

HOUSE BILL No. 2614

By Representative Brunk

2-2

9 AN ACT concerning employment security law; relating to benefits and
10 employer contributions; amending K.S.A. 2009 Supp. 44-703, 44-704c,
11 44-705, 44-706 and 44-712 and repealing the existing sections; also
12 repealing K.S.A. 2009 Supp. 44-760, 44-761, 44-762, 44-763 and 44-
13 764.

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

16 Section 1. K.S.A. 2009 Supp. 44-703 is hereby amended to read as
17 follows: 44-703. As used in this act, unless the context clearly requires
18 otherwise:

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

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

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

36 (b) "Base period" means the first four of the last five completed cal-
37 endar quarters immediately preceding the first day of an individual's ben-
38 efit year, except that the base period in respect to combined wage claims
39 means the base period as defined in the law of the paying state.

40 (1) ~~(A)~~ If an individual lacks sufficient base period wages in order to
41 establish a benefit year in the matter set forth above and satisfies the
42 requirements of subsection (g) of K.S.A. 44-705 and subsection (hh) of
43 K.S.A. 44-703, and amendments thereto, the claimant shall have an al-

1 alternative base period substituted for the current base period so as not to
2 prevent establishment of a valid claim. For the purposes of this subsec-
3 tion, “alternative base period” means the last four completed quarters
4 immediately preceding the date the qualifying injury occurred. In the
5 event the wages in the alternative base period have been used on a prior
6 claim, then they shall be excluded from the new alternative base period.

7 ~~(B) If an individual lacks sufficient base period wages in order to~~
8 ~~establish a benefit year in the manner set forth above the claimant shall~~
9 ~~have an alternative base period substituted for the current base period.~~
10 ~~For the purposes of this subsection, “alternative base period” means eli-~~
11 ~~gibility shall be determined using a base period that consists of the four~~
12 ~~most recently completed calendar quarters preceding the start of the~~
13 ~~benefit year.~~

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

16 (c) (1) “Benefits” means the money payments payable to an individ-
17 ual, as provided in this act, with respect to such individual’s
18 unemployment.

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

23 (d) “Benefit year” with respect to any individual, means the period
24 beginning with the first day of the first week for which such individual
25 files a valid claim for benefits, and such benefit year shall continue for
26 one full year. In the case of a combined wage claim, the benefit year shall
27 be the benefit year of the paying state. Following the termination of a
28 benefit year, a subsequent benefit year shall commence on the first day
29 of the first week with respect to which an individual next files a claim for
30 benefits. When such filing occurs with respect to a week which overlaps
31 the preceding benefit year, the subsequent benefit year shall commence
32 on the first day immediately following the expiration date of the preceding
33 benefit year. Any claim for benefits made in accordance with subsection
34 (a) of K.S.A. 44-709, and amendments thereto, shall be deemed to be a
35 “valid claim” for the purposes of this subsection if the individual has been
36 paid wages for insured work as required under subsection (e) of K.S.A.
37 44-705 and amendments thereto. Whenever a week of unemployment
38 overlaps two benefit years, such week shall, for the purpose of granting
39 waiting-period credit or benefit payment with respect thereto, be deemed
40 to be a week of unemployment within that benefit year in which the
41 greater part of such week occurs.

42 (e) “Commissioner” or “secretary” means the secretary of labor.

43 (f) (1) “Contributions” means the money payments to the state em-

1 ployment security fund which are required to be made by employers on
2 account of employment under K.S.A. 44-710, and amendments thereto,
3 and voluntary payments made by employers pursuant to such statute.

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

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

25 (h) "Employer" means:

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

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

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

- 1 (ii) such individual is not in the employment of such other person
2 within the meaning of subsection (i) of this section.
- 3 (C) For the purpose of this subsection (h)(1), in the case of any in-
4 dividual who is furnished by a crew leader to perform service in agricul-
5 tural labor for any other person and who is not treated as an employee
6 of such crew leader:
- 7 (i) Such other person and not the crew leader shall be treated as the
8 employer of such individual; and
- 9 (ii) such other person shall be treated as having paid cash remunera-
10 tion to such individual in an amount equal to the amount of cash re-
11 munerated to such individual by the crew leader, either on the crew
12 leader's own behalf or on behalf of such other person, for the service in
13 agricultural labor performed for such other person.
- 14 (D) For the purposes of this subsection (h)(1) "crew leader" means
15 an individual who:
- 16 (i) Furnishes individuals to perform service in agricultural labor for
17 any other person;
- 18 (ii) pays, either on such individual's own behalf or on behalf of such
19 other person, the individuals so furnished by such individual for the serv-
20 ice in agricultural labor performed by them; and
- 21 (iii) has not entered into a written agreement with such other person
22 under which such individual is designated as an employee of such other
23 person.
- 24 (2) (A) Any employing unit which for calendar year 2007 and each
25 calendar year thereafter: (i) In any calendar quarter in either the current
26 or preceding calendar year paid for service in employment wages of
27 \$1,500 or more, (ii) for some portion of a day in each of 20 different
28 calendar weeks, whether or not such weeks were consecutive, in either
29 the current or preceding calendar year, had in employment at least one
30 individual, whether or not the same individual was in employment in each
31 such day, or (iii) elects to have an unemployment tax account established
32 at the time of initial registration in accordance with subsection (c) of
33 K.S.A. 44-711, and amendments thereto.
- 34 (B) Employment of individuals to perform domestic service or agri-
35 cultural labor and wages paid for such service or labor shall not be con-
36 sidered in determining whether an employing unit meets the criteria of
37 this subsection (h)(2).
- 38 (3) Any employing unit for which service is employment as defined
39 in subsection (i)(3)(E) of this section.
- 40 (4) (A) Any employing unit, whether or not it is an employing unit
41 under subsection (g) of this section, which acquires or in any manner
42 succeeds to (i) substantially all of the employing enterprises, organization,
43 trade or business, or (ii) substantially all the assets, of another employing

1 unit which at the time of such acquisition was an employer subject to this
2 act;

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

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

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

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

20 (8) Any employing unit not an employer by reason of any other par-
21 agraph of this subsection (h), for which within either the current or pre-
22 ceding calendar year services in employment are or were performed with
23 respect to which such employing unit is liable for any federal tax against
24 which credit may be taken for contributions required to be paid into a
25 state unemployment compensation fund; or which, as a condition for ap-
26 proval of this act for full tax credit against the tax imposed by the federal
27 unemployment tax act, is required, pursuant to such act, to be an "em-
28 ployer" under this act.

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

36 (i) "Employment" means:

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

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

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

43 (C) any individual other than an individual who is an employee under

1 subsection (i)(1)(A) or subsection (i)(1)(B) above who performs services
2 for remuneration for any person:

3 (i) As an agent-driver or commission-driver engaged in distributing
4 meat products, vegetable products, fruit products, bakery products, bev-
5 erages (other than milk), or laundry or dry-cleaning services, for such
6 individual's principal; or

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

14 For purposes of subsection (i)(1)(C), the term "employment" shall in-
15 clude services described in paragraphs (i) and (ii) above only if:

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

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

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

24 (2) The term "employment" shall include an individual's entire serv-
25 ice within the United States, even though performed entirely outside this
26 state if,

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

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

30 (C) the individual's base of operations is in this state, or if there is no
31 base of operations, then the place from which service is directed or con-
32 trolled is in this state.

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

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

39 (B) Services performed entirely without this state, with respect to no
40 part of which contributions are required and paid under an unemploy-
41 ment compensation law of any other state or of the federal government,
42 shall be deemed to be employment subject to this act only if the individual
43 performing such services is a resident of this state and the secretary ap-

1 proved the election of the employing unit for whom such services are
2 performed that the entire service of such individual shall be deemed to
3 be employment subject to this act.

4 (C) Services covered by an arrangement pursuant to subsection (l) of
5 K.S.A. 44-714, and amendments thereto, between the secretary and the
6 agency charged with the administration of any other state or federal un-
7 employment compensation law, pursuant to which all services performed
8 by an individual for an employing unit are deemed to be performed en-
9 tirely within this state, shall be deemed to be employment if the secretary
10 has approved an election of the employing unit for whom such services
11 are performed, pursuant to which the entire service of such individual
12 during the period covered by such election is deemed to be insured work.

13 (D) Services performed by an individual for wages or under any con-
14 tract of hire shall be deemed to be employment subject to this act unless
15 and until it is shown to the satisfaction of the secretary that: (i) Such
16 individual has been and will continue to be free from control or direction
17 over the performance of such services, both under the individual's con-
18 tract of hire and in fact; and (ii) such service is either outside the usual
19 course of the business for which such service is performed or that such
20 service is performed outside of all the places of business of the enterprise
21 for which such service is performed.

22 (E) Service performed by an individual in the employ of this state or
23 any instrumentality thereof, any political subdivision of this state or any
24 instrumentality thereof, or in the employ of an Indian tribe, as defined
25 pursuant to section 3306(u) of the federal unemployment tax act, any
26 instrumentality of more than one of the foregoing or any instrumentality
27 which is jointly owned by this state or a political subdivision thereof or
28 Indian tribes and one or more other states or political subdivisions of this
29 or other states, provided that such service is excluded from "employment"
30 as defined in the federal unemployment tax act by reason of section
31 3306(c)(7) of that act and is not excluded from "employment" under
32 subsection (i)(4)(A) of this section. For purposes of this section, the ex-
33 clusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also
34 be applicable to services performed in the employ of an Indian tribe.

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

40 (G) The term "employment" shall include the service of an individual
41 who is a citizen of the United States, performed outside the United States
42 except in Canada, in the employ of an American employer (other than
43 service which is deemed "employment" under the provisions of subsec-

- 1 tion (i)(2) or subsection (i)(3) or the parallel provisions of another state's
2 law), if:
- 3 (i) The employer's principal place of business in the United States is
4 located in this state; or
- 5 (ii) the employer has no place of business in the United States, but
- 6 (A) The employer is an individual who is a resident of this state; or
- 7 (B) the employer is a corporation which is organized under the laws
8 of this state; or
- 9 (C) the employer is a partnership or a trust and the number of the
10 partners or trustees who are residents of this state is greater than the
11 number who are residents of any other state; or
- 12 (iii) none of the criteria of paragraphs (i) and (ii) above of this sub-
13 section (i)(3)(G) are met but the employer has elected coverage in this
14 state or, the employer having failed to elect coverage in any state, the
15 individual has filed a claim for benefits, based on such service, under the
16 law of this state.
- 17 (H) An "American employer," for purposes of subsection (i)(3)(G),
18 means a person who is:
- 19 (i) An individual who is a resident of the United States; or
- 20 (ii) a partnership if $\frac{2}{3}$ or more of the partners are residents of the
21 United States; or
- 22 (iii) a trust, if all of the trustees are residents of the United States; or
- 23 (iv) a corporation organized under the laws of the United States or
24 of any state.
- 25 (I) Notwithstanding subsection (i)(2) of this section, all service per-
26 formed by an officer or member of the crew of an American vessel or
27 American aircraft on or in connection with such vessel or aircraft, if the
28 operating office, from which the operations of such vessel or aircraft op-
29 erating within, or within and without, the United States are ordinarily and
30 regularly supervised, managed, directed and controlled is within this state.
- 31 (J) Notwithstanding any other provisions of this subsection (i), service
32 with respect to which a tax is required to be paid under any federal law
33 imposing a tax against which credit may be taken for contributions re-
34 quired to be paid into a state unemployment compensation fund or which
35 as a condition for full tax credit against the tax imposed by the federal
36 unemployment tax act is required to be covered under this act.
- 37 (K) Domestic service in a private home, local college club or local
38 chapter of a college fraternity or sorority performed for a person who
39 paid cash remuneration of \$1,000 or more in any calendar quarter in the
40 current calendar year or the preceding calendar year to individuals em-
41 ployed in such domestic service.
- 42 (4) The term "employment" shall not include: (A) Service performed
43 in the employ of an employer specified in subsection (h)(3) of this section

- 1 if such service is performed by an individual in the exercise of duties:
- 2 (i) As an elected official;
- 3 (ii) as a member of a legislative body, or a member of the judiciary,
4 of a state, political subdivision or of an Indian tribe;
- 5 (iii) as a member of the state national guard or air national guard;
- 6 (iv) as an employee serving on a temporary basis in case of fire, storm,
7 snow, earthquake, flood or similar emergency;
- 8 (v) in a position which, under or pursuant to the laws of this state or
9 tribal law, is designated as a major nontenured policymaking or advisory
10 position or as a policymaking or advisory position the performance of the
11 duties of which ordinarily does not require more than eight hours per
12 week;
- 13 (B) service with respect to which unemployment compensation is
14 payable under an unemployment compensation system established by an
15 act of congress;
- 16 (C) service performed by an individual in the employ of such indi-
17 vidual's son, daughter or spouse, and service performed by a child under
18 the age of 21 years in the employ of such individual's father or mother;
- 19 (D) service performed in the employ of the United States govern-
20 ment or an instrumentality of the United States exempt under the con-
21 stitution of the United States from the contributions imposed by this act,
22 except that to the extent that the congress of the United States shall
23 permit states to require any instrumentality of the United States to make
24 payments into an unemployment fund under a state unemployment com-
25 pensation law, all of the provisions of this act shall be applicable to such
26 instrumentalities, and to services performed for such instrumentalities, in
27 the same manner, to the same extent and on the same terms as to all
28 other employers, employing units, individuals and services. If this state
29 shall not be certified for any year by the federal security agency under
30 section 3304(c) of the federal internal revenue code of 1986, the payments
31 required of such instrumentalities with respect to such year shall be re-
32 funded by the secretary from the fund in the same manner and within
33 the same period as is provided in subsection (f) of K.S.A. 44-717, and
34 amendments thereto, with respect to contributions erroneously collected;
- 35 (E) service covered by an arrangement between the secretary and
36 the agency charged with the administration of any other state or federal
37 unemployment compensation law pursuant to which all services per-
38 formed by an individual for an employing unit during the period covered
39 by such employing unit's duly approved election, are deemed to be per-
40 formed entirely within the jurisdiction of such other state or federal
41 agency;
- 42 (F) service performed by an individual under the age of 18 in the
43 delivery or distribution of newspapers or shopping news, not including

1 delivery or distribution to any point for subsequent delivery or
2 distribution;

3 (G) service performed by an individual for an employing unit as an
4 insurance agent or as an insurance solicitor, if all such service performed
5 by such individual for such employing unit is performed for remuneration
6 solely by way of commission;

7 (H) service performed in any calendar quarter in the employ of any
8 organization exempt from income tax under section 501(a) of the federal
9 internal revenue code of 1986 (other than an organization described in
10 section 401(a) or under section 521 of such code) if the remuneration for
11 such service is less than \$50. In construing the application of the term
12 "employment," if services performed during $\frac{1}{2}$ or more of any pay period
13 by an individual for the person employing such individual constitute em-
14 ployment, all the services of such individual for such period shall be
15 deemed to be employment; but if the services performed during more
16 than $\frac{1}{2}$ of any such pay period by an individual for the person employing
17 such individual do not constitute employment, then none of the services
18 of such individual for such period shall be deemed to be employment. As
19 used in this subsection (i)(4)(H) the term "pay period" means a period
20 (of not more than 31 consecutive days) for which a payment of remunera-
21 tion is ordinarily made to the individual by the person employing such
22 individual. This subsection (i)(4)(H) shall not be applicable with respect
23 to services with respect to which unemployment compensation is payable
24 under an unemployment compensation system established by an act of
25 congress;

26 (I) services performed in the employ of a church or convention or
27 association of churches, or an organization which is operated primarily
28 for religious purposes and which is operated, supervised, controlled, or
29 principally supported by a church or convention or association of
30 churches;

31 (J) service performed by a duly ordained, commissioned, or licensed
32 minister of a church in the exercise of such individual's ministry or by a
33 member of a religious order in the exercise of duties required by such
34 order;

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

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

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

43 (L) service performed as part of an employment work-relief or work-

- 1 training program assisted or financed in whole or in part by any federal
2 agency or an agency of a state or political subdivision thereof or of an
3 Indian tribe, by an individual receiving such work relief or work training;
- 4 (M) service performed by an inmate of a custodial or correctional
5 institution;
- 6 (N) service performed, in the employ of a school, college, or univer-
7 sity, if such service is performed by a student who is enrolled and is
8 regularly attending classes at such school, college or university;
- 9 (O) service performed by an individual who is enrolled at a nonprofit
10 or public educational institution which normally maintains a regular fac-
11 ulty and curriculum and normally has a regularly organized body of stu-
12 dents in attendance at the place where its educational activities are carried
13 on as a student in a full-time program, taken for credit at such institution,
14 which combines academic instruction with work experience, if such serv-
15 ice is an integral part of such program, and such institution has so certified
16 to the employer, except that this subsection (i)(4)(O) shall not apply to
17 service performed in a program established for or on behalf of an em-
18 ployer or group of employers;
- 19 (P) service performed in the employ of a hospital licensed, certified
20 or approved by the secretary of health and environment, if such service
21 is performed by a patient of the hospital;
- 22 (Q) services performed as a qualified real estate agent. As used in
23 this subsection (i)(4)(Q) the term “qualified real estate agent” means any
24 individual who is licensed by the Kansas real estate commission as a sa-
25 lesperson under the real estate brokers’ and salespersons’ license act and
26 for whom:
- 27 (i) Substantially all of the remuneration, whether or not paid in cash,
28 for the services performed by such individual as a real estate salesperson
29 is directly related to sales or other output, including the performance of
30 services, rather than to the number of hours worked; and
- 31 (ii) the services performed by the individual are performed pursuant
32 to a written contract between such individual and the person for whom
33 the services are performed and such contract provides that the individual
34 will not be treated as an employee with respect to such services for state
35 tax purposes;
- 36 (R) services performed for an employer by an extra in connection
37 with any phase of motion picture or television production or television
38 commercials for less than 14 days during any calendar year. As used in
39 this subsection, the term “extra” means an individual who pantomimes in
40 the background, adds atmosphere to the set and performs such actions
41 without speaking and “employer” shall not include any employer which
42 is a governmental entity or any employer 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 (S) services performed by an oil and gas contract pumper. As used in
3 this subsection (i)(4)(S), “oil and gas contract pumper” means a person
4 performing pumping and other services on one or more oil or gas leases,
5 or on both oil and gas leases, relating to the operation and maintenance
6 of such oil and gas leases, on a contractual basis for the operators of such
7 oil and gas leases and “services” shall not include services performed for
8 a governmental entity or any organization described in section 501(c)(3)
9 of the federal internal revenue code of 1986 which is exempt from income
10 taxation under section 501(a) of the code;
- 11 (T) service not in the course of the employer’s trade or business per-
12 formed in any calendar quarter by an employee, unless the cash remu-
13 neration paid for such service is \$200 or more and such service is per-
14 formed by an individual who is regularly employed by such employer to
15 perform such service. For purposes of this paragraph, an individual shall
16 be deemed to be regularly employed by an employer during a calendar
17 quarter only if:
- 18 (i) On each of some 24 days during such quarter such individual per-
19 forms for such employer for some portion of the day service not in the
20 course of the employer’s trade or business, or
- 21 (ii) such individual was regularly employed, as determined under sub-
22 paragraph (i), by such employer in the performance of such service during
23 the preceding calendar quarter.
- 24 Such excluded service shall not include any services performed for an
25 employer which is a governmental entity or any employer described in
26 section 501(c)(3) of the federal internal revenue code of 1986 which is
27 exempt from income taxation under section 501(a) of the code;
- 28 (U) service which is performed by any person who is a member of a
29 limited liability company and which is performed as a member or manager
30 of that limited liability company; and
- 31 (V) services performed as a qualified direct seller. The term “direct
32 seller” means any person if:
- 33 (i) Such person:
- 34 (a) is engaged in the trade or business of selling or soliciting the sale
35 of consumer products to any buyer on a buy-sell basis or a deposit-com-
36 mission basis for resale, by the buyer or any other person, in the home
37 or otherwise rather than in a permanent retail establishment; or
- 38 (b) is engaged in the trade or business of selling or soliciting the sale
39 of consumer products in the home or otherwise than in a permanent retail
40 establishment;
- 41 (ii) substantially all the remuneration whether or not paid in cash for
42 the performance of the services described in subparagraph (i) is directly
43 related to sales or other output including the performance of services

