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MEMORANDUM

To: Chairman Hutton and Members of the Committee on Commerce, Labor and
Economic Development

From: Charles Reimer, Asst. Revisor

Date: 3/13/2015

Subject: SB 154

SB 154 makes significant changes to the current unemployment insurance system. Primarily, the bill replaces the current array system with a fixed system.

Section 1.

Section 1 amends K.S.A. 2014 Supp. 44-704 dealing with weekly benefits. The base determination of weekly benefits is 4.25% of the individual's total wages for insured work paid during the calendar quarter of the individual's base period in which wages were highest, subject to a minimum and maximum level determined by the secretary pursuant to the statute. Under current law, the maximum weekly benefit amount is determined by computing 60% of the average weekly wages paid to employees in insured work during the previous calendar year. Under current law, the minimum weekly benefit amount is 25% of the calculated maximum weekly benefit.

The bill changes this procedure. A maximum weekly benefit amount of \$474 is set for claims effective through 2017. For 2018 and thereafter, it is set pursuant to a legislative process requiring a bill every three years. The secretary of labor recommends an adjustment to the speaker of the house and president of the senate for a maximum weekly benefit amount to be effective for three years. The secretary is to consider the average weekly wages paid to employees in insured work during the previous fiscal year; the average duration of unemployment claims; and the ratio of the average weekly benefit

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amount to average weekly wages. The legislature then sets the new maximum weekly benefit amount to be effective the following January 1. Page 2.

The minimum weekly benefit amount is 25% of the maximum amount. Page 3.

In the original bill, any future increase of the maximum weekly benefit amount instituted by the legislature was required to be accompanied by a proportionate increase in the taxable wage base. The taxable wage base is the amount of wages upon which the employer's contribution is taxed. (For employment during calendar year 2015 this is \$12,000 pursuant to K.S.A. 44-703(o); it rises to \$14,000 thereafter.) On the basis of concerns expressed by the Department of Labor, this provision was stricken by the Senate Committee on Commerce.

Section 2.

Section 2, at page 5, amends K.S.A. 2014 supp. 44-710a.

First, the bill amends provisions pertaining to classification of employers in industry groups by the secretary for the purpose of determining contribution rates to the unemployment insurance fund.

New employers are employers who have not been part of the system for at least 24 months. These employers are not eligible for a rate determination based on their claim experience. Under current law, these employers must pay 4% of wages paid during each calendar year, except for employers engaged in construction who must pay 6%. In addition, employers who start a new business and are not eligible for a rate determination based on their claim experience also receive the 2.7% rate. Page 5.

The bill changes the rate for all employers who are not eligible for a rate determination based on their claim experience to 2.7%. Page 5. Employers new to Kansas may still choose between the 2.7% or the rate they had in the state in which they were formerly located. Page 6.

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The bill adds new language clarifying the classification by industrial activity for employers engaged in more than one type of industrial activity and employers who have sold or acquired a new establishment. Page 6.

One of the primary points of the bill is a change from an array to a fixed system for assigning rates to employers eligible for rate determinations based on their experience.

An employer's rating is determined by the employer's "reserve ratio." The reserve ratio is the employers UI account balance (Total benefits charged for all past years deducted from all contributions paid for all such years) divided by the employer's average annual payroll. Page 7.

For employers who have a negative account balance, the bill provides the current rate of 5.4% continues until rate year 2015 (plus a surcharge; see bottom page 9.). Starting with rate year 2016, negative account balance employers pay contributions at the rate referenced in the new standard rate schedule at the bottom of page 15 of the bill. Page 7.

Employers eligible for a rate determination who do not meet the average annual payroll requirements pay the maximum rate under the new standard rate schedule at page 15 until a new period of 24 consecutive months is established. Page 7.

Under current law, and under the bill for rate year 2015, the contribution rate an employer must pay is set by the rate table on pages 8-9 of the bill. The table divides employers up by 51 approximately equal groups, each group comprising about 1.96 percent of all taxable wages paid by all eligible employers. Employers are assigned to each group based on their reserve ratio. Pages 7-8.

