

Approved April 1, 1986
Date

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS

The meeting was called to order by Senator Dan Thiessen at
Chairperson

1:40 ~~XXX~~/p.m. on March 25, 1986 in room 527-S of the Capitol.

All members were present except:

Senator Feleciano was excused.

Committee staff present:

Jerry Donaldson, Legislative Research Department
Gordon Self, Revisor of Statutes Office

Conferees appearing before the committee:

Rob Hodges, Kansas Chamber of Commerce and Industry
Janet Stubbs, Home Builders Association of Kansas
Larry Wolgast, Secretary, Department of Human Resources
Representative Art Douville
John Rathmel, Division of Workers' Compensation
Representative Jim Braden
Stan Basler, Montgomery County Commissioner
Marjorie Van Buren, Office of the Judicial Administrator
Donna Cummings, United Community Services of Johnson County

HB 2761 - Concerning the employment security law.

The hearing on the bill was continued from the previous meeting. Rob Hodges said the Kansas Chamber of Commerce and Industry had input when changes in the employment security law were considered by the Employment Security Advisory Council, and his group endorsed the bill. He furnished a balloon version of the bill with explanations concerning changes (Attachment No.1).

Janet Stubbs, representing the Home Builders Association of Kansas, asked for clarification regarding provisions on page 33, starting on line 595, concerning contractors, subcontractors, and bonding and questioned what the definition of "contractor" was. She expressed concern as to how this section would affect small contractors or home owners acting as the prime contractor. Larry Wolgast interpreted the intent as involving only people in the business of construction rather than individual home owners. A home owner would have to be the employer as well, and this bill makes no change in current definition.

HB 3016 - Concerning the special employment security fund.

A hearing was held on the bill. Mr. Wolgast said it was originally part of HB 2761 but was removed by the House and made into this bill (Attachment No.2). He explained the special employment security fund, into which the Department of Human Resources places all interest and penalty monies, and how the fund can or cannot be used. HB 3016 would allow the Governor and the Secretary more discretion in the use of the money. There is currently \$1.4 million in the fund and is at a level sufficient to be used for a revolving fund and to pay for audits. He said the extra use of the fund would not be used for staff but for special purposes. Most states have less restrictions on this type of fund than does Kansas. He furnished an endorsement from the Job Service Employer Committee and information concerning the use of this fund in other states where it has been used for a voluntary testing program as a better method of matching and placing together employees and employers (Attachment No.3). Mr. Wolgast believed this would be a proper use of the fund in Kansas which would be a pilot program in three offices costing \$55,000.

A member pointed out that, on lines 25 and 26, the word "penalties" was omitted and he questioned what happened to this money. Mr. Wolgast agreed "penalties" could be added. Concern was expressed by a member that even with the best of

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS,
room 527-S, Statehouse, at 1:30 ~~am~~/p.m. on March 25, 1986.

intentions the fund would be used more and more for purposes for which it was not intended. Mr. Wolgast said use of the fund would be restricted to programs for which no other funding was available, and the Gramm-Rudman bill may necessitate its use for needed programs no longer being federally funded. He pointed out that the Governor also must sign all uses of the fund. Passage of the bill would eliminate requests for funding from the Finance Council.

Representative Art Douville said it was the consensus of opinion of the interim committee that studied the concept of HB 3016 to see how it works for one year and then re-examine the fund.

HB 2958 - Concerning workers' compensation.

A hearing was held on the bill. Representative Douville, sponsor, said it allows employees injured on the job to consult another physician of their choice without approval from the Department of Human Resources with the employer being liable for up to \$350 medical costs. It also allows a medical bill to serve as medical testimony in Workers' Compensation claims. He said the Department supports the bill. A similar bill, SB 365, is being considered in the House.

John Rathmel, Division of Workers' Compensation, said current law results in the Division receiving doctor bills from every claimant who was dissatisfied with treatment and required additional hearings.

Rob Hodges, representing industry, and Ralph McGee, representing labor, said the concept of HB 2958 had never been brought before their groups, but no objections to the bill had been raised.

Following discussion, Senator Steineger moved, seconded by Senator Norvell, to report HB 2958 favorably. Senator Morris made a substitute motion that SB 365, which passed the Senate last year, be amended into HB 2958, seconded by Senator Werts. The substitute motion carried. Senator Werts moved to report HB 2958, as amended, favorably, seconded by Senator Morris. Motion carried.

HB 2891 - Concerning workers' compensation, coverage of persons in community service work programs.

A hearing was held on the bill. Staff reviewed its provisions which were the subject of study by the interim Judiciary Committee. Under current law, there is no provision for workers' compensation for persons sentenced to perform community service who are injured. The interim committee recommended that no legislation be enacted as the concept needed additional study.

Representative Jim Braden, sponsor, said the bill attempts to solve the problem judges have who want to sentence offenders to community service but hesitate to put cities and counties in jeopardy if offenders are injured on the job without being covered by workers' compensation. He noted an Attorney General's opinion (Attachment No.4) which states community service workers are employees of the agency using their services. He said the bill does not attempt to address the problem of offenders injuring someone else on the job as that should be addressed in court laws. He believed HB 2891 addresses problems cited in a Post Audit report which is mentioned in his statement (Attachment No.5).

There was discussion regarding who should pay workers' compensation costs, establishing an average wage rate for charges, the difference in types of community service which affects the wage rate, and if inmates working outside of the prison are covered and by whom. Representative Braden believed the House amended the average gross minimum wage figure of \$37.50 into the bill in order to reduce costs of workers' compensation payments. It was pointed out that amendments to the bill require whoever files as elector to pay the cost of coverage.

Stan Basler, Montgomery County Commissioner, said he was more supportive of the bill prior to the hearing but gave a statement (Attachment No.6) which outlines

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON LABOR, INDUSTRY AND SMALL BUSINESS,
room 527-S, Statehouse, at 1:30 ~~xxx~~ p.m. on March 25, 1986.

how his county successfully used persons in a community corrections program for a community project. The county is concerned regarding liability which bogs down efforts in this regard. He pointed out that a House committee is considering tort claims amendments to make employers immune, but he questioned if it would be constitutional.

Marjorie Van Buren, representing the Judicial Administrator, gave a statement (Attachment No.7), in support of the bill. She said judges would like to do more in sentencing offenders to community projects.

Donna Cummings, representing the United Community Services of Johnson County, said this group sponsored referrals in community service programs and placed them with agencies. Her group had believed these workers were covered by the Johnson County workers' compensation. Because of the Attorney General's opinion, their program has been suspended. Her statement in support of the bill is attached (Attachment No.8).

The Chairman adjourned the meeting at 2:30 p.m.

3-25-86

<u>NAME</u>	<u>ADDRESS</u>	<u>REPRESENTING</u>
Donna Smith	Topeka	Ks. Bar Assoc.
Marjorie Van Buren	"	Office of Judicial Administration
Rob Hodges	"	KCCI
Ralph McGee	1114	KS AFL-CIO
Bill Morrissey	"	DHR/WC
George M. O'Connell	"	Ks AFL-CIO
John Rathjens	"	KDHR/WC
Tom Harley	Cherryvale	Montgomery County
Fred Allen	Topeka	KAC
Al Anguish	Topeka	SRS
Donna Cummins	Mission	United Comm. Serv.
Wilma Dickey	"	" "
Larry Wolgan	Topeka	DHR
A. J. Kotich	TOPEKA	DNR
WCU CLAWSON	"	DHR
Paul Bicknell	"	"
WB Damm	Topeka	J. Battenberg
Janet Stubbs	"	HBAK
Louise Kastner	"	Ks Food Dealers Assn

As Amended by House Committee

Session of 1986

HOUSE BILL No. 2761

By Committee on Labor and Industry

1-28

0018 AN ACT concerning the employment security law; relating to
 0019 benefits, disqualification for benefits, benefit claims proce-
 0020 dures and collection of employer payments; penalties; ex-
 0021 penditures from special employment security fund confiden-
 0022 tiality of certain information obtained thereunder; amending
 0023 K.S.A. 44-719 and 75-6210 and K.S.A. 1985 Supp. 44-704,
 0024 44-706, 44-709, 44-716a 44-714 and 44-717 and repealing the
 0025 existing sections; also repealing K.S.A. 1985 Supp. 44-710g
 0026 and 44-710h.

0027 *Be it enacted by the Legislature of the State of Kansas:*

0028 Section 1. ~~On July 1, 1986,~~ K.S.A. 1985 Supp. 44-704 is
 0029 hereby amended to read as follows: 44-704. (a) *Payment of*
 0030 *benefits.* All benefits provided herein shall be payable from the
 0031 fund. All benefits shall be paid through the secretary of human
 0032 resources, in accordance with such rules and regulations as the
 0033 secretary may adopt. Benefits based on service in employment
 0034 defined in subsections (i)(3)(E) and (i)(3)(F) of K.S.A. 44-703 and
 0035 amendments thereto, shall be payable in the same amount, on
 0036 the same terms and subject to the same conditions as compensa-
 0037 tion payable on the basis of other service subject to this act
 0038 except as provided in subsection (e) of K.S.A. 44-705 and sub-
 0039 section (e)(2) of K.S.A. 44-711, and any amendments to these
 0040 statutes.

0041 (b) *Determined weekly benefit amount.* An individual's de-
 0042 termined weekly benefit amount shall be an amount equal to
 0043 4.25% of the individual's total wages for insured work paid
 0044 during that calendar quarter of the individual's base period in
 0045 which such total wages were highest, subject to the following
 0046 limitations:

0047 (1) If an individual's determined weekly benefit amount is
0048 less than the minimum weekly benefit amount, it shall be raised
0049 to such minimum weekly benefit amount;

0050 (2) if the individual's determined weekly benefit amount is
0051 more than the maximum weekly benefit amount, it shall be
0052 reduced to the maximum weekly benefit amount; and

0053 (3) if the individual's determined weekly benefit amount is
0054 not a multiple of \$1, it shall be reduced to the next lower
0055 multiple of \$1.

0056 (c) *Maximum weekly benefit amount.* On July 1 of each year,
0057 the secretary shall determine the maximum weekly benefit
0058 amount by computing 60% of the average weekly wages paid to
0059 employees in insured work during the previous calendar year
0060 and shall prior to that date announce the maximum weekly
0061 benefit amount so determined, by publication in the Kansas
0062 register, except that the maximum weekly benefit amount for the
0063 twelve-month period commencing on July 1, 1985, shall not be
0064 more than \$190. Such computation shall be made by dividing the
0065 gross wages reported as paid for insured work during the pre-
0066 vious calendar year by the product of the average of midmonth
0067 employment during such calendar year multiplied by 52. The
0068 maximum weekly benefit amount so determined and announced
0069 for the twelve-month period shall apply only to those claims filed
0070 in that period qualifying for maximum payment under the fore-
0071 going formula. All claims qualifying for payment at the maximum
0072 weekly benefit amount shall be paid at the maximum weekly
0073 benefit amount in effect when the benefit year to which the
0074 claim relates was first established, notwithstanding a change in
0075 the maximum benefit amount for a subsequent twelve-month
0076 period. If the computed maximum weekly benefit amount is not
0077 a multiple of \$1, then the computed maximum weekly benefit
0078 amount shall be reduced to the next lower multiple of \$1.

0079 (d) *Minimum weekly benefit amount.* The minimum weekly
0080 benefit amount payable to any individual shall be 25% of the
0081 maximum weekly benefit calculated in accordance with subsec-
0082 tion (c) and shall be announced by the secretary in conjunctior
0083 with the published announcement of the maximum weekly ben-

0084 efit, also as provided in subsection (c). The minimum weekly
 0085 benefit amount so determined and announced for the twelve-
 0086 month period beginning July 1 of each year shall apply only to
 0087 those claims which establish a benefit year filed within that
 0088 twelve-month period and shall apply through the benefit year of
 0089 such claims notwithstanding a change in such amount in a
 0090 subsequent twelve-month period. If the minimum weekly ben-
 0091 efit amount is not a multiple of \$1 it shall be reduced to the next
 0092 lower multiple of \$1.

0093 (e) *Weekly benefit payable.* Each eligible individual who is
 0094 unemployed with respect to any week shall, except as to final
 0095 payment, shall be paid with respect to such week a benefit in an
 0096 amount equal to such individual's determined weekly benefit
 0097 amount, less that part of the wage, if any, payable to such
 0098 individual with respect to such week which is in excess of \$8 the
 0099 amount which is equal to 25% of such individual's determined
 0100 weekly benefit amount but which is not or which is in excess of
 0101 \$47 if 25% of such individual's determined weekly benefit
 0102 amount is more than \$47 and if the resulting amount is not a
 0103 multiple of \$1, it shall be reduced to the next lower multiple of
 0104 \$1. For the purpose of this section, remuneration received for
 0105 services performed on a public assistance work project shall not
 0106 be construed as wages.

0107 (f) *Duration of benefits.* Any otherwise eligible individual
 0108 shall be entitled during any benefit year to a total amount of
 0109 benefits equal to whichever is the lesser of 26 times such
 0110 individual's weekly benefit amount, or 1/3 of such individual's
 0111 wages for insured work paid during such individual's base
 0112 period. Such total amount of benefits, if not a multiple of \$1, shall
 0113 be reduced to the next lower multiple of \$1.

0114 (g) For the purposes of this section, wages shall be counted
 0115 as "wages for insured work" for benefit purposes with respect to
 0116 any benefit year only if such benefit year begins subsequent to
 0117 the date on which the employing unit by whom such wages were
 0118 paid has satisfied the conditions of subsection (h) of K.S.A.
 0119 44-703 and amendments thereto with respect to becoming an
 0120 employer.

