Approved _____
Date

MINUTES OF THE SENATE COMMITTEE ON WAYS AND MEANS.

The meeting was called to order by Senator Joe Harder at
Vice- Chairperson

4:00 ~~a.m./~~p.m. on March 13, 1984 in room 123-S of the Capitol.

All members were present except:
Senator Steineger

Committee staff present:
Research Department: Mary Galligan, Lynne Holt, Ray Hauke, Gloria Timmer
Revisor's Office: Norman Furse
Committee Office: Mark Skinner, Doris Fager

Conferees appearing before the committee:
Stu Entz, Associated Builders and Contractors;
Kenneth Landeck, Kansas Sunflower Chapter of Associated Builders & Contractors
Lawrence Smith, Wichita, Smith Construction Co., Inc.
Glenn Coulter, Kansas Contractors' Association
Ernie Mosher, Kansas League of Municipalities
Rob Hodges, Kansas Chamber of Commerce and Industry
Janet Stubbs, Kansas Homebuilders' Association
Joe Pashman, Kansas Homebuilders' Association
Tom Slattery, Associated General Contractors of Kansas

HB 2797 - Prevailing Wage Bill

Mr. Entz commented that the current law in Kansas was enacted in 1891, was used that year, and since then has had no useful purpose. He reminded the committee that HB 2797, as originally introduced, was to repeal the original statute. He questioned whether there should be a prevailing wage imposed on all public construction.

Mr. Entz suggested that the following factors need to be questioned in considering HB 2797: (a) Increased costs; (b) Shoddy work if the prevailing wage is not introduced; (Mr. Entz said he does not believe that would happen) (c) Does HB 2797 protect workmen from unscrupulous contractors? (3) Productivity--if a man knows he is going to make a high per-hour wage, he may take longer to do the work.

Mr. Entz continued by stating that federal construction cost, under the Davis-Bacon Act, is the highest in the country. He suggested this may be the problem if HB 2797 is passed in Kansas.

Specifically, Mr. Entz suggested that on line 121 the words "similar work" should be changed to "similar tasks." He further suggested that the Governor should consider skill level of employees. He noted it is anti-productive if you must set a scale for everyone. If you do not make some provision for certain skills, you exclude minorities and some presently unemployeed, according to Mr. Entz. Another problem would be comparing fringe benefits for different employees.

Mr. Entz referred to subsection (c) on page 3, and noted that he wouldn't want the Department of Human Resources to have the option of depending upon Davis-Bacon wages as they make their wage surveys.

Mr. Entz concluded by stating that the over-riding concern in the act is the impact on the taxpayer.

HB 2797 - Continued

In answer to questions from Senator Hess, Mr. Entz said: (1) the consequences of doing nothing at all would be to retain the eight-hour law as it now stands, and the question is whether or not people who would like to turn that into a prevailing wage law would continue to go to court.

(2) the consequences of repealing the existing statute would be very minor. The taxpayers would get the lowest possible cost for their work.

(3) the consequences of passing HB 2797 as amended would be to eliminate labor costs as a factor in competitive bidding, if Davis-Bacon is a track record of how it would work.

(4) it is his opinion that the Governor does not have the authority under the statute to issue the type of executive order which precipitated introduction of HB 2797, but that the Legislature is the body which should handle this type of legislation, and the executive order should be challenged.

Senator Gaines suggested that all parties get together and come to a conclusion which is agreeable to everyone, with the Governor also included in the discussion. Mr. Entz indicated that if everyone can honestly say the interests of the workmen and taxpayers are uppermost, he would hope some solution could be reached; but if someone has a third interest to protect, he could not reach a conclusion with them.

Senator Bogina asked if, after the first average was determined under HB 2797, the next time it is reviewed the floor would be that established the first time; therefore, the wage would keep increasing. Mr. Entz answered in the affirmative, stating that this is an analogy to Davis-Bacon.

