

Approved Arthur Douville 4-22-86  
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at  
Chairperson

9:00 a.m./~~S.S.~~ on February 6, 1986n room 526-S of the Capitol.

All members were present except:

All members were present.

Committee staff present:

All present.

Conferees appearing before the committee:

Mr. Rob Hodges, KCCI

The advisory council was asked to make a statement on H.B. 2761. Mr. Hodges passed out to the committee 2 attachments. The first attachment was a balloon of H.B. 2761 and the other attachment was a copy of the KCCI news letter. Mr. Hodges, representing the advisory council, spoke on H.B. 2761. He said that this bill would not raise the rates. A short discussion followed.

The Department of Human Resources gave the committee members attachment number 3.

The Chairman asked all committee members to read over the attachments (#1, #2, #3) and further discussion and hearings on H.B. 2761 would be taken up again the following week.

Representative Friedeman made a motion to move out S.B. 176 favorably. The motion was seconded by Representative Pottorff. There being no discussion a vote was taken and the motion was carried.

The meeting was adjourned at 9:30 a.m.

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HOUSE COMMITTEE ON  
LABOR AND INDUSTRY

Guest List

Date 2-6-86

Name	City	Representing
W U CLAWSON	TOPEKA	DHR
Bill Morrissey	"	DHR / WC
Mark Bennett	Topeka	Caw Ins Assoc
Paul Bicknell	"	DHR
Larry Wolgas +	"	"
John Rathmell	"	DHR
KAREN McCLAIN	"	K.A. REALTORS
DAN MORGAN	Topeka	AGC of KS
Tom Slatten	Topeka	AGC of KS
Kathy Morney	Topeka	MEAK
Bob Dacher	WICHITA	BMAC
Wayne Mideo	Topeka	KS AFL-CIO
Harry D. Nelson	Wichita	" " "

HOUSE BILL No. 2761

By Committee on Labor and Industry

1-28

H. INT

2-6-86

AH#1

0017 AN ACT concerning the employment security law; relating to  
0018 benefits, disqualification for benefits, benefit claims proce-  
0019 dures and collection of employer payments; penalties; ex-  
0020 penditures from special employment security fund; amending  
0021 K.S.A. 44-719 and 75-6210 and K.S.A. 1985 Supp. 44-704,  
0022 44-706, 44-709, 44-716a and 44-717 and repealing the existing  
0023 sections; also repealing K.S.A. 1985 Supp. 44-710g and 44-  
0024 710h.

0025 *Be it enacted by the Legislature of the State of Kansas:*

0026 Section 1. On July 1, 1986, K.S.A. 1985 Supp. 44-704 is  
0027 hereby amended to read as follows: 44-704. (a) *Payment of*  
0028 *benefits.* All benefits provided herein shall be payable from the  
0029 fund. All benefits shall be paid through the secretary of human  
0030 resources, in accordance with such rules and regulations as the  
0031 secretary may adopt. Benefits based on service in employment  
0032 defined in subsections (i)(3)(E) and (i)(3)(F) of K.S.A. 44-703 and  
0033 amendments thereto, shall be payable in the same amount, on  
0034 the same terms and subject to the same conditions as compensa-  
0035 tion payable on the basis of other service subject to this act  
0036 except as provided in subsection (e) of K.S.A. 44-705 and sub-  
0037 section (e)(2) of K.S.A. 44-711, and any amendments to these  
0038 statutes.

0039 (b) *Determined weekly benefit amount.* An individual's de-  
0040 termined weekly benefit amount shall be an amount equal to  
0041 4.25% of the individual's total wages for insured work paid  
0042 during that calendar quarter of the individual's base period in  
0043 which such total wages were highest, subject to the following  
0044 limitations:

0045 (1) If an individual's determined weekly benefit amount is  
0046 less than the minimum weekly benefit amount, it shall be raised

0047 to such minimum weekly benefit amount;

0048 (2) if the individual's determined weekly benefit amount is  
0049 more than the maximum weekly benefit amount, it shall be  
0050 reduced to the maximum weekly benefit amount; and

0051 (3) if the individual's determined weekly benefit amount is  
0052 not a multiple of \$1, it shall be reduced to the next lower  
0053 multiple of \$1.

0054 (c) *Maximum weekly benefit amount.* On July 1 of each year,  
0055 the secretary shall determine the maximum weekly benefit  
0056 amount by computing 60% of the average weekly wages paid to  
0057 employees in insured work during the previous calendar year  
0058 and shall prior to that date announce the maximum weekly  
0059 benefit amount so determined, by publication in the Kansas  
0060 register, except that the maximum weekly benefit amount for the  
0061 twelve-month period commencing on July 1, 1985, shall not be  
0062 more than \$190. Such computation shall be made by dividing the  
0063 gross wages reported as paid for insured work during the pre-  
0064 vious calendar year by the product of the average of midmonth  
0065 employment during such calendar year multiplied by 52. The  
0066 maximum weekly benefit amount so determined and announced  
0067 for the twelve-month period shall apply only to those claims filed  
0068 in that period qualifying for maximum payment under the fore-  
0069 going formula. All claims qualifying for payment at the maximum  
0070 weekly benefit amount shall be paid at the maximum weekly  
0071 benefit amount in effect when the benefit year to which the  
0072 claim relates was first established, notwithstanding a change in  
0073 the maximum benefit amount for a subsequent twelve-month  
0074 period. If the computed maximum weekly benefit amount is not  
0075 a multiple of \$1, then the computed maximum weekly benefit  
0076 amount shall be reduced to the next lower multiple of \$1.

0077 (d) *Minimum weekly benefit amount.* The minimum weekly  
0078 benefit amount payable to any individual shall be 25% of the  
0079 maximum weekly benefit calculated in accordance with subsec-  
0080 tion (c) and shall be announced by the secretary in conjunction  
0081 with the published announcement of the maximum weekly ben-  
0082 efit, also as provided in subsection (c). The minimum weekly  
0083 benefit amount so determined and announced for the twelve-

0084 month period beginning July 1 of each year shall apply only to  
 0085 those claims which establish a benefit year filed within that  
 0086 twelve-month period and shall apply through the benefit year of  
 0087 such claims notwithstanding a change in such amount in a  
 0088 subsequent twelve-month period. If the minimum weekly ben-  
 0089 efit amount is not a multiple of \$1 it shall be reduced to the next  
 0090 lower multiple of \$1.

0091 (e) *Weekly benefit payable.* Each eligible individual who is  
 0092 unemployed with respect to any week ~~shall~~, except as to final  
 0093 payment, *shall* be paid with respect to such week a benefit in an  
 0094 amount equal to such individual's determined weekly benefit  
 0095 amount, less that part of the wage, if any, payable to such  
 0096 individual with respect to such week which is in excess of ~~\$8~~ *the*  
 0097 *amount which is equal to 25% of such individual's determined*  
 0098 *weekly benefit amount but which is not more than \$47* and if the  
 0099 resulting amount is not a multiple of \$1, it shall be reduced to the  
 0100 next lower multiple of \$1. For the purpose of this section,  
 0101 remuneration received for services performed on a public as-  
 0102 sistance work project shall not be construed as wages.

0103 (f) *Duration of benefits.* Any otherwise eligible individual  
 0104 shall be entitled during any benefit year to a total amount of  
 0105 benefits equal to whichever is the lesser of 26 times such  
 0106 individual's weekly benefit amount, or  $\frac{1}{3}$  of such individual's  
 0107 wages for insured work paid during such individual's base  
 0108 period. Such total amount of benefits, if not a multiple of \$1, shall  
 0109 be reduced to the next lower multiple of \$1.

0110 (g) For the purposes of this section, wages shall be counted  
 0111 as "wages for insured work" for benefit purposes with respect to  
 0112 any benefit year only if such benefit year begins subsequent to  
 0113 the date on which the employing unit by whom such wages were  
 0114 paid has satisfied the conditions of subsection (h) of K.S.A.  
 0115 44-703 and amendments thereto with respect to becoming an  
 0116 employer.

0117 Sec. 2. On July 1, 1986, K.S.A. 1985 Supp. 44-706 is hereby  
 0118 amended to read as follows: 44-706. An individual shall be  
 0119 disqualified for benefits:

0120 (a) If the individual left work voluntarily without good cause

K.S.A. 44-704(e) Partial Earnings Offset. This proposal would change the  
 formula for determining the amount of money deducted from a  
 claimant's weekly benefit amount to adjust for what he or  
 she earned in part-time employment while unemployed. Present law calls for  
 any amount over \$8 per week earned in partial employment to be deducted,  
 dollar for dollar, from the weekly benefit check. Because claimants may earn  
 so little without having their benefits reduced, few people seek (or report)  
 part-time earnings while they are unemployed. The \$8 figure was set over 25  
 years ago, and then represented 25% of the maximum weekly benefit amount.  
 This proposal would permit claimants to earn 25% of their weekly benefit  
 amount in partial employment, up to a maximum of \$47 per week, before any  
 offsetting deduction would be made. Some examples may help explain the  
 proposal: If a claimant's weekly benefit amount is \$120, he or she may earn  
 \$30 in partial employment (25% of \$120) without losing any benefits. If the  
 partial employment yields \$45, the claimant's weekly benefit check would be  
 reduced by \$15, the amount over the 25% threshold. For claimants who qualify  
 for the maximum weekly benefit amount of \$190, up to \$47 (odd amounts are  
 rounded down in U.C.) could be earned without offset. The \$47 ceiling will  
 become more significant in future years as the maximum weekly benefit amount  
 increases. Claimants who qualify for less than the maximum weekly benefit  
 amount will still be able to earn 25% of their benefit amount, up to \$47,  
 without penalty; those who are eligible for the maximum then in effect, will  
 be subject to the \$47 ceiling and earnings over that amount will be deducted  
 dollar for dollar.

The philosophy behind this complicated system is really rather simple. People  
 drawing unemployment should be looking for work -- even part-time work that  
 could lead to something more rewarding later. By raising the offset thresh-  
 hold from \$8 per week to as much as \$47 per week, more claimants will be  
 encouraged to accept (and report) partial employment. By setting a ceiling on  
 the amount which can be earned, rather than just letting that amount float  
 with the maximum weekly benefit amount, some control is placed on how much can  
 be earned in future years. Merely "indexing" the maximum by making it a  
 percentage, would almost eliminate any opportunity to objectively review the  
 impact of this change in future years.

0121 attributable to the work or the employer, subject to the other  
0122 provisions of this subsection (a). The disqualification shall begin  
0123 the day following the separation and shall continue until after  
0124 the individual has become reemployed and has had earnings  
0125 from insured work of at least three times the individual's weekly  
0126 benefit amount. An individual shall not be disqualified under  
0127 this subsection (a) if:

0128 (1) The individual was forced to leave work because of ill-  
0129 ness or injury upon the advice of a licensed and practicing  
0130 physician and, upon learning of the necessity for absence, im-  
0131 mediately notified the employer thereof, or the employer con-  
0132 sented to the absence, and after recovery from the illness or  
0133 injury, when recovery was certified by a practicing physician,  
0134 the individual returned to the employer and offered to perform  
0135 services and the individual's regular work or comparable and  
0136 suitable work was not available; as used in this paragraph (1)  
0137 "physician" means any person licensed by the proper licensing  
0138 authority of any state to engage in the practice of medicine and  
0139 surgery, osteopathy, chiropractic, dentistry, optometry, podiatry  
0140 or psychology;

0141 (2) the individual left temporary work to return to the regular  
0142 employer;

0143 (3) the individual left work to enlist in the armed forces of the  
0144 United States, but was rejected or delayed from entry;

0145 (4) the individual left work because of the transfer of the  
0146 individual's spouse from one place of work to another place of  
0147 work at a geographic location which makes it unreasonable for  
0148 the individual to continue work at the individual's place of work;

0149 (5) the individual left work because of hazardous working  
0150 conditions; in determining whether or not working conditions  
0151 are hazardous for an individual, the degree of risk involved to the  
0152 individual's health, safety and morals, the individual's physical  
0153 fitness and prior training and the working conditions of workers  
0154 engaged in the same or similar work for the same and other  
0155 employers in the locality shall be considered; as used in this  
0156 paragraph (5), "hazardous working conditions" means working  
0157 conditions that could result in a danger to the physical or mental

0158 well-being of the individual; each determination as to whether  
0159 hazardous working conditions exist shall include, but shall not  
0160 be limited to, a consideration of (A) the safety measures used or  
0161 the lack thereof, and (B) the condition of equipment or lack of  
0162 proper equipment; no work shall be considered hazardous if the  
0163 working conditions surrounding the individual's work are the  
0164 same or substantially the same as the working conditions gener-  
0165 ally prevailing among individuals performing the same or similar  
0166 work for other employers engaged in the same or similar type of  
0167 activity;

0168 (6) the individual left work to enter training approved under  
0169 section 236(a)(1) of the trade act of 1974, provided the work left is  
0170 not of a substantially equal or higher skill level than the indi-  
0171 vidual's past adversely affected employment (as defined for  
0172 purposes of the trade act of 1974), and wages for such work are  
0173 not less than 80% of the individual's average weekly wage as  
0174 determined for the purposes of the trade act of 1974;

0175 (7) the individual left work because of unwelcome harass-  
0176 ment of the individual by the employer or another employee of  
0177 which the employing unit had knowledge;

0178 (8) the individual left work to accept better work; each de-  
0179 termination as to whether or not the work accepted is better work  
0180 shall include, but shall not be limited to, consideration of (A) the  
0181 rate of pay, the hours of work and the probable permanency of  
0182 the work left as compared to the work accepted, (B) the cost to  
0183 the individual of getting to the work left in comparison to the cost  
0184 of getting to the work accepted, and (C) the distance from the  
0185 individual's place of residence to the work accepted in compari-  
0186 son to the distance from the individual's residence to the work  
0187 left;

0188 (9) the individual left work as a result of being instructed or  
0189 requested by the employer, a supervisor or a fellow employee to  
0190 perform a service or commit an act in the scope of official job  
0191 duties which is in violation of an ordinance or statute;

0192 (10) the individual left work because of a violation of the  
0193 work agreement by the employing unit and, before the individ-  
0194 ual left, the individual had exhausted all remedies provided in

0195 such agreement for the settlement of disputes before terminat-  
0196 ing; or

0197 (11) after making reasonable efforts to preserve the work, the  
0198 individual left work due to a personal emergency of such nature  
0199 and compelling urgency that it would be contrary to good con-  
0200 science to impose a disqualification.