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 Sec. 2. ~~On July 1, 1986~~, K.S.A. 1985 Supp. 44-706 is hereby
0122 amended to read as follows: 44-706. An individual shall be
0123 disqualified for benefits:

0124 (a) If the individual left work voluntarily without good cause
0125 attributable to the work or the employer, subject to the other
0126 provisions of this subsection (a). The disqualification shall begin
0127 the day following the separation and shall continue until after
0128 the individual has become reemployed and has had earnings
0129 from insured work of at least three times the individual's weekly
0130 benefit amount. An individual shall not be disqualified under
0131 this subsection (a) if:

0132 (1) The individual was forced to leave work because of ill-
0133 ness or injury upon the advice of a licensed and practicing
0134 physician and, upon learning of the necessity for absence, im-
0135 mediately notified the employer thereof, or the employer con-
0136 sented to the absence, and after recovery from the illness or
0137 injury, when recovery was certified by a practicing physician,
0138 the individual returned to the employer and offered to perform
0139 services and the individual's regular work or comparable and
0140 suitable work was not available; as used in this paragraph (1)
0141 "physician" means any person licensed by the proper licensing
0142 authority of any state to engage in the practice of medicine and
0143 surgery, osteopathy, chiropractic, dentistry, optometry, podiatry
0144 or psychology;

0145 (2) the individual left temporary work to return to the regular
0146 employer;

0147 (3) the individual left work to enlist in the armed forces of the
0148 United States, but was rejected or delayed from entry;

0149 (4) the individual left work because of the transfer of the
0150 individual's spouse from one place of work to another place of
0151 work at a geographic location which makes it unreasonable for
0152 the individual to continue work at the individual's place of work;

0153 (5) the individual left work because of hazardous working
0154 conditions; in determining whether or not working conditions
0155 are hazardous for an individual, the degree of risk involved to the
0156 individual's health, safety and morals, the individual's physical
0157 fitness and prior training and the working conditions of workers

0158 engaged in the same or similar work for the same and other
0159 employers in the locality shall be considered; as used in this
0160 paragraph (5), "hazardous working conditions" means working
0161 conditions that could result in a danger to the physical or mental
0162 well-being of the individual; each determination as to whether
0163 hazardous working conditions exist shall include, but shall not
0164 be limited to, a consideration of (A) the safety measures used or
0165 the lack thereof, and (B) the condition of equipment or lack of
0166 proper equipment; no work shall be considered hazardous if the
0167 working conditions surrounding the individual's work are the
0168 same or substantially the same as the working conditions gener-
0169 ally prevailing among individuals performing the same or similar
0170 work for other employers engaged in the same or similar type of
0171 activity;

0172 (6) the individual left work to enter training approved under
0173 section 236(a)(1) of the trade act of 1974, provided the work left is
0174 not of a substantially equal or higher skill level than the indi-
0175 vidual's past adversely affected employment (as defined for
0176 purposes of the trade act of 1974), and wages for such work are
0177 not less than 80% of the individual's average weekly wage as
0178 determined for the purposes of the trade act of 1974;

0179 (7) the individual left work because of unwelcome harass-
0180 ment of the individual by the employer or another employee of
0181 which the employing unit had knowledge;

0182 (8) the individual left work to accept better work; each de-
0183 termination as to whether or not the work accepted is better work
0184 shall include, but shall not be limited to, consideration of (A) the
0185 rate of pay, the hours of work and the probable permanency of
0186 the work left as compared to the work accepted, (B) the cost to
0187 the individual of getting to the work left in comparison to the cost
0188 of getting to the work accepted, and (C) the distance from the
0189 individual's place of residence to the work accepted in compari-
0190 son to the distance from the individual's residence to the work
0191 left;

0192 (9) the individual left work as a result of being instructed or
0193 requested by the employer, a supervisor or a fellow employee to
0194 perform a service or commit an act in the scope of official job

0195 duties which is in violation of an ordinance or statute;
 0196 (10) the individual left work because of a violation of the
 0197 work agreement by the employing unit and, before the individ-
 0198 ual left, the individual had exhausted all remedies provided in
 0199 such agreement for the settlement of disputes before terminat-
 0200 ing; or

0201 (11) after making reasonable efforts to preserve the work, the
 0202 individual left work due to a personal emergency of such nature
 0203 and compelling urgency that it would be contrary to good con-
 0204 science to impose a disqualification.

0205 (b) ~~Beginning with the week in which the valid initial claim~~
 0206 ~~is filed and for the 10 consecutive weeks which immediately~~
 0207 ~~follow such week and shall forfeit benefit entitlement equal to 10~~
 0208 ~~times the individual's determined weekly benefit amount, but~~
 0209 ~~not less than an amount equal to such individual's determined~~
 0210 ~~weekly benefit amount~~ If the individual has been discharged
 0211 ~~from the individual's last work for a breach of a duty misconduct~~
 0212 ~~connected with the individual's work reasonably owed an em-~~
 0213 ~~ployer by an employee. The disqualification shall begin the day~~
 0214 ~~following the separation and shall continue until after the~~
 0215 ~~individual becomes reemployed and has had earnings from~~
 0216 ~~insured work of at least three times the individual's determined~~
 0217 ~~weekly benefit amount, except that if an individual is discharged~~
 0218 ~~for gross misconduct connected with the individual's work, such~~
 0219 ~~individual shall be disqualified for benefits until such individual~~
 0220 ~~again becomes employed and has had earnings from insured~~
 0221 ~~work of at least eight times such individual's determined weekly~~
 0222 ~~benefit amount. In addition, all wage credits attributable to the~~
 0223 ~~employment from which the individual was discharged for gross~~
 0224 ~~misconduct connected with the individual's work shall be can-~~
 0225 ~~celed. No such cancellation of wage credits shall affect prior~~
 0226 ~~payments made as a result of a prior separation.~~

0227 (1) For the purposes of this subsection (b), "misconduct" is
 0228 defined as a violation of a duty or obligation reasonably owed
 0229 the employer as a condition of employment. In order to sustain a
 0230 finding that such a duty or obligation has been violated, the
 0231 facts must show: (A) Willful and intentional action which is

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 *substantially adverse to the employer's interests, or (B) carelessness*
 0233 *or negligence of such degree or recurrence as to show*
 0234 *wrongful intent or evil design. The term "gross misconduct" as*
 0235 *used in this subsection (b) shall be construed to mean conduct*
 0236 *evinced by extreme, willful and or wanton disregard of an em-*
 0237 *ployer's interest or a carelessness or negligence of such degree*
 0238 *or recurrence as to show an intentional or substantial disregard of*
 0239 *the employer's interest misconduct as defined by this subsection*
 0240 *(b).*

0241 (2) *An individual shall not be disqualified under this sub-*
 0242 *section (b) if the individual is discharged under the following*
 0243 *circumstances:*

0244 (A) *The employer discharged the individual after learning*
 0245 *the individual was seeking other work or when the individual*
 0246 *gave notice of future intent to quit;*

0247 (B) *the individual was making a good-faith effort to do the*
 0248 *assigned work but was discharged due to: (i) Inefficiency, (ii)*
 0249 *unsatisfactory performance due to inability, incapacity or lack*
 0250 *of training or experience, (iii) isolated instances of ordinary*
 0251 *negligence or inadvertence, (iv) good-faith errors in judgment or*
 0252 *discretion, or (v) unsatisfactory work or conduct due to circum-*
 0253 *stances beyond the individual's control; or*

0254 (C) *the individual's refusal to perform work in excess of the*
 0255 *contract of hire.*

0256 (c) *If the individual has failed, without good cause, to either*
 0257 *apply for suitable work when so directed by the employment*
 0258 *office of the secretary of human resources, or to accept suitable*
 0259 *work when offered to the individual by the employment office,*
 0260 *the secretary of human resources, or an employer, such disqual-*
 0261 *ification shall begin with the week in which such failure oc-*
 0262 *curred and for the 10 consecutive weeks which immediately*
 0263 *follow such week and shall forfeit benefit entitlement equal to 10*
 0264 *times the individual's determined weekly benefit amount but*
 0265 *not less than an amount equal to shall continue until the indi-*
 0266 *vidual becomes reemployed and has had earnings from insured*
 0267 *work of at least three times such individual's determined*
 0268 *weekly benefit amount. In determining whether or not any work*

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 is suitable for an individual, the secretary of human resources, or
0270 a person or persons designated by the secretary, shall consider
0271 the degree of risk involved to health, safety and morals, physical
0272 fitness and prior training, experience and prior earnings, length
0273 of unemployment and prospects for securing local work in the
0274 individual's customary occupation or work for which the indi-
0275 vidual is reasonably fitted by training or experience, and the
0276 distance of the available work from the individual's residence.
0277 Notwithstanding any other provisions of this act, an otherwise
0278 eligible individual shall not be disqualified for refusing an offer
0279 of suitable employment, or failing to apply for suitable employ-
0280 ment when notified by an employment office, or for leaving the
0281 individual's most recent work accepted during approved train-
0282 ing, including training approved under section 236(a)(1) of the
0283 trade act of 1974, if the acceptance of or applying for suitable
0284 employment or continuing such work would require the indi-
0285 vidual to terminate approved training and no work shall be
0286 deemed suitable and benefits shall not be denied under this act
0287 to any otherwise eligible individual for refusing to accept new
0288 work under any of the following conditions: (1) If the position
0289 offered is vacant due directly to a strike, lockout or other labor
0290 dispute; (2) if the remuneration, hours or other conditions of the
0291 work offered are substantially less favorable to the individual
0292 than those prevailing for similar work in the locality; (3) if as a
0293 condition of being employed, the individual would be required
0294 to join or to resign from or refrain from joining any labor organi-
0295 zation.

0296 (d) For any week with respect to which the secretary of
0297 human resources, or a person or persons designated by the
0298 secretary, finds that the individual's unemployment is due to a
0299 stoppage of work which exists because of a labor dispute or there
0300 would have been a work stoppage had normal operations not
0301 been maintained with other personnel previously and currently
0302 employed by the same employer at the factory, establishment or
0303 other premises at which the individual is or was last employed,
0304 except that this subsection (d) shall not apply if it is shown to the
0305 satisfaction of the secretary of human resources, or a person or

persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection (d), be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection (d), failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

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

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

(g) For the period of one year beginning with the first day following the last week of unemployment for which the individual received benefits, or for one year from the date the act was committed, whichever is the later, if the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has

0343 knowingly failed to disclose a material fact to obtain or increase
0344 benefits under this act or any other unemployment compensa-
0345 tion law administered by the secretary of human resources.

0346 (h) For any week with respect to which the individual is
0347 receiving compensation for temporary total disability or perma-
0348 nent total disability under the workmen's compensation law of
0349 any state or under a similar law of the United States.

0350 (i) For any week of unemployment on the basis of service in
0351 an instructional, research or principal administrative capacity for
0352 an educational institution as defined in subsection (v) of K.S.A.
0353 44-703 and amendments thereto, if such week begins during the
0354 period between two successive academic years or terms or, when
0355 an agreement provides instead for a similar period between two
0356 regular but not successive terms during such period or during a
0357 period of paid sabbatical leave provided for in the individual's
0358 contract, if the individual performs such services in the first of
0359 such academic years or terms and there is a contract or a reason-
0360 able assurance that such individual will perform services in any
0361 such capacity for any educational institution in the second of
0362 such academic years or terms.

0363 (j) For any week of unemployment on the basis of service in
0364 any capacity other than service in an instructional, research, or
0365 administrative capacity in an educational institution, as defined
0366 in subsection (v) of K.S.A. 44-703 and amendments thereto, if
0367 such week begins during the period between two successive
0368 academic years or terms if the individual performs such services
0369 in the first of such academic years or terms and there is a
0370 reasonable assurance that the individual will perform such ser-
0371 vices in the second of such academic years or terms, except that if
0372 benefits are denied to the individual under this subsection (j)
0373 and the individual was not offered an opportunity to perform
0374 such services for the educational institution for the second of
0375 such academic years or terms, such individual shall be entitled to
0376 a retroactive payment of benefits for each week for which the
0377 individual filed a timely claim for benefits and for which benefits
0378 were denied solely by reason of this subsection (j).

0379 (k) For any week of unemployment on the basis of service in

any capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, if such week begins during an established and customary vacation period or holiday recess, if the individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

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

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

(n) For any week in which an individual is receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer and to which the entire contributions

0417 were provided by such employer, except that: (1) If the entire
0418 contributions to such plan were provided by the base period
0419 employer but such individual's weekly benefit amount exceeds
0420 such governmental or other pension, retirement or retired pay,
0421 annuity or other similar periodic payment attributable to such
0422 week, the weekly benefit amount payable to the individual shall
0423 be reduced (but not below zero) by an amount equal to the
0424 amount of such pension, retirement or retired pay, annuity or
0425 other similar periodic payment which is attributable to such
0426 week; or (2) if only a portion of contributions to such plan were
0427 provided by the base period employer, the weekly benefit
0428 amount payable to such individual for such week shall be re-
0429 duced (but not below zero) by the prorated weekly amount of the
0430 pension, retirement or retired pay, annuity or other similar
0431 periodic payment after deduction of that portion of the pension,
0432 retirement or retired pay, annuity or other similar periodic pay-
0433 ment that is directly attributable to the percentage of the con-
0434 tributions made to the plan by such individual; or (3) if the entire
0435 contributions to the plan were provided by such individual, or by
0436 the individual and an employer (or any person or organization)
0437 who is not a base period employer, no reduction in the weekly
0438 benefit amount payable to the individual for such week shall be
0439 made under this subsection (n); or (4) whatever portion of con-
0440 tributions to such plan were provided by the base period em-
0441 ployer, if the services performed for the employer by such
0442 individual during the base period, or remuneration received for
0443 the services, did not affect the individual's eligibility for, or
0444 increased the amount of, such pension, retirement or retired pay,
0445 annuity or other similar periodic payment, no reduction in the
0446 weekly benefit amount payable to the individual for such week
0447 shall be made under this subsection (n). The conditions speci-
0448 fied in clause (4) of this subsection (n) shall not apply to pay-
0449 ments made under the social security act or the railroad retire-
0450 ment act of 1974, or the corresponding provisions of prior law.
0451 Payments made under these acts shall be treated as otherwise
0452 provided in this subsection (n). If the reduced weekly benefit
0453 amount is not a multiple of \$1, it shall be reduced to the next

0454 lower multiple of \$1.

0455 (o) For any week of unemployment on the basis of services
0456 performed in any capacity and under any of the circumstances
0457 described in subsection (i), (j) or (k) which an individual per-
0458 formed in an educational institution while in the employ of an
0459 educational service agency. For the purposes of this subsection
0460 (o), the term "educational service agency" means a governmen-
0461 tal agency or entity which is established and operated exclu-
0462 sively for the purpose of providing such services to one or more
0463 educational institutions.

0464 Sec. 3. ~~On July 1, 1986,~~ K.S.A. 1985 Supp. 44-709 is hereby
0465 amended to read as follows: 44-709. (a) *Filing.* Claims for ben-
0466 efits shall be made in accordance with rules and regulations
0467 adopted by the secretary. The secretary shall furnish a copy of
0468 such rules and regulations to any individual requesting them.
0469 Each employer shall post and maintain printed statements fur-
0470 nished by the secretary without cost to the employer in places
0471 readily accessible to individuals in the service of the employer.

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

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 *barred from protesting any subsequent decisions about the claim*
0492 *by the secretary, a referee, the board of review or any court,*
0493 *except that the employing unit's response time limit may be: (A)*
0494 *Extended by not more than three business days upon oral*
0495 *application made to the chief of benefits of the division of*
0496 *employment security, or to the chief's designee, before the*
0497 *expiration of the response time limit, or (B) waived or extended*
0498 *upon appeal, if timely response was impossible due to excusable*
0499 *neglect. In any case in which the payment or denial of benefits*
0500 *will be determined by the provisions of subsection (d) of K.S.A.*
0501 *44-706 and amendments thereto, the examiner shall promptly*
0502 *transmit the claim to a special examiner designated by the*
0503 *secretary to make a determination on the claim after the inves-*
0504 *tigation as the special examiner deems necessary. The parties*
0505 *shall be promptly notified of the special examiner's decision and*
0506 *any party aggrieved by the decision may appeal to the referee as*
0507 *provided in subsection (c). The claimant and the claimant's most*
0508 *recent employing unit shall be promptly notified of the exam-*
0509 *iner's or special examiner's decision.*

0510 (2) The examiner may for good cause reconsider the exam-
0511 iner's decision and shall promptly notify the claimant and the
0512 most recent employing unit of the claimant, that the decision of
0513 the examiner is to be reconsidered, except that no reconsidera-
0514 tion shall be made after the termination of the benefit year.

0515 (3) Notwithstanding the provisions of any other statute, a
0516 decision of an examiner or special examiner shall be final unless
0517 the claimant or the most recent employing unit of the claimant
0518 files an appeal from the decision as provided in subsection (c).
0519 The appeal must be filed within 16 calendar days after the
0520 mailing of notice to the last-known addresses of the claimant and
0521 employing unit or, if notice is not by mail, within 16 calendar
0522 days after the delivery of the notice to the parties.