Mr. Landeck said he is in favor of the original bill as it was introduced, to repeal K.S.A. 44-201. He agreed with Mr. Entz in his reasoning. He said any bidding procedure determined for contractors would be passed on to taxpayers, since contractors are in business to make a profit. He said when the state steps in and indicates contractors do not have a right to work with their laborers, the free enterprise system is being destroyed.

Mr. Landeck stated it is difficult to move employees from one county to another and change the wage scale for each move, simply because the average wage is different in each location. He added that establishment of wages higher than the skill level of the person doing work will limit the marginal laborer in our society. Contractors will not be able to hire people and pay them twice what they are worth.

Mr. Landeck concluded by stating that, if HB 2797 could be in its original form, he would be in favor of it. If it can't be passed in that form, his organization would like to see it killed.

Senator Gaines suggested to Mr. Landeck that all interested parties work together to gain a compromise on HB 2797. There was extended discussion concerning Senator Gaines' suggestion, but no solution was reached.

Mr. Smith distributed his prepared statement (Attachment A). Committee members were given opportunity to question him following his testimony.

HB 2797 - Continued

Mr. Coulter distributed his written testimony (Attachment B). There were several questions from committee members after he completed his presentation. He answered some of those questions by stating that some of the members in his organization are union shops, and they may not agree, but the 12 members of the board voted unanimously against HB 2797 as amended. The National Association of General Contractors of America have been on record for a number of years as believing Davis-Bacon is not in the best interests of the citizens of America.

Mr. Mosher distributed Attachment C, and read from his written testimony. He stressed that his message is that the League of Municipalities does not consider it their business to run state contracts, and would like to be left out of it. He said he had known about K.S.A. 44-201, et seq, for 22 years, and it doesn't cause any great problems. He again stressed that the League feels the responsibility should continue to lie with the contractor, rather than with the public agency involved.

Mr. Hodges distributed his written testimony (Attachment D). There were questions from committee members following his presentation.

Ms. Stubbs expressed opposition to HB 2797 in its current form for reasons expressed by previous conferees. She then introduced Mr. Pashman, Legislative Chairman for the Homebuilders Association.

Mr. Pashman said the passage of HB 2797 would be detrimental to the small builders in the State of Kansas because it would raise development costs for special assessments. He said a lot of developers have used special assessments in financing subdivisions. He used the illustration of paying a carpenter $15 an hour, when the prevailing wage is determined to be $20 an hour. He said he would then increase his carpenter's wages to $20 an hour in order to be competitive in the labor force. He said the overall effect on the economy of Kansas would be to increase costs on all building--not just state, county and local governments. There were questions from committee members following Mr. Pashman's presentation.

Mr. Slattery said his association supports repeal of K.S.A. 44-201. He noted he is concerned about the bill in current form. He suggested that a lot more thought should be given as to what kind of survey is going to be required . He suggested further that perhaps it should be sutdied during the interim. His association prefers that HB 2797 be killed.

Senator Gaines asked Mr. Slattery what he would suggest the Legislature do about the Executive Order. He replied that it will probably stand, and the Department of Human Resources will act on it. He added that he would hope contractor groups will have in-put; and that the Secretary of Human Resources may find it is a task larger than he wants.

No action was taken on HB 2797.

SB 797 - Concerning apportionment of revenue from county sales tax

The Chairman indicated this bill had been re-referred to this committee. Senator Werts asked that no action be taken at this time.

Introduction of Bill

The Chairman requested introduction of a bill to change distribution of taxes on liquor sold in private clubs. Motion was made by Senator Doyen and seconded by Senator Werts to introduce the bill as requested. The motion carried by voice vote.

SB 721 - Unemployment compensation claims

Senator Doyen distributed copies of a proposed amendment to SB 721 (Attachment E) and explained the amendment.

Motion was made by Senator Doyen and seconded by Senator Werts to amend SB 721 by including the amendment contained in Attachment E. The motion carried by voice vote.

Motion was made by Senator Doyen and seconded by Senator Gaines to report SB 721 as amended favorably for passage. The motion carried by roll call vote.

