

SENATE BILL No. 77

By Committee on Commerce

1-31

1 AN ACT concerning the employment security act; creating an assessment
2 for the payment of interest on advances received from the federal
3 government; removing the waiting week extension; pertaining to
4 benefits; amending K.S.A. 2010 Supp. 44-704a, 44-705, 44-706, 44-
5 710a and 44-717 and repealing the existing sections.

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

8 Section 1. From and after July 1, 2011, K.S.A. 2010 Supp. 44-704a
9 is hereby amended to read as follows: 44-704a. (a) *Definitions.* As used in
10 this section, unless the context clearly requires otherwise:

11 (1) "Extended benefit period" means a period which:

12 (A) Begins with the third week after a week for which there is an
13 "on" indicator; and

14 (B) ends with either of the following weeks, whichever occurs later:
15 (i) The third week after the first week for which there is an "off"
16 indicator; or (ii) the 13th consecutive week of such period, except that no
17 extended benefit period may begin by reason of an "on" indicator before
18 the 14th week following the end of a prior extended benefit period which
19 was in effect with respect to this state.

20 (2) For the purposes of this section:

21 (A) There is an "on" indicator for this state for a week if the
22 secretary of labor determines, in accordance with the regulations of the
23 United States secretary of labor, that, for the period consisting of such
24 week and the immediately preceding 12 weeks, the rate of insured
25 unemployment (not seasonally adjusted) under this act: (i) Equaled or
26 exceeded 5% and equaled or exceeded 120% of the average of such rates
27 for the corresponding 13-week period ending in each of the preceding
28 two calendar years; ~~or (ii) and the state of Kansas pays a portion of such~~
29 ~~benefits in accordance with the provisions of K.S.A. 44-710(c)(2)(C) and~~
30 ~~44-710(e), and amendments thereto; or (ii) equaled or exceeded 5% and~~
31 ~~equaled or exceeded 120% of the average of such rates for the~~
32 ~~corresponding 13-week period ending in any or all of the preceding three~~
33 ~~calendar years and such benefits are funded entirely by the United States~~
34 ~~department of labor; or (iii) equaled or exceeded 6%; or ~~(iii)~~(iv) with~~
35 respect to benefits for weeks of unemployment beginning after March 6,
36 1993, (a) the average rate of total unemployment (seasonally adjusted), as

1 determined by the United States secretary of labor, for the period
2 consisting of the most recent three months for which data for all states are
3 published before the close of such week equals or exceeds 6.5%, and (b)
4 the average rate of total unemployment for this state (seasonally
5 adjusted), as determined by the United States secretary of labor, for the
6 three-month period referred to in clause ~~(iii)(a)~~(iv)(a)(1), equals or
7 exceeds 110% of such average for either or both of the corresponding
8 three-month periods ending in the two preceding calendar years; *or* (2)
9 *equals or exceeds 110% of such average for any or all of the*
10 *corresponding three-month periods ending in any or all of the three*
11 *preceding calendar years and such benefits are funded entirely by the*
12 *United States department of labor.*

13 (B) (i) There is an "off" indicator for this state for a week if the
14 secretary of labor determines, in accordance with the regulations of the
15 United States secretary of labor, that for the period consisting of such
16 week and the immediately preceding 12 weeks, the rate of insured
17 unemployment (not seasonally adjusted) under this act: (a) (1) Was less
18 than 5% or less than 120% of the average of such rates for the
19 corresponding 13-week period ending in each of the preceding two
20 calendar years; *or* (2) *was less than 5% or less than 120% of the average*
21 *of such rates for the corresponding 13-week period ending in any or all*
22 *of the three preceding calendar years and such benefits are funded*
23 *entirely by the United States department of labor*; and (b) was less than
24 5%.

25 (ii) There is an "off" indicator for this state for a week only if, for
26 the period consisting of such week and the immediately preceding 12
27 weeks, none of the conditions specified in subsection (a)(2)(A) of this
28 section result in an "on" indicator.

29 (3) "Rate of insured unemployment," for purposes of paragraphs (2)
30 (A) and (2)(B) of this subsection, means the percentage derived by
31 dividing:

32 (A) The average weekly number of individuals filing claims for
33 regular benefits in this state for weeks of unemployment with respect to
34 the most recent 13-consecutive-week period, as determined by the
35 secretary of labor on the basis of reports to the United States secretary of
36 labor; by

37 (B) the average monthly employment covered under this act for the
38 first four of the most recent six completed calendar quarters ending
39 before the end of such 13-week period.

40 (4) "Extended entitlement period" of an individual means the period
41 consisting of the weeks of the individual's benefit year which begin in an
42 extended benefit period and, if the individual's benefit year ends within
43 such extended benefit period, any weeks thereafter which begin in such

1 period.

2 (5) "Extended benefits" means benefits (including benefits payable
3 to federal civilian employees and to ex-service personnel pursuant to 5
4 U.S.C.A. chapter 85) payable to an individual under the provisions of the
5 act for weeks of unemployment in the individual's extended entitlement
6 period.

7 (6) "Exhaustee" means an individual who, with respect to any week
8 of unemployment in the individual's extended entitlement period:

9 (A) Has received, prior to such week, all of the regular benefits that
10 were available to the individual under this act or any other state law
11 (including dependents' allowances and benefits payable to federal civilian
12 employees and ex-service personnel under 5 U.S.C.A. chapter 85) in the
13 individual's current benefit year that includes such week, provided that,
14 for the purposes of this paragraph (6)(A), an individual shall be deemed
15 to have received all of the regular benefits that were available to the
16 individual although the individual may subsequently be determined to be
17 entitled to added regular benefits as a result of a pending appeal with
18 respect to wages that were not considered in the original monetary
19 determination of the individual's benefit year; or

20 (B) the individual's benefit year having expired prior to such week,
21 has no, or insufficient, wages on the basis of which the individual could
22 establish a new benefit year that would include such week; and

23 (C) (i) has no right to unemployment benefits or allowances, as the
24 case may be, under the federal railroad unemployment insurance act and
25 such other federal laws as are specified in regulations issued by the
26 United States secretary of labor; and (ii) has not received and is not
27 seeking unemployment benefits under the unemployment compensation
28 law of Canada; but if the individual is seeking such benefits and the
29 appropriate agency finally determines that the individual is not entitled to
30 benefits under such law the individual is considered an exhaustee.

31 (7) "State law" means the unemployment compensation law of any
32 state, approved by the United States secretary of labor under section 3304
33 of the federal internal revenue code of 1986.

34 (b) *Payment of extended benefits.* Extended benefits shall be payable
35 to eligible individuals with respect to weeks of unemployment in their
36 extended entitlement periods. The extended benefits provided by this
37 section and K.S.A. 44-704b, and amendments thereto, shall be payable
38 from the fund. All extended benefits shall be paid through the
39 employment offices, in accordance with such rules and regulations as the
40 secretary of labor may adopt.

41 (c) *Beginning and termination of extended benefit period.* (1)
42 Whenever an extended benefit period is to become effective in this state
43 as a result of an "on" indicator, or an extended benefit period is to be

1 terminated in this state as a result of an "off" indicator, the secretary of
2 labor shall make an appropriate public announcement.

3 (2) Computations required by the provisions of subsection (a)(3) of
4 this section shall be made by the secretary of labor, in accordance with
5 regulations prescribed by the United States secretary of labor.

6 (d) *Weekly extended benefit amount.* The weekly extended benefit
7 amount payable to an individual for a week of total unemployment in the
8 individual's extended entitlement period shall be an amount equal to the
9 regular weekly benefit amount payable to the individual during the
10 individual's applicable benefit year, except that for any week during a
11 period in which federal payments to states under section 204 of the
12 federal-state extended unemployment compensation act of 1970 are
13 reduced pursuant to an order issued under section 252 of the federal
14 balanced budget and emergency deficit control act of 1985, the weekly
15 extended benefit amount payable to an individual for a week of total
16 unemployment in the individual's eligibility period shall be reduced by a
17 percentage amount which is equivalent to the reduction in the federal
18 payment. If such reduced weekly extended benefit amount is not a
19 multiple of \$1, it shall be reduced to the next lower multiple of \$1.

20 (e) *Total extended benefit amount.* (1) Except as otherwise provided
21 in subsection (e)(2) or (e)(3) of this section, the total extended benefit
22 amount payable to any eligible individual with respect to the individual's
23 applicable benefit year shall be the least of the following amounts:

24 (A) Fifty percent of the total amount of regular benefits which were
25 payable to the individual under this act in the individual's applicable
26 benefit year; or

27 (B) thirteen times the individual's weekly benefit amount which was
28 payable to the individual under this act for a week of total unemployment
29 in the applicable benefit year.

30 (2) Effective with respect to weeks beginning in a high
31 unemployment period, the provisions of subsection (e)(1) of this section
32 shall be applied by substituting "80%" for "50%" in subparagraph (A) of
33 that subsection (e)(1), and by substituting "20" for "13" in subparagraph
34 (B) of that subsection (e)(1). For purposes of this subsection (e)(2), the
35 term "high unemployment period" means any period during which an
36 extended benefit period would be in effect if the provisions of subsection
37 (a)(2)(A)(iii) of this section were applied after substituting "8%" for
38 "6.5%" in clause (a) of that subsection (a)(2)(A)(iii).

39 (3) During any fiscal year in which federal payments to states under
40 section 204 of the federal-state extended unemployment compensation act
41 of 1970 are reduced pursuant to an order issued under section 252 of the
42 federal balanced budget and emergency deficit control act of 1985, the
43 total extended benefit amount payable to an individual with respect to the

1 individual's applicable benefit year shall be reduced by an amount equal
2 to the total of all of the reductions under subsection (d) of this section in
3 the weekly extended benefit amounts paid to the individual.

4 (f) *Eligibility requirements for extended benefits.* An individual shall
5 be eligible to receive extended benefits with respect to any week of
6 unemployment in the individual's extended entitlement period only if the
7 secretary of labor, or a person or persons designated by the secretary,
8 finds that with respect to such week:

9 (1) The individual is an "exhaustee" as defined in subsection (a)(6)
10 of this section;

11 (2) the individual is qualified and eligible for extended benefits
12 pursuant to K.S.A. 44-704b, and amendments thereto;

13 (3) the individual is entitled to benefits pursuant to the provisions of
14 this act which apply to claims for, or the payment of regular benefits
15 which are not inconsistent with the provisions of K.S.A. 44-704b, and
16 amendments thereto; and

17 (4) the individual, during the base period, (A) was paid wages for
18 insured work equal to or greater than 1½ times the amount of total wages
19 paid for the quarter in which such wages were highest during the
20 individual's base period; or (B) has been paid an amount equal to or
21 exceeding 40 times the individual's most recent weekly benefit amount in
22 the individual's base period.

23 (g) *Limitation on amount of combined regular, extended and trade*
24 *readjustment act benefits received.* Notwithstanding any other provisions
25 of this section or K.S.A. 44-704b, and amendments thereto, if the benefit
26 year of any individual ends within an extended entitlement period, the
27 remaining balance of extended benefits that the individual would, but for
28 this section, be entitled to receive in that extended entitlement period,
29 with respect to weeks of unemployment beginning after the end of the
30 benefit year, shall be reduced (but not below zero) by the product of the
31 number of weeks for which the individual received any amounts as trade
32 readjustment allowances within that benefit year, multiplied by the
33 individual's weekly benefit amount for extended benefits.

34 Sec. 2. From and after July 1, 2010, K.S.A. 2010 Supp. 44-705 is
35 hereby amended to read as follows: 44-705. Except as provided by
36 K.S.A. 44-757, and amendments thereto, an unemployed individual shall
37 be eligible to receive benefits with respect to any week only if the
38 secretary, or a person or persons designated by the secretary, finds that:

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

1 both of the requirements of this subsection (a).

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

4 (c) The claimant is able to perform the duties of such claimant's
5 customary occupation or the duties of other occupations for which the
6 claimant is reasonably fitted by training or experience, and is available
7 for work, as demonstrated by the claimant's pursuit of the full course of
8 action most reasonably calculated to result in the claimant's
9 reemployment except that, notwithstanding any other provisions of this
10 section, an unemployed claimant otherwise eligible for benefits shall not
11 become ineligible for benefits: (1) Because of the claimant's enrollment
12 in and satisfactory pursuit of approved training, including training
13 approved under section 236(a)(1) of the trade act of 1974; or (2) solely
14 because such individual is seeking only part-time employment if the
15 individual is available for a number of hours per week that are
16 comparable to the individual's part-time work experience in the base
17 period.

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

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

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

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

33 (C) if an individual is seeking unemployment benefits under the
34 unemployment compensation law of any other state or of the United
35 States, except that if the appropriate agency of such state or of the United
36 States finally determines that the claimant is not entitled to
37 unemployment benefits under such other law, this subsection (d)(1)(C)
38 shall not apply.

39 (2) The waiting week requirement of paragraph (1) shall not apply to
40 new claims, filed on or after July 1, 2007, by claimants who become
41 unemployed as a result of an employer terminating business operations
42 within this state, declaring bankruptcy or initiating a work force reduction
43 pursuant to public law 100-379, the federal worker adjustment and

1 retraining notification act (29 U.S.C. §§ 2101 through 2109), as amended.
2 The secretary shall adopt rules and regulations to administer the
3 provisions of this paragraph.

4 ~~(3) a claimant shall become eligible to receive compensation for the~~
5 ~~waiting period of one week, pursuant to paragraph (1), upon completion~~
6 ~~of three weeks of unemployment consecutive to such waiting period.~~

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

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

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

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

33 (2) The claimant files for benefits within 24 months of the date the
34 qualifying injury occurred.

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

38 Sec. 3. From and after July 1, 2011, K.S.A. 2010 Supp. 44-706 is
39 hereby amended to read as follows: 44-706. An individual shall be
40 disqualified for benefits:

41 (a) If the individual left work voluntarily without good cause
42 attributable to the work or the employer, subject to the other provisions of
43 this subsection ~~(a)~~. Failure to return to work after expiration of approved

1 personal or medical leave, or both, shall be considered a voluntary
2 resignation. After a temporary job assignment, failure of an individual to
3 affirmatively request an additional assignment on the next succeeding
4 workday, if required by the employment agreement, after completion of a
5 given work assignment, shall constitute leaving work voluntarily. The
6 disqualification shall begin the day following the separation and shall
7 continue until after the individual has become reemployed and has had
8 earnings from insured work of at least three times the individual's weekly
9 benefit amount. An individual shall not be disqualified under this
10 subsection ~~(a)~~ if:

11 (1) The individual was forced to leave work because of illness or
12 injury upon the advice of a licensed and practicing health care provider
13 and, upon learning of the necessity for absence, immediately notified the
14 employer thereof, or the employer consented to the absence, and after
15 recovery from the illness or injury, when recovery was certified by a
16 practicing health care provider, the individual returned to the employer
17 and offered to perform services and the individual's regular work or
18 comparable and suitable work was not available; As used in this
19 paragraph ~~(1)~~ "health care provider" means any person licensed by the
20 proper licensing authority of any state to engage in the practice of
21 medicine and surgery, osteopathy, chiropractic, dentistry, optometry,
22 podiatry or psychology;

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

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

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

36 (5) the individual left work because of hazardous working
37 conditions; in determining whether or not working conditions are
38 hazardous for an individual, the degree of risk involved to the individual's
39 health, safety and morals, the individual's physical fitness and prior
40 training and the working conditions of workers engaged in the same or
41 similar work for the same and other employers in the locality shall be
42 considered; as used in this paragraph ~~(5)~~, "hazardous working conditions"
43 means working conditions that could result in a danger to the physical or

1 mental well-being of the individual; each determination as to whether
2 hazardous working conditions exist shall include, but shall not be limited
3 to, a consideration of (A) the safety measures used or the lack thereof,
4 and (B) the condition of equipment or lack of proper equipment; no work
5 shall be considered hazardous if the working conditions surrounding the
6 individual's work are the same or substantially the same as the working
7 conditions generally prevailing among individuals performing the same
8 or similar work for other employers engaged in the same or similar type
9 of activity;

10 (6) the individual left work to enter training approved under section
11 236(a)(1) of the federal trade act of 1974, provided the work left is not of
12 a substantially equal or higher skill level than the individual's past
13 adversely affected employment (as defined for purposes of the federal
14 trade act of 1974), and wages for such work are not less than 80% of the
15 individual's average weekly wage as determined for the purposes of the
16 federal trade act of 1974;

17 (7) the individual left work because of unwelcome harassment of the
18 individual by the employer or another employee of which the employing
19 unit had knowledge;

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

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

33 (10) the individual left work because of a violation of the work
34 agreement by the employing unit and, before the individual left, the
35 individual had exhausted all remedies provided in such agreement for the
36 settlement of disputes before terminating;

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

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

43 (i) The individual's reasonable fear of future domestic violence at or

1 en route to or from the individual's place of employment; or

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

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

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

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

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

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

17 (ii) a police record documenting the abuse; or

18 (iii) documentation that the abuser has been convicted of one or
19 more of the offenses enumerated in ~~articles 34 and 35 of chapter 21 of the~~
20 ~~Kansas Statutes Annotated~~ *sections 36 through 77, 174, 210, 211 or 229*
21 *through 231 of chapter 136 of the 2010 Session Laws of Kansas*, and
22 amendments thereto, where the victim was a family or household
23 member; or

24 (iv) medical documentation of the abuse; or

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

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

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

35 (b) If the individual has been discharged for misconduct connected
36 with the individual's work. The disqualification shall begin the day
37 following the separation and shall continue until after the individual
38 becomes reemployed and has had earnings from insured work of at least
39 three times the individual's determined weekly benefit amount, except
40 that if an individual is discharged for gross misconduct connected with
41 the individual's work, such individual shall be disqualified for benefits
42 until such individual again becomes employed and has had earnings from
43 insured work of at least eight times such individual's determined weekly

1 benefit amount. In addition, all wage credits attributable to the
2 employment from which the individual was discharged for gross
3 misconduct connected with the individual's work shall be canceled. No
4 such cancellation of wage credits shall affect prior payments made as a
5 result of a prior separation.

6 (1) For the purposes of this subsection ~~(b)~~, "misconduct" is defined
7 as a violation of a duty or obligation reasonably owed the employer as a
8 condition of employment. The term "gross misconduct" as used in this
9 subsection ~~(b)~~ shall be construed to mean conduct evincing extreme,
10 willful or wanton misconduct as defined by this subsection ~~(b)~~. Failure of
11 the employee to notify the employer of an absence shall be considered
12 prima facie evidence of a violation of a duty or obligation reasonably
13 owed the employer as a condition of employment.

14 (2) For the purposes of this subsection ~~(b)~~, the use of or impairment
15 caused by alcoholic liquor, a cereal malt beverage or a nonprescribed
16 controlled substance by an individual while working shall be conclusive
17 evidence of misconduct and the possession of alcoholic liquor, a cereal
18 malt beverage or a nonprescribed controlled substance by an individual
19 while working shall be prima facie evidence of conduct which is a
20 violation of a duty or obligation reasonably owed to the employer as a
21 condition of employment. Alcoholic liquor shall be defined as provided in
22 K.S.A. 41-102, and amendments thereto. Cereal malt beverage shall be
23 defined as provided in K.S.A. 41-2701, and amendments thereto.
24 Controlled substance shall be defined as provided in K.S.A. 2010 Supp.
25 21-36a01, and amendments thereto. As used in this subsection ~~(b)~~
26 ~~(2) paragraph~~, "required by law" means required by a federal or state law,
27 a federal or state rule or regulation having the force and effect of law, a
28 county resolution or municipal ordinance, or a policy relating to public
29 safety adopted in open meeting by the governing body of any special
30 district or other local governmental entity. Chemical test shall include, but
31 is not limited to, tests of urine, blood or saliva. A positive chemical test
32 shall mean a chemical result showing a concentration at or above the
33 levels listed in K.S.A. 44-501, and amendments thereto, for the drugs or
34 abuse listed therein. A positive breath test shall mean a test result showing
35 an alcohol concentration of .04 or greater. Alcohol concentration means
36 the number of grams of alcohol per 210 liters of breath. An individual's
37 refusal to submit to a chemical test or breath alcohol test shall be
38 conclusive evidence of misconduct if the test meets the standards of the
39 drug free workplace act, 41 U.S.C. § 701 et seq.; the test was
40 administered as part of an employee assistance program or other drug or
41 alcohol treatment program in which the employee was participating
42 voluntarily or as a condition of further employment; the test was
43 otherwise required by law and the test constituted a required condition of

1 employment for the individual's job; the test was requested pursuant to a
2 written policy of the employer of which the employee had knowledge and
3 was a required condition of employment; or there was probable cause to
4 believe that the individual used, possessed or was impaired by alcoholic
5 liquor, a cereal malt beverage or a controlled substance while working. A
6 positive breath alcohol test or a positive chemical test shall be conclusive
7 evidence to prove misconduct if the following conditions are met:

8 (A) Either (i) the test was required by law and was administered
9 pursuant to the drug free workplace act, 41 U.S.C. § 701 et seq., (ii) the
10 test was administered as part of an employee assistance program or other
11 drug or alcohol treatment program in which the employee was
12 participating voluntarily or as a condition of further employment, (iii) the
13 test was requested pursuant to a written policy of the employer of which
14 the employee had knowledge and was a required condition of
15 employment, (iv) the test was required by law and the test constituted a
16 required condition of employment for the individual's job, or (v) there
17 was probable cause to believe that the individual used, had possession of,
18 or was impaired by alcoholic liquor, the cereal malt beverage or the
19 controlled substance while working;

20 (B) the test sample was collected either (i) as prescribed by the drug
21 free workplace act, 41 U.S.C. § 701 et seq., (ii) as prescribed by an
22 employee assistance program or other drug or alcohol treatment program
23 in which the employee was participating voluntarily or as a condition of
24 further employment, (iii) as prescribed by the written policy of the
25 employer of which the employee had knowledge and which constituted a
26 required condition of employment, (iv) as prescribed by a test which was
27 required by law and which constituted a required condition of
28 employment for the individual's job, or (v) at a time contemporaneous
29 with the events establishing probable cause;

30 (C) the collecting and labeling of a chemical test sample was
31 performed by a licensed health care professional or any other individual
32 certified pursuant to paragraph (b)(2)(F) or authorized to collect or label
33 test samples by federal or state law, or a federal or state rule or regulation
34 having the force or effect of law, including law enforcement personnel;

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

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

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

6 (G) the foundation evidence must establish, beyond a reasonable
7 doubt, that the test results were from the sample taken from the
8 individual.

