Approved _____
Date

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND TOURISM.

The meeting was called to order by Sen. Bill Morris at
Chairperson

1:30 ~~XXX~~ a.m./p.m. on February 21, 1983 in room 529-S of the Capitol.

All members were present ~~except~~.

Committee staff present:
Mark Burghart, Research Department
Bruce Kinzie, Revisor
Louise Cunningham, Secretary

Conferees appearing before the committee:
Phil Pennington, Kansas Trial Lawyers Association
William Hutton, Kansas Trial Lawyers Association
Jim Gregory, Wichita, Beech Aircraft
Mark Bennett, Topeka, American Insurance Association
George McCullough, AFL-CIO

A motion was made by Sen. Feleciano to approve the Minutes of February 15th. Motion was seconded by Sen. Arasmith. Motion carried.

The staff briefed the Committee on the provisions in S.B. 82 and S.B. 290 regarding workers' compensation.

S.B. 82 - Workers' Compensation; relating to payment of award in lump sum.

Phil Pennington is the Legislative Assistant for the Kansas Trial Lawyers Association, which represents 800 members. They requested this bill.

William Hutton, Kansas Trial Lawyers Association said this bill would help workers cope with inflation. It would enable an employee to receive a lump sum payment and would leave it to the discretion of the Director rather than to leave it to the insurance companies. Sometimes they have to settle for less than the value of their cases. He said this would take the "hammer" out of the hands of the insurance company. In many cases the insurance company would charge a 25% discount rate to settle for a lump sum. This was within the law. There was some question about this since the bill specified an 8% discount.

Jim Gregory, Beech Aircraft, opposed the bill. He said they had had no complaints regarding failure to award a lump sum payment and that the intent of workers' compensation was to give the injured wage earner a continued weekly income. A copy of his statement is attached. (Attachment 1).

Mark Bennett, American Insurance Association, opposed the bill. He said the purpose was to try to protect the weekly income of the worker. In certain circumstances if the Director found it necessary to have lump sum payments it can be done and handled. He said the Director would not allow anyone taking an unfair advantage of the worker. This bill is not good legislation for either the worker or employer.

George McCullough, AFL-CIO, said they opposed the bill because if the injured worker accepted a lump sum and then his condition changed as a result of the injury, the medical plans will not pay any more benefits and the case could not be reopened for review. A copy of his statement is attached. (Attachment 2). He said some companies would rather pay a lump sum because it costs a lot to pay by the week.

S.B. 290 - Workers' Compensation; relating to compensation for certain disabilities.

George McCullough said they supported this bill because it would enact

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an inflation feature in the permanent or temporary partial section of the law. He felt it should also be written to include benefits for widows and children in death settlements. A copy of his statement is attached. (Attachment 3).

William Hutton said the bill was not seeking to increase benefits but was trying to increase or decrease the weekly benefit by the inflation rate.

Jim Gregory, Beech Aircraft, said they were opposed to the bill. It would make the cost more expensive. The insurance people would not know how to calculate their potential liabilities for future payments. A copy of his statement is attached. (Attachment 4).

Mark Bennett said they were opposed to this bill because they cannot calculate reserves for indexing. It would be necessary to increase rates for such contingencies and they are opposed to any more increases in rates unless they are absolutely necessary. If this were adopted it would be necessary to put a cap on it so the industry would know what reserves to maintain.

The Chairman submitted a proposed bill(3 RS 0986, Attachment 5) which provides that workers who live in an area of a district unemployment office where the unemployment rate is equal to or more than 7% may not be required to file for continued claims for benefits after the initial claim for benefits has been filed. A motion was made by Sen. Werts and seconded by Sen. Arasmith to introduce the bill as a committee bill. Motion carried.

The Chairman submitted a proposed bill concerning voluntary quits and negative account surcharges (3 RS 1088, Attachment 6). A motion was made by Sen. Werts and seconded by Sen. Burke to submit the bill as a committee bill. Motion carried.

The Chairman informed the Committee that hearings would be held next week to give people a chance to testify on what changes should be made in the Employment Security laws. Sen. Karr requested staff to prepare some options for the Committee to consider when conducting next week's information hearings.

Meeting was adjourned.

SENATE LABOR, INDUSTRY & TOURISM COMMITTEE

Date 2-21 Place 529-S. Time 1:30

GUEST LIST

NAME	ADDRESS	ORGANIZATION
Phil Jennings	1818 Washburn Topeka 66604	Ks Trial Lawyers Assoc.
Will. W. Hutton	375 New Brotherhood Bldg/KCK	" "
Bill Sneed	Topeka	Ks Ind Dept
B Moore	5230 W 26 Topeka	Div of Workers Comp.
D Bern	Topeka	DHR
Jim Hoyt	Wichita	Beech Aircraft
Michael Fe	Topeka	A & R
Mark Tennell	Topeka	A & A
Bill Hennessey	"	Div. of Work. Comp.
Larry Wagner	"	DHR
George E. Waldeck	Topeka	SVote AFL-CIO
Norma J. Gudwich	401 Topeka	DHR
Wayne Maichel	110 W 6 Top	Kansas AFL-CIO
George Wilch	S.O.B.	Dof A.
[illegible]	Benton Ks	
[illegible]	Topeka	KNEA

Beech Aircraft Corporation
Wichita, Kansas 67201
U.S.A.

