

SENATE BILL No. 461

By Committee on Commerce

1-23

10 AN ACT concerning employment security law; amending K.S.A. 2007
11 Supp. 44-710 and 44-717 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2007 Supp. 44-710 is hereby amended to read as
15 follows: 44-710. (a) *Payment.* Contributions shall accrue and become pay-
16 able by each contributing employer for each calendar year in which the
17 contributing employer is subject to the employment security law with
18 respect to wages paid for employment. Such contributions shall become
19 due and be paid by each contributing employer to the secretary for the
20 employment security fund in accordance with such rules and regulations
21 as the secretary may adopt and shall not be deducted, in whole or in part,
22 from the wages of individuals in such employer's employ. In the payment
23 of any contributions, a fractional part of \$.01 shall be disregarded unless
24 it amounts to \$.005 or more, in which case it shall be increased to \$.01.
25 Should contributions for any calendar quarter be less than ~~the~~ \$5, no
26 payment shall be required.

27 (b) *Rates and base of contributions.* (1) Except as provided in para-
28 graph (2) of this subsection, each contributing employer shall pay contri-
29 butions on wages paid by the contributing employer during each calendar
30 year with respect to employment as provided in K.S.A. 44-710a and
31 amendments thereto.

32 (2) (A) If the congress of the United States either amends or repeals
33 the Wagner-Peyser act, the federal unemployment tax act, the federal
34 social security act, or subtitle C of chapter 23 of the federal internal
35 revenue code of 1986, or any act or acts supplemental to or in lieu thereof,
36 or any part or parts of any such law, or if any such law, or any part or
37 parts thereof, are held invalid with the effect that appropriations of funds
38 by congress and grants thereof to the state of Kansas for the payment of
39 costs of administration of the employment security law are no longer
40 available for such purposes, or (B) if employers in Kansas subject to the
41 payment of tax under the federal unemployment tax act are granted full
42 credit against such tax for contributions or taxes paid to the secretary of
43 labor, then, and in either such case, beginning with the year in which the

1 unavailability of federal appropriations and grants for such purpose occurs
2 or in which such change in liability for payment of such federal tax occurs
3 and for each year thereafter, the rate of contributions of each contributing
4 employer shall be equal to the total of .5% and the rate of contributions
5 as determined for such contributing employer under K.S.A. 44-710a and
6 amendments thereto. The amount of contributions which each contrib-
7 uting employer becomes liable to pay under this paragraph (2) over the
8 amount of contributions which such contributing employer would be oth-
9 erwise liable to pay shall be credited to the employment security admin-
10 istration fund to be disbursed and paid out under the same conditions
11 and for the same purposes as other moneys are authorized to be paid
12 from the employment security administration fund, except that, if the
13 secretary determines that as of the first day of January of any year there
14 is an excess in the employment security administration fund over the
15 amount required to be disbursed during such year, an amount equal to
16 such excess as determined by the secretary shall be transferred to the
17 employment security fund.

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

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

40 (B) Where base period wage credits of a contributing employer or
41 rated governmental employer represent part-time employment and the
42 claimant continues in that part-time employment with that employer dur-
43 ing the period for which benefits are paid, then that employer's account

1 shall not be charged with any part of the benefits paid if the employer
2 provides the secretary with information as required by rules and regula-
3 tions. For the purposes of this subsection (c)(2)(B), “part-time employ-
4 ment” means any employment when an individual works concurrently for
5 two or more employers and also works less than full-time for at least one
6 of those employers because the individual’s services are not required for
7 the customary, scheduled full-time hours prevailing at the work place or
8 the individual does not customarily work the regularly scheduled full-time
9 hours due to personal choice or circumstances.

10 (C) No contributing employer or rated governmental employer’s ac-
11 count shall be charged with any extended benefits paid in accordance
12 with the employment security law, except for weeks of unemployment
13 beginning after December 31, 1978, all contributing governmental em-
14 ployers and governmental rated employers shall be charged an amount
15 equal to all extended benefits paid.

16 (D) No contributing employer, rated governmental employer or re-
17 imbursement employer’s account shall be charged for any additional benefits
18 paid during the period July 1, 2003 through June 30, 2004.

19 (E) No contributing employer or rated governmental employer’s ac-
20 count will be charged for benefits paid a claimant while pursuing an ap-
21 proved training course as defined in subsection (s) of K.S.A. 44-703 and
22 amendments thereto.

