

Senate Substitute for Substitute for HOUSE BILL No. 2196

AN ACT concerning employment security; creating the unemployment compensation modernization and improvement council; providing for an audit to be conducted by the council; providing for development of a new unemployment insurance information technology system; membership of the procurement negotiating committee for such system; claimant tax information; website publication of trust fund data; maximum benefit period; charging of employer accounts for benefits paid; employment security board of review and emergency expansion thereof; employer contribution rate determination and schedules; crediting employer accounts for fraudulent or erroneous payments; services performed by petroleum landmen; lessor employment unit employee leasing restrictions; disclosure of information; shared work compensation program; establishing the my reemployment plan providing job search and job matching assistance to claimants and employers; providing for workforce training program availability for claimants; providing for the transfer of certain federal coronavirus relief funds received by the state to the employment security fund; changing the benefit disqualification period for fraud; making and concerning appropriations for the fiscal years ending June 30, 2021, and June 30, 2022; authorizing certain transfers and imposing certain limitations; establishing a new crime of unemployment insurance fraud with an enhanced penalty; providing for voluntary identity verification by claimants through participating law enforcement agencies; creating the legislative employment security fund; amending K.S.A. 44-758 and K.S.A. 2020 Supp. 44-703, 44-704, 44-705, 44-706, 44-709, 44-710, 44-710a, 44-710b, 44-714, 44-719 and 44-757 and repealing the existing sections.

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

New Section 1. (a) (1) There is hereby created the unemployment compensation modernization and improvement council. The council shall consist of 13 members appointed as follows:

(A) Three members who, on account of their vocation, employment or affiliations, may be classed as representative of employers, one of whom shall be selected by the governor, one by the speaker of the house of representatives and one by the president of the senate;

(B) three members who, on account of their vocation, employment or affiliation, may be classed as representative of employees, one of whom shall be selected by the governor, one by the speaker of the house of representatives and one by the president of the senate;

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

(D) two members of the senate, one of whom shall be a member of the majority party appointed by the president of the senate and one of whom shall be a member of the minority party appointed by the minority leader of the senate;

(E) two members of the house of representatives, one of whom shall be a member of the majority party appointed by the speaker of the house of representatives and one of whom shall be a member of the minority party appointed by the minority leader of the house of representatives; and

(F) the secretary of labor or a designee of the secretary who has administrative responsibilities with respect to the unemployment insurance compensation system of the department of labor.

(2) Legislative members shall serve during the legislative session in which they are appointed to the council and shall remain members of the legislature in order to retain membership on the council. Vacancies of legislative members during a term shall be filled in the same manner as the original appointment only for the unexpired part of the term. The appointing authority for the legislative member may remove the member, reappoint the member or substitute another appointee for the member at any time.

(3) The members of the council shall be appointed and the council shall hold its first meeting within 30 days of the effective date of this act.

(b) All non-legislative members shall serve for three years or until the council is dissolved, whichever is shorter. Vacancies of non legislative members shall be filled in the same manner as the original appointment only for the unexpired part of the term. The appointing authority for the member may remove the member, reappoint the

member or substitute another appointee for the member at any time.

(c) The council shall be dissolved and the provisions of this section pertaining to the establishment, function and operation of the council shall no longer be in effect after three years from the date of the council's first meeting.

(d) Each member of the council shall be entitled to receive compensation for the member's services, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties, in accordance with policies adopted by the council. Members' compensation and expenses shall be paid from the employment security administration fund or any account of the state general fund of the department of labor, as designated by the secretary.

(e) The chairperson of the house of representatives standing committee on commerce, labor and economic development, or a successor committee to which legislation pertaining to employment security law is customarily referred, shall serve as the chairperson of the council when first organized and for the ensuing two years. The chairperson of the senate standing committee on commerce, or a successor committee to which legislation pertaining to employment security law is customarily referred, shall serve as the chairperson of the council for the next two years, and thereafter the office of chairperson shall continue to alternate between the chambers as provided herein.

(f) The council shall examine and recommend changes to the unemployment compensation system to include current limitations, new features and benefits, system enhancements and dynamic, accurate reporting for the benefit of both employers and individuals. The council shall also examine the process by which an individual files a claim for and receives benefits and any changes made to that process after the effective date of this section. The scope of the council's examinations and recommendations shall include, but not be limited to, the following:

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

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

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

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

(g) (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 March 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 that 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. The council's report, and any subsequent report provided, shall also include information on the progress regarding the secretary's implementation of all program integrity elements and guidance issued by the United States department of labor and the national association of state workforce agencies as described in section 2(e), and amendments thereto. Any confidential information shall be redacted and shall not be made public. The audit shall be paid for by the state, subject to appropriations therefor.

(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, and amendments thereto, when conducting such an executive session.

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

(i) The staff of the legislative research department, the office of revisor of statutes and the division of legislative administrative services shall provide such assistance as may be requested by the chairperson.

(j) (1) The council shall only have access to records of the department of labor that are necessary for the administration and duties of the council. The council shall not have access to any confidential or personal identifying information. The council may request that the secretary of labor, department of labor employee or any private or public employer or employee with information of value to the council appear before the council and testify to matters within the council's purview.

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

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

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

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

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

(A) Develop a written strategic staffing plan to be implemented whenever there is a substantial increase or a substantial decrease in the

number of inquiries or claims for benefits and review the plan in accordance with the provisions of subsection (n);

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

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

(2) In the written strategic staffing plan required under paragraph (1)(A), the secretary shall include an explanation of whether and in what manner the secretary will utilize:

(A) Department employees who do not ordinarily perform services related to unemployment compensation;

(B) employees employed by other state agencies; and

(C) employees provided by private entities.

(n) For purposes of subsection (m)(1)(A), the secretary of labor shall develop the initial written strategic staffing plan and provide such plan to the council, the president of the senate, the speaker of the house of representatives and the governor. The secretary shall review the plan at least once per year. If, after reviewing the plan, the secretary determines that the plan should be revised, the secretary shall revise the plan. After each review of the plan as provided under this subsection, the secretary shall provide the most recent version of the plan to the council, the president of the senate, the speaker of the house of representatives and the governor. The secretary shall post the most recent version of the plan on a publicly accessible website maintained by the secretary.

(o) The council may suggest rules and regulations for adoption by the secretary as necessary to implement the provisions of this section.

(p) The secretary of labor or the secretary's designee shall provide status reports on or before the 15<sup>th</sup> day and the last day of each month to the council. The reports shall include, but not be limited to, the status of the new unemployment information technology system upgrade timeline, progress, budget and the overall project status. At such time that the new system becomes operational, the reports shall include, but not be limited to, system performance and process updates.

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

New Sec. 2. (a) It is the intent of the legislature that, in order to accomplish the mission of collecting state employment security taxes, processing unemployment insurance benefit claims and paying benefits, the department of labor's information technology system shall be continually developed, customized, enhanced and upgraded. The purpose of this section is to ensure the state's unemployment insurance program is utilizing current technology and features to protect the sensitive data required in the unemployment insurance benefit and tax systems relating to program integrity, system efficiency and customer service experience.

(b) The legislature finds that, as a result of the vulnerabilities exposed in the legacy unemployment insurance system by the COVID-19 pandemic unemployment insurance crisis, a new system shall be fully designed, implemented and administered by the department of labor not later than December 31, 2022. The legislative coordinating council, upon consultation with the unemployment compensation modernization and improvement council established by section 1, and amendments thereto, may extend the deadline to a date certain and may further extend the deadline to another date certain at any time.

(c) The information technology system, technology and platform shall include, but not be limited to, any components as specified and defined by the unemployment compensation modernization and improvement council established by section 1, and amendments thereto, in consultation with the secretary.

(d) The new system shall include, but not be limited to, any features and benefits as specified and defined by the unemployment compensation modernization and improvement council established by section 1, and amendments thereto, in consultation with the secretary.

(e) The secretary shall implement and utilize all program integrity elements, as specified and defined by the unemployment compensation modernization and improvement council established by section 1, and amendments thereto, in consultation with the secretary, including, but not limited to:

(1) Social security administration cross-matching for the purpose of validating social security numbers supplied by a claimant;

(2) checking of new hire records against the national directorate of new hires to verify eligibility;

(3) verification of immigration status or citizenship and confirmation of benefit applicant information through the systematic alien verification for entitlement program;

(4) comparison of applicant information to local, state and federal prison databases through incarceration cross-matches;

(5) detection of duplicate claims by applicants filed in other states or other unemployment insurance programs through utilization of the interstate connection network, interstate benefits cross-match, the state identification inquiry state claims and overpayment file and the interstate benefits 8606 application for overpayment recoveries for Kansas claims filed from a state other than Kansas;

(6) identification of internet protocol addresses linked to multiple claims or to claims filed outside of the United States; and

(7) use of data mining and data analytics to detect and prevent fraud when a claim is filed, and on an ongoing basis throughout the lifecycle of a claim, by using current and future functionalities to include suspicious actor repository, suspicious email domains, foreign internet protocol addresses, multi-state cross-match, identity verification, fraud alert systems and other assets provided by the unemployment insurance integrity center.

(f) If the unemployment compensation modernization and improvement council becomes inactive or is dissolved and the new information technology system modernization project has been completed, the secretary shall implement and utilize all new program integrity elements and guidance issued by the United States department of labor and the national association of state workforce agencies, including the integrity data hub, within 60 days of the issuance of any such guidance.

(g) The secretary, on a scheduled basis, shall cross check new and active unemployment insurance claims against the cross-check programs described in subsection (e). If the secretary receives information concerning an individual approved for benefits that indicates a change in circumstances that may affect eligibility, the secretary shall review the individual's case and act in accordance with the law.

(h) The department of labor shall have the authority to execute a memorandum of understanding with any department, agency or agency division for information required to be shared between agencies pursuant to the provisions of this section.

(i) The secretary of labor shall adopt rules and regulations necessary for the purposes of carrying out this section. Such rules and regulations shall be adopted within 12 months of the effective date of this act.

(j) The secretary of labor shall provide an annual status update and progress report regarding the requirements of this section to the unemployment compensation modernization and improvement council and the legislative coordinating council.

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

New Sec. 3. (a) The secretary of labor shall include information on an unemployment insurance benefit claimant's initial notice of

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

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

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

(1) The secretary shall post and maintain certified computations and data for each of the most recent 20 fiscal years within 120 days of the effective date of this act; and

(2) for the fiscal year beginning on July 1, 2021, and each fiscal year thereafter, the secretary shall certify and post the trust fund computations and data for the fiscal year to the website on or before December 1 following the end of such fiscal year.

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

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

(A) The rate group;

(B) the reserve ratio lower limit;

(C) the number of accounts;

(D) the taxable wages by fiscal year;

(E) a summary of active positive eligible accounts with the number of accounts and fiscal year taxable wages;

(F) a summary of active ineligible accounts with the number of accounts and fiscal year taxable wages;

(G) a summary of active negative accounts with the number of accounts and fiscal year taxable wages; and

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

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

(A) The average high cost benefit rate currently in effect; and

(B) the benefit cost rate for the fiscal years used to calculate the average high benefit cost rate.

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

New Sec. 5. (a) (1) The secretary of labor and the secretary of commerce shall jointly establish and implement the my reemployment plan as provided in this section. For purposes of this section, "my reemployment plan" means a program jointly established and implemented by the Kansas department of labor and the Kansas department of commerce that provides enhanced reemployment services, including workforce services provided by the department of commerce, to Kansans receiving unemployment insurance benefits. The program shall be available to all claimants except claimants in the shared work program or trade readjustment assistance program or claimants on temporary layoff with a return-to-work date. The program shall be implemented on or before June 1, 2021.

(2) The secretary of labor shall provide the secretary of commerce with the names and contact information of claimants that have claimed three continuous weeks of benefits. The secretary of commerce shall request a resume or work history, a skills list and a job search plan from the claimants and shall offer and provide, when requested, assistance to the claimants in developing the documents or plan through collaboration by the secretary with the Kansas works workforce system. The claimant shall have seven days to respond to the secretary of commerce. The secretary of commerce shall report any failure to respond by the claimant to the secretary of labor.

(3) The secretary of labor shall share labor market information and current available job positions with the secretary of commerce. The

secretary of labor may collaborate with Kansasworks or other state or federal agencies with job availability information in obtaining or sharing such information.

(4) The secretary of commerce shall match open job positions with claimants based on skills, work history and job location that is a reasonable commute from the claimant's residence and communicate the match information to the claimant and to the employer. The secretary of labor and the secretary of commerce shall consider whether the claimant or a Kansas employer would benefit from the claimant's participation in a work skills training or retraining program as provided by subsection (b) and, if so, provide such information to the employer, if applicable, and the claimant. Claimants who fail to respond within two weeks after contact by Kansasworks or the department of commerce shall be reported by the secretary of commerce to the secretary of labor.

(5) The secretary of commerce shall facilitate and oversee the claimant and employer interview process. The secretary of commerce and the secretary of labor shall monitor the result of job matches and share information regarding any claimant who did not attend an interview or did not accept a position that was a reasonable match for the claimant's work history and skills and was within a reasonable commute from the claimant's residence. The secretary of commerce shall contact the claimant and report the contact to the secretary of labor. The secretary of labor shall consider whether the claimant has failed to meet work search requirements and if the claimant should continue to receive benefits.

(b) The secretary of commerce shall develop and implement a work skills training or retraining program for claimants in collaboration with the Kansasworks workforce system, the secretary of labor, employers and other state or federal agencies or organizations. The secretary of commerce shall seek to obtain or utilize any available federal funds for the program, and to the extent feasible, may make current work skills training and retraining programs available to claimants. The secretary of labor may allow claimants to participate in such a program offered by the secretary of commerce or by another state or federal agency in lieu of requiring the claimant to meet job search requirements and the requirements of the my reemployment plan until the number of allowed benefit weeks has expired. A claimant shall participate in such a program for not less than 25 hours per week. The secretary of commerce shall monitor claimants who are participating in the program to ensure attendance and progress.

(c) Claimants who participate in the my reemployment plan or the work skills training or retraining program shall meet attendance or progress requirements established by the secretary of commerce to continue eligibility for unemployment insurance benefits. Non-compliant claimants shall be reported by the secretary of commerce to the secretary of labor. The secretary of labor shall disqualify such claimants from further benefits within five business days of receiving the report, unless or until the claimant demonstrates compliance to the secretary of commerce, and shall communicate the disqualification and the reason for the disqualification to the claimant. The secretary of commerce shall report to the secretary of labor when the claimant has reestablished compliance. The secretary of labor may continue benefits or reinstate a claimant's eligibility for benefits upon a showing of good cause by the claimant for the failure to meet attendance or progress requirements or my reemployment plan participation requirements.

(d) The secretary of labor and the secretary of commerce shall provide an annual status update and progress report for the my reemployment plan to the standing committee on commerce, labor and economic development of the house of representatives and the standing committee on commerce of the senate during the first month of the 2022 regular legislative session and the first month of each regular legislative session thereafter.

(e) This section shall be a part of and supplemental to the

employment security law.

New Sec. 6. Notwithstanding the provisions of chapter 1 of the 2020 Special Session Laws of Kansas, any other statute, any appropriation act or any other provision of this act: (a) For the fiscal years ending June 30, 2021, and June 30, 2022, on or before July 15, 2021, the director of the budget shall determine the amount of moneys received by the state that are identified as moneys from the federal government for aid to the state of Kansas for coronavirus relief as appropriated in the following acts that are eligible to be used for employment security, may be expended at the discretion of the state, in compliance with the office of management and budget's uniform administrative requirements, cost principles and audit requirements for federal awards, and are unencumbered: (1) The federal CARES act, public law 116-136, the federal coronavirus preparedness and response supplemental appropriation act, 2020, public law 116-123, the federal families first coronavirus response act, public law 116-127, and the federal paycheck protection program and health care enhancement act, public law 116-139; (2) the federal consolidated appropriations act, 2021, public law 116-260; (3) the American rescue plan act of 2021, public law 117-2; and (4) any other federal law that appropriates moneys to the state for aid for coronavirus relief. If the state receives any such moneys from the federal government for aid to the state of Kansas for coronavirus relief after July 15, 2021, the director of the budget shall also identify such moneys for the purposes of fulfilling the transfers required by this section.

(b) Of such identified moneys, the director of the budget shall determine in the aggregate an amount equal to \$250,000,000 available in special revenue funds. If such identified moneys in the aggregate are less than \$250,000,000, the director of the budget shall determine the maximum amount available. The director of the budget shall certify the amount so determined from each fund to the director of accounts and reports and, at the same time as such certification is transmitted to the director of accounts and reports, shall transmit a copy of such certification to the director of legislative research. Upon receipt of each such certification, or as soon thereafter as moneys are available, the director of accounts and reports shall immediately transfer an aggregate amount equal to such certification and in the aggregate, an amount equal to \$250,000,000 if available from such funds to the employment security fund (296-00-7056-7200) of the department of labor for the purpose of funding the employment security fund.

(c) Of such identified moneys, the director of the budget shall further determine in the aggregate an additional amount equal to \$250,000,000 available in special revenue funds. If such identified moneys in the aggregate are less than \$250,000,000, the director of the budget shall determine the maximum additional amount available. The director of the budget shall certify the amount so determined from each fund to the director of accounts and reports and, at the same time as such certification is transmitted to the director of accounts and reports, shall transmit a copy of such certification to the director of legislative research. Upon receipt of each such certification, or as soon thereafter as moneys are available, the director of accounts and reports shall immediately transfer an aggregate amount equal to such certification and in the aggregate, an amount equal to \$250,000,000 if available from such funds to the legislature employment security fund of the legislative coordinating council.

(d) Upon a determination of the dollar amount of improper payments by the audit of the department of labor in accordance with section 1(g), and amendments thereto, the unemployment compensation modernization and improvement council shall report such dollar amount immediately in writing to the division of the budget. Upon receipt of such report, the director of the budget shall certify the dollar amount identified by the audit and transmit a copy of such report and certification to members of the legislative coordinating council and the director of legislative research.



(e) If the amount of improper payments determined by such audit or the amount of any improper payments made during April 1, 2022, through December 31, 2022, as determined by the secretary following the review of the information as provided in K.S.A. 44-710b(e), and amendments thereto, or both such amounts added together, exceed the amounts transferred pursuant to subsections (b) and (c), the secretary shall certify such amount to the director of the budget. The director of the budget shall certify the amount of additional moneys identified under subsection (a) determined to be available from each fund to the director of accounts and reports and, at the same time as such certification is transmitted to the director of accounts and reports, shall transmit a copy of such certification to members of the legislative coordinating council and the director of legislative research. Upon receipt of each such certification, or as soon thereafter as moneys are available, the director of accounts and reports shall immediately transfer an aggregate amount equal to such certification if available from such funds to the legislature employment security fund of the legislative coordinating council.

(f) Upon receipt of any reports or certifications, the legislative coordinating council shall notify the legislative budget committee and forward a copy of such information to the committee. The legislative budget committee shall meet and review such information and shall report such committee's recommendation to the legislative coordinating council. After receiving recommendations from the legislative budget committee, the legislative coordinating council may authorize the transfer moneys in an amount not to exceed the amounts certified of improper payments from the legislature employment security fund to the employment security fund of the department of labor. Such transfers may be approved by the members of the legislative coordinating council, as provided in K.S.A. 46-1202, and amendments thereto, acting on this matter, which is hereby characterized as a matter of legislative delegation, except that such transfers may also be approved while the legislature is in session.

(g) There is hereby established in the state treasury the legislature employment security fund which shall be administered by the legislative coordinating council. All expenditures from the legislature employment security fund shall be for the purposes of funding the employment security fund for improper payments. All expenditures from the legislature employment security fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson of the legislative coordinating council or the designee of the chairperson.

(h) As used in this act, "improper payment amounts" or "improper payments" means any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative or other legally applicable requirements and includes any payment to an ineligible recipient.

New Sec. 7. (a) On or before January 31 of each calendar year, the secretary of labor shall transmit to the standing committee on commerce of the senate and the standing committee on commerce, labor and economic development of the house of representatives or any successor committee, a report, based on information received or developed by the department of labor, concerning the employment security trust fund, unemployment benefit claims and employer contributions to the employment security trust fund. Such report shall contain the following information:

(1) The amount of claims for the 12-month period ending on June 30 of the previous calendar year;

(2) the actual and projected amount of claims for the 12-month period beginning on July 1 of the previous calendar year;

(3) the amount of employer contributions for the 12-month period ending on June 30 of the previous calendar year and current employer contribution rates;

(4) the actual and projected amount of employer contributions for the 12-month period beginning on July 1 of the previous calendar year and ending on June 30 of the current calendar year and projected employer contribution rates for the next succeeding calendar year;

(5) the balance of the employment security trust fund on June 30 of the previous calendar year and the current balance of the fund; and

(6) the projected balance of the employment security trust fund on June 30 of the current calendar year and on January 1 of the next succeeding calendar year.

(b) In arriving at the amount of employer contributions to the employment security trust fund pursuant to subsection (a)(3), and the projected amount of employer contributions pursuant to subsection (a)(4), contributions paid or projected to be paid on or before July 31 following the respective 12-month period ending date of June 30 shall be considered.

(c) The secretary may include in the report any recommendations of the secretary regarding changes in contribution rates or the contribution rate tables. If the secretary makes recommendations, the secretary shall include projections of changes to employer contribution rates and to the balance of the employment security trust fund if the secretary's recommendations were adopted by the legislature.

(d) The provisions of this section shall expire on February 1, 2024.

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

New Sec. 8. During the fiscal years ending June 30, 2021, and June 30, 2022, on the effective date of this act, no state agency named in this or other appropriation act of the 2021 regular session of the legislature shall expend any moneys appropriated from the state general fund or from any special revenue fund or funds for fiscal years 2021 and 2022 as authorized by chapter 5 of the 2020 Session Laws of Kansas or any appropriation act of the 2021 regular session of the legislature for the purposes of entering into a contract or agreement with any party to make any changes, improvements or upgrades to the technology infrastructure for claims, benefits and system integrity or to the methods for information and data sharing concerning Kansas unemployment benefits unless and until: (a) The unemployment compensation modernization and improvement council, created by section 1, and amendments thereto, has reviewed the information technology system, technology and platform specifications pursuant to the provisions of section 2, and amendments thereto, and made a recommendation to the legislative coordinating council; and (b) the legislative coordinating council has reviewed any such specifications and any such recommendations. Such legislative coordinating council review shall take place within 60 days of the last date of accepting bids on the modernization project. After the requesting state agency receives a report from the legislative coordinating council regarding such council's review, such state agency is authorized to expend all approved moneys lawfully credited to and available in such fund or funds during the fiscal years ending June 30, 2021, and June 30, 2022.

New Sec. 9. Notwithstanding the provisions of K.S.A. 75-37,102(b), and amendments thereto, for the purposes of selecting a vendor to perform the unemployment insurance modernization project authorized by section 2, and amendments thereto, the procurement negotiating committee shall be composed of: (a) The director of purchases, or a person designated by the director; (b) the chairperson of the joint committee on information technology pursuant to the provisions of K.S.A. 46-2101, and amendments thereto; and (c) the secretary of administration, or a person designated by the secretary or, if a procurement involves information technology or services, the executive chief information technology officer or a person designated by the executive chief information technology officer.