1 rather than to the number of hours worked;

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

6 (iv) for purposes of this act, a sale or a sale resulting exclusively from
7 a solicitation made by telephone, mail, or other telecommunications
8 method, or other nonpersonal method does not satisfy the requirements
9 of this subsection;

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

14 (X) service performed by agricultural workers who are aliens admit-
15 ted to the United States to perform labor pursuant to section 1101
16 (a)(15)(H)(ii)(a) of the immigration and nationality act; and

17 (Y) service performed by an owner-operator of a motor vehicle that
18 is leased or contracted to a licensed motor carrier with the services of a
19 driver and is not treated under the terms of the lease agreement or con-
20 tract with the licensed motor carrier as an employee for purposes of the
21 federal insurance contribution act, 26 U.S.C. § 3101 et seq., the federal
22 social security act, 42 U.S.C. § 301 et seq., the federal unemployment tax
23 act, 26 U.S.C. § 3301 et seq., and the federal statutes prescribing income
24 tax withholding at the source, 26 U.S.C. § 3401 et seq. Employees or
25 agents of the owner-operator shall not be considered employees of the
26 licensed motor carrier for purposes of employment security taxation or
27 compensation. As used in this subsection (Y), the following definitions
28 apply: (i) "Motor vehicle" means any automobile, truck-trailer, semi-
29 trailer, tractor, motor bus or any other self-propelled or motor-driven
30 vehicle used upon any of the public highways of Kansas for the purpose
31 of transporting persons or property; (ii) "licensed motor carrier" means
32 any person, firm, corporation or other business entity that holds a certifi-
33 cate of convenience and necessity or a certificate of public service from
34 the state corporation commission or is required to register motor carrier
35 equipment pursuant to 49 U.S.C. § 14504; and (iii) "owner-operator"
36 means a person, firm, corporation or other business entity that is the
37 owner of a single motor vehicle that is driven exclusively by the owner
38 under a lease agreement or contract with a licensed motor carrier.

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

42 (k) "Fund" means the employment security fund established by this
43 act, to which all contributions and reimbursement payments required and

1 from which all benefits provided under this act shall be paid and including
2 all money received from the federal government as reimbursements pur-
3 suant to section 204 of the federal-state extended compensation act of
4 1970, and amendments thereto.

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

8 (m) "Unemployment." An individual shall be deemed "unemployed"
9 with respect to any week during which such individual performs no serv-
10 ices and with respect to which no wages are payable to such individual,
11 or with respect to any week of less than full-time work if the wages payable
12 to such individual with respect to such week are less than such individual's
13 weekly benefit amount.

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

17 (o) "Wages" means all compensation for services, including commis-
18 sions, bonuses, back pay and the cash value of all remuneration, including
19 benefits, paid in any medium other than cash. The reasonable cash value
20 of remuneration in any medium other than cash, shall be estimated and
21 determined in accordance with rules and regulations prescribed by the
22 secretary. Compensation payable to an individual which has not been
23 actually received by that individual within 21 days after the end of the
24 pay period in which the compensation was earned shall be considered to
25 have been paid on the 21st day after the end of that pay period. Effective
26 January 1, 1986, gratuities, including tips received from persons other
27 than the employing unit, shall be considered wages when reported in
28 writing to the employer by the employee. Employees must furnish a writ-
29 ten statement to the employer, reporting all tips received if they total \$20
30 or more for a calendar month whether the tips are received directly from
31 a person other than the employer or are paid over to the employee by
32 the employer. This includes amounts designated as tips by a customer
33 who uses a credit card to pay the bill. Notwithstanding the other provi-
34 sions of this subsection (o), wages paid in back pay awards or settlements
35 shall be allocated to the week or weeks and reported in the manner as
36 specified in the award or agreement, or, in the absence of such specificity
37 in the award or agreement, such wages shall be allocated to the week or
38 weeks in which such wages, in the judgment of the secretary, would have
39 been paid. The term "wages" shall not include:

40 (1) That part of the remuneration which has been paid in a calendar
41 year to an individual by an employer or such employer's predecessor in
42 excess of \$3,000 for all calendar years prior to 1972, \$4,200 for the cal-
43 endar years 1972 to 1977, inclusive, \$6,000 for calendar years 1978 to

1 1982, inclusive, \$7,000 for the calendar year 1983, and \$8,000 with re-
2 spect to employment during any calendar year following 1983, except that
3 if the definition of the term “wages” as contained in the federal unem-
4 ployment tax act is amended to include remuneration in excess of \$8,000
5 paid to an individual by an employer under the federal act during any
6 calendar year, wages shall include remuneration paid in a calendar year
7 to an individual by an employer subject to this act or such employer’s
8 predecessor with respect to employment during any calendar year up to
9 an amount equal to the dollar limitation specified in the federal unem-
10 ployment tax act. For the purposes of this subsection (o)(1), the term
11 “employment” shall include service constituting employment under any
12 employment security law of another state or of the federal government;

13 (2) the amount of any payment (including any amount paid by an
14 employing unit for insurance or annuities, or into a fund, to provide for
15 any such payment) made to, or on behalf of, an employee or any of such
16 employee’s dependents under a plan or system established by an em-
17 ployer which makes provisions for employees generally, for a class or
18 classes of employees or for such employees or a class or classes of em-
19 ployees and their dependents, on account of (A) sickness or accident
20 disability, except in the case of any payment made to an employee or such
21 employee’s dependents, this subparagraph shall exclude from the term
22 “wages” only payments which are received under a workers compensation
23 law. Any third party which makes a payment included as wages by reason
24 of this subparagraph (2)(A) shall be treated as the employer with respect
25 to such wages, or (B) medical and hospitalization expenses in connection
26 with sickness or accident disability, or (C) death;

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

32 (4) any payment made to, or on behalf of, an employee or such em-
33 ployee’s beneficiary:

34 (A) From or to a trust described in section 401(a) of the federal in-
35 ternal revenue code of 1986 which is exempt from tax under section
36 501(a) of the federal internal revenue code of 1986 at the time of such
37 payment unless such payment is made to an employee of the trust as
38 remuneration for services rendered as such employee and not as a ben-
39 efiary of the trust;

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

43 (C) under a simplified employee pension as defined in section

- 1 408(k)(1) of the federal internal revenue code of 1986, other than any
2 contribution described in section 408(k)(6) of the federal internal revenue
3 code of 1986;
- 4 (D) under or to an annuity contract described in section 403(b) of
5 the federal internal revenue code of 1986, other than a payment for the
6 purchase of such contract which was made by reason of a salary reduction
7 agreement whether evidenced by a written instrument or otherwise;
- 8 (E) under or to an exempt governmental deferred compensation plan
9 as defined in section 3121(v)(3) of the federal internal revenue code of
10 1986;
- 11 (F) to supplement pension benefits under a plan or trust described
12 in any of the foregoing provisions of this subparagraph to take into ac-
13 count some portion or all of the increase in the cost of living, as deter-
14 mined by the secretary of labor, since retirement but only if such sup-
15 plemental payments are under a plan which is treated as a welfare plan
16 under section 3(2)(B)(ii) of the federal employee retirement income se-
17 curity act of 1974; or
- 18 (G) under a cafeteria plan within the meaning of section 125 of the
19 federal internal revenue code of 1986;
- 20 (5) the payment by an employing unit (without deduction from the
21 remuneration of the employee) of the tax imposed upon an employee
22 under section 3101 of the federal internal revenue code of 1986 with
23 respect to remuneration paid to an employee for domestic service in a
24 private home of the employer or for agricultural labor;
- 25 (6) remuneration paid in any medium other than cash to an employee
26 for service not in the course of the employer's trade or business;
- 27 (7) remuneration paid to or on behalf of an employee if and to the
28 extent that at the time of the payment of such remuneration it is reason-
29 able to believe that a corresponding deduction is allowable under section
30 217 of the federal internal revenue code of 1986 relating to moving
31 expenses;
- 32 (8) any payment or series of payments by an employer to an employee
33 or any of such employee's dependents which is paid:
- 34 (A) Upon or after the termination of an employee's employment re-
35 lationship because of (i) death or (ii) retirement for disability; and
- 36 (B) under a plan established by the employer which makes provisions
37 for employees generally, a class or classes of employees or for such em-
38 ployees or a class or classes of employees and their dependents, other
39 than any such payment or series of payments which would have been paid
40 if the employee's employment relationship had not been so terminated;
- 41 (9) remuneration for agricultural labor paid in any medium other than
42 cash;
- 43 (10) any payment made, or benefit furnished, to or for the benefit of