9 (3) (A) For the purposes of this subsection (~~b~~), misconduct shall
10 include, but not be limited to repeated absence, including incarceration,
11 resulting in absence from work of three days or longer, excluding
12 Saturdays, Sundays and legal holidays, and lateness, from scheduled
13 work if the facts show:

14 (i) The individual was absent without good cause;

15 (ii) the absence was in violation of the employer's written
16 absenteeism policy;

17 (iii) the employer gave or sent written notice to the individual, at the
18 individual's last known address, that future absence may or will result in
19 discharge; and

20 (iv) the employee had knowledge of the employer's written
21 absenteeism policy.

22 (B) For the purposes of this subsection (~~b~~), if an employee disputes
23 being absent without good cause, the employee shall present evidence
24 that a majority of the employee's absences were for good cause. If the
25 employee alleges that the employee's repeated absences were the result of
26 health related issues, such evidence shall include documentation from a
27 licensed and practicing health care provider as defined in subsection (a)
28 (1).

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

31 (A) The employer discharged the individual after learning the
32 individual was seeking other work or when the individual gave notice of
33 future intent to quit;

34 (B) the individual was making a good-faith effort to do the assigned
35 work but was discharged due to: (i) Inefficiency, (ii) unsatisfactory
36 performance due to inability, incapacity or lack of training or experience,
37 (iii) isolated instances of ordinary negligence or inadvertence, (iv) good-
38 faith errors in judgment or discretion, or (v) unsatisfactory work or
39 conduct due to circumstances beyond the individual's control; or

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

42 (c) If the individual has failed, without good cause, to either apply
43 for suitable work when so directed by the employment office of the

1 secretary of labor, or to accept suitable work when offered to the
2 individual by the employment office, the secretary of labor, or an
3 employer, such disqualification shall begin with the week in which such
4 failure occurred and shall continue until the individual becomes
5 reemployed and has had earnings from insured work of at least three
6 times such individual's determined weekly benefit amount. In
7 determining whether or not any work is suitable for an individual, the
8 secretary of labor, or a person or persons designated by the secretary,
9 shall consider the degree of risk involved to health, safety and morals,
10 physical fitness and prior training, experience and prior earnings, length
11 of unemployment and prospects for securing local work in the
12 individual's customary occupation or work for which the individual is
13 reasonably fitted by training or experience, and the distance of the
14 available work from the individual's residence. Notwithstanding any other
15 provisions of this act, an otherwise eligible individual shall not be
16 disqualified for refusing an offer of suitable employment, or failing to
17 apply for suitable employment when notified by an employment office, or
18 for leaving the individual's most recent work accepted during approved
19 training, including training approved under section 236(a)(1) of the trade
20 act of 1974, if the acceptance of or applying for suitable employment or
21 continuing such work would require the individual to terminate approved
22 training and no work shall be deemed suitable and benefits shall not be
23 denied under this act to any otherwise eligible individual for refusing to
24 accept new work under any of the following conditions: (1) If the
25 position offered is vacant due directly to a strike, lockout or other labor
26 dispute; (2) if the remuneration, hours or other conditions of the work
27 offered are substantially less favorable to the individual than those
28 prevailing for similar work in the locality; (3) if as a condition of being
29 employed, the individual would be required to join or to resign from or
30 refrain from joining any labor organization; (4) if the individual left
31 employment as a result of domestic violence, and the position offered
32 does not reasonably accommodate the individual's physical,
33 psychological, safety, and/or legal needs relating to such domestic
34 violence.

35 (d) For any week with respect to which the secretary of labor, or a
36 person or persons designated by the secretary, finds that the individual's
37 unemployment is due to a stoppage of work which exists because of a
38 labor dispute or there would have been a work stoppage had normal
39 operations not been maintained with other personnel previously and
40 currently employed by the same employer at the factory, establishment or
41 other premises at which the individual is or was last employed, except
42 that this subsection (d) shall not apply if it is shown to the satisfaction of
43 the secretary of labor, or a person or persons designated by the secretary,

1 that: (1) The individual is not participating in or financing or directly
2 interested in the labor dispute which caused the stoppage of work; and (2)
3 the individual does not belong to a grade or class of workers of which,
4 immediately before the commencement of the stoppage, there were
5 members employed at the premises at which the stoppage occurs any of
6 whom are participating in or financing or directly interested in the
7 dispute. If in any case separate branches of work which are commonly
8 conducted as separate businesses in separate premises are conducted in
9 separate departments of the same premises, each such department shall,
10 for the purpose of this subsection (~~d~~) be deemed to be a separate factory,
11 establishment or other premises. For the purposes of this subsection (~~d~~),
12 failure or refusal to cross a picket line or refusal for any reason during the
13 continuance of such labor dispute to accept the individual's available and
14 customary work at the factory, establishment or other premises where the
15 individual is or was last employed shall be considered as participation
16 and interest in the labor dispute.

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

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

28 (g) For the period of one year beginning with the first day following
29 the last week of unemployment for which the individual received
30 benefits, or for one year from the date the act was committed, whichever
31 is the later, if the individual, or another in such individual's behalf with
32 the knowledge of the individual, has knowingly made a false statement or
33 representation, or has knowingly failed to disclose a material fact to
34 obtain or increase benefits under this act or any other unemployment
35 compensation law administered by the secretary of labor.

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

40 (i) For any week of unemployment on the basis of service in an
41 instructional, research or principal administrative capacity for an
42 educational institution as defined in subsection (v) of K.S.A. 44-703, and
43 amendments thereto, if such week begins during the period between two

1 successive academic years or terms or, when an agreement provides
2 instead for a similar period between two regular but not successive terms
3 during such period or during a period of paid sabbatical leave provided
4 for in the individual's contract, if the individual performs such services in
5 the first of such academic years or terms and there is a contract or a
6 reasonable assurance that such individual will perform services in any
7 such capacity for any educational institution in the second of such
8 academic years or terms.

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

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

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

38 (m) For any week on the basis of services performed by an alien
39 unless such alien is an individual who was lawfully admitted for
40 permanent residence at the time such services were performed, was
41 lawfully present for purposes of performing such services, or was
42 permanently residing in the United States under color of law at the time
43 such services were performed, including an alien who was lawfully

1 present in the United States as a result of the application of the provisions
2 of section 212(d)(5) of the federal immigration and nationality act. Any
3 data or information required of individuals applying for benefits to
4 determine whether benefits are not payable to them because of their alien
5 status shall be uniformly required from all applicants for benefits. In the
6 case of an individual whose application for benefits would otherwise be
7 approved, no determination that benefits to such individual are not
8 payable because of such individual's alien status shall be made except
9 upon a preponderance of the evidence.

10 (n) For any week in which an individual is receiving a governmental
11 or other pension, retirement or retired pay, annuity or other similar
12 periodic payment under a plan maintained by a base period employer and
13 to which the entire contributions were provided by such employer, except
14 that: (1) If the entire contributions to such plan were provided by the base
15 period employer but such individual's weekly benefit amount exceeds
16 such governmental or other pension, retirement or retired pay, annuity or
17 other similar periodic payment attributable to such week, the weekly
18 benefit amount payable to the individual shall be reduced (but not below
19 zero) by an amount equal to the amount of such pension, retirement or
20 retired pay, annuity or other similar periodic payment which is
21 attributable to such week; or (2) if only a portion of contributions to such
22 plan were provided by the base period employer, the weekly benefit
23 amount payable to such individual for such week shall be reduced (but
24 not below zero) by the prorated weekly amount of the pension, retirement
25 or retired pay, annuity or other similar periodic payment after deduction
26 of that portion of the pension, retirement or retired pay, annuity or other
27 similar periodic payment that is directly attributable to the percentage of
28 the contributions made to the plan by such individual; or (3) if the entire
29 contributions to the plan were provided by such individual, or by the
30 individual and an employer (or any person or organization) who is not a
31 base period employer, no reduction in the weekly benefit amount payable
32 to the individual for such week shall be made under this subsection (~~†~~); or
33 (4) whatever portion of contributions to such plan were provided by the
34 base period employer, if the services performed for the employer by such
35 individual during the base period, or remuneration received for the
36 services, did not affect the individual's eligibility for, or increased the
37 amount of, such pension, retirement or retired pay, annuity or other
38 similar periodic payment, no reduction in the weekly benefit amount
39 payable to the individual for such week shall be made under this
40 subsection (~~†~~). No reduction shall be made for payments made under the
41 social security act or railroad retirement act of 1974.

42 (o) For any week of unemployment on the basis of services
43 performed in any capacity and under any of the circumstances described

1 in subsection (i), (j) or (k) which an individual performed in an
2 educational institution while in the employ of an educational service
3 agency. For the purposes of this subsection (~~o~~), the term "educational
4 service agency" means a governmental agency or entity which is
5 established and operated exclusively for the purpose of providing such
6 services to one or more educational institutions.

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

22 (q) For any week of unemployment on the basis of services
23 performed by the individual in any capacity and under any of the
24 circumstances described in subsection (i), (j), (k) or (o) which are
25 provided to or on behalf of an educational institution, as defined in
26 subsection (v) of K.S.A. 44-703, and amendments thereto, while the
27 individual is in the employ of an employer which is a governmental
28 entity, Indian tribe or any employer described in section 501(c)(3) of the
29 federal internal revenue code of 1986 which is exempt from income
30 under section 501(a) of the code.

