

HOUSE Substitute for SENATE BILL No. 425

By Committee on Commerce and Labor

3-8

9 AN ACT concerning employment security law; relating to contribution
10 rates and penalties and interest; amending K.S.A. 2009 Supp. 44-710
11 and 44-717 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2009 Supp. 44-710 is hereby amended to read as
15 follows: 44-710. (a) *Payment.* Contributions shall accrue and become pay-
16 able by each contributing employer for each calendar year in which the
17 contributing employer is subject to the employment security law with
18 respect to wages paid for employment. Such contributions shall become
19 due and be paid by each contributing employer to the secretary for the
20 employment security fund in accordance with such rules and regulations
21 as the secretary may adopt and shall not be deducted, in whole or in part,
22 from the wages of individuals in such employer's employ. In the payment
23 of any contributions, a fractional part of \$.01 shall be disregarded unless
24 it amounts to \$.005 or more, in which case it shall be increased to \$.01.
25 Should contributions for any calendar quarter be less than \$5, no payment
26 shall be required.

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

37 (2) (A) If the congress of the United States either amends or repeals
38 the Wagner-Peyser act, the federal unemployment tax act, the federal
39 social security act, or subtitle C of chapter 23 of the federal internal
40 revenue code of 1986, or any act or acts supplemental to or in lieu thereof,
41 or any part or parts of any such law, or if any such law, or any part or
42 parts thereof, are held invalid with the effect that appropriations of funds
43 by congress and grants thereof to the state of Kansas for the payment of

1 costs of administration of the employment security law are no longer
2 available for such purposes, or (B) if employers in Kansas subject to the
3 payment of tax under the federal unemployment tax act are granted full
4 credit against such tax for contributions or taxes paid to the secretary of
5 labor, then, and in either such case, beginning with the year in which the
6 unavailability of federal appropriations and grants for such purpose occurs
7 or in which such change in liability for payment of such federal tax occurs
8 and for each year thereafter, the rate of contributions of each contributing
9 employer shall be equal to the total of .5% and the rate of contributions
10 as determined for such contributing employer under K.S.A. 44-710a and
11 amendments thereto. The amount of contributions which each contrib-
12 uting employer becomes liable to pay under this paragraph (2) over the
13 amount of contributions which such contributing employer would be oth-
14 erwise liable to pay shall be credited to the employment security admin-
15 istration fund to be disbursed and paid out under the same conditions
16 and for the same purposes as other moneys are authorized to be paid
17 from the employment security administration fund, except that, if the
18 secretary determines that as of the first day of January of any year there
19 is an excess in the employment security administration fund over the
20 amount required to be disbursed during such year, an amount equal to
21 such excess as determined by the secretary shall be transferred to the
22 employment security fund.

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

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

1 utable to the claimant's work or the employer.

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

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

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

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

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

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

42 (i) Are agricultural labor as defined in subsection (w) of K.S.A. 44-
43 703, and amendments thereto, or domestic service as defined in subsec-

