

**HOUSE BILL No. 2329**

By Committee on Commerce, Labor and Economic Development

2-9

1 AN ACT concerning employment security law; relating to the effect of  
2 separation pay on benefits; amending K.S.A. 2016 Supp. 44-704 and  
3 repealing the existing section.  
4

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

6 Section 1. K.S.A. 2016 Supp. 44-704 is hereby amended to read as  
7 follows: 44-704. (a) *Payment of benefits.* All benefits provided herein shall  
8 be payable from the fund. All benefits shall be paid through the secretary  
9 of labor, in accordance with such rules and regulations as the secretary  
10 may adopt. Benefits based on service in employment defined in K.S.A. 44-  
11 703(i)(3)(E) and (i)(3)(F), and amendments thereto, shall be payable in the  
12 same amount, on the same terms and subject to the same conditions as  
13 compensation payable on the basis of other service subject to this act  
14 except as provided in K.S.A. 44-705(e) and K.S.A. 44-711(e)(2), and  
15 amendments thereto.

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

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

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

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

29 (c) *Maximum weekly benefit amount.* (1) For initial claims effective  
30 prior to July 1, 2015, the maximum weekly benefit amount shall be  
31 determined as follows: On July 1 of each year, the secretary shall  
32 determine the maximum weekly benefit amount by computing 60% of the  
33 average weekly wages paid to employees in insured work during the  
34 previous calendar year and shall prior to that date announce the maximum  
35 weekly benefit amount so determined, by publication in the Kansas  
36 register. Such computation shall be made by dividing the gross wages

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

13 (2) For initial claims effective on or after July 1, 2015, the maximum  
14 weekly benefit amount shall be determined as follows: On July 1 of each  
15 year, the secretary shall determine the maximum weekly benefit amount by  
16 computing 55% of the average weekly wages paid to employees in insured  
17 work during the previous calendar year, but not to be less than \$474, and  
18 shall, prior to that date, announce the maximum weekly benefit amount so  
19 determined by publication in the Kansas register. Such computation shall  
20 be made by dividing the gross wages reported as paid for insured work  
21 during the previous calendar year by the product of the average of mid-  
22 month employment during such calendar year multiplied by 52. The  
23 maximum weekly benefit amount so determined and announced for the  
24 12-month period shall apply only to those claims filed in that period  
25 qualifying for maximum payment under the foregoing formula. All claims  
26 qualifying for payment at the maximum weekly benefit amount shall be  
27 paid at the maximum weekly benefit amount in effect when the benefit  
28 year to which the claim relates was first established, notwithstanding a  
29 change in the maximum benefit amount for a subsequent 12-month period.  
30 If the computed maximum weekly benefit amount is not a multiple of \$1,  
31 then the computed maximum weekly benefit amount shall be reduced to  
32 the next lower multiple of \$1.

33 (d) *Minimum weekly benefit amount.* The minimum weekly benefit  
34 amount payable to any individual shall be 25% of the maximum weekly  
35 benefit amount effective as of the beginning of the individual's benefit  
36 year. If the minimum weekly benefit amount is not a multiple of \$1 it shall  
37 be reduced to the next lower multiple of \$1. The minimum weekly benefit  
38 amount shall apply through the benefit year, notwithstanding a change in  
39 the minimum weekly benefit amount.

40 (e) All claims qualifying for payment at the maximum weekly benefit  
41 amount shall be paid at the maximum weekly benefit amount in effect  
42 when the benefit year to which the claim relates was first established,  
43 notwithstanding a subsequent change in the maximum weekly benefit

1 amount.

2 (f) *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 or holiday pay that was attributable to a week that the  
13 individual claimed benefits; and

14 (B) severance pay, if paid as scheduled, and all other employment  
15 benefits within the employer's control, as defined in subsection (f)(3), if  
16 continued as though the severance had not occurred, except as set out in  
17 subsection (f)(2)(C).

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

20 (A) Remuneration received for services performed on a public  
21 assistance work project;

22 (B) severance pay, in lieu of notice, under the provisions of public  
23 law 100-379, the federal worker adjustment and retraining notification act,  
24 (29 U.S.C.A. §§ 2101 through 2109);

25 (C) all other severance pay, separation pay, bonuses, wages in lieu of  
26 notice or remuneration of a similar nature that is payable after the  
27 severance of the employment relationship, except as set out in subsection  
28 (f)(1)(B); and

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

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

37 (g) *Duration of benefits.* Any otherwise eligible individual shall be  
38 entitled during any benefit year to a total amount of benefits equal to  
39 whichever is the lesser of 26 times such individual's weekly benefit  
40 amount, or  $\frac{1}{3}$  of such individual's wages for insured work paid during such  
41 individual's base period. Such total amount of benefits, if not a multiple of  
42 \$1, shall be reduced to the next lower multiple of \$1.

43 (h) For the purposes of this section, wages shall be counted as "wages

1 for insured work" for benefit purposes with respect to any benefit year  
2 only if such benefit year begins subsequent to the date on which the  
3 employing unit by whom such wages were paid has satisfied the  
4 conditions of K.S.A. 44-703(h), and amendments thereto, with respect to  
5 becoming an employer.

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

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

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

24 (3) *Nothwithstanding the reemployment provisions of K.S.A. 44-*  
25 *705(e), and amendments thereto, any individual whose benefit amount is*  
26 *completely reduced under this subsection for 52 or more weeks shall, upon*  
27 *exhaustion of the separation pay, be entitled to a new benefit year based*  
28 *upon entitlement from the base period of the claim that was reduced.*

29 (j) For weeks commencing on and after January 1, 2014, if at the  
30 beginning of the benefit year, the three month seasonally adjusted average  
31 unemployment rate for the state of Kansas is: (1) Less than 4.5%, a  
32 claimant shall be eligible for a maximum of 16 weeks of benefits; (2) at  
33 least 4.5% but less than 6%, a claimant shall be eligible for a maximum of  
34 20 weeks of benefits; or (3) at least 6%, a claimant shall be eligible for a  
35 maximum of 26 weeks of benefits.

36 Sec. 2. K.S.A. 2016 Supp. 44-704 is hereby repealed.

37 Sec. 3. This act shall take effect and be in force from and after its  
38 publication in the statute book.