

CHAPTER 179

HOUSE BILL No. 2948
(Amends Chapter 105)

AN ACT concerning the department of human resources; relating to the change of name of such agency; relating to other changes required by 2004 ERO 31; amending K.S.A. 38-622, 39-7,108, 39-1702, 44-322a, 44-327, 44-402, 44-403, 44-404, 44-405, 44-406, 44-409, 44-412, 44-552, 44-555c, 44-596, 44-5104, 44-5122, 44-5124, 44-601, 44-601b, 44-607, 44-608, 44-609, 44-610, 44-611, 44-612, 44-614, 44-615, 44-616, 44-618, 44-619, 44-620, 44-621, 44-622, 44-623, 44-624, 44-626, 44-631, 44-634, 44-635, 44-636, 44-638, 44-643, 44-645, 44-646, 44-647, 44-661, 44-662, 44-704a, 44-710b, 44-711, 44-713, 44-713a, 44-715, 44-716, 44-716a, 44-718, 44-720, 44-721, 44-727, 44-759, 44-809, 44-816, 44-820, 44-914, 44-915, 44-1202, 44-1402, 44-1405, 44-1409, 65-1824, 65-4971, 65-5703, 66-132, 72-4427, 72-5413, 72-5432, 73-1209, 73-1219, 74-711, 74-32,160, 74-5068, 74-6701, 74-6702, 74-6703, 74-6706, 74-6707, 74-6708, 74-6709, 74-72,103, 75-443, 75-4323, 75-4332, 75-5133a, 75-5702, 75-5705, 75-5708, 75-5712, 75-5713, 75-5722, 75-5723, 75-5724, 75-5727, 75-5730, 75-5731, 75-5734, 75-5735, 75-5740, 75-5741, 76-186, 76-3110, 77-618, 79-1010, 79-1012 and 79-1014 and K.S.A. 2003 Supp. 44-313, 44-411, 44-508, 44-511, 44-703, as amended by section 6 of 2004 Senate Bill No. 440, 44-704, 44-704b, as amended by section 1 of 2004 Senate Bill No. 440, 44-706, as amended by section 2 of 2004 Senate Bill No. 440, 44-709, as amended by section 3 of 2004 Senate Bill No. 440, 44-710, as amended by section 4 of 2004 Senate Bill No. 440, 44-710a, as amended by section 5 of 2004 Senate Bill No. 440, 44-714, 44-717, 44-757, 44-762, 44-817, 44-926, 49-201, 74-32,151, 74-4911f, 74-4911h, 74-50,131, 74-50,136, 74-8942, 75-2935, 75-3728b, 75-4234, 75-5701, 75-5733, 75-5742, 75-5743, 76-11a06 and repealing the existing sections; also repealing K.S.A. 75-5714 and 75-5716.

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

Section 1. K.S.A. 38-622 is hereby amended to read as follows: 38-622. The state department of ~~human resources~~ *labor* may adopt rules and regulations setting out standards for minor children on motion picture sets as may be necessary to protect the safety and well being of minor children and to carry out the purposes of this act.

Sec. 2. K.S.A. 39-7,108 is hereby amended to read as follows: 39-7,108. (a) There is hereby created the KanWork interagency coordinating committee which shall consist of the following members: (1) No more than 10 members appointed by the governor; (2) the secretary of social and rehabilitation services; (3) the secretary of ~~human resources~~ *labor*; (4) the secretary of administration or the secretary's designee; (5) the secretary of commerce or the secretary's designee; (6) a faculty member engaged in teaching social welfare courses or other relevant academic disciplines at a college or university located in this state appointed by the chairperson of the state board of regents; and (7) a representative of the state department of education who is knowledgeable in the area of vocational-technical education or community colleges, or both, appointed by the chairperson of the state board of education. Individuals appointed to the committee by the governor shall include: A representative of the Kansas league of municipalities; a representative of the Kansas association of counties; a representative of a local school district; a representative of the financial community; a representative of the business community; a representative of organized labor; a representative of the child support enforcement program of the judicial branch; and a social services advocacy representative.

(b) The member of the committee appointed by the chairperson of the state board of regents, the member of the committee appointed by the chairperson of the state board of education and the members of the committee appointed by the governor shall be appointed for two-year terms and until their successors are appointed and qualified. Upon the vacancy of a position on the committee, the person appointing the member whose position is vacant, or the successor to the position of the person appointing such member, shall appoint a person to fill such vacancy.

(c) The secretary of social and rehabilitation services shall serve as chairperson of the committee. The committee shall meet on the call of the chairperson. A majority of all the members of the committee shall constitute a quorum.

(d) The committee shall provide oversight of the KanWork program to insure cooperation at all levels of government, to avoid duplication among agencies and programs, insure cooperation and smooth implementation of the program, encourage involvement by the public, private and nonprofit sectors in the state and provide ongoing planning for the program. In addition, the committee shall review periodically the use of funds under the federal job training and partnership act and other federal

funds available for any similar programs and may issue reports as necessary.

(e) The secretary of social and rehabilitation services shall provide staff assistance and clerical services to the committee. Other state agencies shall cooperate with the committee by providing information and other assistance as may be helpful to the committee in carrying out its duties under this section.

(f) The members of the committee who are not state officers or employees and who are attending meetings of such committee, or attending a subcommittee meeting thereof authorized by such committee, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto. Amounts paid under this subsection (f) shall be from appropriations to the department of social and rehabilitation services upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of social and rehabilitation services or a person designated by the secretary.

Sec. 3. K.S.A. 39-1702 is hereby amended to read as follows: 39-1702. As used in this act:

(a) "Children and adolescents who require multiple levels and kinds of specialized services which are beyond the capability of one agency" means children and adolescents who are residents of Kansas, and with respect to whom there is documentation that: (1) Various agencies have acknowledged the need for a certain type of service and have taken action to provide that level of care; (2) various agencies have collaborated to develop a program plan to meet the needs of the child or adolescent; and (3) various agencies have collaborated to develop programs and funding to meet the need of the child or adolescent, and that existing or alternative programs and funding have been exhausted or are insufficient or inappropriate in view of the distinctive nature of the situation of the child or adolescent.

(b) "Agency" means and includes county health departments, area offices of the department of social and rehabilitation services, district offices of the department of health and environment, local offices of the department of ~~human resources~~ *labor*, boards of education of public school districts, community mental health centers, community facilities for the mentally retarded/developmentally disabled, district courts, county commissions, and law enforcement agencies.

(c) "Authorized decision makers" means agency representatives who have the authority to commit the resources of the agency they represent in the provision of services to any child or adolescent whose needs are brought before a regional interagency council.

(d) "District court" means the chief judge for a judicial district.

(e) "Parent" means a natural parent, an adoptive parent, a stepparent, a foster care provider of a child or adolescent for whom services are needed from more than one agency, or a person acting as parent of a child or adolescent for whom services are needed from more than one agency.

(f) "Person acting as parent" means a guardian or conservator, or a person, other than a parent, who is liable by law to maintain, care for, or support a child or adolescent, or who has actual care and custody of the child or adolescent and is contributing the major portion of the cost of support of the child or adolescent, or who has actual care and control of the child or adolescent with the written consent of a person who has legal custody of the child or adolescent, or who has been granted custody of the child or adolescent, by a court of competent jurisdiction.

Sec. 4. K.S.A. 2003 Supp. 44-313 is hereby amended to read as follows: 44-313. As used in this act: (a) "Employer" means any individual, partnership, association, joint stock company, trust, corporation, limited liability company or other organization, the administrator or executor of the estate of a deceased individual, or the receiver, trustee, or successor of any of the same, the state of Kansas or any department, agency or authority of the state, any city, county, school district or other political subdivision, municipality or public corporation and any instrumentality thereof, employing any person.

(b) "Employee" means any person allowed or permitted to work by an employer.

(c) "Wages" means compensation for labor or services rendered by an employee, whether the amount is determined on a time, task, piece, commission or other basis less authorized withholding and deductions.

(d) "Secretary" means the secretary of ~~human resources~~ *labor*.

Sec. 5. K.S.A. 44-322a is hereby amended to read as follows: 44-322a. (a) Whenever a claim for unpaid wages under K.S.A. 44-313 through 44-326, and amendments thereto, is filed with the secretary of ~~human resources~~ *labor*, the secretary or the secretary's authorized representative shall investigate the claim as provided in K.S.A. 44-322, and amendments thereto, to determine if a dispute exists between the parties to the claim. If the secretary or the secretary's authorized representative determines that a dispute does exist and that the parties are unable to resolve their differences, the secretary or the secretary's authorized representative shall establish a time and place for a hearing on the matter. The hearing shall be conducted in accordance with the provisions of the Kansas administrative procedure act.

(b) Upon the completion of the hearing, the presiding officer shall determine whether the claim for unpaid wages is a valid claim under K.S.A. 44-313 through 44-326; and amendments thereto. If the presiding officer determines the claim for unpaid wages is valid, the amount of unpaid wages owed together with any damages which may be assessed under K.S.A. 44-315, and amendments thereto, if applicable, also shall be determined by the presiding officer. If the presiding officer determines the claim for unpaid wages is valid, the presiding officer shall order that the unpaid wages and any applicable damages be paid by the party responsible for their payment. Any initial order under this section shall be reviewed by the secretary or the secretary's authorized representative in accordance with K.S.A. 77-527 and amendments thereto. The decision of the secretary or the secretary's authorized representative shall be final and the amount of any unpaid wages and applicable damages determined by the secretary or the secretary's authorized representative to be valid shall be due and payable unless judicial review is sought within the time allowed by law.

(c) Any agency action under this section is subject to review in accordance with the act for judicial review and civil enforcement of agency actions.

Sec. 6. K.S.A. 44-327 is hereby amended to read as follows: 44-327. The secretary of ~~human resources~~ *labor* may enter into agreements with other states to collect wages from out-of-state employers and to perform reciprocal services for such other states in the state of Kansas.

Sec. 7. K.S.A. 44-402 is hereby amended to read as follows: 44-402. (a) No person may open, operate or maintain any business performing any private employment agency activities or service without first obtaining a private employment agency license from the state department of ~~human resources~~ *labor*. The annual fee for the license shall be \$25. Every license shall contain the city, street and building number of the location where the licensee conducts the licensee's employment agency. The license, together with a copy of this act, shall be posted in a conspicuous place in each employment agency.

(b) A license issued pursuant to this act shall expire one year after its issuance. A license may be renewed upon application and payment of the annual fee not less than 30 days prior to the expiration of the license.

Sec. 8. K.S.A. 44-403 is hereby amended to read as follows: 44-403. The secretary of ~~human resources~~ *labor* shall require with each application for a license a bond in the penal sum of five hundred dollars with one or more sureties to be approved by ~~said~~ *the* secretary, and conditioned that the obligors will not violate any of the duties, terms, conditions, provisions or requirements of this act.

Sec. 9. K.S.A. 44-404 is hereby amended to read as follows: 44-404. The secretary of ~~human resources~~ *labor* is authorized to commence action or actions on ~~said~~ *such* bond or bonds in the name of the state of Kansas, by filing complaint with the attorney general or other proper prosecuting officer of any violations of its conditions.

Sec. 10. K.S.A. 44-405 is hereby amended to read as follows: 44-405. The secretary of ~~human resources~~ *labor* is authorized to revoke any license, whenever in the judgment of the secretary, the party licensed violates any of the provisions of this act whenever written complaint shall have been filed with the secretary and the secretary gives the case full and fair hearing in accordance with the provisions of the Kansas administrative procedure act.

Sec. 11. K.S.A. 44-406 is hereby amended to read as follows: 44-406.

It shall be the duty of every licensed agency to keep a register in which shall be entered the name and address of every person who shall make application for employment, and the name and nature of employment wanted. Such register shall, at all reasonable hours be kept open to the inspection and examination of the secretary of ~~human resources labor~~ or a person or persons designated by ~~said~~ the secretary.

Sec. 12. K.S.A. 44-409 is hereby amended to read as follows: 44-409. It shall be the duty of the secretary of ~~human resources labor~~, or a person or persons designated by ~~said~~ the secretary, when informed of any violation of this act, to file a complaint of such violation with the attorney general or with the district attorney or county attorney of the county in which such violation is alleged to have occurred and it shall be the duty of the official informed to institute criminal proceedings for the enforcement of the penalties.

Sec. 13. K.S.A. 2003 Supp. 44-411 is hereby amended to read as follows: 44-411. All money or moneys received by or for the secretary of ~~human resources labor~~ from fees under this act shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215; and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the state general fund.

Sec. 14. K.S.A. 44-412 is hereby amended to read as follows: 44-412. The secretary of ~~human resources labor~~ shall adopt any rules and regulations necessary to administer and enforce the provisions of K.S.A. 44-401 through 44-412; and amendments thereto.

Sec. 15. K.S.A. 2003 Supp. 44-508 is hereby amended to read as follows: 44-508. As used in the workers compensation act:

(a) "Employer" includes: (1) Any person or body of persons, corporate or unincorporate, and the legal representative of a deceased employer or the receiver or trustee of a person, corporation, association or partnership; (2) the state or any department, agency or authority of the state, any city, county, school district or other political subdivision or municipality or public corporation and any instrumentality thereof; and (3) for the purposes of community service work, the entity for which the community service work is being performed and the governmental agency which assigned the community service work, if any, if either such entity or such governmental agency has filed a written statement of election with the director to accept the provisions under the workers compensation act for persons performing community service work and in such case such entity and such governmental agency shall be deemed to be the joint employer of the person performing the community service work and both shall have the rights, liabilities and immunities provided under the workers compensation act for an employer with regard to the community service work, except that the liability for providing benefits shall be imposed only on the party which filed such election with the director, or on both if both parties have filed such election with the director; for purposes of community service work, "governmental agency" shall not include any court or any officer or employee thereof and any case where there is deemed to be a "joint employer" shall not be construed to be a case of dual or multiple employment.

(b) "Workman" or "employee" or "worker" means any person who has entered into the employment of or works under any contract of service or apprenticeship with an employer. Such terms shall include but not be limited to: Executive officers of corporations; professional athletes; persons serving on a volunteer basis as duly authorized law enforcement officers, attendants, as defined in subsection (d) of K.S.A. 65-6112, and amendments thereto, drivers of ambulances as defined in subsection (b) of K.S.A. 65-6112, and amendments thereto, firefighters, but only to the extent and during such periods as they are so serving in such capacities; persons employed by educational, religious and charitable organizations, but only to the extent and during the periods that they are paid wages by such organizations; persons in the service of the state, or any department, agency or authority of the state, any city, school district, or other political subdivision or municipality or public corporation and any instrumentality thereof, under any contract of service, express or implied, and every official or officer thereof, whether elected or appointed, while performing official duties; persons in the service of the state as volunteer members of the Kansas department of civil air patrol, but only to the extent and during such periods as they are officially engaged in the performance of

functions specified in K.S.A. 48-3302 and amendments thereto; volunteers in any employment, if the employer has filed an election to extend coverage to such volunteers; minors, whether such minors are legally or illegally employed; and persons performing community service work, but only to the extent and during such periods as they are performing community service work and if an election has been filed an election to extend coverage to such persons. Any reference to an employee who has been injured shall, where the employee is dead, include a reference to the employee's dependents, to the employee's legal representatives, or, if the employee is a minor or an incapacitated person, to the employee's guardian or conservator. Unless there is a valid election in effect which has been filed as provided in K.S.A. 44-542a, and amendments thereto, such terms shall not include individual employers, limited liability company members, partners or self-employed persons.

(c) (1) "Dependents" means such members of the employee's family as were wholly or in part dependent upon the employee at the time of the accident.

(2) "Members of a family" means only surviving legal spouse and children; or if no surviving legal spouse or children, then parents or grandparents; or if no parents or grandparents, then grandchildren; or if no grandchildren, then brothers and sisters. In the meaning of this section, parents include stepparents, children include stepchildren, grandchildren include stepgrandchildren, brothers and sisters include stepbrothers and stepsisters, and children and parents include that relation by legal adoption. In the meaning of this section, a surviving spouse shall not be regarded as a dependent of a deceased employee or as a member of the family, if the surviving spouse shall have for more than six months willfully or voluntarily deserted or abandoned the employee prior to the date of the employee's death.

(3) "Wholly dependent child or children" means:

(A) A birth child or adopted child of the employee except such a child whose relationship to the employee has been severed by adoption;

(B) a stepchild of the employee who lives in the employee's household;

(C) any other child who is actually dependent in whole or in part on the employee and who is related to the employee by marriage or consanguinity; or

(D) any child as defined in subsections (3)(A), (3)(B) or (3)(C) who is less than 23 years of age and who is not physically or mentally capable of earning wages in any type of substantial and gainful employment or who is a full-time student attending an accredited institution of higher education or vocational education.

(d) "Accident" means an undesigned, sudden and unexpected event or events, usually of an afflictive or unfortunate nature and often, but not necessarily, accompanied by a manifestation of force. The elements of an accident, as stated herein, are not to be construed in a strict and literal sense, but in a manner designed to effectuate the purpose of the workers compensation act that the employer bear the expense of accidental injury to a worker caused by the employment.

(e) "Personal injury" and "injury" mean any lesion or change in the physical structure of the body, causing damage or harm thereto, so that it gives way under the stress of the worker's usual labor. It is not essential that such lesion or change be of such character as to present external or visible signs of its existence. An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.

(f) The words "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to the employee occurring while the employee is on the way to assume the duties of employment or after leaving such duties, the proximate cause of which injury is not the employer's negligence. An employee shall not be construed as being on the way to assume the duties of employment or having left such duties at a time when the worker is on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard and which is a route not used by the public except in dealings with the employer. An employee shall not be construed as being on the way to assume the duties of employment, if the employee is a provider of emergency services re-

sponding to an emergency.

The words, "arising out of and in the course of employment" as used in the workers compensation act shall not be construed to include injuries to employees while engaged in recreational or social events under circumstances where the employee was under no duty to attend and where the injury did not result from the performance of tasks related to the employee's normal job duties or as specifically instructed to be performed by the employer.

(g) "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.

(h) "Director" means the director of workers compensation as provided for in K.S.A. 75-5708 and amendments thereto.

(i) "Health care provider" means any person licensed, by the proper licensing authority of this state, another state or the District of Columbia, to practice medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry, audiology or psychology.

(j) "Secretary" means the secretary of ~~human resources~~ *labor*.

(k) "Construction design professional" means any person who is an architect, professional engineer, landscape architect or land surveyor who has been issued a license by the state board of technical professions to practice such technical profession in Kansas or any corporation organized to render professional services through the practice of one or more of such technical professions in Kansas under the professional corporation law of Kansas or any corporation issued a certificate of authorization under K.S.A. 74-7036, and amendments thereto, to practice one or more of such technical professions in Kansas.

(l) "Community service work" means: (1) Public or community service performed as a result of a contract of diversion or of assignment to a community corrections program or conservation camp or suspension of sentence or as a condition of probation or in lieu of a fine imposed by court order; or (2) public or community service or other work performed as a requirement for receipt of any kind of public assistance in accordance with any program administered by the secretary of social and rehabilitation services.

(m) "Utilization review" means the initial evaluation of appropriateness in terms of both the level and the quality of health care and health services provided a patient, based on accepted standards of the health care profession involved. Such evaluation is accomplished by means of a system which identifies the utilization of health care services above the usual range of utilization for such services, which is based on accepted standards of the health care profession involved, and which refers instances of possible inappropriate utilization to the director for referral to a peer review committee.

(n) "Peer review" means an evaluation by a peer review committee of the appropriateness, quality and cost of health care and health services provided a patient, which is based on accepted standards of the health care profession involved and which is conducted in conjunction with utilization review.

(o) "Peer review committee" means a committee composed of health care providers licensed to practice the same health care profession as the health care provider who rendered the health care services being reviewed.

(p) "Group-funded self-insurance plan" includes each group-funded workers compensation pool, which is authorized to operate in this state under K.S.A. 44-581 through 44-592, and amendments thereto, each municipal group-funded pool under the Kansas municipal group-funded pool act which is covering liabilities under the workers compensation act, and any other similar group-funded or pooled plan or arrangement that provides coverage for employer liabilities under the workers compensation act and is authorized by law.

(q) On and after the effective date of this act, "workers compensation board" or "board" means the workers compensation board established under K.S.A. 44-555c and amendments thereto.

(r) "Usual charge" means the amount most commonly charged by health care providers for the same or similar services.

(s) "Customary charge" means the usual rates or range of fees charged by health care providers in a given locale or area.

Sec. 16. K.S.A. 2003 Supp. 44-511 is hereby amended to read as follows: 44-511. (a) As used in this section:

(1) The term "money" shall be construed to mean the gross remuneration, on an hourly, output, salary, commission or other basis, at which the service rendered is recompensed in money by the employer, but it shall not include any additional compensation, as defined in this section, any remuneration in any medium other than cash, or any other compensation or benefits received by the employee from the employer or any other source.

(2) The term "additional compensation" shall include and mean only the following: (A) Gratuities in cash received by the employee from persons other than the employer for services rendered in the course of the employee's employment; (B) any cash bonuses paid by the employer within one year prior to the date of the accident, for which the average weekly value shall be determined by averaging all such bonuses over the period of time employed prior to the date of the accident, not to exceed 52 weeks; (C) board and lodging when furnished by the employer as part of the wages, which shall be valued at a maximum of \$25 per week for board and lodging combined, unless the value has been fixed otherwise by the employer and employee prior to the date of the accident, or unless a higher weekly value is proved; (D) the average weekly cash value of remuneration for services in any medium other than cash where such remuneration is in lieu of money, which shall be valued in terms of the average weekly cost to the employer of such remuneration for the employee; and (E) employer-paid life insurance, health and accident insurance and employer contributions to pension and profit sharing plans. In no case shall additional compensation include any amounts of employer taxes paid by the employer under the old-age and survivors insurance system embodied in the federal social security system. Additional compensation shall not include the value of such remuneration until and unless such remuneration is discontinued. If such remuneration is discontinued subsequent to a computation of average gross weekly wages under this section, there shall be a recomputation to include such discontinued remuneration.

(3) The term "wage" shall be construed to mean the total of the money and any additional compensation which the employee receives for services rendered for the employer in whose employment the employee sustains an injury by accident arising out of and in the course of such employment.

(4) The term "part-time hourly employee" shall mean and include any employee paid on an hourly basis: (A) Who by custom and practice or under the verbal or written employment contract in force at the time of the accident is employed to work, agrees to work, or is expected to work on a regular basis less than 40 hours per week; and (B) who at the time of the accident is working in any type of trade or employment where there is no customary number of hours constituting an ordinary day in the character of the work involved or performed by the employee.

(5) The term "full-time hourly employee" shall mean and include only those employees paid on an hourly basis who are not part-time hourly employees, as defined in this section, and who are employed in any trade or employment where the customary number of hours constituting an ordinary working week is 40 or more hours per week, or those employees who are employed in any trade or employment where such employees are considered to be full-time employees by the industrial customs of such trade or employment, regardless of the number of hours worked per day or per week.

(b) The employee's average gross weekly wage for the purpose of computing any compensation benefits provided by the workers compensation act shall be determined as follows:

(1) If at the time of the accident the money rate is fixed by the year, the average gross weekly wage shall be the yearly rate so fixed divided by 52, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime as computed in paragraph (4) of this subsection.

(2) If at the time of the accident the money rate is fixed by the month, the average gross weekly wage shall be the monthly rate so fixed multiplied by 12 and divided by 52, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime computed as provided in paragraph (4) of this subsection.

(3) If at the time of the accident, the money rate is fixed by the week, the amount so fixed, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime as computed in paragraph (4) of this subsection, shall be the average gross weekly wage.

(4) If at the time of the accident the employee's money rate was fixed by the hour, the employee's average gross weekly wage shall be determined as follows: (A) If the employee was a part-time hourly employee, as defined in this section, the average gross weekly wage shall be determined in the same manner as provided in paragraph (5) of this subsection; (B) if the employee is a full-time hourly employee, as defined in this section, the average gross weekly wage shall be determined as follows: (i) A daily money rate shall first be found by multiplying the straight-time hourly rate applicable at the time of the accident, by the customary number of working hours constituting an ordinary day in the character of work involved; (ii) the straight-time weekly rate shall be found by multiplying the daily money rate by the number of days and half days that the employee usually and regularly worked, or was expected to work, but 40 hours shall constitute the minimum hours for computing the wage of a full-time hourly employee, unless the employer's regular and customary workweek is less than 40 hours, in which case, the number of hours in such employer's regular and customary workweek shall govern; (iii) the average weekly overtime of the employee shall be the total amount earned by the employee in excess of the amount of straight-time money earned by the employee during the 26 calendar weeks immediately preceding the date of the accident, or during the actual number of such weeks the employee was employed if less than 26 weeks, divided by the number of such weeks; and (iv) the average gross weekly wage of a full-time hourly employee shall be the total of the straight-time weekly rate, the average weekly overtime and the weekly average of any additional compensation.

(5) If at the time of the accident the money rate is fixed by the output of the employee, on a commission or percentage basis, on a flat-rate basis for performance of a specified job, or on any other basis where the money rate is not fixed by the week, month, year or hour, and if the employee has been employed by the employer at least one calendar week immediately preceding the date of the accident, the average gross weekly wage shall be the gross amount of money earned during the number of calendar weeks so employed, up to a maximum of 26 calendar weeks immediately preceding the date of the accident, divided by the number of weeks employed, or by 26 as the case may be, plus the average weekly value of any additional compensation and the value of the employee's average weekly overtime computed as provided in paragraph (4) of this subsection. If the employee had been in the employment of the employer less than one calendar week immediately preceding the accident, the average gross weekly wage shall be determined by the administrative law judge based upon all of the evidence and circumstances, including the usual wage for similar services paid by the same employer, or if the employer has no employees performing similar services, the usual wage paid for similar services by other employers. The average gross weekly wage so determined shall not exceed the actual average gross weekly wage the employee was reasonably expected to earn in the employee's specific employment, including the average weekly value of any additional compensation and the value of the employee's average weekly overtime computed as provided in paragraph (4) of this subsection. In making any computations under this paragraph (5), workweeks during which the employee was on vacation, leave of absence, sick leave or was absent the entire workweek because of illness or injury shall not be considered.

(6) (A) The average gross weekly wage of a person serving on a volunteer basis as a duly authorized law enforcement officer, ambulance attendants and drivers as provided in subsection (b) of K.S.A. 44-508, and amendments thereto, firefighter or members of regional emergency medical response teams as provided in K.S.A. 48-928, and amendments thereto, who receives no wages for such services, or who receives wages which are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of the dollar amount closest to, but not exceeding, 112.5% of the state average weekly wage.

(B) The average gross weekly wage of any person performing community service work shall be deemed to be \$37.50.

(C) The average gross weekly wage of a volunteer member of the Kansas department of civil air patrol officially engaged in the performance of functions specified in K.S.A. 48-3302, and amendments thereto, shall be deemed to be \$476.38. Whenever the rates of compensation of the pay plan for persons in the classified service under the Kansas civil service act are increased for payroll periods chargeable to fiscal years commencing after June 30, 1988, the average gross weekly wage which is deemed to be the average gross weekly wage under the provisions of this subsection for a volunteer member of the Kansas department of civil air patrol shall be increased by an amount, adjusted to the nearest dollar, computed by multiplying the average of the percentage increases in all monthly steps of such pay plan by the average gross weekly wage deemed to be the average gross weekly wage of such volunteer member under the provisions of this subsection prior to the effective date of such increase in the rates of compensation of the pay plan for persons in the classified service under the Kansas civil service act.

(D) The average weekly wage of any other volunteer under the workers compensation act, who receives no wages for such services, or who receives wages which are substantially less than the usual wages paid for such services by comparable employers to employees who are not volunteers, shall be computed on the basis of the usual wages paid by the employer for such services to employees who are not volunteers, or, if the employer has no employees performing such services for wages who are not volunteers, the average gross weekly wage shall be computed on the basis of the usual wages paid for such services by comparable employers to employees who are not volunteers. Volunteer employment is not presumed to be full time employment.

(7) The average gross weekly wage of an employee who sustains an injury by accident arising out of and in the course of multiple employment, in which such employee performs the same or a very similar type of work on a part-time basis for each of two or more employers, shall be the total average gross weekly wage of such employee paid by all the employers in such multiple employment. The total average gross weekly wage of such employee shall be the total amount of the individual average gross weekly wage determinations under this section for each individual employment of such multiple employment.

(8) In determining an employee's average gross weekly wage with respect to the employer against whom claim for compensation is made, no money or additional compensation paid to or received by the employee from such employer, or from any source other than from such employer, shall be included as wages, except as provided in this section. No wages, other compensation or benefits of any type, except as provided in this section, shall be considered or included in determining the employee's average gross weekly wage.

(c) In any case, the average yearly wage shall be found by multiplying the average gross weekly wage, as determined in subsection (b), by 52.

(d) The state's average weekly wage for any year shall be the average weekly wage paid to employees in insured work subject to Kansas employment security law as determined annually by the secretary of ~~human resources~~ *labor* as provided in K.S.A. 44-704 and amendments thereto.

(e) Members of a labor union or other association who perform services in behalf of the labor union or other association and who are not paid as full-time employees of the labor union or other association and who are injured or suffer occupational disease in the course of the performance of duties in behalf of the labor union or other association shall recover compensation benefits under the workers compensation act from the labor union or other association if the labor union or other association files an election with the director to bring its members who perform such services under the coverage of the workers compensation act.

The average weekly wage for the purpose of this subsection shall be based on what the employee would earn in the employee's general occupation if at the time of the injury the employee had been performing work in the employee's general occupation. The insurance coverage shall be furnished by the labor union or other association.

Sec. 17. K.S.A. 44-552 is hereby amended to read as follows: 44-552.

(a) The director with the approval of the secretary of ~~human resources~~ *labor* shall at each hearing under the workers compensation act appoint a certified shorthand reporter, who may be within the classified service of the Kansas civil service act, to attend each hearing where testimony is

introduced, and preserve a complete record of all oral or documentary evidence introduced and all proceedings had at such hearing unless such appointment is waived by mutual agreement. At the conclusion of the hearing in any case, if neither party has requested opportunity to file briefs, the administrative law judge may read into the record for certification and filing in the office of the director such stipulations, findings, rulings or orders the administrative law judge deems expedient to the early disposition of the case. If the administrative law judge uses such procedure, with the consent of the parties, no transcript of the record of the hearing shall be made, except that part which is read into the record by the administrative law judge.

