

1 they total \$20 or more for a calendar month whether the tips are received
 2 directly from a person other than the employer or are paid over to the
 3 employee by the employer. This includes amounts designated as tips by a
 4 customer who uses a credit card to pay the bill. Notwithstanding the other
 5 provisions of this subsection (o), wages paid in back pay awards or
 6 settlements shall be allocated to the week or weeks and reported in the
 7 manner as specified in the award or agreement, or, in the absence of such
 8 specificity in the award or agreement, such wages shall be allocated to the
 9 week or weeks in which such wages, in the judgment of the secretary,
 10 would have been paid. The term "wages" shall not include:

11 (1) That part of the remuneration which has been paid in a calendar
 12 year to an individual by an employer or such employer's predecessor in
 13 excess of \$3,000 for all calendar years prior to 1972, in excess of \$4,200
 14 for the calendar years 1972 to 1977, inclusive, in excess of \$6,000 for
 15 calendar years 1978 to 1982, inclusive, in excess of \$7,000 for the
 16 calendar year 1983, and in excess of ~~\$8,000~~ with respect to employment
 17 during any calendar year following ~~1983~~ except that if the definition of
 18 the term "wages" as contained in the federal unemployment tax act is
 19 amended to include remuneration in excess of ~~\$8,000~~ paid to an individual
 20 by an employer under the federal act during any calendar year, wages shall
 21 include remuneration paid in a calendar year to an individual by an
 22 employer subject to this act or such employer's predecessor with respect to
 23 employment during any calendar year up to an amount equal to the dollar
 24 limitation specified in the federal unemployment tax act. For the purposes
 25 of this subsection (o)(1), the term "employment" shall include service
 26 constituting employment under any employment security law of another
 27 state or of the federal government;
 28 (2) the amount of any payment (including any amount paid by an
 29 employing unit for insurance or annuities, or into a fund, to provide for
 30 any such payment) made to, or on behalf of, an employee or any of such
 31 employee's dependents under a plan or system established by an employer
 32 which makes provisions for employees generally, for a class or classes of
 33 employees or for such employees or a class or classes of employees and
 34 their dependents, on account of (A) sickness or accident disability, except
 35 in the case of any payment made to an employee or such employee's
 36 dependents, this subparagraph shall exclude from the term "wages" only
 37 payments which are received under a workers compensation law. Any third
 38 party which makes a payment included as wages by reason of this
 39 subparagraph (2)(A) shall be treated as the employer with respect to such
 40 wages, or (B) medical and hospitalization expenses in connection with
 41 sickness or accident disability, or (C) death;
 42 (3) any payment on account of sickness or accident disability, or
 43 medical or hospitalization expenses in connection with sickness or

Proposed Amendments for HB 2105
 February 25, 2013
 Prepared by Ken Wilke
 Office of the Revisor of Statutes

in excess of \$8,000 for the calendar years 1984 to 2014, inclusive,

\$16,000

2014

\$16,000

Insert K.S.A. 2012 Supp. 44-710a

Sec. 8. K.S.A. 2012 Supp. 44-710a is hereby amended to read as follows: 44-710a. (a) *Classification of employers by the secretary.* The term "employer" as used in this section refers to contributing employers. The secretary shall classify employers in accordance with their actual experience in the payment of contributions on their own behalf and with respect to benefits charged against their accounts with a view of fixing such contribution rates as will reflect such experience. If, as of the date such classification of employers is made, the secretary finds that any employing unit has failed to file any report required in connection therewith, or has filed a report which the secretary finds incorrect or insufficient, the secretary shall make an estimate of the information required from such employing unit on the basis of the best evidence reasonably available to the secretary at the time, and notify the employing unit thereof by mail addressed to its last known address. Unless such employing unit shall file the report or a corrected or sufficient report as the case may be, within 15 days after the mailing of such notice, the secretary shall compute such employing unit's rate of contributions on the basis of such estimates, and the rate as so determined shall be subject to increase but not to reduction on the basis of subsequently ascertained information. The secretary shall determine the contribution rate of each employer in accordance with the requirements of this section.

