

HOUSE BILL No. 2267

By Committee on Taxation

2-11

AN ACT concerning employment security law; relating to definition of employment; service performed by certain agricultural workers who are aliens; amending K.S.A. 2002 Supp. 44-703 and repealing the existing section.

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

Section 1. K.S.A. 2002 Supp. 44-703 is hereby amended to read as follows: 44-703. As used in this act, unless the context clearly requires otherwise:

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

(2) "Average annual payroll" means the average of the annual payrolls of any employer for the last three calendar years immediately preceding the computation date as hereinafter defined if the employer has been continuously subject to contributions during those three calendar years and has paid some wages for employment during each of such years. In determining contribution rates for the calendar year, if an employer has not been continuously subject to contribution for the three calendar years immediately preceding the computation date but has paid wages subject to contributions during only the two calendar years immediately preceding the computation date, such employer's "average annual payroll" shall be the average of the payrolls for those two calendar years.

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

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

(1) If an individual lacks sufficient base period wages in order to establish a benefit year in the matter set forth above and satisfies the requirements of subsection (g) of K.S.A. 44-705 and subsection (hh) of K.S.A. 44-703, and amendments thereto, the claimant shall have an alternative base period substituted for the current base period so as not to

1 prevent establishment of a valid claim. For the purposes of this subsection,
2 “alternative base period” means the last four completed quarters
3 immediately preceding the date the qualifying injury occurred. In the
4 event the wages in the alternative base period have been used on a prior
5 claim, then they shall be excluded from the new alternative base period.

6 (2) For the purposes of this chapter, the term “base period” includes
7 the alternative base period.

8 (c) (1) “Benefits” means the money payments payable to an individual,
9 as provided in this act, with respect to such individual’s
10 unemployment.

11 (2) “Regular benefits” means benefits payable to an individual under
12 this act or under any other state law, including benefits payable to federal
13 civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85,
14 other than extended benefits.

15 (d) “Benefit year” with respect to any individual, means the period
16 beginning with the first day of the first week for which such individual
17 files a valid claim for benefits, and such benefit year shall continue for
18 one full year. In the case of a combined wage claim, the benefit year shall
19 be the benefit year of the paying state. Following the termination of a
20 benefit year, a subsequent benefit year shall commence on the first day
21 of the first week with respect to which an individual next files a claim for
22 benefits. When such filing occurs with respect to a week which overlaps
23 the preceding benefit year, the subsequent benefit year shall commence
24 on the first day immediately following the expiration date of the preceding
25 benefit year. Any claim for benefits made in accordance with subsection
26 (a) of K.S.A. 44-709 and amendments thereto shall be deemed to be a
27 “valid claim” for the purposes of this subsection if the individual has been
28 paid wages for insured work as required under subsection (e) of K.S.A.
29 44-705 and amendments thereto. Whenever a week of unemployment
30 overlaps two benefit years, such week shall, for the purpose of granting
31 waiting-period credit or benefit payment with respect thereto, be deemed
32 to be a week of unemployment within that benefit year in which the
33 greater part of such week occurs.

34 (e) “Commissioner” or “secretary” means the secretary of human
35 resources.

36 (f) (1) “Contributions” means the money payments to the state
37 employment security fund which are required to be made by employers on
38 account of employment under K.S.A. 44-710 and amendments thereto,
39 and voluntary payments made by employers pursuant to such statute.

40 (2) “Payments in lieu of contributions” means the money payments
41 to the state employment security fund from employers which are required
42 to make or which elect to make such payments under subsection (e) of
43 K.S.A. 44-710 and amendments thereto.

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

18 (h) "Employer" means:

19 (1) (A) Any employing unit for which agricultural labor as defined in
20 subsection (w) of this section is performed and which during any calendar
21 quarter in either the current or preceding calendar year paid remunera-
22 tion in cash of \$20,000 or more to individuals employed in agricultural
23 labor or for some portion of a day in each of 20 different calendar weeks,
24 whether or not such weeks were consecutive, in either the current or the
25 preceding calendar year, employed in agricultural labor 10 or more in-
26 dividuals, regardless of whether they were employed at the same moment
27 of time.

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

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

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

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

43 (i) Such other person and not the crew leader shall be treated as the

1 employer of such individual; and

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

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

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

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

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

17 (2) (A) Any employing unit which: (i) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of \$1,500 or more, or (ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year, had in employment at least one individual, whether or not the same individual was in employment in each such day.