For rate years 2016 and thereafter, employer rates are determined by their reserve ratio on a fixed basis, as set forth in the new standard rate table on page 15-16.

The contribution rates are also determined pursuant to the Fund Control Table on page 15. This table sets forth adjustments to the standard rate provided in the standard rate schedule based on the balance in the trust fund. Specifically, the adjustments are based on

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the average high cost multiple of the trust fund. The average high cost multiple is the reserve fund ratio divided by the average high benefit cost rate. The reserve fund ratio is the trust fund balance on July 31 divided by total payrolls for contributing employers for the preceding fiscal year ending June 30. The average high benefit cost rate is the average of the three highest benefit cost rates of the last 20 years. The benefit cost rate is defined by dividing total benefits paid in a fiscal year by total payrolls for covered employers in the fiscal year. Page 15.

The Senate amended the Average High Cost Multiple triggers for the various rate adjustments. These changes result in a higher balance in the fund. In addition, the Senate changed the discount to the standard rates available when the fund reaches an average high cost multiple of 1.15 to .50%. As indicated at the Senate hearing, these changes reflect discussions between the business community and the Department of Labor. Page 15.

The provisions for entering and expanding employers were modified by the bill at page 11. An employer whose reserve ratio is significantly affected due to an increase in taxable payroll due to a growth in employment is eligible for a reduced rate for a period of three, not four, years.

Section 3 was added by the Senate Committee simply to correct a reference that was changed as a result of other amendments in the bill.

SENATE BILL No. 154

By Committee on Commerce

2-5

Proposed Amendments to SB No. 154
For House Committee on Commerce,
Labor and Economic Development
Prepared by: Chuck Reimer
Office of Revisor of Statutes
March 17, 2015

1 AN ACT concerning employment security law; relating to determination
2 of benefits; employer classification and rates; amending K.S.A. 2014
3 Supp. 44-704 and, 44-710a and 44-757 and repealing the existing
4 sections.

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

7 Section 1. K.S.A. 2014 Supp. 44-704 is hereby amended to read as
8 follows: 44-704. (a) *Payment of benefits.* All benefits provided herein shall
9 be payable from the fund. All benefits shall be paid through the secretary
10 of labor, in accordance with such rules and regulations as the secretary
11 may adopt. Benefits based on service in employment defined in
12 ~~subsection (f)(3)(E) and (f)(3)(F) of K.S.A. 44-703(i)(3)(E) and (i)(3)(F),~~
13 and amendments thereto, shall be payable in the same amount, on the same
14 terms and subject to the same conditions as compensation payable on the
15 basis of other service subject to this act except as provided in ~~subsection~~
16 ~~(e) of K.S.A. 44-705(e) and subsection (e)(2) of K.S.A. 44-711(e)(2), and~~
17 amendments thereto.

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

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

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

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

31 (c) *Maximum weekly benefit amount.* On July 1 of each year, the
32 secretary shall determine the maximum weekly benefit amount by
33 computing 60% of the average weekly wages paid to employees in insured
34 work during the previous calendar year and shall prior to that date
35 announce the maximum weekly benefit amount so determined, by
36 publication in the Kansas register. Such computation shall be made by

(1) For initial claims effective prior to July 1, 2015, the
maximum weekly benefit amount shall be determined as
follows:

1 dividing the gross wages reported as paid for insured work during the
2 previous calendar year by the product of the average of midmonth
3 employment during such calendar year multiplied by 52. The maximum
4 weekly benefit amount so determined and announced for the twelve-month
5 period shall apply only to those claims filed in that period qualifying for
6 maximum payment under the foregoing formula. All claims qualifying for
7 payment at the maximum weekly benefit amount shall be paid at the
8 maximum weekly benefit amount in effect when the benefit year to which
9 the claim relates was first established, notwithstanding a change in the
10 maximum benefit amount for a subsequent twelve-month period. If the
11 computed maximum weekly benefit amount is not a multiple of \$1, then
12 the computed maximum weekly benefit amount shall be reduced to the
13 next lower multiple of \$1.