0523 (c) *Appeals.* Unless the appeal is withdrawn, a referee, after
0524 affording the parties reasonable opportunity for fair hearing,
0525 shall affirm or modify the findings of fact and decision of the
0526 examiner or special examiner. The parties shall be duly noti-
0527 of the referee's decision, together with the reasons for the deci-

0528 sion. The decision shall be final, notwithstanding the provisions
0529 of any other statute, unless a further appeal to the board of
0530 review is filed within 16 calendar days after the mailing of the
0531 decision to the parties' last-known addresses or, if notice is not
0532 by mail, within 16 calendar days after the delivery of the deci-
0533 sion.

0534 (d) *Referees.* The secretary shall appoint, in accordance with
0535 subsection (c) of K.S.A. 44-714 and amendments thereto, one or
0536 more referees to hear and decide disputed claims.

0537 (e) *Time, computation and extension.* In computing the
0538 period of time for appeals under this section from the examiner's
0539 or the special examiner's determination or from the referee's
0540 decision, the day of the act, event or default from which the
0541 designated period of time begins to run shall not be included.
0542 The last day of the period shall be included unless it is a
0543 Saturday, Sunday or legal holiday, in which event the period
0544 runs until the end of the next day which is not a Saturday,
0545 Sunday or legal holiday.

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

0565 two members do not agree and make the appointment of the
0566 third member within 30 days after the appointments of the
0567 employer representative member and the employee representa-
0568 tive member, the governor shall appoint the representative of the
0569 public. Not more than two members of the board shall belong to
0570 the same political party.

0571 (2) Each member of the board shall serve until a successor
0572 has been appointed and qualified. Any vacancy in the member-
0573 ship of the board occurring prior to expiration of a term shall be
0574 filled by appointment for the unexpired term in the same manner
0575 as provided for original appointment of the member. Each
0576 member shall be appointed as representative of the same special
0577 interest group represented by the predecessor of the member.

0578 (3) Each member of the board shall be entitled to receive as
0579 compensation for the member's services \$11,000 per year ~~for~~
0580 ~~payroll periods chargeable to the fiscal year ending June 30,~~
0581 ~~1985, and each fiscal year thereafter,~~ together with the member's
0582 traveling and other necessary expenses actually incurred in the
0583 performance of the member's official duties in accordance with
0584 rules and regulations adopted by the secretary. Members' com-
0585 pensation and expenses shall be paid from the employment
0586 security administration fund.

0587 (4) The board shall organize annually by the election of a
0588 chairperson from among its members. The chairperson shall
0589 serve in that capacity for a term of one year and until a successor
0590 is elected. The board shall meet on the first Monday of each
0591 month or on the call of the chairperson or any two members of
0592 the board at the place designated. The secretary of human
0593 resources shall appoint an executive secretary of the board and
0594 the executive secretary shall attend the meetings of the board.

0595 (5) The board, on its own motion, may affirm, modify or set
0596 aside any decision of a referee on the basis of the evidence
0597 previously submitted in the case; may direct the taking of addi-
0598 tional evidence; or may permit any of the parties to initiate
0599 further appeal before it. The board shall permit such further
0600 appeal by any of the parties interested in a decision of a referee
0601 which overrules or modifies the decision of an examiner. The

0602 board may remove to itself the proceedings on any claim pend-
0603 ing before a referee. Any proceedings so removed to the board
0604 shall be heard in accordance with the requirements of subsection
0605 (c). The board shall promptly notify the interested parties of its
0606 findings and decision.

0607 (6) Two members of the board shall constitute a quorum and
0608 no action of the board shall be valid unless it has the concurrence
0609 of at least two members. A vacancy on the board shall not impair
0610 the right of a quorum to exercise all the rights and perform all the
0611 duties of the board.

0612 (g) *Procedure.* The manner in which disputed claims are
0613 presented, the reports on claims required from the claimant and
0614 from employers and the conduct of hearings and appeals shall be
0615 in accordance with rules of procedure prescribed by the board
0616 for determining the rights of the parties, whether or not such
0617 rules conform to common law or statutory rules of evidence and
0618 other technical rules of procedure. A full and complete record
0619 shall be kept of all proceedings and decisions in connection with
0620 a disputed claim. All testimony at any hearing upon a disputed
0621 claim shall be recorded, but need not be transcribed unless the
0622 disputed claim is further appealed. In the performance of its
0623 official duties, the board shall have access to all of the records
0624 which pertain to the disputed claim and are in the custody of the
0625 secretary of human resources and shall receive the assistance of
0626 the secretary upon request.

0627 (h) *Witness fees.* Witnesses subpoenaed pursuant to this sec-
0628 tion shall be allowed fees and necessary traveling expenses at
0629 rates fixed by the board. Such fees and expenses shall be deemed
0630 a part of the expense of administering this act.

0631 (i) *Court review.* (1) Any decision of the board, in the ab-
0632 sence of an action for judicial review of the decision as provided
0633 by this section, shall become final 16 calendar days after the date
0634 of the mailing of the decision. Judicial review of a decision shall
0635 be permitted only after any party claiming to be aggrieved by the
0636 decision has exhausted the party's remedies before the board as
0637 provided by this act.

0638 (2) Within 16 calendar days after the decision of the board

0011 has been mailed, the examiner, or any party aggrieved by the
0012 decision, may secure judicial review of the decision by com-
0013 mencing an action against the board for the review of its decision
0014 in the district court of the county in which the party resides or
0015 has the party's principal place of business or, if the aggrieved
0016 party is a nonresident of the state of Kansas, in the district court
0017 of Shawnee county. In the action any other party to the pro-
0018 ceeding before the board shall be made a defendant.

0019 (3) In an action for judicial review of a decision of the board,
0020 a petition which need not be verified, but which shall state the
0021 grounds upon which a review is sought, shall be served upon the
0022 board or upon such person as the board designates. Such service
0023 shall be deemed completed service on all parties, but the party
0024 served shall be given as many copies of the petition as there are
0025 defendants, and the board shall promptly mail one copy of the
0026 petition to each defendant.

0027 (4) With its answer, the board shall certify and file with the
0028 court all documents and papers and a transcript of all testimony
0029 taken in the matter, together with its findings of fact and deci-
0030 sion. The board, in its discretion, also may certify to the court
0031 questions of law involved in any decision by the board.

0032 (5) In any judicial proceeding under this section, the findings
0033 of the board as to the facts, if supported by evidence and in the
0034 absence of fraud, shall be conclusive and the jurisdiction of the
0035 court shall be confined to questions of law. Such proceeding, and
0036 the questions of law certified, shall be heard in a summary
0037 manner and shall be given precedence over all other civil cases
0038 except cases arising under the workmen's compensation act.

0039 (6) An appeal may be taken from the decision of the district
0040 court in the same manner as is provided in civil cases.

0041 (7) It shall not be necessary, in any judicial proceedings
0042 under this section, to enter exceptions to the rulings of the board
0043 and no bond shall be required for entering an appeal. Upon the
0044 final determination of the judicial proceeding the board shall
0045 enter an order in accordance with the determination. A petition
0046 for judicial review shall not act as a supersedeas or stay unless
0047 the board so orders.

0048 Sec. 4. K.S.A. 1985 Supp. 44-716a is hereby amended to read
0049 as follows: 44-716a. (a) There is hereby created in the state
0050 treasury a special fund to be known as the special employment
0051 security fund. All interest collected under the provisions of the
0052 Kansas employment security law shall be paid into this fund. No
0053 such moneys shall be expended or available for expenditure in
0054 any manner which would permit their substitution for (or a
0055 corresponding reduction in) federal funds which in the absence
0056 of such moneys would be available to finance expenditures for
0057 the administration of the employment security law. Nothing in
0058 this section shall prevent such moneys from being used as a
0059 revolving fund, to cover expenditures (necessary and proper
0060 under the law) for which federal funds have been duly requested
0061 but not yet received, subject to the charging of such expenditures
0062 against such funds when received. Except as otherwise autho-
0063 rized by this section, the moneys in this fund may be used by the
0064 secretary of human resources only for the payment of costs of
0065 administration which are found not to have been properly and
0066 validly chargeable against federal grants (or other funds) re-
0067 ceived for or in the employment security administration fund.
0068 *Moneys from this fund may be used to finance activities as*
0069 *deemed necessary by the secretary of human resources for the*
0070 *efficient operation of activities under or the administration of*
0071 *the employment security law, except that no moneys shall be*
0072 *used for such purposes unless the secretary has determined that*
0073 *no other funds are available or can be properly used to finance*
0074 *expenditures for such purposes. No expenditures of this fund*
0075 *shall be made except on written authorization by the governor*
0076 *and the secretary of human resources.*

0077 (b) The director of accounts and reports is hereby directed to
0078 draw warrants upon the state treasurer against the money in the
0079 special employment security fund for the use and purposes as
0080 herein specified upon vouchers, approved by the secretary of
0081 human resources, and accompanied by the written authorization
0082 of the governor and the secretary of human resources. The
0083 moneys in this fund are hereby specifically made available to
0084 replace, within a reasonable time, any moneys received by this

0085 state pursuant to section 302 of the federal social security act, as
0086 amended, which, because of any action or contingency, have
0087 been lost or have been expended for purposes other than, or in
0088 amounts in excess of, those necessary for the proper administra-
0089 tion of the employment security law. The moneys in this fund
0090 shall be continuously available to the secretary of human re-
0091 sources for expenditure in accordance with the provisions of this
0092 section and shall not lapse at any time or be transferred to any
0093 other fund, except as otherwise authorized in subsection (c).

0094 (c) In addition to expenditures authorized by this section, the
0095 director of accounts and reports may transfer funds from the
0096 special employment security fund to the accounting services
0097 recovery fund as provided in K.S.A. 75-3728b and 75-6212,
0098 ~~75-6210~~ and any amendments to such sections.

0099 Sec. 4. K.S.A. 1985 Supp. 44-714 is hereby amended to read
0100 as follows: 44-714. (a) *Duties and powers of secretary.* It shall be
0101 the duty of the secretary to administer this act and the secretary
0102 shall have power and authority to adopt, amend, or revoke such
0103 rules and regulations, to employ such persons, make such ex-
0104 penditures, require such reports, make such investigations, and
0105 take such other action as the secretary deems necessary or
0106 suitable to that end. Such rules and regulations may be adopted,
0107 amended, or revoked by the secretary only after public hearing
0108 or opportunity to be heard thereon. The secretary shall deter-
0109 mine the organization and methods of procedure in accordance
0110 with the provisions of this act, and shall have an official seal
0111 which shall be judicially noticed. The secretary shall make and
0112 submit reports for the administration of the employment security
0113 law in the manner prescribed by K.S.A. 75-3044 to 75-3046,
0114 inclusive, and 75-3048 and amendments thereto. Whenever the
0115 secretary believes that a change in contribution or benefit rates
0116 will become necessary to protect the solvency of the fund, the
0117 secretary shall promptly so inform the governor and the legisla-
0118 ture, and make recommendations with respect thereto.

0119 (b) *Publication.* The secretary shall cause to be printed for
0120 distribution to the public the text of this act, the secretary's rules
0121 and regulations and any other material the secretary deems

0122 relevant and suitable and shall furnish the same to any person
0123 upon application therefor.

0124 (c) *Personnel.* (1) Subject to other provisions of this act, the
0125 secretary is authorized to appoint, fix the compensation, and
0126 prescribe the duties and powers of such officers, accountants,
0127 deputies, attorneys, experts and other persons as may be neces-
0128 sary in carrying out the provisions of this act. The secretary shall
0129 classify all positions and shall establish salary schedules and
0130 minimum personnel standards for the positions so classified. The
0131 secretary shall provide for the holding of examinations to deter-
0132 mine the qualifications of applicants for the positions so clas-
0133 sified, and, except to temporary appointments not to exceed six
0134 months in duration, shall appoint all personnel on the basis of
0135 efficiency and fitness as determined in such examinations. The
0136 secretary shall not appoint or employ any person who is an
0137 officer or committee member of any political party organization
0138 or who holds or is a candidate for an elective public office. The
0139 secretary shall adopt and enforce fair and reasonable rules and
0140 regulations for appointment, promotions and demotions, based
0141 upon ratings of efficiency and fitness and for terminations for
0142 cause. The secretary may delegate to any such person so ap-
0143 pointed such power and authority as the secretary deems rea-
0144 sonable and proper for the effective administration of this act,
0145 and may in the secretary's discretion bond any person handling
0146 moneys or signing checks under the employment security law.

0147 (2) No employee engaged in the administration of the em-
0148 ployment security law shall directly or indirectly solicit or re-
0149 ceive or be in any manner concerned with soliciting or receiving
0150 any assistance, subscription or contribution for any political
0151 party or political purpose, nor shall any employee engaged in
0152 the administration of the employment security law participate in
0153 any form of political activity, nor shall any employee champion
0154 the cause of any political party or the candidacy of any person.
0155 Any employee engaged in the administration of the employment
0156 security law who violates these provisions shall be immediately
0157 discharged. No person shall solicit or receive any contribution
0158 for any political purpose from any employee engaged in the

0159 administration of the employment security law and any such
0160 action shall be a misdemeanor and shall be punishable by a fine
0161 of not less than \$100 ~~or~~ nor more than \$1,000 or by imprisonment
0162 in the county jail for not less than 30 days nor more than six
0163 months, or both.

0164 (d) *Advisory councils.* The secretary shall appoint a state
0165 employment security advisory council and may appoint local
0166 advisory councils, composed in each case of men and women
0167 which shall include an equal number of employer representa-
0168 tives and employee representatives who may fairly be regarded
0169 as representative because of their vocation, employment, or
0170 affiliations, and of such members representing the general pub-
0171 lic as the secretary may designate. Such councils shall aid the
0172 secretary in formulating policies and discussing problems re-
0173 lated to the administration of this act and in securing impartiality
0174 and freedom from political influence in the solution of such
0175 problems. Members of the state employment security advisory
0176 council attending meetings of such council, or attending a sub-
0177 committee meeting thereof authorized by such council, shall be
0178 paid amounts provided in subsection (e) of K.S.A. 75-3223 and
0179 amendments thereto. Service on the state employment security
0180 advisory council shall not in and of itself be sufficient to cause
0181 any member of the state employment security advisory council to
0182 be classified as a state officer or employee.

0183 (e) *Employment stabilization.* The secretary, with the advice
0184 and aid of the secretary's advisory councils and through the
0185 appropriate divisions of the department of human resources,
0186 shall take all appropriate steps to reduce and prevent unem-
0187 ployment; to encourage and assist in the adoption of practical
0188 methods of vocational training, retraining and vocational guid-
0189 ance; to investigate, recommend, advise, and assist in the es-
0190 tablishment and operation, by municipalities, counties, school
0191 districts and the state, of reserves for public works to be used in
0192 time of business depression and unemployment; to promote the
0193 reemployment of unemployed workers throughout the state in
0194 every other way that may be feasible; and to these ends to carry
0195 on and publish the results of investigations and research studies.