0201 (b) ~~Beginning with the week in which the valid initial claim~~  
0202 ~~is filed and for the 10 consecutive weeks which immediately~~  
0203 ~~follow such week and shall forfeit benefit entitlement equal to 10~~  
0204 ~~times the individual's determined weekly benefit amount, but~~  
0205 ~~not less than an amount equal to such individual's determined~~  
0206 ~~weekly benefit amount~~ If the individual has been discharged  
0207 ~~from the individual's last work for a breach of a duty misconduct~~  
0208 ~~connected with the individual's work reasonably owed an em-~~  
0209 ~~ployer by an employee. The disqualification shall begin the day~~  
0210 ~~following the separation and shall continue until after the~~  
0211 ~~individual becomes reemployed and has had earnings from~~  
0212 ~~insured work of at least three times the individual's determined~~  
0213 ~~weekly benefit amount, except that if an individual is discharged~~  
0214 ~~for gross misconduct connected with the individual's work, such~~  
0215 ~~individual shall be disqualified for benefits until such individual~~  
0216 ~~again becomes employed and has had earnings from insured~~  
0217 ~~work of at least eight times such individual's determined weekly~~  
0218 ~~benefit amount. In addition, all wage credits attributable to the~~  
0219 ~~employment from which the individual was discharged for gross~~  
0220 ~~misconduct connected with the individual's work shall be can-~~  
0221 ~~celed. No such cancellation of wage credits shall affect prior~~  
0222 ~~payments made as a result of a prior separation.~~

0223 (1) For the purposes of this subsection (b), "misconduct" is  
0224 defined as a violation of a duty or obligation reasonably owed  
0225 the employer as a condition of employment. In order to sustain a  
0226 finding that such a duty or obligation has been violated, the  
0227 facts must show: (A) Willful and intentional action which is  
0228 substantially adverse to the employer's interests, or (B) care-  
0229 lessness or negligence of such degree or recurrence as to show  
0230 wrongful intent or evil design. The term "gross misconduct" as  
0231 used in this subsection (b) shall be construed to mean conduct

K.S.A. 44-706(b) Breach of Duty. This proposal would delete the phrase  
"breach of duty" from the law and replace it with "miscon-  
duct" (as a majority of states do). The term "misconduct"  
would be defined, and the term "gross misconduct" would be re-defined.  
Penalties for both misconduct and gross misconduct would be increased. For  
misconduct violators, the penalty would be total disqualification from benefit  
eligibility until the individual had returned to work and earned three times  
his or her determined weekly benefit amount. (This is the same penalty  
enacted last year for "voluntary quit" cases.) Persons guilty of a gross  
misconduct violation would continue with the existing total disqualification  
and eight times weekly benefit earnings requirement to requalify, but would  
have an additional penalty in that they would lose all wage credits attribut-  
able to the employer against which the gross misconduct was committed. Such a  
provision would assure that, regardless of when or how an individual requali-  
fied for benefit eligibility following a gross misconduct disqualification,  
the employer against which the deed was committed would never have any future  
benefits charged against his or her U.C. account (unless, of course, the  
employer rehired the guilty party).

These provisions were sought by KCCI and the other employer representatives of  
the ESAC and would be welcome changes in the state's U.C. law.



0232 evincing *extreme*, willful and wanton ~~disregard of an employer's~~  
 0233 ~~interest or a carelessness or negligence of such degree or recur-~~  
 0234 ~~rence as to show an intentional or substantial disregard of the~~  
 0235 ~~employer's interest misconduct as defined by this subsection (b).~~

0236 (2) *An individual shall not be disqualified under this sub-*  
 0237 *section (b) if the individual is discharged under the following*  
 0238 *circumstances:*

0239 (A) *The employer discharged the individual after learning*  
 0240 *the individual was seeking other work or when the individual*  
 0241 *gave notice of future intent to quit;*

0242 (B) *the individual was making a good-faith effort to do the*  
 0243 *assigned work but was discharged due to: (i) Inefficiency, (ii)*  
 0244 *unsatisfactory performance due to inability, incapacity or lack*  
 0245 *of training or experience, (iii) isolated instances of ordinary*  
 0246 *negligence or inadvertence, (iv) good-faith errors in judgment or*  
 0247 *discretion, or (v) unsatisfactory work or conduct due to circum-*  
 0248 *stances beyond the individual's control; or*

0249 (C) *the individual's refusal to perform work in excess of the*  
 0250 *contract of hire.*

0251 (c) If the individual has failed, without good cause, to either  
 0252 apply for suitable work when so directed by the employment  
 0253 office of the secretary of human resources, or to accept suitable  
 0254 work when offered to the individual by the employment office,  
 0255 the secretary of human resources, or an employer, such disqual-  
 0256 ification shall begin with the week in which such failure oc-  
 0257 curred and for the ~~10 consecutive weeks which immediately~~  
 0258 ~~follow such week and shall forfeit benefit entitlement equal to 10~~  
 0259 ~~times the individual's determined weekly benefit amount but~~  
 0260 ~~not less than an amount equal to~~ *shall continue until the indi-*  
 0261 *vidual becomes reemployed and has had earnings from insured*  
 0262 *work of at least three times such individual's determined*  
 0263 *weekly benefit amount. In determining whether or not any work*  
 0264 *is suitable for an individual, the secretary of human resources, or*  
 0265 *a person or persons designated by the secretary, shall consider*  
 0266 *the degree of risk involved to health, safety and morals, physical*  
 0267 *fitness and prior training, experience and prior earnings, length*  
 0268 *of unemployment and prospects for securing local work in the*

K.S.A. 44-706(c) Work Search/Refusal. This proposal would change only the penalty assessed against U.C. claimants who are found to be not seeking or not accepting suitable work while they are unemployed. The new penalty would be the same as for misconduct cases outlined above (and for voluntary quitters, as instituted last session). Work search and job refusal violators would be disqualified from benefit eligibility until they had returned to work and earned three times their determined weekly benefit amount. No other changes are proposed in this section.

KCCI and other employer representatives are very supportive of this change to bring our disqualifications in line.

0269 individual's customary occupation or work for which the indi-  
0270 vidual is reasonably fitted by training or experience, and the  
0271 distance of the available work from the individual's residence.  
0272 Notwithstanding any other provisions of this act, an otherwise  
0273 eligible individual shall not be disqualified for refusing an offer  
0274 of suitable employment, or failing to apply for suitable employ-  
0275 ment when notified by an employment office, or for leaving the  
0276 individual's most recent work accepted during approved train-  
0277 ing, including training approved under section 236(a)(1) of the  
0278 trade act of 1974, if the acceptance of or applying for suitable  
0279 employment or continuing such work would require the indi-  
0280 vidual to terminate approved training and no work shall be  
0281 deemed suitable and benefits shall not be denied under this act  
0282 to any otherwise eligible individual for refusing to accept new  
0283 work under any of the following conditions: (1) If the position  
0284 offered is vacant due directly to a strike, lockout or other labor  
0285 dispute; (2) if the remuneration, hours or other conditions of the  
0286 work offered are substantially less favorable to the individual  
0287 than those prevailing for similar work in the locality; (3) if as a  
0288 condition of being employed, the individual would be required  
0289 to join or to resign from or refrain from joining any labor organi-  
0290 zation.

0291 (d) For any week with respect to which the secretary of  
0292 human resources, or a person or persons designated by the  
0293 secretary, finds that the individual's unemployment is due to a  
0294 stoppage of work which exists because of a labor dispute or there  
0295 would have been a work stoppage had normal operations not  
0296 been maintained with other personnel previously and currently  
0297 employed by the same employer at the factory, establishment or  
0298 other premises at which the individual is or was last employed,  
0299 except that this subsection (d) shall not apply if it is shown to the  
0300 satisfaction of the secretary of human resources, or a person or  
0301 persons designated by the secretary, that: (1) The individual is  
0302 not participating in or financing or directly interested in the  
0303 labor dispute which caused the stoppage of work; and (2) the  
0304 individual does not belong to a grade or class of workers of  
0305 which, immediately before the commencement of the stoppage,

0306 there were members employed at the premises at which the  
0307 stoppage occurs any of whom are participating in or financing or  
0308 directly interested in the dispute. If in any case separate  
0309 branches of work which are commonly conducted as separate  
0310 businesses in separate premises are conducted in separate de-  
0311 partments of the same premises, each such department shall, for  
0312 the purpose of this subsection (d), be deemed to be a separate  
0313 factory, establishment or other premises. For the purposes of this  
0314 subsection (d), failure or refusal to cross a picket line or refusal  
0315 for any reason during the continuance of such labor dispute to  
0316 accept the individual's available and customary work at the  
0317 factory, establishment or other premises where the individual is  
0318 or was last employed shall be considered as participation and  
0319 interest in the labor dispute.

0320 (e) For any week with respect to which or a part of which the  
0321 individual has received or is seeking unemployment benefits  
0322 under the unemployment compensation law of any other state or  
0323 of the United States, except that if the appropriate agency of such  
0324 other state or the United States finally determines that the  
0325 individual is not entitled to such unemployment benefits, this  
0326 disqualification shall not apply.

0327 (f) For any week with respect to which the individual is  
0328 entitled to receive any unemployment allowance or compensa-  
0329 tion granted by the United States under an act of congress to  
0330 ex-service men and women in recognition of former service with  
0331 the military or naval services of the United States.

0332 (g) For the period of one year beginning with the first day  
0333 following the last week of unemployment for which the individ-  
0334 ual received benefits, or for one year from the date the act was  
0335 committed, whichever is the later, if the individual, or another in  
0336 such individual's behalf with the knowledge of the individual,  
0337 has knowingly made a false statement or representation, or has  
0338 knowingly failed to disclose a material fact to obtain or increase  
0339 benefits under this act or any other unemployment compensa-  
0340 tion law administered by the secretary of human resources.

0341 (h) For any week with respect to which the individual is  
0342 receiving compensation for temporary total disability or perma-

0343 nent total disability under the workmen's compensation law of  
0344 any state or under a similar law of the United States.

0345 (i) For any week of unemployment on the basis of service in  
0346 an instructional, research or principal administrative capacity for  
0347 an educational institution as defined in subsection (v) of K.S.A.  
0348 44-703 and amendments thereto, if such week begins during the  
0349 period between two successive academic years or terms or, when  
0350 an agreement provides instead for a similar period between two  
0351 regular but not successive terms during such period or during a  
0352 period of paid sabbatical leave provided for in the individual's  
0353 contract, if the individual performs such services in the first of  
0354 such academic years or terms and there is a contract or a reason-  
0355 able assurance that such individual will perform services in any  
0356 such capacity for any educational institution in the second of  
0357 such academic years or terms.

0358 (j) For any week of unemployment on the basis of service in  
0359 any capacity other than service in an instructional, research, or  
0360 administrative capacity in an educational institution, as defined  
0361 in subsection (v) of K.S.A. 44-703 and amendments thereto, if  
0362 such week begins during the period between two successive  
0363 academic years or terms if the individual performs such services  
0364 in the first of such academic years or terms and there is a  
0365 reasonable assurance that the individual will perform such ser-  
0366 vices in the second of such academic years or terms, except that if  
0367 benefits are denied to the individual under this subsection (j)  
0368 and the individual was not offered an opportunity to perform  
0369 such services for the educational institution for the second of  
0370 such academic years or terms, such individual shall be entitled to  
0371 a retroactive payment of benefits for each week for which the  
0372 individual filed a timely claim for benefits and for which benefits  
0373 were denied solely by reason of this subsection (j).

0374 (k) For any week of unemployment on the basis of service in  
0375 any capacity for an educational institution as defined in subsec-  
0376 tion (v) of K.S.A. 44-703 and amendments thereto, if such week  
0377 begins during an established and customary vacation period or  
0378 holiday recess, if the individual performs services in the period  
0379 immediately before such vacation period or holiday recess and

0380 there is a reasonable assurance that such individual will perform  
0381 such services in the period immediately following such vacation  
0382 period or holiday recess.