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

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

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

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

43 (s) For any week with respect to which an individual is receiving or

1 has received remuneration in the form of a back pay award or settlement.
2 The remuneration shall be allocated to the week or weeks in the manner
3 as specified in the award or agreement, or in the absence of such
4 specificity in the award or agreement, such remuneration shall be
5 allocated to the week or weeks in which such remuneration, in the
6 judgment of the secretary, would have been paid.

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

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

17 (t) If the individual has been discharged for failing a preemployment
18 drug screen required by the employer and if such discharge occurs not
19 later than seven days after the employer is notified of the results of such
20 drug screen. The disqualification shall begin the day following the
21 separation and shall continue until after the individual becomes
22 reemployed and has had earnings from insured work of at least three
23 times the individual's determined weekly benefit amount.

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

34 Sec. 4. K.S.A. 2010 Supp. 44-710a is hereby amended to read as
35 follows: 44-710a. (a) *Classification of employers by the secretary.* The
36 term "employer" as used in this section refers to contributing employers.
37 The secretary shall classify employers in accordance with their actual
38 experience in the payment of contributions on their own behalf and with
39 respect to benefits charged against their accounts with a view of fixing
40 such contribution rates as will reflect such experience. If, as of the date
41 such classification of employers is made, the secretary finds that any
42 employing unit has failed to file any report required in connection
43 therewith, or has filed a report which the secretary finds incorrect or

1 insufficient, the secretary shall make an estimate of the information
2 required from such employing unit on the basis of the best evidence
3 reasonably available to the secretary at the time, and notify the employing
4 unit thereof by mail addressed to its last known address. Unless such
5 employing unit shall file the report or a corrected or sufficient report as
6 the case may be, within 15 days after the mailing of such notice, the
7 secretary shall compute such employing unit's rate of contributions on the
8 basis of such estimates, and the rate as so determined shall be subject to
9 increase but not to reduction on the basis of subsequently ascertained
10 information. The secretary shall determine the contribution rate of each
11 employer in accordance with the requirements of this section.

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

16 (B) (i) For the rate year 2007 and each rate year thereafter, each
17 employer who is not eligible for a rate contribution shall pay
18 contributions equal to 4% of wages paid during each calendar year with
19 regard to employment except such employers engaged in the construction
20 industry shall pay a rate equal to 6%.

21 (ii) For rate years prior to 2007, employers who are not eligible for a
22 rate computation shall pay contributions at an assigned rate equal to the
23 sum of 1% plus the greater of the average rate assigned in the preceding
24 calendar year to all employers in such industry sector or the average rate
25 assigned to all covered employers during the preceding calendar year,
26 except that in no instance shall any such assigned rate be less than 2%.
27 Employers engaged in more than one type of industrial activity shall be
28 classified by principal activity. All rates assigned will remain in effect for
29 a complete calendar year. If the sale or acquisition of a new establishment
30 would require reclassification of the employer to a different industry
31 sector, the employer would be promptly notified, and the contribution rate
32 applicable to the new industry sector would become effective the
33 following January 1.

34 (iii) For purposes of this subsection (a), employers shall be classified
35 by industrial activity in accordance with standard procedures as set forth
36 in rules and regulations adopted by the secretary.

37 (C) "Computation date" means June 30 of each calendar year with
38 respect to rates of contribution applicable to the calendar year beginning
39 with the following January 1. In arriving at contribution rates for each
40 calendar year, contributions paid on or before July 31 following the
41 computation date for employment occurring on or prior to the
42 computation date shall be considered for each contributing employer who
43 has been subject to this act for a sufficient period of time to have such

1 employer's rate computed under this subsection (a).

2 (2) *Eligible employers.* (A) A reserve ratio shall be computed for
3 each eligible employer by the following method: Total benefits charged to
4 the employer's account for all past years shall be deducted from all
5 contributions paid by such employer for all such years. The balance,
6 positive or negative, shall be divided by the employer's average annual
7 payroll, and the result shall constitute the employer reserve ratio.

8 (B) Negative account balance employers as defined in subsection (d)
9 shall pay contributions at the rate of 5.4% for each calendar year.

10 (C) Eligible employers, other than negative account balance
11 employers, who do not meet the average annual payroll requirements as
12 stated in subsection (a)(2) of K.S.A. 44-703, and amendments thereto,
13 will be issued the maximum rate indicated in subsection (a)(3)(C) of this
14 section until such employer establishes a new period of 24 consecutive
15 calendar months immediately preceding the computation date throughout
16 which benefits could have been charged against such employer's account
17 by resuming the payment of wages. Contribution rates effective for each
18 calendar year thereafter shall be determined as prescribed below.

19 (D) As of each computation date, the total of the taxable wages paid
20 during the 12-month period prior to the computation date by all
21 employers eligible for rate computation, except negative account balance
22 employers, shall be divided into 51 approximately equal parts designated
23 in column A of schedule I as "rate groups," except, with regard to a year
24 in which the taxable wage base changes. The taxable wages used in the
25 calculation for such a year and the following year shall be an estimate of
26 what the taxable wages would have been if the new taxable wage base
27 had been in effect during the entire twelve-month period prior to the
28 computation date. The lowest numbered of such rate groups shall consist
29 of the employers with the most favorable reserve ratios, as defined in this
30 section, whose combined taxable wages paid are less than 1.96% of all
31 taxable wages paid by all eligible employers. Each succeeding higher
32 numbered rate group shall consist of employers with reserve ratios that
33 are less favorable than those of employers in the preceding lower
34 numbered rate groups and whose taxable wages when combined with the
35 taxable wages of employers in all lower numbered rate groups equal the
36 appropriate percentage of total taxable wages designated in column B of
37 schedule I. Each eligible employer, other than a negative account balance
38 employer, shall be assigned an experience factor designated under
39 column C of schedule I in accordance with the rate group to which the
40 employer is assigned on the basis of the employer's reserve ratio and
41 taxable payroll. If an employer's taxable payroll falls into more than one
42 rate group the employer shall be assigned the experience factor of the
43 lower numbered rate group. If one or more employers have reserve ratios

1 identical to that of the last employer included in the next lower numbered
 2 rate group, all such employers shall be assigned the experience factor
 3 designated to such last employer, notwithstanding the position of their
 4 taxable payroll in column B of schedule I.

5

6 SCHEDULE I—Eligible Employers

7 Column A	Column B	Column C
8 Rate	Cumulative	Experience factor
9 group	taxable payroll	(Ratio to total wages)
10 1	Less than 1.96%	.025%
11 2	1.96% but less than 3.92	.40
12 3	3.92 but less than 5.88	.80
13 4	5.88 but less than 7.84	.12
14 5	7.84 but less than 9.80	.16
15 6	9.80 but less than 11.76	.20
16 7	11.76 but less than 13.72	.24
17 8	13.72 but less than 15.68	.28
18 9	15.68 but less than 17.64	.32
19 10	17.64 but less than 19.60	.36
20 11	19.60 but less than 21.56	.40
21 12	21.56 but less than 23.52	.44
22 13	23.52 but less than 25.48	.48
23 14	25.48 but less than 27.44	.52
24 15	27.44 but less than 29.40	.56
25 16	29.40 but less than 31.36	.60
26 17	31.36 but less than 33.32	.64
27 18	33.32 but less than 35.28	.68
28 19	35.28 but less than 37.24	.72
29 20	37.24 but less than 39.20	.76
30 21	39.20 but less than 41.16	.80
31 22	41.16 but less than 43.12	.84
32 23	43.12 but less than 45.08	.88
33 24	45.08 but less than 47.04	.92
34 25	47.04 but less than 49.00	.96
35 26	49.00 but less than 50.96	1.00
36 27	50.96 but less than 52.92	1.04
37 28	52.92 but less than 54.88	1.08
38 29	54.88 but less than 56.84	1.12
39 30	56.84 but less than 58.80	1.16
40 31	58.80 but less than 60.76	1.20
41 32	60.76 but less than 62.72	1.24
42 33	62.72 but less than 64.68	1.28
43 34	64.68 but less than 66.64	1.32

1	35	66.64 but less than 68.60	1.36
2	36	68.60 but less than 70.56	1.40
3	37	70.56 but less than 72.52	1.44
4	38	72.52 but less than 74.48	1.48
5	39	74.48 but less than 76.44	1.52
6	40	76.44 but less than 78.40	1.56
7	41	78.40 but less than 80.36	1.60
8	42	80.36 but less than 82.32	1.64
9	43	82.32 but less than 84.28	1.68
10	44	84.28 but less than 86.24	1.72
11	45	86.24 but less than 88.20	1.76
12	46	88.20 but less than 90.16	1.80
13	47	90.16 but less than 92.12	1.84
14	48	92.12 but less than 94.08	1.88
15	49	94.08 but less than 96.04	1.92
16	50	96.04 but less than 98.00	1.96
17	51	98.00 and over	2.00

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(E) 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 B of schedule II of this section. Each negative account balance employer who does not satisfy the requirements to have an average annual payroll, as defined by subsection (a)(2) of K.S.A. 44-703, and amendments thereto, shall be assigned a surcharge of 2%. ~~Contribution payments made pursuant to this subsection (a)(2)(E) shall be credited to the appropriate account of such negative account balance employer.~~ *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 the calendar year 2011, 50% of any such surcharge shall be 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 remaining surcharge shall be used to retire the principal on funds received from the federal unemployment account under title XII of the social security act;

(ii) 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 amount of

1 *such surcharge necessary to pay such interest;*
 2 *(iii) the portion of such surcharge used for the payment of such*
 3 *interest shall not be included in the calculation of such employers reserve*
 4 *ratio pursuant to subsection (a)(2). The portion of such surcharge used*
 5 *for the payment of principal shall be included in the calculation of such*
 6 *employers reserve ratio pursuant to subsection (a)(2); and*
 7 *(iv) if the amounts collected under this subsection are in excess of*
 8 *the amounts needed to pay interest due, the amounts in excess shall*
 9 *remain in the employment security interest assessment fund to be used to*
 10 *pay interest in future years. Whenever the secretary certifies all interest*
 11 *payments have been paid pursuant to this section, any excess funds*
 12 *remaining in the employment security interest assessment fund shall be*
 13 *transferred to the employment security trust fund for the purpose of*
 14 *paying any remaining principal amount due for advances described in*
 15 *this section. In the event that the amount transferred from the*
 16 *employment security interest assessment fund exceeds such remaining*
 17 *amount of principal due, the balance shall be used for the purposes of the*
 18 *employment security trust fund.*
 19

20 SCHEDULE II—Surcharge on Negative Accounts

21 Column A	21 Column B
22 Negative Reserve Ratio	22 Surcharge as a percent
	23 of taxable wages
24 Less than 2.0%	0.20%
25 2.0% but less than 4.0	.40
26 4.0 but less than 6.0	.60
27 6.0 but less than 8.0	.80
28 8.0 but less than 10.0	1.00
29 10.0 but less than 12.0	1.20
30 12.0 but less than 14.0	1.40
31 14.0 but less than 16.0	1.60
32 16.0 but less than 18.0	1.80
33 18.0 and over	2.00

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 35
 36 (3) *Planned yield.* (A) The average required yield shall be
 37 determined from schedule III of this section, and the planned yield on
 38 total wages in column B of schedule III shall be determined by the
 39 reserve fund ratio in column A of schedule III. The reserve fund ratio
 40 shall be determined by dividing total assets in the employment security
 41 fund provided for in subsection (a) of K.S.A. 44-712, and amendments
 42 thereto, excluding all moneys credited to the account of this state
 43 pursuant to section 903 of the federal social security act, as amended,

1 which have been appropriated by the state legislature, whether or not
 2 withdrawn from the trust fund, and excluding contributions not yet paid
 3 on July 31 by total payrolls for contributing employers for the preceding
 4 fiscal year which ended June 30.