0196 (f) *Records and reports.* Each employing unit shall keep true
 0197 and accurate work records, containing such information as the
 0198 secretary may prescribe. Such records shall be open to inspec-
 0199 tion and subject to being copied by the secretary or the secre-
 0200 tary's authorized representatives at any reasonable time and
 0201 shall be preserved for a period of five years from the due date of
 0202 the contributions or payments in lieu of contributions for the
 0203 period to which they relate. Only one audit shall be made of any
 0204 employer's records for any given period of time. Upon request
 0205 the employing unit shall be furnished a copy of all findings by
 0206 the secretary or the secretary's authorized representatives, re-
 0207 sulting from such audit. A special inquiry or special examination
 0208 made for a specific and limited purpose shall not be considered
 0209 to be an audit for the purpose of this subsection. The secretary
 0210 may require from any employing unit any sworn or unsworn
 0211 reports, with respect to persons employed by it, which the
 0212 secretary deems necessary for the effective administration of this
 0213 act. Information thus obtained or obtained from any individual
 0214 pursuant to the administration of this act, shall, ~~except to the~~
 0215 ~~extent necessary for the proper presentation of a claim,~~ be held
 0216 confidential, *except to the extent necessary for the proper pres-*
 0217 *entation of a claim by an employer or employee under the*
 0218 *employment security law, and shall not be published or be open*
 0219 *to public inspection (, other than to public employees in the*
 0220 *performance of their public duties), in any manner revealing the*
 0221 *individual's or employing unit's identity, but.* Any claimant or
 0222 employing unit or their representatives at a hearing before an
 0223 appeal tribunal or the secretary shall be supplied with informa-
 0224 tion from such records to the extent necessary for the proper
 0225 presentation of the claim. *The transcript made at any such*
 0226 *benefits hearing shall not be discoverable or admissible in*
 0227 *evidence in any other proceeding, hearing or determination of*
 0228 *any kind or nature. In the event of any appeal of a benefits*
 0229 *matter, the transcript shall be sealed by the hearing officer and*
 0230 *shall be available only to any reviewing authority who shall*
 0231 *reseal the transcript after making a review of it. In no event*
 0232 *shall such transcript be deemed a public record. Nothing in this*

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.

0233 subsection (f) shall be construed to prohibit disclosure of any
0234 information obtained under the employment security law, in-
0235 cluding hearing transcripts, upon request of either of the par-
0236 ties, for the purpose of administering or adjudicating a claim for
0237 benefits under the provisions of any other state program, except
0238 that any party receiving such information shall be prohibited
0239 from further disclosure and shall be subject to the same duty of
0240 confidentiality otherwise imposed by this subsection (f) and
0241 shall be subject to the penalties imposed by this subsection (f)
0242 for violations of such duty of confidentiality. If the secretary or
0243 any officer or employee of the secretary violates any provisions
0244 of this subsection (f), the secretary or such officer or employee
0245 shall be fined not less than \$20 nor more than \$200 or imprisoned
0246 for not longer than 90 days, or both. Original records of the
0247 agency and original paid benefit warrants of the state treasurer
0248 may be made available to the employment security agency of any
0249 other state or the federal government to be used as evidence in
0250 prosecution of violations of the employment security law of such
0251 state or federal government. Photostatic copies of such records
0252 shall be made and where possible shall be substituted for origi-
0253 nal records introduced in evidence and the originals returned to
0254 the agency.

0255 (g) *Oaths and witnesses.* In the discharge of the duties im-
0256 posed by the employment security law, the chairperson of an
0257 appeal tribunal, an appeals referee, the secretary or any duly
0258 authorized representative of the secretary shall have power to
0259 administer oaths and affirmations, take depositions, certify to
0260 official acts, and issue subpoenas to compel the attendance of
0261 witnesses and the production of books, papers, correspondence,
0262 memoranda and other records deemed necessary as evidence in
0263 connection with a disputed claim or the administration of the
0264 employment security law.

0265 (h) *Subpoenas, service.* Upon request, service of subpoenas
0266 shall be made by the sheriff of a county within that county, by the
0267 sheriff's deputy, by any other person who is not a party and is not
0268 less than 18 years of age or by some person specially appointed
0269 for that purpose by the secretary of human resources or the

0270 secretary's designee. A person not a party as described above or a
0271 person specially appointed by the secretary or the secretary's
0272 designee to serve subpoenas may make service any place in the
0273 state. The subpoena shall be served as follows:

0274 (1) *Individual.* Service upon an individual, other than a
0275 minor or incapacitated person, shall be made by delivering a
0276 copy of the subpoena to the individual personally or by leaving a
0277 copy at such individual's dwelling house or usual place of abode
0278 with some person of suitable age and discretion then residing
0279 therein, by leaving a copy at the business establishment of the
0280 employer with an officer or employee of the establishment, or by
0281 delivering a copy to an agent authorized by appointment or by
0282 law to receive service of process, but if the agent is one desig-
0283 nated by a statute to receive service, such further notice as the
0284 statute requires shall be given. If service as prescribed above
0285 cannot be made with due diligence, the secretary or the secre-
0286 tary's designee may order service to be made by leaving a copy of
0287 the subpoena at the employer's dwelling house, usual place of
0288 abode or business establishment.

0289 (2) *Corporations and partnerships.* Service upon a domestic
0290 or foreign corporation or upon a partnership or other unincorpo-
0291 rated association, when by law it may be sued as such, shall be
0292 made by delivering a copy of the subpoena to an officer, partner
0293 or resident managing or general agent thereof, or by leaving the
0294 copy at any business office of the employer with the person
0295 having charge thereof or by delivering a copy to any other agent
0296 authorized by appointment or required by law to receive service
0297 of process, if the agent is one authorized by law to receive
0298 service and, if the law so requires, by also mailing a copy to the
0299 employer.

0300 (3) *Refusal to accept service.* In all cases when the person to
0301 be served, or an agent authorized by such person to accept
0302 service of petitions and summonses shall refuse to receive copies
0303 of the subpoena, the offer of the duly authorized process server
0304 to deliver copies thereof and such refusal shall be sufficient
0305 service of such subpoena.

06 (4) *Proof of service.* (A) Every officer to whom a subpoena or

0307 other process shall be delivered for service within or without the
0308 state, shall make return thereof in writing stating the time, place
0309 and manner of service of such writ and shall sign such officer's
0310 name to such return.

0311 (B) If service of the subpoena is made by a person appointed
0312 by the secretary or the secretary's designee to make service, or
0313 any other person described in subsection (h) of this section, such
0314 person shall make an affidavit as to the time, place and manner of
0315 service thereof in a form prescribed by the secretary or the
0316 secretary's designee.

0317 (5) *Time for return.* The officer or other person receiving a
0318 subpoena shall make a return of service promptly and shall send
0319 such return to the secretary or the secretary's designee in any
0320 event within 10 days after the service is effected. If the subpoena
0321 cannot be served it shall be returned to the secretary or the
0322 secretary's designee within 30 days after the date of issue with a
0323 statement of the reason for the failure to serve the same.

0324 (i) *Subpoenas, enforcement.* In case of contumacy by or re-
0325 fusal to obey a subpoena issued to any person, any court of this
0326 state within the jurisdiction of which the inquiry is carried on or
0327 within the jurisdiction of which such person guilty of contumacy
0328 or refusal to obey is found, resides or transacts business, upon
0329 application by the secretary or the secretary's duly authorized
0330 representative, shall have jurisdiction to issue to such person an
0331 order requiring such person to appear before the secretary, or the
0332 secretary's duly authorized representative, to produce evidence,
0333 if so ordered, or to give testimony relating to the matter under
0334 investigation or in question. Failure to obey such order of the
0335 court may be punished by said court as a contempt thereof. Any
0336 person who, without just cause, shall fail or refuse to attend and
0337 testify or to answer any lawful inquiry or to produce books,
0338 papers, correspondence, memoranda or other records in obe-
0339 dience to the subpoena of the secretary or the secretary's duly
0340 authorized representative shall be punished by a fine of not less
0341 than \$200 or by imprisonment of not longer than 60 days, or both,
0342 and each day such violation continued shall be deemed to be a
0343 separate offense.

44 (j) *Protection against self-incrimination.* No person shall be
0345 excused from attending and testifying or from producing books,
0346 papers, correspondence, memoranda and other records before
0347 the secretary or the secretary's duly authorized representative or
0348 in obedience to the subpoena of the secretary or any duly
0349 authorized representative of the secretary in any cause or pro-
0350 ceeding before the secretary, on the ground that the testimony or
0351 evidence, documentary or otherwise, required of such person
0352 may tend to incriminate such person or subject such person to a
0353 penalty or forfeiture; but no individual shall be prosecuted or
0354 subjected to any penalty or forfeiture for or on account of any
0355 transaction, matter or thing concerning which such individual is
0356 compelled, after having claimed the privilege against self-incri-
0357 mination, to testify or produce evidence, documentary or other-
0358 wise, except that such individual so testifying shall not be
0359 exempt from prosecution and punishment for perjury committed
0360 in so testifying.

0361 (k) *State-federal cooperation.* In the administration of this
0362 act, the secretary shall cooperate to the fullest extent consistent
0363 with the provisions of this act, with the federal security agency,
0364 shall make such reports, in such form and containing such
0365 information as the federal security administrator may from time
0366 to time require, and shall comply with such provisions as the
0367 federal security administrator may from time to time find neces-
0368 sary to assure the correctness and verification of such reports;
0369 and shall comply with the regulations prescribed by the federal
0370 security agency governing the expenditures of such sums as may
0371 be allotted and paid to this state under title III of the social
0372 security act for the purpose of assisting in the administration of
0373 this act. Upon request therefor the secretary shall furnish to any
0374 agency of the United States charged with the administration of
0375 public works or assistance through public employment, the
0376 name, address, ordinary occupation, and employment status of
0377 each recipient of benefits and such recipient's rights to further
0378 benefits under this act.

0379 (l) *Reciprocal arrangements.* The secretary shall participate
0380 in making reciprocal arrangements with appropriate and duly

0381 authorized agencies of other states or of the federal government,
0382 or both, whereby:

0383 (1) Services performed by an individual for a single employ-
0384 ing unit for which services are customarily performed in more
0385 than one state shall be deemed to be services performed entirely
0386 within any one of the states (A) in which any part of such
0387 individual's service is performed, (B) in which such individual
0388 maintains residence, or (C) in which the employing unit main-
0389 tains a place of business, provided there is in effect as to such
0390 services, an election, approved by the agency charged with the
0391 administration of such state's unemployment compensation law,
0392 pursuant to which all the services performed by such individual
0393 for such employing units are deemed to be performed entirely
0394 within such state;

0395 (2) service performed by not more than three individuals, on
0396 any portion of a day but not necessarily simultaneously, for a
0397 single employing unit which customarily operates in more than
0398 one state shall be deemed to be service performed entirely
0399 within the state in which such employing unit maintains the
0400 headquarters of its business; provided that there is in effect, as to
0401 such service, an approved election by an employing unit with
0402 the affirmative consent of each such individual, pursuant to
0403 which service performed by such individual for such employing
0404 unit is deemed to be performed entirely within such state;

0405 (3) potential rights to benefits accumulated under the em-
0406 ployment compensation laws of one or more states or under one
0407 or more such laws of the federal government, or both, may
0408 constitute the basis for the payments of benefits through a single
0409 appropriate agency under terms which the secretary finds will be
0410 fair and reasonable as to all affected interests and will not result
0411 in any substantial loss to the fund;

0412 (4) wages or services, upon the basis of which an individual
0413 may become entitled to benefits under an unemployment com-
0414 pensation law of another state or of the federal government, shall
0415 be deemed to be wages for insured work for the purpose of
0416 determining such individual's rights to benefits under this act,
0417 and wages for insured work, on the basis of which an individual

0418 may become entitled to benefits under this act, shall be deemed
0419 to be wages or services on the basis of which unemployment
0420 compensation under such law of another state or of the federal
0421 government is payable, but no such arrangement shall be en-
0422 tered into unless it contains provisions for reimbursements to the
0423 fund for such of the benefits paid under this act upon the basis of
0424 such wages or services, and provisions for reimbursements from
0425 the fund for such of the compensation paid under such other law
0426 upon the basis of wages for insured work, as the secretary finds
0427 will be fair and reasonable as to all affected interests; and

0428 (5) (A) contributions due under this act with respect to wages
0429 for insured work shall *be deemed* for the purposes of K.S.A.
0430 44-717 and amendments thereto ~~be deemed~~ to have been paid to
0431 the fund as of the date payment was made as contributions
0432 therefor under another state or federal unemployment compen-
0433 sation law, but no such arrangement shall be entered into unless
0434 it contains provisions for such reimbursements to the fund of
0435 such contributions and the actual earnings thereon as the secre-
0436 tary finds will be fair and reasonable as to all affected interests;

0437 (B) reimbursements paid from the fund pursuant to subsec-
0438 tion (1)(4) of this section shall be deemed to be benefits for the
0439 purpose of K.S.A. 44-704 and 44-712 and amendments thereto;
0440 the secretary is authorized to make to other state or federal
0441 agencies, and to receive from such other state or federal agen-
0442 cies, reimbursements from or to the fund, in accordance with
0443 arrangements entered into pursuant to the provisions of this
0444 section or any other section of the employment security law;

0445 (C) the administration of this act and of other state and
0446 federal unemployment compensation and public employment
0447 service laws will be promoted by cooperation between this state
0448 and such other states and the appropriate federal agencies in
0449 exchanging services; and *in* making available facilities and in-
0450 formation; the secretary is therefore authorized to make such
0451 investigations, secure and transmit such information, make
0452 available such services and facilities and exercise such of the
0453 other powers provided herein with respect to the administration
0454 of this act as the secretary deems necessary or appropriate to

0455 facilitate the administration of any such unemployment com-
0456 pensation or public employment service law; and, in like man-
0457 ner, to accept and utilize information, service and facilities made
0458 available to this state by the agency charged with the adminis-
0459 tration of any such other unemployment compensation or public
0460 employment service law; *and*

0461 (D) to the extent permissible under the laws and constitution
0462 of the United States, the secretary is authorized to enter into or
0463 cooperate in arrangements whereby facilities and services pro-
0464 vided under this act and facilities and services provided under
0465 the unemployment compensation law of any foreign govern-
0466 ment; may be utilized for the taking of claims and the payment of
0467 benefits under the employment security law of this state or
0468 under a similar law of such government.

0469 (m) *Records available.* The secretary may furnish the railroad
0470 retirement board, at the expense of such board, such copies of
0471 the records as the railroad retirement board deems necessary for
0472 its purposes.

0473 (n) *Destruction of records, reproduction and disposition.*
0474 The secretary may provide for the destruction, reproduction,
0475 temporary or permanent retention, and disposition of records,
0476 reports and claims in the secretary's possession pursuant to the
0477 administration of the employment security law provided that
0478 prior to any destruction of such records, reports or claims the
0479 secretary shall comply with K.S.A. 75-3501 to 75-3514, inclusive,
0480 and amendments thereto.

0481 (o) *Federal cooperation.* The secretary may afford reasonable
0482 cooperation with every agency of the United States charged with
0483 administration of any unemployment insurance law.

0484 (p) The secretary is hereby authorized to fix, charge and
0485 collect fees for copies made of public documents, as defined by
0486 subsection (c) of K.S.A. 45-204 and amendments thereto, by
0487 xerographic, thermographic or other photocopying or reproduc-
0488 tion process, in order to recover all or part of the actual costs
0489 incurred, including any costs incurred in certifying such copies.
0490 All moneys received from fees charged for copies of such docu-
0491 ments shall be remitted to the state treasurer at least monthly.