New Sec. 10. (a) The secretary of labor shall develop a form for use by claimants to establish their identity before a law enforcement

officer of a Kansas law enforcement agency for the purpose of facilitating the receipt of unemployment insurance benefits. The form may be in electronic or paper format and may be transmitted or processed in electronic format if safeguards are made to protect any confidential information of the claimant. Use of the form by a claimant shall not be a requirement to receive unemployment benefits. The form shall be distributed to participating law enforcement agencies upon request and shall be provided to claimants at the time a claim for benefits is submitted. The form shall also be made readily available on the department of labor's website. The form shall be no more than one page in length, include space for the claimant's name, address, phone number if any, email address if any, date of birth and social security number and include instructions for the use of the form for the claimant and the law enforcement agency. The form shall specify permitted identity verification documentation that may be submitted to the law enforcement officer by the claimant to establish the claimant's identity. The permitted forms of identity verification documentation shall be documents to establish identity or documents to establish both identity and employment authorization acceptable for federal form I-9, employment eligibility verification, pursuant to 8 C.F.R. 274a.2 as in effect on the effective date of this act. The form shall be developed and made available within seven days of the effective date of this act. Law enforcement agencies shall not be required to participate in the provisions of this section.

(b) Upon receipt of the form, a claimant may present the form to a participating law enforcement agency with jurisdiction over the location of the claimant's residence or last known place of employment in Kansas and submit documentation as required by the form for verification by the law enforcement agency. The claimant may present the form to a participating law enforcement agency that does not have jurisdiction over the location of the claimant's residence or last known place of employment if no law enforcement agency with such jurisdiction has agreed to participate and the secretary has approved such submission. If a law enforcement officer of the law enforcement agency examines and finds the documentation submitted by the claimant valid and sufficient to establish the claimant's identity, the law enforcement officer shall complete or verify the form and the law enforcement agency shall submit the form to the department of labor as provided by the instructions.

(c) The secretary shall presume a claimant's identity has been confirmed for purposes of the employment security law upon submission of a properly completed form to the secretary by the law enforcement agency on behalf of the claimant. The presumption may be overcome by direct and credible information to the contrary.

(d) The law enforcement officer, law enforcement agency, the state or any political subdivision of the state that employs a law enforcement officer providing identity verification as provided by this section for the department of labor, shall have immunity from any civil or criminal liability for such verification action if the law enforcement officer acts in good faith and exercises due care. Participation and verification of a claimant's identity as provided by this section by a law enforcement agency or law enforcement officer shall constitute a discretionary function or duty for purposes of the Kansas tort claims act.

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

Sec. 11. K.S.A. 2020 Supp. 44-703 is hereby amended to read as follows: 44-703. As used in this act, unless the context clearly requires otherwise:

(a) (1) "Annual payroll" means the total amount of wages paid or payable by an employer during the calendar year.

(2) "Average annual payroll" means the average of the annual payrolls of any employer for the last three calendar years immediately preceding the computation date as hereinafter defined if the employer

has been continuously subject to contributions during those three calendar years and has paid some wages for employment during each of such years. In determining contribution rates for the calendar year, if an employer has not been continuously subject to contribution for the three calendar years immediately preceding the computation date but has paid wages subject to contributions during only the two calendar years immediately preceding the computation date, such employer's "average annual payroll" shall be the average of the payrolls for those two calendar years.

(3) "Total wages" means the total amount of wages paid or payable by an employer during the calendar year, including that part of remuneration in excess of the limitation prescribed as provided in subsection (o)(1) ~~of this section~~.

(b) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year, except that the base period in respect to combined wage claims means the base period as defined in the law of the paying state.

(1) If an individual lacks sufficient base period wages in order to establish a benefit year in the manner set forth above and satisfies the requirements of ~~subsection (g) of K.S.A. 44-705(g) and subsection (hh) of K.S.A. 44-703(hh)~~, and amendments thereto, the claimant shall have an alternative base period substituted for the current base period so as not to prevent establishment of a valid claim. For the purposes of this subsection, "alternative base period" means the last four completed quarters immediately preceding the date the qualifying injury occurred. In the event the wages in the alternative base period have been used on a prior claim, then they shall be excluded from the new alternative base period.

(2) For the purposes of this chapter, the term "base period" includes the alternative base period.

(c) (1) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to such individual's unemployment.

(2) "Regular benefits" means benefits payable to an individual under this act or under any other state law, including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85, other than extended benefits.

(d) "Benefit year" with respect to any individual, means the period beginning with the first day of the first week for which such individual files a valid claim for benefits, and such benefit year shall continue for one full year. In the case of a combined wage claim, the benefit year shall be the benefit year of the paying state. Following the termination of a benefit year, a subsequent benefit year shall commence on the first day of the first week with respect to which an individual next files a claim for benefits. When such filing occurs with respect to a week ~~which~~ *that* overlaps the preceding benefit year, the subsequent benefit year shall commence on the first day immediately following the expiration date of the preceding benefit year. Any claim for benefits made in accordance with ~~subsection (a) of K.S.A. 44-709(a)~~, and amendments thereto, shall be deemed to be a "valid claim" for the purposes of this subsection if the individual has been paid wages for insured work as required under ~~subsection (e) of K.S.A. 44-705(e)~~, and amendments thereto. Whenever a week of unemployment overlaps two benefit years, such week shall, for the purpose of granting waiting-period credit or benefit payment with respect thereto, be deemed to be a week of unemployment within that benefit year in which the greater part of such week occurs.

(e) "Commissioner" or "secretary" means the secretary of labor.

(f) (1) "Contributions" means the money payments to the state employment security fund ~~which~~ *that* are required to be made by employers on account of employment under K.S.A. 44-710, and amendments thereto, and voluntary payments made by employers pursuant to such statute.

(2) "Payments in lieu of contributions" means the money

payments to the state employment security fund from employers ~~which~~ *that* are required to make or ~~which that~~ elect to make such payments under ~~subsection (e) of K.S.A. 44-710(e)~~, and amendments thereto.

(g) "Employing unit" means any individual or type of organization, including any partnership, association, limited liability company, agency or department of the state of Kansas and political subdivisions thereof, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign including nonprofit corporations, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representatives of a deceased person, ~~which that~~ has in its employ one or more individuals performing services for it within this state. All individuals performing services within this state for any employing unit ~~which that~~ maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit had actual or constructive knowledge of the employment.

(h) "Employer" means:

(1) (A) Any employing unit for which agricultural labor as defined in subsection (w) ~~of this section~~ is performed and ~~which~~ during any calendar quarter in either the current or preceding calendar year paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor or for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or the preceding calendar year, employed in agricultural labor 10 or more individuals, regardless of whether they were employed at the same moment of time.

(B) For the purpose of this subsection (h)(1), any individual who is a member of a crew furnished by a crew leader to perform ~~service~~ *services* in agricultural labor for any other person shall be treated as an employee of such crew leader if:

(i) Such crew leader holds a valid certificate of registration under the federal migrant and seasonal agricultural workers protection act or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment or any other mechanized equipment, ~~which that~~ is provided by such crew leader; and

(ii) such individual is not in the employment of such other person within the meaning of subsection (i) ~~of this section~~.

(C) For the purpose of this subsection (h)(1), in the case of any individual who is furnished by a crew leader to perform ~~service~~ *services* in agricultural labor for any other person and who is not treated as an employee of such crew leader:

(i) Such other person and not the crew leader shall be treated as the employer of such individual; and

(ii) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader, either on the crew leader's own behalf or on behalf of such other person, for the ~~service~~ *services* in agricultural labor performed for such other person.

(D) For the purposes of this subsection (h)(1) "crew leader" means an individual who:

(i) Furnishes individuals to perform ~~service~~ *services* in agricultural labor for any other person;

(ii) pays, either on such individual's own behalf or on behalf of such other person, the individuals so furnished by such individual for the ~~service~~ *services* in agricultural labor performed by them; and

(iii) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(2) (A) Any employing unit ~~which that~~ for calendar year 2007 and each calendar year thereafter: (i) In any calendar quarter in either the current or preceding calendar year paid for ~~service services~~ in employment wages of \$1,500 or more; (ii) for some portion of a day in each of 20 different calendar weeks, whether or not such weeks were consecutive, in either the current or preceding calendar year, had in employment at least one individual, whether or not the same individual was in employment in each such day; or (iii) elects to have an unemployment tax account established at the time of initial registration in accordance with ~~subsection (e) of~~ K.S.A. 44-711(c), and amendments thereto.

(B) Employment of individuals to perform domestic service or agricultural labor and wages paid for such service or labor shall not be considered in determining whether an employing unit meets the criteria of this subsection (h)(2).

(3) Any employing unit for which service is employment as defined in subsection (i)(3)(E) ~~of this section~~.

(4) (A) Any employing unit, whether or not it is an employing unit under subsection (g) ~~of this section, which that~~ acquires or in any manner succeeds to: (i) Substantially all of the employing enterprises, organization, trade or business; or (ii) substantially all the assets, of another employing unit ~~which that~~ at the time of such acquisition was an employer subject to this act;

(B) any employing unit ~~which that~~ is controlled substantially, either directly or indirectly by legally enforceable means or otherwise, by the same interest or interests, whether or not such interest or interests are an employing unit under subsection (g) ~~of this section, which~~ acquires or in any manner succeeds to a portion of an employer's annual payroll, ~~which~~ is less than 100% of such employer's annual payroll, and ~~which~~ intends to continue the acquired portion as a going business.

(5) Any employing unit ~~which that~~ paid cash remuneration of \$1,000 or more in any calendar quarter in the current or preceding calendar year to individuals employed in domestic service as defined in subsection (aa) ~~of this section~~.

(6) Any employing unit ~~which that~~ having become an employer under this subsection (h) has not, under ~~subsection (b) of~~ K.S.A. 44-711(b), and amendments thereto, ceased to be an employer subject to this act.

(7) Any employing unit ~~which that~~ has elected to become fully subject to this act in accordance with ~~subsection (e) of~~ K.S.A. 44-711(c), and amendments thereto.

(8) Any employing unit not an employer by reason of any other paragraph of this subsection (h), for which within either the current or preceding calendar year services in employment are or were performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund; or ~~which that~~, as a condition for approval of this act for full tax credit against the tax imposed by the federal unemployment tax act, is required, pursuant to such act, to be an "employer" under this act.

(9) Any employing unit described in section 501(c)(3) of the federal internal revenue code of 1986 ~~which that~~ is exempt from income tax under section 501(a) of the code that had four or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or preceding calendar year, regardless of whether they were employed at the same moment of time.

(i) "Employment" means:

(1) Subject to the other provisions of this subsection, service, including ~~service services~~ in interstate commerce, performed by:

(A) Any active officer of a corporation; or

(B) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the

status of an employee subject to the provisions of subsection (i)(3)(D); or

(C) any individual other than an individual who is an employee under subsection (i)(1)(A) or subsection (i)(1)(B) above who performs services for remuneration for any person:

(i) As an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages—(, other than milk), or laundry or dry-cleaning services, for such individual's principal; or

(ii) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, a principal—(, except for side-line sales activities on behalf of some other person), of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

For purposes of subsection (i)(1)(C), the term "employment"—~~shall include~~ *includes* services described in paragraphs (i) and (ii) above only if:

(a) The contract of service contemplates that substantially all of the services are to be performed personally by such individual;

(b) the individual does not have a substantial investment in facilities used in connection with the performance of the services—(, other than in facilities for transportation); and

(c) the services are not in the nature of a single transaction that is not part of a continuing relationship with the person for whom the services are performed.

(2) The term "employment"—~~shall include~~ *includes* an individual's entire service within the United States, even though performed entirely outside this state if:

(A) The service is not localized in any state;

(B) the individual is one of a class of employees who are required to travel outside this state in performance of their duties; and

(C) the individual's base of operations is in this state, or if there is no base of operations, then the place—~~from which~~ *where* service is directed or controlled is in this state.

(3) The term "employment"—~~shall also include~~ *includes*:

(A) Services performed within this state but not covered by the provisions of subsection (i)(1) or subsection (i)(2) shall be deemed to be employment subject to this act if contributions are not required and paid with respect to such services under an unemployment compensation law of any other state or of the federal government.

(B) Services performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act only if the individual performing such services is a resident of this state and the secretary approved the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(C) Services covered by an arrangement pursuant to ~~subsection (4) of K.S.A. 44-714(j)~~, and amendments thereto, between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law, pursuant to which all services performed by an individual for an employing unit are deemed to be performed entirely within this state, shall be deemed to be employment if the secretary has approved an election of the employing unit for whom such services are performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be insured work.

(D) Services performed by an individual for wages or under any contract of hire shall be deemed to be employment subject to this act if the business for which activities of the individual are performed retains not only the right to control the end result of the activities performed,

but the manner and means by which the end result is accomplished.

(E) ~~Service~~*Services* performed by an individual in the employ of this state or any instrumentality thereof, any political subdivision of this state or any instrumentality thereof, or in the employ of an Indian tribe, as defined pursuant to section 3306(u) of the federal unemployment tax act, any instrumentality of more than one of the foregoing or any instrumentality ~~which that~~ is jointly owned by this state or a political subdivision thereof or Indian tribes and one or more other states or political subdivisions of this or other states, provided that such service is excluded from "employment" as defined in the federal unemployment tax act by reason of section 3306(c)(7) of that act and is not excluded from "employment" under subsection (i)(4)(A) of this section. For purposes of this section, the exclusions from employment in subsections (i)(4)(A) and (i)(4)(L) shall also be applicable to services performed in the employ of an Indian tribe.

(F) ~~Service~~*Services* performed by an individual in the employ of a religious, charitable, educational or other organization ~~which that~~ is excluded from the term "employment" as defined in the federal unemployment tax act solely by reason of section 3306(c)(8) of that act, and is not excluded from employment under ~~paragraphs (I) through (M)~~ of subsection (i)(4)(I) through (M).

(G) The term "employment" ~~shall include~~ *includes* the ~~service~~*services* of an individual who is a citizen of the United States, performed outside the United States except in Canada, in the employ of an American employer ~~—, other than service—~~ *which that* is deemed "employment" under the provisions of subsection (i)(2) or subsection (i)(3) or the parallel provisions of another state's law, if:

(i) The employer's principal place of business in the United States is located in this state; or

(ii) the employer has no place of business in the United States, but:

(a) The employer is an individual who is a resident of this state;

(b) the employer is a corporation which is organized under the laws of this state; or

(c) the employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(iii) none of the criteria of ~~paragraphs (i) and (ii) above of this subsection~~ (i)(3)(G)(i) and (ii) are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(H) An "American employer," for purposes of subsection (i)(3)(G), means a person who is:

(i) An individual who is a resident of the United States;

(ii) a partnership if  $\frac{2}{3}$  or more of the partners are residents of the United States;

(iii) a trust, if all of the trustees are residents of the United States;

or

(iv) a corporation organized under the laws of the United States or of any state.

(I) Notwithstanding subsection (i)(2) ~~of this section~~, all ~~service~~*services* performed by an officer or member of the crew of an American vessel or American aircraft on or in connection with such vessel or aircraft, if the operating office, from which the operations of such vessel or aircraft operating within, or within and without, the United States are ordinarily and regularly supervised, managed, directed and controlled is within this state.

(J) Notwithstanding any other provisions of this subsection (i), ~~service~~*services* with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund or ~~which that~~ as a condition for full tax credit against the tax imposed by the federal unemployment tax act is required



to be covered under this act.

(K) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority performed for a person who paid cash remuneration of \$1,000 or more in any calendar quarter in the current calendar year or the preceding calendar year to individuals employed in such domestic service.

(4) The term "employment"—~~shall~~ *does not* include: (A) ~~Service~~ *Services* performed in the employ of an employer specified in subsection (h)(3)—~~of this section~~ if such service is performed by an individual in the exercise of duties:

- (i) As an elected official;
- (ii) as a member of a legislative body, or a member of the judiciary, of a state, political subdivision or of an Indian tribe;
- (iii) as a member of the state national guard or air national guard;
- (iv) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or similar emergency;
- (v) in a position—~~which~~ *that*, under or pursuant to the laws of this state or tribal law, is designated as a major nontenured policymaking or advisory position or as a policymaking or advisory position the performance of the duties of which ordinarily does not require more than eight hours per week;

(B) ~~services~~ *services* with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(C) ~~services~~ *services* performed by an individual in the employ of such individual's son, daughter or spouse, and—~~services~~ *services* performed by a child under the age of 21 years in the employ of such individual's father or mother;

(D) ~~services~~ *services* performed in the employ of the United States government or an instrumentality of the United States exempt under the constitution of the United States from the contributions imposed by this act, except that to the extent that the congress of the United States shall permit states to require any instrumentality of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this act shall be applicable to such instrumentalities, and to services performed for such instrumentalities, in the same manner, to the same extent and on the same terms as to all other employers, employing units, individuals and services. If this state shall not be certified for any year by the federal security agency under section 3304(c) of the federal internal revenue code of 1986, the payments required of such instrumentalities with respect to such year shall be refunded by the secretary from the fund in the same manner and within the same period as is provided in ~~subsection (f) of K.S.A. 44-717(h)~~, and amendments thereto, with respect to contributions erroneously collected;

(E) ~~services~~ *services* covered by an arrangement between the secretary and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within the jurisdiction of such other state or federal agency;

(F) ~~services~~ *services* performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(G) ~~services~~ *services* performed by an individual for an employing unit as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such employing unit is performed for remuneration solely by way of commission;

(H) ~~services~~ *services* performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal internal revenue code of 1986—~~or~~, other than an organization described in section 401(a) or under section 521 of such

code), if the remuneration for such service is less than \$50. In construing the application of the term "employment," if services performed during  $\frac{1}{2}$  or more of any pay period by an individual for the person employing such individual constitute employment, all the services of such individual for such period shall be deemed to be employment; but if the services performed during more than  $\frac{1}{2}$  of any such pay period by an individual for the person employing such individual do not constitute employment, then none of the services of such individual for such period shall be deemed to be employment. As used in this subsection (i)(4)(H) the term "pay period" means a period (, of not more than 31 consecutive days), for which a payment of remuneration is ordinarily made to the individual by the person employing such individual. This subsection (i)(4)(H) shall not be applicable with respect to services with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of congress;

(I) services performed in the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(J) ~~services~~services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of such individual's ministry or by a member of a religious order in the exercise of duties required by such order;

(K) ~~services~~services performed in a facility conducted for the purpose of carrying out a program of:

(i) Rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury; or

(ii) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market, by an individual receiving such rehabilitation or remunerative work;

(L) ~~services~~services performed as part of an employment work-relief or work-training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training;

(M) ~~services~~services performed by an inmate of a custodial or correctional institution;

(N) ~~services~~services performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university;

(O) ~~services~~services performed by an individual who is enrolled at a nonprofit or public educational institution—~~which~~ that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution,—~~which~~ that combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subsection (i)(4)(O) shall not apply to service performed in a program established for or on behalf of an employer or group of employers;

(P) ~~services~~services performed in the employ of a hospital licensed, certified or approved by the secretary of health and environment, if such service is performed by a patient of the hospital;

(Q) services performed as a qualified real estate agent. As used in this subsection (i)(4)(Q) the term "qualified real estate agent" means any individual who is licensed by the Kansas real estate commission as a salesperson under the real estate brokers' and salespersons' license act and for whom:

(i) Substantially all of the remuneration, whether or not paid in cash, for the services performed by such individual as a real estate

salesperson is directly related to sales or other output, including the performance of services, rather than to the number of hours worked; and

(ii) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for state tax purposes;

(R) services performed for an employer by an extra in connection with any phase of motion picture or television production or television commercials for less than 14 days during any calendar year. As used in this subsection, the term "extra" means an individual who pantomimes in the background, adds atmosphere to the set and performs such actions without speaking and "employer" shall not include any employer—~~which~~ *that* is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986—~~which~~ *that* is exempt from income taxation under section 501(a) of the code;

(S) services performed by an oil and gas contract pumper. As used in this subsection (i)(4)(S), "oil and gas contract pumper" means a person performing pumping and other services on one or more oil or gas leases, or on both oil and gas leases, relating to the operation and maintenance of such oil and gas leases, on a contractual basis for the operators of such oil and gas leases and "services" shall not include services performed for a governmental entity or any organization described in section 501(c)(3) of the federal internal revenue code of 1986—~~which~~ *that* is exempt from income taxation under section 501(a) of the code;

(T) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$200 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if:

(i) On each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business; or

(ii) such individual was regularly employed, as determined under subparagraph (i), by such employer in the performance of such service during the preceding calendar quarter.

Such excluded service shall not include any services performed for an employer—~~which~~ *that* is a governmental entity or any employer described in section 501(c)(3) of the federal internal revenue code of 1986—~~which~~ *that* is exempt from income taxation under section 501(a) of the code;

(U) service which is performed by any person who is a member of a limited liability company and—~~which~~ *that* is performed as a member or manager of that limited liability company; and

(V) services performed as a qualified direct seller. The term "direct seller" means any person if:

(i) Such person:

(a) Is engaged in the trade or business of selling or soliciting the sale of consumer products to any buyer on a buy-sell basis or a deposit-commission basis for resale, by the buyer or any other person, in the home or otherwise rather than in a permanent retail establishment; or

(b) is engaged in the trade or business of selling or soliciting the sale of consumer products in the home or otherwise than in a permanent retail establishment;

(ii) substantially all the remuneration whether or not paid in cash for the performance of the services described in subparagraph (i) is directly related to sales or other output including the performance of services rather than to the number of hours worked;

(iii) the services performed by the person are performed pursuant

to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee for federal and state tax purposes;

(iv) for purposes of this act, a sale or a sale resulting exclusively from a solicitation made by telephone, mail, or other telecommunications method, or other nonpersonal method does not satisfy the requirements of this subsection;

(W) ~~services~~services performed as an election official or election worker, if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than \$1,000;

(X) ~~services~~services performed by agricultural workers who are aliens admitted to the United States to perform labor pursuant to section 1101 (a)(15)(H)(ii)(a) of the immigration and nationality act; ~~and~~

(Y) ~~services~~services performed by an owner-operator of a motor vehicle that is leased or contracted to a licensed motor carrier with the services of a driver and is not treated under the terms of the lease agreement or contract with the licensed motor carrier as an employee for purposes of the federal insurance contribution act, 26 U.S.C. § 3101 et seq., the federal social security act, 42 U.S.C. § 301 et seq., the federal unemployment tax act, 26 U.S.C. § 3301 et seq., and the federal statutes prescribing income tax withholding at the source, 26 U.S.C. § 3401 et seq. Employees or agents of the owner-operator shall not be considered employees of the licensed motor carrier for purposes of employment security taxation or compensation. As used in this subsection (Y), the following definitions apply: (i) "Motor vehicle" means any automobile, truck-trailer, semitrailer, tractor, motor bus or any other self-propelled or motor-driven vehicle used upon any of the public highways of Kansas for the purpose of transporting persons or property; (ii) "licensed motor carrier" means any person, firm, corporation or other business entity that holds a certificate of convenience and necessity or a certificate of public service from the state corporation commission or is required to register motor carrier equipment pursuant to 49 U.S.C. § 14504; and (iii) "owner-operator" means a person, firm, corporation or other business entity that is the owner of a single motor vehicle that is driven exclusively by the owner under a lease agreement or contract with a licensed motor carrier; *and*

(Z) *services performed by a petroleum landman on a contractual basis. As used in this subparagraph, "petroleum landman" means an individual performing services on a contractual basis who is not an individual who is an active officer of a corporation as described in subsection (i)(1)(A) that may include:*

(i) *Negotiating for the acquisition or divestiture of mineral rights;*  
(ii) *negotiating business agreements that provide exploration for or development of minerals;*

(iii) *determining ownership in minerals through the research of public and private records;*

(iv) *reviewing the status of title, curing title defects, providing title due diligence and otherwise reducing title risk associated with ownership in minerals or the acquisition and divestiture of mineral properties;*

(v) *managing rights or obligations derived from ownership of interests in minerals; or*

(vi) *unitizing or pooling of interests in minerals. For purposes of this subparagraph, "minerals" includes oil, natural gas or petroleum. "Services" does not include services performed for a governmental entity or any organization described in section 501(c)(3) of the federal internal revenue code of 1986, or a federally recognized Indian tribe that is exempt from income taxation under section 501(a) of the code.*

(j) "Employment office" means any office operated by this state and maintained by the secretary of labor for the purpose of assisting persons to become employed.

(k) "Fund" means the employment security fund established by

this act, to which all contributions and reimbursement payments required and from which all benefits provided under this act shall be paid and including all money received from the federal government as reimbursements pursuant to section 204 of the federal-state extended compensation act of 1970, and amendments thereto.

(l) "State" includes, in addition to the states of the United States of America, any dependency of the United States, the Commonwealth of Puerto Rico, the District of Columbia and the Virgin Islands.

(m) "Unemployment." An individual shall be deemed "unemployed" with respect to any week during which such individual performs no services and with respect to which no wages are payable to such individual, or with respect to any week of less than full-time work if the wages payable to such individual with respect to such week are less than such individual's weekly benefit amount.

(n) "Employment security administration fund" means the fund established by this act, from which administrative expenses under this act shall be paid.

(o) "Wages" means all compensation for services, including commissions, bonuses, back pay and the cash value of all remuneration, including benefits, paid in any medium other than cash. The reasonable cash value of remuneration in any medium other than cash, shall be estimated and determined in accordance with rules and regulations prescribed by the secretary. Compensation payable to an individual ~~which~~ that has not been actually received by that individual within 21 days after the end of the pay period in which the compensation was earned shall be considered to have been paid on the 21<sup>st</sup> day after the end of that pay period. Effective January 1, 1986, gratuities, including tips received from persons other than the employing unit, shall be considered wages when reported in writing to the employer by the employee. Employees must furnish a written statement to the employer, reporting all tips received if they total \$20 or more for a calendar month whether the tips are received directly from a person other than the employer or are paid over to the employee by the employer. This includes amounts designated as tips by a customer who uses a credit card to pay the bill. Notwithstanding the other provisions of this subsection (o), wages paid in back pay awards or settlements shall be allocated to the week or weeks and reported in the manner as specified in the award or agreement, or, in the absence of such specificity in the award or agreement, such wages shall be allocated to the week or weeks in which such wages, in the judgment of the secretary, would have been paid. The term "wages" shall not include:

(1) That part of the remuneration ~~which~~ that has been paid in a calendar year to an individual by an employer or such employer's predecessor in excess of \$3,000 for all calendar years prior to 1972, in excess of \$4,200 for the calendar years 1972 to 1977, inclusive, in excess of \$6,000 for calendar years 1978 to 1982, inclusive, in excess of \$7,000 for the calendar year 1983, in excess of \$8,000 for the calendar years 1984 to 2014, inclusive, and in excess of \$12,000 with respect to employment during calendar year 2015, and in excess of \$14,000 with respect to all calendar years thereafter, except that if the definition of the term "wages" as contained in the federal unemployment tax act is amended to include remuneration paid to an individual by an employer under the federal act in excess of \$8,000 for the calendar years 1984-2014, inclusive, and in excess of \$12,000 with respect to employment during calendar year 2015, and in excess of \$14,000 with respect to all calendar years thereafter, wages shall include remuneration paid in a calendar year to an individual by an employer subject to this act or such employer's predecessor with respect to employment during any calendar year up to an amount equal to the dollar limitation specified in the federal unemployment tax act. For the purposes of this subsection (o)(1), the term "employment" shall include service constituting employment under any employment security law of another state or of the federal government;

(2) the amount of any payment ~~to~~, including any amount paid by an

employing unit for insurance or annuities, or into a fund, to provide for any such payment), made to, or on behalf of, an employee or any of such employee's dependents under a plan or system established by an employer—~~which~~ *that* makes provisions for employees generally, for a class or classes of employees or for such employees or a class or classes of employees and their dependents, on account of: (A) Sickness or accident disability, except in the case of any payment made to an employee or such employee's dependents, this subparagraph shall exclude from the term "wages" only payments—~~which~~ *that* are received under a workers compensation law. Any third party—~~which~~ *that* makes a payment included as wages by reason of this subparagraph (2)(A) shall be treated as the employer with respect to such wages; or (B) medical and hospitalization expenses in connection with sickness or accident disability; or (C) death;

(3) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

(4) any payment made to, or on behalf of, an employee or such employee's beneficiary:

(A) From or to a trust described in section 401(a) of the federal internal revenue code of 1986—~~which~~ *that* is exempt from tax under section 501(a) of the federal internal revenue code of 1986 at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust;

(B) under or to an annuity plan—~~which~~ *that*, at the time of such payment, is a plan described in section 403(a) of the federal internal revenue code of 1986;

(C) under a simplified employee pension as defined in section 408(k)(1) of the federal internal revenue code of 1986, other than any contribution described in section 408(k)(6) of the federal internal revenue code of 1986;

(D) under or to an annuity contract described in section 403(b) of the federal internal revenue code of 1986, other than a payment for the purchase of such contract—~~which~~ *that* was made by reason of a salary reduction agreement whether evidenced by a written instrument or otherwise;

(E) under or to an exempt governmental deferred compensation plan as defined in section 3121(v)(3) of the federal internal revenue code of 1986;

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subparagraph to take into account some portion or all of the increase in the cost of living, as determined by the secretary of labor, since retirement but only if such supplemental payments are under a plan—~~which~~ *that* is treated as a welfare plan under section 3(2)(B)(ii) of the federal employee retirement income security act of 1974; or

(G) under a cafeteria plan within the meaning of section 125 of the federal internal revenue code of 1986;

(5) the payment by an employing unit—~~to~~, without deduction from the remuneration of the employee), of the tax imposed upon an employee under section 3101 of the federal internal revenue code of 1986 with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(6) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(7) remuneration paid to or on behalf of an employee if and to the extent that at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the federal internal revenue code of 1986 relating to moving expenses;

(8) any payment or series of payments by an employer to an employee or any of such employee's dependents ~~which~~ *that* is paid:

(A) Upon or after the termination of an employee's employment relationship because of (i) death or (ii) retirement for disability; and

(B) under a plan established by the employer ~~which~~ *that* makes provisions for employees generally, a class or classes of employees or for such employees or a class or classes of employees and their dependents, other than any such payment or series of payments ~~which~~ *that* would have been paid if the employee's employment relationship had not been so terminated;

(9) remuneration for agricultural labor paid in any medium other than cash;

(10) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 129 of the federal internal revenue code of 1986 ~~which~~ *that* relates to dependent care assistance programs;

(11) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the federal internal revenue code of 1986;

(12) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(13) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74(c), 117 or 132 of the federal internal revenue code of 1986;

(14) any payment made, or benefit furnished, to or for the benefit of an employee, if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 of the federal internal revenue code of 1986 relating to educational assistance to the employee; or

(15) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106(d) of the federal internal revenue code of 1986 relating to health savings accounts.

Nothing in any paragraph of subsection (o), other than paragraph (1), shall exclude from the term "wages": (1) Any employer contribution under a qualified cash or deferred arrangement, as defined in section 401(k) of the federal internal revenue code of 1986, to the extent that such contribution is not included in gross income by reason of section 402(a)(8) of the federal internal revenue code of 1986; or (2) any amount treated as an employer contribution under section 414(h)(2) of the federal internal revenue code of 1986.

Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this section as of the later of when the services are performed or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of this paragraph, and the income attributable thereto, shall not thereafter be treated as wages for purposes of this section. For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (o) (4).

(p) "Week" means such period or periods of seven consecutive calendar days, as the secretary may by rules and regulations prescribe.

(q) "Calendar quarter" means the period of three consecutive calendar months ending March 31, June 30, September 30 or December 31, or the equivalent thereof as the secretary may by rules and regulations prescribe.

(r) "Insured work" means employment for employers.

(s) "Approved training" means any vocational training course or course in basic education skills, including a job training program authorized under the federal workforce investment act of 1998, approved by the secretary or a person or persons designated by the secretary.

(t) "American vessel" or "American aircraft" means any vessel or aircraft documented or numbered or otherwise registered under the laws of the United States; and any vessel or aircraft ~~which~~ *that* is neither documented or numbered or otherwise registered under the laws of the United States nor documented under the laws of any foreign country, if its crew performs service solely for one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any state.

(u) "Institution of higher education," for the purposes of this section, means an educational institution ~~which~~ *that*:

(1) Admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program ~~which~~ *that* is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

Notwithstanding any of the foregoing provisions of this subsection (u), all colleges and universities in this state are institutions of higher education for purposes of this section, except that no college, university, junior college or other postsecondary school or institution ~~which~~ *that* is operated by the federal government or any agency thereof shall be an institution of higher education for purposes of the employment security law.

(v) "Educational institution" means any institution of higher education, as defined in subsection (u) ~~of this section~~, or any institution, except private for profit institutions, in which participants, trainees or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher and ~~which~~ *that* is approved, licensed or issued a permit to operate as a school by the state department of education or other government agency that is authorized within the state to approve, license or issue a permit for the operation of a school or to an Indian tribe in the operation of an educational institution. The courses of study or training ~~which~~ *that* an educational institution offers may be academic, technical, trade or preparation for gainful employment in a recognized occupation.

(w) (1) "Agricultural labor" means any remunerated service:

(A) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife.

(B) In the employ of the owner or tenant or other operator of a farm, in connection with the operating, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(C) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section (15)(g) of the agricultural marketing act, as amended ~~(, 46 Stat. 1500, sec. 3; 12 U.S.C. § 1141j)~~, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals,



reservoirs or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(D) (i) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than  $\frac{1}{2}$  of the commodity with respect to which such service is performed;

(ii) in the employ of a group of operators of farms—~~(, or a cooperative organization of which such operators are members)~~, in the performance of ~~service services~~ described in paragraph (i) ~~above of this subsection (w)(1)(D)~~, but only if such operators produced more than  $\frac{1}{2}$  of the commodity with respect to which such service is performed;

(iii) the provisions of paragraphs (i) and (ii) ~~above of this subsection (w)(1)(D)~~ shall not be deemed to be applicable with respect to ~~service services~~ performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

(E) On a farm operated for profit if such service is not in the course of the employer's trade or business.

(2) "Agricultural labor" does not include ~~service services~~ performed prior to January 1, 1980, by an individual who is an alien admitted to the United States to perform service in agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the federal immigration and nationality act.

(3) As used in this subsection ~~(w)~~, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(4) For the purpose of this section, if an employing unit does not maintain sufficient records to separate agricultural labor from other employment, all services performed during any pay period by an individual for the person employing such individual shall be deemed to be agricultural labor if services performed during  $\frac{1}{2}$  or more of such pay period constitute agricultural labor; but if the services performed during more than  $\frac{1}{2}$  of any such pay period by an individual for the person employing such individual do not constitute agricultural labor, then none of the services of such individual for such period shall be deemed to be agricultural labor. As used in this subsection ~~(w)~~, the term "pay period" means a period of not more than 31 consecutive days for which a payment of remuneration is ordinarily made to the individual by the person employing such individual.

(x) "Reimbursing employer" means any employer who makes payments in lieu of contributions to the employment security fund as provided in ~~subsection (e) of K.S.A. 44-710(e)~~, and amendments thereto.

(y) "Contributing employer" means any employer other than a reimbursing employer or rated governmental employer.

(z) "Wage combining plan" means a uniform national arrangement approved by the United States secretary of labor in consultation with the state unemployment compensation agencies and in which this state shall participate, whereby wages earned in one or more states are transferred to another state, called the "paying state," and combined with wages in the paying state, if any, for the payment of benefits under the laws of the paying state and as provided by an arrangement so approved by the United States secretary of labor.

(aa) "Domestic service" means any ~~service services~~ for a person in the operation and maintenance of a private household, local college club or local chapter of a college fraternity or sorority, as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise or vocation.

(bb) "Rated governmental employer" means any governmental

entity ~~which~~ that elects to make payments as provided by K.S.A. 44-710d, and amendments thereto.

(cc) "Benefit cost payments" means payments made to the employment security fund by a governmental entity electing to become a rated governmental employer.

(dd) "Successor employer" means any employer, as described in subsection (h) ~~of this section, which~~ that acquires or in any manner succeeds to: (1) Substantially all of the employing enterprises, organization, trade or business of another employer; or (2) substantially all the assets of another employer.

(ee) "Predecessor employer" means an employer, as described in subsection (h) ~~of this section~~, who has previously operated a business or portion of a business with employment to which another employer has succeeded.

(ff) "Lessor employing unit" means any independently established business entity ~~which~~ that engages in the business of providing leased employees to a client lessee.

(gg) "Client lessee" means any individual, organization, partnership, corporation or other legal entity leasing employees from a lessor employing unit.

(hh) "Qualifying injury" means a personal injury by accident arising out of and in the course of employment within the coverage of the Kansas workers compensation act, K.S.A. 44-501 et seq., and amendments thereto.

Sec. 12. K.S.A. 2020 Supp. 44-704 is hereby amended to read as follows: 44-704. (a) *Payment of benefits.* All benefits provided herein shall be payable from the fund. All benefits shall be paid through the secretary of labor, in accordance with such rules and regulations as the secretary may adopt. Benefits based on service in employment defined in K.S.A. 44-703(i)(3)(E) and (i)(3)(F), and amendments thereto, shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act except as provided in K.S.A. 44-705(e) and 44-711(e), and amendments thereto.

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

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

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

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

(c) *Maximum weekly benefit amount.* (1) For initial claims effective prior to 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 60% of the average weekly wages paid to employees in insured work during the previous calendar year 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 mid-month employment during such calendar year multiplied by 52. The maximum weekly benefit amount so determined and announced for the twelve-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 twelve-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.

(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 mid-month 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.

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

(e) 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 subsequent change in the maximum weekly benefit amount.

(f) *Weekly benefit payable.* Each eligible individual who is unemployed with respect to any week, except as to final payment, shall be paid with respect to such week a benefit in an amount equal to such individual's determined weekly benefit amount, less that part of the wage, if any, payable to such individual with respect to such week that is in excess of the amount that is equal to 25% of such individual's determined weekly benefit amount, and if the resulting amount is not a multiple of \$1, it shall be reduced to the next lower multiple of \$1.

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

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

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

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

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

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

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

(D) moneys received as federal social security payments.

(3) For the purposes of this subsection, "employment benefits within the employer's control" means benefits offered by the employer to employees that 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 that the employer has the option to continue to provide to the employee after the last day that the employee worked for that employer.

(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.

(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 when the employing unit by whom such wages were paid has satisfied the conditions of K.S.A. 44-703(h), and amendments thereto, with respect to becoming an employer.

(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 payment of the separation pay to the individual until such amount so paid is exhausted.

(2) If benefits for any week, when reduced as provided in this subsection, result in an amount that is not a multiple of \$1, such benefits shall be rounded to the next lower multiple of \$1.

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

(j) Except as provided in subsection (k), for weeks commencing on and after January 1, 2014, *and ending before September 5, 2021*, 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 maximum of 26 weeks of benefits.

(k) On and after the effective date of this act, a claimant shall be eligible for a maximum of 26 weeks of benefits. A claimant who filed a new claim on or after January 1, 2020, and before the effective date of this act shall be eligible for a maximum of 26 weeks of benefits including the number of weeks of benefits received after January 1, 2020, and before the effective date of this act. This subsection shall not apply to initial claims effective on and after ~~April 1~~ September 5, 2021.

(l) *For weeks commencing on and after September 5, 2021, 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 5%, a claimant shall be eligible for a maximum of 16 weeks of benefits; (2) at least 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 maximum of 26 weeks of benefits.*

*(m) Upon the secretary of labor's receipt of notification that the claimant has become employed, the secretary shall notify the secretary of the department for children and families in order that the secretary for children and families may determine the claimant's eligibility for state or federal benefits provided or facilitated by the department for children and families. The department of labor and the department for children and families shall enter into a memorandum of understanding that shall provide for the transfer of information as provided in this subsection.*

Sec. 13. K.S.A. 2020 Supp. 44-705 is hereby amended to read as follows: 44-705. Except as provided by K.S.A. 44-757, and amendments thereto, an unemployed individual shall be eligible to receive benefits with respect to any week only if the secretary, or a person or persons designated by the secretary, finds that:

(a) The claimant has registered for work at and thereafter continued to report at an employment office in accordance with rules and regulations adopted by the secretary, except that, subject to the provisions of K.S.A. 44-704(a), and amendments thereto, the secretary may adopt rules and regulations that waive or alter either or both of the requirements of this subsection.

(b) The claimant has made a claim for benefits with respect to such week in accordance with rules and regulations adopted by the secretary.

(c) (1) The claimant is able to perform the duties of such claimant's customary occupation or the duties of other occupations that the claimant is reasonably fitted by training or experience, and is available for work, as demonstrated by the claimant's pursuit of the full course of action most reasonably calculated to result in the claimant's reemployment except that, notwithstanding any other provisions of this section, an unemployed claimant otherwise eligible for benefits shall not become ineligible for benefits:

~~(1)(A)~~ Because of the claimant's enrollment in and satisfactory pursuit of approved training, including training approved under section 236(a)(1) of the trade act of 1974;

~~(2)(B)~~ solely because such individual is seeking only part-time employment if the individual is available for a number of hours per week that are comparable to the individual's part-time work experience in the base period; or

~~(3)(C)~~ because a claimant is not actively seeking work:

(i) During a state of disaster emergency proclaimed by the governor pursuant to K.S.A. 48-924 and 48-925, and amendments thereto;

(ii) in response to the spread of the public health emergency of COVID-19; and

(iii) the state's temporary waiver of the work search requirement under the employment security law for such claimant is in compliance with the families first coronavirus response act, public law 116-127.

(2) *The secretary shall develop and implement procedures to address claimants who refuse to return to suitable work or refuse to accept an offer of suitable work without good cause. Such procedures shall include the receipt and processing of job refusal reports from employers, the evaluation of such reports in consideration of the claimant's work history and skills and suitability of the offered employment and guidelines for a determination of whether the claimant shall remain eligible for unemployment benefits or has failed to meet the work search requirements of this subsection or the requirements of K.S.A. 2020 Supp. 44-706(c), and amendments thereto. In determining whether the employment offered is suitable, the secretary's considerations shall include whether the employment offers wages comparable to the claimant's recent employment and work duties that correspond to the claimant's education level and previous work experience. The secretary shall also consider whether the employment*

*offers wages of at least the amount of the claimant's maximum weekly benefits.*

*(3) To facilitate the requirements of paragraph (2), the secretary shall provide readily accessible means for employers to notify the department when a claimant refuses to return to work or refuses an offer of employment, including by telephone, email or an online web portal. Nothing in this subsection shall be construed as to require an employer to report such job refusals to the department.*

*(4) At the time of receipt of notice from an employer pursuant to paragraph (3), the secretary shall, within 10 business days of receipt of such notice from the employer, provide a notice to the claimant who has refused to return to work or to accept an offer of suitable work without good cause. The method of providing the notice to the claimant shall be consistent with other correspondence from the department to the claimant and may include mail, telephone, email or through an online web portal. The notice shall, at minimum, include the following information:*

*(A) A summary of state employment security law regarding a claimant's duties to return to work or accept suitable work;*

*(B) a statement that the claimant has been or may be disqualified and the claimant's right to collect benefits has been or may be terminated for refusal to return to work or accept suitable work without good cause, as provided by this subsection and K.S.A. 2020 Supp. 44-706(c), and amendments thereto;*

*(C) an explanation of what constitutes suitable work under the employment security law; and*

*(D) instructions for contesting a denial of a claim if the denial is based upon a report by an employer that the claimant has refused to return to work or has refused to accept an offer of suitable work.*

*(5) For the purposes of this subsection, an inmate of a custodial or correctional institution shall be deemed to be unavailable for work and not eligible to receive unemployment compensation while incarcerated.*

*(d) (1) Except as provided further, the claimant has been unemployed for a waiting period of one week or the claimant is unemployed and has satisfied the requirement for a waiting period of one week under the shared work unemployment compensation program as provided in K.S.A. 44-757(k)(4), and amendments thereto, and that period of one week, in either case, occurs within the benefit year that includes the week for which the claimant is claiming benefits. No week shall be counted as a week of unemployment for the purposes of this subsection:*

*(A) If benefits have been paid for such week;*

*(B) if the individual fails to meet with the other eligibility requirements of this section; or*

*(C) if an individual is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such state or of the United States finally determines that the claimant is not entitled to unemployment benefits under such other law, this subparagraph shall not apply.*

*(2) (A) The waiting week requirement of paragraph (1) shall not apply to:*

*(i) New claims by claimants who become unemployed as a result of an employer terminating business operations within this state, declaring bankruptcy or initiating a work force reduction pursuant to public law 100-379, the federal worker adjustment and retraining notification act, 29 U.S.C. §§ 2101 through 2109, as amended; or*

*(ii) new claims filed on or after April 5, 2020, through December 26, 2020, in accordance with the families first coronavirus response act, public law 116-127 and the federal CARES act, public law 116-136.*

*(B) The secretary shall adopt rules and regulations to administer the provisions of this paragraph.*

*(3) If the waiting week requirement of paragraph (1) applies, a claimant shall become eligible to receive compensation for the waiting*

period of one week, pursuant to paragraph (1), upon completion of three weeks of unemployment consecutive to such waiting period. This paragraph shall not apply to initial claims effective on and after April 1, 2021.

(e) For benefit years established on and after the effective date of this act, the claimant has been paid total wages for insured work in the claimant's base period of not less than 30 times the claimant's weekly benefit amount and has been paid wages in more than one quarter of the claimant's base period, except that the wage credits of an individual earned during the period commencing with the end of a prior base period and ending on the date that such individual filed a valid initial claim shall not be available for benefit purposes in a subsequent benefit year unless, in addition thereto, such individual has returned to work and subsequently earned wages for insured work in an amount equal to at least eight times the claimant's current weekly benefit amount.

(f) The claimant participates in reemployment services, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the secretary, unless the secretary determines that: (1) The individual has completed such services; or (2) there is justifiable cause for the claimant's failure to participate in such services.

(g) The claimant is returning to work after a qualifying injury and has been paid total wages for insured work in the claimant's alternative base period of not less than 30 times the claimant's weekly benefit amount and has been paid wages in more than one quarter of the claimant's alternative base period if:

(1) The claimant has filed for benefits within four weeks of being released to return to work by a licensed and practicing health care provider;

(2) the claimant files for benefits within 24 months of the date the qualifying injury occurred; and

(3) the claimant attempted to return to work with the employer where the qualifying injury occurred, but the individual's regular work or comparable and suitable work was not available.