SB 828 - Concerning the sale of highway patrol vehicles

Motion was made by Senator Talkington and seconded by Senator Hein to report SB 828 favorably for passage. The motion carried by roll call vote.

SB 579 - Appropriations FY 1985, SRS Institutions

Motion was made by Senator Bogina and seconded by Senator Doyen to reconsider committee action on SB 579. The motion carried by voice vote.

Motion was made by Senator Bogina and seconded by Senator Doyen to amend the subcommittee report on Section 6 of SB 579 to decrease fee funds at Larned State Hospital for FY 1984 by $127,683, and for FY 1985 by $68,925; and to increase the State General Fund by a total of $196,608. The motion carried by voice vote.

Motion was made by Senator Bogina and seconded by Senator Doyen to report SB 579 as amended favorably for passage. The motion carried by roll call vote.

The meeting was adjourned by the Chairman.

Since 1967

SMITH CONSTRUCTION CO., INC.
P.O. BOX 13213 4620 ESTHNER WICHITA, KS 67213 (316) 942-7989

March 12, 1984

SENATE WAYS & MEANS COMMITTEE
State Capitol
Topeka, KS

Attn: Chairman, Senate Ways & Means Committee

RE: House Bill 2797

This statement is made in regard to House Bill 2797 as amended by the house committee of the whole.

Although we appreciate the fact that the legislature seems to understand that current prevailing wage laws are grossly flawed, a few points need to be addressed.

First, the economy of this state and of the country in general is still a free-market one. It is no accident that the most efficient and affluent society is also the one with the most economic freedom. This observation applies to wages and wage laws, as well as other aspects of our economy. It follows, then, that the most effective prevailing wage law is NO prevailing wage law.

As our economy shifts to a service orientation, and shifts occur from unskilled to skilled labor, it becomes increasingly important for employers to pay decent and incentive-based wages to attract the best employees. Those that do not will ultimately fail in the market-place.

To those that say we must protect workers in a recession and the high unemployment that accompanies one, it will be well to remember that a recession is a thermometer. It measures, among other things, how over-priced labor has become in respect to other prices.

And to those that say we must protect the quality of work performed, it would be better to enforce existing laws concerning quality of work and materials rather than attack the problem through wages.

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It is obvious that the big loser in any prevailing wage law is the taxpayer. The contractor will not lose. He will simply pass the cost on. The state will not lose. In fact, it will benefit with more revenue from income taxes and such. The one who pays for higher wages is the taxpayer.

Having stated all of this, we realize that such advice may be ignored. If so, andif a prevailing wage law is to be established on the scale of H.B. 2797, this committee should strive for the following criteria:

1) Any prevailing wage should be a true prevailing wage. This means an accurate assessment of all wages for a particular job. Simply polling union halls for their scales will not accurately portray the wage picture.

2) A prevailing wage should be localized, rather than be a state-wide. H. B. 2797 contains this point, and it should be kept.

3) On the other hand, with a more localized wage system, it will cost more to assess and administer. A cost-effective way must be found, or we add insult to injury of the taxpayer.

The final point to be made is that, while a more localized prevailing wage will help portray true wages more accurately, the best way to do that, protect the workers and protect the taxpayers is to have no prevailing wage at all.

We would like to thank the committee for considering our statement.

Respectfully,

Laurance L. Smith
Sales and Marketing
SMITH CONSTRUCTION CO., INC.

LLS/jjs

TESTIMONY BEFORE

SENATE WAYS AND MEANS COMMITTEE

ON HOUSE BILL 2797 - March 14, 1984

Mr. Chairman and members of the committee.

Thank you for this opportunity to visit with you for a few minutes about House Bill 2797.

My name is Glenn Coulter and I am the Manager of the Kansas Contractors Association.

Our members build a large majority of the highways, dams, bridges, paving projects, sewer lines, water purification plants and sewage disposal plants in Kansas.

The official policy of the Kansas Contractors Association is that KSA 44-201 (Prevailing Wage Statute) is not in the best interests of the citizens of Kansas and should be repealed. Therefore we would recommend that HB2797 be placed back in its original form.

