

**Substitute for HOUSE BILL No. 2135**

By Committee on Commerce and Economic Development

2-22

1 AN ACT concerning certain employees; relating to misclassification of  
2 employees to avoid tax withholding, contributions and reporting  
3 requirements; amending K.S.A. 2010 Supp. 44-703, 44-766 and 79-  
4 3234 and repealing the existing sections.

5  
6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. The secretary or the secretary's designee shall make  
8 all determinations regarding the proper classification of any worker  
9 pursuant to K.S.A. 44-703(i)(3), and amendments thereto.

10 (b) If the department of revenue has reason to believe that a business  
11 has not properly classified a worker pursuant to K.S.A. 44-703(i)(3), and  
12 amendments thereto, the department of revenue shall request a  
13 determination of such worker's classification pursuant to K.S.A. 44-  
14 703(i)(3), and amendments thereto, from the secretary. The department of  
15 revenue shall submit to the secretary all relevant information, including  
16 withholding tax and payroll information, in the possession of the  
17 department of revenue necessary to make such determination.

18 (1) If the secretary deems it necessary to obtain additional  
19 information from the department of revenue in order to make such  
20 determination or to calculate any assessment of unemployment insurance  
21 contributions due, the secretary shall notify the department of revenue.  
22 The department of revenue shall obtain and remit the requested  
23 information to the secretary.

24 (2) The department of revenue shall accept the secretary's  
25 determination made pursuant to subsection (a) and shall rely on such  
26 determination in the department of revenue's examination and assessment  
27 of the business with regard to such worker.

28 (3) Relying upon the information provided by the department of  
29 revenue pursuant to this section, and amendments thereto, and upon  
30 making the determination required by subsection (a), the secretary shall  
31 notify the business of any unemployment insurance contributions due  
32 pursuant to this act. The secretary shall not engage a separate  
33 investigation into the same matter once a determination has been made  
34 pursuant to subsection (a) based upon information so obtained through  
35 the department of revenue.

36 (4) Information shared with the secretary by the department of

1 revenue pursuant to this section, shall be held by the secretary to the same  
2 confidentiality standards as may be required by statutes governing the  
3 department of revenue.

4 (c) Upon investigation and determination by the secretary that a  
5 business has misclassified a worker, the secretary shall notify the  
6 department of revenue that a determination has been made, referring the  
7 matter for collection of applicable income withholding taxes.

8 (1) Upon request of the department of revenue, the secretary shall  
9 make available for its review any information relied upon by the secretary  
10 in making the determination.

11 (2) Information shared with the department of revenue by the  
12 secretary pursuant to this section shall be held by the department of  
13 revenue to the same confidentiality standards as may be required by  
14 statutes governing the department of labor.

15 (d) Each of the secretary of labor and the secretary of revenue may  
16 adopt rules and regulations necessary to effect the purposes of this  
17 section.

18 (e) This section shall be a part of and supplemental to the  
19 employment security law.

20 New Sec. 2. The secretary shall make the determination of  
21 employment required by K.S.A. 44-703(i)(3)(D), and amendments  
22 thereto, by examining the totality of the circumstances in which the  
23 individual renders service and shall exercise strict impartiality in the  
24 conduct of any such determination.

25 (a) The secretary shall first seek to determine whether the business  
26 in question has a reasonable basis upon which it relied when it  
27 determined the classification of a worker as an employee or independent  
28 contractor. If a reasonable basis is found, the classification shall be  
29 deemed valid. A business has a reasonable basis for its classification of  
30 workers if:

31 (1) Any of the following circumstances are present:

32 (A) The business reasonably relied upon a judicial decision  
33 regarding employment classification matters rendered by a federal or  
34 state court of competent jurisdiction in the state of Kansas;

35 (B) the business previously received a ruling from the internal  
36 revenue service, the department of revenue, or the department of labor  
37 validating the business' classification of workers;

38 (C) the business has been previously audited by the internal revenue  
39 service, the department of revenue, or the department of labor at a time  
40 when the business classified workers similarly situated in the same  
41 manner to those workers currently in question, and such audit did not  
42 result in reclassification of those workers so similarly situated; or

43 (D) the business reasonably relied on the application of worker

1 classifications customary among a significant segment of its industry; and

2  
3 (2) The business showed consistency in its practices by:

4 (A) The business classified the worker in question and any similarly  
5 situated worker in the same manner; and

6 (B) the business has consistently and properly reported to the  
7 appropriate taxing authorities wages or payments to the workers in  
8 question and those similarly situated.

