

Approved: SRB 3-30-09
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Steve Brunk at 9:12 a.m. on March 19, 2009, in Room 784 of the Docking State Office Building.

All members were present except:

Representative Scott Schwab- absent

Committee staff present:

Renaë Jefferies, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Jerry Donaldson, Kansas Legislative Research Department
Stephen Bainum, Committee Assistant

Conferees appearing before the Committee:

Representative Raj Goyle,
Jim Garner, Department of Labor
Rachelle Colombo, Kansas Chamber of Commerce

Others attending:

See attached list.

The meeting was called to order by Chairman Steve Brunk at 9:12 a.m. The minutes for March 10 and 11 were approved. The Chairman called the Committees attention to **HB 2374**.

HB 2374 - Concerning employment security law, allowance of alternative base periods and benefits for individuals forced to leave employment to care for an ill or disabled family member.

Renaë Jefferies, Assistant Revisor supplied the Committee with a copy of the American Recovery and Reinvestment Act of 2009 (Attachment 1). She then passed out a memorandum explaining the changes that would be required to qualify for the funds from the Federal Treasury (Attachment 2). Renaë also included a Balloon Amendment for **HB 2374** (Attachment 3).

Representative Bethell questioned why the bill would become affective in 2010 rather than 2009. Secretary Garner said that it was to give the agency time to implement the changes in the bill. If the State has the provisions in the law which will be effective in the next 12 months, the Federal government will immediately certify the law and send the money to the states.

Representative Raj Goyle presented testimony as a proponent of **HB 2374** (Attachment 4).

Representative Prescott asked if this was also the right thing to do. Raj said that in this time of crisis this is the right thing to do and that this is our tax money.

Representative Pottorff asked for an overview of what other states have done in regard to this. Raj said that 20 other states have enacted option 1 and no more than 2 states have refused this money.

Jim Garner, Department of Labor presented a flow chart to illustrate the changes Kansas would have to make to qualify to receive the funds in the Recovery Act (Attachment 5). He also presented testimony as a proponent of **HB 2374** (Attachment 6). Secretary Garner's testimony included a chart on the computation of UI benefits using the base period (Attachment 7). He then explained how the Alternative Base Period works and the effect of implementing the Illness/Disability of immediate Family provision of provision 4c. He then presented the Labor Departments Balloon Amendment on **HB 2374** (Attachment 8).

Representative Brunk clarified that under provision 4c a person leaving employment to care for someone in their immediate family who was ill or had a disability would not receive UI benefits while they were providing such care but that they would receive it when they reentered the job market actively seeking employment. Also if they have not left the employ of the company then they are not eligible for the benefits under provision 4c.

CONTINUATION SHEET

Minutes of the House Commerce and Labor Committee at 9:00 a.m. on March 19, 2009, in Room 784 of the Docking State Office Building.

Representative Bethell asked about the definition of immediate family in the Labor Department Balloon Amendment specifically if it included the wording "sibling" or "significant other. Jim said that it did not have that wording.

Representative Brunk asked a question about the age of the children. Is it 18 years of age? Jim said that the Federal guideline was minor children under the age of 18.

Representative Bethell suggested that the Federal language limiting it to a minor child under the age of 18 should be put into our bill.

Representative Brunk asked for the impact statement that the Department had prepared for implementing the Alternative Base Period and provision 4c. Secretary Garner gave the impact statement that included all the options in the flow chart (Attachment 9). He indicated that the Federal money with the interest would last for 17 years.

Representative Grange asked how much was being paid out in monthly UI benefits now. Secretary Garner said we were paying out about 13 million dollars a week. In a normal year, such as 2007, it was about 5 to 6 million a week. Three to five million a week is the average. Representative Grange commented that the 69 million would not last very long since we are paying out 52 million dollars a month. Secretary Garner said the 17 years represented the length of time the Federal funds would cover the additional benefits paid out because of the changes in Kansas law.

Representative Pottorff asked if it was possible to split the bill and do the first part now and the other part later. Secretary Garner said yes, you can do the first 1/3 and a separate application for the remaining 2/3's.

Representative Grant asked about the reduction of UI tax rates that was passed into law in 2007. Would the current payout from the trust fund trigger a reversal of those reduced rates? Secretary Garner said that the current payout if continued for a year would more than likely trigger an increase in UI tax rates.

Representative Brunk ask what the estimate was of money coming into the trust fund this year. The Secretary said the estimate was about \$437 million and about \$440 million would be paid out of the fund. From that Representative Brunk estimated that the fund balance would be between \$230 to \$250 million by the end of the year.

Representative Bethell asked if there was an automatic trigger for the UI tax rates. Secretary Garner said that the trigger was linked to a solvency measure of the trust fund. It is called the Alternative High Cost Multiple. It looks at the balance in the trust fund as of July 30th each year and then makes a determination based on a calculation by looking back at the worst recession in the last 20 years and projects that out to the trust fund to see if the trust fund has enough to pay out benefits for 1.2 years without any additional funds coming into the fund. That is the trigger, if there is not enough in the fund then it triggers the tax increase.

Representative Brunk asked how many people qualified under the Family Medical Leave Act. They did not qualify for UI benefits but under this new 4c provision they would qualify. It seems to me that the pool of people might be larger that what we have estimated.

Representative Bowers asked which of the available options would give us the biggest bang for the buck. Secretary Garner said that they had looked at the easiest changes in Kansas law that would allow us to get the money into the trust fund.

Representative Brunk ask if it was true that a person could be collecting UI benefits while in a training program and exhaust 46 weeks of benefits before they would collect benefits under provision two. Therefor the trust fund would not be used for additional benefits for almost a year. Secretary Garner said that was correct.

Representative Bethell commented that the best bang for the buck was provision 4c since it lasts for 17 years compared to 13 years with training and 6 years with dependent care.

CONTINUATION SHEET

Minutes of the House Commerce and Labor Committee at 9:00 a.m. on March 19, 2009, in Room 784 of the Docking State Office Building.

Rachelle Colombo, Kansas Chamber of Commerce testified as an opponent of **HB 2374** (Attachment 10). The opposition to **HB 2374** is because of the massive policy changes required which would have a long term impact on administrative costs, benefit payout and employer tax rates. States that have implemented the Alternative Base period have seen increased benefits payouts ranging from 1 to 6%. Another concern is the number of people who currently use the Family Medical Leave Act. Under this new provision many of them might quit their jobs and receive a weekly wage replacement through unemployment compensation.

Chairman Brunk said that the hearing would be held open for the meeting tomorrow.

The next meeting is scheduled for March 20, 2009.

The meeting was adjourned at 10:45 a.m.