We believe that the wages of construction workers should be set by the free give and take of the market place, be it between management and unions negotiating wages and fringe benefits for those who desire to work union, or between management and craftsmen who prefer to work open shop.

KSA 44-201 may have been needed 93 years ago, we do not believe it is needed today.

Thank you very much for the opportunity of appearing before you. I will try to answer any questions you may have.

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League of Kansas Municipalities

PUBLISHERS OF KANSAS GOVERNMENT JOURNAL/112 WEST SEVENTH ST., TOPEKA, KANSAS 66603/AREA 913-354-9565

Statement on HB 2797 -- Prevailing Wage Rate Law
To Senate Committee on Ways and Means
By E.A. Mosher, Executive Director
March 12, 1984

My name is E.A. Mosher, Executive Director of the League of Kansas Municipalities, appearing in opposition to certain provisions of HB 2797.

This policy position is based on the League's convention-adopted Statement of Municipal Policy, which provides: "We oppose the enactment of state legislation to. . .require payment of state or federally determined prevailing wage rates for municipal public works contracts. The implementation of the provisions of K.S.A. 44-201 should remain the responsibility of the contractor."

It should be noted that this policy statement was first adopted by our city convention in 1978. It was obviously not directed at the Governor's Executive Order of January 4, 1984, nor HB 2797. Instead, it is a general expression in opposition to state-mandated implementation of federally determined "Davis-Bacon" wages, in opposition to some state agency telling cities what their contractors must pay to each and every employee, and in opposition to shifting the responsibility for implementation of the law from the contractor to the city.

I would also like to note, for the record, that HB 2797 in its original form was reviewed by both the Finance and Taxation Committee and State Legislative Committee of the League. More recently, the Governing Body of the League reviewed the bill in the form passed by the House. The resulting position of each of these groups is that the League should continue to advocate its convention-adopted policy position.

The Kansas prevailing wage rate law has been in existence for a great many years. Local units have learned to live with it by requiring in bid specifications that the contractor must meet its terms. The implementation of the existing law has been, in effect, a contractor requirement, and that's where we think the responsibility should continue to lie. It is our understanding that, at least since 1916 (see State v. Construction Co., 99 Kan. 838 (1916) and State v. Blaser, 138 Kan. 447 (1933)), the burden of proving whether less than the prevailing wage rate is paid is a responsibility of the plaintiff.

We call to your attention that the existing prevailing wage rate law does not apply to all cities. A clause in K.S.A. 44-203 provides "That any cities of the second or third class owning or operating municipal light and water plants be and the same are hereby exempted from the provisions of this act." Assuming the "and" in this clause means "and/or", which we believe to be the proper interpretation, then the prevailing wage provisions apply to all 24 cities of the first class, but to only 9 of the 86 cities of the second class and 49 of the 517 cities of the third class. In total, given this interpretation, about 115 cities in Kansas are under the prevailing wage law while 512 are exempt.

Assuming our interpretation is incorrect, namely that the act exempts only those cities that operate both a municipal light and municipal water plant, the fact remains that the statute is not uniformly applicably to all cities. As a result, cities may now charter ordinance out from under the act under their constitutional home rules powers, if they want to do so.

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In conclusion, let me observe that our objection to HB 2797, in its present form, is primarily a matter of home rule principle. The bill would appear to wipe out existing home rule options. It would require a state agency to determine a prevailing wage rate for local contracts, which we oppose. It would require these wage rates to be set forth in specifications, thus effectively transferring the responsibility for enforcement from the contractor to the public agency, which we oppose. We have no objections to the development of prevailing wage rates for state contract purposes. This information might even be helpful to locally elected governing bodies who voluntarily want to include these state determined wages in their bid specifications. Our principal point is that cities should have an option, and we know of no good public policy reasons why the state should intervene in this area that we consider primarily a matter of local affairs and government.