(b) All testimony introduced and proceedings had in hearings shall be taken down by the certified shorthand reporter, and if an action for review is commenced or if the director, or either party or the best interests of the administration of justice, so instructs, the certified shorthand reporter shall transcribe the certified shorthand reporter's notes of such hearing. If an action for review is commenced, the cost of preparing a transcript shall be paid as provided by K.S.A. 77-620 and amendments thereto. If no action for review is commenced, the cost of preparing a transcript shall be taxed as costs in the case at the discretion of the director in accordance with fair and customary rates charged in the state of Kansas. All official notes of such certified shorthand reporters shall be preserved and filed in the office of the director. Any transcript prepared as above provided and duly certified shall be received as evidence by the board and by any court with the same effect as if the certified shorthand reporter were present and testified to the records so certified.

(c) The director or administrative law judge, whoever is conducting the hearing, may make the findings, awards, decisions, rulings or modifications of findings or awards and do all acts at any time without awaiting the transcription of the testimony of the certified shorthand reporter if the director or administrative law judge deems it expedient and advisable to do so.

Sec. 18. K.S.A. 44-555c is hereby amended to read as follows: 44-555c. (a) There is hereby established the workers compensation board. The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge. The board shall be within the division of workers compensation of the department of ~~human resources~~ *labor* and all budgeting, personnel, purchasing and related management functions of the board shall be administered under the supervision and direction of the secretary of ~~human resources~~ *labor*. The board shall consist of five members who shall be appointed by the secretary in accordance with this section and who shall each serve for a term of four years, except as provided for the first members appointed to the board under subsection (f).

(b) Each board member shall be an attorney regularly admitted to practice law in Kansas for a period of at least seven years and shall have engaged in the active practice of law during such period as a lawyer, judge of a court of record or any court in Kansas or a full-time teacher of law in an accredited law school, or any combination of such types of practice.

(c) Each board member shall receive an annual salary in an amount equal to the salary prescribed by law for a district judge, except that the member who is the chairperson of the workers compensation board shall receive an annual salary in an amount equal to the salary prescribed for a district judge designated as chief judge of a district court of Kansas. The board members shall devote full time to the duties of such office and shall not engage in the private practice of law during their term of office. No board member may receive additional compensation for official services performed by the board member. Each board member shall be reimbursed for expenses incurred in the performance of such official duties under the same circumstances and to the same extent as judges of the district court are reimbursed for such expenses.

(d) Applications for membership on the board shall be submitted to the director of workers compensation. The director shall determine if an applicant meets the qualifications for membership on the board prescribed in subsection (b). Qualified applicants for the board will be sub-

mitted by the director to the workers compensation board nominating committee for consideration.

(e) There is hereby established the workers compensation board nominating committee which shall be composed of two members appointed as follows: The Kansas AFL-CIO and the Kansas chamber of commerce and industry shall each select one representative to serve on the workers compensation board nominating committee and shall give written notice of the selection to the secretary who shall appoint such representatives to the committee. In the event of a vacancy occurring for any reason on the nominating committee, the respective member shall be replaced by the appointing organization with written notice of the appointment to the secretary of ~~human resources~~ *labor* within 30 days of such vacancy.

(f) (1) Upon being notified of any vacancy on the board or of the need to appoint a member pro tem under subsection (i), the nominating committee shall consider all qualified applicants submitted by the director for the vacant position on the board or the member pro tem position and nominate a person qualified therefor. The nominating committee shall be required to reach unanimous agreement on any nomination to the board. With respect to each person nominated, the secretary either shall accept and appoint the person nominated by the nominating committee to the position on the board for which the nomination was made or shall reject the nomination and request the nominating committee to nominate another person for that position. Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for that position in the same manner.

(2) The first members of the board established by this section are hereby appointed as follows: Each person who was a member of the workers compensation board which was in existence on January 12, 1995, is hereby appointed, effective January 13, 1995, as a member of the board established by this section. The term of office of each person so appointed as a member of the board established by this section is for the period equal to the remainder of the term of office such person had as of January 12, 1995, as a member of the workers compensation board which was in existence on January 12, 1995.

(3) Each member of the board shall hold office for the term of the appointment and until the successor shall have been appointed. Successors to such members shall be appointed for terms of four years.

(4) If a vacancy should occur on the board during the term of a member, the nominating committee shall nominate an individual from the qualified applicants submitted by the director to complete the remainder of the unexpired portion of the term. With respect to each person so nominated, the secretary either shall accept and appoint the person nominated to the board or shall reject the nomination and request the nominating committee to nominate another person for the position. Upon receipt of any such request for the nomination of another person, the nominating committee shall nominate another person for the position in the same manner.

(g) Following the completion of a term, board members who wish to be considered for reappointment to the board shall be deemed to have met the qualification requirements for selection to the board and shall be considered for renomination by the workers compensation board nominating committee.

(h) The members of the board shall annually elect one member to serve as chairperson.

(i) If illness or other temporary disability of a member of the board will not permit the member to serve during a case or in any case in which a member of the board must be excused from serving because of a conflict or is otherwise disqualified with regard to such case, the director shall notify the workers compensation nominating committee of the need to appoint a member pro tem. Upon receipt of such notice, the committee shall act as soon as possible and nominate a qualified person to serve as member pro tem in such case in accordance with subsection (f). Each member pro tem shall receive compensation at the same rate as a member of the board receives, prorated for the hours of actual service as a member pro tem and shall receive expenses under the same circumstances and to the same extent as a member of the board receives. Each member pro tem shall have all the powers, duties and functions of a member of the board with regard to the case.

(j) The board shall maintain principal offices in Topeka, Kansas, and the board may conduct hearings at a courthouse of any county in Kansas or at another location specified by the board. The secretary of ~~human resources~~ *labor* shall provide a courtroom and other suitable quarters in Topeka, Kansas, for the use of the board and its staff. When the board conducts hearings at any location other than in Topeka, Kansas, the director shall make suitable arrangements for such hearings. Subject to the provisions of appropriation acts, the director shall provide such supplies and equipment and shall appoint such support personnel as may be necessary for the board to fulfill the duties imposed by this act, subject to approval by the secretary.

(k) For purposes of hearing cases, the board may sit together or in panels of two members or more, designated by the chairperson of the board, except that an appeal from a preliminary award entered under K.S.A. 44-534a, and amendments thereto, may be heard by a panel of one member designated by the chairperson. All members of the board shall determine each matter before the board. All decisions, reviews and determinations by the board shall be approved in writing by at least three board members. Whenever the board enters a final order in any proceeding, the board shall make written findings of fact and conclusions of law forming the basis of the board's determination and final order. The findings of fact and conclusions of law of the board shall be made a part of the final order. The board shall mail a copy of the final order of the board to all parties to the proceeding within three days following the issuance of the final order.

Sec. 19. K.S.A. 44-596 is hereby amended to read as follows: 44-596.

(a) There is hereby established the workers compensation advisory council. The advisory council shall be composed of the director of workers compensation, or the director's designee from the division of workers compensation, a representative of the insurance industry appointed by the commissioner of insurance, and 10 members who shall be appointed by the secretary of ~~human resources~~ *labor* in accordance with this section. Five members of the advisory council shall be broadly representative of employers throughout Kansas that are under the workers compensation act and shall be appointed as follows: One member shall be appointed from a list of nominees submitted to the secretary of ~~human resources~~ *labor* by the Kansas chamber of commerce and industry and four members shall be appointed from nominees submitted to the secretary of ~~human resources~~ *labor* by employers or other representatives of employers or other employer organizations. Five members of the advisory council shall be broadly representative of employees throughout Kansas that are under the workers compensation act and shall be appointed as follows: One member shall be appointed from a list of nominees submitted to the secretary of ~~human resources~~ *labor* by the Kansas A.F.L.-C.I.O. and four members shall be appointed from nominees submitted to the secretary of ~~human resources~~ *labor* by employees or other representatives of employees or other employee organizations. The representative of the insurance industry shall be knowledgeable of insurance underwriting practices. The director of workers compensation and the representative of the insurance industry shall be nonvoting members of the advisory council.

(b) Each member of the advisory council shall serve at the pleasure of the secretary of ~~human resources~~ *labor*. Any vacancy on the advisory council shall be filled by nomination and appointment in the same manner as the original appointment of the member creating the vacancy.

(c) The advisory council shall study the workers compensation act, proposed amendments to the act and such other matters relating thereto that may be recommended by the secretary of ~~human resources~~ *labor* or the director of workers compensation and shall advise the secretary and the director thereon. The advisory council shall also review and report its recommendations on any legislative bill amending, supplementing or affecting the workers compensation act or rules and regulations adopted thereunder or affecting the administration of such act or rules and regulations, which is introduced in the legislature and which is requested to be reviewed and reported on to a standing committee of either house of the legislature to which the bill is currently referred, upon the request of the chairperson of such committee.

(d) The advisory council shall organize annually by electing a chairperson and a vice-chairperson and shall meet upon the call of the chair-

person. All actions of the advisory council adopting recommendations regarding the workers compensation act or any other matter referred to the advisory committee under subsection (c) shall be by motion adopted by the affirmative vote in open meeting of four of the five voting members who are appointed as representative of employers and four of the five voting members who are appointed as representative of employees. All other actions of the advisory council shall be by motion adopted by the affirmative vote of at least six voting members in open meeting.

(e) The advisory council, in accordance with K.S.A. 74-4319, and amendments thereto, may recess for a closed or executive meeting of the members representing employers or of the members representing employees, or of both such groups of members meeting separately, to separately discuss the matters being studied by the advisory council, except that no binding action shall be taken during any such closed or executive meeting.

(f) The members of the advisory council shall serve without compensation, but, when attending meetings of the advisory commission, or subcommittee meetings thereof authorized by the advisory commission, shall be paid subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(g) In addition to other matters for study prescribed pursuant to this section, the advisory council shall review the following:

(1) Competitive state workers compensation funds, including small business competitive funds;

(2) effectiveness and cost of safety programs;

(3) safety-based insurance premium rate discounts;

(4) fees for attorneys representing all parties in workers compensation claims; and

(5) group-funded self-insurance pools for small businesses. Each of the studies prescribed by this subsection shall be reviewed and reported to the standing committees of the senate and house of representatives having workers compensation subject matter jurisdiction, except that the study of competitive state workers compensation funds shall be completed and reported to the legislative coordinating council not later than December 15, 1993.

Sec. 20. K.S.A. 44-5,104 is hereby amended to read as follows: 44-5,104. (a) Each insurance company or group-funded self-insurance plan providing workers compensation insurance coverage in Kansas shall maintain and shall provide accident prevention programs upon request of the covered employer as a prerequisite for authority to provide such insurance or coverage. The accident prevention programs shall be adequate to furnish accident prevention services required by the nature of the operations of the policyholders or other covered entities and the accident prevention services shall include surveys, recommendations, training programs, consultations, analyses of accident causes, industrial hygiene and industrial health services to implement the program of accident prevention services. The accident prevention programs shall be staffed with field safety representatives. Each field safety representative shall be a person who is (1) a college graduate who has a bachelor's degree in science, industrial hygiene, safety or loss control, or engineering, (2) a registered professional engineer, (3) a certified safety professional, who has attained the designation from the board of certified safety professionals, (4) a certified industrial hygienist, who has attained the designation from the American board of industrial hygiene (5) an individual with five years of experience in occupational safety and health, (6) a person who is working under direct supervision of a person who meets the qualification requirements of this section (7) a person who has attained the designation of associate in loss control management or associate in risk management from the insurance institute of America, who has attained the designation of occupational safety and health technologist from the board of certified safety professionals, or who has attained any other comparable designation or certification by a recognized organization as determined by the secretary of ~~human resources~~ *labor*, or (8) an individual who has completed a certified training program in accident prevention services approved by the secretary of ~~human resources~~ *labor*. The insurance company or group-funded self-insurance plan may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of such methods to fulfill the obligations im-

posed by this section. Accident prevention personnel shall have the qualifications required for field safety representatives.

(b) The secretary of ~~human resources~~ *labor* may conduct such inspections as the secretary deems necessary to determine the adequacy of the accident prevention services required by subsection (a) for each insurance company and group-funded self-insurance plan providing workers compensation insurance coverage in Kansas, including, but not limited to, random inspections and those based upon employer complaints. Documented employer complaints shall be appropriately investigated and the results shall be reported to the commissioner of insurance. The secretary shall not be required by this section to inspect each insurance company or group-funded self-insurance plan.

(c) A notice that accident prevention services are available to the policyholder from the insurance company shall appear in no less than ten-point boldface type on the front page of each workers compensation insurance policy delivered or issued for delivery in this state.

(d) At least once each year, each insurance company or group-funded self-insurance plan providing workers compensation insurance in Kansas shall submit to the director of workers compensation detailed information on the type of accident prevention programs offered to the policyholders by the insurance company or to the covered entities by the group-funded self-insurance plan, as the case may be. The information shall include:

(1) The amount of money spent by the insurance company or group-funded self-insured plan on accident prevention services;

(2) the names, number and qualifications of field safety representatives employed;

(3) the number of site inspections performed;

(4) any accident prevention services made available under a contractual arrangement;

(5) a specification and listing of the premium size of the risks to which accident prevention services were actually provided;

(6) evidence of the effectiveness of and accomplishments in accident prevention; and

(7) any additional information required by the director of workers compensation.

(e) If the insurance company or group-funded self-insurance plan does not maintain or provide the accident prevention services required by this section, the director of workers compensation shall notify the commissioner of insurance. Upon receiving such notification, the commissioner of insurance shall presume the insurance company or group-funded self-insurance plan knew or reasonably should have known of the violation and shall assess the penalty prescribed therefore pursuant to K.S.A. 40-2,125 and amendments thereto. The secretary shall send the information and results obtained pursuant to subsection (d) to the insurance commissioner who shall widely disseminate information about the program.

(f) The secretary of ~~human resources~~ *labor* shall employ the personnel necessary to enforce the provisions of this section and shall employ sufficient safety inspectors to perform inspections at job sites or other work places and may audit accident prevention programs of each insurance company or group-funded self-insurance plan which is subject to this section to determine the adequacy of the accident prevention services provided. The safety inspectors shall have the qualifications required for field safety representatives by subsection (a).

(g) The insurance company or group-funded self-insurance plan, and any agent, servant, or employee thereof, shall have no liability with respect to any accident based on the allegation that such accident was caused or could have been prevented by a program, inspection or other activity or by a service undertaken or not undertaken by the insurance company or group-funded self-insurance plan for the prevention of accidents in connection with operations of the employer. This immunity shall not affect the liability of the insurance company or group-funded self-insurance plan for compensation or as otherwise provided in this act.

Sec. 21. K.S.A. 44-5,122 is hereby amended to read as follows: 44-5,122. (a) If the director or the assistant attorney general assigned to the division of workers compensation has probable cause to believe a fraudulent or abusive act or practice or any other violation of the workers compensation act is of such significance as to constitute a crime, a copy of any order, all investigative reports and any evidence in the possession

of the division of workers compensation which relates to such act, practice or violation may be forwarded to the prosecuting attorney of the county in which the act or any of the acts were performed which constitute the fraudulent or abusive act or practice or other violation. Any case which a county attorney fails to prosecute within 90 days shall be returned promptly to the director. The assistant attorney general assigned to the division of workers compensation shall then prosecute the case if, in the opinion of the assistant attorney general, the acts or practices involved still warrant prosecution.

(b) Any person who believes a violation of the workers compensation act has been or is being committed may notify the division of workers compensation of the department of ~~human resources~~ *labor* immediately after discovery of the alleged violation. The person shall send to the division of workers compensation, in a manner prescribed by the director, the information describing the facts of the alleged violation and such additional information relating to the alleged violation as the director may require. The director shall cause an evaluation of the facts surrounding the alleged violation to be made to determine the extent, if any, to which violations of the workers compensation act exist, which shall include a review and investigation by the assistant attorney general assigned to the division to the extent as may be deemed necessary to determine whether there has been a violation of the workers compensation act.

Sec. 22. K.S.A. 44-5,124 is hereby amended to read as follows: 44-5,124. The attorney general shall appoint, with the approval of the secretary of ~~human resources~~ *labor*, an assistant attorney general who shall be within the division of workers compensation of the department of ~~human resources~~ *labor* and who shall receive an annual salary fixed by the attorney general with the approval of the secretary of ~~human resources~~ *labor* and the governor. The operating expenditures for the assistant attorney general shall be financed by funds available for the administration of the workers compensation act. The duties of the assistant attorney general shall include directing or assisting in the investigation and administrative prosecution of alleged fraudulent or abusive acts or practices or other violations of K.S.A. 44-5,120 through 44-5,122, and amendments thereto, or of any other provisions of the workers compensation act, and in the investigation and criminal prosecution of any such acts, practices or violations which constitute crimes.

Sec. 23. K.S.A. 44-601 is hereby amended to read as follows: 44-601. The secretary of ~~human resources~~ *labor* shall have such power, authority and jurisdiction, and shall perform such duties as are in this act set forth.

Sec. 24. K.S.A. 44-601b is hereby amended to read as follows: 44-601b. The secretary of ~~human resources~~ *labor* shall have active charge of supervision of laws pertaining to children in industry, and ~~he or she~~ *the secretary* is hereby given full jurisdiction over and control of factory, workshop and mill and mine inspection.

Sec. 25. K.S.A. 44-607 is hereby amended to read as follows: 44-607. In case of a controversy arising between employers and workers, or between groups or crafts of workers, engaged in any of ~~said~~ *such* industries, employments, public utilities, or common carriers, if it shall appear to the secretary of ~~human resources~~ *labor* that ~~said~~ *the* controversy may endanger the continuity or efficiency of service of any ~~said~~ *such* industries, employments, public utilities or common carriers, or affect the production or transportation of the necessities of life affected or produced by ~~said~~ *such* industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries, employments, public utilities or common carriers, and thereby endanger the public peace or threaten the public health, full power, authority and jurisdiction are hereby granted to the secretary of ~~human resources~~ *labor*, upon ~~his or her~~ *the secretary's* own initiative, to summon all necessary parties before ~~him or her~~ *the secretary* and to investigate ~~said~~ *the* controversy, and to make such temporary findings and orders as may be necessary to preserve the public peace and welfare and to preserve and protect the status of the parties, property and public interests involved pending ~~said~~ *such* investigations, and to take evidence and to examine all necessary records, and to investigate conditions surrounding the workers, and to consider the wages paid to labor and the return accruing to capital, and the rights and welfare of the public, and all other matters affecting the conduct of ~~said~~ *such* industries, employments, public utilities or common carriers, and to settle and adjust all such controversies by such find-

ings and orders as provided in this act.

It is further made the duty of the secretary of ~~human resources labor~~, upon complaint of either party to such controversy, or upon complaint of any ten citizen taxpayers of the community in which such industries, employments, public utilities or common carriers are located, or upon the complaint of the attorney general of the state of Kansas, if it shall be made to appear to the secretary of ~~human resources labor~~ that the parties are unable to agree and that such controversy may endanger the continuity or efficiency of service of any of ~~said the~~ industries, employments, public utilities or common carriers, or affect the production or transportation of the necessaries of life affected or produced by ~~said such~~ industries or employments, or produce industrial strife, disorder or waste, or endanger the orderly operation of such industries, employments, public utilities or common carriers, and thereby endanger the public peace or threaten the public health, to proceed and investigate and determine ~~said such~~ controversy in the same manner as though upon the secretary's own initiative.

After the conclusion of any such hearing and investigation, and as expeditiously as possible, the secretary of ~~human resources labor~~ shall make and serve upon all interested parties ~~his or her~~ the secretary's findings, stating specifically the terms and conditions upon which ~~said the~~ industry, employment, utility or common carrier should be thereafter conducted insofar as the matters determined by the secretary of ~~human resources labor~~ are concerned.

Sec. 26. K.S.A. 44-608 is hereby amended to read as follows: 44-608. The secretary of ~~human resources labor~~ shall order such changes, if any, as are necessary to be made in and about the conduct of ~~said such~~ industry, employment, utility or common carrier, in the matters of working and living conditions, hours of labor, rules and practices, and a reasonable minimum wage, or standard of wages, to conform to the findings of the secretary of ~~human resources labor~~ in such matters, as provided in this act, and such orders shall be served at the same time and in the same manner as provided for the service of the secretary's findings in this act. All such terms, conditions and wages shall be just and reasonable and such as to enable such industries, employments, utilities or common carriers to continue with reasonable efficiency to produce or transport their products or continue their operations and thus to promote the general welfare.

Service of such order shall be made in the same manner as service of notice of any hearing before ~~said the~~ secretary of ~~human resources labor~~ as provided by this act. Such terms, conditions, rules, practices, wages, or standard of wages, so fixed and determined by ~~said the~~ secretary of ~~human resources labor~~ and stated in ~~said the~~ order, shall continue for such reasonable time as may be fixed by ~~said the~~ secretary of ~~human resources labor~~, or until changed by agreement of the parties with the approval of the secretary of ~~human resources labor~~.

If either party to such controversy shall in good faith comply with any order of ~~said the~~ secretary of ~~human resources labor~~ for a period of ~~sixty~~ 60 days or more, and shall find ~~said the~~ order unjust, unreasonable or impracticable, ~~said the~~ party may apply to ~~said the~~ secretary of ~~human resources labor~~ for a modification thereof and ~~said the~~ secretary of ~~human resources labor~~ shall hear and determine ~~said the~~ application and make findings and orders in like manner and with like effect as originally. In such case the evidence taken and submitted in the original hearing may be considered.

Sec. 27. K.S.A. 44-609 is hereby amended to read as follows: 44-609. It is hereby declared necessary for the promotion of the general welfare that workers engaged in any of ~~said the~~ industries, employments, utilities or common carriers shall receive at all times a fair wage and have healthful and moral surroundings while engaged in such labor; and that capital invested therein shall receive at all times a fair rate of return to the owners thereof. The right of every person to make ~~his or her~~ such person's own choice of employment and to make and carry out fair, just and reasonable contracts and agreements of employment, is hereby recognized. If, during the continuance of any such employment, the terms or conditions of any such contract or agreement hereafter entered into, are by the secretary of ~~human resources labor~~, in any action or proceeding properly before ~~said the~~ secretary under the provisions of this act, found to be unfair, unjust or unreasonable, ~~said the~~ secretary may by proper order so modify

the terms and conditions thereof so that they will be and remain fair, just and reasonable and all such orders shall be enforced as in this act provided.

Sec. 28. K.S.A. 44-610 is hereby amended to read as follows: 44-610. Before any hearing, trial or investigation shall be held by the secretary of ~~human resources labor~~, such notice as the secretary shall deem necessary shall be given to all parties interested by registered U.S. mail addressed to ~~said the~~ parties to the post office of the usual place of residence or business of ~~said the~~ interested parties when same is known, or by the publication of notice in some newspaper of general circulation in the county in which ~~said the~~ industry or employment, or the principal office of such utility or common carrier is located, and ~~said the~~ notice shall fix the time and place of ~~said the~~ investigation or hearing. The costs of publication shall be paid by ~~said the~~ secretary out of any funds available therefor. Such notice shall contain the substance of the matter to be investigated, and shall notify all persons interested in ~~said the~~ matter to be present at the time and place named to give such testimony or to take such action as they may deem proper.

Sec. 29. K.S.A. 44-611 is hereby amended to read as follows: 44-611. The secretary of ~~human resources labor~~ shall have the power and authority to issue summons and subpoenas and compel the attendance of witnesses and parties and to compel the production of the books, correspondence, files, records, and accounts of any industry, employment, utility or common carrier, or of any person, corporation, association or union of employees affected, and to make any and all investigations necessary to ascertain the truth in regard to ~~said the~~ controversy. In case any person shall fail or refuse to obey any summons or subpoena issued by ~~said the~~ secretary after due service then and in that event ~~said the~~ secretary is hereby authorized and empowered to take proper proceedings in any court of competent jurisdiction to compel obedience to such summons or subpoena.

Sec. 30. K.S.A. 44-612 is hereby amended to read as follows: 44-612. Any action of the secretary of ~~human resources labor~~ pursuant to K.S.A. 44-601 through 44-628, and amendments thereto, is subject to review and enforcement by the supreme court in accordance with the act for judicial review and civil enforcement of agency actions. Any such review shall take precedence over other civil cases before the court, and the hearing and determination of the action shall be expedited as fully as may be possible consistent with a careful and thorough trial and consideration of the matter.

Sec. 31. K.S.A. 44-614 is hereby amended to read as follows: 44-614. Any union or association of workers engaged in the operation of such industries, employments, public utilities or common carriers, which shall incorporate under the laws of this state shall be considered and recognized in all its proceedings as a legal entity by the secretary of ~~human resources labor~~ and may appear before ~~said the~~ secretary through and by its proper officers, attorneys or other representatives. The right of such corporations, and of such unincorporated unions or associations of workers, to bargain collectively for their members is hereby recognized. The individual members of such unincorporated unions or associations, who shall desire to avail themselves of such right of collective bargaining, shall appoint in writing some officer or officers of such union or association, or some other person or persons as their agents or trustees with authority to enter into such collective bargains and to represent ~~said the~~ individuals in all matters relating thereto. Such written appointment of agents or trustees shall be made a permanent record of such union or association. All such collective bargains, contracts, or agreements shall be subject to the provisions of K.S.A. 44-609 *and amendments thereto*.

Sec. 32. K.S.A. 44-615 is hereby amended to read as follows: 44-615. It shall be unlawful for any person, firm or corporation to discharge any employee or to discriminate in any way against any employee because of the fact that any such employee may testify as a witness before the secretary of ~~human resources labor~~, or shall sign any complaint or shall be in any way instrumental in bringing to the attention of the secretary of ~~human resources labor~~ any matter of controversy between employers and employees as provided herein.

It shall also be unlawful for any two or more persons, by conspiring or confederating together, to injure in any manner any other person or per-

sons, or any corporation, in their, or its business, labor, enterprise, or peace and security, by boycott, by discrimination, by picketing, by advertising, by propaganda, or other means, because of any action taken by any such person or persons, or any corporation, under any order of ~~said the~~ secretary of ~~human resources~~ labor, or because of any action or proceeding instituted before ~~said the~~ secretary, or because any such person or persons, or corporation, shall have invoked the jurisdiction of ~~said the~~ secretary in any matter provided for herein.

Sec. 33. K.S.A. 44-616 is hereby amended to read as follows: 44-616. It shall be unlawful for any person, firm, or corporation engaged in the operation of any such industry, employment, utility, or common carrier willfully to limit or cease operations for the purpose of limiting production or transportation or to affect prices, for the purpose of avoiding any of the provisions of this act, except that any person, firm or corporation so engaged may apply to the secretary of ~~human resources~~ labor for authority to limit or cease operations, stating the reasons thereof the secretary shall hear such application promptly in accordance with the provisions of the Kansas administrative procedure act, and if such application is found to be in good faith and meritorious, the secretary shall grant authority to limit or cease operations.

In all such industries, employments, utilities or common carriers in which operation may be ordinarily affected by changes in season, market conditions, or other reasons or causes inherent in the nature of the business, the secretary may, upon application and after notice to all interested parties, and investigation, as herein provided, make orders fixing rules, regulations and practices to govern the operation of such industries, employments, utilities or common carriers for the purpose of securing the best service to the public consistent with the rights of employers and employees engaged in the operation of such industries, employments, utilities or common carriers.

Sec. 34. K.S.A. 44-618 is hereby amended to read as follows: 44-618. Any person willfully violating the provisions of this act, or any valid order of the secretary of ~~human resources~~ labor, shall be deemed guilty of a misdemeanor, and upon conviction thereof in any court of competent jurisdiction of this state shall be punished by a fine of not to exceed \$1,000, or by imprisonment in the county jail for a period of not to exceed one year, or by both such fine and imprisonment.

Sec. 35. K.S.A. 44-619 is hereby amended to read as follows: 44-619. Any officer of any corporation engaged in any of the industries, employments, utilities or common carriers herein named and specified, or any officer of any labor union or association of persons engaged as workers in any such industry, employment, utility or common carrier, or any employer of labor, coming within the provisions of this act, who shall willfully use the power, authority or influence incident to such person's official position, or position as an employer of others, and by such means shall intentionally influence, impel, or compel any other person to violate any of the provisions of this act, or any valid order of the secretary of ~~human resources~~ labor, shall be deemed guilty of a felony and upon conviction thereof in any court of competent jurisdiction shall be punished by a fine not to exceed \$5,000, or by imprisonment in the custody of the secretary of corrections for a term not to exceed two years, or by both such fine and imprisonment.

Sec. 36. K.S.A. 44-620 is hereby amended to read as follows: 44-620. In case of the suspension, limitation or cessation of the operation of any of the industries, employments, public utilities or common carriers affected by this act, contrary to the provisions hereof, or to the orders of the secretary of ~~human resources~~ labor made hereunder, if it shall appear to ~~said the~~ secretary that such suspension, limitation, or cessation shall seriously affect the public welfare by endangering the public peace, or threatening the public health, then ~~said the~~ secretary is hereby authorized, empowered and directed to take proper proceedings in any court of competent jurisdiction of this state to take over, control, direct and operate ~~said such~~ industry, employment, public utility or common carrier during such emergency. A fair return and compensation shall be paid to the owners of such industry, employment, public utility or common carrier and also a fair wage to the workers engaged therein, during the time of such operation under the provisions of this section.

Sec. 37. K.S.A. 44-621 is hereby amended to read as follows: 44-621.

When any controversy shall arise between employer and employee as to wages, hours of employment, or working or living conditions, in any industry not hereinbefore specified, the parties to such controversy may, by mutual agreement, and with the consent of the secretary of ~~human resources~~ *labor*, refer the same to the secretary for findings and orders. Such agreement of reference shall be in writing, signed by the parties thereto; whereupon ~~said~~ *the* secretary shall proceed to investigate, hear, and determine ~~said~~ *the* controversy as in other cases, and in such case the findings and orders of the secretary as to ~~said~~ *the* controversy shall have the same force and effect as though made in any essential industry as herein provided.

Sec. 38. K.S.A. 44-622 is hereby amended to read as follows: 44-622. The secretary of ~~human resources~~ *labor* may appoint a person, or persons, having a technical knowledge of bookkeeping, engineering, or other technical subjects involved in any inquiry in which the secretary of ~~human resources~~ *labor* is engaged, as an examiner for the purpose of taking evidence with relation to such subject. ~~Such~~ *The* examiner when appointed shall take an oath to well and faithfully perform the duties imposed upon ~~him or her~~ *such examiner*, and shall thereafter have the same power to administer oaths, compel the production of evidence, and the attendance of witnesses as the secretary of ~~human resources~~ *labor* would have if sitting in the same matter. ~~Said~~ *The* examiner shall receive such compensation as may be provided by law or as fixed by the secretary.