STATEMENT BEFORE THE
KANSAS SENATE
LABOR, INDUSTRY AND TOURISM COMMITTEE
FEBRUARY 21, 1983

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS JIM GREGORY FROM BEECH AIRCRAFT CORPORATION. WE HAVE AIRCRAFT MANUFACTURING FACILITIES IN WICHITA, SALINA, LIBERAL, ANDOVER AND NEWTON. WE APPEAR TODAY IN OPPOSITION TO SB 82. IN OUR JUDGEMENT THIS LEGISLATION ISN'T NECESSARY. EXISTING KANSAS STATUTES CONTAIN AMPLE PROVISION TO PERMIT THE DIRECTOR TO APPROVE A LUMP SUM PAYMENT IN THOSE CASES WHERE IT APPEARS IN THE BEST INTEREST OF ALL PARTIES.

THE EXPERIENCE OF BEECH AIRCRAFT AND ITS INSURERS IS THAT THE CURRENT ADMINISTRATION OF THE ACT IS FAIR AND EQUITABLE TO ALL PARTIES. BEECH'S INSURERS HAVE AGREED TO LUMP SUM PAYMENTS FOR WORKERS' COMPENSATION BENEFICIARIES WHEN DEEMED APPROPRIATE. OUR WORKERS' COMPENSATION PREMIUM IS ABOUT ONE PERCENT OF THE STATE'S ANNUAL PREMIUM AND WE HAVE YET TO HAVE ONE COMPLAINT REGARDING FAILURE TO AWARD A LUMP SUM PAYMENT.

THE INTENTION OF WORKERS' COMPENSATION ACTS FOR DECADES HAS BEEN TO INSURE PROMPT AND REASONABLE "INCOME BENEFITS" TO VICTIMS OF WORK ACCIDENTS. CONSEQUENTLY THE CONCEPT OF INCOME REPLACEMENT IS TO PROVIDE THE INJURED WAGE EARNER OR FAMILY A CONTINUED STREAM WEEKLY INCOME. IN THE VAST MAJORITY OF CASES A LUMP SUM AWARD IS NOT

JUSTIFIED UNLESS IT IS A RELATIVELY MODEST AWARD OR THERE ARE UNUSUAL CIRCUMSTANCES.

THIS LEGISLATION DOESN'T SEEM TO BE IN THE BEST INTERESTS OF THE EMPLOYERS OF THE STATE OF KANSAS OR THOSE PEOPLE INJURED ON THE JOB.

THANK YOU MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE.

SENATE BILL NO. 82

Senate Bill No. 82 will reinstate the law wherein an injured claimant may after he has an award in effect six months may then apply to the Director for a lump sum. The injured or dependent must prove that it is to his or her best interest that a lump sum is better than weekly payments and the Director may order the payment of all or part of the award in a lump sum.

We oppose the lump sum theory in workers' compensation for the reason compensation was designed to be paid on a weekly basis so as to have provide for a continuing income.

Many of my clients seek, demand and need a lump sum to retire debts or to make themselves whole after a period of receiving temporary total compensation because of prior injury-incurred debts. Payments were not made during the time the person was off work receiving weekly compensation because of its inadequacy. This is especially true of high wage earners.

I am opposed even with my knowing that claimants desire and in some cases need a lump sum.

I would support a lump sum legislation only if the following occurred:

a) That the lump sum award could be reopened later on a change condition or need of further medical treatment.

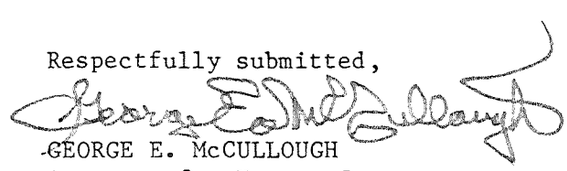
Presently, other group insurance policies that cover nonjob-related injuries, such as Blue Cross/Blue Shield, carry provisions excluding coverage for medical benefits for any medical that would have been covered had the claimant not accepted a lump sum settlement of a workers' compensation claim. The provision of the Blue Cross/Blue Shield exclusion in my office group policy is as follows:

A.2 Services for injuries or diseases related to Your job to the extent You are covered or are required to be covered by a worker's compensation law. If You enter into a settlement giving up Your right to recover future medical benefits under a worker's compensation law, the Plans will not pay those medical benefits that would have been payable except for that settlement.

If the above exclusions could be excluded by statute from other group policies, then the worker would be protected if he accepted a lump sum.

Finally, any non-lump sum settlement which is reduced to an award may be reviewed and modified for change of conditions. This is true only if there has been no lump sum settlement. This means that an injured worker who has an award and whose condition changed as a result of the injury so as to render the worker totally incapable of engaging in employment would be denied the benefit of reviewing a small award covering his condition as it existed at the time that the award was rendered. If his condition changed as a result of the accident to permanent total, the worker would not be able to review so as to have the award reviewed and modified to an award which correctly expresses the changed condition.

Respectfully submitted,



GEORGE E. McCULLOUGH
Attorney for Kansas State
Federation of Labor, AFL-CIO

(3)

SENATE BILL NO. 290

Senate Bill No. 290 would enact an inflation feature in the permanent or temporary partial section of the law.

This provision would increase or decrease a worker's weekly monetary benefit annually.

For instance, if an injured worker was receiving $10.00 per week permanent partial disability and there was a 10% inflation during that year, the compensation would raise $1.00 or be $11.00 per week. Likewise, if there was a 10% deflation, it would decrease and the compensation would be $9.00 per week.

