

HOUSE BILL No. 2644

By Committee on Federal and State Affairs

2-3

9 AN ACT concerning employment security law; regarding contribution
10 rates, penalties and interest; amending K.S.A. 2009 Supp. 44-710a and
11 44-717 and repealing the existing sections.
12

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

14 Section 1. K.S.A. 2009 Supp. 44-710a is hereby amended to read as
15 follows: 44-710a. (a) *Classification of employers by the secretary.* The
16 term “employer” as used in this section refers to contributing employers.
17 The secretary shall classify employers in accordance with their actual ex-
18 perience in the payment of contributions on their own behalf and with
19 respect to benefits charged against their accounts with a view of fixing
20 such contribution rates as will reflect such experience. If, as of the date
21 such classification of employers is made, the secretary finds that any em-
22 ploying unit has failed to file any report required in connection therewith,
23 or has filed a report which the secretary finds incorrect or insufficient,
24 the secretary shall make an estimate of the information required from
25 such employing unit on the basis of the best evidence reasonably available
26 to the secretary at the time, and notify the employing unit thereof by mail
27 addressed to its last known address. Unless such employing unit shall file
28 the report or a corrected or sufficient report as the case may be, within
29 15 days after the mailing of such notice, the secretary shall compute such
30 employing unit’s rate of contributions on the basis of such estimates, and
31 the rate as so determined shall be subject to increase but not to reduction
32 on the basis of subsequently ascertained information. *For calendar years*
33 *2010 and 2011, the secretary shall charge each contributing employer in*
34 *rate groups 1 through 32 the contribution rate in the 2010 original tax*
35 *rate computation table, with contributing employers in rate groups 33*
36 *through 51 being capped at a 5.4% contribution rate. Thereafter, the*
37 *secretary shall determine the contribution rate of each employer in ac-*
38 *cordance with the requirements of this section.*

39 (1) *New employers.* (A) No employer will be eligible for a rate com-
40 putation until there have been 24 consecutive calendar months immedi-
41 ately preceding the computation date throughout which benefits could
42 have been charged against such employer’s account.

43 (B) (i) For the rate year 2007 and each rate year thereafter, each

1 employer who is not eligible for a rate contribution shall pay contributions
2 equal to 4% of wages paid during each calendar year with regard to em-
3 ployment except such employers engaged in the construction industry
4 shall pay a rate equal to 6%.

5 (ii) For rate years prior to 2007, employers who are not eligible for a
6 rate computation shall pay contributions at an assigned rate equal to the
7 sum of 1% plus the greater of the average rate assigned in the preceding
8 calendar year to all employers in such industry sector or the average rate
9 assigned to all covered employers during the preceding calendar year,
10 except that in no instance shall any such assigned rate be less than 2%.
11 Employers engaged in more than one type of industrial activity shall be
12 classified by principal activity. All rates assigned will remain in effect for
13 a complete calendar year. If the sale or acquisition of a new establishment
14 would require reclassification of the employer to a different industry sec-
15 tor, the employer would be promptly notified, and the contribution rate
16 applicable to the new industry sector would become effective the follow-
17 ing January 1.

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

21 (C) "Computation date" means June 30 of each calendar year with
22 respect to rates of contribution applicable to the calendar year beginning
23 with the following January 1. In arriving at contribution rates for each
24 calendar year, contributions paid on or before July 31 following the com-
25 putation date for employment occurring on or prior to the computation
26 date shall be considered for each contributing employer who has been
27 subject to this act for a sufficient period of time to have such employer's
28 rate computed under this subsection (a).

29 (2) *Eligible employers.* (A) A reserve ratio shall be computed for each
30 eligible employer by the following method: Total benefits charged to the
31 employer's account for all past years shall be deducted from all contri-
32 butions paid by such employer for all such years. The balance, positive
33 or negative, shall be divided by the employer's average annual payroll,
34 and the result shall constitute the employer reserve ratio.

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

37 (C) Eligible employers, other than negative account balance employ-
38 ers, who do not meet the average annual payroll requirements as stated
39 in subsection (a)(2) of K.S.A. 44-703, and amendments thereto, will be
40 issued the maximum rate indicated in subsection (a)(3)(C) of this section
41 until such employer establishes a new period of 24 consecutive calendar
42 months immediately preceding the computation date throughout which
43 benefits could have been charged against such employer's account by

1 resuming the payment of wages. Contribution rates effective for each
 2 calendar year thereafter shall be determined as prescribed below.
 3 (D) As of each computation date, the total of the taxable wages paid
 4 during the 12-month period prior to the computation date by all em-
 5 ployers eligible for rate computation, except negative account balance
 6 employers, shall be divided into 51 approximately equal parts designated
 7 in column A of schedule I as “rate groups,” except, with regard to a year
 8 in which the taxable wage base changes. The taxable wages used in the
 9 calculation for such a year and the following year shall be an estimate of
 10 what the taxable wages would have been if the new taxable wage base
 11 had been in effect during the entire twelve-month period prior to the
 12 computation date. The lowest numbered of such rate groups shall consist
 13 of the employers with the most favorable reserve ratios, as defined in this
 14 section, whose combined taxable wages paid are less than 1.96% of all
 15 taxable wages paid by all eligible employers. Each succeeding higher
 16 numbered rate group shall consist of employers with reserve ratios that
 17 are less favorable than those of employers in the preceding lower num-
 18 bered rate groups and whose taxable wages when combined with the
 19 taxable wages of employers in all lower numbered rate groups equal the
 20 appropriate percentage of total taxable wages designated in column B of
 21 schedule I. Each eligible employer, other than a negative account balance
 22 employer, shall be assigned an experience factor designated under col-
 23 umn C of schedule I in accordance with the rate group to which the
 24 employer is assigned on the basis of the employer’s reserve ratio and
 25 taxable payroll. If an employer’s taxable payroll falls into more than one
 26 rate group the employer shall be assigned the experience factor of the
 27 lower numbered rate group. If one or more employers have reserve ratios
 28 identical to that of the last employer included in the next lower numbered
 29 rate group, all such employers shall be assigned the experience factor
 30 designated to such last employer, notwithstanding the position of their
 31 taxable payroll in column B of schedule I.