5
 6 SCHEDULE III—Fund Control
 7 Ratios to Total Wages

8	Column A		Column B
9	Reserve Fund Ratio		Planned Yield
10	4.500 and over	0.00	
11	4.475 but less than 4.500	0.01	
12	4.450 but less than 4.475	0.02	
13	4.425 but less than 4.450	0.03	
14	4.400 but less than 4.425	0.04	
15	4.375 but less than 4.400	0.05	
16	4.350 but less than 4.375	0.06	
17	4.325 but less than 4.350	0.07	
18	4.300 but less than 4.325	0.08	
19	4.275 but less than 4.300	0.09	
20	4.250 but less than 4.275	0.10	
21	4.225 but less than 4.250	0.11	
22	4.200 but less than 4.225	0.12	
23	4.175 but less than 4.200	0.13	
24	4.150 but less than 4.175	0.14	
25	4.125 but less than 4.150	0.15	
26	4.100 but less than 4.125	0.16	
27	4.075 but less than 4.100	0.17	
28	4.050 but less than 4.075	0.18	
29	4.025 but less than 4.050	0.19	
30	4.000 but less than 4.025	0.20	
31	3.950 but less than 4.000	0.21	
32	3.900 but less than 3.950	0.22	
33	3.850 but less than 3.900	0.23	
34	3.800 but less than 3.850	0.24	
35	3.750 but less than 3.800	0.25	
36	3.700 but less than 3.750	0.26	
37	3.650 but less than 3.700	0.27	
38	3.600 but less than 3.650	0.28	
39	3.550 but less than 3.600	0.29	
40	3.500 but less than 3.550	0.30	
41	3.450 but less than 3.500	0.31	
42	3.400 but less than 3.450	0.32	
43	3.350 but less than 3.400	0.33	

1	3.300 but less than 3.350	0.34
2	3.250 but less than 3.300	0.35
3	3.200 but less than 3.250	0.36
4	3.150 but less than 3.200	0.37
5	3.100 but less than 3.150	0.38
6	3.050 but less than 3.100	0.39
7	3.000 but less than 3.050	0.40
8	2.950 but less than 3.000	0.41
9	2.900 but less than 2.950	0.42
10	2.850 but less than 2.900	0.43
11	2.800 but less than 2.850	0.44
12	2.750 but less than 2.800	0.45
13	2.700 but less than 2.750	0.46
14	2.650 but less than 2.700	0.47
15	2.600 but less than 2.650	0.48
16	2.550 but less than 2.600	0.49
17	2.500 but less than 2.550	0.50
18	2.450 but less than 2.500	0.51
19	2.400 but less than 2.450	0.52
20	2.350 but less than 2.400	0.53
21	2.300 but less than 2.350	0.54
22	2.250 but less than 2.300	0.55
23	2.200 but less than 2.250	0.56
24	2.150 but less than 2.200	0.57
25	2.100 but less than 2.150	0.58
26	2.050 but less than 2.100	0.59
27	2.000 but less than 2.050	0.60
28	1.975 but less than 2.000	0.61
29	1.950 but less than 1.975	0.62
30	1.925 but less than 1.950	0.63
31	1.900 but less than 1.925	0.64
32	1.875 but less than 1.900	0.65
33	1.850 but less than 1.875	0.66
34	1.825 but less than 1.850	0.67
35	1.800 but less than 1.825	0.68
36	1.775 but less than 1.800	0.69
37	1.750 but less than 1.775	0.70
38	1.725 but less than 1.750	0.71
39	1.700 but less than 1.725	0.72
40	1.675 but less than 1.700	0.73
41	1.650 but less than 1.675	0.74
42	1.625 but less than 1.650	0.75
43	1.600 but less than 1.625	0.76

1	1.575 but less than 1.600	0.77
2	1.550 but less than 1.575	0.78
3	1.525 but less than 1.550	0.79
4	1.500 but less than 1.525	0.80
5	1.475 but less than 1.500	0.81
6	1.450 but less than 1.475	0.82
7	1.425 but less than 1.450	0.83
8	1.400 but less than 1.425	0.84
9	1.375 but less than 1.400	0.85
10	1.350 but less than 1.375	0.86
11	1.325 but less than 1.350	0.87
12	1.300 but less than 1.325	0.88
13	1.275 but less than 1.300	0.89
14	1.250 but less than 1.275	0.90
15	1.225 but less than 1.250	0.91
16	1.200 but less than 1.225	0.92
17	1.175 but less than 1.200	0.93
18	1.150 but less than 1.175	0.94
19	1.125 but less than 1.150	0.95
20	1.100 but less than 1.125	0.96
21	1.075 but less than 1.100	0.97
22	1.050 but less than 1.075	0.98
23	1.025 but less than 1.050	0.99
24	1.000 but less than 1.025	1.00
25	0.900 but less than 1.000	1.01
26	0.800 but less than 0.900	1.02
27	0.700 but less than 0.800	1.03
28	0.600 but less than 0.700	1.04
29	0.500 but less than 0.600	1.05
30	0.400 but less than 0.500	1.06
31	0.300 but less than 0.400	1.07
32	0.200 but less than 0.300	1.08
33	0.100 but less than 0.200	1.09
34	Less than 0.100	1.10

35

36 (B) *Adjustment to taxable wages.* The planned yield as a percent of
37 total wages, as determined in this subsection (a)(3), shall be adjusted to
38 taxable wages by multiplying by the ratio of total wages to taxable wages
39 for all contributing employers for the preceding fiscal year ending June
40 30, except, with regard to a year in which the taxable wage base changes.
41 The taxable wages used in the calculation for such a year and the
42 following year shall be an estimate of what the taxable wages would have
43 been if the new taxable wage base had been in effect during all of the

1 preceding fiscal year ending June 30.

2 (C) *Effective rates.* (i) Except with regard to rates for negative
3 account balance employers, employer contribution rates to be effective
4 for the ensuing calendar year shall be computed by adjusting
5 proportionately the experience factors from schedule I of this section to
6 the required yield on taxable wages. For the purposes of this subsection
7 (a)(3), all rates computed shall be rounded to the nearest .01% and for
8 calendar year 1983 and ensuing calendar years, the maximum effective
9 contribution rate shall not exceed 5.4%.

10 (ii) For rate year 2007 and subsequent rate years, employers who are
11 current in filing quarterly wage reports and in payment of all
12 contributions due and owing, shall be issued a contribution rate based
13 upon the following reduction: for rate groups 1 through 5, the rates would
14 be reduced to 0.00%; for rate groups 6 through 28, the rates would be
15 reduced by 50%; for rate groups 29 through 51, the rates would be
16 reduced by 40%.

17 (iii) In order to be eligible for the reduced rates for rate year 2007,
18 the employer must file all late reports and pay all contributions due and
19 owing within a 30-day period following the date of mailing of the
20 amended rate notice.

21 (iv) In order to be eligible for the reduced rates for rate year 2008
22 and subsequent rate years, employers must file all reports due and pay all
23 contributions due and owing on or before January 31 of the applicable
24 year, except that the reduced rates for otherwise eligible employers shall
25 not be effective for any rate year if the average high cost multiple of the
26 employment security trust fund balance falls below 1.2 as of the
27 computation date of that year's rates. For the purposes of this provision,
28 the average high cost multiple is the reserve fund ratio, as defined by
29 subsection (a)(3)(A), divided by the average high benefit cost rate. The
30 average high benefit cost rate shall be determined by averaging the three
31 highest benefit cost rates over the last 20 years from the preceding fiscal
32 year which ended June 30. The high benefit cost rate is defined by
33 dividing total benefits paid in the fiscal year by total payrolls for covered
34 employers in the fiscal year.

35 (b) *Successor classification.* (1) (A) For the purposes of this
36 subsection (b), whenever an employing unit, whether or not it is an
37 "employing unit" within the meaning of subsection (g) of K.S.A. 44-703,
38 and amendments thereto, becomes an employer pursuant to subsection (h)
39 (4) of K.S.A. 44-703, and amendments thereto, or is an employer at the
40 time of acquisition and meets the definition of a "successor employer" as
41 defined by subsection (dd) of K.S.A. 44-703, and amendments thereto,
42 and thereafter transfers its trade or business, or any portion thereof, to
43 another employer and, at the time of the transfer, there is substantially

1 common ownership, management or control of the two employers, then
2 the unemployment experience attributable to the transferred trade or
3 business shall be transferred to the employer to whom such business is so
4 transferred. These experience factors consist of all contributions paid,
5 benefit experience and annual payrolls of the predecessor employer. The
6 transfer of some or all of an employer's workforce to another employer
7 shall be considered a transfer of trade or business when, as the result of
8 such transfer, the transferring employer no longer performs trade or
9 business with respect to the transferred workforce, and such trade or
10 business is performed by the employer to whom the workforce is
11 transferred.

12 (B) If, following a transfer of experience under subparagraph (A),
13 the secretary determines that a substantial purpose of the transfer or
14 business was to obtain a reduced liability for contributions, then the
15 experience rating accounts of the employers involved shall be combined
16 into a single account and a single rate assigned to such account.

17 (2) A successor employer as defined by subsection (h)(4) or
18 subsection (dd) of K.S.A. 44-703, and amendments thereto, may receive
19 the experience rating factors of the predecessor employer if an application
20 is made to the secretary or the secretary's designee in writing within 120
21 days of the date of the transfer.

