

MINUTES OF THE SENATE WAYS AND MEANS COMMITTEE

The meeting was called to order by Chairman Jay Emler at 1:30 p.m. on April 29, 2009, in Room 545-N of the Capitol.

All members were present except:

Senator Carolyn McGinn - excused

Committee staff present:

Alan Conroy, Kansas Legislative Research Department
J. G. Scott, Kansas Legislative Research Department
Michael Steiner, Kansas Legislative Research Department
Estelle Montgomery, Kansas Legislative Research Department
Dylan Dear, Kansas Legislative Research Department
Jill Wolters, Office of the Revisor of Statutes
Daniel Yoza, Office of the Revisor of Statutes
Theresa Kiernan, Office of the Revisor of Statutes
Melinda Gaul, Chief of Staff
Shirley Jepson, Committee Assistant

Conferees appearing before the Committee:

Representative Raj Goyle
Wayne Michaels, Director of Employment Security, Department of Labor
Dr. Charles Krider, Professor, University of Kansas
Senator Jeff Colyer
Mark Tallman, Kansas Association of School Boards (KASB)

Others attending:

See attached list.

Introduction of proposed legislation

Senator Teichman moved to introduce legislation concerning the annual reconciliation bill (9rs1112). The motion was seconded by Senator Schodorf. Motion carried on a voice vote.

Senator Taddiken moved to conceptually introduce legislation concerning a tax amnesty bill. The motion was seconded by Senator Vratil. Motion carried on a voice vote.

Senator Vratil moved to introduce legislation concerning liquor tax. The motion was seconded by Senator Taddiken. Motion carried on a voice vote.

Hearing on 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.

Daniel Yoza, Revisor, explained that **HB 2374** would make changes to the Kansas employment security law to allow the State of Kansas to receive additional federal funding under the American Recovery and Reinvestment Act (ARRA) for state unemployment benefits. Language in **HB 2374** concerns changes to the alternative base period (Attachment 1).

Representative Raj Goyle appeared before the Committee in support of **HB 2374**. Representative Goyle stated that in order for the state to draw down additional federal funds through the American Recovery and Reinvestment Act (ARRA) for unemployment insurance, it is necessary to implement changes to the state's law. To draw the first 1/3 of eligible funding, the state must have an Alternative Base Period regarding the time period necessary for an unemployed worker to qualify. To draw down the remaining 2/3 of eligible funding, the state must implement two of four provisions provided by the federal government (Attachment 2). One of the important parts of the legislation pertains to providing training for the unemployed worker.

Wayne Michaels, Director of Employment Security, Department of Labor, presented testimony in support of **HB 2374** (Attachment 3). Mr. Michaels indicated that one requirement from the federal government, directs

CONTINUATION SHEET

Minutes of the Senate Ways and Means Committee at 1:30 p.m. on April 29, 2009, in Room 545-N of the Capitol.

that the legislation cannot contain a sunset date. Mr. Michaels stated that the Department of Labor is offering several amendments to **HB 2374** (Attachment 4).

Dr. Charles Krider, Professor, University of Kansas and member of the Employment Security Advisory Council, presented testimony in support of **HB 2374** (Attachment 5). Dr. Krider stated that the changes to the law as presented in **HB 2374** are good policy changes for the state even if ARRA funding was not available.

David Kerr, Secretary, Department of Commerce, responded to questions from the Committee.

There were no other proponents, neutrals or opponents to come before the Committee.

The hearing on **HB 2374** was closed.

Senator Vratil moved to amend **HB 2374** by adding balloon amendments as presented by the Department of Labor. The motion was seconded by Senator Kultala. Motion carried on a voice vote.

Senator Lee moved to recommend **HB 2374**, as amended, favorably for passage. The motion was seconded by Senator Kultala. Motion carried on a voice vote.

Hearing on SB 311 - State budget, state general fund ending balance requirements, revenue shortfalls and reductions in authorized expenditures, economic impact statements, fiscal note updates.

Jill Wolters, Revisor, explained **SB 311** would require the Director of Legislative Research to prepare an economic impact statement on bills or other matters under consideration of the Legislature upon the request of certain legislative leaders, who are specified in the bill. The Director would also prepare a statement of significant economic impact upon the Kansas economy (Attachment 6).

Senator Jeff Colyer appeared before the Committee in support of **SB 311** (Attachment 7). Senator Colyer noted that **SB 311** would bring stronger fiscal management of the state's budget.

The Committee voiced concern regarding the fiscal note on the legislation in lieu of the revenue shortfall within the state.

There were no other proponents, neutrals or opponents to come before the Committee.

The hearing on **SB 311** was closed.

Senator Taddiken moved to amend **SB 311** by deleting all language pertaining to economic impact and retain only the language addressing allotments. The motion was seconded by Senator Lee. Motion carried on a voice vote.

Senator Kultala moved to table further action on **SB 311**. The motion was seconded by Senator Kelly.

Senator Vratil made a substitute motion to further amend **SB 311** on page 5, line 15, by striking the word "or"; line 16, by striking the word "less"; line 21, by striking the words "or less"; and on page 6, line 27, by striking the words "or less". The motion was seconded by Senator Schmidt. Motion carried on a voice vote.

Senator Kultala moved to table further action on **SB 311** until information is received from the Governor's office. The motion was seconded by Senator Lee.

Senator Lee made a substitute motion to table **SB 311** until Friday, May 1, 2009. The motion was seconded by Senator Kelly. Motion failed on a vote of 4-5.

The Committee returned to action on Senator Kultala's motion.

CONTINUATION SHEET

Minutes of the Senate Ways and Means Committee at 1:30 p.m. on April 29, 2009, in Room 545-N of the Capitol.

Senator Vratil made a substitute motion to further amend SB 311 in line 16 by excluding debt service from the reduction across-the-board. The motion was seconded by Senator Teichman. Motion carried on a voice vote.

Senator Vratil moved to recommend SB 311, as amended, favorably for passage. The motion was seconded by Senator Masterson. Motion failed on a vote of 4-5.

Hearing on SCR 1616 - Urging Kansas school districts to use carefully the federal stimulus funds received.

Jill Wolters, Revisor, explained that **SCR 1616** would urge school district to carefully use the federal stimulus funding. Ms. Wolters indicated that the state could receive \$875 million in education funding as a part of the federal stimulus package.

In response to a question from the Committee concerning a “sweep of school district’s contingency reserve funds”, it was the consensus of Alan Conroy, Legislative Research Department, and Theresa Kiernan, Revisor, that this would not be permitted by law.

Senator Abrams appeared before the Committee in support of **SCR 1616**. Senator Abrams felt it is important the emphasis the Legislature’s intent to school districts that the federal stimulus funding is one-time money and to be used carefully.

Mark Tallman, Kansas Association of School Boards (KASB), presented testimony as neutral on **SCR 1616** (Attachment 8).

The hearing on **SCR 1616** was closed.

Senator Masterson moved to recommend SCR 1616 favorably for passage. The motion was seconded by Senator Wysong. Motion carried on a vote of 6-5.

Response on SB 296

Information regarding **SB 296**, in response to the Committee’s request, on reporting procedures of state agencies, was distributed to the Committee (Attachment 9).

Adjournment

The meeting was adjourned at 3:35 p.m.

The next meeting will be on “call of the Chair”.

**SENATE WAYS & MEANS COMMITTEE
GUEST LIST**

DATE: April 29, 2009

NAME	REPRESENTING
Elaine Frisbie	Division of the Budget
Martin Hawver	Hawver's Capitol Report
Chad Austin	KHA
Brad Stauffer	Carter Group
Nancy Jacobson	DOA
Mark Bobanysk	Capitol Strategies
Kim Fowler	Judicial Branch
Destin Meyer	KAPA
Berend Koops	Hein Law Firm
Amy Campbell	KMTK
Holly Smith	Kansas Liberty
Jim Conant	KDOR
Dick Koeth	KDWJ
Jen Bruning	KSB-D
Lindsay Holwick	KBA
Mark Callman	KASB
Sharon Wenger	KLRD
Erik Wisner	KDA
Shaynon Bell	LGR
Jelen Pedigo	Sentencing Commission

Office of Revisor of Statutes
300 S.W. 10th Avenue
Suite 010-E, Statehouse
Topeka, Kansas 66612-1592
Telephone (785) 296 -2321 FAX (785) 296-6668

MEMORANDUM

To: Senate Ways and Means Committee
From: Daniel Yoza, Assistant Revisor
Date: April 29, 2009
Subject: HB 2374

House Bill 2374 amends K.S.A. 2008 Supp. 44-703.

On page 2 in subsection (b)(1)(B) you will see the new language concerning the alternative base period.

“If an individual lacks sufficient base period wages in order to establish a benefit year in the manner set forth above the claimant shall have an alternative base period substituted for the current base period. For the purposes of this subsection, “alternative base period” means eligibility shall be determined using a base period that consists of the four most recently completed calendar quarters preceding the start of the benefit year.”

This language is designed to obtain the first 1/3 of the ARRA money designated 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 the state meets certain eligibility provisions.

This bill would take effect January 1, 2010.

Recovery Act – UI Provisions

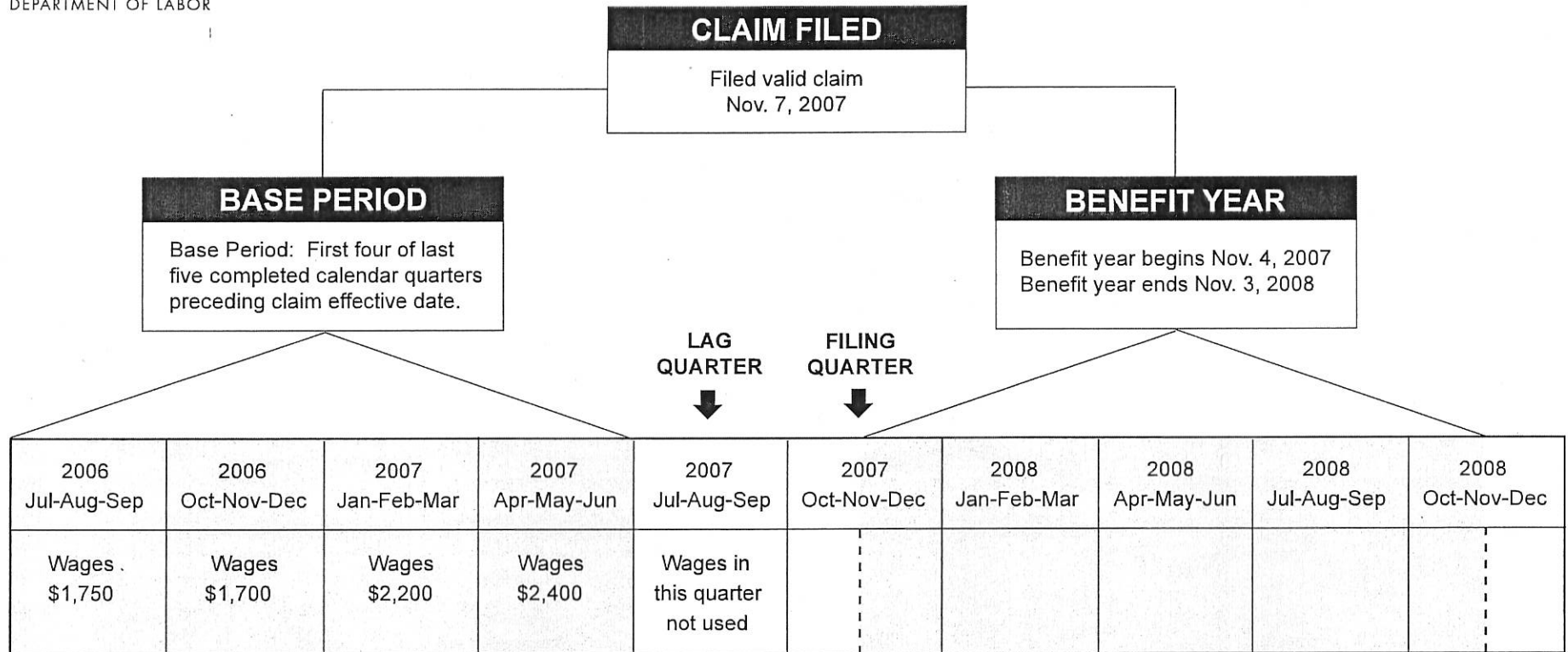
According to the USDOL, Kansas is eligible to receive

\$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:					
	1	2	3	4		
State must have Alternative Base Period	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

Computation of Benefit Amount

2-2



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\% = \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 $30 \times \$102 = \$3,060$ (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 $\$2,683$) = $\$2,652$ (total benefit amount)

Testimony in support of 2009 House Bill 2374
Senate Ways and Means Committee
Jim Garner, Secretary
30 April 2009

Chairman Emler and members of the Committee:

Thank you for the opportunity to appear and share my support for 2009 House Bill 2374. This bill as amended by the House makes a few changes in our Employment Security laws which will allow Kansas to receive nearly \$23 million in federal Recovery Act funds to supplement the Kansas UI Trust Fund through which unemployment benefits are paid. More specifically it provides an alternative period of time for determining if a person has sufficient wages to be eligible for unemployment benefits. In addition, we ask the committee to adopt a balloon amendment that has been drafted in order for us to access \$46 million available in federal funds.

HB 2374, as amended: Establishes an alternative base period for determining earnings eligibility

HB 2374 as amended 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 currently 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.

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 current 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 alternative base period would only be considered if a claimant did not have sufficient earnings using the traditional base period.

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.

At least twenty states already have an alternative base period—most recently including South Dakota, whose legislature passed the law unanimously, New Hampshire and Connecticut.

Balloon amendment: Unemployed workers seeking part-time work or additional training benefits

The original bill included a provision that would provide unemployment benefits to individuals returning to the workforce after having left their previous employer to care for an immediate family member with an illness or disability. This was deleted by the House Commerce and Labor Committee. After meeting with the Employment Security Advisory Council, a 12-member council comprised of members from the business, labor and academic communities, we are asking the Senate Ways and Means Committee add the attached balloon amendment that would provide additional unemployment benefits to individuals in state-approved training programs and to codify our long-standing practice of allowing benefits to unemployed workers seeking part-time work. If both of these provisions in the balloon amendment are adopted and passed, Kansas will receive nearly \$69 million for our UI Trust Fund and keep it solvent.

The training piece would provide an additional 26 weeks of unemployment benefits to unemployed workers who are receiving approved training and are successful in these training programs. The ESAC members believed this option was more in line with the goals of unemployment insurance and voted to support this provision and have this provision presented to the legislature.

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.

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 13 years.

Impact on Kansas businesses

Providing additional benefits to workers in approved training will not affect the business' experience rating. Existing law makes such payments a non-charge event to individual employers as stated in KSA 44-710. This \$69 million from the federal Recovery Act is funding for our Trust Fund that we don't have to raise from Kansas businesses. In addition, our Trust Fund will gain interest on this money, adding to our fund's balance, and the unemployment benefits is money claimants are putting back into the economy, spurring its growth once again.

In the packet of information titled "Impact of Unemployment Compensation Modernization Kansas" the last graph on page 8 indicates our projections of the unemployment rate between now and 2013 and how the UI Trust Fund balance will decrease and increase during those years. In 2007 SB 83 was passed that lowered the tax rates for businesses because the Fund was very healthy. The current economic times will likely activate SB 83's trigger next year, implementing the original tax rates, prior to 2007. As this graph demonstrates, the \$69 million from the Recovery Act could help us reactivate SB 83's reduced rates back into effect a year earlier than if we didn't receive this funding. Again, this is money we don't have to raise from Kansas employers.

Conclusion

Mr. Chairman, I appreciate you allowing me to share this information and my words of support for House Bill 2374 and its balloon amendment. 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.



