Approved: January 26, 2000
Date

MINUTES OF THE HOUSE BUSINESS, COMMERCE AND LABOR COMMITTEE.

The meeting was called to order by Chairperson Al Lane at 9:06 a.m. on January 19, 2000 in Room 521-S of the Capitol.

All members were present except: All members were present

Committee staff present: Bob Nugent, Revisor of Statutes
Jerry Donaldson, Legislative Research Department
Dennis Hodgins, Legislative Research Department
Bev Adams, Committee Secretary

Conferees appearing before the committee: Richard Beyer, Secretary, KDHR
Phil Harness, KDHR
William Sanders, KDHR
Roger Aeschliman, KDHR
A. J. Kotich, KDHR
Bill Layes, KDHR

Others attending: See attached list

Chairman Lane announced that Thursday's meeting will be held at 10:00 a.m. There was no one present today who wanted to introduce a bill. Bill introductions will also be heard on Thursday, January 20.

Chairman Lane introduced Richard Beyer, Secretary of the Kansas Department of Human Resources (KDHR). Secretary Beyer made a few remarks about the purpose of the Human Resources Department in Kansas, which is essentially the state's labor department. The department is the lead agency in the workforce development system. They partner with all the other agencies in the workforce arena such as the Social and Rehabilitation Services, Department of Education, the Board of Regents, and Department of Commerce and Housing, etc. They are all working together to make a stronger and more productive system for employers and citizens of Kansas.

Secretary Beyer furnished the committee with an organizational chart of KDHR and the Strategic Planning Initiative 2000. He shared the vision of the department which is to envision a Kansas where people of wide ranging talents and vital enterprises prosper in a resource rich, diverse state. He then shared with the committee the highlights of their strategic objections. Mr. Beyer explained the organizational chart and introduced several of the executive management team. As they were introduced, they each gave a short presentation of their division and answered questions from the committee. (See Attachment 1) Also handed out were the Workers Compensation 25th Annual Report for Fiscal Year 1999 and the Kansas Employment Security Law Employer Handbook with 1999 Legislative Changes. These booklet are available from the Kansas Department of Human Resources, 401 SW Topeka Boulevard, Topeka, Kansas 66603-3182.

Phil Harness, Director of Workers Compensation briefly explained the purpose of his division. He brought the committee up to date on the division's compliance with recommendations made by the post audit report of last year. He stressed the importance of the committee acting quickly on **SB 219**, which now sits in our committee. The bill was agreed on and recommended for passage by the Workers' Compensation Advisory Council. Later he will present a request for amendments to the boiler inspector statutes.

William Sanders, newly appointed as the Chief Information Officer and Director of Employment Security, KDHR, briefly told of the history of the employment security law. Their department provides temporary weekly unemployment checks to qualified unemployed workers. The latest report of unemployment placed our rate in Kansas at 3.3%. He brought the committee up to date on the trust fund, which now has enough to cover the payout of unemployment benefits for one year and eleven months. This meets and exceeds the low end of the federal requirement of having eighteen months at the highest payout rate during the last fifteen years. The call centers for reporting for unemployed workers is working well, with the process sometimes taking as little as twelve minutes to process a claim. This takes the place of workers having to report to an

unemployment office to qualify for benefits. Handed out to the committee was a proposed federal rule which would cover birth and adoption leave by tapping the unemployment fund. The Employment Security Advisory Council is taking a wait and see attitude towards this new proposed ruling. (See Attachment 2)

Heather Whitley, Director of Employment and Training, KDHR, was traveling today so Roger Aeschliman, Deputy Secretary, KDHR, gave her update to the committee on the Division of Employment and Training. The Workforce Investment Act of 1998 takes effect July 1, 2000. Nearly three years of planning and development have gone into this implementation to this point. On this date there will be seven "One Stop" centers up and running in Kansas. Then the review, monitoring and evaluation of the program begins. In the written testimony are several legislative actions which would positively impact the state. Important among these is the development of a joint committee or sub-committee to be the leading entity on workforce development. (See Attachment 3)

A. J. Kotich, Chief Counsel, KDHR, is working with the revisor to write bills which would remove obsolete statutes, and clarify or upgrade others. These amendments involve the Boiler Safety Act, the Public Employees Relations Act, changing the minimum wage in Kansas, and moving the filing of maps of coal and other types of mines to state geologists instead of KDHR. They are also doing research that will help them write amendments to our child labor laws to bring them up to date with other states.

Bill Lays, Chief of Labor Market Information Services (LMIS), and his staff are responsible for collecting, analyzing and publishing data that relate to all facets of the labor market. These activities provide information about the condition of the economy at the national, regional, state and local levels. Much of this information is presented in publications that are available upon request. Some of these publications are written with projections for the use of the education department and others to develop curriculum. Others have such information as the jobs which are available without a college education. (See Attachment 4)

Secretary Beyer ended the presentation by introducing others from the team: Brad Hamilton, Director of Kansas Commission on Native American Affairs; Tina DeLaRosa, Director of Kansas Advisory Committee on Hispanic Affairs; Tomeka Franklin, Director of Kansas Advisory Commission on African American Affairs; Martha Gabehart, Director of Kansas Commission on Disability Concerns; Kris Kitchen, Heartland Works; Mike O'Hara, Service Market Area Manager; Doug Hager, Executive Director of the Public Employees Relations Board; Linda Tierce, Chief of Benefits; Janet Palmer, Director of Personnel; and David Shufelt, Workers Compensation Division.

Chairman Lane adjourned the meeting at 10:20 a.m.

The next scheduled meeting is January 20, 2000.

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE January 19, 2000

NAME	REPRESENTING
David Shufelt	KDHR - Div Work Comp
Janet Palmer	KDHR
Linda Tierce	KDHR
Bill Hayes	KDHR
William Sanders	KDHR
Danielle Noe	Gov
Cora Schlotzer	KS League of Women Voters
Luis Cuna J.	KSIA
BRAD HAMILTON	KDHR
Tina DelaRosa	KDHR - KS Adv Com. on His. Affairs
Jamaine Abidogun	KAAAC
Tomeka Franklin	KDHR - KS AFR. Amer. Adv. Comm.
Martha Gabehart	KDHR - Disability Concerns
Kris Kitchen	Heartland Works
RM OKazaki	KDHR - E+T
Bill Lawrence	BOEING
Stan Parsons	KGC
Phil Harness	KDHR
A.J. Kolich	KDNR

HOUSE BUSINESS, COMMERCE & LABOR COMMITTEE
GUEST LIST

DATE Jan 19, 2000

NAME	REPRESENTING
Roger Aeschliman	KDHR

KANSAS DEPARTMENT OF HUMAN RESOURCES

Strategic Planning Initiative

2000

HOUSE BUSINESS, COMMERCE & LABOR
1-19-00
Attachment 1

Kansas Department of Human Resources

Mission Statement

The Kansas Department of Human Resources cultivates a job ready workforce and a workplace environment to fuel economic growth for Kansas.

The agency functions as a thought leader, a facilitator, a catalyst and a services delivery organization, partnering with public and private organizations to serve the needs of Kansas employees and employers.

Our value to Kansas is reflected by our success in:

- ☐ Finding meaningful jobs for the unemployed.
- ☐ Finding better jobs for the underemployed, and
- ☐ Removing barriers to performance for employees and employers as they seek to achieve their best.

Vision

We envision a Kansas where people of wide ranging talents and vital enterprises prosper in a resource rich, diverse state.

Values

- We are committed to providing quality resources and services to Kansans and to making them accessible to all.
- Our success and value as an agency of Kansas government is measured by the sustained quality and responsiveness of Kansas' labor exchange environment.
- The content of our work and the context of our organization is characterized by:
  —Politeness and common courtesy
  —Dignity and respect for each other and for the people we serve
  —Stewardship of the trust placed in us and of the assets the State invests in our mission
  —Integrity and ethics in every dimension of our work
  —A focus on quality as the measure of our results
  —Good public policy
  —Clear, candid communication
  —Collaboration, both internally and externally.

Strategic Objectives – Horizon: November 1, 2002

1) KDHR is recognized for its role in improving the health and safety of Kansas workplaces, as measured by:
   a) Changes in frequency and severity of accidents
   b) Employer surveys regarding the impact of training and other KDHR initiatives
   c) Development of relevant measures of workplace health and safety
   d) Extent and degree of enforcement / promotion of standards

2) KDHR functions as a catalyst in establishing and maintaining an efficient labor exchange environment in Kansas, as measured by:
   a) The achieved long term balance of supply and demand for labor in the state, adjusted for economic conditions
   b) The degree to which employers and employees make use of the agency's services and Resources
   c) Measures of performance in workforce development established by the agency
   d) The extent to which KDHR is consistently recognized as an important value-added element in the workforce and employment arena in Kansas, as measured by:
      i) Employer Institute evaluations
      ii) Customer surveys
      iii) Legislator surveys
      iv) Human Resources professional community surveys
      v) Frequency and quality (relevance) of media citations, attributions, editorial commentary, events and awards
      vi) Opinions of other business partners

3) KDHR has in place a technology platform and on-going technology delivery capability matched to the agency's continuing operational context and service delivery model, and in step with the State's information technology plan, as measured by:
   a) Evaluations by KDHR managers responsible for service delivery and administrative management
   b) Best practices benchmark comparisons
   c) Customer feedback – after matching delivery platform to clientele served
   d) Comparison to the Information Technology Executive Committee's architecture statement

4) KDHR delivers a superior return on "investment" dollars to the State of Kansas, as measured by:
   a) Fully absorbed, activity based costs per unit of service compared to other similar entities
   b) Rated quality of service / outcomes compared to costs of service delivery
   c) Indirect overhead costs compared to similar entities
   d) Return on innovation initiatives

5) WIA is an in-place, successful service delivery platform judged to be a key element in the agency's record of success and positive public image.

6) KDHR is recognized as an ethically courageous thought leader in:
   a) Developing and advocating for policies and legislation in the State of Kansas and nationally
   b) Contributing to the development of national workplace and employment policies and systems

7) KDHR is viewed within Kansas Government and in the broader employment context as an intelligent best practices employment model as measured by:
   a) Employee evaluations
   b) Comparisons to other Kansas state agencies and to similar private sector enterprises
   c) Contemporary standards for human resources management practice
   d) Performance in documented "critical incident" situations

8) KDHR has demonstrated core competencies in the successful management of organizational change and transition, and has embraced the constructive pursuit of change as a key success factor for the agency, as measured by:
   a) Percentage of agency staff trained in a common change management methodology
   b) Development and implementation of basic change and transition management practices into the on-going management context of the agency

9) KDHR has an attained "cultural and diverse needs" awareness that is matched to the needs and demographics of the agency's clientele, as measured by:
   a) Routine availability of language and culture proficient professional staff across the organization, including contracted service providers
   b) Accessibility of services for people with identified disabilities
   c) Performance in documented "critical incident" situations

10) KDHR has an established capability for creatively identifying and obtaining traditional and non-traditional funding (capital) from non-budget resources, as measured by:
   a) Percentage of new initiatives funded from these sources and share of grant dollars obtained
   b) Cost / benefit performance of the funding initiative
   c) Number of grants in which the agency is a "partner"

Strategies

1) Develop and implement a broadly defined technology management and control process for the agency.

2) Deliver technology, as a primary enabler, matched to the identified and anticipated needs of the agency and the constituencies it serves.

3) Develop and implement a values based management and employee development system focused on management processes, leadership, people relationships and career paths.

4) Capitalize on opportunities to initiate and establish a network of partnerships and alliances aimed at cultivating a work force and an employment work place that fuels Kansas' economic development.

5) Implement WIA successfully.

6) Identify desirable and necessary changes and enhancements to the agency's human resources environment and systems.
   a) Internally, develop and implement changes within existing authority.
   b) Externally, advocate for enabling authority as required.
   c) Integrate what we offer as an agency with what we use as an agency.

7) Establish an on-going business process review and revision initiative aimed at:
   a) Rationalizing processes for effective customer (external and internal) service.
   b) Meeting cost effectiveness objectives.
   c) Effectively delivering and/or brokering services as a means for maintaining the strategic focus of the agency.

8) Reinvent the UI administrative system to focus additional resources on claimants. Research the UI contributions process to improve the tax environment for employers – to benefit employees and employers.

9) Implement the "matrix communication methodology" for:
   a) Internal communications.
   b) External communications.

10) Build a health & safety benchmarking system and develop benchmarks on an on-going basis measuring factors:
   a) In Kansas.
   b) Vs. other states.

11) Evaluate KDHR's current efforts in benchmarking and data publishing. Identify appropriate changes to existing initiatives in support of strategic objectives and implement.

12) Deploy agency resources to focus more specifically on directly effecting improvements in workplace health and safety.

13) Develop and implement an enhanced system for gathering and analyzing data concerning the make-up or composition of:
   a) Unmet demand (unfilled positions).
   b) Unemployed population.
   c) Underemployed population.

14) Share newly created information (per #13) with the marketplace. Through the use of coalitions, develop initiatives and/or revise programs that meet identified needs.

15) Develop and implement a formal change and transition management education program. Integrate change management methodology into agency business practices.

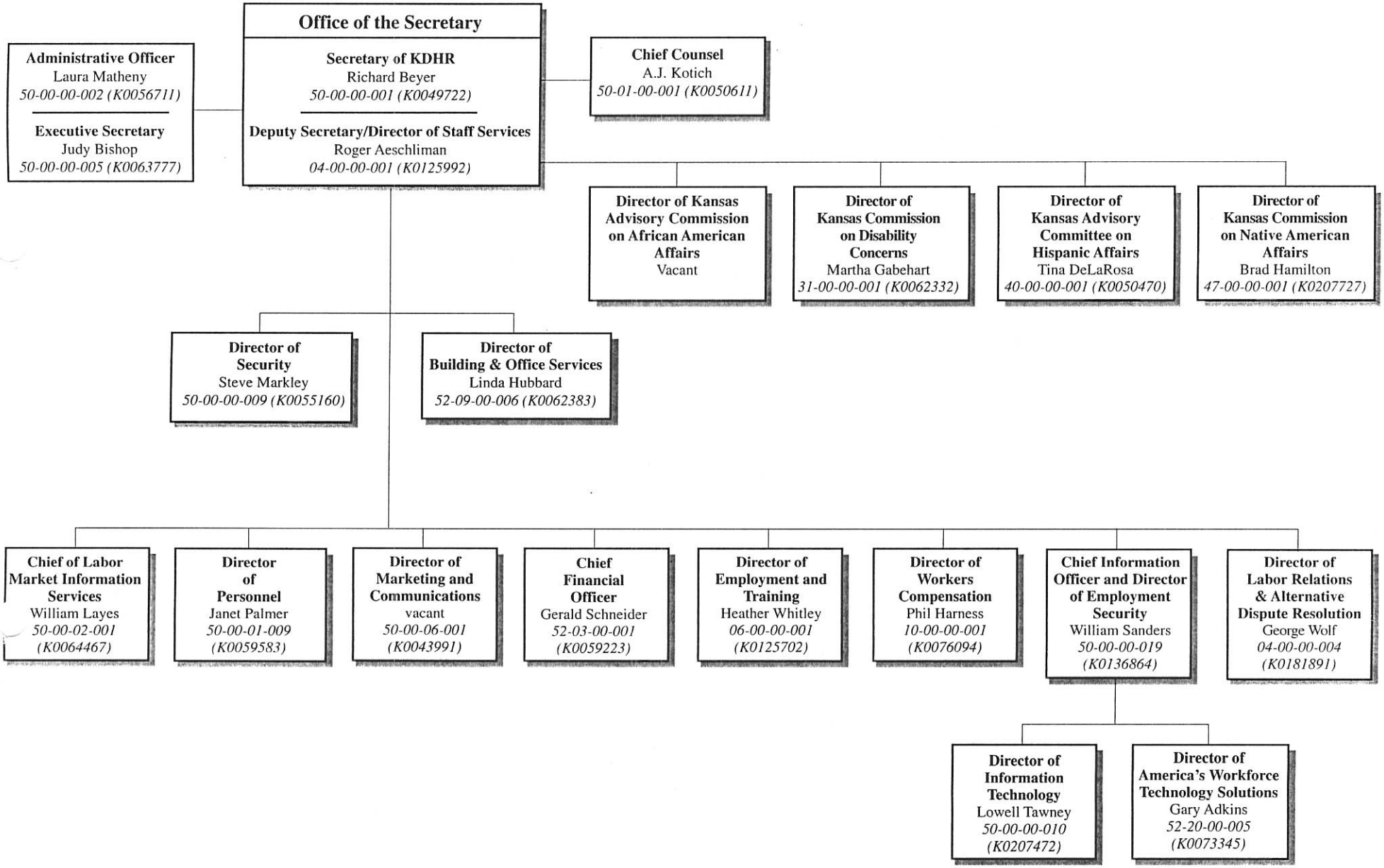
16) Hire, promote and train people who exhibit an awareness and constructive behavior with respect to cultural and special needs issues.

17) Research, develop and implement strategies and mechanisms for augmenting funding for KDHR core services.

18) Develop a pilot program capability for demonstrating the value of proposed initiatives and programs prior to full-scale implementation.

19) Build an external recognition and awards program.

Kansas Department of Human Resources



Approved by:_____

January 2000

KANSAS

EMPLOYMENT SECURITY LAW

K.S.A. 44-701 et. seq.
as amended by the 1999 session

BC+L
1-19-00

KANSAS DEPARTMENT
OF HUMAN RESOURCES

1-9

FOREWORD

This is an informational publication of the Kansas Employment Security Law and Regulations. It is not to be used as an official document and should not be used to cite the law.

This publication was compiled as an aid for the Department of Human Resources' staff and intended for agency use. Although every effort was made to insure accuracy, no representations are made nor are any to be implied, regarding the form or substance of this publication.

LEGISLATIVE CHANGES

The 1999 Legislature made changes to the Kansas Employment Security Law through the passage of substitute for Senate Bill 270. A brief explanation of the major changes resulting from this bill, in addition to the effective date of change, is provided below.

Misconduct Due to Chronic Absenteeism K.S.A. 44-706(b)(3)(C) and K.S.A. 44-706(b)(3)(E)

Effective July 1, 1999, the employer is required to give or send written notice to the employee's last known address that future absence may or will result in discharge. Also, if the employee disputes being absent without good cause, the employee must present evidence that a majority of the absences were for good cause.

Benefit Claim Hearings K.S.A. 44-709(k)

Effective July 1, 1999, parties to a benefit proceeding or hearing may appear personally or by means of a designated representative. Hearings shall be conducted by telephone or other means of electronic communication unless a party requests an in-person hearing.

Negative Account Balance Employers K.S.A. 44-710a(a)(2)(E)

Effective July 1, 1999, the surcharge for negative account balance employers has been increased to 2%. The surcharge is based upon the size of the employer's negative reserve ratio with a minimum of 0.20% to a maximum of 2.00%.

Fund Control Ratios to Total Wages K.S.A. 44-710a(a)(3)

For tax rate years 2000, 2001, and 2002, a new schedule IIIA shall apply when computing the planned yield for employers. This change was made to reintroduce Kansas employers to the payment of unemployment taxes at a lower than normal tax rate at the close of the unemployment tax moratorium.

Reporting Adequacy of the Fund K.S.A. 44-710a(a)(3)(C)

On January 15 of 2000, 2001, and 2002, the Secretary of Human Resources shall report to the legislature the adequacy of the fund. On July 15 of 2000, 2001, and 2002, the same report shall be made to the legislative coordinating council.

KANSAS EMPLOYMENT SECURITY LAW
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Article 7.
EMPLOYMENT SECURITY LAW

44-701. Short title. This act shall be known and may be cited as the "employment security law."
History: L. 1937, ch. 255, § 1; L. 1949, ch. 288, § 1; March 5.

44-702. Declaration of state public policy. As a guide to the interpretation and application of this act, the public policy of this state is declared to be as follows: Economic insecurity, due to unemployment, is a serious menace to health, morals, and welfare of the people of this state. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family. The achievement of social security requires protection against this greatest hazard of our economic life. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor-relief assistance. The legislature, therefore, declares that in its considered judgment the public good and the general welfare of the citizens of this state require the enactment of this measure, under the police powers of the state, for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed.
History: L. 1937, ch. 255, § 2; March 29.

44-703. Definitions. 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.

(3) "Total wages" means the total amount of wages paid or payable by an employer during the calendar year, including that part of remuneration in excess of the limitation prescribed as provided in subsection (o)(1) of this section.

(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 ex-servicemen 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.

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(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, limited liability company, 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 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)(A) 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 (i) substantially all of the employing enterprises,

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organization, trade or business, or (ii) substantially all the assets, of another employing unit which at the time of such acquisition was an employer subject to this act;

(B) any employing unit which is controlled substantially, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests, whether or not such interest or interests are an employing unit under subsection (g) of this section, which acquires or in any manner succeeds to a portion of an employer's annual payroll, which is less than 100% of such employer's annual payroll, and which intends to continue the acquired portion as a going business.

(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 1986 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

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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 (l) 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, 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.

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(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 policy making or advisory position or as a policy making 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 of 1986, 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 of 1986 (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 ½ 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 ½ 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;

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(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 1986 which is exempt from income taxation under section 501(a) of the code;

(S) services performed by an oil and gas contract pumper. As used in this subsection (i)(4)(S), "oil and gas contract pumper" means a person performing pumping and other services on one or more oil or gas leases, or on both oil and gas leases, relating to the operation and maintenance of such oil and gas leases, on a contractual basis for the operators of such oil and gas leases and "services" shall not include services performed for a governmental entity or any organization described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;

(T) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $200 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(i) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(ii) such individual was regularly employed, as determined under subparagraph (i), by such employer in the performance of such service during the preceding calendar quarter.

Such excluded service shall not include any services performed for an employer which is a

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governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income taxation under section 501(a) of the code;

(U) service which is performed by any person who is a member of a limited liability company and which is performed as a member or manager of that limited liability company; and

(V) services performed as a qualified direct seller. The term "direct seller" means any person if:

(i) Such person:

(aa) is engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise rather than in a permanent retail establishment; or

(bb) is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or otherwise than in a permanent retail establishment;

(ii) substantially all the remuneration whether or not paid in cash for the performance of the services described in subparagraph (i) is directly related to sales or other output including the performance of services rather than to the number of hours worked;

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

(iv) for purposes of this act, a sale or a sale resulting exclusively from a solicitation made by telephone, mail, or other telecommunications method, or other nonpersonal method does not satisfy the requirements of this subsection; and

(W) service performed as an election official or election worker, if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than $1,000.

(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, bonuses, back pay and the cash value of all remuneration, including benefits, paid 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. Notwithstanding the other provisions of this subsection (o), wages paid in back pay awards or settlements shall be allocated to the week or weeks and reported in the manner as specified in the award or agreement, or, in the absence of such specificity in the award or agreement, such wages shall be allocated to the week or weeks in which such wages, in the judgment of the secretary, would have been paid. 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

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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 workers 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 federal internal revenue code of 1986 which is exempt from tax under section 501(a) of the federal internal revenue code of 1986 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 federal internal revenue code of 1986;

(C) under a simplified employee pension as defined in section 408(k)(1) of the federal internal revenue code of 1986, other than any contribution described in section 408(k)(6) of the federal internal revenue code of 1986;

(D) under or to an annuity contract described in section 403(b) of the federal internal revenue code of 1986, 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;

(E) under or to an exempt governmental deferred compensation plan as defined in section 3121(v)(3) of the federal internal revenue code of 1986; or

(F) 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 federal employee retirement income security act of 1974; or

(G) under a cafeteria plan within the meaning of section 125 of the federal internal revenue code of 1986;

(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 federal internal revenue code of 1986 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 federal internal revenue code of 1986 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

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employee's employment relationship had not been so terminated;

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

(10) 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 129 of the federal internal revenue code of 1986 which relates to dependent care assistance programs;

(11) 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 federal internal revenue code of 1986;

(12) 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; or

(13) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117 or 132 of the federal internal revenue code of 1986.

(14) 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 of the federal internal revenue code of 1986 relating to educational assistance to the employee.

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 federal internal revenue code of 1986, to the extent that such contribution is not included in gross income by reason of section 402(a)(8) of the federal internal revenue code of 1986; or (2) any amount treated as an employer contribution under section 414(h)(2) of the federal internal revenue code of 1986.

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

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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 furbearing 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 ½ 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 ½ 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 section 214(c) and 101(a)(15)(H) of the federal immigration and nationality act.

(3) As used in this subsection (w), the term "farm" includes stock, dairy, poultry, fruit, furbearing 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.

(4) For the purposes of this section, if an employing unit does not maintain sufficient records to separate agricultural labor from other employment, all services performed during any pay period by an individual for the person employing such individual shall be deemed to be agricultural labor if services performed during ½ or more of any such pay period constitute agricultural labor; but if the services performed during more than ½ of any such pay period by an individual for the person employing such individual do not constitute agricultural labor, then none of the services of such individual for such period shall be deemed to be agricultural labor. As used in this subsection (w), 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.

(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

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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.

(ff) "Lessor employing unit" means any independently established business entity which engages in the business of providing leased employees to a client lessee.

(gg) "Client lessee" means any individual, organization, partnership, corporation or other legal entity leasing employees from a lessor employing unit.

History: L. 1937, ch. 255, § 3; L. 1938, ch. 51, § 1; L. 1939, ch. 214, § 1; L. 1941, ch. 264, § 1; L. 1943, ch. 190, § 1; L. 1945, ch. 220, § 1; L. 1947, ch. 291, § 1; L. 1949, ch. 288, § 2; L. 1951, ch. 307, § 1; L. 1955, ch. 251, § 1; L. 1970, ch. 191, § 1; L. 1971, ch. 180, § 1; L. 1972, ch. 161, § 13; L. 1973, ch. 205, § 1; L. 1975, ch. 462, § 54; L. 1976, ch. 226, § 1; L. 1976, ch. 370, § 56; L. 1977, ch. 181, § 1; L. 1979, ch. 159, § 1; L. 1981, ch. 204, § 1; L. 1983, ch. 169, § 1; L. 1984, ch. 183, § 1; L. 1984, ch. 185, § 1; L. 1984, ch. 184, § 4; L. 1986, ch. 190, § 1; L. 1987, ch. 190, § 1; L. 1987, ch. 191, § 1; L. 1988, ch. 170, § 1; L. 1988, ch. 171, § 1; L. 1989, ch. 150, § 1; L. 1990, ch. 186, § 2; L. 1990, ch. 187, § 1; L. 1990, ch. 188, § 1; L. 1992, ch. 74, § 1; L. 1994, ch. 49, § 1; L. 1995, ch. 50, § 1; L. 1996, ch. 232, § 2; L. 1997, ch. 174 § 1; L. 1998, ch. 124, § 1; July 1

44-704. Benefits. (a) *Payment of benefits.* All benefits provided herein shall be payable from the fund. All benefits shall be paid through the secretary of human resources, in accordance with such rules and regulations as the secretary may adopt. Benefits based on service in employment defined in subsections (i)(3)(E) and (i)(3)(F) of K.S.A. 44-703, and amendments thereto, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act except as provided in subsection (e) of K.S.A. 44-705 and subsection (e)(2) of K.S.A. 44-711, and any amendments to these statues.

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

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

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

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

(c) *Maximum weekly benefit amount.* On July 1 of each year, the secretary shall determine the maximum weekly benefit amount by computing 60% of the average weekly wages paid to employees in insured work during the previous calendar year and shall prior to that date announce the maximum weekly benefit amount so determined, by publication in the Kansas register. Such computation shall be made by dividing the gross wages reported as paid for insured work during the previous calendar year by the product of the average of midmonth employment during such calendar year multiplied by 52. The maximum weekly benefit amount so determined and announced for the twelve-month period shall apply only to those claims filed in that period qualifying for maximum payment under the foregoing formula. All claims qualifying for payment at the maximum weekly benefit amount shall be paid at the maximum weekly benefit amount in effect when the benefit year to which the claim relates was first established, notwithstanding a change in the maximum benefit amount for a subsequent twelve-month period. If the computed maximum weekly benefit amount is not a multiple of $1, then the computed maximum weekly benefit

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amount shall be reduced to the next lower multiple of $1.

(d) *Minimum weekly benefit amount*. The minimum weekly benefit amount payable to any individual shall be 25% of the maximum weekly benefit calculated in accordance with subsection (c) and shall be announced by the secretary in conjunction with the published announcement of the maximum weekly benefit, also as provided in subsection (c). The minimum weekly benefit amount so determined and announced for the twelve-month period beginning July 1 of each year shall apply only to those claims which establish a benefit year filed within that twelve-month period and shall apply through the benefit year of such claims notwithstanding a change in such amount in a subsequent twelve-month period. If the minimum weekly benefit amount is not a multiple of $1 it shall be reduced to the next lower multiple of $1.

(e) *Weekly benefit payable*. Each eligible individual who is unemployed with respect to any week, except as to final payment, shall be paid with respect to such week a benefit in an amount equal to such individual's determined weekly benefit amount, less that part of the wage, if any, payable to such individual with respect to such week which is in excess of the amount which is equal to 25% of such individual's determined weekly benefit amount and if the resulting amount is not a multiple of $1, it shall be reduced to the next lower multiple of $1.

(1) For the purposes of this section, remuneration received under the following circumstances shall be construed as wages:

(A) Vacation pay that was attributable to a week that the individual claimed benefits while work was temporarily interrupted;

(B) holiday pay that was payable with no condition of attendance on other regularly scheduled day or days; and

(C) severance pay, if paid as scheduled, and all other employment benefits within the employer's control, as defined in subsection (e)(3), if continued, as though the severance had not occurred, except as set out in subsection (e)(2)(D).

(2) For the purposes of this section, remuneration received under the following circumstances shall not be construed as wages:

(A) Remuneration received for services performed on a public assistance work project;

(B) vacation pay, except as set out in subsection (e)(1)(A) above;

(C) holiday pay that was not payable unless the individual complied with a condition of attendance on another regularly scheduled day or days;

(D) severance pay, in lieu of notice, under the provisions of public law 100-379, the federal worker adjustment and retraining notification act (29 U.S.C.A. 2101 through 2109); and

(E) all other severance pay, separation pay, bonuses, wages in lieu of notice or remuneration of a similar nature that is payable after the severance of the employment relationship, except as set out in subsection (e)(1)(C).

(3) For the purposes of this subsection (e), "employment benefits within the employer's control" means benefits offered by the employer to employees which are employee benefit plans as defined by section 3 of the federal employee retirement income security act of 1974, as amended, (20 U.S.C. 1002) and which the employer has the option to continue to provide to the employee after the last day that the employee worked for that employer.

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

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

History: L. 1937, ch. 255, § 4; L. 1939, ch. 214, § 2; L. 1941, ch. 264, § 2; L. 1945, ch. 220, § 2; L. 1947, ch. 291, § 2; L. 1949, ch. 288, § 3; L. 1951, ch. 307, § 2; L. 1955, ch. 251, § 2; L. 1957, ch. 295, § 1; L. 1959, ch. 223, § 1; L. 1970, ch. 191, § 2; L. 1971, ch. 180, § 2; L. 1972, ch. 192, § 1; L. 1973, ch. 205, § 2; L. 1976, ch. 226, § 2; L. 1976, ch. 370, § 57; L. 1977, ch. 181, § 2; L. 1979, ch. 160, § 2; L. 1983, ch. 169, § 2; L. 1984, ch. 183, § 2; L. 1985, ch. 176, § 1; L. 1986, ch. 191, § 1; L. 1991, ch. 145, § 1; L. 1993, ch. 251, § 1; L. 1994, ch. 171, § 1; July 1.

44-704a. Extended benefits. (a) *Definitions*. As used in this section, unless the context clearly requires otherwise:

(1) "Extended benefit period" means a period which:

(A) Begins with the third week after a week for which there is an "on" indicator; and

(B) ends with either of the following weeks, whichever occurs later: (i) The third week after the first week for which there is an "off" indicator; or (ii) the 13th consecutive week of such period, except that no extended benefit period may begin by reason

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of an "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) For the purposes of this section:

(A) There is an "on" indicator for this state for a week if the secretary of human resources determines, in accordance with the regulations of the U.S. secretary of labor, that, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this act: (i) Equaled or exceeded 5% and equaled or exceeded 120% of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; or (ii) equaled or exceeded 6%; or (iii) with respect to benefits for weeks of unemployment beginning after March 6, 1993, (a) the average rate of total unemployment (seasonally adjusted), as determined by the U.S. secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5%, and (b) the average rate of total unemployment for this state (seasonally adjusted), as determined by the U.S. secretary of labor, for the three-month period referred to in clause (iii)(a), equals or exceeds 110% of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(B) (i) There is an "off" indicator for this state for a week if the secretary of human resources determines, in accordance with the regulations of the U.S. secretary of labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this act: (a) Was less than 5% or less than 120% of the average of such rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; and (b) was less than 5%.

(ii) There is an "off" indicator for this state for a week only if, for the period consisting of such week and the immediately preceding 12 weeks, none of the conditions specified in subsection (a)(2)(A) of this section result in an "on" indicator.

(3) "Rate of insured unemployment," for purposes of paragraphs (2)(A) and (2)(B) of this subsection, means the percentage derived by dividing:

(A) The average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent thirteen-consecutive-week period, as determined by the secretary of human resources on the basis of reports to the U.S. secretary of labor; by

(B) the average monthly employment covered under this act for the first four of the most recent six completed calendar quarters ending before the end of such thirteen-week period.

(4) "Extended entitlement period" of an individual means the period consisting of the weeks of the individual's benefit year which begin in an extended benefit period and, if the individual's benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(5) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-service personnel pursuant to 5 U.S.C.A. chapter 85) payable to an individual under the provisions of the act for weeks of unemployment in the individual's extended entitlement period.

(6) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's extended entitlement period:

(A) Has received, prior to such week, all of the regular benefits that were available to the individual under this act or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-service personnel under 5 U.S.C.A. chapter 85) in the individual's current benefit year that includes such week, provided that, for the purposes of this paragraph (6)(A), an individual shall be deemed to have received all of the regular benefits that were available to the individual although the individual may subsequently be determined to be entitled to added regular benefits as a result of a pending appeal with respect to wages that were not considered in the original monetary determination of the individual's benefit year; or

(B) the individual's benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which the individual could establish a new benefit year that would include such week; and

(C)(i) has no right to unemployment benefits or allowances, as the case may be, under the federal railroad unemployment insurance act and such other federal laws as are specified in regulations issued by the U.S. secretary of labor; and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law the individual is considered an exhaustee.

(7) "State law" means the unemployment compensation law of any state, approved by the U.S. secretary of labor under section 3304 of the federal internal revenue code of 1986.

(b) *Payment of extended benefits.* Extended benefits shall be payable to eligible individuals with

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respect to weeks of unemployment in their extended entitlement periods. The extended benefits provided by this section and K.S.A. 44-704b and amendments thereto shall be payable from the fund. All extended benefits shall be paid through the employment offices, in accordance with such rules and regulations as the secretary of human resources may adopt.

(c) *Beginning and termination of extended benefit period.* (1) Whenever an extended benefit period is to become effective in this state as a result of an "on" indicator, or an extended benefit period is to be terminated in this state as a result of an "off" indicator, the secretary of human resources shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection (a)(3) of this section shall be made by the secretary of human resources, in accordance with regulations prescribed by the U.S. secretary of labor.

(d) *Weekly extended benefit amount.* The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's extended entitlement period shall be an amount equal to the regular weekly benefit amount payable to the individual during the individual's applicable benefit year, except that for any week during a period in which federal payments to states under section 204 of the federal-state extended unemployment compensation act of 1970 are reduced pursuant to an order issued under section 252 of the federal balanced budget and emergency deficit control act of 1985, the weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be reduced by a percentage amount which is equivalent to the reduction in the federal payment. If such reduced weekly extended benefit amount is not a multiple of $1, it shall be reduced to the next lower multiple of $1.

(e) *Total extended benefit amount.* (1) Except as otherwise provided in subsection (e)(2) or (e)(3) of this section, the total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit year shall be the least of the following amounts:

(A) Fifty percent of the total amount of regular benefits which were payable to the individual under this act in the individual's applicable benefit year; or

(B) thirteen times the individual's weekly benefit amount which was payable to the individual under this act for a week of total unemployment in the applicable benefit year.

(2) Effective with respect to weeks beginning in a high unemployment period, the provisions of subsection (e)(1) of this section shall be applied by substituting "eighty percent" for "fifty percent" in subparagraph (A) of that subsection (e)(1), and by substituting "twenty" for "thirteen" in subparagraph (B) of that subsection (e)(1). For purposes of this subsection (e)(2), the term "high unemployment period" means any period during which an extended benefit period would be in effect if the provisions of subsection (a)(2)(A)(iii) of this section were applied after substituting "8%" for "6.5%" in clause (a) of that subsection (a)(2)(A)(iii).

(3) During any fiscal year in which federal payments to states under section 204 of the federal-state extended unemployment compensation act of 1970 are reduced pursuant to an order issued under section 252 of the federal balanced budget and emergency deficit control act of 1985, the total extended benefit amount payable to an individual with respect to the individual's applicable benefit year shall be reduced by an amount equal to the total of all of the reductions under subsection (d) of this section in the weekly extended benefit amounts paid to the individual.

(f) *Eligibility requirements for extended benefits.* An individual shall be eligible to receive extended benefits with respect to any week of unemployment in the individual's extended entitlement period only if the secretary of human resources, or a person or persons designated by the secretary, finds that with respect to such week:

(1) The individual is an "exhaustee" as defined in subsection (a)(6) of this section;

(2) the individual is qualified and eligible for extended benefits pursuant to K.S.A. 44-704b and amendments thereto;

(3) the individual is entitled to benefits pursuant to the provisions of this act which apply to claims for, or the payment of regular benefits which are not inconsistent with the provisions of K.S.A. 44-704b and amendments thereto; and

(4) the individual, during the base period, (A) was paid wages for insured work equal to or greater than 1½ times the amount of total wages paid for the quarter in which such wages were highest during the individual's base period; or (B) has been paid an amount equal to or exceeding 40 times the individual's most recent weekly benefit amount in the individual's base period.

(g) *Limitation on amount of combined regular, extended and trade readjustment act benefits received.* Notwithstanding any other provisions of this section or K.S.A. 44-704b and amendments thereto, if the benefit year of any individual ends within an extended entitlement period, the remaining balance of extended benefits that the individual

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would, but for this section, be entitled to receive in that extended entitlement period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

History: L. 1971, ch. 180, § 10; L. 1973, ch. 205, § 3; L. 1976, ch. 370, § 58; L. 1977, ch. 182, § 1; L. 1981, ch. 204, § 2; L. 1982, ch. 214, § 1; L. 1987, ch. 191, § 2; L. 1989, ch. 150, § 2; L. 1993, ch. 251, § 2; July 1.

44-704b. Same; disqualification conditions; "suitable work" defined. (a) *Cessation of extended benefits when paid under an interstate claim in a state where an extended benefit period is not in effect*:

(1) Except as provided in subsection (a)(2), an individual shall not be eligible for extended benefits for any week if:

(A) Extended benefits are payable for such week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

(B) no extended benefit period is in effect for such week in the state where the claim for extended benefits was filed.

(2) Subsection (a)(1) shall not apply with respect to the first two weeks for which extended benefits are payable, determined without regard to this subsection, pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

(b) *Disqualification conditions*. (1) An individual shall be disqualified for payment of extended benefits for any week of unemployment in the individual's extended entitlement period and until the individual has been employed in each of four subsequent weeks, whether or not consecutive, and has had earnings of at least four times the weekly extended benefit amount if the secretary of human resources finds that during such period:

(A) The individual failed to accept any offer of suitable work, as defined under subsection (b)(2), or failed to apply for any suitable work as defined in subsection (b)(2) to which the individual was referred by the secretary of human resources; or

(B) the individual failed to actively engage in seeking work as prescribed under subsection (b)(4).