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

(B) (i) For the rate year 2007 and each rate year thereafter, each employer who is not eligible for a rate contribution shall pay contributions equal to 4% of wages paid during each calendar year with regard to employment except such employers engaged in the construction industry shall pay a rate equal to 6%.

(ii) For rate years prior to 2007, employers who are not eligible for a rate computation shall pay contributions at an assigned rate equal to the sum of 1% plus the greater of the average rate assigned in

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the preceding calendar year to all employers in such industry sector or the average rate assigned to all covered employers during the preceding calendar year, except that in no instance shall any such assigned rate be less than 2%. Employers engaged in more than one type of industrial activity shall be classified by principal activity. All rates assigned will remain in effect for a complete calendar year. If the sale or acquisition of a new establishment would require reclassification of the employer to a different industry sector, the employer would be promptly notified, and the contribution rate applicable to the new industry sector would become effective the following January 1.

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

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

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

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

(C) Eligible employers, other than negative account balance employers, who do not meet the average annual payroll requirements as stated in subsection (a)(2) of K.S.A. 44-703, and amendments

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thereto, will be issued the maximum rate indicated in subsection (a)(3)(C) of this section until such employer establishes a new period of 24 consecutive calendar months immediately preceding the computation date throughout which benefits could have been charged against such employer's account by resuming the payment of wages. Contribution rates effective for each calendar year thereafter shall be determined as prescribed below.

(D) As of each computation date, the total of the taxable wages paid during the 12-month period prior to the computation date by all employers eligible for rate computation, except negative account balance employers, shall be divided into 51 approximately equal parts designated in column A of schedule I as "rate groups," except, with regard to a year in which the taxable wage base changes. The taxable wages used in the calculation for such a year and the following year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during the entire twelve-month period prior to the computation date. The lowest numbered of such rate groups shall consist of the employers with the most favorable reserve ratios, as defined in this section, whose combined taxable wages paid are less than 1.96% of all taxable wages paid by all eligible employers. Each succeeding higher numbered rate group shall consist of employers with reserve ratios that are less favorable than those of employers in the preceding lower numbered rate groups and whose taxable wages when combined with the taxable wages of employers in all lower numbered rate groups equal the appropriate percentage of total taxable wages designated in column B of schedule I. Each eligible employer, other than a negative account balance employer, shall be assigned an experience factor designated under column C of schedule I in accordance with the rate group to which the employer is assigned on the basis of the employer's reserve ratio and taxable payroll. If an employer's taxable payroll falls into more than one rate group the employer shall be assigned the experience factor of the lower numbered rate group. If one or more employers have reserve ratios identical to that of the last employer included in the next lower numbered rate group, all such employers shall be assigned the

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experience factor designated to such last employer, notwithstanding the position of their taxable payroll in column B of schedule I.

SCHEDULE I—Eligible Employers

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

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48	92.12 but less than 94.08 ...	1.88
49	94.08 but less than 96.04 ...	1.92
50	96.04 but less than 98.00 ...	1.96
51	98.00 and over	2.00

(E) Negative account balance employers shall, in addition to paying the rate provided for in subsection (a)(2)(B) of this section, pay a surcharge based on the size of the employer's negative reserve ratio, the calculation which is provided for in subsection (a)(2) of this section. The amount of the surcharge shall be determined from column B2 of schedule II of this section for calendar years 2012, 2013, 2014 and from column ~~B1~~ B4 of schedule II of this section for each calendar year after 2014. Each negative account balance employer who does not satisfy the requirements to have an average annual payroll, as defined by subsection (a)(2) of K.S.A. 44-703, and amendments thereto, shall be assigned a surcharge of equal to the maximum negative ratio surcharge from column B2 of schedule II of this section for calendar years 2012, 2013 and 2014. From calendar year 2015 forward each negative account balance employer who does not satisfy the requirements to have an average annual payroll, as defined by subsection (a)(2) of K.S.A. 44-703, and amendments thereto, shall be assigned a surcharge equal to the maximum negative ratio surcharge from column ~~B1~~ B4 of schedule II of this section. Funds from the surcharge paid according to this subsection (a)(2)(E), and amendments thereto, shall be used to pay principal and interest due on funds received from the federal unemployment account under title XII of the social security act, (42 U.S.C. §§ 1321 to 1324), in the following manner:

(i) For each calendar year 2012, 2013 and 2014, an additional 0.10% of the taxable wages paid by all negative account balance employers with a negative reserve ratio between 0.0% and 19.9% shall be designated an interest assessment surcharge and paid into the employment security interest assessment fund for the purpose of paying interest due and owing on funds received from the federal unemployment account under title XII of the social security act. The total surcharges assessed, including the additional 0.10% surcharge mentioned above, on such employers are listed in schedule II

column B2. For the calendar year 2015, and each calendar year thereafter, the surcharge rate for negative balance employers with a negative reserve ratio between 0.0% and 19.9% shall be as listed in schedule II column ~~B1~~ B4.

(ii) For the calendar year ~~2012, and each calendar year thereafter~~ years 2012, 2013 and 2014, an additional surcharge on negative balance employers with negative reserve ratio of 20.0% and higher shall be designated an interest assessment surcharge and deposited in the employment security interest assessment fund. The additional surcharge shall be used for the purposes of paying interest due and owing on fund received from the federal unemployment account under title XII of the social security act. The total surcharge including the additional surcharge on such employers is listed in schedule II column B3 of this section.

(iii) For any succeeding year in which interest is due and owing on funds received from the federal unemployment account under title XII of the social security act, the secretary of labor may adjust the surcharge amounts necessary to pay such interest;

(iv) the portion of such surcharge used for the payment of such interest shall not be included in the calculation of such employers reserve ratio pursuant to subsection (a)(2). The portion of such surcharge used for the payment of principal shall be included in the calculation of such employers reserve ratio pursuant to subsection (a)(2); and

(v) if the amounts collected under this subsection are in excess of the amounts needed to pay interest due, the amounts in excess shall remain in the employment security interest assessment fund to be used to pay interest in future years. Whenever the secretary certifies all interest payments have been paid pursuant to this section, any excess funds remaining in the employment security interest assessment fund shall be transferred to the employment security trust fund for the purpose of paying any remaining principal amount due for advances described in this section. In the event that the amount transferred

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from the employment security interest assessment fund exceeds such remaining amount of principal due, the balance shall be used for the purposes of the employment security trust fund.

SCHEDULE II—Surcharge on Negative Accounts				
Column A	Column B1	Column B2	Column B3	Column B4
Negative Reserve Ratio	Surcharge as a percent of taxable wages	Surcharge as a percent of taxable wages	Surcharge as a percent of taxable wages	Surcharge as a percent of taxable wages
Less than 2.0%.....	0.20%.....	0.30%.....	.....	0.10%
2.0% but less than 4.0.....	0.40.....	0.50.....	.....	0.20
4.0 but less than 6.0.....	0.60.....	0.70.....	.....	0.30
6.0 but less than 8.0.....	0.80.....	0.90.....	.....	0.40
8.0 but less than 10.0.....	1.00.....	1.10.....	.....	0.50
10.0 but less than 12.0.....	1.20.....	1.30.....	.....	0.60
12.0 but less than 14.0.....	1.40.....	1.50.....	.....	0.70
14.0 but less than 16.0.....	1.60.....	1.70.....	.....	0.80
16.0 but less than 18.0.....	1.80.....	1.90.....	.....	0.90
18.0 but less than 20.0.....	2.00.....	2.10.....	.....	1.00
20.0 but less than 22.0.....	2.00.....	.....	2.20.....	1.10
22.0 but less than 24.0.....	2.00.....	.....	2.40.....	1.20
24.0 but less than 26.0.....	2.00.....	.....	2.60.....	1.30
26.0 but less than 28.0.....	2.00.....	.....	2.80.....	1.40
28.0 but less than 30.0.....	2.00.....	.....	3.00.....	1.50
30.0 but less than 32.0.....	2.00.....	.....	3.20.....	1.60
32.0 but less than 34.0.....	2.00.....	.....	3.40.....	1.70
34.0 but less than 36.0.....	2.00.....	.....	3.60.....	1.80
36.0 but less than 38.0.....	2.00.....	.....	3.80.....	1.90
38.0 and over.....	2.00.....	.....	4.00.....	2.00