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

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

37 (i) Are agricultural labor as defined in subsection (w) of K.S.A. 44-
38 703, and amendments thereto, or domestic service as defined in subsec-
39 tion (aa) of K.S.A. 44-703, and amendments thereto, or

40 (ii) are services performed by an employee of this state or a political
41 subdivision thereof, as provided in subsection (i)(3)(E) of K.S.A. 44-703,
42 and amendments thereto, or

43 (iii) are services performed by an employee of a nonprofit educational

1 institution which is not an institution of higher education.

2 (H) No contributing employer or rated governmental employer's ac-
3 count shall be charged with respect to their pro rata share of benefit
4 charges if such charges are of \$100 or less.

5 (3) The examiner shall notify any base period employer whose ac-
6 count will be charged with benefits paid following the filing of a valid
7 new claim and a determination by the examiner based on all information
8 relating to the claim contained in the records of the division of employ-
9 ment security. Such notice shall become final and benefits charged to the
10 base period employer's account in accordance with the claim unless
11 within 10 calendar days from the date the notice was sent, the base period
12 employer requests in writing that the examiner reconsider the determi-
13 nation and furnishes any required information in accordance with the
14 secretary's rules and regulations. In a similar manner, a notice of an ad-
15 ditional claim followed by the first payment of benefits with respect to
16 the benefit year, filed by an individual during a benefit year after a period
17 in such year during which such individual was employed, shall be given
18 to any base period employer of the individual who has requested such a
19 notice within 10 calendar days from the date the notice of the valid new
20 claim was sent to such base period employer. For purposes of this sub-
21 section (c)(3), if the required information is not submitted or postmarked
22 within a response time limit of 10 days after the base period employer
23 notice was sent, the base period employer shall be deemed to have waived
24 its standing as a party to the proceedings arising from the claim and shall
25 be barred from protesting any subsequent decisions about the claim by
26 the secretary, a referee, the board of review or any court, except that the
27 base period employer's response time limit may be waived or extended
28 by the examiner or upon appeal, if timely response was impossible due
29 to excusable neglect. The examiner shall notify the employer of the re-
30 considered determination which shall be subject to appeal, or further
31 reconsideration, in accordance with the provisions of K.S.A. 44-709 and
32 amendments thereto.

33 (4) *Time, computation and extension.* In computing the period of
34 time for a base period employer response or appeals under this section
35 from the examiner's or the special examiner's determination or from the
36 referee's decision, the day of the act, event or default from which the
37 designated period of time begins to run shall not be included. The last
38 day of the period shall be included unless it is a Saturday, Sunday or legal
39 holiday, in which event the period runs until the end of the next day
40 which is not a Saturday, Sunday or legal holiday.

41 (d) *Pooled fund.* All contributions and payments in lieu of contribu-
42 tions and benefit cost payments to the employment security fund shall
43 be pooled and available to pay benefits to any individual entitled thereto

1 under the employment security law, regardless of the source of such con-
2 tributions or payments in lieu of contributions or benefit cost payments.

3 (e) *Election to become reimbursing employer; payment in lieu of con-*
4 *tributions.* (1) Any governmental entity, Indian tribes or tribal units, (sub-
5 divisions, subsidiaries or business enterprises wholly owned by such In-
6 dian tribes), for which services are performed as described in subsection
7 (i)(3)(E) of K.S.A. 44-703, and amendments thereto, or any nonprofit
8 organization or group of nonprofit organizations described in section
9 501(c)(3) of the federal internal revenue code of 1986 which is exempt
10 from income tax under section 501(a) of such code, that becomes subject
11 to the employment security law may elect to become a reimbursing em-
12 ployer under this subsection (e)(1) and agree to pay the secretary for the
13 employment security fund an amount equal to the amount of regular
14 benefits and $\frac{1}{2}$ of the extended benefits paid that are attributable to
15 service in the employ of such reimbursing employer, except that each
16 reimbursing governmental employer, Indian tribes or tribal units shall
17 pay an amount equal to the amount of regular benefits and extended
18 benefits paid for weeks of unemployment beginning after December 31,
19 1978, for governmental employers and December 21, 2000, for Indian
20 tribes or tribal units to individuals for weeks of unemployment which
21 begin during the effective period of such election.

