

HOUSE BILL No. 2105

By Committee on Commerce, Labor and Economic Development

1-28

1 AN ACT concerning the employment security law; amending K.S.A. 44-
2 702 and K.S.A. 2012 Supp. 44-703, 44-704, 44-705, 44-706, 44-709,
3 44-710, 44-719, 74-5602 and 75-5702 and repealing the existing
4 sections; also repealing K.S.A. 2012 Supp. 44-704c.

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

6 Section 1. K.S.A. 44-702 is hereby amended to read as follows: 44-
7 702. As a guide to the interpretation and application of this act, the public
8 policy of this state is declared to be as follows: Economic insecurity, due
9 to unemployment, is a serious menace to health, morals, and welfare of the
10 people of this state. Involuntary unemployment is therefore a subject of
11 general interest and concern which requires appropriate action by the
12 legislature to prevent its spread and to lighten its burden which now so
13 often falls with crushing force upon the unemployed worker and his
14 family. The achievement of social security requires protection against this
15 greatest hazard of our economic life. This can be provided by encouraging
16 employers to provide more stable employment and by the systematic
17 accumulation of funds during periods of employment to provide benefits
18 for periods of unemployment, thus maintaining purchasing power and
19 limiting the serious social consequences of poor-relief assistance. The
20 legislature, therefore, declares that in its considered judgment the public
21 good and the general welfare of the citizens of this state require the
22 enactment of this measure, under the police powers of the state, for the
23 compulsory setting aside of unemployment reserves to be used for the
24 benefit of persons unemployed. *All persons and employers are entitled to*
25 *a neutral interpretation of the employment security law.*

26 Sec. 2. K.S.A. 2012 Supp. 44-703 is hereby amended to read as
27 follows: 44-703. As used in this act, unless the context clearly requires
28 otherwise:

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

31 (2) "Average annual payroll" means the average of the annual
32 payrolls of any employer for the last three calendar years immediately
33 preceding the computation date as hereinafter defined if the employer has
34 been continuously subject to contributions during those three calendar
35 years and has paid some wages for employment during each of such years.
36

Proposed Amendments for HB 2105
February 25, 2013
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Office of the Revisor of Statutes

1 \$1 it shall be reduced to the next lower multiple of \$1.

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

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

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

14 (B) ~~Holiday pay that was payable with no condition of attendance on
15 other regularly scheduled day or days attributable to a week that the
16 individual claimed benefits; and~~

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

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

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

25 (B) ~~vacation pay, except as set out in subsection (e)(1)(A) above;~~
26 ~~(C) holiday pay that was not payable unless the individual complied
27 with a condition of attendance on another regularly scheduled day or days;~~

28 ~~(D) severance pay, in lieu of notice, under the provisions of public
29 law 100-379, the federal worker adjustment and retraining notification act
30 (29 U.S.C.A. §§ 2101 through 2109);~~

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

35 ~~(D)~~ moneys received as federal social security payments.

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

43 (f) *Duration of benefits.* Any otherwise eligible individual shall be

or holiday

and

(e)(2)(C)

1 entitled during any benefit year to a total amount of benefits equal to
 2 whichever is the lesser of 26 times such individual's weekly benefit
 3 amount, or 1/2 of such individual's wages for insured work paid during such
 4 individual's base period. Such total amount of benefits, if not a multiple of
 5 \$1, shall be reduced to the next lower multiple of \$1.

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

12 Sec. 4. K.S.A. 2012 Supp. 44-705 is hereby amended to read as
 13 follows: 44-705. Except as provided by K.S.A. 44-757, and amendments
 14 thereto, an unemployed individual shall be eligible to receive benefits with
 15 respect to any week only if the secretary, or a person or persons designated
 16 by the secretary, finds that:

17 (a) The claimant has registered for work at and thereafter continued
 18 to report at an employment office in accordance with rules and regulations
 19 adopted by the secretary, except that, subject to the provisions of
 20 subsection (a) of K.S.A. 44-704, and amendments thereto, the secretary
 21 may adopt rules and regulations which waive or alter either or both of the
 22 requirements of this subsection (a).

