109), as amended.
21 The secretary shall adopt rules and regulations to administer the provisions
22 of this paragraph.

23 (e) For benefit years established on and after the effective date of this
24 act, the claimant has been paid total wages for insured work in the
25 claimant's base period of not less than 30 times the claimant's weekly
26 benefit amount and has been paid wages in more than one quarter of the
27 claimant's base period, except that the wage credits of an individual earned
28 during the period commencing with the end of a prior base period and
29 ending on the date on which such individual filed a valid initial claim shall
30 not be available for benefit purposes in a subsequent benefit year unless, in
31 addition thereto, such individual has returned to work and subsequently
32 earned wages for insured work in an amount equal to at least eight times
33 the claimant's current weekly benefit amount.

34 (f) The claimant participates in reemployment services, such as job
35 search assistance services, if the individual has been determined to be
36 likely to exhaust regular benefits and needs reemployment services
37 pursuant to a profiling system established by the secretary, unless the
38 secretary determines that: (1) The individual has completed such services;
39 or (2) there is justifiable cause for the claimant's failure to participate in
40 such services.

41 (g) The claimant is returning to work after a qualifying injury and has
42 been paid total wages for insured work in the claimant's alternative base
43 period of not less than 30 times the claimant's weekly benefit amount and

1 has been paid wages in more than one quarter of the claimant's alternative
2 base period if:

3 (1) The claimant has filed for benefits within four weeks of being
4 released to return to work by a licensed and practicing health care
5 provider;:

6 (2) the claimant files for benefits within 24 months of the date the
7 qualifying injury occurred;: *and*

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

11 Sec. 5. K.S.A. 2012 Supp. 44-706 is hereby amended to read as
12 follows: 44-706. An individual shall be disqualified for benefits:

13 (a) If the individual left work voluntarily without good cause
14 attributable to the work or the employer, subject to the other provisions of
15 this subsection. *For purposes of this subsection, "good cause" is cause of*
16 *such gravity that would impel a reasonable, not supersensitive, individual*
17 *exercising ordinary common sense to leave employment. Good cause*
18 *requires a showing of good faith of the individual leaving work, including*
19 *the presence of a genuine desire to work. Failure to return to work after*
20 *expiration of approved personal or medical leave, or both, shall be*
21 *considered a voluntary resignation. After a temporary job assignment,*
22 *failure of an individual to affirmatively request an additional assignment*
23 *on the next succeeding workday, if required by the employment*
24 *agreement, after completion of a given work assignment, shall constitute*
25 *leaving work voluntarily. The disqualification shall begin the day*
26 *following the separation and shall continue until after the individual has*
27 *become reemployed and has had earnings from insured work of at least*
28 *three times the individual's weekly benefit amount. An individual shall not*
29 *be disqualified under this subsection if:*

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

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

43 (3) the individual left work to enlist in the armed forces of the United

1 States, but was rejected or delayed from entry;

2 (4) the spouse of an individual who is a member of the armed forces
3 of the United States who left work because of the voluntary or involuntary
4 transfer of the individual's spouse from one job to another job, which is for
5 the same employer or for a different employer, at a geographic location
6 which makes it unreasonable for the individual to continue work at the
7 individual's job. For the purposes of this provision the term "armed forces"
8 means active duty in the army, navy, marine corps, air force, coast guard or
9 any branch of the military reserves of the United States;

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

27 (6) the individual left work to enter training approved under section
28 236(a)(1) of the federal trade act of 1974, provided the work left is not of a
29 substantially equal or higher skill level than the individual's past adversely
30 affected employment (as defined for purposes of the federal trade act of
31 1974), and wages for such work are not less than 80% of the individual's
32 average weekly wage as determined for the purposes of the federal trade
33 act of 1974;

34 (7) the individual left work because of *persistent* unwelcome
35 harassment of the individual by the employer or another employee of
36 which the employing unit had knowledge *and that would impel the*
37 *average worker to give up such worker's employment*;

38 (8) the individual left work to accept better work; each determination
39 as to whether or not the work accepted is better work shall include, but
40 shall not be limited to, consideration of: (A) The rate of pay, the hours of
41 work and the probable permanency of the work left as compared to the
42 work accepted; (B) the cost to the individual of getting to the work left in
43 comparison to the cost of getting to the work accepted; and (C) the

1 distance from the individual's place of residence to the work accepted in
2 comparison to the distance from the individual's residence to the work left;

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

7 (10) the individual left work because of a *substantial* violation of the
8 work agreement by the employing unit and, before the individual left, the
9 individual had exhausted all remedies provided in such agreement for the
10 settlement of disputes before terminating. *For the purposes of this*
11 *paragraph, a demotion based on performance does not constitute a*
12 *violation of the work agreement;*

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

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

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

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

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

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

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

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

34 (i) A restraining order or other documentation of equitable relief by a
35 court of competent jurisdiction; ~~or~~

36 (ii) a police record documenting the abuse; ~~or~~

37 (iii) documentation that the abuser has been convicted of one or more
38 of the offenses enumerated in articles 34 and 35 of chapter 21 of the
39 Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of
40 chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2012 Supp. 21-
41 6104, 21-6325, 21-6326 or 21-6418 through 21-6421, and amendments
42 thereto, where the victim was a family or household member; ~~or~~

43 (iv) medical documentation of the abuse; ~~or~~

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

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

7 (C) No evidence of domestic violence experienced by an individual,
8 including the individual's statement and corroborating evidence, shall be
9 disclosed by the department of labor unless consent for disclosure is given
10 by the individual.

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

25 (1) For the purposes of this subsection, "misconduct" is defined as a
26 violation of a duty or obligation reasonably owed the employer as a
27 condition of employment *including a violation of a company rule if: (A)*
28 *The individual knew or should have known about the rule; (B) the rule*
29 *was lawful and reasonably related to the job; and (C) the rule was fairly*
30 *and consistently enforced.* The term "gross misconduct" as used in this
31 subsection shall be construed to mean conduct evincing extreme, willful or
32 wanton misconduct as defined by this subsection.

33 (2) (A) Failure of the employee to notify the employer of an absence
34 shall be considered prima facie evidence of a violation of a duty or
35 obligation reasonably owed the employer as a condition of employment.

36 ~~(2) For the purposes of this subsection, the use of or impairment~~
37 ~~caused by alcoholic liquor, a cereal malt beverage or a nonprescribed~~
38 ~~controlled substance by an individual while working shall be conclusive~~
39 ~~evidence of misconduct and the possession of alcoholic liquor, a cereal~~
40 ~~malt beverage or a nonprescribed controlled substance by an individual~~
41 ~~while working shall be prima facie evidence of conduct which is a~~
42 ~~violation of a duty or obligation reasonably owed to the employer as a~~
43 ~~condition of employment. Alcoholic liquor shall be defined as provided in~~

1 K.S.A. 41-102, and amendments thereto. Cereal malt beverage shall be
2 defined as provided in K.S.A. 41-2701, and amendments thereto.
3 Controlled substance shall be defined as provided in K.S.A. 2012 Supp.
4 21-5701, and amendments thereto. As used in this paragraph, "required by
5 law" means required by a federal or state law, a federal or state rule or
6 regulation having the force and effect of law, a county resolution or
7 municipal ordinance, or a policy relating to public safety adopted in open
8 meeting by the governing body of any special district or other local
9 governmental entity. Chemical test shall include, but is not limited to, tests
10 of urine, blood or saliva. A positive chemical test shall mean a chemical
11 result showing a concentration at or above the levels listed in K.S.A. 44-
12 501, and amendments thereto, for the drugs or abuse listed therein. A
13 positive breath test shall mean a test result showing an alcohol
14 concentration of .04 or greater. Alcohol concentration means the number
15 of grams of alcohol per 210 liters of breath. An individual's refusal to
16 submit to a chemical test or breath alcohol test shall be conclusive
17 evidence of misconduct if the test meets the standards of the drug free
18 workplace act, 41 U.S.C. § 701 et seq.; the test was administered as part of
19 an employee assistance program or other drug or alcohol treatment
20 program in which the employee was participating voluntarily or as a
21 condition of further employment; the test was otherwise required by law
22 and the test constituted a required condition of employment for the
23 individual's job; the test was requested pursuant to a written policy of the
24 employer of which the employee had knowledge and was a required
25 condition of employment; or there was probable cause to believe that the
26 individual used, possessed or was impaired by alcoholic liquor, a cereal
27 malt beverage or a controlled substance while working. A positive breath
28 alcohol test or a positive chemical test shall be conclusive evidence to
29 prove misconduct if the following conditions are met:

30 (A) ~~Either (i) the test was required by law and was administered~~
31 ~~pursuant to the drug free workplace act, 41 U.S.C. § 701 et seq., (ii) the~~
32 ~~test was administered as part of an employee assistance program or other~~
33 ~~drug or alcohol treatment program in which the employee was~~
34 ~~participating voluntarily or as a condition of further employment, (iii) the~~
35 ~~test was requested pursuant to a written policy of the employer of which~~
36 ~~the employee had knowledge and was a required condition of employment,~~
37 ~~(iv) the test was required by law and the test constituted a required~~
38 ~~condition of employment for the individual's job, or (v) there was probable~~
39 ~~cause to believe that the individual used, had possession of, or was~~
40 ~~impaired by alcoholic liquor, the cereal malt beverage or the controlled~~
41 ~~substance while working;~~

42 (B) ~~the test sample was collected either (i) as prescribed by the drug~~
43 ~~free workplace act, 41 U.S.C. § 701 et seq., (ii) as prescribed by an~~

1 ~~employee assistance program or other drug or alcohol treatment program~~
2 ~~in which the employee was participating voluntarily or as a condition of~~
3 ~~further employment, (iii) as prescribed by the written policy of the~~
4 ~~employer of which the employee had knowledge and which constituted a~~
5 ~~required condition of employment, (iv) as prescribed by a test which was~~
6 ~~required by law and which constituted a required condition of employment~~
7 ~~for the individual's job, or (v) at a time contemporaneous with the events~~
8 ~~establishing probable cause;~~

9 ~~(C) the collecting and labeling of a chemical test sample was~~
10 ~~performed by a licensed health care professional or any other individual~~
11 ~~certified pursuant to paragraph (b)(2)(F) or authorized to collect or label~~
12 ~~test samples by federal or state law, or a federal or state rule or regulation~~
13 ~~having the force or effect of law, including law enforcement personnel;~~

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

19 ~~(E) the chemical test was confirmed by gas chromatography, gas~~
20 ~~chromatography-mass spectroscopy or other comparably reliable~~
21 ~~analytical method, except that no such confirmation is required for a blood~~
22 ~~alcohol sample or a breath alcohol test;~~

23 ~~(F) the breath alcohol test was administered by an individual trained~~
24 ~~to perform breath tests, the breath testing instrument used was certified~~
25 ~~and operated strictly according to description provided by the~~
26 ~~manufacturers and the reliability of the instrument performance was~~
27 ~~assured by testing with alcohol standards; and~~

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

30 ~~(3)-(A) (B) For the purposes of this subsection, misconduct shall~~
31 ~~include, but not be limited to, repeated absence, including incarceration,~~
32 ~~resulting in absence from work of three days or longer, excluding~~
33 ~~Saturdays, Sundays and legal holidays, and lateness, from scheduled work~~
34 ~~violation of the employer's reasonable attendance expectations if the facts~~
35 ~~show:~~

36 ~~(i) The individual was absent or late without good cause;~~

37 ~~(ii) the absence was in violation of the employer's written~~
38 ~~absenteeism policy; the individual had knowledge of the employer's~~
39 ~~attendance expectation; and~~

40 ~~(iii) the employer gave or sent written notice to the individual, at the~~
41 ~~individual's last known address, that future absence or lateness may or will~~
42 ~~result in discharge; and~~

43 ~~(iv) the employee had knowledge of the employer's written~~

1 ~~absentecism policy.~~

2 (B) (C) For the purposes of this subsection, if an employee disputes
3 being absent *or late* without good cause, the employee shall present
4 evidence that a majority of the employee's absences *or lateness* were for
5 good cause. If the employee alleges that the employee's repeated absences
6 *or lateness* were the result of health related issues, such evidence shall
7 include documentation from a licensed and practicing health care provider
8 as defined in subsection (a)(1).

9 (3) (A) *For the purposes of this subsection, the following shall be*
10 *conclusive evidence of gross misconduct:*

11 (i) *The use of alcoholic liquor, cereal malt beverage or nonprescribed*
12 *controlled substance by an individual while working;*

13 (ii) *the impairment caused by alcoholic liquor, cereal malt beverage*
14 *or nonprescribed controlled substance by an individual while working;*

15 (iii) *a positive breath alcohol test or a positive chemical test,*
16 *provided:*

17 (a) *The test was either:*

18 (1) *Required by law and was administered pursuant to the drug free*
19 *workplace act, 41 U.S.C. § 701 et seq.;*

20 (2) *administered as part of an employee assistance program or other*
21 *drug or alcohol treatment program in which the employee was*
22 *participating voluntarily or as a condition of further employment;*

23 (3) *requested pursuant to a written policy of the employer of which*
24 *the employee had knowledge and was a required condition of employment;*

25 (4) *required by law and the test constituted a required condition of*
26 *employment for the individual's job; or*

27 (5) *there was reasonable suspicion to believe that the individual used,*
28 *had possession of, or was impaired by alcoholic liquor, cereal malt*
29 *beverage or nonprescribed controlled substance while working;*

30 (b) *the test sample was collected either:*

31 (1) *As prescribed by the drug free workplace act, 41 U.S.C. § 701 et*
32 *seq.;*

33 (2) *as prescribed by an employee assistance program or other drug*
34 *or alcohol treatment program in which the employee was participating*
35 *voluntarily or as a condition of further employment;*

36 (3) *as prescribed by the written policy of the employer of which the*
37 *employee had knowledge and which constituted a required condition of*
38 *employment;*

39 (4) *as prescribed by a test which was required by law and which*
40 *constituted a required condition of employment for the individual's job; or*

41 (5) *at a time contemporaneous with the events establishing probable*
42 *cause;*

43 (c) *the collecting and labeling of a chemical test sample was*

1 performed by a licensed health care professional or any other individual
2 certified pursuant to paragraph (b)(3)(A)(iii)(f) or authorized to collect or
3 label test samples by federal or state law, or a federal or state rule or
4 regulation having the force or effect of law, including law enforcement
5 personnel;

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

11 (e) the chemical test was confirmed by gas chromatography, gas
12 chromatography-mass spectroscopy or other comparably reliable
13 analytical method, except that no such confirmation is required for a
14 blood alcohol sample or a breath alcohol test;

15 (f) the breath alcohol test was administered by an individual trained
16 to perform breath tests, the breath testing instrument used was certified
17 and operated strictly according to a description provided by the
18 manufacturers and the reliability of the instrument performance was
19 assured by testing with alcohol standards; and

20 (g) the foundation evidence establishes, beyond a reasonable doubt,
21 that the test results were from the sample taken from the individual;

22 (iv) an individual's refusal to submit to a chemical test or breath
23 alcohol test, provided:

24 (a) The test meets the standards of the drug free workplace act, 41
25 U.S.C. § 701 et seq.;

26 (b) the test was administered as part of an employee assistance
27 program or other drug or alcohol treatment program in which the
28 employee was participating voluntarily or as a condition of further
29 employment;

30 (c) the test was otherwise required by law and the test constituted a
31 required condition of employment for the individual's job;

32 (d) the test was requested pursuant to a written policy of the
33 employer of which the employee had knowledge and was a required
34 condition of employment; or

35 (e) there was reasonable suspicion to believe that the individual used,
36 possessed or was impaired by alcoholic liquor, cereal malt beverage or
37 nonprescribed controlled substance while working;

38 (v) an individual's dilution or other tampering of a chemical test.

39 (B) For purposes of this subsection:

40 (i) "Alcohol concentration" means the number of grams of alcohol
41 per 210 liters of breath;

42 (ii) "alcoholic liquor" shall be defined as provided in K.S.A. 41-102,
43 and amendments thereto;

1 (iii) "cereal malt beverage" shall be defined as provided in K.S.A. 41-
2 2701, and amendments thereto;

3 (iv) "chemical test" shall include, but is not limited to, tests of urine,
4 blood or saliva;

5 (v) "controlled substance" shall be defined as provided in K.S.A.
6 2012 Supp. 21-5701, and amendments thereto;

7 (vi) "required by law" means required by a federal or state law, a
8 federal or state rule or regulation having the force and effect of law, a
9 county resolution or municipal ordinance, or a policy relating to public
10 safety adopted in an open meeting by the governing body of any special
11 district or other local governmental entity;

12 (vii) "positive breath test" shall mean a test result showing an alcohol
13 concentration of
14 .04 or greater, unless the test was administered as part of an employee
15 assistance program or other drug or alcohol treatment program in which
16 the employee was participating voluntarily or as a condition of further
17 employment in which case "positive chemical test" shall mean a test result
18 showing an alcohol concentration at or above the levels provided for in
19 the assistance or treatment program;

20 (viii) "positive chemical test" shall mean a chemical result showing a
21 concentration at or above the levels listed in K.S.A. 44-501, and
22 amendments thereto, for the drugs or abuse listed therein, unless the test
23 was administered as part of an employee assistance program or other
24 drug or alcohol treatment program in which the employee was
25 participating voluntarily or as a condition of further employment in which
26 case "positive chemical test" shall mean a chemical result showing a
27 concentration at or above the levels provided for in the assistance or
28 treatment program.