1 an employee if at the time of such payment or such furnishing it is rea-
2 sonable to believe that the employee will be able to exclude such payment
3 or benefit from income under section 129 of the federal internal revenue
4 code of 1986 which relates to dependent care assistance programs;

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

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

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

15 (14) any payment made, or benefit furnished, to or for the benefit of
16 an employee, if at the time of such payment or such furnishing it is rea-
17 sonable to believe that the employee will be able to exclude such payment
18 or benefit from income under section 127 of the federal internal revenue
19 code of 1986 relating to educational assistance to the employee; or

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

25 Nothing in any paragraph of subsection (o), other than paragraph (1),
26 shall exclude from the term “wages”: (1) Any employer contribution un-
27 der a qualified cash or deferred arrangement, as defined in section 401(k)
28 of the federal internal revenue code of 1986, to the extent that such
29 contribution is not included in gross income by reason of section 402(a)(8)
30 of the federal internal revenue code of 1986; or (2) any amount treated
31 as an employer contribution under section 414(h)(2) of the federal inter-
32 nal revenue code of 1986.

33 Any amount deferred under a nonqualified deferred compensation
34 plan shall be taken into account for purposes of this section as of the later
35 of when the services are performed or when there is no substantial risk
36 of forfeiture of the rights to such amount. Any amount taken into account
37 as wages by reason of this paragraph, and the income attributable thereto,
38 shall not thereafter be treated as wages for purposes of this section. For
39 purposes of this paragraph, the term “nonqualified deferred compensa-
40 tion plan” means any plan or other arrangement for deferral of compen-
41 sation other than a plan described in subsection (o)(4).

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

- 1 (q) “Calendar quarter” means the period of three consecutive cal-
2 endar months ending March 31, June 30, September 30 or December
3 31, or the equivalent thereof as the secretary may by rules and regulations
4 prescribe.
- 5 (r) “Insured work” means employment for employers.
- 6 (s) “Approved training” means: (1) Any vocational training course or
7 course in basic education skills, ~~including a job training program author-~~
8 ~~ized under the federal workforce investment act of 1998,~~ approved by
9 the secretary or a person or persons designated by the secretary; *and*
10 (2) *on and after January 1, 2011, a job training program authorized*
11 *under the federal workforce investment act of 1998 approved by the se-*
12 *cretary or a person or persons designated by the secretary.*
- 13 (t) “American vessel” or “American aircraft” means any vessel or air-
14 craft documented or numbered or otherwise registered under the laws
15 of the United States; and any vessel or aircraft which is neither docu-
16 mented or numbered or otherwise registered under the laws of the
17 United States nor documented under the laws of any foreign country, if
18 its crew performs service solely for one or more citizens or residents of
19 the United States or corporations organized under the laws of the United
20 States or of any state.
- 21 (u) “Institution of higher education,” for the purposes of this section,
22 means an educational institution which:
- 23 (1) Admits as regular students only individuals having a certificate of
24 graduation from a high school, or the recognized equivalent of such a
25 certificate;
- 26 (2) is legally authorized in this state to provide a program of education
27 beyond high school;
- 28 (3) provides an educational program for which it awards a bachelor’s
29 or higher degree, or provides a program which is acceptable for full credit
30 toward such a degree, a program of postgraduate or postdoctoral studies,
31 or a program of training to prepare students for gainful employment in a
32 recognized occupation; and
- 33 (4) is a public or other nonprofit institution.
- 34 Notwithstanding any of the foregoing provisions of this subsection (u),
35 all colleges and universities in this state are institutions of higher educa-
36 tion for purposes of this section, except that no college, university, junior
37 college or other postsecondary school or institution which is operated by
38 the federal government or any agency thereof shall be an institution of
39 higher education for purposes of the employment security law.
- 40 (v) “Educational institution” means any institution of higher educa-
41 tion, as defined in subsection (u) of this section, or any institution, except
42 private for profit institutions, in which participants, trainees or students
43 are offered an organized course of study or training designed to transfer

1 to them knowledge, skills, information, doctrines, attitudes or abilities
2 from, by or under the guidance of an instructor or teacher and which is
3 approved, licensed or issued a permit to operate as a school by the state
4 department of education or other government agency that is authorized
5 within the state to approve, license or issue a permit for the operation of
6 a school or to an Indian tribe in the operation of an educational institution.
7 The courses of study or training which an educational institution offers
8 may be academic, technical, trade or preparation for gainful employment
9 in a recognized occupation.

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

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

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

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

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

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

39 (iii) the provisions of paragraphs (i) and (ii) above of this subsection
40 (w)(1)(D) shall not be deemed to be applicable with respect to service
41 performed in connection with commercial canning or commercial freez-
42 ing or in connection with any agricultural or horticultural commodity after
43 its delivery to a terminal market for distribution for consumption.

- 1 (E) On a farm operated for profit if such service is not in the course
2 of the employer's trade or business.
- 3 (2) "Agricultural labor" does not include service performed prior to
4 January 1, 1980, by an individual who is an alien admitted to the United
5 States to perform service in agricultural labor pursuant to sections 214(c)
6 and 101(a)(15)(H) of the federal immigration and nationality act.
- 7 (3) As used in this subsection (w), the term "farm" includes stock,
8 dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations,
9 ranches, nurseries, ranges, greenhouses, or other similar structures used
10 primarily for the raising of agricultural or horticultural commodities, and
11 orchards.
- 12 (4) For the purpose of this section, if an employing unit does not
13 maintain sufficient records to separate agricultural labor from other em-
14 ployment, all services performed during any pay period by an individual
15 for the person employing such individual shall be deemed to be agricul-
16 tural labor if services performed during $\frac{1}{2}$ or more of such pay period
17 constitute agricultural labor; but if the services performed during more
18 than $\frac{1}{2}$ of any such pay period by an individual for the person employing
19 such individual do not constitute agricultural labor, then none of the serv-
20 ices of such individual for such period shall be deemed to be agricultural
21 labor. As used in this subsection (w), the term "pay period" means a
22 period of not more than 31 consecutive days for which a payment of
23 remuneration is ordinarily made to the individual by the person employ-
24 ing such individual.
- 25 (x) "Reimbursing employer" means any employer who makes pay-
26 ments in lieu of contributions to the employment security fund as pro-
27 vided in subsection (e) of K.S.A. 44-710 and amendments thereto.
- 28 (y) "Contributing employer" means any employer other than a re-
29 imbursing employer or rated governmental employer.
- 30 (z) "Wage combining plan" means a uniform national arrangement
31 approved by the United States secretary of labor in consultation with the
32 state unemployment compensation agencies and in which this state shall
33 participate, whereby wages earned in one or more states are transferred
34 to another state, called the "paying state," and combined with wages in
35 the paying state, if any, for the payment of benefits under the laws of the
36 paying state and as provided by an arrangement so approved by the
37 United States secretary of labor.
- 38 (aa) "Domestic service" means any service for a person in the oper-
39 ation and maintenance of a private household, local college club or local
40 chapter of a college fraternity or sorority, as distinguished from service
41 as an employee in the pursuit of an employer's trade, occupation, pro-
42 fession, enterprise or vocation.
- 43 (bb) "Rated governmental employer" means any governmental entity

1 which elects to make payments as provided by K.S.A. 44-710d and
2 amendments thereto.

3 (cc) “Benefit cost payments” means payments made to the employ-
4 ment security fund by a governmental entity electing to become a rated
5 governmental employer.

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

11 (ee) “Predecessor employer” means an employer, as described in
12 subsection (h) of this section, who has previously operated a business or
13 portion of a business with employment to which another employer has
14 succeeded.

15 (ff) “Lessor employing unit” means any independently established
16 business entity which engages in the business of providing leased em-
17 ployees to a client lessee.

18 (gg) “Client lessee” means any individual, organization, partnership,
19 corporation or other legal entity leasing employees from a lessor employ-
20 ing unit.

21 (hh) “Qualifying injury” means a personal injury by accident arising
22 out of and in the course of employment within the coverage of the Kansas
23 workers compensation act, K.S.A. 44-501 et seq., and amendments
24 thereto.

25 Sec. 2. K.S.A. 2009 Supp. 44-704c is hereby amended to read as
26 follows: 44-704c. *On and after January 1, 2011:*

27 (a) A claimant who exhausts regular benefits and who is enrolled in an
28 approved training program under subsection (s) of K.S.A. 44-703, and
29 amendments thereto, and making successful progress in such program,
30 shall be eligible for up to 26 weeks of additional benefits.

31 (b) This additional benefit may be provided to a claimant in a shared
32 work program under K.S.A. 44-757, and amendments thereto. However,
33 if the claimant is in a shared work program then such claimant shall not
34 be entitled to receive this additional benefit for two consecutive benefit
35 years after the training benefits expire. In addition, a claimant who is
36 receiving shared work benefits when they become eligible for these ad-
37 ditional benefits shall have their payable amount determined in the same
38 manner as their shared work benefits.

39 Sec. 3. K.S.A. 2009 Supp. 44-705 is hereby amended to read as fol-
40 lows: 44-705. Except as provided by K.S.A. 44-757 and amendments
41 thereto, an unemployed individual shall be eligible to receive benefits
42 with respect to any week only if the secretary, or a person or persons
43 designated by the secretary, finds that:

1 (a) The claimant has registered for work at and thereafter continued
2 to report at an employment office in accordance with rules and regula-
3 tions adopted by the secretary, except that, subject to the provisions of
4 subsection (a) of K.S.A. 44-704 and amendments thereto, the secretary
5 may adopt rules and regulations which waive or alter either or both of
6 the requirements of this subsection (a).

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

9 (c) The claimant is able to perform the duties of such claimant's cus-
10 tomary occupation or the duties of other occupations for which the claim-
11 ant is reasonably fitted by training or experience, and is available for work,
12 as demonstrated by the claimant's pursuit of the full course of action most
13 reasonably calculated to result in the claimant's reemployment except
14 that, notwithstanding any other provisions of this section, an unemployed
15 claimant otherwise eligible for benefits shall not become ineligible for
16 benefits ~~(1) because of the claimant's enrollment in and satisfactory pur-~~
17 ~~suit of approved training, including training approved under section~~
18 ~~236(a)(1) of the trade act of 1974 or (2) solely because such individual is~~
19 ~~seeking only part-time employment if the individual is available for a~~
20 ~~number of hours per week that are comparable to the individual's part-~~
21 ~~time work experience in the base period.~~

22 For the purposes of this subsection, an inmate of a custodial or cor-
23 rectional institution shall be deemed to be unavailable for work and not
24 eligible to receive unemployment compensation while incarcerated.

25 (d) (1) Except as provided further, the claimant has been unem-
26 ployed for a waiting period of one week or the claimant is unemployed
27 and has satisfied the requirement for a waiting period of one week under
28 the shared work unemployment compensation program as provided in
29 subsection (k)(4) of K.S.A. 44-757 and amendments thereto, which period
30 of one week, in either case, occurs within the benefit year which includes
31 the week for which the claimant is claiming benefits. No week shall be
32 counted as a week of unemployment for the purposes of this subsection
33 (d):

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

35 (B) if the individual fails to meet with the other eligibility require-
36 ments of this section; or

37 (C) if an individual is seeking unemployment benefits under the un-
38 employment compensation law of any other state or of the United States,
39 except that if the appropriate agency of such state or of the United States
40 finally determines that the claimant is not entitled to unemployment ben-
41 efits under such other law, this subsection (d)(1)(C) shall not apply.

42 (2) The waiting week requirement of paragraph (1) shall not apply to
43 new claims, filed on or after July 1, 2007, by claimants who become un-

1 employed as a result of an employer terminating business operations
2 within this state, declaring bankruptcy or initiating a work force reduction
3 pursuant to public law 100-379, the federal worker adjustment and re-
4 training notification act (29 U.S.C. 2101 through 2109), as amended. The
5 secretary shall adopt rules and regulations to administer the provisions of
6 this paragraph.

7 ~~(3) A claimant shall become eligible to receive compensation for the~~
8 ~~waiting period of one week, pursuant to paragraph (1), upon completion~~
9 ~~of three weeks of unemployment consecutive to such waiting period.~~

10 (e) For benefit years established on and after the effective date of
11 this act, the claimant has been paid total wages for insured work in the
12 claimant's base period of not less than 30 times the claimant's weekly
13 benefit amount and has been paid wages in more than one quarter of the
14 claimant's base period, except that the wage credits of an individual
15 earned during the period commencing with the end of a prior base period
16 and ending on the date on which such individual filed a valid initial claim
17 shall not be available for benefit purposes in a subsequent benefit year
18 unless, in addition thereto, such individual has returned to work and sub-
19 sequently earned wages for insured work in an amount equal to at least
20 eight times the claimant's current weekly benefit amount.

21 (f) The claimant participates in reemployment services, such as job
22 search assistance services, if the individual has been determined to be
23 likely to exhaust regular benefits and needs reemployment services pur-
24 suant to a profiling system established by the secretary, unless the sec-
25 retary determines that: (1) The individual has completed such services;
26 or (2) there is justifiable cause for the claimant's failure to participate in
27 such services.

28 (g) The claimant is returning to work after a qualifying injury and has
29 been paid total wages for insured work in the claimant's alternative base
30 period of not less than 30 times the claimant's weekly benefit amount and
31 has been paid wages in more than one quarter of the claimant's alternative
32 base period if:

33 (1) The claimant has filed for benefits within four weeks of being
34 released to return to work by a licensed and practicing health care
35 provider.

36 (2) The claimant files for benefits within 24 months of the date the
37 qualifying injury occurred.

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

41 Sec. 4. K.S.A. 2009 Supp. 44-706 is hereby amended to read as fol-
42 lows: 44-706. An individual shall be disqualified for benefits:

43 (a) If the individual left work voluntarily without good cause attrib-

1 utable to the work or the employer, subject to the other provisions of this
2 subsection (a). Failure to return to work after expiration of approved
3 personal or medical leave, or both, shall be considered a voluntary res-
4 ignation. After a temporary job assignment, failure of an individual to
5 affirmatively request an additional assignment on the next succeeding
6 workday, if required by the employment agreement, after completion of
7 a given work assignment, shall constitute leaving work voluntarily. The
8 disqualification shall begin the day following the separation and shall con-
9 tinue until after the individual has become reemployed and has had earn-
10 ings from insured work of at least three times the individual's weekly
11 benefit amount. An individual shall not be disqualified under this sub-
12 section (a) if:

13 (1) The individual was forced to leave work because of illness or injury
14 upon the advice of a licensed and practicing health care provider and,
15 upon learning of the necessity for absence, immediately notified the em-
16 ployer thereof, or the employer consented to the absence, and after re-
17 covery from the illness or injury, when recovery was certified by a prac-
18 ticing health care provider, the individual returned to the employer and
19 offered to perform services and the individual's regular work or compa-
20 rable and suitable work was not available; as used in this paragraph (1)
21 "health care provider" means any person licensed by the proper licensing
22 authority of any state to engage in the practice of medicine and surgery,
23 osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

24 (2) the individual left temporary work to return to the regular
25 employer;

26 (3) the individual left work to enlist in the armed forces of the United
27 States, but was rejected or delayed from entry;

28 ~~(4) the individual left work because of the voluntary or involuntary~~
29 ~~transfer of the individual's spouse from one job to another job, which is~~
30 ~~for the same employer or for a different employer, at a geographic loca-~~
31 ~~tion which makes it unreasonable for the individual to continue work at~~
32 ~~the individual's job;~~

33 ~~(5)~~ (4) the individual left work because of hazardous working condi-
34 tions; in determining whether or not working conditions are hazardous
35 for an individual, the degree of risk involved to the individual's health,
36 safety and morals, the individual's physical fitness and prior training and
37 the working conditions of workers engaged in the same or similar work
38 for the same and other employers in the locality shall be considered; as
39 used in this paragraph (5), "hazardous working conditions" means work-
40 ing conditions that could result in a danger to the physical or mental well-
41 being of the individual; each determination as to whether hazardous work-
42 ing conditions exist shall include, but shall not be limited to, a
43 consideration of (A) the safety measures used or the lack thereof, and (B)

1 the condition of equipment or lack of proper equipment; no work shall
 2 be considered hazardous if the working conditions surrounding the in-
 3 dividual's work are the same or substantially the same as the working
 4 conditions generally prevailing among individuals performing the same
 5 or similar work for other employers engaged in the same or similar type
 6 of activity;

7 ~~(6)~~ (5) the individual left work to enter training approved under sec-
 8 tion 236(a)(1) of the federal trade act of 1974, provided the work left is
 9 not of a substantially equal or higher skill level than the individual's past
 10 adversely affected employment (as defined for purposes of the federal
 11 trade act of 1974), and wages for such work are not less than 80% of the
 12 individual's average weekly wage as determined for the purposes of the
 13 federal trade act of 1974;

14 ~~(7)~~ (6) the individual left work because of unwelcome harassment of
 15 the individual by the employer or another employee of which the em-
 16 ploying unit had knowledge;

17 ~~(8)~~ (7) the individual left work to accept better work; each determi-
 18 nation as to whether or not the work accepted is better work shall include,
 19 but shall not be limited to, consideration of (A) the rate of pay, the hours
 20 of work and the probable permanency of the work left as compared to
 21 the work accepted, (B) the cost to the individual of getting to the work
 22 left in comparison to the cost of getting to the work accepted, and (C)
 23 the distance from the individual's place of residence to the work accepted
 24 in comparison to the distance from the individual's residence to the work
 25 left;