**Impact of Proposed Unemployment Insurance
Provisions
2009 UI Modernization Act
Kansas**

Labor Market Information Services
Kansas Department of Labor
401 S.W. Topeka Blvd.
Topeka, KS 66603-3182
www.dol.ks.gov
Phone: (785) 296-5000
Fax: (785) 296-5286

3¹-4

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

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

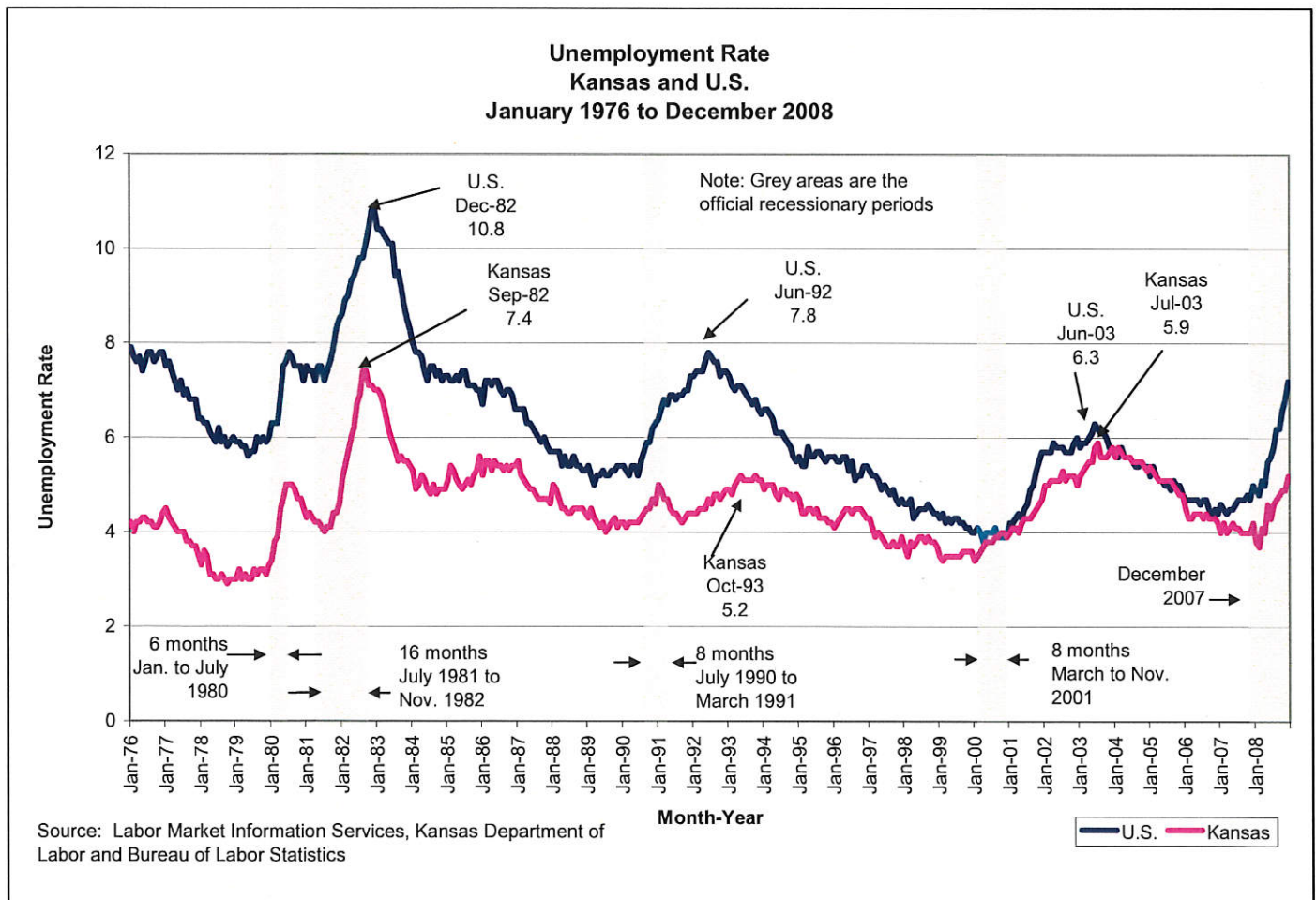


Impact of Unemployment Compensation
Modernization
Kansas

The unemployment statistics presented in this document were modeled using the “Benefit Financing Model” provided by the Employment & Training Administration of the U.S. Department of Labor. One of the key input variables was the projection of the Kansas unemployment rate, which is discussed briefly below.

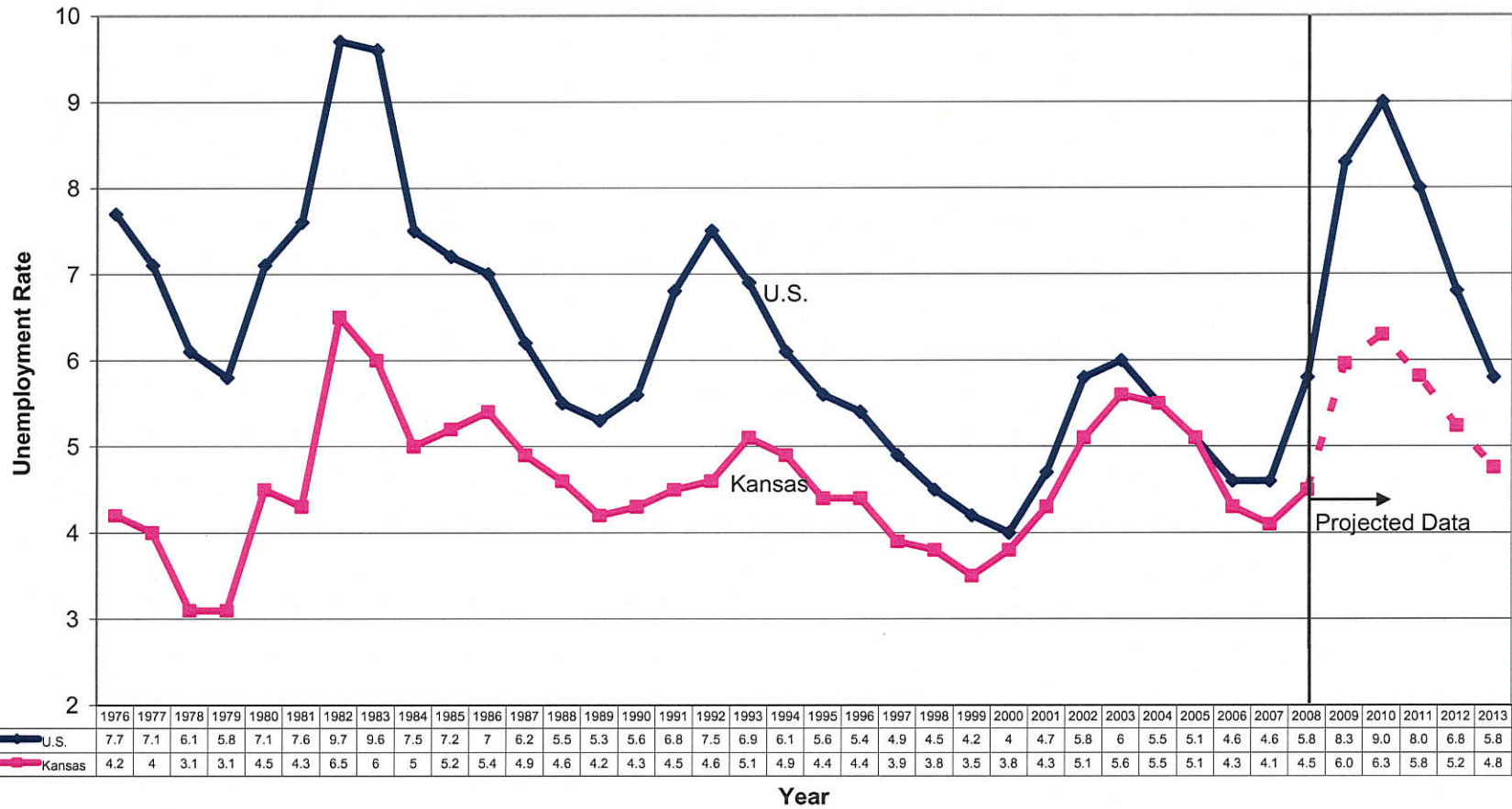
Projection of the Kansas annual unemployment rate for years 2009 through 2013 were based on the national projections of the unemployment rate by the Congressional Budget Office (CBO). More details about the CBO projections are available at <http://www.cbo.gov/budget/econproj.shtml>.

In making projections of the unemployment rate in Kansas we took into account how the Kansas unemployment rate compared to the U.S. unemployment rate from January 1976 to December 2008. The chart below highlights these rates and the official recessionary periods as defined by the National Bureau of Economic Research (NBER).



3-11

Unemployment Rate U.S. and Kansas 1976 to 2013 *



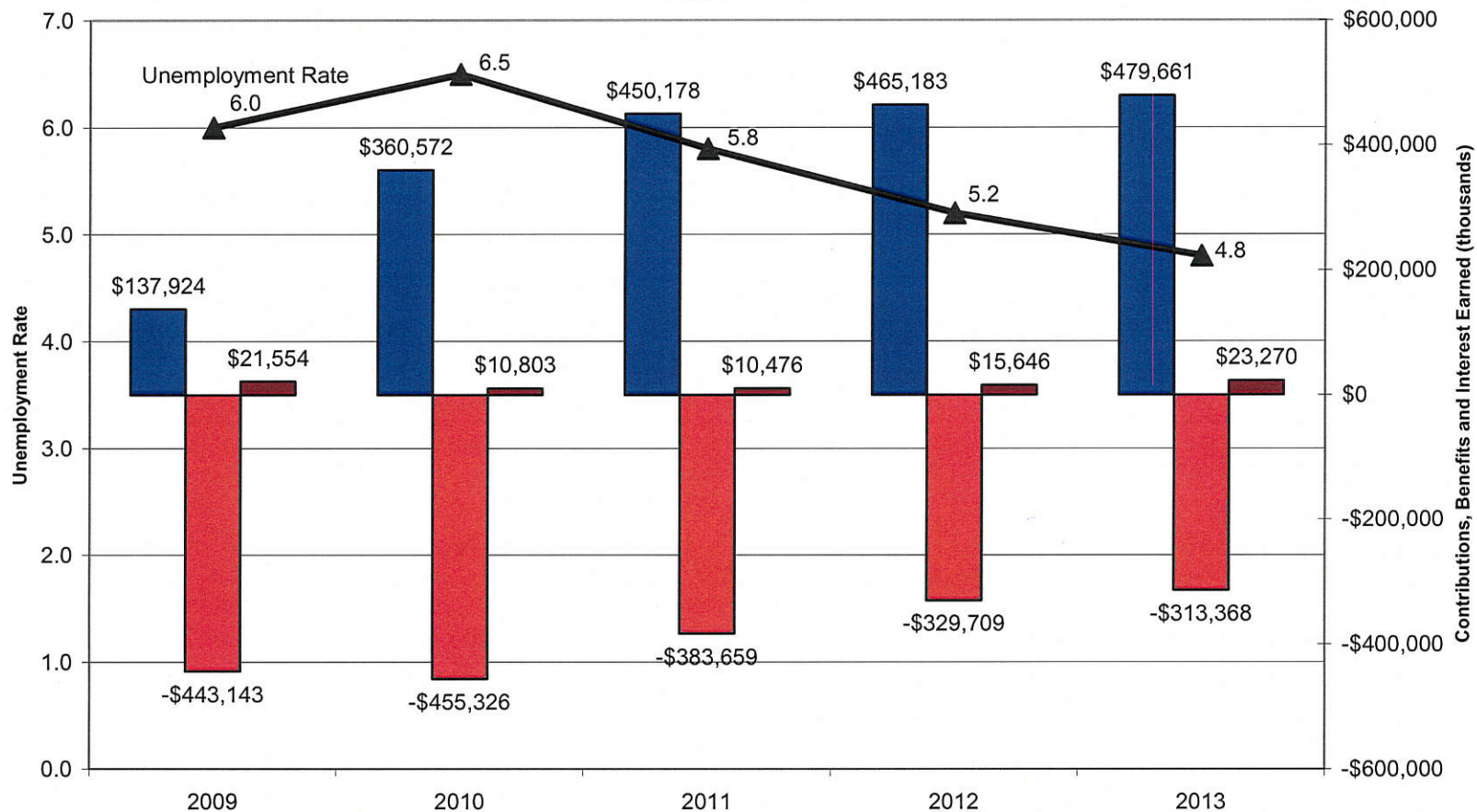
Source: Congressional Budget Office, Bureau of Labor Statistics and Labor Market Information Services, Kansas Department of Labor

* Projected data from 2009 to 2013

Labor Market Information Services, Kansas Department of Labor
401 SW Topeka Blvd., Topeka, KS 66603-3182
www.dol.ks.gov
Phone: (785) 296-5000

3-12

Contributions*, Benefits*, Interest Earned* and Unemployment Rate Kansas 2009 - 2013