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

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

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

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

42 (c) If the individual has failed, without good cause, to either apply for
43 suitable work when so directed by the employment office of the secretary

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

34 (d) For any week with respect to which the secretary of labor, or a
35 person or persons designated by the secretary, finds that the individual's
36 unemployment is due to a stoppage of work which exists because of a
37 labor dispute or there would have been a work stoppage had normal
38 operations not been maintained with other personnel previously and
39 currently employed by the same employer at the factory, establishment or
40 other premises at which the individual is or was last employed, except that
41 this subsection (d) shall not apply if it is shown to the satisfaction of the
42 secretary of labor, or a person or persons designated by the secretary, that:
43 (1) The individual is not participating in or financing or directly interested

1 in the labor dispute which caused the stoppage of work; and (2) the
2 individual does not belong to a grade or class of workers of which,
3 immediately before the commencement of the stoppage, there were
4 members employed at the premises at which the stoppage occurs any of
5 whom are participating in or financing or directly interested in the dispute.
6 If in any case separate branches of work which are commonly conducted
7 as separate businesses in separate premises are conducted in separate
8 departments of the same premises, each such department shall, for the
9 purpose of this subsection be deemed to be a separate factory,
10 establishment or other premises. For the purposes of this subsection,
11 failure or refusal to cross a picket line or refusal for any reason during the
12 continuance of such labor dispute to accept the individual's available and
13 customary work at the factory, establishment or other premises where the
14 individual is or was last employed shall be considered as participation and
15 interest in the labor dispute.

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

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

27 (g) For the period of one year beginning with the first day following
28 the last week of unemployment for which the individual received benefits,
29 or for one year from the date the act was committed, whichever is the later,
30 if the individual, or another in such individual's behalf with the knowledge
31 of the individual, has knowingly made a false statement or representation,
32 or has knowingly failed to disclose a material fact to obtain or increase
33 benefits under this act or any other unemployment compensation law
34 administered by the secretary of labor. *In addition to the penalties set forth*
35 *in K.S.A. 44-719, and amendments thereto, an individual who has*
36 *knowingly made a false statement or representation or who has knowingly*
37 *failed to disclose a material fact to obtain or increase benefits under this*
38 *act or any other unemployment compensation law administered by the*
39 *secretary of labor shall be liable for a penalty in the amount equal to 25%*
40 *of the amount of benefits unlawfully received.*

41 (h) For any week with respect to which the individual is receiving
42 compensation for temporary total disability or permanent total disability
43 under the workmen's compensation law of any state or under a similar law

1 of the United States.

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

14 (j) For any week of unemployment on the basis of service in any
15 capacity other than service in an instructional, research, or administrative
16 capacity in an educational institution, as defined in subsection (v) of
17 K.S.A. 44-703, and amendments thereto, if such week begins during the
18 period between two successive academic years or terms if the individual
19 performs such services in the first of such academic years or terms and
20 there is a reasonable assurance that the individual will perform such
21 services in the second of such academic years or terms, except that if
22 benefits are denied to the individual under this subsection and the
23 individual was not offered an opportunity to perform such services for the
24 educational institution for the second of such academic years or terms,
25 such individual shall be entitled to a retroactive payment of benefits for
26 each week for which the individual filed a timely claim for benefits and for
27 which benefits were denied solely by reason of this subsection.

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

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

43 (m) For any week on the basis of services performed by an alien

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

15 (n) For any week in which an individual is receiving a governmental
16 or other pension, retirement or retired pay, annuity or other similar
17 periodic payment under a plan maintained by a base period employer and
18 to which the entire contributions were provided by such employer, except
19 that: (1) If the entire contributions to such plan were provided by the base
20 period employer but such individual's weekly benefit amount exceeds such
21 governmental or other pension, retirement or retired pay, annuity or other
22 similar periodic payment attributable to such week, the weekly benefit
23 amount payable to the individual shall be reduced~~-(, but not below zero),~~
24 by an amount equal to the amount of such pension, retirement or retired
25 pay, annuity or other similar periodic payment which is attributable to such
26 week; or (2) if only a portion of contributions to such plan were provided
27 by the base period employer, the weekly benefit amount payable to such
28 individual for such week shall be reduced~~-(, but not below zero),~~ by the
29 prorated weekly amount of the pension, retirement or retired pay, annuity
30 or other similar periodic payment after deduction of that portion of the
31 pension, retirement or retired pay, annuity or other similar periodic
32 payment that is directly attributable to the percentage of the contributions
33 made to the plan by such individual; or (3) if the entire contributions to the
34 plan were provided by such individual, or by the individual and an
35 employer~~-(,or any person or organization),~~ who is not a base period
36 employer, no reduction in the weekly benefit amount payable to the
37 individual for such week shall be made under this subsection; or (4)
38 whatever portion of contributions to such plan were provided by the base
39 period employer, if the services performed for the employer by such
40 individual during the base period, or remuneration received for the
41 services, did not affect the individual's eligibility for, or increased the
42 amount of, such pension, retirement or retired pay, annuity or other similar
43 periodic payment, no reduction in the weekly benefit amount payable to

1 the individual for such week shall be made under this subsection. No
2 reduction shall be made for payments made under the social security act or
3 railroad retirement act of 1974.

4 (o) For any week of unemployment on the basis of services
5 performed in any capacity and under any of the circumstances described in
6 subsection (i), (j) or (k) which an individual performed in an educational
7 institution while in the employ of an educational service agency. For the
8 purposes of this subsection, the term "educational service agency" means a
9 governmental agency or entity which is established and operated
10 exclusively for the purpose of providing such services to one or more
11 educational institutions.

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

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

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

40 (1) The individual was engaged in full-time employment concurrent
41 with the individual's school attendance; ~~or~~

42 (2) the individual is attending approved training as defined in
43 subsection (s) of K.S.A. 44-703, and amendments thereto; or

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

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

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

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

21 (t) If the individual has been discharged for failing a preemployment
22 drug screen required by the employer and if such discharge occurs not later
23 than seven days after the employer is notified of the results of such drug
24 screen. The disqualification shall begin the day following the separation
25 and shall continue until after the individual becomes reemployed and has
26 had earnings from insured work of at least three times the individual's
27 determined weekly benefit amount.

28 (u) If the individual was found not to have a disqualifying
29 adjudication or conviction under K.S.A. 39-970, and amendments thereto,
30 or K.S.A. 65-5117, and amendments thereto, was hired and then was
31 subsequently convicted of a disqualifying felony under K.S.A. 39-970, and
32 amendments thereto, or K.S.A. 65-5117, and amendments thereto, and
33 discharged pursuant to K.S.A. 39-970, and amendments thereto, or K.S.A.
34 65-5117, and amendments thereto. The disqualification shall begin the day
35 following the separation and shall continue until after the individual
36 becomes reemployed and has had earnings from insured work of at least
37 three times the individual's determined weekly benefit amount.

38 Sec. 6. K.S.A. 2012 Supp. 44-709 is hereby amended to read as
39 follows: 44-709. (a) *Filing*. Claims for benefits shall be made in
40 accordance with rules and regulations adopted by the secretary. The
41 secretary shall furnish a copy of such rules and regulations to any
42 individual requesting them. Each employer shall post and maintain printed
43 statements furnished by the secretary without cost to the employer in

1 places readily accessible to individuals in the service of the employer.

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

33 (2) The examiner may for good cause reconsider the examiner's
34 decision and shall promptly notify the claimant and the most recent
35 employing unit of the claimant, that the decision of the examiner is to be
36 reconsidered, except that no reconsideration shall be made after the
37 termination of the benefit year.

38 (3) Notwithstanding the provisions of any other statute, a decision of
39 an examiner or special examiner shall be final unless the claimant or the
40 most recent employing unit of the claimant files an appeal from the
41 decision as provided in subsection (c), *except that the time limit for appeal*
42 *may be waived or extended by the referee or board of review if a timely*
43 *response was impossible due to excusable neglect.* The appeal must be

1 filed within 16 calendar days after the mailing of notice to the last known
2 addresses of the claimant and employing unit or, if notice is not by mail,
3 within 16 calendar days after the delivery of the notice to the parties.

