

HOUSE BILL No. 2196

By Committee on Commerce, Labor and Economic Development

2-1

Proposed Amendments for HB 2196
Committee on Commerce, Labor
and Economic Development
Williams #2
February 23, 2021
Prepared by Charles Reimer
Office of Revisor of Statutes

1 AN ACT concerning employment security; creating the unemployment
2 compensation modernization and improvement council; providing for
3 development of a new unemployment insurance information
4 technology system; claimant tax information; website publication of
5 trust fund data; maximum benefit period; charging of employer
6 accounts for benefits paid; employer contribution rate determination
7 and schedules; abolishing the employment security interest assessment
8 fund; crediting employer accounts for fraudulent or erroneous
9 payments; transferring moneys from the state general fund to the
10 unemployment insurance trust fund for improper benefit payments;
11 services performed by petroleum landmen; lessor employment unit
12 employee leasing restrictions; relating to other unemployment trust
13 fund provisions; shared work compensation program; amending K.S.A.
14 44-758 and K.S.A. 2020 Supp. 44-703, 44-704, 44-710, 44-710a, 44-
15 710b and 44-757 and repealing the existing sections.

16

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

18 New Section 1. (a) (1) There is hereby created the unemployment
19 compensation modernization and improvement council. The council shall
20 consist of 11 members appointed as follows:

21 (A) Two members who, on account of their vocation, employment or
22 affiliations, may be classed as representative of employers, to be selected
23 by the workers compensation and employment security boards nominating
24 committee established under K.S.A. 44-551, and amendments thereto, and
25 appointed by the governor;

26 (B) two members who, on account of their vocation, employment or
27 affiliation, may be classed as representative of employees, to be selected
28 by the workers compensation and employment security boards nominating
29 committee and appointed by the governor;

30 (C) the chairpersons of the standing committees of the senate and the
31 house of representatives to which legislation pertaining to the employment
32 security law is customarily referred, appointed by the president of the
33 senate and the speaker of the house of representatives, respectively;

34 (D) two members of the senate appointed by the president of the
35 senate, one of whom is a member of the majority party and one of whom is
36 a member of the minority party;

providing for an audit to be conducted by the council

1 date of this section. The scope of the council's examinations and
2 recommendations shall include, but not be limited to, the following:

3 (1) The technological infrastructure used to file and process claims
4 and pay benefits and the experience of individuals and employers
5 participating in the process;

6 (2) system improvements or upgrades that will maximize
7 responsiveness for individuals and employers;

8 (3) methods for information and data sharing across agency systems
9 related to unemployment compensation to maximize efficiency;

10 (4) system improvements or upgrades relating to system integrity by
11 reporting vulnerabilities and recommended system enhancements to
12 include identity verification and protection, social security administration
13 cross-match, systematic alien verification for entitlement, incarceration
14 cross-matches, interstate connection network, internet protocol address and
15 data mining and analytics to detect and prevent fraud. Such data mining
16 and analytics shall include current and future recommendations by the
17 United States department of labor and the national association of state
18 workforce agencies, including suspicious actor repository, suspicious
19 email domains, foreign IP addresses, multi-state cross-match, identity
20 verification, fraud alert system, and other assets provided by the
21 unemployment insurance integrity center; and

22 (5) methods for synergizing user experience across multiple programs
23 administered or supervised by the secretary of labor.

24 (e) The council shall not examine the solvency of the unemployment
25 compensation fund created by K.S.A. 44-710a, and amendments thereto,
26 or changes that would either increase or reduce benefits paid from the
27 fund.

28 (f) The secretary of labor shall appoint an executive secretary of the
29 council, and the executive secretary shall attend the meetings of the
30 council. The executive secretary's duties shall include:

31 (1) Maintaining council agendas and assisting in planning meetings
32 and conferences;

33 (2) attending meetings and keeping minutes;

34 (3) receiving and screening phone calls and redirecting phone calls
35 when appropriate;

36 (4) handling and prioritizing all official outgoing or incoming regular
37 mail or electronic correspondence;

38 (5) making travel arrangements for members related to council
39 business;

40 (6) handling confidential documents and ensuring they remain secure;

41 (7) maintaining electronic and paper records and ensuring such
42 information is organized and easily accessible; and

43 (8) conducting research and preparing presentations or reports as

(e) (1) The council shall conduct an audit that shall examine the effects on the department of labor and the unemployment insurance system of fraudulent claims and improper payments during the period of March 15, 2020 through December 31, 2022, and the response by the department of labor to such fraudulent claims and improper payments during that period. The council shall select an independent firm to conduct the audit. The auditor shall have access to all confidential documents. The scope of the audit shall include, but not be limited to, the amounts and nature of improper payments and fraudulent claims, fraud processes and methods and the possibility of recovery of any improper payments. The audit shall also include, but not be limited to, an evaluation which provides likelihood of a data breach being a contributing factor to any fraudulent payments, improper network architecture allowing a potential breach to have occurred, and a timeline of relevant events. The independent firm shall make a preliminary report to the council by May 1, 2022 and a final report by September 1, 2022, that shall be made publicly available by the council. The preliminary report should include, but not be limited to, an evaluation of systems with access to the payment and processing of claims, forensic endpoint images related to the claims, and the external perimeter housing the claims systems, as well as an evaluation of the Department of Labor's response to claims. Any confidential information shall be redacted and shall not be made public. The audit shall be paid for by the state, subject to appropriations, therefore.
(2) The council may hold an executive session that shall not be public under the Kansas open meetings act for the purpose of hearing and discussing any confidential portions of the audit. The council shall follow the provisions of K.S.A. 75-4319 when conducting such an executive session.

