

HOUSE BILL No. 2316

AN ACT relating to employment; concerning certain methods of payments; amending K.S.A. 44-314 and K.S.A. 2006 Supp. 44-712 and repealing the existing sections; also repealing K.S.A. 75-5540.

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

Section 1. K.S.A. 44-314 is hereby amended to read as follows: 44-314. (a) Every employer shall pay all wages due to the employees of the employer at least once during each calendar month, on regular paydays designated in advance by the employer, ~~in lawful money of the United States or with checks or drafts which are negotiable in the community wherein the place of employment is located or, with the written consent of the employee, by electronic deposit to an employee's account at a financial institution.~~

(b) *The employer may designate the method by which employees receive wages, provided all wages shall be paid by one or more of the following methods:*

(1) *In lawful money of the United States;*

(2) *by check or draft which is negotiable in the community wherein the place of employment is located;*

(3) *by electronic fund transfer or deposit to an automated clearing-house member financial institution account designated by the employee;*
or

(4) *by payroll card.*

(c) *Any employer that elects to pay wages only by a method authorized in subsection (b)(3) shall offer an alternative payment method as a default option for employees that fail to designate a financial institution account for electronic fund transfer or deposit.*

(d) *Any employer that elects to pay wages using a payroll card as authorized in subsection (b)(4) shall allow employees at least one means of fund access withdrawal per pay period at no cost to the employee for an amount up to and including the total amount of the employee's net wages, as stated on the employee's earnings statement.*

(e) *Not less than 30 days prior to implementing a payroll program using only the methods authorized in subsection (b)(3) or (b)(4), an employer shall either:*

(1) *Conduct one or more employee forums to educate employees regarding the use of a direct deposit or payroll card program offered by the employer; or*

(2) *distribute educational information to employees about direct deposits or payroll cards as they may be used under the payroll card program offered by the employer.*

(f) (1) *Employers shall retain no interest in wages paid by electronic funds transferred to an employee's payroll card account, other than the right to correct inadvertent overpayments in accordance with the rules governing direct deposit.*

(2) *An employer may not charge an employee initiation, loading or other participation fees to receive wages payable in an electronic fund transfer to a payroll card account, with the exception of the cost required to replace a lost, stolen or damaged payroll card.*

(g) *As used in this section:*

(1) *"Payroll card" means a card, issued to an employee by an employer, a bank or other entity on behalf of an employer, onto which an employee's net wages are loaded on regular paydays from a payroll card account and made accessible to an employee. A payroll card is a machine readable instrument for purposes of K.S.A. 9-1111d, and amendments thereto.*

(2) *"Payroll card issuer" means an employer, a bank or other entity that issues a payroll card to an employee under an employer payroll card program.*

(3) *"Payroll card account" means an account into which an employer deposits each participating employee's net wages on regular paydays through an electronic fund transfer.*

~~(b)~~ (h) *The end of the pay period for which payment is made on a regular payday shall be not more than 15 days before such regular payday unless a variance in such requirement is authorized by state or federal law.*

Sec. 2. K.S.A. 2006 Supp. 44-712 is hereby amended to read as follows: 44-712. (a) *Establishment and control.* There is hereby established as a special fund in the state treasury, separate and apart from all public

moneys or funds of this state, an employment security fund, which shall be administered by the secretary as provided in this act. This fund shall consist of: (1) All contributions collected under this act; (2) interest earned upon any moneys in the fund; (3) all moneys credited to this state's account in the federal unemployment trust fund, pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended; (4) any property or securities acquired through the use of moneys belonging to the fund, and all other moneys received for the fund from any other source; (5) all earnings of such property or securities. All moneys in this fund shall be mingled and undivided.