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

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

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

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

43 (5) Any employing unit which paid cash remuneration of \$1,000 or

1 more in any calendar quarter in the current or preceding calendar year
2 to individuals employed in domestic service as defined in subsection (aa)
3 of this section.

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

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

10 (8) Any employing unit not an employer by reason of any other par-
11 agraph of this subsection (h), for which within either the current or pre-
12 ceding calendar year services in employment are or were performed with
13 respect to which such employing unit is liable for any federal tax against
14 which credit may be taken for contributions required to be paid into a
15 state unemployment compensation fund; or which, as a condition for ap-
16 proval of this act for full tax credit against the tax imposed by the federal
17 unemployment tax act, is required, pursuant to such act, to be an “em-
18 ployer” under this act.

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

26 (i) “Employment” means:

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

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

30 (B) any individual who, under the usual common law rules applicable
31 in determining the employer-employee relationship, has the status of an
32 employee; or

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

36 (i) As an agent-driver or commission-driver engaged in distributing
37 meat products, vegetable products, fruit products, bakery products, bev-
38 erages (other than milk), or laundry or dry-cleaning services, for such
39 individual’s principal; or

40 (ii) as a traveling or city salesman, other than as an agent-driver or
41 commission-driver, engaged upon a full-time basis in the solicitation on
42 behalf of, and the transmission to, a principal (except for side-line sales
43 activities on behalf of some other person) of orders from wholesalers,

1 retailers, contractors, or operators of hotels, restaurants, or other similar
2 establishments for merchandise for resale or supplies for use in their
3 business operations.

4 For purposes of subsection (i)(1)(D), the term “employment” shall in-
5 clude services described in paragraphs (i) and (ii) above only if:

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

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

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

14 (2) The term “employment” shall include an individual’s entire serv-
15 ice within the United States, even though performed entirely outside this
16 state if,

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

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

20 (C) the individual’s base of operations is in this state, or if there is no
21 base of operations, then the place from which service is directed or con-
22 trolled is in this state.

23 (3) The term “employment” shall also include:

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

29 (B) Services performed entirely without this state, with respect to no
30 part of which contributions are required and paid under an unemploy-
31 ment compensation law of any other state or of the federal government,
32 shall be deemed to be employment subject to this act only if the individual
33 performing such services is a resident of this state and the secretary ap-
34 proved the election of the employing unit for whom such services are
35 performed that the entire service of such individual shall be deemed to
36 be employment subject to this act.

37 (C) Services covered by an arrangement pursuant to subsection (l) of
38 K.S.A. 44-714 and amendments thereto between the secretary and the
39 agency charged with the administration of any other state or federal un-
40 employment compensation law, pursuant to which all services performed
41 by an individual for an employing unit are deemed to be performed en-
42 tirely within this state, shall be deemed to be employment if the secretary
43 has approved an election of the employing unit for whom such services

1 are performed, pursuant to which the entire service of such individual
2 during the period covered by such election is deemed to be insured work.

3 (D) Services performed by an individual for wages or under any con-
4 tract of hire shall be deemed to be employment subject to this act unless
5 and until it is shown to the satisfaction of the secretary that: (i) Such
6 individual has been and will continue to be free from control or direction
7 over the performance of such services, both under the individual's con-
8 tract of hire and in fact; and (ii) such service is either outside the usual
9 course of the business for which such service is performed or that such
10 service is performed outside of all the places of business of the enterprise
11 for which such service is performed.

12 (E) Service performed by an individual in the employ of this state or
13 any instrumentality thereof, any political subdivision of this state or any
14 instrumentality thereof, or in the employ of an Indian tribe, as defined
15 pursuant to section 3306(u) of the federal unemployment tax act, any
16 instrumentality of more than one of the foregoing or any instrumentality
17 which is jointly owned by this state or a political subdivision thereof or
18 Indian tribes and one or more other states or political subdivisions of this
19 or other states, provided that such service is excluded from "employment"
20 as defined in the federal unemployment tax act by reason of section
21 3306(c)(7) of that act and is not excluded from "employment" under
22 subsection (i)(4)(A) of this section. For purposes of this section, the ex-
23 clusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also
24 be applicable to services performed in the employ of an Indian tribe.