SCHEDULE I—Eligible Employers

33	Column A	Column B	Column C
34	Rate	Cumulative	Experience factor
35	group	taxable payroll	(Ratio to total wages)
36	1	Less than 1.96% .....	.025%
37	2	1.96% but less than 3.92 .....	.04
38	3	3.92 but less than 5.88 .....	.08
39	4	5.88 but less than 7.84 .....	.12
40	5	7.84 but less than 9.80 .....	.16
41	6	9.80 but less than 11.76 .....	.20
42	7	11.76 but less than 13.72 .....	.24
43	8	13.72 but less than 15.68 .....	.28

1	9	15.68 but less than 17.64 .....	.32
2	10	17.64 but less than 19.60 .....	.36
3	11	19.60 but less than 21.56 .....	.40
4	12	21.56 but less than 23.52 .....	.44
5	13	23.52 but less than 25.48 .....	.48
6	14	25.48 but less than 27.44 .....	.52
7	15	27.44 but less than 29.40 .....	.56
8	16	29.40 but less than 31.36 .....	.60
9	17	31.36 but less than 33.32 .....	.64
10	18	33.32 but less than 35.28 .....	.68
11	19	35.28 but less than 37.24 .....	.72
12	20	37.24 but less than 39.20 .....	.76
13	21	39.20 but less than 41.16 .....	.80
14	22	41.16 but less than 43.12 .....	.84
15	23	43.12 but less than 45.08 .....	.88
16	24	45.08 but less than 47.04 .....	.92
17	25	47.04 but less than 49.00 .....	.96
18	26	49.00 but less than 50.96	1.00
19	27	50.96 but less than 52.92	1.04
20	28	52.92 but less than 54.88	1.08
21	29	54.88 but less than 56.84	1.12
22	30	56.84 but less than 58.80	1.16
23	31	58.80 but less than 60.76	1.20
24	32	60.76 but less than 62.72	1.24
25	33	62.72 but less than 64.68	1.28
26	34	64.68 but less than 66.64	1.32
27	35	66.64 but less than 68.60	1.36
28	36	68.60 but less than 70.56	1.40
29	37	70.56 but less than 72.52	1.44
30	38	72.52 but less than 74.48	1.48
31	39	74.48 but less than 76.44	1.52
32	40	76.44 but less than 78.40	1.56
33	41	78.40 but less than 80.36	1.60
34	42	80.36 but less than 82.32	1.64
35	43	82.32 but less than 84.28	1.68
36	44	84.28 but less than 86.24	1.72
37	45	86.24 but less than 88.20	1.76
38	46	88.20 but less than 90.16	1.80
39	47	90.16 but less than 92.12	1.84
40	48	92.12 but less than 94.08	1.88
41	49	94.08 but less than 96.04	1.92
42	50	96.04 but less than 98.00	1.96
43	51	98.00 and over	2.00

1 (E) Negative account balance employers shall, in addition to paying
 2 the rate provided for in subsection (a)(2)(B) of this section, pay a sur-
 3 charge based on the size of the employer’s negative reserve ratio, the
 4 calculation which is provided for in subsection (a)(2) of this section. The
 5 amount of the surcharge shall be determined from column B of schedule
 6 II of this section. Each negative account balance employer who does not
 7 satisfy the requirements to have an average annual payroll, as defined by
 8 subsection (a)(2) of K.S.A. 44-703, and amendments thereto, shall be
 9 assigned a surcharge of 2%. Contribution payments made pursuant to this
 10 subsection (a)(2)(E) shall be credited to the appropriate account of such
 11 negative account balance employer.

12 SCHEDULE II—Surcharge on Negative Accounts

13 Column A	Column B
14 Negative Reserve Ratio	15 Surcharge as a percent of taxable wages
16 Less than 2.0%	0.20%
17 2.0% but less than 4.0 .....	.40
18 4.0 but less than 6.0 .....	.60
19 6.0 but less than 8.0 .....	.80
20 8.0 but less than 10.0	1.00
21 10.0 but less than 12.0	1.20
22 12.0 but less than 14.0	1.40
23 14.0 but less than 16.0	1.60
24 16.0 but less than 18.0	1.80
25 18.0 and over	2.00

26 (3) *Planned yield.* (A) The average required yield shall be determined
 27 from schedule III of this section, and the planned yield on total wages in
 28 column B of schedule III shall be determined by the reserve fund ratio
 29 in column A of schedule III. The reserve fund ratio shall be determined
 30 by dividing total assets in the employment security fund provided for in
 31 subsection (a) of K.S.A. 44-712, and amendments thereto, excluding all
 32 moneys credited to the account of this state pursuant to section 903 of
 33 the federal social security act, as amended, which have been appropriated
 34 by the state legislature, whether or not withdrawn from the trust fund,
 35 and excluding contributions not yet paid on July 31 by total payrolls for
 36 contributing employers for the preceding fiscal year which ended June
 37 30.