COMMERCE & LABOR COMMITTEE

DATE: 3-19-09

NAME	REPRESENTING
Mollie Butler	
Kristen Bottinghaus	KDOL
Inayat Noor mohamad	KDOL
Megan Ingmire	KDOL
Jim Garner Secretary	KDOL
Wayne Maichel	KDOL
JEFF GRENDEL	KS CHAMBER
RACHEL COLEMAN	"
Natalie Bright	WIBA
Dan Murray	NFIB
Eli Allen	
Wil Leiker	KS AFL-CIO
Andy Sanchez	
Bob Martin	Alasco, KS
Jay Martin	Alasco KS
Darien Bellows	" "
emily BROWN	Concordia, KS
Luca Brewer	Concordia, Ks.
Marie Brewer	Concordia, KS
Hadrian Carrier	Concordia, KS
Guy Dyer	Concordia, KS
Sandra Baden	Gaches, Pruden + Ann.
Ryan Dahl	
Andrea Dahl	
Chelsea Robinson	Kansas, city

Renae Jefferies - AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - PL 111-5
(HR 1)

From: <bill.mckee@thomsonreuters.com>
To: <renae.jEFFERIES@rs.ks.GOV>
Date: 3/12/2009 4:07 PM
Subject: AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 - PL 111-5 (HR 1)

SEC. 2003. SPECIAL TRANSFERS FOR UNEMPLOYMENT COMPENSATION
MODERNIZATION.

<< 42 USCA § 1103 >>

(a) IN GENERAL.--Section 903 of the Social Security Act (42 U.S.C. 1103) is amended by adding at the end the following:

*440

(Cite as: 123 Stat 115, *440)

"Special Transfers in Fiscal Years 2009, 2010, and 2011 for Modernization

"(f)(1)(A) In addition to any other amounts, the Secretary of Labor shall provide for the making of unemployment compensation modernization incentive payments (hereinafter 'incentive payments') to the accounts of the States in the Unemployment Trust Fund, by transfer from amounts reserved for that purpose in the Federal unemployment account, in accordance with succeeding provisions of this subsection.

"(B) The maximum incentive payment allowable under this subsection with respect to any State shall, as determined by the Secretary of Labor, be equal to the amount obtained by multiplying \$7,000,000,000 by the same ratio as would apply under subsection (a)(2)(B) for purposes of determining such State's share of any excess amount (as described in subsection (a)(1)) that would have been subject to transfer to State accounts, as of October 1, 2008, under the provisions of subsection (a).

"(C) Of the maximum incentive payment determined under subparagraph (B) with respect to a State--
 "(i) one-third shall be transferred to the account of such State upon a certification under paragraph (4) (B) that the State law of such State meets the requirements of paragraph (2); and
 "(ii) the remainder shall be transferred to the account of such State upon a certification under paragraph (4)(B) that the State law of such State meets the requirements of paragraph (3).

"(2) The State law of a state meets the requirements of this paragraph if such State la.--

"(A) uses a base period that includes the most recently completed calendar quarter before the start of the benefit year for purposes of determining eligibility for unemployment compensation; or

"(B) provides that, in the case of an individual who would not otherwise be eligible for unemployment compensation under the State law because of the use of a base period that does not include the most recently completed calendar quarter before the start of the benefit year, eligibility shall be determined using a base period that includes such calendar quarter.

"(3) The State law of a State meets the requirements of this paragraph if such State law includes provisions to carry out at least 2 of the following subparagraphs:

"(A) An individual shall not be denied regular unemployment compensation under any State law provisions relating to availability for work, active search for work, or refusal to accept work, solely because such individual is seeking only part-time work (as defined by the Secretary of Labor), except that the State law provisions carrying out this subparagraph may exclude an individual if a majority of

the weeks of work in such individual's base period do not include part-time work (as so defined).

"(B) An individual shall not be disqualified from regular unemployment compensation for separating from employment if that separation is for any compelling family reason. For purposes of this subparagraph, the term 'compelling family reason' means the following:

*441

(Cite as: 123 Stat 115, *441)

"(i) Domestic violence, verified by such reasonable and confidential documentation as the State law may require, which causes the individual reasonably to believe that such individual's continued employment would jeopardize the safety of the individual or of any member of the individual's immediate family (as defined by the Secretary of Labor).

"(ii) The illness or disability of a member of the individual's immediate family (as those terms are defined by the Secretary of Labor).

"(iii) The need for the individual to accompany such individual's spouse--

"(I) to a place from which it is impractical for such individual to commute; and

"(II) due to a change in location of the spouse's employment.

"(C)(i) Weekly unemployment compensation is payable under this subparagraph to any individual who is unemployed (as determined under the State unemployment compensation law), has exhausted all rights to regular unemployment compensation under the State law, and is enrolled and making satisfactory progress in a State-approved training program or in a job training program authorized under the Workforce Investment Act of 1998, except that such compensation is not required to be paid to an individual who is receiving similar stipends or other training allowances for non-training costs.

"(ii) Each State-approved training program or job training program referred to in clause (i) shall prepare individuals who have been separated from a declining occupation, or who have been involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the individual's place of employment, for entry into a high-demand occupation.

"(iii) The amount of unemployment compensation payable under this subparagraph to an individual for a week of unemployment shall be equal to--

"(I) the individual's average weekly benefit amount (including dependents' allowances) for the most recent benefit year, less

"(II) any deductible income, as determined under State law.

The total amount of unemployment compensation payable under this subparagraph to any individual shall be equal to at least 26 times the individual's average weekly benefit amount (including dependents' allowances) for the most recent benefit year.

"(D) Dependents' allowances are provided, in the case of any individual who is entitled to receive regular unemployment compensation and who has any dependents (as defined by State law), in an amount equal to at least \$15 per dependent per week, subject to any aggregate limitation on such allowances which the State law may establish (but which aggregate limitation on the total allowance for dependents paid to an individual may not be less than \$50 for each week of unemployment or 50 percent of the individual's weekly benefit amount for the benefit year, whichever is less), except that a State law may provide for a reasonable reduction in the amount of any such allowance for a week of less than total unemployment.

*442

(Cite as: 123 Stat 115, *442)

"(4)(A) Any State seeking an incentive payment under this subsection shall submit an application therefor at such time, in such manner, and complete with such information as the Secretary of Labor

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may within 60 days after the date of the enactment of this subsection prescribe (whether by regulation or otherwise), including information relating to compliance with the requirements of paragraph (2) or (3), as well as how the State intends to use the incentive payment to improve or strengthen the State's unemployment compensation program. The Secretary of Labor shall, within 30 days after receiving a complete application, notify the State agency of the State of the Secretary's findings with respect to the requirements of paragraph (2) or (3) (or both).

"(B)(i) If the Secretary of Labor finds that the State law provisions (disregarding any State law provisions which are not then currently in effect as permanent law or which are subject to discontinuation) meet the requirements of paragraph (2) or (3), as the case may be, the Secretary of Labor shall thereupon make a certification to that effect to the Secretary of the Treasury, together with a certification as to the amount of the incentive payment to be transferred to the State account pursuant to that finding. The Secretary of the Treasury shall make the appropriate transfer within 7 days after receiving such certification.

"(ii) For purposes of clause (i), State law provisions which are to take effect within 12 months after the date of their certification under this subparagraph shall be considered to be in effect as of the date of such certification.

"(C)(i) No certification of compliance with the requirements of paragraph (2) or (3) may be made with respect to any State whose State law is not otherwise eligible for certification under section 303 or approvable under section 3304 of the Federal Unemployment Tax Act.