22 (A) Any employer identified in this subsection (e)(1) may elect to
23 become a reimbursing employer for a period encompassing not less than
24 four complete calendar years if such employer files with the secretary a
25 written notice of such election within the 30-day period immediately fol-
26 lowing January 1 of any calendar year or within the 30-day period im-
27 mediately following the date on which a determination of subjectivity to
28 the employment security law is issued, whichever occurs later.

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

35 (C) Any employer identified in this subsection (e)(1) which has re-
36 mained a contributing employer and has been paying contributions under
37 the employment security law for a period subsequent to January 1, 1972,
38 may change to a reimbursing employer by filing with the secretary not
39 later than 30 days prior to the beginning of any calendar year a written
40 notice of election to become a reimbursing employer. Such election shall
41 not be terminable by the employer for four complete calendar years.

42 (D) The secretary may for good cause extend the period within which
43 a notice of election, or a notice of termination, must be filed and may

1 permit an election to be retroactive but not any earlier than with respect
2 to benefits paid after January 1 of the year such election is received.

3 (E) The secretary, in accordance with such rules and regulations as
4 the secretary may adopt, shall notify each employer identified in subsec-
5 tion (e)(1) of any determination which the secretary may make of its status
6 as an employer and of the effective date of any election which it makes
7 to become a reimbursing employer and of any termination of such elec-
8 tion. Such determinations shall be subject to reconsideration, appeal and
9 review in accordance with the provisions of K.S.A. 44-710b and amend-
10 ments thereto.

11 (2) *Reimbursement reports and payments.* Payments in lieu of con-
12 tributions shall be made in accordance with the provisions of paragraph
13 (A) of this subsection (e)(2) by all reimbursing employers except the state
14 of Kansas. Each reimbursing employer shall report total wages paid dur-
15 ing each calendar quarter by filing quarterly wage reports with the sec-
16 retary which shall be filed by the last day of the month following the close
17 of each calendar quarter. Wage reports are deemed filed as of the date
18 they are placed in the United States mail.

19 (A) At the end of each calendar quarter, or at the end of any other
20 period as determined by the secretary, the secretary shall bill each re-
21 reimbursing employer, except the state of Kansas, (i) an amount to be paid
22 which is equal to the full amount of regular benefits plus $\frac{1}{2}$ of the amount
23 of extended benefits paid during such quarter or other prescribed period
24 that is attributable to service in the employ of such reimbursing employer;
25 and (ii) for weeks of unemployment beginning after December 31, 1978,
26 each reimbursing governmental employer and December 21, 2000, for
27 Indian tribes or tribal units shall be certified an amount to be paid which
28 is equal to the full amount of regular benefits and extended benefits paid
29 during such quarter or other prescribed period that is attributable to
30 service in the employ of such reimbursing governmental employer.

31 (B) Payment of any bill rendered under paragraph (A) of this sub-
32 section (e)(2) shall be made not later than 30 days after such bill was
33 mailed to the last known address of the reimbursing employer, or oth-
34 erwise was delivered to such reimbursing employer, unless there has been
35 an application for review and redetermination in accordance with para-
36 graph (D) of this subsection (e)(2).

37 (C) Payments made by any reimbursing employer under the provi-
38 sions of this subsection (e)(2) shall not be deducted or deductible, in
39 whole or in part, from the remuneration of individuals in the employ of
40 such employer.

41 (D) The amount due specified in any bill from the secretary shall be
42 conclusive on the reimbursing employer, unless, not later than 15 days
43 after the bill was mailed to the last known address of such employer, or

1 was otherwise delivered to such employer, the reimbursing employer files
2 an application for redetermination in accordance with K.S.A. 44-710b and
3 amendments thereto.

4 (E) Past due payments of amounts certified by the secretary under
5 this section shall be subject to the same interest, penalties and actions
6 required by K.S.A. 44-717 and amendments thereto. (1) If any nonprofit
7 organization or group of nonprofit organizations described in section
8 501(c)(3) of the federal internal revenue code of 1986 or governmental
9 reimbursing employer is delinquent in making payments of amounts cer-
10 tified by the secretary under this section, the secretary may terminate
11 such employer's election to make payments in lieu of contributions as of
12 the beginning of the next calendar year and such termination shall be
13 effective for such next calendar year and the calendar year thereafter so
14 that the termination is effective for two complete calendar years. (2) Fail-
15 ure of the Indian tribe or tribal unit to make required payments, including
16 assessment of interest and penalty within 90 days of receipt of the bill
17 will cause the Indian tribe to lose the option to make payments in lieu of
18 contributions as described pursuant to paragraph (e)(1) for the following
19 tax year unless payment in full is received before contribution rates for
20 the next tax year are calculated. (3) Any Indian tribe that loses the option
21 to make payments in lieu of contributions due to late payment or non-
22 payment, as described in paragraph (2), shall have such option reinstated,
23 if after a period of one year, all contributions have been made on time
24 and no contributions, payments in lieu of contributions for benefits paid,
25 penalties or interest remain outstanding.

