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Amber Shultz, Secretary

Laura Kelly, Governor

**Proponent/Neutral/Opponent Testimony on HB 2570**  
**Senate Committee on Commerce &**  
**House Commerce, Labor & Economic Development Committee**  
**Kansas Secretary of Labor, Amber Shultz**  
**February 5, 2024**

Madam Chairwoman, Mr. Chairman & Committee Members,

Good afternoon - on behalf of the Kansas Department of Labor, I welcome the opportunity to submit testimony on HB 2570. Last session, we introduced a small collection of changes to assist the Unemployment Insurance (UI) Modernization project, which is scheduled to launch in the 3<sup>rd</sup> quarter of this year.

HB 2401 was passed by the House. Over the past several months, KDOL and stakeholders have worked together to propose several additions, while preserving those from HB 2401, reflected in HB 2570.

Many of the provisions are policy issues, which the agency will remain neutral on. The agency opposes only a few provisions, as written. We have worked closely, especially in recent days, with some of our stakeholders to find a compromise, and we believe we have done so and those are noted.

However, to be clear, the language contained in HB 2401 must be passed for our UI project to remain on time, on budget, and within scope.

I have marked KDOL modernization priorities with a double-asterisk (\*\*) for your convenience.

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I would like to begin by addressing the provisions our agency **supports**.

**Begin Benefit Year on a Sunday\*\* (Page 3)**

The language changes a benefit year to always begin on a Sunday.

A benefit year is defined as the year after a worker establishes a claim for UI benefits and during which the worker must claim their allotted weeks of benefits. For example, if a claimant is allotted 16 weeks of benefits, they can only claim those benefits within their benefit year. Current practice is for a benefit year to start on a Sunday and end 365 days later. A claimant's next benefit year, therefore, might not start on a Sunday. Benefit years cannot overlap.



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This simple change will save considerable time, effort, and money by eliminating the need for customized programming for the new UI system. This change will have no negative impacts on employers or claimants. Additionally, the change improves the overpayment process and timeliness and quality metrics.

**Charging Notices Sent Quarterly\*\* (Page 38)**

The language changes the frequency employers receive their notice of benefit charges from annually to quarterly.

A benefit charge notice is an employer's report of all unemployment claims against them. Claims filed against an employer are part of their tax calculation for the following year. Kansas is one of only a few states that sends charge notices annually.

This functionality is in the base UI system. Not only will this change save resources avoiding unnecessary customization, but the change will also benefit employers by providing more timely information.

**Remove (2)(H)\*\* (Pages 39-40 )**

This language states that an employer is not charged should the pro-rated share of their potential benefit charges be less than \$100. While we are unsure why this statute was included over 30 years ago, we believe it was to ease administrative costs associated with the mailing of potential charge notices and protests. This is far less burdensome now with SIDES in place and electronic protests available.

**State Unemployment Tax Act Amendments\*\* (Page 58)**

This portion changes the mid-year combination of tax rates when a business acquires another business. The combination would begin the year after the acquisition for all businesses regardless of controlling interest.

Per current statute, any business acquisition with the same controlling interest is required to combine rates the following quarter. Then, a new account must be set up for the new, combined rate. Rates are based on the calendar year and therefore even the modernized software must create a new account with the new combined rate.

If an acquisition does not have the same controlling interest, and the employer elects transfer of factors, no new account number is needed as the rate is combined the following calendar year.

These two processes create inconsistency and additional work for employers when two accounts are assigned in the same year. This is burdensome for all involved because employers are required to continue to report on both the established account and the new combined-rate account in the following quarter. Many of these employers are large entities that utilize payroll



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companies, that then may erroneously report on the wrong account.

Employers have also expressed concern that it delays their ability to have the Feds validate their federally required documentation because now there are two accounts for the State Unemployment Tax Act (SUTA tax) under their one Federal Employer Identification Number (FEIN) in the same tax year.

Most combined rates stay the same or vary little from the previous rate. By the time the rates are ultimately combined mid-year, the employer has already met the taxable wages requirement. So, it is not until the following year that the employer is affected by the combined rate.

This change will ensure that all acquisitions are treated consistently, and it reduces customization costs for modernization programming, ending this confusing practice for employers and KDOL staff.

**Extend the voluntary contribution deadline from 30 days to 90 days after the mailing date of the notice (Page 59)**

This language simply extends to voluntary contribution deadline to 90 days from 30 days after the notice mail date.

Employer unemployment voluntary contributions are financial contributions made by employers beyond their mandatory payroll taxes. These contributions are made voluntarily and are a way for employers to potentially reduce their unemployment tax rate. This language will provide employers with more time to contribute.