Sec. 39. K.S.A. 44-623 is hereby amended to read as follows: 44-623. Any order made by the secretary of ~~human resources~~ *labor* as to a minimum wage or a standard of wages shall be deemed prima facie reasonable and just, and if ~~said~~ *the* minimum wage or standard of wages shall be in excess of the wages theretofore paid in the industry, employment, utility or common carrier, then and in that event the workers affected thereby shall be entitled to receive ~~said~~ *the* minimum wage or standard of wages from the date of the service of summons or publication of notice instituting ~~said~~ *the* investigation, and shall have the right individually, or in case of incorporated unions or associations, or unincorporated unions or associations entitled thereto, collectively, to recover in any court of competent jurisdiction the difference between the wages actually paid and ~~said~~ *the* minimum wage or standard of wages so found and determined by ~~said~~ *the* court in such order.

It shall be the duty of all employers affected by the provisions of this act, during the pendency of any investigation brought under this act, or any litigation resulting therefrom, to keep an accurate account of all wages paid to all workers interested in ~~said~~ *the* investigation or proceedings. In the event ~~said~~ *the* order shall fix a wage or standard of wages which is lower than the wages theretofore paid in the industry, employment, utility or common carrier affected, then and in that event the employers shall have the same right to recover in the same manner as provided in this section with reference to the workers.

Sec. 40. K.S.A. 44-624 is hereby amended to read as follows: 44-624. With the consent of the governor, the secretary of ~~human resources~~ *labor* is hereby authorized and empowered to make, or cause to be made, within this state or elsewhere, such investigations and inquiries as to industrial conditions and relations as may be profitable or necessary for the purpose of becoming familiar with industrial problems such as may arise under the provisions of this act.

Sec. 41. K.S.A. 44-626 is hereby amended to read as follows: 44-626. The provisions of this act and all grants of power, authority and jurisdiction herein made to the secretary of ~~human resources~~ *labor* shall be liberally construed and all incidental powers necessary to carry into effect the provisions of this act are hereby expressly granted to and conferred upon ~~said~~ *the* secretary.

Sec. 42. K.S.A. 44-631 is hereby amended to read as follows: 44-631. The secretary of ~~human resources~~ *labor* is hereby given full jurisdiction over and control of factory, workshop and mill inspection, and mine inspection.

Sec. 43. K.S.A. 44-634 is hereby amended to read as follows: 44-634. It shall be the duty of the secretary of ~~human resources~~ *labor* to collect, assort, arrange and present in annual reports to the governor, to be transmitted biennially by the governor to the legislature, statistical details relating to all labor and industrial pursuits in the state; to the subjects of

cooperation, strikes and other labor difficulties; to trade unions and other labor organizations and their effect upon labor and capital; to other matters relating to the commercial, industrial, social, educational, moral and sanitary conditions prevailing within the state; and the exploitation of such other subjects as will tend to promote the permanent prosperity of the respective industries of the state.

It shall also be the duty of the secretary of ~~human resources~~ *labor* to cause to be enforced all laws regulating the employment of children and minors; all laws established for the protection of health, lives and limbs of operators in workshops and factories, on railroads, and other places; and all laws enacted for the protection of the working classes now in force or that may hereafter be enacted. In the annual report the secretary of ~~human resources~~ *labor* shall also give an account of all proceedings which have been taken in accordance with the provisions of this act, or any of the other laws herein referred to, and in addition thereto such remarks, suggestions and recommendations as the secretary of ~~human resources~~ *labor* may deem necessary for the information of the legislature.

Sec. 44. K.S.A. 44-635 is hereby amended to read as follows: 44-635. The secretary of ~~human resources~~ *labor* is hereby authorized to furnish and deliver a written or printed list of interrogatories to any person, company, or the proper officer of any corporation operating within the state, and require full and complete answers to be made thereto, and returned under oath. The secretary of ~~human resources~~ *labor* shall have power to take and preserve testimony, to issue subpoenas and administer oaths, and examine witnesses under oath in all matters relating to the duties herein required by ~~said the secretary of human resources labor~~, such testimony to be taken in some suitable place in the vicinity to which the testimony is applicable. Witnesses subpoenaed and testifying before the secretary of ~~human resources~~ *labor* shall be paid the same fees as witnesses before the district court; such payment to be made from the incidental fund of the secretary of ~~human resources~~ *labor*.

Any person duly subpoenaed under the provisions of this act who shall willfully neglect or refuse to attend, or refuse to answer any question propounded to ~~him or her~~ *such person* concerning the subject of such examination as provided in this act, or if any person to whom a written or printed list of interrogatories has been furnished by ~~said the secretary of human resources labor~~ shall neglect or refuse to answer and return the same under oath, such person or persons shall be deemed guilty of a misdemeanor, and upon complaint of the secretary of ~~human resources~~ *labor* before a court of competent jurisdiction, and upon conviction thereof, such person or persons shall be fined in a sum not less than ~~twenty five dollars~~ \$25 nor more than ~~one hundred dollars~~ \$100, or by imprisonment in the county jail not exceeding ~~ninety~~ 90 days, or by both such fine and imprisonment. No witness shall be compelled to go outside of the county in which ~~he or she~~ *such witness* resides to testify. In the report of ~~said the secretary of human resources labor~~ no use shall be made of the names of individuals, firms or corporations supplying the information called for by this act, unless by written permission, such information being deemed confidential and not for the purpose of disclosing personal affairs; and any officer, agent or employee of the secretary of ~~human resources~~ *labor* violating this provision shall forfeit a sum not exceeding ~~five hundred dollars~~ \$500, or be imprisoned not more than one year.

Sec. 45. K.S.A. 44-636 is hereby amended to read as follows: 44-636. (a) The secretary of ~~human resources~~ *labor* shall have power to enter any factory or mill, workshop, private works, public works or state agency or institution, mercantile establishment, laundry or any other place of business where labor is or is intended to be performed for any purpose, when the same are open or in operation, for the purpose of gathering facts and statistics such as are contemplated by this act, and to examine into the methods of protection from danger to employees and the sanitary conditions in and around such buildings and places and to keep a record thereof of such inspection.

If it shall be found upon such investigation that the heating, lighting, ventilation, occupant capacity or sanitary arrangement of any such establishment or place is such as to be injurious to the health of persons employed or residing therein, or that the means of egress in case of fire or other disaster are not sufficient, or that the belting, shafting, gearing, elevators, drums, saws, cogs or machinery, in any such establishment or

place are so located or are in a condition so as to be dangerous, or are not sufficiently guarded, or that the vats, pans or any other structures filled with molten metal, hot liquid or hazardous materials or substances are not surrounded with proper safeguards for preventing accidents, injury or illness to those persons in, or near them, or that the construction or condition of any building or buildings, or any boiler, machinery or other appurtenances in or about any place as described in this section is such as to be dangerous or injurious to the persons employed or residing therein, or that the methods of operation are such as to be unnecessarily dangerous or injurious to the persons employed or residing therein, or that any other condition which is within the control of the owner, proprietor, agent, administrator or lessee of any such building, establishment or place to be found to be dangerous or injurious to any persons employed therein or to any other person or persons, the secretary or the authorized agent of the secretary after making such inspection shall notify in writing the owner, proprietor, agent, administrator or lessee of such building, establishment, or place. Such notification may also include an order that requires the provisions of such safeguards or safety devices or the making of such alterations or additions or changes in methods of operation or the taking of any other measures the secretary may deem appropriate and necessary for the safety and protection of the employees or other persons endangered by such conditions and the amount of time granted by the secretary for making any such alterations, additions, changes or taking such other methods as required. Such amount of time shall not exceed 60 days after service of the notice and the order unless an extension thereof is requested for good cause shown by the person named in the order, and such extension is granted by the secretary.

(b) The notification required by subsection (a) shall include notice of the right to a hearing concerning any order included therein. Any such order shall become final unless within 15 days after service of the notice and order, the person or persons named therein shall request in writing a hearing by the secretary. If a request is made for a hearing the date of the hearing shall not be more than 30 days after such request is made. Orders under subsection (a), and hearings thereon, shall be subject to the provisions of the Kansas administrative procedure act.

(c) No person, firm or corporation, nor any officer, agent or employee thereof, shall remove or require to be removed, or made ineffective any practical safeguard around or safety attachment to any machinery, vats, pan, or other apparatus or device mentioned in this section while the same is in use, except for the purpose of immediately making repairs thereto, and all safeguards or safety attachments so removed shall be promptly replaced before the dangerous machine, apparatus or device is returned to normal use or operation. Except as otherwise provided, no person shall require or permit the operation of, or operate, the dangerous machine, apparatus or device without the required safeguards or safety attachments.

(d) If the secretary of ~~human resources~~ *labor* determines that conditions or products in any place of employment are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately, or before such danger can be eliminated through the enforcement provisions otherwise provided by law, the secretary may, in accordance with the provisions of K.S.A. 77-536, and amendments thereto, order the immediate taking of any steps necessary to avoid, correct or remove such imminent danger and prohibit the employment or presence of any individual in locations or under conditions where such imminent danger exists, except individuals whose presence is necessary to avoid, correct or remove such imminent danger or to prevent any avoidable loss of production facilities or product.

(e) Upon issuance of the order authorized by subsection (d) of this section and upon the request of any party who is adversely affected thereby, the secretary shall fix a place and time for a hearing to be held on such order in accordance with the provisions of the Kansas administrative procedure act.

(f) No person shall discharge or in any manner discriminate against any employee because such employee has filed a complaint with, or furnished information to, the secretary of ~~human resources~~ *labor* concerning conditions or situations alleged to be unsafe or hazardous or otherwise covered by the provisions of this act.

(g) Any person who willfully violates any provision of this section or

any lawful order issued pursuant to this section shall be guilty of a misdemeanor and shall be subject to a fine of not less than \$25 nor more than \$100. Each day that such violation exists shall constitute a separate offense.

(h) An action brought pursuant to this section shall not constitute a bar to enforcement of the provisions of this section by injunction or other appropriate remedy, and upon request of the secretary of ~~human resources~~ *labor*, the attorney general shall have the power to institute and maintain in the name of the state any and all appropriate enforcement procedures.

Sec. 46. K.S.A. 44-638 is hereby amended to read as follows: 44-638. All state, county, township and city officers are hereby directed to furnish the secretary of ~~human resources~~ *labor*, upon request, such statistical or other information necessary for the administration of this act.

Sec. 47. K.S.A. 44-643 is hereby amended to read as follows: 44-643. The secretary of ~~human resources~~ *labor* may establish such standard of wages, hours, and conditions of labor for learners and apprentices, and minors employed within this state as shall be held hereunder to be reasonable and not detrimental to health and welfare. The secretary of ~~human resources~~ *labor* may establish different minimum hours and standards for each class in an occupation of different localities in the state, when, in the judgment of the secretary of ~~human resources~~ *labor* the different conditions justify such action.

Sec. 48. K.S.A. 44-645 is hereby amended to read as follows: 44-645. If after investigation the secretary of ~~human resources~~ *labor* is of the opinion that in any occupation the wages, hours and conditions, sanitary and otherwise, are prejudicial to the health or welfare of any substantial number of the classes of employees named in this act and are inadequate to supply the necessary cost of living and to maintain the worker in health the secretary shall publish a notice, not less than once a week for four successive weeks in the Kansas register, that the secretary will on a date and at a place named in the notice hold a public meeting at which all persons will be given a hearing; and, after publication of the notice and the meeting, the secretary of ~~human resources~~ *labor* may make and render such an order as may be proper or necessary, and require all employers in the occupation affected thereby to observe and comply with such determinations and the order.

The order shall become effective in 60 days after it is made and rendered and shall be in full force and effect on and after the 60th day following its making and rendition. The secretary of ~~human resources~~ *labor* shall, insofar as it is practicable, mail a copy of any such order to every employer affected thereby; and every employer affected by any such order shall keep a copy thereof posted in a conspicuous place in each room of such establishment.

Whenever wages, hours, or conditions of labor have been made mandatory in any occupation, upon petition of either employers or employees, the secretary of ~~human resources~~ *labor* may reopen the question.

Sec. 49. K.S.A. 44-646 is hereby amended to read as follows: 44-646. The secretary of ~~human resources~~ *labor* may employ such inspectors and clerical personnel as may be necessary to administer the provisions of this act.

Sec. 50. K.S.A. 44-647 is hereby amended to read as follows: 44-647. The orders of the secretary of ~~human resources~~ *labor* under the provisions of this act may be reviewed in the same manner as is now provided for the review of decisions by K.S.A. 44-601 to 44-628, ~~and acts amendatory thereof or supplemental thereto and amendments thereto.~~

Sec. 51. K.S.A. 44-661 is hereby amended to read as follows: 44-661. (a) There is hereby established the Kansas apprenticeship council within the department of ~~human resources~~ *commerce*. The Kansas apprenticeship council shall be composed of nine members as follows:

- (1) Four members representative of management appointed by the secretary of ~~human resources~~ *commerce*;
- (2) four members representative of labor appointed by the secretary of ~~human resources~~ *commerce*; and
- (3) the secretary of ~~human resources~~ *commerce* or the secretary's designee.

In making such appointments, the secretary of ~~human resources~~ *commerce* shall consider all persons nominated for membership on the coun-

cil by statewide trade associations, employer groups and state labor organizations. All members appointed or designated by the secretary of ~~human resources~~ *commerce* shall possess considerable knowledge of apprenticeship and apprenticeship programs.

(b) Members appointed by the secretary of ~~human resources~~ *commerce* shall be appointed to four-year terms and shall serve until their successors are appointed and qualified. A quorum shall consist of any five members other than the secretary or the secretary's designee. Each member shall have one vote on all matters before the council, except that the secretary or the secretary's designee may cast a vote only in cases of tie votes. Any vacancy shall be filled by appointment for the remainder of the unexpired term.

(c) The Kansas apprenticeship council shall organize annually by electing a chairperson and a vice-chairperson from among the members appointed by the secretary of ~~human resources~~ *commerce* as representative of management or labor. When a member representative of labor is chairperson of the council, a member representative of management shall be vice-chairperson. When a member representative of management is chairperson of the council, a member representative of labor shall be vice-chairperson. In the absence of the chairperson, the vice-chairperson shall exercise all powers of the chairperson. The council may adopt such rules of procedure as it may deem to be required for operation.

(d) The Kansas apprenticeship council shall meet regularly on a bi-monthly basis and at such other times as determined by the council. Meetings may be held at locations within the state which will best promote the purposes of the council and apprenticeship and as may be required in the performance of the powers, duties and functions of the council. Members of the Kansas apprenticeship council attending meetings thereof, or attending a subcommittee meeting thereof authorized by the council, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223 and amendments thereto. Such amounts shall be paid pursuant to vouchers approved by the chairperson of the Kansas apprenticeship council and by the secretary of ~~human resources~~ *commerce* or a person or persons designated therefor by the secretary.

(e) The secretary of ~~human resources~~ *commerce* shall provide to the Kansas apprenticeship council such clerical, secretarial and other staff assistance as may be requested by the council for the performance of the powers, duties and functions of the council.

Sec. 52. K.S.A. 44-662 is hereby amended to read as follows: 44-662. The Kansas apprenticeship council shall perform the following powers, duties and functions:

(a) Assist in the development of and recommend to the secretary of ~~human resources~~ *labor*, standards of wages, hours and conditions of employment for learners and apprentices in accordance with K.S.A. 44-639 through 44-650 and amendments thereto;

(b) formulate and promote the furtherance of labor standards necessary to safeguard the welfare of learners and apprentices;

(c) extend the application of such standards by encouraging the inclusion thereof in collective bargaining agreements;

(d) bring together employers and labor for the formulation of programs of apprenticeship;

(e) cooperate with the bureau of apprenticeship and training and other state or federal agencies engaged in the formulation and promotion of standards of apprenticeship;

(f) examine and approve standards of apprenticeship programs and register apprentices and such programs for purposes of applicable and related federal laws and regulations;

(g) promote the apprenticeship concept within all segments of management and labor and other interested public and private organizations and individuals;

(h) encourage the development of apprenticeship and other industrial training programs embodying sound training practices, proper selection procedures and equal training and employment opportunities for all persons, regardless of race, religion, color, sex, national origin or ancestry; and

(i) serve in an advisory capacity to the secretary of ~~human resources~~ *commerce* in all such matters and in such other matters as may be requested by the secretary.

Sec. 53. K.S.A. 2003 Supp. 44-703, as amended by section 6 of 2004

Senate Bill No. 440, is hereby amended to read as follows: 44-703. As used in this act, unless the context clearly requires otherwise:

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

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

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

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

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

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

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

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

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

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

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

(2) "Payments in lieu of contributions" means the money payments to the state employment security fund from employers which are required

to make or which elect to make such payments under subsection (e) of K.S.A. 44-710 and amendments thereto.

(g) "Employing unit" means any individual or type of organization, including any partnership, association, limited liability company, agency or department of the state of Kansas and political subdivisions thereof, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign including nonprofit corporations, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representatives of a deceased person, which has in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the employment.

(h) "Employer" means:

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

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

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

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

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

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

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

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

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

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

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

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

(B) Employment of individuals to perform domestic service or agri-

cultural labor and wages paid for such service or labor shall not be considered in determining whether an employing unit meets the criteria of this subsection (h)(2).

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

(4) (A) Any employing unit, whether or not it is an employing unit under subsection (g) of this section, which acquires or in any manner succeeds to (i) substantially all of the employing enterprises, organization, trade or business, or (ii) substantially all the assets, of another employing unit which at the time of such acquisition was an employer subject to this act;

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

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

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

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

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

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

(i) "Employment" means:

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

(A) Any active officer of a corporation; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) As an elected official;

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

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

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

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

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

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

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

the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this state shall not be certified for any year by the federal security agency under section 3304(c) of the federal internal revenue code of 1986, the payments required of such instrumentalities with respect to such year shall be refunded by the secretary from the fund in the same manner and within the same period as is provided in subsection (f) of K.S.A. 44-717, and amendments thereto, with respect to contributions erroneously collected;

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

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

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

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

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

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

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

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

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

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

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

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

(O) service performed by an individual who is enrolled at a nonprofit

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Such person:

(a) is engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-com-

mission basis for resale, by the buyer or any other person, in the home or otherwise rather than in a permanent retail establishment; or

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

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

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

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

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

(X) service performed by agricultural workers who are aliens admitted to the United States to perform labor pursuant to section 1101 (a)(15)(H)(ii)(a) of the immigration and nationality act.

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

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

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

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

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

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

(1) That part of the remuneration which has been paid in a calendar

year to an individual by an employer or such employer's predecessor in excess of \$3,000 for all calendar years prior to 1972, \$4,200 for the calendar years 1972 to 1977, inclusive, \$6,000 for calendar years 1978 to 1982, inclusive, \$7,000 for the calendar year 1983, and \$8,000 with respect to employment during any calendar year following 1983, except that if the definition of the term "wages" as contained in the federal unemployment tax act is amended to include remuneration in excess of \$8,000 paid to an individual by an employer under the federal act during any calendar year, wages shall include remuneration paid in a calendar year to an individual by an employer subject to this act or such employer's predecessor with respect to employment during any calendar year up to an amount equal to the dollar limitation specified in the federal unemployment tax act. For the purposes of this subsection (o)(1), the term "employment" shall include service constituting employment under any employment security law of another state or of the federal government;

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

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

(4) any payment made to, or on behalf of, an employee or such employee's beneficiary:

(A) From or to a trust described in section 401(a) of the federal internal revenue code of 1986 which is exempt from tax under section 501(a) of the federal internal revenue code of 1986 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust;

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

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

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

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

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

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

(5) the payment by an employing unit (without deduction from the remuneration of the employee) of the tax imposed upon an employee under section 3101 of the federal internal revenue code of 1986 with respect to remuneration paid to an employee for domestic service in a

private home of the employer or for agricultural labor;

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

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

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

(A) Upon or after the termination of an employee's employment relationship because of (i) death or (ii) retirement for disability; and

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

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

(10) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 129 of the federal internal revenue code of 1986 which relates to dependent care assistance programs;

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

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

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

(14) any payment made, or benefit furnished, to or for the benefit of an employee, if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 of the federal internal revenue code of 1986 relating to educational assistance to the employee.

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

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

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

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

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

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

(t) "American vessel" or "American aircraft" means any vessel or aircraft documented or numbered or otherwise registered under the laws of the United States; and any vessel or aircraft which is neither docu-

mented or numbered or otherwise registered under the laws of the United States nor documented under the laws of any foreign country, if its crew performs service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

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

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

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

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

(4) is a public or other nonprofit institution.

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

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

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

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

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

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

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

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

(iii) the provisions of paragraphs (i) and (ii) above of this subsection (w)(1)(D) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freez-

ing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

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

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

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

(4) For the purpose of this section, if an employing unit does not maintain sufficient records to separate agricultural labor from other employment, all services performed during any pay period by an individual for the person employing such individual shall be deemed to be agricultural labor if services performed during $\frac{1}{2}$ or more of such pay period constitute agricultural labor; but if the services performed during more than $\frac{1}{2}$ of any such pay period by an individual for the person employing such individual do not constitute agricultural labor, then none of the services of such individual for such period shall be deemed to be agricultural labor. As used in this subsection (w), the term "pay period" means a period of not more than 31 consecutive days for which a payment of remuneration is ordinarily made to the individual by the person employing such individual.

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

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

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

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

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

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

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

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

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

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

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

Sec. 54. K.S.A. 2003 Supp. 44-704 is hereby amended to read as follows: 44-704. (a) *Payment of benefits.* All benefits provided herein shall be payable from the fund. All benefits shall be paid through the secretary of ~~human resources~~ *labor*, in accordance with such rules and regulations as the secretary may adopt. Benefits based on service in employment defined in subsections (i)(3)(E) and (i)(3)(F) of K.S.A. 44-703, and amendments thereto, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act except as provided in subsection (e) of K.S.A. 44-705 and subsection (e)(2) of K.S.A. 44-711, and ~~any amendments to these statutes thereto.~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(F) moneys received as federal social security payments.

(3) For the purposes of this subsection (e), "employment benefits within the employer's control" means benefits offered by the employer to employees which are employee benefit plans as defined by section 3 of the federal employee retirement income security act of 1974, as amended, (29 U.S.C. 1002) and which the employer has the option to continue to provide to the employee after the last day that the employee worked for that employer.

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

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

Sec. 55. K.S.A. 44-704a is hereby amended to read as follows: 44-704a. (a) *Definitions.* As used in this section, unless the context clearly requires otherwise:

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

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

(B) ends with either of the following weeks, whichever occurs later: (i) The third week after the first week for which there is an "off" indicator; or (ii) the 13th consecutive week of such period, except that no extended benefit period may begin by reason of an "on" indicator before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) For the purposes of this section:

(A) There is an "on" indicator for this state for a week if the secretary of ~~human resources~~ *labor* determines, in accordance with the regulations of the ~~U.S.~~ *United States* secretary of labor, that, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this act: (i) Equaled or exceeded 5% and equaled or exceeded 120% of the average of such rates for the corresponding ~~thirteen-week~~ *13-week* period ending in each of the preceding two calendar years; or (ii) equaled or exceeded 6%; or (iii) with respect to benefits for weeks of unemployment beginning after March 6, 1993, (a) the average rate of total unemployment (seasonally adjusted), as determined by the ~~U.S.~~ *United States* secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds 6.5%, and (b) the average rate of total unemployment for this state (seasonally adjusted), as determined by the ~~U.S.~~ *United States* secretary of labor, for the three-month period referred to in clause (iii)(a), equals or exceeds 110% of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(B) (i) There is an “off” indicator for this state for a week if the secretary of ~~human resources labor~~ determines, in accordance with the regulations of the ~~U.S.~~ *United States* secretary of labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this act: (a) Was less than 5% or less than 120% of the average of such rates for the corresponding ~~thirteen-week~~ *13-week* period ending in each of the preceding two calendar years; and (b) was less than 5%.

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

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

(A) The average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent ~~thirteen-consecutive-week~~ *13-consecutive-week* period, as determined by the secretary of ~~human resources labor~~ on the basis of reports to the ~~U.S.~~ *United States* secretary of labor; by

(B) the average monthly employment covered under this act for the first four of the most recent six completed calendar quarters ending before the end of such ~~thirteen-week~~ *13-week* period.

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

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

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

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

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

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

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

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

(c) *Beginning and termination of extended benefit period.* (1) Whenever an extended benefit period is to become effective in this state as a

result of an "on" indicator, or an extended benefit period is to be terminated in this state as a result of an "off" indicator, the secretary of ~~human resources~~ labor shall make an appropriate public announcement.

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

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

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

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

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

(2) Effective with respect to weeks beginning in a high unemployment period, the provisions of subsection (e)(1) of this section shall be applied by substituting "~~eighty percent~~" "80%" for "~~fifty percent~~" "50%" in subparagraph (A) of that subsection (e)(1), and by substituting "~~twenty~~" "20" for "~~thirteen~~" "13" in subparagraph (B) of that subsection (e)(1). For purposes of this subsection (e)(2), the term "high unemployment period" means any period during which an extended benefit period would be in effect if the provisions of subsection (a)(2)(A)(iii) of this section were applied after substituting "8%" for "6.5%" in clause (a) of that subsection (a)(2)(A)(iii).

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

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

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

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

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

(4) the individual, during the base period, (A) was paid wages for insured work equal to or greater than 1 1/2 times the amount of total wages paid for the quarter in which such wages were highest during the individual's base period; or (B) has been paid an amount equal to or exceeding 40 times the individual's most recent weekly benefit amount in the individual's base period.

(g) *Limitation on amount of combined regular, extended and trade*

readjustment act benefits received. Notwithstanding any other provisions of this section or K.S.A. 44-704b, and amendments thereto, if the benefit year of any individual ends within an extended entitlement period, the remaining balance of extended benefits that the individual would, but for this section, be entitled to receive in that extended entitlement period, with respect to weeks of unemployment beginning after the end of the benefit year, shall be reduced (but not below zero) by the product of the number of weeks for which the individual received any amounts as trade readjustment allowances within that benefit year, multiplied by the individual's weekly benefit amount for extended benefits.

Sec. 56. K.S.A. 2003 Supp. 44-704b, as amended by section 1 of Senate Bill No. 440, is hereby amended to read as follows: 44-704b. (a) *Cessation of extended benefits when paid under an interstate claim in a state where an extended benefit period is not in effect:*

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

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

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

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

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

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

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

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

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

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

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

(ii) the applicable state or local minimum wage;

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

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

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

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

subsection (b)(2).

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

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

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

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

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

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

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

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

Sec. 57. K.S.A. 2003 Supp. 44-706, as amended by section 2 of Senate Bill No. 440, is hereby amended to read as follows: 44-706. An individual shall be disqualified for benefits:

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

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

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

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

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

(5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety

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

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

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

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

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

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

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

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

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

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

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

(iv) the individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence; or

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

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

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

(ii) a police record documenting the abuse; or

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

(iv) medical documentation of the abuse; or

(v) a statement provided by a counselor, social worker, health care provider, clergy, shelter worker, legal advocate, domestic violence or sexual assault advocate or other professional who has assisted the individual in dealing with the effects of abuse on the individual or the individual's family; or

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

(C) No evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the department of ~~human resources~~ *labor* unless consent for disclosure is given by the individual.

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

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

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

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

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

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

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

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

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

(3) (A) For the purposes of this subsection (b), misconduct shall include, but not be limited to repeated absence, including incarceration, resulting in absence from work of three days or longer, excluding Saturdays, Sundays and legal holidays, and lateness, from scheduled work if the facts show:

(i) The individual was absent without good cause;

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

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

(iv) the employee had knowledge of the employer's written absenteeism policy.

(B) For the purposes of this subsection (b), if an employee disputes being absent without good cause, the employee shall present evidence that a majority of the employee's absences were for good cause. If the employee alleges that the employee's repeated absences were the result of health related issues, such evidence shall include documentation from a licensed and practicing health care provider as defined in subsection (a)(1).

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

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

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

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

(c) If the individual has failed, without good cause, to either apply

for suitable work when so directed by the employment office of the secretary of ~~human resources~~ labor, or to accept suitable work when offered to the individual by the employment office, the secretary of ~~human resources~~ labor, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of ~~human resources~~ labor, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization; (4) if the individual left employment as a result of domestic violence, and the position offered does not reasonably accommodate the individual's physical, psychological, safety, and/or legal needs relating to ~~said~~ such domestic violence.

(d) For any week with respect to which the secretary of ~~human resources~~ labor, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed, except that this subsection (d) shall not apply if it is shown to the satisfaction of the secretary of ~~human resources~~ labor, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection (d) be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection (d), failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

(e) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

(f) For any week with respect to which the individual is entitled to receive any unemployment allowance or compensation granted by the United States under an act of congress to ex-service men and women in

recognition of former service with the military or naval services of the United States.

(g) For the period of one year beginning with the first day following the last week of unemployment for which the individual received benefits, or for one year from the date the act was committed, whichever is the later, if the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of ~~human resources~~ *labor*.

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

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

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

(k) For any week of unemployment on the basis of service in any capacity for an educational institution as defined in subsection (v) of K.S.A. 44-703, and amendments thereto, if such week begins during an established and customary vacation period or holiday recess, if the individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(l) For any week of unemployment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if such week begins during the period between two successive sport seasons or similar period if such individual performed services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

(m) For any week on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the federal immigration and nationality act. Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a

preponderance of the evidence.

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

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

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

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

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

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

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

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

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

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

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

(t) If the individual has been discharged for failing a pre-employment drug screen required by the employer and if such discharge occurs not later than seven days after the employer is notified of the results of such drug screen. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount.

Sec. 58. K.S.A. 2003 Supp. 44-709, as amended by section 3 of 2004 Senate Bill No. 440, is hereby amended to read as follows: 44-709. (a) *Filing.* Claims for benefits shall be made in accordance with rules and regulations adopted by the secretary. The secretary shall furnish a copy of such rules and regulations to any individual requesting them. Each employer shall post and maintain printed statements furnished by the secretary without cost to the employer in places readily accessible to individuals in the service of the employer.