And by redesignating subsections, paragraphs, subparagraphs and clauses accordingly

1 assigned by the chairperson or the secretary of labor.
 2 (g) (1) The council shall only have access to records of the
 3 department of labor that are necessary for the administration and duties of
 4 the council. The council shall not have access to any confidential or
 5 personal identifying information. The council may request that the
 6 secretary of labor, department of labor employee or any private or public
 7 employer or employee with information of value to the council appear
 8 before the council and testify to matters within the council's purview. At
 9 least once per year, the council shall allow members of the public to
 10 appear before the council to testify on any such matters.

90 days

11 (2) Not later than ~~six months~~ after the council's first meeting, the
 12 council shall issue an initial report that, at a minimum, describes the state
 13 of the process by which an individual files a claim for and receives
 14 benefits under the employment security law at the time the report is issued
 15 and planned improvements to the process. The council may address other
 16 matters within the council's purview in the report.

17 (3) The secretary of labor shall post all testimony and other relevant
 18 materials discussed, presented to or produced for the council on a publicly
 19 accessible website maintained by the secretary.

20 (h) The secretary of labor shall notify the chairperson of the council
 21 of any unauthorized third-party access to or acquisition of records
 22 maintained by the secretary that are necessary for the administration of the
 23 employment security law. The secretary shall provide the notice not more
 24 than five days after the secretary discovers or is notified of the
 25 unauthorized access or acquisition.

26 (i) The secretary of labor shall notify the members of the council of
 27 any substantial disruption in the process by which applications for
 28 determination of benefit rights and claims for benefits are filed with the
 29 secretary. The council shall, in cooperation with the secretary, adopt and
 30 periodically review a definition of substantial disruption for purposes of
 31 this subsection.

32 (j) (1) The secretary of labor shall, with the assistance of the council:

33 (A) Develop a written strategic staffing plan to be implemented
 34 whenever there is a substantial increase or a substantial decrease in the
 35 number of inquiries or claims for benefits and review the plan in
 36 accordance with the provisions of subsection (k);

37 (B) create, in a single place on the website maintained by the
 38 secretary, a list of all points of contact by which an applicant for or a
 39 recipient of unemployment compensation benefits or an employer may
 40 submit inquiries related to the employment security law; and

41 (C) adopt rules and regulations creating a uniform process through
 42 which an applicant for or a recipient of benefits under the employment
 43 security law or an employer may submit a complaint related to the service

1 that informs the claimant of the federal and state tax consequences of any
2 unemployment compensation benefits that the claimant may receive. This
3 information shall include an explanation regarding the department of labor
4 income tax withholding agreement form designated as K-BEN 233 or a
5 successor form, tax withholding elections and the tax withholding process
6 and estimated weekly and maximum claim year federal and state tax
7 withholding amounts.

8 (b) This section shall be a part of and supplemental to the
9 employment security law.

10 New Sec. 4. (a) The secretary of labor shall post trust fund
11 computations and data as required by subsection (b) on a publicly
12 accessible website maintained by the secretary as follows:

13 (1) The secretary shall post and maintain the computations and data
14 for each of the most recent 20 fiscal years within 90 days of the effective
15 date of this act; and

16 (2) for the fiscal year beginning on July 1, 2021, and each fiscal year
17 thereafter, the secretary shall post the trust fund computations and data for
18 the fiscal year to the website within ~~90~~ days of such fiscal year's closing
19 date.

120

20 (b) The computations and data to be posted shall include:

21 (1) Distributions of taxable wages by experience factor for each state
22 fiscal year including the following information:

- 23 (A) The rate group;
- 24 (B) the reserve ratio lower limit;
- 25 (C) the number of accounts;
- 26 (D) the taxable wages by fiscal year;
- 27 (E) a summary of active positive eligible accounts with the number of
28 accounts and fiscal year taxable wages;
- 29 (F) a summary of active ineligible accounts with the number of
30 accounts and fiscal year taxable wages;
- 31 (G) a summary of active negative accounts with the number of
32 accounts and fiscal year taxable wages; and

33 (E) a summary of terminated and inactive accounts with the number
34 of accounts and fiscal year taxable wages; and

35 (2) an average high cost benefit rate summary, including:

- 36 (A) The average high cost benefit rate currently in effect; and
- 37 (B) the benefit cost rate for the fiscal years used to calculate the
38 average high benefit cost rate.

39 (c) This section shall be a part of and supplemental to the
40 employment security law.

41 Sec. 5. K.S.A. 2020 Supp. 44-703 is hereby amended to read as
42 follows: 44-703. As used in this act, unless the context clearly requires
43 otherwise: