

Approved

Arthur Douville 4-7-87
Date

MINUTES OF THE House COMMITTEE ON Labor and Industry

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

9:04 a.m./~~p.m.~~ on March 27, 1987 in room 526-S of the Capitol.

All members were present except:

Representatives Buehler, R. D. Miller and Sifers - Excused
Representatives Dillon, Hensley and Roper

Committee staff present:

Jerry Donaldson, Research Department
Jim Wilson, Revisor of Statutes' Office
Juel Bennewitz, Secretary to the Committee

Conferees appearing before the committee:

Minutes of the February 26 and 27 and March 17 and 18, 1987, meetings were distributed to the committee. If no objections were received by Monday, March 30, 1987, the minutes would stand approved.

Copies of proposed amendments to S.B. 237 were distributed to the committee, attachment # 1. Also distributed was an explanation of the proposed changes in S.B. 237 which had been prepared by the Employment Security Advisory Council, attachment # 2.

Jim Wilson reviewed the proposed changes for the committee. There were several questions of clarification which were answered by Mr. Wilson and representatives of the Department of Human Resources.

Chairman Douville asked if these amendments reflected requested changes by Dennis Taylor, Secretary of the Department of Human Resources. Letters from Dennis Taylor to Chairman Douville regarding the aforementioned changes are attachments # 3 and # 4.

Representative Acheson made a motion to adopt the proposed amendments into S.B. 237. Representative Whiteman seconded the motion which passed.

Representative Acheson made a motion to report S.B. 237 favorably for passage. Representative Green seconded the motion which passed.

Representative Webb brought H.B. 2758 to the attention of the committee. He authored the bill as a result of H.B. 2186. It would include preventive medicine for workers such as ambulance drivers or firemen against hepatitis.

Chairman Douville scheduled the bill for introduction, hearing, discussion and final action Tuesday, March 31, 1987.

The meeting was adjourned at 9:50 a.m.

The next meeting will be March 31, 1987, at 9:00 a.m.

PROPOSED AMENDMENTS TO S.B. NO. 237

For Consideration by Committee on Labor and Industry

Be amended:

On page 1, by striking all in lines 22 through 45;

On page 2, by striking all in lines 46 through 82;

On page 3, by striking all in lines 83 through 119;

On page 4, by striking all in lines 120 through 156;

On page 5, by striking all in lines 157 through 193;

On page 6, by striking all in lines 194 through 230;

On page 7, by striking all in lines 231 through 267;

On page 8, by striking all in lines 268 through 304;

On page 9, by striking all in lines 305 through 341;

On page 10, by striking all in lines 342 through 378;

On page 11, by striking all in lines 379 through 415;

On page 12, by striking all in lines 416 through 452;

On page 13, by striking all in lines 453 through 489;

On page 14, by striking all in lines 490 through 526;

On page 15, by striking all in lines 527 through 563;

On page 16, by striking all in lines 564 through 600;

On page 17, by striking all in lines 601 through 637;

On page 18, by striking all in lines 638 through 674;

On page 19, by striking all in lines 675 through 711;

On page 20, by striking all in lines 712 through 748;

On page 21, by striking all in lines 749 through 785;

On page 22, by striking all in lines 786 through 822;

On page 23, by striking all in lines 823, 824 and 825 and inserting in lieu thereof the following material to read as follows:

"Section 1. K.S.A. 44-703, as amended by section 1 of 1987 Senate Bill No. 4, is hereby amended to read as follows: 44-703. As used in this act, unless the context clearly requires otherwise: (a) (1) "Annual payroll" means the total amount of wages paid or payable by an employer during the calendar year.

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

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

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

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

(d) "Benefit year" with respect to any individual, means the period beginning with the first day of the first week for which such individual files a valid claim for benefits, and such benefit year shall continue for one full year. In the case of a combined wage claim, the benefit year shall be the benefit year of the paying state. Following the termination of a benefit year, a subsequent benefit year shall commence on the first day of the first week with respect to which an individual next files a claim for benefits. When such filing occurs with respect to a week

which overlaps the preceding benefit year, the subsequent benefit year shall commence on the first day immediately following the expiration date of the preceding benefit year. Any claim for benefits made in accordance with subsection (a) of K.S.A. 44-709 and amendments thereto shall be deemed to be a "valid claim" for the purposes of this subsection if the individual has been paid wages for insured work as required under subsection (e) of K.S.A. 44-705 and amendments thereto. Whenever a week of unemployment overlaps two benefit years, such week shall, for the purpose of granting waiting-period credit or benefit payment with respect thereto, be deemed to be a week of unemployment within that benefit year in which the greater part of such week occurs.

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

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

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

(g) "Employing unit" means any individual or type of organization, including any partnership, association, agency or department of the state of Kansas and political subdivisions thereof, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign including nonprofit corporations, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representatives of a deceased person, which has in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit

for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the employment.

(h) "Employer" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) Any employing unit, whether or not it is an employing unit under subsection (g) of this section, which acquires or in

any manner succeeds to (A) substantially all of the employing enterprises, organization, trade or business, or (B) substantially all the assets, of another employing unit which at the time of such acquisition was an employer subject to this act.

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

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

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

(8) Any employing unit not an employer by reason of any other paragraph of this subsection (h), for which within either the current or preceding calendar year services in employment are or were performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; or which, as a condition for approval of this act for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to such act, to be an "employer" under this act.

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

(i) "Employment" means:

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

(A) Any active officer of a corporation; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) Services performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act only if the individual performing such services is a resident of this state and the secretary approved the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

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

(D) Services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to

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

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

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

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

(i) The employer's principal place of business in the

United States is located in this state; or

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

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

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

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

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

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

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

(ii) a partnership if 2/3 or more of the partners are residents of the United States; or

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

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

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

(J) Notwithstanding any other provisions of this subsection (i), service with respect to which a tax is required to be paid

under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or which as a condition for full tax credit against the tax imposed by the federal unemployment tax act is required to be covered under this act.

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

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

(i) As an elected official;

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

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

(iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;

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

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

(C) service performed by an individual in the employ of such individual's son, daughter or spouse, and service performed by a child under the age of 21 years in the employ of such individual's father or mother;

(D) service performed in the employ of the United States government or an instrumentality of the United States exempt

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

(E) service covered by an arrangement between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within the jurisdiction of such other state or federal agency;

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

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

(H) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal internal revenue code (other than an organization

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

(I) services performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

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

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

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

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

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

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

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

(O) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subsection (i)(4)(O) shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

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

(Q) services performed as a qualified real estate agent. As used in this subsection (i)(4)(Q) the term "qualified real estate agent" means any individual who is licensed by the Kansas real estate commission as a salesperson under the real estate brokers' and salespersons' license act and for whom:

(i) Substantially all of the remuneration, whether or not paid in cash, for the services performed by such individual as a real estate salesperson is directly related to sales or other

output, including the performance of services, rather than to the number of hours worked; and

(ii) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for state tax purposes;

(R) services performed for an employer by an extra in connection with any phase of motion picture or television production or television commercials for less than 14 days during any calendar year. As used in this subsection, the term "extra" means an individual who pantomimes in the background, adds atmosphere to the set and performs such actions without speaking and "employer" shall not include any employer which is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1954 which is exempt from income under section 501(a) of the code.

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

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

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

(m) "Unemployment." An individual shall be deemed "unemployed" with respect to any week during which such individual performs no services and with respect to which no wages are payable to such individual, or with respect to any week

of less than full-time work if the wages payable to such individual with respect to such week are less than such individual's weekly benefit amount.

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

(o) "Wages" means all compensation for services, including commissions and bonuses and the cash value of all remuneration in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules and regulations prescribed by the secretary. Compensation payable to an individual which has not been actually received by that individual within 21 days after the end of the pay period in which the compensation was earned shall be considered to have been paid on the 21st day after the end of that pay period. Effective January 1, 1986, gratuities, including tips received from persons other than the employing unit, shall be considered wages when reported in writing to the employer by the employee. Employees must furnish a written statement to the employer, reporting all tips received if they total \$20 or more for a calendar month whether the tips are received directly from a person other than the employer or are paid over to the employee by the employer. This includes amounts designated as tips by a customer who uses a credit card to pay the bill. The term "wages" shall not include:

(1) That part of the remuneration which has been paid in a calendar year to an individual by an employer or such employer's predecessor in excess of \$3,000 for all calendar years prior to 1972, \$4,200 for the calendar years 1972 to 1977, inclusive, \$6,000 for calendar years 1978 to 1982, inclusive, \$7,000 for the calendar year 1983, and \$8,000 with respect to employment during any calendar year following 1983, except that if the definition of the term "wages" as contained in the federal unemployment tax act is amended to include remuneration in excess of \$8,000 paid

to an individual by an employer under the federal act during any calendar year, wages shall include remuneration paid in a calendar year to an individual by an employer subject to this act or such employer's predecessor with respect to employment during any calendar year up to an amount equal to the dollar limitation specified in the federal unemployment tax act. For the purposes of this subsection (o)(1), the term "employment" shall include service constituting employment under any employment security law of another state or of the federal government;

(2) the amount of any payment (including any amount paid by an employing unit for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of such employee's dependents under a plan or system established by an employer which makes provisions for employees generally, for a class or classes of employees or for such employees or a class or classes of employees and their dependents, on account of (A) sickness or accident disability, except in the case of any payment made to an employee or such employee's dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workmen's compensation law. Any third party which makes a payment included as wages by reason of this subparagraph (2)(A) shall be treated as the employer with respect to such wages, or (B) medical and hospitalization expenses in connection with sickness or accident disability, or (C) death;

(3) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(4) any payment made to, or on behalf of, an employee or such employee's beneficiary: (A) From or to a trust described in section 401(a) of the internal revenue code which is exempt from tax under section 501(a) of the internal revenue code at the time

of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust;

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a) of the internal revenue code;

(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a) of the internal revenue code;

(D) under a simplified employee pension plan if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) of the internal revenue code;

(E) under or to an annuity contract described in section 403(b) of the internal revenue code, other than a payment for the purchase of such contract which was made by reason of a salary reduction agreement whether evidenced by a written instrument or otherwise;

(F) under or to an exempt governmental deferred compensation plan as defined in section 3121(v)(3) of the internal revenue code; or

(G) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subparagraph to take into account some portion or all of the increase in the cost of living, as determined by the secretary of labor, since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the employee retirement income security act of 1974;

(5) the payment by an employing unit (without deduction from the remuneration of the employee) of the tax imposed upon an employee under section 3101 of the internal revenue code with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(6) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or

business;

(7) remuneration paid to or on behalf of an employee if and to the extent that at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the internal revenue code relating to moving expenses;

(8) any payment or series of payments by an employer to an employee or any of such employee's dependents which is paid: (A) Upon or after the termination of an employee's employment relationship because of (i) death or (ii) retirement for disability; and

(B) under a plan established by the employer which makes provisions for employees generally, a class or classes of employees or for such employees or a class or classes of employees and their dependents, other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(9) remuneration for agricultural labor paid in any medium other than cash;

(10) any contribution, payment or service provided by an employer which may be excluded from the gross income of an employee, such employee's spouse or dependents, under the provisions of section 120 of the internal revenue code relating to amounts received under qualified group legal services plans;

(11) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129 of the internal revenue code which relates to educational assistance programs and dependent care assistance programs;

(12) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the internal revenue

code;

(13) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

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

Nothing in any paragraph of subsection (o), other than paragraph (1), shall exclude from the term "wages": (1) Any employer contribution under a qualified cash or deferred arrangement, as defined in section 401(k) of the internal revenue code, to the extent that such contribution is not included in gross income by reason of section 402(a)(8) of the internal revenue code; or (2) any amount treated as an employer contribution under section 414(h)(2) of the internal revenue code.

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this section as of the later of when the services are performed or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of this paragraph, and the income attributable thereto, shall not thereafter be treated as wages for purposes of this section. For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (o)(4).

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

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

by rules and regulations prescribe.

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

(s) "Approved training" means any vocational training course or course in basic education skills approved by the secretary or a person or persons designated by the secretary.

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

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

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

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

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

(4) is a public or other nonprofit institution.