This bill further provides that if the worker cannot return to the job where injured but could work in other employment, it would raise or reduce annually the amount of compensation so as to comply with the new maximum rates in effective every July 1. Every July 1 the Department of Human Resources determines the average wage of Kansas and applies 75% thereto, and this is the new maximum. Presently, the rate is $204.00 per week.

An example would be that if an individual was receiving $204.00 per week for partial disability and the following year wages increased, even if there was a 10% increase in inflation factor which would entitle the worker to 10% of the $204.00 or a $20.40 increase, the worker would not receive a $20.40 increase if the 75% of the new average wage of Kansas equaled only $206.00. In the latter case the raise would be to $206.00, or $2.00, rather than the additional $20.40.

I support this concept in principal but it would be more beneficial to the worker if it was amended into K.S.A. 44-510b to cover weekly benefits for widows and children so that each year their benefits would be increased or decreased and also amended into K.S.A. 44-510c to provide the same feature for individuals who are

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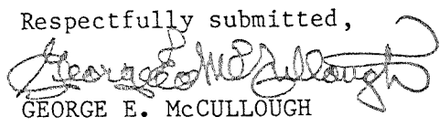
permanently totally disabled or temporarily totally disabled. My reason is that these are the people that can perform no function at the time they receive that compensation for income. The present amendment is to the permanent partial section of the law which indicates the worker may have some ability to earn some income even though it may be slight. The need is greater for those who are 100% unable to gain income and this indexing feature would be of a major benefit to them.

Respectfully submitted,



GEORGE E. McCULLOUGH
Attorney for Kansas State
Federation of Labor, AFL-CIO

Beech Aircraft Corporation
Wichita, Kansas 67201
U.S.A.

STATEMENT BEFORE THE KANSAS SENATE LABOR, INDUSTRY AND TOURISM COMMITTEE

FEBRUARY 21, 1983

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS JIM GREGORY FROM BEECH AIRCRAFT CORPORATION. WE HAVE AIRCRAFT MANUFACTURING FACILITIES IN WICHITA, SALINA, LIBERAL, ANDOVER AND NEWTON. WE APPRECIATE THE OPPORTUNITY TODAY TO APPEAR IN OPPOSITION TO SENATE BILL 290.

IN SOME STATES THE PRACTICAL EFFECT OF SB 290 IS KNOWN AS INDEXING BENEFITS. AREAS WHICH HAVE ADOPTED THIS APPROACH TO WORKERS' COMPENSATION BENEFITS, MINNESOTA, ALASKA, AND WASHINGTON, D.C., HAVE FOUND THEY ARE LOSING EMPLOYERS PARTLY DUE TO THE COST OF THEIR WORKERS' COMP PREMIUMS. MINNESOTA IS A PRIME EXAMPLE OF A STATE WHICH IS LOSING JOBS TO NORTH DAKOTA BECAUSE OF WORKERS' COMPENSATION INSURANCE COSTS. WE CAN SPEAK FROM EXPERIENCE REGARDING WASHINGTON, D.C. BEECH RECENTLY MOVED ITS WASHINGTON OFFICE FROM THE DISTRICT TO ARLINGTON, VIRGINIA AND EXPERIENCED A SIGNIFICANT SAVINGS IN WORKERS' COMP EXPENSES.

THIS LEGISLATION WILL UNDOUBTEDLY MAKE WORKERS' COMPENSATION INSURANCE MUCH MORE EXPENSIVE. INSURERS, OUR INSURANCE PEOPLE TELL US, WILL NOT KNOW HOW TO CALCULATE THEIR POTENTIAL LIABILITIES FOR FUTURE AWARD PAYMENTS.

REINSURANCE FOR THIS INCREASED EXPOSURE IS EXTREMELY EXPENSIVE IF AVAILABLE. BEECH'S WORKERS' COMPENSATION INSURER HAS NOT BEEN

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ABLE TO PURCHASE REINSURANCE FOR THOSE JURISDICTIONS IN WHICH WEEKLY BENEFITS ARE INDEXED ANNUALLY. OBVIOUSLY IT WILL COST EMPLOYERS MORE TO DO BUSINESS IN KANSAS THAN IN OTHER STATES WHICH DO NOT INDEX BENEFITS.

NEARLY 40% OF WORKERS' COMPENSATION BENEFITS IN KANSAS ARE IN THE FORM OF PERMANENT PARTIAL DISABILITY PAYMENTS. IN MOST OF THESE CASES THE EMPLOYEE REMAINS WITH THE CURRENT EMPLOYER AND CONTINUES TO RECEIVE NORMAL WAGES AND USUAL INCREASES. THERE DOESN'T SEEM TO BE ANY SPECIAL NEED TO INCREASE COMPENSATION BENEFITS SINCE IN MOST CASES THERE IS NO ACTUAL WAGE LOSS.

BENEFIT PROGRAMS WHICH ARE INDEXED, SOCIAL SECURITY FOR EXAMPLE, HAVE EXPERIENCED ACTUARIAL DIFFICULTIES BECAUSE OF THE INABILITY TO FORECAST FUTURE PAYMENTS. UNDER THIS PROPOSED PLAN, WORKERS' COMPENSATION INSURERS IN THE NATIONAL COUNCIL ON COMPENSATION WHO ASSIST IN ESTABLISHING PREMIUM RATES WILL HAVE AN EXTREMELY DIFFICULT TASK TO ESTABLISH FAIR, ACCURATE, AND RELIABLE PREMIUMS. IT IS LIKELY THAT UNCERTAINTIES IN RATE MAKING WILL ADD TO COMPENSATION PREMIUM COSTS.