26 ~~(9)~~ (8) the individual left work as a result of being instructed or re-
 27 quested by the employer, a supervisor or a fellow employee to perform
 28 a service or commit an act in the scope of official job duties which is in
 29 violation of an ordinance or statute;

30 ~~(10)~~ (9) the individual left work because of a violation of the work
 31 agreement by the employing unit and, before the individual left, the in-
 32 dividual had exhausted all remedies provided in such agreement for the
 33 settlement of disputes before terminating; *or*

34 ~~(11)~~ (10) after making reasonable efforts to preserve the work, the
 35 individual left work due to a personal emergency of such nature and
 36 compelling urgency that it would be contrary to good conscience to im-
 37 pose a disqualification; ~~or.~~

38 ~~(12) (A) the individual left work due to circumstances resulting from~~
 39 ~~domestic violence, including:~~

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

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

- 1 ~~—(iii) the individual's need to address the physical, psychological and~~
2 ~~legal impacts of domestic violence, or~~
3 ~~—(iv) the individual's need to leave employment as a condition of re-~~
4 ~~ceiving services or shelter from an agency which provides support services~~
5 ~~or shelter to victims of domestic violence, or~~
6 ~~—(v) the individual's reasonable belief that termination of employment~~
7 ~~is necessary to avoid other situations which may cause domestic violence~~
8 ~~and to provide for the future safety of the individual or the individual's~~
9 ~~family.~~
10 ~~—(B) An individual may prove the existence of domestic violence by~~
11 ~~providing one of the following:~~
12 ~~—(i) A restraining order or other documentation of equitable relief by~~
13 ~~a court of competent jurisdiction, or~~
14 ~~—(ii) a police record documenting the abuse, or~~
15 ~~—(iii) documentation that the abuser has been convicted of one or more~~
16 ~~of the offenses enumerated in articles 34 and 35 of chapter 21 of the~~
17 ~~Kansas Statutes Annotated, and amendments thereto, where the victim~~
18 ~~was a family or household member, or~~
19 ~~—(iv) medical documentation of the abuse, or~~
20 ~~—(v) a statement provided by a counselor, social worker, health care~~
21 ~~provider, clergy, shelter worker, legal advocate, domestic violence or sex-~~
22 ~~ual assault advocate or other professional who has assisted the individual~~
23 ~~in dealing with the effects of abuse on the individual or the individual's~~
24 ~~family, or~~
25 ~~—(vi) a sworn statement from the individual attesting to the abuse.~~
26 ~~—(C) No evidence of domestic violence experienced by an individual,~~
27 ~~including the individual's statement and corroborating evidence, shall be~~
28 ~~disclosed by the department of labor unless consent for disclosure is given~~
29 ~~by the individual.~~
30 (b) If the individual has been discharged for misconduct connected
31 with the individual's work. The disqualification shall begin the day follow-
32 ing the separation and shall continue until after the individual becomes
33 reemployed and has had earnings from insured work of at least three
34 times the individual's determined weekly benefit amount, except that if
35 an individual is discharged for gross misconduct connected with the in-
36 dividual's work, such individual shall be disqualified for benefits until such
37 individual again becomes employed and has had earnings from insured
38 work of at least eight times such individual's determined weekly benefit
39 amount. In addition, all wage credits attributable to the employment from
40 which the individual was discharged for gross misconduct connected with
41 the individual's work shall be canceled. No such cancellation of wage
42 credits shall affect prior payments made as a result of a prior separation.
43 (1) For the purposes of this subsection (b), "misconduct" is defined

1 as a violation of a duty or obligation reasonably owed the employer as a
2 condition of employment. The term “gross misconduct” as used in this
3 subsection (b) shall be construed to mean conduct evincing extreme, will-
4 ful or wanton misconduct as defined by this subsection (b). Failure of the
5 employee to notify the employer of an absence shall be considered prima
6 facie evidence of a violation of a duty or obligation reasonably owed the
7 employer as a condition of employment.

8 (2) For the purposes of this subsection (b), the use of or impairment
9 caused by alcoholic liquor, a cereal malt beverage or a nonprescribed
10 controlled substance by an individual while working shall be conclusive
11 evidence of misconduct and the possession of alcoholic liquor, a cereal
12 malt beverage or a nonprescribed controlled substance by an individual
13 while working shall be prima facie evidence of conduct which is a violation
14 of a duty or obligation reasonably owed to the employer as a condition of
15 employment. Alcoholic liquor shall be defined as provided in K.S.A. 41-
16 102, and amendments thereto. Cereal malt beverage shall be defined as
17 provided in K.S.A. 41-2701, and amendments thereto. Controlled sub-
18 stance shall be defined as provided in K.S.A. 2009 Supp. 21-36a01, and
19 amendments thereto. As used in this subsection (b)(2), “required by law”
20 means required by a federal or state law, a federal or state rule or regu-
21 lation having the force and effect of law, a county resolution or municipal
22 ordinance, or a policy relating to public safety adopted in open meeting
23 by the governing body of any special district or other local governmental
24 entity. Chemical test shall include, but is not limited to, tests of urine,
25 blood or saliva. A positive chemical test shall mean a chemical result
26 showing a concentration at or above the levels listed in K.S.A. 44-501,
27 and amendments thereto, for the drugs or abuse listed therein. A positive
28 breath test shall mean a test result showing an alcohol concentration of
29 .04 or greater. Alcohol concentration means the number of grams of al-
30 colhol per 210 liters of breath. An individual’s refusal to submit to a chem-
31 ical test or breath alcohol test shall be conclusive evidence of misconduct
32 if the test meets the standards of the drug free workplace act, 41 U.S.C.
33 701 et seq.; the test was administered as part of an employee assistance
34 program or other drug or alcohol treatment program in which the em-
35 ployee was participating voluntarily or as a condition of further employ-
36 ment; the test was otherwise required by law and the test constituted a
37 required condition of employment for the individual’s job; the test was
38 requested pursuant to a written policy of the employer of which the em-
39 ployee had knowledge and was a required condition of employment; or
40 there was probable cause to believe that the individual used, possessed
41 or was impaired by alcoholic liquor, a cereal malt beverage or a controlled
42 substance while working. A positive breath alcohol test or a positive chem-
43 ical test shall be conclusive evidence to prove misconduct if the following

1 conditions are met:

2 (A) Either (i) the test was required by law and was administered pur-
3 suant to the drug free workplace act, 41 U.S.C. 701 et seq., (ii) the test
4 was administered as part of an employee assistance program or other drug
5 or alcohol treatment program in which the employee was participating
6 voluntarily or as a condition of further employment, (iii) the test was
7 requested pursuant to a written policy of the employer of which the em-
8 ployee had knowledge and was a required condition of employment, (iv)
9 the test was required by law and the test constituted a required condition
10 of employment for the individual's job, or (v) there was probable cause
11 to believe that the individual used, had possession of, or was impaired by
12 alcoholic liquor, the cereal malt beverage or the controlled substance
13 while working;

14 (B) the test sample was collected either (i) as prescribed by the drug
15 free workplace act, 41 U.S.C. 701 et seq., (ii) as prescribed by an em-
16 ployee assistance program or other drug or alcohol treatment program in
17 which the employee was participating voluntarily or as a condition of
18 further employment, (iii) as prescribed by the written policy of the em-
19 ployer of which the employee had knowledge and which constituted a
20 required condition of employment, (iv) as prescribed by a test which was
21 required by law and which constituted a required condition of employ-
22 ment for the individual's job, or (v) at a time contemporaneous with the
23 events establishing probable cause;

24 (C) the collecting and labeling of a chemical test sample was per-
25 formed by a licensed health care professional or any other individual
26 certified pursuant to paragraph (b)(2)(F) or authorized to collect or label
27 test samples by federal or state law, or a federal or state rule or regulation
28 having the force or effect of law, including law enforcement personnel;

29 (D) the chemical test was performed by a laboratory approved by the
30 United States department of health and human services or licensed by
31 the department of health and environment, except that a blood sample
32 may be tested for alcohol content by a laboratory commonly used for that
33 purpose by state law enforcement agencies;

34 (E) the chemical test was confirmed by gas chromatography, gas
35 chromatography-mass spectroscopy or other comparably reliable analyt-
36 ical method, except that no such confirmation is required for a blood
37 alcohol sample or a breath alcohol test;

38 (F) the breath alcohol test was administered by an individual trained
39 to perform breath tests, the breath testing instrument used was certified
40 and operated strictly according to description provided by the manufac-
41 turers and the reliability of the instrument performance was assured by
42 testing with alcohol standards; and

43 (G) the foundation evidence must establish, beyond a reasonable

1 doubt, that the test results were from the sample taken from the
2 individual.

3 (3) (A) For the purposes of this subsection (b), misconduct shall in-
4 clude, but not be limited to repeated absence, including incarceration,
5 resulting in absence from work of three days or longer, excluding Satur-
6 days, Sundays and legal holidays, and lateness, from scheduled work if
7 the facts show:

8 (i) The individual was absent without good cause;

9 (ii) the absence was in violation of the employer's written absenteeism
10 policy;

11 (iii) the employer gave or sent written notice to the individual, at the
12 individual's last known address, that future absence may or will result in
13 discharge; and

14 (iv) the employee had knowledge of the employer's written absen-
15 teeism policy.