Sec. 14. K.S.A. 2020 Supp. 44-706 is hereby amended to read as follows: 44-706. The secretary shall examine whether an individual has separated from employment for each week claimed. The secretary shall apply the provisions of this section to the individual's most recent employment prior to the week claimed. An individual shall be disqualified for benefits:

(a) If the individual left work voluntarily without good cause attributable to the work or the employer, subject to the other provisions of this subsection. For purposes of this subsection, "good cause" is cause of such gravity that would impel a reasonable, not supersensitive, individual exercising ordinary common sense to leave employment. Good cause requires a showing of good faith of the individual leaving work, including the presence of a genuine desire to work. Failure to return to work after expiration of approved personal or medical leave, or both, shall be considered a voluntary resignation. After a temporary job assignment, failure of an individual to affirmatively request an additional assignment on the next succeeding workday, if required by the employment agreement, after completion of a given work assignment, shall constitute leaving work voluntarily. The disqualification shall begin the day following the separation and shall continue until after the individual has become reemployed and has had earnings from insured work of at least three times the individual's weekly benefit amount. An individual shall not be disqualified under this subsection if:

(1) The individual was forced to leave work because of illness or injury upon the advice of a licensed and practicing health care provider and, upon learning of the necessity for absence, immediately notified the employer thereof, or the employer consented to the absence, and after recovery from the illness or injury, when recovery was certified by

a practicing health care provider, the individual returned to the employer and offered to perform services and the individual's regular work or comparable and suitable work was not available. As used in this paragraph "health care provider" means any person licensed by the proper licensing authority of any state to engage in the practice of medicine and surgery, osteopathy, chiropractic, dentistry, optometry, podiatry or psychology;

(2) the individual left temporary work to return to the regular employer;

(3) the individual left work to enlist in the armed forces of the United States, but was rejected or delayed from entry;

(4) the spouse of an individual who is a member of the armed forces of the United States who left work because of the voluntary or involuntary transfer of the individual's spouse from one job to another job, which is for the same employer or for a different employer, at a geographic location which makes it unreasonable for the individual to continue work at the individual's job. For the purposes of this provision the term "armed forces" means active duty in the army, navy, marine corps, air force, coast guard or any branch of the military reserves of the United States;

(5) the individual left work because of hazardous working conditions; in determining whether or not working conditions are hazardous for an individual, the degree of risk involved to the individual's health, safety and morals, the individual's physical fitness and prior training and the working conditions of workers engaged in the same or similar work for the same and other employers in the locality shall be considered; as used in this paragraph, "hazardous working conditions" means working conditions that could result in a danger to the physical or mental well-being of the individual; each determination as to whether hazardous working conditions exist shall include, but shall not be limited to, a consideration of: (A) The safety measures used or the lack thereof; and (B) the condition of equipment or lack of proper equipment; no work shall be considered hazardous if the working conditions surrounding the individual's work are the same or substantially the same as the working conditions generally prevailing among individuals performing the same or similar work for other employers engaged in the same or similar type of activity;

(6) the individual left work to enter training approved under section 236(a)(1) of the federal trade act of 1974, provided the work left is not of a substantially equal or higher skill level than the individual's past adversely affected employment, as defined for purposes of the federal trade act of 1974, and wages for such work are not less than 80% of the individual's average weekly wage as determined for the purposes of the federal trade act of 1974;

(7) the individual left work because of unwelcome harassment of the individual by the employer or another employee of which the employing unit had knowledge and that would impel the average worker to give up such worker's employment;

(8) the individual left work to accept better work; each determination as to whether or not the work accepted is better work shall include, but shall not be limited to, consideration of: (A) The rate of pay, the hours of work and the probable permanency of the work left as compared to the work accepted; (B) the cost to the individual of getting to the work left in comparison to the cost of getting to the work accepted; and (C) the distance from the individual's place of residence to the work accepted in comparison to the distance from the individual's residence to the work left;

(9) the individual left work as a result of being instructed or requested by the employer, a supervisor or a fellow employee to perform a service or commit an act in the scope of official job duties which is in violation of an ordinance or statute;

(10) the individual left work because of a substantial violation of the work agreement by the employing unit and, before the individual left, the individual had exhausted all remedies provided in such



agreement for the settlement of disputes before terminating. For the purposes of this paragraph, a demotion based on performance does not constitute a violation of the work agreement;

(11) after making reasonable efforts to preserve the work, the individual left work due to a personal emergency of such nature and compelling urgency that it would be contrary to good conscience to impose a disqualification; or

(12) (A) the individual left work due to circumstances resulting from domestic violence, including:

(i) The individual's reasonable fear of future domestic violence at or en route to or from the individual's place of employment;

(ii) the individual's need to relocate to another geographic area in order to avoid future domestic violence;

(iii) the individual's need to address the physical, psychological and legal impacts of domestic violence;

(iv) the individual's need to leave employment as a condition of receiving services or shelter from an agency which provides support services or shelter to victims of domestic violence; or

(v) the individual's reasonable belief that termination of employment is necessary to avoid other situations which may cause domestic violence and to provide for the future safety of the individual or the individual's family.

(B) An individual may prove the existence of domestic violence by providing one of the following:

(i) A restraining order or other documentation of equitable relief by a court of competent jurisdiction;

(ii) a police record documenting the abuse;

(iii) documentation that the abuser has been convicted of one or more of the offenses enumerated in articles 34 and 35 of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or articles 54 or 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2020 Supp. 21-6104, 21-6325, 21-6326 or 21-6418 through 21-6422, and amendments thereto, where the victim was a family or household member;

(iv) medical documentation of the abuse;

(v) a statement provided by a counselor, social worker, health care provider, clergy, shelter worker, legal advocate, domestic violence or sexual assault advocate or other professional who has assisted the individual in dealing with the effects of abuse on the individual or the individual's family; or

(vi) a sworn statement from the individual attesting to the abuse.

(C) No evidence of domestic violence experienced by an individual, including the individual's statement and corroborating evidence, shall be disclosed by the department of labor unless consent for disclosure is given by the individual.

(b) If the individual has been discharged or suspended for misconduct connected with the individual's work. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and in cases where the disqualification is due to discharge for misconduct has had earnings from insured work of at least three times the individual's determined weekly benefit amount, except that if an individual is discharged for gross misconduct connected with the individual's work, such individual shall be disqualified for benefits until such individual again becomes employed and has had earnings from insured work of at least eight times such individual's determined weekly benefit amount. In addition, all wage credits attributable to the employment from which the individual was discharged for gross misconduct connected with the individual's work shall be canceled. No such cancellation of wage credits shall affect prior payments made as a result of a prior separation.

(1) For the purposes of this subsection, "misconduct" is defined as a violation of a duty or obligation reasonably owed the employer as a condition of employment including, but not limited to, a violation of a

company rule, including a safety rule, if: (A) The individual knew or should have known about the rule; (B) the rule was lawful and reasonably related to the job; and (C) the rule was fairly and consistently enforced.

(2) (A) Failure of the employee to notify the employer of an absence and an individual's leaving work prior to the end of such individual's assigned work period without permission shall be considered prima facie evidence of a violation of a duty or obligation reasonably owed the employer as a condition of employment.

(B) For the purposes of this subsection, misconduct shall include, but not be limited to, violation of the employer's reasonable attendance expectations if the facts show:

- (i) The individual was absent or tardy without good cause;
- (ii) the individual had knowledge of the employer's attendance expectation; and
- (iii) the employer gave notice to the individual that future absence or tardiness may or will result in discharge.

(C) For the purposes of this subsection, if an employee disputes being absent or tardy without good cause, the employee shall present evidence that a majority of the employee's absences or tardiness were for good cause. If the employee alleges that the employee's repeated absences or tardiness were the result of health related issues, such evidence shall include documentation from a licensed and practicing health care provider as defined in subsection (a)(1).

(3) (A) The term "gross misconduct" as used in this subsection shall be construed to mean conduct evincing extreme, willful or wanton misconduct as defined by this subsection. Gross misconduct shall include, but not be limited to: (i) Theft; (ii) fraud; (iii) intentional damage to property; (iv) intentional infliction of personal injury; or (v) any conduct that constitutes a felony.

(B) For the purposes of this subsection, the following shall be conclusive evidence of gross misconduct:

(i) The use of alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance by an individual while working;

(ii) the impairment caused by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance by an individual while working;

(iii) a positive breath alcohol test or a positive chemical test, provided:

- (a) The test was either:
  - (1) Required by law and was administered pursuant to the drug free workplace act, 41 U.S.C. § 701 et seq.;
  - (2) administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;
  - (3) requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment;
  - (4) required by law and the test constituted a required condition of employment for the individual's job; or
  - (5) there was reasonable suspicion to believe that the individual used, had possession of, or was impaired by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance while working;
- (b) the test sample was collected either:
  - (1) As prescribed by the drug free workplace act, 41 U.S.C. § 701 et seq.;
  - (2) as prescribed by an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;
  - (3) as prescribed by the written policy of the employer of which the employee had knowledge and which constituted a required condition of employment;
  - (4) as prescribed by a test which was required by law and which constituted a required condition of employment for the individual's job;

or

(5) at a time contemporaneous with the events establishing probable cause;

(c) the collecting and labeling of a chemical test sample was performed by a licensed health care professional or any other individual certified pursuant to paragraph (b)(3)(A)(iii)(f) or authorized to collect or label test samples by federal or state law, or a federal or state rule or regulation having the force or effect of law, including law enforcement personnel;

(d) the chemical test was performed by a laboratory approved by the United States department of health and human services or licensed by the department of health and environment, except that a blood sample may be tested for alcohol content by a laboratory commonly used for that purpose by state law enforcement agencies;

(e) the chemical test was confirmed by gas chromatography, gas chromatography-mass spectroscopy or other comparably reliable analytical method, except that no such confirmation is required for a blood alcohol sample or a breath alcohol test;

(f) the breath alcohol test was administered by an individual trained to perform breath tests, the breath testing instrument used was certified and operated strictly according to a description provided by the manufacturers and the reliability of the instrument performance was assured by testing with alcohol standards; and

(g) the foundation evidence establishes, beyond a reasonable doubt, that the test results were from the sample taken from the individual;

(iv) an individual's refusal to submit to a chemical test or breath alcohol test, provided:

(a) The test meets the standards of the drug free workplace act, 41 U.S.C. § 701 et seq.;

(b) the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment;

(c) the test was otherwise required by law and the test constituted a required condition of employment for the individual's job;

(d) the test was requested pursuant to a written policy of the employer of which the employee had knowledge and was a required condition of employment; or

(e) there was reasonable suspicion to believe that the individual used, possessed or was impaired by alcoholic liquor, cereal malt beverage or a nonprescribed controlled substance while working;

(v) an individual's dilution or other tampering of a chemical test.

(C) For purposes of this subsection:

(i) "Alcohol concentration" means the number of grams of alcohol per 210 liters of breath;

(ii) "alcoholic liquor"~~shall be defined~~ *means the same* as provided in K.S.A. 41-102, and amendments thereto;

(iii) "cereal malt beverage"~~shall be defined~~ *means the same* as provided in K.S.A. 41-2701, and amendments thereto;

(iv) "chemical test"~~shall include~~ *includes*, but is not limited to, tests of urine, blood or saliva;

(v) "controlled substance"~~shall be defined~~ *means the same* as provided in K.S.A. 2020 Supp. 21-5701, and amendments thereto;

(vi) "required by law" means required by a federal or state law, a federal or state rule or regulation having the force and effect of law, a county resolution or municipal ordinance, or a policy relating to public safety adopted in an open meeting by the governing body of any special district or other local governmental entity;

(vii) "positive breath test"~~shall mean~~ *means* a test result showing an alcohol concentration of 0.04 or greater, or the levels listed in 49 C.F.R. part 40, if applicable, unless the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a

condition of further employment, in which case "positive chemical test" shall mean a test result showing an alcohol concentration at or above the levels provided for in the assistance or treatment program;

(viii) "positive chemical test" ~~shall mean~~ *means* a chemical result showing a concentration at or above the levels listed in K.S.A. 44-501, and amendments thereto, or 49 C.F.R. part 40, as applicable, for the drugs or abuse listed therein, unless the test was administered as part of an employee assistance program or other drug or alcohol treatment program in which the employee was participating voluntarily or as a condition of further employment, in which case "positive chemical test" ~~shall mean~~ *means* a chemical result showing a concentration at or above the levels provided for in the assistance or treatment program.

(4) An individual shall not be disqualified under this subsection if the individual is discharged under the following circumstances:

(A) The employer discharged the individual after learning the individual was seeking other work or when the individual gave notice of future intent to quit, except that the individual shall be disqualified after the time at which such individual intended to quit and any individual who commits misconduct after such individual gives notice to such individual's intent to quit shall be disqualified;

(B) the individual was making a good-faith effort to do the assigned work but was discharged due to:

- (i) Inefficiency;
- (ii) unsatisfactory performance due to inability, incapacity or lack of training or experience;
- (iii) isolated instances of ordinary negligence or inadvertence;
- (iv) good-faith errors in judgment or discretion; or
- (v) unsatisfactory work or conduct due to circumstances beyond the individual's control; or

(C) the individual's refusal to perform work in excess of the contract of hire.

(c) If the individual has failed, without good cause, to either apply for suitable work when so directed by the employment office of the secretary of labor, or to accept suitable work when offered to the individual by the employment office, the secretary of labor, or an employer, such disqualification shall begin with the week in which such failure occurred and shall continue until the individual becomes reemployed and has had earnings from insured work of at least three times such individual's determined weekly benefit amount. In determining whether or not any work is suitable for an individual, the secretary of labor, or a person or persons designated by the secretary, shall consider the degree of risk involved to health, safety and morals, physical fitness and prior training, experience and prior earnings, length of unemployment and prospects for securing local work in the individual's customary occupation or work for which the individual is reasonably fitted by training or experience, and the distance of the available work from the individual's residence. Notwithstanding any other provisions of this act, an otherwise eligible individual shall not be disqualified for refusing an offer of suitable employment, or failing to apply for suitable employment when notified by an employment office, or for leaving the individual's most recent work accepted during approved training, including training approved under section 236(a)(1) of the trade act of 1974, if the acceptance of or applying for suitable employment or continuing such work would require the individual to terminate approved training and no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions: (1) If the position offered is vacant due directly to a strike, lockout or other labor dispute; (2) if the remuneration, hours or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; (3) if as a condition of being employed, the individual would be required to join or to resign from or refrain from joining any labor organization; and (4) if the individual left employment as a result of domestic

violence, and the position offered does not reasonably accommodate the individual's physical, psychological, safety, or legal needs relating to such domestic violence.

(d) For any week with respect to which the secretary of labor, or a person or persons designated by the secretary, finds that the individual's unemployment is due to a stoppage of work which exists because of a labor dispute or there would have been a work stoppage had normal operations not been maintained with other personnel previously and currently employed by the same employer at the factory, establishment or other premises at which the individual is or was last employed, except that this subsection (d) shall not apply if it is shown to the satisfaction of the secretary of labor, or a person or persons designated by the secretary, that: (1) The individual is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and (2) the individual does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs any of whom are participating in or financing or directly interested in the dispute. If in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection be deemed to be a separate factory, establishment or other premises. For the purposes of this subsection, failure or refusal to cross a picket line or refusal for any reason during the continuance of such labor dispute to accept the individual's available and customary work at the factory, establishment or other premises where the individual is or was last employed shall be considered as participation and interest in the labor dispute.

(e) For any week with respect to which or a part of which the individual has received or is seeking unemployment benefits under the unemployment compensation law of any other state or of the United States, except that if the appropriate agency of such other state or the United States finally determines that the individual is not entitled to such unemployment benefits, this disqualification shall not apply.

(f) For any week with respect to which the individual is entitled to receive any unemployment allowance or compensation granted by the United States under an act of congress to ex-service men and women in recognition of former service with the military or naval services of the United States.

(g) ~~For the period of five years beginning with the first day following the last week of unemployment for which the individual received benefits, or for five years from the date the act was committed, whichever is the later,~~ If the individual, or another in such individual's behalf with the knowledge of the individual, has knowingly made a false statement or representation, or has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor, *unless the individual has repaid the full amount of the overpayment as determined by the secretary or the secretary's designee, including, but not limited to, the total amount of money erroneously paid as benefits or unlawfully obtained, interest, penalties and any other costs or fees provided by law. If the individual has made such repayment, the individual shall be disqualified for a period of one year for the first occurrence or five years for any subsequent occurrence, beginning with the first day following the date the department of labor confirmed the individual has successfully repaid the full amount of the overpayment.* In addition to the penalties set forth in K.S.A. 44-719, and amendments thereto, an individual who has knowingly made a false statement or representation or who has knowingly failed to disclose a material fact to obtain or increase benefits under this act or any other unemployment compensation law administered by the secretary of labor shall be liable for a penalty in the amount equal to 25% of the amount of benefits unlawfully received.

Notwithstanding any other provision of law, such penalty shall be deposited into the employment security trust fund. *No person who is a victim of identity theft shall be subject to the provisions of this subsection. The secretary shall investigate all cases of an alleged false statement or representation or failure to disclose a material fact to ensure no victim of identity theft is disqualified, required to repay or subject to any penalty as provided by this subsection as a result of identity theft.*

(h) For any week with respect to which the individual is receiving compensation for temporary total disability or permanent total disability under the workmen's compensation law of any state or under a similar law of the United States.

(i) For any week of unemployment on the basis of service in an instructional, research or principal administrative capacity for an educational institution as defined in K.S.A. 44-703(v), and amendments thereto, if such week begins during the period between two successive academic years or terms or, when an agreement provides instead for a similar period between two regular but not successive terms during such period or during a period of paid sabbatical leave provided for in the individual's contract, if the individual performs such services in the first of such academic years or terms and there is a contract or a reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms.

(j) For any week of unemployment on the basis of service in any capacity other than service in an instructional, research, or administrative capacity in an educational institution, as defined in K.S.A. 44-703(v), and amendments thereto, if such week begins during the period between two successive academic years or terms if the individual performs such services in the first of such academic years or terms and there is a reasonable assurance that the individual will perform such services in the second of such academic years or terms, except that if benefits are denied to the individual under this subsection and the individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of benefits for each week for which the individual filed a timely claim for benefits and for which benefits were denied solely by reason of this subsection.

(k) For any week of unemployment on the basis of service in any capacity for an educational institution as defined in K.S.A. 44-703(v), and amendments thereto, if such week begins during an established and customary vacation period or holiday recess, if the individual performs services in the period immediately before such vacation period or holiday recess and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess.

(l) For any week of unemployment on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, if such week begins during the period between two successive sport seasons or similar period if such individual performed services in the first of such seasons or similar periods and there is a reasonable assurance that such individual will perform such services in the later of such seasons or similar periods.

(m) For any week on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 212(d)(5) of the federal immigration and nationality act. Any data or information required of individuals

applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of such individual's alien status shall be made except upon a preponderance of the evidence.

(n) For any week in which an individual is receiving a governmental or other pension, retirement or retired pay, annuity or other similar periodic payment under a plan maintained by a base period employer and to which the entire contributions were provided by such employer, except that: (1) If the entire contributions to such plan were provided by the base period employer but such individual's weekly benefit amount exceeds such governmental or other pension, retirement or retired pay, annuity or other similar periodic payment attributable to such week, the weekly benefit amount payable to the individual shall be reduced, but not below zero, by an amount equal to the amount of such pension, retirement or retired pay, annuity or other similar periodic payment which is attributable to such week; or (2) if only a portion of contributions to such plan were provided by the base period employer, the weekly benefit amount payable to such individual for such week shall be reduced, but not below zero, by the prorated weekly amount of the pension, retirement or retired pay, annuity or other similar periodic payment after deduction of that portion of the pension, retirement or retired pay, annuity or other similar periodic payment that is directly attributable to the percentage of the contributions made to the plan by such individual; or (3) if the entire contributions to the plan were provided by such individual, or by the individual and an employer, or any person or organization, who is not a base period employer, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection; or (4) whatever portion of contributions to such plan were provided by the base period employer, if the services performed for the employer by such individual during the base period, or remuneration received for the services, did not affect the individual's eligibility for, or increased the amount of, such pension, retirement or retired pay, annuity or other similar periodic payment, no reduction in the weekly benefit amount payable to the individual for such week shall be made under this subsection. No reduction shall be made for payments made under the social security act or railroad retirement act of 1974.

(o) For any week of unemployment on the basis of services performed in any capacity and under any of the circumstances described in subsection (i), (j) or (k)—~~which~~ *that* an individual performed in an educational institution while in the employ of an educational service agency. For the purposes of this subsection, the term "educational service agency" means a governmental agency or entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions.

(p) For any week of unemployment on the basis of service as a school bus or other motor vehicle driver employed by a private contractor to transport pupils, students and school personnel to or from school-related functions or activities for an educational institution, as defined in K.S.A. 44-703(v), and amendments thereto, if such week begins during the period between two successive academic years or during a similar period between two regular terms, whether or not successive, if the individual has a contract or contracts, or a reasonable assurance thereof, to perform services in any such capacity with a private contractor for any educational institution for both such academic years or both such terms. An individual shall not be disqualified for benefits as provided in this subsection for any week of unemployment on the basis of service as a bus or other motor vehicle driver employed by a private contractor to transport persons to or from nonschool-related functions or activities.

(q) For any week of unemployment on the basis of services performed by the individual in any capacity and under any of the

circumstances described in subsection (i), (j), (k) or (o) which are provided to or on behalf of an educational institution, as defined in K.S.A. 44-703(v), and amendments thereto, while the individual is in the employ of an employer which is a governmental entity, Indian tribe or any employer described in section 501(c)(3) of the federal internal revenue code of 1986 which is exempt from income under section 501(a) of the code.

(r) For any week in which an individual is registered at and attending an established school, training facility or other educational institution, or is on vacation during or between two successive academic years or terms. An individual shall not be disqualified for benefits as provided in this subsection provided:

(1) The individual was engaged in full-time employment concurrent with the individual's school attendance;

(2) the individual is attending approved training as defined in K.S.A. 44-703(s), and amendments thereto; or

(3) the individual is attending evening, weekend or limited day time classes, which would not affect availability for work, and is otherwise eligible under K.S.A. 44-705(c), and amendments thereto.

(s) For any week with respect to which an individual is receiving or has received remuneration in the form of a back pay award or settlement. The remuneration shall be allocated to the week or weeks in the manner as specified in the award or agreement, or in the absence of such specificity in the award or agreement, such remuneration shall be allocated to the week or weeks in which such remuneration, in the judgment of the secretary, would have been paid.

(1) For any such weeks that an individual receives remuneration in the form of a back pay award or settlement, an overpayment will be established in the amount of unemployment benefits paid and shall be collected from the claimant.

(2) If an employer chooses to withhold from a back pay award or settlement, amounts paid to a claimant while they claimed unemployment benefits, such employer shall pay the department the amount withheld. With respect to such amount, the secretary shall have available all of the collection remedies authorized or provided in K.S.A. 44-717, and amendments thereto.

(t) (1) Any applicant for or recipient of unemployment benefits who tests positive for unlawful use of a controlled substance or controlled substance analog shall be required to complete a substance abuse treatment program approved by the secretary of labor, secretary of commerce or secretary for children and families, and a job skills program approved by the secretary of labor, secretary of commerce or the secretary for children and families. Subject to applicable federal laws, any applicant for or recipient of unemployment benefits who fails to complete or refuses to participate in the substance abuse treatment program or job skills program as required under this subsection shall be ineligible to receive unemployment benefits until completion of such substance abuse treatment and job skills programs. Upon completion of both substance abuse treatment and job skills programs, such applicant for or recipient of unemployment benefits may be subject to periodic drug screening, as determined by the secretary of labor. Upon a second positive test for unlawful use of a controlled substance or controlled substance analog, an applicant for or recipient of unemployment benefits shall be ordered to complete again a substance abuse treatment program and job skills program, and shall be terminated from unemployment benefits for a period of 12 months, or until such applicant for or recipient of unemployment benefits completes both substance abuse treatment and job skills programs, whichever is later. Upon a third positive test for unlawful use of a controlled substance or controlled substance analog, an applicant for or a recipient of unemployment benefits shall be terminated from receiving unemployment benefits, subject to applicable federal law.

(2) Any individual who has been discharged or refused employment for failing a preemployment drug screen required by an



employer may request that the drug screening specimen be sent to a different drug testing facility for an additional drug screening. Any such individual who requests an additional drug screening at a different drug testing facility shall be required to pay the cost of drug screening.

(u) If the individual was found not to have a disqualifying adjudication or conviction under K.S.A. 39-970 or 65-5117, and amendments thereto, was hired and then was subsequently convicted of a disqualifying felony under K.S.A. 39-970 or 65-5117, and amendments thereto, and discharged pursuant to K.S.A. 39-970 or 65-5117, and amendments thereto. The disqualification shall begin the day following the separation and shall continue until after the individual becomes reemployed and has had earnings from insured work of at least three times the individual's determined weekly benefit amount.

(v) Notwithstanding the provisions of any subsection, an individual shall not be disqualified for such week of part-time employment in a substitute capacity for an educational institution if such individual's most recent employment prior to the individual's benefit year begin date was for a non-educational institution and such individual demonstrates application for work in such individual's customary occupation or for work for which the individual is reasonably fitted by training or experience.

Sec. 15. K.S.A. 2020 Supp. 44-709 is hereby amended to read as follows: 44-709. (a) *Filing*. Claims for benefits shall be made in accordance with rules and regulations adopted by the secretary. The secretary shall furnish a copy of such rules and regulations to any individual requesting them. Each employer shall: (1) Post and maintain printed statements furnished by the secretary without cost to the employer in places readily accessible to individuals in the service of the employer; and (2) provide any other notification to individuals in the service of the employer as required by the secretary pursuant to the families first coronavirus response act, public law 116-127.

(b) *Determination*. (1) Except as otherwise provided in this paragraph, a representative designated by the secretary, and hereinafter referred to as an examiner, shall promptly examine the claim and, on the basis of the facts found by the examiner, shall determine whether or not the claim is valid. If the examiner determines that the claim is valid, the examiner shall determine the first day of the benefit year, the weekly benefit amount and the total amount of benefits payable with respect to the benefit year. If the claim is determined to be valid, the examiner shall send a notice to the last employing unit who shall respond within 10 days by providing the examiner all requested information including all information required for a decision under K.S.A. 44-706, and amendments thereto. The information may be submitted by the employing unit in person at an employment office of the secretary or by mail, by telefacsimile machine or by electronic mail. If the required information is not submitted or postmarked within a response time limit of 10 days after the examiner's notice was sent, the employing unit shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the employment security board of review or any court, except that the employing unit's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. In any case in which the payment or denial of benefits will be determined by the provisions of K.S.A. 44-706(d), and amendments thereto, the examiner shall promptly transmit the claim to a special examiner designated by the secretary to make a determination on the claim after the investigation as the special examiner deems necessary. The parties shall be promptly notified of the special examiner's decision and any party aggrieved by the decision may appeal to the referee as provided in subsection (c). The claimant and the claimant's most recent employing unit shall be promptly notified of the examiner's or special examiner's decision.

(2) The examiner may for good cause reconsider the examiner's

decision and shall promptly notify the claimant and the most recent employing unit of the claimant, that the decision of the examiner is to be reconsidered, except that no reconsideration shall be made after the termination of the benefit year.

(3) Notwithstanding the provisions of any other statute, a decision of an examiner or special examiner shall be final unless the claimant or the most recent employing unit of the claimant files an appeal from the decision as provided in subsection (c), except that the time limit for appeal may be waived or extended by the referee or board of review if a timely response was impossible due to excusable neglect. The appeal must be filed within 16 calendar days after the mailing of notice to the last known addresses of the claimant and employing unit or, if notice is not by mail, within 16 calendar days after the delivery of the notice to the parties.

(c) *Appeals.* Unless the appeal is withdrawn, a referee, after affording the parties reasonable opportunity for fair hearing, shall affirm or modify the findings of fact and decision of the examiner or special examiner. The parties shall be duly notified of the referee's decision, together with the reasons for the decision. The decision shall be final, notwithstanding the provisions of any other statute, unless a further appeal to the employment security board of review is filed within 16 calendar days after the mailing of the decision to the parties' last known addresses or, if notice is not by mail, within 16 calendar days after the delivery of the decision, except that the time limit for appeal may be waived or extended by the referee or board of review if a timely response was impossible due to excusable neglect.

(d) *Referees.* The secretary shall appoint, in accordance with K.S.A. 44-714(c), and amendments thereto, one or more referees to hear and decide disputed claims.

(e) *Time, computation and extension.* In computing the period of time for an employing unit response or for appeals under this section from the examiner's or the special examiner's determination or from the referee's decision, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(f) *Board of review.* ~~(1)~~ There is hereby created an employment security board of review, hereinafter referred to as the board, ~~consisting~~.

(1) (A) *Except as provided in subparagraph (B), the board shall consist of three members.* Each member of the board shall be appointed for a term of four years as provided in this subsection. Not more than two members of the board shall belong to the same political party.

(B) *On the effective date of this act, the board shall consist of six members. The six-member board shall consist of the following: (i) Three members appointed under subparagraph (A); and (ii) three members appointed for a term that shall expire upon the expiration of this subparagraph. Each member of the board appointed under subparagraph (B)(ii) shall be appointed as provided in this subsection. Not more than four members of the six-member board shall belong to the same political party. The provisions of this subparagraph shall expire on June 30, 2024.*

(2) When a vacancy on the employment security board of review occurs, the workers compensation and employment security boards nominating committee established under K.S.A. 44-551, and amendments thereto, shall convene and submit a nominee to the governor for appointment to each vacancy on the employment security board of review, subject to confirmation by the senate as provided by K.S.A. 75-4315b, and amendments thereto. The governor shall either: (A) Accept and submit to the senate for confirmation the person nominated by the nominating committee; or (B) reject the nomination and request the nominating committee to nominate another person for that position. Except as provided by K.S.A. 46-2601, and amendments

thereto, no person appointed to the employment security board of review, whose appointment is subject to confirmation by the senate, shall exercise any power, duty or function as a member until confirmed by the senate.

(3) No member of the employment security board of review shall serve more than two consecutive terms. *This paragraph shall not apply to members of the board appointed under subsection (f)(1)(B)(ii). The service of a board member appointed under subsection (f)(1)(B)(ii) shall not constitute a term as contemplated in this paragraph.*

(4) Each member of the employment security board shall serve until a successor has been appointed and confirmed. Any vacancy in the membership of the board occurring prior to expiration of a term shall be filled by appointment for the unexpired term in the same manner as provided for original appointment of the member.

(5) Each member of the employment security board of review shall be entitled to receive as compensation for the member's services at the rate of \$15,000 per year, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties in accordance with rules and regulations adopted by the secretary. Members' compensation and expenses shall be paid from the employment security administration fund.

(6) The employment security board of review shall organize annually by the election of a chairperson from among its members. The chairperson shall serve in that capacity for a term of one year and until a successor is elected. *For the purpose of hearing and determining cases, the board members may sit in panels. A board panel shall consist of three members with not more than two members belonging to the same political party. The chairperson may sit as a member of a panel and shall preside over such panel. When the chairperson is not a member of a hearing panel, the chairperson shall appoint a member of the panel to preside.* The board *or board panel* shall meet on the first Monday of each month or on the call of the chairperson or any two members of the board at the place designated. The secretary of labor shall appoint an executive secretary of the board and the executive secretary *or the executive secretary's designee* shall attend the meetings of the board *and board panels*.

(7) The employment security board of review *or board panel*, on its own motion, may affirm, modify or set aside any decision of a referee on the basis of the evidence previously submitted in the case; may direct the taking of additional evidence; or may permit any of the parties to initiate further appeal before it. The board *or board panel* shall permit such further appeal by any of the parties interested in a decision of a referee that overrules or modifies the decision of an examiner. The board *or board panel* may remove to itself the proceedings on any claim pending before a referee. Any proceedings so removed to the board *or board panel* shall be heard in accordance with the requirements of subsection (c). The board *or board panel* shall promptly notify the interested parties of its findings and decision.

(8) ~~Two~~ *A simple majority of the* members of the employment security board of review *or board panel* shall constitute a quorum and no action of the board *or board panel* shall be valid unless it has the concurrence of ~~at least two~~ *a majority of its* members. A vacancy on the board shall not impair the right of a quorum to exercise all the rights and perform all the duties of the board.

(g) *Procedure.* The manner that disputed claims are presented, the reports on claims required from the claimant and from employers and the conduct of hearings and appeals shall be in accordance with rules of procedure prescribed by the employment security board of review for determining the rights of the parties, whether or not such rules conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings and decisions in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. In

the performance of its official duties, the board *or board panel* shall have access to all of the records that pertain to the disputed claim and are in the custody of the secretary of labor and shall receive the assistance of the secretary upon request.

(h) *Witness fees.* Witnesses subpoenaed pursuant to this section shall be allowed fees and necessary travel expenses at rates fixed by the board. Such fees and expenses shall be deemed a part of the expense of administering this act.

(i) *Review of board action.* Any action of the employment security board of review *including that of a board panel*, may not be reconsidered after the mailing of the decision. An action of the board *or board panel* shall become final unless a petition for review in accordance with the Kansas judicial review act is filed within 16 calendar days after the date of the mailing of the decision. If an appeal has not been filed within 16 calendar days of the date of the mailing of the decision, the decision becomes final. No bond shall be required for commencing an action for such review. In addition to those persons having standing pursuant to K.S.A. 77-611, and amendments thereto, the examiner shall have standing to obtain judicial review of an action of such board *or board panel*. The review proceeding, and the questions of law certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workers compensation act.

(j) Any finding of fact or law, judgment, determination, conclusion or final order made by the employment security board of review *or board panel* or any examiner, special examiner, referee or other person with authority to make findings of fact or law pursuant to the employment security law is not admissible or binding in any separate or subsequent action or proceeding, between a person and a present or previous employer brought before an arbitrator, court or judge of the state or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

(k) In any proceeding or hearing conducted under this section, a party to the proceeding or hearing may appear before a referee or the employment security board of review *or board panel* either personally or by means of a designated representative to present evidence and to state the position of the party. Hearings may be conducted in person, by telephone or other means of electronic communication. The hearing shall be conducted by telephone or other means of electronic communication if none of the parties requests an in-person hearing. If ~~only one~~ a party requests an in-person hearing, the referee *or board or board panel* shall have the discretion ~~of requiring to deny the request in the absence of good cause shown for the request by the requesting party.~~ *If a request for an in-person hearing is granted, the referee or board or board panel shall have the discretion to require* all parties to appear in person or allow the party not requesting an in-person hearing to appear by telephone or other means of electronic communication. The notice of hearing shall include notice to the parties of their right to request an in-person hearing and instructions on how to make the request.

Sec. 16. K.S.A. 2020 Supp. 44-710 is hereby amended to read as follows: 44-710. (a) *Payment.* Contributions shall accrue and become payable by each contributing employer for each calendar year that the contributing employer is subject to the employment security law with respect to wages paid for employment. Such contributions shall become due and be paid by each contributing employer to the secretary for the employment security fund in accordance with such rules and regulations as the secretary may adopt and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. In the payment of any contributions, a fractional part of \$.01 shall be disregarded unless it amounts to \$.005 or more, in which case it shall be increased to \$.01. Should contributions for any calendar quarter be less than \$5, no payment shall be required.

(b) *Rates and base of contributions.* (1) Except as provided in paragraph (2) ~~of this subsection~~, each contributing employer shall pay contributions on wages paid by the contributing employer during each calendar year with respect to employment as provided in K.S.A. 44-710a, and amendments thereto. Except that, notwithstanding the federal law requiring the secretary of labor to annually recalculate the contribution rate, for calendar years 2010, 2011, 2012, 2013 and 2014, the secretary shall charge each contributing employer in rate groups 1 through 32 the contribution rate in the 2010 original tax rate computation table, with contributing employers in rate groups 33 through 51 being capped at a 5.4% contribution rate. For calendar year 2021, unemployment tax rates for eligible employers shall be limited to the standard rate schedule in K.S.A. 44-710a, and amendments thereto. Therefore, no additional solvency adjustment shall be applied.

(2) (A) If the congress of the United States either amends or repeals the Wagner-Peyser act, the federal unemployment tax act, the federal social security act, or subtitle C of chapter 23 of the federal internal revenue code of 1986, or any act or acts supplemental to or in lieu thereof, or any part or parts of any such law, or if any such law, or any part or parts thereof, are held invalid with the effect that appropriations of funds by congress and grants thereof to the state of Kansas for the payment of costs of administration of the employment security law are no longer available for such purposes; or (B) if employers in Kansas subject to the payment of tax under the federal unemployment tax act are granted full credit against such tax for contributions or taxes paid to the secretary of labor, then, and in either such case, beginning with the year that the unavailability of federal appropriations and grants for such purpose occurs or that such change in liability for payment of such federal tax occurs and for each year thereafter, the rate of contributions of each contributing employer shall be equal to the total of 0.5% and the rate of contributions as determined for such contributing employer under K.S.A. 44-710a, and amendments thereto. The amount of contributions that each contributing employer becomes liable to pay under this paragraph (2) over the amount of contributions that such contributing employer would be otherwise liable to pay shall be credited to the employment security administration fund to be disbursed and paid out under the same conditions and for the same purposes as other moneys are authorized to be paid from the employment security administration fund, except that, if the secretary determines that as of the first day of January of any year there is an excess in the employment security administration fund over the amount required to be disbursed during such year, an amount equal to such excess as determined by the secretary shall be transferred to the employment security fund.

(c) *Charging of benefit payments.* (1) The secretary shall maintain a separate account for each contributing employer, and shall credit the contributing employer's account with all the contributions paid on the contributing employer's own behalf. Nothing in the employment security law shall be construed to grant any employer or individuals in such employer's service prior claims or rights to the amounts paid by such employer into the employment security fund either on such employer's own behalf or on behalf of such individuals. Benefits paid shall be charged against the accounts of each base period employer in the proportion that the base period wages paid to an eligible individual by each such employer bears to the total wages in the base period. Benefits shall be charged to contributing employers' accounts and rated governmental employers' accounts upon the basis of benefits paid during each twelve-month period ending on the computation date.

(2) (A) Benefits paid in benefit years established by valid new claims shall not be charged to the account of a contributing employer or rated governmental employer who is a base period employer if the examiner finds that claimant was separated from the claimant's most recent employment with such employer under any of the following conditions: (i) Discharged for misconduct or gross misconduct

connected with the individual's work; (ii) leaving work voluntarily without good cause attributable to the claimant's work or the employer; or (iii) discharged from an employer directly impacted by COVID-19 in accordance with the families first coronavirus response act, public law 116-127.

(B) Where base period wage credits of a contributing employer or rated governmental employer represent part-time employment and the claimant continues in that part-time employment with that employer during the period for which benefits are paid, then that employer's account shall not be charged with any part of the benefits paid if the employer provides the secretary with information as required by rules and regulations. For the purposes of this subsection (c)(2)(B), "part-time employment" means any employment when an individual works less than full-time because the individual's services are not required for the customary, scheduled full-time hours prevailing at the work place or the individual does not customarily work the regularly scheduled full-time hours due to personal choice or circumstances.

(C) No contributing employer or rated governmental employer's account shall be charged with any extended benefits paid in accordance with the employment security law, except for weeks of unemployment beginning after December 31, 1978, all contributing governmental employers and governmental rated employers shall be charged an amount equal to all extended benefits paid.

(D) No contributing employer, rated governmental employer or reimbursing employer's account shall be charged for any additional benefits paid during the period July 1, 2003 through June 30, 2004.

(E) No contributing employer or rated governmental employer's account will be charged for benefits paid a claimant while pursuing an approved training course as defined in K.S.A. 44-703(s), and amendments thereto.

(F) No contributing employer or rated governmental employer's account shall be charged with respect to the benefits paid to any individual whose base period wages include wages for services not covered by the employment security law prior to January 1, 1978, to the extent that the employment security fund is reimbursed for such benefits pursuant to section 121 of public law 94-566 (90 Stat. 2673).

(G) With respect to weeks of unemployment beginning after December 31, 1977, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection (c)(2)(G), the term "previously uncovered services" means services that were not covered employment, at any time during the one-year period ending December 31, 1975, except to the extent that assistance under title II of the federal emergency jobs and unemployment assistance act of 1974 was paid on the basis of such services, and that:

(i) Are agricultural labor as defined in K.S.A. 44-703(w), and amendments thereto, or domestic service as defined in K.S.A. 44-703(aa), and amendments thereto;

(ii) are services performed by an employee of this state or a political subdivision thereof, as provided in K.S.A. 44-703(i)(3)(E), and amendments thereto; or

(iii) are services performed by an employee of a nonprofit educational institution that is not an institution of higher education.

(H) No contributing employer or rated governmental employer's account shall be charged with respect to their pro rata share of benefit charges if such charges are of \$100 or less.

(I) *Contributing employers, rated governmental employers and reimbursing employers shall be held harmless for and shall not be required to reimburse the state for claims or benefits paid that have been reported by the employer to the secretary and determined by the secretary as fraudulent or as an improper payment, unless the secretary determines the claims are not fraudulent or improper as provided by K.S.A. 44-710b(b)(2)(A), and amendments thereto. The time limitation for disputing a claim or an appeal of a claim as provided by this section, or by any other provision of the employment*

*security law, shall not apply to identifications of fraud reported to the secretary for claims or benefits paid during the period beginning on March 15, 2020, through December 31, 2022. Contributing employers, rated governmental employers and reimbursing employers shall be refunded or credited, in the discretion of the employer, as provided by K.S.A. 44-710b, and amendments thereto, for any claims or benefits paid that have been reported as fraudulent.*

(3) An employer's account shall not be relieved of charges relating to a payment that was made erroneously if the secretary determines that:

(A) The erroneous payment was made because the employer, or the agent of the employer, was at fault for failing to respond timely or adequately to a written request from the secretary for information relating to the claim for unemployment compensation; and

(B) the employer or agent has established a pattern of failing to respond timely or adequately to requests for information.

(C) For purposes of this paragraph:

(i) "Erroneous payment" means a payment that but for the failure by the employer or the employer's agent with respect to the claim for unemployment compensation, would not have been made; and

(ii) "pattern of failure" means repeated documented failure on the part of the employer or the agent of the employer to respond, taking into consideration the number of instances of failure in relation to the total volume of requests. An employer or employer's agent failing to respond as described in (c)(3)(A) shall not be determined to have engaged in a "pattern of failure" if the number of such failures during the year prior to such request is fewer than two, or less than 2%, of such requests, whichever is greater.

(D) Determinations of the secretary prohibiting the relief of charges pursuant to this section shall be subject to appeal or protest as other determinations of the agency with respect to the charging of employer accounts.

(E) This paragraph shall apply to erroneous payments established on and after the effective date of this act.

(4) The examiner shall notify any base period employer whose account will be charged with benefits paid following the filing of a valid new claim and a determination by the examiner based on all information relating to the claim contained in the records of the division of employment security. Such notice shall become final and benefits charged to the base period employer's account in accordance with the claim unless within 10 calendar days from the date the notice was sent, the base period employer requests in writing that the examiner reconsider the determination and furnishes any required information in accordance with the secretary's rules and regulations. In a similar manner, a notice of an additional claim followed by the first payment of benefits with respect to the benefit year, filed by an individual during a benefit year after a period in such year during which such individual was employed, shall be given to any base period employer of the individual who has requested such a notice within 10 calendar days from the date the notice of the valid new claim was sent to such base period employer. For purposes of this subsection (c)(3), if the required information is not submitted or postmarked within a response time limit of 10 days after the base period employer notice was sent, the base period employer shall be deemed to have waived its standing as a party to the proceedings arising from the claim and shall be barred from protesting any subsequent decisions about the claim by the secretary, a referee, the board of review or any court, except that the base period employer's response time limit may be waived or extended by the examiner or upon appeal, if timely response was impossible due to excusable neglect. The examiner shall notify the employer of the reconsidered determination, which shall be subject to appeal or further reconsideration, in accordance with the provisions of K.S.A. 44-709, and amendments thereto.

(5) *Time, computation and extension.* In computing the period of

time for a base period employer response or appeals under this section from the examiner's or the special examiner's determination or from the referee's decision, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday or legal holiday.

(d) *Pooled fund.* All contributions and payments in lieu of contributions and benefit cost payments to the employment security fund shall be pooled and available to pay benefits to any individual entitled thereto under the employment security law, regardless of the source of such contributions or payments in lieu of contributions or benefit cost payments.

(e) *Election to become reimbursing employer; payment in lieu of contributions.* (1) Any governmental entity, Indian tribes or tribal units, (subdivisions, subsidiaries or business enterprises wholly owned by such Indian tribes), for which services are performed as described in K.S.A. 44-703(i)(3)(E), and amendments thereto, or any nonprofit organization or group of nonprofit organizations described in section 501(c)(3) of the federal internal revenue code of 1986 that is exempt from income tax under section 501(a) of such code, that becomes subject to the employment security law may elect to become a reimbursing employer under this subsection (e)(1) and agree to pay the secretary for the employment security fund an amount equal to the amount of regular benefits and  $\frac{1}{2}$  of the extended benefits paid that are attributable to service in the employ of such reimbursing employer, except that each reimbursing governmental employer, Indian tribes or tribal units shall pay an amount equal to the amount of regular benefits and extended benefits paid for weeks of unemployment beginning after December 31, 1978, for governmental employers and December 21, 2000, for Indian tribes or tribal units to individuals for weeks of unemployment that begin during the effective period of such election.

(A) Any employer identified in this subsection (e)(1) may elect to become a reimbursing employer for a period encompassing not less than four complete calendar years if such employer files with the secretary a written notice of such election within the 30-day period immediately following January 1 of any calendar year or within the 30-day period immediately following the date when a determination of subjectivity to the employment security law is issued, whichever occurs later.

(B) Any employer that makes an election to become a reimbursing employer in accordance with subparagraph (A) will continue to be liable for payments in lieu of contributions until such employer files with the secretary a written notice terminating its election not later than 30 days prior to the beginning of the calendar year for which such termination shall first be effective.

(C) Any employer identified in this subsection (e)(1) that has remained a contributing employer and has been paying contributions under the employment security law for a period subsequent to January 1, 1972, may change to a reimbursing employer by filing with the secretary not later than 30 days prior to the beginning of any calendar year a written notice of election to become a reimbursing employer. Such election shall not be terminable by the employer for four complete calendar years.

(D) The secretary may for good cause extend the period within which a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive but not any earlier than with respect to benefits paid after January 1 of the year such election is received.

(E) The secretary, in accordance with such rules and regulations as the secretary may adopt, shall notify each employer identified in subsection (e)(1) of any determination that the secretary may make of its status as an employer and of the effective date of any election that it makes to become a reimbursing employer and of any termination of



such election. Such determinations shall be subject to reconsideration, appeal and review in accordance with the provisions of K.S.A. 44-710b, and amendments thereto.

(2) *Reimbursement reports and payments.* Payments in lieu of contributions shall be made in accordance with the provisions of subparagraph (A) by all reimbursing employers except the state of Kansas. Each reimbursing employer shall report total wages paid during each calendar quarter by filing quarterly wage reports with the secretary that shall be filed by the last day of the month following the close of each calendar quarter. Wage reports are deemed filed as of the date they are placed in the United States mail.