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

(v) "Educational institution" means any institution of higher education, as defined in subsection (u) of this section, or any institution, except private for profit institutions, in which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher and which is approved, licensed or issued a permit to operate as a school by the state department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school. The courses of study or training which an educational institution offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation.

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

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

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

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

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than 1/2 of the commodity with respect to which such service is performed;

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

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

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

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

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

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

thereto.

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

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

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

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

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

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

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

On page 32, in line 316, after "time" by inserting "for an employing unit response or";

On page 39, in line 574, after the period, by inserting the following: "For purposes of this subsection (c)(3), if the required information is not submitted or postmarked within a response time limit of 10 days after the mailing date of the base period employer notice, the base period employer shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the board of review or any court, except that the base period employer's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect."; preceding line 579, by inserting the following material to read as follows:

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

On page 56, preceding line 558, by inserting the following material to read as follows:

"Sec. 7. K.S.A. 44-712 is hereby amended to read as follows: 44-712. (a) Establishment and control. There is hereby established as a special fund in the state treasury, separate and apart from all public moneys or funds of this state, an employment security fund, which shall be administered by the secretary as provided in this act. This fund shall consist of (1) all contributions collected under this act; (2) ~~all--fines--and penalties--collected--pursuant-to-the-provisions-of-this-act;~~ (3) interest earned upon any moneys in the fund; (4) (3) all moneys credited to this state's account in the federal unemployment trust fund, pursuant to section 903 of the social security act,

42 U.S.C.A. § 1103, as amended; ~~(5)~~ (4) any property or securities acquired through the use of moneys belonging to the fund, and all other moneys received for the fund from any other source; ~~(6)~~ (5) all earnings of such property or securities. All moneys in this fund shall be mingled and undivided.

(b) Accounts and deposits. The state treasurer shall be ex officio custodian of the fund. Payments from the fund, and for the purposes of this act deposits with the secretary of the treasury of the United States shall not be deemed to be payments from the fund, shall be made upon warrants drawn upon the state treasurer by the director of accounts and reports upon vouchers approved by the secretary. There shall be maintained within the fund three separate accounts: (1) A clearing account; (2) an unemployment trust fund account, and (3) a benefit account. All money payable to the fund upon receipt thereof by the secretary, shall be forwarded to the state treasurer, who shall immediately deposit them in the state treasury to the credit of the clearing account of the fund. Refunds payable pursuant to K.S.A. 44-717 and amendments thereto may be paid from the clearing account of the fund by warrants drawn by the director of accounts and reports upon the state treasurer upon vouchers approved by the secretary. After clearance thereof, all other moneys in the clearing account of the fund shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this state in the federal unemployment trust fund established and maintained pursuant to section 904 of the social security act, 42 U.S.C.A. § 1104, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account of the fund shall consist of all moneys requisitioned from this state's account in the federal unemployment trust fund. Except as herein otherwise provided, moneys in the clearing and benefit accounts of the fund may be deposited by the state treasurer in any bank or public depository

as is now provided by law for the deposit of general funds of the state, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts of the fund shall not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository banks.

(c) Withdrawals. Moneys shall be requisitioned from this state's account in the federal unemployment trust fund solely for the payment of benefits and in accordance with the provisions of this act and the rules and regulations adopted by the secretary, except that moneys credited to this state's account pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, shall be used exclusively as provided in subsection (d) of this section. The secretary shall from time to time requisition from the federal unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as deemed necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the state treasurer shall deposit such moneys in the benefit account of the fund and warrants for the payment of benefits shall be charged solely against such benefit account of the fund. Expenditures of such moneys in the benefit account and refunds from the clearing account of the fund shall not be subject to any provisions of law requiring specific appropriations. Any balance of moneys requisitioned from the federal unemployment trust fund which remains unclaimed or unpaid in the benefit account of the fund after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits during succeeding periods, or, in the discretion of the secretary shall be directed to be redeposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the federal unemployment trust fund, as provided in subsection (b) of this section. All balances accrued from unpaid or canceled warrants issued pursuant to this section, notwithstanding the

provisions of K.S.A. 10-812 and amendments thereto shall remain in the benefit account of the fund, and be disbursed in accordance with the provisions of this act relating to such account.