38 SCHEDULE III—Fund Control

39 Ratios to Total Wages

40 Column A	Column B
41 Reserve Fund Ratio	42 Planned Yield
42 4.500 and over	0.00
43 4.475 but less than 4.500	0.01

1	4.450 but less than 4.475	0.02
2	4.425 but less than 4.450	0.03
3	4.400 but less than 4.425	0.04
4	4.375 but less than 4.400	0.05
5	4.350 but less than 4.375	0.06
6	4.325 but less than 4.350	0.07
7	4.300 but less than 4.325	0.08
8	4.275 but less than 4.300	0.09
9	4.250 but less than 4.275	0.10
10	4.225 but less than 4.250	0.11
11	4.200 but less than 4.225	0.12
12	4.175 but less than 4.200	0.13
13	4.150 but less than 4.175	0.14
14	4.125 but less than 4.150	0.15
15	4.100 but less than 4.125	0.16
16	4.075 but less than 4.100	0.17
17	4.050 but less than 4.075	0.18
18	4.025 but less than 4.050	0.19
19	4.000 but less than 4.025	0.20
20	3.950 but less than 4.000	0.21
21	3.900 but less than 3.950	0.22
22	3.850 but less than 3.900	0.23
23	3.800 but less than 3.850	0.24
24	3.750 but less than 3.800	0.25
25	3.700 but less than 3.750	0.26
26	3.650 but less than 3.700	0.27
27	3.600 but less than 3.650	0.28
28	3.550 but less than 3.600	0.29
29	3.500 but less than 3.550	0.30
30	3.450 but less than 3.500	0.31
31	3.400 but less than 3.450	0.32
32	3.350 but less than 3.400	0.33
33	3.300 but less than 3.350	0.34
34	3.250 but less than 3.300	0.35
35	3.200 but less than 3.250	0.36
36	3.150 but less than 3.200	0.37
37	3.100 but less than 3.150	0.38
38	3.050 but less than 3.100	0.39
39	3.000 but less than 3.050	0.40
40	2.950 but less than 3.000	0.41
41	2.900 but less than 2.950	0.42
42	2.850 but less than 2.900	0.43
43	2.800 but less than 2.850	0.44

1	2.750 but less than 2.800	0.45
2	2.700 but less than 2.750	0.46
3	2.650 but less than 2.700	0.47
4	2.600 but less than 2.650	0.48
5	2.550 but less than 2.600	0.49
6	2.500 but less than 2.550	0.50
7	2.450 but less than 2.500	0.51
8	2.400 but less than 2.450	0.52
9	2.350 but less than 2.400	0.53
10	2.300 but less than 2.350	0.54
11	2.250 but less than 2.300	0.55
12	2.200 but less than 2.250	0.56
13	2.150 but less than 2.200	0.57
14	2.100 but less than 2.150	0.58
15	2.050 but less than 2.100	0.59
16	2.000 but less than 2.050	0.60
17	1.975 but less than 2.000	0.61
18	1.950 but less than 1.975	0.62
19	1.925 but less than 1.950	0.63
20	1.900 but less than 1.925	0.64
21	1.875 but less than 1.900	0.65
22	1.850 but less than 1.875	0.66
23	1.825 but less than 1.850	0.67
24	1.800 but less than 1.825	0.68
25	1.775 but less than 1.800	0.69
26	1.750 but less than 1.775	0.70
27	1.725 but less than 1.750	0.71
28	1.700 but less than 1.725	0.72
29	1.675 but less than 1.700	0.73
30	1.650 but less than 1.675	0.74
31	1.625 but less than 1.650	0.75
32	1.600 but less than 1.625	0.76
33	1.575 but less than 1.600	0.77
34	1.550 but less than 1.575	0.78
35	1.525 but less than 1.550	0.79
36	1.500 but less than 1.525	0.80
37	1.475 but less than 1.500	0.81
38	1.450 but less than 1.475	0.82
39	1.425 but less than 1.450	0.83
40	1.400 but less than 1.425	0.84
41	1.375 but less than 1.400	0.85
42	1.350 but less than 1.375	0.86
43	1.325 but less than 1.350	0.87

1	1.300 but less than 1.325	0.88
2	1.275 but less than 1.300	0.89
3	1.250 but less than 1.275	0.90
4	1.225 but less than 1.250	0.91
5	1.200 but less than 1.225	0.92
6	1.175 but less than 1.200	0.93
7	1.150 but less than 1.175	0.94
8	1.125 but less than 1.150	0.95
9	1.100 but less than 1.125	0.96
10	1.075 but less than 1.100	0.97
11	1.050 but less than 1.075	0.98
12	1.025 but less than 1.050	0.99
13	1.000 but less than 1.025	1.00
14	0.900 but less than 1.000	1.01
15	0.800 but less than 0.900	1.02
16	0.700 but less than 0.800	1.03
17	0.600 but less than 0.700	1.04
18	0.500 but less than 0.600	1.05
19	0.400 but less than 0.500	1.06
20	0.300 but less than 0.400	1.07
21	0.200 but less than 0.300	1.08
22	0.100 but less than 0.200	1.09
23	Less than 0.100%	1.10

24 (B) *Adjustment to taxable wages.* The planned yield as a percent of
25 total wages, as determined in this subsection (a)(3), shall be adjusted to
26 taxable wages by multiplying by the ratio of total wages to taxable wages
27 for all contributing employers for the preceding fiscal year ending June
28 30, except, with regard to a year in which the taxable wage base changes.
29 The taxable wages used in the calculation for such a year and the following
30 year shall be an estimate of what the taxable wages would have been if
31 the new taxable wage base had been in effect during all of the preceding
32 fiscal year ending June 30.

33 (C) *Effective rates.* (i) Except with regard to rates for negative ac-
34 count balance employers, employer contribution rates to be effective for
35 the ensuing calendar year shall be computed by adjusting proportionately
36 the experience factors from schedule I of this section to the required
37 yield on taxable wages. For the purposes of this subsection (a)(3), all rates
38 computed shall be rounded to the nearest .01% and for calendar year
39 1983 and ensuing calendar years, the maximum effective contribution rate
40 shall not exceed 5.4%.

