

Approved May 23, 1984
Date

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS

The meeting was called to order by Senator Edward F. Reilly, Jr. at
Chairperson

 a.m./p.m. on April 25, 1984 in room of the Capitol.

All members were present except:

Committee staff present:

Conferees appearing before the committee:

The Committee met outside the Senate Chamber at which time they were polled by the Chairman. The majority of the members concurred that:
SB867, concerning bingo, be sent to the floor of the Senate for consideration; and that the four drafts dealing with the subjects as shown were to be introduced as Committee bills:

1. An act repealing K.S.A. 21-4603, as amended by 1984 Senate Bill No. 499, relating to sentencing.
2. An act concerning marriage license fees.....as amended by 1984 Senate Bill No. 678.
3. An act concerning alcoholism, drug abuse and intoxication treatment.....as amended by 1984 Senate Bill No. 539.
4. An act amending the Kansas code for care of children.

Copies of the drafts are Attachments #1, #2, #3 and #4.

Senator Winter polled the Committee and the consensus was that a proposed draft, Attachment #5, concerning the employment security law relating to benefit eligibility for employees of certain federal postsecondary educational institutions, be introduced as a Committee bill.

The meeting adjourned.

DRAFT

3 RS 2946

Avis Swartzman

SENATE BILL NO. 883

By Committee on Federal and State Affairs

AN ACT repealing K.S.A. 21-4603, as amended by 1984 Senate Bill No. 499, relating to sentencing.

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

Section 1. K.S.A. 21-4603, as amended by 1984 Senate Bill No. 499, is hereby repealed.

Sec. 2. This act shall take effect and be in force from and after its publication in the statute book.

Atch. 1

DRAFT

3 RS 2947

Avis Swartzman

SENATE BILL NO. 584

By Committee on Federal and State Affairs

AN ACT concerning marriage license fees; repealing K.S.A. 23-108 and 23-109 and K.S.A. 1983 Supp. 23-110, all as amended by 1984 House Bill No. 2055, and K.S.A. 1983 Supp. 28-171, as amended by 1984 Senate Bill No. 678.

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

Section 1. (a) The judge or clerk of the district court shall collect from the applicant for a marriage license a fee of \$25.

(b) The clerk of the court shall remit to the state treasurer at least monthly all fees prescribed by this section. The state treasurer shall credit 33% of each remittance to the family and children trust fund and shall credit the remainder to the state general fund.

Sec. 2. K.S.A. 23-108 and 23-109 and K.S.A. 1983 Supp. 23-110, all as amended by 1984 House Bill No. 2055, and K.S.A. 1983 Supp. 28-171, as amended by 1984 Senate Bill No. 678, are hereby repealed.

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

Rec'd. 2

DRAFT

3 RS 2948

Bruce Kinzie

SENATE BILL NO. 586

By Committee on Federal and State Affairs

AN ACT concerning alcoholism, drug abuse and intoxication treatment; amending K.S.A. 65-4032 and K.S.A. 1983 Supp. 65-4003, 65-4028 and 65-4031, all as amended by 1984 House Bill No. 3026, and section 16 of 1984 Senate Bill No. 232 and repealing the existing sections; also repealing K.S.A. 1983 Supp. 64-4003, as amended by 1984 Senate Bill No. 539.

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

Section 1. K.S.A. 1983 Supp. 65-4003, as amended by 1984 House Bill No. 3026, is hereby amended to read as follows: 65-4003. For the purposes of this act:

(1) "Alcoholic" means an individual who habitually lacks self-control as to the use of alcoholic beverages or uses alcoholic beverages to the extent that the individual's health is substantially impaired or endangered or the individual's social or economic function is substantially disrupted;

(2) "private treatment facility" means a private agency providing facilities for the care or lodging of alcoholics meeting which meet the standards prescribed in K.S.A. 65-4013 and amendments thereto, and which are licensed under K.S.A. 65-4014 and amendments thereto, for the treatment of alcoholics or intoxicated individuals or individuals incapacitated by alcohol;

(3) "public treatment facility" means a treatment facility owned and operated by the state of Kansas or any political subdivision thereof and licensed by the secretary under K.S.A. 65-4014 and amendments thereto, as an appropriate place for the care and treatment of alcoholic or intoxicated individuals or individuals incapacitated by alcohol;

(4) "treatment facility" means a public or private

Atch. 3

treatment facility, but such term shall not include a licensed medical care facility~~;~~; a licensed adult care home~~;~~; a facility licensed under ~~the provisions of~~ K.S.A. 75-3307b and amendments thereto; a community-based alcohol and drug safety action program certified, and performing only those functions for which the program is certified, under K.S.A. 8-1008 and amendments thereto; a psychologist or physician who ~~treats,~~ in the usual course of ~~the--psychologist's--or-physician's~~ professional practice, treats alcoholics ~~or,~~ intoxicated individuals or individuals incapacitated by alcohol ~~and--are~~ but who is not exclusively engaged in the usual course of ~~the--individual's~~ professional practice in treating such alcoholics or individuals;

(5) "committee" means the Kansas citizens' committee on alcohol and other drug abuse;

(6) "department" means the department of social and rehabilitation services;

(7) "emergency service patrol" means a patrol established under K.S.A. 65-4056 and amendments thereto;

(8) "incapacitated by alcohol" means that an individual, as the result of the use of alcohol, is unconscious or has impaired judgment so that (a) such individual is incapable of realizing and making a rational decision with respect to such individual's need for treatment; or (b) such individual lacks sufficient understanding or capacity to make or communicate responsible decisions concerning either such individual's well-being or estate;

(9) "disabled individual" means an individual who has been adjudicated disabled pursuant to K.S.A. 59-3002 et seq., and amendments thereto;

(10) "intoxicated individual" means an individual whose mental or physical functioning is substantially impaired as a result of the use of alcohol;

(11) "treatment" means the broad range of emergency, outpatient, intermediate and inpatient services and care which may be extended to alcoholics and intoxicated individuals,

including diagnostic evaluation; medical, psychiatric, psychological, and social service care; vocational rehabilitation; and career counseling; ~~which may be extended to alcoholics and intoxicated individuals;~~

(12) "patient" means an individual who is a voluntary patient, a proposed patient or an involuntary patient;

(13) "voluntary patient" means an individual who is voluntarily receiving care or treatment at a treatment facility other than by order of any court;

(14) "proposed patient" means an individual for whom an application pursuant to K.S.A. 65-4032 and amendments thereto has been filed;

(15) "involuntary patient" means an alcoholic or an individual incapacitated by alcohol who is receiving care or treatment under an order of a district court;

(16) "other facilities for care or treatment" means any mental health clinic, medical care facility, nursing home, physician or any other institution or individual authorized or licensed by law to give care or treatment to any patient;

(17) "physician" means an individual licensed to practice medicine and surgery as provided by the Kansas healing arts act;

(18) "head of the treatment facility" means the administrative director of a treatment facility;

(19) "care or treatment" means such necessary services as are in the best interests of the physical and mental health of the patient;

(20) "discharge" means the final and complete release from care or treatment, by either an order of a district court pursuant to K.S.A. 65-4042 and amendments thereto or a treatment facility;

(21) "convalescent" describes the status of any patient who has not been discharged, but who is permitted by the head of the treatment facility to live apart from a treatment facility;

(22) the various terms defined in K.S.A. 59-3002 and amendments thereto for obtaining a guardian or conservator, or

both, mean the same herein as they do in that act;

(23) "law enforcement officer" means any individual who by virtue of office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes;

(24) "person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof;

(25) "governmental unit" means the state, or any county, municipality or other political subdivision thereof; or any department, division, board or other agency of any of the foregoing;

(26) "secretary" means the secretary of social and rehabilitation services;

(27) "state institution" means any institution within the department of social and rehabilitation services which offers alcoholism treatment programs; and

(28) "psychologist" means ~~an individual authorized to practice psychology as provided by the Kansas certification of psychologists act~~ a certified psychologist, as defined by K.S.A. 74-5302 and amendments thereto.

Sec. 2. K.S.A. 1983 Supp. 65-4028, as amended by 1984 House Bill No. 3026, is hereby amended to read as follows: 65-4028. Any public or private treatment facility or state institution may admit and detain any individual for emergency observation, care or treatment under any of the following procedures:

(A) Upon an order of protective custody issued by a district court pursuant to K.S.A. 65-4031 and amendments thereto.

(B) Upon written application of any law enforcement officer having custody of any individual pursuant to K.S.A. 65-4027 and amendments thereto. The application shall state:

(1) The name and address of the individual, if known;

(2) the name and address of the spouse or nearest relative of the individual, if known;

(3) the officer's belief that the individual is intoxicated or incapacitated by alcohol and because of this is likely to be injured or to injure others if not immediately detained;

(4) the circumstances under which the individual was taken into custody; and

(5) that the law enforcement officer will submit the application provided for in subsection (A) of K.S.A. 65-4031 and amendments thereto, by 5:00 p.m. of the next day that the district court is open for the transaction of business or that the officer has been informed by a parent, guardian or other individual in loco parentis to the person taken into custody that such person, whose name shall be stated in the application, will file the application provided for in subsection (B) of K.S.A. 65-4031 and amendments thereto, within such time.