9 (b) If a reasonable basis as articulated herein cannot be ascertained,  
10 then when making a determination the secretary shall then consider the  
11 following factors:

12 (1) Must the individual comply with specific instructions from the  
13 business regarding when, where, and how to perform services so  
14 provided?

15 (2) Are the activities of the individual integrated into the ongoing  
16 operations of the business?

17 (3) If needed to accomplish the desired end result, does the  
18 individual have the responsibility to hire, supervise and pay assistants?

19 (4) Must the individual work exclusively for the business in  
20 question?

21 (5) Is payment by the business to the individual for services  
22 contingent on completion of established benchmarks or tasks?

23 (6) Does the individual provide significant tools, materials or other  
24 equipment used in the accomplishment of the desired end result?

25 (7) Is the individual responsible for any expenses incurred in the  
26 performance of services?

27 (8) Can the individual suffer a loss in the course of performing  
28 services?

29 (c) The secretary shall seek to educate the business by assisting the  
30 business in identifying facts which may establish either classification.

31 (d) If imposition of a penalty or interest could otherwise be imposed  
32 by this act due to a misclassification of a worker, before imposition of  
33 such assessment, the secretary shall consider the appropriateness of the  
34 penalty or interest to the business charged with the violation of  
35 misclassifying a worker given the circumstances in which the  
36 misclassification occurred.

37 (e) This section shall be a part of and supplemental to the  
38 employment security law.

39 Sec. 3. K.S.A. 2010 Supp. 44-703 is hereby amended to read as  
40 follows: 44-703. As used in this act, unless the context clearly requires  
41 otherwise:

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

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

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

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

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

32 (B) If an individual lacks sufficient base period wages in order to  
33 establish a benefit year in the manner set forth above the claimant shall  
34 have an alternative base period substituted for the current base period.  
35 For the purposes of this subsection, "alternative base period" means  
36 eligibility shall be determined using a base period that consists of the four  
37 most recently completed calendar quarters preceding the start of the  
38 benefit year.

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

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

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

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

24 (e) "Commissioner" or "secretary" means the secretary of labor.

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

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

34 (g) "Employing unit" means any individual or type of organization,  
35 including any partnership, association, limited liability company, agency  
36 or department of the state of Kansas and political subdivisions thereof,  
37 trust, estate, joint-stock company, insurance company or corporation,  
38 whether domestic or foreign including nonprofit corporations, or the  
39 receiver, trustee in bankruptcy, trustee or successor thereof, or the legal  
40 representatives of a deceased person, which has in its employ one or more  
41 individuals performing services for it within this state. All individuals  
42 performing services within this state for any employing unit which  
43 maintains two or more separate establishments within this state shall be

1 deemed to be employed by a single employing unit for all the purposes of  
2 this act. Each individual employed to perform or to assist in performing  
3 the work of any agent or employee of an employing unit shall be deemed  
4 to be employed by such employing unit for all the purposes of this act,  
5 whether such individual was hired or paid directly by such employing  
6 unit or by such agent or employee, provided the employing unit had  
7 actual or constructive knowledge of the employment.

8 (h) "Employer" means:

9 (1) (A) Any employing unit for which agricultural labor as defined  
10 in subsection (w) of this section is performed and which during any  
11 calendar quarter in either the current or preceding calendar year paid  
12 remuneration in cash of \$20,000 or more to individuals employed in  
13 agricultural labor or for some portion of a day in each of 20 different  
14 calendar weeks, whether or not such weeks were consecutive, in either  
15 the current or the preceding calendar year, employed in agricultural labor  
16 10 or more individuals, regardless of whether they were employed at the  
17 same moment of time.

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

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

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

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

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

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

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

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

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

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

7 (2) (A) Any employing unit which for calendar year 2007 and each  
8 calendar year thereafter: (i) In any calendar quarter in either the current or  
9 preceding calendar year paid for service in employment wages of \$1,500  
10 or more, (ii) for some portion of a day in each of 20 different calendar  
11 weeks, whether or not such weeks were consecutive, in either the current  
12 or preceding calendar year, had in employment at least one individual,  
13 whether or not the same individual was in employment in each such day,  
14 or (iii) elects to have an unemployment tax account established at the  
15 time of initial registration in accordance with subsection (c) of K.S.A. 44-  
16 711, and amendments thereto.