14 ~~(d) Minimum weekly benefit amount. The minimum weekly benefit~~
15 ~~amount payable to any individual shall be 25% of the maximum weekly~~
16 ~~benefit calculated in accordance with subsection (c) and shall be~~
17 ~~announced by the secretary in conjunction with the published~~
18 ~~announcement of the maximum weekly benefit, also as provided in~~
19 ~~subsection (c). The minimum weekly benefit amount so determined and~~
20 ~~announced for the twelve-month period beginning July 1 of each year shall~~
21 ~~apply only to those claims which establish a benefit year filed within that~~
22 ~~twelve-month period and shall apply through the benefit year of such~~
23 ~~claims notwithstanding a change in such amount in a subsequent twelve-~~
24 ~~month period. If the minimum weekly benefit amount is not a multiple of~~
25 ~~\$1 it shall be reduced to the next lower multiple of \$1. For initial claims~~
26 ~~effective prior to July 1, 2015, the maximum weekly benefit amount shall~~
27 ~~be determined in accordance with subsection (c).~~

28 ~~(e) For initial claims effective on or after July 1, 2015, the maximum~~
29 ~~weekly benefit amount shall be \$174. This maximum benefit rate shall be~~
30 ~~in effect for claims effective through December 31, 2017. For initial~~
31 ~~claims effective on or after January 1, 2018, the maximum weekly benefit~~
32 ~~amount shall be determined in accordance with subsection (f).~~

33 ~~(f) On or before January 1, 2017, and every three years thereafter,~~
34 ~~the secretary of labor shall present to the speaker of the house of~~
35 ~~representatives and president of the senate a recommendation for an~~
36 ~~adjustment to the maximum weekly benefit amount to be effective for~~
37 ~~claims effective for a three-year period beginning January 1, 2018. Such~~
38 ~~recommendation shall consider the average weekly wages paid to~~
39 ~~employees in insured work during the previous fiscal year; the average~~
40 ~~duration of unemployment claims; and the ratio of the average weekly~~
41 ~~benefit amount to average weekly wages. The recommendation shall be~~
42 ~~published in the Kansas register. The legislature shall thereafter set a new~~
43 ~~maximum weekly benefit amount to be effective the following January 1.~~

1 ~~and continuing for three years.~~ Any future increase of the maximum weekly
2 benefit amount must be accompanied with a proportionate increase in the
3 taxable wage base.

4 ~~(4)(i)~~ Minimum weekly benefit amount. The minimum weekly benefit
5 amount payable to any individual shall be 25% of the maximum weekly
6 benefit amount effective as of the beginning of the individual's benefit year.
7 If the minimum weekly benefit amount is not a multiple of \$1 it shall be
8 reduced to the next lower multiple of \$1. The minimum weekly benefit
9 amount shall apply through the benefit year, notwithstanding a change in
10 the minimum weekly benefit amount.

11 ~~(4)(e)~~ All claims qualifying for payment at the maximum weekly benefit
12 amount shall be paid at the maximum weekly benefit amount in effect
13 when the benefit year to which the claim relates was first established,
14 notwithstanding a subsequent change in the maximum weekly benefit
15 amount.

16 ~~(e)(4)(i)~~ Weekly benefit payable. Each eligible individual who is
17 unemployed with respect to any week, except as to final payment, shall be
18 paid with respect to such week a benefit in an amount equal to such
19 individual's determined weekly benefit amount, less that part of the wage,
20 if any, payable to such individual with respect to such week which is in
21 excess of the amount which is equal to 25% of such individual's
22 determined weekly benefit amount and if the resulting amount is not a
23 multiple of \$1, it shall be reduced to the next lower multiple of \$1.

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

26 (A) Vacation or holiday pay that was attributable to a week that the
27 individual claimed benefits; and

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

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

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

36 (B) severance pay, in lieu of notice, under the provisions of public
37 law 100-379, the federal worker adjustment and retraining notification act,
38 (29 U.S.C.A. §§ 2101 through 2109);

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

43 (D) moneys received as federal social security payments.