0383 (l) For any week of unemployment on the basis of any ser-  
0384 vices, substantially all of which consist of participating in sports  
0385 or athletic events or training or preparing to so participate, if  
0386 such week begins during the period between two successive  
0387 sport seasons or similar period if such individual performed  
0388 services in the first of such seasons or similar periods and there is  
0389 a reasonable assurance that such individual will perform such  
0390 services in the later of such seasons or similar periods.

0391 (m) For any week on the basis of services performed by an  
0392 alien unless such alien is an individual who was lawfully admit-  
0393 ted for permanent residence at the time such services were  
0394 performed, was lawfully present for purposes of performing such  
0395 services, or was permanently residing in the United States under  
0396 color of law at the time such services were performed, including  
0397 an alien who was lawfully present in the United States as a result  
0398 of the application of the provisions of section 203(a)(7) or section  
0399 212(d)(5) of the federal immigration and nationality act. Any data  
0400 or information required of individuals applying for benefits to  
0401 determine whether benefits are not payable to them because of  
0402 their alien status shall be uniformly required from all applicants  
0403 for benefits. In the case of an individual whose application for  
0404 benefits would otherwise be approved, no determination that  
0405 benefits to such individual are not payable because of such  
0406 individual's alien status shall be made except upon a prepon-  
0407 derance of the evidence.

0408 (n) For any week in which an individual is receiving a  
0409 governmental or other pension, retirement or retired pay, annu-  
0410 ity or other similar periodic payment under a plan maintained by  
0411 a base period employer and to which the entire contributions  
0412 were provided by such employer, except that: (1) If the entire  
0413 contributions to such plan were provided by the base period  
0414 employer but such individual's weekly benefit amount exceeds  
0415 such governmental or other pension, retirement or retired pay,  
0416 annuity or other similar periodic payment attributable to such

0417 week, the weekly benefit amount payable to the individual shall  
0418 be reduced (but not below zero) by an amount equal to the  
0419 amount of such pension, retirement or retired pay, annuity or  
0420 other similar periodic payment which is attributable to such  
0421 week; or (2) if only a portion of contributions to such plan were  
0422 provided by the base period employer, the weekly benefit  
0423 amount payable to such individual for such week shall be re-  
0424 duced (but not below zero) by the prorated weekly amount of the  
0425 pension, retirement or retired pay, annuity or other similar  
0426 periodic payment after deduction of that portion of the pension,  
0427 retirement or retired pay, annuity or other similar periodic pay-  
0428 ment that is directly attributable to the percentage of the con-  
0429 tributions made to the plan by such individual; or (3) if the entire  
0430 contributions to the plan were provided by such individual, or by  
0431 the individual and an employer (or any person or organization)  
0432 who is not a base period employer, no reduction in the weekly  
0433 benefit amount payable to the individual for such week shall be  
0434 made under this subsection (n); or (4) whatever portion of con-  
0435 tributions to such plan were provided by the base period em-  
0436 ployer, if the services performed for the employer by such  
0437 individual during the base period, or remuneration received for  
0438 the services, did not affect the individual's eligibility for, or  
0439 increased the amount of, such pension, retirement or retired pay,  
0440 annuity or other similar periodic payment, no reduction in the  
0441 weekly benefit amount payable to the individual for such week  
0442 shall be made under this subsection (n). The conditions speci-  
0443 fied in clause (4) of this subsection (n) shall not apply to pay-  
0444 ments made under the social security act or the railroad retire-  
0445 ment act of 1974, or the corresponding provisions of prior law.  
0446 Payments made under these acts shall be treated as otherwise  
0447 provided in this subsection (n). If the reduced weekly benefit  
0448 amount is not a multiple of \$1, it shall be reduced to the next  
0449 lower multiple of \$1.

0450 (o) For any week of unemployment on the basis of services  
0451 performed in any capacity and under any of the circumstances  
0452 described in subsection (i), (j) or (k) which an individual per-  
0453 formed in an educational institution while in the employ of an

0454 educational service agency. For the purposes of this subsection  
 0455 (o), the term "educational service agency" means a governmen-  
 0456 tal agency or entity which is established and operated exclu-  
 0457 sively for the purpose of providing such services to one or more  
 0458 educational institutions.

0459 Sec. 3. On July 1, 1986, K.S.A. 1985 Supp. 44-709 is hereby  
 0460 amended to read as follows: 44-709. (a) *Filing.* Claims for ben-  
 0461 efits shall be made in accordance with rules and regulations  
 0462 adopted by the secretary. The secretary shall furnish a copy of  
 0463 such rules and regulations to any individual requesting them.  
 0464 Each employer shall post and maintain printed statements fur-  
 0465 nished by the secretary without cost to the employer in places  
 0466 readily accessible to individuals in the service of the employer.

0467 (b) *Determination.* (1) Except as otherwise provided in this  
 0468 subsection (b)(1), a representative designated by the secretary,  
 0469 and hereinafter referred to as an examiner, shall promptly exam-  
 0470 ine the claim and, on the basis of the facts found by the examiner,  
 0471 shall determine whether or not the claim is valid. If the examiner  
 0472 determines that the claim is valid, the examiner shall determine  
 0473 the first day of the benefit year, the weekly benefit amount and  
 0474 the total amount of benefits payable with respect to the benefit  
 0475 year. *If the claim is determined to be valid, the examiner shall*  
 0476 *mail a notice to the last employing unit who shall respond*  
 0477 *within 10 days by providing the examiner all requested infor-*  
 0478 *mation including all information required for a decision under*  
 0479 *K.S.A. 44-706 and amendments thereto. The information may be*  
 0480 *submitted by the employing unit in person at an employment*  
 0481 *office of the secretary or by mail. If the required information is*  
 0482 *not submitted or postmarked within a response time limit of 10*  
 0483 *days after the mailing date of the examiner's notice, the em-*  
 0484 *ploying unit shall be deemed to have waived its standing as a*  
 0485 *party to the proceedings arising from the claim and shall be*  
 0486 *barred from protesting any subsequent decisions about the*  
 0487 *claim by the secretary, a referee, the board of review or any*  
 0488 *court, except that the employing unit's response time limit may*  
 0489 *be: (A) Extended by not more than three business days upon oral*  
 0490 *application made to the chief of benefits of the division of*

K.S.A. 44-709

Employer Response Time Limit. This proposal would change the length of time employers are given to respond to requests for information about the circumstances of a claimant's separation. Under current practice, the Department of Human Resources mails requests for such information to employers and waits to clear claimants for benefits until a response is received or until 16 days have elapsed (in some cases the period may be 19 days, depending on circumstances). The U.S. Department of Labor has been critical of the Kansas Department of Human Resources because of the length of time between a claim's filing and its approval or denial. This proposal would put into the law (the practice is now only addressed by rule and regulation) language to permit payment of benefits after a period of 10 days. If an employer requests an extension of time, an automatic three-day extension would be granted. If, after the waiting period has elapsed, an employer can demonstrate that he or she failed to respond due to "excusable neglect" (i.e., a valid reason why timely response was not made), the department is to grant an exception and accept the employer's response.

For the bulk of employers, this will be much ado about nothing. For cases where an employer needs to respond, the 10-day period, with an extra three days available, will provide adequate time for response. In cases where a good reason prevented a response, the law will provide for late response. In the vast majority of cases where a response is merely a courtesy gesture and the payment of benefits is not being protested, the claimant will receive benefits in a timely manner as required by the federal government.

Realizing that most employers' concerns about U.C. have to do with the circumstances under which a claimant is cleared for benefits, and not with the time limit on responding to a claim, employer representatives approved this change. The department has demonstrated a willingness to work with employers who experience difficulty with such matters, and it is anticipated the cooperation will continue.

0491 employment security, or to the chief's designee, before the  
0492 expiration of the response time limit, or (B) waived or extended  
0493 upon appeal, if timely response was impossible due to excusable  
0494 neglect. In any case in which the payment or denial of benefits  
0495 will be determined by the provisions of subsection (d) of K.S.A.  
0496 44-706 and amendments thereto, the examiner shall promptly  
0497 transmit the claim to a special examiner designated by the  
0498 secretary to make a determination on the claim after the inves-  
0499 tigation as the special examiner deems necessary. The parties  
0500 shall be promptly notified of the special examiner's decision and  
0501 any party aggrieved by the decision may appeal to the referee as  
0502 provided in subsection (c). The claimant and the claimant's most  
0503 recent employing unit shall be promptly notified of the exam-  
0504 iner's or special examiner's decision.

0505 (2) The examiner may for good cause reconsider the exam-  
0506 iner's decision and shall promptly notify the claimant and the  
0507 most recent employing unit of the claimant, that the decision of  
0508 the examiner is to be reconsidered, except that no reconsidera-  
0509 tion shall be made after the termination of the benefit year.

0510 (3) Notwithstanding the provisions of any other statute, a  
0511 decision of an examiner or special examiner shall be final unless  
0512 the claimant or the most recent employing unit of the claimant  
0513 files an appeal from the decision as provided in subsection (c).  
0514 The appeal must be filed within 16 calendar days after the  
0515 mailing of notice to the last-known addresses of the claimant and  
0516 employing unit or, if notice is not by mail, within 16 calendar  
0517 days after the delivery of the notice to the parties.

0518 (c) *Appeals.* Unless the appeal is withdrawn, a referee, after  
0519 affording the parties reasonable opportunity for fair hearing,  
0520 shall affirm or modify the findings of fact and decision of the  
0521 examiner or special examiner. The parties shall be duly notified  
0522 of the referee's decision, together with the reasons for the deci-  
0523 sion. The decision shall be final, notwithstanding the provisions  
0524 of any other statute, unless a further appeal to the board of  
0525 review is filed within 16 calendar days after the mailing of the  
0526 decision to the parties' last-known addresses or, if notice is not  
0527 by mail, within 16 calendar days after the delivery of the deci-



0528 sion.

0529 (d) *Referees.* The secretary shall appoint, in accordance with  
0530 subsection (c) of K.S.A. 44-714 and amendments thereto, one or  
0531 more referees to hear and decide disputed claims.

0532 (e) *Time, computation and extension.* In computing the  
0533 period of time for appeals under this section from the examiner's  
0534 or the special examiner's determination or from the referee's  
0535 decision, the day of the act, event or default from which the  
0536 designated period of time begins to run shall not be included.  
0537 The last day of the period shall be included unless it is a  
0538 Saturday, Sunday or legal holiday, in which event the period  
0539 runs until the end of the next day which is not a Saturday,  
0540 Sunday or legal holiday.

0541 (f) *Board of review.* (1) There is hereby created a board of  
0542 review, hereinafter referred to as the board, consisting of three  
0543 members. Two members shall be appointed by the governor,  
0544 subject to confirmation by the senate as provided in K.S.A. ~~1983~~  
0545 ~~Supp.~~ 75-4315b and amendments thereto for terms of four years.  
0546 One member shall be representative of employees, one member  
0547 shall be representative of employers, and one member shall be  
0548 representative of the public in general. The appointment of the  
0549 employee representative member of the board shall be made by  
0550 the governor from a list of three nominations submitted by the  
0551 Kansas state federation of labor, A.F.L.-C.I.O.; the appointment  
0552 of the employer representative member of the board shall be  
0553 made by the governor from a list of three nominations submitted  
0554 by the Kansas chamber of commerce and industry; and the  
0555 appointment of the public representative member of the board,  
0556 who, because of vocation, occupation or affiliation may be  
0557 deemed not to be representative of either management or labor,  
0558 shall be made by the members appointed by the governor as  
0559 employee representative and employer representative. If the  
0560 two members do not agree and make the appointment of the  
0561 third member within 30 days after the appointments of the  
0562 employer representative member and the employee representa-  
0563 tive member, the governor shall appoint the representative of the  
0564 public. Not more than two members of the board shall belong to

0565 the same political party.

0566 (2) Each member of the board shall serve until a successor  
0567 has been appointed and qualified. Any vacancy in the member-  
0568 ship of the board occurring prior to expiration of a term shall be  
0569 filled by appointment for the unexpired term in the same manner  
0570 as provided for original appointment of the member. Each  
0571 member shall be appointed as representative of the same special  
0572 interest group represented by the predecessor of the member.

0573 (3) Each member of the board shall be entitled to receive as  
0574 compensation for the member's services \$11,000 per year ~~for~~  
0575 ~~payroll periods chargeable to the fiscal year ending June 30,~~  
0576 ~~1985, and each fiscal year thereafter,~~ together with the member's  
0577 traveling and other necessary expenses actually incurred in the  
0578 performance of the member's official duties in accordance with  
0579 rules and regulations adopted by the secretary. Members' com-  
0580 pensation and expenses shall be paid from the employment  
0581 security administration fund.

0582 (4) The board shall organize annually by the election of a  
0583 chairperson from among its members. The chairperson shall  
0584 serve in that capacity for a term of one year and until a successor  
0585 is elected. The board shall meet on the first Monday of each  
0586 month or on the call of the chairperson or any two members of  
0587 the board at the place designated. The secretary of human  
0588 resources shall appoint an executive secretary of the board and  
0589 the executive secretary shall attend the meetings of the board.