17 (B) Employment of individuals to perform domestic service or  
18 agricultural labor and wages paid for such service or labor shall not be  
19 considered in determining whether an employing unit meets the criteria of  
20 this subsection (h)(2).

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

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

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

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

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

43 (7) Any employing unit which has elected to become fully subject to

1 this act in accordance with subsection (c) of K.S.A. 44-711, and  
2 amendments thereto.

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

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

19 (i) "Employment" means:

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

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

23 (B) any individual who, under the usual common law rules  
24 applicable in determining the employer-employee relationship, has the  
25 status of an employee, *subject to provisions of K.S.A. 44-703(i)(3)(D),*  
26 *and amendments thereto;* or

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

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

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

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

43 (a) The contract of service contemplates that substantially all of the



1 services are to be performed personally by such individual;

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

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

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

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

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

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

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

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

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

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

41 (D) Services performed by an individual for wages or under any  
42 contract of hire shall be deemed to be employment subject to this act  
43 ~~unless and until it is shown to the satisfaction of the secretary that: (i)~~

1 ~~Such individual has been and will continue to be free from control or~~  
2 ~~direction over the performance of such services, both under the~~  
3 ~~individual's contract of hire and in fact; and (ii) such service is either~~  
4 ~~outside the usual course of the business for which such service is~~  
5 ~~performed or that such service is performed outside of all the places of~~  
6 ~~business of the enterprise for which such service is performed. if the~~  
7 *business for which activities of the individual are performed retains not*  
8 *only the right to control the end results of the activities performed, but*  
9 *the manner and means by which the end result is accomplished.*

10 (E) Service performed by an individual in the employ of this state or  
11 any instrumentality thereof, any political subdivision of this state or any  
12 instrumentality thereof, or in the employ of an Indian tribe, as defined  
13 pursuant to section 3306(u) of the federal unemployment tax act, any  
14 instrumentality of more than one of the foregoing or any instrumentality  
15 which is jointly owned by this state or a political subdivision thereof or  
16 Indian tribes and one or more other states or political subdivisions of this  
17 or other states, provided that such service is excluded from "employment"  
18 as defined in the federal unemployment tax act by reason of section  
19 3306(c)(7) of that act and is not excluded from "employment" under  
20 subsection (i)(4)(A) of this section. For purposes of this section, the  
21 exclusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall  
22 also be applicable to services performed in the employ of an Indian tribe.

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

28 (G) The term "employment" shall include the service of an  
29 individual who is a citizen of the United States, performed outside the  
30 United States except in Canada, in the employ of an American employer  
31 (other than service which is deemed "employment" under the provisions  
32 of subsection (i)(2) or subsection (i)(3) or the parallel provisions of  
33 another state's law), if:

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

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

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

38 ~~or~~

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

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

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

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

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

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

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

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

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

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

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

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

36 (i) As an elected official;

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

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

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

42 (v) in a position which, under or pursuant to the laws of this state or  
43 tribal law, is designated as a major nontenured policymaking or advisory

1 position or as a policymaking or advisory position the performance of the  
2 duties of which ordinarily does not require more than eight hours per  
3 week;

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

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

11 (D) service performed in the employ of the United States  
12 government or an instrumentality of the United States exempt under the  
13 constitution of the United States from the contributions imposed by this  
14 act, except that to the extent that the congress of the United States shall  
15 permit states to require any instrumentality of the United States to make  
16 payments into an unemployment fund under a state unemployment  
17 compensation law, all of the provisions of this act shall be applicable to  
18 such instrumentalities, and to services performed for such  
19 instrumentalities, in the same manner, to the same extent and on the same  
20 terms as to all other employers, employing units, individuals and services.  
21 If this state shall not be certified for any year by the federal security  
22 agency under section 3304(c) of the federal internal revenue code of  
23 1986, the payments required of such instrumentalities with respect to  
24 such year shall be refunded by the secretary from the fund in the same  
25 manner and within the same period as is provided in subsection (f) of  
26 K.S.A. 44-717, and amendments thereto, with respect to contributions  
27 erroneously collected;

