

SENATE BILL No. 162

By Committee on Commerce

2-8

1 AN ACT concerning employment security law; relating to the employment
2 security board of review; emergency expansion, sunset; amending
3 K.S.A. 2020 Supp. 44-709 and repealing the existing section.
4

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

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

16 (b) *Determination.* (1) Except as otherwise provided in this
17 paragraph, a representative designated by the secretary, and hereinafter
18 referred to as an examiner, shall promptly examine the claim and, on the
19 basis of the facts found by the examiner, shall determine whether or not
20 the claim is valid. If the examiner determines that the claim is valid, the
21 examiner shall determine the first day of the benefit year, the weekly
22 benefit amount and the total amount of benefits payable with respect to the
23 benefit year. If the claim is determined to be valid, the examiner shall send
24 a notice to the last employing unit who shall respond within 10 days by
25 providing the examiner all requested information including all information
26 required for a decision under K.S.A. 44-706, and amendments thereto. The
27 information may be submitted by the employing unit in person at an
28 employment office of the secretary or by mail, by telefacsimile machine or
29 by electronic mail. If the required information is not submitted or
30 postmarked within a response time limit of 10 days after the examiner's
31 notice was sent, the employing unit shall be deemed to have waived its
32 standing as a party to the proceedings arising from the claim and shall be
33 barred from protesting any subsequent decisions about the claim by the
34 secretary, a referee, the employment security board of review or any court,
35 except that the employing unit's response time limit may be waived or
36 extended by the examiner or upon appeal, if timely response was

1 impossible due to excusable neglect. In any case in which the payment or
2 denial of benefits will be determined by the provisions of K.S.A. 44-
3 706(d), and amendments thereto, the examiner shall promptly transmit the
4 claim to a special examiner designated by the secretary to make a
5 determination on the claim after the investigation as the special examiner
6 deems necessary. The parties shall be promptly notified of the special
7 examiner's decision and any party aggrieved by the decision may appeal to
8 the referee as provided in subsection (c). The claimant and the claimant's
9 most recent employing unit shall be promptly notified of the examiner's or
10 special examiner's decision.

11 (2) The examiner may for good cause reconsider the examiner's
12 decision and shall promptly notify the claimant and the most recent
13 employing unit of the claimant, that the decision of the examiner is to be
14 reconsidered, except that no reconsideration shall be made after the
15 termination of the benefit year.

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

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

37 (d) *Referees.* The secretary shall appoint, in accordance with K.S.A.
38 44-714(c), and amendments thereto, one or more referees to hear and
39 decide disputed claims.

40 (e) *Time, computation and extension.* In computing the period of time
41 for an employing unit response or for appeals under this section from the
42 examiner's or the special examiner's determination or from the referee's
43 decision, the day of the act, event or default from which the designated

1 period of time begins to run shall not be included. The last day of the
2 period shall be included unless it is a Saturday, Sunday or legal holiday, in
3 which event the period runs until the end of the next day that is not a
4 Saturday, Sunday or legal holiday.

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

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

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

19 (2) When a vacancy on the employment security board of review
20 occurs, the workers compensation and employment security boards
21 nominating committee established under K.S.A. 44-551, and amendments
22 thereto, shall convene and submit a nominee to the governor for
23 appointment to each vacancy on the employment security board of review,
24 subject to confirmation by the senate as provided by K.S.A. 75-4315b, and
25 amendments thereto. The governor shall either: (A) Accept and submit to
26 the senate for confirmation the person nominated by the nominating
27 committee; or (B) reject the nomination and request the nominating
28 committee to nominate another person for that position. Except as
29 provided by K.S.A. 46-2601, and amendments thereto, no person
30 appointed to the employment security board of review, whose appointment
31 is subject to confirmation by the senate, shall exercise any power, duty or
32 function as a member until confirmed by the senate.

33 (3) No member of the employment security board of review shall
34 serve more than two consecutive terms. *This paragraph shall not apply to*
35 *members of the board appointed under K.S.A. 44-709(f)(1)(B)(ii). The*
36 *service of a board member appointed under K.S.A. 44-709(f)(1)(B)(ii)*
37 *shall not constitute a term as contemplated in this paragraph.*

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

43 (5) Each member of the employment security board of review shall

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

7 (6) The employment security board of review shall organize annually
8 by the election of a chairperson from among its members. The chairperson
9 shall serve in that capacity for a term of one year and until a successor is
10 elected. *For the purpose of hearing and determining cases, the board*
11 *members may sit in panels. A board panel shall consist of three members*
12 *with no more than two members belonging to the same political party. The*
13 *chairperson may sit as a member of a panel and shall preside over such*
14 *panel. When the chairperson is not a member of a hearing panel, the*
15 *chairperson shall appoint a member of the panel to preside. The board or*
16 *board panel shall meet on the first Monday of each month or on the call of*
17 *the chairperson or any two members of the board at the place designated.*
18 *The secretary of labor shall appoint an executive secretary of the board*
19 *and the executive secretary or executive secretary's designee shall attend*
20 *the meetings of the board and board panels.*

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

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

39 (g) *Procedure.* The manner that disputed claims are presented, the
40 reports on claims required from the claimant and from employers and the
41 conduct of hearings and appeals shall be in accordance with rules of
42 procedure prescribed by the employment security board of review for
43 determining the rights of the parties, whether or not such rules conform to

1 common law or statutory rules of evidence and other technical rules of
2 procedure. A full and complete record shall be kept of all proceedings and
3 decisions in connection with a disputed claim. All testimony at any hearing
4 upon a disputed claim shall be recorded, but need not be transcribed unless
5 the disputed claim is further appealed. In the performance of its official
6 duties, the board *or board panel* shall have access to all of the records that
7 pertain to the disputed claim and are in the custody of the secretary of
8 labor and shall receive the assistance of the secretary upon request.

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

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

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

36 (k) In any proceeding or hearing conducted under this section, a party
37 to the proceeding or hearing may appear before a referee or the
38 employment security board of review *or board panel* either personally or
39 by means of a designated representative to present evidence and to state
40 the position of the party. Hearings may be conducted in person, by
41 telephone or other means of electronic communication. The hearing shall
42 be conducted by telephone or other means of electronic communication if
43 none of the parties requests an in-person hearing. If ~~only one~~ a party

1 requests an in-person hearing, the referee *or board or board panel* shall
2 have the discretion ~~of requiring~~ *to deny the request in the absense of good*
3 *cause shown for the request by the requesting party. If a request for an in-*
4 *person hearing is granted, the referee or board or board panel shall have*
5 *the discretion to require* all parties to appear in person or allow the party
6 not requesting an in-person hearing to appear by telephone or other means
7 of electronic communication. The notice of hearing shall include notice to
8 the parties of their right to request an in-person hearing and instructions on
9 how to make the request.

10 Sec. 2. K.S.A. 2020 Supp. 44-709 is hereby repealed.

11 Sec. 3. This act shall take effect and be in force from and after its
12 publication in the Kansas register.