26 (F) Failure of the Indian tribe or any tribal unit thereof to make
27 required payments, including assessments of interest and penalties, after
28 all collection activities deemed necessary by the secretary have been ex-
29 hausted, will cause services performed by such tribe to not be treated as
30 employment for purposes of subsection (i)(3)(E) of K.S.A. 44-703 and
31 amendments thereto. If an Indian tribe fails to make payments required
32 under this section, including assessments of interest and penalties, within
33 90 days of a final notice of delinquency, the secretary shall immediately
34 notify the United States internal revenue service and the United States
35 department of labor. The secretary may determine that any Indian tribe
36 that loses coverage pursuant to this paragraph may have services per-
37 formed on behalf of such tribe again deemed "employment" if all con-
38 tributions, payments in lieu of contributions, penalties and interest have
39 been paid.

40 (G) In the discretion of the secretary, any employer who elects to
41 become liable for payments in lieu of contributions and any nonprofit
42 organization or group of nonprofit organizations described in section 501
43 (c)(3) of the federal internal revenue code of 1986 or governmental re-

1 reimbursing employer or Indian tribe or tribal unit who is delinquent in
2 filing reports or in making payments of amounts certified by the secretary
3 under this section shall be required within 60 days after the effective date
4 of such election, in the case of an eligible employer so electing, or after
5 the date of notification to the delinquent employer under this subsection
6 (e)(2)(G), in the case of a delinquent employer, to execute and file with
7 the secretary a surety bond, except that the employer may elect, in lieu
8 of a surety bond, to deposit with the secretary money or securities as
9 approved by the secretary or to purchase and deliver to an escrow agent
10 a certificate of deposit to guarantee payment. The amount of the bond,
11 deposit or escrow agreement required by this subsection (e)(2)(G) shall
12 not exceed 5.4% of the organization's taxable wages paid for employment
13 by the eligible employer during the four calendar quarters immediately
14 preceding the effective date of the election or the date of notification, in
15 the case of a delinquent employer. If the employer did not pay wages in
16 each of such four calendar quarters, the amount of the bond or deposit
17 shall be as determined by the secretary. Upon the failure of an employer
18 to comply with this subsection (e)(2)(G) within the time limits imposed
19 or to maintain the required bond or deposit, the secretary may terminate
20 the election of such eligible employer or delinquent employer, as the case
21 may be, to make payments in lieu of contributions, and such termination
22 shall be effective for the current and next calendar year.

23 (H) The state of Kansas shall make reimbursement payments quar-
24 terly at a fiscal year rate which shall be based upon: (i) The available
25 balance in the state's reimbursing account as of December 31 of each
26 calendar year; (ii) the historical unemployment experience of all covered
27 state agencies during prior years; (iii) the estimate of total covered wages
28 to be paid during the ensuing calendar year; (iv) the applicable fiscal year
29 rate of the claims processing and auditing fee under K.S.A. 75-3798 and
30 amendments thereto; and (v) actuarial and other information furnished
31 to the secretary by the secretary of administration. In accordance with
32 K.S.A. 75-3798, and amendments thereto, the claims processing and au-
33 diting fees charged to state agencies shall be deducted from the amounts
34 collected for the reimbursement payments under this paragraph (H) prior
35 to making the quarterly reimbursement payments for the state of Kansas.
36 The fiscal year rate shall be expressed as a percentage of covered total
37 wages and shall be the same for all covered state agencies. The fiscal year
38 rate for each fiscal year will be certified in writing by the secretary to the
39 secretary of administration on July 15 of each year and such certified rate
40 shall become effective on the July 1 immediately following the date of
41 certification. A detailed listing of benefit charges applicable to the state's
42 reimbursing account shall be furnished quarterly by the secretary to the
43 secretary of administration and the total amount of charges deducted

1 from previous reimbursing payments made by the state. On January 1 of
2 each year, if it is determined that benefit charges exceed the amount of
3 prior reimbursing payments, an upward adjustment shall be made there-
4 for in the fiscal year rate which will be certified on the ensuing July 15.
5 If total payments exceed benefit charges, all or part of the excess may be
6 refunded, at the discretion of the secretary, from the fund or retained in
7 the fund as part of the payments which may be required for the next fiscal
8 year.