4 (c) *Appeals*. Unless the appeal is withdrawn, a referee, after affording
5 the parties reasonable opportunity for fair hearing, shall affirm or modify
6 the findings of fact and decision of the examiner or special examiner. The
7 parties shall be duly notified of the referee's decision, together with the
8 reasons for the decision. The decision shall be final, notwithstanding the
9 provisions of any other statute, unless a further appeal to the board of
10 review is filed within 16 calendar days after the mailing of the decision to
11 the parties' last known addresses or, if notice is not by mail, within 16
12 calendar days after the delivery of the decision, *except that the time limit*
13 *for appeal may be waived or extended by the referee or board of review if*
14 *a timely response was impossible due to excusable neglect.*

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

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

26 (f) *Board of review*. (1) There is hereby created a board of review,
27 hereinafter referred to as the board, consisting of three members. Except as
28 provided by paragraph (2) of this subsection, each member of the board
29 shall be appointed for a term of four years as provided in this subsection.
30 Two members shall be appointed by the governor, subject to confirmation
31 by the senate as provided in K.S.A. 75-4315b, and amendments thereto.
32 Except as provided by K.S.A. 46-2601, and amendments thereto, no
33 person appointed to the board, whose appointment is subject to
34 confirmation by the senate, shall exercise any power, duty or function as a
35 member until confirmed by the senate. One member shall be representative
36 of employees, one member shall be representative of employers, and one
37 member shall be representative of the public in general. The appointment
38 of the employee representative member of the board shall be made by the
39 governor from a list of three nominations submitted by the Kansas A.F.L.-
40 C.I.O. The appointment of the employer representative member of the
41 board shall be made by the governor from a list of three nominations
42 submitted by the Kansas chamber of commerce and industry. The
43 appointment of the public representative member of the board, who,

1 because of vocation, occupation or affiliation may be deemed not to be
2 representative of either management or labor, shall be made by the
3 members appointed by the governor as employee representative and
4 employer representative. If the two members do not agree and fail to make
5 the appointment of the public member within 30 days after the expiration
6 of the public member's term of office, the governor shall appoint the
7 representative of the public. Not more than two members of the board shall
8 belong to the same political party.

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

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

22 (4) Each member of the board shall be entitled to receive as
23 compensation for the member's services at the rate of \$15,000 per year,
24 together with the member's travel and other necessary expenses actually
25 incurred in the performance of the member's official duties in accordance
26 with rules and regulations adopted by the secretary. Members'
27 compensation and expenses shall be paid from the employment security
28 administration fund.

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

36 (6) The board, on its own motion, may affirm, modify or set aside any
37 decision of a referee on the basis of the evidence previously submitted in
38 the case; may direct the taking of additional evidence; or may permit any
39 of the parties to initiate further appeal before it. The board shall permit
40 such further appeal by any of the parties interested in a decision of a
41 referee which overrules or modifies the decision of an examiner. The board
42 may remove to itself the proceedings on any claim pending before a
43 referee. Any proceedings so removed to the board shall be heard in

1 accordance with the requirements of subsection (c). The board shall
2 promptly notify the interested parties of its findings and decision.

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

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

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

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

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

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

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

12 Sec. 7. K.S.A. 2012 Supp. 44-710 is hereby amended to read as
13 follows: 44-710. (a) *Payment.* Contributions shall accrue and become
14 payable by each contributing employer for each calendar year in which the
15 contributing employer is subject to the employment security law with
16 respect to wages paid for employment. Such contributions shall become
17 due and be paid by each contributing employer to the secretary for the
18 employment security fund in accordance with such rules and regulations as
19 the secretary may adopt and shall not be deducted, in whole or in part,
20 from the wages of individuals in such employer's employ. In the payment
21 of any contributions, a fractional part of \$.01 shall be disregarded unless it
22 amounts to \$.005 or more, in which case it shall be increased to \$.01.
23 Should contributions for any calendar quarter be less than \$5, no payment
24 shall be required.

25 (b) *Rates and base of contributions.* (1) Except as provided in
26 paragraph (2) of this subsection, each contributing employer shall pay
27 contributions on wages paid by the contributing employer during each
28 calendar year with respect to employment as provided in K.S.A. 44-710a,
29 and amendments thereto. Except that, notwithstanding the federal law
30 requiring the secretary of labor to annually recalculate the contribution
31 rate, for calendar years 2010, 2011, 2012, 2013 and 2014, the secretary
32 shall charge each contributing employer in rate groups 1 through 32 the
33 contribution rate in the 2010 original tax rate computation table, with
34 contributing employers in rate groups 33 through 51 being capped at a
35 5.4% contribution rate.

36 (2) (A) If the congress of the United States either amends or repeals
37 the Wagner-Peyser act, the federal unemployment tax act, the federal
38 social security act, or subtitle C of chapter 23 of the federal internal
39 revenue code of 1986, or any act or acts supplemental to or in lieu thereof,
40 or any part or parts of any such law, or if any such law, or any part or parts
41 thereof, are held invalid with the effect that appropriations of funds by
42 congress and grants thereof to the state of Kansas for the payment of costs
43 of administration of the employment security law are no longer available

1 for such purposes, or (B) if employers in Kansas subject to the payment of
2 tax under the federal unemployment tax act are granted full credit against
3 such tax for contributions or taxes paid to the secretary of labor, then, and
4 in either such case, beginning with the year in which the unavailability of
5 federal appropriations and grants for such purpose occurs or in which such
6 change in liability for payment of such federal tax occurs and for each year
7 thereafter, the rate of contributions of each contributing employer shall be
8 equal to the total of .5% and the rate of contributions as determined for
9 such contributing employer under K.S.A. 44-710a, and amendments
10 thereto. The amount of contributions which each contributing employer
11 becomes liable to pay under this paragraph (2) over the amount of
12 contributions which such contributing employer would be otherwise liable
13 to pay shall be credited to the employment security administration fund to
14 be disbursed and paid out under the same conditions and for the same
15 purposes as other moneys are authorized to be paid from the employment
16 security administration fund, except that, if the secretary determines that as
17 of the first day of January of any year there is an excess in the employment
18 security administration fund over the amount required to be disbursed
19 during such year, an amount equal to such excess as determined by the
20 secretary shall be transferred to the employment security fund.

21 (c) *Charging of benefit payments.* (1) The secretary shall maintain a
22 separate account for each contributing employer, and shall credit the
23 contributing employer's account with all the contributions paid on the
24 contributing employer's own behalf. Nothing in the employment security
25 law shall be construed to grant any employer or individuals in such
26 employer's service prior claims or rights to the amounts paid by such
27 employer into the employment security fund either on such employer's
28 own behalf or on behalf of such individuals. Benefits paid shall be charged
29 against the accounts of each base period employer in the proportion that
30 the base period wages paid to an eligible individual by each such employer
31 bears to the total wages in the base period. Benefits shall be charged to
32 contributing employers' accounts and rated governmental employers'
33 accounts upon the basis of benefits paid during each twelve-month period
34 ending on the computation date.

35 (2) (A) Benefits paid in benefit years established by valid new claims
36 shall not be charged to the account of a contributing employer or rated
37 governmental employer who is a base period employer if the examiner
38 finds that claimant was separated from the claimant's most recent
39 employment with such employer under any of the following conditions: (i)
40 Discharged for misconduct or gross misconduct connected with the
41 individual's work; or (ii) leaving work voluntarily without good cause
42 attributable to the claimant's work or the employer.

43 (B) Where base period wage credits of a contributing employer or

1 rated governmental employer represent part-time employment and the
2 claimant continues in that part-time employment with that employer
3 during the period for which benefits are paid, then that employer's account
4 shall not be charged with any part of the benefits paid if the employer
5 provides the secretary with information as required by rules and
6 regulations. For the purposes of this subsection (c)(2)(B), "part-time
7 employment" means any employment when an individual works
8 ~~concurrently for two or more employers and also works less than full-time~~
9 ~~for at least one of those employers~~ because the individual's services are not
10 required for the customary, scheduled full-time hours prevailing at the
11 work place or the individual does not customarily work the regularly
12 scheduled full-time hours due to personal choice or circumstances.

13 (C) No contributing employer or rated governmental employer's
14 account shall be charged with any extended benefits paid in accordance
15 with the employment security law, except for weeks of unemployment
16 beginning after December 31, 1978, all contributing governmental
17 employers and governmental rated employers shall be charged an amount
18 equal to all extended benefits paid.

19 (D) No contributing employer, rated governmental employer or
20 reimbursing employer's account shall be charged for any additional
21 benefits paid during the period July 1, 2003 through June 30, 2004.

22 (E) No contributing employer or rated governmental employer's
23 account will be charged for benefits paid a claimant while pursuing an
24 approved training course as defined in subsection (s) of K.S.A. 44-703,
25 and amendments thereto.

26 (F) No contributing employer or rated governmental employer's
27 account shall be charged with respect to the benefits paid to any individual
28 whose base period wages include wages for services not covered by the
29 employment security law prior to January 1, 1978, to the extent that the
30 employment security fund is reimbursed for such benefits pursuant to
31 section 121 of public law 94-566 (90 Stat. 2673).