22 (3) Whenever an employing unit, whether or not it is an "employing
23 unit" within the meaning of subsection (g) of K.S.A. 44-703, and
24 amendments thereto, acquires or in any manner succeeds to a percentage
25 of an employer's annual payroll which is less than 100% and intends to
26 continue the acquired percentage as a going business, the employing unit
27 may acquire the same percentage of the predecessor's experience factors
28 if: (A) The predecessor employer and successor employing unit make an
29 application in writing on the form prescribed by the secretary, (B) the
30 application is submitted within 120 days of the date of the transfer, (C)
31 the successor employing unit is or becomes an employer subject to this
32 act immediately after the transfer, (D) the percentage of the experience
33 rating factors transferred shall not be thereafter used in computing the
34 contribution rate for the predecessor employer, and (E) the secretary finds
35 that such transfer will not tend to defeat or obstruct the object and
36 purposes of this act.

37 (4) (A) The rate of both employers in a full or partial successorship
38 under paragraph (1) of this subsection shall be recalculated and made
39 effective on the first day of the next calendar quarter following the date of
40 transfer of trade or business.

41 (B) If a successor employer is determined to be qualified under
42 paragraph (2) or (3) of this subsection to receive the experience rating
43 factors of the predecessor employer, the rate assigned to the successor

1 employer for the remainder of the contributions year shall be determined
2 by the following:

3 (i) If the acquiring employing unit was an employer subject to this
4 act prior to the date of the transfer, the rate of contribution shall be the
5 same as the contribution rate of the acquiring employer on the date of the
6 transfer.

7 (ii) If the acquiring employing unit was not an employer subject to
8 this act prior to the date of the transfer, the successor employer shall have
9 a newly computed rate for the remainder of the contribution year which
10 shall be based on the transferred experience rating factors as they existed
11 on the most recent computation date immediately preceding the date of
12 acquisition. These experience rating factors consist of all contributions
13 paid, benefit experience and annual payrolls.

14 (5) Whenever an employing unit is not an employer at the time it
15 acquires the trade or business of an employer, the unemployment
16 experience factors of the acquired business shall not be transferred to
17 such employing unit if the secretary finds that such employing unit
18 acquired the business solely or primarily for the purpose of obtaining a
19 lower rate of contributions. Instead, such employing unit shall be
20 assigned the applicable industry rate for a "new employer" as described in
21 subsection (a)(1) of this section. In determining whether the business was
22 acquired solely or primarily for the purpose of obtaining a lower rate of
23 contributions, the secretary shall use objective factors which may include
24 the cost of acquiring the business, whether the employer continued the
25 business enterprise of the acquired business, how long such business
26 enterprise was continued, or whether a substantial number of new
27 employees were hired for performance of duties unrelated to the business
28 activity conducted prior to acquisition.

29 (6) Whenever an employer's account has been terminated as
30 provided in subsections (d) and (e) of K.S.A. 44-711, and amendments
31 thereto, and the employer continues with employment to liquidate the
32 business operations, that employer shall continue to be an "employer"
33 subject to the employment security law as provided in subsection (h)(8)
34 of K.S.A. 44-703, and amendments thereto. The rate of contribution from
35 the date of transfer to the end of the then current calendar year shall be
36 the same as the contribution rate prior to the date of the transfer. At the
37 completion of the then current calendar year, the rate of contribution shall
38 be that of a "new employer" as described in subsection (a)(1) of this
39 section.

40 (7) No rate computation will be permitted an employing unit
41 succeeding to the experience of another employing unit pursuant to this
42 section for any period subsequent to such succession except in
43 accordance with rules and regulations adopted by the secretary. Any such

1 regulations shall be consistent with federal requirements for additional
2 credit allowance in section 3303 of the federal internal revenue code of
3 1986, and consistent with the provisions of this act.

4 (c) *Voluntary contributions.* Notwithstanding any other provision of
5 the employment security law, any employer may make voluntary
6 payments for the purpose of reducing or maintaining a reduced rate in
7 addition to the contributions required under this section. Such voluntary
8 payments may be made only during the thirty-day period immediately
9 following the date of mailing of experience rating notices for a calendar
10 year. All such voluntary contribution payments shall be paid prior to the
11 expiration of 120 days after the beginning of the year for which such rates
12 are effective. The amount of voluntary contributions shall be credited to
13 the employer's account as of the next preceding computation date and the
14 employer's rate shall be computed accordingly, except that no employer's
15 rate shall be reduced more than five rate groups as provided in schedule I
16 of this section as the result of a voluntary payment. An employer not
17 having a negative account balance may have such employer's rate
18 reduced not more than five rate groups as provided in schedule I of this
19 section as a result of a voluntary payment. An employer having a negative
20 account balance may have such employer's rate reduced to that prescribed
21 for rate group 51 of schedule I of this section by making a voluntary
22 payment in the amount of such negative account balance or to that rate
23 prescribed for rate groups 50 through 47 of schedule I of this section by
24 making an additional voluntary payment that would increase such
25 employer's reserve ratio to the lower limit required for such rate groups
26 50 through 47. Under no circumstances shall voluntary payments be
27 refunded in whole or in part.

28 (d) As used in this section, "negative account balance employer"
29 means an eligible employer whose total benefits charged to such
30 employer's account for all past years have exceeded all contributions paid
31 by such employer for all such years.

32 (e) *There is hereby established in the state treasury, separate and*
33 *apart from all public moneys or funds of this state, an employment*
34 *security interest assessment fund, which shall be administered by the*
35 *secretary as provided in this act. Moneys in the employment security fund*
36 *established by K.S.A 44-712, and amendments thereto, and employment*
37 *security interest assessment fund established by 44-710, and amendments*
38 *thereto, shall not be invested in the pooled money investment portfolio*
39 *established under K.S.A 75-4234, and amendments thereto.*
40 *Notwithstanding the provisions of subsection (a) of K.S.A. 44-712, K.S.A.*
41 *44-716, K.S.A. 44-717 and K.S.A. 75-4234, and amendments thereto, or*
42 *any like provision the secretary shall remit all moneys received from*
43 *employers pursuant to the interest payment assessment established in*

1 section (a)(2)(E), and amendments thereto, to the state treasurer in
 2 accordance with the provisions of K.S.A. 75-4215, and amendments
 3 thereto. Upon receipt of each such remittance, the state treasurer shall
 4 deposit the entire amount in the employment security interest assessment
 5 fund. All moneys in this fund which are received from employers pursuant
 6 to the interest payment assessment established in section (a)(2)(E), and
 7 amendments thereto, shall be expended solely for the purposes and in the
 8 amounts found by the secretary necessary to pay any principal and
 9 interest due and owing the United States department of labor resulting
 10 from any advancements made to the Kansas employment security fund
 11 pursuant to the provisions of title XII of the social security act (42 U.S.C.
 12 § 1321 to 1324) except as may be otherwise provided under section (a)
 13 (2)(E), and amendments thereto. Notwithstanding any provision of this
 14 section, all moneys received and credited to this fund pursuant to section
 15 (a)(2)(E), and amendments thereto, pursuant to section (a)(2)(E), and
 16 amendments thereto, shall remain part of the employment security
 17 interest assessment fund and shall be used only in accordance with the
 18 conditions specified in section (a)(2)(E), and amendments thereto.

19 (e) (f) The secretary of labor shall annually prepare and submit a
 20 certification as to the solvency and adequacy of the amount credited to
 21 the state of Kansas' account in the federal employment security trust fund
 22 to the governor and the employment security advisory council. The
 23 certification shall be submitted on or before December 1 of each calendar
 24 year and shall be for the 12-month period ending on June 30 of that
 25 calendar year. In arriving at the certification contributions paid on or
 26 before July 31 following the 12-month period ending date of June 30
 27 shall be considered. Each certification shall be used to determine the need
 28 for any adjustment to schedule III in subsection (a)(3)(A) and to assist in
 29 preparing legislation to accomplish any such adjustment.

30 Sec. 5. K.S.A. 2010 Supp. 44-717 is hereby amended to read as
 31 follows: 44-717. (a) (1) *Penalties on past-due reports, interest on past-*
 32 *due contributions, payments in lieu of contributions and benefit cost-*
 33 *payments, benefit cost payments and interest assessments made under*
 34 *K.S.A. 44-710a, and amendments thereto.* Any employer or any officer or
 35 agent of an employer, who fails to file any wage report or contribution
 36 return by the last day of the month following the close of each calendar
 37 quarter to which they are related shall pay a penalty as provided by this
 38 subsection (a) for each month or fraction of a month until the report or
 39 return is received by the secretary of labor except that for calendar years
 40 2010 and 2011 an employer or any officer or agent of the employer shall
 41 have up to 90 days past the due date for any of the first three calendar
 42 quarters in a calendar year to pay such employer's contribution without
 43 being charged any interest, however, when the 90 day period has passed,

1 the provisions of this section shall apply. The penalty for each month or
2 fraction of a month shall be an amount equal to .05% of the total wages
3 paid by the employer during the quarter, except that no penalty shall be
4 less than \$25 nor more than \$200 for each such report or return not timely
5 filed. Contributions ~~and benefit cost payments~~, *benefit cost payments and*
6 *interest assessments made pursuant to K.S.A. 44-710a, and amendments*
7 *thereto*, unpaid by the last day of the month following the last calendar
8 quarter to which they are related and payments in lieu of contributions
9 unpaid 30 days after the mailing of the statement of benefit charges, shall
10 bear interest at the rate of 1% per month or fraction of a month until
11 payment is received by the secretary of labor except that an employing
12 unit, which is not theretofore subject to this law and which becomes an
13 employer and does not refuse to make the reports, returns and
14 contributions, payments in lieu of contributions and benefit cost
15 payments required under this law, shall not be liable for such penalty or
16 interest if the wage reports and contribution returns required are filed and
17 the contributions, payments in lieu of contributions or benefit cost
18 payments required are paid within 10 days following notification by the
19 secretary of labor that a determination has been made fixing its status as
20 an employer subject to this law. Upon written request and good cause
21 shown, the secretary of labor may abate any penalty or interest or portion
22 thereof provided for by this subsection ~~(a)~~. Interest amounting to less than
23 \$5 shall be waived by the secretary of labor and shall not be collected.
24 Penalties and interest collected pursuant to this subsection shall be paid
25 into the special employment security fund. For all purposes under this
26 section, amounts assessed as surcharges under subsection (j) or under
27 K.S.A. 44-710a, and amendments thereto, shall be considered to be
28 contributions and shall be subject to penalties and interest imposed under
29 this section and to collection in the manner provided by this section. *For*
30 *all purposes under this section, amounts assessed under K.S.A. 44-710a,*
31 *and amendments thereto, shall be subject to penalties and interest*
32 *imposed under this section and to collection in the manner provided in*
33 *this section.* For purposes of this subsection, a wage report, a contribution
34 return, a contribution, a payment in lieu of contribution ~~or a benefit cost~~
35 ~~payment~~, *a benefit cost payment or an interest assessment made pursuant*
36 *to K.S.A. 44-710a, and amendments thereto*, is deemed to be filed or paid
37 as of the date it is placed in the United States mail.

38 (2) Notices of payment and reporting delinquency to Indian tribes or
39 their tribal units shall include information that failure to make full
40 payment within the prescribed time frame:

- 41 (i) Will cause the Indian tribe to be liable for taxes under FUTA;
- 42 (ii) will cause the Indian tribe to lose the option to make payments in
43 lieu of contributions;

1 (iii) could cause the Indian tribe to be excepted from the definition
2 of "employer," as provided in paragraph (h)(3) of K.S.A. 44-703, and
3 amendments thereto, and services in the employ of the Indian tribe, as
4 provided in paragraph (i)(3)(E) of K.S.A. 44-703, and amendments
5 thereto, to be excepted from "employment."

6 (b) *Collection.* (1) If, after due notice, any employer defaults in
7 payment of any penalty, contributions, payments in lieu of contributions,
8 benefit cost payments, *interest assessments made pursuant to K.S.A. 44-*
9 *710a, and amendments thereto,* or interest thereon the amount due may
10 be collected by civil action in the name of the secretary of labor and the
11 employer adjudged in default shall pay the cost of such action. Civil
12 actions brought under this section to collect contributions, payments in
13 lieu of contributions, benefit cost payments, *interest assessments made*
14 *pursuant to K.S.A. 44-710a, and amendments thereto,* penalties, or
15 interest thereon from an employer shall be heard by the district court at
16 the earliest possible date and shall be entitled to preference upon the
17 calendar of the court over all other civil actions except petitions for
18 judicial review under this act and cases arising under the workmen's
19 compensation act. All liability determinations of contributions due,
20 payments in lieu of contributions ~~or benefit cost payments,~~ *benefit cost*
21 *payments and interest assessments made pursuant to K.S.A. 44-710a, and*
22 *amendments thereto,* due shall be made within a period of five years from
23 the date such contributions, payments in lieu of contributions ~~or benefit~~
24 ~~cost payments,~~ *benefit cost payments and interest assessments made*
25 *pursuant to K.S.A. 44-710a, and amendments thereto,* were due except
26 such determinations may be made for any time when an employer has
27 filed fraudulent reports with intent to evade liability.

28 (2) Any employing unit which is not a resident of this state and
29 which exercises the privilege of having one or more individuals perform
30 service for it within this state and any resident employing unit which
31 exercises that privilege and thereafter removes from this state, shall be
32 deemed thereby to appoint the secretary of state as its agent and attorney
33 for the acceptance of process in any civil action under this subsection. In
34 instituting such an action against any such employing unit the secretary of
35 labor shall cause such process or notice to be filed with the secretary of
36 state and such service shall be sufficient service upon such employing
37 unit and shall be of the same force and validity as if served upon it
38 personally within this state. The secretary of labor shall send notice
39 immediately of the service of such process or notice, together with a copy
40 thereof, by registered or certified mail, return receipt requested, to such
41 employing unit at its last-known address and such return receipt, the
42 affidavit of compliance of the secretary of labor with the provisions of
43 this section, and a copy of the notice of service, shall be appended to the

1 original of the process filed in the court in which such civil action is
2 pending.

3 (3) The district courts of this state shall entertain, in the manner
4 provided in subsections (b)(1) and (b)(2), actions to collect contributions,
5 payments in lieu of contributions, ~~benefit cost payments~~ *interest*
6 *assessments made pursuant to K.S.A. 44-710a, and amendments thereto,*
7 and other amounts owed including interest thereon for which liability has
8 accrued under the employment security law of any other state or of the
9 federal government.

10 (c) *Priorities under legal dissolutions or distributions.* In the event
11 of any distribution of employer's assets pursuant to an order of any court
12 under the laws of this state, including but not limited to any probate
13 proceeding, interpleader, receivership, assignment for benefit of creditors,
14 adjudicated insolvency, composition or similar proceedings, contributions
15 ~~or payments in lieu of contributions~~ *payments in lieu of contributions or*
16 *interest assessments made under K.S.A. 44-710a, and amendments*
17 *thereto,* then or thereafter due shall be paid in full from the moneys which
18 shall first come into the estate, prior to all other claims, except claims for
19 wages of not more than \$250 to each claimant, earned within six months
20 of the commencement of the proceedings. In the event of an employer's
21 adjudication in bankruptcy, judicially confirmed extension proposal, or
22 composition, under the federal bankruptcy act of 1898, as amended,
23 contributions then or thereafter due shall be entitled to such priority as is
24 provided in that act for taxes due any state of the United States.

25 (d) *Assessments.* If any employer fails to file a report or return
26 required by the secretary of labor for the determination of contributions,
27 or payments in lieu of contributions, or benefit cost payments, the
28 secretary of labor may make such reports or returns or cause the same to
29 be made, on the basis of such information as the secretary may be able to
30 obtain and shall collect the contributions, payments in lieu of
31 contributions or benefit cost payments as determined together with any
32 interest due under this act. The secretary of labor shall immediately
33 forward to the employer a copy of the assessment by registered or
34 certified mail to the employer's address as it appears on the records of the
35 agency, and such assessment shall be final unless the employer protests
36 such assessment and files a corrected report or return for the period
37 covered by the assessment within 15 days after the mailing of the copy of
38 assessment. Failure to receive such notice shall not invalidate the
39 assessment. Notice in writing shall be presumed to have been given when
40 deposited as certified or registered matter in the United States mail,
41 addressed to the person to be charged with notice at such person's address
42 as it appears on the records of the agency.

43 (e) (1) *Lien.* If any employer or person who is liable to pay

1 contributions, payments in lieu of contributions ~~or benefit cost payments,~~
2 *benefit cost payments and interest assessments made pursuant to K.S.A.*
3 *44-710a, and amendments thereto,* neglects or refuses to pay the same
4 after demand, the amount, including interest and penalty, shall be a lien in
5 favor of the state of Kansas, secretary of labor, upon all property and
6 rights to property, whether real or personal, belonging to such employer
7 or person. Such lien shall not be valid as against any mortgagee, pledgee,
8 purchaser or judgment creditor until notice thereof has been filed by the
9 secretary of labor in the office of register of deeds in any county in the
10 state of Kansas, in which such property is located, and when so filed shall
11 be notice to all persons claiming an interest in the property of the
12 employer or person against whom filed. The register of deeds shall enter
13 such notices in the financing statement record and shall also record the
14 same in full in miscellaneous record and index the same against the name
15 of the delinquent employer. The register of deeds shall accept, file, and
16 record such notice without prepayment of any fee, but lawful fees shall be
17 added to the amount of such lien and collected when satisfaction is
18 presented for entry. Such lien shall be satisfied of record upon the
19 presentation of a certificate of discharge by the state of Kansas, secretary
20 of labor. Nothing contained in this subsection ~~(e)~~ shall be construed as an
21 invalidation of any lien or notice filed in the name of the unemployment
22 compensation division or the employment security division and such liens
23 shall be and remain in full force and effect until satisfied as provided by
24 this subsection ~~(e)~~.

25 (2) *Authority of secretary or authorized representative.* If any
26 employer or person who is liable to pay any contributions, payments in
27 lieu of contributions ~~or benefit cost payments,~~ *benefit cost payments and*
28 *interest assessments made pursuant to K.S.A. 44-710a, and amendments*
29 *thereto,* including interest and penalty, neglects or refuses to pay the same
30 within 10 days after notice and demand therefor, the secretary or the
31 secretary's authorized representative may collect such contributions,
32 payments in lieu of contributions ~~or benefit cost payments,~~ *benefit cost*
33 *payments and interest assessments made pursuant to K.S.A. 44-710a, and*
34 *amendments thereto,* including interest and penalty, and such further
35 amount as is sufficient to cover the expenses of the levy, by levy upon all
36 property and rights to property which belong to the employer or person or
37 which have a lien created thereon by this subsection ~~(e)~~ for the payment
38 of such contributions, payments in lieu of contributions ~~or benefit cost~~
39 ~~payments,~~ *benefit cost payments and interest assessments made pursuant*
40 *to K.S.A. 44-710a, and amendments thereto,* including interest and
41 penalty. As used in this subsection ~~(e)~~, "property" includes all real
42 property and personal property, whether tangible or intangible, except
43 such property which is exempt under K.S.A. 60-2301 et seq., and

1 amendments thereto. Levy may be made upon the accrued salary or
2 wages of any officer, employee or elected official of any state or local
3 governmental entity which is subject to K.S.A. 60-723, and amendments
4 thereto, by serving a notice of levy as provided in subsection (d) of
5 K.S.A. 60-304, and amendments thereto. If the secretary or the secretary's
6 authorized representative makes a finding that the collection of the
7 amount of such contributions, payments in lieu of contributions ~~or benefit~~
8 ~~cost payments~~, *benefit cost payments and interest assessments made*
9 *pursuant to K.S.A. 44-710a, and amendments thereto*, including interest
10 and penalty, is in jeopardy, notice and demand for immediate payment of
11 such amount may be made by the secretary or the secretary's authorized
12 representative and, upon failure or refusal to pay such amount, immediate
13 collection of such amount by levy shall be lawful without regard to the
14 10-day period provided in this subsection (e).

15 (3) *Seizure and sale of property.* The authority to levy granted under
16 this subsection (e) includes the power of seizure by any means. A levy
17 shall extend only to property possessed and obligations existing at the
18 time thereof. In any case in which the secretary or the secretary's
19 authorized representative may levy upon property or rights to property,
20 the secretary or the secretary's authorized representative may seize and
21 sell such property or rights to property.

22 (4) *Successive seizures.* Whenever any property or right to property
23 upon which levy has been made under this subsection (e) is not sufficient
24 to satisfy the claim of the secretary for which levy is made, the secretary
25 or the secretary's authorized representative may proceed thereafter and as
26 often as may be necessary, to levy in like manner upon any other property
27 or rights to property which belongs to the employer or person against
28 whom such claim exists or upon which a lien is created by this subsection
29 (e) until the amount due from the employer or person, together with all
30 expenses, is fully paid.