41 (ii) For rate year 2007 and subsequent rate years, employers who are
42 current in filing quarterly wage reports and in payment of all contributions
43 due and owing, shall be issued a contribution rate based upon the follow-

1 ing reduction: for rate groups 1 through 5, the rates would be reduced
2 to 0.00%; for rate groups 6 through 28, the rates would be reduced by
3 50%; for rate groups 29 through 51, the rates would be reduced by 40%.

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

8 (iv) In order to be eligible for the reduced rates for rate year 2008
9 and subsequent rate years, employers must file all reports due and pay
10 all contributions due and owing on or before January 31 of the applicable
11 year, except that the reduced rates for otherwise eligible employers shall
12 not be effective for any rate year if the average high cost multiple of the
13 employment security trust fund balance falls below 1.2 as of the com-
14 putation date of that year's rates. For the purposes of this provision, the
15 average high cost multiple is the reserve fund ratio, as defined by sub-
16 section (a)(3)(A), divided by the average high benefit cost rate. The av-
17 erage high benefit cost rate shall be determined by averaging the three
18 highest benefit cost rates over the last 20 years from the preceding fiscal
19 year which ended June 30. The high benefit cost rate is defined by divid-
20 ing total benefits paid in the fiscal year by total payrolls for covered em-
21 ployers in the fiscal year.

22 (b) *Successor classification.* (1) (A) For the purposes of this subsec-
23 tion (b), whenever an employing unit, whether or not it is an "employing
24 unit" within the meaning of subsection (g) of K.S.A. 44-703, and amend-
25 ments thereto, becomes an employer pursuant to subsection (h)(4) of
26 K.S.A. 44-703, and amendments thereto, or is an employer at the time
27 of acquisition and meets the definition of a "successor employer" as de-
28 fined by subsection (dd) of K.S.A. 44-703, and amendments thereto, and
29 thereafter transfers its trade or business, or any portion thereof, to an-
30 other employer and, at the time of the transfer, there is substantially
31 common ownership, management or control of the two employers, then
32 the unemployment experience attributable to the transferred trade or
33 business shall be transferred to the employer to whom such business is
34 so transferred. These experience factors consist of all contributions paid,
35 benefit experience and annual payrolls of the predecessor employer. The
36 transfer of some or all of an employer's workforce to another employer
37 shall be considered a transfer of trade or business when, as the result of
38 such transfer, the transferring employer no longer performs trade or busi-
39 ness with respect to the transferred workforce, and such trade or business
40 is performed by the employer to whom the workforce is transferred.

41 (B) If, following a transfer of experience under subparagraph (A), the
42 secretary determines that a substantial purpose of the transfer or business
43 was to obtain a reduced liability for contributions, then the experience

1 rating accounts of the employers involved shall be combined into a single
2 account and a single rate assigned to such account.

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

8 (3) Whenever an employing unit, whether or not it is an "employing
9 unit" within the meaning of subsection (g) of K.S.A. 44-703, and amend-
10 ments thereto, acquires or in any manner succeeds to a percentage of an
11 employer's annual payroll which is less than 100% and intends to continue
12 the acquired percentage as a going business, the employing unit may
13 acquire the same percentage of the predecessor's experience factors if:
14 (A) The predecessor employer and successor employing unit make an
15 application in writing on the form prescribed by the secretary, (B) the
16 application is submitted within 120 days of the date of the transfer, (C)
17 the successor employing unit is or becomes an employer subject to this
18 act immediately after the transfer, (D) the percentage of the experience
19 rating factors transferred shall not be thereafter used in computing the
20 contribution rate for the predecessor employer, and (E) the secretary
21 finds that such transfer will not tend to defeat or obstruct the object and
22 purposes of this act.

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

27 (B) If a successor employer is determined to be qualified under par-
28 agraph (2) or (3) of this subsection to receive the experience rating factors
29 of the predecessor employer, the rate assigned to the successor employer
30 for the remainder of the contributions year shall be determined by the
31 following:

32 (i) If the acquiring employing unit was an employer subject to this
33 act prior to the date of the transfer, the rate of contribution shall be the
34 same as the contribution rate of the acquiring employer on the date of
35 the transfer.

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

43 (5) Whenever an employing unit is not an employer at the time it

1 acquires the trade or business of an employer, the unemployment expe-
2 rience factors of the acquired business shall not be transferred to such
3 employing unit if the secretary finds that such employing unit acquired
4 the business solely or primarily for the purpose of obtaining a lower rate
5 of contributions. Instead, such employing unit shall be assigned the ap-
6 plicable industry rate for a “new employer” as described in subsection
7 (a)(1) of this section. In determining whether the business was acquired
8 solely or primarily for the purpose of obtaining a lower rate of contribu-
9 tions, the secretary shall use objective factors which may include the cost
10 of acquiring the business, whether the employer continued the business
11 enterprise of the acquired business, how long such business enterprise
12 was continued, or whether a substantial number of new employees were
13 hired for performance of duties unrelated to the business activity con-
14 ducted prior to acquisition.

15 (6) Whenever an employer’s account has been terminated as pro-
16 vided in subsections (d) and (e) of K.S.A. 44-711, and amendments
17 thereto, and the employer continues with employment to liquidate the
18 business operations, that employer shall continue to be an “employer”
19 subject to the employment security law as provided in subsection (h)(8)
20 of K.S.A. 44-703 and amendments thereto. The rate of contribution from
21 the date of transfer to the end of the then current calendar year shall be
22 the same as the contribution rate prior to the date of the transfer. At the
23 completion of the then current calendar year, the rate of contribution
24 shall be that of a “new employer” as described in subsection (a)(1) of this
25 section.

26 (7) No rate computation will be permitted an employing unit suc-
27 ceeding to the experience of another employing unit pursuant to this
28 section for any period subsequent to such succession except in accordance
29 with rules and regulations adopted by the secretary. Any such regulations
30 shall be consistent with federal requirements for additional credit allow-
31 ance in section 3303 of the federal internal revenue code of 1986, and
32 consistent with the provisions of this act.

33 (c) *Voluntary contributions.* Notwithstanding any other provision of
34 the employment security law, any employer may make voluntary pay-
35 ments for the purpose of reducing or maintaining a reduced rate in ad-
36 dition to the contributions required under this section. Such voluntary
37 payments may be made only during the thirty-day period immediately
38 following the date of mailing of experience rating notices for a calendar
39 year. All such voluntary contribution payments shall be paid prior to the
40 expiration of 120 days after the beginning of the year for which such rates
41 are effective. The amount of voluntary contributions shall be credited to
42 the employer’s account as of the next preceding computation date and
43 the employer’s rate shall be computed accordingly, except that no em-

1 ployer's rate shall be reduced more than five rate groups as provided in
2 schedule I of this section as the result of a voluntary payment. An em-
3 ployer not having a negative account balance may have such employer's
4 rate reduced not more than five rate groups as provided in schedule I of
5 this section as a result of a voluntary payment. An employer having a
6 negative account balance may have such employer's rate reduced to that
7 prescribed for rate group 51 of schedule I of this section by making a
8 voluntary payment in the amount of such negative account balance or to
9 that rate prescribed for rate groups 50 through 47 of schedule I of this
10 section by making an additional voluntary payment that would increase
11 such employer's reserve ratio to the lower limit required for such rate
12 groups 50 through 47. Under no circumstances shall voluntary payments
13 be refunded in whole or in part.

14 (d) As used in this section, "negative account balance employer"
15 means an eligible employer whose total benefits charged to such em-
16 ployer's account for all past years have exceeded all contributions paid by
17 such employer for all such years.

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

29 Sec. 2. K.S.A. 2009 Supp. 44-717 is hereby amended to read as fol-
30 lows: 44-717. (a) (1) *Penalties on past-due reports, interest on past-due*
31 *contributions, payments in lieu of contributions and benefit cost pay-*
32 *ments. Subject to the provisions of paragraph (3), any employer or any*
33 *officer or agent of an employer, who fails to file any wage report or con-*
34 *tribution return by the last day of the month following the close of each*
35 *calendar quarter to which they are related shall pay a penalty as provided*
36 *by this subsection (a) for each month or fraction of a month until the*
37 *report or return is received by the secretary of labor. The penalty for each*
38 *month or fraction of a month shall be an amount equal to .05% of the*
39 *total wages paid by the employer during the quarter, except that no pen-*
40 *alty shall be less than \$25 nor more than \$200 for each such report or*
41 *return not timely filed. Contributions and benefit cost payments unpaid*
42 *by the last day of the month following the last calendar quarter to which*
43 *they are related and payments in lieu of contributions unpaid 30 days*

1 after the mailing of the statement of benefit charges, shall bear interest
2 at the rate of 1% per month or fraction of a month until payment is
3 received by the secretary of labor except that an employing unit, which
4 is not theretofore subject to this law and which becomes an employer and
5 does not refuse to make the reports, returns and contributions, payments
6 in lieu of contributions and benefit cost payments required under this
7 law, shall not be liable for such penalty or interest if the wage reports and
8 contribution returns required are filed and the contributions, payments
9 in lieu of contributions or benefit cost payments required are paid within
10 10 days following notification by the secretary of labor that a determi-
11 nation has been made fixing its status as an employer subject to this law.
12 Upon written request and good cause shown, the secretary of labor may
13 abate any penalty or interest or portion thereof provided for by this sub-
14 section (a). Interest amounting to less than \$5 shall be waived by the
15 secretary of labor and shall not be collected. Penalties and interest col-
16 lected pursuant to this subsection shall be paid into the special employ-
17 ment security fund. For all purposes under this section, amounts assessed
18 as surcharges under subsection (j) or under K.S.A. 44-710a, and amend-
19 ments thereto, shall be considered to be contributions and shall be subject
20 to penalties and interest imposed under this section and to collection in
21 the manner provided by this section. For purposes of this subsection, a
22 wage report, a contribution return, a contribution, a payment in lieu of
23 contribution or a benefit cost payment is deemed to be filed or paid as
24 of the date it is placed in the United States mail.

25 (2) Notices of payment and reporting delinquency to Indian tribes or
26 their tribal units shall include information that failure to make full pay-
27 ment within the prescribed time frame:

- 28 (i) will cause the Indian tribe to be liable for taxes under FUTA;
- 29 (ii) will cause the Indian tribe to lose the option to make payments
30 in lieu of contributions;
- 31 (iii) could cause the Indian tribe to be excepted from the definition
32 of "employer," as provided in paragraph (h)(3) of K.S.A. 44-703, and
33 amendments thereto, and services in the employ of the Indian tribe, as
34 provided in paragraph (i)(3)(E) of K.S.A. 44-703, and amendments
35 thereto, to be excepted from "employment."

36 (3) *Notwithstanding any provision of subsection (a) to the contrary,*
37 *for calendar year 2010, any penalty or interest assessed pursuant to sub-*
38 *section (a) shall be forgiven if the contributing employer pays its 2010*
39 *contribution rate in full by the close of the final calendar quarter for*
40 *calendar year 2010. However, if a contributing employer does not pay its*
41 *contribution rate in full by the close of the final calendar quarter for*
42 *calendar year 2010, such contributing employer will be responsible for*
43 *paying any penalties and interest accrued during the calendar year 2010.*

1 (b) *Collection.* (1) If, after due notice, any employer defaults in pay-
2 ment of any penalty, contributions, payments in lieu of contributions,
3 benefit cost payments, or interest thereon the amount due may be col-
4 lected by civil action in the name of the secretary of labor and the em-
5 ployer adjudged in default shall pay the cost of such action. Civil actions
6 brought under this section to collect contributions, payments in lieu of
7 contributions, benefit cost payments, penalties, or interest thereon from
8 an employer shall be heard by the district court at the earliest possible
9 date and shall be entitled to preference upon the calendar of the court
10 over all other civil actions except petitions for judicial review under this
11 act and cases arising under the workmen's compensation act. All liability
12 determinations of contributions due, payments in lieu of contributions or
13 benefit cost payments due shall be made within a period of five years
14 from the date such contributions, payments in lieu of contributions or
15 benefit cost payments were due except such determinations may be made
16 for any time when an employer has filed fraudulent reports with intent
17 to evade liability.