0590 (5) The board, on its own motion, may affirm, modify or set  
0591 aside any decision of a referee on the basis of the evidence  
0592 previously submitted in the case; may direct the taking of addi-  
0593 tional evidence; or may permit any of the parties to initiate  
0594 further appeal before it. The board shall permit such further  
0595 appeal by any of the parties interested in a decision of a referee  
0596 which overrules or modifies the decision of an examiner. The  
0597 board may remove to itself the proceedings on any claim pend-  
0598 ing before a referee. Any proceedings so removed to the board  
0599 shall be heard in accordance with the requirements of subsection  
0600 (c). The board shall promptly notify the interested parties of its  
0601 findings and decision.

0602 (6) Two members of the board shall constitute a quorum and  
0603 no action of the board shall be valid unless it has the concurrence  
0604 of at least two members. A vacancy on the board shall not impair  
0605 the right of a quorum to exercise all the rights and perform all the  
0606 duties of the board.

0607 (g) *Procedure.* The manner in which disputed claims are  
0608 presented, the reports on claims required from the claimant and  
0609 from employers and the conduct of hearings and appeals shall be  
0610 in accordance with rules of procedure prescribed by the board  
0611 for determining the rights of the parties, whether or not such  
0612 rules conform to common law or statutory rules of evidence and  
0613 other technical rules of procedure. A full and complete record  
0614 shall be kept of all proceedings and decisions in connection with  
0615 a disputed claim. All testimony at any hearing upon a disputed  
0616 claim shall be recorded, but need not be transcribed unless the  
0617 disputed claim is further appealed. In the performance of its  
0618 official duties, the board shall have access to all of the records  
0619 which pertain to the disputed claim and are in the custody of the  
0620 secretary of human resources and shall receive the assistance of  
0621 the secretary upon request.

0622 (h) *Witness fees.* Witnesses subpoenaed pursuant to this sec-  
0623 tion shall be allowed fees and necessary traveling expenses at  
0624 rates fixed by the board. Such fees and expenses shall be deemed  
0625 a part of the expense of administering this act.

0626 (i) *Court review.* (1) Any decision of the board, in the ab-  
0627 sence of an action for judicial review of the decision as provided  
0628 by this section, shall become final 16 calendar days after the date  
0629 of the mailing of the decision. Judicial review of a decision shall  
0630 be permitted only after any party claiming to be aggrieved by the  
0631 decision has exhausted the party's remedies before the board as  
0632 provided by this act.

0633 (2) Within 16 calendar days after the decision of the board  
0634 has been mailed, the examiner, or any party aggrieved by the  
0635 decision, may secure judicial review of the decision by com-  
0636 mencing an action against the board for the review of its decision  
0637 in the district court of the county in which the party resides or  
0638 has the party's principal place of business or, if the aggrieved

0011 party is a nonresident of the state of Kansas, in the district court  
0012 of Shawnee county. In the action any other party to the pro-  
0013 ceeding before the board shall be made a defendant.

0014 (3) In an action for judicial review of a decision of the board,  
0015 a petition which need not be verified, but which shall state the  
0016 grounds upon which a review is sought, shall be served upon the  
0017 board or upon such person as the board designates. Such service  
0018 shall be deemed completed service on all parties, but the party  
0019 served shall be given as many copies of the petition as there are  
0020 defendants, and the board shall promptly mail one copy of the  
0021 petition to each defendant.

0022 (4) With its answer, the board shall certify and file with the  
0023 court all documents and papers and a transcript of all testimony  
0024 taken in the matter, together with its findings of fact and deci-  
0025 sion. The board, in its discretion, also may certify to the court  
0026 questions of law involved in any decision by the board.

0027 (5) In any judicial proceeding under this section, the findings  
0028 of the board as to the facts, if supported by evidence and in the  
0029 absence of fraud, shall be conclusive and the jurisdiction of the  
0030 court shall be confined to questions of law. Such proceeding, and  
0031 the questions of law certified, shall be heard in a summary  
0032 manner and shall be given precedence over all other civil cases  
0033 except cases arising under the workmen's compensation act.

0034 (6) An appeal may be taken from the decision of the district  
0035 court in the same manner as is provided in civil cases.

0036 (7) It shall not be necessary, in any judicial proceedings  
0037 under this section, to enter exceptions to the rulings of the board  
0038 and no bond shall be required for entering an appeal. Upon the  
0039 final determination of the judicial proceeding the board shall  
0040 enter an order in accordance with the determination. A petition  
0041 for judicial review shall not act as a supersedeas or stay unless  
0042 the board so orders.

0043 Sec. 4. K.S.A. 1985 Supp. 44-716a is hereby amended to read  
0044 as follows: 44-716a. (a) There is hereby created in the state  
0045 treasury a special fund to be known as the special employment  
0046 security fund. All interest collected under the provisions of the  
0047 Kansas employment security law shall be paid into this fund. No

0048 such moneys shall be expended or available for expenditure in  
 0049 any manner which would permit their substitution for (or a  
 0050 corresponding reduction in) federal funds which in the absence  
 0051 of such moneys would be available to finance expenditures for  
 0052 the administration of the employment security law. Nothing in  
 0053 this section shall prevent such moneys from being used as a  
 0054 revolving fund, to cover expenditures (necessary and proper  
 0055 under the law) for which federal funds have been duly requested  
 0056 but not yet received, subject to the charging of such expenditures  
 0057 against such funds when received. Except as otherwise autho-  
 0058 rized by this section, the moneys in this fund may be used by the  
 0059 secretary of human resources only for the payment of costs of  
 0060 administration which are found not to have been properly and  
 0061 validly chargeable against federal grants (or other funds) re-  
 0062 ceived for or in the employment security administration fund.  
 0063 *Moneys from this fund may be used to finance activities as*  
 0064 *deemed necessary by the secretary of human resources for the*  
 0065 *efficient operation of activities under or the administration of*  
 0066 *the employment security law, except that no moneys shall be*  
 0067 *used for such purposes unless the secretary has determined that*  
 0068 *no other funds are available or can be properly used to finance*  
 0069 *expenditures for such purposes. No expenditures of this fund*  
 0070 *shall be made except on written authorization by the governor*  
 0071 *and the secretary of human resources.*

0072 (b) The director of accounts and reports is hereby directed to  
 0073 draw warrants upon the state treasurer against the money in the  
 0074 special employment security fund for the use and purposes as  
 0075 herein specified upon vouchers, approved by the secretary of  
 0076 human resources, and accompanied by the written authorizatiq  
 0077 of the governor and the secretary of human resources. The  
 0078 moneys in this fund are hereby specifically made available to  
 0079 replace, within a reasonable time, any moneys received by this  
 0080 state pursuant to section 302 of the federal social security act, as  
 0081 amended, which, because of any action or contingency, have  
 0082 been lost or have been expended for purposes other than, or in  
 0083 amounts in excess of, those necessary for the proper administra-  
 0084 tion of the employment security law. The moneys in this fund

K.S.A. 44-716(a) Special Employment Security Fund. This proposal would give the Governor and Secretary of Human Resources more discretion in the use of money from the Special Employment Security Fund. Money in this fund is commonly known as "penalty and interest money" and comes from penalties and interest charged against employers who are late in making their U.C. tax payments. Currently, the Fund may only be used for audit exceptions, for loans pending receipt of federal funds, and for payment of set-off costs (see K.S.A. 75-6210b, pg. 4). The change would permit use of the funds for Employment Security activities not federally funded or inadequately funded.

0085 shall be continuously available to the secretary of human re-  
 0086 sources for expenditure in accordance with the provisions of this  
 0087 section and shall not lapse at any time or be transferred to any  
 0088 other fund, except as otherwise authorized in subsection (c).

0089 (c) In addition to expenditures authorized by this section, the  
 0090 director of accounts and reports may transfer funds from the  
 0091 special employment security fund to the accounting services  
 0092 recovery fund as provided in K.S.A. 75-3728b and ~~75-6212,~~  
 0093 75-6210 and any amendments to such sections.

0094 Sec. 5. On July 1, 1986, K.S.A. 1985 Supp. 44-717 is hereby  
 0095 amended to read as follows: 44-717. (a) *Penalties on past-due*  
 0096 *reports, interest on past-due contributions, payments in lieu of*  
 0097 *contributions and benefit cost payments.* Any employer or any  
 0098 officer or agent of an employer, who ~~shall fail~~ fails to file any  
 0099 wage report or contribution return when due, as required by the  
 0100 secretary of human resources, or within a five-day grace period,  
 0101 shall be subject to a penalty of \$5 ~~pay a penalty as provided by~~  
 0102 ~~this subsection (a) for each month or fraction of a month until~~  
 0103 ~~the report or return is received by the secretary of human~~  
 0104 ~~resources. The penalty for each month or fraction of a month~~  
 0105 ~~shall be an amount equal to .05% of the total wages paid by the~~  
 0106 ~~employer during the quarter, except that no penalty shall be less~~  
 0107 ~~than \$25 nor more than \$200 for each such report or return not~~  
 0108 ~~timely filed. An additional penalty of \$5 shall be assessed for~~  
 0109 ~~each thirty-day period or fraction thereof that any such report or~~  
 0110 ~~return remains not filed.~~ Contributions, payments in lieu of  
 0111 contributions and benefit cost payments unpaid on the date on  
 0112 which they are due and payable, as prescribed by the secretary of  
 0113 human resources, or within a five-day grace period, shall bear  
 0114 interest at the rate of ~~.8%~~ 1.5% per month or fraction of a month  
 0115 until payment is received by the secretary of human resources  
 0116 except that an employing unit, *which is not theretofore,* subject  
 0117 to this law; *and* which becomes an employer and does not refuse  
 0118 to make the reports, returns and contributions, payments in lieu  
 0119 of contributions and benefit cost payments required under this  
 0120 law; shall not be liable for such penalty or interest if the wage  
 0121 reports and contribution returns required are filed and the con-

K.S.A. 44-717(a) Penalties and Interest for Late Filing. This proposal  
 would increase penalties and interest assessed against  
 employers who are late in paying U.C. taxes or are tardy in  
 filing required reports. The current interest rate assessed on delinquent  
 contributions is .8% per month. The proposal would raise this to 1.5% per  
 month. The current penalty for delinquent reports is \$5 per month or fraction  
 thereof. The proposed amount is .05% of total wages paid, with a minimum of  
 \$25, and a maximum of \$200.

0122 tributions, payments in lieu of contributions or benefit cost  
0123 payments required are paid within 10 days following notification  
0124 by the secretary of human resources that a determination has  
0125 been made fixing its status as an employer subject to this law.  
0126 Upon written request and good cause shown, the secretary of  
0127 human resources may abate any penalty or interest or portion  
0128 thereof provided for by this subsection (a). Interest amounting to  
0129 less than \$1 shall be waived by the secretary of human resources  
0130 and shall not be collected. Penalties and interest collected pur-  
0131 suant to this subsection shall be paid into the special employ-  
0132 ment security fund. For all purposes under this section, amounts  
0133 assessed as surcharges under K.S.A. 1983 Supp. 44-710h subsec-  
0134 tion (j) or under K.S.A. 44-710a and amendments thereto shall be  
0135 considered to be contributions and shall be subject to penalties  
0136 and interest imposed under this section and to collection in the  
0137 manner provided by this section.

0138 (b) *Collection.* (1) If, after due notice, any employer defaults  
0139 in payment of any penalty, contributions, payments in lieu of  
0140 contributions, benefit cost payments, or interest thereon the  
0141 amount due may be collected by civil action in the name of the  
0142 secretary of human resources and the employer adjudged in  
0143 default shall pay the cost of such action. Civil actions brought  
0144 under this section to collect contributions, payments in lieu of  
0145 contributions, benefit cost payments, penalties, or interest  
0146 thereon from an employer shall be heard by the district court at  
0147 the earliest possible date and shall be entitled to preference  
0148 upon the calendar of the court over all other civil actions except  
0149 petitions for judicial review under this act and cases arising  
0150 under the workmen's compensation act. All liability determina-  
0151 tions of contributions due, payments in lieu of contributions or  
0152 benefit cost payments due shall be made within a period of five  
0153 years from the date such contributions, payments in lieu of  
0154 contributions or benefit cost payments were due except such  
0155 determinations may be made for any time when an employer has  
0156 filed fraudulent reports with intent to evade liability.

0157 (2) Any employing unit which is not a resident of this state  
0158 and which exercises the privilege of having one or more indi-

0159 viduals perform service for it within this state and any resident  
 0160 employing unit which exercises that privilege and thereafter  
 0161 removes from this state, shall be deemed thereby to appoint the  
 0162 secretary of state as its agent and attorney for the acceptance of  
 0163 process in any civil action under this subsection. In instituting  
 0164 such an action against any such employing unit the secretary of  
 0165 human resources shall cause such process or notice to be filed  
 0166 with the secretary of state and such service shall be sufficient  
 0167 service upon such employing unit and shall be of the same force  
 0168 and validity as if served upon it personally within this state. The  
 0169 secretary of human resources shall send notice immediately of  
 0170 the service of such process or notice, together with a copy  
 0171 thereof, by registered or certified mail, return receipt requested,  
 0172 to such employing unit at its last-known address and such return  
 0173 receipt, the affidavit of compliance of the secretary of human  
 0174 resources with the provisions of this section, and a copy of the  
 0175 notice of service, shall be appended to the original of the process  
 0176 filed in the court in which such civil action is pending.