16 (B) For the purposes of this subsection (b), if an employee disputes
17 being absent without good cause, the employee shall present evidence
18 that a majority of the employee's absences were for good cause. If the
19 employee alleges that the employee's repeated absences were the result
20 of health related issues, such evidence shall include documentation from
21 a licensed and practicing health care provider as defined in subsection
22 (a)(1).

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

25 (A) The employer discharged the individual after learning the indi-
26 vidual was seeking other work or when the individual gave notice of future
27 intent to quit;

28 (B) the individual was making a good-faith effort to do the assigned
29 work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory per-
30 formance due to inability, incapacity or lack of training or experience, (iii)
31 isolated instances of ordinary negligence or inadvertence, (iv) good-faith
32 errors in judgment or discretion, or (v) unsatisfactory work or conduct
33 due to circumstances beyond the individual's control; or

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

36 (c) If the individual has failed, without good cause, to either apply
37 for suitable work when so directed by the employment office of the sec-
38 retary of labor, or to accept suitable work when offered to the individual
39 by the employment office, the secretary of labor, or an employer, such
40 disqualification shall begin with the week in which such failure occurred
41 and shall continue until the individual becomes reemployed and has had
42 earnings from insured work of at least three times such individual's de-
43 termined weekly benefit amount. In determining whether or not any work

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

27 (d) For any week with respect to which the secretary of labor, or a
28 person or persons designated by the secretary, finds that the individual's
29 unemployment is due to a stoppage of work which exists because of a
30 labor dispute or there would have been a work stoppage had normal
31 operations not been maintained with other personnel previously and cur-
32 rently employed by the same employer at the factory, establishment or
33 other premises at which the individual is or was last employed, except
34 that this subsection (d) shall not apply if it is shown to the satisfaction of
35 the secretary of labor, or a person or persons designated by the secretary,
36 that: (1) The individual is not participating in or financing or directly
37 interested in the labor dispute which caused the stoppage of work; and
38 (2) the individual does not belong to a grade or class of workers of which,
39 immediately before the commencement of the stoppage, there were
40 members employed at the premises at which the stoppage occurs any of
41 whom are participating in or financing or directly interested in the dis-
42 pute. If in any case separate branches of work which are commonly con-
43 ducted as separate businesses in separate premises are conducted in sep-

1 arate departments of the same premises, each such department shall, for
2 the purpose of this subsection (d) be deemed to be a separate factory,
3 establishment or other premises. For the purposes of this subsection (d),
4 failure or refusal to cross a picket line or refusal for any reason during
5 the continuance of such labor dispute to accept the individual's available
6 and customary work at the factory, establishment or other premises where
7 the individual is or was last employed shall be considered as participation
8 and interest in the labor dispute.

9 (e) For any week with respect to which or a part of which the indi-
10 vidual has received or is seeking unemployment benefits under the un-
11 employment compensation law of any other state or of the United States,
12 except that if the appropriate agency of such other state or the United
13 States finally determines that the individual is not entitled to such un-
14 employment benefits, this disqualification shall not apply.

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

20 (g) For the period of one year beginning with the first day following
21 the last week of unemployment for which the individual received benefits,
22 or for one year from the date the act was committed, whichever is the
23 later, if the individual, or another in such individual's behalf with the
24 knowledge of the individual, has knowingly made a false statement or
25 representation, or has knowingly failed to disclose a material fact to obtain
26 or increase benefits under this act or any other unemployment compen-
27 sation law administered by the secretary of labor.

28 (h) For any week with respect to which the individual is receiving
29 compensation for temporary total disability or permanent total disability
30 under the workmen's compensation law of any state or under a similar
31 law of the United States.

32 (i) For any week of unemployment on the basis of service in an in-
33 structional, research or principal administrative capacity for an educa-
34 tional institution as defined in subsection (v) of K.S.A. 44-703, and
35 amendments thereto, if such week begins during the period between two
36 successive academic years or terms or, when an agreement provides in-
37 stead for a similar period between two regular but not successive terms
38 during such period or during a period of paid sabbatical leave provided
39 for in the individual's contract, if the individual performs such services in
40 the first of such academic years or terms and there is a contract or a
41 reasonable assurance that such individual will perform services in any
42 such capacity for any educational institution in the second of such aca-
43 demic years or terms.

1 (j) For any week of unemployment on the basis of service in any
2 capacity other than service in an instructional, research, or administrative
3 capacity in an educational institution, as defined in subsection (v) of
4 K.S.A. 44-703, and amendments thereto, if such week begins during the
5 period between two successive academic years or terms if the individual
6 performs such services in the first of such academic years or terms and
7 there is a reasonable assurance that the individual will perform such serv-
8 ices in the second of such academic years or terms, except that if benefits
9 are denied to the individual under this subsection (j) and the individual
10 was not offered an opportunity to perform such services for the educa-
11 tional institution for the second of such academic years or terms, such
12 individual shall be entitled to a retroactive payment of benefits for each
13 week for which the individual filed a timely claim for benefits and for
14 which benefits were denied solely by reason of this subsection (j).

15 (k) For any week of unemployment on the basis of service in any
16 capacity for an educational institution as defined in subsection (v) of
17 K.S.A. 44-703, and amendments thereto, if such week begins during an
18 established and customary vacation period or holiday recess, if the indi-
19 vidual performs services in the period immediately before such vacation
20 period or holiday recess and there is a reasonable assurance that such
21 individual will perform such services in the period immediately following
22 such vacation period or holiday recess.

23 (l) For any week of unemployment on the basis of any services, sub-
24 stantially all of which consist of participating in sports or athletic events
25 or training or preparing to so participate, if such week begins during the
26 period between two successive sport seasons or similar period if such
27 individual performed services in the first of such seasons or similar per-
28 iods and there is a reasonable assurance that such individual will perform
29 such services in the later of such seasons or similar periods.

30 (m) For any week on the basis of services performed by an alien
31 unless such alien is an individual who was lawfully admitted for perma-
32 nent residence at the time such services were performed, was lawfully
33 present for purposes of performing such services, or was permanently
34 residing in the United States under color of law at the time such services
35 were performed, including an alien who was lawfully present in the
36 United States as a result of the application of the provisions of section
37 212(d)(5) of the federal immigration and nationality act. Any data or in-
38 formation required of individuals applying for benefits to determine
39 whether benefits are not payable to them because of their alien status
40 shall be uniformly required from all applicants for benefits. In the case
41 of an individual whose application for benefits would otherwise be ap-
42 proved, no determination that benefits to such individual are not payable
43 because of such individual's alien status shall be made except upon a

1 preponderance of the evidence.

2 (n) For any week in which an individual is receiving a governmental
3 or other pension, retirement or retired pay, annuity or other similar pe-
4 riodic payment under a plan maintained by a base period employer and
5 to which the entire contributions were provided by such employer, except
6 that: (1) If the entire contributions to such plan were provided by the
7 base period employer but such individual's weekly benefit amount ex-
8 ceeds such governmental or other pension, retirement or retired pay,
9 annuity or other similar periodic payment attributable to such week, the
10 weekly benefit amount payable to the individual shall be reduced (but
11 not below zero) by an amount equal to the amount of such pension,
12 retirement or retired pay, annuity or other similar periodic payment
13 which is attributable to such week; or (2) if only a portion of contributions
14 to such plan were provided by the base period employer, the weekly
15 benefit amount payable to such individual for such week shall be reduced
16 (but not below zero) by the prorated weekly amount of the pension, re-
17 tirement or retired pay, annuity or other similar periodic payment after
18 deduction of that portion of the pension, retirement or retired pay, an-
19 nuity or other similar periodic payment that is directly attributable to the
20 percentage of the contributions made to the plan by such individual; or
21 (3) if the entire contributions to the plan were provided by such individ-
22 ual, or by the individual and an employer (or any person or organization)
23 who is not a base period employer, no reduction in the weekly benefit
24 amount payable to the individual for such week shall be made under this
25 subsection (n); or (4) whatever portion of contributions to such plan were
26 provided by the base period employer, if the services performed for the
27 employer by such individual during the base period, or remuneration
28 received for the services, did not affect the individual's eligibility for, or
29 increased the amount of, such pension, retirement or retired pay, annuity
30 or other similar periodic payment, no reduction in the weekly benefit
31 amount payable to the individual for such week shall be made under this
32 subsection (n). No reduction shall be made for payments made under the
33 social security act or railroad retirement act of 1974.

34 (o) For any week of unemployment on the basis of services per-
35 formed in any capacity and under any of the circumstances described in
36 subsection (i), (j) or (k) which an individual performed in an educational
37 institution while in the employ of an educational service agency. For the
38 purposes of this subsection (o), the term "educational service agency"
39 means a governmental agency or entity which is established and operated
40 exclusively for the purpose of providing such services to one or more
41 educational institutions.

42 (p) For any week of unemployment on the basis of service as a school
43 bus or other motor vehicle driver employed by a private contractor to

1 transport pupils, students and school personnel to or from school-related
2 functions or activities for an educational institution, as defined in subsec-
3 tion (v) of K.S.A. 44-703, and amendments thereto, if such week begins
4 during the period between two successive academic years or during a
5 similar period between two regular terms, whether or not successive, if
6 the individual has a contract or contracts, or a reasonable assurance
7 thereof, to perform services in any such capacity with a private contractor
8 for any educational institution for both such academic years or both such
9 terms. An individual shall not be disqualified for benefits as provided in
10 this subsection (p) for any week of unemployment on the basis of service
11 as a bus or other motor vehicle driver employed by a private contractor
12 to transport persons to or from nonschool-related functions or activities.