0492 Upon receipt of each such remittance, the state treasurer shall
 0493 deposit the entire amount thereof in the state treasury to the
 0494 credit of the employment security administration fund. No such
 0495 fees shall be charged or collected for copies of documents that
 0496 are made pursuant to a statute which requires such copies to be
 0497 furnished without expense.

0498 Sec. 5. ~~On July 1, 1986,~~ K.S.A. 1985 Supp. 44-717 is hereby
 0499 amended to read as follows: 44-717. (a) *Penalties on past-due*
 0500 *reports, interest on past-due contributions, payments in lieu of*
 0501 *contributions and benefit cost payments.* Any employer or any
 0502 officer or agent of an employer, who ~~shall fail~~ fails to file any
 0503 wage report or contribution return when due, as required by the
 0504 secretary of human resources, or within a five-day grace period,
 0505 shall be subject to a penalty of \$5 *pay a penalty as provided by*
 0506 *this subsection (a) for each month or fraction of a month until*
 0507 *the report or return is received by the secretary of human*
 0508 *resources. The penalty for each month or fraction of a month*
 0509 *shall be an amount equal to .05% of the total wages paid by the*
 0510 *employer during the quarter, except that no penalty shall be less*
 0511 *than \$25 nor more than \$200 for each such report or return not*
 0512 *timely filed. An additional penalty of \$5 shall be assessed for*
 0513 ~~each thirty-day period or fraction thereof that any such report or~~
 0514 ~~return remains not filed.~~ Contributions, payments in lieu of
 0515 contributions and benefit cost payments unpaid on the date on
 0516 which they are due and payable, as prescribed by the secretary of
 0517 human resources, or within a five-day grace period, shall bear
 0518 interest at the rate of ~~.8%~~ 1.5% per month or fraction of a month
 0519 until payment is received by the secretary of human resources
 0520 except that an employing unit, *which is* not theretofore, subject
 0521 to this law, *and* which becomes an employer and does not refuse
 0522 to make the reports, returns and contributions, payments in lieu
 0523 of contributions and benefit cost payments required under this
 0524 law, shall not be liable for such penalty or interest if the wage
 0525 reports and contribution returns required are filed and the con-
 0526 tributions, payments in lieu of contributions or benefit cost
 0527 payments required are paid within 10 days following notification
 0528 by the secretary of human resources that a determination has

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.

0529 been made fixing its status as an employer subject to this law.
0530 Upon written request and good cause shown, the secretary of
0531 human resources may abate any penalty or interest or portion
0532 thereof provided for by this subsection (a). Interest amounting to
0533 less than \$1 shall be waived by the secretary of human resources
0534 and shall not be collected. Penalties and interest collected pur-
0535 suant to this subsection shall be paid into the special employ-
0536 ment security fund. For all purposes under this section, amounts
0537 assessed as surcharges under ~~K.S.A. 1983 Supp. 44-710h~~ *subsec-*
0538 *tion (j)* or under K.S.A. 44-710a and amendments thereto shall be
0539 considered to be contributions and shall be subject to penalties
0540 and interest imposed under this section and to collection in the
0541 manner provided by this section.

0542 (b) *Collection.* (1) If, after due notice, any employer defaults
0543 in payment of any penalty, contributions, payments in lieu of
0544 contributions, benefit cost payments, or interest thereon the
0545 amount due may be collected by civil action in the name of the
0546 secretary of human resources and the employer adjudged in
0547 default shall pay the cost of such action. Civil actions brought
0548 under this section to collect contributions, payments in lieu of
0549 contributions, benefit cost payments, penalties, or interest
0550 thereon from an employer shall be heard by the district court at
0551 the earliest possible date and shall be entitled to preference
0552 upon the calendar of the court over all other civil actions except
0553 petitions for judicial review under this act and cases arising
0554 under the workmen's compensation act. All liability determina-
0555 tions of contributions due, payments in lieu of contributions or
0556 benefit cost payments due shall be made within a period of five
0557 years from the date such contributions, payments in lieu of
0558 contributions or benefit cost payments were due except such
0559 determinations may be made for any time when an employer has
0560 filed fraudulent reports with intent to evade liability.

0561 (2) Any employing unit which is not a resident of this state
0562 and which exercises the privilege of having one or more indi-
0563 viduals perform service for it within this state and any resident
0564 employing unit which exercises that privilege and thereafter
0565 removes from this state, shall be deemed thereby to appoint the

0566 secretary of state as its agent and attorney for the acceptance of
 0567 process in any civil action under this subsection. In instituting
 0568 such an action against any such employing unit the secretary of
 0569 human resources shall cause such process or notice to be filed
 0570 with the secretary of state and such service shall be sufficient
 0571 service upon such employing unit and shall be of the same force
 0572 and validity as if served upon it personally within this state. The
 0573 secretary of human resources shall send notice immediately of
 0574 the service of such process or notice, together with a copy
 0575 thereof, by registered or certified mail, return receipt requested,
 0576 to such employing unit at its last-known address and such return
 0577 receipt, the affidavit of compliance of the secretary of human
 0578 resources with the provisions of this section, and a copy of the
 0579 notice of service, shall be appended to the original of the process
 0580 filed in the court in which such civil action is pending.

0581 (3) Any contractor, who is or becomes an employer under the
 0582 provisions of this act, who contracts with any subcontractor, who
 0583 also is or becomes an employer under the provisions of this act,
 0584 shall ~~withhold sufficient moneys on the contract to guarantee~~
 0585 ~~that all contributions, penalties and interest are paid upon com-~~
 0586 ~~pletion of the contract, or shall require of the subcontractor a~~
 0587 ~~good and sufficient bond guaranteeing payment of all contribu-~~
 0588 ~~tions, penalties and interest due or to become due with respect to~~
 0589 ~~wages paid for employment on the contract. Failure to comply~~
 0590 ~~with the provisions of this section shall render the contractor be~~
 0591 directly liable for such contributions, penalties and interest due
 0592 from the subcontractor and the secretary of human resources
 0593 shall have all of the remedies of collection against the contractor
 0594 under the provisions of this act as though the services in question
 0595 were performed directly for the contractor, *unless the contractor*
 0596 *requires the subcontractor to provide a good and sufficient*
 0597 *bond guaranteeing payment of all contributions, penalties and*
 0598 *interest due or to become due with respect to wages paid for*
 0599 *employment on the contract.* For the purpose of this subsection
 0600 (b)(3), the words, "contractor" and "subcontractor" mean and
 0601 include individuals, partnerships, firms or corporations, or other
 0602 associations of persons engaged in the business of the construc-

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.

0603 tion, alteration, repairing, dismantling or demolition of build-
0604 ings, roads, bridges, viaducts, sewers, water and gas mains,
0605 streets, disposal plants, water filters, tanks and towers, airports,
0606 dams, levees and canals, oil and gas wells, water wells, pipe-
0607 lines, and every other type of structure, project, development or
0608 improvement coming within the definition of real property.

0609 (4) The district courts of this state shall entertain, in the
0610 manner provided in subsections (b)(1), (b)(2) and (b)(3), actions
0611 to collect contributions, payments in lieu of contributions, ben-
0612 efit cost payments and other amounts owed including interest
0613 thereon for which liability has accrued under the employment
0614 security law of any other state or of the federal government.

0615 (c) *Priorities under legal dissolutions or distributions.* In the
0616 event of any distribution of employer's assets pursuant to an
0617 order of any court under the laws of this state, including but not
0618 limited to any probate proceeding, interpleader, receivership,
0619 assignment for benefit of creditors, adjudicated insolvency,
0620 composition or similar proceedings, contributions or payments
0621 in lieu of contributions then or thereafter due shall be paid in full
0622 from the moneys which shall first come into the estate, prior to
0623 all other claims, except claims for wages of not more than \$250 to
0624 each claimant, earned within six months of the commencement
0625 of the proceedings. In the event of an employer's adjudication in
0626 bankruptcy, judicially confirmed extension proposal, or compo-
0627 sition, under the federal bankruptcy act of 1898, as amended,
0628 contributions then or thereafter due shall be entitled to such
0629 priority as is provided in that act for taxes due any state of the
0630 United States.

0631 (d) *Assessments.* If any employer fails to file a report or
0632 return required by the secretary of human resources for the
0633 determination of contributions, or payments in lieu of contribu-
0634 tions, or benefit cost payments, the secretary of human resources
0635 may make such reports or returns or cause the same to be made,
0636 on the basis of such information as the secretary may be able to
0637 obtain and shall collect the contributions, payments in lieu of
0638 contributions or benefit cost payments as determined together
0639 with any interest due under this act. The secretary of human

0640 resources shall immediately forward to the employer a copy of
0641 the assessment by registered or certified mail to the employer's
0642 address as it appears on the records of the agency, and such
0643 assessment shall be final unless the employer protests such
0644 assessment and files a corrected report or return for the period
0645 covered by the assessment within 15 days after the mailing of the
0646 copy of assessment. Failure to receive such notice shall not
0647 invalidate the assessment. Notice in writing shall be presumed
0648 to have been given when deposited as certified or registered
0649 matter in the United States mail, addressed to the person to be
0650 charged with notice at such person's address as it appears on the
0651 records of the agency.

0652 (e) (1) *Lien for contributions.* If any employer ~~which or~~
0653 *person who* is liable to pay contributions, payments in lieu of
0654 contributions, or benefit cost payments neglects or refuses to pay
0655 the same after demand, the amount, including interest *and*
0656 *penalty*, shall be a lien in favor of the state of Kansas, secretary of
0657 human resources, upon all property and rights to property,
0658 whether real or personal, belonging to such employer *or person*.
0659 Such lien shall not be valid as against any mortgagee, pledgee,
0660 purchaser, or judgment creditor until notice thereof has been
0661 filed by the secretary of human resources in the office of register
0662 of deeds in any county in the state of Kansas, in which such
0663 property is located, and when so filed shall be notice to all
0664 persons claiming an interest in the property of the employer *or*
0665 *person* against whom filed. The register of deeds shall enter such
0666 notices in the financing statement record and shall also record
0667 the same in full in miscellaneous record and index the same
0668 against the name of the delinquent employer. The register of
0669 deeds shall accept, file, and record such notice without prepay-
0670 ment of any fee, but lawful fees shall be added to the amount of
0671 such lien and collected when satisfaction is presented for entry.
0672 Such lien shall be satisfied of record upon the presentation of a
0673 certificate of discharge by the state of Kansas, secretary of human
0674 resources. Nothing contained in this subsection (e) shall be
0675 construed as an invalidation of any lien or notice filed in the
0676 name of the unemployment compensation division or the em-

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.

0677 ployment security division and such liens shall be and remain in
0678 full force and effect until satisfied as provided by this subsection
0679 (e).

0680 (2) *Authority of secretary or authorized representative. If*
0681 *any employer or person who is liable to pay any contributions,*
0682 *payments in lieu of contributions or benefit cost payments,*
0683 *including interest and penalty, neglects or refuses to pay the*
0684 *same within 10 days after notice and demand therefor, the*
0685 *secretary or the secretary's authorized representative may col-*
0686 *lect such contributions, payments in lieu of contributions or*
0687 *benefit cost payments, including interest and penalty, and such*
0688 *further amount as is sufficient to cover the expenses of the levy,*
0689 *by levy upon all property and rights to property which belong to*
0690 *the employer or person or which have a lien created thereon by*
0691 *this subsection (e) for the payment of such contributions, pay-*
0692 *ments in lieu of contributions or benefit cost payments, includ-*
0693 *ing interest and penalty. As used in this subsection (e), "prop-*
0694 *erty" includes all real property and personal property, whether*
0695 *tangible or intangible, except such property which is exempt*
0696 *under K.S.A. 60-2301 et seq., and amendments thereto. Levy*
0697 *may be made upon the accrued salary or wages of any officer,*
0698 *employee or elected official of any state or local governmental*
0699 *entity which is subject to K.S.A. 60-723 and amendments*
0700 *thereto, by serving a notice of levy as provided in subsection (d)*
0701 *of K.S.A. 60-304 and amendments thereto. If the secretary or the*
0702 *secretary's authorized representative makes a finding that the*
0703 *collection of the amount of such contributions, payments in lieu*
0704 *of contributions or benefit cost payments, including interest*
0705 *and penalty, is in jeopardy, notice and demand for immediate*
0706 *payment of such amount may be made by the secretary or the*
0707 *secretary's authorized representative and, upon failure or re-*
0708 *fusal to pay such amount, immediate collection of such amount*
0709 *by levy shall be lawful without regard to the ten-day period*
0710 *provided in this subsection (e).*

0711 (3) *Seizure and sale of property. The authority to levy*
0712 *granted under this subsection (e) includes the power of seizure*
0713 *by any means. A levy shall extend only to property possessed*

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.

and obligations existing at the time thereof. In any case in which
0715 the secretary or the secretary's authorized representative may
0716 levy upon property or rights to property, the secretary or the
0717 secretary's authorized representative may seize and sell such
0718 property or rights to property.

0719 (4) *Successive seizures.* Whenever any property or right to
0720 property upon which levy has been made under this subsection
0721 (e) is not sufficient to satisfy the claim of the secretary for which
0722 levy is made, the secretary or the secretary's authorized repre-
0723 sentative may proceed thereafter and as often as may be neces-
0724 sary, to levy in like manner upon any other property or rights to
0725 property which belongs to the employer or person against whom
0726 such claim exists or upon which a lien is created by this subsec-
0727 tion (e) until the amount due from the employer or person,
0728 together with all expenses, is fully paid.

0729 (f) *Warrant.* In addition or as an alternative to any other
0730 remedy provided by this section and provided that no appeal or
0731 other proceeding for review permitted by this law shall then be
0732 pending and the time for taking thereof shall have expired, the
0733 secretary of human resources or an authorized representative of
0734 the secretary may issue a warrant certifying the amount of con-
0735 tributions, payments in lieu of contributions, benefit cost pay-
0736 ments, interest or penalty, and the name of the employer liable
0737 for same after giving 15 days prior notice. Upon request, service
0738 of final notices shall be made by the sheriff within the sheriff's
0739 county, by the sheriff's deputy or some person specially ap-
0740 pointed by the secretary for that purpose, or by the secretary's
0741 designee. A person specially appointed by the secretary or the
0742 secretary's designee to serve final notices may make service any
0743 place in the state. Final notices shall be served as follows:

0744 (1) *Individual.* Service upon an individual, other than a
0745 minor or incapacitated person, shall be made by delivering a
0746 copy of the final notice to the individual personally or by leaving
0747 a copy at such individual's dwelling house or usual place of
0748 abode with some person of suitable age and discretion then
0749 residing therein, by leaving a copy at the business establishment
of the employer with an officer or employee of the establishi-

0751 ment, or by delivering a copy to an agent authorized by appoint-
0752 ment or by law to receive service of process, but if the agent is
0753 one designated by a statute to receive service, such further
0754 notice as the statute requires shall be given. If service as pre-
0755 scribed above cannot be made with due diligence, the secretary
0756 or the secretary's designee may order service to be made by
0757 leaving a copy of the final notice at the employer's dwelling
0758 house, usual place of abode or business establishment.