(d) Administrative use. (1) Money credited to the account of this state in the federal unemployment trust fund by the secretary of the treasury of the United States of America, pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, may be requisitioned and used for the payment of expenses incurred in the administration of this act pursuant to a specific appropriation by the legislature, if expenses are incurred and the money is requisitioned after the enactment of an appropriation law which: (A) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor, (B) limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and (C) limits the amount which may be obligated during a twelve-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as amended, during the same twelve-month period and the 34 preceding twelve-month periods, exceeds (ii) the aggregate of the amounts obligated pursuant to this subsection and amounts paid out for benefits and charged against the amounts credited to the account of this state during such 35 twelve-month periods. For the purposes of this subsection, amounts obligated during any such twelve-month period shall be charged against equivalent amounts which were first credited and which are not already so charged, except that no amount obligated for administration during any such twelve-month period may be charged against any amount credited during such twelve-month period earlier than the 34th preceding such period.

(2) Money credited to the account of this state pursuant to section 903 of the social security act, 42 U.S.C.A. § 1103, as

amended, may not be withdrawn or obligated except for the payment of benefits and for the payment of expenses for the administration of this act and of public employment offices pursuant to this subsection (d).

(3) Money appropriated as provided by this subsection (d) for the payment of expenses of administration shall be requisitioned as needed for the payment of obligations incurred under such appropriation and, upon requisition shall be deposited in the state treasury to the credit of the employment security administration fund from which such payments shall be made. Money so deposited and credited shall, until expended, remain a part of the federal unemployment trust fund, and, if it will not be expended, shall be returned promptly to the account of this state in the federal unemployment trust fund.

(e) Management of funds upon discontinuance of federal unemployment trust fund. The provisions of subsections (a), (b), (c) and (d) of this section, to the extent that they relate to the federal unemployment trust fund, shall be operative only so long as such unemployment trust fund continues to exist and so long as the secretary of the treasury of the United States of America continues to maintain for this state a separate book account of all funds deposited therein by this state for benefit purposes, together with this state's proportionate share of the earnings of such unemployment trust fund, from which no other state is permitted to make withdrawals. If and when such unemployment trust fund ceases to exist, or such separate book account is no longer maintained, all moneys, properties or securities therein, belonging to the employment security fund of this state, shall be transferred to the state treasurer, to be administered by the secretary as a trust fund for the purpose of paying benefits under this act, and the pooled money investment board upon the direction of the secretary shall have authority to hold, invest, transfer, sell, deposit, and release such moneys, and any properties, securities, or earnings acquired as an incident to such administration.";

And by renumbering sections accordingly;

On page 67, in line 961, after "44-703," by inserting "as amended by section 1 of 1987 Senate Bill No. 4,"; in line 962, by inserting before "and" the following: ", 44-712";

On page 1, in the title, in line 19, after "44-703," by inserting "as amended by section 1 of 1987 Senate Bill No. 4,"; in line 20, after "44-710a" by inserting ", 44-712";

**Kansas Employment Security Advisory Council
Issues to be Forwarded to the Kansas Legislature**

K.S.A. 44-703(h): Page 8, Lines 0298
K.S.A. 44-704a: Page 25, Line 0054

This proposal would bring the language of the Kansas law into agreement with the Federal statute regarding the Virgin Islands. When the Kansas law was enacted, the Virgin Islands did not have a federally approved law. Approval has since been granted and this proposal would change the Kansas law to reflect such approval.

K.S.A. 44-703(i)(4)(R): Page 13, Line 0486

The Council was advised that Senators Johnston and Karr intend to introduce a bill which would specifically exclude "extras" in motion pictures, television programs and commercials from coverage provided the services were performed for less than 14 days in a calendar year. In response, the Council adopted the proposal for inclusion in its legislative recommendations.

K.S.A. 44-704b: Page 29, Line 0230

This proposal removes subsection six which is no longer needed for Federal conformity reasons. At one time the Kansas law mandated a time-specific disqualification period (e.g., benefits may not be received for a specific length of time due to disqualifying circumstances). Disqualification provisions have been changed to require that an individual return to work and earn a specific multiple of the weekly benefit amount.