(b) *Determination.* (1) Except as otherwise provided in this subsection (b)(1), a representative designated by the secretary, and hereinafter referred to as an examiner, shall promptly examine the claim and, on the basis of the facts found by the examiner, shall determine whether or not the claim is valid. If the examiner determines that the claim is valid, the examiner shall determine the first day of the benefit year, the weekly benefit amount and the total amount of benefits payable with respect to the benefit year. If the claim is determined to be valid, the examiner shall send a notice to the last employing unit who shall respond within 10 days by providing the examiner all requested information including all information required for a decision under K.S.A. 44-706 and amendments thereto. The information may be submitted by the employing unit in person at an employment office of the secretary or by mail, by telefacsimile machine or by electronic mail. If the required information is not submitted or postmarked within a response time limit of 10 days after the examiner's notice was sent, the employing unit shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the board of review or any court, except that the employing unit's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. In any case in which the payment or denial of benefits will be determined by the provisions of subsection (d) of K.S.A. 44-706, and amendments thereto, the examiner shall promptly transmit the claim to a special examiner designated by the secretary to make a determination on the claim after the investigation as the special examiner deems necessary. The parties shall be promptly notified of the special examiner's decision and any party aggrieved by the decision may appeal to the referee as provided in subsection (c). The claimant and the claimant's most recent employing unit shall be promptly notified of the ex-

aminer's or special examiner's decision.

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

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

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

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

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

(f) *Board of review.* (1) There is hereby created a board of review, hereinafter referred to as the board, consisting of three members. Except as provided by paragraph (2) of this subsection, each member of the board shall be appointed for a term of four years as provided in this subsection. Two members shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b and amendments thereto. Except as provided by K.S.A. 46-2601, *and amendments thereto*, no person appointed to the board, whose appointment is subject to confirmation by the senate, shall exercise any power, duty or function as a member until confirmed by the senate. One member shall be representative of employees, one member shall be representative of employers, and one member shall be representative of the public in general. The appointment of the employee representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas A.F.L.-C.I.O. The appointment of the employer representative member of the board shall be made by the governor from a list of three nominations submitted by the Kansas chamber of commerce and industry. The appointment of the public representative member of the board, who, because of vocation, occupation or affiliation may be deemed not to be representative of either management or labor, shall be made by the members appointed by the governor as employee representative and employer representative. If the two members do not agree and fail to make the appointment of the public member within 30 days after the expiration of the public member's term of office, the governor shall appoint the representative of the public. Not more than two members of the board shall belong to the same political party.

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

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

ment of the member. Each member shall be appointed as representative of the same special interest group represented by the predecessor of the member.

(4) Each member of the board shall be entitled to receive as compensation for the member's services at the rate of \$15,000 per year, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties in accordance with rules and regulations adopted by the secretary. Members' compensation and expenses shall be paid from the employment security administration fund.

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

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

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

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

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

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

(j) Any finding of fact or law, judgment, determination, conclusion or final order made by the board of review or any examiner, special examiner, referee or other person with authority to make findings of fact or law pursuant to the employment security law is not admissible or binding in any separate or subsequent action or proceeding, between a person and a present or previous employer brought before an arbitrator, court or judge of the state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

(k) In any proceeding or hearing conducted under this section, a party to the proceeding or hearing may appear before a referee or the board

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

Sec. 59. K.S.A. 2003 Supp. 44-710, as amended by section 4 of 2004 Senate Bill No. 440, is hereby amended to read as follows: 44-710. (a) *Payment.* Contributions shall accrue and become payable by each contributing employer for each calendar year in which the contributing employer is subject to the employment security law with respect to wages paid for employment. Such contributions shall become due and be paid by each contributing employer to the secretary for the employment security fund in accordance with such rules and regulations as the secretary may adopt and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. In the payment of any contributions, a fractional part of \$.01 shall be disregarded unless it amounts to \$.005 or more, in which case it shall be increased to \$.01. Should contributions for any calendar quarter be less than \$1, no payment shall be required.

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

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

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

bears to the total wages in the base period. Benefits shall be charged to contributing employers' accounts and rated governmental employers' accounts upon the basis of benefits paid during each twelve-month period ending on the computation date.

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

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

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

(D) No contributing employer, rated governmental employer or reimbursing employer's account shall be charged for any additional benefits paid during the period July 1, 2003 through June 30, 2004.

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

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

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

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

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

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

(H) No contributing employer or rated governmental employer's account shall be charged with respect to their pro rata share of benefit charges if such charges are of \$100 or less.

(3) The examiner shall notify any base period employer whose account will be charged with benefits paid following the filing of a valid new claim and a determination by the examiner based on all information relating to the claim contained in the records of the division of employment security. Such notice shall become final and benefits charged to the base period employer's account in accordance with the claim unless

within 10 calendar days from the date the notice was sent, the base period employer requests in writing that the examiner reconsider the determination and furnishes any required information in accordance with the secretary's rules and regulations. In a similar manner, a notice of an additional claim followed by the first payment of benefits with respect to the benefit year, filed by an individual during a benefit year after a period in such year during which such individual was employed, shall be given to any base period employer of the individual who has requested such a notice within 10 calendar days from the date the notice of the valid new claim was sent to such base period employer. For purposes of this subsection (c)(3), if the required information is not submitted or postmarked within a response time limit of 10 days after the base period employer notice was sent, the base period employer shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the board of review or any court, except that the base period employer's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. The examiner shall notify the employer of the reconsidered determination which shall be subject to appeal, or further reconsideration, in accordance with the provisions of K.S.A. 44-709 and amendments thereto.

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

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

(e) *Election to become reimbursing employer; payment in lieu of contributions.* (1) Any governmental entity, Indian tribes or tribal units, (subdivisions, subsidiaries or business enterprises wholly owned by such Indian tribes), for which services are performed as described in subsection (i)(3)(E) of K.S.A. 44-703, and amendments thereto, or any nonprofit organization or group of nonprofit organizations described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income tax under section 501(a) of such code, that becomes subject to the employment security law may elect to become a reimbursing employer under this subsection (e)(1) and agree to pay the secretary for the employment security fund an amount equal to the amount of regular benefits and $\frac{1}{2}$ of the extended benefits paid that are attributable to service in the employ of such reimbursing employer, except that each reimbursing governmental employer, Indian tribes or tribal units shall pay an amount equal to the amount of regular benefits and extended benefits paid for weeks of unemployment beginning after December 31, 1978, for governmental employers and December 21, 2000, for Indian tribes or tribal units to individuals for weeks of unemployment which begin during the effective period of such election.

(A) Any employer identified in this subsection (e)(1) may elect to become a reimbursing employer for a period encompassing not less than four complete calendar years if such employer files with the secretary a written notice of such election within the ~~thirty-day~~ 30-day period immediately following January 1 of any calendar year or within the ~~thirty-day~~ 30-day period immediately following the date on which a determination of subjectivity to the employment security law is issued, whichever occurs later.

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

(C) Any employer identified in this subsection (e)(1) which has re-

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

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

(E) The secretary, in accordance with such rules and regulations as the secretary may adopt, shall notify each employer identified in subsection (e)(1) of any determination which the secretary may make of its status as an employer and of the effective date of any election which it makes to become a reimbursing employer and of any termination of such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of K.S.A. 44-710b and amendments thereto.

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

(A) At the end of each calendar quarter, or at the end of any other period as determined by the secretary, the secretary shall bill each reimbursing employer, except the state of Kansas, (i) an amount to be paid which is equal to the full amount of regular benefits plus $\frac{1}{2}$ of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such reimbursing employer; and (ii) for weeks of unemployment beginning after December 31, 1978, each reimbursing governmental employer and December 21, 2000, for Indian tribes or tribal units shall be certified an amount to be paid which is equal to the full amount of regular benefits and extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such reimbursing governmental employer.

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

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

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

(E) Past due payments of amounts certified by the secretary under this section shall be subject to the same interest, penalties and actions required by K.S.A. 44-717 and amendments thereto. (1) If any nonprofit organization or group of nonprofit organizations described in section 501(c)(3) of the federal internal revenue code of 1986 or governmental reimbursing employer is delinquent in making payments of amounts certified by the secretary under this section, the secretary may terminate such employer's election to make payments in lieu of contributions as of the beginning of the next calendar year and such termination shall be effective for such next calendar year and the calendar year thereafter so that the termination is effective for two complete calendar years. (2) Failure of the Indian tribe or tribal unit to make required payments, including assessment of interest and penalty within 90 days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions as described pursuant to paragraph (e)(1) for the following

tax year unless payment in full is received before contribution rates for the next tax year are calculated. (3) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or non-payment, as described in paragraph (2), shall have such option reinstated, if after a period of one year, all contributions have been made on time and no contributions, payments in lieu of contributions for benefits paid, penalties or interest remain outstanding.

(F) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalties, after all collection activities deemed necessary by the secretary have been exhausted, will cause services performed by such tribe to not be treated as employment for purposes of subsection (i)(3)(E) of K.S.A. 44-703 and amendments thereto. If an Indian tribe fails to make payments required under this section, including assessments of interest and penalties, within 90 days of a final notice of delinquency, the secretary shall immediately notify the United States internal revenue service and the United States department of labor. The secretary may determine that any Indian tribe that loses coverage pursuant to this paragraph may have services performed on behalf of such tribe again deemed "employment" if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(G) In the discretion of the secretary, any employer who elects to become liable for payments in lieu of contributions and any nonprofit organization or group of nonprofit organizations described in section 501 (c)(3) of the federal internal revenue code of 1986 or governmental reimbursing employer or Indian tribe or tribal unit who is delinquent in filing reports or in making payments of amounts certified by the secretary under this section shall be required within 60 days after the effective date of such election, in the case of an eligible employer so electing, or after the date of notification to the delinquent employer under this subsection (e)(2)(G), in the case of a delinquent employer, to execute and file with the secretary a surety bond, except that the employer may elect, in lieu of a surety bond, to deposit with the secretary money or securities as approved by the secretary or to purchase and deliver to an escrow agent a certificate of deposit to guarantee payment. The amount of the bond, deposit or escrow agreement required by this subsection (e)(2)(G) shall not exceed 5.4% of the organization's taxable wages paid for employment by the eligible employer during the four calendar quarters immediately preceding the effective date of the election or the date of notification, in the case of a delinquent employer. If the employer did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the secretary. Upon the failure of an employer to comply with this subsection (e)(2)(G) within the time limits imposed or to maintain the required bond or deposit, the secretary may terminate the election of such eligible employer or delinquent employer, as the case may be, to make payments in lieu of contributions, and such termination shall be effective for the current and next calendar year.

(H) The state of Kansas shall make reimbursement payments quarterly at a fiscal year rate which shall be based upon: (i) The available balance in the state's reimbursing account as of December 31 of each calendar year; (ii) the historical unemployment experience of all covered state agencies during prior years; (iii) the estimate of total covered wages to be paid during the ensuing calendar year; (iv) the applicable fiscal year rate of the claims processing and auditing fee under K.S.A. 75-3798 and amendments thereto; and (v) actuarial and other information furnished to the secretary by the secretary of administration. In accordance with K.S.A. 75-3798, and amendments thereto, the claims processing and auditing fees charged to state agencies shall be deducted from the amounts collected for the reimbursement payments under this paragraph (H) prior to making the quarterly reimbursement payments for the state of Kansas. The fiscal year rate shall be expressed as a percentage of covered total wages and shall be the same for all covered state agencies. The fiscal year rate for each fiscal year will be certified in writing by the secretary to the secretary of administration on July 15 of each year and such certified rate shall become effective on the July 1 immediately following the date of certification. A detailed listing of benefit charges applicable to the state's reimbursing account shall be furnished quarterly by the secretary to the secretary of administration and the total amount of charges deducted from previous reimbursing payments made by the state. On January 1 of

each year, if it is determined that benefit charges exceed the amount of prior reimbursing payments, an upward adjustment shall be made therefor in the fiscal year rate which will be certified on the ensuing July 15. If total payments exceed benefit charges, all or part of the excess may be refunded, at the discretion of the secretary, from the fund or retained in the fund as part of the payments which may be required for the next fiscal year.

(3) *Allocation of benefit costs.* The reimbursing account of each reimbursing employer shall be charged the full amount of regular benefits and $\frac{1}{2}$ of the amount of extended benefits paid except that each reimbursing governmental employer's account shall be charged the full amount of regular benefits and extended benefits paid for weeks of unemployment beginning after December 31, 1978, to individuals whose entire base period wage credits are from such employer. When benefits received by an individual are based upon base period wage credits from more than one employer then the reimbursing employer's or reimbursing governmental employer's account shall be charged in the same ratio as base period wage credits from such employer bear to the individual's total base period wage credits. Notwithstanding any other provision of the employment security law, no reimbursing employer's or reimbursing governmental employer's account shall be charged for payments of extended benefits which are wholly reimbursed to the state by the federal government.

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

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

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

Sec. 60. K.S.A. 2003 Supp. 44-710a, as amended by section 5 of 2004 Senate Bill No. 440, is hereby amended to read as follows: 44-710a. (a)

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

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

(B) (i) Employers who are not eligible for a rate computation shall pay contributions at an assigned rate equal to the sum of 1% plus the greater of the average rate assigned in the preceding calendar year to all employers in such industry sector or the average rate assigned to all covered employers during the preceding calendar year, except that in no instance shall any such assigned rate be less than 2%. Employers engaged in more than one type of industrial activity shall be classified by principal activity. All rates assigned will remain in effect for a complete calendar year. If the sale or acquisition of a new establishment would require reclassification of the employer to a different industry sector, the employer would be promptly notified, and the contribution rate applicable to the new industry sector would become effective the following January 1.

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

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

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

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

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

(D) As of each computation date, the total of the taxable wages paid during the ~~twelve month~~ 12-month period prior to the computation date by all employers eligible for rate computation, except negative account balance employers, shall be divided into 51 approximately equal parts designated in column A of schedule I as “rate groups,” except, with regard

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

SCHEDULE I—Eligible Employers

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

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

SCHEDULE II—Surcharge on Negative Accounts

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

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

SCHEDULE III—Fund Control
Ratios to Total Wages

Column A Reserve Fund Ratio	Column B Planned Yield
4.500 and over	0.00
4.475 but less than 4.500	0.01
4.450 but less than 4.475	0.02
4.425 but less than 4.450	0.03
4.400 but less than 4.425	0.04
4.375 but less than 4.400	0.05
4.350 but less than 4.375	0.06
4.325 but less than 4.350	0.07
4.300 but less than 4.325	0.08
4.275 but less than 4.300	0.09
4.250 but less than 4.275	0.10
4.225 but less than 4.250	0.11
4.200 but less than 4.225	0.12
4.175 but less than 4.200	0.13
4.150 but less than 4.175	0.14
4.125 but less than 4.150	0.15
4.100 but less than 4.125	0.16
4.075 but less than 4.100	0.17
4.050 but less than 4.075	0.18
4.025 but less than 4.050	0.19
4.000 but less than 4.025	0.20
3.950 but less than 4.000	0.21
3.900 but less than 3.950	0.22
3.850 but less than 3.900	0.23
3.800 but less than 3.850	0.24
3.750 but less than 3.800	0.25
3.700 but less than 3.750	0.26
3.650 but less than 3.700	0.27
3.600 but less than 3.650	0.28
3.550 but less than 3.600	0.29
3.500 but less than 3.550	0.30
3.450 but less than 3.500	0.31
3.400 but less than 3.450	0.32
3.350 but less than 3.400	0.33
3.300 but less than 3.350	0.34
3.250 but less than 3.300	0.35

3.200 but less than 3.250	0.36
3.150 but less than 3.200	0.37
3.100 but less than 3.150	0.38
3.050 but less than 3.100	0.39
3.000 but less than 3.050	0.40
2.950 but less than 3.000	0.41
2.900 but less than 2.950	0.42
2.850 but less than 2.900	0.43
2.800 but less than 2.850	0.44
2.750 but less than 2.800	0.45
2.700 but less than 2.750	0.46
2.650 but less than 2.700	0.47
2.600 but less than 2.650	0.48
2.550 but less than 2.600	0.49
2.500 but less than 2.550	0.50
2.450 but less than 2.500	0.51
2.400 but less than 2.450	0.52
2.350 but less than 2.400	0.53
2.300 but less than 2.350	0.54
2.250 but less than 2.300	0.55
2.200 but less than 2.250	0.56
2.150 but less than 2.200	0.57
2.100 but less than 2.150	0.58
2.050 but less than 2.100	0.59
2.000 but less than 2.050	0.60
1.975 but less than 2.000	0.61
1.950 but less than 1.975	0.62
1.925 but less than 1.950	0.63
1.900 but less than 1.925	0.64
1.875 but less than 1.900	0.65
1.850 but less than 1.875	0.66
1.825 but less than 1.850	0.67
1.800 but less than 1.825	0.68
1.775 but less than 1.800	0.69
1.750 but less than 1.775	0.70
1.725 but less than 1.750	0.71
1.700 but less than 1.725	0.72
1.675 but less than 1.700	0.73
1.650 but less than 1.675	0.74
1.625 but less than 1.650	0.75
1.600 but less than 1.625	0.76
1.575 but less than 1.600	0.77
1.550 but less than 1.575	0.78
1.525 but less than 1.550	0.79
1.500 but less than 1.525	0.80
1.475 but less than 1.500	0.81
1.450 but less than 1.475	0.82
1.425 but less than 1.450	0.83
1.400 but less than 1.425	0.84
1.375 but less than 1.400	0.85
1.350 but less than 1.375	0.86
1.325 but less than 1.350	0.87
1.300 but less than 1.325	0.88
1.275 but less than 1.300	0.89
1.250 but less than 1.275	0.90
1.225 but less than 1.250	0.91
1.200 but less than 1.225	0.92
1.175 but less than 1.200	0.93
1.150 but less than 1.175	0.94
1.125 but less than 1.150	0.95
1.100 but less than 1.125	0.96
1.075 but less than 1.100	0.97
1.050 but less than 1.075	0.98
1.025 but less than 1.050	0.99
1.000 but less than 1.025	1.00
0.900 but less than 1.000	1.01
0.800 but less than 0.900	1.02
0.700 but less than 0.800	1.03
0.600 but less than 0.700	1.04
0.500 but less than 0.600	1.05
0.400 but less than 0.500	1.06
0.300 but less than 0.400	1.07
0.200 but less than 0.300	1.08
0.100 but less than 0.200	1.09
Less than 0.100%	1.10

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

fiscal year ending June 30.

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

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

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

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

(4) If a successor employer is determined to be qualified under paragraph (1), (2) or (3) of this subsection to receive the experience rating factors of the predecessor employer, the rate assigned to the successor employer for the remainder of the contributions year shall be determined by the following:

(A) If the acquiring employing unit was an employer subject to this act prior to the date of the transfer, the rate of contribution shall be the same as the contribution rate of the acquiring employer on the date of the transfer.

(B) If the acquiring employing unit was not an employer subject to this act prior to the date of the transfer, the successor employer shall have a newly computed rate for the remainder of the contribution year which shall be based on the transferred experience rating factors as they existed on the most recent computation date immediately preceding the date of acquisition. These experience rating factors consist of all contributions paid, benefit experience and annual payrolls.

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

shall be that of a “new employer” as described in subsection (a)(1) of this section.

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

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

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

(e) The secretary of ~~human resources~~ *labor* shall annually prepare and submit a certification as to the solvency and adequacy of the amount credited to the state of Kansas’ account in the federal employment security trust fund to the governor and the employment security advisory council. The certification shall be submitted on or before December 1 of each calendar year and shall be for the ~~twelve-month~~ *12-month* period ending on June 30 of that calendar year. In arriving at the certification contributions paid on or before July 31 following the ~~twelve-month~~ *12-month* period ending date of June 30 shall be considered. Each certification shall be used to determine the need for any adjustment to schedule III in subsection (a)(3)(A) and to assist in preparing legislation to accomplish any such adjustment.

Sec. 61. K.S.A. 44-710b is hereby amended to read as follows: 44-710b. (a) *By the secretary of* ~~human resources~~ *labor*. The secretary of ~~human resources~~ *labor* shall promptly notify each contributing employer of its rate of contributions, each rated governmental employer of its benefit cost rate and each reimbursing employer of its benefit liability as determined for any calendar year pursuant to K.S.A. 44-710 and 44-710a; and amendments thereto. Such determination shall become conclusive and binding upon the employer unless, within 15 days after the mailing of notice thereof to the employer’s last known address or in the absence of mailing, within 15 days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the reasons therefor. If the secretary of ~~human resources~~ *labor* grants such review, the employer shall be promptly notified thereof and shall be granted an opportunity for a fair hearing, but no employer shall have standing, in any proceeding involving the employer’s rate of contributions or benefit liability, to contest the chargeability to the employer’s account of any benefits paid in accordance with a determination, redetermination or decision pursuant to subsection (c) of K.S.A. 44-710, and amendments thereto, except upon the ground that the services on the basis of which such benefits were found to be chargeable did not constitute services

performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision or to any other proceedings under this act in which the character of such services was determined. Any such hearing conducted pursuant to this section shall be heard in the county where the contributing employer maintains its principle place of business. The hearing officer shall render a decision concerning all matters at issue in the hearing within 90 days.

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

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

Sec. 62. K.S.A. 44-711 is hereby amended to read as follows: 44-711.

(a) *Period of liability for contributions.* Any employing unit which is or becomes an employer subject to this act within any calendar year shall be subject for all wages paid during the whole of such calendar year.

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

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

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

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

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

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

Sec. 63. K.S.A. 44-713 is hereby amended to read as follows: 44-713. The secretary of ~~human resources~~ *labor*, in recognition of meritorious service by individual employees who serve in the administration of the employment security law and who receive a preponderant share of their compensation through the employment security administration fund, is hereby authorized to make meritorious service awards, including the presentation of a service award pin and certificate to each of such employees when ~~he or she~~ *such employee* has served in such administration a minimum of ~~ten (10)~~ 10 years. The secretary may also present to each of such employees an additional pin and certificate for each additional five ~~(5)~~ year period of satisfactory service in the administration of ~~said~~ *the* law. The cost of each such pin and certificate shall be paid from the employment security administration fund in the same manner as other expenses of administering the employment security law are paid.

Sec. 64. K.S.A. 44-713a is hereby amended to read as follows: 44-713a. Pursuant to 42 U.S.C.A. 1101 *et seq.*, the secretary of ~~human resources~~ *labor* may accept assistance from the *United States* secretary of labor to conduct in-service training either directly or through contracts with institutions of higher education or other qualified agencies, organizations or institutions, to conduct programs and courses designed to train individuals to prepare them or improve their qualifications for service in the administration of Kansas employment security programs.

Sec. 65. K.S.A. 2003 Supp. 44-714 is hereby amended to read as follows: 44-714. (a) *Duties and powers of secretary.* It shall be the duty of the secretary to administer this act and the secretary shall have power and authority to adopt, amend or revoke such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the secretary deems necessary or suitable to that end. Such rules and regulations may be adopted, amended, or revoked by the secretary only after public hearing or opportunity to be heard thereon. The secretary shall determine the organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. The secretary shall make and submit reports for the administration of the employment security law in the manner prescribed by K.S.A. 75-3044 to 75-3046, inclusive, and 75-3048, and amendments thereto. Whenever the secretary believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, the secretary shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

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

(c) *Personnel.* (1) Subject to other provisions of this act, the secretary is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, deputies, attorneys, experts and other persons as may be necessary in carrying out the provisions of this act. The secretary shall classify all positions and shall establish salary schedules and minimum personnel standards for the positions so classified. The secretary shall provide for the holding of examinations to de-

termine the qualifications of applicants for the positions so classified, and, except to temporary appointments not to exceed six months in duration, shall appoint all personnel on the basis of efficiency and fitness as determined in such examinations. The secretary shall not appoint or employ any person who is an officer or committee member of any political party organization or who holds or is a candidate for a partisan elective public office. The secretary shall adopt and enforce fair and reasonable rules and regulations for appointment, promotions and demotions, based upon ratings of efficiency and fitness and for terminations for cause. The secretary may delegate to any such person so appointed such power and authority as the secretary deems reasonable and proper for the effective administration of this act, and may in the secretary's discretion bond any person handling moneys or signing checks under the employment security law.

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

(d) *Advisory councils.* The secretary shall appoint a state employment security advisory council and may appoint local advisory councils, composed in each case of men and women which shall include an equal number of employer representatives and employee representatives who may fairly be regarded as representative because of their vocation, employment, or affiliations, and of such members representing the general public as the secretary may designate. Each such member shall serve a four-year term. On July 1, 1996, the secretary shall designate term lengths for seated members of the council. One-half of the seated members representing employers, $\frac{1}{2}$ of the seated members representing employees and $\frac{1}{2}$ of the members representing the general public shall be designated by the secretary to serve two-year terms. The remaining seated members of the council shall be designated to serve four-year terms. When the term of any member expires, the secretary shall appoint the member's successor to a four-year term. If a position on the council becomes vacant prior to the expiration of the vacating member's term, the secretary may appoint an otherwise qualified individual to fulfill the remainder of such unexpired term. Such councils shall aid the secretary in formulating policies and discussing problems related to the administration of this act and in securing impartiality and freedom from political influence in the solution of such problems. Members of the state employment security advisory council attending meetings of such council, or attending a subcommittee meeting thereof authorized by such council, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223, and amendments thereto. Service on the state employment security advisory council shall not in and of itself be sufficient to cause any member of the state employment security advisory council to be classified as a state officer or employee.

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

feasible; and to these ends to carry on and publish the results of investigations and research studies.

(f) *Records and reports.* Each employing unit shall keep true and accurate work records, containing such information as the secretary may prescribe. Such records shall be open to inspection and subject to being copied by the secretary or the secretary's authorized representatives at any reasonable time and shall be preserved for a period of five years from the due date of the contributions or payments in lieu of contributions for the period to which they relate. Only one audit shall be made of any employer's records for any given period of time. Upon request the employing unit shall be furnished a copy of all findings by the secretary or the secretary's authorized representatives, resulting from such audit. A special inquiry or special examination made for a specific and limited purpose shall not be considered to be an audit for the purpose of this subsection. The secretary may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the secretary deems necessary for the effective administration of this act. Information thus obtained or obtained from any individual pursuant to the administration of this act shall be held confidential, except to the extent necessary for the proper presentation of a claim by an employer or employee under the employment security law, and shall not be published or be open to public inspection, other than to public employees in the performance of their public duties, in any manner revealing the individual's or employing unit's identity. Any claimant or employing unit or their representatives at a hearing before an appeal tribunal or the secretary shall be supplied with information from such records to the extent necessary for the proper presentation of the claim. The transcript made at any such benefits hearing shall not be discoverable or admissible in evidence in any other proceeding, hearing or determination of any kind or nature. In the event of any appeal of a benefits matter, the transcript shall be sealed by the hearing officer and shall be available only to any reviewing authority who shall reseal the transcript after making a review of it. In no event shall such transcript be deemed a public record. Nothing in this subsection (f) shall be construed to prohibit disclosure of any information obtained under the employment security law, including hearing transcripts, upon request of either of the parties, for the purpose of administering or adjudicating a claim for benefits under the provisions of any other state program, except that any party receiving such information shall be prohibited from further disclosure and shall be subject to the same duty of confidentiality otherwise imposed by this subsection (f) and shall be subject to the penalties imposed by this subsection (f) for violations of such duty of confidentiality. Nothing in this subsection (f) shall be construed to prohibit disclosure of any information obtained under the employment security law, including hearing transcripts, for use as evidence in open court in a criminal prosecution for perjury at an appeal hearing under the employment security law or for any criminal violation of the employment security law. If the secretary or any officer or employee of the secretary violates any provisions of this subsection (f), the secretary or such officer or employee shall be fined not less than \$20 nor more than \$200 or imprisoned for not longer than 90 days, or both. Original records of the agency and original paid benefit warrants of the state treasurer may be made available to the employment security agency of any other state or the federal government to be used as evidence in prosecution of violations of the employment security law of such state or federal government. Photostatic copies of such records shall be made and where possible shall be substituted for original records introduced in evidence and the originals returned to the agency.

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

(h) *Subpoenas, service.* Upon request, service of subpoenas shall be made by the sheriff of a county within that county, by the sheriff's deputy, by any other person who is not a party and is not less than 18 years of

age or by some person specially appointed for that purpose by the secretary of ~~human resources labor~~ or the secretary's designee. A person not a party as described above or a person specially appointed by the secretary or the secretary's designee to serve subpoenas may make service any place in the state. The subpoena shall be served as follows:

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

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

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

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

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

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

(i) *Subpoenas, enforcement.* In case of contumacy by or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which such person guilty of contumacy or refusal to obey is found, resides or transacts business, upon application by the secretary or the secretary's duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before the secretary, or the secretary's duly authorized representative, to produce evidence, if so ordered, or to give testimony relating to the matter under investigation or in question. Failure to obey such order of the court may be punished by ~~said~~ the court as a contempt thereof. Any person who, without just cause, shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda or other records in obedience to the subpoena of the secretary or the secretary's duly authorized representative shall be punished by a fine of not less than \$200 or by imprisonment of not longer than 60 days, or both, and each day such violation continued shall be deemed to be a separate offense.

(j) *State-federal cooperation.* In the administration of this act, the secretary shall cooperate to the fullest extent consistent with the provisions of this act, with the federal security agency, shall make such reports,

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

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

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

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

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

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

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

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

ance with arrangements entered into pursuant to the provisions of this section or any other section of the employment security law;

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

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

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

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

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

(o) The secretary is hereby authorized to fix, charge and collect fees for copies made of public documents, as defined by subsection (c) of K.S.A. 45-204, and amendments thereto, by xerographic, thermographic or other photocopying or reproduction process, in order to recover all or part of the actual costs incurred, including any costs incurred in certifying such copies. All moneys received from fees charged for copies of such documents shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215; and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the employment security administration fund. No such fees shall be charged or collected for copies of documents that are made pursuant to a statute which requires such copies to be furnished without expense.

Sec. 66. K.S.A. 44-715 is hereby amended to read as follows: 44-715.

(a) *State employment service.* The secretary of ~~human resources labor~~ shall establish and maintain employment offices in such number and in such places as may be necessary for the proper administration of this act and for the purposes of performing such duties as are within the purview of the act of congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes," approved June 6, 1933 (48 Stat. 113; U.S.C., title 29, sec. 49 (c) as amended). The secretary of ~~human resources labor~~ shall be charged with the duty of cooperating with any official or agency of the United States having powers or duties under the provisions of ~~said such~~ act of congress, as amended, and to do and perform all things necessary to secure to this state the benefits of ~~said such~~ act of congress, as amended, in the promotion and maintenance of a system of employment offices. The provisions of ~~said such~~ act of congress, as amended, are hereby accepted by this state, in conformity with ~~said such~~ act, and this state will observe and comply with the requirements thereof. The secretary of ~~human resources labor~~ is hereby designated and constituted the agency of this state for the purpose of ~~said such~~ act. The secretary of ~~human resources labor~~ shall appoint such officers

and employees as may be necessary for the administration of the act of which this section is amendatory. Such appointments shall be made in accordance with regulations prescribed by the director of the United States employment service. The secretary of ~~human resources~~ *labor* may cooperate with or enter into agreements with the railroad retirement board with respect to the establishment, maintenance, and use of free employment service facilities.