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

30 (G) The term "employment" shall include the service of an individual
31 who is a citizen of the United States, performed outside the United States
32 except in Canada, in the employ of an American employer (other than
33 service which is deemed "employment" under the provisions of subsec-
34 tion (i)(2) or subsection (i)(3) or the parallel provisions of another state's
35 law), if:

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

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

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

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

42 (C) the employer is a partnership or a trust and the number of the
43 partners or trustees who are residents of this state is greater than the

1 number who are residents of any other state; or

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

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

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

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

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

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

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

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

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

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

35 (i) As an elected official;

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

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

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

41 (v) in a position which, under or pursuant to the laws of this state or
42 tribal law, is designated as a major nontenured policymaking or advisory
43 position or as a policymaking or advisory position the performance of the

1 duties of which ordinarily does not require more than eight hours per
2 week;

3 (B) service with respect to which unemployment compensation is
4 payable under an unemployment compensation system established by an
5 act of congress;

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

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

25 (E) service covered by an arrangement between the secretary and
26 the agency charged with the administration of any other state or federal
27 unemployment compensation law pursuant to which all services per-
28 formed by an individual for an employing unit during the period covered
29 by such employing unit's duly approved election, are deemed to be per-
30 formed entirely within the jurisdiction of such other state or federal
31 agency;

32 (F) service performed by an individual under the age of 18 in the
33 delivery or distribution of newspapers or shopping news, not including
34 delivery or distribution to any point for subsequent delivery or
35 distribution;

36 (G) service performed by an individual for an employing unit as an
37 insurance agent or as an insurance solicitor, if all such service performed
38 by such individual for such employing unit is performed for remuneration
39 solely by way of commission;

40 (H) service performed in any calendar quarter in the employ of any
41 organization exempt from income tax under section 501(a) of the federal
42 internal revenue code of 1986 (other than an organization described in
43 section 401(a) or under section 521 of such code) if the remuneration for

1 such service is less than \$50. In construing the application of the term
2 “employment,” if services performed during $\frac{1}{2}$ or more of any pay period
3 by an individual for the person employing such individual constitute em-
4 ployment, all the services of such individual for such period shall be
5 deemed to be employment; but if the services performed during more
6 than $\frac{1}{2}$ of any such pay period by an individual for the person employing
7 such individual do not constitute employment, then none of the services
8 of such individual for such period shall be deemed to be employment. As
9 used in this subsection (i)(4)(H) the term “pay period” means a period
10 (of not more than 31 consecutive days) for which a payment of remunera-
11 tion is ordinarily made to the individual by the person employing such
12 individual. This subsection (i)(4)(H) shall not be applicable with respect
13 to services with respect to which unemployment compensation is payable
14 under an unemployment compensation system established by an act of
15 congress;

16 (I) services performed in the employ of a church or convention or
17 association of churches, or an organization which is operated primarily
18 for religious purposes and which is operated, supervised, controlled, or
19 principally supported by a church or convention or association of
20 churches;

21 (J) service performed by a duly ordained, commissioned, or licensed
22 minister of a church in the exercise of such individual’s ministry or by a
23 member of a religious order in the exercise of duties required by such
24 order;

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

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

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

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

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

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

43 (O) service performed by an individual who is enrolled at a nonprofit

1 or public educational institution which normally maintains a regular fac-
2 ulty and curriculum and normally has a regularly organized body of stu-
3 dents in attendance at the place where its educational activities are carried
4 on as a student in a full-time program, taken for credit at such institution,
5 which combines academic instruction with work experience, if such serv-
6 ice is an integral part of such program, and such institution has so certified
7 to the employer, except that this subsection (i)(4)(O) shall not apply to
8 service performed in a program established for or on behalf of an em-
9 ployer or group of employers;

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

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

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

22 (ii) the services performed by the individual are performed pursuant
23 to a written contract between such individual and the person for whom
24 the services are performed and such contract provides that the individual
25 will not be treated as an employee with respect to such services for state
26 tax purposes;

27 (R) services performed for an employer by an extra in connection
28 with any phase of motion picture or television production or television
29 commercials for less than 14 days during any calendar year. As used in
30 this subsection, the term “extra” means an individual who pantomimes in
31 the background, adds atmosphere to the set and performs such actions
32 without speaking and “employer” shall not include any employer which
33 is a governmental entity or any employer described in section 501(c)(3)
34 of the federal internal revenue code of 1986 which is exempt from income
35 *taxation* under section 501(a) of the code;