1 tion (aa) of K.S.A. 44-703, and amendments thereto, or
2 (ii) are services performed by an employee of this state or a political
3 subdivision thereof, as provided in subsection (i)(3)(E) of K.S.A. 44-703,
4 and amendments thereto, or
5 (iii) are services performed by an employee of a nonprofit educational
6 institution which is not an institution of higher education.
7 (H) No contributing employer or rated governmental employer's ac-
8 count shall be charged with respect to their pro rata share of benefit
9 charges if such charges are of \$100 or less.
10 (3) The examiner shall notify any base period employer whose ac-
11 count will be charged with benefits paid following the filing of a valid
12 new claim and a determination by the examiner based on all information
13 relating to the claim contained in the records of the division of employ-
14 ment security. Such notice shall become final and benefits charged to the
15 base period employer's account in accordance with the claim unless
16 within 10 calendar days from the date the notice was sent, the base period
17 employer requests in writing that the examiner reconsider the determi-
18 nation and furnishes any required information in accordance with the
19 secretary's rules and regulations. In a similar manner, a notice of an ad-
20 ditional claim followed by the first payment of benefits with respect to
21 the benefit year, filed by an individual during a benefit year after a period
22 in such year during which such individual was employed, shall be given
23 to any base period employer of the individual who has requested such a
24 notice within 10 calendar days from the date the notice of the valid new
25 claim was sent to such base period employer. For purposes of this sub-
26 section (c)(3), if the required information is not submitted or postmarked
27 within a response time limit of 10 days after the base period employer
28 notice was sent, the base period employer shall be deemed to have waived
29 its standing as a party to the proceedings arising from the claim and shall
30 be barred from protesting any subsequent decisions about the claim by
31 the secretary, a referee, the board of review or any court, except that the
32 base period employer's response time limit may be waived or extended
33 by the examiner or upon appeal, if timely response was impossible due
34 to excusable neglect. The examiner shall notify the employer of the re-
35 considered determination which shall be subject to appeal, or further
36 reconsideration, in accordance with the provisions of K.S.A. 44-709 and
37 amendments thereto.
38 (4) *Time, computation and extension.* In computing the period of
39 time for a base period employer response or appeals under this section
40 from the examiner's or the special examiner's determination or from the
41 referee's decision, the day of the act, event or default from which the
42 designated period of time begins to run shall not be included. The last
43 day of the period shall be included unless it is a Saturday, Sunday or legal

1 holiday, in which event the period runs until the end of the next day
2 which is not a Saturday, Sunday or legal holiday.

3 (d) *Pooled fund.* All contributions and payments in lieu of contribu-
4 tions and benefit cost payments to the employment security fund shall
5 be pooled and available to pay benefits to any individual entitled thereto
6 under the employment security law, regardless of the source of such con-
7 tributions or payments in lieu of contributions or benefit cost payments.

8 (e) *Election to become reimbursing employer; payment in lieu of con-*
9 *tributions.* (1) Any governmental entity, Indian tribes or tribal units, (sub-
10 divisions, subsidiaries or business enterprises wholly owned by such In-
11 dian tribes), for which services are performed as described in subsection
12 (i)(3)(E) of K.S.A. 44-703, and amendments thereto, or any nonprofit
13 organization or group of nonprofit organizations described in section
14 501(c)(3) of the federal internal revenue code of 1986 which is exempt
15 from income tax under section 501(a) of such code, that becomes subject
16 to the employment security law may elect to become a reimbursing em-
17 ployer under this subsection (e)(1) and agree to pay the secretary for the
18 employment security fund an amount equal to the amount of regular
19 benefits and $\frac{1}{2}$ of the extended benefits paid that are attributable to
20 service in the employ of such reimbursing employer, except that each
21 reimbursing governmental employer, Indian tribes or tribal units shall
22 pay an amount equal to the amount of regular benefits and extended
23 benefits paid for weeks of unemployment beginning after December 31,
24 1978, for governmental employers and December 21, 2000, for Indian
25 tribes or tribal units to individuals for weeks of unemployment which
26 begin during the effective period of such election.

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

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

40 (C) Any employer identified in this subsection (e)(1) which has re-
41 mained a contributing employer and has been paying contributions under
42 the employment security law for a period subsequent to January 1, 1972,
43 may change to a reimbursing employer by filing with the secretary not

1 later than 30 days prior to the beginning of any calendar year a written
2 notice of election to become a reimbursing employer. Such election shall
3 not be terminable by the employer for four complete calendar years.

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

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

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

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

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

42 (C) Payments made by any reimbursing employer under the provi-
43 sions of this subsection (e)(2) shall not be deducted or deductible, in

1 whole or in part, from the remuneration of individuals in the employ of
2 such employer.

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

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

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

1 been paid.