(C) Upon the written application of any reputable individual. The application shall state:

(1) The name and address of the individual against whom the application is filed, if known;

(2) the name and address of the spouse or nearest relative of the such individual, if known;

(3) the applicant's belief that such individual is intoxicated or incapacitated by alcohol and because of this is likely to be injured or to injure others if not immediately detained;

(4) the circumstances in support of such belief; and

(5) that the applicant will submit the application provided for in subsection (B) of K.S.A. 65-4031 and amendments thereto, by 5:00 p.m. of the next day that the district court is open for transaction of business.

(D) The application shall be accompanied by a statement in writing of a physician or psychologist stating that the ~~individual-against-whom-the-application-is-filed~~ proposed patient has been examined within 72 hours before the date of the statement and confirming the existence of the described condition of ~~such person, provided however,~~ the proposed patient, except

that, if a physician or psychologist is unavailable to perform such examination or the proposed patient refuses or is otherwise unavailable, then the application shall so indicate and an examination shall be made not more than 72 hours after the filing of the application.

Upon the filing of the written application, the head of the treatment facility or state institution or the designee of the head of the treatment facility or state institution may authorize and order in writing any law enforcement officer or other person to take into custody and transport such individual to the treatment facility.

(E) Any treatment facility or personnel thereof, who in good faith renders treatment in accordance with law to any individual admitted pursuant to subsection (B) or (C), shall not be liable in a civil or criminal action based upon a claim that such treatment was rendered without legal consent.

Sec. 3. K.S.A. 1983 Supp. 65-4031, as amended by 1984 House Bill No. 3026, is hereby amended to read as follows: 65-4031. A district court may issue an ex parte order of protective custody under any of the following circumstances:

(A) Upon the verified application of any law enforcement officer. The application shall state:

(1) The name and address of the proposed patient, if known;
(2) the name and address of the spouse or nearest relative of the proposed patient, if known;

(3) the affiant's belief that the proposed patient is intoxicated or incapacitated by alcohol and because of this is likely to be injured or to injure others if not immediately detained;

(4) the circumstances under which the proposed patient was taken into custody; and

(5) the application provided for in K.S.A. 65-4032 and amendments thereto has been filed.

This order shall only be valid until 5:00 p.m. of the second day the district court is open for the transaction of business

after the date of issuance, but in no case more than 72 hours following the issuance of such order, excluding Saturdays, Sundays and legal holidays. The district court shall not issue successive orders of protective custody pursuant to this subsection.

(B) Upon the verified application of any reputable individual, if the application provided for in K.S.A. 65-4032 and amendments thereto has been filed in the court. The application shall state:

(1) The application provided for in K.S.A. 65-4032 and amendments thereto has been filed;

(2) the affiant's belief that the proposed patient is intoxicated or incapacitated by alcohol; and

(3) because of the proposed patient's intoxication or incapacitation by alcohol, the proposed patient is likely to be injured or to injure others if not immediately detained.

This order shall only be valid until the conclusion of the hearing held pursuant to K.S.A. 65-4036 and amendments thereto.

(C) A district court may issue an order of protective custody at any time after the hearing provided for in K.S.A. 65-4036 and amendments thereto, if the court has found at such hearing by clear and convincing evidence that the proposed patient is intoxicated or incapacitated by alcohol. This order shall be valid until the order for treatment is executed.

(D) If an order of protective custody is issued pursuant to subsection (A) or (B), the court shall hold a hearing to determine whether there is probable cause to believe the allegations made pursuant to subsection (A) or (B). Such hearing shall be held within 72 hours after the filing of the application. The proposed patient shall be present at such hearing unless the attorney for the proposed patient requests that the proposed patient's presence be waived and the court finds that the proposed patient's presence at the hearing would be injurious to the proposed patient's welfare. The court shall enter in the record of the proceedings the facts upon which the

court has found that the presence of the proposed patient at the hearing would be injurious to the proposed patient's welfare. Notwithstanding the foregoing provisions of this subsection, if the proposed patient requests in writing to the court or to the proposed patient's attorney that the proposed patient be present at the hearing, the proposed patient's presence cannot be waived.

