

Approved: SRB 2/19/07
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:03 A.M. on February 16, 2007 in Room 231-N of the Capitol.

All members were present except:
Mike Kiegerl- excused
Terrie Huntington- excused

Committee staff present:
Jerry Ann Donaldson, Kansas Legislative Research Department
Jill Wolters, Office of Revisor of Statutes
Stephen Bainum, Committee Assistant

Conferees appearing before the committee:

Others attending:
See attached list.

The Chairman asked the committee to look at the minutes for approval before turn around. The Chairman opened the hearing on **HB 2314 Board of accountancy approval of educational credit (Attachment 1)**.

Jill Wolters, Office of Revisor of Statutes, explained the bill.

Representative Pauls asked if lines 39-40 apply to accounting credit. The answer was yes.

Representative Roth said that if we strike lines 27 and 39-40 the Board would still have plenty of discretion as to what credits they will accept. Jill answered yes.

Representative Grant asked if the board could still approve or disapprove individual credits. Jill said that they were doing two things. Approving the university and approving the concentration of courses in accounting. Representative Grant said it seems to him that we are taking away their discretion.

Representative Garcia asked if Jill was saying that in the rules and regulations they would have discretion. Jill said they would have their discretion through deciding what credits would be allowed in the accounting concentration.

Representative Goico said that the university decides valid credits and the Board has recognized the university so the credits are accepted.

Representative Humerickhouse made a motion to strike lines 27, 39 and 40, seconded by Representative Sharp.

Representative Roth asked if approval of the college gives the Board discretion to approve colleges and courses. The answer was yes.

The Chairman called for the question and the motion passed on voice vote. The committee was back on the bill.

Representative Pauls proposed an amendment to reduce from 150 to 100 hour on line 25 on page 1. Seconded by Representative Humerickhouse.

Representative Goico said that since the Board was responsible for approving CPA's then the Board should have the right to establish credit requirements. This is necessary to protect the public.

Representative Roth agreed.
Representative Grant agreed.

Representative Sharp said that she was recently in college and had two bachelor degrees with 155

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hours. The extra 50 hours is a full extra year. Why do we require 150 hours when it doesn't take that many credit hours to get an accounting major?

There being no more questions the question was called and the amendment passed by voice vote. The division was called for and there were 9 yeas and 7 nays. Representatives Goico, Roth and Garcia asked to be recorded as no.

Representative Sharp moved that **HB 2314** be passed favorably as amended, seconded by Representative Kelley.

There were no question. The motion passed on voice vote.

The Chairman called for action on **HB 2268 - Qualifications of persons conducting certain insect inspections.**

Representative Pauls made a motion that the bill be passed favorably, seconded by Representative Ruff.

Seeing no discussion the question was called and the motion passed by voice vote.

The Chairman called the committee to consider **HB 2316 - Authorizing paperless payroll methods for employers.**

Jill Wolters explained the balloon for the bill (Attachment 2).

Representative Goico said that Federal laws apply to these cards. Jill said that Federal rules would also have to be followed by the banks.

Representative Grange commented on line 35 that it was the bank allowing access, not the employer.

The Chairman said that it was the employers intent to allow this by agreement with the bank.

Representative Pauls asked a question about the 90 days mentioned on line 38. Would an employer offering these cards for the first time have to delay issuing them for 90 days? If they are starting a new one, yes.

Representative Roth asked if the Kansas Society for Human Resource Management agreed. Phillip Hayes answered that they do agree with exception they want lines 9-12 on page 2 stricken.

Representative Pauls made a motion to reduce the 90 days to 30 days. Representative Metzger seconded the motion.

The question was called and the amendment passed by voice vote.

Representative Grant made a motion that we accept the lightly amended bill, seconded by Representative Landwehr. This passed by voice vote and the committee was back on the bill as amended.

Representative Goico explained the Federal law about liability for loss of a card and the difference between Federal law and Kansas law. If the loss was reported the limit was \$50.00. If it was not reported the liability was \$300.00 per Kansas law and \$500 per Federal law. He made a motion that Kansas law be made a part of the bill, seconded by Representative Grange.

The Chairman called the question and the amendment passed by voice vote.

Representative Humerickhouse made the motion to strike lines 9-12 on page 2. Seconded by Representative Garcia. Kathy Olsen explained the balloon.

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Representative Landwehr asked Kathy if removing lines 9-12 allows a bank to collect a negative balance. Kathy answered yes.

Representative Pauls asked if the Federal rule controls who can be reported to a credit agency.

The motion passed on voice vote.

Representative Roth made a motion to pass the bill favorably as amended, seconded by Representative Metzker. It was passed by voice vote.

The Chairman called attention to **HB 2456 - Employment security law, reduction in contribution rates** and said that the amendments being considered were already approved on the Senate side.

Jill Wolters explained the balloon (Attachment 3).

Representative Grant made the motion to adopt the amendments, seconded by Representative Ruiz. It passed by voice vote.

Representative Pauls made a motion to report the bill favorably as amended, seconded by Representative Roth. The motion passed on voice vote.

Representative Grange gave a report on the reciprocity bill on continuing education and suggested that it be worked Monday.

The Chairman said that we still have the home inspectors bill to consider on Monday. We intend to finish the hearing and work it Monday morning.

The Chairman adjourned the meeting at 10:14 A.M.

COMMERCE AND LABOR COMMITTEE

Date 2-16-07

NAME	AGENCY
KEN DANIEL	KS SMALL BIZ. COM / NFIB
Susan Simens	KS Board of Accountancy
PEGGY HANNA	State Treasurer's Office
Kathy Olsen	KS Bankers Assn.
Hal Hudson	KS Pest Control Assoc.
D. Loretta S. Boyle	UCHS
Phillip M. Hayes	KS SHRM
Ron Seebor	Ken Law Firm
Derrick Smith	NFIB
JEFF C. SUNDEN	KS CHAMBER

HOUSE BILL No. 2314

By Committee on Commerce and Labor

1-31

9 AN ACT concerning licensure, examination and registration of certified
10 public accountants; relating to the education requirements for admis-
11 sion to examination; amending K.S.A. 2006 Supp. 1-302a and repealing
12 the existing section.

13

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

15 Section 1. K.S.A. 2006 Supp. 1-302a is hereby amended to read as
16 follows: 1-302a. (a) The education requirement prescribed by K.S.A. 1-
17 302, and amendments thereto, is satisfied by ~~successful completion of~~
18 ~~course work consisting of at least 150 semester hours, with a concentra-~~
19 ~~tion in accounting, at a college or university recognized by the board and~~
20 ~~the applicant is the holder of a baccalaureate or higher academic degree.~~
21 *if the applicant meets all of the following requirements:*

22 (1) *Is the holder of a baccalaureate or higher academic degree from*
23 *a college or university approved by the board;*

24 (2) *has been awarded credit by a college or university approved by*
25 *the board for at least 150 semester hours, with a concentration in ac-*
26 *counting; and*

27 (3) *the credit is accepted by the board.*

28 (b) An applicant for admission to take the initial examination in this
29 state as required in K.S.A. 1-302, and amendments thereto, must submit
30 evidence satisfactory to the board of ~~accountancy~~ or to the examination
31 service that the applicant ~~has successfully completed coursework consist-~~
32 ~~ing of at least 150 semester hours, with a concentration in accounting, at~~
33 ~~a college or university recognized by the board and that the applicant is~~
34 ~~the holder of a baccalaureate or higher academic degree~~ *meets the*
35 *requirements of subsection (a).*

36 (c) The board of ~~accountancy~~ may define, by rules and regulations,
37 the term "concentration in accounting," as the same is to be applied each
38 place such term occurs in this section and K.S.A. 1-302b, and amend-
39 ments thereto. *"The board may also prescribe, by rules and regulations,*
40 *the type and amount of credit submitted pursuant to subsection (a).*

41 (d) ~~The board, by rules and regulations, may provide for admittance~~
42 ~~to the examination in this state of persons who will have met the education~~
43 ~~requirements, as provided in this section, within 90 days after the ex-~~

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1 ~~amination to which admitted, but no report on the examination of any~~
2 ~~such person shall be made unless such person shall have met the edu-~~
3 ~~cation requirements as provided in this section. This subsection shall ex-~~
4 ~~pire on January 1, 2004.~~