"(ii) No certification of compliance with the requirements of paragraph (3) may be made with respect to any State whose State law is not in compliance with the requirements of paragraph (2).

"(iii) No application under subparagraph (A) may be considered if submitted before the date of the enactment of this subsection or after the latest date necessary (as specified by the Secretary of Labor) to ensure that all incentive payments under this subsection are made before October 1, 2011.

"(5)(A) Except as provided in subparagraph (B), any amount transferred to the account of a State under this subsection may be used by such State only in the payment of cash benefits to individuals with respect to their unemployment (including for dependents' allowances and for unemployment compensation under paragraph (3)(C)), exclusive of expenses of administration.

"(B) A State may, subject to the same conditions as set forth in subsection (c)(2) (excluding subparagraph (B) thereof, and deeming the reference to 'subsections (a) and (b)' in subparagraph (D) thereof to include this subsection), use any amount transferred to the account of such State under this subsection for the administration of its unemployment compensation law and public employment offices.

"(6) Out of any money in the Federal unemployment account not otherwise appropriated, the Secretary of the Treasury shall reserve \$7,000,000,000 for incentive payments under this subsection. Any amount so reserved shall not be taken into account for purposes of any determination under section 902, 910, or 1203 *443

(Cite as: 123 Stat 115, *443)

of the amount in the Federal unemployment account as of any given time. Any amount so reserved for which the Secretary of the Treasury has not received a certification under paragraph (4)(B) by the deadline described in paragraph (4)(C)(iii) shall, upon the close of fiscal year 2011, become unrestricted as to use as part of the Federal unemployment account.

"(7) For purposes of this subsection, the terms 'benefit year', 'base period', and 'week' have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

"Special Transfer in Fiscal Year 2009 for Administration

"(g)(1) In addition to any other amounts, the Secretary of the Treasury shall transfer from the employment security administration account to the account of each State in the Unemployment Trust Fund, within 30 days after the date of the enactment of this subsection, the amount determined with respect to such State under paragraph (2).

"(2) The amount to be transferred under this subsection to a State account shall (as determined by the

Secretary of Labor and certified by such Secretary to the Secretary of the Treasury) be equal to the amount obtained by multiplying \$500,000,000 by the same ratio as determined under subsection (f)(1) (B) with respect to such State.

"(3) any amount transferred to the account of a state as a result of the enactment of this subsection may be used by the state agency of such state only in the payment of expenses incurred by it for--

"(A) the administration of the provisions of its State law carrying out the purposes of subsection (f)(2) or any subparagraph of subsection (f)(3);

"(B) improved outreach to individuals who might be eligible for regular unemployment compensation by virtue of any provisions of the State law which are described in subparagraph (A);

"(C) the improvement of unemployment benefit and unemployment tax operations, including responding to increased demand for unemployment compensation; and

"(D) staff-assisted reemployment services for unemployment compensation claimants.".

<< 42 USCA § 1103 NOTE >>

(b) REGULATIONS.--The Secretary of Labor may prescribe any regulations, operating instructions, or other guidance necessary to carry out the amendment made by subsection (a).

123 Stat 115, 439 -443 ()

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MEMORANDUM

To: House Committee on Commerce and Labor
From: Renae Jefferies, Assistant Revisor
Date: March 19, 2009
Subject: HB 2374

HB 2374 amends two state employment security law statutes in response to subsection (f) of section 2003 of Public Law 111-5 known as the American Recovery and Reinvestment Act of 2009. Subsection (f) provides for unemployment insurance modernization incentive payments to be made from the federal Unemployment Trust Fund to states who make application to the U.S. Department of Labor demonstrating that such state's unemployment insurance law contains certain benefit eligibility provisions. Kansas unemployment modernization payment is projected to be \$68,970,143.

Pursuant to clause (i) of subparagraph (C) of paragraph (1) of subsection (f), one-third of the money will be transferred to the state upon certification that the state law meets the requirements of paragraph (2) of subsection (f) that "in the case of an individual who would not otherwise be eligible for unemployment compensation under the State law because of the use of a base period that does not include the most recent completed calendar quarter before the start of the benefit year, eligibility shall be determined using a base period that includes such calendar quarter." The change to K.S.A. 44-703, on page 2, lines six through 12, meets that requirement.

To draw down the remaining $\frac{2}{3}$ of the federal moneys, the state law must be certified as meeting two of the requirements of paragraph (3) of subsection (f). The amendment to K.S.A. 44-706 on page 24 allowing benefits to be paid to an individual who "left work due to the compelling family reason of caring for an immediate family member who has an illness or disability" meets one of the requirements of paragraph (3). As the bill now stands, a second requirement under paragraph (3) still needs to be added to the bill in order to draw down the remaining $\frac{2}{3}$ of the

federal moneys.

On March 17, 2009, SB 325 was introduced in the Senate. SB 325 is identical to this bill except for the addition of language which would finishing meeting the requirements of paragraph 3 of section 2003 (f) of the American Recovery and Reinvestment Act. I have drafted a balloon amendment to the House bill which would reflect the additional language in SB 325 which would make the House bill effective in drawing down the remaining $\frac{2}{3}$ of the federal moneys for your consideration in working the bill.

The act, if amended and passed, would take effect January 1, 2010.

HOUSE BILL No. 2374

By Committee on Taxation

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Revisor
Balloon Amendment
March 17, 2009

House Commerce & Labor
Date: 3-19-09
Attachment # 3

44-705

9 AN ACT concerning employment security law; relating to alternative
10 base periods and benefits for individuals forced to leave employment
11 to care for an ill or disabled family member; amending K.S.A. 2008
12 Supp. 44-703 and 44-706 and repealing the existing sections.

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

15 Section 1. K.S.A. 2008 Supp. 44-703 is hereby amended to read as
16 follows: 44-703. As used in this act, unless the context clearly requires
17 otherwise:

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

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

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

35 (b) "Base period" means the first four of the last five completed cal-
36 endar quarters immediately preceding the first day of an individual's ben-
37 efit year, except that the base period in respect to combined wage claims
38 means the base period as defined in the law of the paying state.

39 (1) (A) If an individual lacks sufficient base period wages in order to
40 establish a benefit year in the matter set forth above and satisfies the
41 requirements of subsection (g) of K.S.A. 44-705 and subsection (hh) of
42 K.S.A. 44-703, and amendments thereto, the claimant shall have an al-
43 ternative base period substituted for the current base period so as not to

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1 in dealing with the effects of abuse on the individual or the individual's
2 family; or

3 (vi) a sworn statement from the individual attesting to the abuse.
4 (C) No evidence of domestic violence experienced by an individual,
5 including the individual's statement and corroborating evidence, shall be
6 disclosed by the department of labor unless consent for disclosure is given
7 by the individual; or

8 (13) ~~the individual left work due to the compelling family reason of~~
9 ~~earning for an immediate family member who has an illness or disability.~~

reasons relating to

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

For the purpose of this section immediate family member includes a spouse, parent and child.