13 (q) For any week of unemployment on the basis of services per-
14 formed by the individual in any capacity and under any of the circum-
15 stances described in subsection (i), (j), (k) or (o) which are provided to
16 or on behalf of an educational institution, as defined in subsection (v) of
17 K.S.A. 44-703, and amendments thereto, while the individual is in the
18 employ of an employer which is a governmental entity, Indian tribe or
19 any employer described in section 501(c)(3) of the federal internal reven-
20 ue code of 1986 which is exempt from income under section 501(a) of
21 the code.

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

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

29 (2) the individual is attending approved training as defined in sub-
30 section (s) of K.S.A. 44-703 and amendments thereto; or

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

34 (s) For any week with respect to which an individual is receiving or
35 has received remuneration in the form of a back pay award or settlement.
36 The remuneration shall be allocated to the week or weeks in the manner
37 as specified in the award or agreement, or in the absence of such speci-
38 ficity in the award or agreement, such remuneration shall be allocated to
39 the week or weeks in which such remuneration, in the judgment of the
40 secretary, would have been paid.

41 (1) For any such weeks that an individual receives remuneration in
42 the form of a back pay award or settlement, an overpayment will be
43 established in the amount of unemployment benefits paid and shall be

1 collected from the claimant.

2 (2) If an employer chooses to withhold from a back pay award or
3 settlement, amounts paid to a claimant while they claimed unemployment
4 benefits, such employer shall pay the department the amount withheld.
5 With respect to such amount, the secretary shall have available all of the
6 collection remedies authorized or provided in K.S.A. 44-717, and amend-
7 ments thereto.

8 (t) If the individual has been discharged for failing a preemployment
9 drug screen required by the employer and if such discharge occurs not
10 later than seven days after the employer is notified of the results of such
11 drug screen. The disqualification shall begin the day following the separa-
12 tion and shall continue until after the individual becomes reemployed
13 and has had earnings from insured work of at least three times the indi-
14 vidual's determined weekly benefit amount.

15 (u) If the individual was found not to have a disqualifying adjudication
16 or conviction under K.S.A. 39-970, and amendments thereto, or K.S.A.
17 65-5117, and amendments thereto, was hired and then was subsequently
18 convicted of a disqualifying felony under K.S.A. 39-970, and amendments
19 thereto, or K.S.A. 65-5117, and amendments thereto, and discharged pur-
20 suant to K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and
21 amendments thereto. The disqualification shall begin the day following
22 the separation and shall continue until after the individual becomes reem-
23 ployed and has had earnings from insured work of at least three times
24 the individual's determined weekly benefit amount.

25 Sec. 5. K.S.A. 2009 Supp. 44-712 is hereby amended to read as fol-
26 lows: 44-712. (a) *Establishment and control.* There is hereby established
27 as a special fund in the state treasury, separate and apart from all public
28 moneys or funds of this state, an employment security fund, which shall
29 be administered by the secretary as provided in this act. This fund shall
30 consist of: (1) All contributions collected under this act; (2) interest
31 earned upon any moneys in the fund; (3) all moneys credited to this state's
32 account in the federal unemployment trust fund, pursuant to section 903
33 of the social security act, 42 U.S.C.A. § 1103, as amended; (4) any prop-
34 erty or securities acquired through the use of moneys belonging to the
35 fund, and all other moneys received for the fund from any other source;
36 (5) all earnings of such property or securities. All moneys in this fund
37 shall be mingled and undivided.

38 (b) *Accounts and deposits.* The state treasurer shall be ex officio cus-
39 todian of the fund. Payments from the fund, and for the purposes of this
40 act deposits with the secretary of the treasury of the United States shall
41 not be deemed to be payments from the fund, shall be made by any
42 commercially-accepted means approved by the secretary. There shall be
43 maintained within the fund three separate accounts: (1) A clearing ac-

1 count; (2) an unemployment trust fund account, and (3) a benefit account.
2 All money payable to the fund upon receipt thereof by the secretary, shall
3 be remitted to the state treasurer in accordance with the provisions of
4 K.S.A. 75-4215, and amendments thereto. Upon receipt of each such
5 remittance, the state treasurer shall deposit the entire amount in the state
6 treasury to the credit of the clearing account of the fund. Refunds payable
7 pursuant to K.S.A. 44-717, and amendments thereto, may be paid from
8 the clearing account of the fund by any commercially-accepted means
9 approved by the secretary. After clearance thereof, all other moneys in
10 the clearing account of the fund shall be immediately deposited with the
11 secretary of the treasury of the United States of America to the credit of
12 the account of this state in the federal unemployment trust fund estab-
13 lished and maintained pursuant to section 904 of the social security act,
14 42 U.S.C.A. § 1104, as amended, any provisions of law in this state relating
15 to the deposit, administration, release, or disbursement of moneys in the
16 possession or custody of this state to the contrary notwithstanding. The
17 benefit account of the fund shall consist of all moneys requisitioned from
18 this state's account in the federal unemployment trust fund. Except as
19 herein otherwise provided, moneys in the clearing and benefit accounts
20 of the fund may be deposited by the state treasurer in any bank or public
21 depository as is now provided by law for the deposit of general funds of
22 the state, but no public deposit insurance charge or premium shall be
23 paid out of the fund. Moneys in the clearing and benefit accounts of the
24 fund shall not be commingled with other state funds and shall be main-
25 tained in separate bank accounts.

26 (c) *Withdrawals.* (1) Moneys shall be requisitioned from this state's
27 account in the federal unemployment trust fund solely for the payment
28 of benefits and in accordance with the provisions of this act and the rules
29 and regulations adopted by the secretary, except that moneys credited to
30 this state's account pursuant to section 903 of the social security act, 42
31 U.S.C.A. § 1103, as amended, shall be used exclusively as provided in
32 subsection (d) of this section. The secretary shall from time to time re-
33 quisition from the federal unemployment trust fund such amounts, not
34 exceeding the amounts standing to its account therein, as deemed nec-
35 essary for the payment of benefits for a reasonable future period. Upon
36 receipt thereof the state treasurer shall deposit such moneys in the benefit
37 account of the fund and payments of benefits shall be charged solely
38 against such benefit account of the fund. Expenditures of such moneys
39 in the benefit account and refunds from the clearing account of the fund
40 shall not be subject to any provisions of law requiring specific appropri-
41 ations. Any balance of moneys requisitioned from the federal unemploy-
42 ment trust fund which remains unclaimed or unpaid in the benefit ac-
43 count of the fund after the expiration of the period for which such sums

1 were requisitioned shall either be deducted from estimates for, and may
2 be utilized for the payment of benefits during succeeding periods, or, in
3 the discretion of the secretary shall be directed to be redeposited with
4 the secretary of the treasury of the United States of America, to the credit
5 of this state's account in the federal unemployment trust fund, as provided
6 in subsection (b) of this section. All balances accrued from unpaid or
7 canceled warrants issued pursuant to this section, notwithstanding the
8 provisions of K.S.A. 10-812, and amendments thereto, shall remain in the
9 benefit account of the fund, and be disbursed in accordance with the
10 provisions of this act relating to such account.

11 (2) *The authority of the secretary to borrow money from the federal*
12 *unemployment account in order to have the funds necessary for the pay-*
13 *ment of unemployment benefits which exceed the fund amounts in the*
14 *state's account in the federal unemployment trust fund is subject to the*
15 *prior approval of the state finance council acting on this matter which is*
16 *hereby characterized as a matter of legislative delegation and subject to*
17 *the guidelines prescribed in subsection (c) of K.S.A. 75-3711c, and amend-*
18 *ments thereto, except that such approval also may be given while the*
19 *legislature is in session.*

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

42 (2) Money credited to the account of this state pursuant to section
43 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may not

1 be withdrawn or obligated except for the payment of benefits and for the
2 payment of expenses for the administration of this act and of public em-
3 ployment offices pursuant to this subsection (d).

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

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

18 (e) *Management of funds upon discontinuance of federal unemploy-*
19 *ment trust fund.* The provisions of subsections (a), (b), (c) and (d) of this
20 section, to the extent that they relate to the federal unemployment trust
21 fund, shall be operative only so long as such unemployment trust fund
22 continues to exist and so long as the secretary of the treasury of the United
23 States of America continues to maintain for this state a separate book
24 account of all funds deposited therein by this state for benefit purposes,
25 together with this state's proportionate share of the earnings of such un-
26 employment trust fund, from which no other state is permitted to make
27 withdrawals. If and when such unemployment trust fund ceases to exist,
28 or such separate book account is no longer maintained, all moneys, prop-
29 erties or securities therein, belonging to the employment security fund
30 of this state, shall be transferred to the state treasurer, to be administered
31 by the secretary as a trust fund for the purpose of paying benefits under
32 this act, and the director of investments upon the direction of the sec-
33 retary shall have authority to hold, invest, transfer, sell, deposit, and re-
34 lease such moneys, and any properties, securities, or earnings acquired
35 as an incident to such administration.

36 Sec. 6. K.S.A. 2009 Supp. 44-703, 44-704c, 44-705, 44-706, 44-712,
37 44-760, 44-761, 44-762, 44-763 and 44-764 are hereby repealed.

38 Sec. 7. This act shall take effect and be in force from and after its
39 publication in the Kansas register.