THE CURRENT LAW IS FAIR AND EQUITABLE IN OUR JUDGEMENT. THE NET RESULT OF THIS PROPOSED LEGISLATION WOULD BE TO HAVE AN ADVERSE IMPACT ON KANSAS EMPLOYERS, OR POTENTIAL EMPLOYERS.

THANK YOU.

SENATE BILL NO. _____

By Committee on Labor, Industry and Tourism

AN ACT amending the employment security law; concerning the filing of certain claims for benefits; amending K.S.A. 1982 Supp. 44-709 and repealing the existing section.

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

Section 1. K.S.A. 1982 Supp. 44-709 is hereby amended to read as follows: 44-709. (a) Filing. (1) Claims for benefits shall be made in accordance with rules and regulations adopted by the secretary, except as provided in paragraph (2). The secretary shall furnish a copy of such rules and regulations to any individual requesting them. Each employer shall post and maintain printed statements furnished by the secretary without cost to the employer in places readily accessible to individuals in the service of the employer.

(2) The secretary may provide that workers who live in an area of a district unemployment office where the unemployment rate is equal to or more than 7%, as determined by the secretary, shall not be required to file for continued claims for benefits after the initial claim for benefits has been filed. However, once the unemployment rate has become less than 7% in such areas, the workers shall be required to file for claims for benefits in accordance with the rules and regulations adopted by the secretary in paragraph (1).

(b) Determination. (1) Except as otherwise provided in this subsection (b)(1), a representative designated by the secretary, and hereinafter referred to as an examiner, shall promptly examine the claim and, on the basis of the facts found by the examiner, shall determine whether or not the claim is valid. If the examiner determines that the claim is valid, the examiner shall determine the first day of the benefit year, the weekly benefit amount and the total amount of benefits payable with

respect to the benefit year. In any case in which the payment or denial of benefits will be determined by the provisions of subsection (d) of K.S.A. 44-706, and amendments thereto, the examiner shall promptly transmit the claim to a special examiner designated by the secretary to make a determination on the claim after the investigation as the special examiner deems necessary. The parties shall be promptly notified of the special examiner's decision and any party aggrieved by the decision may appeal to the referee as provided in subsection (c). The claimant and the claimant's most recent employing unit shall be promptly notified of the examiner's or special examiner's decision.

(2) The examiner may for good cause reconsider the examiner's decision and shall promptly notify the claimant and the most recent employing unit of the claimant, that the decision of the examiner is to be reconsidered, except that no reconsideration shall be made after the termination of the benefit year.

(3) Notwithstanding the provisions of any other statute, a decision of an examiner or special examiner shall be final unless the claimant or the most recent employing unit of the claimant files an appeal from the decision as provided in subsection (c). The appeal must be filed within 16 calendar days after the mailing of notice to the last-known addresses of the claimant and employing unit or, if notice is not by mail, within 16 calendar days after the delivery of the notice to the parties.

(c) Appeals. Unless the appeal is withdrawn, a referee, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the examiner or special examiner. The parties shall be duly notified of the referee's decision, together with the reasons for the decision. The decision shall be final, notwithstanding the provisions of any other statute, unless a further appeal to the board of review is filed within 16 calendar days after the mailing of the decision to the parties' last-known addresses or, if notice is not by mail, within 16 calendar days after the delivery of the decision.

(d) Referees. The secretary shall appoint, in accordance with subsection (c) of K.S.A. 44-714, and amendments thereto, one or more referees to hear and decide disputed claims.

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

(f) Board of review. (1) There is hereby created a board of review, hereinafter referred to as the board, consisting of three members. Two members shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 1982 Supp. 75-4315b for terms of four years. One member shall be representative of employees, one member shall be representative of employers, and one member shall be representative of the public in general. The appointment of the employee representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas state federation of labor, A.F.L.-C.I.O.; the appointment of the employer representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas association of commerce and industry; and the appointment of the public representative member of the board, who, because of vocation, occupation or affiliation may be deemed not to be representative of either management or labor, shall be made by the members appointed by the governor as employee representative and employer representative. If the two members do not agree and make the appointment of the third member within 30 days after the appointments of the employer representative member and the employee representative member, the governor shall appoint the representative of the public. Not more than two members of the board shall belong to the same political party.

(2) Each member of the board shall serve until a successor has been appointed and qualified. Any vacancy in the membership of the board occurring prior to expiration of a term shall be filled by appointment for the unexpired term in the same manner as provided for original appointment of the member. Each member shall be appointed as representative of the same special interest group represented by the predecessor of the member.

(3) Each member of the board shall be entitled to receive as compensation for the member's services $6,564 per year, together with the member's traveling and other necessary expenses actually incurred in the performance of the member's official duties in accordance with rules and regulations adopted by the secretary. Members' compensation and expenses shall be paid from the employment security administration fund.

(4) The board shall organize annually by the election of a chairperson from among its members. The chairperson shall serve in that capacity for a term of one year and until a successor is elected. The board shall meet on the first Monday of each month or on the call of the chairperson or any two members of the board at the place designated. The secretary of human resources shall appoint an executive secretary of the board and the executive secretary shall attend the meetings of the board.