9 (3) *Allocation of benefit costs.* The reimbursing account of each reim-
10 burying employer shall be charged the full amount of regular benefits
11 and $\frac{1}{2}$ of the amount of extended benefits paid except that each reim-
12 burying governmental employer's account shall be charged the full
13 amount of regular benefits and extended benefits paid for weeks of un-
14 employment beginning after December 31, 1978, to individuals whose
15 entire base period wage credits are from such employer. When benefits
16 received by an individual are based upon base period wage credits from
17 more than one employer then the reimbursing employer's or reimbursing
18 governmental employer's account shall be charged in the same ratio as
19 base period wage credits from such employer bear to the individual's total
20 base period wage credits. Notwithstanding any other provision of the
21 employment security law, no reimbursing employer's or reimbursing gov-
22 ernmental employer's account shall be charged for payments of extended
23 benefits which are wholly reimbursed to the state by the federal
24 government.

25 (A) *Proportionate allocation (when fewer than all reimbursing base*
26 *period employers are liable).* If benefits paid to an individual are based
27 on wages paid by one or more reimbursing employers and on wages paid
28 by one or more contributing employers or rated governmental employers,
29 the amount of benefits payable by each reimbursing employer shall be
30 an amount which bears the same ratio to the total benefits paid to the
31 individual as the total base period wages paid to the individual by such
32 employer bears to the total base period wages paid to the individual by
33 all of such individual's base period employers.

34 (B) *Proportionate allocation (when all base period employers are re-*
35 *imbursing employers).* If benefits paid to an individual are based on wages
36 paid by two or more reimbursing employers, the amount of benefits pay-
37 able by each such employer shall be an amount which bears the same
38 ratio to the total benefits paid to the individual as the total base period
39 wages paid to the individual by such employer bear to the total base
40 period wages paid to the individual by all of such individual's base period
41 employers.

42 (4) *Group accounts.* Two or more reimbursing employers may file a
43 joint application to the secretary for the establishment of a group account

1 for the purpose of sharing the cost of benefits paid that are attributable
2 to service in the employment of such reimbursing employers. Each such
3 application shall identify and authorize a group representative to act as
4 the group's agent for the purposes of this subsection (e)(4). Upon ap-
5 proval of the application, the secretary shall establish a group account for
6 such employers effective as of the beginning of the calendar quarter in
7 which the secretary receives the application and shall notify the group's
8 representative of the effective date of the account. Such account shall
9 remain in effect for not less than four years and thereafter such account
10 shall remain in effect until terminated at the discretion of the secretary
11 or upon application by the group. Upon establishment of the account,
12 each member of the group shall be liable for payments in lieu of contri-
13 butions with respect to each calendar quarter in the amount that bears
14 the same ratio to the total benefits paid in such quarter that are attrib-
15 utable to service performed in the employ of all members of the group
16 as the total wages paid for service in employment by such member in
17 such quarter bear to the total wages paid during such quarter for service
18 performed in the employ of all members of the group. The secretary shall
19 adopt such rules and regulations as the secretary deems necessary with
20 respect to applications for establishment, maintenance and termination
21 of group accounts that are authorized by this subsection (e)(4), for ad-
22 dition of new members to, and withdrawal of active members from such
23 accounts, and for the determination of the amounts that are payable un-
24 der this subsection (e)(4) by members of the group and the time and
25 manner of such payments.

26 Sec. 2. K.S.A. 2007 Supp. 44-717 is hereby amended to read as fol-
27 lows: 44-717. (a) (1) *Penalties on past-due reports, interest on past-due*
28 *contributions, payments in lieu of contributions and benefit cost pay-*
29 *ments.* Any employer or any officer or agent of an employer, who fails to
30 file any wage report or contribution return by the last day of the month
31 following the close of each calendar quarter to which they are related
32 shall pay a penalty as provided by this subsection (a) for each month or
33 fraction of a month until the report or return is received by the secretary
34 of labor. The penalty for each month or fraction of a month shall be an
35 amount equal to .05% of the total wages paid by the employer during the
36 quarter, except that no penalty shall be less than \$25 nor more than \$200
37 for each such report or return not timely filed. Contributions and benefit
38 cost payments unpaid by the last day of the month following the last
39 calendar quarter to which they are related and payments in lieu of con-
40 tributions unpaid 30 days after the mailing of the statement of benefit
41 charges, shall bear interest at the rate of 1% per month or fraction of a
42 month until payment is received by the secretary of labor except that an
43 employing unit, which is not theretofore subject to this law and which