23 (1) For the purposes of this subsection (b), "misconduct" is defined
24 as a violation of a duty or obligation reasonably owed the employer as a
25 condition of employment. The term "gross misconduct" as used in this
26 subsection (b) shall be construed to mean conduct evincing extreme, will-
27 ful or wanton misconduct as defined by this subsection (b). Failure of the
28 employee to notify the employer of an absence shall be considered prima
29 facie evidence of a violation of a duty or obligation reasonably owed the
30 employer as a condition of employment.

31 (2) For the purposes of this subsection (b), the use of or impairment
32 caused by alcoholic liquor, a cereal malt beverage or a nonprescribed
33 controlled substance by an individual while working shall be conclusive
34 evidence of misconduct and the possession of alcoholic liquor, a cereal
35 malt beverage or a nonprescribed controlled substance by an individual
36 while working shall be prima facie evidence of conduct which is a violation
37 of a duty or obligation reasonably owed to the employer as a condition of
38 employment. Alcoholic liquor shall be defined as provided in K.S.A. 41-
39 102 and amendments thereto. Cereal malt beverage shall be defined as
40 provided in K.S.A. 41-2701 and amendments thereto. Controlled sub-
41 stance shall be defined as provided in K.S.A. 65-4101 and amendments
42 thereto of the uniform controlled substances act. As used in this subsec-
43 tion (b)(2), "required by law" means required by a federal or state law, a

1 amendments thereto. The disqualification shall begin the day following
2 the separation and shall continue until after the individual becomes reem-
3 ployed and has had earnings from insured work of at least three times
4 the individual's determined weekly benefit amount.

5 Sec. 3. ~~K.S.A. 2008 Supp. 44-703 and 44-706 are hereby repealed.~~

6 Sec. 4. This act shall take effect and be in force from and after Jan-
7 uary 1, 2010, and its publication in the statute book.

See Attached Insert "A"

And by renumbering the remaining section accordingly

, 44-705

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K.S.A. 2008 Supp. 44-705 is hereby amended to read as follows: 44-705. 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 (i) 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; or (ii) solely because such individual is seeking only part-time employment if the individual is available for a number of hours per week that are comparable to the individuals' part-time work experience in the base period.

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

(d) (1) Except as provided further, 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):

(A) If benefits have been paid for such week;
 (B) if the individual fails to meet with the other eligibility requirements of this section; or
 (C) 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)(1)(C) shall not apply.

(2) The waiting week requirement of paragraph (1) shall not apply to new claims, filed on or after July 1, 2007, by claimants who become unemployed as a result of an employer terminating business operations within this state, declaring bankruptcy or initiating a work force reduction pursuant to public law 100-379, the federal worker adjustment and retraining notification act (29 U.S.C. 2101 through 2109), as amended. The secretary shall adopt rules and regulations to administer the provisions of this paragraph.

(3) A claimant shall become eligible to receive compensation for the waiting period of one

week, pursuant to paragraph (1), upon completion of three weeks of unemployment consecutive to such waiting period.

(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 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.

(g) The claimant is returning to work after a qualifying injury and has been paid total wages for insured work in the claimant's alternative 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 alternative base period if:

(1) The claimant has filed for benefits within four weeks of being released to return to work by a licensed and practicing health care provider.

(2) The claimant files for benefits within 24 months of the date the qualifying injury occurred.

(3) The claimant attempted to return to work with the employer where the qualifying injury occurred, but the individual's regular work or comparable and suitable work was not available.

Sec. 4.

STATE OF KANSAS
HOUSE OF REPRESENTATIVES

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87TH DISTRICT

TESTIMONY IN SUPPORT OF HB 2374
HOUSE COMMITTEE ON COMMERCE AND LABOR
MARCH 19, 2009

Chairman Brunk, Vice Chairman Grange, Ranking Member Ruiz, and Committee Members:

Thank you for allowing me to testify in support of House Bill 2374, a bill that will provide needed help for laid off Kansans struggling to pay their bills and help speed our economic recovery. With two minimal changes to our unemployment insurance laws, \$69 million of federal stimulus money will be pumped directly into our state that can help families pay for groceries and other essential items while also helping prevent increases in business taxes in the future.

As we know all too well, tens of thousands of Kansans are losing their jobs. In South Central Kansas, home to the State's aviation cluster, more than 11,000 workers (approximately 16% of the total aviation workforce in the region) have been laid off. Just last month, our state's unemployment rate reached a 25-year high. And while the situation is bad now, it may very well get worse before it gets better.

I would like to emphasize four points for your consideration:

This bill is carefully drafted and narrowly tailored to gain the maximum benefit from stimulus money with the smallest impact on our current laws. This bill first modifies the method of determining a worker's base wage period, a change that will enable us to draw nearly \$23 million in stimulus money and join 20 other states that have made this change. Most recently, the South Dakota Legislature passed this provision unanimously. Second, this bill permits employees to leave work to care for a sick or disabled family member, a change that will enable us to draw nearly \$46 million in federal money.

This bill is pro-business, pro-worker, and will help stimulate the economy. We all have a stake in helping our economy recover as soon as possible. Businesses have every interest in ensuring that workers who are laid off will be able to return to the workforce without suffering serious setbacks during their time off from work. Unemployed Kansans will use this assistance in ways that benefit our economy by spending on essential items such as groceries, gas for their cars, and utility bills at home.

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This bill does not cost the State money. We all know that we face a budget crisis in our State. Thankfully the stimulus requirements are not based on any contribution from the State to draw down these federal funds. If we pass this bill, we will receive the \$69 million in the Unemployment Insurance Trust Fund where we can begin earning interest immediately. Labor Department projections indicate this money will last for 17 years. It is also worth nothing that failure to act during this legislative session will cost us at least \$3 million annually in interest.

We must protect the health of our Unemployment Insurance Trust Fund. Although our Fund is healthier than many other states, significant money will be spent in the coming months and years to combat this recession, which is why the stimulus money is so important. Thanks to sound management of the Fund in the past, we were recently able to make a large *cut* in business unemployment taxes. Businesses are receiving \$286 million in tax relief over three years because we have protected our Trust Fund. We should continue these common sense policies.

This bill is an important step in our economic recovery and helps ensure that we do all we can for Kansas workers who are struggling during this economic turmoil. I urge the Committee to pass HB 2374 favorably for passage.

Thank you for your time.