0759 (2) *Corporations and partnerships.* Service upon a domestic
0760 or foreign corporation or upon a partnership or other unincorpo-
0761 rated association, when by law it may be sued as such, shall be
0762 made by delivering a copy of the final notice to an officer, partner
0763 or resident managing or general agent thereof by leaving a copy
0764 at any business office of the employer with the person having
0765 charge thereof or by delivering a copy to any other agent autho-
0766 rized by appointment or required by law to receive service of
0767 process, if the agent is one authorized by law to receive service
0768 and, if the law so requires, by also mailing a copy to the em-
0769 ployer.

0770 (3) *Refusal to accept service.* In all cases when the person to
0771 be served, or an agent authorized by such person to accept
0772 service of petitions and summonses, shall refuse to receive
0773 copies of the final notice, the offer of the duly authorized process
0774 server to deliver copies thereof and such refusal shall be suffi-
0775 cient service of such notice.

0776 (4) *Proof of service.* (A) Every officer to whom a final notice
0777 or other process shall be delivered for service within or without
0778 the state, shall make return thereof in writing stating the time,
0779 place and manner of service of such writ, and shall sign such
0780 officer's name to such return.

0781 (B) If service of the notice is made by a person appointed by
0782 the secretary or the secretary's designee to make service, such
0783 person shall make an affidavit as to the time, place and manner of
0784 service thereof in a form prescribed by the secretary or the
0785 secretary's designee.

0786 (5) *Time for return.* The officer or other person receiving a
0787 final notice shall make a return of service promptly and shall

0 send such return to the secretary or the secretary's designee in
0789 any event within 10 days after the service is effected. If the final
0790 notice cannot be served it shall be returned to the secretary or
0791 the secretary's designee within 30 days after the date of issue
0792 with a statement of the reason for the failure to serve the same.
0793 The original return shall be attached to and filed with any
0794 warrant thereafter filed.

0795 (6) *Service by mail.* (A) Upon direction of the secretary or the
0796 secretary's designee, service by mail may be effected by for-
0797 warding a copy of the notice to the employer by registered or
0798 certified mail to the employer's address as it appears on the
0799 records of the agency. A copy of the return receipt shall be
0800 attached to and filed with any warrant thereafter filed.

0801 (B) The secretary of human resources or an authorized rep-
0802 resentative of the secretary may file the warrant for record in the
0803 office of the clerk of the district court in the county in which the
0804 employer owing such contributions, payments in lieu of con-
0805 tributions, benefit cost payments, interest, or penalty has busi-
0806 ness property. The warrant shall certify the amount of contribu-
0807 tions, payments in lieu of contributions, benefit cost payments,
0808 interest and penalty due, and the name of the employer liable for
0809 such amount. It shall be the duty of the clerk of the district court
0810 to file such warrant of record and enter the warrant in the records
0811 of the district court for judgment and decrees under the pro-
0812 cedure prescribed for filing transcripts of judgment.

0813 (C) The clerk shall enter, on the day the warrant is filed, the
0814 case on the appearance docket, together with the amount and the
0815 time of filing the warrant. From the time of filing such warrant,
0816 the amount of the contributions, payments in lieu of contribu-
0817 tions, benefit cost payments, interest, and penalty, certified
0818 therein, shall have the force and effect of a judgment of the
0819 district court until the same is satisfied by the secretary of human
0820 resources or an authorized representative or attorney for the
0821 secretary. Execution shall be issuable at the request of the
0822 secretary of human resources, an authorized representative or
0823 attorney for the secretary, as is provided in the case of other
08 judgments.

0825 (D) Postjudgment procedures shall be the same as for judg-
0826 ments according to the code of civil procedure.

0827 (E) Warrants shall be satisfied of record by payment to the
0828 clerk of the district court of the contributions, payments in lieu of
0829 contributions, benefit cost payments, penalty, interest to date,
0830 and court costs. Warrants may also be satisfied of record by
0831 payment to the clerk of the district court of all court costs accrued
0832 in the case and by filing a certificate by the secretary of human
0833 resources, certifying that the contributions, payments in lieu of
0834 contributions, benefit cost payments, interest and penalty have
0835 been paid.

0836 (g) *Remedies cumulative.* The foregoing remedies shall be
0837 cumulative and no action taken shall be construed as an election
0838 on the part of the state or any of its officers to pursue any remedy
0839 or action under this section to the exclusion of any other remedy
0840 or action for which provision is made.

0841 (h) *Refunds.* If any individual, governmental entity or orga-
0842 nization makes application for refund or adjustment of any
0843 amount paid as contributions, benefit cost payments or interest
0844 under this law and the secretary of human resources ~~shall deter-~~
0845 ~~mine~~ *determines* that such amount or any portion thereof was
0846 erroneously collected, except for amounts less than \$1, the sec-
0847 retary of human resources shall allow such individual or organi-
0848 zation to make an adjustment thereof without interest, in con-
0849 nection with subsequent contribution payments, or if such
0850 adjustment cannot be made the secretary of human resources
0851 shall refund the amount, except for amounts less than \$1, without
0852 interest, from the employment security fund, except that all
0853 interest erroneously collected which has been paid into the
0854 special employment security fund shall be refunded out of the
0855 special employment security fund. No adjustment or refund shall
0856 be allowed with respect to a payment as contributions, benefit
0857 cost payments or interest unless an application therefor is made
0858 on or before whichever of the following dates is later: (1) One
0859 year from the date on which such payment was made; or (2) three
0860 years from the last day of the period with respect to which such
0861 payment was made. For like cause and within the same period

0862 adjustment or refund may be so made on the secretary's own
 0863 initiative. The secretary of human resources shall not be re-
 0864 quired to refund any contributions, payments in lieu of contri-
 0865 butions or benefit cost payments based upon wages paid which
 0866 have been used as base-period wages in a determination of a
 0867 claimant's benefit rights when justifiable and correct payments
 0868 have been made to the claimant as the result of such determina-
 0869 tion.

0870 (i) *Refund for reimbursing employer.* Upon termination of an
 0871 employer's business or termination of any election to make
 0872 payments in lieu of contributions, a reimbursing employer may
 0873 file for a refund of any payments made to the fund which are in
 0874 excess of any regular or extended benefits which have been
 0875 charged or could become chargeable to the reimbursing em-
 0876 ployer's account. No refund may be made within a twenty-four-
 0877 month period following termination of a reimbursing employer's
 0878 business or election for payments in lieu of contributions.

0879 (j) (1) *Cash deposit or bond.* If any contributing employer is
 0880 delinquent in making payments under the employment security
 0881 law during any two quarters of the most recent four-quarter
 0882 period, the secretary or the secretary's authorized representa-
 0883 tive shall have the discretionary power to require such contrib-
 0884 uting employer either to deposit cash or to file a bond with
 0885 sufficient sureties to guarantee the payment of contributions,
 0886 penalty and interest owed by such employer.

0887 (2) *The amount of such cash deposit or bond shall be not less*
 0888 *than the largest total amount of contributions, penalty and*
 0889 *interest reported by the employer in two of the four calendar*
 0890 *quarters preceding any delinquency. Such cash deposit or bond*
 0891 *shall be required until the employer has shown timely filing of*
 0892 *reports and payment of contributions for four consecutive cal-*
 0893 *endar quarters.*

0894 (3) *Failure to file such cash deposit or bond shall subject the*
 0895 *employer to a surcharge of 2.0% which shall be in addition to*
 0896 *the rate of contributions assigned to the employer under K.S.A.*
 0897 *44-710a and amendments thereto. Contributions paid as a result*
 0898 *of this surcharge shall not be credited to the employer's experi-*

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.

0899 *ence rating account. This surcharge shall be effective during the*
 0900 *next full calendar year after its imposition and during each full*
 0901 *calendar year thereafter until the employer has filed the re-*
 0902 *quired cash deposit or bond or has shown timely filing of*
 0903 *reports and payment of contributions for four consecutive cal-*
 0904 *endar quarters.*

0905 (k) *Any officer, major stockholder or other person who has*
 0906 *charge of the affairs of an employer, which is an employing unit*
 0907 *described in section 501(c)(3) of the federal internal revenue*
 0908 *code of 1954 or which is any other corporate organization or*
 0909 *association, or any public official, who willfully fails to pay the*
 0910 *amount of contributions, payments in lieu of contributions or*
 0911 *benefit cost payments required to be paid under the employ-*
 0912 *ment security law on the date on which such amount becomes*
 0913 *delinquent, shall be personally liable for the total amount of the*
 0914 *contributions, payments in lieu of contributions or benefit cost*
 0915 *payments and any penalties and interest due and unpaid by*
 0916 *such employing unit. The secretary or the secretary's authorized*
 0917 *representative may assess such person for the total amount of*
 0918 *contributions, payments in lieu of contributions or benefit cost*
 0919 *payments and any penalties, and interest computed as due and*
 0920 *owing. With respect to such persons and such amounts assessed,*
 0921 *the secretary shall have available all of the collection remedies*
 0922 *authorized or provided by this section.*

0923 Sec. 6. ~~On July 1, 1986,~~ K.S.A. 44-719 is hereby amended to
 0924 read as follows: 44-719. (a) Any person who makes a false
 0925 statement or representation knowing it to be false or knowingly
 0926 fails to disclose a material fact, to obtain or increase any benefit
 0927 or other payment under this act, either for ~~himself or herself~~ such
 0928 person or for any other person, shall be guilty of theft and shall
 0929 be punished in accordance with the provisions of K.S.A. 21-3701,
 0930 ~~or any~~ and amendments thereto.

0931 (b) Any employing unit or any officer or agent for any em-
 0932 ploying unit or any other person who makes a false statement or
 0933 representation knowing it to be false, or who knowingly fails to
 0934 disclose a material fact, to prevent or reduce the payment of
 0935 benefits to any individual entitled thereto, or to avoid becoming

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.

3 or remaining subject hereto or to avoid or reduce any contribu-
0937 tion or other payment required from an employing unit under
0938 this act, or who willfully fails or refuses to make any such
0939 contributions or other payment or to furnish any reports required
0940 hereunder or to produce or permit the inspection or copying of
0941 records as required hereunder, shall be punished by a fine of not
0942 less than ~~twenty dollars (\$20)~~ \$20 nor more than ~~two hundred~~
0943 ~~dollars (\$200)~~ \$200, or by imprisonment for not longer than ~~sixty~~
0944 ~~(60)~~ 60 days, or both such fine and imprisonment. Each such
0945 false statement or representation or failure to disclose a material
0946 fact, and each day of such failure or refusal shall constitute a
0947 separate offense.

0948 (c) Any person who ~~shall~~ willfully ~~violate~~ *violates* any provi-
0949 sion of this act or any rule and regulation adopted by the
0950 secretary hereunder, the violation of which is made unlawful or
0951 the observance of which is required under the terms of this act,
0952 and for which a penalty is neither prescribed herein or provided
0953 by any other applicable statute, shall be punished by a fine of not
0954 less than ~~twenty dollars (\$20)~~ \$20 nor more than ~~two hundred~~
0955 ~~dollars (\$200)~~ \$200, or by imprisonment for not longer than ~~sixty~~
0956 ~~(60)~~ 60 days, or by both such fine and imprisonment, and each
0957 day such violation continues shall be deemed to be a separate
0958 offense.

0959 (d) Any person who has received any amount of money as
0960 benefits under this act while any conditions for the receipt of
0961 benefits imposed by this act were not fulfilled in ~~his or her~~ *such*
0962 *person's* case, or while such person was disqualified from re-
0963 ceiving benefits, shall in the discretion of the secretary, either be
0964 liable to have such amount of money deducted from any future
0965 benefits payable to ~~him or her~~ *such person* under this act or shall
0966 be liable to repay to the secretary for the ~~unemployment com-~~
0967 ~~ensation~~ *employment security* fund an amount of money equal
0968 to the amount so received by such person. After a period of five
0969 ~~(5)~~ years, the secretary may waive the collection of any such
0970 amount of money when the secretary has determined that the
0971 payment of such amount of money was not due to fraud, misrep-
resentation, or willful nondisclosure on the part of the person

0973 receiving such amount of money, and the collection thereof
 0974 would be against equity or would cause extreme hardship with
 0975 regard to such person. *The collection of benefit overpayments*
 0976 *which were made in the absence of fraud, misrepresentation or*
 0977 *willful nondisclosure of required information on the part of the*
 0978 *person who received such overpayments, may be waived by the*
 0979 *secretary at any time if such person met all eligibility require-*
 0980 *ments of the employment security law during the weeks in*
 0981 *which the overpayments were made. Unless collection is waived*
 0982 *by the secretary, any such amount shall be collectible in the*
 0983 *manner provided in subsection (b) of K.S.A. 44-717; and amend-*
 0984 *ments thereto; for the collection of past due contributions. The*
 0985 *courts of this state shall in like manner entertain actions to*
 0986 *collect amounts of money erroneously paid as benefits, or un-*
 0987 *lawfully obtained, for which liability has accrued under the*
 0988 *employment security law of any other state or of the federal*
 0989 *government.*

0990 (e) *Any employer or person who willfully fails or refuses to*
 0991 *pay contributions, payments in lieu of contributions or benefit*
 0992 *cost payments or attempts in any manner to evade or defeat any*
 0993 *such contributions, payments in lieu of contributions or benefit*
 0994 *cost payments or the payment thereof, shall be liable for the*
 0995 *payment of such contributions, payments in lieu of contribu-*
 0996 *tions or benefit cost payments and, in addition to any other*
 0997 *penalties provided by law, shall be liable to pay a penalty equal*
 0998 *to the total amount of the contributions, payments in lieu of*
 0999 *contributions or benefit cost payments evaded or not paid.*

1000 Sec. 7. ~~On July 1, 1986,~~ K.S.A. 75-6210 is hereby amended to
 1001 read as follows: 75-6210. (a) Upon completion of a setoff trans-
 1002 action, the director shall transfer the net proceeds collected to
 1003 the account or fund of the officer or agency to which the debt was
 1004 owed.

1005 (b) From the gross proceeds collected by the director through
 1006 setoff, the director shall retain a reasonable collection assistance
 1007 fee of not to exceed 15%, *except that in the case of transactions*
 1008 *for collection of debts arising from the employment security law*
 1009 *such fee shall not exceed \$300 for any transaction.* The director

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 overpay-
 ments 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 depart-
 ment 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 lia-
 bility 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.

1010 may credit a portion of the collection assistance fee to the
1011 appropriate account or fund of any other state agency that has
1012 incurred expenses in assisting in the collection of the debt. The
1013 amount of the collection assistance fee retained by the director
1014 shall be deposited in the state treasury and credited to the
1015 accounting services recovery fund.

1016 (c) Upon receipt by the agency of the net proceeds collected,
1017 the agency shall credit the debtor's obligation in the amount of
1018 the gross proceeds collected.

1019 (d) Except as otherwise prescribed by the director or the
1020 secretary of administration, any state agency which receives any
1021 payment from a debtor after notification to the debtor under
1022 K.S.A. 75-6206 and amendments thereto, other than payments
1023 collected pursuant to K.S.A. 44-718 and amendments thereto or
1024 collected through the federal government or judicial process,
1025 shall remit the collection assistance fee imposed under subsec-
1026 tion (b) to the director which shall be credited to the accounting
1027 services recovery fund. If a state agency fails to remit the collec-
1028 tion assistance fee as required by this subsection, the director
1029 may transfer an amount equal to such collection assistance fee
1030 from the appropriate account or fund of the state agency to the
1031 accounting services recovery fund.