32 (G) With respect to weeks of unemployment beginning after
33 December 31, 1977, wages for insured work shall include wages paid for
34 previously uncovered services. For the purposes of this subsection (c)(2)
35 (G), the term "previously uncovered services" means services which were
36 not covered employment, at any time during the one-year period ending
37 December 31, 1975, except to the extent that assistance under title II of the
38 federal emergency jobs and unemployment assistance act of 1974 was paid
39 on the basis of such services, and which:

40 (i) Are agricultural labor as defined in subsection (w) of K.S.A. 44-
41 703, and amendments thereto, or domestic service as defined in subsection
42 (aa) of K.S.A. 44-703, and amendments thereto; ~~or;~~

43 (ii) are services performed by an employee of this state or a political

1 subdivision thereof, as provided in subsection (i)(3)(E) of K.S.A. 44-703,
2 and amendments thereto; or

3 (iii) are services performed by an employee of a nonprofit educational
4 institution which is not an institution of higher education.

5 (H) No contributing employer or rated governmental employer's
6 account shall be charged with respect to their pro rata share of benefit
7 charges if such charges are of \$100 or less.

8 (3) *An employer's account shall not be relieved of charges relating to*
9 *a payment that was made erroneously if the secretary determines that:*

10 (A) *The erroneous payment was made because the employer, or the*
11 *agent of the employer, was at fault for failing to respond timely or*
12 *adequately to a written request from the secretary for information relating*
13 *to the claim for unemployment compensation; and*

14 (B) *the employer or agent has established a pattern of failing to*
15 *respond timely or adequately to requests for information.*

16 (C) *For purposes of this paragraph:*

17 (i) *"Erroneous payment" means a payment that but for the failure by*
18 *the employer or the employer's agent with respect to the claim for*
19 *unemployment compensation, would not have been made; and*

20 (ii) *"pattern of failure" means repeated documented failure on the*
21 *part of the employer or the agent of the employer to respond, taking into*
22 *consideration the number of instances of failure in relation to the total*
23 *volume of requests. An employer or employer's agent failing to respond as*
24 *described in (c)(3)(A) shall not be determined to have engaged in a*
25 *"pattern of failure" if the number of such failures during the year prior to*
26 *such request is fewer than two, or less than 2%, of such requests,*
27 *whichever is greater.*

28 (C) *Determinations of the secretary prohibiting the relief of charges*
29 *pursuant to this section shall be subject to appeal or protest as other*
30 *determinations of the agency with respect to the charging of employer*
31 *accounts.*

32 (D) *This paragraph shall apply to erroneous payments established on*
33 *and after the effective date of this act.*

34 (4) The examiner shall notify any base period employer whose
35 account will be charged with benefits paid following the filing of a valid
36 new claim and a determination by the examiner based on all information
37 relating to the claim contained in the records of the division of
38 employment security. Such notice shall become final and benefits charged
39 to the base period employer's account in accordance with the claim unless
40 within 10 calendar days from the date the notice was sent, the base period
41 employer requests in writing that the examiner reconsider the
42 determination and furnishes any required information in accordance with
43 the secretary's rules and regulations. In a similar manner, a notice of an

1 additional claim followed by the first payment of benefits with respect to
2 the benefit year, filed by an individual during a benefit year after a period
3 in such year during which such individual was employed, shall be given to
4 any base period employer of the individual who has requested such a
5 notice within 10 calendar days from the date the notice of the valid new
6 claim was sent to such base period employer. For purposes of this
7 subsection (c)(3), if the required information is not submitted or
8 postmarked within a response time limit of 10 days after the base period
9 employer notice was sent, the base period employer shall be deemed to
10 have waived its standing as a party to the proceedings arising from the
11 claim and shall be barred from protesting any subsequent decisions about
12 the claim by the secretary, a referee, the board of review or any court,
13 except that the base period employer's response time limit may be waived
14 or extended by the examiner or upon appeal, if timely response was
15 impossible due to excusable neglect. The examiner shall notify the
16 employer of the reconsidered determination which shall be subject to
17 appeal, or further reconsideration, in accordance with the provisions of
18 K.S.A. 44-709, and amendments thereto.

19 ~~(4)~~ (5) *Time, computation and extension.* In computing the period of
20 time for a base period employer response or appeals under this section
21 from the examiner's or the special examiner's determination or from the
22 referee's decision, the day of the act, event or default from which the
23 designated period of time begins to run shall not be included. The last day
24 of the period shall be included unless it is a Saturday, Sunday or legal
25 holiday, in which event the period runs until the end of the next day which
26 is not a Saturday, Sunday or legal holiday.

27 (d) *Pooled fund.* All contributions and payments in lieu of
28 contributions and benefit cost payments to the employment security fund
29 shall be pooled and available to pay benefits to any individual entitled
30 thereto under the employment security law, regardless of the source of
31 such contributions or payments in lieu of contributions or benefit cost
32 payments.

33 (e) *Election to become reimbursing employer; payment in lieu of*
34 *contributions.* (1) Any governmental entity, Indian tribes or tribal units,
35 (subdivisions, subsidiaries or business enterprises wholly owned by such
36 Indian tribes), for which services are performed as described in subsection
37 (i)(3)(E) of K.S.A. 44-703, and amendments thereto, or any nonprofit
38 organization or group of nonprofit organizations described in section
39 501(c)(3) of the federal internal revenue code of 1986 which is exempt
40 from income tax under section 501(a) of such code, that becomes subject
41 to the employment security law may elect to become a reimbursing
42 employer under this subsection (e)(1) and agree to pay the secretary for the
43 employment security fund an amount equal to the amount of regular

1 benefits and ½ of the extended benefits paid that are attributable to service
2 in the employ of such reimbursing employer, except that each reimbursing
3 governmental employer, Indian tribes or tribal units shall pay an amount
4 equal to the amount of regular benefits and extended benefits paid for
5 weeks of unemployment beginning after December 31, 1978, for
6 governmental employers and December 21, 2000, for Indian tribes or
7 tribal units to individuals for weeks of unemployment which begin during
8 the effective period of such election.

9 (A) Any employer identified in this subsection (e)(1) may elect to
10 become a reimbursing employer for a period encompassing not less than
11 four complete calendar years if such employer files with the secretary a
12 written notice of such election within the 30-day period immediately
13 following January 1 of any calendar year or within the 30-day period
14 immediately following the date on which a determination of subjectivity to
15 the employment security law is issued, whichever occurs later.

16 (B) Any employer which makes an election to become a reimbursing
17 employer in accordance with subparagraph (A) of this subsection (e)(1)
18 will continue to be liable for payments in lieu of contributions until such
19 employer files with the secretary a written notice terminating its election
20 not later than 30 days prior to the beginning of the calendar year for which
21 such termination shall first be effective.

22 (C) Any employer identified in this subsection (e)(1) which has
23 remained a contributing employer and has been paying contributions under
24 the employment security law for a period subsequent to January 1, 1972,
25 may change to a reimbursing employer by filing with the secretary not
26 later than 30 days prior to the beginning of any calendar year a written
27 notice of election to become a reimbursing employer. Such election shall
28 not be terminable by the employer for four complete calendar years.

29 (D) The secretary may for good cause extend the period within which
30 a notice of election, or a notice of termination, must be filed and may
31 permit an election to be retroactive but not any earlier than with respect to
32 benefits paid after January 1 of the year such election is received.

33 (E) The secretary, in accordance with such rules and regulations as
34 the secretary may adopt, shall notify each employer identified in
35 subsection (e)(1) of any determination which the secretary may make of its
36 status as an employer and of the effective date of any election which it
37 makes to become a reimbursing employer and of any termination of such
38 election. Such determinations shall be subject to reconsideration, appeal
39 and review in accordance with the provisions of K.S.A. 44-710b, and
40 amendments thereto.

41 (2) *Reimbursement reports and payments.* Payments in lieu of
42 contributions shall be made in accordance with the provisions of paragraph
43 (A) of this subsection (e)(2) by all reimbursing employers except the state

1 of Kansas. Each reimbursing employer shall report total wages paid during
2 each calendar quarter by filing quarterly wage reports with the secretary
3 which shall be filed by the last day of the month following the close of
4 each calendar quarter. Wage reports are deemed filed as of the date they
5 are placed in the United States mail.

6 (A) At the end of each calendar quarter, or at the end of any other
7 period as determined by the secretary, the secretary shall bill each
8 reimbursing employer, except the state of Kansas, (i) an amount to be paid
9 which is equal to the full amount of regular benefits plus $\frac{1}{2}$ of the amount
10 of extended benefits paid during such quarter or other prescribed period
11 that is attributable to service in the employ of such reimbursing employer;
12 and (ii) for weeks of unemployment beginning after December 31, 1978,
13 each reimbursing governmental employer and December 21, 2000, for
14 Indian tribes or tribal units shall be certified an amount to be paid which is
15 equal to the full amount of regular benefits and extended benefits paid
16 during such quarter or other prescribed period that is attributable to service
17 in the employ of such reimbursing governmental employer.