(5) The board, on its own motion, may affirm, modify or set aside any decision of a referee on the basis of the evidence previously submitted in the case; may direct the taking of additional evidence; or may permit any of the parties to initiate further appeal before it. The board shall permit such further appeal by any of the parties interested in a decision of a referee which overrules or modifies the decision of an examiner. The board may remove to itself the proceedings on any claim pending before a referee. Any proceedings so removed to the board shall be heard in accordance with the requirements of subsection (c). The board shall promptly notify the interested parties of its findings and decision.

(6) Two members of the board shall constitute a quorum and no action of the board shall be valid unless it has the

concurrence of at least two members. A vacancy on the board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(g) Procedure. The manner in which disputed claims are presented, the reports on claims required from the claimant and from employers and the conduct of hearings and appeals shall be in accordance with rules of procedure prescribed by the board for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings and decisions in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. In the performance of its official duties, the board shall have access to all of the records which pertain to the disputed claim and are in the custody of the secretary of human resources and shall receive the assistance of the secretary upon request.

(h) Witness fees. Witnesses subpoenaed pursuant to this section shall be allowed fees and necessary traveling expenses at rates fixed by the board. Such fees and expenses shall be deemed a part of the expense of administering this act.

(i) Court review. (1) Any decision of the board, in the absence of an action for judicial review of the decision as provided by this section, shall become final 16 calendar days after the date of the mailing of the decision. Judicial review of a decision shall be permitted only after any party claiming to be aggrieved by the decision has exhausted the party's remedies before the board as provided by this act.

(2) Within 16 calendar days after the decision of the board has been mailed, the examiner, or any party aggrieved by the decision, may secure judicial review of the decision by commencing an action against the board for the review of its decision in the district court of the county in which the party resides or has the party's principal place of business or, if the aggrieved party is a nonresident of the state of Kansas, in the

district court of Shawnee county. In the action any other party to the proceeding before the board shall be made a defendant.

(3) In an action for judicial review of a decision of the board, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon the board or upon such person as the board designates. Such service shall be deemed completed service on all parties, but the party served shall be given as many copies of the petition as there are defendants, and the board shall promptly mail one copy of the petition to each defendant.

(4) With its answer, the board shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision. The board, in its discretion, also may certify to the court questions of law involved in any decision by the board.

(5) In any judicial proceeding under this section, the findings of the board as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of the court shall be confined to questions of law. Such proceeding, and the questions of law certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation act.

(6) An appeal may be taken from the decision of the district court in the same manner as is provided in civil cases.

(7) It shall not be necessary, in any judicial proceedings under this section, to enter exceptions to the rulings of the board and no bond shall be required for entering an appeal. Upon the final determination of the judicial proceeding the board shall enter an order in accordance with the determination. A petition for judicial review shall not act as a supersedeas or stay unless the board so orders.

Sec. 2. K.S.A. 1982 Supp. 44-709 is hereby repealed.

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

SENATE BILL NO. _____

By Committee on Labor, Industry and Tourism

AN ACT concerning the employment security law; relating to benefits and contributions; amending K.S.A. 1982 Supp. 44-706, as amended by section 3 of 1983 House Bill No. 2221, and 44-710a, as amended by section 5 of 1983 House Bill No. 2221, and repealing the existing sections.

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

Section 1. K.S.A. 1982 Supp. 44-706, as amended by section 3 of 1983 House Bill No. 2221, is hereby amended to read as follows: 44-706. An individual shall be disqualified for benefits:

(a) ~~Beginning with the week in which the valid initial claim is filed and for the 10 consecutive weeks which immediately follow such week and shall forfeit benefit entitlement equal to 10 times the individual's determined weekly benefit amount, but not less than an amount equal to such individual's determined weekly benefit amount if the individual left the last~~ If an individual leaves work voluntarily without good cause such individual shall be disqualified for benefits until such individual again becomes employed for at least four consecutive weeks and has had earnings of at least eight times such individual's weekly benefit amount. An individual shall have left work voluntarily with good cause for either work related or personal reasons, if:

(1) After pursuing all reasonable alternatives, the circumstances causing the separation were of such urgent, compelling or necessitous nature as to provide the individual with no alternative but to leave the work voluntarily; or

(2) the reasons for the separation were of such nature that a reasonable and prudent individual would separate from the

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employment under the same circumstances. ~~If an individual leaves work by the individual's own action because of domestic or family responsibilities, not including pregnancy, self employment or to retire because of disability or old age, or to attend school such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings of at least eight times such individual's weekly benefit amount.~~ No individual shall be denied benefits for leaving work to enter training approved under section 236(a)(1) of the trade act of 1974, provided the work left is not of a substantially equal or higher skill level than the individual's past adversely affected employment (as defined for purposes of the trade act of 1974), and wages for such work are not less than 80% of the individual's average weekly wage as determined for the purposes of the trade act of 1974.

(b) ~~Beginning with the week in which the valid initial claim is filed and for the 10 consecutive weeks which immediately follow such week and shall forfeit benefit entitlement equal to 10 times the individual's determined weekly benefit amount, but not less than an amount equal to such individual's determined weekly benefit amount if the~~ If an individual has been discharged from the individual's last work for a breach of a duty connected with the individual's work reasonably owed an employer by an employee, ~~except that~~ such individual shall be disqualified for benefits until such individual again becomes employed for at least four consecutive weeks and has had earnings of at least eight times such individual's weekly benefit amount. If an individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until such individual again becomes employed for at least four weeks and has had earnings of at least ~~eight~~ 12 times such individual's weekly benefit amount. The term "gross misconduct" as used in this subsection shall be construed to mean conduct evincing willful and wanton disregard of an employer's interest or a carelessness or negligence of such degree or

recurrence as to show an intentional or substantial disregard of the employer's interest.