(2) For purposes of this subsection (b), the term "suitable work" means, with respect to any individual, any work which is within such individual's capabilities, provided, however, that the gross average weekly remuneration payable for the work must exceed the sum of:

(A) The individual's weekly extended benefit amount, plus the amount, if any, of supplemental unemployment benefits, as defined in section 501(c)(17)(D) of the internal revenue code of 1954, payable to such individual for such week; and further,

(B) pays wages not less than the higher of:

(i) The minimum wage provided by section 6(a)(1) of the fair labor standards act of 1938, without regard to any exemption; or (ii) the applicable state or local minimum wage;

(C) except that no individual shall be denied extended benefits for failure to accept an offer of or apply for any job which meets the definition of suitability as described above if:

(i) The position was not offered to such individual in writing by an employing unit or was not listed with the employment service; or

(ii) such failure could not result in a denial of benefits under the definition of suitable work for regular benefit claimants in subsection (c) of K.S.A. 44-706 and amendments thereto to the extent that the criteria of suitability in that section are not inconsistent with the provisions of this subsection (b)(2); or

(iii) the individual furnishes satisfactory evidence to the secretary of human resources that the individual's prospects for obtaining work in the individual's customary occupation within a reasonably short period are good. If such evidence is deemed satisfactory for this purpose, the determination of whether any work is suitable with respect to such individual shall be made in accordance with the definition of suitable work for regular benefit claimants in subsection (c) of K.S.A. 44-706 and amendments thereto without regard to the definition specified by this subsection (b)(2).

(3) No work shall be determined suitable work for an individual which does not accord with the labor standard provisions required by section 3304(a)(5) of the internal revenue code of 1954. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving such individual's most recent work accepted during approved training, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any

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of the following conditions:

(A) If the position offered is vacant due directly to a strike, lockout or other labor dispute;

(B) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(C) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization.

(4) For the purposes of subsection (b)(1)(B), an individual shall be treated as actively engaged in seeking work during any week if:

(A) The individual has engaged in a systematic and sustained effort to obtain work during such week; and

(B) the individual furnishes tangible evidence that the individual has engaged in such effort during such week.

(5) The employment service shall refer any individual entitled to extended benefits under this act to any suitable work which meets the criteria prescribed in subsection (b)(2).

(c) Except where inconsistent with the provisions of this act, the terms and conditions of the employment security law which apply to claims for regular benefits and to the payment thereof shall apply to claims for extended benefits and to the payment thereof for weeks of unemployment beginning after June 30, 1993, and ending before January 1, 1995. The provisions of subsection (b) do not apply to claims for extended benefits for weeks of unemployment beginning after June 30, 1993, and ending before January 1, 1995.

History: L. 1981, ch. 204, § 3; L. 1982, ch. 214, § 2; L. 1987, ch. 191, § 3; L. 1993, ch. 251, § 3; July 1.

44-705. Benefit eligibility conditions. Except as provided by K.S.A. 44-757 and amendments thereto, an unemployed individual shall be eligible to receive benefits with respect to any week only if the secretary, or a person or persons designated by the secretary, finds that:

(a) The claimant has registered for work at and thereafter continued to report at an employment office in accordance with rules and regulations adopted by the secretary, except that, subject to the provisions of subsection (a) of K.S.A. 44-704 and amendments thereto, the secretary may adopt rules and regulations which waive or alter either or both of the requirements of this subsection (a).

(b) The claimant has made a claim for benefits with respect to such week in accordance with rules and regulations adopted by the secretary.

(c) The claimant is able to perform the duties of such claimant's customary occupation or the duties of other occupations for which the claimant is reasonably fitted by training or experience, and is available for work, as demonstrated by the claimant's pursuit of the full course of action most reasonably calculated to result in the claimant's reemployment except that, notwithstanding any other provisions of this section, an unemployed claimant otherwise eligible for benefits shall not become ineligible for benefits because of the claimant's enrollment in and satisfactory pursuit of approved training, including training approved under section 236(a)(1) of the trade act of 1974.

For the purposes of this subsection, an inmate of a custodial or correctional institution shall be deemed unavailable for work and not eligible to receive unemployment compensation while incarcerated.

(d) The claimant has been unemployed for a waiting period of one week or the claimant is unemployed and has satisfied the requirement for a waiting period of one week under the shared work unemployment compensation program as provided in subsection (k)(4) of K.S.A. 44-757 and amendments thereto, which period of one week, in either case, occurs within the benefit year which includes the week for which the claimant is claiming benefits. No week shall be counted as a week of unemployment for the purposes of this subsection (d):

(1) If benefits have been paid for such week;

(2) if the individual fails to meet with the other eligibility requirements of this section; or

(3) if an individual 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 state or of the United States finally determines that the claimant is not entitled to unemployment benefits under such other law, this subsection (d)(3) shall not apply.

(e) For benefit years established on and after the effective date of this act, the claimant has been paid total wages for insured work in the claimant's base period of not less than 30 times the claimant's weekly benefit amount and has been paid wages in more than one quarter of the claimant's base period, except that the wage credits of an individual earned during the period commencing with the end of a prior base period and ending on the date on which such individual filed a valid initial claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has returned to work and subsequently earned wages for insured work in an amount equal to at least eight times the claimant's current weekly benefit amount.

(f) The claimant participates in reemployment

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services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the secretary, unless the secretary determines that: (1) The individual has completed such services; or (2) there is justifiable cause for the claimant's failure to participate in such services.

History: L.1937, ch. 255, § 5; L. 1941, ch. 264, § 3; L. 1943, ch. 190, § 2; L. 1945, ch. 220, § 3; L. 1949, ch. 288, § 4; L. 1955, ch. 251, § 3; L. 1959, ch. 223, § 2; L. 1961, ch. 245, § 1; L. 1970, ch. 191, § 3; L. 1971, ch. 180, § 3; L. 1971, ch. 181, § 1; L. 1973, ch. 205, § 4; L. 1976, ch. 226, § 3; L. 1976, ch. 370, § 59; L. 1977, ch. 181, § 3; L. 1979, ch. 159, § 2; L. 1982, ch. 214, § 3; L. 1988, ch. 172, § 2; L. 1995, ch. 51, § 1; L. 1998, ch. 124, § 2; July 1

44-706. Disqualification for benefits. An individual shall be disqualified for benefits:

(a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection (a). After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding workday, if required by the employment agreement, after completion of a given work assignment, shall constitute leaving work voluntarily. The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection (a) if:

(1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after recovery from the illness or injury, when recovery was certified by a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available; as used in this paragraph (1) "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

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

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

(4) the individual left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for the individual to continue work at the individual's job;

(5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered; as used in this paragraph (5), "hazardous working conditions" means working conditions that could result in a danger to the physical or mental well-being of the individual; each determination as to whether hazardous working conditions exist shall include, but shall not be limited to, a consideration of (A) the safety measures used or the lack thereof, and (B) the condition of equipment or lack of proper equipment; no work shall be considered hazardous if the working conditions surrounding the individual's work are the same or substantially the same as the working conditions generally prevailing among individuals performing the same or similar work for other employers engaged in the same or similar type of activity;

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

(7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge;

(8) the individual left work to accept better work; each determination as to whether or not the work accepted is better work shall include, but shall not be limited to, consideration of (A) the rate of pay, the hours of work and the probable permanency of the work left as compared to the work accepted, (B) the cost to the individual of getting to the work left in comparison to the cost of getting to the work accepted, and (C) the distance from the individual's place of residence to the work accepted in comparison to the distance from the individual's

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residence to the work left;

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

(10) the individual left work because of a violation of the work agreement by the employing unit and, before the individual left, the individual had exhausted all remedies provided in such agreement for the settlement of disputes before terminating; or

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

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

(1) For the purposes of this subsection (b), "misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment. The term "gross misconduct" as used in this subsection (b) shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection (b).

(2) For the purposes of this subsection (b), the use of or impairment caused by an alcoholic beverage, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be conclusive evidence of misconduct and the possession of an alcoholic beverage, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be prima facie evidence of conduct which is a violation of a duty or obligation reasonably owed to the employer as a condition of employment. For purposes of this subsection (b), the disqualification of an individual from employment which disqualification is required by the provisions of the drug free workplace act, *41 U.S.C. 701 et seq.* or is otherwise required by law because the individual refused to submit to or failed a chemical test which was required by law, shall be conclusive evidence of misconduct. Refusal to submit to a chemical test administered pursuant to an employee assistance program or other drug or alcohol treatment program in which the individual was participating voluntarily or as a condition of further employment shall also be conclusive evidence of misconduct. Alcoholic liquor shall be defined as provided in K.S.A. 41-102 and amendments thereto. Cereal malt beverage shall be defined as provided in K.S.A. 41-2701 and amendments thereto. Controlled substance shall be defined as provided in K.S.A. 65-4101 and amendments thereto of the uniform controlled substances act. As used in this subsection (b)(2), "required by law" means required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in open meeting by the governing body of any special district or other local governmental entity. An individual's refusal to submit to a chemical test shall not be admissible evidence to prove misconduct unless the test is required by and meets the standards of the drug free workplace act, *41 U.S.C. 701 et seq.*, the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, the test was otherwise required by law and the test constituted a required condition of employment for the individual's job, or, there was probable cause to believe that the individual used, possessed or was impaired by an alcoholic beverage, a cereal malt beverage or a controlled substance while working. The results of a chemical test shall not be admissible evidence to prove misconduct unless the following conditions were met:

(A) Either (i) the test was required by law, the test was administered pursuant to the drug free workplace act, *41 U.S.C. 701 et seq.*, (ii) the test was required by law and the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) the test was required by law and the test constituted a required condition of employment for the individual's job, or (iv) there was probable cause to believe that the individual used, had possession of, or was impaired

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by the alcoholic beverage, the cereal malt beverage or the controlled substance while working;

(B) the test sample was collected either (i) as prescribed by the drug free workplace act, *41 U.S.C. 701 et seq.,* (ii) as prescribed by an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) as prescribed by a test which was required by law and which constituted a required condition of employment for the individual's job, or (iv) at a time contemporaneous with the events establishing probable cause;

(C) the collecting and labeling of the test sample was performed by a licensed health care professional or any other individual authorized to collect or label test samples by federal or state law, or a federal or state rule or regulation having the force and effect of law, including law enforcement personnel;

(D) the test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

(E) the test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample; and

(F) the foundation evidence must establish, beyond a reasonable doubt, that the test results were from the sample taken from the individual.

(3) For the purposes of this subsection (b), misconduct shall include, but not be limited to repeated absence, including lateness, from scheduled work if the facts show:

(A) The individual was absent without good cause;

(B) the absence was in violation of the employer's written absenteeism policy;

(C) the employer gave or sent written notice to the individual, at the individual's last known address, that future absence may or will result in discharge;

(D) the employee had knowledge of the employer's written absenteeism policy; and

(E) if an employee disputes being absent without good cause, the employee shall present evidence that a majority of the employee's absences were for good cause.

(4) An individual shall not be disqualified under this subsection (b) if the individual is discharged under the following circumstances:

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

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

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

(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of human resources, or to accept suitable work when offered to the individual by the employment office, the secretary of human resources, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of human resources, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being

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employed, the individual would be required to join or to resign from or refrain from joining any labor organization.

(d) For any week with respect to which the secretary of human resources, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed, except that this subsection (d) shall not apply if it is shown to the satisfaction of the secretary of human resources, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection (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 knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of human resources.

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

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

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

(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

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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 212(d)(5) of the federal immigration and nationality act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

(n) For any week in which an individual is receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer and to which the entire contributions were provided by such employer, except that: (1) If the entire contributions to such plan were provided by the base period employer but such individual's weekly benefit amount exceeds such governmental or other pension, retirement or retired pay, annuity or other similar periodic payment attributable to such week, the weekly benefit amount payable to the individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity or other similar periodic payment which is attributable to such week; or (2) if only a portion of contributions to such plan were provided by the base period employer, the weekly benefit amount payable to such individual for such week shall be reduced (but not below zero) by the prorated weekly amount of the pension, retirement or retired pay, annuity or other similar periodic payment after deduction of that portion of the pension, retirement or retired pay, annuity or other similar periodic payment that is directly attributable to the percentage of the contributions made to the plan by such individual; or (3) if the entire contributions to the plan were provided by such individual, or by the individual and an employer (or any person or organization) who is not a base period employer, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection (n); or (4) whatever portion of contributions to such plan were provided by the base period employer, if the services performed for the employer by such individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity or other similar periodic payment, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection (n). The conditions specified in clause (4) of this subsection (n) shall not apply to payments made under the social security act or the railroad retirement act of 1974, or the corresponding provisions of prior law. Payments made under these acts shall be treated as otherwise provided in this subsection (n). If the reduced weekly benefit amount is not a multiple of $1, it shall be reduced to the next lower multiple of $1.

(o) For any week of unemployment on the basis of services performed in any capacity and under any of the circumstances described in subsection (i), (j) or (k) which an individual performed in an educational institution while in the employ of an educational service agency. For the purposes of this subsection (o), the term "educational service agency" means a governmental agency or entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(p) For any week of unemployment on the basis of service as a school bus or other motor vehicle driver employed by a private contractor to transport pupils, students and school personnel to or from school-related functions or activities for an educational institution, as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, if such week begins during the period between two successive academic years or during a similar period between two regular

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terms, whether or not successive, if the individual has a contract or contracts, or a reasonable assurance thereof, to perform services in any such capacity with a private contractor for any educational institution for both such academic years or both such terms. An individual shall not be disqualified for benefits as provided in this subsection (p) for any week of unemployment on the basis of service as a bus or other motor vehicle driver employed by a private contractor to transport persons to or from nonschool-related functions or activities.

(q) For any week of unemployment on the basis of services performed by the individual in any capacity and under any of the circumstances described in subsection (i), (j), (k) or (o) which are provided to or on behalf of an educational institution, as defined in subsection (v) of K.S.A. 44-703 and amendments thereto, while the individual is in the employ of an employer which is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income under section 501(a) of the code.

(r) For any week in which an individual is registered at and attending an established school, training facility or other educational institution, or is on vacation during or between two successive academic years or terms. An individual shall not be disqualified for benefits as provided in this subsection (r) provided:

(1) The individual was engaged in full-time employment concurrent with the individual's school attendance; or

(2) the individual is attending approved training as defined in subsection (s) of K.S.A. 44-703 and amendments thereto; or

(3) the individual is attending evening, weekend or limited day time classes, which would not affect availability for work, and is otherwise eligible under subsection (c) of K.S.A. 44-705 and amendments thereto.

(s) For any week with respect to which an individual is receiving or has received remuneration in the form of a back pay award or settlement. The remuneration shall be allocated to the week or weeks in the manner as specified in the award or agreement, or in the absence of such specificity in the award or agreement, such remuneration shall be allocated to the week or weeks in which such remuneration, in the judgment of the secretary, would have been paid.

(1) For any such weeks that an individual receives remuneration in the form of a back pay award or settlement, an overpayment will be established in the amount of unemployment benefits paid and shall be collected from the claimant.

(2) If an employer chooses to withhold from a back pay award or settlement, amounts paid to a claimant while they claimed unemployment benefits, such employer shall pay the department the amount withheld. With respect to such amount, the secretary shall have available all of the collection remedies authorized or provided in section K.S.A. 44-717, and amendments thereto.

History: L. 1937, ch. 255, § 6; L. 1939, ch. 214, § 3; L. 1941, ch. 264, § 4; L. 1945, ch. 220, § 4; L. 1947, ch. 291, § 3; L. 1959, ch. 223, § 3; L. 1961, ch. 245, § 2; L. 1970, ch. 191, § 4; L. 1976, ch. 370, § 60; L. 1979, ch. 159, § 3; L. 1980, ch. 148, § 1; L. 1982, ch. 214, § 4; L. 1982, ch. 215, § 1; L. 1983, ch. 169, § 3; L. 1983, ch. 170, § 2; L. 1984, ch. 184, § 2; L. 1985, ch. 176, § 2; L. 1986, ch. 191, § 2; L. 1987, ch. 192, § 1; L. 1988, ch. 173, § 1; L. 1989, ch. 151, § 1; L. 1991, ch. 146, § 2; L. 1992, ch. 74, § 2; L. 1993, ch. 251, § 4; L. 1995, ch. 235, § 3; L. 1996, ch. 232, § 6; Amended 1999 Substitue S.B. 270; July 1.

44-706a. Application of 44-705, 44-706. This act shall only apply to claims filed after April 30, 1961. All claims filed prior to May 1, 1961, shall be governed by the law in effect immediately prior to the effective date of this act.

History: L. 1961, ch. 245, § 3; May 1.

44-707.

History: L. 1937, ch. 255, § 7; L. 1941, ch. 264, § 5; L. 1943, ch. 190, § 3; Repealed L. 1945, ch. 220, § 13; April 5.

44-707a.

History: L. 1951, ch. 307, § 3; Repealed L. 1955, ch. 251, § 6; July 1.

44-708.

History: L. 1937, ch. 255, § 8; Repealed L. 1941, ch. 264, § 18; April 20.

44-709. Claims for benefits; filing; determination of; appointment of referees; appeals, time; procedures; board of review, membership, compensation and duties; witness fees; judicial review of order of board. (a) *Filing*. Claims for benefits shall be made in accordance with rules and regulations adopted by the secretary. The secretary shall furnish a copy of such rules and regulations to any individual requesting them. Each employer shall post and maintain printed statements furnished by the secretary without cost to the employer in places readily accessible to individuals in the service of the employer.

(b) *Determination*. (1) Except as otherwise provided in this subsection (b)(1), a representative designated by the secretary, and hereinafter referred to as an examiner, shall promptly examine the claim and, on the basis of the facts found by the examiner, shall determine whether or not the claim is valid. If the examiner determines that the claim is valid, the examiner shall determine the first day of the benefit

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year, the weekly benefit amount and the total amount of benefits payable with respect to the benefit year. If the claim is determined to be valid, the examiner shall send a notice to the last employing unit who shall respond within 10 days by providing the examiner all requested information including all information required for a decision under K.S.A. 44-706 and amendments thereto. The information may be submitted by the employing unit in person at an employment office of the secretary or by mail, by telefacsimile machine or by electronic mail. If the required information is not submitted or postmarked within a response time limit of 10 days after the examiner's notice was sent, the employing unit 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 employing unit's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. In any case in which the payment or denial of benefits will be determined by the provisions of subsection (d) of K.S.A. 44-706 and amendments thereto, the examiner shall promptly transmit the claim to a special examiner designated by the secretary to make a determination on the claim after the investigation as the special examiner deems necessary. The parties shall be promptly notified of the special examiner's decision and any party aggrieved by the decision may appeal to the referee as provided in subsection (c). The claimant and the claimant's most recent employing unit shall be promptly notified of the examiner's or special examiner's decision.

(2) The examiner may for good cause reconsider the examiner's decision and shall promptly notify the claimant and the most recent employing unit of the claimant, that the decision of the examiner is to be reconsidered, except that no reconsideration shall be made after the termination of the benefit year.

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

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

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

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

(f) *Board of review*. (1) There is hereby created a board of review, hereinafter referred to as the board, consisting of three members. Except as provided by paragraph (2) of this subsection, each member of the board shall be appointed for a term of four years as provided in this subsection. Two members shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. Except as provided by K.S.A. 1996 Supp. 46-2601, no person appointed to the board, whose appointment is subject to confirmation by the senate, shall exercise any power, duty or function as a member until confirmed by the senate. One member shall be representative of employees, one member shall be representative of employers, and one member shall be representative of the public in general. The appointment of the employee representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas A.F.L.-C.I.O. The appointment of the employer representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas chamber of commerce and industry. The appointment of the public representative member of the board, who, because of vocation, occupation or affiliation may be deemed not to be representative of either management or labor, shall be made by the members appointed by the governor as employee representative and employer representative. If the

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two members do not agree and fail to make the appointment of the public member within 30 days after the expiration of the public member's term of office, the governor shall appoint the representative of the public. Not more than two members of the board shall belong to the same political party.

(2) The terms of members who are serving on the board on the effective date of this act shall expire on March 15, of the year in which such member's term would have expired under the provisions of this section prior to amendment by this act. Thereafter, members shall be appointed for terms of four years and until their successors are appointed and confirmed.

(3) Each member of the board shall serve until a successor has been appointed and confirmed. Any vacancy in the membership of the board occurring prior to expiration of a term shall be filled by appointment for the unexpired term in the same manner as provided for original appointment of the member. Each member shall be appointed as representative of the same special interest group represented by the predecessor of the member.

(4) Each member of the board shall be entitled to receive as compensation for the member's services at the rate of $15,000 per year, which rate of compensation shall be effective retroactively to the beginning of the first payroll period chargeable to the fiscal year ending June 30, 1994, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties in accordance with rules and regulations adopted by the secretary. Members' compensation and expenses shall be paid from the employment security administration fund.

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

(6) The board, on its own motion, may affirm, modify or set aside any decision of a referee on the basis of the evidence previously submitted in the case; may direct the taking of additional evidence; or may permit any of the parties to initiate further appeal before it. The board shall permit such further appeal by any of the parties interested in a decision of a referee which overrules or modifies the decision of an examiner. The board may remove to itself the proceedings on any claim pending before a referee. Any proceedings so removed to the board shall be heard in accordance with the requirements of subsection (c). The board shall promptly notify the interested parties of its findings and decision.

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

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

(h) *Witness fees*. Witnesses subpoenaed pursuant to this section shall be allowed fees and necessary travel expenses at rates fixed by the board. Such fees and expenses shall be deemed a part of the expense of administering this act.

(i) *Court review*. Any action of the board is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. No bond shall be required for commencing an action for such review. In the absence of an action for such review, the action of the board shall become final 16 calendar days after the date of the mailing of the decision. In addition to those persons having standing pursuant to K.S.A. 77-611 and amendments thereto, the examiner shall have standing to obtain judicial review of an action of the board. The review proceeding, and the questions of law certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers compensation act.

(j) Any finding of fact or law, judgment, determination, conclusion or final order made by the board of review or any examiner, special examiner, referee or other person with authority to make findings of fact or law pursuant to the employment security law is not admissible or binding in any

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separate or subsequent action or proceeding, between a person and a present or previous employer brought before an arbitrator, court or judge of the state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

(k) In any proceeding or hearing conducted under this section, a party to the proceeding or hearing may appear before a referee or the board either personally or by means of a designated representative to present evidence and to state the position of the party. Hearings may be conducted in person, by telephone or other means of electronic communication. The hearing shall be conducted by telephone or other means of electronic communication if none of the parties requests an in-person hearing. If only one party requests an in-person hearing, the referee shall have the discretion of requiring all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone or other means of electronic communication. The notice of hearing shall include notice to the parties of their right to request an in-person hearing and instructions on how to make the request.

History: L. 1937, ch. 255, § 9; L. 1941, ch. 264, § 6; L. 1943, ch. 190, § 4; L. 1959, ch. 223, § 4; L. 1965, ch. 320, § 1; L. 1970, ch. 191, § 5; L. 1973, ch. 205, § 5; L. 1976, ch. 226, § 4; L. 1976, ch. 370, § 61; L. 1979, ch. 161, § 2; L. 1980, ch. 149, § 1; L. 1982, ch. 347, § 18; L. 1982, ch. 216, § 1; L. 1982, ch. 312, § 2; L. 1984, ch. 318, § 9; L. 1986, ch. 191, § 3; L. 1986, ch. 318, § 59; L. 1987, ch. 191, § 4; L. 1990, ch. 186, § 3; L. 1993, ch. 251, § 5; L. 1995, ch. 241, § 5; L. 1997, ch. 19, § 1; Amended 1999 Substitue S.B. 270; July 1

44-709a. Right to be represented at hearing. In any proceeding or hearing conducted under K.S.A. 44-709, a party to the proceeding or hearing may appear before a referee or the board either personally or by means of a designated representative to present evidence and to state the position of the party.

History: L. 1982, ch. 215, § 2; July 1.

44-710. Employer contributions, liability for and payment of; pooled fund; election to become reimbursing employer; payments in lieu of contributions; group accounts. (a) *Payment.* Contributions shall accrue and become payable by each contributing employer for each calendar year in which the contributing employer is subject to the employment security law with respect to wages paid for employment. Such contributions shall become due and be paid by each contributing employer to the secretary for the employment security fund in accordance with such rules and regulations as the secretary may adopt and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. In the payment of any contributions, a fractional part of $.01 shall be disregarded unless it amounts to $.005 or more, in which case it shall be increased to $.01. Should contributions for any calendar quarter be less than $1, no payment shall be required.

(b) *Rates and base of contributions.* (1) Except as provided in paragraph (2) of this subsection, each contributing employer shall pay contributions on wages paid by the contributing employer during each calendar year with respect to employment as provided in K.S.A. 44-710a and amendments thereto.

(2)(A) If the congress of the United States either amends or repeals the Wagner-Peyser act, the federal unemployment tax act, the federal social security act, or subtitle C of chapter 23 of the federal internal revenue code of 1986, or any act or acts supplemental to or in lieu thereof, or any part or parts of any such law, or if any such law, or any part or parts thereof, are held invalid with the effect that appropriations of funds by congress and grants thereof to the state of Kansas for the payment of costs of administration of the employment security law are no longer available for such purposes, or (B) if employers in Kansas subject to the payment of tax under the federal unemployment tax act are granted full credit against such tax for contributions or taxes paid to the secretary of human resources, then, and in either such case, beginning with the year in which the unavailability of federal appropriations and grants for such purpose occurs or in which such change in liability for payment of such federal tax occurs and for each year thereafter, the rate of contributions of each contributing employer shall be equal to the total of .5% and the rate of contributions as determined for such contributing employer under K.S.A. 44-710a and amendments thereto. The amount of contributions which each contributing employer becomes liable to pay under this paragraph (2) over the amount of contributions which such contributing employer would be otherwise liable to pay shall be credited to the employment security administration fund to be disbursed and paid out under the same conditions and for the same purposes as other moneys are authorized to be paid from the employment security administration fund, except that, if the secretary determines that as of the first day of January of any year there is an excess in the employment security administration fund over the amount required to be disbursed during such year, an amount equal to such excess as determined by the secretary shall be transferred to the employment security fund.

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(c) *Charging of benefit payments*. (1) The secretary shall maintain a separate account for each contributing employer, and shall credit the contributing employer's account with all the contributions paid on the contributing employer's own behalf. Nothing in the employment security law shall be construed to grant any employer or individuals in such employer's service prior claims or rights to the amounts paid by such employer into the employment security fund either on such employer's own behalf or on behalf of such individuals. Benefits paid shall be charged against the accounts of each base period employer in the proportion that the base period wages paid to an eligible individual by each such employer bears to the total wages in the base period. Benefits shall be charged to contributing employers' accounts and rated governmental employers' accounts upon the basis of benefits paid during each twelve-month period ending on the computation date.

(2)(A) Benefits paid in benefit years established by valid new claims shall not be charged to the account of a contributing employer or rated governmental employer who is a base period employer if the examiner finds that claimant was separated from the claimant's most recent employment with such employer under any of the following conditions: (i) Discharged for misconduct or gross misconduct connected with the individual's work; or (ii) leaving work voluntarily without good cause attributable to the claimant's work or the employer.

(B) Where base period wage credits of a contributing employer or rated governmental employer represent part-time employment and the claimant continues in that part-time employment with that employer during the period for which benefits are paid, then that employer's account shall not be charged with any part of the benefits paid if the employer provides the secretary with information as required by rules and regulations. For the purposes of this subsection (c)(2)(B), "part-time employment" means any employment when an individual works concurrently for two or more employers and also works less than full-time for at least one of those employers because the individual's services are not required for the customary, scheduled full-time hours prevailing at the work place or the individual does not customarily work the regularly scheduled full-time hours due to personal choice or circumstances.

(C) No contributing employer or rated governmental employer's account shall be charged with any extended benefits paid in accordance with the employment security law, except for weeks of unemployment beginning after December 31, 1978, all contributing governmental employers and governmental rated employers shall be charged an amount equal to all extended benefits paid.

(D) No contributing employer or rated governmental employer's account will be charged for benefits paid a claimant while pursuing an approved training course as defined in subsection (s) of K.S.A. 44-703, and amendments thereto.

(E) No contributing employer or rated governmental employer's account shall be charged with respect to the benefits paid to any individual whose base period wages include wages for services not covered by the employment security law prior to January 1, 1978, to the extent that the employment security fund is reimbursed for such benefits pursuant to section 121 of public law 94-566 (90 Stat. 2673).

(F) With respect to weeks of unemployment beginning after December 31, 1977, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection (c)(2)(F), the term "previously uncovered services" means services which were not covered employment, at any time during the one-year period ending December 31, 1975, except to the extent that assistance under title II of the federal emergency jobs and unemployment assistance act of 1974 was paid on the basis of such services, and which:

(i) Are agricultural labor as defined in subsection (w) of K.S.A. 44-703 and amendments thereto or domestic service as defined in subsection (aa) of K.S.A. 44-703 and amendments thereto, or

(ii) are services performed by an employee of this state or a political subdivision thereof, as provided in subsection (i)(3)(E) of K.S.A. 44-703 and amendments thereto, or

(iii) are services performed by an employee of a nonprofit educational institution which is not an institution of higher education.

(3) The examiner shall notify any base period employer whose account will be charged with benefits paid following the filing of a valid new claim and a determination by the examiner based on all information relating to the claim contained in the records of the division of employment. Such notice shall become final and benefits charged to the base period employer's account in accordance with the claim unless within 10 calendar days from the date the notice was sent, the base period employer requests in writing that the examiner reconsider the determination and furnishes any required information in accordance with the secretary's rules and regulations. In a similar manner, a notice of an additional claim followed by the first payment of benefits with respect to the benefit year, filed by an

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individual during a benefit year after a period in such year during which such individual was employed, shall be given to any base period employer of the individual who has requested such a notice within 10 calendar days from the date the notice of the valid new claim was sent to such base period employer. 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 base period employer notice was sent, 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. The examiner shall notify the employer of the reconsidered determination which shall be subject to appeal, or further reconsideration, in accordance with the provisions of K.S.A. 44-709 and amendments thereto.

(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.

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

(e) *Election to become reimbursing employer; payment in lieu of contributions.* (1) Any governmental entity for which services are performed as described in subsection (i)(3)(E) of K.S.A. 44-703 and amendments thereto or any nonprofit organization or group of nonprofit organizations described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income tax under section 501(a) of such code, that becomes subject to the employment security law may elect to become a reimbursing employer under this subsection (e)(1) and agree to pay the secretary for the employment security fund an amount equal to the amount of regular benefits and ½ of the extended benefits paid that are attributable to service in the employ of such reimbursing employer, except that each reimbursing governmental employer shall pay an amount equal to the amount of regular benefits and extended benefits paid for weeks of unemployment beginning after December 31, 1978, to individuals for weeks of unemployment which begin during the effective period of such election.

(A) Any employer identified in this subsection (e)(1) may elect to become a reimbursing employer for a period encompassing not less than four complete calendar years if such employer files with the secretary a written notice of such election within the thirty-day period immediately following January 1 of any calendar year or within the thirty-day period immediately following the date on which a determination of subjectivity to the employment security law is issued, whichever occurs later.

(B) Any employer which makes an election to become a reimbursing employer in accordance with subparagraph (A) of this subsection (e)(1) will continue to be liable for payments in lieu of contributions until such employer files with the secretary a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which such termination shall first be effective.

(C) Any employer identified in this subsection (e)(1) which has remained a contributing employer and has been paying contributions under the employment security law for a period subsequent to January 1, 1972, may change to a reimbursing employer by filing with the secretary not later than 30 days prior to the beginning of any calendar year a written notice of election to become a reimbursing employer. Such election shall not be terminable by the employer for four complete calendar years.

(D) The secretary may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after January 1 of the year such election is received.

(E) The secretary, in accordance with such rules and regulations as the secretary may adopt, shall notify each employer identified in subsection (e)(1) of any determination which the secretary may make of its status as an employer and of the effective date of any election which it makes to become a reimbursing employer and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance

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with the provisions of K.S.A. 44-710b and amendments thereto.

(2) *Reimbursement reports and payments.* Payments in lieu of contributions shall be made in accordance with the provisions of paragraph (A) of this subsection (e)(2) by all reimbursing employers except the state of Kansas. Each reimbursing employer shall report total wages paid during each calendar quarter by filing quarterly wage reports with the secretary which shall be filed by the last day of the month following the close of each calendar quarter. Wage reports are deemed filed as of the date they are placed in the United States mail.

(A) At the end of each calendar quarter, or at the end of any other period as determined by the secretary, the secretary shall bill each reimbursing employer, except the state of Kansas, (i) an amount to be paid which is equal to the full amount of regular benefits plus ½ of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such reimbursing employer; and (ii) for weeks of unemployment beginning after December 31, 1978, each reimbursing governmental employer shall be certified an amount to be paid which is equal to the full amount of regular benefits and extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such reimbursing governmental employer.

(B) Payment of any bill rendered under paragraph (A) of this subsection (e)(2) shall be made not later than 30 days after such bill was mailed to the last known address of the reimbursing employer, or otherwise was delivered to such reimbursing employer, unless there has been an application for review and redetermination in accordance with paragraph (D) of this subsection (e)(2).

(C) Payments made by any reimbursing employer under the provisions of this subsection (e)(2) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of such employer.

(D) The amount due specified in any bill from the secretary shall be conclusive on the reimbursing employer, unless, not later than 15 days after the bill was mailed to the last known address of such employer, or was otherwise delivered to such employer, the reimbursing employer files an application for redetermination in accordance with K.S.A. 44-710b and amendments thereto.

(E) Past due payments of amounts certified by the secretary under this section shall be subject to the same interest, penalties and actions required by K.S.A. 44-717 and amendments thereto. If any reimbursing employer is delinquent in making payments of amounts certified by the secretary under this section, the secretary may terminate such employer's election to make payments in lieu of contributions as of the beginning of the next calendar year and such termination shall be effective for such next calendar year and the calendar year thereafter so that the termination is effective for two complete calendar years.

(F) In the discretion of the secretary, any employer who elects to become liable for payments in lieu of contributions and any reimbursing employer who is delinquent in filing reports or in making payments of amounts certified by the secretary under this section shall be required within 60 days after the effective date of such election, in the case of an eligible employer so electing, or after the date of notification to the delinquent employer under this subsection (e)(2)(F), in the case of a delinquent employer, to execute and file with the secretary a surety bond, except that the employer may elect, in lieu of a surety bond, to deposit with the secretary money or securities as approved by the secretary. The amount of the bond or deposit required by this subsection (e)(2)(F) shall not exceed 5.4% of the organization's taxable wages paid for employment by the eligible employer during the four calendar quarters immediately preceding the effective date of the election or the date of notification, in the case of a delinquent employer. If the employer did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the secretary. Upon the failure of an employer to comply with this subsection (e)(2)(F) within the time limits imposed or to maintain the required bond or deposit, the secretary may terminate the election of such eligible employer or delinquent employer, as the case may be, to make payments in lieu of contributions, and such termination shall be effective for the current and next calendar year.

(G) The state of Kansas shall make reimbursement payments quarterly at a fiscal year rate which shall be based upon: (i) The available balance in the state's reimbursing account as of December 31 of each calendar year; (ii) the historical unemployment experience of all covered state agencies during prior years; (iii) the estimate of total covered wages to be paid during the ensuing calendar year; (iv) the applicable fiscal year rate of the claims processing and auditing fee under K.S.A. 75-3798 and amendments thereto; and (v) actuarial and other information furnished to the secretary by the secretary of administration. In accordance with K.S.A. 75-3798 and amendments thereto, the claims processing and auditing fees charged to state

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agencies shall be deducted from the amounts collected for the reimbursement payments under this paragraph (G) prior to making the quarterly reimbursement payments for the state of Kansas. The fiscal year rate shall be expressed as a percentage of covered total wages and shall be the same for all covered state agencies. The fiscal year rate for each fiscal year will be certified in writing by the secretary to the secretary of administration on July 15 of each year and such certified rate shall become effective on the July 1 immediately following the date of certification. A detailed listing of benefit charges applicable to the state's reimbursing account shall be furnished quarterly by the secretary to the secretary of administration and the total amount of charges deducted from previous reimbursing payments made by the state. On January 1 of each year, if it is determined that benefit charges exceed the amount of prior reimbursing payments, an upward adjustment shall be made therefore in the fiscal year rate which will be certified on the ensuing July 15. If total payments exceed benefit charges, all or part of the excess may be refunded, at the discretion of the secretary, from the fund or retained in the fund as part of the payments which may be required for the next fiscal year.

(3) *Allocation of benefit costs*. The reimbursing account of each reimbursing employer shall be charged the full amount of regular benefits and ½ of the amount of extended benefits paid except that each reimbursing governmental employer's account shall be charged the full amount of regular benefits and extended benefits paid for weeks of unemployment beginning after December 31, 1978, to individuals whose entire base period wage credits are from such employer. When benefits received by an individual are based upon base period wage credits from more than one employer then the reimbursing employer's or reimbursing governmental employer's account shall be charged in the same ratio as base period wage credits from such employer bear to the individual's total base period wage credits. Notwithstanding any other provision of the employment security law, no reimbursing employer's or reimbursing governmental employer's account shall be charged for payments of extended benefits which are wholly reimbursed to the state by the federal government.

(A) *Proportionate allocation (when fewer than all reimbursing base period employers are liable)*. If benefits paid to an individual are based on wages paid by one or more reimbursing employers and on wages paid by one or more contributing or rated governmental employers, the amount of benefits payable by each reimbursing employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bears to the total base period wages paid to the individual by all of such individual's base period employers.

(B) *Proportionate allocation (when all base period employers are reimbursing employers)*. If benefits paid to an individual are based on wages paid by two or more reimbursing employers, the amount of benefits payable by each such employer shall be an amount which bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of such individual's base period employers.

(4) *Group accounts*. Two or more reimbursing employers may file a joint application to the secretary for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employment of such reimbursing employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection (e)(4). Upon approval of the application, the secretary shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the secretary receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than four years and thereafter such account shall remain in effect until terminated at the discretion of the secretary or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The secretary shall adopt such rules and regulations as the secretary deems necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this subsection (e)(4), for addition of new members to, and withdrawal of active members from such accounts, and for the determination of the amounts that are payable under this subsection (e)(4) by members of the group and the time and manner of such payments.

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History: L. 1937, ch. 255, § 10; L. 1941, ch. 264, § 7; L. 1943, ch. 190, § 5; L. 1945, ch. 220, § 5; L. 1947, ch. 292, § 1; L. 1949, ch. 288, § 5; L. 1953, ch. 247, § 1; L. 1963, ch. 276, § 1; L. 1970, ch. 191, § 6; L. 1971, ch. 180, § 4; L. 1972, ch. 192,§ 2; L. 1973, ch. 205, § 6; L. 1974, ch. 205,§ 1; L. 1975, ch. 261, § 1; L. 1976, ch. 370,§ 62; L. 1977, ch. 181, § 4; L. 1979, ch. 159,§ 4; L. 1981, ch. 205, § 1; L. 1982, ch. 216,§ 2; L. 1984, ch. 184, § 3; L. 1987, ch. 191,§ 5; L. 1988, ch. 343, § 1; L. 1989, ch. 150,§ 3; L. 1990, ch. 186, § 4; L. 1996, ch. 232,§ 3; L. 1997, ch. 19, § 2; L. 1998, ch. 167,§ 1; July 1

44-710a. Same; classification of employers; establishment and assignment of annual rates; successor classifications; voluntary contributions; surcharge on negative accounts. (a) *Classification of employers by the secretary*. The term "employer" as used in this section refers to contributing employers. The secretary shall classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts with a view of fixing such contribution rates as will reflect such experience. If, as of the date such classification of employers is made, the secretary finds that any employing unit has failed to file any report required in connection therewith, or has filed a report which the secretary finds incorrect or insufficient, the secretary shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to the secretary at the time, and notify the employing unit thereof by mail addressed to its last known address. Unless such employing unit shall file the report or a corrected or sufficient report as the case may be, within 15 days after the mailing of such notice, the secretary shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increase but not to reduction on the basis of subsequently ascertained information. The secretary shall determine the contribution rate of each employer in accordance with the requirements of this section.

(1) *New employers*. (A) No employer will be eligible for a rate computation until there have been 24 consecutive calendar months immediately preceding the computation date throughout which benefits could have been charged against such employer's account.