Rep. Raj Goyle

Recovery Act – UI Provisions

According to the USDOL, Kansas is eligible to receive

\$68,970,143

1/3 \$22,990,048	2/3 \$45,980,095					
To receive the first 1/3 of Special Transfer to UI Trust Fund:	To receive remaining 2/3 of Special Transfer to UI Trust Fund, State law must have <u>TWO</u> of the four following provisions:					
State must have Alternative Base Period	1	2	3	4		
	Provide benefits to workers seeking part-time employment	Extend UI benefits while worker is in training	Provide a weekly dependent allowance of at least \$15	Workers will not be disqualified for leaving work for compelling family reasons, which must include the following THREE reasons:		
				Domestic Violence	Spouse Relocation	Illness/Disability of Immediate Family
↓	↓	↓	↓	↓	↓	↓
Needs to be added to Kansas law	Has been policy of Kansas for years – need codification of long-standing practice	Kansas does not have such law	Kansas does not have such law	Kansas has this in law K.S.A. 44-706(a)(12)	Kansas has this in law K.S.A. 44-706(a)(4)	Kansas does not have such law

Testimony in support of 2009 House Bill 2374
House Commerce & Labor Committee
Jim Garner, Secretary
19 March 2009

Chairman Brunk and members of the Committee:

Thank you for the opportunity to appear and share my support for 2009 House Bill 2374. This bill makes a few changes in our Employment Security laws which will allow Kansas to receive nearly \$69 million in federal Recovery Act funds to supplement the Kansas UI Trust Fund through which unemployment benefits are paid. More specifically it does two things—provides an alternative period of time for determining a person’s wage eligibility and provides claimants will not be disqualified to receive UI benefits if they return to the labor market after having left their previous job to care for a sick or disabled immediate family member.

Section 1: Establishes an alternative base period for determining earnings eligibility

A claimant is eligible for UI benefits if they have sufficient earnings during four quarters called the base period. This base period is defined as the first four of the last five completed calendar quarters, immediately preceding the date the applicant first files for UI benefits. It does not include the most recently completed quarter.

Section 1 of HB 2374 establishes an alternative base period for determining if an applicant has earned sufficient wages. The alternative base period would be the last four completed calendar quarters, immediately preceding the date the applicant files for unemployment insurance benefits, which would include the most recently completed quarter.

The alternative base period is only applied if the applicant is found to have insufficient wages using the regular base period. Applicants would still have to earn the same amount in wages to qualify for unemployment benefits; the only difference would be the time period during which they earned those wages. This change simply shifts the timing of the base period for those who otherwise have a sufficient wage history to qualify for benefits.

The use of the alternative base period recognizes the changing realities of the modern workforce. Workers today have more transitions and work for a larger number of different employers than workers of the 1930s, when the base period was originally established. Adopting the alternate base period would qualify Kansas to receive the first

third of the \$69 million dollars available to the state through the Recovery Act provision related to unemployment compensation modernization.

Nineteen states currently have an alternative base period. On Friday, March 13, 2009, South Dakota became the 20th state when Governor Mike Rounds signed a law creating an alternative base period in that state. The law unanimously passed the South Dakota legislature.

Section 2: Caring for an immediate family member with an illness or disability

A second change would put Kansas in line to access the remaining two-thirds of the federal funds. The change would provide that individuals would not be disqualified for applying for UI benefits if they left work to care for an immediate family member who has an illness or disability and are now returning to the labor market. Existing law on being "able and available" for work would remain a condition for UI benefits. Individuals would not receive benefits during the time they are caring for the family member. However, they would not be disqualified when applying once they reentered the labor market and were looking for work. Currently, Kansas already provides benefits to individuals who leave work for compelling family reasons, including domestic violence and to follow a spouse who is relocating for a job. The change in Section 2 of the bill would add this third reason. We also offer a balloon amendment defining "immediate family member" to include a spouse, parent or child.

Balloon Amendment: Unemployed workers seeking part-time work

Lastly we need to codify the long standing practice of allowing benefits to unemployed workers who are seeking part-time work. This has been the policy in Kansas for decades. U.S. Department of Labor indicates this policy needs to be codified in order to access the special transfer of funds. That's why we have asked for the amendment that allows us to codify this policy. It will not result in any additional individuals qualifying for benefits. This change is reflected in the balloon amendment as well.

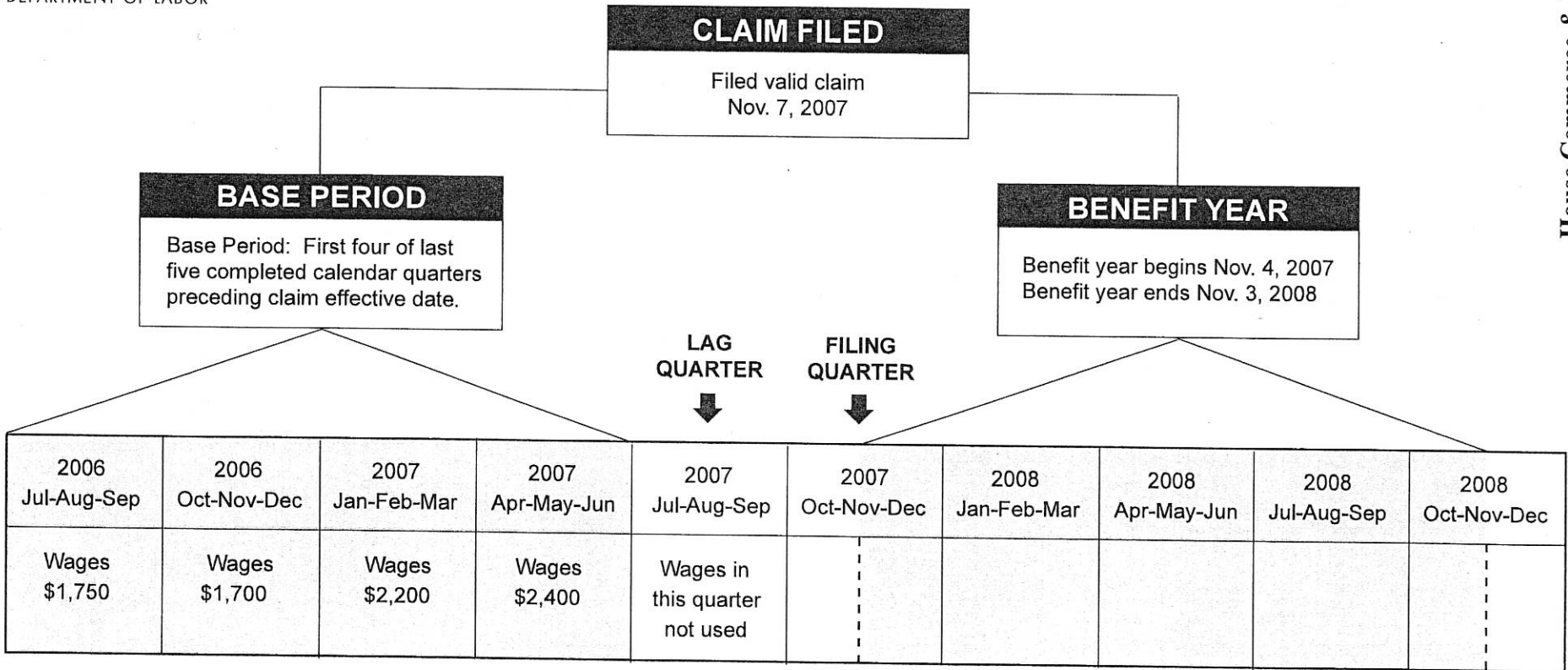
Funding

Overall, these changes will result in some additional people qualifying to receive unemployment benefits. Based on a thorough analysis by KDOL's Labor Market Information Services Division, the funding in the federal Special Transfer (\$68,970,000) would provide adequate funding to support these new provisions for the next 17 years.