36 (S) services performed by an oil and gas contract pumper. As used in
37 this subsection (i)(4)(S), “oil and gas contract pumper” means a person
38 performing pumping and other services on one or more oil or gas leases,
39 or on both oil and gas leases, relating to the operation and maintenance
40 of such oil and gas leases, on a contractual basis for the operators of such
41 oil and gas leases and “services” shall not include services performed for
42 a governmental entity or any organization described in section 501(c)(3)
43 of the federal internal revenue code of 1986 which is exempt from income

1 taxation under section 501(a) of the code;

2 (T) service not in the course of the employer's trade or business per-
3 formed in any calendar quarter by an employee, unless the cash remu-
4 neration paid for such service is \$200 or more and such service is per-
5 formed by an individual who is regularly employed by such employer to
6 perform such service. For purposes of this paragraph, an individual shall
7 be deemed to be regularly employed by an employer during a calendar
8 quarter only if:

9 (i) On each of some 24 days during such quarter such individual per-
10 forms for such employer for some portion of the day service not in the
11 course of the employer's trade or business, or

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

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

19 (U) service which is performed by any person who is a member of a
20 limited liability company and which is performed as a member or manager
21 of that limited liability company; and

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

24 (i) Such person:

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

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

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

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

40 (iv) for purposes of this act, a sale or a sale resulting exclusively from
41 a solicitation made by telephone, mail, or other telecommunications
42 method, or other nonpersonal method does not satisfy the requirements
43 of this subsection; ~~and~~

1 (W) service performed as an election official or election worker, if
2 the amount of remuneration received by the individual during the cal-
3 endar year for services as an election official or election worker is less
4 than \$1,000-; and

5 (X) *service performed by agricultural workers who are aliens admit-*
6 *ted to the United States to perform labor pursuant to section 1101*
7 *(a)(15)(H)(i)(a) of the immigration and nationality act.*

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

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

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

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

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

29 (o) "Wages" means all compensation for services, including commis-
30 sions, bonuses, back pay and the cash value of all remuneration, including
31 benefits, paid in any medium other than cash. The reasonable cash value
32 of remuneration in any medium other than cash, shall be estimated and
33 determined in accordance with rules and regulations prescribed by the
34 secretary. Compensation payable to an individual which has not been
35 actually received by that individual within 21 days after the end of the
36 pay period in which the compensation was earned shall be considered to
37 have been paid on the 21st day after the end of that pay period. Effective
38 January 1, 1986, gratuities, including tips received from persons other
39 than the employing unit, shall be considered wages when reported in
40 writing to the employer by the employee. Employees must furnish a writ-
41 ten statement to the employer, reporting all tips received if they total \$20
42 or more for a calendar month whether the tips are received directly from
43 a person other than the employer or are paid over to the employee by

1 the employer. This includes amounts designated as tips by a customer
2 who uses a credit card to pay the bill. Notwithstanding the other provi-
3 sions of this subsection (o), wages paid in back pay awards or settlements
4 shall be allocated to the week or weeks and reported in the manner as
5 specified in the award or agreement, or, in the absence of such specificity
6 in the award or agreement, such wages shall be allocated to the week or
7 weeks in which such wages, in the judgment of the secretary, would have
8 been paid. The term “wages” shall not include:

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

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

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

1 (4) any payment made to, or on behalf of, an employee or such em-
2 ployee's beneficiary;

3 (A) From or to a trust described in section 401(a) of the federal in-
4 ternal revenue code of 1986 which is exempt from tax under section
5 501(a) of the federal internal revenue code of 1986 at the time of such
6 payment unless such payment is made to an employee of the trust as
7 remuneration for services rendered as such employee and not as a ben-
8 eficiary of the trust;

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

12 (C) under a simplified employee pension as defined in section
13 408(k)(1) of the federal internal revenue code of 1986, other than any
14 contribution described in section 408(k)(6) of the federal internal revenue
15 code of 1986;

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

20 (E) under or to an exempt governmental deferred compensation plan
21 as defined in section 3121(v)(3) of the federal internal revenue code of
22 1986;