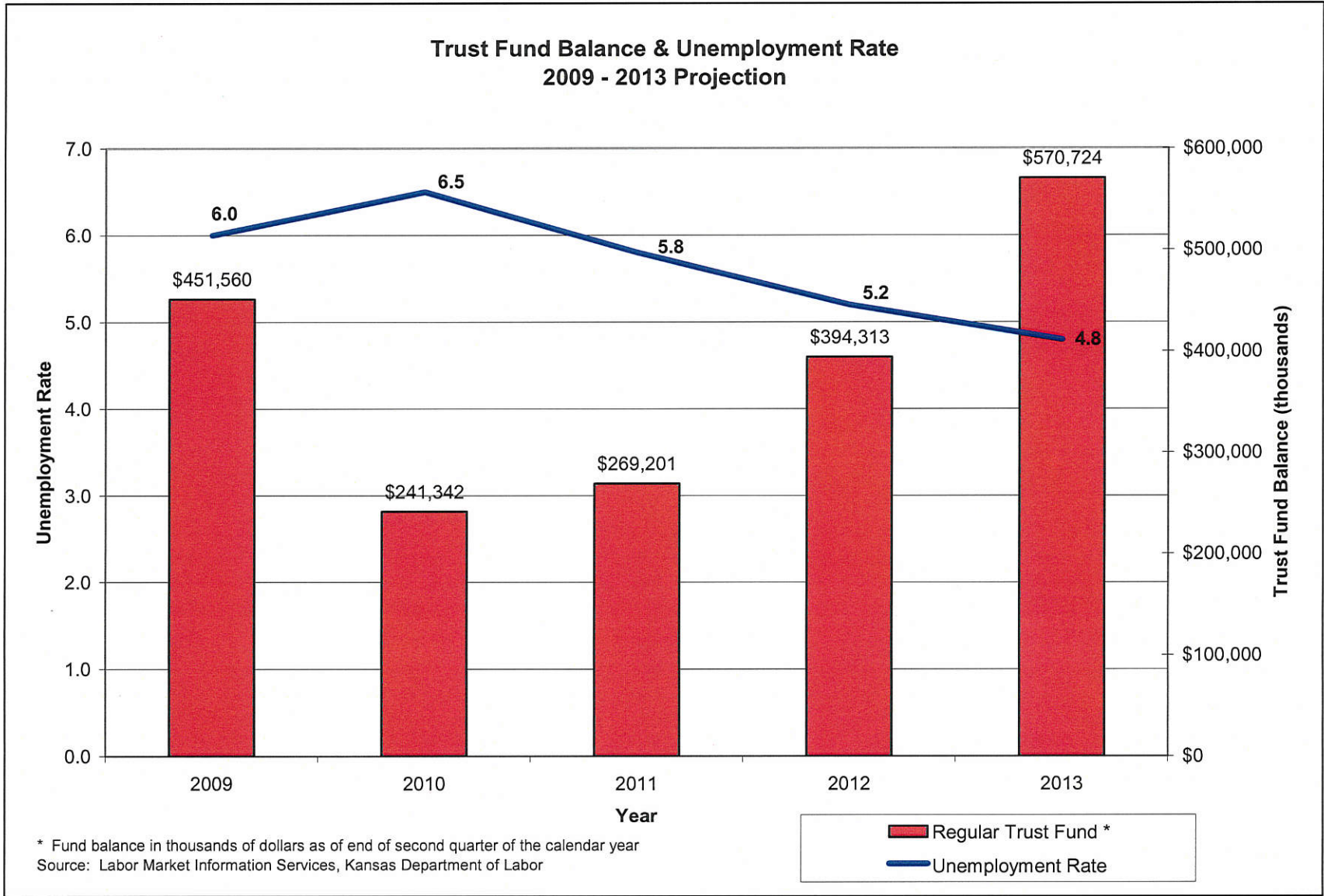
* In thousands of dollars

Source: Labor Market Information Services, Kansas
Department of Labor

■ Contributions
 ■ Benefits
 ■ Interest
 ▲ Unemployment Rate

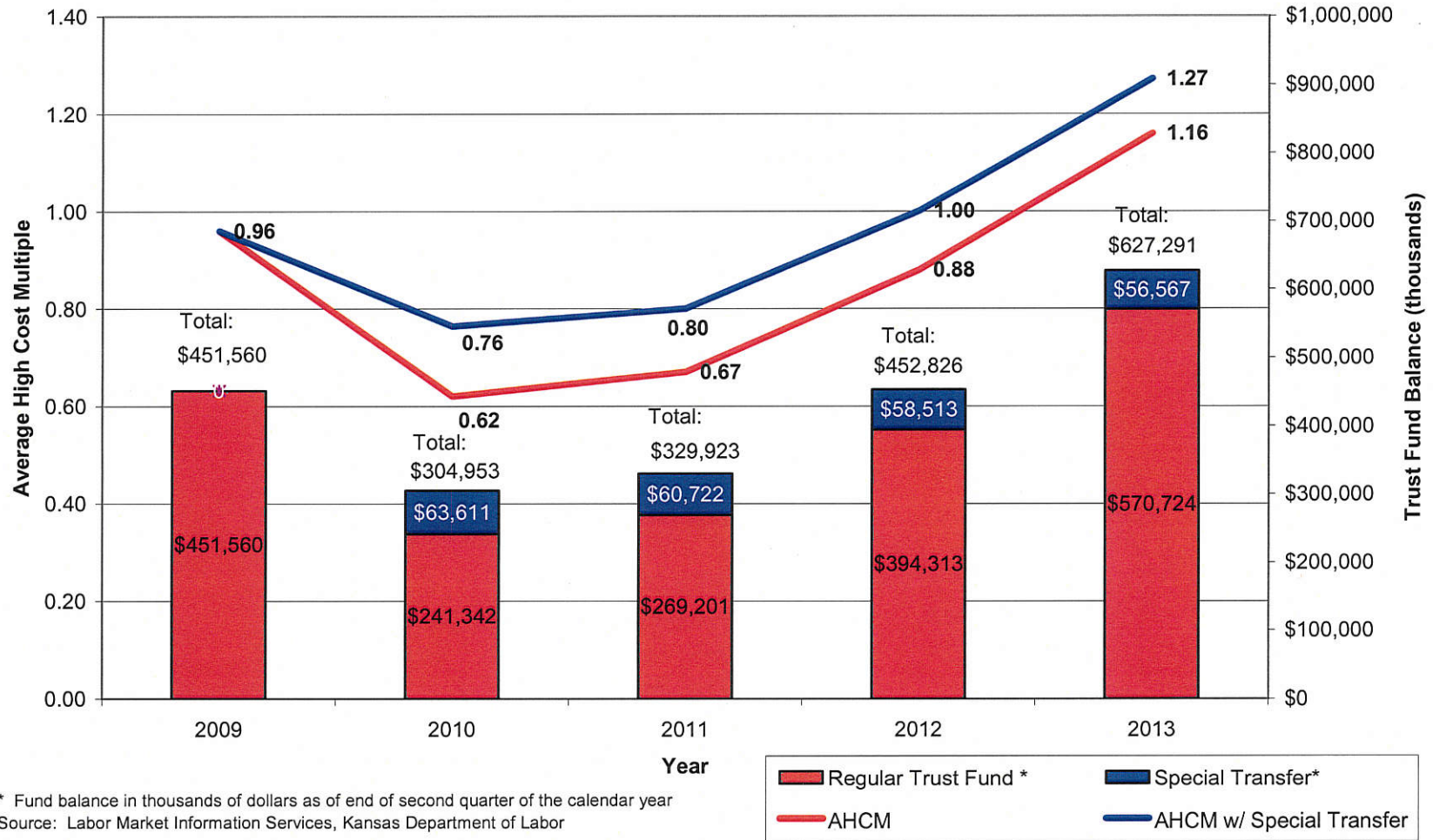
Labor Market Information Services, Kansas Department of Labor
 401 SW Topeka Blvd., Topeka, KS 66603-3182
www.dol.ks.gov
 Phone: (785) 296-5000

3-13

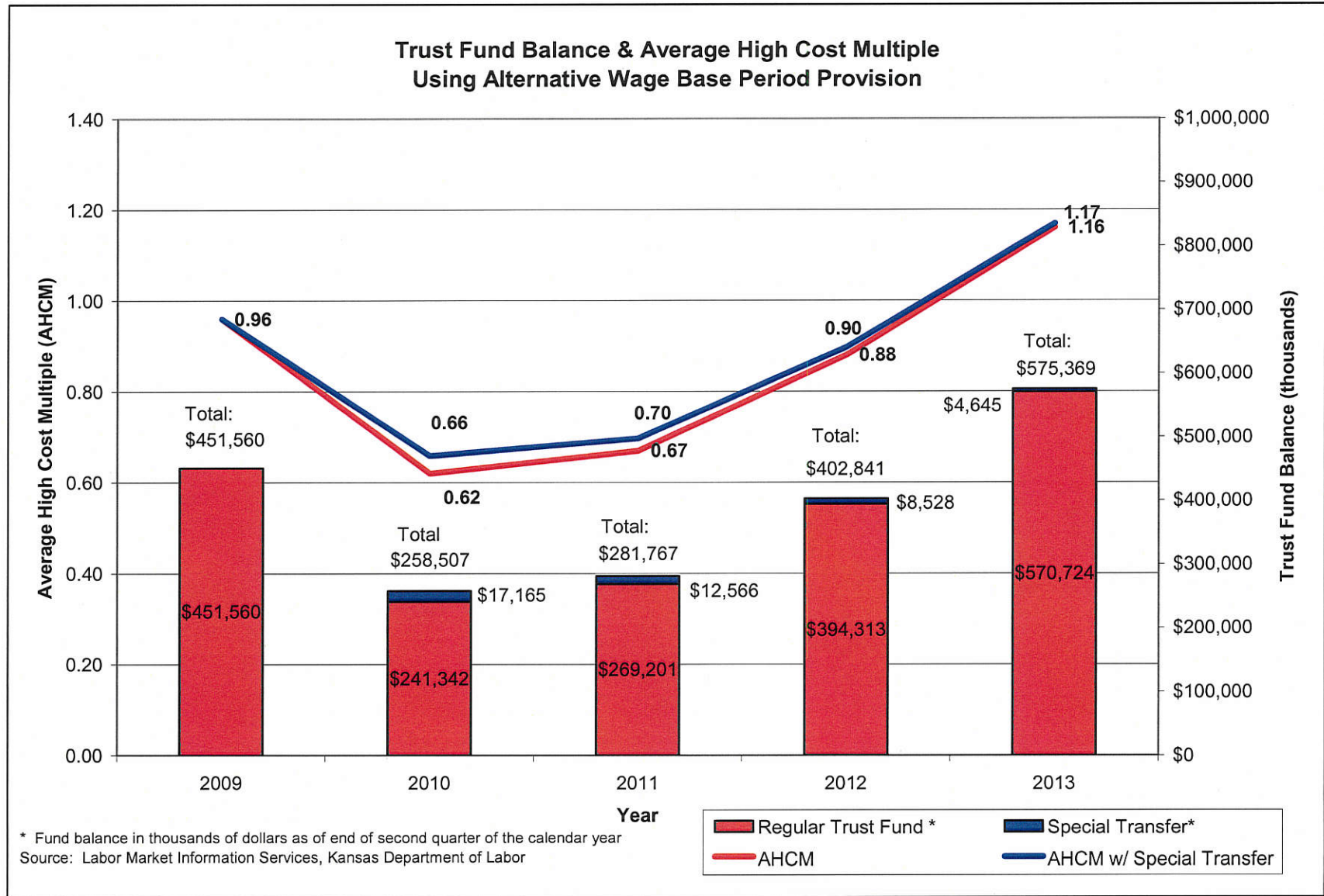


Labor Market Information Services, Kansas Department of Labor
 401 SW Topeka Blvd., Topeka, KS 66603-3182
www.dol.ks.gov
 Phone: (785) 296-5000

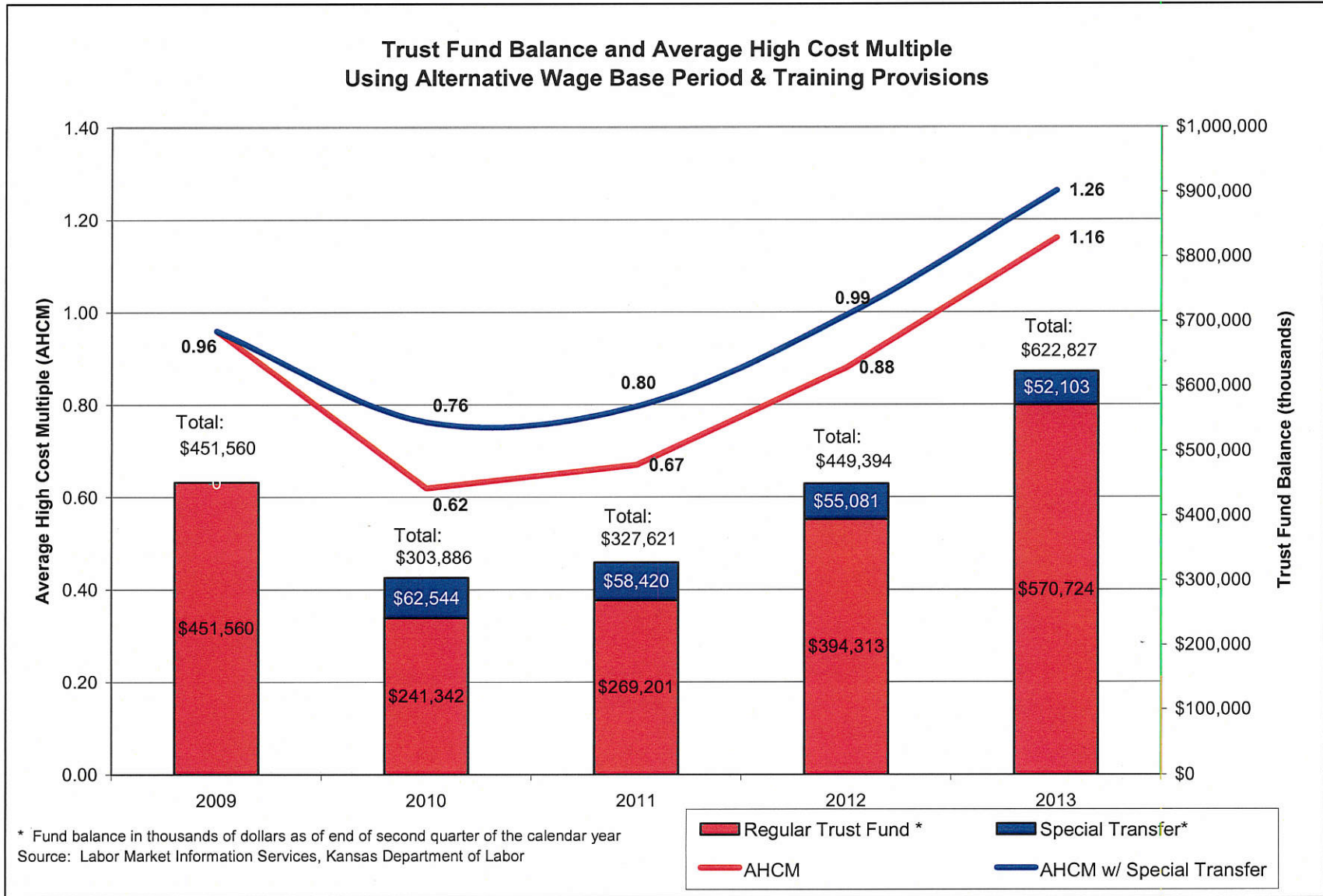
Trust Fund Balance and Average High Cost Multiple Using Alternative Wage Base Period and Primary Care Provisions



7
3-15



Labor Market Information Services, Kansas Department of Labor
 401 SW Topeka Blvd., Topeka, KS 66603-3182
www.dol.ks.gov
 Phone: (785) 296-5000



Labor Market Information Services, Kansas Department of Labor
 401 SW Topeka Blvd., Topeka, KS 66603-3182
www.dol.ks.gov
 Phone: (785) 296-5000

Sec. 2. K.S.A. 2008 Supp. 44-704c is hereby amended to read as follows: 44-704c. (a) Two weeks of additional benefits shall be payable to claimants who exhaust regular benefits and any benefits under any other federal or state extended benefits program during the period July 1, 2003 through June 30, 2004. The benefit eligibility and disqualification provisions of K.S.A. 44-705 and 44-706, and amendments thereto, shall apply to the additional benefits program.

(b) A claimant who exhausts regular benefits and who is enrolled in an approved training program under K.S.A.44-703(s) and making successful progress in such program, shall be eligible for up to 26 weeks of additional benefits.

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: (1) 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 (2) 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):

(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.

As Amended by House Committee

Session of 2009

HOUSE BILL No. 2374

By Committee on Taxation

3-9

Balloon Amendment
Department of Labor
April 14, 2009

Senate Ways & Means Cmte
Date 4-29-2009
Attachment 4

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

, 44-704c and 44-705

sections

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

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

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

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

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

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

40 (1) (A) If an individual lacks sufficient base period wages in order to
41 establish a benefit year in the matter set forth above and satisfies the
42 requirements of subsection (g) of K.S.A. 44-705 and subsection (hh) of
43 K.S.A. 44-703, and amendments thereto, the claimant shall have an al-

4-2

1 alternative base period substituted for the current base period so as not to
2 prevent establishment of a valid claim. For the purposes of this subsection,
3 “alternative base period” means the last four completed quarters
4 immediately preceding the date the qualifying injury occurred. In the
5 event the wages in the alternative base period have been used on a prior
6 claim, then they shall be excluded from the new alternative base period.

7 *(B) If an individual lacks sufficient base period wages in order to
8 establish a benefit year in the manner set forth above the claimant shall
9 have an alternative base period substituted for the current base period.
10 For the purposes of this subsection, “alternative base period” means eli-
11 gibility shall be determined using a base period that consists of the four
12 most recently completed calendar quarters preceding the start of the ben-
13 efit year.*

14 (2) For the purposes of this chapter, the term “base period” includes
15 the alternative base period.

16 (c) (1) “Benefits” means the money payments payable to an individ-
17 ual, as provided in this act, with respect to such individual’s
18 unemployment.

19 (2) “Regular benefits” means benefits payable to an individual under
20 this act or under any other state law, including benefits payable to federal
21 civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85,
22 other than extended benefits.