K.S.A. 44-709: Page 31, Line 0272

This proposal removes the three-day time extension allowed last employers on requests to submit information. This recommendation must be considered in concert with the proposal made regarding response times under K.S.A 44-710(c) listed below.

K.S.A. 44-710(c): Page 37, Line 0492

This proposal makes the following changes to the statute:

1. Changes the statutory language of K.S.A. 44-710(c) to agree with K.S.A. 44-706 regarding the term "misconduct."
2. Clarifies the statute to specify that reimbursing employers are not eligible for non-charging of benefits.
3. Provides for the same time limit for information responses for both last and base period employers.
4. Proves a definition for part-time employment as it relates to charging/noncharging decisions.

K.S.A. 44-710(e)(2)(E): Page 42, Line 0691
K.S.A. 44-710(e)(2)(F): Page 42, Line 0696

This proposal permits the Department to require a surety bond or deposit for any reimbursing employer who is delinquent in filing reports or making payments. It also provides that failure to maintain a required bond or deposit would subject the employer to termination of the reimbursing option.

K.S.A. 44-710a(3)(A): Page 50, Line 0145

This proposal allows for "fine-tuning" the average required yield table used in determining tax rates. This "fine tuning" makes rates more sensitive to changes in required reserve fund balances.

K.S.A. 44-714(f): Page 60, Line 0700

Clarifies the statute in regard to the use of appeals transcripts for prosecution of criminal violations of the Employment Security Law.

KANSAS

DEPARTMENT OF HUMAN RESOURCES



OFFICE OF THE SECRETARY

401 S.W. Topeka Boulevard, Topeka, Kansas 66603-3182
913-296-7474

Mike Hayden, Governor

Dennis R. Taylor, Secretary

March 25, 1987

The Honorable Arthur W. Douville
Chairman, House Labor & Industry Committee
House of Representatives
State Capitol
Topeka, Kansas 66612

Re: K.S.A. 44-703(h)(1)(B)(i)

Dear Representative Douville:

Pursuant to the Tax Reform Act of 1986 (P.L.99-514) clause (i) of section 3306(o)(1)(A) of the Federal Unemployment Tax Act was amended by striking out "Farm Labor Contractor Registration Act of 1963" and inserted in lieu thereof "Migrant and Seasonal Agricultural Worker Protection Act".

Attached is draft language which would reflect these recent changes in federal legislation for inclusion, at your discretion, in S.B. 237.

If I can be of further assistance, please contact me.

Sincerely,

Dennis R. Taylor
Secretary of Human Resources

DRT:BM:ber

Attachment #3
House Labor and Industry
3/27/87

(h) "Employer" means:

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

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

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

migrant and seasonal agricultural workers protection act

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

KANSAS

DEPARTMENT OF HUMAN RESOURCES



OFFICE OF THE SECRETARY

401 S.W. Topeka Boulevard, Topeka, Kansas 66603-3182
913-296-7474

Mike Hayden, Governor

Dennis R. Taylor, Secretary

March 25, 1987

The Honorable Arthur W. Douville
Chairman, House Labor & Industry Committee
House of Representatives
State Capitol
Topeka, Kansas 66612

Re: K.S.A. 44-709
K.S.A. 44-710(c)

Dear Representative Douville:

The Employment Security Advisory Council's approved amendments to the Employment Security Law (K.S.A. 44-701 et. seq.) are contained in S.B. 237. We inadvertently omitted inclusion in K.S.A. 44-710(c) the same excusable neglect and time computation provisions of K.S.A. 44-709.

Additionally, we suggest an amendment to S.B. 237 at page 32 line 0316 to provide consistency in the computation of time for employment unit responses and for filing timely appeals.

Attached is draft language which would correct these omissions for inclusion, at your discretion, in S.B. 237.

If I can be of further assistance, please contact me.

Sincerely,

Dennis R. Taylor
Secretary for Human Resources

DRT:BM:ber

Attachment #4
House Labor and Industry
3/27/87

0306 of the referee's decision, together with the reasons for the deci-
0307 sion. The decision shall be final, notwithstanding the provisions
0308 of any other statute, unless a further appeal to the board of
0309 review is filed within 16 calendar days after the mailing of the
0310 decision to the parties' last known addresses or, if notice is not by
0311 mail, within 16 calendar days after the delivery of the decision.