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

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

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

43 (H) service performed in any calendar quarter in the employ of any

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

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

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

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

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

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

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

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

43 (N) service performed, in the employ of a school, college, or

1 university, if such service is performed by a student who is enrolled and is  
2 regularly attending classes at such school, college or university;

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

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

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

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

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

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

39 (S) services performed by an oil and gas contract pumper. As used in  
40 this subsection (i)(4)(S), "oil and gas contract pumper" means a person  
41 performing pumping and other services on one or more oil or gas leases,  
42 or on both oil and gas leases, relating to the operation and maintenance of  
43 such oil and gas leases, on a contractual basis for the operators of such oil

1 and gas leases and "services" shall not include services performed for a  
2 governmental entity or any organization described in section 501(c)(3) of  
3 the federal internal revenue code of 1986 which is exempt from income  
4 taxation under section 501(a) of the code;

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

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

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

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

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

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

27 (i) Such person:

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

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

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

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

43 (iv) for purposes of this act, a sale or a sale resulting exclusively

1 from a solicitation made by telephone, mail, or other telecommunications  
2 method, or other nonpersonal method does not satisfy the requirements of  
3 this subsection;

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

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

11 (Y) service performed by an owner-operator of a motor vehicle that  
12 is leased or contracted to a licensed motor carrier with the services of a  
13 driver and is not treated under the terms of the lease agreement or  
14 contract with the licensed motor carrier as an employee for purposes of  
15 the federal insurance contribution act, 26 U.S.C. § 3101 et seq., the  
16 federal social security act, 42 U.S.C. § 301 et seq., the federal  
17 unemployment tax act, 26 U.S.C. § 3301 et seq., and the federal statutes  
18 prescribing income tax withholding at the source, 26 U.S.C. § 3401 et  
19 seq. Employees or agents of the owner-operator shall not be considered  
20 employees of the licensed motor carrier for purposes of employment  
21 security taxation or compensation. As used in this subsection (Y), the  
22 following definitions apply: (i) "Motor vehicle" means any automobile,  
23 truck-trailer, semitrailer, tractor, motor bus or any other self-propelled or  
24 motor-driven vehicle used upon any of the public highways of Kansas for  
25 the purpose of transporting persons or property; (ii) "licensed motor  
26 carrier" means any person, firm, corporation or other business entity that  
27 holds a certificate of convenience and necessity or a certificate of public  
28 service from the state corporation commission or is required to register  
29 motor carrier equipment pursuant to 49 U.S.C. § 14504; and (iii) "owner-  
30 operator" means a person, firm, corporation or other business entity that  
31 is the owner of a single motor vehicle that is driven exclusively by the  
32 owner under a lease agreement or contract with a licensed motor carrier.

33 (j) "Employment office" means any office operated by this state and  
34 maintained by the secretary of labor for the purpose of assisting persons  
35 to become employed.

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

42 (l) "State" includes, in addition to the states of the United States of  
43 America, any dependency of the United States, the Commonwealth of



1 Puerto Rico, the District of Columbia and the Virgin Islands.

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

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

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

34 (1) That part of the remuneration which has been paid in a calendar  
35 year to an individual by an employer or such employer's predecessor in  
36 excess of \$3,000 for all calendar years prior to 1972, \$4,200 for the  
37 calendar years 1972 to 1977, inclusive, \$6,000 for calendar years 1978 to  
38 1982, inclusive, \$7,000 for the calendar year 1983, and \$8,000 with  
39 respect to employment during any calendar year following 1983, except  
40 that if the definition of the term "wages" as contained in the federal  
41 unemployment tax act is amended to include remuneration in excess of  
42 \$8,000 paid to an individual by an employer under the federal act during  
43 any calendar year, wages shall include remuneration paid in a calendar

1 year to an individual by an employer subject to this act or such  
2 employer's predecessor with respect to employment during any calendar  
3 year up to an amount equal to the dollar limitation specified in the federal  
4 unemployment tax act. For the purposes of this subsection (o)(1), the  
5 term "employment" shall include service constituting employment under  
6 any employment security law of another state or of the federal  
7 government;

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

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

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

29 (A) From or to a trust described in section 401(a) of the federal  
30 internal revenue code of 1986 which is exempt from tax under section  
31 501(a) of the federal internal revenue code of 1986 at the time of such  
32 payment unless such payment is made to an employee of the trust as  
33 remuneration for services rendered as such employee and not as a  
34 beneficiary of the trust;

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

38 (C) under a simplified employee pension as defined in section  
39 408(k)(1) of the federal internal revenue code of 1986, other than any  
40 contribution described in section 408(k)(6) of the federal internal revenue  
41 code of 1986;

42 (D) under or to an annuity contract described in section 403(b) of the  
43 federal internal revenue code of 1986, other than a payment for the

1 purchase of such contract which was made by reason of a salary  
2 reduction agreement whether evidenced by a written instrument or  
3 otherwise;

4 (E) under or to an exempt governmental deferred compensation plan  
5 as defined in section 3121(v)(3) of the federal internal revenue code of  
6 1986;

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

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

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

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

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

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

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

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

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

41 (10) any payment made, or benefit furnished, to or for the benefit of  
42 an employee if at the time of such payment or such furnishing it is  
43 reasonable to believe that the employee will be able to exclude such

1 payment or benefit from income under section 129 of the federal internal  
2 revenue code of 1986 which relates to dependent care assistance  
3 programs;

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

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

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

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

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

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

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

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

43 (q) "Calendar quarter" means the period of three consecutive

1 calendar months ending March 31, June 30, September 30 or December  
2 31, or the equivalent thereof as the secretary may by rules and regulations  
3 prescribe.

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

5 (s) "Approved training" means any vocational training course or  
6 course in basic education skills, including a job training program  
7 authorized under the federal workforce investment act of 1998, approved  
8 by the secretary or a person or persons designated by the secretary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Sec. 4. K.S.A. 2010 Supp. 44-766 is hereby amended to read as  
24 follows: 44-766. (a) No person shall knowingly and intentionally  
25 misclassify an employee as an independent contractor for the sole or  
26 primary purpose of avoiding either state income tax withholding and  
27 reporting requirements or state unemployment insurance contributions  
28 reporting requirements.

29 ~~(b) Any person violating subsection (a) shall be subject to a penalty~~  
30 ~~pursuant to K.S.A. 79-3228, and amendments thereto. (b) (1) Any person~~  
31 ~~violating subsection (a) shall upon first violation be subject to a civil~~  
32 ~~penalty in an amount computed in the manner prescribed in K.S.A. 79-~~  
33 ~~3228, and amendments thereto.~~

34 (2) Any person violating subsection (a) upon a second violation  
35 shall be subject to a civil penalty computed as prescribed in paragraph  
36 (1) and in addition, upon conviction, shall be guilty of a class C  
37 nonperson misdemeanor.

38 (3) Any person violating subsection (a) upon a third or subsequent  
39 violation shall be subject to a civil penalty computed as prescribed in  
40 paragraph (1) and in addition, upon conviction, shall be guilty of a  
41 severity level 10, nonperson felony.

42 (c) Criminal violations of subsection (a) may be prosecuted by the  
43 attorney general or the district or county attorney for the county in which



1 *the violation occurred.*

2 *(d) Any civil penalty assessed hereunder shall be remitted to the*  
3 *secretary and deposited in the state treasury.*

4 *(e) Any penalty provided in this section shall be in addition to any*  
5 *other penalty and remedy that may otherwise be imposed under the*  
6 *employment security act and such remedies shall be cumulative.*

7 *(f) This section shall be part of and supplemental to the employment*  
8 *security law.*

9 Sec. 5. K.S.A. 2010 Supp. 79-3234 is hereby amended to read as  
10 follows: 79-3234. (a) All reports and returns required by this act shall be  
11 preserved for three years and thereafter until the director orders them to  
12 be destroyed.