(E) If the proposed patient is in custody pursuant to the provisions of K.S.A. 65-4027 and amendments thereto or to subsection (B) of K.S.A. 65-4028 and amendments thereto, at the time the application is filed, the court may order that the proposed patient remain in custody at a treatment facility, state institution or other suitable place until the conclusion of the hearing held pursuant to the provisions of this section. If the proposed patient is not in custody at the time the application is filed, the court may order that the proposed patient be taken into custody and placed in a treatment facility, state institution or other suitable place willing to receive the proposed patient until the conclusion of the hearing held pursuant to the provisions of this section.

(F) The applicant and the proposed patient shall be notified of the time and place of the hearing and afforded an opportunity to appear at the hearing, to testify and to present and cross-examine witnesses. If the proposed patient has not retained an attorney, the court shall appoint an attorney for the proposed patient in the same manner as an attorney is appointed under the provisions of subsection (C) of K.S.A. 65-4033 and amendments thereto. All persons not necessary for the conduct of the proceedings may be excluded. The hearing shall be conducted in as informal a manner as may be consistent with orderly procedure and in a physical setting not likely to have a harmful effect on the proposed patient. The court shall receive all relevant and material evidence which may be offered. If the applicant is not represented by counsel, the county or district attorney shall represent the applicant, prepare all necessary papers, appear at the hearing and present such evidence as the

county or district attorney ~~determine~~ determines to be of aid to the court in determining whether or not there is probable cause to believe that the proposed patient is an alcoholic or incapacitated by alcohol and is likely to be injured or to injure ~~er~~ others if not immediately detained. If the court determines from the evidence that there is probable cause to believe that the proposed patient is an alcoholic or incapacitated by alcohol and is likely to be injured or to injure others if not immediately detained, the court shall issue an order of protective custody; otherwise, the court shall terminate the proceedings.

(G) The order of protective custody issued pursuant to provisions of this section may authorize a health officer, physician, law enforcement officer or other person to take the proposed patient into custody and to transport to and place the proposed patient in a designated public or private treatment facility or state institution or other suitable place willing to receive the proposed patient and may designate the place of detention, but no proposed patient shall be detained in protective custody in a nonmedical facility used for the detention of individuals charged with or convicted of a crime unless other facilities are not available. In lieu of such detention, the order of protective custody may allow the proposed patient to be at liberty, subject to such conditions as the court may impose, pending the hearing provided for in K.S.A. 65-4036 and amendments thereto or pending the execution of the order for care or treatment.

Sec. 4. K.S.A. 65-4032, as amended by 1984 House Bill No. 3026, is hereby amended to read as follows: 65-4032. Any reputable individual may file in the district court of the county of the proposed patient's residence or presence a verified application to determine whether the proposed patient is an alcoholic or incapacitated by alcohol. The application shall state:

(1) The applicant's belief that the proposed patient is an

alcoholic who habitually lacks self-control as to the use of alcoholic beverages and that the proposed patient: (a) Has threatened, attempted, or inflicted physical harm to self or another and that unless committed is likely to be injured or to injure another; or (b) is incapacitated by alcohol; however, a refusal to undergo voluntary treatment does not constitute, in and of itself, evidence of lack of judgment as to the need for treatment, and the facts upon which such beliefs are based;

(2) the name, age, and residence, and present address of the proposed patient, if known to the applicant;

(3) the name and address of the nearest relatives of the proposed patient, if known to the applicant, and if not known, that the applicant has made diligent inquiry to learn the name of such relatives;

(4) the pecuniary condition of the proposed patient to the extent known by the applicant;

(5) the name and address of the person, if any, having custody and control of the proposed patient, if known to the applicant;

(6) the names and addresses of witnesses by whom the truth of the application may be proved;

(7) a request that the court make a determination that the proposed patient is an alcoholic or incapacitated by alcohol and make one or more of the orders provided for in subsection (B) of K.S.A. 65-4031, or K.S.A. 65-4032 and 65-4033, and amendments to those sections.

Unless the court allows an application to be accompanied by a verified statement by the applicant that the person named in the application has refused to submit to an examination by a physician or psychologist, any such application shall be accompanied by a signed statement of a physician or psychologist stating that the physician or psychologist has examined the proposed agent patient and the results of the examination on the issue of whether the proposed patient is an alcoholic or incapacitated by alcohol.

Sec. 5. Section 16 of 1984 Senate Bill No. 232 is hereby amended to read as follows: Sec. 16. (a) After the application provided for in section 7 or section 17 of 1984 Senate Bill No. 232 is filed, the district court at any time, on its own motion or upon the written request of any person, may transfer the venue of any case to any of the following district courts under the following conditions:

(1) When the application is filed in the county of the residence of the patient or proposed patient:

(A) To the county where the patient or proposed patient is being detained in a public or private treatment facility or state institution under the authority of an order issued pursuant to ~~section--6,~~ section 11 or ~~section 12~~ of 1984 Senate Bill No. 232;

(B) to any other county designated by the court, provided that if the patient or proposed patient has made a request for a change of venue and the district court finds that ~~the--patient cannot--obtain~~ a fair hearing cannot be obtained in the county of the patient's or proposed patient's residence.

(2) When the application is filed in the county of the presence of the patient or proposed patient:

(A) To the county of the residence of the patient or proposed patient;

(B) to the county where the patient or proposed patient is being detained in a public or private treatment facility or state institution under the authority of an order issued pursuant to ~~section-6,~~ section 11 or ~~section 12~~ of 1984 Senate Bill No. 232;

(C) to any other county designated by the court, provided that if the patient has made a request for a change of venue and the district court finds that ~~the-patient-cannot-obtain~~ a fair hearing cannot be obtained in the county of the patient's or proposed patient's presence.

(b) If any patient is in a public or private treatment facility or state institution, the district court of the county in which the treatment facility or state institution is located may not transfer venue under any circumstances unless the patient

has requested such transfer.

(c) When any order changing venue is issued, the district court issuing such order shall transmit to the district court to which venue was changed a certified copy of all pleadings and orders in the case. The district court issuing such order shall transmit to the district court of the residence of the proposed patient or, if the county of residence is not ascertainable, to the secretary a statement of all court costs incurred by the county of the district court issuing such order and a certified copy of all pleadings and orders in the case.

(d) Any district court to which venue is transferred shall proceed in the case as if the application had been originally filed therein and shall cause notice of the change of venue to be given to the persons and in the manner provided for in section 10 of 1984 Senate Bill No. 232. The court need not issue the order for evaluation pursuant to subsection (f) of section 8 of 1984 Senate Bill No. 232 if such order has previously been issued.

(e) Any district court to which venue is transferred shall transmit a statement of any court costs incurred and a certified copy of all pleadings and orders in the case to the district court of the county of the residence of the patient or, if the county of residence is not ascertainable, to the secretary.

Sec. 6. K.S.A. 65-4032 and K.S.A. 1983 Supp. 65-4003, 65-4028 and 65-4031, all as amended by 1984 House Bill No. 3026; K.S.A. 1983 Supp. 65-4003, as amended by 1984 Senate Bill No. 539; and section 16 of 1984 Senate Bill No. 232 are hereby repealed.

Sec. 7. This act shall take effect and be in force from and after its publication in the statute book.

DRAFT

3 RS 2973

Don Hayward

SENATE BILL NO. 885

By Committee on Federal and State Affairs

AN ACT amending the Kansas code for care of children; relating to liability for certain actions relating to reports and investigations of child abuse and neglect; amending K.S.A. 1983 Supp. 38-1526 and repealing the existing section.

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

Section 1. K.S.A. 1983 Supp. 38-1526 is hereby amended to read as follows: 38-1526. Anyone participating without malice in the making of an oral or written report to a law enforcement agency or the department of social and rehabilitation services relating to injury inflicted upon a child under 18 years of age as a result of physical, mental or emotional abuse or neglect or sexual abuse or in any follow-up activity to or investigation of the report shall have immunity from any civil liability, ~~civil or criminal~~, that might otherwise be incurred or imposed. Any such participant shall have the same immunity with respect to participation in any judicial proceedings resulting from the report.

Sec. 2. K.S.A. 1983 Supp. 38-1526 is hereby repealed.

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

Atch. 4

BILL NO. _____

By

AN ACT concerning the employment security law; relating to benefit eligibility for employees of certain federal postsecondary educational institutions; amending K.S.A. 1983 Supp. 44-703, as amended by section 1 of 1984 House Bill No. 2629, and repealing the existing section.

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

Section 1. K.S.A. 1983 Supp. 44-703, as amended by section 1 of 1984 House Bill No. 2629, is hereby amended to read as follows: 44-703. As used in this act, unless the context clearly requires otherwise: (a) (1) "Annual payroll" means the total amount of wages paid or payable by an employer during the calendar year.