(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of human resources, or to accept suitable work when offered to the individual by the employment office, the secretary of human resources, or an employer, such ~~disqualification shall begin with the week in which such failure occurred and for the 10 consecutive weeks which immediately follow such week and shall forfeit benefit entitlement equal to 10 times the individual's determined weekly benefit amount but not less than an amount equal to such individual's determined weekly benefit amount~~ individual shall be disqualified for benefits until such individual again becomes employed for at least four consecutive weeks and has had earnings of at least eight times such individual's weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of human resources, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety, and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under

this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute; (2) if the remuneration, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization.

(d) For any week with respect to which the secretary of human resources, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment, or other premises at which the individual is or was last employed, except that this subsection shall not apply if it is shown to the satisfaction of the secretary of human resources, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises. For the purposes of this subsection, failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the

factory, establishment, or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

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

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

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

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

(i) For any week of unemployment on the basis of service in an instructional, research or principal administrative capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, if such week begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between

two regular but not successive terms during such period or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

(j) For any week of unemployment on the basis of service in any capacity other than service in an instructional, research, or administrative capacity in an educational institution other than an institution of higher education, as such terms are defined in subsections (u) and (v) of K.S.A. 44-703 and amendments thereto, if such week begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, if the individual has a contract or contracts, or a reasonable assurance thereof, to perform services in any such capacity for any educational institution other than an institution of higher education for both such academic years or both such terms.

(k) For any week of unemployment on the basis of service in an instructional, research or principal administrative capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, or for service in any other capacity in an educational institution other than an institution of higher education as defined in subsection (u) of K.S.A. 44-703 and amendments thereto, if such week begins during an established and customary vacation period or holiday recess if the individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(l) For any week of unemployment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so

participate, if such week begins during the period between two successive sport seasons or similar period if such individual performed services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

(m) For any week on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the federal immigration and nationality act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

(n) For any week in which an individual is receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer and to which the entire contributions were provided by such employer, except that: (1) If the entire contributions to such plan were provided by the base period employer but such individual's weekly benefit amount exceeds such governmental or other pension, retirement or retired pay, annuity or other similar periodic payment attributable to such week, the weekly benefit amount payable to the individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity or other similar

periodic payment which is attributable to such week; or (2) if only a portion of contributions to such plan were provided by the base period employer, the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero) by the prorated weekly amount of the pension, retirement or retired pay, annuity or other similar periodic payment after deduction of that portion of the pension, retirement or retired pay, annuity or other similar periodic payment that is directly attributable to the percentage of the contributions made to the plan by such individual; or (3) if the entire contributions to the plan were provided by such individual, or by the individual and an employer (or any person or organization) who is not a base period employer, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection (n); or (4) whatever portion of contributions to such plan were provided by the base period employer, if the services performed for the employer by such individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity or other similar periodic payment, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection (n). The conditions specified in clause (4) of this subsection (n) shall not apply to payments made under the social security act or the railroad retirement act of 1974, or the corresponding provisions of prior law. Payments made under these acts shall be treated as otherwise provided in this subsection (n). If the reduced weekly benefit amount is not a multiple of $1, it shall be computed to the next higher multiple of $1, except that for new claims filed after June 30, 1983, it shall be reduced to the next lower multiple of $1.

Sec. 2. K.S.A. 1982 Supp. 44-710a, as amended by section 5 of 1983 House Bill No. 2221, is hereby amended to read as follows: 44-710a. (a) <u>Classification of employers by the secretary.</u> The term "employer" as used in this section refers to

contributing employers. The secretary shall classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts with a view of fixing such contribution rates as will reflect such experience. If, as of the date such classification of employers is made, the secretary finds that any employing unit has failed to file any report required in connection therewith, or has filed a report which the secretary finds incorrect or insufficient, the secretary shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to the secretary at the time, and notify the employing unit thereof by mail addressed to its last-known address. Unless such employing unit shall file the report or a corrected or sufficient report as the case may be, within 15 days after the mailing of such notice, the secretary shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increase but not to reduction on the basis of subsequently ascertained information. The secretary shall determine the contribution rate of each employer in accordance with the requirements of this section.

(1) New employers. (A) No employer will be eligible for a rate computation until there have been 24 consecutive calendar months immediately preceding the computation date throughout which benefits could have been charged against such employer's account.

(B) (i) Effective January 1, 1983, employers ~~which~~ who are not eligible for a rate computation shall pay contributions at an assigned rate equal to the sum of 1% plus the greater of the average rate assigned in the preceding calendar year to all employers in such industry division or the average rate assigned to all covered employers during the preceding calendar year, except that in no instance shall any such assigned rate be less than 2%. Employers engaged in more than one type of industrial activity shall be classified by principal activity. All rates

assigned will remain in effect for a complete calendar year. If the sale or acquisition of a new establishment would require reclassification of the employer to a different industry division, the employer would be promptly notified, and the contribution rate applicable to the new industry division would become effective the following January 1.

(ii) For purposes of this subsection (a), employers shall be classified by industrial activity in accordance with standard procedures as set forth in rules and regulations adopted by the secretary.