5 Sec. 2. K.S.A. 2006 Supp. 1-302a is hereby repealed.

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

HOUSE BILL No. 2316

By Committee on Commerce and Labor

1-31

Proposed Amendment
Kansas Bankers Association
February 15, 2007

Commerce & Labor
2-16-07
(Attach 2)

9 AN ACT concerning payment of compensation; relating to payment
10 methods; amending K.S.A. 44-314 and repealing the existing section.
11

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

13 Section 1. K.S.A. 44-314 is hereby amended to read as follows: 44-
14 314. (a) Every employer shall pay all wages due to the employees of the
15 employer at least once during each calendar month, on regular paydays
16 designated in advance by the employer, ~~in lawful money of the United~~
17 ~~States or with checks or drafts which are negotiable in the community~~
18 ~~wherein the place of employment is located or, with the written consent~~
19 ~~of the employee, by electronic deposit to an employee's account at a~~
20 ~~financial institution.~~

21 (b) *The employer may designate the method by which employees re-*
22 *ceive wages, provided all wages shall be paid by one or more of the fol-*
23 *lowing methods:*

- 24 (1) *In lawful money of the United States;*
- 25 (2) *by check or draft which is negotiable in the community wherein*
26 *the place of employment is located;*
- 27 (3) *by electronic fund transfer or deposit to an automated clearing-*
28 *house member financial institution account designated by the employee.*

29 (c) (1) *Any employer that elects to pay wages only by a method au-*
30 *thorized in subsection (b)(3) shall:*

31 (A) *Offer a payroll card as an alternative payment method or default*
32 *option for employees that fail to designate a financial institution account*
33 *for electronic fund transfer or deposit;*

34 (B) *allow employees who use payroll cards at least one withdrawal*
35 *per pay period at no cost to the employee for an amount up to and in-*
36 *cluding the total amount of the employee's net wages, as stated on the*
37 *employee's earnings statement; and*

38 (C) *not less than 90 days prior to implementing a payroll program*
39 *utilizing payroll cards, an employer shall either:*

40 (i) *Conduct one or more employee forums to educate employees re-*
41 *garding the use of a direct deposit and payroll card program offered by*
42 *the employer; or*

43 (ii) *distribute educational information to employees about payroll*

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1 cards as they may be used under the payroll card program offered by the
2 employer.

3 (2) Wages paid by electronic funds transferred to an employee's pay-
4 roll card account shall be owned by the employee.

5 (3) An employer may not charge an employee initiation, loading or
6 other participation fees to receive wages payable in an electronic fund
7 transfer to a payroll card account, with the exception of the cost required
8 to replace a lost, stolen or damaged payroll card.

9 ~~(4) A payroll card issuer may not report an employee accessing wages
10 by payroll card to a credit agency for a negative balance resulting from
11 a cash advance on future pay, nor may the payroll card issuer attempt
12 collection for any such negative balance.~~

13 (5) As used in this section:

14 (A) "Payroll card" means a card, issued to an employee by an em-
15 ployer, a bank or other entity on behalf of an employer, onto which an
16 employee's net wages are loaded on regular paydays from a payroll card
17 account and made accessible to an employee.

18 (B) "Payroll card issuer" means an employer, a bank or other entity
19 that issues a payroll card to an employee under an employer payroll card
20 program.

21 (C) "Payroll card account" means an account into which an employer
22 deposits each participating employee's net wages on regular paydays
23 through an electronic fund transfer.

24 (b) (d) The end of the pay period for which payment is made on a
25 regular payday shall be not more than 15 days before such regular payday
26 unless a variance in such requirement is authorized by state or federal
27 law.

28 Sec. 2. K.S.A. 44-314 is hereby repealed.

29 Sec. 3. This act shall take effect and be in force from and after its
30 publication in the statute book.

HOUSE BILL No. 2456

By Committee on Federal and State Affairs

2-7

9 AN ACT concerning the employment security law; relating to contribu-
10 tion rates; amending K.S.A. 2006 Supp. 44-710a and repealing the
11 existing section.
12

44-703 and

sections

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

Section 1. KSA 2006 Supp. 44-703. [see attached]
Renumber remaining sections accordingly.

