

SESSION OF 2013

**SUPPLEMENTAL NOTE ON SUBSTITUTE FOR HOUSE  
BILL NO. 2105**

As Amended by Senate Committee of the Whole

**Brief\***

Sub. for HB 2105, as amended, would revise provisions of employment security laws, commonly referred to as Unemployment Insurance (UI), pertaining to contributions paid by employers, eligibility for UI benefits, and the administration of the UI System by the Department of Labor (Department). The bill also would add a statement regarding neutral interpretation of employment security law.

***Contributions Paid by Employers***

The bill would increase the taxable wage base, starting in calendar year 2015, from the current \$8,000 to \$12,000, and in calendar year 2016, from \$12,000 to \$14,000.

The contribution rate for new non-construction employers, employers with less than 24 months of payroll experience, would decrease from 4.0 percent of wages paid to 2.7 percent, provided the employer files all reports and pays all contributions by January 31. The reduced rate would not become effective until the Unemployment Insurance Trust Fund's average high cost multiple falls below 1.0, as of the computation date. The contribution rate for new construction employers would remain at 6.0 percent of wages paid.

Positive balance employers would be eligible to receive a rate discount of 20.0 percent if all reports are filed and all contributions are made by January 31. This discount would

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\*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

not apply if other discounts provided by current law are in effect or if the average high cost multiple for the Unemployment Insurance Trust Fund is less than 1.0.

The bill would revise the surcharge rates for the 20 negative balance employer groups; the first group's surcharge rate would be 0.1 percent, and each subsequent group's surcharge would increase by 0.1 percent. The twentieth group's surcharge would be 2.0 percent. The surcharge would cease to apply after calendar year 2014.

If an employer exhibits a "pattern of failure," which the bill would define to mean the number of failures to respond to fewer than two times or less than 2.0 percent of prior requests made by the Department for information, whichever is greater, the Department would not relieve an employer's account of charges relating to a payment made erroneously.

The deadline for the Secretary of Department of Labor (Secretary) to notify employers of their UI contribution rates for the subsequent rate year would be November 30. Currently, no deadline is specified in statute.

### ***Eligibility for Unemployment Insurance Benefits***

The bill would repeal the alternative means for calculating an individual's wage base period, due to the expiration of federal funding under the American Recovery and Reinvestment Act (ARRA) of 2009. The bill also would revise the definition of "part-time employment" by deleting reference to "two or more employers."

When calculating the weekly benefit payable, the bill would classify holiday pay as wages attributable to a week the individual claimed benefits, deleting reference to vacation pay attributable to a week while work was temporarily interrupted. If an individual received severance pay, the person's weekly UI benefit would be reduced by the amount of severance paid, adjusted to a weekly amount, until the total severance amount is exhausted.

Under current law, an individual who voluntarily leaves employment without good cause is disqualified for benefits. The bill would define “good cause” to mean a cause of such gravity that a reasonable, non-supersensitive person, exercising ordinary common sense, would leave employment. Good cause also would require a showing of good faith of the individual leaving work. Twelve exceptions in current law prevent a person from being disqualified for benefits, however. The seventh exception, pertaining to harassment, would be revised to specify the harassment would impel the average worker to give up employment. The tenth exception, pertaining to violation of the work agreement by the employer, would be revised to require the violation to be substantial, and demotion based on performance would not constitute a violation of a work agreement.

The definition of “misconduct” would be revised to include violation of a company rule if the employee knew or had reason to know the rule, the rule was lawful and reasonably related to the job, and the rule was fairly and consistently enforced. Misconduct also would include tardiness and leaving work early without prior permission. The definition of “gross misconduct” would be revised to include theft, fraud, intentional damage to property, intentional infliction of personal injury, or conduct that results in a felony. Misconduct, under KSA 44-706 (b), disqualifies an individual from UI benefits until the person is reemployed and has earnings equal to three times the weekly UI benefit amount. Gross misconduct disqualifies the individual until the person is reemployed and has earnings equal to eight times the weekly UI benefit amount.

Under current law, an employee’s discharge for misconduct is grounds for disqualification of UI benefits. The bill would include an employee’s suspension for misconduct as grounds for disqualification for the duration of the separation from employment.

The bill would reorganize the current provisions pertaining to alcohol and drug use on the job and include four substantive changes:

- The reason for testing would change from probable cause on the part of the employer to reasonable suspicion;
- Alcohol or drug use would be reclassified from misconduct to gross misconduct;
- An individual tampering with a chemical test would be conclusive evidence of gross misconduct; and
- An alternative definition for “positive breath test” would include reference to test levels listed in 49 C.F.R. 40, if applicable.

If a person makes a false statement or misrepresentation, the bill would lengthen the disqualification period from one year to five years.