13 (b) Except in accordance with proper judicial order, or as provided  
14 in subsection (c) or in K.S.A. 17-7511, subsection (g) of K.S.A. 46-1106,  
15 K.S.A. 46-1114, or K.S.A. 79-32,153a, and amendments thereto, it shall  
16 be unlawful for the secretary, the director, any deputy, agent, clerk or  
17 other officer, employee or former employee of the department of revenue  
18 or any other state officer or employee or former state officer or employee  
19 to divulge, or to make known in any way, the amount of income or any  
20 particulars set forth or disclosed in any report, return, federal return or  
21 federal return information required under this act; and it shall be unlawful  
22 for the secretary, the director, any deputy, agent, clerk or other officer or  
23 employee engaged in the administration of this act to engage in the  
24 business or profession of tax accounting or to accept employment, with or  
25 without consideration, from any person, firm or corporation for the  
26 purpose, directly or indirectly, of preparing tax returns or reports required  
27 by the laws of the state of Kansas, by any other state or by the United  
28 States government, or to accept any employment for the purpose of  
29 advising, preparing material or data, or the auditing of books or records to  
30 be used in an effort to defeat or cancel any tax or part thereof that has  
31 been assessed by the state of Kansas, any other state or by the United  
32 States government.

33 (c) The secretary or the secretary's designee may: (1) Publish  
34 statistics, so classified as to prevent the identification of particular reports  
35 or returns and the items thereof;

36 (2) allow the inspection of returns by the attorney general or other  
37 legal representatives of the state;

38 (3) provide the post auditor access to all income tax reports or  
39 returns in accordance with and subject to the provisions of subsection (g)  
40 of K.S.A. 46-1106 or K.S.A. 46-1114, and amendments thereto;

41 (4) disclose taxpayer information from income tax returns to persons  
42 or entities contracting with the secretary of revenue where the secretary  
43 has determined disclosure of such information is essential for completion

1 of the contract and has taken appropriate steps to preserve confidentiality;  
2 (5) disclose to the secretary of commerce the following: (A) Specific  
3 taxpayer information related to financial information previously  
4 submitted by the taxpayer to the secretary of commerce concerning or  
5 relevant to any income tax credits, for purposes of verification of such  
6 information or evaluating the effectiveness of any tax credit or economic  
7 incentive program administered by the secretary of commerce; (B) the  
8 amount of payroll withholding taxes an employer is retaining pursuant to  
9 K.S.A. 2010 Supp. 74-50,212, and amendments thereto; (C) information  
10 received from businesses completing the form required by K.S.A. 2010  
11 Supp. 74-50,217, and amendments thereto; and (D) findings related to a  
12 compliance audit conducted by the department of revenue upon the  
13 request of the secretary of commerce pursuant to K.S.A. 2010 Supp. 74-  
14 50,215, and amendments thereto;

15 (6) disclose income tax returns to the state gaming agency to be used  
16 solely for the purpose of determining qualifications of licensees of and  
17 applicants for licensure in tribal gaming. Any information received by the  
18 state gaming agency shall be confidential and shall not be disclosed  
19 except to the executive director, employees of the state gaming agency  
20 and members and employees of the tribal gaming commission;

21 (7) disclose the taxpayer's name, last known address and residency  
22 status to the department of wildlife and parks to be used solely in its  
23 license fraud investigations;

24 (8) disclose the name, residence address, employer or Kansas  
25 adjusted gross income of a taxpayer who may have a duty of support in a  
26 title IV-D case to the secretary of the Kansas department of social and  
27 rehabilitation services for use solely in administrative or judicial  
28 proceedings to establish, modify or enforce such support obligation in a  
29 title IV-D case. In addition to any other limits on use, such use shall be  
30 allowed only where subject to a protective order which prohibits  
31 disclosure outside of the title IV-D proceeding. As used in this section,  
32 "title IV-D case" means a case being administered pursuant to part D of  
33 title IV of the federal social security act (42 U.S.C. § 651 et seq.) and  
34 amendments thereto. Any person receiving any information under the  
35 provisions of this subsection shall be subject to the confidentiality  
36 provisions of subsection (b) and to the penalty provisions of subsection  
37 (e);

38 (9) permit the commissioner of internal revenue of the United States,  
39 or the proper official of any state imposing an income tax, or the  
40 authorized representative of either, to inspect the income tax returns made  
41 under this act and the secretary of revenue may make available or furnish  
42 to the taxing officials of any other state or the commissioner of internal  
43 revenue of the United States or other taxing officials of the federal

1 government, or their authorized representatives, information contained in  
2 income tax reports or returns or any audit thereof or the report of any  
3 investigation made with respect thereto, filed pursuant to the income tax  
4 laws, as the secretary may consider proper, but such information shall not  
5 be used for any other purpose than that of the administration of tax laws  
6 of such state, the state of Kansas or of the United States;