23 (d) “Benefit year” with respect to any individual, means the period
24 beginning with the first day of the first week for which such individual
25 files a valid claim for benefits, and such benefit year shall continue for
26 one full year. In the case of a combined wage claim, the benefit year shall
27 be the benefit year of the paying state. Following the termination of a
28 benefit year, a subsequent benefit year shall commence on the first day
29 of the first week with respect to which an individual next files a claim for
30 benefits. When such filing occurs with respect to a week which overlaps
31 the preceding benefit year, the subsequent benefit year shall commence
32 on the first day immediately following the expiration date of the preceding
33 benefit year. Any claim for benefits made in accordance with subsection
34 (a) of K.S.A. 44-709, and amendments thereto, shall be deemed to be a
35 “valid claim” for the purposes of this subsection if the individual has been
36 paid wages for insured work as required under subsection (e) of K.S.A.
37 44-705 and amendments thereto. Whenever a week of unemployment
38 overlaps two benefit years, such week shall, for the purpose of granting
39 waiting-period credit or benefit payment with respect thereto, be deemed
40 to be a week of unemployment within that benefit year in which the
41 greater part of such week occurs.

42 (e) “Commissioner” or “secretary” means the secretary of labor.

43 (f) (1) “Contributions” means the money payments to the state em-

1 ployment security fund which are required to be made by employers on
2 account of employment under K.S.A. 44-710, and amendments thereto,
3 and voluntary payments made by employers pursuant to such statute.

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

8 (g) "Employing unit" means any individual or type of organization,
9 including any partnership, association, limited liability company, agency
10 or department of the state of Kansas and political subdivisions thereof,
11 trust, estate, joint-stock company, insurance company or corporation,
12 whether domestic or foreign including nonprofit corporations, or the re-
13 ceiver, trustee in bankruptcy, trustee or successor thereof, or the legal
14 representatives of a deceased person, which has in its employ one or more
15 individuals performing services for it within this state. All individuals per-
16 forming services within this state for any employing unit which maintains
17 two or more separate establishments within this state shall be deemed to
18 be employed by a single employing unit for all the purposes of this act.
19 Each individual employed to perform or to assist in performing the work
20 of any agent or employee of an employing unit shall be deemed to be
21 employed by such employing unit for all the purposes of this act, whether
22 such individual was hired or paid directly by such employing unit or by
23 such agent or employee, provided the employing unit had actual or con-
24 structive knowledge of the employment.

25 (h) "Employer" means:

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

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

39 (i) Such crew leader holds a valid certificate of registration under the
40 federal migrant and seasonal agricultural workers protection act or sub-
41 stantially all the members of such crew operate or maintain tractors,
42 mechanized harvesting or cropdusting equipment or any other mecha-
43 nized equipment, which is provided by such crew leader; and

4-3

H-4

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

3 (C) For the purpose of this subsection (h)(1), in the case of any in-
4 dividual who is furnished by a crew leader to perform service in agricul-
5 tural labor for any other person and who is not treated as an employee
6 of such crew leader:

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

9 (ii) such other person shall be treated as having paid cash remuner-
10 ation to such individual in an amount equal to the amount of cash re-
11 munerations paid to such individual by the crew leader, either on the crew
12 leader's own behalf or on behalf of such other person, for the service in
13 agricultural labor performed for such other person.

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

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

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

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

24 (2) (A) Any employing unit which for calendar year 2007 and each
25 calendar year thereafter: (i) In any calendar quarter in either the current
26 or preceding calendar year paid for service in employment wages of
27 \$1,500 or more, (ii) for some portion of a day in each of 20 different
28 calendar weeks, whether or not such weeks were consecutive, in either
29 the current or preceding calendar year, had in employment at least one
30 individual, whether or not the same individual was in employment in each
31 such day, or (iii) elects to have an unemployment tax account established
32 at the time of initial registration in accordance with subsection (c) of
33 K.S.A. 44-711, and amendments thereto.

34 (B) Employment of individuals to perform domestic service or agri-
35 cultural labor and wages paid for such service or labor shall not be con-
36 sidered in determining whether an employing unit meets the criteria of
37 this subsection (h)(2).

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

40 (4) (A) Any employing unit, whether or not it is an employing unit
41 under subsection (g) of this section, which acquires or in any manner
42 succeeds to (i) substantially all of the employing enterprises, organization,
43 trade or business, or (ii) substantially all the assets, of another employing

4-5

1 unit which at the time of such acquisition was an employer subject to this
2 act:

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

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

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

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

20 (8) Any employing unit not an employer by reason of any other par-
21 agraph of this subsection (h), for which within either the current or pre-
22 ceding calendar year services in employment are or were performed with
23 respect to which such employing unit is liable for any federal tax against
24 which credit may be taken for contributions required to be paid into a
25 state unemployment compensation fund; or which, as a condition for ap-
26 proval of this act for full tax credit against the tax imposed by the federal
27 unemployment tax act, is required, pursuant to such act, to be an "em-
28 ployer" under this act.

29 (9) Any employing unit described in section 501(c)(3) of the federal
30 internal revenue code of 1986 which is exempt from income tax under
31 section 501(a) of the code that had four or more individuals in employ-
32 ment for some portion of a day in each of 20 different weeks, whether or
33 not such weeks were consecutive, within either the current or preceding
34 calendar year, regardless of whether they were employed at the same
35 moment of time.

36 (i) "Employment" means:

37 (1) Subject to the other provisions of this subsection, service, includ-
38 ing service in interstate commerce, performed by

39 (A) Any active officer of a corporation; or

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

43 (C) any individual other than an individual who is an employee under

4-6

1 subsection (i)(1)(A) or subsection (i)(1)(B) above who performs services
2 for remuneration for any person:

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

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

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

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

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

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

24 (2) The term "employment" shall include an individual's entire serv-
25 ice within the United States, even though performed entirely outside this
26 state if,

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

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

30 (C) the individual's base of operations is in this state, or if there is no
31 base of operations, then the place from which service is directed or con-
32 trolled is in this state.

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

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

39 (B) Services performed entirely without this state, with respect to no
40 part of which contributions are required and paid under an unemploy-
41 ment compensation law of any other state or of the federal government,
42 shall be deemed to be employment subject to this act only if the individual
43 performing such services is a resident of this state and the secretary ap-

6-7

1 proved the election of the employing unit for whom such services are
2 performed that the entire service of such individual shall be deemed to
3 be employment subject to this act.

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

13 (D) Services performed by an individual for wages or under any con-
14 tract of hire shall be deemed to be employment subject to this act unless
15 and until it is shown to the satisfaction of the secretary that: (i) Such
16 individual has been and will continue to be free from control or direction
17 over the performance of such services, both under the individual's con-
18 tract of hire and in fact; and (ii) such service is either outside the usual
19 course of the business for which such service is performed or that such
20 service is performed outside of all the places of business of the enterprise
21 for which such service is performed.

22 (E) Service performed by an individual in the employ of this state or
23 any instrumentality thereof, any political subdivision of this state or any
24 instrumentality thereof, or in the employ of an Indian tribe, as defined
25 pursuant to section 3306(u) of the federal unemployment tax act, any
26 instrumentality of more than one of the foregoing or any instrumentality
27 which is jointly owned by this state or a political subdivision thereof or
28 Indian tribes and one or more other states or political subdivisions of this
29 or other states, provided that such service is excluded from "employment"
30 as defined in the federal unemployment tax act by reason of section
31 3306(c)(7) of that act and is not excluded from "employment" under
32 subsection (i)(4)(A) of this section. For purposes of this section, the ex-
33 clusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also
34 be applicable to services performed in the employ of an Indian tribe.

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

40 (G) The term "employment" shall include the service of an individual
41 who is a citizen of the United States, performed outside the United States
42 except in Canada, in the employ of an American employer (other than
43 service which is deemed "employment" under the provisions of subsec-

4-8

1 tion (i)(2) or subsection (i)(3) or the parallel provisions of another state's
2 law), if:

3 (i) The employer's principal place of business in the United States is
4 located in this state; or

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

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

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

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

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

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

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

20 (ii) a partnership if $\frac{2}{3}$ or more of the partners are residents of the
21 United States; or

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

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

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

31 (J) Notwithstanding any other provisions of this subsection (i), service
32 with respect to which a tax is required to be paid under any federal law
33 imposing a tax against which credit may be taken for contributions re-
34 quired to be paid into a state unemployment compensation fund or which
35 as a condition for full tax credit against the tax imposed by the federal
36 unemployment tax act is required to be covered under this act.

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

42 (4) The term "employment" shall not include: (A) Service performed
43 in the employ of an employer specified in subsection (h)(3) of this section

6-9
H-

- 1 if such service is performed by an individual in the exercise of duties:
- 2 (i) As an elected official;
- 3 (ii) as a member of a legislative body, or a member of the judiciary,
- 4 of a state, political subdivision or of an Indian tribe;
- 5 (iii) as a member of the state national guard or air national guard;
- 6 (iv) as an employee serving on a temporary basis in case of fire, storm,
- 7 snow, earthquake, flood or similar emergency;
- 8 (v) in a position which, under or pursuant to the laws of this state or
- 9 tribal law, is designated as a major nontenured policymaking or advisory
- 10 position or as a policymaking or advisory position the performance of the
- 11 duties of which ordinarily does not require more than eight hours per
- 12 week;
- 13 (B) service with respect to which unemployment compensation is
- 14 payable under an unemployment compensation system established by an
- 15 act of congress;
- 16 (C) service performed by an individual in the employ of such indi-
- 17 vidual's son, daughter or spouse, and service performed by a child under
- 18 the age of 21 years in the employ of such individual's father or mother;
- 19 (D) service performed in the employ of the United States govern-
- 20 ment or an instrumentality of the United States exempt under the con-
- 21 stitution of the United States from the contributions imposed by this act,
- 22 except that to the extent that the congress of the United States shall
- 23 permit states to require any instrumentality of the United States to make
- 24 payments into an unemployment fund under a state unemployment com-
- 25 pensation law, all of the provisions of this act shall be applicable to such
- 26 instrumentalities, and to services performed for such instrumentalities, in
- 27 the same manner, to the same extent and on the same terms as to all
- 28 other employers, employing units, individuals and services. If this state
- 29 shall not be certified for any year by the federal security agency under
- 30 section 3304(c) of the federal internal revenue code of 1986, the payments
- 31 required of such instrumentalities with respect to such year shall be re-
- 32 funded by the secretary from the fund in the same manner and within
- 33 the same period as is provided in subsection (f) of K.S.A. 44-717, and
- 34 amendments thereto, with respect to contributions erroneously collected;
- 35 (E) service covered by an arrangement between the secretary and
- 36 the agency charged with the administration of any other state or federal
- 37 unemployment compensation law pursuant to which all services per-
- 38 formed by an individual for an employing unit during the period covered
- 39 by such employing unit's duly approved election, are deemed to be per-
- 40 formed entirely within the jurisdiction of such other state or federal
- 41 agency;
- 42 (F) service performed by an individual under the age of 18 in the
- 43 delivery or distribution of newspapers or shopping news, not including

H-10

1 delivery or distribution to any point for subsequent delivery or
2 distribution;

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

7 (H) service performed in any calendar quarter in the employ of any
8 organization exempt from income tax under section 501(a) of the federal
9 internal revenue code of 1986 (other than an organization described in
10 section 401(a) or under section 521 of such code) if the remuneration for
11 such service is less than \$50. In construing the application of the term
12 "employment," if services performed during $\frac{1}{2}$ or more of any pay period
13 by an individual for the person employing such individual constitute em-
14 ployment, all the services of such individual for such period shall be
15 deemed to be employment; but if the services performed during more
16 than $\frac{1}{2}$ of any such pay period by an individual for the person employing
17 such individual do not constitute employment, then none of the services
18 of such individual for such period shall be deemed to be employment. As
19 used in this subsection (i)(4)(H) the term "pay period" means a period
20 (of not more than 31 consecutive days) for which a payment of remuneration
21 is ordinarily made to the individual by the person employing such
22 individual. This subsection (i)(4)(H) shall not be applicable with respect
23 to services with respect to which unemployment compensation is payable
24 under an unemployment compensation system established by an act of
25 congress;

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

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

35 (K) service performed in a facility conducted for the purpose of car-
36 rying out a program of:

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

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

43 (L) service performed as part of an employment work-relief or work-

H-1

4-11

1 training program assisted or financed in whole or in part by any federal
2 agency or an agency of a state or political subdivision thereof or of an
3 Indian tribe, by an individual receiving such work relief or work training;

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

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

9 (O) service performed by an individual who is enrolled at a nonprofit
10 or public educational institution which normally maintains a regular fac-
11 ulty and curriculum and normally has a regularly organized body of stu-
12 dents in attendance at the place where its educational activities are carried
13 on as a student in a full-time program, taken for credit at such institution,
14 which combines academic instruction with work experience, if such serv-
15 ice is an integral part of such program, and such institution has so certified
16 to the employer, except that this subsection (i)(4)(O) shall not apply to
17 service performed in a program established for or on behalf of an em-
18 ployer or group of employers;

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

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

27 (i) Substantially all of the remuneration, whether or not paid in cash,
28 for the services performed by such individual as a real estate salesperson
29 is directly related to sales or other output, including the performance of
30 services, rather than to the number of hours worked; and

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

36 (R) services performed for an employer by an extra in connection
37 with any phase of motion picture or television production or television
38 commercials for less than 14 days during any calendar year. As used in
39 this subsection, the term "extra" means an individual who pantomimes in
40 the background, adds atmosphere to the set and performs such actions
41 without speaking and "employer" shall not include any employer which
42 is a governmental entity or any employer described in section 501(c)(3)
43 of the federal internal revenue code of 1986 which is exempt from income

4-12

1 taxation under section 501(a) of the code;

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

11 (T) service not in the course of the employer's trade or business per-
12 formed in any calendar quarter by an employee, unless the cash remu-
13 neration paid for such service is \$200 or more and such service is per-
14 formed by an individual who is regularly employed by such employer to
15 perform such service. For purposes of this paragraph, an individual shall
16 be deemed to be regularly employed by an employer during a calendar
17 quarter only if:

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

21 (ii) such individual was regularly employed, as determined under sub-
22 paragraph (i), by such employer in the performance of such service during
23 the preceding calendar quarter.