Starting in benefit year 2014, a person would be eligible for a maximum of 16 weeks of benefits if the unemployment rate for Kansas was less than 4.5 percent. If the unemployment rate was equal to or greater than 4.5 percent but less than 6.0 percent, a person would be eligible for a maximum of 20 weeks of benefits. If the unemployment rate is equal to or greater than 6.0 percent, a person would be eligible for a maximum of 26 weeks of benefits. For purposes of this provision, the bill would calculate the unemployment rate at the beginning of a benefit year, using a three-month, seasonally adjusted average. Under current law, persons are eligible for a maximum of 26 weeks of benefits.

### ***Administration of the Unemployment Insurance System***

The bill would add an exception to the time limit for appeal, allowing the referee or the Board of Review to waive or extend the time limit of 16 days if an appeal was impossible because of excusable neglect. The Department would be authorized to collect for overpayments by passing federal offset costs on to claimants who have an overpayment gained through fraud. A penalty equal to 25 percent of any benefits unlawfully received would be charged.

The State Employment Security Advisory Council (Council) would be abolished. The Council is appointed by the Secretary to provide advice on the administration of the UI System. There is no limit to the size of the Council, and there is to be an equal number of persons representing employers, employees, and representatives of the general public. The term of office is four years.

The Secretary would report annually to the Legislative Coordinating Council on the condition of the state's account in the Federal Employment Security Trust Fund. Currently, the Secretary makes the report to the Governor and the Council.

The Secretary would be authorized to hire special investigators with law enforcement capabilities to investigate UI fraud, tax evasion, and identity theft.

## **Background**

Unemployment Insurance is a partnership between the federal government and the state. Almost all wage and salary workers are now covered by the program. For purposes of determining contributions made under law, employers are classified into one of three categories: ineligible employers, negative balance employers, and positive balance employers. The first category consists of those employers who do not have 24 months of payroll experience. Negative balance employers are those who have contributed less into UI than what their former employees have received in benefits. Positive balance employers have contributed more to UI than what their former employees have received. Each year, the Labor Department determines the planned yield for the Employment Security Trust Fund as provided by statute. The contributions due from ineligible employers and then negative balance employers are calculated first. The remaining amount is derived from the positive rate employers.

The bill was introduced at the request of the Department. Proponents on the substitute bill before the

Senate Committee included representatives from the Department, the Kansas Chamber, the National Federation of Independent Businesses, the Kansas Society for Human Resource Management, and private employers. Proponents stated the bill would assist the Department to become more efficient in the administration of the UI System, investigating fraud, and clarifying the scope of UI benefits for involuntary unemployment. The representatives from private industry also expressed concern about the future of the UI System. Starting in 2015, employers' rate caps would be lifted automatically by statute. Employers would be required to pay an additional \$90 million in assessments.

A representative of Spirit Aerosystems spoke in opposition to the bill, stating a broader wage base would increase the employment taxes paid by the company.

The House Committee on Commerce, Labor, and Economic Development recommended a substitute bill that includes the provisions of HB 2105, as introduced, plus the following additional provisions from HB 2124, a bill pertaining to UI that was introduced at the request of private industry representatives:

- Reduce an individual's weekly benefit to take into account the severance pay;
- Reduce the contribution rate for new employers, from 4.0 percent to 2.7 percent, if certain conditions are met;
- Redefine the term "gross misconduct";
- Require the Department to give notice to employers of new contribution rates by November 30; and
- Abolish the Employment Security Advisory Council.

In addition to technical amendments, the House Committee further amended the bill to:

- Increase the taxable wage base, from \$8,000 to \$16,000, starting in calendar year 2015;
- Revise the surcharge rates for negative balance employers;
- Extend the disqualification period, from one year to five years, for receiving UI benefits based on false statements or misrepresentations; and
- Provide an alternative definition for “positive breath test” to include reference to federal rule and regulation.

In addition to making a technical amendment, the Senate Committee on Commerce amended the bill to:

- Reduce the maximum number of weeks an individual may receive benefits, depending upon the state’s rate of unemployment;
- Increase the wage base, from \$8,000 to \$12,000 in calendar year 2015, and from \$12,000 to \$14,000 in calendar year 2016; and
- Allow positive balance employers to receive a rate reduction of 20.0 percent if certain conditions are met.

The Senate Committee of the Whole amended the bill to:

- Revise the seventh exception to benefit disqualification pertaining to unwelcome harassment; and
- Specify that a person suspended for misconduct would be disqualified from receiving benefits for the duration of the suspension.

According to the fiscal note on HB 2105, as introduced, the bill would have no fiscal effect. According to that portion of the fiscal note on HB 2124 pertaining to reducing the contribution rate for certain new employers, the rate reduction would reduce revenues by approximately \$4.93 million.