31 (f) *Warrant.* In addition or as an alternative to any other remedy
32 provided by this section and provided that no appeal or other proceeding
33 for review permitted by this law shall then be pending and the time for
34 taking thereof shall have expired, the secretary of labor or an authorized
35 representative of the secretary may issue a warrant certifying the amount
36 of contributions, payments in lieu of contributions, benefit cost payments,
37 interest or penalty, and the name of the employer liable for same after
38 giving 15 days prior notice. Upon request, service of final notices shall be
39 made by the sheriff within the sheriff's county, by the sheriff's deputy or
40 some person specially appointed by the secretary for that purpose, or by
41 the secretary's designee. A person specially appointed by the secretary or
42 the secretary's designee to serve final notices may make service any place
43 in the state. Final notices shall be served as follows:

1 (1) *Individual.* Service upon an individual, other than a minor or
2 incapacitated person, shall be made by delivering a copy of the final
3 notice to the individual personally or by leaving a copy at such
4 individual's dwelling house or usual place of abode with some person of
5 suitable age and discretion then residing therein, by leaving a copy at the
6 business establishment of the employer with an officer or employee of the
7 establishment, or by delivering a copy to an agent authorized by
8 appointment or by law to receive service of process, but if the agent is
9 one designated by a statute to receive service, such further notice as the
10 statute requires shall be given. If service as prescribed above cannot be
11 made with due diligence, the secretary or the secretary's designee may
12 order service to be made by leaving a copy of the final notice at the
13 employer's dwelling house, usual place of abode or business
14 establishment.

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

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

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

34 (B) If service of the notice is made by a person appointed by the
35 secretary or the secretary's designee to make service, such person shall
36 make an affidavit as to the time, place and manner of service thereof in a
37 form prescribed by the secretary or the secretary's designee.

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

1 same. The original return shall be attached to and filed with any warrant
2 thereafter filed.

3 (6) *Service by mail.* (A) Upon direction of the secretary or the
4 secretary's designee, service by mail may be effected by forwarding a
5 copy of the notice to the employer by registered or certified mail to the
6 employer's address as it appears on the records of the agency. A copy of
7 the return receipt shall be attached to and filed with any warrant thereafter
8 filed.

9 (B) The secretary of labor or an authorized representative of the
10 secretary may file the warrant for record in the office of the clerk of the
11 district court in the county in which the employer owing such
12 contributions, payments in lieu of contributions, benefit cost payments,
13 *interest assessments made pursuant to K.S.A. 44-710a, and amendments*
14 *thereto*, interest, or penalty has business property. The warrant shall
15 certify the amount of contributions, payments in lieu of contributions,
16 benefit cost payments, interest and penalty due, and the name of the
17 employer liable for such amount. It shall be the duty of the clerk of the
18 district court to file such warrant of record and enter the warrant in the
19 records of the district court for judgment and decrees under the procedure
20 prescribed for filing transcripts of judgment.

21 (C) The clerk shall enter, on the day the warrant is filed, the case on
22 the appearance docket, together with the amount and the time of filing the
23 warrant. From the time of filing such warrant, the amount of the
24 contributions, payments in lieu of contributions, benefit cost payments,
25 *interest assessments made pursuant to K.S.A. 44-710a, and amendments*
26 *thereto*, interest, and penalty, certified therein, shall have the force and
27 effect of a judgment of the district court until the same is satisfied by the
28 secretary of labor or an authorized representative or attorney for the
29 secretary. Execution shall be issuable at the request of the secretary of
30 labor, an authorized representative or attorney for the secretary, as is
31 provided in the case of other judgments.

32 (D) Postjudgment procedures shall be the same as for judgments
33 according to the code of civil procedure.

34 (E) Warrants shall be satisfied of record by payment to the clerk of
35 the district court of the contributions, payments in lieu of contributions,
36 benefit cost payments, *interest assessments made pursuant to K.S.A. 44-*
37 *710a, and amendments thereto*, penalty, interest to date, and court costs.
38 Warrants may also be satisfied of record by payment to the clerk of the
39 district court of all court costs accrued in the case and by filing a
40 certificate by the secretary of labor, certifying that the contributions,
41 payments in lieu of contributions, benefit cost payments, *interest*
42 *assessments made pursuant to K.S.A. 44-710a, and amendments thereto*,
43 interest and penalty have been paid.

1 (g) *Remedies cumulative.* The foregoing remedies shall be
2 cumulative and no action taken shall be construed as an election on the
3 part of the state or any of its officers to pursue any remedy or action
4 under this section to the exclusion of any other remedy or action for
5 which provision is made.

6 (h) *Refunds.* If any individual, governmental entity or organization
7 makes application for refund or adjustment of any amount paid as
8 contributions, benefit cost payments, *interest assessments made pursuant*
9 *to K.S.A. 44-710a, and amendments thereto*, or interest under this law and
10 the secretary of labor determines that such amount or any portion thereof
11 was erroneously collected, except for amounts less than \$5, the secretary
12 of labor shall allow such individual or organization to make an
13 adjustment thereof, in connection with subsequent contribution payments,
14 or if such adjustment cannot be made the secretary of labor shall refund
15 the amount, except for amounts less than \$5, from the employment
16 security fund, except that all interest erroneously collected which has
17 been paid into the special employment security fund shall be refunded out
18 of the special employment security fund. No adjustment or refund shall
19 be allowed with respect to a payment as contributions, ~~benefit cost~~
20 ~~payments~~, *interest assessments made pursuant to K.S.A. 44-710a, and*
21 *amendments thereto*, or interest unless an application therefor is made on
22 or before whichever of the following dates is later: (1) One year from the
23 date on which such payment was made; or (2) three years from the last
24 day of the period with respect to which such payment was made. For like
25 cause and within the same period adjustment or refund may be so made
26 on the secretary's own initiative. The secretary of labor shall not be
27 required to refund any contributions, payments in lieu of contributions or
28 benefit cost payments based upon wages paid which have been used as
29 base-period wages in a determination of a claimant's benefit rights when
30 justifiable and correct payments have been made to the claimant as the
31 result of such determination. For all taxable years commencing after
32 December 31, 1997, interest at the rate prescribed in K.S.A. 79-2968, and
33 amendments thereto, shall be allowed on a contribution or benefit cost
34 payment which the secretary has determined was erroneously collected
35 pursuant to this section.

36 (i) (1) *Cash deposit or bond.* If any contributing employer is
37 delinquent in making payments under the employment security law
38 during any two quarters of the most recent four-quarter period, the
39 secretary or the secretary's authorized representative shall have the
40 discretionary power to require such contributing employer either to
41 deposit cash or to file a bond with sufficient sureties to guarantee the
42 payment of contributions, *interest assessments made pursuant to K.S.A.*
43 *44-710a, and amendments thereto*, penalty and interest owed by such

1 employer.

2 (2) The amount of such cash deposit or bond shall be not less than
3 the largest total amount of contributions, *interest assessments made*
4 *pursuant to K.S.A. 44-710a, and amendments thereto*, penalty and interest
5 reported by the employer in two of the four calendar quarters preceding
6 any delinquency. Such cash deposit or bond shall be required until the
7 employer has shown timely filing of reports and payment of contributions
8 *and interest assessments made pursuant to K.S.A. 44-710a, and*
9 *amendments thereto*, for four consecutive calendar quarters.

10 (3) Failure to file such cash deposit or bond shall subject the
11 employer to a surcharge of 2.0% which shall be in addition to the rate of
12 contributions assigned to the employer under K.S.A. 44-710a, and
13 amendments thereto. Contributions paid as a result of this surcharge shall
14 not be credited to the employer's experience rating account. This
15 surcharge shall be effective during the next full calendar year after its
16 imposition and during each full calendar year thereafter until the
17 employer has filed the required cash deposit or bond or has shown timely
18 filing of reports and payment of contributions for four consecutive
19 calendar quarters.

20 (j) Any officer, major stockholder or other person who has charge of
21 the affairs of an employer, which is an employing unit described in
22 section 501(c)(3) of the federal internal revenue code of 1954 or which is
23 any other corporate organization or association, or any member or
24 manager of a limited liability company, or any public official, who
25 willfully fails to pay the amount of contributions, payments in lieu of
26 contributions ~~or benefit cost payments~~, *benefit cost payments and interest*
27 *assessments made pursuant to K.S.A. 44-710a, and amendments thereto*,
28 required to be paid under the employment security law on the date on
29 which such amount becomes delinquent, shall be personally liable for the
30 total amount of the contributions, payments in lieu of contributions ~~or~~
31 ~~benefit cost payments~~, *benefit cost payments and interest assessments*
32 *made pursuant to K.S.A. 44-710a, and amendments thereto*, and any
33 penalties and interest due and unpaid by such employing unit. The
34 secretary or the secretary's authorized representative may assess such
35 person for the total amount of contributions, payments in lieu of
36 contributions ~~or benefit cost payments~~, *benefit cost payments and interest*
37 *assessments made pursuant to K.S.A. 44-710a, and amendments thereto*,
38 and any penalties, and interest computed as due and owing. With respect
39 to such persons and such amounts assessed, the secretary shall have
40 available all of the collection remedies authorized or provided by this
41 section.

42 (k) *Electronic filing of wage report and contribution return*

1 *and electronic payment of contributions, benefit cost payments or,*
2 *reimbursing payments or interest assessments under K.S.A. 44-710a, and*
3 *amendments thereto.* The following employers or third party
4 administrators shall file all wage reports and contribution returns and
5 make payment of contributions, benefit cost payments or reimbursing
6 payments electronically as follows:

7 (1) Wage reports, contribution returns and payments due after June
8 30, 2008, for those employers with 250 or more employees or third party
9 administrators with 250 or more client employees at the time such filing
10 or payment is first due;

11 (2) wage reports, contribution returns and payments due after June
12 30, 2009, for those employers with 100 or more employees or third party
13 administrators with 100 or more client employees at the time such filing
14 or payment is first due; and

15 (3) wage reports, contribution returns ~~and payments,~~ *payments and*
16 *interest assessments made pursuant to K.S.A. 44-710a, and amendments*
17 *thereto,* due after June 30, 2010, for those third party administrators with
18 50 or more client employees at the time such filing or payment is first
19 due.

20 The requirements of this subsection may be waived by the secretary
21 for an employer if the employer demonstrates a hardship in complying
22 with this subsection.

23 Sec. 6. K.S.A. 2010 Supp. 44-704a, 44-710a and 44-717 are hereby
24 repealed.

25 Sec. 7. On July 1, 2011, K.S.A. 2010 Supp. 44-705 and 44-706 are
26 hereby repealed.

27 Sec. 8. This act shall take effect and be in force from and after its
28 publication in the Kansas register.

29