24 Such excluded service shall not include any services performed for an
25 employer which is a governmental entity or any employer described in
26 section 501(c)(3) of the federal internal revenue code of 1986 which is
27 exempt from income taxation under section 501(a) of the code;

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

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

33 (i) Such person:

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

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

41 (ii) substantially all the remuneration whether or not paid in cash for
42 the performance of the services described in subparagraph (i) is directly
43 related to sales or other output including the performance of services

4-13

- 1 rather than to the number of hours worked;
- 2 (iii) the services performed by the person are performed pursuant to
- 3 a written contract between such person and the person for whom the
- 4 services are performed and such contract provides that the person will
- 5 not be treated as an employee for federal and state tax purposes;
- 6 (iv) for purposes of this act, a sale or a sale resulting exclusively from
- 7 a solicitation made by telephone, mail, or other telecommunications
- 8 method, or other nonpersonal method does not satisfy the requirements
- 9 of this subsection;
- 10 (W) service performed as an election official or election worker, if
- 11 the amount of remuneration received by the individual during the cal-
- 12 endar year for services as an election official or election worker is less
- 13 than \$1,000;
- 14 (X) service performed by agricultural workers who are aliens admit-
- 15 ted to the United States to perform labor pursuant to section 1101
- 16 (a)(15)(H)(ii)(a) of the immigration and nationality act; and
- 17 (Y) service performed by an owner-operator of a motor vehicle that
- 18 is leased or contracted to a licensed motor carrier with the services of a
- 19 driver and is not treated under the terms of the lease agreement or con-
- 20 tract with the licensed motor carrier as an employee for purposes of the
- 21 federal insurance contribution act, 26 U.S.C. § 3101 et seq., the federal
- 22 social security act, 42 U.S.C. § 301 et seq., the federal unemployment tax
- 23 act, 26 U.S.C. § 3301 et seq., and the federal statutes prescribing income
- 24 tax withholding at the source, 26 U.S.C. § 3401 et seq. Employees or
- 25 agents of the owner-operator shall not be considered employees of the
- 26 licensed motor carrier for purposes of employment security taxation or
- 27 compensation. As used in this subsection (Y), the following definitions
- 28 apply: (i) "Motor vehicle" means any automobile, truck-trailer, semi-
- 29 trailer, tractor, motor bus or any other self-propelled or motor-driven
- 30 vehicle used upon any of the public highways of Kansas for the purpose
- 31 of transporting persons or property; (ii) "licensed motor carrier" means
- 32 any person, firm, corporation or other business entity that holds a certif-
- 33 icate of convenience and necessity or a certificate of public service from
- 34 the state corporation commission or is required to register motor carrier
- 35 equipment pursuant to 49 U.S.C. § 14504; and (iii) "owner-operator"
- 36 means a person, firm, corporation or other business entity that is the
- 37 owner of a single motor vehicle that is driven exclusively by the owner
- 38 under a lease agreement or contract with a licensed motor carrier.
- 39 (j) "Employment office" means any office operated by this state and
- 40 maintained by the secretary of labor for the purpose of assisting persons
- 41 to become employed.
- 42 (k) "Fund" means the employment security fund established by this
- 43 act, to which all contributions and reimbursement payments required and

H-1-H

1 from which all benefits provided under this act shall be paid and including
2 all money received from the federal government as reimbursements pur-
3 suant to section 204 of the federal-state extended compensation act of
4 1970, and amendments thereto.

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

8 (m) "Unemployment." An individual shall be deemed "unemployed"
9 with respect to any week during which such individual performs no serv-
10 ices and with respect to which no wages are payable to such individual,
11 or with respect to any week of less than full-time work if the wages payable
12 to such individual with respect to such week are less than such individual's
13 weekly benefit amount.

14 (n) "Employment security administration fund" means the fund es-
15 tablished by this act, from which administrative expenses under this act
16 shall be paid.

17 (o) "Wages" means all compensation for services, including commis-
18 sions, bonuses, back pay and the cash value of all remuneration, including
19 benefits, paid in any medium other than cash. The reasonable cash value
20 of remuneration in any medium other than cash, shall be estimated and
21 determined in accordance with rules and regulations prescribed by the
22 secretary. Compensation payable to an individual which has not been
23 actually received by that individual within 21 days after the end of the
24 pay period in which the compensation was earned shall be considered to
25 have been paid on the 21st day after the end of that pay period. Effective
26 January 1, 1986, gratuities, including tips received from persons other
27 than the employing unit, shall be considered wages when reported in
28 writing to the employer by the employee. Employees must furnish a writ-
29 ten statement to the employer, reporting all tips received if they total \$20
30 or more for a calendar month whether the tips are received directly from
31 a person other than the employer or are paid over to the employee by
32 the employer. This includes amounts designated as tips by a customer
33 who uses a credit card to pay the bill. Notwithstanding the other provi-
34 sions of this subsection (o), wages paid in back pay awards or settlements
35 shall be allocated to the week or weeks and reported in the manner as
36 specified in the award or agreement, or, in the absence of such specificity
37 in the award or agreement, such wages shall be allocated to the week or
38 weeks in which such wages, in the judgment of the secretary, would have
39 been paid. The term "wages" shall not include:

40 (1) That part of the remuneration which has been paid in a calendar
41 year to an individual by an employer or such employer's predecessor in
42 excess of \$3,000 for all calendar years prior to 1972, \$4,200 for the cal-
43 endar years 1972 to 1977, inclusive, \$6,000 for calendar years 1978 to

H-1-H

4-15

1 1982, inclusive, \$7,000 for the calendar year 1983, and \$8,000 with re-
2 spect to employment during any calendar year following 1983, except that
3 if the definition of the term "wages" as contained in the federal unem-
4 ployment tax act is amended to include remuneration in excess of \$8,000
5 paid to an individual by an employer under the federal act during any
6 calendar year, wages shall include remuneration paid in a calendar year
7 to an individual by an employer subject to this act or such employer's
8 predecessor with respect to employment during any calendar year up to
9 an amount equal to the dollar limitation specified in the federal unem-
10 ployment tax act. For the purposes of this subsection (o)(1), the term
11 "employment" shall include service constituting employment under any
12 employment security law of another state or of the federal government;

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

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

32 (4) any payment made to, or on behalf of, an employee or such em-
33 ployee's beneficiary:

34 (A) From or to a trust described in section 401(a) of the federal in-
35 ternal revenue code of 1986 which is exempt from tax under section
36 501(a) of the federal internal revenue code of 1986 at the time of such
37 payment unless such payment is made to an employee of the trust as
38 remuneration for services rendered as such employee and not as a ben-
39 efiticiary of the trust;

40 (B) under or to an annuity plan which, at the time of such payment,
41 is a plan described in section 403(a) of the federal internal revenue code
42 of 1986;

43 (C) under a simplified employee pension as defined in section

4-16

1 408(k)(1) of the federal internal revenue code of 1986, other than any
2 contribution described in section 408(k)(6) of the federal internal revenue
3 code of 1986;

4 (D) under or to an annuity contract described in section 403(b) of
5 the federal internal revenue code of 1986, other than a payment for the
6 purchase of such contract which was made by reason of a salary reduction
7 agreement whether evidenced by a written instrument or otherwise;

8 (E) under or to an exempt governmental deferred compensation plan
9 as defined in section 3121(v)(3) of the federal internal revenue code of
10 1986;

11 (F) to supplement pension benefits under a plan or trust described
12 in any of the foregoing provisions of this subparagraph to take into ac-
13 count some portion or all of the increase in the cost of living, as deter-
14 mined by the secretary of labor, since retirement but only if such sup-
15 plemental payments are under a plan which is treated as a welfare plan
16 under section 3(2)(B)(ii) of the federal employee retirement income se-
17 curity act of 1974; or

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

20 (5) the payment by an employing unit (without deduction from the
21 remuneration of the employee) of the tax imposed upon an employee
22 under section 3101 of the federal internal revenue code of 1986 with
23 respect to remuneration paid to an employee for domestic service in a
24 private home of the employer or for agricultural labor;

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

27 (7) remuneration paid to or on behalf of an employee if and to the
28 extent that at the time of the payment of such remuneration it is reason-
29 able to believe that a corresponding deduction is allowable under section
30 217 of the federal internal revenue code of 1986 relating to moving
31 expenses;

32 (8) any payment or series of payments by an employer to an employee
33 or any of such employee's dependents which is paid:

34 (A) Upon or after the termination of an employee's employment re-
35 lationship because of (i) death or (ii) retirement for disability; and

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

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

43 (10) any payment made, or benefit furnished, to or for the benefit of

H-17

1 an employee if at the time of such payment or such furnishing it is rea-
2 sonable to believe that the employee will be able to exclude such payment
3 or benefit from income under section 129 of the federal internal revenue
4 code of 1986 which relates to dependent care assistance programs;

5 (11) the value of any meals or lodging furnished by or on behalf of
6 the employer if at the time of such furnishing it is reasonable to believe
7 that the employee will be able to exclude such items from income under
8 section 119 of the federal internal revenue code of 1986;

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

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

15 (14) any payment made, or benefit furnished, to or for the benefit of
16 an employee, if at the time of such payment or such furnishing it is rea-
17 sonable to believe that the employee will be able to exclude such payment
18 or benefit from income under section 127 of the federal internal revenue
19 code of 1986 relating to educational assistance to the employee; or

20 (15) any payment made to or for the benefit of an employee if at the
21 time of such payment it is reasonable to believe that the employee will
22 be able to exclude such payment from income under section 106(d) of
23 the federal internal revenue code of 1986 relating to health savings
24 accounts.

25 Nothing in any paragraph of subsection (o), other than paragraph (1),
26 shall exclude from the term "wages": (1) Any employer contribution un-
27 der a qualified cash or deferred arrangement, as defined in section 401(k)
28 of the federal internal revenue code of 1986, to the extent that such
29 contribution is not included in gross income by reason of section 402(a)(8)
30 of the federal internal revenue code of 1986; or (2) any amount treated
31 as an employer contribution under section 414(h)(2) of the federal inter-
32 nal revenue code of 1986.

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

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

81-4

1 (q) "Calendar quarter" means the period of three consecutive cal-
2 endar months ending March 31, June 30, September 30 or December
3 31, or the equivalent thereof as the secretary may by rules and regulations
4 prescribe.

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

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

, including a job training program authorized under
the federal workforce investment act of 1998,

9 (t) "American vessel" or "American aircraft" means any vessel or air-
10 craft documented or numbered or otherwise registered under the laws
11 of the United States; and any vessel or aircraft which is neither docu-
12 mented or numbered or otherwise registered under the laws of the
13 United States nor documented under the laws of any foreign country, if
14 its crew performs service solely for one or more citizens or residents of
15 the United States or corporations organized under the laws of the United
16 States or of any state.

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

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

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

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

29 (4) is a public or other nonprofit institution.

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

36 (v) "Educational institution" means any institution of higher educa-
37 tion, as defined in subsection (u) of this section, or any institution, except
38 private for profit institutions, in which participants, trainees or students
39 are offered an organized course of study or training designed to transfer
40 to them knowledge, skills, information, doctrines, attitudes or abilities
41 from, by or under the guidance of an instructor or teacher and which is
42 approved, licensed or issued a permit to operate as a school by the state
43 department of education or other government agency that is authorized

81-4

4-19

1 within the state to approve, license or issue a permit for the operation of
2 a school or to an Indian tribe in the operation of an educational institution.
3 The courses of study or training which an educational institution offers
4 may be academic, technical, trade or preparation for gainful employment
5 in a recognized occupation.

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

7 (A) On a farm, in the employ of any person, in connection with cul-
8 tivating the soil, or in connection with raising or harvesting any agricul-
9 tural or horticultural commodity, including the raising, shearing, feeding,
10 caring for, training, and management of livestock, bees, poultry, and fur-
11 bearing animals and wildlife.

12 (B) In the employ of the owner or tenant or other operator of a farm,
13 in connection with the operating, management, conservation, improve-
14 ment, or maintenance of such farm and its tools and equipment, or in
15 salvaging timber or clearing land of brush and other debris left by a hur-
16 ricane, if the major part of such service is performed on a farm.

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

24 (D) (i) In the employ of the operator of a farm in handling, planting,
25 drying, packing, packaging, processing, freezing, grading, storing, or de-
26 livering to storage or to market or to a carrier for transportation to market,
27 in its unmanufactured state, any agricultural or horticultural commodity;
28 but only if such operator produced more than ½ of the commodity with
29 respect to which such service is performed;

30 (ii) in the employ of a group of operators of farms (or a cooperative
31 organization of which such operators are members) in the performance
32 of service described in paragraph (i) above of this subsection (w)(1)(D),
33 but only if such operators produced more than ½ of the commodity with
34 respect to which such service is performed;

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

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

42 (2) "Agricultural labor" does not include service performed prior to
43 January 1, 1980, by an individual who is an alien admitted to the United

H-20

1 States to perform service in agricultural labor pursuant to sections 214(c)
2 and 101(a)(15)(H) of the federal immigration and nationality act.

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

8 (4) For the purpose of this section, if an employing unit does not
9 maintain sufficient records to separate agricultural labor from other em-
10 ployment, all services performed during any pay period by an individual
11 for the person employing such individual shall be deemed to be agricul-
12 tural labor if services performed during $\frac{1}{2}$ or more of such pay period
13 constitute agricultural labor; but if the services performed during more
14 than $\frac{1}{2}$ of any such pay period by an individual for the person employing
15 such individual do not constitute agricultural labor, then none of the serv-
16 ices of such individual for such period shall be deemed to be agricultural
17 labor. As used in this subsection (w), the term “pay period” means a
18 period of not more than 31 consecutive days for which a payment of
19 remuneration is ordinarily made to the individual by the person employ-
20 ing such individual.

21 (x) “Reimbursing employer” means any employer who makes pay-
22 ments in lieu of contributions to the employment security fund as pro-
23 vided in subsection (e) of K.S.A. 44-710 and amendments thereto.

24 (y) “Contributing employer” means any employer other than a re-
25 imbursing employer or rated governmental employer.

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

34 (aa) “Domestic service” means any service for a person in the oper-
35 ation and maintenance of a private household, local college club or local
36 chapter of a college fraternity or sorority, as distinguished from service
37 as an employee in the pursuit of an employer’s trade, occupation, pro-
38 fession, enterprise or vocation.

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

42 (cc) “Benefit cost payments” means payments made to the employ-
43 ment security fund by a governmental entity electing to become a rated

H-21

1 governmental employer.

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

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

11 (ff) "Lessor employing unit" means any independently established
12 business entity which engages in the business of providing leased em-
13 ployees to a client lessee.

14 (gg) "Client lessee" means any individual, organization, partnership,
15 corporation or other legal entity leasing employees from a lessor employ-
16 ing unit.

17 (hh) "Qualifying injury" means a personal injury by accident arising
18 out of and in the course of employment within the coverage of the Kansas
19 workers compensation act, K.S.A. 44-501 et seq., and amendments
20 thereto.

Sec. 2. and Sec. 3. See Insert Attached

21 ~~Sec. 2.—K.S.A. 2008 Supp. 44-706 is hereby amended to read as fol-~~
22 ~~lows: 44-706. An individual shall be disqualified for benefits:~~

23 ~~—(a) If the individual left work voluntarily without good cause attrib-~~
24 ~~utable to the work or the employer, subject to the other provisions of this~~
25 ~~subsection (a). Failure to return to work after expiration of approved~~
26 ~~personal or medical leave, or both, shall be considered a voluntary res-~~
27 ~~ignation. After a temporary job assignment, failure of an individual to~~
28 ~~affirmatively request an additional assignment on the next succeeding~~
29 ~~workday, if required by the employment agreement, after completion of~~
30 ~~a given work assignment, shall constitute leaving work voluntarily. The~~
31 ~~disqualification shall begin the day following the separation and shall con-~~
32 ~~tinue until after the individual has become reemployed and has had earn-~~
33 ~~ings from insured work of at least three times the individual's weekly~~
34 ~~benefit amount. An individual shall not be disqualified under this sub-~~
35 ~~section (a) if:~~

36 ~~—(1) The individual was forced to leave work because of illness or injury~~
37 ~~upon the advice of a licensed and practicing health care provider and,~~
38 ~~upon learning of the necessity for absence, immediately notified the em-~~
39 ~~ployer thereof, or the employer consented to the absence, and after re-~~
40 ~~covery from the illness or injury, when recovery was certified by a prac-~~
41 ~~ticing health care provider, the individual returned to the employer and~~
42 ~~offered to perform services and the individual's regular work or compa-~~
43 ~~rable and suitable work was not available, as used in this paragraph (1)~~