18 (2) Any employing unit which is not a resident of this state and which
19 exercises the privilege of having one or more individuals perform service
20 for it within this state and any resident employing unit which exercises
21 that privilege and thereafter removes from this state, shall be deemed
22 thereby to appoint the secretary of state as its agent and attorney for the
23 acceptance of process in any civil action under this subsection. In insti-
24 tuting such an action against any such employing unit the secretary of
25 labor shall cause such process or notice to be filed with the secretary of
26 state and such service shall be sufficient service upon such employing
27 unit and shall be of the same force and validity as if served upon it per-
28 sonally within this state. The secretary of labor shall send notice imme-
29 diately of the service of such process or notice, together with a copy
30 thereof, by registered or certified mail, return receipt requested, to such
31 employing unit at its last-known address and such return receipt, the
32 affidavit of compliance of the secretary of labor with the provisions of this
33 section, and a copy of the notice of service, shall be appended to the
34 original of the process filed in the court in which such civil action is
35 pending.

36 (3) The district courts of this state shall entertain, in the manner
37 provided in subsections (b)(1) and (b)(2), actions to collect contributions,
38 payments in lieu of contributions, benefit cost payments and other
39 amounts owed including interest thereon for which liability has accrued
40 under the employment security law of any other state or of the federal
41 government.

42 (c) *Priorities under legal dissolutions or distributions.* In the event of
43 any distribution of employer's assets pursuant to an order of any court

1 under the laws of this state, including but not limited to any probate
2 proceeding, interpleader, receivership, assignment for benefit of credi-
3 tors, adjudicated insolvency, composition or similar proceedings, contri-
4 butions or payments in lieu of contributions then or thereafter due shall
5 be paid in full from the moneys which shall first come into the estate,
6 prior to all other claims, except claims for wages of not more than \$250
7 to each claimant, earned within six months of the commencement of the
8 proceedings. In the event of an employer's adjudication in bankruptcy,
9 judicially confirmed extension proposal, or composition, under the federal
10 bankruptcy act of 1898, as amended, contributions then or thereafter due
11 shall be entitled to such priority as is provided in that act for taxes due
12 any state of the United States.

13 (d) *Assessments.* If any employer fails to file a report or return re-
14 quired by the secretary of labor for the determination of contributions,
15 or payments in lieu of contributions, or benefit cost payments, the sec-
16 retary of labor may make such reports or returns or cause the same to be
17 made, on the basis of such information as the secretary may be able to
18 obtain and shall collect the contributions, payments in lieu of contribu-
19 tions or benefit cost payments as determined together with any interest
20 due under this act. The secretary of labor shall immediately forward to
21 the employer a copy of the assessment by registered or certified mail to
22 the employer's address as it appears on the records of the agency, and
23 such assessment shall be final unless the employer protests such assess-
24 ment and files a corrected report or return for the period covered by the
25 assessment within 15 days after the mailing of the copy of assessment.
26 Failure to receive such notice shall not invalidate the assessment. Notice
27 in writing shall be presumed to have been given when deposited as cer-
28 tified or registered matter in the United States mail, addressed to the
29 person to be charged with notice at such person's address as it appears
30 on the records of the agency.

31 (e) (1) *Lien.* If any employer or person who is liable to pay contri-
32 butions, payments in lieu of contributions or benefit cost payments ne-
33 glects or refuses to pay the same after demand, the amount, including
34 interest and penalty, shall be a lien in favor of the state of Kansas, sec-
35 retary of labor, upon all property and rights to property, whether real or
36 personal, belonging to such employer or person. Such lien shall not be
37 valid as against any mortgagee, pledgee, purchaser or judgment creditor
38 until notice thereof has been filed by the secretary of labor in the office
39 of register of deeds in any county in the state of Kansas, in which such
40 property is located, and when so filed shall be notice to all persons claim-
41 ing an interest in the property of the employer or person against whom
42 filed. The register of deeds shall enter such notices in the financing state-
43 ment record and shall also record the same in full in miscellaneous record

1 and index the same against the name of the delinquent employer. The
2 register of deeds shall accept, file, and record such notice without pre-
3 payment of any fee, but lawful fees shall be added to the amount of such
4 lien and collected when satisfaction is presented for entry. Such lien shall
5 be satisfied of record upon the presentation of a certificate of discharge
6 by the state of Kansas, secretary of labor. Nothing contained in this sub-
7 section (e) shall be construed as an invalidation of any lien or notice filed
8 in the name of the unemployment compensation division or the employ-
9 ment security division and such liens shall be and remain in full force and
10 effect until satisfied as provided by this subsection (e).