**Remove all instances of 2008 Great Recession response language from 2011 SB77 (Pages 71-72)**

This change will not affect the agency. Additionally, funds in this employment security interest assessment account were transferred to the employment security trust fund.

**Online filing\*\* (Pages 72-73)**

This language lowers the threshold for businesses that can opt out of online filing to businesses with 25 employees from 50 employees. Online filings include quarterly wage reports and unemployment tax returns.

Please note that payments would still be allowed to be mailed to the agency. Currently, in Q3 of 2023, we received 16 hard copy filings for employers between 25 and 50 employees.

This change continues the agency's objective to modernize all UI processes which reduces resources.

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Next, I would like to address provisions that are policy decisions for the legislature and KDOL is **neutral** on.

**Increases in the percentage of the statewide average annual wage for UI Tax Rates (Pages 15-16)**

Stakeholders proposed this language, and this is a policy decision for the legislature. The language increases, by indexing, the taxable wage base (TWB) from 30% in 2026 to 60% in 2032. The current is \$14,000 and has been since 2015.

The agency understands the premise for this modification. Our original position was to urge caution of the impact on those effected businesses when raising the TWB to 60%. A compromise indexing of 50% over the next 6 years has been reached.

**New Statutory Definitions of Statewide average annual wage or (SAAW) and Statewide average weekly wage (SAWW) (Pages 17, 23-24)**

This language creates new definitions of statewide average annual wage (SAAW) and statewide average weekly wage (SAWW) which would be used in the calculation of tax rates.

Part of the purpose of indexing the taxable wage base is to align it with the weekly benefit amount (WBA), which is also indexed. This definition amends to language for the WBA to be in line with these definitions of SAAW and SAWW.

**Changes to the UI Tax Rate Tables (Pages 50-57)**

Stakeholders proposed this language, and this is a policy decision for the legislature. This adds a new 0% rate group for positive-balance employers, reduces the tax rate for positive-balance employers, and maintains negative-balance employers in a standard schedule.

KDOL worked with stakeholders to make this language less punitive for negative-balance employers. This includes a one-time, write-off of balances of active, negative-balance employers with a reserve ratio benchmark of -25.000%. This would occur in 2024 after Q2 contributions are applied; no earlier than August 20, 2024.

**Extend the UCMIC sunset date to 12/31/2026; ensure continuity with members if needed (Page 74)**

HB 2196 created the Unemployment Compensation Modernization and Improvement Council (UCMIC), which is to sunset in June of 2024. This language would extend the sunset of this council to December 31, 2026.

The agency has no position on this change.

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**Extending the UI Modernization Project Deadline (Page 78) \*\***

HB 2196 included a deadline for complete implementation of the new UI to be December 31, 2022. For each of the three extensions we have requested, the agency has asked the deadline to be December 31, 2024, which aligns with our current launch window.

We submit that under the circumstances, extending the deadline to December 31, 2024 is appropriate.

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Finally, the provisions that KDOL **opposes as written** due to operational concerns. Again, during discussions with stakeholders, we have come to a compromise.

**Establishing procedures to allow employers to report applicants for failing to attend a job interview without notice (Page 29)**

This provision requires the agency to establish a process for employers to submit individuals who fail to attend a job interview without proper notice.

As a reminder, the agency currently performs work-search audits. With the implementation of the new UI system, claimants are required to enter a minimum of three work search activities each week they are claiming benefits before their claim can be submitted. Additionally, the agency currently has a mechanism for identifying a “job refusal”, or the refusal of a bona fide suitable job offer. An interview is not considered a job offer. We believe that these two activities are adequate to address the core tenet of “searching for work”.

We would like to note that the employer will not and cannot know if an applicant is receiving unemployment benefits. The agency cannot provide feedback to the employer regarding the outcome of the investigation due to privacy laws.

If the committee chooses to keep this language, we request an implementation date of January 1, 2026, to allow time to set up the portal and process.

**Board of Review Qualifications (Pages 33-34)**

This language defines qualifications for acceptable candidates for the Kansas Employment Security Board of Review (KESBOR).

The qualifications established, as written, are unwarranted and restrictive. Candidates already are vetted through a rigorous process and are recommended and selected on relevant qualifications.

The proposed provision would prohibit the selection of the best candidate and thus be a disservice to those we serve.

**Change in the timing of creating and publishing the contribution rate tables (Page 50)**

This language proposes a change in timing for publishing the employer contribution rate tables to no less than 120 days prior to the end of the calendar year.

As written, the agency opposes this language because it does not allow the agency an appropriate amount of time to accomplish this task.

In conversations with stakeholders, we agree this should be 30 days.