H-22

1 “health care provider” means any person licensed by the proper licensing
2 authority of any state to engage in the practice of medicine and surgery;
3 osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;
4 ~~(2) the individual left temporary work to return to the regular~~
5 ~~employer;~~
6 ~~(3) the individual left work to enlist in the armed forces of the United~~
7 ~~States, but was rejected or delayed from entry;~~
8 ~~(4) the individual left work because of the voluntary or involuntary~~
9 ~~transfer of the individual’s spouse from one job to another job, which is~~
10 ~~for the same employer or for a different employer, at a geographic loca-~~
11 ~~tion which makes it unreasonable for the individual to continue work at~~
12 ~~the individual’s job;~~
13 ~~(5) the individual left work because of hazardous working conditions;~~
14 ~~in determining whether or not working conditions are hazardous for an~~
15 ~~individual, the degree of risk involved to the individual’s health, safety~~
16 ~~and morals, the individual’s physical fitness and prior training and the~~
17 ~~working conditions of workers engaged in the same or similar work for~~
18 ~~the same and other employers in the locality shall be considered; as used~~
19 ~~in this paragraph (5), “hazardous working conditions” means working con-~~
20 ~~ditions that could result in a danger to the physical or mental well-being~~
21 ~~of the individual; each determination as to whether hazardous working~~
22 ~~conditions exist shall include, but shall not be limited to, a consideration~~
23 ~~of (A) the safety measures used or the lack thereof, and (B) the condition~~
24 ~~of equipment or lack of proper equipment; no work shall be considered~~
25 ~~hazardous if the working conditions surrounding the individual’s work are~~
26 ~~the same or substantially the same as the working conditions generally~~
27 ~~prevailing among individuals performing the same or similar work for~~
28 ~~other employers engaged in the same or similar type of activity;~~
29 ~~(6) the individual left work to enter training approved under section~~
30 ~~236(a)(1) of the federal trade act of 1974, provided the work left is not~~
31 ~~of a substantially equal or higher skill level than the individual’s past~~
32 ~~adversely affected employment (as defined for purposes of the federal~~
33 ~~trade act of 1974), and wages for such work are not less than 80% of the~~
34 ~~individual’s average weekly wage as determined for the purposes of the~~
35 ~~federal trade act of 1974;~~
36 ~~(7) the individual left work because of unwelcome harassment of the~~
37 ~~individual by the employer or another employee of which the employing~~
38 ~~unit had knowledge;~~
39 ~~(8) the individual left work to accept better work; each determination~~
40 ~~as to whether or not the work accepted is better work shall include, but~~
41 ~~shall not be limited to, consideration of (A) the rate of pay, the hours of~~
42 ~~work and the probable permanency of the work left as compared to the~~
43 ~~work accepted; (B) the cost to the individual of getting to the work left~~

4-23

1 in comparison to the cost of getting to the work accepted, and (C) the
2 distance from the individual's place of residence to the work accepted in
3 comparison to the distance from the individual's residence to the work
4 left;

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

9 —(10)—the individual left work because of a violation of the work agree-
10 ment by the employing unit and, before the individual left, the individual
11 had exhausted all remedies provided in such agreement for the settlement
12 of disputes before terminating;

13 —(11)—after making reasonable efforts to preserve the work, the indi-
14 vidual left work due to a personal emergency of such nature and com-
15 pelling urgency that it would be contrary to good conscience to impose a
16 disqualification; or

17 —(12) (A) the individual left work due to circumstances resulting from
18 domestic violence, including:

19 —(i) The individual's reasonable fear of future domestic violence at or
20 en route to or from the individual's place of employment; or

21 —(ii) the individual's need to relocate to another geographic area in
22 order to avoid future domestic violence; or

23 —(iii) the individual's need to address the physical, psychological and
24 legal impacts of domestic violence; or

25 —(iv) the individual's need to leave employment as a condition of re-
26 ceiving services or shelter from an agency which provides support services
27 or shelter to victims of domestic violence; or

28 —(v) the individual's reasonable belief that termination of employment
29 is necessary to avoid other situations which may cause domestic violence
30 and to provide for the future safety of the individual or the individual's
31 family;

32 —(B) An individual may prove the existence of domestic violence by
33 providing one of the following:

34 —(i) A restraining order or other documentation of equitable relief by
35 a court of competent jurisdiction; or

36 —(ii) a police record documenting the abuse; or

37 —(iii) documentation that the abuser has been convicted of one or more
38 of the offenses enumerated in articles 34 and 35 of chapter 21 of the
39 Kansas Statutes Annotated, and amendments thereto, where the victim
40 was a family or household member; or

41 —(iv) medical documentation of the abuse; or

42 —(v) a statement provided by a counselor, social worker, health care
43 provider, clergy, shelter worker, legal advocate, domestic violence or sex-

H-24

1 ual assault advocate or other professional who has assisted the individual
2 in dealing with the effects of abuse on the individual or the individual's
3 family; or

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

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

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

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

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

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

4-25

tion (b)(2), "required by law" means required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in open meeting by the governing body of any special district or other local governmental entity. Chemical test shall include, but is not limited to, tests of urine, blood or saliva. A positive chemical test shall mean a chemical result showing a concentration at or above the levels listed in K.S.A. 44-501, and amendments thereto, for the drugs or abuse listed therein. A positive breath test shall mean a test result showing an alcohol concentration of .04 or greater. Alcohol concentration means the number of grams of alcohol per 210 liters of breath. An individual's refusal to submit to a chemical test or breath alcohol test shall be conclusive evidence of misconduct if the test meets the standards of the drug free workplace act, 41 U.S.C. 701 et seq., the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, the test was otherwise required by law and the test constituted a required condition of employment for the individual's job, the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment, or there was probable cause to believe that the individual used, possessed or was impaired by alcoholic liquor, a cereal malt beverage or a controlled substance while working. A positive breath alcohol test or a positive chemical test shall be conclusive evidence to prove misconduct if the following conditions are met:

—(A)— Either (i) the test was required by law and was administered pursuant to the drug free workplace act, 41 U.S.C. 701 et seq., (ii) the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment, (iv) the test was required by law and the test constituted a required condition of employment for the individual's job, or (v) there was probable cause to believe that the individual used, had possession of, or was impaired by alcoholic liquor, the cereal malt beverage or the controlled substance while working;

—(B)— the test sample was collected either (i) as prescribed by the drug free workplace act, 41 U.S.C. 701 et seq., (ii) as prescribed by an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, (iii) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a

4-26

1 required condition of employment, (iv) as prescribed by a test which was
2 required by law and which constituted a required condition of employ-
3 ment for the individual's job, or (v) at a time contemporaneous with the
4 events establishing probable cause;

5 —(C)—the collecting and labeling of a chemical test sample was per-
6 formed by a licensed health care professional or any other individual
7 certified pursuant to paragraph (b)(2)(F) or authorized to collect or label
8 test samples by federal or state law, or a federal or state rule or regulation
9 having the force or effect of law, including law enforcement personnel;

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

15 —(E)—the chemical test was confirmed by gas chromatography, gas
16 chromatography-mass spectroscopy or other comparably reliable analyt-
17 ical method, except that no such confirmation is required for a blood
18 alcohol sample or a breath alcohol test;

19 —(F)—the breath alcohol test was administered by an individual trained
20 to perform breath tests, the breath testing instrument used was certified
21 and operated strictly according to description provided by the manufact-
22 urers and the reliability of the instrument performance was assured by
23 testing with alcohol standards; and

24 —(G)—the foundation evidence must establish, beyond a reasonable
25 doubt, that the test results were from the sample taken from the
26 individual.

27 —(3) (A)—For the purposes of this subsection (b), misconduct shall in-
28 clude, but not be limited to repeated absence, including incarceration,
29 resulting in absence from work of three days or longer, excluding Satur-
30 days, Sundays and legal holidays, and lateness, from scheduled work if
31 the facts show:

32 —(i)—The individual was absent without good cause;

33 —(ii)—the absence was in violation of the employer's written absenteeism
34 policy;

35 —(iii)—the employer gave or sent written notice to the individual, at the
36 individual's last known address, that future absence may or will result in
37 discharge; and

38 —(iv)—the employee had knowledge of the employer's written absen-
39 teeism policy.

40 —(B)—For the purposes of this subsection (b), if an employee disputes
41 being absent without good cause, the employee shall present evidence
42 that a majority of the employee's absences were for good cause. If the
43 employee alleges that the employee's repeated absences were the result

4-27

1 of health-related issues, such evidence shall include documentation from
2 a licensed and practicing health care provider as defined in subsection
3 (a)(1):
4 —(4) An individual shall not be disqualified under this subsection if the
5 individual is discharged under the following circumstances:
6 —(A) The employer discharged the individual after learning the indi-
7 vidual was seeking other work or when the individual gave notice of future
8 intent to quit;
9 —(B) the individual was making a good-faith effort to do the assigned
10 work but was discharged due to: (i) inefficiency, (ii) unsatisfactory per-
11 formance due to inability, incapacity or lack of training or experience, (iii)
12 isolated instances of ordinary negligence or inadvertence, (iv) good-faith
13 errors in judgment or discretion, or (v) unsatisfactory work or conduct
14 due to circumstances beyond the individual's control; or
15 —(C) the individual's refusal to perform work in excess of the contract
16 of hire.
17 —(c) If the individual has failed, without good cause, to either apply
18 for suitable work when so directed by the employment office of the sec-
19 retary of labor, or to accept suitable work when offered to the individual
20 by the employment office, the secretary of labor, or an employer, such
21 disqualification shall begin with the week in which such failure occurred
22 and shall continue until the individual becomes reemployed and has had
23 earnings from insured work of at least three times such individual's de-
24 termined weekly benefit amount. In determining whether or not any work
25 is suitable for an individual, the secretary of labor, or a person or persons
26 designated by the secretary, shall consider the degree of risk involved to
27 health, safety and morals, physical fitness and prior training, experience
28 and prior earnings, length of unemployment and prospects for securing
29 local work in the individual's customary occupation or work for which the
30 individual is reasonably fitted by training or experience, and the distance
31 of the available work from the individual's residence. Notwithstanding
32 any other provisions of this act, an otherwise eligible individual shall not
33 be disqualified for refusing an offer of suitable employment, or failing to
34 apply for suitable employment when notified by an employment office,
35 or for leaving the individual's most recent work accepted during approved
36 training, including training approved under section 236(a)(1) of the trade
37 act of 1974, if the acceptance of or applying for suitable employment or
38 continuing such work would require the individual to terminate approved
39 training and no work shall be deemed suitable and benefits shall not be
40 denied under this act to any otherwise eligible individual for refusing to
41 accept new work under any of the following conditions: (1) If the position
42 offered is vacant due directly to a strike, lockout or other labor dispute;
43 (2) if the remuneration, hours or other conditions of the work offered are

H-28

1 substantially less favorable to the individual than those prevailing for sim-
2 ilar work in the locality; (3) if as a condition of being employed, the
3 individual would be required to join or to resign from or refrain from
4 joining any labor organization; (4) if the individual left employment as a
5 result of domestic violence, and the position offered does not reasonably
6 accommodate the individual's physical, psychological, safety, and/or legal
7 needs relating to such domestic violence.

8 —(d) For any week with respect to which the secretary of labor, or a
9 person or persons designated by the secretary, finds that the individual's
10 unemployment is due to a stoppage of work which exists because of a
11 labor dispute or there would have been a work stoppage had normal
12 operations not been maintained with other personnel previously and cur-
13 rently employed by the same employer at the factory, establishment or
14 other premises at which the individual is or was last employed, except
15 that this subsection (d) shall not apply if it is shown to the satisfaction of
16 the secretary of labor, or a person or persons designated by the secretary,
17 that: (1) The individual is not participating in or financing or directly
18 interested in the labor dispute which caused the stoppage of work, and
19 (2) the individual does not belong to a grade or class of workers of which,
20 immediately before the commencement of the stoppage, there were
21 members employed at the premises at which the stoppage occurs any of
22 whom are participating in or financing or directly interested in the dis-
23 pute. If in any case separate branches of work which are commonly con-
24 ducted as separate businesses in separate premises are conducted in sep-
25 arate departments of the same premises, each such department shall, for
26 the purpose of this subsection (d) be deemed to be a separate factory,
27 establishment or other premises. For the purposes of this subsection (d),
28 failure or refusal to cross a picket line or refusal for any reason during
29 the continuance of such labor dispute to accept the individual's available
30 and customary work at the factory, establishment or other premises where
31 the individual is or was last employed shall be considered as participation
32 and interest in the labor dispute.

33 —(e) For any week with respect to which or a part of which the indi-
34 vidual has received or is seeking unemployment benefits under the un-
35 employment compensation law of any other state or of the United States;
36 except that if the appropriate agency of such other state or the United
37 States finally determines that the individual is not entitled to such un-
38 employment benefits, this disqualification shall not apply.

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

H-29

1 —(g)—For the period of one year beginning with the first day following
2 the last week of unemployment for which the individual received benefits,
3 or for one year from the date the act was committed, whichever is the
4 later, if the individual, or another in such individual's behalf with the
5 knowledge of the individual, has knowingly made a false statement or
6 representation, or has knowingly failed to disclose a material fact to obtain
7 or increase benefits under this act or any other unemployment compen-
8 sation law administered by the secretary of labor.

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

13 —(i)—For any week of unemployment on the basis of service in an in-
14 structional, research or principal administrative capacity for an educa-
15 tional institution as defined in subsection (v) of K.S.A. 44-703, and
16 amendments thereto, if such week begins during the period between two
17 successive academic years or terms or, when an agreement provides in-
18 stead for a similar period between two regular but not successive terms
19 during such period or during a period of paid sabbatical leave provided
20 for in the individual's contract, if the individual performs such services in
21 the first of such academic years or terms and there is a contract or a
22 reasonable assurance that such individual will perform services in any
23 such capacity for any educational institution in the second of such aca-
24 demic years or terms.

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

39 —(k)—For any week of unemployment on the basis of service in any
40 capacity for an educational institution as defined in subsection (v) of
41 K.S.A. 44-703, and amendments thereto, if such week begins during an
42 established and customary vacation period or holiday recess, if the indi-
43 vidual performs services in the period immediately before such vacation

4-30

1 period or holiday recess and there is a reasonable assurance that such
2 individual will perform such services in the period immediately following
3 such vacation period or holiday recess.

4 —(l)— For any week of unemployment on the basis of any services, sub-
5 stantially all of which consist of participating in sports or athletic events
6 or training or preparing to so participate, if such week begins during the
7 period between two successive sport seasons or similar period if such
8 individual performed services in the first of such seasons or similar per-
9 iods and there is a reasonable assurance that such individual will perform
10 such services in the later of such seasons or similar periods.

11 —(m)— For any week on the basis of services performed by an alien
12 unless such alien is an individual who was lawfully admitted for perma-
13 nent residence at the time such services were performed, was lawfully
14 present for purposes of performing such services, or was permanently
15 residing in the United States under color of law at the time such services
16 were performed, including an alien who was lawfully present in the
17 United States as a result of the application of the provisions of section
18 212(d)(5) of the federal immigration and nationality act. Any data or in-
19 formation required of individuals applying for benefits to determine
20 whether benefits are not payable to them because of their alien status
21 shall be uniformly required from all applicants for benefits. In the case
22 of an individual whose application for benefits would otherwise be ap-
23 proved, no determination that benefits to such individual are not payable
24 because of such individual's alien status shall be made except upon a
25 preponderance of the evidence.

26 —(n)— For any week in which an individual is receiving a governmental
27 or other pension, retirement or retired pay, annuity or other similar pe-
28 riodic payment under a plan maintained by a base period employer and
29 to which the entire contributions were provided by such employer, except
30 that: (1) If the entire contributions to such plan were provided by the
31 base period employer but such individual's weekly benefit amount ex-
32 ceeds such governmental or other pension, retirement or retired pay,
33 annuity or other similar periodic payment attributable to such week, the
34 weekly benefit amount payable to the individual shall be reduced (but
35 not below zero) by an amount equal to the amount of such pension,
36 retirement or retired pay, annuity or other similar periodic payment
37 which is attributable to such week; or (2) if only a portion of contributions
38 to such plan were provided by the base period employer, the weekly
39 benefit amount payable to such individual for such week shall be reduced
40 (but not below zero) by the prorated weekly amount of the pension, re-
41 tirement or retired pay, annuity or other similar periodic payment after
42 deduction of that portion of the pension, retirement or retired pay, an-
43 nuity or other similar periodic payment that is directly attributable to the

4-31

1 percentage of the contributions made to the plan by such individual; or
2 (3) if the entire contributions to the plan were provided by such individ-
3 ual, or by the individual and an employer (or any person or organization)
4 who is not a base period employer, no reduction in the weekly benefit
5 amount payable to the individual for such week shall be made under this
6 subsection (n), or (4) whatever portion of contributions to such plan were
7 provided by the base period employer, if the services performed for the
8 employer by such individual during the base period, or remuneration
9 received for the services, did not affect the individual's eligibility for, or
10 increased the amount of, such pension, retirement or retired pay, annuity
11 or other similar periodic payment, no reduction in the weekly benefit
12 amount payable to the individual for such week shall be made under this
13 subsection (n). No reduction shall be made for payments made under the
14 social security act or railroad retirement act of 1974.