11 (2) *Authority of secretary or authorized representative.* If any employ-
12 er or person who is liable to pay any contributions, payments in lieu
13 of contributions or benefit cost payments, including interest and penalty,
14 neglects or refuses to pay the same within 10 days after notice and de-
15 mand therefor, the secretary or the secretary's authorized representative
16 may collect such contributions, payments in lieu of contributions or ben-
17 efit cost payments, including interest and penalty, and such further
18 amount as is sufficient to cover the expenses of the levy, by levy upon all
19 property and rights to property which belong to the employer or person
20 or which have a lien created thereon by this subsection (e) for the pay-
21 ment of such contributions, payments in lieu of contributions or benefit
22 cost payments, including interest and penalty. As used in this subsection
23 (e), "property" includes all real property and personal property, whether
24 tangible or intangible, except such property which is exempt under K.S.A.
25 60-2301 et seq. and amendments thereto. Levy may be made upon the
26 accrued salary or wages of any officer, employee or elected official of any
27 state or local governmental entity which is subject to K.S.A. 60-723, and
28 amendments thereto, by serving a notice of levy as provided in subsection
29 (d) of K.S.A. 60-304 and amendments thereto. If the secretary or the
30 secretary's authorized representative makes a finding that the collection
31 of the amount of such contributions, payments in lieu of contributions or
32 benefit cost payments, including interest and penalty, is in jeopardy, no-
33 tice and demand for immediate payment of such amount may be made
34 by the secretary or the secretary's authorized representative and, upon
35 failure or refusal to pay such amount, immediate collection of such
36 amount by levy shall be lawful without regard to the 10-day period pro-
37 vided in this subsection (e).

38 (3) *Seizure and sale of property.* The authority to levy granted under
39 this subsection (e) includes the power of seizure by any means. A levy
40 shall extend only to property possessed and obligations existing at the
41 time thereof. In any case in which the secretary or the secretary's au-
42 thorized representative may levy upon property or rights to property, the
43 secretary or the secretary's authorized representative may seize and sell

1 such property or rights to property.

2 (4) *Successive seizures.* Whenever any property or right to property
3 upon which levy has been made under this subsection (e) is not sufficient
4 to satisfy the claim of the secretary for which levy is made, the secretary
5 or the secretary's authorized representative may proceed thereafter and
6 as often as may be necessary, to levy in like manner upon any other
7 property or rights to property which belongs to the employer or person
8 against whom such claim exists or upon which a lien is created by this
9 subsection (e) until the amount due from the employer or person, to-
10 gether with all expenses, is fully paid.

11 (f) *Warrant.* In addition or as an alternative to any other remedy
12 provided by this section and provided that no appeal or other proceeding
13 for review permitted by this law shall then be pending and the time for
14 taking thereof shall have expired, the secretary of labor or an authorized
15 representative of the secretary may issue a warrant certifying the amount
16 of contributions, payments in lieu of contributions, benefit cost payments,
17 interest or penalty, and the name of the employer liable for same after
18 giving 15 days prior notice. Upon request, service of final notices shall be
19 made by the sheriff within the sheriff's county, by the sheriff's deputy or
20 some person specially appointed by the secretary for that purpose, or by
21 the secretary's designee. A person specially appointed by the secretary or
22 the secretary's designee to serve final notices may make service any place
23 in the state. Final notices shall be served as follows:

24 (1) *Individual.* Service upon an individual, other than a minor or in-
25 capacitated person, shall be made by delivering a copy of the final notice
26 to the individual personally or by leaving a copy at such individual's dwell-
27 ing house or usual place of abode with some person of suitable age and
28 discretion then residing therein, by leaving a copy at the business estab-
29 lishment of the employer with an officer or employee of the establish-
30 ment, or by delivering a copy to an agent authorized by appointment or
31 by law to receive service of process, but if the agent is one designated by
32 a statute to receive service, such further notice as the statute requires
33 shall be given. If service as prescribed above cannot be made with due
34 diligence, the secretary or the secretary's designee may order service to
35 be made by leaving a copy of the final notice at the employer's dwelling
36 house, usual place of abode or business establishment.

37 (2) *Corporations and partnerships.* Service upon a domestic or for-
38 eign corporation or upon a partnership or other unincorporated associa-
39 tion, when by law it may be sued as such, shall be made by delivering a
40 copy of the final notice to an officer, partner or resident managing or
41 general agent thereof by leaving a copy at any business office of the em-
42 ployer with the person having charge thereof or by delivering a copy to
43 any other agent authorized by appointment or required by law to receive

1 service of process, if the agent is one authorized by law to receive service
2 and, if the law so requires, by also mailing a copy to the employer.

3 (3) *Refusal to accept service.* In all cases when the person to be
4 served, or an agent authorized by such person to accept service of peti-
5 tions and summonses, shall refuse to receive copies of the final notice,
6 the offer of the duly authorized process server to deliver copies thereof
7 and such refusal shall be sufficient service of such notice.

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

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

16 (5) *Time for return.* The officer or other person receiving a final no-
17 tice shall make a return of service promptly and shall send such return
18 to the secretary or the secretary's designee in any event within 10 days
19 after the service is effected. If the final notice cannot be served it shall
20 be returned to the secretary or the secretary's designee within 30 days
21 after the date of issue with a statement of the reason for the failure to
22 serve the same. The original return shall be attached to and filed with
23 any warrant thereafter filed.

24 (6) *Service by mail.* (A) Upon direction of the secretary or the sec-
25 retary's designee, service by mail may be effected by forwarding a copy
26 of the notice to the employer by registered or certified mail to the em-
27 ployer's address as it appears on the records of the agency. A copy of the
28 return receipt shall be attached to and filed with any warrant thereafter
29 filed.

30 (B) The secretary of labor or an authorized representative of the sec-
31 retary may file the warrant for record in the office of the clerk of the
32 district court in the county in which the employer owing such contribu-
33 tions, payments in lieu of contributions, benefit cost payments, interest,
34 or penalty has business property. The warrant shall certify the amount of
35 contributions, payments in lieu of contributions, benefit cost payments,
36 interest and penalty due, and the name of the employer liable for such
37 amount. It shall be the duty of the clerk of the district court to file such
38 warrant of record and enter the warrant in the records of the district
39 court for judgment and decrees under the procedure prescribed for filing
40 transcripts of judgment.