14 Section 1. K.S.A. 2006 Supp. 44-710a is hereby amended to read as
15 follows: 44-710a. (a) *Classification of employers by the secretary.* The
16 term "employer" as used in this section refers to contributing employers.
17 The secretary shall classify employers in accordance with their actual ex-
18 perience in the payment of contributions on their own behalf and with
19 respect to benefits charged against their accounts with a view of fixing
20 such contribution rates as will reflect such experience. If, as of the date
21 such classification of employers is made, the secretary finds that any em-
22 ploying unit has failed to file any report required in connection therewith,
23 or has filed a report which the secretary finds incorrect or insufficient,
24 the secretary shall make an estimate of the information required from
25 such employing unit on the basis of the best evidence reasonably available
26 to the secretary at the time, and notify the employing unit thereof by mail
27 addressed to its last known address. Unless such employing unit shall file
28 the report or a corrected or sufficient report as the case may be, within
29 15 days after the mailing of such notice, the secretary shall compute such
30 employing unit's rate of contributions on the basis of such estimates, and
31 the rate as so determined shall be subject to increase but not to reduction
32 on the basis of subsequently ascertained information. The secretary shall
33 determine the contribution rate of each employer in accordance with the
34 requirements of this section.

35 (1) *New employers.* (A) No employer will be eligible for a rate com-
36 putation until there have been 24 consecutive calendar months immedi-
37 ately preceding the computation date throughout which benefits could
38 have been charged against such employer's account.

For the rate year 2007 and each rate year thereafter, each employer shall pay contributions equal to 4% of wages paid during each calendar year with regard to employment except those employers engaged in the construction industry shall pay a rate equal to 6%.
(ii) For rate years prior to 2007, employers

39 (B) (i) ~~Employers~~ who are not eligible for a rate computation shall
40 pay contributions at an assigned rate equal to the sum of 1% plus the
41 greater of the average rate assigned in the preceding calendar year to all
42 employers in such industry sector or the average rate assigned to all cov-
43 ered employers during the preceding calendar year, except that in no

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(Attach 3)

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1 instance shall any such assigned rate be less than 2%. Employers engaged
 2 in more than one type of industrial activity shall be classified by principal
 3 activity. All rates assigned will remain in effect for a complete calendar
 4 year. If the sale or acquisition of a new establishment would require re-
 5 classification of the employer to a different industry sector, the employer
 6 would be promptly notified, and the contribution rate applicable to the
 7 new industry sector would become effective the following January 1.

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

(iii)

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

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

25 (B) Negative account balance employers as defined in subsection (d)
 26 shall pay contributions at the rate of 5.4% for each calendar year.

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

36 (D) As of each computation date, the total of the taxable wages paid
 37 during the 12-month period prior to the computation date by all em-
 38 ployers eligible for rate computation, except negative account balance
 39 employers, shall be divided into 51 approximately equal parts designated
 40 in column A of schedule I as "rate groups," except, with regard to a year
 41 in which the taxable wage base changes. The taxable wages used in the
 42 calculation for such a year and the following year shall be an estimate of
 43 what the taxable wages would have been if the new taxable wage base

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1	1.050 but less than 1.075	0.98
2	1.025 but less than 1.050	0.99
3	1.000 but less than 1.025	1.00
4	0.900 but less than 1.000	1.01
5	0.800 but less than 0.900	1.02
6	0.700 but less than 0.800	1.03
7	0.600 but less than 0.700	1.04
8	0.500 but less than 0.600	1.05
9	0.400 but less than 0.500	1.06
10	0.300 but less than 0.400	1.07
11	0.200 but less than 0.300	1.08
12	0.100 but less than 0.200	1.09
13	Less than 0.100%	1.10

14 (B) *Adjustment to taxable wages.* The planned yield as a percent of
15 total wages, as determined in this subsection (a)(3), shall be adjusted to
16 taxable wages by multiplying by the ratio of total wages to taxable wages
17 for all contributing employers for the preceding fiscal year ending June
18 30, except, with regard to a year in which the taxable wage base changes.
19 The taxable wages used in the calculation for such a year and the following
20 year shall be an estimate of what the taxable wages would have been if
21 the new taxable wage base had been in effect during all of the preceding
22 fiscal year ending June 30.