18 (B) Payment of any bill rendered under paragraph (A) of this
19 subsection (e)(2) shall be made not later than 30 days after such bill was
20 mailed to the last known address of the reimbursing employer, or
21 otherwise was delivered to such reimbursing employer, unless there has
22 been an application for review and redetermination in accordance with
23 paragraph (D) of this subsection (e)(2).

24 (C) Payments made by any reimbursing employer under the
25 provisions of this subsection (e)(2) shall not be deducted or deductible, in
26 whole or in part, from the remuneration of individuals in the employ of
27 such employer.

28 (D) The amount due specified in any bill from the secretary shall be
29 conclusive on the reimbursing employer, unless, not later than 15 days
30 after the bill was mailed to the last known address of such employer, or
31 was otherwise delivered to such employer, the reimbursing employer files
32 an application for redetermination in accordance with K.S.A. 44-710b, and
33 amendments thereto.

34 (E) Past due payments of amounts certified by the secretary under
35 this section shall be subject to the same interest, penalties and actions
36 required by K.S.A. 44-717, and amendments thereto. (1) If any nonprofit
37 organization or group of nonprofit organizations described in section
38 501(c)(3) of the federal internal revenue code of 1986 or governmental
39 reimbursing employer is delinquent in making payments of amounts
40 certified by the secretary under this section, the secretary may terminate
41 such employer's election to make payments in lieu of contributions as of
42 the beginning of the next calendar year and such termination shall be
43 effective for such next calendar year and the calendar year thereafter so

1 that the termination is effective for two complete calendar years. (2)
2 Failure of the Indian tribe or tribal unit to make required payments,
3 including assessment of interest and penalty within 90 days of receipt of
4 the bill will cause the Indian tribe to lose the option to make payments in
5 lieu of contributions as described pursuant to paragraph (e)(1) for the
6 following tax year unless payment in full is received before contribution
7 rates for the next tax year are calculated. (3) Any Indian tribe that loses the
8 option to make payments in lieu of contributions due to late payment or
9 nonpayment, as described in paragraph (2), shall have such option
10 reinstated, if after a period of one year, all contributions have been made
11 on time and no contributions, payments in lieu of contributions for benefits
12 paid, penalties or interest remain outstanding.

13 (F) Failure of the Indian tribe or any tribal unit thereof to make
14 required payments, including assessments of interest and penalties, after
15 all collection activities deemed necessary by the secretary have been
16 exhausted, will cause services performed by such tribe to not be treated as
17 employment for purposes of subsection (i)(3)(E) of K.S.A. 44-703, and
18 amendments thereto. If an Indian tribe fails to make payments required
19 under this section, including assessments of interest and penalties, within
20 90 days of a final notice of delinquency, the secretary shall immediately
21 notify the United States internal revenue service and the United States
22 department of labor. The secretary may determine that any Indian tribe that
23 loses coverage pursuant to this paragraph may have services performed on
24 behalf of such tribe again deemed "employment" if all contributions,
25 payments in lieu of contributions, penalties and interest have been paid.

26 (G) In the discretion of the secretary, any employer who elects to
27 become liable for payments in lieu of contributions and any nonprofit
28 organization or group of nonprofit organizations described in section 501
29 (c)(3) of the federal internal revenue code of 1986 or governmental
30 reimbursing employer or Indian tribe or tribal unit who is delinquent in
31 filing reports or in making payments of amounts certified by the secretary
32 under this section shall be required within 60 days after the effective date
33 of such election, in the case of an eligible employer so electing, or after the
34 date of notification to the delinquent employer under this subsection (e)(2)
35 (G), in the case of a delinquent employer, to execute and file with the
36 secretary a surety bond, except that the employer may elect, in lieu of a
37 surety bond, to deposit with the secretary money or securities as approved
38 by the secretary or to purchase and deliver to an escrow agent a certificate
39 of deposit to guarantee payment. The amount of the bond, deposit or
40 escrow agreement required by this subsection (e)(2)(G) shall not exceed
41 5.4% of the organization's taxable wages paid for employment by the
42 eligible employer during the four calendar quarters immediately preceding
43 the effective date of the election or the date of notification, in the case of a

1 delinquent employer. If the employer did not pay wages in each of such
2 four calendar quarters, the amount of the bond or deposit shall be as
3 determined by the secretary. Upon the failure of an employer to comply
4 with this subsection (e)(2)(G) within the time limits imposed or to
5 maintain the required bond or deposit, the secretary may terminate the
6 election of such eligible employer or delinquent employer, as the case may
7 be, to make payments in lieu of contributions, and such termination shall
8 be effective for the current and next calendar year.

9 (H) The state of Kansas shall make reimbursement payments
10 quarterly at a fiscal year rate which shall be based upon: (i) The available
11 balance in the state's reimbursing account as of December 31 of each
12 calendar year; (ii) the historical unemployment experience of all covered
13 state agencies during prior years; (iii) the estimate of total covered wages
14 to be paid during the ensuing calendar year; (iv) the applicable fiscal year
15 rate of the claims processing and auditing fee under K.S.A. 75-3798, and
16 amendments thereto; and (v) actuarial and other information furnished to
17 the secretary by the secretary of administration. In accordance with K.S.A.
18 75-3798, and amendments thereto, the claims processing and auditing fees
19 charged to state agencies shall be deducted from the amounts collected for
20 the reimbursement payments under this paragraph (H) prior to making the
21 quarterly reimbursement payments for the state of Kansas. The fiscal year
22 rate shall be expressed as a percentage of covered total wages and shall be
23 the same for all covered state agencies. The fiscal year rate for each fiscal
24 year will be certified in writing by the secretary to the secretary of
25 administration on July 15 of each year and such certified rate shall become
26 effective on the July 1 immediately following the date of certification. A
27 detailed listing of benefit charges applicable to the state's reimbursing
28 account shall be furnished quarterly by the secretary to the secretary of
29 administration and the total amount of charges deducted from previous
30 reimbursing payments made by the state. On January 1 of each year, if it is
31 determined that benefit charges exceed the amount of prior reimbursing
32 payments, an upward adjustment shall be made therefor in the fiscal year
33 rate which will be certified on the ensuing July 15. If total payments
34 exceed benefit charges, all or part of the excess may be refunded, at the
35 discretion of the secretary, from the fund or retained in the fund as part of
36 the payments which may be required for the next fiscal year.

37 (3) *Allocation of benefit costs.* The reimbursing account of each
38 reimbursing employer shall be charged the full amount of regular benefits
39 and $\frac{1}{2}$ of the amount of extended benefits paid except that each
40 reimbursing governmental employer's account shall be charged the full
41 amount of regular benefits and extended benefits paid for weeks of
42 unemployment beginning after December 31, 1978, to individuals whose
43 entire base period wage credits are from such employer. When benefits

1 received by an individual are based upon base period wage credits from
2 more than one employer then the reimbursing employer's or reimbursing
3 governmental employer's account shall be charged in the same ratio as
4 base period wage credits from such employer bear to the individual's total
5 base period wage credits. Notwithstanding any other provision of the
6 employment security law, no reimbursing employer's or reimbursing
7 governmental employer's account shall be charged for payments of
8 extended benefits which are wholly reimbursed to the state by the federal
9 government.

10 (A) *Proportionate allocation (when fewer than all reimbursing base*
11 *period employers are liable).* If benefits paid to an individual are based on
12 wages paid by one or more reimbursing employers and on wages paid by
13 one or more contributing employers or rated governmental employers, the
14 amount of benefits payable by each reimbursing employer shall be an
15 amount which bears the same ratio to the total benefits paid to the
16 individual as the total base period wages paid to the individual by such
17 employer bears to the total base period wages paid to the individual by all
18 of such individual's base period employers.

19 (B) *Proportionate allocation (when all base period employers are*
20 *reimbursing employers).* If benefits paid to an individual are based on
21 wages paid by two or more reimbursing employers, the amount of benefits
22 payable by each such employer shall be an amount which bears the same
23 ratio to the total benefits paid to the individual as the total base period
24 wages paid to the individual by such employer bear to the total base period
25 wages paid to the individual by all of such individual's base period
26 employers.