2 (G) In the discretion of the secretary, any employer who elects to
3 become liable for payments in lieu of contributions and any nonprofit
4 organization or group of nonprofit organizations described in section 501
5 (c)(3) of the federal internal revenue code of 1986 or governmental re-
6 imbursement employer or Indian tribe or tribal unit who is delinquent in
7 filing reports or in making payments of amounts certified by the secretary
8 under this section shall be required within 60 days after the effective date
9 of such election, in the case of an eligible employer so electing, or after
10 the date of notification to the delinquent employer under this subsection
11 (e)(2)(G), in the case of a delinquent employer, to execute and file with
12 the secretary a surety bond, except that the employer may elect, in lieu
13 of a surety bond, to deposit with the secretary money or securities as
14 approved by the secretary or to purchase and deliver to an escrow agent
15 a certificate of deposit to guarantee payment. The amount of the bond,
16 deposit or escrow agreement required by this subsection (e)(2)(G) shall
17 not exceed 5.4% of the organization's taxable wages paid for employment
18 by the eligible employer during the four calendar quarters immediately
19 preceding the effective date of the election or the date of notification, in
20 the case of a delinquent employer. If the employer did not pay wages in
21 each of such four calendar quarters, the amount of the bond or deposit
22 shall be as determined by the secretary. Upon the failure of an employer
23 to comply with this subsection (e)(2)(G) within the time limits imposed
24 or to maintain the required bond or deposit, the secretary may terminate
25 the election of such eligible employer or delinquent employer, as the case
26 may be, to make payments in lieu of contributions, and such termination
27 shall be effective for the current and next calendar year.

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

1 secretary of administration on July 15 of each year and such certified rate
2 shall become effective on the July 1 immediately following the date of
3 certification. A detailed listing of benefit charges applicable to the state's
4 reimbursing account shall be furnished quarterly by the secretary to the
5 secretary of administration and the total amount of charges deducted
6 from previous reimbursing payments made by the state. On January 1 of
7 each year, if it is determined that benefit charges exceed the amount of
8 prior reimbursing payments, an upward adjustment shall be made there-
9 for in the fiscal year rate which will be certified on the ensuing July 15.
10 If total payments exceed benefit charges, all or part of the excess may be
11 refunded, at the discretion of the secretary, from the fund or retained in
12 the fund as part of the payments which may be required for the next fiscal
13 year.

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

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

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

1 wages paid to the individual by such employer bear to the total base
2 period wages paid to the individual by all of such individual's base period
3 employers.

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

31 Sec. 2. K.S.A. 2009 Supp. 44-717 is hereby amended to read as fol-
32 lows: 44-717. (a) (1) *Penalties on past-due reports, interest on past-due*
33 *contributions, payments in lieu of contributions and benefit cost pay-*
34 *ments.* Any employer or any officer or agent of an employer, who fails to
35 file any wage report or contribution return by the last day of the month
36 following the close of each calendar quarter to which they are related
37 shall pay a penalty as provided by this subsection (a) for each month or
38 fraction of a month until the report or return is received by the secretary
39 of labor *except that for calendar years 2010 and 2011 an employer or any*
40 *officer or agent of the employer shall have up to 90 days past the due*
41 *date to pay such employer's contribution without being charged a penalty*
42 *or interest, however, when the 90 day period has passed, the provisions*
43 *of this section shall apply.* The penalty for each month or fraction of a