(C) "Computation date" means: June 30 of each calendar year with respect to rates of contribution applicable to the calendar year beginning with the following January 1. In arriving at contribution rates for each calendar year, contributions paid on or before July 31 following the computation date for employment occurring on or prior to the computation date shall be considered for each contributing employer who has been subject to this act for a sufficient period of time to have such employer's rate computed under this subsection (a).

(2) Eligible employers. (A) A reserve ratio shall be computed for each eligible employer by the following method: Total benefits charged to the employer's account for all past years shall be deducted from all contributions paid by such employer for all such years. The balance, positive or negative, shall be divided by the employer's average annual payroll, and the result shall constitute the employer reserve ratio.

(B) Negative account balance employers as defined in subsection (d) shall pay contributions at the rate of 5.4% for calendar year 1983 and all years thereafter.

(C) Eligible employers, other than negative account balance employers, who do not meet the average annual payroll requirements as stated in subsection (a)(2) of K.S.A. 44-703 and amendments thereto, will be issued the maximum rate indicated in subsection (a)(3)(C) of this section until an average annual payroll can be obtained. Contribution rates effective for each

calendar year thereafter shall be determined as prescribed below.

(D) As of each computation date, the total of the taxable wages paid during the twelve-month period prior to the computation date by all employers eligible for rate computation, except negative account balance employers, shall be divided into 21 approximately equal parts designated in column A of schedule I as "rate groups." The lowest numbered of such rate groups shall consist of the employers with the most favorable reserve ratios, as defined in this section, whose combined taxable wages paid are less than 4.76% of all taxable wages paid by all eligible employers. Each succeeding higher numbered rate group shall consist of employers with reserve ratios that are less favorable than those of employers in the preceding lower numbered rate groups and whose taxable wages when combined with the taxable wages of employers in all lower numbered rate groups equal the appropriate percentage of total taxable wages designated in column B of schedule I. Each eligible employer, other than a negative account balance employer, shall be assigned an experience factor designated under column C of schedule I in accordance with the rate group to which the employer is assigned on the basis of the employer's reserve ratio and taxable payroll. If an employer's taxable payroll falls into more than one rate group the employer shall be assigned the experience factor of the lower numbered rate group. If one or more employers have reserve ratios identical to that of the last employer included in the next lower numbered rate group, all such employers shall be assigned the experience factor designated to such last employer, notwithstanding the position of their taxable payroll in column B of schedule I.

SCHEDULE I -- Eligible Employers

Column A Rate group	Column B Cumulative taxable payroll	Column C Experience factor (Ratio to total wages)
1	Less than 4.76%	.025%

2	4.76% but less than 9.52	.1
3	9.52 but less than 14.28	.2
4	14.28 but less than 19.04	.3
5	19.04 but less than 23.80	.4
6	23.80 but less than 28.56	.5
7	28.56 but less than 33.32	.6
8	33.32 but less than 38.08	.7
9	38.08 but less than 42.84	.8
10	42.84 but less than 47.60.....	.9
11	47.60 but less than 52.36.....	1.0
12	52.36 but less than 57.12.....	1.1
13	57.12 but less than 61.88.....	1.2
14	61.88 but less than 66.64.....	1.3
15	66.64 but less than 71.40.....	1.4
16	71.40 but less than 76.16.....	1.5
17	76.16 but less than 80.92.....	1.6
18	80.92 but less than 85.68.....	1.7
19	85.68 but less than 90.44.....	1.8
20	90.44 but less than 95.20.....	1.9
21	95.20 and over	2.0

(E) Negative account balance employers shall, in addition to paying the rate provided for in subsection (a)(2)(B) of this section, pay a surcharge based on the size of the employer's negative reserve ratio, the calculation which is provided for in subsection (a)(2) of this section. The amount of the surcharge shall be determined from column B of schedule II of this section. Contribution payments made pursuant to this subsection (a)(2)(E) shall be credited to the appropriate account of such negative account balance employer.

SCHEDULE II -- Surcharge on Negative Accounts

Column A Negative Reserve Ratio	Column B Surcharge as a percent of taxable wages
Less than 2.0%	0.10%

2.0% but less than 4.0 ..... .20

4.0 but less than 6.0 ..... .30

6.0 but less than 8.0 ..... .40

8.0 but less than 10.0 ..... .50

10.0 but less than 12.0 ..... .60

12.0 but less than 14.0 ..... .70

14.0 but less than 16.0 ..... .80

16.0 but less than 18.0 ..... .90

18.0 and over 1.00

(3) Planned yield. (A) The average required yield shall be determined from schedule ~~II~~ III of this section, and the planned yield on total wages in column B of schedule ~~II~~ III shall be determined by the reserve fund ratio in column A of schedule ~~II~~ III. The reserve fund ratio shall be determined by dividing total assets in the employment security fund provided for in subsection (a) of K.S.A. 44-712, excluding all moneys credited to the account of this state pursuant to section 903 of the social security act, as amended, which have been appropriated by the state legislature, whether or not withdrawn from the trust fund, and excluding contributions not yet paid on July 31 by total payrolls for contributing employers for the preceding fiscal year which ended June 30.