1 becomes an employer and does not refuse to make the reports, returns
2 and contributions, payments in lieu of contributions and benefit cost pay-
3 ments required under this law, shall not be liable for such penalty or
4 interest if the wage reports and contribution returns required are filed
5 and the contributions, payments in lieu of contributions or benefit cost
6 payments required are paid within 10 days following notification by the
7 secretary of labor that a determination has been made fixing its status as
8 an employer subject to this law. Upon written request and good cause
9 shown, the secretary of labor may abate any penalty or interest or portion
10 thereof provided for by this subsection (a). Interest amounting to less
11 than ~~\$1~~ \$5 shall be waived by the secretary of labor and shall not be
12 collected. Penalties and interest collected pursuant to this subsection shall
13 be paid into the special employment security fund. For all purposes under
14 this section, amounts assessed as surcharges under subsection (j) or under
15 K.S.A. 44-710a, and amendments thereto, shall be considered to be con-
16 tributions and shall be subject to penalties and interest imposed under
17 this section and to collection in the manner provided by this section. For
18 purposes of this subsection, a wage report, a contribution return, a con-
19 tribution, a payment in lieu of contribution or a benefit cost payment is
20 deemed to be filed or paid as of the date it is placed in the United States
21 mail.

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

- 25 (i) will cause the Indian tribe to be liable for taxes under FUTA;
- 26 (ii) will cause the Indian tribe to lose the option to make payments
27 in lieu of contributions;
- 28 (iii) could cause the Indian tribe to be excepted from the definition
29 of “employer,” as provided in paragraph (h)(3) of K.S.A. 44-703, and
30 amendments thereto, and services in the employ of the Indian tribe, as
31 provided in paragraph (i)(3)(E) of K.S.A. 44-703, and amendments
32 thereto, to be excepted from “employment.”

33 (b) *Collection.* (1) If, after due notice, any employer defaults in pay-
34 ment of any penalty, contributions, payments in lieu of contributions,
35 benefit cost payments, or interest thereon the amount due may be col-
36 lected by civil action in the name of the secretary of labor and the em-
37 ployer adjudged in default shall pay the cost of such action. Civil actions
38 brought under this section to collect contributions, payments in lieu of
39 contributions, benefit cost payments, penalties, or interest thereon from
40 an employer shall be heard by the district court at the earliest possible
41 date and shall be entitled to preference upon the calendar of the court
42 over all other civil actions except petitions for judicial review under this
43 act and cases arising under the workmen’s compensation act. All liability

1 determinations of contributions due, payments in lieu of contributions or
2 benefit cost payments due shall be made within a period of five years
3 from the date such contributions, payments in lieu of contributions or
4 benefit cost payments were due except such determinations may be made
5 for any time when an employer has filed fraudulent reports with intent
6 to evade liability.

7 (2) Any employing unit which is not a resident of this state and which
8 exercises the privilege of having one or more individuals perform service
9 for it within this state and any resident employing unit which exercises
10 that privilege and thereafter removes from this state, shall be deemed
11 thereby to appoint the secretary of state as its agent and attorney for the
12 acceptance of process in any civil action under this subsection. In insti-
13 tuting such an action against any such employing unit the secretary of
14 labor shall cause such process or notice to be filed with the secretary of
15 state and such service shall be sufficient service upon such employing
16 unit and shall be of the same force and validity as if served upon it per-
17 sonally within this state. The secretary of labor shall send notice imme-
18 diately of the service of such process or notice, together with a copy
19 thereof, by registered or certified mail, return receipt requested, to such
20 employing unit at its last-known address and such return receipt, the
21 affidavit of compliance of the secretary of labor with the provisions of this
22 section, and a copy of the notice of service, shall be appended to the
23 original of the process filed in the court in which such civil action is
24 pending.