(A) At the end of each calendar quarter, or at the end of any other period as determined by the secretary, the secretary shall bill each reimbursing employer, except the state of Kansas: (i) An amount to be paid that is equal to the full amount of regular benefits plus  $\frac{1}{2}$  of the amount of extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such reimbursing employer; and (ii) for weeks of unemployment beginning after December 31, 1978, each reimbursing governmental employer and December 21, 2000, for Indian tribes or tribal units shall be certified an amount to be paid that is equal to the full amount of regular benefits and extended benefits paid during such quarter or other prescribed period that is attributable to service in the employ of such reimbursing governmental employer.

(B) Payment of any bill rendered under subparagraph (A) shall be made not later than 30 days after such bill was mailed to the last known address of the reimbursing employer, or otherwise was delivered to such reimbursing employer, unless there has been an application for review and redetermination in accordance with subparagraph (D).

(C) Payments made by any reimbursing employer under the provisions of this subsection (e)(2) shall not be deducted or deductible, in whole or in part, from the remuneration of individuals in the employ of such employer.

(D) The amount due specified in any bill from the secretary shall be conclusive on the reimbursing employer, unless, not later than 15 days after the bill was mailed to the last known address of such employer, or was otherwise delivered to such employer, the reimbursing employer files an application for redetermination in accordance with K.S.A. 44-710b, and amendments thereto.

(E) Past due payments of amounts certified by the secretary under this section shall be subject to the same interest, penalties and actions required by K.S.A. 44-717, and amendments thereto. (1) If any nonprofit organization or group of nonprofit organizations described in section 501(c)(3) of the federal internal revenue code of 1986 or governmental reimbursing employer is delinquent in making payments of amounts certified by the secretary under this section, the secretary may terminate such employer's election to make payments in lieu of contributions as of the beginning of the next calendar year and such termination shall be effective for such next calendar year and the calendar year thereafter so that the termination is effective for two complete calendar years. (2) Failure of the Indian tribe or tribal unit to make required payments, including assessment of interest and penalty within 90 days of receipt of the bill will cause the Indian tribe to lose the option to make payments in lieu of contributions as described pursuant to paragraph (e)(1) for the following tax year unless payment in full is received before contribution rates for the next tax year are calculated. (3) Any Indian tribe that loses the option to make payments in lieu of contributions due to late payment or nonpayment, as described in paragraph (2), shall have such option reinstated, if after a period of one year, all contributions have been made on time and no contributions, payments in lieu of contributions for benefits paid, penalties or interest remain outstanding.

(F) Failure of the Indian tribe or any tribal unit thereof to make required payments, including assessments of interest and penalties,

after all collection activities deemed necessary by the secretary have been exhausted, will cause services performed by such tribe to not be treated as employment for purposes of K.S.A. 44-703(i)(3)(E), and amendments thereto. If an Indian tribe fails to make payments required under this section, including assessments of interest and penalties, within 90 days of a final notice of delinquency, the secretary shall immediately notify the United States internal revenue service and the United States department of labor. The secretary may determine that any Indian tribe that loses coverage pursuant to this paragraph may have services performed on behalf of such tribe again deemed "employment" if all contributions, payments in lieu of contributions, penalties and interest have been paid.

(G) In the discretion of the secretary, any employer who elects to become liable for payments in lieu of contributions and any nonprofit organization or group of nonprofit organizations described in section 501(c)(3) of the federal internal revenue code of 1986 or governmental reimbursing employer or Indian tribe or tribal unit who is delinquent in filing reports or in making payments of amounts certified by the secretary under this section shall be required within 60 days after the effective date of such election, in the case of an eligible employer so electing, or after the date of notification to the delinquent employer under this subsection (e)(2)(G), in the case of a delinquent employer, to execute and file with the secretary a surety bond, except that the employer may elect, in lieu of a surety bond, to deposit with the secretary money or securities as approved by the secretary or to purchase and deliver to an escrow agent a certificate of deposit to guarantee payment. The amount of the bond, deposit or escrow agreement required by this subsection (e)(2)(G) shall not exceed 5.4% of the organization's taxable wages paid for employment by the eligible employer during the four calendar quarters immediately preceding the effective date of the election or the date of notification, in the case of a delinquent employer. If the employer did not pay wages in each of such four calendar quarters, the amount of the bond or deposit shall be as determined by the secretary. Upon the failure of an employer to comply with this subsection (e)(2)(G) within the time limits imposed or to maintain the required bond or deposit, the secretary may terminate the election of such eligible employer or delinquent employer, as the case may be, to make payments in lieu of contributions, and such termination shall be effective for the current and next calendar year.

(H) The state of Kansas shall make reimbursement payments quarterly at a fiscal year rate that shall be based upon: (i) The available balance in the state's reimbursing account as of December 31 of each calendar year; (ii) the historical unemployment experience of all covered state agencies during prior years; (iii) the estimate of total covered wages to be paid during the ensuing calendar year; (iv) the applicable fiscal year rate of the claims processing and auditing fee under K.S.A. 75-3798, and amendments thereto; and (v) actuarial and other information furnished to the secretary by the secretary of administration. In accordance with K.S.A. 75-3798, and amendments thereto, the claims processing and auditing fees charged to state agencies shall be deducted from the amounts collected for the reimbursement payments under this paragraph (H) prior to making the quarterly reimbursement payments for the state of Kansas. The fiscal year rate shall be expressed as a percentage of covered total wages and shall be the same for all covered state agencies. The fiscal year rate for each fiscal year will be certified in writing by the secretary to the secretary of administration on July 15 of each year and such certified rate shall become effective on the July 1 immediately following the date of certification. A detailed listing of benefit charges applicable to the state's reimbursing account shall be furnished quarterly by the secretary to the secretary of administration and the total amount of charges deducted from previous reimbursing payments made by the state. On January 1 of each year, if it is determined that benefit charges exceed the amount of prior reimbursing payments, an upward

adjustment shall be made therefor in the fiscal year rate to be certified on the ensuing July 15. If total payments exceed benefit charges, all or part of the excess may be refunded, at the discretion of the secretary, from the fund or retained in the fund as part of the payments that may be required for the next fiscal year.

(3) *Allocation of benefit costs.* The reimbursing account of each reimbursing employer shall be charged the full amount of regular benefits and  $\frac{1}{2}$  of the amount of extended benefits paid except that each reimbursing governmental employer's account shall be charged the full amount of regular benefits and extended benefits paid for weeks of unemployment beginning after December 31, 1978, to individuals whose entire base period wage credits are from such employer. When benefits received by an individual are based upon base period wage credits from more than one employer then the reimbursing employer's or reimbursing governmental employer's account shall be charged in the same ratio as base period wage credits from such employer bear to the individual's total base period wage credits. Notwithstanding any other provision of the employment security law, no reimbursing employer's or reimbursing governmental employer's account shall be charged for payments of extended benefits that are wholly reimbursed to the state by the federal government. Payments of unemployment compensation that are wholly reimbursed to the reimbursing employer by the federal government shall be charged for the purpose of such reimbursement under the federal CARES act, public law 116-136.

(A) *Proportionate allocation (when fewer than all reimbursing base period employers are liable).* If benefits paid to an individual are based on wages paid by one or more reimbursing employers and on wages paid by one or more contributing employers or rated governmental employers, the amount of benefits payable by each reimbursing employer shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bears to the total base period wages paid to the individual by all of such individual's base period employers.

(B) *Proportionate allocation (when all base period employers are reimbursing employers).* If benefits paid to an individual are based on wages paid by two or more reimbursing employers, the amount of benefits payable by each such employer shall be an amount that bears the same ratio to the total benefits paid to the individual as the total base period wages paid to the individual by such employer bear to the total base period wages paid to the individual by all of such individual's base period employers.

(4) *Group accounts.* Two or more reimbursing employers may file a joint application to the secretary for the establishment of a group account for the purpose of sharing the cost of benefits paid that are attributable to service in the employment of such reimbursing employers. Each such application shall identify and authorize a group representative to act as the group's agent for the purposes of this subsection—(e)(4) *paragraph.* Upon approval of the application, the secretary shall establish a group account for such employers effective as of the beginning of the calendar quarter in which the secretary receives the application and shall notify the group's representative of the effective date of the account. Such account shall remain in effect for not less than four years and thereafter such account shall remain in effect until terminated at the discretion of the secretary or upon application by the group. Upon establishment of the account, each member of the group shall be liable for payments in lieu of contributions with respect to each calendar quarter in the amount that bears the same ratio to the total benefits paid in such quarter that are attributable to service performed in the employ of all members of the group as the total wages paid for service in employment by such member in such quarter bear to the total wages paid during such quarter for service performed in the employ of all members of the group. The secretary shall adopt such rules and regulations as the secretary deems

necessary with respect to applications for establishment, maintenance and termination of group accounts that are authorized by this ~~subsection (e)(4) paragraph~~, for addition of new members to, and withdrawal of active members from such accounts, and for the determination of the amounts that are payable under this ~~subsection (e)(4) paragraph~~ by members of the group and the time and manner of such payments.

Sec. 17. K.S.A. 2020 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) (a) ~~For the rate year 2014 and each rate year thereafter,~~ Each employer who is not eligible for a rate contribution shall pay contributions equal to 2.7% 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%.

(b) (1) ~~For the rate year 2015 and each rate year thereafter,~~ An employer who was not doing business in Kansas prior to July 1, 2014, shall be eligible for either the new employer rate under subsection (a)(1)(B)(i)(a) or the rate associated with the reserve ratio such employer experienced in the state which such employer was formerly located, but in no event less than 1% if such:

(A) Employer has been in operation in the other state or states for at least the three years immediately preceding the date such employer becomes a liable employer in Kansas;

(B) employer provides the authenticated account history from information accumulated from operations of such employer in the other state or all the other states necessary to compute a current Kansas rate; and

(C) employer's business operations established in Kansas are of the same nature, as defined by the North American industrial classification system, as conducted by such employer in the other state or states.

(2) The election authorized in subsection (a)(1)(B)(i)(b) of this section must be made in writing within 30 days after notice of Kansas liability. A rate in accordance with subsection (a)(1)(B)(i)(a) will be assigned unless a timely election has been made.

(3) If the election is made timely, the employer's account will receive the rate elected for the remainder of that rate year. The rate assigned for the next and subsequent years will be determined by the condition of the account on the computation date.

(ii) 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. 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.

(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)(i) For rate year 2015 and prior rate years, negative account balance employers, as defined in subsection (d), shall pay contributions at the rate of 5.4% for each calendar year.~~

~~(ii) For rate year 2016 and rate years thereafter, Negative account balance employers, as defined in subsection (d), shall pay contributions at the rate referenced in section subsection (a)(4)(D)(ii)(B).~~

(C) Eligible employers, other than negative account balance employers, who do not meet the average annual payroll requirements as stated in K.S.A. 44-703(a)(2), and amendments thereto, will be issued the maximum rate indicated by *the maximum rate group of standard rate schedule—standard schedule 7* in subsection (a)(4)(D)(B)(ii) ~~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) For rate year 2015 and prior rate years, 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 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	Column B	Column C
Rate	Cumulative	Experience factor
group	taxable payroll	(Ratio to total wages)
<del>1</del>	<del>Less than 1.96% .....</del>	<del>.025%</del>
<del>2</del>	<del>1.96% but less than 3.92 .....</del>	<del>.04</del>
<del>3</del>	<del>3.92 but less than 5.88 .....</del>	<del>.08</del>
<del>4</del>	<del>5.88 but less than 7.84 .....</del>	<del>.12</del>
<del>5</del>	<del>7.84 but less than 9.80 .....</del>	<del>.16</del>
<del>6</del>	<del>9.80 but less than 11.76 .....</del>	<del>.20</del>
<del>7</del>	<del>11.76 but less than 13.72 .....</del>	<del>.24</del>
<del>8</del>	<del>13.72 but less than 15.68 .....</del>	<del>.28</del>
<del>9</del>	<del>15.68 but less than 17.64 .....</del>	<del>.32</del>
<del>10</del>	<del>17.64 but less than 19.60 .....</del>	<del>.36</del>
<del>11</del>	<del>19.60 but less than 21.56 .....</del>	<del>.40</del>
<del>12</del>	<del>21.56 but less than 23.52 .....</del>	<del>.44</del>
<del>13</del>	<del>23.52 but less than 25.48 .....</del>	<del>.48</del>
<del>14</del>	<del>25.48 but less than 27.44 .....</del>	<del>.52</del>
<del>15</del>	<del>27.44 but less than 29.40 .....</del>	<del>.56</del>
<del>16</del>	<del>29.40 but less than 31.36 .....</del>	<del>.60</del>
<del>17</del>	<del>31.36 but less than 33.32 .....</del>	<del>.64</del>
<del>18</del>	<del>33.32 but less than 35.28 .....</del>	<del>.68</del>
<del>19</del>	<del>35.28 but less than 37.24 .....</del>	<del>.72</del>
<del>20</del>	<del>37.24 but less than 39.20 .....</del>	<del>.76</del>
<del>21</del>	<del>39.20 but less than 41.16 .....</del>	<del>.80</del>
<del>22</del>	<del>41.16 but less than 43.12 .....</del>	<del>.84</del>
<del>23</del>	<del>43.12 but less than 45.08 .....</del>	<del>.88</del>
<del>24</del>	<del>45.08 but less than 47.04 .....</del>	<del>.92</del>
<del>25</del>	<del>47.04 but less than 49.00 .....</del>	<del>.96</del>
<del>26</del>	<del>49.00 but less than 50.96 .....</del>	<del>1.00</del>
<del>27</del>	<del>50.96 but less than 52.92 .....</del>	<del>1.04</del>
<del>28</del>	<del>52.92 but less than 54.88 .....</del>	<del>1.08</del>
<del>29</del>	<del>54.88 but less than 56.84 .....</del>	<del>1.12</del>
<del>30</del>	<del>56.84 but less than 58.80 .....</del>	<del>1.16</del>
<del>31</del>	<del>58.80 but less than 60.76 .....</del>	<del>1.20</del>
<del>32</del>	<del>60.76 but less than 62.72 .....</del>	<del>1.24</del>
<del>33</del>	<del>62.72 but less than 64.68 .....</del>	<del>1.28</del>
<del>34</del>	<del>64.68 but less than 66.64 .....</del>	<del>1.32</del>
<del>35</del>	<del>66.64 but less than 68.60 .....</del>	<del>1.36</del>
<del>36</del>	<del>68.60 but less than 70.56 .....</del>	<del>1.40</del>
<del>37</del>	<del>70.56 but less than 72.52 .....</del>	<del>1.44</del>
<del>38</del>	<del>72.52 but less than 74.48 .....</del>	<del>1.48</del>
<del>39</del>	<del>74.48 but less than 76.44 .....</del>	<del>1.52</del>
<del>40</del>	<del>76.44 but less than 78.40 .....</del>	<del>1.56</del>
<del>41</del>	<del>78.40 but less than 80.36 .....</del>	<del>1.60</del>
<del>42</del>	<del>80.36 but less than 82.32 .....</del>	<del>1.64</del>
<del>43</del>	<del>82.32 but less than 84.28 .....</del>	<del>1.68</del>
<del>44</del>	<del>84.28 but less than 86.24 .....</del>	<del>1.72</del>
<del>45</del>	<del>86.24 but less than 88.20 .....</del>	<del>1.76</del>
<del>46</del>	<del>88.20 but less than 90.16 .....</del>	<del>1.80</del>
<del>47</del>	<del>90.16 but less than 92.12 .....</del>	<del>1.84</del>
<del>48</del>	<del>92.12 but less than 94.08 .....</del>	<del>1.88</del>
<del>49</del>	<del>94.08 but less than 96.04 .....</del>	<del>1.92</del>
<del>50</del>	<del>96.04 but less than 98.00 .....</del>	<del>1.96</del>
<del>51</del>	<del>98.00 and over .....</del>	<del>2.00</del>

~~(E) For rate year 2015 and prior rate years, 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 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 K.S.A. 44-703(a)(2), 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. 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, 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 B4.~~

~~(ii) For the calendar years 2012, 2013 and 2014, an additional surcharge on negative balance employers with a 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 funds 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 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

(D) *If the amounts collected from negative account balance employers 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 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, 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 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.*

(3) *Entering and expanding employer.* (A) The secretary, as a method of providing for a reduced rate of contributions to an employer shall verify the qualifications in this statute that bear a direct relation to unemployment risk for that employer.

(B) If, as of the computation date, an eligible, positive balance employer's reserve ratio is significantly affected due to an increase in the employer's taxable payroll of at least 100% and such increase is attributable to a growth in employment, and not to a change in the taxable wage base from the previous year, the secretary shall assign a reduced rate of contributions for a period of three years.

(i) Such reduced rate of contributions shall be the new employer rate described in subsection (a)(1)(B)(i)(a), or a rate based on the employer's demonstrated risk as reflected in the employer's reserve fund ratio history.

(ii) To be eligible for such reduced rate, the employer must maintain a positive account balance throughout the reduced-rate period and must have an increase in account balance for each year.

(4) ~~*Planned yield.* (A) For rate year 2015 and prior rate years, 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 K.S.A. 44-712(a), 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.~~

(B)(A) ~~For the each rate year 2016 and rate years thereafter, the contribution schedule in effect shall be determined by the applicable fund control table and rate schedule table of subsection (a)(4)(D)(B).~~

#### 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
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
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

(C) *Adjustment to taxable wages.* For rate year 2015 and prior rate years, the planned yield as a percent of total wages, as determined in this subsection (a)(4), 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.

(D)(B) *Effective rates.* (i) For rate year 2016 and ensuing rate years, Employer contribution rates to be effective for the ensuing each calendar year shall be determined by the applicable rate schedule in clause (ii) and the fund control table for the rate year as specified

contained in this ~~section~~ *clause*. The average high cost multiple of the trust fund as of the computation date shall determine the contribution schedule in effect for the next rate year. For purposes of subsection (a) (4)(D)(B)(i) ~~and (v)~~, the average high cost multiple is the reserve fund ratio, ~~as defined by subsection (a)(4)(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. *The reserve fund ratio shall be determined by dividing total assets in the employment security fund provided for in K.S.A. 44-712(a), 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, that have been appropriated by the 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 that ended on June 30.*

Fund Control Table A  
For Rate Years 2016-2021

Lower AHCM Threshold	Upper AHCM Threshold	Solvency Adjustment to Standard Rate per Standard Rate Schedule
<del>1,000.00000</del> -1,000.00000	0.19999	1.60%
0.20000	0.44999	1.40%
0.45000	0.59999	1.20%
0.60000	0.74999	1.00%
0.75000	1.14999	0.00%
1.15000	<del>1,000.00000</del> 1,000.00000	-0.50%

Fund Control Table B  
For Rate Year 2022 and Ensuing Calendar Years

KS SUTA Tax Rate Schedules	Lower AHCM Threshold	Upper AHCM Threshold	Solvency/Credit Adjustment to Maximum Standard Rate	Solvency/Credit Adjustment as a Rate Group Multiplier to Standard, Earned Rate Group	Solvency/Credit Adjustment as a Total % to Employer's Standard, Earned Rate Group
	1 1,000.00000	0.00001	2.00%	0.05263%	26.32%
	2 0.00000	0.24999	1.80%	0.04737%	23.68%
Solvency	3 0.25000	0.44999	1.60%	0.04211%	21.05%
Schedules	4 0.45000	0.59999	1.40%	0.03684%	18.42%
(1-6)	5 0.60000	0.69999	1.20%	0.03158%	15.79%
	6 0.70000	0.74999	1.00%	0.02632%	13.16%
Standard					
Schedule	7 0.75000	1.24999	0.00%	0.00000%	0.00%
(7)					
	8 1.25000	1.29999	1.00%	0.02632%	13.16%
Credit	9 1.30000	1.39999	1.20%	0.03158%	15.79%
Schedules	10 1.40000	1.54999	1.40%	0.03684%	18.42%
(8-13)	11 1.55000	1.74999	1.60%	0.04211%	21.05%
	12 1.75000	1.99999	1.80%	0.04737%	23.68%
	13 2.00000	1,000.00000	2.00%	0.05263%	26.32%

(ii) (a) ~~For rate year 2016 and ensuing rate years~~, Eligible employers shall be classified by rate group according to the standard rate schedule - *standard rate schedule 7* in this section, ~~subject to any adjustment pursuant to the effective rate schedule~~ for that rate year. *Except as provided in subclause (b), for rate years 2016 through 2021, the rate pursuant to the standard rate schedule as adjusted by fund control table A shall apply. Except as provided in subclause (b), for rate year 2022 and ensuing calendar years, the rate pursuant to standard rate schedule 7, solvency schedules 1 through 6 or credit schedules 8 through 13 shall apply as provided by fund control table B.*

(b) (1) *In the event the full transfer of \$250,000,000 is not made as provided in section 6, and amendments thereto, to the employment security fund on or before July 15, 2021, all contributing employers shall pay the rate as set forth in standard rate schedule - standard rate schedule 7 for the 2022 calendar year.*

(2) *In the event the second transfer of up to \$250,000,000 is not made as provided in section 6, and amendments thereto, to the employment security fund on or before July 15, 2022, all contributing employers shall pay the rate as set forth in standard rate schedules - standard rate schedule 7 for the 2023 calendar year.*

STANDARD RATE SCHEDULE -  
STANDARD RATE SCHEDULE 7

Rate Group	Lower Reserve Ratio Limit	Upper Reserve Ratio Limit	Standard Rate
1	18.590	1,000,000.000	0.20%
2	17.875	18.589	0.40%
3	17.160	17.874	0.60%
4	16.445	17.159	0.80%
5	15.730	16.444	1.00%
6	15.015	15.729	1.20%
7	14.300	15.014	1.40%
8	13.585	14.299	1.60%
9	12.870	13.584	1.80%
10	12.155	12.869	2.00%
11	11.440	12.154	2.20%
12	10.725	11.439	2.40%
13	10.010	10.724	2.60%
14	9.295	10.009	2.80%
15	8.580	9.294	3.00%
16	7.865	8.579	3.20%
17	7.150	7.864	3.40%
18	6.435	7.149	3.60%
19	5.720	6.434	3.80%
20	5.005	5.719	4.00%
21	4.290	5.004	4.20%
22	3.575	4.289	4.40%
23	2.860	3.574	4.60%
24	2.145	2.859	4.80%
25	1.430	2.144	5.00%
26	0.715	1.429	5.20%
27	0.000	0.714	5.40%
N1	-0.714	-0.001	5.60%
N2	-1.429	-0.715	5.80%
N3	-2.144	-1.430	6.00%
N4	-2.859	-2.145	6.20%
N5	-3.574	-2.860	6.40%
N6	-4.289	-3.575	6.60%
N7	-5.004	-4.290	6.80%
N8	-5.719	-5.005	7.00%
N9	-6.434	-5.720	7.20%
N10	-7.149	-6.435	7.40%
N11	-1,000,000.000	-7.150	7.60%

~~(iii) For all rate years prior to 2016, 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)(4), 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%.~~

~~(iv) For rate years 2007 through 2015, 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%.~~

~~(v) For rate year 2014 and rate years thereafter, an eligible employer other than a negative account balance employer, who has~~