**Eliminating state benefits if federal benefits issued are equal or more (Page 63)**

This language directs the agency to suspend state unemployment benefits if federal benefits are available that are equal to or more than state benefits.

Programs the federal government issued during the pandemic were directly tied to state benefits. Additionally, claimants often bounced from program to program due to the timing of federal program legislation and USDOL guidance. Even if, hypothetically, federal benefits were not tied to state benefits, extremely complex logic and calculations would be required to determine each weekly claim received comparing eligibility and state benefits due versus federal benefits available versus earned wages. This would most certainly result in more confusion for claimants and employers, as well as contribute to an increase in overpayments.

Using the example of the pandemic, the federal government provided several programs for states to administer. Most were distributed to states through USDOL. However, Lost Wages Assistance (LWA), was an opt-in program administered by the Federal Emergency Management Agency (FEMA). This was not a traditional “unemployment insurance” program, but rather additional benefits for those claimants receiving state unemployment insurance benefits.

Some state and federal programs occur in tandem. For example, Disaster Unemployment Assistance (DUA) is federally triggered in the event of a major disaster by FEMA. DUA is a program of “last resort” and is available only if a claimant does not qualify for regular UI. Extended Benefits (EB) is triggered if a state’s unemployment rate meets certain thresholds. If a state triggers onto EB, benefits are cost-shared at 50/50.

The agency understands the frustration felt by many employers during the pandemic. However, we believe this issue should be raised at the federal level where federal programs are born, and not put an unnecessary burden on the state. The agency understands Nebraska implemented a similar provision, reducing – not suspending – state benefits. The agency would be willing to provide this language.



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### **Current and Additional Reporting (Pages 80-81)**

This language expands the reporting requirements for the agency.

As written, the agency opposes this language. We currently provide much of the information in the Employer Tax Rate page here (Trust Fund Data Section):

<https://www.dol.ks.gov/employers/tax-rates>

Publicly publishing raw employer account information potentially creates fraud risks. Alternatively, stakeholders agree that the agency can prepare this data for a report only to the chairs of House and Senate Commerce as well as a high-level report with aggregated data for public view.

### **Temporary Unemployment Parameters (Pages 23, 81-83)**

This language defines “temporary unemployment” for a benefit year dependent on the account status or NAICS code of the employer.

We wanted to resolve the discrepancy between the definition of temporary employment in our regulations, set at four weeks, with the definition passed in HB 2073, which is eight weeks. Employers could keep valued employees who are on a temporary layoff for eight weeks or less by not requiring that they seek other employment during that timeframe.

As written, it creates an overly complicated system where claimants may be exempt from work search for four weeks, or eight weeks, or 16 weeks, or four weeks plus two weeks, or four weeks plus four weeks, or four weeks plus two weeks plus two weeks. As written, anticipate this to be difficult and costly to program and administer. It will require manual interventions to waive these claimants, which ultimately defeats the purpose of modernization, increases the possibility for error, and slows down the process.

In discussions with stakeholders, we agree on recommending a modification to this language to eight weeks and removing the term “benefit year”. The agency strongly supports the change and would be in alignment with our modernization program. Additionally, portions of the new reporting criteria (above) will allow monitoring of temporary unemployment.

### **Changing of “or” to “and” for MRP exemptions (Page 81-82)**

This language changes the exemptions for claimants to participate in the MRP program.

Legislation contained in HB2703 provided the following exemptions:

- (2) The program shall be required for all claimants except claimants who are:
  - (A) In the shared work program,;
  - (B) in the trade adjustment assistance and trade readjustment assistance program,  
~~claimants on temporary layoff with a return to work date but such claimants shall only be~~



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- ~~excepted during any first 8 consecutive weeks of benefits, claimants that are; and~~  
(C) ~~on temporary unemployment as defined in K.S.A. 44-703(ii), and amendments thereto;~~  
(D) ~~currently employed, claimants that are;~~  
(E) ~~current reemployment services and eligibility assessment participants, claimants that are;~~  
(F) ~~active members in good standing of a placement union or; and~~  
(G) ~~claimants that are engaged in a training program. The program shall be 81- implemented on or before June 1, 2021.~~

The proposed language changes the OR to an AND, thus requiring all conditions to be satisfied. Our understanding from speaking with the revisor is the intent is not to make all conditions satisfied but to operationally remain as in the current statute.

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In summary, the agency appreciates the efforts of the stakeholders and respective committee chairs working on this proposed legislation.

As I stated at the beginning of my testimony, KDOL requires only the pieces marked by \*\*. We look forward to compromising discussions to address the rest of the proposed provisions in HB 2570. I thank you and the committee for your time and willingness to work with our agency to modernize the Kansas Unemployment Insurance system. I will stand for questions at the appropriate time.