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

(b) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that the base period in respect to combined wage claims means the base period as defined

in the law of the paying state.

(c) (1) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to such individual's unemployment.

(2) "Regular benefits" means benefits payable to an individual under this act or under any other state law, including benefits payable to federal civilian employees and to exservicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

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

(e) "Commissioner" or "secretary" means the secretary of human resources.

(f) (1) "Contributions" means the money payments to the state employment security fund which are required to be made by employers on account of employment under K.S.A. 44-710 and

amendments thereto, and voluntary payments made by employers pursuant to such statute.

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

(g) "Employing unit" means any individual or type of organization, including any partnership, association, agency or department of the state of Kansas and political subdivisions thereof, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign including nonprofit corporations, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representatives of a deceased person, which has in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the employment.

(h) "Employer" means:

(1) (A) Any employing unit for which agricultural labor as defined in subsection (w) of this section is performed and which during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor or for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same

moment of time.

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

(i) Such crew leader holds a valid certificate of registration under the farm labor contractor registration act of 1963 or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment or any other mechanized equipment, which is provided by such crew leader; and

(ii) such individual is not in the employment of such other person within the meaning of subsection (i) of this section.

(C) For the purpose of this subsection (h)(1), in the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on the crew leader's own behalf or on behalf of such other person, for the service in agricultural labor performed for such other person.

(D) For the purposes of this subsection (h)(1) "crew leader" means an individual who:

(i) Furnishes individuals to perform service in agricultural labor for any other person;

(ii) pays, either on such individual's own behalf or on behalf of such other person, the individuals so furnished by such individual's for the service in agricultural labor performed by them; and

(iii) has not entered into a written agreement with such other person under which such individual is designated as an

employee of such other person.

(2) (A) Any employing unit which: (i) In any calendar quarter in either the current or preceding calendar year paid for service in employment wages of \$1,500 or more, or (ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year, had in employment at least one individual, whether or not the same individual was in employment in each such day.

(B) Employment of individuals to perform domestic service or agricultural labor and wages paid for such service or labor shall not be considered in determining whether an employing unit meets the criteria of this subsection (h)(2).

(3) Any employing unit for which service in employment as defined in subsection (i)(3)(E) of this section.

(4) Any employing unit, whether or not it is an employing unit under subsection (g) of this section, which acquires or in any manner succeeds to (A) substantially all of the employing enterprises, organization, trade or business, or (B) substantially all the assets, of another employing unit which at the time of such acquisition was an employer subject to this act.

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

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

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

(8) Any employing unit not an employer by reason of any other paragraph of this subsection (h), for which within either the current or preceding calendar year services in employment are

or were performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; or which, as a condition for approval of this act for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to such act, to be an "employer" under this act.

(9) Any employing unit described in section 501(c)(3) of the federal internal revenue code of 1954 which is exempt from income tax under section 501(a) of the code that had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(i) "Employment" means:

(1) Subject to the other provisions of this subsection, service, including service in interstate commerce, performed by

(A) Any active officer of a corporation; or

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

(C) any individual other than an individual who is an employee under subsection (i)(1)(A) or subsection (i)(1)(B) above who performs services for remuneration for any person:

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

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

use in their business operations.

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

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

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

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

(2) The term "employment" shall include an individual's entire service within the United States, even though performed entirely outside this state if,

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

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

(C) the individual's base of operations is in this state, or if there is no base of operations, then the place from which service is directed or controlled is in this state.

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

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

(B) Services performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act only if the individual performing such services is a

resident of this state and the secretary approved the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(C) Services covered by an arrangement pursuant to subsection (1) of K.S.A. 44-714 and amendments thereto between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, shall be deemed to be employment if the secretary has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

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

(E) Service performed by an individual in the employ of this state or any instrumentality thereof, any political subdivision of this state or any instrumentality thereof, any instrumentality of more than one of the foregoing or any instrumentality which is jointly owned by this state or a political subdivision thereof and one or more other states or political subdivisions of this or other states, provided that such service is excluded from "employment" as defined in the federal unemployment tax act by reason of section 3306(c)(7) of that act and is not excluded from "employment" under subsection (i)(4)(A) of this section.