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

SCHEDULE III—Fund Control Ratios to Total Wages	
Column A	Column B
Reserve Fund Ratio	Planned Yield
4.500 and over.....	0.00
4.475 but less than 4.500.....	0.01
4.450 but less than 4.475.....	0.02

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4.425 but less than 4.450.....	0.03
4.400 but less than 4.425.....	0.04
4.375 but less than 4.400.....	0.05
4.350 but less than 4.375.....	0.06
4.325 but less than 4.350.....	0.07
4.300 but less than 4.325.....	0.08
4.275 but less than 4.300.....	0.09
4.250 but less than 4.275.....	0.10
4.225 but less than 4.250.....	0.11
4.200 but less than 4.225.....	0.12
4.175 but less than 4.200.....	0.13
4.150 but less than 4.175.....	0.14
4.125 but less than 4.150.....	0.15
4.100 but less than 4.125.....	0.16
4.075 but less than 4.100.....	0.17
4.050 but less than 4.075.....	0.18
4.025 but less than 4.050.....	0.19
4.000 but less than 4.025.....	0.20
3.950 but less than 4.000.....	0.21
3.900 but less than 3.950.....	0.22
3.850 but less than 3.900.....	0.23
3.800 but less than 3.850.....	0.24
3.750 but less than 3.800.....	0.25
3.700 but less than 3.750.....	0.26
3.650 but less than 3.700.....	0.27
3.600 but less than 3.650.....	0.28
3.550 but less than 3.600.....	0.29
3.500 but less than 3.550.....	0.30
3.450 but less than 3.500.....	0.31
3.400 but less than 3.450.....	0.32
3.350 but less than 3.400.....	0.33
3.300 but less than 3.350.....	0.34
3.250 but less than 3.300.....	0.35
3.200 but less than 3.250.....	0.36
3.150 but less than 3.200.....	0.37
3.100 but less than 3.150.....	0.38
3.050 but less than 3.100.....	0.39
3.000 but less than 3.050.....	0.40
2.950 but less than 3.000.....	0.41
2.900 but less than 2.950.....	0.42
2.850 but less than 2.900.....	0.43
2.800 but less than 2.850.....	0.44
2.750 but less than 2.800.....	0.45
2.700 but less than 2.750.....	0.46
2.650 but less than 2.700.....	0.47
2.600 but less than 2.650.....	0.48
2.550 but less than 2.600.....	0.49
2.500 but less than 2.550.....	0.50
2.450 but less than 2.500.....	0.51
2.400 but less than 2.450.....	0.52
2.350 but less than 2.400.....	0.53
2.300 but less than 2.350.....	0.54
2.250 but less than 2.300.....	0.55
2.200 but less than 2.250.....	0.56
2.150 but less than 2.200.....	0.57
2.100 but less than 2.150.....	0.58
2.050 but less than 2.100.....	0.59

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2.000 but less than 2.050.....	0.60
1.975 but less than 2.000.....	0.61
1.950 but less than 1.975.....	0.62
1.925 but less than 1.950.....	0.63
1.900 but less than 1.925.....	0.64
1.875 but less than 1.900.....	0.65
1.850 but less than 1.875.....	0.66
1.825 but less than 1.850.....	0.67
1.800 but less than 1.825.....	0.68
1.775 but less than 1.800.....	0.69
1.750 but less than 1.775.....	0.70
1.725 but less than 1.750.....	0.71
1.700 but less than 1.725.....	0.72
1.675 but less than 1.700.....	0.73
1.650 but less than 1.675.....	0.74
1.625 but less than 1.650.....	0.75
1.600 but less than 1.625.....	0.76
1.575 but less than 1.600.....	0.77
1.550 but less than 1.575.....	0.78
1.525 but less than 1.550.....	0.79
1.500 but less than 1.525.....	0.80
1.475 but less than 1.500.....	0.81
1.450 but less than 1.475.....	0.82
1.425 but less than 1.450.....	0.83
1.400 but less than 1.425.....	0.84
1.375 but less than 1.400.....	0.85
1.350 but less than 1.375.....	0.86
1.325 but less than 1.350.....	0.87
1.300 but less than 1.325.....	0.88
1.275 but less than 1.300.....	0.89
1.250 but less than 1.275.....	0.90
1.225 but less than 1.250.....	0.91
1.200 but less than 1.225.....	0.92
1.175 but less than 1.200.....	0.93
1.150 but less than 1.175.....	0.94
1.125 but less than 1.150.....	0.95
1.100 but less than 1.125.....	0.96
1.075 but less than 1.100.....	0.97
1.050 but less than 1.075.....	0.98
1.025 but less than 1.050.....	0.99
1.000 but less than 1.025.....	1.00
0.900 but less than 1.000.....	1.01
0.800 but less than 0.900.....	1.02
0.700 but less than 0.800.....	1.03
0.600 but less than 0.700.....	1.04
0.500 but less than 0.600.....	1.05
0.400 but less than 0.500.....	1.06
0.300 but less than 0.400.....	1.07
0.200 but less than 0.300.....	1.08
0.100 but less than 0.200.....	1.09
Less than 0.100%.....	1.10