23 (b) The claimant has made a claim for benefits with respect to such
 24 week in accordance with rules and regulations adopted by the secretary.

25 (c) The claimant is able to perform the duties of such claimant's
 26 customary occupation or the duties of other occupations for which the
 27 claimant is reasonably fitted by training or experience, and is available for
 28 work, as demonstrated by the claimant's pursuit of the full course of action
 29 most reasonably calculated to result in the claimant's reemployment except
 30 that, notwithstanding any other provisions of this section, an unemployed
 31 claimant otherwise eligible for benefits shall not become ineligible for
 32 benefits: (1) Because of the claimant's enrollment in and satisfactory
 33 pursuit of approved training, including training approved under section
 34 236(a)(1) of the trade act of 1974; or (2) solely because such individual is
 35 seeking only part-time employment if the individual is available for a
 36 number of hours per week that are comparable to the individual's part-time
 37 work experience in the base period.

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

41 (d) (1) Except as provided further, the claimant has been unemployed
 42 for a waiting period of one week or the claimant is unemployed and has
 43 satisfied the requirement for a waiting period of one week under the shared

(h) Notwithstanding any other provisions of this section to the contrary, any benefit otherwise payable for any week shall be reduced by the amount of any separation, termination, severance or other similar payment paid to a claimant at the time of or after the claimant's separation from employment during the benefit year.

(1) If any payment pursuant to this subsection is paid with respect to a month, then the amount deemed to be received with respect to any week during such month shall be computed by multiplying such monthly amount by 12 and dividing the product by 52. If there is no designation of the period with respect to which payments to an individual are made under this section, then an amount equal to such individual's normal weekly wage shall be attributed to and deemed paid with respect to the first and each succeeding week following the individual's separation from the employment of the employer making the payment until such amount so paid is exhausted.

(2) If benefits for any week, when reduced as provided in this subsection, result in an amount not a multiple of one dollar, such benefits shall be rounded to the next lower multiple of one dollar.

(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 labor unless consent for disclosure is given by the individual.

(b) If the individual has been discharged or suspended 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, "misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment including a violation of a company rule if (A) *The individual knew or should have known about the rule;* (B) *the rule was lawful and reasonably related to the job;* and (C) *the rule was fairly and consistently enforced.* ~~The term "gross misconduct" as used in this subsection shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection.~~

(2) (A) 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, the use of or impairment caused by alcoholic liquor, a cereal malt beverage or a nonprescribed controlled substance by an individual while working shall be conclusive evidence of misconduct and the possession of alcoholic liquor, 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. Alcoholic liquor shall be defined as provided in~~

, but not limited to,

, including a safety rule,

and an individual's leaving work prior to the end of such individual's assigned work period without permission

1 employee assistance program or other drug or alcohol treatment program
 2 in which the employee was participating voluntarily or as a condition of
 3 further employment; (iii) as prescribed by the written policy of the
 4 employer of which the employee had knowledge and which constituted a
 5 required condition of employment; (iv) as prescribed by a test which was
 6 required by law and which constituted a required condition of employment
 7 for the individual's job; or (v) at a time contemporaneous with the events
 8 establishing probable cause;

9 (C) the collecting and labeling of a chemical test sample was
 10 performed by a licensed health care professional or any other individual
 11 certified pursuant to paragraph (b)(2)(F) or authorized to collect or label
 12 test samples by federal or state law; or a federal or state rule or regulation
 13 having the force or effect of law, including law enforcement personnel;

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

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

23 (F) the breath alcohol test was administered by an individual trained
 24 to perform breath tests; the breath testing instrument used was certified
 25 and operated strictly according to description provided by the
 26 manufacturer and the reliability of the instrument performance was
 27 assured by testing with alcohol standards; and

28 (G) the foundation evidence must establish, beyond a reasonable
 29 doubt, that the test results were from the sample taken from the individual.
 30 (3)-(A) (B) For the purposes of this subsection, misconduct shall
 31 include, but not be limited to, repeated absence, including inattention,
 32 resulting in absence from work of three days or longer, excluding
 33 Saturdays, Sundays and legal holidays, and lateness, from scheduled work
 34 violation of the employer's reasonable attendance expectations if the facts
 35 show:

- 36 (i) The individual was absent or ~~tardy~~ without good cause;
- 37 (ii) the absence was in violation of the employer's written
- 38 absenteeism policy; the individual had knowledge of the employer's
- 39 attendance expectation; and
- 40 (iii) the employer gave or sent written notice to the individual, at the
- 41 individual's last known address, that future absence or ~~lateness~~ may or will
- 42 result in discharge; and
- 43 (iv) the employee had knowledge of the employer's written

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absenteeism policy.