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

(G) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada or, prior to and including December 31 of the year in which the U.S. secretary of labor approves an unemployment compensation law submitted by the Virgin Islands), in the employ of an American employer (other than service which is deemed "employment" under the provisions of subsection (i)(2) or subsection (i)(3) or the parallel provisions of another state's law), if:

(i) The employer's principal place of business in the United States is located in this state; or

(ii) the employer has no place of business in the United States, but

(A) The employer is an individual who is a resident of this state; or

(B) the employer is a corporation which is organized under the laws of this state; or

(C) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) None of the criteria of paragraphs (i) and (ii) above of this subsection (i)(3)(G) are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(H) An "American employer," for purposes of subsection (i)(3)(G), means a person who is:

(i) An individual who is a resident of the United States; or

(ii) a partnership if 2/3 or more of the partners are

residents of the United States; or

(iii) a trust, if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(I) Notwithstanding subsection (i)(2) of this section, all service performed by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft, if the operating office, from which the operations of such vessel or aircraft operating within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

(J) Notwithstanding any other provisions of this subsection (i), service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the federal unemployment tax act is required to be covered under this act.

(K) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of \$1,000 or more in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

(4) The term "employment" shall not include: (A) Service performed in the employ of an employer specified in subsection (h)(3) of this section if such service is performed by an individual in the exercise of duties:

(i) As an elected official;

(ii) as a member of a legislative body, or a member of the judiciary, of a state or political subdivision;

(iii) as a member of the state national guard or air national guard;

(iv) as an employee serving on a temporary basis in case of

fire, storm, snow, earthquake, flood or similar emergency;

(v) in a position which, under or pursuant to the laws of this state, is designated as a major nontenured policymaking or advisory position or as a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week;

(B) service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(C) service performed by an individual in the employ of such individual's son, daughter or spouse, and service performed by a child under the age of 18 years in the employ of such individual's father or mother;

(D) service performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act, except that to the extent that the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this state shall not be certified for any year by the federal security agency under section 3304(c) of the federal internal revenue code, the payments required of such instrumentalities with respect to such year shall be refunded by the secretary from the fund in the same manner and within the same period as is provided in subsection (f) of K.S.A. 44-717 and amendments thereto with respect to contributions erroneously collected;

(E) service covered by an arrangement between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all

services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within the jurisdiction of such other state or federal agency;

(F) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

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

(H) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal internal revenue code (other than an organization described in section 401(a) or under section 521 of such code) if the remuneration for such service is less than \$50. In construing the application of the term "employment," if services performed during 1/2 or more of any pay period by an individual for the person employing such individual constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than 1/2 of any such pay period by an individual for the person employing such individual do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection (i)(4)(H) the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing such individual. This subsection (i)(4)(H) shall not be applicable with respect to services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(I) services performed in the employ of a church or convention or association of churches, or an organization which

is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

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

(K) service performed in a facility conducted for the purpose of carrying out a program of:

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

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

(L) service performed as part of an employment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof, by an individual receiving such work relief or work training;

(M) service performed by an inmate of a custodial or correctional institution, unless such service is performed for a private, for-profit employer;

(N) service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university;

(O) service performed by an individual under the age of 22 who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program,

and such institution has so certified to the employer, except that this subsection (i)(4)(O) shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(P) service performed in the employ of a hospital licensed, certified or approved by the secretary of health and environment, if such service is performed by a patient of the hospital.

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

(k) "Fund" means the employment security fund established by this act, to which all contributions and reimbursement payments required and from which all benefits provided under this act shall be paid and including all money received from the federal government as reimbursements pursuant to section 204 of the federal-state extended compensation act of 1970, and amendments thereto.

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

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

(n) "Employment security administration fund" means the fund established by this act, from which administrative expenses under this act shall be paid.

(o) "Wages" means all compensation for services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated

and determined in accordance with rules and regulations prescribed by the secretary. The term "wages" shall not include:

(1) That part of the remuneration which has been paid in a calendar year to an individual by an employer or such employer's predecessor in excess of \$3,000 for all calendar years prior to 1972, \$4,200 for the calendar years 1972 to 1977, inclusive, \$6,000 for calendar years 1978 to 1982, inclusive, \$7,000 for the calendar year 1983, and \$8,000 with respect to employment during any calendar year following 1983, except that if the definition of the term "wages" as contained in the federal unemployment tax act is amended to include remuneration in excess of \$8,000 paid to an individual by an employer under the federal act during any calendar year, wages shall include remuneration paid in a calendar year to an individual by an employer subject to this act or such employer's predecessor with respect to employment during any calendar year up to an amount equal to the dollar limitation specified in the federal unemployment tax act. For the purposes of this subsection (o)(1), the term "employment" shall include service constituting employment under any employment security law of another state or of the federal government;