Conclusion

Again, Mr. Chairman, I appreciate you allowing me to share this information and my words of support for House Bill 2374. This is a very good opportunity to access funds to improve our UI Trust Fund in this current recession. I would be glad to stand for any questions the committee may have.

Computation of Benefit Amount



Weekly Benefit Amount (WBA)

The claimant had the highest earnings (\$2,400) in the April-May-June quarter of 2007 $\$2,400 \times 4.25\% = \mathbf{\$102}$ (weekly benefit amount)

Qualifying Earnings

To qualify for benefits, the claimant must have been paid wages from insured employment in at least two quarters with total wages of at least 30 times the weekly benefit amount..... $30 \times \$102 = \mathbf{\$3,060}$ (qualifying earnings)
(In this example, the claimant qualifies.)

Total Benefit Amount

$\$1,750 + \$1,700 + \$2,200 + \$2,400 = \$8,050 =$ total base period earnings
 $1/3$ of $\$8,050 = \$2,683$
 $26 \times \$102$ (weekly benefit amount) = $\$2,652$
 Total benefit amount (since $\$2,652$ is less than $\$2,683$) = $\mathbf{\$2,652}$ (total benefit amount)

HOUSE BILL No. 2374

By Committee on Taxation

3-9

9 AN ACT concerning employment security law; relating to alternative
10 base periods and benefits for individuals forced to leave employment
11 to care for an ill or disabled family member; amending K.S.A. 2008
12 Supp. 44-703 ~~and 44-706 and repealing the existing sections.~~

Add 44-705

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

15 Section 1. K.S.A. 2008 Supp. 44-703 is hereby amended to read as
16 follows: 44-703. As used in this act, unless the context clearly requires
17 otherwise:

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

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

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

35 (b) "Base period" means the first four of the last five completed cal-
36 endar quarters immediately preceding the first day of an individual's ben-
37 efit year, except that the base period in respect to combined wage claims
38 means the base period as defined in the law of the paying state.

39 (1) (A) If an individual lacks sufficient base period wages in order to
40 establish a benefit year in the matter set forth above and satisfies the
41 requirements of subsection (g) of K.S.A. 44-705 and subsection (hh) of
42 K.S.A. 44-703, and amendments thereto, the claimant shall have an al-
43 ternative base period substituted for the current base period so as not to

Delete: caring for

Delete; the

1 in dealing with the effects of abuse on the individual or the individual's
2 family; or

3 (vi) a sworn statement from the individual attesting to the abuse.

4 (C) No evidence of domestic violence experienced by an individual,
5 including the individual's statement and corroborating evidence, shall be
6 disclosed by the department of labor unless consent for disclosure is given
7 by the individual; or

Add: s

8 (13) ~~the individual left work due to the compelling family reason of~~
9 ~~caring for an immediate family member who has an illness or disability.~~

Add: relating to

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

Add: For the purpose of this section immediate family member includes spouse, parent, and children.

23 (1) For the purposes of this subsection (b), "misconduct" is defined
24 as a violation of a duty or obligation reasonably owed the employer as a
25 condition of employment. The term "gross misconduct" as used in this
26 subsection (b) shall be construed to mean conduct evincing extreme, will-
27 ful or wanton misconduct as defined by this subsection (b). Failure of the
28 employee to notify the employer of an absence shall be considered prima
29 facie evidence of a violation of a duty or obligation reasonably owed the
30 employer as a condition of employment.

31 (2) For the purposes of this subsection (b), the use of or impairment
32 caused by alcoholic liquor, a cereal malt beverage or a nonprescribed
33 controlled substance by an individual while working shall be conclusive
34 evidence of misconduct and the possession of alcoholic liquor, a cereal
35 malt beverage or a nonprescribed controlled substance by an individual
36 while working shall be prima facie evidence of conduct which is a violation
37 of a duty or obligation reasonably owed to the employer as a condition of
38 employment. Alcoholic liquor shall be defined as provided in K.S.A. 41-
39 102 and amendments thereto. Cereal malt beverage shall be defined as
40 provided in K.S.A. 41-2701 and amendments thereto. Controlled sub-
41 stance shall be defined as provided in K.S.A. 65-4101 and amendments
42 thereto of the uniform controlled substances act. As used in this subsec-
43 tion (b)(2), "required by law" means required by a federal or state law, a

Delete: 3
Add: 4

Add: 44-705

Delete: 4
Add: 5

1 amendments thereto. The disqualification shall begin the day following
2 the separation and shall continue until after the individual becomes reem-
3 ployed and has had earnings from insured work of at least three times
4 the individual's determined weekly benefit amount.

5 Sec. 3. K.S.A. 2008 Supp. 44-703 and 44-706 are hereby repealed.

6 Sec. 4. This act shall take effect and be in force from and after Jan-
7 uary 1, 2010, and its publication in the statute book.

New Sec. 3. K.S.A. 2008 Supp. 44-705 is hereby amended to read as follows: 44-705. 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 (i) 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; or (ii) solely because such individual is seeking only part-time employment if the individual is available for a number of hours per week that are comparable to the individual's part-time work experience in the base period

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

(d)(1) Except as provided further, 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):

Background: According to the recently passed American Recovery and Reinvestment Act (H.R. 1) states can qualify to receive a specific transfer of funds by having certain provisions. Kansas has some of these recommended provisions as part of the current Unemployment Insurance (UI) statute. However, there are two provisions which Kansas will be required to implement to qualify for the funds. These are the Alternative Wage Base Period and either primary care provisions or dependent care provision or a provision allowing benefits for those enrolled in approved training

Alternative Wage Base Period (AWBP): A base period is the period of time that is examined to determine if a claimant for unemployment benefits has sufficient earnings to qualify (monetary eligibility). This period is typically four calendar quarters. Most states define their base periods as the first four of the last five completed calendar quarters. In other words, workers filing UI claims cannot use wages earned in the current quarter (the "filing quarter") or the most recently completed quarter (the "lag quarter"). The proposed AWBP change will allow the "lag quarter" to be used in the calculation of base period wages if an individual did not have sufficient earnings in the traditional base period.

Primary Care: The requirement under this provision from the U.S. Department of Labor is that there is no Unemployment Compensation (UC) disqualification for separation from employment if it was for three noted compelling family reasons. One of the reasons which the Kansas UI statute does not specifically address is the reason of illness or disability of an immediate family member. Under the proposed requirement, individuals who were separated from work due to this reason can qualify for UC.

Dependent Care: The requirement under this provision from the U.S. Department of Labor is to provide a minimum of \$15 per week for each dependent of the UI claimant for up to some capped amount of say \$50 per week of unemployment or 50 percent of the individual's weekly benefit amount for the benefit year, whichever is less. Currently Kansas does not offer benefits for dependents.

Training Enrollment Benefit: The requirement under this provision would provide an additional 26 weeks of UI benefits to any individual who is unemployed, has exhausted all rights to regular UC, and is enrolled in and making satisfactory progress in either: 1) A state-approved training program, or 2) A job training program authorized under the Workforce Investment Act of 1998 (WIA). Currently the Kansas Department of Labor provides regular UI benefits for a maximum of 26 weeks to those individuals enrolled in WIA approved training programs, TAA and other approved training programs.