~~filed all reports due and paid all contributions due and owing on or before January 31 of the applicable year is entitled to a rate discount of 15% except as provided in this subsection. For rate year 2015 and rate years thereafter, an eligible employer other than a negative account balance employer, who has filed all reports due and paid all contributions due and owing on or before January 31 of the applicable year is entitled to a rate discount of 25% except as provided in this subsection. This discount shall not be in effect if other reduced rates pursuant to subsections (a)(4)(D)(i) through (iv) are in effect. This discount shall not be available for a rate year if the average high cost multiple, as defined in subsection (a)(4)(D)(i), of the employment security trust fund balance falls below 1.0 as of the computation date of that year's rates, and this discount shall thereafter cease to be in effect for all subsequent rate years.~~

SOLVENCY RATE SCHEDULES (1-6)

Rate Group	1	2	3	4	5	6
1	0.252632%	0.247375%	0.24211%	0.23684%	0.23158%	0.22632%
2	0.505263%	0.49474%	0.48421%	0.47368%	0.46316%	0.45263%
3	0.757895%	0.74211%	0.72632%	0.71053%	0.69474%	0.67895%
4	1.010526%	0.98947%	0.96842%	0.94737%	0.92632%	0.90526%
5	1.263158%	1.23684%	1.21053%	1.18421%	1.15789%	1.13158%
6	1.515789%	1.48421%	1.45263%	1.42105%	1.38947%	1.35789%
7	1.768421%	1.73158%	1.69474%	1.65789%	1.62105%	1.58421%
8	2.021053%	1.97895%	1.93684%	1.89474%	1.85263%	1.81053%
9	2.273684%	2.22632%	2.17895%	2.13158%	2.08421%	2.03684%
10	2.526316%	2.47368%	2.42105%	2.36842%	2.31579%	2.26316%
11	2.778947%	2.72105%	2.66316%	2.60526%	2.54737%	2.48947%
12	3.031579%	2.96842%	2.90526%	2.84211%	2.77895%	2.71579%
13	3.284211%	3.21579%	3.14737%	3.07895%	3.01053%	2.94211%
14	3.536842%	3.46316%	3.38947%	3.31579%	3.24211%	3.16842%
15	3.789474%	3.71053%	3.63158%	3.55263%	3.47368%	3.39474%
16	4.042105%	3.95789%	3.87368%	3.78947%	3.70526%	3.62105%
17	4.294737%	4.20526%	4.11579%	4.02632%	3.93684%	3.84737%
18	4.547368%	4.45263%	4.35789%	4.26316%	4.16842%	4.07368%
19	4.800000%	4.70000%	4.60000%	4.50000%	4.40000%	4.30000%
20	5.052632%	4.94737%	4.84211%	4.73684%	4.63158%	4.52632%
21	5.305263%	5.19474%	5.08421%	4.97368%	4.86316%	4.75263%
22	5.557895%	5.44211%	5.32632%	5.21053%	5.09474%	4.97895%
23	5.810526%	5.68947%	5.56842%	5.44737%	5.32632%	5.20526%
24	6.063158%	5.93684%	5.81053%	5.68421%	5.55789%	5.43158%
25	6.315789%	6.18421%	6.05263%	5.92105%	5.78947%	5.65789%
26	6.568421%	6.43158%	6.29474%	6.15789%	6.02105%	5.88421%
27	6.821053%	6.67895%	6.53684%	6.39474%	6.25263%	6.11053%
N1	7.073684%	6.92632%	6.77895%	6.63158%	6.48421%	6.33684%
N2	7.326316%	7.17368%	7.02105%	6.86842%	6.71579%	6.56316%
N3	7.578947%	7.42105%	7.26316%	7.10526%	6.94737%	6.78947%
N4	7.831579%	7.66842%	7.50526%	7.34211%	7.17895%	7.01579%
N5	8.084211%	7.91579%	7.74737%	7.57895%	7.41053%	7.24211%
N6	8.336842%	8.16316%	7.98947%	7.81579%	7.64211%	7.46842%
N7	8.589474%	8.41053%	8.23158%	8.05263%	7.87368%	7.69474%
N8	8.842105%	8.65789%	8.47368%	8.28947%	8.10526%	7.92105%
N9	9.094737%	8.90526%	8.71579%	8.52632%	8.33684%	8.14737%
N10	9.347368%	9.15263%	8.95789%	8.76316%	8.56842%	8.37368%
N11	9.600000%	9.40000%	9.20000%	9.00000%	8.80000%	8.60000%

CREDIT RATE SCHEDULES (8-13)

Rate Group	8	9	10	11	12	13
1	0.173684%	0.16842%	0.16316%	0.15789%	0.15263%	0.14737%
2	0.347368%	0.33684%	0.32632%	0.31579%	0.30526%	0.29474%
3	0.521053%	0.50526%	0.48947%	0.47368%	0.45789%	0.44211%
4	0.694737%	0.67368%	0.65263%	0.63158%	0.61053%	0.58947%
5	0.868421%	0.84211%	0.81579%	0.78947%	0.76316%	0.73684%
6	1.042105%	1.01053%	0.97895%	0.94737%	0.91579%	0.88421%
7	1.215789%	1.17895%	1.14211%	1.10526%	1.06842%	1.03158%
8	1.389474%	1.34737%	1.30526%	1.26316%	1.22105%	1.17895%
9	1.563158%	1.51579%	1.46842%	1.42105%	1.37368%	1.32632%
10	1.736842%	1.68421%	1.63158%	1.57895%	1.52632%	1.47368%
11	1.910526%	1.85263%	1.79474%	1.73684%	1.67895%	1.62105%
12	2.084211%	2.02105%	1.95789%	1.89474%	1.83158%	1.76842%
13	2.257895%	2.18947%	2.12105%	2.05263%	1.98421%	1.91579%
14	2.431579%	2.35789%	2.28421%	2.21053%	2.13684%	2.06316%
15	2.605263%	2.52632%	2.44737%	2.36842%	2.28947%	2.21053%
16	2.778947%	2.69474%	2.61053%	2.52632%	2.44211%	2.35789%
17	2.952632%	2.86316%	2.77368%	2.68421%	2.59474%	2.50526%
18	3.126316%	3.03158%	2.93684%	2.84211%	2.74737%	2.65263%
19	3.300000%	3.20000%	3.10000%	3.00000%	2.90000%	2.80000%

20	3.473684%	3.36842%	3.26316%	3.15789%	3.05263%	2.94737%
21	3.647368%	3.53684%	3.42632%	3.31579%	3.20526%	3.09474%
22	3.821053%	3.70526%	3.58947%	3.47368%	3.35789%	3.24211%
23	3.994737%	3.87368%	3.75263%	3.63158%	3.51053%	3.38947%
24	4.168421%	4.04211%	3.91579%	3.78947%	3.66316%	3.53684%
25	4.342105%	4.21053%	4.07895%	3.94737%	3.81579%	3.68421%
26	4.515789%	4.37895%	4.24211%	4.10526%	3.96842%	3.83158%
27	4.689474%	4.54737%	4.40526%	4.26316%	4.12105%	3.97895%
N1	4.863158%	4.71579%	4.56842%	4.42105%	4.27368%	4.12632%
N2	5.036842%	4.88421%	4.73158%	4.57895%	4.42632%	4.27368%
N3	5.210526%	5.05263%	4.89474%	4.73684%	4.57895%	4.42105%
N4	5.384211%	5.22105%	5.05789%	4.89474%	4.73158%	4.56842%
N5	5.557895%	5.38947%	5.22105%	5.05263%	4.88421%	4.71579%
N6	5.731579%	5.55789%	5.38421%	5.21053%	5.03684%	4.86316%
N7	5.905263%	5.72632%	5.54737%	5.36842%	5.18947%	5.01053%
N8	6.078947%	5.89474%	5.71053%	5.52632%	5.34211%	5.15789%
N9	6.252632%	6.06316%	5.87368%	5.68421%	5.49474%	5.30526%
N10	6.426316%	6.23158%	6.03684%	5.84211%	5.64737%	5.45263%
N11	6.600000%	6.40000%	6.20000%	6.00000%	5.80000%	5.60000%

(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 of K.S.A. 44-703(g), and amendments thereto, becomes an employer pursuant to K.S.A. 44-703(h)(4), and amendments thereto, or is an employer at the time of acquisition and meets the definition of a "successor employer" as defined by K.S.A. 44-703(dd), 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 K.S.A. 44-703(h)(4) or (dd), 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 K.S.A. 44-703(g), 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). 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 K.S.A. 44-711(d) and (e), 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 K.S.A. 44-703(h)(8), 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).

(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. 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 K.S.A. 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 K.S.A. 44-712(a), 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 subsection (a)(2)(E) pursuant to law, 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 subsection (a)(2)(E); assessments 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 subsection (a)(2)(E) (a)(2)(D). Notwithstanding any provision of this section, all moneys received and credited to this fund pursuant to subsection (a)(2)(E), shall remain part of the employment security interest assessment fund and shall be used only in accordance with the conditions specified in subsection (a)(2)(E).

(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 trust fund to the governor and the legislative coordinating 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)(4)(B) and to assist in preparing legislation to accomplish any such adjustment.

Sec. 18. K.S.A. 2020 Supp. 44-710b is hereby amended to read as follows: 44-710b. (a) *By the secretary of labor.* The secretary of labor shall promptly notify each contributing employer of its rate of contributions, each rated governmental employer of its benefit cost rate and each reimbursing employer of its benefit liability as determined for any calendar year pursuant to K.S.A. 44-710 and 44-710a, and amendments thereto, on or before November 30 of the calendar year immediately preceding the calendar year in which such rate takes effect. Such determination shall become conclusive and binding upon the employer unless, within 15 days after the mailing of notice thereof to the employer's last known address or in the absence of mailing, within 15 days after the delivery of such notice, the employer files an application for review and redetermination, setting forth the reasons therefor. If the secretary of labor grants such review, the employer shall be promptly notified thereof and shall be granted an opportunity for a fair hearing, but no employer shall have standing, in any proceeding involving the employer's rate of contributions or benefit liability, to contest the chargeability to the employer's account of any benefits paid in accordance with a determination, redetermination or decision pursuant to subsection (c) of K.S.A. 44-710(c), and amendments thereto, except upon the ground that the services on the basis of which



such benefits were found to be chargeable did not constitute services performed in employment for the employer and only in the event that the employer was not a party to such determination, redetermination or decision or to any other proceedings under this act in which the character of such services was determined. Any such hearing conducted pursuant to this section shall be heard in the county where the contributing employer maintains its principle place of business. The hearing officer shall render a decision concerning all matters at issue in the hearing within 90 days.

(b) (1) *The secretary shall, without necessity of a request by an employer or a hearing, immediately and fully credit any contributing employer's, governmental rated employer's or reimbursing employer's account for any benefits paid upon a determination by the secretary that such benefits were an improper payment or paid to any person who received such benefits: (A) By fraud; or (B) in error where any conditions imposed by this act for the receipt of benefits were not fulfilled or where the recipient was not qualified to or disqualified from receiving such benefits.*

(2) (A) *Contributing employers, rated governmental employers and reimbursing employers shall be held harmless for and shall not be required to reimburse the state for any benefits paid that have been identified by the employer and reported to and determined by the secretary as fraudulent or as an improper payment, unless the secretary determines that such benefits were received properly and not: (i) By fraud; or (ii) in error where any conditions imposed by this act for the receipt of benefits were not fulfilled or where the recipient was not qualified to or disqualified from receiving such benefits. Any such determination by the secretary shall be subject to appeal as provided by the employment security law.*

(B) *Reimbursing employers shall be refunded for reimbursements made to the state for any claims or benefits paid on or after March 15, 2020, that are or have been reported to the secretary and determined by the secretary as fraudulent. Amounts refunded shall become due, subject to appeal as provided by the employment security law, upon a determination by the secretary, as provided by subparagraph (A), that the benefits were paid properly and not by fraud or in error.*

(C) *For the time period of March 15, 2020, through December 31, 2022, identifications of fraud reported to the secretary pursuant to subparagraphs (A) and (B) shall not be subject to any time limitation for disputing a claim or for appeal pursuant to K.S.A. 44-710, and amendments thereto, or pursuant to any other provision of the employment security law.*

(3) *The secretary shall review all reimbursing employer accounts and shall apply credit for any benefits previously paid by fraud or in error, as provided by paragraph (1), that have been charged against a reimbursing employer's account and have not yet been recovered through normal recovery efforts.*

(c) *Judicial review.* Any action of the secretary upon an employer's timely request for a review and redetermination of its rate of contributions or benefit liability, in accordance with subsection (a), is subject to review in accordance with the Kansas judicial review act. Any action for such review shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under ~~subsection (i)~~ of K.S.A. 44-709(i), and amendments thereto, and the workmen's compensation act.

(e)(d) *Periodic notification of benefits charged.* The secretary of labor may provide by rules and regulations for periodic notification to employers of benefits paid and chargeable to their accounts or of the status of such accounts, and any such notification, in the absence of an application for redetermination filed in such manner and within such period as the secretary of labor may prescribe, shall become conclusive and binding upon the employer for all purposes. Such redeterminations, made after notice and opportunity for hearing, and the secretary's findings of facts in connection therewith may be introduced in any

subsequent administrative or judicial proceedings involving the determination of the rate of contributions of any employer for any calendar year and shall be entitled to the same finality as is provided in this subsection with respect to the findings of fact made by the secretary of labor in proceedings to redetermine the contribution rate of an employer. The review or any other proceedings relating thereto as provided for in this section may be heard by any duly authorized employee of the secretary of labor and such action shall have the same effect as if heard by the secretary.

(e) *The secretary shall review the information reported by the United States department of labor pursuant to the payment integrity information act of 2019, public law 116-117, and any other relevant information available from the United States department of labor and any relevant information held by the department of labor available to the secretary regarding improper payment amounts for the state of Kansas for the period beginning on March 15, 2020, through December 31, 2022.*

(f) *Any federal unemployment insurance benefit program established as a result of COVID-19 or any pandemic shall not be continued after the ending date of the federal program through the use of Kansas state employment security fund contributions made by Kansas employers.*

Sec. 19. K.S.A. 2020 Supp. 44-714 is hereby amended to read as follows: 44-714. (a) *Duties and powers of secretary.* It shall be the duty of the secretary to administer this act and the secretary shall have power and authority to adopt, amend or revoke such rules and regulations, to employ such persons, make such expenditures, require such reports, make such investigations, and take such other action as the secretary deems necessary or suitable to that end. Such rules and regulations may be adopted, amended, or revoked by the secretary only after public hearing or opportunity to be heard thereon. The secretary shall determine the organization and methods of procedure in accordance with the provisions of this act, and shall have an official seal which shall be judicially noticed. The secretary shall make and submit reports for the administration of the employment security law in the manner prescribed by K.S.A. 75-3044~~—to~~ through 75-3046, ~~inclusive~~, and 75-3048, and amendments thereto. Whenever the secretary believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, the secretary shall promptly so inform the governor and the legislature, and make recommendations with respect thereto.

(b) *Publication.* The secretary shall cause to be printed for distribution to the public the text of this act, the secretary's rules and regulations and any other material the secretary deems relevant and suitable and shall furnish the same to any person upon application therefor.

(c) *Personnel.* Subject to other provisions of this act, the secretary is authorized to appoint, fix the compensation, and prescribe the duties and powers of such officers, accountants, deputies, attorneys, experts and other persons as may be necessary in carrying out the provisions of this act. The secretary may delegate to any such person so appointed such power and authority as the secretary deems reasonable and proper for the effective administration of this act, and may in the secretary's discretion bond any person handling moneys or signing checks under the employment security law.

(d) *Employment stabilization.* The secretary, with the advice and aid of the appropriate divisions of the department of labor, shall: (1) Take all appropriate steps to reduce and prevent unemployment;~~—to~~ (2) encourage and assist in the adoption of practical methods of vocational training, retraining and vocational guidance;~~—to~~ (3) investigate, recommend, advise, and assist in the establishment and operation, by municipalities, counties, school districts and the state, of reserves for public works to be used in time of business depression and unemployment;~~—to~~ (4) promote the reemployment of unemployed

workers throughout the state in every other way that may be feasible; and (5) to these ends—to carry on and publish the results of investigations and research studies.

(e) *Records and reports.* Each employing unit shall keep true and accurate work records, containing such information as the secretary may prescribe. Such records shall be open to inspection and subject to being copied by the secretary or the secretary's authorized representatives at any reasonable time and shall be preserved for a period of five years from the due date of the contributions or payments in lieu of contributions for the period to which they relate. Only one audit shall be made of any employer's records for any given period of time. Upon request the employing unit shall be furnished a copy of all findings by the secretary or the secretary's authorized representatives, resulting from such audit. A special inquiry or special examination made for a specific and limited purpose shall not be considered to be an audit for the purpose of this subsection. The secretary may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the secretary deems necessary for the effective administration of this act. Information thus obtained or obtained from any individual pursuant to the administration of this act shall be held confidential, except to the extent necessary for the proper presentation of a claim by an employer or employee under the employment security law, and shall not be published or be open to public inspection, other than to public officials or the agents or contractors of a public official in the performance of their official duties, in any manner revealing the individual's or employing unit's identity. The secretary may publish or otherwise disclose appeals records and decisions, and precedential determinations on coverage of employers, employment and wages, provided all social security numbers have been removed. Any claimant or employing unit or their representatives at a hearing before an appeal tribunal or the secretary shall be supplied with information from such records to the extent necessary for the proper presentation of the claim. The transcript made at any such benefits hearing shall not be discoverable or admissible in evidence in any other proceeding, hearing or determination of any kind or nature. In the event of any appeal of a benefits matter, the transcript shall be sealed by the hearing officer and shall be available only to any reviewing authority who shall reseal the transcript after making a review of it. In no event shall such transcript be deemed a public record. Nothing in this subsection shall be construed to prohibit disclosure of any information obtained under the employment security law, including hearing transcripts, upon request of either of the parties, for the purpose of administering or adjudicating a claim for benefits under the provisions of any other state program, except that any party receiving such information shall be prohibited from further disclosure and shall be subject to the same duty of confidentiality otherwise imposed by this subsection and shall be subject to the penalties imposed by this subsection for violations of such duty of confidentiality. Nothing in this subsection shall be construed to prohibit disclosure of any information obtained under the employment security law, including hearing transcripts, for use as evidence in a criminal investigation or in open court in a criminal prosecution or at an appeal hearing under the employment security law. Nothing in this subsection shall be construed to prohibit disclosure of any information obtained under the employment security law, including hearing transcripts to an agent or contractor of a public official to whom disclosure is permissible under the employment security law, except that any party receiving such information shall be prohibited from further disclosure, except for use in the performance of such party's official duties, and shall be subject to the same duty of confidentiality otherwise imposed by this subsection and shall be subject to the penalties imposed by this subsection for violations of such duty of confidentiality. Any individual who violates any provisions of this subsection, shall be fined not less than \$20 nor more than \$200 or imprisoned for not longer than 90 days,

or both. Original records of the agency and original paid benefit warrants of the state treasurer may be made available to the employment security agency of any other state or the federal government to be used as evidence in prosecution of violations of the employment security law of such state or federal government. Photostatic copies of such records shall be made and where possible shall be substituted for original records introduced in evidence and the originals returned to the agency. *Nothing in this subsection shall be construed to prohibit disclosure otherwise permissible under 20 C.F.R. part 603.5.*

(f) *Oaths and witnesses.* In the discharge of the duties imposed by the employment security law, the chairperson of an appeal tribunal, an appeals referee, the secretary or any duly authorized representative of the secretary shall have power to administer oaths and affirmations, take depositions, issue interrogatories, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a disputed claim or the administration of the employment security law.

(g) *Subpoenas, service.* Upon request, service of subpoenas shall be made by the sheriff of a county within that county, by the sheriff's deputy, by any other person who is not a party and is not less than 18 years of age or by some person specially appointed for that purpose by the secretary of labor or the secretary's designee. A person not a party as described above or a person specially appointed by the secretary or the secretary's designee to serve subpoenas may make service any place in the state. The subpoena shall be served as follows:

(1) *Individual.* Service upon an individual, other than a minor or incapacitated person, shall be made: (A) By delivering a copy of the subpoena to the individual personally; (B) by leaving a copy at such individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; (C) by leaving a copy at the business establishment of the employer with an officer or employee of the establishment; (D) by delivering a copy to an agent authorized by appointment or by law to receive service of process, but if the agent is one designated by a statute to receive service, such further notice as the statute requires shall be given; or (E) if service as prescribed above in subparagraphs (A), (B), (C) or (D) cannot be made with due diligence, by leaving a copy of the subpoena at the individual's dwelling house, usual place of abode or usual business establishment, and by mailing a notice by first-class mail to the place that the copy has been left.

(2) *Corporations and partnerships.* Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association, when by law it may be sued as such, shall be made by delivering a copy of the subpoena to an officer, partner or resident managing or general agent thereof, or by leaving the copy at any business office of the employer with the person having charge thereof or by delivering a copy to any other agent authorized by appointment or required by law to receive service of process, if the agent is one authorized by law to receive service and, if the law so requires, by also mailing a copy to the employer.

(3) *Refusal to accept service.* In all cases when the person to be served, or an agent authorized by such person to accept service of petitions and summonses shall refuse to receive copies of the subpoena, the offer of the duly authorized process server to deliver copies thereof and such refusal shall be sufficient service of such subpoena.

(4) *Proof of service.* (A) Every officer to whom a subpoena or other process shall be delivered for service within or without the state, shall make return thereof in writing stating the time, place and manner of service of such writ and shall sign such officer's name to such return.

(B) If service of the subpoena is made by a person appointed by the secretary or the secretary's designee to make service, or any other person described in subsection (g), such person shall make an affidavit

as to the time, place and manner of service thereof in a form prescribed by the secretary or the secretary's designee.

(5) *Time for return.* The officer or other person receiving a subpoena shall make a return of service promptly and shall send such return to the secretary or the secretary's designee in any event within 10 days after the service is effected. If the subpoena cannot be served it shall be returned to the secretary or the secretary's designee within 30 days after the date of issue with a statement of the reason for the failure to serve the same.

(h) *Subpoenas, enforcement.* In case of contumacy by or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which such person guilty of contumacy or refusal to obey is found, resides or transacts business, upon application by the secretary or the secretary's duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before the secretary, or the secretary's duly authorized representative, to produce evidence, if so ordered, or to give testimony relating to the matter under investigation or in question. Failure to obey such order of the court may be punished by the court as a contempt thereof. Any person who, without just cause, shall fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda or other records in obedience to the subpoena of the secretary or the secretary's duly authorized representative shall be punished by a fine of not less than \$200 or by imprisonment of not longer than 60 days, or both, and each day such violation continued shall be deemed to be a separate offense.

(i) *State-federal cooperation.* In the administration of this act, the secretary shall cooperate to the fullest extent consistent with the provisions of this act, with the federal security agency, shall make such reports, in such form and containing such information as the federal security administrator may from time to time require, and shall comply with such provisions as the federal security administrator may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with the regulations prescribed by the federal security agency governing the expenditures of such sums as may be allotted and paid to this state under title III of the social security act for the purpose of assisting in the administration of this act. Upon request therefor the secretary shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's rights to further benefits under this act.