41 (C) The clerk shall enter, on the day the warrant is filed, the case on
42 the appearance docket, together with the amount and the time of filing
43 the warrant. From the time of filing such warrant, the amount of the

1 contributions, payments in lieu of contributions, benefit cost payments,
2 interest, and penalty, certified therein, shall have the force and effect of
3 a judgment of the district court until the same is satisfied by the secretary
4 of labor or an authorized representative or attorney for the secretary.
5 Execution shall be issuable at the request of the secretary of labor, an
6 authorized representative or attorney for the secretary, as is provided in
7 the case of other judgments.

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

10 (E) Warrants shall be satisfied of record by payment to the clerk of
11 the district court of the contributions, payments in lieu of contributions,
12 benefit cost payments, penalty, interest to date, and court costs. Warrants
13 may also be satisfied of record by payment to the clerk of the district
14 court of all court costs accrued in the case and by filing a certificate by
15 the secretary of labor, certifying that the contributions, payments in lieu
16 of contributions, benefit cost payments, interest and penalty have been
17 paid.

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

23 (h) *Refunds.* If any individual, governmental entity or organization
24 makes application for refund or adjustment of any amount paid as con-
25 tributions, benefit cost payments or interest under this law and the sec-
26 retary of labor determines that such amount or any portion thereof was
27 erroneously collected, except for amounts less than \$5, the secretary of
28 labor shall allow such individual or organization to make an adjustment
29 thereof, in connection with subsequent contribution payments, or if such
30 adjustment cannot be made the secretary of labor shall refund the
31 amount, except for amounts less than \$5, from the employment security
32 fund, except that all interest erroneously collected which has been paid
33 into the special employment security fund shall be refunded out of the
34 special employment security fund. No adjustment or refund shall be al-
35 lowed with respect to a payment as contributions, benefit cost payments
36 or interest unless an application therefor is made on or before whichever
37 of the following dates is later: (1) One year from the date on which such
38 payment was made; or (2) three years from the last day of the period with
39 respect to which such payment was made. For like cause and within the
40 same period adjustment or refund may be so made on the secretary's own
41 initiative. The secretary of labor shall not be required to refund any con-
42 tributions, payments in lieu of contributions or benefit cost payments
43 based upon wages paid which have been used as base-period wages in a

1 determination of a claimant's benefit rights when justifiable and correct
2 payments have been made to the claimant as the result of such deter-
3 mination. For all taxable years commencing after December 31, 1997,
4 interest at the rate prescribed in K.S.A. 79-2968, and amendments
5 thereto, shall be allowed on a contribution or benefit cost payment which
6 the secretary has determined was erroneously collected pursuant to this
7 section.

8 (i) (1) *Cash deposit or bond.* If any contributing employer is delin-
9 quent in making payments under the employment security law during any
10 two quarters of the most recent four-quarter period, the secretary or the
11 secretary's authorized representative shall have the discretionary power
12 to require such contributing employer either to deposit cash or to file a
13 bond with sufficient sureties to guarantee the payment of contributions,
14 penalty and interest owed by such employer.

15 (2) The amount of such cash deposit or bond shall be not less than
16 the largest total amount of contributions, penalty and interest reported
17 by the employer in two of the four calendar quarters preceding any de-
18 linquency. Such cash deposit or bond shall be required until the employer
19 has shown timely filing of reports and payment of contributions for four
20 consecutive calendar quarters.

21 (3) Failure to file such cash deposit or bond shall subject the em-
22 ployer to a surcharge of 2.0% which shall be in addition to the rate of
23 contributions assigned to the employer under K.S.A. 44-710a and amend-
24 ments thereto. Contributions paid as a result of this surcharge shall not
25 be credited to the employer's experience rating account. This surcharge
26 shall be effective during the next full calendar year after its imposition
27 and during each full calendar year thereafter until the employer has filed
28 the required cash deposit or bond or has shown timely filing of reports
29 and payment of contributions for four consecutive calendar quarters.

30 (j) Any officer, major stockholder or other person who has charge of
31 the affairs of an employer, which is an employing unit described in section
32 501(c)(3) of the federal internal revenue code of 1954 or which is any
33 other corporate organization or association, or any member or manager
34 of a limited liability company, or any public official, who willfully fails to
35 pay the amount of contributions, payments in lieu of contributions or
36 benefit cost payments required to be paid under the employment security
37 law on the date on which such amount becomes delinquent, shall be
38 personally liable for the total amount of the contributions, payments in
39 lieu of contributions or benefit cost payments and any penalties and in-
40 terest due and unpaid by such employing unit. The secretary or the sec-
41 retary's authorized representative may assess such person for the total
42 amount of contributions, payments in lieu of contributions or benefit cost
43 payments and any penalties, and interest computed as due and owing.

1 With respect to such persons and such amounts assessed, the secretary
2 shall have available all of the collection remedies authorized or provided
3 by this section.

4 (k) *Electronic filing of wage report and contribution return and elec-*
5 *tronic payment of contributions, benefit cost payments or reimbursing*
6 *payments.* The following employers or third party administrators shall file
7 all wage reports and contribution returns and make payment of contri-
8 butions, benefit cost payments or reimbursing payments electronically as
9 follows:

10 (1) Wage reports, contribution returns and payments due after June
11 30, 2008, for those employers with 250 or more employees or third party
12 administrators with 250 or more client employees at the time such filing
13 or payment is first due;

14 (2) wage reports, contribution returns and payments due after June
15 30, 2009, for those employers with 100 or more employees or third party
16 administrators with 100 or more client employees at the time such filing
17 or payment is first due; and

18 (3) wage reports, contribution returns and payments due after June
19 30, 2010, for those third party administrators with 50 or more client em-
20 ployees at the time such filing or payment is first due.

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

24 Sec. 3. K.S.A. 2009 Supp. 44-710a and 44-717 are hereby repealed.

25 Sec. 4. This act shall take effect and be in force from and after its
26 publication in the Kansas register.