Overview of the Methodology employed:

AWBP

To estimate the number of UI claimants who would potentially qualify for benefits under the AWBP provisions we used a sample based approach. We looked at UI data from each of the four quarters in 2007. We checked for all individuals who were monetarily ineligible in each quarter due to insufficient wage earnings under the standard base period definition (first four of the last five completed quarters). We then took all individual social security numbers of those monetarily ineligible in the 4th quarter of 2007 and simulated a scenario where those individuals would apply in January of 2008. This would make their previous "lag quarter" the 4th quarter, and would therefore be counted in their base period wages. This created a simulation as if the AWBP was in effect.

After determining how many of those monetarily ineligible in the 4th quarter of 2007 would become eligible in the 1st quarter of 2008, we determined how many of those individuals actually did apply for UI benefits in the 1st quarter of 2008. This helped us ascertain how many individuals would benefit if the AWBP provision was in place.

Primary Care

Using 2008 data, we identified the total number of cases in which benefits were denied to individuals who had separations and were unable to work due to primary care reasons. The three UI separation codes used were 21108, 21111, and 21116. Using a sample based approach, we randomly selected samples out of each of

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these codes. Each sample was then examined to ascertain the nature of primary care reported. Identifying cases where there was sickness/illness or disability of an immediate family member, we determined the percent of the sample which would qualify to receive benefits under the new primary care provision.

For both of these estimation processes we used projections of the unemployment rate from 2010 to 2013. Using the projection of the unemployment rate we estimated the number of individuals in each of the two scenarios who would qualify for benefits under the new provisions. Using the projection of average weekly duration and average benefit payment, a total cost estimate was calculated for each of the scenarios for each of the years from 2010 to 2013. An average cost estimate was derived by averaging the cost estimates from 2010 to 2013 which was then used for all projected years. We also took into account interest earned on the balance of the funds received to improve the accuracy of the actual cost.

Dependent Care

For the purposes of estimating this cost to provide \$15 additional for each dependent to all UI claimants we assumed that dependent would be any child under the age of 18 years of the claimant. Using population estimates from the Census Bureau the number of children under the age of 18 was used along with total population within the age of 22 to 64 years old. It was estimated that children under 18 were approximately 49.9% of the total 22 to 64 year old population group. The total number of weeks claimed for 22-64 year old claimants was determined using KDOL UI data. Using the same percentage (49.9%) the total number of claims which could potentially qualify for dependent benefits was determined. Using the projections of population by the Census Bureau and the projection of claimants by KDOL total cost estimates were derived from 2010 forward.

Training Enrollment Benefit:

Using data collected by the Kansas Department of Labor under the following UI approval codes for those individuals in approved training programs: 11187, 11188, 11189 & 11190; It was determined that in 2008 approximately 235 claimants under these four codes. Out of these 235 claimants, 115 exhausted their regular UI benefits. Thus, these individuals are potential beneficiaries of the extended training enrollment benefit. Assuming that these claimants would qualify and use the additional 26 weeks benefits offered under this provision, the total cost of implementing this provision was estimated using the projected number of these claimants and the average weekly benefit amount for 2010 forward.

Cost estimates:

Alternative Wage Base Period and Primary Care Provisions

Using the above methodology, the average annual cost associated with implementing these two programs is listed below for each year from 2010 forward. Using the projections of interest earned on the balance, the total amount of disbursement of \$68,970,143 would be exhausted in approximately 18 years.

Year	Annual Cost	Balance	Interest Earned	Interest Rate
2009	\$ -	\$ -	\$ 1,593,210.30	4.62
2010	\$ 6,952,581.93	\$ 63,610,771.37	\$ 3,040,594.87	4.78
2011	\$ 5,929,422.72	\$ 60,721,943.53	\$ 2,853,931.35	4.7
2012	\$ 5,063,272.73	\$ 58,512,602.14	\$ 2,738,389.78	4.68
2013	\$ 4,684,102.70	\$ 56,566,889.22	\$ 2,619,046.97	4.63
2014	\$ 5,657,345.02	\$ 53,528,591.18	\$ 2,531,902.36	4.73
2015	\$ 5,657,345.02	\$ 50,403,148.52	\$ 2,474,794.59	4.91
2016	\$ 5,657,345.02	\$ 47,220,598.09	\$ 2,361,029.90	5
2017	\$ 5,657,345.02	\$ 43,924,282.98	\$ 2,222,568.72	5.06
2018	\$ 5,657,345.02	\$ 40,489,506.68	\$ 2,069,013.79	5.11
2019	\$ 5,657,345.02	\$ 36,901,175.45	\$ 1,778,636.66	4.82
2020	\$ 5,657,345.02	\$ 33,022,467.08	\$ 1,591,682.91	4.82
2021	\$ 5,657,345.02	\$ 28,956,804.98	\$ 1,395,718.00	4.82
2022	\$ 5,657,345.02	\$ 24,695,177.96	\$ 1,190,307.58	4.82
2023	\$ 5,657,345.02	\$ 20,228,140.52	\$ 974,996.37	4.82
2024	\$ 5,657,345.02	\$ 15,545,791.87	\$ 749,307.17	4.82
2025	\$ 5,657,345.02	\$ 10,637,754.02	\$ 512,739.74	4.82
2026	\$ 5,657,345.02	\$ 5,493,148.74	\$ 264,769.77	4.82
2027	\$ 5,657,345.02	\$ 100,573.49	\$ 4,847.64	4.82
2028	\$ 5,657,345.02	\$ (5,551,923.88)	\$ (267,602.73)	4.82

Alternative Wage Base Period and Dependent Care Provisions

Using the above methodology, the average annual cost associated with implementing these two programs is listed below for each year from 2010 forward. Using the projections of interest earned on the balance, the total amount of disbursement of \$68,970,143 would be exhausted in approximately 6 years.

Year	Annual Cost	Balance	Interest Earned	Interest Rate
2009	\$ -	\$ -	\$ 1,593,210.30	4.62
2010	\$ 15,586,134.26	\$ 54,977,219.04	\$ 2,627,911.07	4.78
2011	\$ 13,084,835.31	\$ 44,520,294.80	\$ 2,092,453.86	4.7
2012	\$ 11,108,987.06	\$ 35,503,761.60	\$ 1,661,576.04	4.68
2013	\$ 10,286,221.72	\$ 26,879,115.92	\$ 1,244,503.07	4.63
2014	\$ 12,617,375.61	\$ 15,506,243.37	\$ 733,445.31	4.73
2015	\$ 12,645,236.10	\$ 3,594,452.59	\$ 176,487.62	4.91
2016	\$ 12,685,043.04	\$ (8,914,102.83)	\$ (445,705.14)	5

Alternative Wage Base Period and Training Enrollment Benefit

Using the above methodology, the average annual cost associated with implementing these two programs is listed below for each year from 2010 forward. Using the projections of interest earned on the balance, the total amount of disbursement of \$68,970,143 would be exhausted in approximately 13 years.