1 month shall be an amount equal to .05% of the total wages paid by the
2 employer during the quarter, except that no penalty shall be less than \$25
3 nor more than \$200 for each such report or return not timely filed. Con-
4 tributions and benefit cost payments unpaid by the last day of the month
5 following the last calendar quarter to which they are related and payments
6 in lieu of contributions unpaid 30 days after the mailing of the statement
7 of benefit charges, shall bear interest at the rate of 1% per month or
8 fraction of a month until payment is received by the secretary of labor
9 except that an employing unit, which is not theretofore subject to this law
10 and which becomes an employer and does not refuse to make the reports,
11 returns and contributions, payments in lieu of contributions and benefit
12 cost payments required under this law, shall not be liable for such penalty
13 or interest if the wage reports and contribution returns required are filed
14 and the contributions, payments in lieu of contributions or benefit cost
15 payments required are paid within 10 days following notification by the
16 secretary of labor that a determination has been made fixing its status as
17 an employer subject to this law. Upon written request and good cause
18 shown, the secretary of labor may abate any penalty or interest or portion
19 thereof provided for by this subsection (a). Interest amounting to less
20 than \$5 shall be waived by the secretary of labor and shall not be collected.
21 Penalties and interest collected pursuant to this subsection shall be paid
22 into the special employment security fund. For all purposes under this
23 section, amounts assessed as surcharges under subsection (j) or under
24 K.S.A. 44-710a, and amendments thereto, shall be considered to be con-
25 tributions and shall be subject to penalties and interest imposed under
26 this section and to collection in the manner provided by this section. For
27 purposes of this subsection, a wage report, a contribution return, a con-
28 tribution, a payment in lieu of contribution or a benefit cost payment is
29 deemed to be filed or paid as of the date it is placed in the United States
30 mail.

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

- 34 (i) will cause the Indian tribe to be liable for taxes under FUTA;
- 35 (ii) will cause the Indian tribe to lose the option to make payments
36 in lieu of contributions;
- 37 (iii) could cause the Indian tribe to be excepted from the definition
38 of “employer,” as provided in paragraph (h)(3) of K.S.A. 44-703, and
39 amendments thereto, and services in the employ of the Indian tribe, as
40 provided in paragraph (i)(3)(E) of K.S.A. 44-703, and amendments
41 thereto, to be excepted from “employment.”

42 (b) *Collection.* (1) If, after due notice, any employer defaults in pay-
43 ment of any penalty, contributions, payments in lieu of contributions,

1 benefit cost payments, or interest thereon the amount due may be col-
2 lected by civil action in the name of the secretary of labor and the em-
3 ployer adjudged in default shall pay the cost of such action. Civil actions
4 brought under this section to collect contributions, payments in lieu of
5 contributions, benefit cost payments, penalties, or interest thereon from
6 an employer shall be heard by the district court at the earliest possible
7 date and shall be entitled to preference upon the calendar of the court
8 over all other civil actions except petitions for judicial review under this
9 act and cases arising under the workmen's compensation act. All liability
10 determinations of contributions due, payments in lieu of contributions or
11 benefit cost payments due shall be made within a period of five years
12 from the date such contributions, payments in lieu of contributions or
13 benefit cost payments were due except such determinations may be made
14 for any time when an employer has filed fraudulent reports with intent
15 to evade liability.

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

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

40 (c) *Priorities under legal dissolutions or distributions.* In the event of
41 any distribution of employer's assets pursuant to an order of any court
42 under the laws of this state, including but not limited to any probate
43 proceeding, interpleader, receivership, assignment for benefit of credi-

1 tors, adjudicated insolvency, composition or similar proceedings, contri-
2 butions or payments in lieu of contributions then or thereafter due shall
3 be paid in full from the moneys which shall first come into the estate,
4 prior to all other claims, except claims for wages of not more than \$250
5 to each claimant, earned within six months of the commencement of the
6 proceedings. In the event of an employer's adjudication in bankruptcy,
7 judicially confirmed extension proposal, or composition, under the federal
8 bankruptcy act of 1898, as amended, contributions then or thereafter due
9 shall be entitled to such priority as is provided in that act for taxes due
10 any state of the United States.