23 (C) *Effective rates.* (i) Except with regard to rates for negative ac-
24 count balance employers, employer contribution rates to be effective for
25 the ensuing calendar year shall be computed by adjusting proportionately
26 the experience factors from schedule I of this section to the required
27 yield on taxable wages. For the purposes of this subsection (a)(3), all rates
28 computed shall be rounded to the nearest .01% and for calendar year
29 1983 and ensuing calendar years, the maximum effective contribution rate
30 shall not exceed 5.4%.

31 ~~(ii) *Effective for rate year 2007, and continuing each rate year there-*~~
32 ~~*after, employers who are current in filing quarterly wage reports and in*~~
33 ~~*payment of all contributions due and owing, shall be issued a contribution*~~
34 ~~*rate based upon a 40% reduction of the rate specified in clause (i). Such*~~
35 ~~*reduction shall be suspended if, at any time, the balance of the employ-*~~
36 ~~*ment security trust fund equals or is less than \$135 million and shall*~~
37 ~~*remain suspended until such time as the balance of the employment se-*~~
38 ~~*curity trust fund equals or exceeds \$601 million, at which time such re-*~~
39 ~~*duction shall resume in effect.*~~

40 ~~(iii) *In order to be eligible for the rate reduction specified in clause*~~
41 ~~*(ii) for rate year 2007, the employer must file all late reports and pay all*~~
42 ~~*contributions due and owing within a 30 day period following the date*~~
43 ~~*of mailing of the amended rate notice.*~~

1 ~~(iv) In order to be eligible for the rate reduction specified in clause~~
 2 ~~(ii) for each successive rate year wherein such reduction is in effect, the~~
 3 ~~employer must file all reports due and pay all contributions due and owing~~
 4 ~~on or before January 31 of that rate year.~~ ←

5 (b) *Successor classification.* (1) (A) For the purposes of this subsec-
 6 tion (b), whenever an employing unit, whether or not it is an “employing
 7 unit” within the meaning of subsection (g) of K.S.A. 44-703, and amend-
 8 ments thereto, becomes an employer pursuant to subsection (h)(4) of
 9 K.S.A. 44-703, and amendments thereto, or is an employer at the time
 10 of acquisition and meets the definition of a “successor employer” as de-
 11 fined by subsection (dd) of K.S.A. 44-703, and amendments thereto, and
 12 thereafter transfers its trade or business, or any portion thereof, to an-
 13 other employer and, at the time of the transfer, there is substantially
 14 common ownership, management or control of the two employers, then
 15 the unemployment experience attributable to the transferred trade or
 16 business shall be transferred to the employer to whom such business is
 17 so transferred. These experience factors consist of all contributions paid,
 18 benefit experience and annual payrolls of the predecessor employer. The
 19 transfer of some or all of an employer’s workforce to another employer
 20 shall be considered a transfer of trade or business when, as the result of
 21 such transfer, the transferring employer no longer performs trade or busi-
 22 ness with respect to the transferred workforce, and such trade or business
 23 is performed by the employer to whom the workforce is transferred.

24 (B) If, following a transfer of experience under subparagraph (A), the
 25 secretary determines that a substantial purpose of the transfer or business
 26 was to obtain a reduced liability for contributions, then the experience
 27 rating accounts of the employers involved shall be combined into a single
 28 account and a single rate assigned to such account.

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

34 (3) Whenever an employing unit, whether or not it is an “employing
 35 unit” within the meaning of subsection (g) of K.S.A. 44-703, and amend-
 36 ments thereto, acquires or in any manner succeeds to a percentage of an
 37 employer’s annual payroll which is less than 100% and intends to continue
 38 the acquired percentage as a going business, the employing unit may
 39 acquire the same percentage of the predecessor’s experience factors if:
 40 (A) The predecessor employer and successor employing unit make an
 41 application in writing on the form prescribed by the secretary, (B) the
 42 application is submitted within 120 days of the date of the transfer, (C)
 43 the successor employing unit is or becomes an employer subject to this