(B) (i) Employers who are not eligible for a rate computation shall pay contributions at an assigned rate equal to the sum of 1% plus the greater of the average rate assigned in the preceding calendar year to all employers in such industry division or the average rate assigned to all covered employers during the preceding calendar year, except that in no instance shall any such assigned rate be less than 2%. Employers engaged in more than one type of industrial activity shall be classified by principal activity. All rates assigned will remain in effect for a complete calendar year. If the sale or acquisition of a new establishment would require reclassification of the employer to a different industry division, the employer would be promptly notified, and the contribution rate applicable to the new industry division would become effective the following January 1. For rate years 1995, 1996, 1997, 1998 and 1999 all employers who are not eligible for rate computation shall pay contributions at the rate of 1%. However, for rate year 1996, 1997,1998 and 1999 the 1% contribution rate for all employers who are not eligible for a rate computation shall not be effective if the reserve fund ratio in column A of schedule III as determined by this section is less than 1.75%.

(ii) For purposes of this subsection (a), employers shall be classified by industrial activity in accordance with standard procedures as set forth in rules and regulations adopted by the secretary.

(C) "Computation date" means June 30 of each calendar year with respect to rates of contribution applicable to the calendar year beginning with the following January 1. In arriving at contribution rates for each calendar year, contributions paid on or before July 31 following the computation date for employment occurring on or prior to the computation date shall be considered for each contributing employer who has been subject to this act for a sufficient period of time to have such employer's rate computed under this subsection (a).

(2) *Eligible employers*. (A) A reserve ratio shall be computed for each eligible employer by the following method: Total benefits charged to the employer's account for all past years shall be deducted from all contributions paid by such employer for all such years. The balance, positive or negative, shall be divided by the employer's average annual payroll, and the result shall constitute the employer reserve ratio.

(B) Negative account balance employers as defined in subsection (d) shall pay contributions at the rate of 5.4% for each calendar year. However, for rate years 1996, 1997, 1998 and 1999 all negative account balance eligible employers will be assigned rates and pay contributions in accordance with the following schedule.

SCHEDULE IIA

Rate Group	Reserve Ratio Negative Eligible Accounts	Effective Rates
1 Less than	00.00 but greater than 0.40	1.1
2	0.40 but greater than 0.80	1.2
3	0.80 but greater than 1.20	1.3
4	1.20 but greater than 1.60	1.4
5	1.60 but greater than 2.00	1.5
6	2.00 but greater than 2.40	1.6
7	2.40 but greater than 2.80	1.7
8	2.80 but greater than 3.20	1.8
9	3.20 but greater than 3.60	1.9
10	3.60 but greater than 4.00	2.0
11	4.00 but greater than 4.40	2.1
12	4.40 but greater than 4.80	2.2
13	4.80 but greater than 5.20	2.3
14	5.20 but greater than 5.60	2.4
15	5.60 but greater than 6.00	2.5
16	6.00 but greater than 6.40	2.6
17	6.40 but greater than 6.80	2.7
18	6.80 but greater than 7.20	2.8
19	7.20 but greater than 7.60	2.9
20	7.60 but greater than 8.00	3.0

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21	8.00 but greater than 8.40	3.1
22	8.40 but greater than 8.80	3.2
23	8.80 but greater than 9.20	3.3
24	9.20 but greater than 9.60	3.4
25	9.60 but greater than 10.00	3.5
26	10.00 but greater than 10.40	3.6
27	10.40 but greater than 10.80	3.7
28	10.80 but greater than 11.20	3.8
29	11.20 but greater than 11.60	3.9
30	11.60 but greater than 12.00	4.0
31	12.00 but greater than 12.40	4.1
32	12.40 but greater than 12.80	4.2
33	12.80 but greater than 13.20	4.3
34	13.20 but greater than 13.60	4.4
35	13.60 but greater than 14.00	4.5
36	14.00 but greater than 14.40	4.6
37	14.40 but greater than 14.80	4.7
38	14.80 but greater than 15.20	4.8
39	15.20 but greater than 15.60	4.9
40	15.60 but greater than 16.00	5.0
41	16.00 but greater than 16.40	5.1
42	16.40 but greater than 16.80	5.2
43	16.80 but greater than 17.20	5.3
44	17.20 but greater than 17.60	5.4
45	17.60 but greater than 18.00	5.5
46	18.00 but greater than 18.40	5.6
47	18.40 but greater than 18.80	5.7
48	18.80 but greater than 19.20	5.8
49	19.20 but greater than 19.60	5.9
50	19.60	and less 6.0

(C) Eligible employers, other than negative account balance employers, who do not meet the average annual payroll requirements as stated in subsection (a)(2) of K.S.A. 44-703 and amendments thereto, will be issued the maximum rate indicated in subsection (a)(3)(C) of this section until such employer establishes a new period of 24 consecutive calendar months immediately preceding the computation date throughout which benefits could have been charged against such employer's account by resuming the payment of wages. Contribution rates effective for each calendar year thereafter shall be determined as prescribed below.

(D) As of each computation date, the total of the taxable wages paid during the twelve-month period prior to the computation date by all employers eligible for rate computation, except negative account balance employers, shall be divided into 51 approximately equal parts designated in column A of schedule I as "rate groups," except, with regard to a year in which the taxable wage base changes. The taxable wages used in the calculation for such a year and the following year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during the entire twelve-month period prior to the computation date. The lowest numbered of such rate groups shall consist of the employers with the most favorable reserve ratios, as defined in this section, whose combined taxable wages paid are less than 1.96% of all taxable wages paid by all eligible employers. Each succeeding higher numbered rate group shall consist of employers with reserve ratios that are less favorable than those of employers in the preceding lower numbered rate groups and whose taxable wages when combined with the taxable wages of employers in all lower numbered rate groups equal the appropriate percentage of total taxable wages designated in column B of schedule I. Each eligible employer, other than a negative account balance employer, shall be assigned an experience factor designated under column C of schedule I in accordance with the rate group to which the employer is assigned on the basis of the employer's reserve ratio and taxable payroll. If the employer's taxable payroll falls into more than one rate group the employer shall be assigned the experience factor of the lower numbered rate group. If one or more employers have reserve ratios identical to that of the last employer included in the next lower numbered rate group, all such employers shall be assigned the experience factor designated to such last employer, notwithstanding the position of their taxable payroll in column B of schedule I.

SCHEDULE I -- Eligible Employers

Column A Rate Group:	Column B Cumulative Taxable Payroll:	Column C Experience Factor (Ratio to total wages):
1	Less than 1.96%	.025%
2	1.96% but less than 3.92. .	.04
3	3.92 but less than 5.88 . . .	.08
4	5.88 but less than 7.84 . . .	.12
5	7.84 but less than 9.80 . . .	.16
6	9.80 but less than 11.76 . .	.20
7	11.76 but less than 13.72 . .	.24
8	13.72 but less than 15.68 . .	.28
9	15.68 but less than 17.64 . .	.32
10	17.64 but less than 19.60 . .	.36
11	19.60 but less than 21.56 . .	.40
12	21.56 but less than 23.52 . .	.44
13	23.52 but less than 25.48 . .	.48
14	25.48 but less than 27.44 . .	.52
15	27.44 but less than 29.40 . .	.56
16	29.40 but less than 31.36 . .	.60
17	31.36 but less than 33.32 . .	.64
18	33.32 but less than 35.28 . .	.68
19	35.28 but less than 37.24 . .	.72
20	37.24 but less than 39.20 . .	.76
21	39.20 but less than 41.16 . .	.80
22	41.16 but less than 43.12 . .	.84
23	43.12 but less than 45.08 . .	.88
24	45.08 but less than 47.04 . .	.92
25	47.04 but less than 49.00 . .	.96
26	49.00 but less than 50.96 . .	1.00
27	50.96 but less than 52.92 . .	1.04
28	52.92 but less than 54.88 . .	1.08
29	54.88 but less than 56.84 . .	1.12
30	56.84 but less than 58.80 . .	1.16
31	58.80 but less than 60.76 . .	1.20
32	60.76 but less than 62.72 . .	1.24
33	62.72 but less than 64.68 . .	1.28
34	64.68 but less than 66.64 . .	1.32
35	66.64 but less than 68.60 . .	1.36
36	68.60 but less than 70.56 . .	1.40
37	70.56 but less than 72.52 . .	1.44
38	72.52 but less than 74.48 . .	1.48
39	74.48 but less than 76.44 . .	1.52
40	76.44 but less than 78.40 . .	1.56
41	78.40 but less than 80.36 . .	1.60
42	80.36 but less than 82.32 . .	1.64
43	82.32 but less than 84.28 . .	1.68
44	84.28 but less than 86.24 . .	1.72
45	86.24 but less than 88.20 . .	1.76
46	88.20 but less than 90.16 . .	1.80
47	90.16 but less than 92.12 . .	1.84
48	92.12 but less than 94.08 . .	1.88
49	94.08 but less than 96.04 . .	1.92
50	96.04 but less than 98.00 . .	1.96
51	98.00 and over.	2.00

(E) Negative account balance employers shall, in addition to paying the rate provided for in subsection (a)(2)(B) of this section, except for rate years 1996, 1997, 1998 and 1999, pay a surcharge based on the

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size of the employer's negative reserve ratio, the calculation which is provided for in subsection (a)(2) of this section. The amount of the surcharge shall be determined from column B of schedule II of this section. Each negative account balance employer who does not satisfy the requirements to have an average annual payroll, as defined by subsection (a)(2) of K.S.A. 44-703 and amendments thereto, shall be assigned a surcharge of 2%. Contribution payments made pursuant to this subsection (a)(2)(E) shall be credited to the appropriate account of such negative account balance employer.

SCHEDULE II Surcharge on Negative Accounts

Column A Negative Reserve Ratio:	Column B Surcharge as a Percent of Taxable Wages:
Less than 2.0%	0.20%
2.0% but less than 4.0	,40
4.0 but less than 6.0	.60
6.0 but less than 8.0	.80
8.0 but less than 10.0	1.00
10.0 but less than 12.0	1.20
12.0 but less than 14.0	1.40
14.0 but less than 16.0	1.60
16.0 but less than 18.0	1.80
18.0 and over	2.00

(3) *Planned yield.* (A) For rate year 1995, and all years thereafter, the average required yield shall be determined from schedule III of this section, and the planned yield on total wages in column B of schedule III shall be determined by the reserve fund ratio in column A of schedule III. The reserve fund ratio shall be determined by dividing total assets in the employment security fund provided for in subsection (a) of K.S.A. 44-712 and amendments thereto, excluding all moneys credited to the account of this state pursuant to section 903 of the federal social security act, as amended, which have been appropriated by the state legislature, whether or not withdrawn from the trust fund, and excluding contributions not yet paid on July 31 by total payrolls for contributing employers for the preceding fiscal year which ended June 30. For rate years 2000, 2001 and 2002, schedule IIIA shall apply.

SCHEDULE IIIA – Fund Control
Ratios to Total Wages

Column A Reserve Fund Ratio:	Column B Planned Yield:
4.250 and over	0.00
4.225 but less than 4.250	0.01
4.200 but less than 4.225	0.02
4.175 but less than 4.200	0.03
4.150 but less than 4.175	0.04
4.125 but less than 4.150	0.05
4.100 but less than 4.125	0.06
4.075 but less than 4.100	0.07
4.050 but less than 4.075	0.08
4.025 but less than 4.050	0.09
4.000 but less than 4.025	0.10
3.950 but less than 4.000	0.11
3.900 but less than 3.950	0.12
3.850 but less than 3.900	0.13
3.800 but less than 3.850	0.14
3.750 but less than 3.800	0.15
3.700 but less than 3.750	0.16
3.650 but less than 3.700	0.17
3.600 but less than 3.650	0.18
3.550 but less than 3.600	0.19
3.500 but less than 3.550	0.20
3.450 but less than 3.500	0.21
3.400 but less than 3.450	0.22
3.350 but less than 3.400	0.23
3.300 but less than 3.350	0.24
3.250 but less than 3.300	0.25
3.200 but less than 3.250	0.26
3.150 but less than 3.200	0.27
3.100 but less than 3.150	0.28
3.050 but less than 3.100	0.29
3.000 but less than 3.050	0.30
2.950 but less than 3.000	0.31
2.900 but less than 2.950	0.32
2.850 but less than 2.900	0.33
2.800 but less than 2.850	0.34
2.750 but less than 2.800	0.35
2.700 but less than 2.750	0.36
2.650 but less than 2.700	0.37
2.600 but less than 2.650	0.38
2.550 but less than 2.600	0.39
2.500 but less than 2.550	0.40
2.450 but less than 2.500	0.41
2.400 but less than 2.450	0.42
2.350 but less than 2.400	0.43
2.300 but less than 2.350	0.44
2.250 but less than 2.300	0.45
2.200 but less than 2.250	0.46
2.150 but less than 2.200	0.47
2.100 but less than 2.150	0.48
2.050 but less than 2.100	0.49
2.000 but less than 2.050	0.50
1.975 but less than 2.000	0.51
1.950 but less than 1.975	0.52
1.925 but less than 1.950	0.53
1.900 but less than 1.925	0.54
1.875 but less than 1.900	0.55
1.850 but less than 1.875	0.56
1.825 but less than 1.850	0.57
1.800 but less than 1.825	0.58
1.775 but less than 1.800	0.59
1.750 but less than 1.775	0.60
1.725 but less than 1.750	0.61
1.700 but less than 1.725	0.62
1.675 but less than 1.700	0.63
1.650 but less than 1.675	0.64
1.625 but less than 1.650	0.65
1.600 but less than 1.625	0.66
1.575 but less than 1.600	0.67
1.550 but less than 1.575	0.68
1.525 but less than 1.550	0.69
1.500 but less than 1.525	0.70
1.475 but less than 1.500	0.71
1.450 but less than 1.475	0.72
1.425 but less than 1.450	0.73
1.400 but less than 1.425	0.74
1.375 but less than 1.400	0.75
1.350 but less than 1.375	0.76
1.325 but less than 1.350	0.77
1.300 but less than 1.325	0.78
1.275 but less than 1.300	0.79
1.250 but less than 1.275	0.80
1.225 but less than 1.250	0.81
1.200 but less than 1.225	0.82
1.175 but less than 1.200	0.83
1.150 but less than 1.175	0.84
1.125 but less than 1.150	0.85
1.100 but less than 1.125	0.86
1.075 but less than 1.100	0.87
1.050 but less than 1.075	0.88
1.025 but less than 1.050	0.89
1.000 but less than 1.025	0.90
0.900 but less than 1.000	0.91
0.800 but less than 0.900	0.92
0.700 but less than 0.800	0.93
0.600 but less than 0.700	0.94
0.500 but less than 0.600	0.95
0.400 but less than 0.500	0.96
0.300 but less than 0.400	0.97
0.200 but less than 0.300	0.98
0.100 but less than 0.200	0.99
Less than 0.100%	1.00

SCHEDULE III – Fund Control
Ratios to Total Wages

Column A Reserve Fund Ratio:	Column B Planned Yield:
4.500 and over	0.00
4.475 but less than 4.500	0.01
4.450 but less than 4.475	0.02
4.425 but less than 4.450	0.03
4.400 but less than 4.425	0.04
4.375 but less than 4.400	0.05

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4.350 but less than 4.375	0.06
4.325 but less than 4.350	0.07
4.300 but less than 4.325	0.08
4.275 but less than 4.300	0.09
4.250 but less than 4.275	0.10
4.225 but less than 4.250	0.11
4.200 but less than 4.225	0.12
4.175 but less than 4.200	0.13
4.150 but less than 4.175	0.14
4.125 but less than 4.150	0.15
4.100 but less than 4.125	0.16
4.075 but less than 4.100	0.17
4.050 but less than 4.075	0.18
4.025 but less than 4.050	0.19
4.000 but less than 4.025	0.20
3.950 but less than 4.000	0.21
3.900 but less than 3.950	0.22
3.850 but less than 3.900	0.23
3.800 but less than 3.850	0.24
3.750 but less than 3.800	0.25
3.700 but less than 3.750	0.26
3.650 but less than 3.700	0.27
3.600 but less than 3.650	0.28
3.550 but less than 3.600	0.29
3.500 but less than 3.550	0.30
3.450 but less than 3.500	0.31
3.400 but less than 3.450	0.32
3.350 but less than 3.400	0.33
3.300 but less than 3.350	0.34
3.250 but less than 3.300	0.35
3.200 but less than 3.250	0.36
3.150 but less than 3.200	0.37
3.100 but less than 3.150	0.38
3.050 but less than 3.100	0.39
3.000 but less than 3.050	0.40
2.950 but less than 3.000	0.41
2.900 but less than 2.950	0.42
2.850 but less than 2.900	0.43
2.800 but less than 2.850	0.44
2.750 but less than 2.800	0.45
2.700 but less than 2.750	0.46
2.650 but less than 2.700	0.47
2.600 but less than 2.650	0.48
2.550 but less than 2.600	0.49
2.500 but less than 2.550	0.50
2.450 but less than 2.500	0.51
2.400 but less than 2.450	0.52
2.350 but less than 2.400	0.53
2.300 but less than 2.350	0.54
2.250 but less than 2.300	0.55
2.200 but less than 2.250	0.56
2.150 but less than 2.200	0.57
2.100 but less than 2.150	0.58
2.050 but less than 2.100	0.59
2.000 but less than 2.050	0.60
1.975 but less than 2.000	0.61
1.950 but less than 1.975	0.62
1.925 but less than 1.950	0.63
1.900 but less than 1.925	0.64
1.875 but less than 1.900	0.65
1.850 but less than 1.875	0.66
1.825 but less than 1.850	0.67
1.800 but less than 1.825	0.68
1.775 but less than 1.800	0.69
1.750 but less than 1.775	0.70
1.725 but less than 1.750	0.71
1.700 but less than 1.725	0.72
1.675 but less than 1.700	0.73
1.650 but less than 1.675	0.74
1.625 but less than 1.650	0.75
1.600 but less than 1.625	0.76
1.575 but less than 1.600	0.77
1.550 but less than 1.575	0.78
1.525 but less than 1.550	0.79
1.500 but less than 1.525	0.80
1.475 but less than 1.500	0.81
1.450 but less than 1.475	0.82
1.425 but less than 1.450	0.83
1.400 but less than 1.425	0.84
1.375 but less than 1.400	0.85
1.350 but less than 1.375	0.86
1.325 but less than 1.350	0.87
1.300 but less than 1.325	0.88
1.275 but less than 1.300	0.89
1.250 but less than 1.275	0.90
1.225 but less than 1.250	0.91
1.200 but less than 1.225	0.92
1.175 but less than 1.200	0.93
1.150 but less than 1.175	0.94
1.125 but less than 1.150	0.95
1.100 but less than 1.125	0.96
1.075 but less than 1.100	0.97
1.050 but less than 1.075	0.98
1.025 but less than 1.050	0.99
1.000 but less than 1.025	1.00
0.900 but less than 1.000	1.01
0.800 but less than 0.900	1.02
0.700 but less than 0.800	1.03
0.600 but less than 0.700	1.04
0.500 but less than 0.600	1.05
0.400 but less than 0.500	1.06
0.300 but less than 0.400	1.07
0.200 but less than 0.300	1.08
0.100 but less than 0.200	1.09
Less than 0.100%	1.10

(B) *Adjustment to taxable wages.* The planned yield as a percent of total wages, as determined in this subsection(a)(3), shall be adjusted to taxable wages by multiplying by the ratio of total wages to taxable wages for all contributing employers for the preceding fiscal year ending June 30, except, with regard to a year in which the taxable wage base changes. The taxable wages used in the calculation for such a year and the following year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during all of the preceding fiscal year ending June 30.

(C) *Effective rates.* Except with regard to rates for negative account balance employers, employer contribution rates to be effective for the ensuing calendar year shall be computed by adjusting proportionately the experience factors from schedule I of this section to the required yield on taxable wages. For the purposes of this subsection (a)(3), all rates computed shall be rounded to the nearest .01% and for calendar year 1983 and ensuing calendar years, the maximum effective contribution rate shall not exceed 5.4%. For rate years 1995, 1996, 1997, 1998 and 1999, employers, who are current in filing of all reports and in payment of all contributions due, shall be issued a contributions rate of 0%. To be eligible for the 0% rate for rate year 1995, an employer must file all delinquent reports and pay all contributions due within a 30-day period following the date of mailing of the amended rating notice. For rate year 1996, 1997, 1998 and 1999 in order to be eligible for the 0% rate, employers must file all reports due and pay all contributions due on or before January 31, 1996, January 31, 1997, January 31, 1998 and January 31, 1999, respectively. However, for rate year 1996, 1997, 1998 and 1999 the 0% contribution rate for such eligible employers shall not be effective if the reserve fund ratio in column A of schedule III as determined by this section is less than 1.75%. For rate years 1996, 1997, 1998 and 1999 the rates in schedule IIA shall apply unless the reserve fund ratio in column A of schedule III as determined by this section is less than 1.75%. On January 15 of 2000, 2001 and 2002, the secretary shall report to the legislature concerning the adequacy of the fund. On July 15 of 2000, 2001 and 2002, the secretary shall make the same report to the legislative coordinating council. As a part of such report, the secretary shall include any recommenda-

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tions for adjustment of schedule IIIA.

(b) *Successor classification.* (1) For the purposes of this subsection (b), whenever an employing unit, whether or not it is an "employing unit" within the meaning of subsection (g) of K.S.A. 44-703 and amendments thereto, becomes an employer pursuant to subsection (h)(4) of K.S.A. 44-703 and amendments thereto or is an employer at the time of acquisition and meets the definition of a "successor employer" as defined by subsection (dd) of K.S.A. 44-703 and amendments thereto and is controlled substantially either directly or indirectly by legally enforceable means or otherwise by the same interest or interests, shall acquire the experience rating factors of the predecessor employer. These factors consist of all contributions paid, benefit experience and annual payrolls of the predecessor employer.

(2) A successor employer as defined by subsection (h)(4) or subsection (dd) of K.S.A. 44-703 and amendments thereto may receive the experience rating factors of the predecessor employer if an application is made to the secretary or the secretary's designee in writing within 120 days of the date of the transfer.

(3) Whenever an employing unit, whether or not it is an "employing unit" within the meaning of subsection (g) of K.S.A. 44-703 and amendments thereto, acquires or in any manner succeeds to a percentage of an employer's annual payroll which is less than 100% and intends to continue the acquired percentage as a going business, (A) shall acquire the same percentage of the predecessor's experience factors if the employer is controlled substantially, either directly or indirectly or by legally enforceable means or otherwise, by the same interest or interests or (B) may acquire the same percentage of the predecessor's experience factors if: (i) The predecessor employer and successor employing unit make an application in writing on the form prescribed by the secretary, (ii) the application is submitted within 120 days of the date of the transfer, (iii) the successor employing unit is or becomes an employer subject to this act immediately after the transfer, (iv) the percentage of the experience rating factors transferred shall not be thereafter used in computing the contribution rate for the predecessor employer, and (v) the secretary finds that such transfer will not tend to defeat or obstruct the object and purposes of this act.

(4) If the acquiring employing unit was an employer subject to this act prior to the date of the transfer, the rate of contribution for the period from such date to the end of the then current contribution year shall be the same as the contribution rate prior to the date of the transfer. An employing unit which was not subject to this act prior to the date of the transfer shall have a newly computed rate based on the transferred experience rating factors as of the computation date immediately preceding the date of acquisition. These experience rating factors consist of all contributions paid, benefit experience and annual payrolls.

(5) Whenever an employer's account has been terminated as provided in subsection (d) and (e) of K.S.A. 44-711 and amendments thereto and the employer continues with employment to liquidate the business operations, that employer shall continue to be an "employer" subject to the employment security law as provided in subsection (h)(8) of K.S.A. 44-703 and amendments thereto. The rate of contribution from the date of transfer to the end of the then current calendar year shall be the same as the contribution rate prior to the date of the transfer. At the completion of the then current calendar year, the rate of contribution shall be that of a "new employer" as described in subsection (a)(1) of this section.

(6) No rate computation will be permitted an employing unit succeeding to the experience of another employing unit pursuant to this section for any period subsequent to such succession except in accordance with rules and regulations adopted by the secretary. Any such regulations shall be consistent with federal requirements for additional credit allowance in section 3303 of the federal internal revenue code of 1986, and consistent with the provisions of this act.

(c) *Voluntary contributions.* Notwithstanding any other provision of the employment security law, any employer may make voluntary payments for the purpose of reducing or maintaining a reduced rate in addition to the contributions required under this section. Such voluntary payments may be made only during the thirty-day period immediately following the date of mailing of experience rating notices for a calendar year. All such voluntary contribution payments shall be paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective. The amount of voluntary contributions shall be credited to the employer's account as of the next preceding computation date and the employer's rate shall be computed accordingly, except that no employer's rate shall be reduced more than five rate groups as provided in schedule I of this section as the result of a voluntary payment. An employer not having a negative account balance may have such employer's rate reduced not more than five rate groups as provided in schedule I of this section as a result of a voluntary payment. An employer having a negative account balance may have such employer's rate reduced to that prescribed for rate group 51 of schedule I of this section by making a voluntary payment in the amount of such negative account balance or to that rate prescribed for rate groups 50 through 47 of schedule I of this section by making an additional voluntary payment that would increase such employer's reserve ratio to the lower

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limit required for such rate groups 50 through 47. Under no circumstances shall voluntary payments be refunded in whole or in part.

(d) As used in this section, "negative account balance employer" means an eligible employer whose total benefits charged to such employer's account for all past years have exceeded all contributions paid by such employer for all such years.

(e) The secretary of human resources shall annually prepare and submit a certification as to the solvency and adequacy of the amount credited to the state of Kansas' account in the federal employment security trust fund to the governor and the employment security advisory council. Commencing in calendar year 1994, the certification shall be submitted on or before December 1 of each calendar year and shall be for the twelve-month period ending on June 30 of that calendar year. In arriving at the certification contributions paid on or before July 31 following the twelve-month period ending date of June 30 shall be considered. Each certification shall be used to determine the need for any adjustment to schedule III in subsection (a)(3)(A) and to assist in preparing legislation to accomplish any such adjustment.

History: L. 1945, ch. 220, § 6; L. 1947, ch. 291, § 4; L. 1949, ch. 288, § 6; L. 1955, ch. 251, § 4; L. 1957, ch. 296, § 1; L. 1959, ch. 223, § 5; L. 1963, ch. 277, § 1; L. 1971, ch. 180, § 5; L. 1972, ch. 192, § 3; L. 1973, ch. 205, § 7; L. 1974, ch. 205, § 2; L. 1975, ch. 261, § 2; L. 1976, ch. 370, § 63; L. 1978, ch. 192, § 1; L. 1978, ch. 193, § 1; L. 1979, ch. 160, § 1; L. 1982, ch. 215, § 3; L. 1983, ch. 169, § 5; L. 1983, ch. 170, § 3; L. 1984, ch. 183, § 3; L. 1984, ch. 184, § 6; L. 1987, ch. 191, § 6; L. 1989, ch. 150, § 4; L. 1990, ch. 186, § 5; L. 1993, ch. 251, § 6; L. 1995, ch. 71, § 1; L. 1995, ch. 239, § 1; L. 1996, ch. 21, § 1; L. 1997, ch. 43, § 1; L. 1998, ch. 33, §; Amended 1999 Substitute S.B. 270; July 1

44-710b. Rate of contributions, benefit cost rate and benefit liability, notification; review and redetermination; judicial review; periodic notification of benefits charged. (a) *By the secretary of human resources.* The secretary of human resources shall promptly notify each contributing employer of its rate of contributions, each rated governmental employer of its benefit cost rate and each reimbursing employer of its benefit liability as determined for any calendar year pursuant to K.S.A. 44-710 and 44-710a, and amendments thereto. Such determination shall become conclusive and binding upon the employer unless, within 15 days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within 15 days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the reasons therefor. If the secretary of human resources grants such review, the employer shall be promptly notified thereof and shall be granted an opportunity for a fair hearing, but no employer shall have standing, in any proceeding involving the employer's rate of contributions or benefit liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to subsection (c) of K.S.A. 44-710 and amendments thereto, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision or to any other proceedings under this act in which the character of such services was determined. Any such hearing conducted pursuant to this section shall be heard in the county where the contributing employer maintains its principle place of business. The hearing officer shall render a decision concerning all matters at issue in the hearing within 90 days.

(b) *Judicial review.* Any action of the secretary upon an employer's timely request for a review and redetermination of its rate of contributions or benefit liability, in accordance with subsection (a), is subject to review in accordance with the act for judicial review and civil enforcement of agency actions. Any action for such review shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under subsection (i) of K.S.A. 44-709 and amendments thereto, and the workmen's compensation act.

(c) *Periodic notification of benefits charged.* The secretary of human resources may provide by rules and regulations for periodic notification to employers of benefits paid and chargeable to their accounts or of the status of such accounts, and any such notification, in the absence of an application for redetermination filed in such manner and within such period as the secretary of human resources may prescribe, shall become conclusive and binding upon the employer for all purposes. Such redeterminations, made after notice and opportunity for hearing, and the secretary's findings of facts in connection therewith may be introduced in any subsequent administrative or judicial proceedings involving the determination of the rate of contributions of any employer for any calendar year and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact made by the secretary of human resources in proceedings to redetermine the contribution rate of an employer. The review or any other proceedings relating thereto as provided for in this section may be heard by any duly authorized employee of the secretary of human resources and such action shall have the same effect as if heard by the secretary.

History: L. 1945, ch. 220, § 7; L. 1971, ch. 180, § 6; L. 1973, ch. 205, § 8; L. 1976, ch. 370, § 64; L. 1977, ch. 181, § 5; L. 1986, ch. 318, § 60; L. 1997, ch. 182, § 80; July 3.

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44-710c.
History: L. 1951, ch. 307, § 4; Repealed L. 1955, ch. 251, § 6; July 1.

44-710d. Governmental entities; election, mode of payment; rated governmental employer; rate computation; notice. (a) Governmental entities described in subsection (h)(3) of K.S.A. 44-703 and amendments thereto may elect to finance benefit payments as (1) a contributing employer, (2) a reimbursing employer or (3) a rated governmental employer.

(b) Any governmental entity identified in this section may elect to become a rated governmental employer for a period encompassing not less than four complete calendar years if such employer files with the secretary a written notice of such election within the thirty-day period immediately following January 1 of any calendar year or within a like period immediately following the date on which a determination of subjectivity to this act is issued, whichever occurs later.

(c) Any employer electing to become a rated governmental employer shall continue to be liable as a rated governmental employer until such employer files with the secretary a written notice terminating its election and not later than 30 days prior to the beginning of the calendar year for which such termination shall first be effective.

(d) A rated governmental employer shall report and make benefit cost payments based upon total wages paid during each calendar quarter.

(e) No rated governmental employer shall be eligible for a rate computed under subsection (g) of this section until there have been 24 consecutive calendar months immediately preceding the computation date throughout which benefits could have been charged against such employer's account.

(f) Each employer who has not been subject to this act for a sufficient period of time to have a rate computed under this subsection shall make quarterly payments at a calendar year rate expressed as a percentage of total wages and shall be the same for all rated governmental employers not eligible for a computed rate. The rate for rated governmental employers not eligible for a computed rate will be based upon the actual cost experience (benefits paid divided by total wages) of all rated governmental employers during the prior fiscal year ending March 31.

(g) Rated governmental employers eligible for a rate computation shall make quarterly payments at a calendar year rate determined by the experience of all rated governmental employers and the individual employer's experience. The rate shall be computed by the following method:

(1) An adjustment factor rounded to two decimal places shall be computed for all rated governmental employers by dividing total benefits paid by total benefits charged, reported by all rated governmental employers for the preceding fiscal year ending March 31;

(2) An experience factor, stated as a percent rounded to two decimal places, shall be computed for each eligible rated governmental employer by dividing the benefits charged to such employer's account for the preceding fiscal year ending March 31, by the average of such employer's total wages reported for the two preceding fiscal years ending March 31;

(3) Benefit cost rates to be effective for the ensuing calendar year shall be computed by multiplying the experience factor determined in paragraph (2) of this subsection, by the adjustment factor determined in paragraph (1) of this subsection, rounding to the nearest .01%, except that no rated governmental employer's rate for any calendar year will be less than .1%.

(h) Whenever any governmental entity which acquires or in any manner succeeds to all the employment of another governmental entity and both the predecessor and successor have selected the same payment option, the successor shall acquire the experience rating account factors of the predecessor employer. Contributing employer's experience rating account factors consist of the actual contribution and benefit experience and annual payrolls while the rated governmental employer's experience rating account factors consist of the actual benefit experience and annual payrolls. If the successor employing unit was an employer subject to this act prior to the date of acquisition, the contribution rate or benefit cost rate for the period from such date to the end of the then current calendar year shall be the same as the rate with respect to the period immediately preceding the date of acquisition. If the successor was not an employer prior to the date of acquisition, the rate shall be the rate applicable to the predecessor employer or employers with respect to the period immediately preceding the date of acquisition provided there was only one predecessor or there were only predecessors with identical rates. In the event that the predecessors' rates are not identical, the successor's rate shall be a newly computed rate based upon the combined experience of the predecessors as of the computation date immediately preceding the date of acquisition.

(i) Benefit payments shall be charged to the account of each rated governmental employer in accordance with subsection (c) of K.S.A. 44-710 and amendments thereto.

(j) The secretary shall promptly notify each rated governmental employer of such employer's rate for the calendar year, which will become final unless an application for review and redetermination is filed in

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accordance with subsection (b) of K.S.A. 44-710 and amendments thereto.

(k) Rated governmental employers shall make benefit cost payments each calendar quarter. Payments shall be computed by multiplying total wages by the benefit cost rate. Payment of benefit cost payments for any calendar quarter which amounts to less than $1 shall not be required.

History: L. 1977, ch. 181, § 7; L. 1979, ch. 159, § 5; L. 1981, ch. 206, § 1; L. 1981, ch. 205, § 2; July 1.

44-710e. Governmental entities; tax levy, use of proceeds; employee benefits contribution fund. Any city, county, school district or other governmental entity is hereby authorized to budget and pay the cost of providing unemployment insurance benefits for its employees as provided by this act from the various funds from which compensation is paid to its employees, and, if otherwise authorized by law to levy taxes, any such city, county or other governmental entity, except a school district, may levy annually an additional tax therefor, which, together with any other funds available, shall be sufficient to provide the cost thereof and, in the case of cities and counties, to pay a portion of the principal and interest on bonds issued under the authority of K.S.A. 12-1774, and amendments thereto, by cities located in the county. Any taxing subdivision authorized to levy a tax under this section, in lieu of levying such tax, may pay such costs from any employee benefits contribution fund established pursuant to K.S.A. 12-16, 102, and amendments thereto.

History: L. 1977, ch. 181, § 8; L. 1978, ch. 296, § 16; L. 1978, ch. 163, § 6; L. 1979, ch. 52, § 154; L. 1990, ch. 66, § 41; May 31.

44-710f. Counties to provide coverage for certain district court employees. Any county plan pursuant to the employment security law shall indude coverage for district court officers and employees whose total salary is payable by counties.

History: L. 1977, ch. 110, § 7; July 1.

44-710g.

History: L. 1983, ch. 170, § 4; Repealed L. 1986, ch. 191, § 8; July 1.

44-710h.

History: L. 1983, ch. 169, § 4; Repealed L. 1986, ch. 191, § 8; July 1.

44-710i. Common paymaster; wages actually disbursed by employer. For all purposes under the employment security law, whenever two or more employers which are related corporations, which concurrently employ the same individual in employment and which pay wages to such individual through a common paymaster and such common paymaster is one of such employers, each such employer shall be considered to have paid wages to such individual only in the amount of wages actually disbursed by such employer to such individual and such employer shall not be considered to have paid any amount of wages to such individual which was actually disbursed to such individual by another of such employers which concurrently employ such individual. This section shall be construed as part of the employment security law.

History: L. 1983, ch. 163, § 1; July 1.

44-711. Period of liability for contributions; election and termination of employer coverage; exceptions; document copies, fees. (a) *Period of liability for contributions*. Any employing unit which is or becomes an employer subject to this act within any calendar year shall be subject for all wages paid during the whole of such calendar year.

(b) *Termination of liability*. Except as otherwise provided in subsection (c) of this section, an employing unit shall cease to be an employer subject to this act only as of the first day of January of any calendar year, if it files with the secretary of human resources, prior to the first day of May of such calendar year, a written application for termination of coverage and the secretary of human resources finds that within the preceding calendar year the employing unit would not have been subject to this act except for paragraph (6) of subsection (h) of K.S.A. 44-703 and amendments thereto, and has been covered by this act throughout the most recently completed calendar year. The secretary of human resources may at any time on the secretary's own initiative terminate the status of any employing unit as an employer subject to this law when satisfied that such employer has had no individuals in employment at any time during the three preceding calendar years.

(c) *Election and termination*. (1) An employing unit, not otherwise subject to this act, which files with the secretary of human resources its written election to become an employer subject hereto for not less than two calendar years shall, with approval of such election by the secretary of human resources, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years only if prior to the first day of May of such year it has filed with the secretary of human resources a written application for termination.

(2) Any employing unit, for which services that do not constitute employment as defined in this act are performed, may file with the secretary of human resources a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this act for not less than two calendar years. Upon

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approval of such election by the secretary of human resources, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only if prior to the first day of May of such year such employing unit has filed with the secretary of human resources a written application for termination.

(d) *Termination upon total transfer of experience rating.* Notwithstanding the provisions of subsection (a) of this section, upon transfer of an experience rating account in accordance with subsections (b)(1) or (b)(2) of K.S.A. 44-710a and amendments thereto, the predecessor employer shall automatically cease to be an employer subject to this act as of the date of transfer to the successor.

(e) *Termination of account due to successorship.* Notwithstanding the provisions of subsection (a) of this section, an employer's account shall be terminated when the business is acquired by a successor as provided in subsection (h)(4) of K.S.A. 44-703 and amendments thereto or by a nonemploying unit. The account will be terminated as of the date of the acquisition.

History: L. 1937, ch. 255, § 11; L. 1938, ch. 51, § 2; L. 1941, ch. 264, § 8; L. 1945, ch. 220, § 8; L. 1949, ch. 288, § 7; L. 1951, ch. 307, § 5; L. 1955, ch. 251, § 5; L. 1971, ch. 180, § 7; L. 1973, ch. 205, § 9; L. 1976, ch. 370, § 65; L. 1977, ch. 181, § 6; L. 1983, ch. 169, § 6; Feb. 24.

44-712. Employment security fund. (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) interest earned upon any moneys in the fund; (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; (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; (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 bank accounts.

(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.

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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, (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. 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.

(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 fund, and, if it will not be expended, shall be returned promptly to the account of this state in the federal unemployment trust fund.

(4) Notwithstanding paragraph (1), money credited with respect to federal fiscal years 1999, 2000 and 2001, shall be used solely for the administration of the UC Program, and such money shall not otherwise be subject to the requirements of paragraph (1) when appropriated by the legislature.

(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 director of investments 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.

History: L. 1937, ch. 255, § 12; L. 1939, ch. 214, § 4; L. 1941, ch. 264, § 9; L. 1945, ch. 220, § 9; L. 1947, ch. 291, § 5; L. 1949, ch. 288, § 8; L. 1957, ch. 296, § 2; L. 1965, ch. 321, § 1; L. 1969, ch. 247, § 1; L. 1974, ch. 206, § 1; L. 1976, ch. 370, § 66; L. 1983, ch. 170, § 1; L. 1987, ch. 191, § 7; L. 1992, ch. 74, § 3; July 1 L. 1996, ch. 254, § 10; L. 1998, ch. 124, §3; July 1

44-713. Merit awards for certain employees. The secretary of human resources, in recognition of meritorious service by individual employees who serve in the administration of the employment security law and who receive a preponderant share of their compensation through the employment security administration fund, is hereby authorized to make meritorious service awards, including the presentation of a service award pin and certificate to each of such employees when he or she has served in such

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administration a minimum of ten (10) years. The secretary may also present to each of such employees an additional pin and certificate for each additional five (5) year period of satisfactory service in the administration of said law. The cost of each such pin and certificate shall be paid from the employment security administration fund in the same manner as other expenses of administering the employment security law are paid.

History: L. 1937, ch. 255, § 13; L. 1941, ch. 264, § 10; L. 1947, ch. 291, § 6; L. 1953, ch. 248, § 1; L. 1959, ch. 223, § 6; L. 1961, ch. 246, § 1; L. 1967, ch. 282, § 1; L. 1970, ch. 191, § 7; L. 1974, ch. 361, § 60; L. 1976, ch. 357, § 2; L. 1976, ch. 370, § 67; July 1.

44-713a. In-service training. Pursuant to 42 U.S.C.A. 1101 et seq., the secretary of human resources may accept assistance from the secretary of labor to conduct in-service training either directly or through contracts with institutions of higher education or other qualified agencies, organizations or institutions, to conduct programs and courses designed to train individuals to prepare them or improve their qualifications for service in the administration of Kansas employment security programs.

History: L. 1971, ch. 180, § 9; L. 1976, ch. 370, § 68; July 1.

44-714. Administration of act; powers and duties of secretary; employees; certain political activities prohibited, penalties; advisory councils; reports and records, confidentiality; witnesses, oaths and subpoenas; state-federal cooperation; fees for document copies. (a) *Duties and powers of secretary.* It shall be the duty of the secretary to administer this act and the secretary shall have power and authority to adopt, amend or revoke such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the secretary deems necessary or suitable to that end. Such rules and regulations may be adopted, amended, or revoked by the secretary only after public hearing or opportunity to be heard thereon. The secretary shall determine the organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. The secretary shall make and submit reports for the administration of the employment security law in the manner prescribed by K.S.A. 75-3044 to 75-3046, inclusive, and 75-3048 and amendments thereto. Whenever the secretary believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, the secretary shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

(b) *Publication.* The secretary shall cause to be printed for distribution to the public the text of this act, the secretary's rules and regulations and any other material the secretary deems relevant and suitable and shall furnish the same to any person upon application therefor.

(c) *Personnel.* (1) Subject to other provisions of this act, the secretary is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, deputies, attorneys, experts and other persons as may be necessary in carrying out the provisions of this act. The secretary shall classify all positions and shall establish salary schedules and minimum personnel standards for the positions so classified. The secretary shall provide for the holding of examinations to determine the qualifications of applicants for the positions so classified, and, except to temporary appointments not to exceed six months in duration, shall appoint all personnel on the basis of efficiency and fitness as determined in such examinations. The secretary shall not appoint or employ any person who is an officer or committee member of any political party organization or who holds or is a candidate for a partisan elective public office. The secretary shall adopt and enforce fair and reasonable rules and regulations for appointment, promotions and demotions, based upon ratings of efficiency and fitness and for terminations for cause. The secretary may delegate to any such person so appointed such power and authority as the secretary deems reasonable and proper for the effective administration of this act, and may in the secretary's discretion bond any person handling moneys or signing checks under the employment security law.

(2) No employee engaged in the administration of the employment security law shall directly or indirectly solicit or receive or be in any manner concerned with soliciting or receiving any assistance, subscription or contribution for any political party or political purpose, other than soliciting and receiving contributions for such person's personal campaign as a candidate for a nonpartisan elective public office, nor shall any employee engaged in the administration of the employment security law participate in any form of political activity except as a candidate for a nonpartisan elective public office, nor shall any employee champion the cause of any political party or the candidacy of any person other than such person's own personal candidacy for a nonpartisan elective public office. Any employee engaged in the administration of the employment security law who violates these provisions shall be immediately discharged. No person shall solicit or receive any contribution for any political purpose from any employee engaged in the administration of the employment security law and any such action shall be a misdemeanor and shall be punishable by a fine of not less than $100 nor more than $1,000 or by imprisonment in the county jail for not less than 30

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days nor more than six months, or both.

(d) *Advisory councils*. The secretary shall appoint a state employment security advisory council and may appoint local advisory councils, composed in each case of men and women which shall include an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations, and of such members representing the general public as the secretary may designate. Each such member shall serve a four-year term. On July 1, 1996, the secretary shall designate term lengths for seated members of the council. One-half of the seated members representing employers, ½ of the seated members representing employees and ½ of the members representing the general public shall be designated by the secretary to serve two-year terms. The remaining seated members of the council shall be designated to serve four-year terms. When the term of any member expires, the secretary shall appoint the member's successor to a four-year term. If a position on the council becomes vacant prior to the expiration of the vacating member's term, the secretary may appoint an otherwise qualified individual to fulfill the remainder of such unexpired term. Such councils shall aid the secretary in formulating policies and discussing problems related to the administration of this act and in securing impartiality and freedom from political influence in the solution of such problems. Members of the state employment security advisory council attending meetings of such council, or attending a subcommittee meeting thereof authorized by such council, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto. Service on the state employment security advisory council shall not in and of itself be sufficient to cause any member of the state employment security advisory council to be classified as a state officer or employee.

(e) *Employment stabilization.* The secretary, with the advice and aid of the secretary's advisory councils and through the appropriate divisions of the department of human resources, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance; to investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts and the state, of reserves for public works to be used in time of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

(f) *Records and reports*. Each employing unit shall keep true and accurate work records, containing such information as the secretary may prescribe. Such records shall be open to inspection and subject to being copied by the secretary or the secretary's authorized representatives at any reasonable time and shall be preserved for a period of five years from the due date of the contributions or payments in lieu of contributions for the period to which they relate. Only one audit shall be made of any employer's records for any given period of time. Upon request the employing unit shall be furnished a copy of all findings by the secretary or the secretary's authorized representatives, resulting from such audit. A special inquiry or special examination made for a specific and limited purpose shall not be considered to be an audit for the purpose of this subsection. The secretary may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the secretary deems necessary for the effective administration of this act. Information thus obtained or obtained from any individual pursuant to the administration of this act shall be held confidential, except to the extent necessary for the proper presentation of a claim by an employer or employee under the employment security law, and shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity. Any claimant or employing unit or their representatives at a hearing before an appeal tribunal or the secretary shall be supplied with information from such records to the extent necessary for the proper presentation of the claim. The transcript made at any such benefits hearing shall not be discoverable or admissible in evidence in any other proceeding, hearing or determination of any kind or nature. In the event of any appeal of a benefits matter, the transcript shall be sealed by the hearing officer and shall be available only to any reviewing authority who shall reseal the transcript after making a review of it. In no event shall such transcript be deemed a public record. Nothing in this subsection (f) shall be construed to prohibit disclosure of any information obtained under the employment security law, including hearing transcripts, upon request of either of the parties, for the purpose of administering or adjudicating a claim for benefits under the provisions of any other state program, except that any party receiving such information shall be prohibited from further disclosure and shall be subject to the same duty of confidentiality otherwise imposed by this subsection (f) and shall be subject to the penalties imposed by this subsection (f) for violations of such duty of confidentiality. Nothing in this subsection (f) shall be construed to prohibit disclosure of any information obtained under the employment security law, including hearing transcripts, for use as evidence in open court in a

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criminal prosecution for perjury at an appeal hearing under the employment security law or for any criminal violation of the employment security law. If the secretary or any officer or employee of the secretary violates any provisions of this subsection (f), the secretary or such officer or employee shall be fined not less than $20 nor more than $200 or imprisoned for not longer than 90 days, or both. Original records of the agency and original paid benefit warrants of the state treasurer may be made available to the employment security agency of any other state or the federal government to be used as evidence in prosecution of violations of the employment security law of such state or federal government. Photostatic copies of such records shall be made and where possible shall be substituted for original records introduced in evidence and the originals returned to the agency.

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

(h) *Subpoenas, service.* Upon request, service of subpoenas shall be made by the sheriff of a county within that county, by the sheriff's deputy, by any other person who is not a party and is not less than 18 years of age or by some person specially appointed for that purpose by the secretary of human resources or the secretary's designee. A person not a party as described above or a person specially appointed by the secretary or the secretary's designee to serve subpoenas may make service any place in the state. The subpoena shall be served as follows:

(1) *Individual.* Service upon an individual, other than a minor or incapacitated person, shall be made (A) by delivering a copy of the subpoena to the individual personally, (B) by leaving a copy at such individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, (C) by leaving a copy at the business establishment of the employer with an officer or employee of the establishment, (D) by delivering a copy to an agent authorized by appointment or by law to receive service of process, but if the agent is one designated by a statute to receive service, such further notice as the statute requires shall be given, or (E) if service as prescribed above in clauses (A), (B), (C) or (D) cannot be made with due diligence, by leaving a copy of the subpoena at the individual's dwelling house, usual place of abode or usual business establishment, and by mailing a notice by first-class mail to the place that the copy has been left.

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

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

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

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

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

(i) *Subpoenas, enforcement.* In case of contumacy by or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which such person guilty of contumacy or refusal to obey is found, resides or transacts business, upon application by the secretary or the secretary's duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before the secretary, or the secretary's duly

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authorized representative, to produce evidence, if so ordered, or to give testimony relating to the matter under investigation or in question. Failure to obey such order of the court may be punished by said court as a contempt thereof. Any person who, without just cause, shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda or other records in obedience to the subpoena of the secretary or the secretary's duly authorized representative shall be punished by a fine of not less than $200 or by imprisonment of not longer than 60 days, or both, and each day such violation continued shall be deemed to be a separate offense.

(j) *State-federal cooperation.* In the administration of this act, the secretary shall cooperate to the fullest extent consistent with the provisions of this act, with the federal security agency, shall make such reports, in such form and containing such information as the federal security administrator may from time to time require, and shall comply with such provisions as the federal security administrator may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the federal security agency governing the expenditures of such sums as may be allotted and paid to this state under title III of the social security act for the purpose of assisting in the administration of this act. Upon request therefor the secretary shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

(k) *Reciprocal arrangements*. The secretary shall participate in making reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

(1) Services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states (A) in which any part of such individual's service is performed, (B) in which such individual maintains residence, or (C) in which the employing unit maintains a place of business, provided there is in effect as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing units are deemed to be performed entirely within such state;

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

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

(4) wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining such individual's rights to benefits under this act, and wages for insured work, on the basis of which an individual may become entitled to benefits under this act, shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this act upon the basis of such wages or services, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the secretary finds will be fair and reasonable as to all affected interests; and

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

(B) reimbursements paid from the fund pursuant to subsection (l)(4) of this section shall be deemed to be benefits for the purpose of K.S.A. 44-704 and 44-712 and amendments thereto; the secretary is authorized to make to other state or federal agencies, and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to the

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provisions of this section or any other section of the employment security law;

(C) the administration of this act and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this state and such other states and the appropriate federal agencies in exchanging services and in making available facilities and information; the secretary is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this act as the secretary deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law and, in like manner, to accept and utilize information, service and facilities made available to this state by the agency charged with the administration of any such other unemployment compensation or public employment service law; and

(D) to the extent permissible under the laws and constitution of the United States, the secretary is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this act and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the employment security law of this state or under a similar law of such government.

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

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

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

(o) The secretary is hereby authorized to fix, charge and collect fees for copies made of public documents, as defined by subsection (c) of K.S.A. 45-204 and amendments thereto, by xerographic, thermographic or other photocopying or reproduction process, in order to recover all or part of the actual costs incurred, including any costs incurred in certifying such copies. All moneys received from fees charged for copies of such documents shall be remitted to the state treasurer at least monthly. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount thereof in the state treasury to the credit of the employment security administration fund. No such fees shall be charged or collected for copies of documents that are made pursuant to a statute which requires such copies to be furnished without expense.

History: L. 1937, ch. 255, § 14; L. 1939, ch. 214, § 5; L. 1941, ch. 264, § 11; L. 1943, ch. 190, § 6; L. 1945, ch. 220, § 11; L. 1947, ch. 291, § 7; L. 1949, ch. 288, § 9; L. 1951, ch. 307, § 6; L. 1965, ch. 506, § 24; L. 1965, ch. 322, § 1; L. 1973, ch. 205, § 10; L. 1974, ch. 348, § 16; L. 1975, ch. 416, § 4; L. 1976, ch. 370, § 69; L. 1979, ch. 159, § 6; L. 1983, ch. 169, § 7; L. 1986, ch. 191, § 4; L. 1987, ch. 191, § 8; L. 1990, ch. 122, § 17; L. 1991, ch. 145, § 2; L. 1996, ch. 232, § 4; July 1.

44-715. Kansas state employment service; officers and employees; appointments; powers and duties. (a) *State employment service.* The secretary of human resources shall establish and maintain employment offices in such number and in such places as may be necessary for the proper administration of this act and for the purposes of performing such duties as are within the purview of the act of congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933 (48 Stat. 113; U.S.C., title 29, sec. 49 (c) as amended). The secretary of human resources shall be charged with the duty of cooperating with any official or agency of the United States having powers or duties under the provisions of said act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of said act of congress, as amended, in the promotion and maintenance of a system of employment offices. The provisions of said act of congress, as amended, are hereby accepted by this state, in conformity with said act, and this state will observe and comply with the requirements thereof. The secretary of human resources is hereby designated and constituted the agency of this state for the purpose of said act. The secretary of human resources shall appoint such officers and employees as may be necessary for the administration of the act of which this section is amendatory. Such appointments shall be made in accordance with regulations prescribed by the director of the United States employment service. The secretary of human resources may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities.

(b) *Financing*. All moneys received by this state under said act of congress, as amended, shall be paid into the employment security administration fund, and

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said moneys are hereby made available to the secretary of human resources to be expended as provided by this section and by said act of congress. For the purpose of establishing and maintaining free public employment offices, said secretary is authorized to enter into agreements with the railroad retirement board, or any other agency of the United States charged with the administration of an unemployment compensation law, with any political subdivision of this state or with any private nonprofit organization, and as a part of any such agreement the secretary of human resources may accept moneys, services, or quarters as a contribution to the employment service account, and the political subdivisions of this state are hereby authorized to raise and expend moneys, services, or quarters as contribution to the employment service account.

History: L. 1937, ch. 255, § 15; L. 1938, ch. 51, § 3; L. 1939, ch. 214, § 6; L. 1941, ch. 264, § 12; L. 1947, ch. 291, § 8; L. 1949, ch. 288, § 10; L. 1976, ch. 370, § 70; July 1.

44-716. Employment security administration fund. (a) *Special fund.* There is hereby created in the state treasury a special fund to be known as the employment security administration fund. All moneys in this fund which are received from the federal government or any agency thereof, except money received pursuant to subsection (d) of K.S.A. 44-712, and amendments thereof, shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of this act. The fund shall consist of all moneys appropriated by this state and all moneys received from the United States of America, or any agency thereof, including the federal security agency, the railroad retirement board, and any proceeds realized from the sale or disposition of any equipment or supplies which may no longer be necessary for the proper administration of this act, or from any other source, for such purposes, except that moneys received from the railroad retirement board or from any other state as compensation for services or facilities supplied to said board shall be paid into this fund on the same basis as expenditures are made for such service or facilities from such fund. All moneys in this fund shall be deposited, administered, and disbursed, in the same manner and under the same conditions and requirements as is provided by law for other special funds in the state treasury. All balances accrued from unpaid or canceled warrants issued pursuant to this section, notwithstanding the provisions of K.S.A. 10-812, shall remain in the employment security administration fund, and be disbursed in accordance with the provisions of this act relating to such account. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to subsection (d) of K.S.A. 44-712, and amendments thereof, shall remain part of the employment security administration fund and shall be used only in accordance with the conditions specified in subsection (d) of K.S.A. 44-712, and amendments thereof.

(b) *Appropriations.* There shall be appropriated to the employment security administration fund, from any moneys in the state treasury not otherwise appropriated, the sum necessary to match the amount as may be provided and granted to this state under provisions of said act of congress entitled "an act to provide for the establishment of a national employment system and for cooperation with states in the promotion of such system, and for other purposes," approved June 6, 1933 (48 Stat. 113; U.S.C., title 29, sec. 49 (c1) as amended). Pursuant to an estimate by the secretary of human resources of the amount of money required during the ensuing calendar quarter from the sums appropriated, such amount shall be credited to the administration fund at the beginning of each quarter, and additional amounts may be credited by special request of the secretary of human resources. The director of accounts and reports is hereby authorized and directed to draw warrants upon the treasurer of the state for the amounts appropriated upon vouchers approved bythe secretary of human resources.

(c) *Reimbursement of fund.* This state recognizes its obligation to replace, and hereby pledges the faith of this state that funds will be provided in the future, and applied to the replacement of, any moneys received after July 1, 1941, from the federal security agency under title III of the social security act, pursuant to the provisions of section 303 (a) 8 and 9 of the social security act, as amended, which the federal security administrator finds have, because of any action or contingency, been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the federal security administrator to the proper administration of this act. Such moneys shall be promptly replaced by moneys appropriated for such purpose from the general funds of this state to the employment security administration fund for expenditures as provided in subsection (a) of this section. The secretary of human resources shall promptly report to the governor, to the legislature, the amount required for such replacement. In the event the said section 303 (a) 8 and 9 of the social security act is repealed or held inoperative for any reason whatsoever then this paragraph shall be null and void.

History: L. 1937, ch. 255, § 16; L. 1939, ch. 214, § 7; L. 1941, ch. 264, § 13; L. 1947, ch. 291, § 9; L. 1949, ch. 288, § 11; L. 1957, ch. 296, § 3; L. 1965, ch. 86, § 2; L. 1976, ch. 370, § 71; July 1.

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44-716a. Special employment security fund; creation; authorized expenditures and transfers. (a) There is hereby created in the state treasury a special fund to be known as the special employment security fund. All interest and penalties collected under the provisions of the Kansas employment security law shall be paid into this fund. No such moneys shall be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which in the absence of such moneys would be available to finance expenditures for the administration of the employment security law. Nothing in this section shall prevent such moneys from being used as a revolving fund, to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. Except as otherwise authorized by this section or by appropriations act, the moneys in this fund may be used by the secretary of human resources only for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants, or other funds, received for or in the employment security administration fund. In addition to the other purposes for which expenditures may be made from the special employment security fund as authorized by this section or by appropriations act, moneys from this fund may be used to finance activities as deemed necessary by the secretary of human resources for the efficient operation of activities under or the administration of the employment security law, except that (1) no moneys shall be used for such purposes unless the secretary has determined that no other funds are available or can be properly used to finance expenditures for such purposes, and (2) expenditures during any fiscal year for purposes authorized under this section shall not exceed $110,000 except upon approval of the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed by subsection (c) of K.S.A. 75-3711c and amendments thereto. No expenditures of this fund shall be made except on written authorization by the governor and the secretary of human resources.

(b) The director of accounts and reports is hereby directed to draw warrants upon the state treasurer against the money in the special employment security fund for the use and purposes authorized under this section upon vouchers, approved by the secretary of human resources, and accompanied by the written authorization of the governor and the secretary of human resources. The moneys in this fund are hereby specifically made available to replace, within a reasonable time, any moneys received by this state pursuant to section 302 of the federal social security act, as amended, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those necessary for the proper administration of the employment security law. The moneys in this fund shall be continuously available to the secretary of human resources for expenditure in accordance with the provisions of this section and shall not lapse at any time or be transferred to any other fund, except as otherwise authorized in subsection (c) or subsection (d).

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

(d) In addition to expenditures authorized by this section, the director of accounts and reports is directed and authorized to transfer funds from the special employment security fund to the department of human resources federal indirect cost offset fund on July 1 of each year in the amount contained in appropriation bills to be expended from the federal indirect cost offset fund for that fiscal year.

(e) In addition to expenditures authorized by this section, the director of accounts and reports is directed and authorized to transfer funds from the special employment security fund to the clearing account of the employment security fund to be expended in the payment of interest due employers from erroneously collected contributions or benefit cost payments as provided in subsection (h) of K.S.A. 44-717 and amendments thereto.

History: L. 1945, ch. 220, § 10; L. 1947, ch. 291, § 10; L. 1949, ch. 288, § 12; L. 1957, ch. 297, § 7; L. 1976, ch. 370, § 72; L. 1983, ch. 289, § 6; L. 1986, ch. 192, § 1; L. 1987, ch. 37, § 6; L. 1988, ch. 16, § 29; L. 1989, ch. 13, § 23; L. 1991, ch. 145, § 3; L. 1998, ch. 232, § 4; July 1

44-717. Collection of employer payments; penalties and interest, past-due reports and payments; priorities; liens, enforcement; seizure and the sale of property; procedure; refunds; cash deposit or bond; liability of officers and stockholders and members and managers of limited liability companies. (a) Penalties *on past-due reports, interest on past-due contributions, payments in lieu of contributions and benefit cost payments.* Any employer or any officer or agent of an employer, who fails to file any wage report or contribution return by the last day of the month following the close of each calendar quarter to which they are related shall pay a penalty as provided by this subsection (a) for each month or fraction of a month until the report or return is received by the secretary of human resources. The

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penalty for each month or fraction of a month shall be an amount equal to .05% of the total wages paid by the employer during the quarter, except that no penalty shall be less than $25 nor more than $200 for each such report or return not timely filed. Contributions and benefit cost payments unpaid by the last day of the month following the last calendar quarter to which they are related and payments in lieu of contributions unpaid 30 days after the mailing of the statement of benefit charges, shall bear interest at the rate of 1% per month or fraction of a month until payment is received by the secretary of human resources except that an employing unit, which is not theretofore subject to this law and which becomes an employer and does not refuse to make the reports, returns and contributions, payments in lieu of contributions and benefit cost payments required under this law, shall not be liable for such penalty or interest if the wage reports and contribution returns required are filed and the contributions, payments in lieu of contributions or benefit cost payments required are paid within 10 days following notification by the secretary of human resources that a determination has been made fixing its status as an employer subject to this law. Upon written request and good cause shown, the secretary of human resources may abate any penalty or interest or portion thereof provided for by this subsection (a). Interest amounting to less than $1 shall be waived by the secretary of human resources and shall not be collected. Penalties and interest collected pursuant to this subsection shall be paid into the special employment security fund. For all purposes under this section, amounts assessed as surcharges under subsection (j) or under K.S.A. 44-710a and amendments thereto shall be considered to be contributions and shall be subject to penalties and interest imposed under this section and to collection in the manner provided by this section. For purposes of this subsection, a wage report, a contribution return, a contribution, a payment in lieu of contribution or a benefit cost payment is deemed to be filed or paid as of the date it is placed in the United States mail.

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

(2) Any employing unit which is not a resident of this state and which exercises the privilege of having one or more individuals perform service for it within this state and any resident employing unit which exercises that privilege and thereafter removes from this state, shall be deemed thereby to appoint the secretary of state as its agent and attorney for the acceptance of process in any civil action under this subsection. In instituting such an action against any such employing unit the secretary of human resources shall cause such process or notice to be filed with the secretary of state and such service shall be sufficient service upon such employing unit and shall be of the same force and validity as if served upon it personally within this state. The secretary of human resources shall send notice immediately of the service of such process or notice, together with a copy thereof, by registered or certified mail, return receipt requested, to such employing unit at its last-known address and such return receipt, the affidavit of compliance of the secretary of human resources with the provisions of this section, and a copy of the notice of service, shall be appended to the original of the process filed in the court in which such civil action is pending.

(3) Any contractor, who is or becomes an employer under the provisions of this act, who contracts with any subcontractor, who also is or becomes an employer under the provisions of this act, shall be directly liable for such contributions, penalties and interest due from the subcontractor and the secretary of human resources shall have all of the remedies of collection against the contractor under the provisions of this act as though the services in question were performed directly for the contractor, unless the contractor requires the subcontractor to provide a good and sufficient bond guaranteeing payment of all contributions, penalties and interest due or to become due with respect to wages paid for employment on the contract. For the purpose of this subsection (b)(3), the words, "contractor" and "subcontractor" mean and include individuals, partnerships, firms or corporations, or other associations of persons engaged in the business of the construction, alteration, repairing, dismantling or demolition of buildings, roads, bridges, viaducts, sewers, water and gas mains, streets, disposal plants, water filters, tanks and towers, airports, dams, levees and canals, oil and gas

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wells, water wells, pipelines, and every other type of structure, project, development or improvement coming within the definition of real property.

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

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

(d) *Assessments.* If any employer fails to file a report or return required by the secretary of human resources for the determination of contributions, or payments in lieu of contributions, or benefit cost payments, the secretary of human resources may make such reports or returns or cause the same to be made, on the basis of such information as the secretary may be able to obtain and shall collect the contributions, payments in lieu of contributions or benefit cost payments as determined together with any interest due under this act. The secretary of human resources shall immediately forward to the employer a copy of the assessment by registered or certified mail to the employer's address as it appears on the records of the agency, and such assessment shall be final unless the employer protests such assessment and files a corrected report or return for the period covered by the assessment within 15 days after the mailing of the copy of assessment. Failure to receive such notice shall not invalidate the assessment. Notice in writing shall be presumed to have been given when deposited as certified or registered matter in the United States mail, addressed to the person to be charged with notice at such person's address as it appears on the records of the agency.

(e)(1) *Lien.* If any employer or person who is liable to pay contributions, payments in lieu of contributions or benefit cost payments neglects or refuses to pay the same after demand, the amount, including interest and penalty, shall be a lien in favor of the state of Kansas, secretary of human resources, upon all property and rights to property, whether real or personal, belonging to such employer or person. Such lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor until notice thereof has been filed by the secretary of human resources in the office of register of deeds in any county in the state of Kansas, in which such property is located, and when so filed shall be notice to all persons claiming an interest in the property of the employer or person against whom filed. The register of deeds shall enter such notices in the financing statement record and shall also record the same in full in miscellaneous record and index the same against the name of the delinquent employer. The register of deeds shall accept, file, and record such notice without prepayment of any fee, but lawful fees shall be added to the amount of such lien and collected when satisfaction is presented for entry. Such lien shall be satisfied of record upon the presentation of a certificate of discharge by the state of Kansas, secretary of human resources. Nothing contained in this subsection (e) shall be construed as an invalidation of any lien or notice filed in the name of the unemployment compensation division or the employment security division and such liens shall be and remain in full force and effect until satisfied as provided by this subsection (e).

(2) *Authority of secretary or authorized representative.* If any employer or person who is liable to pay any contributions, payments in lieu of contributions or benefit cost payments, including interest and penalty, neglects or refuses to pay the same within 10 days after notice and demand therefor, the secretary or the secretary's authorized representative may collect such contributions, payments in lieu of contributions or benefit cost payments, including interest and penalty, and such further amount as is sufficient to cover the expenses of the levy, by levy upon all property and rights to property which belong to the employer or person or which have a lien created thereon by this subsection (e) for the payment of such contributions, payments in lieu of contributions or benefit cost payments, including interest and penalty. As used in this subsection (e), "property" includes all real property and personal property, whether tangible or intangible, except such property which is exempt under K.S.A. 60-2301 *et seq.*, and amendments thereto. Levy may be made upon the accrued salary or wages of any officer, employee or elected official of any state or local governmental entity which is subject to K.S.A. 60-723 and amendments thereto, by serving a notice of levy as provided in subsection (d) of K.S.A. 60-304

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and amendments thereto. If the secretary or the secretary's authorized representative makes a finding that the collection of the amount of such contributions, payments in lieu of contributions or benefit cost payments, including interest and penalty, is in jeopardy, notice and demand for immediate payment of such amount may be made by the secretary or the secretary's authorized representative and, upon failure or refusal to pay such amount, immediate collection of such amount by levy shall be lawful without regard to the ten-day period provided in this subsection (e).

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

(4) *Successive seizures*. Whenever any property or right to property upon which levy has been made under this subsection (e) is not sufficient to satisfy the claim of the secretary for which levy is made, the secretary or the secretary's authorized representative may proceed thereafter and as often as may be necessary, to levy in like manner upon any other property or rights to property which belongs to the employer or person against whom such claim exists or upon which a lien is created by this subsection (e) until the amount due from the employer or person, together with all expenses, is fully paid.

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

(1) *Individual.* Service upon an individual, other than a minor or incapacitated person, shall be made by delivering a copy of the final notice to the individual personally or by leaving a copy at such individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, by leaving a copy at the business establishment of the employer with an officer or employee of the establishment, or by delivering a copy to an agent authorized by appointment or by law to receive service of process, but if the agent is one designated by a statute to receive service, such further notice as the statute requires shall be given. If service as prescribed above cannot be made with due diligence, the secretary or the secretary's designee may order service to be made by leaving a copy of the final notice at the employer's dwelling house, usual place of abode or business establishment.

(2) *Corporations and partnerships*. Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association, when by law it may be sued as such, shall be made by delivering a copy of the final notice to an officer, partner or resident managing or general agent thereof by leaving a copy at any business office of the employer with the person having charge thereof or by delivering a copy to any other agent authorized by appointment or required by law to receive service of process, if the agent is one authorized by law to receive service and, if the law so requires, by also mailing a copy to the employer.

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

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

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

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

(6) *Service by mail*. (A) Upon direction of the

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secretary or the secretary's designee, service by mail may be effected by forwarding a copy of the notice to the employer by registered or certified mail to the employer's address as it appears on the records of the agency. A copy of the return receipt shall be attached to and filed with any warrant thereafter filed.

(B) The secretary of human resources or an authorized representative of the secretary may file the warrant for record in the office of the clerk of the district court in the county in which the employer owing such contributions, payments in lieu of contributions, benefit cost payments, interest, or penalty has business property. The warrant shall certify the amount of contributions, payments in lieu of contributions, benefit cost payments, interest and penalty due, and the name of the employer liable for such amount. It shall be the duty of the clerk of the district court to file such warrant of record and enter the warrant in the records of the district court for judgment and decrees under the procedure prescribed for filing transcripts of judgment.

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

(D) Postjudgment procedures shall be the same as for judgments according to the code of civil procedure.

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

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

(h) *Refunds*. If any individual, governmental entity or organization makes application for refund or adjustment of any amount paid as contributions, benefit cost payments or interest under this law and the secretary of human resources determines that such amount or any portion thereof was erroneously collected, except for amounts less than $1, the secretary of human resources shall allow such individual or organization to make an adjustment thereof in connection with subsequent contribution payments, or if such adjustment cannot be made the secretary of human resources shall refund the amount, except for amounts less than $1, from the employment security fund, except that all interest erroneously collected which has been paid into the special employment security fund shall be refunded out of the special employment security fund. No adjustment or refund shall be allowed with respect to a payment as contributions, benefit cost payments or interest unless an application therefor is made on or before whichever of the following dates is later: (1) One year from the date on which such payment was made; or (2) three years from the last day of the period with respect to which such payment was made. For like cause and within the same period adjustment or refund may be so made on the secretary's own initiative. The secretary of human resources shall not be required to refund any contributions, payments in lieu of contributions or benefit cost payments based upon wages paid which have been used as base-period wages in a determination of a claimant's benefit rights when justifiable and correct payments have been made to the claimant as the result of such determination. For all taxable years commencing after December 31, 1997, interest at the rate prescribed in K.S.A. 79-2968 and amendments thereto shall be allowed on a contribution or benefit cost payment which the secretary has determined was erroneously collected pursuant to this section.

(i) (l) *Cash deposit or bond*. If any contributing employer is delinquent in making payments under the employment security law during any two quarters of the most recent four-quarter period, the secretary or the secretary's authorized representative shall have the discretionary power to require such contributing employer either to deposit cash or file a bond with sufficient sureties to guarantee the payment of contributions, penalty and interest owed by such employer.

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

(3) Failure to file such cash deposit or bond shall

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subject the employer to a surcharge of 2.0% which shall be in addition to the rate of contributions assigned to the employer under K.S.A. 44-710a and amendments thereto. Contributions paid as a result of this surcharge shall not be credited to the employer's experience rating account. This surcharge shall be effective during the next full calendar year after its imposition and during each full calendar year thereafter until the employer has filed the required cash deposit or bond or has shown timely filing of reports and payment of contributions for four consecutive calendar quarters.

(j) Any officer, major stockholder or other person who has charge of the affairs of an employer, which is an employing unit described in section 501(c)(3) of the federal internal revenue code of 1954 or which is any other corporate organization or association, or any member or manager of a limited liability company, or any public official, who willfully fails to pay the amount of contributions, payments in lieu of contributions or benefit cost payments required to be paid under the employment security law on the date on which such amount becomes delinquent, shall be personally liable for the total amount of the contributions, payments in lieu of contributions or benefit cost payments and any penalties and interest due and unpaid by such employing unit. The secretary or the secretary's authorized representative may assess such person for the total amount of contributions, payments in lieu of contributions or benefit cost payments and any penalties, and interest computed as due and owing. With respect to such persons and such amounts assessed, the secretary shall have available all of the collection remedies authorized or provided by this section.

History: L. 1937, ch. 255, § 17; L. 1938, ch. 51, § 4; L. 1939, ch. 214, § 8; L. 1941, ch. 264, § 14; L. 1945, ch. 220, § 12; L. 1947, ch. 291, § 11; L. 1949, ch. 288, § 13; L. 1959, ch. 223, § 7; L. 1961, ch. 247, § 1; L. 1971, ch. 180, § 8; L. 1973, ch. 205, § 11; L. 1976, ch. 370, § 73; L. 1976, ch. 227, § 1; L. 1979, ch. 159, § 7; L. 1981, ch. 205, § 3; L. 1983, ch. 169, § 8; L. 1984, ch. 147, § 11; L. 1986, ch. 191, § 5; L. 1992, ch. 74, § 4; L. 1995, ch. 71, § 2; L. 1997, ch. 182, § 81; L. 1998, ch. 124, § 5; July 1

44-718. Protection of rights and benefits; penalties. (a) *Waiver of rights void.* No agreement by an individual to waive, release or commute such individual's rights to benefits or any other rights under this act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contribution or payments in lieu of contributions required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from remuneration to finance the employer's contributions required from such employer, or require or accept any waiver of any right hereunder by an individual in such employer's employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than $100 or more than $1,000 or be imprisoned for not more than six months, or both.

(b) *Limitation of fees.* No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the secretary of human resources or representatives of the secretary or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the secretary of human resources or a court may be represented by counsel or other duly authorized agent; but no such counsel or agents shall either charge or receive for such services more than an amount approved by the secretary of human resources. Any person who violates any provision of this subsection shall, for each such offense, be fined not less than $50 nor more than $500, or imprisoned for not more than six months, or both.

(c) *No assignment of benefits; exemptions.* No assignment, pledge or encumbrance of any right to benefits which are or may become due or payable under this act shall be valid; and such rights to benefits shall be exempt from levy, except in accordance with section 6331 of the federal internal revenue code of 1986, and shall be exempt from, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by an individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessaries furnished to such individual or such individual's spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid.

(d) *Support exception.* (1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, disclose whether or not the individual owes support obligations as defined under paragraph (7). If any such individual discloses that such individual owes support obligations, and is determined to be eligible for unemployment compensation, the secretary shall notify the state or local support enforcement agency enforcing such obligation that the individual has been determined to be eligible for unemployment compensation.

(2) The secretary shall deduct and withhold from any unemployment compensation payable to an individual that owes support obligations as defined under paragraph (7):

(A) The amount specified by the individual to the secretary to be deducted and withheld under this subsection, if neither (B) nor (C) is applicable; or

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(B) the amount, if any, determined pursuant to an agreement submitted to the secretary under section 454(20)(B)(i) of the social security act by the state or local support enforcement agency, unless subparagraph (C) is applicable; or

(C) any amount otherwise required to be so deducted and withheld from such unemployment compensation pursuant to legal process (as that term is defined in section 459(i)(5) of the social security act) properly served upon the secretary.

(3) Any amount deducted and withheld under paragraph (2) shall be paid by the secretary to the appropriate state or local support enforcement agency.

(4) Any amount deducted and withheld under paragraph (2) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state or local support enforcement agency in satisfaction of the individual's support obligations.

(5) For purposes of paragraphs (1) through (4), the term "unemployment compensation" means any compensation payable under the employment security law after application of the recoupment provisions of subsection (d) of K.S.A. 44-719 and amendments thereto, (including amounts payable by the secretary pursuant to an agreement under any federal law providing for compensation, assistance or allowances with respect to unemployment).

(6) The subsection applies only if appropriate arrangements have been made for reimbursement by the state or local support enforcement agency for the administrative costs incurred by the secretary under this section which are attributable to support obligations being enforced by the state or local support enforcement agency.

(7) For the purposes of this subsection, "support obligations" means only those obligations which are being enforced pursuant to a plan described in section 454 of the federal social security act which has been approved by the secretary of health and human services under part D of title IV of the federal social security act.

(8) For the purposes of this subsection, "state or local support enforcement agency" means any agency of this state or a political subdivision thereof operating pursuant to a plan described in paragraph (7).

(e)(1) An individual filing a new claim for unemployment compensation shall, at the time of filing such claim, be advised that:

(A) Unemployment compensation is subject to federal, state, and local income tax;

(B) requirements exist pertaining to estimated tax payments;

(C) the individual may elect to have federal income tax deducted and withheld from the individual's payment of unemployment compensation at the amount specified in the federal internal revenue code; and

(D) the individual shall be permitted to change a previously elected withholding status.

(2) Amounts deducted and withheld from unemployment compensation shall remain in the unemployment fund until transferred to the federal taxing authority as a payment of income tax.

(3) The secretary shall follow all procedures specified by the United States department of labor and the federal internal revenue service pertaining to the deducting and withholding of income tax.

(4) Amounts shall be deducted and withheld under this section only after amounts are deducted and withheld for any overpayments of unemployment compensation, child support obligations, food stamp over issuances or any other amounts required to be deducted and withheld under this act.

(f) (1) An individual filing a new claim for unemployment compensation at the time of filing such claim, shall disclose whether or not such individual owes an uncollected over issuance (as defined in section 13(c)(1) of the Food Stamp Act of 1977) of food stamp coupons. The secretary shall notify the state food stamp agency enforcing such obligations of any individual who discloses that such individual owes an uncollected over issuance of food stamps and who is determined to be eligible for unemployment compensation.

(2) The secretary shall deduct and withhold from any unemployment compensation payable to an individual who owes an uncollected over issuance:

(A) The amount specified by the individual to the secretary to be deducted and withheld under this clause;

(B) the amount (if any) determined pursuant to an agreement submitted to the state food stamp agency under section 13(c)(3)(A) of the Food Stamp Act of 1977; or

(C) any amount otherwise required to be deducted and withheld from unemployment compensation pursuant to section 13(c)(3)(B) of such act.

(3) Any amount deducted and withheld under this section shall be paid by the secretary to the appropriate state food stamp agency.

(4) Any amount deducted and withheld under subsection (b) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the state food stamp agency as repayment of the individual's uncollected over issuance.

(5) For purposes of this section, the term "unemployment compensation" means any compensation payable under this act including amounts payable by the secretary pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to

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unemployment.

(6) This section applies only if arrangements have been made for reimbursement by the state food stamp agency for the administrative costs incurred by the secretary under this section which are attributable to the repayment of uncollected over issuances to the state food stamp agency.

History: L. 1937, ch. 255, § 18; L. 1973, ch. 205, § 12; L. 1976, ch. 370, § 74; L. 1982, ch. 214, § 5; L. 1985, ch. 115, § 47; L. 1996, ch. 232, § 5; L. 1997, ch. 19, § 3; L. 1998, ch. 124, § 6; July 1

44-719. Penalties for violation of act; repayment of benefits ineligible to receive, interest thereon. (a) Any person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, either for such person or for any other person, shall be guilty of theft and shall be punished in accordance with the provisions of K.S.A. 21-3701 and amendments thereto.

(b) Any employing unit or any officer or agent for any employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this act, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than $20 nor more than $200, or by imprisonment for not longer than 60 days, or both such fine and imprisonment. Each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who willfully violates any provision of this act or any rule and regulation adopted by the secretary hereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein or provided by any other applicable statute, shall be punished by a fine of not less than $20 nor more than $200, or by imprisonment for not longer than 60 days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d)(1) Any person who has received any amount of money as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in such person's case, or while such person was disqualified from receiving benefits, shall in the discretion of the secretary, either be liable to have such amount of money deducted from any future benefits payable to such person under this act or shall be liable to repay to the secretary for the employment security fund an amount of money equal to the amount so received by such person. After a period of five years, the secretary may waive the collection of any such amount of money when the secretary has determined that the payment of such amount of money was not due to fraud, misrepresentation, or willful nondisclosure on the part of the person receiving such amount of money, and the collection thereof would be against equity or would cause extreme hardship with regard to such person. The collection of benefit overpayments which were made in the absence of fraud, misrepresentation or willful nondisclosure of required information on the part of the person who received such overpayments, may be waived by the secretary at any time if such person met all eligibility requirements of the employment security law during the weeks in which the overpayments were made. (2) Any benefit erroneously paid which is not repaid shall bear interest at the rate of 1.5% per month or fraction of a month. If the benefit was received as a result of fraud, misrepresentation or willful nondisclosure of required information, interest shall accrue from the date of the final determination of overpayment until repayment plus interest is received by the secretary. If the overpayment was without fraud, misrepresentation or willful nondisclosure of required information, interest shall accrue upon any balance which remains unpaid two years after the final determination of overpayment is made and shall continue until payment plus accrued interest is received by the secretary. Interest collected pursuant to this section shall be paid into the special employment security fund, except that interest collected on federal administrative programs shall be returned to the federal government. Upon written request and for good cause shown, the secretary may abate any interest or portion thereof provided for by this subsection (d)(2). Interest accrued may not be paid by money deducted from any future benefits payable to such persons liable for any overpayment.

(3) Unless collection is waived by the secretary, any such amount shall be collectible in the manner provided in subsection (b) of K.S.A. 44-717 and amendments thereto for the collection of past due contributions. The courts of this state shall in like manner entertain actions to collect amounts of money erroneously paid as benefits, or unlawfully obtained, for which liability has accrued under the employment security law of any other state or of the federal government.

(e) Any employer or person who willfully fails or refuses to pay contributions, payments in lieu of

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contributions or benefit cost payments or attempts in any manner to evade or defeat any such contributions, payments in lieu of contributions or benefit cost payments or the payment thereof, shall be liable for the payment of such contributions, payments in lieu of contributions or benefit cost payments and, in addition to any other penalties provided by law, shall be liable to pay a penalty equal to the total amount of the contributions, payments in lieu of contributions or benefit cost payments evaded or not paid.

History: L. 1937, ch. 255, § 19; L. 1941, ch. 264, § 15; L. 1951, ch. 307, § 7; L. 1973, ch. 206, § 1; L. 1976, ch. 226, § 5; L. 1976, ch. 370, § 75; L. 1986, ch. 191, § 6; L. 1991, ch. 145, § 4; July 1.

44-720. Representation in court; prosecutions. (a) *In civil actions*. In any civil action involving the provisions of this act, the secretary of human resources and the state may be represented by any qualified attorney who is an employee of the secretary of human resources and designated by said secretary for this purpose, and at the secretary's request by the attorney general; or if the action is brought in the courts of any other state by any attorney qualified to appear in the courts of that state.

(b) *In criminal actions*. All criminal actions for violation of any provision of this act, or of any rules or regulations issued pursuant thereto, shall be prosecuted by the attorney general of the state; or, at his or her request and under his or her direction, by the district attorney or county attorney of any county in which the offense was committed.

History: L. 1937, ch. 255, § 20; L. 1941, ch. 264, § 16; L. 1970, ch. 191, § 8; L. 1976, ch. 370, § 76; July 1.

44-721. Nonliability of state. Benefits shall be deemed to be due and payable under this act only to the extent provided in this act and to the extent that moneys are available therefor to the credit of the employment security fund and neither the state nor the secretary of human resources shall be liable for any amount in excess of such sums.

History: L. 1937, ch. 255, § 21; L. 1949, ch. 288, § 14; L. 1976, ch. 370, § 77; July 1.

44-722. Saving clause. The legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this act at any time.

History: L. 1937, ch. 255, § 22; March 29.

44-723. Operation concurrent with federal act. If the tax imposed by title IX of the federal social security act (Public No. 271, seventy-fourth congress, approved August 14, 1935) [*], or by any amendments thereto, or any other federal tax against which contributions under this act may be credited has been repealed by congress or has been held unconstitutional by the United States supreme court, the payment of contributions and benefits under this act shall cease, and any unobligated funds in the state employment security fund and in the United States unemployment trust fund returned by the treasurer of the United States because title IX [*] of the social security act is inoperative, shall be refunded to contributors in proportion to their contributions.

History: L. 1937, ch. 255, § 23; L. 1949, ch. 288, § 15; * 42 U.S.C.A. § 1101 to 1110; March 5.

44-724. Separability of provisions. If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of this act and the application of such provision to other persons or circumstances shall not be affected thereby. No caption of any section or set of sections shall in any way affect the interpretation of this act or any part thereof.

History: L. 1937, ch. 255, § 24; March 29.

44-725. Contributions and payments in lieu of contributions deductible in computation of Kansas taxable income. Contributions and payments in lieu of contributions paid by the employer shall be deductible in arriving at the taxable income of such employer under the income tax laws of the state of Kansas, to the same extent as taxes are deductible during any taxable year by any such employer.

History: L. 1937, ch. 255, § 25; L. 1973, ch. 205, § 13; July 1.

44-726.

History: L. 1941, ch. 264, § 17; Repealed L. 1949, ch. 288, § 16; March 5.

44-727. Title to real property acquired with federal funds. The state of Kansas is hereby authorized to receive and accept title to real property which may be acquired under rental purchase agreements executed or to be executed by the secretary in the administration of the employment security law. Such property shall be acquired without appropriation by the state of Kansas and the cost thereof shall be defrayed by federal funds made available for the administration of said law. Sufficiency of title to any property acquired hereunder shall be approved by the attorney general prior to conveyance by general warranty deed to the state of Kansas. Any property acquired under authority hereof shall be utilized primarily for the administration of the employment security law by the secretary of human resources. After acquisition said property may be occupied for administration of the employment security law at no cost other than maintenance.

History: L. 1951, ch. 307, § 8; L. 1976, ch. 370, § 78; July 1.

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44-728 to 44-730.
History: L. 1959, ch. 225, §§ 2 to 4; Repealed, L. 1978, ch. 194, § 1; July 1.

44-731.
History: L. 1959, ch. 225, § 9; Repealed, L. 1978, ch. 194; § 1; July 1.

44-732 to 44-734.
History: L. 1961, ch. 249, §§ 2 to 4; Repealed, L. 1978, ch. 194, § 1; July 1.

44-735.
History: L. 1961, ch. 249, § 11; Repealed, L. 1978, ch. 194, § 1; July 1.

44-736, 44-737.
History: L. 1963, ch. 271, § 2, 3; Repealed, L. 1978, ch. 194, § 1; July 1.

44-738.
History: L. 1963, ch. 271, § 6; Repealed, L. 1978, ch. 194, § 1; July 1.

44-739 to 44-742.
History: L. 1965, ch. 325, §§ 2 to 4, 11; Repealed, L. 1978, ch. 194, § 1; July 1.

44-743 to 44-745.
History: L. 1966, ch. 5, §§ 2 to 4 (Budget Session); Repealed, L. 1978, ch. 194, § 1; July 1.

44-746 to 44-748.
History: L. 1969, ch. 248, §§ 2 to 4; Repealed, L. 1978, ch. 194, § 1; July 1.

44-749.
History: L. 1969, ch. 248, § 5; L. 1975, ch. 262, § 1; Repealed, L. 1978, ch. 194, § 1; July 1.

44-750, 44-751.
History: L. 1969, ch. 248, §§ 6, 7; Repealed, L. 1978, ch. 194, § 1; July 1.

44-752. Sections 44-704a and 44-713a part of and supplemental to employment security law. K.S.A. 44-704a and 44-713a shall be supplemental to and a part of the employment security law.
History: L. 1971, ch. 180, § 11; Feb. 25.

44-753 to 44-756.
History: L. 1974, ch. 201, §§ 1 to 4; Repealed, L. 1978, ch. 194, § 1; July 1.

44-757. Shared work compensation program; definitions; rules and regulations; procedures; employer plans, review and approval; benefits, eligibility and amount; extended benefit eligibility; limit on period for which program benefits payable. *Shared work unemployment compensation program.* (a) As used in this section:

(1) "Affected unit" means a specified department, shift or other unit of two or more employees that is designated by an employer to participate in a shared work plan.

(2) "Fringe benefit" means health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave, and any other analogous employee benefit that is provided by an employer.

(3) "Fund" has the meaning ascribed thereto by subsection (k) of K.S.A. 44-703 and amendments thereto.

(4) "Normal weekly hours of work" means the lesser of 40 hours or the average obtained by dividing the total number of hours worked per week during the preceding twelve-week period by the number 12.

(5) "Participating employee" means an employee who works a reduced number of hours under a shared work plan.

(6) "Participating employer" means an employer who has a shared work plan in effect.

(7) "Secretary" means the secretary of human resources or the secretary's designee.

(8) "Shared work benefit" means an unemployment compensation benefit that is payable to an individual in an affected unit because the individual works reduced hours under an approved shared work plan.

(9) "Shared work plan" means a program for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly hours of work.

(10) "Shared work unemployment compensation program" means a program designed to reduce unemployment and stabilize the work force by allowing certain employees to collect unemployment compensation benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages.

(b) The secretary shall establish a voluntary shared work unemployment compensation program as provided by this section. The secretary may adopt rules and regulations and establish procedures necessary to administer the shared work unemployment compensation program.

(c) An employer who wishes to participate in the shared work unemployment compensation program must submit a written shared work plan to the secretary for the secretary's approval. As a condition for approval, a participating employer must agree to furnish the secretary with reports relating to the operation of the shared work plan as requested by the secretary. The employer shall monitor and evaluate the operation of the established shared work plan as requested by the secretary and shall report the findings to the secretary.

(d) The secretary may approve a shared work plan if:

(1) The shared work plan applies to and identifies a specific affected unit;

(2) the employees in the affected unit are identified by name and social security number;

(3) the shared work plan reduces the normal weekly hours of work for an employee in the affected unit by not less than 20% and not more than 40%;

(4) the shared work plan applies to at least 10% of

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the employees in the affected unit;

(5) the shared work plan describes the manner in which the participating employer treats the fringe benefits of each employee in the affected unit;

(6) the employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of temporary layoffs that would affect at least 10% of the employees in the affected unit and that would result in an equivalent reduction in work hours;

(7) the employer has filed all reports required to be filed under the employment security law for all past and current periods and has paid all contributions, benefit cost payments, or if a reimbursing employer has made all payments in lieu of contributions due for all past and current periods; and

(8) (A) a contributing employer must be eligible for a rate computation under subsection (a)(2) of K.S.A. 44-710a and amendments thereto and is not a negative account employer as defined by subsection (d) of K.S.A. 44-710a and amendments thereto; (B) a rated governmental employer must be eligible for a rate computation under subsection (g) of K.S.A. 44-710d and amendments thereto.

(e) If any of the employees who participate in a shared work plan under this section are covered by a collective bargaining agreement, the shared work plan must be approved in writing by the collective bargaining agent.

(f) A shared work plan may not be implemented to subsidize seasonal employers during the off season or to subsidize employers who have traditionally used part-time employees.

(g) The secretary shall approve or deny a shared work plan no later than the 30th day after the day the shared work plan is received by the secretary. The secretary shall approve or deny a shared work plan in writing. If the secretary denies a shared work plan, the secretary shall notify the employer of the reasons for the denial.

(h) A shared work plan is effective on the date it is approved by the secretary, except for good cause a shared work plan may be effective at any time within a period of 14 days prior to the date such plan is approved by the secretary. The shared work plan expires on the last day of the 12th full calendar month after the effective date of the shared work plan.

(i) An employer may modify a shared work plan created under this section to meet changed conditions if the modification conforms to the basic provisions of the shared work plan as approved by the secretary. The employer must report the changes made to the shared work plan in writing to the secretary before implementing the changes. If the original shared work plan is substantially modified, the secretary shall reevaluate the shared work plan and may approve the modified shared work plan if it meets the requirements for approval under subsection (d). The approval of a modified shared work plan does not affect the expiration date originally set for that shared work plan. If substantial modifications cause the shared work plan to fail to meet the requirements for approval, the secretary shall deny approval to the modifications as provided by subsection (g).

(j) Notwithstanding any other provisions of the employment security law, an individual is unemployed and is eligible for shared work benefits in any week in which the individual, as an employee in an affected unit, works for less than the individual's normal weekly hours of work in accordance with an approved shared work plan in effect for that week. The secretary may not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of the employment security law that relates to availability for work, active search for work or refusal to apply for or accept work with an employer other than the participating employer.

(k) An individual is eligible to receive shared work benefits with respect to any week in which the secretary finds that:

(1) The individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week;

(2) the individual is able to work and is available for additional hours of work or full-time work with the participating employer;

(3) the individual's normal weekly hours of work have been reduced by at least 20% but not more than 40%, with a corresponding reduction in wages; and

(4) the individual's normal weekly hours of work and wages have been reduced as described in paragraph (3) of this subsection (k) for a waiting period of one week which occurs within the period the shared work plan is in effect, which period includes the week for which the individual is claiming shared work benefits.

(l) The secretary shall pay an individual who is eligible for shared work benefits under this section a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual's hours as set forth in the employer's shared work plan. If the shared benefit amount is not a multiple of $1, the secretary shall reduce the amount to the next lowest multiple of $1. All shared work benefits under this section shall be payable from the fund.

(m) The secretary may not pay an individual shared work benefits for any week in which the individual performs paid work for the participating employer in

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excess of the reduced hours established under the shared work plan.

(n) An individual may not receive shared work benefits and regular unemployment compensation benefits in an amount that exceeds the maximum total amount of benefits payable to that individual in a benefit year as provided by subsection (f) of K.S.A. 44-704 and amendments thereto.

(o) An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an exhaustee under K.S.A. 44-704a and 44-704b and amendments thereto and is entitled to receive extended benefits under such statutes if the individual is otherwise eligible under such statutes.

(p) The secretary may terminate a shared work plan for good cause if the secretary determines that the shared work plan is not being executed according to the terms and intent of the shared work unemployment compensation program.

(q) Notwithstanding any other provisions of this section, an individual shall not be eligible to receive shared work benefits for more than 26 calendar weeks during the twelve-month period of the shared work plan. No week shall be counted as a week for which an individual is eligible for shared work benefits for the purposes of this section unless the week occurs within the twelve-month period of the shared work plan.

(r) No shared work benefit payment shall be made under any shared work plan or this section for any week which commences before April 1, 1989.

(s) This section shall be construed as part of the employment security law.

History: L. 1988, ch. 172, § 1; L. 1990, ch. 189, § 1; L. 1991, ch. 145, § 5; L. 1992, ch. 74, § 5; July 1.

44-758. Lessor employing units and client lessees; liability for contributions on wages for services performed for client lessees; reports and records. (a) Any employer or any individual, organization, partnership, corporation or other legal entity which is a lessor employing unit, as defined by subsection (ff) of K.S.A. 44-703 and amendments thereto, shall be liable for contributions on wages paid by the lessor employing unit to individuals performing services for client lessees. For the purposes of the employment security law, no client lessee shall lease an individual proprietor, partner or corporate officer, who is a shareholder or a member of the board of directors of the corporation, from any lessor employing unit. Any client lessee shall be jointly and severally liable for any unpaid contributions, interest and penalties due under this law from any lessor employing unit attributable to wages for services performed for the client lessee by employees leased to the client lessee. The lessor employing unit shall keep separate records and submit separate quarterly contributions and wage reports for each client lessee.

(b) Any lessor employing unit which is currently engaged in the business of leasing employees to client lessees shall comply with the provisions of subsection (a) prior to October 1, 1990.

(c) The provisions of this section shall not be applicable to private employment agencies which provide temporary workers to employers on a temporary help basis, provided the private employment agencies are liable as employers for the payment of contributions on wages paid to temporary workers so employed.

(d) This section shall be construed as part of the employment security law.

History: L. 1990, ch. 186, § 1; July 1.

44-759. Administrative rulings; availability of. On and after January 1, 1998, the secretary of human resources shall make available in a medium readily accessible to contributing employers all administrative rulings of the department of human resources which affect the duties and responsibilities of contributing employers. Such rulings shall be provided in such a manner as to conceal the identity of the specific employer for whom the ruling concerned. The secretary shall cause to be published in the Kansas register a description of each such administrative ruling within 30 days of such ruling together with specific instructions as to how the complete text of the administrative ruling may be obtained.

History: L. 1997, ch. 182, § 82; July 3.

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KANSAS

ADMINISTRATIVE REGULATIONS

Agency 48 and Agency 50

KANSAS DEPARTMENT
OF HUMAN RESOURCES

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KANSAS ADMINISTRATIVE REGULATIONS
AGENCY 48 AND AGENCY 50
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ARTICLE 1 - APPELLATE PROCEDURE

48-1-1. Filing of Appeal. A party appealing from a decision of an examiner or referee shall file with any representative of the division of employment a written notice of appeal stating the reasons for such appeal.

(Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

48-1-2. Notice of Hearing. Upon the scheduling of a hearing on an appeal, notice of hearing on a form approved by the board of review and entitled notice of hearing, shall be mailed to the claimant and other interested parties, at least five (5) days before the date of hearing, specifying the time and place of such hearing.

(Authorized by K.S.A. 1970 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971.)

48-1-3. Disqualification of Referees. No referee shall participate in the hearing of an appeal in which he or she has an interest. Challenges to the interest of any referee shall be made to the referee on, or prior to, the date set for the hearing unless good cause is shown for later challenge. Such challenges to the interest of a referee shall be heard and decided immediately by the referee or, in his or her discretion, referred to the board of review. In the event the challenge is not heard immediately, or is referred to the board of review, the hearing of the appeal shall be continued until the disposal of such challenges. The referee shall cause all parties to be notified of the new date set for such hearing by mailing a notice to all parties to the appeal at least five (5) days before the date set for the hearing.

(Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended May 1, 1980.)

48-1-4. Conduct of Hearing. (a) Each hearing shall be conducted informally and in such a manner as to ascertain all the facts and the full rights of the parties. The claimant and any other party to an appeal before a referee shall present pertinent evidence regarding the issues involved. The referee shall receive evidence logically tending to prove or disprove a given fact in issue, including hearsay evidence and irrespective of common law rules of evidence. The referee, when any evidence is unnecessarily cumulative in effect or when evidence neither proves nor disproves relevant facts in issue, shall, on objection of appellant claimant or interested party, or on that individual's own motion, exclude or prohibit any of this evidence from being received.

(b) When a party appears in person, the referee shall examine the party and the party's witnesses, if any, to the extent necessary. During the hearing of any appeal, the referee shall, with or without notice to either of the parties, take any additional evidence deemed necessary to determine the issues involved.

(c) *Stipulations*. The parties to an appeal, with the consent of the referee, may stipulate in writing or under oath at the hearing as to the facts involved.

(d) *Recording of hearing*. The referee shall record the hearing by use of a mechanical recording device. The recording shall constitute the official record. Other mechanical recording devices shall not be allowed in the hearing.

(e) *Hearings*.

(1) Hearings may be conducted in person or by telephone, subject to the following conditions.

(A) The hearing shall be conducted by telephone if none of the parties requests an in-person hearing.

(B) If only one party requests an in-person hearing, the referee shall have the discretion of requiring all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone.

(C) If all the parties involved request an in-person hearing before the date of a scheduled telephone hearing, the matter shall be continued and set for an in-person hearing; the reasons for the request shall be set forth in writing and sent to the office of appeals by fax, followed with the original sent by mail.

(D) The party requesting the in-person hearing shall be deemed to have agreed that the hearing will be scheduled at a time and geographic location to be determined by the office of appeals, and shall be deemed to have agreed to a delay of the hearing to accommodate scheduling of the hearing.

(E) An in-person hearing shall be held if deemed necessary by the secretary of human resources or the secretary's designee for the fair disposition of the appeal.

(2) A hearing scheduled in person or by telephone shall met these requirements:

(A) permit confrontation and cross-examination of the parties and witnesses; and

(B) permit the simultaneous participation of all parties.

(3) A duly authorized representative shall not appear by telephone at a geographic location different from that of the party represented, except when appearing only as a witness.

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(4) Documentary evidence shall be submitted in advance of the hearing by mail or faxing it to the referee and opposing party. However, the referee shall allow the submission of documentary evidence at the hearing or after the hearing, if to do so is necessary for the fair disposition of the appeal. (Authorized by and implementing K.S.A. 1996 Supp. 44-709(g), as amended by L. 1997, Ch. 19, § 1; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended May 1, 1987; amended April 8, 1998.)

48-1-5. Continuance of Hearing. The referee may continue any hearing upon his or her own motion or upon written application of any party to the appeal.

(a) *Failure to Appear*. If the appellant or any other party fails to appear at the first hearing, the referee shall make a decision based on the record at hand. If the nonappearing party within twelve (12) days following the mailing of the decision petitions the referee for a hearing and shows good cause for the nonappearance, the referee shall set aside the decision and proceed to reschedule the matter for hearing.

(b) *Notice of Continuance*. The referee shall cause notices to be mailed to all interested parties to the appeal wherever there is a continuance.

(c) *Withdrawal of Appeal*. An appellant, with the consent of the referee, may withdraw an appeal in writing or under oath at the hearing.

(Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

48-1-6. Determination of Appeal. After the hearing of an appeal, the referee shall, within a reasonable time, announce findings of fact and the decision with respect to the appeal. The decision shall be in writing and shall be signed by the referee. The referee shall set forth findings of fact with respect to the matters of appeal, the decision and the reasons therefore.

(a) *Notification of Decision*. Copies of all decisions shall be mailed by the referee to the claimant, all other interested parties to the appeal, and the examiner.

(b) All decisions shall contain appeal rights of the parties.

(Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

ARTICLE 2 - BOARD; ORGANIZATION AND PROCEDURES

48-2-1. Creation and Organization. (a) *Election of Officers*. The board of review shall in July of each year elect one of its members chairperson, and a vice chairperson and said officers shall serve for one (1) year and until a successor is elected.

(b) *Meetings*. The board of review shall meet at least once each month or on the call of the chairperson or any two (2) members of the board, at such places as shall be designated.

(c) *Quorum*. Two (2) members of the board of review shall constitute a quorum and no action thereof shall be valid unless it shall have the concurrence of at least two (2) members.

(Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

48-2-2. Filing of Appeal to the Board of Review. A party appealing from a decision of a referee shall file with any representative of the Division of Employment a written notice of appeal, stating reasons for said appeal. Copies of the notice of appeal shall be mailed by the Division of Employment to all parties interested in the decision of the referee which is being appealed.

(Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

48-2-3. Hearing of Appeals. The board of review shall accept appeals, which have an appealable issue, from any referee decision that has been timely filed and its decision on the merits will be based upon the evidence and the record made before the referee, and additional evidence, if any, which the board directs to be taken.

(Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

48-2-4. Additional Evidence. The board of review shall, in its discretion, remand any claim or any issue involved in a claim to a referee or special hearings officer for the taking of such additional evidence as the board of review shall deem necessary. Such evidence shall be taken before the referee or special hearings officer in the manner prescribed for hearings before the referee.

(Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended May 1, 1980.)

48-2-5. Decision of the Board of Review. The board or review shall within a reasonable time announce its findings of fact and decision with respect to each appeal. The decision shall be in writing and signed by those members who concur

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therein. In the event the decision is not unanimous, the decision of the majority shall control. The minority opinion including any written dissent shall be made a part of the record. Copies of all decisions of the board of review shall be mailed to the parties to such appeal.

(a) All decisions shall inform the parties of their appeal rights.

(Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

ARTICLE 3 - REGULATIONS FOR APPEAL STAGES

48-3-1. Witnesses. Witnesses subpoenaed for any hearing before a referee or special hearing officer shall be paid pursuant to K.S.A. 28-125 and K.S.A. 75-3203.

(Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

48-3-2. Representation Before Referee and Board of Review. (a) *Appearance in person*. The parties may appear in person and by an attorney or by a duly authorized representative.

(b) *Representation by attorney*. A party to the proceeding may be represented by an attorney who is regularly admitted to practice before the supreme court of Kansas, or by any attorney from without the state who complies with the provisions of K.S.A. 7-104.

(c) *Representation by a duly authorized representative*.

(1) The parties may be represented by a duly authorized representative who shall serve without fee except as provided in K.S.A. 1985 Supp. 44-718(b). For the purpose of this article, a duly authorized representative is defined as:

(A) A union representative;

(B) an employee of an unemployment compensation cost control management firm;

(C) an employee of a corporate party; or

(D) a legal intern authorized to represent clients pursuant to the provisions of Rule 708 of K.S.A. 7-126.

(2) A referee or the board of review may limit or disallow participation in a hearing by a duly authorized representative if:

(A) the representative does not effectively aid in the presentation of the represented party's case; or

(B) the representative delays the orderly progression of the hearing.

(d) *Standards of conduct*. A referee or the board of review may terminate the hearing and issue a decision based upon the available evidence that a party or a party's representative intentionally and repeatedly fails to observe the provisions of the Kansas employment security law, the rules and regulations of the secretary of human resources or the instructions of a referee or the board of review.

(Authorized by and implementing K.S.A. 1985 Supp. 44-709(g) as amended by L. 1986, Ch. 318, § 59; effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980; amended, May 1, 1987.)

48-3-4. Service of Notice. Notice of all hearings or proceedings called for in this article shall, unless otherwise provided, be given by mail.

(Authorized by K.S.A. 1965 Supp. 44-709(f); effective Jan. 1, 1966.)

48-3-5. Disqualification of Board Members. No member of the board of review shall participate in the consideration of any case in which he or she has an interest.

(Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1966; amended Jan. 1, 1971; amended May 1, 1980.)

ARTICLE 4 - FILING APPEAL

48-4-1. Notice of Appeal, When Filed. The notice of appeal, when filed in person, shall be considered filed on the date delivered to any employee or representative of the Division of Employment. A notice of appeal when filed by mail shall be considered filed on the date postmarked. If the postmark on the envelope is illegible or is missing, the appeal filed by mail shall be considered filed as of the date received by the agency less a calculated time reasonably expected to elapse en route between the place of mailing and the place of delivery, in no case less than three (3) days.

(Authorized by K.S.A. 1979 Supp. 44-709(g); effective Jan. 1, 1967; amended, E-70-32, July 1, 1970; amended Jan. 1, 1971; amended May 1, 1980.)

48-4-2. Constructive Filing. A notice of appeal not filed on time as prescribed by K.S.A. 44-709 and these regulations may be considered timely filed if the referee or the board of review finds that the party appealing failed to file a timely appeal because of excusable neglect.

(Authorized by K.S.A. 1979 Supp. 44-709(g); effective, E-70-32, July 1, 1970; effective Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1980.)

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ARTICLE 1 - MEANING OF TERMS

50-1-1.

(Authorized by K.S.A. 1965 Supp. 44-714(a); effective Jan. 1, 1966; amended May 1, 1980; revoked, May 1, 1987.)

50-1-2. MEANING OF TERMS RELATING TO BOTH UNEMPLOYMENT COMPENSATION CONTRIBUTIONS AND BENEFITS. (a) *Division*. Division means the Division of Employment, Department of Human Resources, State of Kansas.

(b) *State*. State, for purposes of the Interstate Reciprocal Coverage Arrangement, the Interstate Benefit Payment Agreement, and the Interstate Plans for Wage Combining, means the states of the United States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands and Canada, provided such state has subscribed to the agreement or arrangement and whose adherence thereto has not been terminated.

(Authorized by K.S.A. 1980 Supp. 44-714(a), (k); effective Jan. 1, 1966; amended May 1, 1980.)

50-1-3. DEFINITIONS RELATING PRIMARILY TO UNEMPLOYMENT COMPENSATION CONTRIBUTIONS. (a) *Wages Paid*. Wages paid include both wages actually received by the worker and wages constructively paid. Wages are constructively paid when they are (1) credited to the account of or set apart for a worker without any substantial restriction as to the time or manner of payment or condition upon which payment is to be made; (2) made available so that they may be drawn upon by the worker at any time; or (3) brought within the worker's own control and disposition, although not then actually reduced to possession.

(b) *Market*. The term "market" means the place or point where the producer or grower of the commodity customarily parts with economic interest in its future form or destiny.

(c) *Newspaper Carriers*. Newspaper carriers are individuals who purchase newspapers at a wholesale price from the publisher for sale, provide their own means of transportation, pay their own expenses, make their own collections, solicit their own customers, receive no salary, wages or other remuneration from the publisher, are not controlled or directed in the details, means or manner of operation by the publisher, and whose earnings are derived solely from the resale of the newspapers at a profit. Newspaper carriers shall not be deemed employees of the publisher within the meaning of the Kansas Employment Security Law.

(d) *Governmental Entity*. "Governmental entity" means the State of Kansas, its political subdivisions, and their instrumentalities.

(e) *Contributing Employer*. "Contributing employer," as defined in K.S.A. 44-703(y), includes any governmental entity electing to become a contributing employer, or any employer other than a reimbursing employer or rated governmental employer, which makes payments to the Employment Security Fund as provided by K.S.A. 44-710, as amended.

(f) *Reimbursing Employer*. "Reimbursing employer," as defined in K.S.A. 44-703(x), includes any governmental entity or eligible non-profit organization or groups of organizations which elect to make payments in lieu of contributions to the Employment Security Fund as provided by K.S.A. 44-710(e)(1).

(Authorized by and implementing K.S.A. 1985 Supp. 44-703 as amended by L. 1986, Ch. 190, § 1, 44-714(a) as amended by L. 1986, Ch. 191, § 4; effective January 1, 1966; amended January 1, 1972; amended May 1, 1980; May 1, 1983; amended, May 1, 1987.)

50-1-4. DEFINITIONS; UNEMPLOYMENT COMPENSATION CLAIMS AND BENEFIT PAYMENTS. (a) *Types of unemployed workers*.

(1) "Total unemployment" means that, with respect to any one week, worker performs no services and earns no remuneration for services.

(2) "Part-total unemployment" means that, with respect to any one week, a worker performs services in casual or temporary employment for any employing unit other than the worker's regular employer, but works less than a full-work week and earns less than the worker's weekly benefit amount.

(3) "Temporary unemployment" means that, the worker has been laid off due to lack of work by an employing unit for which the worker has worked full time and for which the worker expects to again work full time, and that the worker's employment with the employing unit, although temporarily suspended, has not been terminated. Temporary unemployment may be either total or part-total unemployment and shall not exceed four consecutive weeks.

(4) "Partial unemployment" means that, with respect to any one week, a worker works for the regular employer less than full time because of lack of work and earns less than the worker's weekly benefit amount. Work and earnings from the regular employer shall be considered together with work and

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earnings from any subsidiary work in determining whether the worker worked less than full time and earned less than the worker's weekly benefit amount during the week.

(b) "Week" means the calendar week of seven consecutive calendar days beginning 12:01 a.m. Sunday, and ending 12:00 midnight the following Saturday. For the purposes of payment of benefits to partially unemployed workers whose wages are paid on a weekly basis, the term "week" means the pay-period week of that worker. However, when it is determined to be in the best interest of an interstate claimant, and when Kansas is the liable state, week may be determined to be the seven-day period defined as a week under the laws of the agent state.

(c) "Initial application or claim" means a new application or an additional application.

(1) "New application or claim" means a notice by a worker, filed as prescribed, that the worker intends to claim unemployment compensation benefits and desires a determination as to the worker's rights to benefits, the validity of the claim and, if valid, the inclusive dates of the worker's benefit year and the amount of benefits for which the worker is qualified on the basis of base period wage credits.

(2) "Additional application or claim" means a notice by any worker with a benefit year currently in effect, filed as prescribed, that the worker intends to resume the worker's claim in the previously established benefit year.

(d) "Continued claim" means a request, filed as prescribed, for waiting period credit or benefits for a week of unemployment.

(e) "Interstate benefit payment plan" means the plan approved by the interstate conference of employment security agencies under which benefits are payable to unemployed individuals absent from the state or states in which benefit credits have been accumulated.

(f) "Interstate claimant" means an individual who claims benefits under the unemployment compensation law of one or more liable states through the facilities of an agent state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the liable state finds that this exclusion would create undue hardship on claimants in specified areas.

(g) "Agent state" means any state in which an individual files a claim for benefits against another state.

(h) "Liable state" means any state against which an individual files, through another state, a claim for benefits.

(i) "Week of unemployment" includes any week of unemployment, as defined in the law of the liable state, from which benefits with respect to that week are claimed.

(j) A "mass layoff" means a layoff of 25 or more workers because of lack of work, by an employer, at or about the same time.

(k) "Covered wages" means wages paid for employment which is subject to the provisions of the Kansas employment security law.

(l) "Student", as used in K.S.A. 44-703(i)(4)(N), and any amendments thereto, is an individual who performs services in the employ of a school, college, or university and who is enrolled and regularly attending classes at the school, college, or university. If the individual is pursuing a regular course of study in accordance with the requirements of the school the individual attends, the individual meets the requirements of "regularly attending classes."

Any individual who performs services in the employ of a school, college, or university that are incidental to and for the purposes of pursuing a course or courses of study at the school shall be considered to have the status of a student in the performance of that service.

An individual who performs services in the employ of a school, college, or university primarily as a means of earning a livelihood may be considered an employee even though the individual takes a course or courses of study at the school. Such an individual shall not be classified as a "student" in the performance of such services.

(m) "Additional benefits" means benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any other state law.

(Authorized by K.S.A. 1983 Supp. 44-714; implementing K.S.A. 1983 Supp. 44-703, 44-704, 44-705, 44-709, 44-714; effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1972; amended Jan. 1, 1974; amended May 1, 1984.)

50-1-5. MEANING OF TERMS RELATING TO SUCCESSOR CLASSIFICATION. The following terms are used when determining whether an employing unit is to be classified as a successor employer when acquiring the business of a predecessor employer in accordance with K.S.A. 44-703(h)(4) and 44-710a(b)(1).

(a) *Employing Enterprises*. "Employing enterprises" means those business locations with employment.

(b) *Organization*. "Organization" means employees or employee positions required to continue the business.

(c) *Trade*. "Trade" means the clientele or customers which frequent the business.

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(d) *Business*. "Business" means the goods sold, the services provided or some combination thereof.

(e) *Assets*. "Assets" means all items which are necessary to the normal operations of the day-to-day business.

(Authorized by K.S.A. 44-714; implementing K.S.A. 44-703, 44-710a; effective May 1, 1983.)

ARTICLE 2-UNEMPLOYMENT INSURANCE CONTRIBUTING, REIMBURSING AND RATED GOVERNMENTAL EMPLOYMENT

50-2-1. RULES PERTAINING TO THE CASH VALUE OF REMUNERATION IN KIND. (a) Board, lodging, and any other forms of payment in kind to a worker that represent remuneration for services in addition to or in lieu of cash payments, constitute wages. When payment for services is made partially in kind and deducted from the cash wages otherwise due a worker, the original cash wages due shall constitute the worker's wages.

(b) The value of payments in kind determined by the secretary shall be used to compute contributions due and benefit payments.

(c) A cash value of payments in kind furnished to a worker agreed upon by the worker and his employing unit shall be deemed the value of such payment in kind unless it is less than the value of the payment in kind as specially determined by the secretary, or in the case of board and lodging, less than the value prescribed in subsection (d) of this regulation.

(d) Unless a different rate for board or lodging is determined by the secretary, board or lodging furnished in addition to or in lieu of cash wages shall be deemed to have not less than the following values:

FULL BOARD AND ROOM WEEKLY	$40.00
MEALS, PER WEEK	20.00
PER DAY	3.00
PER MEAL	1.00
LODGING, PER WEEK	20.00
PER DAY	3.00

(Authorized by K.S.A. 1985 Supp. 44-703(o) as amended by L. 1986, Ch. 190, § 1; effective Jan. 1, 1966; amended May 1, 1980; amended, May 1, 1987.)

50-2-2. RECORDS TO BE MAINTAINED BY EMPLOYING UNIT. (a) Each employing unit shall maintain records as hereinafter indicated and shall preserve such records against damage or loss for a period of not less than five years from the due date of the contributions for the period in which the remuneration to which they relate was paid or, if not paid, was due.

(1) For each worker:

(A) Name.

(B) Social security account number.

(C) State or states in which his services are performed; and if any of such services are performed outside the state and are not incidental to the services within the state, the base of operations with respect to such services (or if there is no base of operations, then the place from which such services are directed or controlled) and his residence (by state). Where the services are performed in Canada or the base of operations with respect to such services or the residence of the worker is in Canada, it shall be recorded as if Canada were a state.

(D) Date on which the worker was hired, rehired, or returned to work after temporary layoff and date separated from work and reason therefore.

(E) Remuneration paid for services and dates of payment showing separately: (i) Cash remuneration, including special payments (such as bonuses, gifts, back pay awards, dismissal payments, and similar payments); (ii) Reasonable cash value of remuneration in any medium other than cash including special payments (such as bonuses, gifts, back pay awards, dismissal payments, and similar payments).

(F) Amounts paid him as allowance or reimbursement for traveling or other business expenses, dates of payment, and the amounts of each expenditure actually incurred and accounted for.

(G) With respect to pay periods in which the worker performs services in both employment and nonsubject work: (i) Hours spent in employment; (ii) hours spent in nonsubject work including agricultural employment.

(2) *General*.

(A) Beginning and ending dates for each pay period.

(B) Total amount of wages paid in any quarter with respect to or for employment.

(b) Records shall be maintained by employing units in such form as to make it possible to determine from an inspection thereof with respect to any worker:

(1) Earnings by pay-period weeks, if paid on a weekly basis, or, if not so paid, then by calendar weeks or by such other seven-consecutive-day period as the secretary may prescribe as to any individual or group of individuals.

(2) Weeks of less than full-time work.

(3) Time lost due to reasons other than lack of work.

(4) Calendar days worked by each employee.

(Authorized by K.S.A. 1980 Supp. 44-714(f); effective Jan. 1, 1966; amended May 1, 1980.)

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50-2-3. PAYMENT OF CONTRIBUTIONS AND BENEFIT COST PAYMENTS. (a) *Contributions and Benefit Cost Payments with Respect to Wage Payments*. Contributions and benefit cost payments shall be payable for each calendar quarter with respect to wages paid during that calendar quarter.

(b) *Contributions and Benefit Cost Payments - When Payable*. Except as otherwise provided in this regulation, contributions and benefit cost payments shall become due on, and shall be paid on or before, the 25th day following the close of the calendar quarter in which the wages are paid.

(c) *First Contribution and Benefit Cost Payment*. The first contribution and benefit cost payment of any employing unit which becomes an employer at any time during a calendar year shall, except as otherwise provided in this regulation, become due on, and shall be paid on or before, the 25th day next following the close of the quarter in which the employing unit becomes an employer and shall include contributions and benefit cost payments with respect to all wages paid during that calendar year up to and including the last day of that calendar quarter.

(d) *Contributions and Benefit Cost Payment on Notice of Liability*. Whenever the secretary or the secretary's authorized representative has, in writing, advised an employing unit that it has been determined not to be an employer or that services performed for it do not constitute employment, and when a legal obligation on the part of that unit to pay contributions or benefit cost payments is subsequently established, accrued contributions or benefit cost payments shall become due and interest shall accrue thereon 10 days after such employing unit is informed of its liability.

(e) *Assessment of Penalty and Interest on Newly Subject Employers*. New employers subject to this act who fail to file wage reports and pay contributions or benefit cost payments due within the 10 day period authorized by K.S.A. 44-717(a) shall be assessed penalty and interest from the first contribution and benefit cost payment due date shown on the form "Notice of Establishment or Change" mailed to the employer.

(f) *First Contribution and Benefit Cost Payment-Elective Coverage*. The first contribution and benefit cost payment of any employing unit which elects to become an employer or to have nonsubject services performed for it deemed employment shall upon notice of approval of that election by the secretary become due on, and shall be paid, except as otherwise provided by this regulation, on or before the 25th day next following the close of the calendar quarter which includes: (1) the effective date of such election; or (2) the date of approval, whichever is later. The first payment shall include contributions and benefit cost payments with respect to all wages for services covered by the election paid on and after the effective date and up to and including the last day of such calendar quarter.

(g) *Saturdays, Sundays and Holidays*. When the regular payment day for any employer falls on Saturday, Sunday or a legal holiday, the payment shall be due and payable on the first regular business day following the payment day.