(j) *Reciprocal arrangements.* The secretary shall participate in making reciprocal arrangements with appropriate and duly authorized agencies of other states or of the federal government, or both, whereby:

(1) Services performed by an individual for a single employing unit for which services are customarily performed in more than one state shall be deemed to be services performed entirely within any one of the states: (A) In which any part of such individual's service is performed; (B) in which such individual maintains residence; or (C) in which the employing unit maintains a place of business, provided there is in effect as to such services, an election, approved by the agency charged with the administration of such state's unemployment compensation law, pursuant to which all the services performed by such individual for such employing units are deemed to be performed entirely within such state;

(2) service performed by not more than three individuals, on any portion of a day but not necessarily simultaneously, for a single employing unit which customarily operates in more than one state shall be deemed to be service performed entirely within the state in which such employing unit maintains the headquarters of its business; provided that there is in effect, as to such service, an approved election by an employing unit with the affirmative consent of each such

individual, pursuant to which service performed by such individual for such employing unit is deemed to be performed entirely within such state;

(3) potential rights to benefits accumulated under the employment compensation laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for the payments of benefits through a single appropriate agency under terms which the secretary finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(4) wages or services, upon the basis of which an individual may become entitled to benefits under an unemployment compensation law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining such individual's rights to benefits under this act, and wages for insured work, on the basis of which an individual may become entitled to benefits under this act, shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this act upon the basis of such wages or services, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the secretary finds will be fair and reasonable as to all affected interests; and

(5) (A) contributions due under this act with respect to wages for insured work shall be deemed for the purposes of K.S.A. 44-717, and amendments thereto, to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal unemployment compensation law, but no such arrangement shall be entered into unless it contains provisions for such reimbursements to the fund of such contributions and the actual earnings thereon as the secretary finds will be fair and reasonable as to all affected interests;

(B) reimbursements paid from the fund pursuant to subsection (j) (4) shall be deemed to be benefits for the purpose of K.S.A. 44-704 and 44-712, and amendments thereto; the secretary is authorized to make to other state or federal agencies, and to receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements entered into pursuant to the provisions of this section or any other section of the employment security law;

(C) the administration of this act and of other state and federal unemployment compensation and public employment service laws will be promoted by cooperation between this state and such other states and the appropriate federal agencies in exchanging services and in making available facilities and information; the secretary is therefore authorized to make such investigations, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this act as the secretary deems necessary or appropriate to facilitate the administration of any such unemployment compensation or public employment service law and, in like manner, to accept and utilize information, service and facilities made available to this state by the agency charged with the administration of any such other unemployment compensation or public employment service law; and

(D) to the extent permissible under the laws and constitution of the United States, the secretary is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this act and facilities and services provided under the unemployment compensation law of any foreign government may be utilized for the taking of claims and the payment of benefits under the employment security law of this state or under a similar law of such government.

(k) *Records available.* The secretary may furnish the railroad retirement board, at the expense of such board, such copies of the

records as the railroad retirement board deems necessary for its purposes.

(l) *Destruction of records, reproduction and disposition.* The secretary may provide for the destruction, reproduction, temporary or permanent retention, and disposition of records, reports and claims in the secretary's possession pursuant to the administration of the employment security law provided that prior to any destruction of such records, reports or claims the secretary shall comply with K.S.A. 75-3501 to through 75-3514, inclusive, and amendments thereto.

(m) *Federal cooperation.* The secretary may afford reasonable cooperation with every agency of the United States charged with administration of any unemployment insurance law.

(n) The secretary is hereby authorized to fix, charge and collect fees for copies made of public documents, as defined by K.S.A. 45-217(c), and amendments thereto, by xerographic, thermographic or other photocopying or reproduction process, in order to recover all or part of the actual costs incurred, including any costs incurred in certifying such copies. All moneys received from fees charged for copies of such documents shall be remitted 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 state treasury to the credit of the employment security administration fund. No such fees shall be charged or collected for copies of documents that are made pursuant to a statute which requires such copies to be furnished without expense.

(o) "Performance of official duties" means the administration or enforcement of law or the execution of the official responsibilities of a federal, state or local official, collection of debts owed to the courts or the enforcement of child support on behalf of a state or local official. Administration of law includes research related to the law administered by the public official. "Performance of official duties" does not include solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or a political party.

Sec. 20. K.S.A. 2020 Supp. 44-719 is hereby amended to read as follows: 44-719. (a) (1) *Except as provided in subsection (a)(2)*, any person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or other payment under this act, either for such person or for any other person, shall be guilty of theft and shall be punished in accordance with the provisions of K.S.A. 2020 Supp. 21-5801, and amendments thereto.

(2) *Any violation of subsection (a)(1) shall be a severity level 5, nonperson felony if such person:*

(A) *Had no basis to obtain or increase any benefit or other payment under this act because the person failed to engage in employment as defined in K.S.A. 44-703, and amendments thereto, and failed to perform any services for wages within this state not within the meaning of employment as defined in K.S.A. 44-703, and amendments thereto;*

(B) *knowingly made the false statement or representation in such a manner that such statement or representation purports to have been made by another person, either real or fictitious, and if a real person without the authority of such person; and*

(C) *communicated or caused to be communicated a false statement or representation on three or more occasions within a 30 - day period that purported to be from different other persons, as provided by paragraph (2)(B), to the department of labor.*

(b) Any employing unit or any officer or agent for any employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this act, or who willfully fails or refuses to make

any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not longer than 60 days, or both such fine and imprisonment. Each such false statement or representation or failure to disclose a material fact and each day of such failure or refusal shall constitute a separate offense.

(c) Any person who willfully violates any provision of this act or any rule and regulation adopted by the secretary hereunder, the violation of which is made unlawful or the observance of which is required under the terms of this act, and for which a penalty is neither prescribed herein or provided by any other applicable statute, shall be punished by a fine of not less than \$20 nor more than \$200, or by imprisonment for not longer than 60 days, or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(d) (1) Any person who has received any amount of money as benefits under this act while any conditions for the receipt of benefits imposed by this act were not fulfilled in such person's case, or while such person was disqualified from receiving benefits, shall in the discretion of the secretary, either be liable to have such amount of money deducted from any future benefits payable to such person under this act or shall be liable to repay to the secretary for the employment security fund an amount of money equal to the amount so received by such person. After a period of five years, the secretary may waive the collection of any such amount of money when the secretary has determined that the payment of such amount of money was not due to fraud, misrepresentation, or willful nondisclosure on the part of the person receiving such amount of money, and the collection thereof would be against equity or would cause extreme hardship with regard to such person. The collection of benefit overpayments which were made in the absence of fraud, misrepresentation or willful nondisclosure of required information on the part of the person who received such overpayments, may be waived by the secretary at any time if such person met all eligibility requirements of the employment security law during the weeks in which the overpayments were made.

(2) Any benefit erroneously paid which is not repaid shall bear interest at the rate of 1.5% per month or fraction of a month. If the benefit was received as a result of fraud, misrepresentation or willful nondisclosure of required information, interest shall accrue from the date of the final determination of overpayment until repayment plus interest is received by the secretary. If the overpayment was without fraud, misrepresentation or willful nondisclosure of required information, interest shall accrue upon any balance which remains unpaid two years after the final determination of overpayment is made and shall continue until payment plus accrued interest is received by the secretary. Interest collected pursuant to this section shall be paid into the special employment security fund, except that interest collected on federal administrative programs shall be returned to the federal government. Upon written request and for good cause shown, the secretary may abate any interest or portion thereof provided for by this subsection (d)(2). Interest accrued may not be paid by money deducted from any future benefits payable to such persons liable for any overpayment.

(3) Unless collection is waived by the secretary, any such amount shall be collectible in the manner provided in K.S.A. 44-717, and amendments thereto, for the collection of past due contributions. The courts of this state shall in like manner entertain actions to collect amounts of money erroneously paid as benefits, or unlawfully obtained, for which liability has accrued under the employment security law of any other state or of the federal government.

(4) In cases involving the collection of debts arising from the employment security law, the actual amount received from the United States department of treasury under the treasury offset program or its



successor shall be credited to the overpayment and any fee charged by the department of treasury shall be borne by the debtor.

(e) Any employer or person who willfully fails or refuses to pay contributions, payments in lieu of contributions or benefit cost payments or attempts in any manner to evade or defeat any such contributions, payments in lieu of contributions or benefit cost payments or the payment thereof, shall be liable for the payment of such contributions, payments in lieu of contributions or benefit cost payments and, in addition to any other penalties provided by law, shall be liable to pay a penalty equal to the total amount of the contributions, payments in lieu of contributions or benefit cost payments evaded or not paid.

(f) (1) It shall be unlawful for an employing unit to knowingly obtain or attempt to obtain a reduced liability for contributions under K.S.A. 44-710a(b)(1), and amendments thereto, through manipulation of the employer's workforce, or for an employing unit that is not an employing unit at the time it acquires the trade or business, to knowingly obtain or attempt to obtain a reduced liability for contributions under K.S.A. 44-710a(b)(5), and amendments thereto, or any other provision of K.S.A. 44-710a, and amendments thereto, related to determining the assignment of a contribution rate, when the sole or primary purpose of the business acquisition was for the purpose of obtaining a lower rate of contributions, or for a person to knowingly advise an employing unit in such a way that results in such a violation, such employing unit or person shall be subject to the following penalties:

(A) If the person is an employer, then such employer shall be assigned the highest rate assignable under K.S.A. 44-710a, and amendments thereto, for the rate year during which such violation or attempted violation occurred and the three rate years immediately following this rate year. However, if the employer's business is already at such highest rate for any year, or if the amount of increase in the employer's rate would be less than 2% for such year, then a penalty rate of contributions of 2% of taxable wages shall be imposed for such year. Any moneys resulting from the difference of the computed rate and the penalty rate shall be remitted 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 state treasury to the credit of the special employment security fund.

(B) If the person is not an employer, such person shall be subject to a civil money penalty of not more than \$5,000. All fines assessed and collected under this section shall be remitted 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 state treasury to the credit of the special employment security fund.

(2) For purposes of this subsection, the term "knowingly" means having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved.

(3) For purposes of this subsection, the term "violates or attempts to violate" includes, but is not limited to, any intent to evade, misrepresentation or willful nondisclosure.

(4) (A) In addition to, or in lieu of, any civil penalty imposed by paragraph (1) if, the director of employment security or a special assistant attorney general assigned to the department of labor, has probable cause to believe that a violation of this subsection (f) should be prosecuted as a crime, a copy of any order, all investigative reports and any evidence in the possession of the division of employment security which relates to such violation, may be forwarded to the prosecuting attorney in the county in which the act or any of the acts were performed which constitute a violation of this subsection (f). Any case which a county or district attorney fails to prosecute within 90 days shall be returned promptly to the director of employment security.

The special assistant attorney general assigned to the Kansas department of labor shall then notify the attorney general and if, in the opinion of the attorney general, the acts or practices involved warrant prosecution, the attorney general shall prosecute the case.

(B) Violation of this subsection (f) shall be a level 9, nonperson felony.

(5) The secretary shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

(6) For purposes of subsection (f):

(A) "Person" has the meaning given such term by section 7701(a)(1) of the internal revenue code of 1986;

(B) "trade or business" shall include the employer's workforce; and

(C) the provisions of K.S.A. 2020 Supp. 21-5211 and 21-5212, and amendments thereto, shall apply.

(7) This subsection (f) shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulation issued by the United States department of labor.

Sec. 21. K.S.A. 2020 Supp. 44-757 is hereby amended to read as follows: 44-757. *Shared work unemployment compensation program.*

(a) As used in this section:

(1) "Affected unit" means a specified department, shift or other unit of two or more employees that is designated by an employer to participate in a shared work plan.

(2) "Fringe benefit" means health insurance, a retirement benefit received under a pension plan, a paid vacation day, a paid holiday, sick leave, and any other analogous employee benefit that is provided by an employer.

(3) "Fund" has the meaning ascribed thereto by K.S.A. 44-703(k), and amendments thereto.

(4) "Normal weekly hours of work" means the lesser of 40 hours or the average obtained by dividing the total number of hours worked per week during the preceding twelve-week period by the number 12.

(5) "Participating employee" means an employee who works a reduced number of hours under a shared work plan *initiated by their employer and approved by the secretary.*

(6) "Participating employer" means an employer who has *applied to and been approved by the secretary for* a shared work plan *that is in effect.*

(7) "Secretary" means the secretary of labor or the secretary's designee.

(8) "Shared work benefit" means an unemployment compensation benefit that is payable to an individual in an affected unit because the individual works reduced hours under an approved shared work plan.

(9) "Shared work plan" means a *short-term compensation program for reducing unemployment under which employees who are members of an affected unit share the work remaining after a reduction in their normal weekly hours of work.*

(10) ~~"Shared work unemployment compensation program" means a program designed to reduce unemployment and stabilize the workforce by allowing certain employees to collect unemployment compensation benefits if the employees share the work remaining after a reduction in the total number of hours of work and a corresponding reduction in wages.~~ *"Short-term compensation program" means a shared work plan program designed to provide an alternative to layoffs for employers experiencing a reduction in available work. A "short-term compensation program" preserves employees' jobs and an employer's trained workforce during times of lowered economic activity by allowing an employer to reduce hours of work for employees rather than laying off some employees while others continue to work full time. Under a "short-term compensation program," employees experiencing a reduction in hours are allowed to collect a pro-rata share of their unemployment compensation benefits to replace a portion of the employee's lost wages.*

(b) The secretary shall establish a voluntary—~~shared work-unemployment~~ short-term compensation program as provided by this section. The secretary may adopt rules and regulations and establish procedures necessary to administer the ~~shared work-unemployment~~ short-term compensation program.

(c) *The secretary shall create and manage an annual promotional campaign for the short-term compensation program to encourage and improve business participation. The promotional campaign shall include the following elements:*

(A) *Engagement in proactive educational communications with other state agencies and stakeholders, including the governor's office, legislators, workforce investment boards, labor unions and local, regional or state chambers of commerce;*

(B) *a dedicated department of labor employee or team to efficiently and timely answer employer's questions about the short-term compensation program;*

(C) *presentation materials that provide consistency of messaging about the benefits of using a short-term compensation program to provide stakeholders for distribution to employer groups, workforce investment boards or other interested parties;*

(D) *proactive engagement with employers experiencing economic stress or layoffs to share the benefits of the short-term compensation program and to ensure such employers are aware of the program; and*

(E) *an automated application, claims and weekly certification process for participating employers designed to facilitate participation, reduce an employer's administrative burden and promote the use of the short-term compensation program.*

(d) An employer who wishes to participate in the ~~shared work-unemployment~~ short-term compensation program must submit a written shared work plan to the secretary for the secretary's approval. As a condition for approval, a participating employer must agree to furnish the secretary with reports relating to the operation of the shared work plan as requested by the secretary. The employer shall monitor and evaluate the operation of the established shared work plan as requested by the secretary and shall report the findings to the secretary.

~~(d)~~(e) The secretary may approve a shared work plan if:

(1) The shared work plan applies to and identifies a specific affected unit;

(2) the employees in the affected unit are identified by name and social security number;

(3) the shared work plan reduces the normal weekly hours of work for an employee, including regular part-time employees, in the affected unit by not less than ~~20%~~ 10% and not more than ~~40%~~ 50%;

(4) the shared work plan applies to at least 10% of the employees in the affected unit;

(5) the shared work plan describes the manner that the participating employer treats the fringe benefits of each employee in the affected unit and the employer certifies that if the employer provides health benefits and retirement benefits under a defined benefit plan, as defined in 26 U.S.C. § 414(j), or contributions under a defined contribution plan, as defined in 26 U.S.C. § 414(i), to any employee whose workweek is reduced under the program that such benefits will continue to be provided to employees participating in the ~~shared work~~ short-term compensation program under the same terms and conditions as though the workweek of such employee had not been reduced or to the same extent as other employees not participating in the ~~shared work~~ short-term compensation program;

(6) the employer certifies that the implementation of a shared work plan and the resulting reduction in work hours is in lieu of layoffs that would affect at least 10% of the employees in the affected unit and that would result in an equivalent reduction in work hours;

(7) the employer has filed all reports required to be filed under the employment security law for all past and current periods and has paid all contributions, benefit cost payments, or if a reimbursing employer

has made all payments in lieu of contributions due for all past and current periods;

(8) (A) a contributing employer must be eligible for a rate computation under K.S.A. 44-710a(a)(2), and amendments thereto, and the contributing employer, as determined by the secretary, does not adversely impact the state's eligibility under section 2108 of the federal CARES act, public law 116-136;

(B) *if section 2108 of the federal CARES act, public law 116-136, is no longer in effect, a contributing employer eligible for a rate computation under K.S.A. 44-710(a)(2), and amendments thereto, that is a negative account employer as defined by K.S.A. 44-710a(d), and amendments thereto, may only be approved for a shared work application if the negative account employer's most recent calculated reserve ratio has improved from the previous reporting year's reserve ratio;*

(C) a rated governmental employer must be eligible for a rate computation under K.S.A. 44-710d(g), and amendments thereto;

(9) eligible employees may participate, as appropriate, in training, including without limitation, employer-sponsored training or worker training funded under the workforce investment act of 1998, to enhance job skills if such program has been approved by the state of Kansas;

(10) the employer includes a plan for giving advance notice, where feasible, to an employee whose workweek is to be reduced together with an estimate of the number of layoffs that would have occurred absent the ability to participate in shared work compensation and such other information as the secretary of labor determines is appropriate; and

(11) the terms of the employer's written plan and implementation are consistent with employer obligations under applicable federal and Kansas laws.

~~(e)~~(f) If any of the employees who participate in a shared work plan under this section are covered by a collective bargaining agreement, the shared work plan must be approved in writing by the collective bargaining agent.

~~(f)~~(g) A shared work plan may not be implemented to subsidize seasonal employers during the off-season.

~~(g)~~(h) The secretary shall approve or deny a shared work plan no later than the 30<sup>th</sup> day after the day the shared work plan is received by the secretary. The secretary shall approve or deny a shared work plan in writing. If the secretary denies a shared work plan, the secretary shall notify the employer of the reasons for the denial.

~~(h)~~(i) A shared work plan is effective on the date it is approved by the secretary, except for good cause a shared work plan may be effective at any time within a period of 14 days prior to the date such plan is approved by the secretary. The shared work plan expires on the last day of the 12<sup>th</sup> full calendar month after the effective date of the shared work plan.

~~(i)~~(j) An employer may modify a shared work plan created under this section to meet changed conditions if the modification conforms to the basic provisions of the shared work plan as approved by the secretary. The employer must report the changes made to the shared work plan in writing to the secretary before implementing the changes. If the original shared work plan is substantially modified, the secretary shall reevaluate the shared work plan and may approve the modified shared work plan if it meets the requirements for approval under subsection (d). The approval of a modified shared work plan does not affect the expiration date originally set for that shared work plan. If substantial modifications cause the shared work plan to fail to meet the requirements for approval, the secretary shall deny approval to the modifications as provided by subsection (g).

~~(j)~~(k) Notwithstanding any other provisions of the employment security law, an individual is unemployed and is eligible for shared work benefits in any week in which the individual, as an employee in an affected unit, works for less than the individual's normal weekly

hours of work in accordance with an approved shared work plan in effect for that week. The secretary may not deny shared work benefits for any week to an otherwise eligible individual by reason of the application of any provision of the employment security law that relates to availability for work, active search for work or refusal to apply for or accept work with an employer other than the participating employer.

~~(k)~~(l) An individual is eligible to receive shared work benefits with respect to any week in which the secretary finds that:

(1) *The employee is determined to be eligible for unemployment compensation, except that while receiving shared work benefits, an employee shall not be required to meet work availability or work search requirements but shall be required to be available for the employee's normal work week;*

(2) the individual is employed as a member of an affected unit subject to a shared work plan that was approved before the week in question and is in effect for that week;

~~(2)~~(3) the individual is able to work and is available for additional hours of work or full-time work with the participating employer;

~~(3)~~(4) the individual's normal weekly hours of work have been reduced by at least ~~20%~~ 10% but not more than ~~40%~~ 50%, with a corresponding reduction in wages; and

~~(4)~~(5) the individual's normal weekly hours of work and wages have been reduced as described in subsection (k)~~(3)~~(4) for a waiting period of one week that occurs within the period the shared work plan is in effect, which period includes the week for which the individual is claiming shared work benefits.

~~(h)~~(m) The secretary shall pay an individual who is eligible for shared work benefits under this section a weekly shared work benefit amount equal to the individual's regular weekly benefit amount for a period of total unemployment multiplied by the nearest full percentage of reduction of the individual's hours as set forth in the employer's shared work plan. If the shared benefit amount is not a multiple of \$1, the secretary shall reduce the amount to the next lowest multiple of \$1. All shared work benefits under this section shall be payable from the fund.

~~(m)~~(n) An individual may not receive shared work benefits and regular unemployment compensation benefits in an amount that exceeds the maximum total amount of benefits payable to that individual in a benefit year as provided by K.S.A. 44-704(g), and amendments thereto.

~~(n)~~(o) An individual who has received all of the shared work benefits and regular unemployment compensation benefits available in a benefit year is an exhaustee under K.S.A. 44-704a and 44-704b, and amendments thereto, and is entitled to receive extended benefits under such statutes if the individual is otherwise eligible under such statutes.

~~(o)~~(p) The secretary may terminate a shared work plan for good cause if the secretary determines that the shared work plan is not being executed according to the terms and intent of the ~~shared work~~ ~~unemployment~~ short-term compensation program.

~~(p)~~(q) Notwithstanding any other provisions of this section, an individual shall not be eligible to receive shared work benefits for more than ~~26~~ 52 calendar weeks during the 12-month period of the shared work plan, ~~except that two weeks of additional benefits shall be payable to claimants who exhaust regular benefits and any benefits under any other federal or state extended benefits program during the period July 1, 2003 through June 30, 2004.~~ No week shall be counted as a week for which an individual is eligible for shared work benefits for the purposes of this section unless the week occurs within the 12-month period of the shared work plan.

~~(q)~~(r) No shared work benefit payment shall be made under any shared work plan or this section for any week that commences before April 1, 1989.

~~(r)~~(s) This section shall be construed as part of the employment

security law.

Sec. 22. K.S.A. 44-758 is hereby amended to read as follows: 44-758. (a) Any employer or any individual, organization, partnership, corporation or other legal entity ~~which~~ *that* is a lessor employing unit, as defined by ~~subsection (ff)~~ of K.S.A. 44-703 ~~(ff)~~, and amendments thereto, shall be liable for contributions on wages paid by the lessor employing unit to individuals performing services for client lessees. ~~For the purposes of the employment security law, no client lessee shall lease an individual proprietor, partner or corporate officer, who is a shareholder or a member of the board of directors of the corporation, from any lessor employing unit.~~ Any client lessee shall be jointly and severally liable for any unpaid contributions, interest and penalties due under this law from any lessor employing unit attributable to wages for services performed for the client lessee by employees leased to the client lessee. The lessor employing unit shall keep separate records and submit separate quarterly contributions and wage reports for each client lessee.

(b) Any lessor employing unit ~~which~~ *that* is currently engaged in the business of leasing employees to client lessees shall comply with the provisions of subsection (a) prior to October 1, 1990.

(c) The provisions of this section shall not be applicable to private employment agencies ~~which~~ *that* provide temporary workers to employers on a temporary help basis, provided the private employment agencies are liable as employers for the payment of contributions on wages paid to temporary workers so employed.

(d) This section shall be construed as part of the employment security law.

Sec. 23. K.S.A. 44-758 and K.S.A. 2020 Supp. 44-703, 44-704, 44-705, 44-706, 44-709, 44-710, 44-710a, 44-710b, 44-714, 44-719 and 44-757 are hereby repealed.

Sec. 24. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted

Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

Passed the SENATE

as amended \_\_\_\_\_

SENATE adopted

Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*