25 (3) The district courts of this state shall entertain, in the manner
26 provided in subsections (b)(1) and (b)(2), actions to collect contributions,
27 payments in lieu of contributions, benefit cost payments and other
28 amounts owed including interest thereon for which liability has accrued
29 under the employment security law of any other state or of the federal
30 government.

31 (c) *Priorities under legal dissolutions or distributions.* In the event of
32 any distribution of employer's assets pursuant to an order of any court
33 under the laws of this state, including but not limited to any probate
34 proceeding, interpleader, receivership, assignment for benefit of credi-
35 tors, adjudicated insolvency, composition or similar proceedings, contri-
36 butions or payments in lieu of contributions then or thereafter due shall
37 be paid in full from the moneys which shall first come into the estate,
38 prior to all other claims, except claims for wages of not more than \$250
39 to each claimant, earned within six months of the commencement of the
40 proceedings. In the event of an employer's adjudication in bankruptcy,
41 judicially confirmed extension proposal, or composition, under the federal
42 bankruptcy act of 1898, as amended, contributions then or thereafter due
43 shall be entitled to such priority as is provided in that act for taxes due

1 any state of the United States.

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

20 (e) (1) *Lien.* If any employer or person who is liable to pay contri-
21 butions, payments in lieu of contributions or benefit cost payments ne-
22 glects or refuses to pay the same after demand, the amount, including
23 interest and penalty, shall be a lien in favor of the state of Kansas, sec-
24 retary of labor, upon all property and rights to property, whether real or
25 personal, belonging to such employer or person. Such lien shall not be
26 valid as against any mortgagee, pledgee, purchaser or judgment creditor
27 until notice thereof has been filed by the secretary of labor in the office
28 of register of deeds in any county in the state of Kansas, in which such
29 property is located, and when so filed shall be notice to all persons claim-
30 ing an interest in the property of the employer or person against whom
31 filed. The register of deeds shall enter such notices in the financing state-
32 ment record and shall also record the same in full in miscellaneous record
33 and index the same against the name of the delinquent employer. The
34 register of deeds shall accept, file, and record such notice without pre-
35 payment of any fee, but lawful fees shall be added to the amount of such
36 lien and collected when satisfaction is presented for entry. Such lien shall
37 be satisfied of record upon the presentation of a certificate of discharge
38 by the state of Kansas, secretary of labor. Nothing contained in this sub-
39 section (e) shall be construed as an invalidation of any lien or notice filed
40 in the name of the unemployment compensation division or the employ-
41 ment security division and such liens shall be and remain in full force and
42 effect until satisfied as provided by this subsection (e).

43 (2) *Authority of secretary or authorized representative.* If any em-

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

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

34 (4) *Successive seizures.* Whenever any property or right to property
35 upon which levy has been made under this subsection (e) is not sufficient
36 to satisfy the claim of the secretary for which levy is made, the secretary
37 or the secretary's authorized representative may proceed thereafter and
38 as often as may be necessary, to levy in like manner upon any other
39 property or rights to property which belongs to the employer or person
40 against whom such claim exists or upon which a lien is created by this
41 subsection (e) until the amount due from the employer or person, to-
42 gether with all expenses, is fully paid.

43 (f) *Warrant.* In addition or as an alternative to any other remedy

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

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

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

35 (3) *Refusal to accept service.* In all cases when the person to be
36 served, or an agent authorized by such person to accept service of peti-
37 tions and summonses, shall refuse to receive copies of the final notice,
38 the offer of the duly authorized process server to deliver copies thereof
39 and such refusal shall be sufficient service of such notice.

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

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

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

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

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

30 (C) The clerk shall enter, on the day the warrant is filed, the case on
31 the appearance docket, together with the amount and the time of filing
32 the warrant. From the time of filing such warrant, the amount of the
33 contributions, payments in lieu of contributions, benefit cost payments,
34 interest, and penalty, certified therein, shall have the force and effect of
35 a judgment of the district court until the same is satisfied by the secretary
36 of labor or an authorized representative or attorney for the secretary.
37 Execution shall be issuable at the request of the secretary of labor, an
38 authorized representative or attorney for the secretary, as is provided in
39 the case of other judgments.

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

42 (E) Warrants shall be satisfied of record by payment to the clerk of
43 the district court of the contributions, payments in lieu of contributions,

1 benefit cost payments, penalty, interest to date, and court costs. Warrants
2 may also be satisfied of record by payment to the clerk of the district
3 court of all court costs accrued in the case and by filing a certificate by
4 the secretary of labor, certifying that the contributions, payments in lieu
5 of contributions, benefit cost payments, interest and penalty have been
6 paid.