(B) *Adjustment to taxable wages.* The planned yield as a percent of total wages, as determined in this subsection (a)(3), shall be adjusted to taxable wages by multiplying by the ratio of total wages to

taxable wages for all contributing employers for the preceding fiscal year ending June 30, except, with regard to a year in which the taxable wage base changes. The taxable wages used in the calculation for such a year and the following year shall be an estimate of what the taxable wages would have been if the new taxable wage base had been in effect during all of the preceding fiscal year ending June 30.

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

(ii) For rate year 2007 and subsequent rate years, employers who are current in filing quarterly wage reports and in payment of all contributions due and owing, shall be issued a contribution rate based upon the following reduction: for rate groups 1 through 5, the rates would be reduced to 0.00%; for rate groups 6 through 28, the rates would be reduced by 50%; for rate groups 29 through 51, the rates would be reduced by 40%.

(iii) In order to be eligible for the reduced rates for rate year 2007, the employer must file all late reports and pay all contributions due and owing within a 30-day period following the date of mailing of the amended rate notice.

(iv) In order to be eligible for the reduced rates for rate year 2008 and subsequent rate years, employers must file all reports due and pay all contributions due and owing on or before January 31 of the applicable year, except that the reduced rates for otherwise eligible employers shall not be effective for any rate year if the average high cost multiple of the employment security trust fund balance falls below 1.2 as of the computation date of that year's rates. For the purposes of this provision, the average high cost multiple is the reserve fund ratio, as defined by subsection (a)(3)(A), divided by the average

high benefit cost rate. The average high benefit cost rate shall be determined by averaging the three highest benefit cost rates over the last 20 years from the preceding fiscal year which ended June 30. The high benefit cost rate is defined by dividing total benefits paid in the fiscal year by total payrolls for covered employers in the fiscal year.

(b) *Successor classification.* (1) (A) For the purposes of this subsection (b), whenever an employing unit, whether or not it is an "employing unit" within the meaning of subsection (g) of K.S.A. 44-703, and amendments thereto, becomes an employer pursuant to subsection (h)(4) of K.S.A. 44-703, and amendments thereto, or is an employer at the time of acquisition and meets the definition of a "successor employer" as defined by subsection (dd) of K.S.A. 44-703, and amendments thereto, and thereafter transfers its trade or business, or any portion thereof, to another employer and, at the time of the transfer, there is substantially common ownership, management or control of the two employers, then the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. These experience factors consist of all contributions paid, benefit experience and annual payrolls of the predecessor employer. The transfer of some or all of an employer's workforce to another employer shall be considered a transfer of trade or business when, as the result of such transfer, the transferring employer no longer performs trade or business with respect to the transferred workforce, and such trade or business is performed by the employer to whom the workforce is transferred.

(B) If, following a transfer of experience under subparagraph (A), the secretary determines that a substantial purpose of the transfer or business was to obtain a reduced liability for contributions, then the experience rating accounts of the employers involved shall be combined into a single account and a single rate assigned to such account.