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

Sec. 67. K.S.A. 44-716 is hereby amended to read as follows: 44-716.

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

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

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

Sec. 68. K.S.A. 44-716a is hereby amended to read as follows: 44-716a. (a) There is hereby created in the state treasury a special fund to be known as the special employment security fund. All interest and penalties collected under the provisions of the Kansas employment security law shall be paid into this fund. No such moneys shall be expended or available for expenditure in any manner which would permit their substitution for, or a corresponding reduction in, federal funds which in the absence of such moneys would be available to finance expenditures for the administration of the employment security law. Nothing in this section shall prevent such moneys from being used as a revolving fund, to cover expenditures, necessary and proper under the law, for which federal funds have been duly requested but not yet received, subject to the charging of such expenditures against such funds when received. Except as otherwise authorized by this section or by appropriations act, the moneys in this fund may be used by the secretary of ~~human resources~~ *labor* only for the payment of costs of administration which are found not to have been properly and validly chargeable against federal grants, or other funds, received for or in the employment security administration fund. In addition to the other purposes for which expenditures may be made from the special employment security fund as authorized by this section or by appropriations act, moneys from this fund may be used to finance activities as deemed necessary by the secretary of ~~human resources~~ *labor* for the efficient operation of activities under or the administration of the employment security law, except that (1) no moneys shall be used for such purposes unless the secretary has determined that no other funds are available or can be properly used to finance expenditures for such purposes, and (2) expenditures during any fiscal year for purposes authorized under this section shall not exceed \$110,000 except upon approval of the state finance council acting on this matter which is hereby characterized as a matter of legislative delegation and subject to the guidelines prescribed by subsection (c) of K.S.A. 75-3711c and amendments thereto. No expenditures of this fund shall be made except on written authorization by the governor and the secretary of ~~human resources~~ *labor*.

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

(c) In addition to expenditures authorized by this section, the director of accounts and reports may transfer funds from the special employment

security fund to the accounting services recovery fund as provided in K.S.A. 75-3728b and 75-6210 and amendments thereto.

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

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

Sec. 69. K.S.A. 2003 Supp. 44-717 is hereby amended to read as follows: 44-717. (a) (1) *Penalties on past-due reports, interest on past-due contributions, payments in lieu of contributions and benefit cost payments.* Any employer or any officer or agent of an employer, who fails to file any wage report or contribution return by the last day of the month following the close of each calendar quarter to which they are related shall pay a penalty as provided by this subsection (a) for each month or fraction of a month until the report or return is received by the secretary of ~~human resources~~ *labor*. The penalty for each month or fraction of a month shall be an amount equal to .05% of the total wages paid by the employer during the quarter, except that no penalty shall be less than \$25 nor more than \$200 for each such report or return not timely filed. Contributions and benefit cost payments unpaid by the last day of the month following the last calendar quarter to which they are related and payments in lieu of contributions unpaid 30 days after the mailing of the statement of benefit charges, shall bear interest at the rate of 1% per month or fraction of a month until payment is received by the secretary of ~~human resources~~ *labor* except that an employing unit, which is not theretofore subject to this law and which becomes an employer and does not refuse to make the reports, returns and contributions, payments in lieu of contributions and benefit cost payments required under this law, shall not be liable for such penalty or interest if the wage reports and contribution returns required are filed and the contributions, payments in lieu of contributions or benefit cost payments required are paid within 10 days following notification by the secretary of ~~human resources~~ *labor* that a determination has been made fixing its status as an employer subject to this law. Upon written request and good cause shown, the secretary of ~~human resources~~ *labor* may abate any penalty or interest or portion thereof provided for by this subsection (a). Interest amounting to less than \$1 shall be waived by the secretary of ~~human resources~~ *labor* and shall not be collected. Penalties and interest collected pursuant to this subsection shall be paid into the special employment security fund. For all purposes under this section, amounts assessed as surcharges under subsection (j) or under K.S.A. 44-710a, and amendments thereto, shall be considered to be contributions and shall be subject to penalties and interest imposed under this section and to collection in the manner provided by this section. For purposes of this subsection, a wage report, a contribution return, a contribution, a payment in lieu of contribution or a benefit cost payment is deemed to be filed or paid as of the date it is placed in the United States mail.

(2) Notices of payment and reporting delinquency to Indian tribes or their tribal units shall include information that failure to make full payment within the prescribed time frame:

(i) will cause the Indian tribe to be liable for taxes under FUTA;

(ii) will cause the Indian tribe to lose the option to make payments in lieu of contributions;

(iii) could cause the Indian tribe to be excepted from the definition of "employer," as provided in paragraph (h)(3) of K.S.A. 44-703, and amendments thereto, and services in the employ of the Indian tribe, as provided in paragraph (i)(3)(E) of K.S.A. 44-703, and amendments thereto, to be excepted from "employment."

(b) *Collection.* (1) If, after due notice, any employer defaults in payment of any penalty, contributions, payments in lieu of contributions, benefit cost payments, or interest thereon the amount due may be col-

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

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

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

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

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

shall be entitled to such priority as is provided in that act for taxes due any state of the United States.

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

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

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

amount by levy shall be lawful without regard to the ~~ten-day~~ 10-day period provided in this subsection (e).

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

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

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

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

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

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

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

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

(5) *Time for return.* The officer or other person receiving a final notice shall make a return of service promptly and shall send such return

to the secretary or the secretary's designee in any event within 10 days after the service is effected. If the final notice cannot be served it shall be returned to the secretary or the secretary's designee within 30 days after the date of issue with a statement of the reason for the failure to serve the same. The original return shall be attached to and filed with any warrant thereafter filed.

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

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

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

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

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

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

(h) *Refunds.* If any individual, governmental entity or organization makes application for refund or adjustment of any amount paid as contributions, benefit cost payments or interest under this law and the secretary of ~~human resources~~ *labor* determines that such amount or any portion thereof was erroneously collected, except for amounts less than \$1, the secretary of ~~human resources~~ *labor* shall allow such individual or organization to make an adjustment thereof, in connection with subsequent contribution payments, or if such adjustment cannot be made the secretary of ~~human resources~~ *labor* shall refund the amount, except for amounts less than \$1, from the employment security fund, except that all interest erroneously collected which has been paid into the special employment security fund shall be refunded out of the special employment security fund. No adjustment or refund shall be allowed with respect to a payment as contributions, benefit cost payments or interest unless an application therefor is made on or before whichever of the following dates is later: (1) One year from the date on which such payment was made; or (2) three years from the last day of the period with respect to which such payment was made. For like cause and within the same period adjustment or refund may be so made on the secretary's own initiative. The secretary of ~~human resources~~ *labor* shall not be required to refund any contributions, payments in lieu of contributions or benefit cost payments based

upon wages paid which have been used as base-period wages in a determination of a claimant's benefit rights when justifiable and correct payments have been made to the claimant as the result of such determination. For all taxable years commencing after December 31, 1997, interest at the rate prescribed in K.S.A. 79-2968, and amendments thereto, shall be allowed on a contribution or benefit cost payment which the secretary has determined was erroneously collected pursuant to this section.

(i) (1) *Cash deposit or bond.* If any contributing employer is delinquent in making payments under the employment security law during any two quarters of the most recent four-quarter period, the secretary or the secretary's authorized representative shall have the discretionary power to require such contributing employer either to deposit cash or to file a bond with sufficient sureties to guarantee the payment of contributions, penalty and interest owed by such employer.

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

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

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

Sec. 70. K.S.A. 44-718 is hereby amended to read as follows: 44-718.

(a) *Waiver of rights void.* No agreement by an individual to waive, release or commute such individual's rights to benefits or any other rights under this act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contribution or payments in lieu of contributions required under this act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from remuneration to finance the employer's contributions required from such employer, or require or accept any waiver of any right hereunder by any individual in such employer's employ. Any employer or officer or agent of an employer who violates any provision of this subsection shall, for each offense, be fined not less than \$100 nor more than \$1,000 or be imprisoned for not more than six months, or both.

(b) *Limitation of fees.* No individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the secretary of ~~human resources~~ labor or representatives of the secretary or by any court or any officer thereof. Any individual claiming benefits in any proceeding before the secretary of ~~human resources~~ labor or a court may be represented by counsel or other duly authorized agent, but no such counsel or agents shall either charge or receive for such services more than an amount approved by the secretary of ~~human resources~~ labor. Any person who violates any provision of this subsection shall, for each such

offense, be fined not less than \$50 nor more than \$500, or imprisoned for not more than six months, or both.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) requirements exist pertaining to estimated tax payments;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 71. K.S.A. 44-720 is hereby amended to read as follows: 44-720.

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

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

Sec. 72. K.S.A. 44-721 is hereby amended to read as follows: 44-721. Benefits shall be deemed to be due and payable under this act only to the extent provided in this act and to the extent that moneys are available therefor to the credit of the employment security fund and neither the

state nor the secretary of ~~human resources~~ *labor* shall be liable for any amount in excess of such sums.

Sec. 73. K.S.A. 44-727 is hereby amended to read as follows: 44-727. The state of Kansas is hereby authorized to receive and accept title to real property which may be acquired under rental purchase agreements executed or to be executed by the secretary in the administration of the employment security law. Such property shall be acquired without appropriation by the state of Kansas and the cost thereof shall be defrayed by federal funds made available for the administration of ~~said~~ *the* law. Sufficiency of title to any property acquired hereunder shall be approved by the attorney general prior to conveyance by general warranty deed to the state of Kansas. Any property acquired under authority hereof shall be utilized primarily for the administration of the employment security law by the secretary of ~~human resources~~ *labor*. After acquisition ~~said~~ *such* property may be occupied for administration of the employment security law at no cost other than maintenance.

Sec. 74. K.S.A. 2003 Supp. 44-757 is hereby amended to read as follows: 44-757. *Shared work unemployment compensation program.* (a) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) the shared work plan applies to at least 10% of the employees in the affected unit;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

in wages; and

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

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

(m) The secretary may not pay an individual shared work benefits for any week in which the individual performs paid work for the participating employer in excess of the reduced hours established under the shared work plan.

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

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

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

(q) Notwithstanding any other provisions of this section, an individual shall not be eligible to receive shared work benefits for more than 26 calendar weeks during the ~~twelve-month~~ 12-month period of the shared work plan, except that 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. No week shall be counted as a week for which an individual is eligible for shared work benefits for the purposes of this section unless the week occurs within the ~~twelve-month~~ 12-month period of the shared work plan.

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

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

Sec. 75. K.S.A. 44-759 is hereby amended to read as follows: 44-759. On and after January 1, 1998, the secretary of ~~human resources labor~~ shall make available in a medium readily accessible to contributing employers all administrative rulings of the department of ~~human resources labor~~ which affect the duties and responsibilities of contributing employers. Such rulings shall be provided in such a manner as to conceal the identity of the specific employer for whom the ruling concerned. The secretary shall cause to be published in the Kansas register a description of each such administrative ruling within 30 days of such ruling together with specific instructions as to how the complete text of the administrative ruling may be obtained.

Sec. 76. K.S.A. 2003 Supp. 44-762 is hereby amended to read as follows: 44-762. The secretary of ~~human resources labor~~ shall implement a training curriculum for employees who will interact with claimants under the provisions of K.S.A. 44-706 and K.S.A. 2003 Supp. 44-760 through 44-764; and amendments thereto. Such curriculum shall be approved by the state domestic violence and sexual assault coalition designated by the center for disease control or health and human services.

Sec. 77. K.S.A. 44-809 is hereby amended to read as follows: 44-809. It shall be unlawful for any person

(1) To interfere with or prevent the right of franchise of any member of a labor organization. The right of franchise shall include the right of

an employee to make complaint, file charges, give information or testimony concerning the violations of this act, or the petitioning to ~~his or her~~ *such employee's* union regarding any grievance ~~he or she~~ *such employee* may have concerning ~~his or her~~ *such employee's* membership or employment, or the making known facts concerning such grievance or violations of law to any person, including public officials or the employer, and ~~his or her~~ *such employee's* right of free petition, lawful assemblage and free speech.

(2) To prohibit or prevent any election of the officers of any labor organization.

(3) On and after July 1, 1955, to participate in any strike, walk-out, or cessation of work or continuation thereof against an employer when any of ~~his or her~~ *such employer's* employees are organized into a collective bargaining unit without the same being authorized by a majority vote of the employees in such collective bargaining unit at an election, by secret ballot, held, conducted and canvassed in accordance with rules and regulations which shall be adopted by the secretary of ~~human resources~~ *labor*. The provisions of this section shall not prohibit any person from terminating ~~his or her~~ *such person's* employment on ~~his or her~~ *such person's* own volition.

(4) To enter into an all-union agreement as a representative of employees in a collective bargaining unit unless the employees to be governed thereby have, by a majority vote of such employees by secret ballot, authorized such agreement.

(5) To conduct any election referred to in subsections 3 and 4 of this section without a secret ballot.

(6) To charge, receive, or retain any dues, assessments, or other charges in excess of, or not authorized by, the constitution or bylaws of any labor organization on file as provided in K.S.A. 44-806 *and amendments thereto*.

(7) To act as a business agent without having obtained and possessing a valid and subsisting license.

(8) To solicit membership for or to act as a representative of an existing labor organization without authority of such labor organization to do so.

(9) To make any false statement in an application for a license.

(10) To act as a business agent or representative of any labor organization which does not have on file, with the secretary of state, its constitution and bylaws.

(11) For any person to seize or occupy property unlawfully during the existence of a labor dispute.

(12) To coerce or intimidate any employee in the enjoyment of ~~his or her~~ *such employee's* legal rights, including those guaranteed in K.S.A. 44-803, ~~or any acts amendatory thereof or supplemental and amendments thereto~~, or to intimidate ~~his or her~~ *such employee's* family, picket ~~his or her~~ *such employee's* domicile or injure the person or property of such employee or ~~his or her~~ *such employee's* family or to in any way discriminate against any employee, member of a labor organization or other person by reason of ~~his or her~~ *such employee's* exercise of any right guaranteed to ~~him or her~~ *such employee* by the provisions of this act.

(13) To picket beyond the area of the industry within which a labor dispute arises.

(14) To engage in picketing by force and violence, or to picket in such a manner as to prevent ingress and egress to and from any premises, or to picket other than in a peaceable manner.

(15) To violate the terms of a collective bargaining agreement.

(16) To enter into a closed shop agreement.

Sec. 78. K.S.A. 44-816 is hereby amended to read as follows: 44-816. The secretary of ~~human resources~~ *labor* may adopt rules and regulations governing the conduct and canvassing of elections for the selection of collective bargaining units, and by collective bargaining units relative to approval of all-union agreements, strikes, walk outs, or cessation of work or continuation thereof. Such rules and regulations may be amended, revised, or supplemented from time to time as the secretary of ~~human resources~~ *labor* shall deem advisable or necessary.

Sec. 79. K.S.A. 2003 Supp. 44-817 is hereby amended to read as follows: 44-817. (a) The secretary of ~~human resources~~ *labor* shall have power to appoint any competent, impartial, disinterested person to act as mediator in any labor dispute either upon the secretary's own initiative

or upon the request of one of the parties to the dispute. It shall be the function of such mediator to bring the parties together voluntarily under such favorable auspices as will tend to effectuate settlement of the dispute, but neither the mediator nor the secretary of ~~human resources~~ *labor* shall have any power of compulsion in mediation proceedings. The secretary of ~~human resources~~ *labor* or the secretary's designee shall be authorized to charge fees to the parties for mediation, conflict resolution services or training programs contracted for to be provided by the agency and shall prescribe reasonable rules of procedure for such mediators. The costs for such mediation services shall be allocated by the secretary or the secretary's designee.

(b) All verbal or written information transmitted between any party to a dispute and a mediator conducting the proceeding, or the staff of an approved program under K.S.A. 5-501 *et seq.* and amendments thereto, shall be confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A mediator shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party, including the neutral person or staff of an approved program conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or anyone the party authorizes to claim the privilege.

(c) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to establish a defense for the mediator or staff of an approved program conducting the proceeding in the case of an action against the mediator or staff of an approved program that is filed by a party to the mediation;

(2) any information that the mediator is required to report under K.S.A. 38-1522 and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud; or

(4) any information that the mediator is required to report or communicate under the specific provisions of any statute or in order to comply with orders of the court.

Sec. 80. K.S.A. 44-820 is hereby amended to read as follows: 44-820.

(a) There is hereby created the agricultural labor relations board, which shall consist of three members and which shall be activated only when a complaint is filed with the secretary of the state board of agriculture alleging the existence of a controversy under this act. The secretary of the state board of agriculture shall:

(1) Forthwith request the secretary of ~~human resources~~ *labor* to submit to the governor, within 15 days, a list containing the names of at least three persons, representative of agricultural labor;

(2) forthwith request the secretary of administration to submit to the governor, within 15 days, a list containing the names of at least three persons, representative of the general public and not identified with either agricultural labor or employers; and

(3) submit to the governor, within 15 days, a list containing the names of at least three persons, representative of agricultural employers.

From each of such lists the governor, within 10 days after receiving the same, shall appoint one member to serve on the board. The member representing the public at large shall serve as the chairperson of the board. Not more than two members of the board shall belong to the same political party. Every member of the board shall serve until a successor is appointed and qualified. Any vacancy in the membership of the board occurring prior to the time the board is deactivated shall be filled by the appointment of a new member in the same manner as provided for original appointment of the member being replaced.

(b) Members of the agricultural labor relations board attending meetings of the board shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto. Members' compensation shall be paid by the department of ~~human resources~~ *labor* from funds appropriated thereto by the legislature. The secretary of ~~human resources~~ *labor* shall provide office space

and such clerical and other staff assistance as necessary to enable the board to carry out the provisions of this act.

(c) In addition to other authority provided in this act the board shall:

(1) Establish procedures for the prevention of prohibited agricultural employer and employee organization practices as provided in K.S.A. 44-828, and amendments thereto, except that the board shall provide only for the entering of an order directing the agricultural employer or employee organization to meet and confer in good faith in the case of a claimed violation of subsection (b)(5) or (c)(5) of that section. The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to K.S.A. 44-823, and amendments thereto, or with meeting and conferring.

(2) Hold such hearings and make such inquiries as it deems necessary to carry out properly its functions and powers. For the purpose of such hearings and inquiries, the board may administer oaths and affirmations, examine witnesses and documents, take testimony, receive evidence and compel attendance of witnesses and the production of documents by the issuance of subpoenas. Such subpoenas shall be regulated and enforced in the same manner as provided for the secretary of ~~human resources~~ *labor* under the provisions of K.S.A. 44-611 and amendments thereto.

(3) To exercise such other powers, as appropriate to carry out the purposes and provisions of this act.

(d) The board shall be deactivated when the secretary of the state board of agriculture determines there is no pending nor threatened controversy under this act.

Sec. 81. K.S.A. 44-914 is hereby amended to read as follows: 44-914. As used in this act, unless the context otherwise requires:

(a) "Boiler" means a closed vessel in which water or other liquid is heated, steam or vapor is generated or steam is superheated, or in which any combination of these functions is accomplished, under pressure or vacuum, for use internal or external to itself, by the direct application of energy from the combustion of fuels or of electric or solar power. The term boiler shall also include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

(b) "Certificate inspection" means an inspection, the report of which is used by the chief inspector to determine whether or not an inspection certificate shall be issued as provided by K.S.A. 44-924; and amendments thereto.

(c) "Heating boiler" means a steam or vapor boiler operating at pressures not exceeding 15 pounds per square inch gauge or a hot water heating boiler operating at pressures not exceeding 160 pounds per square inch gauge or temperatures not exceeding 250° Fahrenheit.

(d) "High pressure, high temperature water boiler" means a water boiler operating at pressures exceeding 160 pounds per square inch gauge or temperatures exceeding 250° Fahrenheit.

(e) "Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 pounds per square inch gauge.

(f) "Secretary" means the secretary of ~~human resources~~ *labor*.

(g) "Pressure vessel" means a vessel or container used for the containment of pressure either internal or external in which the pressure is obtained from an external source of vapor, liquid or gas.

(h) "Hot water supply boiler" means a vessel heating water for external uses, by gas, oil, electricity or solar energy that does not exceed 160 psi, or 210° Fahrenheit.

(i) "Inspection fee" means any inspection fees collected pursuant to subsection (a) of K.S.A. 44-926, and amendments thereto, and shall not include any certificate fees collected pursuant to subsection (b) of K.S.A. 44-926, and amendments thereto, and any travel or hotel expense.

Sec. 82. K.S.A. 44-915 is hereby amended to read as follows: 44-915. (a) The provisions of this act shall not apply to:

(1) Boilers and pressure vessels under the control of the United States government or federal law;

(2) antique, scale model or other steam boilers which are used exclusively for exhibition purposes and which are inspected by associations that have established an approved inspection procedure and whose inspectors are registered as special inspectors with the boiler safety unit of the state of Kansas, department of ~~human resources~~ *labor*;

(3) fire engine boilers brought into the state for temporary use in times of emergency;

(4) boilers and pressure vessels located on producing oil and gas leases or storage areas, and outside the limits of any municipality, used solely for oil and gas production purposes;

(5) hot water supply boilers which are directly fired with oil, gas, electricity or solar energy and which are equipped with pressure and temperature safety relief valves approved by the American society of mechanical engineers or the national board of boiler and pressure vessel inspectors, if none of the following limitations is exceeded:

(A) Heat input of 200,000 BTUH;

(B) water temperature of 210° Fahrenheit; and

(C) nominal water capacity of 85 gallons or 120 gallons for an electrical utility generating plant; and

(6) pressure vessels constructed and installed prior to January 1, 1999.

(b) The provisions of subsections (b) and (c) of K.S.A. 44-923, and amendments thereto, and the provisions of K.S.A. 44-924, 44-925 and 44-926, and amendments thereto, shall not apply to:

(1) Boilers and pressure vessels located on farms and used solely for agriculture or horticultural purposes;

(2) heating boilers and pressure vessels which are located in private residences or in apartment houses of less than five family units;

(3) boilers and pressure vessels operated and regularly inspected by railway companies operating in interstate commerce;

(4) any boiler and pressure vessels in any establishment in which petroleum products are refined or processed in which all boiler and pressure equipment is inspected and rated either by an inspection service regularly maintained within such establishment or provided by a manufacturer, designer or insurer of such equipment, in accordance with the applicable provisions of any published code or codes of rules or recommended practices nationally recognized in the industry of which such establishment is a part as providing suitable standards for the inspection, repair and rating of pressure equipment of the type used in such establishment;

(5) pressure vessels used for transportation and storage of compressed gases when constructed in compliance with specifications of the United States department of transportation and when charged with gas marked, maintained and periodically requalified for use, as required by appropriate regulations of the United States department of transportation;

(6) pressure vessels located on vehicles operating under the rules and regulations of other state authorities and used to transport passengers or freight;

(7) pressure vessels installed on the right-of-way of railroads and used in the operation of trains;

(8) pressure vessels having an internal or external operating pressure not exceeding 15 psig with no limit on size;

(9) pressure vessels having an inside diameter, width, height or cross section diagonal not exceeding six inches, with no limitation on length of the vessel or pressure;

(10) pressure vessels for containing water or other nonflammable liquids under pressure, including those containing air, the compression of which serves only as a cushion, when neither of the following limitations is exceeded:

(A) A design pressure of 300 psig; or

(B) a design temperature of 210° Fahrenheit;

(11) pressure vessels which may be classified as pressure containers which are an integral part of components of rotating or reciprocating mechanical devices such as pumps, turbines, generators, engines and hydraulic or pneumatic cylinders, where the primary design considerations and stresses are derived from the functional requirements of the device;

(12) pressure vessels that do not exceed: (A) 15 cubic feet and 250 psi pressure; or (B) 1½ cubic feet in volume and 600 psi pressure; and

(13) pressure vessels installed and constructed before January 1, 1999.

Sec. 83. K.S.A. 2003 Supp. 44-926 is hereby amended to read as follows: 44-926. (a) The owner or user of a boiler or pressure vessel required by this act to be inspected by the chief inspector or a deputy inspector shall pay directly to the chief inspector, upon completion of inspection, inspection fees fixed by the secretary in accordance with this

subsection (a). The secretary shall fix annually, by rules and regulations, a schedule of fees for inspections of pressure vessels installed after January 1, 1999, and boilers by state inspectors and may fix different fees for inspection of boilers and pressure vessels in the various categories. Such fees shall not exceed \$500 per day for each boiler or pressure vessel inspected.

(b) The owner or user of a boiler or pressure vessel for which an inspection certificate is to be issued pursuant to subsection (b) of K.S.A. 44-924, and amendments thereto, shall pay directly to the chief inspector, before issuance of such certificate, a certificate fee fixed by the secretary by rules and regulations of not to exceed \$35.

(c) There is hereby created in the state treasury the boiler inspection fee fund. The chief inspector shall pay daily to the secretary all moneys received from the fees established hereunder, and the secretary shall remit all such moneys to the state treasurer in accordance with the provisions of K.S.A. 75-4215; and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of such inspection fees shall be credited to the state general fund and the balance including all of the certificate fees shall be credited to the boiler inspection fee fund. All expenditures from the boiler inspection fee fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary of ~~human resources~~ labor or by a person or persons designated by the secretary.

Sec. 84. K.S.A. 44-1202 is hereby amended to read as follows: As used in K.S.A. 44-1201 to 44-1213, inclusive, and amendments thereto, unless the context otherwise requires:

(a) "Secretary" means the secretary of ~~human resources~~ labor.

(b) "Wage" means compensation due to an employee by reason of the employee's employment, payable in legal tender of the United States or checks on banks convertible into cash on demand at full face value, subject to such allowances as may be permitted by regulations of the secretary under K.S.A. 44-1207 and amendments thereto.

(c) "Employ" means to suffer or permit to work.

(d) "Employer" means any individual, partnership, association, corporation, business trust or any person or group of persons acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include any employer who is subject to the provisions of the fair labor standards act of 1938 (29 U.S.C.A. § 201 *et seq.*) and any other acts amendatory thereof or supplemental thereto.

(e) "Employee" means any individual employed by an employer, but shall not include: (1) Any individual employed in agriculture; (2) any individual employed in domestic service in or about a private home; (3) any individual employed in a bona fide executive, administrative or professional capacity or in the capacity of an outside commission paid salesman, as such terms are defined and delimited by rules and regulations of the secretary; (4) any individual employed by the United States; (5) any individual who renders service gratuitously for a nonprofit organization as such terms are defined by rules and regulations of the secretary; (6) persons eighteen years of age or less employed for any purpose on an occasional or part-time basis; or (7) any individual employed by a unified school district in an executive, administrative or professional capacity, if the individual is engaged in such capacity 50% or more of the hours during which the individual is so employed.

(f) "Occupation" means employment in any service, trade, business, industry or other gainful employment.

(g) "Gratuity" means voluntary monetary contribution received by an employee from a guest, patron or customer for services rendered.

(h) "Occasional or part-time basis" means any employee working less than 40 hours per week and, for the purposes of this definition, students 18 years of age and under working between academic terms shall be considered part-time employees regardless of the number of hours worked.

Sec. 85. K.S.A. 44-1402 is hereby amended to read as follows: 44-1402. In accordance with appropriation acts, the secretary of ~~human resources~~ commerce shall provide grants to eligible administrative entities, as described in K.S.A. 44-1403, and amendments thereto, for the purpose of establishing and carrying out programs that provide employment opportunities during the summer months and after school to individuals

through payments for labor and related costs associated with the repair, maintenance and renovation of essential community facilities and for labor and related costs associated with assisting with community services and working with low-income senior citizens. In the alternative, if the eligible entity is a private business, such entity may provide employment opportunities that would provide the youth with meaningful and valuable work experiences other than such community services and assistance. Such private business shall specifically stipulate in the grant application what would be such work experience.

Sec. 86. K.S.A. 44-1405 is hereby amended to read as follows: 44-1405. An individual shall be eligible to participate in a program described in subsection (a) of K.S.A. 44-1404, and amendments thereto, only if the individual is attending school and of legal age to be employed and meets the income eligibility guidelines established by the secretary of ~~human resources~~ *commerce*.

Sec. 87. K.S.A. 44-1409 is hereby amended to read as follows: 44-1409. The secretary of ~~human resources~~ *commerce* may adopt guidelines to effectuate the purpose of this act, however, such guidelines shall not be considered rules and regulations as defined in K.S.A. 77-415 and amendments thereto.

Sec. 88. K.S.A. 2003 Supp. 49-201 is hereby amended to read as follows: 49-201. (a) The owner, agent or operator of every coal or underground rock or limestone mine shall make or cause to be made and shall maintain and keep current an accurate map or plan of the workings of such mine, and each and every vein thereof, on a scale not exceeding 100 feet to the inch, and showing the bearings and distances. All such maps and plans shall be kept in the office of such mine. The owner, agent or operator of such mine shall furnish the state geologist with a true copy of said map or plan.

(b) On or before the 10th day of July of each year, each such owner, agent or operator shall amend such maps and plans to record the progress of the workings of such mine during the preceding calendar year to be marked on the original map or plan of such mine, and shall file with the state geologist a copy of the amendments to the map or plan.

(c) When any such mine is worked out or abandoned the fact shall be reported to the state geologist, and the map or plan of such mine on file with the state geologist shall be carefully corrected and verified by the owner, agent or operator.

(d) If the state geologist finds or has reason to believe that any map or plan of any such mine furnished in pursuance of this act is materially inaccurate or imperfect, the state geologist is authorized to cause to be made a correct map or plan of the actual workings of such mine. The cost of making such correct map or plan shall be borne by the owner, agent or operator of the mine and shall be recovered by the state geologist from the owner, agent or operator as other debts are recoverable by law unless the map or plan which the state geologist claimed to be incorrect shall prove to have been correct.

(e) On or before July 31, 2000, all maps and plans held by the secretary of ~~human resources~~ *labor* pursuant to this section shall be transferred to the state geologist.

Sec. 89. K.S.A. 65-1824 is hereby amended to read as follows: 65-1824. The board is hereby authorized, empowered, and directed to administer and enforce the provisions of this act and the board is hereby granted such specific powers as are necessary for the purpose of administering and enforcing the same. In addition thereto, the board shall have power:

(a) To supervise and regulate the barbering industry in this state. Nothing contained in this act shall be construed to abrogate, affect the status, force or operation of any provision of the general laws of this state relating to public health or any lawful rule, regulation or order promulgated thereunder, the law regulating the practice of barbering or any local health ordinance or regulation.

(b) To investigate all matters pertaining to the proper supervision and control of barber shops and the practice of barbering in this state.