(ii) For rate years 2007 and 2008, employers who are current in filing quarterly wage reports and in payment of all contributions due and owing, shall be issued a contribution rate based upon the following reduction: for rate groups 1 through 10, the rates would be reduced to 0.00%; for rate groups 11 through 20, the rates would be reduced by 75%; for rate groups 21 through 30, the rates would be reduced by 50%; and for rate groups 31 through 51, the rates would be reduced by 25%.
 (iii) In order to be eligible for the reduced rates for rate year 2007, the employer must file all late reports and pay all contributions due and owing within a 30-day period following the date of mailing of the amended rate notice.
 (iv) In order to be eligible for the reduced rates for rate year 2008, employers must file all reports due and pay all contributions due and owing on or before January 31, 2008, except that the reduced rates for otherwise eligible employers shall not be effective if the average high cost multiple of the employment security trust fund balance falls below 1.2. For the purposes of this provision, the average high cost multiple is the reserve fund ratio, as defined by subsection (a)(3)(A), divided by the average high benefit cost rate. The average high benefit cost rate shall be determined by averaging the three highest benefit cost rates over the last 20 years from the preceding fiscal year which ended June 30. The high benefit cost rate is defined by dividing total benefits paid in the fiscal year by total payrolls for covered employers in the fiscal year.

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1 (e) The secretary of labor shall annually prepare and submit a certi-
2 fication as to the solvency and adequacy of the amount credited to the
3 state of Kansas' account in the federal employment security trust fund to
4 the governor and the employment security advisory council. The certifi-
5 cation shall be submitted on or before December 1 of each calendar year
6 and shall be for the 12-month period ending on June 30 of that calendar
7 year. In arriving at the certification contributions paid on or before July
8 31 following the 12-month period ending date of June 30 shall be con-
9 sidered. Each certification shall be used to determine the need for any
10 adjustment to schedule III in subsection (a)(3)(A) and to assist in pre-
11 paring legislation to accomplish any such adjustment.

12 Sec. 2. K.S.A. 2006 Supp. 44-710a is hereby repealed.

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

44-703 and

are

Section 1. K.S.A. 2006 Supp. 44-703 is hereby amended to read as follows: 44-703. As used in this act, unless the context clearly requires otherwise:

(a) (1) "Annual payroll" means the total amount of wages paid or payable by an employer during the calendar year.

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

(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.

(1) If an individual lacks sufficient base period wages in order to establish a benefit year in the matter set forth above and satisfies the requirements of subsection (g) of K.S.A. 44-705 and subsection (hh) of K.S.A. 44-703, and amendments thereto, the claimant shall have an alternative base period substituted for the current base period so as not to prevent establishment of a valid claim. For the purposes of this subsection, "alternative base period" means the last four completed quarters immediately preceding the date the qualifying injury occurred. In the event the wages in the alternative base period have been used on a prior claim, then they shall be excluded from the new alternative base period.

(2) For the purposes of this chapter, the term "base period" includes the alternative base period.

(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 labor.

(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) For calendar year 2007 and each calendar year thereafter, employs one or more individuals for some portion of a day during a calendar year, (ii) for each calendar year prior to 2007, each employing unit which 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)~~ (iii) 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, 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)(D), the term "employment" shall include services described in paragraphs (i) and (ii) above only if:

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

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

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

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

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

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

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

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

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

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

(C) Services covered by an arrangement pursuant to subsection (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, or in the employ of an Indian tribe, as defined pursuant to section 3306(u) of the federal unemployment tax act, any instrumentality of more than one of the foregoing or any instrumentality which is jointly owned by this state or a political subdivision thereof or Indian tribes 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. For purposes of this section, the exclusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also be applicable to services performed in the employ of an Indian tribe.

(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.

(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, political subdivision or of an Indian tribe;
- (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 or tribal law, is designated as a major nontenured policymaking or advisory position or as a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week;

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

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

(D) service performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act, except that to the extent that the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this

act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this state shall not be certified for any year by the federal security agency under section 3304(c) of the federal internal revenue code 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 1/2 or more of any pay period by an individual for the person employing such individual constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than 1/2 of any such pay period by an individual for the person employing such individual do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection (i)(4)(H) the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing such individual. This subsection (i)(4)(H) shall not be applicable with respect to services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

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

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

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

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

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

receiving such rehabilitation or remunerative work;

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

(M) service performed by an inmate of a custodial or correctional institution;

(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 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:

(a) 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

(b) 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;

(W) service performed as an election official or election worker, if \$1,000; and 15)(H)(ii)(a) of the immigration and nationality act.