0177 (3) Any contractor, who is or becomes an employer under the  
 0178 provisions of this act, who contracts with any subcontractor, who  
 0179 also is or becomes an employer under the provisions of this act,  
 0180 shall ~~withhold sufficient moneys on the contract to guarantee~~  
 0181 ~~that all contributions, penalties and interest are paid upon com-~~  
 0182 ~~pletion of the contract, or shall require of the subcontractor a~~  
 0183 ~~good and sufficient bond guaranteeing payment of all contribu-~~  
 0184 ~~tions, penalties and interest due or to become due with respect to~~  
 0185 ~~wages paid for employment on the contract. Failure to comply~~  
 0186 ~~with the provisions of this section shall render the contractor be~~  
 0187 directly liable for such contributions, penalties and interest due  
 0188 from the subcontractor and the secretary of human resources  
 0189 shall have all of the remedies of collection against the contractor  
 0190 under the provisions of this act as though the services in question  
 0191 were performed directly for the contractor, *unless the contractor*  
 0192 *requires the subcontractor to provide a good and sufficient*  
 0193 *bond guaranteeing payment of all contributions, penalties and*  
 0194 *interest due or to become due with respect to wages paid for*  
 0195 *employment on the contract.* For the purpose of this subsection

K.S.A. 44-717(b)(3) Contractor/Subcontractor Relationship. This proposal,  
 brought about by a court decision, would make a prime  
 contractor liable for the payment of U.C. taxes of a  
 subcontractor unless the prime contractor required the subcontractor to post a  
 bond guaranteeing the tax payments. Current language is designed to do the  
 same thing, but a court decision found the language was not sufficient. This  
 proposal is designed to address the court decision, not to make a change in  
 the current practice.



0196 (b)(3), the words, "contractor" and "subcontractor" mean and  
0197 include individuals, partnerships, firms or corporations, or other  
0198 associations of persons engaged in the business of the construc-  
0199 tion, alteration, repairing, dismantling or demolition of build-  
0200 ings, roads, bridges, viaducts, sewers, water and gas mains,  
0201 streets, disposal plants, water filters, tanks and towers, airports,  
0202 dams, levees and canals, oil and gas wells, water wells, pipe-  
0203 lines, and every other type of structure, project, development or  
0204 improvement coming within the definition of real property.

0205 (4) The district courts of this state shall entertain, in the  
0206 manner provided in subsections (b)(1), (b)(2) and (b)(3), actions  
0207 to collect contributions, payments in lieu of contributions, ben-  
0208 efit cost payments and other amounts owed including interest  
0209 thereon for which liability has accrued under the employment  
0210 security law of any other state or of the federal government.

0211 (c) *Priorities under legal dissolutions or distributions.* In the  
0212 event of any distribution of employer's assets pursuant to an  
0213 order of any court under the laws of this state, including but not  
0214 limited to any probate proceeding, interpleader, receivership,  
0215 assignment for benefit of creditors, adjudicated insolvency,  
0216 composition or similar proceedings, contributions or payments  
0217 in lieu of contributions then or thereafter due shall be paid in full  
0218 from the moneys which shall first come into the estate, prior to  
0219 all other claims, except claims for wages of not more than \$250 to  
0220 each claimant, earned within six months of the commencement  
0221 of the proceedings. In the event of an employer's adjudication in  
0222 bankruptcy, judicially confirmed extension proposal, or compo-  
0223 sition, under the federal bankruptcy act of 1898, as amended,  
0224 contributions then or thereafter due shall be entitled to such  
0225 priority as is provided in that act for taxes due any state of the  
0226 United States.

0227 (d) *Assessments.* If any employer fails to file a report or  
0228 return required by the secretary of human resources for the  
0229 determination of contributions, or payments in lieu of contribu-  
0230 tions, or benefit cost payments, the secretary of human resources  
0231 may make such reports or returns or cause the same to be made,  
0232 on the basis of such information as the secretary may be able to

0233 obtain and shall collect the contributions, payments in lieu of  
0234 contributions or benefit cost payments as determined together  
0235 with any interest due under this act. The secretary of human  
0236 resources shall immediately forward to the employer a copy of  
0237 the assessment by registered or certified mail to the employer's  
0238 address as it appears on the records of the agency, and such  
0239 assessment shall be final unless the employer protests such  
0240 assessment and files a corrected report or return for the period  
0241 covered by the assessment within 15 days after the mailing of the  
0242 copy of assessment. Failure to receive such notice shall not  
0243 invalidate the assessment. Notice in writing shall be presumed  
0244 to have been given when deposited as certified or registered  
0245 matter in the United States mail, addressed to the person to be  
0246 charged with notice at such person's address as it appears on the  
0247 records of the agency.

0248 (e) (1) *Lien for contributions.* If any employer ~~which or~~  
0249 *person who* is liable to pay contributions, payments in lieu of  
0250 contributions; or benefit cost payments neglects or refuses to pay  
0251 the same after demand, the amount, including interest *and*  
0252 *penalty*, shall be a lien in favor of the state of Kansas, secretary of  
0253 human resources, upon all property and rights to property,  
0254 whether real or personal, belonging to such employer *or person*.  
0255 Such lien shall not be valid as against any mortgagee, pledgee,  
0256 purchaser; or judgment creditor until notice thereof has been  
0257 filed by the secretary of human resources in the office of register  
0258 of deeds in any county in the state of Kansas, in which such  
0259 property is located, and when so filed shall be notice to all  
0260 persons claiming an interest in the property of the employer *or*  
0261 *person* against whom filed. The register of deeds shall enter such  
0262 notices in the financing statement record and shall also record  
0263 the same in full in miscellaneous record and index the same  
0264 against the name of the delinquent employer. The register of  
0265 deeds shall accept, file, and record such notice without prepay-  
0266 ment of any fee, but lawful fees shall be added to the amount of  
0267 such lien and collected when satisfaction is presented for entry.  
0268 Such lien shall be satisfied of record upon the presentation of a  
0269 certificate of discharge by the state of Kansas, secretary of human

K.S.A. 44-717(e) Lien Filings Permitted. This proposal would modify the law  
to permit inclusion of penalties in lien filings. A  
technical problem exists because penalty amounts cannot now  
be included in a lien.

0270 resources. Nothing contained in this subsection (e) shall be  
 0271 construed as an invalidation of any lien or notice filed in the  
 0272 name of the unemployment compensation division or the em-  
 0273 ployment security division and such liens shall be and remain in  
 0274 full force and effect until satisfied as provided by this subsection  
 0275 (e).

0276 (2) *Authority of secretary or authorized representative. If*  
 0277 *any employer or person who is liable to pay any contributions,*  
 0278 *payments in lieu of contributions or benefit cost payments,*  
 0279 *including interest and penalty, neglects or refuses to pay the*  
 0280 *same within 10 days after notice and demand therefor, the*  
 0281 *secretary or the secretary's authorized representative may col-*  
 0282 *lect such contributions, payments in lieu of contributions or*  
 0283 *benefit cost payments, including interest and penalty, and such*  
 0284 *further amount as is sufficient to cover the expenses of the levy,*  
 0285 *by levy upon all property and rights to property which belong to*  
 0286 *the employer or person or which have a lien created thereon by*  
 0287 *this subsection (e) for the payment of such contributions, pay-*  
 0288 *ments in lieu of contributions or benefit cost payments, includ-*  
 0289 *ing interest and penalty. As used in this subsection (e), "prop-*  
 0290 *erty" includes all real property and personal property, whether*  
 0291 *tangible or intangible, except such property which is exempt*  
 0292 *under K.S.A. 60-2301 et seq., and amendments thereto. Levy*  
 0293 *may be made upon the accrued salary or wages of any officer,*  
 0294 *employee or elected official of any state or local governmental*  
 0295 *entity which is subject to K.S.A. 60-723 and amendments*  
 0296 *thereto, by serving a notice of levy as provided in subsection (d)*  
 0297 *of K.S.A. 60-304 and amendments thereto. If the secretary or the*  
 0298 *secretary's authorized representative makes a finding that the,*  
 0299 *collection of the amount of such contributions, payments in lieu*  
 0300 *of contributions or benefit cost payments, including interest*  
 0301 *and penalty, is in jeopardy, notice and demand for immediate*  
 0302 *payment of such amount may be made by the secretary or the*  
 0303 *secretary's authorized representative and, upon failure or re-*  
 0304 *fusal to pay such amount, immediate collection of such amount*  
 0305 *by levy shall be lawful without regard to the ten-day period*  
 0306 *provided in this subsection (e).*

K.S.A. 44-717(e) Past Due Tax Levies. This proposal would allow levies against employers for collection of past due U.C. taxes. Currently, the law does not permit levies to be made as a result of filing a tax lien. This would permit the department to issue levies against delinquent employers 10 days after notice and demand is made as permitted in federal tax collection cases. It is designed to make the department more effective in collecting past due taxes.

0307 (3) *Seizure and sale of property.* The authority to levy  
0308 granted under this subsection (e) includes the power of seizure  
0309 by any means. A levy shall extend only to property possessed  
0310 and obligations existing at the time thereof. In any case in which  
0311 the secretary or the secretary's authorized representative may  
0312 levy upon property or rights to property, the secretary or the  
0313 secretary's authorized representative may seize and sell such  
0314 property or rights to property.

0315 (4) *Successive seizures.* Whenever any property or right to  
0316 property upon which levy has been made under this subsection  
0317 (e) is not sufficient to satisfy the claim of the secretary for which  
0318 levy is made, the secretary or the secretary's authorized repre-  
0319 sentative may proceed thereafter and as often as may be neces-  
0320 sary, to levy in like manner upon any other property or rights to  
0321 property which belongs to the employer or person against whom  
0322 such claim exists or upon which a lien is created by this subsec-  
0323 tion (e) until the amount due from the employer or person,  
0324 together with all expenses, is fully paid.

0325 (f) *Warrant.* In addition or as an alternative to any other  
0326 remedy provided by this section and provided that no appeal or  
0327 other proceeding for review permitted by this law shall then be  
0328 pending and the time for taking thereof shall have expired, the  
0329 secretary of human resources or an authorized representative of  
0330 the secretary may issue a warrant certifying the amount of con-  
0331 tributions, payments in lieu of contributions, benefit cost pay-  
0332 ments, interest or penalty, and the name of the employer liable  
0333 for same after giving 15 days prior notice. Upon request, service  
0334 of final notices shall be made by the sheriff within the sheriff's  
0335 county, by the sheriff's deputy or some person specially ap-  
0336 pointed by the secretary for that purpose, or by the secretary's  
0337 designee. A person specially appointed by the secretary or the  
0338 secretary's designee to serve final notices may make service any  
0339 place in the state. Final notices shall be served as follows:

0340 (1) *Individual.* Service upon an individual, other than a  
0341 minor or incapacitated person, shall be made by delivering a  
0342 copy of the final notice to the individual personally or by leaving  
0343 a copy at such individual's dwelling house or usual place of

0344 abode with some person of suitable age and discretion then  
0345 residing therein, by leaving a copy at the business establishment  
0346 of the employer with an officer or employee of the establish-  
0347 ment, or by delivering a copy to an agent authorized by appoint-  
0348 ment or by law to receive service of process, but if the agent is  
0349 one designated by a statute to receive service, such further  
0350 notice as the statute requires shall be given. If service as pre-  
0351 scribed above cannot be made with due diligence, the secretary  
0352 or the secretary's designee may order service to be made by  
0353 leaving a copy of the final notice at the employer's dwelling  
0354 house, usual place of abode or business establishment.

0355 (2) *Corporations and partnerships.* Service upon a domestic  
0356 or foreign corporation or upon a partnership or other unincorpo-  
0357 rated association, when by law it may be sued as such, shall be  
0358 made by delivering a copy of the final notice to an officer, partner  
0359 or resident managing or general agent thereof by leaving a copy  
0360 at any business office of the employer with the person having  
0361 charge thereof or by delivering a copy to any other agent autho-  
0362 rized by appointment or required by law to receive service of  
0363 process, if the agent is one authorized by law to receive service  
0364 and, if the law so requires, by also mailing a copy to the em-  
0365 ployer.

0366 (3) *Refusal to accept service.* In all cases when the person to  
0367 be served, or an agent authorized by such person to accept  
0368 service of petitions and summonses, shall refuse to receive  
0369 copies of the final notice, the offer of the duly authorized process  
0370 server to deliver copies thereof and such refusal shall be suffi-  
0371 cient service of such notice.

0372 (4) *Proof of service.* (A) Every officer to whom a final notice  
0373 or other process shall be delivered for service within or without  
0374 the state, shall make return thereof in writing stating the time,  
0375 place and manner of service of such writ, and shall sign such  
0376 officer's name to such return.

0377 (B) If service of the notice is made by a person appointed by  
0378 the secretary or the secretary's designee to make service, such  
0379 person shall make an affidavit as to the time, place and manner of  
0380 service thereof in a form prescribed by the secretary or the

0381 secretary's designee.

0382 (5) *Time for return.* The officer or other person receiving a  
0383 final notice shall make a return of service promptly and shall  
0384 send such return to the secretary or the secretary's designee in  
0385 any event within 10 days after the service is effected. If the final  
0386 notice cannot be served it shall be returned to the secretary or  
0387 the secretary's designee within 30 days after the date of issue  
0388 with a statement of the reason for the failure to serve the same.  
0389 The original return shall be attached to and filed with any  
0390 warrant thereafter filed.

0391 (6) *Service by mail.* (A) Upon direction of the secretary or the  
0392 secretary's designee, service by mail may be effected by for-  
0393 warding a copy of the notice to the employer by registered or  
0394 certified mail to the employer's address as it appears on the  
0395 records of the agency. A copy of the return receipt shall be  
0396 attached to and filed with any warrant thereafter filed.

0397 (B) The secretary of human resources or an authorized rep-  
0398 resentative of the secretary may file the warrant for record in the  
0399 office of the clerk of the district court in the county in which the  
0400 employer owing such contributions, payments in lieu of con-  
0401 tributions, benefit cost payments, interest, or penalty has busi-  
0402 ness property. The warrant shall certify the amount of contribu-  
0403 tions, payments in lieu of contributions, benefit cost payments,  
0404 interest and penalty due, and the name of the employer liable for  
0405 such amount. It shall be the duty of the clerk of the district court  
0406 to file such warrant of record and enter the warrant in the records  
0407 of the district court for judgment and decrees under the pro-  
0408 cedure prescribed for filing transcripts of judgment.

0409 (C) The clerk shall enter, on the day the warrant is filed, the  
0410 case on the appearance docket, together with the amount and the  
0411 time of filing the warrant. From the time of filing such warrant,  
0412 the amount of the contributions, payments in lieu of contribu-  
0413 tions, benefit cost payments, interest, and penalty, certified  
0414 therein, shall have the force and effect of a judgment of the  
0415 district court until the same is satisfied by the secretary of human  
0416 resources or an authorized representative or attorney for the  
0417 secretary. Execution shall be issuable at the request of the

0418 secretary of human resources, an authorized representative or  
0419 attorney for the secretary, as is provided in the case of other  
0420 judgments.

0421 (D) Postjudgment procedures shall be the same as for judg-  
0422 ments according to the code of civil procedure.

0423 (E) Warrants shall be satisfied of record by payment to the  
0424 clerk of the district court of the contributions, payments in lieu of  
0425 contributions, benefit cost payments, penalty, interest to date,  
0426 and court costs. Warrants may also be satisfied of record by  
0427 payment to the clerk of the district court of all court costs accrued  
0428 in the case and by filing a certificate by the secretary of human  
0429 resources, certifying that the contributions, payments in lieu of  
0430 contributions, benefit cost payments, interest and penalty have  
0431 been paid.

0432 (g) *Remedies cumulative.* The foregoing remedies shall be  
0433 cumulative and no action taken shall be construed as an election  
0434 on the part of the state or any of its officers to pursue any remedy  
0435 or action under this section to the exclusion of any other remedy  
0436 or action for which provision is made.

0437 (h) *Refunds.* If any individual, governmental entity or orga-  
0438 nization makes application for refund or adjustment of any  
0439 amount paid as contributions, benefit cost payments or interest  
0440 under this law and the secretary of human resources ~~shall deter-~~  
0441 ~~mine~~ *determines* that such amount or any portion thereof was  
0442 erroneously collected, except for amounts less than \$1, the sec-  
0443 retary of human resources shall allow such individual or organi-  
0444 zation to make an adjustment thereof without interest, in con-  
0445 nection with subsequent contribution payments, or if such  
0446 adjustment cannot be made the secretary of human resources  
0447 shall refund the amount, except for amounts less than \$1, without  
0448 interest, from the employment security fund, except that all  
0449 interest erroneously collected which has been paid into the  
0450 special employment security fund shall be refunded out of the  
0451 special employment security fund. No adjustment or refund shall  
0452 be allowed with respect to a payment as contributions, benefit  
0453 cost payments or interest unless an application therefor is made  
0454 on or before whichever of the following dates is later: (1) One

0455 year from the date on which such payment was made; or (2) three  
 0456 years from the last day of the period with respect to which such  
 0457 payment was made. For like cause and within the same period  
 0458 adjustment or refund may be so made on the secretary's own  
 0459 initiative. The secretary of human resources shall not be re-  
 0460 quired to refund any contributions, payments in lieu of contri-  
 0461 butions or benefit cost payments based upon wages paid which  
 0462 have been used as base-period wages in a determination of a  
 0463 claimant's benefit rights when justifiable and correct payments  
 0464 have been made to the claimant as the result of such determina-  
 0465 tion.

0466 (i) *Refund for reimbursing employer.* Upon termination of an  
 0467 employer's business or termination of any election to make  
 0468 payments in lieu of contributions, a reimbursing employer may  
 0469 file for a refund of any payments made to the fund which are in  
 0470 excess of any regular or extended benefits which have been  
 0471 charged or could become chargeable to the reimbursing em-  
 0472 ployer's account. No refund may be made within a twenty-four-  
 0473 month period following termination of a reimbursing employer's  
 0474 business or election for payments in lieu of contributions.

0475 (j) (1) *Cash deposit or bond.* If any contributing employer is  
 0476 delinquent in making payments under the employment security  
 0477 law during any two quarters of the most recent four-quarter  
 0478 period, the secretary or the secretary's authorized representa-  
 0479 tive shall have the discretionary power to require such contrib-  
 0480 uting employer either to deposit cash or to file a bond with  
 0481 sufficient sureties to guarantee the payment of contributions,  
 0482 penalty and interest owed by such employer.

0483 (2) *The amount of such cash deposit or bond shall be not less*  
 0484 *than the largest total amount of contributions, penalty and*  
 0485 *interest reported by the employer in two of the four calendar*  
 0486 *quarters preceding any delinquency. Such cash deposit or bond*  
 0487 *shall be required until the employer has shown timely filing of*  
 0488 *reports and payment of contributions for four consecutive cal-*  
 0489 *endar quarters.*

0490 (3) *Failure to file such cash deposit or bond shall subject the*  
 0491 *employer to a surcharge of 2.0% which shall be in addition to*

K.S.A. 44-717 Deposit/Bond for Chronic Late Payers. Another collection mechanism, this proposal would permit the department to require a cash deposit or bond from chronically delinquent employers. Unpaid contributions have risen sharply over the last three years. It is hoped that requiring a cash deposit or bond (in an amount equal to the highest liability incurred in two of the last four quarters) will help encourage prompt payment of U.C. taxes.



0492 the rate of contributions assigned to the employer under K.S.A.  
 0493 44-710a and amendments thereto. Contributions paid as a result  
 0494 of this surcharge shall not be credited to the employer's experi-  
 0495 ence rating account. This surcharge shall be effective during the  
 0496 next full calendar year after its imposition and during each full  
 0497 calendar year thereafter until the employer has filed the re-  
 0498 quired cash deposit or bond or has shown timely filing of  
 0499 reports and payment of contributions for four consecutive cal-  
 0500 endar quarters.

0501 (k) Any officer, major stockholder or other person who has  
 0502 charge of the affairs of an employer, which is an employing unit  
 0503 described in section 501(c)(3) of the federal internal revenue  
 0504 code of 1954 or which is any other corporate organization or  
 0505 association, or any public official, who willfully fails to pay the  
 0506 amount of contributions, payments in lieu of contributions or  
 0507 benefit cost payments required to be paid under the employ-  
 0508 ment security law on the date on which such amount becomes  
 0509 delinquent, shall be personally liable for the total amount of the  
 0510 contributions, payments in lieu of contributions or benefit cost  
 0511 payments and any penalties and interest due and unpaid by  
 0512 such employing unit. The secretary or the secretary's authorized  
 0513 representative may assess such person for the total amount of  
 0514 contributions, payments in lieu of contributions or benefit cost  
 0515 payments and any penalties, and interest computed as due and  
 0516 owing. With respect to such persons and such amounts assessed,  
 0517 the secretary shall have available all of the collection remedies  
 0518 authorized or provided by this section.

0519 Sec. 6. On July 1, 1986, K.S.A. 44-719 is hereby amended to  
 0520 read as follows: 44-719. (a) Any person who makes a false  
 0521 statement or representation knowing it to be false or knowingly  
 0522 fails to disclose a material fact, to obtain or increase any benefit  
 0523 or other advantage under this act, either for himself or herself such  
 0524 person or any other person, shall be guilty of theft and shall  
 0525 be punished in accordance with the provisions of K.S.A. 21-3701,  
 0526 or any amendments thereto.

0527 (b) Any employing unit or any officer or agent for any em-  
 0528 ploying unit or any other person who makes a false statement or

K.S.A. 44-717 Penalty for Willful Failure to Pay. This proposal would  
 impose a personal liability for willful failure to pay U.C.  
 taxes, payments in lieu of taxes, or benefit cost payments.  
 Current law establishes liability of corporations, non-profit organizations,  
 or governmental entities only against themselves. There is no motivation for  
 individuals in charge of those groups to ensure prompt payment of taxes  
 because there is no liability to do so. For most employers, this obligation  
 is promptly paid and is never an issue. For those who would prefer to post-  
 pone the payment of these taxes there should be some manner of motivation.  
 The personal liability is proposed to provide such motivation.

0529 representation knowing it to be false, or who knowingly fails to  
0530 disclose a material fact, to prevent or reduce the payment of  
0531 benefits to any individual entitled thereto, or to avoid becoming  
0532 or remaining subject hereto or to avoid or reduce any contribu-  
0533 tion or other payment required from an employing unit under  
0534 this act, or who willfully fails or refuses to make any such  
0535 contributions or other payment or to furnish any reports required  
0536 hereunder or to produce or permit the inspection or copying of  
0537 records as required hereunder, shall be punished by a fine of not  
0538 less than ~~twenty dollars (\$20)~~ \$20 nor more than ~~two hundred~~  
0539 ~~dollars (\$200)~~ \$200, or by imprisonment for not longer than ~~sixty~~  
0540 ~~(60)~~ 60 days, or both such fine and imprisonment. Each such  
0541 false statement or representation or failure to disclose a material  
0542 fact, and each day of such failure or refusal shall constitute a  
0543 separate offense.

0544 (c) Any person who ~~shall~~ willfully ~~violate~~ *violates* any provi-  
0545 sion of this act or any rule and regulation adopted by the  
0546 secretary hereunder, the violation of which is made unlawful or  
0547 the observance of which is required under the terms of this act,  
0548 and for which a penalty is neither prescribed herein or provided  
0549 by any other applicable statute, shall be punished by a fine of not  
0550 less than ~~twenty dollars (\$20)~~ \$20 nor more than ~~two hundred~~  
0551 ~~dollars (\$200)~~ \$200, or by imprisonment for not longer than ~~sixty~~  
0552 ~~(60)~~ 60 days, or by both such fine and imprisonment, and each  
0553 day such violation continues shall be deemed to be a separate  
0554 offense.

0555 (d) Any person who has received any amount of money as  
0556 benefits under this act while any conditions for the receipt of  
0557 benefits imposed by this act were not fulfilled in ~~his or her~~ *such*  
0558 *person's* case, or while such person was disqualified from ~~re-~~  
0559 ~~ceiving~~ benefits, shall in the discretion of the secretary, either be  
0560 liable to have such amount of money deducted from any future  
0561 benefits payable to ~~him or her~~ *such person* under this act or shall  
0562 be liable to repay to the secretary for the ~~unemployment com-~~  
0563 ~~pensation~~ *employment security* fund an amount of money equal  
0564 to the amount so received by such person. After a period of five  
0565 ~~(5)~~ years, the secretary may waive the collection of any such

0566 amount of money when the secretary has determined that the  
 0567 payment of such amount of money was not due to fraud, misrep-  
 0568 resentation, or willful nondisclosure on the part of the person  
 0569 receiving such amount of money, and the collection thereof  
 0570 would be against equity or would cause extreme hardship with  
 0571 regard to such person. *The collection of benefit overpayments*  
 0572 *which were made in the absence of fraud, misrepresentation or*  
 0573 *willful nondisclosure of required information on the part of the*  
 0574 *person who received such overpayments, may be waived by the*  
 0575 *secretary at any time if such person met all eligibility require-*  
 0576 *ments of the employment security law during the weeks in*  
 0577 *which the overpayments were made. Unless collection is waived*  
 0578 *by the secretary, any such amount shall be collectible in the*  
 0579 *manner provided in subsection (b) of K.S.A. 44-717, and amend-*  
 0580 *ments thereto, for the collection of past due contributions. The*  
 0581 *courts of this state shall in like manner entertain actions to*  
 0582 *collect amounts of money erroneously paid as benefits, or un-*  
 0583 *lawfully obtained, for which liability has accrued under the*  
 0584 *employment security law of any other state or of the federal*  
 0585 *government.*

0586 (e) *Any employer or person who willfully fails or refuses to*  
 0587 *pay contributions, payments in lieu of contributions or benefit*  
 0588 *cost payments or attempts in any manner to evade or defeat any*  
 0589 *such contributions, payments in lieu of contributions or benefit*  
 0590 *cost payments or the payment thereof, shall be liable for the*  
 0591 *payment of such contributions, payments in lieu of contribu-*  
 0592 *tions or benefit cost payments and, in addition to any other*  
 0593 *penalties provided by law, shall be liable to pay a penalty equal*  
 0594 *to the total amount of the contributions, payments in lieu of*  
 0595 *contributions or benefit cost payments evaded or not paid.*<sup>1\*</sup>

0596 Sec. 7. On July 1, 1986, K.S.A. 75-6210 is hereby amended to  
 0597 read as follows: 75-6210. (a) Upon completion of a setoff trans-  
 0598 action, the director shall transfer the net proceeds collected to  
 0599 the account or fund of the officer or agency to which the debt was  
 0600 owed.