(c) To subpoena barber shop owners, operators, managers or employees, their books and accounts, and other persons from whom such information may be desired, to carry out the purposes and intent of this act, and may issue commissions to take depositions from witnesses absent from the state. Any member of the board may sign and issue subpoenas

and administer oaths to witnesses.

(d) To act as mediator and arbitrator in any controversy or issue that may arise among or between barbers as individuals or that may arise between them as groups. Nothing herein contained shall be construed as authorizing any interference with the authority of the state department of ~~human resources~~ *labor* or the United States department of labor.

The operation and effect of any provisions of this act which confer a general power upon the board shall not be impaired or qualified because a specific power has been granted to the board by this act.

Sec. 90. K.S.A. 65-4971 is hereby amended to read as follows: 65-4971. (a) Subject to applicable law, copies of health care records shall be furnished to a patient, a patient's authorized representative or any other person or entity authorized by law to obtain or reproduce such records, within 30 days of the receipt of the authorization, or the health care provider shall notify the patient or the patient's authorized representative of the reasons why copies are not available. A health care provider may withhold copies of health care records if the health care provider reasonably believes that providing copies of the requested records will cause substantial harm to the patient or another person. Health care providers may condition the furnishing of the patient's health care records to the patient, the patient's authorized representative or any other person or entity authorized by law to obtain or reproduce such records, upon the payment of charges not to exceed a \$15 fee for the cost of supplies and labor; and for copies of health care records routinely duplicated on a standard photocopy machine, \$.50 per page for the first 250 pages and \$.35 per page for additional pages. Providers may charge for the reasonable cost of all duplications of health care record information which cannot be routinely duplicated on a standard photocopy machine.

(b) On January 1, 2004, and annually thereafter, the fees set forth in subsection (a) shall be increased by the secretary of ~~human resources~~ *labor* in accordance with the all-items consumer price index published by the United States department of labor.

Sec. 91. K.S.A. 65-5703 is hereby amended to read as follows: 65-5703. (a) There is hereby created the state emergency response commission for the purpose of carrying out all requirements of the federal act and for the purpose of providing assistance in the coordination of state agency activities relating to: (1) Chemical emergency training, preparedness, and response; and (2) chemical release reporting and prevention, transportation, manufacture, storage, handling, and use.

(b) The commission shall consist of: (1) The following state officers or their appointed designees: The lieutenant governor, the secretary of wildlife and parks, the secretary of ~~human resources~~ *labor*, the secretary of the state board of agriculture, the secretary of health and environment, the adjutant general, the superintendent of the Kansas highway patrol, the state fire marshal, the secretary of transportation, the attorney general, the chairperson of the state corporation commission, and the governor; (2) three members appointed by the governor to represent the general public; and (3) two members appointed by the governor to represent owners and operators of facilities regulated pursuant to this act.

(c) Members of the commission appointed by the governor shall serve for terms of two years. Any vacancy in the office of an appointed member of the commission shall be filled for the unexpired term by appointment by the governor.

(d) A chairperson shall be elected annually by the members of the commission. A vice-chairperson shall be designated by the chairperson to serve in the absence of the chairperson.

(e) Members of the commission attending meetings of such board, or attending a subcommittee meeting thereof authorized by such board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto.

(f) The commission shall perform such duties as are specified in the federal act to be performed by such commissions and, in addition thereto, such duties as are specified in the laws of this state or as are deemed necessary and appropriate by the commission to achieving its purposes. In accordance with the requirements of the federal act, the commission shall establish local planning districts, subject to approval by the secretary of health and environment and the adjutant general, and shall appoint a local planning committee for each such district. Local planning committees shall perform such duties as are specified in the federal act to be

performed by such committees, and in addition thereto, such duties as are assigned by the commission or by any member of the commission acting on behalf of or at the direction of the commission, or as are deemed necessary and appropriate by each such committee to achieving its purposes. The duties of the commission and the local planning committees shall be performed in accordance with rules and regulations adopted pursuant to this act.

Sec. 92. K.S.A. 66-132 is hereby amended to read as follows: 66-132. Every common carrier and every public utility governed by the provisions of this act, whenever an accident attended with loss of human life or serious personal injury occurs upon its premises within this state, shall give immediate notice thereof to the commission by telegraph, telephone or teletype. If notice is given by telephone, such notice shall be followed by a written notice sent by certified or registered mail. In the event of any such accident, if the commission determines that the public interest requires an investigation to be made with the secretary of ~~human resources~~ *labor*; such investigation shall be held in the locality of the accident, unless for greater convenience of those concerned, the commission orders such investigation be held at some other place. Such investigation may be adjourned from place to place as may be found necessary and convenient. The commission shall notify an officer or agent of the public utility or common carrier of the time and place of the investigation in a timely manner.

Sec. 93. K.S.A. 72-4427 is hereby amended to read as follows: 72-4427. The secretary of ~~human resources~~ *commerce* and the state board of regents are hereby authorized to participate in the federal job training partnership act (public law 97-300), and amendments thereto, by providing from funds made available under the federal act and appropriated by the legislature for vocational training in accordance with and to the extent required by the federal act.

Sec. 94. K.S.A. 72-5413 is hereby amended to read as follows: 72-5413. As used in this act and in acts amendatory thereof or supplemental thereto:

(a) The term "persons" includes one or more individuals, organizations, associations, corporations, boards, committees, commissions, agencies, or their representatives.

(b) "Board of education" means the board of education of any school district, the board of control of any area vocational-technical school, and the board of trustees of any community college.

(c) "Professional employee" means any person employed by a board of education in a position which requires a certificate issued by the state board of education or employed by a board of education in a professional, educational or instructional capacity, but shall not mean any such person who is an administrative employee.

(d) "Administrative employee" means, in the case of a school district, any person who is employed by a board of education in an administrative capacity and who is fulfilling duties for which an administrator's certificate is required under K.S.A. 72-7513, and amendments thereto; and, in the case of an area vocational-technical school or community college, any person who is employed by the board of control or the board of trustees in an administrative capacity and who is acting in that capacity and who has authority, in the interest of the board of control or the board of trustees, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(e) "Professional employees' organizations" means any one or more organizations, agencies, committees, councils or groups of any kind in which professional employees participate, and which exist for the purpose, in whole or part, of engaging in professional negotiation with boards of education with respect to the terms and conditions of professional service.

(f) "Representative" means any professional employees' organization or any person it authorizes or designates to act in its behalf or any person a board of education authorizes or designates to act in its behalf.

(g) "Professional negotiation" means meeting, conferring, consulting and discussing in a good faith effort by both parties to reach agreement

with respect to the terms and conditions of professional service.

(h) "Mediation" means the effort through interpretation and advice by an impartial third party to assist in reconciling a dispute concerning terms and conditions of professional service which arose in the course of professional negotiation between a board of education or its representatives and representatives of the recognized professional employees' organization.

(i) "Fact-finding" means the investigation by an individual or board of a dispute concerning terms and conditions of professional service which arose in the course of professional negotiation, and the submission of a report by such individual or board to the parties to such dispute which includes a determination of the issues involved, findings of fact regarding such issues, and the recommendation of the fact-finding individual or board for resolution of the dispute.

(j) "Strike" means an action taken for the purpose of coercing a change in the terms and conditions of professional service or the rights, privileges or obligations thereof, through any failure by concerted action with others to report for duty including, but not limited to, any work stoppage, slowdown, or refusal to work.

(k) "Lockout" means action taken by a board of education to provoke interruptions of or prevent the continuity of work normally and usually performed by the professional employees for the purpose of coercing professional employees into relinquishing rights guaranteed by this act and the act of which this section is amendatory.

(l) (1) "Terms and conditions of professional service" means (A) salaries and wages, including pay for duties under supplemental contracts; hours and amounts of work; vacation allowance, holiday, sick, extended, sabbatical, and other leave, and number of holidays; retirement; insurance benefits; wearing apparel; pay for overtime; jury duty; grievance procedure; including binding arbitration of grievances; disciplinary procedure; resignations; termination and nonrenewal of contracts; reemployment of professional employees; terms and form of the individual professional employee contract; probationary period; professional employee appraisal procedures; each of the foregoing being a term and condition of professional service, regardless of its impact on the employee or on the operation of the educational system; (B) matters which relate to privileges to be granted the recognized professional employees' organization including, but not limited to, voluntary payroll deductions; use of school or college facilities for meetings; dissemination of information regarding the professional negotiation process and related matters to members of the bargaining unit on school or college premises through direct contact with members of the bargaining unit, the use of bulletin boards on or about the facility, and the use of the school or college mail system to the extent permitted by law; reasonable leaves of absence for members of the bargaining unit for organizational purposes such as engaging in professional negotiation and partaking of instructional programs properly related to the representation of the bargaining unit; any of the foregoing privileges which are granted the recognized professional employees' organization through the professional negotiation process shall not be granted to any other professional employees' organization; and (C) such other matters as the parties mutually agree upon as properly related to professional service including, but not limited to, employment incentive or retention bonuses authorized under K.S.A. 72-8246; and amendments thereto.

(2) Nothing in this act, and amendments thereto, shall authorize the diminution of any right, duty or obligation of either the professional employee or the board of education which have been fixed by statute or by the constitution of this state. Except as otherwise expressly provided in this subsection (l), the fact that any matter may be the subject of a statute or the constitution of this state does not preclude negotiation thereon so long as the negotiation proposal would not prevent the fulfillment of the statutory or constitutional objective.

(3) Matters which relate to the duration of the school term, and specifically to consideration and determination by a board of education of the question of the development and adoption of a policy to provide for a school term consisting of school hours, are not included within the meaning of terms and conditions of professional service and are not subject to professional negotiation.

(m) "Secretary" means the secretary of ~~human resources~~ *labor* or a designee thereof.

(n) "Statutory declaration of impasse date" means June 1 in the current school year.

(o) "Supplemental contracts" means contracts for employment duties other than those services covered in the principal or primary contract of employment of the professional employee and shall include, but not be limited to, such services as coaching, supervising, directing and assisting extracurricular activities, chaperoning, ticket-taking, lunchroom supervision, and other similar and related activities.

Sec. 95. K.S.A. 72-5432 is hereby amended to read as follows: 72-5432. (a) The secretary of ~~human resources~~ *labor* may adopt such rules and regulations as are necessary to implement and administer the provisions of K.S.A. 72-5413 through 72-5431, and amendments ~~to such sections thereto~~, which place specific duties and responsibilities upon the secretary.

(b) Any rules and regulations adopted by the secretary of ~~human resources~~ *labor* prior to the effective date of this act to implement and administer the provisions of K.S.A. 72-5413 through 72-5431, and amendments ~~to such sections thereto~~, shall remain in full force and effect until amended, modified, suspended, revoked or nullified pursuant to law.

(c) The secretary of ~~human resources~~ *labor* has the power to issue subpoenas requiring the attendance of any witnesses and the production of any records, books, papers and documents that the secretary considers necessary to implement and administer the provisions of K.S.A. 72-5413 through 72-5431, and amendments ~~to such sections thereto~~, which place specific duties and responsibilities upon the secretary. In the event of refusal to obey a subpoena on the part of any person or persons, the secretary shall have the authority to bring an action to enforce the subpoena in a court of competent jurisdiction.

Sec. 96. K.S.A. 73-1209 is hereby amended to read as follows: 73-1209. The executive director of the Kansas veterans' commission, in accordance with general policies established by ~~said~~ *the* commission, shall:

(1) Collect data and information as to the facilities, benefits and services now or hereafter available to veterans and their relatives and dependents, and furnish such information to veterans and their relatives and dependents and local service officers of veterans' organizations.

(2) Prepare plans for a comprehensive statewide veterans' service program.

(3) Coordinate the program of state agencies which may properly be utilized in the administration of various aspects of the problems of veterans, and relatives and dependents of veterans, such as the department of social and rehabilitation services, the department of ~~human resources~~ *labor*, the state board of education, the board of regents and any other state office, department, board or commission furnishing service to veterans or their relatives or dependents.

(4) Provide a central contact between federal and state agencies dealing with the problems of veterans and their relatives and dependents.

(5) Maintain records of cases handled by the executive director which shall show at least the following information: (a) the name of the veteran; (b) claim or case number of the veteran; and (c) amount of monthly benefit received by the veteran, so as to facilitate the necessary interchange of case histories among state administrative agencies and provide a clearinghouse of information.

(6) Provide such services to veterans and their relatives and dependents as are not otherwise offered by federal agencies.

(7) Provide a central agency to which veterans and their relatives and dependents may turn for information and assistance.

(8) Provide and maintain such field services as shall be necessary to properly care for the needs of veterans and their relatives and dependents which shall not be operated in connection with the social and rehabilitation services.

Sec. 97. K.S.A. 73-1219 is hereby amended to read as follows: 73-1219. (a) On July 1, 1986, the Kansas commission on veterans affairs created by K.S.A. 73-1208a, and amendments thereto, is hereby detached from the department of ~~human resources~~ *labor*. All budgeting, purchasing and related management functions of the commission shall be administered under the direction and supervision of the commission. All vouchers for expenditures and all payrolls of the commission shall be approved by the executive director of the commission. On July 1, 1986, the state department of ~~human resources~~ *labor* shall transfer to the Kansas commis-

sion on veterans affairs all of the books, records, files and property applying to or utilized by the Kansas veterans' commission to such commission.

(b) The Kansas commission on veterans affairs created by K.S.A. 73-1208a, and amendments thereto, is hereby specifically continued in existence. Persons who are members of the Kansas veterans' commission on July 1, 1986, shall continue to hold such offices under the conditions and limitations provided in K.S.A. 73-1208a, and amendments thereto. Unless otherwise specifically provided herein, the powers, duties and functions vested in or exercised or performed by the commission pursuant to law immediately prior to July 1, 1986, shall remain the lawful powers, duties and functions of such commission.

(c) All rules and regulations and all orders or directives of the Kansas veterans' commission, or of any persons authorized by the commission to issue orders or directives, in existence on July 1, 1986, shall continue to be effective and shall be deemed to be the rules and regulations and orders or directives of the Kansas commission on veterans affairs until revised, amended, revoked or nullified pursuant to law. Nothing in this act shall affect the authority of the Kansas commission on veterans affairs to adopt or promulgate rules and regulations or to issue orders or directives as authorized by law.

Sec. 98. K.S.A. 74-711 is hereby amended to read as follows: 74-711. The records of the secretary of ~~human resources~~ labor, compiled and maintained for administration of the employment security law, shall be made available to the director of workers' compensation for comparison with respect to matters of payroll, payroll tax, number and type of employees of all employers doing business in the state of Kansas who have not qualified as self-insurers or group-funded workers' compensation pools and who have not filed statements of insurance with the director of workers' compensation. The director shall order employers coming under this act and who have not qualified as self-insurers or group-funded workers' compensation pools and who have not filed a statement of insurance as provided by this act to so qualify or to file such statement or to cease doing business in the state of Kansas within a period to be set by the director but not less than 10 days from the date of the order.

In the event that such an employer fails to comply with the order of the director of workers' compensation issued as provided in this section, the attorney general or the district attorney or county attorney of any county in which such employer is doing business shall prepare and file in the district court of any county in which such employer is doing business a petition in the name of the state signed and verified by the director of workers' compensation, and asking that such employer be enjoined from doing business in this state for such period of time as the director may deem proper and until such employer has complied with the workers' compensation law, and the district court shall have jurisdiction and venue to enter its order without requiring bond or evidence to be filed or presented. In all other respects such action shall be governed by the laws governing civil procedure.

Sec. 99. K.S.A. 2003 Supp. 74-32,151 is hereby amended to read as follows: 74-32,151. (a) This section and K.S.A. 74-32,152 through 74-32,159, and amendments thereto, shall be known and may be cited as the workforce development loan program act.

(b) As used in the workforce development loan act, "postsecondary educational institution" shall have the meaning ascribed thereto by K.S.A. 74-3201b, and amendments thereto.

(c) Within the limits of appropriations and private contributions therefor, and in accordance with the provisions of this act, the state board of regents may award such loans to Kansas residents who are enrolled in or admitted to an area vocational technical school, technical college, community college, vocational school coordinated under the state board of regents or associate degree programs at postsecondary educational institutions and who enter into a written agreement with the state board of regents as provided in K.S.A. 74-32,152 and amendments thereto.

(d) The board of regents may accept any private contributions to the program. The chief executive officer of the board of regents shall turn such contributions over to the state treasurer who shall deposit such moneys into the workforce development loan fund.

(e) After consultation with the secretaries of the departments of ~~human resources~~, social and rehabilitation services and commerce, the

board may establish a list of education programs in which an applicant must enroll to be eligible for a loan under this program.

(f) The loans shall be awarded on a priority basis to qualified applicants who have the greatest financial need with the highest priority given to those applicants with the greatest financial need who were in foster care on or before their 18th birthday or were released from foster care prior to their 18th birthday after having graduated from high school or completing the requirements for a general educational development (GED) certificate while in foster care. All loans shall be awarded to resident students attending area vocational technical schools, technical colleges, community colleges, area vocational schools or associate degree programs at postsecondary educational institutions. Special preference shall also be established for residents drawing unemployment compensation or such residents who were laid off from employment within the prior six months. The board may also establish preferences for workers deemed to be eligible for North American free trade agreement transition assistance under United States department of labor standards or the Kansas department of ~~human resources~~ *labor* standards.

(g) Loans awarded under this program shall be awarded on an annual basis and shall be in effect for one year unless otherwise terminated before the expiration of such period of time. Such loans shall be awarded for the payment of tuition, fees, books, room and board and any other necessary school related expenses.

Sec. 100. K.S.A. 74-32,160 is hereby amended to read as follows: 74-32,160. Financing of the workforce development loan program act shall be from moneys made available from the Kansas department of ~~human resources~~ *commerce* received from the United States department of labor and the Kansas department of social and rehabilitation services received from the United States department of health and human services in accordance with the provisions of this section and in accordance with and subject to the provisions of Kansas appropriation acts.

The Kansas department of ~~human resources~~ *commerce* shall provide funding for the purpose of this act which shall be limited to the use of federal department of labor workforce investment act funds which are returned to the state as unspent local WIA program year adult, youth and dislocated worker funds. Such unspent funds shall be converted to and identified as state-level set-aside funds for use in carrying out activities as provided under this act. The annual amount of such funds shall not exceed \$500,000. The WIA set-aside funds shall be made available subject to the written approval from the United States department of labor authorizing the use of such for the purpose of this act and appropriated by the United States congress. Funding for this act by the Kansas department of ~~human resources~~ *commerce* shall be contingent on the availability of WIA funding and shall terminate on or before the final WIA authorization date of June 30, 2005. Due to restrictions placed on the transfer of unspent federal funds to the state treasury and the need for timely disbursement of federal funds for WIA expenditures, the Kansas department of ~~human resources~~ *commerce* shall develop in cooperation with the Kansas board of regents, a system for the reimbursement of actual expenses incurred pursuant to this act. Such reimbursement procedures shall be in compliance with acceptable federal department of labor and office of management and budget procedures established for the draw down and disbursement of federal WIA funds.

The secretary of the department of social and rehabilitation services shall cooperate in the administration of the workforce development loan program act which may be funded with the \$500,000 which is to be contributed annually by the Kansas department of social and rehabilitation services in accordance with and subject to the provisions of appropriation acts. When there is a candidate that appears to meet the eligibility guidelines for federal funding administered by the Kansas department of social and rehabilitation services, the Kansas board of regents shall notify the Kansas department of social and rehabilitation services. Upon the Kansas department of social and rehabilitation service's approval of the candidate's eligibility, the director of accounts and reports shall transfer funding from the appropriate federal source as identified by the Kansas department of social and rehabilitation services to the Kansas state treasurer. All receipts and interest collected from repayments of federal funds transferred under the authority of this section shall be returned to the director of accounts and reports for deposit to the originating federal funding

source.

Sec. 101. K.S.A. 2003 Supp. 74-4911f is hereby amended to read as follows: 74-4911f. (a) Subject to procedures or limitations prescribed by the governor, any person who is not an employee and who becomes a state officer may elect to not become a member of the system. The election to not become a member of the system must be filed within 90 days of assuming the position of state officer. Such election shall be irrevocable. If such election is not filed by such state officer, such state officer shall be a member of the system.

(b) Any such state officer who is a member of the Kansas public employees retirement system, on or after the effective date of this act, may elect to not be a member by filing an election with the office of the retirement system. The election to not become a member of the system must be filed within 90 days of assuming the position of state officer. If such election is not filed by such state officer, such state officer shall be a member of the system.

(c) Subject to limitations prescribed by the secretary of administration, the state agency employing any employee who has filed an election as provided under subsection (a) or (b) and who has entered into an employee participation agreement, as provided in K.S.A. 75-5524, and amendments thereto, for deferred compensation pursuant to the Kansas public employees deferred compensation plan shall contribute to such plan on such employee's behalf an amount equal to 8% of the employee's salary, as such salary has been approved pursuant to K.S.A. 75-2935b, and amendments thereto, or as otherwise prescribed by law. With regard to a state officer who is a member of the legislature who has retired pursuant to the Kansas public employees retirement system and who files an election as provided in this section, employee's salary means per diem compensation as provided by law as a member of the legislature.

(d) As used in this section and K.S.A. 74-4927k and amendments thereto, "state officer" means the secretary of administration, secretary on aging, secretary of commerce and housing, secretary of corrections, secretary of health and environment, secretary of human resources labor, secretary of revenue, secretary of social and rehabilitation services, secretary of transportation, secretary of wildlife and parks, superintendent of the Kansas highway patrol, secretary of agriculture, executive director of the Kansas lottery, executive director of the Kansas racing commission, president of the Kansas development finance authority, state fire marshal, state librarian, securities commissioner, adjutant general, members of the state board of tax appeals, members of the Kansas parole board, members of the state corporation commission, any unclassified employee on the staff of officers of both houses of the legislature, any unclassified employee appointed to the governor's or lieutenant governor's staff, any person employed by the legislative branch of the state of Kansas, other than any such person receiving service credited under the Kansas public employees retirement system or any other retirement system of the state of Kansas therefor, who elected to be covered by the provisions of this section as provided in subsection (e) of K.S.A. 46-1302, and amendments thereto, or who is first employed on or after July 1, 1996, by the legislative branch of the state of Kansas and any member of the legislature who has retired pursuant to the Kansas public employees retirement system.

(e) The provisions of this section shall not apply to any state officer who has elected to remain eligible for assistance by the state board of regents as provided in subsection (a) of K.S.A. 74-4925 and amendments thereto.

Sec. 102. K.S.A. 2003 Supp. 74-4911h is hereby amended to read as follows: 74-4911h. (a) Subject to procedures or limitations prescribed by the governor, any person who is not an employee and who becomes a state officer may elect to not become a member of the system. The election to not become a member of the system must be filed within 90 days of assuming the position of state officer. Such election shall be irrevocable. If such election is not filed by such state officer, such state officer shall be a member of the system.

(b) Any such state officer who is a member of the Kansas public employees retirement system, on or after the effective date of this act, may elect to not be a member by filing an election with the office of the retirement system. The election to not become a member of the system must be filed within 90 days of assuming the position of state officer. If such election is not filed by such state officer, such state officer shall be

a member of the system.

(c) Subject to limitations prescribed by the secretary of administration, the state agency employing any employee who has filed an election as provided under subsection (a) or (b) and who has entered into an employee participation agreement, as provided in K.S.A. 75-5524, and amendments thereto, for deferred compensation pursuant to the Kansas public employees deferred compensation plan shall contribute to such plan on such employee's behalf an amount equal to 8% of the employee's salary, as such salary has been approved pursuant to K.S.A. 75-2935b, and amendments thereto, or as otherwise prescribed by law.

(d) As used in this section and K.S.A. 74-4927k, and amendments thereto, "state officer" means the secretary of administration, secretary on aging, secretary of commerce, secretary of corrections, secretary of health and environment, secretary of ~~human resources~~ labor, secretary of revenue, secretary of social and rehabilitation services, secretary of transportation, secretary of wildlife and parks, superintendent of the Kansas highway patrol, secretary of agriculture, executive director of the Kansas lottery, executive director of the Kansas racing commission, president of the Kansas development finance authority, state fire marshal, state librarian, securities commissioner, adjutant general, members of the state board of tax appeals, members of the Kansas parole board, members of the state corporation commission, any unclassified employee on the staff of officers of both houses of the legislature, any unclassified employee appointed to the governor's or lieutenant governor's staff and any person employed by the legislative branch of the state of Kansas, other than any such person receiving service credited under the Kansas public employees retirement system or any other retirement system of the state of Kansas therefor, who elected to be covered by the provisions of this section as provided in subsection (e) of K.S.A. 46-1302, and amendments thereto, or who is first employed on or after July 1, 1996, by the legislative branch of the state of Kansas.

(e) The provisions of this section shall not apply to any state officer who has elected to remain eligible for assistance by the state board of regents as provided in subsection (a) of K.S.A. 74-4925 and amendments thereto.

Sec. 103. K.S.A. 74-5068 is hereby amended to read as follows: 74-5068. The state board of education, the state board of regents and the secretary of ~~human resources~~ labor shall cooperate with and assist the secretary in publicizing the KIT and KIR programs, in designing the programs to meet the specific and individualized needs of industry and by offering such technical advice as the secretary may request.

Sec. 104. K.S.A. 2003 Supp. 74-50,131 is hereby amended to read as follows: 74-50,131. Commencing after December 31, 1999: (a) As used in this act: "Qualified firm" means a for-profit business establishment, subject to state income, sales or property taxes, identified under the standard industrial classification (SIC) codes as in effect July 1, 1993, major groups 20 through 39, major groups 40 through 51, and major groups 60 through 89; identified under the North American industry classification system (NAICS) as in effect on October 1, 2000, or is identified as a corporate or regional headquarters or back-office operation of a national or multi-national corporation regardless of SIC code or NAICS designation. The secretary of commerce shall determine eligibility when a difference exists between a firm's SIC code and NAICS designation. A business establishment may be assigned a standard industrial classification code or NAICS designation according to the primary business activity at a single physical location in the state.

(b) In the case of firms in major groups 40 through 51, and major groups 60 through 89 or the appropriate NAICS designation the business establishment must also demonstrate the following:

- (1) More than $\frac{1}{2}$ of its gross revenues are a result of sales to commercial or governmental customers outside the state of Kansas; or
- (2) more than $\frac{1}{2}$ of its gross revenues are a result of sales to Kansas manufacturing firms within major groups 20 through 39 or the appropriate NAICS designation; or
- (3) more than $\frac{1}{2}$ of its gross revenues are a result of a combination of sales described in (1) and (2).

(c) For purposes of determining whether one of the average wage options described in subsection (d) below is satisfied, business establishments located within a metropolitan county, as defined in K.S.A. 74-

50,114, and amendments thereto, will be compared only to other businesses within that metropolitan county, and business establishments located outside of a metropolitan county will be compared to businesses within an aggregation of counties representing the business establishment's region of the state, which regional aggregation will exclude metropolitan counties. Such aggregation shall be determined by the department of commerce.

(d) Additionally, a business establishment having met the criteria as established in subsection (a) or (b), and using the comparison method described in subsection (c), must meet one of the following criteria:

(1) The establishment with 500 or fewer full-time equivalent employees will provide an average wage that is above the average wage paid by all firms with 500 or fewer full-time equivalent employees which share the same two-digit standard industrial classification code or appropriate NAICS designation.

(2) The establishment with 500 or fewer full-time equivalent employees is the sole firm within its two-digit standard industrial classification code or appropriate NAICS designation which has 500 or fewer full-time equivalent employees.

(3) The establishment with more than 500 full-time equivalent employees will provide an average wage that is above the average wage paid by firms with more than 500 full-time equivalent employees which share the same two-digit standard industrial classification code or appropriate NAICS designation.

(4) The establishment with more than 500 full-time equivalent employees is the sole firm within its two-digit standard industrial classification code or appropriate NAICS designation which has 500 or more full-time equivalent employees, in which event it shall either provide an average wage that is above the average wage paid by all firms with 500 or fewer full-time equivalent employees which share the same two-digit standard industrial classification code or appropriate NAICS designation, or be the sole firm within its two-digit standard industrial classification code or appropriate NAICS designation.

(e) As an alternative to the requirements of subsections (c) and (d), a firm having met the requirements of subsections (a) or (b), may qualify, if excluding taxable disbursements to company owners, the business establishment's annual average wage must be greater than or equal to 1.5 times the aggregate average wage paid by industries covered by the employment security law based on data maintained by the secretary of ~~human resources~~ labor.

(f) For the purposes of this section, the number of full-time equivalent employees shall be determined by dividing the number of hours worked by part-time employees during the pertinent measurement interval by an amount equal to the corresponding multiple of a 40-hour work week and adding the quotient to the number of full-time employees.

(g) The secretary of commerce shall certify annually to the secretary of revenue that a firm meets the criteria for a qualified firm and that the firm is eligible for the benefits and assistance provided under this act. The secretary of commerce is hereby authorized to obtain any and all information necessary to determine such eligibility. Information obtained under this section shall not be subject to disclosure pursuant to K.S.A. 45-215 *et seq.*, and amendments thereto, but shall upon request be made available to the legislative post audit division. The secretary of commerce shall publish rules and regulations for the implementation of this act. Such rules and regulations shall include, but not be limited to:

(1) A definition of "training and education" for purposes of K.S.A. 74-50,132; and amendments thereto.

(2) Establishment of eligibility requirements and application procedures for expenditures from the high performance incentive fund created in K.S.A. 74-50,133; and amendments thereto.

(3) Establishment of approval guidelines for private consultants authorized pursuant to K.S.A. 74-50,133; and amendments thereto.

(4) Establishment of guidelines for prioritizing business assistance programs pursuant to K.S.A. 74-50,133; and amendments thereto.

(5) A definition of "commercial customer" for the purpose of K.S.A. 74-50,133; and amendments thereto.

(6) A definition of "headquarters" for the purpose of K.S.A. 74-50,133; and amendments thereto.

(7) Establishment of guidelines concerning the use and disclosure of

any information obtained to determine the eligibility of a firm for the assistance and benefits provided for by this act.

Sec. 105. K.S.A. 2003 Supp. 74-50,136 is hereby amended to read as follows: 74-50,136. (a) The provisions of this section shall be known and may be cited as the "economic revitalization and reinvestment act."

(b) The purpose of the economic revitalization and reinvestment act is to foster Kansas employment by encouraging product development and engineering leading to new manufactured products in Kansas.

(c) As used in this act:

(1) "Base eligibility period" means the three taxable years immediately preceding the date of application for benefits under this act.