SCHEDULE ~~II~~ III -- Fund Control

Ratios to Total Wages

Column A Reserve Fund Ratio	Column B Planned Yield
5.00% and over	0.40%
4.75 but less than 5.00%	.50
4.50 but less than 4.75	.60
4.25 but less than 4.50	.70
4.00 but less than 4.25	.80
3.75 but less than 4.00	.85
3.50 but less than 3.75	.90
3.25 but less than 3.50	.95

3.00 but less than 3.25	1.00
2.75 but less than 3.00	1.05
2.50 but less than 2.75	1.10
2.25 but less than 2.50	1.15
2.00 but less than 2.25	1.20
1.75 but less than 2.00	1.30
1.50 but less than 1.75	1.40
1.25 but less than 1.50	1.50
1.00 but less than 1.25	1.60
Less than 1.00%	1.70

(B) Adjustment to taxable wages. The planned yield as a percent of total wages, as determined in this subsection (a)(3), shall be adjusted to taxable wages by multiplying by the ratio of total wages to taxable wages for all contributing employers for the preceding fiscal year ending June 30.

(C) Effective rates. Except with regard to rates for negative account balance employers, employer contribution rates to be effective for the ensuing calendar year shall be computed by adjusting proportionately the experience factors from schedule I of this section to the required yield on taxable wages. For the purposes of this subsection (a)(3), all rates computed shall be rounded to the nearest .01% and for calendar year 1983 and ensuing calendar years, the maximum effective contribution rate shall not exceed 5.4%.

(b) Successor classification. (1) For the purposes of this subsection (b), whenever an employing unit, whether or not it is an "employing unit" within the meaning of subsection (g) of K.S.A. 44-703 and amendments thereto, becomes an employer pursuant to subsection (h)(4) of K.S.A. 44-703 and amendments thereto or is an employer at the time of acquisition and meets the definition of a "successor employer" as defined by subsection (dd) of K.S.A. 44-703 and amendments thereto and is controlled substantially either directly or indirectly by legally enforceable means or otherwise by the same interest or interests,

shall acquire the experience rating factors of the predecessor employer. These factors consist of all contributions paid, benefit experience and annual payrolls of the predecessor employer.

(2) A successor employer as defined by subsection (h)(4) or subsection (dd) of K.S.A. 44-703 and amendments thereto may receive the experience rating factors of the predecessor employer if an application is made to the secretary or the secretary's designee in writing within 120 days of the date of the transfer.

(3) Whenever an employing unit, whether or not it is an "employing unit" within the meaning of subsection (g) of K.S.A. 44-703 and amendments thereto, acquires or in any manner succeeds to a percentage of an employer's annual payroll which is less than 100% and intends to continue the acquired percentage as a going business, may acquire the same percentage of the predecessor's experience factors if: (A) The predecessor employer and successor employing unit make an application in writing on the form prescribed by the secretary, (B) the application is submitted within 120 days of the date of the transfer, (C) the successor employing unit is or becomes an employer subject to this act immediately after the transfer, (D) the percentage of the experience rating factors transferred shall not be thereafter used in computing the contribution rate for the predecessor employer, and (E) the secretary finds that such transfer will not tend to defeat or obstruct the object and purposes of this act.

(4) If the acquiring employing unit was an employer subject to this act prior to the date of the transfer, the rate of contribution for the period from such date to the end of the then current contribution year shall be the same as the contribution rate prior to the date of the transfer. An employing unit which was not subject to this act prior to the date of the transfer shall have a newly computed rate based on the transferred experience rating factors as of the computation date immediately preceding the date of acquisition. These experience rating factors consist of all contributions paid, benefit experience and

annual payrolls.

(5) Whenever an employer's account has been terminated as provided in subsections (d) and (e) of K.S.A. 44-711 and amendments thereto and the employer continues with employment to liquidate the business operations, that employer shall continue to be an "employer" subject to the employment security law as provided in subsection (h)(8) of K.S.A. 44-703 and amendments thereto. The rate of contribution from the date of transfer to the end of the then current calendar year shall be the same as the contribution rate prior to the date of the transfer. At the completion of the then current calendar year, the rate of contribution shall be that of a "new employer" as described in subsection (a)(1) of K.S.A. 44-710a and amendments thereto.

(6) No rate computation will be permitted an employing unit succeeding to the experience of another employing unit pursuant to this section for any period subsequent to such succession except in accordance with rules and regulations adopted by the secretary. Any such regulations shall be consistent with federal requirements for additional credit allowance in section 3303 of the internal revenue code, and consistent with the provisions of this act.

(c) Voluntary contributions. Notwithstanding any provision of this act or the act of which this act is amendatory, any employer may make voluntary payments for the purpose of reducing or maintaining a reduced rate in addition to the contributions required under this section. Such voluntary payments may be made only during the thirty-day period immediately following the date of mailing of experience rating notices for a calendar year. All such voluntary contribution payments shall be paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective. The amount of voluntary contributions shall be credited to the employer's account as of the next preceding computation date and the employer's rate shall be computed accordingly, except that no employer's rate shall be reduced more than one rate group as provided in schedule I of

this section as the result of a voluntary payment. An employer not having a negative account balance may have such employer's rate reduced not more than one rate group as provided in schedule I of this section as a result of a voluntary payment. An employer having a negative account balance may have such employer's rate reduced to that prescribed for rate group 21 of schedule I of this section by making a voluntary payment in the amount of such negative account balance. Under no circumstances shall voluntary payments be refunded in whole or in part.

(d) As used in this section, negative account balance employer means an eligible employer whose total benefits charged to such employer's account for all past years have exceeded all contributions paid by such employer for all such years.

Sec. 3. K.S.A. 1982 Supp. 44-706, as amended by section 3 of 1983 House Bill No. 2221, and 44-710a, as amended by section 5 of 1983 House Bill No. 2221, are hereby repealed.

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