(2) For initial claims effective on or after July 1, 2015, the maximum weekly benefit amount shall be determined as follows: On July 1 of each year, the secretary shall determine the maximum weekly benefit amount by computing 55% of the average weekly wages paid to employees in insured work during the previous calendar year, but not to be less than \$474, and shall prior to that date announce the maximum weekly benefit amount so determined by publication in the Kansas register. Such computation shall be made by dividing the gross wages reported as paid for insured work during the previous calendar year by the product of the average of midmonth employment during such calendar year multiplied by 52. The maximum weekly benefit amount so determined and announced for the 12-month period shall apply only to those claims filed in that period qualifying for maximum payment under the foregoing formula. All claims qualifying for payment at the maximum weekly benefit amount shall be paid at the maximum weekly benefit amount in effect when the benefit year to which the claim relates was first established, notwithstanding a change in the maximum benefit amount for a subsequent 12-month period. If the computed maximum weekly benefit amount is not a multiple of \$1, then the computed maximum weekly benefit amount shall be reduced to the next lower multiple of \$1.

(f)

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

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

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

~~(h)~~⁽ⁱ⁾ 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.

~~(i)~~^(m) For weeks commencing on and after January 1, 2014, if at the beginning of the benefit year, the three month seasonally adjusted average unemployment rate for the state of Kansas is: (1) Less than 4.5%, a claimant shall be eligible for a maximum of 16 weeks of benefits; (2) at least 4.5% but less than 6%, a claimant shall be eligible for a maximum of 20 weeks of benefits; or (3) at least 6%, a claimant shall be eligible for a

(1)

1 maximum of 26 weeks of benefits.

2 Sec. 2. K.S.A. 2014 Supp. 44-710a is hereby amended to read as
3 follows: 44-710a. (a) *Classification of employers by the secretary.* The
4 term "employer" as used in this section refers to contributing employers.
5 The secretary shall classify employers in accordance with their actual
6 experience in the payment of contributions on their own behalf and with
7 respect to benefits charged against their accounts with a view of fixing
8 such contribution rates as will reflect such experience. If, as of the date
9 such classification of employers is made, the secretary finds that any
10 employing unit has failed to file any report required in connection
11 therewith, or has filed a report which the secretary finds incorrect or
12 insufficient, the secretary shall make an estimate of the information
13 required from such employing unit on the basis of the best evidence
14 reasonably available to the secretary at the time, and notify the employing
15 unit thereof by mail addressed to its last known address. Unless such
16 employing unit shall file the report or a corrected or sufficient report as the
17 case may be, within 15 days after the mailing of such notice, the secretary
18 shall compute such employing unit's rate of contributions on the basis of
19 such estimates, and the rate as so determined shall be subject to increase
20 but not to reduction on the basis of subsequently ascertained information.
21 The secretary shall determine the contribution rate of each employer in
22 accordance with the requirements of this section.

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

27 (B) (i) (a) ~~For the rate years 2007 through 2013, each employer who~~
28 ~~is not eligible for a rate contribution shall pay contributions equal to 4% of~~
29 ~~wages paid during each calendar year with regard to employment except~~
30 ~~such employers engaged in the construction industry shall pay a rate equal~~
31 ~~to 6%.~~

32 (b) ~~For the rate year 2014 and each rate year thereafter, except as~~
33 ~~provided in subsection (c), each employer who is not eligible for a rate~~
34 ~~contribution shall pay contributions equal to 4% 2.7% of wages paid~~
35 ~~during each calendar year with regard to employment, except such~~
36 ~~employers engaged in the construction industry shall pay a rate equal to~~
37 ~~6%.~~

38 (c) ~~For the rate year 2014 and each rate year thereafter, except for the~~
39 ~~construction industry, each employer who starts a new business and who is~~
40 ~~not eligible for a rate contribution shall pay contributions equal to 2.7% of~~
41 ~~wages paid during each calendar year with regard to employment.~~

42 (d)(b) (1) For the rate year 2015 and each rate year thereafter, an
43 employer who was not doing business in Kansas prior to July 1, 2014,