(2) "Eligible business" means a person, corporation, partnership or other entity doing business in Kansas that satisfies conditions imposed by the secretary, which may include, among other conditions, that the person, corporation, partnership or other entity:

(A) Paid at least \$600,000,000 in average annual gross Kansas compensation, according to reports filed with the secretary of ~~human resources~~ *labor*, during the base eligibility period; and

(B) paid at least \$50,000 of average annual gross compensation per Kansas employee during the base eligibility period; and

(C) has invested at least \$1,000,000,000 in real and tangible personal property located within and currently used in the operation of a business in Kansas; and

(D) is described by north American industrial classification system as being in the manufacturing sector.

(3) "Eligible project" means a research, development, engineering or manufacturing project (A) undertaken by an eligible business relating to the development of a new or improved business component or product and may include, but not be limited to, product development and design, applied research, manufacturing, improvement, replacement or acquisition of real or personal property and modernization and retooling of existing property in Kansas, (B) for which the eligible business proposes to invest not less than \$500,000,000 in Kansas in direct connection with the eligible project of not less than \$500,000,000 in Kansas and (C) for which the eligible business proposes to employ up to 4,000 full-time employees in Kansas, as defined in K.S.A. 74-50,114 and amendments thereto.

(4) "Gross compensation" means gross wages and benefits paid to or on behalf of employees receiving wages.

(5) "Secretary" means the secretary of commerce.

(d) A person, corporation, partnership or other entity proposing to undertake an eligible project may apply to the secretary to enter into an agreement for benefits under this act. The application shall include (1) evidence that the applicant is an "eligible business" as defined in subsection (c)(2) and (2) a detailed description of the eligible project.

(e) Upon receipt of an application described in subsection (d), if the secretary finds that the application is from an eligible business and that the project constitutes an eligible project, the secretary may enter into an agreement with the eligible business for benefits under this act. Such agreement for benefits shall be subject to review and approval of the state finance council created by K.S.A. 75-3708; and amendments thereto. The agreement shall commit the secretary to request that the Kansas development finance authority issue bonds pursuant to the Kansas development finance authority act, K.S.A. 74-8901; *et seq.*, and amendments thereto, to finance the eligible project for the benefit of the eligible business in an aggregate principal amount not to exceed \$500,000,000, plus costs of issuance, costs of credit enhancement, reserve funds and capitalized interest, and shall commit the eligible business to pay the principal of and interest on such obligations, except that during the period from the issuance of such bonds through the maturity of such obligations but not to exceed 20 years revenue realized from withholding upon Kansas wages paid by the eligible business pursuant to K.S.A. 79-3294 *et seq.*, and amendments thereto, with respect to the eligible project which is necessary to pay the interest on such obligations shall be credited to the special economic revitalization fund created in subsection (h), and shall be transferred by the state treasurer to pay interest on such obligations as provided by law. The agreement shall further specifically provide that if the revenue from the withholding upon Kansas wages is insufficient to pay interest on the bonds, the eligible business shall remain obligated to make such payments. The terms and conditions with respect to the ob-

ligations shall be set forth in the agreement or in the financing documents relating to the issuance of the bonds. In the event the eligible business terminates, cancels or reduces the scope of the eligible project approved by the secretary, the agreement shall provide that with respect to debt service, the eligible business shall remain responsible for payment of the entire outstanding principal as well as any interest still outstanding, and no moneys remaining in the special economic revitalization fund shall be made available for the purpose of paying the remaining interest portion of the eligible business' debt service obligation.

(f) Income tax refunds and balances due resulting from withholding upon Kansas wages paid by the eligible business pursuant to K.S.A. 79-3294 *et seq.*, and amendments thereto, with respect to the eligible project, shall be reconciled on at least an annual basis by a method defined in the agreement described in subsection (e).

(g) The Kansas development finance authority is hereby authorized to issue obligations, for the purpose of financing the eligible project provided in subsection (e), in a principal amount not to exceed the amount specified in subsection (e). The maximum maturity of bonds issued pursuant to this act shall be 20 years, unless the secretary shall find and determine that a maturity greater than 20 years, but in no event greater than 30 years, is necessary for economic feasibility of the eligible project of the eligible business.

(h) The state treasurer shall credit all revenue collected or received from withholding upon Kansas wages paid by a taxpayer which is an eligible business with respect to an eligible project, as certified by the secretary, to the special economic revitalization fund, which fund is hereby created in the custody of the state treasurer but shall not be a part of the state general fund. Distributions from the special economic revitalization fund shall be used to pay interest on the bonds as authorized pursuant to this act and shall not be subject to appropriation. On or before the 10th day of each month, the director of accounts and reports shall transfer from the state general fund to the special economic revitalization fund interest earnings based on: (1) The average daily balance of moneys in the special economic revitalization fund for the preceding month; and (2) the net earnings rate of the pooled money investment portfolio for the preceding month. The provisions of this section shall expire when all interest on obligations issued for the purpose of financing all or a portion of the costs of an eligible project has been paid. Moneys credited to the special economic revitalization fund in accordance with the foregoing provisions shall be distributed to or on the order of the Kansas development finance authority to pay interest on bonds issued to finance an eligible project. The state treasurer shall make such distributions on such dates as mutually agreed to by the Kansas development finance authority, the paying agent for such obligations and the state treasurer. The total of all distributions under this section shall not exceed an amount determined to be sufficient to pay the interest on such bonds.

(i) The eligible business shall not be allowed to participate in the IMPACT act or program pursuant to K.S.A. 74-50,102 *et seq.*, and amendments thereto, with respect to the eligible project. The secretary may include provisions in the agreement described in subsection (e) to limit or reduce the amount of eligible credits, including but not limited to those allowed pursuant to K.S.A. 79-32,160a, 79-32,182b or 79-32,206, and amendments thereto, on the investment of the proceeds of the bonds issued under this act. Nothing in this subsection shall be construed to prohibit the eligible business from receiving credits allowed by law for any investment not related to bonds issued pursuant to this section.

(j) All hiring and use of the employees described in subsection (c)(3)(C) by an eligible business in connection with an eligible project, shall be subject to post audit under the legislative post audit act, and amendments thereto. All audit expenses incurred shall be charged to and paid by such eligible business. All moneys received for such audit expenses shall be deposited in the state treasury and credited to the audit services fund of the division of post audit. The division of post audit is hereby authorized to conduct the audit work authorized by this section in accordance with the provisions of the legislative post audit act, and amendments thereto.

(k) Bonds issued under this section shall not be used to provide for or to increase compensation packages, rewards, bonuses, pensions, enhanced retirement, stock options, buyouts or substantial severance pay or

other financial benefits to any chief executive officer, chief financial officer or any officers of the company.

(l) The agreement described in subsection (e) shall include a provision requiring the eligible business to agree that (1) the eligible business shall be subject to post audit under the legislative post audit act, and amendments thereto, (2) the eligible business shall pay audit expenses and (3) the eligible business shall not limit access to information required under the legislative post audit act, and amendments thereto.

(m) No new eligible project shall be approved for financing under the provisions of this section on or after July 1, 2005.

Sec. 106. K.S.A. 74-6701 is hereby amended to read as follows: 74-6701. (a) There is hereby established within and as a part of the department of ~~human resources~~ *commerce* the commission on disability concerns.

(b) All budgeting, purchasing and related management functions of the commission shall be administered under the direction of the secretary of ~~human resources~~ *commerce*. All vouchers for expenditures and all payrolls of the commission shall be approved by the chairperson of the commission, or by a person or persons designated by the chairperson, and by the secretary of ~~human resources~~ *commerce*.

Sec. 107. K.S.A. 74-6702 is hereby amended to read as follows: 74-6702. Subject to the provisions of K.S.A. 74-6709, *and amendments thereto*, the commission shall be composed of 30 members, 15 of whom shall be appointed by the secretary of ~~human resources~~ *commerce*. Of the members appointed by the secretary, preference shall be shown for Kansans representing each of the following:

- (a) Industry;
- (b) labor;
- (c) community-based independent living programs;
- (d) rehabilitation programs;
- (e) education programs;
- (f) disability or rehabilitation research programs; and
- (g) private, nonprofit organizations serving Kansans with disabilities.

At least eight of the members appointed by the secretary shall be Kansans with disabilities.

Sec. 108. K.S.A. 74-6703 is hereby amended to read as follows: 74-6703. In addition to the members appointed by the secretary of ~~human resources~~ *commerce* under K.S.A. 74-6702, and amendments thereto, the following persons, or the designees of such persons, shall serve as members ex officio of the commission:

- (a) The secretary of health and environment;
- (b) the chairperson of the Kansas planning council on developmental disabilities services;
- (c) the commissioner of mental health and developmental disabilities of the department of social and rehabilitation services;
- (d) the commissioner of rehabilitation services of the department of social and rehabilitation services;
- (e) the secretary of commerce;
- (f) the director of special education of the state board of education;
- (g) the secretary of transportation;
- (h) the secretary of aging;
- (i) the secretary of ~~human resources~~ *labor*;
- (j) the secretary of administration;
- (k) the secretary of social and rehabilitation services;
- (l) the president of the Kansas senate;
- (m) the minority leader of the Kansas senate;
- (n) the speaker of the Kansas house of representatives; and
- (o) the minority leader of the Kansas house of representatives.

Sec. 109. K.S.A. 74-6706 is hereby amended to read as follows: 74-6706. The commission shall consult with and advise the secretary of ~~human resources~~ *commerce* on all commission activities and shall:

- (a) Carry on a continuing program to promote a higher quality of life for people with disabilities;
- (b) cooperate with all public and private agencies interested in independent living by people with disabilities;
- (c) cooperate with all agencies responsible for or interested in the rehabilitation and employment of people with disabilities;
- (d) encourage the organization of community-based programs and work closely with such programs in promoting independence of people

with disabilities;

(e) assist in developing societal acceptance of people with disabilities;

(f) inform individuals with disabilities of specific facilities available for increasing their independence;

(g) conduct such educational programs as members deem necessary; and

(h) report annually to the governor and legislature on commission activities and submit any recommendations believed necessary in promoting the independence of people with disabilities.

Sec. 110. K.S.A. 74-6707 is hereby amended to read as follows: 74-6707. The secretary of ~~human resources~~ *commerce* shall appoint an executive director of the commission and the commission shall designate the duties of the position. The secretary of ~~human resources~~ *commerce* shall provide office space and such clerical and other personnel as may be necessary for the efficient performance of the duties prescribed by this act. All personnel serving the commission shall be in the classified service.

Sec. 111. K.S.A. 74-6708 is hereby amended to read as follows: 74-6708. (a) The commission is authorized to receive any gifts, grants, or donations made for any of the purposes of its program and to disburse and administer all such gifts, grants and donations and moneys appropriated to the commission in accordance with the terms thereof.

(b) The commission is authorized to fix and collect reasonable fees for services and materials provided by the commission.

(c) There is hereby established the commission on disability concerns fee fund. The commission shall remit all moneys received by or for it from fees to the state treasurer in accordance with the provisions of K.S.A. 75-4215; and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury. Twenty percent of each such deposit shall be credited to the state general fund and the balance shall be credited to the commission on disability concerns fee fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the commission on disability concerns, or by a person or persons designated by the chairperson and secretary of ~~human resources~~ *commerce*.

Sec. 112. K.S.A. 74-6709 is hereby amended to read as follows: 74-6709. (a) The advisory committee on employment of the handicapped is hereby abolished.

(b) Members serving on the advisory committee on employment of the handicapped on June 30, 1989, under appointment by the president or minority leader of the Kansas senate or the speaker or minority leader of the Kansas house of representatives shall continue to serve as members of the commission on disability concerns, in lieu of four of the members provided to be appointed by the secretary of ~~human resources~~ *commerce*, until expiration of their terms. Vacancies created by the expiration of such terms shall be filled by appointments by the secretary of ~~human resources~~ *commerce*.

(c) On July 1, 1989, employees who, immediately prior to such date were serving the advisory committee on employment of the handicapped and who, in the opinion of the secretary of ~~human resources~~ *commerce*, are necessary to the performance of the duties of the commission on disability concerns shall continue to serve such commission. Any such employee shall retain all retirement benefits and all rights of civil service which had accrued to or vested in such employee before July 1, 1989. The service of each such employee shall be deemed to have been continuous.

(d) On and after July 1, 1989, whenever any statute, contract or other document refers to the advisory committee on employment of the handicapped, such reference shall be deemed to refer to the commission on disability concerns.

(e) The commission on disability concerns shall succeed to all property, property rights and records of the advisory committee on employment of the handicapped.

(f) On July 1, 1989, the director of accounts and reports shall transfer all moneys in the advisory committee on employment of the handicapped fee fund to the commission on disability concerns fee fund. On July 1, 1989, all obligations of the advisory committee on employment of the

handicapped fee fund are hereby transferred to and imposed on the commission on disability concerns fee fund, and the advisory committee on employment of the handicapped fee fund is hereby abolished.

Sec. 113. K.S.A. 74-72,103 is hereby amended to read as follows: 74-72,103. The department of ~~human resources labor~~, established by K.S.A. 75-5701, and amendments thereto, shall be audited under the Kansas governmental operations accountability law, and shall be reviewed and evaluated during the 2006 regular session of the legislature, or such other regular session of the legislature designated by the legislative post audit committee in accordance with the provisions of subsection (c) of K.S.A. 74-7285; and amendments thereto.

Sec. 114. K.S.A. 2003 Supp. 74-8942 is hereby amended to read as follows: 74-8942. As used in K.S.A. 74-8942 through 74-8945:

(a) "Establishment" means a business that:

(1) Has at least \$100,000,000 in existing annual gross compensation paid to jobs located in Kansas, according to reports filed with the secretary of ~~human resources labor~~, for the previous three years;

(2) has an average annual gross compensation of at least \$40,000 paid per existing employee;

(3) currently has at least \$200,000,000 total investment in Kansas;

(4) intends to add investment, in the state as defined in subsection (d), for modernization and retooling of at least \$50,000,000 within five years from the effective date of this act or within five years of contracting with the department of commerce; and

(5) is described by north American industrial classification code number 326211, tire manufacturing.

(b) "Gross compensation" means wages and benefits paid to or on behalf of employees receiving wages.

(c) "Secretary" means the secretary of commerce.

(d) "Invest" or "investment" for the purpose of determining the eligibility of an establishment for the incentive payments created pursuant to this act, means an amount greater than the average amount invested by the establishment over the five years prior to the effective date of this act or for investments made after July 1, 2003, over the five years prior to entering into a contract with the secretary. If an establishment has been engaged in commercial operations for less than five years, the amount invested shall be greater than the annual average amount invested by the establishment for the entire period of commercial operation.

Sec. 115. K.S.A. 75-443 is hereby amended to read as follows: 75-443. The secretary of state, the secretary of revenue and the secretary of ~~human resources labor~~ may adopt rules and regulations for the purpose of authorizing the electronic filing of reports, certificates or other documents which businesses may be required by law to file with such agencies pursuant to chapters 17, 44, 56 and 79 of the Kansas Statutes Annotated *and amendments thereto*.

Sec. 116. K.S.A. 2003 Supp. 75-2935 is hereby amended to read as follows: 75-2935. The civil service of the state of Kansas is hereby divided into the unclassified and the classified services.

(1) The unclassified service comprises positions held by state officers or employees who are:

(a) Chosen by election or appointment to fill an elective office;

(b) members of boards and commissions, heads of departments required by law to be appointed by the governor or by other elective officers, and the executive or administrative heads of offices, departments, divisions and institutions specifically established by law;

(c) except as otherwise provided under this section, one personal secretary to each elective officer of this state, and in addition thereto, 10 deputies, clerks or employees designated by such elective officer;

(d) all employees in the office of the governor;

(e) officers and employees of the senate and house of representatives of the legislature and of the legislative coordinating council and all officers and employees of the office of revisor of statutes, of the legislative research department, of the division of legislative administrative services, of the division of post audit and the legislative counsel;

(f) chancellor, president, deans, administrative officers, student health service physicians, pharmacists, teaching and research personnel, health care employees and student employees in the institutions under the state board of regents, the executive officer of the board of regents and the executive officer's employees other than clerical employees, and,

at the discretion of the state board of regents, directors or administrative officers of departments and divisions of the institution and county extension agents, except that this subsection (1)(f) shall not be construed to include the custodial, clerical or maintenance employees, or any employees performing duties in connection with the business operations of any such institution, except administrative officers and directors; as used in this subsection (1)(f), "health care employees" means employees of the university of Kansas medical center who provide health care services at the university of Kansas medical center and who are medical technicians or technologists or respiratory therapists, who are licensed professional nurses or licensed practical nurses, or who are in job classes which are designated for this purpose by the chancellor of the university of Kansas upon a finding by the chancellor that such designation is required for the university of Kansas medical center to recruit or retain personnel for positions in the designated job classes; and employees of any institution under the state board of regents who are medical technologists;

(g) operations, maintenance and security personnel employed to implement agreements entered into by the adjutant general and the federal national guard bureau, and officers and enlisted persons in the national guard and the naval militia;

(h) persons engaged in public work for the state but employed by contractors when the performance of such contract is authorized by the legislature or other competent authority;

(i) persons temporarily employed or designated by the legislature or by a legislative committee or commission or other competent authority to make or conduct a special inquiry, investigation, examination or installation;

(j) officers and employees in the office of the attorney general and special counsel to state departments appointed by the attorney general, except that officers and employees of the division of the Kansas bureau of investigation shall be in the classified or unclassified service as provided in K.S.A. 75-711, and amendments thereto;

(k) all employees of courts;

(l) client, patient and inmate help in any state facility or institution;

(m) all attorneys for boards, commissions and departments;

(n) the secretary and assistant secretary of the Kansas state historical society;

(o) physician specialists, dentists, dental hygienists, pharmacists, medical technologists and long term care workers employed by the department of social and rehabilitation services;

(p) physician specialists, dentists and medical technologists employed by any board, commission or department or by any institution under the jurisdiction thereof;

(q) student employees enrolled in public institutions of higher learning;

(r) administrative officers, directors and teaching personnel of the state board of education and the state department of education and of any institution under the supervision and control of the state board of education, except that this subsection (1)(r) shall not be construed to include the custodial, clerical or maintenance employees, or any employees performing duties in connection with the business operations of any such institution, except administrative officers and directors;

(s) all officers and employees in the office of the secretary of state;

(t) one personal secretary and one special assistant to the following: The secretary of administration, the secretary of aging, the secretary of agriculture, the secretary of commerce, the secretary of corrections, the secretary of health and environment, the superintendent of the Kansas highway patrol, the secretary of ~~human resources~~ labor, the secretary of revenue, the secretary of social and rehabilitation services, the secretary of transportation, the secretary of wildlife and parks and the commissioner of juvenile justice;

(u) one personal secretary and one special assistant to the chancellor and presidents of institutions under the state board of regents;

(v) one personal secretary and one special assistant to the executive vice chancellor of the university of Kansas medical center;

(w) one public information officer and one chief attorney for the following: The department of administration, the department on aging, the department of agriculture, the department of commerce, the department of corrections, the department of health and environment, the depart-

ment of ~~human resources~~ labor, the department of revenue, the department of social and rehabilitation services, the department of transportation, the Kansas department of wildlife and parks and the commissioner of juvenile justice;

(x) civil service examination monitors;

(y) one executive director, one general counsel and one director of public affairs and consumer protection in the office of the state corporation commission;

(z) specifically designated by law as being in the unclassified service;

(aa) all officers and employees of Kansas, Inc. and the Kansas technology enterprise corporation; and

(bb) any position that is classified as a position in the information resource manager job class series, that is the chief position responsible for all information resources management for a state agency, and that becomes vacant on or after the effective date of this act. Nothing in this section shall affect the classified status of any employee in the classified service who is employed on the date immediately preceding the effective date of this act in any position that is a classified position in the information resource manager job class series and the unclassified status as prescribed by this subsection shall apply only to a person appointed to any such position on or after the effective date of this act that is the chief position responsible for all information resources management for a state agency.

(2) The classified service comprises all positions now existing or hereafter created which are not included in the unclassified service. Appointments in the classified service shall be made according to merit and fitness from eligible pools which so far as practicable shall be competitive. No person shall be appointed, promoted, reduced or discharged as an officer, clerk, employee or laborer in the classified service in any manner or by any means other than those prescribed in the Kansas civil service act and the rules adopted in accordance therewith.

(3) For positions involving unskilled, or semiskilled duties, the secretary of administration, as provided by law, shall establish rules and regulations concerning certifications, appointments, layoffs and reemployment which may be different from the rules and regulations established concerning these processes for other positions in the classified service.

(4) Officers authorized by law to make appointments to positions in the unclassified service, and appointing officers of departments or institutions whose employees are exempt from the provisions of the Kansas civil service act because of the constitutional status of such departments or institutions shall be permitted to make appointments from appropriate pools of eligibles maintained by the division of personnel services.

Sec. 117. K.S.A. 2003 Supp. 75-3728b is hereby amended to read as follows: 75-3728b. (a) The head of any state agency may apply to the director of accounts and reports for authority to write off any accounts receivable or taxes receivable of the state agency or any institution thereof. Upon the receipt of any such application accompanied by documentation satisfactory to the director of accounts and reports, the director may authorize the write-off of any or all such accounts receivable or taxes receivable to the extent and under conditions specified by rules and regulations adopted under K.S.A. 75-3728c; and amendments thereto. The accounts receivable specified in any such authorization shall be promptly written off. Thereafter, subject to the provisions of subsection (d), the state agency shall make appropriate accounting entries to reflect the write-off and such accounts receivable shall no longer be shown in the accounts and reports of such state agency, except that nothing in this act and no action under this section shall be deemed to void any debt, account or liability (civil or criminal) prior to the expiration of the statute of limitations applicable thereto.

(b) Subject to the provisions of subsection (d), all accounts receivable and taxes receivable that have been written off by a state agency pursuant to this section are hereby assigned to the director of accounts and reports. The director of accounts and reports is hereby authorized to pursue the collection of all accounts receivable and taxes receivable assigned to the director under this subsection. Each state agency to which such accounts receivable or taxes receivable were owed prior to the write-off and assignment thereof, shall give the director of accounts and reports all information relating thereto requested by the director of accounts and reports and officers and employees of such state agency shall participate in

any hearings or litigation relating to collection of such accounts receivable or taxes receivable when requested to participate by the director of accounts and reports. The provisions of K.S.A. 75-6212, and amendments thereto, shall be applicable to information relating to accounts receivable and taxes receivable assigned pursuant to this section.

(c) All moneys collected by the director of accounts and reports on accounts receivable and taxes receivable written off and assigned to the director of accounts and reports under this section shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215; and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the accounting services recovery fund, except that in cases involving collection of debts arising out of the employment security law, the entire amount collected shall be credited to the employment security fund and an equal amount shall be transferred from the special employment security fund to the account services recovery fund.

(d) With regard to any accounts receivable that were payable to the secretary of ~~human resources~~ *labor* pursuant to the employment security law, that were written off and assigned to the director of accounts and reports pursuant to this section and that the secretary of ~~human resources~~ *labor* determines to be collectable by the secretary pursuant to the employment security law, the secretary of ~~human resources~~ *labor* may request the director of accounts and reports to reinstate any such accounts receivable at any time prior to collection by the director of accounts and reports pursuant to this section. Upon receipt of such request, the director of accounts and reports shall reinstate such accounts receivable as debts owed to the secretary of ~~human resources~~ *labor* and appropriate entries shall be made in the accounts and reports of the department of ~~human resources~~ *labor* therefor. Upon such reinstatement, such reinstated accounts receivable are hereby reassigned to the secretary of ~~human resources~~ *labor*.

Sec. 118. K.S.A. 2003 Supp. 75-4234 is hereby amended to read as follows: 75-4234. (a) Except as provided in subsection (c) and in subsection (f), all moneys in the state treasury shall be invested as a single portfolio which is hereby designated as the pooled money investment portfolio. The portfolio shall be invested in accordance with article 42 of chapter 75 of the Kansas Statutes Annotated; and amendments thereto. The director of investments shall compute daily the earnings of the portfolio, including realized gains and losses. The pooled money investment board by written policy may provide for allocation of unrealized gains or losses. The director of investments shall calculate on a daily basis and shall deduct from earnings an administrative fee which shall be set by the board and applied as a fixed percentage of moneys in the pooled money investment portfolio. The administrative fee shall not exceed .25% annually on moneys deposited in the municipal investment pool and .10% annually on other moneys in the pooled money investment portfolio. The director of investments shall deposit the administrative fee in accordance with K.S.A. 75-4235; and amendments thereto. The gross earnings, after deduction of the administrative fee, shall be designated as the net earnings of the pooled money investment portfolio.

(b) The pooled money investment board may contract for the services of an external investment advisor to provide advisory services concerning the investment policies and practices of the pooled money investment portfolio. Such investment advisor shall not be the person or firm contracted with under K.S.A. 2003 Supp. 75-4264 *and amendments thereto*.

(c) Moneys in the employment security fund established by K.S.A. 44-712, and amendments thereto, shall not be invested in the pooled money investment portfolio except as may be authorized by the secretary of ~~human resources~~ *labor* pursuant to subsection (e) of K.S.A. 44-712; and amendments thereto.

(d) For moneys in funds designated in this subsection that are in the pooled money investment portfolio and which are not invested in the municipal investment pool, interest is to be paid on such moneys based on the average daily balance in the fund for each month and the net earnings rate of the pooled money investment portfolio for such month. This subsection shall apply to the state highway fund and funds for bonds and other debt instruments of state agencies and authorities.

(e) Moneys in funds designated in this subsection shall not be invested in investment options of the municipal investment pool fund for

which the minimum term of such investment is less than 21 days. This subsection shall apply to state moneys, other than moneys of municipalities as described in subsection (a) of K.S.A. 12-1675; and amendments thereto.

(f) The amount of state moneys certified by the state treasurer as equivalent to the aggregate net amount received for unclaimed property under K.S.A. 2003 Supp. 75-2263, and amendments thereto, shall be managed and invested as provided in K.S.A. 2003 Supp. 75-2263; and amendments thereto.

Sec. 119. K.S.A. 75-4323 is hereby amended to read as follows: 75-4323. (a) There is hereby created the public employee relations board, which shall consist of five members appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b; and amendments thereto. Except as provided by K.S.A. ~~1997-Supp. 46-2601, and amendments thereto~~, no person appointed to the board shall exercise any power, duty or function as a member of the board until confirmed by the senate. One member shall be representative of public employers; one member shall be representative of public employees; and three members shall be representative of the public at large and hold no other public office or public employment. Of the three members representing the public, one shall be selected by the board as chairperson thereof. Not more than three members of the board shall be members of the same political party. Except as provided by subsection (b), each member shall be appointed for a term of four years and until a successor is appointed and confirmed. The governor shall appoint qualified successors to fill vacancies occurring by reason of the expiration of the terms. In case of any other vacancy on the board, the governor shall appoint a qualified successor for the unexpired term.

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

(c) Members of the public employee relations board attending meetings of the board, or attending a subcommittee meeting thereof authorized by the board, shall be paid compensation, subsistence allowances, mileage and other expenses as provided in K.S.A. 75-3223 and amendments thereto. The secretary of ~~human resources~~ *labor* shall provide office space and such clerical and other staff assistance as necessary to assist the board in carrying out the provisions of this act.

(d) The secretary of ~~human resources~~ *labor* may establish, after consulting with representatives of employee organizations and of public agencies, panels of qualified persons, broadly representative of the public, to be available to serve as mediators, arbitrators or members of fact-finding boards and may appoint or may contract with such persons as necessary for the performance of the board's functions, including, but not limited to, mediators, members of fact-finding boards and representatives of employee organizations and public employers to serve as technical advisors to fact-finding boards. Such persons shall perform the duties and exercise the powers prescribed by the secretary, by the board or by law. The secretary shall fix the compensation of such persons and shall provide for reimbursement of their expenses within the amounts made available therefor by the legislature.

(e) In addition to the authority provided in other sections, the board may:

(1) Establish procedures for the prevention of improper public employer and employee organization practices as provided in K.S.A. 75-4333, and amendments thereto, except that the board shall provide only for the entering of an order directing the public agency or employee organization to meet and confer in good faith in the case of a claimed violation of subsection (b)(5) or (c)(3) of K.S.A. 75-4333; and amendments thereto. The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to K.S.A. 75-4327, and amendments thereto, or with meeting and conferring.

(2) Hold such hearings and make such inquiries as it considers necessary to carry out properly its functions and powers. For the purpose of such hearings and inquiries, the board may administer oaths and affir-

mations, examine witnesses and documents, take testimony and receive evidence and compel attendance of witnesses and the production of documents by the issuance of subpoenas. Any of these powers may be delegated to any member of the board or to any person appointed by the secretary of ~~human resources~~ *labor* to perform the functions of the board. The subpoenas shall be regulated and enforced in the same manner as provided for the secretary of ~~human resources~~ *labor* under the provisions of K.S.A. 44-611 and amendments thereto.

(3) Make, amend and rescind such rules and regulations, and exercise such other powers, as appropriate to effectuate the purposes and provisions of this act.

(f) The board shall intervene in the public employer-public employee relations of political subdivisions to the minimum extent possible to secure the objectives expressed in K.S.A. 75-4321; and amendments thereto.

Sec. 120. K.S.A. 75-4332 is hereby amended to read as follows: 75-4332. (a) Public employers may include in memoranda of agreement concluded with recognized employee organizations a provision setting forth the procedures to be invoked in the event of disputes which reach an impasse in the course of meet and confer proceedings. Such memorandum shall define conditions under which an impasse exists, and if the employer is bound by the budget law set forth in K.S.A. 79-2925 *et seq.*, and amendments thereto, the memorandum shall provide that an impasse is deemed to exist if the parties fail to achieve agreement at least 14 days prior to budget submission date.

(b) In the absence of such memorandum of procedures, or upon the failure of such procedures resulting in an impasse, either party may request the assistance of the public employee relations board, or the board may render such assistance on its own motion. In either event, if the board determines an impasse exists in meet and confer proceedings between a public employer and a recognized employee organization, the board shall aid the parties in effecting a voluntary resolution of the dispute, and request the appointment of a mediator or mediators, representative of the public, from a list of qualified persons maintained by the secretary of ~~human resources~~ *labor*; and such appointment of a mediator or mediators shall be made forthwith by the secretary.

(c) All verbal or written information transmitted between any party to a dispute and a mediator conducting the proceeding, or the staff of an approved program under K.S.A. 5-501 *et seq.*, and amendments thereto, shall be confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A mediator shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party, including the neutral person or staff of an approved program conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or anyone the party authorizes to claim the privilege.