1032 (e) In cases involving the collection of debts arising from the
1033 employment security law, the entire amount collected shall be
1034 credited to the employment security fund and the collection
1035 assistance fee shall be transferred from the special employment
1036 security fund to the accounting services recovery fund.

1037 ~~Sec. 8. K.S.A. 1985 Supp. 44-716a is hereby repealed.~~

1038 Sec. 9 8. On July 1, 1986, K.S.A. 44-719 and 75-6210 and
1039 K.S.A. 1985 Supp. 44-704, 44-706, 44-709, 44-710g, 44-710h,
1040 44-714 and 44-717 are hereby repealed.

1041 Sec. 10 9. This act shall take effect and be in force from and
1042 after its publication in the ~~Kansas register~~ statute book.

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.

HOUSE BILL No. 3016

By Committee on Labor and Industry

2-19

0017 AN ACT concerning the employment security law; relating to
0018 expenditures from special employment security fund;
0019 amending K.S.A. 1985 Supp. 44-716a and repealing the exist-
0020 ing section.

0021 *Be it enacted by the Legislature of the State of Kansas:*

0022 Section 1. K.S.A. 1985 Supp. 44-716a is hereby amended to
0023 read as follows: 44-716a. (a) There is hereby created in the state
0024 treasury a special fund to be known as the special employment
0025 security fund. All interest collected under the provisions of the
0026 Kansas employment security law shall be paid into this fund. No
0027 such moneys shall be expended or available for expenditure in
0028 any manner which would permit their substitution for {, or a
0029 corresponding reduction in}, federal funds which in the absence
0030 of such moneys would be available to finance expenditures for
0031 the administration of the employment security law. Nothing in
0032 this section shall prevent such moneys from being used as a
0033 revolving fund, to cover expenditures {, necessary and proper
0034 under the law}, for which federal funds have been duly re-
0035 quested but not yet received, subject to the charging of such
0036 expenditures against such funds when received. Except as oth-
0037 erwise authorized by this section, the moneys in this fund may
0038 be used by the secretary of human resources only for the pay-
0039 ment of costs of administration which are found not to have been
0040 properly and validly chargeable against federal grants {, or other
0041 funds}, received for or in the employment security administra-
0042 tion fund. *Moneys from this fund may be used to finance*
0043 *activities as deemed necessary by the secretary of human re-*
0044 *sources for the efficient operation of activities under or the*
0045 *administration of the employment security law, except that no*

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.

0046 moneys shall be used for such purposes unless the secretary has
0047 determined that no other funds are available or can be properly
0048 used to finance expenditures for such purposes. No expenditures
0049 of this fund shall be made except on written authorization by the
0050 governor and the secretary of human resources.

0051 (b) The director of accounts and reports is hereby directed to
0052 draw warrants upon the state treasurer against the money in the
0053 special employment security fund for the use and purposes as
0054 herein specified upon vouchers, approved by the secretary of
0055 human resources, and accompanied by the written authorization
0056 of the governor and the secretary of human resources. The
0057 moneys in this fund are hereby specifically made available to
0058 replace, within a reasonable time, any moneys received by this
0059 state pursuant to section 302 of the federal social security act, as
0060 amended, which, because of any action or contingency, have
0061 been lost or have been expended for purposes other than, or in
0062 amounts in excess of, those necessary for the proper administra-
0063 tion of the employment security law. The moneys in this fund
0064 shall be continuously available to the secretary of human re-
0065 sources for expenditure in accordance with the provisions of this
0066 section and shall not lapse at any time or be transferred to any
0067 other fund, except as otherwise authorized in subsection (c).

0068 (c) In addition to expenditures authorized by this section, the
0069 director of accounts and reports may transfer funds from the
0070 special employment security fund to the accounting services
0071 recovery fund as provided in K.S.A. 75-3728b and ~~75-6212,~~
0072 ~~75-6210~~ and any amendments to such sections thereto.

0073 Sec. 2. K.S.A. 1985 Supp. 44-716a is hereby repealed.

0074 Sec. 3. This act shall take effect and be in force from and
0075 after its publication in the Kansas register.

KANSAS

JSEC Job Service Employer Committee

Department of Human Resources

March 3, 1986

Larry E. Wolgast, Ed.D.
Secretary of Human Resources
401 Topeka Avenue
Topeka, KS 66603

Dear Larry:

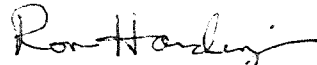
It has come to my attention that House Bill No. 3016 is now under consideration. The provisions will allow for greater flexibility in the utilization of the special employment security fund. As you know, the Kansas Job Service Employer Committee originally proposed that the Department of Human Resources pursue this concept to allow the Secretary of Human Resources with approval of the Governor to utilize this fund to finance activities related to administration of the employment service and unemployment insurance.

It is our feeling that these funds would be beneficial in providing more efficient service to Kansas employers who pay the unemployment insurance taxes. Federal budget cuts have reduced employment service staff resources by 24% since 1981 with further cuts under Gramm-Rudman-Hollings possible.

It is the consensus of opinion among the 650 employers who serve on our committees throughout the State that the Department of Human Resources must be able to utilize all funding sources available to them to ensure that the employment security system operates effectively. If the service now provided deteriorates further, employers would suffer through increased unemployment insurance costs.

Let me assure you that the 650 members of the Kansas Job Service Employer Committee fully support the passage of House Bill No. 3016.

Sincerely,



Ron Harding, Chairman
Kansas JSEC

Senate Labor, Industry and Small
Business Attachment 3 3-25-86



PHILIP MORRIS

U.S.A.

P.O. BOX 26603, RICHMOND, VIRGINIA 23261 TELEPHONE (804) 274-2000

November 22, 1983

Mr. Jerry Pickett
North Carolina Employment Security Commission (NCESC)
P. O. Box 27625
Raleigh, NC 27611

Mr. Pickett:

We are grateful to the North Carolina Employment Security Commission (NCESC) for its valuable assistance in our efforts to select the best qualified hourly employees available for our new plant in Cabarrus County. The NCESC's willingness to include Philip Morris in its Validity Generalization (VG) Pilot Project was critical in our agreement to use the General Aptitude Test Battery (GATB) as a selection device for screening our hourly applicants. The selection system which we used included: 1) A review of applications (for factors like related work experience and stable job history), 2) the GATB, 3) a structured interview, and 4) a non-compensated 64 Hour Pre-Employment Training Program. We believe that a major reason for the success of this system has been the effectiveness of the GATB in identifying higher aptitude applicants than would have been possible using more conventional procedures.

The success of the selection procedures, and of the GATB, has been evident based in part on anecdotal evidence. For example, two of the poorest performing applicants/hires thus far were subsequently identified as having unusually low GATB scores. Another example has included several anecdotes indicating very high levels of motivation by the new hire group as a whole.

Considerable objective information has also been amassed which has allowed us to monitor the success of our New Hires. This report includes an analysis of all the "Objective Data" available to date, compared against all groups or standards which were available for comparison. The comparison groups will include other successful operating plants, and industry-wide data (when available). In addition, preliminary data was available from a "Control Group" of "Transfers" from an existing plant (who were not screened using the GATB). A view of the new plant hires (GATB screened) in comparison to these available groups and standards, (based on training results, and rates of disciplinary actions, accidents, quality defects, and production) is presented below.

Training Results

In some cases it has been possible to compare the New Hires, who were screened with the GATB, against another set of employees who are essentially "transfers" (Rehires) from another plant location and were not screened with the GATB. A random sample of the GATB screened individuals (N=16) outperformed a matched

Training Results (Continued)

(by race/sex) group of non-GATB screened individuals (N=16) on all available training performance measures [94-87 (orientation), 984-927 (forktruck), 995-980 (Walkie Rider)]. A second sample of non-GATB screened individuals (N=18) was similarly outperformed by a matched GATB screened group (N=18) on an "orientation" test for a different department (93-81). The samples are small but the results consistently favor the GATB screened hires.

On a competency based training program which must be passed for promotion to high speed operator positions, the new hires who were GATB screened (average GATB score was at 89th percentile) have had a lower overall failure rate (8%) than trainees at two other existing plants (10% and 25%). This is even more impressive since the GATB screened individuals at the new plant have tougher competency based training standards than the locations with higher failure rates. Fortunately, a group of non-GATB screened individuals were "transferred" to the new plant and were also available for comparison. These "transfers" were administered the GATB for diagnostic purposes only, and had average scores in the 43rd percentile. Of the nine non-GATB screened individuals who have participated in this training, three (33%) have already failed out and the training is not yet complete. Thus, at the new plant individuals who were GATB screened have had a failure rate of 8% compared to a 33% failure rate for non-GATB screened trainees subjected to the same training program.

Disciplinary Actions

The number of disciplinary actions for GATB screened individuals has been consistently lower than the levels in other plant locations. This may occur because the GATB inadvertently screens out less motivated applicants (e.g. we had a 10-15% no-show rate for the GATB). Summed over the 9 month period that our new plant has been in operation, we have had 58% fewer disciplinary problems than in existing plants. It should be clear that in addition to the GATB other aspects of the current selection system (e.g. the 64 Hour non-compensated Pre-Employment Training Program) also contributed significantly to the screening out of less motivated applicants.

Safety/Accidents

Available Safety/Accident data clearly indicate that the GATB screened group has outperformed our other locations and significantly outperformed national industry-wide figures. For example, based on "OSHA incident rate," our new plant hires have had a 33% lower rate of accident incidents than the national average for our industry group. On an index of "lost workday severity rate," our new plant hires have a rate that represents an 88% reduction from the national average and an 82% reduction from our comparison existing plant. Finally, on an index which combines incidents and lost workday severity rate, called the overall "safety performance index" (smaller numbers are more desirable), our new plant has a figure which represents a 71% reduction from the national average and a 35% reduction from our existing comparison plant. These figures represent such astronomical differences that they are even hard for us to believe.

Quality

Data was available to compare our major quality index, "rate of critical defects", to management's agreed upon goal for the division, and to the overall rate at existing plants. Thus far, the new plant's critical defect rates have

Quality (Continued)

been consistently better than the goals (in 8 out of the 9 months) and, overall, we have had 25% fewer defects than the division goals. Furthermore, the rate at the new plant has represented a 59% reduction in critical defects compared to existing plants. Since quality defects can often be connected directly to the "troubleshooting" skills of operators, it is likely that higher aptitude levels have directly influenced quality levels at our new plant.

Production

Finally, production rates (measured by "utilization" rate) has been very favorable for the GATB screened new plant hires. Unfortunately, production utilization levels at existing plants were not available at this writing. However due to the lengthy learning curve involved in getting "up to speed" on new machines (44 months), existing plant levels would probably represent an unfair comparison anyway. The only available standard for comparison for production utilizations (percent production compared to the maximum possible production if machines were running perfectly 100% of the time) were the goals which management had set to evaluate itself against. The production utilization goals were based on a similar "startup" situation at another plant location, and take into consideration the "learning curve" for new operators (which assumes maximum utilization after a 44 month period). The actual utilizations recorded thus far have exceeded the utilization goals in all of the first nine months of operation. Actual utilization, expressed as a percent of utilization goal, has ranged from 121% to 160%. These figures also show a consistent level of production which has exceeded production goals by an average of 35%!

Summary

The chart below represents all of the data available to date for use in evaluating the effectiveness of the new plant hires, who were screened using the GATB. The chart shows that out of the 14 comparisons for which data was available the GATB screened new plant employees exceeded the comparison groups in 13 of these. The only comparison on which the new hires were not superior to one of the comparison groups was on the OSHA incident rate (compared to the existing plant), and there is a good explanation for this. The standards for recording incidents at the new plant are more strict and include many non-recordable incidents by OSHA's own standards (e.g. incidents with no lost time). Nonetheless, even on accident incident rate the new hires exceeded the national industry average by 33%. On the remaining comparisons the average "improvement margin was a whopping 41%.

The data which has been presented suggests that GATB screened employees have consistently outperformed non-GATB screened hires on a wide variety of important "bottom line" measures. However, in addition to the GATB there may be other factors which have contributed to the observed differences. One other explanation is that other aspects of the selection system itself (e.g. the application screening, structured interviews, and pre-employment training program) also helped to select better qualified and more motivated applicants. However, since the GATB was used to screen out about as many applicants as all the other hurdles combined, its impact must be viewed as a dominant one in the overall selection process.

The obtained results may also be due, in part, to differences between the new plant and existing plants. One important difference is the management philosophy in the new plant. This philosophy can be best characterized as highly humanistic and participative.

The new plant is also characterized by having differences in job designs (which give more responsibility and variety to production employees) and differences in training design. These differences (in management philosophy, and job/training design) may be important in explaining different levels of performance when other plants are used as the comparison group. However, since the "transfer" comparison group had equal exposure to these factors as the GATB screened group, some differences in performance (i.e., training results and failure rates) must be due primarily to the superior ability and/or motivation of the GATB screened new plant hires.

Measures of Effectiveness	% Improvement = Imp. % Reduction = Red.	Comparison Groups
<u>Training Success</u> Competency Based Training Score #1	5.3% Imp.	°Sample of experienced "transfers" from existing plant
Competency Based Training Score #2	13.0% Imp.	°Sample of experienced "transfers" from existing plant
Operator Competency Evaluation Failure Rate	2-17% Red. 25% Red.	°Other Plants °Sample of experienced "transfers" from existing plant
<u>Discipline</u> Disciplinary Actions	58% Red.	Other Plant
<u>Safety</u> OSHA Incident Rate	33% Red. -11% Red.	°National Industry Average °Other Plant
Lost Workday Severity Rate	88% Red. 82% Red.	°National Industry Average °Other Plant
Safety Performance Index	71% Red. 35% Red.	°National Industry Average °Other Plant
<u>Quality</u> Quality Defect Rate	25% Red. 59% Red.	°Quality Defect Goal Set by Management. °Other Plants
<u>Production</u> Production Utilization Rate	35% Imp.	°Production Rate Goal Set by Management.

Overall, the new hires have more than exceeded expectations, and have created a workforce which can be characterized as faster learning, more disciplined, safer, more quality conscious, and more productive. We would again like to thank the NCEC for their valuable assistance in helping us to select such a high caliber of employees.

Dennis L. Warmke

Dennis L. Warmke, Ph. D.
Senior Personnel Research Specialist

Bill Van Arnam

Bill Van Arnam
Director, Employee Relations, Cabarrus



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

September 27, 1982

MAIN PHONE 1913/296-2215
CONSUMER PROTECTION 296-3751

ATTORNEY GENERAL OPINION NO. 82- 213

Bryce B. Moore, Director
Division of Worker's Compensation
Department of Human Resources
Sixth Floor, 535 Kansas Avenue
Topeka, Kansas 66603

Re: Automobiles -- Serious Traffic Offenses -- Driving While Under Influence of Alcohol; Performance of Community Service Not Covered by Workmen's Compensation

Synopsis: As amended by L. 1982, ch. 144, §5, K.S.A. 1981 Supp. 8-1567 provides that a person convicted of a violation of the offense of operating a motor vehicle while under the influence of alcohol may be required to perform public or community service work as an alternative to incarceration or payment of a fine. In performing such work, a person receives no compensation, but rather fulfills a condition of his or her sentence from the district or municipal court. Accordingly, such a person is not a workman, employee or worker, as those terms are defined by K.S.A. 44-508(b) of the Workmen's Compensation Act, and is therefore not covered by the terms of the Act. Cited herein: K.S.A. 1981 Supp. 8-1567 (as amended by L. 1982, ch. 144, §5), K.S.A. 44-508, K.S.A. 1981 Supp. 75-6102.