LEGISLATIVE TESTIMONY

Kansas Chamber of Commerce and Industry

500 First National Tower One Townsite Plaza Topeka, KS 66603-3460 (913) 357-6321

A consolidation of the Kansas State Chamber of Commerce, Associated Industries of Kansas, Kansas Retail Council

KANSAS CHAMBER OF COMMERCE AND INDUSTRY

Testimony Before the

SENATE COMMITTEE ON WAYS AND MEANS

HB 2797 March 13, 1984

Mr. Chairman and Members of the Committee:

My name is Rob Hodges and I am Executive Director of the Kansas Industrial Council, a major division of the Kansas Chamber of Commerce and Industry. I appreciate the opportunity to appear before the Committee today to present the Chamber's views regarding House Bill 2797; a proposal to amend a portion of Kansas Statutes Annotated Chapter 44, Article 201.

The Kansas Chamber of Commerce and Industry (KCCI) is a statewide organization dedicated to the promotion of economic growth and job creation within Kansas, and to the protection and support of the private competitive enterprise system.

KCCI is comprised of more than 3,000 businesses plus 215 local and regional chambers of commerce and trade organizations which represent over 161,000 business men and women. The organization represents both large and small employers in Kansas, with 55% of KACI's members having less than 25 employees, and 86% having less than 100 employees.

The KCCI Board of Directors establishes policies through the work of hundreds of the organization's members who make up its various committees. These policies are the guiding principles of the organization and translate into views such as those expressed here.

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KCCI has a policy position established by our Board of Directors in 1980, numbered HR-26, which reads as follows:

(HR-26) Prevailing Wage Law. KCCI believes that the federal and Kansas statutes dealing with the payment of prevailing wages on public works projects are inflationary, difficult to administer, antiquated in the light of more recent laws designed to protect the employee, and therefore, these statutes should be repealed.

Another policy which I think is germane to the issue under consideration today is numbered HR-11 in our policy book and reads as follows:

(HR-11) Wage Rate, Benefits, and Hours Regulations. The Chamber supports the principle that wage rates, benefits, and hours of work be determined by direct negotiation between employer and employees rather than through arbitrary government imposed standards.

That policy was initiated in 1953 and I believe serves to underscore the position which speaks directly to the prevailing wage policy.

HB 2797, as amended by the House, stops short of repealing the prevailing wage statute. Instead, the amended version would permit the Secretary of Human Resources, by rule and regulation, to conduct surveys in each county or municipality to determine the prevailing wages within each locality. But the effects of the changes in the law could not go into effect until March 15, 1985, thereby giving the Legislature an opportunity to review the survey results.

Addressing the amended bill, on page 3, line 0104, workers would be required to to be paid "at least the prevailing wage." But the next subsection, beginning on line 106, requires the state and each municipality to specify the prevailing wage which contractors and subcontractors "must pay" their workers. This seems to indicate that a specific wage must be determined and must be paid, while the first part of New Section 3 appears only to set a floor, a minimum wage for construction jobs. More specific language may be necessary to stipulate legislative intent.

On the same page, beginning in line 0111, the Secretary of Human Resources is granted authority to adopt rules and regulations relating to the procedures for conducting wage surveys. KCCI believes that this language is incomplete, in that it does not require that all workers should be surveyed. A survey which is restricted to one segment of the workforce would not reflect the true picture of wages paid within the locality.

On page 4, beginning in line 0119, the definition of prevailing wages has been written to include employee benefits. But the bill would not define what benefits are to be included in the survey. Employers' costs for benefits can vary widely. The impact of this portion of the bill could force employers with low benefit costs to figure potentially high costs into their bids, if those high costs are included in the prevailing wage according to the survey. Certain benefits, such as workers' compensation and unemployment compensation, should be similar for many employees -- although unemployment compensation costs can vary substantially from employer to employer. KCCI questions why employee benefits should be included. Benefits provided to an employee should be the business of the employer and his employees, not the business of the state, a municipality, or the Legislature.