(2) the amount of any payment to, or on behalf of, an individual in its employ under a plan or system established by an employing unit which makes provisions for individuals in its employ generally or for a class or classes of such individuals (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) on account of (A) retirement, or (B) sickness or accident disability, or (C) medical and hospitalization expenses in connection with sickness or accident disability, or (D) death. If the individual in its employ: (i) Has not the option to receive, instead of provisions for such death benefit any part of such payment or, if such death benefit is insured, any part of the premiums (or contributions to premiums) paid by such individual's employing unit; and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such

death benefit, to assign such benefit, or to receive cash consideration in lieu of such benefit either upon such individual's withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of such individual's services with such employment unit;

(3) the payment by an employing unit (without deduction from the remuneration of the employee) of the tax imposed upon an employee under section 3101 of the internal revenue code with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor. This paragraph (3) of subsection (o) will apply to all remuneration paid after December 31, 1980, except that this paragraph (3) of subsection (o) shall not apply to any payment made before January 1, 1984, by any governmental unit for positions of a kind for which all or a substantial portion of the social security employee taxes were paid by such governmental unit (without deduction from the remuneration of the employee) under the practices of such governmental unit in effect on October 1, 1980;

(4) notwithstanding the foregoing provisions of this subsection (o), "total wages" mean the gross amount paid by an employer to such employer's employees with respect to a week, month, year or other period as required by subsection (e)(2) of K.S.A. 44-710, and amendments thereto.

(p) "Week" means such period or periods of seven consecutive calendar days, as the secretary may by rules and regulations prescribe.

(q) "Calendar quarter" means the period of three consecutive calendar months ending March 31, June 30, September 30 or December 31, or the equivalent thereof as the secretary may by rules and regulations prescribe.

(r) "Insured work" means employment for employers.

(s) "Approved training" means any vocational training course or course in basic education skills approved by the secretary or

a person or persons designated by the secretary.

(t) "American vessel" or "American aircraft" means any vessel or aircraft documented or numbered or otherwise registered under the laws of the United States; and any vessel or aircraft which is neither documented or numbered or otherwise registered under the laws of the United States nor documented under the laws of any foreign country, if its crew performs service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

(u) "Institution of higher education," for the purposes of this section, means an educational institution which:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection (u), all colleges and universities in this state are institutions of higher education for purposes of this section, except that no college, university, junior college or other postsecondary school or institution which is operated by the federal government or any agency thereof shall be an institution of higher education for purposes of the employment security law.

(v) "Educational institution" means any institution of higher education, as defined in subsection (u) of this section, or any institution, except private for profit institutions, in which participants, trainees or students are offered an organized

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

(w) (1) "Agricultural labor" means any remunerated service:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operating, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

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

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured

state, any agricultural or horticultural commodity; but only if such operator produced more than 1/2 of the commodity with respect to which such service is performed;

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

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

(E) On a farm operated for profit if such service is not in the course of the employer's trade or business.

(2) "Agricultural labor" does not include service performed prior to January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the immigration and nationality act.

(3) As used in this subsection (w), the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(x) "Reimbursing employer" means any employer who makes payments in lieu of contributions to the employment security fund as provided in subsection (e) of K.S.A. 44-710 and amendments thereto.

(y) "Contributing employer" means any employer other than a reimbursing employer or rated governmental employer.

(z) "Wage combining plan" means a uniform national arrangement approved by the United States secretary of labor in

consultation with the state unemployment compensation agencies and in which this state shall participate, whereby wages earned in one or more states are transferred to another state, called the "paying state," and combined with wages in the paying state, if any, for the payment of benefits under the laws of the paying state and as provided by an arrangement so approved by the United States secretary of labor.

(aa) "Domestic service" means any service for a person in the operation and maintenance of a private household, local college club or local chapter of a college fraternity or sorority, as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

(bb) "Rated governmental employer" means any governmental entity which elects to make payments as provided by K.S.A. 44-710d and amendments thereto.

(cc) "Benefit cost payments" means payments made to the employment security fund by a governmental entity electing to become a rated governmental employer.

(dd) "Successor employer" means any employer, as described in subsection (h) of this section, which acquires or in any manner succeeds to (1) substantially all of the employing enterprises, organization, trade or business of another employer or (2) substantially all the assets of another employer.

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

Sec. 2. K.S.A. 1983 Supp. 44-703, as amended by section 1 of 1984 House Bill No. 2629, is hereby repealed.

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