27 (4) *Group accounts.* Two or more reimbursing employers may file a
28 joint application to the secretary for the establishment of a group account
29 for the purpose of sharing the cost of benefits paid that are attributable to
30 service in the employment of such reimbursing employers. Each such
31 application shall identify and authorize a group representative to act as the
32 group's agent for the purposes of this subsection (e)(4). Upon approval of
33 the application, the secretary shall establish a group account for such
34 employers effective as of the beginning of the calendar quarter in which
35 the secretary receives the application and shall notify the group's
36 representative of the effective date of the account. Such account shall
37 remain in effect for not less than four years and thereafter such account
38 shall remain in effect until terminated at the discretion of the secretary or
39 upon application by the group. Upon establishment of the account, each
40 member of the group shall be liable for payments in lieu of contributions
41 with respect to each calendar quarter in the amount that bears the same
42 ratio to the total benefits paid in such quarter that are attributable to service
43 performed in the employment of all members of the group as the total wages

1 paid for service in employment by such member in such quarter bear to the
2 total wages paid during such quarter for service performed in the employ
3 of all members of the group. The secretary shall adopt such rules and
4 regulations as the secretary deems necessary with respect to applications
5 for establishment, maintenance and termination of group accounts that are
6 authorized by this subsection (e)(4), for addition of new members to, and
7 withdrawal of active members from such accounts, and for the
8 determination of the amounts that are payable under this subsection (e)(4)
9 by members of the group and the time and manner of such payments.

10 Sec. 8. K.S.A. 2012 Supp. 44-719 is hereby amended to read as
11 follows: 44-719. (a) Any person who makes a false statement or
12 representation knowing it to be false or knowingly fails to disclose a
13 material fact, to obtain or increase any benefit or other payment under this
14 act, either for such person or for any other person, shall be guilty of theft
15 and shall be punished in accordance with the provisions of K.S.A. 2012
16 Supp. 21-5801, and amendments thereto.

17 (b) Any employing unit or any officer or agent for any employing
18 unit or any other person who makes a false statement or representation
19 knowing it to be false, or who knowingly fails to disclose a material fact,
20 to prevent or reduce the payment of benefits to any individual entitled
21 thereto, or to avoid becoming or remaining subject hereto or to avoid or
22 reduce any contribution or other payment required from an employing unit
23 under this act, or who willfully fails or refuses to make any such
24 contributions or other payment or to furnish any reports required
25 hereunder or to produce or permit the inspection or copying of records as
26 required hereunder, shall be punished by a fine of not less than \$20 nor
27 more than \$200, or by imprisonment for not longer than 60 days, or both
28 such fine and imprisonment. Each such false statement or representation or
29 failure to disclose a material fact and each day of such failure or refusal
30 shall constitute a separate offense.

31 (c) Any person who willfully violates any provision of this act or any
32 rule and regulation adopted by the secretary hereunder, the violation of
33 which is made unlawful or the observance of which is required under the
34 terms of this act, and for which a penalty is neither prescribed herein or
35 provided by any other applicable statute, shall be punished by a fine of not
36 less than \$20 nor more than \$200, or by imprisonment for not longer than
37 60 days, or by both such fine and imprisonment, and each day such
38 violation continues shall be deemed to be a separate offense.

39 (d) (1) Any person who has received any amount of money as
40 benefits under this act while any conditions for the receipt of benefits
41 imposed by this act were not fulfilled in such person's case, or while such
42 person was disqualified from receiving benefits, shall in the discretion of
43 the secretary, either be liable to have such amount of money deducted from

1 any future benefits payable to such person under this act or shall be liable
2 to repay to the secretary for the employment security fund an amount of
3 money equal to the amount so received by such person. After a period of
4 five years, the secretary may waive the collection of any such amount of
5 money when the secretary has determined that the payment of such
6 amount of money was not due to fraud, misrepresentation, or willful
7 nondisclosure on the part of the person receiving such amount of money,
8 and the collection thereof would be against equity or would cause extreme
9 hardship with regard to such person. The collection of benefit
10 overpayments which were made in the absence of fraud, misrepresentation
11 or willful nondisclosure of required information on the part of the person
12 who received such overpayments, may be waived by the secretary at any
13 time if such person met all eligibility requirements of the employment
14 security law during the weeks in which the overpayments were made.

15 (2) Any benefit erroneously paid which is not repaid shall bear
16 interest at the rate of 1.5% per month or fraction of a month. If the benefit
17 was received as a result of fraud, misrepresentation or willful
18 nondisclosure of required information, interest shall accrue from the date
19 of the final determination of overpayment until repayment plus interest is
20 received by the secretary. If the overpayment was without fraud,
21 misrepresentation or willful nondisclosure of required information, interest
22 shall accrue upon any balance which remains unpaid two years after the
23 final determination of overpayment is made and shall continue until
24 payment plus accrued interest is received by the secretary. Interest
25 collected pursuant to this section shall be paid into the special employment
26 security fund, except that interest collected on federal administrative
27 programs shall be returned to the federal government. Upon written
28 request and for good cause shown, the secretary may abate any interest or
29 portion thereof provided for by this subsection (d)(2). Interest accrued may
30 not be paid by money deducted from any future benefits payable to such
31 persons liable for any overpayment.

32 (3) Unless collection is waived by the secretary, any such amount
33 shall be collectible in the manner provided in ~~subsection (b)~~ of K.S.A. 44-
34 717, and amendments thereto, for the collection of past due contributions.
35 The courts of this state shall in like manner entertain actions to collect
36 amounts of money erroneously paid as benefits, or unlawfully obtained,
37 for which liability has accrued under the employment security law of any
38 other state or of the federal government.

39 (4) *In cases involving the collection of debts arising from the*
40 *employment security law, the actual amount received from the United*
41 *States department of treasury under the treasury offset program or its*
42 *successor shall be credited to the overpayment and any fee charged by the*
43 *department of treasury shall be borne by the debtor.*

1 (e) Any employer or person who willfully fails or refuses to pay
2 contributions, payments in lieu of contributions or benefit cost payments
3 or attempts in any manner to evade or defeat any such contributions,
4 payments in lieu of contributions or benefit cost payments or the payment
5 thereof, shall be liable for the payment of such contributions, payments in
6 lieu of contributions or benefit cost payments and, in addition to any other
7 penalties provided by law, shall be liable to pay a penalty equal to the total
8 amount of the contributions, payments in lieu of contributions or benefit
9 cost payments evaded or not paid.

10 (f) (1) It shall be unlawful for an employing unit to knowingly obtain
11 or attempt to obtain a reduced liability for contributions under subsection
12 (b)(1) of K.S.A. 44-710a, and amendments thereto, through manipulation
13 of the employer's workforce, or for an employing unit that is not an
14 employing unit at the time it acquires the trade or business, to knowingly
15 obtain or attempt to obtain a reduced liability for contributions under
16 subsection (b)(5) of K.S.A. 44-710a, and amendments thereto, or any other
17 provision of K.S.A. 44-710a, and amendments thereto, related to
18 determining the assignment of a contribution rate, when the sole or
19 primary purpose of the business acquisition was for the purpose of
20 obtaining a lower rate of contributions, or for a person to knowingly advise
21 an employing unit in such a way that results in such a violation, such
22 employing unit or person shall be subject to the following penalties:

23 (A) If the person is an employer, then such employer shall be
24 assigned the highest rate assignable under K.S.A. 44-710a, and
25 amendments thereto, for the rate year during which such violation or
26 attempted violation occurred and the three rate years immediately
27 following this rate year. However, if the employer's business is already at
28 such highest rate for any year, or if the amount of increase in the
29 employer's rate would be less than 2% for such year, then a penalty rate of
30 contributions of 2% of taxable wages shall be imposed for such year. Any
31 moneys resulting from the difference of the computed rate and the penalty
32 rate shall be remitted to the state treasurer in accordance with the
33 provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of
34 each such remittance, the state treasurer shall deposit the entire amount in
35 the state treasury to the credit of the special employment security fund.

36 (B) If the person is not an employer, such person shall be subject to a
37 civil money penalty of not more than \$5,000. All fines assessed and
38 collected under this section shall be remitted to the state treasurer in
39 accordance with the provisions of K.S.A. 75-4215, and amendments
40 thereto. Upon receipt of each such remittance, the state treasurer shall
41 deposit the entire amount in the state treasury to the credit of the special
42 employment security fund.

43 (2) For purposes of this subsection, the term "knowingly" means

1 having actual knowledge of or acting with deliberate ignorance or reckless
2 disregard for the prohibition involved.

3 (3) For purposes of this subsection, the term "violates or attempts to
4 violate" includes, but is not limited to, any intent to evade,
5 misrepresentation or willful nondisclosure.

6 (4) (A) In addition to, or in lieu of, any civil penalty imposed by
7 paragraph (1) if, the director of employment security or a special assistant
8 attorney general assigned to the department of labor, has probable cause to
9 believe that a violation of this subsection (f) should be prosecuted as a
10 crime, a copy of any order, all investigative reports and any evidence in the
11 possession of the division of employment security which relates to such
12 violation, may be forwarded to the prosecuting attorney in the county in
13 which the act or any of the acts were performed which constitute a
14 violation of this subsection (f). Any case which a county or district
15 attorney fails to prosecute within 90 days shall be returned promptly to the
16 director of employment security. The special assistant attorney general
17 assigned to the Kansas department of labor shall then prosecute the case,
18 if, in the opinion of the special assistant attorney general, the acts or
19 practices involved still warrant prosecution.