(h) *Mail Payments*. Payment received through the mail shall be deemed to have been made on the date received by the Division of Employment, 401 Topeka Avenue, Topeka, Kansas.

(i) *Payment by Check*. When payment is made by check, the checks shall be payable to the Kansas Employment Security Fund.

(j) *Past Due Payments*. Any employer who fails to pay any applicable contributions, payment in lieu of contributions or benefit cost payment when due shall be subject to the interest, penalty and actions provisions of K.S.A. 44-717.

(Authorized by and implementing K.S.A. 44-710(a), 44-717; effective January 1, 1966; amended January 1, 1971; amended January 1, 1974; amended May 1, 1980; amended May 1, 1983.)

50-2-4. IDENTIFICATION OF WORKERS. (a) Each employer shall ascertain the social security number of each worker performing services for him or her in employment.

(b) Each employer shall report a worker's social security number in making any report required by the secretary with respect to such worker.

(Authorized by K.S.A. 1980 Supp. 44-714(f); effective May 1, 1980.)

50-2-5. REPORTS - REQUIRED OF EMPLOYERS. (a) *General Requirements*. Each employing unit shall make such reports as the secretary may require and shall comply with instructions printed upon any report form issued by the secretary pertaining to the preparation and return of such report.

(b) *Report to Determine Status*. Every employing unit for which services are performed in employment shall file a Report to Determine Status within fifteen (15) days after such first employment.

(c) *Employing Unit Becoming an Employer*. Any employing unit not already an employer which becomes an employer shall immediately give notice to the secretary of that fact. Such notice shall contain the employer's name and address and the business address and business name, if any.

(d) *Employer Terminating Business*. Any employer who terminates a business for any reason whatsoever

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or transfers or sells all of the organization, trade or business, or any part thereof, or, except in the usual course of business, sells a substantial part of the assets, or changes the trade name of such business or address thereof, shall immediately after such termination, transfer, sale or change of name or address, give notice in writing to the secretary of that fact. Such notice shall contain the employer's account number, name, former address, and present address and, in event of a transfer or sale, the name and address of any new owner, and business name, if any.

(e) *Final Wage and Contribution Report*. Any employer who sells or discontinues all employing enterprises shall file a Final Wage and Contribution Report with payment of all contributions due within fifteen (15) days following such action.

(Authorized by K.S.A. 1980 Supp. 44-714(f); effective Jan. 1, 1966; amended May 1, 1980.)

50-2-6. COOPERATION WITH OTHER STATES. (a) Only states subscribing to the interstate reciprocal coverage arrangement are governed by this regulation.

(b) Submission and approval of coverage elections under the interstate reciprocal coverage arrangement.

(1) Election to cover multi-state workers under the Kansas employment security law.

(A) Each employer shall complete and file an "employer's election to cover multi-state workers under the Kansas employment security law" with the chief of contributions.

(B) The chief of contributions or the chief's designee shall initially approve or disapprove the election. If approved, a copy of the election shall be forwarded to each interested state specified on the election and under whose employment insurance law the individual or individuals in question might, in absence of that election, be covered.

(C) Each interested state agency shall approve or disapprove the election and shall notify the Kansas agency accordingly. Upon notification, the chief of contributions or the chief's designee shall provide the employer with a copy of the approved or disapproved election.

(2) Elections to cover multi-state workers under other state laws.

The elected state shall forward applications for elections to the chief of contributions or the chief's designee who shall approve or disapprove the election and notify the elected agency accordingly.

(c) Effective Period of Elections.

(1) Commencement. Each election duly approved under this regulation shall become effective at the beginning of the calendar quarter in which the election was submitted unless the election, as approved, specifies the beginning of a different calendar quarter.

(2) Termination. The application of an election to any individual under this regulation shall terminate if the elected state finds that the nature of the services customarily performed by the individual for the electing unit has changed so that they are no longer customarily performed in more than one interested state. The termination shall be effective as of the close of the calendar quarter in which notice of that finding is mailed to all parties affected.

(3) Whenever an election under this regulation ceases to apply to any individual, the electing unit shall notify the affected individual accordingly.

(Authorized by and implementing K.S.A. 1983 Supp. 44-714; effective Jan. 1, 1966; amended May 1, 1980; amended May 1, 1984.

50-2-9. AUTHORITY TO TERMINATE ELECTIONS BY REIMBURSING EMPLOYERS. Only employers who have elected to make payments in lieu of contributions shall be subject to termination as reimbursing employers by the secretary.

(Authorized by K.S.A. 1980 Supp. 44-703(x), 44-710(e)(1) and (3), 44-711(e); effective Jan. 1, 1972; amended May 1, 1980.)

50-2-11. PAYMENTS BY REIMBURSING EMPLOYERS. Payments by reimbursing employers shall become due and payable 30 days after the date of mailing of the reimbursing employers' quarterly statement of benefit charges.

(Authorized by K.S.A. 1980 Supp. 44-710(e)(2); effective Jan. 1, 1972; amended May 1, 1980.)

50-2-12. REPORTS BY REIMBURSING EMPLOYERS. Each reimbursing employer shall file, with the division, a report on forms furnished or authorized by the division. The report shall indicate each covered worker's:

(A) social security number;

(B) first and middle initial, and last name; and

(C) total amount of wages, before deductions, paid during the quarter.

The first quarter report shall be due on or before April 25th, the second quarter report shall be due on or before July 25th, the third quarter report shall be due on or before October 25th, and the fourth quarter report shall be due on or before January 25th. Each employer shall be subject to the provisions of K.S.A. 44-717, and any amendments thereto.

(Authorized by K.S.A. 1983 Supp. 44-714,

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implementing K.S.A. 1983 Supp. 44-710(e)(2), 44-717; effective Jan. 1, 1972; amended May 1, 1980; amended May 1, 1984.)

50-2-17. CLASSIFICATION OF EMPLOYERS BY INDUSTRIAL ACTIVITY. All employers subject to the Kansas employment security law shall be classified by industrial activity in accordance with the requirements set out in the standard industrial classification manual, prepared by the statistical policy division of the executive office of the president--office of management and budget, published in 1972 and available for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

(Authorized by and implementing K.S.A. 44-710a; effective May 1, 1983.)

50-2-18. SURETY BOND OR SURETY DEPOSIT REQUIREMENTS FOR REIMBURSING EMPLOYERS. Each employer who elects to become liable for payments in lieu of contributions in accordance with K.S.A. 44-710(e)(1) shall be required to file with the secretary a surety bond or surety deposit as set forth in K.S.A. 44-710(e)(2)(F). (a) *Minimum time period.* The bond or deposit shall be required for a minimum period of four complete calendar years. If, at the close of that time period (or such like time period), the employer has a history of timely reporting and prompt payment of reimbursing employer's quarterly benefit charges, the secretary shall no longer require the surety bond or deposit.

(b) *Termination or inactivity.* Any reimbursing employer who ceases to be an employer under the Kansas employment security law while a surety bond or deposit is in effect shall be required to maintain that bond or deposit for a minimum period of three years after required reporting of wages ends.

(c) *Surety amount when wages not paid during four calendar quarters immediately preceding effective date of election.* The surety amount shall not exceed 3.6% of an estimate of the organization's taxable wages for a four calendar quarter period. If an organization has an increase in employment during the time a surety bond or deposit is required, the secretary or the secretary's authorized representative may require the organization to increase the amount of the bond or deposit. The employer shall be notified of the increase within 60 days after the beginning of the calendar year in which the change is to be effective and the employer shall have 30 days from the date of mailing of the notice to file the increased surety bond or deposit.

(Authorized by and implementing K.S.A. 44-710(e); effective May 1, 1983.)

50-2-19. CONTRIBUTION APPEAL PROCESS FOR EMPLOYERS. The following provisions shall govern the appeal process provided to resolve any protest to any determination pursuant to K.S.A. 44-703, 44-710, 44-710a, 44-710b and 44-710d. (a) *Request for administrative review.* The administrative review shall be made by the chief of contributions or the chief of contributions' authorized representative based upon facts presented or upon additional facts furnished by the employer or secured by the agency. An appeal of the chief of contributions' or the chief's authorized representative's determination shall not stay the enforcement of the order made unless the chief of contributions or the authorized representative orders a suspension of enforcement.

(1) *Notice of liability determinations.* The secretary of human resources or the secretary's authorized representative shall notify each employer of any determination made pursuant to K.S.A. 44-703 and amendments thereto, including but not restricted to, employer liability; employer-employee relationships; wages; agricultural labor and domestic service. That determination shall become conclusive and binding upon the employer, unless within 20 days after the mailing of notice of the determination to the employer's last known address, or within 15 days after the delivery of that notice, the employer requests, in writing, an administrative review. The request shall set forth the reasons an administrative review is desired.

(2) *Notice of contribution rate or benefit cost rate.* The secretary of human resources or the secretary's authorized representative shall notify each contributing employer of its rate of contributions and each rated governmental employer of its benefit cost rate for any calendar year pursuant to K.S.A. 44-710, 44-710a and 44-710d. Those determinations shall become conclusive and binding upon the employer, unless within 15 days after the mailing of notice to the employer's last known address, or within 15 days after the delivery of that notice, the employer requests, in writing, an administrative review. The request shall set forth the reasons a review is requested.

(3) *Notice of benefit payments.* Notice shall be given annually to each contributing employer and each rated governmental employer of the benefits paid and charged to its account during the 12-month period immediately preceding the computation date. Notice shall be given quarterly to each reimbursing employer of the reimbursable benefits paid during the previous calendar quarter. Each employer shall have 20 days from the mailing of the notice to the employer's last known address, or within 15 days

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after delivery of the notice to the employer, to request in writing an administrative review to protest the correctness of the *pro rata* charges of benefit payments to the employer's account. Nothing in this regulation shall be construed to permit the protest of the eligibility of a claimant to receive benefits under K.S.A. 44-705 or to protest a prior determination of chargeability at the time a valid new claim is presented under K.S.A. 44-710(c). In the absence of the request in writing for an administrative review, the benefits paid and charged to the employer's account shall become conclusive and binding upon the employer for all purposes.

(4) *Notice of transfer of experience rating factors.* Notice shall be given to the predecessor and successor employer of the transfer of experience rating factors of a predecessor employer whose business has been acquired by a successor employer as defined in K.S.A. 44-710a(b). That determination shall become conclusive and binding upon the predecessor and the successor, unless within 20 days after mailing of notice thereof to the predecessor's and successor's last known address, or within 15 days after the delivery of the notice, the predecessor employer, the successor employer or both request, in writing, an administrative review.

(b) *Request for administrative hearing.*

(1) The employer shall be notified within 60 days of the results of the administrative review, in writing, by the chief of contributions or an authorized representative. The results of the administrative review shall become conclusive and binding upon the employer unless, within 20 days after the mailing of notice thereof to the employer's last known address, or within 15 days after the delivery of that notice, the employer requests, in writing, an administrative hearing. The request shall include the reasons a hearing is desired.

(2) If the secretary of human resources or the secretary's authorized representative grants an administrative hearing, the employer shall be notified of that determination within 10 days and shall be granted an opportunity for a fair hearing before the secretary or an authorized representative.

(3) At the administrative hearing, which shall be held in Topeka, the employer shall be entitled to be present; to be represented by counsel or by a designated representative of the employer's choice, at the employer's own expense; to present oral testimony or written evidence or both; to examine witnesses and documents; to cross-examine witnesses; and to offer rebuttal testimony or evidence.

(4) Witnesses may be subpoenaed to present books, papers, records, etc. or to give oral testimony as provided in K.S.A. 44-714(h), (i) and (j).

(c) *Judicial review.* The employer shall be notified within 30 days of the secretary's findings as a result of the administrative hearing. An appeal may be taken from the order of the secretary or an authorized representative pursuant to K.S.A. 44-710b(b) or K.S.A. 1981 Supp. 60-2101(d), whichever is applicable.

(Authorized by K.S.A. 44-714; implementing K.S.A. 44-703, 44-710, 44-710a, 44-710b, 44-710d; effective May 1, 1983.)

50-2-20. NOTICE OF EFFECTIVE DATE OF ELECTION OR TERMINATION OF REIMBURSING EMPLOYER STATUS. Any governmental entity, nonprofit organization or any group of nonprofit organizations identified in K.S.A. 44-710(e)(1), shall be notified by mail of the effective date of their election to become a reimbursing employer for a minimum period of four complete calendar years. An employer shall also be notified by mail of the effective date of the termination of the reimbursing employer payment option when applicable. Employers terminating their reimbursing employer status shall remain liable for reimbursing payments until all wage credits on file as a reimbursing employer are no longer used in determining benefit entitlement.

(Authorized by and implementing K.S.A. 44-710(e)(1)(E); effective May 1, 1983.)

50-2-21. COMPUTATION OF EMPLOYER CONTRIBUTION RATES. (a) The terms "total wages" and "taxable wages", as used in this regulation, shall refer to all payrolls for contributing employers, reported and received by September 1 following the computation date of June 30, for all employment during the fiscal year ending on the computation date. The certified payroll information as of September 30 that is required for the computation delineated in this section shall be provided by the director of data processing.

(b) *Planned yield.* The approximate amount of the planned yield for the ensuing calendar year shall be computed as follows:

(1) The planned yield on total wages in column B of schedule III, of K.S.A. 1995 Supp. 44-710a(a)(3), shall be determined by the reserve fund ratio in column A of the same schedule. The reserve fund ratio shall be computed by dividing the total assets of the employment security fund, as of July 31, following the computation date and as certified by the chief of management, by the total payrolls for the preceding fiscal year ended June 30, as certified by the director of data processing.

(2) The average rate of contributions shall be

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determined by multiplying the ratio of total to taxable payrolls for the preceding fiscal year ended June 30 by the planned yield computed in paragraph (b)(1) of this regulation. In any calendar year in which the taxable wage base changes, the calculation for that calendar year and the following calendar year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during the preceding fiscal year ending June 30.

(3) The approximate amount of the planned yield for the ensuing calendar year shall be the taxable wages for the previous fiscal year ended June 30, multiplied by the average rate of contributions computed in paragraph (b)(2) of this section, rounded to the nearest $100,000.00.

(c) Estimated yield from ineligible employer accounts.

(1) Estimated contributions for industry-rated employers.

(A) The computation shall be made using a certified tabulation provided by the director of data processing entitled "all accounts except reimbursing--cross classification by rate and industry." The procedure for computing the average contribution rate for all industries and for each industry division shall be identical. The rate of the preceding calendar year for each rate group in the industry division shall be cumulatively multiplied times the taxable wages in each corresponding rate group for the industry division. The cumulative total shall be divided by the total taxable wages in the industry to determine the industry rate. The assigned rate for each industry shall be the sum of 1.0 percent plus the computed rate or the sum of 1.0 percent plus the average rate of all employers, whichever is higher. The assigned rate shall not be less than 2.0 percent.

(B) The average rate for all industries shall be computed by cumulatively multiplying the calculated rate of each industry division times the total taxable wages for that industry division and dividing the cumulative total by the total taxable wages for the industry divisions.

(C) The estimated contributions for each specially rated industry division and all other divisions shall be computed by multiplying the taxable wages for the corresponding industry divisions or all other industry divisions by the appropriate assigned rate.

(2) The total estimated yield for active ineligible employer accounts shall be the sum of the estimated contributions for industry-rated employers.

(3) Negative account balance employers, as defined in K.S.A. 1995 Supp. 44-710a(d), shall pay at the statutory rate of 5.4 percent. In addition, negative balance employers shall be assessed a surcharge based on the size of the employer's negative reserve ratio. The director of data processing shall provide a certified listing of all negative account balance employers. The listing shall contain the negative reserve ratio, number of employers, and taxable wages for the fiscal year ended June 30. Each negative account balance employer shall be identified as shown in schedule II of K.S.A. 1995 Supp. 44-710a. The assigned rate shall be the sum of the statutory rate of 5.4 percent plus the applicable surcharge identified in schedule II of K.S.A. 1995 Supp. 44-710a. The estimated contributions of negative account balance employers shall be computed by multiplying the taxable wages of all negative account balance employers by only the statutory rate. The resultant product shall reflect the estimated yield from negative account balance employers.

(d) The required yield for eligible employer accounts shall be the approximate amount of the planned yield, computed in paragraph (b)(3) of this regulation, less the total estimated yield for active ineligible employer accounts computed in paragraph (c)(2) of this regulation and less the total estimated yield from negative account balance employers computed in paragraph (c)(3) of this regulation.

(e) Rate adjustment for active eligible employer accounts.

(1) A certified array of each active eligible employer account shall be provided by the director of data processing in accordance with schedule I, K.S.A. 1995 Supp. 44-710a. The tabulation shall include the following:

(A) The lowest reserve ratio in each rate group;

(B) the number of employers in each rate group;

(C) the amount of taxable wages in each rate group;

(D) the cumulative amount of taxable wages for all accounts from the first through each succeeding rate group; and

(E) the final, total taxable payrolls for the fiscal year ended June 30, for all active eligible employer accounts. In any calendar year in which the taxable wage base changes, the taxable wages used in the calculation for that calendar year and the following calendar year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during all of the preceding fiscal year ending June 30.

(2) The average rate required shall be the required yield for eligible employer accounts, determined in subsection (d) of this regulation, divided by the total taxable payrolls listed in paragraph (e)(1)(E) of this regulation.

(3) The average rate required shall be divided by the average estimated yield of the array to develop an adjustment factor. The average estimated yield of the array shall be computed by cumulatively multi-

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plying the taxable payrolls in each rate group by the experience factor denoted for each rate group in schedule I, K.S.A. 1995 Supp. 44-710a(a)(2), and dividing by the total taxable payrolls for active accounts. The experience factor for each rate group in schedule I shall be multiplied by the adjustment factor to determine the adjusted tax rate for each rate group, with the statutory maximum as an upper limit.

(4) The taxable payrolls for each rate group shall be multiplied by the adjusted tax rate computed for each rate group to determine the estimated contributions for each rate group.

(A) If the adjusted tax rate reaches the statutory maximum at a rate group +numerically lower than the highest numbered rate group, or if the computed rate for any group is higher than the statutory maximum, the adjusted tax rates shall be adjusted further. The estimated additional contribution incurred because of the statutory maximum limit of the unadjustable groups shall be prorated over rate groups other than those that are unadjustable. The taxable payrolls and estimated contributions of the unadjustable groups shall be subtracted, respectively, from the totals of all groups and the balances used in the readjustment.

(B) The readjustment shall be accomplished by dividing the total estimated contributions of the adjustable groups by the total taxable payrolls of the adjustable rate groups to determine the required rate of yield for the groups. The estimated rate of yield for the rate groups shall be computed by cumulatively multiplying the experience factor by the corresponding taxable payroll in each rate group and dividing the cumulative total by the total taxable wages of the rate groups. The required rate of yield shall be divided by the estimated rate of yield for the adjustable groups to determine the final adjustment factor.

(C) The experience factors of all rate groups in schedule I shall be multiplied by the final adjustment factor to determine the final effective contribution rates for the eligible contributing employers, with no effective contribution rate to exceed 5.4 percent.

(f) A computation and listing of the effective employer contribution rates shall be prepared by the chief of labor market information services. If in rounding to the terminal digit it is determined that the position subsequent to the terminal digit is five and all succeeding digits are zero, the terminal digit shall be rounded to the nearest even digit. All such calculations shall be rounded to the nearest 1/1000 except as mandated by K.S.A. 1995 Supp. 44-710a(a)(3) requiring all rounding be to the nearest 1/100.

(Authorized by K.S.A. 44-714; implementing K.S.A. 1995 Supp. 44-710a; effective May 1, 1983; amended May 1, 1984; amended May 1, 1987; amended June 25, 1990; amended November 22, 1996.)

50-2-22. CONCURRENT EMPLOYMENT BY RELATED CORPORATIONS WITH A COMMON PAYMASTER. (a)(1) For the purposes of this regulation, when two or more related corporations concurrently employ the same individual and compensate that individual through a common paymaster, and when the common paymaster is one of the related corporations that employs the individual, each corporation shall be considered to have paid only the remuneration it actually disburses to that individual. If all the remuneration to the individual from the related corporations is disbursed through the common paymaster, the total amount of contributions imposed, with respect to wages under K.S.A. 44-703(o), and any amendments thereto, is determined as though the individual has only one employer, the common paymaster. The common paymaster shall be responsible for filing the "employer's quarterly wage report and contribution return" with respect to "wages" it is considered to have paid.

(2) The corporation which intends to act as a common paymaster for a group of related corporations shall notify the division of employment in writing at least 30 days prior to the beginning of the quarter in which the common paymaster reporting is to be effective. That corporation shall furnish the name and account number of each of the corporations in the group. The common paymaster for the group shall also notify the division of employment at least 30 days prior to any change in the group of corporations or termination of the arrangement.

(b) *Definitions*. The definitions contained in this subsection shall be applicable only to this regulation.

(1) *Related corporations*. Corporations shall be considered "related corporations" for an entire calendar quarter if they satisfy any one of the following tests:

(A) The corporations are members of a "controlled group of corporations". For the purposes of this regulation, the term "controlled group of corporations" means:

(i) two or more corporations connected through stock ownership with a common parent corporation, if the parent corporation owns stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of each of the other corporations; or

(ii) two or more corporations, if five or less persons who are individuals, estates, or trusts own

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stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock of each corporation.

(B) in the case of corporations which do not issue stock, at least 50 percent of the members of one corporation's board of directors are members of the board of directors of the other corporations;

(C) at least 50 percent of one corporation's officers are concurrently officers of the other corporations; or

(D) at least 30 percent of one corporation's employees are concurrently employees of the other corporations.

(2) *Common paymaster.* A "common paymaster" of a group of related corporations is any member of the group that disburses remuneration to employees of two or more of those corporations, including their own, on the behalf of those corporations. The common paymaster shall be responsible for keeping books and records for the payroll with respect to those employees. The provisions of this regulation shall not apply to any remuneration to an employee that is not disbursed through the common paymaster.

(3) *Concurrent employment.* The term "concurrent employment" means the simultaneous existence of an employment relationship, as described in K.S.A. 44-703(i), and any amendments thereto, between an individual and two or more corporations.

(c) *Allocations of contributions.*

(1) Subject to the requirements of this regulation, each common paymaster shall have the primary responsibility for remitting contributions with respect to the remuneration it disburses as the common paymaster. The common paymaster shall compute these contributions as though it were the sole employer of the concurrently employed individuals.

(2) If the common paymaster fails to remit these contributions in whole or in part, it shall remain liable for the full amount of the unpaid portion of these contributions. In addition, each of the other related corporations using the common paymaster shall be jointly and severally liable for its appropriate share, plus a proportionate share of the common paymaster's unpaid contributions.

(Authorized by K.S.A. 1983 Supp. 44-714; implementing K.S.A. 1983 Supp. 44-710i; effective May 1, 1984.)

50-2-23. PAYMENTS UNDER EMPLOYERS' PLANS ON ACCOUNT OF SICKNESS OR ACCIDENT DISABILITY. (a) *Payment by third parties.*

(1) Any third party making a payment on account of sickness or accident disability when the payment is not excluded from the term "wages" under paragraph (2) of K.S.A. 44-703(o) shall be treated as the employer with respect to the wages, unless the third party promptly notifies the employer for whom the services are normally rendered of the amount of wages paid. Thereafter, the employer, and not the third party, shall be required to report and pay the contributions due with respect to the wages. The written notice shall be provided by the third party promptly following the end of each calendar quarter so the employer for whom services are normally rendered may report the wages and pay contributions when due each quarter. The written notice shall contain the following information:

(A) The name of the employee paid sick pay; and

(B) The social security account number of the employee paid the sick pay; and

(C) The total amount of sick pay paid to the employee during the calendar quarter.

(2) A third party making a payment on account of sickness or accident disability to an employee as an agent for the employer or making such a payment directly to the employer shall not be treated as the employer under paragraph (1) with respect to the payment unless the agreement between the third party and the employer so provides. The third party shall not be considered an agent of the employer if the third party bears an insurance risk. If the third party bears no insurance risk and is reimbursed on a cost plus fee basis, the third party shall be considered an agent of the employer whether or not the third party is responsible for making determinations regarding the eligibility of the employer's individual employees for payments. If the third party is paid an insurance premium and is not reimbursed on a cost plus fee basis, the third party shall not be considered an agent of the employer, and shall be treated as the employer as provided in paragraph (1).

(b) *Special rules.*

(1) For the purposes of paragraph (1) of subsection (a), the last employer for whom the employee worked prior to becoming sick or disabled or for whom the employee was working at the time the employee became sick or disabled shall be deemed to be the employer for whom services are normally rendered, if the employer made contributions on behalf of the employee to the plan or system under which the employee is being paid.

(2) For purposes of subsection (a), when payments on account of sickness or accident disability are made to employees by a third party insurer pursuant to a contract of insurance with a multi-employer plan which is obligated to make payments on account of

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sickness or accident disability to the employees pursuant to a collective bargaining agreement, and if the third party insurer making the payments complies with the requirements of paragraph (1) of subsection (a) and notifies the plan of the amount of wages paid each employee within the time required for notification of the employer, then the plan, not the third party insurer, shall be required to report and pay the contributions due with respect to the wages. If the plan notifies the employer for whom services are normally rendered of the amount of wages paid each employee within six business days of receipt of the notification, the employer, not the plan, shall be required to report and pay the contributions due with respect to the wages.

(Authorized by K.S.A. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-703, as amended by L. 1986, Ch. 190, Sec. 1; effective, T-87-40; Dec. 8, 1986; effective, May 1, 1987.)

50-2-24a. LEVY AND DISTRAINT; REQUIREMENT OF NOTICE BEFORE LEVY. (a) A levy upon the salary, wages or other property of any employer may be made with respect to any unpaid tax as described in K.S.A. 1985 Supp. 44-717, as amended, only after the secretary or the secretary's designee has notified the employer in writing of the secretary's intention to make the levy.

(b) Not less than 10 days before the day of the levy the notice required under subsection (a) shall be:

(1) made by personal service;

(2) left at the dwelling, or usual place of abode, or place of business of the employer; or

(3) sent by first class U.S. mail to the employer's last known address.

(c) If the secretary has made a finding under K.S.A. 44-717(e) that the collection of tax is in jeopardy, the 10-day period provided in subsection (b) shall not be required.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24b. LEVY AND DISTRAINT; SERVICE OF LEVY. (a) The levy shall be served upon an employer or third party by personal service or by mail in accordance with the following requirements.

(1) *Personal service.*

(A) *Individual service.* Service upon an individual, other than a minor or incapacitated person, shall be made by:

(i) delivering a copy of the notice of levy to the individual personally;

(ii) leaving a copy at the individual's dwelling or usual place of abode with some person of suitable age and discretion then residing there;

(iii) leaving a copy at the business establishment with an officer or employee of the establishment; or

(iv) delivering a copy to an agent authorized by appointment or by law to receive service of process. If the agent is one designated by a statute to receive service, any additional notice required by statute shall be given. If service as prescribed above cannot be made with due diligence, the secretary or the secretary's designee may order service to be made by leaving a copy of the notice of levy at the dwelling house, usual place of abode or business establishment.

(B) *Corporations and partnerships.* Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association, when by law it may be sued as such, shall be made by delivering a copy of the notice of levy to an officer, partner or resident, managing or general agent of it or them by leaving a copy at any business office with the person in charge or by delivering a copy to any other agent authorized by appointment or required by law to receive service of process. If the agent is one authorized by law to receive service, and if the law so requires, any additional notice required by statute shall be given.

(C) The "certification of service" on the notice of levy form shall be completed by the secretary's representative who serves the levy and the person served shall acknowledge receipt of the certification by signing and dating it.

(2) *Service by mail.* Upon the direction of the secretary or the secretary's designee, the notice of levy may be served upon a third party holding property of the employer by registered or certified mail to the third party's address. The return receipt shall be the certificate of service of the notice of levy.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24c. LEVY AND DISTRAINT; CONTINUING LEVY ON SALARY AND WAGES. (a) A levy upon a third party pertaining to the salary, wages or other income payable to or to be received by an employer shall be effective from the date the levy is first made until the liability out of which the levy arose is satisfied.

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(b) A levy shall be released promptly when the liability out of which the levy arose is satisfied and the employer and third party shall be promptly notified that the levy has been released.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24d. LEVY AND DISTRAINT; SURRENDER OF PROPERTY SUBJECT TO LEVY. Any person in possession of or obligated with respect to property or rights to property that is subject to levy and upon which a levy has been made shall, upon demand of the secretary, surrender the property or rights or discharge the obligation to the secretary, except the part of the property or rights which is, at the time of the demand, subject to an attachment or execution under any judicial process.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24e. LEVY AND DISTRAINT; ENFORCEMENT OF LEVY. (a) Any employer who fails or refuses to surrender any property or rights to property that is subject to levy, upon demand by the secretary, shall be subject to proceedings to enforce the amount of the levy.

(b) Any third party who fails or refuses to surrender any property or rights to property subject to levy, upon demand by the secretary, shall be subject to proceedings to enforce the amount of the levy or any lesser amount the third party may owe the employer. A final demand shall be served on any third party who fails or refuses to surrender property. Proceedings shall not be initiated by the secretary until five days after service of the final demand.

(c) When a third party who is in possession of or obligated with respect to property or rights to property that is subject to levy and upon which a levy has been made surrenders the property or rights to property on demand of the secretary or discharges such obligation to the secretary, the third party shall be discharged from any obligation or liability to the delinquent employer with respect to the property or rights to property arising from the surrender or payment to the secretary or the secretary's designee.

(d) *Person defined.* The term "person," as used in K.S.A. 44-717(e)(2), is an individual, or an officer or employee of a corporation, or a member or employee of a partnership, who is under a duty to surrender the property or rights to property, or to discharge the obligation.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24f. LEVY AND DISTRAINT; PRODUCTION OF BOOKS. If a levy has been made or is about to be made on any property, or right to property, any third party having custody or control of any books or records that contain evidence or statements relating to the property or right that contain evidence or statements relating to the property or right to property subject to levy shall, upon demand of the secretary, produce and exhibit the books or records to the secretary.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24g. LEVY AND DISTRAINT; APPRAISAL OF PROPERTY. Any representative of the secretary seizing property shall appraise and set aside to the employer the amount of property declared to be exempt. If the employer objects at the time of the seizure to the valuation fixed by the secretary's representative making the seizure, the secretary shall appoint three disinterested individuals who shall make the valuation.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24h. LEVY AND DISTRAINT; SALE OF SEIZED PROPERTY. (a) *Notice of seizure.* As soon as practical after the seizure of property, notice in writing shall be:

(1) given by the secretary to the employer owning the property and in the case of personal property, any possessor of the property; or

(2) left at the usual place of abode or business of the employer or possessor. If the employer cannot be readily located, or has no dwelling or place of business within the state, the notice may be mailed to the employer's last known address as shown on the Department's records. The notice shall specify the sum demanded, and shall contain a listing of any personal property seized and a description, with reasonable certainty, or any real property seized.

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(b) *Notice of sale*. The secretary shall, as soon as practical after the seizure of the property:

(1) give notice to the employer, in the manner prescribed in subsection (a);

(2) publish a notification in some newspaper published or generally circulated in the county in which the property is seized; and

(3) post a notice at the post office nearest the place where the seizure is made and in at least two other public places. The notice shall specify the property to be sold and the time, place, manner and conditions of the sale. Whenever a levy is made without regard to the 10-day period provided in K.S.A. 44-717(e)(2), public notice of the sale of the property seized shall not be made prior to 10 days following seizure unless the goods seized are perishable.

(c) *Sale of indivisible property*. If any property subject to levy is not divisible, the whole property shall be sold.

(d) *Time and place of sale*. The time of sale shall not be less than 10 days nor more than 40 days from the time of giving public notice. The sale may be postponed for good reason as determined by the chief of contributions. The postponement may not be more than 30 days from the original date of the sale. The place of sale shall be within the county in which the property is seized, except by special order of the secretary.

(e) Manner and conditions of sale.

(1) Rules applicable to sale.

(A) The sale shall be conducted by public auction or public sale under sealed bids.

(B) If several items of property are seized, the notice of sale shall state whether:

(i) the items will be offered separately, in groups, or in the aggregate; or

(ii) the property will be offered both separately, in groups and in the aggregate, and sold under whichever method produces the highest aggregate amount.

(C) The announcement of the minimum price determined by the secretary may be delayed until the receipt of the highest bid.

(D) Payment in full may be required at the time of the acceptance of a bid, or in the alternative part of the payment may be deferred for not more than one month.

(E) The sale may be advertised as appropriate in order to attract the largest number of prospective bidders.

(F) The secretary may adjourn the sale from time to time for a period not to exceed one month.

(2) Payment of amount bid.

(A) If payment in full is required at the time of acceptance of a bid and the purchaser fails to do so the secretary shall immediately sell the property again. If the conditions of the sale permit part of the payment to be deferred, and if the part deferred is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or the part of it that has not been paid or the sale may be declared by the secretary to be null and void for failure to make full payment of the purchase price and the property may be advertised again and sold.

(B) If the property is readvertised and sold again, the new purchaser shall receive the property or the rights to the property, free and clear of any claim or any right of the defaulting purchaser. The amount paid upon the bid price by the defaulting purchaser shall be forfeited. The amount forfeited shall be applied first to sale expenses and then to the original tax debt.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24i. LEVY AND DISTRAINT; SALE OF PERISHABLE GOODS. If the secretary determines any property seized is likely to perish or become greatly reduced in price or value by selling it in accordance with 50-2-24h or the property cannot be kept without great expense, the value of such property shall be appraised by the secretary and shall be returned or sold as provided below:

(a) *Return to employer*. If the employer owning the property can be readily found, the employer shall be given notice of the determination of the appraised value of the property. The property shall be returned to the employer if the employer pays to the secretary an amount equal to the appraised value within the time specified in the notice.

(b) *Immediate sale*. If the employer does not pay the appraised price of the seized property, the property shall be sold publicly as soon as practical.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24j. LEVY AND DISTRAINT; REDEMPTION OF PROPERTY. (a) *Before sale*. Any employer whose property has been the subject of levy shall have the right to pay the amount due, together with the expenses of the proceeding, to the secretary at any time prior to the sale. Upon full

payment, the property shall be restored to the employer by the secretary, and all proceedings in connection with the levy on the property shall cease from the time of the payment.

(b) *Redemption of real estate after sale.*

(1) *Period for redemption.* The employer whose real property is sold, the heirs, executors, administrators, or any other person having any interest in the property, or having a lien upon it, or any person acting on their behalf, shall be permitted to redeem the property sold, or any particular tract of the property, at any time within 180 days after the sale.

(2) *Price.* Any property or tract of property may be redeemed upon payment to the purchaser of the amount paid by the purchaser together with accrued interest computed at the rate of 18 percent per annum.

(3) *Record of redemption.* When any lands are redeemed, an appropriate entry of the redemption shall be made upon the record mentioned in K.A.R. 50-2-24m, and the entry on the record shall be evidence of such redemption.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24k. LEVY AND DISTRAINT; CERTIFICATE OF SALE; DEED OF REAL PROPERTY. (a) *Certificate of sale.* When property is sold, a certificate of sale shall be given by the secretary to the purchaser upon payment in full of the purchase price. The certificate for real property sold shall set forth the legal description of the real property, the name of the defaulting employer, the name of the purchaser, and the price paid.

(b) *Deed to real property.* When any real property is sold and not redeemed within the time provided, a quit-claim deed to the purchaser of the real property shall be executed by the secretary upon the surrender of the certificate of sale. The deed shall recite the facts set forth in the certificate.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24l. LEVY AND DISTRAINT; LEGAL EFFECT OF CERTIFICATE OF SALE OF PERSONAL PROPERTY AND DEED OF REAL PROPERTY. (a) *Certificate of sale of property other than real property.* In all cases of the sale of property other than real property, the certificate of sale shall have the following legal effect:

(1) *As evidence.* The certificate shall be prima facie evidence of the right of the secretary to make the sale and conclusive evidence of the regularity of the proceedings in making the sale.

(2) *As conveyance.* The certificate shall transfer to the purchaser all right, title, and interest of the delinquent employer in and to the property sold.

(3) *As authority for transfer of corporate stock.* If the property consists of stock, the secretary's certificate shall be notice to any corporation, company, or association of the transfer, and shall be authority for the corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same. The certificate shall be in lieu of any original or prior certificate which shall be void whether canceled or not.

(4) *As receipt.* If the subject of sale is securities or other evidences of debt, the secretary's certificate shall be a good and valid receipt to the person holding them against any person holding or claiming to hold possession of the securities or other evidences of debt.

(5) *As authority for transfer of title to motor vehicle.* If the property consists of a motor vehicle, the secretary's certificate shall be notice to any public official charged with the registration of title to motor vehicles of the transfer and shall be authority to the official to record the transfer on the appropriate books and records in the same manner as if the certificate of title to the motor vehicle were transferred or assigned by the party holding it. The certificate shall be in lieu of any original or prior certificate which shall be void whether canceled or not.

(b) Deed of real property.

(1) *Deed as evidence.* The deed given shall be prima facie evidence of the facts stated in it.

(2) *Deed as conveyance of title.* If the proceedings of the secretary as set forth have been substantially in accordance with the provisions of law, the deed shall be considered and operate as a conveyance of all the right, title, and interest the delinquent employer had in and to the real property sold at the time the lien of the department attached to it.

(c) *Effect on junior encumbrances.* A certificate of sale of personal property or a deed to real property shall discharge the property from all liens, encumbrances, and titles over which the lien and levy of the department had priority.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986,

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Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24m. LEVY AND DISTRAINT; RECORDS OF SALE. (a) *Requirement*. A record of all sales and redemptions of real property shall be kept by the secretary. The record shall set forth the tax for which any sale was made, the dates of seizure and sale, the name of the employer, all proceedings in making the sale, the amount of expenses, the names of the purchasers and the date of the deed.

(b) *Copy as evidence*. A copy of the record, or any part thereof, certified by the secretary, shall be evidence in any court of the truth of the facts stated.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24n. LEVY AND DISTRAINT; EXPENSE OF LEVY AND SALE. The secretary shall determine the expenses to be allowed in all cases of levy and sale.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24o. LEVY AND DISTRAINT; APPLICATION OF PROCEEDS OF LEVY. When the department has an interest in property in the form of a lien arising under the provisions of K.S.A. 44-717(e) and the department receives money through seizure, surrender or sale of the property, or by redemption of the property prior to its sale by the department, the money realized by these actions shall:

(a) First, be applied toward the expenses of the proceedings;

(b) Second, be applied toward the employer's liability; and

(c) Third, be refunded or credited by the secretary upon written application. The application shall state there is a surplus remaining in the hands of the secretary and the applicant is legally entitled to receive it.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-24p. LEVY AND DISTRAINT; AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY. (a) *Release of levy*. It shall be lawful for the secretary to release the levy upon all or part of the property or rights to property subject to levy when the secretary determines that a release will facilitate the collection of the liability. Such a release shall not prevent any subsequent levy.

(b) *Return of property*. If the secretary determines that a levy has been placed wrongfully upon the property, it shall be lawful for the secretary to return:

(1) the specific property subject to levy;

(2) an amount of money equal to the amount of money levied upon; or

(3) an amount of money equal to the amount of money received by the department from a sale of such property.

(Authorized by K.S.A. 1985 Supp. 44-714 as amended by L. 1986, Ch. 191, Sec. 4; implementing K.S.A. 1985 Supp. 44-717 as amended by L. 1986, Ch. 191, Sec. 5; effective, T-87-40, Dec. 8, 1986; effective, May 1, 1987.)

50-2-25a. ELECTRONIC FILING, DEFINITIONS. (a) "Electronically filed document" means a "status determination report," an "employer's quarterly wage report and contribution return," or any document filed with the secretary of human resources, pursuant to chapter 44 of the Kansas statutes annotated, that is filed pursuant to these regulations.

(b) "Electric filing" means the authorized electronic transmission of information required by the Kansas statutes annotated and these regulations when an employing unit or the employing unit's representative transmits to the secretary of human resources a "status determination report" or an "employer's quarterly wage report and contribution return," pursuant to chapter 44 of the Kansas annotated and these regulations.