(b) *Accounts and deposits.* The state treasurer shall be ex officio custodian of the fund. Payments from the fund, and for the purposes of this act deposits with the secretary of the treasury of the United States shall not be deemed to be payments from the fund, shall be made ~~upon warrants drawn upon the state treasurer by the director of accounts and reports upon vouchers~~ by any commercially-accepted means approved by the secretary. There shall be maintained within the fund three separate accounts: (1) A clearing account; (2) an unemployment trust fund account, and (3) a benefit account. All money payable to the fund upon receipt thereof by the secretary, shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the clearing account of the fund. Refunds payable pursuant to K.S.A. 44-717, and amendments thereto, may be paid from the clearing account of the fund by ~~warrants drawn by the director of accounts and reports upon the state treasurer upon vouchers~~ any commercially-accepted means approved by the secretary. After clearance thereof, all other moneys in the clearing account of the fund shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the federal unemployment trust fund established and maintained pursuant to section 904 of the social security act, 42 U.S.C.A. § 1104, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account of the fund shall consist of all moneys requisitioned from this state's account in the federal unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts of the fund may be deposited by the state treasurer in any bank or public depository as is now provided by law for the deposit of general funds of the state, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts of the fund shall not be commingled with other state funds and shall be maintained in separate bank accounts.

(c) *Withdrawals.* Moneys shall be requisitioned from this state's account in the federal unemployment trust fund solely for the payment of benefits and in accordance with the provisions of this act and the rules and regulations adopted by the secretary, except that moneys credited to this state's account pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, shall be used exclusively as provided in subsection (d) of this section. The secretary shall from time to time requisition from the federal unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as deemed necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the state treasurer shall deposit such moneys in the benefit account of the fund and ~~warrants for the payment~~ payments of benefits shall be charged solely against such benefit account of the fund. Expenditures of such moneys in the benefit account and refunds from the clearing account of the fund shall not be subject to any provisions of law requiring specific appropriations. Any balance of moneys requisitioned from the federal unemployment trust fund which remains unclaimed or unpaid in the benefit account of the fund after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits during succeeding periods, or, in the discretion of the secretary shall be directed to be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the federal unemployment trust fund, as provided in subsection (b) of this section. All balances

accrued from unpaid or canceled warrants issued pursuant to this section, notwithstanding the provisions of K.S.A. 10-812, and amendments thereto, shall remain in the benefit account of the fund, and be disbursed in accordance with the provisions of this act relating to such account.

(d) *Administrative use.* (1) Money credited to the account of this state in the federal unemployment trust fund by the secretary of the treasury of the United States of America, pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may be requisitioned and used for the payment of expenses incurred in the administration of this act pursuant to a specific appropriation by the legislature, if expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (A) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (B) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (C) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, (ii) the aggregate of the amounts obligated pursuant to this subsection and amounts paid out for benefits and charged against the amounts credited to the account of this state. For the purposes of this subsection, amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged.

(2) Money credited to the account of this state pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may not be withdrawn or obligated except for the payment of benefits and for the payment of expenses for the administration of this act and of public employment offices pursuant to this subsection (d).

(3) Money appropriated as provided by this subsection (d) for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition shall be deposited in the state treasury to the credit of the employment security administration fund from which such payments shall be made. Money so deposited and credited shall, until expended, remain a part of the federal unemployment trust fund, and, if it will not be expended, shall be returned promptly to the account of this state in the federal unemployment trust fund.

(4) Notwithstanding paragraph (1), money credited with respect to federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the UC program, and such money shall not otherwise be subject to the requirements of paragraph (1) when appropriated by the legislature.

(e) *Management of funds upon discontinuance of federal unemployment trust fund.* The provisions of subsections (a), (b), (c) and (d) of this section, to the extent that they relate to the federal unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties or securities therein, belonging to the employment security fund of this state, shall be transferred to the state treasurer, to be administered by the secretary as a trust fund for the purpose of paying benefits under this act, and the director of investments upon the direction of the secretary shall have authority to hold, invest, transfer, sell, deposit, and release such moneys, and any properties, securities, or earnings acquired as an incident to such administration.

Sec. 3. K.S.A. 44-314 and 75-5540 and K.S.A. 2006 Supp. 44-712 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

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

HOUSE concurred in
SENATE amendments _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.