* * *

Dear Mr. Moore:

As Director of the Division of Worker's Compensation of the Department of Human Resources, you request our opinion on a question involving the scope of certain amendments to K.S.A. 1981 Supp. 8-1567, which relates to the offense of operating a vehicle under the influence of alcohol. Specifically, you inquire as to the effect of provisions which allow a person

Bryce B. Moore
Page Two

who has been convicted of a violation to perform community service work in lieu of serving time in jail or paying all or part of a fine. Your question concerns the status of such a person under the Kansas Workmen's Compensation Act, K.S.A. 44-501 et seq., which is administered by your office.

As amended, subsection (c) of K.S.A. 1981 Supp. 8-1567 provides:

"Upon a first conviction of a violation of this section, a person shall be sentenced to not less than 48 hours' imprisonment or 100 hours of public service nor more than 6 months' imprisonment and fined not less than \$200 nor more than \$500, or by both such fine and imprisonment." (Emphasis added.)

The provision for the performance of public service is a new feature of the subsection, which previously allowed the imposition of jail time, a fine or both. Subsection (g) of the statute as amended provides a further alternative concerning payment of any fine imposed, to-wit:

"In lieu of payment of a fine imposed pursuant to this section, the court may order that the person perform community service specified by the court. The person shall receive a credit on the fine imposed in an amount equal to \$5 for each full hour spent by the person in the specified community service." (Emphasis added.)

A previous opinion of this office, No. 82-183, concluded that the terms "public service" and "community service" were synonymous.

Two previous opinions of this office have concluded that individuals performing such work are within the meaning of the term "employee" as defined by the Kansas Tort Claims Act at K.S.A. 1981 Supp. 75-6102(d). Attorney General Opinion Nos. 82-157, 82-183. As such, a governmental unit which utilizes the services of convicted violators in such circumstances could potentially be liable under that act for injuries and damages inflicted or suffered by such persons. You inquire whether the provisions of the Kansas Workmen's Compensation Act would by analogy also apply.

In our opinion, such would not be the case. It has been repeatedly held that for the provisions of K.S.A. 44-501 et seq. to apply, there must be an employer-employee relationship in

existence. See, Dorst v. City of Chanute, 185 Kan. 593 (1959) and cases cited therein at 598. At K.S.A. 44-508(b), the following definition appears:

"'Workman' or 'employee' or 'worker' means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, ambulance attendants, mobile intensive care technicians, firemen or fire fighters, but only to the extent and during such periods as they are so serving in such capacities; persons employed by educational, religious and charitable organizations, but only to the extent and during the periods that they are paid wages by such organizations; persons in the service of the state, or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; volunteers in any employment, if the employer has filed an election to extend coverage to such volunteers; and minors, whether such minors are legally or illegally employed." (Emphasis added.)

It is noteworthy that the above definition looks to the existence of a "contract of service" between the employer and employee, which must exist before the other provisions of the Act come into play. Dorst v. City of Chanute, *supra*; Gaston v. San Ore Construction Co., 206 Kan. 254 (1970). Such a contract does not establish tort liability. Yocum v. Phillips Petroleum Co., 228 Kan. 216 (1980). This is in contrast to the Tort Claims Act, which looks to the degree of control which one person has over the actions of another. Thus, while the latter act covers employer-employee relationships, it also covers master-servant relationships in which no contract of service may exist. K.S.A. 1981 Supp. 75-6102(d); Attorney General Opinion No. 82-157.

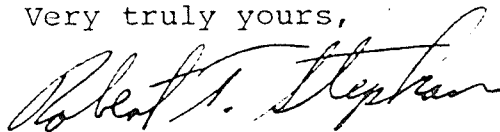
It is our opinion that this distinction is determinative here, where any agreement made by a convicted violator is with the court or prosecuting attorney and not the entity which receives the benefit of the service. Such agreements are not in the

Bryce B. Moore
Page Four

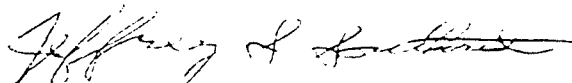
nature of a contract of employment, but rather are a condition of one's sentence, to be performed in lieu of serving jail time. Further, while the recipient of the service, whether a governmental entity or a private organization, has a right to control such persons' actions so as to invoke the Tort Claims Act, it makes no agreement with them as to compensation, length of time to be served, deadline for completion or the consequences of a failure to perform assigned tasks of community service work.

In conclusion, as amended by L. 1982, ch. 144, §5, K.S.A. 1981 Supp. 8-1567 provides that a person convicted of a violation of the offense of operating a motor vehicle while under the influence of alcohol may be required to perform public or community service work as an alternative to incarceration or payment of a fine. In performing such work, a person receives no compensation, but rather fulfills a condition of his or her sentence from the district or municipal court. Accordingly, such a person is not a workman, employee or worker, as those terms are defined by K.S.A. 44-508(b) of the Workmen's Compensation Act, and is therefore not covered by the terms of the Act.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Jeffrey S. Southard
Assistant Attorney General

RTS:BJS:JSS:hle

JAMES D. BRADEN
MAJORITY LEADER

ROOM 381-W, CAPITOL BUILDING
TOPEKA, KANSAS 66612-1504
(913) 296-2302



TOPEKA

HOUSE OF
REPRESENTATIVES

TESTIMONY BEFORE THE SENATE LABOR AND INDUSTRY COMMITTEE

HOUSE BILL 2891

MARCH 25, 1986

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

THERE HAS BEEN CONSIDERABLE CONCERN ABOUT THE POSSIBLE LIABILITY OF A PUBLIC AGENCY OR NON-PROFIT COMMUNITY AGENCY IF A DEFENDANT SENTENCED TO PERFORM COMMUNITY SERVICE FOR THE AGENCY SHOULD INJURE THE DEFENDANT'S SELF OR ANOTHER PERSON.

IN 1984, LEGISLATIVE POST AUDIT RELEASED A PUBLICATION ENTITLED "LIABILITY IN COMMUNITY SERVICE WORK PROGRAMS." DISCUSSED IN THE PUBLICATION ARE THE PERTINENT ISSUES SURROUNDING COMMUNITY SERVICE PROGRAMS. FOR WORKER'S COMPENSATION PURPOSES, THE REPORT POINTS OUT, PERSONS SENTENCED TO COMMUNITY SERVICES ARE NOT COVERED BY THE WORKMEN'S COMPENSATION ACT. GENERALLY, AN OFFENDER INJURED DURING THE COURSE OF EMPLOYMENT WOULD NOT BE COVERED BY INSURANCE. LIABILITY FOR INJURY TO OTHER PERSONS OR PROPERTY IS ALSO DISCUSSED IN THE REPORT. OFFENDERS IN THE COMMUNITY SERVICE

WORK PROGRAMS, WHILE NOT CONSIDERED EMPLOYEES FOR WORKMEN'S COMPENSATION COVERAGE, AND HENCE NOT COVERED, ARE CONSIDERED EMPLOYEES UNDER THE KANSAS TORT CLAIMS ACT. THE EMPLOYING PUBLIC AGENCY COULD BE HELD LIABLE UNDER THESE CIRCUMSTANCES. ALONG THESE LINES, THE ATTORNEY GENERAL, IN A RECENT OPINION HAS DECLARED THAT COMMUNITY SERVICE WORKERS ARE EMPLOYEES OF THE ORGANIZATIONS OR AGENCY, PUBLIC OR PRIVATE, WHICH HAS THE RIGHT TO CONTROL THEIR COMMUNITY SERVICE ACTIVITIES. FURTHER, PARTICIPATING AGENCIES CANNOT CIRCUMVENT THIS LIABILITY BY REQUIRING THE OFFENDER TO SIGN A WAIVER OR RELEASE FORM.

DURING THE INTERIM HEARINGS A REPRESENTATIVE OF THE KANSAS COUNTY AND DISTRICT ATTORNEYS' ASSOCIATION STATED THAT PLACING AN OFFENDER IN COMMUNITY SERVICE IS MUCH MORE ECONOMICAL THAN PLACING AN OFFENDER IN JAIL.

HOUSE BILL 2891 SPECIFICALLY INCLUDES CERTAIN PERSONS PERFORMING COMMUNITY SERVICE IN THE DEFINITION OF "EMPLOYEE" UNDER CERTAIN CONDITIONS. IT DOES NOT ATTEMPT TO ADDRESS THE PROBLEM OF 3RD PARTY INJURY, BUT IT SHOULD SUBSTANTIALLY IMPROVE THE SITUATION REGARDING POSSIBLE INJURY TO THE DEFENDANT.

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE THE COMMITTEE. I URGE YOUR FAVORABLE CONSIDERATION OF HOUSE BILL 2891.

I WOULD BE HAPPY TO ANSWER ANY QUESTIONS.

STAN BASLER
District No. 1
Cherryvale

CARL C. CLARK
District No. 2
Independence

Attachment no. 6
RAY CALDWEL
District No. 3
Coffeyville

COUNTY COMMISSIONERS
MONTGOMERY COUNTY

INDEPENDENCE, KANSAS 67301

March 24, 1986

TO: Senator Dan Thiessen, Chairman

Statement in Favor of House Bill 2891

Dear Senator Thiessen:

I am writing you regarding House Bill 2891 in my capacity as County Commissioner of Montgomery County, Kansas.

A couple of years ago our county government formed a Solid Waste Management Citizens Advisory Committee. During the past couple of years discussion in these committee meetings revealed that many of our local citizens feel that the problem of illegal dumping in road side ditches is a serious problem. It affects both the attractiveness of our area as well as local health and safety.

In addition, within the last couple of years Montgomery County, Kansas has been blessed with a Community Corrections Program funded by the Department of Corrections.

Both the Solid Waste Management Advisory Committee and the Advisory Board of the Community Corrections Program have determined that it would be desirable for Community Corrections clients to form a work crew and have vehicles and supervision to go out and clean road side ditches.

Once again, this is a concept which I am sure will be extremely popular with the citizens of our area. People, in general, disfavor the idea of incarcerating convicted felons and allowing those individuals to receive their life's sustenance and receive no labor in return. Furthermore, we all know that incarceration alone is not rehabilitative. If some of our convicted felons were to receive some basic preoccupation supervision so that they could learn behaviorally how to be better prepared to enter the employment market, it could have a rehabilitative effect.

The only obstacle to the manifestation of the plan to use community corrections people in an effort to clean road side ditches and receive some additional training at the same time, is the unclear picture regarding liability for on-the-job injury regarding such people. House Bill 2891 clarifies that situation.

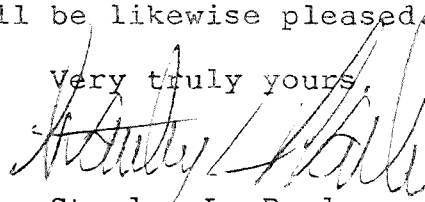
I know with changes in recent years regarding DWI penalties and in view of a general trend around the State to permit community service work in lieu of incarceration, that there are a number of jurisdictions who would be pleased upon the passage of

Senate Labor, Industry and Small
Business Attachment 6 3-25-86

House Bill 2891. In my opinion, all community service work in lieu of incarceration suffers now from the unclear definition of liability for accidental injury. House Bill 2891 would clarify that question in nearly every case.

Consequently, I can say with confidence that Montgomery County would be most pleased if this bill is passed. I also believe that other jurisdictions will be likewise pleased.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Stanley L. Basler", written in dark ink.

Stanley L. Basler

March 25, 1986

SENATE COMMITTEE ON
LABOR, INDUSTRY & SMALL BUSINESS

Testimony on

House Bill 2891
Community Service Workers
Under Workers' Compensation

by

Marjorie J. Van Buren

There has been considerable concern about the possible liability of a public agency or non-profit community agency if a defendant sentenced to perform community work service for the agency should injure the defendant's self or another person.

The interim committee heard testimony that agencies in several judicial districts had found ways to cover possible liability for injuries to the defendants through inclusion of the defendant in a workers' compensation policy. Further information after the completion of interim committee hearings suggests that coverage obtained under workers' compensation insurance might be invalid because such court-ordered service does not fall under the definition of "employee." (See A.G. Opinion No. 82-213, attached.)

House Bill 2891 specifically includes certain persons performing community service in the definition of "employee" under certain conditions. It does not attempt to address the problem of 3rd party injury, but it should substantially improve the situation regarding possible injury to the defendant.

Senate Labor, Industry and Small
Business Attachment 7 3-25-86



United Community Services of Johnson County, Inc.
5311 Johnson Drive, Mission, Kansas 66205
913/432-8424

BOARD of DIRECTORS
Executive Committee

- Betty Keim
President
- Gary McEachen
1st Vice President
- Ann Booth
2nd Vice President
- James B. Lowe
Secretary
- Carol Sader
Treasurer
- Barbara Buehler
- Dr. William Murphy
- Warren Robinson

MEMBERS

- Dr. Raj Chopra
- William Christian
- Craig Christie
- William Cleaver
- Robert Collins
- Gary Gordon
- Gerald Hay
- Walda Johnson
- Asher C. Langworthy, Jr.
- Fred J. Logan, Jr.
- Judge G. Joseph Pierron
- Kyle Robinson
- Elsie Smith
- Myrna Stringer
- Harold Washington
- James P. Way
- Janet Wiglesworth

COUNCIL of ADVISORS

- Robert Bennett
- Mary Birch
- Richard Bond
- Dr. Charles Carlsen
- Ben Craig
- Anne Debus
- SuEllen Fried
- Adele Hall
- Dr. Robert Meneilly
- The Hon. Jan Meyers
- Dennis Moore
- Shirley Rose
- Roe Taliaferro
- Frank Taylor

Gina Pulliam
Executive Director

TO : Senate Labor, Industry & Small Business Committee
 FROM: United Community Services of Johnson County
 DATE: March 25, 1986
 RE : HB 2891

I am Donna Cummins and I am speaking on behalf of United Community Services of Johnson County. UCS is the sponsoring agency for the Court Referral Program in Johnson County. Through this program, defendants are placed with non-profit agencies to perform community service work. I am the staff coordinator who interviews, places and monitors the community service volunteers. Our program works closely with the Johnson County District Attorney's office which refers the defendants to me for placement to complete the required number of volunteer hours.

The Johnson County program is currently in suspension because of rulings that community service workers are not covered under workmen's compensation. Prior to the Attorney General's opinion on this matter, our office and the Johnson County District Attorney's office thought the community service volunteers were covered by the county's workmen's compensation plan. If the insurance questions are not resolved soon, our program in all likelihood will be closed.

Community service is an important component of alternative sentencing, and has been extremely successful in Johnson County. During 1985, a total of 141 defendants were referred and completed 13,000 hours of service to non-profit agencies. This represents a significant increase over the number of defendants and hours of service recorded for 1984.



Planning Partner with Heart of America United Way

Passage of HB 2891 would be a major step towards resolving the insurance problems and questions associated with the community service program. In our particular county, we are also addressing the need for liability insurance coverage for this program.

United Community Services urges your support of HB 2891 and your attention to the insurance dilemmas threatening the continuation of this important service.