Year	Annual Cost	Balance	Interest Earned	Interest Rate
2009	\$ -	\$ -	\$ 1,593,210.30	4.62
2010	\$ 8,019,216.78	\$ 62,544,136.52	\$ 2,989,609.73	4.78
2011	\$ 7,114,075.85	\$ 58,419,670.39	\$ 2,745,724.51	4.7
2012	\$ 6,084,612.17	\$ 55,080,782.73	\$ 2,577,780.63	4.68
2013	\$ 5,555,856.15	\$ 52,102,707.22	\$ 2,412,355.34	4.63
2014	\$ 6,724,514.74	\$ 47,790,547.82	\$ 2,260,492.91	4.73
2015	\$ 6,782,402.31	\$ 43,268,638.42	\$ 2,124,490.15	4.91
2016	\$ 6,842,447.83	\$ 38,550,680.74	\$ 1,927,534.04	5
2017	\$ 6,904,731.72	\$ 33,573,483.06	\$ 1,698,818.24	5.06
2018	\$ 6,969,337.43	\$ 28,302,963.87	\$ 1,446,281.45	5.11
2019	\$ 7,036,351.52	\$ 22,712,893.81	\$ 1,094,761.48	4.82
2020	\$ 7,105,863.77	\$ 16,701,791.52	\$ 805,026.35	4.82
2021	\$ 7,177,967.29	\$ 10,328,850.58	\$ 497,850.60	4.82
2022	\$ 7,252,758.70	\$ 3,573,942.47	\$ 172,264.03	4.82
2023	\$ 7,330,338.19	\$ (3,584,131.69)	\$ (172,755.15)	4.82

Legislative Testimony

HB 2374

March 19, 2009

Testimony before House Commerce Committee

Rachelle Colombo, Senior Director of Legislative Affairs, The Kansas Chamber

Thank you Mr. Chairman and members of the committee for the opportunity to voice the business community's opposition to HB 2374. My name is Rachelle Colombo and I am the Senior Director of Legislative Affairs for the Kansas Chamber.

The Kansas Chamber opposes HB 2374 because it significantly alters state law to achieve compliance with federal requirements for receipt and usage of dollars available through the American Recovery and Reinvestment Act of 2009 (Federal Stimulus Package). Before Kansas adopts a massive policy change with long term impact on administrative cost, benefit pay-out and employer tax rates, the required provisions must be carefully evaluated.

The National Employment Law Project, an advocacy organization for the rights of lower-wage workers, projects that states enacting the required provisions to receive their full share of the stimulus hand-out would see the cost outweigh the benefits in seven years or less. Based on the number of claimants currently qualifying for benefits at an average weekly rate of \$328, the fund will pay out more than \$300 million in benefits over what will be contributed to the fund this year (see attached graph from the KDOL). The formula established in 2007 to provide needed relief to employers with a good experience rating will be suspended much more quickly if the fund is further stretched beyond intended parameters as suggested in HB 2374.

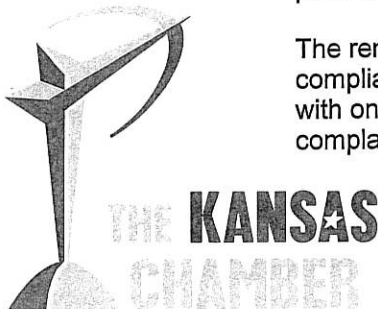
The Kansas Chamber strongly opposes the establishment of an Alternative Base Period which allows the most recently completed quarterly wage consideration for an applicant otherwise ineligible for unemployment compensation. The regular base period is defined as the first four of the last five completed calendar quarters. The most recent quarter is not used as a part of the base period when determining partial wage replacement and compensation rates for a number of reasons.

Implementation, long term administrative costs, and potential tax increases due to an increased number of now-eligible applicants must be considered if allowing fifth quarter wages. By increasing the number of eligible applicants, the alternative base period stretches the state trust fund beyond intended parameters and could threaten its solvency sooner than expected.

States which have already implemented the Alternative Base period have seen an increased benefit payout ranging from 1% to 6%. There are also additional costs associated with processing claims during the fifth quarter because of the increased percentage of claims utilizing affidavits which are processed manually and can cause short term overpayments.

The alternative base period places undue pressure on the solvency of the trust fund during a time when the economy is already unstable by increasing eligibility, increased benefit payouts and increased and ongoing administrative costs. This represents a large policy shift that undermines the intentions of the regular base period and appropriate parameters for eligibility and compensation.

The remaining sum of the available fund from the stimulus package requires compliance with two of four provisions. Of these four provisions, Kansas is compliant with one and is 2/3 compliant with another. HB 2374 recommends establishing complians by including a third provision for workers leaving for compelling family



reasons. Workers terminated because of domestic violence or spousal relocation are eligible for unemployment benefits. The Kansas Chamber opposes establishing benefit eligibility for primary care of an immediate family member with illness or disability as proposed in HB 2374.

It is difficult to determine the financial impact resulting from the substantial policy shift of changing eligibility requirements. While the Kansas Department of Labor claims that both of these changes will only total approximately \$5 million a year, their methodology is questionable in its lack of consideration for contributing factors and its lack of distinction between the impacts of the two new provisions.

The primary care provision alone could represent a far larger impact than projected by KDOL because of their failure to attribute for individuals who currently use the Family Medical Leave Act (FMLA) for the purpose of primary care. But the primary sponsor of this provision, Rep. Jim McDermott (D-WA) has publicly stated his intention of establishing this provision to enable employees who do not have access to FMLA.

According to the United States Department of Labor more than 80% of employed Americans qualify for FMLA and between 3.28% and 6.98% of employed Americans use it. If the same percentage of qualifiers and users exist in Kansas then between 45,300 and 96,300 Kansans will use FMLA this year. Under this provision, employees willing to take unpaid leave for the primary care of an ill or disabled family member could instead quit their job and receive a weekly wage replacement through unemployment compensation – but the Kansas Department of Labor did not consider or reflect this impact in their estimates.

By multiplying the average weekly wage in Kansas [\$328] by the average number of Kansans projected to use FMLA [70,500] and adding it to the currently weekly pay-out for qualified claimants [\$11,762,688.12] the average weekly pay-out would increase by \$23,161,365 million for a total of more than \$35 million in weekly benefit pay-outs for the addition of the primary care provision alone.

Furthermore, the primary care provision is dependent upon specifications without clear definitions and subject to interpretation by the Secretary of the Department of Labor rather than the Legislature. The definitions of “immediate family member”, “disability” and “illness” are paramount to determining the impact of this provision.

The Kansas Chamber urges you to vote “no” on HB 2374 and join nine other states in rejecting proposals to significantly alter unemployment compensation laws that threaten the solvency of the trust fund for a short-term influx of funds which are outweighed by the cost of receiving them.

Thank you again for allowing me the opportunity to voice the Kansas Chamber's opposition to HB 2374.

Kansas Chamber, with headquarters in Topeka, is the leading statewide pro-business advocacy group moving Kansas towards becoming the best state in America to live and work. The Chamber represents small, medium and large employers all across Kansas.