(B) (C) For the purposes of this subsection, if an employee disputes being absent or ~~late~~ without good cause, the employee shall present evidence that a majority of the employee's absences or ~~late~~ were for good cause. If the employee alleges that the employee's repeated absences or ~~late~~ 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).

(3) (4) For the purposes of this subsection, the following shall be conclusive evidence of gross misconduct:

- (i) The use of alcoholic liquor, cereal malt beverage or nonprescribed controlled substance by an individual while working;
- (ii) the impairment caused by alcoholic liquor, cereal malt beverage or nonprescribed controlled substance by an individual while working;
- (iii) a positive breath alcohol test or a positive chemical test, provided:

(a) The test was either:

- (1) Required by law and was administered pursuant to the drug free workplace act, 41 U.S.C. § 701 et seq.;
- (2) 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;
- (3) requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment;
- (4) required by law and the test constituted a required condition of employment for the individual's job; or
- (5) there was reasonable suspicion to believe that the individual used, had possession of, or was impaired by alcoholic liquor, cereal malt beverage or nonprescribed controlled substance while working;

(b) the test sample was collected either:

- (1) as prescribed by the drug free workplace act, 41 U.S.C. § 701 et seq.;

(2) 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;

(3) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a required condition of employment;

(4) as prescribed by a test which was required by law and which constituted a required condition of employment for the individual's job; or

(5) at a time contemporaneous with the events establishing probable cause;

(c) the collecting and labeling of a chemical test sample was

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The term "gross misconduct" as used in this subsection shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection. Gross misconduct shall include, but not be limited to: (i) Theft; (ii) fraud; (iii) intentional damage to property; (iv) intentional infliction of personal injury; or (v) any conduct that constitutes a felony.

(B)

1 (iii) "cereal malt beverage" shall be defined as provided in K.S.A. 41-
2 2701. and amendments thereto;

3 (iv) "chemical test" shall include, but is not limited to, tests of urine,
4 blood or saliva;

5 (v) "controlled substance" shall be defined as provided in K.S.A.
6 2012 Supp. 21-5701, and amendments thereto;

7 (vi) "required by law" means required by a federal or state law, a
8 federal or state rule or regulation having the force and effect of law, a
9 county resolution or municipal ordinance, or a policy relating to public
10 safety adopted in an open meeting by the governing body of any special
11 district or other local governmental entity;

12 (vii) "positive breath test" shall mean a test result showing an alcohol
13 concentration

14 .04 or greater, unless the test was administered as part of an employee
15 assistance program or other drug or alcohol treatment program in which
16 the employee was participating voluntarily or as a condition of further
17 employment in which case "positive chemical test" shall mean a test result
18 showing an alcohol concentration at or above the levels provided for in
19 the assistance or treatment program;

20 (viii) "positive chemical test" shall mean a chemical result showing a
21 concentration at or above the levels listed in K.S.A. 44-501, and
22 amendments thereto, for the drugs or abuse listed therein, unless the test
23 was administered as part of an employee assistance program or other
24 drug or alcohol treatment program in which the employee was
25 participating voluntarily or as a condition of further employment in which
26 case "positive chemical test" shall mean a chemical result showing a
27 concentration at or above the levels provided for in the assistance or
28 treatment program.

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

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

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

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

42 (c) If the individual has failed, without good cause, to either apply for
43 suitable work when so directed by the employment office of the secretary

, except that the individual shall be disqualified after the time at
which such individual intended to quit and any individual who
commits misconduct after such individual gives notice to such
individual's intent to quit shall be disqualified