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

23 —(p) For any week of unemployment on the basis of service as a school
24 bus or other motor vehicle driver employed by a private contractor to
25 transport pupils, students and school personnel to or from school-related
26 functions or activities for an educational institution, as defined in subsec-
27 tion (v) of K.S.A. 44-703, and amendments thereto, if such week begins
28 during the period between two successive academic years or during a
29 similar period between two regular terms, whether or not successive, if
30 the individual has a contract or contracts, or a reasonable assurance
31 thereof, to perform services in any such capacity with a private contractor
32 for any educational institution for both such academic years or both such
33 terms. An individual shall not be disqualified for benefits as provided in
34 this subsection (p) for any week of unemployment on the basis of service
35 as a bus or other motor vehicle driver employed by a private contractor
36 to transport persons to or from nonschool-related functions or activities.

37 —(q) For any week of unemployment on the basis of services per-
38 formed by the individual in any capacity and under any of the circum-
39 stances described in subsection (i), (j), (k) or (o) which are provided to
40 or on behalf of an educational institution, as defined in subsection (v) of
41 K.S.A. 44-703, and amendments thereto, while the individual is in the
42 employ of an employer which is a governmental entity, Indian tribe or
43 any employer described in section 501(c)(3) of the federal internal rev-

H-32

1 emue code of 1986 which is exempt from income under section 501(a) of
2 the code.

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

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

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

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

15 ~~(s) For any week with respect to which an individual is receiving or~~
16 ~~has received remuneration in the form of a back pay award or settlement.~~
17 ~~The remuneration shall be allocated to the week or weeks in the manner~~
18 ~~as specified in the award or agreement, or in the absence of such speci-~~
19 ~~ficity in the award or agreement, such remuneration shall be allocated to~~
20 ~~the week or weeks in which such remuneration, in the judgment of the~~
21 ~~secretary, would have been paid.~~

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

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

32 ~~(t) If the individual has been discharged for failing a preemployment~~
33 ~~drug screen required by the employer and if such discharge occurs not~~
34 ~~later than seven days after the employer is notified of the results of such~~
35 ~~drug screen. The disqualification shall begin the day following the sepa-~~
36 ~~ration and shall continue until after the individual becomes reemployed~~
37 ~~and has had earnings from insured work of at least three times the indi-~~
38 ~~vidual's determined weekly benefit amount.~~

39 ~~(u) If the individual was found not to have a disqualifying adjudication~~
40 ~~or conviction under K.S.A. 39-970, and amendments thereto, or K.S.A.~~
41 ~~65-5117, and amendments thereto, was hired and then was subsequently~~
42 ~~convicted of a disqualifying felony under K.S.A. 39-970, and amendments~~
43 ~~thereto, or K.S.A. 65-5117, and amendments thereto, and discharged pur-~~

4-33

1 suant to K.S.A. 39-970, and amendments thereto, or K.S.A. 65-5117, and
2 amendments thereto. The disqualification shall begin the day following
3 the separation and shall continue until after the individual becomes reem-
4 ployed and has had earnings from insured work of at least three times
5 the individual's determined weekly benefit amount.

4.

6 ~~Sec. 3. 2.~~ K.S.A. 2008 Supp. 44-703 and ~~44-706~~ are ~~is~~ hereby
7 repealed.

, 44-704c and 44-705 are

5.

8 Sec. 4. ~~3.~~ This act shall take effect and be in force from and after
9 January 1, 2010, and its publication in the statute book.

Testimony of Charles E. Krider
Professor
School of Business
University of Kansas

On H.B. 2374

Before The

Senate Ways and Means Committee

April 29, 2009

I am speaking today in support of H.B. 2374. As a member of the Employment Security Advisory Council, I have considered the proposed changes to the State's employment security law and I firmly believe that they should be supported.

One reason for supporting this legislation is that Kansas will become eligible for almost \$69,000,000 in federal funds that would be used for unemployment insurance payments over approximately 15 years. However, that would not be a sufficient reason to support H.B. 2374 if the proposed changes were not good public policy in their own right and in the long term interest of Kansas. My conclusion is that the proposed changes in the Kansas Unemployment Insurance program should be made even if there were no federal incentive to do so.

1. **Alternative Wage Base Period.** Under current law eligibility for UI benefits is determined by looking at the applicant's earnings in the five quarters preceding the application. Only the first four quarters are used in determining eligibility. Consider the following five quarters for a Kansan applying for UI this month:

Q1 2008
Q2 2008
Q3 2008
Q4 2008
Q1 2009

Under current law, only the four quarters from 2008 would be considered in determining eligibility. For UI applicants who do not qualify under that standard H.B. 2374 would provide for an alternative base period that would include the last three quarters in 2008 and the first quarter in 2009.

Senate Ways & Means Cmte

Date 4-29-2009

Attachment 5

There is no reason to ignore an employee's wage record in the Q1 of 2009. An applicant would still be qualified for UI benefits only if his work record in the most recent four quarters showed sufficient earnings. Ignoring the most recent quarter is a practice left over from an earlier time when payroll records were not electronically available to the Department of Labor in a timely manner. Payroll records are now provided electronically and can be used much sooner than is reflected in current state law.

Note that the applicant in our example would become eligible for UI merely by waiting and applying again in the second quarter of 2009. There is no sound public policy reason for requiring an unemployed person to wait for benefits that have in fact been earned. A UI recipient who qualifies under the alternative base period would still receive a maximum of 26 weeks of benefits.

2. **Workers Seeking Part-time Employment.** A condition for receiving UI benefits in Kansas is that recipients continue to actively seek employment. In Kansas, the practice has been to pay UI benefits to employees who have consistently been working part-time and are seeking part-time employment, provided they have sufficient earnings in the base period. The employers of these Kansans have paid into the UI trust fund on their behalf and they should be eligible for benefits when unemployed.

The proposed change is that a claimant shall not be ineligible for benefits

“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.”

This means that applicants who have a history of working part-time and have sufficient earnings to qualify for benefits shall not be denied those benefits because they are seeking a part-time job rather than a full-time job.

The key question is whether this practice of paying benefits to qualified part-time job seekers should continue. I believe that it should. There is no sound reason to require individuals with a record of working part time to suddenly seek full-time employment in order to qualify for UI benefits.

3. **Extend UI Benefits for Workers in Training.** This proposed change would apply only to UI recipients who are in a state certified training program. Kansas already provides 26 weeks of UI to qualified employees who are enrolled in a state certified training program.

The proposed change states:

“A claimant who exhausts regular benefits and who is enrolled in a training program under K.S.A. 44-703(s) and making successful progress in such program shall be eligible for up to 26 weeks of additional benefits.”

Paying extended UI benefits to Kansans in a training program as proposed is good public policy. These types of extended UI are particularly valuable during periods of high unemployment. It is during such periods that we want employees to be in training programs.

One reason for encouraging employees to remain in a training program is that some employees will not be recalled to their previous employment because their job has been permanently eliminated. It is highly desirable for these employees to be retrained for a different position.

I note that employees who qualify for UI under this proposed change would receive UI benefits only until their training program ends. Those in a state-certified training program should not be forced to end their training prematurely.

MEMORANDUM

To: Senator Emler, Chairman, and Members of the Ways and Means Committee
From: Jill Wolters, Senior Assistant Revisor
Date: April 29, 2009
Subject: Senate Bill No. 311, concerning reduction and allotment procedures; economic impact statements and fiscal note updates for legislation

Senate Bill No. 311 would require the Kansas Legislative Research Department (KLRD) to prepare an economic impact statement and fiscal note updates for legislation and other matters before the legislature upon the request of certain legislative leaders (see page 1, lines 19 through 40). The economic impact statement shall include:

- (1) A brief description of the bill or other matter;
- (2) whether the bill or other matter is mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program and whether the bill or other matter meets or exceeds the requirements of applicable federal law;
- (3) a description of the cost estimate of the bill or other matter, the persons and the state agencies that will bear the costs; and
- (4) economic analyses of the effects of the bill or other matter under consideration on significant economic indicators, which may include, but which are not limited to, projected growth or decline in the number and kinds of jobs, general economic growth and inflation factors in the short-term and long-term, in conjunction with the characteristics of current economic factors that are significant in the Kansas economy, and the impact of selected economic indicators that are specified in the request.

The director shall exercise informed, independent professional judgment and shall have the assistance of state agencies, as determined appropriate, to prepare economic impact statements. If, after careful investigation and analysis, it is determined that a reliable monetary cost estimate is not possible, the statement shall set forth the reasons why no monetary cost estimate can be prepared.

The bill would further make amendments to the statutes currently in effect on allotments and reductions.

Currently, K.S.A. 75-3722 provides that whenever for any fiscal year it appears that the resources of the general fund or any special revenue fund are likely to be insufficient to cover the appropriations made against such general fund or special revenue fund, the secretary of administration, on the advice of the director of the budget, shall inaugurate the allotment system so as to assure that expenditures for any particular fiscal year will not exceed the available resources of the general fund or any special revenue fund for that fiscal year. The allotment system does not apply to the legislative or judicial branch. Allotments of the state general fund or special revenue funds, may be unequal or the same percentage of allotment. This occurs by action of the Governor. K.S.A. 75-6704 provides that if the state general fund unencumbered ending balance is less than \$100,000,000, the director of the budget certifies this finding, and the Governor, subject to state finance council approval, issues an ERO reducing each appropriation (excluding debt service and employers contributions under KPERS) and demand transfer (excluding school district capital improvement) by the same percentage amount.

Under the bill, special revenue funds remain as in current law, they may be subject to

Senate Ways & Means Cmte

Date 4-29-2009

Attachment 6

allotment in an unequal or the same percentage. The bill amends the procedure for reductions for appropriations and demand transfers from the state general fund. If the state general fund unencumbered ending balance is less than the amount equal to 3.5% or less of the total amount authorized to be expended or transferred by demand transfer from the state general fund, the director of the budget certifies this finding, and the Governor, subject to state finance council approval, may issue an ERO reducing each appropriation (excluding debt service and employers contributions under KPERS) and demand transfer (excluding school district capital improvement) and the ERO shall specify a specific percentage reduction for each item of appropriation or demand transfer from the state general fund, as determined by the governor, which is not required to be the same percentage reduction for all such items of appropriation or demand transfers. For fiscal year 2010, and each fiscal year thereafter, the reductions concerning the state general fund allows action by the Governor and state finance council when the amount of the unencumbered ending balance in the state general fund for the fiscal year is determined to be insufficient to cover the remaining amount authorized to be expended or transferred by demand transfer from the state general fund in such fiscal year. The ERO is required to impose the same percentage reduction on each item of appropriation or demand transfer from the state general fund.

Corrected Version
Testimony in Support of SB311
Sen. Jeff Colyer
Overland Park, Kansas
April 29th, 2009

It is an honor and a privilege to visit with you, Chairman Emler and the members of the Ways and Means Committee regarding a bill that would bring stronger fiscal management of the Kansas Budget. Last year legislative leaders agreed we need to get better economic and budget information into the legislative process. This reflects the discussion of many members of the Senate. Most importantly it begins to bring additional management tools necessary to a complex budget of more than \$12 billion.

It has become obvious to many chairmen and legislators that we have four issues that need to be addressed:

- 1) We can not reliably update fiscal notes once legislation is significantly changed from the original;
- 2) When legislators are in the revisors office writing legislation they have very limited fiscal information until once the bill is in committee;
- 3) We do not have an impartial mechanism to analyze the economic impact of major bills; and
- 4) Our ending balances law has not been updated in decades and as configured force draconian cuts across the board rather than a flexible way to deal with required allotments.

Without these vital tools and information, we do not have the complete management tools necessary to run a modern \$13 billion budget. We have an excellent professional research staff who if strengthened would improve our management of the taxpayers dollars. We put in excellent efforts to understand the impact of our laws, but everyday we have seen an instance where information has been inadequate.

We must act this year or else we will continue to have inadequate information and we may see a budget crisis in that may trigger many unpleasant consequences. With the rapid changes in our economic picture,

Senate Ways & Means Cmte

Date 4-29-2009

Attachment 7

under current law we do not have the flexibility necessary to deal with our current crisis.

SB311 does four things:

- 1) Instructs Legislative Research to provide a reliable economic impact statement on major bills
- 2) Instructs Legislative Research to work with the Division of the Budget to update fiscal notes when appropriate on major bills
- 3) Updates the \$100million ending balances requirement (which used to be equal to 5%) to 3.5%.
- 4) If cuts are required by law, then the Governor with the approval of the State Finance Council may order flexible reductions rather than across the board cuts.

Thank you.

Federal Role in K-12 Education Expanding

Kansas Association of School Boards

April 29, 2009

The federal government has helped Kansas school districts avoid deeper budget cuts in the current state budget crisis, but that help is coming with new reporting requirements and a call for tougher standards and higher student achievement.

The new administration of Barack Obama is calling for improved education performance to help the United States compete in the global economy. School boards will have to make some difficult choices about how to use additional federal funding that is likely to expire in two years, particularly if state funding also continues to decline.

Impact of federal stimulus funding

Kansas faced a nearly \$1 billion shortfall over Fiscal Years 2009 and 2010 when the 2009 Legislature convened in January as the economic crisis reduced state revenues. But deep cuts to education were at least temporarily averted after the President signed the American Recovery and Reinvestment Act (ARRA) in February.

The ARRA is expected to provide Kansas with \$1.7 billion, mostly spread over the next two years. The largest portion, nearly \$450 million, is the State Fiscal Stabilization Fund, designed primarily to help states avoid or reduce cuts in K-12 and postsecondary education. The ARRA also provides \$115 million in federal special education aid; \$93 million in Title I money and school improvement grants for assisting disadvantaged students, and a small amount of additional funding for other K-12 programs.

Most of these funds will be divided between the next two years, but unless Congress acts to extend this funding – or the state economy recovers enough to replace these dollars – school districts could face significant reductions in areas supported by these funds in 2011-12. For example, the Legislature used \$138.7 million in fiscal stabilization funds to replace state funding for General State Aid in FY 2010. That equals 5 percent of base state aid per pupil, or \$218. The Legislature also used \$53.5 million in federal special education to replace state aid, which equals nearly 14 percent of state funding. School districts will also receive \$70 million over the next two years in Title I funding through the ARRA, in addition to “regular” Title I funding. But those funds do not go through the State General Fund and are not part of state aid to schools.

The guidance from the U.S. Department of Education, which oversees the fiscal stabilization fund and other education programs, provides a conflicting set of goals. States and school districts are supposed to:

- **SPEND FUNDS QUICKLY TO SAVE AND CREATE JOBS.** With school operating budgets being reduced, it is almost impossible to save and create jobs at the same time. “Saving” jobs means spending money on existing positions and permanent staff.
- **ENSURE TRANSPARENCY, REPORTING AND ACCOUNTABILITY.** More reporting and paperwork will be required, even as school districts are losing resources. As a condition of receiving these funds, the U.S. Department of Education is demanding new measurements of teacher quality, higher standards of college and career-readiness; more effective intervention to help low-performing schools, and a data system to track student learning and teacher performance. Districts will have to provide separate reports on stimulus funding, including the portion that simply replaces state aid.