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

29 (e) (1) *Lien.* If any employer or person who is liable to pay contri-
30 butions, payments in lieu of contributions or benefit cost payments ne-
31 glects or refuses to pay the same after demand, the amount, including
32 interest and penalty, shall be a lien in favor of the state of Kansas, sec-
33 retary of labor, upon all property and rights to property, whether real or
34 personal, belonging to such employer or person. Such lien shall not be
35 valid as against any mortgagee, pledgee, purchaser or judgment creditor
36 until notice thereof has been filed by the secretary of labor in the office
37 of register of deeds in any county in the state of Kansas, in which such
38 property is located, and when so filed shall be notice to all persons claim-
39 ing an interest in the property of the employer or person against whom
40 filed. The register of deeds shall enter such notices in the financing state-
41 ment record and shall also record the same in full in miscellaneous record
42 and index the same against the name of the delinquent employer. The
43 register of deeds shall accept, file, and record such notice without pre-

1 payment of any fee, but lawful fees shall be added to the amount of such
2 lien and collected when satisfaction is presented for entry. Such lien shall
3 be satisfied of record upon the presentation of a certificate of discharge
4 by the state of Kansas, secretary of labor. Nothing contained in this sub-
5 section (e) shall be construed as an invalidation of any lien or notice filed
6 in the name of the unemployment compensation division or the employ-
7 ment security division and such liens shall be and remain in full force and
8 effect until satisfied as provided by this subsection (e).

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

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

43 (4) *Successive seizures.* Whenever any property or right to property

1 upon which levy has been made under this subsection (e) is not sufficient
2 to satisfy the claim of the secretary for which levy is made, the secretary
3 or the secretary's authorized representative may proceed thereafter and
4 as often as may be necessary, to levy in like manner upon any other
5 property or rights to property which belongs to the employer or person
6 against whom such claim exists or upon which a lien is created by this
7 subsection (e) until the amount due from the employer or person, to-
8 gether with all expenses, is fully paid.

9 (f) *Warrant*. In addition or as an alternative to any other remedy
10 provided by this section and provided that no appeal or other proceeding
11 for review permitted by this law shall then be pending and the time for
12 taking thereof shall have expired, the secretary of labor or an authorized
13 representative of the secretary may issue a warrant certifying the amount
14 of contributions, payments in lieu of contributions, benefit cost payments,
15 interest or penalty, and the name of the employer liable for same after
16 giving 15 days prior notice. Upon request, service of final notices shall be
17 made by the sheriff within the sheriff's county, by the sheriff's deputy or
18 some person specially appointed by the secretary for that purpose, or by
19 the secretary's designee. A person specially appointed by the secretary or
20 the secretary's designee to serve final notices may make service any place
21 in the state. Final notices shall be served as follows:

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

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

- 1 (3) *Refusal to accept service.* In all cases when the person to be
2 served, or an agent authorized by such person to accept service of peti-
3 tions and summonses, shall refuse to receive copies of the final notice,
4 the offer of the duly authorized process server to deliver copies thereof
5 and such refusal shall be sufficient service of such notice.
- 6 (4) *Proof of service.* (A) Every officer to whom a final notice or other
7 process shall be delivered for service within or without the state, shall
8 make return thereof in writing stating the time, place and manner of
9 service of such writ, and shall sign such officer's name to such return.
- 10 (B) If service of the notice is made by a person appointed by the
11 secretary or the secretary's designee to make service, such person shall
12 make an affidavit as to the time, place and manner of service thereof in
13 a form prescribed by the secretary or the secretary's designee.
- 14 (5) *Time for return.* The officer or other person receiving a final no-
15 tice shall make a return of service promptly and shall send such return
16 to the secretary or the secretary's designee in any event within 10 days
17 after the service is effected. If the final notice cannot be served it shall
18 be returned to the secretary or the secretary's designee within 30 days
19 after the date of issue with a statement of the reason for the failure to
20 serve the same. The original return shall be attached to and filed with
21 any warrant thereafter filed.
- 22 (6) *Service by mail.* (A) Upon direction of the secretary or the sec-
23 retary's designee, service by mail may be effected by forwarding a copy
24 of the notice to the employer by registered or certified mail to the em-
25 ployer's address as it appears on the records of the agency. A copy of the
26 return receipt shall be attached to and filed with any warrant thereafter
27 filed.
- 28 (B) The secretary of labor or an authorized representative of the sec-
29 retary may file the warrant for record in the office of the clerk of the
30 district court in the county in which the employer owing such contribu-
31 tions, payments in lieu of contributions, benefit cost payments, interest,
32 or penalty has business property. The warrant shall certify the amount of
33 contributions, payments in lieu of contributions, benefit cost payments,
34 interest and penalty due, and the name of the employer liable for such
35 amount. It shall be the duty of the clerk of the district court to file such
36 warrant of record and enter the warrant in the records of the district
37 court for judgment and decrees under the procedure prescribed for filing
38 transcripts of judgment.
- 39 (C) The clerk shall enter, on the day the warrant is filed, the case on
40 the appearance docket, together with the amount and the time of filing
41 the warrant. From the time of filing such warrant, the amount of the
42 contributions, payments in lieu of contributions, benefit cost payments,
43 interest, and penalty, certified therein, shall have the force and effect of