0601 (b) From the gross proceeds collected by the director through  
 0602 setoff, the director shall retain a reasonable collection assistance

K.S.A. 44-719 Handling of Administrative Mistakes. This proposal would allow for waiver of overpayments in cases of administrative inadvertance. According to the department, small overpayments are sometimes made to claimants due to inaccurate reporting of wage data from employers, insufficient fact finding, computer programming errors, or incorrect application of the law. In most cases, the claimants are neither aware of the overpayment, or at fault. But, according to law, the overpayment must be collected even if the amount is just a dollar or two. Obviously, such collections cost much more than the overpayment. This proposal would allow the department to waive the collection. At the request of KCCI, the department will be checking with the federal Department of Labor to see if money from the "penalty and interest fund" (mentioned in K.S.A. 44-716a above) can be used to repay the Employment Security Trust Fund in cases of waiver of overpayment.

K.S.A. 44-719 Civil Penalty Added. This proposal would add civil liability to the existing criminal penalties for willful failure to pay U.C. taxes due. The current criminal penalties are seldom used because criminal intent is difficult to prove and prosecutors are reluctant to take the cases. This proposal would allow the department to pursue these cases as civil actions in order to make collections.

0603 fee of not to exceed 15%, *except that in the case of transactions*  
0604 *for collection of debts arising from the employment security law*  
0605 *such fee shall not exceed \$300 for any transaction.* The director  
0606 may credit a portion of the collection assistance fee to the  
0607 appropriate account or fund of any other state agency that has  
0608 incurred expenses in assisting in the collection of the debt. The  
0609 amount of the collection assistance fee retained by the director  
0610 shall be deposited in the state treasury and credited to the  
0611 accounting services recovery fund.

0612 (c) Upon receipt by the agency of the net proceeds collected,  
0613 the agency shall credit the debtor's obligation in the amount of  
0614 the gross proceeds collected.

0615 (d) Except as otherwise prescribed by the director or the  
0616 secretary of administration, any state agency which receives any  
0617 payment from a debtor after notification to the debtor under  
0618 K.S.A. 75-6206 and amendments thereto, other than payments  
0619 collected pursuant to K.S.A. 44-718 and amendments thereto or  
0620 collected through the federal government or judicial process,  
0621 shall remit the collection assistance fee imposed under subsec-  
0622 tion (b) to the director which shall be credited to the accounting  
0623 services recovery fund. If a state agency fails to remit the collec-  
0624 tion assistance fee as required by this subsection, the director  
0625 may transfer an amount equal to such collection assistance fee  
0626 from the appropriate account or fund of the state agency to the  
0627 accounting services recovery fund.

0628 (e) In cases involving the collection of debts arising from the  
0629 employment security law, the entire amount collected shall be  
0630 credited to the employment security fund and the collection  
0631 assistance fee shall be transferred from the special employment  
0632 security fund to the accounting services recovery fund.

0633 Sec. 8. K.S.A. 1985 Supp. 44-716a is hereby repealed.

0634 Sec. 9. On July 1, 1986, K.S.A. 44-719 and 75-6210 and K.S.A.  
0635 1985 Supp. 44-704, 44-706, 44-709, 44-710g, 44-710h and 44-717  
0636 are hereby repealed.

0637 Sec. 10. This act shall take effect and be in force from and  
0638 after its publication in the Kansas register.

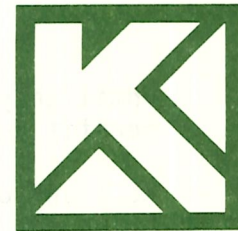
K.S.A. 75-6210(b) Collections through Set-off. This proposal would put a cap  
on the amount charged by the Department of Administration  
when collections are made through set-off. At present,  
U.C. taxes may be collected from delinquent employers by deducting them from  
funds owed to the employer by the state (tax refunds, etc.). The Department  
of Administration performs this function, but charges a flat fee of 15% for  
making collections, regardless of size. The Department of Human resources  
must credit the employer's U.C. account with 100% of the payment, even though  
it receives only 85%. The balance is taken from the (44-716a) "penalty and  
interest fund." This proposal would cap the amount the department of admini-  
stration could charge for collection at either 15% of the amount collected or  
\$300, whichever is less. This would allow the Department of Administration a  
reasonable collection fee, but make sure money is taken sparingly from the  
"penalty and interest fund."

*In addition to the proposed changes outlined above, the ESAC also approved deletion of two sections of the law. Department of Human Resources staff-members had requested the sections be eliminated because they were no longer necessary. Those sections recommended for deletion are: K.S.A. 44-710g and 44-710h. The sections concern how local governments and other employers addressed the U.C. tax surcharges which were in effect for the 1983 calendar year.*

K.S.A. 44-714      Appeal Transcripts Confidential. This proposal would make transcripts of appeal hearings confidential. Most records of U.C. matters are confidential by statute. Enactment of this proposal would ensure that appeal hearings are held in conformity with federal procedure and the testimony of witnesses would not be available for use in unrelated cases.

# SPECIAL REPORT

## 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

December, 1985

## Unemployment Comp. Proposals Readied

*The Employment Security Advisory Council (ESAC), of which KCCI is a member, has completed its pre-legislative consideration of proposed changes in the state's unemployment compensation law. Included in the ESAC's group of proposals for change, which will be considered by the 1986 Kansas Legislature, are further disqualification penalties for some U.C. benefit claimants, an increase in the amount a claimant may earn while unemployed without having the weekly benefit amount reduced, and several changes in U.C. tax collection provisions designed to make sure U.C. taxes are paid when due.*

*According to the agreement reached by the ESAC, all of its proposals will be forwarded to the legislature and included in one bill. The specifics of that anticipated piece of legislation are as follows:*

K.S.A. 44-706(b) Breach of Duty. This proposal would delete the phrase "breach of duty" from the law and replace it with "misconduct" (as a majority of states do). The term "misconduct" would be defined, and the term "gross misconduct" would be re-defined. Penalties for both misconduct and gross misconduct would be increased. For misconduct violators, the penalty would be total disqualification from benefit eligibility until the individual had returned to work and earned three times his or her determined weekly benefit amount. (This is the same penalty enacted last year for "voluntary quit" cases.) Persons guilty of a gross misconduct violation would continue with the existing total disqualification and eight times weekly benefit earnings requirement to requalify, but would have an additional penalty in that they would lose all wage credits attributable to the employer against which the gross misconduct was committed. Such a provision would assure that, regardless of when or how an individual requalified for benefit eligibility following a gross misconduct disqualification, the employer against which the deed was committed would never have any future benefits charged against his or her U.C. account (unless, of course, the employer rehired the guilty party).

These provisions were sought by KCCI and the other employer representatives of the ESAC and would be welcome changes in the state's U.C. law.

K.S.A. 44-706(c) Work Search/Refusal. This proposal would change only the penalty assessed against U.C. claimants who are found to be not seeking or not accepting suitable work while they are unemployed. The new penalty would be the same as for misconduct cases outlined above (and for voluntary quitters, as instituted last session). Work search and job refusal violators would be disqualified from benefit eligibility

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until they had returned to work and earned three times their determined weekly benefit amount. No other changes are proposed in this section.

KCCI and other employer representatives are very supportive of this change to bring our disqualifications in line.

K.S.A. 44-709      Employer Response Time Limit. This proposal would change the length of time employers are given to respond to requests for information about the circumstances of a claimant's separation. Under current practice, the Department of Human Resources mails requests for such information to employers and waits to clear claimants for benefits until a response is received or until 16 days have elapsed (in some cases the period may be 19 days, depending on circumstances). The U.S. Department of Labor has been critical of the Kansas Department of Human Resources because of the length of time between a claim's filing and its approval or denial. This proposal would put into the law (the practice is now only addressed by rule and regulation) language to permit payment of benefits after a period of 10 days. If an employer requests an extension of time, an automatic three-day extension would be granted. If, after the waiting period has elapsed, an employer can demonstrate that he or she failed to respond due to "excusable neglect" (i.e., a valid reason why timely response was not made), the department is to grant an exception and accept the employer's response.

For the bulk of employers, this will be much ado about nothing. For cases where an employer needs to respond, the 10-day period, with an extra three days available, will provide adequate time for response. In cases where a good reason prevented a response, the law will provide for late response. In the vast majority of cases where a response is merely a courtesy gesture and the payment of benefits is not being protested, the claimant will receive benefits in a timely manner as required by the federal government.

Realizing that most employers' concerns about U.C. have to do with the circumstances under which a claimant is cleared for benefits, and not with the time limit on responding to a claim, employer representatives approved this change. The department has demonstrated a willingness to work with employers who experience difficulty with such matters, and it is anticipated the cooperation will continue.

K.S.A. 44-704(e)      Partial Earnings Offset. This proposal would change the formula for determining the amount of money deducted from a claimant's weekly benefit amount to adjust for what he or she earned in part-time employment while unemployed. Present law calls for any amount over \$8 per week earned in partial employment to be deducted, dollar for dollar, from the weekly benefit check. Because claimants may earn so little without having their benefits reduced, few people seek (or report) part-time earnings while they are unemployed. The \$8 figure was set over 25 years ago, and then represented 25% of the maximum weekly benefit amount. This proposal would permit claimants to earn 25% of their weekly benefit amount in partial employment, up to a maximum of \$47 per week, before any offsetting deduction would be made. Some examples may help explain the proposal: If a claimant's weekly benefit amount is \$120, he or she may earn \$30 in partial employment (25% of \$120) without losing any benefits. If the partial employment yields \$45, the claimant's weekly benefit check would be

reduced by \$15, the amount over the 25% threshold. For claimants who qualify for the maximum weekly benefit amount of \$190, up to \$47 (odd amounts are rounded down in U.C.) could be earned without offset. The \$47 ceiling will become more significant in future years as the maximum weekly benefit amount increases. Claimants who qualify for less than the maximum weekly benefit amount will still be able to earn 25% of their benefit amount, up to \$47, without penalty; those who are eligible for the maximum then in effect, will be subject to the \$47 ceiling and earnings over that amount will be deducted dollar for dollar.

The philosophy behind this complicated system is really rather simple. People drawing unemployment should be looking for work -- even part-time work that could lead to something more rewarding later. By raising the offset threshold from \$8 per week to as much as \$47 per week, more claimants will be encouraged to accept (and report) partial employment. By setting a ceiling on the amount which can be earned, rather than just letting that amount float with the maximum weekly benefit amount, some control is placed on how much can be earned in future years. Merely "indexing" the maximum by making it a percentage, would almost eliminate any opportunity to objectively review the impact of this change in future years.

K.S.A. 44-714      Appeal Transcripts Confidential. This proposal would make transcripts of appeal hearings confidential. Most records of U.C. matters are confidential by statute. Enactment of this proposal would ensure that appeal hearings are held in conformity with federal procedure and the testimony of witnesses would not be available for use in unrelated cases.

K.S.A. 44-716(a)      Special Employment Security Fund. This proposal would give the Governor and Secretary of Human Resources more discretion in the use of money from the Special Employment Security Fund. Money in this fund is commonly known as "penalty and interest money" and comes from penalties and interest charged against employers who are late in making their U.C. tax payments. Currently, the Fund may only be used for audit exceptions, for loans pending receipt of federal funds, and for payment of set-off costs (see K.S.A. 75-6210b, pg. 4). The change would permit use of the funds for Employment Security activities not federally funded or inadequately funded.

K.S.A. 44-717(a)      Penalties and Interest for Late Filing. This proposal would increase penalties and interest assessed against employers who are late in paying U.C. taxes or are tardy in filing required reports. The current interest rate assessed on delinquent contributions is .8% per month. The proposal would raise this to 1.5% per month. The current penalty for delinquent reports is \$5 per month or fraction thereof. The proposed amount is .05% of total wages paid, with a minimum of \$25 and a maximum of \$200.

K.S.A. 44-717(b)(3)      Contractor/Subcontractor Relationship. This proposal, brought about by a court decision, would make a prime contractor liable for the payment of U.C. taxes of a subcontractor unless the prime contractor required the subcontractor to post a bond guaranteeing the tax payments. Current language is designed to do the same thing, but a court decision found the language was not sufficient. This



proposal is designed to address the court decision, not to make a change in the current practice.

K.S.A. 44-717(e) Lien Filings Permitted. This proposal would modify the law to permit inclusion of penalties in lien filings. A technical problem exists because penalty amounts cannot now be included in a lien.