(d) The confidentiality and privilege requirements of this section shall not apply to:

(1) Information that is reasonably necessary to establish a defense for the mediator or staff of an approved program conducting the proceeding in the case of an action against the mediator or staff of an approved program that is filed by a party to the mediation;

(2) any information that the mediator is required to report under K.S.A. 38-1522 and amendments thereto;

(3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud; or

(4) any information that the mediator is required to report or communicate under the specific provisions of any statute or in order to comply with orders of the court.

(e) If the impasse persists seven days after the mediators have been appointed, the board shall request the appointment of a fact-finding board of not more than three members, each representative of the public, from a list of qualified persons maintained by the secretary of ~~human resources~~ *labor*. The fact-finding board shall conduct a hearing, may ad-

minister oaths, and may request the board to issue subpoenas. It shall make written findings of facts and recommendations for resolution of the dispute and, not later than 21 days from the day of appointment, shall serve such findings on the public employer and the recognized employee organization. The board may make this report public seven days after it is submitted to the parties. If the dispute continues 14 days after the report is submitted to the parties, the report shall be made public.

(f) If the parties have not resolved the impasse by the end of a ~~forty-day~~ 40-day period, commencing with the appointment of the fact-finding board, or by a date not later than 14 days prior to the budget submission date, whichever date occurs first: (1) The representative of the public employer involved shall submit to the governing body of the public employer a copy of the findings of fact and recommendations of the fact-finding board, together with the representative's recommendations for settling the dispute; (2) the employee organization may submit to such governing body its recommendations for settling the dispute; (3) the governing body or a duly authorized committee thereof shall forthwith conduct a hearing at which the parties shall be required to explain their positions; and (4) thereafter, the governing body shall take such action as it deems to be in the public interest, including the interest of the public employees involved. The provisions of this subsection shall not be applicable to the state and its agencies and employees.

(g) The cost for the mediation and fact-finding services provided by the secretary of ~~human resources~~ labor upon request of the board shall be borne by the secretary of ~~human resources~~ labor. All other costs, including that of a neutral arbitrator, shall be borne equally by the parties to a dispute.

Sec. 121. K.S.A. 75-5133a is hereby amended to read as follows: 75-5133a. The secretary of revenue is hereby authorized to enter into a reciprocal exchange agreement with the secretary of ~~human resources~~ labor for the purpose of identifying taxpayers who have failed to file a return or pay the tax, penalty and interest required under any of the tax provisions administered by the director of taxation or secretary of ~~human resources~~ labor. Information authorized to be exchanged pursuant to such agreement shall include only the taxpayer's name, social security number, last known address and telephone number.

Sec. 122. K.S.A. 2003 Supp. 75-5701 is hereby amended to read as follows: 75-5701. (a) There is hereby established a department of ~~human resources~~ labor. The department shall be administered under the direction and supervision of the secretary of ~~human resources~~ labor who shall be appointed by the governor, subject to confirmation by the senate as provided in K.S.A. 75-4315b, and amendments thereto, and who shall serve at the pleasure of the governor. The secretary shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the governor.

(b) The provisions of the Kansas governmental operations accountability law apply to the department of ~~human resources~~ labor, and the department is subject to audit, review and evaluation under such law.

Sec. 123. K.S.A. 75-5702 is hereby amended to read as follows: 75-5702. The secretary of ~~human resources~~ labor may appoint, with the consent of the governor, one public information officer, one or more division directors, one personal secretary and one special assistant, all of whom shall serve at the pleasure of the secretary of ~~human resources~~ labor, shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of ~~human resources~~ labor with the approval of the governor. The secretary of ~~human resources~~ labor also may appoint such other officers and employees as are necessary to enable the secretary to carry out the duties of the office of the secretary and the department of ~~human resources~~ labor. Except as otherwise specifically provided by law, such officers and employees shall be within the classified service under the Kansas civil service act. All personnel of the department of ~~human resources~~ labor shall perform the duties and functions assigned to them by the secretary or prescribed for them by law and shall act for and exercise the powers of the secretary of ~~human resources~~ labor to the extent authority to do so is delegated by the secretary.

Sec. 124. K.S.A. 75-5705 is hereby amended to read as follows: 75-5705. There is hereby established within and as a part of the department of ~~human resources~~ labor a division of employment security. The secre-

tary of ~~human resources~~ *labor* shall administer the division of employment security or provide for the administration thereof in the manner the secretary deems necessary.

Sec. 125. K.S.A. 75-5708 is hereby amended to read as follows: 75-5708. (a) There is hereby established within and as a part of the department of ~~human resources~~ *labor* a division of workers compensation. The division shall be administered, under the supervision of the secretary of ~~human resources~~ *labor*, by the director of workers compensation, who shall be the chief administrative officer of the division. The director of workers compensation shall be appointed by the secretary of ~~human resources~~ *labor* and shall serve at the pleasure of the secretary. The director shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of ~~human resources~~ *labor*, with the approval of the governor. The director of workers compensation shall be an attorney admitted to practice law in the state of Kansas. The director shall devote full time to the duties of such office and shall not engage in the private practice of law during the director's term of office.

(b) The director of workers compensation may appoint two assistant directors of workers compensation and also may appoint not to exceed 10 administrative law judges. Such assistant directors and administrative law judges shall be in the classified service. The assistant directors shall act for and exercise the powers of the director of workers compensation to the extent authority to do so is delegated by the director. The assistant directors and administrative law judges shall be attorneys admitted to practice law in the state of Kansas, and shall have such powers, duties and functions as are assigned to them by the director or are prescribed by law. The assistant directors and administrative law judges shall devote full time to the duties of their offices and shall not engage in the private practice of law during their terms of office.

(c) Assistant directors and administrative law judges shall be selected by the director of workers compensation, with the approval of the secretary of ~~human resources~~ *labor*. Each appointee shall be subject to either dismissal or suspension of up to 30 days for any of the following:

- (1) Failure to conduct oneself in a manner appropriate to the appointee's professional capacity;
- (2) failure to perform duties as required by the workers compensation act; or
- (3) any reason set out for dismissal or suspension in the Kansas civil service act or rules and regulations adopted pursuant thereto.

No appointee shall be appointed, dismissed or suspended for political, religious or racial reasons or by reason of the appointee's sex.

Sec. 126. K.S.A. 75-5712 is hereby amended to read as follows: 75-5712. (a) The agricultural labor relations board created by K.S.A. 44-820, and amendments thereto, is attached to and is a part of the department of ~~human resources~~ *labor*. All budgeting, purchasing and related management functions of the agricultural labor relations board shall be administered by or under the direction and supervision of the secretary of ~~human resources~~ *labor* as a part of the division of labor-management relations and employment standards. All vouchers for expenditures and all payrolls of the agricultural labor relations board shall be approved by the secretary of ~~human resources~~ *labor* or by a person or persons designated by the secretary.

(b) All rules and regulations and all orders or directives of the agricultural labor relations board, or of any persons authorized by the board to issue orders or directives, in existence on July 1, 1985, shall continue to be effective and shall be deemed to be the rules and regulations and orders or directives of the agricultural labor relations board until revised, amended, revoked or nullified pursuant to law. Nothing in this act shall affect the authority of the agricultural labor relations board to adopt or promulgate rules and regulations or to issue orders or directives as authorized by law.

Sec. 127. K.S.A. 75-5713 is hereby amended to read as follows: 75-5713. (a) The public employee relations board created by K.S.A. 75-4323, and amendments thereto, is attached to and is a part of the department of ~~human resources~~ *labor*. All budgeting, purchasing and related management functions of the public employee relations board shall be administered by or under the direction and supervision of the secretary of ~~human resources~~ *labor* as a part of the division of labor-management

relations and employment standards. All vouchers for expenditures and all payrolls of the public employee relations board shall be approved by the secretary of ~~human resources labor~~ or by a person or persons designated by the secretary.

(b) All rules and regulations and all orders or directives of the public employee relations board, or of any persons authorized by the board to issue orders or directives, in existence on July 1, 1985, shall continue to be effective and shall be deemed to be the rules and regulations and orders or directives of the public employee relations board until revised, amended, revoked or nullified pursuant to law. Nothing in this act shall affect the authority of the public employee relations board to adopt or promulgate rules and regulations or to issue orders or directives as authorized by law.

Sec. 128. K.S.A. 75-5722 is hereby amended to read as follows: 75-5722. The secretary of ~~human resources labor~~ shall appoint a chief attorney for the department of ~~human resources labor~~, who shall serve at the pleasure of the secretary. The chief attorney shall be in the unclassified service under the Kansas civil service act and shall receive an annual salary fixed by the secretary of ~~human resources labor~~, with the approval of the governor. The secretary of ~~human resources labor~~ also may appoint additional attorneys for the department of ~~human resources labor~~. Except for those attorneys the secretary may appoint to positions in the classified service under the Kansas civil service act in order to comply with directives under any federal act, or federal administration thereof, which federal act is related to a function or duty required to be performed by the secretary, such additional attorneys shall be in the unclassified service under the Kansas civil service act, shall receive an annual salary fixed by the secretary of ~~human resources labor~~, with the approval of the governor, and shall be subject to assignment and reassignment of duties within the department of ~~human resources labor~~ as may be determined by the chief attorney.

Sec. 129. K.S.A. 75-5723 is hereby amended to read as follows: 75-5723. The secretary of ~~human resources labor~~ may organize the department of ~~human resources labor~~ in the manner the secretary deems most efficient, so long as the same is not in conflict with the provisions of law, and the secretary may establish policies governing the transaction of all business of the department and the administration of each of the divisions within the department.

Sec. 130. K.S.A. 75-5724 is hereby amended to read as follows: 75-5724. The secretary of ~~human resources labor~~ may create advisory boards, commissions or committees with the approval of the governor, and members of any such board, commission or committee shall be appointed by the secretary. Any such advisory board, commission or committee so created shall be within the department of ~~human resources labor~~ as a part thereof. Such advisory boards, commissions or committees shall consult with and advise the secretary with reference to the management, control and operation of any programs under the jurisdiction of the department or with reference to any law administered by the department or any division thereof. Members of any advisory board, commission or committee created under authority of this section attending meetings thereof, or attending a subcommittee meeting thereof authorized by such board, commission or committee, shall be paid amounts provided in subsection (e) of K.S.A. 75-3223; and amendments thereto. All vouchers for expenditures and all payrolls of each of such advisory boards, commissions or committees shall be approved by the presiding officer thereof and the secretary of ~~human resources labor~~ or a person or persons designated by the secretary.

Sec. 131. K.S.A. 75-5727 is hereby amended to read as follows: 75-5727. The secretary of ~~human resources labor~~ shall have the legal custody of all records, memoranda, writings, entries, prints, representations or combinations thereof of any act, transaction, occurrence or event of the department of ~~human resources labor~~.

Sec. 132. K.S.A. 75-5730 is hereby amended to read as follows: 75-5730. The secretary of ~~human resources labor~~ and the department of ~~human resources labor~~ shall have offices and facilities in Topeka and such other locations throughout the state as are necessary.

Sec. 133. K.S.A. 75-5731 is hereby amended to read as follows: 75-5731. The secretary of ~~human resources labor~~ shall keep a seal which

shall be surrounded by the words "Secretary, Department of ~~Human Resources Labor~~ of Kansas" which shall be of such diameter and with such device as the governor and the secretary of ~~human resources labor~~ may prescribe, an impression of which shall be filed in the office of secretary of state.

Sec. 134. K.S.A. 2003 Supp. 75-5733 is hereby amended to read as follows: 75-5733. (a) Whenever any moneys are granted, collected from or given by any person, firm, corporation or association, or by the United States or any department, instrumentality or agency thereof, to the department of ~~human resources labor~~ or to the office of the secretary of ~~human resources labor~~, which moneys are granted, collected or given for a specific use or purpose, the secretary of ~~human resources labor~~, on behalf of the office of the secretary, the department of ~~human resources labor~~ or the state, may accept or reject any such grant, collection or gift and may enter into contracts or agreements necessary or expedient to the acceptance, collection, management or accountability of such grant, collection or gift. Any grant, collection or gift so accepted and the program therefor shall be known as a special project.

(b) The secretary of ~~human resources labor~~ shall remit all moneys received by or for the secretary for any special project to the state treasurer in accordance with the provisions of K.S.A. 75-4215; and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the ~~human resources department of labor special projects fund, which fund is hereby created. On and after July 1, 2004, the human resources special projects fund is hereby redesignated as the department of labor special projects fund. Whenever the human resources special projects fund, or words of like effect, are referred to or designated by a statute, rule and regulation, contract or other document, such reference or designation shall be deemed to apply to the department of labor special projects fund.~~ All expenditures from such fund shall be made in accordance with appropriation acts and any applicable contract or agreement upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary, or by a person or persons designated by the secretary.

(c) The secretary of ~~human resources labor~~ may employ such personnel as may be necessary, in the judgment of the secretary, to effect any special project. All persons employed for any special project, including the director of each special project, which special project shall have a noncontingent and nonrenewable duration of less than 300 consecutive calendar days, shall be in the unclassified service of the Kansas civil service act and shall receive salaries fixed by the secretary, with the approval of the governor. All persons employed for any other special project, or where conditions of the grant, collection, contract, agreement or gift so stipulate, shall be in the classified service under the Kansas civil service act.

Sec. 135. K.S.A. 75-5734 is hereby amended to read as follows: 75-5734. The secretary of ~~human resources labor~~ shall receive as part of the annual salary fixed by the governor pursuant to K.S.A. 75-5701, and amendments thereto, an annual amount for services performed by the secretary with respect to the administration of or the participation by this state in federal acts and programs. Such annual amount shall be fixed by the governor, shall be paid from the respective funds administered by the secretary with respect to administration of or participation by this state in such federal acts or programs, and shall be a percentage of the annual salary of the secretary which bears the same proportion to such annual salary as the percentage of time spent in the performance of such services bears to the total amount of time spent by the secretary in the performance of all other powers, duties and functions conferred and imposed by law upon the secretary.

Sec. 136. K.S.A. 75-5735 is hereby amended to read as follows: 75-5735. Subject to the approval of the governor, the secretary of ~~human resources labor~~ is authorized to contract with federal government agencies, governmental entities of any state, and private not-for-profit corporations for the performance of data processing services and training.

Sec. 137. K.S.A. 75-5740 is hereby amended to read as follows: 75-5740. It shall be the duty of the secretary of ~~human resources labor~~. To promote better understanding of the accident problem of this state and of state and municipal laws enacted for the purpose of aiding in the so-

lution of the problem; to promote a permanent educational program for the purpose of enlisting the cooperation of all citizens in reducing accidents; to work for the prevention of accidents on streets and highways, in the home, in the factories, on the farm and whenever preventable accidents occur; and to promote safety measures of every kind and character and to educate the public generally in the matters of safety.

Sec. 138. K.S.A. 75-5741 is hereby amended to read as follows: 75-5741. (a) The secretary of ~~human resources~~ *commerce* shall establish within the limits of appropriations therefor and in accordance with the provisions of this section the older Kansans employment program. The secretary may make grants to and enter into contracts with nonprofit agencies or organizations or public bodies for the purpose of providing for the development and operation of the older Kansans employment program.

(b) The older Kansans employment program shall be designed as follows:

(1) The program shall provide to older Kansans an employment placement service with emphasis on employment in the private sector, including nontraditional patterns of employment; and

(2) The program shall provide training in job seeking skills to potential employees who are older Kansans and assistance to potential employers in utilizing the contributions of older Kansans to their work force.

(c) The secretary shall prepare annually a report evaluating the effectiveness of the older Kansans employment program and recommending measures to increase the number of older Kansans gainfully employed. The report shall be prepared and made available annually to the governor, members of the legislature, the secretary of aging, the ~~human resources~~ *commerce* development council and the members of the advisory council on aging no later than December 15 each year.

(d) As used in this section, "older Kansan" means a resident of the state of Kansas who is 55 years of age or older.

Sec. 139. K.S.A. 2003 Supp. 75-5742 is hereby amended to read as follows: 75-5742. (a) The department of ~~human resources~~ *labor* is hereby designated as the agency to collect the new hires information required by the personal responsibility and work opportunity act of 1996. The secretary of ~~human resources~~ *labor* shall contract with the secretary of social and rehabilitation services to provide the information needed to be in compliance with the personal responsibility and work opportunity act of 1996.

(b) The state directory of new hires shall receive, retain and, to the extent permitted by federal law, make information reported to the directory available pursuant to subsection (c).

(c) Except as otherwise permitted by federal law, any agency receiving information from the state directory of new hires shall handle the information as confidential information for use in administering the programs for which it was received. The state directory of new hires shall make information available:

(1) Upon implementation of the national directory of new hires, to the national directory; and

(2) to the secretary of social and rehabilitation services for use in administering an eligibility verification system and, not later than May 1, 1998, the title IV-D program.

(d) Any employer who reports electronically or magnetically and is required to report newly hired employees to more than one state may elect to transmit all such reports to one state by complying with the requirements of title IV-D.

(e) Beginning July 1, 1999, the secretary of ~~human resources~~ *labor* shall annually delete information about individuals contained in the new hires directory if the information is at least two years old. Nothing in this subsection shall be construed as requiring the secretary of ~~human resources~~ *labor* to delete information needed to administer the employment security or workers compensation programs.

Sec. 140. K.S.A. 2003 Supp. 75-5743 is hereby amended to read as follows: 75-5743. (a) All employers and labor organizations doing business in this state shall submit information concerning each new employee to the secretary of ~~human resources~~ *labor* within 20 days of the hiring, re-hiring or return to work of the employee or within 20 days from the date the employee first receives wages or other compensation from the employer. The information shall include the employee's name, address and

social security number and the employer's name, address and federal tax identification number.

(b) The department of social and rehabilitation services shall have access to such information to match the employee's social security number with title IV-D cases.

Sec. 141. K.S.A. 76-186 is hereby amended to read as follows: 76-186. (a) The secretary of ~~human resources~~ *labor* is authorized to sell and convey on behalf of the state of Kansas the following described real estate, and improvements thereon, otherwise known as the department of ~~human resources~~ *labor* Kansas City office building property: Lots 28, 29 and 30 in block 110 in Wyandotte City, now in and a part of Kansas City, Kansas, according to the recorded plat thereof, on state avenue in Kansas City, Wyandotte county, Kansas; and lots 31, 32, 33, 34, 35 and 36 in block 110, on state avenue, Wyandotte City, an addition to Kansas City, Wyandotte county, Kansas.

(b) The deed conveying the real estate, and improvements thereon, described under subsection (a) shall be approved by the attorney general and shall be executed by the secretary of ~~human resources~~ *labor*.

Sec. 142. K.S.A. 2003 Supp. 76-11a06 is hereby amended to read as follows: 76-11a06. (a) Whenever a teacher is given written notice of intention by the state board to nonrenew or to terminate the contract of the teacher as provided in K.S.A. 76-11a05, and amendments thereto, the written notice of the proposed nonrenewal or termination shall include: (1) A statement of the reasons for the proposed nonrenewal or termination; and (2) a statement that the teacher may have the matter heard by a hearing officer upon written request filed with the commissioner of education within 15 days from the date of such notice of nonrenewal or termination.

(b) Within 10 calendar days after the filing of a written request by any teacher to be heard as provided in subsection (a), the state board shall notify the secretary of ~~human resources~~ *labor* that a list of qualified hearing officers is required. Such notice shall contain the mailing address of the teacher. Within 10 days after receipt of notification from the state board, the secretary shall provide to the state board and to the teacher a list of five randomly selected, qualified hearing officers.

(c) Within five days after receiving the list from the secretary of ~~human resources~~ *labor*, each party shall eliminate two names from the list, and the remaining individual on the list shall serve as hearing officer. In the process of elimination, each party shall eliminate no more than one name at a time, the parties alternating after each name has been eliminated. The first name to be eliminated shall be chosen by the teacher within five days after the teacher receives the list. The process of elimination shall be completed within five days thereafter.

(d) Either party may request that one new list be provided within five days after receiving the original list. If such a request is made, the party making the request shall notify the secretary of ~~human resources~~ *labor* and the other party, and the secretary shall generate a new list and distribute it to the parties in the same manner as the original list.

(e) In lieu of using the process provided in subsections (b) through (d), if the parties agree, they may make a request to the American Arbitration Association for an arbitrator to serve as the hearing officer. Any party desiring to use this alternative procedure shall so notify the other party at the time written request for a hearing is filed by the teacher. If the parties agree to use this procedure, the parties shall make a joint request to the American Arbitration Association for a hearing officer within 10 days after the teacher files the request for a hearing. If the parties choose to use this procedure, the parties shall each pay 1/2 of the cost of the arbitrator and of the arbitrator's expenses.

(f) The secretary of ~~human resources~~ *labor* shall compile and maintain a list of hearing officers comprised of residents of this state who are attorneys at law. Such list shall include a statement of the qualifications of each hearing officer.

(g) Attorneys interested in serving as hearing officers under the provisions of this act shall submit an application to the secretary of ~~human resources~~ *labor*. The secretary shall determine if the applicant is eligible to serve as a hearing officer pursuant to the provisions of subsection (h).

(h) An attorney shall be eligible for appointment to the list if the attorney has: (1) Completed a minimum of 10 hours of continuing legal education credit in the area of education law, due process, administrative

law or employment law within the past five years; or (2) previously served as the chairperson of a due process hearing committee prior to the effective date of this act. An attorney shall not be eligible for appointment to the list if the attorney has been employed to represent the state board or a teacher in a due process hearing within the past five years.

Sec. 143. K.S.A. 76-3110 is hereby amended to read as follows: 76-3110. (a) The KPR board may initiate a proceeding to effect termination of a postsecondary institution's participation in federal student aid programs by serving written notice upon the institution that the board has determined that the institution should not be eligible for participation in such programs. The notice shall include a statement of the reasons for the determination and a statement that the institution may contest the finding before a hearing officer upon written request filed with the KPR board. The request to be heard must be filed within 15 days from the date of the notice of the board's determination. Upon receipt of a request by an institution to be heard, the KPR board shall notify the secretary of ~~human resources~~ *labor* that the appointment of a hearing officer is required. Within 10 days after receipt of notification from the KPR board, the secretary of ~~human resources~~ *labor* shall appoint a hearing officer from a list, which shall be compiled and maintained by the secretary of ~~human resources~~ *labor*, of impartial persons who are representative of the public and who are qualified to serve as hearing officers.

(b) Any hearing requested by a postsecondary institution as provided in subsection (a) shall be commenced within 15 calendar days after the hearing officer is appointed and shall be conducted in accordance with the provisions of the Kansas administrative procedure act. Within 30 days after close of the hearing, the hearing officer shall render a written opinion setting forth the hearing officer's findings of fact and recommendation as to the determination of the matter. The opinion shall be submitted to the KPR board and to the postsecondary institution. If, after receipt of the hearing officer's opinion, the KPR board concludes that the board's determination that the institution should not be eligible for participation in federal student aid programs was warranted, the board shall notify the institution and the secretary of education of the determination and the reasons therefor.

Sec. 144. K.S.A. 77-618 is hereby amended to read as follows: 77-618. Judicial review of disputed issues of fact shall be confined to the agency record for judicial review as supplemented by additional evidence taken pursuant to this act, except that review of:

(a) Orders of the director of workers' compensation under the workmen's compensation act shall be in accordance with K.S.A. 44-556 and amendments thereto;

(b) orders of the Kansas human rights commission under the Kansas act against discrimination or the Kansas age discrimination in employment act shall be in accordance with K.S.A. 44-1011 and 44-1021; and amendments thereto;

(c) orders of the division of vehicles, other than orders under K.S.A. 8-254, and amendments thereto, which deny, cancel, suspend or revoke a driver's license shall be in accordance with K.S.A. 8-259 and amendments thereto;

(d) orders of the secretary of ~~human resources~~ *labor* under K.S.A. 72-5413 through 72-5431, and amendments thereto, shall be in accordance with K.S.A. 72-5430a and amendments thereto; and

(e) orders of the state fire marshal under K.S.A. 31-144, and amendments thereto, shall be in accordance with that section.

Sec. 145. K.S.A. 79-1010 is hereby amended to read as follows: 79-1010. Every contractor required to register any contract or contracts, as defined in this act, shall, before entering into the performance of such contract or contracts, execute and file with the secretary or the secretary's designee a good and valid bond in a surety company authorized to do business in this state, or with sufficient sureties to be approved by the secretary or the secretary's designee, conditioned that all taxes, including contributions due under the employment security law, which may accrue to the state of Kansas and all taxes which may accrue to the political subdivisions thereof on account of the execution and performance of such contract or contracts, will be paid when due, and the execution and filing of such bond shall be a condition precedent to commencing work on any contract in the state of Kansas. Such bond shall be conditioned as hereinabove provided with respect to all contracts to be performed during

the current calendar year and shall be in a sum of not less than \$1,000. If at any time during the current calendar year the secretary or the secretary's designee shall determine the amount of the bond is not sufficient to cover the tax liabilities accruing to the state of Kansas or the political subdivisions thereof for the current calendar year, or, upon written request of the secretary of ~~human resources~~ *labor*, the secretary or the secretary's designee shall require such bond to be increased in such sum as the secretary or the secretary's designee may determine to be proper. When any contractor shall have fully performed all contracts registered during the current calendar year, the bond may be released by the secretary or the secretary's designee.

Any contractor who is or becomes subject to the provisions of this act and every contractor required to register any contract or contracts, as defined in this act, who contracts with any subcontractor, who also is or becomes subject to the provisions of this act or is required to register any contract or contracts as defined in this act, shall withhold sufficient moneys on such contract to guarantee that all taxes, including contributions due under the employment security law, which may accrue to the state of Kansas and all taxes which may accrue to the political subdivisions thereof on account of the execution and performance of such contract or contracts, will be paid when due. Failure to comply with the provisions of this section shall render the contractor directly liable for such taxes, contribution, penalties and interest due from the subcontractor and the secretary or the secretary's designee shall have all of the remedies of collection against the contractor under the provisions of this act as though the services in question were performed directly for such contractor.

Every person failing to register as required by this act, or to execute the bond herein provided before beginning the performance of any contract, shall be denied the right to perform such contract until such person complies with such requirements, and the county attorney of any county in which the contract is to be performed, general counsel of the department of ~~human resources~~ *labor* when requested by the secretary of ~~human resources~~ *labor*, or the attorney for the secretary of revenue, when requested by the secretary or the secretary's designee is hereby authorized to proceed by injunction to prevent any activity in the performance of such contract until such registration is made and such bond is executed and filed, and any temporary injunction enjoining the execution of such contract shall be granted without notice by any judge now authorized by law to grant injunctions.

Sec. 146. K.S.A. 79-1012 is hereby amended to read as follows: 79-1012. An action against any contractor coming within the provisions of this act may be brought by the attorney for the secretary of revenue or the general counsel of the department of ~~human resources~~ *labor* in Shawnee county or in any county in which any work under any such contract is performed. The summons shall be directed to the secretary of state, and shall require the defendant to answer by a certain day, not less than 40 days nor more than 60 days from such date. The summons shall be forthwith forwarded by the clerk of the court to the secretary of state, who shall immediately forward a copy thereof to the contractor at the address given by such contractor and thereupon the secretary of state shall make return of the summons to the court whence it issued, showing the date of its receipt by the secretary, the date of forwarding such copy and the name and address of the person to whom the secretary forwarded such copy. Such return shall be under the secretary's hand and seal of office, and shall have the same force and effect as a due and sufficient return made by the sheriff on process directed to the sheriff.

The secretary of state shall keep a suitable record book, in which the secretary shall docket every action commenced against any such contractor. This record shall show the court in which the suit is brought, the title of the case, the time when commenced, and the date and manner of service.

Sec. 147. K.S.A. 79-1014 is hereby amended to read as follows: 79-1014. The secretary of revenue or the secretary's designee shall administer this act. The secretary shall adopt rules and regulations for the administration of this act. No bonds required under this act shall be released until the contract for which any such bond is given shall be fully performed, nor until the secretary or the secretary's designee shall obtain a written release from the secretary of ~~human resources~~ *labor* certifying that all contributions and interest due by the principal on such bond,

under the employment security law, have been paid in full.

Sec. 148. K.S.A. 38-622, 39-7,108, 39-1702, 44-322a, 44-327, 44-402, 44-403, 44-404, 44-405, 44-406, 44-409, 44-412, 44-552, 44-555c, 44-596, 44-5,104, 44-5,122, 44-5,124, 44-601, 44-601b, 44-607, 44-608, 44-609, 44-610, 44-611, 44-612, 44-614, 44-615, 44-616, 44-618, 44-619, 44-620, 44-621, 44-622, 44-623, 44-624, 44-626, 44-631, 44-634, 44-635, 44-636, 44-638, 44-643, 44-645, 44-646, 44-647, 44-661, 44-662, 44-704a, 44-710b, 44-711, 44-713, 44-713a, 44-715, 44-716, 44-716a, 44-718, 44-720, 44-721, 44-727, 44-759, 44-809, 44-816, 44-820, 44-914, 44-915, 44-1202, 44-1402, 44-1405, 44-1409, 65-1824, 65-4971, 65-5703, 66-132, 72-4427, 72-5413, 72-5432, 73-1209, 73-1219, 74-711, 74-32,160, 74-5068, 74-6701, 74-6702, 74-6703, 74-6706, 74-6707, 74-6708, 74-6709, 74-72,103, 75-443, 75-4323, 75-4332, 75-5133a, 75-5702, 75-5705, 75-5708, 75-5712, 75-5713, 75-5714, 75-5716, 75-5722, 75-5723, 75-5724, 75-5727, 75-5730, 75-5731, 75-5734, 75-5735, 75-5740, 75-5741, 76-186, 76-3110, 77-618, 79-1010, 79-1012 and 79-1014 and K.S.A. 2003 Supp. 44-313, 44-411, 44-508, 44-511, 44-703, as amended by section 6 of 2004 Senate Bill No. 440, 44-704, 44-704b, as amended by section 1 of 2004 Senate Bill No. 440, 44-706, as amended by section 2 of 2004 Senate Bill No. 440, 44-709, as amended by section 3 of 2004 Senate Bill No. 440, 44-710, as amended by section 4 of 2004 Senate Bill No. 440, 44-710a, as amended by section 5 of 2004 Senate Bill No. 440, 44-714, 44-717, 44-757, 44-762, 44-817, 44-926, 49-201, 74-32,151, 74-4911f, 74-4911h, 74-50,131, 74-50,136, 74-8942, 75-2935, 75-3728b, 75-4234, 75-5701, 75-5733, 75-5742, 75-5743 and 76-11a06 are hereby repealed.

Sec. 149. This act shall take effect and be in force from and after its publication in the statute book.

Approved May 20, 2004.