1 a judgment of the district court until the same is satisfied by the secretary
2 of labor or an authorized representative or attorney for the secretary.
3 Execution shall be issuable at the request of the secretary of labor, an
4 authorized representative or attorney for the secretary, as is provided in
5 the case of other judgments.

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

8 (E) Warrants shall be satisfied of record by payment to the clerk of
9 the district court of the contributions, payments in lieu of contributions,
10 benefit cost payments, penalty, interest to date, and court costs. Warrants
11 may also be satisfied of record by payment to the clerk of the district
12 court of all court costs accrued in the case and by filing a certificate by
13 the secretary of labor, certifying that the contributions, payments in lieu
14 of contributions, benefit cost payments, interest and penalty have been
15 paid.

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

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

1 mination. For all taxable years commencing after December 31, 1997,
2 interest at the rate prescribed in K.S.A. 79-2968, and amendments
3 thereto, shall be allowed on a contribution or benefit cost payment which
4 the secretary has determined was erroneously collected pursuant to this
5 section.

6 (i) (1) *Cash deposit or bond.* If any contributing employer is delin-
7 quent in making payments under the employment security law during any
8 two quarters of the most recent four-quarter period, the secretary or the
9 secretary's authorized representative shall have the discretionary power
10 to require such contributing employer either to deposit cash or to file a
11 bond with sufficient sureties to guarantee the payment of contributions,
12 penalty and interest owed by such employer.

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

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

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

1 by this section.

2 (k) *Electronic filing of wage report and contribution return and elec-*
3 *tronic payment of contributions, benefit cost payments or reimbursing*
4 *payments.* The following employers or third party administrators shall file
5 all wage reports and contribution returns and make payment of contri-
6 butions, benefit cost payments or reimbursing payments electronically as
7 follows:

8 (1) Wage reports, contribution returns and payments due after June
9 30, 2008, for those employers with 250 or more employees or third party
10 administrators with 250 or more client employees at the time such filing
11 or payment is first due;

12 (2) wage reports, contribution returns and payments due after June
13 30, 2009, for those employers with 100 or more employees or third party
14 administrators with 100 or more client employees at the time such filing
15 or payment is first due; and

16 (3) wage reports, contribution returns and payments due after June
17 30, 2010, for those third party administrators with 50 or more client em-
18 ployees at the time such filing or payment is first due.

19 The requirements of this subsection may be waived by the secretary
20 for an employer if the employer demonstrates a hardship in complying
21 with this subsection.

22 Sec. 3. K.S.A. 2009 Supp. 44-710 and 44-717 are hereby repealed.

23 Sec. 4. This act shall take effect and be in force from and after its
24 publication in the Kansas register.