Finally, that same paragraph makes a distinction between wages being paid to a majority of workers and an average of workers. Given the provision on the previous page that "at least the prevailing wage" should be paid to workers, KCCI questions the necessity for determining prevailing wages based on a majority of workers and their benefits. It would seem that any prevailing wage should reflect what is being paid to the average worker, not what a select group of workers is receiving.

The prevailing wage statute and its amendment or repeal is an emotional issue. This committee will soon decide whether to approve the bill before it, amend the bill, or not consider the bill. By policy statement, KCCI encourages this committee to return the bill to its original form and recommend it favorably for passage.

I thank you for your time and will attempt to answer any questions you may have.

Proposed Amendments to SENATE BILL NO. 721

Be amended:

On page 1, after line 43, by inserting the following:

"Sec. 2. K.S.A. 1983 Supp. 44-706 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 work voluntarily without good cause. An individual shall have left work voluntarily with good cause for either work related or personal reasons,~~ until after the individual has become reemployed and has earnings of at least four times the individual's weekly benefit amount if the individual voluntarily left work without good cause attributable to the work or the employer, except that the individual shall not be disqualified 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~~ The individual left work for the purpose of accepting a more remunerative job which was accepted and in which some wages were earned; or

(2) ~~the reasons for the separation were of such nature that a reasonable and prudent individual would separate from the employment under the same circumstances. If an individual leaves work by the individual's own action because of domestic or family~~

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~~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~~ the individual quit temporary work to return to the employer. 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~~ until after the individual has become reemployed and has earnings of at least four times the individual's weekly benefit amount if the 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 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 and has had earnings of at least eight 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~~ shall continue until the individual has become reemployed and has earned at least four times the 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, 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 if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms, except that if benefits are denied to the individual under this subsection and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(k) For any week of unemployment on the basis of service in ~~an instructional, research or principal administrative~~ any 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.

(o) For any week of unemployment on the basis of services performed in any capacity and under any of the circumstances described in subsection (i), (j) or (k) which an individual performed in an educational institution while in the employ of an educational service agency. For purposes of this subsection (o),

the term "educational service agency" means a governmental agency or governmental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

Sec. 3. K.S.A. 1983 Supp. 44-709 is hereby amended to read as follows: 44-709. (a) Filing. Claims for benefits shall be made in accordance with rules and regulations adopted by the secretary. 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.

(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~~ 1983 Supp. 75-4315b and amendments thereto 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~~ chamber 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~~ $11,000 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.";

Also on page 1, in line 44, by striking "2" and inserting in lieu thereof "4";

On page 12, following line 431, by inserting the following:

"Sec. 5. K.S.A. 1983 Supp. 44-710a is hereby amended to read as follows: 44-710a. (a) Classification of employers by the secretary. 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 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~~ there have been 24 consecutive calendar months immediately preceding the computation date throughout which benefits could have been charged against such employer's account. 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. Each negative account balance employer who does not satisfy the requirements to have an average annual payroll, as defined by subsection (a)(2) of K.S.A. 44-703 and amendments thereto, shall be assigned a surcharge of 1%. 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 III of this section, and the planned yield on total wages in column B of schedule III shall be determined by the reserve fund ratio in column A of schedule 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 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 two rate groups 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 two rate groups 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 or to that rate prescribed for rate group 20 of schedule I of this section by making an additional voluntary payment that would increase such employer's reserve ratio to the lower limit required for such rate group 20. 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.";

Also on page 12, by striking all of line 432 and by inserting in lieu thereof the following:

"Sec. 6. K.S.A. 1983 Supp. 44-706, 44-709, 44-710 and 44-710a are hereby repealed.";

Also on page 12, in line 433, by striking "4" and inserting in lieu thereof "7";

On page 1, in the title, line 15, by inserting after "compensation" the following: "; relating to disqualification for benefits; relating to the compensation of members of the board of review; concerning classification of employers; relating to"; in line 21, by striking "44-710" and inserting in lieu thereof "44-706, 44-709, 44-710 and 44-710a"; also in line 21, by striking "section" and inserting in lieu thereof "sections";