7 (10) communicate to the executive director of the Kansas lottery  
8 information as to whether a person, partnership or corporation is current  
9 in the filing of all applicable tax returns and in the payment of all taxes,  
10 interest and penalties to the state of Kansas, excluding items under formal  
11 appeal, for the purpose of determining whether such person, partnership  
12 or corporation is eligible to be selected as a lottery retailer;

13 (11) communicate to the executive director of the Kansas racing  
14 commission as to whether a person, partnership or corporation has failed  
15 to meet any tax obligation to the state of Kansas for the purpose of  
16 determining whether such person, partnership or corporation is eligible  
17 for a facility owner license or facility manager license pursuant to the  
18 Kansas parimutuel racing act;

19 (12) provide such information to the executive director of the  
20 Kansas public employees retirement system for the purpose of  
21 determining that certain individuals' reported compensation is in  
22 compliance with the Kansas public employees retirement act, at K.S.A.  
23 74-4901 et seq., and amendments thereto; and

24 ~~(13) provide taxpayer information of persons suspected of violating~~  
25 ~~K.S.A. 2010 Supp. 44-766, and amendments thereto, to the staff attorneys~~  
26 ~~of the department of labor for the purpose of determining compliance by~~  
27 ~~any person with the provisions of K.S.A. 2010 Supp. 44-766, and~~  
28 ~~amendments thereto, which information shall be limited to withholding~~  
29 ~~tax and payroll information, the identity of any person that has been or is~~  
30 ~~currently being audited or investigated in connection with the~~  
31 ~~administration and enforcement of the withholding and declaration of~~  
32 ~~estimated tax act, K.S.A. 79-3294 et seq., as amended, and the results or~~  
33 ~~status of such audit or investigation.~~

34 (13) *(i) provide taxpayer information of persons suspected of violating*  
35 *K.S.A. 2010 Supp. 44-766, and amendments thereto, to the secretary of*  
36 *labor or such secretary's designee for the purpose of determining*  
37 *compliance by any person with the provisions of K.S.A. 44-703(i)(3)(D)*  
38 *and K.S.A. 2010 Supp. 44-766, and amendments thereto. The information*  
39 *to be provided shall include all relevant information in the possession of*  
40 *the department of revenue necessary for the secretary of labor to make a*  
41 *proper determination of compliance with the provisions of K.S.A. 44-*  
42 *703(i)(3)(D) and K.S.A. 2010 Supp. 44-766, and amendments thereto,*  
43 *and to calculate any unemployment contribution taxes due. Such*

1 *information to be provided by the department of revenue shall include,*  
2 *but not be limited to, withholding tax and payroll information, the*  
3 *identity of any person that has been or is currently being audited or*  
4 *investigated in connection with the administration and enforcement of the*  
5 *withholding and declaration of estimated tax act, K.S.A. 79-3294 et seq.,*  
6 *and amendments thereto, and the results or status of such audit or*  
7 *investigation.*

8 *(ii) Any person receiving tax information under the provisions of*  
9 *this paragraph shall be subject to the same duty of confidentiality*  
10 *imposed by law upon the personnel of the department of revenue and*  
11 *shall be subject to any civil or criminal penalties imposed by law for*  
12 *violations of such duty of confidentiality.*

13 *(iii) Each of the secretary of labor and the secretary of revenue may*  
14 *adopt rules and regulations necessary to effect the provisions of this*  
15 *paragraph.*

16 (d) Any person receiving information under the provisions of  
17 subsection (c) shall be subject to the confidentiality provisions of  
18 subsection (b) and to the penalty provisions of subsection (e).

19 (e) Any violation of subsection (b) or (c) is a class A nonperson  
20 misdemeanor and, if the offender is an officer or employee of the state,  
21 such officer or employee shall be dismissed from office.

22 (f) Nothing in this section shall be construed to allow disclosure of  
23 the amount of income or any particulars set forth or disclosed in any  
24 report, return, federal return or federal return information, where such  
25 disclosure is prohibited by the federal internal revenue code as in effect  
26 on September 1, 1996, and amendments thereto, related federal internal  
27 revenue rules or regulations, or other federal law.

28 Sec. 6. K.S.A. 2010 Supp. 44-703, 44-766 and 79-3234 are hereby  
29 repealed.

30 Sec. 7. This act shall take effect and be in force from and after its  
31 publication in the statute book.