(c) "Filing party" means the following:

(1) the employing unit;

(2) the employing unit's representative; or

(3) the person authorized to make electronic filings.

(d) "INK" means the information network of Kansas.

(e) "Secretary" means the secretary of human resources.

(Authorized by and implementing L. 1996, Ch. 157, Sec. 1; effective July 7, 1997.)

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50-2-25b. ELECTRONIC FILING, AUTHORIZED USER. A filing party may be authorized to use electronic filing upon the written authorization of the secretary or the secretary's designee and INK.

(a) The filing party shall be authorized by the secretary and INK to use electronic filing if these requirements are met:

(1) the filing party has an account with INK; and

(2) the secretary and INK determine, after appropriate testing, that the secretary is capable of receiving, indexing, and retrieving the data transmitted by the filing party.

(b) The filing party's authorization to use electronic filing may be suspended or revoked by the secretary when the secretary determines that a filing party's transmissions are incompatible with the electronic filing system or when the secretary receives notification from INK that the filing party is delinquent in making payments on its account.

(c) Each request for authorization to use electronic filing shall be submitted to INK. Upon receiving a request for authorization, INK shall notify the secretary. INK shall provide the requesting party with the necessary information and software or specifications to test the filing party's electronic filing capabilities.

(d) If the filing party is authorized to use electronic filing, INK shall assign an identification number to the filing party. If the filing party will act as a representative for an employing unit, the filing party shall submit to INK a sworn statement attesting to that authorization signed by the employing unit, and INK shall assign an identification number to the employing unit. If the employing unit terminates its relationship with the filing party, the employing unit shall notify INK in writing, and its identification number shall be invalidated. (Authorized by and implementing L. 1996, Ch. 157, Sec. 1; effective July 7, 1997.)

50-2-25c. ELECTRONIC FILING, CONTENTS OF TRANSMISSION. (a) Each transmission of one or more documents for electronic filing shall include the applicable requirements of chapter 44 of the Kansas statutes annotated and shall identify the filing party in a form approved by the secretary and INK.

(b) Each electronically filed document that requires identification of an employing unit shall contain the federal tax identification number and shall indicated whether the debtor is an individual or another entity.

(c) When a request is made for a paper copy of an electronically filed document, the copy printed by the secretary shall include a notation stating that the document is an electronically filed document. (Authorized by and implementing L. 1996, Ch. 157, Sec. 1; effective July 7, 1997.)

50-2-25d. ELECTRONIC FILING, IDENTIFICATION OF EMPLOYING UNIT. When a regulation adopted pursuant to chapter 44 requires the name of the employing unit or the address of the employing unit, the filing party shall transmit to the secretary and INK an employing unit identification number designated by INK with each document. (Authorized by and implementing L. 1996, Ch. 157, Sec. 1; effective July 7, 1997.)

50-2-25e. ELECTRONIC FILING, DATE OF FILING. (a) An electronically filed document shall be deemed to have been filed on the date and at the time the transmission is received and confirmed by the secretary.

(b) Each filing party shall be provided by the secretary, through INK, a confirmation that all transmitted documents meet the requirements of these regulations, including the date and time of filing.

(c) Any document transmitted to the secretary that does not contain the information required by these regulations shall not be filed, and the filing party shall be provided by the secretary, through INK, with a notice that identifies the document and states the reason for rejection of the document. (Authorized by and implementing L. 1996, Ch. 157, Sec. 1; effective July 7, 1997.)

ARTICLE 3--UNEMPLOYMENT INSURANCE BENEFITS

50-3-1. EMPLOYING UNIT REQUIREMENTS. (a) *Benefit Posters*. Each employer shall post and maintain an Unemployment Insurance Benefit Poster and the certificate of registration as an employer in a conspicuous place in each plant, branch or establishment maintained by that employer. The secretary shall furnish each employer sufficient copies of the poster and certificate to enable compliance with this regulation.

(b) *Notice of Partial Unemployment*. Immediately after the termination of any week in which an employer because of lack of work has furnished any worker in his or her employ less than four full days of work, and if the earnings for that work are less than the maximum weekly benefit amount established for the current calendar year by the secretary in accordance with K.S.A. 44-704(b), the employer shall give each affected worker a Notice of Partial Unemployment. That notice shall be in the form

prescribed by the secretary. No form or notice as described shall be required with respect to any worker if the employer has been notified of the weekly benefit amount and the allowance of benefits to that worker.

(c) *Notice of Labor Dispute*. In all cases of unemployment due to a strike, lockout or other labor dispute, the employer shall at once fill out Notice of Labor Dispute, in the form prescribed by the secretary, setting forth the approximate number of workers affected. The form shall be mailed to the Department of Human Resources administrative office in Topeka, Kansas.

(d) *List of Workers Affected by Labor Dispute*. Upon request by the secretary, an employing unit shall furnish the secretary with a list showing the names and social security numbers of all workers ordinarily performing services in the department or establishment where unemployment is or was caused by a strike, lockout or other labor dispute.

(e) *Refusal of Work*. Whenever a worker who is currently claiming benefits for unemployment refuses an offer of work made by an employing unit, that employing unit shall immediately report the refusal by furnishing a completed Notice of Refusal of Work to the secretary. That notice shall be in the form prescribed by the secretary and shall furnish the name and social security account number of the worker, nature of the work and duties required of the worker, location of the work, date that work would begin, duration of the work, wages, hours, union requirements, how the offer was made, date of offer, date of refusal, reason given by the worker for refusal, and any other information as required by the form.

(f) *Low Earnings Report*. Immediately after the termination of each payroll period, the employing unit shall furnish each worker in its employ who has made a claim for benefits for partial unemployment a Low Earnings Report. This report shall be in the form as prescribed by the secretary, and shall include each week during the worker's current benefit year in which the worker was employed less than full time because full-time work was not available and in which the worker earned less than that worker's weekly benefit amount.

Payroll byproducts: If authorized by the secretary, the employing unit may, in lieu of the prescribed low earnings report, furnish written evidence concerning the partial unemployment of a worker by means of a pay envelope, pay-check stub or copy thereof, or other suitable medium approved by the secretary. The information contained in that medium shall be in ink or typed print, and it shall show:

(1) The name of the employing unit;

(2) The name and social security account number of the worker;

(3) The amount of wages earned by weeks and the ending date of each such week;

(4) The following certification (individual or rubber stamp): "I certify that the above amount represents reduced earnings in a week of less than full-time work because of lack of work;" and

(5) A signature (actual or facsimile) by the employing unit to the above certification, or other positive identification of the authority, supplying the evidence.

(g) *Information pertaining to workers scheduled for mass layoff*. Upon receiving a request from the secretary, an employer shall furnish the secretary with a list of employees scheduled to be involved in a mass layoff showing the name, social security number and scheduled date of layoff for each employee. In addition, if the layoff is of an indefinite duration, the employer shall issue an unemployment insurance claim packet furnished by the secretary to each employee involved in the layoff.

(h) *Response to Employer Notice*. Any base period employer who desires to request reconsideration of a charge to the employer's experience rating account, under K.S.A. 44-710(a) as amended by L. 1987, Ch. 191, Sec. 5 shall, within 10 days from the date the notice was mailed to the employer, complete and mail to the address indicated on each form a "Notice of Separation and Request for Reconsideration Under Section 44-710(c), Kansas Employment Security Law." The examiner shall furnish a Notice of Separation and Request for Reconsideration form with each Employer Notice. The employer shall request reconsideration upon that original form.

The employer shall provide a complete explanation of the circumstances; the date of separation, if any, the signature and title of the person completing the form for the employer; the employer's firm name and address; the date the form is completed; and any other information as is required by the form.

(i) *Request for separation information and to Verify Earnings*. The secretary is authorized to require special reports from any employing unit to verify earnings and separation information for individuals who have performed services for that employing unit when that information is needed for any purpose connected with the orderly administration of the benefit provisions of the unemployment insurance law of any state or of the federal government. In response to a request to verify earnings, or for separation information any employing unit shall, within 10 days from the date the request is mailed to

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the employing unit, furnish all of the information requested and in the form stipulated.

(Authorized by and implementing K.S.A. 44-705(a) and (b), 44-709(a), as amended by L. 1987, Ch. 191, Sec. 4, 44-710(c), as amended by L. 1987, Ch. 191, Sec. 5, 44-714(a) and (f), as amended by L. 1987, Ch. 191, Sec. 8; effective Jan. 1, 1966; amended Jan. 1, 1971, amended May 1, 1980; amended May 1, 1983; amended May 1, 1988.)

50-3-2. INITIAL CLAIMS FOR BENEFITS INTRASTATE WORKERS. (a) *Reporting to File Initial Claim.* An unemployed worker shall report in person to a representative of the Division at any district unemployment insurance office or itinerant office utilized by the Division to file an initial claim. If that worker lives outside a county in which an office is located the worker shall be permitted to file an initial claim by mail.

(b) *Effective Date of Initial Claim.* The effective date of an initial claim shall be the first day of the calendar week in which the filing date, as defined in section (c) of this regulation, occurs, unless otherwise provided. The effective date of initial claims for partial unemployment shall be the first day of the first week of less than full-time work. The ending date of that week shall not be more than 14 days prior to the filing date of the claim. When filing occurs with respect to a week which overlaps a preceding benefit year, the effective date shall be the first day immediately following the expiration date of the preceding benefit year.

(c) *Filing Date of Initial Claims.*

1. Claim Filed in Person at a Local Job Service Office. The filing date of initial claims filed by workers during a visit in person to a district office or itinerant office shall be the actual date of the visit.

2. Claims Filed in Person at an Itinerant Office. The filing date of initial claims filed by workers during a visit to an itinerant office shall be the first date of the worker's unemployment, if that worker has reported to file an initial claim no later than the first time the itinerant office was open following the first date of unemployment. Otherwise, the filing date shall be the actual date of the visit.

3. Deferred Filing. When a worker visits a district office or itinerant office for the purpose of filing an initial claim, is given claim forms for his or her completion and directed by a Division representative to complete and return the forms to the district office or the itinerant office, the filing date of the initial claim shall be the actual date of the visit: Provided, however, that if the completed claim forms are not returned or mailed to the district office or the itinerant office before the end of the calendar week following the actual date of the visit, the filing date of the initial claim shall be the actual date the completed forms were received in the district office or the itinerant office.

4. Claim Filed by Mail. The filing date of initial claims filed by mail by workers living outside a county in which the district office or itinerant is located shall be the date the worker mailed a written request to the Division for claim forms. If the worker fails to return the completed forms to the district office by the end of the calendar week following the week in which the forms were mailed to the worker, the filing date of the initial claim shall be the actual date the forms were received in the district office.

(d) *Late Filed Initial Claim.*

1. *By Totally or Part-totally Unemployed Workers.* If the effective date of an initial claim, established in accordance with section (b) of this regulation, is later than the first day of the calendar week in which the worker became unemployed because of a late filing date, and the worker establishes good cause for the late reporting in accordance with K.A.R. 50-3-4(a) and files the initial claim in person during the second consecutive week in which the individual is unemployed, or for workers served by an itinerant office, in person or by mail, during the week following the week in which the itinerant office was open, then the effective date of the claim shall be the first day of the week in which the worker became unemployed.

2. *By Partially Unemployed Workers.* If a worker is late reporting to file an initial claim and establishes good cause for the late reporting in accordance with K.A.R. 50-3-4(b), and if the worker files the initial claim by the end of the calendar week following the week after the employee has received notice of potential rights to benefits and of the employee's earnings during the period of partial and temporary unemployment, the effective date of the employee's claim shall be the first day of the week in which the individual became unemployed; this effective date shall not apply, in any case when the initial claim is filed more than 13 weeks following the close of the benefit year.

(e) *New Claims.* A new claim for benefits shall be filed on a form entitled "Unemployment Insurance Application" which shall set forth that the worker has registered for work, the dates and reasons for separation from recent employment, and any other information as prescribed by the Division in the form: Provided, That a new claim for benefits filed by a partially unemployed or temporarily unemployed worker shall constitute that employee's registration for work. Claims personnel shall give each claimant necessary and appropriate assistance as they reasonably can, including referral to the

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public employment office most accessible to the employee. Those employees temporarily unemployed, partially unemployed or affiliated with a union which customarily places their members in employment may be excused from registration for work. A mutual exchange of information regarding services to claimants shall be maintained between the public employment office most accessible to the employee and claims personnel.

(f) *Additional Claims*. A worker having previously established a benefit year which has not ended shall reinstate the claim by filing an additional claim if the employee has earned wages equal to or in excess of the employee's weekly benefit amount or has failed to continue the claim for one or more consecutive weeks and has had intervening employment. The additional claim shall be filed on a form entitled "additional unemployment insurance application" which shall set forth that the worker has registered for work, the date and reasons for separation from recent employment, and such other information as the Division may prescribe in the content of the forms. An additional claim for benefits filed by a partially unemployed or temporarily unemployed worker shall constitute that employee's registration for work.

(Authorized by and implementing K.S.A. 44-709(a); effective January 1, 1966; amended January 1, 1971; amended January 1, 1974; amended May 1, 1980; amended May 1, 1983.)

50-3-3. CONTINUED CLAIMS FOR BENEFITS - INTRASTATE WORKERS. (a) *Continued Claim for Benefits*. Continued claims for benefits shall be made on the continued claim form prescribed by the Division setting forth: (1) That the worker renews his or her registration for work; (2) that he or she continues his or her claim for benefits; (3) that he or she is unemployed; (4) that since he or she last registered for work he or she has performed no services and earned no wages except as indicated; and (5) such other information as is required thereby. The continued claim shall renew the worker's registration for work and continue his or her claim for benefits.

A. *Verification of Earnings*. Workers filing claims for partial unemployment or intermittent partial and temporary unemployment shall also furnish a verification of their earnings as set forth in K.A.R. 50-3-1(g) as part of their continued claim. Such verification shall be approved payroll by-product only if the worker reports in person to continue his or her claim.

B. *Change in Status*. A worker who initiated his or her claim as partially unemployed, who becomes temporarily unemployed and remains so through four (4) consecutive weeks, must be formally registered for work in accordance with practices of the job service and thereafter continue his or her claims as a totally or part-totally unemployed worker until and unless he or she again becomes partially unemployed. The employer shall be given written notice of such change in status and that further low earnings reports as provided by K.A.R. 50-3-1(g) will not be required.

(b) *Manner of Reporting*. The worker shall file his or her continued claims by reporting in person at the time and place designated or by mail, as directed by the Division. The Division shall direct a worker, except a partially unemployed worker otherwise instructed to continue his or her claim by mail, to report in person at a time and place designated by the Division for the purpose of filing a continued claim or for special interview but at intervals of not more than once in each of successive calendar weeks.

(c) *Frequency of Reporting*. (1) Workers filing claims for total, part-total, and temporary unemployment shall file their continued claims for benefits and registrations for work on a weekly basis by mail or as otherwise instructed.

(2) *Claims for Partial or Intermittent Partial and Temporary Unemployment*. A worker filing continued claims for benefits for partial or temporary unemployment, shall file such claims by mail any time within seven (7) days from the close of the week of partial or temporary unemployment being claimed or from the date the employer delivered a notice of low earnings to the worker as provided in K.A.R. 50-3-1(g), whichever is the later date, the mailing date of such claims being considered as the filing date.

(d) *Failure to Report or Late Reporting*. 1. *Unable to Report as Directed Because of Employment, Illness or Disability*. If a worker, except a partially unemployed worker, directed to report in person to continue his or her claim is unable to do so at the time and place designated because of employment, illness or disability, he or she shall promptly notify a representative of the Division of the reasons for failing to report in person. Such notice shall be given in person, by telephone or by mail by the worker. The representative shall take the claim, if the notice is given in person, or shall promptly mail a suitable claim form to the worker by which he or she can claim benefits by mail. A claim filed by a worker unable to report in person, as directed, because of employment, illness or disability shall be accepted if the worker is otherwise eligible and if the claim is received by a representative of the Division within seven (7) days from the date notice of employment, illness or disability was received from the worker

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and claim forms sent him or her but in no case more than twenty-eight (28) days from the close of the week of unemployment being claimed.

2. *Unable to Report as Directed Because of Absence from Locality of Usual Reporting Office.* When a worker is absent on his or her regular report day from the locality where he usually files claims, he or she shall report to file his or her claim in person at the state employment service or employment security office serving the area where he or she is then located. If the worker is otherwise eligible, such claims will be accepted by his usual reporting office if filed within seven (7) days following his or her regular report day: Provided, That no more than four (4) consecutive weeks of unemployment may be claimed in this manner. A worker filing claims in this manner shall furnish a written statement in connection therewith explaining why he or she went to the area of present location and when he or she arrived there, when he or she left the area of his or her usual reporting office and when he or she expects to return there, and a detail of his or her efforts to find work during the week of unemployment being claimed.

3. *Failure to Report or Late Filing; totally or part-totally unemployed workers.* If a worker, except a partially or intermittent partially and temporarily unemployed worker, fails to file a continued claim for benefits as directed, as provided in section (c) of this regulation, but does so during the subsequent week, establishes good cause in accordance with K.A.R. 50-3-4(a) for his or her late reporting and is otherwise eligible, the Division shall accept his or her claim. If a worker, ordinarily instructed to file continued claims by mail, fails to report in person at the time and place designated when directed to do so by the division in accordance with section (c) of this regulation, then subsequent continued claims filed by such worker shall be denied until he or she does report in person to a representative of the division. Such denied claims shall be reinstated and allowed if the worker is otherwise eligible, reports in person to a representative of the division within twenty-eight (28) days from the date he or she should have reported and at that time establishes good cause as provided in K.A.R. 50-3-4(a) for his or her failure to report as directed.

(Authorized by K.S.A. 1980 Supp. 44-705(a) and (b); 44-709(a); effective Jan. 1, 1966; amended Jan. 1, 1971; amended Jan. 1, 1974; amended May 1, 1980.)

50-3-4. GOOD CAUSE FOR LATE FILING. (a) *Claims for Total or Part-Total Unemployment.* A worker shall be deemed to have good cause for late filing of an initial claim if at the time he or she intended to report and during the balance of the calendar week, or to have good cause for failure to report to continue his or her claim at his or her assigned report time, or to report as otherwise directed, if at that time: the local office to which he or she reports was closed or if itinerant service was not conducted as scheduled; he or she was employed for wages; he or she experienced a failure of the transportation facilities upon which he or she relied; he or she was ill or disabled; he or she was influenced by coercion or intimidation exercised by an employer to prevent him or her from reporting; he or she had a definite appointment or prospects for employment for which he or she applied; he or she made reasonable efforts to file claim but was prevented by circumstances beyond his control from actually doing so; there were impelling personal reasons or necessitous circumstances which prevented his or her reporting; or if his or her failure to report resulted from erroneous information or instructions given him or her by a representative of the Division.

(b) *Claims for Partial Unemployment.* A worker shall be deemed to have good cause for late filing of an initial claim or of a continued claim if such late filing is due to failure on the part of the employer to comply with a regulation, to coercion or intimidation exercised by the employer to prevent making such claim, or to failure by the Division to discharge its responsibility promptly in connection with such partial unemployment.

(Authorized by K.S.A. 1980 Supp. 44-705(a) and (b), 44-709(a), 44-714(a); effective Jan. 1, 1966; amended May 1, 1980.)

50-3-5. BENEFIT PAYMENTS - INTERSTATE WORKERS. (a) *Interstate Cooperation.* The Division of Employment shall cooperate with other states adopting a similar regulation for the payment of benefits to interstate claimants.

(b) *Registration for Work.*

1. *Registration in Agent State.* Each interstate claimant shall be registered for work at a public employment office in the agent state when and as required by the law, regulations, and procedures of the agent state. That registration shall be accepted as meeting the registration requirements of the liable state.

2. *Reports by Agent State.* Each agent state shall duly report, to the liable state in question, whether each interstate claimant meets the registration requirements of the agent state.

(c) *Benefit Rights of Interstate Claimants.* If a claimant files a claim against any state, and if it is determined by that state that the claimant has available benefit credits in the state, then claims shall be

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filed only against the state as long as benefit credits are available in that state. The claimant shall file claims against any other state in which there are available benefit credits. For the purposes of this regulation, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the application of a seasonal restriction.

(d) *Claims for Benefits*.

1. Claims for benefits or a waiting period shall be filed by interstate claimants on uniform interstate claim forms and in accordance with uniform procedures developed pursuant to the Interstate Benefit Payment Plan. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

2. Claims shall be filed in accordance with agent state regulations for intrastate claims in local employment offices, or at an itinerant office, or by mail.

(A) With respect to claims for weeks of unemployment in which an individual was not working for the individual's regular employer, the liable state shall, in circumstances which it considers good cause, accept a continued claim filed up to one week, or one reporting period late. If a claimant files more than one reporting period late, an initial claim shall be used to begin a claim series and no continued claim for a past period shall be accepted.

(B) With respect to weeks of unemployment during which an individual is attached to the individual's regular employer, the liable state shall accept any claim which is filed within the time limit applicable to these claims under the law of the agent state.

(e) *Determination of Claims*. The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question such facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

1. *Investigation and Reports*. The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts. The agent state shall not refuse to take an interstate claim.

(f) *Appellate Procedure*. The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims. With respect to the time limits imposed by the law of a liable state upon the filing of an appeal in connection with a disputed benefit claim, an appeal made by an interstate claimant shall be deemed to have been made and communicated to the liable state on the date when it is received by any qualified officer of the agent state.

(g) *Interstate Claims Taken in and for Canada*. All of the provisions of this regulation apply to claims taken in and for Canada.

(Authorized by and implementing K.S.A. 44-714(k); effective January 1, 1966; amended January 1, 1971; amended May 1, 1980; modified, L. 1981 Ch. 421, May 1, 1981; amended May 1, 1983.)

50-3-6. APPELLATE PROCEDURE. *Issuance of Subpoenas*. Whenever the attendance of witnesses or the production of documents, payroll records or other evidence is desired by any party to the proceeding, a request for a proper subpoena, on a form provided by the Division entitled Request for Issuance of Subpoena, must be filled out, signed by such party, and filed with the office where the claim was filed or at the administrative office in Topeka, Kansas. Such request must be filed in due time for such subpoena to be issued and served prior to the time such appeal is to be heard. Subpoenas to compel the attendance of witnesses and the production of records for any hearing, unless directed to issue by the secretary, or any duly authorized representative of the secretary, shall be issued only upon a showing of a necessity therefore by the party applying for the issuance of the subpoena. After the issuance of a subpoena, a copy thereof shall be served by an employee of the Division.

(Authorized by K.S.A. 1980 Supp. 44-714(a), (g) and (h); effective Jan. 1, 1966; amended May 1, 1980.)

50-3-7. AFFIDAVIT OF BONA-FIDE EMPLOYMENT AND WAGES PAID. Claimant's affidavit will be required in support of his or her benefit claim where the listed employer has either failed to verify claimant's alleged wages, previous employment, or where the agency files do not indicate any records or information concerning the listed employer.

The Division will utilize the claimant's affidavit in order to make a monetary or nonmonetary determination only if the claimant submits documentary evidence such as, but not limited to, a form W-2, withholding tax statement or a payroll check stub.

When an affidavit is taken, the Division representative will explain to the claimant that the determination based on claimant's statement is not final and may be subject to adjustment upon the receipt of

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information provided by the claimant's listed employer, or other official reports concerning previous employment and separation information.

(Authorized by K.S.A. 1980 Supp. 44-709(a); effective May 1, 1980.)

ARTICLE 4 - DISCLOSURE OF INFORMATION

50-4-2. LIMITATIONS AND PROCEDURES CONCERNING DISCLOSURE (a) Information obtained from any worker, employing unit, or other persons or groups pursuant to the administration of employment security law shall not be disclosed, directly or indirectly, in any manner revealing the individual's or employing unit's identity, except in the following circumstances:

(1) Information shall be disclosed to the individual or employing unit which furnished the requested information, if:

(A) The individual or employing unit is properly identified in a manner that insures the identity of the individual or employing unit, and

(B) the individual or employing unit makes the request for information on a form provided by the secretary.

(2) Information shall be disclosed to any claimant, employing unit or designated representatives at a hearing before the secretary or a hearing pursuant to K.S.A. 44-709 as amended by L. 1987, Ch. 191, Sec. 4 and amendments thereto, concerning the payment or denial of benefits, if:

(A) The requested information relates to the payment or denial of benefits, and

(B) The information is to be used by the claimant or employing unit to aid in the preparation of evidence to be presented at a hearing before the secretary or a hearing pursuant to K.S.A. 44-709 as amended by L. 1987, Ch. 191, Sec. 4 and amendments thereto, concerning the payment or denial of benefits, and

(C) The request is on a form provided by the secretary, and

(D) If the information is to be disclosed to a representative of the claimant or employing unit, the claimant or employing unit designates the representative in writing on the form furnished by the secretary.

(3) Information shall be disclosed to officers or employees of an agency of the federal government or a state, territorial or local government, in the performance of their public duties, upon written request, if:

(A) The written request specifies the information desired, and

(B) The written request states that the requested information will not be released or published in any manner. The introduction of any information disclosed as evidence at a public hearing or as part of a record available to the public constitutes publication.

(4) Information shall be disclosed upon written request of either of the parties or their representatives for the purpose of administering or adjudicating a claim for benefits under the provisions of any other state benefit program if:

(A) The written request is accompanied by a subpoena or order for records production from an administrative law judge or other official, and

(B) The written request states that the requested information will not be released or published in any manner. The introduction of any information disclosed as evidence at a public hearing or as part of a record available to the public constitutes publication.

(5) Information shall be disclosed as required by any other statute of the federal government or the state of Kansas if the request for information is in writing and the statutory authorization for the release of the requested information is cited in the written request.

(b) Information disclosing the identity of a claimant or employing unit may be used in criminal or civil court proceedings brought by the State of Kansas or Secretary of Human Resources pursuant to the enforcement of the employment security act.

(c) General information concerning employment opportunities, employment levels and trends, and labor supply and demand, may be released, provided no information disclosing the claimant's or employing unit's identity is included.

(d) In all cases where an application for information is granted, the information shall be furnished in written form.

(e) Requests for information shall be made to the district unemployment insurance claims office where the claim was filed or the administrative office in Topeka, Kansas. Forms for requests for information, which by this regulation are to be supplied by the secretary, shall be made available at the district unemployment insurance claims office or the administrative office in Topeka, Kansas.

(f) The secretary may require reimbursement of reasonable expenses incurred in furnishing the requested information, unless:

(1) The information is furnished to a claimant or employing unit pursuant to an unemployment insurance claim.

(2) Federal or state law specifically provides that the information shall be furnished without cost to the individual or agency requesting the information.

(Authorized by K.S.A. 1980 Supp. 44-714(a) as amended by L. 1987, Ch. 191, Sec. 8; effective May 1, 1980; amended May 1, 1988.) 1-111

Birth and Adoption Unemployment Compensation

(BAA-UC)

- President issued an Executive Memorandum on May 24, 1999 directing the Secretary of Labor to allow states the opportunity to develop innovative ways of using UI to support parents taking leave to be with their newborns or newly-adopted children, and to evaluate the effectiveness of using the UI system for these or related purposes.

- DOL issued a proposed rule notice on December 3, 1999 and is seeking comments until January 18, 2000.

- Comments will be considered in the development of a final rule.

- Opportunity for state agencies that administer the UI program to pay UI to parents who take time off from employment after the birth or placement for adoption of a child.

- This is voluntary, experimental program.

- Experimental BAA-UC program is designed to test whether expansion of its interpretation of the able and available requirements would promote a continued connection to the workforce in parents who receive such payments.

- States may enact legislation and begin operation of a BAA-UC program any time after the effective date of the Final Rule. It will appear in the Federal Register as a program letter

- A comprehensive evaluation will be performed when at least four states have implemented legislation and operated a BAA-UC program for a minimum of three years.

- UI to be paid only to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children.

- Newborns are defined as children up to one-year old. Newly-adopted refers to children, regardless of age, who have been placed within the previous 12 calendar months with an adoptive parent.

- Parents are defined as mothers and fathers, biological, legal or having legal custody of a child during the adoption process.

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Attachment 2

- The introduction of eligibility factors unrelated to the fact or cause of unemployment, such as industry, employer size or whether the spouse of a UI recipient also receives (or has received) UI, is inconsistent with federal law.

- All individuals covered under a state's UI law must be covered for BAA-UC.

- The first compensable week is the week in which birth or placement for adoption takes place. Weeks preceding the week of the birth or placement and weeks following the end of the one-year period are not compensable.

- The purpose of BAA-UC is to provide support to new parents on leave from employment to be with their newborns or newly-adopted children. However, for experimental purposes, the DOL will allow states to pay BAA-UC to parents who otherwise leave employment for this purpose.

- DOL estimates that the possible annual aggregate BAA-UC cost could range from zero to approximately $68 million based on the expressed interest of a small number of states.

- States are free to determine monetary qualifications, weekly benefit amounts, number of weeks payable, whether to impose a waiting period, whether to charge the individual employer or to socialize the costs to all employers, whether to limit BAA-UC to parents who take approved leave or to extend it to parents who otherwise leave employment (quit), or whether to deduct any employer-paid leave from the UI payable amount.

- DOL expects that a state will not enact this experimental program without assessing the effect on the solvency of its unemployment fund.

- DOL has provided model legislation. (Copy attached)

Sec. 604.20 Who is covered by Birth and Adoption unemployment compensation?

If a State chooses to provide Birth and Adoption unemployment compensation, all individuals covered by the State's unemployment compensation law must also be covered for Birth and Adoption unemployment compensation. Just as with current unemployment compensation programs, individuals may not be denied experimental Birth and Adoption unemployment compensation based on facts or causes unrelated to the claimant's unemployment, such as industry, employer size or the unemployment status of a family member. The introduction of such facts or causes would be inconsistent with Federal unemployment compensation law.

Sec. 604.21 When does eligibility for Birth and Adoption unemployment compensation commence?

Parents may be eligible for Birth and Adoption unemployment compensation during the one-year period commencing with the week in which their child is born or placed with them for adoption. Weeks preceding the week of the birth or placement and weeks following the end of the one-year period are not compensable.

Sec. 604.22 Are parents who leave employment to be with their newborns or newly-adopted children eligible for Birth and Adoption unemployment compensation, or is it limited only to parents who take approved leave?

States may limit Birth and Adoption unemployment compensation to parents who take approved leave or may extend Birth and Adoption unemployment compensation to parents who otherwise leave employment to be with their newborns or newly-adopted children. However, the intent of Birth and Adoption unemployment compensation is to support all parents who wish to take time from employment to be with their newborns or newly-adopted children.

The following appendix will not appear in the Code of Federal Regulations.

Appendix A--Model State Legislation

Section _____. Birth and Adoption Unemployment Compensation.

(a) An individual who is on a leave of absence from his or her employer or who left employment to be with the individual's child during the first year of life, or during the first year following placement with the individual for adoption, shall not be denied compensation under Section _____ for voluntarily leaving employment, Section _____ relating to availability for work, Section _____ relating to inability to work, or Section _____ for failure to actively seek work.

(b) Section _____, concerning the reduction of the amount of compensation due to receipt of disqualifying income, shall apply to payments under this section. In addition, the following payments shall cause a reduction in the compensation amount:

(1) any payment from the employer resulting from a birth or adoption described in subsection (a); and

(2) any payment resulting from a birth or adoption described in subsection (a) from a disability insurance plan contributed to by an employer, in proportion to the employer's contribution to such plan.

(c) Compensation is payable to an individual under this section for a maximum of 12 weeks with respect to any birth or placement for adoption.

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(d) Each employer shall post at each site operated by the

employer, in a conspicuous place, accessible to all employees, information relating to the availability of Birth and Adoption unemployment compensation.

(e) Any compensation paid under this section shall not be charged to the account of the individual employer.

(f) Two years following the effective date of this legislation, the commissioner shall issue a report to the governor and the legislature evaluating the effectiveness of the Birth and Adoption unemployment compensation program.

(g) This section shall be applied consistent with regulations issued by the U.S. Department of Labor.

The following appendix will not appear in the Code of Federal Regulations.

Appendix B--Commentary on Model State Legislation, Including Policy Issues

General

Must States Implement a Birth and Adoption Unemployment Compensation (BAA-UC) Program?

No. This program is voluntary for the States. However, implementation of BAA-UC will require some legislation on the part of every State seeking to adopt the program. The Model State Legislation is provided for the convenience of States that wish to implement a BAA-UC program.

Does This Regulation Enable a State To Pay UC for Other Types of Family or Medical Leave?

No. This regulation enables a State to pay UC to parents on approved leave or who

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otherwise leave employment to be with their newborns or newly-adopted children. Permitting payment of UC for other types of family leave or care would be inconsistent with this experimental program.

Must All Employer-Paid Leave Be Exhausted Before BAA-UC Is Available?

No. BAA-UC is designed to provide partial wage replacement to parents of newborns or newly-adopted children. The Model State Legislation assumes that any wages paid for the period of employer-provided leave will be deducted. However, States need not deduct these wages from BAA-UC.

Does This Regulation Impose Any Solvency Requirements Upon the States Before They Enact BAA-UC?

No. The DOL expects that a State will not enact changes without assessing the effect on the solvency of its unemployment fund. Each State has the responsibility to assess the cost to the State's unemployment fund whenever coverage, benefit expansions, or tax changes are considered within the State's UC program. Consequently, DOL expects prudent decision makers in a State to examine the State's solvency position and projected taxes and benefit payments under current law before deciding to enact BAA-UC legislation.

Monetary Qualifications and Benefits

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What Are the Earnings and Employment Requirements for BAA-UC?

ETA Proposed Rule

Birth and Adoption Unemployment Compensation; Proposed Rule [12/03/99]

[PDF Version]

Volume 64, Number 232, Page 67971-67979

[Federal Register: December 3, 1999 (Volume 64, Number 232)]
[Proposed Rules]
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From the Federal Register Online via GPO Access [wais.access.gpo.gov]
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Part II

Department of Labor

Employment and Training Administration

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20 CFR Part 604

Birth and Adoption Unemployment Compensation; Proposed Rule

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DEPARTMENT OF LABOR

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Employment and Training Administration

20 CFR Part 604

RIN 1205-AB21

Birth and Adoption Unemployment Compensation

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Labor (DOL) is issuing for comment a Notice of Proposed Rulemaking to create, by regulation, an opportunity for State agencies that administer the Unemployment Compensation (UC) program to pay, under a voluntary experimental program, UC to parents who take time off from employment after the birth or placement for adoption of a child. This effort responds to the President's Executive Memorandum issued May 24, 1999, directing the Secretary of Labor to allow States the opportunity to develop innovative ways of using UC to support parents taking leave to be with their newborns or newly-adopted children and to evaluate the effectiveness of using the UC system for these or related purposes. This regulation will permit interested States to experiment with methods for allowing the use of the UC program for this purpose.

DATES: DOL invites written comments on this proposal. Comments are to be submitted by January 18, 2000.

ADDRESSES: Submit written comments to Grace A. Kilbane, Director, Unemployment Insurance Service, Employment and Training Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4231, Washington, DC 20210. Prior to issuance of this Notice of Proposed Rulemaking, the DOL received correspondence on the subject matter of the proposal. This correspondence, along with correspondence received in response to the Notice of Proposed Rulemaking, will be made part of the rulemaking record and will be considered in the development of a final rule.

FOR MORE INFORMATION CONTACT: Gerard Hildebrand, Unemployment Insurance Service, ETA, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S-4231, Washington, DC 20210. Telephone: (202) 219-5200 ext. 391 (this is not a toll-free number); facsimile: (202) 219-8506.

SUPPLEMENTARY INFORMATION:

I. Background

A. General Overview

(1) Need for Birth and Adoption Leave

On May 23, 1999, the President directed the Secretary of Labor to issue a regulation allowing unemployment fund moneys to be used to provide partial wage replacement to mothers and fathers on leave following the birth or adoption of a child. In discussing the importance of providing partial wage replacement, the President stated: ``[T]hose first weeks of life are critical to the bonding of parents and children, and they can have long-term positive developments for the children. No parent should have to miss them.'' The President also noted that, ``We can do this in a way that preserves the soundness of the unemployment insurance system and continues to promote economic growth.''

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The President elaborated on this Birth and Adoption UC proposal in

a May 24, 1999, memorandum to the heads of executive departments:

First, I hereby direct the Secretary of Labor to propose regulations that enable States to develop innovative ways of using the Unemployment Insurance (UI) system to support parents on leave following the birth or adoption of a child. In addition, I direct the Secretary to develop model State legislation that States could use in following these regulations. In this effort, the Department of Labor is to evaluate the effectiveness of using the system for these or related purposes. In a 1996 study conducted by the Commission on Family and Medical Leave, lost pay was the most significant barrier to parents taking advantage of unpaid leave after the birth or adoption of a child. This new step will help to give States the ability to eliminate a significant barrier that parents face in taking leave.

In response to the President's May 24, 1999, Executive Memorandum, the DOL is exercising its authority to interpret Federal UC statutes, and, in particular the statutes' longstanding ``able and available'' requirements, by implementing an experimental program to examine the use of the UC program as a means for providing partial wage replacement to employees who desire to take approved leave or otherwise leave their employment following the birth or placement for adoption of a child.

(2) The Federal-State UC System

The Federal-State UC program is administered as a partnership of the Federal government and the States. States collect State UC taxes used to pay compensation while the Federal government collects taxes, used for grants for State UC administration, under the Federal Unemployment Tax Act (FUTA). (The FUTA is codified at 26 U.S.C. 3301-3311.) The DOL has broad oversight responsibility for the Federal-State UC program, including determining whether a State law conforms and its practices substantially comply with the requirements of Federal UC law. If a State's law conforms and its practices substantially comply with the requirements of the FUTA, then the Secretary of Labor issues certifications enabling employers in the State to receive credit against the Federal unemployment tax as provided under section 3302, FUTA. If a State and its law are certified under the FUTA, and the State's law conforms and its practices substantially comply with the requirements of Title III of the Social Security Act (SSA), then the State receives grants for the administration of its UC program. (Title III of the SSA is codified at 42 U.S.C. 501-504.) The DOL enforces Federal UC law requirements through the FUTA credit and grant certification processes.

(3) Ability To Work and Availability for Work

The DOL has the authority and responsibility to interpret the provisions of Federal UC law such as the ``able and available'' requirements. Although no explicit able and available requirements are stated in Federal law, the DOL and its predecessors (the Social Security Board and the Federal Security Agency) interpreted four provisions of Federal UC law as requiring that claimants be able to and available for work. Two of these provisions at section 3304(a)(4), FUTA, and section 303(a)(5), SSA, limit with-drawals, with specific exceptions, from a State's unemployment fund to the payment of ``compensation.'' Section 3306(h), FUTA, defines ``compensation'' as ``cash benefits payable to individuals with respect to their unemployment.'' The able and available requirements provide a test of a claimant's ``unemployment.''

The other two provisions found in section 3304(a)(1), FUTA, and section 303(a)(2), SSA, require that compensation ``be paid through public employment offices.'' The requirement that UC is to be paid through the public employment system (the purpose of which is to find people jobs) ties the payment of UC to an individual's search for employment and to his or her ability to work and availability for work.

Agencies administering the Federal-State UC program have for over

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60 years interpreted these four statutory provisions to require a participating State to have able and available requirements.

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In response to practical economic and societal concerns, the DOL has previously, as discussed below, exercised its authority to interpret Federal UC statutes regarding the able and available requirements to address several specific areas: training, illness, jury duty and temporary layoffs. Under its authority to interpret Federal UC law and consistent with its broad oversight responsibility, the DOL interprets the Federal able and available requirements to include a voluntary experimental program for examining the use of the UC program to provide partial wage replacement to employees who take approved leave or otherwise leave employment to be with their newborns or newly-adopted children. This experiment recognizes the impact of women in the workforce and responds to the dramatic societal and economic changes resulting from the large number of families where both parents work. It should allow parents of newborns and newly-adopted children to strengthen their availability for work by providing them with the time and financial support to address several vital needs that accompany the introduction of a new child into the family. The program would allow such parents to provide the initial care that the child will need, to form a strong emotional bond with the child, and to establish a secure system of child care that, once in place, will promote the parents' long-term attachment to the workforce.