Senate Ways & Means Cmte

Date 4-29-2009

Attachment 8

- **INVEST ONE-TIME ARRA FUNDS THOUGHTFULLY TO MINIMIZE THE “FUNDING CLIFF.”** Most of these funds will expire in two years. But spending them on “one-time” purposes will make it difficult to maintain existing jobs and programs, which is the first objective. The Legislature has increased the amount districts can place in contingency reserve to prepare for the loss of federal funds – but building reserves isn’t “spending quickly to save and create jobs.”
- **IMPROVE STUDENT ACHIEVEMENT THROUGH SCHOOL IMPROVEMENT AND REFORM.** Kansas schools have made significant progress in closing the achievement gap and helping students from all backgrounds achieve high standards. But many of the initiatives school leaders credit for this success, such as early childhood, professional development, smaller classes, and more individualized instruction, will be hard to sustain when funding is reduced and salaries, fixed costs and mandatory programs keep increasing.

Federal involvement in education

Excluding the national school lunch program, which began in 1946, the first major federal program for K-12 education was the Elementary and Secondary Education Act of 1965, passed as part of Lyndon Johnson’s Great Society agenda. The first section of that act, or “Title I,” is still the name of the largest federal program to assist disadvantaged students. Since that time, the federal role has been more rhetoric and requirements than proportionate funding. In 1975, Congress passed the Educating All Handicapped Children Act, later renamed the Individuals with Disabilities Education Act (IDEA), resulting in a complex set of requirements for educating disabled students. The promised level of federal funding never materialized.

After the U.S. Department of Education was created in 1979, President Ronald Reagan campaigned to abolish it. He was unsuccessful, but his administration released the “Nation At-Risk Report,” which warned of “a rising tide of mediocrity” sweeping American schools. The report didn’t result in more federal funding, but helped prompt state reform efforts, such as the change to an out-comes focused system in Kansas called Quality Performance Accreditation.

In 1989, President George H.W. Bush convened a national Governors Summit on Education, which resulted in a set of national educational goals. President Bill Clinton formalized that initiative into the Goals 2000: Educate America Act in 1994, and promoted increased federal aid. But it was President George W. Bush’s No Child Left Behind Act (NCLB) that has had the greatest recent impact on education policy. Passed with a bi-partisan majority in 2001, NCLB required all states adopt testing in core subjects in grades three through eight and in high school, set new standards for teachers, and promised significant increases in federal education funding. Kansas virtually re-wrote QPA to comply with NCLB, which set increasing annual targets for students to be proficient on reading and math tests. Schools that fail to meet targets more than two years in a row face sanctions. By 2014, the target is 100 percent proficiency.

Funding did increase in the first few years after NCLB passed. U.S. Department of Education aid to Kansas increased from \$212.3 million in 2001-02 to \$295.9 million in 2004-05. With relatively small increases in state funding over this period, federal funding rose from 7.2 percent of school district operating budgets (general fund plus local option budgets) to 9.7 percent. But with the increased cost of the war in Iraq and concerns about the federal deficit, education aid had stalled since 2005. With increased state funding after the Supreme Court’s *Montoy* decision in 2005, federal funding fell back to 7.5 percent of operating budgets this year.

That will change next year. In addition to spending half of the federal stimulus aid next year, the “regular” funding for major programs has also increased. Total federal aid to Kansas K-12 education is expected to be \$570 million in FY 2010, or 14.4 percent of state and local funding for the general fund and local option budget. (This does not include reimbursement for school meals and nutrition programs operated under the U.S. Department of Agriculture.)

Major federal K-12 education programs

The biggest federal aid program in Kansas is special education grants. Excluding the additional funding in the ARRA, it is expected to provide \$106 million next year, plus \$4.3 million for special education preschool and \$3.9 million for infants and families. This compares to \$423 million in state special education aid. (\$53.5 million from the ARRA replaces states aid.)

The second largest program is Title I grants to school districts, which is expected to provide \$104.4 million next year, plus \$70 million from the ARRA, spread over the next two years. The state will also receive about \$66 million for more than a dozen smaller programs that are also part of the Elementary and Secondary Education Act. Many are awarded to the Kansas State Department of Education or to school districts as competitive grants. The ARRA also provides \$22 million over the next two years for school improvement grants.

The third major area is impact aid to districts with a large federal presence, such as military bases. Kansas will receive more than \$25 million next year. The final major category is vocation and adult education, which provides \$12 million in career and technical education and tech-prep grants.

Kansas also receives over \$100 million annually for school breakfast and lunch programs in public and private schools. Most of these funds do not increase school operating budgets, but reimburse the cost of meals.

New directions from the Obama administration

Indications about where the new administration and Democratic Congress may try to take federal education policy in the future can be found in the “assurances” governors must give for states to receive fiscal stabilization funds. States must address the following:

- **TEACHER EFFECTIVENESS AND ENSURING ALL SCHOOLS HAVE HIGHLY QUALIFIED TEACHERS.** States must report the extent to which all students have access to qualified and effective teachers and whether or not teachers are evaluated based on how well their students perform. They must compare the number and percent of teachers who are highly qualified in both the highest and lowest poverty schools; the results of teacher and principal evaluation systems in school districts and how many schools include student outcomes in teacher and principal evaluations.
- **HIGHER STANDARDS AND RIGOROUS ASSESSMENTS THAT WILL IMPROVE BOTH TEACHING AND LEARNING.** States must report the extent to which public information is available on student performance compared to other states, the extent to which all students are included in state assessment and accountability systems and are provided high-quality assessments, and how many high school seniors continue on to pursue college education or technical training.
- **INTENSIVE SUPPORT, EFFECTIVE INTERVENTIONS, AND IMPROVED ACHIEVEMENT IN SCHOOLS THAT NEED IT MOST.** States must identify schools most in need of academic intervention, and report the progress of those schools in implementing reforms to improve student academic achievement. They must also report whether the state allows charter schools and whether there is a cap restricting the number of such schools, the number of charter schools currently operating in the state, and the number of charter schools closed within the last three years for academic purposes.
- **BETTER INFORMATION TO EDUCATORS AND THE PUBLIC, TO ADDRESS THE INDIVIDUAL NEEDS OF STUDENTS AND IMPROVE TEACHER PERFORMANCE.** States must report on the extent to which it has implemented a system to provide greater clarity to parents about the quality of their child’s education.

This system should enable educators to use real time information about the individual needs of students, move away from a one-size-fits-all approach to education, and improve performance.

It must also track progress of individual students from preschool through postsecondary education; match students to individual teachers; and provide estimates of individual teacher impact on student achievement in a manner that informs instruction and includes appropriate benchmarks.

While states must agree to report progress on these objectives based on specific measurements, they are not required to demonstrate progress in order to receive fiscal stabilization funds. However, these objectives suggest Kansas and other states will have to place greater emphasis on the following areas:

First, expanding performance goals for student achievement beyond proficiency in core subjects to high school graduation rates and college or other postsecondary success. This will require more data tracking and coordination with colleges and postsecondary training programs.

Second, moving beyond a focus on teacher and administrator "qualifications" to measure their impact on students. President Obama has expressed support for teacher merit pay systems and dealing with ineffective teachers. These issues are extremely sensitive to teacher organizations such as the Kansas National Education Association.

Third, placing more attention on low-performing schools and tougher restructuring requirements for those who do not show improvement. If adequate yearly progress standards under No Child Left Behind remain in place, more schools may fall into this category.

Kansas schools have shown significant improvement over the past decade, helped by increases in federal funding in the first years after NCLB and then significant increases in state funding after the *Montoy* lawsuit, especially for disadvantaged students. In the most significant economic crisis and budget shortfall since the great depression, schools will face continued pressure to improve student performance in return for a large, but likely temporary, infusion of federal funding.

From: "Frisbie, Elaine [Budget]" <Elaine.Frisbie@budget.ks.gov>
To: Jill Wolters <Jill.Wolters@rs.ks.gov>, "Goossen, Duane [Budget]" <Duane....>
CC: "Montgomery, Estelle I [LRD]" <Estelle.Montgomery@klrd.ks.gov>, "Scott, J..."
Date: 4/28/2009 3:40 PM
Subject: RE: Further information requested

On those federal ARRA grants that are distributed according to a formula, we know what we are supposed to receive--so we would assume that is what "anticipated" means. We have sent word to state agencies they will be required to report to us on all of this so we can keep the Governor and the Advisory Group up to date.

We also anticipate a new section in the budget report laying this all out.

-----Original Message-----

From: Jill Wolters [mailto:Jill.Wolters@rs.ks.gov]
 Sent: Tuesday, April 28, 2009 3:26 PM
 To: Goossen, Duane [Budget]; Frisbie, Elaine [Budget]
 Cc: Montgomery, Estelle I [LRD]; Scott, James G [LRD]; Steiner, Michael A [LRD]; Jim Wilson; Melinda Gaul
 Subject: RE: Further information requested

Very helpful Elaine, thank you.

Regarding your question to me re. "anticipating", one Senator thought the word "anticipating" was vague and was unsure at what time an agency would be required to report. Another Senator thought the word was not vague and the agency would have knowledge of "anticipating receipt of federal funds". I was inquiring what agency heads thought regarding how they would report.

Thanks again.

Jill Wolters
 Senior Assistant Revisor
 Revisor of Statutes Office
 300 SW 10th, Statehouse
 Topeka, KS 66612
 785-296-2321
 fax 785-296-6668

>>> "Frisbie, Elaine [Budget]" <Elaine.Frisbie@budget.ks.gov> 4/28/2009 2:32 PM >>>

As Duane is out today and I've been working on the website with Kansas.gov, DISC and A&R, I'll take a stab at responding.

We have been hampered somewhat on developing the administrative tool agencies will use to report on ARRA monies, because OMB has not finalized the data elements we must use, and it is as yet unclear how "deep" the state's reporting must go (if state agencies must give detailed reporting, as well as their sub-grantees). Given that, we do know the basic elements we would want to report on. Relative to the items in Section 1 of SB 296, I believe items 1, 2, 3, 5, 6, 7, and 8 will be covered. Item 9 would not be covered--we in the budget world consider these to be one-time monies and only those programs, such as general state aid for schools, support to Regents, operations of prisons, and Medicaid, where we switched out SGF for ARRA monies would

Senate Ways & Means Cmte
 Date 4-29-2009
 Attachment 9

be slated for replacement of ARRA monies. The other programs would simply not be continued, and we would view a plan as unnecessary. I'm not sure what Item 4 is trying to get at--how much SGF we switched out so we know how much will have to be added back in FY 2012?

When I read that section, I do wonder what is meant by "state agency" as some of the ARRA money will not flow directly to any state agency, as least as we recognize them in the budget process, such as the Kansas Housing Resources Corporation under K DFA.

As far as how we would "interpret" Section 1, lines 14-19, are you asking how would agencies reporting in DOB's system qualify as reporting? I believe we in DOB, or anyone with Internet access, would simply run a report out of the website and present it to the Governor's Advisory Group or to the Legislature.

On a technical note, I suggest striking "economic" from lines 11 and 16 on page one. That is not part of the federal act's official title.

Hope that helps.
Elaine

-----Original Message-----

From: Jill Wolters [mailto:Jill.Wolters@rs.ks.gov]
Sent: Tuesday, April 28, 2009 1:41 PM
To: Goossen, Duane [Budget]
Cc: Frisbie, Elaine [Budget]; Montgomery, Estelle I [LRD]; Scott, James G [LRD]; Steiner, Michael A [LRD]; Jim Wilson; Melinda Gaul
Subject: Further information requested

Thank you for the response to my e-mail.

As I understand from your response, the central reporting system will require "agencies to report Recovery Act receipts, expenditures, and jobs created/saved, and other activities through that system" and that it be accessible to legislators and the public.

I am unsure and need an understanding if all the information in the bill will be on the central reporting system (as it is currently contemplated). Please inform me of which pieces of information required in the bill are not being contemplated to be gathered in the system.

Also, the bill on page 1, lines 14 through 19, uses the words "anticipates" and "anticipating". How would this be interrupted to deliver the information to the director of the budget, the director of KLRD and the advisory group?

Again, my thanks for your response to these questions.

Jill Wolters
Senior Assistant Revisor

9-2

Revisor of Statutes Office
300 SW 10th, Statehouse
Topeka, KS 66612
785-296-2321
fax 785-296-6668

>>> "Goossen, Duane [Budget]" <Duane.Goossen@budget.ks.gov> 4/27/2009
5:31 PM >>>
Jill,

I will respond to your questions on behalf of state agencies.

First of all, the Division of Budget and Legislative Research have already collected a great deal of information about the formula grants and potential competitive grants available to Kansas through the Recovery Act.

In addition, a central reporting system is being designed through the efforts of the Division of Budget, Accounts and Reports, DISC, and the Kansas Information Consortium. All agencies will be required to report Recovery Act receipts, expenditures, and jobs created/saved, and other activities through that system. The system is not completed yet, because we are waiting on further federal guidance about reporting requirements, but once complete, it will be available to the public and accessible from the Kansas Recovery Act website.

Further, all Recovery Act funds received by state agencies must be placed in separate funds and accounts within the state's accounting system. At any point, it's possible to generate a report of Recovery Act funds received and spent.

Finally, as part of the 2009 Session mega appropriations bill, the Legislature has acknowledged and planned for the use of much of the Recovery Act funding. Additional provisions are currently being incorporated into the omnibus appropriations bill. As agencies plan their FY 2011 budgets the use and management of Recovery Act funds will be made part of their future financial plan. FY 2011 agency budget plans are due to the Division of Budget and to Legislative Research on September 15.

If SB 296 requires a separate report from agencies in addition to the information they are already providing, then the act's requirements are redundant and will cause unnecessary work. If SB 296 simply requires that the information collected by the Division of Budget, the information in the central Recovery Act reporting system, the Recovery Act information in the state's accounting system, and the information contained in agency budget requests be available and accessible to the Legislature and the public, then the act will not require additional work from agencies.

Please let me know if you have other questions. I am also happy to discuss this issue further with the Senate Ways and Means Committee.

Duane

-----Original Message-----

From: Jill Wolters [mailto:Jill.Wolters@rs.ks.gov]
Sent: Friday, April 24, 2009 1:51 PM
To: Goossen, Duane [Budget]
Cc: Montgomery, Estelle I [LRD]; Scott, James G [LRD]; Steiner, Michael
A [LRD]; Melinda Gaul
Subject: Questions for agency heads

Secretary Goossen:

Please disseminate this request to all agency heads. This information is being requested on behalf of the Senate Committee on Ways and Means.

Please let me know that you received this request. Thank you.

Senate Bill No. 296 establishes a process for state agencies to evaluate and implement federal funding available for state agencies under the federal American economic recovery and reinvestment act of 2009 (federal act). As you can see by the attached amendments dated March 17 and April 24, some requirements are deleted. Using the language from the attached amendment dated April 24, to achieve the policy adopted in this act, please inform me who the agency reports to currently to receive the funds, and determine whether this bill would require the agency to duplicate efforts required by the federal act. Further, please review the information items that are requested in the bill, specifically (a)(1) through (9) and (b)(1) through (9). Would this require you to gather additional information to provide to the director of the budget, the director of KLRD and the advisory group? If so, please describe what additional information you would be gathering. Finally, the bill on page 1, lines 14 through 19, uses the words "anticipates" and "anticipating". How would you interrupt such to deliver the information to the director of the budget, the director of KLRD and the advisory group?

Please respond with the agencies answers to the questions on or before Tuesday, April 28, at noon.

Thank you for your assistance concerning this matter.

Jill Wolters
Senior Assistant Revisor
Revisor of Statutes Office
300 SW 10th, Statehouse
Topeka, KS 66612
785-296-2321
fax 785-296-6668

9-4