K.S.A. 44-717(e) Past Due Tax Levies. This proposal would allow levies against employers for collection of past due U.C. taxes. Currently, the law does not permit levies to be made as a result of filing a tax lien. This would permit the department to issue levies against delinquent employers 10 days after notice and demand is made as permitted in federal tax collection cases. It is designed to make the department more effective in collecting past due taxes.

K.S.A. 44-717 Deposit/Bond for Chronic Late Payers. Another collection mechanism, this proposal would permit the department to require a cash deposit or bond from chronically delinquent employers. Unpaid contributions have risen sharply over the last three years. It is hoped that requiring a cash deposit or bond (in an amount equal to the highest liability incurred in two of the last four quarters) will help encourage prompt payment of U.C. taxes.

K.S.A. 44-717 Penalty for Willful Failure to Pay. This proposal would impose a personal liability for willful failure to pay U.C. taxes, payments in lieu of taxes, or benefit cost payments. Current law establishes liability of corporations, non-profit organizations, or governmental entities only against themselves. There is no motivation for individuals in charge of those groups to ensure prompt payment of taxes because there is no liability to do so. For most employers, this obligation is promptly paid and is never an issue. For those who would prefer to postpone the payment of these taxes there should be some manner of motivation. The personal liability is proposed to provide such motivation.

K.S.A. 44-719 Civil Penalty Added. This proposal would add civil liability to the existing criminal penalties for willful failure to pay U.C. taxes due. The current criminal penalties are seldom used because criminal intent is difficult to prove and prosecutors are reluctant to take the cases. This proposal would allow the department to pursue these cases as civil actions in order to make collections.

K.S.A. 44-719 Handling of Administrative Mistakes. This proposal would allow for waiver of overpayments in cases of administrative inadvertance. According to the department, small overpayments are sometimes made to claimants due to inaccurate reporting of wage data from employers, insufficient fact finding, computer programming errors, or incorrect application of the law. In most cases, the claimants are neither aware of the overpayment, or at fault. But, according to law, the overpayment must be collected even if the amount is just a dollar or two. Obviously, such collections cost much more than the overpayment. This proposal would allow the department to waive the collection. At the request of KCCI, the department will be checking with the federal Department of Labor to see if money from the "penalty and interest fund" (mentioned in K.S.A. 44-716a above) can

be used to repay the Employment Security Trust Fund in cases of waiver of overpayment.

K.S.A. 75-6210(b) Collections through Set-off. This proposal would put a cap on the amount charged by the Department of Administration when collections are made through set-off. At present, U.C. taxes may be collected from delinquent employers by deducting them from funds owed to the employer by the state (tax refunds, etc.). The Department of Administration performs this function, but charges a flat fee of 15% for making collections, regardless of size. The Department of Human resources must credit the employer's U.C. account with 100% of the payment, even though it receives only 85%. The balance is taken from the (44-716a) "penalty and interest fund." This proposal would cap the amount the department of administration could charge for collection at either 15% of the amount collected or \$300, whichever is less. This would allow the Department of Administration a reasonable collection fee, but make sure money is taken sparingly from the "penalty and interest fund."

*In addition to the proposed changes outlined above, the ESAC also approved deletion of two sections of the law. Department of Human Resources staff-members had requested the sections be eliminated because they were no longer necessary. Those sections recommended for deletion are: K.S.A. 44-710g and 44-710h. The sections concern how local governments and other employers addressed the U.C. tax surcharges which were in effect for the 1983 calendar year.*

LEGISLATIVE RECOMMENDATIONS  
OF THE ADVISORY COUNCIL OF THE  
DEPARTMENT OF HUMAN RESOURCES

The Kansas Employment Security Advisory Council is composed of equal representation from employer groups, employee groups and the general public. The function of the Council is to provide advice and guidance to the Secretary regarding promulgation of legislation. Each Departmental proposal is subject to full discussion by the Council prior to its introduction in the State Legislature. It is through a spirit of cooperation and compromise that Department proposals take their final form.

Proposals which have been discussed and endorsed by the Council are:

K.S.A. 44-704

Summary:

This proposal changes the formula for determining the amount of deduction to be made from benefit payments for wages received in partial employment.

Background:

Present law provides a claimant may earn up to \$8.00 per week before any deduction is made in weekly benefit payments. This measure was passed in 1957 when the maximum weekly benefit amount was \$32.00.

This proposal provides for an offset of wages earned in partial employment which exceeds 25% of the claimant's determined benefit amount and the deduction shall not exceed \$47.00 per week. This change acts as an incentive for the unemployed to see partial employment. As an example, should an individual's determined weekly benefit amount be set at \$160, then such claimant could receive \$40 in earnings ( $\$160 \text{ weekly benefit amount} \times .25 = \$40.00$ ) before any offset would be made.

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K.S.A. 44-706

Summary:

This proposal deletes the phrase "breach of duty", defines "misconduct" and re-defines "gross misconduct". In addition, it amends the penalties for disqualification.

Background:

The present law does not have a definition of "breach of duty" although this term and "misconduct" are both used in the statute. "Misconduct" and "gross misconduct" are defined as follows:

"For the purpose of this subsection, 'misconduct' is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. In order to sustain a finding that such a duty or obligation has been violated, the facts must show: (1) willful and intentional action which is substantially adverse to the employer's interests, or (2) carelessness or negligence of such degree or recurrence as to show wrongful intent or evil design. The term 'gross misconduct' as used in this subsection shall be construed to mean conduct evincing extreme, willful and wanton misconduct as defined in this subsection."

The proposed legislation also sets forth a list of reasons for discharge which do not disqualify the individual.

"An individual shall not be disqualified under this subsection if the individual is discharged under the following circumstances:

(1) the employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit;

(2) the individual was making a good-faith effort to do the assigned work but was discharged due to: (A) inefficiency, (B) unsatisfactory performance due to inability, or lack of training and experience, (C) isolated instances of ordinary negligence or inadvertence, (D) good

faith errors in judgment or discretion, or (E) unsatisfactory work or conduct due to circumstances beyond the individual's control;

(3) the individual's refusal to perform work in excess of the contract of hire."

The present law provides for a disqualification for eleven weeks and a requirement the individual shall forfeit benefit entitlement equal to 10 times the individual's determined weekly benefit amount.

The proposed legislation in cases of misconduct requires the individual to become re-employed and earn three times the weekly benefit amount from insured employment before becoming eligible for benefits.

In cases of gross misconduct, all wage credits attributable to the employer from which the individual was discharged shall be cancelled. However, no cancellation of credits shall affect prior separations.

The proposed language states:

"An individual shall be disqualified for benefits:

If the individual has been discharged for misconduct connected with the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if the individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until he or she has become reemployed and has had earnings from insured work of at least eight times such individual's weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross misconduct connected with the individual's work shall be cancelled. No such cancellation of wage credits shall affect prior payments as a result of a prior separation."

K.S.A. 44-706(c)

Summary:

Changes penalty for Job Refusal to begin with the week in which such failure occurred and shall continue until the individual has become re-employed and has had earnings from insured work of at least three times the individuals determined weekly benefit amount.

K.S.A. 44-709

Summary:

This proposal would change the length of time given employers to respond to requests for separation information.

Background:

Regulations currently require employers to respond to requests for separation information within 48 hours. This time limit is not followed as it is not administratively feasible to enforce the regulation. Employers are given, instead, a total of 16 days to respond which is the statutory time limit to provide charge/noncharge information.

The Department has been subject to criticism from the Federal government because not all payments are made in a timely manner. Much of the delay is due to the inordinate amount of time given employers to respond.

This proposal would allow employers ten days to respond, an increase of eight days over current regulation. Response time may be enlarged upon a timely request or upon a showing of excusable neglect. The proposal would establish a procedure which would be feasible to administer.

K.S.A. 44-710g

Summary:

This section is no longer necessary and should be repealed.

Background:

This statute pertained to unbudgeted 1983 and 1984 local government expenditures, and allowed no-fund warrants to be issued in order to pay unemployment insurance taxes without permission of the Board of Tax Appeals. The provision is now obsolete.

K.S.A. 44-710h

Summary:

This section is no longer necessary and should be repealed.

Background:

This statute permitted surcharges to be levied on employers for the years of 1983 and 1984 in order to insure the solvency of the fund. The provision is now obsolete.

K.S.A. 44-714

Summary:

This proposal would provide that appeal hearing transcripts shall be confidential.

Background:

Most agency records are confidential by statute. Recently, there have been several attempts by attorneys to secure hearing transcripts for discovery purposes. Each of these attempts required legal action by the Department in order to quash the subpoena.

Enactment of this legislation would ensure that appeal hearings are held in conformity with federal procedure and the testimony of witnesses would not be available in unrelated cases.

K.S.A. 44-716a

Summary:

This proposal would provide the Governor and the Secretary more discretion in the use of the Special Employment Security Fund.

Background:

Currently the Employment Security Fund may be used solely for payment of audit exceptions, for loans pending receipt of Federal funds and for the payment of off-set costs. At present, the fund contains \$1.34 million. This proposal, patterned after Missouri law, would allow the Secretary, with the Governor's consent, to expend funds for

Employment Security activities which are either not Federally funded or are funded in an inadequate amount.

K.S.A. 44-717(a)

Summary:

This proposal modifies the statute to increase penalties and interest assessed against delinquent employers.

Background:

The current interest rate assessed on delinquent contributions is .8% per month or fraction thereof; the penalty on delinquent reports is \$5.00 per month or fraction thereof. The rate of interest was set in 1938 and the penalty rate was established in 1959.

Due to the inadequacies of the amounts charged, neither serves as either a deterrent to delinquencies or as an incentive for payment.

The proposed legislation would establish an interest rate of 1.5% per month or fraction thereof. The penalty would amount to .05% per month or fraction thereof, of total wages paid, with a minimum of \$25.00 and a maximum amount of \$200.00.

K.S.A. 44-717(b)(3)

This proposal modifies the statute to impose absolute liability for the payment of taxes on a prime contractor on account of its failure to require a sub-contractor to post bond guaranteeing the tax payments.

Summary:

This proposal results from a recent federal court decision in Kansas which found a prime contractor was not liable for a sub-contractor's tax debt under a "safe-harbor" provision the court read into the law. The court held that the department had to be specific concerning the manner in which withheld funds were segregated if the prime contractor was to be held liable. To eliminate this problem, this legislation would impose strict liability for payment on the



prime contractor unless the prime contractor required the sub-contractor to post a bond.

K.S.A. 44-717(e)

Summary:

This proposal would modify the statute to allow inclusion of penalties in lien filings.

Background:

This modification would resolve a technical problem because penalties currently may not be included in liens.

K.S.A. 44-717(e)

Summary:

This proposal would allow levies against employers.

Background:

Currently the unemployment insurance law does not permit levies to be made as a result of filing a tax lien under K.S.A. 44-717(e). There is no enforcement provision contained in the lien law.

This proposed change would allow the Department to issue levies against delinquent employers 10 days after notice and demand is made as permitted in federal tax collections cases. If implemented, the modification would allow the Department to become more effective in the collection of past due contributions.

K.S.A. 44-717

Summary:

A proposal to require a cash deposit by chronically delinquent employers.

Background:

Unpaid contributions have significantly increased over the last three years. This proposal would require chronically delinquent employers either to make a cash deposit or to post a bond in an amount equal to the highest liability incurred in two of the last four quarters.

K.S.A. 44-717

Summary:

A proposal to impose personal liability for willful failure to pay contributions, payments in lieu of contributions or benefit cost payments

Background:

The problem under the present law is the liability to pay the taxes of a corporation, non-profit organization or governmental entity is restricted to the assets of them. There is no motivation for individuals in charge of the entities to ensure payment of taxes because there is no liability for failure to do so. Since the trust funds involved are collected solely from employers and dispersed solely to employees in benefits, any failure to collect taxes imposes a larger burden on complying employers. In addition, other agencies impose personal liability so there is a motivation to pay them and not the Department of Human Resources.

This proposal, an expansion of a concept in California law, would provide for individual liability for tax debts if it could be proven that the individual willfully failed to pay contributions, payments in lieu of contributions, and benefit costs payments.

K.S.A. 44-719

Summary:

This proposal would allow civil liability as well as criminal penalties for willful failure to pay contributions due.

Background:

Current law provides criminal penalties for willful failure to pay contributions due. This section of the law is seldom used as (1) it is difficult to prove criminal intent, and (2) prosecutors are reluctant to take these cases. This proposal would allow the Department to pursue these cases as civil actions in order to effect collections.

K.S.A. 44-719

Summary:

This proposal would allow for waiver of overpayments in cases of administrative inadvertence.

Background:

There have been instances in which claimants, through no fault of their own have been paid benefits erroneously.

K.S.A. 75-6210(b)

Summary:

This proposal establishes a "cap" on the amount charged by the Department of Administration when collections are made through set-off.

Background:

At present, the Department of Administration charges a fee of 15 percent for making collections of past due contributions through set-offs against funds owed the employer. This 15% is transferred from the Special Employment Security Fund, ~~and placed in the Unemployment Insurance Trust Fund.~~

This proposal would place a "cap" on the amount to be charged as the lesser of (a) 15 percent of the amount collected, or (b) \$300. This "cap" would provide adequate payment for services while insuring the special fund remains solvent.