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

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

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

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

39 (7) remuneration paid to or on behalf of an employee if and to the
40 extent that at the time of the payment of such remuneration it is reason-
41 able to believe that a corresponding deduction is allowable under section
42 217 of the federal internal revenue code of 1986 relating to moving
43 expenses;

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

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

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

10 (9) remuneration for agricultural labor paid in any medium other than
11 cash;

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

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

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

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

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

32 Nothing in any paragraph of subsection (o), other than paragraph (1),
33 shall exclude from the term "wages": (1) Any employer contribution un-
34 der a qualified cash or deferred arrangement, as defined in section 401(k)
35 of the federal internal revenue code of 1986, to the extent that such
36 contribution is not included in gross income by reason of section 402(a)(8)
37 of the federal internal revenue code of 1986; or (2) any amount treated
38 as an employer contribution under section 414(h)(2) of the federal inter-
39 nal revenue code of 1986.

40 Any amount deferred under a nonqualified deferred compensation
41 plan shall be taken into account for purposes of this section as of the later
42 of when the services are performed or when there is no substantial risk
43 of forfeiture of the rights to such amount. Any amount taken into account

1 as wages by reason of this paragraph, and the income attributable thereto,
2 shall not thereafter be treated as wages for purposes of this section. For
3 purposes of this paragraph, the term “nonqualified deferred compensa-
4 tion plan” means any plan or other arrangement for deferral of compen-
5 sation other than a plan described in subsection (o)(4).

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

8 (q) “Calendar quarter” means the period of three consecutive cal-
9 endar months ending March 31, June 30, September 30 or December
10 31, or the equivalent thereof as the secretary may by rules and regulations
11 prescribe.

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

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

16 (t) “American vessel” or “American aircraft” means any vessel or air-
17 craft documented or numbered or otherwise registered under the laws
18 of the United States; and any vessel or aircraft which is neither docu-
19 mented or numbered or otherwise registered under the laws of the
20 United States nor documented under the laws of any foreign country, if
21 its crew performs service solely for one or more citizens or residents of
22 the United States or corporations organized under the laws of the United
23 States or of any state.

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

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

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

31 (3) provides an educational program for which it awards a bachelor’s
32 or higher degree, or provides a program which is acceptable for full credit
33 toward such a degree, a program of postgraduate or postdoctoral studies,
34 or a program of training to prepare students for gainful employment in a
35 recognized occupation; and

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

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

43 (v) “Educational institution” means any institution of higher educa-

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

13 (w) (1) “Agricultural labor” means any remunerated service:

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

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

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

31 (D) (i) In the employ of the operator of a farm in handling, planting,
32 drying, packing, packaging, processing, freezing, grading, storing, or de-
33 livering to storage or to market or to a carrier for transportation to market,
34 in its unmanufactured state, any agricultural or horticultural commodity;
35 but only if such operator produced more than $\frac{1}{2}$ of the commodity with
36 respect to which such service is performed;

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

42 (iii) the provisions of paragraphs (i) and (ii) above of this subsection
43 (w)(1)(D) shall not be deemed to be applicable with respect to service

1 performed in connection with commercial canning or commercial freez-
2 ing or in connection with any agricultural or horticultural commodity after
3 its delivery to a terminal market for distribution for consumption.

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

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

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

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

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

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

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

41 (aa) "Domestic service" means any service for a person in the oper-
42 ation and maintenance of a private household, local college club or local
43 chapter of a college fraternity or sorority, as distinguished from service

1 as an employee in the pursuit of an employer's trade, occupation, pro-
2 fession, enterprise or vocation.

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

6 (cc) "Benefit cost payments" means payments made to the employ-
7 ment security fund by a governmental entity electing to become a rated
8 governmental employer.

9 (dd) "Successor employer" means any employer, as described in sub-
10 section (h) of this section, which acquires or in any manner succeeds to
11 (1) substantially all of the employing enterprises, organization, trade or
12 business of another employer or (2) substantially all the assets of another
13 employer.

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

18 (ff) "Lessor employing unit" means any independently established
19 business entity which engages in the business of providing leased em-
20 ployees to a client lessee.

21 (gg) "Client lessee" means any individual, organization, partnership,
22 corporation or other legal entity leasing employees from a lessor employ-
23 ing unit.

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

28 Sec. 2. K.S.A. 2002 Supp. 44-703 is hereby repealed.

29 Sec. 3. This act shall take effect and be in force from and after its
30 publication in the statute book.

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