(4) Minimal Tests of the Able and Available Requirements

Consistent with DOL interpretations, some States have imposed minimal tests of the able and available requirements for specific situations, provided the claimant has demonstrated an attachment to the labor force.

Approved Training. Prior to incorporating the training provision into the Federal laws, the DOL encouraged States to treat individuals in training approved by the State agency as meeting the able and available requirements since such training represents the most effective step available to the individual to return to work. The DOL cautioned that State agencies should only approve short-term training that would make individuals job ready. In 1970, Congress, recognizing the importance of training in remedying unemployment, made this training provision mandatory for all States. (Section 3304 (a)(8), FUTA.) The Federal able and available requirements are preserved because individuals who fail to attend training, except by specific waiver, are held to be unavailable for work and ineligible for UC.

Illness. Eleven States allow an individual who initially meets the able and available requirements, but then becomes ill, to receive UC payments without interruption, provided that no suitable work is offered and refused. The DOL approved such State laws in an effort to deter disqualification for UC where a claimant was not ``able and available'' for perhaps one day, or even one hour, out of a week. Two States, Alaska and Massachusetts, cap the number of weeks ill claimants can collect UC at six weeks and three weeks, respectively; the other States have no statutory limitations. The Federal able and available requirements are preserved because claimants must initially demonstrate their ability to and availability for work before the illness and must be held ineligible if they refuse an offer of suitable work.

Similarly, under the Federal-State Extended Unemployment Compensation Act of 1970 (EB) (26 U.S.C. 3304, note), an ill individual may receive UC only if no suitable work is rejected. The EB program provides additional weeks of compensation to individuals who have exhausted their rights to regular compensation during times of high unemployment and contains a specific ``work search'' requirement. This work search requirement is suspended for EB claimants who are hospitalized for an emergency or life-threatening condition (20 CFR 615.8 (g)(3)(i)(B)). This suspension is permitted only if the State law

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contains a similar provision to those explained above, which must be consistent with the Federal able and available requirements.

Jury Duty. The DOL accepts that States may pay UC to individuals serving on jury duty consistent with the Federal availability requirement. This is reasonable because individuals are compelled under the threat of contempt of court by the judicial branch of the government to go on jury duty, and attendance at jury duty may be taken as evidence that the employee would otherwise be available for work. It would be inconsistent for the State to compel jury service and at the same time disqualify unemployed persons from UC for complying. Most employment is not considered an excuse for avoiding jury duty, and unemployment would also likely not be an excuse from jury duty. Indeed, EB claimants are exempt from the work search provision while on jury duty (20 CFR 615.8(g)(3)(i)(A)).

Temporary Layoffs. In a temporary layoff, the employer is unable to provide work for a short period of time, but both the employer and the employee have the expectation that the employee will return to work on a specific date. When the employer recalls the employee, the employee must accept or be denied UC. In these cases, the availability requirement is essentially limited to the employer who laid off the employee. This recognizes that such employees are frequently career employees who would likely quit a new job to return to their former employer when the layoff ends; therefore, other employers would not likely hire such employees.

B. The Birth and Adoption Unemployment Compensation (BAA-UC) Experiment

(1) Able and Available Requirements for BAA-UC

The DOL previously exercised its authority to interpret the able and available requirements in the areas of training, illness, jury duty, and temporary layoffs. Based on this precedent, the DOL's experimental BAA-UC program is designed to test whether expansion of its interpretation of the able and available requirements would promote a continued connection to the workforce in parents who receive such payments.

As the number of mothers in the workforce and families with both parents working rises, the need to test this interpretation increases, and collecting data under the BAA-UC program to test the existence and magnitude of this group's connection to the work force, is increasingly important. Indeed, much in the same way that providing training to laid-off employees enhances their connection to the workforce by making them more marketable, the DOL wants to test whether providing parents with BAA-UC at a point during the first year of a newborn's life, or after placement for adoption, will help employees maintain or even promote their connection to the workforce by allowing them time to bond with their children and to develop stable child care systems while adjusting to the accompanying changes in lifestyle before returning to work.

The initial time period during which a new child is introduced into a home, and how that child's care will be assimilated into the working lives of the parents, is critical. It is during this period that secure emotional bonds are formed between children and their parents. It is also during this period that a system of child care, which will foster the parents' availability for work, can be firmly established. These requirements are universal when any working family has a new child. Addressing these needs is fundamental to helping families flourish and is also connected to

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sustaining a stable workforce. Where parents continue to work after the arrival of children, they often need the opportunity to bond with their child as well as arrange a system of care that will allow the parents to continue, and indeed strengthen, their attachment to the workforce.

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For all the above reasons, the DOL believes that these parents are an appropriate focus of an experimental extension to the able and available requirements. Thus, this expanded interpretation of the Federal able and available requirements applies only to experimental BAA-UC and does not extend to any other facet of the Federal-State UC program. BAA-UC is an experiment being conducted within the regular UC program.

(2) Experimental versus Permanent Program

This proposed rule will give the State agencies that administer the UC program the opportunity to provide UC, under an experimental program, to parents who take approved leave or otherwise leave their employment to be with a newborn or newly-adopted child. The DOL chose to proceed with an experimental rather than a permanent program in order to compile the necessary information to evaluate the following prior to any implementation of a permanent program: whether individuals compensated for birth and adoption leave are more likely to return to employment, and, therefore, are more available than those who are uncompensated; the effects on employers whose employees take such compensated leave; the effects on employers throughout a State who bear the BAA-UC costs; and the effects on the State's unemployment fund. The DOL anticipates that creating this experimental program, which States can voluntarily choose to put into practice, will give States the necessary latitude to develop innovative programs permitting the DOL to measure employees' connections to the workforce after availing themselves of BAA-UC, as compared to individuals who take unpaid leave or none at all.

(3) Experimental Program Limitations

The purpose of the able and available requirements is to assure sufficient attachment to the workforce. The BAA-UC experimental program is designed to test the proposition that providing UC to the parents of newborns and newly-adopted children who wish to take approved leave or otherwise leave their employment will increase their attachment to the workforce. In order to gain information on the impact of adapting the UC program to address the needs of such employees, the DOL is defining the experimental program to cover the parents of newborns and newly-adopted children. The DOL believes that authorizing States to provide unemployment compensation for parents of newborns and newly-adopted children will produce valuable information for evaluating the program. This information may also serve as a basis for further expanding coverage to assist a broader group of employees to better balance work and family needs. The class of employees covered by this proposed rule is a small, easily-defined group that can be used to test whether compensating absences from employment will assist individuals to maintain, or even improve upon, their connection to the workforce by enabling them to better meet their parental and family needs.

(4) Experimental Program Time Frame and Evaluation

States may enact legislation and begin operation of a BAA-UC program any time after the effective date of the Final Rule. States wishing to enact legislation prior to completion of the rulemaking process should have a contingency provision in their legislation allowing for State agencies to make changes necessary to comply with Federal regulations prior to the implementation of their programs.

The DOL will begin collecting administrative data immediately upon implementation of a BAA-UC program. As States gain experience with their programs, the DOL will evaluate each State individually. A comprehensive evaluation will be performed when at least four States have implemented legislation and operated a BAA-UC program for a minimum of three years.

The Federal evaluation methodology has not yet been completed. Because States will have broad latitude in developing BAA-UC experimental programs, the DOL may use a case study evaluation design. Some of the issues that may be addressed in the evaluation include: whether workforce attachment for this population changed; whether employees faced barriers to taking advantage of BAA-UC; and, if so,

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what can be done to break down these barriers. Though not required by these regulations, it is anticipated that each State will include, as part of its system development, an evaluation component. Once decisions have been made regarding the Federal evaluation process and how the relevant information will be collected, complete information collection instructions will be issued and, if subject to the Paperwork Reduction Act, published for public comment in the Federal Register.

C. Rule Format

In keeping with the Administration's commitment to writing regulations in plain English, the substance and format of this Proposed Rule is presented in a question-and-answer format so that the regulations will be clear and easy to understand. In addition, the DOL has attempted to anticipate and address issues that may arise during this effort.

II. Explanation

DOL is proposing a rule which is not overly prescriptive. This is consistent with the general structure of the UC program under which States have wide latitude in designing their programs.

In accordance with the May 24, 1999, Executive Memorandum, BAA-UC model State legislation has been developed and is appended (Appendix A) for comment. This model legislation is optional and is provided for the convenience of States that choose to implement a BAA-UC program. A commentary on the model legislation and policy issues to aid States in the development of methods provided for under the proposed rule is also appended (Appendix B) for comment. Both appendices are subject to change based upon comments. They will be issued in final form in the Federal Register as a program letter and will not appear in the Code of Federal Regulations.

Description of the Regulation

The proposed rule adds Part 604 to the Code of Federal Regulations. Subparts are organized by subject matter:

Subpart A discusses the purpose and scope of the regulation and defines critical terms.

Subpart B discusses Federal UC requirements as they relate to this experiment.

Subpart C discusses BAA-UC eligibility requirements.

Following is a brief description of each subpart of the proposed regulation.

Subpart A--General Provisions

Subpart A discusses the purpose and scope of the regulation and defines critical terms. The purpose of the regulation is to establish the opportunity for the State agencies that administer the UC program to provide UC, under an experimental program, to parents who take approved leave or otherwise leave employment to be with a newborn or newly-adopted child. This proposal will permit interested States to

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experiment with methods for allowing this use of the UC program.

The scope of the BAA-UC experiment extends to all State UC programs that provide UC to parents who take approved leave or otherwise leave their employment to be with their newborns or newly-adopted children. This group was identified by the President as the focal group for the experiment with possible expansion, if warranted, after the experiment has been evaluated. State participation is completely voluntary.

Definitions of terms specific to BAA-UC are also in Subpart A:

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Approved Leave--Because ``approved leave'' is commonly interpreted as an approved, temporary separation from a specific employer, that definition has been adopted for BAA-UC purposes.

Birth and Adoption unemployment compensation--This is UC paid only to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children.

Newborns--To establish the distinguishing characteristics of the experimental group, it is necessary to define ``newborn.'' For purposes of the experiment, newborns are defined as children up to one-year old.

Newly-adopted children--Adoptive parents are included in the experiment. Because adopted children may not be newborns, and a comparable measurement period is necessary for all parents included in the BAA-UC experiment, ``newly-adopted'' refers to children, regardless of age, who have been placed within the previous 12 calendar months with an adoptive parent(s).

Parents--For BAA-UC experimental purposes, parents are defined as mothers and fathers--biological, legal or having legal custody of a child during the adoption process. The BAA-UC experiment does not include foster parents unless the child has been placed with the foster parents for adoption.

Placement--The adoption process can be lengthy with completion occurring long after a child has been placed with a family. Consequently, for BAA-UC comparability between parents of newborns and parents of newly-adopted children, ``placement'' for BAA-UC purposes will be the time a parent becomes legally responsible for a child pending adoption.

Subpart B--Federal UC Requirements

Subpart B discusses how the Federal UC requirements apply to BAA-UC. Beyond the proposed interpretation of the able and available requirements, this regulation does not change Federal UC requirements. Under its authority to interpret the statutes it administers, the DOL is interpreting the Federal able and available requirements to include BAA-UC. This interpretation will give States the opportunity to experiment with, and demonstrate methods of, providing BAA-UC to parents of newborns and newly-adopted children. The experiment will provide compensation only during the periods when parents take approved leave or otherwise leave employment following the birth or placement for adoption of their child. This interpretation of the Federal able and available requirements applies only for purposes of this experiment.

Subpart C-BAA-UC Eligibility

Subpart C discusses the BAA-UC eligibility requirements. Although implementation of BAA-UC is entirely at State discretion and States have wide latitude in BAA-UC program development, certain eligibility parameters apply. For example, only parents of newborns or newly-adopted children are included in the experiment. Also, because all Federal UC law requirements must be met and the insurance nature of the UC program must be maintained, the introduction of eligibility factors that are inconsistent with Federal UC law requirements is not permitted under BAA-UC programs. The introduction of eligibility factors unrelated to the fact or cause of unemployment, such as industry, employer size or whether the spouse of a UC recipient also receives (or has received) UC, is inconsistent with Federal law. Specifically, in a 1964 conformity decision involving the State of South Dakota, the Secretary of Labor held that Federal law prohibits the introduction of any eligibility test unrelated to the fact or cause of the individual's unemployment. (See Secretary of Labor's Decision of September 25, 1964, In the Matter of the Hearing to the South Dakota Department of Employment Security Pursuant to Section 3304(a) of the Internal Revenue Code of 1954, transmitted by Unemployment Insurance Program Letter No.

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787, October 2, 1964.) Therefore, all individuals covered under a State's UC law must be covered for BAA-UC.

For BAA-UC purposes, the first compensable week is the week in which birth or placement for adoption takes place. States are free to determine whether to prorate the weekly compensation amount based on the day of the birth or placement for adoption or whether to fully compensate for that week. Weeks preceding the week of the birth or placement and weeks following the end of the one-year period are not compensable.

The purpose of BAA-UC is to provide support to new parents on ``leave'' from employment to be with their newborns or newly-adopted children. The term ``leave'' implies that the individual will return to the last employer after a designated period. However, for experimental purposes, the DOL will allow States to pay BAA-UC to parents who otherwise leave employment for this purpose. This will generate data for evaluating how providing compensation affects the connection of these individuals to the workforce. The DOL's view is that limiting BAA-UC to only those individuals who are assured of job retention could be seen as unfairly excluding parents from BAA-UC who are denied leave by their employers.

Executive Order 12866

This proposed rule is a ``significant regulatory action'' within the meaning of Executive Order 12866 because it meets the criteria of Section 3(f)(4) of that Order in that it raises novel or legal policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, the proposed rule has been submitted to, and reviewed by, the Office of Management and Budget.

However, the proposed rule is not considered an ``economically significant'' rule because it will not have an annual effect on the economy of $100 million or more, will not adversely impact a specific sector of the economy, and will not materially alter the budgeting impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof.

The Department estimates that the possible annual aggregate BAA-UC cost could range from zero to approximately $68 million. The regulation is permissive, and the DOL does not know how many States will choose to enact experimental BAA-UC programs. The estimate of the annual aggregate BAA-UC cost of $68 million is based on the expressed interest of a small number of States. The cost depends upon such factors as the extent to which BAA-UC affects parents' incentives to increase their leave duration and the percentage of leave-takers applying for BAA-UC. The derivation of this estimate begins

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with 1997-98 Current Population Survey data showing the annual U.S. average number of women in the labor force with a child under one-year old. After this number is disaggregated by State, the likely proportion of leave-takers for newborns and newly-adopted children is determined based on percentages provided in a report by the Commission on Family and Medical Leave, titled A Workable Balance: Report to Congress on Family and Medical Leave Policies (April 30, 1996). Other factors used in determining the cost estimate include the percent of leave-takers with employer-paid leave, monetary eligibility rates, and average weekly UC payments.

Further, the DOL has evaluated the proposed rule and found it consistent with the regulatory philosophy and principles set forth in Executive Order 12866, which governs agency rulemaking. Although the proposed rule will impact States and State agencies, it will not adversely affect them in a material way. The proposed rule would permit States to voluntarily establish experimental programs to determine the

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effectiveness of using the UC program to support parents taking leave from their employment to be with their newborns or adopted children; it would not impose any new requirements on States.

Paperwork Reduction Act

The DOL has determined that this proposed rule contains no information collection requirements.

Executive Order 12612

These proposed regulations have been reviewed in accordance with Executive Order 12612 regarding federalism. The order requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions which would restrict States' policy options, and take such action only when there is clear constitutional authority and the presence of a problem of national scope. Since this proposed rule does not limit State policy options under the current UC program, it complies with the principles of federalism and with Executive Order 12612.

Executive Order 12988

This proposed rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The proposal has been written to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875

This proposed rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 et seq.) and Executive Order 12875. The DOL has determined that this proposal does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The States have full discretion to decide whether or not to enact a BAA-UC program. See the section entitled ``Executive Order 12866'' for further information on the BAA-UC cost estimate.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities. The proposal affects States and State agencies, which are not within the definition of ``small entity'' under 5 U.S.C. 601(6). Moreover, States have complete discretion in deciding whether or not they will enact a program permitted under this proposed regulation. Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a ``major rule'' as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. Chapter 8). This proposed rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based entities to compete with foreign-based entities in domestic and export markets.

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Effect on Family Life

The DOL certifies that this proposed rule has been assessed in accordance with section 654 of Pub. L. 105-277, 112 Stat. 2681, for its effect on family well-being. The DOL concludes that the proposed rule will not adversely affect the well-being of the nation's families. Rather, it should have a positive effect on family well-being by permitting States to enable more parents to take leave from their employment to be with their newborns or newly-adopted children.

List of Subjects in 20 CFR Part 604

Employment and Training Administration, Labor, and Unemployment Compensation.

Catalogue of Federal Domestic Assistance Number

This program is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

Signed at Washington, D.C. on November 18, 1999.
Alexis M. Herman,
Secretary of Labor.

Words of Issuance

For the reasons set forth in the preamble, the DOL proposes that Chapter V of Title 20, Code of Federal Regulations, be amended by adding new part 604 to read as follows:

PART 604--REGULATIONS FOR BIRTH AND ADOPTION UNEMPLOYMENT COMPENSATION

Subpart A--General Provisions

Sec.
604.1 What is the purpose of this regulation?
604.2 What is the scope of this regulation?
604.3 What definitions apply to this regulation?

Subpart B--Federal Unemployment Compensation Program Requirements

604.10 Beyond the interpretation of the able and available requirements for Birth and Adoption unemployment compensation, does this regulation change the Federal requirements for the unemployment compensation program?

Subpart C--Eligibility

604.20 Who is covered by Birth and Adoption unemployment compensation?
604.21 When does eligibility for Birth and Adoption unemployment compensation commence?
604.22 Are parents who leave employment to be with their newborns or newly-adopted children eligible for Birth and Adoption unemployment compensation, or is it limited only to parents who take approved leave?

Authority: 42 U.S.C. 1302(a); 42 U.S.C. 503(a)(2) and (5); 26 U.S.C. 3304(a)(1) and (4); 26 U.S.C. 3306(h); Secretary's Order No. 4-75 (40 FR 18515); and Secretary's Order No. 14-75 (November 12, 1975).

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Subpart A--General Provisions

Sec. 604.1 What is the purpose of this regulation?

This regulation allows the States to develop and experiment with innovative methods for paying unemployment compensation to parents on approved leave or who otherwise leave employment to be with their

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newborns or newly-adopted children. States' experiences with Birth and Adoption unemployment compensation will enable the Department of Labor to test whether its interpretation of the Federal ``able and available'' requirements promotes a continued connection to the workforce in parents who receive such payments.

Sec. 604.2 What is the scope of the regulation?

This regulation applies to and permits all State unemployment compensation programs to provide benefits to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children. A State's participation is voluntary.

Sec. 604.3 What definitions apply to the regulation?

The following definitions apply to this regulation:

(a) Approved Leave means a specific period of time, agreed to by both the employee and employer, during which an employee is temporarily separated from employment and after which the employee will return to work for that employer.

(b) Birth and Adoption unemployment compensation means unemployment compensation paid only to parents on approved leave or who otherwise leave employment to be with their newborns or newly-adopted children.

(c) DOL means the United States Department of Labor.

(d) Newborns means children up to one-year old.

(e) Newly-adopted children means children, regardless of age, who have been placed within the previous 12 calendar months with an adoptive parent(s).

(f) Parents means mothers and fathers (biological, legal or who have legal custody of a child during the adoption process).

(g) Placement means the time a parent becomes legally responsible for a child pending adoption.

(h) State(s) means one of the States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

Subpart B--Federal Unemployment Compensation Program Requirements

Sec. 604.10 Beyond the interpretation of the able and available requirement for Birth and Adoption unemployment compensation, does this regulation change the Federal requirements for the unemployment compensation program?

No. This regulation does not change the Federal unemployment compensation requirements. Under its authority to interpret Federal unemployment compensation law, the DOL interprets the Federal able and available requirements to include experimental Birth and Adoption unemployment compensation. The regulation applies only to parents who take approved leave or otherwise leave employment to be with their newborns or newly-adopted children.

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Subpart C--Eligibility

Sec. 604.20 Who is covered by Birth and Adoption unemployment compensation?

If a State chooses to provide Birth and Adoption unemployment compensation, all individuals covered by the State's unemployment compensation law must also be covered for Birth and Adoption unemployment compensation. Just as with current unemployment compensation programs, individuals may not be denied experimental Birth and Adoption unemployment compensation based on facts or causes unrelated to the claimant's unemployment, such as industry, employer size or the unemployment status of a family member. The introduction of such facts or causes would be inconsistent with Federal unemployment compensation law.

Sec. 604.21 When does eligibility for Birth and Adoption unemployment compensation commence?

Parents may be eligible for Birth and Adoption unemployment compensation during the one-year period commencing with the week in which their child is born or placed with them for adoption. Weeks preceding the week of the birth or placement and weeks following the end of the one-year period are not compensable.

Sec. 604.22 Are parents who leave employment to be with their newborns or newly-adopted children eligible for Birth and Adoption unemployment compensation, or is it limited only to parents who take approved leave?

States may limit Birth and Adoption unemployment compensation to parents who take approved leave or may extend Birth and Adoption unemployment compensation to parents who otherwise leave employment to be with their newborns or newly-adopted children. However, the intent of Birth and Adoption unemployment compensation is to support all parents who wish to take time from employment to be with their newborns or newly-adopted children.

The following appendix will not appear in the Code of Federal Regulations.

Appendix A--Model State Legislation

Section _____. Birth and Adoption Unemployment Compensation.

(a) An individual who is on a leave of absence from his or her employer or who left employment to be with the individual's child during the first year of life, or during the first year following placement with the individual for adoption, shall not be denied compensation under Section _____ for voluntarily leaving employment, Section _____ relating to availability for work, Section _____ relating to inability to work, or Section _____ for failure to actively seek work.

(b) Section _____, concerning the reduction of the amount of compensation due to receipt of disqualifying income, shall apply to payments under this section. In addition, the following payments shall cause a reduction in the compensation amount:

(1) any payment from the employer resulting from a birth or adoption described in subsection (a); and

(2) any payment resulting from a birth or adoption described in subsection (a) from a disability insurance plan contributed to by an employer, in proportion to the employer's contribution to such plan.

(c) Compensation is payable to an individual under this section for a maximum of 12 weeks with respect to any birth or placement for adoption.

(d) Each employer shall post at each site operated by the

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employer, in a conspicuous place, accessible to all employees, information relating to the availability of Birth and Adoption unemployment compensation.

(e) Any compensation paid under this section shall not be charged to the account of the individual employer.

(f) Two years following the effective date of this legislation, the commissioner shall issue a report to the governor and the legislature evaluating the effectiveness of the Birth and Adoption unemployment compensation program.

(g) This section shall be applied consistent with regulations issued by the U.S. Department of Labor.

The following appendix will not appear in the Code of Federal Regulations.

Appendix B--Commentary on Model State Legislation, Including Policy Issues

General

Must States Implement a Birth and Adoption Unemployment Compensation (BAA-UC) Program?

No. This program is voluntary for the States. However, implementation of BAA-UC will require some legislation on the part of every State seeking to adopt the program. The Model State Legislation is provided for the convenience of States that wish to implement a BAA-UC program.

Does This Regulation Enable a State To Pay UC for Other Types of Family or Medical Leave?

No. This regulation enables a State to pay UC to parents on approved leave or who

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otherwise leave employment to be with their newborns or newly-adopted children. Permitting payment of UC for other types of family leave or care would be inconsistent with this experimental program.

Must All Employer-Paid Leave Be Exhausted Before BAA-UC Is Available?

No. BAA-UC is designed to provide partial wage replacement to parents of newborns or newly-adopted children. The Model State Legislation assumes that any wages paid for the period of employer-provided leave will be deducted. However, States need not deduct these wages from BAA-UC.

Does This Regulation Impose Any Solvency Requirements Upon the States Before They Enact BAA-UC?

No. The DOL expects that a State will not enact changes without assessing the effect on the solvency of its unemployment fund. Each State has the responsibility to assess the cost to the State's unemployment fund whenever coverage, benefit expansions, or tax changes are considered within the State's UC program. Consequently, DOL expects prudent decision makers in a State to examine the State's solvency position and projected taxes and benefit payments under current law before deciding to enact BAA-UC legislation.

Monetary Qualifications and Benefits

What Are the Earnings and Employment Requirements for BAA-UC?

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States may establish their own requirements. The Model State Legislation assumes that States will use the same earnings and employment criteria that apply to all other individuals.

What Is the Weekly Benefit Amount for Individuals Eligible for BAA-UC?

States may establish their own weekly benefit amounts. The Model State Legislation assumes that individuals eligible for BAA-UC will receive the same weekly benefit amount as other individuals eligible for UC.

How Does the Receipt of Other Income Effect Payment of BAA-UC ?

States will determine whether BAA-UC will be reduced by other income. Under the Model State Legislation, the amount of BAA-UC will be reduced in the same manner as any other payment of UC as provided under State law. The Model State Legislation also provides for the deduction of any payment from the employer as a result of the birth or placement for adoption, and for the deduction of any disability insurance payment received as a result of the birth or placement for adoption in proportion to the employer's contribution to the disability insurance plan. This provision, which is limited to payments triggered by the same event which triggers BAA-UC, reflects the view that the unemployment fund should not be held responsible when wage replacement is available from other sources, particularly when both payments are financed by the employer. States should examine their laws to determine if all types of appropriate income are, or should be, deductible. For example, some leave payments which are not normally deductible under State law may cover costs of birth and adoption leave.

How Does the BAA-UC Entitlement Relate to Regular UC Payments?

States are free to determine this. The Model Legislation assumes that BAA-UC counts toward the maximum number of weeks of regular UC.

Period of Eligibility

When May BAA-UC Benefits Begin?

Under Section 604.21 of the proposed regulations, parents may receive BAA-UC only during the one-year period commencing with the week in which the child is born or placed for adoption. For example, an individual taking leave in the 51st week following birth or placement for adoption, would be eligible for BAA-UC only for weeks 51 and 52. Periods preceding the week of birth or placement for adoption are not compensable. States are free to reduce the one-year period.

How Many Weeks of BAA-UC May Individuals Receive?

States are free to determine this. The Model State Legislation provides a maximum duration of 12 weeks per individual with respect to any one birth or adoption. Since the Family and Medical Leave Act of 1993 (FMLA) allows up to 12 weeks of unpaid leave for such events, States may wish to have an identical amount. States may also relate the duration of leave to the individual's weekly amount of UC. For example, for each birth or adoption, an individual may receive an amount equal to 12 times the individual's weekly UC.

To prevent confusion between FMLA and BAA-UC, States should inform potential BAA-UC beneficiaries of the dissimilarities between the two programs (for example, BAA-UC does not guarantee job retention).

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If a Child Is Born in the Middle of the Week or the Placement Occurs in the Middle of the Week, is BAA-UC Payable for This Week?

Under the Model State Legislation, BAA-UC would be payable for this week, assuming all applicable eligibility conditions, such as the deductible income provisions, are met. States may provide the full weekly compensation amount for this week or prorate the weekly amount to reflect only periods following birth or adoption. If the amount is prorated, the State may pay the remaining balance for the last partial week if the individual is still on leave.

Must the Individual Serve a Waiting Period?

No. Nothing in Federal law requires States to have a waiting week for regular UC or BAA-UC. However, not having a waiting week for BAA-UC would eliminate the 50 percent Federal share for the first week of all Extended Benefits claims. Under 20 CFR 615.14(c)(3), a State is not entitled to a Federal share for the first week of Extended Benefits if the State's law provides ``at any time or under any circumstances'' for the payment of UC for the first week of unemployment.

When Is a Child Considered ``Placed'' for Adoption?

Under 604.3(g) of the proposed rule, placement occurs at the time a parent becomes legally responsible for a child pending adoption. State UC agencies should consult the adoption laws of their States to determine precisely when placement occurs.

Other Eligibility Issues

May Both Parents Receive BAA-UC? If So, May They Both Receive Such Compensation at the Same Time?

The answer to both questions is ``yes.'' States implementing BAA-UC must allow both parents, if otherwise eligible, to receive BAA-UC concurrently or consecutively. A State may not prohibit payment of BAA-UC simply because the other parent is taking leave for the same purpose. A State law which does so is inconsistent with Federal law because the eligibility of one parent will be determined based on whether the other parent is receiving UC. Specifically, in a 1964 conformity decision involving the State of South Dakota, the Secretary of Labor held that Federal law prohibits the introduction of any eligibility test unrelated to the fact or cause of the individual's unemployment. (See Secretary of Labor's Decision of September 25, 1964, In the Matter of the Hearing to the South Dakota Department of Employment Security Pursuant to Section 3304(a) of the Internal Revenue Code of 1954, transmitted by Unemployment Insurance Program Letter No. 787, October 2, 1964.) The recipient status of the other parent is unrelated to the fact or cause of an individual's unemployment. Thus, both parents may receive BAA-UC, whether concurrently or consecutively. Similarly, States may not limit use of BAA-UC to the ``primary'' parent.

Must BAA-UC Apply to Individuals Employed by All Employers Subject to State UI Law?

Yes. As explained in the previous answer, States may not impose eligibility conditions not related to the fact or cause of the individual's unemployment. Assuming the services are taxable for UC, States may not, for example, limit BAA-UC based on employer size.

May States Provide BAA-UC to Individuals Who Otherwise Leave Employment (Not on Approved Leave) To Be With Their Newborns or Newly-Adopted

2-20

Children?

Yes. While States are free to determine their own requirements, there are compelling reasons for providing BAA-UC to individuals who otherwise leave employment. Although many employers may grant leave, others may not. The DOL believes that all parents should be treated identically for UC purposes when they take time away from employment to be with their newborn or newly-adopted child. As such, their eligibility for BAA-UC should not be based on whether an employer is required to grant the leave, but on the parent's reason for wanting to take the leave.

May Eligibility Be Conditioned on Whether the Individual Gave Notice to the Employer?

Yes. Although the Model State Legislation does not provide for such a condition because it may result in denials due to the technicality of when the individual requested leave, States may impose it. The basis of such a requirement is that employers should be given sufficient time to accommodate the

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leaving/absence of the individual. If such a provision is included, the DOL recommends that the notice be required to be given no more than 30 days prior to birth or placement, but only where practicable. The FMLA contains a 30-day requirement or shorter notice period where giving 30-day notice is not practicable; it does not require notice when the necessity to take leave is unforeseeable. (Section 102(e), Family and Medical Leave Act, Pub. L. 103-3 (February 5, 1993).)

May Eligibility Be Conditioned on Whether the Individual Chooses Not To Return to Work?

Yes. However, based upon Jenkins v. Bowling, 691 F.2d 1225 (7th Cir. 1982), States may not delay payment until after the individual returns to work. Section 303(a)(1), SSA, requires the full payment of benefits when due, precluding States from delaying payment while awaiting the individual's return to work. A State may, however, declare an overpayment of benefits after the individual fails to return to work.

May An Individual Be Paid BAA-UC Under the Federal-State Extended Benefit Program or Any of the Federally Funded Unemployment Programs?

It depends on the program. Benefits under the UC for Federal Employees (UCFE) and UC for Ex-Servicemembers (UCX) programs are, by Federal law, required to be paid on the same terms and subject to the same conditions as State benefits (with exceptions not relevant here). Therefore, BAA-UC will be paid to individuals under these programs to the same extent as under State law.

Individuals may only receive Disaster Unemployment Assistance (DUA) when their unemployment is caused by a disaster as provided in 20 CFR Part 625. However, if they meet their State's Birth and Adoption UC provisions, then they will satisfy the availability requirement at Sec. 625.4(g), and so may qualify for DUA. For example, an individual who is unemployed due to a major disaster may later give birth. If this individual satisfies the BAA-UC requirements in the State's law, she may receive DUA.

Extended Benefit claimants may not receive Birth and Adoption UC since they cannot meet the systematic and sustained work search requirements in 20 CFR 615.8(g).

Individuals claiming trade readjustment allowances (cash

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benefits) under the Trade Adjustment Assistance and the North American Free Trade Act Transitional Adjustment Assistance programs will be ineligible since such individuals are required to either be in full-time training or conduct the systematic and sustained work search required for the Extended Benefit program.

Financing Costs of BAA-UC

May BAA-UC Costs Be Socialized Among Employers?

Yes. States are free to socialize or not socialize costs of BAA-UC. The Model State Legislation socializes costs--also called ``noncharging.'' An employer may be reluctant to bear all the costs of BAA-UC caused by an employee taking leave since the employer will not have caused the individual's unemployment. Since noncharging is permitted when the unemployment is caused by the employee, it is permitted in this situation. This position applies to both contributory and reimbursable employers.

May BAA-UC Costs Be Paid From a State Fund Other Than the State's Unemployment Fund, for Example, a State's Temporary Disability (TDI) Fund?

Yes. Nothing in Federal UC law governs the treatment of moneys in these funds because they are financed by a separate tax and held separately from the State's unemployment fund. For example, a State with a TDI program may enact a special disability insurance tax on employers and deposit the proceeds in a disability fund. If the State chooses to use one of these funds (or create such a fund) to pay birth and adoption leave benefits, the requirements of DOL's BAA-UC regulation will not apply.

Administrative Costs

May States Use Administrative Grants Received From the Federal Government To Pay for the Administration of a BAA-UC Program?

Provided that all the requirements of the BAA-UC regulation are met, the use of administrative grants is permissible, including for purposes of studying and evaluating the BAA-UC program. However, if the regulation's requirements are not met, the expenditures of grant funds are not for the proper and efficient administration of the State's law as required by section 303(a)(8) of the Social Security Act.

Reporting

Will States Need To Amend Their Laws To Address any Federal Reporting Requirements Concerning BAA-UC?

Although this is a matter for States to determine, the DOL anticipates that few, if any, States will need to amend their laws since most State laws already contain language concerning reporting. Many of these laws are based on the language on page 95 of The Manual of Employment Security Legislation, as revised September 1950, which requires that the agency ``make such reports, in such form and containing such information as the Secretary of Labor may from time to time require, and shall comply with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports.''

What Are the Reporting Requirements?

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The DOL has not yet finalized a methodology for evaluating State

BAA-UC programs. When that methodology is completed, State reporting requirements will be issued in a separate information collection request and, if subject to the Paperwork Reduction Act, published for public comment in the Federal Register.

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THE DIVISION OF EMPLOYMENT AND TRAINING

Heather Whitley – Director
296-7874

The Workforce Investment Act of 1998 takes effect July 1, 2000. Nearly three years of planning and development have gone into this implementation to this point. Planning preceded the actual vote by Congress.

February 28 is the due date for local workforce plans to be submitted to the state.

April 30 is the due date for the State of Kansas 5-year plan to be submitted to the Department of Labor for review.

July 1 constant review, monitoring and evaluation begin. Every facet of the law and process will face continued scrutiny at the local, state and federal level.

WIA sunsets in five years.

The Legislature must be a partner in Workforce Development in Kansas. The following are legislative actions which could positively impact the state:

- Maintain a relationship with the members of the Kansas Workforce Investment Partnership – especially the Legislative members - and make sure they are hearing and voicing the opinion of the Legislature.
- Pass and send a resolution to Congress calling for the elimination of workforce funding and programmatic silos which hinder true progress.
- Enact some Legislative expression of intent and focus about Workforce Development.
- Approve specific and targeted state funding for communications and technology essential to success but not funded federally.
- Create a standing Joint Committee to be the lead Legislative entity on workforce development.
- In the immediate short term, create a joint sub-committee of Economic Development, Education, Business Commerce and Labor in the House and Education and Commerce in the Senate to hear about Kansas's efforts to enact the Workforce Investment Act and to reform Workforce Development.

HOUSE BUSINESS, COMMERCE & LABOR
1-19-00
Attachment 3

The Kansas Department of Human Resources (**KDHR**), through Labor Market Information Services (**LMIS**), is responsible for collecting, analyzing and publishing data that relate to all facets of the labor market. These activities provide information about the condition of the economy at the national, regional, state and local levels. LMIS works in cooperation with the Bureau of Labor Statistics (**BLS**) and Employment and Training Administration (**ETA**) of the United States Department of Labor to gather labor market data that are used to produce key economic indicators at both the national and local levels. Each of the fifty states has a Kansas LMIS counterpart.

By contractual arrangements with BLS and ETA, LMIS conducts a number of major data collection programs. The comprehensive data obtained by the operation of these programs include a great deal of valuable information which is of interest to labor, industry, educators, government agencies and the public at large. These data include employment and unemployment counts by area; jobs and wages by industry; occupational employment trends; monthly employment, hours and earnings estimates and wage information by occupation.

Much of this information is presented in publications prepared by LMIS. A copy of the Labor Market Information Publications Directory is available upon request. Specific data not included in publications is also available by special request. If you would like to receive a copy of our publications directory or make a special request, please contact:

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Kansas Department of Human Resources
401 SW Topeka Boulevard
Topeka, Kansas 66603-3182
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FAX (913) 296-5286

"We have many types of labor information and economic data that are available upon request. These include reports, publications and studies that present employment, unemployment and other types of labor market statistics. If we can be of assistance to you, please don't hesitate to contact us."

LMIS

LABOR MARKET INFORMATION SERVICES

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HOUSE BUSINESS, COMMERCE & LABOR
1-19-00
Attachment 4

KANSAS DEPARTMENT OF HUMAN RESOURCES

Labor Market Information Services conducts data collection and research programs that provide a wide variety of information regarding many aspects of the labor market.

Local Area Unemployment Statistics (LAUS) produces monthly estimates of civilian labor force, employment, unemployment and the unemployment rate. This is place-of-residence data for each of 105 counties in Kansas and the Metropolitan Statistical Areas. LAUS information is often included in media releases and interpretations.

The Kansas Wage Survey is a survey of more than 5,000 employers. Managerial, professional, clerical, service, production, construction and other jobs are surveyed. Separate surveys are provided for the Metropolitan Statistical Areas in addition to statewide and nonmetro figures. The 1992-93 Kansas Wage Survey is available for a fee. Customized wage surveys may also be available for regions of the state or for selected industries.

Affirmative Action Data are prepared to assist in the development of Affirmative Action Plans in accordance with the Federal Contract Compliance Program of the United States Department of Labor. This demographic and employment information is assembled at the statewide and county levels to aid employers in formulating their plans.

Occupational Employment Statistics (OES) is a program that surveys employers on a three-year cycle and collects occupational employment information. These data are used in a variety of ways including projections of occupational trends. Educators, high school and career counselors and individual job seekers are the principal users of OES information.

Unemployment Insurance Research and Reporting includes preparation, submission and distribution of numerous reports concerning unemployment insurance claims and payment activity. Studies are conducted to determine the impact of legislation on unemployment insurance issues. LMIS serves as actuarial trustee for the Kansas Employment Security Trust Fund.

Labor Supply and Demand Relationships are determined by compiling and analyzing administrative statistics, including job applicants and job openings. These data are used to identify worker shortages and worker surpluses throughout the state. Businesses considering relocation or expansion may find this information helpful.

Current Employment Statistics (CES) surveys approximately 6,000 employers a month to produce a monthly report of employment, hours and earnings estimates for the state and Metropolitan Statistical Areas. The Bureau of Labor Statistics combines CES data from all states to produce estimates at the national level.

Employment, Wages and Contributions (ES-202) report is a quarterly compilation of employment, wages, taxable wages and contributions classified by industry and county code for employers who are subject to the unemployment insurance law. These data are the source of considerable employment and wage information for the state, counties and Metropolitan Statistical Areas.

USES OF LMIS DATA

EMPLOYERS
- Considering relocation or expansion
- Making wage and benefit decisions
- Developing Affirmative Action policy
- Forming long and short term business strategies

GOVERNMENT AGENCIES
- Evaluating budgets
- Complying with legislative requirements
- Assessing the condition of state and local economies

EDUCATORS
- Developing curriculum
- Counseling students regarding career choices
- Assisting students in job search

JOB SEEKERS
- Making career choices
- Discovering training opportunities
- Finding job openings
- Getting the job