(2) A successor employer as defined by subsection (h)(4) or subsection (dd) of K.S.A. 44-703, and amendments thereto, may receive the experience rating factors of the predecessor employer if an

application is made to the secretary or the secretary's designee in writing within 120 days of the date of the transfer.

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

(4) (A) The rate of both employers in a full or partial successorship under paragraph (1) of this subsection shall be recalculated and made effective on the first day of the next calendar quarter following the date of transfer of trade or business.

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

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

(ii) If the acquiring employing unit was not an employer subject to this act prior to the date of the transfer, the successor employer shall have a newly computed rate for the remainder of the contribution

year which shall be based on the transferred experience rating factors as they existed on the most recent computation date immediately preceding the date of acquisition. These experience rating factors consist of all contributions paid, benefit experience and annual payrolls.

(5) Whenever an employing unit is not an employer at the time it acquires the trade or business of an employer, the unemployment experience factors of the acquired business shall not be transferred to such employing unit if the secretary finds that such employing unit acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such employing unit shall be assigned the applicable industry rate for a "new employer" as described in subsection (a)(1) of this section. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the secretary shall use objective factors which may include the cost of acquiring the business, whether the employer continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

(6) Whenever an employer's account has been terminated as provided in subsections (d) and (e) of K.S.A. 44-711, and amendments thereto, and the employer continues with employment to liquidate the business operations, that employer shall continue to be an "employer" subject to the employment security law as provided in subsection (h)(8) of K.S.A. 44-703, and amendments thereto. The rate of contribution from the date of transfer to the end of the then current calendar year shall be the same as the contribution rate prior to the date of the transfer. At the completion of the then current calendar year, the rate of contribution shall be that of a "new employer" as described in subsection (a)(1) of this section.

(7) No rate computation will be permitted an employing unit succeeding to the experience of another employing unit pursuant to this section for any period subsequent to such succession except in

accordance with rules and regulations adopted by the secretary. Any such regulations shall be consistent with federal requirements for additional credit allowance in section 3303 of the federal internal revenue code of 1986, and consistent with the provisions of this act.

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

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

(e) There is hereby established in the state treasury, separate and apart from all public moneys or funds of this state, an employment security interest assessment fund, which shall be administered by the secretary as provided in this act. Moneys in the employment security fund established by K.S.A 44-712, and amendments thereto, and employment security interest assessment fund established by 44-710, and amendments thereto, shall not be invested in the pooled money investment portfolio established under K.S.A 75-4234, and amendments thereto. Notwithstanding the provisions of subsection (a) of K.S.A. 44-712, K.S.A. 44-716, K.S.A. 44-717 and K.S.A. 75-4234, and amendments thereto, or any like provision the secretary shall remit all moneys received from employers pursuant to the interest payment assessment established in section (a)(2)(E), and amendments thereto, to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the employment security interest assessment fund. All moneys in this fund which are received from employers pursuant to the interest payment assessment established in section (a)(2)(E), and amendments thereto, shall be expended solely for the purposes and in the amounts found by the secretary necessary to pay any principal and interest due and owing the United States department of labor resulting from any advancements made to the Kansas employment security fund pursuant to the provisions of title XII of the social security act (42 U.S.C. §§ 1321 to 1324) except as may be otherwise provided under section (a)(2)(E), and amendments thereto. Notwithstanding any provision of this section, all moneys received and credited to this fund pursuant to section (a)(2)(E), and amendments thereto, pursuant to section (a)(2)(E), and amendments thereto, shall remain part of the employment security interest assessment fund and shall be used only in accordance with the conditions specified in section (a)(2)(E), and amendments thereto.

(f) The secretary of labor shall annually prepare and submit a certification as to the solvency and adequacy of the amount credited to the state of Kansas' account in the federal employment security

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trust fund to the governor and the employment security advisory council. The certification shall be submitted on or before December 1 of each calendar year and shall be for the 12-month period ending on June 30 of that calendar year. In arriving at the certification contributions paid on or before July 31 following the 12-month period ending date of June 30 shall be considered. Each certification shall be used to determine the need for any adjustment to schedule III in subsection (a)(3)(A) and to assist in preparing legislation to accomplish any such adjustment.