20 (B) Violation of this subsection (f) shall be a level 9, nonperson
21 felony.

22 (5) The secretary shall establish procedures to identify the transfer or
23 acquisition of a business for purposes of this section.

24 (6) For purposes of subsection (f):

25 (A) "Person" has the meaning given such term by section 7701(a)(1)
26 of the internal revenue code of 1986;

27 (B) "trade or business" shall include the employer's workforce; and

28 (C) the provisions of K.S.A. 2012 Supp. 21-5211 and 5212, and
29 amendments thereto, shall apply.

30 (7) This subsection (f) shall be interpreted and applied in such a
31 manner as to meet the minimum requirements contained in any guidance
32 or regulation issued by the United States department of labor.

33 Sec. 9. K.S.A. 2012 Supp. 74-5602 is hereby amended to read as
34 follows: 74-5602. As used in the Kansas law enforcement training act:

35 (a) "Training center" means the law enforcement training center
36 within the university of Kansas, created by K.S.A. 74-5603, and
37 amendments thereto.

38 (b) "Commission" means the Kansas commission on peace officers'
39 standards and training, created by K.S.A. 74-5606, and amendments
40 thereto, or the commission's designee.

41 (c) "Chancellor" means the chancellor of the university of Kansas, or
42 the chancellor's designee.

43 (d) "Director of police training" means the director of police training

1 at the law enforcement training center.

2 (e) "Director" means the executive director of the Kansas commission
3 on peace officers' standards and training.

4 (f) "Law enforcement" means the prevention or detection of crime
5 and the enforcement of the criminal or traffic laws of this state or of any
6 municipality thereof.

7 (g) "Police officer" or "law enforcement officer" means a full-time or
8 part-time salaried officer or employee of the state, a county or a city,
9 whose duties include the prevention or detection of crime and the
10 enforcement of the criminal or traffic laws of this state or of any
11 municipality thereof. Such terms shall include, but not be limited to: The
12 sheriff, undersheriff and full-time or part-time salaried deputies in the
13 sheriff's office in each county; deputy sheriffs deputized pursuant to
14 K.S.A. 19-2858, and amendments thereto; conservation officers of the
15 Kansas department of wildlife, parks and tourism; university police
16 officers, as defined in K.S.A. 22-2401a, and amendments thereto; campus
17 police officers, as defined in K.S.A. 22-2401a, and amendments thereto;
18 law enforcement agents of the director of alcoholic beverage control; law
19 enforcement agents designated by the secretary of revenue pursuant to
20 K.S.A. 2012 Supp. 75-5157, and amendments thereto; law enforcement
21 agents of the Kansas lottery; law enforcement agents of the Kansas racing
22 commission; deputies and assistants of the state fire marshal having law
23 enforcement authority; capitol police, existing under the authority of
24 K.S.A. 75-4503, and amendments thereto; special investigators of the
25 juvenile justice authority; *special investigators designated by the secretary*
26 *of labor* and law enforcement officers appointed by the adjutant general
27 pursuant to K.S.A. 48-204, and amendments thereto. Such terms shall also
28 include railroad policemen appointed pursuant to K.S.A. 66-524, and
29 amendments thereto; school security officers designated as school law
30 enforcement officers pursuant to K.S.A. 72-8222, and amendments
31 thereto; the manager and employees of the horsethief reservoir benefit
32 district pursuant to K.S.A. 2012 Supp. 82a-2212, and amendments thereto;
33 and the director of the Kansas commission on peace officers' standards and
34 training and any other employee of such commission designated by the
35 director pursuant to K.S.A. 74-5603, and amendments thereto, as a law
36 enforcement officer. Such terms shall not include any elected official,
37 other than a sheriff, serving in the capacity of a law enforcement or police
38 officer solely by virtue of such official's elected position; any attorney-at-
39 law having responsibility for law enforcement and discharging such
40 responsibility solely in the capacity of an attorney; any employee of the
41 commissioner of juvenile justice who is employed solely to perform
42 correctional, administrative or operational duties related to juvenile
43 correctional facilities; any employee of the secretary of corrections, any

1 employee of the secretary of social and rehabilitation services; any deputy
2 conservation officer of the Kansas department of wildlife, parks and
3 tourism; or any employee of a city or county who is employed solely to
4 perform correctional duties related to jail inmates and the administration
5 and operation of a jail; or any full-time or part-time salaried officer or
6 employee whose duties include the issuance of a citation or notice to
7 appear provided such officer or employee is not vested by law with the
8 authority to make an arrest for violation of the laws of this state or any
9 municipality thereof, and is not authorized to carry firearms when
10 discharging the duties of such person's office or employment. Such term
11 shall include any officer appointed or elected on a provisional basis.

12 (h) "Full-time" means employment requiring at least 1,000 hours of
13 law enforcement related work per year.

14 (i) "Part-time" means employment on a regular schedule or
15 employment which requires a minimum number of hours each payroll
16 period, but in any case requiring less than 1,000 hours of law enforcement
17 related work per year.

18 (j) "Misdemeanor crime of domestic violence" means a violation of
19 domestic battery as provided by K.S.A. 21-3412a, prior to its repeal, or
20 K.S.A. 2012 Supp. 21-5414, and amendments thereto, or any other
21 misdemeanor under federal, municipal or state law that has as an element
22 the use or attempted use of physical force, or the threatened use of a
23 deadly weapon, committed by a current or former spouse, parent, or
24 guardian of the victim, by a person with whom the victim shares a child in
25 common, by a person who is cohabiting with or has cohabited with the
26 victim as a spouse, parent or guardian, or by a person similarly situated to
27 a spouse, parent or guardian of the victim.

28 (k) "Auxiliary personnel" means members of organized nonsalaried
29 groups who operate as an adjunct to a police or sheriff's department,
30 including reserve officers, posses and search and rescue groups.

31 (l) "Active law enforcement certificate" means a certificate which
32 attests to the qualification of a person to perform the duties of a law
33 enforcement officer and which has not been suspended or revoked by
34 action of the Kansas commission on peace officers' standards and training
35 and has not lapsed by operation of law as provided in K.S.A. 74-5622, and
36 amendments thereto.

37 Sec. 10. K.S.A. 2012 Supp. 75-5702 is hereby amended to read as
38 follows: 75-5702. (a) The secretary of labor may appoint, with the consent
39 of the governor, one public information officer, one or more division
40 directors, one personal secretary and one special assistant, all of whom
41 shall serve at the pleasure of the secretary of labor, shall be in the
42 unclassified service under the Kansas civil service act and shall receive an
43 annual salary fixed by the secretary of labor with the approval of the

1 governor.

2 (b) (1) *The secretary may:*

3 (A) *Conduct public or private investigations within or outside of this*
4 *state which the secretary or the secretary's designee considers necessary*
5 *or appropriate to determine whether a person has violated, is violating, or*
6 *is about to violate the employment security law act or a rule and*
7 *regulation adopted or order issued under the employment security law, or*
8 *to aid in the enforcement of the employment security law;*

9 (B) *require or permit a person to testify, file a statement, or produce*
10 *a record, under oath or otherwise as the secretary or the secretary's*
11 *designee determines, as to all the facts and circumstances concerning a*
12 *matter to be investigated or about which an action or proceeding is to be*
13 *instituted; and*

14 (C) *appoint one or more special investigators to aid in investigations*
15 *conducted*
16 *pursuant to this act.*

17 (2) *Such special investigators shall have authority to make arrests,*
18 *serve subpoenas and all other process, conduct searches and seizures,*
19 *store evidence, and carry firearms, concealed or otherwise while*
20 *investigating violations of the employment security law act and to*
21 *generally enforce all the criminal laws of the state as violations of those*
22 *laws are encountered by such special investigators, except that no special*
23 *investigator may carry firearms while performing such duties without*
24 *having first successfully completed the training course prescribed for law*
25 *enforcement officers under the Kansas law enforcement training act,*
26 *K.S.A. 74-5601 et seq., and amendments thereto.*

27 (c) The secretary of labor also may appoint such other officers and
28 employees as are necessary to enable the secretary to carry out the duties
29 of the office of the secretary and the department of labor.

30 (d) Except as otherwise specifically provided by law, such officers
31 and employees shall be within the classified service under the Kansas civil
32 service act. All personnel of the department of labor shall perform the
33 duties and functions assigned to ~~them~~ *such personnel* by the secretary or
34 prescribed for ~~them~~ *such personnel* by law and shall act for and exercise
35 the powers of the secretary of labor to the extent authority to do so is
36 delegated by the secretary.

37 Sec. 11. K.S.A. 44-702 and K.S.A. 2012 Supp. 44-703, 44-704, 44-
38 704c, 44-705, 44-706, 44-709, 44-710, 44-719, 74-5602 and 75-5702 are
39 hereby repealed.

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