0312 (d) *Referees.* The secretary shall appoint, in accordance with
0313 subsection (c) of K.S.A. 44-714 and amendments thereto, one or
0314 more referees to hear and decide disputed claims.

0315 (e) *Time, computation and extension.* In computing the
0316 period of time for appeals under this section from the examiner's
0317 or the special examiner's determination or from the referee's
0318 decision, the day of the act, event or default from which the
0319 designated period of time begins to run shall not be included.
0320 The last day of the period shall be included unless it is a
0321 Saturday, Sunday or legal holiday, in which event the period
0322 runs until the end of the next day which is not a Saturday,
0323 Sunday or legal holiday.

0324 (f) *Board of review.* (1) There is hereby created a board of
0325 review, hereinafter referred to as the board, consisting of three
0326 members. Two members shall be appointed by the governor,
0327 subject to confirmation by the senate as provided in K.S.A.
0328 75-4315b and amendments thereto for terms of four years. One
0329 member shall be representative of employees, one member shall
0330 be representative of employers, and one member shall be repre-
0331 sentative of the public in general. The appointment of the
0332 employee representative member of the board shall be made by
0333 the governor from a list of three nominations submitted by the
0334 Kansas A.F.L.-C.I.O.; the appointment of the employer repre-
0335 sentative member of the board shall be made by the governor
0336 from a list of three nominations submitted by the Kansas
0337 chamber of commerce and industry; and the appointment of the
0338 public representative member of the board, who, because of
0339 vocation, occupation or affiliation may be deemed not to be
0340 representative of either management or labor, shall be made by
0341 the members appointed by the governor as employee represent-
0342 ative and employer representative. If the two members do not

for an employing unit response or

0565 requests in writing that the examiner reconsider the determina-
 0566 tion and furnishes any required information in accordance with
 0567 the secretary's rules and regulations. In a similar manner, a
 0568 notice of an additional claim followed by the first payment of
 0569 benefits with respect to the benefit year, filed by an individual
 0570 during a benefit year after a period in such year during which
 0571 such individual was employed, shall be given to any base period
 0572 employer of the individual who has requested such a notice
 0573 within 16 10 calendar days from the date the notice of the valid
 0574 new claim was mailed to such base period employer. The exam-
 0575 iner shall notify the employer of the reconsidered determination
 0576 which shall be subject to appeal, or further reconsideration, in
 0577 accordance with the provisions of K.S.A. 44-709, and amend-
 0578 ments thereto.

0579 (d) *Pooled fund.* All contributions and payments in lieu of
 0580 contributions and benefit cost payments to the employment
 0581 security fund shall be pooled and available to pay benefits to any
 0582 individual entitled thereto under the employment security law,
 0583 regardless of the source of such contributions or payments in lieu
 0584 of contributions or benefit cost payments.

0585 (e) *Election to become reimbursing employer; payment in*
 0586 *lieu of contributions.* (1) Any governmental entity for which
 0587 services are performed as described in subsection (i)(3)(E) of
 0588 K.S.A. 44-703, and amendments thereto, or any nonprofit orga-
 0589 nization or group of nonprofit organizations which, pursuant to
 0590 subsection (h)(9) of K.S.A. 44-703, and amendments thereto, is or
 0591 becomes subject to the employment security law after December
 0592 31, 1971, or any nonprofit organization described in section
 0593 501(c)(3) of the internal revenue code of 1954 which is exempt
 0594 from income tax under section 501(a) of such code, that becomes
 0595 subject to the employment security law through election under
 0596 subsection (c) of K.S.A. 44-711, and amendments thereto, may
 0597 elect to become a reimbursing employer under this subsection
 0598 (e)(1) and agree to pay the secretary for the employment security
 0599 fund an amount equal to the amount of regular benefits and 1/2 of
 0600 the extended benefits paid that are attributable to service in the
 0601 employ of such reimbursing employer, except that each reim-

For purpose of this subsection (3); if the required information is not submitted or postmarked within a response time limit of 10 days after the mailing date of the base period employer notice, the base period employer shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the board of review or any court, except that the base period employer's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect.

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