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

12 (h) *Refunds.* If any individual, governmental entity or organization
13 makes application for refund or adjustment of any amount paid as con-
14 tributions, benefit cost payments or interest under this law and the sec-
15 retary of labor determines that such amount or any portion thereof was
16 erroneously collected, except for amounts less than ~~\$1~~ \$5, the secretary
17 of labor shall allow such individual or organization to make an adjustment
18 thereof, in connection with subsequent contribution payments, or if such
19 adjustment cannot be made the secretary of labor shall refund the
20 amount, except for amounts less than ~~\$1~~ \$5, from the employment se-
21 curity fund, except that all interest erroneously collected which has been
22 paid into the special employment security fund shall be refunded out of
23 the special employment security fund. No adjustment or refund shall be
24 allowed with respect to a payment as contributions, benefit cost payments
25 or interest unless an application therefor is made on or before whichever
26 of the following dates is later: (1) One year from the date on which such
27 payment was made; or (2) three years from the last day of the period with
28 respect to which such payment was made. For like cause and within the
29 same period adjustment or refund may be so made on the secretary's own
30 initiative. The secretary of labor shall not be required to refund any con-
31 tributions, payments in lieu of contributions or benefit cost payments
32 based upon wages paid which have been used as base-period wages in a
33 determination of a claimant's benefit rights when justifiable and correct
34 payments have been made to the claimant as the result of such deter-
35 mination. For all taxable years commencing after December 31, 1997,
36 interest at the rate prescribed in K.S.A. 79-2968, and amendments
37 thereto, shall be allowed on a contribution or benefit cost payment which
38 the secretary has determined was erroneously collected pursuant to this
39 section.

40 (i) (1) *Cash deposit or bond.* If any contributing employer is delin-
41 quent in making payments under the employment security law during any
42 two quarters of the most recent four-quarter period, the secretary or the
43 secretary's authorized representative shall have the discretionary power

1 to require such contributing employer either to deposit cash or to file a
2 bond with sufficient sureties to guarantee the payment of contributions,
3 penalty and interest owed by such employer.

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

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

19 (j) Any officer, major stockholder or other person who has charge of
20 the affairs of an employer, which is an employing unit described in section
21 501(c)(3) of the federal internal revenue code of 1954 or which is any
22 other corporate organization or association, or any member or manager
23 of a limited liability company, or any public official, who willfully fails to
24 pay the amount of contributions, payments in lieu of contributions or
25 benefit cost payments required to be paid under the employment security
26 law on the date on which such amount becomes delinquent, shall be
27 personally liable for the total amount of the contributions, payments in
28 lieu of contributions or benefit cost payments and any penalties and in-
29 terest due and unpaid by such employing unit. The secretary or the sec-
30 retary's authorized representative may assess such person for the total
31 amount of contributions, payments in lieu of contributions or benefit cost
32 payments and any penalties, and interest computed as due and owing.
33 With respect to such persons and such amounts assessed, the secretary
34 shall have available all of the collection remedies authorized or provided
35 by this section.

36 (k) *Electronic filing of wage report and contribution return and elec-*
37 *tronic payment of contributions, benefit cost payments or reimbursing*
38 *payments. The following employers or third party administrators shall*
39 *file all wage reports and contribution returns and make payment of con-*
40 *tributions, benefit cost payments or reimbursing payments electronically*
41 *as follows:*

42 (1) *Wage reports, contribution returns and payments due after June*
43 *30, 2008, for those employers with 250 or more employees or third party*

1 *administrators with 250 or more client employees at the time such filing*
2 *or payment is first due;*

3 (2) *wage reports, contribution returns and payments due after June*
4 *30, 2009, for those employers with 100 or more employees or third party*
5 *administrators with 100 or more client employees at the time such filing*
6 *or payment is first due; and*

7 (3) *wage reports, contribution returns and payments due after June*
8 *30, 2010, for those ~~employers with 50 or more employees or~~ third party*
9 *administrators with 50 or more client employees at the time such filing*
10 *or payment is first due.*

11 *The requirements of this subsection may be waived by the secretary for*
12 *an employer if the employer demonstrates a hardship in complying with*
13 *this subsection.*

14 Sec. 3. K.S.A. 2007 Supp. 44-710 and 44-717 are hereby repealed.

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